APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: SUPREME COURT COMMITTEE ON CRIMINAL PRACTICE; RULES of CRIMINAL PROCEDURE 33.8 & 36(c); & RULE of APPELLATE PROCEDURE – CRIMINAL 16

Supreme Court of Arkansas
Opinion delivered February 22, 2007

PER CURIAM. The Supreme Court Committee on Criminal Practice has proposed several rules changes. We express our gratitude to the members of the Criminal Practice Committee for their work and take the following actions with regard to their recommendations:

1. Adoption of Arkansas Rule of Criminal Procedure 33.8.

The Committee recommends that jurors should not be permitted to question witnesses and proposes a new Rule 33.8. We agree with the Committee's recommendation and adopt the rule as published below to be effective immediately.

(New) Rule 33.8. Questions by Jurors.

Jurors shall not be permitted to pose questions to witnesses, either directly or through written questions submitted to the judge or to the parties.

Reporter's Note, 2007 Addition of Rule 33.8.

Permitting jurors to question witnesses may cause delay, prejudice, or error. Rule 33.8 was added in 2007 to bar the practice.

2. Amendment to Arkansas Rule of Criminal Procedure 36(c).

The Committee recommends that the minimum record requirement in an appeal from district court to circuit court should be a certified copy of the district court docket sheet. To accomplish this, an amendment to Arkansas Rule of Criminal Procedure

36(c) is proposed.[1] We agree with the Committee's recommendation and adopt the amendment as published below to be effective immediately.

Rule 36. Appeals from District Court to Circuit Court.

. . . .

(c) *How Taken.* An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court. The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk. Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.

[1] (c) *How Taken.* An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court. The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk. ~~The record shall include any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court.~~ Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.

Reporter's Notes, 2007 Amendments.

The 2007 amendments clarified the contents of the record that must be filed with the circuit court in order to vest that court with jurisdiction of the appeal. *Cf. McNabb v. State*, 367 Ark. 93, 238 S.W.3d 119 (2006) *reh'g denied*. After acquiring jurisdiction of the appeal, the circuit court can, if necessary or desirable, order additional documents or pleadings filed in the district court to be made a part of the record on appeal.

3. Amendment to Arkansas Rule of Appellate Procedure – Criminal 16.

The Committee recommends a change to Rule of Appellate Procedure – Criminal 16 to permit the state to recoup the cost of indigent transcripts when a defendant moves to substitute retained counsel for appointed counsel. We agree with the Committee's recommendation and adopt the amendment as published below to be effective immediately.

Arkansas Rule of Appellate Procedure – Criminal.

Rule 16. Trial counsel's duties with regard to appeal.

. . . .

(d) If pursuant to Ark. Code Ann. § 16-13-506(b), the state has paid the court reporter for the transcript that is filed as part of the record with the appellate court and the defendant thereafter moves to substitute retained counsel for appointed counsel, the court may, as a condition of granting the motion, require the defendant to reimburse the state for the cost of the transcript.

IN RE: SUPREME COURT COMMITTEE ON CRIMINAL PRACTICE, PROPOSED AMENDMENT TO SPEEDY TRIAL RULE

Supreme Court of Arkansas
Opinion delivered February 22, 2007

PER CURIAM. The Supreme Court Committee on Criminal Practice has endorsed the Arkansas Trial Judges' proposal that the time for speedy trial start from the date the defendant is arrested rather than the date the charge is filed. The Committee also recommends that the amendatory language cover the situation where the defendant is brought before the court by service of a summons rather than by execution of an arrest warrant.

This proposed change to Rule 28.2 of the Rules of Criminal Procedure is set out below, and the accompanying Reporter's Note further explains it. We publish the proposal for comment. Comments should be submitted in writing by April 1, 2007, and addressed to: Les Steen, Arkansas Supreme Court Clerk, Justice Building, 625 Marshall Street, Little Rock, AR 72201, Attention: Criminal Procedure Rules.

Amendment to Arkansas Rule of Criminal Procedure 28.2.

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 or service of summons.

Reporter's Note to 2007 Amendments.

Prior to the 2007 amendment, this rule provided that the time for trial began to run on the date the charge was filed, except when the defendant was held in custody or on bail prior to the filing of the charge, in which case the time for trial began to run on the date of arrest. The 2007 amendment changed the speedy trial start date to the date of arrest,

whether the charge is filed before or after that date. The reference to "service of summons" applies to those cases in which the defendant is brought before the court via a summons, rather than an arrest. See Rule 6 – Issuance of Summons in Lieu of Arrest Warrant.

The 2007 amendment applies to prosecutions initiated after the effective date of the amendment. If a person was charged with an offense before the effective date of the amendment, but arrested after the effective date of the amendment, the time for trial commences on the date the charge was filed.

IN RE: ADOPTION of ADMINISTRATIVE ORDER NUMBER 19 — ACCESS TO COURT RECORDS

Supreme Court of Arkansas
Opinion delivered February 22, 2007

PER CURIAM. On June 29, 2006, we published for comment a proposed administrative order addressing public access to court records. *See In Re: Proposed Administrative Order Number 19 – Access to Court Records*, 367 Ark. App'x 619 (2006). This proposal was the product of exhaustive work by the Arkansas Supreme Court Committee on Automation and the Committee's Task Force on Public Access and Privacy Task Force. As we explained in our earlier *per curiam* order:

> In 2004, the court invited governmental and non-governmental organizations to designate persons to participate on the Task Force for the purpose of developing a policy on access to court records which balanced the public's right to know with the need to protect individual privacy from threats such as identity theft. The process has included public hearings and solicitation of comments to draft proposals. Participants in the process have included such groups as the Arkansas Freedom of Information Coalition, Arkansas Trial

> Lawyers Association, Ad Hoc Committee on Public Access to Court Records of the Arkansas Judicial Council, UALR Bowen School of Law, UA School of Law, DIS Office of Information Technology, Attorney General's Office, Arkansas Circuit Clerks Association, Arkansas Public Defender Commission, District Judge's Council, Bureau of Legislative Research, Arkansas Bar Association, Arkansas Press Association, Arkansas Times, The Morning News, Jonesboro Sun, Domestic Violence Coalition, Prosecuting Attorneys Association and the Little Rock Chamber of Commerce.

Id.

We received many comments, and we thank everyone who took the time to consider the proposal and submit comments. Because of various concerns expressed, we asked the Task Force to reconsider several issues, which they did, and a revised proposal was submitted to the court. The court is greatly appreciative of all the work that Task Force has undertaken.

One area of concern raised by the comments dealt with the redaction requirement. The Task Force's response was to recommend a delay in the implementation of any redaction required in the administrative order to allow time for the circuit clerks and attorneys to familiarize themselves with the process and to prepare for implementation. It was also recommended that the appropriate Supreme Court Committees be given time to study this issue and propose appropriate measures. The Task Force proposed an effective date for the redaction requirements of January 1, 2009. (*See* Section 1(E)). We concur in these recommendations.

In response to concerns expressed by court reporters, the Task Force recommended that transcripts and source materials, including recordings or electronic transcriptions, be excluded from the redaction requirement, even if the transcript is filed with the circuit clerk. As the Task Force pointed out, information appearing in these transcripts was uttered in open court. Also, the Task Force added language to clarify that court reporter's source material be treated the same as exhibits, and access to them shall be granted at the discretion of the court. We concur with these suggestions. We also note that this Administrative Order does not supersede Ark. Code Ann § 16-13-501 *et seq.*, which requires court reporters to create transcripts only for party litigants.

We have considered the revised proposal as a whole and approve it. We adopt Administrative Order Number 19 – Access

to Court Records as published below to be effective July 1, 2007, except for those sections requiring redaction of court documents, which shall be effective January 1, 2009.

Administrative Order Number 19
Access to Court Records

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Section I. Authority, Scope, and Purpose

A. Pursuant to Ark. Const. amend. 80, §§ 1, 3, 4; Ark. Code Ann. §§ 16-10-101 (Repl. 1999), 25-19-105(b)(8) (Supp. 2003), and this Court's inherent rule-making authority, the Court adopts and publishes Administrative Order Number 19: Access to Court Records. This order governs access to, and confidentiality of, court records. Except as otherwise provided by this order, access to court records shall be governed by the Arkansas Freedom of Information Act (Ark. Code Ann. §§ 25-19-101 *et seq.*).

B. The purposes of this order are to:

(1) promote accessibility to court records;

(2) support the role of the judiciary;

(3) promote governmental accountability;

(4) contribute to public safety;

(5) reduce the risk of injury to individuals;

(6) protect individual privacy rights and interests;

(7) protect proprietary business information;

(8) minimize reluctance to use the court system;

(9) encourage the most effective use of court and clerk of court staff;

(10) provide excellent customer service; and

(11) avoid unduly burdening the ongoing business of the judiciary.

C. This order applies only to court records as defined in this order and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.

D. Disputes arising under this order shall be determined in accordance with this order and, to the extent not inconsistent with this order, by all other rules and orders adopted by this Court.

E. This order applies to all court records; however clerks and courts may, but are not required to, redact or restrict information that was otherwise public in case records and administrative records created before January 1, 2009.

Section II. Who Has Access Under This Order

A. All persons have access to court records as provided in this order, except as provided in section II(B) of this order.

B. The following persons, in accordance with their functions within the judicial system, may have greater access to court records:

(1) employees of the court, court agency, or clerk of court;

(2) private or governmental persons or entities who assist a court in providing court services;

(3) public agencies whose access to court records is defined by other statutes, rules, orders or policies; and

(4) the parties to a case or their lawyers with respect to their own case.

Section III. Definitions

A. For purpose of this order:

(1) "Court Record" means both case records and administrative records, but does not include information gathered, maintained or stored by a non-court agency or other entity even though the court may have access to the information, unless it is adopted by the court as part of the court record.

(2) "Case Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding.

(3) "Administrative Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government.

(4) "Court" means the Arkansas Supreme Court, Arkansas Court of Appeals, and all Circuit, District, or City Courts.

(5) "Clerk of Court" means the Clerk of the Arkansas Supreme Court, the Arkansas Court of Appeals, and the Clerk of a Circuit, District, or City Court including staff. "Clerk of Court" also means the County Clerk, when acting as the Ex-Officio Circuit Clerk for the Probate Division of Circuit Court.

(6) "Public access" means that any person may inspect and obtain a copy of the information.

(7) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

(8) "In electronic form" means information that exists as electronic representations of text or graphic documents; an electronic image, including a video image of a document, exhibit or other thing; data in the fields or files of an electronic database; or an audio or video recording (analog or digital) of an event or notes in an electronic file from which a transcript of an event can be prepared.

(9) "Bulk Distribution" means the distribution of all, or a significant subset of, the information in court records, as is, and without modification or compilation.

(10) "Compiled Information" means information that is derived from the selection, aggregation or reformulation of information from more than one court record.

(11) "Confidential" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "confidential" shall mean also that the existence of a court record may not be disclosed.

(12) "Sealed" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "sealed" shall mean also that the existence of a court record may not be disclosed.

(13) "Protective order" means that as defined by the Arkansas Rules of Civil Procedure.

(14) "Expunged" means that the record or records in question shall be sequestered, sealed, and treated as confidential, and neither the contents, nor the existence of, the court record may be disclosed unless otherwise permitted by this order, or by law. Unless otherwise provided by this order or by law, "expunged" shall not mean the physical destruction of any records.

(15) "Court Agency" means the Administrative Office of the Courts, the Office of Professional Programs, the Office of the Arkansas Supreme Court Committee on Professional Conduct, the Judicial Discipline and Disability Commission, and any other office or agency now in existence or hereinafter created, which is under the authority and control of the Arkansas Supreme Court.

(16) "Custodian" with respect to any court record, means the person having administrative control of that record and does not mean a person who holds court records solely for the purposes of storage, safekeeping, or data processing for others.

Section IV. General Access Rule

A. Public access shall be granted to court records subject to the limitations of sections V through X of this order.

B. This order applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the records are maintained.

C. If a court record, or part thereof, is rendered confidential by protective order, by this order, or otherwise by law, the confidential content shall be redacted, but there shall be a publicly accessible indication of the fact of redaction. This subsection (C) does not apply to court records that are rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record.

Section V. Remote Access

A. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public, unless public access is restricted pursuant to section VII:

(1) litigant/party/attorney indexes to cases filed with the court;

(2) listings of case filings, including the names of the parties;

(3) the register of actions or docket sheets;

(4) calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;

(5) judgments, orders, or decrees.

B. Remote access to information beyond this list is left to the discretion of the court.

Section VI. Bulk Distribution and Compiled Information

A. Requests for bulk distribution or compiled information shall be made in writing to the Director of the Administrative Office of the Courts or other designee of the Arkansas Supreme Court. Requests will be acted upon or responded to within a reasonable period of time.

B. Bulk distribution or compiled information that is not excluded by section VII of this order shall be provided according to the terms of this section VI(B).

(1) Bulk distribution or compiled information that is not excluded by section VII of this order shall be provided when the following conditions are met:

(a) The requester must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific individuals is ancillary to the purpose of the inquiry.

(b) The requester must declare under penalty of perjury that information obtained pursuant to this section VI(B) will not be used directly or indirectly to sell a product or service to any individual, group of individuals, or the general public. A request for records supporting the news dissemination function of the requester shall not be considered a request that is for commercial use.

(c) The information is requested in a medium in which the information is readily available, and in a format to which the information is readily convertible with the court or court agency's existing software. At its discretion, the court or court agency may agree to summarize, compile, or tailor electronic data in a particular manner or medium in which the data is not readily available, or in a format to which the data is not readily convertible.

(d) Information that is excluded from section VII of this order can reasonably be segregated from non-excluded information and withheld from disclosure. The amount of information deleted shall be indicated on the released portion of the record, and, if technically feasible, at the place in the record where the deletion was made.

(2) The grant of a request under this section VI(B) may be made contingent upon the requester paying the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the record by facsimile or other electronic means, but not including existing personnel time associated with searching for, retrieving, reviewing, or copying information.

(a) If the estimated costs exceed twenty-five dollars ($25.00), the requester may be required to pay that fee in advance.

(b) Information may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public interest.

(c) Notwithstanding the other provisions of this section VI(B)(2), if a discretionary request is agreed to under section VI(B)(1)(c), the requester may be charged the actual, verifiable costs of personnel time exceeding two (2) hours associated with the tasks, in addition to the actual costs of reproduction. The charge for personnel time shall not exceed the salary of the lowest paid employee or contractor who, in the discretion of the court or court agency providing the records, has the necessary skill and training to respond to the request.

(d) The requester is entitled to an itemized breakdown of charges under this section VI(B)(2).

C. Bulk distribution or compiled information that does or does not include information excluded from public access pursuant to section VII of this order may be provided according to the terms of this section VI(C).

(1) The request must:

(a) fully identify the requestor and describe the requestor's interest and purpose of the inquiry;

(b) identify what information is sought;

(c) explain how the information will benefit the public interest or public education;

(d) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited;

(e) explain procedures for accurately distinguishing the records for individuals according to multiple personal identifiers.

(2) Upon receiving a request pursuant to this subsection (C), the Director of the Administrative Office of the Courts, or the court or court agency having jurisdiction over the records if the Administrative Office of the Courts is unable to provide the requested records, may permit objections by persons affected by the release of information, unless individual notice as required under section VI(3)(e) below is waived by the Director or court or court agency having jurisdiction over the records.

(3) The request may be granted only upon determination by the Director of the Administrative Office of the Courts, or by the court or court agency having jurisdiction over the

records if the Administrative Office of the Courts is not able to provide the requested records, that the information sought is consistent with the purposes of this order, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources, and further upon finding by clear and convincing evidence that the requestor satisfies the requirements of subsection (C), and that the purposes for which the information is sought substantially outweighs the privacy interests protected by this order. An order granting a request under this subsection may, at the discretion of the Director or the court or court agency having jurisdiction over the records, specify particular conditions or requirements for the use of the information, including without limitation:

(a) The confidential information will not be sold or otherwise distributed, directly or indirectly, to third parties.

(b) The confidential information will not be used directly or indirectly to sell a product or service to an individual, group of individuals, or the general public.

(c) The confidential information will not be copied or duplicated other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

(d) The requestor must pay reasonable costs of responding to the request, as determined by the court.

(e) The requester must provide for individual notice to all persons affected by the release of information.

(4) When the request includes release of social security numbers, driver's license or equivalent state identification card numbers, dates of birth, or addresses, the information provided shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers, only the year of birth, or only the ZIP code of addresses. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released. The restrictions may be waived only upon a petition to the responding Director, court or court agency.

Section VII. Court Records Excluded From Public Access

A. Case records. The following information in case records is excluded from public access and is confidential absent a court order to the contrary; however, if the information is disclosed in open court and is part of a verbatim transcript of court proceedings or included in trial transcript source materials, the information is not excluded from public access:

(1) information that is excluded from public access pursuant to federal law;

(2) information that is excluded from public access pursuant to the Arkansas Code Annotated;

(3) information that is excluded from public access by order or rule of court;

(4) Social Security numbers;

(5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);

(6) information about cases expunged or sealed pursuant to Ark. Code Ann. §§ 16-90-901 *et seq.*;

(7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies;

(8) litigant addresses and phone numbers.

B. Administrative Records. The following information in administrative records is excluded from public access and is confidential absent a court order to the contrary:

(1) information that is excluded from public access pursuant to Arkansas Code Annotated or other court rule;

(2) information protected from disclosure by order or rule of court.

Section VIII. Obtaining Access to Information Excluded from Public Access

A. Any requestor may make a verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this order to the court having jurisdiction over the record. The request shall demonstrate that:

(1) reasonable circumstances exist that require deviation from the general provisions of this order;

(2) the public interest in disclosure outweighs the harm in disclosure; or

(3) the information should not be excluded from public access under section VII of this order.

The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information.

B. The court shall hold a hearing on the request, unless waived, within a reasonable time, not to exceed thirty (30) days of receipt of the request. The court shall grant a request to allow access following a hearing if the requestor demonstrates by a preponderance of the evidence that any one or more of the requirements of VIII(A)(1) through VIII(A)(3) have been satisfied.

C. A court shall consider the public access and the privacy interests served by this order and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.

D. A court may place restrictions on the use or dissemination of the information to preserve confidentiality.

Section IX. When Court Records May Be Accessed

A. Court records that are publicly accessible will be available for public access in the courthouse during regular business hours established by the court; however, public access to trial exhibits and trial transcript source materials shall be granted at the discretion of the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

B. Upon receiving a request pursuant to section VI(C), or VIII of this order, a court will respond within a reasonable period of time.

Section X. Contracts With Vendors Providing Information Technology Services Regarding Court Records

A. If a court, court agency, or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term "vendor" also includes a non-judicial branch state, county or local governmental agency that provides information technology services to a court.

B. Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this order. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this order.

C. Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this order.

D. Each contract shall require the vendor to acknowledge that court records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this order.

E. These requirements are in addition to those otherwise imposed by law.

Section XI. Violation of Order Not Basis for Liability

Violation of this order by the disclosure of confidential or erroneous court records by a court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court shall not be the basis for establishing civil or criminal liability for violation of this order. This does not preclude a court from using its inherent contempt powers to enforce this order.

APPENDIX I. COMMENTARY

Section I. Commentary

The objective of this order is to promote public accessibility to court records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above

are in no particular order. This order attempts to balance competing interests and recognizes that unrestricted access to certain information in court records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This order recognizes there are strong societal reasons for allowing public access to court records, and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety. Open access allows the public to monitor the performance of the judiciary, furthers the goal of providing public education about the results in cases, and, if properly implemented, reduces court staff time needed to provide public access.

This order starts from the presumption of open public access to court records. In some circumstances, however, there may be sound reasons for restricting access to these records. This order recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to court records, this order also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access. It is also important to remember that, generally, at least some of the parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. A person who is not a party to the action may also be mentioned in the court record. Care should be taken that the privacy rights and interests of such involuntary parties or "third" persons are not unduly compromised.

Subsection (C) is intended to assure that public access provided under this order does not apply to information gathered, maintained, or stored by other agencies or entities that is not necessary to, or is not part of the basis of, a court's decision or the judicial process. Access to this information is governed by the law and the access policy of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information, because the computer uses shared software and databases, does not, by itself, make the information subject to this order.

Existing laws, rules and policies regarding court records have been carefully reviewed during the development of this access policy.

The Administrative Office of the Courts may provide advisory information to individuals or entities about the provisions, restrictions, and limitations of this order.

Section II. Commentary

Section II(A) provides the general rule that all persons, including members of the general public, the media, and commercial and noncommercial entities, are entitled to the same basic level of access to court records.

Generally, access to court records is not determined by who is seeking access or the purpose for seeking access; however, some users, such as court employees or the parties to a particular case, may have greater access to those particular records than is afforded the general public.

Section II(B) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access. This greater level of access is a result of the need for effective management of the judicial system and the protection of the right to a fair trial.

Sections II(B)(1) through (4) identify groups whose authority to access court records is different from that of the public.

Subsection (1): Employees of the court, court agency, and clerk of court need greater access than the public in order to do their work and therefore work under different access rules.

Subsection (2): Employees and subcontractors of entities who provide services to the court or clerk of court or court agency, that is, court services that have been "outsourced," may also need greater access to information to do their jobs and therefore operate under a different access policy. Section X provides the requirements under this order for contracts with vendors concerning court records.

Subsection (3): This subsection is intended to cover personnel in other governmental agencies who have a need for information in court records in order to do their work. An example of this would be an integrated justice system operated on behalf of several justice system agencies where access is governed by internal policies or statutes or rules applicable to all users of the integrated system.

Subsection (4): This subsection continues nearly unrestricted access by litigants and their lawyers to information in their own cases but no higher level of access to information in other cases. As to cases in which they are not the attorney of record, attorneys would have the same access as any other member of the public.

Section III. Commentary

Sections III(A)(1)-(3) explain which records in a court are covered by this order.

Section III(A)(1) excludes from the definition of "court record" information gathered, maintained, or stored by other agencies or entities that is not necessary to, or is not part of the basis of a court's decision or the judicial process. Access to this information is governed by the laws and access policy

of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information, because the computer uses shared software and databases, does not, by itself, make the court records access policy applicable to the information. An example of this is information stored in an integrated criminal justice information system where all data is shared by law enforcement, the prosecutor, the court, defense counsel, and probation and corrections departments. The use of a shared system can blur the distinctions between agency records and court records. Under this section, if the information is provided to the court as part of a case or judicial proceeding, the court's access rules then apply, regardless of where the information came from or the access rules of that agency. Conversely, if the information is not made part of the court record, the access policy applicable to the agency collecting the data still applies even if the information is stored in a shared database.

Section III(A)(2), "Case Record," is meant to be all inclusive of information that is provided to, or made available to, the court that relates to a judicial proceeding. The term "judicial proceeding" is used because there may not be a court case in every situation. The definition is not limited to information "filed" with the court or "made part of the court record" because some types of information the court needs to make a fully informed decision might not be "filed" or technically part of the court record. The language is, therefore, written to include information delivered to, or "lodged" with, the court, even if it is not "filed." An example is a complaint accompanying a motion to waive the filing fee based on indigence. The definition is also intended to include exhibits offered in hearings or trials, even if not admitted into evidence.

The definition includes all information used by a court to make its decision, even if an appellate court subsequently rules that the information should not have been considered or was not relevant to the judicial decision made.

The language is intended to include within its scope materials that are submitted to the court, but upon which a court did not act because the matter was withdrawn or the case was resolved. Once relevant material has been submitted to the court, it does not become inaccessible because the court did not, in the end, act on the information in the materials because the parties resolved the issue without a court decision.

The definition is written to cover any information that relates to a judicial proceeding generated by the court itself, whether through the court administrator's personnel or the clerk's office personnel. This definition applies to proceedings conducted by temporary judges or referees hearing cases in an official capacity. This includes two categories of information. One

category includes documents, such as notices, minutes, orders, and judgments, which become part of the court record. The second category includes information that is gathered, generated, or kept for the purpose of managing the court's cases. This information might never be in a document; it might only exist as information in a field of a database such as a case management system, an automated register of actions, or an index of cases or parties.

Another set of items included within the definition is the official record of the proceedings, whether it is notes and transcripts generated by a court reporter of what transpired at a hearing, or an audio or video recording (analog or digital) of the proceeding. Public Access to these materials shall be granted at the court's discretion under Section IX(A), and information that would otherwise be confidential, but is included within these materials because it was disclosed in open court, is not required to be redacted under Section VII. Pursuant to Ark. Code Ann. §§ 16-13-501 et seq., *court reporters are required to create transcripts only at the request of either party or the judge. The fees for creation of the transcript are set out in Ark. Code Ann. § 16-13-506. This order attempts to retain the common-law framework for access to court reporters' materials, but recognizes that technological changes such as automated electronic transcription and audio and video streaming over the Internet may result in increased availability of these materials without unduly burdening the ongoing business of the judiciary. Administrative Order Number 6 governs broadcasting, recording or photographing in the courtroom.*

Section III(A)(3) defines "Administrative Record." The definition of "court record" includes some information and records maintained by the court and clerk of court that is related to the management and administration of the court or the clerk's office. Examples of this category of information include: internal court policies, memoranda and correspondence, court budget and fiscal records, and other routinely produced administrative records, memos and reports, and meeting minutes.

This subsection makes it clear that the order applies only to information related to the judicial branch. Some information maintained by clerks of court is not a court record, nor is the court responsible for its collection, maintenance, or accessibility. Land records and voter records are examples of information that do not pertain to the administration of the judicial branch of government.

An administrative record might or might not be related to a particular case. That is to say, an administrative record may relate to a particular case and therefore be a case record also. For example, the application of a judicial official for reimbursement for expenses incurred in the course of administering justice in a particular case is both an administrative record and a case record.

A record with such dual character may be subject to public disclosure in either capacity; inversely, the record is excluded from public access only if it qualifies for exclusion in both capacities. For this reason, a judicial official who creates administrative records should take care to avoid including the sort of information that may be excluded from public access to case records and that is not essential to the administrative purpose of the record.

Section III(A)(6) defines "public access" very broadly. The language implies that access is not conditioned on the reason access is requested or on prior permission being granted by the court. Access is defined to include the ability to obtain a copy of the information, not just inspect it. The section does not address the form of the copy, as there are numerous forms the copy could take, and more will probably become possible as technology continues to evolve.

A minimum inspection of the court record can be done at the courthouse where the record is maintained. It can also be done in any other manner determined by the court that serves the principles and interests specified in section I of this order. The inspection can be of the physical record or an electronic version of the court record. Access may be over the counter, by fax, by regular mail, by e-mail or by courier. The section does not preclude the court from making inspection possible via electronic means at other sites, or remotely. It also permits a court to satisfy the request to inspect by providing a printed report, computer disk, tape or other storage medium containing the information requested from the court record.

The section implies an equality of the ability to "inspect and obtain a copy" across the public. Implementing this equality will require the court to address several sources of inequality of access. Some people have physical impairments that prevent them from using the form of access available to most of the public. Another problem has to do with the existence of a "digital divide" regarding access to information in electronic form. The court should provide equivalent access to those who do not have the necessary electronic equipment to obtain access. Finally, there is the issue of the format of electronic information and whether it is equally accessible to all computer platforms and operating systems. The court should make electronic information equally available, regardless of the computer used to access the information (in other words, in a manner that is hardware and software independent).

Another aspect of access is the need to redact restricted information in documents before allowing access to the balance of the document. In some circumstances this may be a quite costly. Lack of, or insufficient, resources may present the court with an awkward choice of deciding between funding normal operations and funding activities related to access to court records. As

technology improves it is becoming easier to develop software that allows redaction of pieces of information in documents in electronic form based on "tags" (such as XML tags) accompanying the information. When software to include such tags in documents becomes available, and court systems acquire the capability to use the tags, redaction will become more feasible, allowing the balance of a document to be accessible with little effort on the part of the court.

The objective of section III(A)(7) defining "remote access" is to describe a means of access that is technology neutral that is used to distinguish means of access for different types of information. The term is used in section V regarding information that should be remotely accessible. The key elements are that: 1) the access is electronic, 2) the electronic form of the access allows searching of records, as well as viewing and making an electronic copy of the information, 3) a person is not required to visit the courthouse to access the record, and 4) no assistance of court or clerk of court staff is needed to gain access (other than staff maintaining the information technology systems).

This definition is independent of any particular technology or means of access. Remote access may be accomplished electronically by any one or more of a number of existing technologies, including dedicated terminal, kiosk, dial-in service, or Internet site. Attaching electronic copies of information to e-mails, and mailing or faxing copies of documents in response to a letter or phone request for information would not constitute remote access under this definition.

In section III(A)(8), the breadth of the definition of "in electronic form" makes clear that this order applies to information that is available in any type of electronic form. The point of this section is to define what "in electronic form" means, not to define whether electronic information can be accessed or how it is accessed. This subsection refers to electronic versions of textual documents (for example documents produced on a word processor, or stored in some other text format such as PDF format), and pictures, charts, or other graphical representations of information (for example, graphics files, spreadsheet files, etc.).

A document might be electronically available as an image of a paper document produced by scanning, or another imaging technique (but not filming or microfilming). This document can be viewed on a screen and it appears as a readable document, but it is not searchable without the aid of OCR (optical character recognition) applications that translate the image into a searchable text format.

An electronic image may also be one produced of a document or other object through the use of a digital camera, for example in a courtroom as part of an evidence presentation system.

Courts are increasingly using case management systems, data warehouses or similar tools to maintain data about cases and court activities. This order applies equally to this information even though it is not produced or available in paper format unless a report containing the information is generated. This section also covers files created for, and transmitted through, an electronic filing system for court documents.

Evidence can be in the form of audio or videotapes of testimony or events. In addition audio and video recording (ER - electronic recording) and computer-aided transcription systems (CAT) using court reporters are increasingly being used to capture the verbatim record of court hearings and trials. In the future real-time video streaming of trials or other proceedings is a possibility. Because this information is in electronic form, it would fall within this definition.

Section III(A)(10) recognizes that compiled information is different from case-by-case access because it involves information from more than one case. Compiled information is different from bulk access in that it involves only some of the information from some cases and the information has been reformulated or aggregated; it is not just a copy of all the information in the court's records. Compiled information involves the creation of a new court record. In order to provide compiled information, a court generally must write a computer program to select the specific cases or information sought in the request, or otherwise use court resources to identify, gather, and copy the information.

Generating compiled data may require court resources and generating the compiled information may compete with the normal operations of the court for resources, which may be a reason for the court not to compile the information. It may be less costly for the court and less of an impact on the court to, instead, provide bulk distribution of the requested information, and let the requestor, rather than the court, compile the information.

The interchangeable definitions of "confidential" and "sealed" in section III(A)(11)-(14) recognize that in some circumstances the court is prohibited from disclosing the contents of a court record, and in some circumstances the court is prohibited from disclosing the very existence of a court record. For purposes of this order, the definition of "protective order" has the same meaning as found in the Arkansas Rules of Civil Procedure, i.e., the usual means by which a court designates a court record or parts of a record as confidential or sealed, for example, to protect a trade secret that includes information necessary to adjudication, but which would be harmful to the litigant if disclosed to the public. Also, this order itself provides that certain information in court records is "confidential," such as a litigant's personal bank account number, section VII(A)(5). The definitions of

"confidential" and "sealed" recognize, however, that this order and other laws may provide limited access to confidential information. For example, consistently with section II, attorneys typically may access un-redacted records in cases on which they are attorneys of record.

Redactions from a publicly disclosed court record to protect sealed content are ordinarily indicated in the disclosure. However, the definitions of "confidential" and "sealed" recognize that in some instances, as provided by court order or by law, the court is prohibited from disclosing even the existence of a court record. For example, when a court record is "expunged," as defined in section III(A)(14) and pursuant to Ark. Code Ann. §§ 16-90-901 et seq. *neither the existence of nor the contents of the records may be disclosed. In some cases, expunge also means the physical destruction of court records in juvenile cases pursuant to Ark. Code Ann. § 9-27-309. In such cases, because physical destruction of the records in electronic form would be impractical, such records should be redacted to eliminate the ability to identify the juvenile while preserving sufficient information regarding the court's actions for statistical and historic purposes.*

The Court recognizes that for public policy reasons, such as to assist first-time offenders to remain productive members of society, it is sometimes necessary to conceal not only the contents of court records, but also the very existence of them from the general public. Expungement is not the only means by which a record may be sealed and made confidential as against disclosure of its very existence; for example, such confidentiality is afforded to adoption records by Ark. Code Ann. §§ 9-9-201 et seq. *However, this order should not be construed to authorize the suppression of court records absent authorization by duly promulgated judicial rule or by duly enacted legislation.* Cf. *section IV(C).*

The definition of "custodian" in section III(A)(16) recognizes that technology decreases the relevance of the physical location of records in electronic form. Court records might be stored remotely from the court in order to increase access, to provide greater security, to prevent loss in case of disaster, or to share resources with other agencies. However, that the records in electronic form are not physically located within a structure housing the court neither reduces the responsibility of the court and clerk for the content of the records, nor gives to the person holding the records for the purposes of storage, safekeeping, or data processing for the court the authority to disseminate the records.

Section IV. Commentary

The objective of this section is to make clear that this order applies to information in the court record regardless of the manner in which the information was created, collected or submitted to the court. Application of

this order is not affected by the means of storage, manner of presentation or the form in which information is maintained. To support the general principle of open access, the application of the rule is independent of the technology or the format of the information.

Subsection (A) states the general premise that information in the court record will be publicly accessible unless access is specifically prohibited. The provision does not require any particular level of access, nor does it require a court to provide access in any particular form, for example, publishing court records in electronic form on a web site or dial-in database.

Subsection (C) provides a way for the public to know that information exists even though public access to the information itself is prohibited. This allows a member of the public to request access to the restricted record under section IX, which they would not know to do if the existence of the restricted information was not known.

However, the Court recognizes that for public policy reasons, such as to assist first-time offenders to remain productive members of society, it is sometimes necessary to conceal not only the contents of court records, but also the very existence of them from the general public. For example, Ark. Code Ann. § 16-90-903 limits the disclosure of the existence of certain expunged records. Section IV(C) accommodates this necessity, but should not be construed to authorize the suppression of court records absent authorization by duly promulgated judicial rule or by duly enacted legislation.

Section V. Commentary

This order does not impose an affirmative obligation to preserve information or data, or to transform information or data received into a format or medium that is not otherwise routinely maintained by the court. While this section encourages courts to make the designated information available to the public through remote access, this is not required, even if the information already exists in an electronic format.

Several types of information in court records have traditionally been given wider public distribution than merely making them publicly accessible at the courthouse. Typical examples are listed in this section. Often this information is regularly published in newspapers, particularly legal papers. Many of the first automated case management systems included a capability to make this information available electronically, at least on computer terminals in the courthouse, or through dial-up connections. Similarly, courts have long prepared registers of actions that indicate for each case what documents or other materials have been filed in the case. Again, early case management systems often automated this function. The summary or general

nature of the information is such that there is little risk of harm to an individual through unwarranted invasion of privacy or proprietary business interests. This section acknowledges and encourages this public distribution practice by making these records presumptively accessible remotely, particularly if they are in electronic form. When a court begins to make information available remotely, they are encouraged to start with the categories of information identified in this list.

While not every court, or every automated system, is capable of providing this type of access, courts are encouraged to develop the capability to do so. The listing of information that should be made remotely available in no way is intended to imply that other information should not be made remotely available. Some court automated systems may also make more information available remotely to litigants and their lawyers than is available to the public.

Making certain types of information remotely accessible allows the court to make cost effective use of public resources provided for its operation. If the information is not available, someone requesting the information will have to call the court or come down to the courthouse and request the information. Public resources will be consumed with court staff locating case files containing the record or information, providing it to the requestor, and returning the case file to the shelf. If the requestor can obtain the information remotely, without involvement of court staff, there will be less use of court resources.

In implementing this section a court should be mindful about what specific pieces of information are appropriately remotely accessible. Care should be taken that the release of information is consistent with all provisions of the access policy, especially regarding personal identification information. For example, the information remotely accessible should not include information presumptively excluded from public access pursuant to section VII, or prohibited from public access by court order. An example of calendar information that may not by accessible by law is that relating to juvenile cases, adoptions, and mental health cases.

Subsection (5): One role of the judiciary, in resolving disputes, is to state the respective rights, obligations and interests of the parties to the dispute. This declaration of rights, obligations and interests usually is in the form of a judgment or other type of final order. Judgments or final orders have often had greater public accessibility by court rule or statutory requirement that they be recorded in a "judgment book." One reason this is done is to simplify public access by placing all such information in one place, rather than making someone step through numerous individual case files to find them. Recognizing such practices, this order specifically encourages this information to be remotely accessible if in electronic form.

There are circumstances where information about charges and convictions in criminal cases can change over time, which could mean copies of such listings derived from court records can become inaccurate unless updated. For example, a defendant may be charged with a felony, but the charge may be dismissed, or modified or reduced to a misdemeanor when the case is concluded. In other circumstances a felony conviction may be reduced to a misdemeanor conviction if the defendant successfully completes probation. These types of circumstances suggest that there be a disclaimer associated with such information, and that education about these possibilities be provided to litigants and the public.

Section VI. Commentary

In the past, court information other than that required to be reported to the Administrative Office of the Courts, was available only directly from the courts. In 2001, the Arkansas Court Automation Project began, with its long-term goal to provide a centralized case management system for all courts in the State of Arkansas. This project is the foundation to provide state-wide electronic filing and document imaging for the courts. As courts go online with the new system, the public will have a more convenient central location from which to request court records.

Subsection (A) of this rule requires that requests for bulk distribution or compiled information be submitted to the Director of the Administrative Office of the Courts or other designee of the Court. If the information requested is contained in the data required to be reported to the Director, then the request will be considered by the Director according to this section. If the information requested is not contained in the data required to be reported to the Director, and either the Administrative Office does not hold the court records or the Administrative Office does hold the court records but does not have permission from the custodian of the court records to disclose the requested records pursuant to this order, then the Director's response will inform the requester which requested records are available only from the court or court agency having jurisdiction over the records.

This section creates a two-track system for access to bulk distribution and compiled information. The first track, described in subsection (B), pertains only to information that is not excluded from disclosure by section VII of this order. The provision of bulk distribution and compiled information is required when certain conditions are met. The use must be one among specified non-commercial purposes, the court must be able to comply with the request without unreasonably excessive effort to meet the requester's format and medium demands, and information made confidential by this order must be reasonably segregable from the public information requested. The latter

two requirements, as well as the "actual costs" principle of subsection (B)(2), are modeled on the Arkansas Freedom of Information Act. Like under the FOIA, custodians and requesters under subsection (B) may reach agreements as to the provision of bulk distribution or compiled information when meeting the request would exceed the reasonableness scope of the medium-format compatibility provision.

In allowing bulk or compiled data requests, courts must limit bulk data to court records, even if those requesting this information are seeking other information which is governed by other agencies' policies.

The second track, described in subsection (C), pertains to information requests regardless of whether the information is excluded from disclosure by section VII of this order. Although the second track therefore potentially allows access to more information than the first track, including confidential information, provision of the information is discretionary, and requirements upon requesters are more onerous. Subsection (C) contemplates that the Director of the Administrative Office of the Courts, or the court or court agency having jurisdiction over the records if the Administrative Office of the Courts is unable to provide the records, will balance competing concerns, including the public interests in both privacy and disclosure, the interests of the requester, and the interests of efficient judicial administration. Generating compiled data may require resources, and generating the compiled information may compete with the normal operations of the court or court agency for resources, which may be reasons not to compile the information. However, it may be less demanding on resources to instead provide bulk distribution of requested information and let the requester compile the information.

In addition to the requirements of subsection (C)(1) pertaining to requests, the Director of the Administrative Office of the Courts, or the court or court agency having jurisdiction over the records if the Administrative Office of the Courts is unable to provide the records, may impose any number of additional restrictions upon requesters concerning the terms by which the requested information is disclosed. The enumerated terms are illustrative and not exhaustive. Indeed, information may be released to a requester who intends to engage in commercial uses, making a limitation on commercial use inappropriate in one case, while in another case, the use may be constrained to the requester's stated governmental purpose. It is anticipated that the Administrative Office of the Courts will develop pattern licensing arrangements for common classes of requests.

Subsection (C)(1)(e) concerns the avoidance of error in the use of personally identifying information. For example, if a requester obtains only the names of persons involved in a certain class of litigation, and not other

personally identifying information about the persons involved, there might occur confusion between those persons and others with the same names. Thus it might be appropriate for a requester to obtain more personally identifying information rather than less, so that, for example, names might be cross-referenced and distinguished by year of birth. A requester should use at least two identifiers when individual identity will be retained in bulk distribution or compiled information. Guidelines of the National Crime Information Center on this point may be consulted.

At the same time, these measures to avoid mistaken identity operate in careful balance with subsection (C)(4), which limits the disclosure of personally identifying information excluded from public disclosure under section VII to partial but useful data components, such as only the last four digits of a driver's license number. More complete identifying information should be provided only in extraordinary circumstances.

Section VII. Commentary

Subsection (A)(1) Federal Law: There are several types of information that are commonly but possibly incorrectly, considered to be protected from public disclosure by federal law. Although there may be restrictions on federal agencies disclosing Social Security numbers, they may not apply to state or local agencies such as courts or clerks of courts. While federal law prohibits disclosure of tax returns by federal agencies or employees, this prohibition may not extend to disclosure by others. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations adopted pursuant to it limit disclosure of certain health related information. Whether the limitation extends to state court records is not clear. There are also federal restrictions regarding information in alcohol and drug abuse patient records and requiring confidentiality of information acquired by drug court programs. This order does not supersede any federal law or regulation requiring privacy or non-disclosure of information.

In addition to deliberative material excluded under this order, a court may exclude from public access materials generated or created by a court reporter with the exception of the official transcript.

This Court recognizes that "[a] trial court has the inherent authority to protect the integrity of the court in actions pending before it and may issue appropriate protective orders that would provide FOIA exemption under Section 25-19-105(b)(8)." See City of Fayetteville v. Edmark, 304 Ark. 179, 191 (1990). Rule 26(c) of the Arkansas Rules of Civil Procedure further recognizes that "the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

Subsection (A)(2) clarifies that this order does not supersede any Arkansas law requiring privacy or non-disclosure of information in court records. The following is a non-exhaustive list of Arkansas Code Annotated sections regarding confidentiality of records whose confidentiality may extend to the records even if they become court records:

(a) adoption records as provided in the Revised Uniform Adoption Act, as amended, Ark. Code Ann. §§ 9-9-201 et seq.*;*

(b) records relating to Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome, pursuant to Ark. Code Ann. §§ 16-82-101 et seq.;

(c) records relating to child abuse not admitted into evidence as part of a public proceeding, pursuant to Ark. Code Ann. §§ 12-12-501 et seq.*;*

(d) records relating to drug tests conducted pursuant to Ark. Code Ann. § 11-14-101 et seq. *except as provided by Ark. Code Ann. § 11-14-109;*

(e) records of grand jury minutes, pursuant to Ark. Code Ann. § 25-19-105(b)(4);

(f) records of juvenile proceedings, pursuant to Ark. Code § 9-27-309;

(g) the master list of jurors' names and addresses, pursuant to Ark. Code Ann. § 16-32-103;

(h) addresses and phone numbers of prospective jurors, pursuant to Ark. Code Ann. § 16-33-101;

(i) indictment against any person not in actual confinement, pursuant to Ark. Code Ann. § 16-85-408;

(j) home or business address of petitioner for domestic order of protection if omitted by petitioner, pursuant to Ark. Code Ann. § 9-15-203;

(k) records or writings made at dispute resolution proceedings, pursuant to Ark. Code Ann. § 16-7-206;

(l) information related to defendant's attendance, attitude, participation, and results of drug screens when participating in a pre- or post-trial treatment program for drug abuse pursuant to Ark. Code Ann. § 16-98-201, even though defendant may have executed a consent for a limited release of confidential information regarding treatment permitting the judge, the prosecutor, and the defense attorney access to the information.

Subsection (B) presumes that administrative records will be governed by the Arkansas Freedom of Information Act, but recognizes that some public record exclusions are codified outside of the Act and that courts have inherent authority to restrict access to court records.

Freedom of Information Act exemptions are only exemptions to the enclosing act. The reference to the Arkansas Code Annotated should not be construed as applying FOIA exemptions to the courts. They may provide guidance upon a motion for a protective order, but should not be construed to be general exemptions beyond their context.

Section VIII. Commentary

This section is intended to address those extraordinary circumstances in which confidential information or information which is otherwise excluded from public access is to be included in a release of information. In some circumstances, the nature of the information contained in a record and the restrictions placed on the accessibility of the information contained in that record may be governed by federal or state law. This section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.

Information excluded from public access that is sought in a request for bulk or compiled records is governed by section VI of this order.

Section IX. Commentary

Subsection (A) is intended to retain the common-law framework with respect to public access to court records at the courthouse. The section recognizes that access to trial exhibits and trial transcript source materials not filed with the court clerk is subject to the discretion of the court. This section is not intended to enhance, extend, or diminish the discretion of the court with respect to access to exhibits and transcript source materials.

This section does not preclude or require "after hours" access to court records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse; however, it is not the intent of this order to compel such additional access.

Section X. Commentary

This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental

entities. Implicit in this order is the concept that all court records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure public access to court records and to restrict access where appropriate. This applies as well to court records maintained in systems operated by any non-judicial governmental department or agency.

Section XI. Commentary

The Supreme Court recognizes that it is not within its constitutional authority to either establish or provide immunity for civil or criminal liability based on violations of this order. The intent of this section is to make clear that absent a statutory or common-law basis for civil or criminal liability, violation of this order alone is insufficient to establish or deny liability for violating the order. Neither does this section preclude the possibility that violation of this order may be used as evidence of negligence or misconduct that resulted in a statutory or common law claim for civil or criminal liability.

IN RE: APPELLATE PRACTICE CONCERNING DEFECTIVE BRIEFS

Supreme Court of Arkansas
Opinion delivered March 8, 2007

PER CURIAM. The Supreme Court is troubled by the diminishing quality of appellate briefs. During the month of February, approximately twenty-four cases were circulated to this court or formally submitted for decision. Nine of those cases, or about one-third, had to be either dismissed as appeals from orders that were not final or returned to the attorneys for rebriefing. The obvious result of this is not only that justice was delayed for the parties, but an additional expense was incurred for added legal work. There was also the extra work placed on this court for justices who had prepared the case, only to find that there was a deficiency and the briefs did not conform to our rules.

The most prevalent problem leading to dismissal of a case due to a defective appeal is violation of Rule 54(b) of the Arkansas Rules of Civil Procedure, which is repeated in Rule 2(11) of the Arkansas Rules of Appellate Procedure – Civil. As the bench and bar know, Rule 54(b) requires that all claims involving all parties be resolved at the trial court level before the case is ripe for appeal. Nevertheless, attorneys continue to overlook the fact that some claims and parties have not been resolved when they appeal a case. A prime example is forgotten John Doe defendants who are not dealt with in the rush to appeal, or a languishing counterclaim. Time and again, this has led to dismissal of the appeal without prejudice to refile.

Omissions in the abstract and Addendum are the second major deficiency. Our Supreme Court Rule 4-2 is clear that the pleadings, orders appealed from, and material exhibits and relevant testimony must be included in either the abstract or Addendum. A specific format for the briefs and a direction that appellees respond to appellants' points on appeal in the same order are also required. Yet, repeatedly there are glaring omissions in the filed briefs or some other failure to comply, which lead to an order from this court for counsel to rebrief the case within fifteen days.

There are several guides available to appellate counsel to avoid these pitfalls. There are, of course, the rules themselves, which are clear and succinct about what is required. There is also a checklist made available to attorneys by Leslie Steen, the Supreme Court Clerk. There is a model brief posted at the court's website at http://courts.state.ar.us. Finally, the Supreme Court Clerk's office stands ready to answer many of the basic questions about what is required.

Six years ago, this court amended its Supreme Court Rules to eliminate the harshness of an affirmance based on deficient appellate briefs. With this current raft of nonconforming briefs, and the time wasted and expense incurred, this court may be forced in the near future to return to its former rule of affirmance.

IN RE: ADMINISTRATIVE ORDER NUMBER 3; ARKANSAS RULE of CIVIL PROCEDURE; and ARKANSAS RULE of CRIMINAL PROCEDURE

Supreme Court of Arkansas
Opinion delivered April 5, 2007

PER CURIAM. The Committees on Criminal and Civil Practice have submitted a joint special report proposing changes in Administrative Order Number 3, Rule of Civil Procedure 7, and Rule of Criminal Procedure 37.1. These proposals address when certain matters are submitted to the circuit court for decision. We have reviewed the Committees' work, and we now publish the suggested amendments for comment from the bench and bar. The Notes explain the changes, and the proposed changes are set out in "line-in, line-out" fashion (new material is italicized; deleted material is lined through).

Comments on the suggested rules changes should be made in writing before June 1, 2007, and they should be addressed to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Civil and Criminal Procedure Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

ADMINISTRATIVE ORDER NUMBER 3 — TRIAL BRIEFS — TRIAL AND APPELLATE COURT DECISIONS — TIME LIMITATIONS AND REPORTS

. . . .

2. Trial court decisions.

A. Judges of circuit courts are directed to submit to the Administrative Office of the Courts at the end of each calendar quarter, reports of cases which have been under advisement for more than ninety (90) days after final submission. These reports are to be submitted on forms supplied by the Administrative Office of the Courts. In cases which have been pending for more than ninety (90) days after final submission, the quarterly report shall include the date when the case was submitted and a statement of the reasons necessitating the delay in rendering a decision. ~~Cases under~~

~~final submission include those with motions submitted for decision that could result in the resolution or dismissal of the case, as well as those cases that have been fully tried and submitted on their merits~~. If there are no cases which are pending for that length of time, the report shall simply state "none."

B. For purposes of subdivision 2(A) of this order, civil cases under final submission include those with motions submitted for decision that could result in the resolution or dismissal of the case, as well as those cases that have been fully tried and submitted on their merits. If a civil case has been fully tried, or a potentially dispsositive motion argued at a hearing, then the case shall be under final submission at the conclusion of the trial or hearing, or on the date any post-trial or post-hearing briefing is filed, whichever last occurs. If no hearing is held on a potentially dispositive motion, then the case shall be under final submission on the date a party files with the circuit clerk a copy of a letter notifying the circuit judge that the motion is ready for decision. The letter shall enclose copies of all the filed papers relating to the motion and reflect service on all other counsel of record.

C. For purposes of subdivision 2(A) of this order, a motion, application, or petition requesting post-conviction relief in a criminal case, including a petition under Arkansas Rule of Criminal Procedure 37, shall be considered under final submission on the date that the petitioner files with the circuit clerk a copy of a letter notifying the circuit judge that the motion, application, or petition has been filed. The letter to the judge shall enclose all copies of pleadings and documents relating to the motion, application, or petition and shall reflect service on the prosecuting attorney. If, within ninety (90) days of the date on which the letter is filed with the circuit clerk, the judge sets a hearing on the motion, application, or petition, then the date on which the petition is considered under final submission shall be extended until the date on which the hearing concludes or the date on which the last post-hearing briefing is filed, whichever last occurs.

~~B.~~ *D.* The Administrative Office of the Courts shall promptly review all reports filed by the trial courts, and if it determines that the delay in any case was not caused by the parties or their counsel, it shall recommend to the Supreme Court a judge to be assigned or appointed to dispose of the delayed case.

~~C.~~ *E.* Willful noncompliance with the provisions of the order shall constitute grounds for discipline under the provisions of Canon 3 B (8) of the Arkansas Code of Judicial Conduct. Any judge whose quarterly report is not received by the 15th of the month following the end of the previous quarter (i.e., January 15,

April 15, July 15, October 15) will be automatically referred to the Judicial Discipline and Disability Commission for possible discipline.

. . . .

COURT'S NOTES, 2007:

New subdivision (2)(B) has been added to clarify when, for purposes of this order, the circuit court takes civil cases under final submission. For dispositive motions where no hearing is held, the order now obligates counsel (or a pro se party) to write the court and provide copies of all the motions, thus fixing a clear submission date. This letter must also be served on all parties and filed with the circuit clerk. Former subdivisions (2)(B) and (2)(C)) have been renumbered.

New subdivision 2(C) addresses Rule 37 petitions and similar post-conviction motions in criminal cases. Rule 37.3(a) permits the circuit court to dispose of a Rule 37 petition without a hearing based on the files and records of the case. Subdivision 2(C) requires the circuit judge to report Rule 37 petitions that have not been so disposed within ninety (90) days after the petitioner files the notification letter described in the subdivision. If within that 90-day period, the judge schedules a hearing on the petition, as provided in Rule 37.3(c), then the petition is not considered under final submission until ninety (90) days after the later of the conclusion of the hearing or the filing of any post-hearing briefs.

Subdivision 2(C) does not apply to post-trial motions filed under Arkansas Rule of Criminal Procedure 33.3. Pursuant to Rule of Appellate Procedure - Criminal 2(b)(1), such motions are deemed denied on the 30th day after the entry of judgment, unless the court denies the motion before that date. Consequently, a circuit court should never have a Rule 33.3 post-trial motion under advisement for more than ninety (90) days.

ARKANSAS RULE OF CIVIL PROCEDURE 7. Pleadings and motions.

. . . .

(b) Motions and Other Papers.

. . . .

(4) The procedure for submitting a potentially dispositive motion to the circuit court for decision, both with and without a hearing, is outlined in Administrative Order Number 3(2)(B).

Addition to Reporter's Notes, 2007 Amendment: *New paragraph (4) of subdivision (b) cross references the 2007 changes in Administrative Order 3, which clarify when a matter is submitted for decision for purposes of that Order.*

ARKANSAS RULE OF CRIMINAL PROCEDURE
Rule 37.1. Scope of remedy.

. . . .

(e) *In addition to filing the petition with the clerk of the court, the petitioner shall (i) send a letter to the judge of the circuit court that imposed the sentence notifying the judge that the petition has been filed and (ii) file with the clerk a copy of the letter notifying the judge that the petition has been filed. The letter to the judge shall enclose all copies of pleadings and documents relating to the petition and shall reflect service on the prosecuting attorney. Filings pursuant to this subsection (e) shall be used solely for purposes of Administrative Order No. 3, and failure to comply with this subsection (e) shall not be grounds for dismissing the petition.*

Reporter's Notes, 2007 Amendment

Subsection (e) was added in 2007. Administrative Order No. 3 requires circuit judges to report cases under advisement for more than 90 days to the Administrative Office of the Courts. The 90-day period does not start to run on a Rule 37 petition until the judge is notified as provided in subsection (e).

IN RE: ADMINISTRATIVE ORDER NO. 10 — ARKANSAS CHILD SUPPORT GUIDELINES

Supreme Court of Arkansas
Opinion delivered April 26, 2007

PER CURIAM. On February 5, 1990, this court first adopted guidelines for child support in response to P.L. 100-485 and Ark. Code Ann. § 9-12-312(a). Effective October, 1989, P.L. 100-485 required that all states adopt guidelines for setting child support; that it be a rebuttable presumption that the amount of support calculated from the child-support chart is correct; and that each state's guidelines be reviewed and revised, as necessary, at least every four years. In response to the federal law, the Arkansas General Assembly enacted Ark. Code Ann. § 9-12-312, which included the federal provisions and authorized the Arkansas Supreme Court to develop guidelines based on recommendations submitted to the court by a committee appointed by the Chief Justice. The Arkansas Supreme Court Committee on Child Support initially made recommendations to the court that formed the substance of a 1990 per curiam order. On May 13, 1991, pursuant to the committee's recommendations, the court issued a new per curiam to supplement the original.

In compliance with the four-year requirement of P.L. 100-485, the committee has submitted periodic reports and recommendations to the court since 1990. On October 23, 1993, the court issued a per curiam order and adopted guidelines that were published in the Court Rules Volume of the Arkansas Code Annotated. On September 25, 1997, the court issued a per curiam and adopted the recommendations of the child support committee. At that time, the court adopted and published Administrative Order Number 10 – *Arkansas Child Support Guidelines*, effective October 1, 1997. The Administrative Order incorporated by reference weekly and monthly family support charts and the Affidavit of Financial Means. On January 22, 1998, the court entered a per curiam and republished Administrative Order Number 10, making minor corrections to the child support charts and to the Affidavit of Financial Means.

The last revision following the child support committee's periodic review was on January 31, 2002. By a per curiam order, the court adopted and republished Administrative Order Number 10 – *Arkansas Child Support Guidelines*, effective February 11, 2002, which incorporated by reference the weekly and monthly family support charts and the Affidavit of Financial Means. The committee has continued to study the existing guidelines, pursuant to federal and state law. Once again, the committee submitted a report to the court, including recommendations for revisions to the Administrative Order, the guidelines and the Affidavit of Financial Means.

Having carefully considered these most recent recommendations, the court adopts and publishes revised Administrative Order Number 10 – *Arkansas Child Support Guidelines*, effective May 3, 2007. This Administrative Order includes and incorporates by reference revised weekly and monthly support charts and adds new biweekly and bimonthly charts. The Affidavit of Financial Means has been substantially revised and is also included and incorporated by reference into Administrative Order Number 10.

The court thanks the committee for its service, and as it has done in the past, directs the committee and the Chief Justice, as its liaison, to continue its charge pursuant to law and the rules of this court.

IN RE: RULES of CRIMINAL PROCEDURE, RULE 28.2(a)

Supreme Court of Arkansas
Opinion delivered April 26, 2007

PER CURIAM. On February 22, 2007, we published for comment a recommendation of the Supreme Court Committee on Criminal Practice that the time for speedy trial start from the date the defendant is arrested rather than the date the charge is filed. We thank those who reviewed the proposal.

We agree with the recommendation and adopt, effective immediately, the amendment to Rule 28.2 of the Rules of Criminal Procedure. As explained in the Reporter's Note, this amendment applies to prosecutions initiated after the effective date of the amendment. If a person was charged with an offense before the effective date of the amendment, but arrested after the effective date of the amendment, the time for trial begins to run on the date the charge was filed. We republish the rule as set out below.

Amendment to Arkansas Rule of Criminal Procedure 28.2.

Rule 28.2. When time commences to run.

(a) The time for trial shall commence running from the date of arrest or service of summons.

Reporter's Note to 2007 Amendments.

Prior to the 2007 amendment, this rule provided that the time for trial began to run on the date the charge was filed, except when the defendant was held in custody or on bail prior to the filing of the charge, in which case the time for trial began to run on the date of arrest. The 2007 amendment changed the speedy trial start date to the date of arrest, whether the charge is filed before or after that date. The reference to "service of summons" applies to those cases in which the defendant is brought before the court via a summons, rather than an arrest. See Rule 6 – Issuance of Summons in Lieu of Arrest Warrant.

The 2007 amendment applies to prosecutions initiated after the effective date of the amendment. If a person was charged with an offense before the effective date of the amendment, but arrested after the effective date of the amendment, the time for trial begins to run on the date the charge was filed.

Appointments to Committees

RE: ARKANSAS LAWYERS ASSISTANCE PROGRAM

Supreme Court of Arkansas
Opinion delivered February 15, 2007

PER CURIAM. In a per curiam order dated August 13, 2002, we appointed Ms. Jane Yeargan of Fayetteville to the Arkansas Lawyers Assistance Program Committee (Committee). Her appointment was to fill the six-year term of Dr. Phillip Barley, which will conclude on February 28, 2007.

In a per curiam order dated December 2, 2004, we appointed Phillip Prewett, Ph.D., of Hot Springs to this Committee to complete the six-year term of Dr. Joe Martindale. That term of appointment will also conclude on February 28, 2007.

Ms. Yeargan and Dr. Prewett have indicated a desire to continue service on this important Committee.

Therefore, we reappoint Phillip Prewett, Ph.D., and Ms. Jane Yeargan to six-year terms on the Committee, said terms to conclude on February 28, 2013.

We extend our appreciation to Dr. Prewett and Ms. Yeargan for their willingness to continue their service on the Committee.

IN RE: SUPREME COURT COMMITTEE ON MODEL JURY INSTRUCTIONS – CIVIL

Supreme Court of Arkansas
Opinion delivered May 3, 2007

PER CURIAM. Samuel E. Ledbetter, Esq., of Little Rock is appointed to the Committee on Model Jury Instructions – Civil for a three-year term to expire on September 30, 2010. The court extends its appreciation to Mr. Ledbetter for his willingness to serve on this important committee.

The court expresses its appreciation to Will Bond, Esq., of Jacksonville, whose term has expired, for his service to this committee.

Professional Conduct Matters

IN RE: Rod D. MARTIN
Arkansas Bar No. 98218

07-137

Supreme Court of Arkansas
Opinion delivered February 22, 2007

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the voluntary surrender of the law license of Rod D. Martin, Niceville, Florida, to practice law in the State of Arkansas. Mr. Martin's name shall be removed from the registry of licensed attorneys, and he is barred from engaging in the practice of law in this state.

It is so ordered.

IN RE: Charlie Lee RUDD
Arkansas Bar No. 89087

07-143

Supreme Court of Arkansas
Opinion delivered February 22, 2007

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, and in lieu of disbarment proceedings, we hereby accept the voluntary surrender of the law license of Charlie Lee Rudd, Hot Springs, Arkansas, to practice law in the State of Arkansas. Mr. Rudd'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: James Scott DENEEN,
Ark. Bar No. 92212

07-145

Supreme Court of Arkansas
Opinion delivered March 1, 2007

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the voluntary surrender of the law license of James Scott DeNeen, Springfield, Missouri, to practice law in the State of Arkansas. Mr. DeNeen's name shall be removed from the registry of licensed attorneys, and he is barred from engaging in the practice of law in this state.

It is so ordered.

IN RE: Darrell F. BROWN, Sr.,
Arkansas Bar No. 72012

05-592

Supreme Court of Arkansas
Opinion delivered March 8, 2007

PER CURIAM. On July 1, 2005, pursuant to Ark. Sup. Ct. R. Prof'l Conduct § 13, we assigned Special Judge John Cole to preside over disbarment proceedings involving Darrell F. Brown, Sr. Upon finding that Mr. Brown committed misconduct, Judge Cole heard evidence relevant to an appropriate sanction to be imposed. *Id.* Afterward, Judge Cole made findings of fact and conclusions of law and his recommendation of a sanction, all of which he filed with the clerk of this court, along with a transcript and record of the proceed-

ings. Upon the filing, the parties are required to file briefs as in other cases. Under section 13, the findings of fact of the special judge are required to be accepted by this court unless clearly erroneous.

In this appeal, Mr. Brown has failed to file his brief, and on February 21, 2007, he notified the clerk he will not file a brief. By failing to file an abstract and brief, the court has nothing to review to question Judge Cole's findings of fact. Accordingly, we grant petitioner, Office of Professional Conduct, its request for a final order disbarring Mr. Brown. His name shall be removed from the registry of attorneys licensed by the State of Arkansas, and he is barred and enjoined from engaging in the practice of law in this state.

Ceremonial Observances

IN RE: RETIREMENT of JUDGE JOHN S. PATTERSON

Supreme Court of Arkansas
Opinion delivered February 22, 2007

PER CURIAM. Judge John S. Patterson of Clarksville served with distinction as circuit judge for the Fifth Judicial Circuit from January 1, 1983, to January 31, 2007. Prior to assuming his circuit court duties, Judge Patterson practiced law with his father, Edward Patterson, served as deputy prosecuting attorney for the Fifth Judicial Circuit, and distinguished himself as Clarksville municipal judge. While on the circuit court bench, Judge Patterson further served the Arkansas judiciary as a member of the Arkansas Supreme Court Committee on Model Jury Instructions – Criminal.

Recognizing his accomplishments and applauding his efforts, the Supreme Court extends its most sincere best wishes to Judge John S. Patterson on the occasion of his retirement.

Jim Hannah

Tom Glaze

Donald L. Corbin

Robert L. Brown

Annabelle C. Imber

Jim Gunter

Paul Danielson