

**SUPREME COURT ADVISORY COMMITTEE  
RULES OF CRIMINAL PROCEDURE**

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*Robert Stanich, Saint Paul*  
*Hon. Heather L. Sweetland, Duluth*

February 19, 2003

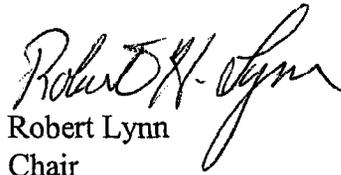
Chief Justice Kathleen Blatz  
Minnesota Supreme Court  
25 Constitution Avenue  
St. Paul, MN 55155-6102

Justice Russell Anderson  
Minnesota Supreme Court  
25 Constitution Avenue  
St. Paul, MN 55155-6102

Dear Chief Justice Blatz and Justice Anderson:

In the Court's order of December 23, 2002, adopting various amendments to the Minnesota Rules of Criminal Procedure, the Court directed the Advisory Committee to consider further our recommendations concerning postconviction remand procedure and to report back to the court by March 1, 2003. The Advisory Committee has done that and in response we submit to you herewith the original and ten copies of a Report with Proposed Amendments to the Minnesota Supreme Court from the Supreme Court Advisory Committee on Rules of Criminal Procedure.

Respectfully yours,

  
Robert Lynn  
Chair

RL/amk  
Encl.

OFFICE APPELLATE COURTS

FEB 19 2003

**FILED**

**C1-84-2137  
STATE OF MINNESOTA  
IN SUPREME COURT**

**In Re:**

**Supreme Court Advisory Committee  
On Rules of Criminal Procedure**

**REPORT WITH PROPOSED AMENDMENTS  
TO THE RULES OF CRIMINAL PROCEDURE**

**February 19, 2003**

**Hon. Robert Lynn, Chair**

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Hon. Russell Anderson  
Supreme Court Liaison

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**REPORT WITH PROPOSED AMENDMENTS  
TO THE MINNESOTA SUPREME COURT  
FROM THE SUPREME COURT  
ADVISORY COMMITTEE  
ON RULES OF  
CRIMINAL PROCEDURE**

On August 9, 2002 the Advisory Committee submitted to the Court a report and proposed amendments to the Minnesota Rules of Criminal Procedure. A public hearing on those proposed amendments was held before the Court on October 29, 2002. On December 23, 2002, the Court issued its order adopting all of the proposed amendments except for recommendations 35 and 43 concerning postconviction remand procedure under a new Rule 28.02, subd. 4 (4). As to those recommendations, the Court directed that the Advisory Committee consider the comments on this issue submitted to the Court at the public hearing and to further advise the Court on those recommendations by March 1, 2003.

In response to the Court's directive, the Advisory Committee met and considered our initial recommendations as well as the comments submitted to the Court concerning this issue. Upon such further consideration, the Committee has determined that a postconviction remand procedure involving a stay of appellate proceedings rather than a dismissal of appellate proceedings is more appropriate. While the Committee recognizes that such stays may require more procedural monitoring by the courts, the Committee believes that this is necessary to assure that there is a prompt resolution of any such remanded cases. The interests of the parties, the victims, and the public in timely closure of remanded cases is better protected by such a procedure.

Accordingly, the Supreme Court Advisory Committee on Rules of Criminal Procedure recommends the following amendments to the Minnesota 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 on Rule 28.02, subd. 4(4).

Amend the comments on 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.

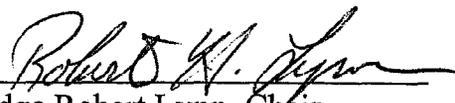
Amend Rule 29.04, subd. 11 as follows:

**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.

Dated: 2/19/03

Respectfully Submitted,

  
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Judge Robert Lynn, Chair  
Supreme Court Advisory Committee  
on Rules of Criminal Procedure