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A PRACTITIONER'S GUIDE TO ARKANSAS'S NEW JUDICIAL ARTICLE

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The passage of Amendment 80 on November 7, 2000 was a watershed event in the history of the Judicial Department of this state. Jurisdictional lines that previously forced cases to be divided artificially and litigated separately in different courts have been eliminated. This fundamental change naturally brings with it a whole host of issues, both theoretical and practical, concerning the form and structure of our court system.¹

I. INTRODUCTION

On November 7, 2000, members of the Arkansas bench and bar and other interested citizens completed an odyssey which had begun more than thirty years earlier to bring comprehensive change to the state's court system.² Similar efforts had been attempted but defeated by the voters or the Arkansas General Assembly in 1970,³ 1980,⁴ 1991,⁵ and 1995.⁶

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1. *In re* Implementation of Amendment 80: Admin. Plans Pursuant to Admin. Order No. 14, 345 Ark. Adv. app. (June 28, 2001) (per curiam) [hereinafter *In re* Implementation of Amendment 80].

2. Amendment 80 to the Arkansas Constitution appeared on the 2000 general election ballot as "Referred Amendment 3." It was approved by a vote of 431,137 (57%) for and 323,547 (43%) against. Publisher's Notes, ARK. CONST. amend. 80.

3. An elected constitutional convention proposed a new constitution for the state, including a judicial article with provisions very similar to those found in Amendment 80. See STATE OF ARKANSAS, PROPOSED ARKANSAS CONSTITUTION OF 1970 WITH COMMENTS: A REPORT TO THE PEOPLE OF THE STATE OF ARKANSAS BY THE SEVENTH ARKANSAS CONSTITUTIONAL CONVENTION (1970); see also Ronald L. Boyer, *A New Judicial System for Arkansas*, 24 ARK. L. REV. 221 (1970). The proposal was defeated at the 1970 general election.

4. A similar proposal was drafted by a constitutional convention in 1980, submitted to the voters, and defeated. See STATE OF ARKANSAS, PROPOSED ARKANSAS CONSTITUTION OF 1980 WITH COMMENTS: A REPORT TO THE PEOPLE OF THE STATE OF ARKANSAS BY THE SEVENTH ARKANSAS CONSTITUTIONAL CONVENTION (1980). The Arkansas General Assembly also attempted to place a constitutional amendment on the 1980 general election ballot which would have revised the limitations on jurisdiction and venue of state courts. Prior to the election, the Arkansas Supreme Court struck this proposal from the ballot. See *Wells v. Riviere*, 269 Ark. 156, 599 S.W.2d 375 (1980).

While the effort to study and draft the new proposal and secure its passage was the result of substantial contributions, both personal and financial, by the Arkansas bench and bar, the ultimate passage of Amendment 80 by such a large majority of the voters came as a surprise to both the supporters and detractors of the amendment. Due to a history of so many failed attempts, the large number of other items that appeared on the election ballot,⁷ and the tendency of Arkansas voters to defeat long and complicated ballot measures, most were surprised by the successful outcome.

One result of this tendency to expect that the amendment would be defeated was a failure to prepare for its success. Neither the Arkansas Bar Association and the Arkansas Judicial Council, the main supporters of the Amendment, nor the Arkansas Supreme Court, the body primarily responsible for its implementation, performed any serious work to plan for or study the actions that would be necessary in the event of the amendment's passage. In light of what was, in retrospect, a very short period between passage and implementation,⁸ this failure to plan for the next steps, while understandable, made the implementation process much more difficult.

Despite this lack of preparation, a considerable amount of work has been done to implement the changes. The Arkansas Supreme Court has promulgated a number of administrative orders and rule changes, and the Arkansas General Assembly has adopted a package of legislation. This article begins by explaining the process that the supreme court has established

5. In 1991, the Arkansas Bar Association developed, as a part of its legislative package, a proposed judicial article to the Arkansas Constitution and sought to have the issue referred to a public vote by the general assembly. Senate Joint Resolution 10 of 1991 was one of three amendments referred by the Joint State Agencies and Governmental Affairs Committee for full consideration by the Arkansas House and Senate. The proposal was approved by the senate, but was defeated in the house by one vote.

6. Former Governor Jim Guy Tucker initiated a process in 1995 to draft and submit for voter approval a revised constitution, including a judicial article. A draft was produced and the question was submitted to the voters as whether to call a constitutional convention. Act of Oct. 19, 1995, No. 1, 1995 Ark. Acts 1. The vote failed in a special election in December of 1995.

7. Five items appeared on the 2000 general election ballot. They included constitutional amendments to allow city and county governments to issue short term redevelopment bonds, to adjust real property assessments and provide a property tax credit, to revise the judicial article, and to establish a state lottery and casino gambling. An initiated act on tobacco settlement proceeds also appeared. Only the gambling amendment failed to secure approval by the voter. Arkansas Secretary of State, *History of Initiatives and Referenda 1938-2000*, at <http://sosweb.state.ar.us/bi38-00.xls> (last visited Mar. 7, 2002).

8. What was obviously a typographical error in the final and official legislation that referred Amendment 80 to the voters resulted in the lack of a specific effective date for the amendment. Section 21 of Amendment 80 provides that the amendment shall become effective on "July, 2001." ARK. CONST. amend. 80, § 21. In actions by the supreme court and general assembly to implement the amendment, this omission of a particular date has not been noted and the presumed effective date has been July 1, 2001.

for the implementation of Amendment 80. Next, it describes the new trial court structure that Amendment 80 created. The new rules regarding court administration, pleading, and practice are covered next. Finally, the article notes some of the unresolved issues that the supreme court and the bar will face as implementation of Amendment 80 continues.

II. THE PROCESS AND TIMING OF IMPLEMENTATION

When the voters approved Amendment 80, the Arkansas Supreme Court recognized that it had the primary responsibility to implement it.⁹ Within three weeks following passage, the supreme court appointed a nine-member committee ("the Committee") to oversee the implementation process.¹⁰ The Committee immediately held a series of meetings and began to adopt both a short-term and long-term strategy for Amendment 80's implementation. The Committee determined that, with Arkansas's biennial session of the general assembly beginning in less than one month, the consideration of necessary action by the legislative branch should be the first order of business. The Committee considered and ultimately endorsed a package of legislation that was proposed to the general assembly. The proposals that were ultimately signed into law included a clarification of the qualification of justices and judges,¹¹ the repeal of all statutes relating to the Court of Common Pleas,¹² a designation for election purposes of each of the divisions of trial courts,¹³ an amendment to various provisions of the juvenile code,¹⁴ and a comprehensive act setting out the process for nonpartisan judicial elections.¹⁵

While the general assembly was considering this legislation, the Committee continued to review action to be taken by the supreme court. The central recommendation concerned the structure of trial court administration and the management of cases, resulting in supreme court's adoption of Ad-

9. See *In re* Appointment of Special Supreme Court Committee to Be Known as "Amendment 80 Committee," 343 Ark. app. 877 (2000) (per curiam).

10. See *id.* The members are Ronald D. Harrison, Jim L. Julian, Judge Robert J. Gladwin, Judge David B. Bogard, Judge John F. Stroud, Jr., Judge Andree L. Roaf, Justice Annabelle Clinton Imber, Justice Robert L. Brown, and Chief Justice Dub Arnold, Chair. *Id.*

11. Act of Mar. 19, 2001, No. 914, 2001 Ark. Acts 914 (codified at ARK. CODE ANN. § 16-10-136 (LEXIS Supp. 2001)).

12. Act of Mar. 19, 2001, No. 915, 2001 Ark. Acts 915 (repealing ARK. CODE ANN. §§ 16-16-201 to -1115).

13. Act of Mar. 20, 2001, No. 951, 2001 Ark. Acts 951.

14. Act of Apr. 13, 2001, No. 1582, 2001 Ark. Acts 1582 (codified at ARK. CODE ANN. §§ 9-27-213, -318, -352, -507 to -508, -510 (LEXIS Supp. 2001)).

15. Act of Apr. 19, 2001, No. 1789, 2001 Ark. Acts 1789 (codified at ARK. CODE ANN. §§ 7-10-101 to -103, 7-5-205, -704, 7-7-103, -401, 14-42-206, 7-5-405, -407 (LEXIS Supp. 2001)).

ministrative Order No. 14, issued on April 6, 2001.¹⁶ The Court also received recommendations from its Committee on Civil Practice and Committee on Criminal Practice. As a result, the court revised each of its administrative orders that were affected by Amendment 80¹⁷ and adopted amendments to the Rules of Civil Procedure and the Inferior Court Rules,¹⁸ the Rules of Criminal Procedure,¹⁹ the Rules of Appellate Procedure-Civil and the Rules of the Supreme Court,²⁰ and, most recently, a new rule to allow for the certification of questions of Arkansas law to the supreme court by any federal court of the United States.²¹

During the process of study and review by the Amendment 80 Committee, it became clear that the full implementation of Amendment 80 by the time of its effective date, July 1, 2001, was next to impossible. The Committee noted that county governments, which were responsible for funding most of the operations of Arkansas trial courts, operated on a calendar year budget. Computer software programs would need to be reprogrammed, printed docket books and other court forms would have to be revised, some modifications in physical facilities might be required, and judges, lawyers, and court personnel would have to be educated. As a result, the supreme court, based upon the recommendation of the Committee, established the first of two transition periods.

For the period July 1, 2001 through December 31, 2001, all judges are circuit judges and may hear any type of case, but during this period of transition, circuit judges shall continue to be assigned the types of cases each was being assigned prior to the effective date of Amendment 80 of the Arkansas Constitution.²²

The result of the court's order was that, during the transition period from July 1, 2001 through December 31, 2001, the circuit court became the unified court of general jurisdiction. Chancery and probate courts ceased to

16. *In re* Adoption of Admin. Order No. 14, 344 Ark. app. 747 (2001) (per curiam).

17. *See In re* Implementation of Amendment 80: Amendments to Admin. Orders, 345 Ark. Adv. app. (May 24, 2001) (per curiam).

18. *See In re* Implementation of Amendment 80: Amendments to Rules of Civil Procedure & Inferior Court Rules, 345 Ark. Adv. app. (May 24, 2001) (per curiam) [hereinafter *In re* Amendments].

19. *In re* Ark. Rules of Criminal Procedure 1.5 & 8.2, 345 Ark. Adv. app. (May 17, 2001) (per curiam).

20. *In re* Implementation of Amendment 80: Amendments to Rules of Appellate Procedure—Civil & Rules of the Supreme Court & Court of Appeals, 345 Ark. Adv. app. (June 7, 2001) (per curiam).

21. *In re* Arkansas Rules of Civil Procedures & Rules of the Supreme Court & Court of Appeals, 347 Ark. Adv. app. (Jan. 24, 2002) (per curiam).

22. Administrative Order No. 14, para. 4(b), 344 Ark. app. 747, 750 (2001) (per curiam).

exist.²³ As to the filing and management of cases, however, judges continued to hear the same type of cases they previously had heard.²⁴ The court's dockets remained in place, and the required cover sheets from pre-Amendment 80 days continued to be used. By June 1, 2001, judges in each of the judicial circuits submitted the plans for court administration for their circuits, as required by Administrative Order No. 14. On June 28, 2001, the supreme court adopted the plans. In its consideration and review of the plans, however, the court found that several practical issues and substantive public policy questions needed answers before a full implementation of Amendment 80 and its purpose was possible. As a result, the court established a second period of transition from January 1, 2002 until July 1, 2003, during which all of the provisions of Amendment 80 would be in force, but evaluation and refinement of the procedures could also take place.

In formulating their administrative plans, the judicial circuits have recognized that the Arkansas judiciary is in a transitional stage. We have considered this fact in passing judgment on their proposed plans. Identifying these practical problems at the front end will hopefully permit the general assembly, as well as county quorum courts, to work with us in formulating answers to these issues, including the appropriation of necessary funding. Thus, we believe that a realistic target date for completing implementation of the new unified court system should be July 1, 2003. On that date, we expect all circuit judges to be available to try all "justiciable matters."²⁵

III. TRIAL COURT STRUCTURE

With the passage of Amendment 80, Arkansas voters reduced the number of states with separate law and equity jurisdiction from four to three, and joined the majority of states that have each created a unified court of general jurisdiction.²⁶ As of July 1, 2001, all Arkansas courts became circuit courts and all chancery and circuit/chancery judges became circuit judges.²⁷ There is no longer a division between law and equity jurisdiction.

23. For an excellent review of the creation and history of Arkansas's chancery courts, see Morton Gitelman, *The Separation of Law and Equity and the Arkansas Chancery Courts: Historical Anomalies and Political Realities*, 17 U. ARK. LITTLE ROCK L.J. 215 (1995).

24. Administrative Order No. 14, para. 4(b), 344 Ark. app. 747, 750 (2001) (per curiam).

25. *In re Implementation of Amendment 80*, *supra* note 1.

26. States that continue to separate law and equity jurisdiction and maintain chancery courts are Delaware, Mississippi, and Tennessee. DAVID ROTTMAN ET AL., U.S. DEP'T OF JUSTICE, STATE COURT ORGANIZATION 342, 361 (1998).

27. ARK. CONST. amend. 80, § 19(B)(1).

A judge hearing a case has full authority to dispose of any and all issues in the case.

As of January 1, 2002, the supreme court also mandated the establishment of five subject matter divisions in each circuit court. They are criminal, civil, juvenile, probate, and domestic relations.²⁸ The court outlined the scope and purposes of these divisions as follows:

A circuit judge shall at all times have the authority to hear all matters within the jurisdiction of the circuit court and has the affirmative duty to do so regardless of the designation of divisions. . . . The designation of divisions is for the purpose of judicial administration and caseload management and is not for the purpose of subject-matter jurisdiction. The creation of divisions shall in no way limit the powers and duties of the judges as circuit judges. Judges shall not be assigned exclusively to a particular division so as to preclude them from hearing other cases which may come before them.²⁹

IV. COURT ADMINISTRATION

One of the major unanswered questions raised by Amendment 80's adoption is the nature and structure of the administration of the trial court. Arkansas has little, if any, history of trial court administration. The lack of state and local resources for personnel and a long tradition and expectation by trial judges that they will operate their courts in an autonomous fashion have created a wide variation in the level and nature of administration from circuit to circuit. With the removal of chancery and probate courts and an expansion of jurisdictional authority for all judges, a new system is required. Who or what should determine the types of cases a particular judge will hear? In multi-judge circuits, how are decisions made? Should the system be uniform from circuit to circuit? The specific language of Amendment 80 did not answer these and many other questions.

Shortly after the approval of Amendment 80, the Director of the Administrative Office of the Courts contacted the National Center for State Courts for an evaluation of the Amendment and a recommendation on the issues that would need to be addressed for successful implementation. This report identified the establishment of a plan for trial court administration as the central issue for any successful implementation:

28. Administrative Order No. 14, para. 1, 344 Ark. app. at 748. Section 6 of Amendment 80 provides as follows: "Subject to the superintending control of the Supreme Court, the Judges of a Circuit Court may divide that Circuit Court into subject matter divisions, and any Circuit Judge within the Circuit may sit in any division." ARK. CONST. amend. 80, § 6.

29. Administrative Order No. 14, para. 1, 344 Ark. app. at 747-48.

[T]he major issue will be creating an administrative structure The judicial article brings about organizational unification and some degree of administrative unification. The problem is that the Supreme Court cannot manage a statewide court system from Little Rock. The best the high court can do is set guidelines and policies. There has to be a local system of judicial administration or the reform will flounder. There is no unified court system in the United States without local administrative judges, and some of these judges are supported by court administrators. With two sets of elected clerks, the circuit courts will already have problems of administrative cohesion, not to mention the consolidation of various courts that were formerly separate from one another. It is hard to envision how this can be done through en banc administration³⁰

The Amendment 80 Committee faced this issue early in its deliberations and received a significant amount of input from judges, clerks, and other court officials. It became clear to the Committee, as evidenced by its recommendation to the supreme court, that the role of the supreme court should not be one of becoming involved in the day-to-day affairs of the trial court administration; rather, the supreme court should establish a uniform set of overriding goals and principles which should form the basis of each circuit's administrative structure. In this way, each circuit takes into account significant local issues or customs. The procedure adopted by the supreme court to carry out this role was the creation of local administrative plans. Administrative Order No. 14 required each multi-judge judicial circuit to submit a plan for circuit court administration to the supreme court by June 1, 2001.³¹ In the plan, the circuit judges were required to set out the process by which they will determine case management and administrative procedures. All of the judges must unanimously agree on the manner in which decisions will be reached under the plan, but the decision-making structure agreed upon does not require unanimity for subsequent decisions. For example, the judicial circuit could hold periodic meetings among the judges with a majority, super-majority, or unanimity being required to bind the circuit. Alternatively, an administrative judge or an administrative committee could be established. In other words, the supreme court did not require any particular decision-making structure, but only that the structure adopted at the local level be clear and in writing.³²

30. Letter from Bob Tobin, National Center for State Courts, to J.D. Gingerich, Director, Administrative Office of the Courts (Dec. 15, 2000) (on file with author).

31. See Administrative Order No. 14, paras. 2, 4(b), 344 Ark. app. at 748-50. After submission of the initial plans in June, 2001, subsequent plans are to be submitted by March 1 of each year following the year in which the judicial election of circuit judges is held. *Id.* at para. 3, 344 Ark. app. at 749.

32. As a result, the supreme court failed to adopt the National Center for State Court's recommendation of a system of local administrative judges. See Letter from Bob Tobin to J.D. Gingerich, *supra* note 30. Arkansas joins New York and Wyoming as the only states

The heart of the plan is a policy on case assignment and allocation. Administrative Order No. 14 requires the following:

The plan shall describe the process for the assignment of cases and shall control the assignment and allocation of cases in the judicial circuit. In the absence of good cause to the contrary, the plan of assignment of cases shall assume (i) random selection of unrelated cases; (ii) a substantially equal apportionment of cases among the circuit judges of a judicial circuit; and (iii) all matters connected with a pending or supplemental proceeding will be heard by the judge to whom the matter was originally assigned.³³

Pursuant to the requirements of Administrative Order No. 14, judges in twenty-one judicial circuits submitted their proposed administrative plans to the court. Four judicial circuits were single-judge circuits, and did not have to submit a plan.³⁴ Three judicial circuits could not agree on a plan to submit.³⁵ The plans submitted offered a wide range of methods of case administration and case distribution. In some cases, a new position as administrative judge was designated. In others, a system of rotation between divisions was established. These variations were, to some extent, a result of the very different circumstances that existed from circuit to circuit.

On June 28, 2001, the supreme court issued a per curiam order in which it announced its decision on each plan.³⁶ Sixteen of the twenty-one submitted plans were approved, although the court required two of these circuits to provide clarification on or before August 15, 2001.³⁷ Five plans were rejected, primarily for their continuation of the distinction between law and equity cases in their case assignment plan.³⁸ These circuits were ordered to submit amended plans to the court on or before August 15, 2001. Each of these circuits ultimately had its plans approved. In the three circuits where no agreement was reached and no plan was submitted, the supreme court

with no system of administrative judges for the courts of general jurisdiction. See *ROTTMAN ET AL.*, *supra* note 26, at 34. In other states, administrative judges are provided a wide range of authority and responsibility. This range includes the assignment of judges, the assignment of cases, the supervision of employees, and the management of the court budget.

33. Administrative Order No. 14, para. 2, 344 Ark. app. at 748-49.

34. Single-judge circuits include the 9-East, 11-East, 18-West and 19-East Circuits.

35. The judges in the 6th, 10th, and 11-West Circuits could not reach an agreement at the local level. In each case, more than one proposal was submitted to the supreme court, none of which had the support of all of the judges in the circuit.

36. See *In re* Implementation of Amendment 80, *supra* note 1.

37. The Arkansas Supreme Court requested further information from judges in the 21st and 23rd Circuits.

38. Circuits whose plans were initially rejected by the supreme court were the 1st, 13th, 15th, 19-West and 22d Circuits.

developed a plan for each circuit and appointed an administrative judge to implement the plan.

Because the administrative plans set out the types of cases that each judge will hear and the method for case allocation and management within each circuit, these are important documents that any practicing attorney should review. The plans must be filed in the office of each circuit clerk; copies are available through the Arkansas Judiciary Web site.³⁹

V. PLEADING AND PRACTICE

Effective July 1, 2001, all pleadings filed in the circuit courts should be styled "In the Circuit Court of _____ County." The pleading should be so styled even if it is the continuation of a matter that had previously been filed in a chancery or probate court.⁴⁰ As of January 1, 2002, when a case is filed, it will be assigned to one of the five subject matter divisions of circuit court: criminal, civil, probate, domestic relations or juvenile. Pursuant to Administrative Order No. 8, a cover sheet *must* accompany all initial filings. There is a separate cover sheet for each of the divisions. Because of the expanded jurisdiction of the circuit court, it is possible that there could be issues in a pleading that would allow it to be filed in more than one division. In this case, the administrative order provides: "If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed."⁴¹ To commence an action, the attorney or pro se litigant filing the initial pleading is responsible for the completion of the filing information on the appropriate cover sheet. The court clerk cannot accept the pleading unless the reporting form accompanies it.⁴²

Cover sheets take on a greater importance in the Amendment 80 environment. Because there are no longer separate chancery and probate courts through which to filter cases, all cases are filed in circuit court. In order for the clerk to understand the type of case and to properly assign the case to

39. Arkansas Judiciary, *Circuit Court Administrative Plans*, at <http://courts.state.ar.us/courts/circuitplans.html> (Aug. 8, 2001).

40. Note, however, that cases filed prior to January 1, 2002 that receive a case number under the former version of Administrative Order No. 2 shall maintain their original case numbers. For example, a chancery case that was filed in 2001 and received case number "E-2001-1" will continue to use that case number in proceedings that take place after January 1, 2002, even though the case is now being heard in the civil or domestic relations division of circuit court.

41. Administrative Order No. 8, para. 2(c), 345 Ark. Adv. app. (May 24, 2001) (per curiam).

42. *See id.*

the appropriate judge, the clerk will have to rely on the information contained in the cover sheets.⁴³

When a case is filed, it will be docketed pursuant to Administrative Order No. 2. Cases shall be assigned the letter prefix corresponding to that docket and a number in the order of filing. Beginning with the first case filed each year, cases shall be numbered consecutively in each docket category with the four digits of the current year followed by a hyphen and the number assigned to the case beginning with the number "1." For example: criminal CR2002-1, civil CV2002-1, probate PR2002-1, domestic relations DR2002-1, juvenile JV2002-1.⁴⁴

Circuit clerks then assign the cases to particular circuit judges based upon the provision of the circuit's administrative plan. One complicating factor in the process of filing cases has to do with "where" the pleading is to be filed, that is, which clerk is responsible for receiving and filing the court record. Arkansas's circuit and county clerks are constitutional officers,⁴⁵ but Amendment 80 did not amend or repeal any of the constitutional language regarding clerks. The role of each clerk is, at best, unclear after Amendment 80's abolishment of probate court, which had been the responsibility of the county clerk.⁴⁶ The supreme court received a recommendation from its Committee on Civil Practice that the circuit clerk be designated as the sole clerk for all circuit court matters, eliminating any role for the probate clerk. The Supreme Court Committee on Amendment 80 also debated this issue. As this discussion took place, the Association of County Clerks pursued legislation before the 2001 General Assembly, which eventually enacted Act 997 of 2001.⁴⁷ The Act provides that if the supreme court creates a probate division, then the county clerk will continue to serve as the clerk for the probate division. The Act designates the county clerk as the ex officio clerk of the probate division of circuit court. When the supreme court eventually adopted the probate division as one of the five divisions of circuit court in Administrative Order No. 14, this statutory role for the county clerk became effective. However, because the five subject matter divisions did not go into effect until January 2002, a gap existed in the statutory responsibility of county clerks. A transitional provision added to Rule 3 of the Arkansas Rules of Civil Procedure remedied this gap. This provision states that for the period of July 1, 2001 through December 31, 2001, probate matters shall

43. *See id.*

44. *Id.*

45. *See* ARK. CONST. art. VII, § 19.

46. *See id.* amend. 80.

47. Act of Mar. 21, 2001, No. 997, 2001 Ark. Acts 997 (codified at ARK. CODE ANN. § 14-14-502(a)(2)(B) (LEXIS Supp. 2001)).

continue to be filed with the same clerk for such matters as were filed prior to July 1, 2001.⁴⁸ Administrative Order No. 8 now incorporates this notion:

[C]ourt Clerk means the elected circuit clerk . . . except in the event probate matters are required by law to be filed in the office of the county clerk, then the term clerk shall also include the county clerk for this limited purpose.⁴⁹

VI. UNFINISHED BUSINESS

Much has been accomplished in the sixteen months since passage of Amendment 80, but the implementation of Amendment 80 is an evolving process. Decisions that have been made may need to be reconsidered,⁵⁰ and questions that have not yet been asked will need to be answered. Some issues can be resolved by legislation or court rule while others will be decided in the context of appellate court decisions. Issues that are currently on the table include the implementation by January 1, 2005, of the new district court system,⁵¹ and the appointment of masters, referees, and magistrates.⁵²

Some of the more vexing of the unresolved issues are those which were raised by the supreme court in its June 28, 2001 per curiam order.⁵³ One question that confronted the court in weighing the merits of the various plans was how a judge's experience and specialization *should be balanced* with the potential for burnout as a factor in the assignment and allocation of cases.⁵⁴ Another issue was the matter of juvenile proceedings and whether they *should be treated* differently from other cases. The court took note of the "state apparatus" related to these proceedings, "such as the prosecutors, public defenders, probation officers, DHS attorneys and caseworkers, attorneys ad litem, CASA volunteers, intake officers, and so forth."⁵⁵

[I]s it necessary or desirable to keep these types of cases segregated in order for the system to operate efficiently? If so, should there be a regular rotation system whereby a circuit judge may be assigned to the juve-

48. *In re* Amendments, *supra* note 18.

49. *Id.*

50. *See In re* Amendments to Admin. Orders Numbers 8 & 14, 346 Ark. Adv. app. (Nov. 1, 2001) (per curiam).

51. ARK. CONST. amend. 80, §§ 7, 19.

52. *Id.* § 8.

53. *In re* Implementation of Amendment 80, *supra* note 1.

54. *See id.*

55. *Id.*

nile or criminal division of circuit court for a specified period of time, at the end of which he or she would be assigned to other cases?⁵⁶

The court also expressed concern over the practical issues related to facilities, staff, and education.

Even if all the theoretical questions were answered, we could not immediately implement the necessary changes because of time and financial constraints. We must allow time for incumbent and newly-elected circuit judges to participate in judicial education programs to train them in areas of the law with which they are not as familiar since all such judges must become available to try any type of case.⁵⁷

These issues remain unresolved, but will have to be addressed very soon to allow the 2003 General Assembly to enact necessary legislation and to meet the court's directive for full implementation of Amendment 80 by 2003.

VII. CONCLUSION

With the adoption of Amendment 80, the Arkansas judicial system has experienced comprehensive and fundamental change. While many of the basic structural issues were made clear by the language of the amendment, numerous other important issues were not. The supreme court and its committees and the members of the circuit court bench have accomplished an extraordinary amount during a short period of time. It is incumbent upon the bench and bar, however, to become familiar with both the changes that have been wrought and the issues that have yet to be addressed in order to successfully implement Arkansas's new judicial article.

56. *Id.*

57. *Id.*