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Rule 1. Scope Of Rules.

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These rules shall govern the procedure in civil appeals to the Arkansas Supreme Court or Court of Appeals. Whenever the words Supreme Court appear in these rules, the words Court of Appeals shall be substituted in applying the rules in a case in which jurisdiction of the appeal is in the Court of Appeals under Rule 1-2 of the Rules of the Supreme Court and Court of Appeals.

History. Amended May 5, 1980; adopted and amended July 10, 1995, effective January 1, 1996

Rule 2. Appealable Matters; Priority.

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(a) An appeal may be taken from a circuit court to the Arkansas Supreme Court from:

(1) A final judgment or decree entered by the circuit court;

(2) An order which in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action;

(3) An order which grants or refuses a new trial;

(4) An order which strikes out an answer, or any part of an answer, or any pleading in an action;

(5) An order which vacates or sustains an attachment or garnishment;

(6) An interlocutory order by which an injunction is granted, continued, modified, refused, or dissolved, or by which an application to dissolve or modify an injunction is refused;

(7) An interlocutory order appointing a receiver, or refusing to wind up a pending receivership or to take the appropriate steps to accomplish the purposes thereof, such as directing a sale or other disposal of property held thereunder;

(8) An order which disqualifies an attorney from further participation in the case;

(9) An order granting or denying a motion to certify a case as a class action in accordance with Rule 23 of the Arkansas Rules of Civil Procedure;

(10) An order denying a motion to dismiss or for summary judgment based on the defense of sovereign immunity or the immunity of a government official;

(11) An order or other form of decision which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in a case involving multiple claims, multiple parties, or both, if the circuit court has directed entry of a final judgment as to one or more but fewer than all of the claims or parties and has made an express determination, supported by specific factual findings, that there is no just reason for delay, and has executed the certificate required by Rule 54(b) of the Rules of Civil Procedure;

(12) An order appealable pursuant to any statute in effect on July 1, 1979, including Ark. Code Ann. § 16-108-228 (formerly § 16-108-219) (an order denying a motion to compel arbitration or granting a motion to stay arbitration, as well as certain other orders regarding arbitration) and 28-1-116 (all orders in probate cases, except an order removing a fiduciary for failure to give a new bond or render an accounting required by the court or an order appointing a special administrator); and

(13) A civil or criminal contempt order, which imposes a sanction and constitutes the final disposition of the contempt matter.

(b) 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 intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from.

(c) Except as provided in Rule 6-9 of the Rules of the Supreme Court and Court of Appeals, appeals in juvenile cases shall be made in the same time and manner provided for appeals from circuit court.

(1) In delinquency cases, the state may appeal only under those circumstances that would permit the state to appeal in criminal proceedings.

(2) Pending an appeal from any case involving a juvenile out-of-home placement, the circuit court retains jurisdiction to conduct further hearings.

(3) In juvenile cases where an out-of-home placement has been ordered, orders resulting from the hearings set below are final appealable orders:

(A) adjudication and disposition hearings;

(B) review and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b); and (C) termination of parental rights.

(d) All final orders awarding custody are final appealable orders.

(e) Appeals in criminal cases have priority over all other business. With respect to civil cases, appeals under subdivisions (a)(6), (a)(7), (a)(9), (c)(3), and (d) of this rule take precedence.

(f)(1) The Supreme Court may, in its discretion, permit an appeal from an order denying a motion for a protective order pursuant to Rule of Civil Procedure 26(c), an order pursuant to Rule of Civil Procedure 37 compelling production of discovery, or an order denying a motion to quash production of materials pursuant to Rule 45 when the defense to production is any privilege recognized by Arkansas law or the opinion-work-product protection. A petition for permission to appeal must be filed with the Supreme Court within 14 calendar days after the order is entered. The circuit court?s order shall be supported by factual findings and shall address the factors (a)-(f) listed below. The decision of the Supreme Court to grant permission to appeal will be guided by:

(a) the need to prevent irreparable injury;

(b) the likelihood that the petitioner?s claim of privilege or protection will be sustained;

(c) the likelihood that an immediate appeal will delay a scheduled trial date;

(d) the diligence of the parties in seeking or resisting an order compelling the discovery in the circuit court;

(e) the circuit court?s written statement of reasons supporting or opposing immediate review; and

(f) any conflict with precedent or other controlling authority as to which there is substantial ground for difference of opinion.

(2) The petition must address the factors listed in subdivision (f)(1) and shall be limited to 10 pages exclusive of supporting materials. Petitioner shall attach in an addendum sufficient supporting documentation from the circuit court record for the Supreme Court to understand the dispute and the issues that would be presented in the permissive appeal. A party may file a response within 10 calendar days after the petition is served. Any response shall also be limited to 10 pages exclusive of any supplementary addendum. Replies and petitions for rehearings shall not be allowed.

(3) Neither the petition nor the grant of permission for an appeal shall delay any scheduled trial or lower-court proceeding unless the circuit court or the Supreme Court orders. If the Supreme Court grants the petition, the petitioner must file a notice of appeal with the circuit clerk within 10 calendar days of the Supreme Court?s order and file the record on appeal within 30 calendar days from the entry of the order allowing 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 subdivision 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). The addition of new paragraph (f) gives the Arkansas Supreme Court discretion to grant permission to take an interlocutory appeal of an order under Ark. R. Civ. P. 37 compelling production of materials or information or an order under Ark. R. Civ. P. 45 denying a motion to quash production of materials for which a privilege or opinion-work-product is claimed. In part the rule is modeled on the successful federal court discretionary interlocutory appeal procedures found in Title 28 U.S.C. § 1292(b) and Federal Rule of Civil Procedure 23(f). The availability of interlocutory appellate review of privilege and work product matters was previously restricted by statements in several Arkansas cases that interlocutory review will not be allowed ?even when the alleged discovery violation pertains to material the petitioning party claims are privileged.? Cooper Tire & Rubber Co. v. Phillips Cnty. Circuit Court, 2011 Ark. 9 Cite as 2012 Ark. 236 183, at 6, ___ S.W.3d ___; Monticello Healthcare Center, LLC v.Goodman, 2010 Ark. 339, at 18, ___ S.W.3d ___; Baptist Health v. Circuit Court of Pulaski Cnty., 373 Ark. 455, 284 S.W.3d 499 (2008). The concern expressed by the court was that allowing interlocutory review could lead to its having to make piecemeal decisions whenever an application for discovery is unsuccessfully resisted at the trial court level. However, a privilege issue that arises within the context of a discovery request also implicates substantive rights that extend well beyond the scope of discovery concerns. See generally Sarah Blassingame Leflar, Reviving the Privilege Doctrine: The appealability of Orders Compelling the Production of Privileged Information, 62 Ark. L. Rev. 283, 288 (2009). See also Jonathan P. Rich, Note, The Attorney-Client Privilege in Congressional Investigations, 88 Colum. L. Rev. 145, 165 (1988). In addition, the Arkansas Supreme Court has recognized an exception to the general doctrine barring interlocutory appellate review of discovery matters where the issue is not merely the resolution of a discovery matter but involves another area of law that could be impacted by the resolution of the discovery matter. Cooper Tire & Rubber Co. v. Phillips Cnty. Circuit Court, 2011 Ark. 183, at 6. (Cooper involved an order to produce confidential trade secret information for which privilege protection is recognized under Rule 507 of the Arkansas Rules of Evidence.) New subdivision (f)(1) recognizes that the integrity of certain relationships and information will be

irretrievably compromised if appellate review of a privilege-contested order allowing discovery must wait until after the circuit court enters a final judgment. Belated vindication cannot re-cloak the disclosed information. The amendment establishes a mechanism by which the court can balance the interest of judicial efficiency and the values inherent in substantive-privilege law. The concern with allowing piecemeal interlocutory appeals of discovery matters is addressed by narrowly limiting the appeal process to privilege matters and by giving the court authority to allow an appeal only if in the court's discretion the matter is worthy of further appellate consideration. Subdivision (f)(1) establishes guidelines for the court's decision whether to allow the appeal. To help ensure development of an adequate record for the Supreme Court?s consideration of whether to allow an appeal, the trial court is required to make factual findings and address the guideline factors (a) through (f) (see also corresponding Ark. R. Civ. P. 26 (f)). In contrast to the factual findings required under Ark. R. Civ. P. 54 (b), subdivision (f)(1) does not make the findings a requirement of the court?s jurisdiction on appeal (see Ark. R. Civ. P. 54 (b)(2)).The contents of the petition to allow an appeal and associated procedures are prescribed, in part, by subdivision (f)(2). The subdivision (f)(2) procedures allow the filing of a response but prohibit a reply or a petition for rehearing. Under subdivision (f)(3) appeal proceedings are not to delay trial or other lower-court proceedings unless ordered by the circuit court or the Supreme Court. The initial procedures to be followed if the court allows an appeal are also prescribed by subdivision (f)(3).

Addition to Reporter?s Notes, 2014 Amendment: A 2012 amendment to Ark. R. App. P.?Civil 2 created a new paragraph (f) that gave the Arkansas Supreme Court discretion to grant permission to take an interlocutory appeal of an order under Ark. R. Civ. P. 37 compelling production of materials or information or an order under Ark. R. Civ. P. 45 denying a motion to quash production of materials for which a privilege or opinion-work-product is claimed. Paragraph (f) is now amended to add appeals from orders denying motions for a protective order under Ark. R. Civ. P. 26(c) to the list of permissive interlocutory appeals of privilege issues allowed under Ark. R. App. P?Civil 2(f). Adding denial of motions for protective orders to the list of permissive interlocutory appeals allowed under the rule is consistent with the policy underlying paragraph (f) of balancing the interests of judicial efficiency and the values inherent in substantive-privilege law and will not significantly enhance the likelihood of piecemeal interlocutory appeals of discovery matters.

Addition to Reporter's Notes, 2018 Amendment: Act 695 of 2011 completely revised the Uniform Arbitration Act, and the appeals provision, formerly appearing at Ark. Code Ann. § 16-108-219, was recodified at § 16-108-228. Subsection (a)(12) of the rule was amended to reflect this change.

History. Amended July 12, 1982; amended March 18, 1985; amended November 11, 1991, effective January 1, 1992; amended November 8, 1993, effective January 1, 1994; adopted and amended July 10, 1995, effective January 1, 1996; adopted and amended effective March 4, 1999; amended January 27, 2000; amended February 1, 2001; amended June 7, 2001, effective July 1, 2001; amended March 13, 2003; amended May 18, 2006, effective July 1, 2006; Amended June 17, 2010, effective July 1, 2010; Amended May 24, 2012, effective July 1, 2012; amended March 13, 2014, effective July 1, 2014; amended December 7, 2017, effective January 1, 2018.

(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. 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.

Rule 4. Appeal; When Taken.

(a) Time for filing notice of appeal. Except as otherwise provided in subdivisions (b) and (c) of this rule, a notice of appeal shall be filed within thirty (30) days from the entry of the judgment, decree or order appealed from. A notice of cross-appeal shall be filed within ten (10) days after receipt of the notice of appeal, except that in no event shall a cross-appellant have less than thirty (30) days from the entry of the judgment, decree or order within which to file a notice of cross-appeal. A notice of appeal filed after the circuit court announces a decision but before the entry of the judgment, decree, or order shall be treated as filed on the day after the judgment, decree, or order is entered.

(b) Extension of time for filing notice of appeal.

(1) Upon timely filing in the circuit court of a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules of Civil Procedure, a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), a motion for a new trial under Rule 59(a), or any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment, the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the circuit court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.

(2) A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such a notice is effective to appeal the underlying judgment, decree, or order. A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice, complying with Rule 3(e). No additional fees will be required for filing an amended notice of appeal.

(3) Upon a showing of failure to receive notice of the judgment, decree or order from

which appeal is sought, a showing of diligence by counsel, and a determination that no party would be prejudiced, the circuit court shall, upon motion filed within 180 days of entry of the judgment, decree, or order, extend the time for filing the notice of appeal for a period of fourteen (14) days from the day of entry of the extension order. Notice of any such motion shall be given to all other parties in accordance with Rule 5 of the Arkansas Rules of Civil Procedure. Expiration of the 180-day period specified in this paragraph does not limit the circuit court's power to act pursuant to Rule 60 of Arkansas Rules of Civil Procedure.

(c) Exception for election cases. If a statute of this State pertaining to elections prescribes a time period for taking an appeal, the period so prescribed shall apply in any case subject to the statute.

(d) When judgment is entered. A judgment or order is entered within the meaning of this rule when it is filed in accordance with Administrative Order No. 2(b).

History. Amended July 7, 1986, effective September 15, 1986; amended December 21, 1987, effective March 14, 1988; amended November 8, 1993, effective January 1, 1994; amended July 10, 1995; adopted and amended July 10, 1995, effective January 1, 1996; amended January 22, 1998; amended January 28, 1999; amended January 27, 2000; amended February 1, 2001; amended June 7, 2001, effective July 1, 2001; amended March 13, 2003; amended January 22, 2004; amended May 25, 2006

Rule 5. Record; Time For Filing.

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(a) When filed.The record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court as hereinafter provided. When, however, an appeal is taken from an interlocutory order under Rule 2(a)(6) or (7), the record must be filed with the clerk of the Supreme Court within thirty (30) days from the entry of such order.

(b) 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 (a) of this rule or a prior extension order, may extend the time for filing the record only if it makes the following findings:

(A) The appellant has filed a motion explaining the reasons for the requested extension and served the motion on all counsel of record;
(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 appellant, in compliance with Rule 6(b), has timely ordered the stenographically reported material from the court reporter and made any financial arrangements required for its preparation; and
(E) An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal or for the circuit clerk to compile the record..

(2) In no event shall the time 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 postjudgment motion is deemed to have been disposed of under Rule 4(b)(1), 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 (a) of this rule or a prior extension order, the appellant may file with the clerk of the Supreme Court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

(c) Partial record. Prior to the time the complete record on appeal is filed with the clerk of the Arkansas Supreme Court as provided in this rule, any party may docket the appeal to make a motion for dismissal or for any other intermediate order by filing a partial record with the clerk. At the request of the moving party, the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken shall certify the portion of the record designated by that party as being a true and correct copy. It shall be the responsibility of the moving party to transmit the certified partial record to the clerk of the Arkansas Supreme Court. Addition to Reporter's Notes, 2012 Amendment: Arkansas Rule of Appellate Procedure?Civil 5(b)(1)(E) is revised to give the circuit court authority to extend the time for filing the record on appeal when necessary for the circuit clerk to compile the record. The rule previously gave that authority to the circuit court only when necessary for the court reporter to include the stenographically reported material in the record on appeal. However, in its per curiam opinion of Bowman v. Centennial Bank, 2011 Ark. 34, the Arkansas Supreme Court noted that the rule failed to address the situation when the circuit clerk needs additional time to compile the record. To extend the time for filing the record on appeal because the circuit clerk needs additional time, the circuit court must make the same prerequisite findings under Rule 5(b)(1)(A) through (E) required for granting extension of time for filing the record when the court reporter needs additional time to compile the record.

History. Amended May 20, 1985; amended July 7, 1986, effective September 15, 1986; adopted and amended July 10, 1995, effective January 1, 1996; amended January 27, 2000; amended June 7, 2001, effective July 1, 2001; amended March 13, 2003; amended May 25, 2006; Amended May 24, 2012, effective July 1, 2012.

Rule 6. Record On Appeal.
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(a) Composition of record. The record shall be compiled in accordance with the rules of the Arkansas Supreme Court and Court of Appeals.

(b) Transcript of proceedings.On or before filing the notice of appeal, the appellant shall order from the reporter a transcript of such parts of the proceedings as he has designated in the notice of appeal and make any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510(c). If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or contrary thereto, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. If the appellant has designated less than the entire record or proceedings, the appellee, if he deems a transcript of other parts of the proceedings to be necessary, shall, within ten (10) days after the receipt of the notice of appeal, file and serve upon the appellant (and upon the court reporter if additional testimony is designated) a designation of the additional parts to be included. The appellant shall then direct the reporter to include in the transcript all testimony designated by appellee.

(c) Record to be abbreviated. All matters not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the appellate court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties. Where parties in good faith abbreviate the record by agreement or without objection from opposing parties, the appellate court shall not affirm or dismiss the appeal on account of any deficiency in the record without notice to appellant and reasonable opportunity to supply the deficiency. Where the record has been abbreviated by agreement or without objection from opposing parties, no presumption shall be indulged that the findings of the circuit court are supported by any matter omitted from the record.

(d) Statement of the evidence or proceedings when no report was made or the transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best means available, including his recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments thereto within ten (10) days after service upon him. Thereupon the statement and any objections or proposed amendments shall be submitted to the circuit court for settlement and approval and as settled and approved shall be included in the record on appeal by the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken.

(e) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the circuit court, the difference shall be submitted by motion to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the circuit court before the record is transmitted to the appellate court, or the appellate court on motion made no later than 30 days after the appellee's brief is filed in the appellate court, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the appellate court. No correction or modification of the record shall be made without prior notice to all parties.

(f) Access to parts of record under seal. When the record contains materials under seal, all counsel of record and pro se litigants shall have access to all parts of the record including the material under seal. For good cause shown on the motion of any party, the appellate court may modify the terms of access. Explanatory Note. This minor amendment harmonizes part of this Rule with part of Rule of Appellate Procedure?Civil 4(a). Under the latter rule, a party has at least ten days after receiving a notice of appeal to file a notice of cross appeal. The deadline for taking that step should be the same as the deadline for designating additional record materials under Rule of Appellate Procedure?Civil 6(b). The change makes Rule 6 track Rule 4: the ten-day window for filing either a cross appeal or a designation of additional record materials opens when a party receives a notice of appeal and closes ten days later.

Addition to Reporter's Notes, 2014 Amendment: Rule 6(e) provided that if anything material to either party is omitted from the record by error, accident, or misstatement, the appellate court, on motion, could order that the omission or misstatement be corrected. However, the rule did not impose a time limit for making the motion. The amendment sets a time limit for making the motion of not later than 30 days after the appellee's brief has been filed in the appellate court.

History. Adopted and amended July 10, 1995, effective January 1, 1996; amended June 7, 2001, effective July 1, 2001; amended February 10, 2005; Amended October 23, 2008, effective January 1, 2009; amended March 13, 2014, effective July 1, 2014.

Rule 7. Certification And Transmission Of Record.
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(a) Certification. The clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken shall certify the record as being a true and correct copy of the record as designated by the parties.
(b) Transmission. After the record has been duly certified by the clerk, it shall be the responsibility of the appellant to transmit such record to the clerk of the appellate court for filing and docketing.

History. Adopted and amended July 10, 1995, effective January 1, 1996; amended June 7, 2001, effective July 1, 2001

Rule 8. Stay Pending Appeal.
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(a) Supersedeas defined; necessity. A supersedeas is a written order commanding appellee to stay proceedings on the judgment, decree or order being appealed from and is necessary to stay such proceedings.

(b) Supersedeas; by whom issued. A supersedeas shall be issued by the clerk of the circuit court that entered the judgment, decree or order being appealed from unless the record has been lodged with the appellate court in which event the supersedeas shall be issued by the clerk of the appellate court.

(c) Supersedeas bond. (1) Whenever an appellant entitled thereto desires a stay on appeal, he shall present to the 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 circuit court. However, the maximum bond that may be required in any civil action under any legal theory shall be limited to twenty-five million dollars ($25,000,000), regardless of the amount of the judgment.

> (2) If a party proves by a preponderance of the evidence that the party who has posted a bond in accordance with paragraph (1) of this subdivision (c) is purposely dissipating or diverting assets outside of the ordinary course of its business for the purpose of evading ultimate payment of the judgment, the court may enter orders as are necessary to prevent dissipation or diversion, including requiring that a bond be posted equal to the full amount of the judgment.

(d) Proceedings against sureties. If security is given in the form of a bond or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the circuit court and irrevocably appoints the clerk of the circuit court that entered the judgment, decree, or order as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion in the circuit court without the necessity of an independent action. The motion and such notice of the motion as the circuit court prescribes shall be filed with the clerk, who shall forthwith mail copies to the sureties if their addresses are known.

Addition to Reporter's Note (2014 Amendment): A second paragraph has been added to subdivision (c) of the rule, and the original text designated accordingly. The second paragraph and a new sentence at the end of the first paragraph are taken from section 17 of Act 649 of 2003, codified at Ark. Code Ann. § 16-55-214. With the adoption of these changes, the statute is superseded pursuant to Ark. Code Ann. § 16-11-301. Also superseded are Ark. Code Ann. §§ 16-68-301 to -306, outdated provisions referenced in section 16-55-214 that were enacted as part of the Civil Code of 1868.

The last sentence of paragraph (c)(1) sets the maximum amount of a supersedeas bond at $25 million, as did section 16-55-214. Like the statute, paragraph (c)(2) provides an exception when necessary to prevent the appellant from diverting or dissipating assets to evade payment of the judgment.

History. Adopted and amended July 10, 1995, effective January 1, 1996; amended June 7,

2001, effective July 1, 2001; amended August 7, 2014, effective January 1, 2015.

Rule 9. Extension Of Time When Clerk'S Office Is Closed.
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Whenever the last day for taking any action under these rules or under the Rules of the Supreme Court and Court of Appeals falls on a Saturday, Sunday, legal holiday, or other day when the clerk's office is closed, the time for such action shall be extended to the next business day.

History. Adopted May 5, 1980; adopted and amended July 10, 1995, effective January 1, 1996; amended January 22, 2004

Rule 10. Uniform Paper Size.
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All notices of appeal, motions, orders, records, transcripts, and other papers required or authorized by these rules shall be on 8 1/2" x 11" paper.

History. Adopted May 15, 1989; adopted and amended July 10, 1995, effective January 1, 1996

Rule 11. Certification By Parties And Attorneys; Frivolous Appeals; Sanctions.
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(a) The filing of a brief, motion or other paper in the Supreme Court or the Court of Appeals constitutes a certification of the party or attorney that, to the best of his knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact; is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; is not filed for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and that the document complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information. A party or an attorney who files a paper in violation of this rule, or party on whose behalf the paper is filed, is subject to a sanction in accordance with this rule.

(b) The Supreme Court or the Court of Appeals shall impose a sanction upon a party or attorney or both for

(l) taking or continuing a frivolous appeal or initiating a frivolous proceeding,
(2) filing a brief, motion, or other paper in violation of subdivision (a) of this rule,
(3) prosecuting an appeal for purposes of delay in violation of Rule 6-2 of the Rules of the Supreme Court and Court of Appeals, and
(4) any act of commission or omission that has an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. For purposes of this rule, a frivolous appeal or proceeding is one that has no reasonable legal or factual basis.

(c) Sanctions that may be imposed for violations of this rule include, but are not limited to, dismissal of the appeal; striking a brief, motion, or other paper; awarding actual costs and expenses, including reasonable attorneys' fees; imposing a penalty payable to the court;

awarding damages attributable to the delay or misconduct; and, where there has been delay, advancing the case on the docket and affirming.

(d) A party may by motion request that a sanction be imposed upon another party or attorney pursuant to this rule, or the court may impose a sanction on its own initiative. A motion shall be in the form required by Rule 2-1 of the Rules of the Supreme Court and Court of Appeals, with citations to the record where appropriate, and will be called for submission three weeks after filing. The opposing party may file a response within 21 days of the filing of the motion. If the court on its own initiative determines that a sanction may be appropriate, the court shall order the party or attorney to show cause in writing why a sanction should not be imposed on the party or attorney or both. Addition to Reporter?s Notes, 2008 Amendment: Subdivision (a) has been amended by adding a new element to the certifications made by a party or an attorney when that person signs a brief, motion, or other paper, including a petition for rehearing or review. The change parallels the 2008 amendment to Rule of Civil Procedure 11. When counsel or a pro se litigant signs a brief, motion, petition, or other paper filed with the appellate court, the person is also certifying compliance with Administrative Order 19?s mandate for redaction of necessary and relevant confidential information in the paper being filed. The redaction/filing-under-seal procedure for confidential information is outlined in Rule of Civil Procedure 5(c)(2)(A) & (B) and explained in the Addition to Reporter?s Notes, 2008 Amendment to that Rule.

History. Added November 18, 1996, effective March 1, 1997; Amended October 23, 2008, effective January 1, 2009.

Rule 12. Substitution of Parties.

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(a) *Death of party*. (1) If a party dies before the record has been filed in the appellate court or the appellate court has otherwise acquired jurisdiction of the case, substitution of parties is governed by Rule 25 of the Rules of Civil Procedure.

(2) If a party dies after the appellate court acquires jurisdiction of the case, the decedent's personal representative may be substituted as a party on motion filed with the Clerk of the Supreme Court and Court of Appeals by the personal representative, by any party, or by the attorney for the deceased party. The motion of a party or of the attorney for the deceased party must be served on the representative. If there is no personal representative of the deceased party, any party or the attorney for the deceased party may suggest the death on the record, and, unless within 90 days after the death is suggested on the record a motion is filed to substitute the deceased party's heirs, devisees, personal representative, or special administrator, the court may take appropriate action, including dismissal of the appeal as to the deceased party.

(b) *Transfer of interest*. If an interest of a party is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.

(c) *Incompetency*. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative.

(d) *Public Officers; Death or Separation from Office*. (1) When a public officer is a party to an

action in his or her official capacity and during its pendency dies, resigns, or otherwise ceased to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of the substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his or her official capacity, the officer may be described as a party by the officer's official title rather than by name; but the court may require that the officer's name be added.

Reporter's Notes (2018):

Following the decision in *Planchon v. Local Police & Fire Retirement System*, 2015 Ark. 131, this rule was adopted to create a procedure for substitution of parties on appeal. This rule borrows from provisions in Federal Rule of Appellate Procedure 43 and Arkansas Rule of Civil Procedure 25.

Adopted December 7, 2017, effective January 1, 2018.
