

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN RE: ESTABLISHMENT of a VOLUNTARY PILOT
PROGRAM for APPELLATE MEDIATION in the
ARKANSAS COURT of APPEALS

Supreme Court of Arkansas
Opinion delivered December 13, 2007

PER CURIAM. With permission from this court, an exploratory committee was formed to consider the implementation of appellate mediation in the Arkansas appellate courts. The committee has submitted a proposal and has recommended that we establish a voluntary pilot program for appellate mediation in the Court of Appeals. The Court of Appeals supports the program.

Upon consideration of the recommendation and the proposal submitted, the Supreme Court and the Court of Appeals *invite, encourage, and request the voluntary participation in appellate mediation* and hereby authorize the establishment of a voluntary appellate mediation pilot program. The pilot program shall include select civil cases (including domestic relations, probate, and workers' compensation law cases, but excluding juvenile and public service commission cases) involving appeals from final orders to the Arkansas Court of Appeals for cases in which notices of appeal are filed on or after September 1, 2008. We further authorize the exploratory committee to promulgate rules, procedures, and forms for the voluntary pilot program for appellate mediation; to develop methods for evaluating the results of this pilot program; and, to make recommendations concerning the further use of appellate mediation or such other recommendations as it deems appropriate.

The voluntary appellate mediation pilot program shall use the procedures and rules set forth in the Arkansas Voluntary Appellate Mediation Pilot Program Rules. A copy is posted on the Arkansas Judiciary's website at <http://courts.state.ar.us/adr/>.

IN RE: ARKANSAS RULES of CIVIL PROCEDURE 4 and 26;
ADMINISTRATIVE ORDER NUMBER 20;
and RULE of EVIDENCE 502

Supreme Court of Arkansas
Opinion delivered January 10, 2008

PER CURIAM. On May 25, 2007, we published for comment the Arkansas Supreme Court Committee on Civil Practice's proposals for changes in the Arkansas Rules of Civil Procedure, Administrative Orders, Rules of Evidence, Rules of Appellate Procedure - Civil, and Rules of The Supreme Court and Court of Appeals. See *In re Arkansas Rules of Civil Procedure; Administrative Order; Rules of Evidence; and Rules of the Supreme Court and Court of Appeals*, 370 Ark. App'x 579 (2007). We thank everyone who reviewed the proposals.

With two exceptions, of the Committee's recommendations that we published, we accept with minor changes the Committee's recommendations.

Based on our review of the comments submitted by the bench and bar, as well as numerous surveys of federal and state court rules governing publication and citation of opinions, we decline, by a vote of 4 to 3, to approve the Committee's proposed change to Rule 5-2 of the Rules of the Supreme Court and Court of Appeals.¹

We also note that the Committee recommended an amendment to Arkansas Rule of Evidence 502, and the Arkansas Bar Association petitioned the court to amend the same rule. We published the Bar Association's proposal separately. See *In re Rules Governing Waiver of Attorney-Client Privilege and Work-Product Doctrine*, 270 Ark. App'x 579 (2007). We accept the Bar Association's proposed changes to Ark. R. Evid. 502. While both proposals are identical with respect to the inadvertent disclosure of material covered by the attorney-client privilege and the work-product doctrine, the Bar Association's proposal also provides that disclo-

¹ Chief Justice Hannah and Justices Brown and Imber would approve the Committee's proposed change to Rule 5-2.

sure of information covered by the attorney-client privilege or the work-product doctrine to a government agency does not constitute a general waiver.

Finally, it should be noted that the Committee's recommended amendment to Ark. R. Civ. P. 26(b)(5), which is hereby accepted, is not limited to the inadvertent disclosure of information covered by the attorney-client privilege or the work-product doctrine. Rule 26(b)(5) applies to work-product as well as to "a claim of privilege," which, according to the Reporter's Note, means "any evidentiary privilege."

We adopt the following amendments and republish the Rules and Reporter's Notes as set out below. Except for Administrative Order Number 20, these amendments shall be effective immediately. **[Administrative Order Number 20 shall be effective March 1, 2008, for new appointments. For currently appointed process servers, they shall comply with the renewal appointment procedure in subsection 20(e) on or before December 31, 2008.]**

We encourage all judges and lawyers to review this per curiam order to familiarize themselves with the changes to the rules. We again express our gratitude to the members of our Civil Practice Committee for the Committee's diligence in performing the important task of keeping our civil rules current, efficient, and fair.

A. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 4. Summons.

....

(c) *By Whom Served.* Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action; (2) any person appointed pursuant to Administrative Order No. 20 for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made; (3) any person authorized to serve process under the law of the place outside this state where service is made; or (4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

Addition to Reporter's Notes, 2007 Amendment: *New Administrative Order Number 20 prescribes minimum qualifications for private process servers appointed by the circuit courts, as well as the procedure for their appointment. The change in Rule 4(c) eliminates the one former qualification (being at least eighteen years old) and incorporates by reference the expanded qualifications contained in the new Administrative Order.*

Rule 26. General provisions governing discovery.

....

(b) *Scope of Discovery.* Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

....

(4) *Trial preparation: experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which he is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Subject to subdivision (b)(4)(C) of this rule, a party may depose any person who has been identified as an expert expected to testify at trial

....

(5) *Inadvertent Disclosure.* (A) A party who discloses or produces material or information without intending to waive a claim of privilege or attorney work product shall be presumed not to have waived under these rules and the Arkansas Rules of Evidence if the party takes the following steps: (i) within fourteen calendar days of discovering the inadvertent disclosure, the producing party must notify the receiving party by specifically identifying the material or information and asserting the privilege or doctrine protecting it; and (ii) if responses to written discovery are involved, then the producing party must amend them as part of this notice.

(B) Within fourteen calendar days of receiving notice of an inadvertent disclosure, a receiving party must return, sequester, or destroy the specified materials and all copies. After receiving this notice, the receiving party may not use or disclose the materials in any way.

(C) A receiving party may challenge a disclosing party's claim of privilege or protection and inadvertent disclosure. The reason for such a challenge may include, but is not limited to, the timeliness of the notice of inadvertent disclosure or whether all the surrounding circumstances show waiver.

(D) In deciding whether the privilege or protection has been waived, the circuit court shall consider all the material circumstances, including: (i) the reasonableness of the precautions taken to prevent inadvertent disclosure; (ii) the scope of the discovery; (iii) the extent of disclosure; and (iv) the interests of justice. Notwithstanding Model Rule of Professional Conduct 3.7, and without having to terminate representation in the matter, an attorney for the disclosing party may testify about the circumstances of disclosure and the procedures in place to protect against inadvertent disclosure.

***Addition to Reporter's Notes, 2007 Amendment:** Paragraph (4)(A) of subdivision (b) has been amended to conform the Rule to current practice. Parties routinely depose testifying experts, as they do other witnesses, without first getting a court order allowing the deposition. This amendment eliminates an unnecessary provision that no one was following.*

Paragraph (5) has been added to subdivision (b). These provisions protect parties who inadvertently disclose material protected by any evidentiary privilege or doctrine of protection, such as the attorney work product doctrine. This provision draws on the work of the Arkansas Bar Association's Task Force on the Attorney-Client Privilege, American Bar Association Resolution 120D (adopted by House of Delegates in August 2006), and a 2006 amendment to Federal Rule of Civil Procedure 26. The Arkansas Bar Association specifically endorsed a similar change in the Arkansas Rule, although its proposal was limited to the attorney-client privilege and the work-product doctrine.

Lawyers do their best to avoid mistakes, but they sometimes happen. Discovery has always posed the risk of the inadvertent production of privileged or protected material. The advent of electronic discovery has only

increased the risk of inadvertent disclosures. This amendment addresses this risk by creating a procedure to evaluate and address inadvertent disclosures, including disputed ones.

Arkansas law on this issue is scarce. In *Firestone Tire & Rubber Co. v. Little*, 276 Ark. 511, 639 S.W.2d 726 (1982), a letter between two lawyers for Firestone “made its way” to one of Firestone’s customers, who produced the letter in another lawsuit. The Supreme Court held that Firestone waived the privilege by allowing the letter to get into the customer’s hands. 276 Ark. at 519, 639 S.W.2d at 730. The Court, however, did not discuss how the customer obtained the letter or whether Firestone’s disclosure was inadvertent. The Eighth Circuit has endorsed the multi-factor approach contained in this Rule as amended. *Gray v. Bicknell*, 86 F.3d 1472, 1483-84 (8th Cir. 1996) (predicting in a diversity case that Missouri courts would adopt this approach, which is the majority view).

The new provision creates a presumption against waiver if the disclosing party acts promptly after discovering the inadvertent disclosure. Notice by the disclosing party must be specific about both the material inadvertently disclosed and the privilege or doctrine protecting it. After receiving this kind of notice, a party may neither use nor disclose the specified material. Instead, the receiving party must either return, sequester, or destroy the material (including all copies). A party’s failure to fulfill these obligations will expose that party to sanctions under Rule 37. The new provision also creates a procedure for the receiving party to challenge a notice of inadvertent disclosure and a procedure for the circuit court to resolve the dispute. This procedure, which requires the court to consider all the material circumstances, “strikes the appropriate balance” and is “best suited to achieving a fair result.” *Gray*, 86 F.3d at 1484.

B. ADMINISTRATIVE ORDERS

ADMINISTRATIVE ORDER NUMBER 20

Private Civil Process Servers Appointment—Qualifications

(a) *Authority to Appoint Persons to Serve Process in Civil Cases.* The administrative judge of a judicial district, or any circuit judge(s) designated by the administrative judge, may issue an order appointing an individual to make service of process pursuant to

Arkansas Rule of Civil Procedure 4(c)(2) in each county of the district wherein approval has been granted. The appointment shall be effective for every division of circuit court in the county.

(b) *Minimum Qualifications to Serve Process.* Each person appointed to serve process must have these minimum qualifications:

- (1) be not less than eighteen years old and a citizen of the United States;
- (2) have a high school diploma or equivalent;
- (3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;
- (4) hold a valid Arkansas driver's license; and
- (5) demonstrate familiarity with the various documents to be served.

Each judicial district may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.

(c) *Appointment Procedure.*

(1) A person seeking court appointment to serve process shall file an application with the circuit clerk. The application shall be accompanied by an affidavit stating the applicant's name, address, occupation, and employer, and establishing the applicant's minimum qualifications pursuant to section (b) of this Administrative Order.

(2) The judge shall determine from the application and affidavit, and from whatever other inquiry is needed, whether the applicant meets the minimum qualifications prescribed by this Administrative Order and any additional qualifications prescribed in that district. If the judge determines that the applicant is qualified, then the judge shall issue an order of appointment. The circuit clerk shall file the order, and provide a certified copy of it to the process server and to the sheriff of the county in which the person will serve process. The circuit clerk of each county shall maintain and post a list of appointed civil process servers.

(d) *Identification.* Each process server shall carry a certified copy of his or her order of appointment, and a Arkansas driver's license, when serving process. He or she shall, upon request or inquiry, present this identification at the time service is made.

(e) *Duration, Renewal, and Revocation.*

A judge shall appoint process servers for a fixed term not to exceed three years. Appointments shall be renewable for additional three-year terms. A process server seeking a renewal appointment shall file an application for renewal and supporting affidavit demonstrating that he or she meets the minimum qualifications prescribed by this Administrative Order and the judicial district. Upon notice to the administrative judge, any circuit judge may revoke an appointment to serve process for his or her division for any of the following reasons: (1) making a false return of service; (2) serious and purposeful improper service of process; (3) failing to meet the minimum qualifications for serving process; (4) misrepresentation of authority, position, or duty; or (5) other good cause.

(f) *Forms.* Forms for the application, affidavit, order of appointment, and renewal of appointment are available at the Administrative Office of the Courts section of the Arkansas Judiciary website, <http://courts.state.ar.us> .

Explanatory Note: *This new Administrative Order imposes expanded minimum qualifications for private process servers in civil cases. Arkansas Rule of Civil Procedure 4(c)(2) formerly provided that the circuit court could appoint any person more than eighteen years old to serve process. Given the importance and effect of service of process, that qualification is insufficient. The expanded minimum qualifications imposed by this Administrative Order will help ensure the competence and character of private process servers. The Order establishes a floor, not a ceiling: the circuit judges in each judicial district may establish additional qualifications. Rule 4(c)(2) has been amended to incorporate this Order by reference. The Order also creates a uniform procedure for appointment and reappointment by the circuit court, as well as giving examples of the good cause which would justify revocation of the privilege of serving process. Finally, the Order requires process servers to carry a certified copy of their order of appointment, and their driver's license, to establish the server's legal authority.*

~~reporting the impaired lawyer or judge to appropriate disciplinary authorities;~~
~~periodic reporting of statistical information; and~~
~~confidentiality and assuring due process.~~

The Committee shall develop the necessary documents to administer the program.

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1. BACKGROUND

ALAP The Arkansas Judges and Lawyers Assistance Program (JLAP) was established by the Arkansas Supreme Court to be effective January 1, 2001. The Court appointed nine (9) committee members, including three (3) citizens who are not members of the legal profession. The members have diverse experience, knowledge and a demonstrated competence in the problems of addiction and other common difficulties that impair members of the legal profession physical and mental health conditions that negatively affect a lawyer or judge in the practice of their profession and quality of life.

The Court appoints the Chair of the Committee. The powers and duties of the Committee are:

- to establish ~~ALAP~~ Arkansas JLAP policies and procedures consistent with the purposes of the program;
- ~~to operate the program to achieve its purposes~~
- to oversee the management of the program to achieve the stated purposes; and,*
- to assure the implementation of the ALAP Arkansas JLAP program in compliance with the Arkansas Supreme Court per curiam Order of December, 7, 2000.

The procedures and policies set forth in this manual are cumulative to and explanatory of the per curiam order of December 7, 2000. In the event of conflict between these procedures and the per curiam order, the provisions of the per curiam order shall prevail.

2. PROGRAM GOALS AND GUIDING PRINCIPLES

ALAP GOALS

- ~~to provide detailed information to the legal community regarding the development of intervention, treatment and support programs and their effectiveness;~~
- ~~to assist the impaired lawyer or judge in overcoming alcohol and/or other substance abuse or dependency or other impairments;~~
- ~~to monitor and assist lawyers and judges in rebuilding their family structure;~~
- ~~to monitor and assist lawyers and judges in returning to legal practice or the bench;~~
- ~~to identify the active impaired lawyer or judge in the state of Arkansas, and~~

to establish a good working relationship with the legal community.

Arkansas JLAP's program goals are:

1. To identify the impaired lawyer or judge who is practicing in the state of Arkansas;
2. To assist judges and lawyers in their personal recovery from physical or mental health conditions that affect competent practice of their profession and their quality of life;
3. To assist the families of judges and lawyers during their personal recovery from identified physical or mental health conditions;
4. To educate the legal community on identification, assessment, referral, treatment, and community based resources available to meet the needs of affected judges and lawyers;
5. To monitor and assist judges and lawyers while they return to the practice of law or to the bench; and,
6. To establish and maintain a cooperative relationship with the legal community.

ALAP PRINCIPLES

humanitarian concern for the public and impaired lawyers and judges motivates the program;

alcohol and/or substance abuse and dependence or other impairments are treatable conditions;

alcohol and/or substance abuse or dependence or other impairments among lawyers and judges should not be ignored or left untreated;

impaired lawyers and judges are obligated to seek help and cooperate in treatment in order to regain or retain their full effectiveness as a lawyer or judge; and

it is every lawyer's or judge's responsibility to be aware of common signs and symptoms that may indicate a colleague's alcohol and/or substance abuse or dependence or other impairments and to assist the colleague in receiving appropriate treatment.

Arkansas JLAP's guiding principles are:

1. The program is motivated by humanitarian concern for the public and legal community;
2. Addiction, mental health concerns, physical disabilities and aging are treatable conditions;

3. *Addiction, mental health concerns, physical disabilities and aging should not be ignored or left untreated;*
4. *Impaired judges and lawyers are obligated to seek assistance and to participate in services necessary to renew their full effectiveness as a lawyer, judge and family member; and,*
5. *Every licensed lawyer and judge has the ethical responsibility to recognize the signs and symptoms of a colleague who might be impaired and to assist the colleague in accessing appropriate services.*

3. CLINICAL DEFINITIONS

The following definitions are used by the Arkansas JLAP Committee and Staff for clarity and consistency:

- Active Participant - A person who continues to make contact and cooperate with Arkansas JLAP staff;*
- Inactive Participant - A person who has made contact (self-referral or referred by another party), but has ceased to make further contact over a 12 month period of time;*
- Non-Participant - A referral has been received from another party, but t after investigation the referred person is deemed not appropriate for Arkansas JLAP engagement or contact had been made and the referral had not cooperated;*
- Pending - A referral for a person has been received, information is being gathered, no direct contact with potential participant has occurred;*
- Compliant - The participant is following the recommendations of the Arkansas JLAP staff and Arkansas JLAP contract;*
- Noncompliant - The participant has failed to follow the recommendations of the Arkansas JLAP staff or has chose to no longer access services of Arkansas JLAP;*
- Transitional - The participant is transitioning out of Arkansas JLAP as the result of loss of licensure; and,*

Trauma - Negative stresses not specifically identified in the per curiam as alcohol, drug abuse, mental health, physical disability or aging (i.e., stress, time management, financial issues, codependency).

4. COMMITTEE GUIDELINES

The following guidelines are used when a lawyer or judge contacts the Committee seeking assistance or when a lawyer or judge suspected of impairment is reported.

All information regarding the identity of the lawyer or judge will be kept confidential and secure;

Impairment may be established by the impaired lawyer's or judge's admission, or by the observation of another person;

After the initial report or request for assistance, an interview is scheduled with the lawyer or judge as soon as possible with the Program Director (Director);

Throughout the meeting, pertinent information is compiled on the lawyer or judge to document impairment;

During the interview, evidence is presented to the lawyer or judge suspected of impairment to encourage him or her to acknowledge the impairment;

If the lawyer or judge recognizes the impairment and is willing to enter treatment, an immediate treatment plan of action is developed;

The lawyer or judge is encouraged to obtain an appropriate evaluation as recommended by the Director which may include recommendations for treatment by a psychiatric/addictionologist or other qualified professional;

Lawyers and judges are expected to be compliant with the evaluation and recommendations as a part of the treatment plan of action;

After receiving the evaluation, the Director recommends what action is appropriate concerning the lawyer or judge, subject to review by the Committee;

When the lawyer or judge successfully completes a treatment plan the Contract for monitoring compliance is signed;

Appropriate follow up care will be monitored by the Director;

Drug screens as directed by the Contract will be performed with the results being placed in the individual lawyer or judge's file. If there is a positive drug screen, the Director will decide what action is to be taken and how to proceed with the matter.

The Director shall consult with the Committee or its representative prior to taking such action;

The participating lawyer or judge will be monitored to assure that he or she is attending AAJNA meetings and/or appropriate aftercare support as directed in the Contract. Documented attendance at meetings and support services shall be submitted to the Director and included in the files.

The following are guidelines used by the Arkansas JLAP committee and staff when contact is initiated:

A. VOLUNTARY SELF-REFERRALS

1. Any licensed lawyer or judge may voluntarily, self-refer;
2. Basic information will be taken by telephone or in person to establish appropriateness for services;"
3. Arkansas JLAP staff meets with the lawyer or judge as soon as possible. The lawyer is encouraged to accept personal responsibility for his or her treatment process and recovery;
4. A clinical assessment is conducted by a licensed professional;
5. Treatment options are discussed and referrals made as appropriate; and,
6. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

REPORTING SUSPECTED IMPAIRMENT

All information and referrals of suspected impairment received by the Committee or Director are confidential, nonpublic, and carefully maintained at all times. The records of the Committee shall be held in the strictest confidence in accordance with Rule 10 of the Rules of ALAP.

No anonymous referrals will be accepted by the Committee.

Any member of the legal profession seeking assistance and support from the Committee may self refer.

Referrals of suspected impairment may be reported by a concerned colleague, professional associate, family member, client, litigant, employer, or other individual who has first hand information indicating impairment or which might place at risk the public health, welfare, safety or the ability of a lawyer or judge to practice and serve.

Referrals will be accepted for lawyers or judges under investigational, provisional, or probational status with the Arkansas Professional Conduct Committee, the Arkansas

Judicial Discipline and Disability Commission, or any disciplinary agency with disciplinary authority.

B. REFERRALS OF SUSPECTED IMPAIRMENT

1. *No anonymous referrals are accepted by the Arkansas JLAP Committee or staff;*
2. *Referrals are accepted when the ability of a lawyer or judge to practice and serve are challenged and are expressed by a concerned party;*
3. *Referrals are accepted from any individual who has observed behaviors indicating impairment or have information that may place public health, welfare, or safety at risk;*
4. *Basic information will be taken by telephone or in person from the referral source to establish "pending status";*
5. *Arkansas JLAP staff meets with the lawyer or judge as soon as possible. The lawyer is encouraged to accept personal responsibility for his or her treatment process and recovery;*
6. *A clinical assessment is conducted by a licensed professional;*
7. *Treatment options are discussed and referrals made as appropriate; and,*
8. *The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.*

C. REFERRALS FROM DISCIPLINARY AUTHORITIES

Referrals are accepted for judges and lawyers under investigational, provisional, or probational status with the Arkansas Professional Conduct Committee, the Arkansas Judicial Discipline and Disability Commission or any disciplinary agency with disciplinary authority.

INVESTIGATION OF SUSPECTED IMPAIRMENT

The objective of an investigation is to carefully document information from individuals who have factual knowledge of the lawyer or judge's behavior. All investigative efforts must be discrete.

When a investigation produces no indication of impairment, the case is classified as unwarranted and is removed from the active files.

When an investigation does not produce the type of information required to conduct a successful intervention but there are indications that potential impairment exists, the case is maintained on file until sufficient information is obtained to warrant further action.

When impairment is confirmed following the investigation, an intervention will be conducted. The lawyer or judge is confronted using techniques designed to assist the lawyer or judge in acknowledging responsibility for initiating a recovery process or other necessary behavioral change.

D. INVESTIGATION OF SUSPECTED IMPAIRMENT

1. *The objective of investigating suspected impairment of a lawyer or judge is to gather accurate information from individuals who have concern for the health of the lawyer or judge. All efforts to gather information are discrete and confidential;*
2. *When an investigation produces insufficient indication of impairment, the lawyer or judge is classified as "non-participant status" but the file is maintained indefinitely should new information be obtained;*
3. *When impairment is confirmed, an intervention is planned and conducted with Arkansas JLAP staff. Intervention planning and implementation use techniques designed to assist the lawyer or judge to acknowledge personal responsibility for initiating treatment and becoming responsible for their recovery and other necessary behavioral changes;*
4. *Treatment options are discussed and referrals made as appropriate; and,*
5. *The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.*

ASSISTANCE FOR IMPAIRMENT

Appropriate assistance is offered through the following process:

A meeting between the lawyer or judge and the Program Director is arranged.

The lawyer or judge is encouraged to acknowledge the impairment and accept responsibility. An approach stressing the support and non-punitive aspects of the Committee is used.

A Contract is presented. The lawyer or judge signs the contract and agrees to participate in the treatment plan of action, or denies being impaired and refuses to sign the contract.

If the lawyer or judge signs the Contract and successfully participates in the treatment plan of action and monitoring plan, his or her identity will remain anonymous.

Impaired lawyers and judges who fail to comply with the Committee's recommendations may be reported by the Committee to the Arkansas Professional Conduct Committee, the Arkansas Judicial Disciplinary & Disability Committee or other disciplinary agency as appropriate under the guidelines of the per curiam.

E. HEALTH MONITORING CONTRACTS

A Health Monitoring Contract is a tool for maintaining treatment goals. Both addiction and mental health contracts monitor the participant's personal responsibility for achieving the desired goals and provide documentation of the accomplishments. Health Monitoring Contracts are individualized for each participant and are maintained for a minimum of three (3) years. Quarterly meetings with Arkansas JLAP staff verify compliance and serve as an ongoing supportive tool for the participating lawyer or judge.

HEALTH CONTRACT

An impaired lawyer or judge who has agreed to participate in the Committee's program is asked to sign a Health Contract before entering a treatment program. In this contract the participating lawyer or judge agrees to:

Enter into an assessment, treatment center, treatment program or hospital as recommended by the Committee;

Abstain from using any alcohol or chemical or acting on behaviors destructive to themselves or others;

Be compliant with all assessment and treatment program recommendations and those of the Director, and

Pay all expenses incurred through the implementation of the Health Contract and subsequent monitoring Contract.

TREATMENT

Treatment is the responsibility of the treatment center or medical professional accepting the case. The committee regularly evaluates treatment providers and programs for compliance with generally accepted standards of care.

MONITORING

Once treatment has been completed, the recovery process begins. The recovering lawyer or judge is asked to sign a Contract. The purpose of the Contract is to set forth terms and conditions which the recovering lawyer or judge will follow for a minimum of three (3) years. This agreement supplements and complements the Health Contract the participating lawyer or judge signed before entering the treatment.

Monitoring is imperative to prevent relapse or regression into old, self-destructive behaviors. The following guidelines will be used:

Upon compliance and completion of the treatment plan, the lawyer or judge is required to contact the Director within 24 hours from discharge;

The lawyer or judge will participate in random drug screening as indicated in his or her Contract. The results of these screens will be placed in the lawyer or judge's file;

Documentation of participation in AA/NA or other support meetings as indicated in the Contract will be sent to the Director and will be placed in the lawyer or judge's file; and

Quarterly meetings with the Director will be arranged to verify treatment compliance and serve as a tool of support for the participating lawyer or judge.

SERVICES PROVIDED

The Committee provides intervention counseling for family members, friends, colleagues, or other who is a potential participant for a structured, formal intervention.

5. ADDITIONAL SERVICES

Arkansas JLAP provides support services for family members, friends, colleagues or others who are potential participants in an intervention. These services may include motivational services to learn techniques and self-care during the recovery process of the participant.

RELEASE OF STATISTICAL INFORMATION

Statistical information concerning verifiable and unverifiable reports of suspected impairment, self referrals, or other substantive information is included in the comprehensive

statistical reports compiled by the Director and reported to the Court. Individual names will not be included in such reports.

6. REPORTING OF STATISTICAL INFORMATION

Statistical information consisting of status; compliance; referral source; nature of impairment; gender; and geographic location are compiled by Arkansas JLAP staff. No individually identifying information is included in the statistical information. Statistical information is provided to the Arkansas Supreme Court annually. Statistical information is maintained indefinitely.

CONFIDENTIALITY

Information and actions taken by ALAP shall be held in the strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of ALAP, unless such disclosure is authorized

7. CONFIDENTIALITY

Information and actions taken by Arkansas JLAP are held in the strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of Arkansas JLAP, unless such disclosure is authorized by the participant. Exceptions include any Arkansas JLAP staff who is a licensed health care professional thus a mandated reporter as outlined by Arkansas statutes.

8. TRANSITIONAL SERVICES

To provide competent clinical care to Arkansas JLAP participants two issues regarding transitional services are provided:

Abandonment Prohibited. Licensed health care professionals do not abandon or neglect clients in counseling. Counselors assist in making appropriate referral arrangements for the continuation of treatment, when necessary, during interruptions such as vacations and following termination of services; and,

Disbarment *Should an Arkansas JLAP participant be disbarred during the course of treatment, the Arkansas JLAP staff will continue to provide transitional services consistent with the requirements of their professional licensing board with regards to proper termination of services. No lawyer or judge shall be refused services during disbarment proceedings or until transitional services have been accomplished.*

9. FILE RETENTION

To be compliant with standards for licensed mental health professionals in the State of Arkansas paper files for all participants will be maintained for seven (7) years from the date services were terminated. The minimum data required by licensed mental health professionals in the state of Arkansas will be retained. All unnecessary information to meet retention requirements will be shredded.

Arkansas Judges and Lawyers Assistance Program

Procedure Manual

FOREWORD

The Arkansas Supreme Court established the Arkansas Lawyers Assistance Program (ALAP) as a program which assists and supports judges and lawyers in overcoming physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age that impair their ability to practice or serve (impairments). The Arkansas Lawyers Assistance Program Committee (Committee) was appointed by the Arkansas Supreme Court to fulfill the purposes of the program, which are:

- to protect the interests of clients, litigants, and the general public from the harm caused by impaired judges and lawyers;
- to assist impaired members of the legal profession to begin and continue to recover; and,
- to educate the bench and bar to the causes of and remedies for impairment affecting members of the legal profession.

The Committee shall develop the necessary documents to administer the program. This Procedure Manual will replace the previous manual adopted by per curiam order of this Court on December 31, 2001. To more properly reflect the population served by the program, throughout the new manual the program is designated Arkansas Judges and Lawyers Assistance Program (JLAP).

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1. Background

The Arkansas Judges and Lawyers Assistance Program (JLAP) was established by the Arkansas Supreme Court to be effective January 1, 2001. The Court appointed nine (9) committee members, including three (3) citizens who are not members of the legal profession. The members have diverse experience, knowledge and a demonstrated competence in the physical and mental health conditions that negatively affect a lawyer or judge in the practice of their profession and quality of life.

The Court appoints the Chair of the Committee. The powers and duties of the Committee are:

- to establish Arkansas JLAP policies and procedures consistent with the purposes of the program;
- to oversee the management of the program to achieve the stated purposes; and,
- to assure the implementation of the Arkansas JLAP program in compliance with the Arkansas Supreme Court per curiam Order of December, 7, 2000.

The procedures and policies set forth in this manual are cumulative to and explanatory of the per curiam order of

December 7, 2000. In the event of conflict between these procedures and the per curiam order, the provisions of

the per curiam order shall prevail.

2. PROGRAM GOALS AND GUIDING PRINCIPLES

Arkansas JLAP's program goals are:

2. To identify the impaired lawyer or judge who is practicing in the state of Arkansas;
3. To assist judges and lawyers in their personal recovery from physical or mental health conditions that affect competent practice of their profession and their quality of life;
4. To assist the families of judges and lawyers during their personal recovery from identified physical or mental health conditions;
5. To educate the legal community on identification, assessment, referral, treatment, and community based resources available to meet the needs of affected judges and lawyers;
6. To monitor and assist judges and lawyers while they return to the practice of law or to the bench; and,
7. To establish and maintain a cooperative relationship with the legal community.

Arkansas JLAP's guiding principles are:

1. The program is motivated by humanitarian concern for the public and legal community;
2. Addiction, mental health concerns, physical disabilities and aging are treatable conditions;
3. Addiction, mental health concerns, physical disabilities and aging should not be ignored or left untreated;
4. Impaired judges and lawyers are obligated to seek assistance and to participate in services necessary to renew their full effectiveness as a lawyer, judge and family member; and,
5. Every licensed lawyer and judge has the ethical responsibility to recognize the signs and symptoms of a colleague who might be impaired and to assist the colleague in accessing appropriate services.

3. CLINICAL DEFINITIONS

The following definitions are used by the Arkansas JLAP Committee and Staff for clarity and consistency:

- Active Participant - A person who continues to make contact and cooperate with Arkansas JLAP staff;
- Inactive Participant - A person who has made contact (self-referral or referred by another party), but has ceased to make further contact over a 12 month period of time;
- Non-Participant - A referral has been received from another party, but after investigation the referred person is deemed not appropriate for Arkansas JLAP engagement or contact had been made and the referral had not cooperated;
- Pending - A referral for a person has been received, information is being gathered, no direct contact with potential participant has occurred;
- Compliant - The participant is following the recommendations of the Arkansas JLAP staff and Arkansas JLAP contract;
- Noncompliant - The participant has failed to follow the recommendations of the Arkansas JLAP staff or has chose to no longer access services of Arkansas JLAP;
- Transitional - The participant is transitioning out of Arkansas JLAP as the result of loss of licensure; and,
- Trauma - Negative stresses not specifically identified in the per curiam as alcohol, drug abuse, mental health, physical disability or aging (i.e., stress, time management, financial issues, codependency).

4. COMMITTEE GUIDELINES

The following are guidelines used by the Arkansas JLAP Committee and staff when contact is initiated:

A. SELF-REFERRALS

1. Any licensed lawyer or judge may voluntarily self-refer;
2. Basic information will be taken by telephone or in person to establish appropriateness for services;
3. Arkansas JLAP staff meets with the lawyer or judge as soon as possible. The lawyer is encouraged to accept personal responsibility for his or her treatment process and recovery;
4. A clinical assessment is conducted by a licensed professional;
5. Treatment options are discussed and referrals made as appropriate; and,
6. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

B. REFERRALS OF SUSPECTED IMPAIRMENT

1. No anonymous referrals are accepted by the Arkansas JLAP Committee or staff;
2. Referrals are accepted when the ability of a lawyer or judge to practice and serve are challenged and are expressed by a concerned party;
3. Referrals are accepted from any individual who has observed behaviors indicating impairment or have information that may place public health, welfare, or safety at risk;
4. Basic information will be taken by telephone or in person from the referral source to establish "pending status";
5. Arkansas JLAP staff meets with the lawyer or judge as soon as possible. The lawyer is encouraged to accept personal responsibility for his or her treatment process and recovery;
6. A clinical assessment is conducted by a licensed professional;
7. Treatment options are discussed and referrals made as appropriate; and,
8. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

C. REFERRALS FROM DISCIPLINARY AUTHORITIES

Referrals are accepted for judges and lawyers under investigative, provisional, or probationary status with the Arkansas Professional Conduct Committee, the Arkansas Judicial Discipline and Disability Commission or any disciplinary agency with disciplinary authority.

D. INVESTIGATION OF SUSPECTED IMPAIRMENT

1. The objective of investigating suspected impairment of a lawyer or judge is to gather accurate information from individuals who have concern for the health of the lawyer or judge. All efforts to gather information are discrete and confidential;

2. When an investigation produces insufficient indication of impairment, the lawyer or judge is classified as "non-participant status" but the file is maintained indefinitely should new information be obtained;
3. When impairment is confirmed, an intervention is planned and conducted with Arkansas JLAP staff. Intervention planning and implementation use techniques designed to assist the lawyer or judge to acknowledge personal responsibility for initiating treatment and becoming responsible for their recovery and other necessary behavioral changes;
4. Treatment options are discussed and referrals made as appropriate; and,
5. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

E. HEALTH MONITORING CONTRACTS

A Health Monitoring Contract is a tool for maintaining treatment goals. Both addiction and mental health contracts monitor the participant's personal responsibility for achieving the desired goals and provide documentation of the accomplishments. Health Monitoring Contracts are individualized for each participant and are maintained for a minimum of three (3) years. Quarterly meetings with Arkansas JLAP staff verify compliance and serve as an ongoing supportive tool for the participating lawyer or judge.

6. Additional Services

Arkansas JLAP provides support services for family members, friends, colleagues or others who are potential participants in an intervention. These services may include motivational services to learn techniques and self-care during the recovery process of the participant.

7. REPORTING OF STATISTICAL INFORMATION

Statistical information consisting of status; compliance; referral source; nature of impairment; gender; and geographic location are compiled by Arkansas JLAP staff. No individually identifying information is included in the statistical information. Statistical information is provided to the Arkansas Supreme Court annually. Statistical information is maintained indefinitely.

8. CONFIDENTIALITY

Information and actions taken by Arkansas JLAP are held in the strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of Arkansas JLAP, unless such disclosure is authorized by the participant. Exceptions include any Arkansas JLAP staff who is a licensed health care professionals thus a mandated reporter as outlined by Arkansas statutes.

9. TRANSITIONAL SERVICES

To provide competent clinical care to Arkansas JLAP participants two issues regarding transitional services are provided:

Abandonment Prohibited:

Licensed health care professionals do not abandon or neglect clients in counseling. Counselors assist in making appropriate referral arrangements for the continuation of treatment, when necessary, during interruptions such as vacations and following termination of services; and,

Disbarment:

Should an Arkansas JLAP participant be disbarred during the course of treatment, the Arkansas JLAP staff will continue to provide transitional services consistent with the requirements of their professional licensing board with regards to proper termination of services. No lawyer or judge shall be refused services during disbarment proceedings or until transitional services have been accomplished.

9. FILE RETENTION

To be compliant with standards for licensed mental health professionals in the State of Arkansas paper files for all participants will be maintained for seven (7) years from the date services were terminated. The minimum data required by licensed mental health professionals in the state of Arkansas will be retained. All unnecessary information to meet retention requirements will be shredded.

IN RE: BOARD of CERTIFIED COURT REPORTER
EXAMINERS

Supreme Court of Arkansas
Opinion delivered February 21, 2008

PER CURIAM. On October 11, 2007, we published for comment the proposal for changes to Administrative Order Number 4, The Rule Providing for Certification of Court Reporters, and The Regulations of the Board of Certified Court Reporter Examiners received from The Board of Certified Court Reporter Examiners. We thank everyone who reviewed the proposal. We accept the Board's recommendations with two minor changes.¹ We adopt the following amendments to Administrative Order Number 4, The Rule Providing for Certification of Court Reporters, and The Regulations of the Board of Certified Court Reporter Examiners to be effective immediately, and republish the Rules as set out below.

**A. ADMINISTRATIVE ORDER NUMBER 4 —
VERBATIM TRIAL RECORD**

(a) *Verbatim Record.* Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it.

(b) *Back-up System.* When making a verbatim record, an official court reporter or substitute court reporter shall always utilize a back-up system in addition to his or her primary reporting system in order to insure preservation of the record.

(c) *Exhibits.* Physical exhibits received or proffered in evidence shall be stored pursuant to the requirements of Section 21 of the Regulations of the Board of Certified Court Reporter Examiners, Official Court Reporter Retention Schedule.

¹ The changes may be found in the Regulations of the Board of Certified Court Reporter Examiners Section 19(e)(8) and (13).

(d) *Sanctions.* Any person who fails to comply with these requirements shall be subject to the discipline provisions of the Rules and Regulations of the Board of Certified Court Reporter Examiners in addition to the enforcement powers of the court, including contempt.

B. RULE PROVIDING FOR CERTIFICATION OF COURT REPORTERS

Section 7. Revocation or suspension.

(a) Generally. The Board for good cause shown after a hearing by the Board, may revoke or suspend any certificate issued by the Board.

Within thirty (30) days of receipt of written findings of the Board suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review *de novo* upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested. It shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Board. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

Section 9. Scope.

a. After the effective date of this Rule, all transcripts taken in court proceedings, depositions, or before any grand jury will be accepted only if they are certified by a court reporter who holds a valid certificate under this Rule. Provided, however, that depositions taken outside this state for use in this state are acceptable if they comply with the Arkansas Rules of Civil Procedure.

b. *Disciplinary Authority.* An Arkansas certified court reporter is subject to the disciplinary authority of this jurisdiction, regard-

less of where the court reporter's conduct occurs. A court reporter not certified in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the court reporter provides or offers to provide any court reporter services in this jurisdiction. A court reporter may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

C. REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

Section 4.

Applicants, other than those certified without examination pursuant to Section 6, shall file not later than 30 days prior to the next examination date, a written application in the form prescribed by the Court, together with an application fee as set forth in Section 3 of these Regulations, with the Clerk of the Supreme Court. Said application fee shall not be refunded in the event the applicant decides not to take the examination or fails the examination. Said application shall state by which method the applicant will test, and certification will be issued solely in that method if the applicant successfully passes the examination.

Section 12.

This Section is hereby repealed.

Section 14.

The tests shall be as follows:

....

(b)(3) Five minutes of two-voice dictation of Q and A at 225 words per minute.

....

Section 17.

The Executive Secretary of the Board will forward the files containing the names and pertinent information for all individuals who have passed the certification test to the Supreme Court Clerk's office where said files will be maintained and stored.

The Executive Secretary will maintain and store all other files pertaining to test results, including all verbatim notes or records, transcripts, and other papers used in connection with

testing for a period of two years following the date of testing, at which time the Executive Secretary may dispose of said files.

It shall be the responsibility of the certified court reporter to provide the Office of the Supreme Court Clerk with written notification of any change of address within fourteen (14) working days.

For the purposes of these regulations, written notification by certified or first class mail to the most recent address provided to the Office of the Clerk shall be deemed sufficient.

Section 19.

Pursuant to Section 7 of the Rule Providing for Certification of Court Reporters, the Board may revoke or suspend any certificate issued after proper notice and hearing, on the following grounds:

a. conviction of a felony, conviction of a misdemeanor involving moral turpitude. Conviction is defined as a plea of guilty, or nolo contendere, or guilty verdict.

b. misrepresentation or omission of material facts in obtaining certification.

c. any intentional violation of, noncompliance with or gross negligence in complying with any rule or directive of the Supreme Court of Arkansas, any other court of record within this State, or this Board.

d. fraud, dishonesty, gross incompetence or habitual neglect of duty.

e. unprofessional conduct, which shall include, but not be limited to:

1. failing to deliver a transcript to a client or court in a timely manner as determined by statute, court order, or agreement;

2. intentionally producing an inaccurate transcript;

3. producing an incomplete transcript except upon order of a court, agreement of the parties, or request of a party;

4. failing to disclose as soon as practical to the parties or their attorneys existing or past financial, business, professional

or family relationships, including contracts for court-reporting services, which might reasonably create an appearance of partiality;

5. advertising or representing falsely the qualifications of a certified court reporter or that an unlicensed individual is a certified court reporter;

6. failing to charge all parties or their attorneys to an action the same price for an original transcript and failing to charge all parties or their attorneys the same price for a copy of a transcript or for like services performed in an action;

7. failing to disclose upon request an itemization in writing of all rates and charges to all parties in an action or their attorneys;

8. reporting of any proceeding by any person, who is a relative of a party or their attorney, unless the relationship is disclosed and any objection thereto is waived on the record by all parties;

9. reporting of any proceeding by any person, who is financially interested in the action, or who is associated with a firm, which is financially interested in the action;

10. failing to notify all parties, or their attorneys, of a request for a deposition transcript, or any part thereof, in sufficient time for copies to be prepared and delivered simultaneously with the original;

11. going "off the record" during a deposition when not agreed to by all parties or their attorneys unless otherwise ordered by the court;

12. giving, directly or indirectly, benefitting from or being employed as a result of any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate for each recipient each year; and

13. charging an unreasonable rate for a copy of an original deposition transcript, or an official reporter charging fees in violation of Ark. Code Ann. Section 16-13-506.

The notice shall state the cause for the contemplated revocation or suspension and the time and place of the hearing before the Board, and shall be mailed to the registered address of the holder of the certificate at least thirty days prior to the hearing. The Board shall make written findings of fact based on the evidence presented.

Section 21.

OFFICIAL COURT REPORTER RECORDS
RETENTION SCHEDULE

PART 1. Scope. a. This records retention schedule applies to all official court reporters in the State of Arkansas. "Official court reporter" as used in this retention schedule means a court reporter, certified by the Arkansas Board of Certified Court Reporter Examiners, who is regularly employed by a circuit judge, or a "substitute court reporter," who serves in the absence of the regularly employed court reporter.

.....

PART 3. Responsibility for Storage; Sanctions. a. During the period which the records are required to be retained, it shall be the responsibility of the official court reporter to maintain his or her records in an orderly, secure, and identifiable manner. It is highly recommended that space be provided in the county courthouse in the county where the official court reporter maintains an office or resides. If that is not feasible, it shall be the responsibility of the official court reporter to provide adequate space for the records.

b. When physical exhibits include firearms, contraband, or other similar items, such items may be transferred to the sheriff or other appropriate governmental agency for storage and safekeeping. The sheriff or governmental agency shall sign a receipt for such items and shall acknowledge that the items shall not be disposed of until authorized by subsequent court order. Other items of physical evidence which present storage problems may be transferred to the attorney of record for storage and safekeeping subject to approval of the trial court and upon appropriate documentation. Forms of orders and receipts for the transfer and disposal of exhibits are appended to Regulation 21.

c. If an official court reporter leaves his or her position for any reason other than his or her death, the reporter shall, within

thirty (30) days, deliver or cause to be delivered, those records as defined in PART 1, to the trial court and retained by the court until a subsequent official court reporter is employed or retained, at which time the records shall be transferred to that reporter. A former official court reporter who maintains Arkansas certification may, with the court's permission, temporarily retrieve his or her former records necessary to prepare an appeal transcript or other documents which a party may request.

d. If an official court reporter dies while still in possession of those records subject to retention as defined in PART 1, the trial court shall take possession of those records within thirty (30) days of the official court reporter's death. The trial court shall retain possession of the records until a subsequent official court reporter is employed or retained. At that time the records shall be transferred to the possession of the subsequent official court reporter who shall safely maintain the records subject to the direction of the trial court.

e. Any person who fails to comply with or who interferes with these transfer provisions may be ordered to appear and show cause why he or she should not be held in contempt of court.

....

PART 5. Log of Records, Sanctions. a. Each official court reporter shall maintain an accurate, orderly log of his or her records which also notes the date and method of destruction of each record listed. Any work papers maintained by the reporter for the purpose of identifying the record of court proceedings shall suffice, as long as they are legible. When an official court reporter leaves his or her position for whatever reason, the trial court shall take possession of the log no later than the date he or she takes possession of the records as set out in PART 3. When a subsequent official court reporter is employed or retained, the log shall be transferred to the possession of the subsequent official court reporter who shall safely maintain the log subject to the direction of the trial court.

b. Any person who fails to comply with or who interferes with this Section may be ordered to appear and show cause why he or she should not be held in contempt of court.

Part 6 of the Per Curiam dated Oct. 16, 1995, set out the Official Court Reporter Retention Schedule:

| <u>TYPE OF CASE</u> | <u>PERIOD OF RETENTION</u> |
|---|--|
| <u>Criminal Cases</u> | |
| Death Penalty | Permanently |
| Life in Prison w/o Parole | Permanently |
| Other Felonies (transcript lodged with appellate court) | 90 days after Mandate issues |
| Other Felonies (no transcript prepared) | 5 years from date of verdict or sentencing |
| Misdemeanors | 2 years from date of sentencing |
| <u>Grand Jury Proceedings</u> | 1 year subsequent to adjournment |
| <u>Civil Circuit</u> | |
| All Cases (transcript lodged with appellate court) | 90 days after Mandate issues |
| All Cases (no transcript prepared) | 2 years from date of final order of trial court |

.....

APPENDIX (Regulation 21)

Receipt and Acknowledgment Order for Transfer
of Trial Court Exhibits

IN THE CIRCUIT COURT OF
_____ COUNTY, ARKANSAS
_____ DIVISION

_____ PLAINTIFF

V. NO. _____

_____ DEFENDANT

ORDER

The following exhibits in the above-styled case are hereby
ordered transferred for storage and safekeeping to:

Exhibit No. _____ (DESCRIPTION)

Exhibit No. _____

Exhibit No. _____

Exhibit No. _____

Exhibit No. _____

**THESE ITEMS MAY NOT BE DISPOSED OF WITHOUT
THE COURT'S PERMISSION EVIDENCED BY A WRIT-
TEN ORDER.**

IT IS SO ORDERED.

Circuit Judge

Date

I ACKNOWLEDGE RECEIPT OF THE PHYSICAL EXHIBITS DESCRIBED ABOVE AND FURTHER ACKNOWLEDGE MY UNDERSTANDING THAT THESE ITEMS MAY NOT BE DISPOSED OF WITHOUT FURTHER ORDER OF THE COURT, AND I AGREE TO RETURN THESE ITEMS TO THE COURT WHEN SO DIRECTED.

(SHERIFF/GOVERNMENTAL
AGENCY/ATTORNEY OR OTHER
ENTITY)

Date

[Receipt shall be filed in case file with the
circuit clerk]

APPENDIX (Regulation 21)

Order for Disposal of Trial Court Exhibits and Acknowledgment of
Receipt for Disposal

IN THE CIRCUIT COURT OF
_____ COUNTY, ARKANSAS
_____ DIVISION

_____ PLAINTIFF

V. NO. _____

_____ DEFENDANT

ORDER

The following exhibits in the above-styled case may be disposed of in a manner consistent with the Regulations of the Board of Certified Court Reporter Examiners:

Exhibit No. _____ (DESCRIPTION)

Exhibit No. _____

Exhibit No. _____

Exhibit No. _____

Exhibit No. _____

[The exhibit(s) shall be transferred to _____
for disposal pursuant to law.]

IT IS SO ORDERED.

Circuit Judge

Date

I ACKNOWLEDGE RECEIPT OF THE PHYSICAL EXHIBITS DESCRIBED ABOVE FOR DISPOSAL PURSUANT TO LAW.

(SHERIFF/GOVERNMENTAL AGENCY/ATTORNEY OR OTHER ENTITY)

Date

[Receipt shall be filed in case file with the circuit clerk]

SECTION 22

a. The purpose of this rule is to ensure the integrity of the record and to avoid the appearance or potential for deferential treatment of parties to an action. Court reporters serve as officers of the court and both the appearance and existence of impartiality are no less important for officers who take depositions than for judicial officers and other persons whose responsibilities are integral to the administration of justice.

b. The court reporter taking the deposition, or the firm or any other person or entity with whom such court reporter has a principal and agency relationship or is otherwise associated, shall not enter into a contractual or financial agreement, arrangement or relationship for court reporting services, whether written or oral, with any attorney, party to an action, insurance company, third-

party administrator, or any other person or entity that has a financial interest in an action, which gives the appearance that the impartiality and independence of the court reporter has been compromised. Specific examples of arrangements that are prohibited include ones that:

1. establish rates and terms for court reporting services that extend beyond a single case, action, or proceeding;

2. include a court reporter on any list of preferred providers of court reporting services after exchanging information and reaching an agreement specifying the prices or other terms upon which future court reporting services will be provided, whether or not the services actually are ever ordered;

3. allow the format of the transcript to be manipulated to affect pricing;

4. require the court reporter taking the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified;

5. fail to offer comparable services, in both quality and price, to all parties or otherwise require the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation;

6. allow the court reporter to communicate directly with a party of interest, other than a *pro se* party, except to provide invoices; and

7. base the compensation of the court reporter on the outcome or otherwise give the court reporter a financial interest in the action.

c. These prohibitions do not apply to situations where fees or special services may be negotiated, provided that they are the same for all parties and are negotiated on a case-by-case basis. Also, these prohibitions do not extend to governmental entities, if they are required by law to obtain court reporting services on a long-term basis through competitive bidding.

d. Any violation of these prohibitions shall be enforceable by the court in which the underlying action is pending. Without otherwise limiting the inherent powers and discretion of the court,

a deposition taken in violation of these prohibitions shall constitute a violation of Rule 28(d) of the Arkansas Rules of Civil Procedure (disqualification for interest), and be subject to all sanctions for such a violation under the Rules of Civil Procedure. In addition, any court reporter, firm, attorney, or party that willfully violates these prohibitions may be subject to fine or sanction by the court, and a court reporter may be subject to disciplinary proceedings before the Board of Certified Court Reporter Examiners.

e. These rules shall be applicable to all court reporting services provided on or after February 21, 2008.

IN RE: The ARKANSAS JUDGES and LAWYERS
ASSISTANCE PROGRAM

Supreme Court of Arkansas
Opinion delivered February 28, 2008

PER CURIAM. On January 10, 2008, we issued a per curiam order setting out proposed revisions to the policies and procedures followed by the Arkansas Lawyers Assistance Program. We sought comment from the bench and the bar. No comments have been received by the Clerk of the Court.

We find the proposed changes in the policies and procedures to be appropriate. These new policies and procedures will more correctly reflect the day-to-day activities, responsibilities, and other procedures attendant to the effective operation of the program.

We adopt the attached document titled “Arkansas Judges and Lawyers Assistance Program - Procedure Manual.” As noted in the foreword to that manual, the program shall henceforth be designated as the Arkansas Judges and Lawyers Assistance Program, or JLAP.

Arkansas Judges and Lawyers Assistance Program

Procedure Manual

FORWARD

The Arkansas Supreme Court established the Arkansas Lawyers Assistance Program (ALAP) as a program which assists and supports judges and lawyers in overcoming physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age that impair their ability to practice or serve (impairments). The Arkansas Lawyers Assistance Program Committee (Committee) was appointed by the Arkansas Supreme Court to fulfill the purposes of the program, which are:

- to protect the interests of clients, litigants, and the general public from the harm caused by impaired judges and lawyers;
- to assist impaired members of the legal profession to begin and continue to recover; and,
- to educate the bench and bar to the causes of and remedies for impairment affecting members of the legal profession.

The Committee shall develop the necessary documents to administer the program. This Procedure Manual will replace the previous manual adopted by per curiam order of this Court on December 31, 2001. To more properly reflect the population served by the program, throughout the new manual the program is designated Arkansas Judges and Lawyers Assistance Program (JLAP).

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1. BACKGROUND

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The Court appoints the Chair of the Committee. The powers and duties of the Committee are:

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6. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

B. REFERRALS OF SUSPECTED IMPAIRMENT

1. No anonymous referrals are accepted by the Arkansas JLAP Committee or staff;
2. Referrals are accepted when the ability of a lawyer or judge to practice and serve are challenged and are expressed by a concerned party;
3. Referrals are accepted from any individual who has observed behaviors indicating impairment or have information that may place public health, welfare, or safety at risk;
4. Basic information will be taken by telephone or in person from the referral source to establish "pending status";
5. Arkansas JLAP staff meets with the lawyer or judge as soon as possible. The lawyer is encouraged to accept personal responsibility for his or her treatment process and recovery;
6. A clinical assessment is conducted by a licensed professional;
7. Treatment options are discussed and referrals made as appropriate; and,
8. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

C. REFERRALS FROM DISCIPLINARY AUTHORITIES

Referrals are accepted for judges and lawyers under investigative, provisional, or probationary status with the Arkansas Professional Conduct Committee, the Arkansas Judicial Discipline and Disability Commission or any disciplinary agency with disciplinary authority.

D. INVESTIGATION OF SUSPECTED IMPAIRMENT

1. The objective of investigating suspected impairment of a lawyer or judge is to gather accurate information from individuals who have concern for the health of the lawyer or judge. All efforts to gather information are discrete and confidential;
2. When an investigation produces insufficient indication of impairment, the lawyer or judge is classified as "non-participant status" but the file is maintained indefinitely should new information be obtained;
3. When impairment is confirmed, an intervention is planned and conducted with Arkansas JLAP staff. Intervention planning and implementation use techniques designed to assist the lawyer or judge to acknowledge personal responsibility for initiating treatment and becoming responsible for their recovery and other necessary behavioral changes;
4. Treatment options are discussed and referrals made as appropriate; and,
5. The participant is offered the opportunity to participate in a health monitoring program to assure compliance with treatment goals.

E. HEALTH MONITORING CONTRACTS

A Health Monitoring Contract is a tool for maintaining treatment goals. Both addiction and mental health contracts monitor the participant's personal responsibility for achieving the desired goals and provide documentation of the accomplishments. Health Monitoring Contracts are individualized for each participant and are maintained for a minimum of three (3) years. Quarterly meetings with Arkansas JLAP staff verify compliance and serve as an ongoing supportive tool for the participating lawyer or judge.

6. ADDITIONAL SERVICES

Arkansas JLAP provides support services for family members, friends, colleagues or others who are potential participants in an intervention. These services may include motivational services to learn techniques and self-care during the recovery process of the participant.

7. REPORTING OF STATISTICAL INFORMATION

Statistical information consisting of status; compliance; referral source; nature of impairment; gender; and geographic location are compiled by Arkansas JLAP staff. No individually identifying information is included in the statistical information. Statistical information is provided to the Arkansas Supreme Court annually. Statistical information is maintained indefinitely.

8. CONFIDENTIALITY

Information and actions taken by Arkansas JLAP are held in the strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of Arkansas JLAP, unless such disclosure is authorized by the participant. Exceptions include any Arkansas JLAP staff who is a licensed health care professional thus a mandated reporter as outlined by Arkansas statutes.

9. TRANSITIONAL SERVICES

To provide competent clinical care to Arkansas JLAP participants two issues regarding transitional services are provided:

Abandonment Prohibited:

Licensed health care professionals do not abandon or neglect clients in counseling. Counselors assist in making appropriate referral arrangements for the continuation of treatment, when necessary, during interruptions such as vacations and following termination of services; and,

Disbarment:

Should an Arkansas JLAP participant be disbarred during the course of treatment, the Arkansas JLAP staff will continue to provide transitional services consistent with the requirements of their professional licensing board with regards to proper termination of services. No lawyer or judge shall be refused services during disbarment proceedings or until transitional services have been accomplished.

9. FILE RETENTION

To be compliant with standards for licensed mental health professionals in the State of Arkansas paper files for all participants will be maintained for seven (7) years from the date services were terminated. The minimum data required by licensed mental health professionals in the state of Arkansas will be retained. All unnecessary information to meet retention requirements will be shredded.

Appointments to
Committees

IN RE: APPOINTMENTS to the ARKANSAS CONTINUING
LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Opinion delivered January 17, 2008

PER CURIAM. Joel L. Taylor of Morrilton is appointed to the Continuing Legal Education Board for a three-year term concluding on December 5, 2010. Mr. Taylor will be an at-large representative and replaces Julie Cabe whose term has expired.

Charles D. Roscof of Helena-West Helena is reappointed to the Continuing Legal Education Board for a three-year term to expire on December 5, 2010. Mr. Roscof will be the representative from the First Congressional District.

Wendy Wood of Little Rock is reappointed to the Continuing Legal Education Board for a three-year term to conclude on December 5, 2010. Ms. Wood will be an at-large representative.

The Court extends its sincere appreciation to Mr. Taylor, Mr. Roscof, and Ms. Wood for accepting appointment to this important Committee. The Court thanks Julie Cabe for her many years of work on this Board, including one year as Chair of the Board.

IN RE: APPOINTMENTS to the DISTRICT COURT
RESOURCE ASSESSMENT BOARD

Supreme Court of Arkansas
Opinion delivered February 14, 2008

PER CURIAM. Act 663 of 2007 created the District Court Resource Assessment Board. The duties of this Board are to make recommendations to the General Assembly in the following areas:

- (1) the criteria for the creation and placement of full-time, state-funded district court judgeships;
- (2) revisions of current district court judgeships or the redistricting of the district court districts of this state; and
- (3) the number and placement of full-time, state-funded district court judgeships.

See Ark. Code Ann. § 16-17-1003.

The Board is to consist of eleven members, seven of whom are to be appointed by the Supreme Court. At this time, we appoint the following persons to the Board to fill the positions specified in Act 663.

- (a) Two members of the Arkansas District Judges Council: Hon. Rusty Porter of West Helena and Hon. Dan Stidham of Paragould;
- (b) One member of the Association of Arkansas Counties: Hon. Wes Fowler, Madison County Judge;
- (c) One member of the Arkansas Municipal League: Mayor Chris Claybaker of Camden;
- (d) One Justice of the Supreme Court: Chief Justice Jim Hannah;
- (e) One member of the Arkansas Bar Association who is engaged in the full-time private practice of law: Mr. Eddie Walker, Esq., of Fort Smith;

(f) One circuit judge: Hon. Marcia Hearnberger of Hot Springs.

We thank these individuals for their willingness to serve on the Board. They shall draw for initial terms as provided in Act 663.

The remaining members of the Board and procedures for conduct of the Board's business are set out in Ark. Code Ann. § 16-17-1002 (b).

IN RE: SUPREME COURT COMMITTEE on MODEL JURY
INSTRUCTIONS—CIVIL

Supreme Court of Arkansas
Opinion delivered February 21, 2008

PER CURIAM. Kristine G. Baker, Esq., of Little Rock is appointed to the Committee on Model Jury Instructions—Civil to fill the unexpired term of Lucinda McDaniel, Esq. This term expires on September 30, 2010. The court extends its appreciation to Ms. Baker for her willingness to serve on this important committee.

IN THE MATTER of the APPOINTMENT
of a SPECIAL JUDGE

Supreme Court of Arkansas
Opinion delivered February 21, 2008

PER CURIAM. Jack Holt, Jr., shall be appointed as a special judge, and he shall be given authority for the express purpose of swearing in the newly-commissioned Wildlife Officers of the Arkansas Game & Fish Commission on February 29, 2008.

It is so ordered.

Professional Conduct
Matters

IN RE: Keith R. ALICH,
Arkansas Bar No. 2006347

07-1312

Supreme Court of Arkansas
Opinion delivered January 17, 2008

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Keith R. Alich, Little Rock, Arkansas, to practice law in the State of Arkansas. Mr. Alich's name shall be removed from the registry of licensed attorneys, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Patricia Gail WALKER,
Arkansas Bar No. 80204

07-1310

Supreme Court of Arkansas
Opinion delivered January 17, 2008.

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Patricia Gail Walker, Nashville, Tennessee, to practice law in the State of Arkansas. Ms. Walker's name shall be removed from the registry of licensed attorneys, and she is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: George Keith WATKINS,
Arkansas Bar No. 81237

07-1311

Supreme Court of Arkansas
Opinion delivered January 17, 2008

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of George Keith Watkins, Paragould, Arkansas, to practice law in the State of Arkansas. Mr. Watkins's name shall be removed from the registry of licensed attorneys, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Sheila WHARTON,
Arkansas Bar No. 80206

08-95

Supreme Court of Arkansas
Opinion delivered February 21, 2008

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, and pursuant to sections 14.A and B of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of the Attorneys at Law (2002), we hereby revoke the law license of Sheila Wharton, Shreveport, Louisiana, to practice law in the State of Arkansas. Ms. Whar-

ton's name shall be removed from the registry of licensed attorneys, and she is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

Ceremonial
Observances

IN RE: The RESIGNATION of CHRISTOPHER THOMAS
as ARKANSAS LAWYER ASSISTANCE PROGRAM
COMMITTEE MEMBER

Supreme Court of Arkansas
Opinion delivered January 10, 2008

PER CURIAM. The Arkansas Lawyer Assistance Program (ALAP) was established on December 7, 2000, in order to help members of the Bar of Arkansas, their colleagues, and families find direction and hope when struggling with alcoholism, drug abuse, physical disability, aging, and trauma. Christopher Thomas is a founding committee member and has served as the secretary/treasurer of ALAP since March 22, 2001.

During his tenure as secretary/treasurer, Christopher Thomas helped develop a lawyer assistance program that has become a model for rural states throughout the country. He helped establish and oversee a revolving loan fund for impaired judges and lawyers for the purposes of defraying the costs of treatment. Through his tenacity, dry sense of humor, and high standard for integrity, Christopher Thomas has provided direction and support to ALAP staff and fellow committee members. He oversaw the development of procedures by which ALAP operates, such as the inclusion of immunity for the staff and committee members and the revocation of the “sunset” provision, allowing ALAP to continue to operate pending further orders of the court. Through prevention and education efforts provided to legal professionals, Christopher Thomas has significantly increased awareness of impairment, intervention, and treatment options.

The Arkansas Supreme Court takes this opportunity to acknowledge with pleasure the achievements of Christopher Thomas and express our sincere appreciation to him for his seven years of public service on behalf of judges and lawyers in the State of Arkansas and his dedication to promoting the health and well being of the legal community.

C. ARKANSAS RULES OF EVIDENCE**Rule 502. Lawyer-client privilege.**

....

(e) *Inadvertent disclosure.* A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if the disclosing party follows the procedure specified in Rule 26(b)(5) of the Arkansas Rules of Civil Procedure and, in the event of a challenge by a receiving party, the circuit court finds in accordance with Rule 26(b)(5)(D) that there was no waiver.

(f) *Selective waiver.* Disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine to a governmental office or agency in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of non-governmental persons or entities.

Explanatory Note: *New subdivision (e) cross-references the 2007 amendment to Rule of Civil Procedure 26(b), which governs inadvertent disclosures of privileged or otherwise protected material during discovery.*

Under new subdivision (f), disclosure of information covered by the attorney-client privilege or the work-product doctrine to a government agency conducting an investigation of the client does not constitute a general waiver of the information disclosed. In short, this provision adopts a rule of “selective waiver” consistent with the Eighth Circuit’s view that disclosure of protected information to the government does not constitute a general waiver, so that the information remains shielded from use by other parties. E.g., Diversified Industries, Inc. v. Meredith, 572 F.2d 596 (8th Cir. 1977).

This is the minority view among the federal circuits. Most have held that waiver of privileged or protected information to a government agency constitutes a waiver for all purposes. E.g., In re Quest Communications Intern, Inc., 450 F.3d 1179 (10th Cir. 2006). Others have recognized selective waiver only if the disclosure was made subject to a confidentiality agreement with the government agency. E.g., Teachers Insurance & Annuity Ass’n v. Shamrock Broadcasting Co., 521 F. Supp 638 (S.D.N.Y. 1981).

Subdivision (f) adopts the Eighth Circuit’s position, which is also reflected in a draft that the Federal Advisory Committee on Evidence has published for public comment. See http://www.uscourts.gov/rules/Excerpt_EV_Report_Pub.pdf#page=4.

IN RE: The ARKANSAS LAWYERS
ASSISTANCE PROGRAM

Supreme Court of Arkansas
Opinion delivered January 10, 2008

PER CURIAM. On December 7, 2000, we established the Arkansas Lawyers Assistance Program (ALAP). Contemporaneously, we adopted rules for ALAP including Rule 2.D(1), which directs the ALAP Committee to establish policies and procedures after reasonable notice to the bench and the bar.

On September 20, 2001, we published such proposed policies and procedures seeking comment from the bench and the bar. By per curiam order of December 13, 2001, we adopted those policies and procedures.

It has been six years since the adoption of the initial policies and procedures. The ALAP program has matured and has acquired practical experience relevant to the matter of policies and procedures. The ALAP Committee now asks us to revisit the issue and adopt a set of policies and procedures that better reflect the day to day activities, responsibilities, and procedures attendant to the effective operation of the ALAP program. To that end, we have been provided a document titled “Arkansas Judges and Lawyers Assistance Program — Procedure Manual.” That document accompanies this per curiam order and is hereby published for comment. In addition, a “marked up” version of the original procedure manual is provided where the language to be deleted is “stricken through” and the new language appears in *italics*.

The ALAP Committee has explained that the proposed revisions more succinctly and correctly recite appropriate policies and procedure. For instance, a section titled “Clinical Definitions” is adopted. Such definitions were not included in the original policies and procedures but experience has shown that adopting such definitions is essential to appropriate treatment and monitoring. In addition, on infrequent occasion, an attorney who has been active in the ALAP program either surrenders his or her license or is disbarred prior to completion of treatment. Accordingly, the newly proposed policies include a section titled “Transitional Services” making it clear the professional ethical obligations of the

Arkansas Lawyer Assistance Program Arkansas Judges' and Lawyers' Assistance Program

~~(ALAP)~~ *(Arkansas JLAP)*

Procedure Manual

Proposed Revisions 1/10/2008

FOREWORD

The Arkansas Supreme Court established the ~~Arkansas Lawyer Assistance Program (ALAP)~~ *Arkansas Judges' and Lawyers' Assistance Program (Arkansas JLAP)* as a program which assists and supports ~~lawyers and judges~~ *judges and lawyers* in overcoming physical or mental disabilities that result from disease, substance abuse, disorder, trauma, or age and that impairs their ability to practice or serve (impairments). The ~~Arkansas Lawyer Assistance Program~~ *Arkansas Judges' and Lawyers' Assistance Program* Committee (Committee) was appointed by the Arkansas Supreme Court to fulfill the purposes of the program, which are:

- to protect the interests of clients, litigants, and the general public from the harm caused by impaired *judges and lawyers*;
- to assist impaired members of the legal profession to begin and continue to recover; and,
- to educate the bench and bar to the causes of and remedies for impairment affecting members of the legal profession.

This manual presents the basic structure of ALAP and explains established guidelines pertaining to:

- ~~lawyers and judges suspected of being impaired;~~
- ~~intervention and referral;~~
- ~~treatment;~~
- ~~rehabilitation;~~
- ~~support;~~

ALAP staff require transitional services even though the participant may no longer be an attorney. Also, there are some stylistic changes, and repetitive or redundant language has been eliminated.

Members of the bench and the bar are invited to submit their comments within 30 days of the date of this order. Such comments should be directed to Leslie Steen, Clerk of the Arkansas Supreme Court, Justice Building, 625 Marshall Street, Little Rock, Arkansas, 72201.