Rule 3. Appeal; €How Taken.

(a) Mode of obtaining review. The mode of bringing a judgment or order to the Supreme Court or Court of Appeals for review shall be by appeal. An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment. An appeal from an order disposing of a postjudgment motion under Rule 4(b)(1) brings up for review the judgment and any 11 Cite as 2012 Ark. 236 intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from.

(b) How taken. An appeal shall be taken by filing a notice of appeal with the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken. In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement shall be satisfied when the notice of appeal is filed with either the circuit clerk or the county clerk. Failure of the appellant or cross-appellant to take any further steps to secure review of the judgment or decree appealed from shall not affect the validity of the appeal or cross-appeal, but shall be ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or cross-appeal. If, however, the record on appeal has not been filed pursuant to Rule 5 of these rules, the circuit court in which the notice of appeal was filed may dismiss the appeal or cross-appeal upon petition of all parties to the appeal or cross-appeal accompanied by a joint stipulation that the appeal or cross-appeal is to be dismissed.

(c) Joint or consolidated appeals. If two or more persons are entitled to appeal and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in the appeal after filing separate, timely notices of appeal and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party.

(d) Cross-appeals. A cross-appeal may be taken by filing a notice of cross-appeal with the clerk of the circuit court that entered the judgment, decree or order being appealed.

(e) Content of notice of appeal or cross-appeal. A notice of appeal or cross-appeal shall:

(i) specify the party or parties taking the appeal;
(ii) designate the judgment, decree, order or part thereof appealed from;
(iii) designate the contents of the record on appeal;
(iv) state that the appellant has ordered the transcript, or specific portions thereof, if oral testimony or proceedings are designated, and has made any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510 (c);
(v) state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to

the Supreme Court, the appellant shall designate the applicable subdivision of Arkansas Supreme Court and Court of Appeals Rule 1?2(a), which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing his or her brief pursuant to Arkansas Supreme Court and Court of Appeals Rules 4?3 and 4?4 in the alternative court if that is later determined by the appellant to be appropriate; and

(vi) state that the appealing party abandons any pending but unresolved claim. This abandonment shall operate as a dismissal with prejudice effective on the date that the otherwise final order or judgment appealed from was entered. An appealing party shall not be obligated to make this statement if the party is appealing an interlocutory order under Arkansas Rule of Appellate Procedure?Civil 2(a)(2)?(a)(13), Arkansas Rule of Appellate Procedure?Civil 2(c), or Arkansas Supreme Court and Court of Appeals Rule 6-9(a), or is appealing a partial judgment certified as final pursuant to Arkansas Rule of Civil Procedure 54(b).

(f) Service of notice of appeal or cross-appeal. A copy of the notice of appeal or cross-appeal shall be served by counsel for appellant or cross-appellant upon counsel for all other parties by any form of mail which requires a signed receipt. If a party is not represented by counsel, notice shall be mailed to such party at his last known address. Failure to serve notice shall not affect the validity of the appeal.

(g) Abbreviated record; statement of points. If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action, he shall serve with his notice of appeal and designation a concise statement of the points on which he intends to rely on the appeal. Addition to Reporter?s Notes, 2010 Amendment. Subdivision (e) has been reformatted into subparts, creating a check list to help parties in preparing their notices of appeal and cross-appeal. With one exception, no substantive change from the former rule has been made. Subdivision (e) has been amended to require one new statement in every notice of appeal and notice of cross-appeal from a final order or judgment. Pursuant to new subpart (vi), the appealing party must state that the party is abandoning any pending but unresolved claim. This abandonment operates as a dismissal with prejudice of these stray claims. This amendment will cure a recurring finality problem. Too often?after the parties have paid for the record, filed it, and filed all their briefs on appeal?the appellate court will discover that what appears to be a final order or judgment is not final because a pleaded claim, counterclaim, or cross-claim remains unadjudicated. This kind of stray claim destroys finality and renders an otherwise final order or judgment unappealable. E.g., Ramsey v. Beverly Enters., Inc., 375 Ark. 424, 291 S.W.3d 185 (2009); Rigsby v. Rigsby, 340 Ark. 544, 11 S.W.3d 551 (2000); Brasfield v. Murray, 96 Ark. App. 207, 239 S.W.3d 551 (2006). These stray claims often appear to have been forgotten by the parties or abandoned even though no order resolved them. It wastes parties? and courts? scarce resources to have two appeals in these situations. A party taking an interlocutory appeal or cross-appeal authorized by the Arkansas Rules of Appellate Procedure, the Rules of the Supreme Court and Court of Appeals, or precedent, should not make this statement in the parties? notice. Nor is this statement required in a notice of appeal or cross-appeal from a judgment certified by the circuit court as final under Rule of Civil Procedure 54(b). In all these situations, which are in essence interlocutory appeals, some claims remain pending and viable in the circuit court during the appeal. Addition to Reporter's Notes, 2012 Amendment: Arkansas Rules of Appellate Procedure?Civil 2(b) and 3(a) contained an ambiguity (same language in both rules) that could have been misconstrued as creating, under limited circumstances, a 180-day period in

which to file the notice of appeal of a judgment (or intermediate order). Both rules stated that "[a]n appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from." The reference in Rules 2(b) and 3(a) to orders disposing of postjudgment motions under Rule 4 (without designation of a specific subsection under Rule 4) was intended to apply only to orders disposing of the postjudgment motions included in Rule 4(b)(1) (motions for judgment notwithstanding the verdict, motions to amend the court's findings of fact or to make additional findings, or any other motions to vacate, alter, or amend the judgment). However, the general reference to Rule 4 in Rules 2(b) and 3(a) could have been read as allowing appellate review of the original judgment (or intermediate order) "brought up for review" by an order disposing of any postjudgment motion allowed under Rule 4. Since motions for extension of time to file a belated appeal are also included under Rule 4 (Rule 4(b)(3)), orders denying belated-appeal motions could have been considered to bring up for review the original judgment (or intermediate order). Because belated-appeal motions under Rule 4(b)(3) may be filed up to 180 days following the judgment, the effect would have been to create a 180-day period in which to appeal the original judgment (or intermediate order). The amendment clarifies the original intent of Rules 2(b) and 3(a) by specifically limiting the postjudgment motions that bring up for review original judgments or intermediate orders to the postjudgment motions included in Rule 4(b)(1).

History Text:

History. Amended July 7, 1986, effective September 15, 1986; amended September 19, 1988; amended December 4, 1989; adopted and amended July 10, 1995, effective January 1, 1996; amended November 18, 1996, effective March 1, 1997; amended December 9, 1996; amended June 23, 1997; amended June 30, 1997, effective for cases in which the record is lodged on or after September 1, 1997; amended December 4, 1997; amended January 28, 1999; amended June 7, 2001, effective July 1, 2001; amended March 13, 2003; amended February 10, 2005; Amended June 17, 2010, effective July 1, 2010; Amended May 24, 2012, effective July 1, 2012.

Associated Court Rules:
Rules of Appellate Procedure?Civil