

ARKANSAS
REPORTS

Volume 351

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
November 21, 2002 — February 6, 2003
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2003

CONTENTS

	Page
JUSTICES AND OFFICERS OF THE SUPREME COURT	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Justices of Supreme Court, Per Curiam Opinions, and Per Curiam Orders Adopting or Amending Rules, etc.	xii
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xvi
TABLE OF OPINIONS NOT REPORTED	xviii
OPINIONS REPORTED	1
APPENDIX	
Rules Adopted or Amended by Per Curiam Orders	677
Appointments to Committees	725
Professional Conduct Matters	731
Ceremonial Observances	733
INDEX	
Alphabetical Headnote Index	735
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	757

STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

(a) SUPREME COURT — SIGNED OPINIONS. All signed opinions of the Supreme Court shall be designated for publication.

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) COURT OF APPEALS — PUBLISHED OPINIONS. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publications when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked “Not Designated for Publication.”

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not

In Re: Arkansas Supreme Court Legal Specialization Transition Task Force (Per Curiam)	686
In Re: Arkansas Rules of Civil Procedure; Rules of Appellate Procedure—Civil; Rules of Appellate Procedure—Criminal; Inferior Court Rules; Rules of the Supreme Court & Court of Appeals; and Administrative Orders (Per Curiam)	687
In Re: Arkansas Rules of Crim. P. 13.3; and Arkansas Rules of App. P.—Crim. 16 (Per Curiam) 704	
In Re: Amended Supreme Court Statement on Limited Jurisdiction Courts Under Amendment 80 (Per Curiam)	708
In Re: Administrative Order Number 14 — Administration of Circuit Courts (Per Curiam)	713
In Re: Administrative Order Number 16 — Procedures Regarding the Assignment of Judges (Per Curiam) ...	719

APPOINTMENTS TO COMMITTEES:

In Re: Arkansas State Bd. of Law Examnrs. (Per Curiam) ...	725
In Re: Code Revision Commission (Per Curiam)	725
In Re: Judicial Discipline and Disability Commission (Per Curiam)	726
In Re: Supreme Court Civil Practice Committee (Per Curiam)	726
In Re: Supreme Court Committee on Child Support (Per Curiam)	727
In Re: Appointments to Arkansas Continuing Legal Education Board (Per Curiam)	728
In Re: Supreme Court Committee on Criminal Practice (Per Curiam)	728

PROFESSIONAL CONDUCT MATTERS:

Ligon v. Price (Per Curiam)	731
-----------------------------------	-----

CEREMONIAL OBSERVANCES:

In Re: Retirement of Purifoy (Per Curiam)	733
---	-----

Buie, Edward Henry <i>v.</i> State	198
Buie, Edward Henry <i>v.</i> State	425
Bullock <i>v.</i> Pace	442
City of Dover <i>v.</i> City of Russellville	557
Dugger <i>v.</i> State	443
Fegans <i>v.</i> Norris	200
Ford Motor Co. <i>v.</i> Harper	559
George <i>v.</i> State	209
Hamilton <i>v.</i> Jones	382
Hamilton <i>v.</i> Jones	561
Hudson <i>v.</i> State	383
<i>In Re:</i> Fuchs	618
Jackson <i>v.</i> State	212
Lake View Sch. Dist. No. 25 <i>v.</i> Huckabee	385
Maxwell <i>v.</i> State	674
McIntosh <i>v.</i> State	322
Munn <i>v.</i> State	324
Scott <i>v.</i> State	619
Simmons <i>v.</i> State	445
Smith, Melton <i>v.</i> State	325
Smith, Melton <i>v.</i> State	562
Supreme Court Comm. on Prof'l Conduct <i>v.</i> Fuchs	384
Warren <i>v.</i> State	563
Wicker <i>v.</i> State	213
Williams, Harmon <i>v.</i> State	214

APPENDIX

RULES ADOPTED OR AMENDED BY PER CURIAM ORDERS:

<i>In Re:</i> Penalty for Late Payment of Bar of Arkansas Dues (Per Curiam)	677
<i>In Re:</i> Supreme Court Statement on Limited Jurisdiction Courts Under Amendment 80 (Per Curiam)	678
<i>In Re:</i> Arkansas Board of Legal Specialization & Amend- ment of Rule 7.4, Arkansas Model Rules of Profes- sional Conduct (Per Curiam)	683
<i>In Re:</i> Arkansas Supreme Court Board of Legal Specializa- tion (Per Curiam)	686

Doss <i>v.</i> State	667
Ivy <i>v.</i> Keith	269
Lake View Sch. Dist. No. 25 <i>v.</i> Huckabee	31
Lewellyn <i>v.</i> Lewellyn	346
Morris <i>v.</i> State	426

ANNABELLE CLINTON IMBER, JUSTICE:

Alexander <i>v.</i> Estate of Alexander	359
Arkansas Soil and Water Conserv. Comm'n <i>v.</i> City of Bentonville	289
Finney <i>v.</i> Cook	367
Kirwan <i>v.</i> State	603
Neeve <i>v.</i> City of Caddo Valley	235

RAY THORNTON, JUSTICE:

Cave City Nursing Home, Inc. <i>v.</i> Arkansas Dep't of Human Servs.	25-A
Clem <i>v.</i> State	112
Davis <i>v.</i> State	406
Hatfield <i>v.</i> Thomas	377
Spears <i>v.</i> City of Fordyce	305
State <i>v.</i> Aud	531
State <i>v.</i> Franklin	131
T&T Chem., Inc. <i>v.</i> Priest	537

JIM HANNAH, JUSTICE:

Chandler <i>v.</i> City of Little Rock	172
Fisher <i>v.</i> Chavers	318
Gamble <i>v.</i> State	541
Judkins <i>v.</i> Hoover	552
Wooten <i>v.</i> State	241
Worth <i>v.</i> Benton County Cir. Court	149
Worth <i>v.</i> City of Rogers	183

PER CURIAM:

Anderson <i>v.</i> State	675
Arkansas Dep't of Human Servs. <i>v.</i> Collier	380
Berna <i>v.</i> State	617



ARKANSAS REPORTS
VOLUME 351

ARKANSAS
APPELLATE REPORTS
VOLUME 80

*[T]he law is the last result of human
wisdom acting upon human experience
for the benefit of the public.*

— SAMUEL JOHNSON
(1709-1784)

THIS BOOK CONTAINS THE OFFICIAL
ARKANSAS REPORTS

Volume 351

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
November 21, 2002 — February 6, 2003
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS

Volume 80

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
November 20, 2002 — February 5, 2003
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
2003

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 676. Cite as 351 Ark. ____ (2002 or 2003).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 446. Cite as 80 Ark. App. ____ (2002 or 2003).

*[T]o none will we sell, to none
deny or delay, right or justice.*

— MAGNA CARTA (1215)

Set in Bembo

JOE CHRISTENSEN PRINTING COMPANY
1540 ADAMS STREET
LINCOLN, NEBRASKA 68521
2003

JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(November 21, 2002 — February 6, 2003 inclusive)

JUSTICES

W.H. "DUB" ARNOLD	Chief Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
RAY THORNTON	Justice
JIM HANNAH	Justice

OFFICERS

MARK PRYOR	Attorney General ¹
MIKE BEEBE	Attorney General ²
LESLIE W. STEEN	Clerk
AVA M. HICKS	Interim Director, Library
WILLIAM B. JONES, JR.	Reporter of Decisions

¹ Left office for U.S. Senate, January 2003.

² Assumed office January 2003.

TABLE OF CASES REPORTED

Boldface type indicates cases in this issue.

A

Alexander <i>v.</i> Estate of Alexander.....	359
Anderson <i>v.</i> State	675
Arkansas County <i>v.</i> Desha County	387
Arkansas Dep't of Human Servs. (Cave City Nursing Home, Inc. <i>v.</i>)	13
Arkansas Dep't of Human Servs. <i>v.</i> Collier	380
Arkansas Dep't of Human Servs. <i>v.</i> Collier	506
Arkansas Health Servs. Comm'n <i>v.</i> Regional Care Fac., Inc.	331
Arkansas Soil & Water Conserv. Comm'n <i>v.</i> City of Bentonville.....	289
Aud (State <i>v.</i>)	531

B

Barnes <i>v.</i> Everett	479
Bell <i>v.</i> Bershears	260
Bennett <i>v.</i> Collier	447
Benton County Cir. Court (Worth <i>v.</i>)	149
Berna <i>v.</i> State	617
Bershears (Bell <i>v.</i>)	260
Bradford <i>v.</i> State	394
Buie, Edward Henry <i>v.</i> State	198
Buie, Edward Henry <i>v.</i> State	425
Bullock <i>v.</i> Pace	442
Butt <i>v.</i> Evans Law Firm, P.A.	566

C

Carter <i>v.</i> Four Seasons Funding Corp.	637
Cathey <i>v.</i> State	464

Cave City Nursing Home, Inc. <i>v.</i> Arkansas Dep't of Human Servs.	13
Chandler <i>v.</i> City of Little Rock	172
Chapman <i>v.</i> Wal-Mart Stores, Inc.	1
Chavers (Fisher <i>v.</i>)	318
City of Caddo Valley (Neeve <i>v.</i>)	235
City of Dover <i>v.</i> City of Russellville	557
City of Fordyce (Spears <i>v.</i>)	305
City of Little Rock (Chandler <i>v.</i>)	172
City of Rogers (Worth <i>v.</i>)	183
City of Russellville (City of Dover <i>v.</i>)	557
Clem <i>v.</i> State	112
Collier (Arkansas Dep't of Human Servs. <i>v.</i>)	380
Collier (Arkansas Dep't of Human Servs. <i>v.</i>)	506
Collier (Bennett <i>v.</i>)	447
Cook (Finney <i>v.</i>)	367

D

Davis <i>v.</i> State	406
Desha County (Arkansas County <i>v.</i>)	387
Doss <i>v.</i> State	667
Dugger <i>v.</i> State	443

E

Eady <i>v.</i> Lansford	249
Edmond <i>v.</i> State	495
Estate of Alexander (Alexander <i>v.</i>)	359
Evans Law Firm, P.A. (Butt <i>v.</i>)	566
Everett (Barnes <i>v.</i>)	479

F

Fegans <i>v.</i> Norris	200
Finney <i>v.</i> Cook	367
Fisher <i>v.</i> Chavers	318
Ford Motor Co. <i>v.</i> Harper	559
Four Seasons Funding Corp. (Carter <i>v.</i>)	637
Franklin (State <i>v.</i>)	131
Fuchs (Supreme Court Comm. on Prof'l Conduct <i>v.</i>)	384

G

Gamble <i>v.</i> State	541
George <i>v.</i> State	209

H

Hamilton <i>v.</i> Jones	382
Hamilton <i>v.</i> Jones	561
Harper (Ford Motor Co. <i>v.</i>)	559
Hatfield <i>v.</i> Thomas	377
Hoover (Judkins <i>v.</i>)	552
Huckabee (Lake View Sch. Dist. No. 25 <i>v.</i>)	31
Huckabee (Lake View Sch. Dist. No. 25 <i>v.</i>)	385
Hudson <i>v.</i> State	383

I

In Re: Fuchs	618
Ivy <i>v.</i> Keith	269

J

Jackson <i>v.</i> State	212
Jones (Hamilton <i>v.</i>)	382
Jones (Hamilton <i>v.</i>)	561
Judkins <i>v.</i> Hoover	552

K

Keith (Ivy <i>v.</i>)	269
Kirwan <i>v.</i> State	603

L

Lake View Sch. Dist. No. 25 <i>v.</i> Huckabee	31
Lake View Sch. Dist. No. 25 <i>v.</i> Huckabee	385
Lansford (Eady <i>v.</i>)	249
Lewellyn (Lewellyn <i>v.</i>)	346
Lewellyn <i>v.</i> Lewellyn	346

M

Maxwell <i>v.</i> State	674
Mayes <i>v.</i> State	26
McIntosh <i>v.</i> State	322
McWhorter (McWhorter <i>v.</i>)	622
McWhorter <i>v.</i> McWhorter	622
Mills <i>v.</i> State	523
Morris <i>v.</i> State	426
Munn <i>v.</i> State	324

N

Neeve <i>v.</i> City of Caddo Valley	235
Norris (Fegans <i>v.</i>)	200

P

Pace (Bullock <i>v.</i>)	442
Pace (Vanderpool <i>v.</i>)	630
Parker <i>v.</i> Sebourn	453
Priest (T&T Chem., Inc. <i>v.</i>)	537
Pugh <i>v.</i> State	5

R

Regional Care Fac., Inc. (Arkansas Health Servs. Comm'n <i>v.</i>)	331
--	-----

S

Scott <i>v.</i> State	619
Sebourn (Parker <i>v.</i>)	453
Simmons <i>v.</i> State	445
Smith, Dennis James <i>v.</i> State	468
Smith, Melton <i>v.</i> State	325
Smith, Melton <i>v.</i> State	562
Spears <i>v.</i> City of Fordyce	305
State <i>v.</i> Aud	531
State <i>v.</i> Franklin	131
State (Anderson <i>v.</i>)	675
State (Berna <i>v.</i>)	617

State (Bradford <i>v.</i>)	394
State (Buie, Edward Henry <i>v.</i>)	198
State (Buie, Edward Henry <i>v.</i>)	425
State (Cathey <i>v.</i>)	464
State (Clem <i>v.</i>)	112
State (Davis <i>v.</i>)	406
State (Doss <i>v.</i>)	667
State (Dugger <i>v.</i>)	443
State (Edmond <i>v.</i>)	495
State (Gamble <i>v.</i>)	541
State (George <i>v.</i>)	209
State (Hudson <i>v.</i>)	383
State (Jackson <i>v.</i>)	212
State (Kirwan <i>v.</i>)	603
State (Maxwell <i>v.</i>)	674
State (Mayes <i>v.</i>)	26
State (McIntosh <i>v.</i>)	322
State (Mills <i>v.</i>)	523
State (Morris <i>v.</i>)	426
State (Munn <i>v.</i>)	324
State (Pugh <i>v.</i>)	5
State (Scott <i>v.</i>)	619
State (Simmons <i>v.</i>)	445
State (Smith, Dennis James <i>v.</i>)	468
State (Smith, Melton <i>v.</i>)	325
State (Smith, Melton <i>v.</i>)	562
State (Warren <i>v.</i>)	563
State (Wicker <i>v.</i>)	213
State (Williams, Harmon <i>v.</i>)	214
State (Williams, John Franklin <i>v.</i>)	229
State (Williams, Phillip Dewayne <i>v.</i>)	215
State (Wooten <i>v.</i>)	241
Supreme Court Comm. on Prof'l Conduct <i>v.</i> Fuchs	384

T

T&T Chem., Inc. <i>v.</i> Priest	537
Thomas (Hatfield <i>v.</i>)	377

V

Vanderpool <i>v.</i> Pace	630
---------------------------------	-----

W

Wal-Mart Stores, Inc. (Chapman <i>v.</i>).....	1
Warren <i>v.</i> State.....	563
Wicker <i>v.</i> State.....	213
Williams, Harmon <i>v.</i> State	214
Williams, John Franklin <i>v.</i> State	229
Williams, Phillip Dewayne <i>v.</i> State	215
Wooten <i>v.</i> State	241
Worth <i>v.</i> Benton County Cir. Court.....	149
Worth <i>v.</i> City of Rogers	183

OPINIONS DELIVERED BY THE RESPECTIVE
JUSTICES OF THE ARKANSAS SUPREME COURT
DURING THE PERIOD COVERED BY THIS VOLUME
AND DESIGNATED FOR PUBLICATION

W.H. "DUB" ARNOLD, CHIEF JUSTICE:

Arkansas County <i>v.</i> Desha County	387
Bennett <i>v.</i> Collier	447
Chapman <i>v.</i> Wal-Mart Stores, Inc.	1
McWhorter <i>v.</i> McWhorter	622
Parker <i>v.</i> Sebourn	453
Williams, Phillip Dewayne <i>v.</i> State	215

TOM GLAZE, JUSTICE:

Arkansas Health Servs. Comm'n <i>v.</i> Regional Care Fac., Inc.	331
Cathey <i>v.</i> State	464
Eady <i>v.</i> Lansford	249
Mills <i>v.</i> State	523
Pugh <i>v.</i> State	5
Smith, Dennis James <i>v.</i> State	468
Williams, John Franklin <i>v.</i> State	229

DONALD L. CORBIN, JUSTICE:

Barnes <i>v.</i> Everett	479
Bell <i>v.</i> Bershears	260
Cave City Nursing Home, Inc. <i>v.</i> Arkansas Dep't of Human Servs.	13
Edmond <i>v.</i> State	495
Mayes <i>v.</i> State	26
Vanderpool <i>v.</i> Pace	630

ROBERT L. BROWN, JUSTICE:

Arkansas Dep't of Human Servs. <i>v.</i> Collier	506
Bradford <i>v.</i> State	394
Butt <i>v.</i> Evans Law Firm, P.A.	566
Carter <i>v.</i> Four Seasons Funding Corp.	637

be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) COPIES OF ALL OPINIONS — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Abshure *v.* State, CR 02-1213 (Per Curiam), Petition for Review denied December 19, 2002.
- Bautista *v.* State, CR 01-497 (Per Curiam), Pro Se Motion to File Belated Petition for Rehearing denied January 30, 2003.
- Berna *v.* Judicial Discipline & Disability Comm'n, 01-1369 (Per Curiam), Pro Se Motion for Rule on Clerk for Matter to be Resubmitted denied December 19, 2002.
- Berna *v.* Reed, 02-569 (Per Curiam), Motion for Reconsideration of Motions for Appointment of Counsel and to File Handwritten Appellant's Brief moot in part and denied in part; Motion for Extension of Time to File Brief moot; Motion for Default Judgment and for Rule on Clerk denied December 12, 2002.
- Berna *v.* State, CR 83-153 (Per Curiam), Pro Se Motion and Amended Motion for Rule on Clerk, Motion for Default Judgment, and Motion for Discovery; motions dismissed January 9, 2003.
- Boatman *v.* State, CR 02-1048 (Per Curiam), Pro Se Motion for Rule on Clerk to Proceed with Appeal of Order denied January 9, 2003.
- Boyland *v.* State, CA CR 00-1427 (Per Curiam), Pro Se Motion for Copy of Transcript at Public Expense denied January 16, 2003.
- Bryan *v.* Harris, 02-395 (Per Curiam), Pro Se Motion to Expedite Appeal dismissed; motion moot February 6, 2003.
- Burger *v.* State, CR 02-350 (Per Curiam), Pro Se Motion for Due Process and to Deny Further Extension of Brief Time to Appellee moot January 16, 2003.
- Burgie *v.* State, CR 02-90 (Per Curiam), Pro Se Motion to Submit Additional Points for Reversal denied January 16, 2003.
- Cagle *v.* State, CR 01-723 (Per Curiam), affirmed November 21, 2002. Rehearing denied December 19, 2002.
- Campbell *v.* State, CR 02-953 (Per Curiam), Pro Se Motion for Extension of Time to File Brief & for Access to Trial Transcript granted January 16, 2003.

-
- Carroll *v.* Piazza, CR 02-1245 (Per Curiam), Petition for Writ of Mandamus moot December 12, 2002.
- Cloird *v.* State, CR 93-284 (Per Curiam), Pro Se Motion for Oral Argument dismissed January 9, 2003.
- Conley *v.* State, CR 02-779 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted; Pro Se Motion for Appointment of Counsel denied November 21, 2002.
- Criswell *v.* State, CR 02-877 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief; appeal dismissed; motion moot December 5, 2002.
- Donald, Archie M. *v.* City of West Memphis, CR 02-1179 (Per Curiam), Pro Se Motion to Proceed *In Forma Pauperis* on Appeal denied January 16, 2003.
- Donald, Archie M. *v.* City of West Memphis, 02-1173 (Per Curiam), Pro Se Motion to Proceed *In Forma Pauperis* on Appeal and Motion to Supplement Record denied January 30, 2003.
- Douthitt *v.* State, CR 96-622 (Per Curiam), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error *Coram Nobis* denied November 21, 2002.
- Dugger *v.* State, CR 02-637 (Per Curiam), Pro Se Motion to Relieve Counsel and for Appointment of Other Counsel stayed; show cause order issued December 19, 2002.
- Ellis *v.* State, CR 02-1060 (Per Curiam), Pro Se Motions for Extension of Time to File Appellant's Brief dismissed; motions moot January 30, 2003.
- Franklin *v.* Maggio, CR 02-1115 (Per Curiam), Pro Se Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed January 23, 2003.
- Gaines *v.* State, CR 02-747 (Per Curiam), Pro Se Motion to File a Belated Brief moot; appeal dismissed January 16, 2003.
- Gipson, Danny *v.* State, CR 02-636 (Per Curiam), Pro Se Petition for Writ of Certiorari, Motion and Amended Motion for Appointment of Counsel and Motions for Extension of Brief Time; appeal dismissed; petition and motions moot January 9, 2003.
- Gipson, David *v.* State, CR 02-782 (Per Curiam), Pro Se Motion and Amended Motion for Belated Appeal of Judgment
-

- denied; Pro Se Motion for Appointment of Counsel moot November 21, 2002.
- Green *v.* Norris, 02-914 (Per Curiam), Pro Se Motion for Rule on Clerk treated as motion for belated appeal and denied December 5, 2002.
- Hall *v.* State, CR 01-917 (Per Curiam), affirmed November 21, 2002.
- Hampton *v.* Humphrey, CR 02-1307 (Per Curiam), Pro Se Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed December 19, 2002.
- Hannah *v.* State, CR 02-680 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Rule on Clerk dismissed January 23, 2003.
- Hardin *v.* State, CR 02-335 (Per Curiam), affirmed February 6, 2003.
- Henderson *v.* State, CR 01-616 (Per Curiam), affirmed December 19, 2002.
- Hendrickson-Atkinson *v.* State, CR 02-1037 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted February 6, 2003.
- Higgins *v.* Yates, CR 02-1244 (Per Curiam), Pro Se Petition for Writ of Mandamus moot December 19, 2002.
- Hill *v.* State, CR 01-1234 (Per Curiam), affirmed December 12, 2002.
- Hodge *v.* State, CR 02-112 (Per Curiam), affirmed January 23, 2003.
- Hodges *v.* Norris, 02-786 (Per Curiam), Pro Se Motion to File Belated Brief granted January 16, 2003.
- Hutcherson *v.* State, CR 02-373 (Per Curiam), rebriefing ordered February 6, 2003.
- Hutts *v.* State, CR 02-964 (Per Curiam), Pro Se Motion for Belated Appeal of Order treated as motion for rule on clerk and granted January 9, 2003.
- Jackson, Michael *v.* State, CR 00-1383 (Per Curiam), dismissed December 12, 2002.
- Jackson, Wilbert *v.* State, CR 97-79 (Per Curiam), affirmed December 12, 2002.

-
- Lamar *v.* State, CR 01-909 (Per Curiam), Pro Se Motion for Photocopy of Transcript or Access to Transcript at Public Expense denied February 6, 2003.
- Lamere *v.* State, CR 02-155 (Per Curiam), Motion to Withdraw Motion granted December 12, 2002.
- Latta *v.* State, CA CR 00-910 (Per Curiam), Pro Se Motion for Photocopy of Transcript at Public Expense denied December 5, 2002.
- Leclere *v.* State, CR 01-1276 (Per Curiam), affirmed January 9, 2003.
- McArty *v.* Thomas, CR 02-994 (Per Curiam), Pro Se Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed December 5, 2002.
- McCoy *v.* State, CR 02-930 (Per Curiam), Pro Se Motions for Extension of Time to File Appellant's Brief, for Duplication of Brief at Public Expense, and for Appointment of Counsel moot; appeal dismissed January 23, 2003.
- Medlock *v.* State, CR 02-1039 (Per Curiam), Motion for Rule on Clerk to Proceed with Appeal of Postconviction Order denied December 12, 2002.
- Miner *v.* State, CR 02-671 (Per Curiam), Pro Se Motion for Belated Appeal denied January 16, 2003.
- Newman *v.* State, CR 02-811 (Per Curiam), Pro Se Motion to Dismiss Mandatory Review of Judgment and Sentence denied January 30, 2003.
- Pate *v.* State, CR 02-451 (Per Curiam), Pro Se Motion to File a Belated Brief granted February 6, 2003.
- Sanders *v.* State, CR 02-1116 (Per Curiam), Pro Se Motion for Belated Appeal of Order granted January 23, 2003.
- Stepps *v.* State, CA CR 00-1379 (Per Curiam), Pro Se Motion for Photocopy of Transcript at Public Expense denied January 23, 2003.
- Van *v.* State, CR 96-1144 (Per Curiam), Pro Se Motion for Photocopy of Transcript at Public Expense denied January 30, 2003.
- Walton *v.* Post-Prison Transfer Bd., 02-791 (Per Curiam), Pro Se Motion to Proceed *In Forma Pauperis* on Appeal denied November 21, 2002.
-

-
- Weaver, Georgia *v.* State, CR 95-1205 (Per Curiam), Pro Se Motion for Photocopy of Appellant's Brief, Transcript, & Other Material at Public Expense denied January 16, 2003.
- Weaver, Terri *v.* State, CR 02-737 (Per Curiam), Pro Se Motion for Duplication of Appellant's Brief at Public Expense moot February 6, 2003.
- Williams *v.* State, CR 00-429 (Per Curiam), Motion for Copy of Trial Transcript denied December 12, 2002.
- Wilson *v.* State, CR 02-128 (Per Curiam), appeal dismissed December 19, 2002.
- Winningham *v.* State, CR 02-976 (Per Curiam), Pro Se Motion for Rule on Clerk denied December 5, 2002.
- Wright *v.* State, CR 02-764 (Per Curiam), Motion for Belated Appeal denied; Motion of Byron Cole Rhodes to be Relieved as Counsel granted December 19, 2002.

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN RE: PENALTY for LATE PAYMENT of
BAR of ARKANSAS DUES

Supreme Court of Arkansas
Delivered November 21, 2002

PER CURIAM. By *per curiam* order of November 1, 2001, the annual dues for membership in the Bar of Arkansas were raised, effective January 1, 2003, as follows: The annual license fee shall be \$175.00 for lawyers who have been licensed for three or more years, \$100.00 for new enrollees who have been licensed for less than three years, and \$15.00 for lawyers who are sixty-five years of age or older. See *In Re Bar of Arkansas License Fees*, 346 Ark. Appx. (2001).

The penalty for late payment of these Bar of Arkansas membership dues, commencing in 2003, and for dues which accrue in subsequent calendar years, shall be as follows:

<u>Annual Fee</u>	<u>Late Payment Fee</u>
\$175.00	\$85.00
\$100.00	\$50.00
\$15.00	\$10.00
Inactive Status	one-half of assessed bar dues

IN RE: SUPREME COURT STATEMENT on
LIMITED JURISDICTION COURTS UNDER
AMENDMENT 80

Supreme Court of Arkansas
Delivered November 25, 2002

PER CURIAM. Amendment 80 revised the Judicial Article of the Arkansas Constitution, and it places substantial responsibility for its implementation on the Supreme Court. In furtherance of this responsibility and as the head of the Judicial Department of state government, we publish the following:

Arkansas Supreme Court Statement on Limited Jurisdiction
Courts Under Amendment 80

The adoption of Amendment 80 to the Arkansas Constitution by the citizens of Arkansas has created significant change in the structure and administration of our state court system. In 2001 our probate and chancery courts were eliminated and a unified circuit court of general jurisdiction was created. Five divisions of circuit court were created and a system for the establishment of local case administrative plans was put in place. In 2002 a change in the process for the selection of state court judges was implemented with the move from partisan to non-partisan judicial elections.

Amendment 80 also requires change and improvement of our limited jurisdiction court system. The implementation date for these changes is January 1, 2005. In many respects, the reform of these courts is the most significant area of constitutional change. Arkansas' limited jurisdiction courts have historically operated as "step-children" in our state court system; in fact, in very few respects could they be considered "state" courts. Pre-Amendment 80 constitutional and statutory provisions create five different limited jurisdiction courts, each with conflicting and overlapping jurisdiction. Almost all of these courts operate on a part-time

basis and there is little consistency in practice and procedure from jurisdiction to jurisdiction.

In order to consider the possible changes required by Amendment 80, the Supreme Court created the Committee on the Implementation of Amendment 80 to study the issues and make recommendations to the court. After reviewing these recommendations, the court now adopts the following statement of policy to guide the implementation of this phase of Amendment 80. It should be noted that the responsibility for implementation on these issues is shared between the Supreme Court and the General Assembly. It is also likely that the full implementation will take place over a number of years. These policy statements, therefore, are offered as a guide to insure consistency in the measures adopted by the judicial and legislative branches and throughout the duration of the process.

1. Geographical Jurisdiction. The current state of the number, location, and geographic authority of limited jurisdiction courts presents a quagmire of conflicting and overlapping judicial boundaries. In many cases, the geographical jurisdiction of the judge exceeds the area from which he or she is elected. In some counties this is compounded by the existence of a multitude of district and city courts. For these reasons the following principles should be adopted:

- * **One district court should be created in each county. In counties which have two county seats and in which the General Assembly has created two judicial districts, one district court should be created in each district.**
- * **No district judge should have the authority to act outside of the area from which he or she is elected.**

2. Full-time Judiciary. With a very few exceptions, current limited jurisdiction court judges are employed on a part-time basis. In some cases, the court is in session for only a few days each month. Most of these judges also maintain an active law practice. Despite the clear provisions of the Code of Judicial Conduct and the

diligent attempts by the judges to avoid problems, conflicts of interest occur routinely. A majority of the complaints received by the Judicial Discipline and Disability Commission involve part-time district court judges. While Amendment 80 does not require that district court judges serve in a full-time capacity it certainly contemplates that as the standard. The change from a municipal or city to a “district” court, the creation of one court per county and the specific authorization of judges to serve courts in more than one county all evidence the expectation of a full-time judiciary. Section 14 of the Amendment provides that the General Assembly may prevent district judges from practicing law.

If the district court is to become a true third tier of the state court system it must be a full-time court served by full-time judges.

- * **To the extent that the number of cases within a county or district is sufficient to support a full caseload, district judges should serve on a full-time basis and should be prohibited from practicing law.**
- * **To the extent that there is not a sufficient number of cases within a district or county to support a full caseload, two or more districts and/or counties should be combined for the purposes of creating an electoral district for the election of a full-time judge to serve the courts so designated.**

3. State Funding. Amendment 80 does not require the state funding of the court system. The stated public policy goal of the General Assembly, however, has been to move from local to state funding of the court system. State funding is essential to provide core judicial services which are both adequate and consistent throughout the state. In order to become a full partner in the state court system, a unified district court should be included within this public-policy goal. It is not within the state’s interest, however, to assume the responsibility for funding a system which is poorly structured and inefficient. The restructuring of the system and its funding by the state, therefore, go hand-in-hand. For example, it is not

sound public policy for the state to enhance the current salary of district court judges without also considering the number of judges serving a county or district and whether they are serving on a full-time basis. Since the goal should be a move to a full-time judiciary, state funding should be utilized to enhance that goal.

- * **The state should assume the responsibility for the payment of the salary and retirement of full-time district court judges.**
- * **The salary paid to full-time district court judges should be commensurate with their role and status as members of the state judiciary and relative to the state salaries paid to general jurisdiction and appellate court judges.**
- * **The source of funding for full-time district court judges should be the same as that for general jurisdiction and appellate court judges.**
- * **Local government should continue to fund the salary and retirement of part-time district court judges and the other costs of operating the district court.**

4. Subject-Matter Jurisdiction. The creation of a full-time district court creates the opportunity for the expansion of the authority and role of the district court. The higher costs associated with the creation of additional circuit court judgeships, the lower cost of litigating at the district court level and quicker access to the district court docket are further reasons to enhance the court's jurisdiction. Further study is needed, however, before a recommendation on specific changes in jurisdiction can or should be made. The decision is also drastically affected by the change in the geographical jurisdiction of the court and the move to full-time status. Possible areas of expansion include an increase in the dollar limitation in civil cases, concurrent jurisdiction with circuit courts in domestic abuse cases, and a uniform obligation to consider and issue search and arrest warrants and conduct probable cause hearings and other preliminary felony issues.

- * **The Supreme Court Committee on the Implementation of Amendment 80 should study and review the possible**

enhancement of the subject-matter jurisdiction of district courts and make recommendations to the court for action and for further recommendation to the General Assembly.

5. Consolidation of Courts. Amendment 80 creates the district court as the unified court of limited jurisdiction. With one exception, the constitutional authority for the continuation of other limited jurisdiction courts is eliminated on January 1, 2005. City courts may continue until eliminated by a city and/or the General Assembly. The rationale for the creation of a unified district court is the same as that which supported a unified circuit court—to streamline and make more efficient the administration of justice. The General Assembly began this process with the repeal of all legislation authorizing Courts of Common Pleas in 2001. The process should continue with the remaining courts.

* **The district court should be established as the unified limited jurisdiction court in Arkansas. Statutory authorization for the continuation of Municipal Courts, City Courts, Police Courts and Justice of the Peace Courts should be repealed, effective January 1, 2005.**

* **The current statutory provisions authorizing magistrates in district courts should be repealed.**

6. Subject-Matter Divisions. Amendment 80 authorizes the Supreme Court to establish subject-matter divisions for district courts. The designations should be for the purpose of case administration and management and should be uniform throughout the state.

* **There should be created the following subject matter divisions for district court: criminal, traffic, civil and small claims.**

IN RE: ARKANSAS BOARD OF LEGAL
SPECIALIZATION AND AMENDMENT OF RULE 7.4,
ARKANSAS MODEL RULES OF
PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Opinion delivered December 5, 2002

PER CURIAM. We published proposed changes in Rule 7.4 for comment. *See In re Rule 7.4 of the Arkansas Model Rules of Professional Conduct*, 350 Ark. Appx. (2002). We thank those who took the time to review the proposal and submit comments.

We adopt amended Rule 7.4, effective December 31, 2002, and republish the rule as set out below. We note that the transition period set out in subsection (e) of the rule has been increased from two to three years.

We have determined that the Arkansas Board of Specialization shall be disbanded, and, for purposes of the transition, its function shall be transferred to the Legal Specialization Transition Task Force, which we hereby establish. We will announce appointments to the Task Force in a separate order. The Task Force shall succeed to those powers and duties granted to the Board of Legal Specialization and the Tax Speciality Committee that may arise during the transition period.

During the transition period, attorneys currently possessing in good standing a specialization certificate under the Arkansas Plan of Specialization will continue to be recognized. The Legal Specialization Transition Task Force is authorized and requested to pursue the following options: (1) Take all necessary action to transform the taxation speciality plan of the Arkansas Board of Specialization to a program accredited by the American Bar Association; or (2) Work with the American Board of Certification to create a taxation certification program; or (3) Negotiate with one or more of the states (California, Florida, and Texas) which currently has a tax certification program to certify Arkansas lawyers in taxation.

At the end of the transition period, the transitional provisions of the rule will sunset, the Arkansas Plan of Specialization will terminate, the Arkansas Legal Specialization Transition Task Force will be disbanded, and the recognition of tax specialists under the Arkansas Plan will cease. The transition period will commence on December 31, 2002 and will end December 31, 2005.

[Effective December 31, 2002]

RULE 7.4. Communication of fields of practice and specialization.

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- (c) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.
- (e) *[Transitional Provisions (December 31, 2002 - December 31, 2005)]*
 - (1) A lawyer who is currently certified as a Board Recognized Specialist in Tax Law under the Arkansas Plan of Specialization may communicate such fact through December 31, 2005.
 - (2) The Arkansas Legal Specialization Transition Task Force shall discharge any administrative, supervisory, or other duties previously discharged by the Board of Legal Specialization or the Tax Speciality Committee that may arise dur-

ing the transition period. No new specialists shall be recognized under the Arkansas Plan of Specialization.

Commentary

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

IN RE: ARKANSAS SUPREME COURT BOARD OF
LEGAL SPECIALIZATION

Supreme Court of Arkansas
Opinion delivered December 5, 2002

PER CURIAM. Today, we disbanded the Board of Legal Specialization. See *In Re Arkansas Board of Legal Specialization and Amendment of Rule 7.4, Arkansas Model Rules of Professional Conduct*. The Court expresses its appreciation to the members of the Board of Legal Specialization who have been serving in holdover positions as we deliberated on the structure and procedure for certifying legal specialists in Arkansas. These members are: Wyckliff Nisbet, Esq.; Terry Poynter, Esq.; Bobby L. Odom, Esq.; Patricia Page, Esq.; Winfred Trafford, Esq.; Richard Moore, Esq. We also posthumously recognize the service of Bill Penix.

IN RE: ARKANSAS SUPREME COURT LEGAL
SPECIALIZATION TRANSITION TASK FORCE

Supreme Court of Arkansas
Opinion delivered December 5, 2002

PER CURIAM. Today, we announced an overhaul of our procedures to certify legal specialists in Arkansas and created the Legal Specialization Transition Task Force. See *In Re Arkansas Board of Legal Specialization and Amendment of Rule 7.4, Arkansas Model Rules of Professional Conduct*. We hereby appoint the following persons to serve on the Legal Specialization Transition Task Force: Robert Hudgins, Esq.; Wyckliff Nisbet, Esq.; Derrick Smith, Esq.; Sammye Taylor, Esq.; and Wendy Wood, Esq. We designate Mr. Nisbet to serve as the Chair. We thank

these members for their willingness to serve on this task force as we make the transition to a new procedure to certify legal specialists in Arkansas.

IN RE: ARKANSAS RULES OF CIVIL PROCEDURE;
RULES OF APPELLATE PROCEDURE—CIVIL;
RULES OF APPELLATE PROCEDURE—CRIMINAL;
INFERIOR COURT RULES; RULES OF THE
SUPREME COURT AND COURT OF APPEALS; AND
ADMINISTRATIVE ORDERS

Supreme Court of Arkansas
Opinion Delivered December 5, 2002

PER CURIAM. The Arkansas Supreme Court Committee on Civil Practice has submitted its annual proposals and recommendations for changes in rules of procedure and administrative orders affecting civil practice. We have reviewed the Committee's work and with minor changes we now publish the suggested amendments for comment from the bench and bar. The Reporter's Notes explain the changes, and the proposed changes are set out in "line-in, line-out" fashion (new material underlined; deleted material lined through).

In addition to the amendments to a number of existing rules, we call attention to several of the proposals for careful review and consideration: (1) deletion of subsection (c) of Rule 17 of the Rules of Civil Procedure; (2) revision of subsection (b) of Rule 5 of the Rules of Appellate Procedure—Civil; (3) revision of Rule 9 of the Inferior Court Rules; and (4) creation of a new rule, Rule 1.8 of the Rules of the Supreme Court and Court of Appeals. Proposed Supreme Court Rule 1-8 provides for the computation and extension of time in the appellate courts and is more compre-

hensive than the analogous appellate rules, Ark. R. App. P.—Civ. 9 and Ark. R. App. P.—Crim. 17.

We express our gratitude to the Chair of the Committee, Judge John Ward, its Reporter, Professor John J. Watkins, and the Committee members for their faithful and helpful work with respect to the Rules.

Comments on the suggested rules changes should be made in writing prior to January 31, 2003, and they should be addressed to: Clerk, Supreme Court of Arkansas, Attn: Civil Procedure Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201. General comments and suggestions about the Arkansas Rules of Civil Procedure should be addressed to: Professor John J. Watkins, Leflar Law Center, University of Arkansas, Fayetteville, Arkansas 72701.

A. Rules of Civil Procedure

1. *Subdivision (b) of Rule 3 is amended as follows:*

Rule 3. Commencement of action — “Clerk” defined.

(b) The term “clerk of the court” as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § ~~14-14-502(a)(2)(B)~~ 14-14-502(b)(2)(B).

The Reporter’s Notes accompanying Rule 3 are amended by adding the following:

Addition to Reporter’s Notes, 2003 Amendment: The statutory reference in subdivision (b) has been corrected.

2. *Subdivision (d)(4) of Rule 4 is amended as follows:*

Rule 4. Summons.

(d) *Personal Service Inside the State.* * * *

(4) Where the defendant is ~~confined in a state or federal incarcerated in any jail, penitentiary, or other~~ incarcerated in any jail, penitentiary, or other correctional facility in this state, service must be upon the keeper or superintendent

of the institution, who shall deliver a copy of the summons and complaint to the defendant. A copy of the summons and complaint shall also be sent to the defendant by first class mail and marked as "legal mail" and, unless the court otherwise directs, to the defendant's spouse, if any.

The Reporter's Notes accompanying Rule 4 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

Subdivision (d)(4) has been revised by replacing the phrase "confined in a state or federal penitentiary or correctional facility" with "incarcerated in any jail, penitentiary, or other correctional facility in this state." This change makes the terminology consistent with that used in Rule 12(a), as amended in 2003.

3. *Subdivisions (a) and (d) of Rule 6 are amended as follows:*

Rule 6. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, ~~or~~ legal holiday, ~~or other day when the clerk's office is closed,~~ in which event the period runs until the end of the next day ~~which is not a Saturday, Sunday, or legal holiday that the clerk's office is open.~~ When the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation. As used in this rule and Rule 77(c), "legal holiday" means those days designated as a holiday by the President or Congress of the United States or designated by the laws of this State.

* * *

(d) *Additional Time After Service by Mail or Commercial Delivery Company.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or commercial deliv-

ery company, three (3) days shall be added to the prescribed period. Provided, however, that this subdivision shall not extend the time in which the defendant must file an answer or preanswer motion when service of the summons and complaint is by mail or commercial delivery company in accordance with Rule 4.

The Reporter's Notes accompanying Rule 6 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

Subdivision (a) has been amended to address the situation in which the clerk's office is closed for reasons other than weekends and legal holidays. The amendment incorporates the Supreme Court's holding in *Honeycutt v. Fanning*, 349 Ark. 324, 78 S.W.3d 96 (2002), and makes Rule 6(a) consistent with, though not identical to, its federal counterpart.

Subdivision (d) of the rule has been rewritten to include commercial delivery companies. The amended subdivision applies when service of papers, other than the summons and complaint, is by mail or by commercial delivery company.

4. *Subdivisions (a) and (h)(2) of Rule 12 are amended as follows:*

Rule 12. Defenses and objections — When and how presented — By pleading or motion — Motion for judgment on the pleadings.

(a) *When Presented.* A defendant shall file his answer within twenty (20) days after the service of summons and complaint upon him, except when service is upon a non-resident of this state or a person incarcerated in any jail, penitentiary, or other correctional facility in this state, in which event he shall have thirty (30) days after service of summons and complaint upon him within which to file his answer. Where service is made under Rule 4(f), the defendant shall have thirty (30) days from the date of the first publication of the warning order within which to file his answer. A party served with a pleading stating a cross-claim or counterclaim against him shall file his answer or reply thereto within twenty (20) days after service upon him. The court may, upon motion of a party, extend the time for filing any responsive pleading. The filing of a motion permitted under this rule alters these periods of time as follows, unless a

different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be filed within ten (10) days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be filed within ten (10) days after service of the more definite statement. Provided, that nothing herein contained shall prevent a defendant summoned in accordance with Rule 4(f) from being allowed, at any time before judgment, to appear and defend the action; and, upon a substantial defense being disclosed, from being allowed a reasonable time to prepare for trial.

* * *

(h) *Waiver or Preservation of Certain Defenses.*

* * *

(2) A defense of failure to state facts upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits. The defense of lack of jurisdiction over the subject matter is never waived and may be raised at any time.

The Reporter's Notes accompanying Rule 12 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

Under revised subdivision (a), a person "incarcerated in any jail, penitentiary, or other correctional facility in this state" has 30 days in which to respond to a complaint. This additional time helps ensure that such a defendant has an opportunity to obtain counsel and to be heard in the action.

Subdivision (h)(2) has been amended to provide that the defense of lack of subject matter jurisdiction is never waived and may be asserted at any time. The new sentence simply restates settled law.

5. *Subdivision (c) of Rule 17 is deleted.*

Rule 17. Parties plaintiff and defendant.

~~(c) *Prisoners.* No judgment shall be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court to defend for him.~~

The Reporter's Notes accompanying Rule 17 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:
Subdivision (c), which has no counterpart in Fed. R. Civ. P. 17, has been deleted. Borrowed from a superseded statute that was part of the Civil Code of 1868, the subdivision stated that "[n]o judgment shall be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court to defend for him."

This provision was deemed unnecessary in light of the substantial changes in incarceration and the rights of prisoners since 1868, as well as the safeguards in amended Rules 4(d)(4) and 12(a) that afford incarcerated persons notice, the opportunity to be heard, and the opportunity to obtain counsel. Because of the elimination of subdivision (c), prisoners no longer receive special treatment with respect to default judgments. See *Zardin v. Terry*, 275 Ark. 452, 631 S.W.2d 285 (1982).

6. *Subdivision (a) of Rule 30 is amended as follows:*

Rule 30. Depositions upon oral examination.

(a) *When Depositions May Be Taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attend-

ance of a witness may be compelled by subpoena as provided in Rule 45, but a subpoena is not necessary if the witness is a party or a person designated under subdivision (b)(6) of this rule to testify on behalf of a party. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

The Reporter's Notes accompanying Rule 30 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: The penultimate sentence of subdivision (a) has been rewritten to expressly provide that a subpoena is not mandatory if the deponent is a party or a person designated under subdivision (b)(6) to testify on behalf of a party. Notice of the deposition is the sole requirement in these circumstances.

Rule 30 of the Federal Rules of Civil Procedure does not explicitly state that a subpoena is unnecessary when the deponent is a party. Under Fed. R. Civ. P. 37(d), however, sanctions may be imposed against a party or person designated to testify on behalf of a party who does not appear at a deposition "after being served with a proper notice." On the basis of this language, which also appears in the corresponding Arkansas rule, the federal courts "have reasoned that notice alone, without subpoena, is sufficient." 8A Wright, Miller & Marcus, Federal Practice & Procedure § 2107 (1994).

7. *The introductory provision of subdivision (b)(2) of Rule 37 is amended as follows:*

Rule 37. Failure to make discovery; Sanctions.

(b) *Failure to Comply With Order.*

* * *

(2) *Sanctions by Court in Which Action Is Pending.* If a **person party** or an officer, director or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make

such orders in regard to the failure as are just, and among others the following:

* * *

The Reporter's Notes accompanying Rule 37 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: In subdivision (b)(2), the word "person" in the first clause has been replaced with "party," thus making the provision consistent with the corresponding federal rule.

8. *Subdivision (a)(1) of Rule 41 is amended as follows:*

Rule 41. Dismissal of actions.

(a) *Voluntary Dismissal; Effect Thereof.*

(1) Subject to the provisions of Rule ~~23(d)~~ 23(e) and Rule 66, an action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the jury, or to the court where the trial is by the court. Although such a dismissal is a matter of right, it is effective only upon entry of a court order dismissing the action.

The Reporter's Notes accompanying Rule 41 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: The reference to "Rule 23(d)" in subdivision (a)(1) has been corrected to read "Rule 23(e)."

9. *Subdivision (f) of Rule 59 is amended as follows:*

Rule 59. New Trials.

(f) *Motion for New Trial Not Necessary for Appeal.* ~~A motion for a new trial shall not be necessary to preserve for appeal an error which could be the basis for granting a new trial.~~ A party who has preserved for appeal an error that could be the basis for granting a new trial is not required to make a motion for new trial as a prerequisite for appellate review of that issue

The Reporter's Notes accompanying Rule 59 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

Subdivision (f) has been rewritten to reflect the holding in *Stacks v. Jones*, 323 Ark. 643, 916 S.W.2d 120 (1996).

10. *Subdivision (a) of Rule 66 is amended as follows:*

Rule 66. Receivers.

(a) *Appointment.* ~~Courts of equity~~ Circuit courts may appoint receivers for any lawful purpose when such appointment shall be deemed necessary and proper. The receiver shall give bond, with sufficient security, in an amount to be approved by the court, for the benefit of all persons in interest. The receiver shall likewise take an oath to faithfully perform the duties reposed in him by the court.

The Reporter's Notes accompanying Rule 66 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

In light of Constitutional Amendment 80, the reference to "courts of equity" in subdivision (a) has been replaced with "circuit courts."

B. Administrative Orders

Subdivision (b) of Administrative Order No. 2 is amended by changing the references to "Rule 4(e)" in paragraphs (3) and (4) to "Rule 4." As amended, paragraphs (3) and (4) read as follows:

ADMINISTRATIVE ORDER NO. 2. DOCKETS AND OTHER RECORDS

(b) Judgments and Orders.

* * *

(3) If the clerk's office has a facsimile machine, the clerk shall accept facsimile transmission of a judgment, decree or order

filed in such manner at the direction of the court. The clerk shall stamp or otherwise mark a facsimile copy as filed on the date and time that it is received on the clerk's facsimile machine during the regular hours of the clerk's office or, if received outside those hours, at the time the office opens on the next business day. The date stamped on the facsimile copy shall control all appeal-related deadlines pursuant to Rule ~~4(e)~~ 4 of the Arkansas Rules of Appellate Procedure—Civil. The original judgment, decree or order shall be substituted for the facsimile copy within fourteen days of transmission.

(4) At any time that the clerk's office is not open for business, and upon an express finding of extraordinary circumstances set forth in an order, any judge may make any order effective immediately by signing it, noting the time and date thereon, and marking or stamping it "filed in open court." Any such order shall be filed with the clerk on the next day on which the clerk's office is open, and this filing date shall control all appeal-related deadlines pursuant to Rule 4(e) 4 of the Arkansas Rules of Appellate Procedure—Civil.

C. Rules of Appellate Procedure—Civil

1. Subdivision (b) of Rule 2 is amended as follows:

Rule 2. Appealable matters; Priority.

(b) An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment. An appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from.

The Reporter's Notes accompanying Rule 2 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: The second sentence of subdivision (b) is new. This sentence formerly appeared in Rule 5(b), which has been rewritten.

2. *Subdivision (a) of Rule 3 is amended as follows:*

Rule 3. Appeal — How taken.

(a) *Mode of obtaining review.* The mode of bringing a judgment, ~~decree~~ or order to the ~~Arkansas~~ Supreme Court ~~or Court of Appeals~~ for review shall be by appeal. An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment. An appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from.

The Reporter's Notes accompanying Rule 3 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: The second and third sentences of subdivision (a) have been added. They also appear in Rule 2(b), as amended in 2003, and are reproduced here to provide additional notice to counsel.

3. *Subdivision (d) of Rule 4 is amended as follows:*

Rule 4. Appeal — When taken.

(d) *When judgment is entered.* A judgment, ~~decree~~ or order is entered within the meaning of this rule when it is filed ~~with the clerk of the circuit court in which the claim was tried in accordance with Administrative Order No. 2(b).~~ A judgment, decree or order is filed when the clerk stamps or otherwise marks it as "filed" and denotes thereon the date and time of filing.

The Reporter's Notes accompanying Rule 4 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: Subdivision (d) has been amended to incorporate the provisions of Administrative Order No. 2(b), which governs the entry of judgments and orders. This change ensures that the rule is consistent with the order.

4. *Subdivision (b) of Rule 5 is amended as follows:*

Rule 5. Record — Time for filing.

~~(b) Extension of time. In cases where there has been designated for inclusion any evidence or proceeding at the trial or hearing which was~~ (1) If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, upon finding that a reporter's transcript of such evidence or proceeding has been ordered by appellant, and upon a further finding that an extension is necessary for the inclusion in the record of evidence or proceedings stenographically reported, by order entered before expiration of the period prescribed by subdivision (a) of this rule or a prior extension order, may extend the time for filing the record on appeal, but the order of extension must be entered before the expiration of the period as originally prescribed or extended by a previous order: only if it makes the following findings:

(A) The appellant has filed a motion explaining the reasons for the requested extension and served the motion on all counsel of record;

(B) The time to file the record on appeal has not yet expired;

(C) All parties have had the opportunity to be heard on the motion, either at a hearing or by responding in writing;

(D) The appellant, in compliance with Rule 6(b), has timely ordered the stenographically reported material from the court reporter and made any financial arrangements required for its preparation; and

(E) An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal.

(2) In no event shall the time be extended more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely postjudgment motion under Rule 4(b) is deemed to have been disposed of under Rule 4(c) 4(b)(1), whichever is later. An appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment, decree and any intermediate order involving the mer-

its and necessarily affecting the judgment, as well as the order appealed from. Counsel seeking an extension of time shall give to opposing counsel notice of the application for an extension of time.

(3) If the appellant is unable to obtain entry of an order of extension before expiration of the period prescribed by subdivision (a) of this rule or a prior extension order, the appellant may file with the clerk of the Supreme Court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

The Reporter's Notes accompanying Rule 5 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

Subdivision (b) has been divided into three paragraphs and revised to clarify the steps necessary to obtain an extension of time for filing the record on appeal. The first and second paragraphs do not change the circumstances under which such an extension is permissible, but the first paragraph specifies the findings that the circuit court must make. See *Murphy v. Dumas*, 343 Ark. 608, 36 S.W.3d 351 (2001). Under the third paragraph, which is new, an appellant may file a petition for writ of certiorari in the Supreme Court if he or she cannot obtain an extension order prior to the applicable deadline.

Deleted from subdivision (b) is a provision that an appeal from an order disposing of a postjudgment motion "brings up for review the judgment, decree and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from." This language now appears in Rules 2(b) and 3(a).

5. *The title and text of Rule 9 are amended as follows:*

Rule 9. Computation and extension of time. ~~Time extension when last day for action falls on Saturday, Sunday or holiday.~~

Computation and extension of time are governed by Rule 1-8 of the Rules of the Supreme Court and Court of Appeals. Whenever the last day for taking any action under these rules or

~~under the Rules of the Supreme Court and Court of Appeals falls on a Saturday, Sunday, or legal holiday, the time for such action shall be extended to the next business day.~~

The Reporter's Notes accompanying Rule 9 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment: The rule has been amended to incorporate the terms of new Rule 1-8 of the Supreme Court and Court of Appeals, which treats computation and extension of time in a comprehensive manner.

D. Rules of Appellate Procedure-Criminal

The title and text of Rule 17 are amended as follows:

Rule 17. Computation and extension of time. ~~Time extension when last day for action falls on Saturday, Sunday or holiday.~~

~~Computation and extension of time are governed by Rule 1-8 of the Rules of the Supreme Court and Court of Appeals. Whenever the last day for taking any action under these rules or under the Rules of the Supreme Court and Court of Appeals falls on a Saturday, Sunday, or legal holiday, the time for such action shall be extended to the next business day.~~

The Reporter's Notes accompanying Rule 17 are amended by adding the following:

Reporter's Notes to 2003 Amendment: The rule has been amended to incorporate the terms of new Rule 1-8 of the Supreme Court and Court of Appeals, which treats computation and extension of time in a comprehensive manner.

E. Rules of the Supreme Court & Court of Appeals

1. *New Rule 1-8 is adopted as follows:*

Rule 1-8. Computation and Extension of Time.

(a) Computation. In computing any period of time prescribed or allowed by these rules, the Rules of Appellate Procedure-Civil, the Rules of Appellate Procedure-Criminal, court order, or any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it falls on a Saturday, Sunday, legal holiday, or other day when the clerk's office is closed, in which event the period runs until the end of the next day that the clerk's office is open. When the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means a day designated as a holiday by the President or Congress of the United States or by the laws of this State.

(b) Extension by court order. (1) On motion and for good cause, the Court may in its discretion extend the time prescribed by the rules listed in subdivision (a) or by court order.

(2) Paragraph (1) of this subdivision does not: (A) authorize an extension of time for filing a notice of appeal, although a belated appeal may be allowed pursuant to Rule 2(e) of the Rules of Appellate Procedure-Criminal; (B) apply to the record on appeal, which is governed by Rule 2-2 of these rules; (C) apply to a petition for rehearing and a response thereto, which are governed by Rule 2-3 of these rules; or (D) authorize an extension of time for filing a petition for review pursuant to Rule 2-4 of these rules.

2. *Subdivision (k) of Rule 4-3 is amended as follows:*

Rule 4-3. Briefs in criminal cases.

(k) Continuances and extensions of time.

(1) The clerk or a deputy clerk may extend the due date of any brief by seven (7) days upon oral request. If such an extension is granted, no further extension shall be entered except by the Court upon a written motion ~~showing good cause~~ making

the showing required by Rule 1-8. The clerk shall confirm an oral extension by letter to all counsel of record.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time ~~(except in (k)(1))~~ for the filing of any brief, except an oral request directed to the clerk pursuant to paragraph (1), must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Eight copies of the motion are required. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

3. *Subdivision (f) of Rule 4-4 is amended as follows:*

Rule 4-4. Briefs in civil cases.

(f) *Continuances and extensions of time.*

(1) The clerk or a deputy clerk may extend the due date of any brief by seven (7) days upon oral request. If such an extension is granted, no further extension shall be entered except by the Court upon a written motion ~~showing good cause~~ making the showing required by Rule 1-8. The clerk shall confirm an oral extension by letter to all counsel of record.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time ~~(except in (f)(1))~~ for the filing of any brief, except an oral request directed to the clerk pursuant to paragraph (1), must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Eight copies of the motion are required. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

F. Inferior Court Rules

Subdivisions (a), (b), and (c) of Rule 9 are amended as follows:

Rule 9. Appeals to circuit court.

(a) ~~*Time for Taking Appeal.* All appeals in civil cases from inferior courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within thirty (30) days from the date of the entry of judgment.~~ *How Taken.* An appeal from an inferior court to the cir-

cuit court shall be taken by filing a notice of appeal with the clerk of the inferior court that entered the judgment or order from which the appeal is taken.

~~(b) *How Taken.* An appeal from an inferior court to the circuit court shall be taken by filing a record of the proceedings had in the inferior court. It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk. *When Taken.* A notice of appeal shall be filed within 30 days from the entry of the judgment or order from which the appeal is taken. For purposes of this subdivision, a judgment or order is entered when the inferior court makes a docket entry as provided in Rule 8(c).~~

(c) *Record on Appeal.* (1) Within 30 days from the filing of the notice of appeal, appellant shall file with the circuit clerk a record of the proceedings had in the inferior court. It shall be the duty of the clerk of the inferior court to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor.

(2) *When* If the clerk of the inferior court, or the court in the absence of a clerk, neglects or refuses to prepare and certify a record for filing in the circuit court, the ~~person desiring an appeal~~ may perfect his appeal on or before the 30th day from the date of the entry of the judgment in the inferior court by filing ~~appellant,~~ before expiration of the 30-day period specified in paragraph (1), may file in the office of the circuit clerk a petition for writ of certiorari, accompanied by an affidavit in the office of the circuit court clerk showing that he or she has requested the clerk of the inferior court [or the inferior court] to prepare and certify preparation and certification of the records thereof for purposes of appeal and that the clerk [or the court] has neglected or refused to prepare and certify such the record for purposes of appeal. A copy of such the petition and affidavit shall be promptly served upon filed with the clerk of the inferior court [or the court] and the adverse party and served on the court and all parties.

(d) * * *

The Reporter's Notes accompanying Rule 9 are amended by adding the following:

Addition to Reporter's Notes, 2003 Amendment:

Subdivisions (a), (b), and (c) have been revised to make the procedure for taking an appeal to circuit court more similar to the practice in appeals from circuit court to the Supreme Court and Court of Appeals. The prior version of the rule, by its terms, applied only in civil cases but was construed as applicable in criminal cases as well. The amended rule does not distinguish between the two and thus governs appeals in both types.

Under subdivision (a), an appeal is taken by filing a notice of appeal with the clerk of the inferior court. Subdivision (b) provides that the notice must be filed within 30 days of the court's docket entry. Previously, there was no notice of appeal, and an appeal was taken by filing the record with the clerk of the circuit court.

Subdivision (c) makes filing the record the second step in the process and establishes a deadline, *i.e.*, within 30 days from the filing of the notice of appeal. If the clerk of the inferior court (or the court itself, in the absence of the clerk), does not prepare the record in sufficient time for meeting this deadline, the appealing party may seek relief from the circuit court by filing a timely petition for writ of certiorari. See Ark. Code Ann. 16-13-204(b) (giving circuit courts the "power to issue all writs, orders, and process which may be necessary in the exercise of their jurisdiction").

IN RE: ARKANSAS RULES of CRIMINAL PROCEDURE,
RULE 13.3; and ARKANSAS RULES of APPELLATE
PROCEDURE—CRIMINAL, RULE 16

Supreme Court of Arkansas
Delivered December 12, 2002

PER CURIAM. We previously published for comment the Arkansas Supreme Court Committee on Criminal Practice's proposal for changes to Rule 13.3 of the Arkansas Rules of Criminal Procedure and Rule 16 of the Arkansas Rules of Appellate Procedure—Criminal. See *In Re Arkansas Rules of Criminal Procedure*, 349 Ark. Appx. (2002). We thank those who took the

time to review the proposals. We also express our gratitude to the members of the Criminal Practice Committee for their work.

At this time, we adopt the amendments to these rules, effective immediately, and republish the rules and Reporter's Notes as set out below.

RULES OF CRIMINAL PROCEDURE

RULE 13.3. Execution of a search warrant.

(a) A search warrant may be executed by any officer. The officer charged with its execution may be accompanied by such other officers or persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.

(b) Prior to entering a dwelling to execute a search warrant, the executing officer shall make known the officer's presence and authority for entering the dwelling and shall wait a period of time that is reasonable under the circumstances before forcing entry into the dwelling. The officer may force entry into a dwelling without prior announcement if the officer reasonably suspects that making known the officer's presence would, under the circumstances, be dangerous or futile or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. For purposes of this rule, a "dwelling" means a vehicle, building, or other structure (i) where any person lives or (ii) which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a structure divided into separately occupied units is itself a dwelling.

(c) In the course of any search or seizure pursuant to the warrant, the executing officer shall give a copy of the warrant to the person to be searched or the person in apparent control of the premises to be searched. The copy shall be furnished before undertaking the search or seizure unless the officer has reasonable cause to believe that such action would endanger the successful execution of the warrant with all practicable safety, in which case he shall, as soon as is practicable, state his authority and purpose and furnish a copy of the warrant. If the premises are unoccupied

by anyone in apparent and responsible control, the officer shall leave a copy of the warrant suitably affixed to the premises.

(d) The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of such search, the officer discovers things not specified in the warrant which he reasonably believes to be subject to seizure, he may also take possession of the things so discovered.

(e) Upon completion of the search, the officer shall make and deliver a receipt fairly describing the things seized to the person from whose possession they are taken or the person in apparent control of the premises from which they are taken. If practicable, the list shall be prepared in the presence of the person to whom the receipt is to be delivered. If the premises are unoccupied by anyone in apparent and responsible control, the executing officer shall leave the receipt suitably affixed to the premises.

(f) The executing officer, and other officers accompanying and assisting him, may use such degree of force, short of deadly force, against persons, or to effect an entry or to open containers as is reasonably necessary for the successful execution of the search warrant with all practicable safety. The use of deadly force in the execution of a search warrant, other than in self-defense or defense of others, is justifiable only if the executing officer reasonably believes that there is a substantial risk that the persons or things to be seized will suffer, cause, or be used to cause death or serious bodily harm if their seizure is delayed, and that the force employed creates no unnecessary risk of injury to other persons.

Reporter's Notes 2002.

A new subsection ("b") was added which incorporates the "knock and announce" requirement into the rules governing the execution of a search warrant. The subsection requires an officer executing a search warrant to "make known the officer's presence and authority" rather than "knock and announce the officer's presence and authority" before forcing entry so as to cover the

situation where knocking would be superfluous because the occupant of the dwelling is outside the dwelling when the officer approaches to serve the warrant. The remaining subsections were redesignated.

RULES OF APPELLATE PROCEDURE—CRIMINAL

Rule 16. Trial counsel's duties with regard to appeal.

(a) Trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. After the notice of appeal of a judgment of conviction has been filed, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.

(b) If court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause in a direct appeal of a conviction or in an appeal in a postconviction proceeding under Ark. R. Crim. P. 37.5, new counsel shall be appointed promptly by the court exercising jurisdiction over the matter of counsel's withdrawal.

(c) If court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause from an appeal in a postconviction proceeding other than a postconviction proceeding under Ark. R. Crim. P. 37.5, new counsel may be appointed in the discretion of the court exercising jurisdiction over the matter of counsel's withdrawal.

Reporter's Notes 2002.

The amendments divide the rule into subsections and add language making it clear that the court has discretion whether to appoint replacement counsel when court appointed counsel is permitted to withdraw in a noncapital postconviction appeal.

IN RE: AMENDED SUPREME COURT STATEMENT
on LIMITED JURISDICTION COURTS
UNDER AMENDMENT 80

Supreme Court of Arkansas
Delivered December 19, 2002

PER CURIAM. We amend the *Supreme Court Statement on Limited Jurisdiction Courts under Amendment 80* dated November 25, 2002 to make clear that implementation of the policies will take place in stages and to establish a final deadline for full implementation of January 1, 2009. With this amendment, we republish the *Supreme Court Statement on Limited Jurisdiction Courts under Amendment 80*.

Amendment 80 revised the Judicial Article of the Arkansas Constitution, and it places substantial responsibility for its implementation on the Supreme Court. In furtherance of this responsibility and as the head of the Judicial Department of state government, we publish the following:

*Arkansas Supreme Court Statement on Limited Jurisdiction Courts
Under Amendment 80*

The adoption of Amendment 80 to the Arkansas Constitution by the citizens of Arkansas has created significant change in the structure and administration of our state court system. In 2001 our probate and chancery courts were eliminated and a unified circuit court of general jurisdiction was created. Five divisions of circuit court were created and a system for the establishment of local case administrative plans was put in place. In 2002 a change in the process for the selection of state court judges was implemented with the move from partisan to non-partisan judicial elections.

Amendment 80 also requires change and improvement of our limited jurisdiction court system. The implementation date for these changes is January 1, 2005. In many respects, the reform of these courts is the most significant area of constitutional change.

Arkansas' limited jurisdiction courts have historically operated as "step-children" in our state court system; in fact, in very few respects could they be considered "state" courts. Pre-Amendment 80 constitutional and statutory provisions create five different limited jurisdiction courts, each with conflicting and overlapping jurisdiction. Almost all of these courts operate on a part-time basis and there is little consistency in practice and procedure from jurisdiction to jurisdiction.

In order to consider the possible changes required by Amendment 80, the Supreme Court created the Committee on the Implementation of Amendment 80 to study the issues and make recommendations to the court. After reviewing these recommendations, the court now adopts the following statement of policy to guide the implementation of this phase of Amendment 80. It should be noted that the responsibility for implementation on these issues is shared between the Supreme Court and the General Assembly. It is also likely that implementation will take place in stages over a number of years. These policy statements, therefore, are offered as a guide to insure consistency in the measures adopted by the judicial and legislative branches and throughout the duration of the process. We believe that the policies set out below shall be fully implemented no later than January 1, 2009.

1. *Geographical Jurisdiction.* The current state of the number, location and geographic authority of limited jurisdiction courts presents a quagmire of conflicting and overlapping judicial boundaries. In many cases, the geographical jurisdiction of the judge exceeds the area from which he or she is elected. In some counties this is compounded by the existence of a multitude of district and city courts. For these reasons the following principles should be adopted:

*** One district court should be created in each county. In counties which have two county seats and in which the General Assembly has created two judicial districts, one district court should be created in each district.**

*** No district judge should have the authority to act outside of the area from which he or she is elected.**

2. *Full-time Judiciary.* With a very few exceptions, current limited jurisdiction court judges are employed on a part-time basis. In some cases, the court is in session for only a few days each month. Most of these judges also maintain an active law practice. Despite the clear provisions of the Code of Judicial Conduct and the diligent attempts by the judges to avoid problems, conflicts of interest occur routinely. A majority of the complaints received by the Judicial Discipline and Disability Commission involve part-time district court judges. While Amendment 80 does not require that district court judges serve in a full-time capacity it certainly contemplates that as the standard. The change from a municipal or city to a "district" court, the creation of one court per county and the specific authorization of judges to serve courts in more than one county all evidence the expectation of a full-time judiciary. Section 14 of the Amendment provides that the General Assembly may prevent district judges from practicing law. If the district court is to become a true third tier of the state court system it must be a full-time court served by full-time judges.

*** To the extent that the number of cases within a county or district is sufficient to support a full caseload, district judges should serve on a full-time basis and should be prohibited from practicing law.**

*** To the extent that there is not a sufficient number of cases within a district or county to support a full caseload, two or more districts and/or counties should be combined for the purposes of creating an electoral district for the election of a full-time judge to serve the courts so designated.**

3. *State Funding.* Amendment 80 does not require the state funding of the court system. The stated public policy goal of the General Assembly, however, has been to move from local

to state funding of the court system. State funding is essential to provide core judicial services which are both adequate and consistent throughout the state. In order to become a full partner in the state court system, a unified district court should be included within this public policy goal. It is not within the state's interest, however, to assume the responsibility for funding a system which is poorly structured and inefficient. The restructuring of the system and its funding by the state, therefore, go hand-in-hand. For example, it is not sound public policy for the state to enhance the current salary of district court judges without also considering the number of judges serving a county or district and whether they are serving on a full-time basis. Since the goal should be a move to a full-time judiciary, state funding should be utilized to enhance that goal.

*** The state should assume the responsibility for the payment of the salary and retirement of full-time district court judges.**

*** The salary paid to full-time district court judges should be commensurate with their role and status as members of the state judiciary and relative to the state salaries paid to general jurisdiction and appellate court judges.**

*** The source of funding for full-time district court judges should be the same as that for general jurisdiction and appellate court judges.**

*** Local government should continue to fund the salary and retirement of part-time district court judges and the other costs of operating the district court.**

4. *Subject Matter Jurisdiction.* The creation of a full-time district court creates the opportunity for the expansion of the authority and role of the district court. The higher costs associated with the creation of additional circuit court judgeships, the lower cost of litigating at the district court level and quicker

access to the district court docket are further reasons to enhance the court's jurisdiction. Further study is needed, however, before a recommendation on specific changes in jurisdiction can or should be made. The decision is also drastically affected by the change in the geographical jurisdiction of the court and the move to full-time status. Possible areas of expansion include an increase in the dollar limitation in civil cases, concurrent jurisdiction with circuit courts in domestic abuse cases, and a uniform obligation to consider and issue search and arrest warrants and conduct probable cause hearings and other preliminary felony issues.

*** The Supreme Court Committee on the Implementation of Amendment 80 should study and review the possible enhancement of the subject matter jurisdiction of district courts and make recommendations to the court for action and for further recommendation to the General Assembly.**

5. *Consolidation of Courts.* Amendment 80 creates the district court as the unified court of limited jurisdiction. With one exception, the constitutional authority for the continuation of other limited jurisdiction courts is eliminated on January 1, 2005. City courts may continue until eliminated by a city and/or the General Assembly. The rationale for the creation of a unified district court is the same as that which supported a unified circuit court — to streamline and make more efficient the administration of justice. The General Assembly began this process with the repeal of all legislation authorizing Courts of Common Pleas in 2001. The process should continue with the remaining courts.

*** The district court should be established as the unified limited jurisdiction court in Arkansas. Statutory authorization for the continuation of Municipal Courts, City Courts, Police Courts and Justice of the Peace Courts should be repealed, effective January 1, 2005.**

*** The current statutory provisions authorizing magistrates in district courts should be repealed.**

6. *Subject Matter Divisions.* Amendment 80 authorizes the Supreme Court to establish subject matter divisions for district courts. The designations should be for the purpose of case administration and management and should be uniform throughout the state.

*** There should be created the following subject matter divisions for district court: criminal, traffic, civil and small claims.**

IN RE: ADMINISTRATIVE ORDER NUMBER 14 —
ADMINISTRATION of CIRCUIT COURTS

Supreme Court of Arkansas
Delivered January 30, 2003

PER CURIAM. In response to the passage of Amendment 80 to the Arkansas Constitution, this Court adopted Administrative Order Number 14 on April 6, 2001, to begin the implementation of court administration under the new constitutional structure. *In re Adoption of Administrative Order Number 14*, 344 Ark. 747 (2001). Subsequently, in reviewing administrative plans, we acknowledged that implementation was an evolving process which would be refined with the benefit of experience. *In re Implementation of Amendment 80: Administrative Plans Pursuant to Administrative Order Number 14*, 345 Ark. 664 (2001). Since its promulgation, the Court has twice adopted minor amendments to Administrative Order Number 14. *In re Amendments to Administrative Orders Numbers 8 and 14*, 346 Ark. 568 (2001); *In re Administrative Order Number 14*, 349 Ark. Appx. (2002).

We have now had almost two years experience with Administrative Order Number 14. The Court has heard the comments and suggestions of circuit judges in both formal and informal settings and has reviewed the Resolution of the Arkansas Judicial Council adopted at its 2002 Annual Meeting. See *In re Administrative Order Number 14*, 349 Ark. Appx. (2002). At that time, we took the Council's request for changes in Administrative Order Number 14 under advisement. We have now concluded that the time is right for major refinements to Administrative Order Number 14, which we announce today, several of which we wish to highlight.

In our *per curiam* order approving plans, we discussed such issues as judicial specialization and special circumstances associated with juvenile and criminal proceedings. See *In re Administrative Plans*, 345 Ark. at 665. Under the amendments which we announce today, cases in the criminal or juvenile divisions of circuit court may be exclusively assigned to particular judges. (Section 3(a)(2)).

A new Section 2 provides for administrative judges in all judicial circuits with two or more judges. The means of selection, term of office, and duties for administrative judges are all set out.

Under today's amendments, administrative plans will be adopted by majority vote of the judges in the circuit (Section 3); and the terms "random selection" and "a substantially equal apportionment of cases" are further explained. (Section (3)(a)(1)). The interim submission date and effective date for plans announced in July, 2002, see 349 Ark. Appx., have now been memorialized in Section (4)(a).

We have not attempted to discuss all the changes made to Administrative Order Number 14 and urge judges and other interested parties to carefully review this amended order. We thank the members of the judiciary for their interest and assistance which has culminated in the amendments today. We continue to recognize that implementation of Amendment 80 is an evolving process, and the Court will be ready to address administrative issues that arise in the future.

Finally, the Court adopts Administrative Order Number 14, as amended, effective immediately, and republishes it as set out below. Because of the timing of this *per curiam* order, the date for selection of administrative judges for 2003 shall be March 21, 2003, in lieu of February 1. (See Section (2)(a)). Pursuant to our previous order, administrative plans will be due July 1, 2003, to be effective January 1, 2004, consistent with Section (4)(a).

ADMINISTRATIVE ORDER NUMBER 14 — ADMINISTRATION OF CIRCUIT COURTS

1. *Divisions.* a. The circuit judges of a judicial circuit shall establish the following subject-matter divisions in each county of the judicial circuit: criminal, civil, juvenile, probate, and domestic relations. 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 to hear all matters within the jurisdiction of the circuit court.

b. For purposes of this order, “probate” means cases relating to decedent estate administration, trust administration, adoption, guardianship, conservatorship, commitment, and adult protective custody. “Domestic Relations” means cases relating to divorce, annulment, maintenance, custody, visitation, support, paternity, and domestic abuse. Provided, however, the definitions of “probate” and “domestic relations” are not intended to restrict the juvenile division of circuit court from hearing adoption, guardianship, support, custody, paternity, or commitment issues which may arise in juvenile proceedings.

2. *Administrative Judges.* In each judicial circuit in which there are two or more circuit judges, there shall be an administrative judge.

a. *Means of Selection.* On or before the first day of February of each year following the year in which the election of circuit judges is held, the circuit judges of a judicial circuit shall select one of their number by secret ballot to serve as the administrative judge for the judicial circuit. In circuits with fewer than ten judges the selection must be unanimous among the judges in the judicial circuit. In circuits with 10 or more judges the selection

shall require the approval of at least 75% of the judges. The name of the administrative judge shall be submitted in writing to the Supreme Court. If the judges are unable to agree on a selection, they shall notify the Chief Justice of the Supreme Court in writing and furnish information detailing their efforts to select an administrative judge and the results of their balloting. The Supreme Court shall then select the administrative judge. An administrative judge shall be selected on the basis of his or her administrative skills.

b. *Term of Office.* The administrative judge shall serve a term of two years and may serve successive terms. The administrative judge shall be subject to removal for cause by the Supreme Court. If a vacancy occurs in the office of the administrative judge prior to the end of a term, then within twenty days of such vacancy, the circuit judges in office at the time of such vacancy shall select an administrative judge to serve the unexpired term, and failing to do so, the Supreme Court shall select a replacement.

c. *Duties.* In addition to his or her regular judicial duties, an administrative judge shall exercise general administrative supervision over the circuit court and judges within his or her judicial circuit under the administrative plan submitted pursuant to Section 3 of this Administrative Order. The administrative judge will be the liaison for that judicial circuit with the Chief Justice of the Supreme Court in matters relating to administration. In addition, the duties of the administrative judge shall include the following:

(1) *Administrative Plan.* The administrative judge shall insure that the administrative plan and its implementation are consistent with the requirements of the orders of the Supreme Court.

(2) *Case Assignment.* Cases shall be assigned under the supervision of the administrative judge in accordance with the circuit's administrative plan. The administrative judge shall assure that the business of the court is apportioned among the circuit judges as equally as possible, and cases may be reassigned as necessity requires. A circuit judge to whom a case is assigned shall accept that case unless he or

she is disqualified or the interests of justice require that the case not be heard by that judge.

(3) *Judicial Assignments.* The administrative judge may, when specified in the circuit's administrative plan, provide for the assignment or reassignment of judges to any subject matter division of the circuit court to hear matters within that division.

(4) *Information Compilation.* The administrative judge shall have responsibility for the computation, development, and coordination of case statistics and other management data respecting the judicial circuit.

(5) *Improvements in the Functioning of the Court.* The administrative judge shall periodically evaluate the effectiveness of the court in administering justice and recommend changes to the Supreme Court.

3. *Administrative Plan.* The circuit judges of each judicial circuit by majority vote shall adopt a plan for circuit court administration. The administrative judge of each judicial circuit shall submit the administrative plan to the Supreme Court. The purpose of the administrative plan is to facilitate the best use of the available judicial and support resources within each circuit so that cases will be resolved in an efficient and prompt manner. The plan shall include the following:

a. *Case Assignment and Allocation.* (1) 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. For purposes of subsection 3 (a)(1)(i), "random selection" means that cases assigned to a particular subject-matter division shall be randomly distributed among the judges assigned to hear those types of cases. For purposes of subsection 3 (a)(1)(ii), "a substantially equal apportionment of cases"

does not require that the judges among whom the cases of a division are assigned must hear the same percentage of such cases so long as the judges' overall caseloads are substantially equal.

(2) Cases in the criminal division or the juvenile division may be exclusively assigned to particular judges, but such assignment shall not preclude them from hearing cases from any subject-matter division of circuit court. Except for the exclusive assignment of criminal and juvenile division cases, cases in other subject-matter divisions should not be exclusively assigned to particular judges absent extraordinary reasons which must be set out in the circuit's administrative plan.

(3) The Administrative Office of the Courts shall as soon as practical develop and make available to each judicial circuit a computerized program to assure (i) random assignment of cases where appropriate and (ii) a substantially equal apportionment of cases among the judges.

b. *Caseload Estimate.* The plan shall provide a process which will apportion the business of the circuit court among each of the judges within the judicial circuit on as equal a basis as possible. The plan shall include an estimate of the projected caseload of each of the judges based upon previous case filings. If, at any time, it is determined that a workload imbalance exists which is affecting the judicial circuit or a judge adversely, the plan shall be amended subject to the provisions of Section 4 of this Administrative Order.

4. *Supreme Court.* a. The administrative plan for the judicial circuit shall be submitted by the administrative judge to the Supreme Court by July 1 of each year following the year in which the general election of circuit judges is held. The effective date of the plan will be the following January 1. Until a subsequent plan is submitted to and published by the Supreme Court, any plan currently in effect shall remain in full force. Judges who are appointed or elected to fill a vacancy shall assume the caseload assigned to the judge they are replacing until such time a new administrative plan is required or the original plan is amended. Upon approval, the Supreme Court shall publish the administrative plan and a copy shall be filed with the clerk of the circuit

court in each county within the judicial circuit and the Clerk of the Supreme Court. The process for the amendment of a plan shall be the same as that of the plan's initial adoption.

b. In the event the administrative judge is unable to submit a plan consistent with the provisions of this Administrative Order, the Supreme Court shall formulate a plan for the equitable distribution of cases and caseloads within the judicial circuit. The Supreme Court shall set out the plan in an order which shall be filed with the clerk of each court in the judicial circuit and the Clerk of the Supreme Court. The clerk shall thereafter assign cases in accordance with the plan.

c. In the event an approved plan is not being followed, a judge may bring the matter to the attention of the Chief Justice of the Arkansas Supreme Court by setting out in writing the nature of the problem. Upon receipt of a complaint, the Supreme Court may cause an investigation to be undertaken by appropriate personnel and will take other action as may be necessary to insure the efficient operation of the courts and the expeditious dispatch of litigation in the judicial circuit.

IN RE: ADMINISTRATIVE ORDER NUMBER 16—
PROCEDURES REGARDING the ASSIGNMENT
of JUDGES

Supreme Court of Arkansas
Delivered February 6, 2003

PER CURIAM. We hereby adopt the following Administrative Order, effective immediately.

SECTION 1: AUTHORITY AND SCOPE

Pursuant to Ark. Const. Amend. 80, §§ 4, 12, and 13; Ark. Code Ann. §§ 16-10-101 (Repl. 1999), 16-13-214 (Repl. 1999), 16-13-312 (Repl. 1999), and this Court's inherent rule-making authority, the Court adopts and publishes Administrative Order Number 16: Procedures Regarding the Assignment of Circuit, District, and Retired Judges and Justices.

This Order authorizes the Chief Justice or his designee to assign sitting circuit court judges or retired circuit, chancery, circuit/chancery, and appellate court judges and justices, with their consent, to serve temporarily in circuit court. Active circuit judges are hereby authorized to sit in a judicial circuit other than the one in which they are currently elected or appointed. Retired judges or retired justices are those who, at the time of assignment, are receiving or have met the statutory requirements to receive judicial retirement benefits.

This order also authorizes the Chief Justice or designee to assign active, full-time district court judges, with their consent, to serve temporarily in a district court. Active, full-time district judges are hereby authorized to sit on assignment in a city, county or district other than the one to which they are currently elected or appointed. Active circuit judges and retired circuit, chancery, circuit/chancery, or appellate judges are also authorized, with their consent, to sit temporarily in district courts, upon appointment by the Chief Justice or designee.

By adoption of this Order, the Court does not prohibit, and in fact, the Court encourages the use of Exchange Agreements by circuit judges or district judges pursuant to Ark. Const. amend. 80, §§ 6(C) and 7(E); Ark. Code Ann. § 16-13-402 & -403 (Repl. 1999); § 16-17-102 (Repl. 1999), and the use of "special judges" as provided by Ark. Const. amend. 80, § 13(C); Ark. Code Ann. § 16-17-210 (Repl. 1999); and Administrative Order Number 1.

SECTION II: BASES FOR ASSIGNMENT

- A. Disqualification pursuant to Arkansas Code of Judicial Conduct;¹ or
- B. Temporary inability to serve;² or
- C. Other need as determined by the Chief Justice.

SECTION III: REQUEST FOR ASSIGNMENT

Circuit Courts: A trial judge requesting that a judge be assigned shall write a letter to the Chief Justice asking that an assignment be made pursuant to one or more of the bases set forth in Section II. In cases of disqualification in judicial circuits with more than one judge, all judges in the circuit must disqualify before an assignment will be made. The last judge in the circuit to recuse in a matter is responsible for writing the letter of request, sufficient in detail to inform the Chief Justice of the following:

- A. the type of case involved;
- B. the facts or law in dispute;
- C. whether a temporary hearing is scheduled or necessary;
- D. the estimated time to hear the matter;
- E. the names of the attorneys representing the parties; and
- F. other pertinent information to assist the Chief Justice in making an assignment.

District Courts: A district court judge requesting that a judge be assigned shall follow the same procedure as set out for circuit courts above, except for the requirement pertaining to the disqualification of all judges in multiple-judge circuits. A request shall include the same information pertinent to a case as set out above for circuit court cases.

Circuit or District Courts: A judge or judges recusing because of disqualification shall take no further action in a case

¹ Am. 80, Sec. 12; Canon 3E of the Code of Judicial Conduct.

² Am. 80, Sec. 13.

after assignment, except that the judge requesting an assignment shall direct his or her staff to notify the attorneys or pro se litigants of the assignment and to accommodate, to the extent possible, an assigned judge regarding facilities and staff, when necessary, to carry out the assignment.

SECTION IV. CONSIDERATIONS IN MAKING ASSIGNMENTS

Issues which will be considered in selecting a judge to be assigned include, but are not limited to:

- A. the type and complexity of the case;
- B. the amount of time estimated for the assignment;
- C. the geographic location of the case and the proximity of the assigned judge; and
- D. the consent of the sitting judge or retired judge or justice selected.

Under no circumstances shall a judge, a lawyer, or a party seek to influence the decision of the Chief Justice in making an assignment.

SECTION V. ASSIGNED JUDGES' POWER TO SIGN DOCUMENTS

A circuit judge or a retired judge assigned to a cause or matter may render or sign orders, judgments, documents, or other papers in that cause or matter in a geographic location other than the judicial circuit in which the cause or matter is pending. Such order, judgment, document, or other paper shall have the same effect, for all intents and purposes, as if signed in the judicial circuit in which the matter or cause is pending.

SECTION VI. TERMINATIONS AND REASSIGNMENTS

An assignment, once made, will be terminated only for good cause at the request of the assigned judge or at the discretion of the Chief Justice.

Circuit Courts: After termination of an assignment and notification to the clerk in the county in which the case is filed, the clerk shall reassign the case within the circuit to the appropriate judge. If the cause necessitating the assignment still exists, the process for assignment by the Chief Justice may begin anew with a letter from the judge to the Chief Justice. Assignment shall be made in the same manner as set out herein.

District Courts: After termination of an assignment and notification to the clerk of the district court in which the case is filed, the district clerk shall notify the district court of the termination of assignment. If the cause necessitating the assignment still exists, the process for assignment by the Chief Justice may begin anew with a letter from the district judge to the Chief Justice. Assignment shall be made in the same manner as set out herein.

SECTION VII. REPORTS

Retired judges assigned to circuit court cases are subject to Administrative Order Number 3, which requires the reporting of cases that have been under advisement for more than ninety (90) days after final submission. For reporting such cases, a retired judge shall follow the process set out in Administrative Order Number 3(2)(A). A retired judge who has no cases that have been under submission for more than ninety (90) days is not required to file a report.

Appointments to
Committees

IN RE: ARKANSAS STATE BOARD of LAW EXAMINERS

Supreme Court of Arkansas
Delivered December 12, 2002

PER CURIAM. The Court appoints Lisa G. Peters of Little Rock to the Arkansas State Board of Law Examiners. Mrs. Peters shall be a representative of the Second Congressional District and will serve a six (6) year term concluding on September 30, 2008. We thank Mrs. Peters for her willingness to serve on this important Board.

Mrs. Peters will succeed the Honorable Wiley Branton, Jr., whose appointment concluded on September 30, 2002. We convey our appreciation to Judge Branton for his years of service to the Arkansas State Board of Law Examiners.

IN RE: CODE REVISION COMMISSION

Supreme Court of Arkansas
Delivered December 16, 2002

PER CURIAM. William G. Wright, Esq., of Arkadelphia is appointed to the Arkansas Code Revision Commission to fill the unexpired term of James H. McKenzie, Esq., who is deceased. The Court thanks Mr. Wright for accepting appointment to this Commission. This term expires on November 7, 2003.

The Court posthumously recognizes the dedicated and faithful service of Mr. McKenzie to the Commission.

IN RE: JUDICIAL DISCIPLINE
and DISABILITY COMMISSION

Supreme Court of Arkansas
Delivered December 16, 2002

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas and Act 637 of 1989, the Court appoints to the Commission the Honorable Leon Jamison, Circuit Judge, Eleventh Judicial Circuit-West, to fill the unexpired term of the Honorable David Bogard, who is retiring. This term expires on June 30, 2005. We appoint to an alternate position on the Commission the Honorable David Laser, Circuit Judge, Second Judicial Circuit, to fill the unexpired term of another retiring member, the Honorable John Plegge. This term expires on June 30, 2006. To fill the alternate position being vacated by Judge Jamison, we appoint the Honorable Stephen Routen, District Judge, St. Francis County District Court. This term expires on June 30, 2007.

The Court thanks retiring Judges Bogard and Plegge for their service to the Commission, Judge Jamison for accepting the position on the Commission, and Judge Laser and Judge Routen for accepting appointment to the alternate positions.

IN RE: SUPREME COURT
CIVIL PRACTICE COMMITTEE

Supreme Court of Arkansas
Delivered January 9, 2003

PER CURIAM. The Hon. Richard Moore, Circuit Judge, Sixth Judicial Circuit, is appointed to the Civil Practice Committee to fill the unexpired term of Judge John Ward, who

has resigned from the Committee. This term expires on July 31, 2003. We thank Judge Moore for accepting appointment to this important Committee.

We designate Judge Andree Roaf of the Arkansas Court of Appeals as the Chair of the Committee and thank her for her willingness to serve in this capacity.

The Court expresses its appreciation to Judge Ward for his dedicated service to the Committee and as its Chair.

IN RE: SUPREME COURT COMMITTEE
on CHILD SUPPORT

Supreme Court of Arkansas
Delivered January 17, 2003

PER CURIAM. Honorable Graham Partlow, Circuit Judge, Retired, of Blytheville and Melinda Gilbert, Esq., of Little Rock are hereby appointed to the Supreme Court Committee on Child Support for four-year terms that will expire on November 30, 2006. The Court thanks Judge Partlow and Ms. Gilbert for accepting appointment to this most important Committee.

The Court expresses its appreciation to Cathleen Compton, Esq., of Little Rock, whose term has expired, for her years of service to the Committee. We posthumously recognize the dedicated and faithful service of Judge Warren Kimbrough to the Child Support Committee.

IN RE: APPOINTMENTS to
ARKANSAS CONTINUING LEGAL
EDUCATION BOARD

Supreme Court of Arkansas
Delivered January 23, 2003

PER CURIAM. Harold Evans is reappointed as an at-large member to a three-year term to conclude on December 5, 2005. The Honorable Don Glover of the Fifth Court of Appeals District is reappointed to a three-year term to conclude on December 5, 2005. The Court conveys its appreciation to Mr. Evans and Judge Glover for their willingness to continue their service on this Board.

Michael Hodson of the Third Court of Appeals District is appointed to replace Rex Terry, who has concluded his service. The Court thanks Mr. Terry for his years of service as a member and Chairman of this Board, and appreciates Mr. Hodson's acceptance of this appointment. Mr. Hodson's appointment is for a three-year initial term concluding on December 5, 2005.

IN RE: SUPREME COURT COMMITTEE on
CRIMINAL PRACTICE

Supreme Court of Arkansas
Delivered February 6, 2003

PER CURIAM. Hon. David Burnett, Circuit Judge of the Second Judicial Circuit, Hon. Jim Gunter, Circuit Judge of the Eighth Judicial Circuit North, and Bruce Anderson, Esq., of Warren are hereby reappointed to our Committee on Criminal Practice for three-year terms to expire on January 31, 2006. The

Court thanks Judge Burnett, Judge Gunter, and Mr. Anderson for accepting reappointment to the Committee.

Thomas B. Devine, III, Esq., of Little Rock, Timothy Dudley, Esq., of Little Rock, and David Raupp, Esq., Assistant Attorney General, are appointed to the Criminal Practice Committee for three-year terms to expire on January 31, 2006. The Court thanks Messrs. Devine, Dudley, and Raupp for accepting appointment to this important Committee.

The Court expresses its gratitude to Kelly Hill, Esq., Jeff Rosenzweig, Esq., and Tammy Harris, Esq., whose terms have expired, for their years of service to the Committee.

Professional Conduct
Matters

Stark LIGON, Executive Director,
Committee on Professional Conduct *v.*
Michael Anthony PRICE,
Arkansas Bar ID # 81133

02-1328

94 S.W.3d 903

Supreme Court of Arkansas
Delivered January 9, 2003

PER CURIAM. In accordance with Amendment 28 of the Constitution of Arkansas and pursuant to Section 13A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, we hereby assign Jack Lessberry of Little Rock, to act as Special Judge to preside over the disbarment proceedings of Michael Anthony Price.

Ceremonial
Observances

IN the MATTER of the RETIREMENT of
JUDGE PHILLIP BRUCE PURIFOY

Supreme Court of Arkansas
Delivered December 12, 2002

PER CURIAM. On the occasion of his retirement from the bench of the 8th Judicial Circuit, the Supreme Court of Arkansas takes the opportunity to thank Judge Phillip Bruce Purifoy for his years of dedication to the legal community and the citizens of this state. The soundness of his judgments and the integrity of his conduct have distinguished his career.

“The main thing of all,” wrote Robert Louis Stevenson, “must still be justice,” and Judge Purifoy has continually sought that high goal, from his tenure as Miller County municipal judge and juvenile judge through his nineteen-year service as circuit-chancery judge for the 8th Judicial Circuit. In addition, Judge Purifoy was instrumental in the revision of the current Arkansas Juvenile Code and took the lead in the reorganization of the 8th Judicial Circuit Probation Office.

The Supreme Court acknowledges with gratitude the accomplishments of Judge Purifoy and wishes him well in all future efforts.

Alphabetical
Headnote
Index

HEADNOTE INDEX

ACTION:

- Class certification, abuse-of-discretion standard. *Worth v. City of Rogers*, 183
- Illegal-exaction suit, taxpayers may not opt out. *Id.*
- Class action, class members may opt out if dissatisfied with complaint or remedies. *Id.*
- Class action, class members have absolute right to be excluded under federal rule. *Id.*
- Class action, rationale. *Id.*
- Class action, must be found to be superior means. *Id.*
- Illegal-exaction suit, class action created by Ark. Const. art. 16, § 13. *Id.*
- Illegal-exaction suit, constitutionally created class of taxpayers. *Id.*
- Illegal-exaction suit, every inhabitant of area affected by alleged illegal exaction is member of class & bound by judgment. *Id.*
- Illegal-exaction suit, doctrine of *re judicata* applies. *Id.*
- Illegal-exaction suit, contrasted with class action. *Id.*
- Illegal-exaction suit, brought for benefit of all taxpayers. *Id.*
- Illegal-exaction suit, judgment entered for benefit of all taxpayers. *Id.*
- Illegal-exaction suit, voluntary payment of taxes cannot be recovered. *Id.*
- Illegal-exaction suit, legislature may regulate procedure. *Id.*
- Illegal-exaction suit, Ark. R. Civ. P. 23 may serve as procedural guide. *Id.*
- Illegal-exaction suit, notice required. *Id.*
- Illegal-exaction suit, issues to be determined. *Id.*
- Illegal exaction, taxes paid after filing of complaint considered paid under protest. *Id.*
- Illegal-exaction suit, notice requirements. *Id.*
- Illegal-exaction suit, contact with citizens should occur to determine whether taxes were paid voluntarily or involuntarily. *Id.*
- Interlocutory appeal from order granting motion to certify class, issue of denial of motion to recuse could not be heard. *Id.*

ADMINISTRATIVE LAW & PROCEDURE:

- Standard of review, role of courts. *Cave City Nursing Home, Inc. v. Arkansas Dep't of Human Servs.*, 13
- Agency decision, when reviewing court may reverse. *Id.*
- Deference given to agencies, scope of judicial review limited. *Id.*
- Appellate review, limited in scope. *Arkansas Soil & Water Conserv. Comm'n v. City of Bentonville*, 289
- Appellate review, deference to administrative agencies. *Id.*
- Administrative adjudication, judicial review. *Id.*
- Appellant agency was creature of legislature, power & authority limited. *Id.*
- Administrative action, when regarded as arbitrary & capricious. *Id.*
- Regulations adopted by agency under rule-making procedures, review. *Arkansas Health Servs. Comm'n v. Regional Care Fac., Inc.*, 331
- Regulations adopted by agency under rule-making procedures, factors that do not invalidate rule. *Id.*
- Agency rules, administrative agencies are better equipped than courts to determine and analyze issues affecting their agencies. *Id.*

Criteria for determining whether nursing home is needed in any county, appellant Commission has discretion to determine. *Id.*
Conclusion that nursing home was needed in any county where projected bed need exceeded existing bed need by 250 or more beds was not arbitrary, it was reasonable to set number at 250 in order to ensure that there was need for new beds before overriding occupancy rate requirement. *Id.*
Rule at issue could apply to other counties in future, Commission did not act arbitrarily in singling out one county. *Id.*

APPEAL & ERROR:

Lack of certification, order not appealable. *Chapman v. Wal-Mart Stores, Inc.*, 1
Failure to comply with Ark. R. Civ. P. 54(b), order not final. *Id.*
Lack of certification, appeal of order barred. *Id.*
Lack of certification, appeal dismissed where supreme court lacked jurisdiction. *Id.*
Alternative basis for ruling not addressed on appeal, issue will not be reversed. *Pugh v. State*, 5
Preservation of argument for appeal, similar objection must have been made at trial. *Mayer v. State*, 26
Argument not made at trial, argument procedurally barred. *Id.*
Subject-matter jurisdiction, issue of void or illegal sentence may be addressed for first time on appeal. *Id.*
Chancery cases, standard of review. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31
Unsupported assignments of error, not considered. *Id.*
Law-of-case doctrine, serves to effectuate efficiency & finality in judicial process. *Id.*
Law-of-case doctrine, does not apply if there is material change in facts. *Id.*
Law-of-case doctrine, 1994 trial court order not binding on trial court in 2001. *Id.*
Failure to cite rule or to develop argument based on rule, supreme court will not do appellant's research. *Id.*
Argument suffered from lack of specificity & citation to authority, supreme court will not develop appellant's argument. *Id.*
Double-jeopardy considerations, challenge to sufficiency of evidence considered first. *Clem v. State*, 112
Findings by trial court were not clearly erroneous, trial court's order dismissing appellants' complaints to set aside annexation of land affirmed. *Chandler v. City of Little Rock*, 172
Motion for rule on clerk, when granted. *Buie v. State*, 198
Motion for belated appeal, denied. *Id.*
Filing of record by uncertified court reporter, procedure. *George v. State*, 209
Filing of record prepared by uncertified court reporter, requirements satisfied. *Id.*
Motion for rule on clerk, good cause for granting. *Jackson v. State*, 212
Motion for belated appeal, good cause for granting. *Wicker v. State*, 213
Motion for belated appeal, good cause for granting. *Williams, Harmon v. State*, 214
Argument made without citation to authority or convincing argument, even constitutional issue will fail. *Wooten v. State*, 241
Ruling made at trial, assertion of error rejected on direct appeal. *Id.*
Issue not addressed in brief, issue not addressed on review. *Id.*
Trial court's decision, supreme court not bound by. *Bell v. Bershears*, 260

- Failure to obtain ruling, procedural bar to appellate consideration. *Id.*
- Issue must first be raised before trial court, applies to *certiorari*. *Ivy v. Keith*, 269
- Issue of whether appellants could recover from insurer was not ripe for consideration, review by supreme court on disposition of motion for summary judgment would have been premature when motion itself was premature. *Spears v. City of Fordyce*, 305
- Appeal must be from final order, when order is final. *Fisher v. Chavers*, 318
- Order that contemplates further action, not final. *Id.*
- Plan not final, appealable order, appeal dismissed. *Id.*
- Motion for rule on clerk, good cause for granting. *McIntosh v. State*, 322
- Motion for rule on clerk, denied. *Id.*
- Tendering of record of appeal, clocked from date of filing first notice of appeal. *Smith, Melton v. State*, 325
- Extending time to file record, calculation of time. *Id.*
- Ninety-day period begins with date of filing of first notice of appeal, notice of appeal not effective until day after ruling made on posttrial motion. *Id.*
- Motion for rule on clerk, when granted. *Id.*
- Motion for rule on clerk, counsel must accept responsibility. *Id.*
- Motion for rule on clerk, denied. *Id.*
- Grant of petition for review, standard of review. *Lewellyn v. Lewellyn*, 346
- Equity cases, standard of review. *Id.*
- Appellate review, Ark. R. App. P.—Civ. 2(d) permits appeal from any order that is final as to custody. *Id.*
- Order final as to custody, supreme court had jurisdiction. *Id.*
- Fact that appellant may argue on appeal that material change of circumstances has not occurred does not mean that issue is not preserved for appellate review, appellee's preservation argument had no merit. *Id.*
- Authority used by appellant inapplicable, facts differed. *Id.*
- Probate cases, *de novo* review. *Alexander v. Estate of Alexander*, 359
- Supplemental abstract, petitioner ordered to submit. *Arkansas Dep't of Human Servs. v. Collier*, 380
- Response to petition, Attorney General directed to file. *Id.*
- Motion for rule on clerk, good cause for granting. *Hudson v. State*, 383
- Motion for award of costs, denied. *Lake View Sch. Dist. No. 25 v. Huckabee*, 385
- Deference to finding by trial court, "clearly erroneous" standard. *Arkansas County v. Desha County*, 387
- Appeal from guilty plea, two exceptions to rule prohibiting. *Bradford v. State*, 394
- Sentencing hearing took place separate & apart from guilty plea, appeal not dismissed as one from guilty plea. *Id.*
- Verbatim record, required by Administrative Order No. 4. *Id.*
- Motion for rule on clerk treated as motion for belated appeal, good cause for granting. *Buie v. State*, 425
- Petition for review, treated as if appeal had been originally filed in supreme court. *Morris v. State*, 426
- Pro se* motion to proceed *in forma pauperis* on appeal, denied. *Bullock v. Pace*, 442
- Motion for rule on clerk, when granted. *Simmons v. State*, 445
- Extension of time to file record, allowable period. *Id.*
- Motion for rule on clerk, counsel must accept responsibility. *Id.*

- Motion for rule on clerk, denied. *Id.*
- Final order, defined. *Bennett v. Collier*, 447
- Petition for writ of *habeas corpus* granted, motion for belated appeal denied. *Id.*
- Ruling not reversible error, only possible sentence was received. *Cathey v. State*, 464
- Argument raised for first time on appeal, not considered. *Barnes v. Everett*, 479
- Failure to make objection at trial, supreme court precluded from addressing argument on appeal. *Id.*
- Preservation of point for appeal, objection at first opportunity required. *Id.*
- Failure to demonstrate prejudice, appellant opened door to line of testimony. *Id.*
- Appellant may not change grounds for objection on appeal, limited by scope of objections & arguments at trial. *Id.*
- Evidence on appeal, standard of review. *Mills v. State*, 523
- Case based on direct evidence, appellant's reliance on precedent for proposition concerning circumstantial evidence inapposite. *Id.*
- No citation to authority or convincing legal argument, court will not entertain argument. *Id.*
- Contention contrary to standard of review, evidence reviewed in light most favorable to appellee & only evidence that supports verdict considered. *Id.*
- Appeal by State, when accepted. *State v. Aud*, 531
- Appeal by State, when rejected. *Id.*
- Only issue present in appeal by State was whether trial court erred in its consideration of evidence, appeal dismissed. *Id.*
- Argument never advanced at trial, argument not preserved for appeal. *T&T Chem., Inc. v. Priest*, 537
- Taxpayers in illegal-exaction lawsuit constitute class as matter of law, appeal from refusal to grant Rule 23 certification of class in illegal-exaction case was not proper basis for interlocutory appeal. *Id.*
- No interlocutory appeal from refusal to certify Rule 23 class in illegal-exaction case, appeal dismissed for lack of jurisdiction. *Id.*
- Part of precedent requiring application of Rule 23 to illegal-exaction lawsuit, overruled. *Id.*
- Double-jeopardy considerations, challenge to sufficiency of evidence issue addressed first on appeal. *Gamble v. State*, 541
- Contemporaneous-objection rule. *Id.*
- Objection made at first opportunity, issue properly preserved. *Id.*
- Arguments raised for first time on appeal, supreme court will not hear. *Judkins v. Hoover*, 552
- Abstract flagrantly deficient, substituted abstract and addendum ordered. *City of Dover v. City of Russellville*, 557
- Finality, jurisdictional issue that supreme court has duty to raise. *Ford Motor Co. v. Harper*, 559
- Issue of supreme court jurisdiction needed further development, rebriefing ordered. *Id.*
- Motion for rule on clerk, good cause for granting. *Smith, Melton v. State*, 562
- Timely filing of *pro se* notice of appeal. *Warren v. State*, 563
- Findings of fact, "clearly erroneous" standard. *Butt v. Evans Law Firm, P.A.*, 566
- Findings of fact, circuit court did not clearly err in finding economic benefit to class & in determining appellee attorney was experienced counsel. *Id.*

Cross-appeal, two issues not addressed. *Id.*
Motion for rule on clerk, not timely. *Berna v. State*, 617
Motion for rule on clerk, dismissed. *Id.*
Postconviction relief, written findings required. *Scott v. State*, 619
Postconviction relief, rule requiring written findings applies to any Rule 37 issue. *Id.*
Postconviction relief, matter remanded where court failed to make sufficient written findings. *Id.*
Chancery cases, standard of review. *McWhorter v. McWhorter*, 622
Chancery cases, deference to chancellor. *Id.*
Chancery cases, chancellor's conclusion of law given no deference on appeal. *Id.*
Argument raised for first time on appeal, not considered. *Id.*
Inapposite authority, earlier holding concerning parity pay inapplicable to appellant's claim. *Vanderpool v. Pace*, 630
Argument raised for first time on appeal, not considered. *Id.*
Equity cases, standard of review. *Carter v. Four Seasons Funding Corp.*, 637
Case relied upon by appellant not helpful, case clearly distinguishable. *Id.*
Issue not developed below, appellate court will not develop. *Id.*
Motion for rule on clerk, good cause for granting. *Maxwell v. State*, 674
Verdict forms not included in record, supplementation of record ordered. *Anderson v. State*, 675

ATTORNEY & CLIENT:

Attorney's fees, factors for guidance in assessing. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31
Attorney's fees, percentage fee rejected. *Id.*
Attorney's fees, trial court abused discretion in basing award on percentage of \$130 million & use of multiplier. *Id.*
Attorney's fees, award modified. *Id.*
Claim of ineffective assistance, standard for measuring counsel's effectiveness. *State v. Franklin*, 131
Counsel did not properly inform client of his right to testify & did not elicit proper waiver of his right to testify, circuit court not clearly erroneous in so finding. *Id.*
Counsel erred in failing to properly inform his client of his right to testify & in failing to elicit proper waiver of his right to testify, error not prejudicial. *Id.*
Claim of ineffective assistance, petitioner did not make showing of both error & prejudice in accordance with *Strickland*. *Id.*
Claim of ineffective assistance, appropriate review for failure to request that limiting instruction be given to jury. *Id.*
Claim of ineffective assistance, no prejudice shown in failure to request that limiting instruction be given to jury. *Id.*
Claim of ineffective assistance, no prejudice shown from failure to challenge gunshot-residue test. *Id.*
Claim of ineffective assistance, failure to present mitigating evidence. *Id.*
Claim of ineffective assistance, defendant given less than maximum sentence cannot show prejudice from sentence itself. *Id.*
Claim of ineffective assistance, failure to present mitigating evidence. *Id.*

- Claim of ineffective assistance, postconviction relief cannot be granted based solely on cumulative error. *Id.*
- Trial court's grant of new trial due to ineffective assistance of counsel based on specific instances of error, case reversed where prejudice prong of *Strickland* test not satisfied. *Id.*
- Ineffective-assistance claim, rebuttable presumption. *Wooten v. State*, 241
- Ineffective-assistance claim, totality of evidence must be considered. *Id.*
- Ineffective-assistance claim, standard of review. *Id.*
- Ineffective-assistance claim, standard of reasonableness. *Id.*
- Guarantee in effective assistance of counsel, sentencing phase. *Id.*
- Ineffective-assistance claim, relief not granted where petitioner failed to show how omitted testimony would have changed outcome. *Id.*
- Ineffective-assistance claim, appellant failed to show how omitted testimony would have changed outcome of case. *Id.*
- Challenge to constitutionality of death penalty sentencing scheme has been repeatedly rejected, failure to raise meritless argument not basis for claim of ineffective assistance. *Id.*
- Claim of ineffective assistance, argument made without reference to convincing argument or authority failed. *Id.*
- Claim of ineffective assistance, appellant offered nothing to show that alleged error prejudiced his case in any way. *Id.*
- Motion to be relieved & for appointment of counsel on appeal, granted. *Munn v. State*, 324
- Legal malpractice, attorney negligent in failing to exercise reasonable diligence & skill on behalf of client. *Barnes v. Everett*, 479
- Legal malpractice, what plaintiff must prove. *Id.*
- Legal malpractice, when attorney is not liable. *Id.*
- Opening statement or closing argument, statements made by attorneys not considered as evidence. *Id.*
- Attorney's statements merely argument made by lawyer on behalf of client, correctly excluded as evidence. *Id.*
- Attorney of record, held responsible for being aware of filings in case. *Warren v. State*, 563
- Attorneys' fees, factors for guidance in assessing. *Butt v. Evans Law Firm, P.A.*, 566
- Attorneys' fees, award not set aside absent abuse of discretion. *Id.*
- Attorneys' fees, circuit court made proper analysis & made findings supporting each factor. *Id.*
- Attorneys' fees, circuit court abused discretion in applying percentage of contingent fee against settlement pool in each case rather than against total amount claimed by taxpayers. *Id.*
- Attorneys' fees, matter remanded for trial court to assess attorneys' fees based on amount claimed by class members. *Id.*
- Attorneys' fees, issue of voluntarily paid attorneys' fees moot. *Id.*
- Attorneys' fees, notices alerted class members that award of fees was outstanding issue. *Id.*
- Attorneys' fees, circuit court did not err on guardian *ad litem* issue. *Id.*
- Attorneys' fees, reversed & remanded for circuit court to determine fees based on amount of actual recovery of illegally paid taxes by class members in school district. *Id.*

BUSINESS & COMMERCIAL LAW:

- Factoring of accounts, factoring defined. *Carter v. Four Seasons Funding Corp.*, 637

Business of factoring accounts, what constitutes. *Id.*
Determination whether factoring contract is true sale or loan turns principally on intent of parties, opinions of other jurisdictions turn on their facts. *Id.*
Determining whether factoring contract is true sale or loan, control factor did not weigh in appellants' favor. *Id.*
Determining whether factoring contract is true sale or loan, issue of recourse. *Id.*
Determining whether factoring contract is true sale or loan, previous analysis finding • that existence of full recourse does not convert factoring arrangement into loan applicable. *Id.*
Determining whether factoring contract is true sale or loan, recourse provision for accounts not paid in ninety days did not convert arrangement into loan. *Id.*
Determining whether factoring contract was true sale or loan, absence of notice did not militate for holding in appellants' favor. *Id.*
Determining whether factoring contract was true sale or loan, damages awarded based on face amount of outstanding accounts not error. *Id.*
Determining whether factoring contract was true sale or loan, appellee's intent to treat transaction as sale clear. *Id.*
Parties intended factoring agreement, appellants failed to meet their burden of proof by clear & convincing evidence that financial arrangement was subterfuge for usurious loans. *Id.*

CERTIORARI:

Writ of, when appropriate. *Ivy v. Keith*, 269
Writ of, proceedings generally governed by normal appellate rules. *Id.*
Writ of, appellant correct in pursuing. *Id.*
Writ of, granted. *Id.*
Extraordinary relief, when granted. *Arkansas Dep't of Human Servs. v. Collier*, 506
Compared with writ of prohibition, may address actions already taken. *Id.*
Application, supreme court will not look beyond face of record. *Id.*
When proper, no other adequate remedy. *Id.*
Fetus would have been born before appeal could have been resolved, *certiorari* appropriate. *Id.*
Respondent judge exceeded statutory authority & order placing fetus in custody of petitioner agency constituted abuse of discretion, writ of *certiorari* granted. *Id.*

CIVIL PROCEDURE:

Motion to dismiss, when converted to motion for summary judgment. *Fegans v. Norris*, 200
Ark. R. Civ. P. 68, award of post-offer costs to defendant does not preclude award of pre-offer costs to prevailing plaintiff under Ark. R. Civ. P. 54(d). *Bell v. Bershears*, 260
Post-offer costs, trial court did not err in awarding to appellee or in denying appellant's request. *Id.*
Pre-offer costs, denial of appellant's request under Ark. R. Civ. P. 54(d) reversed & remanded. *Id.*
Pre-offer costs, should be considered when determining whether judgment obtained was more favorable than offer of judgment. *Id.*
Pre-offer costs, appellant's argument that costs should be included with amount of judgment failed. *Id.*

Ark. R. Civ. P. 68, award of post-offer costs to defendant does not preclude award of pre-offer costs to prevailing plaintiff under Ark. R. Civ. P. 54(d). *Id.*

Post-offer costs, trial court did not err in awarding to appellee or in denying appellant's request. *Id.*

Pre-offer costs, denial of appellant's request under Ark. R. Civ. P. 54(d) reversed & remanded. *Id.*

Pre-offer costs, should be considered when determining whether judgment obtained was more favorable than offer of judgment. *Id.*

Pre-offer costs, appellant's argument that costs should be included with amount of judgment failed. *Id.*

Judgment on part of claims or parties, certification required for appeal. *Fisher v. Chavers*, 318

Motion to set aside order terminating parental rights, appellant procedurally barred. *Parker v. Sebourn*, 453

Motion to set aside for lack of subject-matter jurisdiction, must be filed within ninety days unless procedural exception is asserted & applies. *Id.*

Standing to appeal class-action order approving attorneys' fees & costs, class member must have intervened at circuit court level. *Butt v. Evans Law Firm, P.A.*, 566

Ark. R. Civ. P. 23(b), does not mirror Fed. R. Civ. P. 23(b). *Id.*

Notice, appellant intervenor inconsistently contended on appeal that notices he approved were faulty with regard to objecting to attorneys' fees. *Id.*

CONFLICTS:

Deference to General Assembly, primacy of court rules. *Bradford v. State*, 394

Ark. Code Ann. § 16-65-121 superseded, trial court was within its authority to modify sentence pronounced prior to entry of judgment. *Id.*

CONSTITUTIONAL LAW:

Education Article, State designated as entity to maintain system of free public schools in Arkansas. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31

Role of judiciary, school-funding matter was justiciable. *Id.*

Construction of language of constitution, plain, obvious, & common meaning. *Id.*

Strict scrutiny, applied when impairment of fundamental right claimed. *Id.*

Education Article, plain language does not mandate State-provided, early-childhood education. *Id.*

Separation of powers, one branch of government shall not exercise power of another. *Id.*

Separation of powers, legislature can neither be coerced nor controlled by judicial power. *Id.*

Separation of powers, trial court had no power to order implementation of pre-school education. *Id.*

Ark. Code Ann. § 26-80-204(18)(C) violated Ark. Const. amend. 74, void & of no effect. *Id.*

Ark. Const. art. 16, § 13, self-executing. *Worth v. City of Rogers*, 183

Sovereign immunity, consent to be sued withheld by Arkansas Constitution. *Fegans v. Norris*, 200

Sovereign immunity jurisdictional, may be waived. *Id.*

Sovereign immunity, prohibition of suits against state discussed. *Id.*

Sovereign immunity, appellant's action constituted suit against state. *Id.*

Rational basis test, burden of proof. *Eady v. Lansford*, 249

Different degree of proof required in informed-consent cases than in other medical malpractice cases, rational relationship existed between burden of proof required & achievement of legitimate governmental objective. *Id.*

Amendment 14, prohibits local or special acts. *Arkansas Health Servs. Comm'n v. Regional Care Fac., Inc.*, 331

Local or special legislation, what constitutes. *Id.*

Local or special legislation, may be constitutional if rationally related to purpose of act. *Id.*

Local or special legislation, when generality ends & specialty begins. *Id.*

Local or special legislation, laws classified by looking at substance & practical operation. *Id.*

Local legislation, found valid where legitimate reason existed for singling out one particular city. *Id.*

Local or special legislation, standard of review. *Id.*

Double jeopardy, appellant not entitled to protection where sentencing not afforded finality of acquittal. *Bradford v. State*, 394

No violation of due process on notice issue, circuit court did not err in finding against appellant intervenor. *Butt v. Evans Law Firm, P.A.*, 566

CONTEMPT:

Appellants' argument rejected, 1994 order was not law of case. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31

Petitioner never argued that he was prejudiced by shortness of notice or time to prepare, not deprived of statutory protection. *Ivy v. Keith*, 269

Criminal contempt not appropriate as penalty for violating Ark. R. Civ. P. 11, trial court abused discretion. *Id.*

Lack of ability to pay, complete defense against enforcing payment by imprisonment. *Id.*

Indigency as defense, petitioner's responsibility as present evidence of his financial condition. *Id.*

Show-cause order issued. *Hamilton v. Jones*, 382

Show-cause order issued. *Supreme Court Comm. on Prof'l Conduct v. Fuchs*, 384

Order issued. *Dugger v. State*, 443

Guilty plea accepted, reduced fine imposed. *Hamilton v. Jones*, 561

Master appointed. *In Re: Fuchs*, 618

CONTRACTS:

Construction, construed against drafter. *Carter v. Four Seasons Funding Corp.*, 637

Appellee followed terms of Purchase Agreement by exercising right to security interest after breach of warranty, language in Addendum requiring appellee to remit proceeds of non-factored accounts to appellant did not alter appellee's right to security interest in non-factored accounts in event of breach. *Id.*

COURTS:

Rules, standing to challenge constitutionality. *Williams, Phillip Dewayne v. State*, 215

Rules, appellant lacked standing to challenge constitutionality of Ark. Sup. Ct. R. 5-2(d). *Id.*

Court rules, construed using same canons of construction used to interpret statutes. *Bell v. Bershears*, 260

Rules, Ark. R. Civ. P. 54(d) gives trial judge discretion in awarding authorized costs. *Id.*

Rules, no discretion exists under Ark. R. Civ. P. 68. *Id.*
Termination order was final order, respondent judge had no jurisdiction to hold petitioner in contempt of court. *Bennett v. Collier*, 447
Jurisdiction, trial court had subject-matter jurisdiction under Ark. Code Ann. § 16-13-304(d). *Parker v. Sebourn*, 453

CRIMINAL LAW:

Sentencing, when sentence void or illegal. *Mayes v. State*, 26
Trial court's sentence of life imprisonment without parole illegal, appellant's sentence modified to one of life imprisonment. *Id.*
Rape, penetration can be shown by circumstantial evidence. *Clem v. State*, 112
Accomplice liability, relevant factors in determining connection of accomplice to crime. *Id.*
Accomplice liability, factors connecting accomplice with crime. *Id.*
Accomplice liability, evidence established appellant was accomplice to aggravated robbery. *Id.*
Capital murder, requirement of extreme indifference. *Id.*
Capital murder, denial of directed-verdict motion affirmed where evidence demonstrated that appellant acted with extreme indifference to value of victim's life & that appellant's gun fired fatal shots. *Id.*
Aggravated robbery, focus is threat of harm to victim. *Id.*
Aggravated robbery, substantial evidence existed regardless whether property belonging to witness was taken. *Id.*
Aggravated robbery, appellant's conviction for aggravated robbery of guest affirmed. *Id.*
Misdemeanor theft of property, accomplice's uncorroborated testimony sufficient to sustain appellant's conviction. *Id.*
Law in effect at time appellant sentenced, law properly applied to appellant. *Williams, John Franklin v. State*, 229
Revocation, State's burden. *Id.*
Revocation, standard of review. *Id.*
State met its burden of proof, trial court's revocation of appellant's suspended sentence was affirmed. *Id.*
Accepted guilty plea was never effective judgment of conviction, Ark. Code Ann. § 5-1-112(2) superseded to extent it conflicted with Administrative Order No. 2 & caselaw. *Bradford v. State*, 394
Habitual Offender Act, purpose. *Smith, Dennis James v. State*, 468
Multiple criminal acts not continuing course of conduct, no error to admit appellant's earlier convictions to enhance sentence. *Id.*
Intent, usually must be inferred from circumstances. *Edmond v. State*, 495
First-degree murder, how intent may be inferred. *Id.*
Establishing guilt, eyewitness testimony not required. *Id.*
First-degree murder, substantial evidence supported jury's verdict. *Id.*
Rape conviction, testimony of victim alone sufficient to sustain. *Mills v. State*, 523
Kidnapping, reduction from Class Y to class B felony. *Id.*
Kidnapping, fact question existed for jury to decide which of two felonies applied. *Id.*
Jury found appellant failed to release child alive & in safe place, verdict supported by sufficient evidence. *Id.*

Rape, victim less than fourteen. *Kirwan v. State*, 603
Attempt to commit crime, substantial step. *Id.*
Defense of impossibility, abolished by attempt statute. *Id.*
Attempt statute, provides firm legal basis for intervention of law enforcement to prevent offense's commission. *Id.*
Substantial-step requirement, conduct that might reasonably be held to be substantial step. *Id.*
Commission of criminal offense, not every act done in conjunction with intent to commit crime constitutes attempt to commit crime. *Id.*
Appellant's conduct constituted substantial step toward commission of offense, defendant's motion for directed verdict on charge of attempted rape properly denied. *Id.*
Criminal defendant, territorial jurisdiction over. *Id.*

CRIMINAL PROCEDURE:

Ark. R. Crim. P. 37, appeal from civil action proper. *State v. Franklin*, 131
Grant or denial of postconviction relief, standard of review. *Id.*
Defendant's failure to testify not basis for postconviction relief, prejudice must be specifically demonstrated. *Id.*
Compliance with Ark. R. Crim. P. 25.3(b) mandatory, matter reversed & remanded for trial court to follow mandates of rule. *Bradford v. State*, 394
Stopping & detention of person, Arkansas rule. *Davis v. State*, 406
Investigatory stop, reasonable suspicion. *Id.*
Stopping & detention of person, factors considered in determining grounds for reasonable suspicion. *Id.*
Investigative stop, justification. *Id.*
Totality of circumstances gave rise to reasonable suspicion sufficient to make investigatory stop, trial court did not err. *Id.*
Pat-down search for weapons, when appropriate. *Id.*
Custodial statement, found admissible. *Doss v. State*, 667

DAMAGES:

Discount fee did not change fact that appellee desired to collect face value of purchased accounts under agreement, damage award based on full face value of accounts affirmed. *Carter v. Four Seasons Funding Corp.*, 637

EDUCATION:

Efficient system of education, *Rose* standards. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31
Equal educational opportunity, basic to society. *Id.*
Requirement of general, suitable, & efficient system of free public schools, State has absolute duty to provide adequate education. *Id.*
Performance of State's duty to provide adequate education is absolute constitutional requirement, State failed in performance of its duty. *Id.*
State failed in its constitutional duty to provide general, suitable, & efficient school-funding system, Education Article violated by school-funding system. *Id.*
Equal educational opportunity, General Assembly's constitutional duty to provide. *Id.*
State's responsibility, develop what constitutes adequate education in Arkansas. *Id.*
Equal educational opportunity, basic components. *Id.*

EQUITY:

- Laches, basis of doctrine. *Arkansas County v. Desha County*, 387
- Laches, appellant county barred from asserting plant site was in appellant county. *Id.*
- Laches, trial court's finding that appellee county always exercised control over land not clearly erroneous. *Id.*

EVIDENCE:

- Admission or rejection of discretionary, standard of review. *Pugh v. State*, 5
- Trial court exercised its discretion, no abuse of discretion found. *Id.*
- Co-defendant's psychiatric condition irrelevant absent showing defendant acted in reliance on it, appellant made no showing of reliance. *Id.*
- Duress, proof required. *Id.*
- Unlikely outcome would have differed had evidence been allowed, trial court's refusal to admit was not abuse of discretion. *Id.*
- Doctor's cover letter admitted & remainder of report found cumulative & irrelevant, no abuse of discretion found. *Id.*
- There was no evidence in proffer that would have illuminated relationship between accomplice and appellant, trial court's ruling correct. *Id.*
- There was no abuse of discretion by circuit judge in allowing reference to death-penalty waiver to be made by prosecutor, trial court did not err in allowing State to make statement to jury. *Id.*
- Sufficiency of, standard of review. *Clem v. State*, 112
- Sufficiency of, supreme court does not weigh evidence or credibility of witnesses. *Id.*
- Sufficiency of, rape victim's testimony is substantial evidence. *Id.*
- Rape conviction, supported by sufficient evidence. *Id.*
- Accomplice to rape, convictions supported by sufficient evidence. *Id.*
- Photographs, admission & relevance discretionary. *Id.*
- Relevant evidence defined, ruling on relevance given great weight. *Id.*
- Father's perpetration of abuse by neglect, relevant to case of sexual abuse against neglected child. *Id.*
- Photographs & explanatory testimony found relevant to show living conditions of children, no abuse of discretion found. *Id.*
- Sufficiency of, test for determining. *Williams, Phillip Dewayne v. State*, 215
- Circumstantial evidence, when substantial. *Id.*
- Challenge to sufficiency of, standard of review. *Id.*
- Substantial-evidence standard of review, consistent with rational fact-finder standard. *Id.*
- Substantial-evidence standard of review, constitutionality upheld. *Id.*
- Substantial evidence, defined. *Arkansas Soil & Water Conserv. Comm'n v. City of Bentonville*, 289
- Substantial evidence, challenging party has burden of proving absence. *Id.*
- Admission or exclusion, discretionary with trial court. *Smith, Dennis James v. State*, 468
- Evidence of other crimes, general rule. *Id.*
- Ark. R. Evid. 404(b), exceptions to inadmissibility. *Id.*
- Introduction of evidence of another crime, wrong, or act, relevance required. *Id.*
- Ark. R. Evid. 404(b), independent relevance test. *Id.*
- Evidence suggesting or implying kidnapping, independently relevant to main issue. *Id.*
- Decision to admit or refuse, trial court's discretion. *Barnes v. Everett*, 479

- Relevant evidence, defined. *Id.*
- Ruling on relevancy, not reversed absent abuse of discretion. *Id.*
- Relevant evidence, when excluded. *Id.*
- Weighing probative value against prejudicial effect, determination not reversed absent manifest abuse of discretion. *Id.*
- Probative value outweighed by danger of unfair prejudice, trial court did not abuse discretion in denying admission of evidence. *Id.*
- Sufficiency of, considered on appeal before any alleged trial error. *Edmond v. State*, 495
- Sufficiency of, appellate review of challenge to. *Id.*
- Substantial evidence, defined. *Id.*
- Circumstantial evidence, must be consistent with defendant's guilt & inconsistent with any other reasonable conclusion. *Id.*
- Circumstantial evidence, not every hypothesis must be excluded. *Id.*
- Circumstantial evidence, jury decides whether evidence excludes every hypothesis consistent with innocence. *Id.*
- Circumstantial evidence, substantiality test. *Id.*
- Photographs, admissibility lies in trial judge's discretion. *Id.*
- Photographs, factors relating to admissibility. *Id.*
- Photographs, trial court did not abuse its discretion in admitting photograph. *Id.*
- Jury's finding that appellant failed to establish by preponderance of evidence that he released his victim in safe place, supported by substantial evidence. *Mills v. State*, 523
- Determining sufficiency, substantial evidence defined. *Gamble v. State*, 541
- Challenge to sufficiency, standard of review. *Id.*
- Direct evidence, defined. *Id.*
- Circumstantial evidence, sufficient to establish guilt. *Id.*
- Direct or circumstantial evidence, requirements of substantiality must be met. *Id.*
- Appellant accused of exercising unauthorized control over pistols, conviction supported by substantial evidence. *Id.*
- Best-evidence rule, *Finn v. State*. *Id.*
- Best-evidence rule, applicability. *Id.*
- Best-evidence rule inapplicable. *Id.*
- Challenge to sufficiency, evidence considered in light most favorable to State. *Kinwan v. State*, 603
- Substantial evidence, what constitutes. *Id.*
- Fact that child was fictional character irrelevant to sufficiency challenge, substantial evidence of intent to rape combined with substantial step toward commission of crime sufficient to affirm conviction. *Id.*
- Rape victim under age of fourteen, consent not issue. *Id.*
- Reviewing evidence on jurisdictional question, substantial evidence standard. *Id.*
- Jurisdictional challenge to sufficiency of evidence on pandering charge, properly denied by trial court. *Id.*

INSURANCE:

- "Motor vehicle," defined. *Spears v. City of Fordyce*, 305
- Liability insurance on motor vehicles, vehicles not subject to registration laws do not have to be insured. *Id.*

JUDGES:

- Recusal, decision within court's discretion. *Worth v. Benton County Cir. Court*, 149
- Disqualification of may be waived, what constitutes waiver. *Id.*
- Facts supporting recusal, party may not wait to raise facts until after adverse decision is rendered. *Id.*
- Objection to sitting judge not made until after adverse ruling, petitioners could not complain on appeal. *Id.*
- Disqualification, any alleged right to recusal waived. *Id.*
- Appearance of impropriety addressed first, independent judiciary essential. *Id.*
- Presumption of impartiality exists, petitioners failed to show appearance of impropriety. *Id.*
- Recusal of, when required. *Id.*
- Recusal, interest in outcome of case must be more than that of ordinary citizen or taxpayer. *Id.*
- Judge had no personal interest in outcome of case, judge's impartiality could not reasonably be questioned. *Id.*
- Recusal, no duty unless prejudice shown. *Id.*

JUDGMENT:

- Summary judgment, when appropriate. *Fegans v. Norris*, 200
- Summary judgment, standard of review. *Id.*
- Summary judgment, when suit based on qualified immunity precluded. *Id.*
- Summary judgment based upon failure to state claim upon which relief can be granted differs from summary judgment based upon lack of disputed material facts, dismissal based on failure to state claim should be without prejudice. *Id.*
- Circuit court erred in dismissing complaint with prejudice, order modified to be without prejudice. *Id.*
- Summary judgment, when granted. *Spears v. City of Fordyce*, 305
- Grant of summary judgment, standard of review. *Id.*
- Grant of summary judgment premature, genuine issues of material fact remained to be resolved. *Id.*
- Summary judgment, grant reversed & case remanded. *Arkansas Health Servs. Comm'n v. Regional Care Fac., Inc.*, 331
- Summary judgment, appellate review. *Alexander v. Estate of Alexander*, 359
- Voluntary payment of judgment amount, generally renders subsequent contest moot. *Butt v. Evans Law Firm, P.A.*, 566
- Summary judgment, when granted. *Vanderpool v. Pace*, 630
- Summary judgment, correctly granted to appellees. *Id.*

JURISDICTION:

- Subject-matter jurisdiction, can be raised at any time. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31
- Subject-matter jurisdiction, can be raised on appeal. *Judkins v. Hoover*, 552
- Probate of will, circuit court had jurisdiction. *Id.*
- Circuit court never lost subject-matter jurisdiction, no order existed to be set aside. *Id.*

JURY:

- Need not lay aside common sense, may infer guilt from improbable explanations. *Edmond v. State*, 495

JUVENILES:

- Language of Ark. Code Ann. § 9-27-303(29)(A) plain & unambiguous, unborn fetus does not fall within definition of "juvenile." *Arkansas Dep't of Human Servs. v. Collier*, 506
- Purpose of Juvenile Code made crystal clear, provisions of Ark. Code Ann. § 9-27-302 inapplicable to unborn fetus. *Id.*

MISTRIAL:

- Grant or denial, when reversed. *Smith, Dennis James v. State*, 468

MOTIONS:

- Directed verdict, challenge to sufficiency of evidence. *Clem v. State*, 112
- Directed verdict, challenge to sufficiency of evidence. *Williams, Phillip Dewayne v. State*, 215
- Grant or denial of motion to suppress evidence, standard of review. *Davis v. State*, 406
- Determination of reasonable suspicion or probable cause, standard of review set out in *Ornelas v. United States. Id.*
- Review of suppression challenge, appropriate standard of review clarified. *Id.*
- Officers justified in stopping & searching appellant, trial court's denial of appellant's motion to suppress affirmed. *Id.*
- Directed verdict, renewal must occur before jury is charged. *Cathey v. State*, 464
- Motion for directed verdict not renewed until after verdict returned, issue not preserved for review. *Id.*
- Directed verdict, treated as challenge to sufficiency of evidence. *Edmond v. State*, 495
- Directed-verdict motion, challenge to sufficiency of evidence. *Mills v. State*, 523
- Test for motion for directed verdict, substantial evidence defined. *Id.*
- Motion for directed verdict, challenge to sufficiency of evidence. *Gamble v. State*, 541
- Motion to be relieved as counsel, denied. *Warren v. State*, 563
- Motion to dismiss, granted as to 3,019 class members. *Butt v. Evans Law Firm, P.A.*, 566
- Motion to dismiss, denied as to appellant intervenor. *Id.*
- Motion for directed verdict, when made. *Doss v. State*, 667
- Motion for directed verdict, failure to renew at close of State's rebuttal precludes appellate review. *Id.*
- Motion for directed verdict not renewed at end of State's rebuttal, sufficiency argument could not be considered on appeal. *Id.*

MUNICIPAL CORPORATIONS:

- Annexation, standard of review. *Chandler v. City of Little Rock*, 172
- Five criteria for annexation, considered in disjunctive. *Id.*
- Action to prevent annexation, burden of proof. *Id.*
- Trial court made findings that appellee needed to annex property for proper municipal purposes, findings not clearly erroneous. *Id.*
- Annexation, when proper. *Id.*
- Annexation, location of land in flood plain does not exclude it from consideration. *Id.*
- Best use of property found to be industrial & recreational, findings of trial court not clearly erroneous. *Id.*
- Creatures of legislature, power limited by statute or Constitution. *Arkansas Soil & Water Conserv. Comm'n v. City of Bentonville*, 289

Immunity from suit, limited exceptions. *Spears v. City of Fordyce*, 305
Insurance, city must carry liability insurance on its motor vehicles. *Id.*
Vehicles excepted from registration requirement, "special mobile equipment" defined. *Id.*
Ordinances, rules of construction same as those applied to statutes. *Vanderpool v. Pace*, 630
Municipal code, city marshal plainly & unmistakably designated as department head. *Id.*

NEGLIGENCE:

Medical malpractice, when expert testimony is required. *Eady v. Lansford*, 249

PARENT & CHILD:

Custody award, when modified. *Lewellyn v. Lewellyn*, 346
Joint custody, traditional premise. *Id.*
Joint custody, erosion of ability to cooperate due to relocation of one parent
constituted material change in circumstances. *Id.*
Case relied upon inapposite, case at hand not relocation case where *Staab* factors
should be applied. *Id.*
Trial court transferred sole custody to appellee, no error found. *Id.*
Guardianship, service of notice complied with statutory requirement. *Finney v. Cook*, 367
Order terminating parental rights, final, appealable order where out-of-home
placement ordered. *Bennett v. Collier*, 447
Child support, chancellor's decision not reversed absent abuse of discretion. *McWhorter*
v. McWhorter, 622
Child support, trial court did not abuse discretion regarding determination of gambling
losses where appellant failed to comply with IRS Regulation 77-29. *Id.*
Child support, purpose of child-support guidelines. *Id.*

PHYSICIANS & SURGEONS:

Informed consent, burden of proof. *Eady v. Lansford*, 249
Informed consent, minority view. *Id.*
Informed consent, majority view. *Id.*
Informed consent, common-knowledge exception. *Id.*
Informed consent, supreme court would not "alternatively" apply common-knowledge
doctrine. *Id.*
Medical malpractice case, expert testimony required to survive summary-judgment
motion. *Id.*
Appellant failed to offer proof that appellee violated appropriate standard of care, trial
court's grant of summary judgment to appellee not error. *Id.*

PRISONS:

Dismissal of appellant's complaint would constitute a "strike" for purposes of Ark.
Code Ann. § 16-68-607, finding of circuit court correct. *Fegans v. Norris*, 200

PROHIBITION, WRIT OF:

Recusal statute is not vehicle for forum shopping, petition for writ of mandamus or
prohibition denied. *Worth v. Benton County Cir. Court*, 149
Extraordinary writ, when appropriate. *Neeve v. City of Caddo Valley*, 235
Lower court not wholly without jurisdiction, writ properly denied. *Id.*
Extraordinary relief, when appropriate. *Finney v. Cook*, 367
Appellate review, confined to pleadings. *Id.*

- Not proper remedy, analysis of “home state” issue would turn upon some fact to be determined by trial court. *Id.*
- Show-cause order, appropriate vehicle. *Id.*
- Personal jurisdiction, generally not proper subject for petition. *Id.*
- Personal jurisdiction, when writ is appropriate remedy. *Id.*
- Question was whether petitioner was served in manner required by law, appropriate remedy. *Id.*
- Remedy of appeal, held inadequate. *Id.*
- Denied, not apparent on face of pleadings that trial court was wholly without jurisdiction. *Id.*
- When issued, purpose of. *Hatfield v. Thomas*, 377
- Narrow in scope, lies as matter of sound judicial discretion. *Id.*
- Jurisdiction tested on pleadings, when writ appropriate. *Id.*
- Jurisdiction in Arkansas may be proper, petition for writ to keep circuit court from exercising jurisdiction denied. *Id.*
- Extraordinary writ, when appropriate. *Arkansas Dep't of Human Servs. v. Collier*, 506
- Cannot be used to correct order already entered, directed to court itself. *Id.*
- Inappropriate where circuit court was not wholly without subject-matter jurisdiction & had already taken action sought to be prohibited, petition denied. *Id.*
- PUBLIC OFFICERS & OFFICIALS:**
- Qualified immunity, when official is immune from suit. *Fegans v. Norris*, 200
- Immunity, when applicable. *Id.*
- Immunity, malice defined. *Id.*
- Appellee officials did not violate clearly established principles of law of which reasonable person would have had knowledge, officials were immune from suit. *Id.*
- Overtime pay, appellant city marshal not entitled where position was plainly classified as department head. *Vanderpool v. Pace*, 630
- Overtime pay, appellant city marshal not entitled with respect to receiving fire-department calls. *Id.*
- SCHOOLS & SCHOOL DISTRICTS:**
- School funding, roles of legislative & judicial branches. *Lake View Sch. Dist. No. 25 v. Huckabee*, 31
- School funding, deficiencies can sustain findings of both inadequacy & inequality. *Id.*
- School funding, state government must meet obligation if local government cannot carry the burden. *Id.*
- School funding, test for equality is actual money spent per student. *Id.*
- Classification between poor & rich school districts, State's school-funding formula fostered discrimination based on wealth. *Id.*
- Classification between poor & rich school districts, strict scrutiny unwarranted where school districts were never considered suspect class. *Id.*
- Classification between poor & rich school districts, State failed to justify under rational-basis standard. *Id.*
- School funding, trial court did not err in finding that school-funding system violated equal-protection sections of Arkansas Constitution. *Id.*
- School funding, desegregation funds did not constitute “state aid” for current expenditures. *Id.*

School funding, trial court did not err in not employing school-funding formula used in 1994 order. *Id.*

Excess debt service millage, legislation providing for clearly contrary to plain meaning of Ark. Const. amend 74. *Id.*

School funding, limited role of courts. *Id.*

Constitutional infirmity, mandate stayed. *Id.*

SEARCH & SEIZURE:

Fourth Amendment protections, extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. *Davis v. State*, 406

Lawfulness of search, standard used to determine reasonableness. *Id.*

Officer had reasonable suspicion to search appellant, pat-down search justified under totality of circumstances. *Id.*

STATUTES:

Construction, first rule. *Cave City Nursing Home, Inc. v. Arkansas Dep't of Human Servs.*, 13

Construction, ambiguity. *Id.*

Construction, unambiguous statute given plain meaning. *Id.*

Construction, supreme court hesitant to interpret legislative act in manner contrary to express language. *Id.*

Construction, manner in which law has been interpreted by executive & administrative officers given consideration. *Id.*

Construction, administrative interpretation highly persuasive. *Id.*

Construction, extrinsic facts not allowed to alter meaning when act's language plain & unambiguous. *Id.*

Construction, testimony of legislators with regard to their intent is inadmissible. *Id.*

Legislation at issue not ambiguous, testimony of legislators as to intent of drafters was of no consequence. *Id.*

Construction, without evidence of drafting omission supreme court will not read meaning into legislation. *Id.*

Legislature's intention to provide incentives to nursing facilities clear, appellee's interpretation of Act 1537 was not clearly wrong. *Id.*

Only dictate found in act was that appellee review compliance on quarterly basis, appellee's interpretation of act not clearly erroneous. *Id.*

Appellant was person serving sentence in form of community supervision as result of adjudication of guilt for sex offense, appellant was required to register as sex offender under Arkansas law. *Williams, John Franklin v. State*, 229

Construction, basic rule. *Neeve v. City of Caddo Valley*, 235

Construction, supreme court will not read into statute provision not put there by legislature. *Id.*

Repeal by implication, strongly disfavored. *Id.*

Repeal by implication, when allowed. *Id.*

Repeal by implication, Act 944 of 1977 did not impliedly repeal Ark. Code Ann. § 14-45-106. *Id.*

Construction, court will give meaning to each word. *Id.*

Constitutionality, presumption of validity. *Eady v. Lansford*, 249

Special legislation, defined. *Id.*

Special legislation alleged to be unconstitutional, rational basis test applicable. *Id.*
Construction, first rule. *Bell v. Bershears*, 260
Construction, *de novo* review. *Id.*
Construction, basic rule. *Arkansas Soil & Water Conserv. Comm'n v. City of Bentonville*, 289
Construction, when unambiguous. *Id.*
Interpretation by executive & administrative officers, given consideration on appeal. *Id.*
Relating to same subject matter, *in pari materia*. *Id.*
Open-ended population-based statutes, prospective operation of acts saved them from being unreasonable & arbitrary. *Arkansas Health Servs. Comm'n v. Regional Care Fac., Inc.*, 331
Construction, first rule. *Arkansas Dep't of Human Servs. v. Collier*, 506
Construction, ambiguity. *Id.*
Construction, unambiguous statute given plain meaning. *Id.*
South Carolina statute defining "child" & Arkansas statute defining "juvenile" distinguished, South Carolina case not persuasive authority for construing Arkansas statute. *Id.*
Construction, plain meaning of term "juvenile" does not include unborn child. *Id.*
Construction, first rule of construction. *Vanderpool v. Pace*, 630
Construction, effect of ambiguity. *Id.*

TAXATION:

Illegal-exaction suit, taxpayer victims form class as matter of law. *T&T Chem., Inc. v. Priest*, 537
Existence of class based on illegal-exaction clause of constitution, certification under Ark. R. Civ. P. 23 not required. *Id.*

TRIAL:

Refusal to instruct on lesser-included offense, reversible error where slightest evidence supports instruction. *Morris v. State*, 426
Refusal to instruct on lesser-included offense, affirmed where no rational basis supports giving instruction. *Id.*
Instruction on second-degree murder, evidence supporting finding of "knowing" mental state required. *Id.*
Instruction on second-degree murder, circuit court erred in refusing to give where jury could have believed evidence supported "knowing" mental state. *Id.*
Jury instruction, test for giving. *Id.*
Instruction on manslaughter, evidence did not rise to level of rational basis to warrant giving. *Id.*
Instruction on manslaughter, testimony of subjective fear not enough without supporting evidence. *Id.*
Jury instruction, circuit court determines whether rational basis exists for giving. *Id.*
Instruction on manslaughter, trial court did not err in determining evidence did not support giving. *Id.*
Reference to defendant's prior convictions during guilt phase of trial, prejudice results. *Smith, Dennis James v. State*, 468
Inadvertent reference to prior conviction, admonishment to jury generally renders harmless. *Id.*

Reference to other possible crime was not deliberately induced response, no error found in trial court's denial of mistrial motion. *Id.*

Appellant explicitly declined to request limiting instruction, appellant's decision to decline curative or limiting instruction precluded reversal. *Id.*

Jury instruction, when party is entitled to. *Barnes v. Everett*, 479

Jury instruction, when non-AMI instructions may be given. *Id.*

Jury instruction, trial court did not abuse discretion in refusing to give modified version of AMI Civ. 4th 903. *Id.*

Jury instruction, AMI Civ. 4th 1542 properly instructed jury on attorney negligence issue. *Id.*

Assertion that trial court failed to present issue of victim's voluntary release to jury was wholly without merit, issue was both placed before, & decided by, jury. *Mills v. State*, 523

TRUSTS:

Constructive trust, fundamental purpose. *Carter v. Four Seasons Funding Corp.*, 637

Constructive trust, when imposed. *Id.*

Arrangement between parties was for sale of accounts, imposition of constructive trust appropriate remedy. *Id.*

Case relied upon inapplicable, constructive trust appropriate remedy under these facts. *Id.*

USURY:

Constitutional provision, usurious contracts are void. *Carter v. Four Seasons Funding Corp.*, 637

Determination as to whether document usurious, courts must look beyond four corners of document. *Id.*

Burden of proof, clear & convincing evidence defined. *Id.*

Sale of promissory note at discount, factors considered in determining whether action usurious. *Id.*

WATERS:

Water development proposals, municipalities generally required to submit to Arkansas Soil & Water Conservation Commission. *Arkansas Soil & Water Conserv. Comm'n v. City of Bentonville*, 289

Arkansas Water Plan, responsibility of ASWCC for developing. *Id.*

Water development projects, municipality does not have absolute power to control within its own boundaries. *Id.*

Water development projects, must comply with Arkansas Water Plan. *Id.*

Water distribution project, appellant agency acted within statutory authority when it approved intervenor city's plan. *Id.*

Water development projects, granting appellee city opportunity to provide water service did not materially alter scope of intervenor city's water project. *Id.*

Water development projects, specified water system did not represent material change in water project. *Id.*

Water development projects, selection of specified regional water system was not arbitrary decision. *Id.*

Water development projects, ASWCC's order approving intervenor city's water project supported by substantial evidence. *Id.*

WILLS:

- Pretermitted-child statute, application. *Alexander v. Estate of Alexander*, 359
- Pretermitted-child statute, purpose. *Id.*
- Strong presumption against disherison, omission operates in favor of pretermitted child. *Id.*
- Pretermitted-child statute, mention of children or issue of predeceased children generally sufficient to preclude application of pretermitted-child statute. *Id.*
- Use of term "issue," appellant not sufficiently mentioned for purposes of pretermitted-child statute. *Id.*
- Use of term "issue," technical language that was insufficient to overcome presumption against disherison. *Id.*
- Order entered when stamped by clerk, order of probate required to validate will. *Judkins v. Hoover*, 552
- Order admitting will to probate never entered, oral order ineffective until reduced to writing & filed. *Id.*

WITNESSES:

- Competency, standard of review. *Clem v. State*, 112
- Competency, burden of persuasion. *Id.*
- Competency, trial judge's evaluation of particular importance. *Id.*
- Competency, record needed to prevent finding of manifest error or abuse of discretion in allowing testimony. *Id.*
- Competency, criteria for determining. *Id.*
- Child competent to testify, no abuse of discretion found. *Id.*
- Credibility, supreme court bound by jury's determination. *Williams, Phillip Dewayne v. State*, 215
- Testimony, jury free to believe all or part. *Id.*
- Eyewitness testimony, not clearly unbelievable because uncorroborated. *Id.*
- Eyewitness testimony, not disregarded by supreme court. *Id.*
- Supreme court deferred to trial court's determination of credibility, appellant's testimony not found credible. *Williams, John Franklin v. State*, 229
- Credibility, trial judge not required to believe petitioner. *Ivy v. Keith*, 269
- Credibility, determination for jury. *Mills v. State*, 523
- Credibility, deference to circuit court. *Butt v. Evans Law Firm, P.A.*, 566

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited



INDEX TO ACTS, CODES, CONSTITUTIONAL PROVISIONS, INSTRUCTIONS, RULES, AND STATUTES CITED

ACTS:	§ 6(c)	56
	§ 6(d)	56
ACTS BY NAME:	§ 6(c-d)	56
Administrative Procedure	Act 1194 of 1995	38, 43, 48, 86
Act	Act 989 of 1997	231, 233
Appropriation Act 1537	§ 4(2)	230, 232, 233
§ 127(a)	§ 5(a)(4)	229, 233
Arkansas Medical Malpractice	Act 1108 of 1997	44, 59
Act	§ 3	58
Arkansas Sex Offender	Act 1227 of 1997	461
Registration Act	Act 1300 of 1997	86
Arkansas Trade Practices Act	Act 1307 of 1997	33, 43, 59, 72
Fair Labor Standards Act	§ 1	57
Habitual Offender Act	§ 1(d)(1-2)	66
Motor Vehicle Safety Responsi- bility Act	Act 1361 of 1997	44
Parental Kidnapping Prevention Act	Act 999 of 1999	44
Prison Litigation Reform Act of 1995	Act 1392 of 1999	44
Uniform Child Custody Jurisdiction and Enforcement Act	Act 1529 of 1999	18, 19
	Act 1537 of 1999	15, 16, 18, 19, 20, 21, 22, 23, 24, 25
	§ 127	16, 19, 24
	Act 561 of 2001	535
	§ 2	535
 ARKANSAS ACTS:		
Act 169 of 1931		105
Act 244 of 1937		105
Act 41 of 1941		345
Act 273 of 1953		341, 342
Act 616 of 1975		339, 340, 341
Act 48 of 1977		342
Act 944 of 1977		235, 236, 237, 238, 239
§ 3		237, 238
Act 314 of 1979		178
Act 739 of 1995		343
Act 916 of 1995		43
Act 917 of 1995		43, 44, 72
 CODES:		
(See also RULES and STATUTES):		
ARKANSAS CODE ANNOTATED:		
5-1-102(13)(B)(i)		509, 522
5-1-104(a)(1)		605, 616
5-1-112(2)		395, 403, 404
5-2-202(1)		502
5-2-202(2)		429
5-2-202(3)		431
5-2-208(a)		6, 10
5-2-402		118
5-2-402(1)		118

5-2-402(2)	118	5-27-304(a)	605, 615, 616
5-2-402(3)	118	5-27-304(a)(1)	615
5-2-403	118	5-27-304(a)(2)	615
5-2-403(a)	118	5-36-103	542, 546, 547
5-2-403(a)(1)	118	5-36-103(a)(2)	226
5-2-403(a)(1)-(2)	127	5-36-103(b)(3)	226
5-2-403(a)(2)	224	5-65-103	535
5-2-607	437	5-65-103(a)	532
5-2-614	434, 436	5-65-103(b)	532
5-3-201	603, 604, 609, 610	5-65-204(e)	535, 536
5-3-201(a)(2)	603, 604, 609, 610	5-65-206	535, 536
5-3-201(c)	603, 609	6-15-401 through 407	44
5-3-501(a)(1)	609	6-15-419 through 422	44
5-3-501(a)(2)	609	6-15-1001 through 1011	44
5-4-309(d)	233	6-15-1003	44
5-4-401(a)(1)	142	6-15-1003(a)	57, 58
5-4-404(c)(1)	218	6-15-1003(a)(1)	57
5-4-501(c)	30	6-15-1003(a)(2)	57
5-4-501(d)	27, 28, 29, 30	6-15-1003(b)	58
5-4-501(d)(1)	30	6-15-1003(b)(1)	58
5-4-501(d)(1)(A)	27, 30, 476	6-15-1003(b)(2)	58
5-4-501(d)(2)	26, 28, 30	6-15-1003(c)	58
5-4-501(d)(2)(iii)	477	6-15-1003(c)(1)	58
5-4-501(d)(2)(iv)	477	6-15-1003(c)(2)	58
5-4-501(d)(2)(v)	477	6-15-1003(c)(3)	58
5-4-501(d)(2)(xiii)(a)	477	6-20-302 <i>et seq.</i>	43
5-4-603	675	6-20-302(b)	72
5-10-101(a)(1)	216, 223	6-20-302(c)	57
5-10-102(a)(2)	502	6-20-302(c)(4)	57
5-10-103(a)(1)	429	6-20-302(c)(4)(A)	57
5-10-104	439	6-20-302(c)(4)(A)(i)	57
5-10-104(a)	431	6-20-302(c)(4)(A)(ii)	57
5-11-102	528	6-20-302(c)(4)(A)(iii)	57
5-12-102(a)	225	6-20-302(d)(1-2)	66
5-11-102(b)	524, 528, 529, 530	6-20-303(5)	47
5-12-102	473	6-20-303(15)	47
5-12-103(a)(1)	225, 474	6-20-303(17)	48
5-14-101	117	6-20-1601 through 1610	64
5-14-101(1)	117	9-9-216	458
5-14-101(1)(B)	117	9-9-220	463
5-14-101(A)-(B)	127	9-10-102(b)	459
5-14-103	117, 528	9-10-104	462
5-14-103(a)	117	9-10-104(1)	459
5-14-103(a)(1)	117	9-10-109	462
5-14-103(a)(1)(C)(i)	603, 608	9-19-101 <i>et seq.</i>	367, 371
5-14-103(a)(4)	117, 127	9-19-202	367, 371
5-27-304	615	9-27-302	508, 518, 519, 522

9-27-302(1)	518	15-22-503	291, 297, 298, 299,
9-27-302(2)(A)	519		300
9-27-302(2)(B)	519	15-22-503(a)	297
9-27-302(2)(C)	519	15-22-503(b)	297
9-27-302(2)(D)	519	15-22-503(c)	291, 298
9-27-302(3)	519	15-22-503(c)	299
9-27-302(4)	519	15-22-503(d)	298
9-27-303	513	15-22-503(e)	298, 299, 300
9-27-303(16)	517	15-22-504	299
9-27-303(29)	513, 517, 522	15-22-504(b)	291, 299
9-27-303(29)(A) ...	507, 508, 517, 518	16-10-108	269, 270, 279, 281
9-27-303(29)(B)	508, 518	16-10-108(a)	278
9-27-303(29)(B)(i)	517	16-10-108(a)(1)	278
9-27-303(29)(B)(ii)	517	16-10-108(a)(2)	278
9-27-303(29)(C)	508, 518, 522	16-10-108(a)(3)	269, 278, 279
9-27-303(29)(C)(i)	517	16-10-108(a)(4)	278
9-27-303(29)(C)(ii)	517	16-10-108(a)(5)	278
9-27-303(29)(C)(iii)	517	16-10-108(b)(1)	278
9-27-303(29)(C)(v)	517	16-10-108(b)(2)	278
9-27-306	515	16-10-108(b)(3)	278
9-27-313	515	16-10-108(c)	278, 281, 282, 285,
9-27-315(a)(1)(C)	515		287
9-27-316	463	16-10-108(c)(1)	282
9-27-341	458, 461, 462, 463	16-10-108(c)(2)	282
9-27-341(a)	461	16-10-108(d)(1)	278
9-27-341(a)(1)(A)	458	16-13-214	157, 164, 167
9-27-341(a)(1)(B)	458	16-13-304	454, 460
9-27-341(a)(2)	459	16-13-304(d)	453, 456, 457, 458
9-27-341(a)(3)	459	16-13-304(d)(1) ...	455, 458, 460, 463
9-27-341(a)(B)	461	16-13-304(d)(2)	460
12-12-901 <i>et seq.</i>	231	16-14-206(b)	253
12-12-904(a)(1)	232	16-56-105	633
12-12-905	229, 231, 233, 234	16-62-102	514
12-12-905(a)(2)	232	16-65-121	394, 398, 400, 401
14-40-302(a)	172, 173, 176, 177,	16-68-607	202, 204, 206, 209
	178, 179	16-81-203	408, 411, 414
14-40-302(a)(4)	173, 179	16-89-111(e)(1)	226
14-40-302(b)(1)	179	16-90-111	405
14-40-302(b)(1)(A)	179	16-19-111(b)	400
14-40-501	173, 178	16-93-1302	27, 30
14-45-106	235, 236, 238, 239,	16-93-1302(f)	30
	240	16-97-101	400
14-56-413	291, 299, 300	16-114-201 <i>et seq.</i>	252
14-56-413(a)(1)(A)	299	16-114-206	249, 254
14-116-107	299	16-114-206(b) ...	251, 252, 253, 254,
14-116-402(b)	299		256, 258, 259
		16-114-206(b)(1)	253, 254

Amend. 74 37, 38, 39, 43, 44, 47,
48, 50, 77, 84, 86, 87,
89, 91, 93, 107, 109
§ (a) 48
§ (b)(1) 87
§ (b)(1-2) 87
§ (b)(2) 86, 88
§ (c)(1) 86
§ (d) 89
Amend. 80 42, 236, 239, 240, 347,
354, 362, 370, 463, 555, 652
§ 5 229
§ 12 164
§ 13 169
Ark. Const. of 1836, Art. VII 53, 65
§ 1 53
Ark. Const. of 1861, Art. VII,
§ 1 65
Ark. Const. of 1864, Art. VIII 53
§ 1 65
Ark. Const. of 1868, Art. IX,
§ 1 53, 66
Ark. Const. of 1874, Art. 14,
§ 1 66
Art. 2 56, 67
§ 2 42, 45, 56, 73, 80
§ 3 42, 45, 56, 73, 80, 252
§ 16 271, 284
§ 18 42, 45, 56, 73, 80
Art. 4, § 1 36, 51, 81
Art. 4, § 2 36, 51, 81
Art. 5, § 20 200, 206, 207
Art. 7, § 20 157, 158, 159, 164,
167
Art. 7, § 26 270, 277, 278, 279,
281
Art. 14 33, 36, 56, 67, 71, 80,
81, 82, 101, 102, 108, 110
§ 1 36, 42, 45, 53, 55, 64,
80, 81, 100, 102, 103, 106
§ 2 36
§ 3 87
§ 4 101, 105
Art. 16, § 13 150, 155, 163, 184,
185, 187, 188, 190, 191, 193,
196, 537, 540, 541, 571, 578,
581, 585, 594

Art. 19, § 13(a)(i) 638, 653
Art. 19, § 13(a)(ii) 653

UNITED STATES CONSTITUTION:

Amend. 4 407, 410, 413, 414
Amend. 5 588
Amend. 6 131, 136
Amend. 14 410, 520, 588
Due Process Clause 569, 589

INSTRUCTIONS:

ARKANSAS MODEL JURY INSTRUCTIONS
(CIVIL):

AMI Civ. 4th 103(e) 490
AMI Civ. 4th 903 482, 492, 493
AMI Civ. 4th 1512 482, 494
AMI Civ. 4th 1542 482

ARKANSAS MODEL JURY INSTRUCTIONS
(CRIMINAL):

AMCI 2d 101(e) 490
AMCI 2d 106 529
AMCI 2d 202 135, 140
AMCI 2d 1003 429
AMCI 2d 1004 431
AMCI 2d 1008 675

RULES:

ARKANSAS RULES OF APPELLATE
PROCEDURE — CIVIL:

Ark. R. App. P.—Civ. 2 1, 4, 559,
560
Ark. R. App. P.—Civ. 2(a) 4, 319,
559, 560
Ark. R. App. P.—Civ.
2(a)(9) 187, 188, 195, 537, 540
Ark. R. App. P.—Civ. 2(b) 109
Ark. R. App. P.—Civ.
2(c)(3)(C) 452
Ark. R. App. P.—Civ. 2(d) 347,
354, 355
Ark. R. App. P.—Civ. 4(a) 446
Ark. R. App. P.—Civ. 5 214,
329
Ark. R. App. P.—Civ. 5(a) 325,
326, 328, 329, 330

- Ark. R. App. P.—Civ. 5(b) . . . 325,
326, 327, 328, 329, 445, 446
- Ark. R. App. P.—Civ. 6(e) . . . 675,
676
- ARKANSAS RULES OF APPELLATE
PROCEDURE — CRIMINAL:
- Ark. R. App. P.—Crim. 1 . . . 405
- Ark. R. App. P.—Crim.
1(a) . . . 394, 399
- Ark. R. App. P.—Crim.
2(a)(1) . . . 401
- Ark. R. App. P.—Crim.
2(b)(1) . . . 329, 330
- Ark. R. App. P.—Crim.
2(b)(2) . . . 327, 328, 351, 352, 564
- Ark. R. App. P.—Crim. 3 . . . 533
- Ark. R. App. P.—Crim. 3(c) . . . 533
- Ark. R. App. P.—Crim. 4 . . . 214
- Ark. R. App. P.—Crim. 4(a) . . .
. 326, 446
- Ark. R. App. P.—Crim.
10(a) . . . 401
- Ark. R. App. P.—Crim.
16 . . . 443, 444, 563, 564
- ARKANSAS RULES OF CIVIL
PROCEDURE:
- Ark. R. Civ. P. 5 . . . 373
- Ark. R. Civ. P. 5(b) . . . 373
- Ark. R. Civ. P. 8(a)(1) . . . 202, 208
- Ark. R. Civ. P. 11 . . . 270, 271, 272,
273, 274, 276, 279, 280, 282,
283, 285, 286, 288
- Ark. R. Civ. P. 12(b) . . . 200, 205
- Ark. R. Civ. P. 12(b)(2) . . . 378
- Ark. R. Civ. P. 12(b)(6) . . . 203, 204
- Ark. R. Civ. P. 12(c) . . . 200, 205
- Ark. R. Civ. P. 23 . . . 183, 184, 185,
186, 187, 188, 189, 190, 191,
192, 193, 194, 195, 537, 538,
539, 540, 541, 569, 571, 578,
588, 598, 599, 600
- Ark. R. Civ. P. 23(a) . . . 539
- Ark. R. Civ. P. 23(b) . . . 566, 577
- Ark. R. Civ. P. 23(c) . . . 195, 540
- Ark. R. Civ. P. 23(c)(2) . . . 183, 197
- Ark. R. Civ. P. 23(d) . . . 590
- Ark. R. Civ. P. 25(d) . . . 319
- Ark. R. Civ. P. 52 . . . 176, 182, 362
- Ark. R. Civ. P. 52(a) . . . 579, 623, 625
- Ark. R. Civ. P. 54(b) . . . 1, 2, 3,
4, 5, 318, 319, 321, 354
- Ark. R. Civ. P. 54(b)(1) . . . 3
- Ark. R. Civ. P. 54(b)(2) . . . 3
- Ark. R. Civ. P. 54(d) . . . 260, 261,
263, 264, 265, 266, 267, 268
- Ark. R. Civ. P. 58 . . . 400
- Ark. R. Civ. P. 59 . . . 362
- Ark. R. Civ. P. 60 . . . 83, 457, 458
- Ark. R. Civ. P. 60(a) . . . 453, 455,
457
- Ark. R. Civ. P. 60(b) . . . 457
- Ark. R. Civ. P. 60(c) . . . 455, 456,
457, 453
- Ark. R. Civ. P. 60(c)(4) . . . 458
- Ark. R. Civ. P. 68 . . . 260, 261, 262,
263, 264, 265, 266, 268
- Ark. R. Civ. P. 72 . . . 442
- Ark. R. Civ. P. 81(a) . . . 373
- ARKANSAS RULES OF CRIMINAL
PROCEDURE:
- Ark. R. Crim. P. 2.1 . . . 407, 414
- Ark. R. Crim. P. 3.1 . . . 407, 409,
410, 411, 414, 419
- Ark. R. Crim. P. 3.4 . . . 409, 410,
411, 417, 418, 422, 423
- Ark. R. Crim. P. 17.1 . . . 550
- Ark. R. Crim. P. 24.3 . . . 445
- Ark. R. Crim. P. 24.3(b) . . . 394, 399,
405, 406
- Ark. R. Crim. P. 25.3(b) . . . 394, 395,
395, 402, 403
- Ark. R. Crim. P. 26.1(b)(v) . . . 402
- Ark. R. Crim. P. 33.1(a) . . . 672
- Ark. R. Crim. P. 33.1(b) . . . 672
- Ark. R. Crim. P. 33.1(c) . . . 467,
667, 672, 673
- Ark. R. Crim. P. 37 . . . 131, 135,
136, 143, 144, 145, 147, 242,
243, 244, 246, 247, 248, 405,
619, 620, 621, 622
- Ark. R. Crim. P. 37.1 . . . 617

Ark. R. Crim. P. 37.2(a)	143	Ark. Sup. Ct. R. 1-2(a)(5)	559, 560, 483
Ark. R. Crim. P. 37.2(c)	244	Ark. Sup. Ct. R. 1-2(a)(7)	319, 389
Ark. R. Crim. P. 37.3	244	Ark. Sup. Ct. R. 1-2(b)	544
Ark. R. Crim. P. 37.3(c)	619, 620, 621, 622	Ark. Sup. Ct. R. 1-2(b)(1)	16
Ark. R. Crim. P. 37.5	244	Ark. Sup. Ct. R. 1-2(b)(4)	553
ARKANSAS RULES OF EVIDENCE:		Ark. Sup. Ct. R. 1-2(b)(6)	16, 263, 295, 553, 632
Ark. R. Evid. 102	626	Ark. Sup. Ct. R. 1-2(d)(2)	553
Ark. R. Evid. 401	121, 126, 480, 488	Ark. Sup. Ct. R. 4-1	558
Ark. R. Evid. 402	121, 126	Ark. Sup. Ct. R. 4-2	381, 558, 632
Ark. R. Evid. 403	121, 472, 480, 488	Ark. Sup. Ct. R. 4-2(a)(5)	381, 557, 558
Ark. R. Evid. 404(b)	468, 472, 473	Ark. Sup. Ct. R. 4-2(a)(6)	121, 129, 130
Ark. R. Evid. 803(6)	626	Ark. Sup. Ct. R. 4-2(a)(7)	557, 558
Ark. R. Evid. 806	490	Ark. Sup. Ct. R. 4-2(a)(8)	381
Ark. R. Evid. 1002	550	Ark. Sup. Ct. R. 4-2(b)(1)	386
FEDERAL RULES OF CIVIL PROCEDURE:		Ark. Sup. Ct. R. 4-2(b)(2)	558
Fed. R. Civ. P. 23	183, 189, 190	Ark. Sup. Ct. R. 4-2(b)(3)	129, 381, 558
Fed. R. Civ. P. 23(b)	566, 577	Ark. Sup. Ct. R. 4-3(g)	129
Fed. R. Civ. P. 23(c)(2)	183, 189	Ark. Sup. Ct. R. 4-3(h)	30, 125, 229, 467, 479, 505, 531, 673
Fed. R. Civ. P. 68	262, 267, 268	Ark. Sup. Ct. R. 5-2(d)	218, 219, 228, 229
MODEL RULES OF PROFESSIONAL CONDUCT:		Ark. Sup. Ct. R. 5-3(a)	111
Rule 1.2	137	Ark. Sup. Ct. R. 5-3(c)	111
RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS:		STATUTES:	
Ark. Sup. Ct. R. 1-2(a)(1)	335	ARKANSAS STATUTES ANNOTATED:	
Ark. Sup. Ct. R. 1-2(a)(2)	27, 497	41-514 436	
Ark. Sup. Ct. R. 1-2(a)(3)	370		

ARKANSAS
APPELLATE
REPORTS

Volume 80

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
November 20, 2002 — February 5, 2003
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2003



*Truth is [justice's] handmaid,
freedom is its child. . . .*

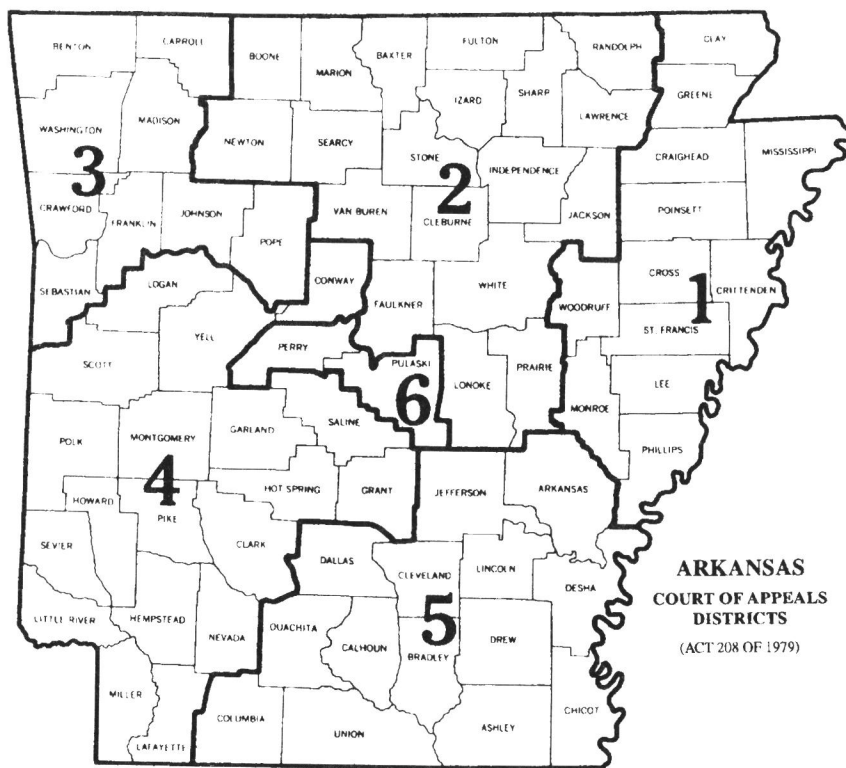
— SYDNEY SMITH
(1771–1845)

Set in Bembo

JOE CHRISTENSEN PRINTING COMPANY
1540 ADAMS STREET
LINCOLN, NEBRASKA 68521
2003

CONTENTS

	Page
MAP OF DISTRICTS FOR COURT OF APPEALS	iv
JUDGES AND OFFICERS OF THE COURT OF APPEALS	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Judges of Court of Appeals and Per Curiam Opinions	xi
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xiv
TABLE OF OPINIONS NOT REPORTED	xvi
TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION	xxiii
OPINIONS REPORTED	1
INDEX	
Alphabetical Headnote Index	447
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	463



**ARKANSAS
COURT OF APPEALS
DISTRICTS**
(ACT 208 OF 1979)

JUDGES AND OFFICERS
OF THE
COURT OF APPEALS
OF ARKANSAS
 DURING THE PERIOD COVERED
 BY THIS VOLUME
 (November 20, 2002 — February 5, 2003 inclusive)

JUDGES

JOHN F. STROUD	Chief Judge ¹
JOHN MAUZY PITTMAN	Judge ²
JOSEPHINE LINKER HART	Judge ³
JOHN E. JENNINGS	Judge ⁴
ROBERT J. GLADWIN	Judge ⁵
JOHN B. ROBBINS	Judge ⁶
SAM BIRD	Judge ⁷
WENDELL L. GRIFFEN	Judge ⁸
OLLY NEAL	Judge ⁹
LARRY D. VAUGHT	Judge ¹⁰
TERRY CRABTREE	Judge ¹¹
KAREN R. BAKER	Judge ¹²
ANDREE LAYTON ROAF	Judge ¹³

OFFICERS

MARK PRYOR	Attorney General ¹⁴
MIKE BEEBE	Attorney General ¹⁵
LESLIE W. STEEN	Clerk
AVA M. HICKS	Interim Director, Library
WILLIAM B. JONES, JR.	Reporter of Decisions

¹ Position 7.
² District 1.
³ District 2.
⁴ District 3. Judge Jennings retired December 31, 2002.
⁵ District 3. Judge Gladwin was appointed January 1, 2003.
⁶ Position 4.
⁷ District 5.
⁸ District 6.
⁹ Position 8.
¹⁰ Position 9.
¹¹ Position 10.
¹² Position 11.
¹³ Position 12.
¹⁴ Left office for U.S. Senate, January 2003.
¹⁵ Assumed office January 2003.

TABLE OF CASES REPORTED

Boldface type indicates cases in this issue.

A

Alexander (<i>Wunderlich v.</i>)	167
Arkansas Dep't of Human Servs. <i>v.</i> McDonald	104
Arkansas Gas Consumers, Inc. <i>v.</i> Arkansas Public Serv. Comm'n	1
Arkansas Okla. Gas Corp. <i>v.</i> Director	251
Arkansas Public Serv. Comm'n (<i>Arkansas Gas Con- sumers, Inc. v.</i>)	1

B

Bailey <i>v.</i> State	193
Bank of Bradley (<i>First Nat'l Bank of Lewisville v.</i>)	368
Beene (<i>Fritzinger v.</i>)	416
Belcher (<i>Belcher v.</i>)	86
Belcher <i>v.</i> Belcher	86
Britton <i>v.</i> Gault	311
Buck <i>v.</i> Gillham	375
Burger (<i>State v.</i>)	119

C

Chadwell <i>v.</i> State	133
Cherry <i>v.</i> State	222
Cheshire <i>v.</i> State	327
Citibank, N.A. (<i>Williams v.</i>)	42
Clements <i>v.</i> State	137
Climer <i>v.</i> State	281
Cole (<i>Randles v.</i>)	334
Cumming <i>v.</i> Putnam Realty, Inc.	153

D

D'Arbonne Constr. Co. <i>v.</i> Foster	87
Davis (McLane Southern, Inc. <i>v.</i>)	30
Director (Arkansas Okla. Gas Corp. <i>v.</i>)	251
Director (Hayes <i>v.</i>)	331
Director (King <i>v.</i>)	57
Director (Magee <i>v.</i>)	162
Director (Oliver <i>v.</i>)	275
Director (Thornton <i>v.</i>)	99

E

East-Harding, Inc. <i>v.</i> Horace A. Piazza & Assocs.	143
Employment Security Dep't (Sanders <i>v.</i>)	110

F

First Nat'l Bank of Lewisville <i>v.</i> Bank of Bradley	368
Foster (D'Arbonne Constr. Co. <i>v.</i>)	87
Frazer <i>v.</i> State	231
French <i>v.</i> Webb	357
Fritzinger <i>v.</i> Beene	416

G

Gault (Britton <i>v.</i>)	311
George <i>v.</i> State	185
Gillham (Buck <i>v.</i>)	375
Green <i>v.</i> State	199

H

Hargrove (Vereen <i>v.</i>)	385
Harris <i>v.</i> State	181
Hass (Hass <i>v.</i>)	408
Hass <i>v.</i> Hass	408
Hayes <i>v.</i> Director	331
Hilton <i>v.</i> State	401
Hisaw <i>v.</i> State Farm Mut. Auto. Ins. Co.	239
Hoisington (Riley <i>v.</i>)	346
Holland <i>v.</i> Lefler	316

Hollins <i>v.</i> State	342
Horace A. Piazza & Assocs. (<i>East-Harding, Inc. v.</i>)	143
Horticare Landscape Management <i>v.</i> McDonald	45

J

Johnson <i>v.</i> State	79
Jones (<i>Ross v.</i>)	382

K

Kelly <i>v.</i> State	126
King <i>v.</i> Director	57

L

Lefler (<i>Holland v.</i>)	316
------------------------------------	-----

M

Magee <i>v.</i> Director	162
Matthews <i>v.</i> Smith	396
McDonald (<i>Arkansas Dep't of Human Servs. v.</i>)	104
McDonald (<i>Horticare Landscape Management v.</i>)	45
McLane Southern, Inc. <i>v.</i> Davis	30

O

Oliver <i>v.</i> Director	275
---------------------------------	-----

P

Progressive N. Ins. Co. (<i>Tunnel v.</i>)	215
Putnam Realty, Inc. (<i>Cumming v.</i>)	153

R

Randles <i>v.</i> Cole	334
Reeves <i>v.</i> State	61
Rhodes <i>v.</i> Veith	362
Riley <i>v.</i> Hoisington	346
Robbins <i>v.</i> State	204
Rogers (<i>Rogers v.</i>)	430

Rogers <i>v.</i> Rogers	430
Ross <i>v.</i> Jones	382

S

Sanders <i>v.</i> Employment Security Dep't	110
Sands (Wal-Mart Stores, Inc. <i>v.</i>)	51
Simmons <i>v.</i> State	426
Smith (Matthews <i>v.</i>)	396
Southwestern Bell Wireless, LLC (Statco Wireless, LLC <i>v.</i>)	284
Statco Wireless, LLC <i>v.</i> Southwestern Bell Wireless, LLC	284
State <i>v.</i> Burger	119
State (Bailey <i>v.</i>)	193
State (Chadwell <i>v.</i>)	133
State (Cherry <i>v.</i>)	222
State (Cheshire <i>v.</i>)	327
State (Clements <i>v.</i>)	137
State (Climer <i>v.</i>)	281
State (Frazer <i>v.</i>)	231
State (George <i>v.</i>)	185
State (Green <i>v.</i>)	199
State (Harris <i>v.</i>)	181
State (Hilton <i>v.</i>)	401
State (Hollins <i>v.</i>)	342
State (Johnson <i>v.</i>)	79
State (Kelly <i>v.</i>)	126
State (Reeves <i>v.</i>)	61
State (Robbins <i>v.</i>)	204
State (Simmons <i>v.</i>)	426
State (Strickland <i>v.</i>)	268
State (Troup <i>v.</i>)	323
State (Wright <i>v.</i>)	114
State Farm Mut. Auto. Ins. Co. (Hisaw <i>v.</i>)	239
Strickland <i>v.</i> State	268

T

Thornton <i>v.</i> Director	99
Troup <i>v.</i> State	323
Tunnel <i>v.</i> Progressive N. Ins. Co.	215

V

Veith (Rhodes <i>v.</i>)	362
Vereen <i>v.</i> Hargrove	385

W

Wal-Mart Stores, Inc. <i>v.</i> Sands	51
Ward <i>v.</i> Williams	69
Webb (French <i>v.</i>)	357
Williams <i>v.</i> Citibank, N.A.	42
Williams (Ward <i>v.</i>)	69
Wright <i>v.</i> State	114
Wunderlich <i>v.</i> Alexander	167

OPINIONS DELIVERED BY THE RESPECTIVE
 JUDGES OF THE ARKANSAS COURT OF APPEALS
 DURING THE PERIOD COVERED BY THIS VOLUME
 AND DESIGNATED FOR PUBLICATION

JOHN F. STROUD, JR., CHIEF JUDGE:

Arkansas Gas Consumers, Inc. <i>v.</i> Arkansas Public Serv. Comm'n	1
Climer <i>v.</i> State	281
Cumming <i>v.</i> Putnam Realty, Inc.	153
Frazer <i>v.</i> State	231
Hass <i>v.</i> Hass	408
Randles <i>v.</i> Cole	334

JOHN MAUZY PITTMAN, JUDGE:

D'Arbonne Constr. Co. <i>v.</i> Foster	87
Hisaw <i>v.</i> State Farm Mut. Auto. Ins. Co.	239
Wal-Mart Stores, Inc. <i>v.</i> Sands	51

JOSEPHINE LINKER HART, JUDGE:

Hollins <i>v.</i> State	342
Riley <i>v.</i> Hoisington	346
Thornton <i>v.</i> Director	99
Tunnel <i>v.</i> Progressive N. Ins. Co.	215

JOHN E. JENNINGS, JUDGE:

Arkansas Okla. Gas Corp. <i>v.</i> Director	251
Magee <i>v.</i> Director	162
Wunderlich <i>v.</i> Alexander	167

ROBERT J. GLADWIN, JUDGE:

French <i>v.</i> Webb	357
Rhodes <i>v.</i> Veith	362

JOHN B. ROBBINS, JUDGE:

Arkansas Dep't Human Servs. <i>v.</i> McDonald	104
First Nat'l Bank of Lewisville <i>v.</i> Bank of Bradley	368
King <i>v.</i> Director	57
McLane Southern, Inc. <i>v.</i> Davis	30
Statco Wireless, LLC <i>v.</i> Southwestern Bell Wireless, LLC	284
Strickland <i>v.</i> State	268

SAM BIRD, JUDGE:

Reeves <i>v.</i> State	61
------------------------------	----

WENDELL L. GRIFFEN, JUDGE:

Harris <i>v.</i> State	181
Holland <i>v.</i> Lefler	316
Oliver <i>v.</i> Director	275
Sanders <i>v.</i> Employment Security Dep't	110
Ward <i>v.</i> Williams	69

OLLY NEAL, JUDGE:

Buck <i>v.</i> Gillham	375
Fritzinger <i>v.</i> Beene	416
George <i>v.</i> State	185
Johnson <i>v.</i> State	79
Ross <i>v.</i> Jones	382
Simmons <i>v.</i> State	426
Troup <i>v.</i> State	323

LARRY D. VAUGHT, JUDGE:

Bailey <i>v.</i> State	193
Britton <i>v.</i> Gault	311
Vereen <i>v.</i> Hargrove	385
Williams <i>v.</i> Citibank, N.A.	42
Wright <i>v.</i> State	114

TERRY CRABTREE, JUDGE:

Cheshire <i>v.</i> State	327
--------------------------------	-----

Matthews <i>v.</i> Smith	396
State <i>v.</i> Burger	119

KAREN R. BAKER, JUDGE:

Cherry <i>v.</i> State	222
Green <i>v.</i> State	199
Horticare Landscape Management <i>v.</i> McDonald	45
Kelly <i>v.</i> State	126
Robbins <i>v.</i> State	204
Rogers <i>v.</i> Rogers	430

ANDREE LAYTON ROAF, JUDGE:

Chadwell <i>v.</i> State	133
Clements <i>v.</i> State	137
East-Harding, Inc. <i>v.</i> Horace A. Piazza	143
Hayes <i>v.</i> Director	331
Hilton <i>v.</i> State	401

PER CURIAM:

Belcher <i>v.</i> Belcher	86
---------------------------------	----

STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

(a) SUPREME COURT — SIGNED OPINIONS. All signed opinions of the Supreme Court shall be designated for publication.

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal from decisions of the Arkansas Board of Review in unemployment compensation cases, when the Court finds the decision appealed from is supported by substantial evidence, that there is an absence of fraud, no error of law appears in the record and an opinion would have no precedential value, the order may be affirmed without opinion.

(c) COURT OF APPEALS — PUBLISHED OPINIONS. Opinions of the Court of Appeals which resolve novel or unusual questions will be released for publications when the opinions are announced and filed with the Clerk. The Court of Appeals may consider the question of whether to publish an opinion at its decision-making conference and at that time, if appropriate, make a tentative decision not to publish. Concurring and dissenting opinions will be published only if the majority opinion is published. All opinions that are not to be published shall be marked "Not Designated for Publication."

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not

be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

(e) COPIES OF ALL OPINIONS — In every case the Clerk will furnish, without charge, one typewritten copy of all of the Court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Alexander *v.* Director, E 02-192 (Griffen, J.), reversed and remanded December 23, 2002.
- Allen *v.* State, CA CR 02-31 (Bird, J.), affirmed January 22, 2003.
- Ambrose *v.* Arkansas Dep't of Human Servs., CA 02-639 (Neal, J.), affirmed December 4, 2002.
- Ambrose *v.* State, CA CR 02-459 (Vaught, J.), affirmed December 18, 2002.
- Arkansas Okla. Gas Corp. *v.* Booth, CA 02-347 (Neal, J.), reversed and remanded in part; affirmed in part on direct appeal; affirmed on cross-appeal December 11, 2002. Rehearing denied January 15, 2003.
- Barnard *v.* TTC Ill., Inc., CA 02-400 (Bird, J.), affirmed December 18, 2002.
- Behrens *v.* Behrens, CA 02-333 (Stroud, C.J.), reversed and remanded December 18, 2002.
- Bohannon *v.* State, CA CR 01-952 (Jennings, J.), affirmed November 20, 2002.
- Bonham *v.* State, CA CR 02-444 (Hart, J.), affirmed December 11, 2002.
- Bowman *v.* State, CA CR 02-633 (Bird, J.), affirmed January 29, 2003.
- Brand *v.* Arkansas Dep't of Human Servs., CA 02-363 (Neal, J.), affirmed December 4, 2002.
- Brown *v.* Director, E 02-77 (Bird, J.), affirmed February 5, 2003.
- Brown, Eric *v.* State, CA CR 02-502 (Pittman, J.), rebriefing ordered January 15, 2003.
- Brown, Thomas *v.* State, CA CR 02-441 (Baker, J.), affirmed January 22, 2003.
- Brownfield *v.* State, CA CR 02-206 (Hart, J.), affirmed January 8, 2003.
- Brunk *v.* State, CA CR 02-557 (Robbins, J.), affirmed February 5, 2003.
- Brunson *v.* State, CA CR 02-253 (Pittman, J.), affirmed December 23, 2002.
- Burnette *v.* State, CA CR 01-287 (Vaught, J.), affirmed November 20, 2002.

-
- Burns *v.* West Tree Serv., CA 02-344 (Griffen, J.), affirmed November 20, 2002.
- Cabral *v.* State, CA CR 02-58 (Vaught, J.), affirmed January 29, 2003.
- Callie *v.* State, CA CR 01-1351 (Pittman, J.), affirmed January 22, 2003.
- Cannon *v.* State, CA CR 00-1192 (Hart, J.), affirmed November 20, 2002.
- Cash *v.* Styers, CA 02-504 (Griffen, J.), affirmed January 15, 2003.
- Caudle *v.* State, CA CR 02-489 (Griffen, J.), affirmed February 5, 2003.
- Ciesielski *v.* State, CA CR 02-154 (Stroud, C.J.), affirmed December 11, 2002.
- Collins *v.* Arkansas Dep't of Human Servs., CA 02-653 (Robbins, J.), affirmed January 22, 2003.
- Conley Transport *v.* Vallor, CA 02-526 (Stroud, C.J.), remanded December 23, 2002.
- Cooney *v.* State, CA CR 02-180 (Roaf, J.), affirmed January 15, 2003.
- Craft *v.* State, CA CR 01-1238 (Stroud, C.J.), affirmed February 5, 2003.
- Crockett *v.* State, CA CR 01-1379 (Griffen, J.), affirmed December 18, 2002.
- Culbreath *v.* Deshazo, CA 02-311 (Pittman, J.), reversed and remanded December 23, 2002. Rehearing denied January 22, 2003.
- Davis, James W. *v.* State, CA CR 01-1389 (Vaught, J.), rebriefing ordered November 20, 2002.
- Davis, Johnny Lee *v.* State, CA CR 02-406 (Robbins, J.), affirmed December 4, 2002.
- Dixon-Bey *v.* State, CA CR 01-1430 (Roaf, J.), affirmed December 18, 2002.
- Doyle *v.* State, CA CR 01-367 (Robbins, J.), rebriefing ordered November 20, 2002.
- Drymon *v.* Miller, CA 02-401 (Baker, J.), affirmed December 18, 2002.
- Dub Clenny Constr., Inc. *v.* Draper, CA 02-478 (Vaught, J.), affirmed February 5, 2003.
-

-
- Eatmon v. State*, CA CR 02-221 (Griffen, J.), affirmed November 20, 2002.
- Edwards v. State*, CA CR 02-236 (Stroud, C.J.), affirmed January 22, 2003.
- Egbert v. State*, CA CR 01-1330 (Pittman, J.), affirmed December 4, 2002.
- Elmore v. State*, CA CR 02-193 (Stroud, C.J.), affirmed December 4, 2002.
- Esquibel v. State*, CA CR 01-862 (Neal, J.), affirmed January 15, 2003.
- Fast v. Northtown Auto Sales, Inc.*, CA 02-579 (Neal, J.), affirmed on direct appeal; affirmed on cross-appeal December 23, 2002. Rehearing denied January 29, 2003.
- Finkus v. Three Lakes Distrib.*, CA 02-337 (Vaught, J.), affirmed December 11, 2002. Rehearing denied January 8, 2003.
- Flemmons v. State*, CA CR 02-421 (Vaught, J.), affirmed January 22, 2003.
- Foley v. State*, CA CR 02-132 (Stroud, C.J.), affirmed January 15, 2003.
- Fondon v. State*, CA CR 01-1200 (Baker, J.), affirmed November 20, 2002.
- Frazier v. State*, CA CR 02-127 (Griffen, J.), affirmed January 22, 2003.
- Ganaway v. State*, CA CR 02-111 (Robbins, J.), affirmed December 18, 2002.
- Gillespie v. State*, CA CR 02-446 (Vaught, J.), affirmed January 8, 2003.
- Guarino v. Kroger*, CA 02-499 (Neal, J.), affirmed December 18, 2002.
- Hall v. Williams*, CA 02-300 (Griffen, J.), affirmed February 5, 2003.
- Haynes v. State*, CA 02-297 (Griffen, J.), affirmed December 18, 2002.
- Henderson v. State*, CA CR 02-146 (Bird, J.), affirmed January 22, 2003.
- Hoggard v. Arkansas Dep't of Human Servs.*, CA 02-498 (Baker, J.), affirmed December 11, 2002.
- Holden v. Manning*, CA 02-351 (Vaught, J.), affirmed December 4, 2002.

- Hood *v.* State, CA CR 02-393 (Neal, J.), reversed and dismissed January 15, 2003.
- Hulsey *v.* State, CA CR 01-1342 (Griffen, J.), remanded for rebriefing February 5, 2003.
- Jacko *v.* State, CA CR 02-260 (Neal, J.), affirmed December 11, 2002.
- Jackson *v.* State, CA 02-535 (Gladwin, J.), affirmed January 29, 2003.
- Jennings *v.* State, CA CR 02-158 (Griffen, J.), remanded for rebriefing January 22, 2003.
- Jones *v.* Mast, CA 02-117 (Hart, J.), affirmed December 4, 2002.
- Jones *v.* State, CA CR 02-474 (Baker, J.), affirmed January 8, 2003.
- Jordan *v.* State, CA CR 01-1288 (Vaught, J.), affirmed February 5, 2003.
- Kissire *v.* Southwestern Bell Tel. Co., CA 02-40 (Crabtree, J.), dismissed January 8, 2003. Rehearing denied February 5, 2003.
- Kohlman *v.* State, CA 02-408 (Robbins, J.), affirmed January 29, 2003.
- Kowalski *v.* State, CA CR 02-456 (Roaf, J.), affirmed December 23, 2002.
- Krumrey *v.* Still, CA 02-542 (Baker, J.), reversed and remanded January 8, 2003.
- Lewis *v.* State, CA CR 01-1327 (Roaf, J.), rebriefing ordered November 20, 2002.
- Looney *v.* State, CA CR 01-1308 (Per Curiam), Appellant's Pro Se Motion for Reinstatement of Appeal granted December 23, 2002.
- Martin *v.* State, CA CR 01-1072 (Hart, J.), affirmed December 23, 2002.
- McAdams *v.* Alcoholic Bev. Control Div., CA 01-1387 (Stroud, C.J.), affirmed January 29, 2003.
- Medco, Inc. *v.* Evans, CA 02-501 (Roaf, J.), affirmed February 5, 2003.
- Merez *v.* Squire Ct. Ltd. Partnership, CA 02-82 (Robbins, J.), substituted opinion on grant of rehearing issued December 18, 2002.

-
- Mickle *v.* DeQueen Reg. Med. Center, CA 02-241 (Bird, J.), affirmed December 11, 2002. Rehearing denied January 8, 2003.
- Morgan *v.* Logan Oil Co., CA 02-186 (Pittman, J.), affirmed December 18, 2002.
- Munday *v.* State, CA CR 02-222 (Griffen, J.), affirmed November 20, 2002.
- Nash *v.* Marianna Warehouse, CA 02-194 (Bird, J.), affirmed November 20, 2002.
- Nichols *v.* State, CA CR 02-96 (Pittman, J.), affirmed December 18, 2002.
- Odom *v.* State, CA CR 00-1466 (Neal, J.), affirmed November 20, 2002.
- Oliver *v.* State, CA CR 02-267 (Vaught, J.), affirmed December 23, 2002.
- Pachl *v.* State, CA CR 01-1300 (Crabtree, J.), reversed and remanded December 18, 2002.
- Pennington *v.* State, CA CR 01-1352 (Crabtree, J.), affirmed as modified December 11, 2002.
- Perkins *v.* State, CA CR 02-530 (Hart, J.), reversed and dismissed February 5, 2003.
- Phillips, Randy *v.* State, CA CR 02-454 (Crabtree, J.), affirmed January 15, 2003.
- Phillips, Randy *v.* State, CA CR 02-455 (Roaf, J.), affirmed January 22, 2003.
- Pickens *v.* State, CA CR 02-153 (Bird, J.), affirmed December 11, 2002.
- Pillow *v.* State, CA CR 01-1169 (Pittman, J.), affirmed November 20, 2002.
- Prairie Farms Dairy, Inc. *v.* Foote, CA 02-268 (Bird, J.), affirmed December 4, 2002.
- Quiroga *v.* State, CA 01-1400 (Stroud, C.J.), affirmed January 29, 2003.
- Ransom *v.* State, CA CR 02-229 (Baker, J.), affirmed in part; reversed and remanded in part February 5, 2003.
- Ray Townsend Farms, Inc. *v.* Smith, CA 03-6 (Per Curiam), Appellee's Motion for Declaration that Trial Court's Order to Show Cause is Collateral or Supplemental to Judgment, or

Alternatively, Motion for Remand for Hearing on Order to Show Cause granted January 29, 2003.

RMP Rentals, LLC *v.* Metroplex, Inc., CA 02-326 (Griffen, J.), dismissed December 4, 2002.

Sadler *v.* State, CA CR 02-44 (Neal, J.), affirmed December 23, 2002.

Sanders *v.* Department of Human Servs., CA 02-630 (Stroud, C.J.), affirmed December 4, 2002.

Sawyer *v.* State, CA CR 02-270 (Griffen, J.), affirmed January 15, 2003.

Schultz *v.* State, CA CR 02-224 (Crabtree, J.), affirmed December 4, 2002.

Scroggins *v.* Adams, CA 02-269 (Hart, J.), reversed and remanded December 23, 2002.

Second Injury Fund *v.* Lewis, CA 02-559 (Pittman, J.), affirmed February 5, 2003.

Shields *v.* State, CA CR 02-541 (Gladwin, J.), affirmed January 29, 2003.

Shultz *v.* State, CA CR 02-230 (Hart, J.), affirmed December 4, 2002.

Singleton *v.* State, CA CR 02-57 (Neal, J.), affirmed January 29, 2003.

Smith *v.* Cholousky, CA 02-272 (Griffen, J.), affirmed December 23, 2002.

Smith *v.* Smith, CA 02-646 (Crabtree, J.), dismissed January 22, 2003.

Smith, Frank Deshawn *v.* State, CA CR 02-151 (Crabtree, J.), affirmed January 15, 2003.

Smith, James E. *v.* State, CA CR 02-228 (Hart, J.), affirmed January 8, 2003.

Snell *v.* Foster, CA 02-218 (Stroud, C.J.), affirmed December 11, 2002.

Strickland *v.* Rancifer, CA 02-261 (Stroud, C.J.), affirmed February 5, 2003.

Superior Pontiac Cadillac Isuzu *v.* Brown, CA 02-425 (Roaf, J.), affirmed December 18, 2002.

Supersaver Wholesale Warehouse *v.* Kivo, CA 02-237 (Pittman, J.), affirmed December 23, 2002.

- Sutton *v.* State, CA CR 02-187 (Pittman, J.), affirmed January 22, 2003.
- Tatum *v.* Director, E 02-64 (Bird, J.), affirmed January 29, 2003.
- Terrell *v.* Arkansas Trucking Serv., CA 02-638 (Robbins, J.), affirmed February 5, 2003.
- Terry *v.* State, CA CR 00-897 (Crabtree, J.), affirmed December 18, 2002.
- Throckmorton *v.* State, CA CR 01-1393 (Roaf, J.), affirmed December 4, 2002.
- Tillery, James Greg *v.* State, CA CR 02-285 (Robbins, J.), affirmed January 8, 2003.
- Tillery, James Greg *v.* State, CA CR 01-879 (Robbins, J.), affirmed January 8, 2003.
- Tolbert *v.* State, CA CR 02-500 (Pittman, J.), affirmed January 22, 2003.
- Tolston *v.* State, CA CR 02-447 (Roaf, J.), affirmed February 5, 2003.
- VanWagoner *v.* CUNA Mut. Group, CA 02-503 (Hart, J.), reversed and remanded January 29, 2003.
- Vestal *v.* Lawson, CA 02-529 (Vaught, J.), affirmed January 22, 2003.
- Wallace *v.* State, CA CR 02-176 (Baker, J.), affirmed January 8, 2003.
- Wendy's *v.* Chamness, CA 02-362 (Crabtree, J.), affirmed in part; remanded in part December 18, 2002.
- Whisenant, Sherrell Jean *v.* State, CA CR 01-1417 (Per Curiam), Appellant's Pro Se Motion to Reinstate Appeal and for Appointment of New Counsel granted January 15, 2003.
- Whisenant, Sherrell Jean *v.* State, CA CR 01-1418 (Per Curiam), Appellant's Pro Se Motion to Reinstate Appeal and for Appointment of New Counsel granted January 15, 2003.
- White *v.* State, CA CR 02-110 (Crabtree, J.), affirmed January 29, 2003.
- Williams, Dennis W. *v.* State, CA CR 02-497 (Bird, J.), affirmed January 29, 2003.
- Williams, Earl Bernard *v.* State, CA CR 02-485 (Roaf, J.), affirmed January 15, 2003.
- Wilson *v.* State, CA CR 02-330 (Crabtree, J.), affirmed February 5, 2003.
- Wright *v.* State, CA CR 02-138 (Vaught, J.), affirmed January 22, 2003.

CASES AFFIRMED BY THE ARKANSAS
COURT OF APPEALS WITHOUT WRITTEN
OPINION PURSUANT TO RULE 5-2(B),
RULES OF THE ARKANSAS SUPREME COURT
AND COURT OF APPEALS

- Adams *v.* Director of Labor, E 02-240, January 22, 2003.
Arena Football League *v.* Director of Labor, E 02-30, December 23, 2002.
Bennett *v.* Director of Labor, E 02-271, February 6, 2003.
Blaylock *v.* Director of Labor, E 02-266, February 6, 2003.
Boggs *v.* Director of Labor, E 02-278, February 6, 2003.
Brooks, Aisha *v.* Director of Labor, E 02-184, November 20, 2002.
Brooks, Sharon S. *v.* Director of Labor, E 02-198, December 4, 2002.
Callaway *v.* Director of Labor, E 02-233, January 22, 2003.
Carter *v.* Director of Labor, E 02-194, December 4, 2002.
Cooper *v.* Director of Labor, E 02-234, January 22, 2003.
Daley *v.* Director of Labor, E 02-250, January 29, 2003.
Darter *v.* Director of Labor, E 02-280, February 6, 2003.
Davis-McField *v.* Director of Labor, E 02-207, December 11, 2002.
Depalma Hotel Corp. *v.* Director of Labor, E 02-185, November 20, 2002.
Dillard *v.* Director of Labor, E 02-250, January 29, 2003.
Dotson *v.* Director of Labor, E 02-225, January 8, 2003.
Dougan *v.* Director of Labor, E 02-270, February 6, 2003.
Dwiggins *v.* Director of Labor, E 02-220, December 23, 2002.
Edgin *v.* Director of Labor, E 02-203, December 11, 2002.
Edwards *v.* Director of Labor, E 02-236, January 22, 2003.
Fallen *v.* Director of Labor, E 02-228, January 8, 2003.
Finley *v.* Director of Labor, E 02-52, December 23, 2002.
Fox *v.* Director of Labor, E 02-253, January 29, 2003.
Fraser *v.* Director of Labor, E 02-178, November 20, 2002.
Freels *v.* Director of Labor, E 02-189, December 4, 2002.
Gideon *v.* Director of Labor, E 02-195, December 4, 2002.
Goebel *v.* Director of Labor, E 02-230, January 8, 2003.
Griffin *v.* Director of Labor, E 02-237, January 22, 2003.

Hart *v.* Director of Labor, E 02-187, November 20, 2002.
Henry *v.* Director of Labor, E 02-268, February 6, 2003.
Hoggard *v.* Director of Labor, E 02-222, January 8, 2003.
Howard *v.* Director of Labor, E 02-256, January 29, 2003.
Hughes *v.* Director of Labor, E 02-186, November 20, 2002.
Jackson *v.* Director of Labor, E 02-263, February 6, 2003.
Jacobs *v.* Director of Labor, E 02-262, January 29, 2003.
Jefferson *v.* Director of Labor, E 02-265, February 6, 2003.
Johnson, Dorothy *v.* Director of Labor, E 02-258, January 29, 2003.
Johnson, Nazaree *v.* Director of Labor, E 02-242, January 22, 2003.
Jones *v.* Director of Labor, E 02-208, December 11, 2002.
Juel *v.* Director of Labor, E 02-219, December 23, 2002.
Keith *v.* Director of Labor, E 02-279, February 6, 2003.
Kelley *v.* Director of Labor, E 02-182, November 20, 2002.
Kennedy *v.* Director of Labor, E 02-245, January 22, 2003.
Knittig *v.* Director of Labor, E 02-183, November 20, 2002.
Leclerc *v.* Director of Labor, E 02-216, December 23, 2002.
Maas *v.* Director of Labor, E 02-272, February 6, 2003.
Magness *v.* Director of Labor, E 02-221, December 23, 2002.
May *v.* Director of Labor, E 02-210, December 11, 2002.
McDowell *v.* Director of Labor, E 02-214, December 23, 2002.
McNew *v.* Director of Labor, E 02-201, December 11, 2002.
Meadows *v.* Director of Labor, E 02-231, January 22, 2003.
Mitchell *v.* Director of Labor, E 02-264, February 6, 2003.
Moton *v.* Director of Labor, E 02-179, November 20, 2002.
Murray *v.* Director of Labor, E 02-229, January 22, 2003.
Myer *v.* Director of Labor, E 02-180, November 20, 2002.
Nolan *v.* Director of Labor, E 02-217, December 23, 2002.
Norwood *v.* Director of Labor, E 02-224, January 8, 2003.
Noud *v.* Director of Labor, E 02-218, December 23, 2002.
Owen *v.* Director of Labor, E 02-191, December 4, 2002.
Page *v.* Director of Labor, E 02-267, February 6, 2003.
Parks *v.* Director of Labor, E 02-257, January 29, 2003.
Perry *v.* Director of Labor, E 02-193, December 4, 2002.
Pullins *v.* Director of Labor, E 02-197, December 4, 2002.
Reed *v.* Director of Labor, E 02-223, January 8, 2003.
Riley *v.* Director of Labor, E 02-261, January 29, 2003.

Santos *v.* Director of Labor, E 02-269, February 6, 2003.
Shepherd *v.* Director of Labor, E 02-238, January 22, 2003.
Smith *v.* Director of Labor, E 02-227, January 8, 2003.
Squires *v.* Director of Labor, E 02-226, January 8, 2003.
Stark *v.* Director of Labor, E 02-177, November 20, 2002.
Stewart *v.* Director of Labor, E 02-249, January 29, 2003.
Superior Indus. Int'l *v.* Director of Labor, E 02-213, December
23, 2002.
Templeton *v.* Director of Labor, E 02-255, January 29, 2003.
Terry *v.* Director of Labor, E 02-241, January 22, 2003.
Thomas *v.* Director of Labor, E 02-209, December 11, 2002.
Thompson *v.* Director of Labor, E 02-196, December 4, 2002.
Turner *v.* Director of Labor, E 02-244, January 22, 2003.
Veysey *v.* Director of Labor, E 02-200, December 11, 2002.
Walker *v.* Director of Labor, E 02-235, January 22, 2003.
Weaver *v.* Director of Labor, E 02-199, December 11, 2002.
Wesson *v.* Director of Labor, E 02-188, December 4, 2002.
Williams, Deniece A. *v.* Director of Labor, E 02-181, November
20, 2002.
Williams, Donald W. *v.* Director of Labor, E 02-212, December
23, 2002.
Williams, Linda M. *v.* Director of Labor, E 02-243, January 22,
2003.
Williams, Willie *v.* Director of Labor, E 02-211, December 11,
2002.
Winnett *v.* Director of Labor, E 02-205, December 11, 2002.

Alphabetical
Headnote
Index

HEADNOTE INDEX

ADMINISTRATIVE LAW & PROCEDURE:

- Arbitrary & capricious action, rational-basis test. *Arkansas Gas Consumers, Inc. v. Arkansas Public Serv. Comm'n*, 1
- Determining whether agency decision is supported by substantial evidence, question on review. *Id.*
- Petition for declaratory judgment in circuit court concerning validity of agency rules, when request for relief should be denied. *Id.*
- Declaratory-judgment action challenging constitutionality of statute, exhaustion-of-remedies doctrine applicable. *Id.*
- Administrative agencies lack authority to declare statutes unconstitutional, constitutional issues should nonetheless be raised & developed at administrative level. *Id.*
- Challenge to statute as unconstitutional on face should first be raised before agency, agency's construction highly persuasive. *Id.*
- Appellant's challenge to facial validity of statutes brought about by Board's action charging appellant with violations of those statutes, exhaustion of administrative remedies necessary. *Id.*
- Construction of validity of antirebating provisions was not foregone conclusion, exhaustion of administrative remedies would have allowed for appeal to circuit court. *Id.*
- Review of state agency decisions by courts, adequate findings of fact must be provided. *Sanders v. Employment Security Dep't*, 110

ADOPTION:

- Setting aside adoption decree beyond one-year period, question of whether adoptive parents have "taken custody" is one of fact. *Wunderlich v. Alexander*, 167
- Standard of review, trial judge left to determine witness credibility. *Id.*
- Appellants had never taken custody of child, trial court's decision setting aside adoption decree not clearly erroneous. *Id.*
- Short statute of limitations serves to promote stability in family relationship, statute itself provided exception to one-year limitations period. *Id.*

APPEAL & ERROR:

- Mootness, exceptions to doctrine. *Arkansas Gas Consumers, Inc. v. Arkansas Public Serv. Comm'n*, 1
- Reasonableness, question of fact. *Id.*
- Harmless error, error unaccompanied by prejudice not ground for reversal. *Id.*
- Failure to obtain ruling below, even constitutional arguments precluded on appeal. *McLane Southern, Inc. v. Davis*, 30
- Appeal from injunction, review limited. *Id.*
- Unconvincing argument, no authority cited. *Cumming v. Putnam Realty, Inc.*, 153
- No ruling made at trial, appellate court will not review matter. *Wunderlich v. Alexander*, 167
- Appellants had burden of obtaining ruling, argument waived on appeal. *Id.*
- No facts or legal argument cited, argument not considered. *Cherry v. State*, 222

- Issue not fully developed or ruled upon at trial, issue not considered as basis for reversal. *Hisaw v. State Farm Mut. Auto. Ins. Co.*, 239
- Issue never ruled on at trial, issue not addressed on appeal. *Id.*
- Substantial-evidence standard, when applicable. *Arkansas Okla. Gas Corp. v. Director*, 251
- Preservation of issue for appeal, contemporaneous-objection rule. *Strickland v. State*, 268
- Motion to suppress renewed orally at bench trial, contemporaneous objection is not required to preserve issue for appeal. *Id.*
- No risk that court would have been unfamiliar with nature of objection, contemporaneous objection was not required to preserve issue for appeal. *Id.*
- Matter pled but not brought to trial judge's attention, matter not addressed. *Stato Wireless, LLC v. Southwestern Bell Wireless, LLC*, 284
- Appeals from district courts, taken as matter of right to circuit courts for trial *de novo*. *Cheshire v. State*, 327
- Preservation of issue for appeal, denial of constitutional right must be objected to at trial. *Id.*
- Preservation of issue on appeal, issue not brought to attention of trial court not considered on appeal. *Id.*
- Equity cases, standard of review. *Riley v. Hoisington*, 346
- Standard of review, clearly erroneous. *First Nat'l Bank of Lewisville v. Bank of Bradley*, 368
- Findings of fact, deference to trial judge. *Id.*
- Bench trial, standard of review. *Buck v. Gillham*, 375
- Notice of appeal, timely filing. *Ross v. Jones*, 382
- Notice of appeal not timely filed, appeal dismissed. *Id.*
- Evidence viewed in light most favorable to appellee, all inferences resolved in appellee's favor. *Vereen v. Hargrove*, 385
- Failure to obtain ruling from trial court, procedural bar to appellate review. *Id.*
- Motion to suppress orally renewed at beginning of bench trial, contemporaneous objection not required to preserve objection for appeal. *Hilton v. State*, 401
- Appellant made contemporaneous objection when contested evidence was introduced, argument preserved for review. *Id.*
- Domestic-relations cases, standard of review. *Hass v. Hass*, 408
- Preservation of argument for appeal, ruling must be obtained. *Fritzinger v. Beene*, 416
- Reversal, cannot be obtained where no prejudice can be determined. *Id.*
- No citation to authority or convincing argument, issue not addressed on appeal. *Id.*
- Failure to abstract item essential to understanding of appeal, court must now allow rebriefing before summarily affirming. *Simmons v. State*, 426
- Record, abstract, & addendum flagrantly deficient, appellant ordered to supplement record. *Id.*
- Granting of stay by supreme court, did not indicate court's inclination to reverse or set aside order. *Rogers v. Rogers*, 430
- Granting of stay by supreme court, did not invalidate contempt order for failure to pay child support. *Id.*
- Record of divorce proceeding filed in earlier appeal, not required to incorporate into record on second appeal. *Id.*
- Abstracting requirements, all pertinent portions of record from first appeal must be abstracted. *Id.*

ARREST:

- Revocation of probation, when appropriate. *Harris v. State*, 181
- Revocation occurred after probationary term had expired & where appellant had not been arrested during probation period for matters relating to his probation, circuit court did not have jurisdiction to revoke appellant's probation. *Id.*
- Outside territorial jurisdiction, when authority exists. *Frazer v. State*, 231
- Outside territorial jurisdiction, officer was in fresh pursuit of appellant. *Id.*
- Outside territorial jurisdiction, authority extended when officer followed appellant out of one city & made stop in another. *Id.*
- Legality, standard of review. *Hilton v. State*, 401

ATTORNEY & CLIENT:

- Attorney's fees, general rule. *Vereen v. Hargrove*, 385
- Attorney's fees, action involving breach of lease. *Id.*
- Attorney's fees, trial judge's decision not reversed absent abuse of discretion. *Id.*
- Attorney's fees, remanded for trial judge to consider whether to make award to appellees. *Id.*

BUSINESS & COMMERCIAL LAW:

- Trade secret, defined. *Statco Wireless, LLC v. Southwestern Bell Wireless, LLC*, 284
- Trade secret, six factor analysis. *Id.*
- Trade secrets, misappropriation defined. *Id.*
- Trade secrets, insufficient evidence of inevitable misappropriation. *Id.*

CIVIL PROCEDURE:

- Ark. R. Civ. P. 4(i), service requirements strictly construed. *Williams v. Citibank, N.A.*, 42
- Motion for extension not timely filed, appellee's complaint should have been dismissed. *Id.*
- Insufficiency of service defense raised in appellant's first pleading, untimeliness of pleading did not constitute waiver of defense. *Id.*
- Ark. R. Civ. P. 4(i), compliance must be exact. *Holland v. Lefler*, 316
- Ark. R. Civ. P. 6(b), not applicable where trial court has no jurisdiction to act. *Id.*
- Appellants did not timely file motion to extend time for service, trial court had no jurisdiction to consider request to extend time for service. *Id.*
- Fed. R. Civ. P. 4(m) not substantially similar to Ark. R. Civ. P. 4(i), no precedential value. *Id.*
- Ark. R. Civ. P. 6(b) cannot be used to enlarge time to obtain service absent compliance with Ark. R. Civ. P. 4(i), no error in denial of motion for extension of time to serve process. *Id.*
- Defense of lack of subject-matter jurisdiction, may be made by motion. *French v. Webb*, 357
- Summary-judgment motion would have been more appropriate as motion to dismiss for lack of subject-matter jurisdiction, distinction immaterial where question was same. *Id.*
- Ark. R. Civ. P. 60 not used as ruse to avoid time constraints of Ark. R. Civ. P. 59(b), appellee city simply wanted judgment reduced to comply with law. *Fritzinger v. Beene*, 416

Trial court should reduce award after jury has entered excess verdict against immune entity, nothing in Ark. R. Civ. P. 60 would prevent it from being used for that purpose. *Id.*

COMMERCIAL LAW:

Sufficiency of description, adequacy is question of fact. *First Nat'l Bank of Lewisville v. Bank of Bradley*, 368

Sufficiency of description, test. *Id.*

Sufficiency of description, should enable third parties to identify property. *Id.*

Sufficiency of description, adequacy should be considered in light of subsequent creditor's actual knowledge. *Id.*

Sufficiency of description, Uniform Commercial Code sets onus on subsequent lender to seek information it needs. *Id.*

Sufficiency of description, trial court did not clearly err in concluding that appellee's financing statement was sufficiently specific to identify covered goods. *Id.*

CONSTITUTIONAL LAW:

Due process, determined by context. *Arkansas Gas Consumers, Inc. v. Arkansas Public Serv. Comm'n*, 1

Double jeopardy, defendant cannot object to violation until he has been convicted of multiple offenses. *Hollins v. State*, 342

Double-jeopardy motion was ineffective because made prior to conviction on any offense, argument not preserved for review where not raised after conviction for multiple charges. *Id.*

CONTEMPT:

Failure to obey support order, trial court may hold party in contempt. *Rogers v. Rogers*, 430

Inability to pay is defense to contempt citation, finding of civil contempt subject to preponderance-of-evidence standard of review. *Id.*

Proof of inability to pay was conclusory rather than specific, trial court's finding not against preponderance of evidence. *Id.*

Contemnor has burden of proving inability to pay, all items of proof are in contemnor's hands. *Id.*

Violation of court order, order must be in definite terms as to duties imposed. *Id.*

Violation of order, order appellant found to have violated not indefinite. *Id.*

CONTRACTS:

Meeting of minds, meaning given to phrase is "objective indicators of agreement." *Ward v. Williams*, 69

Meeting of minds, no conflict between appellate court & supreme court opinions concerning contract formation. *Id.*

Conflicting testimony on agreement of parties, fact question. *Id.*

Intent, court may look to conduct of parties. *Id.*

Trial court considered testimony of both parties, decision not clearly erroneous. *Id.*

Indemnity, arises by virtue of contract. *East-Harding, Inc. v. Horace A. Piazza & Assocs.*, 143

Indemnity, construction. *Id.*

Indemnity, language imposing must be clear, unequivocal, & certain. *Id.*
Construction, determined by court as question of law. *Id.*
Indemnity, strictly construed against party seeking indemnification. *Id.*
Indemnity, case settled without finding any party liable. *Id.*
Indemnity, consistent interpretation appropriate. *Id.*
Written lease contract, construction. *Cumming v. Putnam Realty, Inc.*, 153
Lease & commission agreements, trial court did not err in construing. *Id.*
Appellant contracted as exclusive authorized agent, appellee had vital interest in protecting appellant's customer list. *Statco Wireless, LLC v. Southwestern Bell Wireless, LLC*, 284
Appellant contracted as exclusive authorized agent, appellee had protectible interest in information contained in agent compensation plans. *Id.*
Appellant contracted as exclusive authorized agent, appellee had protectible interest in some bid proposals. *Id.*
Rescission, purchaser entitled to recover good-faith expenditures. *Riley v. Hoisington*, 346
Nonperformance of duty, constitutes breach. *Vereen v. Hargrove*, 385
Failure of one party to perform contractual obligations, generally releases other party from obligations. *Id.*
Forfeitures, must be plainly & unambiguously provided in contract. *Id.*
Minor failure in performance by one party does not justify other in seeking to escape responsibility, breach must be material. *Id.*

CONVERSION:

Liability, good faith will not preclude liability. *Buck v. Gillham*, 375
Defined, when committed. *Id.*
Measure of damages, fair market value defined. *Id.*
Possessory interest, defined. *Id.*
Appellant not liable for conversion, trial court reversed. *Id.*

CORPORATIONS:

Corporation & stockholders, separate entities. *Rhodes v. Veith*, 362
Piercing corporate veil, conditions for disregarding corporate entity vary according to circumstances of case. *Id.*
Piercing corporate veil, doctrine applied to prevent injustice. *Id.*
Piercing corporate veil, burden of proof on one seeking to pierce corporate veil. *Id.*
Piercing corporate veil, only available to third parties who deal with corporation. *Id.*
Corporate existence, cannot be lightly regarded by stockholders. *Id.*
Piercing corporate veil, appellee president of corporation was not "third party" entitled to pierce corporate veil. *Id.*
No other basis for holding appellants personally liable, reversed & dismissed. *Id.*

COURTS:

Law-of-case doctrine, discussed. *Id.*
Mandate, trial court must give deference to appellate court's mandate. *Id.*
Mandate, trial court implemented both letter & spirit of mandate. *Id.*
Revocation of probation after expiration of probation period, jurisdictional issue. *Harris v. State*, 181
Rules, construed using same means used to construe statutes. *Holland v. Lefler*, 316

Rules, federal rules considered of significant precedential value where federal & state rules are similar. *Id.*

Conviction, what constitutes. *Troup v. State*, 323

Jurisdiction lost upon execution of valid sentence, issue of probation revocation after expiration of probation period one of jurisdiction. *Id.*

Revocation of probation after expiration of probation period, when authorized. *Id.*

Ark. Code Ann. § 5-4-309, substantial compliance insufficient. *Id.*

Circuit court lost jurisdiction to revoke probation, trial court's extension of appellant's probation reversed. *Id.*

Jurisdiction, circuit court acquires no jurisdiction on appeal when municipal court lacks subject-matter jurisdiction. *French v. Webb*, 357

Jurisdiction, circuit court lacked subject-matter jurisdiction where appellant's municipal court claim was based on fraud. *Id.*

Subject-matter jurisdiction, always open. *Id.*

Jurisdiction, circuit court's finding that it lacked subject-matter jurisdiction affirmed where municipal court had no jurisdiction over action for fraud. *Id.*

Prevention of miscarriage of justice, broad authority. *Fritzing v. Beene*, 416

Prevention of miscarriage of justice, trial court's use of Ark. R. Civ. P. 60(a) to conform verdict to law was not abuse of discretion. *Id.*

Trial court had jurisdiction to enforce child-support & alimony provisions of decree, sound public policy. *Rogers v. Rogers*, 430

Support orders, continuing jurisdiction. *Id.*

COVENANTS:

Covenants not to compete, burden of proof. *Statco Wireless, LLC v. Southwestern Bell Wireless, LLC*, 284

Covenants not to compete, standard of review. *Id.*

Covenants not to compete, requirements for enforcement. *Id.*

Covenant not to compete growing out of employment or other associational relationship, when interest found sufficient to warrant enforcement. *Id.*

Covenant not to compete, customer lists constitute valuable asset. *Id.*

Covenant not to compete, minor lapses in enforcement did not preclude assertion of protectible interest. *Id.*

Enforcement of covenant not to compete, ability to use confidential information to unfair advantage. *Id.*

Covenant not to compete, appellee had protectible interest sufficient to warrant enforcement. *Id.*

Covenants not to compete, must prohibit more than ordinary competition. *Id.*

Covenants not to compete, reasonableness of restraint. *Id.*

Covenant not to compete, legitimate means of keeping former employee from appropriating its customers. *Id.*

Covenant not to compete, covenant not overly broad. *Id.*

Covenant not to compete, consideration argument without merit. *Id.*

CRIMINAL LAW:

Expungement of sentence under Youthful Offender Act automatic prior to 1995, expungement no longer automatic. *King v. Director*, 57

- Valid traffic stop, officer may detain offender while he completes certain routine tasks. *Reeves v. State*, 61
- Traffic stop, appellant properly asked to exit vehicle. *Id.*
- Rape, forcible compulsion. *Johnson v. State*, 79
- Rape, test for determining whether force was employed. *Id.*
- Rape, substantial evidence supported conviction. *Id.*
- Rape, existence of forcible compulsion depends on whether act is consummated against victim's will. *Id.*
- Value of stolen property, State's burden to prove. *Wright v. State*, 114
- Value of stolen property, jury may consider original cost. *Id.*
- Value of stolen property, owner's testimony sufficient to establish statutory value. *Id.*
- Psychiatric examination of defendant, trial court erred in not immediately suspending proceedings to allow for psychiatric evaluation. *Kelly v. State*, 126
- Sentencing, suspended execution of sentence. *Chadwell v. State*, 133
- Sentencing, reversed & remanded where trial court did not have authority to require appellant to serve more than remainder of original sentence. *Id.*
- Sentencing, affirmed in part where trial court did not lack authority to impose additional ten-year suspended sentence. *Id.*
- Sentencing, reversed & remanded for corrected judgment & resentencing. *Clements v. State*, 137
- Ark. Code Ann. § 5-4-309(e), circuit court loses jurisdiction to revoke probation where probation period has expired without arrest for violation. *Harris v. State*, 181
- Trial court's decision clearly erroneous where record did not provide basis for conditional release, reversed & remanded for entry of order for appellant's unconditional release. *George v. State*, 185
- Manufacture of methamphetamine, sufficient evidence. *Cherry v. State*, 222
- Manufacture of methamphetamine, statute does not require actual production. *Id.*
- Possession of anhydrous ammonia in unlawful manner, sufficient evidence. *Id.*
- Drug paraphernalia, factors to be considered. *Id.*
- Possession of drug paraphernalia with intent to manufacture, sufficient evidence. *Id.*
- Possession of ephedrine with intent to manufacture, sufficient evidence. *Id.*
- Search & seizure, consent justifying. *Strickland v. State*, 268
- Search & seizure, basis for third-party authority to give consent. *Id.*
- Third-party authority to give consent, present appeal did not deal with such authority. *Id.*
- Probation, statutory section authorizing additional period of confinement not applicable to appellant's situation. *Climer v. State*, 281
- Trial court's loss of jurisdiction over defendant, may be raised by appellate court on its own motion. *Id.*
- Circuit court was deprived of jurisdiction to amend or modify sentence after it was placed into execution, reversed & dismissed. *Id.*
- Revocation of probation, preponderance-of-evidence standard. *Cheshire v. State*, 327
- Revocation of probation, trial court's finding that appellant inexcusably failed to pay fine on time not clearly against preponderance of evidence. *Id.*
- Revocation of probation, appellate court not obliged to address issue concerning trial court's finding that appellant also violated probation by committing jailable offense." *Id.*
- Ark. Code Ann. § 5-2-614(b) (Repl. 1997) controlling, absence of argument or authority in support of appellant's position resulted in affirmance. *Hollins v. State*, 342

Probable cause to arrest, defined. *Hilton v. State*, 401

Probable cause, proof required. *Id.*

Arrest for DWI, trial judge's ruling that there was probable cause to arrest affirmed. *Id.*

Officer had reasonable cause to believe appellant inebriated, trial court's ruling denying appellant's motion to suppress breathalyzer results was not clearly against preponderance of evidence. *Id.*

CRIMINAL PROCEDURE:

First appearance, effect of delay on incriminating statements. *Green v. State*, 199

First appearance, examples of unreasonable delay. *Id.*

First appearance, no evidence that delay was deliberate or for purpose of obtaining incriminating statement. *Id.*

Custodial statement, speculation that appellant might not have been as forthcoming & cooperative had he first appeared before judicial officer was not persuasive. *Id.*

First appearance, delay was necessary to record preliminary confession. *Id.*

Custodial statement, no error in trial court's refusal to suppress. *Id.*

Custodial statement, review of ruling on motion to suppress. *Cherry v. State*, 222

Suppression hearing, deference to trial judge in matters of credibility. *Id.*

Citizen-informant's report, three factors in determining reliability. *Frazer v. State*, 231

DAMAGES:

Award of punitive damages, standard of review. *D'Arbonne Constr. Co. v. Foster*, 87

Punitive-damage instruction, when given. *Id.*

Punitive damages, when justified. *Id.*

Punitive-damage award, two-fold intent. *Id.*

Punitive-damage award, existence of wanton or willful conduct determined by facts of each case. *Id.*

DECLARATORY JUDGMENT:

Circuit-court actions, considerations supporting exhaustion-of-remedies doctrine applicable. *McLane Southern, Inc. v. Davis*, 30

DIVORCE:

Alimony, modification of. *Hass v. Hass*, 408

Alimony, abatement of alimony reversed & reinstated where appellant's change from unemployment to employment did not represent change in circumstances contemplated by parties at time of their agreement. *Id.*

Court's jurisdiction, distinct from jurisdiction to award child support & alimony.

Rogers v. Rogers, 430

No evidence that property-settlement agreement was obtained by fraud, no error on point. *Id.*

EMPLOYMENT SECURITY:

Fundamental purpose of law, when individual is disqualified for benefits. *Arkansas*

Okla. Gas Corp. v. Director, 251

Prospective job, when unsuitable. *Id.*

Threat of union sanction does not render job unsuitable, claimant forfeits right to unemployment compensation by refusing to accept job. *Id.*

Elements of equitable estoppel not satisfied, appellant not barred from collecting accrued child-support arrearage. *Id.*

Order failed to make written findings as required by statute, evidence did not support findings that were made. *Robbins v. State*, 204

Award of permanent custody to third party, natural parent must first be found unfit. *Id.*

Custody & guardianship, preference given to natural parent over third party. *Id.*

Custody, best interest of child controlling factor. *Id.*

Required findings not made, grant of permanent custody to third party reversed. *Id.*

Adoption, review of proceedings. *Britton v. Gault*, 311

Adoption, reversed & remanded for court to determine if appellee's consent was required under Ark. Code Ann. § 9-9-206(a). *Id.*

Change of child's surname, best interest of child considered. *Matthews v. Smith*, 396

Change of child's surname, factors considered in determining child's best interest. *Id.*

Change of child's surname, trial court's decision will be upheld where it is not clearly erroneous. *Id.*

Change of child's surname, factors properly considered by trial court. *Id.*

Change of child's surname, change found to be in child's best interest. *Id.*

Visitation, modification of. *Hass v. Hass*, 408

Modification of visitation, more rigid standard required than for initial determination. *Id.*

Modification of visitation, burden of proof. *Id.*

Visitation, best interest of child standard. *Id.*

Modification of visitation, factors considered. *Id.*

Visitation, left to discretion of trial court. *Id.*

Modification of visitation, no error found. *Id.*

Child support, trial court has power to enter child-support order. *Rogers v. Rogers*, 430

Child support, remanded where order entered pursuant to court's authority & child-support amount not challenged on appeal. *Id.*

Recovery of child-support arrearages, legislature intended no "stop-date" other than child's twenty-third birthday. *Id.*

PROBATE:

Appellate review, *de novo* standard. *George v. State*, 185

Appellate review, deference to judge. *Id.*

Proceedings, standard of review. *Bailey v. State*, 193

PUBLIC SERVICE COMMISSION:

Appellate review, standard of review. *Arkansas Gas Consumers, Inc. v. Arkansas Public Serv. Comm'n*, 1

Appellate review, when Commission's decision must be affirmed. *Id.*

Appellate review, courts decide questions of law. *Id.*

Regulatory authority, broad discretion. *Id.*

Arbitrary & capricious action, how to establish. *Id.*

Performs legislative functions by delegation, broad discretion in exercise of powers. *Id.*

Jurisdiction, extends only to activities in which utilities are acting as public utilities. *Id.*

Jurisdiction, not limited to statutory powers. *Id.*

Jurisdiction, Commission had jurisdiction to protect public interest by implementing Temporary Low Income Customer Gas Reconnection Policy. *Id.*

Interim surcharge imposed by Policy authorized by statute, Policy was "regulatory requirement." *Id.*
Decision-making, Commission's discretion. *Id.*
Authority, has same powers as General Assembly would have. *Id.*
Temporary surcharge, Commission had authority to create temporary surcharge to recoup costs of implementing policy. *Id.*
Rate differences, not prohibited by statute. *Id.*
Rate differences, agency can establish rates for different classes of customers. *Id.*
Rate differences, temporary advantage to class of low-income customers reasonable under circumstances. *Id.*
Single-issue ratemaking, rule against does not apply when surcharge is provided for by statute. *Id.*
Single-issue ratemaking, decision to implement Policy to meet emergency was not against public policy. *Id.*
Double recovery, utilities would not recover bad-debt expense twice. *Id.*
Proving decision not supported by substantial evidence, what appellant must show. *Id.*
Testimony, evaluation is for Commission. *Id.*
Substantial evidence, Commission's decision supported by. *Id.*
Findings, requirements. *Id.*
Order Nos. 3 & 4, supported by evidence that supported Order No. 2. *Id.*
Due process, full & fair hearing. *Id.*
Due process, appellant's burden to prove invalidity of procedure. *Id.*
Due process, appellant & ratepayers received all they were due. *Id.*

REMEDIES:

Exhaustion of administrative remedies, doctrine of. *McLane Southern, Inc. v. Davis*, 30

SALES:

Stolen property, rights & liabilities of buyer. *Buck v. Gillham*, 375

SEARCH & SEIZURE:

Pat-down search, when justified. *Reeves v. State*, 61
Pat-down search justified, trial court's finding not clearly against preponderance of evidence. *Id.*
Pat-down search, seizure of contraband. *Id.*
Traffic stop, officer justified in conducting protective frisk. *Id.*
Officer's search valid, appellant had apparent authority to consent to search. *Strickland v. State*, 268

STATUTES:

Construction, basic rule. *Arkansas Gas Consumers, Inc. v. Arkansas Public Serv. Comm'n*, 1
Construction, statutes *in pari materia* must be construed together. *Id.*
Construction, unambiguous statutes. *Id.*
Construction, judicial function. *Id.*
Construction, agency's interpretation highly persuasive. *Id.*
Construction, not interpreted so strictly as to reach conclusion contrary to legislative intent. *Id.*
Construction, first rule. *Holland v. Lefler*, 316

Construction, reviewed *de novo* on appeal. *Id.*
Strong presumption of constitutionality, all doubt must be resolved in favor of constitutionality. *Fritzingler v. Beene*, 416
Challenge to constitutionality, party challenging bears burden. *Id.*
Construction, purpose must be considered. *Rogers v. Rogers*, 430

SUPERSEDEAS:

Effect on judgment, stays execution & maintains status quo. *Rogers v. Rogers*, 430
Trial court's decision to enforce support awards in spite of supersedeas upheld, support orders may not be superseded as matter of right. *Id.*

TRIAL:

Cross-examination, trial court's discretion to impose reasonable limits. *Johnson v. State*, 79
Cross-examination, test to determine whether restrictions infringed upon appellant's confrontation rights. *Id.*
New trial, when trial court may grant. *Randles v. Cole*, 334
New trial, standard of review. *Id.*
Bench trial, standard of review. *Vereen v. Hargrove*, 385
Tort-immunity defense, asserted from time appellee city filed first pleading. *Fritzingler v. Beene*, 416

UNEMPLOYMENT COMPENSATION:

Discharge for dishonesty, disqualified for benefits. *King v. Director*, 57
Standard of review, substantial evidence defined. *Id.*
Dishonesty, defined. *Id.*
Appellant had good-faith belief that his assertion was true & did not make it with intent to deceive, Board's decision denying benefits reversed. *Id.*
Standard of review, substantial evidence defined. *Thornton v. Director*, 99
Good cause, defined. *Id.*
Appellant left job due to fear for safety after being robbed at gunpoint, Board's finding that appellant did not have good cause to voluntarily leave her last work was not supported by substantial evidence. *Id.*
Standard of review, substantial evidence defined. *Sanders v. Employment Security Dep't*, 110
Basis for Board of Review's decision unclear, appellate court unable to review basis for Board's decision. *Id.*
Good cause, defined. *Magee v. Director*, 162
Standard of review, substantial evidence defined. *Id.*
Statement by Board of Review as to when substantial reduction in pay is good cause for quitting employment, consistent with previous holding by court of appeals. *Id.*
Salary reduced by eleven percent, good cause for quitting not found. *Id.*
Additional problems existed between appellant & company treasurer, Board's findings conclusive. *Id.*
Appellant did not have good cause to quit work, Board of Review affirmed. *Id.*
Standard of review, substantial evidence defined. *Oliver v. Director*, 275
Misconduct, what constitutes. *Id.*
Discharge for absenteeism, factors considered in determining whether absenteeism constitutes misconduct. *Id.*
Appellant's absenteeism did not amount to misconduct, payment of benefits ordered. *Id.*

Jurisdiction of Arkansas Employment Security Department over unemployment claims arising out of employment in another state, pertinent statutes. *Hayes v. Director*, 331
Jurisdictional basis for claim unclear, case remanded. *Id.*

WITNESSES:

Conflicting testimony, resolved by trial judge. *Reeves v. State*, 61
Conflicts in testimony, resolved by trial court. *Statco Wireless, LLC v. Southwestern Bell Wireless, LLC*, 284
Credibility, province of circuit court sitting as trier of fact. *Vereen v. Hargrove*, 385
Credibility, deference to trial court. *Rogers v. Rogers*, 430

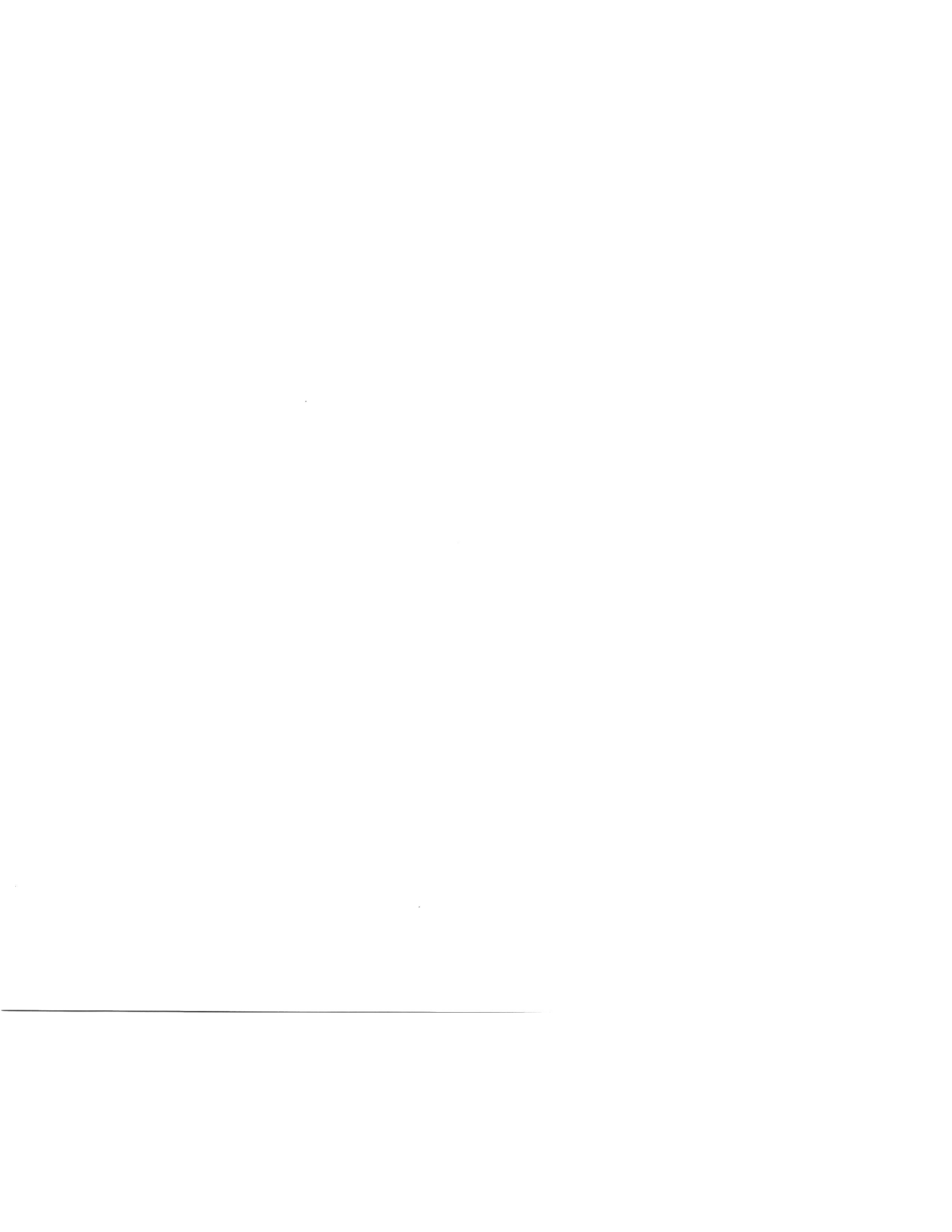
WORDS & PHRASES:

Lie, defined. *King v. Director*, 57

WORKERS' COMPENSATION:

Standard of review, substantial evidence defined. *Horticare Landscape Management v. McDonald*, 45
Witness credibility & weight given testimony, function of Commission. *Id.*
Compensable injury, proof required. *Id.*
Requiring objective medical findings to prove nonmedical elements, would defeat legislative intent. *Id.*
Existence of injury clearly established, Commission's finding that injury compensable supported by sufficient evidence. *Id.*
Standard of review, substantial evidence defined. *Wal-Mart Stores, Inc. v. Sands*, 51
"Employment services" defined, test for. *Id.*
Appellee injured while advancing appellant's interests, appellee was performing employment services at time she was injured. *Id.*
Objective findings, muscle spasms as reported by physician or therapist constitute. *Id.*
Weight & credibility of witness testimony, left to Commission. *Id.*
Medical evidence, resolution of by Commission has force & effect of jury verdict. *Id.*
Injury established by medical evidence supported by objective findings, finding of Commission not error. *Id.*

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited



INDEX TO
ACTS, CODES, CONSTITUTIONAL
PROVISIONS,
INSTRUCTIONS, RULES,
AND STATUTES CITED

ACTS:		4-9-108(b)(3)	372
		4-9-108(b)(4)	372
ACTS BY NAME:		4-9-108(b)(5)	372
Administrative Procedure Act	31, 35, 36, 38	4-9-108(b)(6)	372
Arkansas Medical Malpractice		4-9-108(c)	371, 372
Act	318	4-9-108(d)	372
Arkansas Theft of Trade Secrets		4-9-108(e)	372
Act	290	4-75-601(2)	289, 301
Motor Vehicle Safety		4-75-601(2)(A)	288, 301
Responsibility Act	416, 420	4-75-601(2)(B)	288, 301
Unfair Cigarette Sales Act	34, 35, 37	4-75-601(2)(B)(i)	288, 301
Uniform Revised Adoption		4-75-601(2)(B)(ii)	288, 301
Act	168, 174	4-75-601(2)(B)(ii)(a)	289, 301
Youthful Offender Alternative		4-75-601(2)(B)(ii)(b)	289, 301
Service Act	57, 59	4-75-601(2)(B)(ii)(c)	289, 301
		4-75-601(4)	288, 300
ARKANSAS ACTS:		4-75-604	301
Act 346 of 1975	59	4-75-708(a)	34
Act 310 of 1981	4, 17, 18, 19, 28, 29	4-75-708(b)	33
Act 47 of 1989	418, 423	4-75-708(d)	35
Act 525 of 1989	446	4-75-708(e)	35
Act 542 of 1991	424	5-1-102	139, 140
Act 292 of 1993	424	5-1-102(14)	141
Act 1569 of 1999	281, 283, 325	5-1-110(a)	342, 344
		5-1-110(a)(5)	343
		5-2-304	130
		5-2-305	126, 129, 131
		5-2-305(a)	129
		5-2-309	130, 131
		5-2-309(a)	131
		5-2-309(b)	131
		5-2-311	130
		5-2-314	186, 191
		5-2-314(a)(1)	198
		5-2-314(a)(1) through (4)	190
		5-2-314(b)	190
		5-2-314(c)	190, 196
CODES:			
(See also RULES and STATUTES):			
ARKANSAS CODE ANNOTATED:			
4-9-108	372		
4-9-108(a)	372		
4-9-108(b)	372		
4-9-108(b)(1)	372		
4-9-108(b)(2)	372		

5-2-314(e)	186, 187, 195, 196, 198	9-9-206	313, 314, 315
5-2-315	193, 197	9-9-206(a)	311, 315
5-2-315(a)(1)	191	9-9-206(a)(2)	311, 315
5-2-315(a)(2)(C)	185, 187, 188, 191, 196	9-9-207	313, 314, 315
5-2-315(a)(2)(C)(i)	187, 191, 192, 196	9-9-207(a)(2)	314
5-2-315(a)(2)(C)(ii)	187, 191, 192, 196	9-9-207(a)(3)	311, 315
5-2-605 to -621	345	9-9-216(b)	167, 168, 169, 171, 174, 177, 312
5-2-605(1)	141	9-10-515(d)(3)	254
5-2-614(b)	342, 345	9-12-314	119, 123
5-3-203	116	9-14-105(a)	431, 437
5-4-104	133, 136	9-14-218(a)(1)(A)	124
5-4-104(e)(4)	136	9-14-234	119, 123
5-4-301(d)	325	9-14-234(j)	444
5-4-304(c)	281, 283	9-14-236(b)	435, 445, 446
5-4-304(d)(1)	283	9-14-236(c)	435, 445, 446
5-4-307(c)	135	9-27-302(2)(B)	106
5-4-309	183, 324, 325, 326	9-27-303(15)(A)	106
5-4-309(a)	325	9-27-303(16)(A)	106
5-4-309(d)	326	9-27-325(h)(2)(B)	106
5-4-309(e)	181, 184, 323, 324, 326, 327	9-27-328	210, 214, 215
5-4-310	283	9-27-328(a)	211
5-4-502	136	9-27-328(b)	204, 206, 207, 209, 211, 214
5-14-101(2)	79, 81, 84	9-27-328(b)(1)	207, 213
5-14-103(a)(1)(A)	79, 81	9-27-328(b)(2)	207
5-36-101(11)(A)(i)	116	9-27-328(b)(2) through (5)	213
5-36-103(b)(1)(A)	116	9-27-328(b)(3)	207
5-64-101(v)(1) et seq.	229	9-27-328(b)(4)	207
5-64-101(v)(5)	229	9-27-328(b)(5)	207
5-64-101(v)(6)	229	9-27-328(b)(6)	207, 213
5-64-101(v)(8)	229	11-9-102(4)(b)(iii)	51, 54
5-64-401	222, 227	11-9-102(16)	52, 55
5-64-401(a)(1)(i)	227	11-10-102(3)	254
5-64-403(c)(5)	229	11-10-207	331, 332
5-64-1101(b)	224, 230	11-10-209	331, 332
5-64-1102(a)(1)	230	11-10-211	331, 333
5-65-202(a)	406, 407	11-10-513	99, 101, 111, 332
5-65-202(a)(1)	407	11-10-513(a)(1)	99, 101, 113, 165
5-65-202(a)(2)	407	11-10-513(d)	101
5-65-202(a)(3)	407, 407	11-10-514(a)(1)	278
5-65-203	407	11-10-514(a)(2)	276, 279
5-74-106(a)(1)	227	11-10-514(b)	58, 60
5-74-107(b)(1)	345	11-10-515	103
		11-10-515(a)(1)	262
		11-10-515(a)(1)(B)	254, 262
		11-10-515(c)(1)	99, 101

11-10-515(d) 260, 262
 11-10-515(d)(1) 262, 267
 11-10-515(d)(2) 262, 267
 11-10-515(d)(3) 251, 252, 254,
 259, 262, 265, 266, 267
 11-10-524(b)(1) 113
 11-10-526(a)(1) 113
 11-10-529(c)(1) 260, 331, 333
 11-10-544 331, 333
 16-13-201(a) 431, 437
 16-17-704 359, 360
 16-17-704(a) 359
 16-17-704(a)(1) 359
 16-17-704(a)(2) 359
 16-17-704(a)(3) 360
 16-17-704(a)(4) 360
 16-17-704(a)(5) 360
 16-17-704(a)(6) 360
 16-17-704(b) 360
 16-17-704(c) 360
 16-22-308 387, 389, 395
 16-85-201(a) 201
 16-90-303(b) 57, 59
 16-90-902 60
 16-90-902(a) 60
 16-90-902(b) 60
 16-114-201 *et seq.* 318
 19-10-305(a) 422
 21-9-301 420, 421
 21-9-303 417, 422, 424, 425
 21-9-303(a) 420
 21-9-303(b) 417, 420, 421, 422,
 424
 21-9-303(c) 418, 423
 23-1-101 14, 17
 23-2-301 21
 23-2-304 14, 21
 23-2-304(a) 14
 23-2-304(a)(1) 15, 17
 23-2-304(a)(2) 15, 17
 23-2-304(a)(3) 15
 23-2-421(a) 7, 26
 23-2-423(c)(4) 1, 14
 23-3-114 5, 21
 23-3-114(a)(1) 22
 23-3-114(a)(2) 22

23-3-114(b) 22
 23-3-114(c) 22
 23-4-103 24
 23-4-401(a) 23
 23-4-406 22
 23-4-501 18
 23-4-501 through 23-4-509 . . . 17, 28
 23-4-501(a) 19
 23-4-501(a)(1) 19, 29
 23-4-501(a)(2) 19
 23-4-501(b) 19
 23-4-502 4, 17, 19, 20
 25-15-12(c) 36
 25-15-207 31, 35, 39
 25-15-212 35, 40, 41
 27-19-713(b)(2) 420
 28-65-204 208

CODE OF FEDERAL REGULATIONS:

45 C.F.R. 303.7(c)(7)(iii) 124

CONSTITUTIONAL PROVISIONS:

ARKANSAS CONSTITUTION:

Art. 2, § 23 20
 Art. 5, § 32 424, 425

UNITED STATES CONSTITUTION:

Amend. 4 269, 273, 274
 Amend. 80, § 7(A) 327, 329
 Amend. 80, § 22(a) 329
 Art. 7, § 14 329
 Double Jeopardy Clause 222, 226

RULES:

ARKANSAS RULES OF APPELLATE

PROCEDURE — CIVIL:

Ark. R. App. P.—Civ.
 4(a) 382, 384
 Ark. R. App. P.—Civ.
 6(e) 426, 428

ARKANSAS RULES OF APPELLATE

PROCEDURE — CRIMINAL:

Ark. R. App. P.—Crim. 4(a) . . . 428

ARKANSAS RULES OF CIVIL

PROCEDURE:

Ark. R. Civ. P. 4	42, 45
Ark. R. Civ. P. 4(i)	42, 43, 44, 316, 317, 318, 319, 320, 321, 322, 323
Ark. R. Civ. P. 4(m)	322
Ark. R. Civ. P. 6(b)	316, 317, 319, 320, 321, 322, 323
Ark. R. Civ. P. 6(b)(2)	318, 319, 320, 321
Ark. R. Civ. P. 12(a)	43
Ark. R. Civ. P. 12(b)(1)	357, 358, 361
Ark. R. Civ. P. 12(b)(6)	361
Ark. R. Civ. P. 12(h)(1)	45
Ark. R. Civ. P. 19(2)(i)	174
Ark. R. Civ. P. 50(b)	320
Ark. R. Civ. P. 50(b)(1)	335, 341
Ark. R. Civ. P. 50(b)(2)	340
Ark. R. Civ. P. 52(a)	306, 314
Ark. R. Civ. P. 52(b)	320
Ark. R. Civ. P. 55(c)	44
Ark. R. Civ. P. 59	421
Ark. R. Civ. P. 59(a)(6)	339
Ark. R. Civ. P. 59(b)	320, 417, 421
Ark. R. Civ. P. 59(d)	320
Ark. R. Civ. P. 59(e)	320, 334, 339

Ark. R. Civ. P. 60	417, 421, 422
Ark. R. Civ. P. 60(a)	416, 417, 420, 421

Ark. R. Civ. P. 60(b)	320
Ark. R. Civ. P. 60(c)(1)	86
Ark. R. Civ. P. 62(d)	440

ARKANSAS RULES OF CRIMINAL

PROCEDURE:

Ark. R. Crim. P. 3.1	66, 234
Ark. R. Crim. P. 3.4	66
Ark. R. Crim. P. 4.1(a)(ii)(C)	405
Ark. R. Crim. P. 8.1	200, 201
Ark. R. Crim. P. 11.2	273

FEDERAL RULES OF CIVIL PROCEDURE:

Fed. R. Civ. P. 4(m)	317, 322, 323
Fed. R. Civ. P. 6(b)(2)	322

RULES OF THE ARKANSAS SUPREME

COURT AND COURT OF APPEALS:

Ark. Sup. Ct. R. 4-2(a)(5)	426, 427, 429
Ark. Sup. Ct. R. 4-2(b)(3)	429
Ark. R. Sup. Ct. 4-3(j)	282

STATUTES:

ARKANSAS STATUTES ANNOTATED:

41-606	130
--------	-----



Loss of union privileges, does not provide good cause for rejecting job & does not render offered employment unsuitable. *Id.*

No finding on issue of suitability, remanded for decision on suitability issue. *Id.*

EQUITY:

Equitable defenses, may be used to prevent enforcement of child-support orders. *State v. Burger*, 119

Two innocents must suffer, burden must be borne by the one who induced loss. *Riley v. Hoisington*, 346

Rescission, application of equitable principles. *Id.*

Upon rescission appellees restored to appellant substantially consideration they had received, point affirmed. *Id.*

Rescission of land sale contract, obligation of purchaser for rental value. *Id.*

Trial court erred in determining amount of judgment granted to appellees, point reversed. *Id.*

ESTOPPEL:

Equitable estoppel, elements. *State v. Burger*, 119

Equitable estoppel, first element satisfied. *Id.*

Equitable estoppel, second element not satisfied. *Id.*

Equitable estoppel, third element not satisfied. *Id.*

Equitable estoppel, fourth element not satisfied. *Id.*

EVIDENCE:

Clear & convincing evidence, defined. *Ward v. Williams*, 69

Sufficiency of, test for determining. *Johnson v. State*, 79

Appellate review, only evidence supporting verdict considered. *Id.*

Sufficiency of, test for determining. *Wright v. State*, 114

Appellate review, viewed in light most favorable to State. *Id.*

Viewed in light most favorable to State, only evidence supporting verdict considered. *Clements v. State*, 137

Sufficiency of, appellant waived opportunity to challenge on appeal with respect to third-degree battery conviction. *Id.*

Sufficiency of, test for determining. *Cherry v. State*, 222

Circumstantial evidence, can be sufficient to sustain conviction. *Id.*

Simultaneous possession of drugs & firearms, sufficient evidence. *Id.*

Sufficient evidence of fraudulent misrepresentation, trial court affirmed. *Riley v. Hoisington*, 346

Refusal to take portable breath test, evidence of consciousness of guilt. *Hilton v. State*, 401

DWI, officer's observations with regard to physical characteristics consistent with intoxication can constitute competent evidence to support DWI charge. *Id.*

Substantial evidence, defined. *Simmons v. State*, 426

FRAUD:

Standard of proof, clear & convincing evidence defined. *Riley v. Hoisington*, 346

Constructive fraud sufficient for contract rescission, neither actual dishonesty nor intent to deceive is essential to constructive fraud. *Id.*

Five elements necessary to establish. *Id.*

Evidence existed that appellant intended to misrepresent condition of property, trial court affirmed. *Id.*

INJUNCTION:

Preliminary injunctions, proof required. *McLane Southern, Inc. v. Davis*, 30

Preliminary injunctions, grant or denial of discretionary. *Id.*

Consideration of order denying, appellate court will not delve into merits of case further than is necessary to determine if abuse of discretion occurred. *Id.*

Denial of motion for preliminary injunction not abuse of discretion, appellant failed to exhaust administrative remedies. *Id.*

INSURANCE:

Policy interpretation not dependent on disputed extrinsic evidence, construction question of law. *Tunnel v. Progressive N. Ins. Co.*, 215

Injured party who had no contact with insured vehicle until impact occurred not accorded status as occupant, deceased not insured under appellee policy. *Id.*

Policy language, construction. *Hisaw v. State Farm Mut. Auto. Ins. Co.*, 239

“Arising out of,” meaning of phrase. *Id.*

Causal connection found between motorist’s use of van & appellant’s injuries, injuries were inflicted by underinsured vehicle. *Id.*

JUDGES:

Recusal, trial court’s discretion. *Rogers v. Rogers*, 430

Presumption of impartiality, burden of proof. *Id.*

Recusal, bias discussed. *Id.*

No bias or prejudice demonstrated, enforcement of appellant’s alimony & child-support obligations not affected. *Id.*

JUDGMENT:

Judgment rendered without valid service of process void, no meritorious defense needed to set aside void judgment. *Williams v. Citibank, N.A.*, 42

Default judgment reversed, reversal without prejudice. *Id.*

Conflict between oral verdict & subsequent sentence & written judgment, trial court’s pronouncement of judgment controlled. *Clements v. State*, 137

Summary judgment, purpose of hearing. *East-Harding, Inc. v. Horace A. Piazza & Assocs.*, 143

Summary judgment, shifting burden. *Id.*

Summary judgment, appellate review. *Id.*

Summary judgment, reversed where there were questions of fact to be determined. *Id.*

Summary judgment, when approved. *Cumming v. Putnam Realty, Inc.*, 153

Summary judgment, movant’s burden. *Id.*

Vacation, for fraud. *Wunderlich v. Alexander*, 167

Vacation of, burden of proof. *Id.*

Finding that fraud practiced on court, not clearly erroneous. *Id.*

Summary judgment, standard of review. *Tunnel v. Progressive N. Ins. Co.*, 215

Summary judgment, appellate review. *Hisaw v. State Farm Mut. Auto. Ins. Co.*, 239

Summary judgment to appellee on appellant’s personal insurance reversed, appellant’s injuries arose out of operation, maintenance, or use of underinsured vehicle. *Id.*

Summary judgment, appellate review. *French v. Webb*, 357
Summary judgment, motion can be extension of motion to dismiss for failure to state claim. *Id.*

JURISDICTION:

Subject-matter jurisdiction, act by court without subject-matter jurisdiction void.
Rogers v. Rogers, 430
Subject-matter jurisdiction, defined. *Id.*
Subject-matter jurisdiction, discussed. *Id.*
Appellate review, issue of whether claim should have been heard will be considered unless trial court has no tenable nexus to claim. *Id.*
Dissolution of marriage, trial court lacked jurisdiction where there was no corroboration of residence. *Id.*

JURY:

Instructions, trial court's error in failing to give manslaughter instruction cured when jury convicted appellant of first-degree murder. *Kelly v. State*, 126
Verdict, test of inconsistency. *Randles v. Cole*, 334
Answers to interrogatories, not conflicting. *Id.*
Verdict, setting aside constituted abuse of discretion. *Id.*

JUVENILES:

Delinquency adjudication, burden of proof & standard of review. *Simmons v. State*, 426

LANDLORD & TENANT:

Forfeiture clause for nonpayment of rent, landlord must bring himself strictly within provisions. *Vereen v. Hargrove*, 385
Late payment of rent, not material breach under circumstances. *Id.*
Obligations of tenant, use of leased property in proper manner. *Id.*
Use of premises, whether covenant is implied depends on intention of parties. *Id.*
Installation of tail-water recovery system, within stated purpose of lease. *Id.*
Use of farm's well to provide water to neighbor's farm, appellees did not violate purpose of lease. *Id.*
Trial judge did not err in finding no substantive breach of lease, refusal to declare forfeiture of lease affirmed. *Id.*

MENTAL HEALTH:

Conditional release, trial court's decision was not clearly erroneous. *Bailey v. State*, 193

MOTIONS:

Ruling on motion to suppress, standard of review. *Reeves v. State*, 61
Directed verdict, challenge to sufficiency of evidence. *Johnson v. State*, 79
Denial of motion for directed verdict, standard of review. *D'Arbonne Constr. Co. v. Foster*, 87
Award of punitive damages proper, denial of appellants' motion for directed verdict as to punitive damages not error. *Id.*
Directed verdict, challenge to sufficiency of evidence. *Wright v. State*, 114
Directed verdict, challenge to sufficiency of evidence. *Clements v. State*, 137
Directed verdict, challenge to sufficiency of evidence. *Cherry v. State*, 222

Motion to suppress, no error in trial court's denial. *Id.*
Motion to suppress, totality-of-circumstances standard. *Frazier v. State*, 231
Motion to suppress, denial not clearly erroneous under totality-of-circumstances analysis. *Id.*
Ruling on motion to suppress, standard of review. *Strickland v. State*, 268
Directed verdict, precondition for motion for judgment notwithstanding verdict. *Randles v. Cole*, 334
Denial of motion to suppress, standard of review. *Hilton v. State*, 401

MUNICIPAL CORPORATIONS:

Official acts, immunity from tort suit & liability except to extent of coverage by liability insurance. *Fritzing v. Beene*, 416
Required to carry motor vehicle liability insurance, maximum combined liability for city & employees. *Id.*
Appellant not prejudiced by dismissal of appellee municipal-vehicle operator, appellant obtained maximum statutory damages award. *Id.*
Appellant not prejudiced by dismissal of appellee municipal-vehicle program, appellee's obligation to pay was limited to statutory amount. *Id.*
Act 47 of Third Extraordinary Session of 1989, limitations on direct action against insurer or pool administrator. *Id.*
Trial court did not err in dismissing appellee municipal-vehicle program from suit, trial court may be affirmed if correct for any reason. *Id.*

NEGLIGENCE:

Appellee was responsible for approval of specification & design of project, any claim of negligent design of staircase would be directed at appellee or manufacturer. *East-Harding, Inc. v. Horace A. Piazza & Assocs.*, 143
Action arising from professional services of architect, rarely excludes claims of professional negligence. *Id.*

NEW TRIAL:

Trial court's discretion to grant, trial court's ability to modify or set aside judgment. *Belcher v. Belcher*, 86
Matter remanded to decide appellant's motion, appeal held in abeyance. *Id.*

PARENT & CHILD:

Dependency-neglect proceedings, standard of review. *Arkansas Dep't of Human Servs. v. McDonald*, 104
Dependency-neglect proceedings, unfitness not necessarily predicated on defendant causing direct injury to child. *Id.*
Trial court's failure to adjudge children dependency neglected was clearly erroneous, case reversed & remanded. *Id.*
Ruling on child-support issues, standard of review. *State v. Burger*, 119
Child support, any order that contains child-support provision shall be final judgment as to any payment that has accrued. *Id.*
Enforcement of child-support judgment, circumstances under which court might decline to permit enforcement. *Id.*

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited

WILLS:

- Pretermitted-child statute, application. *Alexander v. Estate of Alexander*, 359
- Pretermitted-child statute, purpose. *Id.*
- Strong presumption against disherison, omission operates in favor of pretermitted child. *Id.*
- Pretermitted-child statute, mention of children or issue of predeceased children generally sufficient to preclude application of pretermitted-child statute. *Id.*
- Use of term "issue," appellant not sufficiently mentioned for purposes of pretermitted-child statute. *Id.*
- Use of term "issue," technical language that was insufficient to overcome presumption against disherison. *Id.*
- Order entered when stamped by clerk, order of probate required to validate will. *Judkins v. Hoover*, 552
- Order admitting will to probate never entered, oral order ineffective until reduced to writing & filed. *Id.*

WITNESSES:

- Competency, standard of review. *Clem v. State*, 112
- Competency, burden of persuasion. *Id.*
- Competency, trial judge's evaluation of particular importance. *Id.*
- Competency, record needed to prevent finding of manifest error or abuse of discretion in allowing testimony. *Id.*
- Competency, criteria for determining. *Id.*
- Child competent to testify, no abuse of discretion found. *Id.*
- Credibility, supreme court bound by jury's determination. *Williams, Phillip Dewayne v. State*, 215
- Testimony, jury free to believe all or part. *Id.*
- Eyewitness testimony, not clearly unbelievable because uncorroborated. *Id.*
- Eyewitness testimony, not disregarded by supreme court. *Id.*
- Supreme court deferred to trial court's determination of credibility, appellant's testimony not found credible. *Williams, John Franklin v. State*, 229
- Credibility, trial judge not required to believe petitioner. *Ivy v. Keith*, 269
- Credibility, determination for jury. *Mills v. State*, 523
- Credibility, deference to circuit court. *Butt v. Evans Law Firm, P.A.*, 566

