

CHAPTER 1017**CRIMINAL PROCEDURE — INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIMS — DIRECT APPEALS***H.F. 2325*

AN ACT relating to raising an ineffective assistance of counsel claim against an attorney in a criminal case on appeal.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13B.9, subsection 2, Code Supplement 2003, is amended to read as follows:

2. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal, that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 2. NEW SECTION. 814.7 INEFFECTIVE ASSISTANCE CLAIM ON APPEAL IN A CRIMINAL CASE.

1. An ineffective assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822, except as otherwise provided in this section. The claim need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes.

2. A party may, but is not required to, raise an ineffective assistance claim on direct appeal from the criminal proceedings if the party has reasonable grounds to believe that the record is adequate to address the claim on direct appeal.

3. If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822.

Sec. 3. Section 814.11, subsection 7, Code 2003, is amended to read as follows:

7. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal, that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 4. Section 815.10, subsection 6, Code 2003, is amended to read as follows:

6. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal, that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel, and the ineffective assistance of counsel claim is the proximate cause of the damage.

Approved March 29, 2004