

# ACAP SUMMER 2022 CONFERENCE

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SUPREME COURT CLERK'S 101:

ELECTRONIC RECORDS ON APPEAL



# TODAY

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- History
- The Rules
- Changes for users
- Tips & Best Practices

# A BRIEF HISTORY

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- AO – 21: the Book of Genesis of eROA, 6.17.2010
  - Encouraged every court in Arkansas to implement an e-filing system.
  - It also gave the AR Supreme Court the authority to adopt e-filing in the appellate courts.
  - Series of amendments...
- Then, in 2015, the ARSC began accepting select motions, petitions, responses via eFlex.
- Then, in 2016, the ARSC began accepting appellate briefs via eFlex.

# A BRIEF HISTORY

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- Then, in early 2019, the ARSC began accepting petitions for review and rehearing and their filings fees.
- Later in June 2019, the ARSC authorized filing of all case-initiating docs, including appellate records, and proposed some rules RE e-filing and a pilot under those rules proposals.
- Most recently, in December 2020, the ARSC adopted final rules concerning eROA and briefing in both the COA and ARSC.



# SOME PERSPECTIVE FROM THE AR SUPREME COURT

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- “The Arkansas Judiciary is committed to improving public access to the courts. Access to reliable, Arkansas-specific information will assist our citizens and strengthen the public’s confidence and faith in the legal system. We will demonstrate the need and build support for obtaining the resources necessary to achieve the accessibility goals.” – STRATEGIC PLAN OF THE ARKANSAS JUDICIARY 2018-2025, *Goal Number 2*, Chief Justice Kemp



# MORE PERSPECTIVE

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- “The Arkansas Judiciary is committed to communicating effectively with the public and educating the public about the court system. Public confidence in the judicial system is fostered by understanding the work of the courts. Through education and outreach, the courts can broaden the public’s knowledge about the purposes, roles, and responsibilities of the judicial branch.” -- STRATEGIC PLAN OF THE ARKANSAS JUDICIARY 2018-2025, *Goal Number 3*, CHIEF JUSTICE KEMP



# AND MORE PERSPECTIVE

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- “In our age, when social media can instantly spread rumor and false information on a grand scale, the public’s need to understand our government, and the protections it provides, is ever more vital. The judiciary has an important role to play in civic education, and I am pleased to report that the judges and staff of our federal courts are taking up the challenge.” – 2019 Year-End Report, Chief Justice Roberts



# AND FINALLY, MORE PERSPECTIVE\*\*

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- We're on same team in terms of delivering access to a chance at justice.
- We have to work together.
- The eROA were new for everyone, including us.
- We strive for high consistency in our reviews.
- Call when there is an issue, let's tackle issues together.
  - An ounce of prevention is worth a pound of cure.



# BIG PICTURE STUFF -- LINKS

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- The four Per Curiam: Orders by the Arkansas Supreme Court making it so.
- June 18, 2015, 2015 Ark. 282,  
<https://opinions.arcourts.gov/ark/supremecourt/en/item/298203/index.do>
- September 15, 2016, 2016 Ark. 314,  
<https://opinions.arcourts.gov/ark/supremecourt/en/item/299381/index.do>
- June 6, 2019, 2019 Ark. 213,  
<https://opinions.arcourts.gov/ark/supremecourt/en/407348/1/document.do>
- December 17, 2020, 2020 Ark. 42,  
<https://www.arcourts.gov/sites/default/files/eROA-Final-Rules-PC-2020-Ark-421.pdf>



# BIG PICTURE STUFF

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- Electronic appeals not a pilot.
- ARSC: Mandatory! ...for most cases where the Notice of Appeal was filed on or after June 1, 2021.\*
  - \*Clerk's office will accept paper records in cases where the NOA is filed prior to June 1, 2021. Also, with *pro se* litigants, default is conventional; only e-filing when specifically requested.
  - We ask *pro se* folks to bifurcate paper records as if e-filing, RP & RT. (Ark. R.App. P. –Civ. 7(b)).
- Change is challenging.
  - For some experienced professionals this can be difficult.
  - We have had our struggles, too.
  - E-filing, with time, getting easier for all. And it's going to improve the justice system.



# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- Record filings (Pleadings & Transcript) submitted through **eFlex** rather than delivery of bound paper volumes from local courts.
- Ark. R.App. Proc. – Civ. 7(a)
  - Circuit clerk must certify their portion; Court Reporter must certify theirs too.
  - 7(c)...then it is the appellant's responsibility to electronically transmit those records to Appellate clerk.
  - Exceptions to e-filing:
    - Items that cannot be “digitized.” Ark. R. App. P. 7(b)(5)
    - Audio and video files shall be filed conventionally.
    - Alleged porn shall be filed conventionally.
    - A.O. 21 and R. 7(c) still allow litigants that are *pro se*, living w/ disability or special needs submit conventional paper.



# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- The ARSC Clerk needs **portable document files (PDFs)** that are:
  - **Bookmarked**. Ark. R. App. P. – Civ. 7(b)(1)
  - **Searchable**. Ark. R. App. P. – Civ. 7(b)(1)
  - **Paginated**. Ark. R. App. P. – Civ. 7 (b)(2) & (3)
    - Ark. Sup. Ct. R. 3-1(f)
  - **Table of Contents**
    - Ark. Sup. Ct. R. 3-1(g)
  - More later!





# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- With eROA, the record is divided into separate parts, each separately and consecutively paginated:
  - Circuit clerk's portion with pleadings, mtns, orders from lawyers and judges
    - “RP” (Record Pleadings)
      - Start w/ page 1
  - Court reporter's portion, i.e., the transcripts.
    - “RT” (Record Transcript)
      - Also, start w/ page 1
    - Ark. Sup. Ct. R. 3-1(f)



# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- RP & RT are separately paginated.
- The cover page of each portion shall be page one.
  - Best practice for stamping page #s?
    - Ex. **RP 1, RP 2, RP 3**, or **RT 1, RT 2, RT 3**...
- Why? Ultimately, we run software program called IBAR\* that recognizes pinpoint cites in the briefs and embeds hyperlinks in the citations that connect your record directly to the briefs so that judges can click on the citation in the brief and go directly with that portion of the record.



# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- The eROA **must have bookmarks** for each document in the circuit clerk's record (pleading, mtn, order, etc.) and each witness or exhibit in the reporter's record.
- Also, the pdf **must be word-searchable**.
- (Ark. R.App. P. Civ. 7(b)(1))
- For ease of reference of readers/reviewers + IBAR.



# PRACTICAL ITEMS & CHANGES

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- What about huge files? (handout—arguably the biggest pitfall we see that's not simple)
  - eFlex can't manage single files over 30MB. Got something more?
  - Any RP or RT that is >30MB needs to be broken into separate PDFs.
    - Ark. R.App. P. 7(b)(4)
    - Keep calm and paginate consecutively 😊
    - **Caution!** Make sure that 2nd, 3rd, and subsequent volumes start on the page after the last page in the previous volume. **More later!**
    - Files over 100MB you can use OneDrive file; contact Clerk's Office.
  - PLEASE include the page range in each separated file name.



EX.

- 
- Smith v Smith Pleadings Vol. 1\_Pgs 1-999  
Smith v Smith Pleadings Vol. 2\_Pgs 1000-1999  
Smith v Smith Pleadings Vol. 3\_Pgs 2000-2499

# PRACTICAL ITEMS & CHANGES

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- What if exhibits cannot be digitized & e-filed?
  - Clerk can still accept those as hard copies. But it's req'd you **log in the electronic record** that some exhibits will be filed conventionally.
    - Ark. R. App. P. Civ. 7(b)(5).
  - **1.** Do so in **Table of Contents** (Index).
  - **2.** Please make clear on **cover pages** of BOTH the electronic and conventional filings that your case involves a “**HYBRID**” electronic/conventional record.
  - **3.** Merge a placeholder page in your record to reference conventional exhibit.

# PRACTICAL ITEMS & CHANGES

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- What about sealed portions?
  - Any portion that is sealed “shall be saved as a separate PDF file, the name of the PDF file should indicate that the contents are sealed”
  - The docs in the sealed file “shall be paginated consecutive to where the page numbering ends in the unsealed file or files.”
    - Ark. Sup. Ct. R. 3-1(o).
  - Must note in TOC. Ark. Sup. Ct. R. 3-1(g).
    - Ex. of TOC when sealed docs are in record, [here pgs 6-7](#).

# PRACTICAL ITEMS & CHANGES

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- The AR Supreme Court's recent PC alludes to something down the road:
- "...we are exploring the possibility of an automated process that would allow the circuit clerks to submit trial court records directly to the appellate clerk. We continue to explore that possibility. As technology improves, it is essential that we keep pace to ensure maximum access to justice."
- **\*\*Build New\*\*** ideas later





# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- For now, we're still using eflex and it's still the appellant's responsibility to coordinate transmission of the eROA from the circuits to the appeals courts.
- You see the Court's intentions?
  - Striving for efficiency, ease of use/fewer hurdles.



# PRACTICAL BIG PICTURE ITEMS & CHANGES

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- No more abstract & addendum requirement in briefs;
  - Instead, there are new sections required: “Jurisdictional Statement” and “Statement of the Case and Facts.”
  - JS and SOCAF must be supported by pinpoint citations to the electronic record.  
Ark. Sup. Ct. R. 4-2(f)
    - “On July 22, 2022, the Pope County Circuit court denied appellant’s MTD.” (RP 165)
    - “During cross examination, the appellant’s neighbor (appellee) stated he had never reviewed or signed the buy-sell agreement.” (RT 32)



# BEST PRACTICES, TIPS, AND THE NITTY GRITTY

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- Pagination
- Bookmarks & Exhibits
- Searchability



# PAGINATION: BEST PRACTICES

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- Rule: the first (i.e., cover) page is page “1” and it is chronological from there. Ark. Sup. Ct. R. 3-1(f) (fatal)
- Best practice: Paginate at bottom center (only when possible, NOT fatal)
- Best practice: Put “RP” or “RT” before page numbers, like this:  
RP 1, RP 2, RP 3, and so on. (not fatal, just best practice)





# PAGINATION: BEST PRACTICES

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- Large files & multiple volumes
  - Rule: The PDF page numbers shall correspond to the record page numbers on page. Ark. R.App. P. 7(b)(2)
  - Practice: Vol. 2 picks up pagination where Vol. 1 left off (fatal)
  - Tip: Your pdf software may not automatically do this in different volumes. Refer to help center of that software provider. We may not be able to troubleshoot software issues for you.
- \*Side note for reporters/clerks that transmit transcripts: What if there was more than one court reporter? Either
  - Tip: Troubleshoot in advance by coordinating pagination w/ each other; or
  - Tip: Last person in linear history can have all previous transcripts forwarded to them and paginate for everyone.



# PAGINATION: BEST PRACTICES

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- Rule: TOC must ID all docs filed under seal. (fatal)
- Best Practice: Check out the PC Order for an example on page 6-7 here.

<https://www.arcourts.gov/sites/default/files/eROA-Final-Rules-PC-2020-Ark-421.pdf>

# PAGINATION: BEST PRACTICES

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- Rule 3-1(g): Any sealed portions of record must be saved as separate PDF file, and the name of that file need indicate that the contents are sealed.
  - Tip: Title file with word “sealed.”
    - Best bookmarks? ex. ““Sealed Brief in Support of Motion to Dismiss.”
- Rule 3-1(g): Documents in sealed files must be paginated consecutive to where the page number ends in the unsealed file or files.
- Tip: Similar practice to consecutive pagination in big files. Just be aware.
  - Get in habit of making sure subsequent volumes pick up on the page after the last in the previous volume.

# BOOKMARKS: BEST PRACTICES

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- If it's a differentiated document, **BOOKMARK IT!** (fatal)
- Title bookmarks properly. (fatal? Sliding scale?)
  - Properly? Bookmarks need clearly ID portion/section to which the bookmark corresponds. Ex. By Document (or by speaker/witness name).
  - 7(b)(1) "Bookmarks shall be made to each document in the record and at the beginning of each witness's testimony."
- Tip for Reporters' Transcripts: For each party & testimonial witness, **BOOKMARK**, and bookmark by separate examinations as well.
  - Best? Plaintiff/defense statements, direct vs. cross, re-direct, etc.





# BOOKMARKS: BEST PRACTICES

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- Tip: Be sure to have the page you want to bookmark centered on your screen when you bookmark it. (everyone else will see it better this way) (not fatal)
- Tip: Check for missing or non-set bookmarks (“dead links”) (not fatal)
  - Caution: the more “dead links,” the more the Clerk need be a stickler and may reject.
  - Also, only add bookmarks related to each respective volume for each pdf.

# BOOKMARKS & PAGINATION: BEST PRACTICES

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- **Exhibits**

- Bookmarks should indicate an exhibit's location in the organized record (\*for Reporters)

- **Physical exhibits**

- **Insert an extra page for physical exhibits!** (Its purpose is to placemark/flag the existence of physical exhibits that are referred to in case, so Clerk's office is alerted that we're expecting physical exhibits from the attorney)
  - Best Practice: Make copies of exhibit!! This can save time, money, etc., in the event of a lost copy.
- Tip: **Add bookmarks towards the end of org process.** (If done too early and you need to split it up b/c the file volume gets too big, the bookmarks are ruined).



# EXAMPLE OF EASY TO OVERLOOK ISSUE w/o PLACEHOLDER FOR PHYSICAL EXHIBIT

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State's Exhibit 26	STATE'S EXHIBIT 26	359
State's Exhibit 27	STATE'S EXHIBIT 27	361
State's Exhibit 28	STATE'S EXHIBIT 28	363
State's Exhibit 30	STATE'S EXHIBIT 29 [REDACTED] EXHIBIT DELIVERED SEPARATELY)	
State's Exhibit 31	STATE'S EXHIBIT 30	365
State's Exhibit 32	STATE'S EXHIBIT 31	367
State's Exhibit 33	STATE'S EXHIBIT 32	369
	STATE'S EXHIBIT 33	371
	DEFENDANT'S EXHIBIT 1	373
	REPORTER'S CERTIFICATE OF COSTS	375
	REPORTER'S CERTIFICATE	376

# SEARCHABILITY: BEST PRACTICES

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- Rule: convert to a searchable document using your PDF software.  
(fatal)
- Best Practice: Convert your anticipated filing into searchable form toward end of organizational process, too.
  - (We receive records that are only partially searchable...probably from running OCR too early in process of organizing the filing)...





# WRIT OF CERT FOR COMPLETE E-RECORD

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- Other New Stuff:
  - Writs issued now provide a space for both the circuit clerk and court reporter (ex.)
  - Allows for separate execution of the writ due to the division of the pleadings and transcript for electronic records on appeal
  - Includes a checkbox to notify our courts if you do not have any documents to submit

# WRIT OF CERT FOR COMPLETE E-RECORD

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- Best practices:
  - First, check language in the top block of the writ to ensure that the court is requesting an electronic record
  - Then, review petition/motion included with writ to determine if you have any of the documents requested
    - Best Practice: Include writ return at the end of the record.

WRIT RETURNABLE IN 30 DAYS ON OCTOBER X, 202X

**CERTIORARI FOR COMPLETE ELECTRONIC RECORD**

STATE OF ARKANSAS     )  
COURT OF APPEALS       )  
XXCR-21-ZZ               )

COURT OF APPEALS CASE NO. CR-21-ZZZ  
THE STATE OF ARKANSAS

TO THE CLERK AND COURT REPORTER, GREETINGS:

WHEREAS, IN A CASE PENDING IN SAID BEAUTIFUL COUNTY CIRCUIT COURT,  
STATE OF ARKANSAS, WHEREIN

THE SHARK FROM JAW'S, APPELLANT AND  
STATE OF ARKANSAS, APPELLEE

JUDGMENT WAS RENDERED, AND APPELLANT PRAYED AN APPEAL FROM SAID  
JUDGMENT TO THE COURT OF APPEALS. YOU ARE, THEREFORE, HEREBY COMMANDED  
THAT YOU CERTIFY TO OUR COURT OF APPEALS, FORTHWITH, A FULL, TRUE AND  
COMPLETE ELECTRONIC TRANSCRIPT OF THE RECORD AND PROCEEDINGS OF SAID  
COURT OF SALINE COUNTY CIRCUIT COURT, THAT OUR COURT OF APPEALS, UPON  
CONSIDERATION OF A COMPLETE RECORD, MAY CAUSE TO BE DONE THEREIN WHAT  
SHOULD BE DONE. HEREOF FAIL NOT AND MAKE DUE RETURN OF THIS WRIT UNDER  
YOUR OFFICIAL SEAL.

IN TESTIMONY WHEREOF, I, STACEY PECTOL, CLERK OF THE  
SUPREME COURT AND COURT OF APPEALS, HERETO SET MY  
HAND AND AFFIX THE SEAL OF SAID COURT, AT MY OFFICE IN THE  
CITY OF LITTLE ROCK, THIS 8TH DAY OF SEPTEMBER, 2021.

\_\_\_\_\_  
CLERK

BY \_\_\_\_\_ D.C.

ORIGINALS TO CLERK AND COURT REPORTER (W/COPY OF PETITION)

CC: MARTIN BRODY  
MATT HOOPER  
ELLENA BRODY, DEPUTY ATTORNEY GENERAL  
HONORABLE QUINT, JUDGE (W/COPY OF PETITION)

**CIRCUIT CLERK'S RETURN**

STATE OF ARKANSAS,

→ COUNTY OF \_\_\_\_\_. I, \_\_\_\_\_ CLERK OF THE COURT OF SALINE  
COUNTY CIRCUIT COURT, HEREBY CERTIFY THAT (PLEASE CHECK ONLY ONE OF THE  
FOLLOWING TWO OPTIONS):

- 1. ☐ I HAVE MADE AND CERTIFIED A FULL, TRUE AND COMPLETE RECORD OF  
DIMINUTION WITHIN SUGGESTED, WHICH IS HERETO ATTACHED.
2. ☐ I HAVE NO DOCUMENTS RESPONSIVE TO THE WRIT; THEREFORE, I HAVE ATTACHED  
NO DOCUMENTS TO THIS RETURN.

IN TESTIMONY WHEREOF, I HERETO SET MY HAND AS CLERK,  
AND AFFIX THE SEAL OF SAID COURT OF SALINE COUNTY CIRCUIT  
COURT, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D.  
20 \_\_\_\_\_.

→ \_\_\_\_\_  
CLERK

**COURT REPORTER'S RETURN**

STATE OF ARKANSAS,

COUNTY OF \_\_\_\_\_. I, \_\_\_\_\_ OFFICIAL COURT REPORTER,  
HEREBY CERTIFY THAT (PLEASE CHECK ONLY ONE OF THE FOLLOWING TWO OPTIONS):

1. ☐ I HAVE MADE AND CERTIFIED A FULL, TRUE AND COMPLETE TRANSCRIPT OF  
DIMINUTION WITHIN SUGGESTED, WHICH IS HERETO ATTACHED.
2. ☐ I HAVE NO DOCUMENTS RESPONSIVE TO THE WRIT; THEREFORE, I HAVE ATTACHED  
NO DOCUMENTS TO THIS RETURN.

IN TESTIMONY WHEREOF, I HERETO SET MY HAND AS COURT  
REPORTER, AND AFFIX MY SEAL, THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, A.D. 20 \_\_\_\_\_.

\_\_\_\_\_  
COURT REPORTER

# PROBABLY A GOOD ORDER TO TACKLE RPs & RTs

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1. Run Page Uniformity (if necessary)
2. Run OCR and pause to check out file size
  1. Take note of whether file is >30MB?
3. Paginate
4. Bookmark

Just suggestions, you maybe will find a process you think is more efficient, especially for typical RPs that are <30MBs.



## WE'RE AVAILABLE TO HELP

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- David, Galesia, Kyle, Chuck

- 625 Marshall Street

Suite 130, Justice Building

Little Rock, Arkansas 72201

Phone: 501-682-6849



# THE FUTURE?? GUIDING PRINCIPLES

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- Develop process for transmittal that is cohesive with global Build New.
- Develop process for transmittal that is *as compatible as possible* with established appellate practice (convention).
- Keep changes to Ark. R. Sup. Ct. & Ark. R.App. P.–Civ. & Crim. to minimum.
- Take inspiration from best practices of 8<sup>th</sup> Circuit & fed cir. CsOA.

# THE FUTURE?? GUIDING PRINCIPLES

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- Develop platform that  burden  efficiency for all ppl involved in appellate process.
  - Circuit Clerks
  - Appellants, appellees, and their lawyers
  - Court Reporters
  - ARSC & ARCOA

# THE FUTURE?? OUR IDEAS

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- Upon filing NOA @ circuit court, Build New platform populates a file w/ ALL docs from circuit court case.
- These documents must not be manipulatable in any way.
  - Either self-certifying or conveniently certified through circuit clerk confirmation.
- Once certified, the appellant, through negative option, responsible to remove documents unnecessary for the record on appeal.
- Direct the program to “bundle” the record, whereby chosen documents are processed into an eROA.



# THE FUTURE?? OUR IDEAS

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- We envision a bundled eROA to have the following attributes:
  - The circuit court filings are in sequential order through linear-time by filing dates of the documents.
  - The filings are paginated in accordance with court rules.
  - The filings are bookmarked in accordance with court rules\*.
  - The final, bundled product is a word-searchable pdf.
  - There is a mechanism allowing convenient inclusion of the stenographic transcript. (transcript will still be bifurcated from the pleadings)
  - No more splitting large files into volumes, or at least keep it to a minimum.



**OFFICE OF THE CLERK**

**501-682-6849**

**SUPREME COURT OF ARKANSAS**  
ARKANSAS COURT OF APPEALS

JUSTICE BUILDING  
625 MARSHALL STREET  
LITTLE ROCK, AR 72201

<https://www.arcourts.gov/>