

APPENDIX

Rules Adopted  
or Amended by  
Per Curiam Orders

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IN RE: ARKANSAS RULES of CRIMINAL PROCEDURE,  
RULE 28.2

Supreme Court of Arkansas  
Delivered September 26, 2002

**P**ER CURIAM. June 27, 2002, we published for comment the Arkansas Supreme Court Committee on Criminal Practice's proposal for changes to Rule 28.2 of the Arkansas Rules of Criminal Procedure. See *In Re Arkansas Rules of Criminal Procedure*, 349 Ark. Appx. (2002). We thank those who took the time to review this proposal. We also express our gratitude to the members of the Criminal Practice Committee for their work.

At this time, we adopt the amendment to Ark. R. Crim. P. 28.2, effective immediately, and republish the rule and Reporter's Note as set out below.

**RULES OF CRIMINAL PROCEDURE**

**RULE 28.2 When time commences to run.**

(a) The time for trial shall commence running from the date the charge is filed, except that if prior to that time the defendant has been continuously held in custody or on bail or lawfully at liberty to answer for the same offense or an offense based on the same conduct or arising from the same criminal episode, then the time for trial shall commence running from the date of arrest.

(b) When the charge is dismissed upon motion of the defendant and subsequently the dismissed charge is reinstated, or the defendant is arrested or charged with the same offense, the time for trial shall commence running from the date the dismissed charge is reinstated or the defendant is subsequently arrested or charged, whichever is earlier; and when the charge is dismissed upon motion of the defendant and subsequently the charge is reinstated following an appeal, the time for trial shall commence running from the date the mandate is issued by the appellate court.

(c) If the defendant is to be retried following a mistrial, the time for trial shall commence running from the date of mistrial.

(d) If the defendant is to be retried following an order by the trial court granting a new trial, the time for trial shall commence running from the date of the order granting a new trial, unless the state appeals the order granting a new trial, in which case the time for trial shall commence running from the date the mandate is issued by the appellate court.

(e) If the defendant is to be retried following an appeal of a conviction, the time for trial shall commence running from the date the mandate is issued by the appellate court.

(f) If the defendant is to be retried following a collateral attack of a conviction, the time for trial shall commence running from the date of the order invalidating the conviction, unless the state appeals the order invalidating the conviction, in which case the time for trial shall commence running on the date of remand by the appellate court.

### **Reporter's Note 2002.**

Prior to the amendment, subsection (c) applied to retrials following a mistrial, retrials following an order granting a new trial, retrials following an appeal, and retrials following a collateral attack. The amendments split these various proceedings into new separate subsections.

The amendments also change the rule regarding a retrial following an appeal of an order granting a new trial. Under new subsection (d), the time for retrial begins running when the appellate court returns the case to the trial court. This changes the rule applied, but not the result reached in *Cherry v. State*, 347 Ark. 606, 66 S.W. 3d 605 (2002)(time for retrial started running when the trial court entered order granting a new trial but the period during which the new trial order was on appeal treated as an excluded period under Ark. R. Crim. P. 28.3).

The amendments were not intended to change the rule that time for trial begins to run without demand by the defendant.

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IN RE: RULE 7.4 of the ARKANSAS MODEL RULES of  
PROFESSIONAL CONDUCT

Supreme Court of Arkansas  
Delivered September 26, 2002

**P**ER CURIAM. These proposed changes in Rule 7.4 are published for comment by the bench and bar. The Supreme Court has been engaged in an assessment of the procedures to certify lawyers as specialists. On February 14, 2002, we announced the appointment of Professor Judith Kilpatrick of the University of Arkansas Law School in Fayetteville as a special consultant to the Court. See *In re Appointment of Special Consultant to Assist the Court in Reviewing Procedures to Certify Lawyers as Specialists*, 347 Ark. Appx. (2002). We asked Professor Kilpatrick to examine the Arkansas Plan of Specialization<sup>1</sup> vis-a-vis procedures throughout the United States. She has done so and reported her findings and recommendations to the Court. We thank Professor Kilpatrick for her excellent work and may need to call on her expertise in this area in the future.

As currently written, Rule 7.4 (c) of the Arkansas Model Rules of Professional Conduct states:

a lawyer who has been recognized as a specialist under the Arkansas Plan of Specialization approved by the Arkansas Supreme Court may communicate the fact during the period that he or she is a "Board Recognized Specialist in (insert field in which recognized) Law" under the plan.

At present, the only recognized specialty in Arkansas is in taxation. In reviewing the Arkansas Plan of Specialization and the information provided by Professor Kilpatrick, we have concluded that the Supreme Court no longer should exercise responsibility for certi-

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<sup>1</sup> See *In re Motion to Amend the Arkansas Plan of Specialization and Adopt Regulations*, 309 Ark. 632 (1992).

fyng specialists, in part for the reasons cited by the American Bar Association Standing Committee on Specialization:

[M]any state and local bar associations wish to avoid the potential expense and complexity of establishing duplicative state programs to accredit or approve private certifying organizations, most of which are expected to operate on a national basis. In addition, the states, especially the smaller states, feel ill-equipped both financially and administratively to conduct independent evaluations of certifying organizations, especially given the need for on-going monitoring of compliance and the need for periodic re-evaluation.

ABA Standing Committee on Specialization, Report accompanying *Standards for Accreditation of Specialty Certification Programs for Lawyers*, (February, 1993).

After considering various options, we have decided to follow the approach recommended by the American Bar Association and to modify Rule 7.4 of the Arkansas Model Rules of Professional Conduct to bring it into substantial alignment with the most recent version of the model rule.

Unfortunately, the American Bar Association does not have an accredited program in taxation, which is the only area in which specialists have been certified under the Arkansas Plan. To resolve this dilemma, we propose the Arkansas Board of Specialization shall continue in existence for a two-year transition period during which those attorneys currently possessing in good standing a specialization certificate under the Arkansas Plan of Specialization will continue to be recognized. During this transition period, attorneys in the Tax Law Specialty Committee are authorized and requested to pursue the following options: (1) Take all necessary action to transform the taxation speciality plan of the Arkansas Board of Specialization to a program accredited by the American Bar Association; or (2) Work with the American Board of Certification to create a taxation certification program; or (3) Negotiate with one or more of the states (California, Florida, and Texas) which currently has a tax certification program to certify Arkansas lawyers in taxation.

At the end of the transition period, the transitional provisions of the rule would sunset, the Arkansas Plan of Specialization would terminate, the Arkansas Board of Specialization would be disbanded, and the recognition of tax specialists under the Arkansas Plan would cease.

The transition period would commence on December 31, 2002 and would end December 31, 2004. Rule 7.4, as amended, would be effective December 31, 2002. Under this approach, we would be able to rely on the accreditation resources of the American Bar Association or other approved certification providers to certify specialist in lieu of our own. Comments with respect to the suggested rule changes should be made in writing prior to November 11, 2002, and they should be addressed to:

Clerk, Supreme Court of Arkansas

Attn: Rule 7.4(c) of the Arkansas Model Rules of Professional Conduct

Justice Building

625 Marshall Street

Little Rock, Arkansas 72201

Changes to the rule are illustrated immediately below, and the amended rule is then set out.

*[Illustration of Changes]*

**Rule 7.4. Communication of fields of practice and specialization.**

~~(a)~~ A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. ~~A lawyer shall not state or imply that the lawyer is a specialist except as follows:~~

~~(a)~~ ~~(b)~~ a A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation; ~~;~~

~~(b) (c) a~~ A lawyer engaged in admiralty practice may use the designation “Admiralty,” “Proctor in Admiralty” or a substantially similar designation, ~~and~~

~~(c) a lawyer who has been recognized as a specialist under the Arkansas Plan of Specialization approved by the Arkansas Supreme Court may communicate the fact during the period that he or she is a “Board Recognized Specialist in (insert field in which recognized) Law” under the plan.~~

~~(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:~~

~~(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(e) [Transitional Provisions (December 31, 2002 – December 31, 2004)]~~

~~(1) A lawyer who is currently certified as a Board Recognized Specialist in Tax Law under the Arkansas Plan of Specialization may communicate such fact through December 31, 2004.~~

~~(2) The Arkansas Board of Specialization and the Tax Speciality Committee shall continue in existence for administrative and supervisory purposes until December 31, 2004. No new specialists shall be recognized under the Arkansas Plan of Specialization.~~

*[Effective December 31, 2002]*

**RULE 7.4. Communication of fields of practice and specialization.**

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation “Admiralty,” “Proctor in Admiralty” or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(e) [*Transitional Provisions (December 31, 2002 - December 31, 2004)*]

(1) A lawyer who is currently certified as a Board Recognized Specialist in Tax Law under the Arkansas Plan of Specialization may communicate such fact through December 31, 2004.

(2) The Arkansas Board of Specialization and the Tax Speciality Committee shall continue in existence for administrative and supervisory purposes until December 31, 2004. No new specialists shall be recognized under the Arkansas Plan of Specialization.

### Commentary

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer’s services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers prac-



ting before the Office. Paragraph (c) recognizes that designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

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IN RE: OCTOBER 17, 2002, SESSION of the  
ARKANSAS SUPREME COURT

Supreme Court of Arkansas  
Delivered October 14, 2002

**P**ER CURIAM. On October 17, 2002, the Supreme Court shall convene at 9:40 a.m. in the Law School Courtroom at the University of Arkansas School of Law, Leflar Law Center, Waterman Hall, Corner of Maple and Garland Avenues, Fayetteville, Arkansas.

IN RE: RULES of the SUPREME COURT and  
COURT of APPEALS of the STATE of ARKANSAS

Supreme Court of Arkansas  
Delivered October 14, 2002

**P**ER CURIAM. We hereby amend, effective immediately,  
Rule 1-1 of the Rules of the Supreme Court and Court  
of Appeals and republish the rule as set out below.

**RULES OF THE SUPREME COURT AND COURT OF  
APPEALS**

**Rule 1-1. Hours and places of meeting.**

The Supreme Court shall convene each Thursday at 9:00  
a.m. and the Court of Appeals each Wednesday at 9:00 a.m.,  
except during recess or as announced by either Court. The  
Supreme Court and the Court of Appeals shall convene in the  
Supreme Court and Court of Appeals Courtroom or at such other  
location as announced by either Court.

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IN RE: ARKANSAS LAWYERS  
ASSISTANCE PROGRAM COMMITTEE

Supreme Court of Arkansas  
Delivered August 13, 2002

**P**ER CURIAM. Ms. Melissa Carroll of Fayetteville is appointed to fill the unexpired five-year term of Ms. Gail Harber on the Arkansas Lawyers Assistance Program Committee. Ms. Harber resigned from the Committee to assume the duties of the Director of the Program. Ms. Jane Yeargan of Fayetteville is appointed to fill the unexpired six-year term of Dr. Phillip Barling on the Committee. The court expresses its appreciation to these new appointees for their willingness to serve on this important Committee.

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IN RE: STATE BOARD of LAW EXAMINERS

Supreme Court of Arkansas  
Delivered August 13, 2002

**P**ER CURIAM. The Honorable Mike Mashburn, Circuit Judge, of Fayetteville, Arkansas, is appointed to the Board of Law Examiners for the purpose of grading the July, 2002 Bar Examination. Judge Mashburn replaces Carolyn Witherspoon of Little Rock.

The Court thanks Judge Mashburn for accepting appointment to this Board for the purpose of grading this examination.

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IN RE: SUPREME COURT BOARD of CERTIFIED  
COURT REPORTER EXAMINERS

Supreme Court of Arkansas  
Delivered September 12, 2002

**P**ER CURIAM. The Honorable J. Michael Fitzhugh, Circuit Judge, Twelfth Judicial Circuit, is appointed to the Board of Certified Court Reporter Examiners to fill the unexpired term of the Honorable Tom Smitherman, who has resigned from the Board. This term expires on July 31, 2003. At this time, we designate the Honorable David Clinger to serve as Chair of the Board.

The Court expresses its appreciation to Judge Fitzhugh for accepting appointment to this important Board and to Judge Clinger for his willingness to assume the duties of the Chair. Finally, we express our gratitude to Judge Smitherman for his years of dedicated service to the Board as its Chair.

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IN RE: APPOINTMENT of COUNSEL in  
CRIMINAL CASES

Supreme Court of Arkansas  
Delivered September 19, 2002

**P**ER CURIAM. Because appellants in criminal cases are entitled to counsel on direct appeal from a judgment of conviction, this Court on occasion must appoint attorneys to represent indigent appellants. Attorneys who are desirous of such appointments should register with Sue Newbery, Criminal Justice Coordinator, Arkansas Supreme Court, Justice Building, 625

Marshall St., Little Rock, AR 72201. Counsel will be paid a fee after determination of the case, upon a proper motion.

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IN RE: COMMITTEE on AUTOMATION

Supreme Court of Arkansas  
Delivered September 19, 2002

**P**ER CURIAM. The Honorable Ben Story, of Forrest City, Stephen Sipes, Esq., of Little Rock, and Carlton Jones, Esq., of Texarkana, are hereby reappointed to the Committee on Automation for three-year terms to expire October 2005.

The Court extends its thanks to Judge Story, Mr. Sipes, and Mr. Jones for accepting these reappointments to this most important committee.

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IN RE: SUPREME COURT COMMITTEE  
on PROFESSIONAL CONDUCT

Supreme Court of Arkansas  
Delivered October 24, 2002

**P**ER CURIAM. The terms of the following members of the Supreme Court Committee on Professional Conduct expire December 31, 2002:

Panel A — Dr. Patricia Youngdahl — Little Rock (At large non-attorney member);

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Panel B — John L. Rush — Pine Bluff (Fourth Congressional District attorney member); and

Panel C — Searcy W. Harrell, Jr. — Camden (Fourth Congressional District attorney member).

The Court thanks each member for accepting reappointment in the present position of each, which appointment is hereby made, to a new six (6) year term, which shall end on December 31, 2008.

The Court expresses its appreciation to each of these members for their service on this most important Committee.

IN RE: David P. HENRY,  
Arkansas Bar ID # 71041

02-1031

86 S.W.3d 856

Supreme Court of Arkansas  
Opinion delivered October 10, 2002

**P**ER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the law license of David P. Henry of Little Rock, Arkansas, to practice law in the State of Arkansas. Mr. Henry'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.

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IN RE: Steven D. LAWRENCE;  
Arkansas Bar ID # 88128

Supreme Court of Arkansas  
Delivered November 14, 2002

**P**ER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the law license of Steven D. Lawrence of Melbourne, Arkansas, to practice law in the State of Arkansas. Mr. Lawrence'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.