



ARKANSAS JUDICIARY

Published on *Arkansas Judiciary* (<https://courts.arkansas.gov>)

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## **Rule 4. Time For Filing Record, Contents Of Record.**

(a) Generally. Except as provided in this rule, matters pertaining to several appeals, the docketing, designation, abbreviation, stipulation, preparation, and correction or modification of the record on appeal, as well as appeals where no stenographic record was made, shall be governed by the Rules of Appellate

Procedure-Civil and any statutes presently in force which apply to civil cases on appeal to the Supreme Court.

(b) When filed. When an appeal is taken by the defendant, the record on appeal shall be filed with the clerk of the appellate court and docketed therein within ninety (90) days from the filing of the notice of appeal, For purposes of determining the date of filing of a notice of appeal, Arkansas Rule of Appellate Procedure -Criminal 2(b) shall apply. The time for filing the record with the clerk of the appellate court may be extended by the circuit court as provided in subsection (c).

(c) Extension of time.

(1) If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, by order entered before expiration of the period prescribed by subdivision (b) of this rule or by a prior extension order, may extend the time for filing the record. A motion by the defendant for an extension of time to file the record shall explain the reasons for the requested extension, and a copy of the motion shall be served on the prosecuting attorney. The circuit court may enter an order granting the extension if the circuit court finds that all parties consent to the extension and that an extension is necessary for the court reporter to include the stenographically reported material in the record on appeal. If the prosecuting attorney does not file a written objection to the extension within ten (10) days after being served a copy of the extension motion, the prosecuting attorney shall be deemed to have consented to the extension, and the circuit court may so find. If the prosecuting attorney files a written objection to the extension within ten (10) days after being served a copy of the extension motion, the circuit court may not grant the extension unless the circuit court makes the following findings:

(A) The defendant has filed a motion explaining the reasons for the requested extension and has served a copy of the motion on the prosecuting attorney;

(B) The time to file the record on appeal has not yet expired;

(C) All parties have had the opportunity to be heard on the motion, either at a hearing or by responding in writing;

(D) The defendant has timely ordered the stenographically reported material from the court reporter and either (i) made any financial arrangements required for preparation of the record, or (ii) filed a petition to obtain the record as a pauper; and

(E) An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal.

(2) In no event shall the time for filing the record be extended more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely post-judgment motion is deemed to have been disposed of under Arkansas Rule of Appellate Procedure - Criminal 2(b), whichever is later.

(3) If the appellant has obtained the maximum seven-month extension available from the circuit court, or demonstrates (by affidavit or otherwise) an inability to obtain entry of an order of extension, then before expiration of the period prescribed by subdivision (b) of this rule or a prior extension order, the appellant may file with the clerk of the appellate court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

(d) 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 trial court clerk unless the clerk is directed to do so by a party or by the clerk of the appellate court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the appellate court. If the record contains photographs, DVDs, or any other visual medium alleged by either party to the appeal to constitute child pornography, a motion to seal the record, stating the reason therefor, shall accompany the record when it is filed with the clerk of the appellate court.

(e) Record for preliminary hearing in appellate court. Prior to the time the complete record on appeal is settled and certified as herein provided, either party to the appeal may docket the appeal in order to make in the appellate court a motion for dismissal, for a stay pending appeal, for fixing or reducing bail, to proceed in forma pauperis, or for any intermediate order. The clerk of the trial court, at the request of the moving party, shall certify and transmit to the clerk of the appellate court a copy of such portion of the record of proceedings as may be available or needed for the purpose. (f) Subsections (b) and (c) of this rule shall not apply to an appeal by the state pursuant to Rule of Appellate Procedure-Criminal 3.

Reporter's Notes to Rule 4 (2008).

The 2008 changes added subsections (b), (c), and (f), added the last sentence of subsection (d), and made minor editorial changes to the other subsections.

Prior to the 2008 changes, an extension of time to file the record in a criminal case was governed by Arkansas Rule of Appellate Procedure -Civil 5(b), which requires the circuit court to find that all parties have had the opportunity to be heard on an extension motion. Subsection (c) requires the court to make such a finding only if the prosecuting attorney objects to the extension. The extension order must reflect that the prosecuting attorney consents to the extension, but defense counsel can either obtain such consent before filing the extension order or such consent can be presumed from the prosecutor's failure to object to the extension motion.

The last sentence of subsection (d) protects the privacy of innocent victims of child pornography. A similar change, covering the contents of briefs on appeal, has been made to Rules of the Supreme Court and Court of Appeals 4-3.

Subsection (f) makes clear that the state cannot request an extension of time to file the record when it takes an appeal pursuant to Arkansas Rule of Appellate Procedure - Criminal 3.

**History Text:**

History. Adopted and amended July 10, 1995, effective January 1, 1996; amended November 20, 1995; amended September 18, 2008.

**Associated Court Rules:**

Rules of Appellate Procedure?Criminal

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**Source URL:** <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-4-time-filing-record-contents-record>