

## **Chapter 6 - Rules of Appellate Procedure Substantive Review Task Force**

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Justice David May, Co-Chair	Nancy Penner, Cedar Rapids
Judge Paul Ahlers, Fort Dodge	Mikkie Schiltz, Davenport
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Ryan Koopmans, Des Moines	Scott Wadding, Des Moines
Martha Lucey, Des Moines	Mathew Zinkula, Waukee
Christine Mayberry, Des Moines	

### **Summary of Proposed Rule Changes for Public Comment March 31, 2023**

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## **Summary of Significant Proposed Changes to the Iowa Rules of Appellate Procedure**

### **Appeals from Guilty Pleas**

- **Rule 6.103(2):** Proposed new rule for appeals from a final judgment of sentence following a guilty plea pursuant to Iowa Code section 814.6(1)(a)(3).
  - A subcommittee drafted a new subrule within rule 6.103, “Review of final orders and judgments,” to expressly address establishing good cause for a direct appeal from a guilty plea.
    - **(a):** The appellant is required to include a “jurisdictional statement” section in the brief to demonstrate good cause to appeal (or identify the guilty plea is from a class A felony).
    - **(b):** The State has the option to dispute good cause in its brief or file a motion to dismiss for lack of good cause.
      - This proposed process is similar to the process of establishing jurisdiction in federal cases.
    - **(c):** The rule cross-references rule 6.1005 for motions to withdraw for lack of good cause.
  - The proposed jurisdictional statement is also included in the brief writing requirements contained in rule 6.903(2)(g). (See below.)

### **Rule 6.901(1)(e); 6.901(2) Pro se Supplemental Briefs**

- The pro se supplemental briefs rule was revised to limit the applicability of the rule to committals under chapter 229A (sexually violent predator committals).
  - This change was made to comply with recent changes to Iowa Code section 814.6A prohibiting pro se filings by persons represented by counsel in criminal cases.

### **Rule 6.903: Contents of the brief**

- **Rule 6.903(1)(h)(1):** Lowered the maximum word limit from 14,000 to 13,000.
  - This was done to correct a possible mathematical error that occurred when converting page limits to word count limits, and is consistent with a similar change by the federal appellate courts.
- **Rule 6.903(2):** Contents of the brief.
  - **(c)** Removed the requirement to list all authorities under each

issue in the “statement of issues presented for review” section of the brief.

- **(e)** The “statement of the case” section was changed to a “nature of the case” section and reworded in an effort to clarify what should and should not be included in that section and the purpose that requirement serves.
- **New (g):** Added a requirement for a jurisdictional statement for appeals involving a guilty plea. See proposed new rule 6.103(2) above.
- **(h)(1):** In the argument section, clarified that citing to the notice of appeal does not satisfy the requirement for showing how an issue was preserved for appellate review.
- **(h)(3):** Added a sentence that no authorities or arguments may be incorporated into the brief by reference to another document.
  - A similar provision already exists in further review rules.
- **(h)(3) Comment:** A proposed new comment was added warning that if an independent state constitutional issue is being asserted, that ordinarily the party making the claim must make a separate argument with citation to authority supporting the independent claim to avoid possible waiver of the issue under rule 6.903(2)(h)(3).
- **(j):** Added a sentence allowing the request for oral or nonoral submission to include an explanation.
- **Old (j):** Removed the requirement that the brief include a certificate of cost.
  - This section is not typically needed with EDMS. However, parties may still include or file one when applicable or needed.

### **Proof/Final Briefs**

- Elimination of proof briefs and the proof-final briefing process. Removed use of “proof” and “final” briefs throughout and replaced with a single briefing system. The briefing process has undergone substantial revamping under the proposed rules.
  - References to “proof briefs” have all been changed to just “briefs” and the word “final” has been removed from references to briefs.

### **6.903 Addendums; 6.905 Appendices**

- The traditional appendix process has been substantially revised. Orders being appealed must be included in an addendum, and appendices to provide additional documents relevant to the appeal will be optional. The specific rule changes are described in more detail below.
- **New Rule 6.903(3): Addendums.**
  - **(a):** The appellant and cross-appellant (if any) must file an addendum at the time their opening brief is filed. The addendum “must include . . . a file-stamped copy of the judgment(s), order(s), or decision(s) being appealed.” An addendum must be filed in every case.
    - This is the language from the current rule requiring these items to be included in the appendix.
  - **(a)(1)–(2):** Specifies that administrative appeals must include rulings from each stage of the agency proceeding in addition to the district court’s ruling, and criminal appeals must include the final judgment of sentence in addition to specific written orders being appealed.
  - **(b):** Cross-appellants must also include an addendum with their opening brief if they are cross-appealing from an order different than the orders included in the appellant’s addendum.
  - **(c):** The addendum must be attached to the party’s brief, similar to the way the court of appeals opinion is attached to a petition for further review.
    - Requires the addendum to be a single document attached to the brief. All orders, etc., included in the addendum must be contained in a single document with a table of contents and pages numbered consecutively.
  - These proposed changes required revisions to citations to the record. See below (rule 6.904(4)).
- **Rule 6.904(4): References in briefs to the record.**
  - Changes were made to citations to the record in conjunction with the proposed changes to the briefing process (see above).
  - Additional changes are noted below.
- **Rule 6.905: Appendices.**
  - The appendix rule was revised to make appendices optional, provide that each party could file its own, and limit the length of the appendix.

- **Old (1):** The requirements to designating parts of the record were deleted.
- **New (1) [prior (2)]: Appellant’s Appendix.** In addition to the addendum, the appellant and appellee may also file their own separate appendix, but are not required to do so.
  - **(a):** the appendix is due the same date as the party’s opening brief.
  - **(b):** The separate appendices may contain no more than 100 pages of additional documents that are important to the issues raised on appeal.
- **(2): Appellee’s appendix.** The rule tracks appellant’s requirements, but it may not contain items included in the appellant’s appendix (instead, the appellee must cite to the appellant’s appendix).
- **(3): Overlength appendix.** “For cause shown,” a party may move for leave to file an overlength appendix.
- **6.905(1) Comment:** A comment was added to the rule that gives examples of what “could” be included in an appendix.
- **Rule 6.905(10),** matters not included in the appendix, was removed.
- **New 6.905(9):** A supplemental appendix may be filed with the reply brief so long as it, combined with the appellant’s original appendix, does not exceed the original appendix page limit (100).

### **6.1005 Withdrawal of Counsel**

- **New rule 6.1005(2):** Withdraw from guilty plea appeals.
  - A new rule was developed for court-appointed attorneys to withdraw from appeals from a guilty plea where good cause is lacking under Iowa Code section 814.6(1)(a)(3).
    - The proposed new rule outlines the process and requirements counsel seeking to withdraw must meet.
    - The proposed rule requires the motion to withdraw and an accompanying brief explaining why good cause cannot be established.
      - This requirement is similar to that of 6.1005 briefs for motions to withdraw from frivolous appeals under renumbered rule 6.1005(3)(a) (former rule 6.1005(2)).
  - The following language was included in the proposed new rule under (a)(2): “Counsel on direct appeal from a criminal

proceeding is not required to review potential claims of ineffective assistance of counsel. See Iowa Code § 814.7.”

- **Rule 6.1005(3):** All other withdraws (frivolous appeals).
  - Changes made to rule 6.1005(3):
    - The following language was removed from (3): “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 following language was added under (a)(2): “Counsel on direct appeal from a criminal proceeding is not required to review potential claims of ineffective assistance of counsel. See Iowa Code § 814.7.”
- **Rule 6.1005(8):** The review process of motions to withdraw has been revised to separate motions to withdraw from guilty pleas for lack of good cause under rule 6.1005(2) from motions to withdraw from frivolous appeals under rule 6.1005(3).
  - **(a):** Review of motions to withdraw from a guilty plea for lack of good cause under rule 6.1005(2): the new proposed rule does not provide for a full examination of the record by the supreme court, and does not require transmittal of the record. Instead, the proposed rule states:

“[I]f the supreme court finds the appeal lacks good cause, it will grant counsel’s motion to withdraw and dismiss the appeal for lack of appellate jurisdiction. If, however, the supreme court finds good cause exists or arguably exists, it will deny counsel’s motion and may remand the matter to the district court for appointment of new counsel.”
  - **(b):** Review of motions to withdraw from frivolous appeals under rule (6.1005(3): No substantive changes made.

## **General Summary of Proposed Changes to the Iowa Rules of Appellate Procedure by Division<sup>1</sup>**

### **General Nonsubstantive Changes:<sup>2</sup>**

- Formatting and citation changes were made across the board to make the appellate rules consistent with other rules (i.e., references to forms, cross-reference citations to other rules).
- Changed all numbers that relate to deadlines from spelled out to numerals to make it easier for practitioners to find applicable deadlines (e.g., “must be filed in seven days” to “must be filed in 7 days”).
- Changed the wording and phrasing in some instances to make the appellate rules consistent with other rules and the Iowa Code.
- Changed some wording and phrasing to plain English or commonly used terms.
  - Removed most instances of the word “shall” in the rules in an effort to continue to move the language in the rules towards common English, provide greater clarity and less ambiguity, and in conformity with other chapters of the Iowa Court Rules as well as the Federal Rules. Typically “shall” was changed to “may,” “will,” “should,” or “must” as appropriate, or simply removed altogether.
- In some instances, larger sections were broken into subsections.
- Reorganized, moved, and combined some sections to allow for a more logical sequence and improved flow.
- Removed references to fax numbers (except where required by statute).
- Clarified varying references to “clerk” to specify which clerk was intended (e.g., clerk of the district court, clerk of the supreme court), and “court” to specify which court was intended (e.g., supreme court, appropriate appellate court, district court).

### **Division I, Rules 6.1–6.199, Case Initiation: Civil and Criminal; Parties and Attorneys; Protected Information; Confidential Materials**

- **Rule 6.1(3), former 6.100(3):** Clarified that abortion notification appeals and filings by confined persons may be done electronically or nonelectronically without prior authorization.

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<sup>1</sup>Some places indicate, “**Changes noted separately**” or use similar language. These references mean that there are other, more significant, proposed changes that are noted under the first header in this document, titled: “**Summary of Significant Proposed Changes to the Iowa Rules of Appellate Procedure.**”

<sup>2</sup>These changes are generally not noted elsewhere in this summary.

- **New rule 6.11:** Added a rule that clarifies that the clerk of the supreme court may act through deputies.
- **Rule 6.101(2):** Added language clarifying where a notice of cross-appeal is to be filed.
- Subsequent subsections of rule 6.103 were renumbered to allow for insertion of 6.103(2).
- **Rule 6.103(2): Changes noted separately.**
- **Rules 6.104(3), 6.106(3), and 6.107(4):** Revised to provide that the combined certificate must be filed within 7 days after the filing date of the challenged order “or court appointment of new appellate counsel, whichever is later.”<sup>3</sup>
  - The 7-day timeframe was lowered from 14 days.
  - The additional allowance from the date new counsel is appointed allows for situations where there must be new counsel appointed for the appeal, such as criminal appeals represented by the state public defender’s office.
- **Rule 6.107(1):** Petition for writ of certiorari.
  - Added a new comment to the rule noting that the supreme court has general authority to review decisions for other tribunals.
    - A comment was added to note that in some circumstances the supreme court on its own authority may review decisions of a magistrate on writ of certiorari.
  - Added a provision noting that the petition is filed with the clerk of the supreme court.
- **New rule 6.108:** Added a new rule regarding the review of expungement matters.
  - The new rule clarifies the proper form of review for expungement matters is by writ of certiorari.
  - The new rule also provides for the confidentiality of these type of proceedings.
- **Former rule 6.108, Form of Review:**
  - **Renumbered as 6.151** to allow room for additional new rules involving different types of appellate review, e.g., the expungement rule.
  - Revised to add the following language:
    - “The appellate court may treat the documents upon which

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<sup>3</sup>In some instances, proposed new language is underlined.



the action was initiated as seeking the proper form of review and, in appropriate cases, may order the parties to file jurisdictional statements or file documents supporting the proper form of discretionary review.”

- “Opposition. This rule does not preclude opposing parties from filing a motion to challenge the form of review.”
- **Rule 6.153:** Protected information, renumber from 6.110.
- **Rule 6.153(5)(b):** References to victim names in briefs that are deemed confidential must be made by initials or “another nonidentifying description.”
  - This was changed from “first name” or initials.

#### **Division II, Rules 6.201–6.299, Termination of Parental Rights and Child in Need of Assistance Appeals**

- **Rules 6.201(1)(c), 6.202(3):** Struck the language: “except that it may be printed or duplicated on one side of the page.”
  - Language conflicts with chapter 16, EDMS rules.
- **Rules 6.201(1)(c)(5), 6.202(3)(e):** Struck the language: “A certificate of confidentiality in accordance with rule 6.110(2).”
  - Language unnecessary because all CINA and TPRs are confidential.
- **Rule 6.204(3):** Struck (b), ruling on a motion for new trial, and (c), posttermination order from the record on appeal for posttermination TPR proceedings.
  - Removed as duplicative because these items are already required to be attached to the petition on appeal (rule 6.201(1)(e)).
- **Rule 6.205(2):** Struck the language, “The refusal of the court of appeals to grant full briefing shall not be a ground for further review.”

#### **Division III, Rules 6.301–399, Certified Questions of Law**

- **Rule 6.302(4):** Revised language regarding payment of the filing fee by removing the phrase “appellant” and referencing rule 6.703 (see below).
- **Removed old rule 6.304(2):** Removed the prohibition on rehearing in certified questions of law cases.
  - Certified questions are the only type of review that the rules prohibit rehearing.

#### **Division IV, Rules 6.401–6.499, Abortion Notification Appeals**

- **Rule 6.401(1):** Revised to allow for the notice of appeal to be filed electronically as well as in person or by fax.

**Division V, Rules 6.501–6.599, Other Proceedings** No substantive changes.

**Division VI, Rules 6.601–6.699 Staying District Court Judgments and Proceedings**

- **Rule 6.601(1):** Combined rule 6.601(4)—Effect on judgment, with rule 6.601(1)—Requirement of bond.

**Division VII, Rules 6.701–6.799, Filing, Service, and Fees**

- **Rule 6.703(1)(f):** Revised to clarify that costs in certified question cases must to be advanced by the “appellant” and will later be apportioned under rule 6.304(3).
- **Rule 6.703(2)(a):**
  - Added a provision providing that for abortion notification appeals the filing fees will be waived.
  - In postconviction-relief cases where the Appellate Defender’s Office represents the applicant, the clerk will waive the filing fees without a motion.

**Division VIII, Rules 6.801–6.899, Record on Appeal**

- **Rule 6.801:** Added paragraphs (d) and (e) to clarify that the record on appeal includes documents from other cases when required by law, such as Iowa Code section 822.6A, and when judicial notice of other documents is taken.
- **Rule 6.802(2):**
  - Reorganized this section on transmission of the record on appeal to separate out CINA and TPR cases from other types of cases in a similar fashion as to other sections in chapter 6.
  - Additionally, “nonelectronic documents and exhibits” provisions were separated into their own subsections and reworded slightly.
  - Changed the deadline to submit the record from 7 days to 14 days and removed reference to “final” briefs (see Division IX below and separate changes above).
- **Removed rule 6.802(5):** Retention of trial record in district court.
  - This was removed as these situations are rare and can be handled on a case-by-case basis if necessary.
- **Rule 6.803(1):** Revised the rule regarding ordering the transcript to say, “Within 7 days after filing the notice of appeal or appointment of new appellate counsel, whichever is later.”
  - Follows revisions to rules 6.104(3), 6.106(3), and 6.107(4).
- **Rule 6.803(2) Form of Transcript:**

- **(c):** Added a requirement in (c) that on transcripts the name of “the witness and the designation of questioning (direct, cross, etc.) must appear in the margin at the top of each page of testimony.”
- **(d):** Added a requirement in (d) that the index appear at the beginning of each volume of the transcript.
- **(e):** Moved (e)—Reporter’s certificate of filing the transcript, to 6.803(3)—Filing transcript and certificate of filing.
- **Rule 6.803(6):** No substantive changes were made to this rule regarding issuance of the briefing notice; but the language was simplified.
- **Rule 6.804(1):** Added to the rule regarding duty of the appellant to file a combined certificate that service of the court reporter is required and may be done by “email, mail, fax, or hand-delivery.”
- **Rule 6.805(1):** Added the ability for the appellee to request permission to file a separate designation of parts to be transcribed beyond the 10-day period upon a showing of good cause.
- **Rule 6.806(3):** The rule regarding proceedings when the transcript is unavailable was modified to allow the district court to conduct a hearing and compel persons to attend, as well as approving or revising any statement of proceedings.
- **Rule 6.807:** Correction or modification of the record rule was revised to eliminate any discretion for the district court to not correct a record that contains errors, omissions, or misstatements by stating that such errors “must be corrected.”

**Division IX, Rules 6.901–6.999, Briefs and Appendices**

- **Division IX:** Proof/final briefs generally: **Changes noted separately.**
- **Rule 6.901(1)(d),** renumbered from **(e):** Added a new subsection for cases in which the typical appellant and appellee roles do not apply.
  - The new rule states: “In the event the parties’ interests differ from traditional appellant-appellee roles, a party may request the clerk of the supreme court to enter briefing deadlines that differ from the prescribed deadlines.”
- **Rule 6.901(1)(e),** renumbered from **(d):** **Changes noted separately.**
- **Rule 6.901(2):** **Changes noted separately.**
- **Rule 6.901(5),** renumbered to **6.901(4):** Rewritten to provide greater clarity in addressing situations that may arise when there are multiple adverse parties.

- The revisions provide that when there are multiple appellants, the response deadline runs from the date of the last appellant brief filed.
- When there are multiple appellees, the reply brief deadline runs from the date of the last appellee brief filed.
- **Rule 6.902(1): Expedited cases.**
  - Added to the list of cases requiring expedited appeals: “physical care” and “visitation” to the child custody category, and “resentencing” to the criminal proceedings category.
  - **Other changes noted separately.**
- **Rule 6.903(1):**
  - **(b)(1):** Added a requirement that the district court case number be included on the front cover of briefs.
  - **(d):** Changed the margin in briefs from 1.25” to 1” and block quotes to 50 words in conformity with Bluebook rules.
  - **(h)(1):** Added provision providing that the caption and signature blocks do not count toward the word limit.
  - **Other changes noted separately.**
- **Rule 6.903(2): Changes noted separately.**
- **Rule 6.903(3): Changes noted separately.**
- **Rule 6.903(4) (renumbered as 6.903(5)):** Provides that an issue may not be raised for the first time in a reply brief, which reflects the current state of the law.
- **Rule 6.904(2)(a): References in briefs to cases:**
  - Broken up into subsections.
  - Added a requirement that parties must generally follow a Bluebook-type format in citations in briefs.
  - Moved and revised the section regarding unpublished opinions cited in briefs.
    - Included a requirement that parties citing an opinion that is not “readily accessible” must serve a copy of the opinion.
    - Added Lexis and Westlaw as examples of “readily accessible.”
- **Rule 6.904(3):** Revised references of legal propositions so well established that no citation is needed in brief, including removing “proximate cause.”
  - Revised (a) by striking a portion of the language: “Findings of fact in a law action, ~~which means generally any action triable by~~

ordinary proceedings, are binding upon the appellate court if supported by substantial evidence.”

- **Rule 6.904(4): Citations to the record:**

- **(a):** Combined the proof brief and final brief subsections and reworded to comply with the changes to appendices in rule 6.905 (see above **changes noted separately**) as follows:

- “Briefs must contain a citation to the record for each material statement of fact and case proceeding that identifies the particular part of the record by date and name of filing (intelligible abbreviations may be used) with references to the pages of the parts of the record, including the original page and line numbers for citations to a transcript. E.g., 1/1/2022 Final Order and Judgment, p. 5; 11/14/2021 Defendant’s Motion for Summary Judgment, Ex. A, p. 14; 6/7/2022 Trial Transcript vol. II, 298:15–24; 5/26/2023 Final Jury Instruction No. 7.”

- **Other changes noted separately.**

- **Rule 6.905: Appendix. Changes noted separately.**

- **Rule 6.906: Amicus Briefs.**

- **(1)(a):** Added a provision to allow the United States and the Iowa Attorney General to file an amicus brief without leave of court or consent of the parties.
- **(1)(b):** Clarified that a conditionally filed amicus brief filed with a motion for leave must be filed as its own document and not as an attachment to the motion.
- **(1)(c):** Added a new subsection regarding amicus participating in oral arguments.
  - The current rule states that an amicus request to participate in argument will not be granted absent extraordinary circumstances. Revisions provide a process for requesting argument time.
  - Amicus must file a motion for leave to participate at the time their brief is filed.
  - For cases on further review in which the amicus has already filed their brief, amicus must make the request within 14 days of the order granting further review.
  - The motion must state whether an aligned party has agreed to share argument time or if not aligned with a party, “state with particularity the reasons why the amicus

curiae should be given its own oral argument time and the amount of time requested.”

- **(1)(b), (c); (2)(c):** Added a provision allowing an amicus that is not aligned to any party to file a brief.
- **Rule 6.908(5) Additional authorities:** For notices of additional authorities, the filing party may now include a concise parenthetical accompanying each citation that explains the relevance of that authority.

#### **Division X, Rules 6.1001–6.1099, Writs, Motions, and Other Documents**

- **Rule 6.1002(5)–(6):** A quorum of the supreme court/court of appeals is required to review an order entered by a single justice or judge.
- **Rule 6.1002(6):** Revised to allow for a senior judge on the court of appeals to entertain motions.
- **Rule 6.1005: Changes noted separately.**
- **Rule 6.1006(1)(b) Rulings on motions to dismiss:** Granting a motion to dismiss an appeal was revised to state, “One justice, judge, or senior judge may order submission with the appeal or deny, but only a quorum of the appropriate appellate court may grant, a motion to dismiss.”
- **Rule 6.1006(1)(c):** Similar to rule 6.1006(1)(b) (above), motions to reinstate an appeal was revised to say: “One justice, judge, or senior judge may deny, but only a quorum of the appropriate appellate court may grant, a motion to reinstate an appeal.”
- **Rule 6.1007(1):** Changed margin requirements for motions to be 1” on all sides and block quotes for 50 words or more in conformity with Bluebook rules.

#### **Division XI, Rules 6.1101–6.1199, Transfer, Submission, and Further Review**

- **New rule 6.1103(1)(a)(3):** “The court of appeals must extend the time for filing an application if the court determines that a failure to timely file an application was due to the clerk of the supreme court's failure to notify the prospective applicant of the filing of the decision.”
  - This was added to comply with Iowa Code section 602.4102(5).
- **Rule 6.1103(2)(c):** revised to allow for “relevant materials from the district court record” and “administrative agency rulings” to be attached to the resistance to applications for further review.
  - Provides consistency with types of materials that may be attached to the further review application.

**Division XII, Rules 6.1201–6.1299, Disposition of Appeals**

- **New rule 6.1202(5):** “One justice, judge, or senior judge may deny, but only a quorum of the appropriate appellate court may grant, a motion to reinstate an appeal.”
  - To conform with the revisions made in rule 6.1006 (above).

**Division XIII, Rules 6.1301–6.1399, Amendment to Rules:** No substantive changes made.