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THE APPELLATE RULES AMENDMENTS—SUGGESTED FORMS AND TIMETABLES

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I. Introduction

On March 24, 1972, the Iowa supreme court, pursuant to its rule-making power,[1] adopted amendments to rules relating to appellate procedure,[2] which became effective on January 1, 1973. Although it may be observed that there is little that is new for those who are familiar with the federal practice,[3] appellate practitioners who have confined their activities to the Iowa supreme court should be advised as to the purpose, intent and mechanics of perfecting appeals under these latest revisions. These changes were prompted by a desire to avoid the cost, confusion and uncertainty that has plagued the system under the former rules of appellate practice.[4]

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The forms included as a part of this article are merely suggested forms prepared by the author as an aid in the preparation of appellate papers. Nothing herein is intended to suggest that the Iowa supreme court would either approve or disapprove any of the forms. None of the forms is intended to have any sequential relationship to any other form contained herein.

1 Iowa Code § 684.3 (1971); Iowa R. Civ. P. 371 (1971).

2 Iowa R. Civ. P. 340 *et seq.* (1973).

3 The amendments are patterned for the most part after the corresponding Federal Rules of Appellate Procedure adopted by the United States Supreme Court on December 4, 1967, which became effective on July 1, 1968. *See* Ward, *The Federal Rules of Appellate Procedure*, 54 A.B.A.J. 661 (1968). *Compare* Iowa R. Civ. P. 344 (1973) *with* Fed. R. App. P. 32.

4 *See, e.g.*, Culligan Soft Water Serv. v. Berglund, 259 Iowa 660, 145 N.W.2d 604 (1966); Mahon v. Mahon, 257 Iowa 563, 133 N.W.2d 697 (1965); Thorne v. Reiser, 245 Iowa 123, 60 N.W.2d 784 (1953); Nelson v. Fisch, 241 Iowa 1, 39 N.W.2d 594 (1949); Walker v. Walker, 239 Iowa 1055, 33 N.W.2d 413 (1948); Boyers v. Schuler

Because the new changes do draw heavily from the Federal Rules of Appellate Procedure, the changes should accomplish uniformity between the state and federal practice and diminish confusion for the sometimes federal practitioner.[5] In addition, if accepted and practiced in the spirit of their intent, they should "promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay."[6]

It is the purpose of this article to discuss the major changes of form suggested by the recent amendments.[7] The total subject of Iowa appellate practice and procedure was extensively covered in a recent work in this review and there is no need to repeat or elaborate upon what was said there, except to point out those important parts of the new rules which represent a departure from the former practice.[8] Suggested forms are included as an aid only, with the caveat that they are not intended as a substitute for one's own research in familiarizing oneself with the rules and with the underlying purpose intended by the court.

II. Scope and Effect of the Changes

The first nine appellate rules, 331 to 339, inclusive, remain unchanged, ostensibly for the reason that those rules are not within the rule-making power of the court.[9] The rules and cases interpreting such matters as the distinctions and procedural differences between interlocutory and final appeals,[10] the limitation on jurisdiction of the appellate court based upon the amount in controversy,[11] the scope of review,[12] the time for perfecting the appeal[13] and the jurisdictional questions pertinent thereto,[14] the notice of appeal,[15] and the procedures for filing and testing the sufficiency of and judgment on supersedeas[16] are not affected by the rules changes.

The changes contemplated by the amendments relate to such matters as the perfection of the record on appeal (including the filing and the docketing of

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Co., 3 N.W.2d 149 (Iowa 1942). The comment was also made as long as thirty-five years ago that the title "Appeal and Error" bulks larger in the American digest system than any other title. Ladd, *Assignments of Errors and the New Iowa Supreme Court Rules*, 21 Iowa L. Rev. 693 (1936).

5 The Federal Rules were adopted to provide a uniform system throughout the various Federal Circuits. Before the adoption of the Federal Rules of Appellate Procedures in 1968, the practice in each circuit varied. *See* Ward, *The Federal Rules of Appellate Procedure*, 54 A.B.A.J. 661 (1968).

6 Ward, *The Federal Rules of Appellate Procedure*, 54 A.B.A.J. 661 (1968).

7 *See also*, Wilson, *The New Iowa Rules of Appellate Procedure*, Iowa State Bar Association—Workshop Outlines 87 (1972).

8 Rendleman & Pfeffer, *Appellate Practice and Procedure*, 19 Drake L. Rev. 74 (1969).

9 Iowa R. Civ. P. 371 (1971). *See* Stolar v. Turner, 236 Iowa 628, 19 N.W.2d 585 (1945).

10 *Id.* 331, 332.

11 *Id.* 333.

12 *Id.* 334.

13 *Id.* 335.

14 *See, e.g.*, Johnson v. Iowa State Hgwy. Comm'n, 257 Iowa 810, 134 N.W.2d 916 (1965); Wilson v. Corbin, 241 Iowa 226, 40 N.W.2d 472 (1950).

15 Iowa R. Civ. P. 336 (1971).

16 *Id.* 337, 338, 339.

the record), the form and substance of the briefs, dismissal of appeal for want of prosecution, reservation by the court of the power to shorten or enlarge time, preservation by the court of its power to file an affirmance without opinion, petitions for rehearing, procedendo and the rules relating to the filing and service of papers and documents.[17]

III. Once Again Over Lightly - Notice Distinctions Between Criminal and Civil Appeals

In the past there has been much confusion among lawyers relating to the initial procedures for perfecting a criminal, as opposed to a civil, appeal.[18] Those distinctions are not changed by the new rules. The jurisdictional requirements for perfecting a criminal appeal are not found in the Rules of Civil Procedure, but are found in Chapter 793 of the *Iowa Code*. A form for both criminal and civil appeals is included here only for the purpose of avoiding further confusion.

Suggested Form No. 1

NOTICE OF APPEAL (Civil)[19]

(Caption in the District Court)

To the Above Named Plaintiff and to ____________, his attorney, and to ____________, Clerk of the District Court:

The above named defendant hereby appeals to the Supreme Court of Iowa from the final judgment entered herein on the ____ day of ______, 19__, and all rulings and orders inhering therein, and from (include here all orders and decrees appealed from, e.g., denial of motion for judgment notwithstanding the verdict, denial of motion for new trial, etc.) entered thereafter on the _____ day of _______, 19__. You are also notified that said appeal will be heard before the Supreme Court of Iowa as provided by law and the rules of said Court.

____

Signature
Address
Attorney for Defendant-Appellant

Proof of Service[20]

I hereby certify that the foregoing Notice of Appeal was filed in my office by the defendant-appellant on the _____ day of ______, 19__, and the filing thereof noted in the proper docket; and that I did on the_____ day

[17] A preliminary copy of the amendments are published in the advance sheets. 200 N.W.2d No. 2 (1972).

[18] *See* Rendleman & Pfeffer, *Appellate Practice and Procedure*, 19 Drake L. Rev. 74, 79 (1969).

[19] Iowa R. Civ. P. 336 (1971). This Rule remains unchanged from the prior practice. The Rule provides that the notice of appeal is filed with the clerk of the district court who then serves it. Service of the notice of appeal is not governed by Iowa R. Civ. P. 353 (1973).

[20] The certificate of service of this notice of appeal is governed by Iowa R. Civ. P. 336 (1971). Proof of service of other papers is governed by Iowa R. Civ. P. 353(d) (1973).

of ______, 19__, mail (or deliver) a copy of said notice to each of the following named attorneys or parties at the addresses noted below:

Abel Advokat
Suite 549
Esquire Building
Des Moines, Iowa 50322

____
Signature
Clerk of the District Court
Polk County, Iowa

Suggested Form No. 2

NOTICE OF APPEAL (Criminal)
TO THE SUPREME COURT OF IOWA[21]

TO: The State of Iowa[22]

______________________ Attorney General for the State of Iowa
______________________ County Attorney for
__________ County, Iowa

You and each of you are hereby notified that the defendant, ________ does hereby appeal from the final judgment entered herein on the ____ day of ________, 19__, and from each and every ruling prejudicial to said defendant during the progress and hearing of said case.

You are further notified that said appeal will come on for hearing in its regular order before said Court at the State Capitol Building, in Des Moines, Iowa, or at such other place as the Court may order.

____
Signature
Attorney for Defendant-Appellant
816 Courthouse Square
Des Moines, Iowa

CERTIFICATE OF SERVICE

I, __________, state that I am the attorney for the defendant-appellant, that I delivered a copy of the above Notice to ________, the County Attorney for Polk County, Iowa, on the ______ day of ________, 19__, and that on the ______ day of ________, 19__, I mailed a copy of said Notice of Appeal to the Attorney General of the State of Iowa addressed to him at his office in the

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[21] Notice of appeal in a criminal case is not governed by IOWA R. CIV. P. 336 (1971), but by statute, IOWA CODE § 793.4 (1971). The appeal is not perfected by filing a notice with the clerk of the district court. Blanchard v. Bennett, 167 N.W.2d 612 (Iowa 1969); State v. Fees, 250 Iowa 163, 93 N.W.2d 103 (1958); State v. Thomas, 238 Iowa 998, 29 N.W.2d 198 (1947).

[22] IOWA CODE § 793.4 (1971) states: "An appeal is taken and perfected by the *party or his attorney* serving on the adverse party or his attorney . . . a notice . . . of appeal. . . ." (emphasis added). *See* State v. Horsey, 176 N.W.2d 769 (Iowa 1970) (notice was held defective which was not addressed to the state and not served on the state or county attorney).

State Capitol Building, Des Moines, Iowa, by depositing the same with the United States Postal Service with sufficient stamps affixed.[23]

Signature
Attorney for Defendant-Appellant
Address

III. The Record on Appeal

Under the former practice, the appellant was required to prepare a typewritten *abstract* of the record, which included the relevant parts of the trial court record, including the pleadings, evidence, rulings and judgment which were material to the issues raised on the appeal.[24] The procedure then provided for the opposing party to propose amendments to the proposed record, and if no agreement between the parties was reached, a hearing was had before the trial court to "settle the record."[25] Once an order settling the record was entered in the trial court, the relevant matters were reduced to a formal printed record which served the purpose of the record on appeal in the supreme court.[26]

The new provisions, however, provide a different method of perfecting the appeal after notice and impose upon the appellant's attorneys some new duties with respect to those parts of the rules relating to the preparation of the record for appeal.

Rule 340(a) specifically defines the record on appeal.[27] Subsection (b) of that rule requires the appellant to order a transcript of "such parts of the proceedings not already on file as he deems necessary"[28] from the court reporter within 10 days after filing the notice of appeal. Appellant is then re-

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[23] Iowa Code § 793.4 does not specifically require that notice be served upon the Attorney General. However, Section 793.5 states that "when an appeal has been taken by the defendant in a criminal case, all filings by the appellant on appeal shall be served on the attorney general." In view of the strict interpretation of the statutes in question, the safe way would be to serve the Attorney General too, for the reason that Section 793.4 requires a "filing" as well as the service of the notice.

The final judgment is, according to the cases, the sentence. Blanchard v. Brewer, 318 F. Supp. 28 (S.D. Iowa 1969), *aff'd* 429 F.2d 89 (8th Cir. 1970), *cert. denied,* 401 U.S. 1002 (1970); State v. Klinger, 259 Iowa 381, 144 N.W.2d 150 (1966).

Iowa Code § 793.4 requires a filing of "evidence of service." It does not prescribe the form of the return. Iowa Code § 793.5 requires that "all filings" by the appellant on appeal be served on the Attorney General. No case found describes the method of providing evidence of service. Blanchard v. Brewer, 318 F. Supp. 28 (S.D. Iowa 1969), *aff'd* 429 F.2d 89 (8th Cir. 1970), *cert. denied,* 401 U.S. 1002 (1970), a case presenting, in the words of the Eighth Circuit, "exceptional circumstances," indicates that where there was actual notice of the appeal, when taken with all the other extenuating facts and circumstances of the case, the defendant was effectively denied the right to appeal in violation of his 14th amendment rights.

[24] Iowa R. Civ. P. 340(a) (1971).

[25] *Id.* 340(c) (1971).

[26] *Id.* 340(f) (1971).

[27] *Id.* 340(a) (1973): "The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries prepared by the Clerk of the trial court shall constitute the record on appeal in all cases."

[28] *Id.* 342(b).

quired to file a Certificate of Ordering Transcript with the clerk of the supreme court within 14 days after filing the notice of appeal.[29] The certificate must be according to the form prescribed by the rules.[30] It should avoid the delay occasioned by the failure to order the transcript within a reasonable time, thereby causing the necessity of prolonged and numerous extensions of time. Under the prior rules, extensions of time for filing the record were approved by the trial court.[31] Under the new amendments, however, only the supreme court has the power to extend the time.[32] Thus, the expression is clear: the rule is intended to increase the speed and efficiency of appellate litigation. The rule places the burden upon the appellant to be serious about the appeal when taken, and it should have the effect of avoiding those kinds of appeals which are prosecuted only for the purpose of delay.

Suggested Form No. 3

CERTIFICATE OF ORDERING TRANSCRIPT

I, ______________, do hereby certify that I am the attorney of record for the appellant in the above captioned matter and that on the _______ day of _____________, 19___, I ordered a transcript of so much of the proceedings as is necessary to this appeal from John C. Fastriter, an official court reporter of the State of Iowa, who reported the proceedings in the trial court.

____
Signature
Attorney for Defendant-Appellant
Address

A. *Designation of Parts of Record Relied Upon*

Rule 340(a) permits the appellant to order only those parts of the transcript which he will rely upon and which will be relevant to the appeal. This is a departure from the former practice where the complete transcript was prepared and the record on appeal was ultimately abstracted from the transcript. However, unless the appellant intends to include all of the transcript, it is incumbent upon him (also within 10 days) to file and serve upon the appellee a designation as to the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on appeal.[33] Apparently if the entire transcript is to be filed, no such designation is necessary. If the appellee thinks that additional parts of the transcript are necessary, he must file and serve upon the appellant a designation of the additional parts of the transcript to be included. Appellant is then permitted four days to order the additional parts, and if he fails to do so within that time, the appellee may

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[29] *Id.*
[30] *Id.* *See* suggested form No. 3.
[31] *Id.* 342(a) (1971).
[32] *Id.* 345 (1973).
[33] *Id.* 340(a).

order the parts or apply to the trial court for an order requiring the appellant to do so.[34]

Suggested Form No. 4

DESIGNATION OF PARTS OF TRANSCRIPT TO BE INCLUDED IN THE RECORD AND STATEMENT OF ISSUES TO BE INCLUDED IN THE APPEAL

Respondent-appellant sets forth herein the following designated parts of the transcript which appellant intends to include in the record and the following issues which appellant intends to present on appeal:

DESIGNATED PARTS OF RECORD

1. That portion of the testimony of petitioner-appellee relating to the breakdown of the marriage relationship, to the property of the parties, and to the amounts necessary for the regular maintenance of the appellee. In addition, petitioner's testimony with respect to the respondent-appellee's income for the two years prior to the dissolution action.
2. That portion of the testimony of the respondent-appellant relating to his financial statement, his current earnings and the present condition of his health, and the testimony relating to his diminished future earning capacity and his anticipated future expenses.
3. That portion of the testimony of petitioner's corroboration witness that there was a breakdown of the marriage relationship.

Issues to Be Presented On Appeal

1. That it is the legislative policy of Iowa that dissolution is not based primarily upon the concept of fault; that an award for alimony in excess of proven needs is punitive in nature and is violative of legislative intent.
2. That the award to the petitioner in the amount of $1,000.00 per month for permanent alimony and $25,435.00 in property settlement is unreasonable in light of all the circumstances.
3. That alimony should not be granted in perpetuity.

Suggested Form No. 5

APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF THE TRANSCRIPT

Petitioner-Appellee proposes that the following parts of the transcript be included in the Appeal:

1. That part of the testimony of the petitioner relating to the fact that she had worked during the years appellant was in medical school and that her current income as a medical clerk is $2.00 per hour.

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[34] The four day requirement is a departure from the corresponding federal rule which imposes no time limit upon ordering the additional parts. FED. R. APP. P. 10(b).

B. *The Record where no report is made or where the transcript is unavailable*

Some cases are not reported[35] and it is conceivable that a transcript may be unavailable for a variety of reasons. It is then incumbent upon the appellant to prepare a statement of the evidence "from the best available means." The statement is then to be served upon the appellee who has the option of proposing and serving amendments or objections within 10 days after the service. The rule then provides that a hearing may be had before the trial court to settle and approve the record so made.[36]

In passing, it is interesting to note that this portion of the rule does not provide for "filing and serving" the statement of the evidence. Instead it requires only that it be served. The language is taken verbatim from Federal Rule 10[37] and can best be described as an oversight. Obviously if a hearing to settle the evidence is to be had, it should be filed in order to bring the matter properly to the attention of the court. In any event, however, it appears that mere filing would not be sufficient under the rules without serving the statement on the opposite party or his attorney.

C. *The Agreed Statement of the Record*

A simplified method of preparing the appellate record is available under the amendment which adopts some of the attributes of former Rule 340(j) but is more directly based on Federal Rule of Appellate Procedure 10(d). The new Rule 340(d) permits the parties to prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided. The rule permits, and indeed encourages, setting forth only those facts which are essential to a decision of the issues presented.[38] It does not require that the agreed statement be approved by the trial court prior to filing with the clerk of the trial court.[39] It does, however, appear that the Iowa rule makes the filing of the agreed record an option in lieu of filing an appendix to the briefs.[40] This observation is concluded from the choice of language adopted by the Iowa court in formulating the rule. The federal rule from which the agreed statement provision is derived states that "copies of the agreed statement *may* be filed as the appendix required by Rule 30."[41] This language would indicate that the appellant could file an appendix in addition to the agreed statement of the record on appeal. However, the Iowa court, in

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35 *See, e.g.*, IOWA R. CIV. P. 178.1.

36 IOWA R. CIV. P. 340(c) (1973).

37 FED. R. APP. P. 10(c).

38 The practice of including matters not essential to the appeal has been a problem under the former practice. *See* Davidson v. Cooney, 259 Iowa 1278, 147 N.W.2d 819 (1967); Haas v. Evening Democrat Co., 252 Iowa 517, 107 N.W.2d 444 (1961).

39 The Iowa court, in adopting the rule, omitted the following language from FED. R. APP. P. 10(d): "If the statement conforms to the truth, it, together with additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court . . . ."

40 IOWA R. CIV. P. 340(d) (1973).

41 FED. R. APP. P. 10(d) (emphasis added).

formulating the rule, chose to substitute the imperative *shall* for *may* which is a clear indication that the Iowa supreme court intended that if an agreed statement of the record is settled and filed, no appendix to the briefs is permitted. The agreed statement, together with the clerk's certification of the docket entries, would constitute the record on appeal.

It would appear that Rule 340(d) permits the parties to take advantage of a real opportunity to reduce the cost of appeal by filing the agreed statement of the record in those cases to which the procedure seems appropriate. This represents a simplification of the procedures suggested in former Rule 340(j). If it is to be interpreted that the agreed statement obviates the need for the preparation of an appendix to the briefs, it would reduce legal fees and printing costs. However, the procedure does not lend itself to use where there is a necessity to set forth a considerable amount of evidence, as in cases where the main issue is the sufficiency of the evidence to sustain a finding of fact.[42] Although lawyers in the adversary system are traditionally apprehensive about giving away advantage, it should be remembered that under the new procedure the court has the complete transcript of the evidence before it for reference if it deems it necessary to refer to the evidence in more detail.[43] Additionally, the court has retained the power to call up additional parts of the record not transmitted by the parties.[44]

D. *Time for Filing the Agreed Statement*

Rule 340(d) provides that the agreed statement, as the record on appeal, shall be filed within the time provided in Rule 341(b). However, the rule suffers from slight ambiguity in that Rule 341(b) provides no specific time schedule for the agreed statement and contains a reference back to Rule 340(b) which contains several critical time requirements on other aspects of the appellate process. The clearest interpretation seems to be, in view of the necessity of a workable application of the rule, that the agreed statement should be filed upon receipt of the appellee's brief, or at such earlier time as the parties agree or the court may order. This is in keeping with the interpretation

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42 IOWA R. CIV. P. 340(b) (1973) provides: "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion."

43 The court adopted its own emphasis in promulgating the following language in IOWA R. CIV. P. 344.1(b):

> *In designating parts of the record for inclusion in the appendix; the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.*

This portion of the rule is a verbatim adoption of the corresponding part of FED. R. APP. P. 30(b) with the exception that the Iowa court chose this sentence for special emphasis.

44 IOWA R. CIV. P. 341(d) provides:

> Any parts of the record which have not been transmitted to the Supreme Court shall, on the order of the Supreme Court or on the request of any party, be transmitted to the Supreme Court by the clerk of the trial court. *The parts of the record not transmitted to the Supreme Court shall nevertheless be part of the record on appeal for all purposes.* (emphasis added).

that an agreed statement may stand in lieu of the appendix to the briefs,[45] the latter of which may be filed after the receipt of the appellee's brief by selection of the optional method of preparing the appendix.[46] It is also in keeping with the concept that the record should be made up from the issues raised by the briefs of the parties, an idea that lends itself to a less voluminous record and consequently reduced cost.

Suggested Form No. 6

AGREED STATEMENT AS THE RECORD ON APPEAL

The appellant and the appellee hereby stipulate and agree that the following Agreed Statement shall be the Record on Appeal in the above captioned case:

Petitioner and respondent were married in 1941. They have two children: Jim, who has reached his majority and Mark, who is in college at Iowa State University. After discharge from the service following World War II respondent attended pharmacy school at Drake University, and then attended medical school at the University of Iowa. During the time that he was in medical school the petitioner worked as an assistant medical records librarian. Upon graduation from medical school, respondent practiced medicine at Algona, Iowa, and at Eagle Grove, Iowa. At Eagle Grove, the petitioner assisted him with his account books and insurance records. The respondent came to Ames, Iowa, in 1965, and practiced there until October of 1970. The jointly-owned property of the parties is set forth in the balance sheet introduced and received as Respondent's Exhibit 1. Petitioner's maintenance requirements since separation have been: house payments, $195.00 per month; taxes, 630.00 per year; electricity, $45.00 per month; household insurance, $162.00 per year; gas, $38.00 per month; water and trash removal, $11.00 per month; car insurance, $60.00 per year; telephone bill, $65.00 per quarter; gasoline for car, $40.00 per month; life insurance, $72.45 per year; clothing expenses, $6000.00 per year.

Respondent's income for the year preceding the trial was $71,000.00. Petitioner is currently working part time for a medical doctor, doing insurance work. There is nothing physically wrong with her health. She owns in her own right $1,000.00 equity in an investment club. She has $530.00 in the bank and $1,500.00 in certificates of deposit, most of which she has saved from the money which the respondent has paid her since the separation. Respondent has paid her $1,500.00 per month since the commencement of the action, for maintenance.

Petitioner's corroborating witness testified as to the breakdown of the marriage relationship.

Respondent's net worth is shown on Exhibit I, a balance sheet prepared by his accountant, showing a net worth of the parties of $51,000.00. Respondent's income is shown on Exhibit 3.

Respondent plans to move to California, where he has a firm commitment to work for another doctor. His pay will be $2,000.00 per month. Exhibit 2 shows the terms of the employment. Malpractice insurance will

[45] *Id.* 340(d).
[46] *Id.* 344.1(c).

be between $2,500.00 and $5,000.00 per year. His income tax liability, paid by withholding, will be $400.00 per month. Respondent has a health problem and has been advised by his doctors that he must cut down on his work and retire from general practice (Respondent's Exhibit 2). His intentions for the future are to work only 40 hours per week. His projected income is limited to $35,000.00 per year, gross. Out of the anticipated income, his anticipated monthly expenses are $400.00 for income tax; $300.00 for the maintenance of his son in college; $200.00-400.00 for malpractice insurance; $100.00 for automobile expense.

In addition, respondent will be required to pay his own attorney fees and the attorney fees for the petitioner in the prosecution of this suit and appeal.

Signed - Attorney for Petitioner-Appellee

Signed - Attorney for Petitioner-Appellant

E. *The Distinction Between the Record and the Appendix to the Briefs*

One area where confusion should be immediately eliminated is the distinction between the "record on appeal," as defined in Rules 340 and 341, and the "appendix to the briefs," as required by Rule 344.1. As noted above, the appellate record, under the older rules, consisted of the typewritten abstract of the record, which, after being settled by agreement or order of the trial court, was printed in final form and became the record on appeal. The court did not, under the older version of the rules, enjoy the opportunity of having the whole record before it. The latest edition, however, provides that the record shall be composed of, and indeed is limited to, the original papers and exhibits filed in the trial court, the transcript of the proceedings and a certified copy of the docket and calendar entries.[47] A complete transcript of the evidence is not necessary and the appellant shall "order such parts of the proceedings . . . as he deems necessary for inclusion in the record."[48] There is nothing in the rules which requires a printing of the record as thus defined. One copy only need be certified by the clerk of the trial court to the clerk of the supreme court.[49]

The appendix to the briefs, however, is merely a designation of those parts of the record to which the parties wish to draw the court's attention. It is not the record, and lawyers should be cautioned not to treat the appendix as the record itself.[50] If the purpose of the new rules is to be served, the appendix should be treated only as an "addendum to the briefs for the convenience of the judges."[51] In its simplest analysis the appendix to the briefs is nothing more than a communication of so much of the formal record as is important

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47 *Id.* 340(a).
48 *Id.* 340(b).
49 *Id.* 341(b).
50 *See* Ward, *The Federal Rules of Appellate Procedure*, 54 A.B.A.J. 661, 664 (1968).
51 *Id.*

to the appeal and appellate practitioners are well advised to observe the golden mean—"never too much."[52]

When properly followed, the advantage of this distinction to the litigants is the advantage of diminished time and cost. The advantage to the court is the simplification and clarification of the factual issues. The older rules encouraged verbosity in the preparation of the record, as the fear of omission was a natural consequence of the operation of the rules. The new procedure, however, provides the opportunity for the elimination of that fear by permitting a partial designation of the trial court record, without printing costs, and the selection of the important parts for inclusion in the appendix to the briefs upon the assurance that the court has available to it the whole record from the trial court.

Suggested Form No. 7

REQUEST TO TRANSMIT THE REMAINING RECORD

To: The Clerk of the District Court for ________ County

You are hereby requested, pursuant to Iowa Rule of Civil Procedure 341(b), to transmit the remaining record to the Clerk of the Supreme Court, including the transcript and the following exhibits necessary for the determination of the appeal in the above captioned case:

Plaintiff's Exhibits Nos. 1, 3, 7, 9 and 10.
Defendant's Exhibits Nos. A, B, C and F.

____
Signature
Address
Attorney for defendant-appellant

V. The Briefs

A. *Time for Filing*

Rule 343(a) requires the appellant to serve and file his brief within 50 days after the date on which the appeal is docketed. This provision gives 10 days more than the corresponding federal rule.[53] Assuming that the appeal is docketed on the last, or 40th day after filing the notice of appeal as permitted by Rule 342, the maximum time permitted for filing the appellant's brief would be 90 days from the date of filing the notice of appeal. This rule represents a reduction of time from the former method, which provided 90 days to file the printed record[54] and an additional 45 days to file the appellant's brief.[55] Thus the maximum time for serving and filing the appellant's brief is reduced from 135 days from the date of the filing of the notice of appeal to 90 days from filing the notice of appeal. Of course, this time is the maximum permitted by

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52 This is the express intent of the rule. *See* Iowa R. Civ. P. 344.1(b) (1973).
53 *Compare* Iowa R. Civ. P. 343(a) (1973) *with* Fed. R. App. P. 31(a).
54 Iowa R. Civ. P. 342 (1971).
55 *Id.* 343.

the rules in the absence of an extension,[56] and *in the event that the appeal is docketed within a shorter time, the time for filing the appellant's brief would be decreased accordingly.* The time for filing and serving the appellee's brief remains the same as the former practice.[57]

The new rule provides that the appellant "may" serve and "file" a reply brief within 14 days after receipt of the appellee's brief, but except for good cause shown a reply brief "must" be filed at least three days before argument. This rule seems to be subject to two interpretations. Because of the choice of the word "may" the filing of the reply brief is optional. However, the language could be interpreted to mean that the filing could go beyond the 14 day period, so long as it is filed within three days of the time set for argument. However, the interpretation that seems to be more commensurate with the philosophy of the rules is that it must be filed, if at all, within 14 days after the date of service of appellee's brief, and it is possible that this time could be shortened if, perchance, the date set for argument is within the 14 day period. It would seem that the desire to speed the disposition of appeals would favor the latter interpretation, although it could work hardships in terms of lead time for printing and service of the reply brief.[58]

B. *The form of the briefs*

There are several changes in the form of the briefs under the new appellate rules which are worthy of note, including matters which are inserted for the convenience of the court in identifying the parties, such as the requirement of color coding[59] and the manner in which the parties are to be designated in the briefs.[60] The new rules relating to the form and contents of the briefs

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[56] "The Supreme Court may shorten the periods described above for serving and filing briefs, either by rule for all cases or by order for specific cases." IOWA R. CIV. P. 343(a) (1973).

[57] "The appellee shall serve and file his Brief within 30 days after service of the brief of the appellant." IOWA R. CIV. P. 343(a) (1973).

[58] IOWA R. CIV. P. 343(a) requires that the reply brief be filed within three days of argument. Rule 353(a) provides that service may be by mail. Rule 353(e) generally provides if a person is required or permitted to do an act within a prescribed time after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed time. Quaere: would the three days before argument requirement be taken up by the three day additional time provision of Rule 353(e)?

[59] IOWA R. CIV. P. 344.2(b) (1973). This follows FED. R. APP. P. 32(a) which provided in part:

> If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix . . . should be white.

[60] "Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designation as 'appellant' and 'appellee.' It promotes clarity to use the designation used in the lower court, or the actual names of the parties, or descriptive terms such as 'the employee,' the 'injured person,' the 'taxpayer,' the 'decedent,' etc." IOWA R. CIV. P. 344(d) (1973).

are drawn heavily from Federal Rule 28, although some of the provisions of the older version of Iowa Rule 344 are retained.

1. *Table of Contents*

Rule 344(a)(1) requires the brief to contain a table of contents and a table of cases, arranged in alphabetical order, together with statutes and other authorities, with reference to the pages of the brief where they are cited.[61] This provision is taken from Federal Rule 28(a)(1) and was not included in the former Iowa Rules.

Suggested Form No. 8

TABLE OF CONTENTS

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TABLE OF AUTHORITIES

I. Judicial Decisions:

Boggs v. Duncan Schell Furniture Co., 163 Iowa 106, 143 N.W. 482 (1913) 20, 30
Burnett v. Banks, 130 Cal. App. 2d 631, 299 P.2d 579 (1955) 42
Brennan v. United Hatters of America, 73 N.J.L. 729, 65 A. 165 (1906) 22, 24, 26
Cunningham v. Burbank Bd. of Realtors, 262 Cal. App. 2d 211, 68 Cal. Rptr. 653 (1968) 22
Dunshee v. Standard Oil Co., 152 Iowa 618, 132 N.W.2d 371 (1911) 20
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Owen v. Williams, 322 Mass. 356, 77 N.E.2d 318 (1948) 28
Willis v. Santa Ana Community Hosp., 58 Cal. 2d 806, 376 P.2d 568, 26 Cal. Rptr. 640 (1962) 22
Wilcox v. Supreme Council, 210 N.Y. 370, 104 N.E. 624 (1914) 41

[61] IOWA R. CIV. P. 344(a) (1973).

II. Statutes:
Iowa Rule of Civil Procedure 344(f)(5) 36

III. American Law Institute Prouncements:
Restatement (Second) of Torts
§ 501 (1965) 22
Restatement (Second) of Torts
§ 502 (1965) 24

IV. Books and Treatises:
12A W. Fletcher, Cyclopedia of Corporations
§§ 5696-5706 (1972) 29
1 F. Harper & F. James, Law of Torts
§ 6.11 (1956) 20, 27
W. Prosser, Law of Torts
§ 124 (3d ed. 1964) 20, 25, 26
9 J. Wigmore, Evidence
§ 2491 (3d ed. 1940) 37

V. Law Review Articles:
Forkosch, An Analysis of the "Prima Facie Tort" Cause of Action, 42 Cornell L. Rev. 465 (1957) 30
Note, Abstaining from Willful Injury, 10 Syracuse L. Rev. 53 (1958) 30

VI. Other Authorities:
Annot., 9 A.L.R.2d 228 (1950) 30

2. *Statement of the Issues*

Although the Iowa supreme court retains its constitutional and statutory function as a court for the correction of errors at law and the review of equity cases de novo,[62] the troublesome distinction of form between the assignment of errors in cases at law and propositions relied upon for reversal in cases triable de novo is eliminated.[63] Brief points conforming to the propositions or errors relied upon for reversal are no longer required. Instead, the new rule merely requires a simplified statement of issues presented for review together with a complete list of all cases and statutes referred to in the argument covering the point, with the four most pertinent cases being emphasized in boldface type.[64] This unified form applies to all classes of cases on review, whether at law or triable de novo.

As a matter of appellate practice, issues are best stated when they alert the court as to the precise question raised and when they create an interest in the court to decide the issues in a manner favorable to the person advancing

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62 Iowa Const. Art. V, § 4; Iowa R. Civ. P. 334 (1973).
63 Iowa R. Civ. P. 344(a)(3) (1973).
64 Id. 344(a)(2). The requirement that the list of cases be added to the corresponding statement of issues is a departure from the corresponding federal rule. *Compare* Fed. R. App. P. 28(a)(2).

them.[65] They should not, as is too often the case, be stated in the abstract without reference to the facts which give rise to them. They should serve as a forecast for both the factual and legal arguments to follow. Although the language of the prior rule that "[t]he errors or propositions shall be separately stated and numbered, in substantially the order they are presented in the . . . brief"[66] is eliminated in the new rules, it would seem that the philosophy of that language remains in all appellate argument. In order to communicate clearly, the issues should be stated in the same chronological order in which they will appear in the brief. Also, although brief points conforming to the " 'Statement of Errors' or 'Propositions' "[67] are no longer required, it would seem that sub-issues could be conveniently stated and would not necessarily be contrary to the intent of the rule if the sub-issues are stated in such a manner that they are an aid to the court in understanding the main issues presented. In any event, it should be remembered that a statement of the issues is simply a method of communication to the court and that the overriding philosophy of the rules changes is to promote simplicity in procedures.[68]

Suggested Form No. 9

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. SHOULD THE IOWA COURT RECOGNIZE A CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE BASED UPON A PROPRIETARY RIGHT CREATED BY MEMBERSHIP IN THE DEFENDANT BREED PROMOTION ASSOCIATION WHERE THE FACTS SHOW THAT PLAINTIFF MAINTAINED HIS LIVING AS A PRODUCER OF REGISTERED CATTLE AND WHERE THE FACTS SHOW THAT PLAINTIFF WAS EXPELLED FROM MEMBERSHIP IN THE DEFENDANT ASSOCIATION WITHOUT NOTICE AND WITHOUT HEARING?

Cases and Authorities:[69]

Clarke v. Figge, 181 N.W.2d 211 (Iowa 1970).

Willis v. Santa Ana Community Hosp., 58 Cal. 2d 806, 376 P.2d 568 (1962) 26 Cal. Rptr. 640.

Boggs v. Duncan-Schell Furniture Co., 152 Iowa 106, 143 N.W. 482 (1913).

Brennan v. United Hatters of America, 73 N.J.L. 729, 65 A. 165 (1906).

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[65] *See* Henneman v. McCalla, 260 Iowa 60, 149 N.W.2d 447 (1967).

[66] IOWA R. CIV. P. 344(a)(3) (1971).

[67] *Id.* 344(a)(4).

[68] *See* Note 5, *supra.*

[69] The first four *authorities* are in bold face type as provided by the rule. See IOWA R. CIV. P. 344(a)(2) (1973). The rule suggests some selectivity. It is to be noted that in the example the author elects to cite the *Dunshee* case fifth in the order, placing two cases from foreign jurisdictions ahead of it. This is for the reason that *Dunshee* and *Boggs* are practically identical for the purpose cited and the only justifiable reason for citing the latter is to add credence to the former. Overcitation is not acceptable practice. See Rendleman & Pfeffer, *Appellate Practice and Procedure*, 19 DRAKE L. REV. 74, 85 (1969). In the exemplified form, it is more important to bring the *Willis* and *Brennan* cases to the court's attention because they cover different points relating to the proposition stated.

Dunshee v. Standard Oil Co., 152 Iowa 618, 132 N.W. 371 (1911).
Prosser, Law of Torts § 124 (3d ed. 1964).

II. DID THE DEFENDANT HAVE A PRIVILEGE TO SUSPEND THE PLAINTIFF FROM MEMBERSHIP AND REFUSE TO REGISTER HIS CATTLE IN ORDER TO MAINTAIN ITS CORPORATE INTENTS AND PURPOSES?

1. If the privilege exists in favor of the defendant, is the privilege conditioned upon defendant:
   a. obtaining jurisdiction over the subject matter and the person of the plaintiff by following its own established procedures for notice hearing?
   b. showing that it did not act in an unlawful manner?
   c. showing that it acted without malice?[70]

Cases and Authorities
Owen v. Williams, 322 Mass. 356, 77 N.E.2d 318 (1948).
Godin v. Niebuhr, 236 Mass. 350, 128 N.E. 406 (1920).
Boggs v. Duncan-Schell Furniture Co., 163 Iowa 106, 143 N.W. 482 (1913).
Restatement of Torts § 768 (1938).
Restatement of Torts § 768 (Tent. Draft No. 14, 1965).
12A W. Fletcher, Cyclopedia of Corporations §§ 5696, 5907 (1972).

III. WAS PLAINTIFF ENTITLED TO DAMAGES AS A RESULT OF THE DEFENDANT'S ACTIONS IN SUSPENDING PLAINTIFF FROM MEMBERSHIP WITHOUT NOTICE AND WITHOUT HEARING?

1. May damages be inferred where damages are the "gist of the action"?
2. Did plaintiff suffer actual damages as a result of defendant's conduct?

Cases and Authorities:
Orkin Exterminating Co. v. Burnett, 160 N.W.2d 427 (Iowa 1967).
Clarke v. Figge, 181 N.W.2d 211 (Iowa 1970).
Godin v. Neibuhr, 236 Mass. 350, 128 N.E. 406 (1920).
Brennan v. United Hatters of America, 73 N.J.L. 729, 65 A.165 (1906).
Prosser, Law of Torts § 124 (3d ed. 1964).

3. *Statement of the Case*

The statement of issues is followed by a "Statement of the Case" which includes a statement of the nature of the case, the course of proceedings and

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70 The new rule neither requires nor prohibits the stating of sub-issues. The example here is intended to show how an issue may be stated with sub-issues relating directly to it. The major issue in the example is whether a privilege is available to the defendant. Directly related to that are the conditions upon which the privilege comes into existence. The cases cited ostensibly go to that total question. The older practice would permit the statement of "error" or "proposition relied upon" with brief points stating each sub-issue, and cases cited to each brief point. See IOWA R. CIV. P. 344(a)(4) (1971). The new rule would permit the authorities to be cited to the whole issue as stated. This would appear to avoid the necessity under the new rule of rephrasing the same basic issue as a separate proposition in order to adequately state the sub-issue.

5. *References to the Record*

The new rules provide that where there are references to the facts in the briefs those references should direct the court to the place in the appendix where the factual statement is found and to the pages of the record if the matter is of the type which is not to be included in the appendix—such as pleadings or motions.[75] The latter reference provision also applies if the appeal is submitted on the original record without an appendix. Appellant, however, may choose the deferred method of preparing the appendix. This permits the appendix to be served and filed after the serving and filing of the brief.[76] Under this method, at the time the briefs are filed, the appendix is not yet in existence, and it is virtually impossible to cite to it. The rule compensates for this eventuality by providing that the page proofs or typewritten copy of the appellant's brief may be filed and served, and the printing deferred until after the appendix is produced. The rules also provide two optional methods of supplying the references to the record under the deferred appendix option. When the brief is written, references may be to the pages of the record involved. Then, when the appendix is prepared, the reference in the appendix is to the record where that factual statement is found. Mechanically, it is accomplished by "placing in brackets the number of each page [of the record] at the place in the appendix where that page [from the record] begins."[77] The appellant may serve and file typewritten or page proofs of his brief, with appropriate references to the parts of the record referred to. After the appendix is printed, he will then file his printed brief and will conform the factual references in the brief to the appropriate pages of the appendix,[78] either by substituting the references to the appendix for the prior references to the record, or by adding additional references to the appendix. It would seem that the latter method would be most helpful to the court, for the reason that it creates a double reference to the appropriate factual part of the record relied upon.

III. The Appendix to the Briefs

Reflecting one of the major changes of the rules, Rule 344.1 provides for the manner of preparation of the "Appendix to the Briefs." As noted before, the appendix is not the record, but, as noted in the rule, "shall contain (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, transcript, instructions, findings, conclusions and opinion; (3) the judgment, order or decision in question; (4) and any other parts of the record to which the parties wish to direct the particular attention of the court."[79]

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75 Iowa R. Civ. P. 344(g) (1973).
76 *Id.* 344.1(c).
77 *Id.*
78 *Id.*
79 *Id.* 344.1(2).

A. Alternative Methods of Preparation

The rule provides important and alternative methods for appellant to sustain his duty of preparing and filing the appendix. It may be served and filed with the appellant's brief,[80] or it may be deferred and filed and served 21 days after the service of the appellee's brief.[81] The advantage of the regular method is that it gives the appellant the opportunity of preparing the brief and the appendix concurrently, thereby causing each to harmonize with the other. References in the brief can readily be made to the appendix. It may, however, create a problem of time if the appendix is made from a lengthy transcript as where the question is one of pointing out to the court the sufficiency of the evidence to sustain a verdict or judgment. Selection of the regular method would undoubtedly add to the ease of preparation of the appellee's brief, in that the appellee would have the opportunity to see the exact parts of the trial record that the appellant is relying upon.

The alternative method also has built in advantages and disadvantages. The obvious advantage is that the appellant may postpone the preparation of the appendix until after the brief is completed. It also permits the appellant to make an early decision as to the legal matters he wishes to advance to the court and to conform the preparation of the appendix to those legal matters. Thus, the appendix may be built from the brief and it is more likely that the spirit of the rules will be observed in that only "the relevant portions" of the trial record will be included in the appendix.[82]

1. The logistics of the alternative method.

Perhaps the most serious disadvantage of the alternative method is that relating to the mechanics of preparation. The appellant is required to file and serve his brief within 50 days after the appeal is docketed.[83] He is ordinarily required to cite to the appendix in his brief, if the appendix is filed with the brief.[84] However, as noted above, if the alternative method is used and the appendix is deferred until 21 days after the receipt of the appellee's brief, the reference to the appendix is, at that time, logistically impossible. Rule 344.1 (c) provides for this contingency by permitting the appellant to file a typewritten copy of the brief or page proofs of the brief within the time that he is first required to file a brief. The typewritten copy or page proofs must contain appropriate references to the transcript. This is ostensibly for the purpose of alerting the appellee to the matters which will be designated in the appendix when filed. Then, within 14 days after the appendix is filed, appellant may

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80 *Id.*

81 *Id.* 344.1(c).

82 *See* Ward, *The Federal Rules of Appellate Procedure*, 54 A.B.A.J. 661, 664 (1968).

83 IOWA R. CIV. P. 343(2) (1973).

84 *Id.* 344(g).

serve and file the printed brief with the appropriate references to the pages of the printed appendix.

B. The Arrangement of the Appendix

Of course, one of the major factors that aids the court in the efficient administration of justice is uniformity in the application of the rules, particularly rules relating to the form of the various matters to be filed. The new provisions provide important changes with regard to the method by which the flow of relevant and important proceedings below may be communicated to the appellate court and by which the court's attention will be focused to the matters which a party wishes to emphasize on appeal. One of these is the manner in which the appendix is to be arranged.[85] It must first contain a form of index including a list of the parts of the record in the order in which they are set out. The relevant docket entries follow the list of contents followed by other parts of the record in chronological order. Reference by quotes from the reporter's transcript is to be preceded by designating the page of the transcript where the quoted matter may be found. Omissions are indicated by asterisks.

Suggested Form No. 12

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[85] *Id.* 344.1(d).

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VII. Manner and Proof of Service of Appellate Papers

The former rule provided that the copies of the record and briefs, after being filed with the clerk of the trial court, were mailed by the clerk to opposing attorneys or parties. The clerk thereafter endorsed his certificate of delivery and forwarded the service copy to the supreme court.[87]

The new rule provides that the filing of the briefs shall be made with the clerk of the supreme court.[88] It permits filing by mail with the proviso that the day of mailing is deemed to be the date of filing "if the most expeditious form of delivery by mail, except special delivery, is utilized."[89] Service of copies of the briefs and appendices upon opposing counsel is now the responsibility of the attorney, not the clerk, as was the practice under the former rule. The method follows the usual federal practice of placing the responsibility of service and proof of service upon counsel.[90]

Suggested Form No. 13

CERTIFICATE OF SERVICE

(delivery to clerk in office of opposing counsel)

The undersigned attorney for the plaintiff-appellant herein does hereby certify that a copy of the foregoing *(brief or appendix)* was served

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86 There are many docket entries in the ordinary law suit, and these will all be certified by the district court clerk pursuant to Rule 349(2). Rule 344.1(d) calls for setting out the *relevant docket* entries. There are many which would not be relevant to an appeal, *e.g.*, the court's ruling on a motion for time to move or plead. The two selected here in this form are indeed relevant because of their importance to show finality for appeal and jurisdiction. For the former *see* Moreno v. Vietor, 156 N.W.2d 305 (Iowa 1968); Street v. Stewart, 226 Iowa 960, 285 N.W. 204 (1939). *But see* Iowa R. Civ. P. 335(b), *as amended* (1969). As to the latter *see, e.g.*, Union Trust & Sav. Bank v. Stanwood Feed & Grain, 158 N.W.2d 1 (1968).

87 Iowa R. Civ. P. 342 (1971).

88 Iowa R. Civ. P. 353(a) (1973).

89 *Id.*

90 *See, e.g.*, Fed. R. App. P. 25.

by me by (*delivering two copies*[91] *to A.B., a clerk at the Office of B.C., counsel for appellee*) on the ________ day of ____________, 19____.

____
Signature
Attorney for Appellant
Address

Suggested Form No. 14

CERTIFICATE OF SERVICE
(Mailing)

The undersigned attorney for the plaintiff-appellant does hereby certify that two copies of the foregoing ______________________ were served by me on the ________ day of ____________, 19____, by depositing the same in the regular mail with sufficient postage affixed and addressed to the attorneys for the defendant-appellee as follows:

A. B. Chalmers
Suite 410
Lexloci Building
Des Moines, Iowa 50315

D. E. Farnsworth
315 Chancery Place
Montezuma, Iowa

____
Signature
Attorney for Appellant
Address

IV. Sanctions for Non-Compliance

In times past, the Iowa supreme court has been somewhat charitable in its attitude with respect to attorneys' failures to follow the rules relating to appellate practice and procedure. It has, by and large, taken the position that the rules should be liberally construed and it has preferred to decide cases on the merits[92] and to overlook technical defects other than those relating to jurisdiction unless the failure to observe the rules is so extensive that in fairness to opposing counsel and, because of resulting confusion and uncertainty, compliance with the rules should be compelled.[93] In the latter instances, violations of the rules have resulted in a broad spectrum of sanctions, including warnings,[94] the

[91] Iowa R. Civ. P. 343(b) requires eighteen copies of the brief to be filed with the clerk of the supreme court, unless the court orders a different number, and also requires two copies to be served on counsel for each party who is separately represented.

[92] *See* Wall v. County Bd. of Educ., 249 Iowa 209, 86 N.W.2d 231 (1957); *In re* Adoption of Cannon, 243 Iowa 828, 53 N.W.2d 877 (1952); Stolar v. Turner, 236 Iowa 628, 19 N.W.2d 585 (1945); Finley v. Thorne, 209 Iowa 343, 226 N.W. 103 (1929).

[93] *See* City of Chariton v. J. C. Blunk Constr. Co., 253 Iowa 805, 112 N.W.2d 829 (1962); Rosin v. Northwestern State Portland Cement Co., 252 Iowa 564, 107 N.W.2d 559 (1961); Jerrel v. Hartford Fire Ins. Co., 251 Iowa 816, 103 N.W.2d 83 (1960).

[94] Union Trust & Savings Bank v. State Bank, 170 N.W.2d 674 (Iowa 1969); Appling v. Stuck, 164 N.W.2d 810 (Iowa 1969); Nelson v. Fisch, 214 Iowa 1, 39 N.W.2d 594 (1949).

assessment of costs,[95] the striking of briefs,[96] and dismissal of appeals.[97]

Although the former rules contained no express mandate of sanctions for general non-compliance, the new rules do. Rule 342(c) provides for dismissal for failure to transmit the record and Rule 343(c) provides that the appeal may be striken upon the appellant's failure to timely file a brief, and if the appellee fails to timely file a brief, appellee will be precluded from oral argument except upon permission of the court.[98] Rule 345 makes provision for the clerk to give a 15-day notice to comply with the rules[99] or suffer a dismissal, and although it suffers somewhat from lack of clarity as to whether an appeal may be ultimately dismissed for failure to comply with the rules or for lack of prosecution, the intent of the court is clear.[100] Practitioners should be well advised that the court may no longer tolerate laxity in compliance with appellate rules.

V. Conclusion

The new appellate rules provide a modern, uniform method of communication to the supreme court. Their spirit and intent are as important to the court, to the litigants and to their attorneys as are their specifics. They represent more than a system of rules for the regulation of appeals; they also, and perhaps more importantly, represent an advanced methodology toward that elusive but long sought after ideal of speedy, efficient and better justice.

TIMETABLE FOR APPELLATE PAPERS[101]

APPELLANT

	Time	*Rule*
I. *Jurisdiction*		
File notice of appeal	Within 30 days after entry of final order, judgment or decree	335

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95 Hanson v. Lassek, 261 Iowa 707, 154 N.W.2d 871 (1968); Fatino v. City of Des Moines, 258 Iowa 37, 137 N.W.2d 638 (1965); Jaeger v. Elliot, 257 Iowa 897, 134 N.W.2d 560 (1965); Sefcik v. Sheker, 241 Iowa 571, 41 N.W.2d 709 (1950).

96 Davis v. Rudolph, 243 Iowa 744, 52 N.W.2d 15 (1915).

97 Lang v. Myers, 244 Iowa 1316, 60 N.W.2d 526 (1953).

98 The clerk of the supreme court has prepared a form letter, the text of which is as follows:

> The appellee's brief in the above case was filed ________ after service of the brief of appellant. No extension of time was granted to excuse such delay. Pursuant to Rule 343(c) appellee will not be heard in oral argument except by permission of the court.

99 The clerk has also prepared a form 15-day notice, the text of which is as follows, after stating the nature of the default: "Unless this default is remedied within fifteen days from the date hereof the appeal will be dismissed pursuant to Rule 345 of the Iowa Rules of Civil Procedure."

100 Iowa R. Civ. P. 345 (1973) provides in part:

> When an appellant in either a docketed or non-docketed appeal fails to comply with the Iowa Rules of Civil Procedure and the rules of this court, the clerk shall notify the appellant and his counsel that upon the expiration of fifteen (15) days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default.

101 *See* Wilson, *The New Iowa Rules of Appellate Procedure*, Iowa State Bar Association—Workshop Outlines, 87, 90-92 (1972) for a comparable timetable.

II. *Preparing the record*		
Order transcript	Within 10 days after filing notice of appeal	340(b)
Serve appellee with description of parts included in record	Within 10 days after filing notice of appeal	340(b)
File certificate of ordering transcript	Within 14 days after filing notice of appeal	342(b)
File agreed statement as the record on appeal		340(d) 341(b)
III. *Transmitting & Docketing*		
Clerk transmits calendar & docket entries to Supreme Court Clerk	Within 14 days of filing notice of appeal	341(a)
Request transmission of remaining record, transcript & exhibits	Upon receipt of appellee's brief or earlier	341(a)
Pay docket fee	Within 10 days after filing notice of appeal	342(a)
IV. *Briefs*		
Serve and file brief	Within 50 days after appeal is docketed	343(a)
Reply brief	Within 14 days after receipt of appellee's brief, but at least 3 days before argument	343(a)
V. *Appendix*		
Options:		
(a) Serve and file agreed appendix	With appellant's brief—within 50 days after appeal is docketed	344.1(b)
(b) If no agreement on contents, serve designation of parts of record included in appendix & statement of issues to be presented	No later than ten days after appeal is docketed	344.1(b)
(c) Deferred Appendix		
1. Designate parts included	At time brief is filed & served	344.1(c)
2. File appendix	21 days after service of appellee's brief	344.1(c)

APPELLEE

I. *Preparing the Record*		
File description of parts of transcript to be included in record	Within 10 days after service of appellant's statement of record	340(b)
II. *Transmitting & Docketing*		
Motion to dismiss for failure to cause timely transmissions of the record or pay docket fee	If appellant fails to transmit record within 14 days; fails to pay docket fees within 40 days	342(c) 341(a) 342(a)

III.	*Briefs*		
	File and serve brief	Within 30 days of service	343(c)
	Motion to dismiss for failure to file brief	If appellant fails to file brief within 50 days	343(c)
IV.	*Appendix*		
	Designate parts to be included	Within 10 days after receipt of appellant's designation	344.1(b)
	Deferred Appendix: Designate parts to be included	When brief is filed	344.1(c)

REVOLUTION IN CORRECTIONS

Hon. Leo Oxberger†

I. Introduction

A revolution in the prison system has occurred in Polk County, Iowa. Prisoners play sports in regular municipal leagues. They telephone their wives, mothers, friends or anyone else anytime they want to without any monitoring of the call. The prisoners have their own private rooms. There are no guards, no iron cells in this prison.

Plans are nearing completion to develop similar prisons in seven other communities in Iowa. The trend in the rest of the nation is toward this type of prison.

The purpose of this article is to inform the practicing lawyer of the reasons underlying the change and to explain in some detail the mechanics of its operation. Hopefully the lawyer will then be able to make maximum use of the programs for the benefit of his client. The single most important point to be emphasized is that buildings should be de-emphasized and individual programming should be emphasized.

II. The Need for Change

The President in his remarks to the National Conference on the Judiciary has stated that "the time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate . . . ."[1] And in his message to the First National Corrections Conference the President stated, "At long last, this nation is coming to realize that the process of justice cannot end with the slamming shut of prison gates . . . the protection of society depends largely on the correction of the criminal . . . 98 out of every hundred criminals who are sent to prison come back out into society . . . ."[2]

The tragedy, however, is that our correctional system is failing; it is time to re-examine our approach to correctional systems and prisons. "Unacceptable conditions mark every aspect of the correctional effort: in pretrial detention, in sentencing procedures, in probationary supervision, in jails and prisons,

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1 Address by President Richard M. Nixon, The National Conference on the Judiciary, Mar. 11, 1971.

2 Address by President Richard M. Nixon, The National Conference on Corrections, Dec., 1971.