

FILED

NOV 18 2016

In the Iowa Supreme Court

CLERK SUPREME COURT

In the Matter of Adopting)
Amendments to Iowa Rule of)
Civil Procedure 1.904 and)
Iowa Rule of Appellate)
Procedure 6.101)

Order

The Iowa Supreme Court adopts amendments to rules 1.904 and 6.101 of the Iowa Court Rules concerning motions to reconsider, enlarge, or amend and deadlines for filing a notice of appeal or application for interlocutory appeal.

On August 29, 2016, the court submitted proposed amendments to rules 1.904 and 6.101 for public comment. The court has carefully considered the comments received, which are posted on the judicial branch website. The court is appreciative of the care and attention reflected in the comments from Iowa practitioners.

As noted in a rule comment accompanying rule 1.904, new provisions in the rule allow that a timely rule 1.904(2) motion will extend the appeal deadline, subject to an exception for successive motions. Similarly, amendments to rule 6.101 clarify that any timely 1.904(2) motion will extend the deadline for filing a notice of appeal or an application for interlocutory appeal, subject to the same exception for successive motions.

Subject to Iowa Legislative Council review consistent with the provisions of Iowa Code section 602.4202, the amendments to both rules 1.904 and 6.101 provided with this order will be effective beginning March 1, 2017.

Dated this 18th day of November, 2016.

The Iowa Supreme Court

By Mark S. Cady
Mark S. Cady, Chief Justice

Chapter 1
Iowa Rules of Civil Procedure
Division IX

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Rule 1.904 Findings by court.

1.904(1) *Findings; conclusions; judgment.* The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law, and direct an appropriate judgment. A party, on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by motion or otherwise. No request for findings is necessary for purposes of review. Findings of a master shall be deemed those of the court to the extent it adopts them.

1.904(2) *Motion to reconsider, enlarge, or amend.* On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be reconsidered, enlarged, or amended and the judgment or decree modified accordingly or a different judgment or decree substituted. ~~But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by motion or otherwise~~ Resistances to such motions and replies may be filed and supporting briefs may be served as provided in rules 1.431(4) and 1.431(5).

1.904(3) *Motions to reconsider, enlarge, or amend other court orders, rulings, judgments, or decrees; time for filing.* In addition to proceedings encompassed by rule 1.904(1), a rule 1.904(2) motion to reconsider, enlarge, or amend another court order, ruling, judgment, or decree will be considered timely if filed within 15 days after the filing of the order, judgment, or decree to which it is directed.

1.904(4) *Successive rule 1.904(2) motions.* Successive rule 1.904(2) motions by a party are prohibited unless the court has modified its order, ruling, judgment, or decree and the subsequent rule 1.904(2) motion is directed only at the modification.

COMMENT: Rules 1.904(3) and 1.904(4) supersede prior case law that held a timely rule 1.904(2) motion must also have been “proper” to extend the time for appeal. See, e.g., Hedlund v. State, 875 N.W.2d 720, 725 (Iowa 2016). To obviate controversies over whether a rule 1.904(2) motion tolls the time for appeal, the rule authorizes any timely rule 1.904(2) motion to extend the appeal deadline, subject to one exception in rule 1.904(4).

Under rule 1.904, the timely filing of a rule 1.904(2) motion extends the deadline for filing a notice of appeal or an application for interlocutory appeal. See Iowa R. App. P. 6.101(1)(b) & 6.104(1)(b)(2). However, the rule does not address whether a rule

1.904(2) motion preserves error for purposes of appeal as to evidence or arguments raised for the first time in that motion. See, e.g., *Tenney v. Atlantic Associates*, 594 N.W.2d 11, 14 (Iowa 1999). The rule also is not intended to affect prior case law concerning a court's inherent authority to reconsider. See *Iowa Elec. Light & Power Co. v. Lagle*, 430 N.W.2d 393, 395-96 (Iowa 1988).

Chapter 6
Rules of Appellate Procedure
Division I

Case Initiation: Civil and Criminal; Parties and Attorneys; Protected
Information; and Confidential Materials

Rule 6.101 Time for appealing final orders and judgments appealable as a matter of right.

6.101(1) *Time for filing a notice of appeal from final orders and judgments.*

a. Termination-of-parental-rights and child-in-need-of-assistance cases under Iowa Code chapter 232. A notice of appeal from a final order or judgment entered in Iowa Code chapter 232 termination-of-parental-rights or child-in-need-of-assistance proceedings must be filed within 15 days after the filing of the order or judgment. However, if a motion is timely filed in good faith under Iowa [R. Civ. P. 1.904\(2\)](#) or Iowa [R. Civ. P. 1.1007](#), the notice of appeal must be filed within 15 days after the filing of the ruling on such motion.

b. All other cases. A notice of appeal must be filed within 30 days after the filing of the final order or judgment. However, if a motion is timely filed in under Iowa [R. Civ. P. 1.904\(2\)](#) or Iowa [R. Civ. P. 1.1007](#), the notice of appeal must be filed within 30 days after the filing of the ruling on such motion.

c. Timely filing of motion defined. For purposes of subparts *a* and *b* above, a motion is considered timely if it has been filed by the applicable deadline and asks the court to reconsider, enlarge, or amend its order, ruling, judgment, or decree. Whether a motion is proper or not does not affect its timeliness. Provided, however, that a motion will not be considered timely if the same party has previously filed a motion to reconsider, enlarge, or amend the court's order, ruling, judgment, or decree, unless the court has modified its order, ruling, judgment, or decree and the subsequent motion is directed only at the modification.

d. Exception for final orders on partial dispositions. A final order dismissing some, but not all, of the parties or disposing of some, but not all, of the issues in an action may be appealed within the time for appealing from the judgment that finally disposes of all remaining parties and issues to an action, even if the parties' interests or the issues are severable.

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Comment: Rule 6.101(c) is intended to supersede prior case law that held a timely

rule 1.904(2) motion must also have been “proper” to extend the time for appeal. See, e.g., Hedlund v. State, 875 N.W.2d 720, 725 (Iowa 2016). To obviate controversies over whether a rule 1.904(2) motion tolls the time for appeal, rule 6.101 authorizes any timely rule 1.904(2) motion to extend the appeal deadline, subject to an exception for successive motions.

Under rule 6.101(c), the timely filing of a rule 1.904(2) motion extends the deadline for filing a notice of appeal or an application for interlocutory appeal. See Iowa R. App. P. 6.101(1)(b) & 6.104(1)(b)(2). However, the rule does not address whether a rule 1.904(2) motion preserves error for purposes of appeal as to evidence or arguments raised for the first time in that motion. See, e.g., Tenney v. Atlantic Associates, 594 N.W.2d 11, 14 (Iowa 1999). The rule also is not intended to affect prior case law concerning a court’s inherent authority to reconsider. See Iowa Elec. Light & Power Co. v. Lagle, 430 N.W.2d 393, 395–96 (Iowa 1988).