

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

IN RE: ARKANSAS BAR ASSOCIATION Rules and  
Regulations for Mandatory Continuing Legal Education

85-302

766 S.W.2d 415

Supreme Court of Arkansas  
Delivered March 6, 1989

PER CURIAM. On December 5, 1985, pursuant to Amendment 28 of the Constitution of the State of Arkansas, the Arkansas Bar Association filed a petition asking this Court to adopt a mandatory continuing legal education program for the Bar of Arkansas. By Per Curiam orders of December 23, 1985, and March 24, 1986, we sought and received comment. Subsequently, by Per Curiam order of May 30, 1986, this Court approved the concept of mandatory continuing legal education. However, we concluded it would be inadvisable to implement such a program pending development of adequate administrative controls.

On November 23, 1987, we issued a Per Curiam order, with a dissent from Justice Hickman, wherein bar dues were increased to fund an office to administer continuing legal education, specialization, and such other matters as the Court may direct.

We note that the Bar of Arkansas, as represented by the Arkansas Bar Association, the Arkansas Trial Lawyers Association, the Arkansas Judicial Council, Inc., and others who filed comments, is generally supportive of the implementation of a minimum continuing legal education program for Arkansas. It is evident that other states are moving in this direction in that, as of this date, thirty-two states have adopted such programs. On June 20, 1988, we appointed Christopher Thomas as Director of the Office of Professional Programs. His mandate was to develop, implement, and administer a continuing legal education program, among other things.

On December 5, 1988, we appointed the Arkansas Continuing Legal Education Board for the purpose of reviewing and commenting upon proposed rules that had been filed on September 23, 1988, by the Director of Professional Programs. The Board's supplemental report and revised rules were filed with this Court on January 27, 1989. We have reviewed the revised rules as proposed by the Arkansas Continuing Legal Education Board. We have also reviewed the record of these proceedings. We find

the rules as proposed by the Board to be, for the most part, acceptable. Nonetheless, we have concluded that material changes are appropriate.

In particular, we have eliminated most classes of exemptions, altered the procedure for requesting inactive status, added new provisions for participation by out of state attorneys, added a provision to allow attorneys and judges to carry forward excess credits to the next reporting period, adopted 60 minutes as the basis for calculating an hour of CLE credit, and made other comparatively minor changes. All of the revisions appear in the Arkansas Rules for Minimum Continuing Legal Education which are attached to this Order.

We hereby adopt the attached Arkansas Rules for Minimum Continuing Legal Education. According to those rules, attorneys may begin acquiring credit for continuing legal education programs or activities beginning March 1, 1989, provided such programs are approved by these rules or by the Arkansas Continuing Legal Education Board. The Board is directed to promulgate regulations, at the earliest opportunity, to further the efficient administration of these rules.

Finally, the Board is to begin prompt implementation and administration of these rules pursuant to Rule 1.(E) of the Arkansas Rules for Minimum Continuing Legal Education.

ARKANSAS RULES FOR  
MINIMUM CONTINUING LEGAL EDUCATION

RULE 1.

*CONTINUING LEGAL EDUCATION BOARD*

- 1.(A) There is hereby established the Arkansas Continuing Legal Education Board (hereafter referred to as the Board). The Board shall be composed of nine voting members, appointed by the Arkansas Supreme Court, all of whom are resident members of the Bar of Arkansas. In addition, the President of the Arkansas Institute for Continuing Legal Education, and the Dean of each Arkansas law school accredited by the American Bar Association shall be ex-officio members, without vote.
- 1.(B) There shall be at least one Board member from each of the six Arkansas Court of Appeals districts. The initial Board shall draw terms so that three members will serve a one year term, three will serve a two year term, and three will serve a three year term.
- 1.(C) All subsequent appointments shall be made by the Arkansas Supreme Court for terms of three years. Board members may be reappointed, but may serve no more than two terms of three years. The Arkansas Supreme Court shall fill all vacancies, with the appointee to serve the remaining term, for such position, subject to reappointment in accord with this paragraph. Any Board member whose term expires shall continue in office until his successor is appointed and qualified.
- 1.(D) The Board shall, annually, by majority vote, elect a Chairman from among its voting members. The Director of Professional Programs for the Arkansas Supreme Court shall serve as Secretary, without a vote. Board members shall be entitled to reasonable reimbursement for expenses.
- 1.(E) The Board shall have the following duties and responsibilities:

- (1) Exercise general supervisory authority over these rules, to include the imposition of sanctions for noncompliance with these rules, as well as the implementation and administration of these rules;
  - (2) Adopt regulations consistent with these rules, to be submitted to the Arkansas Supreme Court for approval prior to their implementation;
  - (3) All matters concerning sanctions for noncompliance with these rules shall be the duty and responsibility of the Board, however, the Board may appoint committees as may be necessary to efficiently administer these rules.
  - (4) In cases of extreme hardship due to mental or physical disability, the Board may approve a substitute plan by which individuals may meet the requirements of these rules; and
  - (5) Such other specific grants of authority as may be set out in these rules.
- 1.(F) A majority of all voting Board members shall constitute a quorum.

## RULE 2.

### *SCOPE*

- 2.(A) Except as noted elsewhere in Rule 2, these rules shall apply to every member of the Bar of Arkansas, including all levels of the State and Federal Judiciary, and all attorneys who may be suspended during any reporting period due to nonpayment of license fee or action by the Supreme Court Committee on Professional Conduct. When used in the course of these rules, the word attorney shall include judges.

- 2.(B) Attorneys who are members of the Bar of Arkansas, but reside outside this State, are required to meet the minimum CLE requirements of their resident state. Such attorneys shall complete an annual certification form to that effect, which will be filed with the Arkansas Supreme Court Office of Professional Programs. Such certifications shall be subject to verification through the agency which administers the CLE program for such resident state. In the event an attorney is a member of the Bar of Arkansas, yet resides in a state where there is no continuing legal education requirement, such attorneys shall be annually required to file with the Arkansas Supreme Court Office of Professional Programs a certification of that fact. Further, in the event an attorney returns to the state of Arkansas from a state wherein there has been no continuing legal education requirement, that attorney shall be required, during the first reporting period after his return, to acquire thirty-six (36) hours of accredited continuing legal education. Twelve (12) of those hours shall be a basic skills course or Bar Examination Review Course as approved by the Board.
- 2.(C) (1) At any time during a reporting period, an attorney, with the exception of sitting judges, may take inactive status pursuant to these rules. Inactive status, for the purpose of these rules only, means that an attorney, subsequent to declaration of inactive status, will not engage in the practice of law during the remainder of that reporting period. Promptly after implementation of these rules, the Arkansas Supreme Court Office of Professional Programs will provide an opportunity for attorneys to declare as an inactive attorney. Attorneys may also, in writing, advise the Arkansas Supreme Court Office of Professional Programs that they wish to take inactive status during any reporting period. By taking such inactive status, the attorney shall be exempt from the minimum educational requirement of Rule 3 for that reporting period, and subsequent reporting periods, if he chooses to annually certify his inactive status pursuant to Rule 5.(E).

(2) If, during any reporting period, an attorney who has previously declared himself inactive returns to the practice of law, he must immediately so advise the Arkansas Supreme Court Office of Professional Programs. Such attorney, who is returning to active status, shall be subject to a reinstatement fee, to be set by the Board, in an amount not to exceed \$250.00. The attorney will receive no educational credits for courses he may take before the reinstatement fee has been paid. Provided that the attorney returning to active practice notifies the Office of Professional Programs and pays the reinstatement fee, then qualified continuing educational credits may be applied pursuant to paragraph 2.(C)(3) below.

(3) Such attorneys shall be required to obtain thirty-six hours of qualified continuing legal education between the date of his return to active status (which is the date the reinstatement fee is received by the Office of Professional Programs) and the end of the next succeeding reporting period. Twelve (12) of those hours will be a basic skills course, or Bar Examination review course, either of which must be approved by the Board.

### RULE 3.

#### *MINIMUM EDUCATIONAL REQUIREMENTS*

- 3.(A) Every member of the Bar of Arkansas, to whom these rules apply, shall complete 12 hours of approved continuing legal education during each reporting period as defined by Rule 5.(A) below. In addition, an attorney or judge may carry over accredited hours in accord with the provisions of Rule 5.(A).
- 3.(B) This minimum requirement must be met through courses conducted by sponsors approved by the Board; or individual courses that have been approved by the Board; or such other programs, courses, or other educational materials that the Board may approve pursuant to Rule 4.
- 3.(C) An hour of continuing legal education shall include at least sixty minutes of instruction, exclusive of meals, introductions, or other non-educational activity.

- 3.(D) The Board is authorized and encouraged to consider the requirement of particular course content, such as professional or judicial ethics, as part of the minimum educational requirement. Further, the Board is authorized and encouraged to consider the creation of a program whereby attorneys who achieve substantial education in excess of the minimum requirement might be appropriately recognized.

#### RULE 4.

##### *ACCREDITATION*

- 4.(A) The Board shall be the exclusive authority for accreditation of acceptable continuing legal education sponsors or programs. The Board, through its Secretary, will regularly report to the Arkansas Supreme Court on actions the Board may have taken in connection with accreditation requests of sponsors, said report to provide a brief individual explanation of each action taken.
- 4.(B) Approval of Accredited Sponsors:
- (1) An organization, or individual, may seek Board designation as an accredited sponsor;
  - (2) Such a request must be accompanied by evidence the sponsor has conducted, during the three years preceding application, at least three courses that substantially comply with the individual course requirements of Rule 4.(C);
  - (3) Subsequent to approval as an accredited sponsor, courses offered by that sponsor may be automatically approved, provided that such courses meet the requirements of Rule 4.(C) and the sponsor so states in connection with each course;



- (4) Likewise, sponsors accredited by another state or a national continuing legal education accrediting body may be automatically approved, provided that such courses meet the requirements of Rule 4.(C) and the sponsor so states in connection with each individual course;
  - (5) Accredited sponsors must abide by all reasonable requests for information or course materials from the Board, or its Secretary, and the Board reserves the right to withdraw sponsor accreditation for failure to meet the requirements of these rules.
- 4.(C) Individual course or activity approval:  
The Board may, upon application, approve continuing legal education courses or activities provided such courses meet the following standards:
- (1) The course must contribute directly to professional competence of attorneys and judges, or to their education with respect to professional or ethical obligations;
  - (2) Course presenters must have the necessary experience or academic skills to conduct the course effectively;
  - (3) Prior to, or during the course, each attendee must be provided with written course materials of a quality and quantity which indicate that adequate time has been devoted to their preparation and that they will be of value to the attendees in the course of their practice;
  - (4) The course must be presented in a suitable setting, which provides attendees with adequate writing surfaces;

- (5) During activities presented by means of videotape, audiotape, or other such systems, there must be an opportunity to ask questions of course faculty or a qualified commentator;
  - (6) The sponsor must encourage participation by attorneys as planners, authors, panelists, or lecturers;
  - (7) The sponsor must make available to the Board, or its Secretary, upon request, information concerning the course, which might include a list of attendees or individual affidavits signed by attendees, the course brochure, a description of the method or manner of presentation, and a set of all written materials pertinent to the course; and
  - (8) The course must be subject to evaluation, before, during, and after presentation.
- 4.(D) The Board is authorized and encouraged to grant approval to all sources of continuing legal education which meet the standards of Rule 4.(C), including publication of law related articles in legal journals; preparation of bar examination materials; preparation for, and conduct of, approved continuing legal education courses; participation in regularly scheduled courses conducted by American Bar Association accredited law schools; and "In House" educational programs conducted by law firms or other law related entities. The Board shall also be authorized to determine the amount of approved hours such activities are worth and may limit the number of such hours that may be applied to the minimum requirement.
- 4.(E) **Provisional Accreditation:**  
Subject to the requirements of Rule 4.(B), the Secretary is authorized to provisionally accredit the following sponsors for courses or activities conducted after March 1, 1989:

- (1) Arkansas Institute for Continuing Legal Education;
- (2) Arkansas Bar Association;
- (3) Arkansas Trial Lawyers Association;
- (4) American Bar Association Accredited Law Schools;
- (5) American Bar Association and its Sections;
- (6) American Law Institute;
- (7) American Judicature Society;
- (8) Arkansas Judicial Department;
- (9) Association of Trial Lawyers of America;
- (10) National Judicial College;
- (11) American Academy of Judicial Education;
- (12) Practicing Law Institute;
- (13) Arkansas Prosecuting Attorney's Association; and
- (14) Arkansas Legal Services Support Center.

This provisional accreditation may be continued in the discretion of the Board.

- 4.(F) It is presumed that sponsor accreditation, or individual program accreditation, will be sought well in advance of the event. However, the Board may accredit a sponsor or individual program after the event.

## RULE 5.

*REPORTING*

- 5.(A) Subject to exceptions noted in Rules 5.(B) and 5.(F), credit for approved continuing legal education hours will be given for courses or activities conducted from July 1 through June 30 of each year, and for the purposes of these rules, this period of time shall be known as the "reporting period". If an attorney or a judge acquires, during such reporting period, approved continuing legal education in excess of twelve (12) hours, the excess credit may be carried forward and applied to the educational requirement for the succeeding reporting period only.
- 5.(B) Provision for initial reporting period: The initial reporting period will end June 30, 1990. During implementation of this new program, courses or activities which are approved by the Board, or these rules, and which are conducted subsequent to March 1, 1989, may be applied to the reporting period ending June 30, 1990.
- 5.(C) Sponsors may be required to report attendance to the Board or its Secretary. Such reports may be required promptly after completion of each program or activity. Attorneys may also report approved activities using an affidavit approved by the Board.
- 5.(D) The Board, through its Secretary, shall maintain current records of CLE attendance for each attorney to whom these rules apply. Pursuant to Board regulation, they shall be made available to such attorneys.
- 5.(E) On or before ten days after the conclusion of a reporting period, the Board, through its Secretary, shall send by regular mail an affidavit to each affected attorney. The affidavit shall require that the attorney confirm compliance with these rules and confirm the active or inactive status of the attorney. The attorney shall sign the affidavit and file same with the Board on or before July 31 of each year.

- 5.(F) In the event an attorney shall fail to obtain the required hours during a reporting period, he shall, nonetheless, file the affidavit by July 31 and accompany the affidavit with a plan for curing any deficiency on or before the following October 31st. The deficiency plan shall be deemed accepted by the Board unless the Board advises the attorney otherwise within thirty days after receipt of the proposed deficiency plan. Subsequently, the attorney shall, by affidavit filed on or before November 15, confirm completion of the deficiency plan. Courses or activities taken pursuant to the deficiency plan shall apply *only* to the minimum educational requirement for the previous reporting period.
- 5.(G) In the event an attorney has completed the minimum educational requirement for a reporting period, yet fails to file the affidavit by July 31, the Board may authorize, by appropriate regulation, late filing of such affidavits.
- 5.(H) Administration of this program is complicated by attorneys who file deficiency plans or file affidavits after the due date. Accordingly, the Board is authorized to assess costs against delinquent attorneys in the form of a reasonable fee for filing late or filing a deficiency plan.
- 5.(I) Newly admitted attorneys shall be subject to the twelve hour minimum requirement during the reporting period that follows the reporting period in which they are admitted.
- 5.(J) All filings pursuant to Rule 5 will be made with the Arkansas Supreme Court Office of Professional Programs, unless the Board directs otherwise. In addition, all such filings that require the signature of an attorney shall be subject to the requirements of Rule 8.4 of the Model Rules of Professional Conduct for Lawyers or its successor rule.

## RULE 6.

*NONCOMPLIANCE AND SANCTIONS*

- 6.(A) If an attorney to whom these rules apply fails to timely file the affidavit, or if necessary, a deficiency plan, as required by Rules 5.(E) or 5.(F), he shall not be in compliance with these rules.
- 6.(B) Within thirty days after July 31 of each year, or thirty days after November 15 in instances where a deficiency plan has been filed, the Board, through its Secretary, shall serve a notice of noncompliance on such attorneys. The notice shall be sent by certified mail, deliver to addressee only, at the address the attorney maintains with the office of the Supreme Court Clerk.
- 6.(C) The notice shall state the nature of the alleged noncompliance and advise the attorney that he must, within fifteen days of receipt of the notice, provide written evidence that he is in compliance, correct the noncompliance, or request a hearing before the Board.
- 6.(D) If, within the allotted time, the noncompliance is not corrected, or a hearing is not requested, the Board may suspend the license of the attorney subject to reinstatement pursuant to paragraph 6.(I) below.
- 6.(E) If a hearing is requested, it shall be promptly conducted before a quorum of the Board. The attorney requesting the hearing shall be given ten days notice thereof.
- 6.(F) Hearing procedure:
- (1) The Board, in the performance of its responsibilities under these rules, shall have the authority to request issuance of summons or subpoena from the office of the Supreme Court Clerk, and the Clerk may issue same. Such requests shall be signed by the Chairman of the Board, or its Secretary.

- (2) Witnesses may be sworn by the Board Chairman or any member acting in his stead, or by any individual authorized to administer oaths, and upon request, a record shall be made. Such hearings are civil proceedings and the standard for decision is preponderance of the evidence.
- (3) The hearing shall be open to the public.
- (4) After the hearing, the Board may retire to executive session to deliberate. Thereafter, its decision shall be publicly announced and, if not unanimous, there shall be a statement of votes by individual members.
- (5) The Board shall take action by majority vote.

6.(G) Authorized dispositions subsequent to hearing:

- (1) The Board shall dismiss the matter if the hearing reveals the attorney is in compliance;
- (2) The Board may enter an order delaying further action for no more than ninety days to allow the attorney to achieve compliance, subsequent to which the Board may suspend the attorney or dismiss the action;
- (3) The Board may suspend the license of the attorney subject to reinstatement pursuant to paragraph 6.(I) below.

6.(H) Attorneys who are suspended are subject to the requirements of Rule 11 of the Rules of the Supreme Court Regulating Professional Conduct of Attorneys At Law.

- 6.(I) Attorneys who have been suspended pursuant to these rules may seek reinstatement by filing an affidavit with the Board or its Secretary. That affidavit must assert that the noncompliance has been corrected and that the attorney is presently in compliance with these rules. Attached to the affidavit shall be documentation of reinstatement requirements of the Board, and the attorney shall pay any reinstatement fees that the Board has assessed. The Board may then reinstate the attorney.

#### RULE 7.

#### *APPEALS*

- 7.(A) Final determinations as to accreditation of a sponsor by the Secretary or a committee of the Board shall, upon request of the aggrieved sponsor, be reviewed by the Board. There shall be no further review of such determinations.
- 7.(B) Final determinations by the Board, which result in suspension of an attorney, may be appealed to the Arkansas Supreme Court. Such appeal shall be heard de novo on the record from the Board proceedings.
- 7.(C) To effect an appeal, the suspended attorney shall file the record with the Supreme Court Clerk within thirty days from the entry of order of suspension. The appellant shall bear the cost of record preparation.

DARRELL HICKMAN, Justice, dissenting. I remain opposed to this court using its power to enforce and promote a project of the Arkansas Bar Association.

While our use of force is only a matter of petty tyranny, it is tyranny all the same. While that will not destroy the independent spirit of the Arkansas lawyer, it will dull it; while the program will not seriously diminish the good name of education, it will mock it.

I have no quarrel with the projects and useful programs of the Arkansas Bar Association, a private, professional organization. They are just not necessarily the business of this court.

I feel it necessary to point out that this court does not have the right to require full time judges, who are prohibited from

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practicing law, to participate in this program. *State Bar of California v. Superior Court*, 207 Cal. 323, 278 P. 432 (1929); *See also Gordon v. Clinkscales*, 215 Ga. 843, 114 S.E.2d 15 (1960); *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986); *Featherstone v. Folbre*, 75 Ark. 510, 88 S.W. 554 (1905); *Baxter v. Brooks*, 29 Ark. 173 (1874); *Good, ex parte*, 19 Ark. 410 (1858); *Allis, ex parte*, 12 Ark. 101 (1851); *Marr, ex parte*, 12 Ark. 84 (1851); *Carnall v. Crawford County*, 11 Ark. 604 (1851).

We do not even pay the annual fee lawyers are required to pay. (However, I know of at least one judge who did pay his dues voluntarily.)

For those interested in comparing what a different generation of justices thought about using force to overcome independent thought and action, *see In the Matter of the Integration of the Bar*, 222 Ark. 35, 259 S.W.2d 144 (1953).

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IN RE AMENDMENTS TO THE CODE OF  
PROFESSIONAL RESPONSIBILITY AND CANONS  
OF JUDICIAL ETHICS

82-16

766 S.W.2d 618

Supreme Court of Arkansas  
Delivered March 20, 1989

PER CURIAM. By per curiam order of July 12, 1982, we adopted the "Arkansas Plan of Specialization." *In Re Amendments to the Code of Professional Responsibility and Canons of Judicial Ethics*, 276 Ark. 600, 637 S.W.2d 589 (1982). The plan, which was incorporated by reference in our opinion, specifies that any fees to be imposed upon those who specialize pursuant to the plan are to be approved by this court.

A committee of the Board of Specialization seeking approval of a specialty in family law has, through its chairman, moved the approval of application, examination, and annual certification fees for those seeking to establish and maintain certification as family law specialists in the amounts of \$50.00 (application),

\$250.00 (examination), and \$50.00 (annual certification).

The motion is granted.

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IN THE MATTER OF RULES OF PROCEDURE OF  
THE ARKANSAS JUDICIAL DISCIPLINE AND  
DISABILITY COMMISSION

770 S.W.2d 116

Supreme Court of Arkansas  
Delivered May 8, 1989

PER CURIAM. In the General Election held November 8, 1988, the people of Arkansas adopted Ark. Const. amend. 66 which created the Arkansas Judicial Discipline and Disability Commission. The general assembly adopted Act 637 of 1989 expanding upon the provisions of the amendment and stating, as permitted by the amendment, the grounds for suspension and removal of judges. Subsection (f) of the amendment provides: "Rules: The Supreme Court shall make procedural rules implementing this amendment and setting the length of terms on the Commission." The following rules for the Commission are hereby promulgated.

**RULE 1. ORGANIZATION OF COMMISSION**

- A. *Composition of Commission.* In accordance with Ark. Const. amend. 66 and Act 637 of 1989, the Commission on Judicial Discipline and Disability shall have nine members who shall be residents of Arkansas. Three members shall be justices or judges appointed by the Supreme Court (judicial members); three shall be lawyers admitted to practice in this state, who are not justices or judges, one appointed by the Attorney General, one by the President of the Senate, and one by the Speaker of the House of Representatives (lawyer members); and three members who are neither lawyers nor sitting or retired justices or judges shall be appointed by the Governor (public members).
- B. *Meetings.* The Commission shall hold an organization meeting immediately upon establishment and biannually thereafter.

ter, and shall meet at least monthly at announced dates and places, except when there is no business to be conducted. Meetings shall be called by the chairman or upon the written request of three members of the Commission.

- C. *Terms of Commission Members and Alternates.* With the exception of the initial appointees, whose initial terms shall be made so that reappointments and later appointments are to be staggered, Commission members and alternates shall serve for terms of six (6) years and shall be eligible for reappointment to second full terms. (Initial appointees shall be eligible for second terms of six (6) years.) At its organization meeting, the members of the Commission shall draw for lengths of initial terms so that one member in each group of members, judicial, lawyer, and public, shall have a four (4) year initial term, one member in each group shall have a five (5) year term, and one member in each group shall have a six (6) year term. After the terms of the initial appointees have been established, slips of paper, each with the name of an alternate, shall be placed in a container. Each member shall draw one of the slips of paper, and the alternate whose name is thus drawn shall have the same length of term as the member who drew his or her name.
- D. *Officers.* At the organization meeting the members of the Commission shall elect one among them to serve as chairman and another to serve as vice-chairman. The vice-chairman shall perform the duties of the chairman whenever he is absent or unable to act.
- E. *Quorum; Voting Requirements.* Five members of the Commission shall constitute a quorum for the transaction of business. A finding of probable cause shall require the concurrence of a majority of the members present.

An alternate member shall serve in the place of the member of the same category whenever such member is disqualified or unable to serve and upon the call of the chairman. An alternate member who is present at a Commission meeting but who has not been called to serve may neither be included in a quorum count nor vote on any matter being considered at such meeting. Whenever an alternate member is called to serve in the place of a member of the Commission, an announcement with respect thereto shall be made at the

commencement of the meeting.

A recommendation that discipline be imposed shall require the concurrence of a majority of the members of the Commission.

#### RULE 2. POWERS AND DUTIES OF THE COMMISSION

- A. *Rules and Forms.* The Commission may recommend to the Supreme Court adoption or amendment of rules with regard to all disciplinary and disability proceedings, promulgate additional rules of procedure not inconsistent with these rules, and require the use of appropriate forms.
- B. *Annual Report.* The Commission shall have prepared an annual report of its activities for presentation to the Supreme Court and the public at the end of each calendar year.

#### RULE 3. FINANCIAL ARRANGEMENTS FOR COMMISSION

- A. *Compensation Proscribed.* The Commission members shall serve without compensation for their services.
- B. *Expenses Allowed.* The Commission members shall be reimbursed for expenses necessarily incurred in the performance of their duties.
- C. *Authorization for Payments.* Expenses of the Commission as provided in section 2.(d) of Act 637 of 1989, shall be authorized to be paid in accordance with the approved Commission budget.

#### RULE 4. COMMISSION OFFICE

The Commission shall establish a permanent office in a building open to the public. The office shall be open and staffed at announced hours.

#### RULE 5. DUTIES OF THE DIRECTOR

The Commission shall prescribe the duties and responsibilities of the director which shall include the authority to:

- (1) Consider information from any source and receive allegations and complaints;
- (2) Make preliminary evaluations;

- (3) Screen complaints;
- (4) Conduct investigations;
- (5) Maintain and preserve the Commission's records, including all complaints, files and written dispositions;
- (6) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
- (7) Prepare the Commission's budget for its approval and administer its funds;
- (8) Employ and supervise other members of the Commission's staff;
- (9) Prepare an annual report of the Commission's activities; and
- (10) Employ, with the approval of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court.

#### RULE 6. JURISDICTION

- A. *Judge in Office.* The authority of the Commission extends to judges and justices in office, and the term "judge" includes anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, magistrate, whether full-time or part-time. Allegations regarding conduct of a judge or justice occurring prior to or during service in judicial office, including the service of a retired judge who has been recalled, are within the jurisdiction of the Commission and shall be considered by it.
- B. *Former Judge.* Conduct of a former judge which has been adjudicated by a final decision reached by the Commission shall not become the subject of disciplinary proceedings before the Supreme Court Committee on Professional Conduct.

**RULE 7. DISCLOSURE**

No disclosure by the Commission, to be made pursuant to section 2.(g) of Act 637 of 1989, shall be permitted except in accordance with procedures approved by the Supreme Court and upon reasonable notice to any judge concerned.

**RULE 8. PROCEDURES OF COMMISSION REGARDING CONDUCT OF A JUDGE**

- A. *Initiation of Inquiry.* In accordance with these rules, any information submitted by a complainant or otherwise brought to the attention of the Commission stating facts that, if true, would be grounds for discipline shall initiate an inquiry relating to the conduct of the judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge.
- B. *Screening.* Upon receipt of a complaint or other information as to conduct that might constitute grounds for discipline of a judge, the executive officer shall make a prompt, discreet, and confidential investigation and evaluation. Under guidelines approved by the Commission, and in light of the initial investigation and evaluation, the executive officer shall determine whether there exists sufficient cause to proceed to a probable cause determination.

The executive officer shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge, if he has been given notice thereof, shall be informed in writing of the dismissal.

- C. *Optional Notice to the Judge.* Notice to the judge that a complaint has been received or an inquiry undertaken may be given at any time.
- D. *Mandatory Notice to the Judge.* Except upon good cause shown and with the approval of the Commission, no action other than dismissal of the complaint shall be taken as to any complaint about which the judge is not notified within ninety (90) days of the receipt of such complaint.
- E. *Sworn Complaint or Statement in Lieu of Complaint.* If, after initial investigation and evaluation, it appears that there is sufficient cause to proceed, the complainant, if any,

shall be asked to file a detailed, signed, sworn complaint against the judge. The sworn complaint shall state the names and addresses of the complainant and the judge, the facts constituting the alleged misconduct and, so far as is known, whether the same or a similar complaint by that complainant against that judge has ever been made to and considered by the Commission. Immediately upon receipt of the sworn complaint, the executive officer shall make written acknowledgement thereof to the complainant.

When a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by the executive officer.

When more than one act of misconduct is alleged, each should be clearly set forth in the sworn complaint or in the statement in lieu of complaint, as the case may be.

- F. *Commencement of the Case.* Upon receipt of each sworn complaint or the preparation of a statement in lieu thereof, a file shall be opened in the Commission office.
- G. *Required Notice.* The judge shall immediately be served with a copy of the sworn complaint or statement of allegations.
- H. *Answer.* Within twenty (20) days after the service upon him of the sworn complaint or statement, the judge shall file a written answer with the executive officer. The answer may include a description of circumstances of a mitigating nature bearing on the charge. A personal appearance before the Commission shall be permitted in lieu of or in addition to a written response. If the judge elects to appear personally his statement shall be recorded verbatim.
- I. *Review Prior to Probable Cause Determination.* Upon receipt and review of the judge's answer, the Commission may terminate the proceeding and dismiss the complaint and, in that event, shall give notice to the judge and each complainant that it has found insufficient cause to proceed.
- J. *Amending Allegations.* Amendment of the allegations regarding the misconduct of a judge, whether presented to the Commission in a sworn complaint or in a statement in lieu

thereof, shall be permitted prior to a finding of probable cause, provided that notice thereof and an opportunity further to respond within ten (10) days is given to the judge.

- K. *Right to Counsel.* The judge shall be entitled to counsel of his own choice.
- L. *Subpoena.* At any stage of the proceeding, the Commission shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge himself, and the production of papers, books, accounts, documents and testimony relevant to the investigation or the proceeding. Upon receiving notice from the Commission as to the pendency of the proceeding, the judge shall be entitled to compel by subpoena the attendance and testimony of witnesses, and the production of papers, books, accounts, documents and testimony relevant to the investigation or the proceeding. The Circuit Court of Pulaski County shall have the power to enforce process.

#### RULE 9. PROBABLE CAUSE

- A. *Establishment of Grounds of Discipline.* The grounds for discipline are those established in part (b) of Ark. Const. amend. 66 and those established by Act 637 of 1989.
- B. *Distinguished from Appeal.* In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he understands it. Claims of error shall be considered only in appeals from court proceedings.
- C. *Probable Cause Determination.* The Commission shall promptly schedule and hold a formal meeting which shall be conducted in private at which the strict rules of evidence need not be observed. A complete verbatim record shall be made. All witnesses shall be duly sworn. A complainant and the judge against whom he has complained shall have the right to be present, with their attorneys, if any, except during Commission deliberations.
- D. *Findings and Report.* The Commission shall prepare a written report containing its findings of fact and its conclusions on each issue presented, and shall file its report with the executive officer.



E. *Disposition.* In its report the Commission shall dispose of the case in one of the following ways:

- (1) If it finds that there has been no misconduct, the director shall be instructed to send the judge and each complainant notice of the dismissal.
- (2) If it finds that there has been misconduct for which a private reprimand constitutes adequate discipline, it shall issue the reprimand. The complainant shall be notified that the matter has been resolved.
- (3) If it finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may so inform or admonish the judge, direct professional counseling or assistance for the judge, or impose conditions on the judge's future conduct. The complainant shall be notified that the matter has been resolved. When either conditions or treatment is prescribed, the Commission shall provide for supervision, enforcement thereof, or both.
- (4) If it finds, by concurrence of a majority of members present, that there is probable cause to believe that there has been misconduct of a nature requiring formal disciplinary proceeding, the director shall cause the judge to be served with the report, the formal statement of the charges, the record of the probable cause determination, and all documents upon which the determination was based. The service upon the judge constitutes notice that he must respond within twenty (20) days.

#### RULE 10. INTERIM SANCTIONS

A. *Suspension with Pay.* In instances of the (1) filing of an indictment or information charging a judge with a felony under state or federal law, or (2) the filing of a misdemeanor charge against a judge or justice where his ability to perform the duties of his office is already affected, the Commission shall convene within ten (10) days for the purpose of considering a recommendation to the Supreme Court that the judge or justice be temporarily suspended with pay pending the outcome of any disciplinary determination. The

Commission shall file its findings and recommendations for temporary suspension with pay with the Supreme Court, which shall grant the matter expedited consideration.

- B. *Effect on Commission Action.* A temporary suspension with pay as an interim sanction shall not preclude action by the Commission with respect to the conduct that was the basis for the felony or misdemeanor charge, nor shall the disposition of the charge in any manner preclude such action.

#### RULE 11. FORMAL DISCIPLINARY HEARING

- A. *Scheduling.* The Commission shall, upon receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing not less than thirty (30) nor more than forty-five (45) days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time, and place of the hearing.
- B. *Discovery.* The judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure.
- C. *Factfinder.* The formal hearing shall be conducted before a factfinder which may be the entire Commission or a three-member panel thereof appointed by the Commission chairman.
- D. *Conduct of Hearing.* The Arkansas Rules of Evidence apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the factfinder. The judge whose conduct is in question shall be permitted to adduce evidence and cross-examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim.
- E. *Amendment of Allegations.* By leave of the Commission or by consent of the judge, the formal charges may be amended after commencement of the public hearing only if the amendment is technical in nature and if the judge and his counsel are given adequate time to prepare a response.
- F. *Determination.* A factfinder other than the entire Commission shall, within sixty (60) days after the hearing, submit its findings and recommendation, together with the record and
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transcript of the proceedings, to the Commission for review and shall contemporaneously serve them upon the judge.

The judge, or Commission counsel, may submit written objections to the findings and recommendations.

The findings, conclusions and accompanying materials, together with the objections, if any, shall be promptly reviewed by the Commission.

The Commission may make independent findings of fact from the record or, if the entire Commission served as factfinder, it shall prepare its findings and recommendations.

- G. *Commission Decision.* The recommendations for discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following:
- (1) A recommendation to the Supreme Court that the judge be removed from office;
  - (2) A recommendation to the Supreme Court that the judge be suspended, with or without pay;
  - (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay;
  - (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for retirement benefits, pursuant to Arkansas Code Annotated § 24-8-217 (1987);
  - (5) Reprimand or censure.
- H. *Dissent.* If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court.
- I. *No Disciplinary Recommendation.* If a majority of the members of the Commission recommend no discipline the case shall be dismissed.
- J. *Opinion to be Filed.* The final decision in any case which has

been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the Clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven days of rendition.

- K. *Witness Fees.* All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them.

## RULE 12. SUPREME COURT REVIEW

- A. *Filing and Service.* The Commission shall file its report, record, findings, and recommendations with the Supreme Court and shall serve copies thereof upon the judge no later than thirty (30) days after the report of the factfinder is submitted. On application by the Commission, the court may direct the withholding of a recommendation regarding discipline pending the determination of other specified matters.
- B. *Prompt Court Considerations.* The Clerk of the Supreme Court shall docket any Commission matter for expedited consideration.
- C. *Brief and Supplementary Filings.* The Commission and the judge shall file with the Supreme Court briefs in accordance with court rules within twenty (20) days of the filing and service of the Commission report. No responsive briefs shall be filed unless requested by the court. If the court desires an expansion of the record or additional findings, either with respect to the recommendation for discipline or sanction to be imposed, it shall remand the case to the Commission for the appropriate directions, retaining jurisdiction, and shall withhold action pending receipt of the additional filing.

The Supreme Court may order additional filings or oral argument as to the entire case or specified issues. The Supreme Court may accept or solicit supplementary filings with respect to medical or other information without remand and prior to an imposition of discipline provided that the parties have notice and an opportunity to be heard thereon.

- D. *Scope of Discipline.* The Supreme Court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal is deemed appropriate, the court shall notify the judge, the Commission and the Supreme Court Committee on Professional Conduct and give each an opportunity to be heard on the issue of the imposition of lawyer discipline.
- E. *Decision.* Based upon a review of the entire record the Supreme Court shall file a written opinion and judgment directing such disciplinary action as it finds just and proper. It may accept, reject, or modify in whole or in part, the findings and recommendation of the Commission. In the event that more than one recommendation for discipline for the judge is filed, the court may render a single decision or impose a single sanction with respect to all recommendations. The court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the court does not so direct, the respondent may file a motion for rehearing within fifteen (15) days of the filing of the decision.
- F. *Certiorari.* The Supreme Court may bring up for review any action taken upon any complaint filed with the Commission, and may also bring up for review a case in which the Commission has failed to act.

#### RULE 13. CASES INVOLVING ALLEGATIONS OF MENTAL AND PHYSICAL DISABILITY

- A. *Procedure.* In considering allegations of mental and physical disability, the Commission shall, insofar as applicable and except as provided in Paragraph B., follow procedure established by these rules.
- B. *Special Provisions.*
- (1) If a complaint or statement of allegation involves the mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.
  - (2) In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an

examination by a qualified medical practitioner designated by the Commission.

- (3) The Commission shall bear the costs of the proceedings, including the cost of a physical or mental examination ordered by it.

#### RULE 14. INVOLUNTARY RETIREMENT

A judge who is advised to retire voluntarily and who refuses may be retired involuntarily by the Supreme Court following the filing of a formal complaint, a public hearing thereon before the Commission, and a report containing a finding that he is physically or mentally disabled, and recommendation to the court that such action be taken.

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IN RE: AMENDMENTS TO THE ARKANSAS RULES  
OF CIVIL PROCEDURE, THE ARKANSAS RULES OF  
APPELLATE PROCEDURE, THE ARKANSAS  
SUPREME COURT ADMINISTRATIVE ORDERS, THE  
RULES OF THE ARKANSAS SUPREME COURT AND  
COURT OF APPEALS, AND THE INFERIOR COURT  
RULES

770 S.W.2d 139

Supreme Court of Arkansas  
Delivered May 15, 1989

PER CURIAM. In our per curiam order of December 19, 1988, we suspended our earlier order on the subject of doing away with the practice of abstracting the record for appeal and substituting a practice by which the parties would submit an appendix or appendices. We took that action because we wish to examine the possibility of changing from the use of legal size paper to letter size paper in all the courts, and we became aware that unless the changes occurred at the same time, appendices would likely be composed of paper of a different size from that of any brief we might permit to be filed, and that appendices might be composed of documents of varying paper sizes. The accompanying possible handling and storage problems made it seem a good idea to put off

the changes until we had sought the recommendation of our Committee on Rules of Pleading, Practice, and Procedure (Civil).

We have now received a recommendation from the committee along with suggestions as to the rules which should be revised to accomplish the change in paper size.

In addition to the committee's recommendations, we have studied those submitted by lawyers, judges, law firms, and lawyers' associations submitted in response to our earlier request for comments on the basic rules we proposed for the purpose of moving to the system of appendices rather than abstracts. Many of those suggestions have been implemented in the amendments we publish today.

As we noted in our per curiam order of October 17, 1988, on this subject, we wish to have a trial period. These amendments will become effective this date, however, any case in which the appellant's brief is submitted or becomes due between now and December 31, 1989, may be presented in accordance with the rules in effect up until today. That will give this court sufficient time to observe the new practice. If we choose to retain the new system, we will be able to make that decision prior to the publication of the 1989 revision of the Rules Book which accompanies the Arkansas Code Annotated. The rules requiring appendices rather than abstracts may then be made permanent.

During the trial period an appellant will be in the position of choosing the manner in which the briefs will be presented. If the appellant chooses to present a brief with an appendix rather than an abstract, then the appellee will be required to proceed in accordance with the new rules. If the appellant chooses to work under the abstract system, the appellee will do so also.

While we may well decide, depending on the results of the trial period, to retain the abstracting practice, we will make permanent the changes with respect to paper size and doing away with printed briefs. Judges, clerks, lawyers, court reporters and others thus will have until January 1, 1990, to prepare to present all legal documents on 8½" by 11" paper.

The purposes of these changes are to decrease the cost of appellate litigation, increase the ease and accuracy of the evaluation of cases at the appellate level, and provide uniformity

as well as compatibility with the age of the word processor in the case of the paper size. We acknowledge and appreciate the comments we received from members of the bench and bar, and we count on continued cooperation as we evaluate the appendix system.

*Amendment to the Arkansas Rules of Civil Procedure*

The Arkansas Rules of Civil Procedure are amended by adding the following Rule 84:

*Rule 84.*

UNIFORM PAPER SIZE

All pleadings, motions, interrogatories, requests for admissions, responses to discovery requests, depositions, briefs, findings, judgments, orders, and other papers required or authorized by these rules shall be on 8½" x 11" paper.

*Amendment to Arkansas Supreme Court Administrative Orders*

Administrative Order No. 2. is amended by redesignating the present subsection (e) as (f) and inserting subsection (e) to read as follows: (e) *Uniform Paper Size.* — All records prepared by the clerk shall be on 8½" by 11" paper.

*Amendment to the Arkansas Rules of Appellate Procedure*

The Arkansas Rules of Appellate Procedure are amended by adding the following as Rule 10:

*Rule 10.*

UNIFORM PAPER SIZE

All notices of appeal, motions, orders, records, transcripts, and other papers required or authorized by these rules shall be on 8½" x 11" paper.

*Rules of the Arkansas Supreme Court and Court of Appeals*

The Rules of the Arkansas Supreme Court and Court of Appeals are amended as follows:

*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 compiled in accordance with Rule 9 of these rules and included in or with 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), (b), and (c)*

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

Subsection (a) and the opening clause preceding it are deleted.

Subsection (b) is redesignated as subsection (a). Its title and first sentence are amended to read: Briefs — Size — Paper — Type. — All briefs shall be typewritten or produced with word processing equipment. Briefs shall be of uniform size on opaque, unglazed 8½" x 11" white paper and firmly bound on the left hand margin by staples or other binding devices.

The seventh sentence of subsection (a) [formerly (b)] is amended to read: Briefs not in compliance with this rule shall not be accepted by the clerk.

Subsection (c) is redesignated as subsection (b). The title and first two sentences are amended to read: *Length of Argument*. — Unless leave of court is first obtained, the argument portion of

the briefs shall not exceed 25 double-spaced pages. The Appellant's reply brief shall not exceed 15 double-spaced pages.

*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: Order of Contents. —  
The contents of the brief shall be presented in the following order:

- (1) Table of Contents
- (2) Table of Authorities Cited
- (3) Jurisdictional Statement (if necessary)
- (4) Preliminary Statement
- (5) Points of Appeal
- (6) Statement of the Case
- (7) Argument
- (8) Conclusion
- (9) Appendix

Subsection (b) is amended to read: Contents Descriptions. —

- (1) Table of Contents: The brief shall have a table of contents, including a table of contents of the appendix. If the appendix is bound separately it shall have a separate table of contents at its beginning, and the appendix table of contents need not be included in the brief.
- (2) Table of Authorities Cited: This table shall include a list of the cases, statutes, and other authorities, with citations.
- (3) Jurisdictional Statement: In cases appealed to the supreme court, there shall be a jurisdictional statement in compliance with Rule 29(2) of these rules. The appellee's brief need contain no jurisdictional statement unless that of the appellant is contested.
- (4) Preliminary Statement: The preliminary statement is a short (no more than three pages) summary of the facts of the case, the issues, and the disposition of the case in the trial court.

(5) **Points of Appeal:** The points of appeal shall be concise, numbered statements of the errors alleged to have been committed by the trial court. The points shall be presented in the order they are to be discussed in the argument portion of the brief. The appellee's brief shall contain responsive points numbered in the same order as the appellant's points to which each responds.

(6) **Statement of the Case:** The appellant's brief shall contain a concise statement of the case, without argument. This statement should provide the court an understanding 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.

(7) **Argument:** The argument portion of the brief shall be composed of legal arguments on the points of appeal stated.

(8) **Conclusion:** Each brief shall contain a conclusion, labeled as such, in which the relief sought or opposed shall be stated, *e.g.*, reversal and remand, reversal and dismissal, affirmance, and suggested alternatives, if any.

(9) The appellant's brief shall contain an appendix as described in subsection (d) of this rule. As noted in that subsection, the brief of the appellee need not contain an appendix.

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 appellee is also a cross-appellant, the appendix with the appellee's brief shall include the items necessary to support the cross-appeal. An appellant's brief may include items in its appendix deemed necessary to respond to a cross-

appeal. If one or more issues on appeal present questions of the sufficiency of the evidence to support factual determinations, only the portions 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 typed or photo 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) a table of contents if the appendix is bound separately, and typed copies or legible photocopies of;
- (ii) relevant pleadings;
- (iii) relevant testimony, hearings transcripts, and exhibits;
- (iv) relevant written motions and orders;
- (v) the verdict or findings of fact, conclusions of law and judgment or decree;
- (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 one or more of 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.

Failure to place a copy of a part of the record in the appendix will not preclude the court from referring to it, but the court will not consider itself obligated to go beyond reading the briefs and included or separate appendices to decide a case.

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 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 council.

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 pages, with a similar 15 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 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 12 (i)(1) and (10)*

The title and opening three sentences of subsection (i) are amended to read: *First Impression Print*. — The record must be made out in plain typewriting of the first impression, not copies, on 8½" x 11" paper and fastened at the top of the page. All transcripts shall be prepared by certified court reporters according to the following rules:

Subsection (i)(1) is amended to read: No fewer than 22 typed lines on standard 8½" x 11" paper.

Subsection (i)(10) is amended to read: All depositions prepared for use as evidence in any court shall comply with these rules, except that the left-hand margin is to be set at no more than 1¾" and binding may be on the left.

*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.

The following rule is added:

*Rule 30*

**UNIFORM PAPER SIZE**

All briefs, motions, pleadings, records, transcripts, and other papers required or authorized by these rules shall be on 8½" x 11" paper.

*Inferior Court Rules*

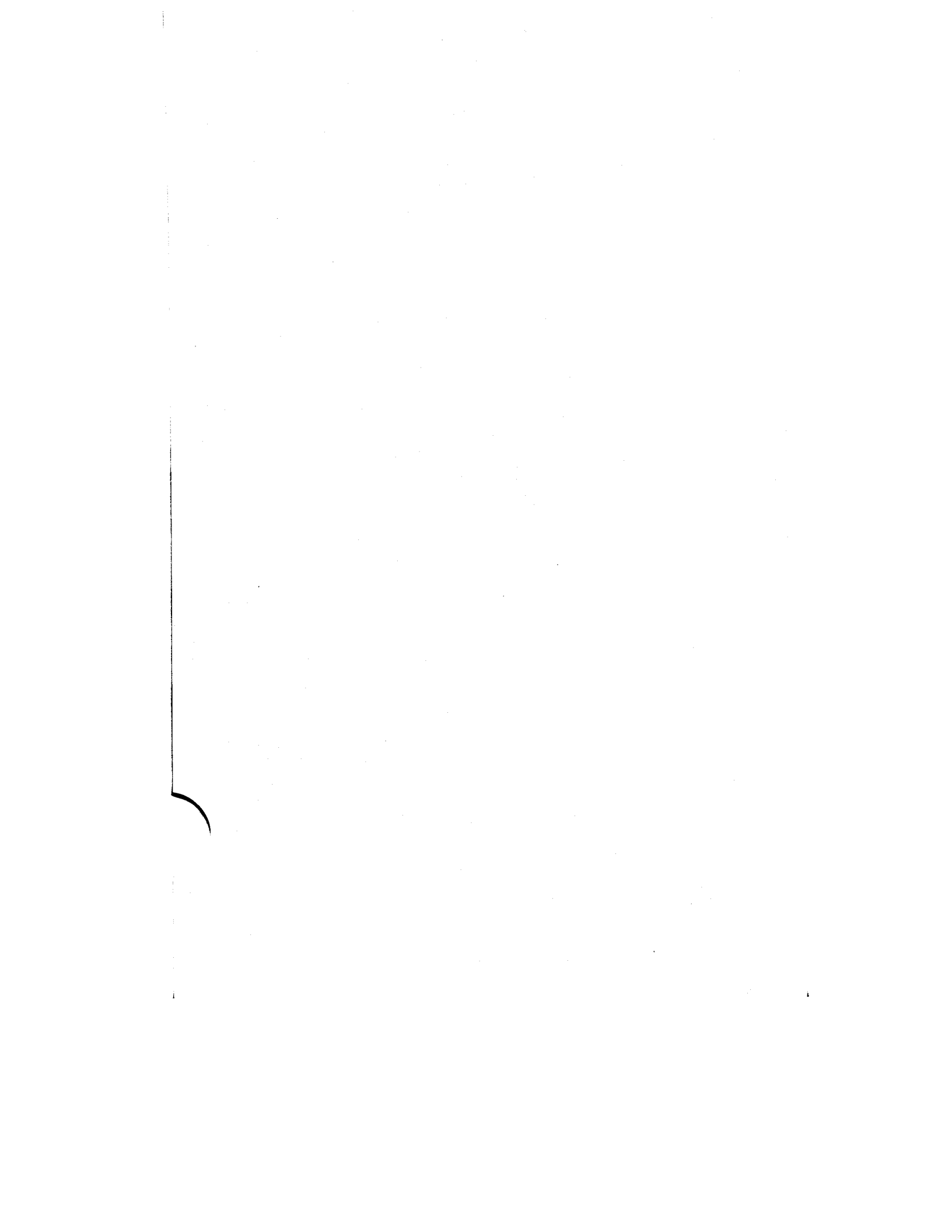
The Inferior Court Rules are amended by adding the following Rule 11.

*Rule 11.*

**UNIFORM PAPER SIZE**

All briefs, motions, pleadings, records, transcripts, and other papers required or authorized by these rules shall be on 8½" by 11" paper.

HICKMAN, J., dissents.





Appointments to  
Committees

IN THE MATTER OF THE BOARD OF LEGAL  
SPECIALIZATION

764 S.W.2d LXII

Supreme Court of Arkansas  
Delivered March 13, 1989

PER CURIAM. The terms of Tim Boe, Esq. of Little Rock and Oliver Clegg, Esq. of Magnolia, as members of the Board of Legal Specialization, have expired. Wendell Griffen, Esq. of Little Rock is appointed to replace Tim Boe from District 6. John E. Gaughan III, Esq. of Camden is appointed to replace Oliver Clegg from District 5. This appointment is for a term of three years ending in March 1992.

The Court further appoints Wendell Griffen to serve as chairperson of the Board.

The Court expresses its gratitude to the outgoing members, Tim Boe and Oliver Clegg, for their faithful service.

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THE MATTER OF THE SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT

765 S.W.2d LI

Supreme Court of Arkansas  
Delivered March 27, 1989

PER CURIAM. Jim McKenzie, Esq. of Prescott, Arkansas, Fourth Congressional District, is appointed to the Supreme Court Committee on Professional Conduct and replaces Damon Young, Esq. from Texarkana, Arkansas; Eddie Walker, Esq. of Fort Smith, Arkansas, at-large, is also appointed to the Committee to replace Darrell F. Brown, Esq. from Little Rock, Arkansas.

Mr. McKenzie is appointed to fill the term of Damon Young which expires on January 1, 1991, and Mr. Walker is appointed for a four-year term expiring March 1, 1993.

The Court expresses its gratitude to Damon Young, Esq. and Darrell F. Brown, Esq. for their faithful service on the Committee.