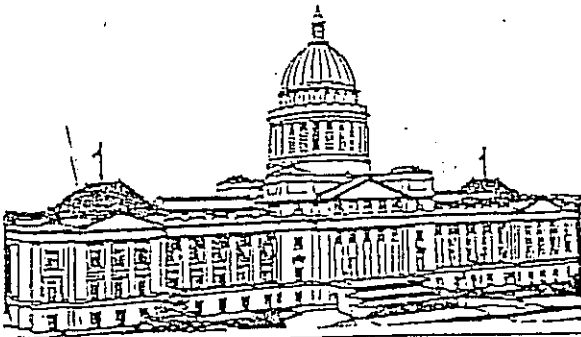


# ARKANSAS REGISTER

## Transmittal Sheet



Sharon Priest  
Secretary of State  
State Capitol Rm. 01  
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 8/7/98 Code Number 006.05.98 -- 021

Name of Agency Department of Finance & Administration

Department Revenue Division

Contact Person Don Zern Phone 682-7751

Statutory Authority for Promulgating Rules Ark. Code Ann. 26-18-301

	Date
Intended Effective Date	Legal Notice Published . . . . . <u>6/1/98</u>
<input type="checkbox"/> Emergency	Final Date for Public Comment . . . . . <u>7/26/98</u>
<input checked="" type="checkbox"/> 10 Days After Filing	Filed With Legislative Council . . . . . <u>Yes</u>
<input type="checkbox"/> Other	Reviewed by Legislative Council . . . . . <u>Yes</u>
	Adopted by State Agency . . . . . <u>7/23/98</u>

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 As Amended.

Donald J. Zern  
Signature

682-7751  
Phone Number

Taxpayer Information Officer  
Title

July 28, 1998  
Date

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STATE OF ARKANSAS

ADMINISTRATION OF JUSTICE FUND  
REGULATION 1998-4

Pursuant to the authority granted by Act 1256 of 1995, as amended by Section 5 of Act 1341 of 1997, the Director of the Department of Finance and Administration, in compliance with Ark. Code Ann. §25-15-204 and with the approval of the Governor, does hereby promulgate the following rules and regulations for the enforcement and administration of Ark. Code Ann. §16-10-602.

**AJ-1.001 DEFINITIONS.** For purposes of this regulation, unless otherwise required by their context, the following definitions apply:

- (A) **ADJUDICATION.** The term "adjudication" shall mean the Department administrative process for the formulation of an Administrative Adjudication Decision.
- (B) **ADMINISTRATIVE ADJUDICATION DECISION.** The term "Administrative Adjudication Decision" shall mean the final written decision of the Office of Hearings and Appeals concerning a Petition for Administrative Adjudication.
- (C) **ADMINISTRATIVE REVIEW DECISION.** The term "Administrative Review Decision" shall mean the final written decision of the Administration of Justice Fund Section concerning a Petition for Administrative Review.
- (D) **APPROPRIATION.** The term "appropriation" shall mean the amount of money authorized to be expended for a specific purpose.
- (E) **AUTHORIZING SIGNATURE.** The term "authorizing signature" shall mean the signature of the Director of the Arkansas Department of Finance and Administration, or any of his duly authorized agents.
- (F) **BUDGET.** The term "budget" shall mean budget items requested by the Department which are applicable under Act 1256 of 1995 as amended by Act 1341 of 1997 as payable from the entity's court costs or filing fees to city or county liabilities.
- (G) **CITY FUND.** The term "City Fund" shall mean the City Administration of Justice Fund created by Act 1256 of 1995, as amended by Act 1341 of 1997.
- (H) **CONTACT PERSON.** The term "contact person" shall mean the person authorized by the Director to:

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- (1) Receive information relating to issues raised by the entity; and
  - (2) Answer questions relating to the administrative regulation.
- (I) COUNTY FUND. The term "County Fund" shall mean the County Administration of Justice Fund created by Act 1256 of 1995, as amended by Act 1341 of 1997.
- (J) DAYS. The term "days" shall mean calendar days.
- (K) DEPARTMENT. The term "Department" shall mean the Arkansas Department of Finance and Administration.
- (L) DIRECTOR. The term "Director" shall mean the Director of the Arkansas Department of Finance and Administration, or any of his duly authorized agents.
- (M) ENTITY. The term "entity" shall mean the county, city or other municipality requesting relief under Act 1341 of 1997.
- (N) FILED. The term "filed" shall mean that a document required to be filed by this regulation has been submitted to the Department in accordance with this regulation.
- (O) GROSS INADEQUACY. The term "gross inadequacy" shall mean the inability to adequately fund operations of those programs or agencies mandated to be funded by the County Fund or the City Fund as directed by Act 1256 of 1995, as amended by Act 1341 of 1997, due in part but not limited to the following conditions:
  - (1) The base year, defined in Act 1256 of 1995 as amended by Act 1341 of 1997, used to calculate an entity's share of court costs and filing fees is not representative of the court's normal level of collections.
  - (2) A significant increase in filed cases in an entity's court.
- (P) PARTY. The term "party" shall mean any person or agency named or admitted as a party in any proceeding under this regulation.
- (Q) PERSON. The term "person" shall mean any individual, partnership, corporation, association, or public or private organization of any character.
- (R) PETITION FOR ADMINISTRATIVE ADJUDICATION. The term "Petition for Administrative Adjudication" shall mean the written request for relief by an entity to the Office of Hearings and Appeals challenging the decision of the

Administration of Justice Fund Section concerning the entity's Petition for Administrative Review.

- (S) PETITION FOR ADMINISTRATIVE REVIEW. The term "Petition for Administrative Review" shall mean the written request for relief by an entity to the Administration of Justice Fund Section challenging the amount of the city or county certified monthly share of court costs or filing fees to be retained by said city or county in a certain fiscal year
- (T) PETITIONER. The term "Petitioner" shall mean an entity filing a Petition for Administrative Review or a Petition for Administrative Adjudication under this regulation.
- (U) RULE. The term "Rule" shall mean any Department statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of the Department.
- (V) RULE MAKING. The term "rule making" shall mean the Department process for the formulation, amendment, or repeal of a rule.
- (W) SECTION. The term "Section" shall mean the Administration of Justice Fund Section created by Act 1256 of 1995, as amended by Act 1341 of 1997.
- (X) STATE FUND. The term "State Fund" shall mean the State Administration of Justice Fund created by Act 1256 of 1995, as amended by Act 1341 of 1997.

**AJ-1.002 ADMINISTRATIVE REVIEW.**

- (A) In the case of a disagreement between the Department and an entity as to the appropriate amount of the entity's certified monthly share of court costs or filing fees retained by the entity in a calendar year, the entity shall file a Petition for Administrative Review with the Administration of Justice Fund Section. This petition must be submitted by the entity's chief administrative officer. The Petition must include the following:
  - (1) a letter requesting administrative review signed by the chief administrative officer;
  - (2) a resolution from the City Council or Quorum Court;
  - (3) a brief outline of the circumstances causing the need for administrative review;

- (4) documentary evidence substantiating the claim of gross inadequacy;
  - (5) a statement of the amount of money requested to correct the inadequacy;  
and
  - (6) a copy of the city or county budget allocations for the current year.
- (B) The Section shall, within ten (10) days of the receipt of the petition, send a letter to the petitioning entity which acknowledges receipt of the petition and which notifies the entity:
- (1) that no additional information is needed by the Section to perform the Administrative Review, or
  - (2) that additional documentation or information is needed by the Section to perform the administrative review. In this instance, the Section will specifically describe the additional documentation or information requested. The entity shall, within sixty (60) days of the receipt of this letter from the Section, provide the requested documentation or information. This 60 day time period may be extended up to an additional fifteen (15) days by the Section upon receiving a written request by the entity. Any extensions granted hereunder must be requested by the Petitioner in writing on or before the initial due date for response to the Section's request for additional documentation or information. Any extensions granted hereunder must be done so in writing by the Section, and the Section may grant no more than one (1) extension hereunder.
- (C) Failure by the Petitioner to provide the additional documentation or information requested by the Section under this subsection by the date specified herein, or by the date properly extended by the Section, shall result in a denial of the entity's claim for relief.
- (D) The Section shall review all requested documentation or information by the Petitioner for completeness and applicability. In the event that the Section determines that the documentation or information submitted by the Petitioner is incomplete, the Section shall so notify the Petitioner in writing within ten (10) days of the initial submission of documentation or information by the Petitioner. This written notice shall specify what additional information is needed by the Section to complete the response. The Petitioner, within fifteen (15) days of receipt of this written notice, shall provide the information requested. This due date may not be extended by the Section. Failure by the Petitioner to provide the additional documentation or information requested by the Section under this subsection by the date specified herein shall result in a denial of the entity's claim

for relief.

- (E) A petition claiming gross inadequacy must demonstrate that the ratio of an entity's share of collected court costs and filing fees to the expenses of the entity's Administration of Justice Fund is significantly out of proportion when compared to the entity's base year of 1994.
- (F) The Section shall, within sixty (60) days of the receipt of the completed responses to its request for documentation or information, render its decision and provide the Petitioner with a written "Administrative Review Decision." The Section shall also provide copies of this Administrative Review Decision to the County or City Treasurer of the affected entity. No entity's certified monthly share of court costs or filing fees shall be reduced as a result of a claim for relief under this regulation.
- (G) LIMITATIONS.
  - (1) In order to receive relief under this regulation for the period beginning July 1, 1997, and ending December 31, 1998, the affected entity must file its Petition for Administrative Review by October 15, 1998. Failure by an entity to file its Petition for Administrative Review by this due date shall bar the entity from receiving relief under this regulation for this period.
  - (2) In order to receive relief under this regulation for any calendar year subsequent to December 31, 1998, the affected entity must file its Petition for Administrative Review between October 15th and December 31st of the year prior to the calendar year for which the relief is being requested. Failure by an entity to file its Petition for Administrative Review by this due date shall bar the entity from receiving relief under this regulation for the year in question.

**AJ-1.003 ADMINISTRATIVE ADJUDICATION.**

- (A) An entity receiving an unfavorable Administrative Review Decision is entitled to appeal this decision to the Office of Hearings and Appeals through the Administrative Adjudication process outlined herein.
- (B) Unless specifically indicated otherwise by this regulation, all proceedings for Administrative Adjudication herein shall be governed by the provisions of the Arkansas Administrative Procedure Act, Ark. Code Ann. Sec. 25-15-201 et seq.
- (C) All proceedings under this subsection shall be conducted by the Office of

Hearings and Appeals of the Department of Finance and Administration, as designated by the Director.

- (D) To secure an Administrative Adjudication of a denial by the Section of a claim for relief under Regulation AJ-1.002 above, the affected entity must file a written Petition for Administrative Adjudication within sixty (60) days of its receipt of the written Administrative Review Decision from the Section. The Petition for Administrative Adjudication shall be filed with the Office of Hearings and Appeals of the Department of Finance and Administration, Room 233 Joel Y. Ledbetter Building, P. O. Box 1272, Little Rock, Arkansas 72203. The entity shall also provide a copy of this petition to the Section. This petition shall state:
- (1) the entity's complete name, mailing address, telephone number, and facsimile number (if any);
  - (2) the complete name, mailing address, telephone number, and facsimile number (if any) of the contact person designated by the entity to receive notices, decisions, or other communication concerning the Administrative Adjudication process.
  - (3) the time period covered under the protest;
  - (4) a statement of the factual and legal grounds for the protest, and any contested factual issue;
  - (5) the specific relief requested;
  - (6) a description or copy of the decision protested; and
  - (7) a statement of whether oral presentation or argument are requested.
- (E) The Office of Hearings and Appeals shall have the authority to request such additional documentation or information from the Department or the entity that it deems necessary to reach its decision.
- (F) If the Petition for Administrative Adjudication does not contain the information required under subsections (D) and (E) above, then the entity may be granted an additional fifteen (15) days by letter of the Office of Hearings and Appeals to submit this required information. Failure to submit this information within the extension period of 15 days shall result in the dismissal of the protest and forfeiture of the entity's right to the Administrative Adjudication provided by this regulation.

(G) Petitions for Administrative Adjudication postmarked more than sixty (60) days after receipt by the entity of the Administrative Review Decision from the Section will be deemed not timely filed. Failure to timely file this protest by the due date shall result in the dismissal of the petition and forfeiture of the entity's right to the Administrative Adjudication provided by this regulation.

(H) ADMINISTRATIVE HEARING - GENERAL.

(1) Upon receipt of a timely filed written Petition for Administrative Adjudication, the Office of Hearings and Appeals shall review the Petition and, if requested by the entity, set an administrative hearing to be attended by the entity and the Department, where both sides shall be afforded an opportunity to respond and to present evidence and argument on all issues involved. This administrative hearing shall be held by a hearing officer from the Office of Hearings and Appeals, or such other hearing officer as may be designated by the Director. If the entity does not request an oral hearing, the Office of Hearings and Appeals shall issue an Administrative Adjudication Decision based upon the Petition presented and the response, if any, by the Department. Administrative hearings held under this regulation shall be held on the record. The Department's counsel shall be responsible for securing a court reporter who will be present at and prepare a verbatim transcript of the administrative hearing. The Department shall be responsible for paying the court reporter for this service.

(2) The Office of Hearings and Appeals shall have the authority to request such additional briefs or submissions of information it deems necessary to reach a decision concerning a petition.

(I) CONDUCT OF HEARING.

(1) Any entity appearing in an administrative hearing under this regulation shall have the right to appear in person or by counsel or other qualified representative.

(2) Except as otherwise provided by law, the entity filing the Petition for Administrative Adjudication shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.



(J) ADMINISTRATIVE ADJUDICATION DECISION.

After reviewing the Petition for Administrative Adjudication, the evidence presented at the administrative hearing, and other relevant information, the hearing officer shall issue his written Administrative Adjudication Decision, which will be the final decision of the Department concerning the entity's petition. The Office of Hearings and Appeals shall send a copy of the Administrative Adjudication Decision to the Department's counsel and to the designated contact person for the entity.

AJ-1.004 JUDICIAL REVIEW.

In the case of an adverse Administrative Adjudication Decision, an affected entity shall be entitled to judicial review as provided in Arkansas Administrative Procedure Act at Ark. Code Ann. §25-15-212.

AJ-1.005 FILING AND DELIVERY OF DOCUMENTS.

- (A) Any documents required to be submitted to the Department by the affected entity shall be submitted by U. S. Mail, facsimile transmission, or other type of delivery requiring a signed receipt.
- (B) If any document required to be filed by the entity within a prescribed period or on or before a prescribed date under this regulation is, after that period or date, delivered by the United States mail to the prescribed recipient, the date of the United States postmark stamped on the cover of the document shall be deemed to be the date of delivery. Only the postmark of the United States Postal Service, rather than those of private postage meters, shall qualify for the provisions of this provision.
- (C) When the last day prescribed under the authority of this regulation for performing any act or instituting any suit falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

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Issued this 23rd day of July, 1998.

Tim Leathers

Tim Leathers  
Acting Director, Department of  
Finance and Administration

DEPARTMENT: Department of Finance and Administration  
DIVISION Revenue Division:  
PERSON COMPLETING  
THIS STATEMENT: Shelby McCook, Office of Administrative Services Administrator  
TELEPHONE NO.: (501) 324-9057  
FAX NO.: (501) 324-9070

FINANCIAL IMPACT STATEMENT

To comply with Act 884 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: Regulation 1998-4 -- (Administration of Justice Fund).

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes: No: **XX**
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. **Does Not Apply.**

1997-98 Fiscal Year

General Revenue: \_\_\_\_\_  
Federal Funds: \_\_\_\_\_  
Cash Funds: \_\_\_\_\_  
Special Revenue: \_\_\_\_\_  
Other: \_\_\_\_\_  
Total: \_\_\_\_\_

None

1997-98 Fiscal Year

General Revenue: \_\_\_\_\_  
Federal Funds: \_\_\_\_\_  
Cash Funds: \_\_\_\_\_  
Special Revenue: \_\_\_\_\_  
Other: \_\_\_\_\_  
Total: \_\_\_\_\_

None

4. What is the total estimated cost by fiscal year to any party subject to the, proposed, amended, or repealed rule or regulation? **None.**

1997-98 Fiscal Year

**None**

1998-99 Fiscal Year

**None**

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

1997-98 Fiscal Year

**No additional cost**

1998-99 Fiscal Year

**No additional cost**

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