

ARKANSAS REPORTS

Vol. 260

CASES DETERMINED

IN THE

Supreme Court of Arkansas

FROM

June 14, 1976—January 24, 1977

CLYDE DICKENS CALLIOTTE
REPORTER

PUBLISHED BY THE
STATE OF ARKANSAS
1977

PER CURIAM
June 21, 1976
Rules of the Court Regulating Professional
Conduct of Attorneys at Law

The following Rules Regulating Professional Conduct of Attorneys at Law are hereby adopted to become effective as of July 1, 1976, and shall apply to all complaints against attorneys filed thereafter.

I

Canons of Ethics Adopted - Violations discipline.

The Court adopts the Code of Professional Responsibility of the American Bar Association as the standard of professional conduct of attorneys at law, and an attorney who violates any provision of the code, or these rules, shall be dealt with as provided herein.

II

Committee Appointed - Quorum.

The Court shall appoint a Committee of seven lawyers, one from each Congressional District and three from the State at large, to serve at the pleasure of the Court, to assist the courts in enforcing these rules. The Committee shall select one of its members as chairman and another as secretary, and shall adopt rules regarding its procedure. A majority shall constitute a quorum.

**Authority to issue summonses and subpoenas -
Disobedience thereof, contempt of Court.**

The name of the Committee shall be "The Supreme Court Committee on Professional Conduct". The Committee shall provide for its use a seal of such design as it may deem appropriate, and, in the performance of duties imposed by the rules of this Court and by its own regulations in aid of the Court's rules, shall have authority to issue summonses for any person or subpoenas 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 party or the attendance of any witness before it. Such process shall be issued under the seal of the Committee and be signed by the Chairman or Secretary and by the Executive Secretary thereof. Disobedience of any summons or subpoena or refusal to testify shall be regarded as constructive contempt of the Supreme Court.

III

Executive Secretary Authorized - Salary and Qualifications.

The Committee shall have, and is hereby granted authority to employ, an Executive Secretary who shall not be a member of the Committee. Such Executive Secretary may be paid such reasonable salary and expenses as may be deemed necessary and appropriate by the Committee payable from funds collected for the use of the Committee under rules of the Court, and available for that purpose as herein provided. The salary and expense arrangement made by the Committee, and subsequent changes therein, shall be subject to the approval of the Court.

The Executive Secretary shall not be a member of, or otherwise connected with, the Committee, and shall have no vote on any matter presented to the Committee for decision. The Executive Secretary shall be subject to replacement at the will of a majority of the Committee. Prior to employment as Executive Secretary such a person must agree to devote his full time and effort to promptly and efficiently receive, investigate, and process complaints and carry out other duties assigned by the Committee.

Duties of Executive Secretary.

It shall be the duty of the Executive Secretary to receive all complaints against any member of the Bar, oral and written, to interview complainants, assist them in the preparation of a detailed complaint in affidavit form pursuant to the rules of the Committee, and to conduct such additional investigation into the facts as may be required. The Executive Secretary shall then furnish to the attorney complained against a copy of the formal complaint and advise the attorney that he may file a written response in affidavit form. At such time as the Executive Secretary has received from the attorney a written response, or has given the attorney at least ten days in which to file a written response, he shall prepare seven copies of the complaint, the response and exhibits, if any, and such other information, memoranda and recommendations which he may have prepared and send a copy to each member of the Committee.

With each such file the Executive Secretary shall submit to each Committee member a written ballot to be filled out and returned to the Executive Secretary. Said ballot shall contain appropriate spaces for (a) the signature of the Committee member, (b) the date, (c) the member's vote on the action to be taken on the complaint, and (d) for additional comments, if any. If the majority of the Committee returns written ballots voting to take no action, the complaint shall be placed in the closed files. If a majority of the Committee returns written ballots to caution, reprove, or reprimand the attorney without a hearing, the attorney shall be notified of the findings and vote of the Committee, and be advised that he has the right, upon written request within twenty days, to a hearing before the Committee. The attorney shall also be advised that in the absence of a request for a hearing, such findings and order of the Committee will be entered in the files of the Committee. If a hearing is requested, the Chairman will be so notified, the written ballots will have no effect or force, and the hearings will be granted upon notice to the attorney.

If a majority of the Committee returns written ballots voting for a formal hearing, the Chairman will be so notified and the procedures set forth in the Rules of the Committee for formal hearings will be followed.

The Committee is hereby authorized to take action by written ballot, subject to the requirements and limitations set forth above.

In the event a majority of the Committee votes to take no disciplinary action against an accused attorney, the Executive Secretary shall so notify the complainant and accused attorney. If a majority of the Committee votes to caution, reprove or reprimand an attorney following a formal hearing, or in the absence of a request for a hearing by the accused attorney as provided herein, then the Committee may have the Executive Secretary notify the complainant that private disciplinary action has been taken against the attorney.

The Executive Secretary and members of the Committee shall keep confidential the activities and files of the Committee, unless it is necessary to divulge information for disbarment suit purposes, or for notification to complainants and accused attorneys of Committee actions, or for release of statistical data.

The Executive Secretary may attend and, at the request of the Committee, act as counsel in presenting testimony and other evidence, in the event a hearing is held by the Committee on any complaint.

IV

Complaints Investigated - Committee may file Court complaints.

The Committee shall investigate all complaints of professional misconduct that may be brought to its attention in the form of an affidavit, or in respect of which any member of the Committee may have information, and shall give the attorney involved an opportunity to explain or refute the charge. If the Committee finds that there is reasonable ground to believe that the attorney has been guilty of professional misconduct, it may caution, reprove, or reprimand the attorney, or it may cause a complaint in writing to be prepared which shall set forth the specific facts constituting the alleged misconduct, and serve a copy thereof on the attorney against whom the charge is made.

Filed in either Circuit or Chancery Court - Notice of Trial - Trial before Judge or Chancellor.

Such complaint shall be filed with the Clerk of the Circuit or Chancery Court of the County in which the accused attorney resides, or in which the alleged offense was committed; and reasonable notice of the time of trial shall be given of not less than twenty days, which trial shall be had before the Circuit Judge or Chancellor, without a jury.

V

Punishment if guilty - Dismissal if not.

If the Judge or Chancellor finds, upon the hearing before him, that the attorney has been guilty of professional misconduct, he shall reprove, reprimand, suspend, or disbar such attorney as the testimony may warrant. If the Judge or Chancellor finds that the report of the Committee is not sustained by the evidence, the proceedings shall be dismissed.

Appeal by either party - heard de novo.

Either the Committee or the attorney defendant may appeal to the Supreme Court from the action taken by the Judge or Chancellor. On appeal the matter shall be heard de novo upon the record made before the trial judge, and this Court shall pronounce such judgment as in its opinion should have been pronounced below.

VI

Notice of Appeal.

Notice of appeal and perfection of appeal shall be in accordance with applicable statutes and rules of this Court governing appeals in civil matters, but the order by the Circuit Judge or Chancellor shall remain effective until judgment by this court is pronounced. If no appeal be perfected within the time allowed and in the manner provided, the order of the Judge or Chancellor shall be final and binding on all parties.

Appeal by defendant - notice to Committee.

Notice of appeal shall be served in writing upon the Chairman or Secretary of the Committee if the appeal be taken by the defendant attorney, and upon such attorney if the appeal be taken by the Committee.

VII

License fee provided - when payable.

A license fee is hereby imposed by this Court to be fixed annually upon each attorney engaged in the practice of law in this State, to be paid to the Clerk of this Court. The amount shall be payable January 1, of each year, and must be paid not later than March 1. Funds thus realized shall be used to defray expenses incurred in the enforcement of these rules, administration of the Client Security Fund and in matters pertaining to admissions and reinstatements to the bar.

VIII

Expenses of Committee provided for.

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.

IX

Rules supplemental to statutes.

The rules adopted shall not be deemed exclusive of but as supplemental to the statutes of the State of Arkansas.

X

All licensed attorneys - members of Bar.

Every lawyer now licensed to practice and engage in the practice shall be a member of the Bar of this State, subject to these rules or those hereafter made.

Suspension for failure to pay fee - Notice of delinquency. Reinstatement - how.

Failure to pay the annual license fee herein provided shall automatically suspend such delinquent lawyer from the practice. Notice of delinquencies shall be given by the Clerk of this Court to the delinquent, and to the Judges of the Circuit and Chancery Courts of the District of the delinquent's residence, and a list of all delinquents shall be posted in the office of the Clerk of this Court. Where delinquency is for no more than three years reinstatement may be had by the payment of all such delinquent dues, and a penalty of \$1.00. (Delinquency in a given year dates from March 2 of that year.) If delinquency is for more than three years application for reinstatement must be made on a form supplied by the Clerk and accompanied by a tender of all unpaid dues and penalty. Application will be referred to the Bar Examining Committee for further recommendation, which may include the taking of a new examination.

Disbarment in other States bar to license and ground for disbarment here. Certified copy of such order prima facie evidence when filed in any Court of this State.

No person shall be admitted to practice law in this State who has been disbarred from the practice of law in any other State, and the disbarment of any person from the practice of law in any other State shall operate as a disbarment of such person from the practice of law in this State under any license, permit or enrollment issued to such person by any Court in this State prior to his disbarment in such other State. Whenever any member of the Bar of this Court shall have been disbarred or suspended by judgment of any court of record held outside of this State or by any United States Court held within this State, such judgment, upon filing of authenticated copy thereof in this Court, shall be deemed prima facie grounds for disbarment or suspension, as the case may be, of such attorney by this Court; and, unless good cause for other action be shown, a like order shall be entered by this Court.

Conviction of Felony or Infamous Crime.

If an attorney has been convicted of a felony or an infamous crime under the laws of any State or the United States, a charge may be made by complaint filed by the Committee with the Clerk of a Court of proper venue under these Rules. A time shall be fixed for a hearing with reasonable notice of not less than twenty days given to the accused attorney. A certified copy of the judgment of conviction of an attorney shall be conclusive evidence of his guilt of the crime for which he has been convicted in any disciplinary proceeding instituted against him based on the conviction. The sole issue to be determined shall be whether the crime warrants discipline and, if so, the extent thereof. The attorney may not offer evidence inconsistent with the essential elements of the crime for which he was convicted. An appeal may be taken in accordance with these Rules.

XI

Suspension of license - adjudication of incompetency.

Where a court of competent jurisdiction has found any licensed attorney to be mentally deficient, such order shall have the effect of depriving the attorney of the right to practice law. When the finding has been superseded by appropriate legal procedure the attorney shall, before again entering upon the practice of law, apply to the State Board of Bar Examiners and submit to such inquiry as that Board in its discretion may require. The Board's recommendations shall then be transmitted to the Supreme Court for its action; but in all instances the proceeding shall be conducted with as little publicity as the circumstances permit.

Voluntary surrender of license.

No petition to this Court for voluntary surrender of license by an attorney shall be granted until referred to the Committee on Professional Conduct and the Committee's recommendation received by this Court.

XII

Immunity from suit.

All communications, complaints, testimony and evidence of any nature filed with, given to or given before the Supreme Court Committee on Professional Conduct, or to any of its employees and agents performing their duties, and based upon a complaint charging an attorney with professional misconduct, as well as all actions and activities growing therefrom, are absolutely privileged, and no suit at law, civil or criminal, predicated thereon may be instituted.

In Re:
Rules of Criminal Procedure

July 6, 1976

PER CURIAM

The fourth word in Rule 32.1 is changed from "shall" to "may," so that the use of the questionnaires becomes discretionary instead of mandatory. The court's decision to make this change is based upon the recommendation of a majority of the Criminal Code Revision Commission and a majority of the circuit judges.

In Re:
Rules of the Supreme Court of Arkansas

September 20, 1976

PER CURIAM

The following is added as the final sentence of Supreme Court Rule 9 (e) (1): In seeking an award of costs under this paragraph, counsel must submit a statement by the printer showing the cost of the supplemental abstract and a certificate of counsel showing the amount of time that was devoted to the preparation of the supplemental abstract.

In The Matter of Rules
Governing Admission to the Bar

October 25, 1976

PER CURIAM

Rules II, III, X, and XI of the Rules Governing Admission to the Bar are amended to read as follows:

II

TIME AND PLACE OF EXAMINATION

The Board shall hold semiannual examinations of applicants to be given in the months of February or March and July or August of each year at the State Capitol, or other designated place, in Little Rock. The Board shall meet semiannually following said examinations for the purpose of grading of examination papers and certifying the grades thereon. The grades on such examinations shall be certified to the Clerk of this Court by the second Monday following the giving of the examination.

The Board may meet at such other times as it may designate, for the purpose of considering applications under the reciprocity rule, of from members of the bar of this state admitted to practice in the Circuit and Chancery Courts prior to July 1, 1917, or for organizational purposes.

III

DUTIES OF THE BOARD

The Board shall provide questions to be used on examinations, and shall furnish to each applicant a set of such questions, on the day of examination.

The Board shall grade the examination papers and as a Board ascertain the average grade of each applicant.

Each applicant shall produce evidence satisfactory to the Board that said applicant has been an actual physical resi-

dent or domiciliary of this state for not less than 60 days next preceding the filing of his application to take the examination; provided, however, that for good cause shown, the Board may waive the above requirement.

The names and addresses of applicants making an average grade of 75 per cent on all subjects, and who shall have been found to be of good moral character, shall be certified to the Clerk of the Supreme Court, with a recommendation that they be licensed as attorneys-at-law and solicitors in chancery.

X

EXPENSE FEE

A fee of \$65.00 must accompany the application to take the examination and a fee of \$250.00 must accompany the application for admission without examination (reciprocity rule), remittance being made by Post-Office Money Order or Little Rock Exchange, payable to the Sate Board of Law Examiners. Those applicants who will not type their examination papers shall pay an additional fee of \$25.00 to apply on the cost of having their handwritten answers typed. Fees thus provided shall be used by the Board to defray the expenses of examination, necessary expenses of the Board members while attending meetings and to provide a reasonable compensation for the services of its Secretary, which amount shall be fixed by the Board.

XI

ADMISSION UNDER RECIPROCITY RULE

Attorneys of good moral character who are citizens of the United States, and who have been admitted for at least four years to the Bar of the highest Appellate Court of another state where the requirements for admission to the Bar are substantially equivalent to the requirements of this state, and who have engaged in the active practice of law for at least three years immediately preceding application for admission, and who have removed to this state, and intend to practice law here, may be recommended by the Board for ad-

mission without examination, upon showing the foregoing facts to the satisfaction of the Board, provided that, until the further order of this Court, the Board in its discretion, may waive the three years' practice requirement as to an applicant who is sufficiently grounded in law, and who by reason of service in the Armed Forces of the United States has been unable to acquire three years' practice.

A certificate from the Clerk of the highest court of such foreign state, showing that the applicant has been licensed for the required time, and that he is a member of the Bar in good standing, together with recommendations of (1) a Judge of a Court of record, (2) two practicing attorneys, and (3) two businessmen, as to his moral qualifications and period of active practice are required to be furnished the Board.

Application for recommendation for admission under this Rule shall be made to the Board. Three members of the Bar, who shall be appointed by and serve at the pleasure of the Board, with the approval of the Court, shall examine all applications under this Rule, and make recommendations to the Board as to admission of applicants. A fee of \$250.00 must accompany the application for admission (reciprocity rule); remittance being made by Post-Office Order or Little Rock Exchange, payable to the Clerk of the Supreme Court, to be disbursed by him as provided in the other Rules of this Court. The Board shall cause appropriate investigation of each applicant and shall pay the Secretary of the Board the sum of \$100.00 for each investigation of such application referred to him by the Board, which fee shall be paid out of the application fees.

In Re: Rules of Criminal Procedure

RULE 36.9 Time and Method
of Taking Appeal

October 25, 1976

PER CURIAM

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. 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.

See additional rules listed under Per Curiam, page xix.