



ARKANSAS JUDICIARY

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## Rule 9. Appeals To Circuit Court.

(a) Time for Taking Appeal From District Court. Within 30 days of the docket entry awarding judgment entered in accordance with Rule 8(c) of these rules, regardless of whether a written judgment is otherwise entered or filed, appeals in civil cases from district court to circuit court shall be filed with the clerk of the circuit court having jurisdiction of the appeal. The 30-day period is not extended by a motion for new trial, a motion to amend the court's findings of fact or to make additional findings, or any other motion to vacate, alter or amend the judgment. (b)

How Taken From District Court. (1) A party may take an appeal from a district court by filing with the clerk of the circuit court having jurisdiction of the appeal (i) a certified copy of the district court's docket sheet which shows the entry awarding judgment and all prior entries or a certified copy of the record of the district court proceedings consisting of all documents and motions filed in the district court, and (ii) a certified copy of the complaint filed in the district court or, if filed in accordance with Rule 10 of these rules, a certified copy of the claim form filed in the small claims division of the district court. Neither a notice of appeal nor an order granting leave to appeal shall be required. The appealing party shall serve upon counsel for all other parties and upon any party not represented by counsel, certified copies of the district court docket sheet or the district court record and a certified copy of the district court complaint or claim form. Service upon counsel or a party not represented by counsel shall be effected as follows: (A) By sending the copies by any form of mail requiring a signed receipt; (B) By delivering the copies as described in Arkansas Rule of Civil Procedure 5(b)(2); (C) By sending the copies by a commercial delivery company as described in Arkansas Rule of Civil Procedure 5(b)(2); or (D) If service is upon counsel, by sending the copies by electronic transmission as described in Arkansas Rule of Civil Procedure 5(b)(2). If service is by mail, the signed receipt shall be attached to the certificate of service. The following form may be used for the certificate of service: Certificate of Service The undersigned certifies that a true and correct copy of the certified copy of the district court docket sheet or the district court record and a certified copy of the district court complaint or claim form were served on

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by [state method of service used, examples: mail with the signed receipt attached; hand delivery; commercial delivery service].

\_\_\_\_\_[Signature of person making service] Failure to serve certified copies of the district court docket sheet or district court record and a certified copy of the district court complaint or claim form shall not affect the validity of the appeal. The filing of the certified copy of the district court complaint or claim form with the clerk of the circuit court shall constitute the filing of the complaint for purposes of commencing the action in circuit court in accordance with Arkansas Rule of Civil Procedure 3(a). (2) If the clerk of the district court does not prepare or certify a record for filing in the circuit court in a timely manner, a party may take an appeal by filing an affidavit in the office of the circuit clerk, within forty (40) days from the date of the entry of the judgment in the district

court, showing (i) that the appealing party has requested the clerk of the district court to prepare and certify the record for purposes of appeal and (ii) that the clerk has not done so within thirty (30) days from the date of the entry of the judgment in the district court. The appealing party shall promptly serve a copy of the affidavit upon the clerk of the district court and upon the opposing attorney or party. The circuit court shall acquire jurisdiction of the appeal upon the filing of the affidavit. On motion of the appealing party, the circuit court may order the clerk of the district court to prepare, certify, and file the record in the circuit court. (3) If service of the certified copies of the district court docket sheet or record and the complaint or claim form is not made within 120 days after filing the district court complaint or claim form with the circuit court or within the time period established by an extension granted pursuant to this subdivision, the action shall be dismissed without prejudice upon motion or upon the court's initiative. The court, upon written motion and a showing of good cause, may extend the time for service if the motion is made within 120 days of the filing with the circuit court the district court complaint or claim form or within the time period established by a previous extension. To be effective, an order granting an extension must be entered within 30 days after the motion to extend is filed, by the end of the 120-day period, or by the end of the period established by the previous extension, whichever date is later. (c) Procedure on Appeal From District Court. (1) All the parties shall assert all their claims and defenses in circuit court. Within 30 days after a party serves upon counsel for all other parties, and upon any party not represented by counsel, certified copies of the district court docket sheet or district court record and a certified copy of the district court complaint or claim form, the party who was the defendant in district court shall file its answer, motions, and claims within the time and manner prescribed by the Arkansas Rules of Civil Procedure and the case shall otherwise proceed in accordance with those rules. (2) At the time they file their complaint, answer, motions, and claims, the parties shall also file with the circuit clerk certified copies of any district court papers that they believe are material to the disputed issues in circuit court. Any party may also file certified copies of additional district court papers at any time during the proceeding as the need arises. (3) As soon as practicable after the pleadings are closed, the circuit court shall establish a schedule for discovery, motions, and trial. (4) Except as modified by the provisions of this rule, and except for the inapplicability of Rule of Civil Procedure 41, the Arkansas Rules of Civil Procedure shall govern all the circuit court proceedings on appeal of a district court judgment as if the case had been filed originally in circuit court. (d) Supersedeas Bond on Appeal From District Court. Whenever an appellant entitled thereto desires a stay on appeal to circuit court in a civil case, he shall present to the district court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall satisfy and perform the judgment, decree, or order of the inferior court. All proceedings in the district court shall be stayed from and after the date of the court's order approving the supersedeas bond. (e) Special Provisions For Appeals From County Court to Circuit Court. Unless otherwise provided in this subdivision, the requirements of subdivisions (a), (b), (c), and (d) govern appeals from county court to circuit court. A party may take an appeal from the final judgment of a county court by filing a notice of appeal with the clerk of the circuit court having jurisdiction over the matter within thirty (30) days from the date that the county court filed its order with the county clerk. A certified copy of the county court's final judgment must be attached to the notice of appeal. In the circuit-court proceeding, the party who was the petitioner or plaintiff in county court shall have all the obligations of the plaintiff in a case that has been appealed from district court to circuit court. If there were no defendants in the county-court proceeding, then the petitioner/plaintiff shall name all necessary, adverse parties

as defendants in its complaint filed in circuit court. (f) Administrative Appeals. (1) If an applicable statute provides a method for filing an appeal from a final decision of any governmental body or agency and a method for preparing the record on appeal, then the statutory procedures shall apply. (2) If no statute addresses how a party may take such an appeal or how the record shall be prepared, then the following procedures apply. (A) Notice of Appeal. A party may appeal any final administrative decision by filing a notice of appeal with the clerk of the circuit court having jurisdiction of the matter within thirty (30) days from the date of that decision. The notice of appeal shall describe the final administrative decision being appealed and specify the date of that decision. The date of decision shall be either the date of the vote, if any, or the date that a written record of the vote is made. The party shall serve the notice of appeal on all other parties, including the governmental body or agency, by serving any person described in Arkansas Rule of Civil Procedure 4(d)(7), by any form of mail that requires a return receipt. (B) The Record on Appeal. Within thirty (30) days after filing its notice of appeal, the party shall file certified copies of all the materials the party has or can obtain that document the administrative proceeding. Within thirty (30) days after these materials are filed, any opposing party may supplement the record with certified copies of any additional documents that it believes are necessary to complete the administrative record on appeal. At any time during the appeal, any party may supplement the record with a certified copy of any document from the administrative proceeding that is not in the record but the party believes the circuit court needs to resolve the appeal. (C) Procedure on Appeal. As soon as practicable after all the parties have made their initial filing of record materials, the court shall establish a schedule for briefing, hearings, and any other matters needed to resolve the appeal.

#### **Comment Text:**

**Addition to Reporter's Notes, 2014 Amendment:** The amendment addresses several problems that have arisen in practice under District Court Rule 9. The rule prescribed that an appeal was taken from the district court by filing with the circuit clerk "a certified copy of the district court's docket sheet," rather than the district court record as had been required prior to a 2008 amendment of the rule. In *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913, the appellant did not file the docket sheet but filed all of the actual documents in the case, in effect, the district court record. Since the appellant had not complied with the Rule 9(b) requirement that the docket sheet be filed, the Arkansas Supreme Court held that the circuit court did not have jurisdiction and upheld dismissal of the case. The amended rule allows perfecting the appeal either by filing a certified copy of the docket sheet or by filing a certified copy of the district court record (See *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913 (Brown, J., concurring) (suggesting that revision of the rule to allow appeal by filing either the docket sheet or the record would eliminate the harsh result of the case.) 2010 Ark. 308, 365 S.W.3d 913). District Court Rule 9 also required that, on appeal from district court, the plaintiff "shall file a complaint and plead all its claims in circuit court." However, the rule was silent on what happened if the plaintiff failed to plead again by filing a complaint in circuit court. If the defendant appealed and the plaintiff failed to file a complaint in circuit court, the lack of procedural guidance from the rule could leave the circuit court with the undesirable choice of either dismissing the plaintiff's case and awarding judgment to the defendant due to the failure of the plaintiff to follow the dictates of the rule or allowing the case to proceed despite lack of compliance with the rule's re-pleading requirement. A survey of circuit court practices in regard to the re-pleading requirement found no uniform approach in dealing with the re-pleading issue. To a limited extent, the 2013 decision of *Circle D Contractors, Inc. v. Bartlett* ameliorated the repleading dilemma by holding that "[t]he requirement that a plaintiff refile its

complaint in circuit court is not jurisdictional; it is procedural, thus only substantial compliance is required.? 2013 Ark. 131, at 3. The amendment addresses the re-pleading problem by requiring that, on appeal by either party, a certified copy of the district court complaint or claim form must be filed with the circuit court clerk in addition to a certified copy of the district court docket sheet or the district court record. The amendment also provides that the filing in circuit court of the certified copy of the district court complaint or claim form constitutes the filing of the complaint for purposes of commencing the action in circuit court in accordance with the requirements of Arkansas Rule of Civil Procedure 3(a). After filing the certified copy of the district court complaint or the claim form, the case then proceeds in circuit court as prescribed by the Arkansas Rules of Civil Procedure with defendant filing its answer, motions, and claims within the time and manner prescribed by the rules and the plaintiff filing an amended complaint, if desired. This approach to resolving the re-pleading issue reinforces the view expressed in the 2008 Addition to Reporter's Notes that "appeals from district court are appellate in form but original in fact." Although District Court Rule 9 required service of the appeal documents on all parties, the only method of service prescribed by the rule was by "any form of mail which requires a signed receipt." This single method of service made processing the appeal dependent on the person to be served signing the receipt for the mail. The revised rule provides several other methods of service in addition to service by signed return receipt mail. In addition, the rule provides that failure to serve the appeal documents does not affect the validity of the appeal. District Court Rule 9 previously did not prescribe a time limit for service of the appeal documents (under the revised rule the appeal documents are certified copies of the district court docket sheet or district court record and a certified copy of the district court complaint or claim form). Subsection (b)(3) of the revised rule borrows the Arkansas Rule of Civil Procedure 4(i) 120-day time limit for service of summons as the time limit for service of the appeal documents. As with Ark. R. Civ. P. 4(i), the time limit may be extended upon motion and a showing of good cause made within 120 days of filing the suit or within the time period established by a previous extension. The revision to District Court Rule 9 also addresses an issue that arose in the 2013 Court of Appeals decision of *Kankey v. State*, 2013 Ark. App. 68. In that case, within the time required for filing the record the appellant lodged what purported to be the complete, original district court record with the circuit court. However, the district-court record had not been certified when it was filed with the circuit court, although the district clerk later belatedly certified the record. The rule made no provision for belated preparation or certification of the district court record. The revised rule provides that if the clerk of the district court, after request, does not timely prepare or certify the record, a party may take an appeal by filing an affidavit with the circuit clerk within 40 days of the judgment showing that the appealing party requested preparation and certification of the record and that the clerk failed to do so within 30 days of the entry of the district court judgment. The filing of the affidavit gives the circuit court jurisdiction of the appeal and the circuit court may then order the clerk of the district court to prepare, certify, and file the record in circuit court. The revision is based on similar procedure under Arkansas Rule of Criminal Procedure 36(d). Several other minor changes to District Court Rule 9 are not substantive and are made to enhance the clarity of the rule and to delete rule language that the 2013 amendments rendered redundant, unnecessary, or confusing.

### **History Text:**

History. Amended May 26, 1987, effective July 1, 1987; amended November 18, 1996, effective March 1, 1997; amended January 22, 2004; revised December 9, 2004, effective January 1, 2005. Revised October 9, 2008; effective January 1, 2009; amended March 13, 2014, effective July 1, 2014.

**Associated Court Rules:**

District Court Rules

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