

Cite as 2018 Ark. 240

# SUPREME COURT OF ARKANSAS

IN RE ARKANSAS SUPREME  
COURT COMMITTEE ON  
CRIMINAL PRACTICE; ARK. R.  
CRIM. P. 33.6; ARK. SUP. CT. R. 3-4;  
AND ARK. R. APPELLATE P.  
-CRIM. 2

Opinion Delivered June 21, 2018

---

## PER CURIAM

The Arkansas Supreme Court Committee on Criminal Practice submitted proposals for changes in rules related to jury instructions and belated appeals. We are publishing the recommendations for comment. The Reporter's Notes explain the changes, and the proposed changes are set out in "line-in, line-out" fashion (new material is underlined; deleted material is lined through).

Comments on the suggested rule changes should be made in writing before September 1, 2018, and they should be addressed to: Stacey Pectol, Clerk, Supreme Court of Arkansas, Attn.: Criminal Procedure Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

1. Jury Instructions.

**Rule of Criminal Procedure 33.6. Instructions and Verdict Forms ~~To Be Delivered To Jury.~~**

(a)

In the trial of all cases in courts of record wherein juries are employed, upon request of counsel for any party, or of a juror, it shall be the duty of the presiding judge to deliver to the jury immediately prior to its retirement for deliberation, a ~~typewritten~~ written copy of the oral instructions ~~read given~~ to the jury. The written jury instructions shall be returned to the court by the foreman of the jury when the jury is dismissed.

(b)

The verdict forms and written jury instructions shall be filed in the clerk's case file at the conclusion of the jury's deliberations.

(c)

Any proffered jury instructions, which were requested by parties and rejected by the court, shall be delivered to the court reporter and made an exhibit to the court reporter's transcript.

**Reporter's Notes, 201\_ Amendment.** Subdivisions (b) and (c) were added.

**Rule of Supreme Court and Court of Appeals 3-4. Record in criminal cases.**

(a) *Order of record.* In all criminal cases, after the caption set forth in Rule 3-1, the record shall be organized in the following sequence:

1. Return of the indictment or information;
2. Defendant's pleadings;
3. Subsequent pleadings and orders in chronological order;
4. Final judgment and commitment or order appealed;
5. Verdict forms and written jury instructions;
56. Motion for new trial, to set aside, amend, etc.;
- 67. Order granting or denying above motions;
- 78. Notice of appeal and designation of record;
- 89. Extensions of time to file record on appeal;

–910. Reporters' transcription of testimony;

–4011. Appeal bond;

4412. Certificate, duly acknowledged.

(b) *Record of jury matters.* 1. The record shall not include the impaneling or swearing of the jury, the names of the jurors, or any motion, affidavit, order, or ruling in reference thereto unless expressly called for by a party's designation of the record.

2. Verdict forms, written jury instructions, and proffered jury instructions shall be inserted in the record when expressly identified by a party's designation of the record.

(c) *Exhibits.* Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the Court.

**Reporter's Notes, 201\_ Amendment.** Subdivisions (b)(2) was added to provide for verdict forms, written jury instructions, and proffered jury instructions to be inserted in the record.

2. Belated appeals.

## **Rule of Appellate Procedure-Crim. 2. Time and method of taking appeal.**

...

(e) *Failure to pursue appeal.* Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken. If no judgment of conviction was entered of record within ten (10) days of the date sentence was pronounced, application for belated appeal must be made within eighteen (18) months of the date sentence was pronounced. The court may equitably toll this 18-month deadline if the defendant has pursued his or her rights diligently and some extraordinary circumstance stood in his or her way.

...

**Reporter’s Notes, 201\_ Amendment.** The last sentence in subdivision (e) is new, drawing the standard from *Holland v. Florida*, 560 U.S. 631, 649 (2010)(a “petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing.”)(internal quotations and citations omitted).