

George BOEHM d/b/a BOEHM & ASSOCIATES  
v. Lorin MOENCH d/b/a MOENCH INVESTMENT  
COMPANY, LTD.

CA 85-313

718 S.W.2d 491

Court of Appeals of Arkansas  
En Banc

Opinion delivered November 5, 1986

1. **APPEAL & ERROR — FAILURE TO INCLUDE PLEADINGS AND JUDGMENT IN ABSTRACT OF RECORD VIOLATES COURT RULE.** — The failure of appellant to include in his abstract the pleadings and the judgment from which he appeals is a flagrant violation of Rule 9(d), Rules of the Arkansas Supreme Court and Court of Appeals.
2. **APPEAL & ERROR — ABSTRACT OF RECORD MUST BE IMPARTIAL CONDENSATION.** — Rule 9, Rules of the Arkansas Supreme Court and Court of Appeals, prohibits the underscoring of passages in the abstract of the record, since it must be an impartial condensation of the record.
3. **APPEAL & ERROR — VIOLATION OF RULE 9, RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS — ATTORNEYS ALLOWED ADDITIONAL TIME TO HAVE BRIEFS REPRINTED AT THEIR OWN EXPENSE.** — Although the appellate court may affirm the decision of the trial court if, in preparing the abstract of the

record and briefs, the appellant fails to comply with Rule 9, Rules of the Supreme Court and Court of Appeals, nevertheless, if the court finds this action to be unduly harsh, it may allow the abstract and briefs to be brought into compliance with the rule. *Held*: The attorneys for the appellant and appellee are allowed additional time to have the briefs reprinted at the attorneys' expense to conform to the requirements of Rule 9.

Appeal from Pope Chancery Court; *Richard Mobley*, Chancellor; time extended for filing additional briefs.

*Mobley & Smith*, by: *William F. Smith*, for appellant.

*James R. Marschewski*, for appellee.

PER CURIAM. [1, 2] Upon review of the briefs in this case, we find that both the appellant's and appellee's abstracts flagrantly violate Ark. R. Sup. Ct. and Ct. App. 9(d). The appellant failed to include in his abstract the pleadings and the judgment from which he appeals. The appellee's supplemental abstract is not an impartial condensation of the records, as the appellee consistently underscores portions of the testimony, a practice prohibited by Rule 9. Furthermore, the appellee's supplemental abstract does not correct the deficiencies discovered in the appellant's abstract.

[3] While we could affirm the decision under Rule 9(e)(2), we find that action to be unduly harsh as the appellant has a sufficient abstract to show there may be merit in his position. Therefore, pursuant to Rule 9(e)(2), we will give the appellant's attorney twenty (20) days from today, November 5, 1986, to reprint the brief, at the attorney's expense, to conform to the requirements of Rule 9. The appellee will be granted fifteen (15) additional days from the date the appellant's brief is filed in which to file a revised brief.

Because the reprinting of the appellee's brief is caused at least in part by his own attorney's violation of Rule 9(d), the appellee's attorney will be responsible for the expense of reprinting the appellee's brief, except to the extent it is revised due to changes in the appellant's brief — those expenses shall be paid for by the appellant's attorney. The appellee will be required to file a detailed statement of costs so that the Court may determine the relevant expenses to be paid by each attorney.