CHAPTER 164

RULES OF APPELLATE PROCEDURE

IN THE MATTER OF	)	
	)	REPORT OF THE
THE	)	
	)	SUPREME COURT
RULES OF APPELLATE PROCEDURE	)	

TO THE 1977 REGULAR SESSION OF THE SIXTY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF IOWA:

Pursuant to sections 684.18(2) and 684.19, The Code, the Supreme Court of Iowa has prescribed and hereby reports to the General Assembly the new Rules of Appellate Procedure as set out in exhibit "A" hereto attached and made a part hereof.

Respectfully submitted,

THE SUPREME COURT OF IOWA

/s/ C. Edwin Moore
C. Edwin Moore, Chief Justice

Des Moines, Iowa
January 28, 1977

EXHIBIT "A"

RULES OF APPELLATE PROCEDURE

July 1, 1977

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I. APPEALS IN CIVIL CASES

RULE 1. FROM FINAL JUDGMENT.

(a) All final judgments and decisions of the district court and any final adjudication in the district court under rule 86, Rules of Civil Procedure, involving the merits or materially affecting the final decision, may be appealed to the Supreme Court, except as provided in this rule and in rule 3, Rules of Appellate Procedure. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for dissolution of marriage or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of dissolution of marriage or annulment shall also be deemed a final decision.

(b) No interlocutory ruling or decision may be appealed except as provided in rule 2, Rules of Appellate Procedure, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over or proceeding to trial. On appeal from the final judgment, appellant may assign as error such interlocutory ruling or decision or any final adjudication in the trial court under rule 86, Rules of Civil Procedure, from which no appeal has been taken, where such ruling, decision or final adjudication is shown to have substantially affected

the rights of the complaining party.

RULE 2. FROM INTERLOCUTORY ORDERS.

(a) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the Supreme Court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after service of the application and hearing as provided in rules 22 and 30, Rules of Appellate Procedure, on finding that such ruling or decision involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 1, Rules of Appellate Procedure, from a final adjudication in the trial court under rule 86, Rules of Civil Procedure.

(b) The order granting such appeal may be on terms advancing it for prompt submission. It shall stay further proceedings below and may require bond.

RULE 3. AMOUNT IN CONTROVERSY.

Subject to § 631.16 of The Code and except where the action involves an interest in real estate, no appeal shall be taken in any case where the amount in controversy, as shown by the pleadings, is less than three thousand dollars unless the trial judge, within thirty days after the judgment or order is entered, certifies that the cause is one in which appeal should be allowed. The right of appeal is not affected by any remission of any part of the verdict or judgment.

RULE 4. SCOPE OF REVIEW.

Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict.

RULE 5. TIME FOR APPEAL.

(a) Appeals to the Supreme Court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial or judgment notwithstanding the verdict as provided in rule 247, Rules of Civil Procedure, or a motion as provided in rule 179(b), Rules of Civil Procedure, is filed, and then within thirty days after the entry of the ruling on such motion; provided however that where an application to the Supreme Court or any justice thereof to grant an appeal under rule 2, Rules of Appellate Procedure, is made within thirty days from the date of such ruling or decision, any appeal allowed upon such application shall be deemed timely taken.

Provided further that if the Supreme Court or any justice determines that the order or decision from which application to appeal under rule 2, Rules of Appellate Procedure, is timely made is a final judgment or decision from which appeal would lie under rule 1, Rules of Appellate Procedure, an appeal therefrom shall also be deemed timely taken and perfected when the order making such determination is filed with the clerk of the Supreme Court, and rule 6 (b), Rules of Appellate Procedure, shall apply.

A cross-appeal may be taken within the thirty days for taking an appeal or in any event within five days after the appeal is taken.

(b) No appeal from a judgment, ruling or order taken after it has actually been made by the trial court shall be

held insufficient because the clerk of the trial court has not recorded such judgment, ruling or order upon the court records at the time the appeal is taken, if it shall appear that such record has been made prior to ten days after the date on which the appeal is docketed.

RULE 6. HOW TAKEN.

(a) An appeal other than those allowed by order under rule 2 or rule 5, Rules of Appellate Procedure, is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by appellant or his attorney. It shall specify the parties taking the appeal and the decree, judgment, order or part thereof appealed from. The appellant shall serve a copy of the notice on each other party or his counsel in the manner prescribed in rule 82(b), Rules of Civil Procedure. The notice presented to the clerk of the trial court for filing shall be accompanied by a proof of service in the form prescribed in rule 82(g), Rules of Civil Procedure. Promptly after filing the notice of appeal with the clerk of the trial court appellant shall mail or deliver to the clerk of the Supreme Court a copy of such notice for his information.

(b) An interlocutory appeal under rule 2, Rules of Appellate Procedure, shall be deemed taken and perfected when the order allowing it is filed with the clerk of the Supreme Court. No notice of such appeal is necessary. The time for any further proceeding on such appeal which would run from the notice of appeal shall run from the date such order is so filed. The clerk of the Supreme Court shall promptly transmit a copy of such order to the attorneys of record and the clerk of the trial court.

RULE 7. SUPERSEDEAS BOND.

(a) No appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to

be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that appellant will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value the obligation of the judgment or order appealed from, which an appellate court may render or order to be rendered by the trial court; and also all costs and damages adjudged against him on the appeal, and all rents of or damage to property during the pendency of the appeal of which appellee is deprived by reason of the appeal.

(b) If the judgment or order appealed from be for money, the penalty of such bond shall be one hundred twenty-five percent of the amount thereof, including costs, unless, in exceptional cases, the trial court fixes a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than three hundred dollars.

(c) No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring appellee and all others to stay proceedings under it or such part of it as has been appealed from, when the appeal bond is filed and approved.

RULE 8. BOND--HEARING ON SUFFICIENCY.

If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a supersedeas bond tendered by appellant, he may apply to the trial court, on at least three days notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, the trial court shall determine the

sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in security or defective in form, it shall discharge such bond and fix a time for filing a new one, all as appears by the circumstances shown at the hearing.

RULE 9. JUDGMENT ON BOND.

If an appellate court affirms the judgment appealed from, it may, on motion of appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or it may remand the cause to the trial court for the determination of such damages and costs and entry of judgment on the bond.

RULE 10. RECORD ON APPEAL.

(a) COMPOSITION OF RECORD ON APPEAL. The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases.

(b) TRANSCRIPT; DUTY OF APPELLANT TO ORDER; NOTICE IF PARTIAL TRANSCRIPT ORDERED. Within ten days after filing the notice of appeal, appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. If appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless all of the proceedings are to be transcribed, appellant shall also within such ten days file with the clerk of the trial court and serve on appellee a description of the parts of the proceedings which he has ordered transcribed. With

that description appellant shall file and serve a statement of the issues he intends to present on appeal. If appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten days after the service of the statement of appellant, file with the clerk of the trial court and serve an appellant a designation of additional parts to be included. If appellant shall within four days fail or refuse to order such parts, appellee shall either order the parts or apply to the trial court to compel appellant to do so. The ordering party must make satisfactory arrangements with the reporter for payment of the transcript costs.

The reporter's transcript shall be filed with the clerk of the trial court within the time fixed or allowed for docketing the appeal; and these rules relative to such transcript shall also apply to bills of exceptions under rule 241, Rules of Civil Procedure. The cost of the transcript shall be taxed in the trial court.

(c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be filed with the clerk of the trial court and served on appellee within twenty days after the filing of the notice of appeal. Appellee may file with the clerk of the trial court and serve on appellant objections or proposed amendments to the statement within ten days after service of appellant's statement. Thereupon the statement and any objections or proposed amendments shall be submitted

to the trial court for settlement and approval and as settled and approved shall be included in the record on appeal.

(d) CORRECTION OR MODIFICATION OF THE RECORD. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation or the trial court, either before or after the record is transmitted to the Supreme Court, or the appropriate appellate court on proper suggestion or on its own initiative, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court, unless the questions arise after the case has been transferred to the Court of Appeals, in which event, they shall be presented to that court.

RULE 11. TRANSMISSION OF RECORD.

(a) TIME FOR TRANSMISSION OF DOCKET ENTRIES. Within fourteen days after the filing of the notice of appeal, the clerk of the trial court shall transmit a certified copy of the docket and calendar entries in the proceeding in the trial court to the clerk of the Supreme Court and all parties or their attorneys. The clerk of the Supreme Court shall thereupon prepare a docket page and assign a number to the case.

(b) TRANSMISSION OF REMAINING RECORD. Within seven days after all required briefs and the appendix have been

served or at such earlier time as the parties may agree or the Supreme Court may order, appellant shall request the clerk of the trial court to transmit immediately to the clerk of the Supreme Court the remaining record not already transmitted, including the original papers and exhibits filed in the trial court and any reporter's transcript of proceedings. Appellant shall take all action necessary to enable the clerk of the trial court to assemble and timely transmit the remaining record. If more than one appeal is taken, each appellant shall comply with the provisions of rule 10(b), Rules of Appellate Procedure, and this subdivision.

When request is made by either party for transmission to the Supreme Court of portions of the record in addition to the certified copy of the docket and calendar entries, the clerk of the trial court shall number the documents comprising the remaining record and shall transmit the same to the clerk of the Supreme Court. The clerk of the trial court shall transmit with the remaining record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the Supreme Court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the Supreme Court. The clerk of the trial court shall indicate, by endorsement on the face of the

record or otherwise, the date upon which the record is transmitted to the Supreme Court.

(c) RETENTION OF TRIAL RECORD IN TRIAL COURT. If the record or any part thereof is required in the trial court for use pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of an appellate court, and shall transmit a copy of the order and of the docket and calendar entries together with such parts of the original record as the parties may designate and as the trial court shall allow. The parts of the record not transmitted to the clerk of the Supreme Court shall nevertheless be part of the record on appeal for all purposes.

(d) PORTIONS OF RECORD NOT TRANSMITTED. Any parts of the record which have not been transmitted to the clerk of the Supreme Court shall, on the order of an appellate court or on the request of any party, be transmitted by the clerk of the trial court to the clerk of the Supreme Court.

RULE 12. DOCKETING APPEAL; FILING RECORD.

(a) DOCKETING THE APPEAL. Within forty days after the filing of the notice of appeal, unless the time is shortened or extended by an order under rule 20, Rules of Appellate Procedure, appellant shall pay the docket fee to the clerk of the Supreme Court, and the clerk shall thereupon enter the appeal upon the docket. If appellant is authorized by the trial court or Supreme Court to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at the request of the party within such forty days. Simultaneously with such

payment of the fee or request for docketing without fee, appellant shall serve on appellee and file with the clerk of the Supreme Court a statement as to whether the appeal does or does not involve a contest as to child custody to which rule 17, Rules of Appellate Procedure, applies. An appeal shall be docketed under the title given to the action in the trial court, with appellant identified as such, but if such title does not contain the name of appellant, his name identified as appellant shall be added to the title. The clerk of the Supreme Court shall immediately give notice to all parties or their attorneys of the date on which the appeal is entered on the docket.

(b) CERTIFICATE OF ORDERING TRANSCRIPT. Within fourteen days after filing notice of appeal appellant shall file with the clerk of the Supreme Court and serve on appellee a certificate of ordering transcript. The certificate shall include the name of the reporter, the date on which the transcript was ordered, a description of the portions of proceedings ordered transcribed and a statement regarding the arrangements made with the reporter for payment of the cost of the transcript. The certificate shall be signed by appellant or his attorney.

If for any reason a transcript has not been ordered within ten days after the filing of the notice of appeal, appellant shall file with the clerk of the Supreme Court and serve on appellee within such fourteen days a certificate so stating with a statement of the reason a transcript cannot or will not be prepared.

If, after the filing of the certificate of ordering transcript, a transcript of additional portions of the proceedings is ordered under rule 10(b), Rules of Appellate Procedure, or otherwise, the party so ordering shall within four days file with the Supreme Court clerk and serve on the

other party a supplemental certificate so stating.

(c) DISMISSAL FOR FAILURE TO DOCKET. If appellant shall fail to pay the docket fee when required, any appellee may file a motion in the Supreme Court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken and the date on which the notice of appeal was filed. Appellant may respond by written resistance within fourteen days of service of the motion by appellee. The clerk shall docket the appeal for the purpose of permitting the Supreme Court to entertain the motion without requiring payment of the docket fee, but appellant shall not be permitted to respond without payment of the fee unless he is otherwise exempt from prepayment.

(d) DISMISSAL FOR FAILURE TO TRANSMIT REMAINING RECORD. If appellant shall fail to cause timely transmission of the remaining portions of the record as required by rule 11(b), Rules of Appellate Procedure, any appellee may file a motion in the Supreme Court to dismiss the appeal. The motion shall state on what dates required briefs and the appendix were served on the parties and filed with the clerk of the Supreme Court. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed and the expiration date of any order retaining the record or parts thereof in trial court or of any order extending the time for transmitting the record or parts thereof. Appellant may respond by written resistance within fourteen days of service of the motion by appellee.

(e) RESTORING TRIAL COURT JURISDICTION. After an appeal is taken, the filing with the clerk of the trial court of a stipulation in which all parties agree to a dismissal of an appeal shall restore jurisdiction to the trial court for the entry of an order of dismissal of the appeal, which will be a final adjudication. The clerk of the trial court shall forward a copy of such stipulation and order to the clerk of the Supreme Court.

(f) LIMITED REMAND. The appropriate appellate court during appeal or pending application for appeal may remand the cause to the trial court, which shall have jurisdiction for such specific proceedings as may be directed by the appellate court. Notwithstanding such remand, jurisdiction of the appeal shall remain in the appellate court which ordered the remand.

RULE 13. FILING AND SERVICE OF BRIEFS AND AMENDMENTS.

(a) TIME FOR SERVING AND FILING BRIEFS. Appellant shall serve and file his brief within fifty days after the date on which the appeal is docketed. Appellee shall serve and file his brief within thirty days after service of the brief of appellant. If appellant serves and files a reply brief, he shall do so within fourteen days after service of the brief of appellee. The Supreme Court may shorten these periods for serving and filing briefs, either by rule for all cases or for classes of cases or by order in specific cases.

(b) CROSS APPEALS. In the event of a cross appeal, appellant shall serve and file his brief within fifty days after the date on which the appeal is docketed. Appellee (cross appellant) shall serve and file his brief within thirty

days after service of the brief of appellant. Appellant (cross appellee) shall serve and file his responsive reply brief within thirty days after service of the brief of appellee Appellee (cross appellant) may serve and file a reply brief under rule 14(c), Rules of Appellate Procedure, within fourteen days after service of appellant's reply brief.

(c) MULTIPLE ADVERSE PARTIES. If the time for doing any act prescribed by these rules is measured from the date of service of a paper by an adverse party, then in the case of multiple adverse parties the time for doing such act shall be measured from the date of service of the last timely served paper by an adverse party or the date of expiration of time within which the adverse parties had to serve the paper.

(d) AMENDMENTS. An appellant may amend his required brief once within fifteen days after serving the brief, provided no brief has been served in response to his brief. The time for serving and filing of appellee's brief shall be measured from the date of service of the amendment to appellant's brief. An appellee may amend his brief once within ten days after serving his brief, provided no brief has been served in reply to his brief. The time for serving and filing appellant's reply brief shall be measured from the date of service of the amendment to appellee's brief. A reply brief may be amended at any time prior to seven days before submission of the appeal to the appellate court. Any other or further amendments to the briefs may be made only with leave of the appropriate appellate court. An amendment may be conditionally filed with a motion for leave.

(e) NUMBER OF COPIES TO BE FILED AND SERVED. Eighteen copies of each brief or amendment thereto shall be filed with the clerk of the Supreme Court, unless the court by order in a particular case shall direct a different number, and two copies shall be served on counsel for each party separately represented. If a party is allowed by order of the Supreme Court to file typewritten ribbon and carbon copies of a brief, the original and five legible copies shall be filed with the clerk and one copy shall be served on counsel for each party separately represented.

(f) CONSEQUENCE OF FAILURE TO FILE BRIEFS. If appellant fails to file his brief within the time provided by this rule, or within the time as extended, appellee may move for dismissal of the appeal. If appellee fails to timely file his brief, he will not be heard at oral argument except by special permission of the appropriate appellate court.

RULE 14. BRIEFS.

(a) APPELLANT's BRIEF. The brief of appellant shall contain under appropriate headings and in the following order:

(1) A table of contents with page references.

(2) A table of cases (alphabetically arranged), statutes and other authorities cited, with references to all pages of the brief where they are cited.

(3) A statement of the issues presented for review. Under each issue separately stated shall be a list of all cases, statutes and other authorities referred to in the argument covering that issue. The authorities which are considered to be the most pertinent and convincing shall be indicated by underlining. Not less than one nor more

than four authorities under each separately stated issue shall be so indicated. Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings and the disposition of the case in the trial court. It shall then recite the facts relevant to the issues presented for review. All portions of the statement shall be supported by appropriate references to the record or the appendix in accordance with subdivision (g).

(5) An argument. The argument may be preceded by a summary. The argument shall contain in separately numbered divisions corresponding to the separately stated issues the contentions of appellant with respect to the issues presented and the reasons therefore, with citations to the authorities relied on and to the pertinent parts of the record in accordance with subdivision (g).

(6) A short conclusion stating the precise relief sought.

(b) APPELLEE'S BRIEF. The brief of appellee shall conform to the requirements of subdivision (a) (1) to (6), except that a statement of the case need not be made unless appellee is dissatisfied with the statement of appellant.

(c) REPLY BRIEF. Appellant may file a brief in reply to the brief of appellee, and if appellee has cross-appealed, he may file a brief in reply to the brief of appellant responding to the issues presented by the cross appeal. No further briefs may be filed except with leave of the appropriate appellate court.

(d) REFERENCES IN BRIEFS TO PARTIES. In their briefs and oral arguments counsel should minimize references to parties by such designations as "appellant" and "appellee" and should use the actual names of the parties or descriptive terms such as "plaintiff", "defendant", "the employee", "the injured person", "the taxpayer", "the decedent".

(e) REFERENCES IN BRIEFS TO LEGAL AUTHORITIES. In citing cases the names of parties must be given. In citing Iowa cases, reference must be made to the volume and page where the case may be found in the Iowa Reports, if reported therein, and in the North Western Reporter, if reported therein. In citing cases reference must be made to the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. E.g., __ Iowa __, __ N.W. __ (19__); __N.W.2d __ (Iowa 19__); __N.W.2d__ (Iowa Ct. App. 19__); __S.W. 2d__ (Mo. Ct. App. 19__); __U.S. __, __S.Ct. __, L.Ed.2d__ (19__); __F.2d __ (__Cir. 19__); __F. Supp. __ (S.D. Cal. 19__). When quoting from authorities or referring to a specific point within an authority, the specific page or pages quoted or relied upon shall be given in addition to the required page references. Unpublished opinions of the Iowa appellate courts may not be cited as authority. When treatises or textbooks are cited, the edition must be designated. In citing authorities other than cases, references shall be made as follows: codes, to section number; treatises, textbooks and encyclopedias, to section and page; all others, to page or pages. Use of the "supra" and "infra" forms of citation is discouraged.

(f) REFERENCES IN BRIEFS TO LEGAL PROPOSITIONS. The following propositions are deemed so well established that authorities need not be cited in support of any of them:

(1) 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.

(2) In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made.

(3) In ruling upon motions for new trial the trial court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.

(4) The court is slower to interfere with the grant of a new trial than with its denial.

(5) Ordinarily the burden of proof on an issue is upon the party who would suffer loss if the issue were not established.

(6) In civil cases the burden of proof is measured by the test of preponderance of the evidence.

(7) In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them.

(8) The party who so alleges must, unless otherwise provided by statute, prove negligence and proximate cause, by a preponderance of the evidence.

(9) A motorist upon a public highway has a right to assume that others using the road will obey the law, including statutes, rules of the road and necessity for due care, at

least until he knows or in the exercise of due care should have known otherwise.

(10) Generally questions of negligence, contributory negligence and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law.

(11) Reformation of written instruments may be granted only upon clear, satisfactory and convincing evidence of fraud, deceit, duress or mutual mistake.

(12) Written instruments affecting real estate may be set aside only upon evidence that is clear, satisfactory and convincing.

(13) In construing statutes the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said.

(14) In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says.

(15) In child custody cases the first and governing consideration of the courts is the best interest of the child.

(16) An issue may be proven by circumstantial evidence; but this evidence must be such as to make the theory reasonably probable, not merely possible, and more probable than any other theory based on such evidence. Generally, however, it is for the jury or other trier of fact to say whether circumstantial evidence meets this test.

(17) Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question is engendered.

(g) REFERENCES IN BRIEFS TO THE RECORD. References in the briefs to parts of the record reproduced in the appendix filed with the brief of appellant (see rule 15, Rules of Appellate Procedure) shall be to the pages of the appendix at which those parts appear. If the appendix is deferred, references in the briefs to portions of the record to be reproduced in the appendix shall be made in the manner stated in rule 15(c), Rules of Appellate Procedure. If references are made in the briefs to parts of the record not reproduced in the appendix, the references shall be to the pages of the parts of the record involved, e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered and received or rejected.

(h) LENGTH OF BRIEFS. Except by permission of the Supreme Court, required briefs shall not exceed fifty pages exclusive of the table of contents and table of authorities and reply briefs shall not exceed twenty-five pages. Such permission may be granted ex parte.

(i) BRIEFS IN CROSS APPEALS. If a cross appeal is filed, the party who first filed his notice of appeal shall be deemed appellant for the purposes of this rule and rules 13 and 15, Rules of Appellate Procedure, unless the parties otherwise agree or the Supreme Court otherwise orders. The brief of appellee shall contain the issues and argument involved in his cross appeal as well as his response to the brief of appellant.

(j) MULTIPLE APPELLANTS OR APPELLEES. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

RULE 15. APPENDIX TO BRIEFS.

(a) DUTY OF APPELLANT; CONTENT; TIME; NUMBER. Appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the trial court proceeding; (2) any relevant portions of the pleadings, transcript, instructions, findings, conclusions and opinion; (3) the judgment, order or decision in question; (4) the notice of appeal, and (5) any other parts of the record to which the parties wish to direct the particular attention of the court. Portions of the record shall be set out verbatim in the appendix. Summaries, abstracts or narratives shall not be used unless the parties prepare an agreed statement of the case pursuant to subdivision (f) of this rule. The fact that parts of the record are not included in the appendix shall not prevent the parties or the courts from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, appellant shall serve and file the appendix with his brief. Eighteen copies of the appendix, and of any amendments thereto, shall be filed with the clerk of the Supreme Court and two copies shall be served on counsel for each party separately represented unless the court shall by rule or order direct the filing of a different number. The appendix may be amended by agreement of all the parties at any time prior to assignment of the appeal for submission to an appellate court. The

written consent of all the parties must be filed with the amendment. In absence of agreement or after assignment, the appendix may be amended only with leave of the appropriate appellate court. An amendment to the appendix may be conditionally filed with a motion for leave.

(b) DETERMINATION OF CONTENTS; COST OF PRODUCING. The parties are encouraged to agree as to the contents of the appendix. If the parties do agree on such contents, they shall file a short memorandum of that agreement with the clerk of the Supreme Court within fourteen days after the date on which the appeal is docketed. If the parties do not so agree, appellant shall, not later than fourteen days after the date on which the appeal is docketed, serve on appellee and file with the clerk of the Supreme Court a designation of the parts of the record which he intends to include in the appendix and a statement of the issues which he intends to present for review. If appellee desires to direct the particular attention of the court to parts of the record not designated by appellant, he shall, within ten days after service of the designation, file with the clerk of the Supreme Court and serve upon appellant a designation of those parts. Appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall consider the fact that the entire record is available to the appellate courts for examination and shall not engage in unnecessary designation. Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by appellant, but if appellant considers

that parts of the record designated by appellee for inclusion are unnecessary for the determination of the issues presented, he may so advise appellee and appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be unnecessarily included in the appendix the appropriate appellate court may impose the cost of producing such parts on that party.

(c) ALTERNATIVE METHOD OF DESIGNATING CONTENTS. Preparation of the appendix may be deferred by appellant until after typewritten or page proof copies of all the briefs have been filed. If the preparing and filing of the appendix is thus deferred, the provisions of subdivision (b) of this rule shall apply, except that the designations referred to therein shall be made by each party at the time his required brief is initially served and filed, and a statement of the issues presented shall be unnecessary. Appellant shall, not later than ten days after the date on which the appeal is docketed, file with the clerk of the Supreme Court and serve on appellee a notification of his election to defer the appendix.

If a deferred appendix authorized by this subdivision is employed, each party shall serve and file typewritten or page proof copies of his brief or briefs within the time required by rule 13(a), Rules of Appellate Procedure. One typewritten carbon copy or page proof copy of each brief shall be served on opposing counsel and two copies shall be filed with the clerk of the Supreme Court. The initial copies of the briefs shall contain appropriate references to

the pages of the parts of the record involved, e.g., Petition p. 6, Judgment p. 5, Transcript p. 298. Within twenty-one days after service of the initial copy of appellee's brief, appellant shall file and serve the appendix. Within fourteen days after the appendix is served, each party shall serve and file copies of his brief or briefs in the form prescribed by rule 16(a), Rules of Appellate Procedure, containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the briefs as initially served and filed, except that typographical errors may be corrected.

(d) ARRANGEMENT OF THE APPENDIX. At the beginning of the appendix shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order. Portions of the reporter's transcript of proceedings shall be inserted in chronological order based on the date the transcribed proceedings took place rather than on the date the completed transcript was filed. When matter contained in the transcript is set out in the appendix, the original pagination of that matter shall be indicated in the appendix by placing in brackets the number of each page of the transcript at the place in the appendix where that transcript page begins. Omissions in the text of papers, of exhibits or of the transcript, regardless of size, must be indicated by a set of three asterisks. Immaterial formal matter, such as captions,

subscriptions and acknowledgments, shall be omitted. A question and its answer may be contained in a single paragraph.

(e) REPRODUCTION OF EXHIBITS. Exhibits or relevant portions thereof designated for inclusion in the appendix may be contained in a separate volume or volumes, suitably indexed. Eighteen copies thereof shall be filed with the appendix and two copies shall be served on counsel for each party separately represented. Relevant portions of the transcript of a proceeding before an administrative agency, board, commission or officer, used in an action in the trial court, may be regarded as an exhibit for the purpose of this subdivision.

(f) AGREED STATEMENT OF THE CASE FILED AS THE APPENDIX. In lieu of an appendix with contents as specified in subdivision (a) and arranged as specified in subdivision (d), the parties may prepare an agreed statement of the case which shall not incorporate by reference any part of the record. The statement shall be in narrative form, shall show how the issues presented by the appeal arose and how they were decided and shall set forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. The original agreed statement shall be signed by all parties to the appeal or their counsel, and one copy thereof shall be filed with the clerk of the Supreme Court within fourteen days after the appeal is docketed. As the appendix, appellant shall file and serve with his brief printed or duplicated copies of the

agreed statement in the form required by rule 16(a), Rules of Appellate Procedure.

RULE 16. FORM OF BRIEFS, APPENDIX AND OTHER PAPERS.

(a) FORM OF BRIEFS AND APPENDIX. Briefs and the appendix may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. The appendix and briefs shall be printed or duplicated on both sides of the sheet. Carbon copies of briefs and the appendix may not be submitted without permission of the court. All printed or duplicated matter must appear in at least 11 point (small pica) type on opaque, unglazed paper. When utilizing a process which duplicates or copies a typewritten original, lines of typewritten text shall be double spaced. Briefs and the appendix shall be bound on the left in volumes having pages 8 1/2 by 11 inches and type matter 6 by 8 1/2 inches. Margins on the bound side of the sheets shall be not less than 1 1/8 inches suitable for permanent binding procedures. Copies of the reporter's transcript of proceedings and other papers reproduced in a manner authorized by this rule may be inserted in the appendix, but not in such manner as to prevent subsequent uniform permanent binding. Such papers may be informally renumbered and asterisks may be added informally if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and colored covers are available, the cover of the brief of appellant should be blue; that of appellee, red; that of an intervenor or amicus curiae, green; that of a reply brief, gray. The cover of the appendix should be white. The cover of an

amendment should be the same color as the document which it amends. The front covers of the briefs and the appendix, and amendments thereto, shall contain: (1) the name of the court and the appellate number of the case; (2) the title of the case (see rule 12(a), Rules of Appellate Procedure); (3) the nature of the proceeding in court (e.g., Appeal, Certiorari) and the name of the court (and judge), agency or board whose decision is under review; (4) the title of the document (e.g., Brief for Appellant, Appendix), and (5) the name and address of counsel representing the party on whose behalf the document is filed.

(b) FORM OF OTHER PAPERS. Motions and other papers may be produced in the manner prescribed by subdivision (a), or they be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if legible.

A motion or other paper addressed to an appellate court shall contain a caption setting forth the name of the court, the title of the case, the file number and a brief descriptive title indicating the purpose of the paper. Three copies of motions and other papers addressed to the appropriate appellate court shall be filed with the clerk of the Supreme Court and one copy shall be served on each party separately represented unless the appropriate appellate court by order directs otherwise.

(c) PRINTING TAXED AS COSTS. The amount actually paid for printing or otherwise producing necessary copies of briefs and the appendix or copies of records authorized by these rules, exclusive of stenographic expense, shall be certified by the attorney, and if reasonable, shall be taxed in the appellate court as costs.

RULE 17. CHILD CUSTODY CASES.

In appeals involving a contest as to custody of children, adoption or termination of parent-child relationship, and in juvenile court proceedings affecting child placement, the times prescribed in rule 13, Rules of Appellate Procedure, for serving and filing briefs shall be reduced by one-half. Reply briefs are unnecessary. If filing of the appendix is deferred pursuant to rule 15(c), Rules of Appellate Procedure, the appendix shall be served and filed not more than fifteen days after service of appellee's initial brief and printed or duplicated copies of all the briefs shall be served and filed within seven days after service of the appendix. Court reporters shall give priority to transcription of proceedings in these cases over other civil transcripts. These appelas shall be accorded submission precedence over other civil cases.

RULE 18. BRIEF OF AMICUS CURIAE.

A brief of an amicus curiae may be filed only by leave of the appropriate appellate court granted on motion, at the request of the appropriate appellate court or when accompanied by the written consent of all parties. The brief may be conditionally filed with a motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons a brief of an amicus curiae is desirable.

Any amicus curiae shall file his brief within the time allowed the party whose position as to affirmance or reversal the brief will support. The appropriate appellate court for cause shown may grant leave for later filing, specifying the period within which an opposing party may respond. A request by an amicus curiae to participate in oral argument will not be granted except for extraordinary reasons.

RULE 19. FAILURE TO PROSECUTE.

When an appellant fails to comply with an appellate rule, the clerk shall notify appellant and his counsel in accordance with rule 30(c), Rules of Appellate Procedure, that upon the expiration of fifteen days from service of notification the appeal will be dismissed for want of prosecution unless appellant remedies the default within such period. Should the appellant fail to comply, the clerk shall enter an order dismissing the appeal for want of prosecution and shall issue a certified copy thereof to the clerk of the district court as the procedendo. Appellant shall not be entitled to remedy his default after a dismissal under this rule, unless by order of the appropriate appellate court. The dismissal of an appeal shall not limit the authority of the Supreme Court to take disciplinary action against defaulting counsel.

An appeal may be dismissed, with or without notice of default, for failure to comply with an appellate rule, upon the motion of a party or of the appropriate appellate court.

RULE 20. SHORTENING OR ENLARGING TIME.

The Supreme Court, and the Court of Appeals as to appeals transferred to it, may upon its own motion or on motion

of a litigant shorten or enlarge the time prescribed by the Rules of Appellate Procedure or by the rules of the court or its order for doing any act, or may permit an act to be done after the expiration of such time, but such courts may not enlarge the time for filing a notice of appeal. In cases where rule 17, Rules of Appellate Procedure, applies the motion shall so state.

RULE 21. ORAL ARGUMENT; SUBMISSION.

(a) A party desiring to be heard orally shall so state at the end of his brief; and unless he does so he will not be heard orally except by special permission or order of the appropriate appellate court.

(b) In cases submitted with oral argument, ordinarily the opening argument of appellant shall not exceed twenty-five minutes, the argument of appellee shall not exceed twenty-five minutes and appellant's reply argument shall not exceed ten minutes. The chief justice or chief judge of the appropriate appellate court may extend or shorten the time for oral argument.

(c) The appropriate appellate court may conclude, prior to submission, that even though a substantial issue exists, oral argument would not be of assistance or should be shortened. In such event counsel will be advised accordingly before submission.

(d) Failure to argue orally points properly made in the briefs shall not be deemed waiver thereof.

(e) Appeals shall be submitted to the Supreme Court or transferred to the Court of Appeals substantially in the

order they are made ready except when advance submission is accorded by statute, rule or order of the Supreme Court.

(f) If an appeal involves questions of public importance or rights which are likely to be lost or greatly impaired by delay, the Supreme Court may upon the motion of a party or on its own motion order the submission or transfer of the cause in advance of the time at which it would otherwise be submitted or transferred.

RULE 22. WRITS, MOTIONS, ORDERS.

(a) WRITS AND PROCESS, SUPREME COURT. The Supreme Court shall issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory and administrative control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

(b) WRITS AND PROCESS, COURT OF APPEALS. The Court of Appeals shall issue writs and other process necessary for the exercise and enforcement of its jurisdiction, but a writ, order or other process in any appeal not transferred to the Court of Appeals by the Supreme Court shall be of no effect.

(c) MOTIONS IN SUPREME COURT AND COURT OF APPEALS. Unless another form is prescribed by these rules, an application for an order or other relief, including an order to dismiss or affirm, shall be made by serving a motion on all other parties to the appeal and filing it with the clerk of the Supreme Court. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity

the grounds on which it is based and shall set forth the order or precise relief sought. Any briefs, affidavits or other papers supporting a motion shall be served and filed with the motion. Except as to motions under rule 22(e), Rules of Appellate Procedure, any party may serve and file a resistance to a motion within fourteen days after service of the motion, unless otherwise ordered by the appropriate appellate court. A reply to the resistance may be served and filed within three days after the service of the resistance.

(d) RULINGS, HEARINGS. Resisted motions will be ruled on by the appropriate appellate court or a justice or judge thereof after the expiration of at least seven days from serving the resistance, unless such court, justice or judge orders a different time for submission of the motion. Unresisted motions will be ruled on after the expiration of at least three days from the last day for filing a resistance unless a different time for submission is ordered. Motions in which all parties join may be ruled on at any time. The court, justice or judge may require briefs to be filed with respect to a motion, and may set any motion for hearing and prescribe notice to be given.

(e) MOTIONS FOR PROCEDURAL OR TEMPORARY ORDERS. Notwithstanding the provisions of subdivisions (c) and (d) as to motions generally, motions for procedural orders, including any motion under rule 20, Rules of Appellate Procedure, and motions for temporary orders in which it appears that rights would be lost or greatly impaired by delay, may be ruled upon at any time without awaiting a resistance thereto. Any party adversely affected by such ruling may within fourteen days request reconsideration, vacation

or modification of the ruling.

(f) AUTHORITY OF A SINGLE JUSTICE TO ENTERTAIN MOTIONS. In addition to any authority expressly conferred by rule or by statute, a single justice of the Supreme Court may entertain any motion in an appeal or original proceeding in the Supreme Court and grant or deny any relief which may properly be sought by motion, except that a single justice may not dismiss, affirm or otherwise determine an appeal or original proceeding. The action of a single justice may be reviewed by the Supreme Court.

(g) AUTHORITY OF COURT OF APPEALS AND ITS JUDGES TO ENTERTAIN MOTIONS. The Court of Appeals and its judges may entertain motions only in appeals which the Supreme Court has transferred to that court. In such appeals, a single judge of the Court of Appeals may entertain any motion and grant or deny any relief which may properly be sought by motion, except that a single judge may not dismiss, affirm or otherwise determine an appeal. The action of a single judge may be reviewed by the Court of Appeals.

RULE 23. MOTIONS TO DISMISS OR AFFIRM.

(a) MOTIONS TO DISMISS. A motion to dismiss may be served and filed without payment of the docket fee, but appellant shall not be permitted to respond without payment of the fee unless he is otherwise exempt from payment. After consideration, the appropriate appellate court may rule on the motion or may order the motion submitted with the appeal.

(b) MOTIONS TO AFFIRM. Appellee may move the Supreme Court to affirm the appeal on the ground that the issues raised by the appeal are frivolous and the appeal was taken soley for the purpose of delay. The motion shall be served and

filed within seven days after service of appellant's brief and shall be supported by so much of the record as necessary to show the ground for the motion. One justice of the Supreme Court may overrule, but only the Supreme Court may sustain, a motion to affirm.

(c) EXCLUDING TIME. The time between the service of a motion to dismiss or affirm and an order overruling it or ordering a motion to dismiss to be submitted with the appeal shall be excluded in measuring the time within which subsequent acts required by these rules must be done.

RULE 24. AFFIRMED OR ENFORCED WITHOUT OPINION.

When the Supreme Court determines that any of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (a) a judgment of the district court is correct; (b) the evidence in support of a jury verdict is sufficient; (c) the order of an administrative agency is supported by substantial evidence, or (d) no error of law appears; and the Supreme Court also determines that the questions are not of sufficient importance to justify an opinion and that an opinion would not have precedential value, the judgment or order may be affirmed or enforced without opinion.

In such case, the Supreme Court may in its discretion enter the following order: "AFFIRMED, see rule 24, Rules of Appellate Procedure."

RULE 25. QUARTERLY PUBLICATION.

A list indicating the disposition of all decisions rendered by the Supreme Court per curiam or under rule 24, Rules of Appellate Procedure, shall be published quarterly in the North Western Reporter, except for such of those decisions as the Supreme Court specially orders to be published in the regular manner. Such decisions published

quarterly shall not be cited or relied upon as authority in any litigation in any court in Iowa except when the decision establishes the law of the case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same respondent.

RULE 26. REMANDS.

When a judgment is reversed for error in overruling a motion to direct a verdict, a motion for judgment under rule 243(b), Rules of Civil Procedure or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the appellate court may enter or direct the trial court to enter final judgment as if such motion had been initially sustained; provided that if it appears from the record that the material facts relating thereto were not fully developed at the trial or if in the opinion of the appellate court the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case.

RULE 27. PETITION FOR REHEARING IN SUPREME COURT.

(a) TIME FOR FILING: CONTENT; ANSWER; ACTION BY SUPREME COURT IF GRANTED. Except as stated in rule 402(e), Rules of Appellate Procedure, a petition for rehearing may be filed within fourteen days after the filing of an opinion by the Supreme Court unless the time is shortened or enlarged by order of that court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Supreme Court has overlooked or misapprehended and shall contain such argument in support

of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the Supreme Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted, the Supreme Court may make a final disposition of the cause without reargument, may order reargument or resubmission or may make such other order as is deemed appropriate under the circumstances.

(b) FORM OF PETITION; LENGTH. The petition shall be in the form prescribed by rule 16(a), Rules of Appellate Procedure, and copies shall be served and filed as prescribed by rules 13(e) and 30, Rules of Appellate Procedure, for the service and filing of briefs. Except by permission of the Court, a petition for rehearing shall not exceed ten pages.

RULE 28. COSTS.

All fees and costs shall abide the result of the appeal and be taxed to the unsuccessful party, unless otherwise ordered by the appropriate appellate court.

RULE 29. PROCEDENDO.

Unless otherwise ordered by the Supreme Court, no procedendo shall issue for fifteen days after an opinion of the Supreme Court is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending. Unless otherwise ordered by the Court of Appeals, no procedendo shall issue for twenty-one days after an opinion of the Court of Appeals is filed, nor thereafter while an application for further review by the Supreme Court is pending.

RULE 30. FILING AND SERVICE.

(a) FILING. Papers required or permitted to be filed in the Supreme Court or in the Court of Appeals shall be filed with the clerk of the Supreme Court. Filing may be accomplished by mail addressed to the clerk of the Supreme Court, and shall be deemed filed on the day of mailing. To be deemed filed on the day of mailing a paper must contain or be accompanied by a certificate signed by the person who will actually mail the paper. The certificate shall specify the paper filed and the date the paper will be deposited in the United States mail. Papers received by the clerk of the Supreme Court without a certificate shall be deemed filed when received by that clerk. When these rules or an order of an appellate court require multiple copies of a paper to be filed, filing shall not be complete until all required copies are filed. If a motion requests relief which may be granted by a single justice of the Supreme Court, the justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk of the Supreme Court.

(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers filed by any party and not expressly required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk of the Supreme Court may permit papers to be filed without acknowledgment or proof of service but shall require such proof to be filed promptly thereafter.

(e) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period.

(f) APPLICABILITY. This rule shall govern filing and service of papers required or permitted to be filed with the clerk of the Supreme Court under the Rules of Appellate Procedure.

II. APPEALS IN CRIMINAL CASES

RULE 101. PERFECTING APPEAL.

Appeal in a criminal action shall be taken and perfected within the time and in the manner prescribed by statute.

RULE 102. PROCEDURE.

All procedure after the perfection of an appeal in a criminal case shall be governed by the Rules of Appellate Procedure to the full extent not inconsistent with statute. The appendix prescribed by the Rules of Appellate Procedure shall constitute the abstract. Papers required to be served on the State shall be served upon the attorney general.

RULE 103. DOCKETING CRIMINAL APPEALS.

Criminal appeals shall be docketed as provided in rule 12, Rules of Appellate Procedure. If a defendant appeals and trial court has found him to be indigent and appointed appeal counsel for him, the appeal shall be docketed upon defendant's request without payment of the docket fee.

RULE 104. FRIVOLOUS APPEALS; WITHDRAWAL OF COUNSEL.

(a) If counsel appointed to represent a convicted indigent defendant in an appeal to the Supreme Court is convinced after conscientious investigation of the trial transcript that the appeal is frivolous and that he cannot, in good conscience, proceed with the appeal, he may move the Supreme Court in writing to withdraw. The motion must be accompanied by a brief referring to anything in the record that might arguably support the appeal.

(b) Prior to filing any motion to withdraw from an appeal, counsel shall advise his client in writing of the decision as to frivolity accompanied by a copy of counsel's motion and brief, and counsel shall attach to the filed motion a certificate showing service thereof. Counsel's notice to his client shall further advise the client that if he agrees with counsel's decision and does not desire to proceed further with the appeal, the client shall within thirty days from service of the motion and brief clearly and expressly communicate such desire, in writing signed by him, to the Supreme Court.

(c) Receipt of such communication shall result in the appeal being forthwith dismissed.

(d) Counsel's notice to his client shall further advise the client that in the event he desires to proceed with the appeal he shall within such thirty days give like communication to the Supreme Court, raising any points he chooses.

The Supreme Court will then proceed, after a full examinatior of all the proceedings, to decide whether the appeal is wholly frivolous. If it so finds, it may grant counsel's motion to withdraw and dismiss the appeal.

(e) In order to protect his client's rights, counsel desiring to withdraw shall within the time permitted for docketing the appeal under rule 12, Rules of Appellate Procedure, make application pursuant to rule 20, Rules of Appellate Procedure, for extension of time in which to docket the appeal.

(f) If however, the Supreme Court finds the legal points to be arguable on their merits and therefore not frivolous, it may grant counsel's motion to withdraw but will prior to submission of the appeal afford the indigent the assistance of new counsel, to be appointed by the trial court. Such new counsel shall proceed with the appeal pursuant to the Rules of Appellate Procedure. Appellant's brief shall raise any issues counsel believes to be meritorious after a conscientious examination of the record. Counsel shall also inform the court in appellant's brief of the issues his client raises and otherwise cause the case to be reviewed in accordance with the Rules of Appellate Procedure.

(g) Defendent's failure to communicate to the Supreme Court within the time provided in this rule or any extension thereof his disagreement with counsel's decision that the appeal is frivolous, or of defendant's desire to proceed with the appeal, shall be deemed an election by him to agree with counsel's decision.

III. DISCRETIONARY REVIEW

RULE 201. APPLICATION.

An application for discretionary review shall be filed within the time and in the manner prescribed by statute. Simultaneously the applicant shall also mail a copy of the application to the clerk of the Supreme Court and pay to such clerk a filing fee in the amount prescribed by the Supreme Court for filing an application for permission to appeal. The filing fee shall be waived in a criminal proceeding for discretionary review if the trial court found defendant indigent and appointed appeal counsel for him.

RULE 202. RESISTANCE; RULING.

The application may be resisted and ruled on in the manner prescribed in the Rules of Appellate Procedure relating to motions unless otherwise ordered by the Supreme Court or a justice thereof.

RULE 203. PROCEDURE; DOCKETING.

If an application for discretionary review is granted, further proceedings shall be had pursuant to the Rules of Appellate Procedure to the full extent not inconsistent with statute. The time for any further proceeding which would run from the notice of appeal shall run from the filing date of the order granting the application for discretionary review. Within forty days after the filing of such order appellant shall pay the docket fee or, if the fee has been waived, request that the proceeding be docketed. The docket fee shall be waived in a criminal proceeding for discretionary review if the trial court found defendant indigent and appointed appeal counsel for him.

IV. ORIGINAL CERTIORARI PROCEEDINGS

RULE 301. PETITION FOR WRIT OF CERTIORARI.

A petition for a writ of certiorari directed to the district court shall be filed with the clerk of the Supreme Court or a justice thereof within the time prescribed by rule 319 of the Rules of Civil Procedure. Copies of the petition shall be filed and served in the manner prescribed by the Rules of Appellate Procedure for the filing and serving of motions.

RULE 302. RESISTANCE; RULING.

The petition may be resisted and ruled on in the manner prescribed in the Rules of Appellate Procedure relating to motions unless otherwise ordered by the Supreme Court or a justice thereof.

RULE 303. ORIGINAL CERTIORARI PROCEDURE.

The procedure under writs of certiorari granted by the Supreme Court or a justice thereof shall be as prescribed by the Rules of Appellate Procedure to the full extent those rules are not inconsistent with this rule or statute. The proceeding shall be entitled in the name of the petitioner as plaintiff and the district court as defendant. The Rules of Appellate Procedure applicable to appellants shall apply to plaintiffs and those applicable to appellees shall apply to defendants. The times specified in those rules which in appeals run from the filing of notice of appeal shall run from the filing of the order granting the writ, except that plaintiff shall cause the proceeding to be docketed within ten days after the writ is granted. Defendant shall make

full return to the writ when requested to do so by plaintiff. Such request shall be made by plaintiff within seven days after all required briefs and the appendix have been served or at such earlier date as the parties may agree or the Supreme Court or a justice thereof may order.

RULE 304. APPEAL OR CERTIORARI

If any case is brought by appeal or certiorari and the appellate court is of the opinion that the other of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought.

A petition for writ of certiorari may under this rule be treated by the Supreme Court as an application to grant an appeal pursuant to rule 2, Rules of Appellate Procedure, and conversely an application to grant an appeal may be treated as a petition for certiorari.

Nothing in this rule shall operate to extend the time within which an appeal may be taken.

V. TRANSFER AND FURTHER REVIEW

RULE 401. TRANSFER OF CASES TO COURT OF APPEALS.

(a) The Supreme Court may by order, on its own motion, transfer to the Court of Appeals for decision any case filed in the Supreme Court except a case in which provisions of the Iowa Constitution or statutes grant exclusive jurisdiction to the Supreme Court.

(b) The Supreme Court shall ordinarily retain the following types of cases: (1) cases involving substantial constitutional questions as to the validity of a statute, ordinance or court or administrative rule; (2) cases involving

substantial issues in which there is or is claimed to be a conflict with a published decision of the Court of Appeals or Supreme Court; (3) cases involving substantial issues of first impression; (4) cases involving fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Supreme Court; (5) cases in which life imprisonment has been imposed; (6) cases involving lawyer discipline, and (7) cases appropriate for summary disposition.

(c) Other cases shall ordinarily be retained by the Supreme Court or be transferred to the Court of Appeals as follows: (1) cases which involve substantial questions of enunciating or changing legal principles shall be retained and (2) cases which involve questions of applying existing legal principles shall be transferred.

RULE 402. APPLICATION FOR FURTHER REVIEW.

(a) NO FEE. No fee shall be required for filing an application to the Supreme Court for further review of a decision of the Court of Appeals.

(b) GROUNDS. An application to the Supreme Court for further review shall allege precisely and in what manner the Court of Appeals: (1) has erred; (2) has rendered a decision which is in conflict with a prior holding of a published Court of Appeals decision or published Supreme Court decision; (3) has not considered a potentially controlling constitutional provision in rendering its opinion, or (4) has decided a case which should have been retained by the Supreme Court.

(c) FORM AND LENGTH OF APPLICATION AND RESISTANCE AND NUMBER TO BE FILED. Each copy of the application for further

review shall contain or be accompanied by a copy of the opinion of the Court of Appeals, showing the date of its filing The application shall be a single document including a brief in support of the request for review. All contentions in support of the application shall be included therein, including all legal authorities and argument. A party who desires to file a resistance shall do so within ten days after service of the application. The resistance shall be a single document which includes all contentions in opposition to the application. No authorities or argument may be incorporated into the application or the resistance by reference to another document. An application or resistance shall be in the form prescribed by rule 16(a), Rules of Appellate Procedure, except that it may be printed or duplicated on one side of the sheet. The application or resistance shall not exceed twenty pages exclusive of the Court of Appeals opinion, index of contents, table of authorities and permitted evidentiary exhibits and trial court orders. No materials shall be annexed to or filed with an application or resistance other than the opinion of the Court of Appeals, except that, if it is of unusual significance, an evidentiary exhibit not exceeding ten pages and a trial court order not exceeding that length may be annexed. Eighteen copies of an application or a resistance shall be filed. In addition, two copies shall be served on each other party separately represented.

(d) SUPPLEMENTAL BRIEFS. If an application for further review is granted, the Supreme Court may require the parties to file supplemental briefs on the merits of all or some of the issues to be reviewed.

(e) PROCEDENDO. When an application for further review is denied by order of the Supreme Court or by operation of law, the clerk of the Supreme Court shall immediately issue procedendo.

VI. OTHER PROCEEDINGS

RULE 501. PROCEDURE IN OTHER PROCEEDINGS.

Procedure in all other proceedings in the appellate courts shall, unless otherwise ordered, be the procedure prescribed in the Rules of Appellate Procedure to the full extent not inconsistent with rules specifically prescribing the procedure or with statute. An appendix under the Rules of Appellate Procedure shall be deemed an abstract of record.

VII. FORMS

RULE 601. FORMS.

The Supreme Court may by order prescribe forms for use under the Rules of Appellate Procedure.

VIII. CHANGES AND EFFECTIVE DATES

RULE 701. CHANGES.

The Supreme Court shall have power, by order, to revoke, change or supplement the Rules of Appellate Procedure, except for rules 1 to 9, inclusive. Such changes or additions shall take effect at such time as the Supreme Court shall prescribe.

RULE 702. EFFECTIVE AND GOVERNANCE DATES.

The Rules of Appellate Procedure shall take effect on July 1, 1977. They shall govern appeals and proceedings in the

appellate courts after they take effect, and also all further acts in appeals and proceedings then pending except to the extent that in the opinion of the appropriate appellate court or a justice or judge thereof their application in a particular appeal or proceeding would be infeasible or unjust, in which event the previous rules shall apply.

ACKNOWLEDGEMENT

I, Steven C. Cross, Secretary of the Senate of the State of Iowa, hereby acknowledge delivery to me on the 28th day of January, 1977 of the foregoing report of the Supreme Court of Iowa pertaining to Rules of Appellate Procedure.

/s/ Steven C. Cross
Secretary of the Senate, 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa

ACKNOWLEDGEMENT

I, David L. Wray, Chief Clerk of the House of Representatives of the State of Iowa, hereby acknowledge delivery to me on this 28th day of January, 1977 of the foregoing report of the Supreme Court of Iowa pertaining to Rules of Appellate Procedure.

/s/ David L. Wray
Chief Clerk of the House of Representatives, 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa

CERTIFICATE

I, Dale M. Cochran, do hereby certify that I am the Speaker of the House of Representatives of the 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa; and I, David L. Wray, do hereby certify that I am the Chief Clerk of the House of Representatives of the 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa, and we do hereby jointly certify that as such Speaker and Chief Clerk that on the twenty-eighth day of January, 1977, the Supreme Court of the State of Iowa reported to said House of Representatives, and filed with it, the attached and foregoing Rules of Appellate Procedure;

THAT the date of making said report to the 1977 Regular Session of the Sixty-seventh General Assembly was within the twenty days subsequent to the convening of the 1977 Regular Session of the Sixty-seventh General Assembly;

THAT no other report pertaining to the Rules of Appellate Procedure was made or filed by said Supreme Court with said House of Representatives;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Appellate Procedure were made or enacted at such 1977 Regular Session of said Sixty-seventh General Assembly.

Signed this thirteenth day of June, 1977, being the last legislative day of the 1977 Regular Session of the Sixty-seventh General Assembly.

/s/ Dale M. Cochran
Dale M. Cochran
Speaker of the House

/s/ David L. Wray
David L. Wray
Chief Clerk of the House of Representatives, 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa

CERTIFICATE

I, Arthur A. Neu, do hereby certify that I am the President of the Senate of the 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa; and I, Steven C. Cross, do hereby certify that I am the Secretary of the Senate of the 1977 Regular Session of the Sixty-seventh General Assembly of the State of Iowa, and we do hereby jointly certify that as such President and Secretary that on the twenty-eighth day of January, 1977, the Supreme Court of the State of Iowa reported to said Senate, and filed with it, the attached and foregoing Rules of Appellate Procedure;

THAT the date of making said report to the 1977 Regular Session of the Sixty-seventh General Assembly was within the twenty days subsequent to the convening of the 1977 Regular Session of the Sixty-seventh General Assembly;

THAT no other report pertaining to the Rules of Appellate Procedure was made or filed by said Supreme Court with said Senate;

THAT no changes, modifications, amendments, revisions or additions to the Rules of Appellate Procedure were made or enacted at such 1977 Regular Session of said Sixty-seventh General Assembly.

Signed this thirteenth day of June, 1977, being the last legislative day of the 1977 Regular Session of the Sixty-seventh General Assembly.

/s/ Arthur A. Neu
President of the Senate

/s/ Steven C. Cross
Steven C. Cross
Secretary of the Senate
1977 Regular Session of the
Sixty-seventh General Assembly
of the State of Iowa