

CHAPTER 21

ORGANIZATION AND PROCEDURES OF APPELLATE COURTS

ORGANIZATION OF SUPREME COURT

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

ORGANIZATION AND ADMINISTRATION OF COURT OF APPEALS

Rule 21.11	Sitting en banc or in divisions
Rule 21.12	Party's challenge to nonoral or division assignment
Rule 21.13	Division personnel
Rule 21.14	Court conferences
Rules 21.15 to 21.20	Reserved

APPELLATE OPERATING PROCEDURES

Rule 21.21	Allocation of proceedings (cases)
Rule 21.22	Submissions to supreme court
Rule 21.23	Reserved
Rule 21.24	Oral argument
Rule 21.25	Participation in and publication of opinions
Rule 21.26	Correction of opinions
Rule 21.27	Consideration of petitions for rehearing
Rule 21.28	Opinions dealing with confidential material
Rule 21.29	Memorandum opinions
Rule 21.30	Publication of court of appeals opinions
Rule 21.31	Costs in court of appeals
Rule 21.32	Application to supreme court for further review
Rule 21.33	Distribution of printed papers
Rule 21.34	Petitions, applications, requests, and motions in supreme court

CHAPTER 21 ORGANIZATION AND PROCEDURES OF APPELLATE COURTS

ORGANIZATION OF 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.
[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

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.
[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

Rules 21.3 to 21.10 Reserved.

ORGANIZATION AND ADMINISTRATION OF COURT OF APPEALS

Rule 21.11 Sitting en banc or in divisions. The court of appeals may sit in divisions. 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 division of the court of appeals.
[Court Order September 19, 1979; October 7, 1981; February 1, 1982; May 16, 1984; November 9, 2001, effective February 15, 2002]

Rule 21.12 Party's challenge to nonoral or division assignment. A party may state reasons in writing why a case should be submitted with oral argument or not be assigned to a division of the court of appeals. The statement, if any, shall be filed and served within seven days after the date of the notice that the case will be submitted without oral argument or to a division.
[Court Order February 1, 1982; November 9, 2001, effective February 15, 2002]

Rule 21.13 Division personnel. The personnel of a division of the court of appeals shall not be permanent but may be changed from time to time by the chief judge or by vote of a majority of the judges of the court of appeals. The membership of a division shall be selected at random. A chief judge sitting on any division shall be the presiding judge. On a division of which the chief judge is not a member, the judge senior in precedence shall preside.
[Court Order February 1, 1982; May 16, 1984; July 19, 1999; November 9, 2001, effective February 15, 2002]

Rule 21.14 Court conferences. A preliminary conference may be held for cases submitted to the court of appeals without oral argument. Prior to oral argument, cases shall ordinarily be randomly assigned to a judge for drafting of an opinion. Preliminary conferences on cases heard orally by the court of appeals ordinarily shall follow argument. A tentative vote shall be taken at the preliminary conference. Final conference on all cases ordinarily shall be by panel but may, at the option of the court, be en banc.
[Court Order February 1, 1982; May 16, 1984; June 28, 1995, effective August 1, 1995; July 19, 1999; November 9, 2001, effective February 15, 2002]

Rules 21.15 to 21.20 Reserved.

APPELLATE OPERATING PROCEDURES

Rule 21.21 Allocation of proceedings (cases).

21.21(1) Initial review. All appellate proceedings shall be filed in the office of the supreme court clerk. Screening and evaluation of cases shall be undertaken by the supreme court for purposes of routing to the appropriate appellate court. All routing decisions shall be made by the supreme court. Decisions concerning the necessity and time allocated for oral argument shall be decided in the appropriate appellate court in accordance with the rules of appellate procedure.

21.21(2) *Review by supreme court panel.* Except as otherwise directed by a supervisory order of the chief justice, all proceedings shall be reviewed by a rotating panel of three justices of the supreme court to determine initially whether a case shall be retained by the supreme court for full appellate review, transferred to the court of appeals, or decided by summary disposition by the supreme court.

21.21(3) *Summary disposition.* Cases appropriate for summary disposition shall be retained by the supreme court for disposition by a brief per curiam opinion.
[Court Order September 19, 1979; May 27, 1988, effective July 1, 1988; November 9, 2001, effective February 15, 2002; February 27, 2008]

Rule 21.22 Submissions to supreme court. Causes not fully argued at the period for which assigned may be passed to a later period or be continued on the supreme court's own motion or on motion by a party.

[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

Rule 21.23 Reserved.

Rule 21.24 Oral argument.

21.24(1) *Governing principle.* Oral argument in both the supreme court and court of appeals shall be governed by these rules and the rules of appellate procedure.

21.24(2) *Limitations on oral argument.* Oral argument shall not be granted as a matter of right. When oral argument is granted, time limitations shall be determined at the discretion of the court hearing the appeal.

[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002; June 3, 2009; August 10, 2009]

Rule 21.25 Participation in and publication of opinions. Each opinion of the supreme court and court of appeals shall show the justices or judges who participated in it. Opinions of the supreme court and opinions of the court of appeals to be published in accordance with rule 21.30 and Iowa R. App. P. 6.1209 shall be published by West Publishing Company commencing with and subsequent to 158 N.W.2d.

[Court Order September 19, 1979; December 20, 1989, effective February 15, 1990; February 19, 2001, effective July 1, 2001; November 9, 2001, effective February 15, 2002]

Rule 21.26 Correction of opinions.

21.26(1) 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 the corrections to be inserted in the original opinion. If the opinion is to be published in the North Western Reporter and has not yet been published in a bound volume, and if the correction did not originate with West Publishing Company, the author or appropriate appellate court shall cause a copy of the correction notice to be transmitted immediately to West Publishing Company for insertion of the correction in the published opinion.

21.26(2) 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 supreme court ruling on any application for further review or, when no such application is filed, before issuance of procedendo. Such changes shall be made only by filing an order, amended opinion, or substituted opinion. The original opinion shall remain on file with the clerk and shall not be altered by interlining, expunging prior language, or any other means.
[Court Order December 5, 1979, effective January 1, 1980; May 16, 1984; November 9, 2001, effective February 15, 2002]

Rule 21.27 Consideration of petitions for rehearing. Immediately upon the filing of a petition for rehearing pursuant to Iowa R. App. P. 6.1205, the clerk shall deliver copies of the petition to all justices of the supreme court. All petitions for rehearing shall be considered by the supreme court en banc.

[Court Order June 27, 1980; November 9, 2001, effective February 15, 2002]

Rule 21.28 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 or initial only. 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.

[Court Order November 19, 1981; November 9, 2001, effective February 15, 2002]

Rule 21.29 Memorandum opinions.

21.29(1) *When appropriate.* Memorandum opinions may be used by the court of appeals and supreme court to dispose of cases when appropriate. A short memorandum opinion may be used 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.

21.29(2) *Contents.* Memorandum opinions should contain all of the following information:

- a. The name and number of the case.
- b. Appellant's contentions when appropriate.
- c. The reasons for the result, briefly stated.
- d. The disposition.

[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

Rule 21.30 Publication of court of appeals opinions.

21.30(1) *Policy.* The principal role of the court of appeals is to dispose justly of a high volume of cases. In order to achieve maximum productivity without sacrificing quality, the court of appeals must devote time, which otherwise might be used in writing and revising full opinions, to deciding cases.

21.30(2) *Criteria for publication.* An opinion of the court of appeals may be published only when at least one of the following criteria is satisfied:

- a. The case resolves an important legal issue.
- b. The case concerns a factual situation of broad public interest.
- c. The case involves legal issues which have not been previously decided by the Iowa Supreme Court.

21.30(3) *Authority for publication.* Subject to this rule, 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 within 30 days after the opinion becomes final. A copy of the order shall be provided to the state court administrator. An opinion may be published only after it is final. Denial of further review shall not constitute approval by the supreme court of the opinion sought to be reviewed. When further review is granted, the supreme court shall decide whether the court of appeals opinion will be published.

21.30(4) *Manner of publication.* Opinions of the court of appeals which are approved for publication shall be transmitted by the chief judge of the court of appeals to West Publishing Company for publication in the North Western Reporter.

21.30(5) *Abstracts of opinions not otherwise published.* The state court administrator shall cause to be published an abstract of each opinion of the court of appeals not approved for publication. The abstracts shall consist of the title, docket number, date of decision and disposition of each case. The abstracts shall be published quarterly in the North Western Reporter.

[Court Order September 19, 1979; March 3, 1981; February 1, 1982; June 10, 1983; August 31, 2001; November 9, 2001, effective February 15, 2002; August 29, 2002]

Rule 21.31 Costs in court of appeals. Costs in the court of appeals shall be the same as in the supreme court.

[Court Order September 19, 1979; November 9, 2001, effective February 15, 2002]

Rule 21.32 Application to supreme court for further review.

21.32(1) 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.

21.32(2) The supreme court en banc shall consider each application for further review and resistance. The affirmative vote of at least four justices 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.

[Court Order September 19, 1979; June 1, 2000, effective November 11, 2000; November 9, 2001, effective February 15, 2002; January 24, 2003; November 23, 2004]

Rule 21.33 Distribution of printed papers. For cases retained by the supreme court or in which an application for further review was granted, the clerk of the supreme court shall make the following distribution of the papers which are printed or duplicated in the manner prescribed in Iowa R. App. P. 6.903 and 6.905: a copy to each justice of the supreme court, the state law library, the library of the University of Iowa College of Law and the law library of Drake University. The remainder of such papers shall be placed in the clerk's office, with one copy to be kept permanently there or in the state historical department archives. For cases transferred to the court of appeals in which an application for further review was not granted, the clerk shall distribute a copy of the printed or duplicated papers to each judge of that court and to the state law library; the remainder shall be placed in the clerk's office, with one copy to be kept permanently there or in the state historical department archives. When a court of appeals opinion is approved for publication, the clerk shall make the following additional distribution of the printed or duplicated papers in the case: a copy to the library of the University of Iowa College of Law and to the law library of Drake University.

[Court Order September 19, 1979; May 22, 1990, effective July 2, 1990; November 9, 2001, effective February 15, 2002]

Rule 21.34 Petitions, applications, requests, and motions in supreme court.

21.34(1) Clerk's examination of papers. The clerk of the supreme court or the deputy clerk shall examine each petition, application, request, motion or similar paper (called "motions" in this rule) filed in the clerk's office regarding matters in the supreme court to determine whether:

a. The clerk or deputy has authority to rule on the motion pursuant to Iowa R. App. P. 6.1002(7), or

b. The motion may be resisted and be ruled upon pursuant to Iowa Rs. App. P. 6.1002(2) and 6.1002(5) and 6.1002(6), or

c. The motion demands the immediate attention of the supreme court.

21.34(2) Motions for procedural orders. If the clerk or the deputy clerk determines that a motion is for a procedural order and that it may be ruled on under Iowa R. App. P. 6.1002(7), the clerk or the deputy clerk shall do any of the following:

a. Promptly rule on the motion and send copies of the order to the interested parties or their attorneys of record.

b. If the clerk or deputy clerk determines a resistance would be helpful, set the matter for nonoral consideration pursuant to Iowa R. App. P. 6.1002(8), before ruling on the motion or forwarding it to a justice.

c. Request the assistance of central staff research attorneys, before ruling on the motion or forwarding it to a justice.

d. Forward the motion to a justice with a request that a justice rule on the motion and a statement of the reason for the request.

21.34(3) Action on substantive motions.

a. When all the nonmoving parties have resisted or the time for resistance has expired, the clerk shall promptly deliver the motion and all relevant papers directly to a justice or to central staff research attorneys, who shall prepare a memorandum, if necessary, and proposed order on the motion. The

memorandum shall be confidential. The staff attorneys shall promptly send to the justice to whom the motion is assigned a copy of the motion, resistance and attachments filed by the parties; any transcript or other relevant papers, and an original and one copy of any memorandum and proposed order unless otherwise directed by the assigned justice.

b. If the memorandum recommends relief that cannot be granted by a single justice under Iowa R. App. P. 6.1002(5), the staff attorneys shall send copies of the motion, resistance, attachments, memorandum and proposed order to two other justices to participate in the consideration of the motion. The justices will then consider the motion and the justice to whom the motion is assigned will sign the proposed order, or draft and sign an order. The order shall recite the names of the three justices considering the motion.

c. After a justice has signed an order, the justice shall arrange for its delivery to the supreme court clerk's office and for the mailing of copies of the order to the parties. The clerk's office shall contact the parties regarding any order requiring immediate notification.

d. If a motion which should proceed pursuant to Iowa Rs. App. P. 6.1002(2) and 6.1002(5) and 6.1002(6) is filed directly with a justice, the justice will note on the original the date of filing and transmit the original to the clerk in accordance with Iowa R. App. P. 6.701. The clerk and staff attorneys shall then proceed with the motion pursuant to this subrule unless otherwise directed by the justice.

21.34(4) *Motions demanding immediate attention.* Motions demanding the immediate attention of the supreme court include, but are not limited to, the following: motions for an immediate temporary stay of proceedings pending consideration of request for a stay during appeal; motions for immediate temporary injunctive relief; motions for an order affecting the immediate custody of a child; motions for any temporary relief when substantial rights would otherwise apparently be lost or be greatly impaired by delay, and motions requesting relief of an emergency nature. If the clerk or the deputy clerk determines that a motion demands the immediate attention of the court, the motion and relevant papers shall be immediately delivered with an explanation of the urgency involved for appropriate disposition to a justice who maintains a Des Moines office. The clerk and staff attorneys shall provide assistance on request.

21.34(5) *Motion calendar.* The clerk and central staff shall maintain a confidential calendar of motions requiring action by one or more justices, and the calendar shall ordinarily include:

Docket number.

Case name.

Name of motion indicating relief sought.

Date of filing motion.

Justice, if any, with whom filed.

Justice to whom assigned.

Any other participating justices.

Date of ruling on motion.

21.34(6) *Justices to whom motions are assigned.* The justice to whom a motion is assigned shall be determined at random but in a manner to ensure substantially equal division of work. When necessary or desirable, additional justices will participate in considering a motion.

[Court Order September 19, 1979; October 1, 1979; July 19, 1984; May 7, 1986, effective June 2, 1986; November 9, 2001, effective February 15, 2002]