

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN RE: RULES of CRIMINAL PROCEDURE,
ADOPTION of RULE 36

Supreme Court of Arkansas
Opinion delivered April 28, 2005

PER CURIAM. The Supreme Court Committee on Criminal Practice has proposed the adoption of a new rule to address criminal appeals from district court to circuit court. Such appeals are currently governed by District Court Rule 9, which generally is a rule for civil actions. The committee recommends proposed Rule 36 to serve as a comprehensive procedure governing appeals from limited jurisdiction courts to circuit courts. The rule attempts to codify existing practice as reflected in District Court Rule 9 and statutes. The rule is further explained in the accompanying Reporter's Notes.

The proposed rule has been circulated by the committee to all district court judges and their comments have been considered by the committee. The proposed rule has also been reviewed by our Committee on Civil Practice. Today, we publish the proposal for comment. We express our gratitude to the members of the Criminal Practice Committee for their work.

Comments should be submitted in writing by July 1, 2005 and addressed to: Les Steen, Arkansas Supreme Court Clerk, Justice Building, 625 Marshall Street, Little Rock, AR 72201, Attention: Criminal Procedure Rules.

Arkansas Rules of Criminal Procedure

Rule 36. Appeals from District Court to Circuit Court.

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

Reporter's Notes

Subsection (a) incorporates Ark. Code Ann. § 16-96-501 (which is shown by Code Revision Commission as superseded) and Arkansas Code Ann. § 16-96-502. *See also,*

Amendment 80, § 7(A) of the Arkansas Constitution, which establishes district courts as trial courts of limited jurisdiction, subject to the right of appeal to circuit court.

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

Reporter's Notes

Subsection (b) restates the provisions of District Court Rule 9(a), which governed appeals in criminal cases prior to the adoption of Arkansas Rule of Criminal Procedure 36.

(c) *How Taken.* An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. It shall be the duty of the clerk of the district court to prepare and certify such record when requested in writing by the defendant and upon payment by the defendant of any fees of the district court authorized by law therefor. The defendant shall have the responsibility of filing such certified record in the office of the circuit clerk. The record shall include any supersedeas bond or appeal bond filed by the defendant.

Reporter's Notes

Subsection (c) is substantially identical to District Court Rule 9(b), which governed appeals in criminal cases prior to the adoption of Arkansas Rule of Criminal Procedure 36. The only difference between this subsection and District Court Rule 9(b) is the final sentence, which appears only in this subsection in recognition of the fact that the record in a criminal case will usually include an appearance bond and possibly a supersedeas bond. Ark. Code Ann. § 16-96-505 describes the transcript in a criminal case but that provision was not included in this subsection because § 16-96-505 is shown as superseded by the Code Revision Commission.

(d) *Failure of clerk to file record.* If the clerk of the district court does not prepare and certify a record for filing in the circuit court in a timely manner, the defendant may take an appeal by filing an affidavit in the

office of the circuit clerk, within 30 days from the date of the entry of the judgment in the district court, showing (i) that the appellant has requested the clerk of the district court to prepare and certify the record for purposes of appeal and (ii) that the clerk has not done so. The defendant shall promptly serve a copy of such affidavit upon the clerk of the district court and upon the prosecuting attorney. On motion of the defendant or the prosecuting attorney, the circuit court may order the clerk of the district court to prepare, certify, and file a record in the circuit court.

Reporter's Notes

Subsection (d) is based on District Court Rule 9(c), which governed appeals in criminal cases prior to the adoption of Arkansas Rule of Criminal Procedure 36.

(e) *Bond*. When an appeal is taken from a district court to circuit court, there shall be no supersedeas of the judgment entered by the district court unless the defendant posts a supersedeas bond with security or deposit as required by the district court. The district court may also require the defendant to post an appearance bond to guarantee the appearance of the defendant before the circuit court, provided that an appearance bond originally posted with the district court to guarantee the appearance of the defendant before that court shall serve to guarantee the appearance of the defendant before the circuit court on appeal. The clerk of the district court shall transmit any supersedeas bond or appearance bond with any security or deposit to the circuit court. After acquiring jurisdiction of the appeal, the circuit court may modify the amount or security of the appearance bond.

Reporter's Notes

Subsection (e) is based on District Court Rule 9(d) and Ark. Code Ann. § 16-96-504. The sentence providing that an appeal bond posted with the district court shall serve to guarantee the appearance of the defendant before the circuit court is consistent with Rule 9.2(e). The subsection also distinguishes a supersedeas bond from an appeal bond. In *Gober v. Daniels*, 295 Ark. 199, 748 S.W.2d 29 (1988) the Supreme Court stated: "The regimens of Rule 9.2 have no practicable application to the setting of a supersedeas bond contemplated by [16-96-504], nor are they constitutionally required. There is a marked difference between the purpose of

supersedeas, which is to stay the effect of the judgment, and those bonds which operate to guarantee the appearance of the person.”

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

Reporter's Notes

Subsection (f) ensures that both the prosecuting attorney and the circuit judge are aware that an appeal to circuit court has been filed and should reduce the number of cases in which the defendant fails to receive the speedy trial required by Rule 28.1. There is nothing comparable to this subsection in current law.

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

Reporter's Notes

Prior to the adoption of subsection (g), Ark. Code Ann. § 16-96-507 provided for *de novo* review on appeal from a limited jurisdiction court to circuit court. *See also*, Amendment 80, § 7(A) of the Arkansas Constitution, which requires a trial *de novo* in the circuit court. This subsection does not address the collection or disposition of fines, penalties, forfeitures, or costs imposed by the circuit court. These matters will continue to be governed by Ark. Code Ann. § 16-96-403.

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

Reporter's Notes

This subsection is based loosely on Ark. Code Ann. § 16-96-508. The collection and disposition of fines, penalties, forfei

tures, or costs in the event of a default judgment will continue to be governed by Ark. Code Ann. § 16-96-403.

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

IN RE: RULES GOVERNING ADMISSION TO
THE BAR of ARKANSAS

Supreme Court of Arkansas
Opinion delivered May 26, 2005

PER CURIAM. Rule XII.2. of the *Rules Governing Admission to the Bar* (Rules) presently states: “No candidate shall be allowed to take the bar examination who is not a citizen of the United States or an alien lawfully residing in the United States.” The Arkansas State Board of Law Examiners (Board) has considered this language in the context of the increasing number of foreign students attending American law schools on student visas. Those students then secure a professional training visa for an additional year after graduation during which time they take the bar examination.

It does not appear that the requirement of citizenship, which is the first alternative of the current rule, is constitutional. *See In Re: Griffiths*, 413 U.S. 717 (1973).

The second option posited by the rule — “alien lawfully residing” — is uncertain of definition, especially in light of the numerous immigrant or non immigrant status categories that are available to foreign law students.

A survey of other jurisdictions makes clear that no jurisdiction has a citizenship requirement. Many do not inquire beyond determining whether the applicant is lawfully present at the time he or she takes the examination. A few states have language similar

to what we have in Arkansas, but the language does not provide guidance on what "residing" might mean.

In light of these considerations, the Board recommends that Rule XII.2. be amended as follows:

RULE XII.2.

Candidates may be a United States citizen, an alien lawfully admitted for permanent residence, or an alien otherwise authorized to work or study lawfully in the United States.

We publish this proposal for comment of the bench and the bar. Such comments should be directed to Leslie Steen, Clerk of the Court, 625 Marshall St., Little Rock, AR 72201, before September 1, 2005.

Appointments to
Committees

IN RE: JUDICIAL DISCIPLINE and
DISABILITY COMMISSION

Supreme Court of Arkansas
Opinion delivered May 26, 2005

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas and Act 637 of 1989, the court reappoints to the Commission the Honorable Leon Jamison, Circuit Judge, Eleventh Judicial Circuit-West. This term expires on June 30, 2011. The court thanks Judge Jamison for accepting reappointment to the Commission.

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

Supreme Court of Arkansas
Opinion delivered May 26, 2005

PER CURIAM. Lloyd Vance Stone, III, Esq., of Bentonville, Third Congressional District, is appointed to the Supreme Court Committee on the Unauthorized Practice of Law for a three-year term to expire on May 31, 2008. Ms. Karen Kay Howard of Batesville is appointed to an At-Large Position for a three-year term to expire on May 31, 2008.

The Court thanks Mr. Stone and Ms. Howard for accepting appointment to this important Committee. We also express our appreciation to Jim Coutts, Esq., and Catherine Duvall, whose terms have expired, for their service to the Committee.

THE JUDICIAL DISCIPLINE AND
DISABILITY COMMISSION

Supreme Court of Virginia
Opinion delivered May 20, 2008

The Commission in accordance with Amendment 10 of the
Constitution of Virginia and Act 627 of 1989, the court
repeals the Commission on the Judicial Branch, created
by the Judicial Branch Commission, and transfers its jurisdiction
to the Judicial Discipline and Disability Commission, created
by the Commission.

THE SUPREME COURT COMMITTEE ON THE
UNETHICAL PRACTICE OF LAW

Supreme Court of Virginia
Opinion delivered May 20, 2008

The Commission on the Unethical Practice of Law, created
by the Supreme Court of Virginia, is appointed to the
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Professional Conduct
Matters

IN RE: Luther Vance MARKER,
Arkansas Bar No. 92234

05-549

Supreme Court of Arkansas
Opinion delivered May 26, 2005

Petition for Voluntary Surrender of Law License granted.

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

It is so ordered.