CIVIL PROCEDURE

RULES UPDATE:

INITIAL DISCLOSURES

EXPEDITED CIVIL ACTION

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CHAPTER 1
RULES OF CIVIL PROCEDURE

* * * *

DIVISION II
ACTIONS, JOINDER OF ACTIONS, AND PARTIES

* * * *

[New Rule]

G. EXPEDITED CIVIL ACTIONS

Rule 1.281 Expedited civil actions

1.281(1) *General provisions.*

a. Eligible actions. Rule 1.281 governs "expedited civil actions" in which the sole relief sought is a money judgment and in which all claims (other than compulsory counterclaims) for all damages by or against any one party total $75,000 or less, including damages of any kind, penalties, prefiling interest, and attorney fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

b. Excluded actions. Rule 1.281 does not apply to small claims or domestic relations cases.

c. Electing expedited procedures. Eligible plaintiffs can elect to proceed as an expedited civil action by certifying that the sole relief sought is a money judgment and that all claims (other than compulsory counterclaims) for all damages by or against any one party total $75,000 or less, including damages of any kind, penalties, prefiling interest, and attorney fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs. The certification must be on a form approved by the supreme court and signed by all plaintiffs and their attorneys if represented. The certification is not admissible to prove a plaintiff's damages in the expedited civil action or in any other proceeding.

d. Iowa Rules of Civil Procedure otherwise apply. Except as otherwise specifically provided by this rule, the Iowa Rules of Civil Procedure are applicable to expedited civil actions. Iowa Court Rule 23.5—Form 3: Trial Scheduling and Discovery Plan for Expedited Civil Action must be used for expedited civil actions in lieu of Form 2 of rule 23.5.

e. Limitation on damages. Except as provided in rule 1.281(1)(*f*), a party proceeding under rule 1.281 may not recover a judgment in excess of $75,000, nor may a judgment be entered against a party in excess of $75,000, excluding prejudgment interest that accrues after the filing date, postjudgment interest, and costs. The jury, if any, must not be informed of the $75,000 limitation. If the jury returns a verdict for damages in excess of $75,000 for or against a party,

the court may not enter judgment on that verdict in excess of $75,000, exclusive of prejudgment interest that accrues after the filing date, postjudgment interest, and costs.

f. Stipulated expedited civil action. In a civil action not eligible under rule 1.281(1)(*a*) and not excluded by rule 1.281(1)(*b*), the parties may request to proceed as an expedited civil action upon the parties' filing of a Joint Motion to Proceed as an Expedited Civil Action. If the court grants the parties' motion, and unless the parties have otherwise agreed, the parties will not be bound by the $75,000 limitation on judgments in rule 1.281(1)(*e*). The parties may enter into additional stipulations regarding damages and attorney fees. Unless otherwise ordered, the joint motion and any stipulations must not be disclosed to the jury.

g. Termination of expedited civil action. Upon timely application of any party, the court may terminate application of this rule and enter such orders as are appropriate under the circumstances if:

(1) The moving party makes a specific showing of substantially changed circumstances sufficient to render the application of this rule unfair; or

(2) A party has in good faith filed a compulsory counterclaim that seeks relief other than that allowed under rule 1.281(1)(*a*).

h. Permissive counterclaims. Permissive counterclaims are subject to the $75,000 limitation on damages under rule 1.281(1)(*e*), unless the court severs the permissive counterclaim.

i. Side. As used throughout rule 1.281, the term "side" refers to all the litigants with generally common interests in the litigation.

Comment:

Rule 1.281(1)(*a*). The rule provides that absent stipulation, a single party in an expedited civil action cannot recover more than $75,000 or be liable for more than $75,000. A single party could obtain a damage verdict in excess of $75,000, so long as the final judgment in the proceeding in favor of that party (after apportionment of fault and offsets for any settlements and exclusive of prejudgment interest, postjudgment interest, and costs) does not exceed $75,000.

Rule 1.281(1)(*c*). Rule 1.1901 provides the Expedited Civil Action Certificate for eligible plaintiffs to complete.

Rule 1.281(1)(*g*). If the judgment in an expedited civil action is reversed and remanded on appeal, the case remains subject to rule 1.281 on remand, unless the trial court, upon motion, terminates the expedited civil action pursuant to this provision.

1.281(2) *Discovery in expedited civil actions.*

a. Discovery period. Except upon agreement of the parties or leave of court granted upon a showing of good cause, all discovery must be completed no later than 60 days before trial.

b. Initial disclosures. Expedited civil actions are subject to the initial disclosure requirements of rule 1.500(1).

c. Limited and simplified discovery procedures. Except upon agreement of the parties or leave of court granted upon a showing of good cause, discovery in expedited civil actions is subject to the following additional limitations:

(1) *Interrogatories to parties.* Subject to rule 1.509(4), each side may serve no more than ten interrogatories on any other side.

(2) *Production of documents.* In addition to document disclosures required under rule 1.500(1)(*a*), each side may serve no more than 10 requests for production on any other side under rule 1.512.

(3) *Requests for admission.* Each side may serve no more than 10 requests for admission on any other side under rule 1.510. This limit does not apply to requests for admission of the genuineness of documents that the party intends to offer into evidence at trial.

(4) *Depositions upon oral examination.*

1. *Parties.* One deposition of each party may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities named as a party, one representative deponent may be deposed.

2. *Other deponents.* Each side may take the deposition of up to two nonparties.

d. Number of expert witnesses. Each side is entitled to one retained expert, except upon agreement of the parties or leave of court granted upon a showing of good cause.

e. Motion for leave of court. A motion for leave of court to modify the limitations provided in rule 1.281(2) must be in writing and must set forth the proposed additional discovery and the reasons establishing good cause for its use.

1.281(3) *Motions.*

a. Motions to dismiss. Any party may file any motion permitted by rule 1.421. Unless the court orders a stay, the filing of a motion to dismiss will not eliminate or postpone otherwise applicable pleading or disclosure requirements.

b. Motions for summary judgment.

(1) *Limited grounds.* Motions for summary judgment under rule 1.981 may be made in an expedited civil action only upon the following grounds:

1. To collect on an open account or other liquidated debt.
2. To establish an obligation to indemnify.
3. To assert an immunity defense.
4. Failure to comply with Iowa Code section 668.11 or other deadline for disclosure.
5. Failure to provide notice or exhaust remedies as required by law.
6. To raise any other matter constituting an avoidance or affirmative defense.

(2) *Limited number.* Each party may file no more than one motion for summary judgment under rule 1.981. The motion may include more than one ground authorized under rule 1.281(3)(*b*)(1).

(3) *Deadline.* Motions for summary judgment under rule 1.981 must be filed no later than 90 days before trial.

Comment:
Rule 1.281(3)(*b*)(1)(4). If a case requires expert testimony, failure to timely designate an expert or to make a timely expert disclosure could be a permissible ground for summary judgment under this rule.

1.281(4) *Procedure for expedited trials.*

a. Demand for jury trial. Any party who desires a jury trial of any issue triable of right by a jury must file and serve upon the other parties a demand for jury trial pursuant to rule 1.902. Otherwise, expedited civil actions will be tried to the court.

b. Trial setting. The court shall set the expedited civil action for trial on a date certain, which will be a firm date except that the court may later reschedule the trial for another date during the same week. Unless the court otherwise orders for good cause shown, expedited civil actions must be tried within one year of filing.

c. Pretrial submissions. In addition to the pretrial submissions required by rules 1.500(3) and 23.5—Form 3(8), the parties must file one jointly proposed set of jury instructions and verdict forms. If a jury instruction or verdict form is controverted, each side must include its specific objections, supporting authority, and, if desired, a proposed alternative instruction or verdict form for the court's approval, denial, or modification. Both stipulated and alternative proposed jury instructions and verdict forms must be set forth in one document that is filed electronically in word processing format with the court.

d. Expedited civil jury trial. Unless otherwise ordered, the jury in an expedited civil jury trial will consist of six persons selected from a panel of twelve prospective jurors. Each side must strike three prospective jurors. If the expedited civil jury is unable to reach a unanimous verdict after deliberating for a period of not less than three hours, the verdict can be rendered by a five-juror majority. Where there are more than two sides, the court in its discretion may authorize and fix an additional number of jurors to be impaneled and strikes to be exercised.

e. Expedited nonjury trial. The court trying an expedited civil action without a jury may, in its discretion, dispense with findings of fact and conclusions of law and instead render judgment on a general verdict, special verdicts, or answers to interrogatories that are accompanied by relevant legal instructions that would be used if the action were being tried to a jury. In such cases, the parties must comply with the pretrial submission requirements of rule 1.281(4)(*c*). When the court follows this procedure, parties must make their record with respect to objections to or requests for instructions, special verdicts, and answers to interrogatories as in a jury trial. Posttrial motions will be permitted as in a jury trial except that the court may, in lieu of ordering a new trial, enter new verdicts or answers to interrogatories on the existing trial record.

f. Time limit for trial. Expedited civil actions should ordinarily be submitted to the jury or the court within two business days from the commencement of trial. Unless the court allows additional time for good cause shown, each side is allowed no more than six hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. Time spent on objections, bench conferences, and challenges for cause to a juror is not included in the time limit.

g. Evidence.

(1) *Stipulations.* Parties should stipulate to factual and evidentiary matters to the greatest extent possible.

(2) *Documentary evidence admissible without custodian certification or testimony.* The court may overrule objections based on authenticity and hearsay to the admission of a document, notwithstanding the absence of testimony or certification from a custodian or other qualified witness, if:

1. The party offering the document gives notice to all other parties of the party's intention to offer the document into evidence at least 90 days in advance of trial. The notice must be given to all parties together with a copy of any document intended to be offered.

2. The document on its face appears to be what the proponent claims it is.

3. The document on its face appears not to be hearsay or appears to fall within a hearsay exception set forth in Iowa Rule of Evidence 5.803(3), 5.803(4), 5.803(6), 5.803(7), 5.803(8), 5.803(9), 5.803(10), 5.803(11), 5.803(12), 5.803(13), 5.803(14), 5.803(15), 5.803(16), 5.803(17), or 5.803(22).

4. The objecting party has not raised a substantial question as to the authenticity or trustworthiness of the document.

5. Nothing in rule 1.281(4)(*g*)(2) affects the operation of other Iowa Rules of Evidence such as rules 5.402, 5.403, and 5.404.

6. Nothing in rule 1.281(4)(*g*)(2) authorizes admission of a document that contains hearsay within hearsay, unless the court determines from the face of the document that each part of the combined statements conforms with an exception to the hearsay rule set forth in rule 1.281(4)(*g*)(2)(3).

7. Any authenticity or hearsay objections to a document as to which notice has been provided under rule 1.281(4)(*g*)(2)(1) must be made within 30 days after receipt of the notice.

(3) *Health Care Provider Statement in Lieu of Testimony.*

1. The report of any treating health care provider concerning the claimant may be used in lieu of deposition or in-court testimony of the health care provider, provided that the report offered into evidence is on the Health Care Provider Statement in Lieu of Testimony form adopted by the supreme court, and is signed by the health care provider making the report.

2. A Health Care Provider Statement in Lieu of Testimony must be accompanied by a certification from counsel for claimant listing all communications between counsel and the health care provider.

3. Unless otherwise stipulated or ordered by the court, a copy of the completed health care provider statement must be served on all parties at least 150 days in advance of trial. Any objections to the health care provider statement, including an objection that the statement is incomplete or does not otherwise comply with rule 1.281(4)(*g*)(3), must be made within 30 days after receipt of the statement. For good cause shown, the court may issue such orders regarding the health care provider statement as justice may require, including an order permitting a health care provider to supplement the statement.

4. Any party against whom a health care provider statement may be used has the right, at the party's own initial expense, to cross-examine by deposition the health care provider signing the report, and the deposition may be used at trial.

Comment:

Rule 1.281(4)(*b*). The parties may stipulate to a reasonable time beyond the one-year time limit in order to accommodate scheduling conflicts. The court, however, may set the expedited civil action for trial within the one-year period absent party consent.

Rule 1.281(4)(*e*). The rule is intended to conserve judicial time and resources by giving the court discretion to dispense with findings of fact and conclusions of law and instead render a verdict as if the court were sitting as a "jury of one." The use of jury instructions and a verdict form in lieu of findings of fact and conclusions of law permits appellate review of the court's ruling. The cross-reference to rule 1.281(4)(*c*) clarifies that the parties must submit jointly one proposed set of jury instructions and a verdict form to the court trying the case without a jury. And, as also required by rule 1.281(4)(*c*), the parties must timely note objections to the final form of jury instructions and verdict form used by the court. Rule 1.904(2), governing motions to enlarge or amend findings and conclusions, does not apply in expedited nonjury trials in which the court dispenses with findings and conclusions.

Rule 1.281(4)(*g*)(2). The rule streamlines the presentation of records at trial, such as medical and business records, by allowing admission without a sponsoring witness to establish authenticity and the elements of a hearsay exception. This rule authorizes the court to review and admit the record on its face subject to other objections, such as relevance, upon a determination that the record appears to be genuine and appears not to be hearsay or to fall within one of several enumerated hearsay exceptions, such as statements for purpose of medical diagnosis or treatment, records of regularly conducted activity, or public records and reports (rules 5.803(4), 5.803(6), and 5.803(8)). If the record appears genuine and appears to qualify for one of the enumerated hearsay exceptions, the burden shifts to the other side to raise a substantial question as to its authenticity or trustworthiness. Rule 1.281(4)(*g*)(2) may only be used if the proponent of the record has given notice to other parties sufficiently in advance of trial of its intent to rely on this rule, while serving a copy of the record. *See* rule 1.281(4)(*g*)(2)(1).

Rule 1.281(4)(*g*)(3)(1). The rule permits a party to admit the out-of-court declaration of a health care provider in lieu of the health care provider's in-court testimony. It prohibits hearsay objections based solely on the fact that the health care provider has not testified at trial or in a deposition subject to cross-examination.

Rule 1.281(4)(*g*)(3)(3). Any party may object to all or part of the Health Care Provider Statement in Lieu of Testimony, including the proponent of the statement. The rule provides that the court must rule on any objection to the health care provider statement sufficiently in advance of trial so as to give the proponent an opportunity to rectify any deficiencies in the statement. In ruling on such objections, the court has discretion to determine matters such as whether the health care provider has provided actual medical treatment for the patient, whether the health care provider has substantially answered the questions on the statement, or whether to redact any portion of the statement.

1.281(5) *Settlement conference; alternative dispute resolution.* Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract or statute,

the court may not, by order or local rule, require the parties to engage in a settlement conference or in any other form of alternative dispute resolution.

1.281(6) *Claim preclusion; issue preclusion.* Judgments or orders in an expedited civil action may not be relied upon to establish claim preclusion or issue preclusion unless the party seeking to rely on a judgment or order for preclusive effect was either a party or in privity with a party in the expedited civil action.

In the Iowa District Court for _____ County

_____ **Plaintiff** *Full name of Plaintiff: first, middle, last* vs. _____ **Defendant** *Full name of Defendant: first, middle, last*	Civil case no._____ **Expedited Civil Action Certification**

Plaintiff, _____, together with Plaintiff's attorney,
Name of Plaintiff

_____, elect to bring this lawsuit as an Expedited
Name of attorney

Civil Action under Iowa Rule of Civil Procedure 1.281.

Plaintiff certifies that the sole relief sought is a money judgment and that all claims (other than compulsory counterclaims) for all damages by or against any one party total $75,000 or less, including damages of any kind, penalties, prefiling interest, and attorney fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

Plaintiff certifies the following:

1. I am a plaintiff in this action.
2. If I am represented by an attorney, I have conferred with my attorney about using the Expedited Civil Action procedures available to parties in the State of Iowa.
3. I understand that by electing to proceed under Expedited Civil Action procedures, the total amount of my recovery will not exceed $75,000, excluding prejudgment interest accrued after the filing, postjudgment interest, and court costs. Additionally, no single defendant can be liable for more than $75,000 to all plaintiffs combined, excluding prejudgment interest accrued after the filing, postjudgment interest, and court costs.
4. I understand that if a jury were to award more than $75,000 as damages to me, or if a jury were to award more than $75,000 in total against a single defendant, the trial judge would reduce the amount of the judgment to $75,000, plus any applicable interest and court costs to which I may be entitled.

With this knowledge, I agree to proceed under the Expedited Civil Action procedures.

Dated this ____ day of _____, 20____.

_____
Plaintiff

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Oath and Signatures

I, _____, certify under penalty of perjury and pursuant to the
Print Plaintiff's name

laws of the State of Iowa that the preceding is true and correct.

_____ _____, 20_____
Month *Day* *Year*

_____
Handwritten signature of Plaintiff

_____
Full name of Plaintiff: first, middle, last

_____
Plaintiff's attorney's name, if applicable

_____
Signature of attorney, if applicable

_____
Law firm, if applicable

_____
Mailing addr. of attorney (or Plaintiff if unrepresented)

_____
Telephone no. of attorney (or Plaintiff if unrepresented)

_____
Email address of attorney (or Plaintiff if unrepresented)

_____
Additional email address, if available

In the Iowa District Court for _____ County

_____ **Plaintiff** *Full name of Plaintiff: first, middle, last* vs. _____ **Defendant** *Full name of Defendant: first, middle, last*	Civil case no._____ **Alternative Expedited Civil Action Certification for Plaintiffs that Are Not Natural Persons or Otherwise Must Act Through a Representative**

Plaintiff, _____, together with Plaintiff's attorney,
Name of Plaintiff

_____, elect to bring this lawsuit as an Expedited
Name of attorney

Civil Action under Iowa Rule of Civil Procedure 1.281.

Plaintiff certifies that the sole relief sought is a money judgment and that all claims (other than compulsory counterclaims) for all damages by or against any one party total $75,000 or less, including damages of any kind, penalties, prefiling interest, and attorney fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

The undersigned person certifies the following:

1. I am the _____ of Plaintiff in this action. I am duly authorized to execute this certification.
   Title
2. If Plaintiff is represented by an attorney, I have conferred with that attorney about using the Expedited Civil Action procedures available to parties in the State of Iowa.
3. I understand that by electing to proceed under Expedited Civil Action procedures, the total amount of Plaintiff's recovery will not exceed $75,000, excluding prejudgment interest accrued after the filing, postjudgment interest, and court costs. Additionally, no single defendant can be liable for more than $75,000 to all plaintiffs combined, excluding prejudgment interest accrued after the filing, postjudgment interest, and court costs.
4. I understand that if a jury were to award more than $75,000 as damages to Plaintiff, or if a jury were to award more than $75,000 in total against a single defendant, the trial judge would reduce the amount of the judgment to $75,000, plus any applicable interest and court costs to which Plaintiff may be entitled.

Continued on next page

With this knowledge, Plaintiff agrees to proceed under the Expedited Civil Action procedures.

Dated this ____ day of _____, 20____.
Month *Year*

_____
Plaintiff

_____
Name and title of Plaintiff's representative signing this form

Oath and Signature

I, _____, certify under penalty of perjury and pursuant to the
Print name of Plaintiff's representative
laws of the State of Iowa that the preceding is true and correct.

_____ _____, 20_____
Month *Day* *Year*

_____
Handwritten signature of Plaintiff's representative

_____
Full name of Plaintiff's representative

_____
Name of attorney

_____
Signature of attorney

_____
Name of law firm

_____
Mailing address of attorney

_____
Telephone number of attorney

_____
Email address of attorney

_____
Additional email address, if available

In the Iowa District Court for _____ County

_____ **Plaintiff** *Full name of Plaintiff: first, middle, last* vs. _____ **Defendant** *Full name of Defendant: first, middle, last*	Civil case no._____ **Joint Motion to Proceed as an Expedited Civil Action**

1. Pursuant to Iowa Rule of Civil Procedure 1.281(1)(*f*), the parties hereby move upon stipulation that this action proceed as an Expedited Civil Action.
2. All parties agree to this motion.
3. If the court grants this joint motion, the parties acknowledge and agree that this case will be subject to the Expedited Civil Action rule (Iowa R. Civ. P. 1.281), except for any limitations on damages set forth in the rule.

Status of Trial Scheduling Order and Discovery Plan: *Check one*

☐ The parties have already filed a Trial Scheduling and Discovery Plan. This case has a current trial date of _____. The parties wish to retain that trial date. The parties acknowledge and agree that in the event of any conflict between the existing Trial Scheduling and Discovery Plan and Iowa Rule of Civil Procedure 1.281, the deadlines in rule 1.281 will apply.

☐ The parties will be filing a Trial Scheduling and Discovery Plan in an Expedited Civil Action case.

I certify that all parties and attorneys to this action have agreed to this Joint Motion and have been served with a copy.

_____ _____, 20_____ _____
Signed: *Month* *Day* *Year* *Party's or attorney's signature*

_____ _____
Printed name *Attorney's law firm, if applicable*

_____ _____ _____ _____
Mailing address *City* *State* *ZIP code*

(_____) _____ _____ _____
Phone number *Email address* *Additional email address, if applicable*

In the Iowa District Court for _____ County

_____ **Plaintiff** *Full name of Plaintiff: first, middle, last* vs. _____ **Defendant** *Full name of Defendant: first, middle, last*	Civil case no._____ **Health Care Provider Statement in Lieu of Testimony (and Attorney Certificate)**

Patient Name: _____

Type of Incident: _____

Date of Incident: _____

Answer the following questions with information and opinions regarding the named patient.

☐ Check this box if you are attaching separate pages for any of your answers to the questions below. Be sure that the question to which your answer relates appears at the top of each additional page. *Number of additional pages:* _____

1. What degrees, licenses, and board certifications do you hold, if any, and what year was each attained? Alternatively, you may attach your curriculum vitae.

   _____

   _____

2. What injuries, if any, did _____ (*Patient*) sustain in the above-referenced incident?

   _____

   _____

3. Did _____ (*Patient*) have any pre-existing, symptomatic conditions that were aggravated by the injuries sustained in the incident? If so, describe the pre-existing conditions and the extent of their aggravation.

   _____

   _____

4. Did _____ (*Patient*) have any pre-existing, nondisabling, nonsymptomatic conditions that became symptomatic as a result of the incident? If so, describe.

   _____

   _____

5. What treatment has _____ received from you that was necessitated by the
Patient
injuries sustained in the incident? Include treatment provided by other care providers to the extent you are aware of such. Include medications prescribed, therapy recommended, surgery recommended and any other treatments needed as a result of this condition.

_____

_____

6. Have there been or are there any restrictions or limitations placed on _____
Patient
due to injuries sustained in the incident? If so, describe them, including the actual or expected duration of the restrictions or limitations.

_____

_____

7. Has _____ made a full recovery from the injuries sustained in the
Patient
incident? If not, what are your expectations for _____ regarding future
Patient
symptoms and the duration of such symptoms?

_____

_____

8. Is there any additional care or medications that may reasonably be required in the future as a result of the injuries sustained in the incident? If so, describe the expected care, including the expected frequency, duration, and cost.

_____

_____

9. Is _____ now susceptible to further health problems in the future as a
Patient
result of injuries sustained in the incident? If so, explain.

_____

_____

10. Is there anything _____ has done or failed to do that has aggravated
Patient
his or her condition or impaired his or her recovery? If so, explain.

_____

_____

11. Have you reviewed or relied upon any medical records other than those generated by you or other providers in your office in forming your opinions to the answers to the questions above? If so, identify or attach the records that you have reviewed and relied upon in forming your answers.

_____

_____

12. Have you relied upon any other documents or information about _____ or
Patient
the incident, other than the records indicated above? If so, state what documents or information you relied upon, and the manner by which you received it.

_____

_____

Oath and Signature

I, _____, certify under penalty of perjury and pursuant to the
Health care provider's name
laws of the State of Iowa that the preceding is true and correct.

_____ _____, 20_____ _____
Signed on: Month *Day* *Year* *Health care provider's signature*

Attorney Certificate on next page

Attorney Certificate

List any oral, written, or electronic communications between you or anyone in your office and the above-named treating health care provider or anyone in the provider's office regarding

_____.
Patient

For each such communication, identify the date of the communication and, if the communication was written or electronic, attach copies of such communications:

_____

_____

_____

_____

_____

_____

_____

_____

Oath and Signature

I, _____, certify under penalty of perjury and pursuant to the
Print attorney's name

laws of the State of Iowa that the preceding is true and correct.

_____ _____, 20_____
Month *Day* *Year*

_____
Handwritten signature

Information supplied by:

_____
Full name: first, middle, last

_____
Law firm, if applicable

_____
Mailing address

_____
Telephone number

_____
Email address

_____
Additional email address - if available

FILED
AUG 28 2014
CLERK SUPREME COURT

In the Supreme Court of Iowa

Adoption of Expedited Civil Action Rule and Amendments to Iowa Discovery Rules	))))	**Order**

Having received and reviewed public comments, and made changes to the versions that were circulated for public comment, the Iowa Supreme Court today approves new Iowa Court Rule 1.281, governing expedited civil actions, and new rule 1.500, and amendments to rules 1.413, 1.501, 1.503, 1.504, 1.505, 1.507, 1.508, 1.509, 1.512, 1.517, 1.701, 1.708, and 1.906, governing discovery and pretrial procedures. Complete texts of the new expedited civil action rule (ECA rule) and the other new and amended rules (collectively referred to as "the discovery amendments") are provided with this order. These texts include a number of explanatory comments. These rules are approved pursuant to the court's supervisory and administrative authority under Iowa Code section 602.1201 (2013). Approval is subject to the provisions of Iowa Code section 602.4202.

The ECA rule and the discovery amendments adopted today are an outgrowth of the work of the Iowa Civil Justice Reform Task Force. That task force, which had 84 members, produced a report in early 2012 that recommended changes to discovery processes as well as consideration of a separate track for civil cases falling below a threshold dollar value.

In the fall of 2012, seeking to put those recommendations into effect, the supreme court appointed a fourteen-person Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations. The committee was specifically charged with proposing potential amendments to the Iowa Rules of Civil Procedure to implement a two-tier,

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or dual-track, civil justice system and to streamline discovery processes. In the summer of 2013, the committee reported to the supreme court, recommending changes to the existing discovery rules as well as a new rule authorizing streamlined and expedited case procedures for actions involving $75,000 or less in money damages. After further examination and revision, these proposals were circulated for public comment on November 1, 2013.

The public comment period lasted from November 1, 2013, until March 17, 2014. The court received valuable comments from a number of sources. Both the committee and the court have carefully reviewed the comments.

Based upon the comments, the court has made some changes to the ECA rule and the discovery amendments. In general, however, the essential features from the November 1, 2013, public comment versions have been retained. For the ECA rule, these include the $75,000 limit on recovery for or against a party (unless the parties stipulate to proceeding under the ECA rule), the ability of plaintiffs to opt in unilaterally, the limits on discovery and summary judgment motions, the expedited trial, the time limit on each side's trial presentation, and certain modifications of the hearsay rule.

The court believes the provisions of the ECA rule will significantly reduce litigation time and cost, while increasing access to justice. Yet the ECA rule is also designed to preserve the traditional jury trial and parties' rights of appeal. Of course, the court intends to closely monitor how the ECA rule operates and will consider future amendments if needed. The state court administrator has appointed a committee, chaired by Chief Judge Marlita Greve of the Seventh Judicial District, and including a

number of district court administrators and court clerks, to assist in implementation of the ECA rule.

With respect to the discovery amendments, the court has made some changes in response to the comments but again has decided to retain most of the provisions that were circulated for public comment last fall. Thus, initial disclosures will be presumptively required in most civil cases, although the parties may stipulate out of the initial disclosure requirement. On balance, the court believes that having the parties exchange basic information that is typically provided later in discovery anyway will lead to more cost-effective and efficient litigation. The discovery amendments also include an expert report requirement (replacing the existing expert interrogatory answers) and various other updates to Iowa's discovery rules, some of which are intended to curb potential abuse of discovery practices. A number of these amendments have their genesis in the 2012 Iowa Civil Justice Reform Task Force report.

Additionally, pursuant to its supervisory and administrative authority, and subject again to the provisions of Iowa Code section 602.4202, the court today approves certain new forms and amends certain existing forms in order to implement the new ECA rule and the discovery amendments. These forms are:

- New rule 1.1901—Forms 16 and 17 to be used when a plaintiff wishes to proceed under the ECA rule.
- New rule 1.1901—Form 18 to be used when the parties wish to jointly move for a case to proceed under the ECA rule.
- New rule 1.1901—Form 19: Health Care Provider Statement in Lieu of Testimony, authorized by the ECA rule.

- Amended rule 23.5—Form 1: Notice of Civil Trial-Setting Conference.
- Amended rule 23.5—Form 2: Trial Scheduling Order and Discovery Plan, to be used in standard track (non-ECA) cases.
- New rule 23.5—Form 3: Trial Scheduling Order and Discovery Plan for Expedited Civil Action.

Finally, the court amends court rules 23.2(1) and 23.2(2) regarding time standards for ECA cases. In rule 23.2(1)(*c*), court administration will schedule ECA cases to commence trials within 12 months of filing. In rule 23.2(2)(*c*), the court, for good cause shown, may order an extension of time for commencing an ECA case within 15 months of filing.

The new rules, amended rules, new forms, and amended forms referenced above are provided with this order.

Subject to the provisions of Iowa Code section 602.4202, the ECA rule, the discovery amendments and the aforementioned forms will take effect January 1, 2015. All actions filed on or after January 1, 2015, will be subject to the new rules and forms.

In addition, the discovery amendments will apply to all previously-commenced cases *pending* on or after January 1, 2015, except for Iowa Rule of Civil Procedure 1.500 (required disclosures), rule 1.505(1) (timing of discovery), rule 1.507 (discovery conference), rule 1.508 (expert discovery), and rule 1.906 (civil trial setting conference), provided further that the district court may in any case direct the parties to comply with all or part of those rules as part of a pretrial order. Furthermore, the district court may, upon stipulation of the parties, direct that an action commenced prior to January 1, 2015, proceed as an expedited civil action.

Dated this 28th day of August, 2014.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice

FILED
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CLERK SUPREME COURT

In the Supreme Court of Iowa

Revisions to Expedited Civil Action Rule and Recent Amendments to Iowa Discovery Rules	))))	**Order**

By order dated August 28, 2014, the supreme court approved new Iowa Court Rule 1.281, governing expedited civil actions (ECA), and new rule 1.500 and amendments to rules 1.413, 1.501, 1.503, 1.504, 1.505, 1.507, 1.508, 1.509, 1.512, 1.517, 1.701, 1.708, and 1.906, governing discovery and pretrial procedures. The court also amended court rules 23.2(1) and 23.2(2) and the trial scheduling forms provided in rule 23.5.

The August 28 order noted that the state court administrator has appointed a case management committee, chaired by Chief Judge Marlita Greve of the Seventh Judicial District, to assist in implementation of the ECA rule and discovery amendments. Chief Judge Greve's committee recommends that the trial scheduling and discovery plan forms 2 and 3 in rule 23.5 be separated from the court order implementing the trial scheduling and discovery dates in the forms. The original fourteen-person Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations charged with proposing the ECA rule and discovery amendments supports this change, as does the supreme court.

The court now approves minor, nonsubstantive changes, provided with this order, to the following:

1. ECA Rule 1.281: Striking "Order" from the reference to Iowa Court Rule 23.5—Form 3 in rule 1.281(1)(*d*); and clarifying that the ECA rule on time limit for trial applies to civil actions tried to the court in rule 1.281(4)(*f*).

2. Discovery rule amendments: Deleting "Order" from references to Rule 23.5—Form 2, now titled "Trial Scheduling and Discovery Plan," in rules 1.500

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and 1.507; making minor wording changes to clarify parts of the comments to rules 1.500(3)(*a*) and (*b*); clarifying the last sentence of the comment to rule 1.507; clarifying the last two sentences of rule 1.906; and adding a comment to rule 1.906.

3. Rule 1.901—Form 18 and Rule 23.5—Forms 1-3: Removing "Order" from form titles and internal form references; and revising instructional language on the forms to accommodate this change.

Pursuant to the provisions of Iowa Code section 602.4202, the revisions identified in this order, with the ECA rule, discovery amendments, chapter one forms, and chapter 23 rule amendments and forms, will take effect January 1, 2015. All actions filed on or after January 1, 2015, will be subject to the new rules and forms.

In addition, as set forth previously in the court's August 28 order, the discovery amendments will apply to all previously-commenced cases *pending* on or after January 1, 2015, except for Iowa R. Civ. P. 1.500 (required disclosures), Iowa R. Civ. P. 1.505(1) (timing of discovery), Iowa R. Civ. P. 1.507 (discovery conference), Iowa R. Civ. P. 1.508 (expert discovery), and Iowa R. Civ. P. 1.906 (civil trial setting conference), provided further that the district court may in any case direct the parties to comply with all or part of those rules as part of a pretrial order. Furthermore, the district court may, upon stipulation of the parties, direct that an action commenced prior to January 1, 2015, proceed as an expedited civil action.

Dated this 30th day of October, 2014.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice

Rule 23.5—Form 3: ***Trial Scheduling and Discovery Plan for Expedited Civil Action***

Use of this form is mandatory in Expedited Civil Actions under Iowa Rule of Civil Procedure 1.281.

- This form is to be filed within 7 days after the parties' discovery conference and before the trial-setting conference with the court.
- The parties should complete the entire form except as otherwise indicated.

In the Iowa District Court for _____ County

_____ _____ **Plaintiff(s) / Petitioner(s)** *Full name: first, middle, last* vs. _____ _____ **Defendant(s) / Respondent(s).** *Full name: first, middle, last*	No._____ **Trial Scheduling and Discovery Plan for Expedited Civil Action** Date Petition filed:_____/ _____/ _____ *mm* *dd* *yyyy* Case type: ☐ Law ☐ Equity ☐ Other ☐ PCR ☐ Judicial Review Trial type: ☐ Jury ☐ Nonjury Expected trial length: 2 days The amount in controversy exceeds $10,000. ☐ Yes ☐ No

Appearances:
Plaintiff(s) / Petitioner(s)

Defendant(s) / Respondent(s)

1. **Trial** *Note to parties: Unless you have obtained a date from court administration, leave this date blank; the court will enter the date after the trial-setting conference.*

   Trial of this case is set for _____ _____, 20 ___, at _____:_____ ☐ a.m. ☐ p.m.
   Month *Day* *Year* *Time*

   in the district court in the courthouse of the above-named county.

2. **Pretrial conference** *Check one. Note to parties: If box* A *is checked, leave the date blank unless you have obtained a pretrial conference date from court administration. If you do not have a pretrial conference date and check box* A, *the court will enter the date, by order, after the trial-setting conference.*

   A. ☐ A pretrial conference will be held on _____ _____, 20___, at _____:_____ ☐ a.m. ☐ p.m.
   Month *Day* *Year* *Time*

   The conference may be held telephonically with prior approval of the court.

   B. ☐ A pretrial conference will be held upon request.

3. **New parties** *List the time period or date when no new parties may be added.*

   No new parties may be added later than 180 days before trial or by _____.

If you need assistance to participate in court due to a disability, contact the disability coordinator at: (_____) _____ Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice. Disability coordinator contact information available at: http://www.iowacourts.gov/Administration/Directories/ADA_Access/

4. Pleadings *List the time period or date pleadings will be closed.*

Pleadings will be closed 60 days before trial or by _____.

5. Initial disclosures. *Check all that apply*

A. ☐ The parties have exchanged initial disclosures.

B. ☐ The parties will provide initial disclosures no later than _____.

C. ☐ The parties have stipulated that the following will not be included in initial disclosures:
List items not included

D. ☐ The parties have stipulated not to provide any initial disclosures.

E. ☐ The following party objects to providing initial disclosures on the following grounds:
Identify the party and state all applicable grounds

6. Discovery

The parties have held a discovery conference as required by Iowa Rule of Civil Procedure 1.507.

All written discovery will be served no later than 90 days before trial. All depositions will be completed no later than 60 days before trial. Or, all discovery will be completed by

_____.

Check all that apply and attach any appropriate exhibits

A. ☐ No discovery of electronically stored information is expected in this case.

B. ☐ The parties have conferred about discovery of electronically stored information and reached agreement as set out in Attachment ____.

C. ☐ The parties have conferred about discovery of electronically stored information and have been unable to reach an agreement. *Note to parties: If box* C *is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ /_____ /_____, at: _____:_____ ☐ a.m. ☐ p.m.
mm *dd* *yyyy* *Time*

☐ at the _____ County Courthouse, courtroom _____, or
County *Courtroom number*

☐ at the following location: _____.

D. ☐ The parties have agreed to a discovery plan, and their agreement is set forth in Attachment ___.

E. ☐ The parties have agreed to deviate from the limits on discovery otherwise applicable to this action, and their agreement is set forth in Attachment ___.

F. ☐ The parties have agreed to conduct discovery in phases, and their agreement is set forth in Attachment ____.

G. ☐ The parties have reached an agreement under Iowa Rule of Evidence 5.502 as set forth in Attachment ____.

H. ☐ The parties have reached an agreement under Iowa Rule of Civil Procedure 1.504 as set forth in Attachment ____.

I. ☐ The parties have conferred about a discovery plan and have been unable to reach agreement on the issues set forth in Attachment ____. *Note to parties: If box* I *is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ /_____ /_____, at: _____:_____ ☐ a.m. ☐ p.m.
mm *dd* *yyyy* *Time*

☐ at the _____ County Courthouse, courtroom _____, or
County *Courtroom number*

☐ at the following location: _____.

7. Health care provider statement

Unless otherwise stipulated or ordered by the court, a copy of any completed Health Care Provider Statement in Lieu of Testimony, Iowa R. Civ. P. 1.281(4)(*g*)(3), must be served on all parties at least 150 days before trial. Any objection to the Health Care Provider Statement must be filed with the court, together with a copy of the statement, within 30 days after receipt of the statement.

8. Expert witnesses

A. A party who intends to call an expert witness, including rebuttal expert witnesses, must certify to the court and all other parties the expert's name, subject matter of expertise, and qualifications, within the following time period, unless the Iowa Code requires an earlier designation date (*see, e.g.,* Iowa Code section 668.11):

(1) Plaintiff: 210 days before trial or by _____.

(2) Defendant/Third Party Plaintiff: 150 days before trial or by _____.

(3) Third Party Defendant/Others/Rebuttal: 90 days before trial or by _____.

B. Any disclosures required by Iowa Rule of Civil Procedure 1.500(2)(*b*) will be provided:
Check each that applies

(1) ☐ At the same time the expert is certified.

(2) ☐ According to the following schedule:

a. Plaintiff:____ days before trial or by _____.

b. Defendant/Third Party Plaintiff:____ days before trial or by_____.

c. Third Party Defendant/Others/Rebuttal:____ days before trial or by

_____.

C. This section does not apply to court-appointed experts.

The deadlines listed in paragraphs 4, 5, 6, 7, *and* 8 *may be amended, without further leave of court, by filing a Stipulated Amendment to this Plan listing the dates agreed upon and signed by all counsel and self-represented litigants. Such Stipulated Amendment may not override any requirement of the Iowa Court Rules and cannot serve as a basis for a continuance of the trial date or affect the date for pretrial submissions.*

9. Pretrial submissions

At least **14 or** ____ (the parties may enter another number but not less than 7) **days before trial**, counsel for the parties and self-represented litigants must:

A. File a **witness and exhibit** list with the clerk of court, serve a copy on opposing counsel and self-represented litigants, and exchange exhibits. In electronic cases, witness and exhibit lists must be electronically filed, and the EDMS system will serve copies on all registered parties. Exhibits must be electronically submitted in lieu of exchanging them. These disclosures must include the following information about the evidence that the disclosing party may present at trial other than solely for impeachment:

(1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying those the party expects to present and those the party may call if the need arises.

(2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.

(3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises. The following rules govern exhibits and exhibit lists:

a. Plaintiff will use numbers and Defendant will use letters. Pretrial exhibit lists will identify each exhibit by letter or number and description. Exhibits must be marked before trial.

b. Immediately before commencement of trial, the court must be provided with a bench copy, and the court reporter with a second copy, of the final exhibit list for use in recording the admission of evidence.

c. In nonjury cases, immediately before commencement of trial, parties must provide the court with a bench copy of all exhibits identified on the exhibit lists.

d. Within 7 days after the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial, counsel and self-represented litigants must file with the clerk of court, and serve on each party, any identification, authentication, and foundation objections to the exhibits listed; otherwise such objections are deemed **waived** for trial purposes. In electronic cases, any identification, authentication, and foundation objections must be electronically filed, and the EDMS system will serve copies on all registered parties. Electronic filing of these objections must be done within 7 days of the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial; otherwise, such objections are deemed **waived** for trial purposes.

B. File and serve **motions in limine**, with supporting legal authority.

C. File and serve a complete set of **joint jury instructions and verdict forms**, in a form to be presented to the jury or judge, including a statement of the case and any stock jury instruction numbers. If there is any disagreement about an instruction or verdict form, each side must include its specific objections, supporting authority, and a proposed alternative instruction or verdict form for the court's approval. The court must be provided the instructions in written form and electronically.

D. Deliver to the judge and serve a concise **trial brief** addressing factual, legal, and evidentiary issues, with citation to legal authorities.

10. Motions

All motions including motions for summary judgment and except motions in limine, must be filed with the clerk of court's office or electronically filed at https://www.iowacourts.state.ia.us/EFile/ at least 90 days before trial, with copies to the assigned judge.

11. Settlements

The parties are responsible for immediately notifying the court administrator of settlement.

12. Late settlement fees

Late settlement fees under Iowa Rule of Civil Procedure 1.909 are applicable.

13. Continuances

Continuances are discouraged and will only be granted for good cause. Motions to continue are governed by Iowa Rule of Civil Procedure 1.910. In the event the trial date is continued, all time deadlines in this Plan and any Stipulated Amendments remain in effect relative to the new trial date unless the court approves new deadlines.

14. Notice

Failure to comply with any of the provisions of this Plan or Stipulated Amendments to this Plan may result in the court imposing sanctions pursuant to Iowa Rule of Civil Procedure 1.602(5), including limitation and exclusion of evidence and witnesses and payment of costs or attorney fees. The court will resolve disputes regarding oral agreements on scheduling by reference to this Plan or any Stipulated Amendments to this Plan.

15. Other *List additional agreements of the parties for the Trial Scheduling and Discovery Plan*

At least one signature to the Trial Scheduling and Discovery Plan is required. The signer certifies that all listed parties have joined in this Trial Scheduling and Discovery Plan, subject to any objections noted.

I certify that all parties and attorneys to this action have agreed to this Trial Scheduling and Discovery Plan and have been served with a copy.

_____ _____, 20_____ /s_____

Signed: *Month* *Day* *Year* *Party's or attorney's signature*

_____ _____

Printed name *Attorney's law firm, if applicable*

_____ _____ _____ _____

Mailing address *City* *State* *ZIP code*

(_____) _____ _____ _____

Phone number *Email address* *Additional email address, if available*

Original filed with the clerk of court or electronically filed at https://www.iowacourts.state.ia.us/EFile/.

Copies to: counsel of record, self-represented litigants, and court administration.

For questions regarding documents filed with the court in this case, please see https://www.iowacourts.state.ia.us/ESAWebApp//SelectFrame or call the clerk of court.

Q & A Regarding Expedited Civil Action Rule 1.281*

January 2015

Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations

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A. Eligibility

Q. Who decides whether a case goes into the expedited civil action (ECA) track?

A. Plaintiff. If the plaintiff designates the case as an eligible case, it will go into the track and be subject to the $75,000 limit. To elect ECA status, the plaintiff must file rule 1.1901-Form 16 or 17 (Form 16 is for natural party plaintiffs, Form 17 for other entities).

Q. How does the $75,000 limit work?

A. All claims by or against a party may total no more than $75,000. The jury is not told of the limit, so if a verdict exceeds that amount it will be reduced to $75,000. The committee expected that attorneys who opt into the expedited civil action track would want to have written informed consent from their clients.

Q. Do attorney fees count against the $75,000 limit?

* Please note: These questions and answers are not a part of the Iowa Rules of Civil Procedure or the official comments to the rules.

A. Everything counts against the $75,000 limit except interest after the date of filing and costs.

Q. Can the parties stipulate into the expedited civil action track and not be bound by the $75,000 limit?

A. Yes. Rule 1.1901-Form 18 may be used for this purpose.

Q. Is it possible to get a case out of the expedited civil action track?

A. The district court can remove a case from the track on a timely motion if a party shows that circumstances have changed substantially, making it unfair to keep the case in the track (e.g., plaintiff has additional damages that could not have been foreseen), or a compulsory counterclaim is filed that exceeds $75,000 or includes equitable relief. (If the counterclaim is not compulsory, the district court presumably can sever it.)

In addition, the existing rule 1.943 right to dismiss without prejudice (subject to the statute of limitations) remains in effect.

Q. Can equity actions go through the expedited civil case track?

A. Only upon agreement of all parties.

Q. Can ECA actions be tried to the court?

A. Yes, if no side makes a timely jury demand or the parties jointly waive the jury.

B. Discovery

Q. What is different about expedited civil action discovery?

A. There are more stringent limits. No more than 10 interrogatories, 10 requests for production, and 10 requests for admission are permitted without leave of court (except for requests to admit the genuineness of exhibits). One deposition of each party and two other depositions are allowed *per side*. Each side is entitled to one retained expert in its case-in-chief unless otherwise stipulated or permitted by court order for good cause shown.

Q. What's a "side"?

A. Litigants with common interests are considered one "side."

C. Motions

Q. What is different about motions in the expedited civil track?

A. Motions to dismiss do not change. Motions for summary judgment, however, are limited under the rule. A party can only file one motion for summary judgment and only the following grounds may be included in the motion: (1) collection of an open account or liquidated debt; (2) establishment of an obligation to indemnify; (3) assertion of an immunity defense; (4) failure to comply with a disclosure deadline, such as Iowa Code section 668.11; (5) failure to provide required notice or exhaust remedies; and (6) other affirmative defenses.

Q. What is the deadline for summary judgment motions in ECA cases?

A. In ECA cases, the standard deadline is 90 days before trial.

D. Trial setting

Q. When would an expedited civil action be tried?

A. Unless otherwise ordered for good cause, expedited civil actions will be tried *within one year of filing.* The trial setting will be certain for a given date, but subject to change during that week. Generally, ECA cases have priority over other civil cases seeking recovery of damages. Of course, trials of cases with even greater priority (e.g., criminal, juvenile) take precedence over trials of ECA actions, and in unusual circumstances, an ECA trial could be affected.

Q. What if one of the attorneys is not available to try the case within one year?

A. If the parties stipulate, the court may extend the trial date a reasonable time (say, one or two months) beyond the one-year window. The court, however, has authority to set the trial within one year even without consent of the parties.

Q. How is the judicial branch going to meet the commitment to get ECA cases tried within a year?

A. State court administration has been engaged in planning and allocation of resources, working with the district court administrators of each judicial district to prepare for processing of expedited civil actions.

Q. Is there a designated group of judges assigned to expedited civil action cases, like with the business court?

A. No. Expedited civil actions are intended to be tried like other cases in the normal course, with some streamlined procedures and a shortened window from filing to verdict.

E. Trial procedure

Q. What do juries look like in an expedited civil action?

A. There are six-person juries with three strikes per side during voir dire. After three hours of deliberation, the verdict may be rendered by a five-to-one vote.

Q. What are the time limits for trial?

A. Each side is limited to six hours of trial time. This includes time spent on voir dire, opening statement, presentation of direct testimony, cross-examination of the other side's witnesses, and closing argument. The goal is to get the case tried in two or three days.

Q. Why overall time limits?

A. The limits on time give attorneys the freedom to allocate their time in the manner they think would be most effective for their cases.

Q. What is excluded from counting toward the time limits?

A. Generally, time spent on court matters do not count. For example, arguing objections, the jury instruction conference, motions for directed verdict, instructing the jury.

Q. Are the time limits absolute?

A. No. The court has the ability to extend the limits for good cause shown.

Q. How will the time limits be tracked and enforced?

A. The court will enforce the time limits. As a practical matter, however, the committee expects the court to delegate to the parties the task of tracking each side's time usage. The sides may mutually agree on how best to track time and propose that to the court.

F. Pretrial submissions

Q. Are there any special pretrial submissions required in an expedited civil action?

A. Yes. The parties are required to submit one joint set of jury instructions and verdict forms to which they have agreed. When the parties cannot reach agreement on an instruction or verdict form, each party must include in the joint set its proposed alternative for that instruction or verdict form only, with supporting authority. The joint set of jury instructions and verdict forms must be submitted in electronic word processing format.

G. Trial to the court

Q. Are there any special procedures to be followed if the expedited civil action is tried to the court?

A. Yes. If the court chooses, it may render a verdict as in a jury trial instead of issuing findings of fact and conclusions of law. In that event, the court would make a record of the jury instructions it is following, which would correspond to the instructions it would have given to a jury, and the court would also render a verdict on the verdict form it would have used with a jury.

H. Evidence

Q. Are there any special evidentiary rules?

A. There are two. First, records that appear on their face to be valid business, public, or medical records may be admitted without testimony or a sworn statement from a custodian laying foundation. There are several qualifications and prerequisites for this rule. Notice must be given of intent to rely on this rule at least 90 days before trial. (A copy of any records would be served with the notice.) Also, the rule does not address relevance. That is, the proponent

of the record still must establish its relevance. Additionally, if there are layers of hearsay in the record, the rule requirements must be met as to each layer before the record can be admitted. Further, a party might avoid the effect of the rule by raising a substantial question as to the authenticity or the trustworthiness of the document.

Q. What is the point of this rule?

A. The aim is to reduce the costs of trial by streamlining the presentation of some kinds of records that are normally admitted anyway.

Q. What is the second major evidentiary rule change?

A. The health care provider statement rule.

Q. How does the health care provider statement work?

A. It applies only to health providers who have actually *treated* the plaintiff (or other injured party). In lieu of presenting deposition or trial testimony of that provider, a party may present the provider's sworn answers to a standard questionnaire. *See* rule 1.1901-Form 19. The questionnaire covers topics such as injuries plaintiff sustained in the incident, treatment provided, and the plaintiff's future limitations.

Q. Can the injured party's counsel communicate with the health care provider about the questionnaire?

A. Yes, but all such communications (oral, written, or electronic) must be disclosed by the attorney as part of the questionnaire.

Q. Can the health care provider be deposed or subpoenaed for trial?

A. Yes, at the expense of the party who arranges for the testimony.

Q. What is the genesis for this rule?

A. The high cost of obtaining medical testimony is a serious barrier to bringing civil actions in the $75,000 or less range. To make the expedited civil action rule work, the committee felt this problem had to be addressed.

I. General

Q. Do the Iowa Rules of Civil Procedure apply to expedited civil actions?

A. Yes, unless otherwise stated.

Q. Are appeal rights affected in expedited civil actions?

A. No.

Q. What is the goal behind the expedited civil action rule?

A. The rule has several goals: To enhance access to justice, to assure that litigants are not priced out of Iowa's justice system, to preserve the essential features of an Iowa jury trial, and to reverse the decline in civil jury trials in this state.

CHAPTER 1
RULES OF CIVIL PROCEDURE

DIVISION IV
PLEADINGS AND MOTIONS

. . . .

B. PLEADINGS, FORMAT AND CONTENT

. . . .

Rule 1.413 Verification abolished; affidavits; certification.

1.413(1) 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 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 shall impose a similar obligation on such party. <u>This rule does not apply to disclosures, discovery requests, responses, objections, and motions under rules 1.500 through 1.517, which are governed by rule 1.503(6).</u>

. . . .

Rule 1.500 Duty to disclose; required disclosures.

1.500(1) *Initial disclosures.*

a. In general. Except as exempted by rule 1.500(1)(*e*) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(1) The name and, if known, the address, telephone numbers, and electronic mail address of each individual likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

(2) All documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

1. Unless good cause exists for not doing so, copies of the documents or electronically stored information listed must be served with the disclosure.

2. If copies of any document or electronically stored information are not produced, the disclosing party must state the good cause for not producing the items and provide a description by category, location, and the name and address of the custodian of the document or electronically stored information.

3. A party who provides documents in disclosure must produce them as they are kept in the usual course of business.

(3) A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under rule 1.512 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; provided, however, that this rule 1.500(1)(*a*)(3) does not require disclosure of the exact dollar amounts claimed for noneconomic damages.

(4) For inspection and copying as under rule 1.512, and notwithstanding rule 1.503(2), the declarations page of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, and, in any action in which coverage is or may be contested, a copy of the agreement and all letters from the insurer to the insured regarding coverage.

b. Claims for personal or emotional injury. Except as exempted by rule 1.500(1)(*e*) or as otherwise stipulated or ordered by the court, and in addition to the initial disclosures required by rule 1.500(1)(*a*), any party asserting a claim for damages for personal or emotional injuries must, without awaiting a discovery request, provide to the other parties:

(1) The claimant's full name and date of birth.

(2) The claimant's Medicare health insurance claim number (HICN).

(3) The names and addresses of all doctors, hospitals, clinics, pharmacies, and other health care providers claimant consulted within five years prior to the date of injury up to the present date.

(4) Legally sufficient written waivers allowing the opposing party to obtain those records subject to appropriate protective provisions authorized by rule 1.504. The opposing party must give contemporaneous notice to the claimant when the opposing party uses the waivers to obtain records and must provide a copy of all records obtained by waiver to the claimant and all other parties. Any party who requests that the opposing party produce these records in nonelectronic form must bear the opposing party's costs of producing them in that form.

c. Claims for lost time or earning capacity. Except as exempted by rule 1.500(1)(*e*) or as otherwise stipulated or ordered by the court, and in addition to the initial disclosures required by rule 1.500(1)(*a*), any party asserting a claim for damages for lost time or lost earning capacity must, without awaiting a discovery request, provide to the other parties:

(1) The claimant's federal and state income tax returns for the five years prior to the date of disclosure.

(2) The names and addresses of all persons by whom the claimant has been employed for the five years prior to the date of disclosure.

(3) Legally sufficient written waivers allowing the opposing party to obtain the claimant's personnel files and payment histories from each employer subject to appropriate protective provisions authorized by rule 1.504.

1. The opposing party must give contemporaneous notice to the claimant when the opposing party uses the waiver to obtain records and must provide a copy of all records obtained by waiver to the claimant and all other parties.

2. Any party who requests that the opposing party produce these records in nonelectronic form must bear the opposing party's costs of producing them in that form.

d. *Domestic relations proceedings.*

(1) Except as otherwise stipulated or ordered by the court and in lieu of the initial disclosures required by rule 1.500(1)(*a*), in domestic relations actions involving any contested claim, including divorce, custody, modification, and paternity actions, each party must, without awaiting a discovery request, provide to the other party copies of the following:

1. Paystubs or other documentation showing the party's income from all sources, deductions for federal and state taxes, health insurance premiums, union dues, and mandatory pension

withholdings for the past six months. If children are involved, the party providing health insurance must provide a breakdown of the cost of an individual health insurance plan and the cost of a family plan.

2. The party's federal and state income tax returns, including all schedules and W-2's, for the three most recent years if not in the possession of the other person.

3. A current financial affidavit, including a description of all assets and liabilities.

4. Statements of account or other documentation to support the assets or liabilities listed in the financial affidavit.

(2) If the action is a modification case or an unmarried custody case, the parties must provide only the information contained in rules 1.500(1)(*d*)(1)(1) and 1.500(1)(*d*)(1)(2).

e. Proceedings exempt from initial disclosure. Unless otherwise ordered by the court or agreed to by the parties, the requirements of rules 1.500(1)(*a*) through (*d*) do not apply to the following:

(1) Actions for certiorari or for judicial review of administrative agency actions under Iowa Code chapter 17A.

(2) Actions for forcible entry and detainer.

(3) Domestic relations proceedings in which there are no contested claims.

(4) Adoption proceedings, name change proceedings, actions under Iowa Code chapter 236, and actions initiated by the Child Support Recovery Unit.

(5) Foreclosure proceedings in which there are no contested claims.

(6) Actions for postconviction relief or any other proceeding to challenge a criminal conviction or sentence.

(7) Probate proceedings in which there are no contested claims.

(8) Juvenile proceedings.

(9) Mental health proceedings.

(10) Actions under Iowa Code chapters 225, 229, and 229A.

(11) Actions to enforce an arbitration award or an out-of-state judgment.

(12) Small claims proceedings under Iowa Code chapter 631.

f. Time for initial disclosures in general. A party must make the initial disclosures at or within 14 days after the parties' rule 1.507 discovery conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

g. Time for initial disclosures for parties served or joined later. A party who is first served or otherwise joined after the rule 1.507 discovery conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

h. Basis for initial disclosure; unacceptable excuses. A party must make the initial disclosures based on the information then reasonably available to the party. A party is not excused from making the disclosures because the party has not fully investigated the case, because the party challenges the sufficiency of another party's disclosures, because another party has not made that party's disclosures, or because the information is in the possession, custody, or control of the party's insurance carrier.

Comment:

Rule 1.500. The entirety of rule 1.500 is added. With some modifications, the rule adopts the required disclosures currently used by the federal courts and by a number of states that have also recently engaged in civil justice reform. Like its federal counterpart, the rule seeks to accelerate the exchange of basic information and eliminate the delay and expense of serving formal discovery requests seeking routine information that will be produced as a matter of course in most cases.

The information disclosed under rule 1.500(1) is subject to a continuing duty to supplement. *See* rule 1.500(5).

1.500(2) *Disclosure of expert testimony.*

a. In general. In addition to the disclosures required by rule 1.500(1), a party must disclose to the other parties the identity of any witness the party may use at trial to present evidence under Iowa Rules of Evidence 5.702, 5.703, and 5.705.

b. Witnesses who must provide a written report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain the following:

(1) A complete statement of all opinions the witness will express and the basis and reasons for them.

(2) The facts or data considered by the witness in forming the opinions.

(3) Any exhibits that will be used to summarize or support the opinions.

(4) The witness's qualifications, including a list of all publications authored in the previous 10 years.

(5) A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

(6) A statement of the compensation to be paid for the study and testimony in the case.

c. Witnesses who do not provide a written report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(1) The subject matter on which the witness is expected to present evidence under Iowa Rules of Evidence 5.702, 5.703, or 5.705.

(2) A summary of the facts and opinions to which the witness is expected to testify.

d. Time to disclose expert testimony. A party must make these disclosures at the times and in the sequence set forth in the court's trial scheduling order. If not otherwise ordered, expert disclosures shall be due:

(1) No later than 90 days before the date set for trial; or

(2) Within 30 days after the other party's disclosures if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under rule 1.500(2)(*b*) or (*c*).

e. Supplementing disclosures. The parties must supplement these disclosures when required under rule 1.508(3).

Comment:

Rule 1.500 (2)(*d*). The rule contemplates that in many, if not most, cases, scheduling of disclosure of expert testimony will be governed by a trial scheduling order. *See* Iowa R. Civ. P. 1.907; Iowa Ct. R. 23.5—Form 2: Trial Scheduling Order and Discovery Plan.

1.500(3) *Pretrial disclosures.*

a. In general. In addition to the disclosures required by rules 1.500(1) and 1.500(2), a party must provide to the other parties and promptly file the following information about the evidence the party may present at trial other than evidence to be used solely for impeachment:

(1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying the witnesses the party expects to present and those the party may call if the need arises.

(2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.

(3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises.

b. Time for pretrial disclosures; objections. Pretrial disclosures must be made at least 14 days before trial. This deadline may be modified by order of the court or stipulation of the parties, provided, however, that the parties may not stipulate to a pretrial disclosure deadline of less than 7 days before trial. A party may serve and promptly file a list of the following objections: any objections to the use under rule 1.704 of a deposition designated by another party under rule 1.500(3)(*a*)(2), and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under rule 1.500(3)(*a*)(3). Objections must be served and filed within 7 days of the pretrial disclosures, or within 4 days if the pretrial disclosure deadline is less than 10 days before trial, unless the court directs otherwise. An objection not so made, except for one under Iowa Rule of Evidence 5.402 or 5.403, is waived unless excused by the court for good cause.

c. Duty to supplement unaffected. Rule 1.500(3) does not affect the obligation of a party to timely supplement disclosures and discovery responses as required by rule 1.503(4)(*a*)(2).

Comment:

Rules 1.500(3)(*a*) and 1.500(3)(*b*). Rules 1.500(3)(*a*) and (*b*) mirror Federal Rule of Civil Procedure. 26(*a*)(3). The duty to disclose trial witnesses, deposition testimony, and exhibits is governed by the Time Standards for Case Processing in rule 23.5 of the Iowa Court Rules. Rule 23.5 is mandatory and applies to all civil actions. This rule incorporates into the Iowa Rules of Civil Procedure the duty to make pretrial disclosures. Iowa Court Rule 23.5—Form 2: Trial Scheduling Order and Discovery Plan, implements these and other scheduling deadlines.

Rule 1.500(3)(*b*). The federal rules require that pretrial disclosures occur within 30 days of trial and that objections occur within 14 days thereafter. Former rule 23.5—Form 2 of the Iowa Court Rules imposed a later deadline, requiring disclosure of all witness and exhibit lists at least 7 days before trial, with objections due within 5 days thereafter (2 days before trial). Requiring pretrial disclosures 30 days before trial could result in unnecessary time and effort. The former 7 day deadline, however, may have been in some circumstances too close to trial. Rule 1.500(3)(*b*) requires parties to make pretrial disclosures two weeks in advance of trial, unless they stipulate to a different deadline, which cannot be less than one week before trial. The rule also gives opposing parties one week thereafter to respond, unless the disclosure deadline was less than 10 days before trial. Iowa Court Rule 23.5—Form 2: Trial Scheduling Order and Discovery Plan reflects these changes.

1.500(4) *Form of disclosures.* Unless the court orders otherwise, all disclosures under rule 1.500 must be in writing, signed, and served.

1.500(5) *Supplementing the disclosures.* The parties must supplement these disclosures when required under rules 1.503(4) and 1.508(3).

1.500(6) *Effective date.* Rule 1.500 applies only to actions commenced on or after January 1, 2015, provided that the court may in any case direct the parties to comply with all or part of the rule as part of a pretrial order.

Rule 1.501 Discovery methods.

1.501(1) ~~Parties~~ In addition to the disclosures required by rule 1.500, and subject to the timing provisions of rule 1.505, 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.

1.501(2) The rules providing for discovery and inspection ~~shall~~ should be liberally construed, ~~and shall be enforced~~ administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding and 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.~~

1.501(3) ~~Unless the court orders otherwise under rule 1.504, the frequency of use of these methods is not limited.~~ Discovery must be conducted in good faith, and responses to discovery requests, however made, must fairly address and meet the substance of the request. Any discovery motion presented to the court must include a certification that the movant has in good faith personally spoken with or attempted to speak with other affected parties in an effort to resolve the dispute without court action. The certification must identify the date and time of any conference or attempts to confer.

Comment:

Rule 1.501(3). The rule makes the certification of conference requirement apply to all discovery motions. A similar provision is contained in rule 1.504(3) governing motions for protective order and in rule 1.517(5) governing sanctions and motions to compel. Telephonic conferences satisfy the conference requirement of these rules.

1.501(4) 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"

. . . .

Rule 1.503 Scope of discovery.

. . . .

1.503(1) *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, and the identity of witnesses the party expects to call to testify at the trial. 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.

a. Unless otherwise provided in a request for discovery, a request for the production of a "document" or "documents" shall encompass electronically stored information. Any reference in the rules in this division to a "document" or "documents" shall encompass electronically stored information.

b. All discovery is subject to the limitations of rule 1.503(8).

1.503(2) *Insurance agreements.* ~~A~~ In addition to the initial disclosures required by rule 1.500(1)(*a*)(4), 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 rule, an application for insurance shall not be treated as part of an insurance agreement.

Comment:

Rule 1.503(2). Notwithstanding the initial disclosure obligation in rule 1.500(1)(*a*)(4), rule 1.503(2) clarifies that additional discovery regarding insurance is still allowed, but the fruits of that discovery will not necessarily be admissible.

. . . .

1.503(4) ~~*Supplementation of*~~ *Supplementing disclosures and responses.* A party who has made a disclosure under rule 1.500, or who has responded to a request for discovery, ~~is under a duty to supplement or amend the~~ must timely supplement or correct the party's disclosure or response~~ to include information thereafter acquired~~ as follows:

a. A party must timely supplement or correct any disclosure or response that concerns ~~is under a duty seasonably to supplement the response with respect to any question directly addressed to~~ any of the following:

(1) The identity and location of persons having knowledge of discoverable matters.

(2) The identity of each person expected to be called as a witness at trial.

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

b. A party is under a duty seasonably to ~~amend~~ supplement or correct its disclosure or a prior response if the party ~~obtains information upon the basis of which:~~

~~(1) The party knows that the response was incorrect when made.~~

~~(2) 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.~~

learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

c. As provided in rule 1.508(3), a party ~~shall~~ must supplement discovery as to experts and the substance of their testimony.

d. An additional 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~~ to supplement prior responses.

Comment:

Rule 1.503(4)(*b*). The amendment eliminates the "knowing concealment" requirement that had triggered the duty to supplement incorrect discovery responses. Rule 1.503(4)(*b*) now tracks the federal rule by requiring supplementation of any response that the answering party learns is materially incomplete or incorrect unless that information has already otherwise been disclosed in discovery. *See* Fed. R. Civ. P. 26(e)(1)(A).

. . . .

1.503(6) *Signing disclosures and discovery requests, responses, and objections.*

a. Signature required; effect of signature. Every disclosure under rule 1.500 and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's name, law firm, or name of partnership, association, corporation, or tribe on behalf of which the filing agent is signing, and mailing address, telephone number, and electronic mail address. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(1) The disclosure is complete and correct as of the time it is made.

(2) The discovery request, response, or objection is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law.

2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

b. Failure to sign. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

c. Sanction for improper certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, shall impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

Comment:

Rule 1.503(6). The rule is patterned on Federal Rule of Civil Procedure 26(g). Having a separate certification requirement tailored specifically to discovery more effectively deters discovery abuse. *See* rule 1.413(1) (providing that its certification obligation does not apply to discovery).

1.503(7) *Reliance on disclosures and discovery responses of other parties.* Any party may rely on any other party's disclosures or discovery responses to the extent permitted by otherwise applicable evidentiary rules and regardless of when that party is joined. Unless requested to do so by a current party, the responding party has no duty to supplement its responses to discovery requests after the propounding party has been dismissed from the case.

1.503(8) *Limitations on frequency and extent.* On motion or on its own, the court shall limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

a. The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

c. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Rule 1.504 Protective orders.

1.504(1) 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:

a. 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:

(1) That the discovery not be had.

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place, or the allocation of expenses.

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

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.

(5) That discovery be conducted with no one present except persons designated by the court.

(6) That a deposition after being sealed be opened only by order of the court.

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

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

b. ~~Shall~~ On motion or on its own, shall limit the frequency and extent of use of the methods described in rule 1.501(1) in accordance with the limitations of rule 1.503(8). ~~if it determines that any of the following applies:~~

~~(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.~~

~~(3) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.~~

Comment:

Rule 1.504(1). Rather than repeating the proportionality limitations contained in the scope of discovery, rule 1.504(1) cross-references proportionality. Additionally, in recognition of the court's independent obligation to ensure the proportionality of discovery, rule 1.504(1) expressly authorizes the court to limit sua sponte the frequency and extent of discovery.

1.504(2) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of rule ~~1.504(1)(*b*)~~1.503(8). The court may specify conditions for the discovery.

1.504(3) A motion for protective order must include a certification that the movant has in good faith personally spoken with or attempted to speak with other affected parties in an effort to resolve the dispute without court action. The certification must identify the date and time of any conference or attempts to confer. 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 rule 1.517(1)(*d*) apply to the award of expenses incurred in relation to the motion.

Rule 1.505 ~~Sequence and timing~~ Timing and sequence of discovery.

1.505(1) *Timing.*

a. A party may not seek discovery from any source before the parties have conferred as required by rule 1.507, except in a proceeding exempt from initial disclosure under rule 1.500(1)(*e*), or when authorized by these rules, by stipulation, or by court order.

b. The discovery moratorium of rule 1.505(1) applies only to actions commenced on or after January 1, 2015, provided that the court may in any case direct the parties to comply with all or part of the rule as part of a pretrial order.

1.505(2) *Sequence.* Unless the court upon motion orders otherwise for the convenience of parties and witnesses and in the interests of justice, or the parties stipulate, 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 1.507 Discovery conference of the parties.

1.507(1) ~~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 issues relating to the discovery and preservation of electronically stored information, including the form in which it should be produced.~~

~~*e.* Any issues relating to claims of privilege or protection as trial preparation material, including (if the parties agree on a procedure to assert such claims after production) whether to ask the court to include their agreement in an order.~~

~~*f.* Any other proposed orders with respect to discovery.~~

~~*g.* 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.~~ *Conference timing.* Except in a proceeding exempt from initial disclosure under rule 1.500(1)(*e*) or when the court orders otherwise, the parties must confer as soon as practicable, but no later than 21 days

after any defendant has answered or appeared. The plaintiff must notify all parties of the discovery conference deadline. Except as otherwise stipulated or ordered by the court, the filing of a pre-answer motion under rule 1.421 does not affect the obligation to participate in the discovery conference or to make disclosures required by rule 1.500(1).

1.507(2) ~~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.~~ *Conference content; parties' responsibilities.* In conferring, parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by rule 1.500(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 7 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person. The discovery plan must be submitted in all events prior to the trial-setting conference.

1.507(3) *Discovery plan.* ~~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.~~ The discovery plan will be included in Iowa Court Rule 23.5—Form 2: Trial Scheduling Order and Discovery Plan, and except as otherwise ordered by the court, a discovery plan must state the parties' views and proposals on the following:

a. Changes that should be made in the timing, form, or requirement for disclosures under rule 1.501(1), including a statement of when initial disclosures were made or will be made.

b. Subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

c. Issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which the information should be produced.

d. Issues about claims of privilege or of protection as trial preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include the parties' agreement in an order under Iowa Rule of Evidence 5.502.

e. Changes that should be made to the limitations on discovery imposed under these rules, and other limitations that should be imposed.

f. Any other orders that the court should issue under rule 1.504 or under rule 1.602.

1.507(4) *Pretrial conference.* ~~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 rule 1.602.~~ Following the parties' discovery conference, any party may request the court to convene a pretrial conference under rule 1.602 to resolve any objection or disputed issue identified in the parties' discovery plan.

Comment:

Rule 1.507. The rule is substantially rewritten to provide that parties, including pro se litigants, have a duty to confer early in a case and cooperate in framing a discovery plan to submit to the court. The rule is patterned on the federal attorney conference rule, Federal Rule of Civil Procedure 26(f). Rule 1.507 envisions that the discovery conference will occur on or before the rule 1.906 trial-setting conference. The parties must submit the discovery plan within 7 days of the trial-setting conference, and initial disclosures are due within 14 days of the discovery conference.

Rule 1.508 Discovery of experts.

1.508(1) *Expert who is expected to be called as a witness.* In addition to the disclosures and discovery provided pursuant to ~~rule~~ rules 1.500(2) and 1.516, 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 rule 1.503(1) and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

~~*a.* 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, all of the following:~~

~~(1) The subject matter on which the expert is expected to testify.~~

~~(2) The designated person's qualifications to testify as an expert on such subject.~~

~~(3) 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 knowledge of the facts obtained by the witness prior to being retained as an expert or 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 30 days of service of such answers, otherwise the objection is waived.~~

a. Deposition of an expert who may testify. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If rule 1.500(2)(*b*) requires a report from the expert, the deposition may be conducted only after the report is provided.

b. Discovery by other means. ~~Discovery by other means is available without leave of court in lieu of or in addition to interrogatories:~~

~~(1) 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.~~

~~(2) A~~ Subject to rules 1.508(1) (*d*) and (*e*), 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.

~~(3) If~~ *c. Tangible form.* Subject to rules 1.508(1) (*d*) and (*e*), 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.

d. Trial preparation protection for draft reports or interrogatory answers. Rule 1.503(3) protects drafts of any report or disclosure required under rule 1.500(2), regardless of the form in which the draft is recorded.

e. Trial preparation protection for communications between a party's attorney and expert witnesses. Rule 1.503(3) protects communications between the party's attorney and any witness required to provide a report under rule 1.500(2)(*b*), regardless of the form of the communications, except to the extent that the communications:

(1) Relate to compensation for the expert's study or testimony.

(2) Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed.

(3) Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

1.508(2) *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 rule 1.516 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.

1.508(3) *Duty to supplement discovery as to experts.* ~~If a party expects to call an expert witness when the identity or the 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 rule 1.508(1)(*a*)(1) to (3), as soon as practicable, but in no event less than 30 days prior to the beginning of trial except on leave of court. If the identity of an expert witness and the information described in rule 1.508(1)(*a*)(1) to (3) 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.~~For an expert whose report must be disclosed under rule 1.500(2)(*b*), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed no later than 30 days before trial. Failure to disclose or supplement the identity of an expert witness or the information described in rule 1.500(2) is subject to sanctions under rule 1.517(3)(*a*).

1.508(4) *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 rule 1.508(1)(*a*) or 1.508(1)(*b*), the~~ 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,~~ disclosures, ~~separate~~ report, deposition testimony, 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.~~

1.508(5) ~~*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 occur within a reasonable and specific time before the date of trial. Upon motion, or at a discovery conference held pursuant to rule 1.507, 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.~~

~~**1.508(6)**~~ *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 rules 1.508(1) and 1.508(2). With respect to discovery obtained under rule 1.508(1), the court may require, and with respect to discovery obtained under rule 1.508(2), 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.

1.508(6) *Effective date.* Rules 1.508(1)(*a*), 1.508(1)(*d*), 1.508(1)(*e*), and 1.508(3) apply only to actions commenced on or after January 1, 2015, provided that the court may in any case direct the parties to comply with all or part of the rules as part of a pretrial order.

Rule 1.509 Interrogatories to parties.

1.509(1) *Availability; procedures for use.*

a. 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. ~~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.~~

b. Each interrogatory, unless the court has ordered otherwise, ~~shall~~ must be ~~followed by a reasonable space for insertion of the answer unless the interrogatories are~~ provided in an electronic word processing format ~~in which an answer can be inserted~~. An interrogatory ~~which~~ that does not comply with this requirement is subject to objection.

c. Each interrogatory ~~shall~~ must, to the extent it is not objected to, 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~~. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. A party may answer an interrogatory in whole or in part subject to an objection without waiving that objection. Any answer so provided is subject to the duty to supplement set forth in rule 1.503(4), but the party does not waive the objection by supplementing. Where an answer is provided subject to an objection, the answering party must specify the extent to which the requested information has not been provided.

d. A party answering interrogatories 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 rule 1.517. 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 30 days after the interrogatories are served. Objections, if any, must be signed by the attorney who objects and must ~~shall~~ be served within 30 days after the interrogatories are served. ~~Defendants, however, may serve their objections or answers within 60 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 rule 1.517(1) with respect to any objection to or other failure to answer an interrogatory.

e. ~~A~~ Except as provided in rule 1.509(4), or unless otherwise stipulated or ordered by the court for good cause shown, a party ~~shall~~must not serve on any other party more than 30 interrogatories, including all discrete subparts ~~on any other party except upon agreement of the parties or leave of court granted upon a showing of good cause~~. Any discrete subpart to a nonpattern interrogatory will be considered a separate interrogatory. A motion for leave of court to serve more than 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

Comment:

Rule 1.509(1)(*c*). The rule mirrors Federal Rule of Civil Procedure 33(b)(3) and (4) in requiring that objections to interrogatories be specific and providing that any ground not raised in a timely objection is waived. The rule further allows a party to respond to an interrogatory subject to an objection without waiving that objection. In such cases, however, the responding party must clearly indicate whether any responsive information is being withheld subject to the objection.

1.509(2) *Scope; use at trial.*

a. Interrogatories may relate to any matters which can be inquired into under rule 1.503, 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.

b. 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.

1.509(3) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, 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.

1.509(4) *Pattern interrogatories.* The supreme court, by supervisory order or otherwise, may approve pattern interrogatories for different classes of cases. Any pattern interrogatory and its subparts are counted as one interrogatory.

Comment:

Rule 1.509(4). Parties are encouraged to use supreme court-approved pattern discovery when appropriate. A party may use one or more pattern interrogatories that are part of an approved set of pattern interrogatories. Any approved pattern interrogatory is counted as one interrogatory in determining the total number of permissible interrogatories, regardless of the number of subparts or multiple inquiries within the interrogatory. In contrast, each discrete subpart of a nonpattern interrogatory will count as a separate interrogatory. A party may combine pattern interrogatories with other interrogatories, subject to applicable limitations as to number. A party should not serve pattern interrogatories that have no application to the case.

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Rule 1.512. Production of documents, electronically stored information, and things; entry upon land for inspection and other purposes.

1.512(1) *Requests.* Any party may serve on any other party a request:

a. To produce and permit the party making the request, or someone acting on that party's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained—translated, if necessary, by the respondent into a reasonably usable form.

b. To inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of rule 1.503 and which are in the possession, custody or control of the party upon whom the request is served.

c. To permit, except as otherwise provided by statute, 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 rule 1.503.

1.512(2) *Procedure.*

a. Making requests. ~~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 request may specify the form in which electronically stored information is to be produced.

b. Responses and objections.

(1) The party upon whom the request is served shall serve a written response within 30 days after the service of the request~~, except that a defendant may serve a response within 60 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, including an objection to the requested form for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form for producing electronically stored information – or if no form was specified in the request – the responding party must state the form it intends to use.~~

(2) For each item or category, the response must state that inspection and related activities will be permitted as requested or state the grounds for objecting to the request with specificity, including reasons. If the responding party states that the party will produce copies of documents or of electronically stored information instead of permitting inspection, the production must be

completed no later than the time for inspection stated in the request or a later reasonable time stated in the response.

(3) Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. A party may respond to a request in whole or in part subject to an objection without waiving that objection. Any response so provided is subject to the duty to supplement set forth in rule 1.503(4), but the party does not waive the objection by supplementing.

(4) An objection must state whether any responsive materials are being withheld on the basis of the objection. An objection to part of a request must specify the part and permit inspection of the rest. When a response is provided subject to an objection, the responding party must specify the extent to which the requested information has not been provided.

(5) The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form for producing electronically stored information, or if no form was specified in the request, the responding party must state the form or forms it intends to use.

c. Motion to compel. The party submitting the request may move for an order under rule 1.517 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.

d. Production. Unless the parties otherwise agree, or the court otherwise orders:

(1) A party who produces documents for inspection 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 request.

(2) If a request does not specify the form for producing electronically stored information, the responding party must produce the information in a form in which it is ordinarily maintained or in a form that is reasonably usable.

(3) A party need not produce the same electronically stored information in more than one form.

1.512(3) *Pattern requests.* The supreme court, by supervisory order or otherwise, may approve pattern requests for production for different classes of cases.

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Rule 1.517 Consequences of failure to make disclosures or discovery.

1.517(1) *Motion for order compelling disclosures or discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order compelling disclosure or discovery as follows:

a. Appropriate court. 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. 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.

b. ~~Motion~~ Specific motions.

(1) *To compel disclosure.* If a party fails to make a disclosure required by rule 1.500, any other party may move to compel disclosure and for appropriate sanctions.

(2) *To compel a discovery response.* If a deponent fails to answer a question propounded or submitted under rule 1.701 or 1.710, or a corporation or other entity fails to make a designation under rule 1.707(5), or a party fails to answer an interrogatory submitted under rule 1.509, or if a party, in response to a request for inspection submitted under rule 1.512, fails to produce documents, or fails to respond that inspection will be permitted, ~~as requested~~ or fails to permit inspection ~~as requested~~, the party seeking discovery may move for an order compelling an answer, a designation, or an inspection in accordance with the request.

(3) *Related to a deposition.* When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before moving for an order.

(4) *Default; notice; protective orders.* If a motion to compel is filed and the time for resistance of that motion has expired without a resistance having been filed, the court may grant the motion without a hearing.

(5) *Sanctions.* 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 rule 1.517.

(6) *Protective order.* 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 rule 1.504(1).

c. Evasive or incomplete answer. For purposes of this rule an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion.

(1) If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, 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.

(2) 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.

(3) 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.

e. Notice to litigants. If the motion is granted, the court shall direct the clerk to ~~mail~~ serve a copy of the order to counsel and to the party or parties whose conduct, individually or by counsel, necessitated the motion.

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1.517(3) *Failure to disclose, to supplement an earlier response, or to admit.*

a. Failure to disclose or supplement. If a party fails to provide information or identify a witness as required by rule 1.500, 1.503(4), or 1.508(3), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition or instead of this sanction, the court, on motion or after giving an opportunity to be heard:

(1) May order payment of the reasonable expenses, including attorney's fees, caused by the failure.

(2) May inform the jury of the party's failure.

(3) May impose other appropriate sanctions, including any of the orders listed in rule 1.517(2)(*b*).

b. 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 rule 1.510, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds any of the following:

~~*a.*~~(1) The request was held objectionable pursuant to rule 1.510.

~~*b.*~~(2) The admission sought was of no substantial importance.

~~*c.*~~(3) The party failing to admit had reasonable grounds to believe that the party might prevail on the matter.

~~*d.*~~(4) There was other good reason for the failure to admit.

1.517(4) *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 rule 1.707(5) to testify on behalf of a party fails:

a. To appear before the officer who is to take the person's deposition, after being served with a proper notice; or

b. To serve answers or objections to interrogatories submitted under rule 1.509, after proper service of the interrogatories; or

c. To serve a written response to a request for inspection submitted under rule 1.512, 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 rule 1.517(2)(*b*)(1), (2), (3), and (5).

d. The failure to act described in rule 1.517(4) 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 rule 1.504.

1.517(5) *Motions relating to discovery.* No motion relating to depositions, discovery, or discovery sanctions ~~shall~~ may be filed with the clerk or considered by the court unless the motion alleges that ~~counsel for~~ the ~~moving party~~ movant has ~~made a~~ in good faith ~~but unsuccessful attempt~~ personally spoken with or attempted to speak with other affected parties in an effort to resolve the dispute without court action. ~~issues raised by the motion with opposing counsel without intervention of the court.~~ The certification must identify the date and time of any conference or attempts to confer.

1.517(6) *Electronically stored information.* Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

1.517(7) *Failure to participate in framing a discovery plan.* If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by rule 1.507, the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, that the failure causes.

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DIVISION VII
DEPOSITIONS AND PERPETUATING TESTIMONY

A. DEPOSITIONS

Rule 1.701 Depositions upon oral examination.

1.701(1) *When depositions may be taken.*

a. Without leave. ~~After commencement of the action, any~~ Any party may, by deposition upon oral examination, take the testimony of any person, including a party, without leave of court except as provided in rule 1.701(*b*). The attendance of witnesses may be compelled by subpoena as provided in rule 1.715. ~~by deposition upon oral examination.~~

b. With leave. 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 under any of the following circumstances:~~

(1) The parties have not stipulated to the deposition and the party seeks to take the deposition before the time specified in rule 1.505(1), unless special notice is given as provided in rule 1.701(2); or

~~*a.* If a defendant has served a notice of taking deposition or otherwise sought discovery.~~

~~*b.* If special notice is given as provided in rule 1.701(2)(*b*);~~

(2) The parties have not stipulated to the deposition and the deponent has already been deposed in the case; or

~~The attendance of witnesses may be compelled by subpoena as provided in rule 1.715.~~

(3) ~~The deposition of a person~~ The deponent is confined in prison ~~may be taken only by leave of court on such terms as the court prescribes~~.

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Rule 1.708 Conduct of oral deposition.

1.708(1) *Examination; cross-examination; recording examination; administering the oath; objections; written questions.*

a. Examination and cross-examination; recording examination; administering oath. 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 oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with rule 1.701(4). If requested by one of the parties, the testimony shall be transcribed.

b. Objections. 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. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under rule 1.708(2).

c. Participating through written questions. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition who shall transmit them to the officer. The officer shall propound them to the witness and record the answers verbatim.

1.708(2) *Sanction;~~Motion~~ motion to terminate or limit examination.*

a. Sanction. The court may impose an appropriate sanction, including the reasonable expenses and attorney's fees incurred by any party, on a person who impedes, delays, or frustrates the fair examination of the deponent.

b. Motion to terminate or limit. 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 rule 1.504. 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 rule 1.517(1)(*d*) apply to the award of expenses incurred in relation to the motion.

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Rule 1.906 Civil trial-setting conference. No later than ~~90~~ 21 days after ~~the action is commenced~~any defendant has answered or appeared, the clerk shall ~~send~~ provide a notice of civil trial-setting conference to all parties not in default. The clerk shall use Iowa Court Rule 23.5—Form 1:~~, the~~ Notice of Civil Trial-Setting Conference, to ~~send~~ provide the notice. The notice shall schedule a trial-setting conference no ~~later~~ earlier than ~~150~~ 35 days after ~~commencement of the action~~ and no later than 50 days after any defendant has answered or appeared. The parties are responsible for obtaining a timely trial-setting conference ~~within 150 days after commencement of the action~~ regardless of whether a party receives notice of the trial-setting conference. Failure to receive notice shall not be grounds to avoid dismissal under rule 1.944. A party may move for an earlier trial-setting conference upon giving notice to all parties. The court and the parties shall use Iowa Court Rule 23.5—Form 2:~~, the~~ Trial Scheduling Order and Discovery Plan ~~to set the trial date~~. If a trial is continued, the court shall set the trial to a date certain. Unless otherwise ordered, the deadlines established in the trial scheduling order shall continue to apply to the case.

CHAPTER 1
RULES OF CIVIL PROCEDURE
DIVISION V
DISCOVERY AND INSPECTION

Rule 1.500 Duty to disclose; required disclosures.

1.500(1) *Initial disclosures*

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f. Time for initial disclosures in general. Except in domestic relations proceedings, a party must make the initial disclosures at or within 14 days after the parties' rule 1.507 discovery conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure. In domestic relations proceedings, a party must make the initial disclosures within 60 days of filing of the petition unless a different time is set by stipulation or court order or unless the court, upon motion, relieves the parties from the obligation to provide initial disclosures.

CHAPTER 1
RULES OF CIVIL PROCEDURE
DIVISION V
DISCOVERY AND INSPECTION

Rule 1.507 Discovery conference.

1.507(1) *Conference timing.* Except in a proceeding exempt from initial disclosure under rule 1.500(1)(*e*), a domestic relations proceeding, or when the court orders otherwise, the parties must confer as soon as practicable, but no later than 21 days after any defendant has answered or appeared. The plaintiff must notify all parties of the discovery conference deadline. Except as otherwise stipulated or ordered by the court, the filing of a pre-answer motion under rule 1.421 does not affect the obligation to participate in the discovery conference or to make disclosures required by rule 1.500(1).

CHAPTER 1
RULES OF CIVIL PROCEDURE
DIVISION IX
TRIAL AND JUDGMENT

Rule 1.906 Civil trial-setting conference. Except in domestic relations proceedings, ~~No~~ no later than 21 days after any defendant has answered or appeared, the clerk shall provide a notice of civil trial-setting conference to all parties not in default. The clerk shall use Iowa Court Rule 23.5—Form 1: Notice of Civil Trial-Setting Conference, to provide the notice. The notice shall schedule a trial-setting conference no earlier than 35 days after and no later than 50 days after any defendant has answered or appeared. The parties are responsible for obtaining a timely trial-setting conference regardless of whether a party receives notice of the trial-setting conference. Failure to receive notice shall not be grounds to avoid dismissal under rule 1.944. A party may move for an earlier trial-setting conference upon giving notice to all parties. The court and the parties shall use Iowa Court Rule 23.5—Form 2: Trial Scheduling and Discovery Plan to set the trial date. If a trial is continued, the court shall set the trial to a date certain. Unless otherwise ordered, all previous deadlines will continue to apply to the case.

CHAPTER 1
RULES OF CIVIL PROCEDURE

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DIVISION V
DISCOVERY AND INSPECTION

Rule 1.500 Duty to disclose; required disclosures.

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1.500(2) *Disclosure of expert testimony.*

d. Time to disclose expert testimony. A party must make these disclosures at the times and in the sequence set forth in the court's trial scheduling order. If not otherwise ordered, expert disclosures shall be due:

(1) No later than 90 days before the date set for trial; or

(2) Within 30 days after the other party's disclosures if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under rule 1.500(2)(*b*) or (*c*).

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Comment:
Rule 1.500 (2)(*d*). The rule contemplates that in many, if not most, cases, scheduling of disclosure of expert testimony will be governed by a trial scheduling order. *See* Iowa R. Civ. P. 1.907; Iowa Ct. R. 23.5—Form 2: Trial Scheduling ~~Order~~ and Discovery Plan.

1.500(3) *Pretrial disclosures.*

a. In general. In addition to the disclosures required by rules 1.500(1) and 1.500(2), a party must provide to the other parties and promptly file the following information about the evidence the party may present at trial other than evidence to be used solely for impeachment:

(1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying the witnesses the party expects to present and those the party may call if the need arises.

(2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.

(3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises.

b. Time for pretrial disclosures; objections. Pretrial disclosures must be made at least 14 days before trial. This deadline may be modified by order of the court or stipulation of the parties, provided, however, that the parties may not stipulate to a pretrial disclosure deadline of less than 7 days before trial. A party may serve and promptly file a list of the following objections: any objections to the use under rule 1.704 of a deposition designated by another party under rule 1.500(3)(*a*)(2), and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under rule 1.500(3)(*a*)(3). Objections must be served and filed within 7 days of the pretrial disclosures, or within 4 days if the pretrial disclosure deadline is less than 10 days before trial, unless the court directs otherwise. An objection not so made, except for one under Iowa Rule of Evidence 5.402 or 5.403, is waived unless excused by the court for good cause.

c. Duty to supplement unaffected. Rule 1.500(3) does not affect the obligation of a party to timely supplement disclosures and discovery responses as required by rule 1.503(4)(*a*)(2).

Comment:

Rules 1.500(3)(*a*) and 1.500(3)(*b*). Rules 1.500(3)(*a*) and (*b*) mirror Federal Rule of Civil Procedure. 26(*a*)(3). The duty to disclose final trial witnesses, deposition testimony, and exhibits is governed by the Time Standards for Case Processing in rule 23.5 of the Iowa Court Rules. Rule 23.5 is mandatory and applies to all civil actions. This rule incorporates into the Iowa Rules of Civil Procedure the duty to make pretrial disclosures. Iowa Court Rule 23.5—Form 2: Trial Scheduling ~~Order~~ and Discovery Plan, implements these and other scheduling deadlines.

Rule 1.500(3)(*b*). The federal rules require that pretrial disclosures occur ~~within~~ at least 30 days ~~of~~ before trial and that objections occur within 14 days thereafter. Former rule 23.5—Form 2 of the Iowa Court Rules imposed a later deadline, requiring disclosure of all witness and exhibit lists at least 7 days before trial, with objections due within 5 days thereafter (2 days before trial). Requiring pretrial disclosures 30 days before trial could result in unnecessary time and effort. The former 7 day deadline, however, may have been in some circumstances too close to trial. Rule 1.500(3)(*b*) requires parties to make pretrial disclosures two weeks in advance of trial, unless they stipulate to a different deadline, which cannot be less than one week before trial. The rule also gives opposing parties one week thereafter to respond, unless the disclosure deadline was less than 10 days before trial. Iowa Court Rule 23.5—Form 2: Trial Scheduling ~~Order~~ and Discovery Plan reflects these changes.

. . . .

1.507(3) *Discovery plan.* The discovery plan will be included in Iowa Court Rule 23.5—Form 2: Trial Scheduling ~~Order~~ and Discovery Plan, and except as otherwise ordered by the court, a discovery plan must state the parties' views and proposals on the following:

a. Changes that should be made in the timing, form, or requirement for disclosures under rule 1.501(1), including a statement of when initial disclosures were made or will be made.

b. Subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

c. Issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which the information should be produced.

d. Issues about claims of privilege or of protection as trial preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include the parties' agreement in an order under Iowa Rule of Evidence 5.502.

e. Changes that should be made to the limitations on discovery imposed under these rules, and other limitations that should be imposed.

f. Any other orders that the court should issue under rule 1.504 or under rule 1.602.

1.507(4) *Pretrial conference.* Following the parties' discovery conference, any party may request the court to convene a pretrial conference under rule 1.602 to resolve any objection or disputed issue identified in the parties' discovery plan.

Comment:

Rule 1.507. The rule is substantially rewritten to provide that parties, including pro se litigants, have a duty to confer early in a case and cooperate in framing a discovery plan to submit to the court. The rule is patterned on the federal attorney conference rule, Federal Rule of Civil Procedure 26(f). Rule 1.507 envisions that the discovery conference will occur ~~on or~~ before the rule 1.906 trial-setting conference. The parties must submit the discovery plan within 7 days ~~of~~ after the ~~trial setting~~ discovery conference, and initial disclosures are due within 14 days after ~~of~~ the discovery conference.

. . . .

DIVISION IX
TRIAL AND JUDGMENT

. . . .

Rule 1.906 Civil trial-setting conference. No later than 21 days after any defendant has answered or appeared, the clerk shall provide a notice of civil trial-setting conference to all parties not in default. The clerk shall use Iowa Court Rule 23.5—Form 1: Notice of Civil Trial-Setting Conference, to provide the notice. The notice shall schedule a trial-setting conference no earlier than 35 days after and no later than 50 days after any defendant has answered or appeared. The parties are responsible for obtaining a timely trial-setting conference regardless of whether a party receives notice of the trial-setting conference. Failure to receive notice shall not be grounds to avoid dismissal under rule 1.944. A party may move for an earlier trial-setting conference upon giving notice to all parties. The court and the parties shall use Iowa Court Rule 23.5—Form 2: Trial Scheduling ~~Order~~ and Discovery Plan to set the trial date. If a trial is continued, the court shall set the trial to a date certain. Unless otherwise ordered, ~~the~~ all previous deadlines ~~established in the trial scheduling order shall~~ will continue to apply to the case.

Comment:

Rule 1.906. Following receipt of the parties' Trial Scheduling and Discovery Plan and after the trial-setting conference, it is contemplated that the district court or its designee will enter an order scheduling trial. This order would also approve, supplement, or modify the terms of the Trial Scheduling and Discovery Plan as needed.

Rule 23.5—Form 1: *Notice of Civil Trial-Setting Conference*

In the Iowa District Court for _____ County

_____	No._____
Plaintiff(s) / Petitioner(s) *Full name: first, middle, last* vs. _____ **Defendant(s) / Respondent(s).** *Full name: first, middle, last*	**Notice of Civil Trial-Setting Conference** *Use of this form is mandatory*

To the parties or their attorneys of record:

In accordance with Iowa Rule of Civil Procedure 1.906, notice is hereby given that this case has been set

for trial-setting conference on *_____ _____, 20___, at ____:____ ☐ a.m. ☐ p.m.
Month *Day* *Year* *Time*

before _____ at _____.
Person *Location*

**This date shall be no earlier than 35 days after and no later than 50 days after any defendant has answered or appeared unless set sooner by special order on application of one or more parties.*

This conference shall be held: *Check one*

☐ By telephone with the conference call to be initiated by _____.
Person who will initiate the call

The court administrator will be connected to the call at (_____) _____.
Phone number of court administrator

☐ In person.

Attorneys for all parties appearing in the case shall participate at this conference. A party will participate in person if the party does not have an attorney.

At this trial-setting conference, every case will be set for trial within the time periods provided by Iowa Court Rules chapter 23, Time Standards for Case Processing.

Prior to the trial-setting conference, the parties must file a Trial Scheduling ~~Order~~ and Discovery Plan, Iowa Court Rule 23.5—Form 2 (Form 3 for Expedited Civil Actions).

In judicial districts that allow it, the parties may, in lieu of holding a trial-setting conference, first file their Trial Scheduling ~~Order~~ and Discovery Plan and then, prior to the date scheduled for the trial-setting conference, obtain a trial date from ~~the~~ court ~~administrator~~ administration that complies with the provisions of chapter 23. ~~The date will be entered by the court on the Trial Scheduling Order and Discovery Plan.~~

The trial date that is agreed upon at this conference will be a firm date. Continuances will not be granted, even if all parties agree, unless for a crucial cause that could not have been foreseen.

The clerk of court will notify all counsel of record and parties not represented by counsel.

Dated this ____ day of_____, 20____. _____
Day *Month* *Year* *Clerk of Court or District Court Administrator*

Rule 23.5—Form 2: ***Trial Scheduling and Discovery Plan***

Do not file this form in an Expedited Civil Action case, instead use Form 3.

- This form is to be filed within 7 days after the parties' discovery conference and before the trial-setting conference with the court.
- The parties should complete the entire form except as otherwise indicated.

In the Iowa District Court for _____ County

_____ **Plaintiff(s) / Petitioner(s)** *Full name: first, middle, last* vs. _____ **Defendant(s) / Respondent(s).** *Full name: first, middle, last*	No._____ **Trial Scheduling and Discovery Plan** *Use of this form is mandatory* Date Petition filed:_____/ _____/ _____ *mm dd yyyy* Case type: ☐ Law ☐ Equity ☐ Other ☐ PCR ☐ Judicial Review Trial type: ☐ Jury ☐ Nonjury Expected trial length: _____ days The amount in controversy exceeds $10,000. ☐ Yes ☐ No

Appearances:
Plaintiff(s) / Petitioner(s)

Defendant(s) / Respondent(s)

It is ordered:

1. **Trial** *Note to parties: Unless you have obtained a trial date from court administration, leave this date blank; the court will enter the date after the trial-setting conference.*

   Trial of this case is set for _____ _____, 20 _____, at _____:_____ ☐ a.m. ☐ p.m.
   Month Day Year Time

   in the district court in the courthouse of the county named above.

2. **Pretrial conference** *Check one. Note to parties: If box A is checked, leave the date blank unless you have obtained a pretrial conference date from court administration. If you do not have a pretrial conference date and check box A, the court will enter the date, by order, after the trial-setting conference.*

   A. ☐ A pretrial conference will be held on _____ ____, 20____, at _____:_____ ☐ a.m. ☐ p.m.
   Month Day Year Time

   The conference may be held telephonically with prior approval of the court.

   B. ☐ A pretrial conference will be held upon request.

3. **New parties**

   No new parties may be added later than 180 days before trial or _____ / _____ / _____.
   mm dd yyyy

If you need assistance to participate in court due to a disability, contact the disability coordinator at: (_____) _____ Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice. Disability coordinator contact information available at: http://www.iowacourts.gov/Administration/Directories/ADA_Access/

4. Transcripts and records

All required agency records or prior criminal transcripts will be filed within 30 days of the date of this Plan or by _____ / _____ / _____.
mm *dd* *yyyy*

5. Pleadings

Pleadings will be closed 60 days before trial or _____ / _____ / _____.
mm *dd* *yyyy*

6. Initial disclosures *Check all that apply*

A. ☐ The parties have exchanged initial disclosures.

B. ☐ The parties will provide initial disclosures no later than _____.

C. ☐ The parties have stipulated that the following will not be included in initial disclosures:
List items not included

D. ☐ The parties have stipulated not to provide any initial disclosures.

E. ☐ The following party objects to providing initial disclosures on the following grounds:
Identify the party and state all applicable grounds

7. Discovery

The parties have held a discovery conference as required by Iowa Rule of Civil Procedure 1.507.

All written discovery will be served no later than 90 days before trial. All depositions will be completed no later than 60 days before trial. Or, all discovery will be completed by

_____ / _____ / _____.
mm *dd* *yyyy*

Check all that apply

A. ☐ No discovery of electronically stored information is expected in this case.

B. ☐ The parties have conferred about discovery of electronically stored information and reached agreement as set out in Attachment ____.

C. ☐ The parties have conferred about discovery of electronically stored information and have been unable to reach an agreement. *Note to parties: If box* C *is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ / _____ / _____, at: _____ : _____ ☐ a.m. ☐ p.m.
mm *dd* *yyyy* *Time*

☐ at the _____ County Courthouse, courtroom _____, or
County *Courtroom number*

☐ at the following location: _____.

D. ☐ The parties have agreed to a discovery plan, and their agreement is set forth in Attachment ___.

E. ☐ The parties have agreed to deviate from the limits on discovery otherwise applicable to this action, and their agreement is set forth in Attachment ___.

F. ☐ The parties have agreed to conduct discovery in phases, and their agreement is set forth in Attachment ____.

G. ☐ The parties have reached an agreement under Iowa Rule of Evidence 5.502 as set forth in Attachment ____.

H. ☐ The parties have reached an agreement under Iowa Rule of Civil Procedure 1.504 as set forth in Attachment ____.

I. ☐ The parties have conferred about a discovery plan and have been unable to reach agreement on the issues set forth in Attachment ____. *Note to parties: If box* I *is checked, leave the following information blank unless the parties have obtained a hearing date, time, and location from court administration.*

A hearing is set for _____ /_____ /_____, at: _____:_____ ☐ a.m. ☐ p.m.
mm *dd* *yyyy* *Time*

☐ at the _____ County Courthouse, courtroom _____, or
County *Courtroom number*

☐ at the following location: _____.

8. Expert witnesses

A. A party who intends to call an expert witness, including rebuttal expert witnesses, shall certify to the court and all other parties the expert's name, subject matter of expertise, and qualifications, within the following time period, unless the Iowa Code requires an earlier designation date (*see, e.g.,* Iowa Code section 668.11):

(1) Plaintiff: 210 days before trial or _____ /_____ /_____.
mm *dd* *yyyy*

(2) Defendant/Third Party Plaintiff: 150 days before trial or _____ /_____ /_____.
mm *dd* *yyyy*

(3) Third Party Defendant/Others/Rebuttal: 90 days before trial or _____ /_____ /_____.
mm *dd* *yyyy*

B. Any disclosures required by Iowa Rule of Civil Procedure 1.500(2)(*b*) will be provided:
Check each that applies

(1) ☐ At the same time the expert is certified.

(2) ☐ According to the following schedule:

a. Plaintiff: _____ /_____ /_____.
mm *dd* *yyyy*

b. Defendant/Third Party Plaintiff: _____ /_____ /_____.
mm *dd* *yyyy*

c. Third Party Defendant/Others/Rebuttal: _____ /_____ /_____.
mm *dd* *yyyy*

C. This section does not apply to court-appointed experts.

The deadlines listed in paragraphs 5, 6, 7, *and* 8 *may be amended, without further leave of court, by filing a Stipulated Amendment to this Plan listing the dates agreed upon and signed by all attorneys and self-represented litigants. Such Stipulated Amendment may not override any requirement of the Iowa Court Rules and cannot serve as a basis for a continuance of the trial date or affect the date for pretrial submissions.*

9. Pretrial submissions

At least **14 or** ____ (the parties may enter another number but not less than **7**) **days before trial**, counsel for the parties and self-represented litigants must:

A. File a **witness and exhibit** list with the clerk of court, serve a copy on opposing counsel and self-represented litigants, and exchange exhibits. In electronic cases, witness and exhibit lists must be electronically filed, and the EDMS system will serve copies on all registered parties. Exhibits must be electronically submitted in lieu of exchanging them. These disclosures must

include the following information about the evidence that the disclosing party may present at trial other than solely for impeachment:

(1) The name and, if not previously provided, the address, telephone numbers, and electronic mail address of each witness, separately identifying those the party expects to present and those the party may call if the need arises.

(2) The page and line designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.

(3) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises. The following rules govern exhibits and exhibit lists:

a. Plaintiff will use numbers and Defendant will use letters. Pretrial exhibit lists will identify each exhibit by letter or number and description. Exhibits must be marked before trial.

b. Immediately before commencement of trial, the court must be provided with a bench copy, and the court reporter with a second copy, of the final exhibit list for use in recording the admission of evidence.

c. In nonjury cases, immediately before commencement of trial, parties must provide the court with a bench copy of all exhibits identified on the exhibit lists.

d. Within 7 days after the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial, counsel and self-represented litigants must file with the clerk of court, and serve on each party, any identification, authentication, and foundation objections to the exhibits listed; otherwise such objections are deemed **waived** for trial purposes. In electronic cases, any identification, authentication, and foundation objections will be electronically filed, and the EDMS system will serve copies on all registered parties. Electronic filing of these objections must be done within 7 days of the filing of an exhibit list, or within 4 days if the deadline for filing of the list is less than 10 days before trial; otherwise, such objections are deemed **waived** for trial purposes.

B. File and serve **motions in limine**, with supporting legal authority.

C. File and serve **all proposed jury instructions** in a form to be presented to the jury, including a statement of the case, the stock jury instruction numbers, and verdict forms. The court must be provided the instructions in written form and electronically.

D. Deliver to the judge and serve a concise **trial brief** addressing factual, legal, and evidentiary issues, with citation to legal authorities.

10. Motions

All motions including motions for summary judgment and except motions in limine, must be filed with the clerk of court's office or electronically filed at https://www.iowacourts.state.ia.us/EFile/ at least 60 days before trial, with copies to the assigned judge.

11. Settlement conference

Note to parties: If A *or* B *is checked, leave any date blank; the court will enter the settlement conference date, by order, after the trial-setting conference.*

A. ☐ A settlement conference will be held on _____ ____, 20___, at _____:_____ ☐ a.m. ☐ p.m.
Month *Day* *Year* *Time*

at the _____ County Courthouse.

All parties with authority to settle must be present.

B. ☐ A settlement conference will be held on _____ ____, 20___, at _____:_____ ☐ a.m. ☐ p.m.
Month *Day* *Year* *Time*

at the following location _____.

All parties with authority to settle must be present.

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C. ☐ A settlement conference will occur at a date, time, and location arranged by the parties. All parties with authority to settle must be present.

D. ☐ A settlement conference will be held upon request.

The parties are encouraged to consider alternative dispute resolution including private mediation or arbitration.

12. Settlements

The parties are responsible for immediately notifying the court administrator of settlement.

13. Late settlement fees

Late settlement fees under Iowa Rule of Civil Procedure 1.909 are applicable.

14. Continuances

Continuances are discouraged and will only be granted for good cause. Motions to continue are governed by Iowa Rule of Civil Procedure 1.910. In the event the trial date is continued, all time deadlines in this Plan and any Stipulated Amendments remain in effect relative to the new trial date unless the court approves new deadlines.

15. Notice

Failure to comply with any of the provisions of this Plan or Stipulated Amendments to this Plan may result in the court imposing sanctions pursuant to Iowa Rule of Civil Procedure 1.602(5), including limitation and exclusion of evidence and witnesses and payment of costs or attorney fees. The court will resolve disputes regarding oral agreements on scheduling by reference to this Plan or any Stipulated Amendments to this Plan.

At least one signature to the Trial Scheduling and Discovery Plan is required. The signer certifies that all listed parties have joined in this Trial Scheduling and Discovery Plan, subject to any objections noted.

I certify that all parties and attorneys to this action have agreed to this Trial Scheduling and Discovery Plan and have been served with a copy.

_____ _____, 20_____ /s_____

Signed: Month Day Year Party's or attorney's signature

_____ _____

Printed name Attorney's law firm, if applicable

_____ _____ _____ _____

Mailing address City State ZIP code

(_____) _____ _____ _____

Phone number Email address Additional email address, if available

Original filed with the clerk of court or electronically filed at https://www.iowacourts.state.ia.us/EFile/.

Copies to: counsel of record, self-represented litigants, and court administration.

For questions regarding documents filed with the court in this case, please see www.judicial.state.ia.us/Online_Court_Services/Online_Docket_Record/ or call the clerk of court.

Q & A Regarding Amendments to Iowa Discovery Rules*

January 2015

Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations

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A. Initial disclosures (new 1.500(1))

Q. Are initial disclosures required in expedited civil action cases?

A. Yes. Initial disclosures are required in all civil cases except as follows: (1) certain categories of cases are expressly excluded by the rule (see next question), (2) the court may by order exempt the case from the initial disclosure requirement, (3) the parties may stipulate not to exchange disclosures.

Q. Which civil actions are excluded from the initial disclosure requirement?

* Please note: These questions and answers are not a part of the Iowa Rules of Civil Procedure or the official comments to the rules.

A. Rule 1.500(1)(*e*) enumerates 12 kinds of actions that are exempt from initial disclosure requirements, including but not limited to administrative review proceedings, mental health proceedings, juvenile proceedings, domestic relations proceedings in which there are no contested claims, and small claims proceedings.

Q. How do the Iowa initial disclosures compare to those in federal proceedings?

A. Generally, they are similar. Parties will produce basic information at the beginning of the case—for example, the identity of persons with information to support the parties' claims or defenses, copies of documents that support claims or defenses, and computations of damages. The goal is to get information out early that normally would be obtained otherwise later in the discovery process. Also, disclosure is to some extent self-enforcing—it puts the burden on the party who wants to use the witness or exhibit to disclose it in a timely fashion. The committee believed initial disclosures will result in streamlined case processing, early case evaluation, and a fairer dispute-resolution process.

Q. Are there differences between the Iowa disclosures and the federal disclosures?

A. Yes. The Iowa disclosure rules go beyond the federal rules to some extent. For example, actual *copies* of documents will be produced in the initial disclosure unless it is too costly or burdensome. Also, there are some disclosures tailored to particular kinds of cases. For example, in personal injury cases, among other things, written waivers to obtain medical records are required.

Q. What happens if a party has not been served or joined in the case when initial disclosures are due?

A. The party must make initial disclosures within 30 days of being served or joined.

Q. Can parties stipulate out of the requirement for initial disclosures?

A. Yes. Parties can also stipulate not to exchange *some* of the initial disclosures.

Q. Can a party take discovery before the initial disclosures?

A. Generally no. Discovery is not permitted until the parties have had the initial discovery conference, and disclosures are due within 14 days of that date.

B. Discovery conference (1.507, 1.517(7))

Q. Are the parties required to participate in the initial discovery conference?

A. Yes. Unless the proceeding is exempt from initial disclosures or the court orders otherwise, all parties, including pro se litigants, have a duty to confer early in a case as soon as practicable but no later than 21 days after any defendant has answered or appeared. All parties are responsible to cooperate in good faith in framing a discovery plan to submit to the court within 7 days of the discovery conference. The rule is patterned on the Fed. R. Civ. P. 26(f) attorney conference, which has proven to be one of the most effective federal discovery amendments.

Q. Will the filing of a pre-answer motion under rule 1.421 suspend the obligation to make disclosures or to hold a discovery conference?

A. No, except as otherwise stipulated or ordered by the court.

Q. Is a discovery conference required for all civil actions?

A. At present, yes, unless the case is in a category that is exempt from the initial disclosure requirement or the court orders otherwise.

C. Civil trial setting conference (1.906)

Q. When will the civil trial setting conference occur?

A. No earlier than 35 days and no later than 50 days after any defendant has answered or appeared. In other words, it is expected that the civil trial setting conference will occur approximately two weeks to four weeks after the discovery conference. The court is supposed to notify the parties of the date no later than 21 days after any defendant has answered or appeared.

Q. What needs to be done before the civil trial setting conference?

A. In addition to holding their discovery conference, the parties must submit a proposed trial scheduling order and discovery plan. This will be either Form 2 or Form 3 under rule 23.5, depending on whether the case is a standard case or an ECA case.

Q. What happens after the civil trial setting conference?

A. The court enters an order setting the trial date and confirming (or modifying where appropriate) the provisions of the proposed trial scheduling order and discovery plan the parties have submitted. If there are disputes between the parties requiring court resolution, a further hearing can be scheduled.

D. Expert reports (new 1.500(2), 1.508)

Q. How do the new expert reports for retained experts differ from previous expert interrogatory answers (Iowa R. Civ. P. 1.508)?

A. There are a few additional items in the expert reports. The new expert report requirement is modeled directly after the federal rule (Fed. R. Civ. P. 26(a)(2)). Expert interrogatory answers are no longer required.

Q. Does a party have access to the other side's draft expert reports or to communications between opposing counsel and their retained experts?

A. Generally not, although communications that identify facts, data, or assumptions the expert relied on in forming his or her opinions are discoverable.

E. Pretrial disclosures (new 1.500(3))

Q. What is the point of the new rule on disclosures before trial?

A. A decision was made to move up the uniform deadline for disclosures of witnesses and exhibits to 14 days before trial and also to require disclosure of deposition designations at that time. As the comment explains, this 14-day timeframe is a compromise between the 7-day timeframe that was previously required and the 30-days-before-trial deadline utilized in federal court. In addition, the duty to disclose trial witnesses, deposition testimony, and exhibits has been moved out of the time standards for case processing in rule

23.5—Form 2 of the Iowa Court Rules (which apply to all civil actions) and into the Iowa Rules of Civil Procedure.

F. Supplementation (1.503(4))

Q. Why was the wording regarding supplementation of discovery changed?

A. The previous Iowa standard needed clarification. For example, under the rule, a discovery response had to be amended only when the party "[knew] that the response was incorrect when made," or when the party learned the response "[was] no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment." These tests are sometimes hard to apply. Accordingly, they are eliminated and supplementation now depends on whether the existing disclosure or response is materially "incomplete or incorrect."

G. Reliance on disclosures and discovery responses of other parties (1.503(7))

Q. What changed here?

A. The amendments make it clear that any party may rely on another party's disclosures or discovery responses to the extent permitted by applicable evidentiary rules—*regardless of who served the discovery.* Once a party has been dismissed, however, there is no ongoing duty to supplement responses to discovery served by the dismissed party, unless a party who remains in the case has asked for supplementation.

H. Limiting discovery (1.503(8), 1.504)

Q. What has been done about overly burdensome and excessive discovery?

A. The rule changes authorize the district court *on its own* to limit discovery.

I. Objecting and responding to discovery at the same time (1.509(1)(c), 1.512(2)(b))

Q. What are the rule changes here?

A. The rule makes clear that a party may answer an interrogatory or respond to a document request subject to an objection—without waiving that objection. However, there are two caveats. The answering party must clearly indicate the extent to which it is providing the requested information. Also, when a party has answered an interrogatory or responded to a document request subject to an objection, it must supplement that answer or response to the same extent when it obtains materially new information.

J. Discovery motions (1.501(3), 1.504(3), 1.517)

Q. Is there any change to what a party must do before bringing a discovery motion?

A. Yes. Under the amendments, a boilerplate recital that the party has attempted to resolve the matter with the other side is insufficient. The motion must include a certification that the movant has personally spoken with or attempted to speak with the other side, including the date and time of the conference with opposing counsel and any attempts to confer.

Q. Do the amendments permit the court to grant a discovery motion without a hearing?

A. Yes, if no timely resistance is filed.

Q. Do the amendments permit the court to award sanctions if the nonmovant provided the discovery, but did not do so until after the motion to compel was filed?

A. Yes. Under the changes, the district court has authority to award sanctions to the movant in these circumstances.

K. Depositions (1.701, 1.708)

Q. Are there any changes regarding deposition practice?

A. Deposition objections must be stated concisely and in a nonargumentative manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation the court ordered, or to present a motion to terminate or limit the deposition. The court may impose an appropriate sanction on a person who frustrates the fair examination of a deponent. These changes are modeled on the federal rules.

L. General

Q. Are these amendments just an adoption of federal discovery reforms?

A. No. The changes are selective. For example, the committee considered and rejected federal time limits on the length of depositions as unnecessary in Iowa.

Q. Do the discovery amendments apply to expedited civil action (ECA) cases?

A. Yes.