



2015 YLD
Bridge the Gap Seminar

Civil Procedure

3:30 p.m.-4:00 p.m.

Presented by:

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1. Most important, read the rules for yourself
 - a. Links o rules and common forms (such as Trial Scheduling and Discovery Order) are on the Iowa Judicial Branch website (www.iowacourts.gov), under “Features” in right center of page.

2. Basic Effective Date is 1-1-15
 - a. Certain rules went into effect early:
 - i. 1.281
 - ii. 1.500
 - iii. 1.505(1)
 - iv. 1.507
 - v. 1.508
 - vi. 1.906

3. Discovery
 - a. New discovery rules apply to all civil cases, not just Expedited Case Assignment (ECA).
 - b. New discovery rules apply to ECA, except when an ECA has own rule

4. IRCP 1.281 – Eligibility for ECA
 - a. Sole relief sought has to be money judgment
 - b. Total claims can’t exceed \$75,000
 - c. Automatically removed from ECA if compulsory claim brings total above \$75,000 (or compulsory claim is severed from case and moved to regular docket)
 - d. If ECA, trial must be filed within one year of Petition filed at
 - i. Case can be moved to ECA by stipulation of parties
 - ii. If case brought into ECA late, 1 year trial date is from date it is designated ECA, not date Petition filed.
 - e. Initial disclosure rule does apply
 - f. Discovery limitations:
 - i. 10 Interrogatories per side
 - ii. 10 requests for production per side
 - iii. 10 request for admissions per side
 - iv. Each party can be deposed and depose up to 2 non-parties
 - v. 1 expert per side, unless by agreement

NOTE: Rules sometimes say “party” and sometime “side”. “Side” means that if more than one Plaintiff or Defendant, the rule regards them as one (i.e. 10 ROG per “side” means that together, all Plaintiffs can only serve 10 ROG).

- g. Motion for Summary Judgment – one per party
 - i. restrictions on grounds:
 - (a) Open account or liquidated debt
 - (b) Obligation to indemnify
 - (c) Establish immunity

- (d) Failure to comply with disclosure deadline
- (e) ETC. – see rules

- h. Trial within one year of petition (or conversion to ECA case)
 - i. Trial set for a “week” trial schedule and your case will happen that week, but start dates vary.
 - ii. Only bumped for ECA with higher priority
 - iii. 6 jurors, 3 strikes per side
 - iv. trial will last 2 days, no exception
 - v. Chess clock – each side will have total of 6 hours to do jury selection, opening statements, present evidence (direct and cross) and closing argument.
 - (a) time keeper will vary, usually Judge or court attendant)
 - vi. Can be either jury or bench trial
 - (a) If Bench trial, Judge may use jury instructions and verdict form to ruling, like a jury, instead of doing formal Findings of Facts and Conclusions of Law

- i. Special Evidentiary Rules
 - i. Business records with or without certification are due in 90 days
 - ii. Health Care Provider Statement: written standard statement (form available) from “treater” in lieu of testifying or doing trial depo
 - (a) Standard questions (injuries, treatment, restrictions, limitations)
 - (b) Due 150 days before trial
 - (c) Can still depose but at party’s expense

- j. Miscellaneous
 - i. Limits on issue and claim preclusions
 - ii. Jury not told of \$75,000 limit
 - (a) Pltf can ask for anything and if awarded more than \$75,000, reward will be reduced to \$75,000
 - iii. Form 16 or 17 to file as ECA
 - iv: What to do if other side drags feet on discovery
 - (a) Try putting pressure on them before going for Mtn to

Compel

- (b) Court is willing to exercise compel power to keep it going, but will most likely be expedited process

5. Discovery Changes

- a. Apply to all court matters (see Admin Order staying new changes re Family Law Cases until review)
- b. State moving towards Federal System, with tweaks

- c. Discovery Conference (1.507) and Need for Trial Scheduling and Discovery Order
 - i. Form 23.2 for Regular; 23.3 for ECA
 - ii. Late entering defendants can request a PTC to modify deadlines that were decided on before they were a party
 - iii. Discovery conference, based on FRCP 26
 - (a) Disclosures
 - (b) ESI
 - (c) Limits on Discovery
 - (d) Privilege/Protection
- d. No provisions for IME to use Health Care Provider Statement – this form is only for “treaters”
- e. Compulsory claim in ECA case that is over \$75,000
 - i. Court can move whole thing to regular civil case OR
 - ii. Sever the compulsory claim and try it separately as regular case and keep rest as ECA
- f. Experts – opinions/reports due at time of designation (like federal)

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.

In the Iowa District Court for _____ County	
<p>_____ Plaintiff <i>Full name of Plaintiff: first, middle, last</i></p> <p>vs.</p> <p>_____ Defendant <i>Full name of Defendant: first, middle, last</i></p>	<p>Civil case no. _____</p> <p style="text-align: center;">Health Care Provider Statement in Lieu of Testimony (and Attorney Certificate)</p>

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 _____ sustain in the above-referenced incident?
Patient

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

4. Did _____ have any pre-existing, nondisabling, nonsymptomatic conditions
Patient 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

Rule 1.1901—Form 16: Expedited Civil Action Certification

In the Iowa District Court for _____ County	
Plaintiff <i>Full name of Plaintiff: first, middle, last</i> vs. Defendant <i>Full name of Defendant: first, middle, last</i>	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, pre-filing interest, and attorney fees, but excluding pre-judgment interest accrued after the filing date, post-judgment 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 pre-judgment interest accrued after the filing, post-judgment interest, and court costs. Additionally, no single defendant can be liable for more than \$75,000 to all plaintiffs combined, excluding pre-judgment interest accrued after the filing, post-judgment 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

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

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

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 _____:_____.
Month *Day* *Year* *Time* a.m. p.m.

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 _____:_____.
Month *Day* *Year* *Time* a.m. p.m.

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.m.
 - p.m.A hearing is set for / / , at: : : .
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.m.
 - A hearing is set for _____ / _____ / _____, at _____: _____ 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.

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.