Q & A Regarding Expedited Civil Action Rule 1.281*

January 2015

Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations

Contents

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.