

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 is 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.*

. . . .

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.

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

6
7 **Rule 6.702 Filing fees and copies.**

8 **6.702(1) Filing fees.**

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

14
15 **Rule 6.801 Composition of record on appeal.** Only the ~~The~~ original
16 papers and exhibits filed in the district court, the transcript of proceedings, if
17 any, and a certified copy of the docket and court calendar entries prepared by
18 the clerk of the district court in the case from which the appeal is taken shall
19 constitute the record on appeal ~~in all cases.~~

20
21 **Rule 6.806 Proceedings when transcript unavailable.**

22 **6.806(1) Statement of the evidence or proceedings.** A statement of the
23 proceedings may be prepared to create a record of a hearing or trial for which
24 a transcript is unavailable if a party deems it necessary to complete the
25 record on appeal. If no report of the evidence or proceedings at a hearing or
26 trial was made or if a transcript is unavailable, the appellant may prepare
27 a~~The~~ statement of the evidence or proceedings shall be prepared from the
28 best available means, including the ~~appellant's~~ party's recollection. The
29 statement shall be filed with the clerk of the district court and served on the
30 ~~appellee~~ opposing party within 20 days after the filing of the notice of
31 appeal ~~if the evidence or proceeding was not reported~~ or within 10 days after
32 the ~~appellant~~ party discovers a transcript of ~~reported evidence~~ or a
33 proceeding is unavailable.

34 **6.806(2) Objections to statement.** The ~~appellee~~ opposing party may file
35 with the clerk of the district court and serve on the ~~appellant~~ filing party
36 objections or proposed amendments to the statement within 10 days after
37 service of the ~~appellant's~~ statement.

38 **6.806(3) Approval of statement by district court.** The statement and any
39 objections or proposed amendments shall be submitted to the district court
40 for settlement and approval. The statement as settled and approved shall

1 be filed with the clerk of the district court and the clerk of the supreme
2 court.

3
4 **Rule 6.903 Briefs.**

5 **6.903(1)** *Form of briefs.*

6

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

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

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

19
20 **Rule 6.1005 Frivolous appeals; withdrawal of counsel.**

21

22 **6.1005(2)** *Motion to withdraw.* If, after a diligent investigation of the entire
23 record, court-appointed counsel is convinced the appeal is frivolous, and that
24 counsel cannot, in good conscience, proceed with the appeal, counsel may file a
25 motion to withdraw. The motion must be accompanied by:

26 *a.* A brief referring to anything in the record that might arguably support
27 the appeal. The motion and brief shall be in the form specified in rule 6.1007
28 and shall contain citations to the record. If the appeal is from a guilty plea or
29 sentence, the motion shall, at a minimum, address whether a factual basis
30 existed for each and every element of the crime, whether the plea and
31 sentencing proceedings substantially complied with the rules of criminal
32 procedure, and whether the sentence was authorized by the Iowa Code, case
33 law, and rules of criminal procedure. The brief shall also contain citations to
34 the record establishing each of the elements of the crime and establishing
35 compliance with the rules of criminal procedure and the Iowa Code.

36
37 **Rule 6.1103 Application to the supreme court for further review.**

38 **6.1103(1)** *Application.*

39

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

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

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

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

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

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

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

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

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

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

23 *c. Form.* ~~An application for further review shall be a single document in the~~
24 ~~form prescribed by rule 6.903(1). Each copy of the application shall contain or~~
25 ~~be accompanied by a copy of the court of appeals decision, showing the date of~~
26 ~~its filing. The application shall be a single document including a brief in~~
27 ~~support of the request for review. All contentions and legal authorities in~~
28 ~~support of the application shall be included. No authorities or argument may~~
29 ~~be incorporated into the application by reference to another document;~~
30 ~~however, citations to the appendix are permitted. The only materials that may~~
31 ~~be attached to or filed with an application, other than the court of appeals~~
32 ~~decision, are an evidentiary exhibit not exceeding 10 pages and a district court~~
33 ~~order. The district court order shall be attached if the court of appeals affirmed~~
34 ~~the decision of the district court under rule 6.1203 (affirmed or enforced~~
35 ~~without opinion), Iowa Ct. R. 21.29 (memorandum opinion), or Iowa Code~~
36 ~~section 602.5106(1) (affirmed by operation of law). An application for further~~
37 review shall contain all of the following under appropriate headings in the
38 following order:

39 (1) *The questions presented for review.* The application shall contain
40 questions presented for review, expressed concisely in relation to the

1 circumstances of the case, without unnecessary detail. The questions should
2 be short and should not be argumentative or repetitive. The questions shall be
3 set out on the first page following the cover, and no other information may
4 appear on that page.

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

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

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

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

18 (6) *Other attachments.* The only materials that may be attached to or filed
19 with an application, other than the court of appeals decision, are an
20 evidentiary exhibit not exceeding 10 pages and a district court order. The
21 district court order shall be attached if the court of appeals affirmed the
22 decision of the district court under rule 6.1203 (affirmed or enforced without
23 opinion), Iowa Ct. R. 21.29 (memorandum opinion), or Iowa Code section
24 602.5106(1) (affirmed by operation of law).

25 *d. Discretion of supreme court on further review.* On further review, the
26 supreme court may review any or all of the issues raised in the original appeal
27 or limit its review to just those issues brought to the court's attention by the
28 application for further review.

29 *(de). Filing fee.* The applicant shall pay to the clerk of the supreme court a
30 filing fee or file a motion to waive or defer the fee as provided in rule 6.702(1)(g).
31

1 opinion.

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

8 **21.22(3)** *Publication of court of appeals opinions.* The court of appeals, by
9 majority vote of its members en banc, shall decide which of its opinions shall
10 be published. Its decision to publish an opinion shall be reflected in an order
11 filed with the clerk. An opinion may be published only after it is final. When
12 further review is granted, the court of appeals' opinion shall not be published
13 unless the supreme court otherwise directs.

14 **21.22(4)** *Official reporter.* Opinions of the supreme court and opinions of
15 the court of appeals to be published shall be published in West's North
16 Western Reporter commencing with and subsequent to 158 N.W.2d.

17 **21.22(5)** *Table of court of appeals opinions not otherwise published.* A
18 table of the opinions of the court of appeals not approved for publication shall
19 be published regularly in West's North Western Reporter. The table shall
20 consist of the title, docket number, date of decision, and disposition of each
21 case.

22 **Rule 21.23 Correction of opinions.**

23 **21.23(1)** *Correction notice.* The author of an opinion or the appropriate
24 appellate court may correct typographical, grammatical, or other formal errors
25 in the opinion by filing a correction notice with the clerk of the supreme court.
26 The correction notice shall be filed and kept with the opinion, and the author
27 or appropriate appellate court shall cause a corrected opinion to be filed with
28 the clerk. The corrected opinion shall reflect the original date of filing as well
29 as the date of the filing of the corrected opinion. The original opinion shall
30 remain on file with the clerk. If the opinion is to be published in West's North
31 Western Reporter and has not yet been published in a bound volume, and if
32 the correction did not originate with the publishing company, the author or
33 appropriate appellate court shall cause a copy of the correction notice to be
34 transmitted immediately to the publishing company for insertion of the
35 correction in the published opinion.[]

36 **21.23(2)** *Substantive changes to opinion.* Changes in the substance of a
37 supreme court opinion may be made only by action of that court before
38 procedendo has been issued. Changes in the substance of an opinion by the
39 court of appeals may be made only before the supreme court rules on any
40 application for further review or, when no such application is filed, before
41 issuance of procedendo. Such changes shall be made only by filing an order
42 amending the opinion together with a substituted opinion. The substituted
43 opinion shall reflect the original date of filing as well as the date of the filing of
44 the substituted opinion. The original opinion shall remain on file with the
45 clerk.

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

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

12 **Rule 21.26 Memorandum opinions.**

13 **21.26(1) *When appropriate.*** Memorandum opinions may be used by the
14 court of appeals and supreme court when any of the following occur:

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

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

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

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

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

27 **21.26(2) *Contents.*** Memorandum opinions should contain all of the
28 following information:

- 29 1. The name and number of the case.
- 30 2. Appellant's contentions when appropriate.
- 31 3. The reasons for the result, briefly stated.
- 32 4. The disposition.

33 **Rule 21.27 Application to supreme court for further review.**

34 **21.27(1) *When deemed submitted.*** An application for further review shall
35 be deemed submitted for consideration by the supreme court when the time for
36 filing a resistance to the application has expired. In those cases in which a
37 resistance is not allowed unless ordered by the court, and no resistance has
38 been ordered, an application for further review shall be deemed submitted
39 when the time for filing an application has expired.

40 **21.27(2) *Supreme court consideration.*** The supreme court en banc shall
41 consider each application for further review and resistance. The affirmative
42 vote of at least one-half of justices voting on the application shall be required to
43 grant an application for further review. If an application is granted, the

1 supreme court shall determine the scope and manner of submission.

2 **21.27(3)** Denial of further review shall have no precedential value.

3 **Rule 21.28 Petitions, applications, requests, and motions.**

4 **21.28(1)** *Clerk's review of filings.* The clerk of the supreme court or
5 designee shall examine each petition, application, request, motion or similar
6 document (called "motions" in this rule) filed to determine:

7 a. If the motion should be considered by a single judge, justice, or panel of
8 the appropriate appellate court, or whether it may be ruled upon by the clerk
9 or deputy pursuant to rule 6.1002(7);

10 b. If the motion should be ruled upon without awaiting a resistance
11 pursuant to rule 6.1002(4); or

12 c. If the motion demands the immediate attention of the court pursuant to
13 rule 6.1002(1)(a).

14 **21.28(2)** *Consideration of motions.*

15 a. *Motions not requiring a resistance.* Motions not requiring a resistance
16 will be promptly submitted to a judge, justice, panel, or the clerk or deputy for
17 consideration.

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

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

24 **21.28(3)** *Motions considered by more than one judge or justice.* Orders on
25 motions considered by a panel of judges or justices shall be signed by one
26 judge or justice, but shall include the names of the judges or justices who
27 considered the motion. An order on a motion the entire court considered,
28 however, may be signed by a single judge or justice with a notation that the
29 motion was considered en banc.

30 **21.28(4)** *Assignment of motions.* Motions shall ordinarily be assigned to a
31 judge, justice, or panel for consideration on a rotating basis.

32