

APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

IN THE MATTER OF RULES OF THE SUPREME
COURT AND COURT OF APPEALS OF THE STATE
OF ARKANSAS 29(6)

759 S.W.2d XXVII

Supreme Court of Arkansas
Opinion delivered November 21, 1988

PER CURIAM. Rule 29(6) of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas is amended this date to include the following as the penultimate paragraph:

Responses to petitions for review must be filed within 10 days of the filing of the petition. Responses are subject to the same page, briefing, and argument limitations as petitions for review. A response may have attached to it the response to the petition for rehearing filed in the Court of Appeals.

IN THE MATTER OF STATUTES DEEMED
SUPERSEDED BY THE ARKANSAS RULES OF CIVIL
PROCEDURE

759 S.W.2d XXVIII

Supreme Court of Arkansas
Opinion delivered November 21, 1988

PER CURIAM. Added to the list of statutes deemed superseded by the Arkansas Rules of Civil Procedure are the following sections as codified in the Arkansas Code Annotated (1987): §§ 16-44-101 through 16-44-106; 16-44-107(b); 16-44-109 through 16-44-113; 16-44-115; and 16-44-121.

As a result of this order and the order of November 24, 1986, *In the Matter of Statutes Deemed Superseded by the Arkansas Rules of Civil Procedure*, 290 Ark. 616, 719 S.W.2d 436 (1986), Subchapter 1 of Title 16 of Chapter 44 of the Arkansas Code of

1987 has been deemed superseded in its entirety.

IN THE MATTER OF CHANGES TO THE
ARKANSAS RULES OF CIVIL PROCEDURE AND
THE ARKANSAS RULES OF APPELLATE
PROCEDURE

759 S.W.2d XXIX

Supreme Court of Arkansas
Opinion delivered November 21, 1988

PER CURIAM. The Arkansas Supreme Court Committee on Rules of Pleading, Practice, and Procedure (Civil) has submitted its annual suggestions for changes in the rules. We adopt the suggested changes which follow. They will become effective January 1, 1989. By another order published this date, we also accept the committee's suggestions with respect to statutes to be added to the list of those we deem superseded because they have been supplanted by the rules.

We will be pleased to receive comments and suggestions about these changes from the members of the bench and bar. Persons who wish to make suggestions about these changes may do so by letter directly to this court. If members of the bench and bar, or indeed any persons, have comments or suggestions or proposals for changing the rules, generally, they should be made by letter to the committee reporter at the following address:

Professor John J. Watkins
Leflar Law Center
Waterman Hall
Fayetteville, Arkansas 72701

This court continues to appreciate the hard work and dedication of the committee chairman, Circuit Judge Henry Wilkinson, the committee reporter, Professor John J. Watkins, and the members of the committee who give generously of their time and talent to keep our procedural rules up to date.

Rule 4, Ark. R. Civ. P.

Rule 4, Arkansas Rules of Civil Procedure, is amended as follows:

(1) By deleting subdivision (c) of the rule and replacing it with the following:

(c) *By Whom Served*: Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy; (2) any person not less than eighteen years of age specially appointed by the court for the purpose of serving a summons; (3) any person not less than eighteen years of age who is not a party to the litigation instituted by the filing of the complaint; and (4) in the event of service by mail pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

(2) By designating subdivision (d)(8) of the rule as paragraph (A) of subdivision (d)(8) and by adding the following as a new paragraph (B):

(B) Alternatively, service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5) and (7) of this subdivision of this rule may be made by the plaintiff or an attorney of record for the plaintiff by mailing a copy of the summons and the complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to a form adopted by the Supreme Court and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service is received by the sender within twenty days after the date of mailing, service of such summons and complaint shall be made pursuant to subdivision (c)(1)-(3) of this rule in the manner prescribed by subdivisions (d)(1)-(5) and (d)(7). Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within twenty days after mailing, the notice and acknowledgment of receipt of summons. The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

The following amendment to the Reporter's Note accompanying Rule 4 is adopted:

Addition to Reporter's Note, 1988 Amendment: Rule 4 is amended in an effort to expand the options for service of process. Under amended Rule 4(c)(3), a new class of persons — anyone not less than eighteen years of age who is not a party — may serve the summons and complaint. The federal rules contain a similar provision. *See* Rule 4(c)(2)(A), Fed. R. Civ. P. As under prior Arkansas practice, the rule also permits the sheriff, a deputy sheriff, or any person specially appointed by the court to serve the summons and complaint, though the amendment makes clear that a person so appointed must not be less than eighteen years of age. The prior provision permitting service by "any other person authorized by law to serve summons" has been deleted as unnecessary, particularly in light of new subdivision (c)(3). New subdivision (c)(4), which applies in the event of service by mail, tracks the language of subdivision (d)(8) and was added here for the sake of clarity.

Amended Rule 4(d)(8) establishes an alternative method for service of process by mail. New paragraph (B) of this subdivision is virtually identical to the corresponding federal rule. *See* Rule 4(c)(2)(C)(ii), (D) & (E), Fed. R. Civ. P. Because new paragraph (B) supplements rather than supplants the prior service-by-mail provision now found in paragraph (A) of subdivision (d)(8), practitioners may choose the method they consider the most workable. The federal courts also allow this choice, since Rule 4(c)(2)(C)(i), Fed. R. Civ. P., allows service in accordance with the law of the state in which the federal court sits.

The following form is adopted to accompany the service-by-mail provision of Rule 4(d)(8)(B):

**NOTICE AND ACKNOWLEDGMENT FOR
SERVICE BY MAIL**

[Caption]

NOTICE

To: (insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within the time specified in the summons. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

Signature

Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS
AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (insert address).

Signature

Relationship to Entity/
Authority to Receive Service
of Process

Date of Signature

Rule 6, Ark. R. Civ. P.

Rule 6(d), Ark. R. Civ. P., is amended by adding the following sentence at the end of the subdivision:

Provided, however, that this subdivision shall not extend the time in which the defendant must file an answer or preanswer motion when service of the summons and complaint is by mail in accordance with Rule 4.

The following amendment to the Reporter's Note accompanying Rule 6 is adopted:

Addition to Reporter's Note, 1988 Amendment: Rule 6(d) is amended to make plain that a defendant does not have an extra three days to file an answer or preanswer motion under Rule 12 when the summons and complaint are served by mail pursuant to Rule 4. Allowing a defendant an additional three days to answer in the event of service by mail would be a "bonus" not available to a defendant served by another method. Under Rule 12(a), a defendant must answer or file a preanswer motion within a given number of days "after the service of summons and complaint upon him." The specified time period thus begins to run when the defendant receives the summons and complaint, irrespective of the manner in which it is served. Rule 6(d) continues to apply with respect to pleadings and papers other than the complaint, however, for service of these materials by mail is presumptively complete upon mailing, Rule 5(b), Ark. R. Civ. P. Thus, the three-day

extension provided by Rule 6(d) is necessary to compensate for the “lag time” between the mailing of these papers and their delivery.

Rule 68, Ark. R. Civ. P.

Rule 68, Ark. R. Civ. P., is amended by adding the following after the last sentence:

For purposes of this rule, the term “costs” is defined as reasonable litigation expenses, excluding attorney’s fees.

The following amendment to the Reporter’s Note accompanying Rule 68 is adopted:

Addition to Reporter’s Note, 1988 Amendment: The amendment broadens the definition of the term “costs” for purposes of this rule. In *Darragh Poultry & Livestock Equipt. Co. v. Piney Creek Sales, Inc.*, 294 Ark. 427, 743 S.W.2d 804 (1988), the Supreme Court held that, as used in this rule, the term “costs” is limited to costs authorized by statute, a result consistent with prior cases adopting a narrow definition of the term in other contexts. However, a broader approach is warranted with respect to this rule, which is designed to encourage early settlement. The amended rule thus permits assessment of not only those costs authorized by statute, but also reasonable expenses typically incurred in the course of litigation. As a result, expenses disallowed under *Darragh* — e.g., meals and lodging — are now available under the amended rule. Attorney’s fees, however, are expressly excluded from the new definition.

Rule 3, Ark. R. App. P.

The following amendment to the Reporter’s Note accompanying Rule 3 is adopted:

Addition to Reporter’s Note, 1988 Amendment: Under the amendment, which revises the last sentence of Rule 3(b), the trial court has authority to dismiss an appeal before the record is docketed in the appellate court only if all parties so stipulate and petition the trial court for dismissal. Absent such a stipulation, a party wishing to dismiss an appeal must file a partial record in the appellate court and move for dismissal there. *See Norfleet v. Nor-*

fleet, 223 Ark. 751, 268 S.W.2d 387 (1954). The amendment works a significant change in the rule, which, as amended in 1986, permitted the trial court to dismiss an appeal, prior to the docketing of the record, upon motion of a party.

IN RE SUSPENSION OF THE CHANGE FROM
ABSTRACT TO APPENDIX SYSTEM

761 S.W.2d LXXXIV

Supreme Court of Arkansas
Delivered December 19, 1988

PER CURIAM. By per curiam order of October 17, 1988, entitled "In the Matter of Revision of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas," we proposed a new system for presenting an abbreviation of the record on appeal. The order provided that the change would become effective January 1, 1989, unless altered, suspended, or revoked before that date.

We hereby suspend the order temporarily so that we may consider another proposal in conjunction with the change from abstracting the record to presenting it in the form of an appendix. We wish to consider changing our Rule 12 so that all records of trial will be on 8½" by 11" paper. We believe such a change may be practical. If we require all briefs to be on paper of that size, appendices and briefs may easily be bound together. That may require elimination of the 6¾" by 10" printed briefs.

Rather than consider, and perhaps adopt, these changes piecemeal we will review these related proposals simultaneously and work toward publication of a per curiam order addressing both of them.

IN RE William Birney BARRY

762 S.W.2d 389

Supreme Court of Arkansas
Delivered January 9, 1989

PER CURIAM. On recommendation of the committee on Professional Conduct, the Court accepts the surrender by William Birney Barry of his license to practice law.

IN THE MATTER OF RULE 18(a) OF THE RULES OF
THE ARKANSAS SUPREME COURT AND COURT
OF APPEALS

763 S.W.2d LXXVI

Supreme Court of Arkansas
Delivered January 17, 1989

PER CURIAM. Rule 18(a) of the Rules of the Arkansas Supreme Court and Court of Appeals is amended to clarify the requirement for requesting oral argument. We find it advisable to clarify the rule because some parties have assumed that a request for oral argument included in a brief will suffice. The intent of the rule is that there be a separate, written request filed with the clerk, therefore, the first paragraph of Rule 18(a) is amended to read as follows:

(a) Request Made in Time. — Where either side desires to make an oral argument in any case, counsel shall give the Court and opposing counsel written notice by letter, separate from any brief, filed with the Clerk not more than five days after appellant's reply brief is filed or becomes due, whichever occurs first.

IN THE MATTER OF RULE 29.6. OF THE RULES OF
THE ARKANSAS SUPREME COURT AND COURT
OF APPEALS

763 S.W.2d LXXVII

Supreme Court of Arkansas
Delivered January 17, 1989

PER CURIAM. It has come to our attention that on infrequent occasions it may be desirable for this court to have supplemental briefs in cases accepted for review from the Arkansas Court of Appeals. The need may arise, for example, when the court of appeals has based its decision on a matter not argued to it by the parties.

We add the following paragraph to Rule 29.6. of the Rules of the Arkansas Supreme Court and Court of Appeals to permit supplemental briefs upon the granting of the motion of a party:

Any party may request permission to submit a supplemental brief by motion, filed with the Clerk and served upon all other parties, within two weeks after the granting of review. The moving party's brief shall be due twenty days from the granting of the motion. Other parties may file responsive supplemental briefs within ten days of the date the moving party's supplemental brief is filed. A reply brief may be filed within five days after the filing of a responsive supplemental brief. No supplemental brief, responsive supplemental brief, or reply brief submitted pursuant to this rule shall exceed ten pages in length. These briefs shall otherwise conform to the requirements of Rule 8. Oral argument may be requested not more than five days after a reply brief is served or becomes due, whichever occurs first. The request for oral argument shall be by letter, separate from any brief, filed with the Clerk and served upon all parties.

IN THE MATTER OF THE MODEL RULES OF
PROFESSIONAL CONDUCT

761 S.W.2d LXXXII

Supreme Court of Arkansas
Delivered January 23, 1989

PER CURIAM. The Model Code of Professional Responsibility EC 2-20 (1980) provides that because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations are rarely justified. *See also Stuart M. Speiser, 1 Attorneys' Fees*, §§ 2.6 and 2.28 (1973). In fact, this court has held that contingent fee contracts in domestic relations cases that might tend to prevent reconciliation between a husband and wife are void or against public policy. *See McDearmon v. Gordon & Gremillion*, 247 Ark. 318, 445 S.W.2d 488 (1969); *McConnell v. McConnell*, 98 Ark. 193, 136 S.W. 931 (1911). Accordingly, Rule 1.5(d) of the Arkansas Model Rules of Professional Conduct provides that a lawyer shall not enter into an arrangement for, charge, or collect any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof.

Presently, our model rules fail to address whether a lawyer may enter into such a contingent fee arrangement to collect support arrearages that have accrued pursuant to a final order or decree that previously established or awarded support or alimony. Federal law, however, has been enacted to facilitate the enforcement of child support orders and decrees and in doing so, provides that states be paid a percentage of all collections made on behalf of children receiving AFDC and are also allowed to recover their costs of collection from support payments made on behalf of children not receiving AFDC. *See 42 USC §§ 655-658* (Supp. 1988). Contingent fee contracts entered into between attorneys and clients for the collection of support arrearages clearly do not confront the same public policy consideration as those agreements which made a fee dependent upon securing a divorce or minimum support, alimony or property amounts. Instead, such agreements entered for collection of support arrearages provide an incentive for attorneys to take such cases when often the custodial parent has little or no money to retain an

attorney to file the required post-decretal action.

For the foregoing reasons, Rule 1.5(d) of the Model Rules of Professional Conduct, as adopted by our per curiam of December 16, 1985, is amended to read as follows:

A lawyer shall not enter into an arrangement for, charge, or collect:

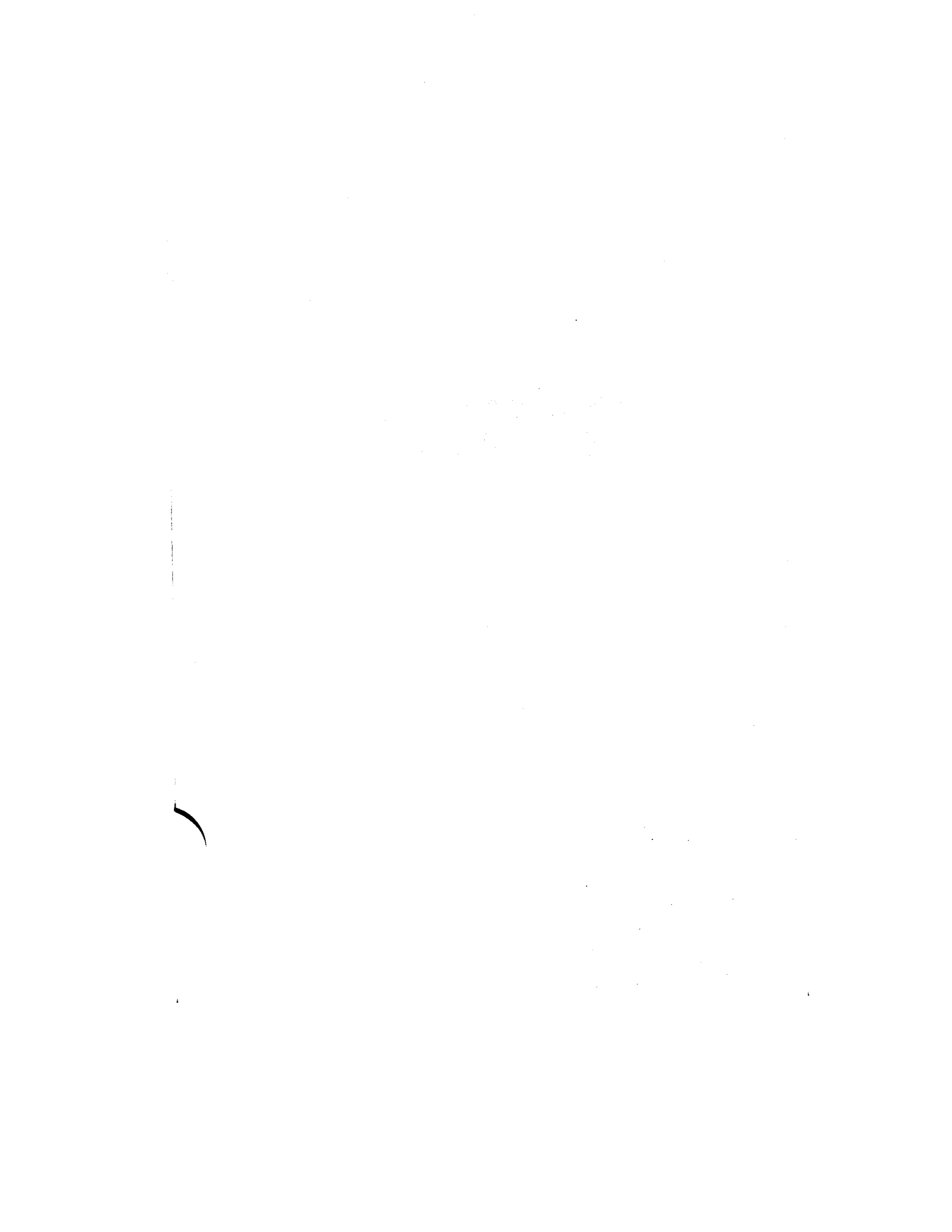
(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof. Provided, however, after a final order or decree is entered an attorney may enter into a contingent fee contract for collection of payments which are due pursuant to such decree or order; or

IN THE MATTER OF THE REINSTATEMENT OF
James Michael HANKINS

Supreme Court of Arkansas
Delivered January 30, 1989

763 S.W.2d 94

PER CURIAM. Upon recommendation of the State Board of Law Examiners, the license of James Michael Hankins to practice law is ordered reinstated.



Appointments to Committees

IN RE: ARKANSAS BAR ASSOCIATION RULES AND
REGULATIONS FOR MANDATORY CONTINUING
LEGAL EDUCATION

88-302

759 S.W.2d LII

Supreme Court of Arkansas
Opinion delivered December 5, 1988

PER CURIAM. In an order of May 30, 1986, we approved the concept of Mandatory Continuing Legal Education. Subsequently, by way of an order on June 20, 1988, we appointed Christopher Thomas as Director of Professional Programs to develop, implement, and administer a continuing legal education program. His report to the Court, and proposed rules, were filed with the Supreme Court Clerk on September 23, 1988.

Those proposed rules suggest the creation of the Arkansas Continuing Legal Education Board, which is composed of nine voting members, and, three non-voting ex-officio members.

Prior to adoption of any final rules on this subject, we hereby appoint the Arkansas Continuing Legal Education Board as follows:

<u>Board Member</u>	<u>Arkansas Court of Appeals District</u>
1. Harry Trumann Moore	First
2. Odell Pollard	Second
3. Robert Cloar	Third
4. John Stroud	Fourth
5. Circuit Judge H.A. Taylor	Fifth
6. Russ Meeks	Sixth

At Large Board Members

<u>Board Member</u>	<u>Residence</u>
1. Jerry Malone	Little Rock
2. Donna Gay	Little Rock
3. Robin Mays	Little Rock

Ex-Officio Members

<u>Board Member</u>	<u>Institution</u>
1. Dennis Shackelford	President, Arkansas Institute for Continuing Legal Education
2. Jake Looney	Dean, University of Arkansas at Fayetteville Law School
3. Lawrence Averill, Jr.	Dean, University of Arkansas at Little Rock Law School

The Board shall convene at the earliest opportunity. As suggested by Rule 1 of the rules proposed by the Director of Professional Programs, the Board shall elect a chairman from among its voting members, and, the voting members shall draw for staggered three year terms.

The Board shall review the report to the Court, and proposed rules, which have previously been filed by the Director of Professional Programs. The Board may also review such other materials, and consult such other sources, such as the bench and bar, as it may consider necessary. The Director of Professional Programs shall offer administrative and clerical support in this endeavor.

Thereafter, the Board shall file with this Court its comment concerning the proposed rules. The Board is free to make any suggested modifications, or additions, as it may consider appropriate.

IN THE MATTER OF THE BOARD OF LAW
EXAMINERS

760 S.W.2d 382

Supreme Court of Arkansas
Opinion delivered December 5, 1988

PER CURIAM. Webb Hubbell, Little Rock, Arkansas, is hereby appointed to the Arkansas State Board of Law Examiners to fill the unexpired term of James R. Wallace, Little Rock, Arkansas, ending September 30, 1991.

The Court expresses its gratitude to James R. Wallace for his faithful service to the Board.

ARKANSAS JUDICIAL DISCIPLINE AND
DISABILITY COMMISSION

761 S.W.2d LXXXV

Supreme Court of Arkansas
Delivered January 17, 1989

PER CURIAM. Arkansas Constitution amendment 66 provides that under the judicial power of the State, a Judicial Discipline and Disability Commission is established and shall be comprised of nine persons, three of whom are to be appointed by this Court who are either justices or judges, together with three alternate members.

This constitutional amendment further provides that this Court shall make procedural rules implementing this amendment and setting the length of terms on the Commission.

Prior to the adoption of any final rules on this subject, we hereby appoint the following persons to the Commission:

<i>Commission Member</i>	<i>Alternate Commission Member</i>
1. Chancellor Tom Butt	Judge George Cracraft, Court of Appeals

- | | |
|--------------------------------------|------------------------------|
| 2. Circuit Judge Stark
Ligon | Circuit Judge Harry Barnes |
| 3. Municipal Judge
Edwin Alderson | Chancellor Annabelle Clinton |

IN THE MATTER OF THE COMMITTEE ON THE
UNAUTHORIZED PRACTICE OF LAW

763 S.W.2d LXXIX

Supreme Court of Arkansas
Delivered January 17, 1989

PER CURIAM. Mr. John Lewis, Fayetteville, Arkansas, is hereby appointed to our Committee on the Unauthorized Practice of Law, replacing Wayne Hartsfield, Searcy, Arkansas.

The court expresses its gratitude to Wayne Hartsfield, for his faithful service as a member of this Committee.

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

763 S.W.2d LXXVIII

Supreme Court of Arkansas
Delivered January 17, 1989

PER CURIAM. Bobby R. McDaniel, Jonesboro, Arkansas, is hereby appointed to our Committee on Rules of Pleadings, Practice and Procedure in Criminal Cases, replacing H. William Allen, Little Rock, Arkansas.

The court expresses its gratitude to H. William Allen for his faithful service as a member of this Committee.