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SUPREME COURT OF ARKANSAS

IN RE AMENDMENT TO RULE 6-1(a) OF THE RULES OF THE SUPREME COURT AND COURT OF APPEALS OF THE STATE OF ARKANSAS	**Opinion Delivered:** August 2, 2018

PER CURIAM

Today, the court publishes for comment a proposed amendment to Rule 6-1(a) of the Rules of the Supreme Court and Court of Appeals. Rule 6-1 provides the procedure for petitioning this court for extraordinary relief. Petitioners seeking extraordinary relief have historically named the circuit court or circuit judge presiding over the matter below as respondents to such petitions, and our caselaw has approved that practice. *See, e.*g., *Entergy Arkansas, Inc. v. Pope Cty. Circuit Court*, 2014 Ark. 506, 452 S.W.3d 81. Currently, Rule 6-1 correctly acknowledges that the real parties in interest are the parties to the action below, not the circuit judge, who "is ordinarily a nominal party." *See* Ark. Sup. Ct. R. 6-1(a)(3) (2017). However, we think putting judges in an adversarial posture against litigants before them is undesirable even if such actions are maintained against the court or the judge in a capacity that is merely nominal. Therefore, we propose amending 6-1(a) to eliminate the practice of naming courts and judges as respondents and to prohibit circuit courts and judges from filing responses to extraordinary writ petitions unless ordered to do so by this court. This is similar to Rule 21 of the Federal Rules of Appellate Procedure.

The proposed amendment is set out below in "line-in, line-out" fashion (new material is underlined; deleted material is lined through). Comments on the suggested amendment should be made in writing before September 1, 2018, and they should be addressed to: Stacey Pectol, Clerk, Supreme Court of Arkansas, 625 Marshall Street, Little Rock, Arkansas 72201.

Rule 6-1. Extraordinary writs, expedited consideration, and temporary relief.

(a) Extraordinary writs.

(1) Proceedings for an extraordinary writ such as prohibition, mandamus, and certiorari are commenced by filing ~~an original~~ a petition in the Supreme Court. These writs are not available if appeal is an adequate remedy. A party seeking appellate review of a circuit court's decision on a request for an extraordinary writ must file a notice of appeal in the circuit court, not a petition for the writ in the ~~appellate~~ Supreme ~~c~~Court. When a party petitions the ~~appellate~~ Supreme ~~c~~Court for an extraordinary writ, the certified pleadings ~~with~~, orders, and ~~certified~~ exhibits from the circuit court, if applicable, are treated as the record.

(2) The petitioner is required to file with the Clerk the ~~original~~ petition along with the certified record. The petitioner shall not identify the circuit court or judge as a respondent to the petition. Instead, the petitioner should identify as respondents all the other parties to the circuit court action. Evidence of service of a copy of the petition and record upon the ~~adverse party~~ respondents or ~~his or her~~ their counsel of record in the circuit court is required. The petitioner must also provide a copy of the petition to the circuit judge to alert the circuit judge to the filing of the petition. The Clerk may refuse to accept for filing any petition that does not comply with the requirements of these rules.

(3) ~~When the petition includes a certified copy of the record in the circuit court, the petitioner shall serve a copy of that record on the adverse party or his or her counsel. In prohibition cases, the petitioner shall also serve a copy of the record on the circuit judge, who is ordinarily a nominal party and is not required to file a response.~~ Unless modified by the Court, a response to a petition for extraordinary relief may be filed within 10 calendar days from the date of the filing of the petition for extraordinary relief. The circuit judge or any other non-party shall not file a response unless the Supreme Court has entered an order requesting a response.