

APPEALS

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Time and Method of Taking Appeals - All Cases.

Rules of Appellate Procedure - Criminal

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.

(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.

Rules of Appellate Procedure - Civil

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).

Rules of Supreme Court - Dependency-Neglect Cases

Rule 6-9. Rule for Appeals in Dependency-Neglect Cases

b) Notice, Indigency, and Time for Appeal.

(1) The notice of appeal shall be filed within twenty-one (21) days following the entry of the circuit court order from which the appeal is being taken.

(A) If the court announces its ruling from the bench and an appellant files a notice of appeal prior to the entry of the order, it shall be deemed to be filed the day after the order is entered.

(B) The notice of appeal and designation of record shall be signed by the appellant, if an adult, and appellant's counsel. The notice shall set forth the party or parties initiating the

appeal, the address of the parties or parties, and specify the order from which the appeal is taken.

(2) If the appellant alleges indigency for purpose of the appeal, the appellant shall file a motion, with notice to all parties, to request an indigency determination within fourteen (14) days following the entry of the order from which the appeal is taken.

(A) If the appellant has had a court determination of indigency prior to the hearing from the order from which the appeal is taken, the appellant shall seek a re-determination of indigency for purpose of appeal and shall submit a new affidavit for the court to determine indigency for the purpose of appeal.

(B) The circuit court shall rule on appellant's indigency motion within five (5) days of the indigency motion being filed. If the court conducts a hearing on the indigency motion, the judge may conduct the indigency hearing outside of the county and by teleconference. The court shall use the federal poverty guidelines provided by the Administrative Office of the Courts in making its indigency determination.

(C) If the appellant is determined indigent for purpose of appeal, the notice shall indicate that the court has made a determination of indigency for payment of the record. Trial counsel for indigent parents or custodians shall not be relieved as counsel for purpose of appeal until relieved by the Public Defender Commission as provided in Rule 6-10(c). If appellant is determined not indigent, appellant shall state that arrangements for payment of the record have been made.

(3) If a timely notice of appeal is filed, any other party may file a notice of cross-appeal and designation of record within five (5) days from receipt of the notice of appeal.

(4) The time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.

(5) In computing time periods in Rule 6-9, Ark. R. Civ. P. Rule 6(a), which provides in part that when the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation, shall apply.

(c) Record on Appeal.

(1) The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to the hearing from which the order on appeal arose, all exhibits entered into evidence at that hearing, and all orders entered in the case prior to the order on appeal.

(2) The appellant and the cross-appellant, if any, shall (A) complete a Notice of Appeal (Cross-Appeal) and Designation of Record (Form 1); (B) file Form 1 with the Circuit

Clerk; and (C) serve Form 1 on the court reporter and all parties by any form of mail which requires a signed receipt.

(3) The designation-of-record portion of Form 1 shall identify the hearing from which the order being appealed arose, and shall designate the date(s) of the hearing resulting in the order being appealed. Service of the Notice of Appeal and Designation of Record (Form 1) shall constitute a request for transcription of the hearing from which the order of the appeal arose.

(4) Within five (5) days after receipt of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall file a statement by mail or fax with the Circuit Clerk indicating whether arrangements for payment have been made and that the record will be completed timely. The court reporter shall make arrangements for the record to be completed and certified within sixty (60) days.

Rule 3 - Appeal by State.

(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.

Appeals from Final Orders - General Rules

Rules of Appellate Procedure - Criminal

Criminal Rule 4. Time for filing record, contents of record.

(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.

Rules of Appellate Procedure - Civil

Civil Rule 5. Record - Time for Filing.

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. (Note: See Special Rule for Certain Interlocutory Appeals.)**

(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.

Special Rule for Certain Interlocutory Appeals

Civil Rule 5. Record - Time for Filing.

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. (Note: See Special Rule for Certain Interlocutory Appeals.)**

Rule 2. Appealable Matters; Priority.

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

(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.

Rules of Supreme Court - Dependency-Neglect Cases

Rule 6-9. Rule for Appeals in Dependency-Neglect Cases

(d) Transmission of Record. Absent extraordinary circumstances, the record on appeal shall be filed with the Clerk of the Supreme Court within seventy (70) days of the filing of the Notice of Appeal. Within sixty (60) days after the filing of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall provide the record to the Circuit Clerk who shall have no longer than five (5) days to prepare the record, including any transcripts and exhibits, to be transmitted for submission to Clerk of the Supreme Court. After the record has been duly certified by the Circuit Clerk, it shall be the responsibility of the appellant to transmit the record to the Clerk of the Supreme Court for filing.

(g) Extensions. The Clerk of the Supreme Court shall have the authority to grant one (1) seven-day extension for completion of the record and one (1) seven-day extension to any party to the appeal to file the petition or the response to the petition. The extension shall be computed from the date the petition or response was originally due. Absent extraordinary circumstances, no other extensions shall be granted.

All other Juvenile Cases:

Rule 2. Appealable Matters: Priority.

(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.

Appeal by the State

Rules of Appellate Procedure - Criminal

Rule 3. Appeal by State.

(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.

Death Penalty

Rules of Appellate Procedure - Criminal

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.