

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN RE: ARKANSAS BAR ASSOCIATION PETITION TO
REVISE PROCEDURAL RULES of THE ARKANSAS
JUDICIAL DISCIPLINE and DISABILITY COMMISSION

07-444

Supreme Court of Arkansas
Opinion delivered May 24, 2007

PER CURIAM. Amendment 66 to the Arkansas Constitution created the Arkansas Judicial Discipline and Disability Commission, and subsection (f) of the amendment provides that the Arkansas Supreme Court shall make procedural rules implementing this amendment. We adopted rules in 1989. *In Re Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission*, 298 Ark. App'x 654, 770 S.W.2d 116 (1989). Some amendments have been made over the years, and in 2005, the court requested the Arkansas Bar Association to perform a comprehensive review of the rules and report its findings. In response to this request, the Bar Association appointed the Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission composed of six circuit judges and nine lawyers.

The Task Force submitted its report to the House of Delegates on January 20, 2007, and the House of Delegates directed the Bar Association to petition the supreme court to revise the rules of the Commission. The petition filed on May 2, 2007, is now before the court.

First, we thank the Bar Association for assisting the court in this endeavor and especially the members of the Task Force: Judges Kathleen Bell, Elizabeth Danielson, Robert Edwards, Mary Ann Gunn, Willard Proctor, and Hamilton Singleton; Attorneys Vince Chadick, Nate Coulter, Thomas Curry, Barbara Halsey (now circuit judge), Larry Jegley, Sean Keith, Gary Nutter, Kent Rubens, and the Task Force's chair, Robert Cearley, Jr.

The report is attached as Exhibit A to the petition, a Summary of Recommendations is attached as Exhibit B, and Recommended Changes in Rules, Policies, and Guidelines are attached as Exhibit C. To assist our deliberations on these proposals, we solicit comments from the bench and bar. We have appended the petition and exhibits to this per curiam order and publish them for comment. Comments should be made in writing

before September 1, 2007, and they should be addressed to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Judicial Discipline and Disability Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

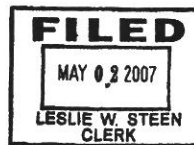
07-444

IN THE SUPREME COURT OF ARKANSAS

ARKANSAS BAR ASSOCIATION

PETITIONER

**IN RE: PROCEDURAL RULES OF THE
ARKANSAS JUDICIAL DISCIPLINE
AND DISABILITY COMMISSION**



PETITION

1

The Arkansas Bar Association, at the direction of its House of Delegates, and acting through its President, James D. Sprott, and Past Presidents, A. Glenn Vassar and Frederick S. Ursery, and by Robert M. Cearley, Jr., chair of its Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission, petitions the Court to revise the rules of the Commission as set out below, and in support states:

1. This Court is authorized and directed to promulgate rules regarding all matters of Commission operations and all disciplinary and disability proceedings pursuant to Amendment 66 to the Constitution of Arkansas, and Act 637 of 1989 and subsequent Acts codified as Ark. Code Ann. § 16-10-401, *et seq.*
2. The Court first adopted rules for the Commission by *PER CURIAM* on May 8, 1989; and amended May 14, 1990; July 16, 1990; March 16, 1992; July 6, 1992; and July 12, 1993.
3. At the request of the Court, Petitioner Arkansas Bar Association appointed its Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission in May 2005 to assist the Court in discharging its responsibility.
4. The Task Force, comprised of 6 circuit judges and 9 lawyers, met on 10 occasions over 18 months, completed its assignment, and submitted its Report the

Arkansas Bar Association House of Delegates on January 20, 2007. A copy of the Report is attached as Exhibit A.

5. For the Court's convenience a Summary of Recommendations is attached as Exhibit B, and the specific Rule, Guideline and Policy changes recommended are attached as Exhibit C.

Wherefore, Petitioner asks the Court to exercise its constitutional authority to adopt the rules and revisions and direct the policy and guideline changes as set out in Exhibits A, B, and C.

Respectfully submitted,

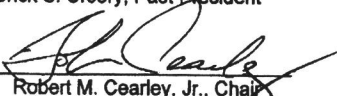
ARKANSAS BAR ASSOCIATION

James D. Sprott, President

A. Glenn Vasser, Immediate Past President

Frederick S. Ursery, Past President

BY:


Robert M. Cearley, Jr., Chair
Task Force on Procedural Rules of the
Arkansas Judicial Discipline and
Disability Commission

Arkansas Bar Association
Report of the Task Force
on
Procedural Rules of the Arkansas Judicial Discipline and Disability Commission

Background

Arkansas Discipline and Disability Commission

The Arkansas Judicial Discipline and Disability Commission was established in 1989 by Amendment 66 to the Arkansas Constitution, and implemented by Act 637 of 1989, codified as Ark. Code Ann. § 16-10-401 *et seq.* The Commission is comprised of nine members – three lawyers, three judges, and three public members. Alternates are also appointed for each member, and serve "upon the call of, or on behalf of, the chairman." (See Commission Rule 1. E.) The Commission has six full-time employees, including an Executive Director, Deputy Executive Director, and Investigator. Jurisdiction of the Commission extends to about 400 judges of the appellate, circuit, district, city, and police courts, as well as retired judges who serve by assignment, and others who perform judicial functions, such as referee, special master, court commissioner, and magistrate. According to the last two Annual Reports, the Commission receives and disposes of approximately 300 complaints each year, operating on an annual budget of about \$460,000.

Rules governing the operation of the Commission were adopted by the Arkansas Supreme Court by *per curiam* of May 8, 1989, and amended in 1990, 1992, and 1993. Rules 1 - 7 deal with administrative matters, jurisdiction, and disclosure of information. Rule 10 covers interim sanctions. Rule 12 provides for Supreme Court review of formal decisions of the Commission, and Rules 13-14 cover mental and physical disability and involuntary retirement. Rules 8, 9, and 11 set out the procedures to be followed to investigate and adjudicate complaints. The Commission has also adopted a number of Guidelines and Operating Policies under authority granted by Rule 2. All can be found on the Commission's website at <http://www.state.ar.us/jdd> and in the Appendix to this report.

Task Force on Disciplinary Rules and Procedures

In response to the request of the Arkansas Supreme Court, Association President Fred Ursery appointed this Task Force on May 20, 2005, to review the rules and procedures governing the operation of the Commission, invite and evaluate comments and suggestions on how they might be improved, and report its recommendations to the Board of Governors. The Task Force, consisting of six judges and nine lawyers, met on 10



occasions over 18 months. Its efforts focused on Commission Rules 8, 9 and 11, and the receipt, investigation, and adjudication of complaints.

At its first meeting, Arkansas Judicial Discipline and Disability Commission Chairman, Mike Gott, and Executive Director, James Badami, appeared at the invitation of the Task Force to explain how the Commission works. They shared their views on the strengths and weaknesses of current rules and procedures and invited questions, comments, and suggestions on how they might be improved. The Executive Director subsequently wrote to the Task Force asking that it address several issues of concern. (See Appendix).

At its second meeting, former Commissioners and Circuit Judges, David B. Bogard and John B. Plegge; and former Commissioner Laurie Bridewell offered their comments and observations on the work of the Commission and how its operations might be improved.

At the third and fourth meetings, Circuit Judges Ben Story, Jim Spears, Phil Shirron, and David Switzer presented the Recommendation of the Arkansas Judicial Council containing comprehensive suggestions for changes in the Commission's rules and procedures.

Mary Devlin, Regulation Counsel of the American Bar Association Center for Professional Responsibility, appeared at the fifth meeting to present the Model Rules For Judicial Disciplinary Enforcement developed under the auspices of the ABA.

At its sixth meeting, the Task Force again heard from the Executive Director of the Commission, accompanied by Jay Wills, Deputy Executive Director and Legal Council to the Commission, who presented a written response to the Recommendation of the Judicial Council, and responded to questions. Stark Ligon, Executive Director of the Supreme Court Committee on Professional Conduct, was also present by invitation and offered his comments and observations on issues common to the Committee and the Commission.

The remainder of the meetings were spent assimilating and analyzing information and formulating the report and recommendations that follow. The minutes of all meetings can be found in the Appendix to this report.

The Task Force undertook a thorough review of the Commission's rules and procedures, published Guidelines and Policies, the Recommendation of the Arkansas Judicial Council and response of the Commission staff, and compared them to the ABA Model Rules and the rules of several sister states.

The Task Force also reviewed the following publications and references:

2004 Annual Report and the *2005 Annual Report* of the Arkansas Judicial Discipline and Disability Commission

How Judicial Conduct Commissions Work, published by the American Judicature Society

Model Rules For Judicial Disciplinary Enforcement published by the American Bar Association and the State Justice Institute

The disciplinary rules of numerous states, particularly those of Kansas, Tennessee, and Wyoming.

All sources except the disciplinary procedures of other states appear in the Appendix to this report.

Summary of Recommendations

The Task Force recommends the action indicated in each of the following areas:

1. **Intake Procedures and Complaint Forms** — adoption by the Commission of a new sworn or verified complaint form and intake instructions pursuant to authority granted in Rule 2, and abrogation of the “sworn complaint” and “statement in lieu of complaint” provided for in Rule 8. E. in favor of a formal statement of allegations that meets all notice and specificity requirements of due process (*This can be accomplished without a rule change*);
2. **Anonymous Complaints and Media Based Complaints** — modification of current Rule 8. A. to require that all but anonymous complaints be signed;
3. **Contact with Potential Witnesses** — modification of current Rule 8 as spelled out in Proposed Rule 8, and adoption of appropriate Guidelines and Policies governing contact with potential witnesses and dissemination of information;
4. **Ex Parte Communication** — adoption of a new Rule 11 prohibiting *ex parte* communication on matters of substance between persons involved in the investigation and persons involved in the adjudication of a complaint (*to replace current Rule 11 which is eliminated by Proposed Rules 8 and 9*);
5. **Use of Separate Investigation Panels and Hearing Panels** — adoption of new rules to involve Commission members and Alternates in early decision-making on complaints and investigations (*See Proposed Rules 8 and 9, and Proposed Rule 1. F.*);
6. **Redundancy in Hearing Procedures — Number of Appearances** — abrogation of current Rules 8 and 9 and adoption of proposed Rules 8 and 9 to alleviate the “screening hearing” and the “Probable Cause” hearing and to provide for screening,

investigation and hearing of complaints by separate Investigation Panels and Hearing Panels (*See Proposed Rules 8 and 9*).

7. Private/Informal Disposition of Complaints — rejection of the suggestion of private or informal disposition of complaints;

8. Jurisdiction — Ambiguities and Conflicts Between Rules 6 and 12 — adoption of revised Rule 6 to confirm jurisdiction of the Commission over conduct both prior to and during service in judicial office and jurisdiction of the Supreme Court Committee on Professional Conduct over the conduct of former judges, even if already adjudicated by the Commission; and,

9. Limitation of Actions/Disposition of Complaints — adoption by Rule of a timetable for adjudication of complaints (*See Proposed Rule 15*).

These recommendations are further explained below.

Recommendations of the Task Force

1. Intake Procedures and Complaint Forms

This topic implicates two stages of the disciplinary process, the intake complaint and the formal complaint, and Rules 2 and 8B which give the Commission authority to adopt appropriate forms, initiate and conduct investigations, and receive a "sworn complaint" or prepare a "statement of allegations" where "sufficient cause to proceed" is found. Commission Operating Policy F.3. covers the same subjects.

Intake Complaint

The Commission's practice at the time the Task Force began its work was to send a complaint form and a document entitled, "How To File A Complaint Against A Judge" to anyone who contacted the Commission alleging judicial misconduct. (*See Appendix*). One of the criticisms of this practice was that the complaint form was suggestive of misconduct as it included a section inviting the complainant to simply enter a check mark in front of selected allegations of misconduct. The Arkansas Judicial Council's Recommendation includes a new instruction sheet and a new form for the intake complaint. The Commission's Executive Director indicated at the June 2006 meeting of the Task Force his willingness to accept the Council's recommendation to eliminate the multiple choice allegations of misconduct and adopt a neutral complaint form. The Commission apparently agreed, and reportedly this has now been done; the new Complaint form currently in use by the Commission is attached. (*See Appendix*). The complaint form recommended by the Task Force is virtually identical except that it must be sworn or affirmed under penalty of perjury, a formality the Task Force believes is essential.

The Task Force recommends the use of the following Intake Instruction cover sheet, derived from that employed by the Arkansas Supreme Court Committee on Professional Conduct, and Complaint Form, both adapted from the Recommendation of the Judicial Council:

Arkansas Judicial Discipline & Disability Commission
Tower Building, Suite #1060
Little Rock, Arkansas 72201
Phone: (501)682-1050 Fax (501)682-1049

PLEASE READ CAREFULLY

The Judicial Discipline and Disability Commission is an independent state agency that receives and investigates complaints concerning judges. The Commission has the authority to discipline or recommend discipline to the Arkansas Supreme Court for judges who are in violation of the Arkansas Code Of Judicial Conduct adopted by the Supreme Court. The Commission may issue a public admonishment, reprimand, or censure. For more serious violations, the Commission may make recommendations to the Arkansas Supreme Court to impose sanctions that include removal from the bench, suspension from the bench with or without pay, leave with or without pay, or involuntary retirement.

The Commission's authority is limited to violations of the Arkansas Code of Judicial Conduct and the sanctions set out above. It has no authority to compel a judge to take any particular course of action nor does the Commission become involved in litigation of legal matters. Please understand that the Commission cannot represent you, give you any legal advice, or change the outcome of a court decision.

If you feel that a judge has acted in a manner that violates the Arkansas Code Of Judicial Conduct, fill out as completely as possible the attached complaint form, and return it to this office. Include any additional documentation that you believe is relevant and material to your complaint. If sufficient cause is found to file a formal complaint, some or all of your supporting documentation may be included as exhibits. **Please provide a narrative account of the judge's actions of which you complain that is FACTUAL.** Conclusory statements such as, "He's a liar," "She didn't do me right," "He's incompetent," etc., have no evidentiary value and do not assist in the evaluation of your complaint.

The Commission will review the information in your complaint form, conduct any necessary investigation, and advise you whether your concerns fall within the Commission's limited authority. Each complainant will be informed by letter whether a complaint states a basis for further consideration. If after initial investigation it appears that there is sufficient cause to proceed, the Commission will prepare a formal complaint which will be sent to the judge

for a response. The complainant will be provided a copy of any response and have the opportunity for rebuttal, if appropriate. Any rebuttal will be made available to the respondent judge. All these documents will then be forwarded to the Commission for review and action. You will be advised in writing of the Commission's final action. In some instances, the Commission will conduct a hearing on a complaint. If that should occur, you may have the opportunity to appear and testify at the hearing. Copies of the Arkansas Code of Judicial Conduct can be found at the following website <http://courts.state.ar.us> under "Judicial Discipline & Disability Commission."

Arkansas Judicial Discipline & Disability Commission
 Tower Building - Suite # 1060 - 323 Center Street
 Little Rock, AR 72201
 Phone: (501) 682-1050 / FAX: (501) 682-1049
 Email: jddc@arkansas.gov

COMPLAINT FORM

Please type or print all information

I hereby request an investigation of _____ of the _____
(Judge's name)
 _____ Court in _____, _____ Arkansas.
(City) (County)

Your Name: _____

Mailing Address: _____

Phone: Daytime () _____ Evening () _____

Cellular Phone () _____ Email address: _____

STATEMENT OF FACTS

1. State below the specific details of what the judge did that you think constitutes misconduct or indicates disability. (Please type or print legibly in black ink.)

ATTACH ADDITIONAL SHEET(S) IF NEEDED.

2) Did you have a case before this judge? yes no
If yes, is the case still pending? yes no

3) When and where did the ethical misconduct occur?

Date: _____ Time: _____ Location: _____

4) If your complaint arose from a court case, please provide the following information:

Case Name: _____ Case Number: _____

Plaintiff's information:

Defendant's information:

Name _____

Name _____

Address _____

Address _____

Daytime phone _____

Daytime phone _____

Attorney's information (Plaintiff):

Attorney's information (Defendant):

Name _____

Name _____

Address _____

Address _____

Phone _____

Phone _____

Additional Attorney's Information (use additional pages if necessary):

Name _____

Name _____

Address _____

Address _____

Phone _____

Phone _____

Represented _____

Represented _____

What type of case gives rise to this complaint? Please check one.

criminal; small claims; civil; probate;
 domestic (family) relations; other (specify) _____

How are you interested in the case? Please check one.

plaintiff/petitioner; defendant/respondent; unrelated to a case;
 attorney for _____; witness for _____;
 family member of _____; other (specify) _____

5) List documents you have attached that help support your complaint that the judge has engaged in misconduct or has a disability:

6) List documents that are not attached but will be needed by the Commission to support your complaint and may help in the Commission's investigation:

7) Identify, if possible, any other witnesses to the judge's conduct: (example: reporters, bailiffs, clerks, court reporters, law enforcement officers, or other attorneys, plaintiffs, defendants or witnesses that were present at the time).

Name: _____
Address: _____

Phone: _____

NOTE: STATE LAW PROVIDES THAT THE JUDICIAL DISCIPLINE & DISABILITY COMMISSION'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL. FILING A COMPLAINT IS NOT A SUBSTITUTE FOR APPEAL AND HAS NO EFFECT ON YOUR LEGAL OR APPELLATE RIGHTS. THE APPELLATE PROCESS IS SUBJECT TO STRICT DEADLINES AND YOU SHOULD IMMEDIATELY OBTAIN LEGAL ADVICE ABOUT YOUR APPELLATE REMEDIES.

I request that the above complaint, supported by the Statement of Facts, be investigated by the Judicial Discipline & Disability Commission and that appropriate action be taken.

I swear or affirm under penalty of perjury that the information furnished is true and correct to the best of my knowledge, information, and belief.

Signature: _____ **Date:** _____

The Task Force believes that these changes provide meaningful guidance to the complainant without suggesting misconduct on the part of the judge.

Formal Statement of Allegations

When, after initial investigation and evaluation, sufficient cause to proceed is found, current Rule 8E and Commission Operating Policy F.3. provide for preparation and filing of "a detailed, signed, sworn complaint against the judge." At the first meeting of the Task Force, the Executive Director suggested that this "sworn complaint" is redundant and should be eliminated in favor of a statement of allegations that would meet all due process notice and specificity requirements. The Judicial Council's Recommendation is similar, suggesting the following language be adopted by Rule:

The formal judicial complaint form should state a cause of action. It should state the alleged Code of Judicial Conduct that has been violated and the specific facts that support the alleged violation.

The Task Force supports replacing the "sworn complaint" or "statement in lieu of complaint" with a formal statement of allegations that cites specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support of the alleged violation(s). Appropriate language is incorporated in the recommended changes to Rules 8, 9, and 11, below. This proposed rule change would accommodate all parties and address their concerns. (*Current Rules 8, 9, and 11 are combined and substantially rewritten in Proposed Rules 8 and 9, eliminating current Rule 11 which is replaced by Proposed Rule 11 on ex parte communication.*)

2. Anonymous Complaints and Media Based Complaints

Commission Rule 5 provides that the Executive Director "shall . . . (c)onsider information from any source and receive allegations and complaints." The Executive Director explained that anonymous complaints are unsolicited complaints that come in without attribution, sometimes a phone call followed by a letter, or sometimes just by letter. He further explained that no investigation is initiated absent a written complaint, even though it may be anonymous. Anonymous complaints and media based investigations are controversial, but every state judicial disciplinary authority accepts anonymous complaints and considers information gleaned from the news media. Anonymous complaints serve the public by providing a mechanism for complaint when aggrieved parties simply would not come forward unless they could remain anonymous. The favorite example is the complaint initiated by a member of the staff of a judge whose conduct is the subject of the complaint. Information gleaned from news media simply cannot be ignored when the conduct of public officials is involved. In 2004 and 2005, the Commission received a total of 28 anonymous complaints. No total is reported for the number of media based investigations initiated.

The Judicial Council recommended adoption of the following rule:

All complaints must bear the name of the complainant, unless anonymous. If an individual staff member or Commissioner files or solicits a complaint, he or she shall sign the complaint.

The rationale offered for this proposal is that the respondent judge should be entitled to face his accuser, except where the accuser is truly anonymous. Implementing this recommendation would require that every complaint before the Commission be sworn upon oath or verified by the person or persons making the complaint. When the complaint is anonymous or based upon media reports, it would have to be signed by the Executive Director.

The Task Force endorses the recommendation of the Judicial Council and recommends inclusion of the following language which appears in Proposed Rule 8. A., below.

All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director. If the Executive Director, an individual staff member, Commission member or Alternate files, solicits, or initiates a complaint, he or she shall sign the complaint.

3. Contact with Potential Witnesses

It is currently the practice of the Commission staff to send the unexpurgated complaint to potential witnesses with a letter requesting a written response detailing any knowledge the potential witness may have regarding the allegations of the complaint. The Executive Director indicated that more than 90% of complaints are dismissed after initial investigation and before the Probable Cause Hearing level. The Task Force believes that, under these circumstances, disseminating as yet unsubstantiated charges by sending copies of unexpurgated complaints to potential witnesses does not serve the public interest, contaminates the investigation, and risks harming innocent persons. It was unanimously agreed that this practice offends traditional notions of fairness, and that it should be prohibited. Witnesses should be contacted in accordance with established investigatory techniques to determine what useful information they might have, without exposing them to the unsubstantiated complaint.

The Task Force recommends adoption of language contained in Proposed Rule 8 and adoption by the Commission of appropriate Guidelines or Policies to address these issues.

4. Ex Parte Communication

Currently there is no *Rule* prohibiting *ex parte* communication between Commission staff and Commission members or Alternates regarding matters which are the subject of

complaints or under investigation or consideration. There is, likewise, no *Rule* prohibiting *ex parte* communication between Commission members or Alternates and respondent judges or their family members, supporters, or potential witnesses. *Ex parte* communication is addressed in Commission Guideline C, but there is no provision for removal or recusal of the involved Commission member or Alternate.

The Task Force believes *ex parte* communication by any interested party with members of the Commission or Alternates on matters of substance relating to proceedings before the Commission should be prohibited and recommends adoption of the following language to replace current Rule 11 which is subsumed by Proposed Rules 8 and 9.

Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.

(This language is derived from Rule 7H(1) of the Procedures Regulating Professional Conduct of attorneys.)

5. Use of Separate Investigation and Hearing Panels

Current rules and practices of the Commission authorize the Executive Director to determine whether to initiate an investigation based upon the contents of a written and signed complaint, an anonymous complaint, or media reports. The Executive Director indicates that he dismisses for lack of jurisdiction about 1/3 of the complaints upon first reading, and that 90% of those remaining are dismissed after some investigation but before the Probable Cause Hearing. The Judicial Council representatives expressed concern about the decision to initiate an investigation being made without the Commission or any member of the Commission participating, even in situations involving scandalous allegations that inevitably reach the public because of contacts with potential witnesses. To address these concerns, the Council recommended that a three-member panel of Commissioners make the decision by majority vote whether to pursue an investigation or move forward with a formal charge. The panel could direct staff to take specific steps in the investigation and report their findings for further consideration, or simply leave the investigation to the staff to pursue as it sees fit. The makeup of the panel would need to remain constant when the staff responds to specific requests during an investigation.

Specifically, the Judicial Counsel recommended adoption of the following rule:

The Commission should be divided into three, "three member panels" to determine if there is sufficient cause to proceed on any complaint

not dismissed by the Executive Director. The Chair shall randomly select the panels and each panel shall have one public person, an attorney and a judge. Each panel shall make a prompt, discreet, and confidential investigation and evaluation to determine whether there are sufficient grounds to proceed on a complaint. If the panel votes by a two-thirds vote to proceed, the panel shall notify the judge of the Code of Judicial Conduct sections allegedly violated.

This recommendation implicates several aspects of the Commission's procedures, and was discussed and debated perhaps more than any other topic. Of all the proposals for changes in the rules that were presented to the Task Force, it has the broadest implications. Use of panels in the investigation process that are drawn from members who will participate in adjudication of the complaint presents due process concerns inherent in any procedure that exposes fact-finders to the details of an investigation before they sit in judgment. Any such restructuring should therefore require complete separation of the investigatory and adjudicatory functions, and participation by a member in one should preclude participation in the other involving the same matter. Five states now operate with such a two-tier system: Florida, Kansas, South Carolina, Tennessee, and Wyoming. The ABA Model Rules employ panels in a similar manner. Current Rule 11 of the Commission authorizes the chairman to appoint three-member panels to conduct formal hearings, but does not address participation of Commission members in the investigatory function of the Commission.

The Task Force questioned whether such a dramatic change was needed and whether it was feasible given the structure and composition of the Commission as set out in Amendment 66 and the statutory scheme. It was noted that the requirement in Amendment 66, the enabling legislation, and existing Rules of the Commission that all decisions involving sanctions or disability be reached by "majority vote of the membership" would preclude dividing the Commission members into panels, if members serving on an investigation panel were then disqualified from serving on the hearing panel. It was then suggested that this obstacle could be overcome by utilizing Alternates to form the Investigation Panels.

After further discussion and study, the Task Force concluded that neither Amendment 66 nor the enabling legislation, Ark. Code Ann. § 16-10-401 *et seq.*, present an impediment to use of panels comprised of Commission members and/or Alternates. Nothing in applicable law or rules spells out the role of the Alternate members of the Commission or limits or restricts the role of an Alternate member in carrying out the functions of the Commission. Investigative panels could be composed solely of Alternates or both Commission members and Alternates.

If Alternates are available to serve exclusively or interchangeably with Commission members to form three-member Investigation Panels and nine-member Hearing Panels, a full nine-member Commission would be available in every instance in which a majority vote is required. The Task Force recommends implementing the two-tier system as simply as possible in conformity with the existing composition of the Commission and its existing procedural rules. Three 3-member Investigation Panels could be comprised of Commission

members and/or Alternates. All could, nonetheless, continue to serve on Hearing Panels as they do under current practice when appointed by the chairman, provided they not serve on a Hearing Panel involving any matter on which they served on an Investigation Panel.

The Task Force recommends this be achieved by adding a new paragraph F. to current Rule 1, as set out below:

RULE 1. ORGANIZATION OF COMMISSION.

...

PROPOSED Rule 1. F.

Investigation Panels and Hearing Panels. The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chairman shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge. Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.

6. Redundancy in Hearing Procedures — Number of Appearances

The Task Force heard from lawyers, judges, former Commission members, and Commission staff that current Rules 8, 9, and 11, which allow as many as three appearances by the respondent judge, result in unnecessary proceedings. Former Commissioners complained about redundancy, and lawyers complained that multiple hearings often result in a lack of continuity in the composition of the Commission — some members being absent because of scheduling conflicts and Alternates replacing them. Examination of current rules suggests there is no real need for the “screening hearing” or the Probable Cause Hearing, and Commission staff agreed that the procedures should be streamlined to alleviate redundancy. To this end, the Task Force recommends eliminating two of three hearings provided under current rules, and combining current Rules 8, 9, and 11 into the following Rules 8 and 9.

PROPOSED RULE 8. PROCEDURES OF COMMISSION REGARDING CONDUCT OF A JUDGE

- A. Initiation of Inquiry.** *In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge.* (Same as current Rule 8. A.)

All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the complaint. (This is new, from Item 2, supra.)

All contacts with potential witnesses shall be in accordance with these Rules. (This is new, from Item 3, supra.)

- B. Screening.** *The Executive Director shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal.* (Similar to current Rule 8 B, but deleting initial investigation by the Executive Director.)
- C. Investigation of Complaints.** *All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant and the judge shall be informed in writing of the dismissal.* (Use of an Investigation Panel is entirely new.)

- D. Mandatory Notice to the Judge.** *If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct.*

The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

(New language — replaces “optional” notice)

- E. Dismissal or Formal Statement of Allegations.** *The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, or it may direct a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support the alleged violation(s) be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure. (New — the Investigation Panel directs the investigation and the preparation of a formal statement of allegations, if any.)*
- F. Answer.** *The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge. (Extends time to answer to 30 days from 20 days)*

PROPOSED RULE 9. HEARING ON FORMAL STATEMENT OF ALLEGATIONS

- A. Hearing.** *The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine-member Commission on which no member of the Investigation Panel which considered the initial*

complaint may serve. This same nine-member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day. (This is new.)

- B. Scheduling.** *The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing. (Same as current Rule 11.A., but time is limited to 90 days.)*
- C. Discovery.** *The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process. (This combines Current Rules 8. L. and 11. B.)*
- D. Right to Counsel.** *The judge shall be entitled to counsel of his/her own choice. (Current 8. K.)*
- E. Conduct of Hearing.** *The Arkansas Rules of Evidence shall apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim. (This is current Rule 11.D.)*
- F. Immunity from Prosecution.** *The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. § 16-43-601, et seq. (This is Current Rule 8. M.)*
- G. Public Hearing.** *The hearing shall be open to the public and*

recorded by a certified court reporter. (This is new.)

- H. **Determination.** *The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge. (Current Rule 11. F.)*
- I. **Disposition.** *In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct; and, (3) If it finds there has been conduct that is cause for formal discipline it shall be imposed as set forth in Rule 11. J. (Derived from current Rule 9. E. 1 and 2.)*
- J. **Commission Decision – Formal Discipline.** *The recommendation for formal discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following: (1) A recommendation to the Supreme Court that the judge be removed from office; (2) A recommendation to the Supreme Court that the judge be suspended, with or without pay; (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay; (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for his/her retirement benefits, pursuant to Ark. Code Ann. § 24-8-217 (1987); (5) Reprimand or censure. (Current 11. G. 1-5).*
- K. **Dissent.** *If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court. (Current Rule 11. H.)*
- L. **Opinion to be Filed.** *The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition. (Current 11. J)*

M. Witness Fees. All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them. (Current Rule 11. K.)

7. Private/Informal Disposition of Complaints

The suggestion was made by lawyers, judges, Commissioners, former Commissioners, and Commission staff that private or informal disposition of complaints should be an option available to the Commission under appropriate circumstances. The Judicial Council's Recommendation included the following:

There should be another option for the Commission prior to a public reprimand or censure. The Office of Professional Conduct has an option called "Non-Public Warning." Note: On the Judicial Discipline and Disability Commission website the Information Pamphlet referred to the ability of the commission to "make an informal adjustment (such as direct professional counseling or assistance for the judge) or issue a public admonishment, reprimand or censure."

These suggestions were rejected by the Task Force on the grounds that private disposition is not appropriate when the conduct involves elected public officials, a view shared by the Arkansas Supreme Court. (See Ark. Court Rules, Commission Rule 7, Publishers' Notes, para 8-9 at 1269-70 (2006); Appendix.)

8. Jurisdiction — Ambiguities and Conflicts Between Rules 6 and 12

At the first meeting of the Task Force, the Executive Director asked that consideration be given to eliminating uncertainty in Rules 6 and 12 regarding two issues: (1) whether the Commission has jurisdiction to discipline a judge who is no longer in office; and (2) whether a judge who has been disciplined by the Commission may be subjected to disciplinary action before the Committee on Professional Conduct. The Task Force recognizes the ambiguities and recommends proposed revised Rule 6 addressing these issues. (Proposed changes to Rule 6 also include language appearing in current Rules 9, A, and B.)

Current Rules 6 and 12.

A. Judge in Office. The authority of the Commission extends to judges and justices in office, and the term "judge" includes anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or magistrate,

whether full-time or part-time. Allegations regarding conduct of a judge or justice occurring prior to or during service in judicial office, including the service of a retired judge who has been recalled, are within the jurisdiction of the Commission and shall be considered by it.

B. Former Judge. Conduct of a former judge which has been adjudicated by a final decision reached by the Commission shall not become the subject of disciplinary proceedings before the Supreme Court Committee on Professional Conduct.

RULE 12. SUPREME COURT REVIEW

D. Scope of Discipline. The Supreme Court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal is deemed appropriate, the court shall notify the judge, the Commission, and the Supreme Court Committee on Professional Conduct, and give each an opportunity to be heard on the issue of the imposition of lawyer discipline.

(Emphasis added)

PROPOSED RULE 6. JURISDICTION.

The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below.

A. Establishment of Grounds for Discipline. The grounds for discipline are those established in part (b) of Ark. Const. Amend. 66 and those established by Act 637 of 1989. (Current Rule 9.A.)

B. Distinguished from Appeal. In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings. (Current Rule 9. B.)

C. Judge-in-Office. As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, or referee, whether full-time or part-time. The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.

D. Former Judge. *The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge.*

E. Overlapping Jurisdiction. *Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct. (This makes clear that discipline as a judge does not preclude discipline as a lawyer — current Rule 12 would remain unchanged.)*

9. Limitations of Actions/Disposition of Complaints

There is no statute of limitations on matters before the Commission, nor should there be, as past conduct may affect fitness for judicial office and should be open to examination. Once a complaint involving the conduct of a judge is made, all parties agree it should be resolved within a reasonable time. The Judicial Council recommends requiring disposition of all complaints within 18 months by adoption of the following proposed rule:

Proposed Rule 15. Complaints Shall Be Adjudicated or Dismissed Within 18 Months.

A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:

- (a) All periods of delay granted at the request of the judge.***
- (b) All periods of suspension under Rule 10.***

The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have been joined with the complaint dismissed.

The Executive Director and staff agree the proposed rule would be workable provided the "good cause" provision were included. The Task Force recommends adoption. The Task Force also recommends that the Commission adopt Guidelines or Policies establishing appropriate deadlines for presenting intake complaints to the Investigation Panel (perhaps 45 days) and completing the investigation (perhaps 90 days).

Conclusion

The Task Force stands ready to redraft its recommendations in any form the Board of Governors or House of Delegates deems appropriate. The Task Force wishes to thank all those who offered their comments and assistance, particularly the Arkansas Judicial Council, current and former members of the Commission, its Executive Director and staff.

Robert M. Cearley, Jr., Chair
November 28, 2006

Task Force Members:

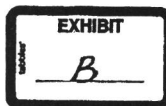
Judge Kathleen Bell
Vince O. Chadick
Nate Coulter
Thomas F. Curry
Judge Elizabeth Danielson
Judge Robert Edwards
Judge Mary Ann Gunn
Barbara A. Halsey
Larry Jegley
Sean T. Keith
Gary R. Nutter
Judge Willard Proctor
Kent J. Rubens
Judge Hamilton H. Singleton

Summary of Recommendations

The Task Force recommends the action indicated in each of the following areas:

1. **Intake Procedures and Complaint Forms** — adoption by the Commission of a new sworn or verified complaint form and intake instructions pursuant to authority granted in Rule 2, and abrogation of the "sworn complaint" and "statement in lieu of complaint" provided for in Rule 8. E. in favor of a formal statement of allegations that meets all notice and specificity requirements of due process (*This can be accomplished without a rule change.*);
2. **Anonymous Complaints and Media Based Complaints** — modification of current Rule 8. A. in accordance with Proposed Rule 8.A. to require that all but anonymous complaints be signed;
3. **Contact with Potential Witnesses** — modification of current Rule 8 as spelled out in Proposed Rule 8, and adoption of appropriate Guidelines and Policies governing contact with potential witnesses and dissemination of information;
4. **Ex Parte Communication** — adoption of a new Rule prohibiting *ex parte* communication on matters of substance between persons involved in the investigation and persons involved in the adjudication of a complaint (*to replace current Rule 11 which is eliminated by Proposed Rules 8 and 9*);
5. **Use of Separate Investigation Panels and Hearing Panels** — adoption of new rules to involve Commission members and Alternates in early decision-making on complaints and investigations (*See Proposed Rules 8 and 9, and Proposed Rule 1. F.*);
6. **Redundancy in Hearing Procedures — Number of Appearances** — abrogation of current Rules 8 and 9 and adoption of proposed Rules 8 and 9 to alleviate the "screening hearing" and the "Probable Cause" hearing and to provide for screening, investigation and hearing of complaints by separate Investigation Panels and Hearing Panels (*See Proposed Rules 8 and 9*);
7. **Private/Informal Disposition of Complaints** — rejection of the suggestion of private or informal disposition of complaints;
8. **Jurisdiction — Ambiguities and Conflicts Between Rules 6 and 12** — adoption of revised Rule 6 to confirm jurisdiction of the Commission over current and former judges regarding conduct occurring prior to or during service in judicial office, and jurisdiction of the Supreme Court Committee on Professional Conduct over the conduct of former judges, even if already adjudicated by the Commission; and,
9. **Limitation of Actions/Disposition of Complaints** — adoption by Rule of a timetable for adjudication of complaints (*See Proposed Rule 15*).

April 26, 2007



Recommended Changes In Rules, Policies, and Guidelines**1. Proposed Intake Instructions and Complaint Form**

Arkansas Judicial Discipline & Disability Commission
Tower Building, Suite #1060
Little Rock, Arkansas 72201
Phone: (501)682-1050 Fax (501)682-1049

PLEASE READ CAREFULLY

The Judicial Discipline and Disability Commission is an independent state agency that receives and investigates complaints concerning judges. The Commission has the authority to discipline or recommend discipline to the Arkansas Supreme Court for judges who are in violation of the Arkansas Code Of Judicial Conduct adopted by the Supreme Court. The Commission may issue a public admonishment, reprimand, or censure. For more serious violations, the Commission may make recommendations to the Arkansas Supreme Court to impose sanctions that include removal from the bench, suspension from the bench with or without pay, leave with or without pay, or involuntary retirement.

The Commission's authority is limited to violations of the Arkansas Code of Judicial Conduct and the sanctions set out above. It has no authority to compel a judge to take any particular course of action nor does the Commission become involved in litigation of legal matters. Please understand that the Commission cannot represent you, give you any legal advice, or change the outcome of a court decision.

If you feel that a judge has acted in a manner that violates the Arkansas Code Of Judicial Conduct, fill out as completely as possible the attached complaint form, and return it to this office. Include any additional documentation that you believe is relevant and material to your complaint. If sufficient cause is found to file a formal complaint, some or all of your supporting documentation may be included as exhibits. **Please provide a narrative account of the judge's actions of which you complain that is FACTUAL.** Conclusory statements such as, "He's a liar," "She didn't do me right," "He's incompetent," etc., have no evidentiary value and do not assist in the evaluation of your complaint.

The Commission will review the information in your complaint form, conduct any necessary investigation and advise you whether your concerns fall within the Commission's limited authority. Each complainant will be informed by letter whether a complaint states a basis for further



consideration. If after initial investigation it appears that there is sufficient cause to proceed, the Commission will prepare a formal complaint which will be sent to the judge for a response. The complainant will be provided a copy of any response and have the opportunity for rebuttal, if appropriate. Any rebuttal will be made available to the respondent judge. All these documents will then be forwarded to the Commission for review and action. You will be advised in writing of the Commission's final action. In some instances, the Commission will conduct a hearing on a complaint. If that should occur, you may have the opportunity to appear and testify at the hearing. Copies of the Arkansas Code of Judicial Conduct can be found at the following website <http://courts.state.ar.us> under "Judicial Discipline & Disability Commission."

Arkansas Judicial Discipline & Disability Commission
 Tower Building - Suite # 1060 - 323 Center Street
 Little Rock, AR 72201
 Phone: (501) 682-1050 / FAX: (501) 682-1049
 Email: jddc@arkansas.gov

COMPLAINT FORM

Please type or print all information

I hereby request an investigation of _____ of the _____
(Judge's name)

_____ Court in _____, _____ Arkansas.
(City) (County)

Your Name: _____

Mailing Address: _____

Phone: Daytime () _____ Evening () _____

Cellular Phone () _____ Email address: _____

STATEMENT OF FACTS

1. State below the specific details of what the judge did that you think constitutes misconduct or indicates disability. **(Please type or print legibly in black ink.)**

ATTACH ADDITIONAL SHEET(S) IF NEEDED.

2) Did you have a case before this judge? yes no
 If yes, is the case still pending? yes no

3) When and where did the ethical misconduct occur?

Date: _____ Time: _____ Location: _____

4) If your complaint arose from a court case, please provide the following information:

Case Name: _____ Case Number: _____

Plaintiff's information:

Defendant's information:

Name _____ Name _____

Address _____ Address _____

Daytime phone _____ Daytime phone _____

Attorney's information (Plaintiff):

Attorney's information (Defendant):

Name _____ Name _____

Address _____ Address _____

Phone _____ Phone _____

Additional Attorney's Information (use additional pages if necessary):

Name _____ Name _____

Address _____ Address _____

Phone _____ Phone _____

Represented _____ Represented _____

What type of case gives rise to this complaint? Please check one.
 _____ criminal; _____ small claims; _____ civil; _____ probate;
 _____ domestic (family) relations; _____ other (specify) _____

How are you interested in the case? Please check one.
 _____ plaintiff / petitioner; _____ defendant/respondent; _____ unrelated to a case;
 _____ attorney for _____ ; _____ witness for _____ ;
 _____ family member of _____ ; _____ other (specify) _____

5) *List documents you have attached that help support your complaint that the judge has engaged in misconduct or has a disability:*

6) *List documents that are not attached but will be needed by the Commission to support your complaint and may help in the Commission's investigation:*

7) *Identify, if possible, any other witnesses to the judge's conduct: (example: reporters, bailiffs, clerks, court reporters, law enforcement officers, or other attorneys, plaintiffs, defendants or witnesses that were present at the time).*

Name: _____
 Address: _____

 Phone: _____

NOTE: STATE LAW PROVIDES THAT THE JUDICIAL DISCIPLINE & DISABILITY COMMISSION'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL. FILING A COMPLAINT IS NOT A SUBSTITUTE FOR APPEAL AND HAS NO EFFECT ON YOUR LEGAL OR APPELLATE RIGHTS. THE APPELLATE PROCESS IS SUBJECT TO STRICT DEADLINES AND YOU SHOULD IMMEDIATELY OBTAIN LEGAL ADVICE ABOUT YOUR APPELLATE REMEDIES.

I request that the above complaint, supported by the Statement of Facts, be investigated by the Judicial Discipline & Disability Commission and that appropriate action be taken.

I swear or affirm under penalty of perjury that the information furnished is true and correct to the best of my knowledge, information, and belief.

Signature: _____ **Date:** _____

PROPOSED Rule 1. F.

Investigation Panels and Hearing Panels. The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chairman shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge. Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.

PROPOSED RULE 6. JURISDICTION.

The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below.

A. Establishment of Grounds for Discipline. The grounds for discipline are those established in part (b) of Ark. Const. Amend. 66 and those established by Act 637 of 1989. (*Current Rule 9.A.*)

B. Distinguished from Appeal. In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings. (*Current Rule 9. B.*)

C. Judge-In-Office. As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, referee, whether full-time or part-time. The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.

D. Former Judge. The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge.

E. Overlapping Jurisdiction. Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct. (*This makes clear that*

discipline as a judge does not preclude discipline as a lawyer — current Rule 12 would remain unchanged.)

PROPOSED RULE 8. PROCEDURES OF COMMISSION REGARDING CONDUCT OF A JUDGE

- A. Initiation of Inquiry.** In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge. *(Same as current Rule 8. A.)*

All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the complaint. *(This is new.)*

All contacts with potential witnesses shall be in accordance with these Rules. *(This is new.)*

- B. Screening.** The Executive Director shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal. *(Similar to current Rule 8 B, but deleting initial investigation by the Executive Director.)*
- C. Investigation of Complaints.** All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant and the judge shall be informed in writing of the dismissal. *(Use of an Investigation Panel is entirely new.)*
- D. Mandatory Notice to the Judge.** If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination

and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct.

The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

(New language — replaces "optional" notice)

- E. Dismissal or Formal Statement of Allegations.** The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, or it may direct a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support the alleged violation(s) be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure. *(New — the Investigation Panel directs the investigation and the preparation of a formal statement of allegations, if any.)*
- F. Answer.** The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge. *(Extends time to answer to 30 days from 20 days)*

PROPOSED RULE 9. HEARING ON FORMAL STATEMENT OF ALLEGATIONS

- A. Hearing.** The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine-member Commission on which no member of the Investigation Panel which considered the initial complaint may serve. This same nine-member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day. *(This is new.)*
- B. Scheduling.** The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing. *(Current Rule 11.A., but time is limited to 90 days.)*
- C. Discovery.** The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission

and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process. *(This is the Current Rules 8.L. and 11. B.)*

- D. Right to Counsel.** The judge shall be entitled to counsel of his/her own choice. *(Current 8. K.)*
- E. Conduct of Hearing.** The Arkansas Rules of Evidence shall apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim. *(Combination of Rules 11.D.)*
- F. Immunity from Prosecution.** The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. § 16-43-601, et seq. *(This is Current Rule 8. M.)*
- G. Public Hearing.** The hearing shall be open to the public and recorded by a certified court reporter. *(This is new.)*
- H. Determination.** The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge. *(Current Rule 11. F.)*
- I. Disposition.** In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct; and (3) If it finds there has been conduct that is cause for formal discipline it shall be imposed as set forth in Rule 9.J. *(Derived from current Rule 9. E. 1 and 2.)*
- J. Commission Decision – Formal Discipline.** The recommendation for formal discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following: (1) A recommendation to the Supreme Court that the judge be removed from office; (2) A recommendation to the Supreme

Court that the judge be suspended, with or without pay; (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay; (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for his/her retirement benefits, pursuant to Ark. Code Ann. § 24-8-217 (1987); (5) Reprimand or censure. (*Current 11. G. 1-5*)

- K. **Dissent.** If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court. (*Current Rule 11. H.*)
- L. **Opinion to be Filed.** The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition. (*Current 11. J*)
- M. **Witness Fees.** All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them. (*Current Rule 11. K.*)

PROPOSED RULE 11. EX PARTE COMMUNICATION.

Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.

PROPOSED RULE 15. COMPLAINTS SHALL BE ADJUDICATED OR DISMISSED WITHIN 18 MONTHS.

A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:

- (a) All periods of delay granted at the request of the judge;
- (b) All periods of suspension under Rule 10.

The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have

been joined with the complaint dismissed.

(The Task Force also recommends that the Commission adopt Guidelines or Policies establishing appropriate deadlines for presenting intake complaints to the panel (perhaps 45 days) and completing the investigation (perhaps 90 days)).

IN RE: RULES GOVERNING ADMISSION TO
THE BAR of ARKANSAS

Supreme Court of Arkansas
Opinion delivered May 24, 2007

PER CURIAM. Part A of Rule IX of the *Rules Governing Admission to the Bar* (Rules) provides: “[a] Bar examination applicant may retain: the applicant’s written scaled score that corresponds to a total written raw score of 825 or more” The Board of Law Examiners (Board) has reviewed the effects of this provision.

In many instances, the written score an applicant retains is diminished in weight from one exam to the next as the result of the process of scaling that written score to the MBE. An expert employed by the Board recommends that this provision be removed from the Rules. The consultant notes that very few states allow retention of written scores because of the variability in weight from one exam to the next. This is particularly troubling in Arkansas since the written score is two thirds (2/3) of the final score.

Based upon these considerations, the Board has unanimously voted to recommend that this provision be removed. We concur and republish Part A of Rule IX as it appears on the attachment to this order. This change will be effective for scores secured during the February 2008 Arkansas Bar Exam.

Rule IX. Examination - Subjects - Passing Grade

A. General Examination

All examinations shall be in writing and shall cover the subjects hereinafter listed and such other subjects as the Board may direct, subject to prior Court approval.

Business Organizations This subject heading may include corporations, partnerships, agency and master-servant relationships.

Commercial Transactions This subject heading may include the general coverage of the U.C.C. This will not include the general

subject of contracts and will not include matters relating to warranties under product liability, both of which may be covered under other headings.

Criminal Law and Procedure This subject heading may include constitutional law as it applies to criminal law and procedure.

Constitutional Law This subject heading may include both the Arkansas Constitution and the Constitution of the United States. This subject will not be primarily directed to matters relating to criminal law and procedure.

Torts This subject heading may include the entire field of Tort law and questions concerning product liability.

Property This subject heading may include the law of real property and, or, personal property. Emphasis here should not be placed on the U.C.C. and other such questions arising primarily under the subject heading "Commercial Transactions."

Wills, Estates, Trusts Because of the broad scope of this subject heading, questions concerning taxation shall not be covered. Guardianship of both the person and the estate may be included.

Evidence

Practice and Procedure This subject heading may include both state and federal trial and appellate practice and, where applicable, remedies and choice of forum.

Equity and Domestic Relations

Contracts This subject heading should place emphasis upon the traditional basics of contract law. Only where duplication cannot be avoided, should matters such as the application of the Uniform Commercial Code be covered under this heading.

Multistate Performance Test The Multistate Performance Test (MPT) presents problems which arise in a variety of fields of law which include the subject area as set forth in the preceding paragraphs as well as other fields of law. However, materials provided with the examination provide sufficient substantive information to complete the task set forth in each MPT question.

NOTE: Conflict of Laws is not included as a separate subject on the examination. However, conflict questions may arise in the subjects included on the examination and should be recognized as such.

Pass/Fail Determination The answers to each essay question and each MPT question will be graded on a scale ranging from 65 to 85. This score shall be designated as the applicant's "raw" score on a question. The raw score on each MPT question will be multiplied by 1.5. The resulting products from the MPT questions will be added to the sum of the raw scores from the essay questions to yield a "total written raw" score.

The distribution of the total written raw scores acquired by applicants on a given examination will be converted to a score distribution that has the same mean and standard deviation as those same applicants' Multistate Bar Examination scale scores on that examination. The score on this converted scale that corresponds to the applicant's total written raw score shall be designated as the applicant's "written scale" score. An applicant's total examination score shall be determined by the following formula:

Total Score = (written scale score x 2) + MBE scale score

An applicant shall pass the examination if he or she earns a total score of 405 points or higher.

A bar examination applicant may retain a Multistate Bar Examination scale score of 135 or more. The retained score may be used in the immediately succeeding examination only. An applicant may transfer from another jurisdiction a Multistate Bar Examination scale score of 135 or more for use in the immediately succeeding examination only.

The Board shall destroy all examination papers, including questions and answers, at the time of the next succeeding bar examination. However, the original copy of each question shall be maintained in accordance with Rule III.

IN RE: RULES GOVERNING WAIVER of ATTORNEY-
CLIENT PRIVILEGE and WORK-PRODUCT DOCTRINE

07-305

Supreme Court of Arkansas
Opinion delivered May 24, 2007

PER CURIAM. The Arkansas Bar Association petitions the supreme court to amend Arkansas Rule of Evidence 502 by adding new subdivisions (e) and (f). We publish the recommended changes for comment from the Bench and Bar and ask that comments be sent to Leslie Steen, Clerk of the Arkansas Supreme Court, 625 Marshall Street, Little Rock, Arkansas 72201, on or before July 1, 2007. The recommended changes are as follows:

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

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

Comment

Subdivision (e) is a cross-reference to Rule 26(b)(5). Its placement here is analogous to the inclusion of subdivision (d)(3)(B) in Arkansas Rule of Evidence 503, the physician-patient privilege. That subdivision tracks subdivision (c)(2) of Arkansas Rule of Civil Procedure 35(c)(2), which governs discovery of medical information.

Under subdivision (f), disclosure information covered by the attorney-client privilege or the work-product doctrine to a gov-

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

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

Subdivision (f) adopts the Eighth Circuit’s position, which is also reflected in a draft that the Federal Advisory Committee on Evidence has published for public comment. This draft, which would create new Federal Rule of Evidence 502, is available online at the federal judiciary’s website on rulemaking. See http://www.uscourts.gov/rules/Excerpt_EV_Report_Pub.pdf#page=4. Proposed subdivision (f) is based on subdivision (c) of the draft federal rule.

The selective waiver provision in the federal draft has been the target of some criticism. For example, the Association of Corporate Counsel has said that “while well-intentioned, it may have a negative impact on the larger issue given the current context of a ‘culture of waiver’ that has been created by government enforcement officials and prosecutors who have abused their discretion by routinely coercing companies to waive their privilege.” Similarly, some members of the ABA — speaking for themselves, not the organization — have written that “adopting the rule in the ‘culture of waiver’ environment puts a Band-Aid on the corporate injury caused by wrong-headed governmental policies.”

In essence, these critics would prefer that the federal advisory committee, and ultimately Congress, address the broader issues posed by Department of Justice policies. The Arkansas Bar Association believes, as its Task Force concluded, that half a loaf is better than none. As one commentator has written, selective waiver “will limit both the government’s ability to manipulate the

privilege and plaintiffs lawyers' incentive to sue first and discover claims later." He further explained:

All things being equal, a company should not be able to waive privilege as to some and then invoke it as to others. But things are not equal. Today's circumstances are very different . . . , though courts rejecting selective waiver have not recognized this change. The federal government, in particular the SEC, is at least implicitly pressuring companies to waive the attorney-client privilege and work-product protection. The remarkably unsettled case law makes it impossible for a company to know exactly what it risks by producing materials to the government, yet it "cooperates" anyway and thereby erodes employees' willingness to consult with their counsel. This is not a business decision; it is a corporate reaction to an abuse of government power. And since fairness is the touchstone of the courts' analysis, selective waiver is both justifiable and necessary.

Dore, *A Matter of Fairness: The Need for a New Look at Selective Waiver in SEC Investigations*, 89 Marq. L. Rev. 761, 794 (2005).

It has been suggested that only a uniform, national rule will solve the problem. That may well be so, and it is arguable that Congress has the power to federalize the attorney-client privilege and the work-product doctrine by enacting a statute that preempts state law. See generally Glynn, *Federalizing Privilege*, 52 Am. U. L. Rev. 59 (2002); Note, *Preserving the Privilege: Codification of Selective Waiver and the Limits of Federal Power Over State Courts*, 86 B. U. L. Rev. 691 (2006).

Until Congress takes this step, however, the Arkansas Bar Association is of the opinion that a state rule addressing selective waiver can be beneficial. Suppose, for example, that a corporation retained a law firm to investigate apparent accounting improprieties; turned over the resulting report and supporting documents to the S.E.C. and U.S. Attorney in connection with their investigations; and then found itself being asked by plaintiffs in an accounting fraud action in state court to produce the report and documents during discovery. In that situation, the Georgia Supreme Court held that the corporation had waived work-product protection by providing the material to federal investigators. See *McKesson Corp. v. Green*, 279 Ga. 95, 610 S.E.2d 54 (2005). The selective waiver rule of subdivision (f) would lead to the opposite result in such a case brought in Arkansas.

IN RE: ARKANSAS RULES of CIVIL PROCEDURE;
ADMINISTRATIVE ORDERS; RULES of EVIDENCE; and
RULES of the SUPREME COURT and COURT OF APPEALS

Supreme Court of Arkansas
Opinion delivered May 25, 2007

PER CURIAM. The Arkansas Supreme Court Committee on Civil Practice has submitted its annual proposals and recommendations for changes in rules of procedure affecting civil practice. We have reviewed the Committee's work, and we now publish the suggested amendments for comment — except for the proposed changes to Ark. R. Civ. P. 51 and Ark. R. App. P.—Civil 5, which we choose not to publish at this time. The Notes explain the changes, and the proposed changes are set out in “line-in, line-out” fashion (new material is italicized; deleted material is lined through).

We call attention to three significant recommendations: First, the proposed change to Rule 5-2 of the Rules of the Supreme Court and Court of Appeals would provide that all decisions are precedent, even if the decision is not designated for publication in the official reporter. A thorough explanation of this proposal is found in the accompanying Reporter's Note. Second, the proposed changes to Ark. R. Civ. P. 26 (b) and Ark. R. Evid. 502 would protect parties who inadvertently disclose material protected by an evidentiary privilege or doctrine of protection, such as the attorney work product doctrine. Recently, the Arkansas Bar Association filed a petition that recommends similar changes to these rules. Finally, a new Administrative Order is proposed prescribing minimum qualifications for private civil process servers, as well as a procedure for appointment.

We express our gratitude to the Chair of the Committee, Judge Henry Wilkinson, its Reporter, Judge D.P. Marshall Jr., and all the Committee members for their faithful and helpful work with respect to the rules.

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

A. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 4. Summons.

....

(c) *By Whom Served.* Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action; (2) any person ~~not less than eighteen years of age~~ appointed pursuant to *Administrative Order No. ___* for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made; (3) any person authorized to serve process under the law of the place outside this state where service is made; or (4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

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

Rule 26. General provisions governing discovery.

....

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

....

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

(A) (I) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which he is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) *Subject to subdivision*

~~(b)(4)(C) of this rule, a party may depose any person who has been identified as an expert expected to testify at trial. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.~~

. . . .

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

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

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

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

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

Paragraph (5) has been added to subdivision (b). These provisions protect parties who inadvertently disclose material protected by any evidentiary privilege or doctrine of protection, such as the attorney work product

doctrine. This provision draws on the work of the Arkansas Bar Association's Task Force on the Attorney-Client Privilege, American Bar Association Resolution 120D (adopted by House of Delegates in August 2006), and a 2006 amendment to Federal Rule of Civil Procedure 26. The Arkansas Bar Association specifically endorsed this change in the Arkansas Rule.

Lawyers do their best to avoid mistakes, but they sometimes happen. Discovery has always posed the risk of the inadvertent production of privileged or protected material. The advent of electronic discovery has only increased the risk of inadvertent disclosures. This amendment addresses this risk by creating a procedure to evaluate and address inadvertent disclosures, including disputed ones.

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

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

B. ADMINISTRATIVE ORDERS**ADMINISTRATIVE ORDER NUMBER ___*****Private Civil Process Servers
Appointment—Qualifications***

(a) Authority to Appoint Persons to Serve Process in Civil Cases. The administrative judge of a judicial circuit, or any circuit judge(s) designated by the administrative judge, may issue an order appointing an individual to make service of process pursuant to Arkansas Rule of Civil Procedure 4 (c)(2).

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

- (1) be not less than eighteen years old and a citizen of the United States;*
- (2) have a high school diploma or equivalent;*
- (3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;*
- (4) hold a valid Arkansas driver's license;*
- (5) demonstrate familiarity with the various documents to be served; and*
- (6) obtain prior written approval from the sheriff of each county in which the person will serve process.*

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

(c) Appointment Procedure.

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

(2) The judge shall determine from the application and affidavit, and from whatever other inquiry is needed, whether the applicant meets the minimum qualifications prescribed by this Administrative Order and any

additional qualifications prescribed in that circuit. If the judge determines that the applicant is qualified, then the judge shall issue an order of appointment. The circuit clerk shall file the order, and provide a certified copy of it to the process server. The circuit clerk of each county shall maintain and post a list of appointed civil process servers.

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

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

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

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

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

C. ARKANSAS RULES OF EVIDENCE

Rule 502. Lawyer-client privilege.

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

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

D. RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 5-2. Opinions.

(a) *Supreme court — Signed opinions.* All signed opinions of the Supreme Court shall be designated for publication.

(b) *Court of appeals — Opinion form.* Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeals from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record, and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) *Court of appeals — Published opinions.* Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publication when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked “Not Designated for Publication.”

(d) *Court of appeals — Unpublished opinions.* Opinions of the court of appeals not designated for publication shall not be pub-

lished in the *Arkansas Reports* and shall not be cited, quoted or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) *Copies of all opinions.* In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

(a) *Filing, Notice, and Website Publication.* The Supreme Court and Court of Appeals shall file every opinion with the Clerk, who shall provide a copy of the opinion to each pro se litigant and all counsel of record for each party in the case without charge. The Reporter of Decisions shall promptly post every opinion on the Arkansas Judiciary's website and maintain a searchable library of opinions on the website, which shall include all opinions issued after January 1, 2000.

(b) *Arkansas Reports and Arkansas Appellate Reports.* The Supreme Court and Court of Appeals shall decide which of their opinions will be included in the *Arkansas Reports* and the *Arkansas Appellate Reports*, the official reporter. Opinions marked "Not Designated For Inclusion In the *Arkansas Reports* or *Arkansas Appellate Reports*" shall not be reproduced there, but shall be listed by case number, style, date, and disposition.

(c) *Precedential Value.* Every Supreme Court and Court of Appeals opinion is precedent and may be relied upon and cited by any party in any proceeding. Whether an opinion is included in the *Arkansas Reports* or *Arkansas Appellate Reports* shall have no effect on its precedential value.

(d) *Copies and Service of Certain Pre-2000 opinions.* During any proceeding before any court or administrative body, a party who cites an opinion issued before January 1, 2000, and not included in the *Arkansas Reports* or *Arkansas Appellate Reports* shall serve a copy of that opinion on all the other parties and file proof of service.

(e) *Uniform citation.* (1) Decisions included in the *Arkansas Reports* and *Arkansas Appellate Reports* shall be cited in all court papers by referring to the volume and page where the decision can be found and the year of the decision. Parallel citations to an unofficial reporter, and pinpoint citations to specific pages, are strongly encouraged. For example:

Smith v. Jones, 338 Ark. 556, 558, 999 S.W.2d 669, 670 (1999).

Doe v. State, 74 Ark. App. 193, 198, 45 S.W.3d 860, 864 (2001).

(2) Decisions not included in the Arkansas Reports or Arkansas Appellate Reports, but available on the Arkansas Judiciary website, shall be cited in all court papers by referring to the case name, appellate docket number, the court name, and date of decision. Parallel citations to an unofficial electronic database, and pinpoint citations, are strongly encouraged. A pinpoint citation to the electronic version of a decision on the Arkansas Judiciary website shall refer to the page of the PDF (or WordPerfect version, if no PDF exists) where the matter cited appears. For example:

White v. Green, No. CA04-543, at p.3, 2004 WL 3109899, at *2 (Ark. App. Jan. 19, 2004).

Roe v. State, No. CA99-288, at p.3, 1999 AR 1002003, at p.2 (VersusLaw) (Ark. App. Mar. 1, 1999).

(3) Decisions not included in the Arkansas Reports or the Arkansas Appellate Reports, nor available on the Arkansas Judiciary website, shall be cited in all court papers by referring to any electronic database and including the case name, the appellate docket number, the court name, and the date of the decision. Parallel citations to other electronic databases, and pinpoint citations to specific pages, are strongly encouraged. For example:

Red v. Brown, No. CA06-173, 1998 WL 012345, at *3, 1998 Ark. App. LEXIS 54321, at *4 (Ark. App. May 20, 1998).

Blue v. State, No. CA87-456, at p.5 (Loislaw, Ark. Case Law), 1987 WL 54321, at *6 (Ark. App. Dec. 1, 1987).

(f) *Affirmance Without Opinion*. In appeals from decisions of the Arkansas Board of Review in unemployment-compensation cases, when the appellate court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record, and an opinion would have no precedential value, the order may be affirmed without opinion.

Reporter's Note: Unlike our other Arkansas court rules, the Rules of the Supreme Court and Court of Appeals do not contain reporter's notes. To encourage comments from the bench and bar on this proposal, however, this note explains why the Committee on Civil Practice unanimously recommends that the Supreme Court revise Rule 5-2.

The proposed rule recognizes that, as a matter of legal principle, all Arkansas appellate decisions have some precedential value. When an appellate court says what the law is for a particular set of facts, that decision

binds that court and lower courts in later, similar cases — unless the prior decision has been overruled, can be distinguished from the case under consideration, or is overruled in the process of deciding the current case. Jackson v. State, 359 Ark. 297, 310-11, 197 S.W.3d 468, 478 (2004). The force of precedent disciplines judicial power and is a pillar of the rule of law. Anastasoff v. U.S., 223 F.3d 898, 899-900, 903-05 (8th Cir. 2000), vacated, 235 F.3d 1054 (8th Cir. 2000). The proposed rule helps keep bright this line between judicial decision-making and legislation.

The proposed rule also recognizes that, as a practical matter, there is no longer any such animal as an “unpublished” opinion. Every decision made by an Arkansas appellate court since 2000 is available to the public without charge in a searchable format on the Arkansas Judiciary website at www.courts.state.ar.us. Many decisions from earlier years are available there too. The new rule obligates the Reporter of Decisions to keep this database up to date, as she already does. Internet databases accessible to the public for a nominal fee or for free contain almost all Arkansas appellate decisions since statehood. Our court rules should acknowledge the ready electronic availability of judicial decisions and capitalize on it for the benefit of litigants, lawyers, and the public.

The proposed rule also protects litigants and lawyers who lack, or cannot afford, access to a complete electronic database of Arkansas appellate opinions. A litigant who cites a decision made before 2000 — and thus which is not available for free on the internet through the Arkansas Judiciary website — must serve a copy of that decision to all the other parties in the case. This obligation eliminates a potential prejudice from the rule.

The proposed rule recognizes that the Arkansas Reports and the Arkansas Appellate Reports remain the official reporter for decisions by the Supreme Court and Court of Appeals. Publication of those books, however, is an increasingly expensive endeavor. The proposed rule contemplates that, because certain decisions address issues of first impression, clarify our law, or extend it, these decisions will merit inclusion in the official reporter. But the financial realities that dictate how many opinions can be included in the books each year should not dictate the precedential value of all the decisions. Anastasoff, 223 F.3d at 904. This proposal preserves the ability of the Supreme Court and Court of Appeals to give prominence to certain decisions by including them in the official reporter, while recognizing that being included in the books does not determine precedential value. Instead, that determination is a matter of judgment for the court deciding a current controversy in light of past judicial decisions.

The proposed rule sweeps more broadly than a recent amendment to the Federal Rules of Appellate Procedure. New federal Rule 32.1 provides that no United States Court of Appeals may prohibit or restrict the citation

of federal decisions issued on or after January 1, 2007, which have been designated “unpublished,” “not precedential,” or the like. That salutary step, however, does not resolve the deeper issue: the precedential value of an opinion which, for whatever reason, was not included in an official, printed reporter. See generally, Scott E. Gant, *Missing the Forest For A Tree: Unpublished Opinions and New Federal Rule of Appellate Procedure 32.1*, 47 B.C. L. Rev. 705 (2006). New Rule 32.1 also creates a troublesome gap by forever depriving certain pre-2007 decisions of precedential value. That line may be convenient, but it is unprincipled. The proposed Arkansas rule answers the question of citation by recognizing that all Arkansas appellate decisions are precedents, and thus may be cited by any party to any court. Using the familiar judicial tools for evaluating precedents, that court must then determine the weight, if any, it should accord an earlier decision in a current case.

New subdivision (e) prescribes uniform citation rules. These provisions cover the three categories of opinions from Arkansas’s appellate courts: opinions printed in the books; opinions not included in the books, but on the Arkansas Judiciary website; and opinions that are neither in the books nor on the website. This provision also notes the strong preference for parallel citations and pinpoint citations. New subdivision (e) necessitates a change and cross reference in Rule 4-2, which governs the contents of briefs.

The proposed rule preserves certain aspects of current Rule 5-2. As provided in subdivision (a), the Clerk of the Courts remains obligated to file as a public record all decisions of the Supreme Court and Court of Appeals. The Clerk must also continue to provide a copy of every decision to every litigant in the case. And subdivision (f) retains that part of current Rule 5-2 which allows the Arkansas Court of Appeals to affirm decisions of the Arkansas Board of Review in unemployment-compensation cases in certain circumstances.

The scholarly literature on unpublished opinions, non-precedential opinions, and no-citation rules is extensive. See, e.g., Gant, *supra*, at p. 706, note 5 (collecting citations). A good survey is Anastasoff, *Unpublished Opinions, and “No-Citation Rules,”* 3 J. App. Prac. & Process 169 (2001). Almost thirty years ago, the operation of then-new Arkansas Supreme Court Rule 21 — the ancestor of current Rule 5-2 — was the subject of an empirical study. David Newbern and Douglas L. Wilson, *Rule 21: Unprecedented and the Disappearing Court*, 32 Ark. L. Rev. 37 (1978). The authors concluded that our judicial system was being ill-served by unpublished opinions and recommended that they be abandoned. In a companion article, Justice George Rose Smith argued that selective publication was working well in Arkansas and should continue. George Rose Smith, *The Selective Publication of Opinions: One Court’s Expe-*

rience, 32 Ark. L. Rev. 26 (1978). Three decades of experience show that Newbern and Wilson were correct. The Committee on Civil Practice believes that revised Rule 5-2 is sound in principle, workable in practice, and worthy of adoption.

Rule 4-2. Contents of Briefs.

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

. . . .

(7) *Argument.* Arguments shall be presented under subheadings numbered to correspond to the outline of points to be relied upon. For each issue, the applicable standard of review shall be concisely stated at the beginning of the discussion of the issue. ~~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. Rule 5-2(e) governs citation of decisions of the Arkansas Supreme Court and Court of Appeals. Citation of decisions from other jurisdictions should follow the most recent edition of *The Bluebook: A Uniform System of Citation.*~~ Reference in the argument portion of the parties' briefs to material found in the abstract and Addendum shall be followed by a reference to the page number of the abstract or Addendum at which such material may be found. The number of pages for argument shall comply with Rule 4-1(b).

IN RE: ADMINISTRATIVE ORDER NO. 10 —
Arkansas Child Support Guidelines

Supreme Court of Arkansas
Supplemental Opinion delivered June 14, 2007*

PER CURIAM. On April 26, 2007, this court handed down a per curiam order regarding Administrative Order No. 10 — *Arkansas Child Support Guidelines*, which included the following attachments to the order: (1) a revised Administrative Order No. 10, (2) revised Child Support Charts (weekly, biweekly, monthly, and bimonthly), and (3) a revised Affidavit of Financial Means. These attachments had errors in them. This per curiam order amends and corrects Administrative Order No. 10, the Biweekly Child Support Chart and the Affidavit of Financial Means.

Administrative Order No. 10 is amended in Section III, *Calculation of Support*, in subsection “b,” *Income Which Exceeds Chart*. A new *Example* is provided for computing child support when income exceeds the chart. The maximum weekly income in the example now conforms to the maximum weekly income on the revised chart.

Section III is also amended in subsection “c,” *Nonsalaried payors*, to update military terminology for “quarters allowance” and to add subsistence allowance as a component of total income for military personnel.

Two of the four Family Support Charts have been amended. The Biweekly Child Support Chart skipped from “Payor Net Bi-weekly Income” of \$290 to \$400. The Chart has been corrected. The “bimonthly” chart is renamed the “Semimonthly” Family Support Chart, and all references to “bimonthly” have been changed to “semi-monthly” in the administrative order and in the affidavit.

A new Affidavit of Financial Means is substituted, renumbered to correct errors in numbering in the one published originally. Substantive changes include a request for three pay stubs to be attached to the affidavit after section 1.c. There are additions for

* REPORTER'S NOTE: The original per curiam order was handed down April 26, 2007.

clarification about income in sections 4.a. and 4.d., and about the children being supported in section 5.b. “Health insurance” was added to the list of monthly expenses as section “m.” The term “legally determined illegitimate children” was replaced with “legally legitimated children” in section 23.i. After that section is a new instruction to repeat the “net pay” information on separate attachments for other salaried positions.

We republic the April 26, 2007, per curiam order and substitute all attachments, (1) revised Administrative Order No. 10, (2) revised Child Support Charts, and (3) the revised Affidavit of Financial Means.

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

Supreme Court of Arkansas
Opinion delivered April 26, 2007

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

In compliance with the four-year requirement of P.L. 100-485, the committee has submitted periodic reports and recommendations to the court since 1990. On October 23, 1993, the

court issued a per curiam order and adopted guidelines that were published in the Court Rules Volume of the Arkansas Code Annotated. On September 25, 1997, the court issued a per curiam and adopted the recommendations of the child support committee. At that time, the court adopted and published Administrative Order Number 10 – *Arkansas Child Support Guidelines*, effective October 1, 1997. The Administrative Order incorporated by reference weekly and monthly family support charts and the Affidavit of Financial Means. On January 22, 1998, the court entered a per curiam and republished Administrative Order Number 10, making minor corrections to the child support charts and to the Affidavit of Financial Means.

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

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

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

ADMINISTRATIVE ORDER NUMBER 10 — CHILD SUPPORT GUIDELINES**Section I. Authority and scope.**

Pursuant to Act 948 of 1989, as amended, codified at Ark. Code Ann. § 9-12-312(a) and the Family Support Act of 1988, Pub. L. No. 100-485 (1988), the Court adopts and publishes Administrative Order Number 10 — Child Support Guidelines. This Administrative Order includes and incorporates by reference the attached weekly, biweekly, semimonthly, and monthly family support charts and the attached Affidavit of Financial Means.

It is a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the amount of child support to be awarded in any judicial proceeding for divorce, separation, paternity, or child support. The court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support.

All orders granting or modifying child support (including agreed orders) shall contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the Family Support Chart. If the order varies from the guidelines, it shall include a justification of why the order varies as may be permitted under Section V hereinafter. It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support Chart is correct, if the court enters in the case a specific written finding within the Order that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate.

Section II. Definition of income.

Income means any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest less proper deductions for:

1. Federal and state income tax;
2. Withholding for Social Security (FICA), Medicare, and railroad retirement;
3. Medical insurance paid for dependent children; and
4. Presently paid support for other dependents by court order, regardless of the date of entry of the order or orders.

Cases reflect that the definition of "income" is "intentionally broad and designed to encompass the widest range of sources consistent with this State's policy to interpret 'income' broadly for the benefit of the child." *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005); *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002); *McWhorter v. McWhorter*, 346 Ark. 475, 58 S.W.3d 840 (2001); and *Davis v. Office of Child Support*

Enforcement, 341 Ark. 349, 20 S.W.3d 273 (2000).

Section III. Calculation of support.

a. *Basic Considerations.* The most recent revision of the family support charts is based on the weekly, biweekly, semimonthly and monthly income of the payor parent as defined in Section II.

For purposes of computing child support payments, a month consists of 4.334 weeks. Biweekly means a payor is paid once every two weeks or 26 times during a calendar year. Semimonthly means a payor is paid twice a month or 24 times during a calendar year.

Use the lower figure on the chart for income to determine support. Do not interpolate (i.e., use the \$200.00 amount for all income pay between \$200.00 and \$210.00 per week.)

The amount paid to the Clerk of the Court or to the Arkansas Clearinghouse for administrative costs pursuant to Ark. Code Ann. § 9-12-312(e)(1)(A), § 9-10-109(b)(1)(A), and § 9-14-804(b) is not to be included as support.

b. *Income Which Exceeds Chart.* When the payor's income exceeds that shown on the chart, use the following percentages of the payor's weekly, biweekly, semimonthly or monthly income as defined in SECTION II to set and establish a sum certain dollar amount of support:

- One dependent: 15%
- Two dependents: 21%
- Three dependents: 25%
- Four dependents: 28%
- Five dependents: 30%
- Six dependents: 32%

To compute child support when income exceeds the chart, add together the maximum weekly, biweekly, semimonthly, or monthly chart amount, and the percentage of the dollar amount that exceeds that figure, using the percentage above based upon the number of dependents. *Example:* The maximum on the weekly chart is \$1,000 a week. If a payor's net weekly income is \$1,200 and support will be computed for one child—add \$149 (the chart amount of support for one child when payor's net weekly income is \$1,000) and \$30 (15% of \$200, the amount exceeding the maximum chart amount), for total child support of \$179. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006) (case decided before the Administrative Order was amended to include this computation and example).

c. *Nonsalaried Payors.* For Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and children on account of the payor's disability. SSI benefits shall not be considered as income.

For Veteran's Administration disability recipients, Workers' Compensation disability recipients, and Unemployment Compensation recipients, the court shall consider those benefits as income.

For military personnel, see the latest military pay allocation chart and benefits.

Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS) should be added to other income to reach total income. Military personnel are entitled to draw BAH at a "with dependents" rate if they are providing support pursuant to a court order. However, there may be circumstances in which the payor is unable to draw BAH or may draw BAH only at the "without dependents" rate. Use the BAH for which the payor is actually eligible. In some areas, military personnel receive a variable allowance. It may not be appropriate to include this allowance in calculation of income since it is awarded to offset living expenses which exceed those normally incurred.

For commission workers, support shall be calculated based on minimum draw plus additional commissions.

For self-employed payors, support shall be calculated based on the last two years' federal and state income tax returns and the quarterly estimates for the current year. A self-employed payor's income should include contributions made to retirement plans, alimony paid, and self-employed health insurance paid; this figure appears on line 22 of the current federal income tax form. Depreciation should be allowed as a deduction only to the extent that it reflects actual decrease in value of an asset. Also, the court shall consider the amount the payor is capable of earning or a net worth approach based on property, life-style, etc. For "clarification of the procedure for determining child support by using the net-worth method," see *Tucker v. Office of Child Support Enforcement*, 368 Ark. 481, 247 S.W.3d 485 (2007).

d. *Imputed Income*. If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support.

e. *Spousal Support*. The chart assumes that the custodian of dependent children is employed and is not a dependent. For the purposes of calculating temporary support only, a dependent custodian may be awarded 20% of the net take-home pay for his or her support in addition to any child support awarded. For final hearings, the court should consider all relevant factors, including the chart, in determining the amount of any spousal support to be paid.

f. *Allocation of Dependents for Tax Purposes*. Allocation of dependents for tax purposes belongs to the custodial parent pursuant to the Internal Revenue Code. However, the Court shall have the discretion to grant dependency allocation, or any part of it, to the noncustodial parent if the benefit of the allocation to the noncustodial parent substantially outweighs the benefit to the custodial parent.

g. *Health Insurance*. In addition to the award of child support, the court order shall provide for the child's health care needs, which normally would include health insurance if available to either parent at a reasonable cost.

Section IV. Affidavit of financial means.

The Affidavit of Financial Means shall be used in all family support matters. The trial court shall require each party to complete and exchange the Affidavit of Financial

Means prior to a hearing to establish or modify a support order.

Section V. Deviation considerations.

a. *Relevant Factors.* Relevant factors to be considered by the court in determining appropriate amounts of child support shall include:

1. Food;
2. Shelter and utilities;
3. Clothing;
4. Medical expenses;
5. Educational expenses;
6. Dental expenses;
7. Child care (includes nursery, baby sitting, daycare or other expenses for supervision of children necessary for the custodial parent to work);
8. Accustomed standard of living;
9. Recreation;
10. Insurance;
11. Transportation expenses; and
12. Other income or assets available to support the child from whatever source, including the income of the custodial parent.

b. *Additional Factors.* Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and maintenance of life insurance, health insurance, dental insurance for the children's benefit;
2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g., orthopedic shoes, glasses, braces, etc.);
3. The creation or maintenance of a trust fund for the children;
4. The provision or payment of special education needs or expenses of the child;
5. The provision or payment of day care for a child;
6. The extraordinary time spent with the noncustodial parent, or shared or joint custody arrangements;
7. The support required and given by a payor for dependent children, even in the absence of a court order; and
8. Where the amount of child support indicated by the chart is less than the normal costs of child care, the court shall consider whether a deviation is appropriate.

c. *Application of deviation factors.* These deviation factors may be considered for both the custodial and the noncustodial parents.

Section VI. Abatement of support during extended visitation.

The guidelines assume that the noncustodial parent will have visitation every other weekend and for several weeks during the summer. Excluding weekend visitation with the custodial parent, in those situations in which a child spends in excess of 14 consecutive days with the noncustodial parent, the court should consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations

of the custodial parent which are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents. Any partial abatement or reduction of child support should not exceed 50% of the child support obligation during the extended visitation period of more than 14 consecutive days.

In situations in which the noncustodial parent has been granted annual visitation in excess of 14 consecutive days, the court may prorate annually the reduction in order to maintain the same amount of monthly child support payments. However, if the noncustodial parent does not exercise said extended visitations during a particular year, the noncustodial parent shall be required to pay the abated amount of child support to the custodial parent.

Section VII. Provisions for payment.

All orders of child support shall fix the dates on which payments shall be made. All support orders issued shall include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement as required by Ark. Code Ann. § 9-14-218(a). All income withholding forms shall be made a part of the court file by the payee or his or her attorney. Payment shall be made through the Arkansas Clearinghouse pursuant to Ark. Code Ann. § 9-14-805. Times for payment should ordinarily coincide with the payor's receipt of salary, wages, or other income.

Weekly Family Support Chart

Arkansas					
Weekly Family Support Chart					
Arkansas Adjusted					
Payor Net Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
100	26	37	44	49	54
110	28	41	49	54	59
120	31	45	53	58	64
130	33	48	57	63	70
140	36	52	61	68	75
150	38	55	66	72	80
160	40	59	70	77	85
170	43	62	74	81	90
180	45	66	77	85	94
190	47	69	81	90	99
200	50	72	85	94	104
210	52	76	89	98	108
220	55	79	93	102	113
230	57	83	97	107	118
240	60	86	102	112	124
250	62	90	106	117	129
260	65	94	110	122	135
270	67	97	115	127	140
280	70	101	119	132	145
290	72	104	123	136	150
300	74	107	126	139	154
310	76	110	129	143	158
320	78	113	133	147	162
330	80	116	136	150	166
340	82	119	139	154	170
350	84	121	142	157	173
360	85	123	144	159	176
370	86	124	146	162	178
380	87	126	148	164	181
390	89	128	150	166	183
400	90	130	152	168	186
410	91	132	154	171	188
420	92	133	157	173	191
430	94	135	159	175	194
440	95	137	161	178	196
450	97	139	163	180	199
460	98	141	165	183	202
470	100	143	167	185	204
480	100	144	169	186	206
490	101	145	170	187	207
500	102	146	171	189	208
510	102	147	172	190	210
520	103	148	173	191	211
530	104	149	174	192	212
540	104	150	175	193	213
550	105	150	175	193	214
560	105	151	176	194	214
570	106	151	176	195	215
580	106	152	177	195	215
590	107	153	177	196	216

Arkansas <i>Weekly Family Support Chart</i> Arkansas Adjusted					
Payer Net Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
600	108	154	178	197	218
610	109	156	181	200	220
620	110	158	183	202	223
630	112	160	185	205	228
640	113	162	188	207	229
650	115	164	190	210	232
660	116	166	192	212	234
670	117	168	195	215	237
680	119	169	197	218	240
690	120	171	199	220	243
700	121	173	201	222	245
710	122	174	202	224	247
720	123	176	204	226	249
730	124	177	206	227	251
740	125	179	207	229	253
750	126	180	209	231	255
760	127	182	211	233	257
770	128	183	212	235	259
780	129	185	214	237	261
790	130	186	216	238	263
800	131	187	217	240	265
810	133	189	219	242	267
820	134	190	221	244	269
830	135	192	222	246	271
840	136	193	224	247	273
850	137	195	226	249	275
860	137	196	227	251	277
870	138	197	228	252	278
880	139	198	230	254	280
890	140	199	231	255	282
900	141	201	232	257	284
910	142	202	234	258	285
920	143	203	235	260	287
930	143	204	237	261	289
940	144	205	238	263	290
950	145	207	239	264	292
960	146	208	241	266	294
970	147	209	242	268	295
980	148	210	244	269	297
990	148	211	245	271	299
1000	149	213	246	272	300

Biweekly Family Support Chart

Arkansas					
Bi-Weekly Family Support Chart					
Arkansas Adjusted					
Payor Net Bi-Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
200	51	75	89	98	108
220	56	82	97	107	118
240	61	89	106	117	129
260	66	96	114	128	139
280	71	104	123	135	150
300	76	111	131	145	160
320	81	118	139	154	170
340	86	124	147	162	179
360	90	131	155	171	189
380	95	138	162	179	198
400	100	144	170	188	207
420	104	151	178	196	217
440	109	158	185	205	226
460	114	165	194	215	237
480	119	172	203	224	248
500	124	180	212	234	258
520	129	187	221	244	269
540	134	195	230	254	280
560	139	202	238	263	291
580	144	208	245	271	299
600	148	214	252	279	308
620	152	220	259	288	316
640	156	226	265	293	324
660	160	231	272	301	332
680	164	237	279	308	340
700	167	242	284	314	347
720	170	245	288	319	352
740	172	249	292	323	357
760	175	252	297	328	362
780	177	256	301	332	367
800	180	259	305	337	372
820	182	263	309	341	377
840	185	267	313	346	382
860	188	271	318	351	387
880	191	275	322	356	393
900	193	279	326	361	398
920	196	282	331	365	403
940	199	286	335	370	409
960	201	288	337	373	411
980	202	290	339	375	414
1000	203	292	341	377	416
1020	205	294	344	380	419
1040	206	296	346	382	422
1060	208	298	348	384	424
1080	209	299	349	386	426
1100	210	301	350	387	427
1120	211	302	351	388	428
1140	212	303	352	389	429
1160	213	304	353	390	431
1180	214	305	354	391	432
1200	216	307	357	394	435

Arkansas					
<i>Bi-Weekly Family Support Chart</i>					
Arkansas Adjusted					
Payor Net Bi-Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children
1220	218	311	381	399	441
1240	221	315	386	404	446
1260	224	319	371	409	452
1280	226	323	375	415	458
1300	229	327	380	420	463
1320	232	331	384	425	469
1340	235	335	389	430	475
1360	237	339	394	435	480
1380	240	343	398	440	486
1400	242	346	402	444	490
1420	244	349	405	447	494
1440	246	352	408	451	498
1460	248	355	412	455	502
1480	251	357	415	458	506
1500	253	360	418	462	510
1520	255	363	421	466	514
1540	257	366	425	469	518
1560	259	369	428	473	522
1580	261	372	431	477	526
1600	263	375	435	480	530
1620	265	378	438	484	534
1640	267	381	441	488	538
1660	269	384	445	491	542
1680	271	386	448	495	546
1700	273	389	451	498	550
1720	275	392	454	501	554
1740	277	394	457	505	557
1760	278	396	459	508	560
1780	280	399	462	511	564
1800	282	401	465	514	567
1820	283	404	468	517	570
1840	285	406	470	520	574
1860	287	408	473	523	577
1880	288	411	476	526	581
1900	290	413	479	529	584
1920	292	416	481	532	587
1940	294	418	484	535	591
1960	295	420	487	538	594
1980	297	423	490	541	597
2000	299	425	493	544	601

Semimonthly Family Support Chart

Arkansas					
Semi-Monthly Family Support Chart					
Arkansas Adjusted					
Payor Net Semi-Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
250	64	93	110	122	134
275	70	102	121	133	147
300	78	111	131	145	160
325	82	120	142	157	173
350	88	129	152	168	186
375	94	137	162	179	197
400	100	145	171	189	209
425	106	154	181	200	221
450	112	162	191	211	232
475	118	170	200	221	244
500	124	179	211	233	258
525	130	189	222	245	271
550	137	198	233	258	284
575	143	207	244	270	298
600	149	216	255	282	311
625	155	225	265	293	323
650	160	232	273	302	333
675	165	239	281	311	343
700	170	246	290	320	354
725	175	253	298	329	364
750	180	260	306	338	373
775	183	265	311	344	380
800	186	269	316	350	386
825	189	274	322	355	392
850	192	278	327	361	398
875	196	282	332	367	405
900	199	287	337	373	411
925	202	292	343	379	418
950	206	297	348	384	424
975	210	302	353	390	431
1000	213	307	359	396	438
1025	218	311	363	402	443
1050	218	313	366	405	447
1075	220	316	369	407	450
1100	222	318	371	410	453
1125	223	320	374	413	456
1150	225	323	377	416	460
1175	226	324	378	418	461
1200	228	326	379	419	463
1225	229	327	381	421	464
1250	230	329	382	422	466
1275	231	330	383	423	467
1300	233	333	386	427	471
1325	237	338	392	433	478
1350	240	343	398	440	485
1375	244	348	404	446	492
1400	247	353	409	452	499
1425	251	358	415	459	507
1450	254	363	421	465	514

Arkansas <i>Semi-Monthly Family Support Chart</i> Arkansas Adjusted					
Payor Net Semi-Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
1475	257	387	427	472	521
1500	261	372	432	478	527
1525	263	376	436	482	532
1550	266	379	440	487	537
1575	268	383	445	491	542
1600	271	387	449	496	547
1625	274	390	453	500	552
1650	276	394	457	505	557
1675	279	397	461	510	563
1700	281	401	465	514	568
1725	284	405	469	519	573
1750	287	408	474	523	578
1775	289	412	478	528	583
1800	292	416	482	532	588
1825	294	419	486	537	593
1850	297	422	490	541	597
1875	299	425	493	545	601
1900	301	428	497	549	606
1925	303	431	500	552	610
1950	305	434	503	556	614
1975	307	437	507	560	618
2000	309	440	510	564	623
2025	311	443	514	568	627
2050	313	446	517	572	631
2075	316	449	521	575	635
2100	318	452	524	579	639
2125	320	455	528	583	644
2150	322	458	531	587	648
2175	324	461	535	591	652
2200	326	464	538	595	656
2225	328	467	541	598	661
2250	330	470	545	602	665
2275	333	473	548	606	669
2300	335	476	552	610	673
2325	337	479	555	614	677
2350	339	482	559	617	682
2375	341	485	562	621	686
2400	342	487	563	623	687
2425	343	488	565	624	689
2450	344	489	566	625	690
2475	345	490	567	627	692
2500	346	491	568	628	693

Monthly Family Support Chart

Arkansas Monthly Family Support Chart Arkansas Adjusted					
Payer Net Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
500	127	186	220	243	289
550	140	204	242	267	295
600	152	222	283	290	321
650	165	240	284	314	347
700	177	257	304	338	371
750	189	274	324	358	395
800	200	291	343	379	418
850	212	307	362	400	441
900	224	324	381	421	465
950	235	340	400	442	488
1000	248	359	422	467	515
1050	261	377	444	491	542
1100	273	396	466	515	569
1150	286	414	488	540	596
1200	298	433	511	564	623
1250	310	449	530	585	646
1300	320	464	546	604	666
1350	330	478	563	622	687
1400	340	493	580	640	707
1450	351	507	596	659	727
1500	360	521	612	676	747
1550	366	530	622	688	759
1600	373	538	633	699	772
1650	379	547	643	711	784
1700	385	556	653	722	797
1750	391	565	664	733	810
1800	398	574	674	745	823
1850	405	584	685	757	836
1900	412	594	696	769	849
1950	419	603	707	781	862
2000	426	613	718	793	875
2050	432	622	727	803	887
2100	436	626	732	809	893
2150	439	631	738	815	900
2200	443	636	743	821	906
2250	447	641	748	827	913
2300	450	646	753	833	919
2350	453	649	756	836	923
2400	455	652	759	839	926
2450	458	655	761	841	929
2500	460	657	764	844	932
2550	463	660	766	847	935
2600	467	666	773	854	942
2650	474	676	784	866	957
2700	481	686	796	879	971
2750	487	695	807	892	985
2800	494	705	819	905	999
2850	501	715	830	918	1013
2900	508	725	842	930	1027
2950	515	735	854	943	1041

Arkansas <i>Monthly Family Support Chart</i> Arkansas Adjusted					
Payor Net Monthly Income	One Child	Two Children	Three Children	Four Children	Five Children
3000	521	744	884	955	1054
3050	526	751	873	964	1064
3100	532	759	881	973	1075
3150	537	766	889	982	1085
3200	542	773	897	992	1095
3250	547	780	906	1001	1105
3300	552	788	914	1010	1115
3350	558	795	922	1019	1125
3400	563	802	930	1028	1135
3450	568	809	939	1037	1145
3500	573	817	947	1046	1155
3550	578	824	955	1056	1165
3600	583	831	964	1065	1175
3650	589	839	972	1074	1186
3700	593	845	979	1082	1195
3750	597	851	986	1090	1203
3800	602	857	993	1097	1211
3850	606	863	1000	1105	1220
3900	610	869	1007	1113	1228
3950	614	875	1014	1120	1237
4000	619	881	1021	1128	1245
4050	623	887	1028	1136	1254
4100	627	893	1035	1143	1262
4150	631	899	1041	1151	1270
4200	635	905	1048	1158	1279
4250	640	911	1055	1166	1287
4300	644	917	1062	1174	1296
4350	648	923	1069	1181	1304
4400	652	929	1076	1189	1313
4450	657	935	1083	1197	1321
4500	661	941	1090	1204	1330
4550	665	947	1097	1212	1338
4600	669	953	1104	1220	1346
4650	674	959	1111	1227	1355
4700	678	965	1118	1235	1363
4750	682	971	1124	1243	1372
4800	684	973	1127	1245	1375
4850	686	976	1129	1248	1378
4900	688	978	1132	1251	1381
4950	690	980	1134	1253	1383
5000	691	983	1136	1256	1386

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS
(Domestic Relations Division)

STATE OF ARKANSAS }
 }
 COUNTY OF _____ }

AFFIDAVIT OF FINANCIAL MEANS

Revised 6/2007

 Plaintiff

v.

No. _____

 Defendant

The affiant, being duly sworn, says under penalty of perjury that affiant is the **(PLAINTIFF) (DEFENDANT)** (strike out one) herein, has prepared this financial statement, knows the contents thereof, and that it is true and correct.

MY INCOME
 (Complete Block 23 on page 5 FIRST)

1.	How often are you paid?	Amount
	<input type="checkbox"/> weekly <input type="checkbox"/> biweekly (26 times a year) <input type="checkbox"/> monthly <input type="checkbox"/> semimonthly (twice a month—24 times a year) <input type="checkbox"/> other	
1.a.	Net Pay: (Take-home) (from line 23.h.)	\$ _____
1.b.	Allowable Deductions: (from line 23.g.)	\$ _____
1.c.	Other Deductions: (from line 24.i.)	\$ _____

Please attach your last three (3) pay stubs to this affidavit.

2. Number of dependents, including self, claimed for tax withholding purposes: _____
3. Additional amount, if any, withheld for tax purposes: \$ _____

OTHER INCOME, FUNDS & LIQUID ASSETS AVAILABLE TO ME

4.	Funds:	Amount:	Source of funds/assets:
4.a.	All other income received (state source, amount, and how often received):	\$	See attached sheet.
4.b.	Cash on hand or in banks:	\$	
4.c.	Stocks & bonds, etc.:	\$	
4.d.	All other child support:	\$	

THE CHILDREN

5.	Financial responsibility of my children:	Number of children:
5.a.	Number of children I have with opposing party:	#
5.b.	Number of other children I have and support:	#
5.c.	Total Number of children living with me whom I support:	#
5.d.	Full Name of child(ren) born or legally adopted of this marriage:	Date of Birth:
1.		
2.		
3.		
4.		

MY MONTHLY EXPENSES

6.	Expense:	Amount:		Expense:	Amount:
a.	Rent/house payment:	\$	k.	Drugs:	\$
b.	Gas & electricity:	\$	l.	Life Insurance:	\$
c.	Water:	\$	m.	Health Insurance:	\$
d.	Telephone:	\$	n.	Auto Insurance:	\$
e.	Food:	\$	o.	Fire Insurance:	\$
f.	Clothing:	\$	p.	Transportation:	\$
g.	Laundry & cleaning:	\$	q.	Other:	\$
h.	Child care:	\$	r.	Other:	\$
i.	Car payment:	\$	s.	Other:	\$
j.	Medical:	\$	t.	Other:	\$
				Total:	\$

Place a check mark by all expenses which are not being paid currently.

CREDITORS

(Complete items 26, 27, & 28 on pages 6 & 7 FIRST)

	Whose Debts:	Total Owed: (A)	Total of Monthly payments: (B)
7.	Joint Debts:	\$	\$
8.	Plaintiff's Debts:	\$	\$
9.	Defendant's Debts:	\$	\$

GENERAL INFORMATION ABOUT PARTIES

(Do not guess concerning information about opposing party)

	Information about:	Plaintiff	Defendant
10.	Name:		
11.	Address:		
12.	SSN: (last four digits)		
13.	Date of Birth:		
14.	Phone No.: (home)		
15.	Phone No.: (work)		
16.	Employer:		
17.	Employer Address:		
18.	Employer Phone No.:		
19.	Opposing party's net ___weekly, ___biweekly, ___monthly or ___semimonthly income:		
20.	Other income of opposing party:		
21.	Number of children of opposing party:		

INCOME FROM SALARY

22. How often are you paid?

weekly
 biweekly
 semimonthly
 monthly
 other
 52 times a year
 26 times a year
 24 times a year
 12 times a year
 Explain

YOUR NET PAY
(Gross pay minus payroll deductions)

23.	Income:		Amount	
23.a.	Gross Wages per pay period:		\$	xxxxxxxxxxx
		Deductions per check:	xxxxxxx	Amount
23.b.		Federal Income Taxes Withheld:	xxxxxxx	\$
23.c.		State Income Taxes Withheld:	xxxxxxx	\$
23.d.		F.I.C.A., and medicare ¹ :	xxxxxxx	\$
23.e.		Health Insurance (children only) ² :	xxxxxxx	\$
23.f.		Court ordered child support ³ :	xxxxxxx	\$
23.g.		Total Withheld: (b) thru (f) above: Carry to line 1.b. on first page.	xxxxxxx	\$
23.h.	Net take-home pay per pay period: (Subtract 23.g from 23.a)			\$
23.i.	¹ F.I.C.A. is Social Security; Include any railroad retirement in F.I.C.A. block. ² Include the amount you pay to cover the children only. ³ Include any court ordered child support for dependents of previous marriages or previously legally legitimated children and adopted children withheld from current paycheck.			

Repeat salary information on a separate attachment for any other salaried positions you have.

OTHER DEDUCTIONS FROM MY PAYCHECK

24.	Item:	Amount:
24.a.	Union dues:	\$
24.b.	Credit Union, thrift plan payments:	\$
24.c.	Pension Benefits and stock purchase plans:	\$
24.d.	Charitable contributions:	\$

24.e.	Debt payments and/or garnishments:	\$
24.f.	Life Insurance payments:	\$
24.g.	Other (Identify):	\$
24.h.	Other (Identify):	\$
24.i.	Total Withheld (total of 24.a. thru 24.h.) (Carry to 1.c. on page 1):	\$

The above deductions will not be considered as direct deductions from your gross pay.
However, they may affect the amount of the child support obligation.

OTHER COURT ORDERED CHILD SUPPORT

25.	Other court-ordered child support being paid other than by deduction: Attach child support order and proof of payment.	\$
-----	---	----

CREDITORS & DEBTS

26. Debts in the names of BOTH PARTIES are:

	Creditor:	Total amount owed:	Monthly payment:
26.a.		\$	\$
26.b.		\$	\$
26.c.		\$	\$
26.d.		\$	\$
26.e.		\$	\$
26.f.		\$	\$
26.g.		\$	\$
26.h.		\$	\$
	Totals:	\$	\$

Attach additional schedules as needed, and then total - Carry to lines 7(A) & 7(B) on page 3.

27. Debts in the name of only the PLAINTIFF are:

	Creditor:	Total amount owed:	Monthly payment:
27.a.		\$	\$

27.b.		\$	\$
27.c.		\$	\$
27.d.		\$	\$
27.e.		\$	\$
	Totals:	\$	\$

Attach additional schedules as needed, and then total - Carry to lines 8(A) & 8(B) on page 3.

28. Debts in the name of only the DEFENDANT are:

	Creditor:	Total amount owed:	Monthly payment:
28.a.		\$	\$
28.b.		\$	\$
28.c.		\$	\$
28.d.		\$	\$
28.e.		\$	\$
	Totals:	\$	\$

Attach additional schedules as needed, and then total - Carry to lines 9(A) & 9(B) on page 3.

Dated this _____ of _____, 20_____.

Affiant

Subscribed and sworn to before me on this _____ day of _____, 20_____.

Notary Public

My commission expires: _____

NOTICE

BOTH PARTIES MUST COMPLETE AND EXCHANGE THIS SEVEN-PAGE AFFIDAVIT PRIOR TO THE TEMPORARY HEARING. BOTH PARTIES MUST SUPPLY THE ORIGINAL NOTARIZED AFFIDAVIT TO THE COURT. THE COURT WILL PUNISH PERJURY BY APPROPRIATE ACTION.

IN RE: ESTABLISHMENT of a VOLUNTARY PILOT
PROGRAM for the FILING of ELECTRONIC BRIEFS,
EXCLUDING the ADDENDUM, in the SUPREME COURT
and COURT of APPEALS

Supreme Court of Arkansas
Opinion delivered June 21, 2007

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

Upon consideration of the recommendation and the proposal submitted, the Supreme Court and the Court of Appeals *invite, encourage, and request the voluntary filing of electronic briefs*, excluding the addendum, and hereby authorize the establishment of a voluntary pilot program. The pilot program shall include all briefs, excluding the addendum, submitted to the Arkansas Supreme Court and the Arkansas Court of Appeals after September 1, 2007, for cases in which briefs are due in those courts on or after that date. As a courtesy to the court, it is requested that *non-participating* parties provide electronic copies of their briefs, excluding the addendum, to opposing parties.¹ We further authorize the exploratory committee to promulgate procedures, consistent with the rules of the Arkansas Supreme Court and the Court of Appeals,² for the voluntary submission of electronic briefs; to develop methods for evaluating the results of this pilot program;

¹ Such courtesy briefs should follow the same rules set forth for the electronic briefs to be filed with the courts.

² It is important to note that the electronic filing of a brief (E-brief) is *in addition to* and *not a replacement of* the paper copies that are required to be filed by our rules. Compliance with the filing requirements of the rules can only be achieved by filing the requisite copies in the proper form with the Clerk of the Court. ELECTRONIC FILINGS WILL NOT BE CONSIDERED IN DETERMINING WHETHER A BRIEF IS TIMELY FILED UNDER THE RULES OF APPELLATE PROCEDURE. We will consider the paper original

and to make recommendations concerning the further use of electronic filing in appellate cases or such other recommendations as it deems appropriate.

An electronic brief, excluding the addendum, shall be submitted using the procedures and standards set forth in *Standards for the Pilot Study to Evaluate the Use of Electronic Briefs*.³ A copy is posted on the courts' website at <http://courts.state.ar.us>.

IN RE: SUPREME COURT and COURT of APPEALS
FILING FEE

Supreme Court of Arkansas
Opinion delivered June 21, 2007

PER CURIAM. Act 378 of 2007 amends Ark. Code Ann. § 21-6-401(a) and raises the Supreme Court and Court of Appeals filing fees from \$100 to \$150 effective July 31, 2007.

as the official filing; therefore, the E-brief shall not differ from the paper original, and all format and length requirements specified in the appellate rules shall apply.

³ Questions regarding the technical procedures should be directed to: Jack Garvey, Website Coordinator, at jack.garvey@arkansas.gov, (501)682-9400.

Appointments to
Committees

IN RE: JUDICIAL DISCIPLINE and
DISABILITY COMMISSION

Supreme Court of Arkansas
Opinion delivered May 17, 2007

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas and Act 637 of 1989, the Supreme Court reappoints to the Judicial Discipline and Disability Commission Honorable Chris Williams of Malvern, Circuit Judge, Seventh Judicial Circuit, and Honorable Stephen Routon of Forrest City, District Judge, St. Francis County District Court. These terms expire on June 30, 2013.

The court thanks Judge Williams and Judge Routon for accepting reappointment to the Commission.

IN RE: SUPREME COURT BOARD of CERTIFIED COURT
REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered June 14, 2007

PER CURIAM. Honorable Xollie Duncan of Bentonville, Circuit Judge, 19th West Judicial Circuit, and Ms. Sharon Hartz of Pine Bluff, Certified Court Reporter, are reappointed to our Board of Certified Court Reporter Examiners for three-year terms expiring on July 31, 2010.

The court expresses its gratitude to these members for their willingness to continue their service.

IN RE: ARKANSAS CODE REVISION COMMISSION

Supreme Court of Arkansas
Opinion delivered June 21, 2007

PER CURIAM. Don M. Schnipper, Esq., of Hot Springs is appointed to the Arkansas Code Revision Commission to fill the unexpired term of William H. Sutton, Esq., of Little Rock, who has resigned. The court thanks Mr. Sutton for his years of dedicated service to the Commission and Mr. Schnipper for accepting appointment to the Commission. This term expires on November 7, 2007.

IN RE: CLIENT SECURITY FUND COMMITTEE

Supreme Court of Arkansas
Opinion delivered June 21, 2007

PER CURIAM. Representative Earnest Brown, Jr., of Pine Bluff is hereby reappointed to the Client Security Fund Committee for a five-year term to expire July 31, 2012.

The Court thanks Representative Brown for accepting reappointment to this important committee.

IN RE: ARKANSAS SUPREME COURT COMMITTEE on
SECURITY and EMERGENCY PREPAREDNESS

Supreme Court of Arkansas
Opinion delivered July 19, 2007

PER CURIAM. The Arkansas Task Force on Court Security was created to examine court security in Arkansas and to make recommendations to the Supreme Court. *See In re: Adoption of Recommendations from the Arkansas Task Force on Court Security*, 368 Ark. App'x 701 (2007). In February, we responded to certain of the recommendations submitted by the Task Force, including the adoption of minimum guidelines for court security and emergency preparedness, and discussed the current state of court security and the need for improvements. *Id.* We are pleased to acknowledge the General Assembly's response to other recommendations of the Task Force in passing The Court Security Act (Act 576 of 2007), which created the Office of Security and Emergency Preparedness and the Director of Security and Emergency Preparedness within the Administrative Office of the Courts, created a court security grant program to provide funds to cities and counties to implement local security and emergency preparedness plans for circuit and district courts, and established standards for persons serving as court security officers.

One of the Task Force's recommendations, which was previously deferred, was the creation of the Supreme Court Committee on Security and Emergency Preparedness. The purpose of the committee is to recommend and evaluate uniform state policies on court security and emergency preparedness and assist local courts in drafting and implementing local plans. Today, we adopt this recommendation, create the Arkansas Supreme Court Committee on Security and Emergency Preparedness, and appoint the initial members. The structure of the committee is as follows:

**Arkansas Supreme Court Committee on Security and
Emergency Preparedness**

A. The Arkansas Supreme Court Committee on Security and Emergency Preparedness shall consist of 17 voting members, appointed as provided herein. All subsequent appointments of

voting members shall be for a term of three years. A voting member may be appointed to serve no more than two successive three-year terms.

B. Should any vacancy in the term of a voting member occur, the appropriate appointing authority shall appoint a successor voting member who shall serve the remainder of the term. Any member whose term shall expire shall continue to serve until his or her successor is appointed.

C. The Arkansas Supreme Court shall appoint 15 members of the committee and the Speaker of the Arkansas House of Representatives and the President Pro Tempore of the Arkansas Senate shall each be entitled to appoint one member of their respective chambers to serve as members of the Committee.

The initial members of the committee and their terms of office are as follows:

Circuit Judge Jim Hudson of Texarkana (Chair) (September 30, 2010),

Sheriff Keith Bowers of Batesville (September 30, 2010),

Mr. Larry Burris, Chief Court Bailiff, of Fort Smith (September 30, 2008),

Hon. Sonny Cox, Arkansas County Judge (September 30, 2008),

Mr. Eddie Davis, Arkansas Supreme Court Police Chief (September 30, 2009),

Circuit Judge Tim Fox of Little Rock (September 30, 2008),

Ms. Pat Hannah of the Workers' Compensation Commission (September 30, 2009),

Hon. Mike Jacobs, Johnson County Judge (September 30, 2010),

Mr. David Maxwell, Director, Arkansas Department of Emergency Management (September 30, 2010),

Mayor James Morgan of White Hall (September 30, 2008),

Ms. Vicki Rima, Garland County Circuit Clerk (September 30, 2008),

District Court Judge David Saxon of Fort Smith (September 30, 2010),

Circuit Judge Hamilton Singleton of Camden (September 30, 2009),

Mayor Tommy Swaim of Jacksonville (September 30, 2009), and

District Court Judge Cheney Taylor of Batesville (September 30, 2009)

We thank each of these members for their willingness to serve as charter members of this undertaking. In addition to these members, we request the Speaker of the House and the President Pro Tempore of the Senate to appoint one member of their respective chambers to serve on the committee.

IN RE: STATE BOARD of LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered July 19, 2007

PER CURIAM. Lucinda McDaniel, of Jonesboro, Arkansas, is appointed to the Board of Law Examiners for the purpose of grading the July 2007 Bar Examination. Ms. McDaniel replaces Tim Watson of Newport.

The Court thanks Ms. McDaniel for accepting appointment to this Board for the purpose of grading this examination.

Ceremonial
Observances

IN RE: J. D. GINGERICH'S SERVICE AS PRESIDENT of THE
CONFERENCE of STATE COURT ADMINISTRATORS

Supreme Court of Arkansas
Opinion delivered May 31, 2007

PER CURIAM. At the annual meeting of the Conference of State Court Administrators in August of 2006, J.D. Gingerich, the Director of the Arkansas Administrative Office of the Courts, was elected President of the Conference of State Court Administrators and Vice-chair of the Board of Directors for the National Center for State Courts. The Conference of State Court Administrators (COSCA) was established in 1955 and is dedicated to the improvement of state court systems. Its membership consists of the state court administrator or equivalent official in each of the fifty states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands. COSCA is part of the National Center for State Courts, which is headquartered in Williamsburg, VA and is dedicated to improving the administration of justice by providing education, training, and research services to the nation's state courts.

Mr. Gingerich has served as our director since 1988 and is respected among his peers throughout the country. His service in these organizations brings distinction to the state and our court system. As his year as president of COSCA draws to a close, the Arkansas Supreme Court takes this occasion to acknowledge with pleasure the achievements of J.D. Gingerich.

Jiri Hanzal

Tom Blayz

Annabelle C. Embler

Walter A. Lee

Tom Lynter

Robert J. Brown

Fred Danilson

 IN RE: PASSING of JUDGE HOWARD TEMPLETON

Supreme Court of Arkansas
 Opinion delivered September 13, 2007

PER CURIAM. On September 3, 2007, Honorable Howard Templeton, Circuit Judge, Second Judicial Circuit-Retired, lost his long and valiant battle with cancer and other health issues. On the sad occasion of his passing, the Arkansas Supreme Court wishes to acknowledge his life of service to the Arkansas legal system and to express our sympathy to his wife, Carol, and his family.

Judge Templeton's contributions to the bench and bar began in 1966 upon his graduation from the University of Arkansas Law School. He practiced law until his election to the bench in 1976 and ably served the citizens of the Second Judicial Circuit for 25 years until his retirement in 2002. In addition, Judge Templeton served the Arkansas judiciary as President of the Arkansas Judicial Council, and he was selected by his fellow judges as the Second Circuit's first administrative judge. Howard Templeton distinguished himself on the bench and had the respect and admiration of his fellow judges.

The Arkansas Supreme Court salutes Judge Howard Templeton for an extraordinary life on and off the bench. The attorneys and judges of the state have been enriched by his service. His community, his church, his friends, and his family have been enriched by his presence.


 Chief Justice Jim Hannah


 Justice Tom Glaze


 Justice Robert Brown


 Justice Jim Gunter


 Justice Don Corbin


 Justice Annabelle Clinton-Imber


 Justice Paul Danielson