

1       **Proposed Amendments to Iowa Court Rules Governing**  
2       **Appellate Processes**

3  
4                               **Chapter 2**  
5                               **Rules of Criminal Procedure**

6       . . . .

7       **Rule 2.29 Appointment of appellate counsel in criminal cases.**

8       . . . .

9               **2.29(6)** Trial counsel shall continue as defendant's  
10       appointed appellate counsel unless the trial court or supreme  
11       court orders otherwise. Unless appellate counsel is immediately  
12       appointed under rule 2.23(3)(f), trial counsel shall determine  
13       whether defendant wants to appeal. If so, and defendant desires  
14       appointed appellate counsel, trial counsel shall file with the district  
15       court the notice of appeal and an application for appointment of  
16       counsel and for transcript at public expense. ~~If defendant wants to~~  
17       ~~appeal but desires to proceed pro se, trial counsel shall file with~~  
18       ~~the district court the notice of appeal, a notice signed by defendant~~  
19       ~~indicating defendant's intent to proceed pro se, an application for~~  
20       ~~transcript at public expense, and the combined certificate along~~  
21       ~~with counsel's motion to withdraw.~~ Selection of appointed  
22       appellate counsel shall be the responsibility of the trial court.  
23       Defendant shall not have the right to select the attorney to be  
24       assigned; however, defendant's request for particular counsel shall  
25       be given consideration by the trial court.

26       ~~**Rule 2.30 Waiver of right to appellate counsel in criminal**~~  
27       ~~**cases.**~~

1           ~~An indigent defendant may waive the defendant's right to~~  
2           ~~have appellate counsel appointed if defendant does so in writing~~  
3           ~~and the trial court finds of record that defendant has acted with~~  
4           ~~full awareness of the defendant's rights and of the consequences of~~  
5           ~~a waiver and if the waiver is otherwise made according to law.~~  
6           ~~Defendant may withdraw a waiver of the defendant's right to~~  
7           ~~appellate counsel at any time. Such withdrawal and subsequent~~  
8           ~~appointment of counsel shall not affect any prior appellate~~  
9           ~~proceedings in which defendant acted pro se and shall not extend~~  
10          ~~any appellate deadlines, unless the appropriate appellate court~~  
11          ~~otherwise orders. Notwithstanding a waiver by defendant, the trial~~  
12          ~~court, after notice of appeal or application for discretionary review~~  
13          ~~has been filed, may appoint counsel to advise defendant during~~  
14          ~~appellate proceedings if it appears to the court that, because of the~~  
15          ~~gravity of the offense and other circumstances affecting defendant,~~  
16          ~~the failure to appoint counsel may result in injustice to the~~  
17          ~~defendant.~~

18          **Rule 2.30 Duty of continuing representation, withdrawal.**

19           2.30(1) Trial counsel may withdraw at any time after the  
20           final determination and disposition of the criminal action by the  
21           dismissal of the indictment or trial information or the acquittal of  
22           the defendant. However, in the event of the entry of a judgment of  
23           conviction and sentence, an attorney may not withdraw without  
24           leave of the trial court until the expiration of the time for appeal  
25           from the judgment of conviction. In the event a defendant entitled  
26           to court-appointed counsel wishes to appeal, counsel shall file with  
27           the district court the notice of appeal and an application for

1 appointment of counsel and for transcript at public expense in  
2 accordance with rule 2.29(6) before being allowed to withdraw.

3 **2.30(2)** Withdrawals allowed under this rule pertain only to  
4 the district court proceedings, and counsel of record in the district  
5 court shall be deemed to be counsel in the appellate court in  
6 accordance with the provisions of Iowa Rule of Appellate Procedure  
7 6.109(4) in the event of an appeal unless another is retained or  
8 appointed and notice is given to the parties and the clerk of the  
9 supreme court.

10

1 **Chapter 6**  
2 **Rules of Appellate Procedure**

3 . . . .

4 **Rule 6.110 Protected information; confidential materials;**  
5 **briefs not confidential.**

6 **6.110(4) Responsibility of filer.** It is the responsibility of the  
7 filing party to ensure that confidential or protected information is  
8 properly redacted, omitted, or certified as confidential. It is not  
9 the responsibility of the clerk of court to review filings to  
10 determine whether appropriate redactions, omissions, or  
11 certifications have been made-, to redact or remove confidential or  
12 protected information from court filings; or to certify or seal  
13 confidential or protected information on its own initiative. Failure  
14 of the filing party to ensure that confidential or protected  
15 information is properly redacted, omitted, or certified as  
16 confidential may subject the filing party to sanctions.

17 . . . .

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

21 . . . .

22 **6.201(2) Joinder disallowed.** Joinder in another party's  
23 petition on appeal is disallowed.

24 **6.201(2)(3) Consequence of failure to file a timely petition on**  
25 **appeal.** If the petition on appeal is not filed with the clerk of the  
26 supreme court within 15 days after the filing of a notice of appeal  
27 or within 15 days after the filing of an order granting an  
28 interlocutory appeal, the supreme court shall dismiss the appeal,  
29 and the clerk shall immediately issue procedendo.

1       **Rule 6.801 Composition of record on appeal.** Only the original  
2 papers and exhibits filed in the district court case from which the  
3 appeal is taken, the transcript of proceedings, if any, and a  
4 certified copy of the docket and court calendar entries prepared by  
5 the clerk of the district court in the case from which the appeal is  
6 taken shall constitute the record on appeal.

7       . . . .

8

9       **Rule 6.901 Filing and service of briefs and amendments.**

10       . . . .

11               **6.901(8)** *Number of copies to be filed and served.* Two  
12 copies of proof briefs and 18 copies of each brief in final form or  
13 amendment thereto shall be filed in paper with the clerk of the  
14 supreme court, and one copy of the proof brief and the briefs in  
15 final form shall be filed in paper and served on counsel for each  
16 party separately represented.

17       . . . .

1       **Rule 6.903 Briefs.**

2               **6.903(1) Form of briefs.**

3               *a. Reproduction.* A paper brief may be reproduced by any  
4 process that yields a clear black image on white paper. The paper  
5 must be opaque and unglazed. Briefs shall be reproduced on both  
6 sides of the sheet.

7               *b. Form of front covers.* The front covers of the briefs shall  
8 contain:

9                   (1) The name of the court and the appellate number of the  
10 case.

11                   (2) The caption on appeal. See rule 6.109(2).

12                   (3) The nature of the proceeding (e.g., Appeal, Certiorari)  
13 and the name of the court and judge, agency, or board whose  
14 decision is under review.

15                   (4) The title of the document (e.g., Brief for Appellant).

16                   (5) The name, address, telephone number, e-mail address,  
17 and fax number of counsel or the self-represented party filing the  
18 brief.

19               *c. Color of front covers.* The front cover of a brief filed in  
20 paper shall be:

21                   (1) Appellant’s brief—blue.

22                   (2) Appellee’s brief—red.

23                   (3) Reply brief—gray.

24                   (4) Amicus curiae brief—green.

25               The cover of any amended brief filed in paper shall be the  
26 same color as the original brief. Electronically filed briefs should  
27 have white covers.

1           *d. Paper size, line spacing, and margins.* The brief must be  
2 on 8½ by 11 inch paper. The text must be double-spaced, but  
3 quotations more than 40 words long may be indented and single-  
4 spaced. Headings and footnotes may be single-spaced. Margins  
5 shall be 1¼ inches on each side and 1 inch on the top and bottom.  
6 Page numbers shall be located at the bottom center of each page.  
7 The pages must be numbered consecutively using Arabic whole  
8 numbers. The cover page is page number one. Any blank pages  
9 are also numbered. Roman numerals are not allowed as page  
10 numbers.

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

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

22           . . . .

23           *h. Printing or duplicating taxed as costs.* To the extent  
24 reasonable, the costs of printing or duplicating a brief required to  
25 be filed or served in paper shall be taxed in the appellate court as  
26 costs. Reasonable printing or duplicating costs shall not exceed \$4

1        \$1 per page unless otherwise ordered by the appropriate appellate  
2        court.

3        . . . .

4                **6.903(4)** *Appellant's reply brief.* The appellant may file a  
5        brief in reply to the brief of the appellee. The reply brief does not  
6        need to contain the sections required by rule 6.903(2)(d),  
7        6.903(2)(e), 6.903(2)(f), 6.903(2)(g)(1), 6.903(2)(g)(2), or 6.903(2)(i)  
8        for principal briefs. Unless a cross-appeal is filed, no further  
9        briefs may be filed without leave of the appropriate appellate court.

10       . . . .

11  
12        **Rule 6.905 Appendix.**

13       . . . .

14                **6.905(3)** *Cover; form.*

15                a. The cover of the appendix and amendments to it shall be  
16        white.

17                b. The requirements set out in rule 6.903(1) governing the  
18        printing, typeface, spacing, page size, margins, binding, and the  
19        form and content of the front cover of briefs shall also be followed  
20        in the preparation of the appendix.

21                c. Copies of pleadings, exhibits, and other papers may be  
22        reduced or enlarged to 8 1/2 by 11 inches for insertion in the  
23        appendix. All such copies must be legible.

24                d. Page numbers must be located at the bottom center of  
25        each page. The pages must be numbered consecutively using  
26        Arabic whole numbers. The cover page is page number one. Any

1 blank pages are also numbered. Roman numerals are not allowed  
2 as page numbers.

3 . . . .

4 **6.905(13)** *Cost of producing; taxation as costs on appeal.*

5 a. The cost of producing the appendix shall initially be paid  
6 by the appellant unless the parties otherwise agree. If, however,  
7 the appellant reasonably believes parts of the record designated by  
8 the appellee for inclusion are unnecessary for the determination of  
9 the issues presented, the appellant may so advise the appellee who  
10 shall advance the cost of including such parts. If any party shall  
11 cause matters to be unnecessarily included in the appendix, the  
12 appropriate appellate court may tax the cost of producing such  
13 parts on that party.

14 b. Appellant's attorney shall certify within the appendix the  
15 amount actually paid for printing or otherwise producing  
16 necessary copies of the appendix.

17 c. The reasonable costs of printing or duplicating the  
18 appendix shall be taxed by the appellate court. Reasonable  
19 printing or duplicating costs shall not exceed \$4 \$1 per page  
20 unless otherwise ordered by the appropriate appellate court.

21 **6.905(14)** Confidential or Protected Information. All  
22 confidential or protected material must be included in a separate  
23 volume of the appendix and only that volume may be certified as  
24 confidential.

25 . . . .

1 **Rule 6.906 Brief of amicus curiae.**

2 . . . .

3 **6.906(3)** *Rehearings.* Amicus curiae briefs shall not be filed  
4 in support of, or in resistance to, a petition for rehearing of an  
5 opinion of the court of appeals or the supreme court.

6 **6.906(3)(4)** *Form of amicus curiae brief.* An amicus curiae  
7 brief shall not exceed more than one-half of the length limitations  
8 for a required brief specified in rule 6.903(1)(g). An amicus curiae  
9 brief must comply with the format requirements of rule 6.903(1).  
10 An amicus curiae brief need not comply with rule 6.903(2) or (3)  
11 but must include all of the following:

12 . . . .

13 **6.906(4)(5)** *Criteria for allowing amicus curiae brief.* An  
14 appellate court has broad discretion in determining whether an  
15 amicus curiae brief should be allowed. The court will base its  
16 decision on whether the brief will assist the court in resolving the  
17 issues preserved for appellate review in the case. In reaching its  
18 decision, the court will consider various factors, including those  
19 set forth below.

20 . . . .

21 **6.906(5)(6)** *Number of copies of amicus brief.* Eighteen  
22 copies of an amicus brief shall be filed. In addition, one copy shall  
23 be served on each party.

24 . . . .

1       **Rule 6.1002 Motions.**

2       . . . .

3               **6.1002(2)** *Resistance; reply to resistance.* All resistances,  
4       replies, and any supporting documents shall be served as provided  
5       in rule 6.701 and filed with the clerk of the supreme court. Unless  
6       the appropriate appellate court orders otherwise, any party may  
7       file a resistance to a motion within 14 days after service of the  
8       motion. A reply to the resistance may be filed within three days  
9       after the service of the resistance. The appropriate appellate court  
10      may act upon the motion prior to the expiration of the time to file a  
11      reply to the resistance. A resistance or a reply to the resistance  
12      may be supported by other relevant portions of the record, but  
13      such attachments shall not exceed 25 pages unless otherwise  
14      ordered by an appellate court. Any application for the inclusion of  
15      attachments exceeding the 25-page limitation shall not include  
16      such attachments.

17      . . . .

18

1 **Rule 6.1005 Frivolous appeals; withdrawal of counsel.**

2 . . . .

3 **6.1005(2)** *Motion to withdraw.* If, after a diligent  
4 investigation of the entire record, court-appointed counsel is  
5 convinced the appeal is frivolous, and that counsel cannot, in good  
6 conscience, proceed with the appeal, counsel may file a motion to  
7 withdraw. For purposes of this section, a potential claim of  
8 ineffective assistance of counsel that requires the development of  
9 an additional record in a postconviction relief proceeding may be  
10 considered frivolous. The motion must be accompanied by:

11 a. A brief referring to anything in the record that might  
12 arguably support the appeal. The motion and brief shall be in the  
13 form specified in rule 6.1007 and shall contain citations to the  
14 record. If the appeal is from a guilty plea or sentence, the motion  
15 shall, at a minimum, address whether a factual basis existed for  
16 each and every element of the crime, whether the plea and  
17 sentencing proceedings substantially complied with the rules of  
18 criminal procedure, and whether the sentence was authorized by  
19 the Iowa Code, case law, or the rules of criminal procedure. The  
20 brief shall contain specific citations to the sections of the Iowa  
21 Code and the Iowa Rules of Court that are applicable to the  
22 determination of whether the sentence imposed was within the  
23 statutory limits and compare those sections to the sentence  
24 imposed, along with a proper citation to the record. The brief shall  
25 also contain citations to the record establishing each of the  
26 elements of the crime and establishing compliance with the rules  
27 of criminal procedure and the Iowa Code.

1 . . . .

2 **6.1005(4)** *Request to transmit record.* ~~Within 14 days after~~At  
3 the time of filing the motion to withdraw, counsel shall request the  
4 clerk of the district court to transmit immediately to the clerk of  
5 the supreme court the remaining record not already transmitted,  
6 including the original papers and exhibits filed in the district court  
7 and any court reporter's transcript of the proceedings.

8 . . . .

9

10 **Rule 6.1006 Motions to dismiss, affirm, or reverse.**

11 . . . .

12 **6.1006(3)** *Motions to reverse.* Any party may file a motion  
13 with the appropriate appellate court to summarily reverse the  
14 appeal on the grounds the result is controlled by an  
15 indistinguishable, recently published decision of an appellate court  
16 or where error has been confessed. The motion shall comply with  
17 the requirements of rule 6.1002(1). ~~In response to a motion to~~  
18 ~~reverse, the appropriate appellate court will order the nonmoving~~  
19 ~~party to show cause why the case should not be reversed. A similar~~  
20 ~~show cause order may be entered by the appropriate appellate~~  
21 ~~court acting on its own initiative.~~ One judge or justice may  
22 overrule, but only a quorum of the appropriate appellate court may  
23 sustain, a motion to reverse.

24 . . . .

1       **Rule 6.1103 Application to the supreme court for further**  
2       **review.**

3               **6.1103(1) Application.**

4       . . . .

5               *c. Form.* An application for further review shall be a single  
6       document in the form prescribed by rule 6.903(1). An application  
7       for further review shall contain all of the following under  
8       appropriate headings in the following order:

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

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

18              (3) *Statement supporting further review.* The application  
19       shall contain a direct and concise statement of the reasons why  
20       the case warrants further review. The statement shall not be  
21       limited to a recitation of rule 6.1103(1)(b) but shall explain why  
22       the case meets the grounds for further review set forth in that  
23       rule. For example, if the claim is that the court of appeals  
24       decision is in conflict with a decision of the supreme court or the  
25       court of appeals on an important matter the party must at a  
26       minimum cite to the case in conflict.

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

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

10           (6) *Other attachments.* The only materials that may be  
11 attached to or filed with an application, other than the court of  
12 appeals decision, ~~are an evidentiary exhibit~~ relevant material  
13 from the district court record not exceeding ten pages, ~~and a~~  
14 district court order, orders, administrative agency rulings, or  
15 rulings from local boards or commissions. The district court  
16 order shall be attached if the court of appeals affirmed the  
17 decision of the district court under rule 6.1203 (affirmed or  
18 enforced without opinion), Iowa Ct. R. 21.26 (memorandum  
19 opinions), or Iowa Code section 602.5106(1) (affirmed by operation  
20 of law).

21 . . . .

22           **6.1103(4)** *Length of application or resistance.*

23           a. The application or resistance shall not exceed two-fifths  
24 of the length limitations for a required brief specified in rule  
25 6.903(1)(g) exclusive of the court of appeals decision, table of  
26 contents, table of authorities, ~~and evidentiary exhibits~~ relevant

1 material from the district court record, district court orders, and  
2 agency decisions.

3 b. An application for further review must include a  
4 certificate of compliance using rule 6.1401 form 10.

5 . . . .

6 **Rule 6.1202 Failure to comply with appellate deadlines and**  
7 **appellate court orders; consequences and penalties.**

8 . . . .

9 **6.1202(6) Failure to follow or respond to appellate court**  
10 **order. When a party to an appeal fails to follow or respond to an**  
11 **appellate court order, the court may dismiss the appeal or impose**  
12 **a penalty. If a monetary penalty is imposed on a party's attorney**  
13 **the penalty must be paid by the attorney individually and is not to**  
14 **be charged to the client. If such penalties are not paid within 15**  
15 **days, the attorney may be ordered to show cause why he or she**  
16 **should not be found in contempt of the court.**

17 . . . .

18 **Rule 6.1205 Petition for rehearing in supreme court.**

19 . . . .

20 **6.1205(4) Action by supreme court.** Oral argument in  
21 support of the petition will not be permitted. If a petition for  
22 rehearing is granted, the supreme court may make a final  
23 disposition of the case with or without oral argument, order  
24 resubmission, or enter any other appropriate order. The supreme  
25 court may deny the rehearing but simultaneously amend the  
26 opinion.

27 . . . .

1       **Rule 6.1208 Procedendo.**

2               **6.1208(1)** *Procedendo from supreme court action.* Unless  
3 otherwise ordered by the supreme court, no procedendo shall  
4 issue for:

5               *a.* Twenty-one days after an opinion of the supreme court  
6 is filed, nor thereafter while a petition for rehearing or an  
7 application for extension of time to file a petition for rehearing,  
8 filed according to these rules, is pending.

9               *b.* Twenty-one days after an order denying a petition for  
10 rehearing and the supreme court amends the original opinion as  
11 filed.

12               *c.* Seventeen days after an order dismissing the appeal is  
13 filed, nor thereafter while a motion requesting that the dismissal  
14 be set aside, filed according to these rules, is pending.

15       . . . .

16

1 **Rule 6.1401 — Form 10: *Certificate of Compliance with Type-Volume Limitation,***  
2 ***Typeface Requirements, and Type-Style Requirements for applications and***  
3 ***resistances to further reviews***

4  
5 **Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and**  
6 **Type-Style Requirements**

7  
8 1. This application/resistance for further review complies with the type-volume  
9 limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

10  this application/resistance contains [state the number of words,  
11 excluding the parts of the application/resistance exempted by Iowa R. App. P.  
12 6.1103(4)], or

13  this application/resistance uses a monospaced typeface and contains  
14 [state the number of lines of text, excluding the parts of the  
15 application/resistance exempted by Iowa R. App. P. 6.1103(4)].

16 2. This application/resistance for further review complies with the typeface  
17 requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of  
18 Iowa R. App. P. 6.903(1)(f) because:

19  this application /resistance for further review has been prepared in a  
20 proportionally spaced typeface using [state name and version of word  
21 processing program] in [state font size and name of type style], or

22  this application /resistance for further review has been prepared in a  
23 monospaced typeface using [state name and version of word processing  
24 program] with [state number of characters per inch and name of type style].

25  
26 \_\_\_\_\_  
27 Signature

26 \_\_\_\_\_  
27 Date



1           c. Appearance or assistance by students in other matters  
2 shall be under the general supervision of licensed Iowa counsel,  
3 but such counsel need not be personally present in court unless  
4 required by order of the court.  
5       . . . .