APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: MANDATORY CONTINUING EDUCATION for CERTIFIED COURT REPORTERS

Supreme Court of Arkansas
Delivered June 17, 1999

PER CURIAM. By per curiam order of April 8, 1999, we adopted a mandatory continuing education requirement for certified court reporters (Reporters). We appointed the Director of the Office of Professional Programs (Director) as administrator. The Board of Certified Court Reporter Examiners (Board) and the Director propose that the reporters be divided into three groups in order to ease implementation and future administration of the program. The Board and the Director also propose that programs given from July 1, 1999, through December 31, 1999, be subject to recognition for continuing education credit. We agree.

Accordingly, reporters whose last names begin with the letters A-G will have 10 hours due from January 1, 2000, through December 31, 2000; reporters whose last names begin with the letters H-N will have 20 hours due from January 1, 2000, through December 31, 2001; and, reporters whose last names begin with the letters O-Z will have 30 hours due from January 1, 2000, through December 31, 2002. The Board is authorized to adjust the initial reporting deadlines for individual court reporters, during the implementation phase only, to avoid manifest injustice such as a substantial discrepancy between the State deadline and a national court reporter organization continuing education deadline. After the implementation period, each group of reporters will be subject to the thirty (30) hour requirement every three years, which will begin at the end of their respective initial reporting periods. Further, the Board, or an accreditation committee

appointed by the Board, may approve continuing education hours acquired between July 1, 1999, and December 31, 1999.

IN RE: RULE PROVIDING for CERTIFICATION of COURT REPORTERS

Supreme Court of Arkansas
Delivered June 17, 1999

PER CURIAM. We hereby amend, effective immediately, Section 1 (B) of the Rule Providing for Certification of Court Reporters to read as follows:

SECTION 1. MEMBERS OF THE BOARD.

A. . . . .

B. Members shall be appointed to serve a three year term and are eligible to be appointed to a second three year term. A member whose term has expired shall continue to serve until a successor is appointed and qualified. The Court shall fill any vacancy by appointing a member for the duration of an unexpired term and may remove any member for cause. A member who has been appointed to complete an unexpired term shall be eligible for reappointment to serve two terms of three years each.

C. . . . .

IN RE: RULES GOVERNING PROFESSIONAL CONDUCT

98-1369

Supreme Court of Arkansas
Delivered June 18, 1999

PER CURIAM. On May 21, 1999, we delivered a per curiam acknowledging that the Pulaski County Bar Association and the Arkansas Bar Association have an interest in initiating a Lawyers-Helping-Lawyers Program, and that the respective bar associations were in the process of addressing similar programs in other jurisdictions. We further indicated a willingness to work with the associations to schedule hearings (informal or formal) to permit interested parties to submit their studies, views, or proposals. The court also requested the Professional Conduct Committee to work on this subject matter so it can make suggestions and recommendations.

On June 4, 1999, the Pulaski County Bar Association (apparently with the Arkansas Bar Association's support) has filed an amended petition wherein the Pulaski County Bar Association requests us to adopt proposed additions to rules 1.6 and 8.3 of the Arkansas Rules of Professional Conduct. The recommended additions provide the confidentiality that the associations submit is needed in order to adopt an effective Lawyers Assistance Program. The suggested changes and additions apparently emanate from a workshop held by the Arkansas Bar Association on May 20 and 21, 1999. A copy of the amended petition has been forwarded to the Professional Conduct Committee, and we request that the Committee respond with its studied remarks and recommendations, if any.

Before acting on the Pulaski County Bar Association's amended petition and recommended rule changes, the court requests that the moving parties submit their full proposal regarding the type of Lawyer Assistance Program they intend to implement and submit to this court for approval. If that proposal includes the suggested participation, financial or otherwise, of this

court, the associations should delineate the nature and level of support expected of the court. If funding is needed, the associations should not only provide the projected total amount needed for the program, but also set out the expected cost items needed to be underwritten. Preferably, the associations can reduce those matters to written form, and a meeting can be scheduled thereafter to discuss these matters.

IN RE: ADMINISTRATIVE ORDER NUMBER 2 — ARK. R. CIV. P., RULES 5 and 58

Supreme Court of Arkansas
Delivered June 24, 1999

PER CURIAM. Our Committee on Civil Practice has recommended changes in Administrative Order Number 2 (b) and additions to the Reporter's Notes to Ark. R. Civ. P., Rules 5 and 58.

Paragraph (b)(3) of Administrative Order Number 2 provides that judgments, decrees, and orders may be filed with the clerk by facsimile transmission if the court so directs.

Paragraph (b)(4) of Administrative Order Number 2 addresses emergency situations when an order needs to be effective immediately, but the clerk's office is not open.

We thank the committee for its work and agree with its recommendations. Accordingly, we adopt, effective immediately, the changes to paragraph (b) of Administrative Order Number 2 and republish it.

We direct that the additions to the Reporter's Notes to Rules 5 and 58 be added to the commentary.

ADMINISTRATIVE ORDER NUMBER 2 — Docket and Other Records

(a) **Docket.** ***

(b) **Judgments and Orders.** (1) The clerk shall keep a judgment record book in which shall be kept a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the Court may direct to be kept.

(2) The clerk shall denote the date and time that a judgment, decree or order is filed by stamping or otherwise marking it with the date and time and the word "filed." A judgment, decree or order is entered when so stamped or marked by the clerk, irrespective of when it is recorded in the judgment record book.

(3) If the clerk's office has a facsimile machine, the clerk shall accept facsimile transmission of a judgment, decree or order filed in such manner at the direction of the court. 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 date stamped on the facsimile copy shall control all appeal-related deadlines pursuant to Rule 4(e) of the Arkansas Rules of Appellate Procedure--Civil. The original judgment, decree or order shall be substituted for the facsimile copy within fourteen days of transmission.

(4) At any time that the clerk's office is not open for business, and upon an express finding of extraordinary circumstances set forth in an order, any judge may make any order effective immediately by signing it, noting the time and date thereon, and marking or stamping it "filed in open court." Any such order shall be filed with the clerk on the next day on which the clerk's office is open, and this filing date shall control all appeal-related deadlines pursuant to Rule 4(e) of the Arkansas Rules of Appellate Procedure—Civil.

Rule 5, Ark. R. Civ. P.

Addition to Reporter's Notes (1999): Subdivision(c)(2) of this rule does not authorize the filing of judgments, decrees or orders by facsimile transmission. However, Administrative Order No. 2(b), as amended in 1999, requires any clerk's office with a facsimile machine to "accept facsimile transmission of a judgment, decree or order filed in such manner at the direction of the court." The faxed judgment, decree or order is effective when entered by the clerk. To ensure the permanency of official court records, the original judgment, decree or order must be substituted for the facsimile copy within 14 days of transmission, but this step does not have any bearing on the effectiveness of the faxed document or the time for taking an appeal.

Rule 58, Ark. R. Civ. P.

Addition to Reporter's Notes (1999): The second paragraph of this rule provides that a judgment or decree "is effective only when . . . set forth [on a separate document] and entered as provided in Administrative Order No. 2." As amended in 1999, Administrative Order No. 2(b) provides that a judgment, decree or order is "entered" when stamped or otherwise marked by the clerk with the time and date and the word "filed," irrespective of when it is recorded in the judgment book. When the clerk's office is not open for business, and upon an express finding of extraordinary circumstances, an order is effective immediately when signed by the judge. Such order must be filed with the clerk on the next day on which the clerk's office is open, and this filing date controls all appeal-related deadlines.

The 1999 amendment to Administrative Order No. 2(b) also requires any clerk's office with a facsimile machine to "accept facsimile transmission of a judgment, decree or order filed in such manner at the direction of the court." The faxed judgment, decree or order is effective when entered by the clerk. To ensure the permanency of official court records, the original judgment, decree or order must be substituted for the facsimile copy within 14 days of transmission, but this step does not have any bearing on the effectiveness of the faxed document or the time for taking an appeal.

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

Supreme Court of Arkansas
Delivered June 24, 1999

PER CURIAM. Rule 2 of the Rules of Appellate Procedure—Criminal is being amended to incorporate a recent change in the comparable provision of the civil appellate rules. Subsection (b)(1) is amended to provide 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. For additional explanation concerning the changes, refer to the Reporter's Notes at the conclusion of the amended rule.

Below, subsections (a) and (b) are published with the changes highlighted for ease of reference. Then the rule as amended is republished in its entirety. This amendment is effective immediately.

[Highlighted changes to the rule]

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)~~ *subsection (b)(1) of this rule*, or

(4) the date of entry of an order denying a petition for postconviction relief under Ark. R. Crim. P. 37, the person desiring to appeal the judgment or order or both shall file with the trial court a notice of appeal identifying the parties taking the appeal and the judgment or order or both *being* appealed. The notice

shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the appellant shall designate the applicable subdivision of Supreme Court Rule 1-2 (a) which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing his or her Brief pursuant to Supreme Court Rules 4-3 and 4-4 in the alternative court if that is later determined by the appellant to be appropriate.

(b) **Time for Filing.** *(1) A notice of appeal filed after the trial court announces a decision but before the entry of the judgment or order shall be treated as filed on the day after the judgment or order is entered.* ~~A notice of appeal is invalid if filed at any time prior to the day that the judgment or order appealed from is entered or prior to the day that a post-trial motion is deemed denied except as provided herein. If a notice of appeal is filed on the same day that the judgment or order appealed from is entered or on the day that a post-trial motion is deemed denied, the notice of appeal shall be effective. A notice of appeal filed within thirty (30) days of entry of the judgment of conviction shall be effective to appeal the judgment, even if a post-trial motion is subsequently filed. If a post-trial motion is filed after the notice of appeal, it shall not be necessary, to preserve the appeal of the judgment of conviction, to file another notice of appeal of the judgment. If an appellant wishes to appeal an adverse ruling on a post-trial motion and the appellant has previously filed a notice of appeal of the judgment, the appellant must file a notice of appeal regarding the ruling on the motion within the time provided in subpart (a)(2) or (3) hereof.~~

Upon timely filing in the trial court of a post-trial motion, 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 post-trial motions 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 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 subsection (a) of this rule. No additional fees will be required for filing an amended notice of appeal.

. . . .

[Rule, as amended, in its entirety]

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 subsection (b)(1) of this rule, or

(4) the date of entry of an order denying a petition for postconviction relief under Ark. R. Crim. P. 37, the person desiring to appeal the judgment or order or both shall file with the trial court a notice of appeal identifying the parties taking the appeal and the judgment or order or both being appealed. The notice shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the appellant shall designate the applicable subdivision of Supreme Court Rule 1-2 (a) which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing his or her Brief pursuant to Supreme Court Rules 4-3 and 4-4 in the alternative court if that is later determined by the appellant to be appropriate.

(b) **Time for Filing**. (1) A notice of appeal filed after the trial court announces a decision but before the entry of the judgment

or order shall be treated as filed on the day after the judgment or order is entered. Upon timely filing in the trial court of a post-trial motion, 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 post-trial motions 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 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 subsection (a) of this rule. No additional fees will be required for filing an amended notice of appeal.

(c) **Certificate That Transcript Ordered**. (1) If oral testimony or proceedings are designated, the notice of appeal shall include a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter, and, except for good cause, that any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510 (c) have been made. If the appealing party is unable to certify that financial arrangements have been made, then he shall attach to the notice of appeal an affidavit setting out the reason for his inability to so certify. A copy of the notice of appeal shall be mailed to the court reporter.

(2) Alternatively, the notice of appeal shall include a petition to obtain the record as a pauper if, for the purposes of the appeal, a transcript is deemed essential to resolve the issues on appeal.

(3) It shall not be necessary to file with either the notice of appeal or the designation of contents of record any portion of the reporter's transcript of the evidence of proceedings.

(d) **Notification of Parties.** Notification of the filing of the notice of appeal shall be given to all other parties or their representatives involved in the cause by mailing a copy of the notice of appeal to the parties or their representatives and to the Attorney General, but failure to give such notification shall not affect the validity of the appeal.

(e) **Failure to Pursue Appeal.** Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken. If no judgment of conviction was entered of record within ten (10) days of the date sentence was pronounced, application for belated appeal must be made within eighteen (18) months of the date sentence was pronounced.

(f) **Dismissal of Appeal.** If an appeal has not been docketed in the Supreme Court, the parties, with the approval of the trial court, may dismiss the appeal by stipulation filed in that court or that court may dismiss the appeal upon a motion and notice by the appellant.

Reporter's Notes: The rule has been revised to reconcile it with recent changes in the comparable Rule of Appellate Procedure—Civil, Rule 4.

Subdivision (a)(3) has been amended to reference (b)(1) of this rule which has been amended to incorporate the "deemed denied" language. Before this amendment, the rule merely referenced Rule 4(c) of the Rules of Appellate Procedure—Civil.

Subsection (b)(1) 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. Additionally, the "deemed denied" language of Rule 4 of the Rules of Appellate Procedure—Civil is now contained in this rule so reference to the civil rules is no longer necessary.

Subdivision (b)(2) addresses the effect of post-trial motions on the timing of the 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.

It further provides that a notice of appeal filed before disposition of a post-trial motion becomes effective on the day after a dispositive order is entered or the motion is deemed denied by operation of law pursuant to subsection (b)(1). The effect 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 post-trial 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.

As directed in Rule 4 of the Rules of Appellate Procedure—Criminal, the time to file the record in a criminal case is governed by Rule 5 of the Rules of Appellate Procedure — Civil. Rule 5 provides that the record shall be filed and docketed "within 90 days from the filing of the first notice of appeal." In light of the change in subsection (b)(1) of Rule 2 to treat a premature notice of appeal as filed on the day after the judgment or order is entered, it is intended that the 90 days runs from the effective date of the

notice of appeal. Likewise, in other instances when the filing date of the notice of appeal is critical, it should run from the effective date of the notice.

IN RE: RULE 5.5, RULES of CRIMINAL PROCEDURE

Supreme Court of Arkansas
Delivered June 24, 1999

PER CURIAM. Our Committee on Criminal Practice has recommended in light of the United States Supreme Court's decision in *Knowles v. Iowa* (December 8, 1998) that Rule 5.5 of the Rules of Criminal Procedure be repealed. We agree. Accordingly, effective immediately, Rule 5.5 is repealed.

~~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.~~

IN RE: RULES of CRIMINAL PROCEDURE, NEW RULE 8.6

Supreme Court of Arkansas
Delivered June 24, 1999

PER CURIAM. On April 15th, we announced the adoption of new Rule 8.6[1] and stated that it was to become effective July 1, 1999. The sixty-day period shall commence running on July 1, 1999. If a person is in custody on July 1, 1999, the prosecuting attorney should file charges within sixty days of that date.

IN RE: SUPREME COURT AD HOC COMMITTEE on FOSTER CARE and ADOPTION

Supreme Court of Arkansas
Delivered June 24, 1999

PER CURIAM. In 1995 the Arkansas Supreme Court appointed an Ad Hoc Committee on Foster Care and Adoption (Committee) to assess dependency-neglect proceedings, make findings and recommendations and implement plans for improvement in court practice to enable children who are abused and neglected to be placed in safe and permanent homes in a timely fashion.

The Committee issued its report of findings and recommendations in 1997. In this report the committee found that, " Chil-

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[1] 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.

dren are not adequately represented in dependency-neglect cases in the state. Even when they are represented, the quality or representation is often minimal or poor." As a result, the Committee recommended:

> The creation of a state-sponsored system through the Administrative Office of the Courts for attorney ad litem representation of every child in a dependency-neglect proceeding.
>
> The creation of a state-wide Court Appointed Special Advocate (CASA) Program to work with the attorney ad litem to represent the best interest of children.
>
> The development of standards and manuals for attorneys who represent children.

Act 1227 of 1997 created a Division of Dependency-Neglect within the Administrative Office of the Courts (AOC), but the AOC did not receive sufficient funding to fully implement the committee's recommendations. Consequently, the Committee established a Pilot Representation Program in the 13th Judicial District to demonstrate the effectiveness of having such representation. Further, Act 708 of 1999 established a statewide system of contracts for attorneys ad litem and provided that the Arkansas Supreme Court adopt standards of practice and qualifications for service for all attorneys who seek to receive contracts to provide legal representation to children in dependency-neglect proceedings.

Toward that end the Committee has submitted its recommendations for those qualifications and standards, and comment has been sought and received from the Juvenile Division Judges. We commend the Committee for its work and its dedication to improving dependency-neglect proceedings in our state. Having considered the Committee's proposal and the juvenile judges' comments, we adopt the following qualifications and standards of practice for attorneys ad litem who represent children in dependency-neglect cases, effective January 1, 2000.

Qualifications for Attorneys Ad litem in Dependency-Neglect Cases

I. Licensed attorney and in good standing with the Arkansas Supreme Court

II. Education to include mandatory specialized training of not less than 10 hours (live or video tape) within in the last two years prior to appointment. Prerequisite training must include:

1. Child development;
2. Dynamics of abuse and neglect;
3. Ad litem roles & responsibilities, including ethical considerations;
4. Relevant juvenile code, federal law, and case law;

Additional prerequisite training may include, but not be limited to:

5. Grief and attachment;
6. Child Maltreatment Act;
7. Family dynamics, including substance abuse and mental health issues;
8. Custody and visitation;
9. Resources and services; and
10. DCFS policies & procedures

III. Clinical prerequisite for new ad litem appointments to include but not be limited to:

1. Observation of an emergency hearing, an adjudication hearing and a review hearing;
2. Assistance in representation of a child in an emergency hearing, an adjudication hearing and a review hearing under supervision of an experienced attorney ad litem; and

3. Observation with an experienced ad litem in a TPR hearing prior to representing a child in a TPR hearing.

IV. Continuing education to include at least four hours per year related to ad litem representation in dependency-neglect cases. It is not required that this continuing education be certified as continuing legal education. Hours may be carried over for up to two years.

Standards of Practice for Attorneys Ad Litem in Dependency-Neglect Cases

1. An attorney ad litem shall conduct personally or in conjunction with a trained CASA an independent investigation consisting of review of all relevant documents and records including but not limited to: police reports, DCFS records, medical records, school records, and court records. The ad litem shall interview the child, and in conjunction with a trained CASA shall interview the parents, foster parents, caseworker, service providers, school personnel and others having relevant knowledge to assist in representation. Continuing investigation and regular contact with the child are mandatory.

2. An attorney ad litem shall determine the best interest of a child by considering such factors as the child's age and sense of time, level of maturity, culture and ethnicity, degree of attachment to family members including siblings; as well as continuity, consistency, and the child's sense of belonging and identity.

3. An attorney ad litem shall appear at all hearings to represent the best interest of the child. All relevant facts should be presented to the court and if the child's wishes differ from the ad litem's determination of the child's best interest the ad litem shall communicate the child's wishes to the court.

4. An attorney ad litem shall explain the court proceedings and the role of the ad litem in terms that the child can understand.

5. An attorney ad litem shall make recommendations for specific and appropriate services for the child and the child's family.

6. An attorney ad litem shall monitor implementation of case plans and court orders.

7. An attorney ad litem shall file appropriate pleadings on behalf of the child.

8. An attorney ad litem shall review the progress of the child's case and shall advocate for timely hearings.

9. An attorney ad litem shall request orders that are clear, specific, and, where appropriate, include a time line for assessment, services, placement, treatment and evaluation of the child and the child's family.

10. Attorney-client or any other privilege shall not prevent the ad litem from sharing all information relevant to the best interest of the child with the court.

11. An attorney ad litem, functioning as an arm of the court, is afforded immunity against ordinary negligence for actions taken in furtherance of his or her appointment.

12. An attorney ad litem shall participate in prerequisite education prior to appointment which shall include 10 hours of training and shall participate in annual continuing education of four hours.

13. A full-time attorney shall not have more than 75 dependency-neglect cases, and a part-time attorney shall not have more than 25 dependency-neglect cases. Any deviations from this standard must be approved by the Administrative Office of the Courts who shall consider the following, including but not limited to: the number of counties in a judicial district, the experience and expertise of the attorney ad litem, area resources, and the availability of CASA volunteers. An attorney who is in within 5 cases of reaching the maximum caseload shall notify the Administrative Office of the Courts and the Juvenile Division Judge.

IN RE: ATTORNEY ENROLLMENT FEE

Supreme Court of Arkansas
Delivered September 30, 1999

PER CURIAM. Act 960 of 1999 provides that the Supreme Court shall determine the amount of the fee to be paid by attorneys for enrolling and recording their licenses and furnishing them certified transcripts. These fees are deposited in the Supreme Court Library Fund for the purpose of maintaining and improving the Supreme Court Library.

Historically, this fee was set by the General Assembly, but with the passage of the reference Act, it is now our responsibility. Accordingly, effective January 1, 2000, the fee for attorney enrollment is set at $25.00.

IN RE: CERTIFICATION for FOREIGN LANGUAGE INTERPRETERS in ARKANSAS COURTS

Supreme Court of Arkansas
Delivered September 30, 1999

PER CURIAM. All persons, whether or not able to understand or communicate adequately in the English language, must be afforded rights when they appear in court. See Ark. Code Ann. §16-64-111, §16-89-104, §16-10-102 and §25-15-101. It is the intent of this Per Curiam Order to provide for the certification, appointment and use of interpreters for non-English speaking parties or witnesses in all state and local court proceedings.

Ark. Code Ann. §16-10-102 established the Administrative Office of the Courts (AOC) subject to the supervision of the

Supreme Court of Arkansas to be responsible for the administration of the nonjudicial business of the judicial branch. Ark. Code Ann. §16-10-127 authorizes and directs the AOC to establish a program to facilitate the use of interpreters and transliterators in all state and local courts in Arkansas and to prescribe the qualifications of and certify persons who may serve as certified interpreters in all courts in the state.

Therefore, pursuant to our superintending powers, we hereby authorize the AOC, with advice of the Arkansas Judicial Council Ad Hoc Foreign Language Interpreter Certification Committee, and in compliance with Administrative Order No. 11 and the rules of the Consortium for State Court Interpreter Certification, to prescribe requirements for the recruitment, testing, certification, evaluation, duties, professional conduct, continuing education, certification renewal, and other matters relating to interpreters.

When an interpreter is requested or when the judge determines that a party or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed, using the most current roster of certified interpreters maintained by the AOC. Where possible, but particularly for more complex cases, an interpreter with Advanced Certification as denoted on the roster should be used.

The judge may appoint a non-certified interpreter only upon a finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. Recognizing that the judge is the final arbiter of any interpreter's qualifications, a non-certified interpreter may be appointed only after the judge has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved. Before appointing a non-certified interpreter, the judge shall make a finding that the proposed non-certified interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting, and that the proposed non-certified interpreter has read, understands, and will abide by Administrative Order No. 11, the Arkansas Code of Professional

Responsibility for Interpreters in the Judiciary. A summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record or as a docket entry of the legal proceeding.

A non-English speaking party or witness may at any point in the proceeding waive the right to the services of an interpreter, but only when (1) the waiver is approved by the judge on the record or by docket entry after explaining to the non-English speaking party or witness through an interpreter the nature and effect of the waiver; (2) the judge makes a finding on the record or by docket entry that the waiver has been made knowingly, intelligently, and voluntarily; and (3) in cases where the non-English speaking party or witness has retained/appointed counsel or has the right to counsel, that party or witness has been afforded the opportunity to consult with his or her attorney. At any point in any proceeding, for good cause shown, a non-English speaking party or witness may retract his or her waiver and request an interpreter.

All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Any of the following actions shall constitute good cause for the judge to remove an interpreter: (1) being unable to interpret adequately, including where the interpreter self-reports such inability; (2) knowingly and willfully making false interpretation while serving in an official capacity; (3) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity; (4) failing to adhere to the requirements prescribed by the AOC, including the Arkansas Code of Professional Responsibility for foreign language interpreters; (4) failing to follow other standards prescribed by law. The judge shall notify the AOC in writing whenever he or she removes an interpreter, setting forth the reason(s) for that action.

In all legal proceedings, the cost of providing interpreter services shall be assessed by the judge according to law. Provided, no non-English speaking party or witness shall be denied the serv-

ices of an interpreter because he or she is unable to pay for those services.

This Per Curiam Order is effective January 1, 2000.

IN RE: RULES GOVERNING ADMISSION to the BAR of ARKANSAS

Supreme Court of Arkansas
Delivered September 30, 1999

PER CURIAM. Rule I of the Rules Governing Admission to the Bar provides that members of the Board of Law Examiners (Board) shall be appointed to three-year terms, subject to reappointment for an additional three years. Due to resignations and subsequent reappointments this provision has led to an uneven distribution of conclusion of terms. For example, in September of 1998, three Board members were replaced, and in September of 2000, four terms will come to a conclusion.

The Board has asked this Court to consider an amendment to Rule I to provide for a single six-year term. The Board states that such an amendment, properly implemented, would result in two terms coming to a conclusion in each of five years, and one term coming to a conclusion in the sixth year. The Board argues that such an outcome would contribute to continuity of experience from year to year. We agree.

We adopt and publish Rule I of the Rules Governing Admission to the Bar as it appears on the attachment to this order.

In order to implement the revised rule we will make appointments and reappointments to the Board in accord with the following schedule.

In September of this year the individual appointed to replace Blair Arnold will be asked to serve a seven-year term concluding in 2006. Present Board member Audrey Evans will be asked to serve an additional three-year term concluding in 2002.

In September, 2000, four members of the Board who have served at least six years will see their second terms come to a conclusion. Of that number, two new appointees will be asked to serve five-year terms concluding in 2005. Two of the present Board members will be asked to serve additional one-year terms concluding in 2001. Present Board member Jerry Pinson will be asked to serve an additional three-year term concluding in 2003.

In September, 2001, the initial three-year terms of three present Board members will come to a conclusion. Of that number, two will be asked to serve for three years concluding in 2004. One will be asked to serve for two years concluding in 2003.

Of the remaining three appointments due at that time, one new appointee will be asked to serve a five-year term concluding in 2006, and the remaining new appointees will be asked to serve six-year terms concluding in 2007.

RULE I.

COMPOSITION OF BOARD OF LAW EXAMINERS

The State Board of Law Examiners, (hereinafter Board), is hereby constituted, before whom all applicants for license must appear.

Said Board shall consist of eleven members: two from each Congressional District (as now or hereafter constituted), and the remainder from the State at large. Each appointment shall be for a term of six years, unless otherwise designated by the Supreme Court. Vacancies occurring from causes other than expiration of term of office will be filled by the Supreme Court as they occur, and the person so appointed shall serve the remainder of the term of his or her predecessor. The Board, from its members, shall annually select its own chair. Members shall continue to serve

beyond their designated term until such time as their successor is qualified and appointed by the Court.

The Board, its individual members, Executive Secretary and employees and agents of the Board are absolutely immune from suit or action for their activities in discharge of their duties hereunder to the full extent of judicial immunity in Arkansas.

The Board may adopt regulations consistent with these rules, to be submitted to the Arkansas Supreme Court for approval prior to their implementation. Any regulations adopted by the Board and approved by the Court shall appear as an appendix to the Rules Governing Admission to the Bar. (Per Curiam Order, February 10, 1969; amended by Per Curiam Order, May 18, 1992; amended by per curiam July 17, 1995; amended by Per Curiam Order, September 30, 1999.)

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.