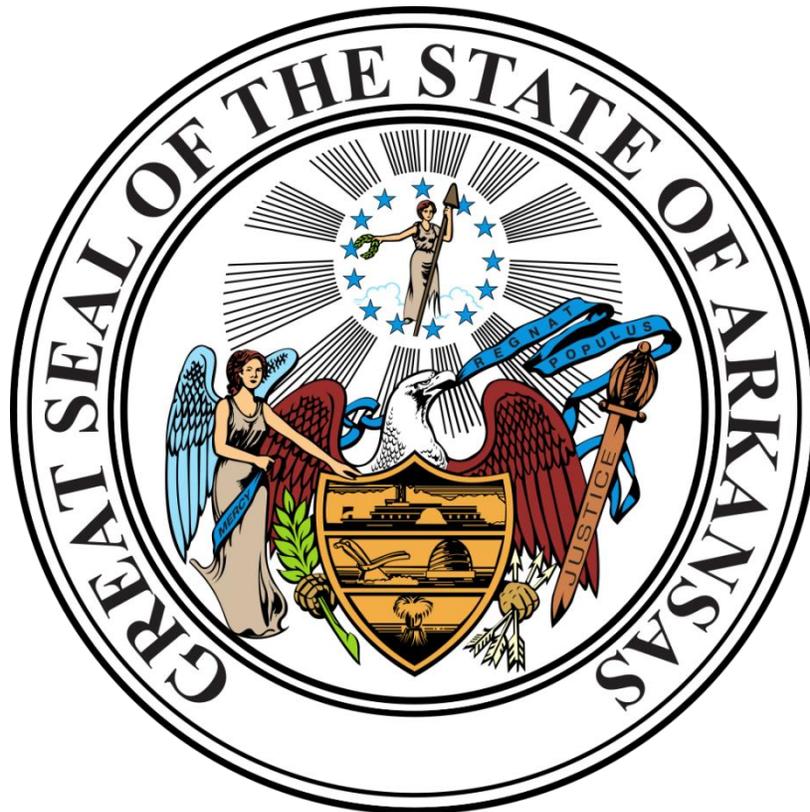


Arkansas Circuit Courts

Judges' Benchbook

Miscellaneous



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Updated March 2014

Welcome to the updated Circuit Court Judges' Benchbook for the Probate Division. We are pleased to provide you with this up-to-date resource that we hope will aid you in your legal research and decision-making.

The new format of the Benchbook lends itself to both hardcopy and digital formats. To make the most of this Benchbook, we suggest that you utilize the embedded links to cases, court rules and other resources. In order to access the case law, you will need to sign in to your Fastcase account using your Arkansas Bar Association log in. It is easy to do. You will need to repeat this process each session that you use the Benchbook. You may consider "bookmarking" these links for future reference. If you do not have access to Fastcase because you are not a member of the Arkansas Bar, find out more about becoming a member at https://www.arkbar.com/pages/Join_Renew_Membership_Online.aspx.

First, go to <https://www.arkbar.com/> and click on "Fastcase."

Then, sign in using your log in information.

Click "Fastcase" one more time, and you will be logged in.

You are now ready to use the links in the Benchbook.

Without closing out your browser, open the Benchbook, which can be found at <https://courts.arkansas.gov/administration/education/publications>.

When you click on a case, it should take you straight to Fastcase.

Note: You will continue to be signed in to Fastcase as long as your browser remains open. If you close out of your browser, you will need to sign in to Fastcase again through the arkbar.org website.

Please note that Fastcase has not yet updated the Arkansas Code Annotated with the changes from the 2013 legislative session, so there are not any hyperlinks to online statutes in the Benchbook. They will be added and the Benchbook republished as soon as they become available. To search for statutes online, you will need to use the General Assembly's website.

First, go to <http://www.lexisnexis.com/hottopics/arcodes/Default.asp>.

Then, type in the statute call numbers and press enter.

(For example, "28-25-104" will take you to the statute for holographic wills.)

As always, the staff at the Administrative Office of the Courts is here to help. If you have any questions, please contact:

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Thank you and enjoy!

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I. Miscellaneous

Cameras in the Courtroom

Source

[Arkansas Supreme Court Administrative Order No. 6](#): Broadcasting, Recording, or Photographing in the Courtroom.

Application

The Administrative Order applies to all courts, circuit, district, and appellate, except as specifically set out in the Order.

Authorization--Exceptions

A judge may authorize broadcasting, recording or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that the participants will not be distracted, nor will the dignity of the proceedings be impaired.

Exceptions include:

- (1) timely objection by party or attorney shall preclude broadcasting, recording or photographing of proceedings;
- (2) timely objection by a witness, upon being informed by the court of the right to refuse any of the above, shall preclude broadcasting, recording or photographing of that witness;
- (3) all domestic relations, probate matters and juvenile matters in circuit court, and all drug court proceedings;
- (4) in camera proceedings unless the court consents;
- (5) jurors, minors without parental or guardian consent, sexual offense victims, and undercover police agents or informants shall not be broadcast, recorded or photographed.

[Arkansas Supreme Court Administrative Order No. 6](#).

Procedure

The court shall direct news media representatives to enter into a pooling arrangement for the broadcasting, recording, or photographing of a trial.

- Requires a written agreement to share with other media representatives.
- Media pool selects one of its own as pool coordinator, who files a plan, subject to the final approval of the court.
- The court retains ultimate control of application of these rules.
- Media pool may have two cameras in the courtroom, one for still photography and one for television photography, both in stationary positions outside the bar of the courtroom.
- Other specifics are included in the rule for audio systems for radio broadcasting, for lighting or wiring, and for installation or removal of the camera and audio equipment.

Contempt

Failure to abide by these provisions can result in a contempt citation against the news representative and agency.

See [Wofford v. State, 330 Ark. 8 \(1997\)](#) (alleged violation of this Order is not appealable after one enters a conditional guilty plea under Ark. R. Crim. P. 24.3(b)); and

[Smith v. State, 314 Ark. 448 \(1993\)](#) (see discussion of the Rule, decided shortly after Administrative Order No. 6 was adopted, and see separate concurring opinions of Justices Robert Dudley and Tom Glaze for a discussion and history of the Rule).

Special Judges

Election of a Special Judge by Regular Practicing Attorneys

The procedure set out in Administrative Order No. 1 applies when the judge of a circuit court shall fail to attend on any day scheduled for the holding of that court due to an emergency or sudden illness, or when a judge's disqualification from presiding in any pending case is unanticipated.

[Arkansas Supreme Court Administrative Order No. 1.](#)

See also [Arkansas Constitution, Am. 80, §13](#).

Procedure

When a special judge is to be elected, the clerk shall notify the regular practicing attorneys in the county attending court that day in the most practical manner under the circumstances, including giving notice by telephone or by posting the notice in a public and conspicuous place in the courtroom.

The election is conducted by the clerk of the court, who accepts nominations from the attorneys present. Upon notice by the clerk, the attorneys present in the courtroom shall elect a special judge from one of their number.

The election shall be by secret ballot. The attorney receiving a majority of the votes shall be declared elected as special judge. He or she shall immediately be sworn in by the clerk and shall immediately enter upon the duties of the office. He or she shall adjudicate those causes pending at the time of his or her election.

Only attorneys who are qualified to serve as special judge may vote in the election of a special judge. No person who is not an attorney regularly engaged in the practice of law in the State of Arkansas and duly licensed and in good standing to do so, and who is not a resident possessed of the qualifications required of an elector of this state, whether registered to vote or not, shall be elected special judge. A law clerk is not eligible to be elected as a special judge.

Coverage

Each division of circuit court in a county considered a separate court for purposes of the rule.

Record and Oath

Documents for the clerk's record and the oath of office are at the end of [Administrative Order No. 1](#).

Payment for Judges Selected by Local Election Under Administrative Order No. 1

Judge will be paid a daily rate equivalent to one-half a sitting circuit judge's daily salary.

Temporary Assignment of Judges

[Administrative Order No. 16](#) authorizes the Chief Justice to assign sitting circuit court judges, retired circuit, chancery, circuit/chancery, and appellate court judges and justices, and sitting state district court judges, with their consent, to serve temporarily in circuit court.

The Order also authorizes the Chief Justice to assign sitting district court judges and sitting state district court judges, with their consent, to serve temporarily in a district court. Sitting circuit judges and retired circuit, chancery, circuit/chancery, and appellate judges are also authorized, with their consent, to sit temporarily in district courts, upon appointment by the Chief Justice.

First, the other judges in the circuit shall attempt to cover the absence. Next, the Chief Justice should be requested to make an assignment. Lastly, Administrative Order No. 1, election by local attorneys, should be used.

See [Ark. Code Ann. § 16-13-224](#) (concerning temporary exchanges and assignments).

See also [Ark. Code Ann. § 16-13-214](#) (concerning disqualification).

And see [Ark. Code Ann. § 16-10-101](#) (Supreme Court's administrative authority).

Assignment by the Supreme Court

A trial judge requesting that a judge be assigned shall write a letter to the Chief Justice asking that an assignment be made either because of disqualification or temporary inability to serve, or some other need. All judges in the circuit must disqualify before an assignment will be made. One judge in the circuit is responsible for writing the letter of request, sufficient in detail to inform the Chief Justice of the following:

- A. that all the judges in the circuit have recused;
- B. the type of case involved;
- C. the facts or law in dispute;
- D. whether a temporary hearing is scheduled or necessary;
- E. the estimated time to hear the matter;
- F. the names of the attorneys representing the parties; and

G. other pertinent information to assist the Chief Justice in making an assignment.

[Administrative Order No. 16.](#)

A judge or judges recusing because of disqualification shall take no further action in a case after assignment, except that the judge requesting an assignment shall direct his or her staff to notify the attorneys or pro se litigants of the assignment and to accommodate, to the extent possible, an assigned judge regarding facilities and staff, when necessary, to carry out the assignment.

Issues which will be considered in selecting a judge to be assigned include, but are not limited to:

- A. the type and complexity of the case;
- B. the amount of time estimated for the assignment;
- C. the geographic location of the case and the proximity of the assigned judge; and
- D. the consent of the sitting judge or retired judge or justice selected.

[Administrative Order No. 16.](#)

Under no circumstances shall a judge, a lawyer, or a party seek to influence the decision of the Chief Justice in making an assignment.

See [Neal v. Wilson, 321 Ark. 70, 900 S.W.2d 177 \(1995\)](#) (It is parties' or trial court's responsibility to apprise Supreme Court as to whether assignment of judge from another circuit is required, and once that assignment is made, that responsibility continues; it is not Supreme Court's task, on its own volition, to discover or monitor whether circumstances have changed to warrant termination of assignment or reassignment).

Effect of Assignment

A judge assigned to a cause or matter may render or sign orders, judgments, documents, or other papers in that cause or matter in a geographic location other than the judicial circuit or district in which the cause or matter is pending. Such order, judgment, document, or other paper shall have the same effect, for all intents and purposes, as if signed in the judicial circuit or district in which the matter or cause is pending.

An assignment, once made, will be terminated only for good cause at the request of the assigned judge or at the discretion of the Chief Justice.

After termination of an assignment and notification to the clerk in the county in which the case is filed, the clerk shall reassign the case within the circuit to the appropriate judge. If the cause necessitating the assignment still exists, the process for assignment by the Chief Justice may begin anew with a letter from a judge in the circuit to the Chief Justice. Assignment shall be made in the same manner as above.

Assigned judges, including retired judges, are subject to Administrative Order No. 3, which requires reporting of cases that have been under advisement for more than 90 days.

[Administrative Order No. 16.](#)

Expenses

A sitting circuit judge who accepts an assignment will receive actual expenses for meals and lodging, plus mileage at the current state rate, while traveling on assignment. [Ark. Code Ann. § 16-10-119.](#)

A retired judge who accepts an assignment of a circuit case will receive actual expenses for meals and lodging, mileage at the current state rate, and a per diem equal to one-half a sitting judge's daily salary.

Requests for reimbursement are made through the AOC on forms provided by that office. The AOC will submit paperwork to the Auditor of State for payment.

Exchange Agreements Between Circuit Judges

Circuit judges may execute exchange agreements with each other to sit for one another by mutual agreement in their respective circuits. Agreements are often made between judges from contiguous circuits, although nothing mandates that the circuits be contiguous. Judges often execute these agreements at the beginning of each year for a term certain.

An exchange agreement should not be used to transfer a case in which a judge is disqualified. [State v. George, 250 Ark. 968 \(1971\).](#)

Exchange agreements are probably not necessary between circuit judges within a circuit, at least since Amendment 80, since each judge within a circuit has jurisdiction over any and all types of cases within the circuit.

See [Ark. Code Ann. § 16-13-224.](#)

See the Appendix for a Sample Exchange Order.

Appendix

Sample Exchange Order.....	1
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SAMPLE EXCHANGE ORDER

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

DIVISION

JUDICIAL CIRCUIT

and

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

DIVISION

JUDICIAL CIRCUIT

AGREEMENT TO EXCHANGE CIRCUITS TEMPORARILY

This Agreement to exchange circuits temporarily is effective between:

_____, Circuit Judge, _____ Judicial Circuit of Arkansas and
_____, Circuit Judge, _____ Judicial Circuit of Arkansas, to permit Judge
_____ to sit as Circuit Judge on exchange in the _____ Judicial Circuit, and to permit
Judge _____ to sit as Circuit Judge on exchange in the _____ Judicial Circuit.

It is the intent of this agreement, as and when implemented, to permit the respective
judges to sit in the respective courts, other than their own, pursuant to and under the authority of
§ 6C of Amend. 80 to the Ark. Const., and Supreme Court Administrative Order No. 16, § I.

Nothing in this exchange shall prevent the judges from exercising and discharging the
authorities, duties and prerogatives of their own offices and courts. Implementation of this
exchange shall be by mutual agreement of the judges, and this exchange is revocable at the
pleasure of either Judge upon written notice by either to the other.

This agreement directed to be filed and recorded in the records of the respective courts,
by the clerks thereof.

Witness our hands this _____ day of _____, 201__.

_____, Circuit Judge
Division __, _____ County, Arkansas

_____, Circuit Judge
Division __, _____ County, Arkansas