

**SUPREME COURT OF ARKANSAS**

IN RE ADOPTION OF ARKANSAS  
RULE OF CRIMINAL PROCEDURE  
4.7; AMENDMENTS TO ARK. R.  
CRIM. P. 8.2; AND ADMINISTRATIVE  
ORDER NO. 18

**Opinion Delivered** June 22, 2012

**PER CURIAM**

We asked the Committee on Criminal Practice to study a possible rule to address the recording of custodial interrogations. The committee presented the court with a proposal that was published for comment on May 26, 2011. *See In re Supreme Court Committee on Criminal Practice—Proposed Rule Changes*, 2011 Ark. 241 (per curiam). Many comments were received, and we referred the matter back to the committee for further study. The committee revised the proposed rule and has resubmitted it to the court. The proposal does not mandate the recording of all custodial interrogations; rather, it allows the trial court to consider the failure to record a statement in determining the admissibility of the statement. We are in agreement with this approach, especially as a starting point. Accordingly, we adopt and publish Rule 4.7, as set out below. This rule shall be effective September 1, 2012.

In addition, we are adopting technical amendments to Administrative Order No. 18

Section 6(b)(5)(v))<sup>1</sup> and Ark. R. Crim. P 8.2<sup>2</sup> to correct obsolete provisions. These amendments are effective immediately, and the provisions, as amended, are set out below and republished.

We express our gratitude to the members of the Criminal Practice Committee for their work.

### **Arkansas Rules of Criminal Procedure**

#### **Rule 4.7. Recording Custodial Interrogations.**

(a) Whenever practical, a custodial interrogation at a jail, police station, or other similar place, should be electronically recorded.

(b)(1) In determining the admissibility of any custodial statement, the court may consider, together with all other relevant evidence and consistent with existing law, whether an electronic recording was made; if not, why not; and whether any recording is substantially accurate and not intentionally altered.

(2) The lack of a recording shall not be considered in determining the admissibility of a custodial statement in the following circumstances:

(A) a statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing,

(B) a statement made during a custodial interrogation that was not recorded because electronic recording was not practical,

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<sup>1</sup>Text corrected in Admin. Order No. 18 Section 6(b)(5)(v). “Conduct a preliminary hearing as provided in Ark. Code Ann. § ~~5-4-310(a)~~ 16-93-307.”

<sup>2</sup>Text deleted in Rule 8.2(c). “Attorneys appointed by district courts, ~~city courts, and police courts~~ may receive. . . .”

(C) a voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness,

(D) a spontaneous statement that is not made in response to a question,

(E) a statement made after questioning that is routinely asked during the processing of the arrest of the suspect,

(F) a statement made during a custodial interrogation by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made of the statement, provided that an electronic recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement, or

(G) a statement made during a custodial interrogation that is conducted out-of-state.

(3) Nothing in this rule precludes the admission of a statement that is used only for impeachment and not as substantive evidence.

(c) An electronic recording must be preserved until the later of:

(1) the date on which the defendant's conviction for any offense relating to the statement is final and all direct and post-conviction proceedings are exhausted, or

(2) the date on which the prosecution for all offenses relating to the statement is barred by law.

(d) In this rule, "electronic recording" includes motion picture, audiotape, or videotape, or digital recording.

**Reporter's Notes, 2012.** This rule was added in 2012 in response to the decision in *Clark v. State*, 374 Ark. 292, 287 S.W.3d 567 (2008). The rule does not mandate the

recording of all custodial statements. Instead, it allows the trial court to consider the failure to record a statement in determining the admissibility of the statement.

**Rule 8.2. Appointment of counsel.**

...

(c) Attorneys appointed by district courts may receive fees for services rendered upon certification by the presiding judicial officer if provision therefor has been made by the county or municipality in which the offense is committed or the services are rendered. Attorneys so appointed shall continue to represent the indigent accused until relieved for good cause or until substituted by other counsel.

**Administrative Orders**

**Administrative Order No. 18. Administration of District Courts.**

...

6. *Jurisdiction of State District Court Judgeships.* [This section (6) applies to State District Court Judgeships (“Pilot District Courts”) upon their effective date.] In addition to the powers and duties of a district court under this administrative order, a state district court shall exercise additional power and authority as set out in this section.

...

(b) *Reference.* A state district court judge may be referred matters pending in the circuit court. A state district court judge presiding over any referred matter shall

be subject at all times to the superintending control of the administrative judge of the judicial circuit. The following matters pending in circuit court may be referred to a state district court judge:

...

(5) *Criminal Matters.* (A) Any of the following duties (the rules referenced below are the Arkansas Rules of Criminal Procedure) with respect to an investigation or prosecution of an offense lying within the exclusive jurisdiction of the circuit court:

...

(v) Conduct a preliminary hearing as provided in Ark. Code Ann. § 16-93-307.

...