THIS BOOK CONTAINS THE OFFICIAL

ARKANSAS REPORTS

Volume 345

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
May 17, 2001 — July 9, 2001
INCLUSIVE[1]

AND

ARKANSAS APPELLATE REPORTS

Volume 74

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
May 16, 2001 — July 5, 2001
INCLUSIVE[2]

PUBLISHED BY THE
STATE OF ARKANSAS
2001

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[1]Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 579. Cite as 345 Ark. ___ (2001).

[2]Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 445. Cite as 74 Ark. App. ___ (2001).

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FROM
May 17, 2001 — July 9, 2001
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

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2001

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OF THE
SUPREME COURT OF ARKANSAS
DURING THE PERIOD COVERED BY THIS VOLUME

(May 17, 2001 — July 9, 2001, inclusive)

JUSTICES

W.H. "DUB" ARNOLD	Chief Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
RAY THORNTON	Justice
JIM HANNAH	Justice

OFFICERS

MARK PRYOR	Attorney General
LESLIE W. STEEN	Clerk
TIMOTHY N. HOLTHOFF	Librarian
WILLIAM B. JONES, JR.	Reporter of Decisions

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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.

OPINIONS NOT DESIGNATED FOR PUBLICATION

Anderson *v.* Reed, 01-166 (Per Curiam), Pro Se Motion to File Supplemental Brief denied; appeal dismissed May 17, 2001.

Anderson *v.* Hudson, CR 01-517 (Per Curiam), Pro Se Petition for Writ of Mandamus moot June 7, 2001.

Arnett *v.* State, CR 01-265 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted; Pro Se Motion for Appointment of Counsel denied May 17, 2001.

Bautista *v.* State, CR 01-497 (Per Curiam), Motion to Proceed Pro Se on Appeal granted June 21, 2001.

Bell *v.* Green, 99-840 (Per Curiam), affirmed May 31, 2001.

Boatman *v.* State, 01-419 (Per Curiam), Pro Se Motions for Appointment of Counsel and for Extension of Time to File Brief; denied and appeal dismissed May 24, 2001.

Brady, David *v.* State, CR 01-393 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Rule on Clerk denied July 9, 2001.

Brady, David *v.* State, CR 01-393 (Per Curiam), Pro Se Petition for Review denied; Pro Se Motion for Rule on Clerk granted in part and denied in part May 17, 2001.

Burnette *v.* State, CR 01-287 (Per Curiam), Pro Se Motion to Compel Attorney to File Petition for Writ of Certiorari or, in the Alternative, for Appointment of Other Counsel granted July 9, 2001.

Davis, Michael A. *v.* State, CR 01-57 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted June 14, 2001.

Davis, Arthur Dean *v.* State, CR 01-611 (Per Curiam), Motion to Proceed with Belated Petition for Writ of Certiorari denied June 21, 2001.

Dennis *v.* State, CR 99-1159 (Per Curiam), dismissed June 7, 2001.

Dirickson *v.* State, CR 99-795 (Per Curiam), affirmed May 17, 2001.

Farver *v.* Davis, CR 01-113 (Per Curiam), Pro Se Motions for Reconsideration of Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed May 24, 2001.

Forman *v.* State, CR 01-505 (Per Curiam), Pro Se Motion for Belated Appeal; treated as motion for rule on clerk to lodge record belatedly and denied June 21, 2001.

Gipson *v.* State, CR 00-1246 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Appointment of Counsel denied May 24, 2001.

Glick *v.* Brewer, 00-893 (Per Curiam), Pro Se Motion for Oral Argument denied June 28, 2001.

Hillard, Craig Keith *v.* State, CR 94-238 (Per Curiam), Pro Se Motion for Permission to Abstract Appeal Record denied June 28, 2001.

Hillard, Craig Keith *v.* State, CR 94-238 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied May 17, 2001.

Huddleston *v.* State, CR 00-697 (Per Curiam), Pro Se Motion to Supplement Abstract with Abstract of Trial Record moot, or in the alternative, appellant directed to amend motion July 9, 2001.

Hunt, Kenneth *v.* Arkansas Dep't of Fin. & Admin., 01-389 (Per Curiam), Pro Se Motion for Reconsideration of Motion to Proceed *In Forma Pauperis* denied July 9, 2001.

Hunt, Kenneth *v.* Arkansas Dep't of Fin. & Admin., 01-389 (Per Curiam), Pro Se Motion to Proceed *In Forma Pauperis* denied May 24, 2001.

Jackson, Coy *v.* State, CR 99-1117 (Per Curiam), affirmed June 7, 2001.

Jackson, Jeffery *v.* State, CR 00-1147 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied May 17, 2001.

Johnson, Harold *v.* State, CR 99-1304 (Per Curiam), affirmed July 9, 2001.

Johnson, Donald Cleveland *v.* State, CR 00-129 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed June 14, 2001.

Jones *v.* State, CR 01-178 (Per Curiam), Pro Se Motions for Duplication of Brief at Public Expense and to File Belated Brief and to Correct Record denied; appeal dismissed May 17, 2001.

Kelley *v.* State, CR 99-930 (Per Curiam), affirmed June 7, 2001.

Kindall *v.* State, CR 86-222 (Per Curiam), Pro Se Petition to Proceed in Circuit Court Pursuant to Criminal Procedure Rule 37 dismissed June 14, 2001.

King *v.* State, CR 01-315 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Reply Brief granted July 9, 2001.

Lackey *v.* State, CR 99-1343 (Per Curiam), reversed and remanded June 28, 2001.

Lewis *v.* State, CR 99-657 (Per Curiam), Pro Se Motion for Photocopy of Record at Public Expense denied July 9, 2001.

Maier *v.* State, CR 99-1305 (Per Curiam), affirmed June 28, 2001.

Martin *v.* State, CR 99-828 (Per Curiam), affirmed May 17, 2001.

Mitchell *v.* Norris, 99-1243 (Per Curiam), affirmed July 9, 2001.

Morris *v.* State, CR 99-1391 (Per Curiam), affirmed July 9, 2001.

Nahlen *v.* State, CR 99-1227 (Per Curiam), affirmed June 21, 2001.

Raglin *v.* State, CR 97-402 (Per Curiam), additional briefing ordered May 24, 2001.

Randolph *v.* State, CR 01-314 (Per Curiam), Pro Se Motion to Dismiss Appeal granted June 14, 2001.

Rychtarik *v.* State, CR 98-3 (Per Curiam), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error *Coram Nobis* denied June 28, 2001.

Sims *v.* Norris, 01-374 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed June 21, 2001.

Skarda *v.* State, CR 99-1137 (Per Curiam), affirmed June 7, 2001.

Skinner *v.* State, CR 00-1361 (Per Curiam), Pro Se Motion for Rule on Clerk denied May 17, 2001.

Smith *v.* Hudson, CR 01-657 (Per Curiam), Pro Se Petition for Writ of Mandamus moot July 9, 2001.

Standridge *v.* State, CR 01-101 (Per Curiam), Pro Se Motion to Waive Requirement that Appellant Provide Seventeen Copies of Brief moot; appeal dismissed May 17, 2001.

Swanigan *v.* State, CR 99-1106 (Per Curiam), affirmed May 24, 2001.

Vaseur *v.* State, CR 01-601 (Per Curiam), Motion to Proceed with Belated Petition for Writ of Certiorari denied June 21, 2001.

Walker *v.* State, CR 99-1133 (Per Curiam), affirmed June 14, 2001.

Wallace *v.* State, CR 99-1367 (Per Curiam), affirmed June 28, 2001.

Washington *v.* State, CR 01-409 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied May 17, 2001.

Watts *v.* State, CR 01-544 (Per Curiam), Pro Se Petition for Writ of Certiorari to Complete the Record denied and appeal dismissed June 21, 2001.

Williams, Benjamin *v.* Norris, 00-37 (Per Curiam), affirmed May 17, 2001.

Williams, Benjamin *v.* Norris, 00-37 (Per Curiam), Petition for Rehearing denied June 28, 2001.

Williams, James H. *v.* State, CR 99-1006 (Per Curiam), affirmed June 7, 2001.

Winfrey *v.* State, CR 99-1063 (Per Curiam), reversed and remanded June 14, 2001.

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APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ARKANSAS RULES of CRIMINAL PROCEDURE 1.5 and 8.2

Supreme Court of Arkansas
Delivered May 17, 2001

PER CURIAM. In the wake of the passage of Amendment 80 to the State Constitution, our Committee on Criminal Practice reviewed the various rules of court affecting criminal practice to determine which of those rules needed to be amended. This task has been completed. Accordingly, we hereby amend, effective July 1, 2001, Rules 1.5 and 8.2 of the Rules of Criminal Procedure and republish the rules as set out below.

ARKANSAS RULES OF CRIMINAL PROCEDURE

Rule 1.5. Prosecutions in name of state.

All prosecutions for violations of the criminal laws of this state shall be in the name of the State of Arkansas, provided that this rule shall in no way affect the distribution, as provided by law, of moneys collected by district courts.

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 district courts, city courts, and police courts 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.

IN RE: IMPLEMENTATION of AMENDMENT 80: AMENDMENTS to ADMINISTRATIVE ORDERS

Supreme Court of Arkansas
Delivered May 24, 2001

PER CURIAM. Following the passage of Amendment 80, we have reviewed our Administrative Orders to determine what amendments are required. We hereby amend and republish Administrative Orders 1, 2, 3, 4, 6, 8, and 10 as set out below. The changes in Administrative Orders 1, 3, 4, 6, and 10 shall be effective July 1, 2001.

The amendments to Administrative Order Number 2 shall be effective January 1, 2002, **except for the amendment to section (f), which shall be effective July 1, 2001.**

The amendments to Administrative Order Number 8 shall be effective July 1, 2001, **except for new section (II) (c) [Multiple claims], which shall be effective January 1, 2002.** Revised reporting forms or cover sheets will go into effect January 1, 2002[1], but these forms will be available for review well before their effective date. The forms currently in use will continue to be used during the period July 1 through December 31, 2001.

At the conclusion of this order, there appears a line-in/line-out version of the Administrative Orders illustrating the changes for the convenience of the reader.

[1] The subject-matter divisions to be created pursuant to Administrative Order Number 14 go into effect when the administrative plans approved thereunder become effective, January 1, 2002.

ADMINISTRATIVE ORDERS OF THE SUPREME COURT

ADMINISTRATIVE ORDER NUMBER 1 — SPECIAL JUDGES

Section 1.

When the judge of a circuit court shall fail to attend on any day scheduled for the holding of that court, or if such a judge is disqualified from presiding in any pending case, upon notice from the clerk of the court, the regular practicing attorneys attending the court may elect a special judge. The attorneys present in the courtroom shall elect one of their number as special judge. The election shall be conducted by the clerk of the court, who will accept nominations from the attorneys present. Only attorneys who are qualified to serve as special judge may vote in the election of a special judge. The election shall be by secret ballot. The attorney receiving a majority of the votes shall be declared elected as special judge. He shall immediately be sworn in by the clerk and shall immediately enter upon the duties of the office. He shall adjudicate those causes pending at the time of his election.

Section 2.

When a special judge is to be elected, notice shall be given by the clerk of the court to the regular practicing attorneys in the county served by the court in the most practical manner in the circumstances, including giving notice by telephone or by posting the notice in a public and conspicuous place in the courtroom.

Section 3.

No person who is not an attorney regularly engaged in the practice of law in the State of Arkansas and duly licensed and in good standing to do so, and who is not a resident possessed of the qualifications required of an elector of this state, whether registered to vote or not, shall be elected special judge.

Section 4.

For purposes of this rule, each division of circuit court in a county shall be considered to be a separate court.

Section 5.

The clerk of the court in the county in which the special judge election is held shall make a record of the proceedings, which shall be a part of the record of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

IN THE MATTER OF _____ SPECIAL JUDGE

Now on this _____ day of _____, ____, the Honorable _____, notified the clerk that he/she was unable to attend and preside over this court on this day. WHEREUPON, the Clerk gave notice pursuant to Administrative Order No. 1 that an election was to be held for a Special Judge to preside during the absence of said Judge.

AND THEREAFTER, the Honorable _____, an attorney at law, a resident of the State of Arkansas and possessing the required qualifications, having received a majority of the votes cast at such special election, at which only the practicing attorneys in attendance in the Court were allowed to vote, was found and declared to be duly elected Special Judge to preside during the absence of the Honorable _____.

WHEREUPON, the Clerk did administer the oath of office required by law as such Special Judge and he/she assumed the bench and entered upon the discharge of his/her duties herein.

_____

Clerk

OATH OF OFFICE

STATE OF ARKANSAS
COUNTY OF _____

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of Special Judge of Circuit Court, _____ Division, _____ County, upon which I am about to enter.

_____
Special Judge

Witnesses _____ _____
_____

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

_____
Circuit Clerk

By: _____
Deputy Clerk

ADMINISTRATIVE ORDER NUMBER 2 — DOCKETS AND OTHER RECORDS

[Changes to Administrative Order Number 2 shall be effective January 1, 2002, except for section (f), which shall be effective July 1, 2001]

(a) Docket. The clerk shall keep a book known as a "civil docket," designated by the prefix "CV"; a book known as a "probate docket," designated by the prefix "PR"; a book known as a "domestic relations" docket," designated by the prefix "DR"; a book known as a "criminal docket," designated by the prefix "CR"; and a book known as a "juvenile docket," designated by the prefix "JV". Each action shall be entered in the appropriate docket book. Cases shall be assigned the letter prefix corresponding to that docket and a number in the order of filing. Beginning with the first case filed each year, cases shall be numbered consecutively in each docket category with the four digits of the current year, followed by a hyphen and the number assigned to the case, beginning with the number "1". For example:

criminal	CR2002-1
civil	CV2002-1
probate	PR2002-1
domestic relations	DR2002-1
juvenile	JV2002-1

All papers filed with the clerk, all process issued and returns thereon, all appearances, orders, verdicts and judgments shall be noted chronologically in the dockets and filed in the folio assigned to the action and shall be marked with its file number. These entries shall be brief, but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. Where there has been a demand for trial by jury it shall be shown on the docket along with the date upon which demand was made.

(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.

(c) Indices. Suitable indices of the civil, probate, domestic relations, criminal, and juvenile dockets and of every judgment or order referred to in Section (b) of this rule shall be kept by the clerk under the direction of the court.

(d) Other Books and Records. The clerk shall also keep such other books and records as may be required by law and as directed by the Supreme Court.

(e) Uniform Paper Size. All records prepared by the clerk shall be on 8 1/2" x 11" paper.

(f) *[effective July 1, 2001]* Clerk Defined. When used herein, the term clerk refers to the clerks of the various circuit courts of the state; provided, that in the event probate matters are required by law to be filed in the office of county clerk, then the term clerk shall also include the county clerk for this limited purpose.

ADMINISTRATIVE ORDER NUMBER 3 — TRIAL BRIEFS — TRIAL AND APPELLATE COURT DECISIONS — TIME LIMITATIONS AND REPORTS

1. *Trial briefs.* All matters which are under submission to a trial judge should be promptly, efficiently, and fairly determined. The total time for all parties to file briefs in any case in the circuit courts is limited to a period not to exceed thirty (30) days after the trial is completed and the case is ready for decision. Upon a showing or written statement of special circumstances in a particular case, the time for filing briefs may be extended, reduced, or eliminated at the discretion of the trial judge.

2. *Trial court decisions.*

A. Judges of circuit courts are directed to submit to the Administrative Office of the Courts at the end of each calendar quarter, reports of cases which have been under advisement for more than ninety (90) days after final submission. These reports are to be submitted on forms supplied by the Administrative Office of the Courts. In cases which have been pending for more than ninety (90) days after final submission, the quarterly report shall include the date when the case was submitted and a statement of the reasons necessitating the delay in rendering a decision. If there are no cases which are pending for that length of time, the report shall simply state "none."

B. The Administrative Office of the Courts shall promptly review all rports filed by the trial courts, and if it determines that the delay in any case was not caused by the parties or their counsel, it shall recommend to the Supreme Court a judge to be assigned or appointed to dispose of the delayed case.

C. Willful noncompliance with the provisions of the order shall constitute grounds for discipline under the provisions of Canon 3 B (8) of the Arkansas Code of Judicial Conduct. Any judge whose quarterly report is not received by the 15th of the month following the end of the previous quarter (i.e., January 15, April 15, July 15, October 15) will be automatically referred to the Judicial Discipline and Disability Commission for possible discipline.

3. *Appellate court decisions.*

A. Justices and Judges of the Arkansas Supreme Court and Court of Appeals are directed to submit to the Chief Justice of the Supreme Court at the end of each quarter a report of any case in which an

opinion has not been issued within sixty (60) days from the case's submission. The report shall include a statement of the reason necessitating the delay in issuing an opinion.

B. The Supreme Court will review the reasons given for delay in any reported case and make any reassignment or take any appropriate action necessary to dispose of the case.

C. Willful noncompliance with the provisions of this order shall constitute grounds for discipline under the provisions of Canon 3 B (8) of the Arkansas Code of Judicial Conduct.

4. *Effective date.* This order shall become effective commencing January 1, 1991, and the initial quarterly reports shall be filed on or before March 31, 1991, and the last day of each quarterly month thereafter.

ADMINISTRATIVE ORDER NUMBER 4 — VERBATIM TRIAL RECORD

Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it.

ADMINISTRATIVE ORDER NUMBER 6 — BROADCASTING, RECORDING, OR PHOTOGRAPHING IN THE COURTROOM

(a) *Application — Exception.* This Order shall apply to all courts, circuit, district, and appellate, except as set out below.

(b) *Authorization.* A judge may authorize broadcasting, recording, or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that the participants will not be distracted, nor will the dignity of the proceedings be impaired.

(c) *Exceptions.* The following exceptions shall apply:

(1) An objection timely made by a party or an attorney shall preclude broadcasting, recording, or photographing of the proceedings;

(2) The court shall inform witnesses of their right to refuse to be broadcast, recorded, or photographed, and an objection timely made by a witness shall preclude broadcasting, recording or photographing of that witness;

(3) All juvenile matters in circuit court as well as hearings in probate and domestic relations matters in circuit court, e.g., adoptions, guardianships, divorce, custody, support, and paternity, shall not be subject to broadcasting, recording, or photographing.

(4) In camera proceedings shall not be broadcast, recorded, or photographed except with consent of the court;

(5) Jurors, minors without parental or guardian consent, victims in cases involving sexual offenses, and undercover police agents or informants shall not be broadcast, recorded, or photographed.

(d) *Procedure.* The broadcasting, recording, or photographing of any court proceeding shall comply with the following rules:

(1) The court shall direct that the news media representatives enter into a pooling arrangement for the broadcasting, recording, or photographing of a trial. Any representative of a news medium wanting to broadcast, record, or photograph court proceedings shall present to the court a written statement agreeing to share with other media representatives. The media pool shall select one of its members to serve as pool coordinator. The media pool shall establish its own procedures, not inconsistent with these rules or with the wishes of the court, and the pool coordinator shall arbitrate any problems that arise. If a problem arises that requires the assistance of the court, the pool coordinator alone shall be responsible for coordinating with the court. A plan for the placement of the broadcast equipment shall be prepared and filed by the pool coordinator, subject to the final approval of the court.

(2) The court shall retain ultimate control of the application of these rules over the broadcasting, recording, or photographing of a trial. Decisions made as to the details are final and are not subject to appeal. The court may in its discretion terminate the broadcasting, recording, or photographing at any time. Such a decision should not be made in an effort to edit the proceedings but only as one necessary in the interest of justice.

(3) The media pool may have two cameras in the courtroom during the course of a trial. One camera shall be used for still photography, and one camera shall be used for television photography. Both

cameras shall remain in stationary positions outside the bar of the courtroom. Videotape recording and other electronic equipment not a component part of the cameras shall be located in an area remote from the courtroom to be designated by the court.

(4) One additional audio system for radio broadcasting shall be permitted provided that all microphones and related essential wiring will be unobtrusive and located in places designated in advance by the basic courtroom plan. The pool coordinator shall permit the installation of a pickup distribution box to be located outside the courtroom area to allow additional agencies access to the audio feed.

(5) Only television or photographic equipment that does not require distracting sound or light shall be employed to cover court proceedings. No artificial lighting device shall be employed in connection with television cameras. Any court approved alterations in existing lighting or wiring shall be accomplished by and at the expense of the media pool.

(6) Camera and audio equipment shall be installed or removed only when the court is not in session. Film changes shall not be made while court is in session. No audio equipment shall be used to record conversations between attorneys and clients or conversations between attorneys and the court held outside the hearing of the jury.

(e) *Contempt.* Failure to abide by any provision of this Order can result in a citation for contempt against the news representative and his or her agency.

ADMINISTRATIVE ORDER NUMBER 8 — FORMS FOR REPORTING CASE INFORMATION IN ALL ARKANSAS TRIAL COURTS

[Changes to Administrative Order Number 8 shall be effective July 1, 2001, except for Section II (c) [Multiple claims], which shall be effective January 1, 2002]

Section I. Scope.

In every action filed in the circuit courts, a form designed for the uniform collection of case data shall be completed and filed with the initial pleading and again at final disposition. The forms

shall be used in assigning and allocating cases and to collect statistical case data. The forms shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or the rules of this Court. This Order in no way affects the use of the Judgment and Commitment Order or Judgment and Disposition Order in judicial proceedings as authorized by Court Rule or statute.

Section II. Responsibility for forms.

a. Administrative office of the courts. The Administrative Office of the Courts (AOC) shall be responsible for the content and format of the forms after consultation with other appropriate agencies or as may be required by law. The AOC shall be responsible for training in the use of these forms and for initial dissemination of the forms.

b. Court clerk. The court clerk shall not accept an initial pleading which is not accompanied by the appropriate completed form. The court clerk shall maintain a supply of forms to ensure their availability to attorneys or pro se litigants. The court clerk shall weekly forward a copy of the forms which have been filed to the AOC unless the court clerk or other official as designated by the trial court reports electronically to the AOC. Those counties which report electronically should not send copies of the paper forms unless specifically requested to do so by the AOC. These forms shall replace all forms currently used for reporting case data to the AOC. For the purposes of this Administrative Order, court clerk means the elected circuit clerk, or his/her deputy clerks in whose office a pleading, order, judgment, or decree is filed, except in the event probate matters are required by law to be filed in the office of county clerk, then the term clerk shall also include the county clerk for this limited purpose.

c. *[Effective January 1, 2002]* Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed. Attorneys or pro se litigants should be cognizant that claims which are wholly unrelated may be severed and proceeded with separately under Rule 18 (b) of the Rules of Civil Procedure.

Section III. Procedure.

a. Criminal cases. The office of the prosecuting attorney shall be responsible for completion of the criminal information form and

for filing it in the Office of the Circuit Clerk who shall forward a copy to the AOC pursuant to SECTION II.b.

Upon conviction and sentencing to the Arkansas Department of Correction, the office of the prosecuting attorney shall be responsible for completion of the Judgment and Commitment Order. The Order shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b and to counsel of record for the defendant.

Where the final disposition does not result in a commitment to the Arkansas Department of Correction but may include any of the following — an order of probation, suspended imposition of sentence, commitment to the Department of Community Punishment or to the county jail, a fine, restitution, and/or court costs — the office of the prosecuting attorney shall be responsible for completion of the Judgment and Disposition Order which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b and to counsel of record for the defendant.

Where the case is dismissed or nolle prossed because of the speedy trial rule, the case is transferred, or the defendant is acquitted, the office of the prosecuting attorney shall be responsible for completion of the Reporting Form for Defense-Related Dispositions which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b and to counsel of record for the defendant.

b. Civil, Probate, and Domestic Relations cases. When an action is commenced, the attorney or pro se litigant filing the initial pleading shall be responsible for completion of the filing information on the appropriate reporting form, and that form shall be filed with the court clerk. The court clerk shall not accept the pleading unless it is accompanied by the reporting form. The court clerk shall file the original in the case file and shall forward a copy of the reporting form to the AOC pursuant to SECTION II.b.

When the final order/decree/judgment is filed with the court clerk, the clerk or other appropriate official as designated by the trial court shall complete the disposition information on the original form in the case file. The court clerk shall sign, date, and forward a copy of the completed reporting form to the AOC pursuant to SECTION II.b.

c. Juvenile cases. When an action is commenced, unless otherwise designated by the judge, the attorney or pro se litigant filing the petition shall be responsible for completion of the filing information on the appropriate reporting form, and that form shall be filed with the court clerk. The court clerk shall not accept an initial pleading unless it is accompanied by the reporting form. The court clerk shall forward a copy of the reporting form to the AOC pursuant to Section II.b.

Pursuant to A.C.A. Sec. 16-13-603(d)(2), the judge shall designate a staff person who shall be responsible for completing the disposition information on the appropriate juvenile reporting form when an order is entered and forwarding the form to the court clerk for filing. The court clerk shall not accept the order unless it is accompanied by the reporting form. The court clerk shall sign, date, and forward a copy of the reporting form to the AOC pursuant to SECTION II.b.

ADMINISTRATIVE ORDER NUMBER 10 — CHILD SUPPORT GUIDELINES

***

FORMS

IN THE CIRCUIT COURT OF _____
COUNTY, ARKANSAS

_____ Division

* * * *

ILLUSTRATION OF CHANGES MADE TO THE ADMINISTRATIVE ORDERS

[not to be published in Official Rules]

ADMINISTRATIVE ORDER NUMBER 1 — SPECIAL JUDGES

Section 1.

When the judge of a circuit~~, chancery, or probate~~ court shall fail to attend on any day scheduled for the holding of that court, or if such a judge is disqualified from presiding in any pending case, upon notice from the clerk of the court, the regular practicing attorneys attending the court may elect a special judge. The attorneys present in the courtroom shall elect one of their number as special judge. The election shall be conducted by the clerk of the court, who will accept nominations from the attorneys present. Only attorneys who are qualified to serve as special judge may vote in the election of a special judge. The election shall be by secret ballot. The attorney receiving a majority of the votes shall be declared elected as special judge. He shall immediately be sworn in by the clerk and shall immediately enter upon the duties of the office. He shall adjudicate those causes pending at the time of his election.

Section 2.

When a special judge is to be elected, notice shall be given by the clerk of the court to the regular practicing attorneys in the county served by the court in the most practical manner in the circumstances, including giving notice by telephone or by posting the notice in a public and conspicuous place in the courtroom.

Section 3.

No person who is not an attorney regularly engaged in the practice of law in the State of Arkansas and duly licensed and in good standing to do so, and who is not a resident possessed of the qualifications required of an elector of this state, whether registered to vote or not, shall be elected special judge.

Section 4.

For purposes of this rule, each division of circuit ~~division of a~~ court in a county shall be considered to be a separate court.

Section 5.

The clerk of the court in the county in which the special judge election is held shall make a record of the proceedings, which shall be a part of the record of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

IN THE MATTER OF _____ SPECIAL JUDGE

Now on this _____ day of _____, ____, the Honorable _____, notified the clerk that he/she was unable to attend and preside over this court on this day. WHEREUPON, the Clerk gave notice pursuant to Administrative ~~Rule~~ Order No. 1 that an election was to be held for ~~of~~ a Special Judge to preside during the absence of said Judge.

AND THEREAFTER, the Honorable _____, an attorney at law, a resident of the State of Arkansas and possessing the required qualifications, having received a majority of the votes cast at such special election, at which only the practicing attorneys in attendance in the Court were allowed to vote, was found and declared to be duly elected Special Judge to preside during the absence of the Honorable _____.

WHEREUPON, the Clerk did administer the oath of office required by law as such Special Judge and he/she assumed the bench and entered upon the discharge of his/her duties herein.

_____
Clerk

OATH OF OFFICE

STATE OF ARKANSAS
COUNTY OF _____

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully

discharge the duties of the office of Special Judge of Circuit Court, _____ Division, _____ County, upon which I am about to enter.

_____
Special Judge

Witnesses _____ _____
_____

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

_____
Circuit Clerk~~/Chancery~~ Clerk

By: _____
Deputy Clerk

ADMINISTRATIVE ORDER NUMBER 2 — DOCKETS AND OTHER RECORDS

(a) Docket. The clerk shall keep a book known as a "civil docket," designated by the prefix "CV";~~a book known as a "chancery docket,"~~ a book known as a "probate docket," designated by the prefix "PR"; a book known as a "domestic relations" docket," designated by the prefix "DR"; ~~and~~ a book known as a "criminal docket," designated by the prefix "CR"; and a book known as a "juvenile docket," designated by the prefix "JV". ~~and~~ Each action shall be entered in the appropriate docket book. ~~therein each action~~ Cases shall be assigned the letter prefix corresponding to that docket and a numbers in the order of filing. ~~and b~~ Beginning with the first case filed each year ~~in each court~~, cases shall be numbered consecutively in each docket category with the four digits of the current year ~~shall be entered~~, followed by a hyphen and the number assigned to the case, beginning with the number "1". For example:

criminal CR2002-1

civil	CV2002-1
probate	PR2002-1
domestic relations	DR2002-1
juvenile	JV2002-1

~~For further identification, the court may direct that the letters "CIV" or "CR" precede the docket number for cases filed in circuit court, that the letters "E" or "J" precede the docket number for cases filed in chancery court, and that the letter "P" precede the docket number for cases filed in probate court.~~

All papers filed with the clerk, all process issued and returns thereon, all appearances, orders, verdicts and judgments shall be noted chronologically in the dockets and filed in the folio assigned to the action and shall be marked with its file number. These entries shall be brief, but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. Where there has been a demand for trial by jury it shall be shown on the docket along with the date upon which demand was made.

(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.

(c) Indices. Suitable indices of the civil, probate, domestic relations, criminal, ~~chancery,~~ and juvenile~~, and probate~~ docket and of every judgment or order referred to in Section (b) of this rule shall be kept by the clerk under the direction of the court.

(d) Other Books and Records. The clerk shall also keep such other books and records as may be required by law and as directed by the Supreme Court.

(e) Uniform Paper Size. All records prepared by the clerk shall be on 8 1/2" x 11" paper.

(f) Clerk Defined. When used herein, the term clerk refers to the clerks of the various circuit~~, chancery or probate~~ courts of the state; provided, that in the event probate matters are required by law to be filed in the office of county clerk, then the term clerk shall also include the county clerk for this limited purpose.

ADMINISTRATIVE ORDER NUMBER 3 — TRIAL BRIEFS — TRIAL AND APPELLATE COURT DECISIONS — TIME LIMITATIONS AND REPORTS

1. *Trial briefs.* All matters which are under submission to a trial judge should be promptly, efficiently, and fairly determined. The total time for all parties to file briefs in any case in the circuit~~, chancery, probate and juvenile~~ courts is limited to a period not to exceed thirty (30) days after the trial is completed and the case is ready for decision. Upon a showing or written statement of special circumstances in a particular case, the time for filing briefs may be extended, reduced, or eliminated at the discretion of the trial judge.

2. *Trial court decisions.*

A. Judges of circuit~~, chancery; probate and juvenile~~ courts are directed to submit to the Administrative Office of the Courts at the

end of each calendar quarter, reports of cases which have been under advisement for more than ninety (90) days after final submission. These reports are to be submitted on forms supplied by the Administrative Office of the Courts. In cases which have been pending for more than ninety (90) days after final submission, the quarterly report shall include the date when the case was submitted and a statement of the reasons necessitating the delay in rendering a decision. If there are no cases which are pending for that length of time, the report shall simply state "none."

B. The Administrative Office of the Courts shall promptly review all reports filed by the trial courts, and if it determines that the delay in any case was not caused by the parties or their counsel, it shall recommend to the Supreme Court a judge to be assigned or appointed to dispose of the delayed case.

C. Willful noncompliance with the provisions of the order shall constitute grounds for discipline under the provisions of Canon 3 B (8) of the Arkansas Code of Judicial Conduct. Any judge whose quarterly report is not received by the 15th of the month following the end of the previous quarter (i.e., January 15, April 15, July 15, October 15) will be automatically referred to the Judicial Discipline and Disability Commission for possible discipline.

3. *Appellate court decisions.*

A. Justices and Judges of the Arkansas Supreme Court and Court of Appeals are directed to submit to the Chief Justice of the Supreme Court at the end of each quarter a report of any case in which an opinion has not been issued within sixty (60) days from the case's submission. The report shall include a statement of the reason necessitating the delay in issuing an opinion.

B. The Supreme Court will review the reasons given for delay in any reported case and make any reassignment or take any appropriate action necessary to dispose of the case.

C. Willful noncompliance with the provisions of this order shall constitute grounds for discipline under the provisions of Canon 3 B (8) of the Arkansas Code of Judicial Conduct.

4. *Effective date.* This order shall become effective commencing January 1, 1991, and the initial quarterly reports shall be filed on or before March 31, 1991, and the last day of each quarterly month thereafter.

ADMINISTRATIVE ORDER NUMBER 4 — VERBATIM TRIAL RECORD

Unless waived on the record by the parties, it shall be the duty of any circuit~~, chancery, or probate~~ court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it.

ADMINISTRATIVE ORDER NUMBER 6 — BROADCASTING, RECORDING, OR PHOTOGRAPHING IN THE COURTROOM

(a) *Application - Exception.* This Order shall apply to all courts, circuit, ~~chancery, probate, municipal,~~ district, and appellate, except ~~but it shall not apply to the juvenile division of chancery court~~ as set out below.

(b) *Authorization.* A judge may authorize broadcasting, recording, or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that the participants will not be distracted, nor will the dignity of the proceedings be impaired.

(c) *Exceptions.* The following exceptions shall apply:

(1) An objection timely made by a party or an attorney shall preclude broadcasting, recording, or photographing of the proceedings;

(2) The court shall inform witnesses of their right to refuse to be broadcast, recorded, or photographed, and an objection timely made by a witness shall preclude broadcasting, recording or photographing of that witness;

(3) All juvenile matters ~~in the juvenile division of the chancery court as well as chancery and probate court hearings in probate and domestic relations matters,~~ in circuit court as well as hearings in probate and domestic relations matters in circuit court, e.g., adoptions, guardianships, divorce, custody, support, and paternity, shall not be subject to broadcasting, recording, or photographing;

(4) In camera proceedings shall not be broadcast, recorded, or photographed except with consent of the court;

(5) Jurors, minors without parental or guardian consent, victims in cases involving sexual offenses, and undercover police agents or informants shall not be broadcast, recorded, or photographed.

(d) *Procedure.* The broadcasting, recording, or photographing of any court proceeding shall comply with the following rules:

(1) The court shall direct that the news media representatives enter into a pooling arrangement for the broadcasting, recording, or photographing of a trial. Any representative of a news medium wanting to broadcast, record, or photograph court proceedings shall present to the court a written statement agreeing to share with other media representatives. The media pool shall select one of its members to serve as pool coordinator. The media pool shall establish its own procedures, not inconsistent with these rules or with the wishes of the court, and the pool coordinator shall arbitrate any problems that arise. If a problem arises that requires the assistance of the court, the pool coordinator alone shall be responsible for coordinating with the court. A plan for the placement of the broadcast equipment shall be prepared and filed by the pool coordinator, subject to the final approval of the court.

(2) The court shall retain ultimate control of the application of these rules over the broadcasting, recording, or photographing of a trial. Decisions made as to the details are final and are not subject to appeal. The court may in its discretion terminate the broadcasting, recording, or photographing at any time. Such a decision should not be made in an effort to edit the proceedings but only as one necessary in the interest of justice.

(3) The media pool may have two cameras in the courtroom during the course of a trial. One camera shall be used for still photography, and one camera shall be used for television photography. Both cameras shall remain in stationary positions outside the bar of the courtroom. Videotape recording and other electronic equipment not a component part of the cameras shall be located in an area remote from the courtroom to be designated by the court.

(4) One additional audio system for radio broadcasting shall be permitted provided that all microphones and related essential wiring will be unobtrusive and located in places designated in advance by the basic courtroom plan. The pool coordinator shall permit the installation of a pickup distribution box to be located outside the courtroom area to allow additional agencies access to the audio feed.

(5) Only television or photographic equipment that does not require distracting sound or light shall be employed to cover court proceedings. No artificial lighting device shall be employed in connection with television cameras. Any court approved alterations in existing lighting or wiring shall be accomplished by and at the expense of the media pool.

(6) Camera and audio equipment shall be installed or removed only when the court is not in session. Film changes shall not be made while court is in session. No audio equipment shall be used to record conversations between attorneys and clients or conversations between attorneys and the court held outside the hearing of the jury.

(e) *Contempt.* Failure to abide by any provision of this Order can result in a citation for contempt against the news representative and his or her agency.

ADMINISTRATIVE ORDER NUMBER 8 — FORMS FOR REPORTING CASE INFORMATION IN ALL ARKANSAS TRIAL COURTS

Section I. Scope.

~~Beginning July 1, 1996, i~~In every action filed in the circuit~~, chancery, and probate~~ courts, a form designed for the uniform collection of case data shall be completed and filed with the initial pleading and again at final disposition. The ~~civil, chancery, probate and juvenile~~ forms shall be used in assigning and allocating cases and to collect ~~, while required, are solely for the purpose of collecting~~ statistical case data. The forms ~~and~~ shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or the rules of this Court. This Order in no way affects the use of the Judgment and Commitment Order or Judgment and Disposition Order in judicial proceedings as authorized by Court Rule or statute.

Section II. Responsibility for forms.

a. Administrative office of the courts. The Administrative Office of the Courts (AOC) shall be responsible for the content and format of the forms after consultation with other appropriate agencies or as may be required by law. The AOC shall be responsible for training in the use of these forms and for initial dissemination of the forms.

b. Court clerk. The court clerk shall not accept an initial pleading which is not accompanied by the appropriate completed form. The court clerk shall maintain a supply of forms to ensure their availability to attorneys or pro se litigants. The court clerk shall weekly forward a copy of the forms which have been filed to the AOC unless the court clerk or other official as designated by the trial court reports electronically to the AOC. Those counties which report electronically should not send copies of the paper forms unless specifically requested to do so by the AOC. These forms shall replace all forms currently used for reporting case data to the AOC. For the purposes of this Administrative Order, court clerk means the elected circuit~~, chancery, or county~~ clerk, or his/her deputy clerks in whose office a pleading, order, judgment, or decree is filed, except in the event probate matters are required by law to be filed in the office of county clerk then the term clerk shall also include the county clerk for this limited purpose.

c. Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed. Attorneys or pro se litigants should be cognizant that claims which are wholly unrelated may be severed and proceeded with separately under Rule 18 (b) of the Rules of Civil Procedure.

Section III. Procedure.

a. Criminal cases. The office of the prosecuting attorney shall be responsible for completion of the criminal information form and for filing it in the Office of the Circuit Clerk who shall forward a copy to the AOC pursuant to SECTION II.b.

Upon conviction and sentencing to the Arkansas Department of Correction, the office of the prosecuting attorney shall be responsible for completion of the Judgment and Commitment Order. The Order shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b and to counsel of record for the defendant.

Where the final disposition does not result in a commitment to the Arkansas Department of Correction but may include any of the following — an order of probation, suspended imposition of sentence, commitment to the Department of Community Punishment or to the county jail, a fine, restitution, and/or court costs — the

office of the prosecuting attorney shall be responsible for completion of the Judgment and Disposition Order which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b and to counsel of record for the defendant.

Where the case is dismissed or nolle prossed because of the speedy-trial rule, the case is transferred, or the defendant is acquitted, the office of the prosecuting attorney shall be responsible for completion of the Reporting Form for Defense-Related Dispositions which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b and to counsel of record for the defendant.

b. Civil, Probate, and Domestic Relations ~~circuit, chancery and probate~~ cases. When an action is commenced, the attorney or pro se litigant filing the initial pleading shall be responsible for completion of the filing information on the appropriate reporting form, and that form shall be filed with the court clerk. The court clerk shall not accept the pleading unless it is accompanied by the reporting form. The court clerk shall file the original in the case file and shall forward a copy of the reporting form to the AOC pursuant to SECTION II.b.

When the final order/decree/judgment is filed with the court clerk, the clerk or other appropriate official as designated by the trial court shall complete the disposition information on the original form in the case file. The court clerk shall sign, date, and forward a copy of the completed reporting form to the AOC pursuant to SECTION II.b.

c. Juvenile ~~division chancery~~ cases. When an action is commenced, unless otherwise designated by the ~~juvenile division~~ judge, the attorney or pro se litigant filing the petition shall be responsible for completion of the filing information on the appropriate reporting form, and that form shall be filed with the court clerk. The court clerk shall not accept an initial pleading unless it is accompanied by the reporting form. The court clerk shall forward a copy of the reporting form to the AOC pursuant to Section II.b.

Pursuant to A.C.A. Sec. 16-13-603(d)(2), the ~~juvenile division~~ judge shall designate a staff person who shall be responsible for completing the disposition information on the appropriate juvenile reporting form when an order is entered and forwarding the form to the court clerk for filing. The court clerk shall not accept the

order unless it is accompanied by the reporting form. The court clerk shall sign, date, and forward a copy of the reporting form to the AOC pursuant to SECTION II.b.

ADMINISTRATIVE ORDER NUMBER 10 — CHILD SUPPORT GUIDELINES

***

FORMS

IN THE ~~CHANCERY~~ CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ Division

* * * *

IN RE: IMPLEMENTATION of AMENDMENT 80: AMENDMENTS to RULES of CIVIL PROCEDURE, and INFERIOR COURT RULES

Supreme Court of Arkansas
Delivered May 24, 2001

PER CURIAM. In the aftermath of the passage of Amendment 80, our Committee on Civil Practice has reviewed the various rules of court touching on civil practice to determine what amendments are required. With respect to the Rules of Civil Procedure and the Inferior Court Rules, the Committee has reported to the Court the changes it recommends.[1] We have reviewed the report and thank the Committee for a job well done.

[1] Amendments to the Rules of Appellate Procedure—Civil and amendments to the Rules of the Supreme Court and Court of Appeals will be announced at a later date.

We accept the Committee's recommendations, with minor changes, and hereby amend and republish the rules as set out below:

Rules of Civil Procedure: 1, 2, 3, 4, 12, 18, 22, 27, 28, 38, 45, 51, 52, 60, 78, 81, and 82;

Inferior Court Rule 1.

These changes shall be effective July 1, 2001, unless noted otherwise.

At the conclusion of the rules changes, there appears a line-in/line-out version of the rules for the convenience of the reader which illustrates the changes.

Implementation of Amendment 80: Amendments to Rules of Civil Procedure and Inferior Court Rules

A. Rules of Civil Procedure

1. Rule 1 is amended to read as follows:

These rules shall govern the procedure in the circuit courts in all suits or actions of a civil nature with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

The Reporter's Notes accompanying Rule 1 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The reference to chancery and probate courts in the first sentence has been deleted in light of Constitutional Amendment 80, the new judicial article approved by the voters in November 2000. That amendment established the circuit courts as the state's "trial courts of original jurisdiction" and abolished the separate chancery and probate courts.

2. Rule 2 is amended to read as follows:

There shall be one form of action to be known as "civil action."

The Reporter's Notes accompanying Rule 2 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The second sentence, which provided that actions in equity were to be brought in chancery court and actions at law in circuit court, has been deleted in conformity with Constitutional Amendment 80, under which the circuit courts are the state's "trial courts of original jurisdiction." The effect of this change in the rule is to merge law and equity, as contemplated by Amendment 80. As the U.S. Supreme Court observed with respect to the corresponding federal rule, "law and equity are procedurally combined; nothing turns now upon the form of the action or the procedural devices by which the parties happen to come before the court." *Ross v. Bernhard*, 396 U.S. 531, 540 (1970).

Section 6(B) of Amendment 80 authorizes the Supreme Court to promulgate rules governing the organization of circuit courts into subject matter divisions. Administrative Order No. 14, adopted by the Supreme Court pursuant to this authorization, requires that the circuit judges of each judicial circuit "establish the following subject-matter divisions in each county of the circuit: criminal, civil, juvenile, probate, and domestic relations." However, the order expressly provides that this designation of divisions "is for the purpose of judicial administration and caseload management and is not for the purpose of subject-matter jurisdiction." At all times, a circuit judge has "the authority to hear all matters within the jurisdiction of the circuit court and has the affirmative duty to do so regardless of the designation of divisions."

The merged system is to be contrasted with and distinguished from the prior practice in Arkansas during the period in which chancery courts had not been created in all counties. In counties without chancery courts, the circuit court "was a court of dual jurisdiction, the judge presiding in one division or 'on the law side' as a superior court of common law, and also sitting in chancery as judge of a court of equity. . . ." *Morgan Utilities, Inc. v. Perry County*, 183 Ark. 542, 547, 37 S.W.2d 74, 77 (1931). With the merger of law and equity, there are not separate law and equity "sides" of the circuit court.

Although law and equity have been merged, equitable principles may be applied where appropriate. This has been so in the federal courts. *E.g., Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368, 382 n.26 (1949) ("Notwithstanding the fusion of law and equity by the Rules of Civil Procedure, the substantive principles of Courts of Chancery remain unaffected"); *In re United States Brass Corp.*, 110 F.3d 1261, 1267 (7th Cir. 1997) ("Ever since law and equity were merged in the federal courts . . . more than a half century ago, the

courts have had a free hand in importing equitable defenses into suits at law"). Moreover, the merger does not alter substantive rights. *Grupo Mexicano de Desarrollo, S.A.*, 527 U.S. 308, 322 (1999).

3. Rule 3 is amended to read as follows:

Rule 3. COMMENCEMENT OF ACTION - "CLERK" DEFINED

(a) A civil action is commenced by filing a complaint with the clerk of the court who shall note thereon the date and precise time of filing.

(b) The term "clerk of the court" as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(a)(2)(B).

[Transitional Provision. For the period July 1, 2001 through December 31, 2001, probate matters shall continue to be filed with the same clerk where such matters were filed immediately prior to July 1, 2001.**]**

The Reporter's Notes accompanying Rule 3 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The word "proper," which modified "court" in the original version of the rule, has been deleted. Also, the one sentence that comprised the rule has been designated as subdivision (a) and a new subdivision (b) added to define the term "clerk of the court."

As the original Reporter's Notes accompanying this rule make plain, the "proper court" was one with jurisdiction over the subject matter. When the rule was adopted in 1978, that jurisdiction was divided among three courts — circuit, chancery, and probate. Under Constitutional Amendment 80, however, the circuit court is the single trial court of general jurisdiction.

The original Reporter's Notes to this rule also state that the term "proper court" referred to the court "in which venue is properly laid." This issue has since been addressed in Rule 12(h)(3), which provides that in cases where venue is improper, the court may either "dismiss the action or direct that it be transferred to a county where venue would be proper." In the event of a transfer pursuant to this provision, the action remains "commenced" as of

the date of the original filing. If the action is dismissed, it was nonetheless commenced for statute of limitations purposes and may be refiled within one year under the savings statute, Ark. Code Ann. § 16-56-126. *See Forrest City Machine Works v. Lyons*, 315 Ark. 173, 866 S.W.2d 372 (1993) (savings statute is applicable when action is dismissed for insufficient service of process).

Subdivision (b) has been added in light of Administrative Order No. 14 of the Supreme Court and Act 997 of 2001. The order, adopted pursuant to Section 6(B) of Amendment 80, requires the judges of each judicial circuit to establish the following divisions: criminal, civil, juvenile, probate, and domestic relations divisions. Act 997, which amended Ark. Code Ann. § 14-14-502(a)(2)(B), provides that in those counties in which county clerks have been elected, the county clerk "may be ex officio clerk of the probate division of circuit court, if such division exists, of the county until otherwise provided by the General Assembly." Consequently, in some counties probate proceedings will be initiated by a filing in the county clerk's office, and in such cases the county clerk will be the "clerk of the court" for other purposes under these Rules.

Most probate matters are "special proceedings" within the meaning of Rule 81(a) and thus governed by statutory procedures, if any, rather than by these Rules. *See, e.g., In re Adoption of Martindale*, 327 Ark. 685, 940 S.W.2d 491 (1997) (adoption); *Screeton v. Crumpler*, 273 Ark. 167, 617 S.W.2d 847 (1981) (probate of will). However, some probate matters are civil actions. *See, e.g., Coleman v. Coleman*, 257 Ark. 404, 520 S.W.2d 239 (1974) (proceeding by which a claim against the estate of a deceased person is reduced to judgment is a civil action). The status of a particular probate matter as a special proceeding or a civil action has no bearing on where the papers are to be filed.

Filing in the wrong clerk's office is not fatal, and the action is commenced as of the filing date. *Cf. Linder v. Howard*, 296 Ark. 414, 757 S.W.2d 562 (1995) (the timely filing of the complaint in chancery court tolled the statute of limitations even though the case should have been brought in circuit court and was transferred there after statute had run).

4. The first line of the caption of the summons form accompanying Rule 4 is amended to read as follows:

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

The explanatory paragraph accompanying the form is amended to read as follows:

Official Form of Summons

The Supreme Court of Arkansas has adopted the following form of summons for use in all cases in which personal service is to be had pursuant to Rule 4(c), (d) and (e) of the Arkansas Rules of Civil Procedure. The form may be modified as needed in special circumstances. Additional notices, if required, should be inserted in the appropriate space. This form is not for use in cases of constructive service pursuant to Rule 4(f). The adoption of this form is in compliance with Rule 4(b) and does not modify or amend any part of that rule.

5. Rule 12(h)(3) is amended to read as follows:

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Upon a determination that venue is improper, the court shall dismiss the action or direct that it be transferred to a county where venue would be proper, with the plaintiff having an election if the action could be maintained in more than one county.

The Reporter's Notes accompanying Rule 12 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: Paragraph (3) of subdivision (h) has been amended to reflect Constitutional Amendment 80, under which the circuit court is the single court of general jurisdiction in the state.

A clause in the first sentence providing for transfer in the event that the court lacks subject matter jurisdiction has been deleted because there are no longer separate circuit, chancery, and probate courts. Left intact, however, is language directing the court to dismiss the action whenever it appears that subject matter jurisdiction is lacking. This provision comes into play when, for instance, the Constitution assigns original jurisdiction to another court. By way of example, the Supreme Court has original jurisdiction to determine the sufficiency of state initiative and referendum petitions and proposed constitutional amendments.

Furthermore, while state courts generally have concurrent jurisdiction with the federal courts to decide cases arising under

federal law, state courts are without subject matter jurisdiction if Congress has made federal jurisdiction exclusive. *See, e.g.,* 28 U.S.C. § 1338(a) (patent and copyright cases).

6. Rule 18 is amended by revising subdivisions (a) and (b) to read as follows:

(a) *Joinder of Claims.* A party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or alternate claims, as many claims, legal or equitable, as the party may have against an opposing party, provided that nothing herein shall affect the obligation of a party under Rule 13(a).

(b) *Severance and Transfer.* (1) Any claim against a party may be severed and proceeded with separately. (2) If the court determines that the action, or a particular claim, should in the interest of justice or judicial economy be heard in another division, the court may transfer it to that division.

The Reporter's Notes accompanying Rule 18 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: Subdivisions (a) and (b) have been amended in light of Constitutional Amendment 80, which established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

New language in subdivision (a) authorizes joinder of claims whether "legal or equitable," as does the corresponding federal rule. Amendment 80's merger of law and equity removed any barriers to the joinder of legal and equitable claims in a single action. *See Beacon Theatres, Inc. v. Westover,* 359 U.S. 500, 510 (1959) ("the liberal joinder provisions of the Federal Rules . . . allow legal and equitable causes to be brought and resolved in one civil action").

Previously, subdivision (b) stated that a trial court could "make appropriate orders affecting severance of claims and may transfer claims between courts of law and equity on appropriate jurisdictional grounds." This provision has been deleted because of Amendment 80 and replaced with two paragraphs.

Under new paragraph (1), which tracks the language of Rule 21, any claim "may be severed and proceeded with separately."

New paragraph (2) permits the transfer of a particular claim, or the entire action, from one division of the circuit court to another "in the interest of justice or judicial economy." Administrative Order No. 14, adopted by the Supreme Court pursuant to Amendment 80, requires that the circuit judges of each judicial circuit establish five divisions in each county of the circuit: criminal, civil, juvenile, probate, and domestic relations. Creation of these divisions has no jurisdictional significance. *See* 2001 Reporter's Note accompanying Rule 2.

In the system contemplated by Amendment 80 and Administrative Order No. 14, severance should be employed sparingly and only when multiple claims in a single action are wholly unrelated. If the claims arise from the same transaction or occurrence, a series of transactions or occurrences, or a common nucleus of operative fact, they should not be severed and then transferred to another division of the circuit court for disposition. Severance and transfer in this situation would be at odds with the purpose of Amendment 80, which was designed to eliminate the jurisdictional lines that had forced cases to be divided artificially and litigated separately in different courts. *See, e.g., Hilburn v. First State Bank*, 259 Ark. 569, 535 S.W.2d 810 (1976).

7. Rule 22(b) is amended to read as follows:

(b) A plaintiff who disclaims any interest in the money or property that is the subject of the interpleader action shall, upon depositing the money or property in the registry of the court, be discharged from all liability. The court may make an award of reasonable litigation expenses, including attorneys' fees, to such a plaintiff.

The Reporter's Notes accompanying Rule 22 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The word "trial," which modified "court" in the second sentence of subdivision (b), has been deleted. Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

8. Rule 27 is amended by revising subdivisions (a)(4) and (b) to read as follows:

(a) *Before Action.*

* * *

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in the courts of this state, it may be used in any action involving the same subject matter subsequently brought in a circuit court of this state in accordance with the provisions of Rule 32(a).

(b) *Pending Appeal.* If an appeal has been taken from a judgment of a circuit court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the circuit court for leave to take the depositions, upon the same notice and service thereof as if the same were pending in that court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure of justice, it may make an order allowing the depositions to and may make orders of the character provided for by Rule 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed these rules for depositions taken in actions pending in the circuit court.

The Reporter's Notes accompanying Rule 27 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The reference to chancery courts in subdivision (a)(4) has been deleted in light of Constitutional Amendment 80, which established circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts. Also, the references to "trial court" in subdivision (b) have been changed to "circuit court" or "court."

9. Rule 28(c) is amended to read as follows:

(c) *For Use in Foreign Countries.* A party desiring to take a deposition or have a document or other thing produced for examination in this state, for use in a judicial proceeding in a foreign country, may produce to a judge of the circuit court in the county where the witness or person in possession of the document or thing

to be examined resides or may be found, letter rogatory, appropriately authenticated, authorizing the taking of such deposition or production of such document or thing on notice duly served; whereupon it shall be the duty of the court to issue a subpoena requiring the witness to attend at a specified time and place for examination. In case of failure of the witness to attend or refusal to be sworn or to testify or to produce the document or thing requested, the court may find the witness in contempt.

The Reporter's Notes accompanying Rule 28 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: Subdivision (c) has been amended by deleting the reference in the first sentence to chancery and probate courts. Constitutional Amendment 80 established circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

10. The Reporter's Notes accompanying Rule 38 are amended by adding the following:

Addition to Reporter's Notes, 2001: Article 2, Section 7 of the Constitution of 1874 provides, in part, that "[t]he right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy. . . ." Rule 38 sets out the procedure for asserting the right to a jury trial.

Constitutional Amendment 80, which merged courts of law and equity, did not repeal or modify Article 2, Section 7. As a result of the merger, however, the Supreme Court will be required to determine the parameters of the right to trial by jury in the new system. The possible impact is most clearly seen in cases involving legal issues formerly decided in chancery court under the cleanup doctrine. In this situation, the Supreme Court held that a litigant was not deprived of his or her right to trial by jury because that right is limited to cases that would have been decided "at law" in 1874. By virtue of the cleanup doctrine, which was well-established by 1874, legal issues could be decided by the chancellor without a jury. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986).

In a merged system, the question is whether Article 2, Section 7 requires trial by jury with respect to legal issues which, prior to merger, would have been heard in chancery under the cleanup doctrine. Faced with this question after the merger of law and

equity in the federal courts, the U.S. Supreme Court held that in a case involving both legal and equitable issues, the former will ordinarily be tried first to the jury in order to avoid the preclusive effect of an initial decision by the court on the equitable issues. *See Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962); *Beacon Theatres v. Westover*, 359 U.S. 500 (1958). Federal cases on this point are not binding, because the right to jury trial in state court is governed not by the Seventh Amendment but by state law. *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996); *Colclasure v. Kansas City Life Ins. Co., supra.*

11. Rule 45(f) is amended to read as follows:

(f) *Depositions for Use in Out-of-State Proceedings.* Any party to a proceeding pending in a court of record outside this state may take the deposition of any person who may be found within this state. A party who has filed a notice of deposition upon oral examination in an out-of-state proceeding, which complies with Rule 30(b), may file a certified copy thereof with the circuit clerk of the county in which the deposition is to be taken; whereupon, the clerk shall issue a subpoena in accordance with the notice. All provisions of this rule shall apply to such subpoenas. Any objection shall be heard by a circuit judge of the county in which the deposition is to be taken.

The Reporter's Notes accompanying Rule 45 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: Subdivision (f) has been amended by deleting the reference to chancery judges. Constitutional Amendment 80 established circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

12. Rule 51 is amended by revising the second paragraph to read as follows:

A mere general objection shall not be sufficient to obtain appellate review of the court's action relating to instructions to the jury except as to an instruction directing a verdict or the court's action in declining to do so.

The Reporter's Notes accompanying Rule 51 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The word "trial," which modified "court's" the second paragraph, has been deleted in light of Constitutional Amendment 80, which established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

13. Rule 52 is amended by revising subdivisions (a) and (b)(2) to read as follows:

(a) *Effect.* If requested by a party, in all contested actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of re-view. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous (clearly against the preponderance of the evidence), and due regard shall be given to the opportunity of the circuit court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under these rules.

(b) *Amendment.* (1) * * *

(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 circuit 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, 2001 Amendment: The references to "trial court" in subdivisions (a) and (b)(2) have been replaced with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate probate and chancery courts.

14. Rule 60 is amended by revising subdivisions (h) and (i) to read as follows:

(h) *Premature Judgment.* Rendering judgment prior to the time fixed for filing an answer shall be deemed a clerical misprision. No misprision of the clerk shall be ground for appeal until relief has been sought in the circuit court and action taken there.

(i) *Motion to Vacate or Modify May Be Heard First.* The circuit court may first try and decide upon the grounds for vacating or modifying a judgment before trying or deciding the validity of the defense or cause of action.

The Reporter's Notes accompanying Rule 60 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The references to "trial court" in subdivisions (h) and (i) have been replaced with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

15. Rule 78(d) is amended to read as follows:

(d) *Mandamus and Prohibition.* Upon the filing of petitions for writs of mandamus or prohibition in election matters, it shall be the mandatory duty of the circuit court having jurisdiction to fix and announce a day of court to be held no sooner than two (2) and no longer than seven (7) days thereafter to hear and determine the cause.

The Reporter's Notes accompanying Rule 78 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: Subdivision (d) has been deleting the words "judge or chancellor" and replacing them with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts.

16. Rule 81(a) is amended to reads as follows:

(a) *Applicability in General.* These rules shall apply to all civil proceedings cognizable in the circuit courts of this state except in those instances where a statute which creates a right, remedy or

proceeding specifically provides a different procedure in which event the procedure so specified shall apply.

The Reporter's Notes accompanying Rule 81 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The reference to chancery and probate courts in subdivision (a) has been deleted in light of Constitutional Amendment 80, which abolished these courts and established circuit courts as the "trial courts of original jurisdiction" in the state.

17. Rule 82 is amended to reads as follows:

These rules shall not be construed to extend or limit the jurisdiction of circuit courts in this state or the venue of actions therein.

The Reporter's Notes accompanying Rule 82 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The reference to chancery and probate courts has been deleted in light of Constitutional Amendment 80, which abolished these courts and established circuit courts as the "trial courts of original jurisdiction" in the state.

B. Inferior Court Rules

Rule 1 is amended to read as follows:

These rules shall govern the procedure in all civil actions in the inferior courts of this state. They shall apply in the small claims division of district courts to the extent that they do not conflict with Small Claims Procedure Act, Ark. Code Ann. §§ 16-17-601-16-17-614.

The Reporter's Notes accompanying Rule 1 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment. Act 1693 of 2001 changed the name of municipal courts to district courts, and the second sentence of this rule has been amended accordingly. Courts of common pleas, which were previously subject to these rules, were abolished by Act 915 of 2001.

Amendments to Rules with Changes Illustrated

[not to be published in Official Rules]

A. Rules of Civil Procedure

1. Rule 1 is amended by deleting the comma and the phrase "chancery, and probate" after the word "circuit" in the first sentence. As amended, the rule reads as follows:

These rules shall govern the procedure in the circuit~~, chancery, and probate~~ courts in all suits or actions of a civil nature with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

2. Rule 2 is amended by deleting the second sentence. As amended, the rule reads as follows:

There shall be one form of action to be known as "civil action." ~~Actions in equity shall be brought in the Chancery Court and actions at law shall be brought in the Circuit Court.~~

3. Rule 3 is amended by revising the title to read "Commencement of Action - 'Clerk' Defined"; by designating the existing sentence as subdivision (a); by deleting the word "proper" in that sentence; and by adding the following as subdivision (b): "The term 'clerk of the court' as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(a)(2)(B)." As amended, the rule reads as follows:

Rule 3. COMMENCEMENT OF ACTION - "CLERK" DEFINED

(a) A civil action is commenced by filing a complaint with the clerk of the ~~proper~~ court who shall note thereon the date and precise time of filing.

(b) The term "clerk of the court" as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(a)(2)(B).

[**Transitional Provision.** For the period July 1, 2001 through December 31, 2001, probate matters shall continue to be filed with

the same clerk where such matters were filed immediately prior to July 1, 2001.]

4. The first line of the caption of the summons form accompanying Rule 4 is amended by inserting the word "Circuit" in the blank between the words "the" and "court" and by inserting the word "County" before the comma following the second blank. As amended, the first line reads as follows:

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

The explanatory paragraph accompanying the form is amended by deleting the last sentence and by replacing the first sentence with the following: "The Supreme Court of Arkansas has adopted the following form of summons for use in all cases in which personal service is to be had pursuant to Rule 4(c), (d) and (e) of the Arkansas Rules of Civil Procedure" As amended, the paragraph reads as follows:

Official Form of Summons

The Supreme Court of Arkansas has adopted the following form of summons ~~by per curiam Feb. 1, 1982: "The Court, pursuant to Act 38 of 1973 and its constitutional and inherent power to regulate procedure in the courts hereby adopts the following as a recommended form of summons~~ for use in ~~the various courts of the State. Use of this form is recommended for~~ all cases in which personal service is to be had pursuant to Rule 4(c), (d) and (e) of the Arkansas Rules of Civil Procedure~~, Vol. 3A (Repl. 1979)~~. The form may be modified as needed in special circumstances. Additional notices, if required, should be inserted in the appropriate space. This form is not for use in cases of constructive service pursuant to Rule 4(f). The adoption of this form is in compliance with Rule 4(b) and does not modify or amend any part of that rule. ~~Compliance will be mandatory effective July 1, 1982.~~

5. Rule 12 is amended by inserting a period after the word "action" in the first sentence subdivision (h)(3) and by deleting the remainder of that sentence. As amended, the subdivision reads as follows:

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. ~~or direct that the case be transferred to the proper court.~~ Upon a determination that venue is improper, the

court shall dismiss the action or direct that it be transferred to a county where venue would be proper, with the plaintiff having an election if the action could be maintained in more than one county.

6. Rule 18 is amended by inserting the phrase "legal or equitable" between the words "claims" and "as" in subdivision (a) and by adding commas before and after that phrase; by replacing the word "he" with "the party" in that subdivision; and by replacing the only sentence in subdivision (b) with the following: "(1) Any claim against a party may be severed and proceeded with separately. (2) If the court determines that the action, or a particular claim, should in the interest of justice or judicial economy be heard in another division, the court may transfer it to that division." As amended, these subdivisions read as follows:

(a) *Joinder of Claims.* A party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or alternate claims, as many claims, legal or equitable, as ~~he~~ the party may have against an opposing party, provided that nothing herein shall affect the obligation of a party under Rule 13(a).

(b) *Severance and Transfer.* ~~The trial court may make appropriate orders affecting severance of claims and may transfer claims between courts of law and equity on appropriate jurisdictional grounds.~~ (1) Any claim against a party may be severed and proceeded with separately. (2) If the court determines that the action, or a particular claim, should in the interest of justice or judicial economy be heard in another division, the court may transfer it to that division.

7. Rule 22 is amended by deleting the word "trial" in the second sentence of subdivision (b). As amended, the subdivision reads as follows:

(b) A plaintiff who disclaims any interest in the money or property that is the subject of the interpleader action shall, upon depositing the money or property in the registry of the court, be discharged from all liability. The ~~trial~~ court may make an award of reasonable litigation expenses, including attorneys' fees, to such a plaintiff.

8. Rule 27 is amended by deleting the words "or chancery" after the word "circuit" in subdivision (a)(4); by replacing the term "trial court" in the first clause of the first sentence of subdivision (b) with "circuit court"; by deleting the word "trial" elsewhere in the that sentence; by replacing the term "trial court" in the first clause of

the second sentence of subdivision (b) with "circuit court"; by deleting the words "the trial" in the last clause of that sentence; and by replacing the term "trial court" in the last sentence of subdivision (b) with "circuit court." As amended, these provisions read as follows:

(a) *Before Action.*

* * *

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in the courts of this state, it may be used in any action involving the same subject matter subsequently brought in a circuit ~~or chancery~~ court of this state in accordance with the provisions of Rule 32(a).

(b) *Pending Appeal.* If an appeal has been taken from a judgment of a ~~trial~~ circuit court or before the taking of an appeal if the time therefor has not expired, the ~~trial~~ court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the ~~trial~~ court. In such case the party who desires to perpetuate the testimony may make a motion in the ~~trial~~ circuit court for leave to take the depositions, upon the same notice and service thereof as if the same were pending in ~~the trial~~ that court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure of justice, it may make an order allowing the depositions to and may make orders of the character provided for by Rule 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed these rules for depositions taken in actions pending in the ~~trial~~ circuit court.

9. Rule 28 is amended by deleting the comma and the phrase "chancery or probate" after the word "circuit" in the first sentence of subdivision (c). As amended, the subdivision reads as follows:

(c) *For Use in Foreign Countries.* A party desiring to take a deposition or have a document or other thing produced for examination in this state, for use in a judicial proceeding in a foreign country, may produce to a judge of the circuit~~, chancery or probate~~ court in the county where the witness or person in possession of

the document or thing to be examined resides or may be found, letter rogatory, appropriately authenticated, authorizing the taking of such deposition or production of such document or thing on notice duly served; whereupon it shall be the duty of the court to issue a subpoena requiring the witness to attend at a specified time and place for examination. In case of failure of the witness to attend or refusal to be sworn or to testify or to produce the document or thing requested, the court may find the witness in contempt.

10. [n/a]

11. Rule 45 by deleting the words "or chancery" in the last sentence of subdivision (f). As amended, the subdivision reads as follows:

(f) *Depositions for Use in Out-of-State Proceedings.* Any party to a proceeding pending in a court of record outside this state may take the deposition of any person who may be found within this state. A party who has filed a notice of deposition upon oral examination in an out-of-state proceeding, which complies with Rule 30(b), may file a certified copy thereof with the circuit clerk of the county in which the deposition is to be taken; whereupon, the clerk shall issue a subpoena in accordance with the notice. All provisions of this rule shall apply to such subpoenas. Any objection shall be heard by a circuit ~~or chancery~~ judge of the county in which the deposition is to be taken.

12. Rule 51 is amended by deleting the word "trial" in the second paragraph. As amended, this paragraph reads as follows:

A mere general objection shall not be sufficient to obtain appellate review of the ~~trial~~ court's action relating to instructions to the jury except as to an instruction directing a verdict or the court's action in declining to do so.

13. Rule 52 is amended by replacing the term "trial court" in subdivisions (a) and (b)(2) with "circuit court." As amended, these subdivisions read as follows:

(a) *Effect.* If requested by a party, in all contested actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of

re-view. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous (clearly against the preponderance of the evidence), and due regard shall be given to the opportunity of the ~~trial~~ circuit court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under these rules.

(b) *Amendment.* (1) * * *

(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~~ circuit court an objection to such findings or has made a motion to amend them or a motion for judgment.

14. Rule 60 is amended by replacing the term "trial court" in subdivisions (h) and (i) with "circuit court." As amended, these subdivisions read as follows:

(h) *Premature Judgment.* Rendering judgment prior to the time fixed for filing an answer shall be deemed a clerical misprision. No misprision of the clerk shall be ground for appeal until relief has been sought in the ~~trial~~ circuit court and action taken there.

(i) *Motion to Vacate or Modify May Be Heard First.* The ~~trial~~ circuit court may first try and decide upon the grounds for vacating or modifying a judgment before trying or deciding the validity of the defense or cause of action.

15. Rule 78 is amended by replacing the phrase "judge or chancellor" in subdivision (d) with "circuit court." As amended, the subdivision reads as follows:

(d) *Mandamus and Prohibition.* Upon the filing of petitions for writs of mandamus or prohibition in election matters, it shall be the mandatory duty of the circuit court ~~judge or chancellor~~ having jurisdiction to fix and announce a day of court to be held no sooner than two (2) and no longer than seven (7) days thereafter to hear and determine the cause.

16. Rule 81is amended by deleting the comma and the phrase "chancery, and probate" after the word "circuit" in subdivision (a). As amended, the subdivision reads as follows:

(a) *Applicability in General.* These rules shall apply to all civil proceedings cognizable in the circuit~~, chancery, and probate~~ courts of this state except in those instances where a statute which creates a right, remedy or proceeding specifically provides a different procedure in which event the procedure so specified shall apply.

17. Rule 82 is amended by deleting the comma and the phrase "chancery, and probate" after the word "circuit." As amended, the rule reads as follows:

These rules shall not be construed to extend or limit the jurisdiction of circuit~~, chancery, and probate~~ courts in this state or the venue of actions therein.

B. Inferior Court Rules

Rule 1 is amended by replacing the word "municipal" in the second sentence with "district." As amended, the rule reads as follows:

These rules shall govern the procedure in all civil actions in the inferior courts of this state. They shall apply in the small claims division of ~~municipal~~ district courts to the extent that they do not conflict with Small Claims Procedure Act, Ark. Code Ann. §§ 16-17-601-16-17-614.

IN RE: MODIFICATION of the ABSTRACTING SYSTEM — AMENDMENTS to SUPREME COURT RULES 2-3, 4-2, 4-3, AND 4-4

Supreme Court of Arkansas
Delivered May 31, 2001

PER CURIAM. Today, we announce significant changes with regard to briefs and the record on appeal. Over a year ago,

our Committee on Civil Practice submitted a proposal to replace abstracting the record with an appendix system. Spurred by the Committee's work, an alternative proposal to the wholesale replacement of the abstracting system was crafted by members of the appellate courts. Both proposals were published for comment on January 4, 2001. Many comments were submitted, and we thank all who took the time to comment on the issues.

The recurring theme in the comments and at the heart of the Committee's proposal was the need for appeals to be decided on the merits. We agree and have addressed this concern in amending Rule 4-2(b)(3). Appeals will no longer be affirmed because of the insufficiency of the abstract without the appellant first having any opportunity to cure the deficiencies. The so-called "affirmance rule" is being essentially eliminated, except in the rarest circumstance where the appellant refuses or fails to comply after given the opportunity to cure a deficient abstract, addendum, and brief. A second issue was the contention that abstracting is behind the times and wasteful of attorney's time and client's money. With this contention, we cannot agree. It is essential for the appellate court to know the facts underlying the legal arguments in a brief. The appellate bench feels strongly that abstracting of testimony is beneficial to the judges' having confidence of their grasp of the record to facilitate a prompt and fair decision. In our view, the abstracting of testimony serves the Court well and is not an antiquated process. We know the judges benefit from it, and we believe that the time expended by attorneys is rewarded when writing the argument portion of the brief. Consequently, the abstracting of testimony will continue and the appendix system is not being adopted.

However, we are persuaded that the abstracting of pleadings, exhibits, and other written documents is not the best means to understand such materials. A better approach is to review the relevant papers themselves. In this case, abstracting is an unnecessary expenditure of time and money. In connection with the reduction of the abstract, the Addendum is being expanded as set out in Rule 4-2(a)(7) to include not only the judgment, order, or decree appealed from, but also the relevant pleadings and other written documents. The abstract will be limited to relevant testimony and discussions.

Other changes include that the contents of the abstract and Addendum be included in the Table of Contents of the brief [R. 4-2(a)(1)]; the statement of the case is being moved to immediately precede the argument portion of the brief [4-2(a)(6)(A)]; and there must be references to the abstract and Addendum in the statement

of the case and the argument. We encourage all appellate attorneys to read Rule 4-2 and the other rules carefully to become familiar with all the changes being made at this time.

In a sense, these changes are interim in nature because the rapid advancements in technology will eventually permit the electronic filings of record and briefs, and some of the issues with which we are struggling will disappear. But we believe the changes we announce today — an expanded Addendum, reduced abstract, and essentially the elimination of the "affirmance rule" — will benefit the appellate bench and bar and will improve the appellate process. We owe a great debt to the Committee for providing the impetus to bring these issues to the table.

Accordingly, we hereby amend Supreme Court Rules 2-3, 4-2, 4-3, and 4-4 and republish these rules as set out below. These amendments will be effective for cases in which the record is lodged in the Supreme Court or Court of Appeals on or after September 1, 2001. The Court is cognizant that the modification of the abstracting system as well as the other changes in briefing will require a period of adjustment. Thus, through March 1, 2002, the Clerk of the Court should be liberal in granting extensions pursuant to Rules 4-3(k) and 4-4(f) to enable parties to remedy problems with their briefs arising from the changes which we announce today.

Rule 4-2. Contents of briefs.

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

(1) *Table of contents.* Each brief must include a table of contents. It should reference the page number for the beginning of each of the major sections identified in Rule 4-2(a)(2)—(7). The table of contents also should include references to the abstract listing the name of each witness with the page number at which the testimony begins, and references to the Addendum listing each document with the page number at which it appears.

(2) *Informational statement and jurisdictional statement.* The Informational Statement and Jurisdictional Statement required by Supreme Court Rule 1-2(c).

(3) *Points on appeal.* The appellant shall list and separately number, concisely and without argument, the points relied upon for a reversal of the judgment or decree. The appellee will follow the

same sequence and arrangement of points as contained in the appellant's brief and may then state additional points. Either party may insert under any point not more than two citations which either considers to be the principal authorities on that point.

(4) *Table of authorities.* The table of authorities shall be an alphabetical listing of authorities with a designation of the page number of the brief on which the authority appears. The authorities shall be grouped as follows:

(A) Cases
(B) Statutes/rules
(C) Books and treatises
(D) Miscellaneous

(5) *Abstract.* The appellant's abstract or abridgment of the transcript should consist of an impartial condensation, without comment or emphasis, of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision. Depositions shall be abstracted in a similar fashion. For ease of abstracting, the court reporter shall provide the attorney, at cost, a copy of the transcript in an electronic form, *e.g.*, a computer diskette, so that material may be electronically copied and placed in the abstract. (If the court reporter does not have the requisite equipment, then this requirement shall not apply.) Pleadings and documentary evidence should not be abstracted. On a second or subsequent appeal, the abstract shall include a condensation of all pertinent portions of the transcript filed on any prior appeal. Not more than one page of the transcript shall in any instance be abstracted without a page reference to the transcript. In the abstracting of testimony, the first person (*i.e.*, "I") rather than the third person (*i.e.*, "He, She") shall be used. The Clerk will refuse to accept a brief if the testimony is not abstracted in the first person or if the abstract does not contain the required references to the record. Whenever a map, plat, photograph, or other similar exhibit must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by photography or other process and include it in the Addendum with a reference in the abstract to the page in the Addendum where the exhibit appears unless this requirement is shown to be impracticable and is waived by the Court upon motion.

(6) *Argument.* (A) First, the appellant's brief shall contain a concise statement of the case without argument. This statement shall be denoted as the "Statement of the Case," shall ordinarily not exceed two pages in length, and shall not exceed five pages without leave of the Court. The pages of the statement of the case shall appear immediately preceding the argument and are not counted against the page limits of the Argument set out in Rules 4-1(b) and 4-3(e). The statement of the case should be sufficient to enable the Court to understand the nature of the case, the general fact situation, the action taken by the trial court, and must include page references to the abstract and Addendum. The Clerk will refuse to accept a brief if the required references to the abstract and Addendum are not included. The appellee's brief need not contain a statement of the case unless the appellant's statement is deemed to be controverted or insufficient.

(B) Second, arguments shall be presented under subheadings numbered to correspond to the outline of points to be relied upon. Citations of decisions of the Court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible. Reference in the argument portion of the parties' briefs to material found in the abstract and Addendum shall be followed by a reference to the page number of the abstract or Addendum at which such material may be found. The number of pages for argument shall comply with Rule 4-1(b).

(7) *Addendum.* Following the signature and certificate of service, the appellant's brief shall contain an Addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, letter opinion, or Workers' Compensation Commission opinion from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal. In the case of lengthy pleadings or documents, only relevant excerpts in context need to be included in the Addendum. Depending upon the issues on appeal, the Addendum may include such materials as the following: a contract, will, lease, or any other document; proffers of evidence; jury instructions or proffered jury instructions; the court's findings and conclusions of law; orders; administrative law judge's opinion; discovery documents; requests for admissions; and relevant pleadings or documents essential to an understanding of the Court's jurisdiction on appeal such as the notice of appeal. The Addendum shall include an index of its contents and shall also be

clear where any item appearing in the Addendum can be found in the record. The appellee may prepare a supplemental Addendum if material on which the appellee relies is not in the appellant's Addendum. Pursuant to subsection (c) below, the Clerk will refuse to accept an appellant's brief if its Addendum does not contain the required order, judgment, decree, ruling, letter opinion, or administrative law judge's opinion. The appellee's brief shall only contain an Addendum to include an item which the appellant's Addendum fails to include.

(8) *Cover for briefs.* On the cover of every brief there should appear the number and style of the case in the Supreme Court or Court of Appeals, a designation of the court from which the appeal is taken, and the name of its presiding judge, the title of the brief (*e.g.*, "Abstract, Addendum, and Brief for Appellant"), and the name or names of individual counsel who prepared the brief, including their addresses and telephone numbers.

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

(1) If the appellee considers the appellant's abstract or Addendum to be defective, the appellee's brief should call the deficiencies to the Court's attention and may, at the appellee's option, contain a supplemental abstract or Addendum. When the case is considered on its merits, the Court may upon motion impose or withhold costs, including attorney fees, to compensate either party for the other party's noncompliance with this Rule. In seeking an award of costs under this paragraph, counsel must submit a statement showing the cost of the supplemental abstract or Addendum and a certificate of counsel showing the amount of time that was devoted to the preparation of the supplemental abstract or Addendum.

(2) If the case has not yet been submitted to the Court for decision, an appellant may file a motion to supplement the abstract or Addendum and file a substituted brief. Subject to the Court's discretion, the Court will routinely grant such a motion and give the appellant fifteen days within which to file the substituted abstract, Addendum, and brief. If the appellee has already filed its brief, upon the filing of appellant's substituted abstract, Addendum, and brief, the appellee will be afforded an opportunity to revise or supplement its brief, at the expense of the appellant or the appellant's counsel, as the Court may, upon motion, direct.

(3) Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2(a)(5) and (7). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule.

(c) *Non-compliance.* Briefs not in compliance with the format required by this Rule shall not be accepted for filing by the Clerk.

Rule 2-3. Petitions for rehearing.

(a) *Filing and service.* A petition for rehearing, a brief in support of the petition, and evidence of service of the petition, brief, and a certificate of merit stating that the petition is not filed for the purpose of delay, shall be filed within 18 days from the date of decision.

(b) *Response.* The respondent may file a brief on the following Monday (in the Supreme Court) or Wednesday (in the Court of Appeals) or within seven (7) days from the filing of the petition for rehearing, whichever last occurs, or may, on or before that time, obtain an extension of one (1) week upon written motion to the Court.

(c) *Additional time.* Neither party will be granted further time than as indicated above, except upon written motion to the Court and a showing of illness of counsel or other unavoidable casualty.

(d) *Number of copies to be filed.* Eight copies of the petition must be filed, and a copy must be served upon opposing counsel.

(e) *Page length.* In all cases, both civil and criminal, the petition and supporting brief, if any, including the style of the case and the

certificate of counsel, shall not exceed ten 8" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a), except that if the petition and supporting argument are not more than three pages, they need not be bound as set forth in Rule 4-1(a).

(f) *Ground(s) stated.* The petition must specifically state the ground(s) relied upon.

(g) *Entire case not to be reargued.* The petition for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain. Counsel are expected to argue the case fully in the original briefs, and the brief on rehearing is not intended to afford an opportunity for a mere repetition of the argument already considered by the Court.

(h) *Previous reference in abstract or Addendum.* In no case will a rehearing petition be granted when it is based upon any fact thought to have been overlooked by the Court, unless reference has been clearly made to it in the abstract of the transcript or the Addendum of the record prescribed by Rules 4-2 and 4-3.

(i) *No oral argument.* Oral argument will not be permitted on a petition for rehearing.

(j) *Limited to one petition.* A party may submit only one petition for rehearing.

(k) *New counsel.* Litigants will not be permitted to substitute new counsel for the purpose of filing a petition for rehearing. Additional counsel may, however, participate in a petition for rehearing, or in opposition to the petition, by joining with the original counsel in the petition and brief, or by obtaining permission of the Court by motion.

Rule 4-3. Briefs in criminal cases.

(a) *Briefs in chief — When the state is the appellee.* In criminal cases in which the State is the appellee and in which appellant is not indigent, the appellant shall have 40 days from the date the transcript is lodged to file 17 copies of the brief with the Clerk. Upon the filing of the brief, the appellant shall submit proof of service of two additional copies of the brief upon the Attorney General and one copy upon the circuit court.

(b) *Briefs in chief — When the state is the appellant.* In criminal cases in which the State is the appellant, the procedure shall be the same as in subsection (a) except the State shall file only 17 copies of the brief with the Clerk and furnish evidence of service upon opposing counsel and the circuit court.

(c) *Appellee's brief.* The appellee shall have 30 days from the filing of the appellant's brief to file 17 copies of the brief with the Clerk and such further abstract and Addendum as may be necessary to a fair determination of the case. Proof of service upon opposing counsel and the circuit court is required.

(d) *Reply brief.* The appellant shall have 15 days from the date that the appellee's brief is filed to file 17 copies of the reply brief and furnish evidence of service upon the opposing counsel and the circuit court.

(e) *Page limits on briefs.* The argument portion of the appellant's and the appellee's briefs shall not exceed 25 double-spaced typewritten pages including the conclusion, if any, with a 15 typewritten page limit upon the reply brief, except that if either limitation is shown to be too stringent in a particular case, and there has been a good faith effort to comply with the page limits, it may be waived on motion.

(f) *Misdemeanor cases subject to dismissal.* In misdemeanor cases, failure of the appellant to file a brief within the time limit renders the case subject to dismissal as in civil cases pursuant to Rule 4-5.

(g) *Appellant's duty to abstract record.* In all felony cases it is the duty of the appellant, whether represented by retained counsel, appointed counsel or a public defender, or acting pro se, to abstract such parts of the transcript and to include in the Addendum such parts of the record, but only such parts, as are material to the points to be argued in the appellant's brief.

(h) *Court's review of errors in death or life imprisonment cases.* When the sentence is death or life imprisonment, the Court must review all errors prejudicial to the appellant in accordance with Ark. Code Ann. Sec. 16-91-113(a). To make that review possible, the appellant must abstract, or include in the Addendum, as appropriate, all rulings adverse to him or her made by the circuit court on all objections, motions and requests made by either party, together with such parts of the record as are needed for an understanding of each adverse ruling. The Attorney General will make certain and certify that all of those objections have been abstracted, or included

in the Addendum, and will brief all points argued by the appellant and any other points that appear to involve prejudicial error.

(i) *Preparation of briefs for indigent appellants.* When an indigent appellant is represented by appointed counsel or a public defender, the attorney may have the briefs reproduced by submitting one double-spaced typewritten manuscript to the Attorney General and one to the Clerk not later than the due date of the brief. In such instances, the time for the filing of the Attorney General's brief is extended by five days.

(j) *Withdrawal of counsel.*

(1) Any motion by counsel for a defendant in a criminal or a juvenile delinquency case for permission to withdraw made after notice of appeal has been given shall be addressed to the Court, shall contain a statement of the reason for the request and shall be served upon the defendant personally by first-class mail. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court.

(2) The Clerk shall furnish the appellant with a copy of the appellant's counsel's brief, and advise the appellant that he or she has 30 days within which to raise any points that he or she chooses, and that this may be done in typewritten or hand printed form and accompanied by an affidavit that no paid assistance from any inmate of the Department of Correction or of any other place of incarceration has been received in the preparation of the response.

(3) The Clerk shall serve all such responses by an appellant on the Attorney General, who shall file a brief for the State, pursuant to sections (e) and (i) of this Rule, within 30 days after such service and serve a copy on the appellant, as well as on the appellant's counsel.

(4) After a reply brief has been filed, or after the time for filing such a brief has expired, the motion for withdrawal shall be submitted to the Court as other motions are submitted. If, upon consideration of the motion, it shall appear to the Court that the judgment

of the circuit court should be affirmed or reversed, the Court may take such action on its own motion, without any supporting opinion.

(k) *Continuances and extensions of time.* (1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) days upon oral request. If such an extension is granted, no further extension shall be entertained except by the Court upon a written motion showing good cause.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time (except in (k)(1)) for the filing of any brief must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Eight copies of the motion are required. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

Rule 4-4. Filing and service of briefs in civil cases.

(a) *Appellant's brief.* In all civil cases the appellant shall, within 40 days of lodging the record, file 17 copies of the appellant's brief with the Clerk and furnish evidence of service upon opposing counsel and the trial court. Each copy of the appellant's brief shall contain every item required by Rule 4-2. Unemployment compensation cases appealed from the Arkansas Board of Review may be submitted to the Court of Appeals for decision as soon as the transcript is filed, unless the petition for review shows it is filed by an attorney, or notice of intent to file a brief for the appellant is filed with the Clerk prior to the filing of the transcript.

(b) *Appellee's brief — Cross-appellant's brief.* The appellee shall file 17 copies of the appellee's brief, and of any further abstract or Addendum thought necessary, within 30 days after the appellant's brief is filed, and furnish evidence of service upon opposing counsel and the trial court. If the appellee's brief has a supplemental abstract or Addendum, it shall be compiled in accordance with Rule 4-2 and included in or with each copy of the brief. This Rule shall apply to cross-appellants. If the cross-appellant is also the appellee, the two separate arguments may be contained in one brief, but each argument is limited to 25 pages.

(c) *Reply brief — Cross-appellant's reply brief.* The appellant may file 17 copies of a reply brief within 15 days after the appellee's brief is filed and shall furnish evidence of service upon opposing counsel and the trial court. This Rule shall apply to the cross-appellant's

reply brief except it must be filed within 15 days after the cross-appellee's brief is filed.

(d) *Evidence of service.* Briefs tendered to the Clerk will not be filed unless evidence of service upon opposing counsel and the trial court has been furnished to the Clerk. Such evidence may be in the form of a letter signed by counsel, naming the attorney or attorneys and the trial court to whom copies of the brief have been mailed or delivered.

(e) *Submission.* The case shall be subject to call on the next Thursday (in the Supreme Court) or Wednesday (in the Court of Appeals) after the expiration of the time allowed for filing the reply brief of the appellant or the cross-appellant.

(f) *Continuances and extensions of time.* (1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) days upon oral request. If such an extension is granted, no further extension shall be entertained except by the Court upon a written motion showing good cause.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time (except in (f)(1)) for the filing of any brief must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Eight copies of the motion are required. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

IN RE: IMPLEMENTATION of AMENDMENT 80: AMENDMENTS to RULES of APPELLATE PROCEDURE—CIVIL and RULES of the SUPREME COURT and COURT of APPEALS

Supreme Court of Arkansas
Delivered June 7, 2001

PER CURIAM. In response to the passage of Amendment 80, our Committee on Civil Practice has recommended

changes to the Rules of Appellate Procedure—Civil and the Rules of the Supreme Court and Court of Appeals. We approve the Committee's recommendations and thank them for another excellent job. We hereby amend and republish the rules, or subdivisions thereof, as set out in this order. The rules affected are the following:

Rules of Appellate Procedure—Civil: 2, 3, 4, 5, 6, 7, and 8;

Rules of the Supreme Court and Court of Appeals: 1-2, 1-5, 3-1, 3-2, 3-4, 3 -5, 3-6, 4-2, 4-4, 5-3, 6-1, 6-3, 6-5, and 6-7.

These changes shall be effective July 1, 2001.

At the conclusion of the rules changes, there appears a line-in/line-out version of the rules for the convenience of the reader, which illustrates the changes.

Implementation of Amendment 80: Amendments to Rules of Appellate Procedure—Civil and Rules of the Supreme Court and Court of Appeals

A. Rules of Appellate Procedure-Civil

1. Rule 2 is amended by revising paragraphs (1), (11), (12) of subdivision (a), the introductory sentence of subdivision (c), and paragraph (2) of subdivision (c) to read as follows:

(a) An appeal may be taken from a circuit court to the Arkansas Supreme Court from:

1. A final judgment or decree entered by the circuit court;

* * *

11. An order or other form of decision which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in a case involving multiple claims, multiple parties, or both, if the circuit court has directed entry of a final judgment as to one or more but fewer than all of the claims or parties and has made an express determination, supported by specific factual findings, that there is no just reason for delay, and has executed the certificate required by Rule 54(b) of the Rules of Civil Procedure; and

12. An order appealable pursuant to any statute in effect on July 1, 1979, including Ark. Code Ann. § 16-108-219 (an order denying a motion to compel arbitration or granting a motion to stay arbitration, as well as certain other orders regarding arbitration) and § 28-1-116 (all orders in probate cases, except an order removing a fiduciary for failure to give a new bond or render an accounting required by the court or an order appointing a special administrator).

* * *

(c) Appeals in juvenile cases shall be made in the same time and manner provided for appeals from circuit court.

* * *

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

The Reporter's Notes accompanying Rule 2 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The reference to chancery and probate courts in the introductory clause of Rule 2(a) has been deleted in light of Constitutional Amendment 80, the new judicial article approved by the voters in November 2000. That amendment established the circuit courts as the state's "trial courts of original jurisdiction" and abolished the separate chancery and probate courts. For the same reason, the references to "trial court" in subdivisions (a)(1) and (a)(11) have been replaced with "circuit court."

The term "probate court" has been deleted from subdivision (a)(12) and the provision rewritten to refer to "probate cases." Similarly, the reference to "juvenile court" in the introductory sentence of subdivision (c) has been deleted and the sentence revised to refer to "juvenile cases." In subdivision (c)(2), the reference to "juvenile court" has been changed to "circuit court."

2. Rule 3 is amended by revising subdivisions (b) and (d) to read as follows:

(b) *How taken.* An appeal shall be taken by filing a notice of appeal with the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken. Failure of the

appellant or cross-appellant to take any further steps to secure review of the judgment or decree appealed from shall not affect the validity of the appeal or cross-appeal, but shall be ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or cross-appeal. If, however, the record on appeal has not been filed pursuant to Rule 5 of these rules, the circuit court in which the notice of appeal was filed may dismiss the appeal or cross-appeal upon petition of all parties to the appeal or cross-appeal accompanied by a joint stipulation that the appeal or cross-appeal is to be dismissed.

(d) *Cross-appeals.* A cross-appeal may be taken by filing a notice of cross-appeal with the clerk of the circuit court that entered the judgment, decree or order being appealed.

The Reporter's Notes accompanying Rule 3 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: In the third sentence of subdivision (b), the term "trial court" has been changed to "circuit court." Under Constitutional Amendment 80, the circuit courts are the "trial courts of original jurisdiction" in the state. Also, the references to the "clerk of the court" in subdivisions (b) and (d) have been replaced with "clerk of the circuit court." In most cases, the circuit clerk serves as clerk of the circuit court and the notice of appeal will be filed in the circuit clerk's office. However, in some counties the county clerk is clerk of the circuit court with respect to probate matters. This division of labor is discussed in the 2001 Reporter's Note accompanying Rule 3 of the Rules of Civil Procedure.

3. Rule 4 is amended by revising subdivisions (a), (b)(1),(b)(3), and (d) to read as follows:

(a) *Time for filing notice of appeal.* Except as otherwise provided in subdivisions (b) and (c) 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 circuit 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 circuit 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), a motion for a new trial under Rule 59(a), or any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment, 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 circuit 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) * * *

(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 circuit 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.

(d) *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 circuit 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, 2001 Amendment: The references to "trial court" in subdivisions (a), (b)(1), and (b)(3) have been replaced with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts. Also, the reference to the "clerk of the court" in subdivision (d) has been replaced with "clerk of the circuit court." In most cases, the circuit clerk serves as clerk of the circuit court. However, in some counties the county clerk handles probate matters. This

division of labor is discussed in the 2001 Reporter's Note accompanying Rule 3 of the Rules of Civil Procedure.

4. Rule 5 is amended to read as follows:

(a) *When filed.* The record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court as hereinafter provided. When, however, an appeal is taken from an interlocutory order under Rule 2(a)(6) or (7), the record must be filed with the clerk of the Supreme Court within thirty (30) days from the entry of such order.

(b) *Extension of time.* In cases where there has been designated for inclusion any evidence or proceeding at the trial or hearing which was stenographically reported, the circuit court, upon finding that a reporter's transcript of such evidence or proceeding has been ordered by appellant, and upon a further finding that an extension is necessary for the inclusion in the record of evidence or proceedings stenographically reported, may extend the time for filing the record on appeal, but the order of extension must be entered before the expiration of the period for filing as originally prescribed or extended by a previous order. In no event shall the time be extended more than seven (7) months from the date of the entry of the judgment, decree or order, or from the date on which a timely postjudgment motion under Rule 4(b) is deemed to have been disposed of under Rule 4(c), whichever is later. An appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment, decree and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from. Counsel seeking an extension shall give to opposing counsel notice of the application for an extension of time.

(c) *Partial record.* Prior to the time the complete record on appeal is filed with the clerk of the Arkansas Supreme Court as provided in this rule, any party may docket the appeal to make a motion for dismissal or for any other intermediate order by filing a partial record with the clerk. At the request of the moving party, the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken shall certify the portion of the record designated by that party as being a true and correct copy. It shall be the responsibility of the moving party to transmit the certified partial record to the clerk of the Arkansas Supreme Court.

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

Addition to Reporter's Notes, 2001 Amendment: The term "trial court" in subdivisions (a), (b), and (c) has been replaced with "circuit court." Constitutional Amendment 80 established the circuit courts as the "trial courts of original jurisdiction" in the state and abolished the separate chancery and probate courts. Subdivision (c) has been further revised by specifying that certification of the partial record shall be made by the clerk of "the circuit court that entered the judgment, decree, or order from which the appeal is taken." In most cases, the circuit clerk serves as clerk of the circuit court. However, in some counties the county clerk handles probate matters. This division of labor is discussed in the 2001 Reporter's Note accompanying Rule 3 of the Rules of Civil Procedure.

5. Rule 6 is revising subdivisions (c), (d), and (e) to read as follows:

(c) *Record to be abbreviated.* All matters not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties. Where parties in good faith abbreviate the record by agreement or without objection from opposing parties, the appellate court shall not affirm or dismiss the appeal on account of any deficiency in the record without notice to appellant and reasonable opportunity to supply the deficiency. Where the record has been abbreviated by agreement or without objection from opposing parties, no presumption shall be indulged that the findings of the circuit court are supported by any matter omitted from the record.

(d) *Statement of the evidence or proceedings when no report was made or the transcript is unavailable.* If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best means available, including his recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments thereto within ten (10) days after service

upon him. Thereupon the statement and any objections or proposed amendments shall be submitted to the circuit court for settlement and approval and as settled and approved shall be included in the record on appeal by the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken.

(e) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the circuit court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the circuit court, either before or after the record is transmitted to the appellate court, or the appellate court on proper suggestion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the appellate court.

The Reporter's Notes accompanying Rule 6 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The references to "trial court" in subdivisions (c), (d), and (e) have been replaced with "circuit court" in light of Constitutional Amendment 80, which established the circuit courts as the "trial courts of original jurisdiction" in the state. Subdivision (d) has been further revised by specifying that certification of the record shall be made by the clerk of "the circuit court that entered the judgment, decree, or order from which the appeal is taken." In most cases, the circuit clerk serves as clerk of the circuit court. However, in some counties the county clerk handles probate matters. This division of labor is discussed in the 2001 Reporter's Note accompanying Rule 3 of the Rules of Civil Procedure.

6. Rule 7 is amended to read as follows:

(a) *Certification.* The clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken shall certify the record as being a true and correct copy of the record as designated by the parties.

(b) *Transmission.* After the record has been duly certified by the clerk, it shall be the responsibility of the appellant to transmit such record to the clerk of the appellate court for filing and docketing.

The Reporter's Notes accompanying Rule 7 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The reference to the "clerk of the trial court" in subdivision (a) has been replaced with "clerk the circuit court that entered the judgment, decree, or order from which the appeal is taken." In subdivision (b), the phrase "the clerk of the trial court" has been reduced to simply "the clerk." In most cases, the circuit clerk serves as clerk of the circuit court. However, in some counties the county clerk handles probate matters. This division of labor is discussed in the 2001 Reporter's Note accompanying Rule 3 of the Rules of Civil Procedure.

7. Rule 8 is amended by revising subdivisions (b), (c) and (d) to read as follows:

(b) *Supersedeas; by whom issued.* A supersedeas shall be issued by the clerk of the circuit court that entered the judgment, decree or order being appealed from unless the record has been lodged with the appellate court in which event the supersedeas shall be issued by the clerk of the appellate court.

(c) *Supersedeas bond.* Whenever an appellant entitled thereto desires a stay on appeal, he shall present to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall satisfy and perform the judgment, decree or order of the circuit court.

(d) *Proceedings against sureties.* If security is given in the form of a bond or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the circuit court and irrevocably appoints the clerk of the circuit court that entered the judgment, decree, or order as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion in the circuit court without the necessity of an independent action. The motion and such notice of the motion as the circuit court prescribes shall be filed with the clerk, who shall forthwith mail copies to the sureties if their addresses are known.

The Reporter's Notes accompanying Rule 8 are amended by adding the following:

Addition to Reporter's Notes, 2001 Amendment: The references to "court" in subdivision (b) and to "trial court" in subdivisions (c) and (d) have been replaced with "circuit court." Under Constitutional Amendment 80, the circuit courts are the "trial courts of original jurisdiction" in the state.

In subdivision (b) and the first sentence of subdivision (d), the clerk of the trial court is now referred to as the "clerk of the circuit court that entered the judgment, decree, or order." In the third sentence of subdivision (d), the reference is simply to "the clerk." In most cases, the circuit clerk serves as clerk of the circuit court. However, in some counties the county clerk handles probate matters. This division of labor is discussed in the 2001 Reporter's Note accompanying Rule 3 of the Rules of Civil Procedure.

B. Rules of the Supreme Court and Court of Appeals

1. Rule 1-2(a)(3) is amended to read as follows:

Petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit courts;

2. Rule 1-5 is amended to read as follows:

No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the circuit court.

3. Rule 3-1 is amended by revising subdivisions (a), (e), (h), and (j) to read as follows:

(a) *Generally.* All records shall begin with the style of the court in which the controversy was heard, the name of the judge presiding when the decree, judgment or order was rendered and its date, the names of all the parties litigant, and the nature of the suit or motion. For example: "Trial before A.B., judge of the circuit court on the ___ day of _____, ____;

John Doe, Plaintiff
vs.
Jane Doe, Defendant

Action on Promissory Note"

(e) *Record on second appeal.* When a cause has been once before the Court and a record is again required (for the purpose of correcting error which occurred on retrial), the second record shall begin where the former ended; that is, with the judgment of the appellate court, which should be entered of record in the circuit court, omitting the opinion of the appellate court. The appeal or supersedeas bond should be the last entry included.

(h) *Record fee and costs certified.* The fee for the production of the record must be certified in all cases; in addition, all costs in the circuit court must be reported, and by whom paid.

(j) *Exhibits.* Documents of unusual bulk or weight shall not be transmitted by the clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical exhibits other than documents shall not be transmitted by the clerk of the circuit court except by order of the Court.

4. Rule 3-2(a) is amended to read as follows:

(a) *Generally.* The clerks of the circuit courts in making records to be transmitted to the Court, shall, unless excepted by the provisions of this Rule, include all matters in the record as required by Rule 3-1(n).

5. Rule 3-4(c) is amended to read as follows:

(c) *Exhibits.* Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the Court.

6. Rule 3-5(a) is amended to read as follows:

(a) *Authorization for writ of certiorari.* When jurisdiction is conferred by filing, within the time allowed for appeal, a dated and certified copy of the order or judgment appealed from, the Clerk may, upon authorization by the Court, issue a writ of certiorari to the clerk of the circuit court, the reporter, or any other person charged with the duty of preparing the record on appeal, directing that any omissions or errors in the record be corrected.

7. Rule 3-6(b) is amended to read as follows:

(b) *Failure to claim exhibits in civil cases.* All exhibits filed in civil cases and not attached to the transcript, in the Supreme Court and Court of Appeals, must be claimed by the party who presented the exhibit to the circuit court and be removed from the Clerk's office within 90 days from the date the mandate is issued. The attorney receiving the exhibits must sign the docket showing their receipt. If an exhibit is not claimed within the 90 days, the Clerk may destroy or dispose of it after giving the parties, or the attorneys of record, 30 days notice of the Clerk's intention to do so.

8. Rule 4-2(a)(6)(A), as adopted by the per curiam order of May 31, 2001, is amended to read as follows:

(6) *Argument.* (A) First, the appellant's brief shall contain a concise statement of the case without argument. This statement shall be denoted as the "Statement of the Case," shall ordinarily not exceed two pages in length, and shall not exceed five pages without leave of the Court. The pages of the statement of the case shall appear immediately preceding the argument and are not counted against the page limits of the Argument set out in Rules 4-1 (b) and 4-3 (e). The statement of the case should be sufficient to enable the Court to understand the nature of the case, the general fact situation, the action taken by the circuit court, and must include page references to the abstract and Addendum. The Clerk will refuse to accept a brief if the required references to the abstract and Addendum are not included. The appellee's brief need not contain a statement of the case unless the appellant's statement is deemed to be controverted or insufficient.

9. Rule 4-4, as amended by the per curiam order of May 31, 2001, is amended by revising subdivisions (a), (b), (c), and (d) to read as follows:

(a) *Appellant's brief.* In all civil cases the appellant shall, within 40 days of lodging the record, file 17 copies of the appellant's brief with the Clerk and furnish evidence of service upon opposing counsel and the circuit court. Each copy of the appellant's brief shall contain every item required by Rule 4-2. Unemployment compensation cases appealed from the Arkansas Board of Review may be submitted to the Court of Appeals for decision as soon as the transcript is filed, unless the petition for review shows it is filed by an attorney, or notice of intent to file a brief for the appellant is filed with the Clerk prior to the filing of the transcript.

(b) *Appellee's brief — Cross-appellant's brief.* The appellee shall file 17 copies of the appellee's brief, and of any further abstract or

Addendum thought necessary, within 30 days after the appellant's brief is filed, and furnish evidence of service upon opposing counsel and the circuit court. If the appellee's brief has a supplemental abstract or Addendum, it shall be compiled in accordance with Rule 4-2 and included in or with each copy of the brief. This Rule shall apply to cross-appellants. If the cross-appellant is also the appellee, the two separate arguments may be contained in one brief, but each argument is limited to 25 pages.

(c) *Reply brief — Cross-appellant's reply brief.* The appellant may file 17 copies of a reply brief within 15 days after the appellee's brief is filed and shall furnish evidence of service upon opposing counsel and the circuit court. This Rule shall apply to the cross-appellant's reply brief except it must be filed within 15 days after the cross-appellee's brief is filed.

(d) *Evidence of service.* Briefs tendered to the Clerk will not be filed unless evidence of service upon opposing counsel and the circuit court has been furnished to the Clerk. Such evidence may be in the form of a letter signed by counsel, naming the attorney or attorneys and the circuit court to whom copies of the brief have been mailed or delivered.

10. Rule 5-3(a) is amended to read as follows:

(a) *Mandate to be issued in all cases.* In all cases, civil and criminal, the Clerk will issue a mandate when the decision becomes final and will mail it to the clerk of the circuit court from which the appeal was taken for filing and recording. A decision is not final until the time for filing of petition for rehearing or, in the case of a decision of the Court of Appeals, the time for filing a petition for review has expired or, in the event of the filing of such petition, until there has been a final disposition thereof.

11. Rule 6-1 is amended by revising subdivisions (a), (c), and (e) to read as follows:

(a) *Pleadings — Number of copies.* In cases in which the jurisdiction of the Court is in fact appellate although in form original, such as petitions for writs of prohibition, certiorari, or mandamus, the pleadings with certified exhibits from the circuit court (if applicable) are treated as the record. If the petition falls within subsection (b) or (c) of this Rule, the pleader is required to file the original and seven copies of the pleading along with the record with the Clerk. Evidence of service of a copy upon the adverse party or his or her counsel of record in the circuit court is required. If the proceeding

falls within subsection (e) of this Rule, the pleader is required to file only the original pleading along with the certified record. When the petition includes a certified copy of the record in the circuit court, it is not necessary that a copy of such exhibit be served upon the adverse party or his or her counsel. In prohibition cases, a copy of the pleadings will also be served upon the circuit judge, who is ordinarily a nominal party and is not required to file a response.

(c) *Applications for temporary relief.* When the petitioner intends to apply to the full Court for temporary relief staying the circuit court proceedings pending the consideration of the petition upon its merits, eight copies of the petition must be filed, and reasonable notice of the application for temporary relief must be served upon the other party or the counsel of record in the circuit court and the circuit court. If, after its review and consideration of the record and pleading filed, the Court shall determine that a temporary stay is warranted and granted, briefs shall be required as in other cases under Rule 4-4, and the parties' brief time will be calculated from the date the temporary relief is granted. However, the Court may decide the matter without ruling on the request for a briefing schedule.

(e) *Time for filing briefs.* If the proceedings in the circuit court have been stayed, or the time before a hearing or trial will allow a briefing schedule, briefs are required as in other cases, the parties' brief time under Rule 4-4 for filing a brief to be calculated from the date on which the petition is filed. The mere filing of a petition for relief under this section does not automatically entitle the petitioner to file briefs and stay the proceedings in the circuit court.

12. Rule 6-3(a) is amended to read as follows:

(a) *Scope.* In an appeal in which counsel for either side believes that a person's identity should be protected by the Court, counsel may move the Court to do so. These cases may include, but are not limited to, adoptions and appeals in juvenile cases.

13. Rule 6-5(b) is amended to read as follows:

(b) *Procedure.* In such proceedings, the procedure will conform to that prevailing in bench trials in the circuit courts. Upon filing the original and seven copies of the pleading and payment of a filing fee, a summons or other process will be issued by the Clerk. The respondent's pleading must be filed within the time provided by the Rules of Civil Procedure.

14. Rule 6-7 is amended by deleting subdivision (d), redesignating subdivision (e) as subdivision (d), and revising subdivision (c) to read as follows:

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

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

Amendments to Rules with Changes Illustrated

[not to be published in Official Rules]

A. Rules of Appellate Procedure—Civil

1. Rule 2 is amended by revising paragraphs (1), (11), (12) of subdivision (a), the introductory sentence of subdivision (c), and paragraph (2) of subdivision (c) to read as follows:

(a) An appeal may be taken from a circuit~~, chancery, or probate~~ court to the Arkansas Supreme Court from:

1. A final judgment or decree entered by the ~~trial~~ circuit court;

* * *

11. An order or other form of decision which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in a case involving multiple claims, multiple parties, or both, if the ~~trial~~ circuit court has directed entry of a final judgment as to one or more but fewer than all of the claims or parties and has made an express determination, supported by specific factual findings, that there is no just reason for delay, and has executed the certificate required by Rule 54(b) of the Rules of Civil Procedure; and

12. An order appealable pursuant to any statute in effect on July 1, 1979, including Ark. Code Ann. § 16-108-219 (an order denying a motion to compel arbitration or granting a motion to stay arbitration, as well as certain other orders regarding arbitration) and § 28-1-116 (all ~~probate court~~ orders in probate cases, except an order removing a fiduciary for failure to give a new bond or render

an accounting required by the court or an order appointing a special administrator).

* * *

(c) ~~All appeals from~~ Appeals in juvenile cases ~~court~~ shall be made in the same time and manner provided for appeals from ~~chancery~~ circuit court.

* * *

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

2. Rule 3 is amended by revising subdivisions (b) and (d) to read as follows:

(b) *How taken.* An appeal shall be taken by filing a notice of appeal with the clerk of the circuit court ~~which~~ that entered the judgment, decree, or order from which the appeal is taken. Failure of the appellant or cross-appellant to take any further steps to secure review of the judgment or decree appealed from shall not affect the validity of the appeal or cross-appeal, but shall be ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or cross-appeal. If, however, the record on appeal has not been filed pursuant to Rule 5 of these rules, the ~~trial~~ circuit court in which the notice of appeal was filed may dismiss the appeal or cross-appeal upon petition of all parties to the appeal or cross-appeal accompanied by a joint stipulation that the appeal or cross-appeal is to be dismissed.

(d) *Cross-appeals.* A cross-appeal may be taken by filing a notice of cross-appeal with the clerk of the circuit court ~~which~~ that entered the judgment, decree or order being appealed.

3. Rule 4 is amended by revising subdivisions (a), (b)(1),(b)(3), and (d) to read as follows:

(a) *Time for filing notice of appeal.* Except as otherwise provided in subdivisions (b) and (c) 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~~ circuit 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~~ circuit 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), a motion for a new trial under Rule 59(a), or any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment, 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~~ circuit 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) * * *

(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~~ circuit 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.

(d) *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 circuit 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.

4. Rule 5 is amended to read as follows:

(a) *When filed.* The record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal, unless the time is extended by order of the ~~trial~~ circuit court as hereinafter provided.

When, however, an appeal is taken from an interlocutory order under Rule 2(a)(6) or (7), the record must be filed with the clerk of the Supreme Court within thirty (30) days from the entry of such order.

(b) *Extension of time.* In cases where there has been designated for inclusion any evidence or proceeding at the trial or hearing which was stenographically reported, the ~~trial~~ circuit court, upon finding that a reporter's transcript of such evidence or proceeding has been ordered by appellant, and upon a further finding that an extension is necessary for the inclusion in the record of evidence or proceedings stenographically reported, may extend the time for filing the record on appeal, but the order of extension must be entered before the expiration of the period for filing as originally prescribed or extended by a previous order. In no event shall the time be extended more than seven (7) months from the date of the entry of the judgment, decree or order, or from the date on which a timely postjudgment motion under Rule 4(b) is deemed to have been disposed of under Rule 4(c), whichever is later. An appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment, decree and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from. Counsel seeking an extension shall give to opposing counsel notice of the application for an extension of time.

(c) *Partial record.* Prior to the time the complete record on appeal is filed with the clerk of the Arkansas Supreme Court as provided in this rule, any party may docket the appeal to make a motion for dismissal or for any other intermediate order by filing a partial record with the clerk. At the request of the moving party, the clerk of the ~~trial~~ circuit court that entered the judgment, decree, or order from which the appeal is taken shall certify the portion of the record designated by that party as being a true and correct copy. It shall be the responsibility of the moving party to transmit the certified partial record to the clerk of the Arkansas Supreme Court.

5. Rule 6 is revising subdivisions (c), (d), and (e) to read as follows:

(c) *Record to be abbreviated.* All matters not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by

another, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties. Where parties in good faith abbreviate the record by agreement or without objection from opposing parties, the appellate court shall not affirm or dismiss the appeal on account of any deficiency in the record without notice to appellant and reasonable opportunity to supply the deficiency. Where the record has been abbreviated by agreement or without objection from opposing parties, no presumption shall be indulged that the findings of the ~~trial~~ circuit court are supported by any matter omitted from the record.

(d) *Statement of the evidence or proceedings when no report was made or the transcript is unavailable.* If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best means available, including his recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments thereto within ten (10) days after service upon him. Thereupon the statement and any objections or proposed amendments shall be submitted to the ~~trial~~ circuit court for settlement and approval and as settled and approved shall be included in the record on appeal by the clerk of the circuit court ~~in the record on appeal~~ that entered the judgment, decree, or order from which the appeal is taken.

(e) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the ~~trial~~ circuit court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the ~~trial~~ circuit court, either before or after the record is transmitted to the appellate court, or the appellate court on proper suggestion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the appellate court.

6. Rule 7 is amended to read as follows:

(a) *Certification.* The clerk of the ~~trial~~ circuit court that entered the judgment, decree, or order from which the appeal is taken shall certify the record as being a true and correct copy of the record as designated by the parties.

(b) *Transmission.* After the record has been duly certified by the clerk ~~of the trial court~~, it shall be the responsibility of the appellant to transmit such record to the clerk of the appellate court for filing and docketing.

7. Rule 8 is amended by revising subdivisions (b), (c) and (d) to read as follows:

(b) *Supersedeas; by whom issued.* A supersedeas shall be issued by the clerk of the circuit court ~~which rendered~~ that entered the judgment, decree or order being appealed from unless the record has been lodged with the appellate court in which event the supersedeas shall be issued by the clerk of the appellate court.

(c) *Supersedeas bond.* Whenever an appellant entitled thereto desires a stay on appeal, he shall present to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall satisfy and perform the judgment, decree or order of the ~~trial~~ circuit court.

(d) *Proceedings against sureties.* If security is given in the form of a bond or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the ~~trial~~ circuit court and irrevocably appoints the clerk of the ~~trial~~ circuit court that entered the judgment, decree, or order as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion in the ~~trial~~ circuit court without the necessity of an independent action. The motion and such notice of the motion as the ~~trial~~ circuit court prescribes shall be filed with the clerk ~~of the trial court~~, who shall forthwith mail copies to the sureties if their addresses are known.

B. Rules of the Supreme Court and Court of Appeals

1. Rule 1-2(a)(3) is amended to read as follows:

Petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit~~, chancery, or probate~~ courts;

2. Rule 1-5 is amended to read as follows:

No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the ~~trial~~ circuit court.

3. Rule 3-1 is amended by revising subdivisions (a), (e), (h), and (j) to read as follows:

(a) *Generally.* All records shall begin with the style of the court in which the controversy was heard, the name of the judge presiding when the decree, judgment or order was rendered and its date, the names of all the parties litigant, and the nature of the suit or motion. For example: "Trial before A.B., judge of ~~____~~ the circuit court on the ___ day of _____, ~~19~~____;

John Doe, Plaintiff
vs.
Jane Doe, Defendant

Action on Promissory Note"

(e) *Record on second appeal.* When a cause has been once before the Court and a record is again required (for the purpose of correcting error which occurred on retrial), the second record shall begin where the former ended; that is, with the judgment of the appellate court, which should be entered of record in the ~~trial~~ circuit court, omitting the opinion of the appellate court. The appeal or supersedeas bond should be the last entry included.

(h) *Record fee and costs certified.* The fee for the production of the record must be certified in all cases; in addition, all costs in the ~~trial~~ circuit court must be reported, and by whom paid.

(j) *Exhibits.* Documents of unusual bulk or weight shall not be transmitted by the ~~trial court~~ clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical exhibits other than documents shall not be transmitted by the ~~trial court~~ clerk of the circuit court except by order of the Court.

4. Rule 3-2(a) is amended to read as follows:

(a) *Generally.* The clerks of the circuit~~, chancery and probate~~ courts in making records to be transmitted to the Court, shall, unless excepted by the provisions of this Rule, include all matters in the record as required by Rule 3-1(n).

5. Rule 3-4(c) is amended to read as follows:

(c) *Exhibits.* Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the ~~trial court~~ clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the Court.

6. Rule 3-5(a) is amended to read as follows:

(a) *Authorization for writ of certiorari.* When jurisdiction is conferred by filing, within the time allowed for appeal, a dated and certified copy of the order or judgment appealed from, the Clerk may, upon authorization by the Court, issue a writ of certiorari to the clerk of the ~~trial~~ circuit court, the reporter, or any other person charged with the duty of preparing the record on appeal, directing that any omissions or errors in the record be corrected.

7. Rule 3-6(b) is amended to read as follows:

(b) *Failure to claim exhibits in civil cases.* All exhibits filed in civil cases and not attached to the transcript, in the Supreme Court and Court of Appeals, must be claimed by the party who presented the exhibit to the ~~trial~~ *circuit* court and be removed from the Clerk's office within 90 days from the date the mandate is issued. The attorney receiving the exhibits must sign the docket showing their receipt. If an exhibit is not claimed within the 90 days, the Clerk may destroy or dispose of it after giving the parties, or the attorneys of record, 30 days notice of the Clerk's intention to do so.

8. Rule 4-2(a)(6)(A), as adopted by the per curiam order of May 31, 2001, is amended to read as follows:

(6) *Argument.* (A) First, the appellant's brief shall contain a concise statement of the case without argument. This statement shall be denoted as the "Statement of the Case," shall ordinarily not exceed two pages in length, and shall not exceed five pages without leave of the Court. The pages of the statement of the case shall appear immediately preceding the argument and are not counted against the page limits of the Argument set out in Rules 4-1 (b) and 4-3 (e). The statement of the case should be sufficient to enable the Court to understand the nature of the case, the general fact situation, the action taken by the ~~trial~~ circuit court, and must include page references to the abstract and Addendum. The Clerk will refuse to accept a brief if the required references to the abstract and Addendum are not included. The appellee's brief need not contain

a statement of the case unless the appellant's statement is deemed to be controverted or insufficient.

9. Rule 4-4, as amended by the per curiam order of May 31, 2001, is amended by revising subdivisions (a), (b), (c), and (d) to read as follows:

(a) *Appellant's brief.* In all civil cases the appellant shall, within 40 days of lodging the record, file 17 copies of the appellant's brief with the Clerk and furnish evidence of service upon opposing counsel and the ~~trial~~ circuit court. Each copy of the appellant's brief shall contain every item required by Rule 4-2. Unemployment compensation cases appealed from the Arkansas Board of Review may be submitted to the Court of Appeals for decision as soon as the transcript is filed, unless the petition for review shows it is filed by an attorney, or notice of intent to file a brief for the appellant is filed with the Clerk prior to the filing of the transcript.

(b) *Appellee's brief — Cross-appellant's brief.* The appellee shall file 17 copies of the appellee's brief, and of any further abstract or Addendum thought necessary, within 30 days after the appellant's brief is filed, and furnish evidence of service upon opposing counsel and the ~~trial~~ circuit court. If the appellee's brief has a supplemental abstract or Addendum, it shall be compiled in accordance with Rule 4-2 and included in or with each copy of the brief. This Rule shall apply to cross-appellants. If the cross-appellant is also the appellee, the two separate arguments may be contained in one brief, but each argument is limited to 25 pages.

(c) *Reply brief — Cross-appellant's reply brief.* The appellant may file 17 copies of a reply brief within 15 days after the appellee's brief is filed and shall furnish evidence of service upon opposing counsel and the ~~trial~~ circuit court. This Rule shall apply to the cross-appellant's reply brief except it must be filed within 15 days after the cross-appellee's brief is filed.

(d) *Evidence of service.* Briefs tendered to the Clerk will not be filed unless evidence of service upon opposing counsel and the ~~trial~~ circuit court has been furnished to the Clerk. Such evidence may be in the form of a letter signed by counsel, naming the attorney or attorneys and the ~~trial~~ circuit court to whom copies of the brief have been mailed or delivered.

10. Rule 5-3(a) is amended to read as follows:

(a) *Mandate to be issued in all cases.* In all cases, civil and criminal, the Clerk will issue a mandate when the decision becomes final and will mail it to the clerk of the circuit ~~trial~~ court from which the appeal was taken for filing and recording. A decision is not final until the time for filing of petition for rehearing or, in the case of a decision of the Court of Appeals, the time for filing a petition for review has expired or, in the event of the filing of such petition, until there has been a final disposition thereof.

11. Rule 6-1 is amended by revising subdivisions (a), (c), and (e) to read as follows:

(a) *Pleadings - Number of copies.* In cases in which the jurisdiction of the Court is in fact appellate although in form original, such as petitions for writs of prohibition, certiorari, or mandamus, the pleadings with certified exhibits from the ~~trial~~ circuit court (if applicable) are treated as the record. If the petition falls within subsection (b) or (c) of this Rule, the pleader is required to file the original and seven copies of the pleading along with the record with the Clerk. Evidence of service of a copy upon the adverse party or his or her counsel of record in the ~~trial~~ circuit court is required. If the proceeding falls within subsection (e) of this Rule, the pleader is required to file only the original pleading along with the certified record. When the petition includes a certified copy of the record in the ~~trial~~ circuit court, it is not necessary that a copy of such exhibit be served upon the adverse party or his or her counsel. In prohibition cases, a copy of the pleadings will also be served upon the ~~trial~~ circuit judge, who is ordinarily a nominal party and is not required to file a response.

(c) *Applications for temporary relief.* When the petitioner intends to apply to the full Court for temporary relief staying the ~~trial~~ circuit court proceedings pending the consideration of the petition upon its merits, eight copies of the petition must be filed, and reasonable notice of the application for temporary relief must be served upon the other party or the counsel of record in the ~~trial~~ circuit court and the ~~trial~~ circuit court. If, after its review and consideration of the record and pleading filed, the Court shall determine that a temporary stay is warranted and granted, briefs shall be required as in other cases under Rule 4-4, and the parties' brief time will be calculated from the date the temporary relief is granted. However, the Court may decide the matter without ruling on the request for a briefing schedule.

(e) *Time for filing briefs.* If the proceedings in the ~~trial~~ circuit court have been stayed, or the time before a hearing or trial will

allow a briefing schedule, briefs are required as in other cases, the parties' brief time under Rule 4-4 for filing a brief to be calculated from the date on which the petition is filed. The mere filing of a petition for relief under this section does not automatically entitle the petitioner to file briefs and stay the proceedings in the ~~trial~~ circuit court.

12. Rule 6-3(a) is amended to read as follows:

(a) *Scope.* In an appeal in which counsel for either side believes that a person's identity should be protected by the Court, counsel may move the Court to do so. These cases may include, but are not limited to, adoptions and appeals ~~from the~~ in juvenile ~~division of chancery court~~ cases.

13. Rule 6-5(b) is amended to read as follows:

(b) *Procedure.* In such proceedings, the procedure will conform to that prevailing in bench trials in the ~~chancery~~ circuit courts. Upon filing the original and seven copies of the pleading and payment of a filing fee, a summons or other process will be issued by the Clerk. The respondent's pleading must be filed within the time ~~allowed in chancery cases as~~ provided ~~under~~ by the Rules of Civil Procedure.

14. Rule 6-7 is amended by deleting subdivision (d), redesignating subdivision (e) as subdivision (d), and revising subdivision (c) to read as follows:

(c) *Affirmed* in part and reversed in part ~~—Law. In cases at law, the appellant is entitled to the appeal costs if a reversal is ordered, and a substantial recovery is made.~~ The Court may assess appeal costs according to the merits of the case.

~~(d) Affirmed in part and reversed in part—Chancery. In chancery cases, the Court may assess appeal costs according to the merits of the case.~~

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

IN RE: RULE 4.1, ARKANSAS RULES of CRIMINAL PROCEDURE

Supreme Court of Arkansas
Delivered June 21, 2001

PER CURIAM. The Arkansas Supreme Court Committee on Criminal Practice submitted a proposal to amend Rule 4.1 of the Rules of Criminal Procedure. We published the proposal for comment in our *per curiam* order of November 30, 2000. The recommended change in the rule was related to language in Ark. Code Ann. § 16-81-113(a)(1), which was amended in the recent session of the General Assembly by Act 1421 of 2001. Following passage of this Act, the Committee revisited the proposed rule and has now submitted a revised proposal to the Court.

We again express our gratitude to the Committee for their work with respect to this rule. We agree with the Committee's recommendation and adopt, effective August 13, 2001, Rule 4.1, and republish it as set out below.

ARKANSAS RULES OF CRIMINAL PROCEDURE

Rule 4.1. Authority to arrest without warrant.

(a) A law enforcement officer may arrest a person without a warrant if:

(i) the officer has reasonable cause to believe that such person has committed a felony;

(ii) the officer has reasonable cause to believe that such person has committed a traffic offense involving:

(A) death or physical injury to a person; or

(B) damage to property; or

(C) driving a vehicle while under the influence of any intoxicating liquor or drug;

(iii) the officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence;

(iv) the officer has reasonable cause to believe that such person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding the arrest if no physical injury was involved or 12 (twelve) hours preceding the arrest if physical injury, as defined in Ark. Code Ann. § 5-1-102, was involved;

(v) the officer is otherwise authorized by law.

(b) A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony.

(c) An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer or private citizen is unable to determine the particular offense which may have been committed.

(d) A warrantless arrest by an officer not personally possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency which collectively possesses knowledge sufficient to constitute reasonable cause.

(e) A person arrested without a warrant shall not be held in custody unless a judicial officer determines, from affidavit, recorded testimony, or other information, that there is reasonable cause to believe that the person has committed an offense. Such reasonable cause determination shall be made promptly, but in no event longer than forty-eight (48) hours from the time of arrest, unless the prosecuting attorney demonstrates that a bona fide emergency or other extraordinary circumstance justifies a delay longer than forty-eight (48) hours. Such reasonable cause determination may be made at the first appearance of the arrested person pursuant to Rule 8.1.

Reporter's Notes, 2001. Concerning subsection (a)(iv), see Ark. Code Ann. § 16-81-113(a)(1), as amended by Act 1421 of 2001. Subsection (a)(v) is intended to incorporate current and future statutes authorizing an arrest without a warrant. Examples of such statutory authority include Ark. Code. Ann. § 5-4-309 (warrantless arrest for violation of probation); Ark. Code. Ann. § 5-36-116 (warrantless arrest for shoplifting); Ark. Code. Ann. § 5-53-134 (warrantless arrest for violation of protective order); Ark. Code

Ann. § 16-81-114 (warrantless arrest for gas theft); and Ark. Code. Ann. § 16-93-705 (warrantless arrest for violation of parole).

IN RE: IMPLEMENTATION of AMENDMENT 80: ADMINISTRATIVE PLANS PURSUANT to ADMINISTRATIVE ORDER NUMBER 14

Supreme Court of Arkansas
Delivered June 28, 2001

PER CURIAM. Pursuant to our *per curiam* order dated April 6, 2001, in which this court adopted Administrative Order Number 14, the judicial circuits of the state have submitted administrative plans. In reviewing these plans, it has become apparent that myriad issues are at play, making it impossible to develop a template that will work across the board in every judicial circuit.

Section 6 of Amendment 80 to the Arkansas Constitution provides in pertinent part as follows:

> (A) Circuit Courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution.
>
> (B) Subject to the superintending control of the Supreme Court, the Judges of a Circuit Court may divide that Circuit Court into subject matter divisions, and any Circuit Judge within the Circuit may sit in any division.

In Administrative Order Number 14, we authorized the division of circuit court into five subject matter divisions: criminal, juvenile, civil, domestic relations, and probate. Now, we must consider how the circuit judges of a circuit "may sit in any division" and adhere to one of Amendment 80's fundamental purposes — the merger of law and equity in which there are not separate law and equity "sides" of the circuit court.

The passage of Amendment 80 on November 7, 2000 was a watershed event in the history of the Judicial Department of this state.[1] Jurisdictional lines that previously forced cases to be divided artificially and litigated separately in different courts have been eliminated. This fundamental change naturally brings with it a whole host of issues, both theoretical and practical, concerning the form and structure of our court system. Examples of such issues include:

- How should the benefits of a judge's experience and specialization in a particular subject matter be factored into the assignment and allocation of cases? In that regard, should any consideration be given to the potential for "burnout" among judges who hear the same type of case year after year?

- Are juvenile proceedings substantially different from other proceedings, such that they require different treatment?

- Because of the state apparatus related to both criminal and juvenile cases, such as the prosecutors, public defenders, probation officers, DHS attorneys and caseworkers, attorneys ad litem, CASA volunteers, intake officers, and so forth, is it necessary or desirable to keep these types of cases segregated in order for the system to operate efficiently?[2] If so, should there be a regular rotation system whereby a circuit judge may be assigned to the juvenile or criminal division of circuit court

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[1] While some may argue that Amendment 80 was intended to stop the needless transfer of cases because of jurisdictional lines drawn between equity and law, we do not read Amendment 80 to be so limited in its scope. Even if we were to accept such a narrow interpretation, the effects of Amendment 80 are, in reality, far reaching. For example, the merger of law and equity removed any barriers to the joinder of legal and equitable claims in a single action. Thus, in actions governed by the Arkansas Rules of Civil Procedure, multiple claims, whether "legal or equitable," may be asserted in a single action. *See* Ark. R. Civ. P. 18(a) as amended in *In Re: Implementation of Amendment 80: Amendments to Rules of Civil Procedure, and Inferior Court Rules*, 345 Ark. Appx. (May 24, 2001). *See also* our *per curiam* order of May 24, 2001, in which we adopted the following amendment to Administrative Order Number 8:

> c. *[Effective January 1, 2002]* Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed. Attorneys or pro se litigants should be cognizant that claims which are wholly unrelated may be severed and proceeded with separately under Rule 18 (b) of the Rules of Civil Procedure.

[2] 1 With the exception of child support enforcement unit (C.S.E.U.) cases, these concerns are not as pressing with respect to the civil, probate, and domestic relations divisions.

> for a specified period of time, at the end of which he or she would be assigned to other cases?

In reviewing the plans submitted by the judicial circuits, we have struggled with these questions and concluded that definitive answers cannot and should not be given at this time. As the judicial system in Arkansas passes from a long history of separate courts of law and equity into this new era of a single, general jurisdiction circuit court, this court recognizes that the transition cannot be accomplished in one giant leap on July 1, 2001; rather, there must be a transitional phase for implementation of the new unified court system contemplated by Amendment 80.

In this vein, of immediate concern are the practical issues related to resources, including facilities, court-related personnel, and judicial experience. Among the twenty-eight judicial circuits, there are single-judge circuits; multi-judge, one county, one courthouse circuits; multi-judge, one county, two courthouse circuits; multi-judge, two county circuits; and multi-judge, multi-county, multi-courthouse circuits. It goes without saying that there are critical staffing issues attendant to any shifting of cases from one court to another. Even if all the theoretical questions were answered, we could not immediately implement the necessary changes because of time and financial constraints. We must allow time for incumbent and newly-elected circuit judges to participate in judicial education programs to train them in areas of the law with which they are not as familiar since all such judges must become available to try any type of case.

In formulating their administrative plans, the judicial circuits have recognized that the Arkansas Judiciary is in a transitional stage. We have considered this fact in passing judgment on their proposed plans. Identifying these practical problems at the front end will hopefully permit the General Assembly, as well as county quorum courts, to work with us in formulating answers to these issues, including the appropriation of necessary funding. Thus, we believe that a realistic target date for completing implementation of the new unified court system should be July 1, 2003. On that date, we expect all circuit judges to be available to try all "justiciable matters."

After giving due consideration to all of the above, we announce the following decisions with regard to the plans submitted.[3]

1. We unequivocally approve the plans filed in the 8th S and 9th W Judicial Circuits.

2. We approve with some reservations the plans filed in the following Judicial Circuits: 2nd, 3rd, 4th, 5th, 7th, 12th, 14th, 16th, 17th, 18th E, and 20th. With one exception, each plan splits out the criminal and juvenile cases. The plan filed by the 7th Judicial Circuit only splits out the juvenile cases. These plans are acceptable in this transitional period. These circuits should recognize that amendments may become necessary in the future as some of the questions posed above are answered and as resource issues are rectified.

3. The plan of the 8th N Judicial Circuit is approved, recognizing that unique conflict-of-interest issues among judges and attorneys in essential official positions may require some adjustment in the assignment of cases.

4. We approve the plans submitted by the 21st and 23rd Judicial Circuits conditioned upon this court receiving clarification regarding certain provisions contained in those plans. Specifically, with regard to the plan submitted by the 21st Judicial Circuit, the provision concerning criminal and civil matters states as follows: "The jury cases, both civil and criminal, will be handled 80% by Judge Rogers and 20% by Judge Cottrell." This provision fails to mention any allocation of civil and criminal non-jury cases. We direct the 21st Judicial Circuit to submit a clarification by August 15, 2001, which confirms that the above-quoted allocation encompasses all civil and criminal cases, whether jury or non-jury. The plan submitted by the 23rd Judicial Circuit states that there is an "even split of all subject matter between the two divisions of the [circuit]," and indicates that the clerks have a "formula for the split of cases between the divisions." However, the plan fails to disclose what that formula is. We direct the 23rd Judicial Circuit to submit a clarification by August 15, 2001, which includes the

[3] 1 The following Judicial Circuits are single-judge circuits, and thus, did not have to submit plans: 9th E, 11th E, 18th W, and 19th E.

formula used by the clerks to allocate cases between the divisions.

5. The plan submitted by the 13th Judicial Circuit cannot be approved because it permits the plaintiff to designate the judge to hear civil cases in that circuit, thereby violating the fundamental principle of random selection of judges. We direct the 13th Judicial Circuit to revisit the matter and resubmit a plan by August 15, 2001.

6. Plans submitted by the 1st, 15th, 19th W, and 22nd Judicial Circuits cannot be approved because they each maintain the status quo with respect to equity jurisdiction. Unlike criminal and juvenile cases, we cannot countenance the splitting out of equity as was the practice under the former Judicial Article.[4] These circuits are directed to resubmit plans by August 15, 2001, to remedy this problem.

7. The 6th, 10th, and 11th W Judicial Circuits did not submit plans approved by all their respective judges. Pursuant to Administrative Order Number 14, this court hereby adopts the administrative plans set forth below, subject to the same reservations already stated in paragraph No. 2, and appoints the judges designated below to serve as administrative judges for the purpose of implementing these plans.

- **6th Judicial Circuit**

(1) The plan for case assignment in this judicial circuit, effective January 1, 2002, shall be as follows:

(a) Pulaski County: See Table A

(b) Perry County:

For cases in Perry County, all juvenile matters will be handled by visits from Judges Warren, Gruber, and Branton. Uncontested matters, domestic abuse cases, first appearances, and arraignments may also be set on the juvenile days in Perry County. The remaining matters will be set on jury and non-jury days, with all of the other judges in the 6th Judicial Circuit staffing these days as they may agree on a rotating basis.

[4] 1 These circuits use the following nomenclature to accomplish the equity split: civil-law/civil-equity; civil-non-jury/civil-jury; and a listing of particular types of equity cases.

(2) Judge David Bogard will be the administrative judge.

- **10th Judicial Circuit**

(1) The plan for this judicial circuit, effective January 1, 2002, shall include these elements:

(a) Random and equal assignment of the civil, probate, and domestic relations cases to the five circuit judges.

(b) Each circuit judge will be assigned one county and will be responsible for the criminal and juvenile cases in that county, with preference given to that judge's home county.

(c) Each circuit judge will allot one day per month to be in a given county on a rotating basis, to handle any routine and uncontested matters.

Adjustments shall be made by the administrative judge to assure that the caseload for the criminal and juvenile divisions are equally apportioned.

(2) Judge Don Glover will be the administrative judge.

- **11th W Judicial Circuit**

(1) The plan for this judicial circuit, effective January 1, 2002, shall be the plan submitted by the majority of the judges of the 11th W Judicial Circuit.

(2) Judge Leon Jamison will be the administrative judge.

In this transitional period between July 1, 2001 and July 1, 2003, we are adopting a liberal approach in approving plans. Judges and judicial circuits should be aware that a plan approved this year will not be approved automatically when next submitted. With additional experience, this court will be able to provide more guidance and determine whether additional resources will be available to ease some of the problems arising under the current plans. We recognize that this is an evolving process, and this court solicits the advice and suggestions from all those affected as we work together to implement the new judicial article adopted by the people as Amendment 80 to the Arkansas Constitution.

Table A

Division	Judge	Percentage/Subject/Number of Cases	Approx. Total
1st	Judge Marion Humphrey	21% Criminal (1048) + 7% Civil (360)	1408
2nd	Judge Chris Piazza	13% Criminal (649) + 15% Civil (772)	1421
3rd	Judge John Ward	26% Civil	1359
4th	Judge John Langston	26% Criminal	1319
5th	Judge Willard Proctor	16% Criminal (799) + 12% Civil (618)	1417
6th	Judge David Bogard	11% Criminal (549) + 17% Civil (875)	1424
7th	Judge John Plegge	13% Criminal (649) + 14% Civil (720)	1370
8th	Judge Wiley Branton	33% Juvenile	978
9th	Judge Mary Ann McGowen	11% Domestic (741) + 14% Probate (376) + 100% P.A.C. Court(298)	1415
10th	Judge Joyce Warren	33% Juvenile	978
11th	Judge Rita Gardner	33% Juvenile	979
12th	Judge Alice Gray	14% Domestic (923) + 14 % Probate (376) + 3% Civil (146)	1445
13th	Judge Collins Kilgore	14% Domestic (923) + 14% Probate (376) + 3% Civil (146)	1445
14th	Judge Vann Smith	16% Domestic (1072) + 14 % Probate (376)	1448
15th	Judge Robin Mays	16% Domestic (1072) + 14 % Probate (376)	1448
16th	Judge Ellen Brantley	14% Domestic (923) + 14% Probate (376) + 3% Civil (146)	1446
17th	Judge Mackie Pierce	16% Domestic (1072) + 14% Probate	1448

IN RE: AMENDMENT to RULE 10 of ARKANSAS RULES of APPELLATE PROCEDURE—CRIMINAL (AUTOMATIC REVIEW in DEATH CASES)

Supreme Court of Arkansas
Delivered July 9, 2001

PER CURIAM. In *State v. Robbins*, 339 Ark. 379 (1999), we held that in death-penalty cases, even if the defendant waives his personal right of appeal, the Supreme Court will conduct an automatic review of the record for egregious and prejudicial errors. On May 3, 2001, we published for comment a proposed rule to implement the procedures announced in *Robbins*. The rule was recommended to the Court by our Committee on Criminal Practice. We thank all those who submitted comments and again express our appreciation to the Committee for their hard work.

We hereby adopt the amendment to Rule 10 of the Rules of Appellate Procedure—Criminal, and republish the rule as set out below. This rule shall be effective for all cases in which the death penalty is imposed on or after August 1, 2001.

GLAZE, J., dissents. *See State v. Robbins*, 339 Ark. 389, 5 S.W.3d 51 (1999) (Glaze, J., dissenting opinion).

Rule 10. Automatic appeal and mandatory review in death-sentence cases; procedure on affirmance.

(a) *Automatic appeal.* Upon imposing a sentence of death, the circuit court shall order the circuit clerk to file a notice of appeal on behalf of the defendant within thirty (30) days after entry of judgment. The notice of appeal shall be in the form annexed to this rule. The court reporter shall transcribe all portions of the criminal proceedings consistent with Article III of the Rules of the Supreme Court and shall file the transcript with the circuit clerk within ninety (90) days after entry of the judgment. Within thirty (30) days after receipt of the transcript, the circuit clerk shall compile the record consistent with Article III and shall file the record with the clerk of the Arkansas Supreme Court for mandatory review consistent with this rule and for review of any additional issues the appellant may enumerate.

(b) *Mandatory review.* Whenever a sentence of death is imposed, the Supreme Court shall review the following issues in addition to other issues, if any, that a defendant may enumerate on appeal.

Counsel shall be responsible for abstracting the record and briefing the issues required to be reviewed by this rule and shall consolidate the abstract and brief for such issues and any other issues enumerated on appeal. The Court shall consider and determine:

i) pursuant to Rule 4-3(h) of the Rules of the Supreme Court and Ark. Code Ann. § 16-91-113(a), whether prejudicial error occurred;

ii) whether the trial court failed in its obligation to bring to the jury's attention a matter essential to its consideration of the death penalty;

iii) whether the trial judge committed prejudicial error about which the defense had no knowledge and therefore no opportunity to object;

iv) whether the trial court failed in its obligation to intervene without objection to correct a serious error by admonition or declaring a mistrial;

v) whether the trial court erred in failing to take notice of an evidentiary error that affected a substantial right of the defendant;

vi) whether the evidence supports the jury's finding of a statutory aggravating circumstance or circumstances; and

vii) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor.

(c) *Procedure on affirmance.* When a judgment of death has been affirmed, the denial of post-conviction relief has been affirmed, or a mandate has been returned from the United States Supreme Court, and the day of execution has passed, the Clerk of the Supreme Court shall transmit to the Governor a certificate of the affirmance or return of mandate and judgment, to the end that a warrant for the execution of the judgment may be issued by the Governor. Such certificate shall operate to dissolve any stay of execution previously entered by the Supreme Court or any stay of execution previously entered by a circuit court pending disposition of a petition for post-conviction relief.

FORM: CLERK'S NOTICE OF APPEAL TO THE ARKANSAS SUPREME COURT IN DEATH-SENTENCE CASE PURSUANT TO RULE 10 OF THE RULES OF APPELLATE PROCEDURE—CRIMINAL

IN THE CIRCUIT COURT OF _____
COUNTY, ARKANSAS

DIVISION _____ DISTRICT _____

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT

NOTICE OF APPEAL FROM JUDGMENT IMPOSING DEATH SENTENCE

CONVICTION(S) APPEALED (list all offenses appealed):

_____

DATE OF ENTRY OF JUDGMENT: _____

SENTENCE(S) (List all sentences in addition to sentence(s) of death)

_____

INDIGENT: ( ) YES ( ) NO

NAME AND COMPLETE ADDRESS OF:

1. COURT REPORTER(S) (List all court reporters; use additional pages if needed):

_____
(name) (telephone)

_____
(address) (city) (state) (zip code)

_____
(name) (telephone)

(address) (city) (state) (zip code)

2. DEFENDANT'S TRIAL COUNSEL (List all attorneys; use additional pages if needed):

(name) (telephone)

(address) (city) (state) (zip code)

(name) (telephone)

(address) (city) (state) (zip code)

THE COURT REPORTER SHALL IMMEDIATELY PREPARE THE ENTIRE RECORD AND TRANSMIT IT IN ACCORDANCE WITH RULE 10(a) OF THE ARKANSAS RULES OF APPELLATE PROCEDURE—CRIMINAL.

THIS NOTICE OF APPEAL MUST BE GIVEN WITHIN THE TIME SPECIFIED IN RULE 2(a)OF THE ARKANSAS RULES OF APPELLATE PROCEDURE—CRIMINAL.

I certify that I have served a copy of this notice of appeal on all parties or their representatives involved in the cause and on the court reporter by mailing a copy of the notice of appeal to the parties or their representatives, to the court reporter, and to the Attorney General on this _____ day of _____, 20__.

CIRCUIT COURT CLERK

IN RE: AMENDMENTS to the PROCEDURES REGULATING PROFESSIONAL CONDUCT of ATTORNEYS at LAW; and The MODEL RULES of PROFESSIONAL CONDUCT, RULES 1.4 and 1.15

Supreme Court of Arkansas
Delivered July 9, 2001

PER CURIAM. Upon the invitation of this Court, the American Bar Association Standing Committee on Professional Discipline sent a team to examine the structure, operations, and procedures of our lawyer disciplinary system for the purpose of making recommendations for improvements to the system. On February 25, 2000, the Standing Committee issued its report to the Court containing its findings and recommendations. We reviewed the report and consulted with members of the Committee on Professional Conduct and the staff of the Office of Professional Conduct. On December 14, 2000, we published for comment proposed changes to the Procedures Regulating Professional Conduct of Attorneys at Law. A number of comments were received, and we thank those persons for taking the time to assist in this process.

After reviewing the comments and upon further deliberations, we have made substantial changes to the draft which was previously published, and the Court is now prepared to adopt amended procedures. Accordingly, we hereby amend and republish the Procedures Regulating Professional Conduct of Attorneys at Law as set out below. These changes shall be effective January 1, 2002.

In addition, we hereby adopt two amendments to the Model Rules of Professional Conduct: Rule 1.4(c) and Rule 1.15(d)(1) and (e). These two rules are republished following the Procedures, and they shall be effective January 1, 2002.

PROCEDURES OF THE ARKANSAS SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW

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PROCEDURES OF THE ARKANSAS SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW

SECTION 1. SCOPE.

A. *Purpose.* These Procedures are promulgated for the purpose of regulating the professional conduct of attorneys at law and shall apply to complaints filed and formal complaints instituted against attorneys after the effective date of these procedures, and within the purview of the jurisdiction and the authority of the Supreme Court Committee on Professional Conduct. From the effective date hereof, these Procedures shall apply to transfers to inactive status, to reinstatements, and to the extent that limitations and special requirements pertain, to attorneys presently suspended, disbarred or who have surrendered their law licenses. Every attorney now or hereafter licensed to practice law in the State of Arkansas shall be a member of the Bar of this State and subject to these Procedures. The jurisdiction of the Supreme Court Committee on Professional Conduct shall extend to lawyers in active, inactive or suspended status.

B. *Rules of professional conduct adopted.* The court has adopted the Model Rules of Professional Conduct of the American Bar Association, as amended, as the standard of professional conduct of attorneys at law. An attorney who violates any provision of the Model Rules, or these Procedures, shall be subject to the provisions herein.

C. *Nature of proceedings.* Disciplinary proceedings are neither civil nor criminal but are sui generis.

D. *Repealer.* To the extent that former rules or existing provisions of the Arkansas Code Annotated are in conflict with these Procedures, they are hereby overruled and superseded. These Procedures shall not be deemed exclusive of, but supplemental to those provisions of the Arkansas Code Annotated that are not in conflict herewith.

SECTION 2. DEFINITIONS. As used in these Procedures, unless the context otherwise requires:

A. "CLERK" means the Clerk of the Arkansas Supreme Court.

B. "COMMITTEE" means the Supreme Court Committee on Professional Conduct.

C. "COMPLAINANT" means the person(s) initiating a complaint, or the Committee when acting at its own instance or on behalf of another in initiating a complaint.

D. "COMPLAINT" means an inquiry, allegation, or information of whatever nature and in whatever form received by or coming to the attention of the Office of Professional Conduct or the Committee and concerning the conduct of a person subject to the jurisdiction of the Committee.

E. "FORMAL COMPLAINT" means a complaint directed to an attorney by the Office of Professional Conduct setting forth the alleged violation(s) of the Model Rules and informing the attorney of the right to file a written response.

F. "LESSER MISCONDUCT" is defined in Section 17 (C).

G. "MODEL RULES" means the Model Rules of Professional Conduct of the American Bar Association, as amended, and any statutory provisions or rules adopted by the Arkansas Supreme Court regulating the professional conduct of attorneys at law.

H. "OFFICE OF PROFESSIONAL CONDUCT" means the staff office managed and supervised by the Executive Director, which is responsible for receiving and investigating all complaints concerning members of the Arkansas Bar, presenting cases before the Committee panels, and litigating cases from the Committee before any court of this state.

I. "RESPONDENT" or "RESPONDENT ATTORNEY" means an attorney against whom a formal complaint has been initiated whether or not the attorney has failed to file a written response.

J. "SERIOUS CRIME" means any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy or solicitation of another to commit a "serious crime."

K. "SERIOUS MISCONDUCT" is defined in Section 17 (B).

L. "SUBSTANTIAL" when used for the purposes of these procedures in reference to degree or extent, means beyond mere suspicion or conjecture and of sufficient force and character to compel a conclusion one way or another with reasonable and material certainty and precision.

M. "UNAVOIDABLE CIRCUMSTANCES" means circumstances not attributable to negligence, carelessness, fault, or the lack of diligence on the part of the respondent attorney.

SECTION 3. COMMITTEE ON PROFESSIONAL CONDUCT.

A. *Composition/Term of Office.*

(1) The Supreme Court shall appoint the members of the Committee on Professional Conduct to assist in enforcing these Procedures. The Committee shall consist of two separate seven-member panels. Each panel will be comprised of five attorneys, one chosen from the State at large and **one** from each of the **four** Congressional Districts. Two non-attorneys will be chosen to serve on each panel, and these four lay members will be chosen **from the State at large**. Members shall not be permanently assigned to a particular panel, but the composition of the panels shall rotate among the members from time to time. Each appointment shall be for a term of six years unless otherwise designated by the Supreme Court. Members may be reappointed to one successive six-year term. Terms shall be staggered. 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 his or her predecessor's term. Committee members shall serve until their successors are appointed and certified. The Committee shall elect one of its members as Chairperson and another as Secretary. The Committee, consistent with the provisions herein, may adopt such internal, operating rules and policies as may be necessary to facilitate the performance of its duties, responsibilities, and administrative functions.

(2) Members shall refrain from taking part in any disciplinary proceeding in which a judge similarly situated would be required to recuse.

(3) Seven reserve members shall be appointed to serve as a pool from which replacements may be drawn in those instances in which members of the Committee are disqualified or unable to serve. Five of the reserve members shall be lawyers with at least one from each Congressional District. Two of the reserve members shall not be lawyers and shall be selected from the State at large. In other respects, the terms of service for reserve members shall be the same as provided for the Committee. Reserve members shall possess the authority, powers, immunities and entitlements as provided for the Committee by these Procedures, and which are necessary and appropriate for the discharge of their duties and function. The Committee Chairperson or Executive Director shall appoint reserve members to serve, individually or collectively as the situation requires, in those instances in which members of a panel of the Committee consider themselves disqualified or are unable to serve. Reserve members serving as replacements shall be selected so as to maintain the appropriate lawyer/non-lawyer composition. Reserve members do not have to be selected unless the required quorum of the Committee or a panel thereof is not present. If necessary, the Supreme Court may appoint additional persons to serve as reserve members to permit the Committee to discharge its duties.

B. *Quorum.* A majority of the Committee shall constitute a quorum for the conduct of Committee business, but the Committee shall not sit en banc for disciplinary proceedings. When the Committee is authorized to act in a seven-member panel, five members shall constitute a quorum.

C. *Authority/Powers.*

(1) The Committee, through its panels, shall have, and is hereby granted, authority to impose any sanctions deemed appropriate as provided in Section 7 (Procedure), Section 17 (Sanctions), and Section 18 (Fines, Costs, and Restitution).

(2) The Committee, through its panels, is hereby authorized to take action by written ballot subject to the requirements and limitations set out in Section 10 of these Procedures.

(3) The Committee, through its panels, is authorized to conduct hearings at either:

(a) The request of the panel; or

(b) The request of the respondent attorney after written ballots are taken.

(4) The Committee is authorized to hold meetings to conduct the business of the Committee which consists of, but is not limited to, the election of officers, the determination of pending complaints, and such administrative matters as required.

(5) The Committee shall have the authority to employ, with the consent of the Supreme Court, an Executive Director who will not be a member of the Committee, and shall not have a vote on any matter presented to the Committee for decision. The Committee, acting through its Chairperson, may temporarily employ or designate from the staff attorneys of the Office of Professional Conduct an acting Executive Director in any case in which the Executive Director or the Senior Staff Attorney (pursuant to Section 5 (D) (3)) is unable to act, or recuses, or disqualifies.

(6) The Committee shall maintain a permanent office under the supervision of the Executive Director for the conduct of its business and the maintenance of the various records of the Committee.

(7) The seal heretofore adopted by the Committee shall be the official seal for its use in the performance of the duties imposed by these Procedures.

(8) The Committee, through its panels as described herein, shall have the authority to issue summonses for any person(s), or subpoenas for any witness(es), including the production of documents, books, records, or other evidence, in the same manner as is provided for civil process pursuant to the Arkansas Rules of Civil Procedure, requiring the presence of any person, or the attendance of any witness before the Committee for the purpose of testimony, or in furtherance of an investigation. Such process shall be issued under the seal of the Committee provided for in subsection C(7) of this Section and be signed by the Chairperson of the Committee, Secretary, the chair of a panel of the Committee or by the Executive Director. Any subpoenas issued herein shall clearly indicate that the subpoenas are issued in connection with a confidential investigation under these Procedures and that it is regarded as contempt of the Supreme Court for a person subpoenaed to breach the confidentiality of the investigation. If found to be in

contempt of the Supreme Court under these Procedures, a person may be punished by incarceration, imposition of a fine, or both. In addition, it shall be grounds for discipline under these Procedures for a subpoenaed attorney to breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to seek or consult with legal counsel in regard to the subpoena, nor shall the confidentiality apply to subpoenas issued in connection with a public hearing.

(9) The Committee, through the Chairperson, a panel chair, or the Executive Director, may seek immunity from criminal prosecution for a reluctant witness, using the procedure of Ark. Code Ann. §§ 16-43-601 to 606 (1987).

(10) The Committee may propose rules of procedure for lawyer discipline and disability proceedings for promulgation by the Supreme Court, and comment on existing and proposed rules.

(11) The Committee shall periodically review the operation of the system with the Supreme Court.

(12) The Committee, working with the Office of Professional Conduct, shall inform the public about the existence and operation of the system and the disposition of each matter in which public discipline has been imposed, a lawyer has been transferred to or from disability inactive status, or a lawyer has been reinstated. Communication options should include toll-free telephone and the Internet.

(13) The Committee shall perform administrative oversight over the Office of Professional Conduct which shall include: reviewing the productivity and efficiency of the office; assessing caseload management; reviewing and making recommendations concerning budgetary matters; making recommendations to the Executive Director; and improving the statistical records of the office. Administrative responsibilities may be delegated to panels of the Committee on a rotating basis, which may include an Executive Committee selected by the Committee.

(14) When so requested by a Federal Judge under the Uniform Federal Rules of Disciplinary Enforcement adopted by the United States District Courts of Arkansas on May 1,

1980, or successor rules, the Committee may act as the disciplinary agency and the Executive Director as counsel in a federal disciplinary action. Any additional expense incurred in the processing of a federal complaint will be paid from the funds arising from the assessments levied pursuant to the Uniform Federal Rules and available for that purpose. When final action is taken under a federal complaint, a report of that action will be made to the Federal Judge who referred the matter, and the Committee may also furnish to the Federal Judge any other information from its files necessary to fulfill its duties as disciplinary agency.

D. *Immunity.* The Committee, its individual members, Executive Director and employees and agents of the Committee 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.

E. *Expenses.* From the funds established and appropriated by the Arkansas Supreme Court and in accordance with budgetary limitations, members of the Committee shall be entitled to receive their travel and hotel expenses, reimbursement for postage, stationery, communications, an attendance allowance, other incidental expenses including stenographic bills and court costs chargeable against them, and to attend training and continuing education programs. All such items shall be paid by the Clerk by check on such funds. Accounts must be itemized and certified by the Chairperson, Secretary, or the Executive Director of the Committee as true and correct.

SECTION 4. COMMITTEE PANELS.

A. *General.* The Committee may delegate to panels composed of less than the full membership of the Committee the power to act for the Committee in discharging the powers and duties hereunder. Specifically, the Chairperson of the Committee shall appoint seven-member hearing panels. The Chairperson of the Committee shall also (i) establish the rotation by which members are assigned to panels, (ii) establish the rotation by which panels are assigned complaints; and (iii) designate the chairs for panels

B. *Appointment.* Each panel shall consist of five lawyer-members of the Committee and two non-lawyers. A lawyer member of each panel shall be appointed its chair by the Chairperson of the Committee. A panel member whose term has expired may continue to serve on any case that was commenced before the expiration of the

member's term. Five members shall constitute a quorum. The panel shall act only with the concurrence of at least four members. Reserve members may be appointed to serve on a panel pursuant to Section 3 (A) (3).

C. *Powers and Duties.* Panels shall have the following powers and duties:

(1) To conduct proceedings during the ballot phase concerning formal complaints of misconduct, petitions for reinstatement, and petitions for transfer to and from disability inactive status;

(2) To conduct hearings;

(3) To adopt written findings of fact, conclusions of law, and recommendations **prepared** with the administrative assistance of the Office of Professional Conduct; and

(4) To discharge other duties imposed by these Procedures.

SECTION 5. OFFICE OF PROFESSIONAL CONDUCT.

A. *General.* The Executive Director of the Office of Professional Conduct shall be an attorney actively licensed to practice law in the State of Arkansas, shall serve at the will of the Court, and shall devote full time and effort to promptly and efficiently perform the duties stated in this Section, and such other duties as directed by the Committee.

B. *Duties-Office.*

(1) The Executive Director may attend and, at the request of the Committee, act as counsel in presenting testimony and other evidence at any hearing pursuant to these Procedures.

(2) The Executive Director, or in his or her absence or disqualification from a case the acting Executive Director, shall have power to administer oaths in all matters incident to the duties imposed by these Procedures and such power and authority shall be coextensive with the State.

(3) The Executive Director shall be responsible for the administration of the business office and the security of the

records. As authorized by and upon such terms as the Committee shall direct, the Executive Director may employ such personnel, including, staff attorneys, investigators, temporary employees, and retain independent counsel, as may be required to perform the administrative, investigative or legal functions of the Committee. The Executive Director and the professional staff of the Office of Professional Conduct shall periodically attend training and continuing education programs.

(4) The Executive Director shall receive reports from financial institutions pursuant to Model Rule 1.15 (d) (1) indicating that a properly payable instrument has been presented against a lawyer's trust account containing insufficient funds, irrespective of whether or not the instrument is honored, and take appropriate action in response to such information.

C. *Duties-Complaints*

(1) It shall be the duty of the Office of Professional Conduct to receive and investigate all complaints against any member of the Bar. Such complaints shall be docketed and assigned a permanent file number. The Office of Professional Conduct and the Committee shall accept and treat as a formal complaint any writing signed by a judge of a court of record in this State regardless of whether such signature is verified.

(2) The Executive Director may refer matters involving lesser misconduct as defined in Section 17 (C) to alternatives-to-discipline programs approved by the Supreme Court. Such programs may include, in addition to the Arkansas Lawyers Assistance Program, programs for fee arbitration, arbitration, mediation, law office management assistance, psychological counseling, continuing education, and ethics.

(3) Upon a determination by the Executive Director that a complaint sets out allegations falling within the purview of the Committee, and those allegations are supported by sufficient evidence, the Executive Director shall provide any assistance needed in the preparation of the complainant's affidavit, and shall process a formal complaint pursuant to the procedures of the Court and the Committee.

(4) If a complaint does not set forth sufficient grounds to reasonably support preparation of a formal complaint but contains information indicative of a misunderstanding or controversy between an attorney and a client or a third party who

may be aggrieved by the conduct or circumstances, and the best interests of the integrity of the profession and the valid concerns of the complainant would be served by reconciliation or communication between the parties, the Executive Director may, at the request of the complainant or in the judgment of the Executive Director, contact the attorney by telephone or letter advising the attorney of the nature of the complaint. The aforementioned procedure will not be considered a formal complaint.

(5) Review of the Executive Director's Decision.

(a) A complainant, who is not satisfied with the Executive Director's determination that the allegations of the complaint fall outside the purview of the Committee or that the allegations are not supported by sufficient evidence to file a formal complaint, may request a review of that determination.

(b) The request for review shall be filed with the Executive Director in writing within twenty (20) days from the date of mailing of the letter notifying the complainant of the determination of the lack of a basis for filing a formal complaint.

(c) The written request will set out in general terms the complainant's grounds for objection to the Executive Director's decision.

(d) Upon receipt of a request for review, the Executive Director will acknowledge in writing the request, and shall forward the complaint information to the Chairperson of the Committee on Professional Conduct for review.

(e) The Chairperson of the Committee shall forward copies of the Complaint provided by the Executive Director to five members of the Committee, one of whom will be a nonlawyer, directing that they review the Executive Director's disposition of the matter.

(f) The reviewing members, by majority vote, may approve the Executive Director's disposition of the matter, direct that an affidavit of formal complaint be prepared, or request further investigation of the matter by the Executive Director. Votes may be taken by written ballots on forms supplied by the Office of Professional Conduct or by telephone. With the administrative assistance of the Office of Professional Conduct, the result of the vote will be made known

to the Chairperson of the Committee and the Executive Director by a member of the five-member reviewing body. If a formal complaint is instituted, members of the five-member reviewing body shall not participate in subsequent proceedings in the matter.

(g) The Executive Director shall then notify the complainant in writing of the results of the review and dismiss the complaint, initiate a formal complaint, or request additional information as appropriate.

(h) There shall be no further review or appeal of the Committee's final decision.

D. *Staff Attorneys.*

(1) All Staff Attorneys employed by the Executive Director shall be actively licensed to practice law in the State of Arkansas.

(2) Staff Attorneys shall serve at the direction and pleasure of the Executive Director and may perform all duties and possess all authority of the Executive Director as the Executive Director may delegate except for the final determination of sufficiency of formal complaints, and the authority and responsibilities provided in Sections 3(C)(8) (subpoenas) and 5(B)(2) (oaths), which authority may be exercised by the acting Executive Director in the absence of or upon the disqualification from a case by the Executive Director.

(3) In the event of the temporary inability of the Executive Director to fully discharge the duties of office, or when a vacancy exists in that office, the Senior Staff Attorney shall discharge such duties as the acting Executive Director. If the Executive Director determines that a conflict of interest exists for the Executive Director with regard to a particular complaint, complainant, or respondent, the Executive Director may recuse from the matter and the Senior Staff Attorney shall discharge such duties as the acting Executive Director for that matter.

E. *Compensation/Expenses.* The Executive Director and staff of the Office of Professional Conduct shall be paid such reasonable salary and expenses as deemed necessary and appropriate by the Committee. Employee salaries, benefits and expenses of the office

shall be payable from funds budgeted to the Committee by the Arkansas Supreme Court.

SECTION 6. CONFIDENTIALITY/RECORDS.

A. *Communications Confidential.* Subject to the exceptions listed in subsections B and C of this Section:

(1) All communications, complaints, formal complaints, testimony, and evidence filed with, given to or given before the Committee, or filed with or given to any of its employees and agents during the performance of their duties, that are based upon a complaint charging an attorney with violation of the Model Rules, shall be absolutely privileged and confidential; and

(2) All actions and activities arising from or in connection with an alleged violation of the Model Rules by an attorney licensed to practice law in this State are absolutely privileged and confidential.

(3) These provisions of privilege and confidentiality shall apply to complainants.

B. *Exceptions.*

(1) Except as expressly provided in these Procedures, proceedings under these Procedures are not subject to the Arkansas Rules of Civil Procedure regarding discovery.

(2) The records of public hearings conducted by the Committee pursuant to Section 11 of these Procedures are public information.

(3) In the case of disbarment, the Committee and the Office of Professional Conduct are authorized to release any information that either deems necessary for that purpose.

(4) The Committee is authorized to release information:

(a) For statistical data purposes;

(b) To a corresponding lawyer disciplinary authority or an authorized agency or body of a foreign jurisdiction engaged in the regulation of the practice of law;

(c) To the State Board of Law Examiners;

(d) To the Committee on the Unauthorized Practice of Law;

(e) To the Arkansas Client Security Fund Committee;

(f) To the Commission on Judicial Discipline and Disability;

(g) To any other committee, commission, agency or body within the State empowered to investigate, regulate or adjudicate matters incident to the legal profession when such information will assist in the performance of those duties;

(h) To any agency, body, or office of the federal government or this State charged with responsibility for investigation and evaluation of a lawyer's qualifications for appointment to a governmental position of trust and responsibility; or,

(i) Pursuant to the provisions of Section 9(A) and Section 15(B) of these Procedures.

(5) Any attorney against whom a formal complaint is pending shall have disclosure of all information in the possession of the Committee and the Office of Professional Conduct concerning that complaint including any record of prior complaints about that attorney. Procedures for discovery for formal complaints are set out in Section 8.

(6) The attorney about whom a complaint is made may waive, in writing, the confidentiality of the information.

(7) In all cases, the complainant shall be provided with a copy of the respondent attorney's affidavit of response and afforded a reasonable opportunity to reply.

C. *Sanctions Made Public.* When a public sanction becomes final under these Procedures, or when the Committee decides to initiate disbarment proceedings, a copy shall be forwarded to the Clerk and shall be maintained as a public record by the Clerk. Such information shall also be publicly disseminated, including release to the press and posting on the Arkansas Judiciary website.

SECTION 7. PROCEDURE.

A. *General.* A panel of the Committee shall adjudicate all formal complaints alleging violation of the Model Rules that may be brought to its attention in the form of an affidavit, or in respect of which any member of the Committee may have information, and shall give the attorney involved an opportunity to explain or refute the charge.

B. *Standard of Proof.* Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to or from inactive status shall be established by a preponderance of the evidence.

C. *Burden of Proof.* The burden of proof in proceedings seeking discipline or involuntary transfer to inactive status is on the Executive Director. The burden of proof in proceedings seeking reinstatement or transfer from involuntary or voluntary inactive status is on the attorney seeking such action.

D. *Limitations on Actions.* The institution of disciplinary actions pursuant to these Procedures shall be exempt from all statutes of limitation.

E. *Evidence and Procedures.* Except as noted in these Procedures, the Arkansas Rules of Evidence and the Arkansas Rules of Civil Procedure shall not generally apply to discipline proceedings.

F. *Pleadings.* All pleadings filed before the Committee shall be captioned "Before the Supreme Court Committee on Professional Conduct" and be styled "In re _____" to reflect the name of the respondent attorney.

G. *Prior Sanctions.* Information concerning prior discipline of the respondent attorney shall not be divulged to the Committee members hearing or reviewing a complaint until after a finding of misconduct has been made unless said information is relevant for purposes of impeachment, or probative of issues pending in the present matter, including, without limitation, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. [See Ark. R. Evid. 404 (b).] If a panel is considering a matter by ballot-vote procedure, information concerning prior discipline of the respondent attorney, which is not subject to disclosure as set out above, shall be provided to the panel members in a sealed envelope accompanying the ballot, and shall not be unsealed and reviewed by the voting panel member until and

unless the panel member shall mark the ballot finding a violation of a Model Rule.

H. *Ex Parte Communication.*

(1) Members of the Committee shall not communicate ex parte with the Executive Director or the staff of the Office of Professional Conduct, or the respondent attorney or his or her counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or these Procedures, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits.

(2) A violation of this rule may be cause for removal of any member from the panel before which a matter is pending.

SECTION 8. DISCOVERY.

A. *Scope.* Within ten days following the filing with the Office of Professional Conduct of a request for a hearing by a respondent attorney after a ballot vote pursuant to Section 10(D) (3), the Executive Director and the respondent attorney shall exchange the names and addresses of all persons having knowledge of relevant facts. Within sixty (60) days following the filing of the request, the Executive Director and the respondent attorney may take depositions in accordance with Arkansas Rule of Civil Procedure 30 and shall comply with reasonable requests for (i) non-privileged information and evidence relevant to the charges or the attorney, and (ii) other material upon good cause shown to the chair of the panel before which the matter was pending.

B. *Resolution of Disputes.* Disputes concerning discovery shall be determined by the chair of the panel to which the matter was assigned. All discovery orders by the chair are interlocutory and may not be appealed prior to the entry of the final order.

C. *Rules of Civil Procedure Not Applicable.* Proceedings under these rules are not subject to the Arkansas Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas.

SECTION 9. SERVICE OF COMPLAINT/ RESPONSE/ FAILURE TO RESPOND/ RECONSIDERATION.

Upon the filing of a formal complaint, the Executive Director shall:

A. *Service of Complaint.*

(1) Furnish to the attorney complained against a copy of the formal complaint and advise the attorney that he or she may file a written response in affidavit form with any supporting evidence desired. The attorney's mailing address on record with the Clerk shall constitute the address for service by mail. Attorneys shall be responsible for informing the Clerk in writing and within a reasonable time of any change of such address. Certified mailing of the formal complaint to said address shall be deemed a waiver of confidentiality for purposes of Section 9 (A)(2)(c).

(2) Service may be effected on a respondent attorney by:

(a) Mailing a copy of the formal complaint to attorney's address of record by certified, restricted delivery, return receipt mail; or,

(b) Personal service as provided by the Arkansas Rules of Civil Procedure or by an Investigator with the Office of Professional Conduct; or,

(c) When reasonable attempts to accomplish service by Section 9(A)(2)(a) or Section 9(A)(2)(b) have been unsuccessful, then a warning order, in such form as prescribed by the Committee, shall be published weekly for two consecutive weeks in a newspaper of general circulation within this State or within the locale of the attorney's address of record. In addition, a copy of the formal complaint and warning order shall be sent to the respondent attorney's address of record by regular mail.

(3) An attorney's failure to provide an accurate, current mailing address to the Clerk as required by Section 9(A)(1), or the failure or refusal to receipt certified mailing of a formal complaint, shall be deemed a waiver of confidentiality for the purposes of the issuance of a warning order.

(4) Unless good cause is shown for an attorney's non-receipt of a certified mailing of a formal complaint, the attorney shall be liable for the actual costs and expenses for service or the attempted service of a formal complaint, to include all expenses associated with the effectuation of service. Such sums will be due and payable to the Committee before any response to a formal complaint will be accepted or considered by the Committee.

(5) After service has been effected by any of the aforementioned means, subsequent mailings by the Committee to the respondent attorney may be by regular mail to the attorney's address of record, address at which service was accomplished, or to such address as may have been furnished by the attorney, as the appropriate circumstance may dictate, except that notices of hearings and letters of caution, reprimand, suspension or initiation of disbarment proceedings shall also be sent by certified, return receipt mail.

(6) Service on a non-resident attorney may be accomplished pursuant to Section 9(A)(2)(a), (b) or (c), or in any manner prescribed by the law of the jurisdiction to which the service is directed.

B. *Time and Manner of Response.*

(1) Upon service of a formal complaint, pursuant to Section 9(A)(2)(a) or Section 9(A)(2)(b), or the date of the first publication, pursuant to Section 9(A)(2)(c), the attorney shall have twenty (20) days in which to file a written response consisting of an original and eight (8) copies with the Executive Director, except when service is upon a non-resident of this State, in which event the attorney shall have thirty (30) days within which to file a response. In the event that the Executive Director has not received a response within twenty (20) days or within thirty (30) days, as the appropriate case may be, following the date of service, and an extension of time has not been granted, the Executive Director shall proceed to issue ballots as provided in Section 10.

(2) At the request of an attorney, the Executive Director is authorized to grant an extension of reasonable length for the filing of a response. Subsequent requests for extensions must be in written form and will be ruled on by the Chairperson of the Committee, or the chair of the panel to which the matter has been assigned.

(3) The Executive Director shall provide a copy of the attorney's response to the complainant within ten (10) days of receiving it and advise that the complainant has seven (7) days in which to rebut or refute any allegations or information contained in the attorney's response. The Executive Director may include any rebuttal made by the complainant as a part of the material submitted to the Committee for decision and any such rebuttal shall be provided to the respondent attorney for informational purposes only, with no response required. If rebuttal to be submitted to the Committee contains allegations of violation of the Model Rules not previously alleged, it shall be in the form of a supplemental affidavit of complaint and the respondent attorney shall be provided a copy and permitted surrebuttal in the manner prescribed in subsection B(1) of this Section, except the time for doing so shall be ten (10) days.

(4) The calculation of the time limitations specified in Section 9(B) shall commence on the day following service upon the respondent. If the due date of a response or surrebuttal falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next regular business day.

C. *Failure to Respond/Reconsideration.*

(1) An attorney's failure to provide, in the prescribed time and manner, a written response to a formal complaint served in compliance with Section 9(A)(2) shall constitute separate and distinct grounds for the imposition of sanctions notwithstanding the merits of the underlying, substantive allegations of the complaint; or,

(2) May be considered for enhancement of sanctions imposed upon a finding of violation of the Model Rules.

(3) The separate imposition or the enhancement of sanctions for failure to respond may be accomplished by the panel's notation of such failure in the appropriate sanction order and shall not require any separate or additional notice to the respondent attorney.

(4) Failure to respond to a formal complaint shall constitute an admission of the factual allegations of the complaint and shall extinguish a respondent's right to a public hearing.

(a) Provided, however, that a respondent attorney, within the time specified in Section 10(D) (3), may file with the

Executive Director an original and eight (8) copies of a petition for reconsideration, stating, on oath, compelling and cogent evidence of unavoidable circumstances sufficient to excuse or justify the failure to respond. Otherwise, the panel's decision shall be final and will be filed of record with the Clerk.

(b) Upon the filing of a petition for reconsideration, the Executive Director shall provide each member of the panel a copy of the petition for vote by written ballot consistent with provisions of Section 10.

(c) If a majority of the panel, upon a finding of clear and convincing evidence, votes to grant the petition for reconsideration, the panel may:

(i) Permit the attorney to submit a belated affidavit of response to the substantive allegations of the formal complaint and the matter shall proceed as though the response had been made timely; and/or

(ii) Set aside any sanction imposed solely on the basis of the attorney's failure to respond.

(d) If the petition for reconsideration is denied, the panel's original decision and imposition of sanctions become final and will be filed of record with the Clerk. Appeal from the Committee's denial of reconsideration and the imposition of sanctions may be taken in the time and manner prescribed by the applicable provisions of Section 12. Provided, however, that such appeal cannot attack the substantive allegations of the complaint and shall be limited to the panel's denial of reconsideration.

SECTION 10. VOTE BY BALLOT.

A. At such time as the Executive Director has received from the attorney a written response or the attorney has failed to respond within the period provided in Section (9) (B), the Executive Director shall cause to be prepared seven copies of the complainant's affidavit, the response, rebuttal, exhibits, and a separate sealed envelope containing information concerning any prior discipline of the respondent attorney and shall send a copy thereof to each member of the seven-member panel to which the matter has been assigned. The members of the panel and its chair shall be selected by the Chairperson of the Committee. The Executive Director shall not

take part in the deliberations of the panel. Each member shall vote by written ballot.

B. Each ballot shall contain appropriate spaces for:

(1) The name and signature of the panel member;

(2) The date;

(3) The member's vote on the action to be taken on the formal complaint; and,

(4) A place for the members to state which Section(s) of Model Rules, if any, are found to be violated.

C. If a majority of the panel returns written ballots expressing a desire to cause a respondent attorney, complainant, or other person to appear for the purposes of eliciting testimony, production of records and documents, provision of additional information or evidence, or for any other relevant purposes involved with a matter pending before the panel, a hearing will be scheduled and summonses or subpoenas may issue as required. Such evidentiary hearing shall not be public and no adjudicative decision will be pronounced or rendered at that time. The Committee, upon written ballot or voice vote, subsequently shall notify the respondent attorney of the decision and notify the complainant if no disciplinary action was warranted. Otherwise, the provisions of Section 10(D)(3) shall apply. Any recorded testimony, records, documents, exhibits or other evidence adduced at an evidentiary hearing may be received and made part of the record at a subsequent public hearing.

D. *Results of Ballot Vote.*

(1) In the event a majority of the panel votes to take no disciplinary action against a respondent attorney, the panel shall so advise the Office of Professional Conduct, which shall notify the complainant and the respondent attorney. The Office of Professional Conduct shall file a monthly report of such cases, by number only, as a public record in the office of the Clerk.

(2) If the vote is to warn, an appropriate letter shall be sent to the respondent and the complainant. The Office of Professional Conduct shall file a monthly report of such cases, by number only, as a public record in the office of the Clerk.

(3) If a majority of the panel returns written ballots to caution, reprimand, or suspend the attorney, the attorney shall be notified of the findings and decision of the panel, and be advised that he or she has a right, upon written request filed with the Office of Professional Conduct within twenty (20) days of service as defined by Section 9(A)(2), to a hearing before another seven-member panel of the Committee, none of which were members of the original panel, as provided in Section 11. The attorney shall also be advised that in the absence of a request for a hearing, such findings and order of the Committee will be entered in the files of the Committee and will be filed as a public record in the office of the Clerk.

(4) If a majority of the panel votes by paper ballot to initiate disbarment proceedings, the Committee shall proceed as set out in Section 13 and there shall be no public hearing before the Committee pursuant to Section 11. If the panel finds that a lawyer has committed acts against a client which constitute theft of property under Ark. Code Ann. § 5-36-103 (or its replacement), regardless of whether the attorney has been convicted, disbarment proceedings must be instituted.

(5) If any findings of fact, conclusions of law, or other recommendations are necessary at the conclusion of the ballot process, they shall be prepared by the Office of Professional Conduct with the advice and consent of the panel.

(6) The panel may refer matters involving lesser misconduct to alternatives-to-discipline programs as explained in Section 5 (C)(2).

SECTION 11. PUBLIC HEARING. If a hearing is requested after a ballot vote:

A. A panel will be so notified, and the written ballots if any, will be destroyed. The prior findings and decision shall be for naught and a panel will hear the complaint de novo under the rules for public hearings. The public hearing shall be heard before a seven-member panel of the Committee, the members of which will be selected by the Chairperson of the Committee, none of whom shall have been members of the original ballot-vote panel.

B. The Executive Director shall set a date for the hearing and shall notify the respondent attorney and the complainant of the hearing date. Once a hearing is set, the granting of any request for a

continuance shall be at the discretion of the chair of the panel. The chair of the panel may require a prehearing conference.

C. At the end of the hearing, the panel shall hold an executive session to deliberate upon any disciplinary action to be taken. The findings and decision of the panel shall be announced immediately. The votes of the individual members shall be announced if the decision is not unanimous.

D. If a majority of the panel votes to caution, reprimand, or suspend an attorney, the Office of Professional Conduct shall be so advised, and shall notify the complainant of the specific action taken against the attorney. The Office of Professional Conduct will prepare, with the advice and consent of the panel, the Findings and Order, and a copy shall be filed as a public record in the office of the Clerk.

E. If a majority of the panel votes to disbar, the Executive Director, shall file an action for disbarment as provided in Section 13. Alternatively, if circumstances require and with the Supreme Court's approval, the panel may retain independent counsel to prosecute the disbarment proceeding. If the panel finds that a lawyer has committed acts against a client which constitute theft of property under Ark. Code Ann. § 5-36-103 (or its replacement), regardless of whether the attorney has been convicted, disbarment proceedings must be initiated.

F. The Committee may refer matters involving lesser misconduct to alternatives-to-discipline programs as explained in Section 5 (C)(2).

G. *Doctor-Patient Privilege Waived.* Raising the defense of mental or physical disability by one who is the subject of a disciplinary proceeding shall constitute a waiver of the doctor-patient privilege.

H. *Immunity for Disciplinary Proceedings.* Except for perjury and false swearing, complainants, respondents and witnesses are absolutely immune from suit or action for all communications with the Committee and all statements made within the disciplinary proceeding.

SECTION 12. APPEAL.

A. A respondent attorney or the Executive Director aggrieved by an action of a panel taken **at** a public hearing, may appeal to the Arkansas Supreme Court by filing a Notice of Appeal with the

Office of Professional Conduct within thirty (30) days after the filing of the panel's **written** action with the Clerk. In appeals directly from the panel, the action shall proceed as an action between the Executive Director and the respondent. The panel may stay the effective date of any action pending appeal to the Arkansas Supreme Court. There shall be no appeal by the respondent attorney of a panel's decision to file an action for disbarment pursuant to Section 13.

B. Appeals from any action by a panel after hearing shall be heard de novo on the record and the Arkansas Supreme Court shall pronounce such judgment as in its opinion should have been pronounced below.

C. Notice of appeal and perfection of appeal shall be in accordance with the Rules of Appellate Procedure—Civil and Rules of the Arkansas Supreme Court governing appeals in civil matters. If no appeal is perfected within the time allowed and in the manner provided, the action of the panel shall be final and binding on all parties.

SECTION 13. DISBARMENT PROCEEDINGS.

(A) An action for disbarment shall be filed as an original action with the Clerk of the Supreme Court. Upon such filing, the Arkansas Supreme Court, pursuant to Amendment 28 of the Arkansas Constitution, shall assign a special judge to preside over the disbarment proceedings. The Clerk shall arrange for a courtroom or other suitable facility in Pulaski County in which the proceedings shall be heard. The special judge may hear preliminary and posttrial matters and take other such actions outside of Pulaski County to the same extent that the law permits judges sitting by assignment or on exchange to do. With the consent of all the parties, the judge may conduct the proceedings outside of Pulaski County. All allegations of violation(s) of the Model Rules by the attorney, notwithstanding the situs of the alleged conduct, shall be heard in this proceeding. In disbarment suits, the action shall proceed as an action between the Executive Director and the respondent. Proceedings shall be held in compliance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence, and trial shall be had without a jury.

(B) The judge shall first hear all evidence relevant to the alleged misconduct and shall then make a determination as to whether the allegations have been proven. Upon a finding of misconduct, the judge shall then hear all evidence relevant to an appropriate sanction

to be imposed, including evidence related to the factors listed in Section 19 and the aggravating and mitigating factors set out in the American Bar Association's Model Standards for Imposing Lawyer Sanctions, §§ 9.22 and 9.32 (1992). See Wilson v. Neal, 332 Ark. 148, 964 S.W. 2d 199 (1998).

(C) The judge shall make findings of fact and conclusions of law with respect to the alleged misconduct of the respondent attorney and the imposition of sanctions, including the factors discussed in subsection 13 (B). Before filing the findings and conclusions, the judge may submit a draft thereof to counsel for all parties for the purpose of receiving their objections and suggestions. The judge shall make a recommendation as to the appropriate sanction from those set out in Section 17 (D).

(D) The findings of fact, conclusions of law, and recommendation of an appropriate sanction shall be filed with the Clerk of the Supreme Court along with a transcript and the record of the proceedings. Upon the filing, the parties shall file briefs as in other cases. The findings of fact shall be accepted by the Supreme Court unless clearly erroneous. The Supreme Court shall impose the appropriate sanction, if any, as the evidence may warrant. In imposing the sanction of suspension, the attorney may be suspended for a period not exceeding five (5) years. There is no appeal from the decision of the Supreme Court except as may be available under federal law.

SECTION 14. RECIPROCAL DISBARMENT OR SUSPENSION.

A. The disbarment or suspension of any person from the practice of law in any other state shall operate as a disbarment or suspension of such person from the practice of law in this State under any license issued to such person by the Arkansas Supreme Court prior to his or her disbarment or suspension in such other state.

B. Upon presentation of a certified order or other proper document of a tribunal or a corresponding disciplinary authority of another jurisdiction evidencing disbarment or suspension, the Committee by summary proceeding shall cause a like sanction to be imposed and shall notify the Clerk of such action. Notice of the Committee's action shall be sent to the attorney's mailing address of record with the Clerk.

SECTION 15. CRIMINAL ACTIVITY.

A. *Reporting Determinations of Guilt.* All prosecuting attorneys and judges participating in or presiding over a proceeding in which an attorney pleaded guilty to, entered a nolo contendere plea, or has been found guilty of a Serious Crime in any jurisdiction shall have the duty to report such conviction or plea to the Executive Director.

B. *Notification of Possible Criminal Activity.* When, in connection with an investigation or a hearing, either the Office of Professional Conduct or the Committee is presented with any substantial evidence of criminal conduct by any party which would constitute a Serious Crime in any jurisdiction, the Office of Professional Conduct on its own initiative or at the direction of the Committee shall notify the appropriate prosecutorial authority.

C. *Procedures for Disbarment.*

(1) When a complaint against an attorney is based on a conviction in any jurisdiction of a Serious Crime, or a crime which also violates Rule 8.4 (b) of the Model Rules of Professional Conduct, the Committee shall institute disbarment proceedings.

(2) Actions for disbarment based on the conviction of a crime shall proceed in accordance with the procedures in Section 13 of these Procedures.

(3) A certified copy of the judgment of conviction shall be conclusive evidence of the attorney's guilt.

(4) The attorney may not offer evidence inconsistent with the essential elements of the crime for which he or she was convicted.

SECTION 16. INTERIM SUSPENSION PROCEDURE.

A. An action for the interim suspension of a lawyer is initiated, adjudicated and imposed in the following manner:

(1) Pursuant to Section 17(E)(3)(a), an interim suspension may be imposed immediately upon a panel's decision to institute disbarment action on any formal complaint pending before it;

(2) Pursuant to Section 17(E)(3)(b), an interim suspension may be imposed upon presentation to a panel of the Committee of satisfactory proof that the attorney has pleaded guilty to, entered a nolo contendere plea, or has been found guilty of a Serious Crime in any jurisdiction;

(3) Pursuant to Section 17(E)(3)(c), a panel of the Committee may impose an interim suspension upon presentation of a verified petition by the Executive Director containing sufficient evidence to demonstrate that the attorney poses a substantial threat of serious harm to the public or to the lawyer's clients.

B. The attorney shall be given immediate notice of interim suspension consistent with the provisions of Section 9(A). Within seven (7) days of notice of the imposition of interim suspension, the attorney may submit to the Executive Director an affidavit in rebuttal of the evidence before the panel of the Committee and a request for the dissolution or modification of the interim suspension. An original and eight (8) copies of the rebuttal and request will be submitted to the Executive Director which shall be forthwith disseminated by mail or facsimile transmission to the panel of the Committee for its reconsideration and expeditious action. Upon receipt of the panel's decision, the Executive Director shall promptly notify the attorney pursuant to Section 9(A)(2).

C. An attorney suspended pursuant to Section 17(E)(3) shall comply with the requirements of Section 21. The imposition of an interim suspension does not abate any pending disciplinary actions against the attorney.

D. An interim suspension imposed pursuant to Section 17E(3)(c) shall be dissolved upon the following conditions:

(1) The alleged misconduct did not result in a decision to initiate disbarment or in action by a panel of the Committee pursuant to Sections 9 (A)(1), 9 (B), and 10 (D)(3); and

(2) Ninety (90) days have elapsed from the denial of a request to dissolve or modify the suspension; and,

(3) The attorney complied with the requirements of Section 21.

SECTION 17. SANCTIONS.

A. *Grounds for Discipline.* It shall be grounds for discipline for a lawyer to:

(1) Violate or attempt to violate the Model Rules of Professional Conduct, or any other rules of this jurisdiction regarding professional conduct of lawyers; or

(2) Engage in conduct violating applicable rules of professional conduct of another jurisdiction in which the attorney is licensed or practices.

B. *Serious Misconduct.* Serious misconduct is conduct in violation of the Model Rules that would warrant a sanction terminating or restricting the lawyer's license to practice law. Conduct will be considered serious misconduct if any of the following considerations apply:

(1) The misconduct involves the misappropriation of funds;

(2) The misconduct results in or is likely to result in substantial prejudice to a client or other person;

(3) The misconduct involves dishonesty, deceit, fraud, or misrepresentation by the lawyer;

(4) The misconduct is part of a pattern of similar misconduct;

(5) The lawyer's prior record of public sanctions demonstrates a substantial disregard of the lawyer's professional duties and responsibilities; or

(6) The misconduct constitutes a "Serious Crime" as defined in these Procedures.

C. *Lesser Misconduct.* Lesser misconduct is conduct in violation of the Model Rules that would not warrant a sanction terminating or restricting the lawyer's license to practice law.

D. *Types of Sanctions.* Misconduct shall be grounds for one or more of the following sanctions:

(1) DISBARMENT: The termination of the lawyer's privilege to practice law and removal of the lawyer's name from the list of licensed attorneys.

(2) SUSPENSION: A limitation for a fixed period of time on the lawyer's privilege to engage in the practice of law.

(3) INTERIM SUSPENSION: A temporary suspension for an indeterminate period of time of the lawyer's privilege to engage in the practice of law pending the final adjudication of a disciplinary matter.

(4) REPRIMAND: A severe public censure issued against the lawyer.

(5) CAUTION: A public warning issued against the lawyer.

(6) WARNING: A non-public caution issued against the lawyer.

(7) PROBATION: Written conditions imposed for a fixed period of time, and with the lawyer's consent, permitting the lawyer to engage in the practice of law under the supervision of another lawyer.

E. *Imposition of Sanctions.* When a panel of the Committee finds that an attorney has violated any provision of the Model Rules, the panel is authorized:

(1) To cause a complaint for disbarment to be prepared and filed against the lawyer in accordance with Section 13. Disbarment proceedings are appropriate when mandated by Section 15(C) of the Procedures or upon a finding of "serious misconduct" for which a lesser sanction would be inappropriate. A finding that a lawyer has committed acts against a client which constitute theft of property under Ark. Code Ann. § 5-36-103 (or its replacement), regardless of whether the attorney has been convicted, shall result in the automatic filing of disbarment proceedings. Actions for disbarment address the overall fitness of a lawyer to hold a license to practice law. The Committee's written notice to institute a disbarment proceeding need not state specific findings as to the misconduct or Model Rule violations.

(2) To suspend the lawyer's privilege to practice law for a fixed period of time not in excess of five (5) years. Suspension is appropriate when a panel of the Committee finds that the lawyer has engaged in "serious misconduct", and, consonant with the pertinent factors enunciated in Section 19, the nature and degree of such misconduct do not warrant disbarment.

(3) To temporarily suspend the lawyer's privilege to practice law pending final adjudication and disposition of a disciplinary matter. Interim suspension shall be appropriate in the following situations:

(a) Immediately on decision to initiate disbarment;

(b) Immediately upon proof that the attorney has been found guilty of a Serious Crime in any jurisdiction, notwithstanding pending post-conviction actions; and,

(c) When a panel of the Committee is in receipt of sufficient evidence demonstrating that the lawyer has engaged or is engaging in misconduct involving:

(i) Misappropriation of funds or property;

(ii) Abandonment of the practice of law; or,

(iii) Substantial threat of serious harm to the public or to the lawyer's clients.

(4) To issue the lawyer a letter of reprimand. A reprimand is appropriate when a panel of the Committee finds that a lawyer has engaged in "lesser misconduct" that, by application of the factors enunciated in Section 19, warrants a sanction more severe than a caution. Additionally, in certain very limited circumstances, a panel of the Committee may find that a reprimand is appropriate for conduct otherwise falling within the definition of "serious misconduct" when application of the aforementioned factors substantially demonstrates clear and compelling grounds for sanctions less severe than restriction of the privilege to practice law.

(5) To issue the lawyer a letter of caution. A caution is appropriate when a panel of the Committee finds that a lawyer has engaged in "lesser misconduct" and application of the aforementioned factors does not warrant a reprimand.

(6) To issue a letter of warning. Prior to the preparation of an affidavit of complaint, or subsequent to a lawyer's affidavit of response but before a panel of the Committee has issued a formal letter of disposition in a pending matter, the Executive Director, with the written consent of the attorney and with the approval of and at the direction of the chair of a panel, is authorized to issue a non-public letter of warning against the lawyer. A warning is not appealable. Only in cases of "lesser misconduct" of a minor nature, when there is little or no injury to a client, the public, the legal system or the profession, and when there is little likelihood of repetition by the lawyer, should a warning be imposed. A warning is not a sanction available to a panel of the Committee when issuing a formal letter of disposition following public adjudication of the disciplinary matter.

(7) To impose probationary conditions. Prior to or subsequent to the filing of a formal complaint, a panel of the Committee may, with the written consent of the lawyer, place the lawyer on probation for a period not exceeding two (2) years. Probation shall be used only in cases where there is little likelihood that the lawyer will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised. Probation may be utilized concurrently with imposition of other sanctions not restricting the privilege to practice law or may follow a period of suspension. The probationary conditions shall be in writing and acknowledged, in writing, by the lawyer. A lawyer amenable to probation shall be responsible for obtaining the agreement of another lawyer, acceptable to a panel of the Committee, to supervise, monitor, and assist the lawyer as required to fulfill the conditions of probation. Assent to undertake supervision shall be acknowledged in writing to a panel of the Committee. Probation shall be terminated upon the filing of an affidavit by the lawyer showing compliance with the conditions and an affidavit by the supervising lawyer stating probation is no longer necessary and summarizing the basis for that statement. Willful or unjustified non-compliance with the conditions of probation will terminate the probation and subject the lawyer to further disciplinary action, to include imposition of a more severe sanction which could have been imposed originally but for the agreement to probation. An attorney subjected to such further disciplinary action may only offer evidence or argument relating to the willful or unjustified nature of the non-compliance. Unsuccessful rehabilitation or non-completion of the probation conditions will subject the lawyer to further disciplinary

proceedings consistent with these Procedures. Except as necessary to the Committee's discharge of its responsibilities, terms and conditions of probation and reports related thereto which involve the lawyer's mental, physical or psychological condition shall be confidential.

SECTION 18. FINES, COSTS, AND RESTITUTION.

In addition to the Committee's authority set forth in Section 17 of these Procedures, a panel of the Committee in any case where a disciplinary sanction is imposed, may:

A. Assess the respondent attorney the costs of the proceedings, including the costs of investigations, witness fees, service of process, depositions, and a court reporter's services;

B. Impose a fine of not more than $25,000.00; and

C. Order restitution to persons financially injured by the conduct.

SECTION 19. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.

In addition to any other considerations permitted by these Procedures, a panel of the Committee, in imposing any sanctions, shall consider:

A. The nature and degree of the misconduct for which the lawyer is being sanctioned.

B. The seriousness and circumstances surrounding the misconduct.

C. The loss or damage to clients.

D. The damage to the profession.

E. The assurance that those who seek legal services in the future will be protected from the type of misconduct found.

F. The profit to the lawyer.

G. The avoidance of repetition.

H. Whether the misconduct was deliberate, intentional or negligent.

I. The deterrent effect on others.

J. The maintenance of respect for the legal profession.

K. The conduct of the lawyer during the course of the Committee action.

L. The lawyer's prior disciplinary record, to include warnings.

M. Matters offered by the lawyer in mitigation or extenuation except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the lawyer demonstrates that he or she is successfully pursuing in good faith a program of recovery.

SECTION 20. SURRENDER OF LICENSE, DISCIPLINE BY CONSENT.

(A) *Surrender of License.* An attorney may surrender his or her license upon the conditions agreed to by the attorney, the Executive Director, and a panel of the Committee. An attorney may offer or consent to the voluntary surrender of his or her license at any stage of the proceedings. No petition to the Supreme Court for voluntary surrender of license by an attorney shall be granted until referred to a panel of the Committee and the recommendations of the panel are received by the Supreme Court. (See Section 20 (E) (2), for procedure if Supreme Court does not accept the surrender.)

(B) *Discipline by Consent.*

(1) An attorney against whom a formal complaint has been served may, at any stage of the proceedings not less than ten (10) business days prior to the commencement of a public hearing before a panel of the Committee, tender a conditional acknowledgment and admission of violation of the Model Rules alleged, or to particular provisions of Model Rules so alleged, in exchange for a stated disciplinary sanction in accordance with the following:

(2) With service of a complaint, the respondent attorney will be advised that if a negotiated disposition by consent is contemplated that the respondent attorney should contact the Executive Director to undertake good faith discussion of a

proposed disposition. All discipline by consent proposals must be approved in writing by the Executive Director, before they can be submitted to any other body.

(3) Upon a proposed disposition acceptable to the respondent attorney and the Executive Director, the respondent shall execute and submit a discipline by consent on a document prepared by the Executive Director setting out the necessary factual circumstances, admission of violation of the Model Rules, and the proposed sanction.

(4) The consent proposal, along with copies of the formal complaint, and the recommendations of the Executive Director, shall be presented to a panel of seven members for their votes by written ballot to accept or reject the proposed disposition. The respondent will be notified immediately in writing of the panel decision. Rejection will result in the continuation of the formal complaint process, using a different panel, by a ballot vote pursuant to Section 10 or a public hearing pursuant to Section 11, as the case may be.

(C) No appeal can be taken from a disciplinary sanction entered by consent.

(D) The panel shall file written evidence of the terms of the discipline by consent with the Clerk.

(E) Serious Misconduct. If the discipline by consent involves allegations of Serious Misconduct, the Supreme Court shall approve any agreed proposal and any sanction.

(1) The Executive Director shall present to the Supreme Court, under such procedures as the Supreme Court may direct, any discipline by consent proposal involving Serious Misconduct which the Executive Director has reached with a respondent attorney.

(2) If the Supreme Court does not approve of the proposed discipline by consent or the voluntary surrender of license, the matter shall be referred to a panel that has not rendered a decision in the case by ballot vote, which new panel shall resume, as practical, the proceedings at the stage at which they were suspended when the proposal was made and submitted to the Supreme Court. If both regular panels have been used in prior proceedings involving a case, the Committee

Chair may form a third panel with seven of the reserve members (five attorneys and two non-attorneys) to hear the case.

(3) The fact that an offer and proposed sanction was agreed to by the Executive Director, the terms of the proposed discipline by consent, and the fact that the Supreme Court rejected the proposal shall not be disclosed to the new panel, except in those instances where disclosure of compromises is permitted under Rule 408 of the Arkansas Rules of Evidence.

SECTION 21. DUTIES OF SANCTIONED ATTORNEY. In every case in which an attorney is disbarred, suspended, or surrenders his or her license, the attorney shall, within twenty (20) days of the disbarment, suspension or surrender:

A. Notify all of his or her clients and any counsel of record in pending matters in writing that he or she has been disbarred, or suspended, or surrendered his or her license;

B. In the absence of co-counsel, notify all clients in writing to make arrangements for other representation, calling attention to any urgency in seeking the substitution of another attorney;

C. Deliver to all clients being represented in pending matters any papers or property to which they are entitled, or notify them or co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers and other property;

D. Refund any part of the fees or costs paid in advance that have not been earned or expended;

E. File with the Court, agency or tribunal before which any litigation is pending a copy of the notice to the opposing counsel, or adverse parties if no opposing counsel;

F. Keep and maintain a record **for each client** of the steps taken to accomplish the foregoing;

G. File with the Clerk and the Committee a list of all other state, federal and administrative jurisdictions to which he or she is licensed or admitted to practice. Upon such filing, the Clerk shall notify those entitled of the disbarment, suspension or surrender.

H. The attorney shall, within thirty (30) days of disbarment, suspension or surrender of license, file an affidavit with the Committee that he or she has fully complied with the provisions of the order and completely performed the foregoing or provide a full explanation of the reasons for his or her noncompliance. Such affidavit shall also set forth the address where communications may thereafter be directed to the respondent.

I. Failure to comply with these Procedures shall subject the attorney to contempt of the Arkansas Supreme Court.

SECTION 22. EMPLOYMENT OF CERTAIN DISCIPLINED ATTORNEYS.

A. When attorneys have been placed on inactive status, suspended, disbarred, or have surrendered their licenses, they are ineligible to practice law within this jurisdiction until readmitted or reinstated.

B. After having surrendered his or her law license, or having been disbarred, or while on suspension or inactive status, an attorney shall not be employed in any capacity whatsoever with a lawyer, law firm or lawyer professional association. Employment is construed as the provision of any services or labor for the benefit of the law practice of the employing lawyer or lawyers, whether compensated or not, and irrespective of the location where the services or labor may be performed.

SECTION 23. REINSTATEMENT.

A. Following any period of suspension from the practice of law, an attorney desiring reinstatement shall file with the Executive Director a verified petition requesting reinstatement.

B. The petition for reinstatement shall be accompanied by proof of payment of an application fee of $100.00 to the Clerk.

C. The petition for reinstatement shall set out the following:

(1) That the attorney has fully and promptly complied with the requirements of Section 21.

(2) That the attorney has refrained from practicing law during the period of suspension;

(3) That the attorney's license fee is current or has been tendered to the Clerk; and

(4) That the attorney has fully complied with any requirements imposed by the Committee as conditions for reinstatement.

D. Any knowing misstatement of fact may constitute grounds for contempt, denial or revocation of reinstatement.

E. Failure to comply with the provisions of Section 21 (G) and (H) shall preclude consideration for reinstatement.

F. No attorney shall be reinstated to the practice of law in this State until the Arkansas Supreme Court has received an affirmative vote by a majority of a panel of the Committee.

SECTION 24. READMISSION TO THE BAR.

A. No attorney who has been disbarred or surrendered his or her law license in this State shall thereafter be readmitted to the Bar of Arkansas except upon application made to the State Board of Law Examiners in accordance with the Rules Governing Admission To The Bar, or any successor rules, and the approval of the Arkansas Supreme Court.

B. Provided, however, that application for readmission to the Bar of Arkansas shall not be allowed in any of the following circumstances:

(1) Less than five (5) years have elapsed since the effective date of the disbarment or surrender;

(2) The disbarment or surrender resulted from conviction of a Serious Crime in any jurisdiction other than commission of an offense for which the culpable mental state was that of negligence or recklessness; or

(3) Any of the grounds found to be the basis of a disbarment or any grounds presented in a voluntary surrender of law license are of the character and nature of conduct that reflects adversely on the individual's honesty or trustworthiness, whether or not the conviction of any criminal offense occurred.

SECTION 25. INACTIVE STATUS.

A. *Temporary Transfer to Inactive Status.* The Committee is authorized to temporarily transfer an attorney to inactive status in the event that:

(1) The attorney has been judicially declared incompetent; or

(2) The attorney has been involuntarily committed due to incapacity or disability; or

(3) The attorney has alleged incapacity during the course of a disciplinary proceeding against him or her; or

(4) The attorney is found by the Committee to be culpable of habitual drunkenness or drug use substantially affecting the attorney's fitness to practice law; or

(5) The attorney is found by the Committee to have appeared in Court while under the influence of alcohol or drugs; or

(6) The attorney is found by the Committee to be unfit to practice law due to mental infirmity whether or not he or she has been judicially declared incompetent; or

(7) Without cause, the attorney requests to be transferred to a voluntary inactive status.

B. All trial judges have the duty to, and shall report to the Committee any attorney appearing before them who, in the trial judge's opinion, is under the influence of alcohol or drugs.

C. The Committee may vote by ballot as provided in Section 10 of these Procedures, on the issue of temporary transfer to inactive status or reinstatement due to an event described in subsections A (1), (2), (3) or (7) of this Section.

D. All other temporary transfers of an attorney to inactive status shall be made only after hearings initiated by the Executive Director or others and conducted in the same manner, where applicable, as provided in Section 11 of these Procedures. Provided further, however, the Committee may in its sound discretion hold a closed hearing and seal the record thereof.

E. For good cause shown, the Committee may order the attorney to submit to a medical, psychiatric or psychological examination by a Committee-appointed expert.

F. No attorney shall be entitled to practice in Arkansas while on inactive status in this State. Upon a transfer to inactive status the attorney, or his or her counsel as may be appropriate, shall comply with Section 21 of these Procedures.

G. The Committee may reinstate an attorney to active status upon a showing that any disability has been removed and the attorney is fit to resume the practice of law.

H. Reinstatement shall be accomplished in accordance with the provisions of Section 23.

I. The filing of a petition for reinstatement shall be deemed a waiver of the doctor-patient privilege regarding the disability.

SECTION 26. EXPUNGEMENT OF DISMISSALS. After three years, the Committee shall expunge all records or other evidence of the existence of complaints terminated by dismissals or referrals to alternative programs pursuant to Section 5(C)(2), except that upon the Executive Director's application, notice to respondent, and a showing of good cause, the Committee may permit the Executive Director to retain such records for one additional period of time not to exceed three years.

A. *Notice to Respondent.* If the respondent was contacted by the Executive Director or Committee concerning the complaint, or the Executive Director or Committee otherwise knows that the respondent is aware of the existence of the complaint, the respondent shall be given prompt written notice of the expungement.

B. *Effect of Expungement.* After a file has been expunged, any response by the Executive Director or Committee to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no complaint was made.

SECTION 27. CONTEMPT. The following shall be regarded as contempt of the Arkansas Supreme Court:

A. Willful disobedience of any Committee or panel order, summons or subpoena;

B. The refusal to testify on matters not privileged by law;

C. Knowingly to testify falsely before a panel of the Committee;

D. Engaging in the practice of law during a period of suspension;

E. Engaging in the practice of law after a disbarment or surrender of license; or,

F. Violation of these Procedures by any person.

MODEL RULES OF PROFESSIONAL CONDUCT

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall promptly notify a client in writing of the actual or constructive receipt by the attorney of a check or other payment received from an insurance company, an opposing party, or from any other source which constitutes the payment of a settlement, judgment, or other monies to which the client is entitled.

Rule 1.15. Safekeeping property.

(a) All lawyers shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

(1) Funds of a client shall be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. The lawyer or law firm may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges.

(2) Other property shall be identified as such and appropriately safeguarded.

(3) Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d)(1) Each trust account referred to in (a) above shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government. Each such account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

(A) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments that are presented against insufficient funds but which instruments are

honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(2) A lawyer who receives client funds which in the judgment of the lawyer are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing account for such funds. The account shall be maintained in compliance with the following requirements:

(A) The trust account shall be maintained in compliance with sections (a), (b) and (c) of this rule and the funds shall be subject to withdrawal upon request and without delay;

(B) No earnings from the account shall be made available to the lawyer or law firm; and,

(C) The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.

(3) All client funds shall be deposited in the account specified in section (d)(2) unless they are deposited in a separate interest-bearing account for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in (a) and (b) of this rule.

(4) The interest paid on the account shall not be less than, nor the fees and charges assessed greater than, the rate paid or fees and charges assessed, to any non-lawyer customers on accounts of the same class within the same institution.

(5) The decision whether to use an account specified in section (d)(2) or an account specified in section (d)(3) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

(A) The amount of interest which the funds would earn during the period they are expected to be deposited; and,

(B) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.

(e) All lawyers who maintain accounts provided for in this Rule, must convert their client trust account(s) to interest-bearing account(s) with the interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six months from the date of the order adopting this Rule, unless the account falls within subsection (d)(3). Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(f) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on the following form in a manner designated by the Clerk of the Supreme Court.

(g) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas IOLTA Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.

TRUST ACCOUNT/IOLTA CERTIFICATE

(All licensed lawyers in Arkansas must check the appropriate box and sign below)

[ ] I am a lawyer who in the course of the practice of law in Arkansas receives or disburses client funds, and, in order to comply with the Model Rules of Professional Conduct Rule 1.15, I have (my law firm has; or the public or private entity for which I work has) established one or more pooled client trust account(s), all of which are interest-bearing for the benefit of the Arkansas IOLTA Foundation.

[ ] I am engaged in the practice of law in Arkansas, but in the course of my practice I do not receive client funds.

[ ] I am not required to maintain a client trust account because I do not practice law in Arkansas, receive client funds in Arkansas, or receive funds from Arkansas clients.

[ ] Because I am a full-time judge, government lawyer or military lawyer, I do not handle client funds and do not maintain a client trust account.

Signature of Lawyer	Date	Supreme Court Number

APPENDIX

Appointments to Committees

IN RE: ARKANSAS ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Supreme Court of Arkansas
Delivered May 24, 2001

PER CURIAM. In accordance with Act 673 of 1995, the Court appoints Robert Hornberger, Esq., of Fort Smith and Robert McCallum, Esq., of Arkadelphia to the Arkansas Alternative Dispute Resolution Commission for six-year terms to expire on June 30, 2007. The Court reappoints Sidney McCollum, Esq., of Bentonville to the Commission for a six-year term to expire on June 30, 2007. The Court thanks all of these appointees for their willingness to serve on this important Commission.

IN RE: ARKANSAS JUDICIAL DISCIPLINE and DISABILITY COMMISSION

Supreme Court of Arkansas
Delivered May 24, 2001

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas and Act 637 of 1989, the Court appoints the Honorable Chris Williams of Malvern to the Arkansas Judicial Discipline and Disability Commission for a six-year term to expire on June 30, 2007. The Court reappoints the Honorable Leon Jamison of Pine Bluff to an alternate position on the Commission for a six-year term to expire on June 30, 2007.

The Court thanks Judge Williams and Judge Jamison for accepting appointment to the Commission. The Court expresses its appreciation to Judge Van Gearhart whose term on the Commission has expired.

IN RE: SUPREME COURT ALTERNATE COMMITTEE on PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered May 24, 2001

PER CURIAM. Dr. Rose Marie Word of Pine Bluff, serving an At-Large Position, is reappointed to the Alternate Committee on Professional Conduct. The Court thanks Dr. Word for accepting reappointment to this most important Committee.

IN RE: SUPREME COURT BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Delivered June 7, 2001

PER CURIAM. The Honorable David Clinger, Circuit Judge, of Bentonville and Ms. Debbie Dudley Worthington of Little Rock are reappointed to the Board of Certified Court Reporter Examiners for three-year terms to expire on July 31, 2004.

The Court expresses its appreciation to Judge Clinger and Ms. Worthington for accepting reappointment to this important Board.

IN RE: COMMITTEE on the UNAUTHORIZED PRACTICE of LAW

Supreme Court of Arkansas
Delivered June 28, 2001

PER CURIAM. King Benson, Esq., of Paragould, First Congressional District, is appointed to the Supreme Court Committee on the Unauthorized Practice of Law for a three-year term to expire on May 31, 2004. Ms. Donna Osborne of Little Rock is appointed to an At-Large Position for a three-year term to expire on May 31, 2004.

The Court thanks Mr. Benson and Ms. Osborne for accepting appointment to this important Committee. The Court expresses its appreciation to Noyl Houston of Jonesboro and Mary Bennett of Little Rock, whose terms have expired, for their dedicated service to the Committee.

IN RE: SUPREME COURT COMMITTEE on CIVIL PRACTICE

Supreme Court of Arkansas
Delivered July 9, 2001

PER CURIAM. Professor Ken Gould of the University of Arkansas at Little Rock and Claibourne W. Patty, Jr., Esq., of North Little Rock are reappointed to the Supreme Court Committee on Civil Practice for three-year terms to expire on July 31, 2004. James A. Ross, Jr., Esq., of Monticello is hereby appointed to the Committee on Civil Practice for a three-year term to expire on July 31, 2004. The Court expresses its appreciation to these appointees for their willingness to serve.

The Court thanks Thomas D. Deen, Esq., of Dermott, whose term has expired, for his service as a member of the Committee.

APPENDIX

Professional Conduct Matters

IN RE: Philip K. KINSEY,
Arkansas Bar ID # 67031

01-422 ___ S.W.3d ___

Supreme Court of Arkansas
Delivered May 31, 2001

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Philip K. Kinsey, of Fayetteville, Washington County, Arkansas, to practice law in the State of Arkansas. Mr. Kinsey's name shall be removed from the registry of licensed attorneys and he is barred from engaging in the practice of law in this State.

It is so ordered.

IN RE: Kenneth Gerald BRECKENRIDGE,
Arkansas Bar ID # 84015

01-394 49 S.W.3d 99

Supreme Court of Arkansas
Delivered June 7, 2001

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Kenneth Gerald Breckenridge, of Hot Springs, Garland County, Arkansas, to practice law in the State of Arkansas. Mr. Breckenridge's name shall be removed from the registry of licensed attorneys and he is barred from engaging in the practice of law in this state.

It is so ordered.

IN RE: JAMES ODELL CLAWSON, JR.,
Arkansas Bar ID # 890219

01-625 49 S.W.3d 99

Supreme Court of Arkansas
Delivered June 7, 2001

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of James Odell Clawson, Jr., of Little Rock, Pulaski County, Arkansas, to practice law in the State of Arkansas. Mr. Clawson's name shall be removed from the registry of licensed attorneys and he is barred from engaging in the practice of law in this state.

It is so ordered.

IN RE: Edward L. WRIGHT, Jr.,
Arkansas Bar ID # 59022

01-615 49 S.W.3d 99

Supreme Court of Arkansas
Delivered June 7, 2001

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Edward L. Wright, of Little Rock, Pulaski County, Arkansas, to practice law in the State of Arkansas. Mr. Wright's name shall be removed from the registry of licensed attorneys and he is barred from engaging in the practice of law in this state.

It is so ordered.

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ARKANSAS APPELLATE REPORTS

Volume 74

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
May 16, 2001 — July 5, 2001
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

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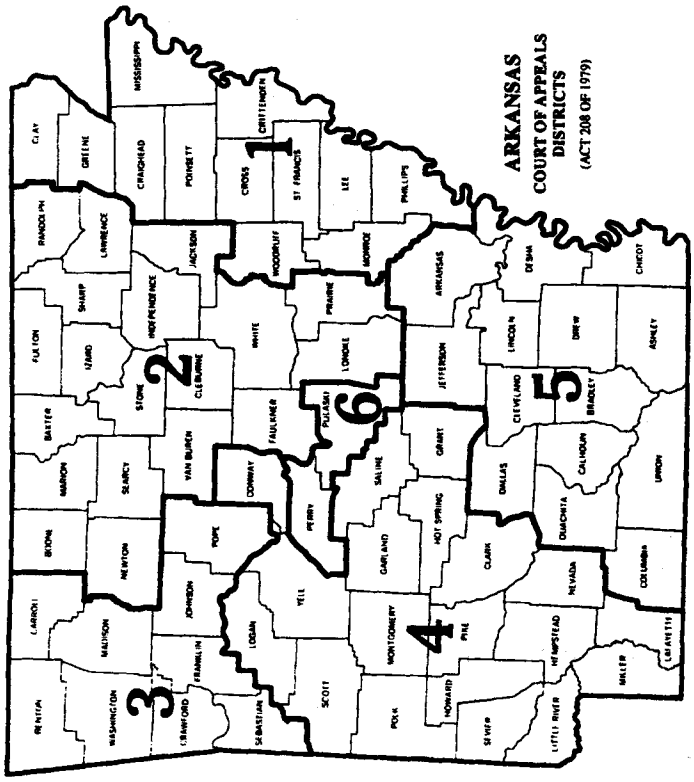
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COURT OF APPEALS
OF ARKANSAS
DURING THE PERIOD COVERED BY THIS VOLUME

(May 16, 2001 — July 5, 2001, inclusive)

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JOHN MAUZY PITTMAN	Judge[2]
JOSEPHINE LINKER HART	Judge[3]
JOHN E. JENNINGS	Judge[4]
JOHN B. ROBBINS	Judge[5]
SAM BIRD	Judge[6]
WENDELL L. GRIFFEN	Judge[7]
OLLY NEAL	Judge[8]
LARRY D. VAUGHT	Judge[9]
TERRY CRABTREE	Judge[10]
KAREN R. BAKER	Judge[11]
ANDREE LAYTON ROAF	Judge[12]

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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.

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CASES AFFIRMED BY THE ARKANSAS COURT OF APPEALS WITHOUT WRITTEN OPINION PURSUANT TO RULE 5-2(B), RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

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APPENDIX

Ceremonial Observances

IN the MATTER of the PASSING of NANCY MARIAN EPPERSON

Court of Appeals of Arkansas
Memorial Opinion delivered May 23, 2001

PER CURIAM. From August 22, 1983, until her retirement on April 1, 2001, Marian Epperson faithfully served as a law clerk at the Arkansas Court of Appeals. The court wishes to honor her years of service by this memorial opinion and express our gratitude for the loyalty and dignity that she displayed throughout her service to this court.

Ms. Epperson began her service on the court as a law clerk to the Honorable Judge Melvin Mayfield. After Judge Mayfield's retirement, Ms. Epperson continued as a law clerk for the Honorable Judge Sam Bird. At the time of her death on May 15, 2001, Ms. Epperson had the distinction of being the longest-serving law clerk on the Arkansas Court of Appeals, having served for almost eighteen years. During those years, she maintained her commitment, not only to fairness and justice, but also to her coworkers and the judges for whom she worked. We also wish to express our sincere condolences to her family. She will be missed by her many friends and colleagues.

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