

Cite as 2011 Ark. 250

SUPREME COURT OF ARKANSAS

No.

Opinion Delivered June 2, 2011

IN RE ARKANSAS RULES OF CIVIL
PROCEDURE; DISTRICT COURT
RULES; AND RULES OF THE
SUPREME COURT AND COURT OF
APPEALS

PER CURIAM

On March 3, 2011, we published for comment the Arkansas Supreme Court Committee on Civil Practice's proposals for changes in the Arkansas Rules of Civil Procedure and Rules of the Supreme Court and Court of Appeals. *See In re Ark. Rules of Civil Procedure*, 2011 Ark. 99 (per curiam). We thank everyone who reviewed the proposals.

We accept the committee's recommendations with the following exceptions. We are adopting the change in Ark. R. Civ. P. 12 making the time to respond the same (30 days) for residents and nonresidents, and this change will require a change in the official summons form. However, we decline to act on the other suggested changes to the summons at this time and request the Committee on Civil Practice to look comprehensively at the form in light of several of the comments that we received.

We also want the committee to review the Rules of the Supreme Court in regard to page limits and request that it make a recommendation to the court. Thus, we are not acting on the proposed changes to Rules 2-1, 4-1, and 4-2.

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The change in the time to respond to a complaint also affects District Court Rules, and changes are required to Rules 4, 6, and 10.

We adopt amendments to Ark. R. Civ. P. 3, 12, 30, 65, the summons form and Notice and Acknowledgment of Service by Mail form (Rule 4 (b) and (d)); Ark. Sup. Ct. R. 6-7 and 6-9; and Ark. Dist. Ct. R. 4, 6, and 10. These amendments shall be effective July 1, 2011. We republish the rules and Reporter's Notes as set out below. We encourage all judges and lawyers to review this per curiam in order to familiarize themselves with the changes to the rules.

We again express our gratitude to the members of our Civil Practice Committee for their diligence in performing the important task of keeping our civil rules current, efficient, and fair.

A. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 3. Commencement of action — “Clerk” defined.

(a) A civil action is commenced by filing a complaint with the clerk of the court who shall note thereon the date and precise time of filing.

(b) The term “clerk of the court” as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(b)(2)(B). In counties

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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 complaint is filed with either the circuit clerk or the county clerk.

(c) The clerk shall assign a new case number and charge a new filing fee for the filing of any case that is refiled after having been dismissed.

Addition to Reporter's Notes, 2011 Amendment: The amendment adds a new subdivision (c) to clarify that a new case number is to be assigned and a new filing fee charged for a case re-filed after having been dismissed. The new case number and filing fee requirements apply to cases voluntarily or involuntarily dismissed under Rule 41. The new case number and filing fee requirements do not apply to cases that have not been dismissed but have been closed subject to reopening depending on further developments in the case. Consequently, the requirements do not apply to requests for modification of visitation, custody, or child support provisions in domestic relation cases; the filing of motions for contempt citations; and other requests for court orders in cases that have been closed, but not dismissed. However, other fees or charges authorized by law, such as case reopening fees, may be imposed.

Rule 4. Summons.

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[In accordance with the amendments to Rule 12(a), the form for summons issued pursuant to Ark. R. Civ. P. 4(b) and the Form for Notice and Acknowledgment for Service by Mail pursuant to Ark. R. Civ. P. 4(d)(8)(B) are amended to read as set out at the end of this order.]

Rule 12. Defenses and Objections—When and How Presented—by Pleading or Motion—Motion for Judgment on the Pleadings.

(a) *When Presented.*

(1) A defendant shall file his or her answer within 30 days after the service of summons and complaint upon him or her. A defendant served under Rule 4(f) shall file an answer within 30 days from the date of first publication of the warning order.

A defendant incarcerated in any jail, penitentiary, or other correctional facility in this state, however, shall file an answer within 60 days after service. A party served with a pleading stating a cross-claim or counterclaim against him or her shall file an answer or reply thereto within 30 days after service upon the party. The court may, upon motion of a party, extend the time for filing any responsive pleading.

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(3) When any case is removed to federal court and subsequently remanded, the plaintiff shall file a certified copy of the order of remand with the clerk of the circuit court and shall forthwith give written notice of such filing to all parties in accordance with Rule 5. Any adverse party shall have 30 days from the receipt of such notice within which to file an answer or a motion permitted under this rule.

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(f) *Motion to Strike*. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

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Addition to Reporter's Notes, 2011 Amendment: Subdivision (a)(1) has been amended to require that both resident and nonresident defendants file a response within 30 days after service of the summons and complaint. The rule previously required that the resident defendant file the response within 20 days. On occasion the different response times led to the issuance of an incorrect summons by the clerk's office and subsequent issues as to the sufficiency of process. In addition, modern means of communication and electronic transmission diminish the need to distinguish between response times for resident and nonresident defendants. The amendment to subdivision (a)(3) extends to 30 days from the date of receipt of the remand notice the time within which a defendant must respond to a complaint when a case is remanded from federal court. Subdivision 12(f) similarly is amended to require that a motion to strike be filed within 30 days of service of the pleading upon a party.

Rule 30. Depositions upon oral examination.

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(f) *Certification by Officer; Exhibits; Copies; Notice of Filing.*

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(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain, for the period established for transcripts of court proceedings in the retention schedule for official court reporters, stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent; provided that it shall be the duty of the party causing the deposition to be taken to furnish one copy of the transcript, or if the deposition was recorded solely by sound or sound-and-visual as provided for in Rule 30(b)(3), a copy of the recording, to any opposing party, or in the event there is more than one opposing party, a copy may be filed with the clerk for the use of all opposing parties, and the party filing the deposition shall give prompt notice of its filing to all other parties.

Addition to Reporter's Notes, 2011 Amendment: Subdivision (f)(2) is revised to clarify that a party taking a deposition is not obligated to provide the opposing party or parties a copy of any sound or sound and video recording of the deposition unless no written transcript was made. Since former subdivision (f)(2) required that the party taking

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the deposition provide the opposing party a copy of the deposition (if multiple parties, to file a copy with the clerk for use by all parties), the rule could have been read as requiring the party taking the deposition to incur the additional expense of providing a copy of the nonstenographic sound or sound and video recording in addition to the written transcript. Under the amendment, a party taking a deposition only by sound or sound and video recording is still obligated to provide the opposing party with a copy of the deposition or, in a case involving multiple parties to file a copy for use of all opposing parties.

Rule 65. Injunctions and temporary restraining orders.

(a) *Preliminary Injunction.* (1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) *Temporary Restraining Order.* (1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

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(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

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(c) *Security*. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Neither the State of Arkansas, its officers, nor its agencies are required to give security.

(d) *Contents and Scope of Every Injunction and Restraining Order*.

(1) *Contents*. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound*. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with the parties and the parties' officers, agents, servants, employees, and attorneys.

Addition to Reporter's Notes, 2011 Amendment: Rule 65 has been completely rewritten and is now substantially identical to Federal Rule 65 as amended in 2009. Rule 65 as adopted in 1979 departed significantly from the corresponding federal rule. Contrary

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to the approach of the federal rule and that of most states, the original Arkansas Rule 65 treated preliminary injunctions and temporary restraining orders as equivalent, allowing issuance of either without notice to the adverse party. Subsections (a) and (b) of the amended rule provide for issuance of a temporary restraining order without notice to the adverse party but require notice to the adverse party prior to issuance of a preliminary injunction.

The amendment eliminates former subsection (a)(2) that limited the availability of *ex parte* injunctive relief in some circumstances. The revised rule provides a number of enhanced procedural protections for persons or entities against whom *ex parte* injunctive relief is sought, including: that an affidavit or verified complaint state specific facts showing the harm that will result to the movant before the adverse party can be heard; that the movant's attorney certify in writing any efforts made to give notice and why notice should not be required; that a temporary restraining order issued without notice describe the circumstances underlying its issuance; that the temporary restraining order must expire not later than 14 days after entry unless for good cause or with the adversary's consent it is extended; and that the hearing on the temporary restraining order be set for the earliest possible time and take precedence over other matters. In addition, the party against whom the order is issued may appear and move to dissolve or modify the order upon 2 days' notice to the party who obtained the temporary restraining order without notice.

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In subsection (c) the amended rule conditions issuance of a preliminary injunction or temporary restraining order on the movant's giving security determined by the court and section (d)(1) prescribes the contents of the injunction or restraining order. Subsection (d) specifies the persons bound by the order.

B. ARKANSAS RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 6-7. Taxation of costs.

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(b) *Reversal*. The appellant may recover (1) brief costs not to exceed \$3.00 per page with total costs of the brief not to exceed \$1000.00, (2) the filing fee of \$150.00 and the technology fee of \$15.00, (3) the circuit clerk's costs of preparing the record, and (4) the court reporter's cost of preparing the transcript.

(c) *Affirmed in part and reversed in part*. The Court may assess appeal costs according to the merits of the case.

(d) *Imposing or withholding costs*. Whether the case be affirmed or reversed, the Court will impose or withhold costs in accordance with Rule 4-2(b).

Explanatory Note, 2011 Amendment: Ark. Code Ann. § 21-6-416 added a technology fee to be charged by the clerk of the Supreme Court, and it may be recovered as a cost.

Rule 6-9. Rule for appeals in dependency-neglect cases.*(a) Appealable Orders.*

(1) The following orders may be appealed from dependency-neglect proceedings:

(A) adjudication order;

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

(C) termination of parental rights;

(D) denial of right to appointed counsel pursuant to Ark. Code Ann. § 9-27-316(h); and

(E) denial of a motion to intervene.

(2) The circuit court shall enter and distribute to all the parties all dependency-neglect orders no later than thirty (30) days after a hearing.

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Explanatory Note, 2011 Amendment: The amendment adds denial of a motion to intervene in dependency-neglect proceedings to the list of appealable orders under the expedited appeal procedure of Rule 6-9.

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C. DISTRICT COURT RULES**Rule 4. Complaint.**

A complaint shall be in writing and signed by the plaintiff or his or her attorney, if any. It shall also: (a) state the names of the parties, the nature and basis of the claim, and the nature and amount of the relief sought; (b) warn the defendant to file a written answer with the clerk of the court, and to serve a copy to the plaintiff or his or her attorney, within 30 days after service of the complaint upon him; (c) warn the defendant that failure to file an answer may result in a default judgment being entered against him; (d) recite the address of the plaintiff or his or her attorney, if any; and (e) contain a proof of service form which shall be completed by the person serving the defendant. No separate summons is required.

. . . .

SUMMONS AND NOTICE TO DEFENDANT

You are hereby warned to file a written answer with the clerk of the court within 30 days after the date that you receive this complaint and to send a copy to the plaintiff or to his or her attorney. If you do not file an answer within 30 days, or if you fail to file an answer, a default judgment may be entered against you.

[Signature of Clerk or Judge]

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PROOF OF SERVICE

STATE OF ARKANSAS

CITY OF _____

I, _____, hereby certify that I served the within complaint on the defendant, _____, at o'clock _____.m. on _____ 2_____, by [state method of service].

[Signature and Office, if any]

Subscribed and sworn to before me this _____ day of _____ 2_____,

[To be completed if service is by someone other than sheriff or constable.]

Notary Public or Court Clerk

My Commission Expires: _____

Rule 6. Contents of answer; time for filing.

(a) *Contents of Answer.* An answer shall be in writing and signed by the defendant or his or her attorney, if any. It shall also state: (1) the reasons for denial of the relief sought by the plaintiff, including any affirmative defenses and the factual bases therefor; (2) any affirmative relief sought by the defendant, whether by way of counterclaim, set-off, cross-claim, or third-party claim, the factual bases for such relief, and the names and

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addresses of other persons needed for determination of the claim for affirmative relief; and

(3) the address of the defendant or his or her attorney, if any.

(b) Time for Filing Answer or Reply. A defendant shall file an answer with the clerk of the court within thirty (30) days after the service of the complaint upon the defendant. An answer to a cross-claim and a reply to a counterclaim shall be filed with the clerk of the court within 20 days of the date that the pleading asserting the claim is served. A copy of an answer or reply shall also be served on the opposing party or parties in accordance with Rule 5(b) of the Rules of Civil Procedure.

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Rule 10. Procedure in small claims division.

(a) Commencement of action — Form of claim and notice to defendant.

(1) Actions in the small claims division of district court shall be commenced whenever the claimant or the personal representative of a deceased claimant shall file with the clerk of the court a claim in substantially the following form:

In the District Court of _____, State of Arkansas

Small Claims Division

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SUMMONS AND NOTICE TO DEFENDANT

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You are hereby warned to file a written answer with the clerk of this court within thirty (30) days after you receive this claim and forward a copy to the plaintiff at the address above or a default judgment may be entered against you.

_____ (Signature of Clerk or Judge)

_____ District Court Clerk

Address: _____

RETURN OF SERVICE

STATE OF ARKANSAS

COUNTY OF _____

I, _____, certify that I served the within Claim Form on the defendant, _____, at _____ o'clock _____ .m. on _____, 2_____, by _____.

_____ (Show manner of service)

Name and Office, if any

Subscribed and sworn to before me this _____ day of _____, 2_____,

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(To be completed if service by other than a Sheriff, Constable, or Clerk)

Notary Public

My commission expires: _____

(2) *Preparation, etc., of claim form.* The plaintiff shall prepare the claim form as is set forth in this rule. The claim form shall be presented by the plaintiff in person. Upon receipt of the claim form and filing fee, the clerk shall file the claim form and proceed to assist the plaintiff in obtaining service on the defendant. In all cases, a copy of the answer in substantially the same form as set forth in this rule shall be included by the clerk with the claim form to be served on the defendant.

(3) *Service of process.*

(A) Unless service by the sheriff or other authorized person is requested by the plaintiff, the defendant shall be served by certified mail.

(B) The clerk shall enclose a copy of the claim form in an envelope addressed to the defendant at the address stated in the claim form, prepay the postage, the cost of which may be collected from the plaintiff at time of filing, and mail the envelope to the defendant by certified mail and request a return receipt from addressee only. The clerk shall attach to the original claim form the receipt for the certified letter and the return card thereon or other evidence of service of the claim form. No separate summons is required.

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(C) Service hereunder shall be in accordance with Rule 4 of the Arkansas Rules of Civil Procedure.

(b) *Answer by defendant.* A defendant shall file an answer with the clerk of the court within thirty (30) days after the service of the claim form upon the defendant. The defendant shall mail a copy of the answer to the plaintiff.

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Official Form of Summons

The Supreme Court of Arkansas has adopted the following form of summons for use in all cases in which personal service is to be had pursuant to Rule 4(c), (d) and (e) of the Arkansas Rules of Civil Procedure. The form may be modified as needed in special circumstances. Additional notices, if required, should be inserted in the appropriate space. This form is not for use in cases of constructive service pursuant to Rule 4(f). The adoption of this form is in compliance with Rule 4(b) and does not modify or amend any part of that rule.

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

SUMMONS

Plaintiff: _____

Court Division

[or other appropriate
court data]

[If not represented by an
attorney, give address]

vs.

Defendant: _____

Case Number: _____

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Plaintiff's attorney: _____

[name and address] _____

THE STATE OF ARKANSAS TO DEFENDANT: _____

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.

2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a written answer or a motion under Rule 12 of the Arkansas Rules of Civil Procedure and thereafter appear and present your defense. Your pleading or answer must meet the following requirements:

A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.

B. It must be filed in the court clerk's office within 30 days from the day you were served with this summons.

3. If you desire to be represented by an attorney you should immediately contact your attorney so that a response can be filed for you within the time allowed.

4. Additional notices:

Witness my hand and the seal of the court this _____.

(date)

Address of Clerk's Office:

Clerk

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[SEAL]

(The appropriate return of service may be on the same page.)

**Form for Notice and Acknowledgment
for Service by Mail under Ark. R. Civ. P. 4(d)(8)(B)**

This form is to be used only for service by mail under Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure. It cannot be used for service by mail under Rule 4(d)(8)(A) or for service by a commercial delivery company under Rule 4(d)(8)(C).

NOTICE

To: [*Defendant's name and address*]

A lawsuit captioned _____ [insert caption of case from complaint] has been filed against you in the Circuit Court of _____ County, Arkansas. The enclosed summons and complaint are served on you in accordance with Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days. If you do not do so, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within the time specified in the summons.

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If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, partnership, limited liability company, unincorporated association, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and are authorized to receive service, you must indicate under your signature your authority.

As the sender of this Notice and Acknowledgment of Receipt of Summons and Complaint, I declare under penalty of perjury that it is being mailed on [date].

Sender's Address:

[Signature]

[Printed Name]

[Date of Signature]

**ACKNOWLEDGMENT OF RECEIPT
OF SUMMONS AND COMPLAINT**

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the lawsuit referenced above at [address] on [date].

[Signature]

SLIP OPINION

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[Printed Name]

[Relationship to Entity / Authority to
Receive Service]

[Date of Signature]