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Rule 1-1. Hours And Places Of Meeting. [3]

Printer-friendly version [4] PDF version [5]

The Supreme Court shall convene each Thursday at 9:00 a.m. and the Court of Appeals each Wednesday at 9:00 a.m., except during recess or as announced by either Court. The Supreme Court and the Court of Appeals shall convene in the Supreme Court and Court of Appeals Courtroom or at such other location as announced by either Court.

Rule 1-2. Appellate Jurisdiction Of The Supreme Court And Court Of Appeals. [6]

Printer-friendly version [7] PDF version [8]

(a) Supreme Court jurisdiction. All cases appealed shall be filed in the Court of Appeals except that the following cases shall be filed in the Supreme Court:

1. All appeals involving the interpretation or construction of the Constitution of Arkansas;

2. Criminal appeals in which the death penalty or life imprisonment has been imposed;

3. Petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit courts;

4. Appeals pertaining to elections and election procedures;

5. Appeals involving the discipline of attorneys-at-law and or arising under the power of the Supreme Court to regulate the practice of law;

6. Appeals involving the discipline and disability of judges;

7. Second or subsequent appeals following an appeal which has been decided in the Supreme Court; and

8. Appeals required by law to be heard by the Supreme Court.

(b) Reassignment of cases. Any case is subject to reassignment by the Supreme Court, and in doing so, the Supreme Court will consider but not be limited to the following:

(1) issues of first impression,

(2) issues upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,

(3) issues involving federal constitutional interpretation,

(4) issues of substantial public interest,

(5) significant issues needing clarification or development of the law, or overruling of precedent, and

(6) appeals involving substantial questions of law concerning the validity, construction, or interpretation of an act of the General Assembly, ordinance of a municipality or county, or a rule or regulation of any court, administrative agency, or regulatory body.

(c) Informational statement and jurisdictional statement.

(1) The Informational Statement and Jurisdictional Statement in appellant's brief are for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit.

(A) The Informational Statement which is to be contained within the brief, as provided in Rule 4-2(a)(2), shall be on a form which may be copied from that provided below and which shall be available from the Clerk.

(B) The Jurisdictional Statement, in narrative form, shall be completed on separate page(s), not to exceed three 8 1/2" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The attorney's signature may appear on a separate page at the end and shall not count against the three-page limit. The style of the case should not be stated, and, beginning with the first page, the Jurisdictional Statement shall contain in the order indicated:

(i) The first numbered paragraph which shall concisely state all issues of law raised on appeal. The issues should be expressed in the terms and circumstances of the case but without unnecessary detail.

(ii) The second numbered paragraph which shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes:" Then, the appellant shall discuss as many of the issues listed in Rule 1-2(b) which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

(2) If a cross-appeal is filed, the cross-appellant shall include in his or her brief an Informational Statement and Jurisdictional Statement in the same format as that for the appellant limited to the issues raised by the cross-appeal.

(3) If there is substantial disagreement on the part of an appellee or cross-appellee with the information in the appellant's Jurisdictional Statement, the appellee or cross-appellee may

include in the appellee's or cross-appellee's brief a statement entitled "Appellee's Response to Jurisdictional Statement", in which the appellee or cross-appellee may dispute or clarify any of the appellant's statements, concluding with the following certification. "I express a belief, based on a reasoned and studied professional judgment, that the statements made by the appellant in the appellant's Jurisdictional Statement to which I have taken exception are material to understanding correctly the nature of this appeal and its disposition in the appropriate appellate court." The page requirements for the appellee's response shall comply with the provisions of subsection (c) except that it shall not exceed two pages. The appellee's response shall not include an Informational Statement.

(d) Transfer and certification. The Supreme Court may transfer to the Court of Appeals any case appealed to the Supreme Court and may transfer to the Supreme Court any case appealed to the Court of Appeals. If the Court of Appeals seeks to transfer a case, the Court of Appeals shall find and certify that the case: (1) is excepted from its jurisdiction by Rule 1-2(a), or (2) otherwise involves an issue of significant public interest or a legal principle of major importance. The Supreme Court may accept for its docket cases so certified or may remand any of them to the Court of Appeals for decision. The Clerk of the Court shall notify the parties or their counsel of the transfer of any case.

(e) Petition for review. No appeal as of right shall lie from the Court of Appeals to the Supreme Court. The Supreme Court will exercise its discretion to review an appeal decided by the Court of Appeals only on application by a party to the appeal, upon certification of the Court of Appeals, or if the Supreme Court decides the case is one that should have originally been assigned to the Supreme Court. In determining whether to grant a petition to review, the following, while neither controlling nor fully measuring the Supreme Court's discretion, indicate the character of reasons that will be considered: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is arguably in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals arguably erred in some way related to one of the grounds listed in Rule 1-2(b).

(f) Improper filing. No case filed in either the Supreme Court or the Court of Appeals shall be dismissed for having been filed in the wrong court but shall be transferred or certified to the proper court.

(g) Allocation of workload. Notwithstanding the foregoing provisions, cases may be assigned and transferred between the courts by Supreme Court order to achieve a fair allocation of the appellate workload between the Supreme Court and the Court of Appeals.

(h) In all appeals from criminal convictions or postconviction relief matters heard in the Court of Appeals, the appellant shall not be required to petition for rehearing in the Court of Appeals or review in the Supreme Court following an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. When the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the appellant shall be deemed to have exhausted all available state remedies.

Addition to Reporter's Notes, 2001 Amendment: Subdivision (h) was added in response to language in O'Sullivan v. Boerckel, 526 U.S. 838, 119 S. Ct. 1728 (1999)("[N]othing in our decision today requires the exhaustion of any specific state remedy when a State has provided that that remedy is unavailable. Section 2254(c), in fact, directs federal courts to

consider whether a habeas petitioner has "the right under the law of the State to raise, by any available procedure, the question presented," . . . . The exhaustion doctrine, in other words, turns on an inquiry into what procedures are "available" under state law. In sum, there is nothing in the exhaustion doctrine requiring federal courts to ignore a state law or rule providing that a given procedure is not available.") Id., 526 U.S. at 848. Petitions for review, which are discretionary under subdivision (e) of this rule, should not be required in order for a state prisoner to exhaust his state remedies.

Rule 1-3. Uniform Paper Size. [9]
Printer-friendly version [10] PDF version [11]

All briefs, motions, pleadings, records, transcripts, and other papers required or authorized by these Rules shall be on 8 1/2" x 11" paper.

Rule 1-4. Clerk'S Office Business Hours. [12]
Printer-friendly version [13] PDF version [14]

The Clerk will record the exact time and date of filing or tender upon any document filed or tendered for filing in the Clerk's Office. Filings shall occur only between business hours of 8:00 a.m. and 5:00 p.m. on business days.

If the Clerk discovers documents left in or about the Clerk's Office after business hours with a written request for filing or tender, and the documents are in order for filing or tender, they may be marked as filed or tendered as of the beginning of the following business day. Neither the Clerk nor any member of the Clerk's Office staff shall be responsible to see to it that documents are filed or tendered unless they are presented during business hours by a person delivering them to the Clerk's Office.

Rule 1-5. Contempt. [15]
Printer-friendly version [16] PDF version [17]

No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the circuit court.

Rule 1-6. Employees Of The Court. [18]
Printer-friendly version [19] PDF version [20]

No employee of either Court shall engage in the practice of law or have a pecuniary interest in any concern that does business with either Court.

Rule 1-7. Practice Absent Specific Rule. [21]
Printer-friendly version [22] PDF version [23]

In cases where no provision is made by statute or other rule, proceedings in the Court shall be in accordance with existing practice.

Rule 1-8. Courtesy electronic copies. [24]
Printer-friendly version [25] PDF version [26]

[Rendered obsolete by per curiam order June 21, 2018.]

Reporter?s Notes to Rule 1-8 (2013 adoption): Rule 1-8 serves several purposes: (1) by

requiring that motions, petitions, writs, briefs, responses, and replies filed in the appellate court also be submitted in electronic PDF format, the rule allows the members of the appellate courts and court personnel to review those documents and other documents submitted in PDF format with modern computer and other portable electronic equipment; (2) the burden on the Supreme Court Clerk?s staff to scan paper documents into electronic PDF format is significantly relieved; and (3) electronic filing of the prescribed documents and other documents as provided in the rule serves as a transitional step toward the anticipated requirement of electronic filing of documents in the Arkansas appellate courts (see Administrative Order No. 21?Electronic Filing).

The rule imposes a minimal burden on parties submitting the documents to which the rule applies. The motions, petitions, writs, briefs, responses, and replies required to be filed in PDF format are often created in PDF contemporaneously with the original composition of those documents or the documents can easily be converted into PDF format by the word processing program in which they were originally composed. The rule encourages, but does not require, that the case record be submitted in PDF format. The rule also encourages, but does not require, that PDF documents be submitted in text-searchable format by which electronic searches may be made for particular words or data within the documents.

Subsection (b) applies the same redaction standards for confidential information contained in the PDF documents that are applicable to the original paper documents filed with the court. PDF files must be assigned names in accordance with the file naming convention standards of the rule established by subsection (c). A helpful guide to applying the file naming convention standard is provided by an example of a file name that follows immediately after the explanation of the file naming convention standard requirement. Subsection (c) also requires that PDF files in excess of 10 megabytes in size be divided into separate parts each of which must be no larger than 10 megabytes with each part identified in the file name as required by the file naming convention standard.

Subsection (d) clarifies that submission of PDF documents does not constitute filing or serving the documents as required by the Rules of the Supreme Court and Court of Appeals. Filing and service of the original paper documents in accordance with the rules are still required for the filing and service to be legally effective. In addition, the PDF files submitted must not contain material not included in the original paper documents and subsection (e) requires that the files be free of computer viruses.

Subsection (f) prescribes that PDF documents are to be submitted only on a Compact Disk (CD), Digital Video Disk (DVD), portable ?flash? or ?thumb? drive, or other similar electronic media. Because of the risks associated with opening email attachments, submission of documents by email is not allowed. Under subsection (h) the paper filing for which PDF documents are submitted must include a certification that the PDF documents have been submitted and served as required by the rule, that the PDF documents are identical to the corresponding paper documents, and that to the best of the knowledge, information and belief of the person submitting the PDF documents they are free of computer viruses after having been scanned by an antivirus program. The person submitting the PDF documents must also identify original paper documents filed in connection with the appeal that are not in PDF format.

Adopted June 6, 2013, effective August 1, 2013; amended September 12, 2013; rendered obsolete by per curiam order June 21, 2018.

Rule 2-1. Motions, Petitions, and Responses, General Rules. [27]
Printer-friendly version [28] PDF version [29]

(a) Writing required. All motions, petitions, and responses filed in the appellate courts must be in writing and comply with the requirements of Rule 4-1(a) in regard to the style of briefs. All motions, petitions, and responses, except for those that require the payment of any fee or that are case initiating, shall be filed using the electronic filing system provided by the Administrative Office of the Courts. However, persons proceeding pro se and persons with disabilities or special needs that prevent electronic filing shall be entitled to submit conventional paper filings.

(b) Number of copies. No paper copies are required for electronic filings. For conventional paper filings in the Supreme Court or Court of Appeals, one clearly legible copy on 8 1/2" by 11" paper must be provided at the time of filing.

(c) Service. Evidence of service of a motion, petition, or response upon opposing counsel must be furnished at the time of filing.

(d) Response. A response may be filed within 10 calendar days of the filing of a motion or petition. Evidence of service is required.

(e) Memorandum of authorities. With any motion, petition, application for temporary relief, or other action of the court that is sought before the regular submission of the case, the moving party shall file and serve upon opposing counsel or an unrepresented party a short citation of statutes, rules of court, and other authorities upon which the movant or petitioner relies. Any party responding to any such motion, petition, or application shall likewise file a memorandum of authorities.

(f) Compliance with Administrative Order 19 required. Every motion, petition, response, similar paper, memorandum of authorities, and any document attached to any of those papers, must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

(g) Motions for reconsideration. Any motion to reconsider the appellate court's order deciding any motion or petition must be filed no later than eighteen calendar days after the date of the order.

(h) Page length. Except as otherwise provided in these rules, a motion, petition, or response, including the memorandum of authorities and supporting brief, if any, but excluding any exhibits, shall not exceed ten 8" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a), except that motions, petitions, or responses and supporting documents are not to be bound as set forth in Rule 4-1(a) but are to be stapled with a single staple in the top left-hand corner of the page. Motions for an expansion of the page limit must set forth the reason or reasons for the request and must state that a good faith effort to

comply with this rule has been made. The motion must specify the number of additional pages requested.

Addition to Reporter's Notes, 2012 Amendment: Prior to the 2012 amendment, this rule applied only to "motions." Because filings in the appellate court may also take the form of "petitions" and "responses," the amendment expands the rule to cover petitions and responses. The 2012 amendments also add subsection (h). The introductory clause to subsection (h) makes it clear that the 10-page limit of this rule is preempted by a Supreme Court rule setting a different page limit with respect to a particular motion, petition, or response. For example, Supreme Court Rule 2-4 limits petitions for review to three pages, and subsection (h) does not change that limit.

Addition to Reporter's Notes, 2014 Amendment: Rule 2-1(a) & (h) required that all motions, petitions, and responses filed in the appellate courts in excess of three pages be bound in compliance with the requirements of Rule 4-1(a) which is applied by reference in Rule 2-1 (a) & (h). This requirement created a problem for the Clerk's office because when the documents are received in the office, the bindings are removed for copying, scanning, and filing, etc. Rule 2-1(a) & (h) is amended to prescribe that the documents to which the rule applies are to be stapled in the top left-hand corner, rather than bound.

Amended March 13, 2014, effective July 1, 2014; amended September 15, 2016, effective September 21, 2016; amended and effective June 21, 2018.

Rule 2-2. Motion For Rule On Clerk. [30]
Printer-friendly version [31] PDF version [32]

(a) Record tendered late. Where a record is tendered which, on its face, appears to be outside the time allotted for docketing the case, it shall be the duty of the Clerk to notify the attorney representing the appellant and note on the record the date the tender was made.

(b) Docketing for purpose of presenting request for rule ? Service of motion. If the appellant contends that the Clerk is in error in refusing to file the record, then upon payment of the regular filing fee, the case shall be tentatively docketed and numbered. The appellant shall then file a motion in accordance with Rule 2-1 to require the Clerk to docket the case as an appeal. A copy of the motion shall be served by the appellant upon opposing counsel, and evidence of service shall be furnished to the Clerk with the motion at the time of filing.

(c) Procedure when rule granted. If the motion is granted, the case shall proceed in the regular manner for appeals without payment of any additional fee.

(d) Procedure when rule denied. If the motion is denied, the case shall be stricken from the docket, the jurisdiction of the Court terminated, and the filing fee forfeited.

Rule 2-3. Petitions For Rehearing. [33]
Printer-friendly version [34] PDF version [35]

(a) Filing and service. A petition for rehearing, a brief in support of the petition, and evidence of service of the petition, brief, and a certificate of merit stating that the petition is not filed for

the purpose of delay, shall be filed within 18 calendar days from the date of decision.

(b) Response. The respondent may file a brief on the following Monday (in the Supreme Court) or Wednesday (in the Court of Appeals) or within seven calendar days from the filing of the petition for rehearing, whichever last occurs, or may, on or before that time, obtain an extension of one week upon written motion to the Court.

(c) Additional time. Neither party will be granted further time than as indicated above, except upon written motion to the Court and a showing of illness of counsel or other unavoidable casualty.

(d) Number of copies to be filed. The petition must be filed with the Clerk, and no copies are required. A copy must be served upon opposing counsel.

(e) Page length. In all cases, both civil and criminal, the petition and supporting brief, if any, including the style of the case and the certificate of counsel, shall not exceed ten 81/2" x 11" double-spaced, typewritten pages.

(f) Ground(s) stated. The petition must specifically state the ground(s) relied upon.

(g) Entire case not to be reargued. The petition for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain. Counsel are expected to argue the case fully in the original briefs, and the brief on rehearing is not intended to afford an opportunity for a mere repetition of the argument already considered by the Court.

(h) Previous reference in abstract or Addendum. In no case will a rehearing petition be granted when it is based upon any fact thought to have been overlooked by the Court, unless reference has been clearly made to it in the abstract of the transcript or the Addendum of the record prescribed by Rules 4-2 and 4-3.

(i) No oral argument. Oral argument will not be permitted on a petition for rehearing.

(j) Limited to one petition. A party may submit only one petition for rehearing.

(k) New counsel. Litigants will not be permitted to substitute new counsel for the purpose of filing a petition for rehearing. Additional counsel may, however, participate in a petition for rehearing, or in opposition to the petition, by joining with the original counsel in the petition and brief, or by obtaining permission of the Court by motion.

(l) Compliance with Administrative Order 19 required. Every petition for rehearing, brief in support, and brief in response must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Reporter's Notes (2019).

Subdivision (e) was amended to reconcile it with Rule 2-1(a) regarding binding and stapling.

Amended and effective June 21, 2018; amended October 18, 2018, effective January 1, 2019.

Rule 2-4. Petitions For Review. [36]
Printer-friendly version [37] PDF version [38]

(a) Contents of petition. A petition to the Supreme Court for review of a decision of the Court of Appeals must be in writing and must be filed within 18 calendar days from the date of the decision, regardless of whether a petition for rehearing is filed with the Court of Appeals. The petition may be typewritten and shall not exceed three 8 1/2" x 11", double-spaced pages in length. The petition must briefly and distinctly state the basis upon which the case should be reviewed and may include citations of authority or references to statutes or constitutional provisions. The petition can only be filed by a party to the appeal and is otherwise subject to Rule 1-2(e).

(b) Briefs and oral argument prohibited. Briefs will not be accepted and oral arguments will not be heard in support of petitions for review. However, the petitioner may attach a copy of the petition for rehearing to the petition for review.

(c) Grounds for review. A petition for review must allege one of the following: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals otherwise erred with respect to one of the grounds listed in Rule 1-2(b).

(d) Response. A response to a petition for review must be filed within 10 calendar days of the date the petition was filed. Responses are subject to the same limitations as petitions. The respondent may attach a copy of the response to the petition for rehearing to the response to the petition for review.

(e) Clerk?s notification; request for oral argument. When the Supreme Court grants a petition for review, the Clerk shall promptly notify all counsel and parties appearing pro se. Within two weeks of the notification, the briefs previously submitted to the Court of Appeals shall be electronically filed with the Clerk along with six paper copies within five days of the electronic-filing date. Any party may request oral argument by filing, contemporaneously with that party's filing of the brief, a letter, separate from the brief, stating the request with a copy to all parties. The decision to grant the request for oral argument and other aspects of oral argument are governed by Rule 5-1.

(f) Supplemental and reply briefs. Any party may request permission to submit a supplemental brief by motion, filed with the Clerk and served upon all other parties, within two weeks after the granting of review. The moving party's brief shall be due 20 calendar days from the granting of the motion. Other parties may file responsive supplemental briefs within 10 calendar days of the date the moving party's supplemental brief is filed. A reply brief may be filed within five calendar days after the filing of a responsive supplemental brief. No supplemental brief, responsive supplemental brief, or reply brief submitted pursuant to this Rule shall exceed 10 pages in length. These briefs shall otherwise conform to the requirements of Rule 4-1.

(g) Compliance with Administrative Order 19 required. Every petition for review, response, and supplemental brief of any kind on review must comply with the protective requirements for

confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Amended and effective June 21, 2018.

Rule 3-1. Preparation Of The Record. [39]
Printer-friendly version [40] PDF version [41]

(a) Generally. All records shall begin with the style of the court in which the controversy was heard, the name of the judge presiding when the decree, judgment or order was rendered and its date, the names of all the parties litigant, and the nature of the suit or motion. For example: "Trial before A.B., judge of the circuit court on the ____ day of _____, __;

John Doe, Plaintiff

vs. Action on Promissory Note"

Jane Doe, Defendant

(b) Dates. Whenever an order of the court is mentioned, the date shall be specifically stated, rather than by reference to the day and year "aforesaid".

(c) Duplications. No part of the record shall be copied more than once. When a particular record recurs, a reference should be made to pages in the preceding part of the record.

(d) Depositions. When depositions are taken on interrogatories and included in the record, the answers must be placed immediately after the questions to which they are responsive.

(e) Record on second appeal. When a cause has been once before the Court and a record is again required (for the purpose of correcting error which occurred on retrial), the second record shall begin where the former ended; that is, with the judgment of the appellate court, which should be entered of record in the circuit court, omitting the opinion of the appellate court. The appeal or supersedeas bond should be the last entry included.

(f) Table of contents. Every record shall include a table of contents which refers to the pages in the record where the matter identified is copied. For example:

Complaint ..... Page 1

Answer ..... Page 4

Motion for Summary Judgment ..... Page 6

Exhibit A - Medical Records (completely redacted and filed under seal, Pages 8S15)

Brief in Support of Summary Judgment (internal redactions with complete version filed under seal)..... Page 16

The record shall be consecutively paginated, including any papers under seal. The table of contents shall also list all documents filed under seal.

(g) Fee for index. Clerks may add to their fee for the record a reasonable charge for these items where no charge is fixed by statute.

(h) Record fee and costs certified. The fee for the production of the record must be certified in all cases; in addition, all costs in the circuit court must be reported, and by whom paid.

(i) Clerk's record and reporter's transcript--Paper size and preparation.

The transcript must be prepared in plain typewriting or computer or word processor printing of the first impression, not copies, on 8 1/2" x 11" paper. The record, as defined in paragraph (m) [paragraph (n)] of this Rule, shall be fastened on the left of the page. All transcripts shall be prepared by certified court reporters and comport with the following rules:

(1) No fewer than 25 typed lines on standard 81/2" x 11" paper;

(2) No fewer than 9 or 10 characters to the typed inch;

(3) Left-hand margins to be set at no more than 13/4";

(4) Right-hand margins to be set at no more than 3/8";

(5) Each question and answer to begin on a separate line;

(6) Each question and answer to begin at the left-hand margin with no more than 5 spaces from the "Q" and "A" to the text;

(7) Carry-over "Q" and "A" lines to begin at the left-hand margin;

(8) Colloquy material, quoted material, parentheticals and exhibit markings to begin no more than 15 spaces from the left-hand margin with carry-over lines to begin no more than 10 spaces from the left-hand margin;

(9) All transcripts to be prepared in the lower case;

(10) All transcripts shall be prepared on only one side of the paper, not front and back;

(11) All transcripts of depositions shall comply with these Rules.

(j) Exhibits. Documents of unusual bulk or weight shall not be transmitted by the clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical exhibits other than documents shall not be transmitted by the clerk of the circuit court except by order of the Court.

(k) Folding of record. Records must be transmitted to the Clerk without being folded or creased.

(l) Surveys. Real property surveys which form a part of the record shall not be fastened to the record.

(m) Record in volumes. Where the record is too large to be conveniently bound in one volume, it shall be divided into separate volumes of convenient size and numbered sequentially.

(n) Definition of record. The term "record" in civil cases, and as used in these Rules, refers only to the pleadings, judgment, decree, order appealed, transcript, exhibits, and certificates.

Amended and effective by per curiam order June 26, 2014.

Rule 3-2. Items To Be Omitted From The Record. [42]
Printer-friendly version [43] PDF version [44]

(a) Generally. The clerks of the circuit courts in making records to be transmitted to the Court, shall, unless excepted by the provisions of this Rule, include all matters in the record as required by Rule 3-1(n).

(b) Summons. In cases where the defendant has appeared, the clerk shall not set out any summons or other writ of process for appearance or the return thereof, but shall state: "Summons issued", (showing date) "and served", (showing date).

(c) Amended pleadings. In case of an amendment to the pleadings by substitution, the clerks shall treat the amended pleading as the only one and shall refrain from copying into the records any pleadings withdrawn, waived or superseded by amendment, unless it is expressly called for by a party's designation of the record.

(d) Incidental matters. Clerks shall not insert in the record any matter concerning the organization or adjournment of court, the impaneling or swearing of the jury, the names of jurors, including any motion, affidavit, or order or ruling in reference thereto, any continuance or commission to take testimony or the return thereto, any notice to take depositions or the caption or certificate of the officer before whom such depositions are taken, or any other incidental matter, unless it is expressly called for by a party's designation of the record.

Rule 3-3. Record In Civil Cases. [45]
Printer-friendly version [46] PDF version [47]

Not all records in civil cases will have the same contents. To the extent possible, items will be arranged in the following sequence:

1. The Complaint;

2. Plaintiff 's exhibits which accompany the Complaint;

3. Statement regarding summons, set out in Rule 3-2(b);

4. Answer;

5. Defendant's exhibits which accompany the Answer;

6. Subsequent pleadings and orders in chronological order;

7. Final judgment, decree, or order appealed;

8. Post-judgment decree, order or motion (e.g., motions for new trial);

9. Orders granting or denying post-judgment motions;

10. Notice of appeal and designation of record;

11. Statement of points to be relied upon if abbreviated record designated;

12. Extensions of time to file record on appeal;

13. Stipulations to abbreviated records;

14. Narrative of testimony upon stipulations;

15. Depositions introduced;

16. Reporters' transcription of testimony;

17. Supersedeas bond;

18. Certificate, duly acknowledged;

19. Certificate of costs, indicating payor.

Rule 3-4. Record In Criminal Cases. [48]
Printer-friendly version [49] PDF version [50]

(a) Order of record. In all criminal cases, after the caption set forth in Rule 3-1, the record shall be organized in the following sequence:

1. Return of the indictment or information;

2. Defendant's pleadings;

3. Subsequent pleadings and orders in chronological order;

4. Final judgment and commitment or order appealed;

5. Verdict forms and written jury instructions;

6. Motion for new trial, to set aside, amend, etc.;

7. Order granting or denying above motions;

8. Notice of appeal and designation of record;

9. Extensions of time to file record on appeal;

10. Reporters' transcription of testimony;

11. Appeal bond;

12. Certificate, duly acknowledged.

(b) *Record of jury matters*. (1) The record shall not include the impaneling or swearing of the jury, the names of the jurors, or any motion, affidavit, order, or ruling in reference thereto unless expressly called for by a party's designation of the record.

(2) Verdict forms, written jury instructions, and proffered jury instructions shall be inserted in the record when expressly identified by a party's designation of the record.

(c) *Exhibits*. Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the clerk of the circuit court unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the Court.

Reporter's Notes, 2019 Amendment.

Subdivision (b)(2) was added to provide for verdict forms, written jury instructions, and proffered jury instructions to be inserted in the record.

Amended October 18, 2018, effective January 1, 2019.

Rule 3-5. Certiorari To Complete The Record. [51]
Printer-friendly version [52] PDF version [53]

(a) Authorization for writ of certiorari. When jurisdiction is conferred by filing, within the time allowed for appeal, a dated and certified copy of the order or judgment appealed from, the Clerk may, upon authorization by the Court, issue a writ of certiorari to the clerk of the circuit court, the reporter, or any other person charged with the duty of preparing the record on appeal, directing that any omissions or errors in the record be corrected.

(b) Contents of writ. The writ shall order that the record be completed and certified within thirty days, and the explanation for any default in complying with the writ must be made on the return within the time directed. This procedure may be used in appeals of civil, criminal, and administrative agency or commission cases.

Rule 3-6. Disposal Of Record And Exhibits. [54]

Printer-friendly version [55] PDF version [56]

(a) Procedure to obtain ? Failure to return. Attorneys may obtain from the Clerk the record in a disposed of case by giving a receipt and may retain the record for a period of not more than thirty days. No extension of time will be granted until the record has been returned, and then only upon order of the Court. Upon failure to return the record within the time allotted, the Clerk shall demand its return. If the demand is not complied with within ten days, the delinquency shall be reported to the Court at which time a citation shall issue commanding the attorney to appear before the Court immediately and show cause why a citation for contempt should not issue.

(b) Failure to claim exhibits in civil cases. All exhibits filed in civil cases and not attached to the transcript, in the Supreme Court and Court of Appeals, must be claimed by the party who presented the exhibit to the circuit court and be removed from the Clerk's office within 90 days from the date the mandate is issued. The attorney receiving the exhibits must sign the docket showing their receipt. If an exhibit is not claimed within the 90 days, the Clerk may destroy or dispose of it after giving the parties, or the attorneys of record, 30 days notice of the Clerk's intention to do so.

(c) Exhibits in criminal cases.

(1) Exhibits in cases in which the mandate has been issued for more than five years shall be disposed of in the following manner:

(A) Physical exhibits consisting of weapons, in whatever form, shall be transferred to the U.S. Bureau of Alcohol, Tobacco & Firearms for disposal pursuant to Bureau policy.

(B) Controlled substances, in whatever form, shall be transferred to the Arkansas Department of Health for disposal pursuant to Department policy.

(C) All other exhibits, except those contained in the record, may be destroyed at the discretion of the Clerk.

(2) All exhibits shall be retained in cases that are subject to continuing litigation or in which the defendant received a sentence of death.

(3) Exhibits in cases which are reversed on appeal shall be transferred to the Office of the Prosecutor Coordinator when the mandate from the Court issues.

Rule 3-7 Cover Sheet [57]

Printer-friendly version [58] PDF version [59]

(a) When an initial record or pleading is filed with the Clerk of the Supreme Court and Court of Appeals, a cover sheet shall be completed and filed. The cover sheet shall be used for case initiation purposes. The cover sheet shall not replace or supplement the filing and service of other papers as required by law or the Rules of the Supreme Court and Court of Appeals.

(b) The Administrative Office of the Courts shall be responsible for the content and format of the cover sheet and instructions for its use.

The Clerk shall not accept an initial record or pleading that is not accompanied by the cover sheet. The Clerk shall place the completed cover sheet in the case file.

The attorney or pro se litigant at the time of filing an initial record or pleading shall be responsible for completing the information on the cover sheet. The cover sheet shall be type written; however, a pro se litigant may submit a handwritten cover sheet.

Rule 4-1. Style Of Briefs. [60]
Printer-friendly version [61] PDF version [62]

(a) Briefs - Size - Paper - Type. All briefs shall be type written or produced with computer or word processing equipment. Briefs shall be of uniform size on opaque, unglazed 8" x 11" white paper and firmly bound on the left hand margin by staples or other binding devices. If staples are used, they should be covered by tape. Briefs shall be double-spaced, except for quoted material, which may be single-spaced and indented. Footnote lines, except quotations, shall be double-spaced. Use of footnotes is not encouraged and should be used sparingly. Carbon copies are not acceptable, but copies produced by offset printing, positive photocopy, or other dry photo-duplicating process which produces a clearly legible black-on-white reproduction may be used. The abstract, statement of the case, argument, and addendum shall each be numbered sequentially from page one, and both sides of the page may be used. The margin at the top, outer edge, and bottom of each page shall be not less than one inch, and the margin at the binding edge shall be wide enough to allow the text to be read easily. Typeface shall be proportionally spaced, shall not be less than 14 points, and must include serifs, but sans-serif type may be used in headings and captions. Commercial organizations or members of the bar maintaining equipment for duplicating may submit to the Clerk samples for prior approval. If the Clerk is satisfied that such duplicating process will produce documents which conform to the specifications of this rule, it will be approved.

(b) Length of argument. Unless leave of the court is first obtained, the argument portion of a brief shall not exceed 30 double-spaced pages including the conclusion, if any. The appellant's reply brief shall not exceed 15 double-spaced pages and shall not include any supplemental abstract unless permitted by the court upon motion. Motions for an expansion of the page limit must set forth the reason or reasons for the request and must state that a good faith effort to comply with this rule has been made. The motion must specify the number of additional pages requested.

(c) Pro se briefs. Where the appellant in a criminal appeal is entitled to representation by counsel, pro se briefs will be accepted only when the appellant has filed an affidavit stating that the appellant has knowingly and intelligently refused the services of an attorney on appeal. Such a brief shall also be accompanied by an affidavit that the appellant has prepared it without the paid assistance of any other prison inmate.

(d) Compliance with Administrative Order No. 19 required. All parts of all briefs, including the abstract and any document attached to any brief in the addendum, must comply with the protective requirements for confidential information established by Administrative Order No. 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Arkansas Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal. If the record contains confidential information that is neither necessary nor relevant for the appellate court's consideration of the case, then the party shall omit that information throughout the brief, including the abstract and addendum. If confidential information is integrated with necessary information, then the party should redact the confidential information in the abstract and addendum. In this situation, the party need not file an unredacted version of the brief. If

the confidential information is necessary and relevant to a decision on appeal, pursuant to Rule 4-4, the party must file one redacted copy and seventeen unredacted copies of the brief for a total of eighteen copies. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

(e) Noncompliance. Briefs not in compliance with this rule shall not be accepted by the Clerk. When a party submits a brief on time that substantially complies with the rules, the Clerk may mark the brief ?tendered,? grant the party a seven-day compliance extension, and return the brief to the party for correction. If the party resubmits a compliant brief within seven (7) calendar days, then the Clerk shall accept that brief for filing on the date it is received.

Addition to Reporter's Notes, 2014 Amendment: Both Rule 4-1 and Rule 4-4 required the filing on appeal of nine copies of redacted briefs and nine copies of unredacted briefs, for a total of eighteen copies. However, only one copy of the redacted brief need be filed---for public viewing, while 17 copies of unredacted briefs should be filed for use by the courts and court personnel. Rules 4-1 and 4-4 are amended accordingly.

Amended March 13, 2014, effective July 1, 2014.

Rule 4-2. Contents Of Briefs. [63]
Printer-friendly version [64] PDF version [65]

(a) Contents. The contents of the brief shall be in the following order:

(1) Table of contents. Each brief must include a table of contents. It should reference the page number for, and include hyperlinks to, the beginning of each of the major sections identified in Rule 4-2(a)(2)-(8). The table must also list the contents of the abstract and the addendum. The name of each witness, and the abstract page number on which his or her testimony begins, must be included. The table must identify each document in the addendum, list the addendum page number where the document begins, and list the corresponding record page number.

(2) Informational statement and jurisdictional statement. The Informational Statement and Jurisdictional Statement required by Supreme Court Rule 1-2(c).

(3) Points on appeal. The appellant shall list and separately number, concisely and without argument, the points relied upon for a reversal of the judgment or decree. The appellee must follow the same sequence and arrangement of points as contained in the appellant's brief and may then state additional points. Either party may insert under any point not more than two citations which the party considers the principal authorities on that point.

(4) Table of authorities. The table of authorities shall be an alphabetical listing of authorities with a designation of the page number of the brief on which the authority appears. The authorities shall be grouped as follows:

(A) Cases

(B) Statutes and Rules

(C) Books and Treatises

(D) Miscellaneous

(5) Abstract. The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.

(A) Contents. All material information recorded in a transcript (stenographically reported material) must be abstracted. Depending on the issues on appeal, material information may be found in, for example, counsel's statements and arguments, voir dire, testimony, objections, admissions of evidence, proffers, colloquies between the court and counsel, jury instructions (if transcribed), and rulings. All material parts of all hearing transcripts, trial transcripts, and deposition transcripts must be abstracted, even if they are an exhibit to a motion or other paper. Exhibits (other than transcripts) shall not be abstracted. Instead, material exhibits shall be copied and placed in the addendum. If an exhibit referred to in the abstract is in the addendum, then the abstract shall include a reference to the addendum page where the exhibit appears.

(B) Form. The abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material). The abstract must not reproduce the transcript verbatim. No more than one page of a transcript shall be abstracted without giving a record page reference. In abstracting testimony, the first person (?I?) rather than the third person ("He or She") shall be used. The question-and-answer format shall not be used. In the extraordinary situations where a short exchange cannot be converted to a first-person narrative without losing important meaning, however, the abstract may include brief quotations from the transcript.

(C) Miscellaneous. (i) In a second or subsequent appeal, material information from all transcripts filed in any prior appeal must be abstracted. (ii) If an abstract exceeds two hundred fifty pages, then the appellant may bind it separately from the other parts of the brief without filing a motion seeking permission from the appellate court to do so. (iii) To assist in the abstracting process, the court reporter shall provide the appellant at a nominal charge an electronic copy of the transcript. (iv) The Clerk will refuse to accept a brief if the abstract does not comply with this rule. The Clerk shall handle briefs with a noncompliant abstract pursuant to Rule 4-1(e) by marking the brief tendered and granting a seven-day compliance extension. As prescribed by Rule 4-1(d), the abstract must also comply with Administrative Order 19?s redaction requirements for confidential information.

(6) Statement of the Case. The appellant's brief shall contain a concise statement of the case without argument. This statement, denoted as the "Statement of the Case," shall ordinarily not exceed two pages in length, and shall not exceed five pages without leave of the court. The pages of the statement of the case shall appear immediately before the argument and are not counted against the page limits of the argument set out in Rules 4-1(b) and 4-3(e). The statement of the case should be sufficient to enable the court to understand the nature of the case, the general fact situation, and the action taken by the trial court. The statement must include supporting page references to the abstract or addendum or both. The Clerk will refuse to accept a brief if the required references to the abstract or addendum are not included. The appellee's brief need not contain a statement of the case unless the appellant's statement is

deemed to be controverted or insufficient.

(7) Argument. Arguments shall be presented under subheadings numbered to correspond to the outline of points to be relied upon. For each issue, the applicable standard of review shall be concisely stated at the beginning of the discussion of the issue. Citations of decisions of the Arkansas Supreme Court and Court of Appeals must be from the official reports, and all citations to both official and unofficial reports shall follow the format prescribed in Rule 5-2. All citations of decisions of any other court must state the style of the case and cite the official reporter (including a regional reporter so designated by the issuing court) in which the case is found. If the case is also reported by unofficial publishers, including an unofficial electronic database, one of these should also be cited. Reference in the argument portion of the parties' briefs to material found in the abstract and addendum shall be followed by a reference to the page number of the abstract or addendum at which such material may be found. The number of pages for argument shall comply with Rule 4-1(b).

(8) Addendum. The appellant's brief shall contain an addendum after the signature and certificate of service. The addendum shall contain true and legible copies of the non-transcript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. The addendum shall not merely reproduce the entire record of trial court filings, nor shall it contain any document or material that is not in the record.

(A) Contents. (i) The addendum must include the following documents:

? the pleadings (as defined by Rule of Civil Procedure 7(a)) on which the circuit court decided each issue: complaint, answer, counterclaim, reply to counterclaim, cross-claim, answer to cross-claim, third-party complaint, and answer to third-party complaint. If any pleading was amended, the final version and any earlier version incorporated therein shall be included;

? all motions (including posttrial and postjudgment motions), responses, replies, exhibits, and related briefs, concerning the order, judgment, or ruling challenged on appeal. But if a transcript (stenographically reported material) of a hearing, deposition, or testimony is an exhibit to a motion or related paper, then the material parts of the transcript shall be abstracted, not included in the addendum. The addendum shall also contain a reference to the abstract pages where the transcript exhibit appears as abstracted;

? any document essential to an understanding of the case and the issues on appeal, such as a will, contract, lease, note, insurance policy, trust, or other writing;

? in a case where there was a jury trial, the jury's verdict forms;

? defendant's written waiver of right to trial by a jury;

? in a case where there was a bench trial, the court's findings of fact and conclusions of law, if any;

? the order, judgment, decree, ruling, letter opinion, or administrative agency decision from which the appeal is taken. In workers' compensation appeals, the administrative law judge's opinion shall be included when it is adopted in the order of the full commission. If the order (however named) incorporates a bench ruling, then that ruling must be abstracted and the addendum must contain a reference to the abstract pages where the information appears as abstracted. The transcript (stenographically reported material) containing the ruling may also

be copied in the addendum or omitted, at the appellant's choice;

? all versions of the order (however named) being challenged on appeal if the court amended the order;

? any order adjudicating any claim against any party with or without prejudice;

? any Rule of Civil Procedure 54(b) certificate making an otherwise interlocutory order a final judgment;

? all notices of appeal; ? any postjudgment motion that may have tolled the time for appeal, and is therefore necessary to decide whether a notice of appeal was timely filed;

? any motion to extend the time to file the record on appeal, and any related response, reply, or exhibit;

? any order extending the time to file the record on appeal; and

? any other pleading or document in the record that is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. For example, docket sheets, superseded pleadings, discovery related documents, proffers of documentary evidence, jury instructions given or proffered, and exhibits (such as maps, plats, photographs, computer disks, CDs, DVDs).

(ii) Waiver of addendum obligation. If an exhibit or other item in the record cannot be reproduced in the addendum, then the party making the addendum must file a motion seeking a waiver of the addendum obligation.

(B) Form. Each page in the addendum must also show the record page number where the original is located. Each document must be a complete and legible copy of the original, clearly showing any file mark. If an addendum exceeds two hundred fifty pages, then a party may bind it separately from the rest of the brief without filing a motion seeking permission from the appellate court to do so.

(C) Supplemental addendum. An appellee may include a supplemental addendum containing any document in the record on which the appellee relies in its brief and that is absent from the appellant's addendum. A cross-appellant shall likewise limit any supplemental addendum to documents of record not contained in the appellant's addendum but necessary to demonstrate appellate jurisdiction over, and to decide the issues in, the cross-appeal. A cross-appellee may include a non-duplicative supplemental addendum limited to documents concerning the cross-appeal.

(D) Miscellaneous. If the Clerk determines that the addendum does not comply with this rule, he or she shall refuse to accept a brief. The Clerk shall handle briefs with a noncompliant addendum pursuant to Rule 4-1(e) by marking the brief tendered and granting a seven-day compliance extension. As prescribed by Rule 4-1(d), the addendum must also comply with Administrative Order 19?s redaction requirements for confidential information.

(9) Cover for briefs. On the cover of every brief there should appear the number and style of the case in the Supreme Court or Court of Appeals, a designation of the court from which the appeal is taken, and the name of its presiding judge, the title of the brief (e.g., "Abstract, Addendum, and Brief for Appellant"), and the name or names of individual counsel who

prepared the brief, including their bar numbers, addresses, telephone and facsimile numbers, and e-mail addresses. If the brief contains multiple volumes, the volume number should appear on the cover of each volume near the bottom of the cover page.

(b) Insufficiency of appellant's abstract or addendum. Motions to dismiss the appeal for insufficiency of the appellant's abstract or addendum will not be recognized. Deficiencies in the appellant's abstract or addendum will ordinarily come to the court's attention and be handled in one of four ways as follows:

(1) If the appellee considers the appellant's abstract or addendum to be defective, the appellee's brief should call the deficiencies to the court's attention and may, at the appellee's option, contain a supplemental abstract or addendum. When the case is considered on its merits, the court may upon motion impose or withhold costs, including attorney's fees, to compensate either party for the other party's noncompliance with this rule. In seeking an award of costs under this paragraph, counsel must submit a statement showing the cost of the supplemental abstract or addendum and a certificate of counsel showing the amount of time that was devoted to the preparation of the supplemental abstract or addendum.

(2) If the case has not yet been submitted to the court for decision, an appellant may file a motion to supplement the abstract or addendum and file a substituted brief. Subject to the court's discretion, the court will routinely grant such a motion and give the appellant fifteen days within which to file the substituted abstract, addendum, and brief. If the appellee has already filed its brief, upon the filing of appellant's substituted abstract, addendum, and brief, the appellee will be afforded an opportunity to revise or supplement its brief, at the expense of the appellant or the appellant's counsel, as the court may, upon motion, direct.

(3) Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2 (a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule.

(4) If the appellate court determines that deficiencies or omissions in the abstract or addendum need to be corrected, but complete rebriefing is not needed, then the court will order the appellant to file a supplemental abstract or addendum within seven calendar days to provide the additional materials from the record to the members of the appellate court.

(c) Noncompliance. (1) Briefs not in compliance with the format required in Rules 4-1 and 4-2 shall not be accepted for filing by the Clerk. When a party submits a noncompliant brief on time that substantially complies with the rules governing briefs, the Clerk shall mark the brief ?tendered,? grant the party a seven-day compliance extension, and return the brief to the party for correction. If the party resubmits a compliant brief within seven (7) calendar days, then the Clerk shall accept that brief for filing on the date it is received.

(2) If after a brief has been accepted for filing, it is determined that an appellee?s brief is deficient or an appellant?s brief is deficient in areas not addressed in Rule 4-2(b)(3), the court may give the party fifteen days to cure the noncompliance under the procedure described in Rule 4-2 (b)(3). If the problem is not timely corrected, then the court will take appropriate action, including affirming the judgment or decree at cost to the appellant, or otherwise giving judgment according to the requirements of the case.

(3) After the opportunity to cure deficiencies has been afforded pursuant to Rule 4-2(b)(3) or (c)(2), attorneys who fail to comply with the requirements of this rule may be referred to the Office of Professional Conduct, and in addition, may be subject to any of the following: (A) contempt, (B) suspension of the privilege to practice before the Supreme Court or Court of Appeals for a specified time or until the attorney can demonstrate a satisfactory competency of the rules, or (C) imposition of any of the sanctions listed in Rule 11(c) of the Rules of Appellate Procedure-Civil.

Addition to Reporter's Notes, 2014 Amendment. The amendment to Rule 4-2(a)(9) requiring placement of volume numbers on briefs that contain multiple volumes is a housekeeping matter to assist in the orderly operation of the Clerk's office.

Amended by per curiam order March 31, 2011---new subsection (b)(4); amended March 13, 2014, effective July 1, 2014; amended December 7, 2017, effective January 1, 2018.

Rule 4-3. Briefs In Criminal Cases. [66]
Printer-friendly version [67] PDF version [68]

(a) Electronic filing. Briefs shall be filed using the electronic filing system provided by the Administrative Office of the Courts. Parties filing any brief electronically shall provide six paper copies of the brief to the Clerk within five days of the filing date. Any person proceeding pro se and any person with a disability or special need that prevents him or her from filing electronically shall be permitted to submit conventional paper filings. Parties conventionally filing shall provide six paper copies of the brief at the time of filing.

(b) Appellant's brief. The appellant shall have 40 days from the date the transcript is lodged to file the appellant's brief with the Clerk. The appellant shall furnish evidence of service upon opposing counsel and the circuit court, except as otherwise provided in (f). As provided in (a), the appellant shall provide paper copies of the brief within five days of the filing date.

(c) Appellee's brief. The appellee shall have 30 days from the filing of the appellant's brief to file the appellee's brief with the Clerk and such further abstract and Addendum as may be necessary to a fair determination of the case. Proof of service upon opposing counsel and the

circuit court is required, except as otherwise provided in (f). As provided in (a), the appellee shall provide paper copies of the brief within five days of the filing date.

(d) Reply brief. The appellant shall have 15 days from the date that the appellee's brief is filed to file the reply brief and furnish evidence of service upon the opposing counsel and the circuit court. As provided in (a), the appellant shall provide paper copies of the brief within five days of the filing date.

(e) Page limits on briefs. The argument portion of the appellant's and the appellee's briefs shall not exceed 30 double-spaced typewritten pages including the conclusion, if any, with a 15 typewritten page limit upon the reply brief, except that if either limitation is shown to be too stringent in a particular case, and there has been a good faith effort to comply with the page limits, it may be waived on motion.

(f) Sealing of child pornography. If a brief contains photographs, DVDs, or any other visual medium alleged by either party to the appeal to constitute child pornography, a motion to seal the brief, stating the reason therefor, must accompany the brief when it is filed with the Clerk of the Court. Only the court, its personnel, and the attorneys of record shall be provided with copies of briefs containing the materials to be sealed. All other persons to be served with the brief shall receive copies which do not contain the materials to be sealed.

(g) Misdemeanor cases subject to dismissal. In misdemeanor cases, failure of the appellant to file a brief within the time limit renders the case subject to dismissal as in civil cases pursuant to Rule 4-5.

(h) Appellant's duty to abstract record. In all felony cases it is the duty of the appellant, whether represented by retained counsel, appointed counsel or a public defender, or acting pro se, to abstract such parts of the transcript and to include in the Addendum such parts of the record, but only such parts, as are material to the points to be argued in the appellant's brief.

(i) Court's review of errors in death or life imprisonment cases. When the sentence is death or life imprisonment, the Court must review all errors prejudicial to the appellant in accordance with Ark. Code Ann. Sec. 16-91-113(a). To make that review possible, the appellant must abstract, or include in the Addendum, as appropriate, all rulings adverse to him or her made by the circuit court on all objections, motions and requests made by either party, together with such parts of the record as are needed for an understanding of each adverse ruling. The Attorney General will make certain and certify that all of those objections have been abstracted, or included in the Addendum, and will brief all points argued by the appellant and any other points that appear to involve prejudicial error.

(j) Preparation of briefs for indigent appellants. When an indigent appellant is represented by appointed counsel or a public defender, the attorney may have the briefs reproduced by submitting one unbound double-spaced typewritten manuscript to the Attorney General and one to the Clerk not later than the due date of the brief. In such instances, the time for the filing of the Attorney General's brief is extended by five days.

(k) Withdrawal of counsel.

(1) Any motion by counsel for a defendant in a criminal or a juvenile delinquency case for permission to withdraw made after notice of appeal has been given shall be addressed to the

Court, shall contain a statement of the reason for the request and shall be served upon the defendant personally by first-class mail. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court.

(2) The Clerk shall furnish the appellant with a copy of the appellant's counsel's brief, and advise the appellant that he or she has 30 days within which to raise any points that he or she chooses, and that this may be done in typewritten or hand printed form and accompanied by an affidavit that no paid assistance from any inmate of the Department of Correction or of any other place of incarceration has been received in the preparation of the response.

(3) The Clerk shall serve all such responses by an appellant on the Attorney General, who shall file a brief for the State, pursuant to sections (e) and (j) of this Rule, within 30 days after such service and serve a copy on the appellant, as well as on the appellant's counsel.

(4) After a reply brief has been filed, or after the time for filing such a brief has expired, the motion for withdrawal shall be submitted to the Court as other motions are submitted. If, upon consideration of the motion, it shall appear to the Court that the judgment of the circuit court should be affirmed or reversed, the Court may take such action on its own motion, without any supporting opinion.

(*l*) Continuances and extensions of time.

(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral or electronically filed request. If such an extension is granted, no further extension shall be granted except by the Clerk for compliance with these Rules as provided in Rule 4-2(c) or by the Court upon a written motion showing good cause.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time (except in (*l*)(1)) for the filing of any brief must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

Reporter?s Notes to Rule 4-3(2008) A 2008 amendment added subsection (f) and relettered the subsequent paragraphs.

Amended December 7, 2017, effective January 1, 2018.

Rule 4-4. Filing And Service Of Briefs In Civil Cases. [69]
Printer-friendly version [70] PDF version [71]

(a) Electronic Filing. Briefs shall be filed using the electronic filing system provided by the Administrative Office of the Courts. Parties filing electronically shall provide six paper copies of the brief to the Clerk within five days of the filing date. Any person proceeding pro se and any person with a disability or special need that prevents him or her from filing electronically

shall be permitted to submit conventional paper filings. Parties filings conventionally shall provide six paper copies of the brief at the time of filing.

(b) Appellant's brief. In all civil cases the appellant shall, within 40 days of lodging the record, file the appellant's brief with the Clerk and furnish evidence of service upon opposing counsel and the circuit court. Each copy of the appellant's brief shall contain every item required by Rule 4-2. Unemployment compensation cases appealed from the Arkansas Board of Review may be submitted to the Court of Appeals for decision as soon as the transcript is filed, unless the petition for review shows it is filed by an attorney, or notice of intent to file a brief for the appellant is filed with the Clerk prior to the filing of the transcript.

When a party has determined that confidential information is necessary and relevant to the appellate court's consideration of the case, redaction shall be done pursuant to Rule 4-1(d), and the party shall file one redacted copy and six unredacted copies of the appellant's brief. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

(c) Appellee's brief?Cross-appellant's brief. The appellee shall file the appellee's brief, and any further abstract or addendum thought necessary, within 30 days after the appellant's brief is filed, and furnish evidence of service upon opposing counsel and the circuit court. If the appellee's brief has a supplemental abstract or addendum, it shall be compiled in accordance with Rule 4-2 and included in or with each copy of the brief. This rule shall apply to cross-appellants. If the cross-appellant is also the appellee, the two separate arguments may be contained in one brief, but each argument is limited to 30 pages.

When a party has determined that confidential information is necessary and relevant to the appellate court's consideration of the case, redaction shall be done pursuant to Rule 4-1(d), and the party shall file one redacted copy and six unredacted copies of the appellant's brief or cross-appellant's brief. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

(d) Reply brief?Cross-appellant's reply brief. The appellant may file a reply brief within fifteen days after the appellee's brief is filed and shall furnish evidence of service upon opposing counsel and the circuit court. This rule shall apply to the cross-appellant's reply brief except it must be filed within fifteen days after the cross-appellee's brief is filed.

When a party has determined that confidential information is necessary and relevant to the appellate court's consideration of the case, redaction shall be done pursuant to Rule 4-1(d), and the party shall file one redacted copy and six unredacted copies of the reply brief or cross-appellant's reply brief. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

(e) Evidence of service. Briefs tendered to the Clerk will not be filed unless evidence of service upon opposing counsel and the circuit court has been furnished to the Clerk. Such evidence may be in the form of a letter signed by counsel, naming the attorney or attorneys and the circuit court to whom copies of the brief have been mailed or delivered.

(f) Submission. The case shall be subject to call on the next Thursday (in the Supreme Court) or Wednesday (in the Court of Appeals) after the expiration of the time allowed for filing the reply brief of the appellant or the cross-appellant. After the case has been submitted to the court for decision, the court will not consider motions to dismiss because of settlement or

notice of settlement.

(g) Continuances and extensions of time.

(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral or electronically filed request. The party requesting a Clerk's extension must confirm the extension by sending a letter immediately to the Clerk or the deputy clerk with a copy to all counsel of record and any pro se party. If such an extension is granted, no further extension shall be granted except by the Clerk for compliance with these Rules as provided in Rule 4-2(c) or by the Court upon a written motion showing good cause.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time (except in (g)(1)) for the filing of any brief must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

Addition to Reporter?s Notes, 2014 Amendment: Rules 4-1 and 4-4 both required the filing on appeal of nine copies of redacted briefs and nine copies of unredacted briefs, for a total of eighteen copies. However, only one copy of the redacted brief need be filed?for public viewing?while 17 copies of the unredacted briefs should be filed for use by the courts and court personnel. Rules 4-1 and 4-4 are amended accordingly. The appellate court practice has been that after a case has been submitted to the court for decision, the court will not consider motions to dismiss because of settlement of the litigation or notice of settlement. The amendment to Rule 4-4(e) conforms the rule to the practice.

Amended March 13, 2014, effective July 1, 2014; amended December 7, 2017, effective January 1, 2018.

Rule 4-5. Failure To File Briefs In Civil Cases. [72]
Printer-friendly version [73] PDF version [74]

If the appellant's brief has not been filed in a civil case within the time allowed by Rule 4-4, the Court may dismiss the appeal and affirm the judgment or decree at cost to the appellant. When the appellee has failed to appear and file a brief, the Court may, when the case is called for submission, proceed and give judgment according to the requirements of the case.

Rule 4-6. Amici Curiae Briefs. [75]
Printer-friendly version [76] PDF version [77]

(a) *Permission required; Scope limited*. Briefs of amici curiae may be filed only with permission of the court, obtained on motion as provided in this rule. The briefs shall be limited to matters in the record on appeal and shall address only the issues raised by the parties at the appellate level. No new issues shall be introduced.

(b) *Motion for permission; How and when filed*. (i) A motion for permission to file an amicus brief shall be filed at any time after the filing of the appellee's brief but no later than the day that the appellant's reply brief is due. It shall not exceed five double-spaced typewritten pages and shall not include a memorandum of authorities but shall otherwise comply with Rule 2-1.

(ii) The motion shall be accompanied by the proposed amicus brief and shall state whether the brief supports the appellant's or appellee's position or is neutral.

(iii) The motion shall specify the nature of the movant's interest and set forth with particularity the reasons why the amicus brief is necessary. The motion shall contain the following statement: "The movant has read the briefs of the appellant and appellee, and the amicus brief is necessary to address the following issue(s): _____ [list issue(s).]"

(c) *Disclosures*. A brief filed under this rule shall indicate: (i) whether counsel for a party authored the brief in whole or in part, and (ii) whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief or otherwise collaborated in the preparation or submission of the brief. It shall also identify every person or entity, other than the amicus curiae, its members, or its counsel, who made such monetary contribution to the brief or collaborated in its preparation. These disclosures shall be made in an unnumbered footnote on the first page of the argument section of the brief.

(d) *Oral arguments*. Attorneys for amici curiae will not be permitted to participate in oral arguments.

(e) *Petitions for rehearing*. Attorneys for amici curiae will not be permitted to file a petition for rehearing or to join in the petition of a party.

Reporter's Notes (2018 Amendments):

See Ferguson v. Brick, 279 Ark. 168, 649 S.W.2d 397 (1983) (Amicus briefs are limited to the facts proven at trial and the points raised by the parties on appeal, and the movant seeking permission to file the brief must show why it is necessary.)

This rule was rewritten in 2018. The revised rule changes the time to file the motion until after the appellee's brief is filed (paragraph (b)). The movant must set out why the amicus brief is necessary. In addition, paragraph (c) requires certain disclosures to be made.

Amended December 7, 2017, effective January 1, 2018.

Rule 4-7. Briefs In Postconviction and Certain Civil Appeals Where Appellant Is Incarcerated and Proceeding Pro Se. [78]
 Printer-friendly version [79]  PDF version [80]

(a) ***Applicability***. This rule shall govern pro se briefs filed by incarcerated persons in appeals of Rule 37.1 postconviction orders and civil appeals from the denial of relief with regard to petitions for writs of habeas corpus, declaratory judgment, mandamus, and other petitions pertaining to the appellant's conviction of a criminal offense and/or incarceration. Except for the provisions contained in this rule, briefs filed by pro se parties shall otherwise comply with the Rules of the Supreme Court and Court of Appeals. Substantial compliance with this rule shall be sufficient.

(b) *Style of briefs.*

(1) *Briefs - Size - Paper - Type*. A pro se brief may be handwritten, typed or produced with

computer or word processing equipment. A handwritten brief shall be clearly legible, shall not exceed 30 lines per page and 15 words per line with left-hand and right-hand margins of at least one and 1 1/2 inches and upper and lower margins of at least 2 inches. Briefs shall be of uniform size on 8 1/2 x 11 inch paper and firmly bound on the left hand margin by staples or other binding devices. Typed briefs shall be double-spaced, except for quoted material, which may be single-spaced and indented. Footnotes, except quotations therein, shall be double-spaced. Use of footnotes is not encouraged and should be used sparingly. Carbon copies are not acceptable, but copies produced by offset printing, positive photocopy, or other dry photo duplicating process which produces a clearly legible black-on-white reproduction may be used. Each page in the brief should be numbered sequentially with Page 1 being the first page of the argument. The brief need not be signed by the appellant.

(2) *Length of argument*. Unless leave of the court is first obtained, the argument portion of a brief shall not exceed 30 double-spaced pages including the conclusion, if any. The appellant's reply brief shall not exceed 15 double-spaced pages and shall not include any supplemental addendum unless permitted by the court upon motion. Motions for an expansion of the page limit must set forth the reason or reasons for the request. The motion must specify the number of additional pages requested.

(3) *Affidavit*. If the pro se appellant received assistance in the preparation of the content of a brief, the brief shall also be accompanied by a notarized affidavit that the appellant has prepared it without the paid assistance of any other prison inmate.

(c) *Contents of briefs*.

(1) *Contents*. The contents of the brief shall be in the following order:

(A) Argument. The appellant shall state each issue to be argued and then set out the argument in support of that issue. All citations of decisions of any court must state the name of the case and the volume number and page where the case may be found.

(B) *Addendum*. The appellant's brief shall contain an Addendum, which consists of photocopies of documents from the record. The Addendum shall include true and legible photocopies of at least the original pleading, order from which the appeal is taken, and the notice of appeal. The appellee may prepare a supplemental Addendum if material on which the appellant relies is not in the appellant's Addendum. Only documents that are part of the record may be included in the Addendum.

(2) *Cover for briefs*. On the cover of the brief there should appear the docket number and name of the case, the name of the court from which the appeal is taken, the title of the brief, and the name of the appellant.

(3) *Insufficiency of appellant's Addendum*. Motions to dismiss the appeal for insufficiency of the appellant's Addendum will not be recognized. Deficiencies in the appellant's Addendum will ordinarily come to the Court's attention and be handled in one of three ways as follows:

(A) If the appellee considers the appellant's Addendum to be defective, the appellee's brief should call the deficiencies to the Court's attention and may, at the appellee's option, contain a supplemental Addendum.

(B) If the case has not yet been submitted to the Court for decision, an appellant may file a motion to supplement the Addendum and for leave to file a substituted brief. Subject to the

Court's discretion, the Court may grant such a motion and allow the appellant 30 days within which to file the substituted brief. If the appellee has already filed its brief, upon the filing of appellant's substituted brief, the appellee will be afforded an opportunity to file a substituted brief within 15 days.

(C) Whether the appellee has called attention to deficiencies in the appellant's Addendum, the Court may address the question at any time. If the Court finds the Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has 30 days within which to file a substituted brief. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to file a substituted brief within 15 days. If after the opportunity to cure the deficiencies, the appellant fails to file a complying brief within the prescribed time, the circuit court's order may be affirmed for noncompliance with the Rule.

(4) *Noncompliance*. Briefs not in substantial compliance with this Rule shall not be accepted for filing by the Clerk. When a party submits a brief on time that does not substantially comply with these Rules, the Clerk shall mark the brief "tendered," grant the party a 14-day compliance extension, and return the brief to the party for correction. If the party resubmits a compliant brief within fourteen calendar days, then the Clerk shall accept that brief for filing on the date it is received.

(d) Number of briefs and time for filing.

(1) *Briefs in chief*. The appellant shall have 40 days from the date the record is lodged to file six copies of the brief with the Clerk.

(2) *Appellee's brief*. The appellee shall have 30 days from the filing of the appellant's brief to file its brief with the Clerk and serve a paper copy on the appellant by mail.

(3) *Reply brief*. The appellant shall have 15 days from the date that the appellee's brief is filed to file six copies of the reply brief.

(4) Continuances and extensions of time. The Clerk or a deputy clerk may extend the due date of any brief by 7 calendar days upon oral or letter request. If such an extension is granted, no further extension shall be granted except by the Court upon a written motion showing good cause.

Amended and effective by per curiam order May 11, 2017; amended and effective by per curiam order June 21, 2018.

Rule 4-8. Procedure For No-Merit Briefs, Pro Se Points, And Responses In Involuntary-Commitment Cases. [81]
Printer-friendly version [82] PDF version [83]

(a) After studying the record and researching the law, if appellant?s counsel in an involuntary-commitment case determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit brief and move to withdraw. Counsel?s no-merit brief must include the following information:

(1) The argument section of the brief shall list all adverse rulings to the appellant made by the

circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.

(2) The abstract and addendum shall contain all rulings adverse to the appellant made by the circuit court at the hearing from which the order of appeal arose.

(b) Appellee is not required to, but may, respond to a no-merit brief. Appellee may file a concurrence letter supporting the no-merit brief. Any appellee?s response shall be filed within thirty (30) days of the filing of the no-merit brief.

(c) The Clerk of the Supreme Court shall mail the appellant, at the appellant?s last known address, a copy of the no-merit brief and the motion to withdraw. The Clerk shall notify the appellant in writing that the appellant may raise any points that the appellant chooses and that these points may be typewritten or hand-printed. The Clerk shall also notify the appellant that the points must be received by the Supreme Court Clerk by mail or other method of delivery within thirty (30) days from the date that the Clerk mailed the appellant the notification.

(d) The Clerk shall mail a copy of appellant?s points to the appellee and appellant?s counsel within three (3) business days after receiving them.

(e) Appellee is not required to respond to appellant?s points. Appellee may do so, however, by filing a response within thirty (30) days of the date the points were received by the Clerk of the Supreme Court.

Explanatory Note. In appeals in criminal, termination-of-parental-rights, and adult long-term protective-custody cases, appointed counsel may discharge their professional obligations by filing a no-merit brief and moving to withdraw. The Clerk must serve the brief and motion on the appellant, who then has the opportunity to file pro se points, which the appellee may in turn respond to. Ark. Sup. Ct. R. 4-3(j) and 6-9(i); see generally Anders v. California, 386 U.S. 738 (1967); Linker-Flores v. Ark. Dep?t of Human Servs., 359 Ark. 131, 194 S.W.3d 739 (2004); Adams v. Ark. Dep?t of Health & Human Servs., 375 Ark. 402, ____ S.W.3d ____ (2009). This procedure balances the appellant?s right to counsel on appeal and due process with the lawyer?s obligation as an officer of the court not to pursue frivolous arguments. Involuntary-commitment cases raise similar constitutional and procedural concerns. But no Anders procedure currently exists in our rules for those kinds of cases. While the deprivation of liberty is neither as extended as a prison sentence nor as final as losing parental rights, involuntary commitment is nonetheless a ?massive curtailment of liberty,? and thus constitutionally significant. Humphrey v. Cady, 405 U.S. 504, 509 (1972). The supreme court recently noted this issue, Dickinson v. State, 372 Ark. 62, 67, 270 S.W.3d 863 (2008), but did not decide whether an Anders procedure is needed in involuntary-commitment cases. Dickinson, 372 Ark. at 70?71, 270 S.W.3d at 866-67 (Imber and Brown, JJ., dissenting). The new rule creates this procedure for these cases.

Rule 5-1. Oral Arguments. [84]
 Printer-friendly version [85]  PDF version [86]

(a) Written request required. Any party may request oral argument by filing, contemporaneously with that party?s brief, a letter, separate from the brief, stating the request with a copy to all parties. The request for oral argument may be filed contemporaneously with either the party?s initial brief or reply brief. Oral argument will be allowed upon request unless

it is determined that

(1) the appeal is frivolous;
(2) the dispositive issue or set of issues has been decided authoritatively; or
(3) the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the decision-making process.

The court may at its discretion and on its own motion select any case for oral argument when it appears to the court that the matters presented for consideration are such that oral arguments are appropriate for a full presentation of the issues.

(b) Argument date fixed. The Clerk will notify counsel or the parties of the date oral argument is to be held or that the case will be submitted on briefs only. Thereafter, the date for argument may be changed only upon written motion to the court and upon a showing of good cause. If attempts to schedule oral argument may result in undue delay, the court may decide the case without oral argument. Counsel who have not requested oral argument are not required to appear at the argument but must, at least five days before the date the argument is to be heard, notify the Clerk in writing that they do not intend to appear. If counsel fails to provide notification and makes no appearance, he or she shall be subject to sanctions under Rule 11 of the Rules of Appellate Procedure?Civil.
(c) Counsel and time limitations. Only two attorneys will be heard for each side, and not more than 20 minutes will be allowed to each side for argument unless special leave of Court has been granted prior to the argument. Applications for additional time for argument must be by written motion, filed not less than one week before the case is scheduled for submission, and setting forth the reasons why additional time is necessary.

(d) Apportionment of time. The time allowed may be apportioned between the counsel on the same side at their discretion; provided, always, that a fair presentation of the case shall be made by the party having the opening and closing argument.

(e) Reading from books. Counsel are not permitted to read from books, briefs, or records, except those short extracts which they consider necessary to properly emphasize some point.

(f) Substance of authorities stated. Instead of reading authorities, counsel are expected to cite them in their briefs and to state the substance in argument.

(g) Interruptions not permitted. Counsel will not be permitted to interrupt opposing counsel with questions or otherwise, except by leave of the Court.

(h) Petitions for rehearing. Oral arguments are not permitted in support of or in opposition to petitions for rehearing.

(i) Amici curiae counsel. Amici Curiae counsel will not be permitted to participate in the oral argument.

(j) Citing cases outside the brief. If a case outside the brief is to be cited during oral argument, the citation must be furnished opposing counsel and the Court before the date of argument.

Rule 5-2. Opinions. [87]
 Printer-friendly version [88]  PDF version [89]

(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.

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.

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

Rule 5-3. Mandate. [90]

Printer-friendly version [91] PDF version [92]

(a) Mandate to be issued in all cases. In all cases, civil and criminal, the Clerk will issue a mandate when the decision becomes final and will mail it to the clerk of the circuit court from which the appeal was taken for filing and recording. A decision is not final until the time for filing of petition for rehearing or, in the case of a decision of the Court of Appeals, the time for filing a petition for review has expired or, in the event of the filing of such petition, until there has been a final disposition thereof.

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

(c) Stay of mandate.

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

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

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

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

Such stay or recall is discretionary with the Court.

(2) The stay shall not exceed 90 days from the date the stay is issued, unless the period is extended for good cause or the party who obtained the stay timely files a petition with

Supreme Court of the United States and so notifies the Clerk of this Court, in which case the stay shall remain in effect until the Supreme Court's final disposition.

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

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

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

Amendments: Subsection (c) amended by per curiam order dated October 28, 2010.

Rule 6-1. Extraordinary Writs, Expedited Consideration, And Temporary Relief. [93]
Printer-friendly version [94] PDF version [95]

(a) Extraordinary writs

(1) Proceedings for an extraordinary writ such as prohibition, mandamus, and certiorari are commenced by filing an original petition in the Supreme Court. These writs are not available if appeal is an adequate remedy. A party seeking appellate review of a circuit court's decision on a request for an extraordinary writ must file a notice of appeal in the circuit court, not a petition for the writ in the appellate court. When a party petitions the appellate court for an extraordinary writ, the pleadings with certified exhibits from the circuit court, if applicable, are treated as the record.

(2) The petitioner is required to file with the Clerk the original petition along with the record. Evidence of service of a copy upon the adverse party or his or her counsel of record in the circuit court is required.

(3) When the petition includes a certified copy of the record in the circuit court, the petitioner shall serve a copy of that record on the adverse party or his or her counsel. In prohibition cases, the petitioner shall also serve a copy of the record on the circuit judge, who is ordinarily a nominal party and is not required to file a response.

(b) Emergency or accelerated proceedings In situations where time limitations do not allow a proper response time of ten days, upon the filing of the pleading, the pleader shall inform the Clerk's office of the need for an emergency or accelerated hearing by the Court. Upon notification, the Court will determine the date of the response and date of consideration of the pleading. If the pleader desires oral argument, such argument will be addressed to the Court at the regularly called sessions at 9:00 a.m. on Thursday (in the Supreme Court) or Wednesday (in the Court of Appeals) morning; otherwise, oral argument will not be entertained. The pleading must be properly filed and the party or attorney of record notified before oral argument will be heard.

(c) Applications for temporary relief. When the petitioner intends to apply to the full Court for temporary relief staying the circuit court proceedings pending the consideration of the petition upon its merits, reasonable notice of the application for temporary relief must be served upon the other party or the counsel of record in the circuit court and the circuit court. If, after its review and consideration of the record and pleading filed, the Court shall determine that a temporary stay is warranted and granted, briefs shall be required as in other cases under Rule

4-4, and the parties' brief time will be calculated from the date the temporary relief is granted. However, the Court may decide the matter without ruling on the request for a briefing schedule.

(d) Response A response to an application for temporary relief in subsection (c) may be filed within 10 calendar days unless modified by the Court. Additional time for filing a response must be requested within the 10 day period.

(e) Page limitation. Absent leave of court for good cause shown, no petition or response shall exceed fifteen pages excluding any addendum.

(f) Time for filing briefs. If the proceedings in the circuit court have been stayed, or the time before a hearing or trial will allow a briefing schedule, briefs are required as in other cases, the parties? brief time under Rule 4-4 for filing a brief to be calculated from the date on which the petition is filed. The mere filing of a petition for relief under this section does not automatically entitle the petitioner to file briefs and stay the proceedings in the circuit court.

Subsection (b) amended June 30, 1997, effective September 1, 1997; subsections (a), (c), and (e) amended June 7, 2001, effective July 1, 2001; amended October 9, 2008, effective January 1, 2009; amended June 17, 2010, effective July 1, 2010; amended and effective June 21, 2018.

Rule 6-2. Appeals Prosecuted For Purposes Of Delay. [96]

Printer-friendly version [97] PDF version [98]

(a) Motion alleging delay. When counsel for the appellee has examined the record and believes that the appeal has been prosecuted merely for the purposes of delay, counsel may file a motion alleging such delay with a plea to the Court to advance and affirm.

(b) Contents of motion. The motion shall provide citations to the record to show that the appeal has been prosecuted merely for the purpose of delay. Counsel shall state in the motion that he or she has carefully examined the record and specify the reasons for the belief that the appeal has been filed for the purpose of delay.

(c) Procedure. The motion shall be in the form required by Rule 2-1 and will be called for submission three weeks after filing.

(d) Response. Counsel for the appellant may file a response within 21 days of the filing of the motion.

Rule 6-3. Anonymity In Certain Appellate Proceedings, Opinions And Case Styles. [99]

Printer-friendly version [100] PDF version [101]

(a)*Scope*. The record and accompanying briefs, motions, or other filings in all adoption appeals and all appeals originating in the juvenile division of circuit court shall be sealed. The Clerk shall ensure that the public docket use initials to identify juveniles in those appeals. Counsel and the Court shall preserve the juvenile?s anonymity by using initials in all subsequent captions, opinions, motions, and briefs, as well as in oral argument, if any. The record and papers on appeal shall be open for inspection only to counsel and parties of record, or, only upon order of the Court after review of a written motion. In any other appeal in which counsel for either side believes that a person?s identity should be protected by the Court, counsel may move the Court to do so.

(b)*Appellant as Movant*. If the movant is the appellant in the case, the motion shall be filed at the time the transcript is tendered for filing to the Clerk. The person whose identity is sought to be protected shall be referred to using the initials of the first and last names in the motion and on the cover of the transcript, if applicable. Upon filing the motion, the Clerk shall seal the record pending the Court?s decision on the motion.

(c)*Appellee as Movant*. If the movant is the appellee in the case, the motion shall be filed within 5 days, excluding weekends and holidays, of the date the record is filed. The person whose identity is sought to be protected shall be referred to using the initials of the first and last names in the motion. Upon filing the motion, the Clerk shall seal the record pending the Court?s decision on the motion.

(d)*Service*. A copy of the motion must be served upon opposing counsel who will have 10 days to respond and serve the movant. Opposing counsel shall also use only the initials of the first and last names of the person at issue in any response.

(e)*Motion Granted*. If the Court grants the motion, the Clerk shall ensure that the cover of the tendered transcript complies with the Court?s order. Counsel and the Court shall preserve the person?s anonymity by using initials to identify the protected party in all subsequent captions, opinions, motions, and briefs, as well as in oral argument, if any. The records and papers on appeal shall be open for inspection only to counsel and parties of record, or, only upon order of the Court after review of a written motion.

(f)*Motion Denied*. If the Court denies the motion, the Clerk shall substitute the person?s full name on the cover of the transcript, if applicable, and the appeal shall proceed in accordance with these Rules.

Amended and effective January 23, 2014.

Rule 6-4. Motion Requesting Disqualification. [102]
Printer-friendly version [103] PDF version [104]

Counsel for any party may file a motion requesting that one or more justices or judges disqualify. The motion shall be in the form required by Rule 2-1 and shall state the particular facts alleged to require the disqualification. The motion shall be filed a reasonable time prior to the submission of the case to the Court.

Rule 6-5. Original Actions. [105]
Printer-friendly version [106] PDF version [107]

(a) Original jurisdiction. The Supreme Court shall have original jurisdiction in extraordinary actions as required by law, such as suits attacking the validity of statewide petitions filed under Amendment 7 of the Arkansas Constitution, or where the Supreme Court's contempt powers are at issue.

(b) Procedure. In such proceedings, the procedure will conform to that prevailing in bench trials in the circuit courts. Upon filing the original pleading and payment of a filing fee, a summons or other process will be issued by the Clerk. The respondent's pleading must be filed within the time provided by the Rules of Civil Procedure.

(c) Fact finding. Evidence upon issues of fact will be taken by a master to be appointed by the Court. As a condition to the appointment of a master, the Court may require both parties to file a bond for costs to be approved by the Clerk. Upon the filing of the master's findings, the parties shall file briefs as in other cases.

(d) Fact finding unnecessary. When the issues involve questions of law only, and there is no need for appointment of a master to determine facts, the parties shall file briefs as in other cases. Time limits under Rule 4-4 will be calculated from the date the respondent's pleading is filed or due to be filed.

Amended and effective June 21, 2018.

Rule 6-6. Pauper's Oath And Motions For Attorney's Fees In Criminal Cases. [108]
Printer-friendly version [109] PDF version [110]

(a)*Jurisdiction of request to proceed in forma pauperis.* When a criminal case is appealed to the Supreme Court or Court of Appeals, a request to proceed in forma pauperis may be filed with the appellate court at any time after the record is docketed with the clerk of the court. Prior to the docketing of the record with the clerk of the appellate court, the trial court shall have exclusive jurisdiction to consider a request to proceed in forma pauperis. Any petition or motion requesting to proceed in forma pauperis that is filed with the appellate court before the record is docketed with the clerk of the court shall be returned for failure to comply with this Rule.

(b) *Pauper's oath and affidavit; requirement*. A petition or motion filed with the Supreme Court or Court of Appeals requesting to proceed in forma pauperis be accompanied by an assertion of indigency, verified by a supporting affidavit. The affidavit form will be provided by the Clerk of the Court for such purposes. Any petition or motion not in compliance with this Rule will be returned to the petitioner or counsel for failure to comply.

(c) *Form for affidavit in support of request to proceed in forma pauperis*. The form of the affidavit shall be as follows:

IN THE SUPREME COURT OF ARKANSAS OR ARKANSAS COURT OF APPEALS _____ PETITIONER V. NO. ___ STATE OF ARKANSAS RESPONDENT AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS I,

_____, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress. I further swear that the responses which I have made to questions and instructions below are true. 1. Are you presently employed? Yes ___ No ___ (a) If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. (b) If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. 2. Have you received within the past twelve months any money from any of the following sources? (a) Business, profession or any form of self-employment? Yes ___ No ___ (b) Rent payments, interest or dividends? Yes ___ No ___ (c) Pensions, annuities or life insurance payments? Yes ___ No ___ (d) Gifts or inheritances? Yes ___ No ___ (e) Any other sources? Yes ___ No ___ If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months. 3. Do you own any cash, or do you have money in a checking or savings account? Yes ___ No ___ If the answer is yes, state the total amount in each account. 4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes ___ No ___ If the answer is yes, describe the property and state its approximate value. 5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. 6. TO BE COMPLETED ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION. Do you have any funds in the inmate welfare funds? Yes ___ No ___ If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution. I understand that false statement or answer to any questions in this affidavit will subject me to penalties for perjury. _____ Signature of Petitioner STATE OF _____ COUNTY OF _____ Petitioner, _____, being first duly sworn under oath, presents that he/she has read and subscribed to the above and states that the information therein is true and correct. SUBSCRIBED AND SWORN to before me this _____ day of _____, 19__. _____ Notary Public My commission expires: _____ ..... CERTIFICATE (To be completed by authorized officer of penal institution) I hereby certify that the petitioner herein, _____ _____, has the sum of $ _____ on account to his/her credit at the _____ institution where he/she is confined. I further certify that petitioner likewise has the following securities to his/her credit according to the records of said institution: _____ _____ Authorized Officer of Institution

(d) *Content of motions for attorney's fees*. All motions for attorney's fees from attorneys appointed to represent indigent appellants in criminal cases shall contain the following information: (1) the date of appointment; (2) the court which appointed counsel; (3) the number of hours expended by counsel in research, court appearances, and preparation of pleadings and briefs; (4) counsel's customary rate of compensation in similar cases; (5) the customary rate of compensation in similar cases of attorneys in the community; (6) expenses incurred by counsel which are directly attributable to the case; (7) the experience of counsel in the representation of criminal appellants; and (8) the relative complexity of the case. The motion shall be filed not later than 30 days after the issuance of the mandate.

Reporter's Notes, 2013 Amendment. The 2013 amendment added subsection (c) to clarify

which court has jurisdiction to consider a request to proceed in forma pauperis.

Amended and effective by per curiam order Sep. 26, 2013.

Rule 6-7. Taxation Of Costs. [111]
Printer-friendly version [112] PDF version [113]

(a) Affirmance. The appellee may recover brief costs not to exceed $3.00 per page; total costs not to exceed $500.00.

(b) Reversal. The appellant may recover (1) brief costs not to exceed $3.00 per page with total costs of the brief not to exceed $1000.00, (2) the filing fee of $150.00, (3) the circuit clerk's costs of preparing the record, and (4) the court reporter's cost of preparing the transcript.

(c) Affirmed in part and reversed in part. The Court may assess appeal costs according to the merits of the case.

(d) Imposing or withholding costs. Whether the case be affirmed or reversed, the Court will impose or withhold costs in accordance with Rule 4-2(b).

Explanatory Note. The fee for filing an appeal increased to $150.00 on July 31, 2007. The Rule is amended to reflect this increase.

Explanatory Note, 2011 Amendment: Ark. Code Ann. ? 21-6-416 added a technology fee to be charged by the clerk of the Supreme Court, and it may be recovered as a cost.

Rule 6-8. Certification Of Questions Of Law. [114]
Printer-friendly version [115] PDF version [116]

(a) Power to Answer. (1) The Supreme Court may, in its discretion, answer questions of law certified to it by order of a federal court of the United States if there are involved in any proceeding before it questions of Arkansas law which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

(2) The Supreme Court shall decide whether to answer the question so certified within 30 days of the filing of the certification order. The Clerk shall mail notice of this decision to the certifying court, counsel of record, and parties appearing without counsel. The notice shall also state whether portions of the record, if any, are to be filed pursuant to subdivision (d) of this rule, as well as the briefing schedule and the approximate date the question certified will come before the Supreme Court for consideration.

(3) If the Supreme Court takes no action within 30 days of the filing of the certification order, the Court shall be deemed to have declined to answer the question unless it has by order extended the time.

(4) If the certification order is filed when the Supreme Court is formally in recess, the 30-day time period shall commence when the Court returns from the recess.

(5) In its discretion, the Supreme Court may at any time rescind its decision to answer a certified question. The Clerk shall promptly mail notice to the certifying court, counsel of

record, and parties appearing without counsel.

(b) Method of Invoking. This rule may be invoked upon motion of a federal court of the United States or upon motion of any party to the cause pending before the court.

(c) Contents of Certification Order. (1) A certification order shall contain: (A) the question of law to be answered; (B) the facts relevant to the question, showing fully the nature of the controversy out of which the question arose; (C) a statement acknowledging that the Supreme Court, acting as the receiving court, may reformulate the question; and (D) the names and addresses of counsel of record and parties appearing without counsel.

(2) If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

(d) Preparation of Certification Order. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the clerk of the Supreme Court by the clerk of the certifying court under its official seal. The Supreme Court may require the original or copies of all or any portion of the record before the certifying court to be filed if, in the opinion of the Supreme Court, the record or portion thereof may be necessary in answering the questions.

(e) Costs of Certification. Fees and costs shall be the same as in civil appeals docketed before the Supreme Court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its certification order.

(f) Briefs and Argument. Proceedings in the Supreme Court shall be those provided in these rules.

(g) Opinion. The written opinion of the Supreme Court stating the law governing the questions certified shall be sent by the clerk under the seal of the Supreme Court to the certifying court and to the parties.

(h) Power to Certify; Procedure. The Supreme Court or the Court of Appeals, on their own motion or the motion of any party, may order certification of questions of law to the highest court of any other state when it appears to the Supreme Court or the Court of Appeals that there are involved in any proceeding before the court questions of law of the receiving state which may be determinative of the cause then pending and that there are no controlling precedents in the decisions of the highest court of the receiving state. The procedures for certification from this state to the receiving state shall be those provided in the laws of the receiving state.

Rule 6-9. Rule For Appeals In Dependency-Neglect Cases. [117]

Printer-friendly version [118] PDF version [119]

(a) Appealable Orders.

(1) The following orders may be appealed from dependency-neglect proceedings:

(A) adjudication order;

(B) disposition, review, no reunification, and permanency planning order if the court directs entry of a final judgment as to one or more of the issues or parties based upon the express

determination by the court supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b);

(C) termination of parental rights;

(D) denial of right to appointed counsel pursuant to Ark. Code Ann. ? 9-27-316(h); and

(E) denial of a motion to intervene.

(2) The circuit court shall enter and distribute to all the parties all dependency-neglect orders no later than (thirty) 30 days after a hearing.

(b) Notice, Indigency, and Time for Appeal.

(1) The notice of appeal shall be filed within twenty-one (21) days following the entry of the circuit court order from which the appeal is being taken.

(A) If the court announces its ruling from the bench and an appellant files a notice of appeal prior to the entry of the order, it shall be deemed to be filed the day after the order is entered.

(B) The notice of appeal and designation of record shall be signed by the appellant, if an adult, and appellant's counsel. The notice shall set forth the party or parties initiating the appeal, the address of the parties or parties, and specify the order from which the appeal is taken.

(2) If the appellant alleges indigency for purpose of the appeal, the appellant shall file a motion, with notice to all parties, to request an indigency determination within fourteen (14) days following the entry of the order from which the appeal is taken.

(A) If the appellant has had a court determination of indigency prior to the hearing from the order from which the appeal is taken, the appellant shall seek a re-determination of indigency for purpose of appeal and shall submit a new affidavit for the court to determine indigency for the purpose of appeal.

(B) The circuit court shall rule on appellant?s indigency motion within five (5) days of the indigency motion being filed. If the court conducts a hearing on the indigency motion, the judge may conduct the indigency hearing outside of the county and by teleconference. The court shall use the federal poverty guidelines provided by the Administrative Office of the Courts in making its indigency determination.

(C) If the appellant is determined indigent for purpose of appeal, the notice shall indicate that the court has made a determination of indigency for payment of the record. Trial counsel for indigent parents or custodians shall not be relieved as counsel for purpose of appeal until relieved by the Public Defender Commission as provided in Rule 6-10(c). If appellant is determined not indigent, appellant shall state that arrangements for payment of the record have been made.

(3) If a timely notice of appeal is filed, any other party may file a notice of cross-appeal and designation of record within five (5) days from receipt of the notice of appeal.

(4) The time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.

(5) In computing time periods in Rule 6-9, Ark. R. Civ. P. Rule 6(a), which provides in part that when the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation, shall apply.

(c) Record on Appeal.

(1) The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to the hearing from which the order on appeal arose, all exhibits entered into evidence at that hearing, and all orders entered in the case prior to the order on appeal.

(2) The appellant and the cross-appellant, if any, shall (A) complete a Notice of Appeal (Cross-Appeal) and Designation of Record (Form 1); (B) file Form 1 with the Circuit Clerk; and (C) serve Form 1 on the court reporter and all parties by any form of mail which requires a signed receipt.

(3) The designation-of-record portion of Form 1 shall identify the hearing from which the order being appealed arose, and shall designate the date(s) of the hearing resulting in the order being appealed. Service of the Notice of Appeal and Designation of Record (Form 1) shall constitute a request for transcription of the hearing from which the order of the appeal arose.

(4) Within five (5) days after receipt of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall file a statement by mail or fax with the Circuit Clerk indicating whether arrangements for payment have been made and that the record will be completed timely. The court reporter shall make arrangements for the record to be completed and certified within sixty (60) days.

(d) Transmission of Record. Absent extraordinary circumstances, the record on appeal shall be filed with the Clerk of the Supreme Court within seventy (70) days of the filing of the Notice of Appeal. Within sixty (60) days after the filing of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall provide the record to the Circuit Clerk who shall have no longer than five (5) days to prepare the record, including any transcripts and exhibits, to be transmitted for submission to Clerk of the Supreme Court. After the record has been duly certified by the Circuit Clerk, it shall be the responsibility of the appellant to transmit the record to the Clerk of the Supreme Court for filing.

(e) Petition on Appeal.

(1) Within thirty 30 days after transmission of the record to the Clerk of the Supreme Court, the appellant shall file a Petition on Appeal (Form 2). Petitions on appeal shall be filed using the electronic filing system provided by the Administrative Office of the Courts. Parties filing electronically shall provide six paper copies of their petition to the Clerk within five days from the date of filing. Any person proceeding pro se and any person with a disability or special need that prevents him or her from filing electronically shall be permitted to submit conventional paper filings. Parties filing conventionally shall provide six paper copies of the petition at the time of filing.

(2) The petition shall not exceed twenty-five pages, excluding the abstract and addendum,

and shall include:

(A) A statement of the nature of the case and the relief sought;

(B) A concise statement of the material facts as they relate to the issues presented in the petition on appeal that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. This statement must also summarize the circuit court order appealed from and recite the date the order was entered. (References to pages in the abstract and addendum are required.);

(C) An abstract or abridgment of the transcript that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision. In the abstracting of testimony, the first person (i.e., ?I?) rather than the third person (i.e., ?He, She?) shall be used. Not more than one page of the transcript shall in any instance be abstracted without a page reference to the record.

(D) A concise statement of the legal issues presented for appeal, including a statement of how the issues arose; and a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. Citations of decisions of the court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible.

(E) Following the signature and certificate of service, the appellant's petition shall contain an addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, or letter opinion from which the appeal is taken, a copy of the notice of appeal, and any other relevant pleadings, documents, or exhibits essential to an understanding of the case, which may include, but are not limited to, affidavits, petitions, case plan, court reports, court orders, or other exhibits entered into the record during the hearing from which the appeal arose, and all orders entered in the case prior to the order on appeal. The addendum shall include an index of its contents and shall also designate where any item appearing in the addendum can be found in the record.

(f) Response to Petition on Appeal or Cross-Appeal.

(1) Within twenty (20) days after filing of the appellant's petition on appeal, any appellee may file a response to the petition on appeal or cross-appeal (Form 3). Responses to petitions on appeal shall be filed using the electronic filing system provided by the Administrative Office of the Courts. Parties filing electronically shall provide six paper copies of the petition to the Clerk within five days of the filing date. Any person proceeding pro se and any person with a disability or special need that prevents him or her from filing electronically shall be permitted to submit conventional paper filings. Parties filing conventionally shall provide six paper copies of the petition at the time of filing.

(2) The response shall not exceed twenty-five pages, excluding the abstract and addendum and shall include:

(A) A concise statement of the material facts as they relate to the issues presented by the appellant, as well as the issues, if any, being raised by the appellee on cross-appeal, that is

sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court. (References to pages in the abstract and addendum are required.)

(B) A concise response to the legal issues presented on appeal and cross-appeal, if any, including a statement of how the issue arose; a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised. Citations of decisions of the court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible.

(C) If the appellee considers the appellant's abstract or addendum to be defective or incomplete, the appellee may provide a supplemental abstract or addendum. The appellee's addendum shall only include an item which the appellant's addendum fails to include.

(3) The appellant will have ten (10) days after appellee's response or petition on cross appeal is filed to reply to the response or the petition on cross appeal. If appellee files a petition on cross-appeal and the appellant has filed a response to the petition on cross-appeal, the appellee will have ten (10) days to reply to appellant's response to the petition on cross-appeal. The reply shall be filed using the electronic filing system provided by the Administrative Office of the Courts. Parties electronically filing shall provide six paper copies of their reply to the Clerk within five days from the date of filing. Any person proceeding pro se and any person with a disability or special need that prevents him or her from filing electronically shall be permitted to submit conventional paper filings. Parties filing conventionally shall provide six paper copies of the petition at the time of filing.

(g) Extensions. The Clerk of the Supreme Court shall have the authority to grant one (1) seven-day extension for completion of the record and one (1) seven-day extension to any party to the appeal to file the petition or the response to the petition. The extension shall be computed from the date the petition or response was originally due. Absent extraordinary circumstances, no other extensions shall be granted.

(h) Style of Petition. The style of the Petition on Appeal, Response, and Cross-Appeal shall follow the style of briefs as described by Rule 4-1 of the Rules of the Supreme Court except where a style is specifically described by these rules. Reference to any minor in the Notice of Appeal, Notice of Cross Appeal, Petition for Appeal, Petition for Cross Appeal, and responses shall be by the minor's initials. Other parties seeking anonymity shall comply with Rule 6-3 of the Rules of the Supreme Court and Court of Appeals.

(i) Procedure for No-Merit Petitions, Pro Se Points, and State's Response.

(1) After studying the record and researching the law, if appellant's counsel determines that the appellant has no meritorious basis for appeal, then counsel may file a no-merit petition and move to withdraw. In addition to the requirement set forth in subsection (e), counsel's no-merit petition must include the following:

(A) The argument section of the petition shall list all adverse rulings to the appellant made by the circuit court on all objections, motions, and requests made by the party at the hearing from which the appeal arose and explain why each adverse ruling is not a meritorious ground for reversal.

(B) The abstract and addendum shall contain all rulings adverse to the appellant, made by the Circuit Court at the hearing from which the order of appeal arose.

(2) Appellees are not required to, but may, respond to a no-merit petition. Appellees may file a concurrence letter supporting the no-merit petition. Any response by an appellee shall be filed within twenty (20) days of the filing of the no-merit petition.

(3) The Clerk of the Supreme Court shall mail the appellant, at the appellant's last known address, a copy of the no-merit petition and the motion to withdraw. The Clerk shall notify the appellant in writing that the appellant may raise any points that the appellant chooses and that these points may be typewritten or hand-printed. The Clerk shall also notify the appellant that the points shall be received by the Supreme Court Clerk by mail or other method of delivery within thirty (30) days from the date the Clerk mailed the appellant the notification.

(4) The Clerk shall provide appellant's points by electronic transmission or other method of delivery to the Department of Human Services - Office of Chief Counsel, the Attorney Ad Litem, and appellant's counsel within three (3) business days.

(5) Appellees are not required to respond to appellant's points; however, appellees may do so by filing such response within twenty (20) days of receipt by the Clerk of the Supreme Court of the appellant's points.

(j) Ruling.

(1) Dependency-neglect proceedings shall be prioritized on the calendar of the appellate court. Once a case is ready for submission, the Clerk of the Supreme Court shall submit the case for decision.

(2) If a party files a petition for rehearing with the appellate court or petition for review with the Supreme Court, it shall be filed within ten (10) calendar days of the appellate court's decision and the response shall be filed within ten (10) calendar days of the filing of the petition. A petition for rehearing shall comply with Rule 2-3 and a petition for review shall comply with Rule 2-4 of the Rules of the Supreme Court and Court of Appeals in all respects, except for the number of days for filing. No supplemental briefs or extensions shall be allowed. The Clerk of the Supreme Court shall submit the petition for decision. Explanatory Note, 2011 Amendment: The amendment [to Rule 6-9 (a)(1)] adds denial of a motion to intervene in dependency-neglect proceedings to the list of appealable orders under the expedited appeal procedure of Rule 6-9.

History. Adopted May 18, 2006, effective July 1, 2006; amended September 25, 2008; amended June 2, 2011, effective July 1, 2011; amended December 7, 2017, effective January 1, 2018.

Rule 6-10. Trial counsel's duties with regard to dependency-neglect appeals. [120]
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(a) Trial counsel shall explain to his/her client all rights regarding any possible appeal, including deadlines, the merits, and likelihood of success of an appeal.

(b) If appellant is indigent, trial counsel shall file a motion seeking an indigency determination for purpose of appeal with the Circuit Court and ensure that appellant has signed the notice of appeal pursuant to Rule 6-9.

(c) Trial counsel who represent indigent parents and custodians shall serve the Arkansas Public Defender Commission by electronic submission or other method of delivery a file-marked copy of the notice of appeal and the order or orders that are being appealed within three (3) business days of filing the notice of appeal with the Circuit Clerk.

(1) Trial counsel shall timely respond to all reasonable requests for information to the Arkansas Public Defender Commission for purpose of appeal. Trial counsel for indigent parents or custodians shall not be relieved as counsel for the purpose of appeal until the Public Defender Commission timely receives the properly filed notice of appeal, questionnaire, and the order(s) appealed.

(2) The Arkansas Public Defender Commission shall send confirmation of receipt to trial counsel. This confirmation shall operate to relieve trial counsel of representation of the client for the limited purpose of appeal, and no motion to be relieved will need to be filed with the appellate court.

(d) The Circuit Court shall retain jurisdiction of the dependency-neglect case and conduct further hearings as necessary. Trial counsel, whether retained or court-appointed, shall continue to represent his/her client in a dependency-neglect case in the Circuit Court throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court to withdraw in the interest of justice or for other sufficient cause.

(e) After the notice of appeal is filed with the Circuit Court, the appellate court shall have exclusive jurisdiction to relieve counsel for the purpose of appeal, except as provided in subsection (c). All substitute counsel shall file an entry of appearance with the Clerk of the Supreme Court.

History. Adopted May 18, 2006, effective July 1, 2006; amended September 25, 2008.

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