Cite as 2011 Ark. 99

SUPREME COURT OF ARKANSAS

No.

IN RE ARKANSAS RULES OF CIVIL PROCEDURE AND RULES OF THE SUPREME COURT AND COURT OF APPEALS

Opinion Delivered March 3, 2011

PER CURIAM

The Arkansas Supreme Court Committee on Civil Practice has submitted its annual proposals and recommendations for changes in rules of procedure affecting civil practice. We have reviewed the committee's work and publish for comment the suggested amendments that appear below. The 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).

We express our gratitude to the Chair of the Committee, Judge Henry Wilkinson, its Reporter, Professor Kenneth S. Gould, and all the committee members for their faithful and helpful work with respect to the rules.

Comments on the suggested rule changes should be made in writing before May 1, 2011, to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Civil Procedure Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

A. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 3. Commencement of action — "Clerk" defined.

(a) A civil action is commenced by filing a complaint with the clerk of the court who shall note thereon the date and precise time of filing.

(b) The term "clerk of the court" as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(b)(2)(B). In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement shall be satisfied when the complaint is filed with either the circuit clerk or the county clerk.

(c) The clerk shall assign a new case number and charge a new filing fee for the filing of any case that is re-filed after having been dismissed.

Addition to Reporter's Notes, 2011 Amendment: The amendment adds a new subdivision (c) to clarify that a new case number is to be assigned and a new filing fee charged for a case re-filed after having been dismissed.

Rule 4. Summons.

. . . .

[*In accordance with the amendments to Rule 12(a), the form for summons issued pursuant to Ark. R. Civ. P. 4(a)(b), the form for Notice and Acknowledgment for Service by Mail under Ark. R. Civ. P. 4(d)(8)(B), and the accompanying Reporter's Notes are amended to read as set out on the following pages. The language of the forms is also updated consistent with changes in December 2009 to the comparable federal forms.*]

THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DIVISION [Civil, Probate, etc.]

_____	)	
Plaintiff	)	
	)	
v.	)	No. _____
	)	
_____	)	
Defendant	)	

SUMMONS

THE STATE OF ARKANSAS TO: [Defendant's name and address]

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint.

Within 30 days after service of this summons on you (not counting the day you received it) — or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas — you must file with the clerk of this Court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address is: _____

_____

If you fail to respond within the applicable time period, judgment by default will be entered against you for the relief demanded in the complaint.

Address of Clerk's Office

_____

_____

CLERK OF COURT

_____

[Signature of Clerk or Deputy Clerk]

[SEAL]

Date: _____

No. _____

PROOF OF SERVICE

[This section is to be completed only if service is made by a sheriff or deputy sheriff.]

This summons for [name of defendant] was received by me on _____ [date].

☐ I personally served the summons and complaint on the individual at _____ [place] on _____ [date]; or

☐ I left the summons and complaint in the proximity of the individual after he/she refused to receive it when I offered it to him/her; or

☐ I left the summons and complaint at the individual's dwelling house or usual place of abode at _____ [address] with _____ [name], a person at least 14 years of age who resides there, on _____ [date]; or

☐ I served the summons and complaint on _____ [name of individual], who is designated by appointment or by law to receive service of process on behalf of _____ [name of defendant] on _____ [date]; or

☐ I returned the summons unexecuted because _____ _____;
or

☐ [Other specify]
_____
_____
_____

My fee is $ ____.

I declare under penalty of perjury that this information is true.

Date: _____ SHERIFF OF _____ COUNTY, ARKANSAS

By: _____
[Signature of server]

_____
[Printed name and title]

Additional information regarding service or attempted service: _____
_____
_____
_____
_____

Reporter's Notes Regarding Summons Form, 2011: The new summons form changes the time to respond to the complaint to 30 days for both resident and nonresident defendants and updates the language of the form consistent with changes in December 2009 to the comparable federal summons form. The changes to the federal form were part of a nearly three-year-long process to clarify and simplify the language of the Federal Rules of Civil Procedure.

Form for Notice and Acknowledgment
for Service by Mail under Ark. R. Civ. P. 4(d)(8)(B)

This form is to be used only for service by mail under Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure. It cannot be used for service by mail under Rule 4(d)(8)(A) or for service by a commercial delivery company under Rule 4(d)(8)(C).

_____

NOTICE

To: [*Defendant's name and address*]

A lawsuit captioned _____ [insert caption of case from complaint] has been filed against you in the Circuit Court of _____ County, Arkansas. The enclosed summons and complaint are served on you in accordance with Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure.

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

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

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

As the sender of this Notice and Acknowledgment of Receipt of Summons and Complaint, I declare under penalty of perjury that it is being mailed on [date].

Sender's Address:

_____

_____

_____

_____
[Signature]

_____
[Printed Name]

_____
[Date of Signature]

ACKNOWLEDGMENT OF RECEIPT
OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the lawsuit referenced above at [address] on [date].

_____
[Signature]

_____
[Printed Name]

_____
[Relationship to Entity / Authority to Receive Service]

_____
[Date of Signature]

Reporter's Notes Regarding Form for Notice and Acknowledgment for Service by Mail Under ARCP 4(d)(8)(B), 2011: The new form updates the language of the form consistent with changes in December 2009 to the comparable federal summons form. The changes to the federal form were part of a nearly three-year-long process to clarify and simplify the language of the Federal Rules of Civil Procedure.

Rule 12. Defenses and Objections–When and How Presented–by Pleading or Motion–Motion for Judgment on the Pleadings.

(a) *When Presented.*

(1) A defendant shall file his or her answer within ~~20~~ 30 days after the service of summons and complaint upon him or her.~~, except that: (A) a defendant not residing in this state shall file an answer within 30 days after service; (B) a~~ A defendant served under Rule 4(f) shall file an answer within 30 days from the date of first publication of the warning order.~~; and (C) a~~ A defendant incarcerated in any jail, penitentiary, or other correctional facility in this state, however, shall file an answer within 60 days after service. A party served with a pleading stating a cross-claim or counterclaim against him or her shall file ~~his~~ an answer or reply thereto within ~~20~~ 30 days after service upon ~~him~~ the party. The court may, upon motion of a party, extend the time for filing any responsive pleading.

. . . .

(3) When any case is removed to federal court and subsequently remanded, the plaintiff shall file a certified copy of the order of remand with the clerk of the circuit court and shall forthwith give written notice of such filing to all parties in accordance with Rule 5. Any adverse party shall have ~~20~~ 30 days from the receipt of such notice within which to file an answer or a motion permitted under this rule.

. . . .

(f) *Motion to Strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~20~~ 30 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

. . . .

Addition to Reporter's Notes, 2011 Amendment: Subdivision (a)(1) has been amended to require that both resident and nonresident defendants file a response within 30 days after service of the summons and complaint. The rule previously required that the resident defendant file the response within 20 days. On occasion the different response times led to the issuance of an incorrect summons by the clerk's office and subsequent issues as to the sufficiency of process. In addition, modern means of communication and electronic transmission diminish the need to distinguish between response times for resident and nonresident defendants. The amendment to subdivision (a)(3) extends to 30 days from the date of receipt of the remand notice the time within which a defendant must respond to a

complaint when a case is remanded from federal court. Subdivision 12(f) similarly is amended to require that a motion to strike be filed within 30 days of service of the pleading upon a party.

Rule 30. Depositions upon oral examination.

. . . .

(f) *Certification by Officer; Exhibits; Copies; Notice of Filing.*

. . . .

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain, for the period established for transcripts of court proceedings in the retention schedule for official court reporters, stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent; provided that it shall be the duty of the party causing the deposition to be taken to furnish one copy of the transcript, or if the deposition was recorded solely by sound or sound-and-visual as provided for in Rule 30(b)(3), a copy of the recording, to any opposing party, or in the event there is more than one opposing party, a copy may be filed with the clerk for the use of all opposing parties, and the party filing the deposition shall give prompt notice of its filing to all other parties.

Addition to Reporter's Notes, 2011 Amendment: Subdivision (f)(2) is revised to clarify that a party taking a deposition is not obligated to provide the opposing party or parties a copy of any sound or sound and video recording of the deposition unless no written transcript was made. Since former subdivision (f)(2) required that the party taking the deposition provide the opposing party a copy of the deposition (if multiple parties, to file a copy with the clerk for use by all parties), the rule could have been read as requiring the party taking the deposition to incur the additional expense of providing a copy of the nonstenographic sound or sound and video recording in addition to the written transcript. Under the amendment, a party taking a deposition only by sound or sound and video recording is still obligated to provide the opposing party with a copy of the deposition or, in a case involving multiple parties to file a copy for use of all opposing parties.

Rule 65. Injunctions and temporary restraining orders.

(a) *Preliminary Injunction.* (1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and

consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) *Temporary Restraining Order.* (1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration*. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing*. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve*. On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) *Security*. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Neither the State of Arkansas, its officers, nor its agencies are required to give security.

(d) *Contents and Scope of Every Injunction and Restraining Order.*

(1) *Contents*. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound*. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with the parties and the parties' officers, agents, servants, employees, and attorneys.

Addition to Reporter's Notes, 2011 Amendment: Rule 65 has been completely rewritten and is now substantially identical to Federal Rule 65 as amended in 2009. Rule 65 as adopted in 1979 departed significantly from the corresponding federal rule. Contrary to the approach of the federal rule and that of most states, the original Arkansas Rule 65 treated preliminary injunctions and temporary restraining orders as equivalent, allowing issuance of either without notice to the adverse party. Subsections (a) and (b) of the amended rule provide for issuance of a temporary restraining order without notice to the adverse party but require notice to the adverse party prior to issuance of a preliminary injunction.

The amendment eliminates former subsection (a)(2) that limited the availability of *ex parte* injunctive relief in some circumstances. The revised rule provides a number of enhanced procedural protections for persons or entities against whom *ex parte* injunctive relief is sought, including: that an affidavit or verified complaint state specific facts showing the harm that will result to the movant before the adverse party can be heard; that the movant's attorney certify in writing any efforts made to give notice and why notice should not be required; that a temporary restraining order issued without notice describe the circumstances underlying its issuance; that the temporary restraining order must expire not later than 14 days after entry unless for good cause or with the adversary's consent it is extended; and that the hearing on the temporary restraining order be set for the earliest possible time and take precedence over other matters. In addition, the party against whom the order is issued may appear and move to dissolve or modify the order upon 2 days' notice to the party who obtained the temporary restraining order without notice.

In subsection (c) the amended rule conditions issuance of a preliminary injunction or temporary restraining order on the movant's giving security determined by the court and section (d)(1) prescribes the contents of the injunction or restraining order. Subsection (d) specifies the persons bound by the order.

(a)(1) Notice. A preliminary injunction or a temporary restraining order may be granted without written or oral notice to the adverse party or his attorney where it appears by affidavit or verified complaint that irreparable harm or damage will or might result to the applicant if such preliminary injunction or temporary restraining order is not granted. In all other cases, reasonable notice must be given to the adverse party or his attorney of the application for a preliminary injunction or temporary restraining order and an opportunity for such party or his attorney to be heard in opposition thereto. Every preliminary injunction or temporary restraining order granted without notice shall be filed with the clerk and a copy served upon the party restrained in the manner prescribed by Rule 4 of these rules.

(2) A restraining order or interlocutory injunction to stop the general and ordinary business operation of an individual, corporation, labor union, turnpike, railroad, canal company, municipal corporation, any building, erection or other work or to restrain a nuisance can only be granted by the court or any judge thereof upon reasonable notice of the time and place of the application therefor to the party enjoined. No such preliminary injunction or restraining order shall be effective until the party obtaining the injunction files his bond with the clerk, together with good and sufficient securities to be approved by the clerk, conditioned that the party giving the bond will pay to the party enjoined such damages as he may sustain if it is finally decided that the injunction ought not to have been granted.

(b) Hearing. Upon application by the party against whom the preliminary injunction or temporary restraining order has been issued without notice, the Court shall, as expeditiously as possible, hold a hearing to determine whether the preliminary injunction or temporary restraining order should be dissolved. Where a hearing is required to be held on an application for a preliminary injunction or temporary restraining order, the Court may order the trial of the action on the merits advanced and consolidated with the hearing on the application. When consolidation is not ordered, any evidence received upon application for a preliminary injunction or temporary restraining order which would be admissible upon the trial on the merits becomes a part of the record of the trial and need not be repeated upon the trial. This subdivision (b) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(c) Duration. A preliminary injunction or temporary restraining order not otherwise earlier dissolved shall remain in effect until a final judgment or decree is entered, provided that such preliminary injunction or temporary restraining order may, upon motion and for good cause shown, be made permanent upon final hearing of the cause.

(d) Security. As a condition precedent to the issuance of a preliminary injunction or temporary restraining order, the Court may require the giving of security by the applicant in such sum as the Court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State of Arkansas or any officer or agency thereof.

The provisions of Rule 65.1 apply to any surety upon a bond or undertaking under this rule.

~~(e) Form and Scope of Injunction or Restraining Order. Every order granting an injunction or restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained or mandated; and it is binding only upon the parties to the action, their officers, agents, servants, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.~~

~~(f) Contempt. Disobedience of an injunction or restraining order may be punished by the Court as a contempt.~~

B. ARKANSAS RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 2-1. Motions, general rules.

(a) *Writing Required*. All motions must be in writing~~.~~ and comply with the requirements of Rule 4-1(a) in regard to the style of briefs.

. . . .

Explanatory Note, 2011 Amendment: This amendment clarifies that all motions filed in the Arkansas Supreme Court and Court of Appeals must comply with the requirements of Rule 4-1(a) in regard to the style of briefs.

Rule 4-1. Style of briefs.

. . . .

(b) *Length of argument*. Unless leave of the court is first obtained, the argument portion of a brief shall not exceed 30 double-spaced pages including the conclusion, if any. The appellant's reply brief shall not exceed ~~15~~ 20 double-spaced pages and shall not include any supplemental abstract unless permitted by the court upon motion. Motions for an expansion of the page limit must set forth the reason or reasons for the request and must state that a good faith effort to comply with this rule has been made. The motion must specify the number of additional pages requested.

. . . .

Explanatory Note, 2011 Amendment: In an October 29, 2009 per curiam the Arkansas Supreme Court approved a change in the font size for briefs to 14 points and raised the page limit for opening briefs from 25 to 30 pages. The amendment to Rule 4-1(b) makes a corresponding change in the page limit for reply briefs from 15 to 20 pages to adjust for the 14 points requirement.

Rule 4-2. Contents of briefs.

(a) *Contents*. The contents of the brief shall be in the following order:

. . . .

(6) *Statement of the Case.* The appellant's brief shall contain a concise statement of the case without argument. This statement, denoted as the "Statement of the Case," shall ordinarily not exceed two pages in length, and shall not exceed ~~five~~ six pages without leave of the court. The pages of the statement of the case shall appear immediately before the argument and are not counted against the page limits of the argument set out in Rules 4-1(b) and 4-3(e). The statement of the case should be sufficient to enable the court to understand the nature of the case, the general fact situation, and the action taken by the trial court. The statement must include supporting page references to the abstract or addendum or both. The Clerk will refuse to accept a brief if the required references to the abstract or addendum are not included. The appellee's brief need not contain a statement of the case unless the appellant's statement is deemed to be controverted or insufficient.

Explanatory Note, 2011 Amendment: In an October 29, 2009 per curiam the Arkansas Supreme Court approved a change in the font size for briefs to 14 points and raised the page limit for opening briefs from 25 to 30 pages. The amendment to Rule 4-2(a)(6) makes a corresponding change in the page limit for statement of the case from 5 to 6 pages to adjust for the 14 points requirement.

. . . .

Rule 6-7. Taxation of costs.

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(b) *Reversal.* The appellant may recover (1) brief costs not to exceed $3.00 per page with total costs of the brief not to exceed $1000.00, (2) the filing fee of $150.00 and the technology fee of $15.00, (3) the circuit clerk's costs of preparing the record, and (4) the court reporter's cost of preparing the transcript.

(c) *Affirmed in part and reversed in part.* The Court may assess appeal costs according to the merits of the case.

(d) *Imposing or withholding costs.* Whether the case be affirmed or reversed, the Court will impose or withhold costs in accordance with Rule 4-2(b).

Explanatory Note, 2011 Amendment: Act 328 of 2009, § 7 (Ark. Code Ann. § 21-6-416) added a technology fee to be charged by the clerks of the Supreme Court, circuit courts, and district courts (Ark. Code Ann. § 21-6-416). With a few exceptions, the fee of $15 is imposed for civil actions filed in those courts. The amendment to Ark. Sup. Ct. R. 6-7(b) adds the technology fee to the costs that a successful appellant may recover in the Arkansas Supreme Court or Court of Appeals.

Rule 6-9. Rule for appeals in dependency-neglect cases.

(a) *Appealable Orders.*

(1) The following orders may be appealed from dependency-neglect proceedings:

(A) adjudication order;

(B) disposition, review, no reunification, and permanency planning order if the court directs entry of a final judgment as to one or more of the issues or parties based upon the express determination by the court supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. 54(b);

(C) termination of parental rights; ~~and~~

(D) denial of right to appointed counsel pursuant to Ark. Code Ann. § 9-27-316(h)~~.~~; and

(E) denial of a motion to intervene.

(2) The circuit court shall enter and distribute to all the parties all dependency-neglect orders no later than thirty (30) days after a hearing.

. . . .

Explanatory Note, 2011 Amendment: The amendment adds motions to intervene in dependency-neglect proceedings to the list of appealable orders under the expedited appeal procedure of Rule 6-9. In *Schubert v. Arkansas Department of Human Services & K.M.*, 2009 Ark. 596, 2009 WL 4403241, the Arkansas Supreme Court determined that "the plain language" of Rule 6-9 did not allow appeal of orders denying intervention in dependency-neglect cases (though in *Schubert* the Court did allow appeal of the order denying intervention under Arkansas Rule of Appellate Procedure–Civil 2(a)(2)). The amendment corrects the omission by adding"denial of a motion to intervene" to the list of appealable orders.