

APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

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

Supreme Court of Arkansas
Delivered November 11, 1991

PER CURIAM. The Arkansas Supreme Court Committee on Civil Practice has submitted its annual suggestions for rule changes. With some minor alterations in the wording of the rule changes and reporter's notes, we adopt the suggested changes which follow. They will become effective in the form published herewith on January 1, 1992, unless amended or withdrawn prior to that date.

Comments and suggestions with respect to the Rules are welcome and may be made directly to this Court. They may also be made by letter to the Committee Reporter at the following address:

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

This Court continues to appreciate the hard work and dedication of the Committee and expresses its thanks to the Chairman, Judge Henry Wilkinson, the Reporter, Professor John J. Watkins, and to the members of the Committee who give of their time and talent to keep our procedural rules current.

Rule 2, Ark. R. App. P.

Subsection (a)(9) of Rule 2, Ark. R. App. P., is amended to read as follows:

An order granting or denying a motion to certify a case as a class action in accordance with Rule 23 of the Arkansas Rules of Civil Procedure.

Subsection (c) of Rule 2, Ark. R. App. P., is amended to read as follows:

Appeals under paragraphs (6), (7), and (9) of subsection (a) of this rule take precedence in the Supreme Court.

The following amendment to the Reporter's Notes is also adopted:

Addition to Reporter's Notes, 1991 Amendment. Rule 2(a)(9) is amended to expressly permit an immediate appeal from an order denying a motion to certify a case as a class action, as well as from an order granting such certification. The Supreme Court has held that both types of orders may be immediately appealed. See *Ford Motor Credit Co. v. Nesheim*, 285 Ark. 253, 686 S.W.2d 777 (1985); *Drew v. First Federal Savings & Loan Ass'n*, 271 Ark. 667, 610 S.W.2d 876 (1981). However, Rule 2(a)(9) has heretofore specifically dealt only with orders granting class certification. Rule 2(c) is amended to add appeals under Rule 2(a)(9) to the list of those that "take precedence," since appeals of orders granting or denying class certification are interlocutory in nature.

Rule 30, Ark. R. Civ. P.

Rule 30(c), Ark. R. Civ. P., is amended by inserting the following before the last sentence:

Absent exceptional circumstances, a party or a lawyer for a party shall not instruct a deponent not to answer a question, except for reasonable, good faith claims of privilege.

The following amendment to the Reporter's Notes is also adopted:

Addition to Reporter's Notes, 1991 Amendment. Under subdivision (c), "[e]vidence objected to shall be taken subject to the objections." Thus, it is generally not proper for a lawyer to instruct a deponent to refuse to answer a question. The 1991 amendment expressly states that such an instruction is impermissible absent exceptional circumstances or a reasonable, good faith assertion of a privilege. In light of the amendment, a contention that the question seeks irrelevant information beyond the scope of discovery under Rule 26(b)(1) is not a basis for instructing the deponent not to answer, unless exceptional circumstances — such as harassment or irrelevant questions that unnecessarily touch on sensitive areas — are present. The 1991 amendment is consistent with case law applying Federal

Rule 30(c). See, e.g., *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130*, 657 F.2d 890 (7th Cir. 1981); *International Union of Electrical, Radio & Machine Workers v. Westinghouse Elec. Corp.*, 91 F.R.D. 277 (D.D.C. 1981); *Preyer v. United States Lines, Inc.*, 64 F.R.D. 430 (E.D. Pa. 1973).

Miscellaneous Amendments, Ark. R. Civ. P.

The following amendments correct typographical errors, inaccurate cross-references, and similar errors in the Arkansas Rules of Civil Procedure:

1. Rule 4(d)(8)(A) is amended to delete "or Rule 60(b)" in the last sentence.
2. Rule 6(b) is amended to change the references in the penultimate clause from "Rules 50(b), 52(b), (d) and (e) and 60(b)" to "Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b)."
3. Rule 23.2 is amended by changing the reference to "Rule 23(c)" to "Rule 23(e)."
4. Rule 30(e) is amended by changing the reference to "Rule 32(d)(4)" to "Rule 32(c)(4)."
5. Rule 32(a)(1) is amended by changing the reference to "the Uniform Rules of Evidence, Ark. Stat. Ann. § 28-1001" to "the Arkansas Rules of Evidence."
6. Rule 32(c)(3)(C) is amended by replacing the word "propounded" with "propounding."
7. Rule 36(c) is amended by adding the words "Separate Document" and a period, in boldface type, as an introductory title to the subparagraph.
8. Rule 38(c) is amended by changing the reference to "Rule 5(d)" to "Rule 5(c)."
9. Rule 39(c) is amended by adding the words "Advisory Jury and Trial By Consent" and a period, in boldface type, as an introductory title to the subparagraph.
10. Rule 41(c) is amended by replacing the word "Counterclaims" in the introductory title of the subparagraph with "Counterclaim."

11. Rule 57 is amended by changing the reference to "Ark. Stat. Ann. 34-2501 et seq." to "Ark. Code Ann. §§ 16-111-101 through 16-111-111."

12. Rule 62(d) is amended by changing the reference to "the Supreme Court" to "the appellate court."

13. Rule 62(f) is amended by changing the reference to "the Arkansas Supreme Court" to "the appellate court."

14. Rule 77(b) is amended by changing the reference to "Ark. Stat. Ann. 22-404.1 (Repl. 1962)" to "Ark. Code Ann. § 16-13-318."

In addition, the Reporter's Notes to Rule 40 are amended by adding the following:

Addition to Reporter's Notes, 1979 Amendment. Section (c) of Rule 40 did not appear in the original version of the Rules of Civil Procedure adopted by the Supreme Court in December 1978 but was added less than two months later. *See In re Rules of Civil Procedure, Rule 40*, 265 Ark. 963 (1979). Thus, this provision was in place when the Rules went into effect on July 1, 1979, although the Reporter's Notes were not modified to reflect its addition. Section (c) is virtually identical to a superseded statute, Ark. Stat. Ann. § 27-1401 (Repl. 1962), as amended by Act 333 of 1979.

IN RE: ARKANSAS RULES FOR MINIMUM
CONTINUING LEGAL EDUCATION and Regulations of
the Arkansas Continuing Legal Education Board

Supreme Court of Arkansas
Delivered January 13, 1992

PER CURIAM. The Arkansas Continuing Legal Education Board has proposed changes in the Arkansas Rules for Minimum Continuing Legal Education and the Regulations of the Arkansas Continuing Legal Education Board.

We publish the proposed changes along with comments supplied by the Board so that they may be studied by members of the bench and bar. The proposed changes will become effective March 1, 1992, unless withdrawn or altered by further order prior to that date.

Written comments on the proposed changes may be sent to the Clerk of the Supreme Court and Court of Appeals, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

The motion submitted by the Board and the proposed changes to the Rules and Regulations are as follows:

MOTION TO AMEND RULES AND REGULATIONS

COMES the ARKANSAS CONTINUING LEGAL EDUCATION BOARD (the "Board"), and for its Motion to Amend Rules and Regulations, states:

- (1) The Board has completed the first year of operation. The Board suspended 43 in-state attorneys for noncompliance. This is approximately 1% of all in-state lawyers. The Board conducted hearings for reinstatement and reinstated two attorneys.
- (2) The Office of Professional Programs undertook responsibility for conduct of the Arkansas Bar Examination in April, 1990. The "closing-out" of the CLE year in July conflicts directly with the conduct and grading of the July Bar Examination.
- (3) The Director of the Office of Professional Programs, serving as Secretary to the Board and as Secretary to the Board of Law Examiners, has experienced difficulty administering these programs simultaneously.
- (4) The date for the July Bar Examination cannot be changed due to the use of the Multistate Bar Examination as part of the examination process. In meetings of the Board held March 30, 1991, and December 7, 1991, the Director proposed and requested a number of changes in "due dates" in connection with the administration of the CLE program.
- (5) The proposed changes would allow the Office of Professional Programs more time to receive certificates of attendance, send out notices of noncompliance and give attorneys an additional one month in which to certify compliance with the

Arkansas Rules. With respect to "out-of-state" attorneys, existing rules do not contain a "due date" by which an out-of-state attorney must certify compliance with the attorney's resident state, so the proposed rules provide a date.

(6) The Board respectfully requests that the modifications which are described in the following paragraphs be considered and adopted by the Court. All proposed rule and regulatory changes, whether additions or deletions, appear in bold type and are all capitalized. Where language has been added or substituted, the bold type has been underlined. Language which is stricken is in parentheses.

(7) The Board has by formal action and unanimous vote adopted these proposed rule and regulatory changes for consideration and adoption by the Court.

I. PROPOSED RULE CHANGES

A. RULE 2.(C)

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. **THIS FORM** will be filed with the Arkansas Supreme Court Office of Professional Programs **ON OR BEFORE THE OCTOBER 31 WHICH SUCCEEDS THE REPORTING PERIOD IN QUESTION.** 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 or foreign jurisdiction where there is no continuing legal education requirement, such attorney shall be annually required to file with the Arkansas Supreme Court Office of Professional Programs a certification **FORM CONFIRMING** that fact. **THIS FORM SHALL BE FILED ON OR BEFORE THE OCTOBER 31 WHICH SUCCEEDS THE REPORTING PERIOD IN QUESTION.**

EXPLANATION AND COMMENT

The present rule has no deadline for filing these forms.

B. RULE 5.(D)

ON OR BEFORE THE JULY 31 after the conclusion of **THE IMMEDIATELY PRECEDING** reporting period, the Board, through its Secretary, shall send by regular mail a certificate to each attorney **TO WHOM THESE RULES APPLY**. The certificate shall require that the attorney confirm compliance with these rules. **(AND CONFIRM THE ACTIVE OR INACTIVE STATUS OF THE ATTORNEY)**. All such attorneys shall sign the certificate and file it with the Board on or before **THE AUGUST 31 WHICH SUCCEEDS THE END OF THE IMMEDIATELY PRECEDING REPORTING PERIOD. INACTIVE ATTORNEYS SHALL BE REQUIRED TO FILE A FORM THAT CONFIRMS THEIR ACTIVE OR INACTIVE STATUS ON OR BEFORE THE OCTOBER 31 WHICH SUCCEEDS THE REPORTING PERIOD IN QUESTION.**

EXPLANATION AND COMMENT

The present rule requires that the Office of Professional Programs send out the final set of certificates within ten (10) days after June 30 of each reporting period. The number of attorneys in that category, i.e., those who have still not certified their 12 hours by June 30, is going to number approximately 2,000. Certificates of attendance for courses given in late June are not received by the Office of Professional Programs until during or after the month of July. By extending the period of time in Rule 5.(D), the Office of Professional Programs will be able to receive and record the certifications and mail out the CLE reports subsequent to conducting the July Bar Examination, which is graded in August of each year.

C. RULE 5.(E)

In the event an attorney shall fail to obtain the required hours during a reporting period, the attorney shall nonetheless, file the certificate **REQUIRED BY RULE 5.(D) BY THE AUGUST 31 WHICH SUCCEEDS THE END OF THE IMMEDIATELY PRECEDING REPORTING PERIOD. THIS CERTIFICATION SHALL BE ACCOMPANIED BY A PLAN FOR CURING ANY DEFICIENCY ON OR BEFORE THE FOLLOWING DECEMBER 1.** 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 a certificate filed on or before **THE FOLLOWING DECEMBER 15**, confirm completion of the deficiency plan. Courses or activities taken pursuant to the deficiency plan shall apply *only* to the minimum education requirement for the previous reporting period.

EXPLANATION AND COMMENT

The above date changes are necessitated by the proposed date changes in Rule 5.(D). The changes are consistent.

D. RULE 5.(F)

In the event an attorney has completed the minimum educational requirement for a reporting period, yet fails to file the certificate **REQUIRED BY RULE 5.(D) BY AUGUST 31**, the Board may authorize, by appropriate regulation, late filing of such certificates.

EXPLANATION AND COMMENT

These date changes are required in the event the Court adopts the earlier proposed date modifications.

E. RULE 6.(A)

If an attorney to whom these rules apply fails to timely file the **CERTIFICATE REQUIRED BY RULE 5.(D)** or, if necessary, a deficiency plan, as required by Rule 5.(E) **(OR 5.(F)), OR THE CERTIFICATION REQUIRED BY RULE 2.(C), (HE) THE ATTORNEY** shall not be in compliance with these rules.

EXPLANATION AND COMMENT

This proposal eliminates the reference to Rule 5. (F) which was inadvertently placed in the original set of rules. Also, it substitutes "certificate" for the word "affadavit" which appears in the present rules.

F. RULE 6.(B)

Within thirty days after **AUGUST 31** of each year, or **THIRTY DAYS AFTER DECEMBER 15** in instances where a deficiency plan has been filed, the Board, through its Secretary, shall serve a notice of noncompliance on

attorneys who are not in compliance with these rules. The notice shall be sent by **FIRST CLASS REGULAR MAIL (CERTIFIED MAIL, DELIVERED TO ADDRESSEE ONLY)** at the address the attorney maintains with the Office of the Supreme Court Clerk.

EXPLANATION AND COMMENT

In the event the "due dates" in Rules 2.(c) and 5.(D) are changed, then these proposed date changes in Rule 6.(B) are necessary. This proposal would require notices to be sent by regular mail. The existing rule requires that notices of noncompliance be sent by certified mail, delivered to addressee only. All notices presently sent by the Supreme Court Clerk are sent by regular mail.

G. RULE 6.(C) & (D)

The notice shall state the nature of the alleged noncompliance and advise the attorney that **(HE) THE ATTORNEY** must, within fifteen days of receipt of the notice, provide written evidence that **(HE) THE ATTORNEY** is in compliance, correct the noncompliance, or request a hearing before the Board. 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. **IF THE ATTORNEY IS SUSPENDED, THE SECRETARY SHALL, BY CERTIFIED MAIL, DELIVER TO ADDRESSEE ONLY, NOTIFY THE ATTORNEY OF (HIS) SUCH ATTORNEY'S SUSPENSION. THE NOTICE SHALL ADVISE THE ATTORNEY OF (HIS) SUCH ATTORNEY'S RIGHTS OF APPEAL AND PROVIDE SUCH FURTHER INFORMATION AS THE BOARD DEEMS APPROPRIATE.**

EXPLANATION AND COMMENT

The existing rules do not state the manner in which attorneys whose licenses have been suspended should be notified. The proposed additional language in Rule 6.(C) and (D) will address this omission.

H. RULE 6.(H)

Attorneys who are suspended are subject to the provisions of **SECTION 7.(D) OF THE PROCEDURES OF THE ARKANSAS SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS OR ITS SUCCESSOR RULE. THE AFFIDAVIT REQUIRED BY SUB-SECTION (8) OF SECTION 7.(D) SHALL BE FILED WITH THE DIRECTOR OF THE OFFICE OF PROFESSIONAL PROGRAMS.**

EXPLANATION AND COMMENT

The proposed rule change reflects that Rule 11 of the Rules of the Supreme Court Regulating Professional Conduct of Attorneys at Law has recently become Section 7.(D) and provides for the filing of an affidavit. This modification requires that any attorney suspended for CLE violations shall file that affidavit with the Office of Professional Programs.

I. RULE 6.(I)

An attorney who has been suspended pursuant to these rules who desires reinstatement shall file a **PETITION FOR REINSTATEMENT WITH THE BOARD OR ITS SECRETARY. THE PETITION SHALL BE SWORN AND PROPERLY ACKNOWLEDGED BY A NOTARY PUBLIC OR ANY OFFICIAL AUTHORIZED TO TAKE OATHS. THE PETITION MAY INCLUDE THE APPLICANT'S REASON FOR NON-COMPLIANCE, STATE THAT THE APPLICANT IS PRESENTLY IN COMPLIANCE OR PROVIDE ANY OTHER MATERIAL INFORMATION PERTINENT TO THE APPLICANT'S PETITION. IN ADDITION, THE PETITIONER MAY REQUEST A HEARING BEFORE THE BOARD. IN SUCH CASE, A HEARING WILL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS SET OUT IN RULES 6.(E), 6.(F), 6.(G) AND SECTION 6 OF THE REGULATIONS. IN THE EVENT THE ATTORNEY IS REINSTATED, THE BOARD MAY SET ADDITIONAL EDUCATIONAL REQUIREMENTS AS A CONDITION OF REINSTATEMENT AND MAY ASSESS A REINSTATEMENT FEE CONSISTENT WITH ITS REGULATIONS.**

EXPLANATION AND COMMENT

The existing rules and regulations do not provide hearing procedures for a Petition for Reinstatement. The proposed Rule 6.(I) adopts hearing procedures consistent with Rule 6.(E), 6.(F), 6.(G) and Section 6 of the Regulations.

II. PROPOSED REGULATION CHANGES**A. REGULATION 1.08 - SPONSOR RECORDS**

Accredited or individual course sponsors shall maintain course records in connection with programs which have been approved by the Board. These records shall be maintained in the possession of the sponsor for a period of **(TWO (2) YEARS) ONE (1) YEAR** after the program or activity. Such records shall include: the course outline or brochures; all written materials; the faculty information; the evaluations; and the attendance records.

EXPLANATION AND COMMENT

The required time for a sponsor to maintain the records under Regulation 1.08 can reasonably be reduced from two (2) years to one (1) year. This will still provide for maintenance of the records for a sufficient length of time for the Office of Professional Programs to have access to the records, if necessary.

B. 4.04(2) - AUTHORSHIP OF LAW ARTICLES

In accordance with objective standards to be developed and applied by the Board, up to twelve (12) hours of credit may be earned through the authorship of a law-related article published by an American Bar Association accredited law school, a state bar journal, an official publication of the American Bar Association, or through authorship of a published book on legal matters. Any attorney may petition the Board for credit for the authorship of an article or book. **ENTITLEMENT TO PUBLICATION CREDIT WILL ACCRUE AS OF THE DATE OF DOCUMENTED ACCEPTANCE OF THE ARTICLE BY THE PUBLISHER.) ENTITLEMENT TO PUBLICATION CREDIT WILL ACCRUE AS OF THE DATE OF PUBLICATION OF THE ARTICLE OR DOCUMENTED DATE OF ACCEPTANCE FOR PUBLICATION.**

EXPLANATION AND COMMENT

The existing Regulation 4.04(2) provides that an attorney may receive credit for authorship of an article as of "the date of documented acceptance of the article by the publisher." During the first year for compliance with the continuing legal education rules, nine (9) individuals sought CLE credit for articles. None could produce the required "documented acceptance for publication by the publisher." The Board recommends that the last sentence of the existing Regulation 4.04(2) be changed so that credit may accrue as of the date of publication of the article, or as of the documented date of acceptance for publication. Either of these two times, dates and events can be ascertained so that credit may be awarded under the provisions of Regulation 4.04(2).

C. REGULATION 5.01 - REPORTING FEES

Attorneys are authorized to file certificates of compliance **(AFTER THE DUE DATE FOR ANY REPORTING PERIOD, AND ATTORNEYS ARE AUTHORIZED TO FILE DEFICIENCY PLANS ON FORMS DEVELOPED BY THE SECRETARY) UNDER RULE 5.(D), OUT-OF-STATE CERTIFICATES UNDER 2.(C), OR CONFIRMATION OF ACTIVE OR INACTIVE STATUS UNDER 5.(D), AFTER THE DUE DATE AS SET OUT IN THOSE RULES.** To be accepted, such filings shall be accompanied **(BY THE FOLLOWING FEES: LATE FILING OF CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 5.(G) - TWENTY-FIVE DOLLARS (\$25.00); FILING OF DEFICIENCY PLAN PURSUANT TO RULE 5.(F) - SEVENTY-FIVE DOLLARS (\$75.00.) BY A LATE FILING FEE IN THE AMOUNT OF TWENTY-FIVE (\$25.00). DEFICIENCY PLANS PURSUANT TO RULE 5.(E) MUST BE ACCOMPANIED BY A LATE FILING FEE OF SEVENTY-FIVE (\$75.00).** (SUCH) ALL fees shall be payable to the Bar of Arkansas.

EXPLANATION AND COMMENT

The existing section on late filing fees does not address late filing fees for out-of-state certificates or for confirmation of active or inactive status. The amounts included in the regulation have

previously been approved by the Court.

IN RE Joseph William SEGERS, Jr.
Arkansas Bar ID #70096

820 S.W.2d 461

Supreme Court of Arkansas
Delivered January 13, 1992

PER CURIAM. Upon the recommendation of the Committee on Professional Conduct we accept the surrender of the license of Joseph William Segers, Jr. without qualification.

Appointments to
Committees

IN THE MATTER OF THE ARKANSAS
CONTINUING LEGAL EDUCATION BOARD

820 S.W.2d 64

Supreme Court of Arkansas
Delivered December 23, 1991

PER CURIAM. Blair Arnold, Batesville, is appointed to this Board replacing Odell Pollard, Searcy, for a term of three years ending December 5, 1994.

The Court expresses its gratitude to Odell Pollard for his faithful and exemplary service as a member of the Board.

IN THE MATTER OF THE ARKANSAS
CONTINUING LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Delivered December 23, 1991

PER CURIAM. Robert R. Ross, Little Rock, is appointed to this Board replacing W. Russell Meeks, Little Rock, for a term of three years ending December 5, 1994.

The Court expresses its gratitude to W. Russell Meeks, III for his faithful and exemplary service as a member of the Board and as Chairman of the Board.

IN THE MATTER OF THE ARKANSAS
CONTINUING LEGAL EDUCATION BOARD

828 S.W.2d 346

Supreme Court of Arkansas
Delivered January 13, 1992

PER CURIAM. Donna Gay, Little Rock, is reappointed to this Board, At-Large, for a term of three years ending December 5, 1994.

The Court expresses its appreciation to Ms. Gay for accepting reappointment to this most important Board.