

IF YOU BUILD IT, WILL THEY COME?

DESIGNING IOWA'S NEW EXPEDITED CIVIL ACTION RULE AND RELATED CIVIL JUSTICE REFORMS

*Laurie Kratky Doré**

ABSTRACT

*In the movie Field of Dreams,** Iowa farmer Ray Kinsella plows a well-established cornfield to build a baseball diamond, accepting the unlikely proposition: "If you build it, [they] will come." In the process, Ray saves his struggling farm and mends failed family ties. In a similar act of faith, the Iowa Supreme Court has critically tilled an entrenched civil justice system and devised an innovative procedure designed to increase access to Iowa courts and revive the vanishing civil jury trial. This Article examines the court's new Expedited Civil Action Rule and related discovery reforms that are intended to reduce litigation costs and delay. In addition to explaining the operation of the new procedure, this Article explores the civil justice reform efforts that contributed to the Rule's development and the numerous considerations that influenced its ultimate design.*

* Ellis and Nelle Levitt Distinguished Professor of Law, Drake University Law School. I had the privilege of serving as the Reporter for the Iowa Supreme Court Advisory Committee that studied and recommended these rule amendments to the Iowa Supreme Court. I am grateful to the court for appointing me to this project and to the Advisory Committee Chairperson, Iowa Supreme Court Justice Edward Mansfield, for his exceptional leadership of the committee and his invaluable input concerning this Article. I would like to acknowledge and thank the members of the Advisory Committee—their knowledge, dedication, collegiality, and willingness to question the status quo proved indispensable to these reforms. In addition to Justice Mansfield, the Advisory Committee membership included Timothy Eckley (ex officio), Professor Patrick Bauer, Timothy Bottaro, Honorable Marlita Greve, Gayla Harrison, Steven Lawyer, Gregory Lederer, Honorable Sean McPartland, Honorable Eliza Ovrom, Karla Shea, Joseph Saluri, and Jeffrey Thompson. While I acknowledge and thank these individuals for their input to the rules and this Article, the views expressed (and mistakes made) herein are mine alone and should not be attributed to the Iowa Supreme Court or the members of the Advisory Committee. Finally, I would like to thank my husband and colleague, Matthew Doré, for his valued comments and support.

** W.P. KINSELLA, SHOELESS JOE (1982) (providing the premise upon which *Field of Dreams* is based). The Field of Dreams is still open and available for baseball fans in Dyersville, Iowa. See FIELD OF DREAMS MOVIE SITE, <http://www.fieldofdreamsmoviesite.com/> (last visited Mar. 19, 2015).

My hope is that the Article will serve not only as a resource to lawyers and judges in Iowa, but also as a useful reference for those considering similar reforms in other states.

TABLE OF CONTENTS

I.	Introduction	403
II.	Genesis of Amendments	405
	A. Iowa Supreme Court Task Force on Civil Justice Reform	405
	B. Iowa Supreme Court Advisory Committee	407
	C. Adoption of the ECA Rule and General Discovery Amendments	407
	D. The National Civil Justice Reform Movement.....	409
	1. 2009 Joint Report of the American College of Trial Lawyers and the Institute for the Advancement of the American Legal System.....	409
	2. 2010 Duke Discovery Conference and the Pending 2015 Amendments to the Federal Rules of Civil Procedure.....	411
	3. Civil Justice Reform in Other States	413
III.	The Rationale for Iowa's Expedited Civil Action Rule	417
IV.	Eligible Claims.....	419
	A. Threshold Amount: \$75,000	420
	B. Calculating the Amount in Controversy: Components, Nonmonetary Relief, and Multiple Parties.....	421
	C. Excluded Actions	423
V.	Entering, Exiting, and Stipulating to the Expedited Civil Action Procedure	424
	A. Voluntary or Mandatory?: Plaintiff's Election	424
	B. Certifying Eligibility	428
	C. Terminating the Expedited Civil Action.....	430
	D. Stipulated Expedited Civil Actions	431
VI.	Features and Operation of the Expedited Civil Action Rule	432
	A. Limited Discovery.....	433
	1. Required Disclosures	433
	2. Written Discovery.....	437
	3. Depositions	440
	4. Expert Discovery	441
	B. Limited Motion Practice	443
	1. Motions to Dismiss	443
	2. Motions for Summary Judgment.....	443
	C. Streamlined Trial Procedures.....	445

1. Expedited Docketing: Trial Within One Year of Filing.....	445
2. Judge Versus Jury: Expedited Jury Trials and Expedited Bench Trials.....	447
a. The Jury in an Expedited Civil Action.....	447
b. The Expedited Bench Trial	449
3. Streamlined Presentation of Proof.....	451
D. Simplified Evidence Rules.....	452
1. Hearsay and Authenticity Objections Regarding Documents	452
2. Health Care Provider Statement in Lieu of Testimony	454
E. Judgment: Appeal and Res Judicata	457
1. Appeal.....	457
2. Res Judicata.....	458
VII. Looking Forward.....	462
Appendix.....	464

I. INTRODUCTION

The American civil justice system has often and justifiably been criticized as inefficient, overly expensive, unnecessarily protracted, and inaccessible to ordinary citizens seeking judicial redress. The escalating costs and delay associated with civil litigation have ignited a national reform movement aimed at improving access to the courts while preserving and fostering the uniquely American jury trial. In 2009, the Iowa Supreme Court joined this growing reform effort by undertaking a five-year study of the Iowa civil justice system.¹ That initiative has culminated in significant amendments to the Iowa rules of court—a new Expedited Civil Action Rule that streamlines and accelerates lawsuits seeking \$75,000 or less in money damages (the “ECA Rule”), as well as important revisions to Iowa’s existing discovery rules (the “general discovery amendments”). Both the ECA Rule and the general discovery amendments only recently became effective,² so it

1. The Iowa Supreme Court has been actively involved in civil justice initiatives since well before 2009. In 1990, the court created an Equality in the Courts Task Force to study gender bias in the courts. *See EQUAL. IN THE CTS. TASK FORCE, FINAL REPORT OF THE EQUALITY IN THE COURTS TASK FORCE 1* (1993). In 1994, the court appointed a Commission on Planning for the 21st Century to help prepare the Iowa judicial branch for future challenges. *See IOWA SUPREME CT. COMM’N ON PLANNING FOR THE 21ST CENTURY, CHARTING THE FUTURE OF IOWA COURTS 3* (1996). I was a member of the latter commission and its Planning and Public Education Subcommittee.

2. The amendments became effective on January 1, 2015. The Iowa Supreme

remains to be seen whether they will achieve their intended aims of “significantly reduc[ing] litigation time and cost, while increasing access to justice” and “preserv[ing] the traditional jury trial and parties’ rights of appeal.”³

This Article examines the development, design, and operation of the new ECA Rule, along with related general discovery amendments.⁴ Part II discusses the genesis of the amendments, both in Iowa and as part of the broader national civil justice reform movement. The focus then turns to Iowa’s new ECA Rule itself.⁵ Parts III and IV discuss the underlying purpose and governing scope of the ECA Rule. Part V addresses the options for triggering the expedited process and describes the mechanism ultimately chosen for entering and exiting the procedure. Part VI explains the specific features and operation of the new ECA Rule—examining, in the process, the various considerations that influenced the Rule’s design. Finally, Part

Court order adopting the amendments states the following concerning their effective date:

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.

Order, Adoption of the Expedited Civil Action Rule and Amendments to Iowa Discovery Rules, at 4 (Iowa Aug. 28, 2014) [hereinafter 2014 ECA Order].

3. *Id.* at 2.

4. This Article focuses on the design and operation of the new Expedited Civil Action procedure in Iowa and does not separately analyze the general discovery amendments. However, the Article does discuss some of the more important general discovery amendments that apply to all civil actions, including Expedited Civil Actions.

5. The ECA Rule consists of a number of subdivisions that govern the course of an Expedited Civil Action from commencement through discovery, to trial and judgment. This Article will cite relevant provisions of the ECA Rule in its discussion of specific issues. For ease of reference, however, the entire text of the ECA Rule, along with the official comments, can be found in the Appendix to the Article.

VII looks forward to the implementation of the new amendments and to some possible future reforms the Iowa Supreme Court might wish to consider.

II. GENESIS OF AMENDMENTS

A. Iowa Supreme Court Task Force on Civil Justice Reform

Both the ECA Rule and the general discovery amendments had their genesis in recommendations issued by an 83-member Iowa Supreme Court Task Force on Civil Justice Reform convened by the Iowa Supreme Court in 2009 (the “Task Force”).⁶ The court directed the Task Force, chaired by Iowa Supreme Court Justice Daryl Hecht, to critically examine the Iowa civil justice system and develop “a plan for a multi-option civil justice system [that] include[s] proposals for new court processes and improvements in current processes that will foster prompt, affordable and high-quality resolution of non-domestic⁷ civil cases.”⁸

6. See Order, *In re* Appointments to the Task Force for Civil Justice Reform, at 1 (Iowa Dec. 18, 2009) [hereinafter 2009 Task Force Order]. The Iowa Supreme Court intentionally appointed a diverse membership to the Task Force that included private, in-house, nonprofit, and government attorneys; trial and appellate judges; laypersons; corporate representatives; court officials; and law professors hailing from across the state and representing both plaintiff and defense perspectives. See IOWA CIVIL JUSTICE REFORM TASK FORCE, REFORMING THE IOWA CIVIL JUSTICE SYSTEM, app. A (Jan. 30, 2012) [hereinafter TASK FORCE REPORT] (listing Task Force members).

7. Having concluded that family law procedures deserve their own “separate, specialized study,” the Iowa Supreme Court excluded domestic relations from the Task Force directive. See TASK FORCE REPORT, *supra* note 6, at 2 n.2. In January 2015, the court appointed a separate Family Law Case Processing Reform Task Force “to identify best practices for accessible, transparent, and consistent family law processes and to propose recommendations for new court processes and improvements to current processes for statewide adoption.” Order, *In re* Establishment of and Appointments to the Iowa Family Law Case Processing Reform Task Force, at 2 (Iowa Jan. 14, 2015) [hereinafter 2015 Family Law Task Force Order].

8. TASK FORCE REPORT, *supra* note 6, at 2 (alterations in original) (quoting 2009 Task Force Order, *supra* note 6). In its order authorizing the Task Force, the Iowa Supreme Court noted:

Each year, Iowa’s trial courts typically handle approximately 150,000 non-domestic civil cases These lawsuits constitute nearly 46% of the state’s trial court docket (not including scheduled violations). . . . For some cases, especially cases involving smaller to medium sized claims for damages, the civil justice system is unnecessarily complicated and slow. Also, the substantial costs of civil litigation . . . are a concern for all litigants In addition, the system’s “one

The Task Force surveyed “more than 9,000 licensed Iowa attorneys and judges to obtain their input” on topics ranging from pleading, pretrial motions, discovery, and alternative dispute resolution.⁹ Through subcommittees,¹⁰ the Task Force identified features of the Iowa justice system that hindered the just, efficient, and inexpensive resolution of civil cases and impeded access to Iowa courts.¹¹ In January 2012, the Task Force issued *Reforming the Iowa Civil Justice System* (the “Task Force Report”) recommending ways to make civil litigation more affordable, efficient, and accessible.¹² Among the Task Force Report’s many proposals,¹³ two common recommendations emerged from several subcommittees: a two-tier structure to streamline litigation of smaller value cases¹⁴ and discovery reforms aimed at making discovery more affordable, efficient, and proportional to the needs and value of a case.¹⁵

size fits all” approach may not be the most effective method for resolving certain types of cases These problems deter some litigants from pursuing valid claims and prompt others to settle claims of questionable merit. So in reality, the hassles, handicaps, and high cost of civil litigation impede access to justice.

2009 Task Force Order, *supra* note 6.

9. See TASK FORCE REPORT, *supra* note 6, at 5; see also *id.* at app. B (containing the results of the Iowa Civil Justice Reform Task Force survey (the “Iowa Survey”)).

10. Justice Hecht appointed a 14-person Task Force Steering Committee that identified five areas for study: Discovery, Pre-Trial Procedures, Litigation Management, Specialty Courts and Rules, and Court-Annexed ADR. *See id.* at 3. I was a member of the Task Force Steering Committee and co-chaired the Discovery Subcommittee together with Judge Eliza Ovrom. *See id.* at i (identifying Task Force Steering Committee Members and Subcommittees).

11. *Id.* at v-viii (setting out executive summary of proposals).

12. See generally *id.*

13. The Iowa Supreme Court acted upon at least one other Task Force recommendation: the adoption of “a pilot program to study establishment of a specialty business court to handle commercial litigation and complex litigation.” *See id.* at 103. In December 2012, the Iowa Supreme Court authorized a three-year pilot project that established the Iowa Business Specialty Court. *See Memorandum of Operation, In re Establishment of the Iowa Bus. Specialty Court Pilot Project*, at 1 (Iowa Dec. 21, 2012) [hereinafter 2012 Bus. Court Establishment Order]. Under the business court pilot project, one of three designated business court judges may preside over complex commercial cases with at least \$200,000 in dispute, and qualifying cases already filed may be transferred to this business court’s docket with the consent of the parties. *See Order, In re Appointment of Judges to the Iowa Business Specialty Court Pilot Project*, at 1 (Iowa Mar. 4, 2013).

14. See TASK FORCE REPORT, *supra* note 6, at 13.

15. *See id.* at 29.

B. Iowa Supreme Court Advisory Committee

The Iowa Supreme Court took up both recommendations and, in October 2012, appointed an Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations (the “Advisory Committee”).¹⁶ The court directed the Advisory Committee “to propose potential amendments to the Iowa Rules of Civil Procedure to implement a two-tier, or dual-track, civil justice system and to streamline discovery processes.”¹⁷ In addition to its chairperson, Iowa Supreme Court Justice Edward Mansfield, the Advisory Committee included three Iowa district court judges, five private practice attorneys (who represented both the plaintiff and the defense bars), one government attorney, one in-house counsel, and two law professors specializing in civil procedure, including me.¹⁸ I acted as Reporter for the Advisory Committee.

In addition to the Task Force Report and its underlying Iowa Survey, the Advisory Committee examined civil justice reform efforts in other jurisdictions, reports, research, and recommendations aimed at improving the litigation process, and the discovery provisions of the Federal Rules of Civil Procedure (including the pending 2015 amendments).

C. Adoption of the ECA Rule and General Discovery Amendments

In August 2013, the Advisory Committee reported back to the Iowa Supreme Court recommending the adoption of the new ECA Rule and the general discovery amendments. In November 2013, the court published and circulated the proposed amendments for public comment¹⁹ and later extended the public comment period to March 17, 2014.²⁰ Comments were submitted in writing and at the numerous presentations made to members of the Iowa judiciary and the bar by Justice Mansfield and other members of the Advisory Committee. The proposals were revised in light of this public

16. Order, *In re* Appointments to the Advisory Committee Concerning Certain Civil Justice Reform Task Force Recommendations, at 1 (Iowa Oct. 10, 2012) [hereinafter 2012 Advisory Comm. Order].

17. *Id.*

18. See *supra* note * for the names of the Advisory Committee members.

19. See Order, Request for Public Comment Regarding Proposed Amendments to Iowa Discovery Rules and a Proposed Expedited Civil Action Rule, at 3–4 (Iowa Nov. 1, 2013) [hereinafter 2013 Order Requesting Public Comment].

20. See Order, *In re* Extending the Deadline for Public Comment on Proposed Amendments to Iowa Discovery Rules and Expedited Civil Action Rule, at 1 (Iowa Dec. 20, 2013).

input and comments from the Iowa Supreme Court itself.²¹ Finally, by order dated August 28, 2014, Chief Justice Mark Cady approved the new ECA Rule and the general discovery amendments to become effective on January 1, 2015.²² The court expressed its hope that the ECA Rule “will significantly reduce litigation time and cost, while increasing access to justice.”²³ At the same time, the ECA Rule is “designed to preserve the traditional jury trial,” the occurrence rates of which have fallen precipitously in civil cases.²⁴ In addition to the rule amendments themselves, the court approved new and amended forms for courts and litigants to utilize in implementing the new provisions.²⁵

21. *See* 2014 ECA Order, *supra* note 2, at 1–2.

22. *Id.* at 4.

23. *Id.* at 2.

24. *Id.* A recent report by the Iowa State Court Administrator’s Office indicates that the number of jury trials in Iowa courts has continued to decline since 1994. *See* STATE COURT ADM’RS OFFICE, JURY TRIALS IN IOWA DISTRICT COURT, 1994–2013 (2014), *available at* [http://c.ymcdn.com/sites/www.iowabar.org/resource/collection/998039CD-1AA5-4F8D-A0E1-4D26CADD0F48/IA_Jury_Trials_1994-2013-Graph_\(2-21-14\).pdf](http://c.ymcdn.com/sites/www.iowabar.org/resource/collection/998039CD-1AA5-4F8D-A0E1-4D26CADD0F48/IA_Jury_Trials_1994-2013-Graph_(2-21-14).pdf). In 2013, only 191 civil jury trials occurred in Iowa district courts. *See id.* This compares to the 269 civil jury trials that occurred in 2009 (the first year when “jury trial” was redefined to reflect “only cases with a jury verdict entered”). *See id.* Therefore, from 2009 to 2013, civil jury trials in Iowa declined by 29 percent. *See id.* This decline in the rate of jury trials in Iowa mirrors the national experience. Much has been written about the causes and solutions for this vanishing civil trial. *See generally* Mark W. Bennett, *Judges’ Views on Vanishing Civil Trials*, 88 JUDICATURE 306 (2005); Stephen B. Burbank & Stephen N. Subrin, *Litigation and Democracy: Restoring a Realistic Prospect of Trial*, 46 HARV. C.R.-C.L. L. REV. 399 (2011); Marc Galanter, *A World Without Trials?*, 1 J. DISP. RESOL. 7 (2006); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004); Stephan Landsman, *The Civil Jury in America: Scenes from an Unappreciated History*, 44 HASTINGS L.J. 579 (1993); John H. Langbein, *The Disappearance of Civil Trial in the United States*, 122 YALE L.J. 522 (2012); Marc Galanter & Angela Frozena, Presentation at the 2011 Forum for State Appellate Judges: The Continuing Decline of Civil Trials in American Courts 2–5 (2011).

25. The new or revised forms to be used in connection with the 2015 Iowa amendments include: IOWA R. CIV. P. 1.1901—Form 16: Expedited Civil Action Certification; IOWA R. CIV. P. 1.1901—Form 17: Alternative Expedited Civil Action Certification for Plaintiffs that Are Not Natural Persons or Otherwise Must Act Through a Representative; IOWA R. CIV. P. 1.1901—Form 18: Joint Motion to Proceed as an Expedited Civil Action; IOWA R. CIV. P. 1.1901—Form 19: Health Care Provider Statement in Lieu of Testimony; IOWA CT. R. 23.5—Form 1: Notice of Civil Trial-Setting Conference; IOWA CT. R. 23.5—Form 2: Trial Scheduling Order and Discovery Plan (for non-Expedited Civil Action cases); and IOWA CT. R. 23.5—Form 3: Trial Scheduling Order and Discovery Plan for Expedited Civil Action. *See* 2014 ECA Order, *supra* note

D. The National Civil Justice Reform Movement

Iowa's new and amended rules are an outgrowth of a national movement aimed at making the civil justice system more efficient, effective, and accessible. Across the country, federal and state courts alike are scrutinizing the civil litigation process and developing innovative procedures designed to reduce the delay and expense of litigation, while protecting and fostering the civil jury trial. This national civil justice reform movement strongly influenced Iowa's new ECA Rule, as well as the general discovery amendments.

1. 2009 Joint Report of the American College of Trial Lawyers and the Institute for the Advancement of the American Legal System

One of the leading organizations devoted to the improvement of the American justice system is the Institute for the Advancement of the American Legal System (IAALS), headquartered at the University of Denver.²⁶ In 2007, IAALS partnered with the American College of Trial Lawyers (ACTL) "to examine the role of discovery in perceived problems in the United States civil justice system and to make recommendations for reform, if appropriate."²⁷ This study culminated in a 2009 report that

2, at 3–4. See *infra* Part VII for a discussion of the implementation of the new ECA Rule.

26. See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (IAALS), UNIV. OF DENVER, <http://iaals.du.edu> (last visited Mar. 19, 2015). As self-described on its website, IAALS "is a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system," and its "mission is to forge innovative and practical solutions to problems in our system in collaboration with the best minds in the country." *Id.* Although the IAALS currently has several projects, its "Rule One" initiative "identifies and recommends court processes and procedures that provide greater access, efficiency and accountability." *Initiatives*, IAALS, UNIV. OF DENVER, <http://iaals.du.edu/initiatives> (last visited Mar. 19, 2015). The Executive Director of the IAALS is former Colorado Supreme Court Justice Rebecca Love Kourlis. *About IAALS*, IAALS, UNIV. OF DENVER, <http://iaals.du.edu/about-the-institute/> (last visited Mar. 14, 2015). Kourlis addressed the inaugural plenary meeting of the Iowa Task Force about the need to create a "roadmap for reform" of Iowa's civil justice system. *TASK FORCE REPORT*, *supra* note 6, at 3.

27. AM. COLL. OF TRIAL LAWYERS TASK FORCE ON DISCOVERY & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FINAL REPORT ON THE JOINT PROJECT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS TASK FORCE ON DISCOVERY AND THE INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM 1 (2009) [hereinafter ACTL–IAALS REPORT], available at http://iaals.du.edu/images/wygwam/documents/publications/ACTL-IAALS_Final_Report_rev_8-4-10.pdf; see also *TASK FORCE REPORT*, *supra* note 6, App. D:1 (containing ACTL–IAALS REPORT, *supra*).

contained broad principles and recommendations suggesting reform of existing procedures for pleading, discovery, motion practice, and judicial management (the “ACTL-IAALS Report”).²⁸ The Task Force used the ACTL-IAALS Report as a resource in its study of the Iowa civil justice system and its recommendations to the Iowa Supreme Court.²⁹

Although the ACTL-IAALS Report contained numerous recommendations, two of its principles, in particular, guided development of the Iowa reforms. The first addresses the “one size fits all” assumption that underlies federal and most states’ procedural systems.³⁰ Under the prevailing transsubstantive approach, one set of procedural rules governs all types of cases.³¹ The ACTL-IAALS Report rejects the one size fits all assumption, concluding that a unitary procedural system may actually contribute to the delay and expense of civil litigation.³² Instead, the ACTL-IAALS Report recommends that “rulemakers should have the flexibility to create different sets of rules for certain types of cases so that they can be resolved more expeditiously and efficiently.”³³ This rejection of the notion that one procedural system should govern the adjudication of all civil cases underlies Iowa’s new ECA Rule for smaller value cases.

The second principle, echoed throughout the ACTL-IAALS Report, is the need for “proportionality” in case processing—the idea that discovery and other procedures should be calibrated to the particular needs and value of a case.³⁴ As discussed below, the pending 2015 amendments to the Federal

28. See ACTL-IAALS REPORT, *supra* note 27, at 3–24 (detailing proposed principles and recommendations).

29. See TASK FORCE REPORT, *supra* note 6, at app. D.

30. See ACTL-IAALS REPORT, *supra* note 27, at 4–5.

31. *See id.*

32. *See id.*

33. *Id.* at 4. Others have criticized the current transsubstantive approach taken by many procedural systems and have suggested that, in some cases, it might be more efficient to use specialized procedures for different types of cases. See Stephen N. Subrin, *The Limitations of Transsubstantive Procedure: An Essay on Adjusting the “One Size Fits All” Assumption*, 87 DENV. U. L. REV. 377, 378 (2010) (urging readjustment of the notion that the same procedural rules should resolve all civil disputes and advocating “a simpler procedural track for some cases and non-binding protocols for discovery and other procedural incidents for some of the more expansive and expensive case-types”); Joshua M. Koppel, Comment, *Tailoring Discovery: Using Nontranssubstantive Rules to Reduce Waste and Abuse*, 161 U. PA. L. REV. 243, 287 (2012) (recommending the adoption of “subject matter-specific discovery rules”). Of course, the problem lies in determining what cases deserve special treatment or different procedural rules.

34. ACTL-IAALS REPORT, *supra* note 27, at 7 (“Proportionality should be the

Rules of Civil Procedure expressly incorporate proportionality into the scope of discovery.³⁵ Although Iowa decided not to similarly modify the scope of discovery,³⁶ the ECA Rule itself, as well as its various limits on discovery, pretrial, and trial procedures, all reflect the proportionality touchstone.

2. 2010 Duke Discovery Conference and the Pending 2015 Amendments to the Federal Rules of Civil Procedure

Civil justice reform at the federal level also influenced the work of the Iowa Advisory Committee. In 2010, the Federal Civil Rules Advisory Committee convened the Conference on Civil Litigation at Duke University (the “Duke Conference”) to examine the state of civil litigation in federal courts and to explore better ways to ensure “the just, speedy, and inexpensive determination of every action.”³⁷ Nearly 200 diverse participants³⁸ explored potential reforms to the federal system of discovery, concluding that improvement depends upon three precepts: greater cooperation among the parties; proportionality in discovery and other available procedures; and earlier, more active judicial management.³⁹ After the Duke Conference, the Federal Civil Rules Advisory Committee created a subcommittee to consider the Duke reform proposals. This years-long study culminated in significant amendments to the discovery and other provisions of the Federal Rules of Civil Procedure, which are expected to become effective December 1, 2015.⁴⁰ Those pending amendments

most important principle applied to all discovery.”).

35. See *infra* Part II.D(2) for a discussion of civil justice reform at the federal level, including this particular amendment and other pending amendments to the Federal Rules of Civil Procedure.

36. See *infra* note 42.

37. FED. R. CIV. P. 1; *see also* ADVISORY COMM. ON FED. RULES OF CIVIL PROCEDURE, PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE 2 (2014) [hereinafter 2014 FED. ADVISORY COMM. REPORT]. Materials prepared for the Duke Conference can be found at <http://www.uscourts.gov/RulesAndPolicies/rules/archives/projects-rules-committees/2010-civil-litigation-conference.aspx> and many of the papers presented at the conference were published in the Duke Law Journal. See *Special Symposium: 2010 Civil Litigation Review Conference*, 60 DUKE L.J. 537 (2010).

38. The Duke Conference included judges, rulemakers, law professors, researchers, practitioners, and professional organizations representing an array of interests. See 2014 FED. ADVISORY COMM. REPORT, *supra* note 37.

39. See *id.* at 2–3.

40. See *id.* at 1. The Judicial Conference of the United States has approved the Duke amendments to the federal rules and forwarded them for action to the U.S.

assimilate all three Duke principles: encouraging cooperation among counsel,⁴¹ incorporating proportionality into discovery,⁴² and requiring earlier judicial involvement.⁴³ As discussed below, both the ECA Rule and the general discovery amendments were similarly formulated with these guiding principles in mind.

Supreme Court. Once prescribed by the Supreme Court, the rules package will become effective on December 1, 2015, unless it is modified or rejected by Congress. *See* 2014 FED. ADVISORY COMM. REPORT, *supra* note 37 (forwarding pending 2015 amendments to Standing Committee on Rules of Practice and Procedure). *See also* 28 U.S.C. §§ 2072–2074, 2077 (establishing the procedure for promulgating rules of federal procedure and evidence).

41. FED. R. CIV. P. 1, for example, is amended to make “cooperative and proportional use of procedure” a shared responsibility of both the court and counsel. 2014 FED. ADVISORY COMM. REPORT, *supra* note 37, at 13. Further, the federal amendments require that the parties discuss and attempt to agree upon certain subjects at the attorney conference and to include those subjects in the discovery plan presented to the court. *See id.* at 28–29; *see also* FED. R. CIV. P. 26(f)(3) (existing rule and pending 2015 amendments) (encouraging parties to discuss preservation of electronically stored information, document preservation, and claw-back agreements at the attorney conference).

42. One of the most significant, and controversial, of the proposed federal amendments coming out of the Duke Conference is the incorporation of proportionality into the scope of discovery itself. As amended, FED. R. CIV. P. 26(b)(1) will read:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

FED. R. CIV. P. 26(b)(1) (pending amendment 2015) (amendments underlined and emphasis added). Under the federal amendment, information is not discoverable unless it is nonprivileged, relevant, and proportional. *See id.* Although the new Iowa rules observe the principle of proportionality, the Iowa Advisory Committee decided *not* to make proportionality an express limit on the scope of discovery for either Expedited Civil Actions or civil cases in general. *See* IOWA R. CIV. P. 1.503(1) (delineating the scope of permissible discovery as “any matter, not privileged, which is relevant to the subject matter involved in the pending action”).

43. The federal amendments encourage early and active judicial case management by permitting the district court to address additional subjects at its scheduling conference with the parties and by shortening its deadline for issuing the initial scheduling order. *See* FED. R. CIV. P. 16(b) (pending amendment 2015).

3. Civil Justice Reform in Other States

Iowa does not stand alone in refusing to accept the status quo regarding civil litigation. A number of other states have engaged in a similarly critical examination of their civil justice systems and have made significant procedural changes designed to curb costs, reduce delay, and increase public access to their courts.⁴⁴ The Advisory Committee examined recent efforts

44. See generally Rebecca Love Kourlis & Brittany K.T. Kauffman, *The American Civil Justice System: From Recommendations to Reform in the 21st Century*, 61 KAN. L. REV. 877 (2013) (discussing pilot projects in various stages of design and implementation throughout the country).

taken by Minnesota,⁴⁵ New Hampshire,⁴⁶ Texas,⁴⁷ South Carolina,⁴⁸

45. At the recommendation of its own Civil Justice Reform Task Force, the Minnesota Supreme Court adopted an extensive package of amendments to its rules of civil procedure and rules of practice for its district courts. *See Order Adopting Amendments to the Rules of Civil Procedure and General Rules of Practice Relating to the Civil Justice Reform Task Force* (Minn. Feb. 4, 2013) [hereinafter Minn. Feb. 4, 2013 Order]; *Order Promulgating Corrective Amendments to the Rules of Civil Procedure and General Rules of Practice Relating to the Civil Justice Reform Task Force* (Minn. Feb. 12, 2013) [hereinafter Minn. Feb. 12, 2013 Order]; *Order Relating to the Civil Justice Reform Task Force, Authorizing Expedited Civil Litigation Track Pilot Project, and Adopting Amendments to the Rules of Civil Procedure and the General Rules of Practice* (Minn. May 8, 2013) [hereinafter Minn. May 8, 2013 Order]. Those changes, which were “aimed at facilitating more cost-effective and efficient civil case processing,” became effective July 1, 2013. *See* Minn. May 8, 2013 Order, *supra*, at 1. Like Iowa, Minnesota amended its rules generally applicable to all civil cases. *See id.* at 3. Minnesota now requires automatic initial disclosures, expert disclosures, and pretrial disclosures that are patterned on the federal rules and that are similar to those adopted in Iowa. *See* MINN. R. CIV. P. 26.01(a), (b), (c). Minnesota also requires the parties to participate in a discovery conference and to formulate a discovery plan “as soon as practicable.” MINN. R. CIV. P. 26.06. Unlike Iowa, however, Minnesota has added proportionality to the scope of discovery. MINN. R. CIV. P. 26.02(b). Finally, Minnesota has adopted a rather unique expedited procedure for the resolution of nondispositive motions. *See* MINN. R. CIV. P. 115.04(d) (permitting informal submission, response, hearing, and resolution process regarding nondispositive motions). In addition to general rules that govern all civil cases, Minnesota formulated special rules applicable to specific types of cases. Under its new Complex Case Program, for example, certain types of cases are presumptively designated “complex cases” (i.e., antitrust, intellectual property, securities, product liability) and then assigned to a single judge who actively manages the litigation from start to finish. *See* MINN. R. CIV. P. 146.02(c), 146.03. At the other end of the spectrum, Minnesota has adopted a pilot program in two counties for an Expedited Civil Litigation Track, under which eligible cases must be tried within four to six months of filing. *See* Minn. May 8, 2013 Order, *supra*, at 4–12 (Special Rules for the Pilot Expedited Civil Litigation Track). Some of the details of Minnesota’s Pilot Expedited Civil Litigation Track will be discussed in connection with the new Iowa ECA Rule. *See infra* Part VI.

46. John Broderick, then-chief justice of the New Hampshire Supreme Court, addressed the initial plenary meeting of the Iowa Task Force in September 2010. *See* TASK FORCE REPORT, *supra* note 6, at 3. New Hampshire was one of the first states to engage in any significant reform of its civil litigation rules. *See* CIVIL JUSTICE INITIATIVE, NAT’L CTR. FOR STATE COURTS, NEW HAMPSHIRE: IMPACT OF THE PROPORTIONAL DISCOVERY/AUTOMATIC DISCLOSURE (PAD) PILOT RULES 1 (2013). In 2010, the New Hampshire Supreme Court ordered that a set of Proportional Discovery–Automatic Disclosure (PAD) Rules be instituted on a pilot basis in two counties. *See id.* Those PAD Rules governed pleadings, case management orders, automatic disclosures, and ordinary and electronic discovery. *See id.* Effective October 2013, the PAD Rules were enacted statewide in New Hampshire. Order, 3 (N.H. May 22, 2013) (incorporating PAD Pilot

Oregon,⁴⁹ Utah,⁵⁰ and Colorado.⁵¹ Like Iowa, many of these state reforms

Project Rules in all New Hampshire superior courts for all civil actions pending on or filed after October 1, 2013).

47. In 2013, Texas amended its civil procedure rules to provide for expedited trial and truncated discovery in cases seeking money damages of \$100,000 or less. *See* TEX. R. CIV. P. 169 (expedited action rule); TEX. R. CIV. P. 190.2 (discovery control plan for expedited actions); *see also* TEX. R. CIV. P. 47 cmt. (pleading of expedited actions requires “a more specific statement of the relief sought by a party”). The Texas expedited action procedures implement a legislative directive calling for “rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed \$100,000.” TEX. R. CIV. P. 169 cmt. 1; *see* TEX. GOV’T CODE § 22.004(h); *see generally* Michael Morrison et al., *Expedited Civil Actions in Texas and the U.S.: A Survey of State Procedures and a Guide to Implementing Texas’s New Expedited Actions Process*, 65 BAYLOR L. REV. 824 (2013). Specific features of the Texas expedited action procedure will be examined in connection with the discussion of Iowa’s ECA Rule. *See infra* Part VI.

48. In 2013, the South Carolina Supreme Court authorized the statewide implementation of a fast track jury trial process. *See* Administrative Order, Fast Track Jury Trials, Appellate Case No. 2013-000389 (S.C. Mar. 7, 2013) [hereinafter S.C. 2013 Order]. This procedure provides a “voluntary, binding jury trial, before a reduced jury panel and a mutually selected Special Hearing Officer.” *Id.*

49. *See* OR. UTCR 5.150 (authorizing a joint motion to designate a case otherwise eligible for a jury trial for an expedited civil jury trial at the discretion of the presiding judge). In 2010, this expedited process was implemented in select Oregon courts, and in 2012, it was adopted on a statewide basis. Chief Justice Order, No. 10-025, *In re Out-of-Cycle Adoption of New UTCR 5.150*, UTCR Form 5.150.1a, and UTCR Form 5.150.1b (Or. May 6, 2010); IAALS, A SUMMARY OF SHORT, SUMMARY, AND EXPEDITED TRIAL PROGRAMS AROUND THE COUNTRY IN 2014, at 13 [hereinafter IAALS, SUMMARY OF EXPEDITED TRIAL PROGRAMS], *available at* <http://iaals.du.edu/library/publications/summary-of-short-summary-expedited-civil-action-programs-around-country>.

50. In 2011, Utah significantly overhauled its discovery rules applicable to civil cases. Proportionality is now built into Utah’s scope of discovery, with the burden on the requesting party to demonstrate that the requested discovery is both relevant and proportional. *See* UTAH R. CIV. P. 26(b)(2), (3). To supplement required initial disclosures, Utah now utilizes a two-track, three-tier discovery system tailored to the amount in controversy. *See* UTAH R. CIV. P. 26(c)(5), (6) (delineating limits on standard fact discovery in three levels of cases and providing for “extraordinary discovery” beyond those limits). Utah has also adopted innovative rules regarding retained experts: opposing parties must choose between a detailed, signed report from the other side’s retained expert *or* a deposition of that expert limited to no more than four hours. UTAH R. CIV. P. 26(a)(4). Finally, Utah has implemented a voluntary expedited jury trial pilot program that permits the parties to agree to a streamlined and expedited trial after the conclusion of discovery. *See* UTAH CODE JUD. ADMIN. R. 4-501; *see generally* Marc Therrien, *Talkin’ ‘Bout A Revolution?: Utah Overhauls Its Rules of Civil Discovery*, 2011 UTAH L. REV. 669 (2011).

51. In 2012, Colorado established a Civil Access Pilot Project applicable to business

include some form of short, simplified, summary, or expedited procedures for use in noncomplex cases with lower amounts in controversy.⁵² Although these expedited programs in other states share similar features, they vary dramatically in their design and details. The Iowa Advisory Committee thus had no obvious template upon which to pattern its own procedure. Rather than trying to replicate any one state's process, the Advisory Committee focused on designing a rule that best suited Iowa. The resulting ECA Rule,⁵³

actions in district court (CAPP). *See* Chief Justice Directive 11-02, Adopting Pilot Rules for Certain District Court Civil Cases (Colo. Oct. 7, 2011) [hereinafter Colo. 2011 Pilot Project Order] (approving Pilot Project Rules). The rules apply to all business actions filed in five Denver metropolitan area courts and provide for a single judge assignment, early and continuing judicial management, proportional discovery, detailed pleadings and disclosures, and significant limits on the use of expert witnesses. *See id.* at 3–7. The pilot project expires on June 30, 2015. *See* Chief Justice Directive 11-02, Adopting Pilot Rules for Certain District Court Civil Cases (Colo. July 11, 2014). A subcommittee of the Colorado Civil Rules Committee has been evaluating the results of the CAPP pilot program and has developed proposed amendments that implement a number of its most effective features. The Colorado Supreme Court recently requested public comment on those amendments, referred to as the “Improving Access to Justice Rules,” which would become effective July 1, 2015 and apply state-wide to all civil cases. *See* Proposed Rule Changes, Colorado Rules of Civil Procedure (Jan. 1, 2015 Colorado Supreme Court Order), available at https://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes.cfm; Brittany Kauffman, IAALS Online, *Colorado's Proposed Civil Rule Amendments Focused on Improving Access to Justice* (March 30, 2015), <http://online.iaals.du.edu/2015/03/30/colorados-proposed-civil-rule-amendments-focused-on-improving-access-to-justice/>). In addition to the more recent CAPP pilot program, Colorado was one of the first states to establish, in 2014, a simplified procedure applicable to civil actions seeking money damages of \$100,000 or less. COLO. R. CIV. P. 16.1(b). Unless a party requests exclusion from the simplified procedure, eligible cases are subject to dramatically curtailed discovery—no depositions, interrogatories, requests for production, or requests for admission—and an expedited trial date. COLO. R. CIV. P. 16.1(a)(2), (d). Trial preparation is accomplished through detailed and specialized initial disclosures and written disclosure of witnesses' expected testimony. COLO. R. CIV. P. 16.1(a)(2), (i) (providing for early trial setting); COLO. R. CIV. P. 16.1(k)(1) (setting out required disclosures, including document disclosures, expert disclosures, non-expert trial testimony, and trial exhibits).

52. *See generally* IAALS, SUMMARY OF EXPEDITED TRIAL PROGRAMS, *supra* note 49; IAALS ET AL., A RETURN TO TRIALS: IMPLEMENTING EFFECTIVE, SHORT, SUMMARY, AND EXPEDITED CIVIL ACTION PROGRAMS (2012) [hereinafter IAALS, A RETURN TO TRIALS]; NAT'L CTR. FOR STATE COURTS, SHORT, SUMMARY & EXPEDITED: THE EVOLUTION OF CIVIL JURY TRIALS (2012).

53. The Advisory Committee struggled with what to name the new Iowa procedure. As reflected in IAALS, SUMMARY OF EXPEDITED TRIAL PROGRAMS, *supra* note 49, jurisdictions differ with respect to the title, as well as the particulars, of these types of procedures. Of the jurisdictions that have implemented (or attempted to implement)

discussed in detail below, is thus unique from those adopted elsewhere; it selectively utilizes some of the worthier elements from other jurisdictions, while tailoring its provisions to meet the particular needs and interests of Iowa's courts, attorneys, and citizens.

III. THE RATIONALE FOR IOWA'S EXPEDITED CIVIL ACTION RULE

One of the Task Force's principal recommendations concerned the creation of a separate, streamlined, and expedited system for the resolution of smaller value cases.⁵⁴ The Task Force reported that many Iowa citizens are being priced out of the civil justice system or diverted into alternative dispute resolution (ADR).⁵⁵ One of the chief objectives of the new ECA Rule, then, is to improve access to the courts by reducing the time and

dual-track programs, the most common nomenclature is "expedited." *See* ALA. CODE § 6-1-3 (2014) (expedited civil actions under certain circumstances); CAL. CIV. PROC. CODE. § 630.02 (West 2011); CAL. CIV. R. 3.1545 (expedited jury trials); FLA. STAT. ANN. § 45.075 (West 2014) (expedited trials); Minn. May 8, 2013 Order, *supra* note 45 ("Expedited Civil Litigation Track"); H.B. 244, Reg. Sess. (Miss. 2013) (expedited small claims); OR. UTCR 5.150 (expedited civil jury cases); TEX. R. CIV. P. 169 (expedited actions); UTAH CODE JUD. ADMIN. R. 4-501 (expedited jury trial); General Order No. 64, (N.D. Cal. June 21, 2011) (expedited trial procedure). There is no common designation in the remaining jurisdictions. *See, e.g.*, COLO. R. CIV. P. 16.1 (simplified procedure); ILL. S. CT. R. 222 (limited and simplified discovery in certain cases); S.C. 2013 Order, *supra* note 48 (fast track jury trial). The Advisory Committee decided to designate Iowa's new procedure "Expedited Civil Action" to reflect one of its most important features: the prompt processing and resolution of eligible civil claims.

54. TASK FORCE REPORT, *supra* note 6, at 13 (recommending "a pilot program based on a two-tier civil justice system" and noting that "[a] two-tier system would streamline litigation processes—including rules of evidence and discovery disclosures—and reduce litigation costs of certain cases falling below a threshold dollar value"). Indeed, more than 74 percent of the respondents to the Iowa Survey supported the creation of a streamlined civil justice process for cases valued below a certain dollar amount. *Id.* at app. B:7 (noting that 74.4 percent of the Iowa lawyers and judges surveyed either strongly agreed or agreed with this proposition).

55. According to a related survey conducted by a Task Force subcommittee, a large number of attorneys reported they had turned away cases because the amount in controversy did not justify the expense of litigation. *See id.* at app. C:2 (reporting that 92 percent of the plaintiff bar and 74 percent of the defense bar had "turned away a case because the anticipated verdict value was not large enough and yet was more than the small claims limit" of \$5,000); *see also id.* at 63 (discussing court-annexed alternative dispute resolution and acknowledging that "the ever-increasing percentage of civil disputes resolved by ADR modalities" might "have negative effects on the civil justice system in the long term").

expense otherwise associated with civil adjudication.⁵⁶ Importantly, the ECA Rule seeks to facilitate *trial* of eligible cases, rather than promote alternatives to adjudication such as mediation or arbitration.⁵⁷ Unlike many other jurisdictions whose “summary jury trials” encourage *settlement* through nonbinding advisory verdicts,⁵⁸ the ultimate objective of the Iowa ECA Rule is binding *adjudication* through a final, appealable judgment.⁵⁹ By removing barriers to the courthouse, the Iowa Supreme Court hopes that the ECA Rule will resuscitate and promote the vanishing trial in Iowa courts:

Both the committee and the court are concerned about the declining number of civil jury trials in Iowa courts. In 2012, there were only 204 civil jury cases tried to verdict in our courts. Many attribute this to the increased time and expense involved in trying cases to verdict.

56. See 2014 ECA Order, *supra* note 2, at 2 (“The court believes the provisions of the ECA rule will significantly reduce litigation time and cost, while increasing access to justice.”).

57. The Task Force could not reach a consensus whether Iowa courts should adopt court-annexed ADR to supplement the existing practice of using private, voluntary ADR to resolve civil cases. TASK FORCE REPORT, *supra* note 6, at 59–64 (discussing competing arguments for and against court-annexed ADR). It recognized, however, that “[c]ompeting needs for judicial branch resources . . . may dictate that a higher priority must be assigned to other types of civil justice reform at this time.” *Id.* at 60.

58. Many jurisdictions have adopted summary jury trial procedures that are voluntary and nonbinding, unless otherwise stipulated by the parties. These programs—which frequently involve a truncated trial, a summary presentation of evidence, and a nonbinding or advisory verdict—are actually a form of ADR. See IAALS, SUMMARY OF EXPEDITED TRIAL PROGRAMS, *supra* note 49, at 7, 9–16 (identifying jurisdictions with voluntary, nonbinding summary jury trial procedures). Other jurisdictions have developed an ADR system for smaller value claims rather than a simplified system of adjudication. Illinois, for example, has established a system of mandatory, nonbinding arbitration for civil claims seeking \$10,000 to \$50,000. See 735 ILL. COMP. STAT. ANN. § 5/2–1001A (West 2003) (authorizing Illinois Supreme Court to provide for mandatory arbitration “in order to expedite in a less costly manner” claims not exceeding \$50,000); ILL. SUP. CT. R. 86 (West 2009) (authorizing implementation of mandatory arbitration procedures in approved district courts); *see also* NEV. REV. STAT. § 38.250 (2013) (requiring nonbinding arbitration of civil actions where the amount in controversy does not exceed \$50,000).

59. 2014 ECA Order, *supra* note 2, at 2 (stating that the ECA Rule is “designed to preserve . . . parties’ rights of appeal”). Indeed, the ECA Rule seeks to avoid the expense and delay associated with court-annexed ADR: “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.” IOWA R. CIV. P. 1.281(5).

The proposed discovery rule changes and the proposed expedited civil action rule are intended to reduce costs and delay in discovery, make it more economical to litigate cases to conclusion (especially when \$75,000 or less is at stake), and enable more Iowans to have access to justice.⁶⁰

The Iowa Supreme Court directed the Advisory Committee to design a “two-tier, or dual track” process for smaller value cases that would best achieve these related objectives.⁶¹ A number of questions confronted the Advisory Committee as it engaged in this task. The first concerned the appropriate scope of the new ECA Rule: What types of civil cases are suitable for streamlined treatment?

IV. ELIGIBLE CLAIMS

Most, though not all, jurisdictions with short, summary, or expedited programs use case value, rather than subject matter, to delineate claims suitable for streamlined or expedited treatment.⁶² The Task Force similarly recommended a dual-track procedure for civil cases with an amount in controversy below a certain threshold value.⁶³ The Task Force identified these smaller value claims as most likely to be denied access to judicial resolution because many attorneys are not even willing to accept these cases due to the prohibitive costs of discovery and the delay involved in trying them through judgment.⁶⁴ Thus, rather than differentiating eligible cases by

60. 2013 Order Requesting Public Comment, *supra* note 19, at 2.; see also 2014 ECA Order, *supra* note 2, at 2 (noting that in addition to reducing costs and delay, “the ECA rule is also designed to preserve the traditional jury trial”); Bennett, *supra* note 24, at 306–08 (discussing declining civil trial rates in the United States and in Iowa).

61. See 2009 Task Force Order, *supra* note 6, at 13.

62. See IAALS, SUMMARY OF EXPEDITED TRIAL PROGRAMS, *supra* note 49 (containing case value requirements in the “Voluntary or Mandatory” column). Some jurisdictions, however, designate cases suitable for expedited treatment based on the type or subject matter of the dispute. See, e.g., ALASKA R. CIV. P. 26(g) (restricting discovery and expediting calendaring of “civil actions for personal injury or property damage involving less than \$100,000”); Colo. 2011 Pilot Project Order, *supra* note 51, at app. A (providing that the proportionality principle of the pilot CAPP Rules applies to “business actions,” that include breach of contract, business torts, UCC actions, corporate formation and dissolution cases, antitrust claims, and nonmedical professional malpractice); Minn. May 8, 2013 Order, *supra* note 45, at R.1(b) (designating an expedited litigation track for all civil cases involving consumer credit contracts, other contracts, personal injury, or “other” randomly designated civil claims).

63. TASK FORCE REPORT, *supra* note 6, at 13–22 (discussing and recommending a two-tier civil justice system).

64. See *id.* at 13 (“The increased cost of litigation dictates that many meritorious

case type or subject matter,⁶⁵ the ECA Rule establishes eligibility for expedited treatment based on the amount in controversy.⁶⁶ The more difficult choices concern establishing the appropriate threshold amount, defining its components, and determining when that amount is in controversy.

A. Threshold Amount: \$75,000

Jurisdictions with short, summary, or expedited programs differ as to the threshold amount that triggers streamlined discovery or trial procedures. Maximums range from \$30,000 at the low end;⁶⁷ to \$50,000,⁶⁸ \$65,000,⁶⁹ or \$75,000⁷⁰ at the middle range; to a common high of \$100,000.⁷¹ Although the

claims are never pursued simply because the costs of litigation substantially offset or outweigh any potential recovery."); *see also* discussion *supra* note 55 (noting survey results).

65. The ECA Rule does, however, exclude one category of cases—domestic relations—from its provisions based on subject matter. IOWA R. CIV. P. 1.281(1)(b); *see discussion infra* notes 89–90 and accompanying text.

66. *See* IOWA R. CIV. P. 1.281(1)(a) (establishing the \$75,000 threshold).

67. MD. CODE ANN. CTS. & JUD. PROC. § 4-401(1) (LexisNexis 2013) (giving a district court of limited jurisdiction the exclusive jurisdiction over contract and tort cases in which the “debt or damages claimed do not exceed \$30,000”).

68. Utah uses a graduated three-tier discovery regime that differentiates between cases seeking \$50,000 or less, cases claiming more than \$50,000 but less than \$300,000, and cases claiming \$300,000 or more. *See* UTAH R. CIV. P. 26(c)(5). Accelerated and restricted discovery applies to cases seeking \$50,000 or less. *See id.* (limiting standard fact discovery in three levels of cases); *see also* ILL. S. CT. R. 222(a) (providing that “limited and simplified discovery” applies in “civil actions seeking money damages not in excess of \$50,000”).

69. *See* ARIZ. REV. STAT. § 12–133 (2015) (requiring arbitration for all claims not in excess of \$65,000); *cf. ADR Programs*, JUDICIAL BRANCH OF ARIZ., MARICOPA CNTY. (last visited Mar. 14, 2015), <http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/adrPrograms.asp> (“By stipulation, parties can agree to a binding, one-day jury trial . . . in the event that parties opt out of mandatory arbitration.”).

70. *See* S.D. CODIFIED LAWS § 19-16-8.2 (2004) (allowing a written report of a health provider to be introduced in lieu of testimony in personal injury and wrongful death cases in which the damages do not exceed \$75,000).

71. *See* ALASKA R. CIV. P. 26(g) (providing limited discovery and expedited calendaring for actions asserting only “personal injury or property damage involving less than \$100,000 in claims”); COLO. R. CIV. P. 16.1(c) (offering simplified and inexpensive procedures except in cases seeking monetary relief of more than \$100,000); TEX. R. CIV. P. 169(a)(1) (establishing expedited procedure for cases seeking monetary relief “aggregating \$100,000 or less”); *see also* Minn. May 8, 2013 Order, *supra* note 45, at

Task Force recommended a jurisdictional limit of \$50,000,⁷² the Advisory Committee feared that plaintiffs would be discouraged from using the expedited rule if they knew at the outset that recovery would be capped at \$50,000. At the same time, higher amounts at stake implicate increased complexity and risk that abbreviated procedures might not fairly manage. Ultimately, the Advisory Committee recommended that the eligibility ceiling be set at the familiar \$75,000 figure also applicable to federal diversity jurisdiction.⁷³ In addition to representing a compromise between the prevailing threshold amounts from other states, a \$75,000-maximum amount in controversy requirement ensures that the efficiencies and cost savings of the ECA Rule will not be lost by removal of the case to federal court.⁷⁴

B. Calculating the Amount in Controversy: Components, Nonmonetary Relief, and Multiple Parties

Besides establishing the threshold amount, the ECA Rule must also provide guidance on how to calculate whether the amount in controversy meets that threshold: What components of recovery will count as part of the \$75,000 maximum? Are claims seeking nonmonetary or equitable relief eligible for expedited treatment? And how should the amount in dispute be determined if multiple plaintiffs or defendants are joined in the Expedited Civil Action?

Litigants should know what they are getting into if they find themselves subject to the ECA Rule. To provide certainty with respect to the consequences of the new procedure, the \$75,000 amount establishes a ceiling that includes *all* items of potential recovery, including “damages of any kind, penalties, prefilig interest, and attorneys’ fees.”⁷⁵ The only items excepted from the \$75,000 limit are postfiling prejudgment interest, postjudgment

R.1(c)(5) (indicating that the court may consider whether estimated damages “significantly exceed” \$100,000 in deciding whether to exclude a case from the expedited litigation track).

72. See TASK FORCE REPORT, *supra* note 6, at 14.

73. See 28 U.S.C. § 1332 (2012) (providing for original federal subject matter jurisdiction in cases between parties of diverse citizenship “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs”); *see also* IOWA R. CIV. P. 1.281(1)(a); 2014 ECA Order, *supra* note 2, at 2.

74. See 28 U.S.C. § 1441 (allowing a defendant to remove a state court action to federal court if federal subject matter jurisdiction exists and the requirements of the removal statutes are satisfied).

75. IOWA R. CIV. P. 1.281(1)(a); *see also* IOWA R. CIV. P. 1.281(1)(e) (providing that “a party proceeding under rule 1.281 may not recover a judgment in excess of \$75,000”).

interest, and costs.⁷⁶ Due to the difficulty of valuing equitable relief,⁷⁷ only monetary claims are eligible for expedited treatment, unless otherwise stipulated.⁷⁸

In order to ensure that the truncated procedures of the ECA Rule are limited to smaller, less complex claims (at least to the extent not otherwise agreed), the Rule limits recovery “by or against any one party” to \$75,000.⁷⁹ Regardless of the number of plaintiffs or the number of defendants, a single party “cannot recover more than \$75,000 or be liable for more than \$75,000.”⁸⁰ Thus, two coplaintiffs who each seek \$50,000 against a single defendant could not bring an Expedited Civil Action because the defendant’s \$100,000 total exposure would exceed the limitation.⁸¹

Because the jury is not informed of the monetary limit,⁸² the jury could potentially return a verdict greater than \$75,000 for or against a single party. If that occurs, however, “the court may not enter judgment on that verdict

76. See IOWA R. CIV. P. 1.281(1)(a), (e).

77. The federal courts have struggled with how to value suits seeking injunctive relief for purposes of the amount in controversy requirement of diversity jurisdiction. *See, e.g.*, McCarty v. Amoco Pipeline Co., 595 F.2d 389, 391–96 (7th Cir. 1979) (discussing different approaches used by various circuit courts); *see generally* JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE 41–51 (4th ed. 2005) (discussing problems courts encounter in determining the amount in controversy when plaintiffs seek equitable, rather than monetary, relief).

78. See IOWA R. CIV. P. 1.281(1)(a) (applying the ECA Rule to cases in which money damages are “the sole relief sought”). A number of jurisdictions similarly limit their summary or expedited procedures to actions seeking only monetary relief. *See, e.g.*, ILL. SUP. CT. R. 222 (excluding “actions seeking equitable relief” from the limited and simplified discovery rule); TEX. R. CIV. P. 169(a) (limiting the expedited action rule to claimants seeking only monetary relief); UTAH R. CIV. P. 26(c)(3) (presumptively assigning suits claiming nonmonetary relief to Tier 2 discovery rules governing claims valued between \$50,000 and \$300,000). In contrast, the \$100,000 cap under Colorado’s voluntary simplified procedure “shall not restrict an award of non-monetary relief.” COLO. R. CIV. P. 16.1(c).

79. IOWA R. CIV. P. 1.281(1)(a).

80. IOWA R. CIV. P. 1.281(1) cmt. (a). Thus, while a plaintiff in a multiparty Expedited Civil Action may seek and recover a verdict for more than \$75,000, “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.” *Id.*

81. IOWA R. CIV. P. 1.281(1)(a), (e).

82. IOWA R. CIV. P. 1.281(1)(e) (“The jury, if any, must not be informed of the \$75,000 limitation.”).

in excess of \$75,000,” excluding postfiling interest and costs.⁸³ Likewise, because the plaintiff in an Expedited Civil Action may find the verdict reduced through apportionment of fault or a settlement offset, the plaintiff may ask the jury to return a verdict for more than \$75,000.⁸⁴ Again, however, any judgment rendered on such a verdict in favor of the plaintiff will be limited to no more than \$75,000.⁸⁵

The eligibility provision of the ECA Rule encapsulates the above considerations. It provides,

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.⁸⁶

C. Excluded Actions

Although other jurisdictions exclude a number of proceedings from the scope of their simplified and expedited programs,⁸⁷ the Iowa ECA Rule excludes only two categories of cases from its governance: domestic relations cases and small claims.⁸⁸ The Iowa Supreme Court directed the Task Force and Advisory Committee to include only nondomestic civil cases in its civil justice reform efforts.⁸⁹ Although many Iowa judges and attorneys recognize that Iowa family law procedures are in need of reform, the Iowa Supreme Court viewed domestic relations cases as “warrant[ing] a separate,

83. *Id.*

84. *See id.*; IOWA R. CIV. P. 1.281(1) cmt. (a).

85. *See* IOWA R. CIV. P. 1.281(1) cmt. (a).

86. IOWA R. CIV. P. 1.281(1)(a). For a discussion of how compulsory and permissive counterclaims impact the Expedited Civil Action procedure, see *infra* notes 125–28 and accompanying text.

87. *See, e.g.*, ILL. SUP. CT. R. 222(a) (exempting small claims, ordinance violations, and family actions from limited and simplified discovery procedures); TEX. R. CIV. P. 169(a)(2) (excluding claims under the Family Code, Property Code, Tax Code and Medical Liability Statute from the expedited action rule).

88. *See* IOWA R. CIV. P. 1.281(1)(b).

89. 2009 Task Force Order, *supra* note 6, at 1 (directing the Task Force to propose reforms “that will foster prompt, affordable and high-quality resolution of non-domestic civil cases”).

specialized study.”⁹⁰

Moreover, although the ECA Rule will help to streamline the processing of smaller value claims, proportionality requires that the smallest claims receive even simpler, less formal procedures. Accordingly, the ECA Rule does not apply to civil claims involving \$5,000 or less, which fall instead under Iowa’s existing small claims procedures.⁹¹ The ECA Rule thus potentially governs any nondomestic, civil case seeking only monetary damages that are greater than \$5,000, but no more than \$75,000.

V. ENTERING, EXITING, AND STIPULATING TO THE EXPEDITED CIVIL ACTION PROCEDURE

The ECA Rule’s eligibility provision simply winnows out which civil claims are suitable for its abbreviated procedures. It does not address how those eligible claims enter or exit the process.⁹² What or who triggers an Expedited Civil Action? How and when, if ever, can cases be removed from the expedited track? Finally, should litigants be permitted to avail themselves of the Rule’s expedited provisions to resolve otherwise-ineligible claims?

A. *Voluntary or Mandatory?: Plaintiff’s Election*

Determining how to initiate the expedited process proved to be one of the more difficult and controversial issues facing the Advisory Committee. The decision was complicated by the different approaches taken by other jurisdictions with similar short, summary, or expedited programs. In many courts, both state and federal, the simplified procedure is completely

90. TASK FORCE REPORT, *supra* note 6, at 2 n.2. Indeed, the court has recently commissioned another task force devoted to the study and reform of family law procedures. In January 2015, the Iowa Supreme Court established a Family Law Case Processing Reform Task Force to “identify best practices for accessible, transparent, and consistent family law processes and to propose recommendations for new court processes and improvements to current processes for statewide adoption.” 2015 Family Law Task Force Order, *supra* note 7, at 1. In appointing that task force, the court noted that “65% of respondents [to the Iowa Survey] volunteered that family law was an area in need of reform.” *Id.*

91. IOWA R. CIV. P. 1.281(1)(b) (excluding small claims from the Expedited Civil Action procedure). The Iowa Code defines “small claims” as civil actions seeking \$5,000 or less, exclusive of interest and costs. *See* IOWA CODE § 631.1(1)(b) (2015).

92. *See* IOWA R. CIV. P. 1.281(1)(a)–(d) (outlining the general eligibility requirements for the Expedited Civil Action litigation track).

voluntary—requiring the mutual consent of all the parties to participate⁹³ or allowing any party to unilaterally veto the process by opting out.⁹⁴ Other jurisdictions, in contrast, automatically include eligible claims within the summary procedure unless the court, for limited reasons, grants a party's request to exit the process.⁹⁵ In still others, the trial court itself determines whether to place an eligible lawsuit on the expedited track.⁹⁶

Not surprisingly, most attorneys prefer the optional model that requires the mutual consent of all litigants.⁹⁷ Experience from states with this type of voluntary process, however, suggests that attorneys are likely to opt out of or refuse to opt into an abbreviated process if there is any real matter in dispute.⁹⁸ That is, voluntary expedited procedures are infrequently

93. See, e.g., CAL. CIV. PROC. CODE § 630.03 (West 2011); CAL. R. CT. 3.1547 (requiring parties to sign a “proposed consent order” to be eligible for an expedited jury trial); FLA. STAT. ANN. § 45.075 (West 2006) (allowing the court to conduct an expedited trial “[u]pon the joint stipulation of the parties to any civil case”); S.C. 2013 Order, *supra* note 48 (providing for a fast-track jury trial but requiring mutual consent of the parties); UTAH CODE JUD. ADMIN. R. 4-501(1) (“[T]he parties may agree to and move for an expedited jury trial at the close of discovery.”); Gen. Order No. 64 (N.D. Cal. June 21, 2011) (requiring parties to file an “Agreement for Expedited Trial and Request for Approval”); NEV. SHORT TR. R. 1(b) (2013) (stating that participation in the short trial program is voluntary).

94. For instance, Colorado’s simplified procedure “generally applies to all civil actions, whether for monetary damages or any other form of relief unless expressly excluded by [the simplified procedure] Rule or the pleadings, *or unless a party timely and properly elects to be excluded from its provisions.*” COLO. R. CIV. P. 16.1(a)(2) (emphasis added).

95. Minn. May 8, 2013 Order, *supra* note 45, at 4–6 (providing for automatic assignment of specified cases to a pilot expedited litigation track unless the court excludes the case on a party’s motion); TEX. R. CIV. P. 169(c) (establishing expedited procedures that apply to all eligible cases unless removed from the process for good cause and on the motion of a party or if any plaintiff files an amended or supplemental pleading that seeks relief that the expedited procedures prohibit).

96. In Oregon, for instance, upon the agreement of all parties and submission of a motion, the presiding judge can exercise “sole discretion” over whether to designate a case as an expedited case. OR. UTCR 5.150(2). Although a joint motion is required, the decision belongs solely to the court and “is dependent on the availability of staff, judges, and courtrooms.” OR. UTCR 5.150(1)–(2).

97. Many of the public comments received by the Iowa Supreme Court concerning the proposed ECA Rule reflect this sentiment. See generally Public Comments on Proposed Expedited Civil Action and Amendments to Discovery Rules (Mar. 17, 2014) [hereinafter Public Comments].

98. Corina Gerety, *Courts Learning from One Another: Colorado and Texas*, IAALS ONLINE (Dec. 12, 2012), <http://online.iaals.du.edu/2012/12/12/courts-learning->

utilized in contested cases, and thus are likely to be ineffective in reducing costs or increasing access.

For that reason, states such as Texas⁹⁹ and Minnesota,¹⁰⁰ which have both recently created a separate track for smaller cases, chose to compel expedited treatment of all eligible suits unless removed from the expedited track by the court.¹⁰¹ The compulsory nature of these programs may be

from-one-another (reporting on an IAALS study of Colorado's voluntary simplified procedure for claims less than \$100,000 and concluding that "the procedure's impact is quite limited and asymmetrical" and "the Rule is used infrequently in contested cases and probably does not achieve its intended objectives"); *see also* DAVID G. CAMPBELL, REPORT OF THE ADVISORY COMMITTEE ON CIVIL PROCEDURE 152 (2013) (noting that the "speedy trial project" in the U.S. District Court for the Northern District of California that requires party consent "has had no takers"); Morrison et al., *supra* note 47, at 832 (noting that voluntary short, summary, and expedited programs "have not been enthusiastically embraced" and "have had a limited scope").

99. In adopting Texas Civil Procedure Rule 169, regarding rules for expedited actions, the Texas Supreme Court noted,

An important issue in formulating rules for expedited actions has been whether the rules should have a compulsory element to them or merely encourage lawyers to agree to more expedited procedures in smaller cases. Having carefully weighed the arguments of the Working Group, the report of the Task Force, the deliberations of the Supreme Court Advisory Committee, and the experience of other jurisdictions, the Court has concluded that the objectives of HB 274 cannot be achieved, or the benefits to the administration of justice realized, without rules that compel expedited procedures in smaller cases.

Order, Misc. Docket No. 12-9191, Adoption of Rules for Dismissals and Expedited Actions, at 5 (Tex. 2012); *see also* Morrison et al., *supra* note 47, at 831 (noting Texas's decision to adopt a mandatory expedited program, rather than a voluntary process used in other states (citing TEX. R. CIV. P. 169(a)(1))).

100. One of the "core principles" cited by the Minnesota Supreme Court in adopting its mandatory pilot expedited civil litigation track was the fact that "[a]ttorneys and parties are hesitant to voluntarily elect expedited procedures" and that, in order for expedited rules to function, "a mandatory system is required." Minn. May 8, 2013 Order, *supra* note 45, at 4.

101. *See, e.g.*, TEX R. CIV. P. 169(a); Minn. May 8, 2013 Order, *supra* note 45, at 5–6. The New Jersey Supreme Court is also considering the adoption of an expedited civil action rule. Its Advisory Committee on Expedited Civil Actions has issued a report noting "that in every jurisdiction considered where a voluntary program was implemented, participation was minimal." N.J. SUPREME COURT, REPORT OF THE SUPREME COURT ADVISORY COMMITTEE ON EXPEDITED CIVIL ACTIONS 4 (2014). The report thus recommends that the New Jersey courts adopt a "soft mandatory" approach, which would route all eligible cases into the expedited procedure unless the trial court

illusory, however, because a plaintiff could, if permitted by the law and warranted by the facts, avoid their restrictions by seeking nonmonetary relief or recovery in excess of the eligible sum.¹⁰²

The Iowa ECA Rule does not adopt any of these existing models for initiating its expedited procedure. Instead, the ECA Rule incorporates elements of both voluntary and compulsory approaches.¹⁰³ The ECA Rule is voluntary because it allows plaintiffs to elect into the system by “certifying” that they are seeking only monetary relief and that all claims asserted “by or against any one party” do not exceed \$75,000.¹⁰⁴ It is also mandatory because once the plaintiff opts in, the ECA provisions govern the suit through judgment¹⁰⁵ unless the court subsequently terminates the expedited action for one of two limited reasons.¹⁰⁶ A defendant cannot unilaterally veto the plaintiff’s decision to utilize the ECA process, and a plaintiff who files an Expedited Civil Action cannot, without dismissing the suit altogether,¹⁰⁷ exit the procedure without leave of court.¹⁰⁸

The ECA Rule attempts to balance the interests of plaintiffs who are allowed to opt into the expedited procedure with those of defendants who then find themselves subject to its simplified procedures. It incentivizes use of the procedure while providing the defendant some assurance and protections. The amount in dispute is set high enough to encourage plaintiffs to utilize the procedures, but not so high as to deny defendants an adequate opportunity to prepare and present their defense. And, because a plaintiff

removes a case pursuant to “clear parameters,” which include party consent. *See id.* at 4–5.

102. Under the Texas procedure, for instance, the trial court “must remove a suit from the expedited actions process . . . if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by [the rule].” TEX. R. CIV. P. 169(c)(1)(B).

103. *See generally* IOWA R. CIV. P. 1.281.

104. IOWA R. CIV. P. 1.281(1)(c).

105. “If the judgment in an expedited civil action is reversed and remanded on appeal,” the proceeding will remain subject to the ECA Rule “unless the trial court, upon motion, terminates the expedited civil action” for a reason authorized by the ECA Rule. IOWA R. CIV. P. 1.281(1) cmt. (g).

106. IOWA R. CIV. P. 1.281(1)(g).

107. The Iowa rules provide a party one opportunity to dismiss a petition, without prejudice and without court order, any time up to 10 days before trial. IOWA R. CIV. P. 1.943. Statute of limitations permitting, then, a plaintiff could voluntarily dismiss an Expedited Civil Action without seeking court approval.

108. *See* IOWA R. CIV. P. 1.281(1) cmt. (g).

can unilaterally elect into the ECA procedure, the \$75,000 ceiling will bind that plaintiff's recovery and assure each defendant that its liability will be limited to a maximum of \$75,000.¹⁰⁹

B. Certifying Eligibility

In some jurisdictions, the plaintiff's petition or civil cover sheet determines whether the lawsuit qualifies for short, summary, or expedited procedures by affirmatively seeking a monetary judgment below the threshold amount.¹¹⁰ Using the petition to trigger the expedited procedure in Iowa, however, presents some difficulties. Under the Iowa Rules of Civil Procedure,¹¹¹ unless liquidated damages are the only damages involved, "a pleading shall not state the specific amount of money damages sought."¹¹² Moreover, in an Expedited Civil Action, the jury is not told of the \$75,000 ceiling on recovery for fear that the information would influence the assessment of damages.¹¹³ Yet, the petition is a public filing that can generally be disclosed to the jury. Requiring plaintiffs to affirmatively plead that they are seeking no more than \$75,000 would thus alter the otherwise-applicable pleading rule and amplify the risk of jury prejudice. Court personnel also raised administrative concerns with using either the petition

109. *See supra* notes 75–81 and accompanying text. IOWA R. CIV. P. 1.281(e) provides that except in stipulated proceedings, "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." IOWA R. CIV. P. 1.281(e). If the jury returns a verdict for greater than \$75,000 in damages, "the court may not enter judgment on that verdict" in excess of the threshold, other than allowable interest and costs. *See id.*

110. *See* TEX. R. CIV. P. 169(a)(1) (stating that the expedited process applies to a suit in which all claimants "affirmatively plead that they seek only monetary relief aggregating \$100,000 or less"); *see also* COLO. R. CIV. P. 16.1(b)(3) (requiring that pleadings containing eligible claims be accompanied by a special civil cover sheet); ILL. SUP. CT. R. 222(b) (requiring that parties file an affidavit attached to the initial pleading in any civil action seeking money damages stating whether the total damages sought exceeds \$50,000); Minn. May 8, 2013 Order, *supra* note 45, at 5 (providing that all civil actions having eligible "case type indicators" be included in the pilot track).

111. The Iowa Rules of Civil Procedure apply to Expedited Civil Actions except to the extent indicated in the ECA Rule. *See* IOWA R. CIV. P. 1.281(d).

112. IOWA R. CIV. P. 1.403(1) (providing general requirements for stating a claim for relief).

113. IOWA R. CIV. P. 1.281(1)(e) ("The jury, if any, must not be informed of the \$75,000 limitation."). For the same reason, the certificate by which a plaintiff elects expedited procedures "is not admissible to prove a plaintiff's damages in the expedited civil action or in any other proceeding." IOWA R. CIV. P. 1.281(1)(c).

or the civil cover sheet to initiate an expedited suit.

Accordingly, ECA eligibility is not determined by the petition or the civil cover sheet. Instead, a plaintiff wishing to opt into the ECA procedure must file a separate certification affirming 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.”¹¹⁴ The certification is not admissible to prove damages in the Expedited Civil Action or in any other proceeding.¹¹⁵

Finally, and as previously discussed, the court in an Expedited Civil Action cannot enter judgment for more than the eligible amount even if the jury renders a verdict for damages in excess of \$75,000.¹¹⁶ To ensure the plaintiff opting into the ECA Rule understands and consents to this ceiling on recovery, and to mitigate legal malpractice concerns, the certification must be signed by “*all* plaintiffs and their attorneys.”¹¹⁷ The ECA Certification accordingly contains a disclaimer that plaintiffs must sign, acknowledging they will be bound by the \$75,000 limitation even if the jury returns a verdict in excess of that amount.¹¹⁸

114. *Id.*

115. *Id.*

116. IOWA R. CIV. P. 1.281(1)(e); *supra* notes 79–85 and accompanying text. As explained *infra*, the \$75,000 ceiling need not bind the court or the parties if all parties stipulate to use the rules for Expedited Civil Actions in an otherwise-ineligible case. IOWA R. CIV. P. 1.281(1)(f); *see infra* notes 129–32 and accompanying text.

117. IOWA R. CIV. P. 1.281(1)(c) (emphasis added).

118. By signing the Expedited Civil Action Certification, all plaintiffs agree to proceed under the ECA Rule and certify 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

C. Terminating the Expedited Civil Action

Once a plaintiff elects into the ECA Rule, the lawsuit remains subject to its provisions unless and until the court terminates the Rule's application.¹¹⁹ The Advisory Committee considered allowing the court to withdraw a case from the ECA Rule "for good cause shown," but rejected that standard as too subjective and unpredictable.¹²⁰ Instead, the ECA Rule establishes more clearly defined parameters for removal. Upon timely motion by either party—whether plaintiff or defendant—a court may withdraw a suit from the ECA Rule only if one of two enumerated circumstances exist.¹²¹

First, the trial court may terminate an Expedited Civil Action upon a party's motion, if the moving party "makes a specific showing of substantially changed circumstances sufficient to render the application of [the ECA Rule] unfair."¹²² Substantially changed circumstances are those that might render a case no longer suitable for the curtailed discovery, truncated trial, or other limitations imposed by the ECA Rule. A court, for example, might terminate an Expedited Civil Action if a plaintiff's damages unexpectedly increase to a level that renders the \$75,000 limit unfair. Other factors might include: the joinder of multiple claims, parties, or third-party defendants; numerous fact, medical, or expert witnesses; the need for an interpreter; or unforeseen legal or factual complexity.¹²³ It should be noted,

applicable interest and court costs to which I may be entitled.

IOWA R. CIV. P. 1.1901—Form 16: Expedited Civil Action Certification; *see also* IOWA R. CIV. P. 1.1901—Form 17: Alternative Expedited Civil Action Certification for Plaintiffs that Are Not Natural Persons or Otherwise Must Act Through a Representative.

119. *See* IOWA R. CIV. P. 1.281(g).

120. *Cf.* N.J. SUPREME COURT, *supra* note 101 (recommending "clear parameters defining the basis for removal that will need little to no interpretation by the court," rather than "standards such as 'for good cause shown' which are capable of being inconsistently and subjectively applied").

121. IOWA R. CIV. P. 1.281(1)(g)(1)–(2).

122. IOWA R. CIV. P. 1.281(1)(g)(1).

123. *Cf.* TEX. R. CIV. P. 169 cmt. 3 ("In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under [the expedited action rule], whether a defendant has filed a compulsory counterclaim in good faith that seeks

however, that a court might be able to accommodate many of these considerations by modifying the Rule's limits on discovery, experts, and trial, rather than terminating the Expedited Civil Action altogether.¹²⁴

The second ground for terminating an Expedited Civil Action arises if a "party has in good faith filed a compulsory counterclaim that seeks relief other than that allowed by rule 1.281(1)(a)." ¹²⁵ That is, the court must remove a case from the ECA procedure if a defendant files a counterclaim that arises from the same transaction or occurrence as the plaintiff's claim that either seeks nonmonetary relief or a monetary judgment for more than \$75,000 in damages.¹²⁶ Because the compulsory counterclaim must be in good faith, the defendant probably cannot file such a compulsory counterclaim for the sole purpose of avoiding the ECA provisions.¹²⁷ A permissive counterclaim, which does not arise from the same transaction or occurrence as the opposing party's claim, remains subject to the \$75,000 limitation on damages unless the court severs it from the Expedited Civil Action.¹²⁸

D. Stipulated Expedited Civil Actions

The ECA Rule contemplates that in some cases not otherwise eligible for expedited treatment—actions seeking nonmonetary relief or monetary damages in excess of \$75,000—parties might nevertheless wish to utilize the Rule's streamlined and expedited provisions. In such a case, with the mutual

relief other than that allowed under [the rule], the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary."); H.B. 244, Reg. Sess., § 2(14) (Miss. 2013) (instructing trial courts to consider "the nature of the claim(s) and the defense(s), the existence of multiple claims or parties, the complexity of the case, and the need for the examination of a party").

124. See IOWA R. CIV. P. 1.281(2)(c) (allowing the court to modify limits on discovery for good cause shown); IOWA R. CIV. P. 1.281(2)(d) (permitting the court to modify limits on the number of expert witnesses for good cause shown); IOWA R. CIV. P. 1.281(4)(f) (allowing the court to alter time limits for trial for good cause shown). See *infra* Part VI for a discussion of the features and operation of the ECA Rule.

125. IOWA R. CIV. P. 1.281(1)(g)(2).

126. See IOWA R. CIV. P. 1.241 (defining a "compulsory counterclaim" as one "held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim").

127. See IOWA R. CIV. P. 1.281(1)(g)(2). The Iowa Rules of Civil Procedure already require that any counterclaim be objectively grounded in law and in fact and not be interposed for any improper purpose. See IOWA R. CIV. P. 1.413(1).

128. IOWA R. CIV. P. 1.281(1)(h); see also IOWA R. CIV. P. 1.242 (governing permissive counterclaims generally).

consent of all parties, the court may grant a joint motion to proceed as a stipulated Expedited Civil Action.¹²⁹ The decision whether to grant the parties' joint request is committed to the trial court's discretion. Presumably, the court would consider case-specific factors similar to those involved in the decision whether to terminate an Expedited Civil Action,¹³⁰ as well as administrative concerns posed by last-minute requests for expedited docketing.

In a stipulated Expedited Civil Action, the parties need not be bound by the \$75,000 limit on judgments and may enter into other agreements concerning damages and attorneys' fees that will bind the parties regardless of the ultimate decision of the jury or the court.¹³¹ The joint motion to proceed as a stipulated Expedited Civil Action and any additional agreements or stipulations "must not be disclosed to the jury," unless otherwise ordered by the court.¹³²

VI. FEATURES AND OPERATION OF THE EXPEDITED CIVIL ACTION RULE

Some jurisdictions exclusively aim their short, summary, or expedited procedures at the discovery phase of smaller value lawsuits and do not otherwise modify or restrict the other stages of litigation that might also contribute to expense and inefficiency.¹³³ The ECA Rule also directly

129. *See* IOWA R. CIV. P. 1.281(f); *see also* IOWA R. CIV. P. 1.1901—Form 18: Joint Motion to Proceed as an Expedited Civil Action.

130. IOWA R. CIV. P. 1.281(1)(g)(1); *see supra* notes 122–24 and accompanying text.

131. IOWA R. CIV. P. 1.281(1)(f) ("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 attorneys' fees."); To minimize the risks of a stipulated Expedited Civil Action, for instance, the parties may enter into high-low agreements regarding the maximum and minimum amount of damages recoverable. Other jurisdictions permit similar stipulations. *See, e.g.*, Gen. Order No. 64, attachment B (N.D. Cal. June 21, 2011) (providing a form agreement for an expedited trial that parties requesting to proceed under the local expedited trial procedure can use to set out an agreement that "regardless of the ultimate decision of the jury or the court, plaintiff will receive no less than \$ ____ in damages [and in attorney fees] from defendant(s), and defendant will pay no more than \$ ____ in damages [and in attorneys fees] to plaintiffs"); *cf.* UTAH CODE JUD. ADMIN. R. 4-501(2)(F) (allowing parties who opt into an expedited trial to "agree to a minimum amount of damages that a plaintiff is guaranteed to receive, and a maximum amount of damages that a defendant will be liable for, regardless of the jury's verdict").

132. IOWA R. CIV. P. 1.281(f).

133. *See, e.g.*, ILL. S. CT. R. 222 (titled "Limited and Simplified Discovery in Certain

addresses and dramatically modifies discovery, which undoubtedly contributes to the costs and delay of civil litigation.¹³⁴ The Rule's streamlined procedures, however, extend beyond discovery to the other pretrial and trial phases of an Expedited Civil Action. Five principal features characterize these integrated procedures: (1) curtailed discovery, (2) limited motion practice, (3) accelerated and abbreviated trial procedures, (4) simplified evidentiary rules, and (5) narrow claim and issue preclusion.

A. Limited Discovery

The discovery provisions of the ECA Rule implement the proportionality principle that discovery should be no more extensive or expensive than necessary given the value and needs of each case.¹³⁵ Accordingly, the ECA Rule severely restricts the amount of fact and expert discovery that might otherwise be available in non-expedited cases.¹³⁶ The ECA Rule also accelerates the discovery process, requiring that discovery be completed at least two months before the expedited trial.¹³⁷

1. Required Disclosures

Aside from the ECA Rule, perhaps the most significant change coming out of the court's civil justice reform project is the statewide adoption of required initial disclosures in all civil cases.¹³⁸ As explained by the comment

Cases"); UTAH R. CIV. P. 26(c)(5) (limiting discovery in all civil cases where the amount in controversy is \$50,000 or less).

134. Almost half of the respondents to the Iowa Survey (43.7 percent) identified the time required for discovery (20.4 percent) and the lack of attorney collaboration on discovery issues (23.3 percent) as the "primary cause of delay in the litigation process." TASK FORCE REPORT, *supra* note 6, at B:28. The Task Force Report thus aimed many of its recommendations at reducing the delay, expense, and inefficiencies of discovery. *See id.* at 29–46.

135. *See id.* at 30.

136. Like most other provisions of the ECA Rule, its discovery restrictions can be modified by stipulation or by court order for good cause shown. *See* IOWA R. CIV. P. 1.281(2)(c) (setting out limitations on discovery that apply to Expedited Civil Actions "[e]xcept upon agreement of the parties or leave of court granted upon a showing of good cause"). Any motion to modify the discovery limitations "must be in writing and must set forth the proposed additional discovery and the reasons establishing good cause for its use." IOWA R. CIV. P. 1.281(2)(e).

137. IOWA R. CIV. P. 1.281(2)(a); *see also* IOWA CT. R. 23.5—Form 3: Trial Scheduling Order and Discovery Plan for Expedited Civil Action.

138. *See* IOWA R. CIV. P. 1.500(1)(a). Initial disclosures come at the recommendation of the full Task Force and were supported by the Iowa Survey in which a majority of

to the new required disclosures rule,

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.¹³⁹

Under the new initial disclosure rule, at an early stage of the

lawyers who had experience in federal court agreed that Iowa should adopt similar disclosure requirements. *See* TASK FORCE REPORT, *supra* note 6, at 32–34, B:37. The general discovery amendments exempt several categories of cases from the initial disclosure obligation. *See* IOWA R. CIV. P. 1.500(1)(e). Moreover, the disclosure requirement can be modified or excused by stipulation or court order. *See* IOWA R. CIV. P. 1.500(1)(a) (setting out disclosure requirements that apply “except as exempted by rule 1.500(1)(e) or as otherwise stipulated or ordered by the court”).

139. IOWA R. CIV. P. 1.500(1) cmt.; *see also* FED. R. CIV. P. 26(a) advisory committee’s note to 1993 amendments (noting that “[a] major purpose of the revision [adopting federal initial disclosure requirements] is to accelerate the exchange of basic information about the case and to eliminate the paperwork involved in requesting such information”). Initial disclosures are, to a large extent, self-enforcing in that the failure to disclose information or supplement incorrect or incomplete disclosures can result in the exclusion of that information from evidence. *See* IOWA R. CIV. P. 1.517(3)(a) (“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.”). States that have recently engaged in civil justice reform efforts have also added required disclosures to their discovery rules. *See, e.g.*, COLO. R. CIV. P. 26(a)(1) (2001 amendments adopting provisions similar to Fed. R. Civ. P. 26(a), requiring disclosures); MINN. R. CIV. P. 26.01 (2013 amendments requiring automatic initial disclosures, expert disclosures, and pretrial disclosures); N.H. SUPER. CT. R. 22 (2013 amendment “accomplishes a major change from prior New Hampshire practice in that it requires both the plaintiff and the defendant to make automatic initial disclosures”); *see also* FED. R. CIV. P. 26(a) advisory committee note to 2010 amendments (seeking to reduce discovery costs through automatic, uniform application of required disclosure rules, local rules notwithstanding). Texas likewise authorizes basic disclosures but requires that the requesting party formally demand the disclosures in officially approved “Requests for Disclosure.” *See* TEX. R. CIV. P. 194(1).

litigation,¹⁴⁰ before other discovery commences,¹⁴¹ parties must automatically disclose certain basic information “that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.”¹⁴² Thus, like the federal disclosures on which this amendment is patterned, required disclosures pertain to evidence that the disclosing party may use in its case in chief, including the identities of “individuals likely to have discoverable information,” physical evidence, and documents.¹⁴³

140. The Advisory Committee considered whether to accelerate the timing of required disclosures in Expedited Civil Actions but decided that separate disclosure deadlines would be unnecessarily confusing. Thus, the same timing provisions govern required disclosures in all non-exempt civil cases, including Expedited Civil Actions. *See* IOWA R. CIV. P. 1.281(2)(b) (“Expedited civil actions are subject to the initial disclosure requirements of rule 1.500(1).”). Initial disclosures must occur within two weeks of the attorneys’ discovery conference. *See* IOWA R. CIV. P. 1.500(1)(f). This discovery conference is also a new feature of the general discovery amendments, and it must occur “no later than 21 days after any defendant has answered or appeared.” IOWA R. CIV. P. 1.507(1). Thus, initial disclosures will generally occur within five weeks after any defendant has answered or appeared. Initial disclosures must be based upon information “reasonably available” to the disclosing party at the time of disclosure but are also subject to the general duty to supplement incomplete or incorrect information. *See* IOWA R. CIV. P. 1.500(1)(h); *see also* IOWA R. CIV. P. 1.503(4) (establishing an amended duty to supplement discovery responses that no longer includes a “knowing concealment” requirement); IOWA R. CIV. P. 1.508(3) (requiring supplementation of expert disclosures and responses); IOWA R. CIV. P. 1.500(5) (clarifying that rules 1.503(4) and 1.508(3) apply to initial disclosures).

141. IOWA R. CIV. P. 1.505(1)(a) (prohibiting parties from seeking discovery until they have conferred at the discovery conference required by rule 1.507).

142. IOWA R. CIV. P. 1.500(1)(a)(1)–(2). Like the federal rule, a party in Iowa need only disclose information that that party may use *in support* of its claim or defense. *Compare id.*, with FED. R. CIV. P. 26(a)(1)(A)(i)–(ii). Some jurisdictions, however, require much broader disclosure that requires civil litigants to automatically disclose all relevant information known by or available to the disclosing parties and their lawyers. *See, e.g.*, ARIZ. R. CIV. P. 26.1(a)(4) (requiring disclosure of “[t]he names and addresses of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences”); ARIZ. R. CIV. P. 26.1(a)(9) (requiring disclosure of documents and electronically stored information from each party “which that party believes may be relevant to the subject matter of the action” and further requiring that “a copy of the documents and electronically stored information listed shall be served with the disclosure”).

143. Like the federal rule, the new Iowa rule requires disclosure of information concerning damages, insurance, witnesses, and documents. *Compare* IOWA R. CIV. P. 1.500(1)(a)(1)–(4), with FED. R. CIV. P. 26(a)(1)(A)(i)–(iv). The Iowa disclosure provision does differ from the federal rule in some respects. For example, the Iowa rule broadens the disclosure obligation concerning documents. The federal disclosure rule

Unlike federal disclosures, the new Iowa rules require additional case-specific initial disclosures¹⁴⁴ in suits claiming damages for personal or emotional injury¹⁴⁵ or for lost time or earning capacity.¹⁴⁶ Moreover, besides the initial disclosures that occur at the inception of a case, parties in all non-exempt civil cases must now make certain expert disclosures, including a detailed report for specially trained experts,¹⁴⁷ as well as pretrial disclosure of trial witnesses, exhibits, and depositions.¹⁴⁸

Unless otherwise agreed or ordered by the court, these required disclosures apply to Expedited Civil Actions.¹⁴⁹ Indeed, the restrictions that

requires only that the disclosing party describe documents by category and location during the initial disclosures. IOWA R. CIV. P. 26(a)(1)(A)(ii). In contrast, the Iowa rule requires the actual production of the disclosed documents unless good cause, such as undue burden or expense, exists to excuse such production. IOWA R. CIV. P. 1.500(1)(a)(2).

144. Several other jurisdictions mandate specific initial disclosures in selected categories of cases. Some limit case-specific disclosures to expedited litigation tracks. *See, e.g.*, COLO. R. CIV. P. 16.1(k)(1)(B)(i)–(ii) (providing additional specific disclosure requirements in personal injury and employment cases litigated under its simplified procedure). Others require these specialized disclosures in all non-exempt civil cases. *See, e.g.*, UTAH R. CIV. P. 26.2 (requiring specific initial disclosures for both plaintiffs and defendants in personal injury actions). Iowa's general discovery amendments require these specialized disclosures in all non-exempt civil cases falling within the enumerated categories. *See* IOWA R. CIV. P. 1.500(1)(b)–(d).

145. *See* IOWA R. CIV. P. 1.500(1)(b)(1)–(4) (requiring, in personal injury suits, records waivers and additional disclosures such as the claimant's name, date of birth, Medicare claim information, and health care providers).

146. *See* IOWA R. CIV. P. 1.500(1)(c)(1)–(3) (requiring, in all claims for lost time or earning capacity, disclosure of claimants' income tax returns and previous employers' information, along with written waivers covering personnel files and payment history records). The general discovery amendments also provide for specialized initial disclosures in domestic relations cases. *See* IOWA R. CIV. P. 1.500(1)(d). These case-specific disclosures will not apply to Expedited Civil Actions, however, since domestic relations cases are excluded from application of the ECA Rule. *See* IOWA R. CIV. P. 1.281(1)(b).

147. IOWA R. CIV. P. 1.500(2)(a)–(c). The new rule requires pretrial disclosure of the identities and opinions of expert witnesses without the need to serve an expert interrogatory, as was formerly the practice. IOWA R. CIV. P. 1.500(2)(a), (b)(1); *see also* IOWA R. CIV. P. 1.508(1)(b) (“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.”).

148. *See* IOWA R. CIV. P. 1.500(3)(a).

149. IOWA R. CIV. P. 1.281(2)(b) (“Expedited civil actions are subject to the initial disclosure requirements of rule 1.500(1).”). As a general rule, except as expressly set out

the ECA Rule places on the duration and amount of discovery assume that required disclosures will occur and that little additional discovery may be needed. Because initial disclosures only compel disclosure of information helpful to the disclosing party, however, additional discovery will likely be necessary.¹⁵⁰ Accordingly, the ECA Rule permits some limited discovery beyond required disclosures.

2. Written Discovery

Rather than restricting written discovery on a per-party basis, the ECA Rule limits the number of interrogatories,¹⁵¹ requests for production,¹⁵² and requests for admission¹⁵³ allotted to each side of an expedited case. The term “side” encompasses “all the litigants with generally common interests in the litigation.”¹⁵⁴ Thus, all plaintiffs are usually on one side, and all defendants on the other. Unless otherwise stipulated or ordered for good cause shown, each side in an Expedited Civil Action can serve no more than 10 interrogatories¹⁵⁵ and 10 requests for production on the other side.¹⁵⁶ This numerical limit must be read in conjunction with the new general discovery amendments that authorize the Iowa Supreme Court to develop and approve “pattern” interrogatories and requests for production.¹⁵⁷

The amended interrogatory rule generally regards each “discrete

in the ECA Rules, the Iowa Rules of Civil Procedure apply to Expedited Civil Actions. *See* IOWA R. CIV. P. 1.281(1)(d).

150. *See* IOWA R. CIV. P. 1.500(1)(a).

151. *See* IOWA R. CIV. P. 1.281(2)(c)(1) (“Subject to rule 1.509(4), each side may serve no more than ten interrogatories on any other side.”).

152. *See* IOWA R. CIV. P. 1.281(2)(c)(2) (“[E]ach side may serve no more than ten requests for production on any other side under rule 1.512.”).

153. *See* IOWA R. CIV. P. 1.281(2)(c)(3) (“Each side may serve no more than ten requests for admission on any other side under rule 1.510.”).

154. IOWA R. CIV. P. 1.281(1)(i).

155. IOWA R. CIV. P. 1.281(2)(c)(1). In non- Expedited Civil Action civil cases, each party (rather than each side) may serve up to 30 interrogatories on each other party unless otherwise stipulated or ordered. *See* IOWA R. CIV. P. 1.509(1)(e).

156. IOWA R. CIV. P. 1.281(2)(c)(2). The rules do not limit the number of requests for production that may be served by a party in a non-Expedited Civil Action civil case. *See* IOWA R. CIV. P. 1.512 (governing requests for production in non-Expedited Civil Action civil cases).

157. *See* IOWA R. CIV. P. 1.509(4) (“The supreme court, by supervisory order or otherwise, may approve pattern interrogatories for different classes of cases.”); IOWA R. CIV. P. 1.512(3) (“The supreme court, by supervisory order or otherwise, may approve pattern requests for production for different classes of cases.”).

subpart” of a nonpattern interrogatory as a separate interrogatory that counts against the applicable limit.¹⁵⁸ However, the rule counts “any pattern interrogatory and its subparts” as only one interrogatory.¹⁵⁹ As explained in a comment to the general discovery amendments,

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.¹⁶⁰

The amendment thus encourages litigants to use pattern discovery to make their interrogatories stretch further and to avoid disputes over the wording and scope of a discovery request. It also deters irrelevant, boilerplate discovery requests.

The Iowa Supreme Court has not yet officially approved any pattern discovery. A number of other jurisdictions, however, authorize the use of officially approved “uniform” or “standard” interrogatories.¹⁶¹ Pattern discovery could be aimed at particular claims, such as employment,¹⁶²

158. IOWA R. CIV. P. 1.509(1)(e).

159. IOWA R. CIV. P. 1.509(4).

160. IOWA R. CIV. P. 1.509(4) cmt.

161. *See* ARIZ. R. CIV. P. 33.1(f) (“Any uniform interrogatory may be used where it fits the legal or factual issues of the particular case”); CAL. CIV. PROC. CODE § 2033.710 (authorizing the Judicial Council to “develop and approve official form interrogatories and requests for admission”); COLO. R. CIV. P. 33(e) (distinguishing between pattern and nonpattern interrogatories; counting the subparts of nonpattern interrogatories as separate interrogatories); CONN. R. SUPER. CT. CIV. §§ 13-6(b)–(c), 13-8(a) (approving the use of standard interrogatories and prohibiting objections thereto); FLA. R. CIV. P. 1.340(a) (permitting the development and use of standard interrogatory forms); ILL. SUP. CT. R. 213(j) & cmt. j (authorizing and encouraging the use of standard interrogatories); MD. R. 2-421(a) (counting each form interrogatory as one interrogatory); N.J. CT. R. 4:17-1(b) (approving the use of uniform interrogatories in certain actions); S.C. R. CIV. P. 33(b) (approving standard interrogatories for use in all civil cases).

162. *See, e.g.*, Cal. Jud. Council Form DISC-002 (2011) (“Form Interrogatories—

personal injury,¹⁶³ automobile negligence,¹⁶⁴ medical malpractice,¹⁶⁵ premises liability,¹⁶⁶ product liability,¹⁶⁷ or contract.¹⁶⁸ Alternatively or additionally, standard interrogatories could be directed at more generally applicable issues, such as the description or investigation of an event; medical or claims history; damages for physical, mental, or emotional injuries; property damages; and loss of income or earning capacity.¹⁶⁹

In developing its own uniform discovery, the Iowa Supreme Court could enlist the help of its civil rules advisory committee, the Iowa bar, and attorneys with relevant practice experience. These groups could work

Employment Law"). At the federal level, the Federal Civil Rules Advisory Committee, the IAALS, and the National Employment Lawyers Association joined together to develop protocols and pattern forms for initial disclosures in employment cases. *See* 2014 FED. ADVISORY COMM. REPORT, *supra* note 37, at B-3. These pattern initial disclosures are being used on a pilot basis in more than 50 federal district courts. *Id.*; *see also* Koppel, *supra* note 33, at 259 (discussing the joint effort to develop "pattern interrogatories and pattern requests for production for use in employment discrimination cases").

163. *See, e.g.*, ARIZ. R. CIV. P. 84, Form 5 (uniform personal injury interrogatories); FLA. R. CIV. P. app. I, Forms 1–2 (standard personal injury negligence interrogatories); MD. R., Form 8 (personal injury interrogatories); N.J. R. CT. APP. II, Forms A, C ("Uniform Interrogatories . . . in Personal Injury Cases").

164. *See, e.g.*, FLA. R. CIV. P. app. I, Standard Interrogatories, Forms 5–6 (standard automobile negligence interrogatories); ILL. SUP. CT. R. 213(j), Amended Interrogatories Under Rule 213(j) (standard motor vehicle interrogatories); MD. R., Form 7 ("Motor vehicle tort interrogatories"); N.J. CT. R. app., Forms B, C(1), D (uniform interrogatories for "Motor Vehicle Collision Cases").

165. *See, e.g.*, ARIZ. R. CIV. P. 84, Form 4 (uniform medical malpractice interrogatories); FLA. R. CIV. P. app. I, Forms 3, 4 (medical malpractice standard interrogatories to plaintiff and defendant); ILL. SUP. CT. R. 213(j), Amended Interrogatories Under Rule 213(j) (medical malpractice interrogatories to plaintiff, defendant doctor, and defendant hospital); N.J. CT. R. app., Forms A(1), C(3).

166. *See, e.g.*, CONN. GEN. STAT. ANN. app. of Forms, Form 203, 206 (interrogatories and requests for production for premises liability cases); N.J. CT. R. app., Forms C(2) (uniform interrogatories for "falldown cases").

167. *See, e.g.*, MD. R. app., Form 9–10 (uniform product liability definitions and interrogatories); N.J. CT. R. app. II, Form A(2), C(4) (uniform interrogatories for products liability cases other than pharmaceutical and toxic torts).

168. *See, e.g.*, ARIZ. R. CIV. P. 84 Form 6 (uniform contract litigation interrogatories); Cal. Jud. Council Form DISC-001 (including interrogatory for contracts in general form interrogatories).

169. *See, e.g.*, Cal. Jud. Council Form DISC-001 (general form interrogatories); COLO. R. CIV. P. app., form 20 (general pattern interrogatories); CONN. GEN. STAT. ANN., App. of Forms, Forms 201, 202, 204, 205 (general forms for plaintiffs' and defendants' interrogatories and requests for production); S.C. R. CIV. P. 33(b) (standard interrogatories in civil cases).

together in constructing similar case-specific or issue-specific interrogatories and requests for production. Once approved by the court, this pattern discovery could be used alone or in combination with nonpattern written discovery, in ECA and non-ECA cases alike.

In addition to the 10-count restriction on interrogatories and requests for production, the ECA Rule limits the number of requests for admission to 10 per side.¹⁷⁰ In order to smooth the admission of exhibits, however, this cap “does not apply to requests for admission of the genuineness of documents that the party intends to offer into evidence at [the expedited] trial.”¹⁷¹

3. *Depositions*

In non-ECA cases, the Advisory Committee decided not to curtail the number or duration of depositions that can be taken in a civil lawsuit.¹⁷² In contrast, the ECA Rule limits the number of depositions each side in an Expedited Civil Action can take.¹⁷³ Unless modified by the parties or by the court for good cause, each side may take only one deposition of each party and up to two nonparties.¹⁷⁴ With a nonnatural entity such as a corporation

170. *See* IOWA R. CIV. P. 1.281(2)(c)(3). In non-expedited civil cases, each party is permitted 30 requests for admission per opposing party. *See* IOWA R. CIV. P. 1.510(1).

171. IOWA R. CIV. P. 1.281(2)(c)(3).

172. *See* IOWA R. CIV. P. 1.701 (providing that, in most situations, parties may take depositions upon oral examination without leave of court). The Advisory Committee did not perceive deposition overuse or misuse to be a significant problem in Iowa. It thus rejected as unnecessary the federal approach that limits each side to 10 depositions and limits each deposition to “1 day of 7 hours.” FED. R. CIV. P. 30(a)(2)(A)(i) (requiring a party to obtain leave of court if that party has already taken 10 depositions); FED. R. CIV. P. 30(d)(1) (limiting the duration of depositions). The Iowa general discovery amendments do, however, provide that any given witness may be deposed only once without leave of court. *See* IOWA R. CIV. P. 1.701(1)(b)(2); *see also* FED. R. CIV. P. 30(a)(2)(A)(ii).

173. *See* IOWA R. CIV. P. 1.281(2)(c)(4)(1)–(2). Some jurisdictions limit the total number of deposition hours permitted in expedited cases, rather than limiting the total number of depositions. For example, Utah limits each side in Tier 1 cases to three hours for non-expert depositions. UTAH R. CIV. P. 26(c)(5). Texas allows each party no more than six deposition hours but allows the parties to agree to up to 10 hours total. TEX. R. CIV. P. 190.2(b)(2). The Advisory Committee decided to limit the total number of depositions allowed per side, rather than arbitrarily placing a time limit on depositions. *See* IOWA R. CIV. P. 1.281(2)(c)(4)(1)–(2).

174. IOWA R. CIV. P. 1.281(2)(c)(4)(1)–(2), (e). Minnesota’s Pilot Expedited Litigation Track permits only party depositions. Minn. May 8, 2013 Order, *supra* note

or partnership, only one representative deposition can be taken.¹⁷⁵ The deposition provision of the ECA Rule does not distinguish between fact and expert witnesses or between retained and nonretained experts.¹⁷⁶ The two-deposition cap thus presumably encompasses all these types of nonparty witnesses.¹⁷⁷

4. Expert Discovery

The Task Force regarded expert discovery as “a significant factor contributing to the cost and delay of civil litigation” and recommended that the number of expert witnesses be limited in smaller value cases.¹⁷⁸ Thus, unless otherwise stipulated or ordered, each side in an expedited case is entitled to only one retained expert.¹⁷⁹ Importantly, this restriction on the number of experts pertains only to retained experts—it does not curtail the number of nonretained expert witnesses, such as treating physicians or other health care providers.¹⁸⁰

The Task Force could not reach a consensus on whether to prohibit or

45, at 10. Nonparties may not be deposed unless the deposition will be used “in lieu of live testimony.” *Id.*

175. *See* IOWA R. CIV. P. 1.281(2)(c)(4)(1).

176. However, each party in an Expedited Civil Action is only “entitled to one retained expert, except upon agreement of the parties or leave of court granted upon a showing of good cause.” IOWA R. CIV. P. 1.281(2)(d).

177. As discussed *infra* Part VI.D.2, the two-deposition cap on nonparty depositions may need to yield if Expedited Civil Action plaintiffs avail themselves of the opportunity to offer a “Health Care Provider Statement in Lieu of Testimony” of a treating physician. *See* IOWA R. CIV. P. 1.281(4)(g)(3). Under that procedure, the party against whom the Health Care Provider Statement may be offered “has the right, at that party’s own initial expense, to cross-examine by deposition the health care provider” and then use that deposition at trial. IOWA R. CIV. P. 1.281(4)(g)(3)(4).

178. TASK FORCE REPORT, *supra* note 6, at 19–21, 31.

179. IOWA R. CIV. P. 1.281(2)(d). Civil justice reform efforts frequently focus on the costs of expert witnesses. *See, e.g.*, PRESIDENT’S COUNCIL ON COMPETITIVENESS, AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA 4–5 (1991). The ACTL-IAALS Report, for example, recommends that parties should generally be limited to one expert witness per issue and that expert testimony should be strictly limited to the contents of the expert’s written report. ACTL-IAALS REPORT, *supra* note 27, at 17; *see also* ARIZ. R. CIV. P. 26(b)(4)(D) (presumptively limiting each side to one independent expert per issue); Colo. 2011 Pilot Project Order, *supra* note 51, at R. 10.1(d) (providing that other than production of experts’ reports, “[t]here shall be no depositions or other discovery of experts”).

180. *See* IOWA R. CIV. P. 1.281(2)(d).

otherwise restrict litigants from deposing expert witnesses.¹⁸¹ However, the 2015 general discovery amendments do require certain automatic disclosures concerning all testifying expert witnesses.¹⁸² Those disclosures mandate that specially retained testifying experts prepare and sign a very detailed report summarizing their opinions and the grounds on which they are based.¹⁸³ A comprehensive expert report may well obviate the need for an opposing party to depose a retained expert.¹⁸⁴

Unfortunately, the expert disclosure amendments do not address the significant expense associated with *procuring* expert testimony, whether through a deposition or at trial. Those prohibitive expenditures undoubtedly contribute to the reluctance of many plaintiff's attorneys to accept smaller

181. See TASK FORCE REPORT, *supra* note 6, at 20–21.

182. See IOWA R. CIV. P. 1.500(2).

183. *See id.* The new amendments now require certain disclosures regarding expert testimony without the need to request the information using an expert interrogatory. Any expert who has been retained or specially employed to give expert testimony must prepare a report setting forth:

- (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 ten 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.

IOWA R. CIV. P. 1.500(2)(b).

184. Indeed, the ACTL–IAALS Report suggests that strictly limiting expert testimony to the contents of their expert report and compelling automatic production of that report should “obviate the need for a deposition in most cases.” ACTL–IAALS REPORT, *supra* note 27, at 17. Utah has developed a rather innovative approach to this issue. Initially, experts must automatically disclose a “brief summary of the[ir] opinions” that will make up their testimony, along with the information supporting those opinions. UTAH R. CIV. P. 26(a)(4)(A). Then, each side must choose whether to take a four-hour deposition of the opposing expert at its own expense or require that the opposing expert prepare a more detailed signed report that will subsequently bind the expert's trial testimony. See UTAH R. CIV. P. 26(a)(4)(B).

value cases.¹⁸⁵ Indeed, the exorbitant cost of medical testimony arguably defeats any incentive to file an Expedited Civil Action if recovery, including attorneys' fees, is limited to \$75,000. As discussed further below, the ECA Rule addresses this related concern in its simplified evidence provisions.¹⁸⁶

B. Limited Motion Practice

1. Motions to Dismiss

The ECA Rule does not prohibit any party from moving to dismiss the expedited action for lack of personal or subject matter jurisdiction, insufficient notice or service of process, or for failure to state a claim.¹⁸⁷ However, the filing of such a preanswer motion does not "eliminate or postpone otherwise applicable pleading or disclosure requirements."¹⁸⁸ Thus, a preanswer motion to dismiss an Expedited Civil Action will not disrupt or delay the otherwise-applicable deadlines for the discovery conference¹⁸⁹ or initial disclosures.¹⁹⁰

2. Motions for Summary Judgment

Motions for summary judgment arguably conserve scarce judicial and party resources by identifying and disposing of factually unsupported claims that do not merit the time and expense of trial. Summary judgment motions, however, have become *de rigueur* today and may actually exacerbate the delay and expense associated with civil litigation.¹⁹¹ Many uncomplicated,

185. Cf. TASK FORCE REPORT, *supra* note 6, at B:35 (reporting that 32.7 percent of survey respondents stated that "[c]lient concerns about expert witness costs" almost always prompted them to "seek or acquiesce to mediation processes in a case").

186. See discussion *infra* Part VI.D.

187. See IOWA R. CIV. P. 1.281(3)(a) ("Any party may file any motion [to dismiss] permitted by rule 1.421"); see generally IOWA R. CIV. P. 1.421(1).

188. IOWA R. CIV. P. 1.281(3)(a). In non-Expedited Civil Action cases, filing a preanswer motion delays the obligation to file an answer until 10 days after the court acts on the motion. See IOWA R. CIV. P. 1.441(3).

189. See IOWA R. CIV. P. 1.507(1) (requiring a discovery conference to occur within "21 days after any defendant has answered or appeared").

190. See IOWA R. CIV. P. 1.500(1)(f) (requiring initial disclosures to occur within two weeks of the discovery conference required by rule 1.507).

191. See, e.g., Mark Bennett, *Essay, From the "No Spittin', No Cussin', and No Summary Judgment" Days of Employment Discrimination Litigation to the "Defendant's Summary Judgment Affirmed Without Comment" Days: One Judge's Four-Decade Perspective*, 57 N.Y.L. SCH. L. REV. 685, 704 (2013) ("Today, summary judgment

smaller claims could likely be tried to judgment with less time and money than that incurred in the complicated dance of summary judgment and its associated collection of motions, statements of disputed and undisputed facts, briefs, affidavits, and depositions.¹⁹² Indeed, some have argued that trial by jury could best be preserved and encouraged by eliminating summary judgment altogether.¹⁹³

The ECA Rule acknowledges this concern and restricts the use of summary judgment motions in expedited cases. Parties may make only one motion for summary judgment in an Expedited Civil Action.¹⁹⁴ Moreover, motions may raise only those grounds specifically enumerated in the ECA Rule. Importantly, “no evidence” motions that challenge the nonmoving party’s ability to prove one or more elements of its claim are not permitted.¹⁹⁵ Instead, the only permissible grounds for moving for summary judgment are to: (1) collect an “open account or other liquidated debt,”¹⁹⁶ (2) “establish an obligation to indemnify,”¹⁹⁷ (3) “assert an immunity defense,”¹⁹⁸ (4) claim that the nonmoving party failed to comply with an expert disclosure requirement or other disclosure deadline,¹⁹⁹ (5) note a failure to “provide

motions, with their concomitant briefing, statements of fact, and appendices, more often than not, exceed the size of the white and yellow pages of the Chicago phone directory—combined.”).

192. *See id.* at 711 (stating author’s belief “that by eliminating the enormous sums spent on the litigation/summary judgment industry, more parties would choose to go to trial because it would become less expensive and faster to get there in the vast majority of cases.”).

193. *See id.*; *see also* Suja A. Thomas, *Why Summary Judgment is Unconstitutional*, 93 VA. L. REV. 139, 178–79 (2007).

194. IOWA R. CIV. P. 1.281(3)(b)(2) (“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).”).

195. *See* IOWA R. CIV. P. 1.281(3)(b)(1).

196. IOWA R. CIV. P. 1.281(3)(b)(1)(1).

197. IOWA R. CIV. P. 1.281(3)(b)(1)(2).

198. IOWA R. CIV. P. 1.281(3)(b)(1)(3).

199. *See* IOWA R. CIV. P. 1.281(3)(b)(1)(4). The rule allows a party to move for summary judgment for “failure to comply with Iowa Code section 668.11 or other deadline for disclosure.” *Id.* The referenced section requires pretrial disclosure of expert witnesses in professional liability cases. *See* IOWA CODE § 668.11(1) (2015). The comment to this provision of the ECA Rule acknowledges that “[i]f 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.” IOWA R. CIV. P. 1.281(3) cmt. (b)(1)(4).

notice or exhaust remedies,”²⁰⁰ or (6) raise any other affirmative defense.²⁰¹ Finally, parties moving for summary judgment in an expedited action must do so at least 90 days before trial.²⁰²

C. Streamlined Trial Procedures

The ECA Rule seeks to encourage the *trial* of eligible claims.²⁰³ In addition to restricting pretrial discovery and motion practice, the ECA Rule expedites and truncates the trial phase of an Expedited Civil Action.²⁰⁴ In designing these streamlined trial procedures, the Advisory Committee considered a number of related issues. What does “expedited” mean? How quickly after filing should an Expedited Civil Action be resolved? Who should act as factfinder in an expedited case: should the parties be entitled to a jury trial of disputed facts, or should expedited cases be decided exclusively by judges in bench trials? And how can the presentation of proof in an expedited trial be streamlined without sacrificing litigants’ rights to fully present their cases?

1. Expedited Docketing: Trial Within One Year of Filing

The truism “time is money” applies to litigation as well as life. Undue delay in case processing is a common complaint regarding the civil justice system and another serious barrier to court access.²⁰⁵ An imperative of any procedural reform concerning smaller, less complex civil disputes, then, is to ensure these cases are expeditiously resolved within a fixed time period. Accordingly, the ECA Rule provides that unless otherwise ordered for good cause, an Expedited Civil Action must be given a firm trial date set within

200. IOWA R. CIV. P. 1.281(3)(b)(1)(5).

201. IOWA R. CIV. P. 1.281(3)(b)(1)(6).

202. IOWA R. CIV. P. 1.281(3)(b)(3). This accelerates the usual 60-day deadline for summary judgment motions in non-Expedited Civil Action cases. *See* IOWA R. CIV. P. 1.981(3); IOWA CT. R. 23.5—Form 2: ¶ 10 Trial Scheduling Order and Discovery Plan.

203. *See* 2014 ECA Order, *supra* note 2, at 2; TASK FORCE REPORT, *supra* note 6, at 13.

204. *See* IOWA R. CIV. P. 1.281(4).

205. *See* TASK FORCE REPORT, *supra* note 6, at 13 (“Even if the anticipated cost is not an obstacle precluding judicial resolution of a dispute, the length of time consumed in litigated resolutions of disputes often is.”); *id.* at C:11 (reporting that 30 percent of plaintiffs’ attorneys and 32 percent of defense attorneys state that “length of time between the case coming through the door and the earning of the fee” is either “sometimes a factor” or “frequently a factor” in the decision not to take the case).

one year of filing.²⁰⁶ Because the duration of an expedited trial is similarly compressed,²⁰⁷ the ECA Rule gives court administrators flexibility to “reschedule the [expedited] trial for another date during the same week” it was originally scheduled.²⁰⁸

Although the Task Force also recommended that the court implement a one-judge-one-case assignment system,²⁰⁹ the promise of a trial within one year of filing might not be attainable if only one judge were assigned to handle an Expedited Civil Action from start to finish. The Advisory Committee discussed this tension: the desire to have a single judge designated at the inception of a case to follow it through to resolution on one hand and the desire for a firm and speedy trial date on the other. The Advisory Committee concluded that the one-judge-one-case objective assumes more importance in complex or multiparty cases—like those now being tried in Iowa’s pilot business court—and may unnecessarily complicate trial scheduling in the simpler, lower value cases eligible for expedited treatment.²¹⁰

Judges and court administrators will need to be innovative and flexible to achieve the one-year objective without bumping other civil cases that have been sitting longer on the court’s docket. Senior judges may need to be assigned to preside over expedited civil trials, and the court may need to modify priority trial lists. Moreover, court administrators may not be able to fully accommodate attorneys’ scheduling conflicts and may be required to set an Expedited Civil Action for a given trial date without the parties’

206. IOWA R. CIV. P. 1.281(4)(b) (“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.”); *see also* IOWA CT. R. 23.2(1)(c) (setting time standards for Expedited Civil Actions and providing that such cases “shall . . . commence trial” within 12 months of filing); IOWA CT. R. 23.2(2)(c) (stating that for good cause shown, “a court may order an extension of the time for trial” of an Expedited Civil Action to 15 months after filing).

207. *See* discussion *infra* Part VI.C(2).

208. IOWA R. CIV. P. 1.281(4)(b).

209. *See* TASK FORCE REPORT, *supra* note 6, at 23–26; *see also* ACTL-IAALS REPORT, *supra* note 27, at 18 (recommending that “[a] single judicial officer should be assigned to each case at the beginning of a lawsuit and should stay with the case through its termination” because “[j]udges who are going to try cases are in the best position to make pretrial rulings on evidentiary and discovery matters and dispositive motions”).

210. *See generally* 2012 Bus. Court Establishment Order, *supra* note 13 (providing for the assignment of specialized presiding judges to cases transferred to the business court docket).

consent.²¹¹ The Iowa Supreme Court is aware that practical issues may arise with the adoption of the ECA Rule and has appointed an implementation committee of judges and court administrators to address those and other concerns.²¹²

2. Judge Versus Jury: Expedited Jury Trials and Expedited Bench Trials

In some states, cases on the summary or expedited litigation track are tried to the court, rather than to a jury.²¹³ Bench trials can be scheduled more flexibly and do not require time-consuming voir dire, sidebar conferences, or jury instructions. A principal goal of Iowa civil justice reform, however, is to preserve and encourage the civil *jury* trial, the rate of which has precipitously dropped in recent decades.²¹⁴ In recognition of the essential role of the civil jury, the ECA Rule permits either party to demand a jury trial for their Expedited Civil Action. If neither party demands a jury trial, or if both parties expressly waive a jury, the Expedited Civil Action will be tried to the bench.²¹⁵

a. *The Jury in an Expedited Civil Action.* Although some public comments opposed reducing the size of the civil jury in an Expedited Civil Action,²¹⁶ the Advisory Committee believed the jury and the jury panel

211. See IOWA R. CIV. P. 1.281(4) cmt. (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.”).

212. See 2014 ECA Order, *supra* note 2, at 2–3.

213. In Maryland, for example, certain small value claims can be filed in a court of limited jurisdiction and resolved through an expedited bench trial. Cases valued below \$15,000 are tried to a court of limited jurisdiction, and in those cases, “a party may not demand a jury trial.” See MD. CODE ANN., CTS. & JUD. PROC. § 4-402(e)(1) (LexisNexis 2013); *see also* MD. R. 3-325(a)–(b) (LexisNexis 2002). If a jury is demanded in a case valued between \$15,000 and \$30,000, however, the case is transferred out of the expedited limited jurisdiction docket to a circuit court of general jurisdiction. See MD. CODE ANN., CTS. & JUD. PROC. § 4-402(e)(2).

214. See 2014 ECA Order, *supra* note 2, at 2–3; *see also* Bennett, *supra* note 24, at 306–08 (discussing declining jury trial rates in Iowa and the nation).

215. IOWA R. CIV. P. 1.281(4)(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.”).

216. See Public Comments, *supra* note 97 (reporting one commenter’s statement that “[w]e see no basis to reduce the number of jurors in an expedited trial from eight to six”).

could be reduced—saving precious time in jury selection—without impairing the accuracy of the jury verdict or the fairness of the proceeding.²¹⁷ In fact, while some minimum number of jurors is undoubtedly required to yield a reliable result, six-person civil juries are widely used in federal court.²¹⁸ Instead of the ordinary eight-person jury used in other civil cases,²¹⁹ the expedited civil jury in Iowa “consist[s] of six persons selected from a panel of twelve prospective jurors.”²²⁰ To achieve this six-person jury, each side is allotted three peremptory strikes, rather than the usual four.²²¹ The trial court has discretion to increase the number of jurors or strikes in cases with more than two sides.²²²

In non-expedited civil cases, each party submits its proposed jury instructions and verdict forms to the district court, and the trial judge must sort through those sometimes redundant submissions, as well as its own research, to construct the final jury charge.²²³ This can be time-consuming for the court, the parties, and members of the jury. To reduce at least some of this judicial burden and accelerate submission of an expedited case to the jury, the ECA Rule requires that the litigants confer with each other and

217. *Cf.* IAALS, A RETURN TO TRIALS, *supra* note 52, at 6 (stating that “voir dire makes civil jury trials too lengthy” and that a potential solution would be to “[d]esignate smaller jury panel size” to produce a “shorter voir dire time”).

218. *See* FED. R. CIV. P. 48 (authorizing the use of six-member juries in federal civil jury trials); *see also* Colgrove v. Battin, 413 U.S. 149, 158–60 (1973) (holding that a six-person civil jury delivering a unanimous verdict satisfies the Seventh Amendment’s right to trial by jury in civil suits).

219. *See* IOWA R. CIV. P. 1.915; *but see* IOWA R. CIV. P. 1.917 (providing that a jury shall continue to hear a case if up to two jurors become unable to participate but requiring that a “[m]inimum of six jurors” participate throughout the duration of the case).

220. IOWA R. CIV. P. 1.281(4)(d).

221. *See id.* (“Each side must strike three prospective jurors.”); IOWA R. CIV. P. 1.915(7) (“Each side [in non-expedited cases] must strike four jurors.”). The reduction of peremptory strikes should not draw strong criticism given that some distinguished jurists have called for the elimination of peremptory strikes altogether. *See, e.g.*, Batson v. Kentucky, 476 U.S. 79, 102–03 (Marshall, J., concurring) (arguing that peremptory challenges should be eliminated entirely in order to end the racial discrimination that peremptory challenges inevitably inject into the jury selection process).

222. *See* IOWA R. CIV. P. 1.281(4)(d) (“Where there are more than two sides [in an Expedited Civil Action], the court in its discretion may authorize and fix an additional number of jurors to be impaneled and strikes to be exercised.”).

223. *See* IOWA R. CIV. P. 1.924 (permitting any party to request jury instructions and giving parties time to object to the court’s final instructions).

“file one jointly proposed set of [stipulated] jury instructions and verdict forms.”²²⁴ If agreement cannot be reached concerning a proposed instruction or verdict form, “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.”²²⁵ To facilitate the court’s decision on the final charge, both the stipulated instructions and the opposing alternatives must be contained in one document, in word processing format, filed electronically with the court.²²⁶

Finally, the number of jurors necessary to yield a verdict has also been reduced to account for the smaller venire. If the expedited civil jury is “unable to reach a unanimous verdict” after three hours of deliberation, a five-person majority can render the jury’s verdict.²²⁷

b. *The Expedited Bench Trial.* As previously indicated, if neither party to an Expedited Civil Action demands a jury trial, the case will be tried to the court. Under otherwise-applicable rules, a judge trying a nonjury civil case must base the court’s judgment upon written and separately stated findings of fact and conclusions of law.²²⁸ These findings and conclusions notify both the litigants and the appellate court of the basis for the trial court’s decision.²²⁹ As noted by the Task Force Report, however, requiring the court to issue detailed findings of fact and conclusions of law in cases

224. IOWA R. CIV. P. 1.281(4)(c). These proposed joint jury instructions are in addition to the pretrial disclosure of trial witnesses, exhibits, and deposition testimony required in all civil cases. *See* IOWA R. CIV. P. 1.500(3) (detailing pretrial disclosures that each party must make at least 14 days before trial unless otherwise agreed or ordered); IOWA CT. R. 23.5—Form 3, ¶ 9: Trial Scheduling Order and Discovery Plan for Expedited Civil Action—Pretrial Submissions.

225. IOWA R. CIV. P. 1.281(4)(c).

226. *See id.*

227. IOWA R. CIV. P. 1.281(4)(d). In an ordinary civil case in which the parties have not otherwise stipulated, the eight jurors must render a unanimous verdict if they deliberate for less than six hours after the case is submitted to them. *See* IOWA R. CIV. P. 1.931(1). If a jury has deliberated for more than six hours, a one-short-of-unanimous supermajority can overrule the lone dissenter and render the verdict. *See id.*

228. *See* IOWA R. CIV. P. 1.904(1); *see also* FED. R. CIV. P. 52 (requiring that a federal court, in a bench trial, must “find the facts specially and state its conclusions of law separately” either on the record at the close of evidence or “in an opinion or memorandum of decision”).

229. *See* Berger v. Amana Soc’y, 120 N.W.2d 465, 467 (Iowa 1963) (noting that findings of fact and conclusions of law permit counsel to “direct his attack upon specific adverse findings or rulings in the event of an appeal”).

with uncomplicated facts and law may needlessly prolong the proceedings.²³⁰ The district court judges on the Advisory Committee concurred with this assessment, attributing much of the existing delay in deciding nonjury cases to the preparation of written findings and conclusions.

The ECA Rule seeks to alleviate this time lag by permitting the trial court, in its discretion, to “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.”²³¹ The court, in effect, opts to sit “as a ‘jury of one’” and renders its decision using the same legal instructions and verdict form it would use if the case had been tried to the jury.²³² As in an expedited jury trial, the parties must jointly submit one document containing their proposed stipulated instructions and their contested alternatives (along with supporting authority).²³³ Further, as in an expedited jury trial, the litigants must timely object and make their record with respect to the court’s final instructions and verdict form or they risk waiving those objections.²³⁴ Appellate review thus remains possible, with the court’s “verdict” and accompanying legal instructions substituting for findings of fact and conclusions of law.²³⁵

230. TASK FORCE REPORT, *supra* note 6, at 89 (indicating that “litigants and lawyers sometimes wait for weeks or months for a decision” in nonjury civil cases because of this requirement); *see also id.* at 90–91 (recommending that parties be permitted to jointly waive findings of fact and conclusions of law in nonjury cases in order to expedite the resolution of some nonjury civil cases).

231. IOWA R. CIV. P. 1.281(4)(e). In a sense, this is a return to former practice. Before the adoption of Iowa R. Civ. P. 1.904, the court was not required to issue findings of fact unless the parties requested them. *See* Official 1943 Comment, IOWA R. CIV. P. 1.904.

232. *See* IOWA R. CIV. P. 1.281(4) cmt. (e).

233. IOWA R. CIV. P. 1.281(4)(e) (“In such cases, the parties must comply with the pretrial submission requirements of rule 1.281(4)(c).”).

234. *See id.* (“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.”); *see also* IOWA R. CIV. P. 1.924 (requiring that all objections to the court’s jury instructions be made before final argument and that “[n]o other grounds or objections shall be asserted thereafter, or considered on appeal”).

235. *See* IOWA R. CIV. P. 1.281(4) cmt. (e). The rule permits posttrial motions “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.” IOWA R. CIV. P. 1.281(4)(e). If the trial court dispenses with findings of fact and conclusions of law and instead renders a verdict based on legal instructions, parties will not be able to move to amend or enlarge findings and conclusions as they might otherwise do in a bench trial under rule 1.904(2). IOWA R. CIV. P. 1.281(4) cmt. (e).

3. Streamlined Presentation of Proof

In addition to limits on discovery, most jurisdictions with some type of short, summary, or expedited trial program dramatically truncate the actual trial of the case.²³⁶ The ECA Rule likewise envisions that Expedited Civil Actions will “ordinarily” be submitted to the factfinder “within two business days from the commencement of trial.”²³⁷ To achieve that objective, the ECA Rule limits each *side* to no more than six hours to present its case, including “jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments,” unless the court allows extra time for good cause shown.²³⁸ Rather than allocating the allowable time to these specific trial activities, the Rule permits each side to divide its allotted time as it sees fit. Attorneys who value opening statement over voir dire, for example, have discretion to reflect that strategic choice in their overall time allocation. The six-hour maximum does not include time spent on court activities such as bench conferences, objections, jury instruction conferences, reading jury instructions, or challenging a juror for cause.²³⁹

Practical issues will undoubtedly arise concerning the enforcement of the six-hour-per-side trial limit. For instance, the ECA Rule does not explicitly address who keeps track of each side’s time. The parties are certainly free to agree upon a timekeeping method, but the decision ultimately remains within the trial court’s discretion. It can be expected that each side will track its own time and police the opposing side’s limit as well. Additional time might be needed to counteract obstructionist tactics that impede the fair examination of witnesses or the efficient presentation of proof. Good cause might likewise support extra time in cases with multiple

236. See, e.g., CAL. CT. R. 3.1550 (“Excluding jury selection, each side [in voluntary expedited jury trial] will be allowed three hours to present its case, including opening statements and closing arguments . . .”); FLA. STAT. ANN. § 45.075(6) (West 2006) (limiting stipulated expedited trials to one day); S.C. 2013 Order, *supra* note 48, at ¶ 10 (“Generally, a Fast Track jury trial should not last longer than one (1) day.”); TEX. R. CIV. P. 169(d)(3) (permitting each side in an expedited action eight hours “to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments”); UTAH JT. JUD. ADM. R. 4-501(2)(E) (giving parties who agree to participate in the pilot expedited trial program three hours per side to present their case at trial).

237. IOWA R. CIV. P. 1.281(4)(f).

238. *Id.*

239. *Id.* (“Time spent on objections, bench conferences, and challenges for cause to a juror is not included in the time limit.”).

parties whose interests unforeseeably diverge during trial. The ECA Rule accords the trial court discretion to account for these and other varied circumstances that might justify departing from the six-hour restriction.

This judicial discretion should rebut the criticism that six hours is an arbitrary limit that violates a litigant's right to fully and fairly present its case.²⁴⁰ Counsel can also cooperate with each other and work with the court to further streamline the trial of the expedited case. For example, the parties could be encouraged to submit a joint, comprehensive juror questionnaire to be completed by prospective jurors and provided to counsel in advance of voir dire.²⁴¹ The evidentiary provisions of the ECA Rule discussed below should also help make the six-hour limit achievable.

D. Simplified Evidence Rules

To help achieve the streamlined trial envisioned by the ECA Rule, parties are encouraged to "stipulate to factual and evidentiary matters to the greatest extent possible."²⁴² Additionally, the ECA Rule utilizes two relatively unique evidence provisions to minimize the delay and expense of trial. The first relaxes the evidentiary requirements for admitting documents that, on their face, appear to be valid business, public, or medical records.²⁴³ The second seeks to reduce the prohibitive costs of medical testimony by permitting a claimant to introduce a written "Health Care Provider Statement" in lieu of that provider's deposition or trial testimony.²⁴⁴

1. Hearsay and Authenticity Objections Regarding Documents

The ECA Rule streamlines the presentation of records by eliminating

240. As Judge Richard Arnold noted:

[I]t may be an abuse of the trial court's discretion to exclude probative, non-cumulative evidence simply because its introduction will cause delay, and any time limits formulated in advance of trial must be fashioned with this in mind. Such limits should be "sufficiently flexible to accommodate adjustment if it appears during trial that the court's initial assessment was too restrictive."

Johnson v. Ashby, 808 F.2d 676, 678 (8th Cir. 1987) (quoting MCI Commc'ns Corp. v. Am. Tel. & Tel. Co., 708 F.2d 1081, 1171 (7th Cir. 1983)).

241. *See, e.g.*, CAL. CIV. R. 3.1549 ("Parties are encouraged to submit a joint form questionnaire to be used with prospective jurors to help expedite the voir dire process.").

242. IOWA R. CIV. P. 1.281(4)(g)(1).

243. *See* IOWA R. CIV. P. 1.281(4)(g)(2).

244. *See* IOWA R. CIV. P. 1.281(4)(g)(3).

the need to call a sponsoring witness to prove the authenticity of a record or the elements of a hearsay exception.²⁴⁵ To avail itself of this option, a party must provide pretrial notice of its intent to offer documents under this provision and produce copies of those documents well in advance of trial.²⁴⁶ A court should overrule any authenticity or hearsay objection to a document so disclosed if, on its face, the document (1) "appears to be what the proponent claims it is"²⁴⁷ and (2) either "appears to be non-hearsay"²⁴⁸ or appears to fall within one of the hearsay exceptions enumerated in the ECA Rule that ordinarily apply to medical, business, or public records.²⁴⁹ If a document contains several layers of hearsay, each level of hearsay must

245. See IOWA R. CIV. P. 1.281(4)(g)(2). Under existing evidence rules, a party can avoid calling a custodian or other sponsoring witness by using an affidavit to lay the hearsay foundation and establish the authenticity of business records. See IOWA R. EVID. 5.803(6), 5.902(11)–(12). However, the ECA Rule's special evidentiary rule goes further than these existing provisions. The ECA Rule applies to hearsay exceptions other than the business records exception and, with respect to business records, dispenses with the need for the proponent to produce even a custodial affidavit. See IOWA R. CIV. P. 1.281(4)(g)(2).

246. To utilize this procedure, a litigant must provide all other parties notice of its intent to do so, along with a copy of the documents themselves, at least 90 days before trial. See IOWA R. CIV. P. 1.281(4)(g)(2)(1).

247. IOWA R. CIV. P. 1.281(4)(g)(2)(2).

248. IOWA R. CIV. P. 1.281(4)(g)(2)(3). Hearsay is defined in IOWA R. EVID. 5.801(a)–(c). Under that definition, an out-of-court statement is not hearsay if it is not offered for the truth of the matter asserted in the statement. See IOWA R. EVID. 5.801(c). Moreover, certain categories of statements are deemed nonhearsay even if offered for their truth. See IOWA R. EVID. 5.801(d)(1) (prior statements of witnesses); IOWA R. EVID. 5.801(d)(2) (statements of party-opponents).

249. See IOWA R. CIV. P. 1.281(4)(g)(2)(3). To satisfy this provision, a document that is hearsay may be admitted if it:

appears to fall within a hearsay exception set forth in Iowa Rule of Evidence 5.803(3) [then existing mental, emotional, or physical condition], 5.803(4) [statements for medical diagnosis or treatment], 5.803(6) [records of regularly conducted activity], 5.803(7) [absence of entry in records kept in accordance with the provisions of business records rule], 5.803(8) [public records and reports], 5.803(9) [records of vital statistics], 5.803(10) [absence of public record or entry], 5.803(11) [records of religious organizations], 5.803(12) [marriage, baptismal, and similar certificates], 5.803(13) [family records], 5.803(14) [records of documents affecting an interest in property], 5.803(15) [statements in documents affecting an interest in property], 5.803(16) [statements in ancient documents], 5.803(17) [market reports, commercial publications], or 5.803(22) [judgments of previous conviction].

Id.

appear to fall within one of those hearsay exceptions.²⁵⁰ If these prerequisites are satisfied, the burden shifts to the opposing party to raise “a substantial question as to the authenticity or trustworthiness of the document.”²⁵¹ The ECA Rule essentially shifts the evidentiary burden regarding authenticity and hearsay to the party opposing admission of a document. It does not, however, create any new hearsay exceptions or preclude other evidentiary objections such as relevance.²⁵²

2. Health Care Provider Statement in Lieu of Testimony

As previously discussed, the spiraling costs of expert and medical testimony contribute to the reluctance of counsel to take cases in which the potential recovery would not justify such expenditures.²⁵³ An injured party has little to no control over the witness fees charged by a treating physician or other health care provider, yet that testimony is frequently needed to prove damages and causation. Although limited discovery and streamlined and accelerated adjudication might encourage a plaintiff to file an Expedited Civil Action, steep expert witness costs counteract these incentives by consuming the plaintiff’s maximum recovery.²⁵⁴ The Advisory Committee believed that plaintiffs would not use the ECA Rule unless the high costs of obtaining medical testimony were addressed.²⁵⁵

250. IOWA R. CIV. P. 1.281(4)(g)(2)(6) (noting that IOWA R. CIV. P. 1.281(4)(g)(2) does not authorize “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 [enumerated] exception to the hearsay rule”); *see also* IOWA R. EVID. 5.805 (addressing hearsay within hearsay).

251. IOWA R. CIV. P. 1.281(4)(g)(2)(4). An opposing party must raise any hearsay, authenticity, or trustworthiness objection to a document no later than 30 days after receiving the proponent’s notice to offer it under this procedure. IOWA R. CIV. P. 1.281(4)(g)(2)(7).

252. IOWA R. CIV. P. 1.281(4) cmt. (g)(2) (“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”).

253. *See* TASK FORCE REPORT, *supra* note 6, at 47–48 (discussing expert witness fees). The Task Force recognized that the current statutory cap of \$150 per day on expert witness fees, *see* IOWA CODE § 622.72 (2011), impedes access to justice in smaller cases where the actual costs of producing expert witnesses far exceeds the plaintiff’s potential recovery. TASK FORCE REPORT, *supra* note 6, at 47–48. The Task Force suggested that the statute might be amended to provide the court greater discretion to tax as costs a more fair and reasonable amount for expert witness fees. *See id.*

254. *See* TASK FORCE REPORT, *supra* note 6, at 47–48.

255. *See id.* (“An attorney might advise the plaintiff that the case is not worth taking

To that end, the ECA Rule permits a claimant²⁵⁶ to offer a questionnaire, answered in writing and under oath by a treating physician or other health care provider, in lieu of that treating provider's deposition or trial testimony.²⁵⁷ Only persons who have actually treated the injured claimant may complete this "Health Care Provider Statement in Lieu of Testimony" (the "Health Care Provider Statement").²⁵⁸ Independent medical exams are thus not covered.

The ability to use a Health Care Provider Statement—instead of live deposition or trial medical testimony—is one of the more innovative and controversial provisions of the ECA Rule.²⁵⁹ The Health Care Provider

in part because a proper presentation of the case would require an investment of \$15,000 for the presentation of the testimony of three expert witnesses.").

256. Although plaintiffs are most likely to use the Health Care Provider Statement, defendants who assert personal injury counterclaims may also take advantage of the procedure. *See* IOWA R. CIV. P. 1.281(4)(g)(3).

257. IOWA R. CIV. P. 1.281(4)(g)(3)(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."). The procedure eliminates any hearsay objection to the Health Care Provider Statement. *See* IOWA R. CIV. P. 1.281(4) cmt. (g)(3)(1).

258. IOWA R. CIV. P. 1.281(4)(g)(3)(1); *see also* IOWA R. CIV. P. 1.1901—Form 19: Health Care Provider Statement in Lieu of Testimony. The provision may include providers to whom an injured party is referred after suit is filed, provided that the physician renders actual medical treatment to the injured party. *See* IOWA R. CIV. P. 1.281(4) cmt. (g)(3)(3) (noting that, in ruling on the admissibility of the Health Care Provider Statement, "the court has discretion to determine matters such as whether the health care provider has provided actual medical treatment for the patient"). The provision anticipates that multiple health care providers may render medical treatment to a claimant and thus that more than one Health Care Provider Statement may be used.

259. The court received numerous and conflicting comments concerning this provision. *See* Public Comments, *supra* note 97. The procedure is similar to that currently followed in workers' compensation cases in Iowa. *See* IOWA ADMIN. CODE r. 876-4.18 (2015) ("Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order or rule for service of the records and reports shall be admissible as evidence at hearing of the contested [workers' compensation] case unless otherwise provided by rule."). South Dakota uses such a procedure in workers' compensation proceedings and in personal injury or wrongful death cases seeking damages of \$75,000 or less. S.D. CODIFIED LAWS § 19-16-8.2 (2004) (allowing a physician's written report to be used "in lieu of deposition or in-court testimony" in specified classes of cases); *see also* FLA. STAT. ANN. § 45.075(11) (West 2006) (allowing parties in expedited trials to "introduce a verified written report of any expert and an affidavit of the expert's curriculum vitae" instead of calling the expert to

Statement was a product of extensive negotiation and compromise by members of the Advisory Committee who represented both plaintiff and defense perspectives. The standard form requires the treating health care provider to fully answer questions concerning the nature and extent of the patient's injuries, preexisting conditions, treatment, diagnosis, prognosis, physical restrictions or limitations, and aggravating factors.²⁶⁰ It further inquires about information or documents reviewed or relied upon by the treating provider in forming his or her opinions and answers.²⁶¹ Although plaintiff's counsel can communicate with the treating health care provider concerning the Health Care Provider Statement, the plaintiff's counsel must fully disclose any such communications on the Statement.²⁶²

This procedure eliminates any hearsay objection to the Health Care Provider Statement.²⁶³ The opposing party remains free to depose the health care provider but must shoulder the expense of doing so.²⁶⁴ Any deposition so taken by the opposing party is admissible in the trial of the Expedited Civil Action.²⁶⁵ If multiple Health Care Provider Statements are used because more than one provider has rendered treatment to an injured claimant, the opposing party may opt to depose each provider at its own expense. In these circumstances, the court may need to modify the two-nonparty-deposition limit.²⁶⁶

Any completed Health Care Provider Statement must be served on all parties to the Expedited Civil Action at least five months before trial.²⁶⁷ For

testify).

260. *See* IOWA R. CIV. P. 1.1901—Form 19: Health Care Provider Statement in Lieu of Testimony.

261. *Id.* ¶ 11.

262. *See* IOWA R. CIV. P. 1.281(4)(g)(3)(2). The Attorney Certificate on the Health Care Provider Statement asks the plaintiff's attorney to identify "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 [the patient]." IOWA R. CIV. P. 1.901—Form 19: Health Care Provider Statement in Lieu of Testimony. The disclosure asks for the date of each communication and requires plaintiff's counsel to produce all written or electronic communications. *See id.*

263. *See* IOWA R. CIV. P. 1.281(4)(g)(2).

264. *See* IOWA R. CIV. P. 1.281(4)(g)(3)(4).

265. *Id.* (providing that opposing party "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").

266. *See* IOWA R. CIV. P. 1.281(2)(c)(4)(2).

267. *See* IOWA R. CIV. P. 1.281(4)(g)(3)(3) ("[A] copy of the completed health care

good cause shown, the court may permit the health care provider to supplement the statement with information obtained after this deadline.²⁶⁸ The opposing party must raise any objections to the Statement within 30 days of its receipt.²⁶⁹ Potential objections may concern whether the health care provider is a bona fide treating physician, whether the provider has fully answered all of the questions, whether the claimant has complied with the notice and deadline provisions of the ECA Rule, or whether portions of the Statement should be redacted.²⁷⁰ The deadlines concerning the Health Care Provider Statement are set sufficiently in advance of trial to provide an adequate opportunity for the court to resolve any objections and for the proponent to remedy any deficiencies.

E. Judgment: Appeal and Res Judicata

1. Appeal

Some expedited trial programs seek to reduce costs and further accelerate the resolution of eligible disputes by making the resulting judgment both binding and *unappealable*.²⁷¹ In those jurisdictions, however, the expedited trial process is completely voluntary.²⁷² Parties who mutually consent to enter the summary proceeding not only agree to its restrictions on discovery and trial, but also waive their right to file a posttrial motion or an appeal, except for limited grounds like fraud or corruption or misconduct by the judge or the jury.²⁷³

provider statement must be served on all parties at least 150 days in advance of trial.”).

268. *See id.* (“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.”).

269. *Id.* (“Any objections to the health care provider statement, including an objection that the statement is incomplete or does not otherwise comply with [this rule], must be made within 30 days after receipt of the statement.”).

270. *See* IOWA R. CIV. P. 1.281(4) cmt. (g)(3)(3).

271. *See generally* IAALS, SUMMARY OF EXPEDITED TRIAL PROGRAMS, *supra* note 49 (identifying expedited trial programs that produce binding judgments with limited rights to appeal).

272. *See id.*

273. *See, e.g.*, CAL. CIV. PROC. CODE § 630.09 (West 2011) (“By agreeing to participate in the expedited jury trial process, the parties agree to waive the right to bring post-trial motions or to appeal from the determination of the matter,” except on the grounds of judicial or jury misconduct, corruption, fraud, or other undue means); S.C. 2013 Order, *supra* note 48 (providing that in the absence of a contrary agreement, parties waive the right to appeal on any ground but fraud); UTAH CODE JUD. ADMIN. R. 4-

Because the Iowa ECA Rule seeks to encourage actual adjudication, rather than ADR, the judgment in an Expedited Civil Action likewise binds the parties. However, because the plaintiff can opt into the process without the defendant's consent, the ECA Rule does not limit any party's right to file posttrial motions, such as a motion for judgment notwithstanding the verdict²⁷⁴ or for a new trial,²⁷⁵ or to file an appeal.²⁷⁶

2. *Res Judicata*

As previously discussed, some attorneys regarded the binding and mandatory nature of the ECA Rule especially troubling for defendants who are unilaterally forced to litigate under its accelerated and abridged procedures.²⁷⁷ A related issue raised in the public comments concerned whether a judgment rendered in an Expedited Civil Action would have preclusive effect in other suits involving the same or different parties. In particular, defendants feared they might be estopped, in future lawsuits brought by other plaintiffs, from relitigating issues already adjudicated in the Expedited Civil Action.

It is possible—perhaps even likely—that an Iowa court would refuse to apply this type of offensive nonmutual issue preclusion to judgments rendered in an Expedited Civil Action.²⁷⁸ In order for that type of issue

501(2)(G) (requiring that parties participating in the expedited jury trial pilot program waive the right "to file a motion for directed verdict or motion to set aside the verdict" and waive the right to move for a new trial or to file an appeal except on limited grounds).

274. *See* IOWA R. CIV. P. 1.1003.

275. *See* IOWA R. CIV. P. 1.1004.

276. *See* IOWA R. APP. P. 6.101, 6.102 (establishing the time and procedure for an appeal from a final judgment); *cf.* IOWA R. CIV. P. 1.281(1) cmt. (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.").

277. *See generally* Public Comments, *supra* note 97.

278. The Iowa Supreme Court, in *Hunter v. City of Des Moines*, set forth the requirements for issue preclusion in Iowa:

Before issue preclusion may . . . be employed in any case, these four prerequisites must be established: (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

300 N.W.2d 121, 123 (Iowa 1981) (citing *Bertran v. Glen Fall Ins. Co.*, 232 N.W.2d 527,

preclusion to apply to an Expedited Civil Action judgment, a court must determine whether the defendant was “afforded a full and fair opportunity to litigate” the particular issue in the Expedited Civil Action or whether other circumstances justify affording the defendant another opportunity to litigate that issue.²⁷⁹ The Iowa Supreme Court has held that issue preclusion does not apply to a small claims court judgment because the simple and informal procedures available in small claims court “have been tailored to the prompt, inexpensive determination of small claims and thus may be wholly inappropriate to the determination of the same issues when presented in the context of a much larger claim.”²⁸⁰ A defendant forced to litigate under the ECA Rule could similarly argue that its expedited procedures did not afford a full and fair opportunity to litigate the issues and that a defendant faced with a potentially much larger claim should be given another opportunity to litigate those issues with the benefit of full discovery, traditional evidence rules, and more complete argument and proof.²⁸¹

On the other hand, important differences exist between small claims proceedings and Expedited Civil Actions that might justify different treatment of issue preclusion.²⁸² Small claims jurisdiction in Iowa is limited to claims not exceeding \$5,000.²⁸³ Parties are not entitled to a jury trial in small claims suits, and the small claims court must use “simple and informal” procedures “without regard to the technicalities of procedure.”²⁸⁴ In contrast, the \$75,000 ceiling of the ECA Rule is significant enough that defendants would have an incentive to fully litigate the matter. In an Expedited Civil Action either party may request an expedited jury trial.²⁸⁵ Moreover, to the extent not otherwise provided in the ECA Rule, the

533 (Iowa 1975)).

279. *Id.* at 124–25; *see also* RESTatement (SECOND) OF JUDGMENTS § 29 (1980) (“A party precluded from relitigating an issue with an opposing party, . . . is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.”).

280. *Vill. Supply Co., Inc. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 554 (Iowa 1981) (internal quotation mark omitted).

281. *See id.*; *see also* IOWA R. CIV. P. 1.281(6) (“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.”).

282. *Compare* IOWA R. CIV. P. 1.281, *with* IOWA CODE § 631 (2013).

283. *See* IOWA CODE § 631.1(3) (2013).

284. *Id.* § 631.11(1).

285. *See* IOWA R. CIV. P. 1.281(4)(a).

evidentiary and procedural protections of the Iowa rules continue to apply to Expedited Civil Actions.²⁸⁶ Finally, the losing party to an Expedited Civil Action can appeal the judgment to correct any harmful error that might have occurred in the course of the expedited procedure.²⁸⁷

Thus, it remains uncertain whether Iowa courts would apply offensive nonmutual issue preclusion to Expedited Civil Actions. This uncertainty is compounded by the fact that “[t]he application of the doctrine of offensive issue preclusion . . . is a matter left largely to the trial court’s discretion, subject to reversal only for abuse of that discretion.²⁸⁸

Thus, while *res judicata* is traditionally a common law doctrine developed and applied on a case-by-case basis, the Advisory Committee thought it important to provide greater certainty concerning the possible preclusive effects of an Expedited Civil Action judgment. The ECA Rule thus expressly provides:

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.²⁸⁹

Under this provision, ordinary principles of claim and issue preclusion still bind the parties to an Expedited Civil Action.²⁹⁰ The judgment rendered therein will be conclusive between the parties (and their privies) unless a general exception to those common law doctrines exists.²⁹¹ A plaintiff will

286. See IOWA R. CIV. P. 1.281(1)(d) (providing that the Iowa Rules of Civil Procedure apply “[e]xcept as otherwise specifically provided by this rule”).

287. See *supra* notes 271–76 and accompanying text.

288. *Casey v. Koos*, 323 N.W.2d 193, 197 (Iowa 1982) (citing *Hunter v. City of Des Moines*, 300 N.W.2d 121, 124 (Iowa 1981)).

289. IOWA R. CIV. P. 1.281(6).

290. See *id.*

291. The Iowa Supreme Court explained the doctrine of claim preclusion in *Pavone v. Kirke*:

The general rule of claim preclusion holds that a valid and final judgment on a claim bars a second action on the adjudicated claim or any part thereof. “Therefore, a party must litigate all matters growing out of the claim, and claim preclusion will apply ‘not only to matters actually determined in an earlier action but to all relevant matters that could have been determined.’” Claim preclusion may preclude litigation on matters the parties never litigated in the

not be allowed “a second day in court on the same claim he made in the first action” against the defendant.²⁹² Accordingly, that plaintiff must contemplate whether he has any other related claims against that defendant before electing to proceed as an Expedited Civil Action, where his recovery will be restricted to \$75,000.²⁹³ Likewise, a judgment in favor of either the plaintiff or the defendant in an Expedited Civil Action will prohibit relitigation, in a later action between them on the same or a different claim, of any issue that was actually litigated and necessarily determined in the Expedited Civil Action.²⁹⁴

In contrast, someone who was not a party to the Expedited Civil Action cannot benefit or be bound by the Expedited Civil Action judgment.²⁹⁵ This allays the concern that an expedited judgment might support nonmutual offensive issue preclusion in a subsequent non-expedited action brought by a different party seeking a larger recovery. Hopefully, this provision will foster greater acceptance of the ECA Rule by defendants who find themselves involuntarily subject to its abbreviated provisions. And, by eliminating any uncertainty concerning the collateral use of these judgments in subsequent proceedings, the provision may even encourage litigants to bring stipulated Expedited Civil Actions regarding larger, otherwise-

first claim.

807 N.W.2d 828, 835 (Iowa 2011) (citations omitted); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 17 (1980) (“A valid and final personal judgment is conclusive between the parties, except on appeal or other direct review”); *id.* § 18 (stating the principle that, when claim preclusion applies, “[t]he plaintiff cannot thereafter maintain an action on the original claim or any part thereof”).

292. B & B Asphalt Co., Inc. v. T.S. McShane Co., Inc., 242 N.W.2d 279, 287 (Iowa 1976).

293. *See Pavone*, 807 N.W.2d at 836 (quoting *Arnevik v. Univ. of Minn. Bd. of Regents*, 642 N.W.2d 315, 319 (Iowa 2002)) (noting that “a second claim is likely to be barred by claim preclusion” if the acts complained of are the same or “where the same evidence will support both actions”); *Arnevik*, 642 N.W.2d at 320 (noting that it is the plaintiff’s “duty to explore and discover all of her possible causes of action and to bring them at the same time she brought her first claim”).

294. *See Vill. Supply Co., Inc. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 554 (Iowa 1981) (“Issue preclusion bars relitigation of an issue which the parties, or those sufficiently identified with them, have previously litigated.”); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 17(3) (“A judgment in favor of either the plaintiff or the defendant is conclusive, in a subsequent action between them on the same or a different claim, with respect to any issue actually litigated and determined if its determination was essential to that judgment.”).

295. *See IOWA R. CIV. P. 1.281(6).*

ineligible claims.

VII. LOOKING FORWARD

The Iowa Supreme Court has established a committee to facilitate the implementation of the ECA Rule and to deliver on the Rule's promise to expedite resolution of more civil claims in Iowa district courts.²⁹⁶ The court and its Advisory Committee will monitor the process, evaluate results, and modify any provisions that prove ineffective or problematic.²⁹⁷ Empirical data on the operation and use of the ECA Rule will prove essential.²⁹⁸

Iowa attorneys will need to gain confidence in the new procedure and become comfortable with its simplified and accelerated features. Hopefully, those attributes will encourage more litigants to submit their claims to Iowa courts and Iowa juries for resolution. The \$75,000 limit on recovery could also give more attorneys the opportunity to hone trial advocacy skills currently dulled by the dearth of jury trials. Indeed, the constraints on discovery and trial imposed by the ECA Rule will require attorneys to become even more focused and efficient advocates.

Most importantly, civil justice reform must continue. The ECA Rule and related general discovery amendments represent an important and innovative step toward making the Iowa court system more responsive and accessible to its citizens. Much more can likely be accomplished. The Iowa Supreme Court has already begun a study of how to improve the process and procedures used in domestic relations cases.²⁹⁹

Additionally, and as discussed above, the general discovery

296. *Summaries of Iowa's New Expedited Civil Action Rule and Recent Discovery Rules Amendments*, IOWA JUDICIAL BRANCH http://newsletter.iowacourts.gov/2015/January/Expedited_Civil_Action/ (last visited Mar. 16, 2015) ("A second committee that Chief Judge Greve of the Seventh Judicial District chairs, has been working on case processing aspects of implementing the ECA rule.").

297. *Id.* ("The supreme court will closely monitor operation of the new rule and case processing and will consider future amendments if necessary.")

298. A number of individuals and organizations, including the IAALS, the National Center for State Courts, and the State Justice Institute, have conducted empirical research to evaluate civil justice reforms adopted in other states. *See* IAALS, SUMMARY OF EMPIRICAL RESEARCH ON THE CIVIL JUSTICE PROCESS: 2008–2013 (2014) (summarizing 39 studies that include file–docket analysis and interviews); *see also* IAALS, MOMENTUM FOR CHANGE: THE IMPACT OF THE COLORADO CIVIL ACCESS PILOT PROJECT (2014); CIVIL JUSTICE INITIATIVE, *supra* note 46.

299. *See* 2015 Family Law Task Force Order, *supra* note 7.

amendments have authorized the Iowa Supreme Court to develop and approve pattern interrogatories and requests for production for use in specific types of civil cases.³⁰⁰ This project may require coordinated effort by the court and attorneys from relevant practice areas such as employment law, products liability, premises liability, and medical malpractice.

The court might also revisit the Task Force recommendation regarding single-judge case assignment.³⁰¹ Proponents of civil justice reform support the one-judge one-case approach as one of the most effective and efficient means of judicial management: the judicial officer who tries a case should also be the person who rules on pretrial matters, discovery, and dispositive motions.³⁰² Although the court may be unable to implement this reform on its own, that recommendation certainly deserves further study.

Only time and experience will determine whether Iowa's new Expedited Civil Action procedure will achieve meaningful savings of time or cost, increase the jury trial rate, or provide greater access to the courts for ordinary citizens. Ultimately, the success of the new rule will depend on its widespread acceptance and use. Although the ECA Rule has only been effective since January 1, 2015,³⁰³ initial indicators are promising: more than 70 Expedited Civil Actions were filed statewide in the Rule's first three months of existence.³⁰⁴ To paraphrase the mantra heard by fictional Iowa farmer Ray Kinsella, the Iowa Supreme Court has built the ECA Rule—it will now need to wait and see whether "they will come."³⁰⁵

We can hope that many years in the future, the ghost of a seasoned trial lawyer will magically appear in a beautiful nineteenth-century Iowa courthouse that once again hums with activity—judges, lawyers, clients, and jury trials. "Is this heaven?" the phantom trial lawyer will ask. "No," the folks in the courthouse will reply, "It's Iowa."

300. See discussion *supra* Part VI.A.2.

301. See *supra* notes 209–10 and accompanying text (discussing why the Advisory Committee did not recommend that the Iowa Supreme Court adopt a one judge—one case assignment rule in Expedited Civil Actions).

302. See ACTL-IAALS REPORT, *supra* note 27, at 18 ("A single judicial officer should be assigned to each case at the beginning of a lawsuit and should stay with the case through its termination.").

303. See 2014 ECA Order, *supra* note 2.

304. E-mail from Timothy S. Eckley, Assistant Counsel to the Chief Justice, Iowa Supreme Court, to Laurie Kratky Doré, Distinguished Professor of Law, Drake University Law School (Mar. 20, 2015) (relaying figures from Office of State Court Administration for the State of Iowa) (on file with author).

305. See *FIELD OF DREAMS* (Universal 1989).

APPENDIX

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, prefilings 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, prefilings 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.