

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.