Rule 1. Right Of Appeal.

(a) Right of appeal. Any person convicted of a misdemeanor or a felony by virtue of trial in any circuit court of this state has the right to appeal to the Arkansas Court of Appeals or to the Supreme Court of Arkansas. An appeal may be taken jointly by codefendants or by any defendant jointly charged and convicted with another defendant, and only one (1) appeal need be taken where a defendant has been found guilty of one (1) or more charges at a single trial. Except as provided by ARCrP 24.3(b) there shall be no appeal from a plea of guilty or nolo contendere.
(b) Precedence. Appeals in criminal cases shall take precedence over all other business of the Supreme Court. Appeals under RAP-Civ 2(a)(6), (7), and (9) shall take next precedence in the Supreme Court.
(c) Death of defendant. Upon the death of a defendant, the appeal shall not abate. The appeal shall continue on the relation of a representative party as provided in Ark. R. Civ. P. 25(a).

History. Amended July 13, 1987, effective October 1, 1987; adopted and amended July 10, 1995, effective January 1, 1996; amended December 9, 2004, effective January 1, 2005

Rule 2. Time And Method Of Taking Appeal.

(a) Notice of appeal. Within thirty (30) days from (1) the date of entry of a judgment, or (2) the date of entry of an order denying a post-trial motion under Ark. R. Crim. P. 33.3, or (3) the date a post-trial motion under Ark. R. Crim. P. 33.3 is deemed denied pursuant to subsection (b)(1) of this rule, or (4) the date of entry of an order denying a petition for postconviction relief under Ark. R. Crim. P. 37, the person desiring to appeal the judgment or order or both shall file with the clerk of the circuit court a notice of appeal identifying the parties taking the appeal and the judgment or order or both being appealed. The notice shall also 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 Supreme Court 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 Supreme Court Rules 4-3 and 4-4 in the alternative

court if that is later determined by the appellant to be appropriate.

(b) Time for filing.

(1) A notice of appeal filed after the trial court announces a decision but before the entry of the judgment or order shall be treated as filed on the day after the judgment or order is entered. Upon timely filing in the trial court of a post-trial motion, 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 trial 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 post-trial motions 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 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 subsection (a) of this rule. No additional fees will be required for filing an amended notice of appeal.

(3) *Inmate filing.* If a person confined in a correctional or detention facility files a pro se notice of appeal from a judgment of conviction in circuit court or from a circuit court judgment denying postconviction relief under Arkansas Rule of Criminal Procedure 37, and the notice is not timely under subdivision (a) or (b) of this rule, it shall be deemed filed on the date of its deposit in the facility's legal mail system if the following conditions are satisfied:

(i) on the date the notice of appeal is deposited in the mail, the appellant is confined in a state correctional facility, a federal correctional facility, or a regional or county detention facility that maintains a system designed for legal mail; and

(ii) the notice of appeal is filed pro se; and

(iii) the notice of appeal is deposited with first-class postage prepaid, addressed to the clerk of the circuit court; and

(iv) the notice of appeal contains a notarized statement by the appellant as follows:

"I declare under penalty of perjury:

that I am incarcerated in
_____ [name of facility];

that I am filing this notice of appeal pro se;

that the notice of appeal is being deposited in the facility's legal mail system

on _____[date];

that first-class postage has been prepaid; and

that the notice of appeal is being mailed to _____[list the name and address of each person served with a copy of the notice of appeal].

_____

(Signature)

[NOTARY]"

The envelope in which the notice of appeal is mailed to the circuit clerk shall be retained by the circuit clerk and included in the record of the appeal.

(c) Certificate that transcript ordered.

(1) If oral testimony or proceedings are designated, the notice of appeal shall include a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter, and, except for good cause, that any financial arrangements required by the court reporter pursuant to Ark. Code Ann. 16-13-510(c) have been made. If the appealing party is unable to certify that financial arrangements have been made, then he shall attach to the notice of appeal an affidavit setting out the reason for his inability to so certify. A copy of the notice of appeal shall be mailed to the court reporter.

(2) Alternatively, the notice of appeal shall include a petition to obtain the record as a pauper if, for the purposes of the appeal, a transcript is deemed essential to resolve the issues on appeal.

(3) It shall not be necessary to file with either the notice of appeal or the designation of contents of record any portion of the reporter's transcript of the evidence of proceedings.

(d) Notification of parties. Notification of the filing of the notice of appeal shall be given to all other parties or their representatives involved in the cause by mailing a copy of the notice of appeal to the parties or their representatives and to the Attorney General, but failure to give such notification shall not affect the validity of the appeal.

(e) Failure to pursue appeal. Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken. If no judgment of conviction was entered of record within ten (10) days of the date sentence was pronounced, application for belated appeal must be made within eighteen (18) months of the date sentence was pronounced.

(f) Dismissal of appeal. If an appeal has not been docketed in the Supreme Court, the parties, with the approval of the trial court, may dismiss the appeal by stipulation filed in that court or that court may dismiss the appeal upon a motion and notice by the appellant.

Reporters Notes, 2007 Amendment.

The 2007 amendment clarified that the notice of appeal was to be filed with the circuit clerk, not the circuit judge.

Reporter's Notes, 2015 Amendment.

The 2015 amendment added subsection (b)(3). It is based on the federal "mailbox rule," Fed. R. App. P. 4(c). It is limited to appeals from convictions or denials of Rule 37 relief and applies only to pro se inmates.

History. Amended October 25, 1976; amended December 18, 1978; amended January 25, 1988, effective March 1, 1988; amended January 31, 1994; adopted and amended July 10, 1995, effective January 1, 1996; amended December 4, 1995; 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 November 5, 1998; amended January 28, 1999; amended June 24, 1999; amended November 15, 2007; amended June 25, 2015, effective September 1, 2015.

(a) An interlocutory appeal on behalf of the state may be taken only from a pretrial order in a felony prosecution which (1) grants a motion under Ark. R. Crim. P. 16.2 to suppress seized evidence, (2) suppresses a defendant's confession, or (3) grants a motion under Ark. Rule of Evidence 411(c) to allow evidence of the victim's prior sexual conduct. The prosecuting attorney shall file, within ten (10) days after the entering of the order, a notice of appeal together with a certificate that the appeal is not taken for the purposes of delay and that the order substantially prejudices the prosecution of the case. Further proceedings in the trial court shall be stayed pending determination of the appeal.

(b) Where an appeal, other than an interlocutory appeal, is desired on behalf of the state

following either a misdemeanor or felony prosecution, the prosecuting attorney shall file a notice of appeal within thirty (30) days after entry of a final order by the trial judge.

(c) When a notice of appeal is filed pursuant to either subsection (a) or (b) of this rule, the clerk of the court in which the prosecution sought to be appealed took place shall immediately cause a transcript of the trial record to be made and transmitted to the attorney general, or delivered to the prosecuting attorney, to be by him delivered to the attorney general. If the attorney general, on inspecting the trial record, is satisfied that error has been committed to the prejudice of the state, and that review by the Supreme Court is desirable under this rule, he make take the appeal by filing the transcript of the trial record with the clerk of the Supreme Court within sixty (60) days after the filing of the notice of appeal. (d) The Supreme Court will not consider an appeal filed under either subsection (a)(1) or (2) or subsection (b) of this rule unless the correct and uniform administration of the criminal law requires review by the court. (e) A decision by the Arkansas Supreme Court sustaining in its entirety an order appealed under subsections (a)(1) and (a)(2) shall bar further proceedings against the defendant on the charge; however, a decision sustaining an order appealed under subsection (a)(3) shall not bar further proceedings against the defendant on the charge.

Reporter's Notes, 2011. The 2011 amendment added subsection (d) of the rule to make clear that the "correct and uniform administration of the criminal law" requirement applies only to appeals permitted under subsections (a)(1), (a)(2), and (b) of this rule. Compare *State v. Parker*, 2010 Ark. 173, where the court refused to apply the requirement to an interlocutory appeal under Ark. Code Ann. section 16-42-101(c).

History. Amended June 7, 1976, effective July 7, 1976; amended February 14, 1983; adopted and amended July 10, 1995, effective January 1, 1996; amended December 3, 1998; amended February 17, 2000, effective retroactively to December 3, 1998; amended February 9, 2011, effective April 1, 2011; amended November 15, 2012, effective January 1, 2013.

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

Rule 5. No Bond For Costs.

There shall be no bond for costs as a prerequisite for the appeal of either a felony or misdemeanor conviction.

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

Rule 6. Bail On Appeal.

(a) The appeal bond provided for in this rule shall be filed in the office of the clerk of the court in which the conviction is had, and a copy thereof shall be attached to the bill of exceptions and shall be made a part of the transcript to be filed in the Supreme Court.
(b)(1) When a defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to an offense other than one specified in subsection (b)(2) or (b)(3) of this section, and he is

sentenced to serve a term of imprisonment, and he has filed a notice of appeal, the trial court shall not release the defendant on bail or otherwise pending appeal unless it finds:
(A) By clear and convincing evidence that the defendant is not likely to flee or that there is no substantial risk that the defendant will commit a serious crime, intimidate witnesses, harass or take retaliatory action against any juror, or otherwise interfere with the administration of justice or pose a danger to the safety of any other person; and
(B) That the appeal is not for the purpose of delay and that it raises a substantial question of law or fact.
(2) When the defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to capital murder, the trial court shall not release the defendant on bail or otherwise, pending appeal or for any reason.
(3) When the defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to murder in the first degree, rape, aggravated robbery, or causing a catastrophe, or kidnapping or arson when classified as a Class Y felony, and he has been sentenced to death or imprisonment, the trial court shall not release him on bail or otherwise, pending appeal or for any reason.
(c)(1) If an appeal bond is granted by the trial court, it shall be conditioned on the defendant's surrendering himself to the sheriff of the county in which the trial was held upon the dismissal of the appeal or upon the rendition of final judgment upon the appeal. The trial court may also condition release by imposing restrictions specified in ARCrP 9.3 or other restrictions found reasonably necessary.
(2) Following the affirmance or reversal of a conviction, or the dismissal of an appeal, the Clerk of the Supreme Court shall immediately make and forward to the clerk of the circuit court of the county in which the defendant was convicted a certified copy of the mandate of the Supreme Court.
(3) The circuit clerk, upon receipt of a mandate affirming the conviction, shall immediately file the mandate and notify the sheriff and the bail bondsman or, in appropriate cases, other sureties on the bail bond that the defendant should be surrendered to the sheriff as required by the terms of the bail bond.
(4) If the defendant fails to surrender himself to the sheriff in compliance with the conditions of his bond, the sheriff shall notify the clerk of the circuit court, and the circuit court shall direct that fact to be entered on its records and shall adjudge the bail bond of the defendant, or the money deposited in lieu thereof, to be forfeited.
(5) The defendant having failed to surrender, the circuit clerk shall immediately issue a summons against the sureties on the bail bond requiring them to appear and show cause why judgment should not be rendered against them for the sum specified in the bail bond on account of the forfeiture thereof, which summons shall be made returnable and shall be executed as in civil actions, and the action shall be docketed and shall proceed as an ordinary civil action.
(6) The summons may be served as provided by law in any place in which the sureties may be found, and the service of the summons on the defendant or defendants shall give the court complete jurisdiction of the defendant and cause.
(7) No pleadings on the part of the state shall be required in such cases.
(d) The circuit court in which the defendant was convicted shall retain jurisdiction to hear and decide any motion to revoke the bail of a defendant set at liberty pursuant to this rule, even if the record on appeal has been lodged with the Supreme Court or the Court of Appeals.
(e) If the court in which the defendant was convicted refuses to grant an appeal bond, and an appeal bond shall thereafter be granted by any Justice or Justices of the Supreme Court, the bond shall be conditioned that, upon the dismissal of the appeal or the rendition of the final judgment therein by the Supreme Court, the defendant shall surrender himself as provided in

this rule in execution of the judgment.

History. Amended March 27, 1995; adopted and amended July 10, 1995, effective January 1, 1996; amended effective October 21, 1999

Rule 7. Appeal After Confinement.

If a judgment of confinement in a detentional facility operated by the state has been executed before notice of appeal is given, the defendant shall remain in the detentional facility during the pendency of the appeal, unless discharged by the expiration of his term of confinement or by pardon or parole, or admitted to bail by the trial court prior to the docketing of the appeal in the Supreme Court. If the trial court or a Justice or Justices of the Supreme Court admit the defendant to bail pending appeal, the commitment by which the sentence was carried into execution may be recalled. Upon a reversal, if a new trial is ordered, the defendant shall be removed from the detentional facility and returned to the custody of the sheriff of the county in which the sentence was imposed.

History. Amended December 18, 1978; adopted and amended July 10, 1995, effective January 1, 1996

Rule 8. Exceptions And Motion For New Trial Unnecessary.

Motions for New Trial. It shall not be necessary to file a motion for new trial to obtain review of any matter on appeal. If a motion for new trial is submitted to the trial court, on appeal the appellant shall not be restricted to a consideration of matters assigned therein. Formal exceptions to rulings or orders of the trial court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objections to the action of the court and his grounds therefore; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

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

Rule 9. Acquittal Barring Prosecution.

A judgment in favor of the defendant that operates as a bar to future prosecution of the offense shall not be reversed by the Supreme Court.

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

Rule 10. Automatic Appeal And Mandatory Review In Death-Sentence Cases; Procedure On Affirmance.

(a) Automatic appeal. Upon imposing a sentence of death, the circuit court shall order the

circuit clerk to file a notice of appeal on behalf of the defendant within thirty (30) days after entry of judgment. The notice of appeal shall be in the form annexed to this rule. The court reporter shall transcribe all portions of the criminal proceedings consistent with Article III of the Rules of the Supreme Court and shall file the transcript with the circuit clerk within ninety (90) days after entry of the judgment. Within thirty (30) days after receipt of the transcript, the circuit clerk shall compile the record consistent with Article III and shall file the record with the clerk of the Arkansas Supreme Court for mandatory review consistent with this rule and for review of any additional issues the appellant may enumerate.
(b) Mandatory review. Whenever a sentence of death is imposed, the Supreme Court shall review the following issues in addition to other issues, if any, that a defendant may enumerate on appeal. Counsel shall be responsible for abstracting the record and briefing the issues required to be reviewed by this rule and shall consolidate the abstract and brief for such issues and any other issues enumerated on appeal. The Court shall consider and determine:
(i) pursuant to Rule 4-3(h) of the Rules of the Supreme Court and Ark. Code Ann. 16-91-113(a), whether prejudicial error occurred;
(ii) whether the trial court failed in its obligation to bring to the jury's attention a matter essential to its consideration of the death penalty;
(iii) whether the trial judge committed prejudicial error about which the defense had no knowledge and therefore no opportunity to object;
(iv) whether the trial court failed in its obligation to intervene without objection to correct a serious error by admonition or declaring a mistrial;
(v) whether the trial court erred in failing to take notice of an evidentiary error that affected a substantial right of the defendant;
(vi) whether the evidence supports the jury's finding of a statutory aggravating circumstance or circumstances; and
(vii) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor.
(c) Procedure on affirmance. When a judgment of death has been affirmed, the denial of post-conviction relief has been affirmed, or a mandate has been returned from the United States Supreme Court, and the day of execution has passed, the Clerk of the Supreme Court shall transmit to the Governor a certificate of the affirmance or return of mandate and judgment, to the end that a warrant for the execution of the judgment may be issued by the Governor. Such certificate shall operate to dissolve any stay of execution previously entered by the Supreme Court or any stay of execution previously entered by a circuit court pending disposition of a petition for post-conviction relief.
Form: Notice of Appeal

History. Amended July 6, 1981; adopted and amended July 10, 1995, effective January 1, 1996; amended January 13, 2000; amended July 9, 2001, effective for all cases in which the death penalty is imposed on or after August 1, 2001

Rule 11. Proceedings On Reversal.

Upon a mandate of reversal ordering a new trial being filed in the clerk's office of the circuit court in which the judgment of confinement in the penitentiary was rendered and executed, the clerk shall deliver to the sheriff a copy of the mandate and precept, authorizing and commanding him to bring the defendant from the penitentiary to the county jail, which shall be obeyed by the sheriff and keeper of the penitentiary.

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

Rule 12. Deduction Of Confinement Under Prior Conviction.
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If the defendant upon the new trial is again convicted, the period of his former confinement in the penitentiary shall be deducted by the court from the period of confinement fixed in the last verdict of conviction.

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

Rule 13. Judgment For Costs.
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On the affirmance of a judgment, where the appeal is taken by the defendant, and on the reversal of an appealable order where the appeal is taken by the state, a judgment for costs shall be rendered against the defendant.

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

Rule 14. Matters To Be Considered On Appeal.
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The Supreme Court need only review those matters briefed and argued by the appellant, provided that where either a sentence for life imprisonment or death was imposed, the Supreme Court shall review the entire record for errors prejudicial to the right of the appellant.

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

Rule 15. Action To Be Taken On Appeal.
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A conviction shall be reversed and a new trial ordered where the Supreme Court finds that the conviction is contrary to the Constitution or the laws of Arkansas, or for any reason determines that the appellant did not have a fair trial. Where appropriate, the Supreme Court shall reverse the conviction and order the appellant discharged. In all other cases, the conviction must be affirmed or affirmed as modified.

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

Rule 16. Trial Counsel'S Duties With Regard To Appeal.
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(a) 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.
(b) If court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause in a direct appeal of a conviction or in an appeal in a postconviction proceeding under Ark. R. Crim. P. 37.5, new counsel shall be appointed promptly by the court exercising jurisdiction over the matter of counsel's withdrawal.
(c) If court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause from an appeal in a postconviction proceeding other than a postconviction proceeding under Ark. R. Crim P. 37.5, new counsel may be appointed in the discretion of the court exercising jurisdiction over the matter of counsel's withdrawal.
(d) If pursuant to Ark. Code Ann. 16-13-506(b), the state has paid the court reporter for the transcript that is filed as part of the record with the appellate court and the defendant thereafter moves to substitute retained counsel for appointed counsel, the court may, as a condition of granting the motion, require the defendant to reimburse the state for the cost of the transcript.

History. Adopted and amended July 10, 1995, effective January 1, 1996; amended January 13, 2000; amended December 12, 2002; amended February 22, 2007

Rule 17. Time Extension When Last Day For Action On Saturday, Sunday Or Holiday.

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, or legal holiday, 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

Rule 18. Uniform Paper Size.

All notices of appeal, motions, orders, records, transcripts, and other papers required or authorized by these rules shall be on an 81/2" x 11" paper.

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

Rule 19. Motions Requesting Copy of Record or Brief

(a) A convicted offender who seeks, at public expense, a copy of an appellate brief, the trial record, or a transcript must file a motion in the Supreme Court stating that he or she has requested the documents from his or her counsel and that counsel did not provide the documents. In addition, if the moving party seeks a photocopy (as opposed to a disk or other electronic medium), he or she must demonstrate some compelling need for the brief, record, or transcript.

(b) A copy of the motion shall be served on counsel who prepared or filed the documents. Within 20 days of such service, counsel shall file a response. If the requested documents were not provided to the client, the response shall either commit to provide the requested documents or provide good cause why counsel will not provide the documents.

(c) An attorney has an obligation under Ark. R. Prof?l Conduct 1.16 (d) to surrender documents such as an appellate brief, record or transcript to the client. This obligation requires the attorney to provide only what already exists in his or her possession. But if the attorney possesses paper copies that have been requested, the attorney must supply those paper copies. The attorney?s obligation is determined by Ark. R. Prof?l Conduct 1.16 (d), and this rule is not intended to enlarge or diminish the obligation.

Reporter?s Notes to 2016 amendment.

This rule was added in 2016 to address a recurrent issue faced by the appellate courts: convicted offenders frequently request that the appellate court provide at public expense a copy of the party?s brief or appellate record that had previously been filed. The intent of this amendment is to make clear that a party is first to look to his or her former attorney for a copy of a brief or an appellate record. The attorney may already possess the requested documents and in many cases these documents have already been paid for either by the client or by the state if the party is indigent.

Attorneys are the appropriate first stop for copies because in general a person is not entitled to photocopying at public expense unless he or she demonstrates some compelling need for specific documentary evidence, such as to support an allegation contained in a petition for postconviction relief. Wright v. State, 2010 Ark. 155 (per curiam); Layton v. State, 2009 Ark. 438 (per curiam); Moore v. State, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam); see Austin v. State, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam). Indigency alone does not entitle a petitioner to photocopying at public expense. Gardner v. State, 2009 Ark. 488 (per curiam); see Washington v. State, 270 Ark. 840, 606 S.W.2d 365 (1980) (per curiam). When an appeal has been lodged in either of the appellate courts, all material related to the appeal remains permanently on file with the clerk. Persons may review the material in the clerk's office and photocopy all or portions of it. Absent compelling need, an incarcerated person desiring a photocopy of material related to an appeal may write the court, remit the photocopying fee, and request that the copy be mailed to the prison.

Attorneys have an obligation to surrender these documents to a client or former client upon request. In Travis v. Supreme Court Committee on Professional Conduct, 2009 Ark. 188, the court discussed the attorney?s duty to provide documents in a file to a client pursuant to Ark. R. Prof?l Conduct 1.16 (d), which provides:

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client?s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

(Emphasis added.) To be clear, the attorney?s obligation is to provide documents that are in his or her possession. There is no obligation to recreate them. If counsel desires to keep a

copy of what is surrendered to the client, however, such expense should be borne by the attorney. Moreover, if counsel has a copy of the documents in electronic form only, whether on a disk or other electronic medium, he or she is obligated to provide an electronic copy of the documents.

Adopted March 31, 2016, effective immediately.
