

FILED

February 4, 2015

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

**ORDER REGARDING PROPOSED AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE**

As directed by the court in an order filed February 28, 2014, ADM09-8006, the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure considered, and has recommended, amendments to the Minnesota Rules of Criminal Procedure related to the implementation of electronic filing and service in the appellate courts. In addition, the Committee considered a proposal for a rule of procedure requiring notice when a subpoena for production of documents is issued to a third party, and has recommended adoption of a new rule.

The court established a public comment period for the recommended amendment related to the notice requirements when a subpoena for production of documents about a victim is issued to a third party. Written comments were received from the Minnesota County Attorneys Association and the Minnesota Coalition Against Sexual Assault. Both organizations supported the proposed amendment, but both asked the court to expand the rule to cover all witnesses, not just victims.

The court has reviewed the proposed amendments and the written comments. With respect to the requested expansion of the notice requirement to all witnesses, the court notes

that the Committee considered this possibility but decided against the broader scope in its recommended amendment.

IT IS HEREBY ORDERED that the amendments recommended by the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective March 1, 2015. The amendments as approved are attached to this order. These amendments shall apply to all actions or proceedings pending or commenced on or after the effective date. The inclusion of the Advisory Committee's comments is made for convenience and does not reflect court approval of the comments.

Dated: February 4, 2015

BY THE COURT:



Gildea, Lorie
Feb 4 2015 9:24 AM

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Add a new paragraph (c) to Rule 22.01, subd. 2, as follows:

(c) A subpoena requiring the production of privileged or confidential records about a victim as defined in Minn. Stat. § 611A.01(b) may be served on a third party only by court order. A motion for an order must comply with Rule 10.03, subd. 1. Before entering the order, the court may require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

2. Add a paragraph to the Comments to Rule 22, as follows:

The addition of paragraph (c) to Rule 22.01, subd. 2 is to formalize the process as set forth in *State v. Paradee*, 403 N.W.2d 640 (Minn. 1987); and *State v. Hummel*, 483 N.W.2d 68 (Minn. 1992).

3. Amend Rule 28.02, subd. 4(1), as follows:

(1) Service and Filing. A defendant appeals by filing a notice of appeal with the clerk of the appellate courts with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgment or order appealed from is entered. The defendant need not file ~~a certified copy of the judgment or order appealed from,~~ or the statement of the case provided for in Minnesota Rule of Civil Appellate Procedure 133.03 unless the appellate court directs otherwise. The defendant does not have to post bond to appeal. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal.

4. Amend Rule 28.02, subd. 5(12), as follows:

(12) For defendants represented on appeal by the State Public Defender's office, Minnesota Rule of Civil Appellate Procedure 110.02, subd. 2, concerning the transcript certificate ~~as to transcript~~, does not apply. In these cases, the State Public Defender's office on ordering the transcript must ~~mail-transmit~~ transmit a copy of the written request for transcript to the court administrator, the clerk of the appellate courts, and the prosecutor.

The court reporter must promptly acknowledge its receipt and indicate acceptance in writing, with copies to the court administrator, the clerk of the appellate courts, the State Public Defender's office, and the prosecutor. In so doing, the court reporter must state the estimated number of pages of the transcript and the estimated completion date. That date cannot exceed 60 days, but for guilty plea and sentencing transcripts, it cannot exceed 30 days. Upon delivery of the transcript, the reporter must file with the clerk of the appellate courts a certificate evidencing the date and manner of delivery.

5. Amend Rule 28.02, subd. 5(20), as follows:

(20) The transcript remains the property of the State Public Defender's office and must be returned upon expiration of the time to file any supplemental brief. Upon return of the transcript, the State Public Defender's office must provide the defendant with a copy of a signed receipt for it. The State Public Defender's office must promptly file the ~~original of the~~ receipt with the clerk of the appellate courts, and until that occurs, the clerk will not accept the supplemental brief for filing.

6. Amend Rule 28.02, subd. 7(3), as follows:

(3) Application for Release Pending Appeal. A defendant must first apply to the district court for release pending appeal. If the district court denies release pending appeal or imposes conditions of release, the court must state on the record the reasons for the action taken.

If the defendant appeals and has previously applied to the district court for release pending appeal, the defendant may file a motion for release, or for modification of the conditions of release, to the applicable appellate court or to a judge or justice of that court. The motion must be determined promptly upon such ~~papers, affidavits, documents~~ and portions of the record as the parties may present, and after reasonable notice to the prosecutor. The appellate court or one of its judges or justices may order the defendant's release pending the motion's disposition.

7. Amend Rule 28.02, subd. 8, as follows:

Subd. 8. Record on Appeal. The record on appeal consists of the ~~papers~~documents filed in the district court, the offered exhibits, and the transcript of the proceedings, if any.

In lieu of the record as defined by this rule, the parties may—within 60 days after filing of the notice of appeal—prepare, sign, and file with the court administrator a statement of the case showing how the issues

presented by the appeal arose and how the district court decided them, stating only the claims and facts essential to a decision. The district court, after making any additions it considers necessary to present the issues raised by the appeal, may approve the statement, which will then be the record on appeal. Any recitation of the essential facts of the case, conclusions of law, and any relevant district court memorandum of law must be included with the record.

An appellant who intends to proceed on appeal with a statement of the case under this rule rather than by obtaining a transcript, or without either a statement of the case or transcript, must serve notice of intent to do so on respondent and the court administrator and also file the notice with the clerk of the appellate courts, all within the time provided for ordering a transcript.

8. Amend Rule 28.02, subd. 9, as follows:

Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the appellant must order the transcript, and any requested paper copies, must be ordered within 30 days after filing of the notice of appeal ~~and may be unless the time is extended by the appellate court for good cause, and that the appellant must order an original and two copies of any transcript.~~ Any other party may request a paper copy of the transcript as provided in Minnesota Rule of Civil Appellate Procedure 110.02, subd. 2(b), within 10 days of the filing of either the transcript request or the court reporter's acknowledgment and acceptance of the transcript request, whichever is later or the written request for transcript. The ~~original~~ transcript must be filed with the court administrator and a copy transmitted promptly to the attorney for each party. ~~Upon the termination of the appeal, the clerk of the appellate courts must transmit the original transcript along with the remainder of the record to the court administrator.~~

If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made it part of the district court record, it becomes part of the record on appeal and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

If the appellant does not order the entire transcript, then within the 30 days permitted to order it, the appellant must file with the clerk of the appellate courts and serve on the court administrator and respondent a

description of the parts of the transcript the appellant intends to include in the record, and a statement of the issues the appellant intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings necessary, the respondent must order from the reporter, within 10 days of service of the description or notification of no transcript, those other parts deemed necessary, or serve and file a motion in the district court for an order requiring the appellant to do so.

9. Amend Rule 28.04, subd. 2(3), as follows:

(3) Briefs. The prosecutor must file the appellant's brief with the clerk of appellate courts, with proof of service on the respondent, within 15 days of delivery of the transcript.

If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request any transcript under Rule 28.04, subd. 2(2), appellant must file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent within 15 days after the prosecutor filed the notice of appeal.

Within 8 days of service of appellant's brief upon respondent, the respondent must file the respondent's brief together with proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and ~~appendices~~addenda, but the appellant's brief must contain a procedural history.

10. Amend Rule 28.04, subd. 6(1), as follows:

(1) Service and Filing. The prosecutor may appeal an order granting postconviction relief by filing a notice of appeal with the clerk of the appellate courts, with proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.

~~A certified copy of the order appealed and the~~The statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

11. Amend Rule 28.04, subd. 7(1), as follows:

(1) Service and Filing. The prosecutor may appeal an order staying adjudication by filing a notice of appeal with the clerk of the appellate courts, with proof of service on opposing counsel, the court administrator, the State Public Defender's office, and the Minnesota Attorney General.

The notice must be accompanied by a copy of a written request to the court reporter for a transcript of the proceedings, as appellant deems necessary. No fees or bond for costs are required for the appeal.

~~A certified copy of the order to be appealed or the~~ The statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

12. Amend Rule 28.04, subd. 7(3), as follows:

(3) Briefs. The prosecutor must file and serve the appellant's brief and proof of service on the respondent with the clerk of the appellate courts within 15 days after delivery of the transcript.

If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request a transcript, the appellant must file the appellant's brief and proof of service on the respondent with the clerk of the appellate courts together within 15 days after the prosecutor filed the notice of appeal. The brief must identify itself as a stay of adjudication brief.

Within 8 days after service of the appellant's brief, the respondent must file the respondent's brief and proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and ~~appendices~~addenda, but the appellant's brief must contain a procedural history.

13. Amend Rule 28.04, subd. 8(1), as follows:

(1) Service and Filing. The prosecutor may appeal these judgments or orders by filing with the clerk of the appellate courts a notice of appeal and proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.

~~A certified copy of the judgment or order appealed and the~~ The statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

14. Amend Rule 28.05, subd. 1, as follows:

Subd. 1. Procedure. The following procedures apply to the appeal of a sentence imposed or stayed under these rules:

(1) Notice of Appeal and Briefs. Any party appealing a sentence must file with the clerk of the appellate courts, within 90 days after judgment and sentencing:

(a) a notice of appeal; and

(b) ~~an affidavit~~proof of service of the notice on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals the State Public Defender's office.

If all transcripts necessary for the appeal have already been transcribed when the appellant files the notice of appeal, the party appealing the sentence must file with the notice of appeal an informal letter brief in the number of copies prescribed by standing order of the appellate court~~9 copies of an informal letter brief~~, which must identify itself as a sentencing appeal brief, with ~~an affidavit~~proof of service on opposing counsel, the Minnesota Attorney General, and in the case of prosecution appeals the State Public Defender's office. The brief must set out the arguments concerning the illegality or inappropriateness of the sentence.

When the transcripts necessary for the appeal have not been transcribed, the appellant must file with the notice of appeal a request for transcripts, and ~~an affidavit~~proof of service of the request on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals, the State Public Defender's office.

Appellant's brief must be identified as a sentencing appeal brief and must be served and filed within 30 days after delivery of the transcript. The clerk of the appellate courts must not accept a notice of appeal from sentence unless accompanied by the requisite briefs or transcript request and ~~affidavit~~proof of service.

A defendant appealing the sentence and the judgment of conviction may combine the two into a single appeal; when this option is selected, the procedures in Rule 28.02 continue to apply.

(2) Transmission of Record. Upon receiving a copy of the notice of appeal, the court administrator must immediately forward to the clerk of the appellate courts:

- (a) a transcript of the sentencing hearing, if any;
- (b) the sentencing order required in Rule 27.03, subd. 7, with the departure report, if any, ~~attached~~;
- (c) the sentencing guidelines worksheet; and
- (d) any presentence investigation report.

(3) Respondent's Brief. Within 10 days of service on respondent of appellant's brief, a respondent choosing to respond must serve an informal letter brief on appellant and file with the clerk of the appellate courts the number of copies prescribed by standing order of the appellate court ~~copies of the brief~~.

(4) Reply Brief. Appellant may serve and file a reply brief within 5 days after service of the respondent's brief.

(5) Other procedures. The following rules govern the below-listed aspects of sentencing appeals:

- (a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;
- (b) Rule 28.02, subd. 5: proceedings in forma pauperis;
- (c) Rule 28.02, subd. 6: stays;
- (d) Rule 28.02, subd. 7: release of the defendant on appeal; and
- (e) Rule 28.02, subd. 13: oral argument.

15. Amend the fifth paragraph of the Comment to Rule 28 as follows:

Under Rule 28.02, subd. 9 (Transcript of Proceedings and Transmission of the Transcript and Record), the transcript must be ordered within 30 days after filing of the notice of appeal rather than within 10 days as otherwise provided by Minn. R. Civ. App. P. 110.02, subd. 1. The provisions of Minn. R. Civ. App. P. 110 and 111 concerning the content and transmission of the record and transcripts apply to criminal appeals under Rule 28. Therefore, except as provided in Rule 28.02, subd. 5(12), it is necessary in a criminal appeal on ordering the transcript to serve and file a ~~Certificate as to Transcript~~ transcript certificate as required by Minn. R. Civ. App. P. 110.02, subd. 2. If either of the parties questions the accuracy of the court reporter's transcript of a videotape or audiotape exhibit, that

party may seek to correct the transcript either by stipulation with the other party or by motion to the district court under Minn. R. Civ. App. P. 110.05.

16. Amend Rule 29.03, subd. 1, as follows:

Subd. 1. Service and Filing. A defendant appeals by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts, with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgment appealed from is entered. The defendant does not have to post a bond to appeal. The defendant need not file ~~a certified copy of the judgment or order appealed from, or~~ the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

17. Amend Rule 29.04, subd. 1, as follows:

Subd. 1. Service and Filing. A party petitioning for review to the Supreme Court from the Court of Appeals must file ~~4 copies of a~~ petition for review with the clerk of the appellate courts, with proof of service on opposing counsel and the Minnesota Attorney General. A defendant does not have to file a bond to petition for review.

A party's failure to take any step other than timely filing the petition for review does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

18. Amend Rule 29.04, subd. 3, as follows:

Subd. 3. Contents of Petition for Review. The petition for review must not exceed 10 pages, exclusive of the ~~appendix~~ addendum, and must identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals, and contain in order the following information:

(1) the names, addresses, and telephone numbers of the attorneys for all parties;

(2) the date the Court of Appeals filed its decision, and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals;

(3) a concise statement of the legal issue or issues presented for review, indicating how the district court and the Court of Appeals decided each issue;

(4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals, including a designation of the district court and district court judge, and the disposition of the case in the district court and in the Court of Appeals;

(5) a concise statement of facts indicating briefly the nature of the case, and including only the facts relevant to the issue(s) sought to be reviewed;

(6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and

(7) an **appendix addendum** containing a copy of the written decision of the Court of Appeals, and a copy of any district court recitation of the essential facts of the case, conclusions of law, and memoranda.

19. Amend Rule 29.04, subd. 5, as follows:

Subd. 5. Response to Petition. When a petition for review has been filed, the respondent must file with the clerk of the appellate courts within 20 days after service of the petition on respondent ~~4 copies of~~ any response, not to exceed 10 pages exclusive of the **appendix addendum**, and proof of service on appellant. Failing to respond to the petition will not be considered agreement with it.

20. Amend Rule 29.04, subd. 6, as follows:

Subd. 6. Cross-Petition. A party cross-petitioning for review to the Supreme Court must file with the clerk of the appellate courts within 20 days after service of the petition for review, or within 30 days after filing of the decision of the Court of Appeals, whichever is later, ~~4 copies of~~ a cross-petition for review, not to exceed 10 pages exclusive of the **appendix addendum**, and proof of service on the petitioner. The cross-petition must conform to Rule 29.04, subd. 3, but the procedural history, statement of facts, and **appendix addendum** need not be included unless the cross-petitioner disagrees with them as they appear in the petition for review.

The court may permit a party, without filing a cross-petition, to defend a decision or judgment on any ground that the law and record permit that would not expand the relief that has been granted to the party.

21. Amend Rule 29.04, subd. 7, as follows:

Subd. 7. Action on Petition or Cross-Petition. The Supreme Court must file its order granting or denying review or cross-review within 60 days from the date the petition was filed. Upon the filing of the order, the clerk of the appellate courts must ~~mail~~transmit a copy of it to the attorneys for the parties.

22. Amend Rule 29.04, subd. 8, as follows:

Subd. 8. Briefs.

(1) Except as subdivision 10 (pretrial appeals) of this rule directs:

(a) appellant must serve and file the appellant's brief and ~~appendix~~addendum within 30 days after filing entry of the order granting review~~permission to appeal~~;

(b) respondent must serve and file the respondent's brief and ~~appendix~~addendum, if any, within 30 days after service of appellant's brief; and

(c) appellant may serve and file a reply brief within 10 days after service of the respondent's brief.

(2) In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but appellant's brief must also contain a procedural history.

23. Amend Rule 29.04, subd. 10(1), as follows:

(1) Briefs. In cases originally appealed to the Court of Appeals by the prosecutor under Rule 28.04, the appellant must, within 15 days from the date of filing entry of the order granting review, serve the appellant's brief on respondent and file with the clerk of the appellate courts~~14 the number of copies prescribed by standing order of the appellate court~~with the clerk of the appellate courts.

Within 8 days of service, respondent must serve the respondent's brief on appellant and file with the clerk of the appellate courts~~14 the number of copies prescribed by standing order of the appellate court~~with the clerk of the appellate courts.