

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8049



**ORDER RE PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF CRIMINAL PROCEDURE**

On October 4, 2023, we issued an order directing the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure to review whether the rules should be amended to address the impact and potential consequences of the State’s failure to file respondent’s briefs in cases pending before the court of appeals, particularly when the defendant raises an issue where the burden of persuasion on appeal may shift to the State.

In a report filed on October 1, 2024, the Advisory Committee recommended an amendment to Rule 28.02, subdivision 10, of the Minnesota Rules of Criminal Procedure that states: “If the respondent fails to file a response addressing a matter raised by appellant on which the respondent bears the burden, the Court of Appeals may conclude that the respondent failed to meet its burden on the matter.”

By order filed on October 21, 2024, we established a period for the public to file written comments in response to the recommended amendment to Rule 28.02, subd. 10. Only one comment was received, from the Minnesota County Attorneys Association (MCAA), opposing the proposed amendment. The MCAA stated that “small county attorney offices in greater Minnesota often lack the resources and personnel to respond to every criminal appeal.” The MCAA asserted that the current rules adequately address the issue.

We have carefully considered the Advisory Committee's recommendations, the public comment, and the issue that prompted our referral to the Advisory Committee. We are troubled that the State is failing to file respondent's briefs in criminal cases in the court of appeals with increasing frequency. We acknowledge the concern raised by the MCAA that staffing and resource limitations may impede some county attorneys from filing a brief in every criminal case. Regardless of the reason, however, the adversarial system suffers when the State fails to file respondent's briefs. The State's failure to file briefs leaves appellate courts with the task of attempting to construct the State's positions from the district court record without the benefit of focused counterarguments to those presented by the appellant. It also may result in forfeiture of arguments later presented to our court that were not presented to the court of appeals due to the absence of a brief. We strongly encourage the State to file a respondent's brief whenever possible.

Nonetheless, we decide not to adopt this proposed rule amendment that provides permissive authority to the court of appeals to address the impact and potential consequences of the State's failure to file respondent's briefs in cases pending before the court of appeals. The court of appeals already has such authority. We appreciate the Advisory Committee's thoughtful work on this issue.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that we decline to adopt the proposed amendments to Rule 28.02, subdivision 10, of the Minnesota Rules of Criminal Procedure recommended by the Advisory Committee in its October 1, 2024 report.

Dated: April 7, 2025

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Natalie E. Hudson
Chief Justice