ARKANSAS REPORTS
VOLUME 335

ARKANSAS
APPELLATE REPORTS
VOLUME 64

[T]he law is the last result of human wisdom acting upon human experience for the benefit of the public.

— SAMUEL JOHNSON
(1709-1784)

THIS BOOK CONTAINS THE OFFICIAL

ARKANSAS REPORTS

Volume 335

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
November 5, 1998 — December 21, 1998
INCLUSIVE[1]

AND

ARKANSAS APPELLATE REPORTS

Volume 64

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
November 4, 1998 — December 23, 1998
INCLUSIVE[2]

PUBLISHED BY THE
STATE OF ARKANSAS
1998

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[1]Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 547. Cite as 335 Ark. ___ (1998).
[2]Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 377. Cite as 64 Ark. App. ___ (1998).

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.

— JAMES MADISON
(1751-1836)

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JOE CHRISTENSEN PRINTING COMPANY
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1998

ARKANSAS REPORTS

Volume 335

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
November 5, 1998 — December 21, 1998
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1998

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JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(November 5, 1998 — December 21, 1998, inclusive)

JUSTICES

W.H. "DUB" ARNOLD	Chief Justice
DAVID NEWBERN	Justice[1]
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
RAY THORNTON	Justice

OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian[2]
WILLIAM B. JONES, JR.	Reporter of Decisions

[1]Retired December 31, 1998.

[2]Retired December 31, 1998.

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STANDARDS FOR PUBLICATION OF OPINIONS

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RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

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 published 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.

Anthony *v.* State, CR 97-655 (Per Curiam), Pro Se Motion for Photocopies at Public Expense denied November 12, 1998.

Bell *v.* Rogers, CR 98-1037 (Per Curiam), Pro Me Motion to Amend Petition for Writ of Mandamus granted November 19, 1998.

Berna *v.* Case No. 89-214, 98-1202 (Per Curiam), Pro Se Motion for Rule on Clerk; denied December 17, 1998.

Bly *v.* State, CR 98-595 (Per Curiam), Pro Se Motion for Appointment of Counsel denied November 5, 1998.

Brown *v.* Norris, 98-1012 (Per Curiam), Pro Se Motions for Duplication of Appellant's Brief at Public Expense and to be Provided with a Sample Brief from a Civil Case; moot December 10, 1998.

Coleman *v.* State, CR 98-224 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted November 5, 1998.

Crawford *v.* Davis, CR 98-217 (Per Curiam), Pro Se Petition for Writ of mandamus moot November 5, 1998.

Dennis *v.* State, CR 97-902 (Per Curiam), Petition for Rehearing denied December 3, 1998.

Elliott *v.* Keith, CR 98-1311 (Per Curiam), Pro Se Motion for Rule on Clerk Dismissed December 17, 1998.

Forrest *v.* State, CR 97-1311 (Per Curiam), affirmed December 17, 1998.

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Hancock *v.* State, CR 98-919 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted December 3, 1998.

Jones, Howard W. *v.* State, 98-547 (Per Curiam), Pro Se Motion for Appointment of Counsel denied December 3, 1998.

Jones, Michael L. *v.* State, CR 97-1167 (Per Curiam), Appellant's Pro Se Motions to Include a Supplemental Abstract in His Reply Brief and for Expansion of Page Limit in Reply Brief and for Appointment of Counsel denied November 12, 1998.

Laughlin *v.* State, CR 97-933 (Per Curiam), affirmed November 19, 1998.

Morris *v.* State, CR 97-1003 (Per Curiam), Appellant's Pro Se Motion to Supplement Appellant's Brief denied November 19, 1998.

Nooner *v.* State, CR 98-577 (Per Curiam), Pro Se Motions for Rule on Clerk and for Reconsideration of Motion for New Trial and Pro Se Petitions for Writ of Mandamus and Injunction, for Writ of Prohibition, and for Extraordinary Writ; denied December 10, 1998.)

Orsini *v.* Beck, 98-1013 (Per Curiam), Pro Se Motions for Continuance, for Duplication of Brief at Public Expense, to Prevent Appellee from Relying on Certain Citations of Legal Authority, to Supplement Motion, and to Strike Appellee's Response; Motion for duplication of brief at public expense moot; motions for continuance, to prevent appellees from relying on certain citations of legal authority, to supplement motion, and to strike appellees' response denied December 17, 1998.

Orsini *v.* Norris, 98-1119 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief; granted December 10, 1998.

Pardue *v.* State, CR 98-970 (Per Curiam), Pro Se Motion to Strike Appellee's Brief denied November 12, 1998.

Richards *v.* State, CR 97-1536 (Per Curiam), Pro Se Motion for Leave to File a Pro Se Reply Brief denied November 5, 1998.

Robertson *v.* State, CR 97-707 (Per Curiam), Petition for Rehearing denied November 19, 1998.

Rudd *v.* State, CR 97-840 (Per Curiam), affirmed November 5, 1998.

Scott *v.* Simes, CR 98-1262 (Per Curiam), Pro Se Petition for Writ of Mandamus and Pro Se Petition for Writ of Prohibition moot December 3, 1998.

Speed *v.* State, CA CR 96-903 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript and Other Material at Public Expense denied December 3, 1998.

Stephens *v.* State, CR 98-1073 (Per Curiam), Pro Se Motions for Rule on Clerk and for Appointment of Counsel denied November 19, 1998.

Thomas *v.* State, CR 98-1084 (Per Curiam), Pro Se Motion for Evidentiary Hearing; denied December 10, 1998.

Williams *v.* Norris, 98-739 (Per Curiam), Pro Se Motion for Declaratory Judgment denied and appeal dismissed December 2, 1998.

Williams *v.* State, CR 84-30 (Per Curiam), Pro Se Petition for Writ of Certiorari dismissed November 5, 1998.

Williams *v.* State, CR 97-1020 (Per Curiam), affirmed December 10, 1998.

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APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ARKANSAS RULES OF CIVIL PROCEDURE 4, 5, 26, 33, 34, 41, 50, 54, 55; ARKANSAS RULES OF APPELLATE PROCEDURE 4; PROPOSED ADMINISTRATIVE ORDER 11; ARKANSAS CODE ANNOTATED §§ 16-20-109 and 16-58-131

Supreme Court of Arkansas
Delivered November 5, 1998

PER CURIAM. The Arkansas Supreme Court Committee on Civil Practice has submitted its annual proposals and recommendations for changes in the Arkansas Rules of Civil Procedure, the Arkansas Rules of Appellate Procedure—Civil, and the Court's Administrative Orders.

We publish the Committee's suggested changes to the Rules and the Reporter's Notes for comment from the bench and bar. Appended to the proposal is a line-in, line-out version of the proposed amendments to the Rules. We note that the proposed amendments to Ark. R. Civ. P. 5 will, if adopted, result in Ark. Code Ann. §§ 16-20-109 and 16-58-131 being deemed superseded.

We express our gratitude to the Chair of the Committee, Judge John Ward, its Reporter, Professor John J. Watkins, and 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 prior to January 15. 1999, and they should be addressed to:

Clerk, Supreme Court of Arkansas
Attn: Civil Procedure Rules
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201.

General comments and suggestions about the Arkansas Rules of Civil Procedure should be addressed to:

Professor John J. Watkins
Leflar Law Center
University of Arkansas
Fayetteville, Arkansas 72701.

Arkansas Rules of Civil Procedure

1. Rule 4 is amended by deleting the word "a" before the word "summons" in subdivision (c)(2) and by revising subdivision (e)(3) to read as follows:

By mail as provided in subdivision (d)(8) of this rule;

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

Addition to Reporter's Notes, 1999 Amendment: Subdivision (c)(2) has been amended by deleting the word "a" before the word "summons." This amendment is intended to make plain that private process servers may be appointed by standing order as well as on a case-by-case basis. In addition, subdivision (e)(3) has been amended to provide that service by mail outside the state in accordance with the requirements of subdivision (d)(8), which governs service by mail inside the state. This change makes the two provisions consistent.

2. Ark. Code Ann. §§ 16-20-109 and 16-58-131 are deemed superseded.

3. Rule 5 is amended by revising subdivision (b) to read as follows:

(b) **Service: How Made.** (1) Whenever under this rule or any statute service is required or permitted to be made upon a party represented by an attorney, the service shall be upon the attorney, except that service shall be upon the party if the court so orders or the action is one in which a final judgment has been entered and the court has continuing jurisdiction.

(2) Except as provided in paragraph (3) of this subdivision, service upon the attorney or upon the party shall be made by delivering a copy to him or by sending it to him by regular mail at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy for purposes of this paragraph means handing it to the attorney or to the party; by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing. When service is permitted upon an attorney, such service may be effected by electronic transmission, provided that the attorney being served has facilities within his office to receive and reproduce verbatim electronic transmissions, or such service may be made by a commercial delivery service which maintains permanent records of actual delivery.

(3) If a final judgment or decree has been entered and the court has continuing jurisdiction, service upon a party by mail shall comply with the requirements of Rule 4(d)(8)(A).

Rule 5 is further amended by revising paragraph (2) of subdivision (c) to read as follows:

(2) If the clerk's office has a facsimile machine, the clerk shall accept facsimile transmissions of any paper filed under this rule and may charge a fee of $1.00 per page. Any signature appearing on a facsimile copy shall be presumed authentic until proven otherwise. The clerk shall stamp or otherwise mark a facsimile copy as filed on the date and time that it is received on the clerk's facsimile machine during the regular hours of the clerk's office or, if received outside those hours, at the time the office opens on the next business day.

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

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has been divided into three paragraphs, but only one change has been made. Previously, service by regular mail was sufficient in all cases. *See Office of Child Support v. Ragland*, 330 Ark. 280, 954 S.W.2d 218 (1997) (motion to hold former spouse in contempt for failure to pay child support). Paragraph (2) provides for service by regular mail as a general rule; however, paragraph (3) creates an exception by incorporating the requirements of Rule 4(d)(8)(A) for service by mail on a party when, as in *Ragland*, a final judgment or decree has been entered and the court has continuing jurisdiction. In this situation, paragraph (1) requires, as did the prior version of the rule, that service be made on the party, not his or her attorney. Ark. Code Ann. § 16-58-131, which addressed these issues and other matters now governed by Rules 4 and 5, has been deemed superseded.

Several changes have been made in subdivision (c)(2) concerning facsimile filings. The statute on which the rule was originally based, Ark. Code Ann. § 16-20-109, has been deemed superseded.

The first sentence of subdivision (c)(2) has been amended to require any clerk with a facsimile machine to accept facsimile filings of any paper filed under this rule and to allow the clerk to charge a fee of $1.00 per page. Previously, the rule provided that a clerk with a facsimile machine "may accept" papers filed by fax. Apparently, some clerks refused to accept papers filed in this manner even though they had the necessary equipment. Also, language in the first sentence requiring that an original document be substituted for a fax filing if the latter were not made on bond-type paper has been deleted. This provision was considered unnecessary in light of improvements in the quality of fax machines.

The third sentence of subdivision (c)(2) has been amended to require that the clerk stamp or otherwise mark the facsimile copy as filed on the date and time that it is received in the clerk's office or, if received when the office is closed, on the next business day. The last sentence of the prior version of

the rule, which provided that "[t]he date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of filing," has been deleted because the date and time are printed by the sender's facsimile machine, not the clerk's.

4. Rule 26 is amended by inserting the words "any books, documents, or other tangible things and the identity and location of" between the words "of" and "persons" in the first sentence of paragraph (1) of subdivision (b), and by revising paragraph (2) of subdivision (e) to read as follows:

> (2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

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

> **Addition to Reporter's Notes, 1999 Amendment:** The first sentence of subdivision (b)(1) has been revised to correct an oversight that dates to the rule's adoption. As amended, this sentence provides for discovery not only as to persons who may have knowledge of discoverable matters or who may be called as witnesses at trial, but also as to "books, documents, or other tangible things." The new language is taken from Federal Rule 26(b)(1), on which the Arkansas rule was based.
>
> Subdivision (e)(2) has been revised to track the corresponding federal rule, as amended in 1993. The duty to supplement, while imposed on a "party," applies whether the corrective information is learned by the client or by the attorney. Supplementation need not be made as each new item of information is learned but should be made at appropriate intervals during the discovery period, and with special promptness as the trial date approaches. Under the revised rule, the obligation to supplement applies to interrogatories, requests for production, and requests for admissions, but not ordinarily to deposition testimony. However, supplementation is required under subdivision (e)(1) with respect to changes in the opinions of experts, whether in response to interrogatories under subdivision (b)(4)(A) or in a deposition.
>
> The obligation to supplement under subdivision (e)(2) arises whenever a party learns that its prior responses are "in some material respect" incomplete or incorrect. The "knowing concealment" standard found in the former version of the rule has been deleted. A formal amendment of a response is not necessary if the corrective or supplemental information has been made known to the parties in writing or during the discovery process, as when a witness not previously disclosed is identified during the taking of a deposition.

5. Rule 33 is amended by adding the following sentence at the end of subdivision (d):

> A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily can the party served, the records from which the answer may be ascertained.

The Reporter's Notes accompanying Rule 33 are amended by adding the following:

> **Addition to Reporter's Notes, 1999 Amendment:** Subdivision (d) has been amended by adding the last sentence. Taken from the corresponding federal rule, this provision makes clear that a party responding to interrogatories by producing business records has the duty to specify, by category and location, the records from which answers to interrogatories can be derived. Without such guidance, the burden of deriving the answers would not be substantially the same for the party serving the interrogatories as for the responding party. A similar requirement has been added to Rule 34(b).

6. Rule 34(b) is amended by numbering the two paragraphs as (1) and (2), respectively; by adding the phrase "and inspection permitted of the remaining parts" at the end of the fourth sentence of paragraph (2); and by adding the following as new paragraph (3):

> (3) A party who produces documents for inspection shall (A) organize and label them to correspond with the categories in the production request or (B) produce them as kept in the usual course of business if the party seeking discovery can locate and identify the relevant records as readily as can the party who produces the documents.

The Reporter's Notes accompanying Rule 34 are amended by adding the following:

> **Addition to Reporter's Notes, 1999 Amendment:** The first and second paragraphs of subdivision (b) have been numbered and a new paragraph (3) added. The fourth sentence of the second paragraph has been amended to require a party who objects to part of a request for production to permit inspection with respect to the unobjectionable portions. The corresponding federal rule was so amended in 1993. A similar requirement for answers to interrogatories appears in Rule 33(b)(1).
>
> The new third paragraph, based on Federal Rule 34(b), provides that a party from whom production is sought must (1) organize and label the documents in accordance with the categories set out in the production request, or (2) produce them as kept in the usual course of business. However, the second option is available only if "the party seeking discovery can locate and identify the relevant documents as readily as can the party who produces them." This requirement is intended to eliminate a problem that has arisen

under the federal rule, which appears to give the producing party the right to produce records as kept in the usual course of business even though the party seeking discovery would be forced to sift through a jumble of documents in order to find those that are responsive to the production request. A similar requirement has been added to Rule 33(d), which allows the production of business records in response to interrogatories.

7. Rule 41 is amended by revising subdivision (a) to read as follows:

> **(a) Voluntary Dismissal; Effect Thereof.** (1) Subject to the provisions of Rule 23(d) and Rule 66, an action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the jury, or to the court where the trial is by the court. Although such a dismissal is a matter of right, it is effective only upon entry of a court order dismissing the action.
>
> (2) A voluntary dismissal under paragraph (1) operates as an adjudication on the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based upon or including the same claim, unless all parties agree by written stipulation that such dismissal is without prejudice.
>
> (3) In any case where a set-off or counterclaim has been previously presented, the defendant shall have the right of proceeding on his claim although the plaintiff may have dismissed his action.

Rule 41 is further amended by adding the following new sentence at the end of subdivision (d):

> For purposes of this rule, the term "costs" means those items taxable as costs under Rule 54(d)(2).

The Reporter's Notes accompanying Rule 41 are amended by adding the following:

> **Addition to Reporter's Notes, 1999 Amendment:** Subdivision (a) has been divided into three numbered paragraphs and revised to reflect case law. In *Blaylock v. Shearson Lehman Brothers, Inc.*, 330 Ark. 620, 954 S.W.2d 939 (1997), the Supreme Court noted that it had "long interpreted [Rule 41(a)] as creating an absolute right to a nonsuit prior to submission of the case to the jury or to the court." In the same case, the Court held that "a court order is necessary to grant a nonsuit and the judgment or decree must be entered to be effective."
>
> A new sentence has been added to subdivision (d) defining "costs" as those recoverable under Rule 54(d)(2), a new provision. A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. *See, e.g., Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582

(1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

8. Rule 50 is amended by revising subdivision (b) to read as follows:

(b) Motion for Judgment Notwithstanding the Verdict. (1) Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.

(2) Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party within 10 days after the jury has been discharged may move for judgment in accordance with his motion for directed verdict. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

(3) A motion for a new trial may be joined with a motion for judgment notwithstanding the verdict, or a new trial be prayed in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

The Reporter's Notes accompanying Rule 50 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has been divided into three numbered paragraphs. The new second sentence of paragraph (2) makes plain that a pre-judgment motion for JNOV is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was ineffective. *See Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new third sentence provides that a motion for JNOV not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

9. Rule 52 is amended by revising subdivision (b) to read as follows:

> (b) **Amendment.** (1) Upon motion of a party made not later than 10 days after entry of judgment, the court may amend its findings of fact or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.
>
> (2) When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

The Reporter's Notes accompanying Rule 52 are amended by adding the following:

> **Addition to Reporter's Notes, 1999 Amendment:** Subdivision (b) has been divided into two numbered paragraphs. The new third sentence of paragraph (1) makes plain that a pre-judgment motion to amend findings or to make additional findings is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was not effective. *See Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new fourth sentence provides that a motion to amend findings or for additional findings not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

Rule 54 is amended by revising subdivision (d) to read as follows:

> (d) **Costs.** (1) Costs shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.
>
> (2) Costs taxable under this rule are limited to the following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

The Reporter's Notes accompanying Rule 54 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment: A new paragraph has been added to subdivision (d) defining the term "costs." A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. *See, e.g., Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

11. Rule 55 is amended by replacing the word "appear" in subdivision (a) with the word "plead." The Reporter's Notes accompanying Rule 55 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment: Subdivision (a) has been amended by replacing the word "appear" with the word "plead," the terminology used in the corresponding federal rule. This revision, while minor, is intended to eliminate potential confusion stemming from the fact that appearance is also relevant under subdivision (b), which requires notice of a hearing on a motion for default judgment if the party against whom the judgment is sought "has appeared in the action. . . ." In addition, use of the word "plead" in subdivision (a) indicates that the phrase "otherwise appear" has independent meaning. Arkansas cases suggest that this phrase means the same thing as an appearance, in which case it would be a redundancy. *E.g., Tapp v. Fowler*, 291 Ark. 309, 724 S.W.2d 176 (1987) (defendant appeared or otherwise defended within meaning of Rule 55(a) by filing motion to dismiss and motion for summary judgment). Under the federal rule, the phrase "otherwise defend" refers to motions, which by definition are not pleadings. *E.g., Bass v. Hoagland*, 172 F.2d 205 (5th Cir.), *cert. denied*, 338 U.S. 816 (1949). *See also* Ark. R. Civ. P. 7(a) & (b) (distinguishing pleadings and motions). Amended subdivision (a) reflects the dichotomy recognized by the federal courts.

12. Rule 59 is amended by deleting the semicolon and the words "Amendment of Judgments" from the title and by adding the following two sentences at the end of subdivision (b):

A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

The Reporter's Notes accompanying Rule 59 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has to amended by adding a new second sentence that effectively overturns *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997),

which held that a motion for new trial filed before entry of judgment is ineffective. As amended, the rule reflects the practice in the federal courts. The new third sentence provides that a motion for new trial not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

In addition, the title of the rule has been modified by striking the words "amendment of judgments." A provision in the original version of the rule dealing with this issue was deleted in 1983. *See* Addition to Reporter's Notes, 1983 Amendment.

Arkansas Rules of Appellate Procedure-Civil

Rule 4 is amended to read as follows:

(a) **Time for Filing Notice of Appeal.** Except as otherwise provided in subdivision (b) of this rule, a notice of appeal shall be filed within thirty (30) days from the entry of the judgment, decree or order appealed from. A notice of cross-appeal shall be filed within ten (10) days after receipt of the notice of appeal, except that in no event shall a cross-appellant have less than thirty (30) days from the entry of the judgment, decree or order within which to file a notice of cross-appeal. A notice of appeal filed after the trial court announces a decision but before the entry of the judgment, decree, or order shall be treated as filed on the day after the judgment, decree, or order is entered.

(b) **Extension of Time for Filing Notice of Appeal.** (1) Upon timely filing in the trial court of a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules of Civil Procedure, a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), or a motion for a new trial under Rule 59(a), the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the trial court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.

(2) A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such a notice is effective to appeal the underlying judgment, decree, or order. A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice, complying with Rule 3(e). No additional fees will be required for filing an amended notice of appeal.

(3) Upon a showing of failure to receive notice of the judgment, decree or order from which appeal is sought and a determination that no party would be prejudiced, the trial court may, upon motion filed within 180 days of entry of the judgment, decree, or order, extend the time for filing the notice of appeal for a period of fourteen (14) days from the date of entry of the extension order. Notice of any such motion shall be given to all other parties in accordance with Rule 5 of the Arkansas Rules of Civil Procedure.

(c) **When Judgment Is Entered.** A judgment, decree or order is entered within the meaning of this rule when it is filed with the clerk of the court in which the claim was tried. A judgment, decree or order is filed when the clerk stamps or otherwise marks it as "filed" and denotes thereon the date and time of filing.

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

Addition to Reporter's Notes, 1999 Amendment: The rule has been revised to incorporate some features of Rule 4 of the Federal Rules of Appellate Procedure, as amended in 1991 and 1993. On balance, the effect of the amendment is to liberalize prior Arkansas practice.

Subdivision (a) now provides that a premature notice of appeal is to be treated as if it had been filed after entry of the judgment, decree, or order. Previously, such a notice was ineffective. *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992). Subdivision (f) of the prior version of the rule, which provided that a notice of appeal was effective if filed on the same day but earlier in time than the judgment, decree, or order, has been deleted. Also deleted are two sentences in subdivision (a) dealing with the situation in which a party has not received notice of entry of a judgment, decree, or order. This issue is now addressed in paragraph (3) of subdivision (b).

Amended subdivision (b) combines subdivisions (b), (c), and (d) of the prior version of the rule. Paragraph (b)(1) is essentially former subdivision (b), with one clarifying change. A timely motion for new trial, judgment notwithstanding the verdict, or amendment of findings extends for all parties the time for filing a notice of appeal. If there are multiple motions, the 30-day period for filing a notice of appeal begins to run from entry of the order disposing of "the last motion outstanding" or the date on which such motion is deemed denied by operation of law.

Paragraph (b)(2), based on Federal Rule 4(a)(4), is new. It provides that a notice of appeal filed before disposition of one of the specified posttrial motions becomes effective on the day after a dispositive order is entered or the motion is deemed denied by operation of law. Under prior practice, a premature notice of appeal was ineffective. *Chickasaw Chemical Co. v. Beasley*, 328 Ark. 472, 944 S.W.2d 511 (1997); *Kimble v. Gray*, 313 Ark. 373, 853 S.W.2d 890 (1993). The effect of paragraph (b)(2) is to suspend a premature notice until the motion is ruled on or deemed denied, and a new notice is not necessary to appeal the underlying case. However, a party seeking to appeal from disposition of the posttrial motion must amend the original notice to so indicate. No additional fees are required in this situation, since the notice is an amendment of the original and not a new notice of appeal.

Paragraph (b)(3) is a revised version of a provision previously found in subdivision (a), under which a party who did not receive notice of the judgment or order that he or she wished to appeal could obtain an extension from the trial court "for a period not to exceed sixty (60) days from the expiration of the time otherwise prescribed by these rules." This rule proved restrictive in operation. *See, e.g., Jones-Blair Co. v. Hammett*, 51 Ark. App. 112, 911 S.W.2d 263 (1995), rev'd on other grounds, 326 Ark. 74, 930 S.W.2d 335 (1997); *Chickasaw Chemical Co. v. Beasley, supra*. Accordingly, paragraph (b)(3) expands the period during which an extension may be sought.

The trial court may extend the time for filing the notice of appeal "upon motion filed within 180 days of entry of the judgment, decree, or order." If such an extension is granted, the notice of appeal must be filed within fourteen days from the date on which the extension order is entered. These time frames are taken from the corresponding federal rule. *See* Rule 4(a)(6), Fed. R. App. P. Like the federal rule, paragraph (b)(3) also requires a determination by the trial court that no party would be prejudiced by the extension of time. The term "prejudice" means some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal. Prejudice might arise, for example, if the appellee had taken some action in reliance on the expiration of the normal time period for filing a notice of appeal.

Administrative Orders

The following new Administrative Order Number 11 is adopted:

ADMINISTRATIVE ORDER NUMBER 11 – OFFICIAL PROBATE FORMS

SECTION 1. Authority. The Court, pursuant to Ark. Code Ann. § 28-1-114 and its constitutional and inherent powers to regulate procedure in the courts, adopts the following probate forms. These official forms supersede all earlier versions.

SECTION 2. Captions and Affidavits. When the word "caption" appears on a form, the following format should be used:

In The Probate Court of _____ County, Arkansas

In The Matter of the Estate of
_____, Deceased No._____

-OR-

In the Matter of _____,
An Incapacitated Person

When the word "affidavit" appears on a form, the following format should be used:

STATE OF ARKANSAS
COUNTY OF _____

Subscribed and sworn to before me on [date].

_____
[Signature]

_____
[Official Title]

(Seal)

My commission expires:

_____

Reporter's Notes to Section 2: The statutes governing guardianship proceedings, Ark. Code Ann. §§ 28-65-101–28-65-603, use the term "incapacitated person" to refer both to persons who are impaired by reason of various

forms of disability and to persons under the age of 18 whose disabilities have not been removed. The term "minor" may be used with respect to the latter.

By statute, "[e]very application to the [probate] court, unless otherwise provided, shall be by petition signed and verified by or on behalf of the petitioner." Ark. Code Ann. § 28-1-109(a). Other documents require verification only if the governing statute so provides. These statutes are cited in the Reporter's Notes accompanying those forms, other than applications, that require an affidavit.

SECTION 3. Forms.

Form 1.

[Caption]

DEMAND FOR NOTICE OF PROCEEDINGS FOR PROBATE OF WILL OR APPOINTMENT OF PERSONAL REPRESENTATIVE

The undersigned, _____, respectfully demands notice of any proceeding to probate a will of _____, deceased, who resided at _____, Arkansas, or for the appointment of a personal representative to administer [his][her] estate.

My address is _____.

My interest in the estate is that of _____.

My attorney, authorized to represent me in this proceeding, and to accept notice for me, is _____, whose address is _____.

Date: _____, ___.

_____
[Signature]

Reporter's Notes to Form 1: *See* Ark. Code Ann. § 28-40-108(a).

Form 2.

[Caption]

PETITION FOR APPOINTMENT
OF [ADMINISTRATOR][ADMINISTRATRIX]

_____, whose address is _____, and whose interest in the decedent's estate is that of _____, petitions that letters of administration of the estate be issued. The facts known to petitioner are:

1. The decedent, _____, aged ___, who resided at _____ in _____ County, Arkansas, died intestate at _____ on or about [date].

2. The surviving spouse and heirs of the decedent, and their respective ages, relationships to the decedent, and residence addresses, are:

Name	Age	Relationship	Residence Address
_____	___	_____	_____
_____	___	_____	_____
_____	___	_____	_____

3. The probable value of the decedent's estate is:
   Real property $_____
   Personal property $_____

4. Petitioner nominates _____, whose residence address is _____, for appointment as [administrator][administratrix] of the estate. The relationship, if any, of the nominee to the decedent, and other facts, if any, which entitle the nominee to appointment are: _____.

THEREFORE, petitioner requests that this court make an order determining the fact of the death and of the intestacy of the decedent, and appointing petitioner's nominee [administrator][administratrix] of the estate.

_____
[Signature of Petitioner]

[Affidavit]

Reporter's Notes to Form 2: *See* Ark. Code Ann. § 28-40-107. The term "heir" is defined by statute as "a person entitled by the law of descent and distribution to the real and personal property of an intestate decedent, but does not include a surviving spouse." Ark. Code Ann. § 28-1-102(a)(10).

Form 3.

[Caption]

PETITION FOR PROBATE OF WILL AND APPOINTMENT OF PERSONAL REPRESENTATIVE

_____, whose address is _____, and whose interest in the decedent's estate is that of _____, petitions that a certain written instrument be admitted to probate as the last will of the decedent, and for the appointment of a personal representative. The facts known to petitioner are:

1. The decedent, _____, aged ___, who resided at _____ in _____ County, Arkansas, died at _____ on or about [date].

2. The decedent left as his last will a written instrument dated the _____ day of _____, ____, which has been filed in this court. Proof of its execution in the manner required by law has been made or will be made at the time of presentation of this petition.

3. The surviving spouse, heirs, and devisees of the decedent, and their respective ages, relationships to the decedent, and residence addresses, are:

Name	Age	Relationship	Residence Address
_____	____	_____	_____
_____	____	_____	_____
_____	____	_____	_____

4. The probable value of the decedent's estate is:
Real property $_____
Personal property $_____

5. The will of the decedent nominates _____ as [executor] [executrix]. (Petitioner nominates for appointment as _____, _____ of _____ to administer the estate.) The relationship, if any, of the nominee to the decedent, and other facts, if any, which entitle the nominee to appointment are: _____.

THEREFORE, petitioner requests that this court make an order determining (1) the fact of the death of the decedent; (2) that the proffered instrument was executed in all respects according to law when the testator was competent to do so and acting without undue influence, fraud or restraint, has not been revoked and is decedent's last will; and (3) appointing the nominee to administer the decedent's estate.

_____
[Signature of Petitioner]

[Affidavit]

Reporter's Notes to Form 3: *See* Ark. Code Ann. § 28-40-107. The sentence in parentheses in paragraph 5 is to be substituted for the preceding sentence if the petitioner seeks appointment of a personal representative who is not nominated in the decedent's will.

Form 4.

[Caption]

PROOF OF WILL

I, _____, state on oath:

I am one of the subscribing witnesses to the attached written instrument, dated the ____ day of _____, ____, which purports to be (a codicil to) the last will of _____, deceased. On the execution date of the instrument the [testator][testatrix], in my presence, and in the presence of the other attesting witnesses, signed the instrument at the end, or acknowledged [his][her] signature, declared the instrument to be [his][her] will, and requested that I attest [his][her] execution of it. Then, in the presence of the [testator][testatrix]

and the other witnesses, I signed my name as an attesting witness. At the time of execution of the instrument, the [testator][testatrix] appeared to be eighteen years of age or older, of sound mind, and acting without undue influence, fraud or restraint.

Date:_____, ____.

_____
[Signature]

[Affidavit]

Reporter's Notes to Form 4: This form is designed for execution and filing with the court when the original will did not include a "proof of will." Because it is not always practical to have multiple witnesses appear simultaneously, the form is for a single witness. This form is for an attested will and should not be used for a holographic will. An attested will must be proved by at least two attesting witnesses or as otherwise provided by statute. Ark. Code Ann. § 28-40-117(a). If the instrument is a codicil, the language in parentheses should be included. An affidavit is required by Ark. Code Ann. § 28-40-118(a).

Form 5.

[Caption]

NOTICE OF HEARING ON PETITION

To all persons interested in the estate of _____, deceased:

You are hereby notified that a petition has been filed in this court (to admit to probate the will of _____, and) for the appointment of a personal representative for this estate; that this petition will be heard at ___ o'clock __m. on [date], at _____, or at a later time or other place to which the hearing may be adjourned or transferred.

Date: _____, ____

_____, Clerk.
By:_____, Deputy Clerk.

Reporter's Notes to Form 5: *See* Ark. Code Ann. §28-40-110. The language in parentheses should be used when the petitioner seeks probate of a will.

Form 6.

[Caption]

BOND OF PERSONAL REPRESENTATIVE

The undersigned, _____, as principal, having been appointed [executor][executrix] of the will of (or [administrator][administratrix] of the estate of) _____, deceased, and _____, as suret__, acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use and benefit of all persons interested in the estate, in the penal sum of _____ Dollars ($_____) conditioned as follows:

If the undersigned [executor][executrix] (or [administrator][administratrix]) shall well and faithfully account for his administration of the estate, as required by law, this bond shall become void. Otherwise, this bond will remain in full force and effect.

Date: _____, ____.

_____, as Principal.

_____, as Surety.

_____, as Surety.

Approved this date: _____, ____.

_____, Clerk.

By:_____, Deputy Clerk.

Approved this date: _____, ____.

_____, Judge.

Reporter's Notes to Form 6: *See* Ark. Code Ann. § 28-48-204. The references to administrator and administratrix in parentheses are to be substituted for the references to executor and executrix if the personal representative was not nominated in the decedent's will. If a corporate surety is used, the power of attorney of agent should be attached. If the sureties are individuals, their qualifying affidavit (Form 7) should be attached.

Form 7.

[Caption]

QUALIFYING AFFIDAVIT OF PERSONAL SURETIES

The undersigned, being the sureties on the bond filed in this estate, state on oath that we collectively own property in the State of Arkansas, in excess of our liabilities and subject to execution, of a value equal to the amount of the bond.

Date: _____, ____.

_____, Surety.

_____, Surety.

_____, Surety.

[Affidavit]

Reporter's Notes to Form 7: *See* Ark. Code Ann. § 28-48-205. This form is only for individual sureties. It may be used with the guardian's bond (Form 27). An affidavit is required by Ark. Code Ann. § 28-48-205(b).

Form 8.

[Caption]

ACCEPTANCE OF APPOINTMENT AS PERSONAL REPRESENTATIVE

The undersigned, _____, having been appointed _____ of the estate of _____, deceased, accepts the appointment.
Date: _____, ____.

_____
[Signature]

Reporter's Notes to Form 8: *See* Ark. Code Ann. § 28-48-102(a). This form is to be used only when no bond is required of the personal representative.

Form 9.

[Caption]

DESIGNATION OF PROCESS AGENT

The undersigned, _____, as _____ of the estate of _____, appoints the clerk of this court and his successors in office, (or _____, whose residence address is _____,) as agent in behalf of the undersigned, to accept service of process and notice in all actions and proceedings with respect to the estate.
Date: _____, ____.

_____
[Signature]

Reporter's Notes to Form 9: *See* Ark. Code Ann. § 28-48-101(b)(6). This form is for use by a nonresident personal representative or guardian. The language in parentheses should be substituted for the language immediately preceding it if someone other than the clerk of the court is appointed. The statute does not require an affidavit or acknowledgment.

Form 10.

[Caption]

LETTERS OF ADMINISTRATION

_____, whose address is _____, having been appointed and qualified as [administrator][administratrix] of the estate of _____, deceased, who died on or about [date], is hereby authorized to act as [administrator][administratrix] for and in behalf of the estate and to take possession of the estate's property as authorized by law.

Issued this date: _____, ____.

_____, Clerk.

By:_____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 10: *See* Ark. Code Ann. § 28-48-102. This form shall used if the personal representative was not nominated in the decedent's will. Appropriate modifications should be made to this form for letters of administration with will annexed, administration in succession, and special administration.

Form 11.

[Caption]

LETTERS TESTAMENTARY

_____, whose address is _____, having been appointed and qualified as [executor][executrix] of the will of _____, deceased, who died on or about [date], is hereby authorized to act as [executor][executrix] for and in behalf of the estate and to take possession of the estate's property as authorized by law.

Issued this date: _____, ____.

_____, Clerk.

By:_____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 11: *See* Ark. Code Ann. § 28-48-102. This form shall used if the personal representative was nominated in the decedent's will.

Form 12.

[Caption]

NOTICE OF APPOINTMENT AS
[ADMINISTRATOR][ADMINISTRATRIX]

Last known address: _____
Date of Death: _____, ____

The undersigned was appointed [administrator][administratrix] of the estate of _____, deceased, on [date].

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within three (3) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate. However, claims for injury or death caused by the negligence of the decedent shall be filed within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

This notice first published on [date].

_____
[Administrator][Administratrix]

_____
[Mailing Address]

Reporter's Notes to Form 12: *See* Ark. Code Ann. § 28-40-111. This form shall used if no will was admitted to probate.

Form 13.

[Caption]

NOTICE OF APPOINTMENT AS [EXECUTOR][EXECUTRIX] (OR [ADMINISTRATOR][ADMINISTRATRIX] WITH WILL ANNEXED)

Last known address: _____
Date of Death: _____, ____

An instrument dated _____, ____ was admitted to probate on [date] as the last will of _____, deceased, and the undersigned has been appointed [executor][executrix] (or [administrator][administratrix]) thereunder. Contest of the probate of the will can be effected only by filing a petition within the time provided by law.

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within three (3) months from the date of the first publi-

cation of this notice, or they shall be forever barred and precluded from any benefit in the estate. However, claims for injury or death caused by the negligence of the decedent shall be filed within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

This notice first published on [date].

_____
[Executor][Executrix][Administrator]
[Administratrix]

_____
[Mailing Address]

Reporter's Notes to Form 13: *See* Ark. Code Ann. § 28-40-111. This form shall be used if a will was admitted to probate and a personal representative was appointed. The language in parentheses in the first paragraph should be substituted for the language immediately preceding it if the personal representative was not nominated in the decedent's will. The form to be used when a will is probated but no personal representative appointed may be found in Ark. Code Ann. § 25-40-111(c)(3). Because such proceedings are infrequent, no official form was adopted.

Form 14.

[Caption]

NOTICE TO SURVIVING SPOUSE

The will of the _____, deceased, dated _____, ____, was admitted to probate by this court on [date].

Any right which you may have to take against the will must be exercised by written election filed in this court within one month after the expiration of the time limited for the filing of claims against the estate; except, however, that in the particular circumstances set forth in Ark. Code Ann. § 28-39-403, you may be entitled to make such election at a later date.

Dated: _____, ____.

_____, Clerk.
By:_____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 14: *See* Ark. Code Ann. § 28-39-402. This notice must be mailed by the clerk to the surviving spouse of the decedent within one month after a will has been admitted to probate.

Form 15.

[Caption]

REQUEST FOR SPECIAL NOTICE OF HEARING

The undersigned, _____, respectfully requests written notice by ordinary mail of the time and place of all hearings on the settlement of accounts, on final distribution, and on any other matters for which any notice is required by law, by rule of court, or by an order in this case.

My address is _____.

My interest in the estate is that of _____.

My attorney, authorized to represent me in this proceeding, and to accept notice for me, is _____, whose address is _____.

Dated: _____, ____.

_____
[Signature]

PROOF OF SERVICE

1. (To be used if acknowledged by personal representative or his attorney)
The undersigned acknowledges receipt of this notice on [date].

_____
[Personal Representative]
By:_____
[Attorney]

. (To be used when not so acknowledged)
The undersigned duly served this notice on _____, the personal representative of this estate, on [date] in the following manner: [Insert the method of service as specified in Ark. Code Ann. § 28-1-112.]

[Affidavit]

Reporter's Notes to Form 15: *See* Ark. Code Ann. § 28-40-108(b). This form is to be used only after a personal representative has been appointed and must be prepared in duplicate, with one copy served on the personal representative. An affidavit is required only if Paragraph 2 is used and must be sworn to unless signed by an officer authorized by law to serve civil process, or signed by the clerk or by an attorney of this state. *See* Ark. Code Ann. § 28-1-112(f).

Form 16.

[Caption]

PETITION FOR AWARD OF STATUTORY ALLOWANCES

The decedent, _____, is survived by the persons named below who constitute the surviving spouse, if any, and all of the decedent's minor children, if any.

Name of surviving spouse: _____.

Children:

Name of Child	Sex	Age	Name of Guardian
_____	___	___	_____
_____	___	___	_____

The surviving spouse, who was living with the decedent at the time of the decedent's death, is entitled to the award of the following items of household furniture, furnishings, appliances, implements and equipment which are reasonably necessary for the use and occupancy of the family dwelling by the surviving spouse and minor children, if any:

HOUSEHOLD FURNITURE AND EQUIPMENT

[Itemizing is required only to the extent necessary to distinguish the selected items from other household furniture and equipment, if any, of the decedent's estate.]

Among the items of personal property of the estate of the decedent are those described below, which the undersigned surviving spouse of the decedent (or the undersigned guardian of the decedent's minor children) have selected to be assigned to and vested in the surviving spouse and minor children of the decedent as provided by law. Each item of property has the value stated opposite its description.

ITEMIZED DESCRIPTION OF PROPERTY

Description	Value
_____	$_____
_____	$_____
_____	$_____

The surviving spouse and minor children of the decedent are entitled to be awarded sustenance for a period of two months after the death of the decedent as follows:

THEREFORE, petitioner requests that this court enter an order assigning to and vesting in the surviving spouse and minor children of the decedent the personal property described above, to which they are respectively entitled under the provisions of Ark. Code Ann. §§ 28-39-101 through 28-39-104.

_____

[Capacity of Petitioner]

[Affidavit]

Reporter's Notes to Form 16: *See* Ark. Code Ann. §§ 28-39-101– 28-39-104. The total value under "Itemized Description of Property" is limited to $1,000 as against creditors and $2,000 as against distributees. If minor children are not the children of the surviving spouse, the petition should be revised to reflect that the allowance vests in the surviving spouse to the extent of one-half thereof, and the remainder vests in the decedent's minor children in equal shares. Award for sustenance for period of two months after death of decedent shall be a reasonable amount, not exceeding $500 in the aggregate. Ark. Code Ann. § 28-39-101(c). Beneath the signature line, the capacity of the petitioner should be identified (*e.g.*, as the personal representative, the surviving spouse, or the guardian of minor children). If the petitioner is the guardian of minor children, the language in parentheses should be substituted for the language immediately preceding it.

Form 17.

[Caption]

INVENTORY OF DECEDENT'S ESTATE

The undersigned, _____ of the estate of _____, deceased, states on oath that to the best of my knowledge and belief, the following is a complete and accurate inventory of all property owned by the decedent, and its fair market value, at the time of the decedent's death.

REAL ESTATE

	Legal Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
Homestead:	_____	_____	$_____
Other real estate:	_____	_____	$_____

Total Value of Real Estate: $_____

PERSONAL PROPERTY

Household Goods and Personal Effects

[This list should include, but not be limited to, furniture, household and yard equipment, clothing, jewelry, etc.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Other Tangible Personal Property

[This list should include, but not be limited to, automobiles and other motor

vehicles, farm equipment, livestock, agricultural products, stocks of merchandise, any going business enterprise or interest therein, etc.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Intangible Personal Property

[List separately in detail: cash on hand; money on deposit, stating names and addresses of depositories; bonds, stating names of issuers, interest rates, classes, maturity dates, serial numbers, face amounts, and dates to which interest is paid; corporate stocks, stating certificate numbers, names of issuers, classes, and number of shares; notes receivable, stating the names and addresses of makers, dates, amounts, interest rates, and dates to which interest paid, balances due, maturities, and security, if any; accounts receivable, stating names of debtors, dates of last items and balances due; and other intangibles, describing in detail.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Total Value of Personal Property: $_____

SUMMARY

Total real property:	$_____
Total personal property:	$_____
Total estate:	$_____

The undersigned was not indebted or obligated to the decedent at the time of the decedent's death except as stated herein.

Date: _____, ____.

_____

[Signature]

[Affidavit]

Reporters Notes to Form 17: *See* Ark. Code Ann. § 28-49-110. This form should be filed by the personal representative within two months after qualification, unless the requirement is waived pursuant to Ark. Code Ann. § 28-49-110(c)(1). Inventory should not include any property owned jointly with right of survivorship by the decedent and a third party, or any insurance proceeds or other benefits payable by beneficiary designation, unless such benefits are payable to the decedent's estate. An affidavit is required by Ark. Code Ann. § 28-49-110(a)(2).

Form 18.

[Caption]

AFFIDAVIT TO CLAIM AGAINST ESTATE

I, _____, do swear that the attached claim against the estate of _____, deceased, is correct, that nothing has been paid or delivered toward the satisfaction of the claim except as noted, that there are no offsets to this claim, to the knowledge of this affiant, except as therein stated, and that the sum of _____ Dollars ($_____) is now justly due (or will or may become due as stated). I further state that if this claim is based upon a written instrument, a true and complete copy, including all endorsements, is attached.

Date: _____, ___.

_____

[Signature]

[Affidavit]

Reporter's Note to Form 18: *See* Ark. Code Ann. §§ 28-50-103–28-50-104. If this affidavit is made by a corporation, organization, or anyone other than an individual in his or her own behalf, the representative capacity of the affiant must be clearly stated in the first line in the form and below the signature line. An affidavit is required by Ark. Code Ann. § 28-50-103(a).

Form 19.

[Caption]

APPRAISAL

The undersigned, _____, _____ and _____, having been appointed to appraise the property described below, represented to us by _____ as _____ to be property of the captioned estate, do appraise the value of each item as:

REAL ESTATE

Legal Description of Property and Interest Therein Owned by the Estate	Value
_____	$ _____
_____	$ _____
Total Value:	$_____

Each of the undersigned states on oath that [he] [she] is not interested in the estate, the property appraised, or the sale of any of this property; that [he] [she] believes [himself] [herself] to be well informed concerning the value of

the property appraised; and that the foregoing appraisal is on the basis of the full and fair value of the property.

Date: _____, ____.

_____
[Appraiser]

_____
[Appraiser]

_____
[Appraiser]

[Affidavit]

Reporter's Note to Form 19: *See* Ark. Code Ann. § 28-51-302. This form is to be used by personal representatives and guardians of estates when real estate of the decedent or ward is to be sold, and in sales of personal property when an appraisal is required by the court. The court may approve the appointment of one appraiser instead of the three contemplated by the form to appraise real property, unless an heir or beneficiary of the estate objects. By statute, the appraisers must certify the appraisal under oath. Ark. Code Ann. § 28-51-302(b).

Form 20.

[Caption]

ACCOUNTING BY PERSONAL REPRESENTATIVE

_____ respectfully submits to the court [his][her] account as _____ of this estate for the period beginning on [date] and ending on [date]. This account is submitted because [insert the occasion for filing of account as set forth in Ark. Code Ann. §28-52-103(a)].

1. Charges to accountant: [If this is the first account, the first item should be the value of the estate as reflected by the inventory. If a subsequent account, the first item should be the balance shown by the previous account. Thereafter list separately, described in detail: (a) additional property received by accountant; (b) all income; and (c) gains from the sale, conveyance or other disposition of any property received by the accountant during the accounting period. Show the date of each transaction.]

Total Charges to Accountant: $_____

2. Credits, other than payments to distributees, to which accountant is entitled: [List separately (a) all disbursements, other than payments to distributees, and (b) all losses sustained on sales, conveyances or other dispositions of any property, describing each item in full. Show the date of each transaction.]

Total: $_____

3. Credits for money paid or assets delivered to distributees: [Itemize each disbursement of cash and describe in detail other assets delivered, showing opposite each asset the amount at which its value was estimated in the inventory or, if purchased by the accountant, its cost. Show the date of each transaction.]

Total: $_____

SUMMARY OF ACCOUNT

Charges to accountant:	$_____
Credits as per paragraph 2:	$_____
Credits as per paragraph 3:	$_____
Total Credits:	$_____
Balance remaining in hands of accountant:	$_____

4. Description of balance remaining in hands of accountant: [List separately and describe in detail each item of property remaining in the accountant's hands, showing the inventory value or cost of each.]

5. Changes in form of assets not affecting balance: [List separately and describe in detail all changes in the form of assets resulting from collections or sales at inventory or cost value and other such transactions. Show the date of each transaction.]

6. All outstanding liabilities of the estate of which accountant has knowledge are:

Total Liabilities: $_____

Vouchers evidencing cash disbursements and receipts evidencing other assets delivered for which accountant has taken credit are attached to this account.

THEREFORE, having fully accounted for the administration of this estate for the period set out above, accountant requests that, after proper advertisement and notice, if any, required by law or by the court, this account be examined, approved, and confirmed by the court, and that accountant be allowed the sum of $_____ as [his] [her] fee for services rendered during the period covered by this account.

_____

[Signature]

[Affidavit]

Reporter's Notes to Form 20: *See* Ark. Code Ann. §§ 28-52-103–28-52-104. In the case of a final account, a request for an order of final distribution should be added, pursuant to Ark. Code Ann. § 28-52-105(b). This form should be filed by the personal representative unless the requirement is waived pursuant to Ark. Code Ann. § 28-52-104(c). Verification of the account is required by Ark. Code Ann. § 28-52-103(a). Form 31 is to be used for an accounting by a guardian.

Form 21.

[Caption]

NOTICE OF FILING OF ACCOUNTS

Pursuant to Ark. Code Ann. § 28-52-106, notice is given that accounts of the administration of the estates listed below have been filed on the dates shown by the named personal representatives.

All interested persons are called on to file objections to such accounts on or before the sixtieth day following the filing of the respective accounts, failing which they will be barred forever from excepting to the account.

Name of Estate	Name and Address of Personal Representative	Nature of Account	Date Filed
_____	_____	_____	____
_____	_____	_____	____

Date: _____, ____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Note to Form 21: By statute, the clerk must publish, in a newspaper published or having a general circulation in the county, a notice of estates in which accounts have been filed by personal representatives during the preceding month, listing in alphabetical order the names of the estates. Ark. Code Ann. § 28-52-106.

Form 22.

[Caption]

CITATION FOR FAILURE TO PRESENT ACCOUNT

To _____, the personal representative of this estate:

Being delinquent in the filing of your account of your administration of this estate, you are required to file that account within thirty (30) days after the date of service of this citation and to show cause why an attachment should not be issued against you for your failure to present your account according to law.

Date: _____, ____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 22: *See* Ark. Code Ann. § 28-52-103(c).

Form 23.

[Caption]

AFFIDAVIT FOR COLLECTION OF SMALL ESTATE
BY DISTRIBUTEE

_____, _____ and _____, for the purpose of dispensing with administration of this estate, deceased, state on oath:

1. The decedent _____, aged ___, who resided at _____ in _____ County, Arkansas, died at _____ on or about [date]. No petition for the appointment of a personal representative for the decedent's estate is pending or has been granted.

2. More than forty-five (45) days have elapsed since decedent's death.

3. The value, less encumbrances, of all property owned by the decedent at the time of death, excluding the homestead of and statutory allowances for the benefit of the surviving spouse or minor children, if any, of the decedent, does not exceed fifty thousand dollars ($50,000).

4. There are no unpaid claims or demands against the decedent or the decedent's estate, and the Department of Human Services furnished no federal or state benefits to the decedent (or, that if such benefits have been furnished, the Department of Human Services has been reimbursed in accordance with state and federal laws and regulations).

5. An itemized description and valuation of the decedent's personal property; a legal description and valuation of the decedent's real property, including homestead, if any; and the names and addresses of persons having possession thereof or residing on any of the decedent's real property, are:

Description of Property, and Extent and Details of Encumbrances, if Any	Valuation Less Encumbrances	In Possession of
_____	_____	_____
_____	_____	_____

6. The names, ages, relationships to the decedent and residence addresses of the persons entitled to receive the property of the decedent as surviving spouse, heirs or devisees of decedent's will are:

Name	Age	Relationship	Residence Address
_____	___	_____	_____
_____	___	_____	_____

THEREFORE, the distributee[s] of this estate shall be entitled to distribution of the property identified above, without the necessity of an order of the court or other proceeding, upon furnishing a copy of this Affidavit, certified by the clerk, to any person owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right of the decedent.

Date: _____, ____.

_____
[Affiant]

_____
[Affiant]

_____
[Affiant]

[Affidavit]

CERTIFICATE OF CLERK

The undersigned Clerk of the Probate Court of _____ County, Arkansas, certifies that this is a true copy of an affidavit filed in this court on [date], that the affidavit remains on file and that no petition for the appointment of a personal representative of this estate has been filed in this court.

Date: _____, ____.

_____, Clerk.

By:_____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 23: *See* Ark. Code Ann. § 28-41-101. The language in parentheses in Paragraph 4 should be substituted for the language immediately preceding it if the Department of Human Services furnished benefits to the decedent. An affidavit by the distributee is required by Ark. Code Ann. § 28-41-101(a)(4). If an estate collected pursuant to this affidavit contains real property, the distributee, to allow for presentation of claims against the estate, may publish a notice promptly after the affidavit has been filed. Ark. Code Ann. § 28-41-101(b)(2).

Form 24.

[Caption]

PETITION FOR APPOINTMENT OF GUARDIAN OF THE PERSON AND ESTATE

The petitioner respectfully represents to this court that a guardian of the person and of the estate should be appointed for the incapacitated person whose name, date of birth, sex, and address are:

Name	Date of Birth	Sex	Residence Address
_____	_____	___	_____

The nature of the incapacity and purpose of the guardianship sought for the incapacitated person are: [Insert the nature of incapacity and purpose of guard-

ianship, in accordance with the definitions and classifications set forth in Ark. Code Ann. §§ 28-65-101 & 28-65-104.]

The nature, extent and value of the property of the incapacitated person and the interest of the incapacitated person in that property, are: [Include approximate value and description of property, including any compensation, pension, insurance or allowance to which the incapacitated person may be entitled].

There is no guardian of the person or estate of the incapacitated person, except as follows: [State whether a guardian has been appointed in any state for the estate or person of the incapacitated person and if not, write "none."]

_____, whose address is _____, is related to or interested in the incapacitated person by reason of _____ and is legally qualified to serve as guardian of the person and estate of the incapacitated person.

[He][She] is at present serving as guardian of the persons or estates of the incapacitated persons whose names and addresses are as follows: [List the names and addresses of any wards for whom the person whose appointment is sought is already guardian.]

Insofar as the petitioner has been able to ascertain, the persons most closely related, by blood or marriage, to the incapacitated person are:

Name	Relationship	Residence Address
_____	_____	_____
_____	_____	_____

The nature of the proposed ward's alleged disability is: [Set forth a statement of the alleged disability as defined by Ark. Code Ann. §§ 28-65-101(1) & 28-65-104.]

Petitioner recommends the following type of guardianship, having the scope and duration indicated: [Include a recommendation proposing the type, scope and duration of guardianship.]

The following facility or agency from which the proposed ward is receiving services has been notified of the proceedings: [Include a statement that any facility or agency from which the respondent is receiving services has been notified of the proceedings.]

The names and addresses of others having knowledge of the proposed ward's disability are:

Name	Residence Address
_____	_____
_____	_____

_____
[Signature of Petitioner]

[Affidavit]

Reporter's Notes to Form 24: This petition is for a guardianship of both the person and the estate. It should be modified if the guardianship is only of

one or the other. By statute, incapacitated persons include those who are impaired by certain specified mental and physical disabilities, as well as persons under the age of 18 whose disabilities have not been removed and persons who are detained or confined by a foreign power or who have disappeared. Ark. Code Ann. §§ 28-65-101 & 28-65-104. Matters that must be enumerated in the petition are set forth in Ark. Code Ann. § 28-65-205. *See also* Ark. Code Ann. §§ 28-65-105–28-65-106 (purpose of guardianship proceedings and rights of incapacitated persons).

Form 25.

[Caption]

NOTICE OF HEARING FOR APPOINTMENT

To: _____

You are hereby notified that a petition has been filed in this court for the appointment of a guardian of the [person] [estate] [person and estate] of _____, an incapacitated person, and that the petition will be heard at ___ o'clock __.m., on [date] at the _____ County Courthouse, or at a later time or other place to which the hearing may be adjourned or transferred.

Date: _____, ____.

_____, Clerk.

By:_____, Deputy Clerk.

Reporter's Notes to Form 25: *See* Ark. Code Ann. § 28-65-207 (notice of hearing for appointment and methods for service of such notice); Ark. Code Ann. § 28-65-208 (persons who must be notified of the hearing). At least 20 days notice of the hearing must be given. Ark. Code Ann. § 28-65-207(c)(2).

Form 26.

[Caption]

APPLICATION FOR WRITTEN NOTICE

To: _____

The undersigned, _____, in accordance with Ark. Code Ann. § 28-65-209, requests written notice of all hearings on petitions for settlement of accounts, for the sale, mortgage, lease, or exchange of any property of this guardianship estate, for an allowance of any nature payable from the ward's estate, for the investment of funds of the estate, for the removal, suspension, or discharge of the guardian, or for final termination of the guardianship, and any other matter affecting the welfare or care of the incapacitated person or

[his][her] property.

The requested notice should be sent to the undersigned at the following address:

Date: _____, ____.

_____
[Applicant or attorney]

_____
[Mailing Address]

Reporter's Notes to Form 26: Pursuant to Ark. Code Ann. § 28-65-209, an interested party may, in person or by attorney, serve upon the guardian and upon his attorney, and file with the clerk of the court where the proceedings are pending, with a written admission or proof of service, a written request stating that he desires notice of some or all of the matters enumerated in this form. Unless the court directs otherwise, upon filing the request, the person shall be entitled to notice of all such hearings or of such of them as he designates in his request.

Form 27.

[Caption]

GUARDIAN'S BOND

The undersigned, _____, as principal, having been appointed guardian of the [person] [estate] [person and estate] of _____, an incapacitated person; and _____, as suret__, acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use and benefit of all persons interested, in the penal sum of _____ Dollars ($_____), conditioned as follows:

If the undersigned guardian shall well and faithfully account for his guardianship, as by law required, this bond shall become void; otherwise, it will remain in full force and effect.

Date: _____, ____.

_____, as Principal.
_____, as Surety.
_____, as Surety.

Approved this date: _____, ____.

_____, Clerk.
By:_____, Deputy Clerk.

Approved this date: _____, ____.

_____, Judge.

Reporter's Notes to Form 27: *See* Ark. Code Ann. § 28-65-215 (requirement for a bond). For the qualifying affidavit of personal sureties, see

Form 7.

Form 28.

[Caption]

ACCEPTANCE OF APPOINTMENT AS GUARDIAN

The undersigned, _____, having been appointed guardian of the [person] [estate] [person and estate] of _____, an incapacitated person, hereby accepts the appointment.

Date: _____, ____.

_____

[Signature]

Reporter's Notes to Form 28: This form is to be used only when no bond is required of the guardian.

Form 29.

[Caption]

LETTERS OF GUARDIANSHIP OF THE PERSON AND ESTATE

Be It Known:

_____, whose address is _____, having been appointed guardian of the person and estate of _____, an incapacitated person, and having qualified as guardian, is hereby authorized to have the care and custody of and exercise control over the incapacitated person and to take possession of and administer the property of the incapacitated person, as authorized by law.

Date: _____, ____.

_____, Clerk.

By:_____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 29: This form, prescribed by Ark. Code Ann. § 28-65-217, is for a guardianship of both the person and the estate. It should be modified if the guardianship is only of one or the other. If the powers, authorities, and duties of the guardian are limited, the letters of guardianship must clearly state, in bold print, that they are so restricted and the word "limited" must appear in both the title and in the body of the form. For designation of a process agent by a non-resident, see Form 9.

Form 30.

[Caption]

INVENTORY OF WARD'S ESTATE

The undersigned, guardian of the estate of _____, an incapacitated person, states on oath that to the best of my knowledge and belief, the following is a complete and accurate inventory of all property owned by the ward at the time of my appointment as such guardian, and that the amount set opposite each item of property is its fair market value at the time it came under my control as guardian:

REAL ESTATE

Legal Description and Extent of Ward's Interest	Encumbrances, Liens, Etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Total value of real estate: $_____

PERSONAL PROPERTY

Household Goods and Personal Effects

[This list should include, but not be limited to, furniture, household and yard equipment, clothing, jewelry, etc.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Other Tangible Personal Property

[This list should include, but not be limited to, automobiles and other motor vehicles, farm equipment, livestock, agricultural products, stocks of merchandise, any going business enterprise or interest therein, etc.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Intangible Personal Property

[List separately in detail: cash on hand; money on deposit, stating names and addresses of depositories; bonds, stating names of issuers, interest rates, classes, maturity dates, serial numbers, face amounts, and dates to which interest is paid; corporate stocks, stating certificate numbers, names of issuers, classes, and number of shares; notes receivable, stating the names and addresses of makers, dates, amounts, interest rates, and dates to which interest paid, balances due, maturities, and security, if any; accounts receivable, stating names of debtors, dates of last items and balances due; and other intangibles, describing in detail.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	$_____
_____	_____	$_____

Total value of personal property: $_____

SUMMARY

Total real property:	$_____
Total personal property:	$_____
Total estate:	$_____

The undersigned is not indebted or obligated to the ward except as stated herein.

Date: _____, ____.

_____
[Signature]

[Affidavit]

Reporter's Notes to Form 30: Paragraph (a) of Ark. Code Ann. § 28-65-321 provides that the inventory is subject to the same requirements for the inventory of a decedent's estate. *See* Ark. Code Ann. § 28-49-110. Among those requirements is an affidavit.

Form 31.

[Caption]

ACCOUNTING BY GUARDIAN

_____ respectfully submits to the court [his][her] account as guardian of the estate of _____ for the period beginning on [date] and ending on [date]. This account is submitted because [insert the occasion for filing of account as set forth in Ark. Code Ann. § 28-65-320].

1. Charges to accountant: [If this is the first account, the first item should be the value of the estate as reflected by the inventory. If a subsequent account, the first item should be the balance shown on the previous account. Thereafter list separately and describe in detail (a) additional property received by accountant; (b) all income; and (c) gains from the sale, conveyance or other disposition of any property received by the accountant during the accounting period. Show the date of each transaction.]

Total charges to accountant: $_____

2. Credits, other than payments to distributees, to which accountant is entitled: [List separately (a) all disbursements, other than payments to

distributees, and (b) all losses sustained on sales, conveyances or other dispositions of any property, describing each item in full. Show the date of each transaction.]

Total: $_____

3. Credits for money paid or assets delivered to distributees: [Itemize each disbursement of cash and describe in detail other assets delivered, showing opposite each asset the amount at which its value was estimated in the inventory or, if purchased by the accountant, its cost. Show the date of each transaction.]

Total: $_____

SUMMARY OF ACCOUNT

Charges to accountant:	$_____
Credits as per paragraph 2:	$_____
Credits as per paragraph 3:	$_____
Total Credits:	$_____
Balance remaining in hands of accountant:	$_____

4. Description of balance remaining in hands of accountant: [List separately and describe in detail each item of property remaining in the accountant's hands, showing the inventory value or cost of each.]

5. Changes in form of assets not affecting balance: [List separately and describe in detail all changes in the form of assets resulting from collections or sales at inventory or cost value and other such transactions. Show the date of each transaction.]

6. All outstanding liabilities of the estate of which accountant has knowledge are:

Total Liabilities: $_____

Vouchers evidencing cash disbursements and receipts evidencing other assets delivered for which accountant has taken credit are attached to this account.

THEREFORE, having fully accounted for the administration of this estate for the period set out above, accountant requests that, after proper advertisement and notice, if any, required by the law or by the court, this account be examined, approved, and confirmed by the court, and that accountant be allowed the sum of $_____ as [his][her] fee for services rendered during the period covered by this account.

_____

[Signature]

[Affidavit]

Reporter's Notes to Form 31: Pursuant to Ark. Code Ann. § 28-65-320, a guardian of the estate must file with the court annually, within 60 days after the anniversary date of his or her appointment and also within 60 days after termination of his or her guardianship, a written verified accounting. Notice of

hearing of every accounting must be given to the same persons in the same manner as required in connection with the petition to appoint the guardian, except that the court may dispense with notice to a mentally incompetent ward upon a satisfactory showing that such notice would be detrimental to his or her well-being.

Form 32.

[Caption]

ANNUAL REPORT OF GUARDIAN

_____, the duly appointed, qualified, and acting guardian of _____, an incapacitated person, submits this annual report to the court in accordance with Ark. Code Ann. § 28-65-322.

The current mental, physical, and social condition of the incapacitated person is: [Provide a summary.]

The present living arrangements of the incapacitated person are: [Describe those arrangements.]

The need for continued guardianship services is: [State whether there is a need for such services.]

Submitted with this annual report is the petitioner's accounting of the guardianship estate for the period beginning on [date] and ending on [date].

_____
[Signature]

Reporter's Notes to Form 32: All guardians must file an annual report with the court, setting forth the matters reflected in this form. *See* Ark. Code Ann. § 28-65-322. Any other information which is requested by the court or is necessary in the opinion of the guardian must also be included.

Form 33.

[Caption]

AGREEMENT OF DEPOSITORY

The undersigned, being [a bank in Arkansas insured by the Federal Deposit Insurance Corporation] [a savings and loan association in Arkansas insured by the Federal Savings & Loan Association Corporation] [a credit union in Arkansas insured by the National Credit Union Administration], received on deposit from _____, as guardian of the estate of _____, an incapacitated person, the sum of _____ Dollars ($ _____) in cash on

[date] and agrees not to permit any withdrawal from these funds unless authorized by order of this court.

Date: _____, ____.

_____
[Authorized Officer or Agent of Depository]

Reporter's Notes to Form 33: By statute, the court may dispense with a bond for the guardian when the entire guardianship is in cash deposited on interest in any of the institutions identified in the form, provided that the value of the estate so deposited is not greater than the maximum amount of insurance provided by law for a single depositor. Ark. Code Ann. § 28-65-215(e). This form must be executed on behalf of the depository and filed with the probate clerk. For an enumeration of the types of authorized investments for guardianship funds, see Ark. Code Ann. § 28-65-311.

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; (2) any person not less than eighteen years of age appointed for the purpose of serving a 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 pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

* * *

(e) **Other Service:** Whenever the law of this state authorizes service outside this state, the service, when reasonably calculated to give actual notice, may be made:

* * *

(3) By ~~any form of~~ mail ~~addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee~~ *as provided in subdivision (d)(8) of this rule*;

* * *

Addition to Reporter's Notes, 1999 Amendment: Subdivision (c)(2) has been amended by deleting the word "a" before the word "summons." This amendment is intended to make plain that private process servers may be appointed by standing order as well as on a case-by-case basis. In addition, subdivision (e)(3) has been amended to provide for service by mail outside the state in accordance with the requirements of subdivision (d)(8), which governs service by mail inside the state. This change makes the two provisions consistent.

Rule 5.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

* * *

(b) **Service: How Made.** *(1)* Whenever under this rule or any statute service is required or permitted to be made upon a party represented by an attorney, the service shall be upon the attorney, *except that service shall be upon the party if* ~~unless~~ the court *so* orders ~~service upon the party himself~~ or ~~service is to be with respect to an~~ *the* action *is one* in which a final judgment has been entered ~~but~~ *and* the court has continuing jurisdiction.

(2) Except as provided in paragraph (3) of this subdivision, service ~~Service~~ upon the attorney or upon the party shall be made by delivering a copy

to him or by ~~mailing~~ *sending* it to him *by regular mail* at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy for purposes of this paragraph means handing it to the attorney or to the party; or, by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing. When service is permitted upon an attorney, such service may be effected by electronic transmission, provided that the attorney being served has facilities within his office to receive and reproduce verbatim electronic transmissions, or such service may be made by a commercial delivery service which maintains permanent records of actual delivery.

(3) If a final judgment or decree has been entered and the court has continuing jurisdiction, service upon a party by mail shall comply with the requirements of Rule 4(d)(8)(A).

(c) Filing. * * *

(2) *If the clerk's office has a facsimile machine, the* ~~The~~ clerk may *shall* accept facsimile transmissions of any paper filed under this rule~~, providing that it is transmitted on to bond-type paper that can be preserved for a period of at least ten years or on to nonbond paper if an original is substituted for the facsimile copy with ten days of transmission~~. *and may charge a fee of $1.00 per page.* Any signature appearing on a facsimile copy shall be presumed authentic until proven otherwise. *The clerk shall stamp or otherwise mark a facsimile copy as filed* ~~A facsimile copy shall be deemed received when it is transmitted and~~ *on the date and time that it is* received on the clerk's facsimile machine *during the regular hours of the clerk's office or, if received outside those hours, at the time the office opens on the next business day.* ~~without regard to the hours of operation of the clerk's office. The date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of filing.~~

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has been divided into three paragraphs, but only one change has been made. Previously, service by regular mail was sufficient in all cases. *See Office of Child Support v. Ragland*, 330 Ark. 280, 954 S.W.2d 218 (1997) (motion to hold former spouse in contempt for failure to pay child support). Paragraph (2) provides for service by regular mail as a general rule; however, paragraph (3) creates an exception by incorporating the requirements of Rule 4(d)(8)(A) for service by mail on a party when, as in *Ragland*, a final judgment or decree has been entered and the court has continuing jurisdiction. In this situation, paragraph (1) requires, as did the prior version of the rule, that service be made on the party, not his or her attorney. Ark. Code Ann. § 16-58-131, which addressed these issues and other matters now governed by Rules 4 and 5, has been deemed superseded.

Several changes have been made in subdivision (c)(2) concerning facsimile fil-

ings. The statute on which the rule was originally based, Ark. Code Ann. § 16-20-109, has been deemed superseded.

The first sentence of subdivision (c)(2) has been amended to require any clerk with a facsimile machine to accept facsimile filings of any paper filed under this rule and to allow the clerk to charge a fee of $1.00 per page. Previously, the rule provided that a clerk with a facsimile machine "may accept" papers filed by fax. Apparently, some clerks refused to accept papers filed in this manner even though they had the necessary equipment. Also, language in the first sentence requiring that an original document be substituted for a fax filing if the latter were not made on bond-type paper has been deleted. This provision was considered unnecessary in light of improvements in the quality of fax machines.

The third sentence of subdivision (c)(2) has been amended to require that the clerk stamp or otherwise mark the facsimile copy as filed on the date and time that it is received in the clerk's office or, if received when the office is closed, on the next business day. The last sentence of the prior version of the rule, which provided that "[t]he date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of filing," has been deleted because the date and time are printed by the sender's facsimile machine, not the clerk's.

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:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the issues in the pending actions, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, identity and location of *any books, documents, or other tangible things and the identity and location of* persons who have knowledge of any discoverable matter or who will or may be called as a witness at the trial of any cause. It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * *

(e) **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

* * *

(2) A party is under a duty seasonably to amend a prior response *to an interrogatory, request for production, or request for admission* if ~~he obtains information upon the basis of which (A) he knows that the response was in-~~

~~correct when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment~~ *the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.*

* * *

Addition to Reporter's Notes, 1999 Amendment: The first sentence of subdivision (b)(1) has been amended to correct an oversight that dates to the rule's adoption. As revised, this sentence provides for discovery not only as to persons who may have knowledge of discoverable matters or who may be called as witnesses at trial, but also as to "books, documents, or other tangible things." The new language is taken from Federal Rule 26(b)(1), on which the Arkansas rule was based.

Subdivision (e)(2) has been revised to track the corresponding federal rule, as amended in 1993. The duty to supplement, while imposed on a "party," applies whether the corrective information is learned by the client or by the attorney. Supplementation need not be made as each new item of information is learned but should be made at appropriate intervals during the discovery period, and with special promptness as the trial date approaches. Under the revised rule, the obligation to supplement applies to interrogatories, requests for production, and requests for admissions, but not ordinarily to deposition testimony. However, supplementation is required under subdivision (e)(1) with respect to changes in the opinions of experts, whether in response to interrogatories under subdivision (b)(4)(A) or in a deposition.

The obligation to supplement under subdivision (e)(2) arises whenever a party learns that its prior responses are "in some material respect" incomplete or incorrect. The "knowing concealment" standard found in the former version of the rule has been deleted. A formal amendment of a response is not necessary if the corrective or supplemental information has been made known to the parties in writing or during the discovery process, as when a witness not previously disclosed is identified during the taking of a deposition.

Rule 33.

INTERROGATORIES TO PARTIES

* * *

(d) Option to Produce Business Records. Where the answers to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford

the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. *A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily can the party served, the records from which the answer may be ascertained.*

Addition to Reporter's Notes, 1999 Amendment: Subdivision (d) has been amended by adding the last sentence. Taken from the corresponding federal rule, this provision makes clear that a party responding to interrogatories by producing business records has the duty to specify, by category and location, the records from which answers to interrogatories can be derived. Without such guidance, the burden of deriving the answers would not be substantially the same for the party serving the interrogatories as for the responding party. A similar requirement has been added to Rule 34(b).

Rule 34.

PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

* * *

(b) **Procedure.** *(1)* The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

(2) The party upon whom the request has been served shall serve a written response within 30 days after the service of the request, except that a defendant must serve a response within 30 days after the service of the request upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified *and inspection permitted of the remaining parts.* The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(3) A party who produces documents for inspection shall (A) organize and label them to correspond with the categories in the production request

or (B) produce them as kept in the usual course of business if the party seeking discovery can locate and identify the relevant records as readily as can the party who produces the documents.

* * *

Addition to Reporter's Notes, 1999 Amendment: The first and second paragraphs of subdivision (b) have been numbered and a new paragraph (3) added. The fourth sentence of the second paragraph has been amended to require a party who objects to part of a request for production to permit inspection with respect to the unobjectionable portions. The corresponding federal rule was so amended in 1993. A similar requirement for answers to interrogatories appears in Rule 33(b)(1).

The new third paragraph, based on Federal Rule 34(b), provides that a party from whom production is sought must (1) organize and label the documents in accordance with the categories set out in the production request, or (2) produce them as kept in the usual course of business. However, the second option is available only if "the party seeking discovery can locate and identify the relevant documents as readily as can the party who produces them." This requirement is intended to eliminate a problem that has arisen under the federal rule, which appears to give the producing party the right to produce records as kept in the usual course of business even though the party seeking discovery would be forced to sift through a jumble of documents in order to find those that are responsive to the production request. A similar requirement has been added to Rule 33(d), which allows the production of business records in response to interrogatories.

Rule 41.

DISMISSAL OF ACTIONS

(a) **Voluntary Dismissal; Effect Thereof.** *(1)* Subject to the provisions of Rule 23(d) and Rule 66, an action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the jury, or to the court where the trial is by the court. ~~, provided, however, that such dismissal~~ *Although such a dismissal is a matter of right, it is effective only upon entry of a court order dismissing the action.*

(2) A voluntary dismissal under paragraph (1) operates as an adjudication on the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based upon or including the same claim, unless all parties agree by written stipulation that such dismissal is without prejudice.

(3) In any case where a set-off or counterclaim has been previously presented, the defendant shall have the right of proceeding on his claim although the plaintiff may have dismissed his action.

* * *

(d) **Costs of Previously Dismissed Action.** If a plaintiff who has once dismissed an action, or who has suffered an involuntary dismissal in any court,

commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order. *For purposes of this rule, the term "costs" means those items taxable as costs under Rule 54(d)(2).*

Addition to Reporter's Notes, 1999 Amendment: Subdivision (a) has been divided into three numbered paragraphs and revised to reflect case law. In *Blaylock v. Shearson Lehman Brothers, Inc.*, 330 Ark. 620, 954 S.W.2d 939 (1997), the Supreme Court noted that it had "long interpreted [Rule 41(a)] as creating an absolute right to a nonsuit prior to submission of the case to the jury or to the court." In the same case, the Court held that "a court order is necessary to grant a nonsuit and the judgment or decree must be entered to be effective."

A new sentence has been added to subdivision (d) defining "costs" as those recoverable under Rule 54(d)(2), a new provision. A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. *See, e.g., Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

Rule 50.

MOTION FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

* * *

(b) Motion for Judgment Notwithstanding the Verdict. *(1)* Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.

(2) Not later ~~No more~~ than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party within 10 days after the jury has been discharged may move for judgment in accordance with his motion for directed verdict. *A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.*

(3) A motion for a new trial may be joined with ~~this~~ *a* motion *for judgment notwithstanding the verdict*, or a new trial be prayed in the alternative. If a verdict was returned the court may allow the judgment to stand or may

re-open the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has been divided into three numbered paragraphs. The new second sentence of paragraph (2) makes plain that a pre-judgment motion for JNOV is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was ineffective. *See Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new third sentence provides that a motion for JNOV not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(c) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

Rule 52.

FINDINGS BY THE COURT

* * *

(b) **Amendment.** *(1)* Upon motion of a party made not later than 10 days after entry of judgment, the court may amend its findings of fact or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. *A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.*

(2) When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has been divided into two numbered paragraphs. The new third sentence of paragraph (1) makes plain that a pre-judgment motion to amend findings or to make additional findings is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was not effective. *See Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new fourth sentence provides that a motion to amend findings or for additional findings not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(c) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

Rule 54.

JUDGMENTS; COSTS

* * *

(d) **Costs.** *(1)* Costs ~~authorized by statute or by these rules~~ shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.

(2) Costs taxable under this rule are limited to the following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

Addition to Reporter's Notes, 1999 Amendment: A new paragraph has been added to subdivision (d) defining the term "costs." A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. *See, e.g., Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

Rule 55.

DEFAULT

(a) **When Entitled.** When a party against whom a judgment for affirmative relief is sought has failed to appear *plead* or otherwise defend as provided by these rules, judgment by default may be entered by the court.

(b) * * *

Addition to Reporter's Notes, 1999 Amendment: Subdivision (a) has been amended by replacing the word "appear" with the word "plead," the terminology used in the corresponding federal rule. This revision, while minor, is intended to eliminate potential confusion stemming from the fact that appearance is also relevant under subdivision (b), which requires notice of a hearing on a motion for default judgment if the party against whom the judgment is sought "has appeared in the action. . . ." In addition, use of the word "plead" in subdivision (a) indicates that the phrase "otherwise appear" has independent meaning. Arkansas cases suggest that this phrase means the same thing as an appearance, in which case it would be a redundancy. *E.g., Tapp v. Fowler*, 291 Ark. 309, 724 S.W.2d 176 (1987) (defendant appeared or otherwise defended within meaning of Rule 55(a) by filing motion to dismiss and motion for summary judgment). Under the federal rule, the phrase "otherwise defend" refers to motions, which by definition are not pleadings. *E.g., Bass v. Hoagland*, 172 F.2d 205 (5th Cir.), *cert. denied*, 338 U.S. 816 (1949). *See also* Ark. R. Civ. P. 7(a) & (b) (distinguishing pleadings and motions). Amended subdivision (a) reflects the dichotomy recognized by the federal courts.

Rule 59.

NEW TRIALS; ~~AMENDMENT OF JUDGMENTS~~

* * *

(b) **Time for Motion.** A motion for new trial shall be filed not later than 10 days after the entry of judgment. *A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.*

* * *

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has to amended by adding a new second sentence that effectively overturns *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997), which held that a motion for new trial filed before entry of judgment is ineffective. As amended, the rule reflects the practice in the federal courts. The new third sentence provides that a motion for new trial not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(c) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

In addition, the title of the rule has been modified by striking the words "amendment of judgments." A provision in the original version of the rule dealing with this issue was deleted in 1983. *See* Addition to Reporter's Notes, 1983 Amendment.

Arkansas Rules of Appellate Procedure-Civil

Rule 4.

APPEAL--WHEN TAKEN

(a) **Time for Filing Notice** ***of Appeal.*** Except as otherwise provided in ~~subsequent sections~~ *subdivision (b)* of this rule, a notice of appeal shall be filed within thirty (30) days from the entry of the judgment, decree or order appealed from. A notice of cross-appeal shall be filed within ten (10) days after receipt of the notice of appeal, except that in no event shall a cross-appellant have less than thirty (30) days from the entry of the judgment, decree or order within which to file a notice of cross-appeal. ~~Upon a showing of failure to receive notice of the judgment, decree or order from which appeal is sought, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed sixty (60) days from the expiration of the time otherwise prescribed by these rules. Such an extension may be granted before or after the time otherwise prescribed by these rules has expired, but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.~~ *A notice of appeal filed after the trial court announces a decision but before the entry of the judgment, decree, or order shall be treated as filed on the day after the judgment, decree, or order is entered.*

(b) ***Extension of*** **Time for** ***Filing*** **Notice of Appeal** ~~**Extended by Timely Motion.**~~ *(1)* Upon timely filing in the trial court of a motion for judgment notwithstanding the verdict under Rule 50(b) *of the Arkansas Rules of Civil Procedure*, ~~of~~ a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), or ~~of~~ a motion for a new trial under Rule 59~~(b)~~*(a)*, the time for filing ~~of~~ *a* notice of appeal shall be extended ~~as provided in this rule:~~ *for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the trial court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.*

(2) A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such a notice is effective to appeal the underlying judgment, decree, or order. A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice, complying with Rule 3(e). No additional fees will be required for filing an amended notice of appeal.

~~(c) Disposition of Posttrial Motion. If a timely motion listed in section subdivision (b) of this rule is filed in the trial court by any party, the time for~~

~~appeal for all parties shall run from the entry of the order granting or denying a new trial or granting or denying any other such motion. Provided, that if the trial court neither grants nor denies a motion of the type set forth in paragraph (2) of this subdivision within thirty (30) days of its filing, the motion will be deemed denied as of the 30th day. A notice of appeal filed before the disposition of any such motion or, if no order is entered, prior to the expiration of the 30-day period shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion or from the expiration of the 30-day period. No additional fees shall be required for such filing.~~

~~(d) Time for Appeal from Disposition of Motion. Upon disposition of a motion listed in section (b) of this rule, any party desiring to appeal from the judgment, decree or order originally entered shall have thirty (30) days from the entry of the order disposing of the motion or the expiration of the 30-day period provided in section (c) of this rule within which to give notice of appeal.~~

(3) Upon a showing of failure to receive notice of the judgment, decree or order from which appeal is sought and a determination that no party would be prejudiced, the trial court may, upon motion filed within 180 days of entry of the judgment, decree, or order, extend the time for filing the notice of appeal for a period of fourteen (14) days from the date of entry of the extension order. Notice of any such motion shall be given to all other parties in accordance with Rule 5 of the Arkansas Rules of Civil Procedure.

(c) ~~(e)~~ **When Judgment Is Entered.** A judgment, decree or order is entered within the meaning of this rule when it is filed with the clerk of the court in which the claim was tried. A judgment, decree or order is filed when the clerk stamps or otherwise marks it as "filed" and denotes thereon the date and time of filing.

~~(f) Notice of Appeal Filed on Same Day. A notice of appeal filed on the same day as the judgment, decree, or order appealed from shall be effective.~~

Addition to Reporter's Notes, 1999 Amendment: The rule has been revised to incorporate some features of Rule 4 of the Federal Rules of Appellate Procedure, as amended in 1991 and 1993. On balance, the effect of the amendment is to liberalize prior Arkansas practice.

Subdivision (a) now provides that a premature notice of appeal is to be treated as if it had been filed after entry of the judgment, decree, or order. Previously, such a notice was ineffective. *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992). Subdivision (f) of the prior version of the rule, which provided that a notice of appeal was effective if filed on the same day but earlier in time than the judgment, decree, or order, has been deleted. Also deleted are two sentences in subdivision (a) dealing with the situation in which a party has not received notice of entry of a judgment, decree, or order. This issue is now addressed in paragraph (3) of subdivision (b).

Amended subdivision (b) combines subdivisions (b), (c), and (d) of the prior

version of the rule. Paragraph (b)(1) is essentially former subdivision (b), with one clarifying change. A timely motion for new trial, judgment notwithstanding the verdict, or amendment of findings extends for all parties the time for filing a notice of appeal. If there are multiple motions, the 30-day period for filing a notice of appeal begins to run from entry of the order disposing of "the last motion outstanding" or the date on which such motion is deemed denied by operation of law.

Paragraph (b)(2), based on Federal Rule 4(a)(4), is new. It provides that a notice of appeal filed before disposition of one of the specified posttrial motions becomes effective on the day after a dispositive order is entered or the motion is deemed denied by operation of law. Under prior practice, a premature notice of appeal was ineffective. *Chickasaw Chemical Co. v. Beasley*, 328 Ark. 472, 944 S.W.2d 511 (1997); *Kimble v. Gray*, 313 Ark. 373, 853 S.W.2d 890 (1993). The effect of para-graph (b)(2) is to suspend a premature notice until the motion is ruled on or deemed denied, and a new notice is not necessary to appeal the underlying case. However, a party seeking to appeal from disposition of the posttrial motion must amend the original notice to so indicate. No additional fees are required in this situation, since the notice is an amendment of the original and not a new notice of appeal.

Paragraph (b)(3) is a revised version of a provision previously found in subdivision (a), under which a party who did not receive notice of the judgment or order that he or she wished to appeal could obtain an extension from the trial court "for a period not to exceed sixty (60) days from the expiration of the time otherwise prescribed by these rules." This rule proved restrictive in operation. *See, e.g., Jones-Blair Co. v. Hammett*, 51 Ark. App. 112, 911 S.W.2d 263 (1995), rev'd on other grounds, 326 Ark. 74, 930 S.W.2d 335 (1997); *Chickasaw Chemical Co. v. Beasley, supra*. Accordingly, paragraph (b)(3) expands the period during which an extension may be sought.

The trial court may extend the time for filing the notice of appeal "upon motion filed within 180 days of entry of the judgment, decree, or order." If such an extension is granted, the notice of appeal must be filed within fourteen days from the date on which the extension order is entered. These time frames are taken from the corresponding federal rule. *See* Rule 4(a)(6), Fed. R. App. P. Like the federal rule, paragraph (b)(3) also requires a determination by the trial court that no party would be prejudiced by the extension of time. The term "prejudice" means some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal. Prejudice might arise, for example, if the appellee had taken some action in reliance on the expiration of the normal time period for filing a notice of appeal.

IN RE: RULE 5.5, RULES OF CRIMINAL PROCEDURE

Supreme Court of Arkansas
Delivered November 5, 1998

PER CURIAM. Our Committee on Criminal Practice has recommended that we amend Ark. R. Crim. P. 5.5. This rule was adopted in 1976 pursuant to an American Bar Association recommendation. *See* American Bar Association, Standards Relating to Pretrial Release § 1.4 (Approved Draft, 1968). In 1986, the Standard from which our Rule 5.5 was derived was revised. 2 American Bar Association, Standards for Criminal Justice, Standard 10-2.4 (2d ed. Supp. 1986). The committee proposes that we substitute this revision for our current rule. The change is set out below.

We publish this proposal for comments from the bench and bar. Comments should be filed with the Clerk of the Supreme Court by February 1, 1999, and should be addressed to:

Leslie Steen, Clerk
Arkansas Supreme Court
Justice Building
625 Marshall Street
Little Rock, AR 72201

Rule 5.5. Lawful Searches.

~~The issuance of a citation in lieu of arrest or continued custody does not affect the authority of a law enforcement officer to conduct an otherwise lawful search or any other investigative procedure incident to an arrest.~~

When an officer makes a lawful arrest, the defendant's subsequent release on citation should not affect the lawfulness of any search incident to the arrest.

Reporter's Notes: *See State v. Earl,* 333 Ark. 489 (1998).

This rule is derived from Standard 10-2.4 of the American Bar Association's Standards for Criminal Justice. The Commen-

tary to this Standard states in part: "These standards are not intended to affect the officer's right to conduct [a search incident to arrest] when there has, in fact, been a good faith arrest. The fact that the officer may later decide that although a criminal charge is justified the accused will respond to a citation and that continued detention is not necessary will not affect the validity of the initial arrest and search." 2 American Bar Association, Standards for Criminal Justice, Standard 10-2.4 (2d ed. Supp. 1986).

IN RE: RULES GOVERNING ADMISSION TO THE BAR OF ARKANSAS

Supreme Court of Arkansas
Delivered November 5, 1998

PER CURIAM. At the request of the State Board of Law Examiners, the appendix of Rules Governing Admission to the Bar is amended by the addition of Regulation 9, which appears below.

REGULATION 9
MISCELLANEOUS FEE SCHEDULE

Application packet fee	$25.00
MBE transfer fee	25.00
Copies — per page	.25

The miscellaneous fees set forth above are in addition to any other fees or expenses the applicant may be required to submit in connection with his or her application.

IN RE: RULES OF APPELLATE PROCEDURE—CRIMINAL, RULE 2

Supreme Court of Arkansas
Delivered November 5, 1998

PER CURIAM. Our Committee on Criminal Practice has recommended a change in Rule 2 of the Rules of Appellate Procedure—Criminal to correct an inaccurate cross reference.

In Rule 2(a)(2), the reference to "RAP Crim.10" is incorrect. The correct reference should be Rule 33.3 of the Rules of Criminal Procedure. Accordingly, Rule 2 (a) is hereby amended, effective immediately, and republished in pertinent part as follows:

Rule 2. TIME AND METHOD OF TAKING APPEAL.

(a) Notice of Appeal. Within thirty (30) days from

(1) the date of entry of a judgment; or

(2) the date of entry of an order denying a post-trial motion under Ark. R. Crim. P. 33.3; or

(3) the date a post-trial motion under Ark. R. Crim. P. 33.3 is deemed denied pursuant to RAP Civ. 4 (c); or

(4) the date of entry of an order denying a petition for postconviction relief under Ark. R. Crim. P. 37 . . . .

IN RE: CLIENT SECURITY FUND COMMITTEE

Supreme Court of Arkansas
Delivered November 12, 1998

PER CURIAM. By Per Curiam Order dated July 12, 1993, this Court promulgated Rules Of The Client Security Fund Committee replacing all prior rules creating and regulating The Client Security Fund. Among other things, The Client Security Fund Committee was granted the authority to adopt rules governing its procedures, subject to the approval of the Court. Consonant with that authority The Client Security Fund Committee has adopted certain rules governing its procedures and submitted same for approval by this Court.

Upon consideration, the Court approves the procedural rules adopted by The Client Security Fund Committee, entitled "Rules Governing Procedures Of The Client Security Fund Committee," a copy of which is appended to this Order and made a part hereof by reference, to become effective on the publication date of this Order.

It is so ordered.

RULES GOVERNING PROCEDURES OF THE CLIENT SECURITY FUND COMMITTEE

Pursuant to the authority granted The Client Security Fund Committee by the Arkansas Supreme Court in its Per Curiam of July 12, 1993, and any successor rules of the Court not inconsistent with the grant of authority to adopt rules governing procedures and to implement regulations in aid of the Court's rules, The Client security Fund Committee adopts and publishes the following procedural rules:

PROCEDURAL RULE 1. COMMITTEE MEETINGS

The regular meetings of The Client Security Fund Committee shall be held in the months of October, February and June of each year. Dates for meetings to be held in the following twelve months shall be set at the June meeting of each year. Any regular meeting may be cancelled by the Committee Chair when it appears that the amount of business to be conducted does not reasonably justify such meeting. The Committee Chair may call an emergency meeting at any time such action is warranted.

PROCEDURAL RULE 2. FUNDS AVAILABLE FOR PAYMENT OF CLAIMS

Consonant with the Court's adoption of a fiscal year of July 1 to June 30 for budgeting purposes for the Client Security Fund, the Committee adopts a like period for determination of funds available for payment of approved claims. Any and all claims approved by the Committee during said fiscal year shall be paid on a *pro rata* basis from the total funds available at the June meeting of each year.

IN RE: UNIFORM ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

Supreme Court of Arkansas
Delivered November 12, 1998

PER CURIAM. Pursuant to Ark. Code Ann. §9-14-218(c), the Arkansas Child Support Commission has requested that the Court adopt and publish the Uniform Order/Notice to Withhold Income for Child Support for use statewide to help ensure uniform and accurate enforcement of all cases where the wages of the noncustodial parent are subject to withholding for child support. The Uniform Order/Notice was designed by the Federal Office of Child Support Enforcement in cooperation with Title IV-D Agencies, advocates for employers, and payroll processing groups.

Therefore, pursuant to Ark. Code Ann. §9-14-218(c), we hereby adopt and publish the accompanying two-page Uniform Order/Notice to Withhold Income for Child Support for use statewide in all cases which are subject to wage withholding for child-support purposes.

OMB NO.: 0970-0154
EXPIRATION DATE: 12/31/00

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

State_____,
Co./City/Dist. of_____
Date of Order/Notice_____
Court/Case Number_____

_____ Original Order/Notice
_____ Amended Order/Notice
_____ Terminate Order/Notice

Employer/Withholder's Federal EIN Number
Employer/Withholder's Name
Employer/Withholder's Address

RE: *
Employee/Obligor's Name (Last, First, MI)
*
Employee/Obligor's Social Security Number
*
Employee/Obligor's Case Identifier
Custodial Parent's Name (Last, First, MI)

Child(ren)'s Name(s): **DOB**

Child(ren)'s Name(s): **DOB**

ORDER INFORMATION: This is an Order/Notice to Withhold Income for Child Support based upon an order for support from _____. By law, you are required to deduct these amounts from the above-named employee's/obligor's income until _____ even if the Order/Notice is not issued by your State.

☐ If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available through the employee's/obligor's employment. _____

$_____ per _____ in current support
$_____ per _____ in past-due support **Arrears 12 weeks or greater?** ☐ yes ☐ no
$_____ per _____ in medical support
$_____ per _____ in other (specify)
_____ per _____ in other (specify)
for a total of $_____ per _____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered support payment cycle, use the following to determine how much to withhold:
$_____ per weekly pay period. $_____ per semimonthly pay period (twice a month).
$_____ per biweekly pay period (every two weeks). $_____ per monthly pay period.

REMITTANCE INFORMATION:

You must begin withholding no later than the first pay period occurring _____ working days after the date of this Order/Notice. Send payment within _____ working days of the paydate/date of withholding. You are entitled to deduct a fee to defray the cost of withholding. Refer to the laws governing the work state of the employee for the allowable amount. The total withheld amount, including your fee, cannot exceed _____% of the employee's/obligor's aggregate disposable weekly earnings. For the purpose of the limitation on withholding, the following information is needed (see #9 on back).

When remitting payment provide the paydate/date of withholding and the case identifier _____.
If remitting by EFT/EDI, use this FIPS code: * _ _ _ _ _ _ _ _ _; Bank routing code:*_____;
Bank account number:*_____.

Make it payable to:_____ Payee and case identifier

Send check to:_____ Payee's Address

Authorized by_____

Print Name_____

*EFT/EDI Information

OMB NO.: 0970-0154
EXPIRATION DATE: 12/31/00

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

☐ **If checked you are required to provide a copy of this form to your employee.**

1. **Priority:** Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect please contact the requesting agency listed below.

2. **Combining Payments:** You can combine withheld amounts from more than one employee/obligor's income in a single payment to each agency requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

3.* **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which amount was withheld from the employee's wages. You must comply with the law of the state of employee's/obligor's principal place of employment with respect to the time periods within which you must implement the withholding order and forward the child support payments.

4.* **Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order/Notice to Withhold Income for Child Support against this employee/obligor and you are unable to honor all support Order/Notices due to Federal or State withholding limits, you must follow the law of the state of employee's/obligor's principal place of employment. You must honor all Order/Notices to the greatest extent possible. (see #9 below)

5. **Termination Notification:** You must promptly notify the payee when the employee/obligor is no longer working for you. Please provide the information requested and return a copy of this order/notice to the agency identified below.
EMPLOYEE'S/OBLIGOR'S NAME: _____.
EMPLOYEE'S CASE IDENTIFIER: _____ **DATE OF SEPARATION:** _____.
LAST KNOWN HOME ADDRESS _____.
NEW EMPLOYER'S ADDRESS _____.

6. **Lump Sum Payments: You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.**

7. **Liability:** If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State law.
_____
_____

8. **Anti-discrimination:** You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.
_____
_____

9.* **Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; and Medicare taxes.

10. _____
_____
_____
_____

*NOTE: If you or your agent are served with a copy of this order in the state that issued the order, you are to follow the law of the state that issued this order with respect to these items.

Requesting Agency_____
_____
_____
_____
_____

If you or your employee/obligor have any questions, contact:_____
by telephone at_____ or by FAX at_____ or by Internet_____.

IN RE: BOARD OF CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Delivered November 19, 1998

PER CURIAM. Our Board of Certified Court Reporter Examiners, in response to a presentation by the Arkansas Court Reporter Association (Association), recommends to the Court that we adopt a rule or regulation which would prohibit the practice commonly known as "third party contracting," an arrangement whereby a company or person enters into an exclusionary contract with an individual court reporter or a court reporting agency for all of its court reporting services in connection with litigation in a designated region. The company or person is continually involved in litigation and mandates its attorneys to use the court reporting services provided under the contract. Several other states, including Georgia, Louisiana, Texas, and Kentucky, have adopted measures either by Court Rule or statute prohibiting this practice.

According to the Association, these contracts deny the court reporter adequate and proper control of his or her work because the contract, not the reporter, sets prices which may not be uniform for all parties to the litigation, may require earlier release to one party over another, and may require that the court reporter release custody of the untranscribed transcript for production, invoicing, and distribution. Arkansas Court Rules regarding form and style of transcripts are sometimes ignored. In short, the Association submits that third party contracting violates the neutral and impartial role of the court reporter as an officer of the court.

We publish Proposed Section 22 of the Regulations of the Board of Certified Court Reporter Examiners for comment from the bench, bar, and certified court reporters. Comments should be made in writing within 60 days to:

Clerk, Supreme Court of Arkansas
Attn: Third Party Contracting
Justice Building, 625 Marshall Street
Little Rock, AR 72201

REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

SECTION 22.

Court reporters, or any entity providing the services of a Court Reporter, are prohibited from providing services under any contractual agreement that: (1) undermines the impartiality of the Court Reporter; (2) requires the Court Reporter to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney; (3) requires a Court Reporter to provide any service not made available to all parties to an action; or, (4) gives or appears to give an exclusive advantage to any party.

IN RE: ADOPTION of ADMINISTRATIVE ORDER NUMBER 11 — ARKANSAS CODE of PROFESSIONAL RESPONSIBILITY for INTERPRETERS in the JUDICIARY

Supreme Court of Arkansas
Delivered December 3, 1998

PER CURIAM. In 1997, a special committee was appointed by the Arkansas Judicial Council to study the issue of a certification program for foreign language interpreters and to make recommendations to the full Judicial Council. Judges and interpreters were appointed to serve on the committee.

This fall the committee made its report to the Arkansas Judicial Council and recommended the adoption of the Model Code of Professional Responsibility for Interpreters in the Judiciary. This Code was developed by the National Center for State Courts with advice from experts in the field. It has been adopted by other states which have a certification process for foreign language interpreters.

The Arkansas Judicial Council endorsed this recommendation at its recent meeting and has requested that the Supreme Court adopt it. In making its recommendation to us, the Arkansas Judicial Council stated that the Code provides a foundation for acceptable courtroom procedure and protocol and also serves as a basis for education and training of interpreters.

We commend the Arkansas Judicial Council and the judges and interpreters who served on the committee for their work on this issue.

Having now thoroughly considered the matter, we adopt, effective immediately, the Code and promulgate it as **Administrative Order Number 11 — Arkansas Code of Professional Responsibility for Interpreters in the Judiciary**. Administrative Order Number 11 is published below.

ADMINISTRATIVE ORDER NUMBER 11 — ARKANSAS CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE JUDICIARY

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.[1] As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

Commentary:

The black letter principles of this model code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are *probable* and *expected* behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recom-

[1] Non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.

mended that the reasons for the policy as it applies to court interpreters be examined.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but *every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted.* This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires — including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court par-

ticipants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English-speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officials, refrain from casual and personal conversations with anyone in court that may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity for any party involved in the case;

3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;

5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a matter consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication

must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his or her duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or spe-

cialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within the court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

IN RE: RULES OF APPELLATE PROCEDURE—CRIMINAL, RULE 3

Supreme Court of Arkansas
Delivered December 3, 1998

PER CURIAM. Our Committee on Criminal Practice has recommended a change in Rule 3 of the Rules of Appellate Procedure—Criminal. Rule 3 (a) concerns interlocutory appeals by the state. It fails to include appeals arising under the Rape Shield Statute, Ark. Code Ann. § 16-42-101. In order to avoid confusion and for ease of reference, this circumstance is

being added to the rule as (3) (a) (3). Accordingly, Rule 3 (a) is hereby amended, effective immediately, and republished as follows:

Rule 3. APPEAL BY STATE.

(a) An interlocutory appeal on behalf of the state may be taken only from a pretrial order in a felony prosecution which (1) grants a motion under Ark. R. Crim. P. 16.2 to suppress seized evidence, (2) suppresses a defendant's confession, or (3) grants a motion under Ark. Code Ann. § 16-42-101 (c) to allow evidence of the victim's prior sexual conduct. The prosecuting attorney shall file, within ten (10) days after the entering of the order, a notice of appeal together with a certificate that the appeal is not taken for the purposes of delay and that the order substantially prejudices the prosecution of the case. Further proceedings in the trial court shall be stayed pending determination of the appeal.

Reporter's Notes: "(a)(3)" was added to the issues from which the state may file an interlocutory appeal — an adverse ruling under the Rape Shield Law, Ark. Code Ann. § 16-42-101. This appeal is currently authorized by statute, and it is now referenced in the rule to avoid any confusion.

IN RE: RULES OF CRIMINAL PROCEDURE, RULES 8.2 and 8.6

Supreme Court of Arkansas
Delivered December 3, 1998

PER CURIAM. Our Committee on Criminal Practice has recommended a change in Rule 8.2 and the adoption of a new Rule 8.6. The purpose behind these proposals can be gleaned by reading the Reporter's Notes which follow each rule and are reproduced below.

We are publishing these proposals for comment from the bench and bar. Comments should be in writing and received by March 1, 1999, and should be addressed as follows:

Leslie Steen, Clerk
Arkansas Supreme Court
RE: Rules of Criminal Procedure
Justice Building
625 Marshall Street
Little Rock, AR 72201

RULE 8. RELEASE BY JUDICIAL OFFICER AT FIRST APPEARANCE

RULE 8.2. Appointment of Counsel.

(a) An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable.

(b) Whenever an indigent accused is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel to represent him, the court shall appoint counsel to represent him unless he is charged with a misdemeanor and the court has determined that under no circumstances will imprisonment be imposed as a part of the punishment if he is found guilty.

(c) Attorneys appointed by municipal courts, city courts, police courts, and justices of the peace may receive fees for services rendered upon certification by the presiding judicial officer if provision therefor has been made by the county or municipality in which the offense is committed or the services are rendered. Attorneys so appointed shall continue to represent the indigent accused until relieved for good cause or until substituted by other counsel.

REPORTER'S NOTES: The addition of the last sentence to Rule 8.2 (c) is intended to ensure that where counsel is appointed in municipal court, the appointment continues for purposes of this rule even in circuit court proceedings unless and until appointed counsel is relieved or new counsel is appointed.

Rule 8.6. Time for Filing Formal Charge.

If the defendant is continued in custody subsequent to the first appearance, the prosecuting attorney shall file an indictment or information in a court of competent jurisdiction within sixty days of the defendant's arrest. Failure to file an indictment or information within sixty days shall not be grounds for dismissal of the case against the defendant, but shall, upon motion of the defendant, result in the defendant's release from custody unless the prosecuting attorney establishes good cause for the delay. If good cause is shown, the court shall reconsider bail for the defendant.

Reporter's Notes: This rule is intended to address the problem identified in *State v. Pulaski County Circuit Court*, 326 Ark. 886, 934 S.W. 2d 915 (1996), *modified on rehearing*, 327 Ark. 287, 938 S.W. 2d 815 (1997), wherein the person was arrested without a warrant, was continued in custody beyond his first appearance in municipal court, but waited over two months before his case was formally filed in circuit court by the filing of an information. This rule contemplates that, in the typical case, formal charges should be filed within a reasonable time following an arrest with sufficient latitude being given for circumstances that are beyond the prosecuting attorney's control and which necessitate a delay in the filing of formal charges. Nothing in this rule shall be construed to abrogate the defendant's privilege to file an application for writ of *habeas corpus* or any other applicable extraordinary remedy.

IN RE: RULES of CRIMINAL PROCEDURE — RULES 28, 29, and 30 — SPEEDY TRIAL

Supreme Court of Arkansas
Delivered December 17, 1998

PER CURIAM. For over two years, our Committee on Criminal Practice has been thoroughly reviewing our speedy-trial rule and considering possible changes. It has studied procedures utilized by other states and the federal government. The committee has now brought a proposal to the court. The proposal is explained in the Comments which accompany the proposed rules.

We express our gratitude to the members of the Criminal Practice Committee for their work on this matter. We are publishing the committee's proposal for comment from the bench and bar. Comments and suggestions on these proposed rules may be made in writing prior to February 15, 1999. They should be addressed to:

Leslie Steen, Clerk
Arkansas Supreme Court
Attn: Criminal Procedure Rules
Justice Building
625 Marshall Street
Little Rock, AR 72201

RULE 28

SPEEDY TRIAL

RULE 28.~~2~~1. When Time Commences to Run.

The time for trial shall commence running, without demand by the defendant, from the following dates:

(a) from the date the charge is filed, except that if prior to that time the defendant has been continuously held in custody or on bail or lawfully at liberty to answer for the same offense or an

offense based on the same conduct or arising from the same criminal episode, then the time for trial shall commence running from the date of arrest;

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

(c) if the defendant is to be retried following a mistrial, an order granting a new trial, or an appeal or collateral attack, the time for trial shall commence running from the date of the mistrial, the order granting a new trial, or the remand.

Comment: Current Rule 28.2; moved to 28.1 for better flow.

RULE ~~28.1~~ 28.2. Limitations and Consequences.

(a) Any defendant charged with an offense ~~in circuit court~~ and incarcerated in a city or county jail in this state pending trial shall be released on his own recognizance if not brought to trial within nine (9) months from the time provided in Rule 28.~~2~~1, excluding only such periods of necessary delay as are authorized in Rule 28.3.

(b) A ~~Any~~ defendant charged with an offense ~~in circuit court~~ and incarcerated in prison in this state pursuant to conviction of another offense who is not ~~shall be entitled to have the charge dismissed with an absolute bar to prosecution if not~~ brought to trial within twelve (12) months from the time provided in Rule 28.~~2~~1, excluding only such periods of necessary delay as are authorized in Rule 28.3 shall be entitled to make a demand for trial pursuant to subsection (d) of this rule.

(c) A ~~Any~~ defendant charged with an offense ~~after October 1, 1987, in circuit court~~ and held to bail, or otherwise lawfully set at

liberty, including released from incarceration pursuant to subsection (a) ~~hereof~~ of this rule, who is not ~~shall be entitled to have the charge dismissed with an absolute bar to prosecution if not~~ brought to trial within twelve (12) months from the time provided in Rule 28.~~2~~1, excluding only such periods of necessary delay as are authorized in Rule 28.3 shall be entitled to make a demand for trial pursuant to subsection (d) of this rule.

(d) A defendant not brought to trial within the time provided in subsection (b) or (c) of this rule may file with the clerk of the trial court a written demand for speedy trial. A copy of the demand shall be served on the prosecutor and the trial judge. The demand for speedy trial may only be filed after the expiration of the time provided in subsection (b) or (c) of this rule. A demand for speedy trial filed before the expiration of that time will be ineffective for purposes of this rule but shall not bar the filing of a subsequent timely demand. If a defendant is not brought to trial within ninety (90) days of the date a timely demand is filed, excluding only such periods of necessary delay as are authorized in Rule 28.3, the defendant shall be entitled to have the charge dismissed with prejudice. The filing of a second or subsequent demand for speedy trial supersedes all previous demands for purposes of calculating the ninety (90) day period; provided however, following the denial of a motion to dismiss filed pursuant to this rule, a defendant may file another demand without waiving the issue of the timeliness of the rejected demand.

(e) Motion for dismissal of a charge pursuant to subsection ~~(b) or (c) hereof~~ (d) of this rule shall be made to the trial court, but if denied, may be presented to the Arkansas Supreme Court by petition for writ of prohibition.

(e~~f~~) The dismissal of a charge pursuant to subsection ~~(b) or (c) hereof~~ (d) of this rule shall ~~also~~ be an absolute bar to a subsequent prosecution for ~~any other offense required to be joined with the charge dismissed~~ the same offense or any offense required by Rule 21.3(a) to be joined with the charge dismissed.

(f~~g~~) Failure of a defendant to move for dismissal of a charge pursuant to subsection ~~(b) or (c)~~(d) of this rule ~~hereof~~ prior to a

plea of guilty or trial shall constitute a waiver of ~~his~~ the defendant's rights under this ~~these~~ rules.

(gh) This rule shall have no effect in those cases which are expressly governed by the "Interstate Agreement on Detainers Act" (Act 705 of 1971, A.C.A. § 16-95-101 et seq.).

COMMENT: Former Rule 28.1 has been rewritten and now appears as Rule 28.2. The meat of the change is set out in subsection (d).

A defendant may file a demand for speedy trial if he/she has not been brought to trial within twelve months as that time may be extended by applicable excluded periods. A timely demand for speedy trial triggers a 90-day "fast track" to trial and later to seek dismissal in the event the 90-day period is exceeded without justification. There is no hearing required upon the defendant filing a demand for speedy trial. It is envisioned that upon receipt of a demand, a prosecutor, and possibly even the trial court, would compute the time and determine whether the demand was timely and take appropriate action.

After ninety days from the demand or prior to trial, the defendant may then move for dismissal. At this time, it will be determined whether the demand was timely and whether the 90-day period was violated. If it is determined that the defendant's demand was prematurely filed, he or she may then file a second demand, and a new 90-day period will run from the date the second demand is filed.

RULE 28.3. Excluded Periods.

The following periods shall be excluded in computing the time for trial. Such periods shall be set forth by the court in a written order or docket entry, but it shall not be necessary for the court to make the determination until the defendant has moved to enforce his right to a speedy trial pursuant to Rule 28 unless it is specifically provided to the contrary below. The number of days of the excluded period or periods shall be added to the time applicable to the defendant as set forth in Rules 28.1 and 28.2 to determine the limitations and consequences applicable to the defendant.

(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on the competency of the defendant and the period during which he is incompetent to stand trial, hearings on pretrial motions, interlocutory appeals by the defendant or the state, and trials of other charges against the defendant. No pretrial motion shall be held under advisement for more than thirty (30) days, and the period of time in excess of thirty (30) days during which any such motion is held under advisement shall not be considered an excluded period.

~~(b) The period of delay resulting from congestion of the trial docket when the delay is attributable to exceptional circumstances. When such a delay results, the court shall state the exceptional circumstances in its order continuing the case.~~

(b) The period of delay resulting from a continuance attributable to congestion of the trial docket if in a written order or docket entry at the time the continuance is granted: (1) the court explains with particularity the reasons the trial docket does not permit trial on the date originally scheduled; (2) the court determines that the delay will not prejudice the defendant; and (3) the court schedules the trial on the next available date permitted by the trial docket.

(c) The period of delay resulting from a continuance granted at the request of the defendant or his counsel. All continuances granted at the request of the defendant or his counsel shall be to a day certain, and the period of delay shall be from the date the continuance is granted until such subsequent date contained in the order or docket entry granting the continuance.

(d) The period of delay resulting from a continuance (calculated from the date the continuance is granted until the subsequent date contained in the order or docket entry granting the continuance) granted at the request of the prosecuting attorney, if:

(1) the continuance is granted because of the unavailability of evidence material to the state's case, when due diligence has been exercised to obtain such evidence and there are reasonable

grounds to believe that such evidence will be available at a later date; or

(2) the continuance is granted in a felony case to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional complexity of the particular case.

(e) The period of delay resulting from the absence or unavailability of the defendant. A defendant shall be considered absent whenever his whereabouts are unknown. A defendant shall also be considered unavailable whenever his whereabouts are known but his presence for the trial cannot be obtained or he resists being returned to the state for trial.

(f) The time between a dismissal or nolle prosequi upon motion of the prosecuting attorney for good cause shown, and the time the charge is later filed for the same offense or an offense required to be joined with that offense.

(g) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant acting with due diligence shall be granted a severance so that he may be tried within the time limits applicable to him.

(h) Other periods of delay for good cause.

~~(i) All excluded periods shall be set forth by the court in a written order or docket entry. The number of days of the excluded period or periods shall be added to the number of months applicable to the defendant as set forth in Rule 28.1 (a), (b) and (c) to determine the limitations and consequences applicable to the defendant.~~

Comment: Opening paragraph added which includes language formerly in subsection (i), but further provides that the trial court may determine the excluded periods when the defendant has moved for dismissal pursuant to Rule 28.2 rather than at an earlier date although the judge is still free to do so earlier. This finding is a determination of the excluded periods.

Subsection (a) was revised to clarify that interlocutory appeals by the state are included within this excluded period.

Subsection (b) was amended to make more practical a continuance granted because of congestion of the trial docket. The three-pronged finding was substituted for the previous standard which required a finding of "exceptional circumstances." This requirement of the entry of a contemporaneous written order explaining the reasons for the continuance, finding that the defendant is not prejudiced, and scheduling a new trial date is in addition to the finding required as to the periods to be excluded. Typically, the period to be excluded under subsection (b) will be from the date on which the trial was scheduled as specified in (b)(1) to the rescheduled date as specified in (b)(3).

RULE 29. SPECIAL PROCEDURES: PERSON SERVING TERM OF IMPRISONMENT

RULE 29.1. Prosecutor's Obligations.

(a) If the prosecuting attorney has information that a person charged with a crime is imprisoned in a penal institution in the State of Arkansas, he shall promptly seek to obtain the presence of the prisoner for trial.

(b) If the prosecuting attorney has information that a person charged with a crime is imprisoned in a penal institution of a jurisdiction other than the State of Arkansas, he shall promptly cause a detainer to be filed with the official having custody of the prisoner and request such officer to advise the prisoner of the filing of the detainer and of the prisoner's right to demand trial.

(c) Upon receipt from a prisoner of a demand for trial upon a pending charge, the prosecuting attorney shall promptly seek to obtain the presence of the prisoner for trial.

COMMENT: No change.

~~RULE 30. CONSEQUENCES OF DENIAL OF SPEEDY TRIAL~~

~~RULE 30.1. Absolute Discharge.~~

~~(a) Subject to the provisions of subsection (b) hereof, a defendant not brought to trial before the running of the time for trial, as extended by excluded periods, shall be absolutely discharged. This discharge shall constitute an absolute bar to prosecution for the offense charged and for any other offense required to be joined with that offense.~~

~~(b) An incarcerated defendant not brought to trial before the running of the time for trial as provided by Rules 28.1 — 28.3 shall not be entitled to absolute discharge pursuant to subsection (a) hereof but shall be recognized or released on order to appear.~~

~~(c) The time for trial of a defendant released pursuant to subsection (b) hereof shall be computed pursuant to Rules 28.1 (b) and 28.2.~~

~~RULE 30.2. Waiver.~~

~~Failure of a defendant to move for dismissal of the charges under these rules prior to a plea of guilty or trial shall constitute a waiver of his rights under these rules.~~

COMMENT: Rule 30 (30.1 and 30.2) has been stricken because of redundancy. The substantive matters addressed by these provisions are found in Rules 28.1 through 28.3.

Appointments to Committees

IN RE: SUPREME COURT COMMITTEE on CHILD SUPPORT

Supreme Court of Arkansas
Opinion delivered December 3, 1998

PER CURIAM. Retired Chancellor Warren Kimbrough and Attorney Cathleen Compton are hereby reappointed to the Committee on Child Support for four-year terms to expire on November 30, 2002.

The Court expresses thanks to Judge Kimbrough and Attorney Compton for accepting reappointment to this most important committee.

Professional Conduct Matters

IN RE: William Arthur MURPHY

982 S.W.2d 199

Supreme Court of Arkansas
Delivered November 19, 1998

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of William Arthur Murphy of Sheridan, Grant County, Arkansas, to practice law in the State of Arkansas. Mr. Murphy's name shall be removed from the registry of licensed attorneys, and he is permanently barred from engaging in the unlicensed practice of law in this state.

Ceremonial Observances

IN the MATTER of the RETIREMENT of JUSTICE DAVID NEWBERN

Supreme Court of Arkansas
Delivered December 17, 1998

PER CURIAM. Upon his retirement from the Supreme Court of Arkansas after fourteen years of service as associate justice, the court recognizes and expresses appreciation to Justice David Newbern for his broad learning, his gentlemanly collegiality, and his humane wit.

Justice Newbern has loved the law, as he has the music that is so integral a part of his being, as an instrument of civilization, a means of bringing harmony to the human experience. During his tenure, Justice Newbern has exemplified the qualities best summarized by Shakespeare: "He was a scholar, and a ripe and good one;/Exceeding wise, fair-spoken, and persuading. . . ."

Despite the quotation, the past tense is hardly appropriate for one with Justice Newbern's manifold interests, energies, and gifts. The court extends to him best wishes for an active and fulfilling future.

RESOLUTION OF THE SUPREME COURT OF ARKANSAS

17 DECEMBER 1998

WHEREAS, Jacqueline S. Wright has faithfully served the Supreme Court of Arkansas since 1979 as Librarian; and

WHEREAS, during her nineteen-year tenure, Ms. Wright's visionary commitment to the modernization of the Supreme Court Library has led to the expansion and prudent management of resources, the classification of the collection, the automation of the catalogue, and the improvement of the physical space itself; and

WHEREAS, Ms. Wright has been a pioneer in the field of electronic legal research, having created the Arkansas Judiciary Home Page and having provided information in a variety of formats to suit the needs of the Court and the public alike; and

WHEREAS, for her contributions to the Supreme Court Library and to the profession of law librarianship, Ms. Wright has received both state and national recognition, reflecting credit on this institution;

THEREFORE, on the occasion of her retirement, the Supreme Court of Arkansas expresses its gratitude to Jacqueline S. Wright for her unexampled devotion to her duties as Supreme Court Librarian and wishes her the greatest happiness for the future.

W.H. "DUB" ARNOLD, Chief Justice

LESLIE W. STEEN, Clerk

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Volume 64

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

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November 4, 1998 — December 23, 1998
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

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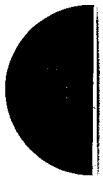

Justice is truth in action.

— Benjamin Disraeli
(1804-1881)

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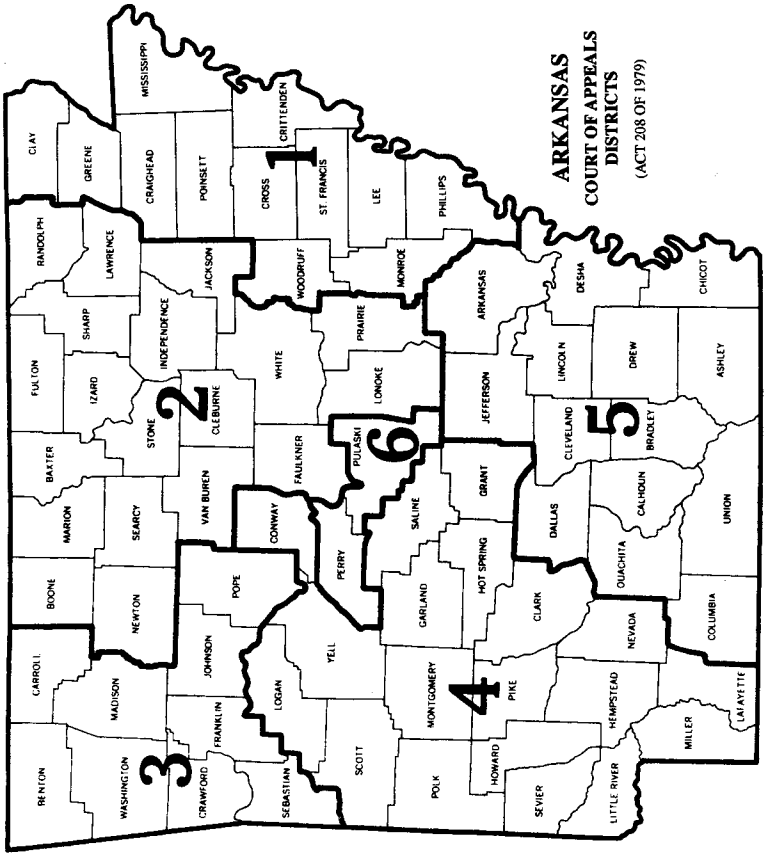
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GRANT
MARION
SEARCY
VAN BUREN
CONWAY
SALINE
DALLAS
CALHOUN
UNION
BOONE
NEWTON
POPE
PERRY
GARLAND
HOT SPRING
CLARK
OUACHITA
COLUMBIA
CARROLL
JOHNSON
YELL
NEVADA
MADISON
LOGAN
MONTGOMERY
PIKE
HEMPSTEAD
LAFAYETTE
FRANKLIN
BENTON
WASHINGTON
CRAWFORD
SEBASTIAN
SCOTT
POLK
HOWARD
SEVIER
LITTLE RIVER
MILLER

JUDGES AND OFFICERS
OF THE
COURT OF APPEALS
OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(November 4, 1998 — December 23, 1998, inclusive)

JUDGES

JOHN B. ROBBINS	Chief Judge[1]
JOHN MAUZY PITTMAN	Judge[2]
D. FRANKLIN AREY, III	Judge[3]
JOHN E. JENNINGS	Judge[4]
SAM BIRD	Judge[5]
JUDITH ROGERS	Judge[6]
JOHN F. STROUD, JR.	Judge[7]
OLLY NEAL	Judge[8]
WENDELL L. GRIFFEN	Judge[9]
TERRY CRABTREE	Judge[10]
MARGARET MEADS	Judge[11]
ANDREE LAYTON ROAF	Judge[12]

OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian[13]
WILLIAM B. JONES, JR.	Reporter of Decisions

[1] District 4.
[2] District 1.
[3] District 2.
[4] District 3.
[5] District 5.
[6] District 6.
[7] Position 7.
[8] Position 8.
[9] Position 9.
[10] Position 10.
[11] Position 11.
[12] Position 12.
[13] Retired December 31, 1998.

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

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 published 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.

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Allen *v.* Jarvis, CA 98-607 (Neal, J.), reversed and remanded December 23, 1998.

American Stitchco, Inc. *v.* Hendrix, CA 98-548 (Roaf, J.), reversed and remanded December 9, 1998.

Babbitt *v.* Thompson, CA 98-331 (Rogers, J.), affirmed December 23, 1998.

Baker *v.* State, CA CR 98-231 (Rogers, J.), affirmed November 4, 1998.

Ball *v.* Sewell, CA 98-202 (Griffen, J.), affirmed December 16, 1998.

Ballenger Paving Co. *v.* Johnson, CA 98-20 (Jennings, J.), affirmed December 16, 1998; petition for rehearing denied January 27, 1999.

Barrett *v.* Barrett, CA 97-1132 (Arey, J.), affirmed December 9, 1998.

Baxter *v.* State, CA CR 98-319 (Pittman, J.), affirmed December 2, 1998.

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Berner *v.* State, CA CR 98-197 (Griffen, J.), reversed November 11, 1998.

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Brazil *v.* State, CA CR 98-109 (Robbins, C.J.), affirmed December 23, 1998.

Brian *v.* State, CA CR 98-276 (Roaf, J.), affirmed December 9, 1998.

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Burks *v.* Director, E 98-43 (Neal, J.), affirmed December 16, 1998.

Butler *v.* State, CA 97-1366 (Jennings, J.), affirmed December 16, 1998.

Century Tube Corp. *v.* Jasper, CA 98-252 (Arey, J.), reversed and remanded November 4, 1998.

Chambers *v.* Hughes Ins. Agency, Inc., CA 97-1372 (Rogers, J.), affirmed November 4, 1998.

Childress *v.* State, (Rogers, J.), affirmed December 23, 1998.

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Crespo *v.* State, CA CR 98-183 (Pittman, J.), affirmed December 9, 1998.

Death & Permanent Total Disability Trust Fund *v.* Crisel, CA 98-656 (Crabtree, J.), appeal dismissed December 2, 1998.

Douthit *v.* State, CA CR 98-482 (Pittman, J.), affirmed December 23, 1998.

Dudley *v.* Dudley, CA 98-12 (Robbins, C.J.), affirmed December 9, 1998; petition for rehearing denied January 27, 1999.

Dyer *v.* State, CA CR 97-1554 (Griffen, J.), affirmed November 11, 1998.

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Fields *v.* State CA CR 98-180 (Roaf, J.), affirmed November 4, 1998.

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Gentuso *v.* Jones, CA 98-558 (Griffen, J.), reversed and remanded December 23, 1998.

Guynn *v.* State, CA CR 98-278 (Pittman, J.), affirmed December 23, 1998.

Hall, Androus *v.* State, CA CR 97-1344 (Crabtree, J.), affirmed November 18, 1998.

Hall, Carlos Cortez *v.* State, CA CR 98-321 (Arey, J.), affirmed December 9, 1998.

Halter *v.* State, CA CR 98-119 (Robbins, C.J.), affirmed December 16, 1998.

Harris *v.* Callaway, CA 98-152 (Griffen, J.), affirmed November 18, 1998.

Hayes *v.* Georgia-Pacific Corp., CA 97-1553 (Arey, J.), affirmed December 16, 1998.

Henry *v.* State, CA CR 97-778 (Robbins, C.J.), affirmed December 9, 1998.

Holloway *v.* State, CA CR 98-606 (Stroud, J.), affirmed December 2, 1998.

Hutto *v.* Burnett, CA 98-215 (Bird, J.), affirmed November 4, 1998.

J & D Hauling, Inc. *v.* East Ark. Contractors, Inc., CA 98-652 (Bird, J.), affirmed December 23, 1998.

Jenkins *v.* Jenkins, CA 98-318 (Pittman, J.), affirmed December 16, 1998.

Jernigan *v.* Stephenson, CA 98-468 (Stroud, J.), affirmed December 16, 1998.

Killingsworth *v.* State, CA CR 98-543 (Bird, J.), affirmed November 11, 1998.

Kubisty *v.* Gray, CA 98-1246 (Per Curiam), Appellants' Pro Se Motion for Stay of Judgment and Accelerated Proceedings granted November 4, 1998.

Langston *v.* State, CA CR 96-1471 (Neal, J.), rebriefing ordered November 11, 1998.

Lee *v.* State, CA CR 98-520 (Arey, J.), affirmed November 18, 1998.

Lincoln *v.* AAA Bail Bond Co., CA 98-365 (Rogers, J.), reversed and remanded December 9, 1998.

Lindsay *v.* Mars, CA 98-269 (Jennings, J.), affirmed December 16, 1998.

Love *v.* State, CA CR 98-507 (Stroud, J.), affirmed December 16, 1998.

Lynch *v.* Boatmen's Bank, CA 98-416 (Bird, J.), affirmed November 11, 1998.

Maxey *v.* Maxey, CA 98-487 (Robbins, C.J.), affirmed December 23, 1998.

Maxwell *v.* State, CA 97-1492 (Rogers, J.), affirmed November 11, 1998.

May *v.* Allgood, CA 98-158 (Griffen, J.), affirmed November 11, 1998.

McGarrity *v.* Wright, CA 98-496 (Neal, J.), affirmed December 16, 1998.

McGrew *v.* State, CA CR 98-686 (Rogers, J.), affirmed November 11, 1998.

McReynolds *v.* State, CA CR 98-576 (Rogers, J.), affirmed November 18, 1998.

Melton *v.* Melton, CA 98-295 (Crabtree, J.), appeal dismissed December 2, 1998; petition for rehearing denied January 6, 1999.

Moore *v.* Director, E 98-197 (Roaf, J.), appeal dismissed December 16, 1998.

Moore *v.* State, CA 98-431 (Roaf, J.), affirmed November 18, 1998.

Moss *v.* State, CA 98-474 (Rogers, J.), affirmed December 23, 1998.

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Neel *v.* Synoground, CA 97-1558 (Griffen, J.), affirmed December 16, 1998.

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Nickles *v.* Caldwell, CA 98-346 (Rogers, J.), dismissed November 4, 1998.

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Office of Child Support Enfcmnt. *v.* McBride, CA 98-619 (Rogers, J.), appeal dismissed December 16, 1998.

O'Guinn *v.* Georgia-Pacific Corp., CA 98-372 (Arey, J.), affirmed December 2, 1998.

Oliver *v.* State, CA CR 98-368 (Jennings, J.), affirmed December 16, 1998.

Parker *v.* Frazer's, Inc., CA 98-116 (Pittman, J.), affirmed November 18, 1998.

Patrick *v.* Farmer, CA 98-534 (Arey, J.), affirmed on direct appeal; affirmed in part and remanded in part on cross-appeal December 9, 1998; petition for rehearing denied January 20, 1999.

Perkins *v.* Perkins, CA 98-297 (Arey, J.), reversed and remanded December 23, 1998.

Petker *v.* Petker, CA 98-523 (Stroud, J.), affirmed December 23, 1998.

Phillips *v.* Syroco, Inc., CA 98-175 (Crabtree, J.), affirmed November 4, 1998

Piazza *v.* State, CA CR 98-307 (Neal, J.), affirmed December 9, 1998; petition for rehearing denied January 13, 1999.

Prunty Bail Bonds *v.* State, CA 98-352 (Neal, J.), affirmed December 9, 1998.

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Quinlan *v.* Cumberland, CA 98-347 (Griffen, J.), affirmed November 18, 1998.

Ralston *v.* Director, E 98-9 (Rogers, J.), affirmed November 18, 1998.

Reid *v.* State, CA CR 98-759 (Per Curiam), Motion of William C. McArthur to be Appointed as Counsel for Appellant, granted November 18, 1998.

Richardson *v.* State, CA CR 98-287 (Griffen, J.), affirmed November 4, 1998.

Riverside Furniture Corp. *v.* Director, E 97-236 (Bird, J.), affirmed November 4, 1998.

Roach *v.* Brown Jordan Co., CA 98-364 (Griffen, J.), affirmed November 11, 1998.

Robbins *v.* State, CA CR 98-484 (Jennings, J.), reversed and dismissed December 2, 1998.

Roberson *v.* State, CA CR 98-493 (Neal, J.), affirmed December 23, 1998; petition for rehearing denied January 27, 1999.

Roberts *v.* Director, E 98-53 (Griffen, J.), affirmed December 23, 1998; petition for rehearing denied February 10, 1999.

Royal *v.* State, CA CR 98-306 (Arey, J.), affirmed December 16, 1998.

Scroggins *v.* Crosby, CA 98-163 (Jennings, J.), affirmed December 16, 1998.

Shivey *v.* Shivey, CA 98-1127 (Per Curiam), Appellant's Motion for Reconsideration of Motion to Dismiss Appeal denied December 16, 1998.

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Wadley *v.* Bell, CA 98-473 (Jennings, J.), affirmed December 23, 1998.

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Watkins *v.* State, CA CR 98-160 (Roaf, J.), affirmed December 9, 1998.

Williams *v.* State, CA CR 98-458 (Jennings, J.), affirmed November 11, 1998.

Wilson *v.* Amfuel, CA 98-587 (Crabtree, J.), affirmed in part; reversed in part and remanded December 9, 1998.

Wilson *v.* Eagle Seed Co., CA 98-565 (Jennings, J.), affirmed November 4, 1998.

Withers *v.* Director, E 97-261 (Rogers, J.), affirmed November 11, 1998.

Woodard *v.* Ridenhour, CA 98-230 (Crabtree, J.), reversed November 11, 1998; petition for rehearing denied January 27, 1999.

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