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APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: RULE 37.5(b)(1)(A) of the ARKANSAS RULES of CRIMINAL PROCEDURE

Supreme Court of Arkansas
Delivered November 29, 2001

PER CURIAM. The Arkansas Supreme Court Committee on Criminal Practice has recommended an amendment to Rule 37.5(b)(1)(A) of the Rules of Criminal Procedure in response to the adoption of Rule 10 of the Arkansas Rules of Appellate Procedure—Criminal (Automatic Review in Death Cases). *See In Re: Amendment to Rule 10*, 345 Ark. Appx. (July 9, 2001). Because of the adoption of Rule 10, certain language in Rule 37.5 (b)(1)(A) became obsolete.

We agree with the Committee's recommendation and adopt, effective immediately, the amendment to Rule 37.5 (b)(1)(A) as republished below.

We express our gratitude to the members of the Criminal Practice Committee for their work on this matter.

Rule 37.5. Special rule for persons under sentence of death.

* * *

(b) Requirement of Hearing on Appointment of Attorney.[1]

(1)(A) Upon affirmance of a sentence of death by the Supreme Court of Arkansas, the clerk of the court shall forward a copy of the

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[1] *"Line-in, line-out" version of Rule 37.5 (b)(1)(A) to illustrate changes:*

Upon affirmance of a sentence of death by the Supreme Court of Arkansas, the clerk of the court shall forward a copy of the mandate to the circuit court that imposed the sentence of death and to the Attorney General. The circuit court shall conduct a hearing to consider the appointment of an attorney to represent the person in post-conviction proceedings under this rule. If the Supreme Court affirms a sentence of death ~~or affirms the trial court's finding of competency to waive an appeal from a sentence of death,~~ the hearing shall be held not later than twenty-one (21) days after the mandate is issued by the Supreme Court. ~~If an appeal is taken from the sentence of death but later dismissed by the Supreme Court, the hearing shall be held not later than twenty-one (21) days after the date the appeal is dismissed. If a timely notice of appeal is filed with the trial court but the trial record is never lodged in the Supreme Court, the hearing shall be held not later than twenty-one (21) days after the last date for lodging the trial record in the Supreme Court. If no timely notice of appeal is filed, the hearing shall be held not later than twenty-one (21) days after the last date on which a notice of appeal could have been filed.~~

mandate to the circuit court that imposed the sentence of death and to the Attorney General. The circuit court shall conduct a hearing to consider the appointment of an attorney to represent the person in post-conviction proceedings under this rule. If the Supreme Court affirms a sentence of death, the hearing shall be held not later than twenty-one (21) days after the mandate is issued by the Supreme Court.

In RE: ESTABLISHMENT of the ARKANSAS LAWYERS ASSISTANCE PROGRAM

Supreme Court of Arkansas
Delivered December 13, 2001

PER CURIAM. By way of *per curiam* order dated September 20, 2001, we published the proposed policies and procedures of the Arkansas Lawyers Assistance Program (ALAP). In that order, we invited comment within sixty days of that date.

Upon review of the Clerk's records, we find that no comments have been received. We have concluded our review of the proposed policies and procedures and approve them as published on September 20, 2001.

IN RE: ARKANSAS CODE of JUDICIAL CONDUCT, CANON 5

Supreme Court of Arkansas
Delivered December 20, 2001

PER CURIAM. On October 11, 2001, we published for comment the Judicial Discipline and Disability Commission's

proposed amendments to Canon 5 of the Code of Judicial Conduct. The Commission made its recommendation in a petition filed on October 1, 2001 in response to the passage of Amendment 80 to the Arkansas Constitution. This constitutional amendment, which makes judicial elections nonpartisan, necessitated modifications to Canon 5.

Numerous comments were received, and the Court has deliberated over the Commission's proposal and the comments. We thank the Commission for its work and all who took the time to review the proposal and submit comments. In light of the comments and the Court's own concerns, we have not adopted all of the Commission's recommendations but have revised Canon 5 as set out below.

In addition to Canon 5, we are also amending the Application Section and the Terminology Section of the Code. We adopt, effective this date, all of these amendments and republish these provisions of the Code of Judicial Conduct.

First, we are publishing a "line-in, line-out" version to illustrate the changes, then a clean version of the amended provisions of the Code is republished.

GLAZE, J., not participating.

Terminology.

. . . .

"Political organization" denotes a ~~political party or other~~ group, other than a political party, ~~the principal~~ a purpose of which is to participate in the political process ~~further the election or appointment of candidates to political office~~. ~~See Sections 5A(1), 5B(2) and 5C(1).~~

"Political party" has the same meaning as provided in Ark. Code Ann. § 7-1-101 (16)(A), that is, "any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office." In the case of a newly organized political party, the term "political party" shall mean a party that satisfies the requirements contained in Ark. Code Ann. § 7-3-108(b).

. . . .

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

A. All Judges and Candidates.

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization or a political party;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a political party;

(d) ~~attend political gatherings; or~~ directly or indirectly seek or use endorsements from a political party;

(e) solicit funds for, pay an assessment to or make a contribution to a political ~~organization~~ party or candidate; or ~~purchase tickets for political party dinners or other functions,~~

(f) publicly identify his or her current political party affiliation or lend one's name to a political party.

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter. As an individual, a judge is entitled to his or her personal view on political questions and to rights and opinions as a citizen. However, as a member of Arkansas non-partisan judiciary, a judge and judicial candidate must avoid any conduct which associates him or her with a political party.

As Arkansas maintains a partisan primary election process, this provision ensures that a judge or candidate may ask for a ballot in a party's primary or declare a party affiliation for voting purposes without violating ethical standards.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization or a political party."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. Former judges and retired judges are encouraged to not publicly endorse or publicly oppose a candidate for any public office with the use of their former title.

A candidate does not publicly endorse another candidate for public office by having that judicial candidate's name on the same ~~ticket~~ ballot of a political party primary in the section of the ballot designated as a nonpartisan judicial candidate.

Restricting candidates for judicial office from publicly identifying their affiliation in a political party and seeking or using a political party endorsement is necessary for an independent and impartial judiciary and in preserving public confidence in that independence and impartiality.

Judicial elections are nonpartisan and show that judges are impartial and independent. Such elections and those seeking judicial office should do nothing which would create the appearance of any lack of impartiality or independence on the part of the candidate and the Arkansas Judiciary.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of

the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of the Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Arkansas Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law;

(i) retain an office in a political organization or a political party,

(ii) attend ~~political~~ gatherings of political organizations and political parties, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or a political party or candidate and purchase tickets for political party dinners or other functions.

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization or a political party, attend ~~political~~ gatherings of political parties and political organizations and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5A (1), 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge, or a candidate subject to public election may, except as prohibited by law:

(a) at any time

(i) purchase tickets for and attend ~~political~~ gatherings of a political organization or a political party;

(ii) contribute to a political organization;

(iii) privately identify himself or herself as affiliated with a political party.

(b) when a candidate for election

(i) speak to gatherings on his or her own behalf and may speak at gatherings of political organizations or political parties where all opposing judicial candidates for the same office ~~are invited~~ have the opportunity to speak ~~at the same gathering~~;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

Commentary:

Section 5C(1)(b)(iii) allows a judicial candidate to ask an individual to place a sign supporting the candidate in his or her yard.

~~Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.~~

(2) A candidate shall not personally solicit or accept campaign contributions. ~~or personally solicit publicly stated support.~~ A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support other than from political ~~organizations~~ parties for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers.

A candidate's committee may solicit contributions and public support for the candidate's campaign no earlier than 180 days before ~~a primary~~ an election and no later than 45 days after the last contested election in which the candidate participates during the election year. Funds received prior to the 180 day limitation or after the 45 day limitation shall be returned to the contributor. If funds are received personally by a judicial candidate, the candidate shall promptly turn them over to the campaign committee. A candidate

shall not use or permit the use of campaign contributions for the private benefit of the candidate or others. Any campaign fund surplus shall be returned to the contributors or turned over to the State Treasurer as provided by law.

Commentary:

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are *permitted by law and* reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

~~(3) Except as prohibited by law, a candidate for judicial office in a public election may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.~~

(3) A candidate for judicial office in a public election may not directly or indirectly solicit or promote the candidate's name to appear in promotions on a political party's ticket or materials paid for by a political party. Except as prohibited by law, a candidate's name, picture or other identifying information may be listed in election material sponsored by a political organization.

Commentary:

Election material published by a political organization, such as the League of Women Voters or a bar association, is unobjectionable.

~~Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).~~

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary:

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Arkansas Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Commentary:

The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

B. Continuing Part-time Judge. A continuing part-time judge:

(1) is not required to comply:

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, and 4H. ~~5A(1), 5B(2) and 5D.~~

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Commentary:

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

C. Pro Tempore Part-time Judge or Periodic Part-time Judge.

A pro tempore part-time judge or periodic part-time judge:

(1) is not required to comply:

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5D.

(2) A person who has been a pro tempore part-time judge or periodic part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

Commentary:

A full time governmental official who has judicial powers which are exercised infrequently, such as a county judge, is a pro tempore part-time judge.

D. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

ARKANSAS CODE OF JUDICIAL CONDUCT

Terminology.

. . . .

"Political organization" denotes a group, other than a political party, a purpose of which is to participate in the political process.

"Political party" has the same meaning as provided in Ark. Code Ann. § 7-1-101 (16)(A), that is, "any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office." In the case of a newly organized political party, the term "political party" shall mean a party that satisfies the requirements contained in Ark. Code Ann. § 7-3-108 (b).

. . . .

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

A. All Judges and Candidates.

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization or a political party;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a political party;

(d) directly or indirectly seek or use endorsements from a political party;

(e) solicit funds for, pay an assessment to or make a contribution to a political party or candidate; or

(f) publicly identify his or her current political party affiliation or lend one's name to a political party.

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter. As an individual, a judge is entitled to his or her personal view on political questions and to rights and opinions as a citizen. However, as a member of Arkansas non-partisan judiciary, a judge and judicial candidate must avoid any conduct which associates him or her with a political party.

As Arkansas maintains a partisan primary election process, this provision ensures that a judge or candidate may ask for a ballot in a party's primary or declare a party affiliation for voting purposes without violating ethical standards.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization or a political party."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. Former judges and retired judges are encouraged to not publicly endorse or publicly oppose a candidate for any public office with the use of their former title.

A candidate does not publicly endorse another candidate for public office by having that judicial candidate's name on the same ballot of a political party primary in the section of the ballot designated as a nonpartisan judicial candidate.

Restricting candidates for judicial office from publicly identifying their affiliation in a political party and seeking or using a political party endorsement is necessary for an independent and impartial judiciary and in preserving public confidence in that independence and impartiality.

Judicial elections are nonpartisan and show that judges are impartial and independent. Such elections and those seeking judicial office should do nothing which would create the appearance of any lack of impartiality or independence on the part of the candidate and the Arkansas Judiciary.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of

the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of the Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court

administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Arkansas Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law;

(i) retain an office in a political organization or a political party,

(ii) attend gatherings of political organizations and political parties, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or a political party or candidate and purchase tickets for political party dinners or other functions.

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization or a political party, attend gatherings of political parties and political organizations and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5A(1), 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge, or a candidate subject to public election may, except as prohibited by law:

(a) at any time

(i) purchase tickets for and attend gatherings of a political organization or a political party;

(ii) contribute to a political organization;

(iii) privately identify himself or herself as affiliated with a political party.

(b) when a candidate for election

(i) speak to gatherings on his or her own behalf and may speak at gatherings of political organizations or political parties where all opposing judicial candidates for the same office have the opportunity to speak;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

Commentary:

Section 5C(1)(b)(iii) allows a judicial candidate to ask an individual to place a sign supporting the candidate in his or her yard.

(2) A candidate shall not personally solicit or accept campaign contributions. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support other than from political parties for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers.

A candidate's committee may solicit contributions and public support for the candidate's campaign no earlier than 180 days before an election and no later than 45 days after the last contested election in which the candidate participates during the election year. Funds received prior to the 180 day limitation or after the 45 day limitation shall be returned to the contributor. If funds are received personally by a judicial candidate, the candidate shall promptly turn them over to the campaign committee. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others. Any campaign fund surplus shall be returned to the contributors or turned over to the State Treasurer as provided by law.

Commentary:

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are permitted by law and reasonable under the circumstances. Though not

prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) A candidate for judicial office in a public election may not directly or indirectly solicit or promote the candidate's name to appear in promotions on a political party's ticket or materials paid for by a political party. Except as prohibited by law, a candidate's name, picture or other identifying information may be listed in election material sponsored by a political organization.

Commentary:

Election material published by a political organization, such as the League of Women Voters or a bar association, is unobjectionable.

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary:

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is

subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Arkansas Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Commentary:

The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

B. Continuing Part-time Judge. A continuing part-time judge:

(1) is not required to comply:

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, and 4H.

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Commentary:

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all

parties pursuant to Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

C. Pro Tempore Part-time Judge or Periodic Part-time Judge.

A pro tempore part-time judge or periodic part-time judge:

(1) is not required to comply:

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5D.

(2) A person who has been a pro tempore part-time judge or periodic part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

Commentary:

A full time governmental official who has judicial powers which are exercised infrequently, such as a county judge, is a pro tempore part-time judge.

D. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

IN RE: PROCEDURES REGULATING PROFESSIONAL CONDUCT of ATTORNEYS at LAW — SURRENDER OF LICENSE — SECTION 20(A) REVISED

Supreme Court of Arkansas
Delivered December 20, 2001

PER CURIAM. By Per Curiam issued July 9, 2001, the Court substantially amended and renumbered the sections of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law, with the changes to be effective January 1, 2002. After further review, the Court has concluded that an additional change is needed in newly numbered Section 20(A), dealing with Surrender of License, to allow an offer of voluntary surrender to be made without a pending proceeding. That change is incorporated into the revision of Section 20(A) set out below, which shall be effective January 1, 2002, in place of the Section 20(A) published July 9, 2001.

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 time. 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 the procedure where there is a disciplinary proceeding pending, if Supreme Court does not accept the voluntary offer of surrender.)

IN RE: PROCEDURES REGULATING PROFESSIONAL CONDUCT of ATTORNEYS at LAW — SECTION 22 — RESTRICTIONS on FORMER ATTORNEYS REVISED

Supreme Court of Arkansas
Delivered December 20, 2001

PER CURIAM. By Per Curiam issued July 9, 2001, the Court substantially amended and renumbered the sections of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law, with the changes to be effective January 1, 2002. After further review, the Court has concluded that additional changes are needed in newly numbered Section 22, dealing with restrictions on former attorneys. These latest changes are incorporated into the revision of Section 22 set out below, which shall be effective January 1, 2002, in place of the Section 22 published July 9, 2001.

Section 22. Restrictions on Former Attorneys.

A. For the purposes of this Section, a "former attorney" is any attorney who is disbarred, has surrendered a law license, is on suspension, or is on inactive status.

B. (1) A former attorney providing services to an attorney or law firm under Subsection 22.C shall not occupy, share, or use office space in any location or building where the practice of law is conducted.

(2) A former attorney shall not engage in the practice of law, nor may a former attorney engage in any employment in or related to the practice of law, except as specifically permitted in this Section.

(3) For legal service provided to a client that was not completed prior to becoming a former attorney, a former attorney may receive compensation only on a quantum meruit basis.

(4) A former attorney shall promptly take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, attorney, legal assistant, law clerk, or similar title from any association with the name of the former attorney.

C. Consistent with the restrictions in Subsection 22.B, a former attorney may provide to attorneys and law firms, whether for

or without compensation, services involving legal research, and drafting of briefs and research memorandum, provided the former attorney:

(1) Shall have no contact with clients or prospective clients of any attorney or law firm in person, by telephone, in writing, e-mail, or by any other form of communication;

(2) Shall have no contact with client funds or property;

(3) Any former attorney providing permitted services may be compensated only for the reasonable value of the services provided and shall not be compensated on a contingency basis or share in any way in any fees for legal services provided by an attorney; and

(4) Such services are not provided to any attorney or law firm with whom the former attorney had any employment affiliation as an attorney at the time of the activities which resulted in the attorney becoming a former attorney or at the time of the final action which resulted in the attorney becoming a former attorney.

D. Any attorney or law firm utilizing the services of a former attorney as permitted in this Section shall be responsible for the actions and work product of the former attorney in the rendering of such services and to ensure that the restrictions on a former attorney set out herein are observed.

E. An attorney shall not aid a former attorney in the unauthorized practice of law or in a violation of the restrictions set out herein on former attorneys. An attorney shall have an obligation, as under Model Rule 8.3, to report any violation of this Section by a former attorney.

F. The maximum punishment for an attorney, or any former attorney on suspension or on inactive status, violating this Section may be disbarment. A former attorney previously disbarred or who has surrendered a law license and who violates this Section may be deemed to be in contempt of the Supreme Court and may be punished accordingly.

IN RE: AMENDMENT to the SUPREME COURT PROCEDURES REGULATING PROFESSIONAL CONDUCT of ATTORNEYS at LAW. PROPOSED NEW SECTION 28 on ATTORNEY TRUST ACCOUNT AUTOMATIC OVERDRAFT NOTIFICATION, and TEMPORARY SUSPENSION of AMENDMENT to MODEL RULE 1.15(d)(1)

Supreme Court of Arkansas
Delivered December 20, 2001

PER CURIAM. By Per Curiam issued July 9, 2001, the Court adopted amendments to the Procedures Regulating Professional Conduct of Attorneys at Law (the "Procedures") and to Model Rule of Professional Conduct 1.15(d)(1), all to be effective January 1, 2002. The amendment to Model Rule 1.15(d)(1) established an automatic overdraft notification reporting requirement for all attorney trust accounts. To implement this new provision in amended Model Rule 1.15(d), a new provision in the Procedures is being considered. Proposed new Section 28 to the Procedures is published today, for public comment. Also attached for comment is a copy of the proposed "Attorney Trust Account Overdraft Reporting Agreement" to be executed by financial institutions desiring to participate in the program and be approved as depositories for attorney trust accounts. The comment period will run through January 18, 2002. Comments on proposed Section 28 (below) should be made in writing and addressed to:

Clerk, Arkansas Supreme Court
Attn: Procedures Regulating Professional Conduct of Attorneys
Justice Building
625 Marshall Street
Little Rock, AR 72201

Because of this action, the effective date of that part of the amendment to Model Rule 1.15(d)(1) set out **in bold wording** immediately below, is hereby suspended until further order of the Court.

Rule 1.15 Safekeeping property.

(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.

* * *

PROPOSED NEW SECTION 28 TO THE PROCEDURES

Section 28. Attorney trust account and automatic "overdraft" notification procedure.

A. Consent By Lawyers. Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the trust account overdraft reporting and production requirements mandated by this Section.

B. Overdraft Notification Agreement Required. A financial institution shall be approved as a depository for lawyer trust accounts only if it files with the Arkansas Supreme Court Office of Professional Conduct (the "Office") an agreement, in a form provided by the Office, to report to that Office whenever any properly payable instrument is presented against any lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Office may establish additional procedures, to be approved by the Supreme Court, governing approval and revocation of approved status for financial institutions. The

Office shall annually file with the Supreme Court Clerk and the Arkansas IOLTA Foundation, and post on the Court's website, not later than January 1, a current list of approved financial institutions. No attorney or law firm trust account shall be maintained in any financial institution that does not agree to so report and is not approved by the Office. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days written notice to the Office.

C. Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution to the Office shall be in the following format:

(1) 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;

(2) 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.

D. Timing of Reports. Reports under subsection 28.C shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

E. Costs. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Section.

F. Lawyers who practice law in this state shall deposit all funds held in trust in this jurisdiction in accordance with Rule 1.15(a) of the Model Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions approved by the Office.

G. Every lawyer engaged in the practice of law in this state shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

H. Definitions. For purposes of this Section:

(1) Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

(4) "Office" means the Office of Professional Conduct of the Arkansas Supreme Court.

I. The form of the "Attorney Trust Account Overdraft Reporting Agreement" attached hereto, and as may be subsequently revised, is approved for use.

J. Disapproval or Revocation of Approval of Financial Institutions.

(1) Refusal of the Office to approve a financial institution due to failure of the financial institution to timely submit an initial properly executed written agreement on the form approved by the Court or the Office is not appealable or otherwise subject to challenge, including by civil action in any court.

(2) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found by the Executive Director to

have engaged in a pattern of neglect or to have acted in bad faith in not complying with its obligations under the written agreement.

(3) The Executive Director of the Office shall communicate any decision to revoke approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for the revocation decision and advise of any right to reconsideration or review. The financial institution shall have thirty (30) days from the date of receipt of the written notice to file a written request with the Executive Director seeking reconsideration of the Executive Director's decision or a review of that decision by a panel of the Committee on Professional Conduct. The financial institution may request a review by either ballot vote of a panel or a public hearing before a panel, following the Procedures. The decision of the panel shall be final and not subject to any review. The approved status of the financial institution shall continue until such time as this review process is final.

(4) Once the approval of the financial institution has been finally revoked, the institution shall not thereafter be approved as a depository for attorney trust accounts until such time as the financial institution petitions the Office for new approval, including in the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future, and approval is granted.

(5) Within fifteen (15) days of receipt of the notice of revocation, or final order of revocation if reviewed by a panel, of its approved status, a financial institution shall give written notification of the revocation action to all holders of attorney trust accounts on deposit with the financial institution, and file a report with the Office of all such attorney notification contacts within thirty (30) days of the date of receipt by the financial institution of the notice or final order of revocation.

(6) Any attorney or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked shall remove all trust accounts from the financial institution within thirty (30) days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the

Office, including the name and address of the new trust account depository institution.

(7) Failure of any financial institution, attorney, or law firm to comply with the provisions of Section 28 may be treated as contempt of the Arkansas Supreme Court upon petition by the Office, and punished as such upon a finding of contempt.

Commentary to Section 28:

1. This Section is generally based on Rule 29 of the Model Rules for Lawyer Disciplinary Enforcement (1996) of the American Bar Association's Standing Committee on Professional Discipline.

2. This Section establishes that consent to the reporting and production requirements mandated by amended Model Rule 1.15 is a condition of the privilege to practice law in Arkansas. This condition is intended to protect financial institutions from claims by lawyer-depositors based on disclosures made by financial institutions, provided that the disclosures are in accordance with this Section. Parties to an overdraft notification agreement are the Court, through its Office of Professional Conduct, and a financial institution. The consent provision in this Section avoids the necessity for financial institutions to draft separate agreements with lawyers to establish consent to overdraft notification or for the attorney disciplinary office to do so with each attorney.

3. The overdraft notification agreement requires that all overdrafts be reported, irrespective of whether the instrument is honored. In light of the purposes of this Section, and in view of ethical proscriptions concerning the preservation of client funds and commingling of client and lawyer funds, it would be improper for a lawyer to accept overdraft privileges or any other arrangement for a personal loan on a client trust account in exchange for the institution's promise to delay or not to report an overdraft.

4. Absence of discretion makes notification by a financial institution an administratively simple matter. An institution which receives an instrument for payment against insufficient funds need not evaluate whether circumstances require that notification be given; it merely provides notice.

5. It then becomes the responsibility of the disciplinary agency to determine whether further action is necessary. In cases where an

overdraft is a result of an accounting error (caused by either the lawyer or the institution), but notification has already been sent to the Office, the institution should provide the lawyer with a written explanation (preferably, an affidavit from an officer of the institution) that the lawyer can then submit to the Office to verify the error.

6. This Section provides the proper format for overdraft reports. In so doing, the Section distinguishes between dishonored instruments and instruments that are presented against insufficient funds but honored. Where instruments are presented against insufficient funds but paid, the Section specifies the information that the institution should provide.

7. Ordinarily, within 24 hours of dishonor an institution gives notice of an overdraft to a depositor whose account is charged. See Uniform Commercial Code, Section 3-508. This is the same time period in which overdraft notification is given to the Office. Where an instrument presented against insufficient funds is honored, the financial institution should send overdraft notification to the agency within five (5) days of the date of presentation.

8. Upon receipt of an overdraft notification, this Section contemplates that the Office will contact the lawyer or firm by telephone and request an explanation for the overdraft. A letter requesting a documented explanation may also be sent. If the overdraft is an accounting error, the lawyer or firm submits a written explanation, including any documents to substantiate the claim. Where the lawyer or firm cannot supply an adequate or complete explanation for the overdraft, other action may be generated, including an audit or a demand for production of the lawyer's books and records.

9. In addition to normal monthly maintenance fees on each account, a lawyer or firm can anticipate additional fees to be charged by the financial institutions for reporting overdrafts in accordance with this Section. However, because financial institutions already flag overdrafts and returned checks, it appears only slightly more burdensome for the institution to forward a copy to the Office. As a result, the additional cost to the lawyer should not be exorbitant.

10. This Section should not be interpreted to allow a lawyer to permit trust account funds to be reduced through deductions made by a financial institution to cover costs of overdraft notification. Such costs should not be borne by clients.

11. Under the laws of most jurisdictions, the definition of "properly payable" will be contained in section 4-104 of the Uniform Commercial Code.

12. This Section sets forth the requirements for deposit of trust funds in clearly identified trust accounts in approved financial institutions. Funds held not in connection with a representation, such as a trust fund for a lawyer's own spouse or minor child, do not fall under this Section. This Section also does not concern a lawyer's own funds properly held in a non-fiduciary capacity, such as funds in a business or personal account.

13. Under Rule 1.15(a) of the Model Rules of Professional Conduct, trust property may be held outside the lawyer's home jurisdiction upon consent of the client. The overdraft notification rule here governs funds held within the adopting state. A lawyer's obligation to deposit trust funds in an approved institution will arise upon adoption of the overdraft notification rule in a state where the lawyer deposits trust funds, whether that state is the state wherein the lawyer's office is situated or some other state.

14. Under the laws of most jurisdictions, the definition of "notice of dishonor" will be determined by reference to section 3-508 of the Uniform Commercial Code, under which notice must be given by a bank before its midnight deadline and by any other person or institution before midnight on the third business day after dishonor or receipt of notice of dishonor.

ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT

To: Arkansas Supreme Court Office of Professional Conduct (the "Office")
Justice Building, Room 110
625 Marshall Street
Little Rock, AR 72201-1054

The undersigned, being a duly authorized officer of (name of institution)

_____,

a financial institution doing business in the State of Arkansas, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to receive attorney trust accounts in the State of Arkansas. In consideration of approval by the Office of this financial institution, the financial institution agrees

to comply with the overdraft reporting requirements for such financial institutions as set forth in Section 28 of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (Rev. 2002) (the "Procedures"), which is incorporated herein by reference, and any other rules or procedures for overdraft reporting promulgated by the Arkansas Supreme Court or the Office, and any later amendments to such rules or procedures.

Specifically, the named financial institution agrees to report to the Office all events involving trust account instruments, and to report in the following format:

(1) 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;

(2) 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.

All reports shall be made within the following time periods:

(1) In the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;

(2) In the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.

This agreement shall apply to all branches of the named financial institution and shall not be cancelled except upon thirty (30) days written notice to the Executive Director of the Office at the address listed above.

Name and address of financial institution:

_____

_____

Date:_____ _____

Signature of Authorized Official

Corporate Seal

_____
Printed or Typed Name of Authorized Official

_____
Title or Position of Authorized Official

ACKNOWLEDGMENT

On this ____ day of _____, 2____, before me, a Notary Public for the State of Arkansas, appeared the above-named individual, known to me to the person executing this instrument, and acknowledged and executed this instrument as his/her free and voluntary act.

_____
Notary Public (signature)

My Commission Expires: _____

ACCEPTANCE

The above-named financial institution is hereby approved by the Arkansas Supreme Court Office of Professional Conduct as a depository for attorney trust accounts in the State of Arkansas until such time as this agreement is cancelled by the financial institution upon thirty (30) days written notice to the Office, or is revoked by action of the Executive Director of the Office.

Date _____

_____
Executive Director, Office of Professional Conduct

(01-01-2002 ed.)

IN RE: ARKANSAS RULES of CIVIL PROCEDURE; and RULES of the SUPREME COURT and COURT of APPEALS

Supreme Court of Arkansas
Delivered January 24, 2002

PER CURIAM. On November 8, 2001, we published for comment the Arkansas Supreme Court Committee on Civil Practice's proposals for changes in the Arkansas Rules of Civil Procedure, Inferior Court Rules, Rules of Appellate Procedure—Civil, and Rules of the Supreme Court and Court of Appeals. We thank everyone who reviewed the proposals and submitted comments.

The proposals with two exceptions[1] will be implemented. We encourage all judges and lawyers to review this *per curiam* order to familiarize themselves with the changes to the rules, but we want to emphasize the change in Rule 4-2 of the Rules of the Supreme Court and Court of Appeals. The Argument portion of a brief now requires the following: "For each issue, the applicable standard of review shall be concisely stated at the beginning of the discussion of the issue."

We again express our gratitude to the members of our Civil Practice Committee for the Committee's diligence in performing the important task of keeping our civil rules current, efficient, and fair.

The amendments to Ark. R. Civ. P. 4(d)(8)(C) and 5(b) are deemed to supersede Ark. Code Ann. § 1-2-122(b) with respect to the service of process and other papers.

We adopt the following amendments to be effective immediately and republish the rules and Reporter's Notes as set out below.

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[1] No action is being taken at this time with respect to the Inferior Court Rules, and the Civil Practice Committee is requested to review these rules in light of a comment which was received.

The proposed change to Rule 5 of the Rules of Appellate Procedure—Civil is not being adopted. Although the Committee's recommendation makes some good points, practitioners are familiar with the calculation of time under the existing rule, and any benefit in adopting the recommendation is offset by the learning curve which would be necessary to implement it.

Arkansas Rules of Civil Procedure

1. The Table of Contents preceding the Rules of Civil Procedure is revised by including ten headings, as follows:

I. Scope of Rules — One Form of Action

1. Scope of rules.
2. One form of action.

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

3. Commencement of action — "Clerk" defined.
4. Summons.
5. Service and filing of pleadings and other papers.
6. Time.

III. Pleadings and Motions

7. Pleadings and motions.
8. General rules of pleading.
9. Pleading special matters.
10. Form of pleadings.
11. Signing of pleadings, motions, and other papers; sanctions.
12. Defenses and objections — When and how presented — By pleading or motion — Motion for judgment on the pleadings.
13. Counterclaim and cross-claim.
14. Third-party practice.
15. Amended and supplemental pleadings.
16. Pretrial procedure; formulated issues.

IV. Parties

17. Parties plaintiff and defendant.
18. Joinder of claims and remedies.
19. Joinder of persons needed for just adjudication.
20. Permissive joinder of parties.
21. Misjoinder and non-joinder of parties.
22. Interpleader.
23. Class actions.
23.1. Actions by shareholders.
23.2 Actions relating to unincorporated associations.
24. Intervention.

25. Substitution of parties.

V. Depositions and Discovery

26. General provisions governing discovery.
27. Depositions before action or pending appeal.
28. Persons before whom depositions may be taken.
29. Stipulations regarding discovery procedures.
30. Depositions upon oral examination.
31. Depositions upon written questions.
32. Use of depositions in court proceedings.
33. Interrogatories to parties.
34. Production of documents and things and entry upon land for inspection and other purposes.
35. Physical and mental examination of persons.
36. Requests for admission.
37. Failure to make discovery; sanctions.

VI. Trials

38. Jury trial of right.
39. Trial by jury or by the court.
40. Trial settings and continuances.
41. Dismissal of actions.
42. Consolidation; separate trials.
43. Taking of testimony.
44. Proof of official record.
44.1. Determination of foreign law.
45. Subpoena.
46. Exceptions unnecessary.
47. Jurors.
48. Number of jurors — Verdict.
49. Verdicts and interrogatories.
50. Motion for directed verdict and for judgment notwithstanding verdict.
51. Instructions to jury; objection.
52. Findings by the court.
53. Masters.

VII. Judgment

54. Judgments; costs.
55. Default.
56. Summary judgment.
57. Declaratory judgments.
58. Entry of judgment or decree.

59. New trials.
60. Relief from judgment, decree or order.
61. Harmless error.
62. Stay of proceedings to enforce a judgment.
63. Disability of a judge.

VIII. Counsel; Provisional and Final Remedies; Suits in Forma Pauperis.

64. Addition and withdrawal of counsel.
65. Injunctions and temporary restraining orders.
65.1. Security; proceedings against sureties.
66. Receivers.
67. Deposit in court.
68. Offer of judgment.
69. Execution discovery.
70. Judgment for specific acts; vesting title.
71. Process in behalf of and against persons not parties.
72. Suits in forma pauperis.
73-76. [Reserved.]

IX. Circuit Courts and Clerks.

77. Courts and clerks.
78. Motion day and hearings on motions.
79. [Abolished.]
80. Admissibility of testimony at prior trial.

X. General Provisions.

81. Applicability of rules.
82. Jurisdiction and venue unaffected.
83. [Abolished.]
84. Uniform paper size.
85. Title.
86. Effective date.

2. Subdivisions (c), (d), (f), and (g) of Rule 4 are amended to read as follows:

(c) *By Whom Served.* Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action; (2) any person not less than eighteen years of age appointed for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made; (3) any

person authorized to serve process under the law of the place outside this state where service is made; or (4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

(d) *Personal Service Inside the State.* A copy of the summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made upon any person designated by statute to receive service or as follows:

* * *

(4) Where the defendant is confined in a state or federal penitentiary or correctional facility, service must be upon the keeper or superintendent of the institution who shall deliver a copy of the summons and complaint to the defendant. A copy of the summons and complaint shall also be sent to the defendant by first class mail and marked as "legal mail" and, unless the court otherwise directs, to the defendant's spouse, if any.

(8)(A) * * *

(B) * * *

(C) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5) and (7) of this subdivision may also be made by the plaintiff or an attorney of record for the plaintiff using a commercial delivery company that (i) maintains permanent records of actual delivery, and (ii) has been approved by the circuit court in which the action is filed or in the county where service is to be made. The summons and complaint must be delivered to the defendant or an agent authorized to receive service of process on behalf of the defendant. The signature of the defendant or agent must be obtained. Service pursuant to this paragraph shall not be the basis for a judgment by default unless the record reflects actual delivery on and the signature of the defendant or agent, or an affidavit by an employee of an approved commercial delivery company reciting or showing refusal of the process by the defendant or agent. If delivery of process is refused, the plaintiff or attorney making such service, promptly upon receipt of notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default may be rendered against the defendant unless he or she

appears to defend the suit. A judgment by default may be set aside pursuant to Rule 55(c) if the court finds that someone other than the defendant or agent signed the receipt or refused the delivery or that the commercial delivery company had not been approved as required by this subdivision.

* * *

(f) *Service by Warning Order.* (1) If it appears by the affidavit of a party seeking judgment or his or her attorney that, after diligent inquiry, the identity or whereabouts of a defendant remains unknown, or if a party seeks a judgment that affects or may affect the rights of persons who are not and who need not be subject personally to the jurisdiction of the court, service shall be by warning order issued by the clerk. This subdivision shall not apply to actions against unknown tortfeasors.

(2) The warning order shall state the caption of the pleadings; include, if applicable, a description of the property or other res to be affected by the judgment; and warn the defendant or interested person to appear within 30 days from the date of first publication of the warning order or face entry of judgment by default or be otherwise barred from asserting his or her interest. The party seeking judgment shall cause the warning order to be published weekly for two consecutive weeks in a newspaper having general circulation in the county where the action is filed and to be mailed, with a copy of the complaint, to the defendant or interested person at his or her last known address by any form of mail with delivery restricted to the addressee or the agent of the addressee.

(3) If the party seeking judgment has been granted leave to proceed as an indigent without prepayment of costs, the clerk shall conspicuously post the warning order for a continuous period of 30 days at the courthouse or courthouses of the county wherein the action is filed. The party seeking judgment shall cause the warning order to be mailed, with a copy of the complaint, to the defendant or interested person as provided in paragraph (2). Newspaper publication of the warning order is not required.

(4) No judgment by default shall be taken pursuant to this subdivision unless the party seeking the judgment or his or her attorney has filed with the court an affidavit stating that 30 days have elapsed since the warning order was first published as provided in paragraph (2) or posted at the courthouse pursuant to paragraph (3). If a defendant or other interested person is known to the party seeking judgment or to his or her attorney, the affidavit shall also

state that 30 days have elapsed since a letter enclosing a copy of the warning order and the complaint was mailed to the defendant or other interested person as provided in this subdivision.

(g) *Proof of Service.* The person effecting service shall make proof thereof to the clerk within the time during which the person served must respond to the summons. If service is made by a sheriff or his deputy, proof may be made by executing a certificate of service or return contained in the same document as the summons. If service is made by a person other than a sheriff or his deputy, the person shall make affidavit thereof, and if service has been by mail or commercial delivery company, shall attach to the affidavit a return receipt, envelope, affidavit or other writing required by Rule 4(d)(8). Proof of service in a foreign country, if effected pursuant to the provisions of a treaty or convention as provided in Rule 4(e)(4), shall be made in accordance with the applicable treaty or convention.

Rule 4 is amended further by deleting subdivision (j) and redesignating subdivision (k) as subdivision (j), as follows:

(j) *Service of Other Writs and Papers.* Whenever any rule or statute requires service upon any person, firm, corporation or other entity of notices, writs, or papers other than a summons and complaint, including without limitation writs of garnishment, such notices, writs or papers may be served in the manner prescribed in this rule for service of a summons and complaint. Provided, however, any writ, notice or paper requiring direct seizure of property, such as a writ of assistance, writ of execution, or order of delivery shall be made as otherwise provided by law.

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

Addition to Reporter's Notes, 2002 Amendment: Subdivision (c)(4) has been amended to refer to service by a commercial company, an option authorized by new paragraph (C) of subdivision (d)(8) and discussed below. Over the years, lawyers have questioned the efficacy of service by mail under paragraph (A) of subdivision (d)(8), in part because the postal service does not always follow its own rules regarding restricted delivery mail.

Subdivision (d) has been revised to provide that service shall be made as provided in that subdivision or "upon any person

designated by statute to receive service." This provision incorporates statutes which, for example, provide for service on the registered agent of a corporation. *E.g.*, Ark. Code Ann. §§ 4-26-503, 4-27-1510. It was deemed advisable in light of case law suggesting that Rule 4 is exclusive as to the recipients of process, despite language in subdivisions (d)(1) & (5) permitting service on an "agent authorized . . . by law to receive service of summons." *See, e.g., May v. Bob Hankins Distributing Co.*, 301 Ark. 494, 785 S.W.2d 23 (1990).

Subdivision (d)(4) has been amended to require the plaintiff not only to serve the superintendent of the correctional facility housing the defendant (as well as the defendant's spouse, if any, unless the court orders otherwise), but also to send a copy of the summons and complaint, marked as "legal mail," to the defendant by first class mail. This additional safeguard is similar to that found in substituted service statutes. *E.g.*, Ark. Code Ann. §§ 16-58-120(b)(2)(B) (in addition to serving Secretary of State, plaintiff must mail copy of summons and complaint to defendant at last known address).

New paragraph (C) of subdivision (d)(8) permits service by "a commercial delivery company that (i) maintains permanent records of actual delivery and (ii) has been approved by the circuit court in which the action is filed or in the county where service is to be made." Service of papers by commercial delivery companies under Rule 5 has been allowed for more than a decade with no apparent problem. *See* Rule 5(b)(2) & Addition to Reporter's Notes, 1989 Amendment. Rule 5(b)(2) has been amended to require court approval of the commercial delivery company, a requirement imposed by new paragraph (C) of this rule.

Paragraph (C) is more restrictive than Ark. Code Ann. §§ 1-2-122(b), which allows service by "an alternative mail carrier." The statute has thus been superseded with respect to service of process. Paragraph (C) contains additional safeguards similar to those found in paragraph (A) for service by mail and requires, as does subdivision (c)(2) with respect to service by a private person, that the commercial delivery company be approved by the circuit court of the county where the action is filed or where service is to be made. This approval may be in the form of a standing order or may be made on a case-by-case basis, as under subdivision (c)(2). *See* Addition to Reporter's Notes to Rule 4, 1999 Amendment.

The rule has also been amended to provide uniform requirements for warning orders. Those requirements are contained in

revised subdivision (f), which deals with both situations in which service by warning order is permissible, *i.e.*, "when the identity or whereabouts of a defendant remains unknown, or if a party seeks a judgment that affects or may affect the rights of persons who are not and who need not be subject personally to the jurisdiction of the court." Former subdivision (j) has been deleted and former subdivision (k) redesignated as subdivision (j).

3. Subdivision (b) of Rule 5 is amended to read as follows:

(b) *Service: How Made.* (1) * * *

(2) Except as provided in paragraph (3) of this subdivision, service upon the attorney or upon the party shall be made by delivering a copy to him or by sending it to him by regular mail or commercial delivery company at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy for purposes of this paragraph means handing it to the attorney or to the party; by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing, and service by commercial delivery company is presumptively complete upon depositing the papers with the company. When service is permitted upon an attorney, such service may be effected by electronic transmission, provided that the attorney being served has facilities within his office to receive and reproduce verbatim electronic transmissions. Service by a commercial delivery company shall not be valid unless the company: (A) maintains permanent records of actual delivery, and (B) has been approved by the circuit court in which the action is filed or in the county where service is to be made.

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

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

Addition to Reporter's Notes, 2002 Amendment: Since 1989, subdivision (b)(2) has allowed service of papers, other than the summons and complaint, on attorneys via commercial delivery companies. This subdivision has been amended to allow service by

this method on parties as well, but with the safeguard that the commercial delivery company be court-approved. Section 1-2-122(b) of the Arkansas Code, which allowed service by "an alternative mail carrier," has been deemed superseded.

Subdivision (b)(2) has also been revised to provide that "service by commercial delivery company is presumptively complete upon depositing the papers with the company." This provision parallels that for service by mail, which "is presumptively complete upon mailing." Subdivision (b)(3), which applies when the circuit court has continuing jurisdiction, has been amended to reflect the addition of new paragraph (C) of Rule 4(d)(8).

4. Subdivision (c) of Rule 6 is amended to read as follows:

(c) *For Motions, Responses, and Replies.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 20 days before the time specified for the hearing. Any party opposing a motion shall serve a response within 10 days after service of the motion. The movant shall then have 5 days after service of the response within which to serve a reply. The time periods set forth in this subdivision may be modified by order of the court and do not apply when a different period is fixed by these rules, including Rules 56(c) and 59(d).

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

Addition to Reporter's Notes, 2002 Amendment: Rule 6(c) has been amended to clarify the timing of motions, responses, and replies. A related change with respect to motion practice has been made in Rule 7(b), which governs the form and content of motions, responses, and replies. Cross-references to Rules 6(c) and 7(b) have been added to Rule 12(i) and Rule 78(b).

Under the prior version of subdivision (c), a written motion and notice of hearing had to be served no later than ten days prior to the date set for hearing. At the same time, Rule 78(b) provided a ten-day period for a response and a five-day period for reply. As a result, there might be no time for a reply. To address this problem, the ten-day period in subdivision (c) has been expanded to twenty days. Also, the provisions governing the timing of responses and replies have been shifted from Rule 78(b) to subdivision (c). As was previously the case, the court may modify the time periods by order. These periods are inapplicable when a different time frame is

established by another rule, *e.g.*, Rule 56(c) (motions for summary judgment).

The provision in the former version of subdivision (c) as to supporting affidavits now appears in Rule 7(b)(2).

5. Rule 7 is amended by changing the title of the rule to "Pleadings and motions," and subdivision (b) is amended to read as follows:

(b) *Motions and Other Papers.*

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) All motions required to be in writing and any responses and replies shall include a brief supporting statement of the factual and legal basis for the motion, response, or reply and the citations relied upon. Any supporting affidavits shall be served with the motion, response, or reply. Failure to satisfy these requirements shall be ground for the court's striking the motion, response, or reply. The court is not required to grant a motion solely because no response or brief has been filed.

(3) The rules applicable to captions, signings, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

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

Addition to Reporter's Notes, 2002 Amendment: New paragraph (2) of subdivision (b) addresses matters that previously appeared in Rule 6(c) (supporting affidavits) and Rule 78(b) (content of motions). With these changes, Rule 6(c) governs the timing of motions, responses, and replies, while Rule 7(b) governs their content. Rule 78(b) simply cross-references these provisions. Former paragraph (2) of subdivision (b) has been redesignated as paragraph (3), and minor changes have been made in the titles of subdivision (b) and the rule.

6. Subdivision (i) of Rule 12 is amended to read as follows:

(i) *Response to Motions; Reply.* Any response in opposition to a motion under this rule and any reply to such a response shall be made as provided in Rules 6(c) and 7(b).

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

Addition to Reporter's Notes, 2002 Amendment: Subdivision (i) of the rule previously included time periods for serving responses to motions and replies to responses. These matters are now governed by Rule 6(c), and subdivision (i) has been amended to provide a cross-reference to that provision. There has also been added a cross-reference to Rule 7(b), which governs the content of motions, responses, and replies.

7. Subdivision (f) of Rule 45 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. A deposition, including any subpoenas issued therefor, shall be subject to these rules as well as to any rule or statute creating a privilege or immunity from discovery. Any objection or motion for protective order with respect to the deposition 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, 2002 Amendment: The third sentence of subdivision (f) has been amended to expressly provide that a deposition taken for use in an out-of-state proceeding is subject to the Rules of Civil Procedure, as well as to any rule or statute "creating a privilege or immunity from discovery." Previously, this sentence stated only that the Rules applied to subpoenas issued for such depositions. Also, the last sentence of subdivision (f) has been revised to include a specific reference to motions for protective orders made with respect to the deposition pursuant to Rule 26(c). The former version of this sentence mentioned only objections.

8. The following Reporter's Note is adopted to accompany the subpoena form promulgated by the Court in connection with Rule 45:

Reporter's Notes Regarding Subpoena Form

This form was designed for civil cases, including probate and juvenile matters, and should not be used in criminal proceedings. It is based on the form used in the federal courts. *See* Form AO 88, Subpoena in a Civil Case (Rev. 1994), reprinted in 1B Federal Procedural Forms §§ 1:1270 (1999). However, it departs from the federal model as necessary to accommodate differences between the Arkansas Rules of Civil Procedure and the federal rules.

Rule 45 does not mention the form, but the Supreme Court's order of adoption describes it as "official." *In re Arkansas Rules of Civil Procedure*, 340 Ark. 731, 733 (2000). Although use of an exact reproduction of the form is not mandatory, a subpoena must include all information called for by the form. For example, the second page of the form contains a "notice to persons subject to subpoenas" intended to advise those persons of their rights and duties under Rule 45. A subpoena without this information would be subject to challenge. However, so long as the necessary information is included, use of a "home-grown" document should not be fatal.

Additional information may be included if it is not inconsistent with Rule 45 or the form itself. For instance, a subpoena issued by the clerk might contain the name, address and phone number of the attorney who requested its issuance. Other information can be added in certain spaces on the form. The division in which the case is pending may also be included along with the street address in the box labeled "place of testimony."

On the other hand, modification of the form in such a way that distorts the controlling law or misleads the recipient is impermissible. Under Rule 45(b), for example, a subpoena *duces tecum* directed to a non-party is permissible only in connection with a deposition, hearing, or trial. Consequently, adding to the form a box to be checked and an accompanying statement to the effect that the recipient is commanded to permit inspection of specified documents at counsel's office on a given date, is not permissible. By contrast, the federal form offers this option, which is available under the federal rules. *See* Rules 34(c) & 45(a)(1)(C), Fed. R. Civ. P.

Unless a statute provides a procedure different from that specified in Rule 45, the rule and the form are applicable in probate and juvenile cases. Certain probate matters — such as will contests and adoptions — are "special proceedings" within the meaning of Rule 81(a) and thus excepted from the Rules of Civil Procedure if a statute sets out a different procedure. *E.g., Brantley v. Davis*, 305 Ark. 68, 805 S.W.2d 75 (1991). Some juvenile matters may also be special proceedings. *See Kelley v. State*, 191 Ark. 848, 88 S.W.2d 65 (1935). If there is no such statute, then the rules apply. *Norton v. Hinson*, 337 Ark. 487, 989 S.W.2d 535 (1999).

There appears to be only one statute that uses the word "subpoena" in connection with probate cases, and it does not conflict with Rule 45. *See* Ark. Code Ann. §§ 5-2-317(b)(3). By statute, the Rules of Civil Procedure apply to "all proceedings" in juvenile cases "until rules of procedure for juvenile court are developed and in effect," except as otherwise provided by the juvenile code. Ark. Code Ann. §§ 9-27-325(f). No such rules have been promulgated, and the only statute dealing with subpoenas in juvenile cases is not inconsistent with Rule 45. *See* Ark. Code Ann. §§ 9-27-310(e). Accordingly, the rule and the subpoena form apply in probate and juvenile proceedings.

9. Subdivision (b), (c), and (d) of Rule 78 are amended to read as follows:

(b) *Motions, Responses, and Replies.* The form and content of motions, responses, and replies are governed by Rule 7(b). The timing of motions, responses, and replies is governed by Rule 6(c).

(c) *Hearing; Waiver.* The court, upon notice to all parties, may hold a hearing on a motion only after the time for reply has expired; however, the court may hear a proper ex parte motion at any time. Unless a hearing is requested by counsel or is ordered by the court, a hearing will be deemed waived and the court may act upon the matter without further notice after the time for reply has expired.

(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 2 and no longer than 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, 2002 Amendment: The provisions of subdivision (b) have been deleted and replaced with cross-references to Rule 6(c), which now governs the timing of motions, responses, and replies, and to Rule 7(b), which now governs their content. Under the new first sentence of subdivision (c), the court may not hold a hearing on a motion, except one that may properly be heard ex parte, until the time for reply has expired. A similar provision was added to Rule 56(c), which applies to motions for summary judgment, in 2001. The title of subdivision (c) has been revised to make plain that it does not refer simply to waiver of hearings, and stylistic changes have been made in subdivision (d).

Rules of the Arkansas Supreme Court and Court of Appeals

1. Rule 4-2 (a)(7) is amended to read as follows:

Rule 4-2. Contents of briefs.

(a) *Contents.* * * *

(7) *Argument.* Arguments shall be presented under subheadings numbered to correspond to the outline of points to be relied upon. For each issue, the applicable standard of review shall be concisely stated at the beginning of the discussion of the issue. Citations of decisions of the Court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible. 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).

2. New Rule 6-8 is adopted as follows:

Rule 6-8. Certification of Questions of Law.

(a) *Power to Answer.* (1) The Supreme Court may, in its discretion, answer questions of law certified to it by order of a federal court of the United States if there are involved in any proceeding before it questions of Arkansas law which may be determinative of the cause then pending in the certifying court and as to which it

appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

(2) The Supreme Court shall decide whether to answer the question so certified within 30 days of the filing of the certification order. The Clerk shall mail notice of this decision to the certifying court, counsel of record, and parties appearing without counsel. The notice shall also state whether portions of the record, if any, are to be filed pursuant to subdivision (d) of this rule, as well as the briefing schedule and the approximate date the question certified will come before the Supreme Court for consideration.

(3) If the Supreme Court takes no action within 30 days of the filing of the certification order, the Court shall be deemed to have declined to answer the question unless it has by order extended the time.

(4) If the certification order is filed when the Supreme Court is formally in recess, the 30-day time period shall commence when the Court returns from the recess.

(5) In its discretion, the Supreme Court may at any time rescind its decision to answer a certified question. The Clerk shall promptly mail notice to the certifying court, counsel of record, and parties appearing without counsel.

(b) *Method of Invoking.* This rule may be invoked upon motion of a federal court of the United States or upon motion of any party to the cause pending before the court.

(c) *Contents of Certification Order.* (1) A certification order shall contain: (A) the question of law to be answered; (B) the facts relevant to the question, showing fully the nature of the controversy out of which the question arose; (C) a statement acknowledging that the Supreme Court, acting as the receiving court, may reformulate the question; and (D) the names and addresses of counsel of record and parties appearing without counsel.

(2) If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

(d) *Preparation of Certification Order.* The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the clerk of the Supreme Court by the clerk of the certifying court under its official seal.

The Supreme Court may require the original or copies of all or any portion of the record before the certifying court to be filed if, in the opinion of the Supreme Court, the record or portion thereof may be necessary in answering the questions.

(e) *Costs of Certification.* Fees and costs shall be the same as in civil appeals docketed before the Supreme Court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its certification order.

(f) *Briefs and Argument.* Proceedings in the Supreme Court shall be those provided in these rules.

(g) *Opinion.* The written opinion of the Supreme Court stating the law governing the questions certified shall be sent by the clerk under the seal of the Supreme Court to the certifying court and to the parties.

(h) *Power to Certify; Procedure.* The Supreme Court or the Court of Appeals, on their own motion or the motion of any party, may order certification of questions of law to the highest court of any other state when it appears to the Supreme Court or the Court of Appeals that there are involved in any proceeding before the court questions of law of the receiving state which may be determinative of the cause then pending and that there are no controlling precedents in the decisions of the highest court of the receiving state. The procedures for certification from this state to the receiving state shall be those provided in the laws of the receiving state.

IN RE: ADMINISTRATIVE ORDER NUMBER 10: ARKANSAS CHILD SUPPORT GUIDELINES

Supreme Court of Arkansas
Opinion delivered January 31, 2002

PER CURIAM. On February 5, 1990, this Court first adopted guidelines for child support in response to P.L. 100-485 and Ark. Code Ann. § 9-12-312(a). Effective October, 1989, P.L.

100-485 required the following: that all states adopt guidelines for setting child support; that it be a rebuttable presumption that the amount of support calculated from the child-support chart is correct; and that each state's guidelines be reviewed and revised, as necessary, at least every four years. In response to the federal law, the Arkansas General Assembly enacted Ark. Code Ann. § 9-12-312, which included the federal provisions and authorized the Arkansas Supreme Court to develop guidelines based on recommendations submitted to the Court by a committee appointed by the Chief Justice.

The Committee on Child Support initially made recommendations to the Court which formed the substance of the 1990 Per Curiam Order. On May 13, 1991, pursuant to the Committee's recommendations, the Court issued a new Per Curiam Order which supplemented the original. Then, in compliance with the four-year requirement of P.L. 100-485, the Committee submitted recommendations to the Court in October, 1993, and the Court issued a Per Curiam Order on October 23, 1993, adopting the guidelines which subsequently were published in the *Court Rules* volume of the *Arkansas Code Annotated.*

On September 25, 1997, again pursuant to the four-year requirement of P.L. 100-485, the Court issued a Per Curiam Order, adopting recommendations of the Child Support Committee. In addition, the Court adopted and published *Administrative Order Number 10 — Arkansas Child Support Guidelines*, effective October 1, 1997. The Administrative Order incorporated by reference the weekly and monthly family-support charts and the Affidavit of Financial Means. The Court republished *Administrative Order Number 10* with a Per Curiam Order of January 22, 1998, making minor corrections to the child-support charts and to the Affidavit of Financial Means.

In the ensuing four years, the Committee has continued to study the existing guidelines, pursuant to federal and state law, and once again has submitted its recommendations to the Court. Having carefully considered these most recent recommendations, the Court adopts and publishes *Administrative Order Number 10 — Arkansas Child Support Guidelines*, effective February 11, 2002. This Administrative Order includes and incorporates by reference the revised weekly and monthly family-support charts and the revised Affidavit of Financial Means which are attached to Administrative Order No. 10.

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

GLAZE and CORBIN, JJ., dissent.

* * *

ADMINISTRATIVE ORDER NUMBER 10 — CHILD SUPPORT GUIDELINES

SECTION I. AUTHORITY AND SCOPE.

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

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

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

SECTION II. DEFINITION OF INCOME.

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

1. Federal and state income tax;

2. Withholding for Social Security (FICA), Medicare, and railroad retirement;

3. Medical insurance paid for dependent children; and

4. Presently paid support for other dependents by court order.

SECTION III. CALCULATION OF SUPPORT.

a. Basic Considerations.

The most recent revision of the family support charts is based on the weekly and monthly income of the payor parent as defined in Section II.

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

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

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

b. Income Which Exceeds Chart.

When the payor's income exceeds that shown on the chart, use the following percentages of the payor's weekly or monthly income as defined in SECTION II to set and establish a sum certain dollar amount of support:

One dependent: 15%
Two dependents: 21%

Three dependents: 25%
Four dependents: 28%
Five dependents: 30%
Six dependents: 32%

c. Nonsalaried Payors.

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

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

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

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

For self-employed payors, support shall be calculated based on the last two years' federal and state income tax returns and the quarterly estimates for the current year. A self-employed payor's income should include contributions made to retirement plans, alimony paid, and self-employed health insurance paid; this figure appears on line 22 of the current federal income tax form. Depreciation should be allowed as a deduction only to the extent that it reflects actual decrease in value of an asset. Also, the court shall consider the amount the payor is capable of earning or a net worth approach based on property, life-style, etc.

d. Imputed Income.

If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are

reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support.

e. Spousal Support.

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

f. Allocation of Dependents for Tax Purposes.

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

g. Health Insurance.

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

SECTION IV. AFFIDAVIT OF FINANCIAL MEANS.

The Affidavit of Financial Means shall be used in all family support matters. The trial court shall require each party to complete and exchange the Affidavit of Financial Means prior to a hearing to establish or modify a support order.

SECTION V. DEVIATION CONSIDERATIONS.

a. Relevant Factors.

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

1. Food;

2. Shelter and utilities;

3. Clothing;

4. Medical expenses;

5. Educational expenses;

6. Dental expenses;

7. Child care (includes nursery, baby sitting, daycare or other expenses for supervision of children necessary for the custodial parent to work);

8. Accustomed standard of living;

9. Recreation;

10. Insurance;

11. Transportation expenses; and

12. Other income or assets available to support the child from whatever source.

b. Additional Factors.

Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and maintenance of life insurance, health insurance, dental insurance for the children's benefit;

2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g., orthopedic shoes, glasses, braces, etc.);

3. The creation or maintenance of a trust fund for the children;

4. The provision or payment of special education needs or expenses of the child;

5. The provision or payment of day care for a child;

6. The extraordinary time spent with the noncustodial parent, or shared or joint custody arrangements;

7. The support required and given by a payor for dependent children, even in the absence of a court order; and

8. Where the amount of child support indicated by the chart is less than the normal costs of child care, the court shall consider whether a deviation is appropriate.

SECTION VI. ABATEMENT OF SUPPORT DURING EXTENDED VISITATION.

The guidelines assume that the noncustodial parent will have visitation every other weekend and for several weeks during the summer. Excluding weekend visitation with the custodial parent, in those situations in which a child spends in excess of 14 consecutive days with the noncustodial parent, the court should consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent which are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents. Any partial abatement or reduction of child support should not exceed 50% of the child-support obligation during the extended visitation period of more than 14 consecutive days.

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

SECTION VII. PROVISIONS FOR PAYMENT.

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

* * *

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS

AFFIDAVIT OF FINANCIAL MEANS

COUNTY OF _____ Revised 02-02

_____ PLAINTIFF

Vs. Case No. _____

_____ DEFENDANT

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

The affiant, being duly sworn, says under penalty of perjury that affiant is the [Plaintiff/Defendant/Party] (*circle one*) to this support action herein, has prepared this financial statement, knows the contents thereof, and that it is true and correct.

Attach additional pages as needed.

INCOME

Complete Item 29.

1. My weekly take-home pay [from Item 29(i)] is $_____.

2. I claim ____ dependents for the purpose of determining my State of Arkansas withholding. I claim ____ dependents for the purpose of determining my federal withholding. I [did/did not] (*circle one*) claim myself as a dependent. I [do/do not] (*circle one*) have an additional amount withheld from my payroll checks for tax purposes and, if so, that amount is $_____ per [week/pay period] (*circle one*) and itemized below. All other deductions taken from my payroll check before I receive it total $_____ [from Item 29(j)(8)].

3. I receive total payments, periodic, or otherwise, from the following sources: _____ in the following amount(s) of $_____.

4. I have cash on hand in the amount of $_____ from the following sources: _____.

5. I have on deposit in banks and savings institutions the amount of $_____ from the following source(s): _____.

6. I have stocks and bonds in the amount of $_____ and their source was _____.

CREDITORS

Complete Items 30, 31 and 32.

7. Debts in the name of plaintiff only: ALL CREDITORS LISTED UNDER ITEM 30:
   (a) TOTAL UNPAID BALANCES: $_____
   (b) TOTAL MONTHLY PAYMENTS: _____

8. Debts in the name of defendant only: ALL CREDITORS LISTED UNDER ITEM 31:
   (a) TOTAL UNPAID BALANCES: $_____
   (b) TOTAL MONTHLY PAYMENTS: _____

9. Debts in our JOINT NAMES are: ALL CREDITORS LISTED UNDER ITEM 32:
   (a) TOTAL UNPAID BALANCES: $_____
   (b) TOTAL MONTHLY PAYMENTS: _____

AVERAGE MONTHLY EXPENSES

10. My present average monthly expenses to support myself and ___ children are:

HOUSEHOLD

Mortgage or rent payments $_____
Property taxes and insurance $_____
Electricity $_____
Water, garbage & sewer $_____
Telephone (including cell) $_____
Fuel, oil or natural gas $_____
Repairs & Maintenance $_____

Lawn (and pool) care $_____
Pest Control $_____
Housewares $_____
Food & Grocery items $_____
Meals outside home $_____
Other $_____
_____ $_____
_____ $_____
_____ $_____

AUTOMOBILE EXPENSE

Car/lease payment $_____
Gasoline and Oil $_____
Repairs $_____
Auto Tag and Title $_____
Insurance $_____
Other_____ $_____
_____ $_____

CHILDREN'S EXPENSES

Nursery or babysitting $_____
School tuition $_____
School supplies $_____
Lunch money $_____
Allowance $_____
Clothing $_____
Medical, Dental, Drugs $_____

Vitamins $_____
Barber/Beauty parlor $_____
Cosmetics/Toiletries $_____
Gifts for Holidays/Birthdays $_____
Other _____ $_____
_____ $_____
_____ $_____

INSURANCES

Health $_____
Life $_____
Other Insurance $_____
_____ $_____
_____ $_____

OTHER EXPENSES NOT LISTED

Household help $_____
Dry Cleaning $_____
My Clothing $_____
My Hair Care $_____
My Cosmetics $_____
Newspaper, etc $_____
_____ $_____
_____ $_____

PETS

Food $_____
Grooming $_____
Veterinarian $_____

PERSONAL

Membership dues $_____
Professional dues $_____
Social Dues $_____
Entertainment $_____
Vacations $_____
Publications $_____
Church/Charity $_____
Miscellaneous $_____
Other $_____

MEDICAL EXPENSES

Physician $_____
Dental $_____
Medicines $_____
Hospital $_____
Glasses $_____
Other _____ $_____

TOTAL MONTHLY EXPENSES $_____

Place a check mark next to those not being paid currently.

GENERAL INFORMATION

11. My full name is _____.

12. My social security number is _____.
My military I.D. number is _____.

13. My Arkansas driver's license number is _____.

14. My date of birth is _____.
My place of birth is _____.

15. My father's full name is_____.
My mother's full name is _____.
[They/He/She] reside(s) at _____.
My [father and/or mother] [is/are] deceased.

16. My present resident address is _____.

17a The full names, birth dates and social security numbers of children born (or legally adopted) of this marriage are:

	Name	**Birth Date**	**Soc. Sec. Number**
(a)	_____	_____	_____
(b)	_____	_____	_____
(c)	_____	_____	_____
(d)	_____	_____	_____
(e)	_____	_____	_____
(f)	_____	_____	_____

17b The full names, birth dates and social security numbers of Children born out of wedlock to the parties are:

	Name	**Birth Date**	**Soc. Sec. Number**
(a)	_____	_____	_____
(b)	_____	_____	_____
(c)	_____	_____	_____

Paternity has _____ has not _____ been established for these children.

17c I also have the obligation to support the following additional children born to me and _____:

	Name	Birth Date	Soc. Sec. Number
(a)	_____	_____	_____
(b)	_____	_____	_____
(c)	_____	_____	_____

Please attach any court orders establishing paternity and establishing a child support obligation.

18. My employer is _____.

19. My employer's full address is _____.

20. My home telephone number is _____.
My work telephone number is _____.

INFORMATION ABOUT OPPOSING PARTY, IF KNOWN (DO NOT GUESS)

21. The opposing party's full name is _____.

22. The opposing party's social security number is _____.
The opposing party's military I.D. number is _____.

23. The opposing party's Arkansas driver's license number is _____.

24. (a) The opposing party's father's full name is _____.
(b) The opposing party's mother's full name is _____.
(c) [They/He/She] reside(s) at _____.
(d) Opposing party's [father and/or mother] [is/are] deceased.

25. The opposing party's present residence address is _____.

26. The opposing party's employer is _____.

27. The opposing party's employer's address is _____.

28. The opposing party's home telephone number is _____.
The opposing party's work telephone number is _____.

INCOME

29. How often are you paid and what are your gross wages, salary or commission due each time? *(Check one)*

_____ Weekly (52 times a year)
_____ Bi-Weekly (26 times a year)
_____ Semi-Monthly (24 times a year)
_____ Monthly (12 times a year)
_____ Other (Explain)

PAYROLL DEDUCTIONS

(a) GROSS WAGES		$_____
(b) Federal income tax withheld	$_____	
(c) Arkansas income tax withheld	$_____	
(d) FICA (social security) or railroad retirement	$_____	
(e) Health insurance (children only)	$_____	
(f) Court-ordered child support for dependents of previous marriage or previously legally determined adopted or illegitimate children	$_____	
(g) TOTAL WITHHELD ((b) through (f) above)		$_____
(h) NET TAKE-HOME PAY PER PAY PERIOD (Subtract (g) from (a) above)		$_____
(i) CONVERT TO WEEKLY TAKE-HOME PAY AND CARRY TO ITEM 1 ABOVE		$_____

Example: If (h) above is $300.00 and is received bi-weekly, multiply $300.00 by 26 (26x3OO=$7,800), divide $7,800 by 52 ($150.00); carry $150.00 to Item 1

(j) OTHER ITEMS WITHHELD FROM MY CHECK ARE:	
(1) Union dues	$_____
(2) Credit union, thrift plans	$_____
(3) Pension benefits, stock purchase plans	$_____
(4) Charitable contributions	$_____
(5) Debt payments, garnishments	$_____
(6) Life insurance payments	$_____
(7) other (identify)	$_____

Items (1) through (7) above are not allowed in computing take-home pay.

(8) TOTAL WITHHELD (sum of items (1) through (7) above) $_____

If self-employed, attach copies of your past two years' state and federal income tax returns and a list of all disbursements made to you during the current calendar year.

CREDITORS AND DEBTS

30. Debts in the name of PLAINTIFF only are:

Creditors	Total Unpaid Balance	Monthly Payment
(a)_____	$_____	$_____
(b)_____	_____	_____
(c)_____	_____	_____
(d)_____	_____	_____
(e)_____	_____	_____
(f) TOTAL:	*$_____	**$_____
	***Carry forward to Item 7(a)**	****Carry forward to Item 7(b)**

31. Debts in the name of DEFENDANT only are:

Creditors	Total Unpaid Balance	Monthly Payment
(a)_____	$_____	$_____
(b)_____	_____	_____
(c)_____	_____	_____
(d)_____	_____	_____
(e)_____	_____	_____
(f) TOTAL:	*$_____	**$_____
	***Carry forward to Item 8(a)**	****Carry forward to Item 8(b)**

32. Debts in JOINT names:

Creditors	Total Unpaid Balance	Monthly Payment
(a)_____	$_____	$_____
(b)_____	_____	_____
(c)_____	_____	_____
(d)_____	_____	_____
(e)_____	_____	_____
(f) TOTAL:	*$_____	**$_____
	***Carry forward to Item 9(a)**	****Carry forward to Item 9(b)**

33. The weekly take-home pay of opposing party is $_____.

34. All other income of the opposing party is $_____.

_____
Affiant

STATE OF _____

COUNTY OF _____

Subscribed and sworn to before me, a Notary Public, on this ___ day of _____, _____.
(month) (year)

_____
Notary Public

My Commission Expires:

_____.
(SEAL)

ARKANSAS

Monthly Family Support Chart

PAYOR NET MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN
500	121	176	209	230	250
550	133	193	229	253	274
600	145	211	249	275	298
650	156	228	269	297	322
700	168	245	289	320	347
750	180	262	309	342	370
800	191	278	328	362	393
850	202	294	347	383	415
900	214	310	366	404	438
950	225	326	384	425	460
1000	236	342	403	445	483
1050	247	359	422	467	506
1100	259	375	442	488	529
1150	271	392	462	510	553
1200	282	409	481	532	576
1250	294	425	501	553	600
1300	305	442	520	575	623
1350	314	454	534	591	640
1400	319	462	544	601	652
1450	325	470	554	612	663
1500	331	479	563	622	675
1550	337	487	573	633	686
1600	342	495	582	643	697
1650	348	503	591	653	708
1700	354	511	600	663	719
1750	359	518	609	672	729
1800	364	526	617	682	739
1850	370	533	626	692	750
1900	375	541	635	701	760
1950	383	551	647	714	774
2000	391	563	659	729	790
2050	398	574	672	743	805
2100	406	585	685	757	821

2150	414	596	698	771	836
2200	422	607	711	785	851
2250	429	618	723	799	866
2300	437	628	736	813	881
2350	444	639	748	827	896
2400	451	649	761	841	911
2450	458	660	773	854	926
2500	466	671	786	868	941
2550	473	681	797	881	955
2600	480	691	809	894	969
2650	487	701	820	906	982
2700	494	711	832	919	996
2750	501	721	843	932	1010
2800	508	731	855	945	1024
2850	515	741	867	958	1038
2900	522	751	879	971	1052
2950	529	761	890	984	1067
3000	536	771	902	997	1081
3050	542	780	914	1010	1095
3100	549	790	926	1023	1109
3150	556	800	938	1036	1123
3200	563	810	950	1049	1137
3250	569	819	960	1061	1150
3300	574	827	970	1071	1161
3350	579	834	979	1081	1172
3400	584	842	988	1092	1183
3450	589	849	997	1102	1194
3500	594	857	1006	1112	1205
3550	599	864	1015	1122	1216
3600	604	872	1024	1132	1227
3650	609	879	1034	1142	1238
3700	614	887	1043	1152	1249
3750	619	895	1052	1162	1260
3800	624	902	1061	1172	1271
3850	630	910	1071	1184	1283
3900	636	919	1082	1195	1295
3950	642	928	1092	1207	1308
4000	648	937	1102	1218	1321
4050	654	946	1113	1230	1333
4100	660	954	1123	1241	1346
4150	666	963	1134	1253	1358
4200	672	972	1144	1264	1371
4250	678	981	1155	1276	1383
4300	684	989	1165	1288	1396
4350	690	998	1176	1299	1408

4400	698	1007	1186	1311	1421
4450	702	1015	1195	1321	1432
4500	707	1023	1205	1331	1443
4550	713	1031	1214	1341	1454
4600	718	1039	1223	1352	1465
4650	724	1047	1232	1362	1476
4700	729	1054	1242	1372	1487
4750	735	1062	1251	1382	1498
4800	740	1070	1260	1392	1509
4850	746	1078	1269	1403	1520
4900	751	1086	1278	1413	1531
4950	757	1094	1288	1423	1542
5000	762	1102	1297	1433	1553

ARKANSAS

Weekly Family Support Chart

PAYOR NET WEEKLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN
100	24	35	42	46	50
110	27	39	46	51	55
120	29	42	50	55	60
130	31	46	54	60	65
140	34	49	58	64	69
150	36	52	62	69	74
160	38	56	66	73	79
170	41	59	70	77	84
180	43	63	74	82	88
190	45	66	78	86	93
200	47	69	81	90	97
210	50	72	85	94	102
220	52	75	89	98	106
230	54	79	93	102	111
240	56	82	96	107	115
250	59	85	100	111	120
260	61	89	104	115	125
270	63	92	108	120	130
280	66	95	112	124	134
290	68	99	116	128	139
300	70	102	120	133	144
310	72	104	123	136	147
320	73	106	125	138	149
330	74	108	127	140	152
340	76	109	129	142	154
350	77	111	131	144	156
360	78	113	132	146	159
370	79	114	134	148	161
380	80	116	136	150	163

390	81	117	138	152	165
400	82	119	140	154	167
410	83	120	141	156	169
420	84	122	143	158	171
430	86	123	145	160	173
440	87	125	147	162	176
450	88	127	149	165	178
460	90	129	152	167	182
470	91	132	154	170	185
480	93	134	157	173	188
490	94	136	159	176	191
500	96	138	162	179	194
510	98	140	164	182	197
520	99	143	167	184	200
530	100	145	169	187	203
540	102	147	172	190	206
550	103	149	174	193	209
560	105	151	177	195	212
570	106	153	179	198	215
580	108	155	182	201	218
590	109	157	184	203	220
600	111	159	186	206	223
610	112	161	189	208	226
620	113	163	191	211	229
630	115	165	193	214	232
640	116	167	196	216	234
650	118	169	198	219	237
660	119	171	200	221	240
670	120	173	203	224	243
680	122	175	205	227	246
690	123	177	207	229	248
700	124	179	210	232	251
710	126	181	212	234	254
720	127	183	214	237	257
730	129	185	217	240	260
740	130	187	219	242	263
750	131	189	221	245	265
760	132	190	223	247	267
770	133	192	225	249	270
780	134	193	227	251	272
790	135	195	229	253	274
800	136	196	230	255	276

810	137	198	232	257	278
820	138	199	234	259	280
830	139	201	236	261	283
840	140	202	238	263	285
850	141	204	240	265	287
860	142	205	241	267	289
870	143	207	243	269	291
880	144	208	245	271	294
890	145	210	247	273	296
900	147	212	249	275	299
910	148	214	251	278	301
920	149	215	253	280	304
930	150	217	256	282	306
940	151	219	258	285	309
950	153	221	260	287	311
960	154	222	262	289	314
970	155	224	264	292	316
980	156	226	266	294	319
990	157	228	268	296	321
1000	159	229	270	298	324

IN RE: SECTION 28 to the SUPREME COURT PROCEDURES REGULATING PROFESSIONAL CONDUCT of ATTORNEYS at LAW and MODEL RULE of PROFESSIONAL CONDUCT 1.15(d)(1)

Supreme Court of Arkansas
Delivered February 21, 2002

PER CURIAM. In a *Per Curiam* released December 20, 2001, the Court solicited comments on a proposed new Section 28 to the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law, regarding automatic overdraft reporting for attorney IOLTA trust accounts. The proposed new Section 28, and Model Rule 1.15(d)(1) mentioned below, can be found on the Court's website at *http://courts.state.ar.us/courts/cpc.html.* One public comment was received and reviewed.

The Court now makes the proposed new Section 28 final. To allow adequate time for implementation of the new Procedure, which involves attorneys, financial institutions and the Office of Professional Conduct, Section 28 shall be effective July 1, 2002.

Model Rule of Professional Conduct 1.15(d)(1), as revised to have been effective January 1, 2002, but temporarily suspended December 20, 2001, pending public comment on Section 28, is hereby made effective with Section 28 of the Procedures on July 1, 2002.

It is so ordered.

APPENDIX

Appointments to Committees

IN RE: ARKANSAS STATE BOARD of LAW EXAMINERS

Supreme Court of Arkansas
Delivered December 6, 2001

PER CURIAM. The Court is informed that Audrey Evans, Second Congressional District representative on the Arkansas State Board of Law Examiners (Board), has tendered her resignation from the Board effective December 31, 2001. We regret the early departure of Ms. Evans from the Board but recognize her appointment as a United States Bankruptcy Judge precludes further participation on the Board.

We hereby appoint the Honorable Wiley A. Branton, Jr., of the Second Congressional District, to replace Ms. Evans effective January 1, 2002. Judge Branton will serve the remainder of Ms. Evans' term which concludes September 30, 2002.

By previous order of the Court dated October 25, 2001, we appointed an individual for the sole purpose of grading the February 2002 examination on behalf of Ms. Evans. That per curiam order remains intact. Judge Branton will be serving as the appointed Board member for the noted period of time, and will be grading the results of the July 2002 Arkansas bar examination.

The Court thanks Judge Branton for his willingness to accept appointment to the Board. The Court conveys its deep gratitude to Ms. Evans for her years of service as a member and Chair of the Board.

IN RE: SUPREME COURT COMMITTEE on PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered January 14, 2002

PER CURIAM. The amended Procedures Regulating Professional Conduct of Attorneys at Law ("Procedures")

became effective January 1, 2002. *See In Re Amendments to the Procedures Regulating Professional Conduct of Attorneys at Law* (July 9, 2001). At that time the Committee on Professional Conduct was expanded from seven to fourteen voting members, in two hearing panels (Panel A and Panel B), and a new group of seven "reserve" members (Panel C) was added. Member terms are reduced from seven to six years under the amended Procedures, and necessary adjustments have been made here. The following appointments are made, commencing January 1, 2002, to the expanded Committee, with the terms indicated for each.

COMMITTEE PANEL A:

Member:	*Position:*	*Term expires:*
Dr. Patricia Youngdahl Little Rock	Non-Attorney At Large	12-31-2002
Richard A. Reid Blytheville	Attorney — 1st CD	12-31-2003
Ken R. Reeves Harrison	Attorney — 3rd CD	12-31-2004
Bart F. Virden Morrilton	Attorney — 2nd CD	12-31-2005
Win A. Trafford Pine Bluff	Attorney — 4th CD	12-31-2006
Gwendolyn D. Hodge Little Rock	Attorney — At Large	12-31-2007
Helen Herr Little Rock	Non-Attorney At Large	12-31-2007

COMMITTEE PANEL B:

John L. Rush Pine Bluff	Attorney — 4th CD	12-31-2002
J. Michael Cogbill Fort Smith	Attorney — 3rd CD	12-31-2003
Rita M. Harvey Little Rock	Non-Attorney At Large	12-31-2004
Richard F. Hatfield Little Rock	Attorney — 2nd CD	12-31-2005
Vacancy (to be filled)	Attorney At Large	12-31-2006
Harry Truman Moore Paragould	Attorney — 1st CD	12-31-2007
Dr. Rose Marie Word Pine Bluff	Non-Attorney At Large	12-31-2007

COMMITTEE RESERVE — PANEL C:

Searcy W. Harrell, Jr. Camden	Attorney — 4th CD	12-31-2002
Sylvia Orton Little Rock	Non-Attorney At Large	12-31-2003
Robert D. Trammell Little Rock	Attorney — 2nd CD	12-31-2004
David Newbern Little Rock	Attorney At Large	12-31-2005
Kenneth R. Mourton Fayetteville	Attorney — 3rd CD	12-31-2006
Beverly Morrow Pine Bluff	Non-Attorney At Large	12-31-2007
Phillip D. Hout Newport	Attorney — 1st CD	12-31-2007

For their willingness to serve in this most important Court activity, the Court expresses its appreciation to the present members of the Committee on Professional Conduct and the Alternate Committee on Professional Conduct, and to the new members of the Reserve Panel of the Committee.

The Court expresses its appreciation to Jacqueline Johnston-Cravens for her service on the former Alternate Committee until her resignation in November 2001.

IN RE: CHILD SUPPORT COMMITTEE

Supreme Court of Arkansas
Opinion delivered January 17, 2002

PER CURIAM. By *per curiam* order of December 20, 1993, *In re Child Support Committee*, 315 Ark. 760 (1993), we reconstituted the Child Support Committee to consist of one Arkansas Court of Appeals Judge, three chancellors, one juvenile division circuit/chancery judge, one legal services attorney, one Office of Child Support Enforcement attorney, two attorneys of the private bar, and one attorney member of the Arkansas General Assembly. As a result of Amendment 80 to the Arkansas Constitution, we hereby modify these designations to change the "chancellors" and "circuit/chancery" designations to four "circuit judges."

The terms of two longtime members of the Committee have expired. The Court expresses its gratitude to the Honorable Judith Rogers of Little Rock and the Honorable Ellen Brantley of Little Rock for their tireless and dedicated service to the Committee.

We hereby appoint Judge John Robbins of the Arkansas Court of Appeals and Judge Mary McGowan, Pulaski County Circuit Judge, to the Child Support Committee for four-year terms to expire on November 30, 2005. The Court thanks the appointees for agreeing to serve on this most important Committee.

IN RE: APPOINTMENTS to ARKANSAS CONTINUING LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Delivered January 24, 2002

PER CURIAM. Cindy Grace Thyer of the First Court of Appeals District is reappointed to a three-year term to conclude on December 5, 2004. Tony L. Yocom of the Fourth Court of Appeals District is reappointed to a three-year term concluding on December 5, 2004. The Court conveys its appreciation to Ms. Thyer and Mr. Yocom for their willingness to continue their service on this Board.

Julie M. Cabe of Little Rock is appointed as an at-large member to replace the Honorable Carol Anthony, who has concluded her service. The Court thanks Judge Anthony for her years of service as a member and Chair of this Board, and appreciates Ms. Cabe's acceptance of this appointment. Ms. Cabe's appointment is for a three-year initial term concluding on December 5, 2004.

IN RE: APPOINTMENT of SPECIAL CONSULTANT to ASSIST the COURT in REVIEWEING PROCEDURES to CERTIFY LAWYERS as SPECIALISTS

Supreme Court of Arkansas
Delivered February 14, 2002

PER CURIAM. The Supreme Court has undertaken an assessment of its procedures to certify lawyers as specialists. To assist the Court in this task, we are pleased to appoint Judith Kilpatrick, an Associate Professor of Law at the University of Arkansas Law School in Fayetteville, as a special consultant to the Court. Professor Kilpatrick is a member of the American Bar Association Standing Committee on Specialization and is familiar with the American Bar Association sponsored certification process, as well as programs of other states.

We ask Professor Kilpatrick to examine the structure, operations, and procedures of our specialist certification system and to report her findings and recommendations to us. We thank Professor Kilpatrick for her willingness to assist the Court in this endeavor and look forward to working with her.

IN RE: SUPREME COURT AMENDMENT 80 COMMITTEE

Supreme Court of Arkansas
Delivered February 28, 2002

PER CURIAM. On November 30, 2000, we established the Amendment 80 Committee to oversee the implementation of Amendment 80 to the State Constitution. *See In re: Appointment of Special Supreme Court Committee to be known as "Amendment 80 Committee,"* 343 Ark. 877 (2000). Much has been accomplished to that end, but more remains to be done. At this time, it is necessary to make additional appointments to the Committee. We hereby appoint Justice Jim Hannah, the Honorable Jim Gunter, Circuit Judge of Hope, the Honorable Stephen Routon, District Judge of Forrest City, and the Honorable David Stewart, District Judge of Little Rock, to the Amendment 80 Committee.

Judge Gunter is the current president of the Arkansas Judicial Council, and he replaces his predecessor in that position, the Honorable David Bogard of Little Rock. We thank Judge Bogard for his service and extend our appreciation to the new appointees for their willingness to serve on this important Committee. The current composition of the Committee is as follows:

Chief Justice W. H. "Dub" Arnold, Chair
Justice Robert L. Brown
Judge Robert J. Gladwin
Judge Jim Gunter
Justice Jim Hannah
Ronald D. Harrison
Justice Annabelle Clinton Imber
Jim L. Julian

Judge Andree L. Roaf
Judge Stephen Routon
Judge David Stewart
Chief Judge John F. Stroud, Jr.

IN RE: SUPREME COURT ALTERNATE COMMITTEE on PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered March 14, 2002

PER CURIAM. Valerie L. Kelly of Jacksonville, Arkansas, is appointed to fill the unexpired term of Jacqueline J. Cravens on Panel B of the Supreme Court Committee on Professional Conduct. The term expires on December 31, 2006. It is an at-large attorney position.

The court thanks Ms. Kelly for accepting appointment to this most important committee, and expresses its appreciation to Jacqueline J. Cravens for her dedicated service to the Committee.

IN RE: SUPREME COURT COMMITTEE on CRIMINAL PRACTICE

Supreme Court of Arkansas
Delivered March 14, 2002

PER CURIAM. Hon. Charles Yeargan, Circuit Judge of the Ninth Circuit West Judicial Circuit, Hon. Thomas Deen, Prosecuting Attorney of the Tenth Judicial Circuit; and Colette Honorable, Esq., Assistant Attorney General, are hereby appointed to our Committee on Criminal Practice for three-year terms to expire on January 31, 2005. Judge David Burnett is designated the

Chair of the Committee. Additionally, we are designating Frank Newell, Esq., as an *ex-officio*, non-voting, Advisor to the Committee, and Professor Scott Stafford of the University of Arkansas Law School at Little Rock as the Reporter for the Committee.

The Court thanks Judge Yeargan, Mr. Deen, and Ms. Honorable for accepting appointment to this important Committee.

The Court expresses its gratitude to Judge Tom Keith, Raymond Abramson, and Gordon Webb, whose terms have expired, for their years of service on the Committee.

APPENDIX

Professional Conduct Matters

IN RE: Lesa Gail Bridges JACKSON,
Arkansas Bar ID # 87007

68 S.W.3d 294

Supreme Court of Arkansas
Delivered March 7, 2002

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the law license of Lesa Gail Bridges Jackson, Arkansas Bar No. 87007, of Pulaski County, Arkansas, to practice law in the State of Arkansas. Her name shall be removed from the registry of licensed attorneys and she is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.