

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

PROMULGATION OF AMENDMENTS TO THE  
MINNESOTA RULES OF CRIMINAL PROCEDURE

**ORDER**

WHEREAS, in its report dated August 9, 2002, the Supreme Court Advisory Committee on the Rules of Criminal Procedure recommended certain amendments to the Minnesota Rules of Criminal Procedure; and

WHEREAS, on October 29, 2002, the Supreme Court held a hearing on the proposed amendments; and

WHEREAS, in an order dated December 23, 2002, the Supreme Court requested further comment from the Advisory Committee concerning the committee's recommended change to Rule 28.02, subd. 4; and

WHEREAS, the Advisory Committee submitted additional comments and proposed amendments in its report dated February 19, 2003; and

WHEREAS, the Supreme Court reviewed the report, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Minnesota Rules of Criminal Procedure are prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota.
2. The attached amendments shall take effect on March 17, 2003, and shall apply to all appeals pending on or filed on or after the effective date.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

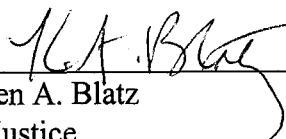
DATED: February 28, 2003

OFFICE OF  
APPELLATE COURTS

FEB 28 2003

**FILED**

BY THE COURT:

  
Kathleen A. Blatz  
Chief Justice

## AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

1. Rule 28.02, subd. 4. Procedure for Appeals Other than Sentencing Appeals.

Amend Rule 28.02, subd. 4 by adding a new part (4) as follows:

(4) Stay of Appeal for Postconviction Proceedings. If, after filing a notice of appeal, a defendant determines that a petition for postconviction relief is appropriate, the defendant may file a motion to stay the appeal for postconviction proceedings.

2. Comments to Rule 28.02, subd. 4(4).

Amend the comments to Rule 28 by adding the following paragraph after the existing eighth paragraph of the comments:

Rule 28.02, subd. 4(4) establishes a procedure by which a defendant who has initiated a direct appeal may nonetheless pursue postconviction relief. Certain types of claims are better suited to the taking of testimony and fact-finding possible in the district court, and defendants are encouraged to bring such claims, such as ineffective assistance of counsel where explanation of the attorney's decision is necessary, through postconviction proceedings rather than through direct appeal. See *Black v. State*, 560 N.W.2d 83, 85 n.1 (Minn. 1997). The order staying the appeal may provide for a time limit within which to file the postconviction proceeding.

3. Rule 29.03, subd. 4. Other Procedures.

Amend Rule 29.03, subd. 4 as follows:

**Subd. 4. Other Procedures.** The provisions of Rule 28.02, subd. 4(4), concerning dismissal stay of appeal for postconviction proceedings, Rule 28.02, subd. 5, concerning proceedings in forma pauperis, Rule 28.02, subd. 6, concerning stays, Rule 28.02, subd. 7, concerning release of defendant, Rule 28.02, subd. 9, concerning the transcript of proceedings and transmission of the transcript and record, Rule 28.02, subd. 10, concerning briefs, Rule 28.02, subd. 11, concerning the scope of review, Rule 28.02, subd. 12, concerning action on appeal, and Rule 29.04, subd. 9, concerning oral argument shall apply to appeals in first degree murder cases under this rule.

4. Rule 29.04, subd. 11. Other Procedures.

Amend Rule 29.04, subd. 11 as follows:

**Subd. 11. Other Procedures.** The provisions of Rule 28.02, subd. 4(4), concerning ~~dismissal~~ stay of appeal for postconviction proceedings, Rule 28.02, subd. 5, concerning proceedings in forma pauperis, Rule 28.02, subd. 6, concerning stays, Rule 28.02, subd. 7, concerning release of defendant, Rule 28.02, subd. 8, concerning record on appeal, Rule 28.02, subd. 11, concerning the scope of review, and Rules 28.02, subd. 12 and 28.05, subd. 2, concerning action on appeal shall apply to appeals to the Supreme Court from the Court of Appeals.