

Cite as 2009 Ark. 519

SUPREME COURT OF ARKANSAS**Opinion Delivered** October 22, 2009IN RE: PROPOSED
AMENDMENTS TO
ADMINISTRATIVE ORDER
NUMBER 1**PER CURIAM**

In reviewing our procedures for the use of special judges, we have concluded that amendments are necessary to Administrative Number 1. This administrative order has been in place for a number of years, and the election of attorneys to serve as special circuit court judges is rooted in the Arkansas Constitution. Ark. Const., Amend. 80, § 13.¹ Administrative Order Number 1 must be utilized in conjunction with Administrative Order Number 16 – Procedures Regarding the Assignment of Judges. In order for these two provisions to better fit, we propose changes to Administrative Order Number 1.

We publish the proposed amendments (new language is underlined, and deleted language is lined-through) for comment, and the comment period shall expire December 31, 2009. Comments should be in writing and addressed as follows: Clerk, Arkansas Supreme Court, Attention ADMINISTRATIVE ORDER NUMBER 1, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

¹See Ark. Const., Art. 7, § 21 (repealed) and Ark. Const. Amend. 77, § 1 (repealed).

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Administrative Order 1. Special Judges

Section 1.

The procedure set out in this administrative order is intended to apply when
~~When~~ the judge of a circuit court shall fail to attend on any day scheduled for the holding of that court ~~or if such a judge is disqualified from presiding in any pending case~~ due to an emergency or sudden illness, or when a judge's disqualification from presiding in any pending case is unanticipated. It should be employed to address unforeseen situations in which a replacement cannot be assigned pursuant to Administrative Order Number 16 – Procedures Regarding the Assignment of Judges. Administrative Order Number 16 requires that when a circuit judge is temporarily unable to serve, first, the other judges in the circuit should attempt to cover the absence; next, the Chief Justice should be requested to make an assignment; lastly, Administrative Order 1 should be utilized.

~~[moved to section 2 upon notice from the clerk of the court, the regular practicing attorneys attending the court may elect a special judge. The attorneys present in the courtroom shall elect one of their number as special judge. The election shall be conducted by the clerk of the court, who will accept nominations from the attorneys present. Only attorneys who are qualified to serve as special judge may vote in the election of a special judge. The election shall be by secret ballot. The attorney receiving a majority of the votes shall be declared elected as special judge. He shall immediately be sworn in by the clerk and shall immediately~~

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~~enter upon the duties of the office. He shall adjudicate those causes pending at the time of his election;]~~

Section 2.

When a special judge is to be elected, notice shall be given by the clerk of the court to the regular practicing attorneys in the county served by the court in the most practical manner under the circumstances, including giving notice by telephone or by posting the notice in a public and conspicuous place in the courtroom. Upon notice from the clerk of the court, the regular practicing attorneys attending the court may elect a special judge. The attorneys present in the courtroom shall elect one of their number as special judge. The election shall be conducted by the clerk of the court, who will accept nominations from the attorneys present. Only attorneys who are qualified to serve as special judge may vote in the election of a special judge. The election shall be by secret ballot. The attorney receiving a majority of the votes shall be declared elected as special judge. He or she shall immediately be sworn in by the clerk and shall immediately enter upon the duties of the office. He or she shall adjudicate those causes pending at the time of his or her election.

Section 3.

No person who is not an attorney regularly engaged in the practice of law in the State of Arkansas and duly licensed and in good standing to do so, and who is not a resident possessed of the qualifications required of an elector of this state, whether registered to vote or not, shall be elected special judge. A law clerk is not eligible to be elected as a special

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judge.

Section 4.

For purposes of this rule, each division of circuit court in a county shall be considered to be a separate court.

Section 5.

Each month a circuit judge shall submit a written report to the Administrative Office of the Courts reporting those instances during the month when a special judge elected pursuant to the procedures of Administrative Order Number 1 have been utilized in his or her court. The report shall provide for each such instance (a) the date, (b) the name of the attorney elected, (c) the reason the circuit judge was unable to attend court on those dates, and (d) a certification that attempts for other judges in the circuit to hear the matter or for the Chief Justice to make an assignment were unsuccessful.

Section 6.

The clerk of the court in the county in which the special judge election is held shall make a record of the proceedings, which shall be a part of the record of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

IN THE MATTER OF _____, SPECIAL JUDGE

Now on this _____ day of _____, _____, Honorable

_____ [notified the clerk that he/she was unable to attend or

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~~and~~ preside over this court on this day][failed to attend and preside over this court on this day].

WHEREUPON, the Clerk gave notice pursuant to Administrative Order No. 1 that an election was to be held for a Special Judge to preside during the absence of said Judge.

AND THEREAFTER, Honorable _____, an attorney at law, a resident of the State of Arkansas and possessing the required qualifications, having received a majority of the votes cast at such special election, at which only the practicing attorneys in attendance in the Court were allowed to vote, was found and declared to be duly elected Special Judge to preside during the absence of Honorable _____.

WHEREUPON, the Clerk did administer the oath of office required by law for such Special Judge, and he/she assumed the bench and entered upon the discharge of his/her duties herein.

_____ Clerk

OATH OF OFFICE

STATE OF ARKANSAS)

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COUNTY OF _____)

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of Special Judge of Circuit Court, _____ Division, _____ County, upon which I am about to enter.

_____Special Judge

Witnesses:

Subscribed and sworn to before me this _____ day of _____, _____.

_____Circuit Clerk

By:

_____Deputy Clerk