

PER CURIAM

78-11

December 18, 1978

RULE OF COURT CREATING A
COMMITTEE ON THE UNAUTHORIZED
PRACTICE OF LAW

The Constitution and laws of this state vest in the Supreme Court the duty and authority to regulate the practice of law and to prohibit the unauthorized practice of law. Pursuant thereto, the following rule is adopted to become effective as of February 1, 1979, and shall apply to all complaints of and matters or inquiries dealing with the unauthorized practice of law.

-I-

The Court shall appoint a committee composed of four lawyers and three persons who are not lawyers. One lawyer member of the committee shall be from each Congressional district and the balance of the members shall be from the state at-large, all to serve at the pleasure of the Court. The committee shall select one of its members as Chairman and another as secretary.

A majority of the committee shall constitute a quorum.

-II-

The name of the committee shall be "The Supreme Court Committee on the Unauthorized Practice of Law." The committee shall provide for its use a seal of such design as it may deem appropriate, and in the performance of its duties imposed by Rule of Court and by its own rules promulgated pursuant to Rule of Court, shall have authority to issue subpoena for any witness, including the production of documents, books, records, or other evidence, directed to any Sheriff or State Police officer within the state, requiring the presence of any person before it. Such process shall be issued

under the seal of the committee and be signed by the Chairman or Secretary. Disobedience of any subpoena or a refusal to testify may be regarded as constructive contempt of the Arkansas Supreme Court, and punishable by proceedings in that court.

-III-

All inquiries and Complaints relating to the unauthorized practice of law shall be directed to the committee, in writing, through the Clerk of the Arkansas Supreme Court. Upon receipt of such inquiry or Complaint, the committee may:

a. Without formal investigation make a determination that the action or course of conduct does not constitute unauthorized practice of law, or

b. Determine that probable cause exists for the conduct of a formal investigation and to conduct such investigation as is indicated, including the calling of witnesses for testimony under oath. Thereafter, the committee shall

1. Make a determination of whether in the opinion of the committee, the action or course of conduct under investigation constitutes unauthorized practice of law.

2. Publish an advisory opinion directed to the interested parties and reflecting the decision of the committee.

c. In the event of a finding of unauthorized practice of law and a continuation of the action or course of conduct after receipt of the committee's advisory opinion, the committee shall bring an action or actions in the proper Court(s) seeking to enjoin that conduct deemed to constitute unauthorized practice of law, and to pursue such action(s) in the name of the committee to a final conclusion.

-IV-

The committee shall adopt rules of procedure for the handling of inquiries and Complaints and a copy of said rules of procedure shall be filed with the Clerk of the Arkansas

Supreme Court and shall be subject to inspection and made available upon request of any interested person.

-V-

Expenses of the committee: From the funds created under Rule VII, members of the Committee shall be entitled to receive their actual necessary travel and hotel expenses, reimbursement for postage, stationery, communications, an attendance allowance, and other incidental expenses, including stenographic bills, and court costs chargeable against them. All such items shall be paid by the Clerk of this Court by check on said fund, signed by the Clerk and countersigned by the Chief Justice. Accounts must be itemized and certified by the Chairman, Secretary or the Executive Secretary of the Committee as true and correct.

-VI-

All inquiries and Complaints which proceed to hearing(s) before this committee shall be open to the public and the news media. No advisory opinion issued by this committee shall be construed as an Order of the Court and such opinion shall have no binding or legal effect upon any affected party. However, nothing in this section shall be deemed to restrict or in any manner inhibit the committee from commencing such legal action as an arm of state government as it deems proper, to enjoin or restrain an activity or course of conduct deemed by a majority of the committee to be unauthorized practice of law within the statutes and laws of this state.

BYRD, J., dissents.

CONLEY BYRD, Justice, dissenting. Over the years the individual lawyers of this State and the local and State Bar Associations have admirably handled the problems involved in the unauthorized practice of law by laymen by the filing of suits to enjoin such conduct. See *Ark. Bar Association v. Union National Bank*, 224 Ark. 48, 273 S.W. 2d 408 (1954). In the course of such proceedings discovery procedures were available and freely used as in any other type of civil litigation. Now, however, this Court upon no showing of any change of

circumstances has created a committee and given it State wide subpoena powers such as that possessed by Prosecuting Attorneys to coerce witnesses to come to the committee. I cannot reconcile myself with the fact that this Court should treat the businessmen of this State as common criminals while in seeking to determine if they are encroaching upon what the committee may consider the unauthorized practice of law.

Upon the procedure we have heretofore followed, a harassed citizen subpoenaed for a deposition had a right to apply to the trial court for relief from harassment, Ark. Stat. Ann. § 28-353, but under the rule here approved by the majority a witness subpoenaed like a common criminal from Hamburg to Fayetteville for the taking of his testimony prior to the Texas-Arkansas football game has nobody to whom he can apply for relief. In fact the rule of this Court says he is in contempt of the Supreme Court of Arkansas if he does not go.

For the reasons stated, I would not give the committee on the unauthorized practice of law the power of subpoena, but would leave them to proceed under the discovery rules applicable to all other civil litigants.

**In the Matter of
Rules Governing Admission
to the Bar**

Amendment of Rule IX

January 15, 1979

PER CURIAM

Rule IX of the Rules Governing Admission to the Bar is hereby amended to read as follows:

All applications for leave to take the examination shall be filed with the Secretary at least 54 days in advance of the examination.

Re: Rules of Civil Procedure

78-54

December 18, 1978

The Court, pursuant to Act 38 of 1973 and to its constitutional and inherent power to regulate procedure in the courts, hereby adopts the Rules of Civil Procedure submitted by the Civil Procedure Revision Committee, with modifications made by the Court. These Rules will be effective July 1, 1979. The Court expresses its great appreciation for the untiring work done by the members of the Committee and for the various suggestions made by attorneys in response to the Court's invitation.

Printer's Note: These Rules are being published by The Bobbs-Merrill Company as a Supplement to the Arkansas Statutes Annotated.

In the Matter of
Rules of Criminal Procedure
Rule 36.9 Time and Method
of Taking Appeal

74-345

December 18, 1978

PER CURIAM

Criminal Procedure Rule 36.9 is hereby amended to read as follows:

Within thirty (30) days from the date of the sentence and entry of judgment by the trial judge, the person or persons desiring to appeal the judgment shall file with the trial court a notice of appeal identifying the parties taking the appeal and the judgment appealed. The notice of appeal shall include either a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter or a petition to obtain the record as a pauper if, for the purposes of the appeal, a transcript is deemed essential to resolve the issues on appeal. Notification of the filing of the notice of appeal shall be given by all other parties or their representatives involved in the cause by mailing a copy of the notice of appeal to the parties or their representatives and to the Attorney General, but failure to give such notification shall not affect the validity of the appeal. Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. *However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made, either to the Supreme Court or the trial court, within eighteen (18) months of the date of commitment.* If an appeal

has not been docketed in the Supreme Court, the parties, with the approval of the trial court, may dismiss the appeal by stipulation filed in that court or that court may dismiss the appeal upon a motion and notice by the appellant. [Emphasis added only to denote added language.]

In the Matter of
Amendment of Rule 36.13,
Arkansas Rules of Criminal Procedure

December 18, 1978

PER CURIAM

Rule 36.13 of the Arkansas Rules of Criminal Procedure is hereby amended to read as follows:

Rule 36.13. Appeal after confinement. — If a judgment of confinement in a detentional facility operated by the state has been executed before notice of appeal is given, the defendant shall remain in the detentional facility during the pendency of the appeal, unless discharged by the expiration of his term of confinement or by pardon or parole, or admitted to bail by the trial court prior to docketing of the appeal in this court. If the trial court admits the defendant to bail pending appeal, the court may recall the commitment by which the sentence was carried into execution. Upon a reversal, if a new trial is ordered, the defendant shall be removed from the detentional facility and returned to the custody of the sheriff of the county in which the sentence was imposed.

In the Matter of
Rules of Criminal Procedure
Rule 37.2 Commencement of Proceedings;
Pleadings; Permission of Supreme Court
Following Appeal

74-345

December 18, 1978

PER CURIAM

Criminal Procedure Rule 37.2 is hereby amended by adding the following subsection (c):

(c) A petition claiming relief under this rule must be filed in circuit court or, if prior permission to proceed is necessary as indicated in paragraph (a), in the Supreme Court within three (3) years of the date of commitment, unless the ground for relief would render the judgment of conviction absolutely void.

Re: Arkansas Model Criminal Instructions

PER CURIAM

January 29, 1979

If Arkansas Model Criminal Instructions (AMCI) contains an instruction applicable in a criminal case, and the trial judge determines that the jury should be instructed on the subject, the AMCI instruction shall be used unless the trial judge finds that it does not accurately state the law. In that event he will state his reasons for refusing the AMCI instruction. Whenever AMCI does not contain an instruction on a subject upon which the trial judge determines that the jury should be instructed, or when an AMCI instruction cannot be modified to submit the issue, the instruction on that subject should be simple, brief, impartial, and free from argument.

Re: Judicial Planning Committee

January 15, 1979

PER CURIAM

By *per curiam* order dated December 6, 1976, as amended January 12, 1977, the Judicial Planning Committee was created pursuant to the recommendation of the Arkansas Judicial Council. The term of each member was for a period of 2 years' duration. The membership of that committee together with those appointed to serve on the expanded task force is hereby extended indefinitely or until such time as the committee's project is accomplished.