

EDITORIAL NOTES

Supplemental Notes to Articles Previously Published

1. *The Iowa Rules of Discovery*, 7 DRAKE L. REVIEW. 3 (1957) discussed the Iowa discovery rules as amended and how they would implement the fact finding and investigation processes of a lawsuit. Special emphasis was placed in the article on the effect Rule 141(a) would have on limiting the scope of discovery.

In the recent Iowa case of *Henke v. Iowa Home Mutual Casualty Company*, Iowa, 87 N.W.2d 920 (1958), before the Court on an interlocutory appeal from litigation which involved the substantive question of an insurer's liability for a judgment exceeding policy limits, the Iowa Court made several important declarations concerning Rule 141(a) which indicate to some extent the Court's attitude toward the construction and enforcement of this new discovery rule.

The trial court had sustained the motion of the plaintiff to require the production of all letters, correspondence, reports and communications between the insurance company and the attorney defending the prior action which had resulted in the judgment exceeding the policy limits. The insurance company argued that Rule 141(a) protected it from disclosing these papers.

The Court held that Rule 141(a) did not provide any protection to the insurance company primarily because that Rule had reference to papers and writings which are related to or prepared for a currently pending action and not to papers and writings prepared during a different action at an earlier time when the parties were not adverse to each other. The Rule "applies in an action between two adverse parties whose separate counsels have each made investigations in respect to that action which they intend to use in the adversary proceeding between the two."

The Court further pointed out that even assuming the Rule to be applicable in the present case, the decision of the trial court to require production of the papers was a proper exercise in its sound discretion to determine whether the withholding of such papers "will result in an injustice or undue hardship."