

Cite as 2010 Ark. 36

SUPREME COURT OF ARKANSAS

No.

Opinion Delivered 1-21-10

IN RE: SUPREME COURT
COMMITTEE ON
CRIMINAL PRACTICE

PER CURIAM

The Supreme Court Committee on Criminal Practice has submitted several proposals to the court as set out in detail below. We express our gratitude to the members of the Criminal Practice Committee for their work. These proposals are being published for comment, and the comment period shall end on March 31, 2010. (New language is underlined in the rules set out below.)

Comments should be submitted in writing to: Clerk of the Arkansas Supreme Court, Attention: Criminal Practice Committee, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

1. Amendment to Arkansas Rule of Appellate Procedure - Criminal 16.

The Committee recommends that a motion to relieve counsel or to appoint new counsel clearly state whether or not a notice of appeal has been filed, and the proposed amendment reads:

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Rule of Appellate Procedure - Criminal 16. Trial counsel's duties with regard to appeal.

(a) (i) Trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. ~~After the notice of appeal of a judgment of conviction has been filed, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.~~

(ii) If no notice of appeal of a conviction has been filed with the trial court, the trial court shall have exclusive jurisdiction to relieve counsel and appoint new counsel. A motion filed with the trial court to be relieved as counsel or a motion to the trial court for appointment of counsel shall clearly state that no notice of appeal has been filed with the trial court.

(iii) If a notice of appeal of a conviction has been filed with the trial court, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel. A motion filed with the appellate court to be relieved as counsel or a motion filed with the appellate court for appointment of counsel shall clearly state that a notice of appeal has been filed with the trial court and shall further state the date on which the notice of appeal was filed.

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Reporter's Notes, 2010

Prior to the 2010 amendments, jurisdiction to relieve or appoint counsel turned on whether a notice of appeal had been filed with the trial court. The 2010 amendments added the requirement that a motion to be relieved as counsel or a motion for appointment of counsel must clearly state whether or not a notice of appeal has been filed with the trial court. Such a statement enables a court to determine that it has jurisdiction to grant or deny the motion.

2. Amendment to Arkansas Rule of Criminal Procedure 27.3.

The Committee proposes the following changes, as explained in the Reporter's

Note:

Rule 27.3. Continuances.

(a) The court shall grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecuting attorney or defense counsel, but also the public interest in prompt disposition of the case.

(b) Unless waived in writing by both parties, the court shall not grant a continuance in a felony case except following a hearing, at which each party is afforded a reasonable opportunity to object to the continuance.

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The 2010 amendment added subsection (b), which ensures that either party has the opportunity to object to a proposed continuance. By affording the defendant an opportunity to object before a continuance is granted, the court invokes the “contemporaneous objection” rule. If the defendant fails to object to the continuance, he or she is precluded from later arguing that the period of the continuance is not an excluded period for speedy trial purposes under Rule 28.3. Compare *Mack v. State*, 321 Ark. 547, 905 S.W.2d 842 (1995)(Hearing held) with *Tanner v. State*, 324 Ark. 37, 918 S.W.2d 166 (1996)(No hearing held). See also, *Davis v. State*, 375 Ark. 368, _____ S.W.3d _____ (2009)(“Before a criminal defendant may be required to state a contemporaneous objection to the exclusion of time under speedy trial, the excludability of the period must be discussed ‘during a hearing where the defendant and his counsel were present.’ ”)

The intent of the amendment is not to foreclose later consideration whether the period of the continuance is an excluded period under Rule 28.3. If no hearing is held, the state can still argue that the period of the continuance is an excluded period under Rule 28.3, but the state cannot argue that the defendant should have objected to the continuance at the time it was granted.