APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ADOPTION of AMENDMENT TO RULE 1.15, ARKANSAS RULES of PROFESSIONAL CONDUCT, and ENABLING POWERS FOR THE ARKANSAS IOLTA FOUNDATION, INC.

06-625

Supreme Court of Arkansas
Opinion delivered November 30, 2006

PER CURIAM. The Arkansas IOLTA Foundation, Inc., filed a petition with the court proposing to revise Rule 1.15 of the Arkansas Rules of Professional Conduct and seeking certain powers for the IOLTA Board of Directors. The proposal was published for comment. *See In Re Proposed Amendment to Rule 1.15, Ark. Rules of Prof'l Conduct, & Enabling Powers for the Ark. IOLTA Found., Inc.* 367 Ark. App'x 647 (2006) (per curiam). The objectives of the proposed amendments were summarized as follows:

> The changes proposed in this Petition relate primarily to a wider variety of new banking products . . . to the types of financial institutions that may hold IOLTA accounts, and to certain banking practices . . . that negatively impact attorney IOLTA revenue. In addition, the Petition seeks enabling powers for the Foundation's Board.

Id.

We thank those who reviewed the proposal and submitted comments. We agree with the proposal but have restructured it somewhat. In addition, in response to a comment, language has been added in (c)(3)(i-ii), setting out notice and cure provisions concerning a bank's removal from the IOLTA program. The changes in the rule are illustrated at the end of this order.

We adopt, effective February 1, 2007, the amendments to Rule 1.15 of the Arkansas Rules of Professional Conduct, including the enabling powers for the Arkansas IOLTA Foundation Board, all as set out below, and republish the rule in its entirety.

RULE 1.15. SAFEKEEPING PROPERTY AND TRUST ACCOUNTS

(a) Safekeeping property.

(1) A lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

(2) Property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.

(3) Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client.

(4) A lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order.

(5) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons.

(6) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(b) Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.

(1) Funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

(2) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer may deposit funds belonging to the lawyer or the law firm in a client trust account for the sole purposes of paying bank services charges on that account, or to comply with the minimum balance required for the waiver of bank charges, but only in the amount necessary for those purposes, but not to exceed $500.00 in any case. Such funds belonging to the lawyer or law firm shall be clearly identified as such in the account records.

(4) Each trust account referred to in section (b)(1) shall be an interest- or dividend-bearing account held at an eligible institution.

(5) Each such trust account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

> (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
>
> (ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account ("IOLTA" account) for such funds. The account shall be maintained in compliance with the following requirements:

(i) The trust account shall be maintained in compliance with sections (b)(1) - (b)(5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;

(ii) No earnings from the account shall be made available to the lawyer or law firm; and,

(iii) The interest accruing on this account, net of allowable reasonable fees, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.

(7) All client funds shall be deposited in the account specified in section (b)(6), unless they are deposited in a separate interest-bearing account ("non-IOLTA" account) for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in this Rule.

(8) The decision whether to use an "IOLTA" account specified in section (b)(6) or a "non-IOLTA" account specified in section (b)(7) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

(i) The amount of interest which the funds would earn during the period they are expected to be deposited; and,

(ii) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.

(9) Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(10) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on a form provided by and in a manner designated by the Clerk of the Supreme Court.

(11) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas IOLTA Foundation's Board of Directors, on

its own motion, has exempted the lawyer or law firm from participation in the Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.

(c) IOLTA Foundation relationship with eligible and member institutions.

(1) DEFINITIONS. As used in this rule, the terms below shall have the following meaning:

(i) "IOLTA account" means an interest- or dividend-bearing trust account benefiting the Arkansas IOLTA Foundation, Inc. established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons, which may be withdrawn upon request as soon as permitted by law.

(ii) "Eligible institution" for IOLTA accounts means a depository bank or savings and loan association or credit union authorized by federal or state laws to do business in Arkansas, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Arkansas. In addition, an eligible institution must either (1) maintain a physical office in the state of Arkansas or (2) be owned by a bank holding company regulated by the Federal Reserve System, of which a subsidiary federally-insured depository bank or savings and loan association or credit union maintains a physical office in the state of Arkansas. Eligible institutions must meet the requirements set out in section (b) above.

(iii) "Interest- or dividend-bearing trust account" means a federally insured checking account or an investment product, including a sweep product and a daily (overnight) financial-institution repurchase agreement or an open-end money market fund. A daily financial-institution repurchase agreement must be fully collateralized by U.S. Treasury Securities; an open-end money-market fund must invest primarily in U.S. Treasury Securities or repurchase agreements fully collateralized by U.S. Treasury Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal

statutes and regulations. An open-end money-market fund must hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and, at the time of investment, have total managed assets of at least $250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

(iv) "Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) federal deposit insurance fees, (5) sweep fees, 12b-1 fees, and subaccounting fees, and (6) a reasonable IOLTA account administrative fee.

(v) "U.S. Treasury Securities" means direct obligations of the federal government of the United States.

(vi) "Repurchase agreements" means transactions in which a fund buys a security from a dealer or bank and agrees to sell the security back at a mutually agreed-upon time and price. The repurchase price exceeds the sale price, reflecting the fund's return on the transaction. This return is unrelated to the interest rate on the underlying security. Repurchase agreements are subject to credit risks.

(2) Participation in the IOLTA program is voluntary for banks, savings and loan associations, and investment companies. Any eligible institution that elects to provide and maintain IOLTA accounts shall do so according to the following terms:

(i) Determination of Interest Rates and Dividends. Eligible institutions that maintain IOLTA accounts that are, or are invested in, interest-bearing deposits or daily financial-institution repurchase agreements shall pay no less than the highest rate and dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the balance in the IOLTA account, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such

factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer may accept, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account into a daily financial institution repurchase agreement or a money-market fund. However, this Rule shall not require any eligible institution to offer or otherwise make available sweep accounts for IOLTA accounts.

(ii) Written Agreements. There shall be a written agreement between the lawyer and the eligible institution, designating interest on the IOLTA account be remitted to the Arkansas IOLTA Foundation, Inc. on a monthly basis.

(iii) Interest Rates and Dividends. Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(iv) Reasonable Fees. Reasonable fees means (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balances, (4) federal deposit insurance fees, (5) sweep fees, 12b-1 fees, and subaccounting fees, and (6) a reasonable IOLTA account administrative fee. Reasonable fees are the only service charges or fees permitted to be deducted from interest earned on IOLTA accounts. Reasonable fees may be deducted from interest on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for all of its customers with interest-bearing accounts. All other fees and charges shall not be assessed against the accrued interest on the IOLTA account but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

(v) Negative Netting Prohibited. Fees or charges in excess of the interest earned on the account for any month shall not be taken from interest earned on other IOLTA accounts or from the principal of the account.

(vi) Reporting Requirements. A statement should be transmitted monthly to the Arkansas IOLTA Foundation, Inc. with each remittance showing the period for which the

remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the average daily rate applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period. The Foundation supplies a monthly remittance form tailored to each bank listing the required information; however, should the bank elect to generate its own report, the requirements in this section must be addressed.

(3) In addition to the attorney trust account "automatic overdraft" notification procedures set out in Section 28 of the Procedures of the Arkansas Supreme Court regulating professional conduct of attorneys at law:

(i) Banks may only be removed from the IOLTA program after notice from the Foundation to the bank of the action needed to correct or implement any needed changes and a timely response from the bank.

(ii) Should a bank be removed from the IOLTA program, the Foundation will give attorneys sufficient notice and time in order to move their IOLTA accounts to another participating bank.

COMMENT:

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b)(3) provides it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the trust account funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the

lawyer reasonably believes represent fee owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed of the funds shall be promptly distributed.

[4] Paragraph (a)(6) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

ILLUSTRATION OF CHANGES

(Language removed is struck through; new language is underlined.)

. . . .

(b) **Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.**

(4) Each trust account referred to in section (b)(1) shall be an interest- or dividend-bearing account held at an eligible institution.

~~(4) Each trust account referred to in section (b) (1) shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government.~~

. . . .

(6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account ("IOLTA" account) for such funds. The account shall be maintained in compliance with the following requirements:

(i) The trust account shall be maintained in compliance with sections (b)(1) - (b)(5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;

(ii) No earnings from the account shall be made available to the lawyer or law firm; and,

(iii) The interest accruing on this account, net of allowable reasonable fees, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.

~~(iii) The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include any items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.~~

. . . .

~~(8) The interest paid on the account shall not be less than, nor the fees and charges assessed greater than, the rate paid or fees and charges assessed, to any non-lawyer customers on accounts of the same class within the same institution.~~

. . . .

~~(9) All lawyers who maintain accounts provided for in this Rule, must convert their client trust account(s) to interest-bearing account(s) with the interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six months from the date of the order adopting this Rule, unless the account falls within subsection (b)(8).~~ Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(c) IOLTA Foundation relationship with eligible and member institutions.

[Entire section is new]

IN RE: ARKANSAS LAWYERS ASSISTANCE PROGRAM

Supreme Court of Arkansas
Opinion delivered November 30, 2006

PER CURIAM. In November of 1999, the Arkansas Bar Association and the Pulaski County Bar Association filed a petition with this court asking that we adopt the "Arkansas Lawyers Assistance Program." In that petition, the petitioners stated,

> The Arkansas Bar Association and the Pulaski County Bar Association believe a need exists to assist lawyers, law students, and Judges who are impaired by substance abuse, depression, and similar problems so that they may be persuaded to obtain treatment to assist them to overcome their problems, recover, and return to being responsible, productive members of the legal profession and of society. Further, a need exists to protect clients and the public from harm caused by impaired lawyers and Judges.

On July 7, 2000, we proposed the creation of a program for lawyers and judges and published for comment proposed rules for its operation. On December 7, 2000, by per curiam order, we created the Arkansas Lawyers Assistance Program (ArLAP) and adopted rules governing its operation. We concluded that the assertions of the petitioners pertaining to the need for such a program were likely well founded. However, we chose to include a "sunset" provision which would cause ArLAP to cease to exist on December 31, 2006, absent further orders from this court.

Since the adoption of that per curiam order, this court has had the benefit of annual consultations with the professional staff employed to administer the program. During those meetings, we have been kept apprised of the development of the program as well as the evidence of the need for such a program. ArLAP has been utilized by at least 165 members of the bench and bar to cope with one or more of the difficulties outlined in the original petition. The number of participants continues to increase each year. Further, the participants have come from all sections of the state, closely reflecting the distribution of population within the state.

Rule VII of the ArLAP rules provides that the Committee on Professional Conduct or the Judicial Discipline and Disability Commission may refer individuals to ArLAP as part of the disciplinary process. Since the inception of the program, a number of attorneys and judges have been referred to ArLAP. Providing such an option broadens the available resources for dealing with disciplinary issues arising from alcoholism, substance abuse, or other infirmities.

In order to provide funding, by per curiam order of September 16, 2004, we directed that $20.00 of each annual license fee would be allocated to this program. We have learned that such a level of funding has proven to be adequate under current circumstances. The court is also informed that the ArLAP committee has recently established a non-profit foundation by which they seek contributions to further assist in the funding of ArLAP.

We conclude that the number of lawyers, judges, family members, and clients who have been positively affected by the existence of ArLAP is compelling evidence of the need for the program. We direct that the Arkansas Lawyers Assistance Program continue to exist in accordance with the rules and regulations originally adopted on December 7, 2000, as later amended, pending further orders of this court.

tions on the following subjects: Practice & Procedure; Commercial Transactions; Business Organizations; Criminal Law & Procedure; Torts; Property; Wills, Estates, & Trusts; and Equity & Domestic Relations.

We also determined that the development of questions and answers for the first three (3) of those subjects (Practice & Procedure, Commercial Transactions, and Business Organizations) would be done by the National Conference of Bar Examiners (NCBE) and presented to the applicants via the Multistate Essay Examination (MEE). The remaining five (5) questions are prepared by members of the Board.

MEE questions are developed over a period of approximately eighteen (18) months. A committee composed of practicing lawyers, judges, and law school professors develop the first draft of the question. It is then refined over a period of time and ultimately is "field tested" by a group of individuals who have recently passed their state's bar exam. As a result of that field test, the question is revised once again and is ready for use by the various jurisdictions. At the moment, nineteen (19) states currently utilize the MEE.

After the question is given, a calibration session is held in Chicago. All Arkansas Board members will attend that calibration session and, in the company of examiners from all other jurisdictions, "calibrate" or determine the appropriate weight to be given to each significant issue raised in the question.

For the above reasons, the Board has asked that the MEE be utilized as the testing vehicle for all eight (8) essay questions. We accept that recommendation and direct that all essay subjects given on the Arkansas Bar Examination, as set out in our per curiam order of November 30, 2000, make use of the MEE as the question for that subject area. This order is effective with the questions to be given during the July 2007 Arkansas Bar Examination.

INCREASE IN BAR EXAMINATION FEE

As decided above, the MEE, effective in July 2007, will become the testing device for all essay questions. That requirement will lead to significant additional costs in purchasing those questions from the National Conference of Bar Examiners and paying for the attendance of Arkansas examiners at the Chicago grading session twice a year.

Further, the Board notes that the number of applicants has reached the point where an additional day has been added to the grading session to ensure that the examiners have ample time to grade the answers.

Finally, the Board allows the use of laptop computers by examinees during the examination. This option results in increased expense for the purchase of the necessary software for each applicant and in providing technical support during the examination and the printing of the answers.

Consequently, the Board recommends that the Bar examination fee, which is currently $325.00, be increased to $400.00, effective with the July 2007 Arkansas Bar Examination. The Board notes that such a fee will remain one of the lowest in the nation. We agree with the Board's recommendation.

Therefore, in line with Rule XI of the *Rules Governing Admission to the Bar*, the examination fee for the general Arkansas Bar Examination is set at $400.00, effective with the July 2007 examination.

IN RE: RULES GOVERNING ADMISSION TO THE BAR OF ARKANSAS

Supreme Court of Arkansas
Opinion delivered January 11, 2007

PER CURIAM. On November 30, 2006, we issued a per curiam mandating that the Multi-state Essay Examination (MEE) be utilized as a testing vehicle for all eight essay questions given during the Arkansas Bar Examination. The Executive Secretary to the Board of Law Examiners now advises that such a change is not possible under the current testing format utilized in this state. Particularly, the MEE and Multi-state Performance Test (MPT), which is already a part of the current testing format, must be given on the same

day. Thus, it is not possible to administer two MPT questions as well as eight MEE essay questions in the course of a single day.

The Board remains persuaded that utilization of the MEE is an appropriate course of action. Accordingly, we amend our per curiam of November 30, 2006, to make the use of the MEE permissive rather than mandatory. The Board of Law Examiners may utilize the MEE for essay questions to the extent it can do so under the current testing regimen. The Board is directed to reconsider this matter and report to the Court at the earliest opportunity.

IN RE: ADOPTION of RECOMMENDATIONS FROM THE ARKANSAS TASK FORCE ON COURT SECURITY

Supreme Court of Arkansas
Opinion delivered February 1, 2007

PER CURIAM. In 2005, the Arkansas Judicial Council and the Arkansas District Court Judges Association requested that the Supreme Court adopt a set of proposed standards for court security. At the time, we expressed concern about the lack of participation and input from city and county officials and others involved in the operation of local court facilities. The Director of the Administrative Office of the Courts was asked to create a task force to study this problem on a comprehensive basis, and the Arkansas Task Force on Court Security was formed to examine court security in the state and to offer recommendations to the Supreme Court. The Task Force was chaired by Circuit Judge Jim Hudson of Texarkana, and the other members were Representative Bob Adams of Sheridan, Sheriff Keith Bowers of Batesville, Larry Burris, Chief Court Bailiff, of Fort Smith, Hon. Sonny Cox, Arkansas County Judge, Eddie Davis, Arkansas Supreme Court Police Chief, Circuit Judge Tim Fox of Little Rock, Hon. Mike Jacobs, Johnson County Judge, Pat Hannah

of the Workers' Compensation Commission, Mayor James Morgan of White Hall, Vicki Rima, Garland County Circuit Clerk, District Court Judge David Saxon of Fort Smith, Circuit Judge Hamilton Singleton of Camden, Mayor Tommy Swaim of Jacksonville, District Court Judge Cheney Taylor of Batesville, and Senator Jerry Taylor of Pine Bluff.

The Task Force submitted its final recommendations to the court on November 15, 2006. The court was also made aware that proposed legislation on court security, consistent with the recommendations which we received, has been submitted to and will be considered by the Arkansas General Assembly. We agree that the issues of court security and emergency preparedness extend beyond the areas of responsibility of the Supreme Court and the judicial branch. These are important issues for all of our citizens — not just judges — and a comprehensive response will require collaboration and response from all three branches of state government and cooperation between the state and local governments. We are appreciative of the study and work undertaken by the members of the Task Force and thank Judge Hudson and the members of the Task Force for their service. At this time, we can take action on several of the recommendations.

One of the Task Force's recommendations calls upon the Supreme Court to establish minimum guidelines to serve as a starting point for security and emergency preparedness plans to be adopted for all state and local court facilities. We note that similar action has been taken by supreme courts in other states.[1] We also note that the Taskforce has used the word "guideline" rather than "standard" or "requirement." We are mindful of the concerns of local officials about the assumption of state-mandated requirements and the potential additional financial costs. These guidelines are intended to serve as guidance to facilitate the first steps toward the adoption of consistent policies and a minimum level of security for all court facilities. We accept this recommendation and adopt the following guidelines:

---

[1] *See, e.g., Rules of Superintendence for the Courts of Ohio, Appendix C, Court Security Standards*; *Michigan Court Security Standards*, SCAO Administrative Memorandum 2002-06 (July 3, 2002); Arizona Supreme Court Committee on Courthouse Security and Emergency Preparedness, *Final Report* (Administrative Order 2003-21).

Standard A. **Security Personnel and Training.** Uniformed and qualified court security officers should be assigned specifically and in sufficient numbers to ensure the security of every court and its facilities. At a minimum, one court security officer shall be present whenever court is in session and has been requested by the judge. The Arkansas General Assembly is respectfully requested to consider the adoption of minimum certification standards for court security officers consistent with current law enforcement personnel standards. In addition to certification, additional training should be required on issues that are specific to a court setting.

Standard B. **Access Control.** Without exception and regardless of the purpose or hour, all individuals entering a courtroom should be subject to a screening process. All entrances to the courtroom should be examined and secured. When possible, entrances should be limited to one main entrance and exit. Personnel and screening equipment should be placed at the main entrance. For those entrances without screening, proper locking mechanisms and alarms should be maintained. Proper signage should be posted in highly visible traffic areas to notify individuals that both their person and their belongings will be screened and/or searched.

Other ways to control access to the court should be explored and incorporated such as locking mechanisms on all entrances, the use of employee identification, restricting access to offices, and maintaining a policy of restricting weapons in the courthouse facility.

Standard C. **Court Facility Design.** The design of court facilities and offices should be made with security in mind. Buildings should be designed to protect against attack, limit access to sensitive areas, and to avoid inappropriate interaction between the participants

in the judicial process. Waiting areas and traffic flow should be designed to allow for the separation of judges, court personnel, and other parties such as jurors, witnesses, and prisoners.

To enhance the safety of court facilities, all courtrooms and hearing rooms should be equipped with a duress alarm. Phones should have a caller identification systems installed and when practicable, video surveillance of court facility parking areas and other strategic areas is recommended. Access to environmental controls should be secured and limited to authorized personnel.

Standard D. **Communication.** Good communication is essential in an emergency. A clear line of authority must be established for each agency and court. A clear definition of who will activate an emergency plan and implement security responses, such as an evacuation, should be established. In addition, all names and contact information of key court personnel should be provided to the Local Security and Emergency Preparedness Advisory Committee and other appropriate agencies. This information should be kept up to date.

Standard E. **After-Hours Security.** Each court facility should adopt procedures to ensure security outside of normal working hours. Additionally, procedures should be implemented for detection of unauthorized entry of a court facility after-hours.

Standard F. **Incident Reporting.** All security and emergency preparedness incidents should be documented in writing and a report of the incident made to the State Security and Emergency Preparedness Committee in a form to be approved by the Committee.

Standard G. **Firearms Policy.** Each local court security and emergency preparedness plan shall in-

clude a firearms policy. The policy shall be distributed to all law enforcement agencies in the county and posted at entrances to all court rooms and court facilities.

With respect to the other recommendations, we take the following actions:

- We adopt the fourth recommendation, requesting that we require the creation of a Local Security and Emergency Preparedness Advisory Committee in every Arkansas county. These committees shall be co-chaired by a circuit judge, appointed by the administrative judge, and the county judge and the membership should include a district court judge, city and county executive officers, law enforcement officers, local emergency preparedness officials, and a representative of the public. The specific number and composition of the committee should be determined at the local level. We request that administrative judges and county judges take steps to implement this recommendation as soon as possible.
- We adopt the fifth recommendation, requesting that we require that a Local Security and Emergency Preparedness Plan be drafted and approved in every county by the Local Advisory Committees discussed above; however, we change the proposed date for submission of such plans to the Supreme Court from July 1, 2007 to January 1, 2008. These plans should apply to every facility in the county in which court proceedings are held or in which court employees are located, and the plans should be consistent with the Minimum Guidelines which we have adopted today.
- The Task Force's first recommendation is the creation of a State Security and Emergency Preparedness Advisory Committee for the purpose of recommending and evaluating uniform state policies on court security and emergency preparedness and assisting local courts in drafting and implementing local plans. We agree with this recommendation, and it will be implemented in due course.
- We support the second recommendation calling for the designation of a Director of Security and Emergency Preparedness, who shall serve as the point of contact on issues of security and emergency preparedness for the

judicial branch. This position requires action by the General Assembly, and we urge the General Assembly to enact such legislation.

- Likewise, the third recommendation, the adoption of a comprehensive policy on security and emergency preparedness and the dissemination statewide of a corresponding procedure manual, can only be implemented after a Director of Security and Emergency Preparedness is in place and the State Advisory Committee has been appointed. At the appropriate time, the court will take further action to implement this recommendation.

Again, we thank all who have worked on this issue in the past. We want all the citizens of the state to know that the Arkansas Supreme Court is committed to this task. All persons who are required to be present in a court facility, be they members of the public, jurors, litigants, lawyers, employees or judges, should be able to conduct their business in a safe and secure environment. We are prepared to work with state executive and legislative branch officials and with local officials who are primarily responsible for our court facilities as we attempt to address this important issue for our state, which is central to the proper and efficient administration of justice.

IN RE: REPORT of LEGISLATIVE TASK FORCE ON DISTRICT COURTS — ALTERNATIVE PROPOSAL BEING PUBLISHED FOR COMMENT

Supreme Court of Arkansas
Opinion delivered February 8, 2007

PER CURIAM. On October 26, 2006, in response to a recommendation by the Legislative Task Force on District Courts,[1] we published for comment a proposed administrative order drafted by the Task Force that permitted certain district court judges participating in a proposed pilot program to preside over matters pending in the circuit court. *See In re Report of the Legislative Task Force on District Courts*. The Task Force informed the court that the proposed administrative order was based on Rule 72.1, Rules of the U.S. District Courts (E.D. and W.D., Ark.), and "would be the most effective way of addressing an issue upon which no agreement has been reached previously." That issue is the subject matter jurisdiction for these proposed pilot district courts.

As we noted in our earlier per curiam opinion, because time was of the essence with the General Assembly in session, we immediately published the proposed administrative order for the purpose of soliciting comments from the bench and bar while we at the same time considered the merits of the Task Force's proposal.

A number of comments have been received, and we thank the judges and lawyers who studied the proposal and offered their insights. A number of concerns were expressed, many of which the court shares. We do not intend to review each comment, but a common thread in many of the objections may be traced to the issue of the "record" in the event that circuit court cases are referred to district court. As district courts are courts of limited jurisdiction, district court judges do not have court reporters available to them. Until the court reporter issue, including the associated costs, is addressed by the General Assembly, we do not

[1] Act 1849 of 2005 created the Legislative Task Force on District Courts, and it was charged with conducting a comprehensive study of the transition of district court judges to state employee status and the funding and role of district courts.

believe that it is in the interest of the state's judicial system to attempt to implement the Task Force's proposed administrative order at this time. At an appropriate time, after the court reporter issue is resolved, we would be willing to revisit the concept proposed by the Task Force. We would also be in a better position at that time to address other issues raised in connection with the Task Force's proposal.

To facilitate the work of the Task Force and to assist the General Assembly as it considers the various recommendations of the Task Force, we are publishing for comment an alternative approach. We solicit comments from the bench and bar to the proposal set out below. Comments should be in writing, submitted no later than March 2, 2007, and be addressed to: Les Steen, Supreme Court Clerk, Attention Administrative Order District Courts, Justice Building, 625 Marshall, Little Rock, AR 72201.

We propose for consideration that Administrative Order Number 18 be amended by adding a subsection to apply in the event that the General Assembly approves a pilot program composed of five pilot district courts utilizing full-time, state salaried district court judges:

Administrative Order Number 18. Administration of District Courts.

. . .

6. *Jurisdiction of Pilot District Courts.* In addition to the powers and duties of a district court under this administrative order, a pilot district court shall exercise additional power and authority as set out in this subsection.

(a) *Original Jurisdiction.* A pilot district court shall have original jurisdiction within its territorial jurisdiction over the following civil matters:

(1) Exclusive of the circuit court in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars ($100), excluding interest, costs, and attorney's fees;

(2) Concurrent with the circuit court in matters of contract where the amount in controversy does not exceed the sum of **ten thousand dollars ($10,000)**, excluding interest, costs, and attorney's fees;

(3) Concurrent with the circuit court in actions for the recovery of personal property where the value of the property does not exceed the sum of **ten thousand dollars ($10,000)**;

(4) Concurrent with the circuit court in matters of damage to personal property where the amount in controversy does not exceed the sum of **ten thousand dollars ($10,000),** excluding interest and costs.

(b) *Reference.* A pilot district court may be referred matters pending in the circuit court within its territorial jurisdiction. A district judge presiding over any referred matter shall be subject at all times to the superintending control of the administrative judge of the judicial circuit. The following matters pending in circuit court may be referred to a pilot district court:

(1) *Consent Jurisdiction.* Civil matters upon the consent of all parties;[2]

---

[2] We are not prepared at this time to announce the procedure to implement a civil consent process but will adopt necessary procedures if and when it becomes necessary. One possibility for consideration will be the procedure proposed in the Task Force's administrative order, which provided:

a. *Notice.* The circuit clerk shall give the plaintiff notice of the consent jurisdiction of a district judge when a civil suit is filed. The circuit clerk shall also attach the same notice to the summons for service on the defendant.

b. *Consent.* Any party may obtain a "Consent to District Judge Jurisdiction" form from the Circuit Clerk's Office, which shall provide that any appeal in the case shall be taken directly to the Arkansas Supreme Court or Court of Appeals.

c. *Transfer.* Once the completed forms have been returned to the circuit clerk, the circuit clerk shall then assign the case to a district judge and forward the consent forms for final approval to the circuit judge to whom the case was originally assigned. When the circuit judge has approved the transfer and returned the consent forms to the circuit clerk's office for filing, the circuit clerk shall forward a copy of the consent forms to the district judge to whom the case is reassigned. The circuit clerk shall also indicate on the file that the case has been reassigned to the district judge.

d. *Appeal.* The final judgment, although ordered by a district judge, is deemed a final judgment of the circuit court and will be entered by the circuit clerk under Rule 58 of the Arkansas Rules of Civil Procedure. Any appeal shall be taken to the Arkansas Supreme Court or Court of Appeals in the same manner as an appeal from any other judgment of the circuit court.

(2) *Protective Orders.*[3] Petitions for temporary orders of protection pursuant to Ark. Code Ann. Section 9-15-206 (The Domestic Abuse Act of 1991);

(3) *Criminal Matters.* Any of the following duties (the rules referenced below are the Arkansas Rules of Criminal Procedure) with respect to an investigation or prosecution of an offense lying within the exclusive jurisdiction of the circuit court:

(A) Issue a search warrant pursuant to Rule 13.1.

(B) Issue an arrest warrant pursuant to Rule 7.1 or Ark. Code Ann.§ 16-81-104, or issue a summons pursuant to Rule 6.1.

(C) Make a reasonable cause determination pursuant to Rule 4.1(e).

(D) Conduct a first appearance pursuant to Rule 8.1, at which thejudge may appoint counsel pursuant to Rule 8.2; inform a defendant pursuant to Rule 8.3; accept a plea of "not guilty" or "not guilty by reason of insanity": conduct a pretrial release inquiry pursuant to Rules 8.4 and 8.5; or release a defendant from custody pursuant to Rules 9.1, 9.2, and 9.3.

---

[3] We are not prepared at this time to announce the procedure to refer matters to district court judges but will adopt necessary procedures if and when it becomes necessary. Options include the procedure in Rule 53 of the Arkansas Rules of Civil Procedure for referring issues to masters or the procedure in the Task Force's proposed administrative order, which provided:

> 2. *Reference.* With the concurrence of a majority of the circuit judges of a judicial circuit, the administrative judge of a judicial circuit may refer matters pending in the circuit court to a district judge serving within the judicial circuit, with the judge's consent, which shall not be unreasonably withheld.... A decision of a district judge is final and binding and is subject only to a right of appeal to the circuit judge to whom the case has been assigned. A party may appeal the decision of a district judge by filing a motion within ten (10) days of the decision. Copies shall be served on all other parties and the district judge from whom the appeal is taken. The motion shall specifically state the rulings excepted to and the basis for the exceptions. The circuit judge may reconsider any matter *sua sponte.* The circuit judge shall affirm the findings of the district judge unless they are found to be clearly erroneous or contrary to law.

(E) Conduct a preliminary hearing as provided in Ark. Code Ann. § 5-4-310(a).

If a person is charged with the commission of an offense lying within the exclusive jurisdiction of the circuit court, a district court judge may not accept or approve a plea of guilty or nolo contendere to the offense charged or to a lesser included offense.

Appointments to Committees

IN RE: SUPREME COURT COMMITTEE ON AUTOMATION

Supreme Court of Arkansas
Opinion delivered November 9, 2006

PER CURIAM. Honorable Jay Moody, of Little Rock, Ms. Judy West of North Little Rock, Mr. Ned Snow of Fayetteville, and Ms. Linda Shields of Little Rock, are appointed to the Committee on Automation for three-year terms to expire October 31, 2009. The court extends its thanks to Mr. Moody, Ms. West, Mr. Snow, and Ms. Shields for accepting appointments to the committee and to Ms. Karen Sharp and Mr. Tom Leath for accepting reappointment.

The court thanks Mr. Reed Edwards of Little Rock, Mr. James McCormack, of Little Rock, and Honorable Barry Sims of Little Rock, whose terms expired, and for their service on the committee.

IN RE: CHILD SUPPORT COMMITTEE

Supreme Court of Arkansas
Opinion delivered December 14, 2006

PER CURIAM. Judge Graham Partlow, Circuit Judge, Retired, of Blytheville and Melinda Gilbert, Esq., of Little Rock are reappointed to the Child Support Committee for four-year terms to expire on November 30, 2010. The court thanks these members for accepting reappointment to this important committee.

IN RE: SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Opinion delivered December 14, 2006

PER CURIAM. Win A. Trafford, Esquire, of Pine Bluff (Panel A, attorney member from the Fourth Congressional District), Valerie L. Kelly, Esquire, of Jacksonville (Panel B, At-Large attorney member), and Kenneth R. Mourton, Esquire, of Fayetteville (Panel C, attorney member from the Third Congressional District) currently serve on the Professional Conduct Committee. Their terms expire on December 31, 2006. Each member is eligible for reappointment to a full term on the Committee and has expressed a willingness to continue to serve on this important Court Committee. Mr. Trafford, Ms. Kelly and Mr. Mourton are hereby reappointed, effective January 1, 2007, to a six-year term in their respective current positions on the Committee, with the new term of each member to expire on December 31, 2012.

The Court expresses its gratitude to Mr. Trafford, Ms. Kelly, and Mr. Mourton for their dedicated and faithful service to the Committee, and their willingness to continue in this service.

IN RE: APPOINTMENTS TO THE ARKANSAS CONTINUING LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Opinion delivered February 1, 2007

PER CURIAM. J. Cotten Cunningham of Little Rock is appointed to the Continuing Legal Education Board for a three-year term concluding on December 5, 2009. Mr. Cunningham will be a representative from the Second Congressional District and replaces Mark Hayes whose term has expired.

Chris Parks of Fort Smith is appointed to the Continuing Legal Education Board for a three-year term to expire on December 5, 2009. Mr. Parks will be the representative from the Third Congressional District and replaces Jim Rose, III whose term has expired.

Patricia James of Little Rock is appointed to the Continuing Legal Education Board for a three-year term to conclude on December 5, 2009. Ms. James will be an at-large representative and replaces Madison Pat Aydelott whose term has expired.

The court extends its sincere appreciation to Mr. Cunningham, Mr. Parks, and Ms. James for accepting appointment to this important Committee. The court thanks Mark Hayes, Jim Rose, III, and Madison Pat Aydelott for their many years of work on this Board.

IN RE: SUPREME COURT COMMITTEE ON CRIMINAL PRACTICE

Supreme Court of Arkansas
Opinion delivered February 8, 2007

PER CURIAM. Hon. Brian Miller of Helena, Arkansas Court of Appeals, District 7, and Dan Ritchey, Esq., of Blytheville are appointed to the Criminal Practice Committee for three-year terms to expire on January 31, 2010. We thank these new members for accepting appointment to this important committee.

We designate Hon. Charles Yeargan of Murfreesboro, Circuit Judge, 9th West Judicial Circuit, the new chair of the Committee and thank him for accepting these duties.

The Court expresses its gratitude to Hon. Larry Chandler, the out-going chair, and W.H. Taylor, Esq., whose terms have expired, for their years of dedicated service.

Ceremonial Observances

IN THE MATTER OF CHIEF JUSTICE BETTY C. DICKEY

Supreme Court of Arkansas
Opinion delivered December 14, 2006

PER CURIAM. Justice Betty C. Dickey was appointed Chief Justice of the Arkansas Supreme Court effective January 1, 2004. She was the first woman to serve in that post. Following her term as chief justice, she was appointed associate justice of the court where she has served for the past two years. Justice Dickey has been an able and committed public servant for virtually all of her professional life, serving as prosecuting attorney for the 11th West Judicial District, Commissioner of the Arkansas Public Service Commission, and Justice of the Arkansas Supreme Court. Her considerable experience, ready wit, sensitivity to the disadvantaged, and innate sense of right and wrong will be sorely missed by her colleagues on the bench. We wish her Godspeed and best wishes in the years ahead.

Chief Justice Jim Hannah

Justice Robert L. Brown

Justice Tom Glaze

Justice Annabelle Imber

Justice Don Corbin

Justice Jim Gunter

IN THE MATTER OF THE UNTIMELY PASSING OF JUDGE TERRY CRABTREE

Supreme Court of Arkansas
Opinion delivered January 11, 2007

PER CURIAM. Judge Terry Crabtree of the Arkansas Court of Appeals passed away on January 6, 2007. His death, terminating a lifetime of public service, is a grievous loss to the judiciary and people of Arkansas.

Terry Crabtree's career of public service began in the United States Army, where he performed the dangerous task of helicopter door gunner with the Army's Air Cavalry in Vietnam. Following his military service, for which he was awarded the Air Medal and the Bronze Star, he fought for justice as a police officer in the Watts area of Los Angeles until 1977, when he honorably retired after being shot in the line of duty and suffering an injury that ultimately resulted in the loss of his leg.

This injury did not end Terry Crabtree's career as an upholder of justice. Obtaining bachelors and law degrees from the University of Arkansas in Fayetteville, Terry Crabtree showed his dedication to the ideal of justice by working as a public defender on behalf of the arrestees he had once apprehended. He began his judicial career as a municipal judge and was soon serving as Circuit-Chancery and Juvenile Judge in northwest Arkansas. His outstanding performance in these positions resulted in his being appointed to the Arkansas Court of Appeals by Governor Mike Huckabee. Judge Crabtree subsequently was elected to two consecutive terms on that court.

Judge Crabtree will be missed as a legal scholar who served on the faculty of the University of Arkansas at Little Rock and who authored some of the finest opinions ever delivered by an Arkansas appellate court. He will be missed even more for his quiet courage and idealistic devotion to duty and justice.

The court wishes to express its sincere sympathy to the family.

Chief Justice Jim Hannah

Justice Tom Glaze

Justice Annabelle Clinton-Imber

Justice Don Corbin

Justice Jim Gunter

Justice Robert Brown

Justice Paul Danielson

IN THE MATTER of THE UNTIMELY PASSING of JUDGE TERRY CRABTREE

Court of Appeals of Arkansas
Opinion delivered January 10, 2007

PER CURIAM. From January 1, 1997, until his death on January 6, 2007, Judge Terry Crabtree faithfully served the State of Arkansas as a member of the Arkansas Court of Appeals. Upon the occasion of his death, the court wishes to express its sincere condolences to Judge Crabtree's family and takes this moment to recognize the dignity and civility that he displayed during his service on the court.

Following a distinguished career as a soldier, police officer, professor, and circuit/chancery/juvenile judge, Judge Crabtree was appointed to this court by Governor Mike Huckabee. Thereafter he was elected to two consecutive terms. During his decade as an appellate judge, he maintained a commitment to justice and fairness and stood as a positive example for other judges with whom he served. Judge Crabtree's record of public service cannot be overestimated. He will be sorely missed on both a professional and personal level by his many friends and colleagues.