

# ARKANSAS SUPREME COURT

Proceedings of  
September 10, 2009

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## PER CURIAM ORDERS

REHEARINGS DENIED: Petitions for rehearing were denied today in the following cases.

CR08-459. Darius Jackson v. State of Arkansas, from Pulaski Circuit, Fifth Division. Hannah, C.J., would grant.

CR08-1146. Kenneth Ray Osburn v. State of Arkansas, from Ashley Circuit. Hannah, C.J., and Brown and Gunter, JJ., would grant.

CR08-1353. Billy Terrell Adams v. State of Arkansas, from White Circuit.

08-654. Robert Meyer, d/b/a Meyer Excavators Contractors v. CDI Contractors, LLC, from Pulaski Circuit, Third Division.

09-46. Seiz Company, d/b/a Seiz Sign Company v. Arkansas State Highway and Transportation Department, from Pulaski Circuit, Ninth Division. Hannah, C.J., would grant. Imber, J., not participating.

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REVIEWS GRANTED: Petitions for review were granted today in the following cases.

CR09-609. Hutson Burks v. State of Arkansas, from Pulaski Circuit, Seventh Division.

CR09-647. Demetrius Heard v. State of Arkansas, from Lonoke Circuit.

CR09-761. Patricia McClanahan v. State of Arkansas, from Scott Circuit. Danielson, J., not participating.

09-408. Monte Red et ux. v. U.S. Bank, from Saline Circuit.

09-561. Angie Fletcher v. Kevin Scorza, from Pulaski Circuit, Seventeenth Division.

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REVIEWS DENIED: Petitions for review were denied today in the following cases.

- CR09-522. Detriawn Wade v. State of Arkansas, from Crittenden Circuit.
- CR09-648. Orlando L. Dosia v. State of Arkansas, from Howard Circuit.
- CR09-755. William Edward Snider v. State of Arkansas, from Columbia Circuit.
- CR09-782. Mary Joann Cole v. State of Arkansas, from Greene Circuit.
- 09-202. Gail Parkerson v. Richard McMurtrey et al., from Garland Circuit.
- 09-230. David H. Pickering et ux. v. Winfred W. Garrison et ux., Pulaski Circuit, Third Division.
- 09-267. Taylor Chaney v. Gina Kern, from Washington Circuit.
- 09-322. L.F. Brands Marketing, Inc. v. Dillards, Inc., from Pulaski Circuit, Twelfth Division.
- 09-332. Pearlene Ford, as Trustee of the Pearlene Ford Trust v. Gary Howard, from Benton Circuit.
- 09-347. Betty Gerrald Barnett v. Douglas Tobacco et al., from Workers' Compensation Commission.
- 09-352. Robert Sally v. Service Master and AIG Claim Service, from Workers' Compensation Commission.
- 09-375. Kimberly D. Harris v. Columbia Sewing Company, Inc. et al., from Workers' Compensation Commission.
- 09-364. James W. Goyne v. Crabtree Contracting Co., Inc. et al., from Workers' Compensation Commission.
- 09-381. Ora Lee Williams v. R.S. McCullough et al., from St. Francis Circuit.
- 09-396. Clemons Timber, Inc. v. American Interstate Insurance Company, from Cleburne Circuit.
- 09-397. Richard E. Brooks v. R.A. Brooks Trucking Company et al., from Workers' Compensation Commission.
- 09-411. Jackie Donald Hoffarth v. Anna Harp, from Benton Circuit.
- 09-470. South Flag Lake, Inc. v. Henrietta Gordon et al., from Arkansas Circuit. Brown, J., not participating.
- 09-471. George T. Ransom v. Lyndel Ransom, from Hot Spring Circuit.
- 09-500. Nestle, USA, Inc. et al. v. Arnold Drone, from Workers' Compensation Commission.
- 09-520. Henry Nichols and Regions Bank, Trustees for Alpha Trust v. Culotches Bay Navigation Rights Committee, L.L.C., from Prairie Circuit, Northern District.
- 09-526. Julie Davis v. Deric Sheriff, from Lonoke Circuit.

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- CR00-803. Timothy Lamont Howard v. State of Arkansas, from Little River Circuit. Application for permission to be appointed as counsel on behalf of defendant is granted. Corbin, J., not participating.
- CR07-623. Ronald J. Campbell v. State of Arkansas, from Lonoke Circuit. Appellant's motion to file enlarged reply brief is denied. See Pemberton v. State, 291 Ark. 198, 723 S.W.2d 372 (1987).

CR07-623. Ronald J. Campbell v. State of Arkansas, from Lonoke Circuit. Motion for extension of time to file reply brief. Granted thirty days.

CR08-1033. Lloyal Willie Bryant v. State of Arkansas, from Boone Circuit. Rebriefing ordered. See **per curiam** this date.

CR08-1297. James Aaron Miller v. State of Arkansas, from Sebastian Circuit, Fort Smith District. Appellee's motion to file enlarged brief. Granted thirty-two pages.

CACR08-1344. Shelton Wormley v. State of Arkansas, from Drew Circuit. Motion for belated appeal is granted. See **per curiam** this date.

CR08-1386. Kenneth R. Isom v. State of Arkansas, from Drew Circuit. Motion to hold CR08-1386 in abeyance until CR09-548 is briefed, and to consolidate decisions is denied. Imber, J., not participating.

CR08-1481. Jessie Lloyd Misskelley, Jr. v. State of Arkansas, from Clay Circuit, Western District. Appellant's motion for remand for further fact-findings on issue of Judge Burnett's political plans and for designation of special judge to make fact-findings. Motion denied. Imber and Wills, JJ., not participating.

CR08-1493. Damien Wayne Echols v. State of Arkansas, from Craighead Circuit, Western District. Appellant's motion to correct supplemented record on appeal and for seven day stay following correction of record for filing of appellant's substituted opening brief. Motion granted. Wills, J., not participating.

CR08-1493. Damien Wayne Echols v. State of Arkansas, from Craighead Circuit, Western District. Motion of Steven A. Drizin and Laura H. Nirider for permission to practice by comity. Motion granted. Wills, J., not participating.

CR09-60. Charles Jason Baldwin v. State of Arkansas, from Craighead Circuit, Western District. Appellant's motion for remand for further proceedings regarding recusal is denied.

CR09-410. Kitaka Lauderdale v. State of Arkansas, from Craighead Circuit, Western District. Motion to set appeal bond is denied.

CR09-412. Richard Brown v. State of Arkansas, from Saline Circuit. Appellee's motion to dismiss appeal is granted.

CR09-680. Carol Jauch v. State of Arkansas, from Pulaski Circuit, Sixth Division. Motion to withdraw is granted.

CR09-693. Christopher Lee Paschall v. Washington County Circuit Court, from Washington Circuit. Petition for writ of certiorari is denied without prejudice. Imber, J., not participating.

CR09-703. Albert Lee Lewis, Jr. v. State of Arkansas, from Craighead Circuit, Eastern District. Motion for rule on clerk is granted. See **per curiam** this date.

CR09-788. Robert D. Loggins v. State of Arkansas, from Union Circuit. Motion to withdraw as counsel, substitution of other counsel and to stay briefing schedule. Denied without prejudice pending entry of appearance of substituted counsel.

CR09-831. Benjamin D. Carter, Jr. v. State of Arkansas, from Union Circuit. Motion for substitution of counsel is granted.

CR09-831. Benjamin D. Carter, Jr. v. State of Arkansas, from Union Circuit. Motion for extension of time to file brief. Granted thirty days.

CR09-838. Kevin Banks v. State of Arkansas, from Pulaski Circuit, Second Division. Motion for rule on clerk is granted. See **per curiam** this date.

CR09-911. Kimberly Ann Webb v. State of Arkansas, from Sebastian Circuit, Fort Smith District. Motion to waive

filing fee is denied without prejudice. See Arkansas Supreme Court Rule 6-6.

CR09-942. Joseph Akin v. State of Arkansas, from Pope Circuit. Motion for rule on clerk is granted. See **per curiam** this date.

08-653. McCourt Manufacturing Corp. v. Dave Rycroft, from Sebastian Circuit, Fort Smith District. Appellee's motion and amended motion for attorney's fees are denied.

08-1452. Don Gentry, County Judge and Phillips County v. Christine Robinson, from Phillips Circuit. Appellants' motion to supplement the record is granted.

09-114. Mary Clark v. Arthur Johnson, M.D. et al., from Johnson Circuit. Appellant's motion to supplement abstract and brief and to file substituted brief is granted.

09-114. Mary Clark v. Arthur Johnson, M.D. et al., from Johnson Circuit. Motion for extension of brief time for appellant's reply brief. Granted fourteen days.

CA09-244. Greg Seago v. Arkansas Department of Human Services et al., from Miller Circuit. Joint motion to reassign to the Arkansas Supreme Court is denied.

09-313. Barry Jewell v. Keith Moser et al., from Pulaski Circuit, Sixth Division. Appellee/cross-appellant Scott Fletcher's motion for revised briefing schedule. Clerk to set briefing schedule.

09-313. Barry Jewell v. Keith Moser et al., from Pulaski Circuit, Sixth Division. Appellee/ cross-appellant Scott Fletcher's motion to dismiss appeal of Debra Worley, Special Administrator of the Estate of Micheal D. Sims. Motion denied.

09-313. Barry Jewell v. Keith Moser et al., from Pulaski Circuit, Sixth Division. Cross-appellant Debra Worley's motion to file a belated brief. Moot.

CA09-350. Alfonso Reid v. Arkansas Department of Human Services et al., from Miller Circuit. Joint motion to reassign to the Arkansas Supreme Court is denied.

CA09-351. Brian Broderick v. Arkansas Department of Human Services et al., from Miller Circuit. Joint motion to reassign to the Arkansas Supreme Court is denied.

09-408. Monte Red et ux. v. U.S. Bank, from Saline Circuit. Motion for rule on clerk to file response to petition for review. Moot.

09-431. Mary Clark v. Arthur Johnson, M.D. et al., from Sebastian Circuit, Fort Smith District. Motion of the Arkansas Trial Lawyers Association to file brief amicus curiae is granted.

09-443. Arkansas Judicial Discipline and Disability Commission v. Honorable L.T. Simes, Circuit Judge, an Original Action. Respondent's third motion to supplement the record is granted. Special Justice Ron Sheffield joins. Wills, J., not participating.

09-462. Farm Bureau Mutual Insurance Company of Arkansas, Inc. v. Pulaski County Circuit Court, from Pulaski Circuit, Fifth Division. Petition for writ of certiorari and stay of proceedings. Passed until case submitted; request for oral argument denied.

09-553. Chubb Lloyds Insurance Company of Texas et al. v. Miller County Circuit Court, from Miller Circuit. Motion to supplement the record and notice of filing. Motion granted.

09-587. Foremost Insurance Company et al. v. Miller County Circuit Court, from Miller Circuit. Motion to supplement the record and notice of filing. Motion granted.

09-595. Stephen Jackson v. Cathy Jackson, from Pulaski Circuit, Sixteenth Division. Motion for rule on clerk is denied. See **per curiam** this date.

09-651. Larry Thomas et ux. v. Green Tree Servicing, LLC, from Crittenden Circuit. Motion to proceed in forma pauperis is denied.

09-657. Teresa Bloodman v. State of Arkansas, from Mississippi Circuit, Osceola District. Appellant's motion to settle and supplement the record is granted.

09-665. Rosemarie Clampitt v. James P. Geurin et ux., from Garland Circuit. Appellant's motion for restraining order against appellees is denied.

09-684. John Doe et al. v. Stark Ligon, Executive Director, Supreme Court Committee on Professional Conduct, an Original Action. Petitioners' motion to file submissions under seal is granted.

09-688. Alcoa World Alumina, L.L.C. v. Richard Weiss, Director, Arkansas Department of Finance and Administration, from Pulaski Circuit, Third Division. Motion to file brief amicus curiae in support of appellant is granted.

09-704. Helen Virginia Coan Estate et al. v. Michael P. Gaughan, from Ouachita Circuit. Appellants' motion for writ of certiorari to complete record and to stay briefing schedule. Writ returnable within fifteen days; clerk to set briefing schedule.

09-720. Katheleen McClain v. Honorable James Moody, Jr. et al., from Pulaski Circuit, Third Division. Motion to proceed in forma pauperis is denied; motion for rule on clerk and petition for writ of prohibition are moot.

09-735. Ernst & Young, LLP v. Benjamin H. Reid, Jr. et al., from Sebastian Circuit, Fort Smith District. Petition for writ of certiorari to complete the record. Granted thirty days.

09-742. Natalie E. Willis v. Honorable Ellen Brantley, Circuit Judge, from Pulaski Circuit, Sixteenth Division. Motion to proceed in forma pauperis is denied; motion and amended motion for rule on clerk to file petition for writs of prohibition/mandamus and writ of certiorari are moot.

09-758. Carroll Wayne Hamilton v. Circuit Court of Pulaski County, Arkansas, from Pulaski Circuit, Thirteenth Division. Petition for writ of prohibition or, in the alternative, certiorari is denied without prejudice.

09-781. Ben Sisler v. Chastine Bramlett et al., from Van Buren Circuit. Motion for rule on clerk is denied. See **per curiam** this date. Imber, J., not participating.

09-812. Harvey Edwards v. City of Jonesboro et al., from Craighead Circuit, Western District. Motion for rule on clerk is denied.

09-841. Perennial Healthcare Management et al. v. Cheryl Staggs, as Special Personal Representative of Shirley Boyd, Deceased, from Independence Circuit. Appellants' motion to dismiss appeal is granted; motion for stay pending appeal is moot.

09-845. Texas Farmers Insurance Company et al. v. Miller County Circuit Court, from Miller Circuit. Petition for writ of certiorari or prohibition is denied; motion for temporary relief moot.

09-845. Texas Farmers Insurance Company et al. v. Miller County Circuit Court, from Miller Circuit. Motion to supplement the record and notice of filing. Moot.

09-852. Felicia M. Andrews v. 436 Hop, Ltd, d/b/a 436 International House of Pancakes, from Pulaski Circuit, Third Division. Appellee's motion to dismiss appeal is granted.

09-860. Andy Worley et ux. v. Theodore Patin et ux., from Garland Circuit. Motion for rule on clerk is denied.

09-886. In Re: Estate of Arver Hicks, Jr., Deceased, from Logan Circuit, Southern District. Motion for rule on clerk is remanded. See **per curiam** this date. Gunter, J., dissents.

09-926. Felicia M. Andrews v. International House of Pancakes, from Pulaski Circuit, Third Division. Appellant's motion to proceed in forma pauperis. Moot.

09-935. Scott Lippe v. State of Arkansas, from Carroll Circuit, Eastern District. Appellee's motion to dismiss appeal is granted.

09-941. Financial Freedom Senior Funding Corporation v. Woody Pearce, from Craighead Circuit, Western District. Motion for rule on clerk is denied. Hannah, C.J., Danielson, and Wills, JJ., would grant.

09-943. Van Buren County Title Company v. Ester Bass et al., from Van Buren Circuit. Motion for rule on clerk is granted. See **per curiam** this date.

09-944. Jennifer Emmert v. Arkansas Department of Human Services, from Fulton Circuit. Motion for rule on clerk is granted. See **per curiam** this date.

In Memory of Honorable Ernie E. Wright. See **per curiam** this date.

On August 6, 2009, Honorable Ernie Wright of Harrison died at the age of 93. On the occasion of his passing, the Arkansas Supreme Court wishes to acknowledge his life of service to the Arkansas judiciary and to express our sympathy to his wife, Aileen, and his family.

In his long and distinguished career, Judge Wright served, either through election or by appointment, as Chancellor, Special Circuit Judge, Chief Judge of the Court of Appeals, and Supreme Court Special Justice. In addition to his duties on the bench, Judge Wright served the Arkansas judiciary as President of the Arkansas Judicial Council. He had the respect and admiration of his fellow judges.

Judge Wright's contributions to the bench and bar began upon his graduation from the University of Arkansas Law School. He enjoyed a successful career in the private practice of law in Mountain Home. Over the course of Judge Wright's legal career, he served as City Attorney of Mountain Home, Deputy Prosecutor of Baxter County, Prosecuting Attorney of the Sixteenth Circuit, and for over twenty-one years, as Chancellor of the Eleventh Chancery Circuit. In 1979, Governor Bill Clinton appointed him to lead the newly created Arkansas Court of Appeals as its first Chief Judge.

Judge Wright's sense of duty and service extended beyond the judiciary. He resigned as prosecuting attorney to enter the United States Army during World War II and ultimately served in the United States Air Force. In 1996, he chaired a federal land commission on the Buffalo River National Park.

The Arkansas Supreme Court joins the attorneys, judges, and citizens of this state in saluting Judge Ernie Wright for a distinguished legal career and for an extraordinarily well-lived life.

## **MOTIONS SUBMITTED**

### **PETITIONS FOR REVIEW:**

CR09-637. Terrance Wright v. State of Arkansas, from Clark Circuit.

CR09-675. Michael E. Jackson v. State of Arkansas, from Faulkner Circuit.

09-438. Kathy Travis Gilbow v. Patrick Travis, from Benton Circuit.

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CR09-948. Avery Darnell Williams v. State of Arkansas, from Pulaski Circuit, Fifth Division. Motion for rule on clerk.

CR09-986. Thurstle Dale Mullen v. Honorable Michael Medlock, Circuit Judge, from Crawford Circuit. Petition for writ of certiorari.

09-553. Chubb Lloyds Insurance Company of Texas et al. v. Miller County Circuit Court et al., from Miller Circuit. Petitioners' motion to supplement the record.

CA09-695. John Schubert et ux. v. Arkansas Department of Human Services, from Crawford Circuit. Appellee's motion to reconsider granting of appellants' request for an additional thirty days to file brief.

09-749. Lee Campbell v. Michael Hankins, from Jefferson Circuit. Appellant's motion to dismiss petition for review.

### **SUBMISSIONS**

08-811. Justin Bryan, d/b/a J&L Construction v. City of Cotter, Arkansas et al., from Pulaski Circuit, Second Division. Argued orally.

08-543. Landmark Novelties, Inc. v. Arkansas State Board of Pharmacy, from Pulaski Circuit, Second Division.

08-975. Jena Graham v. Darlene Matheny, from Pulaski Circuit, Thirteenth Division.

08-1089. Bernice McWhorter v. Gene McWhorter, from Phillips Circuit.

09-13. Flow Doc, Inc. et al. v. Thomas M. Horton, from Pulaski Circuit, Twelfth Division.

09-225. Richard Weiss, Director, Arkansas Department of Finance and Administration v. Bryce Company, LLC, from White Circuit.

09-308. Daryl Guffey v. Kim Billings Counts, from Washington Circuit.