ARKANSAS REPORTS
VOLUME 374

ARKANSAS
APPELLATE REPORTS
VOLUME 103

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

— Samuel Johnson
(1709-1784)

THIS BOOK CONTAINS THE OFFICIAL

ARKANSAS REPORTS

Volume 374

CASES DETERMINED

IN THE

Supreme Court of Arkansas

FROM

June 19, 2008 — October 31, 2008

INCLUSIVE[1]

AND

ARKANSAS APPELLATE REPORTS

Volume 103

CASES DETERMINED

IN THE

Court of Appeals of Arkansas

FROM

June 18, 2008 — October 29, 2008

INCLUSIVE[2]

PUBLISHED BY THE
STATE OF ARKANSAS
2009

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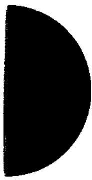
[1]Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 543. Cite as 374 Ark. ___ (2008).

[2]Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 333. Cite as 103 Ark. App. ___ (2008).



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ARKANSAS REPORTS

Volume 374

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
June 19, 2008 — October 31, 2008
INCLUSIVE

SUSAN P. WILLIAMS
REPORTER OF DECISIONS

AMY DUNN JOHNSON
DEPUTY
REPORTER OF DECISIONS

JEFFREY D. BARTLETT
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2009

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JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(June 19, 2008 — October 31, 2008, inclusive)

JUSTICES

JIM HANNAH	Chief Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
JIM GUNTER	Justice
PAUL E. DANIELSON	Justice

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LESLIE W. STEEN	Clerk
AVA M. HICKS	Director, Library
SUSAN P. WILLIAMS	Reporter of Decisions
AMY DUNN JOHNSON	Deputy Reporter of Decisions

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STANDARDS FOR PUBLICATION OF OPINIONS

RULE 5-2

RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

OPINIONS

(a) *SUPREME COURT — SIGNED OPINIONS.* All signed opinions of the Supreme Court shall be designated for publication.

(b) *COURT OF APPEALS — OPINION FORM.* Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) *COURT OF APPEALS — PUBLISHED OPINIONS.* Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publications when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked "Not Designated for Publication."

(d) *COURT OF APPEALS — UNPUBLISHED OPINIONS.* Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except

in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) *COPIES OF ALL OPINIONS* — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

Aaron *v.* Norris, 08-700 (PER CURIAM), Pro Se motion for belated appeal denied October 9, 2008.

Ammons *v.* State, CR07-598 (PER CURIAM), appeal dismissed, September 18, 2008.

Aydelotte *v.* State, 08-758 (PER CURIAM), Pro Se Motion for Extension of Brief Time moot; appeal dismissed October 30, 2008.

Bates *v.* State, CR08-450 (PER CURIAM), appeal dismissed, Pro Se Motion for Extension of Brief Time and Motion for Duplication at Public Expense moot June 19, 2008.

Bumgardner *v.* State, CR07-366 (PER CURIAM), affirmed September 18, 2008.

Craig *v.* State, CR08-500 (PER CURIAM), Pro Se Motion for Extension of Brief Time moot, appeal dismissed October 30, 2008.

Crawford *v.* State, CR07-1051 (PER CURIAM), affirmed October 2, 2008.

Daniels *v.* State, CR08-885 (PER CURIAM), Pro Se Motions for Appointment of Counsel and for Continuance or Suspension of Appellant's Brief's Due Date moot, appeal dismissed October 30, 2008.

Darrough *v.* State, CR08-357 (PER CURIAM), affirmed October 23, 2008.

Davis, Andrew L. *v.* State, CR08-285 (PER CURIAM), affirmed October 2, 2008.

Davis, Kevin Lynn *v.* State, CR08-148 (PER CURIAM), In re Appointment of Counsel October 2, 2008.

Day *v.* Pierce, 08-390 (PER CURIAM), Pro Se Petition for Writ of Mandamus denied June 19, 2008.

Gray, Kenneth *v.* State, CR08-346 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted, appeal dismissed October 2, 2008.

Gray *v.* State, CR08-994 (PER CURIAM), Pro Se Motion for Belated Appeal and to Supplement Motion for Belated Appeal denied October 30, 2008.

Hampton *v.* State, CR07-1263 (PER CURIAM), affirmed, September 18, 2008.

Hancock *v.* State, CR06-1133 (PER CURIAM), affirmed October 9, 2008.

Harris, Eddy Stanley *v.* State, CR07-1247 (PER CURIAM), affirmed June 26, 2008.

Harris, Mark Lee *v.* State, CR08-762 (PER CURIAM), Pro Se Motion for Belated Appeal treated as Motion for Rule on Clerk and granted October 2, 2008.

Hicks *v.* Arnold, CR08-622 (PER CURIAM), Pro Se petition for writ of mandamus moot October 9, 2008.

Hill *v.* Williams, CR08-663 (PER CURIAM), Pro Se motion to withdraw petition for writ of mandamus granted, Pro Se motion to hold petition for writ of mandamus moot October 23, 2008.

Holt *v.* Dennis, CR08-438 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot June 19, 2008.

Jackson *v.* Norris, 08-113 (PER CURIAM), Appellee's Motion to Dismiss appeal granted, appeal dismissed September 25, 2008.

Jarrett *v.* State, CR08-771 (PER CURIAM), Pro Se motion for belated appeal treated as motion for rule on clerk on denied October 9, 2008.

Johnson *v.* Norris, 07-913 (PER CURIAM), affirmed October 23, 2008.

King *v.* State, CR08-432 (PER CURIAM), appeal dismissed, Pro Se Motion for Extension of Time to File Appellant's Brief moot June 19, 2008.

Lee *v.* State, CR08-160 (PER CURIAM), Pro Se motion to remand to circuit court denied, September 18, 2008.

Long *v.* State, CR08-109 (PER CURIAM), Pro Se Motion for Belated Appeal denied September 25, 2008.

Loveless *v.* Agee, 08-144 (PER CURIAM), Pro Se Motion for Extension of Time to File Appellant's Brief granted, Pro Se Motions for Appointment of Counsel and for Duplication at State Expense denied October 30, 2008.

Loveless, Edward *v.* Norris, 08-533 (PER CURIAM), appeal dismissed, Pro Se Petition for Writ of Certiorari denied, Pro Se Motions for Extension of Time to File Appellant's Brief, Appointment of Counsel, for Duplication of Brief and to Stay Appeal to Complete Record on Appeal moot September 25, 2008.

Matthews *v.* State, CR81-96, CACR81-134 and CR83-99 (PER CURIAM), Pro Se Motion for Duplication of Records at Public Expense denied September 25, 2008.

Morris *v.* State, CR07-727 (PER CURIAM), affirmed October 9, 2008.

Munson *v.* Arkansas Dep't of Corr. Sex Offender Screening & Risk Assessment, 08-554 (PER CURIAM), Pro Se motion for photocopy of record, for appointment of counsel and for exten-

sion of time to file appellant's brief treated as motion for access to record and granted in part and denied in part, September 18, 2008.

Nelson *v.* Maggio, CR08-565 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot September 25, 2008.

Noble *v.* State, CR07-1106 (PER CURIAM), appeal dismissed, Pro Se Motion for Appointment of Counsel moot September 25, 2008.

Parmley *v.* Norris, 07-813 (PER CURIAM), remanded October 9, 2008.

Price *v.* State, CR07-1195 (PER CURIAM), Pro Se Motion for Copy of Transcript at Public Expense denied June 19, 2008.

Prince/Qadosh *v.* Norris, 08-78 (PER CURIAM), appeal dismissed, Pro Se motion to supplement addendum moot October 23, 2008.

Rodriguez *v.* Clinger, CR08-780 (PER CURIAM), Pro Se petition for writ of mandamus moot October 23, 2008.

Sanders *v.* State, CR08-704 (PER CURIAM), Pro Se motion for belated appeal, to proceed in forma pauperis and for appointment of counsel granted October 9, 2008.

Smith *v.* State, CR07-141 (PER CURIAM), appeal dismissed June 19, 2008.

Smith, Raechio *v.* Wyatt, 08-469 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot, Pro Se Motion to Proceed in Forma Pauperis granted September 25, 2008.

Smith *v.* Norris, 08-733 (PER CURIAM), Pro Se Motions for Subpoena of Documents from Circuit Court to Dismiss Conviction, to File Belated Brief and for Duplication at State Expense moot, appeal dismissed October 30, 2008.

Smith *v.* State, CR08-777 (PER CURIAM), Pro Se Motion to Withdraw Appeal granted, appeal dismissed October 30, 2008.

Spencer *v.* State, CR08-574 (PER CURIAM), appeal dismissed, Pro Se motion to supplement record moot October 23, 2008.

Van Vliet *v.* State, CR08-540 (PER CURIAM), Pro Se Motion to Proceed in Forma Pauperis on Appeal dismissed June 19, 2008.

Viveros *v.* State, CR07-1229 (PER CURIAM), Pro Se Motion to File Belated Brief granted October 30, 2008.

Ward *v.* State, CR08-860 (PER CURIAM), Pro Se motion for belated appeal and to proceed in forma pauperis denied October 23, 2008.

Warren *v.* State, CR07-834 (PER CURIAM), affirmed October 23, 2008.

Wheat *v.* Reynolds, CR08-1052 (PER CURIAM), Pro Se petition for writ of mandamus moot October 9, 2008.

White, James Al *v.* State, CR08-204 (PER CURIAM), appeal dismissed, Pro Se Motion for Transcript moot October 2, 2008.

White *v.* Glover, CR08-0869 (PER CURIAM), Pro Se petition for writ of mandamus moot October 9, 2008.

APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE RULES of SUPREME COURT and COURT of APPEALS, RULE 4-3; RULES of APPELLATE PROCEDURE – CRIMINAL, RULE 4; and RULES of CRIMINAL PROCEDURE, RULE 24.3

Supreme Court of Arkansas
Opinion delivered June 19, 2008

PER CURIAM. The Supreme Court Committee on Criminal Practice has submitted three proposals to the court as set out in detail below. We express our gratitude to the members of the Criminal Practice Committee for their work. These proposals are being published for comment, and the comment period shall end on August 31, 2008. (New language is underlined in the rules set out below.)

Comments should be submitted in writing to: Leslie Steen, Clerk of the Arkansas Supreme Court, Attention: Criminal Practice Committee, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

1. Proposed amendments to Arkansas Rule of Appellate Procedure – Criminal Rule 4. Time for filing record, contents of record.

Arkansas Rule of Appellate Procedure - Criminal 4(a) provides that matters "pertaining to several appeals, the docketing, designation, abbreviation, stipulation, preparation, and correction or modification of the record on appeal, as well as appeals where no stenographic record was made, shall be governed by the Rules of Appellate Procedure-Civil." Pursuant to Rule 4(a)'s incorporation of the civil appellate rules, the time for filing the record in a criminal case is currently controlled by Arkansas Rule of Appellate Procedure - Civil 5.

The Criminal Practice Committee proposes a revised Arkansas Rule of Appellate Procedure - Criminal 4 that establishes a separate rule applicable to filing the record in criminal appeals. The most significant departure from Arkansas Rule of Appellate Procedure - Civil 5 is that revised Rule 4 does not require the circuit court to make the detailed findings in order to obtain an extension

unless the prosecuting attorney objects to the extension in writing within ten days of being served with a copy of the extension motion.

Another feature of this proposal and as more fully discussed below relating to Rule 4-3 of the Rules of the Supreme Court and Court of Appeals, a conforming addition has been made in section (d) to provide for the sealing of exhibits that may constitute child pornography.

2. Proposed amendments to Supreme Court Rule 4-3 regarding sealing of portions of brief.

At the request of the Attorney General and Executive Director of the Public Defender Commission, the Criminal Practice Committee recommends the addition of a new section "f" to Rule 4-3. It permits a party to move to seal exhibits that may constitute child pornography. (A conforming change is made to Rule 4 (d) of the Rules of Appellate Procedure (Criminal.)

3. Model Conditional Plea Form to be appended to Arkansas Rule of Criminal Procedure 24.3(b).

Arkansas Rule of Criminal Procedure 24.3(b) permits a defendant, with the approval of the court and the consent of the prosecuting attorney, to enter a conditional plea of guilty following the denial of a motion to suppress seized evidence or a custodial statement. In an effort to reduce conditional pleas that fail to meet the strict technical requirements of Rule 24.3(b), the committee recommends that a model conditional plea form be appended to Rule 24.3.

Rules of Appellate Procedure – Criminal

Rule 4. Time for filing record, contents of record.

(a) *Generally.* Except as provided in this rule, ~~Matters~~ matters pertaining to several appeals, the docketing, designation, abbreviation, stipulation, preparation, and correction or modification of the record on appeal, as well as appeals where no stenographic record was made, shall be governed by the Rules of Appellate Procedure-Civil and any statutes presently in force which apply to civil cases on appeal to the Supreme Court.

(b) *When filed.* When an appeal is taken by the defendant, the record on appeal shall be filed with the clerk of the appellate

court and docketed therein within ninety (90) days from the filing of the notice of appeal, For purposes of determining the date of filing of a notice of appeal, Arkansas Rule of Appellate Procedure -Criminal 2(b) shall apply. The time for filing the record with the clerk of the appellate court may be extended by the circuit court as provided in subsection (c).

(c) *Extension of time.* (1) If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, by order entered before expiration of the period prescribed by subdivision (b) of this rule or by a prior extension order, may extend the time for filing the record. A motion by the defendant for an extension of time to file the record shall explain the reasons for the requested extension, and a copy of the motion shall be served on the prosecuting attorney. The circuit court may enter an order granting the extension if the circuit court finds that all parties consent to the extension and that an extension is necessary for the court reporter to include the stenographically reported material in the record on appeal. If the prosecuting attorney does not file a written objection to the extension within ten (10) days after being served a copy of the extension motion, the prosecuting attorney shall be deemed to have consented to the extension, and the circuit court may so find. If the prosecuting attorney files a written objection to the extension within ten (10) days after being served a copy of the extension motion, the circuit court may not grant the extension unless the circuit court makes the following findings:

(A) The defendant has filed a motion explaining the reasons for the requested extension and has served a copy of the motion on the prosecuting attorney;

(B) The time to file the record on appeal has not yet expired;

(C) All parties have had the opportunity to be heard on the motion, either at a hearing or by responding in writing;

(D) The defendant has timely ordered the stenographically reported material from the court reporter and either (i) made any financial arrangements required for preparation of the record, or (ii) filed a petition to obtain the record as a pauper; and

(E) An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal.

(2) In no event shall the time for filing the record be extended more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely post-judgment motion is deemed to have been disposed of under Arkansas Rule of Appellate Procedure - Criminal 2(b), whichever is later.

(3) If the appellant has obtained the maximum seven-month extension available from the circuit court, or demonstrates (by affidavit or otherwise) an inability to obtain entry of an order of extension, then before expiration of the period prescribed by subdivision (b) of this rule or a prior extension order, the appellant may file with the clerk of the appellate court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

~~(b)~~ (d) *Exhibits*. Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the ~~Clerk~~ clerk of the ~~Court~~ of the appellate court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the ~~Court~~ appellate court. If the record contains photographs, DVDs, or any other visual medium alleged by either party to the appeal to constitute child pornography, a motion to seal the record, stating the reason therefor, shall accompany the record when it is filed with the clerk of the appellate court.

~~(c)~~ (e) *Record for ~~Preliminary Hearing~~ preliminary hearing in ~~Supreme Court~~ appellate court*. Prior to the time the complete record on appeal is settled and certified as herein provided, ~~any appealing~~ either party to the appeal may docket the appeal in order to make in the ~~Supreme Court~~ appellate court a motion for dismissal, for a stay pending appeal, for fixing or ~~reduction of~~ reducing bail, to proceed in forma pauperis, or for any intermediate order. The clerk of the trial court, at the request of the ~~appealing~~ moving party, shall certify and transmit to the ~~Supreme Court~~ clerk of the appellate court a copy of such portion of the record of proceedings as may be available or needed for the purpose.

(f) Subsections (b) and (c) of this rule shall not apply to an appeal by the state pursuant to Rule of Appellate Procedure-Criminal 3.

Reporter's Notes to Rule 4 (2008).

The 2008 changes added subsections (b), (c), and (f), added the last sentence of subsection (d), and made minor editorial changes to the other subsections.

Prior to the 2008 changes, an extension of time to file the record in a criminal case was governed by Arkansas Rule of Appellate Procedure-Civil 5(b), which requires the circuit court to find that all parties have had the opportunity to be heard on an extension motion. Subsection (c) requires the court to make such a finding only if the prosecuting attorney objects to the extension. The extension order must reflect that the prosecuting attorney consents to the extension, but defense counsel can either obtain such consent before filing the extension order or such consent can be presumed from the prosecutor's failure to object to the extension motion.

The last sentence of subsection (d) protects the privacy of innocent victims of child pornography. A similar change, covering the contents of briefs on appeal, has been made to Rules of the Supreme Court and Court of Appeals 4-3.

Subsection (f) makes clear that the state cannot request an extension of time to file the record when it takes an appeal pursuant to Arkansas Rule of Appellate Procedure - Criminal 3.

Rules of Supreme Court and Court of Appeals

Rule 4-3. Briefs in criminal cases.

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

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

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

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

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

(f) *Sealing of child pornography.* If a brief contains photographs, DVDs, or any other visual medium alleged by either party to the appeal to constitute child pornography, a motion to seal the brief, stating the reason therefor, must accompany the brief when it is filed with the Clerk of the Court. Only the court, its personnel, and the attorneys of record shall be provided with copies of briefs containing the materials to be sealed. All other persons to be served with the brief shall receive copies which do not contain the materials to be sealed.

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

~~(g)~~ (h) *Appellant's duty to abstract record.* In all felony cases it is the duty of the appellant, whether represented by retained

counsel, appointed counsel or a public defender, or acting pro se, to abstract such parts of the transcript and to include in the Addendum such parts of the record, but only such parts, as are material to the points to be argued in the appellant's brief.

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

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

~~(j)~~ (k) *Withdrawal of counsel.*

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

contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court.

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

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

(4) After a reply brief has been filed, or after the time for filing such a brief has expired, the motion for withdrawal shall be submitted to the Court as other motions are submitted. If, upon consideration of the motion, it shall appear to the Court that the judgment of the circuit court should be affirmed or reversed, the Court may take such action on its own motion, without any supporting opinion.

~~(k)~~ (l) *Continuances and extensions of time.*

(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral request. If such an extension is granted, no further extension shall be granted except by the Clerk for compliance with these Rules as provided in Rule 4-2(c) or by the Court upon a written motion showing good cause.

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

Reporter's Notes to Rule 4-3(2008)

A 2008 amendment added subsection (f) and relettered the subsequent paragraphs.

Rules of Criminal Procedure

Rule 24.3. Pleading by the Defendant.

CONDITIONAL PLEA FORM

[For use with Rule 24.3(b), Arkansas Rules of Criminal Procedure]

IN THE CIRCUIT COURT OF ____________,
ARKANSAS
________ Division

No. ____________

STATE OF ARKANSAS

v.

_________________, Defendant

CONDITIONAL PLEA

I, ____________________________ *(name of defendant)*, with the approval of the court, and the consent of the Prosecuting Attorney am entering a plea of [guilty] [no contest] to Count 1. ____
Count 2. ____
Count 3. ____

I understand my plea is conditioned upon the filing of an appeal on the issue of ____________________ *(describe pretrial motion [to suppress seized evidence] [to suppress custodial statement] upon which appeal will be based).*

I understand that, if the judge approves my plea of [guilty] [no contest], a judgment and sentence will be entered, and that I may appeal on the issue specified above in the manner provided by the rules of court.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of [guilty] [no contest].

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest], if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

____________________ ______________________________

Date Defendant

DEFENSE COUNSEL REVIEW

I have reviewed this conditional plea with my client, and I have discussed with my client its consequences.

____________________ ______________________________

Defense counsel Date

PROSECUTOR APPROVAL

I have reviewed this conditional plea and consent to it.

____________________ ______________________________

Prosecutor Attorney Date

COURT APPROVAL

This Conditional Plea Agreement is approved, and I direct that it be entered of record in this case.

____
Circuit Judge

____
Date

This Conditional Plea Form shall accompany the Judgment and Commitment Order Form or Judgment and Disposition Order Form and be made a part of the record in the case.

I certify this is a true and correct record of this Court.

Date: __________ Circuit Clerk/Deputy: ____________________

IN RE RULES of the SUPREME COURT and COURT of APPEALS, PROPOSED AMENDMENTS to RULES 6-9 and 6-10

Supreme Court of Arkansas
Opinion delivered June 19, 2008

PER CURIAM. On May 18, 2006, we adopted rules for appeals in dependency-neglect cases and trial counsel's duties in such appeals. *See In Re Adoption of Rules 6-9 and 6-10 of the Rules of the Supreme Court and Court of Appeals (Rules for Appeals in Dependency-Neglect Cases)*, 366 Ark. Appx. 628 (2006). The rules were adopted to improve the appellate process in cases involving placement of abused and neglected children. The rules limited the record, curtailed extensions, and established time lines in order to expedite the appellate process. These rules represented a significant departure from prior practice in this area.

We anticipated that the rules would need to be revisited with the benefit of experience. They have now been in place for approximately two years. The Supreme Court Ad Hoc Committee on Foster Care and Adoption reviewed the practice under the rules, surveyed participants in the process, and has now recommended to the supreme court proposed amendments to the rules. These amendments have been submitted in an effort to refine the improvements put in place in 2006. We thank the Ad Hoc Committee on Foster Care and Adoption for its work and everyone who has assisted in this endeavor.

We now publish for comment the proposed amendments. (New language is underlined.) Comments with respect to the overall efficacy of the rules and these amendments in particular should be made in writing prior to September 18, 2008, and they should be addressed to: Clerk, Supreme Court of Arkansas, Attn: Rules for Appeals in Dependency-Neglect Proceedings, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 6-9. Rule for appeals in dependency-neglect cases.

(a) *Appealable Orders.*

(1) The following orders may be appealed from dependency-neglect proceedings:

(A) adjudication order;

(B) disposition, review, no reunification, and permanency planning order if the court directs entry of a final judgment as to one or more of the issues or parties based upon the express determination by the court supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. Rule 54(b);

(C) termination of parental rights; and

(D) denial of right to appointed counsel pursuant to Ark. Code Ann. § 9-27-316(h).

(2) The circuit court shall enter and distribute to all the parties all dependency-neglect orders no later than (thirty) 30 days after a hearing.

(b) *Notice, Indigency, and Time for Appeal.*

(1)~~(2)~~ The ~~N~~notice of appeal shall be filed within ~~14 days~~ twenty-one (21) days following the entry of the circuit court order from which the appeal is being taken.

(A) ~~(1)~~If the court announces its ruling from the bench and an appellant files a notice of appeal prior to the entry of the order, it shall be deemed to be filed the day after the order is entered.

(B)~~(D)~~ The notice of appeal and designation of record shall be signed by the appellant, if an adult, and appellant's counsel. The notice shall set forth the party or parties initiating the appeal, the address of the parties or parties, and specify the order from which the appeal is taken.

(2))~~(A)~~ If the appellant alleges indigency for purpose of the appeal, the appellant ~~must request an indigency hearing within seven (7) days~~

~~of~~shall file a motion, with notice to all parties, to request an indigency determination within fourteen (14) days following the entry of the order from which the appeal is taken.

> (A)If the appellant has had a court determination of indigency prior to the hearing from the order from which the appeal is taken, the appellant shall seek a re-determination of indigency for purpose of appeal and shall submit a new affidavit for the court to determine indigency for the purpose of appeal.
>
> (B) The circuit court shall rule on appellant's indigency motion ~~conduct the indigency hearing~~ within five (5) days of the ~~request for an indigency appeal hearing~~ indigency motion being filed. If the court conducts a hearing on the indigency motion, the judge may conduct the indigency hearing outside of the county and by teleconference. The court shall use the federal poverty guidelines provided by the Administrative Office of the Courts in making its indigency determination.
>
> (C) If the appellant is determined indigent for purpose of appeal, the notice shall ~~state~~ indicate that the court has made a determination of indigency for payment of the record. ~~and appointment of counsel for the appeal.~~ Trial counsel for indigent parents or custodians shall not be relieved as counsel for purpose of appeal until relieved by the Public Defender Commission as provided in Rule 6-10(c). If appellant is determined not indigent, appellant shall state that arrangements for payment of the record have been made.

(3)~~(E)~~ If a timely notice of appeal is filed, any other party may file a notice of cross-appeal and designation of record within five (5) days from receipt of the notice of appeal.

(4)~~(F)~~ The time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.

(5)~~(G)~~ In computing time periods in ~~this~~ Rule 6-9,~~- refer to the guidelines in~~ Ark. R. Civ. R. Rule 6(a), which provides in part that when the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation, shall apply.

(c) *Record on Appeal.*

(1) The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to ~~that~~ the hearing from which the order on appeal arose, ~~and~~ all exhibits entered into evidence at that hearing, and all orders entered in the case prior to the order on appeal.

(2) The appellant and the cross-appellant, if any, shall (A) complete a Notice of Appeal (Cross-Appeal) and Designation of Record (Form 1); (B) file Form 1 with the Circuit Clerk; and (C) serve Form 1 on the court reporter and all parties by any form of mail which requires a signed receipt.

(3) The designation-of-record portion of Form 1 shall identify the hearing from which the order being appealed arose, and shall designate the date(s) of the hearing resulting in the order being appealed. Service of the Notice of Appeal and Designation of Record (Form 1) shall constitute a request for transcription of the hearing from which the order of the appeal arose.

(4) Within five (5) days after receipt of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall file a statement by mail or fax with the Circuit Clerk indicating whether arrangements for payment have been made and that the record will be completed timely. The court reporter shall make arrangements for the record to be completed and certified within sixty (60) days.

(d) *Transmission of Record.* The record on appeal shall be filed with the Clerk of the Supreme Court within seventy (70) days of the filing of the Notice of Appeal. Within sixty (60) days after the filing of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall provide the record to the Circuit Clerk who shall have no longer than five (5) days to prepare the record, including any transcripts and exhibits, to be transmitted for submission to Clerk of the Supreme Court. After the record has been duly certified by the Circuit Clerk, it shall be the responsibility of the appellant to transmit the record to the Clerk of the Supreme Court for filing.

(e) *Petition on Appeal.*

(1) Within ~~20~~ thirty 30 days after transmission of the record to the Clerk of the Supreme Court, the appellant shall file an original and 16 copies of a Petition on Appeal (Form 2).

(2) The petition shall not exceed twenty (20) pages, excluding the abstract and addendum, and shall include:

(A) A statement of the nature of the case and the relief sought;

(B) A concise statement of the material facts as they relate to the issues presented in the petition on appeal that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. This statement must also summarize the circuit court order appealed from and recite the date the order was entered. (References to pages in the abstract and a~~A~~ddendum are required.);

(C) An abstract or abridgment of the transcript that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision. In the abstracting of testimony, the first person (i.e., "I") rather than the third person (i.e., "He, She") shall be used. Not more than one page of the transcript shall in any instance be abstracted without a page reference to the record.

(D) A concise statement of the legal issues presented for appeal, including a statement of how the issues arose; and a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. 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.

(E) Following the signature and certificate of service, the appellant's petition shall contain an addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, or letter opinion from which the appeal is taken, a copy of the notice of appeal, and any other relevant pleadings, documents, or exhibits essential to an understanding of the case, which may include, but are not limited to, affidavits, petitions, case plan, court reports, court orders, or

other exhibits entered into the record during the hearing from which the appeal arose, and all orders entered in the case prior to the order on appeal. The addendum shall include an index of its contents and shall also designate where any item appearing in the addendum can be found in the record.

(f) *Response to Petition on Appeal or Cross Appeal.*

(1) Within twenty (20) days after filing of the appellant's petition on a petition on appeal, any appellee may file an original and sixteen (16) copies of a response to the petition on appeal or cross-appeal (Form 3). ~~The response shall be prepared by trial counsel or by substitute counsel so long as substitute counsel has filed an entry of appearance.;ac4e0000281c0;ac4e0000281c0~~

(2) The response shall not exceed twenty (20) pages, excluding the abstract and addendum and shall include:

(A) A concise statement of the material facts as they relate to the issues presented by the appellant, as well as the issues, if any, being raised by the appellee on cross-appeal, that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. (References to pages in the abstract and a~~A~~ddendum are required.)

(B) A concise response to the legal issues presented on appeal and cross-appeal, if any, including a statement of how the issue arose; a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. 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.

(C) If the appellee considers the appellant's abstract or addendum to be defective or incomplete, the appellee may provide a supplemental abstract or addendum. The appellee's addendum shall only include an item which the appellant's addendum fails to include.

(3) The appellant will have ten (10) days after appellee's response or petition on cross appeal is filed to reply to the response or the petition

on cross appeal. If appellee files a petition on cross appeal and the appellant has filed a response to the petition on cross appeal, the appellee will have ten (10) days to reply to appellant's response to the petition on cross appeal.

(g) *Extensions*. The Clerk of the Supreme Court shall have the authority to grant one (1) seven-day extension for completion of the record and one (1) seven-day extension to any party to the appeal to file the petition or the response to the petition. The extension shall be computed from the date the petition or response was originally due. No other extensions shall be granted.
~~Only one extension for completion of the record and only one extension per party for submission of the petition shall be granted upon a showing of manifest injustice and only for a period of no more than seven (7) days. If the request is based on the court reporter's inability to complete the transcript, it must be supported by an affidavit of the reporter specifying why the transcript has not been completed~~.

(h) *Style of Petition*. The style of the Petition on Appeal, Response, and Cross-Appeal shall follow the style of briefs as described by Rule 4-1 of the Rules of the Supreme Court except where a style is specifically described by these rules. Reference to any minor in the Notice of Appeal, Notice of Cross Appeal, Petition for Appeal, Petition for Cross Appeal, and responses shall be by the minor's initials ~~and birth date~~. Other parties seeking anonymity shall comply with Rule 6-3 of the Rules of the Supreme Court and Court of Appeals.

(i) *Procedure for No-Merit Petitions, Pro Se Points, and State's Response.*

(1) After studying the record and researching the law, if appellant's counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. In addition to the requirement set forth in subsection (e), counsel's no-merit petition must include the following:

> (A) The argument section of the petition shall list all adverse rulings to the appellant made by the circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.

(B) The abstract and addendum shall contain all rulings adverse to the appellant, made by the Circuit Court at the hearing from which the order of appeal arose.

(2) Appellees are not required to, but may, respond to a no-merit petition. Appellees may file a concurrence letter supporting the no-merit petition. Any response by an appellee shall be filed within twenty (20) days of the filing of the no-merit petition.

(3) The Clerk of the Supreme Court shall mail the appellant, at the appellant's last known address, a copy of the no-merit petition and the motion to withdraw. The Clerk shall notify the appellant in writing that the appellant may raise any points that the appellant chooses and that these points may be typewritten or hand-printed. The Clerk shall also notify the appellant that the points shall be received by the Supreme Court Clerk by mail or other method of delivery within thirty (30) days from the date the Clerk mailed the appellant the notification.

(4) The Clerk shall provide appellant's points by electronic transmission or other method of delivery to the Department of Human Services - Office of Chief Counsel, the Attorney Ad Litem, and appellant's counsel within three (3) business days.

(5) Appellees are not required to respond to appellant's points; however, appellees may do so by filing such response within twenty (20) days of receipt by the Clerk of the Supreme Court of the appellant's points.

(j)~~(i)~~ *Ruling.*

(1) Dependency-neglect proceedings shall be prioritized on the calendar of the appellate court. Once a case is ready for submission, the Clerk of the Supreme Court shall submit the case for decision.

(2) If a party files a petition for rehearing with the appellate court or petition for review with the Supreme Court, it ~~must~~ shall be filed within ~~(five) 5~~ ten (10) calendar days of the appellate court's decision and the response shall be filed within ~~five (5)~~ ten (10) calendar days of the filing of the petition. A petition for rehearing shall comply with Rule 2-3 and a petition for review shall comply with Rule 2-4 of the Rules of the Supreme Court and Court of Appeals in all respects, except for the number of days for filing. No supplemental briefs or extensions shall be allowed. The Clerk of the Supreme Court shall submit the petition for decision.

Rule 6-10. ~~TRIAL~~ Counsel's duties with regard to dependency-neglect appeals.

(a) Trial counsel shall explain to his/her client all rights regarding any possible appeal, including deadlines, the merits, and likelihood of success of an appeal.

(b) If appellant is indigent, trial counsel shall file a motion seeking an indigency determination for purpose of appeal with the Circuit Court and ensure that appellant has signed the notice of appeal pursuant to Rule 6-9.

(c) Trial counsel who represent indigent parents and custodians shall serve the Arkansas Public Defender Commission by electronic submission or other method of delivery a file-marked copy of the notice of appeal and the order or orders that are being appealed within ~~twenty-four (24)~~ three (3) business days of filing the notice of appeal with the Circuit Clerk.

(1) Trial counsel shall timely respond to all reasonable requests for information to the Arkansas Public Defender Commission for purpose of appeal. Trial counsel for indigent parents or custodians shall not be relieved as counsel for the purpose of appeal until the Public Defender Commission timely receives the properly filed notice of appeal, questionnaire, and the order(s) appealed.

(2) The Arkansas Public Defender Commission shall send confirmation of receipt to trial counsel. This confirmation shall operate to relieve trial counsel of representation of the client for the limited purpose of appeal, and no motion to be relieved will need to be filed with the appellate court,

~~(a)~~ (d) The Circuit Court shall retain jurisdiction of the dependency-neglect case and conduct further hearings as necessary. Trial counsel, whether retained or court-appointed, shall continue to represent his/her client in a dependency-neglect case in the Circuit Court throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court ~~or appellate court~~ to withdraw in the interest of justice or for other sufficient cause.

(e) After the notice of appeal is filed with the Circuit Court, the appellate court shall have exclusive jurisdiction to relieve counsel for the purpose of appeal, except as provided in subsection (c). All substitute counsel shall file an entry of appearance with the Clerk of the Supreme Court. ~~A trial court shall determine if the defendant is~~

~~indigent for purposes of appeal. If the defendant has appointed counsel and is no longer indigent, the trial court shall relieve appointed counsel. After the notice of appeal has been filed with the Circuit Clerk, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.~~

~~(b) If court-appointed counsel is permitted to withdraw pursuant to subsection (a), new counsel shall be appointed promptly by the court exercising jurisdiction over the matter of counsel's withdrawal and appointed counsel shall be qualified pursuant to Arkansas Supreme Court Administrative Order No. 15.~~

~~(c) *Motions for Attorney's Fees.* All motions for attorney's fees from attorneys appointed to represent indigent parent(s) or guardian(s) in dependency-neglect cases shall contain the following information: (1) the date of appointment; (2) the court which appointed counsel; (3) the number of hours expended by counsel in research, court appearances, and preparation of pleadings and petitions for appeals; (4) an itemization of expenses incurred by counsel which are directly attributable to the case; and (5) the relative complexity of the case. The motion shall be filed not later than 30 days after the issuance of the mandate.~~

IN RE: RULES of SUPREME COURT and COURT of APPEALS, RULE 4-3; RULES of APPELLATE PROCEDURE–CRIMINAL, RULE 4; and RULES of CRIMINAL PROCEDURE, RULE 24.3

Supreme Court of Arkansas
Opinion delivered September 18, 2008

PER CURIAM. The Supreme Court Committee on Criminal Practice submitted three proposals to the court, and we published them for comment at which time the proposals were fully explained. *See In re Rules of Supreme Court and Court of Appeals, Rule 4-3; Rules of Appellate Procedure – Criminal, Rule 4; and Rules of Criminal Procedure, Rule 24.3*, 374 Ark. App'x 545 (June 19, 2008). In addition, the Reporter's Notes discuss the rule changes. We thank everyone who reviewed the proposals, and we again express our gratitude to the members of the Criminal Practice Committee for their work.

Today, we adopt the amendments to Rule 4-3 of the Rules of the Supreme Court and Court of Appeals and Rule 4 of the Rules of Appellate Procedure – Criminal, and republish the rules as set out below. We also adopt the Conditional Plea Form as set out below and direct that the form be appended to Rule 24.3 of the Rules of Criminal Procedure. These amendments are effective October 1, 2008.

Rules of Appellate Procedure – Criminal

Rule 4. Time for filing record, contents of record.

(a) *Generally.* Except as provided in this rule, matters pertaining to several appeals, the docketing, designation, abbreviation, stipulation, preparation, and correction or modification of the record on appeal, as well as appeals where no stenographic record was made, shall be governed by the Rules of Appellate Procedure–Civil and any statutes presently in force which apply to civil cases on appeal to the Supreme Court.

(b) *When filed.* When an appeal is taken by the defendant, the record on appeal shall be filed with the clerk of the appellate court and

docketed therein within ninety (90) days from the filing of the notice of appeal, For purposes of determining the date of filing of a notice of appeal, Arkansas Rule of Appellate Procedure–Criminal 2(b) shall apply. The time for filing the record with the clerk of the appellate court may be extended by the circuit court as provided in subsection (c).

(c) *Extension of time.* (1) If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, by order entered before expiration of the period prescribed by subdivision (b) of this rule or by a prior extension order, may extend the time for filing the record. A motion by the defendant for an extension of time to file the record shall explain the reasons for the requested extension, and a copy of the motion shall be served on the prosecuting attorney. The circuit court may enter an order granting the extension if the circuit court finds that all parties consent to the extension and that an extension is necessary for the court reporter to include the stenographically reported material in the record on appeal. If the prosecuting attorney does not file a written objection to the extension within ten (10) days after being served a copy of the extension motion, the prosecuting attorney shall be deemed to have consented to the extension, and the circuit court may so find. If the prosecuting attorney files a written objection to the extension within ten (10) days after being served a copy of the extension motion, the circuit court may not grant the extension unless the circuit court makes the following findings:

(A) The defendant has filed a motion explaining the reasons for the requested extension and has served a copy of the motion on the prosecuting attorney;

(B) The time to file the record on appeal has not yet expired;

(C) All parties have had the opportunity to be heard on the motion, either at a hearing or by responding in writing;

(D) The defendant has timely ordered the stenographically reported material from the court reporter and either (i) made any financial arrangements required for preparation of the record, or (ii) filed a petition to obtain the record as a pauper; and

(E) An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal.

(2) In no event shall the time for filing the record be extended more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely post-judgment motion is deemed to have been disposed of under Arkansas Rule of Appellate Procedure–Criminal 2(b), whichever is later.

(3) If the appellant has obtained the maximum seven-month extension available from the circuit court, or demonstrates (by affidavit or otherwise) an inability to obtain entry of an order of extension, then before expiration of the period prescribed by subdivision (b) of this rule or a prior extension order, the appellant may file with the clerk of the appellate court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

(d) *Exhibits*. Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the clerk of the appellate court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the appellate court. If the record contains photographs, DVDs, or any other visual medium alleged by either party to the appeal to constitute child pornography, a motion to seal the record, stating the reason therefor, shall accompany the record when it is filed with the clerk of the appellate court.

(e) *Record for preliminary hearing in appellate court*. Prior to the time the complete record on appeal is settled and certified as herein provided, either party to the appeal may docket the appeal in order to make in the appellate court a motion for dismissal, for a stay pending appeal, for fixing or reducing bail, to proceed in forma pauperis, or for any intermediate order. The clerk of the trial court, at the request of the moving party, shall certify and transmit to the clerk of the appellate court a copy of such portion of the record of proceedings as may be available or needed for the purpose.

(f) Subsections (b) and (c) of this rule shall not apply to an appeal by the state pursuant to Rule of Appellate Procedure–Criminal 3.

Reporter's Notes to Rule 4 (2008).

The 2008 changes added subsections (b), (c), and (f), added the last sentence of subsection (d), and made minor editorial changes to the other subsections.

Prior to the 2008 changes, an extension of time to file the record in a criminal case was governed by Arkansas Rule of Appellate Procedure–Civil 5(b), which requires the circuit court to find that all parties have had the opportunity to be heard on an extension motion. Subsection (c) requires the court to make such a finding only if the prosecuting attorney objects to the extension. The extension order must reflect that the prosecuting attorney consents to the extension, but defense counsel can either obtain such consent before filing the extension order or such consent can be presumed from the prosecutor's failure to object to the extension motion.

The last sentence of subsection (d) protects the privacy of innocent victims of child pornography. A similar change, covering the contents of briefs on appeal, has been made to Rules of the Supreme Court and Court of Appeals 4-3.

Subsection (f) makes clear that the state cannot request an extension of time to file the record when it takes an appeal pursuant to Arkansas Rule of Appellate Procedure–Criminal 3.

Rules of Supreme Court and Court of Appeals

Rule 4-3. Briefs in criminal cases.

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

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

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

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

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

(f) *Sealing of child pornography.* If a brief contains photographs, DVDs, or any other visual medium alleged by either party to the appeal to constitute child pornography, a motion to seal the brief, stating the reason therefor, must accompany the brief when it is filed with the Clerk of the Court. Only the court, its personnel, and the attorneys of record shall be provided with copies of briefs containing the materials to be sealed. All other persons to be served with the brief shall receive copies which do not contain the materials to be sealed.

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

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

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

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

(k) *Withdrawal of counsel.*

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

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

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

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

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

(*l*) *Continuances and extensions of time.*

(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral request. If such an extension is granted, no further extension shall be granted except by the Clerk for compliance with these Rules as provided in Rule 4-2(c) or by the Court upon a written motion showing good cause.

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

Reporter's Notes to Rule 4-3 (2008)

A 2008 amendment added subsection (f) and relettered the subsequent paragraphs.

Rules of Criminal Procedure

Rule 24.3. Pleading by the Defendant.

CONDITIONAL PLEA FORM

[For use with Rule 24.3(b), Arkansas Rules of Criminal Procedure]

IN THE CIRCUIT COURT OF ____________, ARKANSAS

________Division

No. ___________

STATE OF ARKANSAS

v.

__________________________, Defendant

CONDITIONAL PLEA

I, __________________________ *(name of defendant)*, with the approval of the court, and the consent of the Prosecuting Attorney am entering a plea of [guilty] [no contest] to Count 1. ____

Count 2. ____

Count 3. ____

I understand my plea is conditioned upon the filing of an appeal on the issue of ___________________ *(describe pretrial motion [to suppress seized evidence] [to suppress custodial statement] upon which appeal will be based).*

I understand that, if the judge approves my plea of [guilty] [no contest], a judgment

and sentence will be entered, and that I may appeal on the issue specified above in the manner provided by the rules of court.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of [guilty] [no contest].

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest], if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

____________________ __________________________

Date Defendant

DEFENSE COUNSEL REVIEW

I have reviewed this conditional plea with my client, and I have discussed with my client its consequences.

____________________ __________________________

Defense counsel Date

PROSECUTOR APPROVAL

I have reviewed this conditional plea and consent to it.

______________________ ____________________________

Prosecutor Attorney Date

COURT APPROVAL

This Conditional Plea Agreement is approved, and I direct that it be entered of record in this case.

____

Circuit Judge

____

Date

This Conditional Plea Form shall accompany the Judgment and Commitment Order Form or Judgment and Disposition Order Form and be made a part of the record in the case.

I certify this is a true and correct record of this Court.

Date:________________ Circuit Clerk/Deputy: ____________________________

IN RE: RULES of the SUPREME COURT and COURT of APPEALS, RULES 6-9 and 6-10

Supreme Court of Arkansas
Opinion delivered September 25, 2008

PER CURIAM. On June 19, 2008, we published for comment the recommendations of the Supreme Court Ad Hoc Committee on Foster Care and Adoption to amend Rules 6-9 and 6-10 of the Rules of the Supreme Court and Court of Appeals. *See In re Rules of the Supreme Court and Court of Appeals, Proposed Amendments to Rules 6-9 and 6-10*, 374 Ark. App'x ___ (2008). We thank the Ad Hoc Committee on Foster Care and Adoption for its work and everyone who has assisted in this endeavor.

We accept these recommendations and adopt, effective immediately, the amendments to Rules 6-9 and 6-10 of the Rules of the Supreme Court and Court of Appeals. We republish the rules as set out below.

RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 6-9. Rule for appeals in dependency-neglect cases.

(a) *Appealable Orders.*

(1) The following orders may be appealed from dependency-neglect proceedings:

(A) adjudication order;

(B) disposition, review, no reunification, and permanency planning order if the court directs entry of a final judgment as to one or more of the issues or parties based upon the express determination by the court supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b);

(C) termination of parental rights; and

(D) denial of right to appointed counsel pursuant to Ark. Code Ann. § 9-27-316(h).

(2) The circuit court shall enter and distribute to all the parties all dependency-neglect orders no later than thirty (30) days after a hearing.

(b) *Notice, Indigency, and Time for Appeal.*

(1) The notice of appeal shall be filed within twenty-one (21) days following the entry of the circuit court order from which the appeal is being taken.

(A) If the court announces its ruling from the bench and an appellant files a notice of appeal prior to the entry of the order, it shall be deemed to be filed the day after the order is entered.

(B) The notice of appeal and designation of record shall be signed by the appellant, if an adult, and appellant's counsel. The notice shall set forth the party or parties initiating the appeal, the address of the parties or parties, and specify the order from which the appeal is taken.

(2) If the appellant alleges indigency for purpose of the appeal, the appellant shall file a motion, with notice to all parties, to request an indigency determination within fourteen (14) days following the entry of the order from which the appeal is taken.

(A) If the appellant has had a court determination of indigency prior to the hearing from the order from which the appeal is taken, the appellant shall seek a re-determination of indigency for purpose of appeal and shall submit a new affidavit for the court to determine indigency for the purpose of appeal.

(B) The circuit court shall rule on appellant's indigency motion within five (5) days of the indigency motion being filed. If the court conducts a hearing on the indigency motion, the judge may conduct the indigency hearing outside of the county and by teleconference. The court shall use the federal poverty guidelines provided by the Administrative Office of the Courts in making its indigency determination.

(C) If the appellant is determined indigent for purpose of appeal, the notice shall indicate that the court has made a determination of indigency for payment of the record. Trial counsel for indigent parents or custodians shall not be relieved as counsel for purpose of appeal until relieved by the Public Defender Commission as provided

in Rule 6-10(c). If appellant is determined not indigent, appellant shall state that arrangements for payment of the record have been made.

(3) If a timely notice of appeal is filed, any other party may file a notice of cross-appeal and designation of record within five (5) days from receipt of the notice of appeal.

(4) The time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.

(5) In computing time periods in Rule 6-9, Ark. R. Civ. P. Rule 6(a), which provides in part that when the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation, shall apply.

(c) *Record on Appeal.*

(1) The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to the hearing from which the order on appeal arose, all exhibits entered into evidence at that hearing, and all orders entered in the case prior to the order on appeal.

(2) The appellant and the cross-appellant, if any, shall (A) complete a Notice of Appeal (Cross-Appeal) and Designation of Record (Form 1); (B) file Form 1 with the Circuit Clerk; and (C) serve Form 1 on the court reporter and all parties by any form of mail which requires a signed receipt.

(3) The designation-of-record portion of Form 1 shall identify the hearing from which the order being appealed arose, and shall designate the date(s) of the hearing resulting in the order being appealed. Service of the Notice of Appeal and Designation of Record (Form 1) shall constitute a request for transcription of the hearing from which the order of the appeal arose.

(4) Within five (5) days after receipt of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall file a statement by mail or fax with the Circuit Clerk indicating whether arrangements for payment have been made and that the record will be

completed timely. The court reporter shall make arrangements for the record to be completed and certified within sixty (60) days.

(d) *Transmission of Record.* The record on appeal shall be filed with the Clerk of the Supreme Court within seventy (70) days of the filing of the Notice of Appeal. Within sixty (60) days after the filing of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall provide the record to the Circuit Clerk who shall have no longer than five (5) days to prepare the record, including any transcripts and exhibits, to be transmitted for submission to Clerk of the Supreme Court. After the record has been duly certified by the Circuit Clerk, it shall be the responsibility of the appellant to transmit the record to the Clerk of the Supreme Court for filing.

(e) *Petition on Appeal.*

(1) Within thirty (30) days after transmission of the record to the Clerk of the Supreme Court, the appellant shall file an original and 16 copies of a Petition on Appeal (Form 2).

(2) The petition shall not exceed twenty (20) pages, excluding the abstract and addendum, and shall include:

(A) A statement of the nature of the case and the relief sought;

(B) A concise statement of the material facts as they relate to the issues presented in the petition on appeal that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. This statement must also summarize the circuit court order appealed from and recite the date the order was entered. (References to pages in the abstract and addendum are required.);

(C) An abstract or abridgment of the transcript that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision. In the abstracting of testimony, the first person (i.e., "I") rather than the third person (i.e., "He, She") shall be used. Not more than one page of the transcript shall in any instance be abstracted without a page reference to the record.

(D) A concise statement of the legal issues presented for appeal, including a statement of how the issues arose; and a discussion of the legal authority on which the party is relying with citation to support-

ing statutes, case law, or other legal authority for the issues raised. 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.

(E) Following the signature and certificate of service, the appellant's petition shall contain an addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, or letter opinion from which the appeal is taken, a copy of the notice of appeal, and any other relevant pleadings, documents, or exhibits essential to an understanding of the case, which may include, but are not limited to, affidavits, petitions, case plan, court reports, court orders, or other exhibits entered into the record during the hearing from which the appeal arose, and all orders entered in the case prior to the order on appeal. The addendum shall include an index of its contents and shall also designate where any item appearing in the addendum can be found in the record.

(f) *Response to Petition on Appeal or Cross Appeal.*

(1) Within twenty (20) days after filing of the appellant's petition on a petition on appeal, any appellee may file an original and sixteen (16) copies of a response to the petition on appeal or cross-appeal (Form 3).

(2) The response shall not exceed twenty (20) pages, excluding the abstract and addendum and shall include:

(A) A concise statement of the material facts as they relate to the issues presented by the appellant, as well as the issues, if any, being raised by the appellee on cross-appeal, that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. (References to pages in the abstract and addendum are required.)

(B) A concise response to the legal issues presented on appeal and cross-appeal, if any, including a statement of how the issue arose; a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. 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.

(C) If the appellee considers the appellant's abstract or addendum to be defective or incomplete, the appellee may provide a supplemental abstract or addendum. The appellee's addendum shall only include an item which the appellant's addendum fails to include.

(3) The appellant will have ten (10) days after appellee's response or petition on cross appeal is filed to reply to the response or the petition on cross appeal. If appellee files a petition on cross appeal and the appellant has filed a response to the petition on cross appeal, the appellee will have ten (10) days to reply to appellant's response to the petition on cross appeal.

(g) *Extensions.* The Clerk of the Supreme Court shall have the authority to grant one (1) seven-day extension for completion of the record and one (1) seven-day extension to any party to the appeal to file the petition or the response to the petition. The extension shall be computed from the date the petition or response was originally due. No other extensions shall be granted.

(h) *Style of Petition.* The style of the Petition on Appeal, Response, and Cross-Appeal shall follow the style of briefs as described by Rule 4-1 of the Rules of the Supreme Court except where a style is specifically described by these rules. Reference to any minor in the Notice of Appeal, Notice of Cross Appeal, Petition for Appeal, Petition for Cross Appeal, and responses shall be by the minor's initials. Other parties seeking anonymity shall comply with Rule 6-3 of the Rules of the Supreme Court and Court of Appeals.

(i) *Procedure for No-Merit Petitions, Pro Se Points, and State's Response.*

(1) After studying the record and researching the law, if appellant's counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. In addition to the requirement set forth in subsection (e), counsel's no-merit petition must include the following:

(A) The argument section of the petition shall list all adverse rulings to the appellant made by the circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.

(B) The abstract and addendum shall contain all rulings adverse to the appellant, made by the Circuit Court at the hearing from which the order of appeal arose.

(2) Appellees are not required to, but may, respond to a no-merit petition. Appellees may file a concurrence letter supporting the no-merit petition. Any response by an appellee shall be filed within twenty (20) days of the filing of the no-merit petition.

(3) The Clerk of the Supreme Court shall mail the appellant, at the appellant's last known address, a copy of the no-merit petition and the motion to withdraw. The Clerk shall notify the appellant in writing that the appellant may raise any points that the appellant chooses and that these points may be typewritten or hand-printed. The Clerk shall also notify the appellant that the points shall be received by the Supreme Court Clerk by mail or other method of delivery within thirty (30) days from the date the Clerk mailed the appellant the notification.

(4) The Clerk shall provide appellant's points by electronic transmission or other method of delivery to the Department of Human Services - Office of Chief Counsel, the Attorney Ad Litem, and appellant's counsel within three (3) business days.

(5) Appellees are not required to respond to appellant's points; however, appellees may do so by filing such response within twenty (20) days of receipt by the Clerk of the Supreme Court of the appellant's points.

(j) *Ruling.*

(1) Dependency-neglect proceedings shall be prioritized on the calendar of the appellate court. Once a case is ready for submission, the Clerk of the Supreme Court shall submit the case for decision.

(2) If a party files a petition for rehearing with the appellate court or petition for review with the Supreme Court, it shall be filed within ten (10) calendar days of the appellate court's decision and the response shall be filed within ten (10) calendar days of the filing of the petition. A petition for rehearing shall comply with Rule 2-3 and a petition for review shall comply with Rule 2-4 of the Rules of the Supreme Court and Court of Appeals in all respects, except for the number of days for filing. No supplemental briefs or extensions shall be allowed. The Clerk of the Supreme Court shall submit the petition for decision.

Rule 6-10. Counsel's duties with regard to dependency-neglect appeals.

(a) Trial counsel shall explain to his/her client all rights regarding any possible appeal, including deadlines, the merits, and likelihood of success of an appeal.

(b) If appellant is indigent, trial counsel shall file a motion seeking an indigency determination for purpose of appeal with the Circuit Court and ensure that appellant has signed the notice of appeal pursuant to Rule 6-9.

(c) Trial counsel who represent indigent parents and custodians shall serve the Arkansas Public Defender Commission by electronic submission or other method of delivery a file-marked copy of the notice of appeal and the order or orders that are being appealed within three (3) business days of filing the notice of appeal with the Circuit Clerk.

(1) Trial counsel shall timely respond to all reasonable requests for information to the Arkansas Public Defender Commission for purpose of appeal. Trial counsel for indigent parents or custodians shall not be relieved as counsel for the purpose of appeal until the Public Defender Commission timely receives the properly filed notice of appeal, questionnaire, and the order(s) appealed.

(2) The Arkansas Public Defender Commission shall send confirmation of receipt to trial counsel. This confirmation shall operate to relieve trial counsel of representation of the client for the limited purpose of appeal, and no motion to be relieved will need to be filed with the appellate court.

(d) The Circuit Court shall retain jurisdiction of the dependency-neglect case and conduct further hearings as necessary. Trial counsel, whether retained or court-appointed, shall continue to represent his/her client in a dependency-neglect case in the Circuit Court throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court to withdraw in the interest of justice or for other sufficient cause.

(e) After the notice of appeal is filed with the Circuit Court, the appellate court shall have exclusive jurisdiction to relieve counsel for the purpose of appeal, except as provided in subsection (c). All substitute counsel shall file an entry of appearance with the Clerk of the Supreme Court.

IN RE: ARKANSAS BAR ASSOCIATION PETITION to AMEND CODE of JUDICIAL CONDUCT

Supreme Court of Arkansas
Opinion delivered October 2, 2008

PER CURIAM. The American Bar Association has proposed a new model code of judicial conduct, the 2007 American Bar Association Code of Judicial Conduct ("2007 ABA Code"), and each state is asked to consider its adoption. This court in considering whether the 2007 ABA Code should be adopted in Arkansas requested that the Arkansas Bar Association review it and make a report to the court. The Arkansas Bar Association created the Task Force on the Code of Judicial Conduct and appointed the following members: Professor Howard Brill of Fayetteville, Chair, Hon. Kathleen Bell of Helena, Hon. Ellen Brantley of Little Rock, Laurie Bridewell, Esq., of Lake Village, Michael Crawford, Esq., of Hot Springs, Don Elliott, Jr., Esq., of Fayetteville, Frances Fendler, Esq., of Little Rock, Hon. John C. Finley, III, of Ashdown, Donis Hamilton, Esq., of Paragould, Hon. Eugene Harris of Little Rock, Hon. Leon Jamison of Pine Bluff, James Simpson, Esq., of Little Rock, Hon. Kim Smith of Fayetteville, Hon. Gordon Webb of Harrison, Patrick Wilson, Esq., of Little Rock, and Hon. Ralph Wilson of Osceola.

The Task Force worked on this project for over nine months and submitted its report to the Arkansas Bar Association House of Delegates on June 14, 2008. The House of Delegates approved the report and directed that it be presented to the court.

On August 7, 2008, the Arkansas Bar Association filed a petition with the court to adopt the 2007 ABA Code, as revised by the Arkansas Bar Association, to replace the Arkansas Code of Judicial Conduct, as amended, which was adopted in 1993. The petition is now before the court. We thank the Arkansas Bar Association and especially the members of the Task Force for their work on this project.

To assist our deliberations, we solicit comments from the bench and bar. We have appended the petition and exhibits to this *per curiam* order and publish them for comment. Exhibit "A" is the

Report containing the proposed Arkansas code,[1] Exhibit "B" is a comparison of the proposed Arkansas code with the 2007 ABA Code, and Exhibit "C" is a comparison of the proposed Arkansas code with the current Arkansas Code of Judicial Conduct.

Comments should be made in writing before January 1, 2009, and they should be addressed to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Code of Judicial Conduct, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

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[1] Three editorial changes have been made in the Report that is being published for comment: In the Application Section, (I)(B), the terms "justice of the peace" and "court commissioner" have been deleted. In the Terminology Section, a Comment has been added with reference to the term "judicial candidate," pointing out that Arkansas does not have retention elections and appointments only arise in limited contexts. In Rule 4.2 (B), we have inserted the term "judicial candidate" in the rule so that it reads, "judicial candidate in a public election," and clarified the Comment.

IN THE SUPREME COURT OF ARKANSAS

ARKANSAS BAR ASSOCIATION **PETITIONER**
IN RE: CODE OF JUDICIAL CONDUCT

PETITION

The Arkansas Bar Association, at the direction of its House of Delegates, and acting through its President, Rosalind M. Mouser, Past President Richard L. Ramsay, and by chair of its Task Force on the Code of Judicial Conduct, Howard Brill, petitions the Court to revise the Code of Judicial Conduct of the Commission and to adopt the rule set out in Exhibit "A" attached hereto.

1. The existing Arkansas Code of Judicial Conduct was adopted by PER CURIAM order on July 5, 1993.

2. At the request of the Court, Petitioner Arkansas Bar Association then President James D. Sprott and then President-Elect Richard L. Ramsay appointed its Task Force on Code of Judicial Conduct in May, 2007 to review the 2007 American Bar Association Code of Judicial Conduct.

3. The Task Force, comprised of eight judges and eight lawyers, met on several occasions over a nine month period, completed its assignment, and submitted its Report the to the Arkansas Bar Association House of Delegates on June 14, 2008. A copy of the Report is attached as Exhibit "A".

4. For the Court's convenience a Comparison of the House of Delegates Proposal to the American Bar Association Model Code (February 2007) is attached as Exhibit "B", and the Comparison of the House of Delegates Proposal to the existing Arkansas Code of Judicial Conduct (1993) is attached as Exhibit "C".

5. The House of Delegates at its meeting on June 14, 2008 adopted the Report from the Task Force and asked that it be presented to the Court.

WHEREFORE, Petitioner, the Arkansas Bar Association, asks the Court to exercise its constitutional authority to adopt the Code of Judicial Conduct rules and revisions and direct the policy and guideline changes as set out in Exhibits "A", "B", and "C".

ARKANSAS BAR ASSOCIATION

____
Rosalind M. Mouser
President

____
Richard L. Ramsay
Immediate Past President

EXHIBIT A

Arkansas Code of Judicial Conduct as Proposed by the Arkansas Bar Association's House of Delegates June 14, 2008 based on the

ABA MODEL CODE OF JUDICIAL CONDUCT FEBRUARY 2007

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ABA MODEL CODE OF JUDICIAL CONDUCT

FEBRUARY 2007

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Model Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

Scope

[1] The Model Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Model Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).

"Aggregate," *in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. See Rules 2.11 and 4.4.*

"Appropriate authority" *means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.*

"Contribution" *means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.*

"De minimis," *in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.*

"Domestic partner" *means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.*

"Economic interest" *means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:*

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

"Fiduciary" *includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.*

"Impartial," "impartiality," *and* ***"impartially"*** *mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.*

"Impending matter" *is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.*

"Impropriety" *includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.*

"Independence" *means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.*

"Integrity" *means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.*

"Judicial candidate" *means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.*

"Knowingly," "knowledge," "known," *and* ***"knows"*** *mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.*

"Law" *encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.*

"Member of the candidate's family" *means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.*

"Member of the judge's family" *means a spouse, domestic partner, child, grandchild,*

parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

***"Member of a judge's family residing in the judge's household"** means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.*

***"Nonpublic information"** means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.*

***"Pending matter"** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.*

***"Personally solicit"** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.*

***"Political organization"** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.*

***"Public election"** includes primary and general elections. . See Rules 4.2 and 4.4.*

***"Third degree of relationship"** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.*

COMMENT

[1] Regarding the term "judicial candidate," in Arkansas, there are no retention elections, and selection by appointment arises in limited situations, such as to fill a newly created judgeship or a vacancy.

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four distinct categories of part-time judges. The four 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. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a, magistrate, special master, referee, or member of the administrative law judiciary.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law.

II. [DELETED]

III. CONTINUING PART-TIME JUDGE

A judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law ("continuing part-time judge"),

(A) is not required to comply:

(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements); and

(B) shall not practice law in the court on which the judge serves, shall not appear in any criminal matter in the county in 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.

COMMENT

[1] 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 informed consent of all parties, and pursuant to any applicable Model Rules of Professional Conduct. An adopting jurisdiction should substitute a reference to its applicable rule.

[2A] Paragraph (B) does not, as a general rule, prohibit a continuing part-time judge from practicing law. However the position of a judge in presiding over a criminal matter and then appearing as a criminal defense attorney in a court of general jurisdiction and opposing that same prosecutor creates an appearance of impropriety, even when the proceedings are separate. Accordingly, continuing part time judges are prohibited from appearing in any criminal matter in the county

where the judge serves, regardless of how the criminal matter arises.

[3A] Because the position of the judge is paramount to the judge's private law practice, the judge should be particularly sensitive to conflicts that may arise when the judge presides over matters involving particular attorneys and then, in his or her private law practice, appears in adversary proceedings in a court of general jurisdiction opposing the same attorneys who appear before the judge. Opposing counsel may be hampered in vigorous advocacy against an attorney who wears judicial robes and presides over cases involving that counsel. The primacy of judicial service and the obligation to avoid even the appearance of impropriety mandate caution in accepting civil cases in disputed matters.

IV. PERIODIC PART-TIME JUDGE

A periodic part-time judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter,

(A) is not required to comply:

(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) 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.

V. PRO TEMPORE PART-TIME JUDGE

A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:

(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or

(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).

VI. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries 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 Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1

Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

RULE 1.2

Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.*

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for

publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1

Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2

Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.3

Bias, Prejudice, and Harassment

> ***(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.***
>
> ***(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.***
>
> ***(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.***
>
> ***(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to personal characteristics when they are relevant to an issue in a proceeding.***

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on the basis of personal characteristics.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4

External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5

Competence, Diligence, and Cooperation

> ***(A) A judge shall perform judicial and administrative duties, competently and diligently.***
>
> ***(B) A judge shall cooperate with other judges and court officials in the administration of court business.***

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6

Ensuring the Right to Be Heard

> ***(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.****
>
> ***(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.***

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7

Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

COMMENT

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8

Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9

Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) [DELETED]

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10

Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11

Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
b) acting as a lawyer in the proceeding;
(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or
(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [DELETED]

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:
(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed

in such capacity an opinion concerning the merits of the particular matter in controversy;
(c) was a material witness concerning the matter; or
(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the

judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[4A] The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign, or publicly supported the judge in his or her election does not of itself disqualify the judge. However, the size of contributions, the degree of involvement in the campaign, the timing of the campaign and the proceeding, the issues involved in the proceeding, and other factors known to the judge may raise questions as to the judge's impartiality under paragraph (A).

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
(4) an interest in the issuer of government securities held by the judge.

RULE 2.12

Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13

Administrative Appointments

(A) In making administrative appointments, a judge:
(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) [DELETED]

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(D) No judge shall employ a spouse or other relative unless it has been affirmatively demonstrated to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

[3][DELETED]

RULE 2.14

Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

[3A] Judges may exercise discretion in referring a lawyer or another judge to the Arkansas Lawyer Assistance Program. See Rule 2.15.

RULE 2.15

Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.**

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that

judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

[3A] This rule does not apply to a member of the Lawyer Assistance Committee of the Arkansas Lawyer Assistance Program (ArLAP) or a volunteer acting pursuant to the Rules regarding information received in one's capacity as a Committee member or volunteer, acting in good faith, unless it appears to the member or volunteer that the lawyer or judge in question, after entry into the ArLAP, is failing to desist from said violation, or is failing to cooperate with a program of assistance to which said lawyer or judge has agreed, or is engaged in the sale of a controlled substance or theft of property constituting a felony under Arkansas law, or the equivalent thereof if the offense is not within the State's jurisdiction.

[4A] Except as provided by this Code or the Rules of ArLAP, no information received, gathered, or maintained by the Committee, its members or volunteers, or by an employee of the ArLAP in connection with the work of the Committee may be disclosed to any person nor be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject lawyer or judge. However, the Committee may refer any lawyer or judge to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee, a volunteer, or an employee of the ArLAP gives rise to reasonable suspicion of a direct threat to the health or safety of the subject lawyer, judge or other person, then the obligation of confidentiality shall not apply, and the Committee member, volunteer, or ArLAP employee may make

such communications as are necessary for the purpose of avoiding or preventing said threat.

RULE 2.16

Cooperation with Disciplinary Authorities

> ***(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.***
>
> ***(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.***

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1

Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:*

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity,* or impartiality;**

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their personal characteristics. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For

example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

[5A] Before speaking or writing about social or political issues, judges should consider the impact of their statements. Comments may suggest that the judge lacks impartiality. See Rule 1.2. They may create the impression that a judge has or manifests bias or prejudice toward individuals with contrary social or political views. See Rule 2.3. Public comments may require the judge to disqualify himself or herself when litigation involving those issues comes before the judge. See Rule 2.11. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

RULE 3.2

Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

> *(A) in connection with matters concerning the law, the legal system, or the administration of justice;*
>
> *(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or*
>
> *(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary* capacity.*

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3

Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4

Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

RULE 3.5

Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

RULE 3.6

Affiliation with Discriminatory Organizations

> *(A) A judge shall not hold membership in any organization that practices invidious discrimination.*
>
> *(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination. A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.*

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] Invidious discrimination will generally be demonstrated if an organizations's exclusionary membership practices are arbitrary, irrational,

or the result of hostility or animus toward an identifiable group. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[2A] A judge may ordinarily be a member of an organization which is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited, even though that organization is a single sex or single race organization. Likewise, a judge may ordinarily be a member of an organization which is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, even though in fact its membership is limited. Similarly, a judge may have or retain membership with a university related or other living group, even though its membership is single sex. However, public approval of, or participation in, any discrimination that gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary violates this Code. For example, an organization that conducts lobbying or advocacy on behalf of its members may raise such concerns. Ultimately, each judge must determine in the judge's own conscience whether participation in such an organization violates Rule 3.6.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

RULE 3.7

Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, as long as the solicitation cannot reasonably be perceived as coercive;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties

in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

RULE 3.8

Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.*

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9

Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.*

COMMENT

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

RULE 3.10

Practice of Law

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11

Financial, Business, or Remunerative Activities

*(A) A judge may hold and manage investments of the judge and members of the judge's family.**

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or

appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12

Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.**

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13

Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

> *(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.**

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

> ***(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;***
>
> ***(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;***
>
> ***(3) ordinary social hospitality;***
>
> ***(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;***
>
> ***(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;***
>
> ***(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;***
>
> ***(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or***
>
> ***(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge.***

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

> ***(1) gifts incident to a public testimonial;***
>
> ***(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:***

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may

freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14

Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.*

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs

reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,* or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

[4A] Reimbursement of expenses from governmental entities need not be reported under Rule 3.14 [C] or Rule 3.15.

RULE 3.15

Reporting Requirements

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), and

(3) reimbursement of expenses and waiver of fees or charges as permitted by Rule 3.14(A).

(B) The scope of reporting, the time for reporting, the manner of reporting, and other issues shall be as determined by state law.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1

Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate* shall not:*

*(1) act as a leader in, or hold an office in, a political organization;**

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;*

(5) [DELETED];

(6) publicly identify himself or herself as a candidate of a political organization;

(7) seek, accept, or use endorsements from a political organization;

(8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;*

(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;

(10) use court staff, facilities, or other court resources in a campaign for judicial office;

(11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;*

(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending* in any court; or*

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.*

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

COMMENT

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. Judges are permitted to request a ballot in a party's primary without violating this Code.

[6A] Judges are permitted to attend or purchase tickets for dinners or other events sponsored by a political organization.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made

that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result.

[13A] Before speaking or announcing personal views on social or political topics in a judicial campaign, candidates should consider the impact of their statements. Such statements may suggest that the judge lacks impartiality. See Rule 1.2. They may create the impression that a judge has or manifests bias or prejudice toward individuals with contrary social or political views. See Rule 2.3. Public comments may require the judge to disqualify himself or herself when litigation involving those issues come before the judge. See Rule 2.11. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2

Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate* in a public election* shall:

(1) act at all times in a manner consistent with the independence, integrity,* and impartiality* of the judiciary;*

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

*(B) A judicial candidate * in a public election may, unless prohibited by law,* and not earlier than 365 days before the first applicable election:*

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3)[DELETED];

(4) attend or purchase tickets for dinners or other events sponsored by a political organization;*

(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and

(6)[DELETED].

(C)[DELETED].

COMMENT

[1] Paragraph (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.

Candidates may not engage in these activities earlier than 365 days before the first applicable election.

[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).

[3] [DELETED]

[4] In nonpartisan elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.

[5] Subject to the 365 day limitation, judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations. (Cf. Rule 4.1, Comment 6A, Judges are permitted to attend or purchase tickets for dinners or other events sponsored by a political organization.)

[6][DELETED]

[7][DELETED]

RULE 4.3

Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.

COMMENT

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).

RULE 4.4

Campaign Committees

(A) A judicial candidate* subject to public election* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.*

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions* as are permitted by state law.

(2) not to solicit or accept contributions for a candidate's current campaign more than 180 days before the applicable election, nor more than 45 days after the last election in which the candidate participated; and

(3) to comply with all applicable statutory requirements for

disclosure and divestiture of campaign contributions.

(C) Any campaign fund surplus shall be returned to the contributors or turned over to the State Treasurer as provided by law.

COMMENT

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law.

[3A] To reduce potential disqualification and to avoid the appearance of impropriety, judicial candidates should, as much as possible, not be aware of those who have contributed to the campaign.

RULE 4.5

Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.*

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

EXHIBIT B

Comparison of the House of Delegates Proposal to the ABA Model Code (February 2007)

This memo indicates the primary differences between the ABA version and the proposal approved by the House of Delegates. Many non-substantial changes are not mentioned in this memo. For examples, references to retention elections and caucuses have been removed. Changes in Rules 4.1 -4.5 (governing elections) have been made in light of Amendment 80 and the non-partisan judicial elections. Similarly, references in Comments to local rules have been deleted.

The Task Force made several preliminary decisions:

1)We concluded that the format of the ABA proposal is preferable to the existing Code.

2)As much as possible, we would follow the ABA proposal to assist in uniform interpretation.

3)We would carefully consider any prior Arkansas distinctions found in the present Code.

4)We would consider the realities of the judicial structure and experience in Arkansas.

Note: the designation of a Comment with an (A) means that it is an Arkansas addition to the ABA proposal. The same distinction was employed with the Arkansas Rules of Professional Conduct, as adopted by the Supreme Court in May 2005.

1)Application: The proposal deletes II (Retired-Judge Subject to Recall who by law is not permitted to practice law). Arkansas does not have such individuals. The provisions for Periodic Part-Time Judges and Pro Tempore Part-Time Judges have been retained.

2)Application: (III. Continuing Part-time Judges). The Task Force altered (B) to prohibit part-time judges from appearing in any criminal matter in the county in which the judge

presides. Because of the geographical size of some judicial circuits, the Task Force concluded it was unrealistic to prohibit judges from appearing in any criminal matter in the entire circuit. Comment 2A explains this restriction. Further, Comment 3A urges the judge to exercise caution before appearing in any adversary proceeding that involves attorneys who come before the judge in his or her judicial capacity. In addition, the language in (A) was altered to provide that candidates for district judgeships will be subject to the same judicial election rules as other judicial candidates.

3) In Rules 2.3, 3.1 and 3.6 (and accompanying comments), the House deleted a list of 12 categories or factors, and substituted the language of "personal characteristics." This language is based on proposals from the United States Judicial Conference.

4)Rule 2.9(A)(4): In response to feedback from the House of Delegates and other attorneys, the Task Force deleted this language: "A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge."

5)Rule 2.11: The proposal removes (A)(4). The Task Force did not believe that disqualification should be required because a litigant or an attorney had contributed at a particular level to the campaign fund of the judge. However, recognizing the possibility of a conflict or the appearance of a conflict, the Task Force inserted Comment 4A.

6)Rule 2.13: The proposal removes (A)(3) forbidding appointment of lawyers to administrative positions if they had contributed at a particular level to the judge's campaign fund. However, the proposal adds (D), which is taken from the current Code, and requires judges to affirmatively demonstrate to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position.

7)Rules 2.14 and 2:15: The proposal adds Comments 3A to Rule 2.14 and Comments 7A and 8A to Rule 2.15. These references to the Arkansas Lawyer Assistance Program are taken from the existing Code.

8)Rule 3.1: The Task Force added Comment 5A.

9)Rule 3.6: Comment 2A is taken from the existing Comment in the current Arkansas Code of Judicial Conduct.

10)Rule 3.7(A)(3) retains the current language and permits a judge to solicit membership in charitable, religious and other organizations, provided it is done in a non-coercive manner.

11)Rule 3.14. Comment 4A states that reimbursement of expenses from government entities need not be reported.

12)Rule 3.15 is modified by eliminating the dual reporting. The only public reports of outside income, expenses and gifts will be as required by Arkansas statutory law.

13)Rule 4.1: Comment 6A permits a judge or judicial candidate to attend or purchase tickets for dinner or other events sponsored by a political organization, but not by a candidate for public office.

14)Rule 4.1 does not permit a judicial candidate to make a pledge, promise or commitment.

15)Rules 4.1 and 4.2: Judges and judicial candidates will not be permitted to contribute to any political organization or candidate for public office.

16)Rule 4.4. Section C retains the current language that any campaign surplus shall be returned to the contributors or turned over to the State Treasurer.

17)Rule 4.4: Comment 3A urges judicial candidates, as much as possible, to remain unaware of the contributors to the campaign.

Howard W. Brill
Chairman, Task Force

June 20, 2008

EXHIBIT C

Comparison of the House of Delegates Proposal to the existing Arkansas Code of Judicial Conduct (1993)

This memo indicates the primary changes from the existing Arkansas Code of Judicial Conduct (effective May 1, 1993). The focus is upon those changes that would be most apparent to Arkansas judges.

Scope: Please note paragraphs 3,4 and 6: The Comments to the Rules provide guidance and identify aspirational goals for judges. Even when a comment contains the term "must", it is not intended that the comment itself is binding or enforceable. Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression of a Rule will result in the imposition of discipline.

Terminology: The phrase "domestic partner" is explained in the Terminology, and used throughout the Code.

Application: (III. Continuing Part-time Judge): The language of (B) clarifies that a continuing part-time judge may not appear in criminal cases in the county in which the judge presides. Prior opinions of the Judicial Ethics Advisory Committee (98-02; 2002-04) concluded that a municipal judge should not represent any criminal defendants in the same circuit. Comment [2A] urges the judge to exercise caution before appearing in any adversary proceedings involving lawyer who come before the judge in his or her judicial capacity.

1)Rule 2.3: Judges are not to manifest bias or prejudice, and are not to permit court officials and lawyers to do so either. The current Code says: "Including, but not limited to race, sex, religion, or national origin." The House of Delegates substituted the language of "personal characteristics." The change was also made in Rules 3.1 and 3.6, and accompanying Comments. The language was based in part on a proposal from the United States Judicial Conference.

2)Rule 2.6: This rule permits the trial judge to encourage settlement discussions between the parties. Comment 2 identifies factors that the judge should consider in determining his or her appropriate involvement. Comment 3 also reminds the judge that information received during settlement discussions may require disqualification if settlement fails.

However the Task Force, after receiving feedback from the House of Delegates deleted Rule 2.9(a)(4): "A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge."

3)Rule 2.11: Comment 4A recognizes the relationship of judicial campaigns and disqualification, but does not mandate recusal.

4)Rule 3.1: Prior limitations on judges speaking and writing have been removed. Comment 5A urges judges to consider the impact of their statements before speaking or writing about social or political issues. As indicated in the Scope, the Comments are intended to give guidance and identify aspirational goals for judges, but are not a basis for discipline.

5)Rule 3.2: The Task Force proposal restores the basic language that was in the Arkansas Code of 1993. That language was revised by the Court, following its decision in Griffen v. Arkansas Judicial Discipline and Disability Commission, 355 Ark. 38, 130 S.W. 3d 524 (2003).

6)Rule 3.14: Comment 4A clarifies that reimbursement of expenses from government entities need not be reported.

7)Rule 3.15 requires that judges file public reports on outside income, gifts and expenses as required by state law. The necessity of a second filing with the Administrative Office of the Courts is eliminated. The Task Force concluded that existing Arkansas law is far more detailed than the language of the Code of Judicial Conduct.

8)Rule 4.1 In contrast with the earlier Code, no Rule bars statements during a judicial campaign, other than pledges, promises and commitments. However, Comment 13A urges candidates to consider the impact that personal statements on social and political issues might have. As previously mentioned, the Comments are intended to give guidance and identify aspirational goals for judges, but are not a basis for discipline.

9)Rule 4.1 (Comment 6A) and Rule 4.2(B)(4): Judges and judicial candidates are permitted to purchase tickets and attend political rallies conducted by political organizations (but not by individual candidates). Those activities may take place during the campaign and during the judge's tenure in office.

10)Rule 4.1(A)(4): Judges are not permitted to give money to a political organization or another political candidate, whether it is during the election cycle or during the term of office. The proposed Code continues to bar judges and judicial candidates from supporting or opposing any other candidate. Rule 4.1(A)(3).

11)Rule 4.2: Judicial campaigns cannot begin until 365 days before the election. However, the current 180 day limitation on pre-election fund raising is retained, as is the 45 day post-election limit.

12)Rule 4.4: Comment 3A urges judicial candidates, as much as possible, to remain unaware of the contributors to the campaign.

Howard W. Brill
Chair, Task Force

June 20, 2008

IN RE: ARKANSAS DISTRICT COURT RULES; RULES of CIVIL PROCEDURE; RULES of EVIDENCE; RULES of the SUPREME COURT and COURT of APPEALS; and RULES of APPELLATE PROCEDURE–CIVIL

Supreme Court of Arkansas
Opinion delivered October 9, 2008

PER CURIAM. On April 17, 2008, we published for comment the Arkansas Supreme Court Committee on Civil Practice's proposals for changes in the Arkansas District Court Rules, Rules of Civil Procedure, Rules of Evidence, Rules of the Supreme Court and Court of Appeals, and Rules of Appellate Procedure–Civil. We thank everyone who reviewed the proposals.

We accept the Committee's recommendations except with respect to the proposed change to Supreme Court Rule 4-4(c) concerning cross-appellee's briefs. We adopt the following amendments to be effective January 1, 2009 and republish the Rules and Reporter's Notes as set out below.

We encourage all judges and lawyers to review this per curiam in order to familiarize themselves with the changes to the rules. 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.

A. ARKANSAS DISTRICT COURT RULES

Rule 1 is amended to read:

Rule 1. Scope of rules.

(a) Except as provided in subdivision (b), these rules shall govern the procedure in all civil actions in the district courts and county courts (hereinafter collectively called the "district courts") of this state. They shall apply in the small claims division of district courts except as may be modified by Rule 10 of these rules.

(b) These rules shall not apply to an appeal of a tax assessment from an equalization board to the county court. Rule 9 of these rules, however, shall apply to a tax-assessment appeal from county court to circuit court.

(c) Where applicable and unless otherwise specifically modified herein, the Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence shall apply to and govern matters of procedure and evidence in the district courts of this State. Actions in the small claims division of district court shall be tried informally before the court with relaxed rules of evidence, *see* Rule 10(d)(2) of these rules.

(d) Rules specific to criminal proceedings in district court shall so indicate, and in such cases, such rules shall apply to actions pending in city courts.

(e) Other matters affecting district courts may be found in Administrative Order Number 18.

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

Addition to Reporter's Notes, 2008 Amendment. Subdivision (b) is new. It recognizes that our statutes prescribe specific procedures for appealing a tax assessment from an equalization board to the county court. Ark. Code Ann. §§ 26-27-311, 318. Those statutory procedures, not the District Court Rules, govern such cases in the county court with one exception. The exception is that Rule 9 governs appeals in tax-assessment cases from county court to circuit court. Former subdivisions (b)-(d) have been redesignated as (c)-(e).

Rule 9 is amended to read:

Rule 9. Appeals to circuit court.

(a) *Time for Taking Appeal From District Court.* All appeals in civil cases from district courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within 30 days from the date of a docket entry awarding judgment regardless of whether a formal judgment is entered. The 30-day period is not extended by a motion for new trial, a motion to amend the court's findings of fact or to make additional findings, or any other motion to vacate, alter or amend the judgment.

(b) *How Taken From District Court.* A party may take an appeal from a district court by filing a certified copy of the district court's docket

sheet, which shows the awarding of judgment and all prior entries, with the clerk of the circuit court having jurisdiction over the matter. Neither a notice of appeal nor an order granting leave to appeal shall be required. The appealing party shall serve a copy of the certified docket sheet upon counsel for all other parties, and any party proceeding pro se, by any form of mail that requires a signed receipt.

(c) *Procedure on Appeal From District Court.*

(1) All the parties shall assert all their claims and defenses in circuit court. Within thirty days after a party perfects its appeal to circuit court by filing a certified copy of the district court docket sheet with the circuit clerk, the party who was the plaintiff in district court shall file a complaint and plead all its claims in circuit court. The party who was the defendant in district court shall file its answer, motions, and claims within the time and manner prescribed by the Arkansas Rules of Civil Procedure. All the parties shall serve their pleadings and other papers on counsel for all opposing parties, and on any party proceeding pro se, by any form of mail which requires a signed receipt.

(2) At the time they file their complaint, answer, motions, and claims, the parties shall also file with the circuit clerk certified copies of any district court papers that they believe are material to the disputed issues in circuit court. Any party may also file certified copies of additional district court papers at any time during the proceeding as the need arises.

(3) As soon as practicable after the pleadings are closed, the circuit court shall establish a schedule for discovery, motions, and trial.

(4) Except as modified by the provisions of this rule, and except for the inapplicability of Rule of Civil Procedure 41, the Arkansas Rules of Civil Procedure shall govern all the circuit court proceedings on appeal of a district court judgment as if the case had been filed originally in circuit court.

(d) *Supersedeas Bond on Appeal From District Court.* Whenever an appellant entitled thereto desires a stay on appeal to circuit court in a civil case, he shall present to the district court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that

appellant shall satisfy and perform the judgment, decree, or order of the inferior court. All proceedings in the district court shall be stayed from and after the date of the court's order approving the supersedeas bond.

(e) *Special Provisions For Appeals From County Court to Circuit Court.*

Unless otherwise provided in this subdivision, the requirements of subdivisions (a), (b), (c), and (d) govern appeals from county court to circuit court. A party may take an appeal from the final judgment of a county court by filing a notice of appeal with the clerk of the circuit court having jurisdiction over the matter within thirty (30) days from the date that the county court filed its order with the county clerk. A certified copy of the county court's final judgment must be attached to the notice of appeal. In the circuit-court proceeding, the party who was the petitioner or plaintiff in county court shall have all the obligations of the plaintiff in a case that has been appealed from district court to circuit court. If there were no defendants in the county-court proceeding, then the petitioner/plaintiff shall name all necessary, adverse parties as defendants in its complaint filed in circuit court.

(f) *Administrative Appeals.*

(1) If an applicable statute provides a method for filing an appeal from a final decision of any governmental body or agency and a method for preparing the record on appeal, then the statutory procedures shall apply.

(2) If no statute addresses how a party may take such an appeal or how the record shall be prepared, then the following procedures apply.

(A) *Notice of Appeal.* A party may appeal any final administrative decision by filing a notice of appeal with the clerk of the circuit court having jurisdiction of the matter within thirty (30) days from the date of that decision. The notice of appeal shall describe the final administrative decision being appealed and specify the date of that decision. The date of decision shall be either the date of the vote, if any, or the date that a written record of the vote is made. The party shall serve the notice of appeal on all other parties, including the governmental body or agency, by serving any person described in Arkansas Rule of Civil Procedure 4(d)(7), by any form of mail that requires a return receipt.

(B) *The Record on Appeal.* Within thirty (30) days after filing its notice of appeal, the party shall file certified copies of all the materials the party has or can obtain that document the administrative proceeding.

Within thirty (30) days after these materials are filed, any opposing party may supplement the record with certified copies of any additional documents that it believes are necessary to complete the administrative record on appeal. At any time during the appeal, any party may supplement the record with a certified copy of any document from the administrative proceeding that is not in the record but the party believes the circuit court needs to resolve the appeal.

(C) *Procedure on Appeal.* As soon as practicable after all the parties have made their initial filing of record materials, the court shall establish a schedule for briefing, hearings, and any other matters needed to resolve the appeal.

The Reporter's Notes accompanying Rule 9 are amended by adding:

Addition to Reporter's Notes, 2008 Amendment. The rule has been substantially rewritten to eliminate several points of confusion and difficulty.

Subdivision (a) has been amended. The rule prescribes that the thirty-day time to appeal from a district court runs from the date that the court makes a docket entry of judgment. This change conforms the rule to precedent. *E.g.*, *Lewis v. Robertson*, 96 Ark. App. 114, 239 S.W.3d 30 (2006). This change also preserves the flexibility that district courts need to dispose of many cases with only a docket entry. Counsel and parties proceeding pro se must monitor the district court's docket carefully to determine when the time to appeal begins to run.

The procedure prescribed in subdivision (b) for taking an appeal has been changed. Instead of having to file a certified copy of the entire district court record, now the appealing party must file with the circuit clerk only a certified copy of the district court docket sheet. This document should show all proceedings in the district court, including the judgment appealed from. This simplification makes it easier to perfect an appeal. It eliminates the difficulty that parties often encountered in getting a complete certified record from the district court clerk within thirty days of the judgment. This change also eliminates the need for former subdivision (c), which provided an affidavit procedure when the certified district court record was unavailable and which resulted in litigation about that procedure. *E.g.*, *Nettles v. City of Little Rock*, 96 Ark. App. 86, 238 S.W.3d 635 (2006). New subdivision (b) also conforms the rule to case law. In

McNabb v. State, 367 Ark. 93, 238 S.W.3d 119 (2006), the supreme court held that a party satisfied former rule 9's requirement that the appealing party file "a record of the proceedings" in the district court by filing a certified district court docket sheet with the circuit clerk.

To ensure notice of the appeal to opposing parties, the appealing party must serve the docket sheet on all other parties by some form of mail that generates a signed receipt. This provision echoes the requirements of Arkansas Rule of Appellate Procedure–Civil 3(f) about serving a notice of appeal. Rule of Civil Procedure 4 does not apply and service of process is not required.

Former Rule 9 was silent about the procedure that circuit courts should follow in perfected appeals from district court. This silence led to confusion. *E.g.*, *Wright v. City of Little Rock*, 366 Ark. 96, 233 S.W.3d 644 (2006). New subdivision (c) outlines the procedure in circuit court: the party who was the plaintiff in the district court must file a complaint and plead its claims again; the other parties must file their answers, motions, and claims; all the parties must file certified copies of whatever district court materials they believe are important; and then the circuit court should handle the case like any other matter pursuant to the Arkansas Rules of Civil Procedure.

The requirement to plead again is new. It better captures the truth that appeals from district court are appellate in form but original in fact. This new pleading requirement generated a corresponding amendment in Rule of Civil Procedure 81(b), which formerly made pleading again discretionary with the circuit court.

Under settled precedent, an appeal from a district court judgment may not be dismissed without prejudice, either by a party's voluntary nonsuit or by the circuit court. Such a dismissal leaves the district court's judgment intact and finally adjudicates the matter. *Wright*, *supra*; *Watson v. White*, 217 Ark. 853, 233 S.W.2d 544 (1950). With that exception, and subject to the particularized requirements of this rule, the Arkansas Rules of Civil Procedure apply to circuit court proceedings on appeal from a district court's judgment. To insure that all parties have notice of the claims and defenses in circuit court, and to avoid defaults, all the parties must serve their pleadings by some form of mail requiring a signed receipt.

New subdivision (e) contains some needed special provisions for appeals to circuit court from final orders of the county court. Unless

subdivision (e) provides a different procedure, the provisions of subdivisions (a), (b), (c), and (d) govern appeals from county courts to circuit court. This new provision conforms Rule 9 to precedent: the district court rules govern appeals from county courts. *Pike Ave. Dev. Co. v. Pulaski County*, 343 Ark. 338, 37 S.W.3d 177 (2001). Under the Arkansas Constitution, the county courts have jurisdiction over a number of matters, most prominently county taxes (including those on real property) and roads. *See generally* David Newbern & John J. Watkins, 2 Arkansas Practice Series: Civil Practice & Procedure § 2:6 (4th ed. 2005 & Supp. 2007). Former Rule 9 was written solely in terms of appeals from district court, and its requirements did not fit appeals from county courts well. The revised provisions of Rule 9 (a)-(d) are a better fit, but some special provisions for appeals in county-court cases are nonetheless needed.

The procedures used in county courts vary. Some, for example, do not maintain a docket sheet for each matter. All final orders of county courts, however, are filed with the county clerk. New subdivision (e) ties the time for taking an appeal from a county court, and the method of perfecting that appeal, to the filing of the county court's final order. A party seeking to appeal must file a notice of appeal with the appropriate circuit clerk within thirty days of the date that the county court enters its final order. The notice should describe the order being appealed from and must attach a certified copy of that order. The timely filing of this notice is jurisdictional, as was the timely filing of a certified record or affidavit of unavailability under the former rule. *Pike Ave., supra.* Some cases in county court involve petitioners and respondents, rather than plaintiffs and defendants, and some have no adverse party named. New subdivision (e) addresses these issues by making the party who sought relief in the county court the plaintiff in any appeal to circuit court and obligates that party to open the pleadings with a complaint naming all necessary, adverse parties as defendants. Whether a party is necessary should be determined by reference to Rule of Civil Procedure 19 and the cases interpreting it. Absent a specific and contrary provision in subdivision (e), all the provisions of subdivisions (a), (b), (c), and (d) apply to appeals from county court to circuit court.

Subdivision (f) is new. Rule 9 has long governed appeals from decisions by certain governmental bodies, such as zoning boards and city councils, to circuit court. *See generally* Newbern & Watkins, *supra* § 2:4. The fit between the provisions of the rule and these adminis-

trative appeals, however, was imprecise. This resulted in problems for litigants in perfecting their appeals. *E.g., Bd. of Zoning Adjustment of City of Little Rock v. Cheek*, 328 Ark. 18, 942 S.W.2d 821 (1997); *Franks v. Mountain View*, 99 Ark. App. 205, 258 S.W. 3d 799 (2007). The provisions of new subdivision (f) are tailored for administrative appeals.

Paragraph (f)(1) is a default provision: if a statute prescribes the method for filing an appeal or preparing the record on appeal, or both, then the statutory procedures apply. Paragraph (f)(2) and its subparts describe the governing procedures if no applicable statutory procedure exists. A party perfects its appeal under new paragraph (f)(2)(A) by filing a timely notice of appeal with the circuit court. The notice should describe the administrative decision being appealed and the date of that decision. The thirty-day window in which to file the notice is standard. Ark. R. App. P.–Civil 4(a). In cases involving administrative action, uncertainty sometimes arose about the exact date of the decision: was it, for example, when a vote was taken or when the minutes reflecting a vote were approved? *Cf. Cheek, supra.* The revised rule eliminates this uncertainty by allowing either the date of any vote, or the date of a writing embodying the decision (e.g., a letter determination or approved minutes), to be the date of decision. This provision is intended to loosen the governing standard so that parties do not lose their rights to seek judicial review of an administrative decision based on a hyper-technical concern about precisely when the government body made its decision. This new provision ensures that all parties will be informed about the appeal by mandating service of the notice of appeal by any form of mail that requires a return receipt. The certificate of service on the notice should show compliance with this requirement.

New provision (f)(2)(B) creates a new and less rigid procedure for getting the administrative record to the circuit court. The former rule's problematic requirement linking the filing of the record to perfecting the appeal has been eliminated. The record-keeping practices of local administrative bodies vary widely, but this variance should not handicap litigants. Getting any needed administrative record materials to the circuit court is a housekeeping matter, not a jurisdictional requirement. The revised rule instructs all the parties to take turns filing certified copies of whatever materials they possess or can obtain that document the administrative proceedings. And the

parties may supplement the record at any time during the circuit court proceeding if important documents from the administrative process become available.

New provision (f)(2)(C) clarifies that, once the parties have made their initial record filings, the circuit court should enter an order scheduling whatever proceedings are needed — discovery, briefing, or hearings — to resolve the case.

B. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 50, Subdivision (e) is amended to read:

Rule 50. Motion for directed verdict and for notwithstanding verdict.

. . . .

(e) *Appellate Review*. In a jury trial, a party who does not have the burden of proof on a claim or defense must move for a directed verdict based on insufficient evidence at the conclusion of all the evidence to preserve a challenge to the sufficiency of the evidence for appellate review. A party who has the burden of proof on a claim or defense need not make such a motion to challenge on appeal the sufficiency of the evidence supporting a jury verdict adverse to that party. If for any reason the motion is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

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

Addition to Reporter's Notes, 2008 Amendment: Subdivision (e) has been amended and clarified. In a series of cases, the court of appeals had interpreted former subdivision (e) to require the party with the burden of proof to move for a directed verdict on the party's own claim or defense in order to challenge on appeal the sufficiency of the evidence supporting the fact-finder's decision for the opposing party. *Laird v. Weigh Sys. S. II, Inc.*, 98 Ark. App. 393, 255 S.W.3d 900 (2007); *King v. Powell*, 85 Ark. App. 212, 148 S.W.3d 792 (2004); *Sw. Bell Tel. Co. v. Garner*, 83 Ark. App. 226, 125 S.W.3d 844 (2003). This interpretation required a motion that would rarely be granted and served no useful purpose. *King*, 85 Ark. App. at 228-29, 148

S.W.3d at 802 (Bird, J., concurring). Revised subdivision (e) makes clear that only the party against whom a claim or defense is asserted must move for a directed verdict to preserve its right to challenge on appeal the sufficiency of the evidence. The amendment overrules the contrary holdings in *Garner*, *King*, and *Laird*.

Rule 54 is amended by adding subdivision (b)(5):

Rule 54. Judgment; costs.

. . . .

(b) *Judgment Upon Multiple Claims or Involving Multiple Parties.*

. . . .

(5) *Named but Unserved Defendant.* Any claim against a named but unserved defendant, including a "John Doe" defendant, is dismissed by the circuit court's final judgment or decree.

Rule 54 is further amended by adding a phrase to subdivision (d)(2):

. . . .

(d) *Costs.*

. . . .

(2) Costs taxable under this rule are limited to the following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; fees of translators appointed by the court pursuant to Rule 1009 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

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

Addition to Reporter's Notes, 2008 Amendments. Subdivision (b) has been amended by adding a new paragraph (5), which addresses the "named but not served defendant" problem. Cases asserting

claims against multiple defendants are commonplace. In some of those cases, a defendant is never served but nonetheless remains listed as a party and is never dismissed even though the circuit court has resolved all the claims against all the other parties. This situation creates problems on appeal. It wastes litigants' time and money and scarce judicial resources when, after the case has been appealed and briefed, the appellate court discovers a forgotten defendant whose presence destroys the finality of the judgment being appealed. *E.g.*, *Grooms v. Myers*, 308 Ark. 324, 823 S.W.2d 901 (1992). This problem often arises with "John Doe" defendants. *E.g.*, *Downing v. Lawrence Hall Nursing Ctr.*, 368 Ark. 51, 243 S.W.3d 263 (2006). New paragraph (5) solves this problem by mandating that any claim against a named but unserved defendant (including any John Doe) is dismissed by the circuit court's final judgment or decree.

Paragraph (d)(2) has also been amended. The change reflects that Rule of Evidence 1009, also adopted in 2008, authorizes the circuit court to appoint a qualified translator and requires the court to tax the reasonable value of the appointed translator's services as costs.

Rule 81, Subdivision (b) is amended to read:

Rule 81. Applicability of rules.

. . . .

(b) *Actions Appealed From Lower Court.* These rules shall apply to civil actions which are appealed to a court of record and which are triable de novo.

. . . .

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

Addition to Reporter's Notes, 2008 Amendment: Subdivision (b) of this rule has been amended to eliminate the circuit court's discretion about pleading again. The 2008 amendment to District Court Rule 9 requires pleading again in every civil case appealed to circuit court from district court. The change here conforms the two rules.

C. ARKANSAS RULES OF EVIDENCE

We adopt the new Rule 1009:

Rule 1009. Translation of foreign-language documents and recordings.

(a) *Translations.* A translation of foreign-language documents and recordings, including transcriptions, that is otherwise admissible under the Arkansas Rules of Evidence shall be admissible upon the affidavit of a "qualified translator," as defined in paragraph (h) of this rule, setting forth the qualifications of the translator, and certifying that the translation is fair, accurate, and complete. This affidavit, along with the translation and the underlying foreign-language documents or recordings, shall be served upon all parties at least forty-five (45) days before the date of trial.

(b) *Objections.* Any party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation. This objection shall be served upon all parties at least fifteen (15) days before the date of trial.

(c) *Effect of Failure to Object or Offer Conflicting Translation.* If no conflicting translation or objection is timely served, the court shall admit a translation submitted under paragraph (a) without need of proof, provided however that the underlying foreign-language documents or recordings are otherwise admissible under the Arkansas Rules of Evidence. Failure to serve a conflicting translation under paragraph (a), or failure to timely and properly object to the accuracy of a translation under paragraph (b), shall preclude a party from attacking or offering evidence contradicting the accuracy of the translation at trial.

(d) *Effect of Objections or Conflicting Translations.* In the event of conflicting translations under paragraph (a), or if objections to another party's translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.

(e) *Expert Testimony of Translator.* Except as provided in paragraph (c), this rule does not preclude the admission of a translation of foreign-language documents and recordings at trial either by live testimony or by deposition testimony of a qualified translator.

(f) *Varying of Time Limits*. The court, upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this rule.

(g) *Court Appointment*. The court, if necessary, may appoint a qualified translator, the reasonable value of whose services shall be taxed as court costs.

(h) *Qualified Translator*. A "qualified translator" is an interpreter satisfying the requirements established by the Arkansas Supreme Court in *In re Certification for Foreign Language Interpreters in Arkansas Courts*, 338 Ark. App'x 827 (1999) and Administrative Order Number 11. A Registry of Interpreters is maintained by the Administrative Office of the Courts.

D. ARKANSAS RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 4-4(f) is amended to read:

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

. . . .

(f) *Continuances and extensions of time.*

(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral request. The party requesting a Clerk's extension must confirm the extension by sending a letter immediately to the Clerk or the deputy clerk with a copy to all counsel of record and any pro se party. If such an extension is granted, no further extension shall be granted except by the Clerk for compliance with these Rules as provided in Rule 4-2(c) or by the Court upon a written motion showing good cause.

The title of Rule 6-1 and subdivision (a) are amended to read:

6-1. Extraordinary writs, expedited consideration, and temporary relief.

(a) *Extraordinary writs*. (1) Proceedings for an extraordinary writ such as prohibition, mandamus, and certiorari are commenced by filing an original petition in the Supreme Court. These writs are not available if appeal is an adequate remedy. A party seeking appellate review of a

circuit court's decision on a request for an extraordinary writ must file a notice of appeal in the circuit court, not a petition for the writ in the appellate court. When a party petitions the appellate court for an extraordinary writ, the pleadings with certified exhibits from the circuit court, if applicable, are treated as the record.

(2) If the petition falls within subsection (b) or (c) of this Rule, the petitioner is required to file the original and seven copies of the petition along with the record with the Clerk. Evidence of service of a copy upon the adverse party or his or her counsel of record in the circuit court is required. If the proceeding falls within subsection (e) of this Rule, the petitioner is required to file only the original petition along with the certified record.

(3) When the petition includes a certified copy of the record in the circuit court, the petitioner shall serve a copy of that record on the adverse party or his or her counsel. In prohibition cases, the petitioner shall also serve a copy of the record on the circuit judge, who is ordinarily a nominal party and is not required to file a response.

E. ARKANSAS RULES OF APPELLATE PROCEDURE—CIVIL

Rule 2, Subdivision (c)(2) is amended to read:

Rule 2. Appealable matters; priority.

. . . .

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

IN RE: RULES GOVERNING ADMISSION to the BAR of ARKANSAS

Supreme Court of Arkansas
Opinion delivered October 9, 2008

PER CURIAM. On February 26, 2004, by per curiam order, we reinstated admission on motion as an alternative means of securing admission to the Bar of Arkansas. Ark. Bar Adm. R. XVI. Since that per curiam order, the Board of Law Examiners (Board) has faced a number of issues that naturally arise in connection with the adoption of any new procedure.

Most recently, the Board has been called upon to interpret Section 1(d) of Rule XVI, which is the "reciprocity" provision. The current rule requires that the applicant "has or had his or her principal place of business for the practice of law, for the two year period immediately preceding application under this rule" *in* a reciprocal jurisdiction. The dilemma with which the Board has wrestled is the instance where an applicant moves his or her permanent residence to the State of Arkansas and does not promptly file for admission on motion. A literal reading of the current language would seem to preclude that application. Particularly, some portion of the two year period "*immediately preceding application*" would have been *in* Arkansas, not a reciprocal jurisdiction. To resolve this uncertainty, the Board recommends that Section 1(d) of Rule XVI be amended as it appears on the attachment to this order. We concur.

In routine cases of admission on motion or reinstatement from suspension for non payment of fees, where the application raises no questions concerning the applicant's eligibility, for administrative reasons the Board suggests that the Executive Secretary be authorized to certify such applicants to the Clerk. Presently, all such applications are referred to the Chair of the Board for "certification" to the Clerk. Due to the increasing number of admission on motion applicants, this current procedure has become unnecessarily burdensome for the Board Chair and the Executive Secretary. Accordingly, the Board unanimously recommends that Rule IV of the Rules be amended to allow the Board to delegate such authority to the Executive Secretary. We ac-

knowledge the administrative efficiency that such a modification will provide and therefore adopt Rule IV as it appears on the attachment to this order.

Finally, the current rules with the new language appearing in italics is attached as well.

Rule XVI — Admission on Motion

1(d) Establish that the state, territory, or the District of Columbia in which the applicant has or had his or her principal place of business for the practice of law, for the two year period immediately preceding establishment of permanent residence in this state or filing application under this rule, would allow attorneys from this state a similar accommodation as set forth in this rule; however, applicants who have been on continuous active military duty for five of the seven years mentioned in (c) above may, in the discretion of the Board, be excused from the two year requirement of this rule;

Rule IV. Duties of the Board

The Board shall cause to be provided questions to be used on examinations, and shall furnish to each applicant a set of such questions on the day of examination.

The Board shall cause to be graded the examination papers and as a Board ascertain the average grade of each applicant.

The names and addresses of applicants passing the examination as determined pursuant to Rule IX of these rules and who are otherwise eligible for admission in accord with Rule XIII of these rules; or, who are eligible for admission or reinstatement pursuant to Rule XVI or Rule VII of these rules; and who meet the requirements of Rule XIII of these rules, may be certified by the Executive Secretary to the Clerk of the Supreme Court, with a recommendation that they be licensed as attorneys at law.

New language is in italics.

Rule XVI — Admission on Motion

1(d) Establish that the state, territory, or the District of Columbia in which the applicant has or had his or her principal place of business for the practice of law, for the two year period immediately preceding *establishment of permanent residence in this state or filing* application under this rule, would allow attorneys from this state a similar accommodation as set forth in this rule; however, applicants who have been on continuous active military duty for five of the seven years mentioned in (c) above may, in the discretion of the Board, be excused from the two year requirement of this rule;

Rule IV. Duties of the Board

The Board shall cause to be provided questions to be used on examinations, and shall furnish to each applicant a set of such questions on the day of examination.

The Board shall cause to be graded the examination papers and as a Board ascertain the average grade of each applicant.

The names and addresses of applicants passing the examination as determined pursuant to Rule IX of these rules *and who are otherwise eligible for admission in accord with Rule XIII of these rules;* or, who are eligible for admission *or reinstatement* pursuant to Rule XVI *or Rule VII* of these rules; and who meet the requirements of Rule XIII of these rules, *may* be certified *by the Executive Secretary* to the Clerk of the Supreme Court, with a recommendation that they be licensed as attorneys at law.

IN RE: RULES of CIVIL PROCEDURE 5, 11 & 58; ADMINISTRATIVE ORDERS 19 & 19.1; RULES of APPELLATE PROCEDURE–CIVIL 6 & 11; RULES of the SUPREME COURT and COURT of APPEALS 1-2, 2-1, 2-3, 2-4, 3-1 and 4-1

Supreme Court of Arkansas
Opinion delivered October 23, 2008

PER CURIAM. In February 2007, we adopted Administrative Order 19, which governs the public's access to court records. In our per curiam we asked our Committee on Civil Practice to study this comprehensive new Administrative Order and recommend any needed changes in our court rules for civil cases. On June 5, 2008, we published for comment the Committee's proposals for changes in the Arkansas Rules of Civil Procedure, Administrative Orders, Rules of Appellate Procedure–Civil, and Rules of The Supreme Court and Court of Appeals. We thank everyone who reviewed the proposals and made comments.

We accept the Committee's recommendations with several changes prompted by the comments. We adopt the following amendments to be effective January 1, 2009 and republish the Rules and Reporter's Notes as set out below.

Any document filed before the effective date of these rule changes does not have to comply with the redaction requirements. We impose no obligation to redact existing court records. This would be an almost impossible burden for litigants, lawyers, and circuit clerks. Appeal records filed after January 1, 2009 will necessarily contain documents filed with the circuit courts that do not comply with the redaction rules. This is acceptable. The revised appellate rules require that appellate briefs, petitions, and motions — including abstracts and addendums — filed starting January 1, 2009, comply with the new requirements. Any needed redactions will therefore occur when counsel or a pro se litigant prepares these papers. Over time, appellate records will gradually come into compliance as they reflect papers filed in circuit court after the effective date of these new rules.

We call attention to the following amendments, which were not part of the Committee's proposals but arose out of comments

from the bench and bar. First, we have modified one aspect of Administrative Order 19. The addresses and phone numbers of all litigants are no longer deemed confidential. Instead, only the addresses of petitioners requesting anonymity in domestic-abuse matters are confidential. This change makes Administrative Order 19 track existing substantive law. Second, Rule of Supreme Court and Court of Appeals 3-1 has been amended to clarify how confidential material under seal should be listed in the table of contents and paginated in an appeal record. Third, Rule of Appellate Procedure–Civil 6 has been amended by adding a new subdivision governing access to any sealed portion of an appellate record. Because many appeal records will soon contain at least some confidential material under seal, a rule about access was needed.

These rule changes are comprehensive and significant. Starting on January 1, 2009, litigants and their lawyers must, in so far as possible, first eliminate all confidential information from all court filings. If the information is essential to the case, then litigants and their lawyers must redact it in the publicly available copy of the filed document and file a duplicate, unredacted copy under seal for use by the parties and the court. These new procedures will start implementing Administrative Order 19's careful balance between the public's right to access their courts' records with litigants' rights to keep confidential information private. We expect that refinements will be needed. We therefore encourage the bench and bar to suggest further rule changes based on their experience with these procedures in practice in 2009.

We encourage all judges and lawyers to review this *per curiam* in order to familiarize themselves with the changes to the rules. 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.

A. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 5 has been amended to add a new subdivision (c)(2) and former subdivision (2) is renumbered (3).

(c) *Filing*. (1) All papers after the complaint required to be served upon a party or his attorney shall be filed with the clerk of the court either before service or within a reasonable time thereafter. The clerk shall note the date and time of filing thereon.

However, proposed findings of fact, proposed conclusions of law, trial briefs, proposed jury instructions, and responses thereto may but need not be filed unless ordered by the court. Depositions, interrogatories, requests for production or inspection, and answers and responses thereto shall not be filed unless ordered by the court. When such discovery documents are relevant to a motion, they or the relevant portions thereof shall be submitted with the motion and attached as an exhibit unless such documents have already been filed. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in the proper form. In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement for any pleading, paper, order, judgment, decree, or notice of appeal shall be satisfied when the document is filed with either the circuit clerk or the county clerk.

(2) Confidential information as defined and described in Sections III(A)(11) and VII(A) of Administrative Order 19 shall not be included as part of a case record unless the confidential information is necessary and relevant to the case. Section III(A)(2) of the Administrative Order defines a case record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding. If including confidential information in a case record is necessary and relevant to the case:

(A) The confidential information shall be redacted from the case record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the case record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order]. If an entire document is redacted, then the name of the document (with the number of pages redacted specified) should be noted in the publicly available court file and the entire document should be filed under seal. The requirement that the redaction be indicated in case records shall not apply to court records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and

(B) An un-redacted copy of the case record with the confidential information included shall be filed with the court under seal. The un-redacted copy of the case record shall be retained by the court as part of the court record of the case. It is the

responsibility of the attorney for a party represented by counsel and the responsibility of a party unrepresented by counsel to ensure that confidential information is omitted or redacted from all case records that they submit to a court. It is the responsibility of the court, court agency, or clerk of court to ensure that confidential information is omitted or redacted from all case records, including orders, judgments, and decrees, that they create.

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

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

Addition to Reporter's Notes, 2008 Amendment: Subdivision (c) of the rule has been amended to incorporate Administrative Order 19's requirements, which grant the public broad access to case records while safeguarding confidential information in those records. (The Administrative Order is appended to the Rules of Civil Procedure.) Amended Rule 5(c) obligates lawyers, and pro se litigants, to identify and shield confidential information that is necessary and relevant to the case by redacting that information in all publicly available documents they file with the court. The rule places primary responsibility for protecting information that the law has adjudged confidential on those individuals best situated to recognize and protect that information — lawyers and parties. They know the facts of their cases better than court staff or courts; they create almost all the documents coming into the court's record; and they have the greatest incentive to minimize and protect confidential information in case records.

Under subdivision 2(B), courts, court agencies, and clerks are responsible for omitting or redacting confidential information from case records — including orders, judgments, and decrees — that they create. A parallel change reflecting this obligation in judgments and decrees has been made in Rule of Civil Procedure 58.

Administrative Order 19 defines categories of confidential information and the Commentary to the Order explains the legal basis for the confidentiality. Section VII of the Order lists the following categories of confidential information in case records that are excluded from public access absent a court order allowing disclosure:

(1) information excluded from public access pursuant to federal law;

(2) information excluded from public access pursuant to the Arkansas Code Annotated;

(3) information excluded from public access by order (including protective order) or rule of court;

(4) Social Security numbers;

(5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);

(6) information about cases expunged or sealed pursuant to Ark. Code Ann. § 16-90-901, et seq.;

(7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies; and

(8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.

The Commentary to Section VII of Administrative Order 19 discusses confidential information protected from public disclosure under federal and Arkansas law. The Commentary includes a non-exhaustive list of Arkansas Code Annotated sections regarding confidentiality of records whose confidentiality may extend to the records even if they become court records. See also the Arkansas Personal Information Protection Act, Ark. Code Ann. § 4-110-101 et seq.

New subsection (c)(2) embodies Order 19's important threshold requirement: only confidential information that is "necessary and relevant to the case" should be in a case record. Litigants are likewise best able to make this evaluation. And because they must redact any such information in a case record, litigants will have an incentive to reduce redactions by screening out unnecessary and irrelevant confidential information when creating documents for filing.

The amended rule provides two methods of redaction: blacking out the protected information or inserting a bracketed reference to the fact of redaction. Both achieve Administrative Order 19's balance between public access and confidentiality. If a redaction covers all of any multi-page document, then the rule requires listing the name of the document and the number of pages redacted in the publicly available court file. No useful purpose would be served by having a stack of blacked-out pages in the public file.

Because a litigant will have deemed redacted information necessary and relevant, the court will need access to that information in handling and deciding the case. To allow this access, subdivision 2(B) obligates litigants to file unredacted copies of all their court papers under seal.

Some state agencies who deal routinely with confidential information — such as the Public Service Commission — have developed specialized rules for handling and protecting that information. Administrative Order 19 and its implementing rules in the Rules of Civil Procedure do not apply directly to those agencies' internal proceedings. But when a case from the PSC or other agency is appealed, the Rules of Appellate Procedure–Civil and the Rules of the Supreme Court and Court of Appeals do apply. Those Rules now implement Administrative Order 19 by incorporating and applying the redaction provisions of the Rules of Civil Procedure to all briefs, petitions, and other papers filed on appeal. Current agency procedures about confidential information that do not conflict with the new redaction rules are permissible. For example, confidential PSC documents are filed at the Commission on pink paper under seal. This and similar procedures supplement, but do not conflict with, the basic scheme required by Rule of Civil Procedure 5(c)(2). Certain appeal records will therefore contain materials shaped by these supplementary procedures, which is acceptable.

Former subsection (c)(2) has been renumbered, and is now (c)(3).

Subdivision (a) of Rule 11 is amended to read:

(a) Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address and telephone num-

ber, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and that it complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information from case records submitted to the court. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The Reporter's Notes accompanying Rule 11 are amended by adding:

Addition to Reporter's Notes, 2008 Amendment: Subdivision (a) has been amended by adding a new element to the certifications made by a pro se party or an attorney when that person signs a pleading, motion, or other paper. The attorney or party is now also certifying compliance with Administrative Order 19's mandate for redaction of necessary and relevant confidential information in the case record being filed. The incorporation of Administrative Order 19's mandate here gives the circuit court a ready method for enforcing this mandate.

Rule 58 has been amended to read:

Subject to the provisions of Rule 54(b), upon a general or special verdict, or upon a decision by the court granting or denying the relief sought, the court may direct the prevailing party to promptly prepare and submit, for approval by the court and opposing counsel, a form of judgment or decree which shall then be entered as the judgment or decree of the court. The court may enter its own form of judgment or decree or may enter the form

prepared by the prevailing party without the consent of opposing counsel. A judgment or decree shall omit or redact confidential information as provided in Rule 5(c)(2).

Every judgment or decree shall be set forth on a separate document. A judgment or decree is effective only when so set forth and entered as provided in Administrative Order No. 2. Entry of judgment or decree shall not be delayed for the taxing of costs.

The Reporter's Notes accompanying Rule 58 are amended by adding:

Addition to Reporter's Note, 2008 Amendment: The rule has been amended to reflect Administrative Order 19's requirement that any necessary and relevant confidential information in a case record — a category that includes judgments and decrees — must be redacted. See Addition to Reporter's Notes, 2008 Amendment to Rule of Civil Procedure 5.

B. ADMINISTRATIVE ORDERS OF THE SUPREME COURT

We amend **Administrative Order Number 19, Section VII(A)(8)** to read:

(8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.

Explanatory Note: Before the amendment, this part of the Administrative Order made the address and phone number of all litigants confidential. That rule would have been both too broad and unworkable. Litigants' addresses are needed for, among other things, summonses and judgments. The revised provision is limited to the situation where current substantive law makes a litigant's addresses confidential for an obvious and compelling reason. Ark. Code Ann. § 9-15-203 (Repl. 2008).

We issue the following new Administrative Order:

ADMINISTRATIVE ORDER NUMBER 19.1 — REDACTION IN COURT ADMINISTRATION RECORDS

Confidential information as defined and described in Sections III(A)(11) and VII(B) of Administrative Order 19 shall not be included as part of a court administrative record unless the confi-

dential information is necessary to the administration of the judicial branch of government. Section III(A)(3) of the Order defines an administrative record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government. If inclusion of confidential information in a court administrative record is necessary to the administration of the judicial branch of government:

A. The confidential information shall be redacted from the court administrative record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the court administrative record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order]. The requirement that the redaction be indicated in a court administrative record shall not apply to administrative records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and

B. An un-redacted copy of the court administrative record with the confidential information included shall be filed with the court under seal. It is the responsibility of a court, court agency, or clerk of court creating a court administrative record to ensure that confidential information is omitted or redacted from administrative records. As noted in Section XI of Administrative Order 19, a court may use its inherent contempt powers to enforce this rule.

Explanatory Note: This new Administrative Order applies only to records related to court administration created by the judicial branch and agents and agencies of that branch. It does not apply to records created by administrative agencies in the Executive Branch or independent administrative agencies.

C. ARKANSAS RULES OF APPELLATE PROCEDURE–CIVIL

Subdivision (f) is added to Rule 6:

(f) *Access to parts of record under seal.* When the record contains materials under seal, all counsel of record and pro se litigants shall have access to all parts of the record including the material under seal. For good cause shown on the motion of any party, the appellate court may modify the terms of access.

Explanatory Note: The new redaction requirements for confidential information will create some materials under seal in many cases. This new subdivision makes clear that counsel and unrepresented litigants need not file a motion for access to such materials in every case; access by counsel and pro se litigants is presumptively allowed. This arrangement may be modified on motion for good cause.

Subdivision (a) of Rule 11 is amended to read:

(a) The filing of a brief, motion or other paper in the Supreme Court or the Court of Appeals constitutes a certification of the party or attorney that, to the best of his knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact; is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; is not filed for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and that the document complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information. A party or an attorney who files a paper in violation of this rule, or party on whose behalf the paper is filed, is subject to a sanction in accordance with this rule.

The Reporter's Notes accompanying Rule 11 are amended by adding:

Addition to Reporter's Notes, 2008 Amendment: Subdivision (a) has been amended by adding a new element to the certifications made by a party or an attorney when that person signs a brief, motion, or other paper, including a petition for rehearing or review. The change parallels the 2008 amendment to Rule of Civil Procedure 11. When counsel or a pro se litigant signs a brief, motion, petition, or other paper filed with the appellate court, the person is also certifying compliance with Administrative Order 19's mandate for redaction of necessary and relevant confidential information in the paper being filed. The redaction/filing-under-seal procedure for confidential information is outlined in Rule of Civil Procedure 5(c)(2)(A) & (B) and explained in the Addition to Reporter's Notes, 2008 Amendment to that Rule.

D. RULES OF THE SUPREME COURT AND COURT OF APPEALS

The Informational Statement, which is described in subdivision (c) of Rule 1-2 and is appended to the Rule, is amended to read:

INFORMATIONAL STATEMENT

. . .

VI. CONFIDENTIAL INFORMATION

(1) Does this appeal involve confidential information as defined by Sections III(A)(11) and VII(A) of Administrative Order 19?
___ Yes ___ No

(2) If the answer is "yes," then does this brief comply with Rule 4-1(d)?
___ Yes ___ No

Rule 2-1 is amended to add subdivision (f):

(f) *Compliance with Administrative Order 19 required.* Every motion, response, similar paper, memorandum of authorities, and any document attached to any of those papers, must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Rule 2-3 is amended to add subdivision (l):

(l) *Compliance with Administrative Order 19 required.* Every petition for rehearing, brief in support, and brief in response must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Rule 2-4 is amended to add subdivision (g):

(g) *Compliance with Administrative Order 19 required.* Every petition for review, response, and supplemental brief of any kind

on review must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Rule 3-1(f) is amended to read:

(f) *Table of contents.* Every record shall include a table of contents which refers to the pages in the record where the matter identified is copied. For example:

Complaint .... Page 1

Answer .... Page 4

Motion for Summary Judgment .... Page 6

- Exhibit A – Medical Records (completely redacted and filed under seal, Pages 8-15)

Brief in Support of Summary Judgment (internal redactions with complete version filed under seal).. Page 16

Response to Motion for Summary .... Page 27

- Exhibit A – Medical Records (internal redactions with complete version filed under seal) .... Page 29

Brief Opposing Summary Judgment .... Page 34

Judgment .... Page 45

Notice of Appeal .... Page 47

Transcript of Hearing .... Page 49

The record shall be consecutively paginated, including any papers under seal. The table of contents shall also list all documents filed under seal.

Explanatory Note: The rule has been amended to illustrate how to handle and compile material under seal because it has been redacted. Records have long been consecutively paginated,

and that practice is now reflected in the amended rule. Material under seal should be reflected in the table of contents. If a pleading, motion, brief, or other paper contains some internal redactions, that fact should be noted in the table of contents. The complete version of the paper under seal should contain the same appeal-record page numbers as the redacted version in the publicly available file. If a document has been redacted completely, then the public file should contain the name of the document and a list of the pages redacted. For multi-page redactions, the unredacted copy under seal should contain page numbering that fills the gap left in the public court record, as shown in the example above for motion exhibit A.

Rule 4-1 has been amended to add a new subdivision (d) and former subdivision (d) is redesignated (e):

(d) *Compliance with Administrative Order 19 required.* All parts of all briefs, including the abstract and any document attached to any brief in the addendum, must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

(*e*) *Non-compliance.* Briefs not in compliance with this Rule shall not be accepted by the Clerk.

GUNTER and DANIELSON, JJ., concur.

PAUL E. DANIELSON, Justice, concurring. Let me begin by commending the Committee for its work in this area. I concur with the changes being made to these rules and write merely to provide some words of caution that I feel are necessary. The public's access to court records is of the utmost importance. Indeed, this court and the courts of this state clearly strive to make our court records as accessible to the public as possible. However, I believe there is an important distinction to be made between accessibility and publication, as pointed out and discussed by Professor Ned Snow in his recent article. *See* Ned Snow, *Arkansas Court Documents Going Online: Bad Policy for Private Information*, 2008 Ark. L. Notes 113.

Our rules have provided that certain information, when available in electronic form, shall be made remotely accessible to the public,[1] unless public access is restricted pursuant to our rules. *See* Admin. Order of the Sup. Ct. 19, § V (2008). This includes: (1) litigant/party/attorney indexes to cases filed with the court; (2) listings of case filings, including the names of the parties; (3) the register of actions or docket sheets; (4) calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings; and (5) judgments, orders, or decrees. *See id.* Nothing, as it stands now, prohibits pleadings or other documents that might be filed in a case from being published electronically. In fact, our order leaves the decision on remote accessibility of information beyond the above list to the discretion of the court.

I would caution the courts of this state to exercise that discretion very carefully. Even with the utmost diligence that will be exercised by litigants and their lawyers, confidential information is sure to be missed in some cases. And while it is true that we must ensure public access to court records, the courts of this state must also make every effort to protect the individual privacy rights and interests of Arkansas's litigants. Were every document in a case published electronically, our courts could very well surpass expectation in making court records available and, instead, engage in the publication of private information. Surely, our litigants' rights to privacy do not fall second to the public's electronic accessibility of court records.

As we move forward in this electronic age, we must take care to protect *all* of our litigants' interests and not just some. I urge the courts of this state to tread carefully when determining what information should be made remotely accessible. For these reasons, I respectfully concur.

GUNTER, J., joins.

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[1] "Remote access" is defined as "the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained." Admin. Order of the Sup. Ct. 19, § III(7).

IN RE: BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered October 30, 2008

PER CURIAM. The Board of Certified Court Reporter Examiners has submitted proposed changes to Administrative Order Number 7, The Rule Providing for Certification of Court Reporters, and The Regulations of the Board of Certified Court Reporter Examiners. We have reviewed the Board's work, and we now publish the suggested amendments for comment from the bench, bar, and public. The proposed changes are set out in "line-in, line-out" fashion (new material is underscored; deleted material is lined through).

Comments on the suggested changes should be made in writing before January 1, 2009, and they should be addressed to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Board of Certified Court Reporter Examiners, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

RULE PROVIDING FOR CERTIFICATION OF COURT REPORTERS

Section 2. Officers of the board; meetings

A. At the first meeting of the Board, the Board will organize by electing one of its members as chairman and one as secretary, each of whom shall serve for one year and until his successor is elected. The Clerk of this Court shall serve as treasurer.

B. The Board shall ~~meet in Little Rock and shall hold such meetings not less than once a year~~ meet <u>at least twice a year</u> ~~and~~ at such times and places as the Board shall designate.

Section 3. Duties of the board

The Board is charged with the duty and invested with the power and authority:

A. To determine the eligibility of applicants for certification.

B. To determine the content of examinations to be given to applicants for certification as certified court reporters.

C. To determine the applicant's ability to make a verbatim record of court proceedings by any recognized system designated by the Board.

D. To issue certificates to those found qualified as certified court reporters.

~~E. To establish standards and conditions for reciprocity and for temporary waivers of certifications requirements of eligible applicants.~~

E. ~~F.~~ To set a fee to be paid by each applicant at the time the application is filed and an annual license fee.

F. ~~G.~~ To develop a records retention schedule for official court reporters of state trial courts.

G. ~~H.~~ To develop, implement, and enforce a continuing education requirement for court reporters certified pursuant to this Rule.

H. ~~I.~~ To promulgate, amend and revise regulations relevant to the above duties and to implement this Rule. Such regulations are to be consistent with the provisions of this Rule and shall not be effective until approved by this Court.

I. To provide a system and procedure for receiving complaints against court reporters, investigating such complaints, filing formal disciplinary Complaints against reporters, and for hearing, consideration, and determination of validity of charges and appropriate sanctions to be imposed upon any reporter.

Section 4. Application for certification

Every applicant for examination for certification as a certified court reporter shall file with the clerk of this court a written application in the form prescribed by the Board. Upon request, the clerk of this court shall forward to any interested person application forms together with the text of this rule and a copy of the regulations promulgated by the Board under the provisions of Rule 3~~G~~ E.

Section 5. Eligibility for certification

Applicants shall:

a. be at least 18 years of age,

b. be of good moral character,

c. not be a convicted felon, and

d. not have been adjudicated or found guilty, or entered a plea of guilty or nolo contendere to, any felony, or to any misdemeanor that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a reporter in other respects, or to any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a felony.

Section 7. Discipline ~~Revocation or suspension~~

(a) Sanctions. ~~Generally~~**.** For violating any of the provisions of Sections 19 or 22 of the "Regulations of the Board of Certified Court Reporter Examiners," the Board for good cause shown, and by a majority of four (4) votes from the Board concurring, after a public hearing by the Board, may sanction a reporter by ordering a public admonition, or by suspending or revoking ~~revoke or suspend~~ any certificate issued by the Board. The Board, with four (4) votes concurring, may sanction a reporter for minor or lesser misconduct with a private, non-public admonition by discipline by consent, as set out in Section 8 of these Rules.

~~Within thirty (30) days of receipt of written findings of the Board suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review *de novo* upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested. It shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by timely filed order of the Board. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.~~

(b) Definitions.

1. "Revoke a certificate" means to unconditionally prohibit the conduct authorized by the certificate. If a reporter's certificate is revoked, the reporter is not eligible to apply for a new reporter's certificate for a period of five (5) years after the date the revocation order becomes effective after final Board action or after final action by the Supreme Court of Arkansas, if there is an appeal.

2. "Suspend a certificate" means to prohibit, whether absolutely or subject to conditions which are reasonably related to the grounds for suspension, for a defined period of time, the conduct authorized by the certificate. No suspension shall be for less than one (1) month nor for more than sixty (60) months.

3. "Admonition" means a written order or opinion of the Board stating the specific misconduct or failure to perform duties by the reporter. The admonition shall be designated as being private or public by the Board. A private admonition shall be a confidential document known and available only to the Board and the reporter.

(c) Subpoenas. The Board has the authority to issue subpoenas for any witness(es), and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to a hearing held pursuant to Section 7 upon the request of any party. Such process shall be issued by and under the seal of the Board and be signed by the Chair or the Executive Secretary. The subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. The Board shall provide for its use a seal of such design as it may deem appropriate. The Circuit Court of Pulaski County shall have the power to enforce process.

(d) Special Prosecutor.

(1) When requested in writing by the Board to so serve, the Executive Director of the Arkansas Supreme Court Office of Professional Conduct ("Office") may, if time, work demands, and resources of that Office permit, act as the investigating, charging, and prosecutorial officer for Complaints of this Board. Any expenses of that Office attributed to handling a Complaint from this Board shall be paid to the Bar of Arkansas account from funds available to this Board after review and approval by the Chair of this Board of any such expense claims. By agreement between this Board and the Office, reasonable reimbursement for attorney time may be made by the Board to the Office.

(2) The Board may employ on contract, from funds within its budget, such attorneys as it deems necessary for the investigation, charging, and prosecution of Complaints before the Board.

(e) Immunity. The Board, its individual members, and any employees and agents of the Board, including the Executive Director and staff of the Office of Professional Conduct when acting for the Board, are absolutely immune from suit or action for their activities in discharge of their duties hereunder to the full extent of judicial immunity in Arkansas.

(f) Confidentiality. Subject to the exceptions listed in (4) below in this subsection:

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

(2) All actions and activities arising from or in connection with an alleged violation of the Board Rules by a reporter certified by the Board are absolutely privileged and confidential.

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

(4) Exceptions.

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

(ii.) The records of public hearings conducted by the Board are public information.

(iii.) In the case of revocation, the Board is authorized to release any information that it deems necessary for that purpose.

(iv.) The Board is authorized to release information:

(a) For statistical data purposes;

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

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

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

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

(5) Any reporter against whom a formal Complaint is pending shall have disclosure of all information in the possession of the Board and its agents concerning that Complaint, including any record of prior Complaints about that reporter, but excepting "attorney work product" materials.

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

(g) Procedure.

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

2. Burden of Proof. The burden of proof in proceedings seeking discipline is on the Board or its special prosecutor. The burden of proof in proceedings seeking reinstatement is on the reporter seeking such action.

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

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

5. Pleadings. All pleadings filed before the Board shall be captioned "Before the Supreme Court Board of Certified Court Reporter Examiners" and be styled "In re ______________" to reflect the name of the respondent reporter.

(h) Ex Parte Communication.

(1) Members of the Board shall not communicate "ex parte" with any complainant, attorney acting as Board prosecutor, the Executive Director, or the staff of the Office of Professional

Conduct, or the respondent reporter or his or her counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or these Rules, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits of the case or Complaint.

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

(i) Probable cause determination. Before a formal Complaint may be prepared on any reporter, the written approval of four (4) members of the Board shall be given to the complaint as filed. Before any formal Complaint may be served on a reporter, it shall be approved by the signature of the Board Chair.

(j) Complaint. The Complaint to be served upon a reporter shall state with reasonable specificity each Board Rule alleged to have been violated by the reporter and summarize the conduct or omission by the reporter that supports the Rule violation. Affidavits of those persons having knowledge of the facts and court records and documents may be attached as exhibits to the Complaint.

(k) Service of Complaint. The Complaint shall be served by one of the following methods:

1. By certified, restricted delivery, return receipt mail to the reporter at the address of record for the reporter currently on file with the Board,

2. By personal service as provided by the Arkansas Rules of Civil Procedure or an Investigator with the Office of Professional Conduct; or,

3. When reasonable attempts to accomplish service by (k)(1) and (k)(2) have been unsuccessful, then a warning order, in such form as prescribed by the Board, shall be published weekly for two consecutive weeks in a newspaper of general circulation within this State or within the locale of the respondent reporter's address of record. In addition, a copy of the formal Complaint and warning order shall be sent to the respondent reporter's address of record by regular mail.

4. A reporter's failure to provide an accurate, current mailing address to the Board or the failure or refusal to receipt certified mailing of a formal Complaint, shall be deemed a waiver of confidentiality for the purposes of the issuance of a warning order.

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

6. After service has been effected by any of the aforementioned means, subsequent mailings by the Board to the respondent reporter may be by regular mail to the reporter's address of record, to the address at which service was accomplished, to any counsel for the reporter, or to such address as may have been furnished by the reporter, as the appropriate circumstance may dictate, except that notices of hearings and letters or orders of admonition, suspension, or revocation shall also be sent by certified, return receipt mail or be served upon the reporter in a manner authorized in Section 7(k)(2).

7. Service on a non-resident reporter may be accomplished pursuant to any option available herein, or in any manner prescribed by the law of the jurisdiction to which the service is directed.

(l) Time and Manner of Response; Rebuttal.

(1) Upon service of a formal Complaint, pursuant to Section 7(k) or after the date of the first publication, pursuant to Section 7(k)(3), the respondent reporter shall have twenty (20) days in which to file a written response in affidavit form with the Board of Certified Court Reporters Examiners by filing the response at the Office of the Clerk of the Arkansas Supreme Court, 625 Marshall Street, Little Rock, AR 72201, except when service is upon a non-resident of this State, in which event the respondent reporter shall have thirty (30) days within which to file a response. In the event that a response has not been filed with the Board of Certified Court Reporters Examiners within twenty (20) days or within thirty (30) days, as the appropriate case may be, following the date of service, and an extension of time has not been granted, the Executive Secretary shall proceed to issue the Complaint to the Board by mail as a "failed to respond" case.

(2) At the written request of a reporter, the Board Chair is authorized to grant an extension of reasonable length for the filing of a response.

(3) The Executive Secretary shall provide a copy of the reporter's response to the complainant within seven (7) calendar days of receiving it and advise that the complainant has ten (10) calendar days in which to rebut or refute any allegations or information contained in the reporter's response. The Executive Secretary shall include any rebuttal made by the complainant as a part of the material submitted to the Board for decision and any such rebuttal shall be provided to the respondent reporter for informational purposes only, with no response required. If any rebuttal submitted contains allegations of violations of Board Rules not previously alleged, a supplemental or amended Complaint may be prepared and served on the respondent reporter, who shall be permitted surrebuttal in the manner prescribed herein for filing a response to a Complaint.

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

(m) Failure to Respond; Reconsideration.

(1) A reporter's failure to provide, in the prescribed time and manner, a written response to a formal Complaint served in compliance with Section 7(k) shall constitute separate and distinct grounds for the imposition of sanctions notwithstanding the merits of the underlying, substantive allegations of the Complaint; or,

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

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

(4) Failure to timely respond to a formal Complaint shall constitute an admission of all factual allegations of the Complaint and an admission of all alleged violations of Rules and Regulations in the Complaint.

(5) Failure to timely respond to a formal Complaint shall extinguish a respondent reporter's right to a public hearing on the formal Complaint.

(6) Reconsideration:

(a) Provided, however, that in a case where a timely response was not filed by a respondent reporter, within ten (10) calendar days after receiving a written notice from the Board setting the case for hearing, the respondent reporter may file with the Board, through the Office of the Clerk of the Arkansas Supreme Court, a petition for reconsideration in affidavit form, stating under oath clear, compelling, and cogent evidence of unavoidable circumstances sufficient to excuse or justify the failure to file a timely response to the Complaint.

(b) Upon the filing of a petition for reconsideration for failure to timely file a response to a Complaint, the Executive Secretary of the Board shall provide each member of the Board a copy of the petition for reconsideration for a vote by written ballot on granting or denying the petition, the ballot to be marked and returned to the Executive Secretary within a reasonable time.

(c) If four (4) members of the Board, upon a finding of clear and convincing evidence, vote to grant the petition for reconsideration, the Board shall permit the reporter to submit a belated affidavit of response to the substantive allegations of the formal Complaint and the matter shall proceed as though the response had been made timely.

(d) If four (4) Board members vote to deny the petition for reconsideration, the case shall be placed on the agenda at the next meeting of the Board, and the Board shall determine the appropriate sanction from a review of the file, without giving consideration or weight to any response that may have been untimely filed.

(n) Pretrial procedure.

(1) The Board Chair may set and conduct such pretrial conferences as the Chair deems needed for the case. The Board Chair shall also issue an order setting any Complaint for hearing before the Board.

(2) The Board Chair shall hear and decide all pretrial matters and all motions, including any motion to dismiss the Complaint or any part thereof.

(o) Hearings.

(1) Hearings shall be conducted at such times and places as the Board may designate.

(2) A hearing shall not be conducted unless at least five (5) Board members are present.

(3) After hearing all the testimony and receiving all the evidence in a case, the Board shall deliberate in private and reach a decision on the Complaint. At least four (4) votes are required to find a Rule or Regulation violation and to order a sanction. The same four (4) Board members are not required to vote for both the rule violation(s) and the sanction.

(4) If at least four (4) Board members agree on the Rule or Regulation violated by the reporter, and on a sanction, an Order consistent with such vote shall be prepared and provided to the Board Chair for review and approval. Upon approval, such Order shall be filed with the Clerk of the Arkansas Supreme Court and a filed copy shall be promptly provided to the respondent reporter and any counsel for the reporter.

(5) In addition to any available disciplinary sanction, the Board may also order a reporter to pay:

(a) The costs of the investigation and hearing, excluding any attorney's fees,

(b) A fine not to exceed $1,000.00 and

(c) Full restitution to any person or entity which has suffered a financial loss due to the reporter's violation of any Board Rule or Regulation, but only to the extent of the costs of any reporter's transcript and fees and expenses associated with a transcript of any court proceeding or deposition.

(6) Once a public hearing has commenced, a private, confidential admonition is not an available sanction.

Section 8. Surrender of certificate – Discipline by consent.~~Funds Disbursement of.~~

(a). Surrender of Certificate. A reporter may surrender his or her certificate upon the conditions agreed to by the reporter and the Board:

(1) In lieu of disciplinary proceedings where serious misconduct by the reporter is admitted by the reporter to exist, or

(2) On a voluntary surrender basis of his or her certificate at any time where there is no pending Complaint against the reporter.

(3) No petition to the Supreme Court for voluntary surrender of a certificate by a reporter shall be granted until referred to and approved by the Board and the recommendations of the Board are received by the Supreme Court.

(4) If the Supreme Court accepts any form of surrender of a reporter's certificate, it will do so by per curiam order.

(b). Discipline by Consent.

(1) A reporter against whom a formal Complaint has been served may, at any stage of the proceedings not less than ten (10) business days prior to the commencement of a public hearing tender a written conditional acknowledgment and admission of violation of some or all of the Rules and Regulations alleged, in exchange for a stated disciplinary sanction in accordance with the following:

(2) With service of a Complaint, the respondent reporter shall be advised in writing that if a negotiated disposition by consent is contemplated that the respondent reporter should contact the Board Chair or the Board's special prosecutor to undertake good faith discussion of a proposed disposition. All discipline by consent proposals must be approved in writing by the Board Chair, or by the Board's special prosecutor before the consent proposal can be submitted to the Board.

(3) Upon a proposed disposition acceptable to the respondent reporter and the Board Chair or representative, the respondent reporter shall execute and submit a consent proposal on a document prepared by the Board setting out the necessary factual circumstances, admissions of violation of the Board Rules and Regulations, and the terms of the proposed sanction.

(4) The consent proposal, along with copies of the formal Complaint, and the recommendations of the Board Chair or representative, shall be presented to the Board by written ballot to either accept or reject the proposed disposition. The respondent reporter will be notified immediately in writing of the Board's decision. Rejection will result in the continuation of the formal Complaint process.

(5). No appeal is available from a disciplinary sanction entered by the consent process.

(6). The Board shall file written evidence of the terms of any public sanction discipline by consent, in the form of an order, with the Clerk of the Supreme Court.

(c) Serious Misconduct. If the discipline by consent involves allegations of serious misconduct, for which a suspension or revocation of the certificate is to be imposed, the Supreme Court shall also approve any agreed consent proposal and any sanction.

(1) The Board shall present to the Supreme Court, under such procedures as the Supreme Court may direct, any discipline by consent proposal involving serious misconduct, which the Board has reached with a respondent reporter.

(2) If the Supreme Court does not approve the proposed discipline by consent or the voluntary surrender of the certificate, the matter shall be referred back to the Board which shall resume the proceedings at the stage at which they were suspended when the consent proposal was made and submitted to the Supreme Court.

Section 9. Appeal. ~~Scope~~

(a) Within thirty (30) days of receipt of written findings of the Board issuing an admonition, or suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested.

(b) The Executive Secretary of the Board shall prepare the record for appeal consisting of the pleadings, orders, and other documents of the case, and include therein the transcript of proceedings that is provided by the respondent reporter. The Chair of the Board shall certify the record prepared by the Executive Secretary.

(c) The respondent reporter shall be responsible for obtaining the transcript of any case proceedings and hearings and for timely providing same to the Executive Secretary of the Board. It shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by timely filed order of the Board. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

Section ~~8~~ 10 Funds—Disbursement of.

All fees and other monies accruing under the Rule shall be deposited by the Clerk of this Court in an account called, "Certified Court Reporters Fund." All expenses incurred by the Board shall be paid out of this fund as authorized and directed by the Board. Travel and other necessary expenses of the members of the Board shall be paid from said fund.

Section ~~9~~ 11. Scope.

(a) After the effective date of this Rule, all transcripts taken in court proceedings, depositions, or before any grand jury will be accepted only if they are certified by a court reporter who holds a valid certificate under this Rule. Provided, however, that depositions taken outside this state for use in this state are acceptable if they comply with the Arkansas Rules of Civil Procedure.

(b) *Disciplinary Authority*. An Arkansas certified court reporter is subject to the disciplinary authority of this jurisdiction, regardless of where the court reporter's conduct occurs. A court reporter not certified in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the court reporter provides or offers to provide any court reporter services in this jurisdiction. A court reporter may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Section ~~10~~. 12. Effective date.

The effective date of this Rule is February 1, 1984.

Section ~~10 [11]~~ 13. Continuing education requirement.

Reporters certified pursuant to this rule must acquire thirty (30) continuing education credits every three years through activities approved by the Board or a committee of the Board. Such three year period shall be known as the "reporting period." Each reporting period shall begin on January 1 and extend through December 31 three years hence. The reporting period for reporters newly certified pursuant to this Rule shall begin January 1 following certification by the Board. If a reporter acquires, during such reporting period, approved continuing education in excess of (30) thirty hours, the excess credit may be carried forward and applied to the education requirement for the succeeding reporting period only. The maximum number of continuing education hours one may carry forward is ten (10).

A continuing education credit is presumed to be 60 minutes in length. However, the Board in its discretion may grant greater or lesser credits per hour of education as each individual program may warrant. Court reporters certified pursuant to this rule who maintain a residence address outside the State of Arkansas are subject to this requirement. However, continuing education activities approved by the appropriate authority in their resident jurisdiction shall be applicable to this requirement.

To establish compliance with this continuing education requirement the Board may accept continuing education hours acquired to meet the continuing education requirements of the National Court Reporters Association or the National Verbatim Reporters Association.

Exceptions to Requirement.

In cases where extreme hardship or extenuating circumstances are shown, the Board may grant a waiver of the continuing education requirement or extensions of time within which to fulfill the requirements. Such waivers or extensions shall be considered only upon written request from the certificate holder. As a condition of any waiver or extension, the Board may set such terms and conditions as may be appropriate under the circumstances.

Any reporter certified pursuant to this rule who attains age 65 or 30 years of certification, during any reporting period, is exempt from all requirements of this rule for that reporting period as well as all subsequent reporting periods.

At any time during a reporting period a reporter may take inactive status as it pertains to the continuing education requirement of this rule. Inactive status means that a reporter will not practice court reporting until such time as the reporter returns to active status. Election of inactive status must be in writing. Election of inactive status must be annually renewed and the Board shall provide a form for renewal of inactive status. Such annual renewal shall be filed with the Board on or before March 31 of each year subsequent to the year of election of inactive status. For the purpose of this paragraph court reporting means "verbatim reporting" as defined in Section 1 of the "Regulations of the Board of Certified Court Reporter Examiners" and, verbatim reporting regardless of the context, including administrative or regulatory proceedings and non-judicial proceedings. A reporter

may return to active status at any time upon written notice to the Board. In such case the reporter shall be subject to the thirty hour requirement of this rule for the reporting period beginning the following January 1.

Continuing Education Activities Content.

Continuing education credit may be obtained by attending or participating in Board approved seminars, conventions, or workshops, or other activities approved by the Board. To be approved for continuing education credit the activity must: be presented by individuals who have the necessary experience or academic skills to present the activity; include quality written materials; and, the course must be subject to evaluation. The continuing education activity must contribute directly to the competence and professionalism of court reporters. The Board is authorized to approve continuing education activities which include but are not limited to the following subject areas: language; academic knowledge; statutes and regulations; reporting technology and business practice; and, ethical practices-professionalism.

Administrative Procedures.

The Board shall be the authority for approval of continuing education programs. Such authority may be delegated by the Board to a committee. It is presumed that program approval will be sought and determined well in advance of the educational activity. However, the Board or its committee may approve an educational activity after the event.

The Board is authorized to develop appropriate forms and other administrative procedures as necessary to efficiently administer this continuing education requirement.

The Board shall require that reporters certified pursuant to this rule maintain and provide such records as necessary to establish compliance with this continuing education requirement. The Board may also require that sponsors provide evidence of attendance at programs in such form as the Board may direct.

On or before January 31 after the conclusion of the immediately preceding reporting period, the Board shall provide a final report by first class mail to reporters whose reporting period concluded the preceding December 31. The number of continuing education credits stated on the final report shall be presumed

correct unless the reporter notifies the Board otherwise. In the event the final report shows that the reporter has failed to acquire 30 continuing education credits for the applicable reporting period, the reporter shall be in noncompliance with the requirements of this rule.

In the event of noncompliance, the certificate of the affected reporter shall be subject to suspension as set forth in the following section. Prior to initiation of suspension proceedings, the Board shall provide notice to allow the reporter to achieve compliance. Board approved continuing education credits obtained subsequent to the relevant reporting period and prior to a vote of suspension shall be accepted in order to cure noncompliance. However, such hours will be subject to a late filing fee in an amount not to exceed $100.00.

Suspension of License – Reinstatement.

Section 7 of this rule - Discipline ~~"Revocation or Suspension~~" and Section 19 of the "Regulations of the Board of Certified Court Reporter Examiners" shall govern suspension or revocation proceedings for failure to comply with the continuing education requirements set out in Section 13 ~~10 [Section11]~~ of this rule.

After a Board vote of suspension or revocation of a certificate, the Board shall notify the affected reporter by way of certified mail, restricted delivery, return receipt requested. In addition, the Board shall file the order of suspension with the Clerk of this Court and provide such other notice as the Board may consider appropriate.

A reporter whose certificate has been suspended pursuant to this Section who desires reinstatement shall file a petition for reinstatement with the Board. The petition shall be properly acknowledged by a notary public or an official authorized to take oaths. It shall be in such form as the Board may direct. The petitioner may request a hearing before the Board. Upon appropriate notice and hearing, the Board may take action on the petition for reinstatement. In the event the certificate is reinstated, the Board may set additional educational requirements, including successful completion of a certification examination, as a condition of reinstatement and may assess reinstatement fees in an amount not to exceed $250.00.

REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

Section 18

Any person desiring to file a grievance ~~Complaint~~ against a Certified Court Reporter may file a written statement on a form provided by the Board ~~notarized affidavit~~, attaching any pertinent documentary evidence thereto, with the Board of Certified Court Reporters Examiners through the Office of the Clerk of the Arkansas Supreme Court, for delivery to the Executive Secretary of the Board for investigation and determination of probable cause for a formal Complaint.

Section 19

Pursuant to Section 7 of the Rule Providing for Certification of Court Reporters, the Board may issue an admonition or revoke or suspend any certificate issued after proper notice and hearing, on the following grounds:

~~a. conviction of a felony, conviction of a misdemeanor involving moral turpitude. Conviction is defined as a plea of guilty, or *nolo contendere*, or guilty verdict~~.

a. Conviction of any felony, or having been adjudicated or found guilty, or entered a plea of guilty or nolo contendere to, any felony, or to any misdemeanor that reflects adversely on the reporter's honesty, trustworthiness, or fitness as a reporter in other respects, or to any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a felony.

b. misrepresentation or omission of material facts in obtaining certification.

c. any intentional violation of, noncompliance with or gross negligence in complying with any rule or directive of the Supreme Court of Arkansas, any other court of record within this State, or this Board.

d. fraud, dishonesty, gross incompetence or habitual neglect of duty.

e. unprofessional conduct, which shall include, but not be limited to:

1. failing to deliver a transcript to a client or court in a timely manner as determined by statute, court order, or agreement;

2. intentionally producing an inaccurate transcript;

3. producing an incomplete transcript except upon order of a court, agreement of the parties, or request of a party;

4. failing to disclose as soon as practical to the parties or their attorneys existing or past financial, business, professional or family relationships, including contracts for court-reporting services, which might reasonably create an appearance of partiality;

5. advertising or representing falsely the qualifications of a certified court reporter or that an unlicensed individual is a certified court reporter;

6. failing to charge all parties or their attorneys to an action the same price for an original transcript and failing to charge all parties or their attorneys the same price for a copy of a transcript or for like services performed in an action;

7. failing to disclose upon request an itemization in writing of all rates and charges to all parties in an action or their attorneys;

8. reporting of any proceeding by any person, who is a relative of a party or their attorney, unless the relationship is disclosed and any objection thereto is waived on the record by all parties;

9. reporting of any proceeding by any person, who is financially interested in the action, or who is associated with a firm, which is financially interested in the action;

10. failing to notify all parties, or their attorneys, of a request for a deposition transcript, or any part thereof, in sufficient time for copies to be prepared and delivered simultaneously with the original;

11. going "off the record" during a deposition when not agreed to by all parties or their attorneys unless otherwise ordered by the court;

12. giving, directly or indirectly, benefitting from or being employed as a result of any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or

agents, except for nominal items that do not exceed $100 in the aggregate for each recipient each year; and

13. charging an unreasonable rate for a copy of an original deposition transcript, or an official reporter charging fees in violation of Ark. Code Ann. Section 16-13-506.

~~The notice shall state the cause for the contemplated revocation or suspension and the time and place of the hearing before the Board, and shall be mailed to the registered address of the holder of the certificate at least thirty days prior to the hearing. The Board shall make written findings of fact based on the evidence presented.~~

ADMINISTRATIVE ORDER NUMBER 7—ARKANSAS SUPREME COURT AND COURT OF APPEALS RECORDS RETENTION SCHEDULE

. . . .

Section 6. Retention schedule.

Record Type	Retention Instructions
Supreme Court and Court of Appeals Docket Books:	Retain Permanently.
Supreme Court and Court of Appeals Case Indices:	Retain Permanently.
Supreme Court and Court of Appeals Record of Proceedings:	Retain Permanently.
Civil Case Records and Case Files: After 1940	Retain seven (7) years after case is closed, then offer for donation.
Criminal Case Records and Case Files:	
After 1940 Death Penalty.	Retain Permanently.
Life without Parole.	Retain Permanently.
Life.	Retain Permanently.
Felony with greater than 10 year sentence	Retain ten (10) years after case is closed, then offer for donation.

Other criminal cases with 10 year sentence or less	Retain five (5) years after case is closed, then offer for donation.
Civil and Criminal Records: Prior to and including 1940	Retain Permanently.
Rule on Clerk Denied Records: Supreme Court and Court of Appeals Case Record and Case File.	Retain five (5) years.
Employment Security Division: Case Record and Case File.	Retain three (3) years.
Supreme Court and Court of Appeals Opinions: Original copy of Opinions and Per Curiam Opinions.	Retain Permanently.
Financial Records including: Supreme Court & Court of Appeals, Clerk's Office, Court Library, Appellate Committees, Personnel, Arkansas Attorneys, Arkansas Bar Account, Court Reporters, Client Security Fund: Vouchers, Ledgers, Receipts, Contracts, Cancelled Checks, Bank Statements, Fees, Audit Reports, Tax Reports, Social Security Reports, Retirement Reports, Purchase Orders, Insurance Reports, and Requisition Reports.	Retain three (3) years following legislative audit.
Other Supreme Court and Court of Appeals Documents including:	

All case related motions, petitions, summons, mandates, and bonds, which have been filed separately from the case file.	Retain as long as Case file is maintained.
Original actions, motions, and petitions.	Retain seven (7) years.
Per Curiam Orders.	Retain as long as Case file is maintained.
Arkansas Attorney Records:	
Petitions for Licenses.	Retain Permanently.
Student Practice, Rule 15 Petitions.	Retain five (5) years.
Professional Association Members List.	Retain Permanently.
Professional Association Members Receipts.	Retain three (3) years following Legislative audit.
Committee on Professional Conduct Files.	Retain Permanently.
Correspondence and Misc. Letters.	Retain three (3) years.
Certification of Registration.	Retain three (3) years.
Board of Certified Court Reporter Examiners Disciplinary files, which may include, but is not limited to:	
Grievance Forms, Complaints, Responses, Probable Cause Vote Sheets, Motions, Discovery, Final Orders, Notices of Appeal, Transcripts from Hearings, and Opinions from the Supreme Court	Retain Permanently.
Applications for Certification and related files	Retain two (2) years following the date of testing.
Records from Board meetings	Retain Permanently.
Correspondence	Retain three (3) years.

<u>All other documents not referenced in this section or other rules or regulations</u>	<u>Retain seven (7) years.</u>
United States Supreme Court Records:	
US Supreme Court Mandates.	Retain as long as Case File is maintained.
US Supreme Court Writs of Certiorari.	Retain as long as Case File is maintained.
Other Records maintained by Clerk's Office including:	
Court of Appeals Motion Assignment Sheet, Court of Appeals Motion Pending file, Supreme Court and Court of Appeals Syllabus, Court of Appeals Oral Argument file, Court of Appeals Submissions file, Condition of Supreme Court Docket Summary file.	Immediate Disposal.
Court Clerk Correspondence including:	
Correspondence to Civil Procedure Committee, Letters to Clerk Certifying Briefs, Employment Security Division Late Filing Correspondence, Oral Arguments Confirmation Letters, Library Delinquent Accounts Correspondence.	Immediate Disposal.
Miscellaneous or General Correspondence:	Retain one (1) year.

Appointments to Committees

IN RE: CLIENT SECURITY FUND COMMITTEE

Supreme Court of Arkansas
Opinion delivered June 19, 2008

PER CURIAM. Ben McMinn is hereby reappointed to the Client Security Fund Committee for a five-year term to expire July 31, 2013.

The Court thanks Mr. McMinn for accepting reappointment to this important committee.

IN RE: SUPREME COURT COMMITTEE on CIVIL PRACTICE

Supreme Court of Arkansas
Opinion delivered June 19, 2008

PER CURIAM. Leon Johnson, Esq., of Little Rock and Brian G. Brooks, Esq., of Greenbrier are appointed to the Civil Practice Committee for three-year terms to expire on July 31, 2011. We thank them for their willingness to serve on this important committee. Rodney Moore, Esq., of Arkadelphia is reappointed to the Civil Practice Committee for a three-year term to expire on July 31, 2011, and we thank him for his continued service.

The court expresses its gratitude to Marie Bernarde-Miller, Esq., of Little Rock and Gary Corum, Esq., of Little Rock, whose terms have expired, for their years of valuable service to this committee.

IN RE: APPOINTMENT to PROFESSIONAL PRACTICUM COMMITTEE

Supreme Court of Arkansas
Opinion delivered June 19, 2008

PER CURIAM. By Per Curiam Order of July 1, 2004, Lucinda McDaniel of Jonesboro was appointed to serve as the First Congressional District representative on the Professional Practicum Committee. Ms. McDaniel's initial term of four years concludes on July 1, 2008.

As the replacement for Ms. McDaniel, the Court appoints Mr. Tom Womack of Jonesboro as the representative on the Committee from the First Congressional District for a six-year term to conclude on July 1, 2014.

The Court is grateful for the willingness of Mr. Womack to accept appointment to this Committee. The Court thanks Ms. McDaniel for her years of service on this Committee.

IN RE: SUPREME COURT BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered June 26, 2008

PER CURIAM. Honorable Larry W. Chandler of Magnolia, Circuit Judge, 13th Judicial Circuit, is appointed to our Board of Certified Court Reporter Examiners effective August 1, 2008, for a three-year term expiring on July 31, 2011. The court thanks him for his willingness to serve on this important board.

The court expresses its gratitude to Judge Edwin Keaton of Camden for his valuable service to the board.

IN RE: JUDICIAL COMPENSATION COMMITTEE

Supreme Court of Arkansas
Opinion delivered August 22, 2008

PER CURIAM. The Arkansas Supreme Court hereby appoints a Judicial Compensation Committee to investigate judicial compensation for circuit judges and appellate judges in the state. The mission of the Committee will be to explore the adequacy of judicial compensation and to make recommendations to this Court and to the Arkansas General Assembly as well as to the Arkansas Bar Association. The Committee will also explore the need for the establishment of a permanent Judicial Compensation Commission to monitor the adequacy of judicial compensation and to make recommendations to the General Assembly. Adequacy is defined as compensation sufficient to attract good, capable, and qualified people to seek judicial offices and to retain such people in those positions.

Appointment of this Committee was approved by the Board of Directors of the Arkansas Judicial Council at its meeting in Hot Springs on June 11 of this year. The full membership of the Judicial Council was advised the following day at the Business Meeting.

The following people have been appointed to the Committee by the Court:

Virgil Miller

Claiborne P. Deming

Julia Peck Mobley

Randy Wilbourn

Alan B. Hughes

Archie Schaffer, III

Kent Rubens

Ben Hyneman

Kenneth R. Reeves

George Hopkins

William H. Bowen

Bradley D. Jesson
Mark Doramus
Sharon Allen
Warren Stephens

IN RE: SUPREME COURT COMMITTEE on the UNAUTHORIZED PRACTICE of LAW

Supreme Court of Arkansas
Opinion delivered September 18, 2008

PER CURIAM. Christopher W. Morledge, Esq., of Forrest City, First Congressional District, is appointed to the Supreme Court Committee on the Unauthorized Practice of Law for a three-year term to expire on May 31, 2011.

Lloyd Vance Stone, III, Esq., of Bentonville, Third Congressional District, and Ms. Karen Kay Howard of Batesville, At-Large Position, are reappointed to the Committee for three-year terms to expire on May 31, 2011.

The Court thanks Mr. Morledge for accepting appointment and Mr. Stone and Ms. Howard for accepting reappointment to this important Committee. We also express our appreciation to King Benson, Esq., of Paragould, whose term has expired, for his dedicated service to this Committee.

IN RE: ARKANSAS SUPREME COURT BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered September 18, 2008

PER CURIAM. Ms. Patricia Horton-Pfeifer of Little Rock, Certified Court Reporter, is appointed to our Board of Certified Court Reporter Examiners for a three-year term expiring on July 31, 2011. The court thanks her for her willingness to serve on this important board.

The court expresses its gratitude to Ms. Judy Ammons for her valuable service to the board.

IN RE: SUPREME COURT COMMITTEE on the UNAUTHORIZED PRACTICE of LAW

Supreme Court of Arkansas
Opinion delivered September 25, 2008

PER CURIAM. Ms. Pam Bohannan, of Magnolia, is appointed to an at-large position on the Unauthorized Practice of Law Committee for a three-year term to expire on May 31, 2011. The Court thanks Ms. Bohannan for accepting appointment to this important Committee.

The Court expresses its appreciation to Ms. Donna Osborne, whose term has expired, for her service to the Committee.

IN RE: ACCESS to JUSTICE COMMISSION

Supreme Court of Arkansas
Opinion delivered October 23, 2008

PER CURIAM. Justice Annabelle Clinton Imber of the Arkansas Supreme Court is reappointed to the Access to Justice Commission for a term to expire on October 15, 2011.

IN RE: SUPREME COURT AUTOMATION COMMITTEE

Supreme Court of Arkansas
Opinion delivered October 30, 2008

PER CURIAM. Honorable Russell Roberts, Faulkner County District Court, and Sue Jones, Circuit Clerk, Hot Spring County, are appointed to the Committee on Automation for three-year terms to expire October 31, 2011. We thank Judge Roberts and Ms. Jones for their willingness to serve on this important committee. Honorable Larry Jegley of Little Rock, Prosecuting Attorney of the Sixth Judicial Circuit, is reappointed to the Committee on Automation for a three-year term to expire October 31, 2011. We thank Mr. Jegley for his continued service.

The court thanks Judge Ben Storey, Circuit Judge, of Forrest City whose term has expired, for his valuable service on the committee. We also note that Stephen Sipes's (Pulaski County Court Administrator) service as a member of the committee has expired, but he will continue to serve as an advisor to the committee, and we thank him for his commitment to the work of the committee.

IN RE: STATE BOARD of LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered October 30, 2008

PER CURIAM. The Court appoints Ernest Sanders, Jr., of Little Rock to the Arkansas State Board of Law Examiners. Mr. Sanders shall be a representative of the Second Congressional District and will serve a six-year term concluding on September 30, 2014. Mr. Sanders succeeds Lisa Peters of Little Rock.

The Court thanks Mr. Sanders for accepting appointment to this important Board. The Court extends its sincere appreciation to Ms. Peters for her many years of service to the Board, including her leadership as Chair of this Board in 2008.

IN RE: ARKANSAS SUPREME COURT COMMITTEE on SECURITY and EMERGENCY PREPAREDNESS

Supreme Court of Arkansas
Opinion delivered October 30, 2008

PER CURIAM. We appoint Hon. Charles Clawson of Conway, Circuit Judge, 20th Judicial Circuit, and Mr. Jim Johnson of Fordyce to the Arkansas Supreme Court Committee on Security and Emergency Preparedness for three-year terms to expire on September 30, 2011. We thank them for their willingness to serve on this important committee.

Mr. Larry Burris, Chief Court Bailiff, of Fort Smith, Hon. Sonny Cox, Arkansas County Judge, and Ms. Vicki Rima, Garland County Circuit Clerk, are reappointed to the Arkansas Supreme Court Committee on Security and Emergency Preparedness for three-year terms to expire on September 30, 2011. We thank these members for their continued service.

We thank Circuit Judge Tim Fox of Little Rock and Mayor James Morgan of White Hall, whose terms have expired, for their service on this committee.

Professional Conduct Matters

IN RE: Raymond E. BORNHOFT,
Arkansas Bar No. 85014

08-713

Supreme Court of Arkansas
Opinion delivered June 26, 2008

PER CURIAM. Upon recommendation of the Supreme Court Committee on Professional Conduct, and in lieu of facing disciplinary proceedings for serious misconduct involving client funds, we hereby accept the voluntary surrender of the law license of Raymond E. Bornhoft, Fayetteville, Arkansas, to practice law in the State of Arkansas. Mr. Bornhoft's name shall be removed from the registry of licensed attorneys, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Michael R. McCUSKER
Surrender of Law License—Arkansas Bar No. 2001075

08-984

Supreme Court of Arkansas
Opinion delivered September 4, 2008

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Michael R. McCusker, of Cordova, Tennessee, to practice law in the State of Arkansas. Mr. McCusker's name shall be removed from the registry of

attorneys licensed by the State of Arkansas, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Frank Butterfield WHITBECK
Surrender of Law License—Arkansas Bar No. 76010

08-980

Supreme Court of Arkansas
Opinion delivered September 4, 2008

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender, in lieu of disbarment proceedings that would result from his adjudication of guilt to felony offenses in federal court on May 8, 2008, of the law license of Frank Butterfield Whitbeck of Little Rock, to practice law based on a license from the State of Arkansas. The name of Frank Butterfield Whitbeck shall be removed from the registry of attorneys licensed by the State of Arkansas, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Eric Dean ARCHER,
Arkansas Bar No. 20001190

08-944

Supreme Court of Arkansas
Opinion delivered September 11, 2008

PER CURIAM. Upon the initiation of his petition and by recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Eric Dean Archer, Rogers, Arkansas, to practice law in the State of Arkansas. Mr. Archer's name shall be removed from the registry of licensed attorneys, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Larry Gene DUNKLIN
SURRENDER of LAW LICENSE
ARKANSAS BAR NO. 81051

08-1055

Supreme Court of Arkansas
Opinion delivered September 18, 2008

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Larry Gene Dunklin, of Little Rock, Arkansas, to practice law in the State of Arkansas. Mr. Dunklin's name shall be removed from the registry of

attorneys licensed by the State of Arkansas, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

Ceremonial Observances

IN RE: THE RETIREMENT of JUSTICE THOMAS GLAZE

Supreme Court of Arkansas
Opinion delivered September 4, 2008

PER CURIAM. Upon his retirement from the Supreme Court of Arkansas after twenty-one years of service as associate justice, the court recognizes and expresses appreciation to Justice Tom Glaze for his dedication to public service and in particular to this court. Justice Glaze has made the court's work his first priority and has zealously defended the integrity of this court. Justice Glaze has loved the law and the work of the supreme court, and his institutional memory in our deliberations has kept the court on course.

Born in Missouri, Justice Glaze came to Arkansas to play baseball at the University of Arkansas. He went on to serve his adopted state as an attorney in private practice, as a staff attorney with Pulaski County Legal Aid, and as legal advisor to Governor Winthrop Rockefeller. He also served as the Executive Director of the Election Research Council, Inc., Assistant Attorney General, and Chairman of the Election Laws Institute, Inc. Justice Glaze first went on the bench as a chancery judge for the Sixth Judicial Circuit; he then served as a judge on the Arkansas Court of Appeals until his election to the Arkansas Supreme Court in 1986. As an adjunct professor at the University of Arkansas at Little Rock Bowen School of Law, Justice Glaze educated countless law students in the subject of family law. He taught his students not only substantive law, but the practical and ethical aspects of practicing law as well.

Justice Glaze is known by his colleagues in the legal community as a defender of those unable to protect themselves. A voice for children and families in need, he was an early proponent of foster care reform in this state. Justice Glaze advocated for the establishment of full-fledged courts for children's issues and has long encouraged the appointment of attorneys ad litem to represent children.

John F. Kennedy said, "Let the public service be a proud and lively career." It has been so for Justice Tom Glaze. To analogize his legal career to the game of baseball, which has always been close

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Motion for directed verdict, appellant's sufficiency-of-the-evidence argument was not preserved for appellate review because appellant's counsel failed to make a specific motion regarding lack of evidence. *Brown v. State,* 324

Review in death or life imprisonment cases, Ark. Sup. Ct. R. 4-3(h) does not mandate review of appellant's claim because directed-verdict motion was not properly made. *Id.*

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Motion for directed verdict, appellant's sufficiency-of-the-evidence argument was not preserved for appellate review because appellant's directed-verdict motion was nonspecific. *Elkins v. State,* 399

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Criminal contempt, circuit court did not err in convicting Appellant of criminal contempt because substantial evidence supported finding. *Stilley v. University of Ark. at Fort Smith,* 248

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Civil contempt, circuit court's order was definite and clear. *Terry v. White,* 366

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Recusal of judges, respondent judges who recused were without authority to reconsider their recusals, although a judge who recused could perform the ministerial act of assigning another judge to the case after his recusal. *Kelly v. Mississippi County Circuit Court,* 396

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Lesser-included offenses, no double-jeopardy violation where appellant was sentenced for two separate crimes of possession. *Koster v. State,* 74

Sufficiency of the evidence, substantial evidence supported the jury's verdict that appellant committed aggravated robbery. *Sales v. State,* 222

Sufficiency of the evidence, substantial evidence supported the jury's verdict of premeditated and deliberated capital murder. *Id.*

Sufficiency of the evidence, there was substantial evidence that appellant committed capital felony murder. *Id.*

Mistrial, trial court properly denied appellant's motion for mistrial where appellant offered no evidence of prejudice. *Id.*

Victim-impact evidence, there was no convincing authority to support appellant's argument that court should have acted sua sponte on plain error or that the court should have previewed and controlled the admission of the victim-impact evidence. *Id.*

Aggravating circumstances, waiver of objection precluded appellate review of admission of aggravating circumstances. *Id.*

Aggravating circumstances, evidence was sufficient to support jury's finding of statutory aggravating circumstances. *Id.*

Sufficiency of the evidence, evidence was sufficient to corroborate the testimony of capital-murder accomplice. *Wertz v. State,* 256

Aggravating circumstances, evidence was sufficient to establish that appellant knowingly created a great risk of death to a person other than the victims. *Id.*

Mitigating circumstances, jury did not erroneously reject any mitigating circumstance. *Id.*

Sufficiency of the evidence, there was substantial evidence to support the jury's verdict finding appellant guilty of rape, second-degree sexual assault, and first-degree terroristic threatening. *Rohrbach v. State,* 271

Engaging children in explicit conduct for use in visual or print medium, evidence was sufficient to support jury's findings. *Williams v. State,* 282

Sufficiency of the evidence, substantial evidence supported guilty verdict of second-degree sexual assault. *Brown v. State,* 341

Sufficiency of the evidence, evidence was sufficient to support rape conviction. *Young v. State,* 350

Sufficiency of the evidence, evidence was sufficient to support residential burglary conviction. *Id.*

Sufficiency of the evidence, there was substantial evidence upon which the jury could infer that appellant's actions were motivated by a desire for sexual gratification. *Rounsaville v. State,* 356

Sufficiency of the evidence, evidence was sufficient to support first-degree sexual abuse conviction. *Hayes v. State,* 384

Applicability of statute in effect on date of crime, pre-1997 version of criminal nonsupport statute governed. *Reeves v. State,* 415

Nonsupport as a continuing offense, under pre-1997 nonsupport statute, appellant's course of conduct ended on child's eighteenth birthday, unnecessary to determine when complicity ended for purposes of new statute. *Id.*

Accomplice liability, no indication that jury found that murder witness was an accomplice. *Bush v. State,* 506

Accomplice liability, assuming witness was an accomplice, there was sufficient evidence to support jury's verdict. *Id.*

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Arrest was not invalid, arrest was not delayed beyond procedural time limits. *Koster v. State,* 74

Search & seizure, evidence was in plain view in a commercial business, no Fourth Amendment violation. *Id.*

Motion to suppress, appellant did not invoke the right to remain silent, nor did he assert coercion. *Id.*

Voluntariness of confession, standard of review set forth in *Ornelas v. United States*. *Clark v. State,* 292

Voluntariness of confession, appellate court was not constitutionally mandated to apply the *Ornelas* standard of review. *Id.*

Voluntariness of confession, Arkansas's standard of review is consistent with the requirements of *Ornelas*. *Id.*

Voluntariness of confession, determined based on totality of the circumstances surrounding waiver of rights. *Id.*

Voluntariness of confession, trial judge was not clearly erroneous in his evaluation of the credibility of the witnesses. *Id.*

Voluntariness of confession, Appellant was not particularly vulnerable such that her free will was overborne. *Id.*

Voluntariness of confession, even if admission of the confession was improper, such error would be harmless in light of otherwise overwhelming evidence of Appellant's guilt. *Id.*

Custodial interrogation, circuit court erred in admitting Appellant's confession where confession was taken after the invocation of right to counsel and before counsel was present or Appellant initiated further conversation. *Wedgeworth v. State,* 373

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Misrepresentation by taxing authority, whether void was an issue of first impression. *Dollarway Patrons for Better Schs. v. Dollarway Sch. Dist.*, 92

Initiative petitions invalidated, notary procedures required by statute were not followed. *Save Energy Reap Taxes v. Shaw,* 428

Notarization defect was not cured by testimony under oath. *Id.*

Substantial evidence supported a finding of common authorship, no error where 238 signatures were invalidated. *Id.*

All signatures invalidated where instances of common authorship were found, Ark. Code Ann. § 14-14-915(d) was controlling. *Id.*

Appellant failed to meet burden of proving genuineness of signatures. *Id.*

Required number of signatures not collected, question directed to be removed from the ballot. *Id.*

Ballot titles, prohibition of casino gaming was not included in title, gambling, except as to lotteries, is regulated by the General Assembly. *Cox v. Daniels,* 437

Ballot titles, lotteries. *Id.*

The supreme court does not engage in the construction of proposed amendments. *Id.*

Writ of mandamus, in light of the need for judicial economy, supreme court treated improperly presented mandamus action as an appeal from the circuit court's order denying appellant's request for the writ. *Dobbins v. Democratic Party of Ark.*, 496

Private postelection right to challenge, appellant had twenty days after he was denied certification to contest the certification. *Id.*

Private postelection right to challenge, because appellant's challenge was untimely, circuit court did not abuse its discretion by denying appellant's motion. *Id.*

Initiative & referendum, circuit court erred in concluding that an unregistered voter could sign the petition if he or she had a reasonable expectation that he or she was registered upon completing voter registration application. *Mays v. Cole,* 532

Initiative & referendum, burden of proof shifted to proponent of petition in light of evidence of forgery, signatures on petition containing forgeries were decertified. *Id.*

Initiative & referendum, a person is not qualified to sign a petition before he or she has registered to vote with the county clerk, signatures of witnesses who signed petition on the same day they registered were decertified. *Id.*

Initiative & referendum, petition did not meet signature requirement, certification of "wet/dry" election was set aside. *Id.*

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Good cause to grant, denial of due process. *Id.*

Recantation of testimony not cognizable. *Id.*

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Victim's prior statement was not hearsay, current testimony was consistent with prior testimony regarding fabrication. *Winkle v. State,* 128

Witnesses, extrinsic evidence of prior inconsistent statements, recorded conversation was properly admitted. *Id.*

Ark. R. Evid. 404(b) pedophile exception, testimony of appellant's biological daughter describing abuse by appellant fell within pedophile exception because conduct was sufficiently similar. *Rohrbach v. State,* 271

Rule 404(b), circuit court did not abuse its discretion in allowing victim's mother to testify that appellant had threatened her with physical violence because evidence was independently relevant. *Id.*

Video footage, DVD was relevant for proving elements of the crimes. *Williams v. State,* 282

Video footage, appellant could not prevent the admission of evidence by simply conceding to the facts of the crime. *Id.*

Video footage, judge did not abuse his discretion in admitting DVD into evidence. *Id.*

Rape-shield statute, appellant's rape-shield argument was not preserved because appellant failed to follow proper procedure in requesting exception. *Allen v. State,* 309

Rule 404(b) pedophile exception, no requirement that prior act be charged or substantiated. *Id.*

Rule 404(b) pedophile exception, no requirement that victim of prior act be a member of abuser's family as long as there is sufficient evidence of an intimate relationship. *Id.*

Rule 404(b) pedophile exception, trial court's decision to admit evidence of prior acts that were remote in time was not error where testimony regarding prior acts helped to demonstrate appellant's intent as it related to the present charges. *Id.*

Rule 404(b) pedophile exception, fact that victim of prior bad acts was himself an admitted pedophile was an issue of witness credibility for the jury to resolve. *Id.*

Rule 403, evidence of prior sexual abuse was permissible because similarities between prior acts and the conduct charged were probative of issue of the accused's deviate sexual impulses. *Id.*

Rape-shield statute, circuit court did not clearly err in excluding evidence of prior recantation of molestation allegation. *Bond v. State,* 332

Rape-shield statute, evidence of prior recantation was not outside the rape-shield statute because victim's prior sexual conduct would necessarily come to light. *Id.*

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Ballot titles, petitioner did not meet burden of proving that title was misleading or insufficient. *Id.*

Ballot titles, sufficiency. *Id.*

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Subrogation rights of Comprehensive Health Insurance Pool, made-whole doctrine applies to claims under Ark. Code Ann. § 23-79-510. *Id.*

Application of made-whole doctrine, because circuit court's finding that appellee was not made whole was not clearly erroneous, appellant is not entitled to subrogation. *Id.*

Settlement under Ark. Code Ann. § 23-79-510(e)(2)(B), CHIP's consent to settlement was not required because CHIP never held an interest in the settlement that did not make appellee whole. *Id.*

Compulsory motor vehicle liability insurance, compulsory insurance law does not state that some policy exclusions are permitted by public policy while others are not. *Southern Farm Bureau Cas. Ins. Co. v. Easter*, 238

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ARKANSAS APPELLATE REPORTS

Volume 103

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
June 18, 2008 — October 29, 2008
INCLUSIVE

SUSAN P. WILLIAMS
REPORTER OF DECISIONS

AMY DUNN JOHNSON
DEPUTY
REPORTER OF DECISIONS

JEFFREY D. BARTLETT
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2009

Set in Bembo

WEST, A THOMSON BUSINESS
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ST. PAUL, MN 55164-0526
CUSTOMER SERVICE: 1-800-328-488
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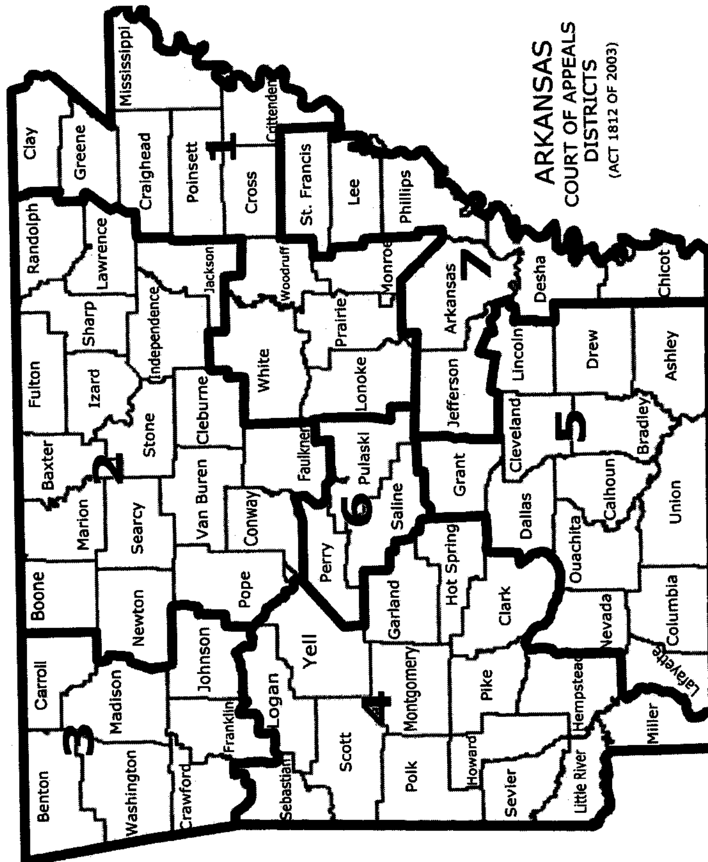
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OF THE

COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED BY THIS VOLUME

(June 18, 2008 — October 29, 2008, inclusive)

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JOHN MAUZY PITTMAN	Chief Judge[1]
D.P. MARSHALL JR.	Judge[2]
JOSEPHINE LINKER HART	Judge[3]
KAREN R. BAKER	Judge[4]
ROBERT J. GLADWIN	Judge[5]
SARAH J. HEFFLEY	Judge[6]
JOHN B. ROBBINS	Judge[7]
DAVID M. GLOVER	Judge[8]
SAM BIRD	Judge[9]
WENDELL L. GRIFFEN	Judge[10]
LARRY D. VAUGHT	Judge[11]
EUGENE HUNT	Judge[12]

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*REPORTER'S NOTE: Act 1812 of 2003 redistricted the state judicial districts for the Arkansas Court of Appeals. Each footnote shows the district and position from which each judge was or will be elected and the statute pursuant to which each was elected at the time the opinions in this volume were written.

[1] District 1, Position 1; Act 208 of 1979.
[2] District 1, Position 2; Act 1812 of 2003.
[3] District 2, Position 1; Act 208 of 1979.
[4] District 2, Position 2; Act 1812 of 2003.
[5] District 3, Position 1; Act 208 of 1979.
[6] District 3, Position 2; Act 1812 of 2003.
[7] District 4, Position 1; Act 1812 of 2003.
[8] District 4, Position 2; Act 1812 of 2003.
[9] District 5, Position 1; Act 1812 of 2003.

[10] District 6, Position 1; Act 208 of 1979.
[11] District 6, Position 2; Act 1812 of 2003.
[12] District 7; Act of 1812 of 2003; appointed and sworn in August 4, 2008.

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OPINIONS

(a) *SUPREME COURT — SIGNED OPINIONS.* All signed opinions of the Supreme Court shall be designated for publication.

(b) *COURT OF APPEALS — OPINION FORM.* Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) *COURT OF APPEALS — PUBLISHED OPINIONS.* Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publications when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked "Not Designated for Publication."

(d) *COURT OF APPEALS — UNPUBLISHED OPINIONS.* Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except

in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) *COPIES OF ALL OPINIONS* — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

Adams *v.* Haney, CA07-1193 (HART, J.), reversed and remanded June 18, 2008.

Akins *v.* Nautilus Ins. Co., CA08-274 (BIRD, J.), affirmed in part; reversed in part October 8, 2008.

Anthony *v.* Turner, CA08-427 (BIRD, J.), reversed and remanded October 29, 2008.

B.C. *v.* State, CA08-585 (GLOVER, J.), affirmed October 29, 2008.

Baggs *v.* State, CACR07-1236 (PITTMAN, C.J.), affirmed June 18, 2008.

Bailey *v.* State, CACR07-1166 (MARSHALL, J.), rebriefing ordered; Motion to Withdraw denied June 25, 2008.

Barnes *v.* West, CA07-1049 (GRIFFEN, J.), affirmed September 24, 2008.

Barron *v.* State, CACR06-506 (GLADWIN, J.), Motion to Withdraw denied; rebriefing ordered June 25, 2008.

Believ *v.* Lennox Indus., CA07-1197 (GLOVER, J.), reversed and remanded June 18, 2008.

Benedict *v.* Arkansas Dep't of Human Servs., CA08-268 (MARSHALL, J.), affirmed June 25, 2008.

Bergman *v.* Arkansas Dep't of Human Servs., CA08-513 (ROBBINS, J.), affirmed September 24, 2008.

Billingsley *v.* Hillcrest Care & Rehab, CA08-196 (PITTMAN, C.J.), affirmed September 17, 2008.

Blake *v.* State, CACR08-559 (ROBBINS, J.), affirmed October 29, 2008.

Blanton *v.* Jackson, CA08-4 (BIRD, J.), affirmed in part; reversed and remanded in part October 22, 2008.

Bone *v.* Barnard, CA07-1177 (GLADWIN, J.), affirmed September 10, 2008.

Branning *v.* State, CACR07-789 (HEFFLEY, J.), reversed and dismissed October 22, 2008.

Brooks, Dale Roslyn *v.* State, CACR08-468 (BIRD, J.), affirmed October 22, 2008.

Brooks, James Harold *v.* State, CACR08-318 (GLADWIN, J.), affirmed October 8, 2008.

Brown, Joy Lueann *v.* Arkansas Dep't of Human Servs., CA08-442 (GLOVER J.), affirmed September 17, 2008.

Brown, Rick *v.* Frank, CA08-471 (MARSHALL, J.), affirmed October 22, 2008.

Brown, Robert L. *v.* State, CACR07-1216 (HEFFLEY, J.), rebriefing ordered June 25, 2008.

Bullock *v.* Steed, CA08-394 (GLADWIN, J.), affirmed October 29, 2008.

Campbell-Harper *v.* Harper, CA07-1274 (GLADWIN, J.), affirmed on direct appeal; cross-appeal moot September 17, 2008.

Carrick *v.* State, CACR08-251 (HUNT, J.), affirmed as modified September 24, 2008.

Carroll, Jayson Wayne *v.* State, CACR07-941 (ROBBINS, J.), rebriefing ordered June 25, 2008.

Carroll, Pamela Marshall *v.* Carroll, CA07-1174 (MARSHALL, J.), appeal dismissed September 17, 2009.

Cauley Bowman, PLLC *v.* Twin City Fire Ins. Co., CA08-62 (GLOVER, J.), affirmed September 24, 2008.

Chambliss *v.* State, CACR08-210 (GLOVER, J.), affirmed October 1, 2008.

Chapple *v.* State, CACR08-263 (HART, J.), affirmed September 17, 2008.

Christian *v.* Arkansas Dep't of Human Servs., CA08-294 (HEFFLEY, J.), affirmed June 25, 2008.

Clarks *v.* State, CACR07-1041 (BIRD, J.), affirmed September 10, 2008.

Coldiron *v.* Landherr, CA08-143 (HEFFLEY, J.), dismissed August 27, 2008.

Coleman *v.* State, CACR08-214 (BAKER, J.), affirmed September 10, 2008.

Collins *v.* State, CACR08-81 (VAUGHT, J.), affirmed June 18, 2008.

Colston *v.* Latco, Inc., CA08-135 (HART, J.), affirmed September 3, 2008.

Combs-Smith *v.* Hopkins, CA08-20 (GRIFFEN, J.), affirmed June 18, 2008.

Cooper *v.* Cooper Clinic, P.A., CA08-8 (VAUGHT, J.), affirmed August 27, 2008.

Cothern *v.* State, CACR07-1354 (HART, J.), affirmed September 10, 2008.

Cowell *v.* Cowell, CA08-360 (GLOVER, J.), affirmed October 22, 2008.

Creggett *v.* State, CACR08-292 (GLADWIN, J.), affirmed September 17, 2008.

D.L. *v.* State, CA08-267 (VAUGHT, J.), affirmed October 22, 2008.

Dayberry *v.* State, CACR07-1302 (ROBBINS, J.), affirmed August 27, 2008.

Delamar *v.* State, CACR08-64 (MARSHALL, J.), affirmed September 24, 2008.

DeLoach *v.* Arkansas Dep't of Human Servs., CA08-757 (VAUGHT, J.), affirmed; Motion to Withdraw granted October 29, 2008.

Donald *v.* State, CACR07-1058 (GRIFFEN, J.), affirmed; Motion to Withdraw granted June 25, 2008.

Eason, Mack Leonard *v.* State, CACR07-467 (PITTMAN, C.J.), Motion to Withdraw denied; rebriefing ordered June 25, 2008.

Eason, Michael W. *v.* Arkansas Local Police & Fire Ret. Sys., CA08-493 (PER CURIAM), Appellee's Motion to Correct the Record granted with instructions August 27, 2008.

Eason, Michael W. *v.* Arkansas Local Police & Fire Ret. Sys., CA08-493 (PER CURIAM), Appellee's Motion to Stay Brief Time Pending Motion to Correct the Record granted with instructions August 27, 2008.

Eatmon *v.* State, CACR08-310 (PITTMAN, C.J.) affirmed October 8, 2008.

Edwards *v.* State, CACR08-56 (GRIFFEN, J.), affirmed as modified June 18, 2008.

Ellis *v.* State, CACR08-28 (HEFFLEY, J.), affirmed September 17, 2008.

ERMC, LP *v.* Arkansas Bd. of Private Investigators & Private Sec. Agencies, CA07-1192 (BAKER, J.), affirmed September 24, 2008.

Evans *v.* State, CACR07-956 (GLOVER, J.), affirmed September 24, 2008.

Faulkner County Judge *v.* Smith, CA08-410 (GLOVER, J.), affirmed October 8, 2008.

Firestone Tube Co. *v.* Garrison, CA08-216 (HART, J.), affirmed September 24, 2008.

Foster *v.* State, CACR07-1240 (ROBBINS, J.), affirmed September 3, 2008.

Frye *v.* State, CACR08-235 (VAUGHT, J.), affirmed; Motion granted June 25, 2008.

Full Counsel Christian Fellowship *v.* Holloway Firm, Inc., CA08-182 (PITTMAN, C.J.), affirmed September 10, 2008.

Garcia, Ernest *v.* Estate of Duvall, CA08-845 (PER CURIAM), Appellee's Motion for Permission to File Reply Brief on Appellee's Motion to Dismiss granted August 27, 2008.

Garcia, Ernest *v.* Estate of Duvall, CA08-845 (PER CURIAM), Appellee's Motion to Dismiss Appeal denied August 27, 2008.

Gaston *v.* State, CACR08-37 (GLOVER, J.), affirmed June 18, 2008.
Glasgow *v.* Arkansas Dep't of Human Servs., CA08-578 (GRIFFEN, J.), affirmed October 8, 2008.
Gould *v.* Gould, CA07-1269 (VAUGHT, J.), affirmed October 8, 2008.
Greer *v.* State, CACR08-32 (HUNT, J.), affirmed September 17, 2008.
Hagar *v.* State, CACR08-308 (PITTMAN, C.J.), reversed and dismissed October, 22, 2008.
Handley *v.* Handley, CA08-21 (GLADWIN, J.), affirmed October 22, 2008.
Handy *v.* State, CACR08-138 (GRIFFEN, J.), affirmed June 18, 2008.
Harris *v.* Johnson, CA07-1048 (BAKER, J.), affirmed October 29, 2008.
Harrison, Bobby Dean *v.* State, CACR08-102 (VAUGHT, J.), affirmed October 8, 2008.
Harrison, Penny *v.* Arkansas Dep't of Human Servs., CA08-373 (ROBBINS, J.), affirmed September 10, 2008.
Hernandez *v.* State, CACR07-1315 (BIRD, J.), dismissed August 27, 2008.
Herron *v.* Campbell, CA07-1309 (BIRD, J.), affirmed August 27, 2008.
Hess *v.* Wal-Mart Stores, Inc., CA08-79 (VAUGHT, J.), affirmed September 10, 2008.
Hickman *v.* State, CACR08-422 (ROBBINS, J.), affirmed October 1, 2008.
Hicks, Dana *v.* Antique Warehouse of Ark., CA08-110 (PITTMAN, C.J.), affirmed in part; reversed in part; and remanded October, 22, 2008.
Hicks, William David *v.* State, CACR07-1347 (HEFFLEY, J.), affirmed September 24, 2008.
Hilbun *v.* State, CACR08-41 (GRIFFEN, J.), affirmed September 3, 2008.
Hill & Hill Constr. Co. *v.* Pritchett, CA08-353 (ROBBINS, J.), affirmed October 1, 2008.
Hite *v.* J & J Trucking, CA08-137 (MARSHALL, J.), affirmed June 18, 2008.
Hodge *v.* State, CACR07-1303 (BIRD, J.), affirmed; Motion granted June 25, 2008.
Holbrook *v.* Freeman, CA08-181 (HUNT, J.), affirmed October 8, 2008.

Holliman *v.* State, CACR08-518 (BIRD, J.), affirmed October 1, 2008.

Houston *v.* State, CACR07-1272 (GRIFFEN, J.), affirmed September 17, 2008.

Hudson *v.* State, CACR08-498 (GLADWIN, J.), affirmed October 29, 2008.

Hunter *v.* Arkansas Dep't of Human Servs., CA08-576 (BIRD, J.), affirmed; Motion to Withdraw granted October 1, 2008.

IH Servs. Inc. *v.* Perry, CA08-221 (MARSHALL, J.), affirmed September 17, 2008.

J.B. Hunt Transp., Inc. *v.* Director, E08-19 (GLOVER, J.), affirmed October 29, 2008.

Jackson, Brenda *v.* State, CACR08-194 (HEFFLEY, J.), affirmed September 10, 2008.

Jackson, Gregory V. *v.* State, CACR08-538 (ROBBINS, J.), affirmed October 29, 2008.

Johnson, Anthony Terrell *v.* State, CACR08-187 (HEFFLEY, J.), affirmed October 8, 2008.

Johnson, Brandon J. *v.* State, CACR08-9 (ROBBINS, J.), affirmed June 18, 2008.

Johnson, Brandon J. *v.* State, CACR08-10 (BAKER, J.), affirmed September 24, 2008.

Joiner *v.* State, CACR08-151 (GLOVER, J.), affirmed June 18, 2008.

Jones *v.* State, CACR07-952 (VAUGHT, J.), affirmed September 17, 2008.

King *v.* State, CACR08-93 (VAUGHT, J.), reversed and remanded October 1, 2008.

Layton *v.* State, CACR07-1292 (ROBBINS, J.), rebriefing ordered June 25, 2008.

Leak *v.* State, CACR08-331 (GLADWIN, J.), affirmed October 22, 2008.

Lemoine *v.* Director, E07-262 (PITTMAN, C.J.), affirmed October 1, 2008.

Loe *v.* Smelser, CA08-226 (GLOVER, J.), affirmed October 8, 2008.

Logan *v.* Smith Ready Mix, Inc., CA08-387 (HART, J.), affirmed October 29, 2008.

Maldonado *v.* State, CACR07-1324 (GRIFFEN, J.), affirmed; Motion to Be Relieved granted June 25, 2008.

Mann *v.* Mann, CA08-158 (BAKER, J.), affirmed September 10, 2008.

Maradeo *v.* Farwell, CA08-250 (HART, J.), reversed and remanded September 17, 2008.

Martin, Jennifer *v.* Scroll Techs., CA08-560 (VAUGHT, J.), affirmed October 29, 2008.

Martin, Misty *v.* Arkansas Dep't of Human Servs., CA08-552 (BAKER, J.), affirmed September 17, 2008.

Mason *v.* Quality Millwork, Inc., CA08-227 (GRIFFEN, J.), affirmed October 1, 2008.

McCoy *v.* State, CACR08-122 (PITTMAN, C.J.), affirmed September 17, 2008.

McDonald *v.* Director, E07-227 (HEFFLEY, J.), affirmed June 18, 2008.

McMurray *v.* State, CACR07-1124 (HEFFLEY, J.), affirmed October 1, 2008.

McNichols *v.* State, CACR07-1285 (HART, J.), affirmed June 18, 2008.

McPhail *v.* Smith, CA08-304 (GRIFFEN, J.), affirmed October, 22, 2008.

Mercy Health Ctr. *v.* Borchert, CA08-220 (BIRD, J.), affirmed September 17, 2008.

Miller v. State, CACR07-1218 (BAKER, J.), rebriefing ordered June 25, 2008.

Mingo *v.* State, CACR08-147 (BIRD, J.), affirmed September 3, 2008.

Mitchell *v.* Ramsey, CA07-1190 (GLADWIN, J.), dismissed September 17, 2008.

Monroe *v.* State, CACR08-150 (HUNT, J.), affirmed October 1, 2008.

New Life Beauty Ctr., Inc. *v.* Palomar Med. Techs., Inc., CA07-1189 (PITTMAN, C.J.), affirmed June 25, 2008.

Owens *v.* State, CACR08-131 (MARSHALL, J.), affirmed September 10, 2008.

Parker *v.* Petit Jean Poultry, Inc., CA07-1225 (BIRD, J.), affirmed October 8, 2008.

Payne *v.* Donaldson, CA08-105 (ROBBINS, J.), dismissed October 22, 2008.

Pearson *v.* Hice, CA08-283 (GLADWIN, J.), affirmed October 8, 2008.

Penson *v.* State, CACR07-468 (GLADWIN, J.), Motion to Withdraw denied; rebriefing ordered June 25, 2008.

Pharmerica *v.* Cortez, CA08-161 (BAKER, J.), reversed and remanded August 27, 2008.

Pharmerica *v.* McMillon, CA07-1028 (HART, J.), reversed and remanded August 27, 2008.

Phillips *v.* State, CACR07-933 (HART, J.), affirmed; Motion to Be Relieved granted June 25, 2008.

Pierce *v.* State, CACR08-324 (HART, J.), affirmed October 29, 2008.

Pilant *v.* Lakeland Dev., LLC, CA08-103 (ROBBINS, J.), affirmed September 24, 2008.

Pillow *v.* Sanyo Mfg. Co., CA07-1353 (VAUGHT, J.), affirmed September 17, 2008.

Plumley *v.* Plumley, CA08-3 (ROBBINS, J.), affirmed June 18, 2008.

Presley *v.* Baxter County Reg'l, Inc., CA08-90 (GRIFFEN, J.), appeal dismissed without prejudice September 3, 2008.

Pullan *v.* State, CACR07-1344 (MARSHALL, J.), affirmed October 8, 2008.

Rasmussen *v.* State, CACR07-985 (BAKER, J.), affirmed June 25, 2008.

Ray *v.* State, CACR07-1273 (GLOVER, J.), affirmed September 10, 2008.

Rayford *v.* State, CACR08-89 (GLOVER, J.), affirmed August 27, 2008.

Reynolds *v.* Robertson Contractors, Inc., CA08-44 (GLADWIN, J.), reversed and remanded September 17, 2008.

Rice *v.* State, CACR08-489 (MARSHALL, J.), affirmed October 29, 2008.

River Valley Land, Inc. *v.* Hudson, CA08-854 (PER CURIAM), Appellant's Motion to Consolidate denied; leave granted to file supplemental record September 10, 2008.

Rivers *v.* State, CACR07-1126 (MARSHALL, J.), affirmed September 24, 2008.

Robinson *v.* State, CACR07-1279 (GLADWIN, J.), affirmed September 3, 2008.

Rodgers *v.* State, CACR08-80 (HEFFLEY, J.), affirmed August 27, 2008.

Rodrigo *v.* State, CACR06-1092 (VAUGHT, J.), dismissed August 27, 2008.

Roehm *v.* State, CACR08-123 (BAKER, J.), affirmed August 27, 2008.

Roland *v.* Commercial Bank & Trust Co., CA07-1265 (HEFFLEY, J.), dismissed October 22, 2008.

Rudd *v.* State, CACR08-254 (HUNT, J.), affirmed as modified October 22, 2008.

Sanders *v.* State, CACR07-1053 (BIRD, J.), dismissed June 25, 2008.

Schwellinger-Aguirre *v.* State, CACR07-1129 (GLOVER, J.), affirmed; Motion granted June 25, 2008.
Scott *v.* State, CACR07-1052 (BAKER, J.), affirmed September 24, 2008.
Scroggin *v.* Scroggin, CA07-1011 (PER CURIAM), rebriefing ordered June 18, 2008.
Shaw *v.* Dyson, CA07-907 (MARSHALL, J.), affirmed September 24, 2008.
Shea *v.* Coran, CA07-1259 (HEFFLEY, J.), reversed and remanded September 24, 2008.
Smith, Delois *v.* Jefferson Comprehensive Care, CA08-215 (GLADWIN, J.), affirmed September 24, 2008.
Smith, Lenamont D. *v.* State, CACR08-149 (HEFFLEY, J.), affirmed September 3, 2008.
Smith, Steven Lee *v.* State, CACR08-12 (PITTMAN, C.J.), affirmed September 24, 2008.
Smith, Vontifany *v.* Sherwood Imports, Inc., CA08-348 (VAUGHT, J.), dismissed October 8, 2008.
Sperry *v.* Arkansas Dep't of Human Servs., CA08-521 (BIRD, J.), affirmed September 24, 2008.
Stalter *v.* Gibson, CA08-198 (HUNT, J.), reversed and remanded September 17, 2008.
Starkey *v.* Starkey, CA08-168 (GRIFFEN, J.), affirmed in part; dismissed in part October 29, 2008.
State Farm Mut. Auto. Ins. Co. *v.* Jones, CA07-1277 (ROBBINS, J.), affirmed September 17, 2008.
Steward *v.* State, CACR08-58 (GLOVER, J.), affirmed September 3, 2008.
Sullivent *v.* Sullivent, CA07-419 (MARSHALL, J.), affirmed June 18, 2008.
Summerville *v.* State, CACR08-236 (GRIFFEN, J.), affirmed October 1, 2008.
Swafford *v.* Pocahontas Pub. Schs., CA08-111 (HART, J.), reversed and remanded October 1, 2008.
Tarter *v.* Webb, CA07-1019 (HUNT, J.), affirmed October 1, 2008.
Taylor, Craig L. *v.* State, CACR08-199 (GLOVER, J.), affirmed; Motion granted June 25, 2008.
Taylor, Nikshea S. *v.* State, CACR08-146 (BAKER, J.), affirmed October 1, 2008.
Terrell *v.* State, CACR08-542 (GLOVER, J.), affirmed October 22, 2008.

Thermoenergy Corp. *v.* Rock Capital, LLC, CA07-1035 (GLADWIN, J.), affirmed on direct appeal; affirmed on cross-appeal June 25, 2008.

Thomas *v.* State, CACR07-395 (PITTMAN, C.J.), Motion to Withdraw denied; rebriefing ordered June 25, 2008.

Torelli *v.* Goriparthi, CA08-201 (HEFFLEY, J.), affirmed October 8, 2008.

Trice *v.* State, CACR08-319 (ROBBINS, J.), affirmed October 8, 2008.

Vandiver *v.* Arkansas Dep't of Human Servs., CA08-91 (MARSHALL, J.), affirmed June 18, 2008.

Vaughan *v.* APS Servs., LLC, CA08-213 (GRIFFEN, J.), affirmed October 8, 2008.

Vaughn *v.* State, CACR08-230 (BAKER, J.), affirmed October 8, 2008.

Vela *v.* Djafarzadeh, CA08-363 (MARSHALL, J.), affirmed October 8, 2008.

Vicentic *v.* City of Hot Springs, CA08-68 (GLOVER, J.), affirmed September 3, 2008.

Vincent *v.* State, CACR06-777 (PITTMAN, C.J.), affirmed September 3, 2008.

Warren *v.* State, CACR08-107 (MARSHALL, J.), affirmed August 27, 2008.

Webb *v.* State, CACR07-948 (GLOVER, J.), reversed and remanded September 24, 2008.

Whirlpool Corp. *v.* Hedges, CA08-156 (GLADWIN, J.), affirmed October 1, 2008.

White, Clifton *v.* City of Little Rock, CA07-1350 (ROBBINS, J.), affirmed September 3, 2008.

White, Michael *v.* Arkansas Dep't of Human Servs., CA08-424 (HEFFLEY, J.), affirmed September 17, 2008.

Wilder *v.* State, CACR08-172 (VAUGHT, J.), affirmed September 10, 2008.

Williams, Andre *v.* State, CACR08-277 (HUNT, J.), affirmed September 10, 2008.

Williams, Anthony *v.* Williams, CA07-1323 (GLOVER, J.), affirmed September 17, 2008.

Williams, Gary *v.* State, CACR07-945 (GRIFFEN, J.), affirmed September 17, 2008.

Williamson *v.* Williamson, CA07-1172 (GLOVER, J.), affirmed June 25, 2008; substituted opinion on denial of rehearing August 27, 2008.

Wilson *v.* State, CACR08-255 (GLADWIN, J.), affirmed October 1, 2008.

Wine *v.* State, CACR07-1241 (HART, J.), affirmed; Motion to Be Relieved granted June 25, 2008.

Wise *v.* State, CACR07-1173 (VAUGHT, J.), rebriefing ordered June 25, 2008.

Worth *v.* State, CACR08-338 (ROBBINS, J.), affirmed October 22, 2008.

Yarbrough *v.* Mack, CA08-436 (HEFFLEY, J.), affirmed October 1, 2008.

Young *v.* Young, CA08-159 (MARSHALL, J.), affirmed September 3, 2008.

CASES AFFIRMED BY THE ARKANSAS COURT OF APPEALS WITHOUT WRITTEN OPINION PURSUANT TO RULE 5-2(B), RULES OF THE ARKANSAS SUPREME COURT

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Croney *v.* Director, E08-38, June 18, 2008.
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Glass *v.* Director, E08-53, September 10, 2008.
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Terry's Finer Foods, Inc. *v.* Director, E08-57, September 10, 2008.
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Finding of, order must be clear and definite, contempt was not proper in this case. *Knott v. Carr,* 162

Error declared where appellant was held in contempt, the error was lack of notice. *Sharp v. Keeler,* 233

No abuse of discretion where circuit court refused to clarify. *Rownak v. Rownak,* 258

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Enforcement of oral stipulations, appellant never assented to oral stipulations in open court. *Jenkins v. Jenkins,* 21

Interpretation must be upon the entire instrument, grant of summary judgment was error. *Knox v. Regions Bank,* 99

Tortious interference, appellants could not prove causation, summary judgment was proper. *Id.*

Arbitration agreement was enforceable, agreement contained mutual obligations. *Hot Spring County Med. Ctr. v. Arkansas Radiology Affiliates, P.A.,* 252

Arbitration agreement was enforceable, no agreement existed that would have altered the parties' mutual obligations. *Id.*

Contempt order merely effectuated parties' agreement, appellant requested the provision regarding religious upbringing of the parties' children. *Rownak v. Rownak,* 258

No miscarriage of justice, parties agreed as a contractual matter about children's religious upbringing, agreement was neither criminal nor a violation of public policy. *Id.*

CRIMINAL LAW:

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Computer child pornography, evidence was sufficient to establish that appellant believed the victim was only thirteen years old. *Kelley v. State,* 110

Internet stalking of a child, evidence was sufficient to establish that appellant knowingly arranged a meeting with the victim. *Id.*

Sufficiency of the evidence, there was substantial evidence to support appellant's conviction. *Warren v. State,* 124

Evidence was sufficient to convict appellant of first-degree battery. *Id.*

No constitutional double-jeopardy violation. *Id.*

Sufficiency of the evidence, single fingerprint on truck's exterior was not sufficient evidence to support convictions. *Turner v. State,* 248

Suspended imposition of sentence, terms and conditions, revocation of appellant's SIS was error. *Seamster v. State,* 305

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Construction of Rule 26.1(a), no absolute right to withdraw guilty plea. *Drake v. State,* 87

Search & seizure, no expectation of privacy in motel room. *Anderson v. State,* 137

Illegal arrest, no basis for setting aside conviction. *Weaver v. State,* 201

Illegal arrest, motion to dismiss was not proper vehicle to challenge the arrest. *Id.*

Denial of motion to suppress was reversed, there was no probable cause to stop appellant for traffic violation. *Hinojosa v. State,* 312

Mistake of law, *Travis v. State* distinguished. *Id.*

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Joint and several liability, even though damages attributable to each accident could not be

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Requirements of Ark. Code Ann. § 28-9-209 were not met, appellee was not a legal heir. *Defir v. Reed,* 319

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Hearsay, although the supreme court has not specifically stated that Ark. Code Ann. § 16-46-108 is an authorized hearsay exception, it has impliedly held the statute to be a valid exception. *Discover Bank v. Pommell,* 96

Affidavits, appellant met requirement under Ark. Code Ann. § 16-46-108 that the affidavit be filed with the clerk of the court at least fourteen days prior to trial. *Id.*

Affidavits, appellee made no argument that she did not receive prompt notice. *Id.*

Hearsay, circuit court abused its discretion in excluding evidence because Ark. Code Ann. § 16-46-408 is a valid hearsay exception, and appellant met the requirements for the exception. *Id.*

Motion in limine was proper, appellee did not enter a plea of guilty in open court. *Nixon v. Chapman,* 222

Expert witnesses, no abuse of discretion where opinion testimony was excluded. *Sharp v. Keeler,* 233

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Child support, adoption of stipulated arrearages was error. *Id.*

Child custody, jurisdiction, trial court lacked subject-matter jurisdiction. *Czupil v. Jernigan,* 132

Child support, malpractice settlement was considered income. *Fusher v. Fusher,* 158

Child support, proffered evidence regarding terms of settlement was properly excluded. *Id.*

Child custody, initial custody determination, best-interest determination was proper. *Hicks v. Cook,* 207

Child custody, resolution of custody determination was not based on appellant's involvement with Wicca, appellant lacked credibility. *Id.*

Child custody, due deference given to superior position of the trial court, mental health and physical condition were properly considered. *Id.*

Change of custody, no material change of circumstances. *Sharp v. Keeler,* 233

Change of custody, custodial parent's actions were not harming the child. *Id.*

Change of custody, best interest of the child, appellant had the burden of proof. *Id.*

FEES & COSTS:

Assessment of jury costs under Ark. Code Ann. § 16-34-102 improper in civil cases, appellant had no standing to challenge improper assessment against appellee. *Lackey v. Mays,* 70

Recovery of fees and costs related to preparation of supplemental materials for appellate court, although supplemental abstract and supplemental addendum prepared by appellee were helpful, appellate court declined to award any party any fees. *Id.*

JUDGMENT:

Summary judgment, statements conflicted with records, summary judgment on one aspect of culpability was reversed and remanded. *Lee v. Martindale,* 36

Summary judgment, expert's affidavit and deposition testimony were inconsistent, summary judgment was affirmed. *Id.*

Summary judgment, summary judgment affirmed, appellant's expert stated that standard of care was met, there was no basis on which to contradict radiologist's sworn statement. *Id.*

Collection of child-support arrearages, statute of limitations relied upon by appellant was not applicable. *Johns v. Johns,* 55

Summary judgment, testimony established that there was a factual issue precluding entry of summary judgment. *Knox v. Regions Bank,* 99

Summary judgment, applicability of forty-five day period, no allegation of prejudice. *Scroggin v. Scroggin,* 144

Default judgment, finding of fraud justified setting aside an unequal division of property in the divorce case. *West v. West,* 269

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Medical malpractice, amended complaint barred by statute of limitations. *Dachs v. Hendrix,* 184

Medical malpractice, wrongful death, individual claims could not be asserted, personal representative had been appointed. *Id.*

Medical malpractice, statute of limitations was not tolled. *Id.*

Medical malpractice, reliance on legislative history of Medical Malpractice Act was misplaced. *Id.*

Medical malpractice, minority tolling provisions did not apply, only a personal representative could bring the wrongful-death or survival action. *Id.*

NEGLIGENCE:

Duty of care to invitees, no duty existed where appellant knew about the condition of the parking lot and appreciated the dangers it involved. *Lackey v. Mays,* 70

Duty of care to invitees, no duty existed where risks related to presence of delivery service in shopping center and delivery-service driver in parking lot would have been apparent to a reasonable driver in appellant's position. *Id.*

Duty to invitees, obvious-danger exception applied because circumstances were not extraordinary. *Id.*

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Adoption, consent not required. *In re A.R. v. Brown,* 1

Adoption, notice requirements, appellant failed to show prejudice. *Id.*
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Termination of parental rights, procedural requirements were not met. *Tuck v. Arkansas Dep't of Human Servs.*, 263
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