

Cite as 2010 Ark. 252

SUPREME COURT OF ARKANSAS

No.

Opinion Delivered 5-20-10

IN RE: ARKANSAS SUPREME COURT
AND COURT OF APPEALS RULE 5-3

PER CURIAM

There has been some question over the years as to the duration of a stay of the issuance of a mandate or the recall of a mandate under Arkansas Supreme Court and Court of Appeals Rule 5-3, when a petition for writ of certiorari has been filed with the United States Supreme Court. In an attempt to address this question, we now publish the following proposed amendment to Rule 5-3 for comment from the Bench and Bar. 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 change should be made in writing before September 1, 2010, to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Supreme Court Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

Rule 5-3. Mandate.

(a) *Mandate to be issued in all cases.* In all cases, civil and criminal, the Clerk will issue a mandate when the decision becomes final and will mail it to the clerk of the circuit court from which the appeal was taken for filing and recording. A decision is not final until the

time for filing of petition for rehearing or, in the case of a decision of the Court of Appeals, the time for filing a petition for review has expired or, in the event of the filing of such petition, until there has been a final disposition thereof.

(b) *Immediate issuance, upon leave of court.* No transcript of any judgment, decision or opinion of the Court shall be certified by the Clerk, or mandate issued, within 18 calendar days after the judgment is rendered without special leave of the Court or upon stipulation of counsel, except in the case of the denial of a petition under Rule 37 of the Arkansas Rules of Criminal Procedure, in which case the decision of the Court shall be certified by the Clerk and the mandate issued on the day the decision is rendered.

(c) *Stay of mandate.*

(1) Parties desiring to prosecute proceedings to the Supreme Court of the United States ~~either by appeal or~~ by filing a petition for a writ of certiorari may obtain an order either staying the issuance of a mandate or recalling a mandate upon motion to the Court ~~(or to an individual judge)~~ and a showing that:

(A) the petition for a writ of certiorari presents a substantial question;

(B) there is good cause for a stay or a recall; and

(C) an order has been placed with the Clerk for a copy of the record, with payment of an advance deposit of \$50.00.

Such stay or recall is discretionary with the Court.

(2) The stay shall not exceed 90 days from the date the stay is issued, unless the period is extended for good cause or the party who obtained the stay timely files a petition with the Supreme Court of the United States and so notifies the Clerk of this Court, in which case the stay shall remain in effect until the Supreme Court's final disposition.

(3) Bond may be required as a condition for granting or continuing the stay.

(4) The Clerk shall issue the mandate immediately upon the filing of a copy of the Supreme Court order denying the petition for writ of certiorari.

(d) *Motion to recall mandate.* A motion to recall the mandate must be served upon opposing counsel, and an objection to the motion may be filed. Should the motion be granted, the moving party shall pay all costs accrued after the filing of the mandate.