



ARKANSAS JUDICIARY

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## Rule 5-2. Opinions.

(a) Filing, Notice, and Publication. The Supreme Court and Court of Appeals shall file every opinion with the Clerk, who shall provide a copy of the opinion to each pro se litigant and all counsel of record for each party in the case without charge. The Reporter of Decisions shall post every opinion on the Arkansas Judiciary's website and maintain a secure and searchable library of opinions on the website, which shall include all opinions issued after February 14, 2009. The Administrative Office of the Courts is authorized to develop an advanced search engine with additional features and to charge subscribers for its use. The Administrative Office of the Courts is also authorized to charge a reasonable fee for providing reports of opinions on disc or other physical medium.

(b) Official Reports.

(1) The Arkansas Reports and the Arkansas Appellate Reports shall contain the official report of decisions of the Supreme Court and Court of Appeals issued before February 14, 2009. The official report of decisions issued after that date shall be an electronic file created, authenticated, secured, and maintained by the Reporter of Decisions on the Arkansas Judiciary website.

(2) After an opinion is announced, the Reporter shall post a preliminary report of the opinion's text on the website. This version is subject to editorial corrections. After the mandate has issued, and any needed editorial corrections are made, the Reporter shall replace the preliminary report with an authenticated and secure electronic file containing the permanent and final report of the decision.

(3) Every report of every decision shall contain an official citation created by the Reporter. This citation shall include the year in which the decision was issued, the abbreviated name of the issuing court, and the sequential appellate decision number for the year. For example, the citation *White v. Green*, 2010 Ark. 171, reflects that the decision was issued in 2010, by the Arkansas Supreme Court, and was the one hundred seventy-first opinion issued by that court that calendar year. The citation *Roe v. State*, 2010 Ark. App. 745, reflects that this decision was made by the Court of Appeals and was the seven hundred forty-fifth appellate opinion issued by that court in calendar year 2010.

(c) Precedential Value. Every Supreme Court and Court of Appeals opinion issued after July 1, 2009, is precedent and may be relied upon and cited by any party in any proceeding. Opinions of the Supreme Court and Court of Appeals issued before July 1, 2009, and not designated for publication shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case).

(d) Uniform citation.

(1) Decisions included in the Arkansas Reports and Arkansas Appellate Reports shall be cited in all court papers by referring to the volume and page where the decision can be found and the year of the decision. Parallel citations to the regional reporter, if available, are required. Pinpoint citations to specific pages are strongly encouraged. For example: *Smith v. Jones*, 338 Ark. 556, 558, 999 S.W.2d 669, 670 (1999). *Doe v. State*, 74 Ark. App. 193, 198, 45 S.W.3d 860, 864 (2001).

(2) Published decisions issued between February 14, 2009, and July 1, 2009, and all decisions issued after July 1, 2009, and available on the Arkansas Judiciary website shall be cited in all court papers by referring to the case name, the year of the decision, the abbreviated court name, and the appellate decision number. Arkansas Supreme Court shall be abbreviated ?Ark.? Arkansas Court of Appeals shall be abbreviated ?Ark. App.?. Parentheticals containing a date or court abbreviation shall not be used. Parallel citations to the regional reporter, if available, are required. If the regional reporter citation is not available, then parallel citations to unofficial sources, including unofficial electronic databases, may be provided. Pinpoint citations to specific pages are strongly encouraged. A pinpoint citation to the official version of a decision on the Arkansas Judiciary website shall refer to the page of the electronic file where the matter cited appears. For example: *Smith v. Hickman*, 2009 Ark. 12, at 1, 273 S.W.3d 340, 343. *Doe v. State*, 2009 Ark. App. 318, at 7, 2009 WL 240613, at \*8. *White v. Green*, 2010 Ark. 171, at 3, 2010 WL 3109899, at \*2. *Roe v. State*, 2010 Ark. App. 745, at 6, 279 S.W.3d 495, 497. (3) When an unpublished decision may be cited in continuing or related litigation pursuant to subdivision (c), the opinion's date determines the citation form. Opinions issued before February 14, 2009, shall be cited by referring to the case name, the appellate docket number, the abbreviated name of the issuing court and the complete date of the opinion in the first parenthetical, and including ?unpublished? in a second parenthetical. Opinions issued after February 14, 2009, and before July 1, 2009, shall be cited by referring to the case name, the year of the decision, the abbreviated court name, the appellate decision number, and including ?unpublished? in a parenthetical. Parallel citations to unofficial sources, including unofficial electronic databases, may be provided. For example: *Holt v. Newbern*, No. CA07-345, slip op. at 4, 2008 WL 30117, at \*2 (Ark. App. Apr. 16, 2008) (unpublished). *Byrd v. Battle*, 2009 Ark. App. 114, at 8, 2009 WL 47129, at \*6 (unpublished).

(e) Opinion Form. Opinions of the Court of Appeals shall only be in conventional form.

(f) Affirmance Without Opinion. In appeals from decisions of the Arkansas Board of Review in unemployment-compensation cases, when the appellate court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record, and an opinion would have no precedential value, the order may be affirmed without opinion.

## **Comment Text:**

Explanatory Note. Rule 5-2 has been completely rewritten to reflect the electronic publication of the official reports of appellate decisions. This comprehensive amendment is effective July 1, 2009.

Subdivision (a) reflects, in part, long-standing practice. All opinions are filed with the Clerk, and the Clerk sends a copy to each party or their lawyer if they have one. The Reporter of Decisions (or our Librarian) has been posting opinions on the Arkansas Judiciary website since 1996. As amended, the rule obligates the Reporter to continue doing so and to maintain a secure and searchable library containing all opinions issued after February 14, 2009, on the website. The rule also authorizes the Administrative Office of the Courts to develop and charge for the use of an advanced search engine. The AOC may also charge for providing the official reports in other formats, such as on CD.

Subdivision (b) has three parts. Section (1) defines what constitutes the official report of a decision of the Arkansas Supreme Court and Court of Appeals. For decisions issued before February 14, 2009, the official report is the opinion printed in a volume of the Arkansas Reports or Arkansas Appellate Reports. For opinions issued after that date, the official report is the electronic file created, authenticated, and maintained by the Reporter on the Arkansas Judiciary website.

Subdivision (b)(2) prescribes the Reporter's responsibilities in releasing and finalizing opinions. The first version of an opinion, the "preliminary report," must be posted on the website after the court announces the decision. The preliminary report is subject to editorial corrections by the Reporter. After the mandate has issued, and any editorial corrections have been made, the "final report" of the decision will be posted on the website in place of the preliminary report. Both the preliminary and final reports are official reports of the decision, which may be cited as otherwise allowed in the rule. All reports will be secure and authenticated.

Subdivision (b)(3) obligates the Reporter to create an official citation, in a new prescribed form, for every appellate decision issued after February 14, 2009. This obligation includes opinions that are not designated for publication between that date and July 1, 2009. The rule contains examples and an explanation of the new citation form which looks much like a citation to the Arkansas Reports or Arkansas Appellate Reports. The book volume number has been replaced with the year of the decision. And the page number has been replaced with a "sequential appellate decision number for the year." The Reporter assigns this number, starting with 1 for the first opinion issued by each appellate court each calendar year. This is not a global numbering system covering all opinions of both appellate courts. Instead, there will be one annual list for Supreme Court opinions and one annual list for Court of Appeals opinions.

Subdivision (c) eliminates the distinction between unpublished opinions. All opinions issued after July 1, 2009, are precedent and may be cited in any filing or argument in any court.

Subdivision (d) is entirely new. It prescribes a uniform citation form for all appellate decisions. If a decision appears in the Arkansas Reports or Arkansas Appellate Reports, then the familiar citation form must be used. The only new requirement is a parallel citation, if one is

available, to the regional reporter. Pinpoint citations are strongly encouraged.

All opinions issued after February 14, 2009, will be in the new electronic database of official reports. These opinions must be cited using the new citation form described earlier: case name, year of decision, abbreviated court name, and sequential appellate decision number. The amended rule abandons parentheticals in almost all citations. With the date and issuing court embedded in the citation itself, the parenthetical is rendered superfluous. Parallel cites to a regional reporter, if available, are required. Parallel cites to other unofficial sources, such as electronic databases, are allowed but not required. Pinpoint citations are strongly encouraged in general. The amended rule also prescribes how to do a pinpoint cite to an electronic report (preliminary or final) of an Arkansas case: cite the page of the electronic file where the matter cited appears. The electronic file will be secure, with the pages locked in place so that they are the same no matter what computer they are viewed on.

Subdivision (d)(3) covers citation of unpublished decisions issued before the effective date of this rule (July 1, 2009). The opinion's date determines the citation form. Pre-February 14, 2009, unpublished opinions are cited by case name and docket number, with the abbreviated court name and full date in the first parenthetical and a second parenthetical denoting the unpublished status. Pinpoint cites should use the "slip opinion" designation. Unpublished opinions issued between February 1, 2009, and July 1, 2009, should be cited using the new citation form: year, abbreviated court name, and sequential appellate opinion number with one additional element: a parenthetical denoting the opinion's "unpublished" status.

Subdivisions (e) and (f) are carry-overs from the old rule. The former authorizes the Court of Appeals to issue opinions in conventional or memorandum form. In re Memorandum Opinions, 15 Ark. App. 301, 700 S.W.2d 63 (1985) (per curiam). The latter authorizes unemployment appeals from the Board of Review to be affirmed without an opinion.

#### **History Text:**

Amended and effective by per curiam order June 8, 2017.

#### **Associated Court Rules:**

Rules of the Supreme Court and Court of Appeals of the State of Arkansas

#### **Group Title:**

Article V. Arguments and Opinions

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