

BEHIND THE SCENES AT THE SUPREME COURT

I. Screening Process

A. Case Statements

1. The Iowa appellate system is based on a “deflection” structure. All cases are filed in the office of the supreme court clerk. Iowa Ct. R. 21.21(1)(a). Cases that are not directly transferred by the clerk to the court of appeals are then routed through a screening process in which a three-justice panel decides which cases should be retained, which should be transferred to the court of appeals, and which should be summarily decided. Iowa Ct. R. 21.21(2).
2. The clerk’s office forwards cases to central staff for preparation of a case statement once the cases are “ready.” Cases are ready when the final briefs and appendix have all been filed, the record has been received from the district court clerk, and all motions have been resolved or ordered to be submitted with the appeal.
3. The staff reads the briefs and pertinent portions of the appendices or record and prepares a case statement. The staff also checks the cases for finality, form of review, timeliness, and error preservation. Cases that are not properly before the court may be subject to dismissal after notice to the parties. The purpose of the case statement is to “set the table” for the screening panel’s routing decision.
4. The public portion of the case statement lists the supreme court docket number, county name and number, long caption, trial and appellate counsel, finality of the challenged judgment order or decree, timeliness of case-initiating document, a general scope of review, oral argument requests, and a brief description of the procedural posture of the case and the issues. *See* Iowa Ct. R. 21.41, form 1. The remainder of the case statement is confidential, *see* Iowa Ct. R. 21.21(1)(c), and

includes a recitation of the facts, issues, and error preservation claims, a discussion section where appropriate, and routing and oral argument recommendations. The routing recommendations are based on the criteria set forth in Iowa Rule of Appellate Procedure 6.401.

5. Supreme Court Retention. Supreme court retention is appropriate under rule 6.401(2) for cases involving: (a) “substantial constitutional questions as to the validity of a statute, ordinance or court or administrative rule;” (b) substantial issues alleged to conflict with a published court of appeals or supreme court decision, (c) substantial issues of first impression, (d) “fundamental and urgent issues of broad public importance”; and (e) lawyer discipline, and under rule 6.401(3)(a) for cases involving “substantial questions of enunciating or changing legal principles.”
6. Summary Disposition (fasttracks). Cases that are deemed appropriate for summary disposition by the supreme court are known internally as fasttrack cases. *See* Iowa R. App. P. 6.401(2)(f). These cases generally are per curiam memorandum opinions, are expedited for submission, and, with rare exception, are not published. In general, these are cases in which the disposition is clearly controlled by a recent published decision, or those, which, on their face, are clearly appropriate for affirmance or reversal. *See* Iowa Ct. R. 21.21(3).
7. Court of Appeals. Cases involving questions of applying existing legal principles shall be transferred. *See* Iowa R. App. P. 6.401(3)(b). By implication, cases involving the types of issues listed above for supreme court retention, where those issues are deemed to be insubstantial, are also transferred. The vast majority of domestic relations, postconviction relief and involuntary commitment cases have also been directly transferred to the court of appeals since October 2001.
8. The screening panel usually consists of two justices and a senior judge. The panel members are selected on a rotating basis. The case statements are batched into definite supreme court, possible supreme court, fasttrack and court of appeals lists. The “possible” supreme court list includes most of the cases that fall in the gray area

between clear supreme court and clear court of appeals recommendations. The panel discusses the recommendations in a telephone conference call and the staff director takes down their routing decisions. The routing determinations made by the panel are final.

B. Further Review Memoranda.

1. The clerk forwards further review applications and resistances to the central staff, which prepares orders setting the opinions for consideration during the court's next available administrative telephone conference. The staff director reviews applications to make sure they comply with the requirements of Iowa Rule of Appellate Procedure 6.402. If further review applications appear to be untimely, the orders require the parties to file statements indicating why the applications should not be dismissed. *See* Iowa Code § 602.4102(4) (An application for further review shall not be granted by the supreme court unless the application was filed within twenty days following the filing of the decision of the court of appeals.).
2. The staff attorneys may prepare further review memoranda for each case. The memoranda describe the status, issues and facts, analyze the issues presented, and recommend grant or deny and whether oral argument should be allowed. The memoranda should not recommend how the matter should ultimately be resolved. The memoranda address whether further review should be granted under the criteria set forth in Iowa Rule of Appellate Procedure 6.402(3). Those grounds include whether the court of appeals has erred, has rendered an opinion conflicting with a published supreme court or court of appeals opinion, has not considered a controlling constitutional provision, or has decided a case which should have been retained by the supreme court. Iowa R. App. P. 6.402(3).
3. A rotating panel of supreme court justices reviews the memoranda. The panel makes recommendations to the full court, which makes the final grant/deny decisions en banc.

C. Motions.

1. The motion practice consumes a considerable portion of court and central staff's time. The clerk's office forwards motions to staff on a weekly motion calendar. These generally include substantive and the more complex procedural motions. Over 900 motions were funneled through central staff each year in 2000 and 2001. Our motions attorney assigns the motions to staff and randomly attaches the required number of justices or senior judges to the motions. He also makes relevant entries on our Appellate Case Processing system.
2. The staff prepares memoranda and proposed orders on the motions, copies them, and forwards them to the court.
3. The staff attorneys try to draft proposed orders that will not only resolve the motions, but also put the case back on track procedurally so additional motions will not be necessary.
4. The court either signs the proposed order or directs the staff attorney to change the order or do additional research.

II. Administrative Conference Following Screening Process

- A. Further Reviews.** The court considers the screening panel's recommendations on further review applications during its en banc administrative telephone conference held just after screening. The court considers the applications in light of the rule 6.402 criteria and may also consider whether the case will allow the court to make any new law or significantly advance or clarify existing case law. Those further reviews that are granted are placed in the next available supreme court submission.
- B. Petitions for Rehearing.** At the same conference call, the court considers pending petitions for rehearing under Iowa Rule of Appellate Procedure 6.27. These are requests for the court to reconsider its own rulings based on alleged mistakes of law or fact, and should not be confused with further reviews, *see* Iowa Rule of Appellate Procedure 6.402, or court of appeals rehearings, *see* Iowa Rule of Appellate Procedure 6.28. The court does not hear oral arguments on rehearing petitions, and

ordinarily will not grant them without requesting an answer from opposing counsel. If the court denies rehearing, the clerk issues procedendo and the case is over. Occasionally, the court may make cosmetic changes to the opinion along with the order denying rehearing. If the petition is granted, the court may dispose of the case at that time or direct that the case be resubmitted.

III. Assignment of Cases

A. Assignment Procedure.

1. The Chief Justice and the staff director make the case assignment. In a typical assignment, the Chief Justice gets two or three cases depending on his administrative workload, and the other justices each get three. The assignment is composed of further review grants, ethics cases, priority cases (such as child custody, criminal, juvenile, etc.) and the oldest available nonpriority civil cases.
2. The staff director prepares a draft of the tentative case assignment. The cases are then assigned to the justices by the chief justice on a random basis unless the screening panel has directed a case be assigned to a particular justice or a conflict prevents that justice from taking the case.

B. Submission Schedule. The tentative case assignment is then used to prepare the submission schedule. The chief justice schedules oral arguments and nonoral cases on Wednesday, Thursday, and Friday morning of court week. The slate of cases attempts to balance oral and nonorals submissions for a given session and tries to accommodate the needs of both the court and counsel. The submission schedule is prepared about one month in advance and lists the case caption, the county of origin, counsel and assigned oral argument time and date. The schedule is available in the supreme court clerk's office and on the court's web page, <http://www.judicial.state.ia.us/>. The court also sends letters to counsel notifying them of the date and time of oral argument or nonoral submission.

IV. Court Week Procedures.

A. Oral arguments. The court recently adopted a new procedure for its court weeks. The court holds reinstatement and special ethics hearings on Monday afternoon. It conferences circulating opinions en banc on Tuesdays. The court hears oral arguments and submits nonoral cases on Wednesday mornings and afternoons, Thursday mornings and afternoons, and Friday mornings. The justices have already read the briefs prior to oral arguments, so counsel should focus on legal arguments rather than factual recitations. The justices hear the cases en banc and will quiz counsel on their positions during arguments. Counsel should view each question as a chance to solidify their case and avoid being evasive or defensive. The justice who asks the toughest questions may well be your ally. The best arguments will address the policy ramifications of the ultimate decision as well as the effect on the present case.

B. Postsubmission Conference. At the postsubmission conference following each argument session, the justices will discuss how the opinion should be drafted in each case. The assigned justice then drafts the opinion as discussed, or may end up drafting the decision in a different manner if the justice cannot agree with the majority consensus.

C. Opinion Conference. At the opinion conference, the justices discuss each circulating opinion. The opinions may be approved as is or with minor revisions, or may be held over for study, revision, or dissent. If an opinion already has a dissent, that dissent may win the day at conference, and the case may be held over for a new decision. The conferences are no holds barred, but any ruffled feathers are usually smoothed over at the subsequent court dinners.

D. Administrative Conference. In addition to its opinion duties, the court decides various administrative matters during court weeks. The court has three subcommittees, administrative, rules and bar conduct, which meet on Monday mornings of court week. The subcommittees prepare minutes and present their proposals to the full court during the Tuesday afternoon administrative conferences. Based on the outcome of these conferences, staff drafts or finalizes whatever rules, orders or letters that are necessary.

V. Appellate Practice Tips.

A. Appellate Briefs.

1. Identify whether you believe your case should be retained by the supreme court or transferred in your routing statement under Iowa Rule of Appellate Procedure 6.14(e), citing applicable criteria contained in rule 6.401.
2. Discuss ramifications of your issues on future cases.
3. Don't hide error preservation, finality or timeliness problems—get them resolved as soon as possible.
4. Remember to ask for oral argument time if you want it and say so if you do not.
5. In criminal briefs, always set forth the specific convictions, code sections (including year), and sentences.
6. In criminal briefs, always link sufficiency challenges to the specific element(s) you believe were not established. Make sure the specific sufficiency challenges were preserved in the district court.
7. In criminal briefs, allege ineffective assistance of trial counsel if it does not appear that a valid issue was preserved. The ineffectiveness issue must be argued in a separate brief section and not just in a footnote.
8. In criminal cases, cite specific constitutional provisions by article, section and title, and provide U.S. Supreme Court precedent for any federal challenges. Otherwise, you might waive a potential habeas claim. On Iowa Constitutional challenges, make sure they were argued below and be sure to actually argue them in your brief.
9. Always note related cases.
10. Don't make frivolous error preservation challenges.
11. Make sure you actually argue all claims and cite relevant authorities and record citations for factual matters.
12. Be specific about relief sought.
13. Use initials, aliases or first names only in briefs in juvenile cases.

B. Appendix.

1. The appendix is extremely important and should be prepared with care. The appendix is the only part of the record that most justices will see, and a poor appendix

frustrates the court and reflects badly on the attorney and the case.

2. Make sure you have a clear table of contents.
 - a. Identify items by description: e.g., “Real Estate Contract” rather than “Exhibit 1”.
 - b. Indicate the nature of an order or decision: e.g., “Temporary Custody Order” rather than “Order”.
 - c. Indicate where an individual’s testimony can be found in the appendix.
3. In setting forth testimony, it is vitally important that the reader can always tell who is testifying, who is questioning them, and where breaks in the testimony occur.

C. Further reviews.

1. Distinguish further review by the supreme court under rule 6.402 from court of appeals rehearings under rule 6.27. They have different deadlines, format requirements and purposes.
2. File the further reviews on time. Unless the court of appeals grants an extension based on the clerk’s failure to notify a party of the decision, an untimely further review cannot be granted. You can use the file by mail rule under rule 6.31(1)(a), but the additional time for service by mail under rule 6.31(5) does not apply.
3. Use yellow covers on further review documents.
4. State specifically why further review should be granted. Go beyond merely claiming error and argue why granting further review would be helpful to the bench and bar.
5. Do not merely regurgitate your appellate brief, especially if the court of appeals decided the case on a basis you did not anticipate.

D. Motions.

1. Try and resolve differences with opposing counsel before seeking court intervention through the motion practice. Many motions would never have to be filed if counsel would buckle down and settle minor disputes.
2. Don’t use motions as a way to gain an extension of time, especially in custody cases.

3. Go easy on pro ses. Even though the court has said it will hold pro ses to the same standards, as a factual matter pro ses are given some leeway. Filing motions to dismiss for short delays or minor transgressions unduly delays cases and wastes court and staff time. As a rule of thumb, if a pro se is making a reasonable effort at complying with our rules and deadlines, the appeal will be allowed to proceed.
4. Make sure a filing is actually late before filing a motion to dismiss. Consider the effects of rules 6.31(1)(a) (file by mail), 6.31(5) additional time where deadline runs from service and service is by mail), Iowa rule of civil procedure 1.442(4) (notice of appeal timely if timely served and filed within a reasonable time thereafter) and Iowa Code section 4.1(34) (where deadline falls on Saturday, Sunday or enumerated holiday, it shifts to the next business day).
5. Don't bury the court with paper. We need the challenged order and enough of the record to decide the issue before the court. A blizzard of paper impresses no one and wastes valuable time and storage space. Rule 6.22(3)(d) now limits attachments beyond the challenged ruling and any matter required by a specific rule to 25 pages unless otherwise ordered by the court, and the request for overlength attachments cannot include the attachment.
6. Always reply to motions to strike or dismiss. If the party correctly alleges materials are not part of the record, concede the point or move under rule 10(d) to correct the record.
7. Always cite authority in motions and resistances.

E. Termination Appeals.

Remember that termination appeals are governed by an extremely expedited process with a different procedure altogether than other appeals. *See* Iowa Rs. App. P. 6.5(2), 6.6(3), (4), 6.10(2), and 6.151 et.seq. Be sure and use the special timetable set forth in rule 6.701, table 3.