

**Appointments to  
Committees**

**IN THE MATTER OF THE APPOINTMENT OF THE  
DIRECTOR OF PROFESSIONAL PROGRAMS**

750 S.W.2d LXVII

Supreme Court of Arkansas  
Delivered June 20, 1988

**PER CURIAM.** Christopher Thomas, Esquire, of Little Rock, is appointed to the position of Director of Professional Programs, effective July 15, 1988.

In that capacity, he shall have responsibility for development, implementation, and administration of our Mandatory Continuing Legal Education Program, as well as responsibility for implementation and administration of the Arkansas Plan of Specialization. The Director of Professional Programs shall also provide administrative support for such other programs and nonjudicial business of the Court as it may direct.

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**IN RE: SUPREME COURT COMMITTEE ON MODEL  
JURY INSTRUCTIONS, CRIMINAL**

751 S.W.2d LII

Supreme Court of Arkansas  
Delivered July 5, 1988

**PER CURIAM.** Circuit Judge Stark Ligon, Warren, Arkansas, is appointed to the Supreme Court Committee on Model Jury Instructions, Criminal, to serve at the pleasure of the Court.

IN THE MATTER OF APPOINTMENTS TO THE  
COMMITTEE ON RULES OF PLEADING, PRACTICE,  
AND PROCEDURE IN CIVIL CASES

751 S.W.2d LIII

Supreme Court of Arkansas  
Delivered July 5, 1988

PER CURIAM. The Committee of Rules of Pleading, Practice, and Procedure in Civil Cases was created by per curiam order of May 20, 1974, to draft rules of pleading, practice, and procedure to be used in all Arkansas courts in civil cases. The Arkansas Rules of Civil Procedure, the Arkansas Rules of Appellate Procedure, and the Arkansas Rules of Procedure in Inferior Courts resulted from the committee's initial efforts. By per curiam order of February 22, 1982, the committee was reinstated for the purpose of continuing to study the rules, advising the supreme court on the need for changes, and establishing guidelines for processing suggested changes.

It was important that the committee membership remain static during the initial drafting phase. However, now that the committee has assumed its advisory role, we deem it proper that the members be appointed for staggered terms, and that the membership be limited to twelve persons representative of a cross section of the bench and bar.

We notified the members of the committee of our decisions to establish terms and asked if any of those who had served so faithfully from the inception of the committee desired to discontinue their membership. To those members who are leaving the committee after fourteen years of exemplary service, we offer our sincere thanks and accolades for a job well done. They are: the Honorable Thomas F. Butt, the Honorable William H. Enfield, Walter B. Cox, who served as the original drafting reporter for the committee, O. Wendell Hall, and William H. Sutton.

Carolyn Witherspoon of Little Rock is appointed to a three year term on the committee. The other members of the committee who will continue to serve, and the terms for which they will serve, are:

Honorable Henry Wilkinson, Chairman, three years

Honorable Jim Gunter, three years

H. David Blair, three years

John P. Gill, two years

Kenneth Gould, two years

Philip Hickey, two years

Frank Huckaba, two years

Stephen A. Matthews, one year

Dennis L. Shackleford, one year

William R. Wilson, one year

Professor John J. Watkins will continue to serve as reporter and as a voting member of the committee, ex officio.

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IN THE MATTER OF THE BOARD OF LEGAL  
SPECIALIZATION

751 S.W.2d LVI

Supreme Court of Arkansas  
Delivered July 5, 1988

PER CURIAM. The term of the Honorable Richard Hatfield of Little Rock, Arkansas, has expired. The Honorable Terry Poynter of Mountain Home, Arkansas, is appointed to replace Mr. Hatfield for District 2. This appointment is for a term of three years ending in February, 1991.

The court expresses its gratitude to Mr. Hatfield for his faithful service.

IN THE MATTER OF THE CLIENT SECURITY  
FUND

751 S.W.2d LVII

Supreme Court of Arkansas  
Delivered July 5, 1988

**PER CURIAM.** George D. Ellis of Benton, Arkansas, is hereby appointed to the Client Security Fund Committee for a term expiring June 30, 1993.

The court expresses its gratitude to Ms. Meredith Catlett of Little Rock, Arkansas, for her faithful service.

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IN THE MATTER OF THE SUPREME COURT  
COMMITTEE ON RULES OF PLEADINGS,  
PRACTICE AND PROCEDURE IN CRIMINAL CASES

751 S.W.2d LV

Supreme Court of Arkansas  
Delivered July 5, 1988

**PER CURIAM.** The Honorable Gerald Pearson of Jonesboro, Arkansas, is hereby appointed chairman of our Committee on Rules of Pleadings, Practice and Procedure in Criminal Cases, replacing the Honorable William Enfield of Bentonville, Arkansas, as chairman. The Honorable Frank Newell, the Honorable Clint Miller, and the Honorable John Langston are also appointed as a member of this Committee.

The court expresses its gratitude to Judge Enfield for serving as chairman of this Committee and for his continuing faithful service as a member of this Committee.

**IN THE MATTER OF THE SUPREME COURT  
COMMITTEE ON RULES OF PLEADING, PRACTICE  
AND PROCEDURE IN CRIMINAL CASES**

752 S.W.2d 765

Supreme Court of Arkansas  
Delivered July 18, 1988

**PER CURIAM.** Dean Scott Stafford, Little Rock, Arkansas is appointed to the Supreme Court Committee on Rules of Pleadings, Practice and Procedure in Criminal Cases to serve at the pleasure of the court.

**APPENDIX**  
**Rules Adopted**  
**or Amended by**  
**Per Curiam Orders**

## IN RE: STATE BOARD OF LAW EXAMINERS

752 S.W.2d XLIX

Supreme Court of Arkansas  
Delivered July 18, 1988

PER CURIAM. Rule II of the Rules Governing Admission to the Bar is changed by this per curiam opinion. The more significant changes include: a \$25.00 processing fee for a printout to be mailed to the applicant showing all of the applicant's examination scores; authorization for the Board to release statistical data to the public, as long as the identity of the individual applicant is protected; and, the top examination paper in each subject shall be made available for examination by all applicants.

Effective immediately, Rule II shall provide:

RULE II. TIME AND PLACE OF  
EXAMINATION

The Board shall hold semiannual examinations of applicants to be given in the months of February or March and July or August of each year at the State Capitol, or other designated place, in Little Rock. The Board shall meet semiannually following said examination for the purpose of grading the examination papers and certifying the grades thereon. The grades on such examinations shall be certified to the Clerk of the Court within 30 days following the giving of the examination.

The Board may meet at such other times as it may designate to carry out its duties specified herein.

The activities, files and records of the Board shall be kept confidential except in the following instances:

- a. Public hearings required under these rules;
- b. The certification of names and addresses of all applicants who complete the examination and whether they have passed the examination;
- c. Upon written request of an applicant and payment of a \$25 processing fee, the Executive Secretary shall send to the applicant by certified mail, return receipt requested, restricted delivery to addressee only, a list showing the



examination grades awarded the applicant. The written request must be made within six months following the certification of examination results to the Court;

d. When necessary for disbarment suit, release of statistical data, or in defense of litigation brought against the Executive Secretary, the Board, or members of the Board;

e. Such statistical data as the Board deems proper, protecting the identity of the individual applicant;

f. The top examination paper in each subject examined shall be available for review in the Office of the Clerk of the Court, but the name of the author shall not be disclosed;

g. Any information furnished to the Board or its Executive Secretary in connection with any application shall be confidential unless the person furnishing that information waives its confidentiality in writing. Any proceeding at which the testimony of witnesses is being taken under oath shall be open to the public and all evidence considered by the Board at such a proceeding shall be public.

HICKMAN and HAYS, JJ., dissent.

DARRELL HICKMAN, Justice, dissenting. The records that we keep and the records our committees have are all public records and should be available for public examination. When a lawyer seeks a public license to practice law, it becomes a matter of public interest, and all records regarding that application should be public. That includes the grade the individual makes on the examination.

Only for good sensible reasons and in extraordinary cases should any public record be secret or access limited.

I find no justification to keep secret the individual grades made by applicants for a public license to practice law.

HAYS, J., joins in the dissent.

IN THE MATTER OF ARKANSAS RULES OF  
APPELLATE PROCEDURE 3(b)

755 S.W.2d LXXV

Supreme Court of Arkansas  
Delivered September 19, 1988

PER CURIAM. In *Johnson v. Carpenter*, 290 Ark. 255, 718 S.W.2d 434 (1986), we stated clearly that appeals were not to be dismissed by trial courts. There is one exception to that statement. A trial court should have the power to dismiss an appeal before the record is docketed with this court or the court of appeals if all parties to the appeal stipulate that it is to be dismissed and they petition the trial court to dismiss it. The second sentence of Ark. R. App. P. 3(b) is changed, effective this date, to read as follows:

If, however, the record on appeal has not been filed pursuant to Rule 5, the trial court in which the notice of appeal was filed may dismiss the appeal or cross appeal upon petition of all parties to the appeal or cross appeal accompanied by a joint stipulation that the appeal or cross appeal is to be dismissed.

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IN RE: APPOINTMENT OF COUNSEL IN CRIMINAL  
CASES

756 S.W.2d LXXII

Supreme Court of Arkansas  
Delivered October 3, 1988

PER CURIAM. Because appellants in criminal cases are entitled to counsel on direct appeal from a judgment of conviction and on the appeal of an order denying relief under A.R.Cr.P. Rule 37, this Court on occasion must appoint attorneys to represent indigent appellants. Attorneys who are desirous of such appointments should register with Sue Newbery, Criminal Justice Coordinator, Arkansas Supreme Court, Justice Building, Little Rock, AR 72201 (682-1637). Counsel will be paid a fee after

determination of the case, upon a proper motion.

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IN THE MATTER OF REVISION OF THE RULES OF  
THE SUPREME COURT AND COURT OF APPEALS  
OF THE STATE OF ARKANSAS

757 S.W.2d LVIII

Supreme Court of Arkansas  
Delivered October 17, 1988

PER CURIAM. For some time the members of this court have been concerned about whether our system requiring abstracting of the record is worth the effort lawyers must devote to it, and thus the money litigants must invest in it, in each case. We are aware that most state and federal appellate courts have a system which does not require abstracting the record but permits necessary parts of the record to be presented with each brief in the form of an appendix. We have examined the requirements of some of those courts, and the bulk of the changes to our rules set out below are designed to implement such a system for this court and the Arkansas Court of Appeals.

The appendix system used elsewhere and proposed below permits an appellant or petitioner to include with the brief copies of pages of the record of trial which are crucial to decision of the case on appeal or before us on some sort of petition. The factual background necessary to decision of a legal question can always be set out in the statement of the case, and the appellant or petitioner will be required to furnish an appendix containing certain items, such as the trial court's order of judgment. The appellant or petitioner may wish to provide additional copies of parts of the trial transcript to buttress the statement of the case. If there is a disagreement with respect, for example, to the words used in the testimony of a witness or in the words spoken or written by the court, the parts of the record copied and presented in the appendix to the appellant's or petitioner's brief can be used by each appellate judge to resolve the matter without having to go to the original record.

We considered the possibility of using the so called "joint appendix" used in some other courts, but we are not proposing it

because we think enough efficiency can be achieved by allowing the responding party to furnish an appendix to which reference may be made to provide a basis to settle any dispute. We also were put off by the rules necessary to foster an agreement between litigants as to what should be in a joint appendix.

The first step we wish to take in implementation of this change is to solicit the written comments of members of the bench and bar. We hope to receive not only general remarks of approval or disapproval but specific suggestions with respect to the language of the rules changes we set out below. Comments should be addressed to:

Clerk, Attn. Rules Changes  
Arkansas Supreme Court  
Justice Building  
Little Rock, AR 72201

We will accept comments and suggestions between this date and December 15, 1988. Unless altered, suspended, or revoked, by further order of this court, the following changes in the Rules of the Arkansas Supreme Court and Court of Appeals will become effective January 1, 1989.

Because the change we propose is a major one for all concerned, we think a trial period would be appropriate. If the changes designed to implement the appendix system come into effect, we will evaluate the new system after a reasonable time. If it is our opinion that it does not work as well as the former abstracting system, we will simply revoke the change. We will, of course, be receptive to written comments addressed as above on the way the new system is working once it is in effect.

*Rule 4 (c)*

Rule 4 (c) is amended to change the statutory reference to: Ark. Code Ann. § 16-67-321 (1987).

*Rule 7 (a), (b), and (g)*

The title of Rule 7 is amended to read: Briefs; Filing and Service.

The first sentence of subsection (a) is amended to read: Appellant's Brief. — In all civil cases the appellant shall, within 40 days of lodging the record, file 17 copies of the appellant's brief with the clerk of the supreme court and court of appeals and

furnish evidence of service upon opposing counsel. Each copy of the appellant's brief shall contain every item required by Rule 9 of these rules.

Subsection (b) is amended to read: Appellee's Brief. — The appellee shall file 17 copies of the appellee's brief within 30 days after the appellant's brief is filed and furnish evidence of service upon opposing counsel. If the appellee's brief has an appendix, it shall be included in each copy of the brief.

Subsection (g) is amended to read: Briefs Furnished to Trial Judge. — It shall be the duty of the appellant and of the appellee, upon filing any brief in this court, to furnish a copy thereof to the trial judge who heard the case.

*Rule 8, Title, (a) and (b)*

The title of Rule 8 is amended to read: Briefs; Length, Size, Printing, Typing, and Duplicating.

The title and first sentence of subsection (a) are amended to read: Printed Briefs — Size — Paper — Type. — Briefs which are printed shall be of uniform size, in standard pica type, or equal, on opaque, unglazed white paper 6¾ by 10 inches.

The title and first sentence of subsection (b) are amended to read: Typewritten Briefs — Size — Paper — Type. — Briefs which are typewritten shall be of uniform size, in standard pica type, or equal, on opaque, unglazed white paper 8½ by 11 inches and firmly bound on the left hand margin by staples or other binding devices.

*Rule 9, Title, (a), (b), (d), (e), (f), and (g)*

The title of Rule 9 is amended to read: Briefs; Contents.

Subsection (a) is amended to read: Indexing. — The brief shall include an index, including an index of the appendix, at the beginning. If the appendix is bound separately, it shall be indexed separately at its beginning, and the appendix index need not be included in the brief.

Subsection (b) is amended to read: Jurisdictional Statement and Statement of the Case. — After any jurisdictional statement required in supreme court cases by Rule 29 (2), the appellant's brief shall contain a concise statement of the case, without argument. This statement should provide the court an under-

standing of the nature of the case. It should summarize the evidence presented at the trial or hearing and should discuss the evidence in detail only when necessary to an understanding of the issue or issues being presented to the appellate court. The appellee's brief need not contain a statement of the case unless the appellant's statement is controverted or deemed insufficient. References to the testimony of named witnesses shall be made to the page of the designated record and the page of the appendix at which the testimony appears.

Subsection (d) is amended to read: Appendix. — Following the argument portion of the appellant's brief, the appellant shall include an appendix, consisting of those portions of the designated record (see Rule 12 of these Rules and Ark. R. App. P. 6) the appellant deems dispositive of or directly relevant to the issue or issues on appeal. If an issue on appeal is sufficiency of the evidence to support a factual determination, only the portion of testimony and documents of record necessary to verify the statement of the case shall be included in the appendix. Each item in the appendix shall be a verbatim copy from the record and each page of the appendix shall be clearly identified by reference to the page at which it appears in the designated record. Although the appendix is a part of the brief, it shall be paginated separately, and the parties may refer to it by page number, *e.g.* "appellant's appendix, p.3." The appendix shall include, in the following order:

- (i) an index if the appendix is bound separately;
- (ii) relevant pleadings;
- (iii) relevant testimony and exhibits;
- (iv) relevant written motions and orders;
- (v) the verdict or findings of fact, conclusions of law and order for judgment;
- (vi) relevant post trial motions and orders;
- (vii) any relevant memorandum opinions of the trial court and any opinion of the Arkansas Court of Appeals if a decision of that court is to be reviewed;

- (viii) if the trial court's instructions are challenged on appeal, the instructions, any portion of the transcript containing a discussion of the instructions, and any relevant requests for instructions;
- (ix) the notice of appeal as well as the petition for review if the case has been decided by the Arkansas Court of Appeals.

Subsection (e) is amended to read: Appellee's Appendix. — The appellee's brief may include an appendix if the appellee finds that the appellant's appendix is insufficient to provide the documents necessary to understand the case. The appellee's appendix need not contain all of the items required in (d) above for the appellant's appendix, but shall contain only copies of those parts of the record, other than those in the appellant's appendix, deemed by the appellee to be necessary to understand the case or resolve factual disputes.

Subsection (g) is amended to read: Cover for Briefs. — On the cover of every brief there shall appear the number and style of the case in the supreme court or court of appeals, a designation of the court from which the appeal is taken, and the name of its presiding judge, the title of the brief (e.g., Brief for Appellant), and the name or names of counsel filing the brief.

#### *Rule 10*

The first sentence of Rule 10 is amended to read: If a brief has not been filed by the appellant in a civil case within the time allowed by Rule 7 of these rules, the court may dismiss the appeal or affirm the judgment or decree.

#### *Rule 11, Title, (a), (f), and (g)*

The title of Rule 11 shall read: Briefs; Criminal Cases.

Subsection (a) is amended to read: Briefs in Chief — When the State Is the Appellee. — In criminal cases in which the state is the appellee, the appellant shall, within 40 days after the transcript is lodged, file with the clerk of the supreme court and court of appeals 17 copies of the appellant's printed or typewritten brief as in civil cases and submit proof of service of two additional copies on the Attorney General, who shall have 30 days after the filing of the appellant's brief to file 17 copies of the

State's brief including such further appendix as may be necessary to a fair determination of the case, and who shall furnish evidence of service of a copy of the State's brief upon opposing counsel.

Subsection (f) is amended to read: **Appellant's Duty to File Brief.** — The argument portion of the appellant's brief shall not exceed 25 double-spaced typewritten pages or 30 printed pages, with a similar 15 typewritten and 20 printed page limit upon the reply brief, except that either limitation may be waived on motion stating that the appellant has attempted to draft the brief within the limits and has failed to be able to do so, giving reasons. The State's brief shall comply with the same limits and exception. See subparagraph (g) with respect to indigents' briefs.

When the sentence is death or life imprisonment, the court will review all errors prejudicial to the appellant. At the close of the argument portion of the appellant's brief, the appellant will list, with references to the record and appendix, all objections, decided adversely to the appellant, which were not discussed in the argument portion of the brief. The Attorney General will make certain that all such objections have been noted by the appellant and will list any omitted and brief all points argued by the appellant and any other points favorable to the appellant deemed by the Attorney General to have merit.

Subsection (g) is amended to read: **Briefs for Indigent Appellants.** — When an indigent appellant is represented by appointed counsel or a public defender, his attorney may have the brief prepared for submission by submitting the typed, double-spaced, manuscript to the Attorney General not later than the due date of the brief.

*Rule 16 (c)*

Rule 16 (c) is amended to read: **Briefs — Time for Filing.** — Briefs are required as in other cases. The time for filing briefs, as provided in Rule 7, is to be calculated from the date on which the petition is filed.

*Rule 17 (b)*

Rule 17 (b) is amended to read: **Issues of Law Only Involved.** — When the issues involve questions of law only, the parties shall file briefs as in other cases. The time for filing briefs is to be calculated, as provided in Rule 7, from the date on which the issues are joined.



*Rule 20 (e) and (h)*

Subsection (e) is amended to read: **Petition — Form.** The petition and supporting brief, if any shall conform to the formal requirements for briefs found in Rule 8.

Subsection (h) is amended to read: **Matters of Fact.** — In no case will a petition for rehearing be granted when based on a fact alleged to have been overlooked by the Court, unless reference has clearly been made to it in the petitioner's brief.

*Rule 24 (e)*

Subsection (e) is deleted.

HICKMAN, J., dissents.

DARRELL HICKMAN, Justice, dissenting. Not all of us are concerned. H. G. Wells said the urge to edit is almost irresistible; Little Rock lawyer Walter Davidson says it is irresistible. I would leave the rules alone. We have the best appellate procedure in America. Copying mediocrity will not improve our system.