

THIS BOOK CONTAINS THE OFFICIAL
ARKANSAS REPORTS
Volume 352

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
February 13, 2003 — April 24, 2003
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS
Volume 81

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
February 12, 2003 — April 23, 2003
INCLUSIVE²

PUBLISHED BY THE
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2003

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 570. Cite as 352 Ark. ____ (2003).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 486. Cite as 81 Ark. App. ____ (352).

*Justice is itself the great standing
policy of civil society*

— EDMUND BURKE
(1729–1797)

Set in Bembo

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

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 All opinions that are not to be published shall be marked “Not Designated for Publication.”

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not

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

— SAMUEL JOHNSON
(1709-1784)

ARKANSAS REPORTS

Volume 352

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
February 13, 2003 — April 24, 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

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DURING THE PERIOD COVERED
BY THIS VOLUME
(February 13, 2003 — April 24, 2003 inclusive)

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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

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

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IN RE: RULES of the SUPREME COURT of ARKANSAS
and COURT of APPEALS of ARKANSAS

Supreme Court of Arkansas
Delivered May 8, 2003

PER CURIAM. It has come to our attention that there is some confusion among members of the bar regarding the application of our appellate rules on page numbering to the Addendum section of briefs. Arkansas Supreme Court Rule 4-1(a) specifies that each page in a brief “shall be numbered.” Ark. R. Sup. Ct. 4-1(a). Likewise, Arkansas Supreme Court Rule 4-2(a)(1) states that the Table of Contents “should include . . . references to the Addendum listing each document with the page number at which it appears.” Ark. R. Sup. Ct. 4-2(a)(1). The Clerk of the Supreme Court has encountered some attorneys who believe that our page-numbering rule is satisfied by using the page number from the record as the “page number” of the Addendum. That was not the intent of the rule.

The intent of the page-numbering rule, of course, is to facilitate appellate review by the members of this Court, in part by making access to the “order, judgment, decree, ruling, letter opinion, or Worker’s Compensation Commission Opinion from which the appeal is taken,” and the “other relevant pleadings, documents, of exhibits essential to an understanding of the case” as efficient as possible. Ark. Sup. Ct. R. 4-2(a)(8). This end is frustrated by treating page numbers from the record as the “page numbers” in the appellant’s brief.

To correct this situation, the eighth sentence in Arkansas Supreme Court Rule 4-1(a) is amended to read: “Each page shall be numbered sequentially from page one of the brief to the end of the brief, and both sides of the page may be used.” Likewise, the second sentence in Arkansas Supreme Court Rule 4-2(a)(1) is amended to read: “The table of contents also should include references to the abstract listing the name of each witness with the page number at which the testimony begins and references to the Addendum listing each document with the page number at which it appears in the Addendum.”

IN RE: RULES GOVERNING ADMISSION
to the BAR of ARKANSAS

Supreme Court of Arkansas
Opinion delivered May 15, 2003

PER CURIAM. The State Board of Law Examiners has recommended that Rule III.c. of the *Rules Governing Admission to the Bar* (Rules) be amended and that Regulation 7 of those rules also be amended. Both recommendations are designed to increase the efficiency of administration of those rules and regulations. We concur in that recommendation and adopt and republish Rule III.c. and Regulation 7 as set forth below.

Rule III.c.

Subsequent to the release of the bar examination results, the Secretary shall provide each examinee with his or her examination grades.

Regulation 7.

Miscellaneous Fee Schedule

Application mailing fee	\$ 5.00
MBE transfer fee	\$25.00
Copies — per page	\$.25

The miscellaneous fees set forth above are in addition to any other fees or expenses the applicant may be required to submit in connection with his or her application. (Adopted by Per Curiam November 5, 1998).

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

- Anderson *v.* Hudson, CR 03-97 (Per Curiam), Pro Se Petition for Writ of Mandamus moot February 28, 2003.
- Baker *v.* State, CR 02-984 (Per Curiam), Pro Se Motions for Rule on Clerk, for Duplication of Motions and Other Pleadings at Public Expense denied; Pro Se Motion for Extension of Time to File Brief granted April 17, 2003.
- Berger *v.* State, CR 02-350 (Per Curiam), remanded February 28, 2003.
- Berna *v.* Reed, 02-569 (Per Curiam), Pro Se Motions for General Rules denied April 3, 2003.
- Berna *v.* Reed, 02-569 (Per Curiam), affirmed April 10, 2003.
- Burgie *v.* State, CR 02-90 (Per Curiam), affirmed February 20, 2003.
- Burnett *v.* State, CR 02-336 (Per Curiam), Pro Se Motion to Amend Points for Reversal and to Reply to Appellee's Brief and Motion to Correct Motion to Amend Points denied February 20, 2003.
- Campbell *v.* State, CR 01-1181 (Per Curiam), affirmed March 6, 2003.
- Campbell *v.* State, CR 01-1181 (Per Curiam), Petition for Rehearing denied April 10, 2003.
- Charton *v.* State, CR 02-60 (Per Curiam), rebriefing ordered February 13, 2003.
- Chavez *v.* State, CR 02-461 (Per Curiam), appeal dismissed April 10, 2003.
- Conley *v.* State, CR 02-779 (Per Curiam), Pro Se Motion for Extension of Time to File Brief moot March 13, 2003.
- Cook *v.* State, CR 02-140 (Per Curiam), affirmed March 13, 2003.
- Cooper *v.* State, CR 02-933 (Per Curiam), Pro Se Petition for Writ of Certiorari or in the Alternative to Remand for Evidentiary Hearing denied April 17, 2003.
- Crain *v.* State, CR 03-68 (Per Curiam), Pro Se Motion to Dismiss Appeal granted March 20, 2003.

- Curtis *v.* Phillips, CR 02-1390 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 3, 2003.
- Dayberry *v.* State, CR 02-740 (Per Curiam), rebriefing ordered April 17, 2003.
- Dyer *v.* State, CR 02-581 (Per Curiam), affirmed April 10, 2003.
- Eads *v.* State, CR 02-1326 (Per Curiam), Pro Se Motion for Rule on Clerk to Proceed With Appeal of Post-Conviction Order denied March 6, 2003.
- Flowers, Anthony Ray *v.* State, CR 02-1359 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied March 13, 2003.
- Flowers, Clinton *v.* State, CR 02-1127 (Per Curiam), Pro Se Motions for Rule on Clerk to File a Belated Brief, for Copy of Tendered Brief, and for Copy of Motion for Rule on Clerk moot; appeal dismissed March 6, 2003.
- Gaines *v.* State, CR 02-101 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted (final extension); Pro Se Motion for Duplication of Tendered Brief at Public Expense moot February 28, 2003.
- Gipson *v.* State, CR 03-44 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied; Pro Se Motion for Expedited Consideration of Motion moot March 13, 2003.
- Gipson *v.* State, CA CR 01-408 (Per Curiam), Pro Se Motion for Transcript at Public Expense denied April 3, 2003.
- Goins *v.* State, CR 02-972 (Per Curiam), Appellee's Motion to Dismiss Appeal granted; appeal dismissed April 24, 2003.
- Green, Bobby L. *v.* State, CR 02-1243 (Per Curiam), Pro Se Motion for Rule on Clerk to File Belated Motion for Extension of Time moot April 17, 2003.
- Green, Bobby R. *v.* State, CR 02-1203 (Per Curiam), Pro Se Motion for Appointment of New Counsel or in the Alternative for Leave to File a Supplemental Pro Se Brief and Motion to Compel Counsel to Pursue Reconstruction of Record denied April 10, 2003.
- Hammon *v.* State, CR 00-1259 (Per Curiam), affirmed April 3, 2003.

- Hoffman *v.* State, CR 02-683 (Per Curiam), affirmed February 28, 2003.
- Honeycutt *v.* State, CR 02-554 (Per Curiam), affirmed March 6, 2003.
- Houston *v.* State, CR 02-1333 (Per Curiam), affirmed April 24, 2003.
- Jackson, Andre Lamont *v.* State, CR 98-386 (Per Curiam), Pro Se Motion for Photocopy of Transcript at Public Expense denied April 17, 2003.
- Jackson, Michael *v.* State, CR 00-1383 (Per Curiam), Pro Se Motion for Leave to File a Pro Se Belated Petition for Rehearing dismissed April 24, 2003.
- Jennings *v.* State, CR 02-906 (Per Curiam), affirmed April 17, 2003.
- King *v.* State, CR 02-645 (Per Curiam), Pro Se Motion and Amended Motion to File Supplemental Pro Se Brief; motion and amended motion denied February 28, 2003.
- Lamere *v.* State, CR 02-155 (Per Curiam), Pro Se Motion to Supplement Record on Appeal denied February 13, 2003.
- LeMaire *v.* State, CR 02-732 (Per Curiam), affirmed March 20, 2003.
- Magby *v.* State, CR 02-24 (Per Curiam), affirmed March 6, 2003.
- Mayberry *v.* State, CA CR 01-900 (Per Curiam), Pro Se Motion for Photocopy of Transcript and Briefs at Public Expense denied February 13, 2003.
- McDonald *v.* State, CR 02-1317 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted; Petition for Writ of Certiorari and to Transfer Record denied April 10, 2003.
- McGuire *v.* Norris, 02-1222 (Per Curiam), Pro Se Motions for Extension of Time to File Brief and for Appointment of Counsel moot; appeal dismissed February 13, 2003.
- Moore *v.* State, CR 02-983 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted February 13, 2003.
- Nazaretta *v.* State, CR 03-27 (Per Curiam), Pro Se Joint Motion for Rule on Clerk to Proceed with Appeal of Judgment granted April 17, 2003.

- Nichols *v.* Davis, 02-1050 (Per Curiam), Pro Se Motion for Reconsideration of Petition for Writ of Mandamus dismissed February 20, 2003.
- Nichols *v.* Harmon, 02-567 (Per Curiam), rebriefing ordered March 20, 2003.
- Oliver *v.* State, CR 02-823 (Per Curiam), Pro Se Motion to File Belated Reply Brief granted April 3, 2003.
- Pugh *v.* State, CR 02-1288 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief moot; appeal dismissed March 20, 2003.
- Rhodes *v.* Reynolds, CR 02-1126 (Per Curiam), Pro Se Motions for Reinstatement of Mandamus Petition and for Reconsideration of Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed February 13, 2003.
- Sanders *v.* State, CR 02-1116 (Per Curiam), Pro Se Motions for Extension of Time to File Appellant's Brief, for Access to Trial Transcript to Prepare Brief, and to Hold Appeal in Abeyance Pending Access to Transcript granted April 17, 2003.
- Smith *v.* State, CR 01-1283 (Per Curiam), affirmed April 10, 2003.
- Stinnett *v.* State, CR 02-643 (Per Curiam), affirmed March 13, 2003.
- Vasquez *v.* Epley, CR 03-149 (Per Curiam), Pro Se Motion for Rule on Clerk to File Mandamus Petition Without Record dismissed April 24, 2003.
- Walton *v.* Post-Prison Transf. Bd., 02-791 (Per Curiam), Pro Se Motion for Reconsideration of Motion to Proceed *In Forma Pauperis* on Appeal denied February 28, 2003.
- Watts *v.* State, CR 02-1217 (Per Curiam), Pro Se Motion for Duplication of Appellant's Brief at Public Expense moot; appeal dismissed March 20, 2003.
- Whitfield *v.* State, CR 02-1389 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied March 13, 2003.
- Wigley *v.* State, CR 02-1372 (Per Curiam), Pro Se Motion for Rule on Clerk to Proceed with Appeal of Post Conviction

- Order denied; Pro Se Motion for Declaratory Judgment and Petition for Writ of Certiorari moot April 3, 2003.
- Williams *v.* Davis, 03-26 (Per Curiam), Pro Se Petition for Writ of Mandamus moot February 20, 2003.
- Wright *v.* Shirron, CR 03-126 (Per Curiam), Pro Se Petition for Writ of Mandamus moot February 20, 2003.
- Wright, Almer Willis *v.* State, CA CR 01-472 (Per Curiam), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error *Coram Nobis* denied April 24, 2003.
- Wright, Almer Willis *v.* State, CR 03-121 (Per Curiam), Pro Se Petition for Writ of Certiorari moot; Motion to Supplement Record granted April 24, 2003.
- Young *v.* State, CR 02-1260 (Per Curiam), Pro Se Motion for Extension of Time to File Brief moot; appeal dismissed March 6, 2003.

APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ARKANSAS RULES of CIVIL PROCEDURE;
RULES of APPELLATE PROCEDURE—CIVIL;
and ADMINISTRATIVE ORDERS

Supreme Court of Arkansas
Delivered March 13, 2003

PER CURIAM. On December 5, 2002, we published for comment the Arkansas Supreme Court Committee on Civil Practice's proposals for changes in the Arkansas Rules of Civil Procedure, Inferior Court Rules, Rules of Appellate Procedure—Civil, Rules of Appellate Procedure—Criminal, Administrative Orders, and Rules of the Supreme Court and Court of Appeals. We thank everyone who reviewed the proposals and submitted comments.

As a result of certain comments received in response to the Committee's proposals, we refer the proposed changes to the following rules back to the Civil Practice Committee for further consideration: Ark. R. Civ. P. 17(c), Ark. R. App. P.—Civ. 9, Ark. R. App. P.—Crim. 17, and Ark. S. Ct. R. 1-8, 4-3(k), 4-4(f). We will defer action on these proposals, as well as Inferior Ct. R. 9, pending receipt of the Committee's final recommendations. The remaining proposals will be implemented.

We encourage all judges and lawyers to review this *per curiam* order to familiarize themselves with the changes to the rules. We again express our gratitude to the members of our Civil Practice Committee for the Committee's diligence in performing the important task of keeping our civil rules current, efficient, and fair.

We adopt the following amendments to be effective immediately and republish the rules and Reporter's Notes as set out below.

A. Rules of Civil Procedure

1. Subdivision (b) of Rule 3 and the accompanying Reporter's Notes are 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(b)(2)(B).

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

2. Subdivision (d)(4) of Rule 4 and the accompanying Reporter’s Notes are amended as follows:

Rule 4. Summons.

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

(4) Where the defendant is 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.

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 and the accompanying Reporter’s Notes 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, 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 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 delivery 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.

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 and the accompanying Reporter's Notes 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.

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 (a) of Rule 30 and the accompanying Reporter's Notes are 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 attendance 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.

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).

6. The introductory provision of subdivision (b)(2) of Rule 37 and the accompanying Reporter’s Notes are 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 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:

* * *

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.

7. Subdivision (a)(1) of Rule 41 and the accompanying Reporter’s Notes are amended as follows:

Rule 41. Dismissal of actions.

(a) *Voluntary Dismissal; Effect Thereof.*

(1) Subject to the provisions of Rule 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.

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)."

8. Subdivision (f) of Rule 59 and the accompanying Reporter's Notes are amended as follows:

Rule 59. New Trials.

(f) *Motion for New Trial Not Necessary for Appeal.* 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

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).

9. Subdivision (a) of Rule 66 and the accompanying Reporter's Notes are amended as follows:

Rule 66. Receivers.

(a) *Appointment.* 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.

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. Rules of Appellate Procedure—Civil

1. Subdivision (b) of Rule 2 and the accompanying Reporter's Notes are 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.

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 and the accompanying Reporter's Notes are amended as follows:

Rule 3. Appeal — How taken.

(a) *Mode of obtaining review.* The mode of bringing a judgment or order to the 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.

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 and the accompanying Reporter's Notes are amended as follows:

Rule 4. Appeal — When taken.

(d) *When judgment is entered.* A judgment or order is entered within the meaning of this rule when it is filed in accordance with Administrative Order No. 2(b).

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 and the accompanying Reporter's Notes are amended as follows:

Rule 5. Record — Time for filing.

(b) *Extension of time.* (1) If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, 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 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 is deemed to have been disposed of under Rule 4(b)(1), whichever is later.

(3) If the appellant is unable to obtain entry of an order of extension before expiration of the period prescribed by subdivi-

sion (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.

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).

C. 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 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 of the Arkansas Rules of Appellate Procedure—Civil.

IN RE: PUBLICATION of the *ARKANSAS REPORTS*

Supreme Court of Arkansas
Opinion delivered April 17, 2003

PER CURIAM. Since the January term of 1837, the official texts of the opinions of the Supreme Court of Arkansas have been published in the *Arkansas Reports*, which now number 352 volumes. The published decisions of the Arkansas Court of Appeals have been published since the fall term of 1979, first in volumes 266-271 of the *Arkansas Reports*, and subsequently in the *Arkansas Appellate Reports*, which extend at present to 81 volumes.

During recent years, Internet use has had a major impact on the research methods of attorneys and the practice of law in Arkansas. The headnoted official opinion texts from both appellate courts have been posted on the Arkansas Judiciary Home Page

(<http://courts.state.ar.us/>). Judges and attorneys alike have come to rely increasingly on the electronic version of the law reports.

In light of current trends as well as budget constraints, the Supreme Court invites comment from bench and bar on the future of the *Arkansas Reports* and the *Arkansas Appellate Reports*. Many attorneys have informally expressed their attachment to the printed series of *Arkansas Advance Reports* and the hardbound volumes. Others have indicated a preference for the electronic medium. The Supreme Court welcomes discussion of how best to serve the legal profession while keeping faith with the tradition of nearly two centuries of official law reporting.

Comments should be sent by July 1, 2003, to Leslie W. Steen, Clerk; Arkansas Supreme Court; Justice Building, Suite 130; 625 Marshall Street; Little Rock, Arkansas 72201.

Appointments to
Committees

IN RE: SUPREME COURT on MODEL JURY
INSTRUCTIONS—CRIMINAL

Supreme Court of Arkansas
Delivered March 20, 2003

PER CURIAM. Deborah R. Sallings, Esq., of Little Rock, Ellen L. Reif, Esq., of Little Rock, and Melody Piazza, Esq., of Little Rock are hereby reappointed to the Supreme Court Committee on Model Jury Instructions—Criminal for three-year terms, to expire on February 28, 2006. The Court thanks Ms. Sallings, Ms. Reif, and Ms. Piazza for accepting reappointment to this most important Committee.

Professional Conduct Matters

IN RE: Jane Carlson ARANCIBIA,
Arkansas Bar ID # 93047

Supreme Court of Arkansas
Delivered March 20, 2003

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the voluntary surrender (resignation) of the law license of Jane Carlson Arancibia of Richmond, Virginia, to practice law based on a license from the State of Arkansas. The name of Jane Carlson Arancibia shall be removed from the registry of attorneys licensed by the State of Arkansas, and she is barred and enjoined from engaging in the practice of law in this state unless done pursuant to a law license granted by another state or jurisdiction with the authority to authorize the practice of law and done in accordance with the rules of this state.

It is so ordered.

Ceremonial Observances

IN the MATTER of the
RETIREMENT of JUDGE JOHN W. COLE

Supreme Court of Arkansas
Delivered February 28, 2003

PER CURIAM. Judge John Walton Cole served with distinction as judge for the Seventh Judicial District from January 1, 1979, to December 31, 2002. During that period, he witnessed and participated in the transformation of the Arkansas judicial system, serving for many years as circuit judge and latterly as circuit-chancery judge.

Prior to assuming his circuit court duties, Judge Cole distinguished himself as Sheridan municipal judge and prosecuting attorney for the Seventh Judicial District. On the circuit court bench, Judge Cole's principal interest remained the criminal law, and he worked constantly to see justice done in that realm.

Recognizing his accomplishments and applauding his efforts, the Supreme Court extends its most sincere best wishes to Judge John W. Cole on the occasion of his retirement.

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ARKANSAS APPELLATE REPORTS

Volume 81

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
February 12, 2003 — April 23, 2003
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2003



[I]f the republic is the weal of the people, and there is no people if it be not associated by a common acknowledgment of right, and if there is no right where there is no justice, then most certainly it follows that there is no republic where there is no justice.

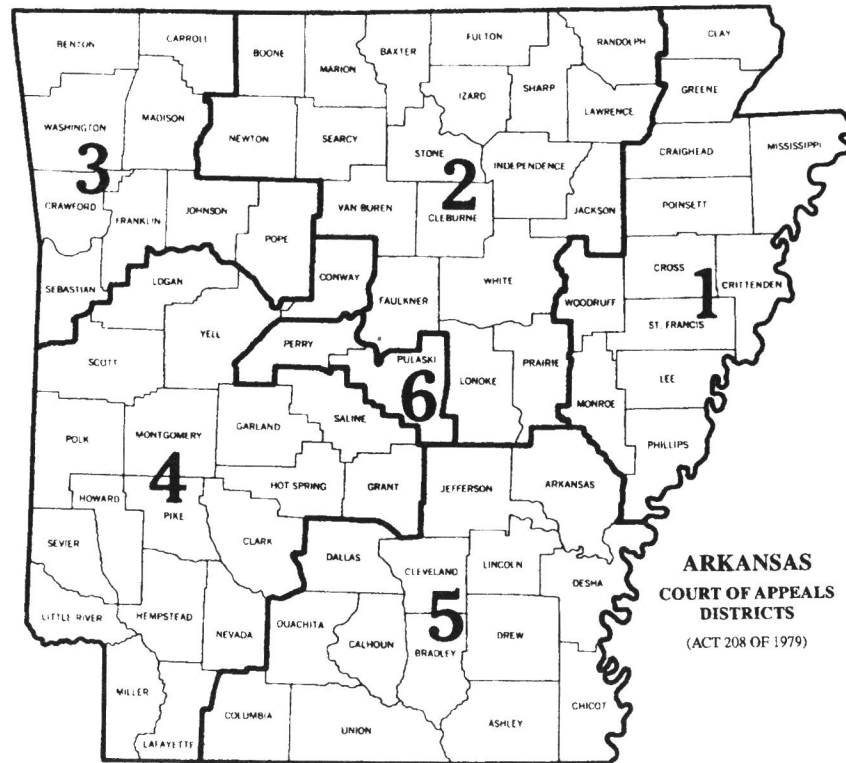
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2003

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**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
(February 12, 2003 — April 23, 2003 inclusive)

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

OFFICERS

MIKE BEEBE	Attorney General
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 Gladwin was appointed January 1, 2003.

⁵ Position 4.

⁶ District 5.

⁷ District 6.

⁸ Position 8.

⁹ Position 9.

¹⁰ Position 10.

¹¹ Position 11.

¹² Position 12.

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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

- 145 Assocs., LTD. *v.* Theatrical Bldg. Corp., CA 02-516 (Stroud, C.J.), affirmed on direct appeal; affirmed on cross-appeal February 19, 2003. Rehearing denied April 2, 2003.
- Abels *v.* Copelin, CA 02-718 (Crabtree, J.), affirmed March 12, 2003.
- Allen *v.* State, CA 02-536 (Gladwin, J.), affirmed February 12, 2003.
- Allstate Ins. Co. *v.* Antoon, CA 02-577 (Griffen, J.), affirmed April 16, 2003.
- Anderson *v.* Anderson, CA 02-420 (Robbins, J.), affirmed February 12, 2003.
- Anderson *v.* State, CA CR 02-582 (Hart, J.), affirmed February 26, 2003. Rehearing denied April 2, 2003.
- Arkansas Appraiser Lic. and Cert. Bd. *v.* Maris, CA 02-855 (Stroud, C.J.), reversed and remanded April 16, 2003.
- Arkansas Health Group *v.* Rochelle, CA 02-728 (Roaf, J.), reversed and remanded March 12, 2003.
- Ashley *v.* Director, E 02-143 (Bird, J.), affirmed April 9, 2003.
- Autozone, Inc. *v.* Biles, CA 02-818 (Crabtree, J.), reversed March 12, 2003. Rehearing denied April 9, 2003.
- Aydelotte *v.* State, CA CR 02-1176 (Griffen, J.), dissenting opinion only April 2, 2003.
- Baird *v.* State, CA CR 02-757 (Vaught, J.), rebriefing ordered March 19, 2003.
- Baptist Health *v.* Cox, CA 02-734 (Neal, J.), affirmed February 19, 2003.
- Barnes *v.* State, CA CR 00-1472 (Neal, J.), affirmed April 23, 2003.
- Bates *v.* Gilbert, CA 02-869 (Hart, J.), affirmed April 16, 2003.
- Berger-Nielsen *v.* Nielsen, CA 02-831 (Neal, J.), affirmed April 23, 2003.
- Biggs *v.* State, CA CR 02-573 (Bird, J.), affirmed February 12, 2003.
- Bishop *v.* ACKR, Inc., CA 02-565 (Hart, J.), affirmed in part; reversed in part and remanded February 26, 2003.
- Bowles *v.* Southwestern Bell Tel., CA 02-357 (Gladwin, J.), affirmed March 5, 2003.
- Bowman *v.* State, CA CR 02-571 (Crabtree, J.), affirmed March 19, 2003.
- Brady *v.* Hall, CA 02-889 (Vaught, J.), affirmed April 23, 2003.

- Brewer *v.* State, CA 02-931 (Neal, J.), affirmed March 19, 2003.
- Briley *v.* State, CA CR 02-324 (Baker, J.), affirmed February 12, 2003.
- Broadston *v.* Parsons, CA 02-598 (Stroud, C.J.), affirmed April 2, 2003.
- Brown, Curtis *v.* State, CA CR 02-424 (Hart, J.), affirmed March 12, 2003.
- Brown, Jerry *v.* State, CA CR 02-279 (Robbins, J.), affirmed April 16, 2003. Rehearing denied May 28, 2003.
- Brown, Rodney *v.* State, CA CR 02-773 (Baker, J.), affirmed March 12, 2003.
- Burke *v.* State, CA CR 02-233 (Vaught, J.), rebriefing ordered February 12, 2003.
- Burt *v.* Arkansas Dep't of Human Servs., CA 02-585 (Pittman, J.), affirmed April 16, 2003.
- Campbell, Floyd *v.* State, CA CR 02-574 (Robbins, J.), affirmed March 12, 2003. Rehearing denied May 28, 2003.
- Campbell, Jeannie *v.* State, CA CR 02-896 (Crabtree, J.), affirmed April 23, 2003.
- Care Manor of Baxter County *v.* Wheeler, CA 02-414 (Bird, J.), affirmed April 16, 2003.
- Carter *v.* State, CA CR 02-533 (Gladwin, J.), reversed and dismissed April 2, 2003.
- C.C. *v.* State, CA 02-466 (Pittman, J.), affirmed March 12, 2003.
- City of Jonesboro *v.* Marshall, CA 02-1112 (Griffen, J.), affirmed April 23, 2003.
- Clark *v.* State, CA CR 02-975 (Per Curiam), Appellee's Motion to Dismiss Appeal stayed; show cause issued March 12, 2003.
- Clifton *v.* State, CA CR 02-686 (Griffen, J.), affirmed April 9, 2003.
- Corbit *v.* State, CA CR 02-750 (Vaught, J.), affirmed February 26, 2003.
- Cory *v.* Keeling, CA 02-440 (Pittman, J.), reversed and remanded April 2, 2003.
- Cousins *v.* State, CA CR 02-586 (Robbins, J.), affirmed March 5, 2003.
- Craig *v.* Coffman, CA 02-894 (Stroud, C.J.), affirmed March 19, 2003. Rehearing denied April 16, 2003.
- Crowder *v.* State, CA CR 01-795 (Vaught, J.), reversed and dismissed April 23, 2003.
- Danner *v.* Paul, CA 02-617 (Crabtree, J.), affirmed March 5, 2003.

- Davies *v.* State, CA CR 02-614 (Griffen, J.), affirmed February 19, 2003.
- Davis *v.* Estate of Davis, CA 02-833 (Bird, J.), affirmed April 16, 2003.
- Davis *v.* Taylor, CA 02-670 (Baker, J.), reversed and remanded April 16, 2003.
- Delta Plastics, Inc. *v.* Director, E 02-115 (Griffen, J.), affirmed February 19, 2003.
- Dodds *v.* Bank of the Ozarks, CA 02-904 (Per Curiam), appeal dismissed April 9, 2003.
- Doolan *v.* Burton, CA 02-801 (Griffen, J.), affirmed April 2, 2003.
- Dowden *v.* State, CA CR 02-913 (Baker, J.), reversed and remanded April 2, 2003.
- Doyle *v.* State, CA CR 01-367 (Robbins, J.), affirmed April 23, 2003.
- Elkins *v.* State, CA CR 02-396 (Crabtree, J.), affirmed February 19, 2003.
- Emmett *v.* State, CA CR 02-510 (Hart, J.), reversed and dismissed March 19, 2003.
- Enkoff *v.* State, CA CR 02-491 (Robbins, J.), affirmed February 26, 2003.
- Escandon *v.* State, CA CR 01-1249 (Pittman, J.), affirmed April 23, 2003.
- Foote *v.* Pine Bluff Sch. Dist., CA 02-806 (Hart, J.), affirmed April 9, 2003.
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- Fredericks *v.* Fredericks, CA 02-891 (Roaf, J.), affirmed April 23, 2003.
- Fulmer *v.* State, CA CR 02-932 (Per Curiam), Appellee's Motion to Dismiss Appeal stayed; show cause issued March 12, 2003.
- Gailey *v.* Allstate Ins. Co., CA 02-184 (Vaught, J.), appeal dismissed February 12, 2003.
- Gann *v.* State, CA CR 02-612 (Stroud, C.J.), affirmed February 12, 2003.
- Garrett *v.* Estate of Miller, CA 02-245 (Griffen, J.), affirmed February 12, 2003.
- Gentry *v.* Kanna, CA 02-620 (Baker, J.), affirmed February 26, 2003.

- Gipson *v.* State, CA CR 02-304 (Baker, J.), affirmed March 5, 2003.
- Gooden *v.* State, CA CR 00-845 (Hart, J.), reversed and dismissed April 2, 2003.
- Hall *v.* Hall, CA 02-102 (Baker, J.), affirmed on direct appeal; affirmed on cross-appeal March 19, 2003.
- Harbor Distrib. Co. *v.* Caldarera, CA 02-1088 (Hart, J.), affirmed on appeal and cross-appeal April 9, 2003.
- Harrison *v.* Arkansas Dep't of Human Servs., CA 02-212 (Neal, J.), affirmed April 9, 2003.
- Hendricks *v.* Read, CA 02-273 (Griffen, J.), affirmed April 16, 2003.
- Hendrickson *v.* State, CA CR 02-814 (Vaught, J.), affirmed April 9, 2003.
- Hershman *v.* Fountain, CA 02-644 (Vaught, J.), affirmed April 9, 2003.
- Herzberg *v.* Pine Bluff Nat'l Bank, CA 02-701 (Gladwin, J.), affirmed April 16, 2003.
- Hickey *v.* State, CA CR 02-520 (Bird, J.), affirmed March 5, 2003.
- Hicks *v.* State, CA CR 02-881 (Roaf, J.), affirmed April 16, 2003.
- Hill *v.* State, CA CR 02-1077 (Hart, J.), affirmed April 16, 2003.
- Hobbs *v.* State, CA CR 02-615 (Neal, J.), affirmed February 12, 2003.
- Howerton *v.* State, CA CR 02-836 (Baker, J.), affirmed April 9, 2003.
- Hubbell *v.* Hubbell, CA 02-590 (Neal, J.), affirmed February 26, 2003.
- Huitt *v.* Arkansas Dep't of Human Servs., CA 02-962 (Stroud, C.J.), affirmed April 16, 2003.
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- J. C. *v.* State, CA 02-430 (Pittman, J.), affirmed March 19, 2003.
- Johnson *v.* Cotton, CA 02-941 (Robbins, J.), affirmed April 9, 2003.
- Johnson *v.* State, CA CR 02-388 (Hart, J.), reversed and dismissed March 19, 2003.
- Justice Furniture, Inc. *v.* Cameron, CA 02-679 (Hart, J.), affirmed March 12, 2003. Rehearing denied May 14, 2003.
- Lainhart *v.* Diamante, CA 02-538 (Hart, J.), affirmed March 5, 2003.

- Langston *v.* Langston, CA 02-928 (Roaf, J.), affirmed February 19, 2003.
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- Lyman *v.* Ivy, CA 02-722 (Neal, J.), affirmed March 12, 2003.
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- Maverick Tube Corp. *v.* Winters, CA 02-716 (Vaught, J.), affirmed March 12, 2003.
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- McKee Foods Corp. *v.* Christie, CA 02-986 (Baker, J.), affirmed March 12, 2003.
- Miller *v.* The Kroger Co., CA 02-480 (Roaf, J.), affirmed in part; reversed and remanded in part February 12, 2003. Rehearing denied May 21, 2003. *See* 82 Ark. App. 281.
- Mills *v.* State, CA CR 02-651 (Stroud, C.J.), affirmed February 26, 2003.
- Minor *v.* State, CA CR 02-672 (Bird, J.), reversed and remanded March 19, 2003.
- Mitchell, Curtis *v.* State, CA CR 02-523 (Gladwin, J.), affirmed April 2, 2003.
- Mitchell, Raymond *v.* State, CA CR 01-600 (Robbins, J.), reversed and remanded March 19, 2003.
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- Moore *v.* State, CA CR 02-724 (Crabtree, J.), affirmed April 9, 2003.
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- Nicholson *v.* Bowers, CA 02-566 (Vaught, J.), affirmed April 9, 2003.
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- Phillips *v.* State, CA CR 02-550 (Robbins, J.), reversed and remanded February 19, 2003.
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- Porch *v.* State, CA CR 02-496 (Gladwin, J.), affirmed February 26, 2003.
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- Radford *v.* State, CA CR 02-770 (Crabtree, J.), reversed and dismissed April 16, 2003.
- Rankins *v.* State, CA CR 02-596 (Bird, J.), affirmed February 19, 2003.
- Ratliff *v.* Ratliff, CA 02-844 (Hart, J.), affirmed in part; reversed and remanded in part on direct appeal; affirmed on cross-appeal April 9, 2003.
- Ray, Shannon *v.* State, CA CR 02-472 (Gladwin, J.), affirmed March 12, 2003.
- Ray, Timothy *v.* State, CA CR 02-317 (Crabtree, J.), affirmed February 12, 2003.
- Reilly *v.* Homes, CA 02-609 (Crabtree, J.), affirmed February 12, 2003. Rehearing denied March 19, 2003.
- Reynolds Termite and Pest Control, Inc. *v.* Brady, CA 02-766 (Gladwin, J.), reversed April 2, 2003.
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- Rice *v.* State, CA CR 02-518 (Pittman, J.), affirmed April 2, 2003.
- Riverdale Dev. Co., LLC *v.* Ruffin Bldg. Sys., Inc., CA 03-244 (Bird, J.), dissenting opinion only April 16, 2003.
- Robbins *v.* Arkansas Dep't of Human Servs., CA 02-690 (Bird, J.), affirmed March 19, 2003.
- Roberts *v.* State, CA 02-742 (Stroud, C.J.), affirmed March 19, 2003.

- Rodriguez *v.* State, CA CR 01-1297 (Vaught, J.), affirmed March 5, 2003.
- Rogers *v.* State, CA CR 02-458 (Stroud, C.J.), affirmed April 16, 2003. Rehearing denied May 21, 2003.
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- Scott *v.* Director, E 02-173 (Neal, J.), affirmed March 5, 2003.
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- Shaban *v.* State, CA CR 02-777 (Stroud, C.J.), affirmed April 9, 2003.
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- TDS Erectors, Inc. *v.* Estes, CA 02-727 (Crabtree, J.), dismissed March 12, 2003.
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- Thomas *v.* Marked Tree Bank, CA 02-642 (Vaught, J.), affirmed March 5, 2003. Rehearing denied April 9, 2003.
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- Turner *v.* State, CA CR 02-797 (Stroud, C.J.), affirmed February 19, 2003.
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- Washington *v.* State, CA CR 02-825 (Crabtree, J.), affirmed April 9, 2003.
- Watkins *v.* State, CA CR 02-667 (Neal, J.), affirmed February 26, 2003.
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OPINION PURSUANT TO RULE 5-2(B),
RULES OF THE ARKANSAS SUPREME COURT
AND COURT OF APPEALS

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- Business records, argument concerning untrustworthiness went to weight of evidence & not to admissibility. *Id.*
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- Contradictions in witness's testimony regarding statement were properly resolved by trial court, court did not err in holding statement admissible as recorded recollection. *Id.*
- Hearsay, admissions against penal interest properly admitted. *Id.*
- No independent grounds for admission of witness's out-of-court statement recounting statements made by third party, those portions of witness's statement improperly admitted by trial court. *Id.*
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- Chain of custody, proof for interchangeable items must be more conclusive than for other evidence. *Id.*
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Federal forfeiture statute similar but for shifting burden of proof, federal statute provides guidance as to when probable cause upheld. *Id.*

State had burden of proof, lack of rebuttal evidence considered pursuant to statute. *Id.*

Main Street properties purchased with proceeds & profits traceable to drug-trafficking activities in violation of Uniform Controlled Substances Act, properties subject to forfeiture under Ark. Code Ann. § 5-64-505(a)(6). *Id.*

State met burden of proof on all three properties, decision forfeiting property affirmed. *Id.*

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- Slip-&-fall cases, proof required to establish violation of duty of ordinary care. *Id.*
- Slip-&-fall cases, fact that person slips & falls does not give rise to inference of negligence. *Id.*
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- Stairs presenting open & obvious danger, similar case from Illinois. *Id.*
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