APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ADOPTION of RULE 36 of THE ARKANSAS RULES of CRIMINAL PROCEDURE

Supreme Court of Arkansas
Opinion delivered May 11, 2006

PER CURIAM. The Supreme Court Committee on Criminal Practice proposed the adoption of a new rule to address criminal appeals from district court to circuit court, and the proposal was published for comment. *See In Re: Rules of Criminal Procedure*, 362 Ark. Appx. 663 (2005). A number of comments were received, and the rule was referred back to the committee for further consideration. The committee has made several changes to the original proposal and has again submitted its work to the court and recommended the rule's adoption.

Proposed Rule 36 is intended to serve as a comprehensive procedure governing criminal appeals from limited jurisdiction courts to circuit courts. Such appeals are currently governed by District Court Rule 9, which generally is a rule for civil actions. The rule attempts to codify existing practice as reflected in District Court Rule 9 and statutes. Highlights of the changes in the rule from the proposal published in 2005 include the following:

> — 36(c). Clarification that request for the record is filed with the district court clerk and service is made on the prosecuting attorney.
>
> — 36(d). Addition of 10 days to file affidavit when district court clerk fails to prepare and certify the record and clarification that circuit court acquires jurisdiction upon filing of the affidavit. *Velek v. State (City of Little Rock)*, 364 Ark. 531, 222 S.W.3d 182 (2006).
>
> — 36(e). Term "supersedeas" is deleted and clarification that appearance bond stays the imposition of the judgment imposed by the district court.

These changes and the rule itself are further explained in the accompanying Reporter's Notes.

We have reviewed the committee's revisions and the rule as a whole. We thank the committee for its work, and the judges and

lawyers who reviewed the proposal and submitted comments. We are in agreement with the committee's recommendation and adopt Rule 36 as published below to be effective June 1, 2006.

Rule 36. Appeals from District Court to Circuit Court.

(a) *Right to Appeal.* A person convicted of a criminal offense in a district court, including a person convicted upon a plea of guilty, may appeal the judgment of conviction to the circuit court for the judicial district in which the conviction occurred. The state shall have no right of appeal from a judgment of a district court.

(b) *Time for Taking Appeal.* An appeal from a district court to the circuit court shall be filed in the office of the clerk of the circuit court having jurisdiction of the appeal within thirty (30) days from the date of the entry of the judgment in the district court. The 30-day period is not extended by the filing of a post-trial motion under Rule 33.3.

(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 record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. 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.

(d) *Failure of clerk to file record.* If the clerk of the district court does not prepare and certify a record for filing in the circuit court in a timely manner, the defendant may take an appeal by filing an affidavit in the office of the circuit clerk, within forty (40) days from the date of the entry of the judgment in the district court, showing (i) that the defendant has requested the clerk of the district court to prepare and certify the record for purposes of appeal and (ii) that the clerk has not done so within thirty (30) days from the date of the entry of the judgment in the district court. The defendant shall promptly serve a

copy of such affidavit upon the clerk of the district court and upon the prosecuting attorney. The circuit court shall acquire jurisdiction of the appeal upon the filing of the affidavit. On motion of the defendant or the prosecuting attorney, the circuit court may order the clerk of the district court to prepare, certify, and file a record in the circuit court.

(e) *Bond.* When an appeal is taken from a district court to circuit court, the district court may require the defendant to post a bond or other security to guarantee the appearance of the defendant before the circuit court, provided that an appearance bond originally posted with the district court to guarantee the appearance of the defendant before that court shall serve to guarantee the appearance of the defendant before the circuit court on appeal. The approval of the bond or other security to guarantee the appearance of the defendant before the circuit court shall stay the imposition of the judgment imposed by the district court. The clerk of the district court shall transmit any bond or other security to the circuit court. The failure of the defendant to post a bond or other security with the district court shall not prevent the circuit court from acquiring jurisdiction of the appeal. After acquiring jurisdiction of the appeal, the circuit court may modify the bond or other security.

(f) *Notice.* When the record of the proceeding in the district court is filed in the office of the circuit clerk, the circuit clerk shall promptly give written notice thereof to the prosecuting attorney and to the circuit judge to whom the appeal is assigned.

(g) *Trial De Novo.* An appeal from a judgment of conviction in a district court shall be tried *de novo* in the circuit court as if no judgment had been rendered in the district court.

(h) *Default Judgment.* The circuit court may affirm the judgment of the district court if (i) the defendant fails to appear in circuit court when the case is set for trial; or (ii) the clerk of the district court fails to prepare and certify a record for filing in the circuit court as provided in subsection (c) of this rule and the defendant fails to move the circuit court for an order to compel the filing of the record within thirty (30) days after filing the affidavit provided in subsection (d) of this rule.

(i) *District court without clerk.* If a district court has no clerk, any reference in this rule to the clerk of a district court shall be deemed to refer to the judge of the district court.

Reporter's Notes

Prior to the adoption of Rule 36 appeals from limited jurisdiction courts to circuit court were governed by District Court Rule 9 (formerly Inferior Court Rule 9) and various statutory provisions in Title 16, Chapter 9, Subchapter 5. Although District Court Rule 1 limited the scope of the rules to "civil actions in district courts and county courts," the Supreme Court ruled that District Court Rule 9 also governed criminal appeals. *Bocksnick v. City of London*, 308 Ark. 599, 825 S.W.2d 267 (1992).

Subsection (a) incorporates Ark. Code Ann. § 16-96-501 (shown as superseded) and Arkansas Code Ann. § 16-96-502 (repealed in 2005). See, also, Amendment 80, § 7(A) of the Arkansas Constitution, which establishes district courts as trial courts of limited jurisdiction, subject to the right of appeal to circuit court.

Subsection (b) substantially restates District Court Rule 9(a).

Subsection (c) is based on District Court Rule 9(b). Because appearance bonds are unique to criminal appeals, the sentence requiring the record to include any bond or other security to guarantee the defendant's appearance in circuit court is not found in District Court Rule 9(b). Ark. Code Ann. § 16-96-505, which describes the transcript in a criminal case, was not included in this subsection because § 16-96-505 is shown as superseded by the Code Revision Commission.

Subsection (d) is based on District Court Rule 9(c). A defendant has two ways to perfect an appeal from district court to circuit court. The usual method will be to file the certified record with the circuit court, as described in subsection (c). Alternatively, if the district court clerk does not prepare and certify the district court record, the defendant can vest the circuit court with jurisdiction by filing the affidavit described in subsection (d). *Velek v. State (City of Little Rock)*, 364 Ark. 531, 222 S.W.3d 182 (2006). If the district court record is not filed within thirty days but is filed within forty days, the circuit court does not acquire jurisdiction of the appeal unless the defendant also files an affidavit to the effect that the record was requested but not prepared and certified within thirty days by the district court clerk.

Subsection (e) is derived from District Court Rule 9(d) and repealed Ark. Code Ann. § 16-96-504. The sentence providing that an appearance bond posted with the district court shall serve to guarantee the appearance of the defendant before the circuit court is consistent with Arkansas Rule of Criminal Procedure 9.2(e). The next to last sentence of the subsection codifies the holding of *Velek*, *supra*. In that case the Supreme Court ruled that the circuit court acquired jurisdiction upon filing of the affidavit described in subsection (d) even though the district court clerk refused to prepare the record because the defendant failed to post an appeal bond.

Subsection (f) ensures that both the prosecuting attorney and the circuit judge are aware that an appeal to circuit court has been filed and should reduce the number of cases in which the defendant fails to receive the speedy trial required by Arkansas Rule of Criminal Procedure 28. There is nothing comparable to this subsection in current law.

Subsection (g)'s provision for *de novo* review of a district court judgment on appeal to circuit court is required by Amendment 80, § 7(A) of the Arkansas Constitution. See, also, Ark. Code Ann. § 16-96-507.

Subsection (h) is based loosely on Ark. Code Ann. § 16-96-508. The collection and disposition of fines, penalties, forfeitures, or costs in the event of a default judgment in circuit court will continue to be governed by Ark. Code Ann. § 16-96-403.

IN RE: ADOPTION of SUPREME COURT RULE 4-7. BRIEFS IN POSTCONVICTION and CIVIL APPEALS WHERE APPELLANT IS INCARCERATED and PROCEEDING PRO SE

Supreme Court of Arkansas
Opinion delivered May 18, 2006

PER CURIAM. On January 19, 2006, we published for comment a proposed procedure for briefing by incarcerated *pro se* appellants. We thank all who submitted comments. We now adopt Rule 4-7 of the Arkansas Rules of the Supreme Court and Court of Appeals, as published below, and the rule shall be effective for cases in which the record is lodged on or after June 1, 2006.

ARTICLE IV. BRIEFS

. . .

Rule 4-7. Briefs in Postconviction and Civil Appeals Where Appellant is Incarcerated and Proceeding *Pro Se*.

(a) *Applicability*. This rule shall govern *pro se* briefs filed by incarcerated persons in appeals of postconviction relief proceedings and civil appeals. Except for the provisions contained in this rule, briefs filed by *pro se* parties shall otherwise comply with the Rules of the Supreme Court and Court of Appeals.

(b) *Style of briefs*.

(1) *Briefs - Size - Paper - Type*. A *pro se* brief may be handwritten, typed or produced with computer or word processing equipment. A handwritten brief shall be clearly legible, shall not exceed thirty lines per page and fifteen words per line with left-hand and right-hand margins of at least one and one-half inches and upper and lower margins of at least two inches. Briefs shall be of uniform size on 8 1-2" x 11" paper and firmly bound on the left hand margin by staples or other binding devices. If staples are used, they should be covered by tape. Typed briefs shall be double-spaced, except for quoted material, which may be single-spaced and indented. Footnote lines, except quotations, shall be double-spaced. Use of footnotes is not encouraged and should be used sparingly. Carbon copies are not acceptable, but copies produced by offset printing, positive photocopy, or other dry photo duplicating process which produces a clearly legible black-on-white

reproduction may be used. Each page in the brief should be numbered sequentially with Page 1 being the first page of the abstract.

(2) *Length of argument.* Unless leave of the Court is first obtained, the argument portion of a brief shall not exceed 25 double-spaced pages including the conclusion, if any. The appellant's reply brief shall not exceed 15 double-spaced pages and shall not include any supplemental abstract or Addendum unless permitted by the Court upon motion. Motions for an expansion of the page limit must set forth the reason or reasons for the request and must state that a good faith effort to comply with this Rule has been made. The motion must specify the number of additional pages requested.

(3) *Affidavit.* If the *pro se* appellant received assistance in the preparation of the content of a brief, the brief shall also be accompanied by an affidavit under penalty of perjury that the appellant received assistance and from whom. If the appellant has prepared it without the paid assistance of any other prison inmate, the affidavit shall so state.

(c) *Contents of briefs.*

(1) *Contents.* The contents of the brief shall be in the following order:

(A) *Abstract.* The abstract is a summary of the testimony of the witnesses and other statements of the judge and attorneys contained in the transcript that are important to the understanding of the issues raised in the argument portion of the brief. Pleadings, papers filed with the clerk, and documentary evidence should not be abstracted but should be included in the Addendum. It is the duty of the appellant to abstract such parts of the transcript, but only such parts, as are material to the points to be argued in the appellant's brief. The appellant in the abstract must summarize any testimony of witnesses, and discussions between the judge and any person, needed for an understanding of the issues. If parts of a prior trial or proceeding are important to the understanding of an issue, those parts of the transcript of that trial or proceeding must be included in the abstract. (*E.g.*, an appellant arguing in a Rule 37.1 appeal that his attorney failed to make an objection at trial must abstract the part of the transcript where that occurred.) The appellee may prepare a supplemental abstract if material on which the appellee relies is not in the appellant's abstract.

(B) *Argument.* The appellant shall state each issue to be argued and then set out the argument in support of that issue. If an

argument refers to a particular place in the record, the page number for that place in the record shall be provided. All citations of decisions of any court must state the name of the case and the book and page where the case may be found. Reference in the argument portion of the brief to material found in the abstract and Addendum shall be followed by a reference to the page number on which the material can be found in the brief.

(C) *Addendum.* The appellant's brief shall contain an Addendum, which consists of photocopies of documents from the record. It is the duty of the appellant to include in the Addendum such parts of the record, but only such parts, as are material to the points to be argued in the appellant's brief. The Addendum shall include true and legible photocopies of the original pleading, order from which the appeal is taken, and the notice of appeal. The Addendum shall also include any other relevant pleadings, jury instructions, documents, or exhibits essential to an understanding of the case. If parts of a prior trial or proceeding are important to the understanding of an issue, those parts of the record of that trial or proceeding must be included in the Addendum. (*E.g.*, an appellant arguing in a Rule 37.1 appeal that his attorney allowed an improper jury instruction at trial must include the jury instruction at issue in the Addendum.) The appellee may prepare a supplemental Addendum if material on which the appellee relies is not in the appellant's Addendum. Only documents that are part of the trial court record may be included in the Addendum.

(2) *Cover for briefs.* On the cover of the brief there should appear the docket number and name of the case, the name of the court from which the appeal is taken, the title of the brief (e.g., "Brief for Appellant"), and the name of the appellant.

(3) *Insufficiency of appellant's abstract or Addendum.* Motions to dismiss the appeal for insufficiency of the appellant's abstract or Addendum will not be recognized. Deficiencies in the appellant's abstract or Addendum will ordinarily come to the Court's attention and be handled in one of three ways as follows:

(A) If the appellee considers the appellant's abstract or Addendum to be defective, the appellee's brief should call the deficiencies to the Court's attention and may, at the appellee's option, contain a supplemental abstract or Addendum.

(B) If the case has not yet been submitted to the Court for decision, an appellant may file a motion to supplement the abstract or Addendum and file a substituted brief. Subject to the Court's

discretion, the Court will routinely grant such a motion and give the appellant thirty days within which to file the substituted abstract, Addendum, and brief. If the appellee has already filed its brief, upon the filing of appellant's substituted abstract, Addendum, and brief, the appellee will be afforded an opportunity to revise or supplement its brief.

(C) Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief. Mere modifications of the original brief by the appellant will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement its brief. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the trial court's order may be affirmed for noncompliance with the Rule.

(4) *Non-compliance.* Briefs not in compliance with this Rule shall not be accepted for filing by the Clerk. When a party submits a brief on time that substantially complies with these Rules, the Clerk shall mark the brief "tendered", grant the party a fourteen-day compliance extension, and return the brief to the party for correction. If the party resubmits a compliant brief within fourteen calendar days, then the Clerk shall accept that brief for filing on the date it is received.

(d) *Number of briefs and time for filing.*

(1) *Briefs in chief.* The appellant shall have 40 days from the date the transcript is lodged to file 17 copies of the brief with the Clerk.

(2) *Appellee's brief.* The appellee shall have 30 days from the filing of the appellant's brief to file 17 copies of the brief with the Clerk and serve a copy on the appellant.

(3) *Reply brief.* The appellant shall have 15 days from the date that the appellee's brief is filed to file 17 copies of the reply brief.

(4) *Continuances and extensions of time.* The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral or letter request. If such an extension is granted, no further extension shall be granted except by the Court upon a written motion showing good cause.

IN RE: ADOPTION of RULES 6-9 and 6-10 of THE RULES of THE SUPREME COURT and COURT of APPEALS (RULES FOR APPEALS IN DEPENDENCY-NEGLECT CASES)

Supreme Court of Arkansas
Opinion delivered May 18, 2006

PER CURIAM. On February 2, 2006 we published for comment proposed rules for appeals in dependency-neglect cases and trial counsel's duties in such appeals. *See In Re Proposed Rules for Appeals in Dependency-Neglect Cases* (February 2, 2006) for a discussion of the problems necessitating these rules. In order to address the problems and to expedite the appellate process in dependency-neglect cases, the proposal focused on limiting the record, curtailing extensions, and establishing time lines.

We thank everyone who reviewed the proposed rules and submitted comments. We have considered the comments and further reviewed the proposal. With some refinements, we accept the rules recommended by the Ad Hoc Committee on Foster Care and Adoption. Again, we express our gratitude to the members of that committee and everyone who assisted them on this project. We adopt Rule 6-9 and Rule 6-10 of the Rules of the Supreme Court and Court of Appeals as published below. These rules are

effective July 1, 2006 at which time appeals shall be commenced by filing the Notice of Appeal and Designation of Record (Form 1)[1] as set out in Rule 6-9.

With the adoption of Rule 6-9, it is necessary to amend Rule 2 (c) of the Rules of Appellate Procedure — Civil. Effective July 1, 2006, Rule 2(c) is amended as follows:

RULES OF APPELLATE PROCEDURE — CIVIL

Rule 2. Appealable matters; priority.

. . .

(c) Except as provided in Rule 6-9 of the Rules of the Supreme Court and Court of Appeals, appeals in juvenile cases shall be made in the same time and manner provided for appeals from circuit court.

(1) In delinquency cases, the state may appeal only under those circumstances that would permit the state to appeal in criminal proceedings.

(2) Pending an appeal from any case involving a juvenile out-of-home placement, the circuit court retains jurisdiction to conduct review hearings.

(3) In juvenile cases where an out-of-home placement has been ordered, orders resulting from the hearings set below are final appealable orders:

(A) adjudication and disposition hearings;

(B) review and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b); and

(C) termination of parental rights.

RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 6-9. Rule For Appeals In Dependency-Neglect Cases.

(a) Appealable Orders.

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[1] The forms specified in Rule 6-9 will be made available by the Administrative Office of the Courts and will be accessible on the Supreme Court's website: http://www.courts.state.ar.us.

(1) The following orders may be appealed from dependency-neglect proceedings:

(A) adjudication order;

(B) disposition, review, and permanency planning order if the court directs entry of a final judgment as to one or more of the issues or parties based upon the express determination by the court supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b);

(C) termination of parental rights; and

(D) denial of right to appointed counsel pursuant to Ark. Code Ann. Section 9-27-316(h).

(2) The circuit court shall enter and distribute to all the parties all dependency-neglect orders no later than 30 days after a hearing.

(b) Notice and Time for Appeal.

(1) If the court announces its ruling from the bench and an appellant files a notice of appeal prior to the entry of the order, it shall be deemed to be filed the day after the order is entered.

(2) Notice of appeal shall be filed within 14 days from the entry of the circuit court order from which the appeal is being taken.

(A) If the appellant alleges indigency for purposes of the appeal, the appellant must request an indigency hearing within seven (7) days of the entry of the order from which the appeal is taken.

(B) The circuit court shall conduct the indigency hearing within five (5) days of the request for the indigency appeal hearing.

(C) If the appellant is indigent, the notice shall state that the court has made a determination of indigency for payment of the record and appointment of counsel for the appeal. If not indigent, appellant shall state that arrangements for payment of the record have been made.

(D) The notice of appeal and designation of record shall be signed by the appellant, if an adult, and appellant's counsel. The notice shall set forth the party or parties initiating the appeal, the address of the parties or parties, and specify the order from which the appeal is taken.

(E) If a timely notice of appeal is filed, any other party may file a notice of cross-appeal and designation of record within five (5) days from receipt of the notice of appeal.

(F) The time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.

(G) In computing time periods in this Rule 6-9, refer to the guidelines in Ark. R. Civ. P. 6 (a), which provides in part that when the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

(c) Record on Appeal.

(1) The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to that hearing, and all exhibits entered into evidence at that hearing.

(2) The appellant and the cross-appellant, if any, shall (A) complete a Notice of Appeal (Cross-Appeal) and Designation of Record (Form 1); (B) file Form 1 with the Circuit Clerk; and (C) serve Form 1 on the court reporter and all parties by any form of mail which requires a signed receipt.

(3) The designation-of-record portion of Form 1 shall identify the hearing from which the order being appealed arose, and shall designate the date(s) of the hearing. Service of the Notice of Appeal and Designation of Record (Form 1) shall constitute a request for transcription of the hearing from which the order of the appeal arose.

(4) Within five (5) days after receipt of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall file a statement by mail or fax with the Circuit Clerk indicat-

ing whether arrangements for payment have been made and that the record will be completed timely. The court reporter shall make arrangements for the record to be completed and certified within 60 days.

(d) Transmission of Record. The record on appeal shall be filed with the Clerk of the Supreme Court within 70 days of the filing of the Notice of Appeal. Within 60 days after the filing of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall provide the record to the Circuit Clerk who shall have no longer than five (5) days to prepare the record, including any transcripts and exhibits, to be transmitted for submission to Clerk of the Supreme Court. After the record has been duly certified by the Circuit Clerk, it shall be the responsibility of the appellant to transmit the record to the Clerk of the Supreme Court for filing.

(e) Petition on Appeal.

(1) Within 20 days after transmission of the record to the Clerk of the Supreme Court, the appellant shall file an original and 16 copies of a Petition on Appeal or Cross Appeal (Form 2).

(2) The petition shall not exceed twenty pages, excluding the abstract and addendum, and shall include:

(A) A statement of the nature of the case and the relief sought;

(B) A concise statement of the material facts as they relate to the issues presented in the petition on appeal that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. This statement must also summarize the circuit court order appealed from and recite the date the order was entered.(References to pages in the abstract and Addendum are required.);

(C) An abstract or abridgment of the transcript that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision. In the abstracting of testimony, the first person (i.e., "I") rather

than the third person (i.e., "He, She") shall be used. Not more than one page of the transcript shall in any instance be abstracted without a page reference to the record.

(D) A concise statement of the legal issues presented for appeal, including a statement of how the issues arose; and a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. Citations of decisions of the court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible.

(E) Following the signature and certificate of service, the appellant's petition shall contain an addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, or letter opinion from which the appeal is taken, a copy of the notice of appeal, and any other relevant pleadings, documents, or exhibits essential to an understanding of the case, which may include, but are not limited to, affidavits, petitions, case plan, court reports, court orders, or other exhibits entered into the record during the hearing from which the appeal arose. The addendum shall include an index of its contents and shall also designate where any item appearing in the addendum can be found in the record.

(f) Response to Petition on Appeal or Cross Appeal.

(1) Within 20 days after filing of the appellant's petition on appeal, any appellee may file an original and 16 copies of a response to the petition on appeal or cross-appeal (Form 3). The response shall be prepared by trial counsel or by substitute counsel so long as substitute counsel has filed an entry of appearance.

(2) The response shall not exceed twenty pages, excluding the abstract and addendum and shall include:

(A) A concise statement of the material facts as they relate to the issues presented by the appellant, as well as the issues, if any, being raised by the appellee on cross-appeal, that is

sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. (References to pages in the abstract and Addendum are required.)

(B) A concise response to the legal issues presented on appeal and cross-appeal, if any, including a statement of how the issue arose; a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. Citations of decisions of the court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible.

(C) If the appellee considers the appellant's abstract or addendum to be defective or incomplete, the appellee may provide a supplemental abstract or addendum. The appellee's addendum shall only include an item which the appellant's addendum fails to include.

(3) The appellant will have ten (10) days after appellee's response on cross appeal is filed to reply to the response or cross appeal.

(4) The appellee will have ten (10) days after appellant's response is filed to reply to appellant's response to the cross appeal.

(g) Extensions. Only one extension for completion of the record and only one extension per party for submission of the petition shall be granted upon a showing of manifest injustice and only for a period of no more than seven (7) days. If the request is based on the court reporter's inability to complete the transcript, it must be supported by an affidavit of the reporter specifying why the transcript has not been completed.

(h) Style of Petition. The style of the Petition on Appeal, Response, and Cross-Appeal shall follow the style of briefs as described by Rule 4-1 of the Rules of the Supreme Court except where a style is specifically described by these rules.

(i) Ruling.

(1) Dependency-neglect proceedings shall be prioritized on the calendar of the appellate court. Once a case is ready for submission, the Clerk of the Supreme Court shall submit the case for decision.

(2) If a party files a petition for rehearing with the appellate court or petition for review with the Supreme Court, it must be filed within 5 days of the appellate court's decision. No supplemental briefs or extensions shall be allowed. The Clerk of the Supreme Court shall submit the petition for decision.

RULE 6-10.

Trial counsel's duties with regard to dependency-neglect appeals.

(a) Trial counsel, whether retained or court-appointed, shall continue to represent his/her client in a dependency-neglect case throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or appellate court to withdraw in the interest of justice or for other sufficient cause. A trial court shall determine if the defendant is indigent for purposes of appeal. If the defendant has appointed counsel and is no longer indigent, the trial court shall relieve appointed counsel. After the notice of appeal has been filed with the Circuit Clerk, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.

(b) If court-appointed counsel is permitted to withdraw pursuant to subsection (a), new counsel shall be appointed promptly by the court exercising jurisdiction over the matter of counsel's withdrawal and appointed counsel shall be qualified pursuant to Arkansas Supreme Court Administrative Order No. 15.

(c) *Motions for Attorney's Fees.* All motions for attorney's fees from attorneys appointed to represent indigent parent(s) or guardian(s) in dependency-neglect cases shall contain the following information: (1) the date of appointment; (2) the court which appointed counsel; (3) the number of hours expended by counsel in research, court appearances, and preparation of pleadings and petitions for appeals; (4) an itemization of expenses incurred by counsel which are directly attributable to the case; and (5) the relative complexity of the case. The motion shall be filed not later than 30 days after the issuance of the mandate.

NOTICE OF APPEAL OR CROSS APPEAL AND DESIGNATION OF THE RECORD

Circuit Court: _____ **Circuit Court Judge:** _____ **Case Number(s):** _____ **Arkansas Department of Health and Human Services v.** **❑parents❑guardians❑custodian** _____ **[children's initials]** **Appellant:** _____	**COURT USE ONLY**
Appellant's Attorney or Appellant if no Attorney (Name and Address): Phone Number: E-mail: FAX Number: Attorney Bar #:	
❑NOTICE OF APPEAL AND DESIGNATION OF THE RECORD **❑CROSS-APPEAL AND DESIGNATION OF RECORD**	

Notice is hereby given that _____ as counsel for _____ hereby ❑appeals or ❑cross-appeals the order of the Circuit Court entered on _____(date) with reference to a hearing regarding:

- ❑ denial of appointed counsel
- ❑ adjudication
- ❑ disposition (only if a final order pursuant to Ark. R. Civ. P. Rule 54(b))
- ❑ review (only if a final order pursuant to Ark. R. Civ. P. Rule 54(b))
- ❑ permanency planning (only if a final order pursuant to Ark. R. Civ. P. Rule 54(b)
- ❑ termination of parental rights

and all adverse rulings made therein.

DESIGNATION OF RECORD

The clerk of the Circuit Court will prepare the record on appeal, which shall include, pursuant to Rule 6-9, the following items:

1. The Circuit Court shall include all include all pleadings, motions, reports, exhibits, and orders of the court relevant to the order from which the appeal arose as designated by the appellant:
   - ❑ pleadings dated: _____
   - ❑ motions dated: _____
   - ❑ reports dated: _____
   - ❑ exhibits dated: _____
   - ❑ orders dated: _____
   - ❑ other (describe) dated: _____

NOTICE OF APPEAL OR CROSS APPEAL AND DESIGNATION OF THE RECORD

2. The original transcript from the date(s)_____of the proceeding resulting in the Circuit Court order on appeal.

3. The name and address of the court reporter(s) is:

Name	Name
Address	Address
City State Zip Code	City State Zip Code

Signature, attorney for appellant Date	Signature of appellant Date

CERTIFICATE OF SERVICE

I certify that on _____ (today's date) the original of this *NOTICE OF APPEAL (CROSS-APPEAL) AND DESIGNATION OF RECORD* was filed with the Circuit Clerk; and a true and accurate copy of this *NOTICE OF APPEAL (CROSS-APPEAL) AND DESIGNATION OF RECORD* was served on the other party(ies) and any court reporters listed above by any form of mail with a signed receipt to the following:

Name & Address

Name & Address

Name & Address

Name & Address

Name & Address

Name & Address

Name & Address

Attorney Signature

Date Bar Number

OR

Appellant (if pro se litigant) Signature

Date

PETITION ON APPEAL

Clerk of the Arkansas Supreme Court **Justice Building, 625 Marshall, LR, AR 72201** **Circuit Court:** _____ **Circuit Court Judge:** _____ **Case Number(s):** _____ _____ **Arkansas Department of Health and Human Services v.** _____ ❑**parents**❑**guardians**❑**custodian** _____ **[children's initials]** **Appellant:**_____	**COURT USE ONLY**
Appellant's Attorney or Appellant if no Attorney (Name and Address): Phone Number: E-mail: FAX Number: Attorney's Bar #:	Case Number:

1. This Petition on Appeal is filed on behalf of _____, the ❑mother ❑father ❑child ____ (initials) ❑ DHHS ❑Intervenor ❑other _____:

Child(ren)'s Initials	Date(s) of Birth
_____	_____
_____	_____
_____	_____
_____	_____

(additional children may be added if needed)

2. Indicate the type of petition on appeal

❑ The parent was denied appointed counsel pursuant to Ark. Code Ann. §9-27-317, and the order entered on _____ is being appealed.
(date)

❑ The child/children were adjudicated dependent-neglected pursuant to Ark. Code Ann. §9-27-329, and the adjudication order entered on _____ is being appealed.
(date)

❑ There was a final order pursuant to Ark. R. Civ. P. Rule 54(b) entered at the review hearing in accordance with Ark. Code Ann. §9-27-337 and the review order entered on _____ is being appealed.
(date)

❑ There was a final order pursuant to Ark. R. Civ. P. Rule 54(b) entered at the permanency planning hearing in accordance with Ark. Code Ann. §9-27-338 and the permanency planning order entered on_____ is being appealed.
(date)

PETITION ON APPEAL

❑ Parental rights were terminated pursuant to Ark. Code Ann. §9-27-341 and the termination order entered on _____ is being appealed.
(date)

3. Appellant's attorney, _____, ❑is ❑is not the attorney who represented appellant at Circuit Court hearing from which the appeal arose.

4. Are there any other pending appeals involving the child (ren)? ❑Yes ❑No If Yes, list below:

Case Name and Number: _____

Indicate type of appeal: _____

List the relevant dates regarding this case (if they have not occurred indicate by N/A):

❑ Child was removed from home if applicable: _____

❑ D-N petition filed: _____ ❑Appointment of parent counsel: _____

❑ Appointment of AAL for child: _____ ❑ D-N Adjudication order: _____

❑ D-N Disposition order: _____

❑ Review orders: _____

❑ Permanency Planning orders: _____

❑ Other hearing (describe type): _____

❑ Petition to terminate parental rights filed: _____

❑ Termination order: _____

❑ Notice of appeal filed: _____

5. State the nature of the case and relief sought: The appellant seeks:

6. State the material facts as they relate to the issues presented on appeal:

7. Attach an abstract or abridgment of the transcript of the hearing from which the order on appeal arose that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as necessary to an understanding to the court of all the issues presented to the court for a decision.

The abstract should be in the first person, rather than the third person. For example, use I and he/she.

8. State the legal issues presented for appeal, including a statement of how the issues arose, and supporting legal authority.

The issues statement should be concise in nature and set forth the specific legal questions. General conclusions, such as "the trial court's ruling is not supported by the law or the facts," are not acceptable. Include specific supporting legal authority upon which the party is relying with citations to supporting statutes, case law, or other legal authority for each issue raised. All citations of decisions must state the style of the case and the book and page in which the case is found.

PETITION ON APPEAL

The undersigned requests that the Appellate Court issue an opinion reversing the order of the Circuit Court in this matter.

_____
Signature, attorney for appellant Date

OR

_____
Signature of pro se litigant Date

Addendum List of Attachments (*pursuant to Rule 6-9 (e)(2)(E)*):

_____

_____

_____

_____

_____

_____

CERTIFICATE OF SERVICE

I certify that on _____(today's date) the original and 16 copies of this *PETITION ON APPEAL* were filed with the Clerk of the Supreme Court; and a true and accurate copy of this *PETITION ON APPEAL* was served on the other party(ies) by placing it in the United States mail, postage pre-paid and addressed to the following:

_____
Name & Address

_____
Name & Address

_____
Name & Address

_____
Name & Address

_____
Name & Address

_____

_____
Attorney Signature

_____ _____
Date Bar Number

OR

_____
Appellant (if pro se litigant) Signature

_____
Date

RESPONSE AND CROSS APPEAL TO PETITION ON APPEAL

Clerk of the Arkansas Supreme Court **Justice Building, 625 Marshall, LR, AR 72201** **Circuit Court:** _____ **Circuit Court Judge:** _____ **Case Number(s):** _____ _____ **Arkansas Department of Health and Human Services v.** _____ ❑**parents**❑**guardians**❑**custodian** _____ **[children's initials]** **Appellant:** _____	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Attorney Bar #:	Case Number:

1. This Response to the Petition on Appeal is filed on behalf of _____, the ❑mother ❑father ❑child _____(initials) ❑ DHHS ❑ Intervenor ❑other _____:

2. Appellee's attorney, _____, ❑is ❑is not the attorney who represented appellee at the Circuit Court hearing from which the appeal arose.

3. The relevant date(s) regarding this case are:

   ❑ Correctly stated in the Petition on Appeal.
   ❑ Corrected by appellee as follows:

4. The statement of material facts as they relate to the issues presented by the appellant for appeal are:

   ❑ Accurate as set forth by appellant, and accepted by the undersigned appellee.
   ❑ Requires additions/corrections as follows:

5. The appellant's abstract for purposes of this appeal is:

   ❑ Accurate as set forth by appellant, and accepted by the undersigned appellee.
   ❑ Defective or incomplete and the appellee shall include only items which the appellant failed to include:

6. The appellant's addendum for purposes of this appeal is:

   ❑ Accurate as set forth by appellant, and accepted by the undersigned appellee.
   ❑ Defective or incomplete and the appellee shall include only items which the appellant failed to include:

RESPONSE AND CROSS APPEAL TO PETITION ON APPEAL

7. Appellee's response to the legal issues, including a statement of how the issues arose, and supporting legal authority.

   The issues statement should be concise in nature and set forth the specific legal questions. General conclusions are not acceptable. Include specific supporting legal authority upon which the party is relying with citations to supporting statutes, case law, or other legal authority for each issue raised. All citations of decisions must state the style of the case and the book and page in which the case is found

The undersigned requests that the Appellate Court issue an opinion reversing the order of the Circuit Court in this matter.

Signature, attorney for appellant Date

OR

Signature of pro se litigant Date

8. Were there any issues on cross-appeal? ❑Yes ❑No If yes, notice should have been filed with Circuit Court Clerk five days following receipt of the notice of appeal pursuant to Rule 6-9 (b)(2)(E). Attached proof of notice and if cross appeal was filed:

   a. State the nature of the cross appeal and the relief sought by appellee:

   b. State the material facts as they relate to the issues presented on cross appeal:

   c. If the abstract prepared by the appellant is insufficient as to the issues on cross appeal, attach an abstract or abridgment of the transcript of the hearing from which the order on appeal arose that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as necessary to an understanding to the court of all the issues presented to the court for a decision on cross appeal.

      The abstract should be in the first person, rather than the third person. For example, use I and he/she.

   d. State the legal issues presented for cross appeal, including a statement of how the issues arose, and supporting legal authority.

      The issues statement should be concise in nature and set forth the specific legal questions. General conclusions, such as "the trial court's ruling is not supported by the law or the facts," are not acceptable. Include specific supporting legal authority upon which the party is relying with citations to supporting statutes, case law, or other legal authority for each issue raised All citations of decisions must state the style of the case and the book and page in which the case is found.

Signature, attorney for appellee Date

OR

Appellee (if pro se litigant) Date

RESPONSE AND CROSS APPEAL TO PETITION ON APPEAL

CERTIFICATE OF SERVICE

I certify that on _____(date) the original and 16 copies of this *RESPONSE TO PETITION ON APPEAL* was filed with the Clerk of the Arkansas Supreme Court; and a true and accurate copy of this *RESPONSE TO PETITION ON APPEAL* was served on the other party(ies) by placing it in the United States mail, postage pre-paid and addressed to the following:

_____
Name & Address

_____
Name & Address

_____
Name & Address

_____
Name & Address

_____
Name & Address

_____
Attorney Signature

_____ _____
Date Bar Number

OR

_____
Appellant (if pro se litigant) Signature

_____
Date

IN RE: ARKANSAS RULES of CIVIL PROCEDURE; ADMINISTRATIVE ORDER NUMBER 18; RULES of APPELLATE PROCEDURE – CIVIL; and RULES of THE SUPREME COURT and COURT of APPEALS

Supreme Court of Arkansas
Opinion delivered May 25, 2006

PER CURIAM. On March 2, 2006, we published for comment the Arkansas Supreme Court Committee on Civil Practice's proposals for changes in the Arkansas Rules of Civil Procedure, Rules of Appellate Procedure — Civil, and Administrative Order Number 18. On June 23, 2005, we published for comment a proposed change to Rule 6-7 of the Rules of the Supreme Court and Court of Appeals. We thank everyone who reviewed the proposals.

The court accepts, with minor changes, the committee's recommendations. We adopt the following amendments to be effective immediately and republish the Rules and Reporter's Notes as set out below.

We encourage all judges and lawyers to review this *per curiam* in order to familiarize themselves with the changes to the rules. We draw particular attention to the following changes in the Rules of Civil Procedure:

- Rule 4 (i) sets a deadline for the entry of the order to extend the time in which to obtain service of the summons.
- Rule 23, governing class actions, has been substantially revised to incorporate recentamendments to Federal Rule of Civil Procedure 23 and the court's holdings in recent decisions, as well as current Arkansas practice.
- Rules 26 and 37, governing discovery, now impose an affirmative duty to supplement responses to discovery.
- Rule 56, governing summary-judgment practice, has been amended, especially with regard to the timing of motions for summary judgment, the related briefing, and any hearing on such motions.

Administrative Order Number 18, governing district courts, has been

amended to provide for small claims magistrates, special judges, and clarification that the jurisdictional amount is exclusive of costs, interest, and attorney's fees.

The court again expresses its gratitude to the members of our Civil Practice Committee for the Committee's diligence in performing the important task of keeping our civil rules current, efficient, and fair.

A. ARKANSAS RULES OF CIVIL PROCEDURE

1. Subdivisions (d)(4) and (i) of Rule 4 are amended to read as follows:

(d)(4) Where the defendant is incarcerated in any jail, penitentiary, or other correctional facility in this state, service must be upon the administrator of the institution, who shall deliver a copy of the summons and complaint to the defendant. A copy of the summons and complaint shall also be sent to the defendant by first class mail and marked as "legal mail" and, unless the court otherwise directs, to the defendant's spouse, if any.

. . .

(i) Time Limit for Service. If service of the summons is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon motion or upon the court's initiative. If a motion to extend is made within 120 days of the filing of the suit, the time for service may be extended by the court upon a showing of good cause. The order granting any such extension, however, must be entered within 30 days after the motion to extend is filed, or by the end of the 120-day period, whichever date is later. If service is made by mail pursuant to this rule, service shall be deemed to have been made for the purpose of this provision as of the date on which the process was accepted or refused. This paragraph shall not apply to service in a foreign country pursuant to Rule 4(e) or to complaints filed against unknown tortfeasors.

The Reporter's Notes accompanying Rule 4 are amended by adding the following:

Addition to Reporter's Note, 2006 Amendment: Rule 4(d)(4) has been amended to delete the untoward reference to the "keeper" of a jail, penitentiary, or other correctional facility. The term "administrator" has been substituted for "superintendent."

Rule 4(i), which governs the time limit for service, has been amended to set a reasonable deadline for getting an order entered on a motion to extend time for service. In *Edwards v. Sazabo Foods*, 317 Ark. 369, 877 S.W.2d 932 (1994), the supreme court rejected an effort to require that both the motion for extension of time to serve and the order granting that motion must be filed within the 120-day period. This amendment leaves *Edwards* intact. To encourage prompt service, and discourage filing a motion to extend but not securing an order promptly, the amendment sets a deadline for the entry of that order: thirty days after the motion is filed, or the end of the 120-day period, whichever date is later. The alternative deadlines eliminate the possibility that an early motion for extension will inadvertently reduce the time allowed for extending the time for service.

2. Subdivisions (a), (b), (c), (d), and (e) of Rule 23 are amended to read as follows:

(a) Prerequisites to Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties and their counsel will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. At an early practicable time after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. For purposes of this subdivision, "practicable" means reasonably capable of being accomplished. An order under this section may be altered or amended at any time before the court enters final judgment. An order certifying a class action must define the class and the class claims, issues, or defenses.

(c) Notice. (1) In any class action in which monetary relief is sought, including actions for damages and restitution, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(2) The notice must concisely and clearly state in plain, easily understood language:

- the nature of the action,
- the definition of the class certified,
- the class claims, issues, or defenses,
- that a class member may enter an appearance and participate in person or through counsel if the member so desires,
- that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and
- the binding effect of a class judgment on class members.

(3) In any class action in which no monetary relief is sought, the court may require any notice it deems appropriate in the circumstances.

(4) The cost of any notice shall be borne by the representative parties; provided, however, that the court may shift all or part of the cost to the opposing party or parties if the case is settled or the class representative substantially prevails on the merits.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of the members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dividing the class into subclasses, treating each subclass as a

class, and construing and applying the provisions of this rule accordingly; and (6) dealing with similar procedural matters. The orders may be combined with an order under Rule 16 and may be altered or amended from time to time as may be desirable.

(e) Dismissal or Compromise. (1) The court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class. The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise. The court may approve any such resolution that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

(2) The parties seeking approval of a settlement, voluntary dismissal, or compromise must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.

(3) The court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(4) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval. An objection may be withdrawn only with the court's approval.

The Reporter's Notes accompanying Rule 23 are amended by adding the following:

Addition to Reporter's Note, 2006 Amendment: All parts of the Rule have been revised. Many of these changes echo recent amendments to Federal Rule of Civil Procedure 23, while others incorporate the holding of recent Arkansas decisions and current Arkansas practice. With a few exceptions, the changes are technical and do not change Arkansas law.

Another prerequisite — the adequacy of class counsel — has been added to subdivision (a). This addition conforms the Rule to Arkansas law. *E.g., Mega Life & Health Insurance Co. v. Jacola*, 330 Ark. 261, 275, 975 S.W.2d 898, 904 (1997). Relevant factors for the circuit court's evaluation of class counsel include: counsel's work identifying and investigating potential claims, counsel's experience in handling class actions, complex litigation, and claims of the type asserted; counsel's knowledge of the applicable law; and

the resources counsel will commit to representing the class. See generally, Federal Rule of Civil Procedure 23(g). Unless a showing is made to the contrary, however, Arkansas law presumes that the class representative's counsel "will vigorously and competently pursue the litigation." *USA Check Cashers of Little Rock, Inc. v. Island*, 349 Ark. 71, 80, 76 S.W.3d 243, 247 (2002).

Subdivision (b) on the timing of the circuit court's certification decision has been amended. The former rule required a certification decision as soon as practicable after the lawsuit commenced. That requirement, however, neither captured the prevailing practice nor recognized the good reasons for delaying the certification decision, such as the need for limited discovery on the Rule 23(a) prerequisites. The revised Rule requires a decision on certification at an early practicable time, which is the current standard in the federal Rule. That standard gives the circuit court and the parties some flexibility, while leaving intact the settled Arkansas law that the court may not inquire into the merits at the certification stage. *E.g., Speights v. Stewart Title Guaranty Co., Inc.*, ___ Ark. ___, ___, ____ S.W.3d ____, ____ 2004 WL 1354279 (30 September 2004) (Supplemental Opinion Denying Rehearing).

The amendment deletes the phrase "may be conditional" from the part of subdivision (b) authorizing the circuit court to alter or amend a certification order. The deleted phrase is superfluous; the Arkansas cases on point have emphasized the circuit court's power to reconsider, affirm, alter, modify, or withdraw certification. *E.g., Fraley v. Williams Ford Tractor and Equipment Co.*, 339 Ark. 322, 347, 5 S.W.3d 423, 438-39 (1999). All of these actions spring from the power to alter or amend a certification order. This change brings the Arkansas Rule back into conformity with the federal Rule.

The amendment also replaces the phrase "before the decision on the merits" in subdivision (b) with the phrase "at any time before the court enters final judgment." This change follows an amendment to the federal Rule; it better reflects the duration of the circuit court's authority to modify its certification decision; and it should give the circuit court greater flexibility to deal with developments late in the litigation but before final judgment.

A new sentence has been added to the end of subdivision (b). As the cases make plain, the certification order must define the class in sufficiently definite terms so that the court and the parties

may identify the class members. *E.g., Ferguson v. Kroger*, 343 Ark. 627, 631-32, 37 S.W.3d 590, 593 (2001). Identifying the claims, issues, and defenses will likewise help in identifying class members and expedite the resolution of the litigation. The amendment tracks existing Arkansas law and the federal Rule. This amendment does not alter the precedent holding that the circuit court is not required to perform a rigorous analysis of the case at the certification stage. *E.g., THE/FRE, Inc. v. Martin*, 349 Ark. 507, 514, 78 S.W.3d 723, 727 (2002). But the circuit court must "undertake enough of an analysis to enable [the appellate court] to conduct a meaningful review." *See Lenders Title Co. v. Chandler*, 353 Ark. 339, 349, 107 S.W.3d 157, 162 (2003).

Subdivision (c) on notice has been rewritten and divided into subparts. The changes specify the contents of the notice in clearer terms, make a plain-statement requirement for the notice explicit, and bring the Arkansas Rule in line with the comparable federal Rule. A provision explicitly authorizing the circuit court to require notice in class actions where no monetary relief is sought has also been added. All these revisions are technical and do not change Arkansas law.

A new sentence (5) has been added to subdivision (d) to recognize the circuit court's authority to create subclasses. The Arkansas cases have assumed this authority, and implicitly approved it, for almost twenty years. *E.g., Int'l Union of Ethical, Radio and Machine Workers v. Hudson*, 295 Ark. 107, 117, 747 S.W.2d 81, 86-87 (1988); *State Farm Fire & Casualty Co. v. Ledbetter*, 355 Ark. 28, 35-36, 1295 S.W.3d 815, 820-21 (2003). The federal Rule authorizes subclasses, which are often useful. This change conforms the Rule to current Arkansas practice. Former sentence (5) has been renumbered as (6).

Subdivision (e) about dismissal and compromise has been rewritten. With some exceptions, the revised Rule restates Arkansas law in the clearer terms of Federal Rule of Civil Procedure 23(e) and incorporates current Arkansas practice. For example, proposed settlements are evaluated now for fairness, reasonableness, and adequacy. *Ballard v. Martin*, 349 Ark. 564, 79 S.W.3d 838 (2002). Subdivision (1) also requires the circuit court to hold a fairness hearing before approving any proposed settlement. This is a new requirement, though fairness hearings are routine in most class actions. Subdivision (2) requires the parties seeking approval of any settlement to file a statement identifying side agreements. This new requirement will promote fairness in settlements and

mirrors the federal Rule. Subdivision (3) gives the circuit court discretion to open a second opt-out window if the circumstances justify it. The federal Rule contains this option, and it merely recognizes the circuit court's power to fashion all appropriate relief as part of approving any proposed settlement. Finally, subdivision (4) requires court approval before an objection may be withdrawn. Objections often can, and should be, resolved by the parties. This new requirement, also drawn from the federal Rule, will help the circuit court insure the fairness of those resolutions in light of the overall proposed settlement of the litigation.

3. Subdivision (e) of Rule 26 is amended to read as follows:

(e) Supplementation of Responses. (1) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. This duty includes, but is not limited to, supplying supplemental information about the identity and location of persons having knowledge of discoverable matters, the identity and location of each person expected to be called as a witness at trial, and the subject matter and substance of any expert witness's testimony.

(2) An additional duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

The Reporter's Notes accompanying Rule 26 are amended by adding the following:

Addition to Reporter's Notes, 2006 Amendment: Subdivision (e) has been amended. The amendment strengthens a party's duty to supplement discovery responses with additional or corrected information received after the party's original response. Introductory language stating a general no-duty-to-supplement rule with exceptions has been eliminated. Former subdivisions (e)(1) and (e)(2) have been combined: there is one duty to amend, and amended responses containing supplemental information are one kind of amendment. Former subdivision (e)(3) has been renumbered as new (e)(2) and clarified. The circuit court or the parties may expand the Rule 26(e) duty to supplement. New subdivision (e) in Arkansas Rule of Civil Procedure 37 contains a companion change: if a party fails to supple-

ment discovery responses seasonably, and prejudice results, then the prejudiced party may move for any appropriate sanction from the circuit court.

4. Subdivisions (e) and (f) of Rule 37 are amended to read as follows:

(e) Failure to Supplement Responses. If a party fails to supplement responses seasonably as required by Rule 26(e), and another party suffers prejudice, then upon motion of the prejudiced party made before or at trial, the court may make any order which justice requires to protect the moving party, including but not limited to imposing any sanction allowed by subdivision (b)(2)(A)-(C) of this rule.

(f) Expenses Against State. Except to the extent permitted by statute, expenses and fees may not be awarded against the state of Arkansas under this rule.

The Reporter's Notes accompanying Rule 37 are amended by adding the following:

Addition to Reporter's Notes, 2006 Amendment: The Rule has been amended by adding a new subdivision (e) and renumbering former subdivision (e) as (f). New subdivision (e) draws on the principles embodied in the 2000 amendment to Federal Rule of Civil Procedure 37, but establishes a different rule. Under this new Arkansas Rule, when a party fails to supplement discovery responses seasonably with new information, and prejudice results, then the prejudiced party may move the circuit court for relief. New subdivision (e) gives the circuit court wide discretion, including imposing any sanction allowed by Arkansas Rule of Civil Procedure 37, in handling any failure to supplement. This new provision works in tandem with the companion change in Arkansas Rule of Civil Procedure 26(e) to strengthen every party's duty to supplement discovery responses promptly.

5. Subdivisions (a), (b), and (c) of Rule 56 are amended to read as follows:

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment

in his favor upon all or any part thereof. Absent leave of court for good cause shown, the party must file any such motion no later than 45 days before any scheduled trial date.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. Absent leave of court for good cause shown, the party must file any such motion no later than 45 days before any scheduled trial date.

(c) Motion and Proceedings Thereon.

(1) The motion shall specify the issue or issues on which summary judgment is sought and may be supported by pleadings, depositions, answers to interrogatories and admissions on file, and affidavits. The adverse party shall serve a response and supporting materials, if any, within 21 days after the motion is served. The moving party may serve a reply and supporting materials within 14 days after the response is served. For good cause shown, the court may by order reduce or enlarge the foregoing time periods. No party shall submit supplemental supporting materials after the time for serving a reply, unless the court orders otherwise. The court, on its own motion or at the request of a party, may hold a hearing on the motion not less than 7 days after the time for serving a reply. For good cause shown, the court may by order reduce the foregoing time period.

The Reporter's Notes accompanying Rule 56 are amended by adding the following:

Addition to Reporter's Notes, 2006 Amendment: Several parts of Rule 56 governing the timing of motions for summary judgment, the related briefing, and the hearing have been amended. These changes continue the effort to refine the Rule by making summary-judgment practice more fair, predictable, and efficient.

The amendments to subdivisions (a) and (b) eliminate a party's right to seek summary judgment at any time. Instead, absent good cause, a party must move at least 45 days before any scheduled trial date. This deadline allows for full briefing and a hearing on the motion before trial, which should promote more efficient use of judicial resources. In addition, it prevents a party from using a late motion for summary judgment as a stealth motion for continuance.

Subdivision (c)(1) has been amended to allow the circuit court to reduce the time periods for responses and replies. Under the former Rule, the court could only enlarge the time periods. Both reductions and enlargements must now be justified by a showing of good cause. Finally, the presumptive period between the due date for any reply and any hearing has been shortened from 14 to 7 days. This change accommodates the pre-trial deadline for filing the motion, while giving the non-moving party adequate time to prepare for the hearing in light of any reply. Revised subdivision (c)(1) also allows the circuit court to shorten the seven-day period for good cause, for example, scheduling difficulties.

B. ADMINISTRATIVE ORDER NUMBER 18

6. Subdivisions (3), (6), and (7) of Administrative Order Number 18 are amended to read as follows:

3. Civil Jurisdiction. The district court shall have original jurisdiction within its territorial jurisdiction over the following civil matters:

(a) Exclusive of the circuit court in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars ($100), excluding interest, costs, and attorney's fees;

(b) Concurrent with the circuit court in matters of contract where the amount in controversy does not exceed the sum of five thousand dollars ($5,000), excluding interest, costs, and attorneys' fees;

(c) Concurrent with the circuit court in actions for the recovery of personal property where the value of the property does not exceed the sum of five thousand dollars ($5,000); and

(d) Concurrent with the circuit court in matters of damage to personal property where the amount in controversy does not exceed the sum of five thousand dollars ($5,000), excluding interest and costs.

. . .

6. Small Claims Magistrate.

(a) At the request of the majority of the district judges of a district court, with the concurrence of a majority of the circuit court judges of a judicial circuit, the Administrative Judge of the judicial circuit may designate one or more licensed attorney(s) to serve as a Small Claims Magistrate to preside over the Small Claims Division of the

district court. A Small Claims Magistrate shall be deemed the "judge" as that term is used in Rule 10 of the District Court Rules. A Small Claims Magistrate shall be subject to the superintending control of the district judges of the district court.

(b) A Small Claims Magistrate shall possess the same qualifications as a district court judge. The appointment shall be in writing and filed with the District Court Clerk.

7. *Special Judges.*

Special district judges shall be appointed or elected in accordance with Administrative Order Number 1 and A.C.A. § 16-17-210. A special district judge shall have the same qualifications, powers, and authority as a regular district judge.

The Court Notes accompanying Administrative Order Number 18 are amended by adding the following:

Court Notes, 2006:

New section 6 on small claim magistrates and new section 7 on special judges have been added. A special district judge shall be appointed or elected in the same manner as a special circuit judge. Section 3 has been amended to clarify that the jurisdictional amounts in contract cases are exclusive of costs and attorney's fees, as well as interest. In cases involving personal property, the jurisdictional amount is exclusive of interest and costs only because an award of attorney's fees will not be available.

C. ARKANSAS RULES OF APPELLATE PROCEDURE – CIVIL

7. Subdivision (b)(3) of Rule 4 is amended to read as follows:

(3) Upon a showing of failure to receive notice of the judgment, decree or order from which appeal is sought, a showing of diligence by counsel, and a determination that no party would be prejudiced, the circuit court shall, upon motion filed within 180 days of entry of the judgment, decree, or order, extend the time for filing the notice of appeal for a period of fourteen (14) days from the day of entry of the extension order. Notice of any such motion shall be given to all other parties in accordance with Rule 5 of the Arkansas Rules of Civil Procedure. Expiration of the 180-day period specified in this paragraph does not limit the circuit court's power to act pursuant to Rule 60 of Arkansas Rules of Civil Procedure.

The Reporter's Notes accompanying Rule 4 are amended by adding the following:

Addition to Reporter's Notes, 2006 Amendment: Subdivision (b)(3) has been amended to reflect the holding in *Arkco Corp. v. Askew*, 360 Ark. 222, 200 S.W.3d 444 (2004). In addition to satisfying the Rule's other conditions, the party seeking to reopen the time to file a notice of appeal must demonstrate diligence by the party's counsel in attempting to find out if the circuit court had entered the judgment, decree, or order from which appeal is sought.

8. Subdivision (b)(3) of Rule 5 has been amended to read as follows:

(3) If the appellant has obtained the maximum seven-month extension available from the circuit court, or demonstrates (by affidavit or otherwise) an inability to obtain entry of an order of extension, then before expiration of the period prescribed by subdivision (a) of this rule or a prior extension order, the appellant may file with the clerk of the Supreme Court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

The Reporter's Notes accompanying Rule 5 are amended by adding the following:

Addition to Reporter's Notes, 2006 Amendment: Rule 5(b)(3) has been revised to embody the holding of *Coggins v. Coggins*, 353 Ark. 431, 108 S.W.3d 588 (2003) (*per curiam*). Before the supreme court will accept a partial record and entertain a petition for a writ of certiorari to complete the record, the appellant must exhaust all extensions available from the circuit court or show that no extension could be obtained. In the latter situation, the appellant must demonstrate that, notwithstanding a good faith effort to get the record prepared on time and secure all available extensions of the record due date from the circuit court, the appellant was unable to get an extension order entered. The appellant should make this showing with references to the partial record filed with the supreme court and, if necessary, an affidavit describing the circumstances.

D. RULES OF THE SUPREME COURT AND COURT OF APPEALS

9. Subdivision (b) of Rule 6-7 has been amended, and the rule reads as follows:

Rule 6-7. Taxation of costs.

(a) *Affirmance.* The appellee may recover brief costs not to exceed $3.00 per page; total costs not to exceed $500.00.

(b) *Reversal.* The appellant may recover (1) brief costs not to exceed $3.00 per page with total costs of the brief not to exceed $500.00, (2) the filing fee of $100.00, (3) the circuit clerk's costs of preparing the record, and (4) the court reporter's cost of preparing the transcript.

(c) *Affirmed in part and reversed in part.* The Court may assess appeal costs according to the merits of the case.

(d) *Imposing or withholding costs.* Whether the case be affirmed or reversed, the Court will impose or withhold costs in accordance with Rule 4-2(b).

IN RE: REGULATIONS of
THE BOARD of LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered May 25, 2006

PER CURIAM. At the request of the Board of Law Examiners, we amend Regulation 4 to read as follows:

4. The character questionnaire required by this rule shall bear the original signature of the applicant.

IN RE: RULES GOVERNING ADMISSION TO THE BAR; RULES FOR MINIMUM CONTINUING LEGAL EDUCATION; AND, REGULATIONS of THE ARKANSAS CONTINUING LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Opinion delivered June 1, 2006

PER CURIAM. We have various sets of rules or regulations affecting the annual lawyer license fee and the practice status of attorneys. As each of these provisions has been adopted or changed over the years, inconsistency has developed. By way of example, the Rules for Minimum Continuing Legal Education have an "inactive" status, while the Procedures of the Supreme Court Regulating Professional Conduct of Attorneys speak in terms of "voluntary inactive" status, and the IOLTA compliance statement inquires as to whether an attorney is engaged in the "practice of law". These various categories affect an attorney's license fee and CLE requirements and should be made consistent. For this reason, we adopt amendments to these rules, regulations or procedures as set forth in the following paragraphs.

The amendments noted below are effective January 1, 2007. A copy of each of the current rules or regulations, with deletions or additions highlighted, follows this per curiam order.

RULES GOVERNING ADMISSION TO THE BAR OF ARKANSAS

We amend Rule VII. A. of the Rules Governing Admission to the Bar of Arkansas to read as follows:

A. LICENSE FEE. An annual license fee as set by the Court, from time to time, shall be imposed upon each attorney actively licensed to practice law in this State. The fee shall be paid annually to the Clerk of the Arkansas Supreme Court. The amount shall be payable January 1 of each year, and must be paid not later than March 1 of each year. Funds thus realized shall be used as ordered by the Supreme Court of the State of Arkansas.

Attorneys licensed in this State who have transferred to voluntary inactive status pursuant to Section 25 A.(7) of the Procedures of the Arkansas Supreme Court Regulating Profes-

sional Conduct of Attorneys at Law, or its' successor provision, shall pay fifty percent (50%) of the fee required of actively licensed attorneys.

RULES FOR MINIMUM CONTINUING LEGAL EDUCATION

We amend Rule 2.(D) of the Arkansas Rules for Minimum Continuing Legal Education (CLE) to read as follows:

2.(D) Inactive Status:

(1) At anytime during a reporting period, an attorney on active status, with the exception of sitting judges, may take inactive status for the purpose of these rules. Such status may be secured by filing a petition in accord with Section 25 A.(7) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures) or its' successor provision. By taking inactive status, the attorney shall be exempt from the minimum educational requirements of rule 3 for that reporting period and subsequent reporting periods.

(2) An attorney may return to active practice by petition filed as set forth in Section 23 of the Procedures or its' successor provision.

(3) Attorneys who return to active practice in accord with the preceding paragraph shall obtain thirty-six (36) hours of approved continuing legal education between the date of return to active status and the end of the next succeeding reporting period. The date of return to active status will be the date upon which the order granting return to active status is filed with the Clerk of the Supreme Court of Arkansas. Twelve (12) of the thirty-six (36) hours shall be in a basic skills course, or bar examination review course, either of which must be approved by the Board.

REGULATIONS OF THE ARKANSAS CONTINUING LEGAL EDUCATION BOARD

As set forth in the preceding section, election of inactive status for CLE purposes will now be administered through the Procedures Regulating the Professional Conduct of Attorneys At Law. Thus, the current Regulation 2.02 (1), which governs the reinstatement fee, is no longer necessary. We delete Regulation 2.02 (1) from the Regulations of the Arkansas Continuing Legal Education Board.

LICENSE FEE FOR SENIOR MEMBERS OF THE BAR

Consonant with Rule VII. A. of the Rules Governing Admission to the Bar of Arkansas, in recent years we have issued several per curiam orders pertaining to the amount of the annual license fee. See: *In Re Bar of Arkansas License Fee*, 317 Ark Appendix 686, 878 S.W.2nd 409 (1994); *In Re Bar of Arkansas License Fees*, a per curiam order entered November 1, 2001; and, *In Re: Penalty for Late Payment of Bar of Arkansas Dues*, a per curiam order delivered on November 21, 2002. In each of those orders, we have made a provision for a reduced fee for attorneys who are 65 years of age or older. The first of those per curiam orders, issued in 1994, required attorneys seeking the reduced fee to "certify that their earnings do not exceed the amount that would prevent a person of their age from drawing the maximum social security benefits". The most recent two per curiam orders do not contain that language. Beginning with the annual license fees due January 1, 2007, attorneys shall be entitled to the reduced annual license fee if they are age 65 or older and they certify that their primary source of income does not derive from the practice of law. The reduced fee shall be in the amount set in the per curiam orders of November 1, 2001 and November 21, 2002.

IOLTA

Section 1.15(11) of the Model Rules of Professional Conduct governs the IOLTA compliance statement attorneys must sign each year when they pay their annual license fee. The content of that compliance statement shall be in a "manner designated by the Clerk of the Supreme Court". The Court is informed that the Clerk, in cooperation with the Board of the Arkansas IOLTA program, will be modifying that compliance statement to be consistent with the changes set out above.

Deletions are "stricken through"; additions are in **bold**.

Rules Governing Admission to the Bar

Rule VII

A. LICENSE FEE. An annual license fee as set by the court, from time to time, shall be imposed upon each attorney actively licensed to practice law in this State. ~~An annual license fee in an~~

~~amount equal to fifty per centum (50%) of the fee required of an actively licensed attorney is hereby imposed upon each attorney licensed in this State who has transferred to voluntary inactive status pursuant to Section 25 A.(7) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law or its successor provision.~~ The fee shall be paid annually to the Clerk of the Arkansas Supreme Court. The amount shall be payable January 1 of each year, and must be paid not later than March 1 of each year. Funds thus realized shall be used as ordered by the Supreme Court of the State of Arkansas.

Attorneys licensed in this State who have transferred to voluntary inactive status pursuant to Section 25 A.(7) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, or its successor provision, shall pay fifty percent (50%) of the fee required of actively licensed attorneys.

CLE Rules

Rule 2.(D) Inactive Status

(1) At anytime during a reporting period, an attorney on active status, with the exception of sitting judges, may take inactive status pursuant to these rules. **Such status may be secured by filing a petition in accord with Section 25 A.(7) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures) or its successor provision.** ~~Inactive status, for the purpose of these rules only, means that an attorney, subsequent to declaration of inactive status, will not engage in the practice of law during the remainder of that reporting period or subsequent reporting periods. Election of inactive status must be in writing.~~ By taking inactive status, the attorney shall be exempt from the minimum educational requirements of Rule 3 for that reporting period and subsequent reporting periods.

(2) ~~If, during any reporting period, an attorney who has previously declared inactive returns to the practice of law, the attorney must immediately so advise the Board. Such attorney, who is returning to active status, shall be subject to a reinstatement fee, to be set by the Board, in an amount not to exceed $250.00. The attorney will receive no educational credits for courses taken before the rein-~~

~~statement fee has been paid. Provided that the attorney returning to active practice notifies the Board and pays the reinstatement fee, then qualified continuing legal education credits may be applied pursuant to paragraph 2.(D)(3) below.~~

An attorney may return to active practice by petition filed as set forth in Section 23 of the Procedures or its successor provision.

(3) ~~Such attorneys shall be required to obtain thirty-six (36) hours of qualified continuing legal education between the date of return to active status (which is the date the reinstatement fee is received by the Board) and the end of the next succeeding reporting period. Twelve (12) of those hours will be a basic skills course, or bar examination review course, either of which must be approved by the Board~~

Attorneys who return to active practice in accord with the preceding paragraph shall obtain thirty-six (36) hours of approved continuing legal education between the date of return to active status and the end of the next succeeding reporting period. The date of return to active status will be the date upon which the order granting return to active status is filed with the Clerk of the Supreme Court of Arkansas. Twelve (12) of the thirty-six (36) hours shall be in a basic skills course, or bar examination review course, either of which must be approved by the Board.

CLE Regulations

2.02 Inactive Status

(1) Reinstatement Fee

~~The reinstatement fee, pursuant to Rule 2.(D)(2), shall be FIFTY DOLLARS ($50.00). The Board, in its discretion, may waive this fee under extraordinary circumstances.~~

Appointments to Committees

IN RE: CRIMINAL JURY INSTRUCTIONS COMMITTEE

Supreme Court of Arkansas
Opinion delivered April 20, 2006

PER CURIAM. The Honorable Gordon Webb, of Harrison, is hereby reappointed to the Criminal Jury Instructions Committee for a three-year term to expire April 2009.

The Court extends its thanks to Mr. Webb for accepting this reappointment to this most important committee and thanks him for his dedicated service.

IN RE: CRIMINAL JURY INSTRUCTIONS COMMITTEE

Supreme Court of Arkansas
Opinion delivered April 27, 2006

PER CURIUM. Raymond R. Abramson, of Clarendon, is hereby appointed to the Criminal Jury Instructions Committee for a three-year term to expire April 2009.

The Court extends its thanks to Mr. Abramson for accepting this appointment to this most important committee.

IN RE: CRIMINAL JURY INSTRUCTIONS COMMITTEE

Supreme Court of Arkansas
Opinion delivered May 4, 2006

PER CURIAM. Bruce Buck, of Harrison, Billy Bob Webb, of Rogers, and Joe Perry, of Marianna, are hereby appointed to the Criminal Jury Instructions Committee. The Court extends its thanks to Mr. Buck, Mr. Webb, and Mr. Perry for accepting this appointment to this most important Committee.

In addition to the 14 regular members, including the Court's liaison Justice, authorized by per curiam on December 13, 1993, we believe that the input of the ex-officio members of the Committee is valuable with respect to the issues considered by the Committee. We would like to thank Paula Casey for serving as reporter, Robert McMahan, Prosecutor Coordinator, for serving as an advisor and Larry Brady for serving as staff attorney.

The Court expresses its gratitude to Melody Piazza, Ellen Reif, and Deborah Sallings, whose terms have expired, for their years of service on the Committee.

IN RE: SUPREME COURT COMMITTEE ON THE UNAUTHORIZED PRACTICE of LAW

Supreme Court of Arkansas
Opinion delivered June 1, 2006

PER CURIAM. Jim Jackson, Esq., of Bryant, Second Congressional District, is appointed to the Supreme Court Committee on the Unauthorized Practice of Law for a three-year term to expire on May 31, 2009. The court thanks Mr. Jackson for accepting appointment to this important Committee.

Ms. Penny Rea of Little Rock and David Beatty, Esq., of Lewisville are reappointed to the Committee for three-year terms to expire on May 31, 2009. We thank Ms. Rea and Mr. Beatty for their continued service.

The court expresses its appreciation to Hal Kemp, Esq., of Little Rock, whose term has expired, for his service to the Committee.

IN RE: JUDICIAL DISCIPLINE and DISABILITY COMMISSION

Supreme Court of Arkansas
Opinion delivered June 15, 2006

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas and Act 637 of 1989, the court reappoints to the Judicial Discipline and Disability Commission the Honorable William Storey, Circuit Judge, Fourth Judicial Circuit. This term expires on June 30, 2012. We reappoint to an alternate position on the Commission the Honorable David Laser, Circuit Judge, Second Judicial Circuit. This term expires on June 30, 2012. The court thanks Judges Storey and Laser for accepting reappointment to the Commission.

To fill the alternate position being vacated by the Honorable Olly Neal of the Arkansas Court of Appeals, we appoint the Honorable Joyce Williams Warren, Circuit Judge, Sixth Judicial Circuit. This term expires on June 30, 2012. We thank Judge Warren for accepting appointment to the Commission. We also thank Judge Neal for his service to the Commission.

Professional Conduct Matters

IN RE: Thomas James "T.J." HIVELY
Arkansas Bar No. 75060

06-298

Supreme Court of Arkansas
Opinion delivered April 6, 2006

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 T. J. Hively, Batesville, Arkansas, to practice law in the State of Arkansas. Mr. Hively'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: RICHARD L. WOMMACK
Arkansas Bar No. 62028

06-356

Supreme Court of Arkansas
Opinion delivered April 13, 2006

Petition for Voluntary Surrender of Law License; granted.

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, and in lieu of further disciplinary and disbarment proceedings, we hereby accept the voluntary surrender of the law license of Richard L. Wommack, Fayetteville, Arkansas, to practice law in the State of Arkansas. Mr.

Wommack'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: Wesley John KETZ
Arkansas Bar No. 76065

06-460

Supreme Court of Arkansas
Opinion delivered May 4, 2006

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 Wesley John Ketz, Batesville, Arkansas, to practice law in the State of Arkansas. Mr. Ketz'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: Charles Edwin PFIESTER
Arkansas Bar No. 91263

06-461

Supreme Court of Arkansas
Opinion delivered May 11, 2006

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the voluntary surrender of the law license of Charles Edwin Pfiester, Mountain View, Arkansas, to practice law in the State of Arkansas. There are no pending disciplinary complaints against Mr. Pfiester. Mr. Pfiester's name shall be removed from the registry of licensed attorneys, and he relinquishes his privilege to practice law in this state.

It is so ordered.

IN RE: Joe Douglas WRAY,
Arkansas Bar. No. 81171

06-617

Supreme Court of Arkansas
Opinion delivered June 22, 2006

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 Joe Douglas Wray, El Dorado, Arkansas, to practice law in the State of Arkansas. Mr. Wray'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.

Ceremonial Observances

IN RE: THE REPORTER of DECISIONS of THE ARKANSAS SUPREME COURT

Supreme Court of Arkansas
Opinion delivered May 25, 2006

PER CURIAM. On the occasion of Marlo Bush Krueger's recent service as Interim Reporter of Decisions at our request, the Supreme Court wishes to honor her and express our gratitude for the loyalty and respect that she displayed throughout her service to this court over the years. Ms. Krueger set the highest standards, performing her duties with unexampled devotion and a professional's pride.

The court wishes Marlo Bush Krueger Godspeed and great joy in all future efforts.

IN RE: APPOINTMENT of THE REPORTER of DECISIONS of THE ARKANSAS SUPREME COURT

Supreme Court of Arkansas
Opinion delivered May 25, 2006

PER CURIAM. Kristin A. Cordell, Attorney, of Little Rock, is appointed to the position of Reporter of Decisions of the Arkansas Supreme Court, effective March 20, 2006.

Ms. Cordell replaces William B. Jones, Jr., Attorney, who resigned from the position, and Marlo Bush Krueger, who served as interim reporter.