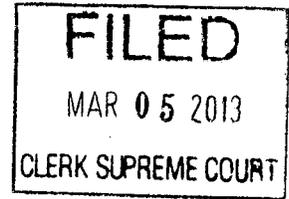


In the Supreme Court of Iowa



**In the Matter of Amendments to)
the Rules of Appellate Procedure)
and the Organization and)
Procedures of Appellate)
Courts in Chapters 6 and 21)
of the Iowa Court Rules)**

Order

The Iowa Supreme Court, after consideration of public comments and careful review, has approved amendments to the Rules of Appellate Procedure contained in Chapter 6 of the Iowa Court Rules and a complete rescission and rewrite of the rules governing the Organization and Procedures of Appellate Courts contained in Chapter 21 of the Iowa Court Rules.

Amendments to the Rules of Appellate Procedure contained in Chapter 6 of the Iowa Court Rules include:

1. Putting the burden on the filer to ensure the filer protects confidential information.
2. In termination-of-parental-rights and child-in-need-of-assistance cases, expanding the page limits for petitions and responses.
3. Stating that if a party files a notice of appeal and the court deems the appeal interlocutory, the court will not refund any part of the filing fee.
4. Clarifying the procedure a party must follow to file a statement of evidence.
5. Clarifying the acceptable typefaces a party may use in a brief.
6. Setting forth the requirements an attorney must comply with when filling a motion to withdraw under rule 6.1005.
7. Restating the circumstances when the supreme court will grant further review.
8. Stating the requirements and form of the application a party must use when requesting further review, including that the application must

contain a concise statement of the questions presented for review and the reasons why the case warrants further review.

The court rescinds Chapter 21 of the Iowa Court Rules, Organization and Procedures of Appellate Courts, in its entirety and replaces it with a new chapter 21 that better reflects the present operating procedures of the appellate courts. The new chapter 21 includes appellate court procedures for posting opinions on the Internet and explains which version of a supreme court opinion is considered the controlling version.

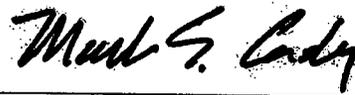
The amendments to chapter 6 and the rewrite of chapter 21 are attached to this order.

The amendments to the Rules of Appellate Procedure contained in Chapter 6 of the Iowa Court Rules and the complete rescission and rewrite of the rules governing the Organization and Procedures of Appellate Courts contained Chapter 21 of the Iowa Court Rules shall **take effect May 3, 2013**.

Dated this 5th day of March, 2013.

The Supreme Court of Iowa

By



Mark S. Cady, Chief Justice

CHAPTER 6
RULES OF APPELLATE PROCEDURE

Rule 6.110 Protected information; confidential materials; briefs not confidential.

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6.110(4) Responsibility of filer. It is the responsibility of the filing party to ensure that confidential or protected information is properly redacted, omitted, or certified as confidential. It is not the responsibility of the clerk of court to review filings to determine whether appropriate redactions, omissions, or certifications have been made.

6.110(4) 6.110(5) Briefs not confidential.

a. Briefs filed with the clerk of the supreme court shall not be confidential. A brief shall not contain a reproduction, quotation, or extensive paraphrase of material that is declared by any statute or rule of the supreme court to be confidential. Instead, a brief may include general statements of fact supported by references pursuant to rule 6.904(4) to pages of the appendix or parts of the record that are confidential.

Rule 6.201 Petition on appeal in termination-of-parental-rights and child-in-need-of-assistance cases under Iowa Code chapter 232.

6.201(1) Petition on appeal.

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c. *Length; form; cover.* The petition on appeal shall not exceed ~~15~~ 20 pages, excluding the attachments required by rule 6.201(1)(e), and shall be in the form prescribed by rule 6.1007, except that it may be printed or duplicated on one side of the page. The cover shall be blue and shall contain:

- (1) The caption of the case.
- (2) The title of the document (Petition on Appeal).
- (3) The name of the court and judge whose decision is under review.
- (4) The name, address, telephone number, e-mail address, and fax number of counsel representing the appellant.
- (5) A certificate of confidentiality in accordance with rule 6.110(2).

Rule 6.202 Response to Petition on appeal in termination-of-parental-rights and child-in-need-of-assistance cases under Iowa Code chapter 232.

.....
6.202(3) Length; form; cover. An optional response to the petition on appeal shall not exceed ~~15~~ 20 pages; a required response shall not exceed ~~18~~ 20 pages. A response shall be in the form prescribed by rule 6.1007, except

that it may be printed or duplicated on one side of the page. The cover shall be red and shall contain:

- a. The caption of the case.
- b. The title of the document (Response to Petition on Appeal).
- c. The name of the court and judge whose decision is under review.
- d. The name, address, telephone number, e-mail address, and fax number of counsel representing the appellee.
- e. A certificate of confidentiality in accordance with rule 6.110(2).

Rule 6.702 Filing fees and copies.

6.702(1) Filing fees.

a. *Appeal from final order or judgment.* The fee for filing ~~an~~ a notice of appeal from a final order or judgment is \$150. The appellant shall pay the fee to the clerk of the supreme court within seven days after filing the notice of appeal. If the court determines the appeal is not from a final order or judgment, the clerk shall not refund any part of the filing fee.

Rule 6.801 Composition of record on appeal. The Only the original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries prepared by the clerk of the district court in the case from which the appeal is taken shall constitute the record on appeal in all cases.

Rule 6.806 Proceedings when transcript unavailable.

6.806(1) Statement of the evidence or proceedings. A statement of the proceedings may be prepared to create a record of a hearing or trial for which a transcript is unavailable if a party deems it necessary to complete the record on appeal. ~~If no report of the evidence or proceedings at a hearing or trial was made or if a transcript is unavailable, the appellant may prepare a~~ The statement of the evidence or proceedings shall be prepared from the best available means, including the appellant's party's recollection. The statement shall be filed with the clerk of the district court and served on the ~~appellee opposing party~~ appellee opposing party within 20 days after the filing of the notice of appeal ~~if the evidence or proceeding was not reported or within 10 days after the appellant party discovers a transcript of reported evidence or a proceeding is unavailable.~~

6.806(2) Objections to statement. The appellee opposing party may file with the clerk of the district court and serve on the appellant filing party

objections or proposed amendments to the statement within 10 days after service of the ~~appellant's~~ statement.

6.806(3) *Approval of statement by district court.* The statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval. The statement as settled and approved shall be filed with the clerk of the district court and the clerk of the supreme court.

Rule 6.903 Briefs.

6.903(1) *Form of briefs.*

.....

e. Typeface. Either a proportionally spaced or a monospaced typeface may be used.

(1) A proportionally spaced typeface must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced typeface must be 14 point or larger for all text, including footnotes. Examples of proportionally spaced typeface with serifs that can be used in the body of a brief are Cambria, Bookman Old Style, Century Schoolbook, Times New Roman, Baskerville Old Face, Garamond, or Georgia.

(2) A monospaced typeface may not contain more than 10 1/2 characters per inch for all text, including footnotes. Examples of monospaced typeface that can be used in the body of a brief are Courier 12 point and Consolas 12 point.

Rule 6.1005 Frivolous appeals; withdrawal of counsel.

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6.1005(2) *Motion to withdraw.* If, after a diligent investigation of the entire record, court-appointed counsel is convinced the appeal is frivolous, and that counsel cannot, in good conscience, proceed with the appeal, counsel may file a motion to withdraw. For purposes of this section, a potential claim of ineffective assistance of counsel that requires the development of an additional record in a postconviction relief proceeding may be considered frivolous. The motion must be accompanied by:

a. A brief referring to anything in the record that might arguably support the appeal. The motion and brief shall be in the form specified in rule 6.1007 and shall contain citations to the record. If the appeal is from a guilty plea or sentence, the motion shall, at a minimum, address whether a factual basis existed for each and every element of the crime, whether the plea and

sentencing proceedings substantially complied with the rules of criminal procedure, and whether the sentence was authorized by the Iowa Code, case law, or the rules of criminal procedure. The brief shall also contain citations to the record establishing each of the elements of the crime and establishing compliance with the rules of criminal procedure and the Iowa Code.

Rule 6.1103 Application to the supreme court for further review.

6.1103(1) Application.

.....

~~b. Grounds. An application for further review shall allege precisely and in what manner the court of appeals has done any of the following:~~

~~(1) Made an error of law.~~

~~(2) Rendered a decision that conflicts with a prior holding of a published court of appeals or supreme court opinion.~~

~~(3) Failed to consider a potentially controlling constitutional provision in rendering its decision.~~

~~(4) Decided a case that should have been retained by the supreme court.~~

Further review by the supreme court is not a matter of right, but of judicial discretion. An application for further review will not be granted in normal circumstances. The following, although neither controlling nor fully measuring the supreme court's discretion, indicate the character of the reasons the court considers:

(1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter;

(2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court;

(3) The court of appeals has decided a case where there is an important question of changing legal principles.

(4) The case presents an issue of broad public importance that the supreme court should ultimately determine.

~~c. Form. An application for further review shall be a single document in the form prescribed by rule 6.903(1). Each copy of the application shall contain or be accompanied by a copy of the court of appeals decision, showing the date of its filing. The application shall be a single document including a brief in support of the request for review. All contentions and legal authorities in support of the application shall be included. No authorities or argument may be incorporated into the application by reference to another document;~~

~~however, citations to the appendix are permitted. The only materials that may be attached to or filed with an application, other than the court of appeals decision, are an evidentiary exhibit not exceeding 10 pages and a district court order. The district court order shall be attached if the court of appeals affirmed the decision of the district court under rule 6.1203 (affirmed or enforced without opinion), Iowa Ct. R. 21.29 (memorandum opinion), or Iowa Code section 602.5106(1) (affirmed by operation of law). An application for further review shall contain all of the following under appropriate headings in the following order:~~

(1) *Questions presented for review.* The application shall contain questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. The questions shall be set out on the first page following the cover, and no other information may appear on that page.

(2) *Table of contents.* The application shall contain a table of contents including page references.

(3) *Statement supporting further review.* The application shall contain a direct and concise statement of the reasons why the case warrants further review.

(4) *Brief.* The application shall contain a brief in support of the request for review including all contentions and legal authorities in support of the application. No authorities or argument may be incorporated into the application by reference to another document; however, citations to the appendix are permitted.

(5) *Decision of the court of appeals.* The application shall contain or be accompanied by a copy of the court of appeals decision, showing the date of its filing.

(6) *Other attachments.* The only materials that may be attached to or filed with an application, other than the court of appeals decision, are an evidentiary exhibit not exceeding ten pages and a district court order. The district court order shall be attached if the court of appeals affirmed the decision of the district court under rule 6.1203 (affirmed or enforced without opinion), Iowa Ct. R. 21.26 (memorandum opinions), or Iowa Code section 602.5106(1) (affirmed by operation of law).

d. *Discretion of supreme court on further review.* On further review, the supreme court may review any or all of the issues raised in the original appeal

or limit its review to just those issues brought to the court's attention by the application for further review.

d. e. Filing fee. The applicant shall pay to the clerk of the supreme court a filing fee or file a motion to waive or defer the fee as provided in rule 6.702(1)(g).

(NEW) CHAPTER 21
ORGANIZATION AND PROCEDURES OF APPELLATE COURTS

ORGANIZATION OF THE SUPREME COURT

| | |
|--------------------|--------------------------|
| Rule 21.1 | Submission to the court |
| Rule 21.2 | Absence of chief justice |
| Rule 21.3 to 21.10 | Reserved |

ORGANIZATION OF THE COURT OF APPEALS

| | |
|---------------------|------------------------------|
| Rule 21.11 | Policy |
| Rule 21.12 | Sitting en banc or in panels |
| Rule 21.13 | Panel composition |
| Rule 21.14 to 21.20 | Reserved |

APPELLATE OPERATING PROCEDURES

| | |
|------------|---|
| Rule 21.21 | Allocation of proceedings (cases) |
| Rule 21.22 | Participation in and publication of opinions |
| Rule 21.23 | Correction of opinions |
| Rule 21.24 | Consideration of petitions for rehearing |
| Rule 21.25 | Opinions dealing with confidential material |
| Rule 21.26 | Memorandum opinions |
| Rule 21.27 | Application to supreme court for further review |
| Rule 21.28 | Posting opinions on the Internet |
| Rule 21.29 | Controlling opinions |
| Rule 21.30 | Petitions, applications, requests, and motions |

CHAPTER 21
ORGANIZATION AND PROCEDURES OF APPELLATE COURTS

ORGANIZATION OF THE SUPREME COURT

Rule 21.1 Submission to the court. Cases shall ordinarily be submitted en banc; however, the chief justice may provide for submission and consideration by less than the entire court.

Rule 21.2 Absence of chief justice. If the chief justice is absent or ill or from any other disability is unable to act and does not select some other member of the supreme court to act as chief justice during an absence or disability, the court shall select one of its other members to act during such time.

Rules 21.3 to 21.10 Reserved.

ORGANIZATION OF THE COURT OF APPEALS

Rule 21.11 Policy. The principal role of the court of appeals is to dispose justly of a high volume of cases.

Rule 21.12 Sitting en banc or in panels. The court of appeals may sit in panels. The chief judge of the court of appeals shall determine whether a case will be submitted with or without oral argument and whether it will be submitted to a panel of the court of appeals. A case first assigned to a panel may be submitted en banc upon the approval of the court.

Rule 21.13 Panel composition. Composition of panels shall be changed periodically. A chief judge sitting on any panel shall be the presiding judge. When the chief judge is not a member of the panel, the active judge with the most seniority shall preside.

Rule 21.14 to 21.20 Reserved.

APPELLATE OPERATING PROCEDURES

Rule 21.21 Allocation of proceedings (cases). Screening and evaluation of cases filed with the supreme court clerk shall be undertaken by the supreme court for purposes of routing to the appropriate appellate court. The supreme court shall make all routing decisions. Decisions concerning the necessity and scheduling of oral argument shall be made in the appropriate appellate court.

Rule 21.22 Participation in and publication of opinions.

21.22(1) Participation in opinions. Each opinion of the supreme court and

court of appeals shall show the justices or judges who participated in the opinion.

21.22(2) *Publication of supreme court opinions.* All opinions of the supreme court, other than those issued per curiam, shall be published as provided in this rule. A list indicating the disposition of all opinions rendered by the supreme court per curiam or under Iowa R. App. P. 6.1203 shall be published quarterly in West's North Western Reporter, except for those opinions the supreme court specially orders to be published in the regular manner.

21.22(3) *Publication of court of appeals opinions.* The court of appeals, by majority vote of its members en banc, shall decide which of its opinions shall be published. Its decision to publish an opinion shall be reflected in an order filed with the clerk. An opinion may be published only after it is final. When further review is granted, the opinion of the court of appeals shall not be published unless the supreme court otherwise directs.

21.22(4) *Official reporter.* Opinions of the supreme court and opinions of the court of appeals to be published shall be published in West's North Western Reporter commencing with and subsequent to 158 N.W.2d.

21.22(5) *Table of court of appeals opinions not otherwise published.* A table of the opinions of the court of appeals not approved for publication shall be published regularly in West's North Western Reporter. The table shall consist of the title, docket number, date of decision, and disposition of each case.

Rule 21.23 Correction of opinions.

21.23(1) *Correction notice.* The author of an opinion or the appropriate appellate court may correct typographical, grammatical, or other formal errors in the opinion by filing a correction notice with the clerk of the supreme court. The correction notice shall be filed and kept with the opinion, and the author or appropriate appellate court shall cause a corrected opinion to be filed with the clerk. The corrected opinion shall reflect the original date of filing as well as the date of the filing of the corrected opinion. The original opinion shall remain on file with the clerk. If the opinion is to be published in West's North Western Reporter and has not yet been published in a bound volume, and if the correction did not originate with the publishing company, the author or appropriate appellate court shall cause a copy of the correction notice to be transmitted immediately to the publishing company for insertion of the correction in the published opinion.

21.23(2) *Substantive changes to opinion.* Changes in the substance of a supreme court opinion may be made only by action of that court before procedendo has been issued. Changes in the substance of an opinion by the court of appeals may be made only before the supreme court rules on any application for further review or, when no such application is filed, before issuance of procedendo. Such changes shall be made only by the filing of an

order amending the opinion together with a substituted opinion. The substituted opinion shall reflect the original date of filing as well as the date of the filing of the substituted opinion. The original opinion shall remain on file with the clerk.

Rule 21.24 Consideration of petitions for rehearing. All petitions for rehearing shall be considered by the justices and judges who participated in the original opinion.

Rule 21.25 Opinions dealing with confidential material. In an appeal in a juvenile case in which the juvenile court record is confidential under Iowa Code section 232.147, the supreme court or court of appeals shall refer to the parties in the caption and body of the opinion and other public court documents by first name, initials, or pseudonym. The same method of designation shall be used in any situation in which revealing a person's identity would have the effect of disclosing material which is required by statute or rule of the supreme court to be confidential.

Rule 21.26 Memorandum opinions.

21.26(1) *When appropriate.* Memorandum opinions may be used by the court of appeals and supreme court when any of the following occur:

a. The issues involve only the application of well-settled rules of law to a recurring fact situation.

b. The issue is whether the evidence is sufficient to support a jury verdict, a trial judge's finding of fact, or an administrative agency's finding, and the evidence is sufficient.

c. Disposition of the proceeding is clearly controlled by a prior published holding of the court deciding the case or of a higher court.

d. The record of the proceeding includes an opinion of the court or agency whose decision is being reviewed, the opinion identifies and considers all the issues presented, and the appellate court approves of the reasons and conclusions in the opinion.

e. A full opinion would not augment or clarify existing case law.

21.26(2) *Contents.* Memorandum opinions should contain all of the following information:

a. The name and number of the case.

b. The contentions of the Appellant or Appellants when appropriate.

c. The reasons for the result, briefly stated.

d. The disposition.

Rule 21.27 Application to supreme court for further review.

21.27(1) *When deemed submitted.* An application for further review shall be deemed submitted for consideration by the supreme court when the time for filing a resistance to the application has expired. In those cases in which a

resistance is not allowed unless ordered by the court, and no resistance has been ordered, an application for further review shall be deemed submitted when the time for filing an application has expired.

21.27(2) Supreme court consideration. The supreme court en banc shall consider each application for further review and resistance. The affirmative vote of at least one-half of justices voting on the application shall be required to grant an application for further review. If an application is granted, the supreme court shall determine the scope and manner of submission.

21.27(3) Denial of further review shall have no precedential value.

Rule 21.28 Posting opinions on the Internet. The appropriate appellate court will make its opinions available on the judicial branch web page, www.iowacourts.gov, shortly after the court files the opinion in the clerk's office. If a court corrects an opinion under rule 21.23, the appropriate appellate court will make the corrected opinion available on the judicial branch web page shortly after the court files the corrected opinion in the clerk's office.

Rule 21.29 Controlling versions of opinions. The latest version of an opinion on file in the office of the clerk of the supreme court is the controlling version of the opinion. Opinions posted on the judicial branch web page may contain computer-generated errors or other deviations from the official opinion filed in the clerk's office. Moreover, a slip opinion is replaced within a few months by a paginated version of the opinion in the North Western Reporter preliminary print, and by the final version of the opinion in the reporter's bound volume. In case of discrepancies between the opinion posted on the judicial branch web page and the reporter's printed slip opinion, the latest opinion filed in the clerk's office is the controlling opinion. In case of discrepancies between the slip opinion and any later version in the reporter's bound volume, the latest version as filed in the clerk's office is the controlling opinion. In case of discrepancies between any online version of the opinion and the reporter's bound volume, the latest version of the opinion on file in the clerk's office is the controlling opinion.

Rule 21.30 Petitions, applications, requests, and motions.

21.30(1) Clerk's review of filings. The clerk of the supreme court or designee shall examine each petition, application, request, motion or similar document (called "motions" in this rule) filed to determine:

- a. If the motion should be considered by a single judge, justice, or panel of the appropriate appellate court, or whether it may be ruled upon by the clerk or deputy pursuant to rule 6.1002(7);
- b. If the motion should be ruled upon without awaiting a resistance pursuant to rule 6.1002(4); or
- c. If the motion demands the immediate attention of the court pursuant to

rule 6.1002(1)(a).

21.30(2) *Consideration of motions.*

a. Motions not requiring a resistance. Motions not requiring a resistance shall be promptly submitted to a judge, justice, panel, or the clerk or deputy for consideration.

b. Motions demanding immediate attention. Motions demanding the immediate attention of the court shall be immediately delivered to the appropriate appellate court.

c. Other motions. All other motions shall be submitted to a judge, justice, panel, or clerk or deputy for consideration after expiration of the deadline to file a resistance.

21.30(3) *Motions considered by more than one judge or justice.* Orders on motions considered by a panel of judges or justices shall be signed by one judge or justice, but shall include the names of the judges or justices who considered the motion. An order on a motion the entire court considered, however, may be signed by a single judge or justice with a notation that the motion was considered en banc.

21.30(4) *Assignment of motions.* Motions shall ordinarily be assigned to a judge, justice, or panel for consideration on a rotating basis.