

THIS BOOK CONTAINS THE OFFICIAL
ARKANSAS REPORTS
Volume 353

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
May 1, 2003 — July 24, 2003
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS
Volume 82

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
April 30, 2003 — June 25, 2003
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
2003

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 917. Cite as 353 Ark. ____ (2003).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 619. Cite as 82 Ark. App. ____ (2003).

*Ius est ars boni et aequi.
[Justice is the art of
the good and the fair].*

— ANONYMOUS LATIN SAYING

Set in Bembo

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

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ARKANSAS
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VOLUME 82

[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 353

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
May 1, 2003 — July 24, 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

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JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(May 1, 2003 — July 24, 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

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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DONALD L. CORBIN, JUSTICE:

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ROBERT L. BROWN, JUSTICE:

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ANNABELLE CLINTON IMBER, JUSTICE:

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RAY THORNTON, JUSTICE:

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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

- Anderson *v.* Hudson, CR 03-366 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 1, 2003.
- Arnold *v.* Proctor, CR 03-309 (Per Curiam), Motion to Hold Respondent in Contempt and for Other Relief denied; Pro Se Petition for Writ of Mandamus moot May 1, 2003.
- Berger *v.* State, CR 02-350 (Per Curiam), Pro Se Motion to Find Trial Court in Contempt and to Reverse Case in Light Thereof denied May 8, 2003.
- Berna *v.* Reed, 02-569 (Per Curiam), Petition for Rehearing denied May 8, 2003.
- Billingsley *v.* State, CR 03-204 (Per Curiam), Pro Se Motion to Stay Appeal Until Record Completed moot; appeal dismissed May 15, 2003.
- Boylard *v.* State, CR 03-333 (Per Curiam), Pro Se Motions for Access to Transcript to Prepare Brief and for Extension of Time to File Brief; appeal dismissed; motions moot June 12, 2003.
- Brady *v.* State, CR 00-929 (Per Curiam), affirmed May 1, 2003.
- Burnett *v.* State, CR 02-336 (Per Curiam), affirmed June 26, 2003.
- Butler *v.* State, CR 01-487 (Per Curiam), Pro Se Motion to Correct Clerical Error in Mandate granted; Motion to Compel Trial Court to Recall Order Denying Postconviction Petition denied May 15, 2003.
- Carroll *v.* State, CR 03-448 (Per Curiam), Pro Se Motion for Rule on Clerk; treated as motion for belated appeal and denied June 26, 2003.
- Chapman *v.* State, CR 03-252 (Per Curiam), Pro Se Motion for Rule on Clerk; treated as motion for belated appeal and denied May 8, 2003.
- Charton *v.* State, CR 02-60 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted May 8, 2003.
- Chatman *v.* State, CR 03-407 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief dismissed May 22, 2003.
- Cloird *v.* Harmon, 03-272 (Per Curiam), Pro Se Motions to Consolidate Record, for Appointment of Counsel, and for Access to Trial Transcript; appeal dismissed; motions moot June 19, 2003.

- Collins *v.* State, CR 98-563 (Per Curiam), Pro Se Motion for Photocopy of Transcript at Public Expense denied May 8, 2003.
- Conley *v.* State, CR 02-779 (Per Curiam), Pro Se Motion to Complete Record granted; Petition for Writ of Certiorari moot May 29, 2003.
- Copeland *v.* State, CR 03-180 (Per Curiam), Pro Se Motion for Belated Appeal of Order moot; Request for Appointment of New Counsel denied May 22, 2003.
- Crain *v.* Williams, CR 03-367 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 1, 2003.
- Cromeans *v.* State, CR 02-1186 (Per Curiam), affirmed May 8, 2003.
- Davis *v.* Yates, CR 03-572 (Per Curiam), Pro Se Petition for Writ of Mandamus moot June 26, 2003.
- Dodson *v.* State, CR 02-1221 (Per Curiam), Pro Se Motion to File a Belated Reply Brief granted; Pro Se Motion for Duplication of Reply Brief at Public Expense denied June 12, 2003.
- Durham *v.* Putman, CR 02-1028 (Per Curiam), Pro Se Amended Petition for Writ of Mandamus moot May 22, 2003.
- Elliott *v.* State, CR 03-142 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied May 15, 2003.
- Faulkens *v.* State, CR 01-907 (Per Curiam), Pro Se Motion for Photocopy of Record at Public Expense denied May 22, 2003.
- Fletcher *v.* Davis, CR 03-510 (Per Curiam), Pro Se Petition for Writ of Mandamus moot June 19, 2003.
- Gaines *v.* State, CR 02-747 (Per Curiam), Pro Se Motion for Reconsideration dismissed May 1, 2003.
- Green *v.* State, CR 02-1203 (Per Curiam), Pro Se Motions to File a Supplemental Pro Se Brief and Motion for Release of Medical Records denied June 12, 2003.
- Harris *v.* State, CR 02-961 (Per Curiam), affirmed June 5, 2003.
- Hodges *v.* Norris, Larry, 02-786 (Per Curiam), Pro Se Motion to Correct Per Curiam Opinion denied May 1, 2003.
- Hutcherson, Willie *v.* State, CR 02-373 (Per Curiam), affirmed June 12, 2003.
- Hutcherson, Willie *v.* State, CR 02-373 (Per Curiam), Petition for Rehearing denied June 26, 2003.
- Johnson *v.* Burnett, CR 03-246 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 1, 2003.

- Johnson *v.* State, CR 03-170 (Per Curiam), Pro Se Motion for Copy of Trial Transcript at Public Expense denied May 29, 2003.
- King *v.* State, CR 02-781 (Per Curiam), Pro Se Motion to File Petition for Review Without Remitting Filing Fee denied June 12, 2003.
- Koontz *v.* State, CR 99-791 (Per Curiam), Pro Se Motion for Copy of Partial Record at Public Expense denied May 8, 2003.
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- Mathis *v.* State, CR 03-236 (Per Curiam), Pro Se Motion for Rule on Clerk to Proceed with Appeal of Postconviction Order denied May 15, 2003.
- McArty *v.* Morgan, 03-293 (Per Curiam), Pro Se Motion to Supplement Record denied June 19, 2003.
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- Mitchell *v.* State, CR 03-69 (Per Curiam), Pro Se Motion for Extension of Time to File Brief moot May 1, 2003.
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- Nazaretta *v.* State, CR 03-27 (Per Curiam), Pro Se Motions for Appointment of Counsel moot June 5, 2003.
- Nichols *v.* Harmon, 02-567 (Per Curiam), Pro Se Motion for Extension of Time to File Substituted Appellant's Brief granted; Motion for Appointment of Counsel denied May 29, 2003.
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- Pate *v.* State, CR 02-451 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted; Motion to Stay Appeal and for Writ of Certiorari denied June 5, 2003.
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- Risher *v.* State, CR 03-311 (Per Curiam), Pro Se Motion to Rule on Court (sic) and for Appointment of Counsel, Motion to Order Trial Court to Produce Record and for Appointment of Counsel, Motion for Access to Prison Records and Motion for Oral Argument denied; Motion to File Handwritten Pleadings moot; Second Motion to File Handwritten Pleadings and for Other Relief moot in part and denied in part May 29, 2003.
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APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN RE: RULES of the SUPREME COURT of ARKANSAS
and COURT of APPEALS of ARKANSAS 4-1 and 4-2

Supreme Court of Arkansas
Delivered May 29, 2003

PER CURIAM. It has come to our attention that our recent *per curiam* handed down on May 8, 2003, regarding page numbering in briefs is causing difficulty for members of the bar. The intention of the *per curiam* was to ensure that the Addendum contains sequential page numbers beginning with page one, and not merely page numbers from the record.

To correct this situation, the eighth sentence in Arkansas Supreme Court Rule 4-1(a) is amended to read: "The abstract, statement of the case, argument, and addendum shall each be numbered sequentially from page one, and both sides of the page may be used." Likewise, the third 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." The practice of numbering the table of contents, informational and jurisdictional statement, points on appeal, and table of authorities using lower-case roman numerals is allowed to continue.

IN RE: RULES GOVERNING ADMISSION
to the BAR of ARKANSAS

Supreme Court of Arkansas
Opinion delivered June 12, 2003

PER CURIAM. Prior to July 1, 1985, there was an admission on motion or reciprocity provision in the Rules Governing Admission to the Bar. Attorneys who were licensed in other jurisdictions, and who could establish a number of years of experience as well as good moral character and mental and emo-

tional stability could be admitted to the Bar of Arkansas without examination. The rule required residency in Arkansas.

On July 1, 1985, by per curiam order, this Court eliminated the admission on motion or reciprocity rule. (Per curiam order of July 1, 1985, 692 S.W.2d 233). We cited a decision of the United States Supreme Court, *New Hampshire v. Piper*, 105 S.Ct. 1272 (1985) which held residency requirements for reciprocity to be in contravention of the Privileges and Immunities Clause of the United States Constitution.

The Arkansas State Board of Law Examiners (Board) has presented a recommendation that we consider the reenactment of an admission on motion or reciprocity rule. In support of their recommendation, the Board provides the following information.

Thirty-three states presently have an admission on motion provision. (See the attached chart.¹) Three of those states have recently adopted new admission on motion rules (Georgia, Utah, and Vermont). The significance of state boundaries in determining admission requirements is diminishing. Practitioners are avoiding state licensure by: practicing on the Internet; advertising through regional or national television; or, retaining an Arkansas attorney solely to have a “presence” in the State while the litigation decisions take place in another jurisdiction. The Board suggests that admission on motion would encourage such practitioners to become admitted in Arkansas, thereby subjecting themselves to the disciplinary authority of this jurisdiction.

The American Bar Association, through its Commission on Multi-Jurisdictional Practice, continues to deliberate the numerous issues raised by multi-jurisdictional practice. A corollary group of the American Bar Association, the Section of Legal Education and Admissions to the Bar, has developed a proposal to adopt a “model rule” on admission on motion.

The Board also notes that an often overlooked aspect of this discussion relates to the difficulty Arkansas lawyers have in securing licensure by motion in other jurisdictions. This problem arises because Arkansas will not allow admission on motion, hence,

¹ Reporter's note: The chart is unavailable in electronic format; a paper copy is available from the Arkansas Supreme Court Clerk's office.

some states to which an Arkansas attorney might seek to emigrate will not extend admission on motion provisions to that attorney.

We seek comment from the bench and the bar as to the advisability of reinstating an admission on motion rule. A proposed Admission on Motion Rule suggested by the Board accompanies this order. Written comments should be sent to Mr. Leslie Steen, Clerk of the Court. We will defer further action for a period of 90 days in which to receive the views of the bench and the bar.

PROPOSED MODEL MOTION RULE

1. An applicant who meets the requirements of (a) through (i) of this rule may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

- (a) have been admitted to practice law in another state, territory, or the District of Columbia;
- (b) hold a first professional degree in law (J.D. or L.L.B.) from a law school approved by the American Bar Association at the time the degree was conferred;
- (c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;
- (d) establish that the state in which the applicant has his or her principal place of business for the practice of law would allow attorneys from this state a similar accommodation as set forth in this rule;
- (e) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (f) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;
- (g) establish that the applicant possesses the character and fitness to practice law in this jurisdiction as set out in Rule XIII of the Rules Governing Admission to the Bar;

- (h) designate the Clerk of this Court for service of process; and,
 - (i) pay a fee as may be set by this Court.
2. For the purposes of this rule, the “active practice of law” shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed in advance of bar admission in the jurisdiction to which application is being made, be accepted toward the durational requirement:
- (a) Representation of one or more clients in the private practice of law;
 - (b) Service as a lawyer with a local, state, or federal agency, including military service;
 - (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
 - (d) Service as a judge in a federal, state, or local court of record;
 - (e) Service as a judicial law clerk; or,
 - (f) Service as corporate counsel.
3. For the purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.
4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

Proposed Model Rule

IN RE: ARKANSAS COURT AUTOMATION PROJECT
and ADMINISTRATIVE ORDER NUMBER 2

Supreme Court of Arkansas
Delivered July 3, 2003

PER CURIAM. The Arkansas Court Automation Project is a project under the auspices of the Administrative Office of the Courts and the Arkansas Supreme Court Committee on Automation with an ultimate goal of connecting all the Circuit Courts and District Courts to a statewide automated court system. The first phase of the project includes a pilot program in three circuit courts, Faulkner County Circuit Court, Sebastian County Circuit Court, and Hot Spring County Circuit Court, and two district courts, Conway District Court and Malvern District Court.

The automated program to be used in these pilot courts is not compatible with the case-numbering system set out in Administrative Order Number 2(a). At such time as the pilot program goes on line, as authorized and directed by the Administrative Office of the Courts, these pilot courts shall be exempted from the case-numbering and docketing requirements specified in Administrative Order Number 2, and they shall use the case-numbering and docketing system which the Administrative Office of the Courts directs.

District Courts participating in the pilot program shall likewise follow the directives of the Administrative Office of the Courts with regard to the numbering and docketing of cases.

When additional courts are added to the automated system, they shall comply with this *per curiam* order. At an appropriate time, Administrative Order Number 2 will be amended to comprehensively implement the automated court system.

IN RE: ADMINISTRATIVE ORDER NUMBER 14—
ADMINISTRATIVE PLANS

Supreme Court of Arkansas
Delivered July 3, 2003

PER CURIAM. In our *per curiam* order dated January 30, 2003, *In re: Administrative Order Number 14 — Administration of Circuit Courts*, we directed that administrative plans be submitted by the various judicial circuits¹ by July 1, 2003. The plans have been submitted, and the Court has reviewed them. We announce the following actions with respect to the plans.

(1) The administrative plans submitted by the following judicial circuits are approved: 1st, 4th, 8th-N, 8th-S, 11th-W, 14th, 15th, 16th, 17th, 18th-E, 19th-W, 20th, 22nd, and 23rd.

(2) The plan adopted by the majority of the circuit judges and submitted by the administrative judge in the 10th judicial circuit is approved.

(3) The administrative plans submitted by the 7th, 9th-W, 13th, and 21st judicial circuits are approved conditioned upon these plans being modified to provide for the computerized random assignment of cases. See Administrative Order Number 14 (3)(a)(3).

(4) Administrative Order Number 14 (3)(a)(2) provides that “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.” The plans submitted by the 2nd, 5th, 6th, and 12th judicial circuits provide for particular judges to exclusively hear domestic relations and probate cases, but the plans fail to set out the extraordinary reasons for such assignments. Accordingly, these plans are remanded, and the above-listed circuits are directed to furnish the Court with the required explanation or to submit a modified plan.

¹ It is not necessary for the one-judge judicial circuits, 9th-E, 11th-E, 18th-W, and 19th-E, to submit plans.

(5) The plan submitted by the 3rd judicial circuit provides that one judge “will primarily hear equity cases.” We have made clear that cases cannot be assigned based upon a law/equity dichotomy; consequently, this plan is remanded with directions to correct this flaw.

The plans submitted by the 1st judicial circuit, and the 6th judicial circuit as it relates to case assignments in Perry County, have a troubling feature. Each provides for the open assignment of certain cases as opposed to the assignment of each case to a particular judge. We understand the reasons for this practice, but these judicial circuits should work toward assigning each case to a judge. In the future, plans may not be approved with this open assignment feature.

Finally, we announce that it is the Court’s belief that rotation of judges in those instances where judges are exclusively assigned to criminal or juvenile cases may be desirable. The possibility of “burn-out,” as well as a desire to diversify, are factors worthy of consideration. Administrative judges and all circuit judges should be cognizant of this consideration as plans are prepared in the future. Hopefully, the wishes of colleagues will be addressed, but the Court will consider the possible need for rotation in specific instances, as well as any necessary amendment to Administrative Order Number 14.

Pursuant to Administrative Order Number 14, approved plans shall be effective January 1, 2004.

CORBIN, J., not participating.

GLAZE and IMBER, JJ., dissent.

TOM GLAZE, Justice, dissenting. This court adopted Administrative Order Number 14 wherein this court, in discussing case assignments provided that the assignment of cases *shall*, among other things, assume “random selection” of unrelated cases. The court defined “random selection” to mean that cases assigned to a particular subject-matter division shall be randomly *distributed among the judges assigned to hear those types of cases*. The judicial districts except the First District and Sixth District (Perry County) submitted administrative plans that comply with the case-

assignment procedure directed by Order 14. There is no reason these two districts should be given special treatment in Order 14.

This court adopted the foregoing case-assignment requirement so the assigned judge would be the one responsible and accountable for whatever happens in that case. Of course, if the assigned judge has a conflict of any kind making him or her unable to conduct a hearing or trial, he or she can obtain an exchange agreement with another judge to hear or try the matter. This procedure assures there is always one judge that is particularly responsible for the life and disposition of the assigned case.

The majority court is not only ignoring its own Order 14, but it also applies its Order unfairly in favor of Districts One and Six. There is absolutely no reason for allowing this disparate treatment of judicial districts. Cases within a division are to be assigned to judges. In this respect, the *per curiam* handed down today is going to create problems in our judicial system that it does not need. If I were a judge in all the other judicial districts besides the First and Sixth, I would not be too happy with this court's diverging from its order.

For these reasons, I dissent from that part of the *per curiam*.

IMBER, J., joins.

Appointments to Committees

IN RE: CLIENT SECURITY FUND

Supreme Court of Arkansas
Delivered May 29, 2003

PER CURIAM. The Honorable Benjamin C. McMinn, of Little Rock, is hereby reappointed to the Client Security Fund Committee for a five-year term to expire July 2008.

The Court extends its thanks to Mr. McMinn for accepting this reappointment to this most important committee.

IN RE: BOARD of CERTIFIED
COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered June 9, 2003

PER CURIAM. Ms. Maria Lafferty, Certified Court Reporter, is hereby appointed to serve as the Executive Secretary to the Board of Certified Court Reporter Examiners, effective immediately. The Court thanks Ms. Lafferty for accepting appointment to this most important position.

IN RE: BOARD of CERTIFIED
COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered June 12, 2003

PER CURIAM. The Honorable Michael Fitzhugh, Circuit Judge, 12th Judicial Circuit, is reappointed to the Board of Certified Court Reporter Examiners for a three-year term to expire on July 31, 2006. The Court thanks Judge Fitzhugh for accepting reappointment to the Board.

The Honorable Mackie Pierce, Circuit Judge, Sixth Judicial Circuit, and Ms. Alice Cook of Cabot, a certified court reporter, are appointed to the Board of Certified Court Reporter Examiners. Each term is for three years and expires on July 31, 2006. We thank Judge Pierce and Ms. Cook for their willingness to serve on this important Board.

The Court expresses its gratitude to the Honorable Robert McCorkindale of Harrison, and Ms. Joyce Helms of Arkadelphia, whose terms have expired, for their years of service to the Board.

IN RE: COMMITTEE on
MODEL JURY INSTRUCTIONS—CRIMINAL

Supreme Court of Arkansas
Delivered June 19, 2003

PER CURIAM. The Honorable Gordon Webb, Circuit Judge, Fourteenth Judicial Circuit, is appointed to the Supreme Court Committee on Model Jury Instructions—Criminal for a three-year term to expire on February 28, 2006. We

thank Judge Webb for his willingness to serve on this important committee.

We express our gratitude to Judge Henry Wilkinson, Circuit Judge Retired, whose term has expired, for his years of valuable service to the Committee.

IN RE: COMMITTEE on
UNAUTHORIZED PRACTICE of LAW

Supreme Court of Arkansas
Delivered July 3, 2003

PER CURIAM. Hal Kemp, Esq., of Little Rock, Second Congressional District, is reappointed to the Supreme Court Committee on the Unauthorized Practice of Law for a three-year term to expire on May 31, 2006. David L. Beatty, Esq., of Lewisville, Fourth Congressional District, and Ms. Penny Rea of Little Rock, At-Large Position, are appointed to the Committee for three-year terms to expire in May 31, 2006.

The Court expresses thanks to Mr. Kemp for accepting reappointment and to Ms. Rea and Mr. Beatty for accepting appointment to this important committee.

The Court expresses its appreciation to LeAnne Daniel of Arkadelphia and Sharon Prasse of Little Rock, whose terms have expired, for their service to the Committee.

Professional Conduct Matters

IN RE: Kenneth George FUCHS;
Arkansas Bar ID # 81063

03-633

Supreme Court of Arkansas
Opinion delivered June 12, 2003

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the law license of Kenneth George Fuchs of Conway, Arkansas, to practice law in the State of Arkansas. Mr. Fuchs's name shall be removed from the registry of licensed attorneys and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

CORBIN, J., not participating.

Ceremonial Observances

ARKANSAS ADVANCE REPORTS

IN RE: MAUDE PARKMAN

Supreme Court of Arkansas

Delivered June 3, 2003

PER CURIAM. The recent untimely death of Maude Parkman signals the end of a chapter in the annals of court reporting in this state. A former employee of the Arkansas Supreme Court and a court reporter with the Pulaski County Chancery Court, Ms. Parkman made an enduring contribution to the state's legal system as Executive Secretary to the Board of Certified Court Reporter Examiners. She was, indeed, the Board's only Executive Secretary since its inception.

Members of the legal community will remember Ms. Parkman as a witty, candid, and intelligent woman. The Arkansas Supreme Court wishes to pay tribute to her indomitable spirit and her tenacious zeal for public service. Maude Parkman's unique qualities will be missed.

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- Motion for rule on clerk, denied. *Rogers v. State*, 359
- Verbatim record required in accord with Administrative Order No. 4, trial court's failure to make verbatim record of in-chambers conferences on directed-verdict motion was error. *Robinson v. State*, 372
- Record must be made pursuant to Admin. Order No. 4, waiver not implied by State's failure to object. *Id.*
- Administrative Order No. 4 to hereafter be strictly construed, bench & bar put on notice. *Id.*
- Contemporaneous-objection rule, *Wicks* exceptions. *Anderson v. State*, 384
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- Assignment of error made for first time on appeal, argument not considered. *Hoover v. State*, 424
- Appellant not sentenced to death, appellant lacked standing to raise error that had to do with death penalty. *Id.*
- Order of extension, supreme court expects compliance with Ark. R. App. P.—Civ. 5(b). *Coggins v. Coggins*, 431
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- Expectation of privacy, search implicates Fourth Amendment when reasonable expectation of privacy is infringed. *Id.*
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- Sovereign immunity, suit against State Highway Department is suit against State. *Id.*
- Sovereign immunity, action that will tap into State's treasury for damages barred by doctrine. *Id.*
- Sovereign immunity, suit barred by doctrine where appellant was seeking to control action of State. *Id.*
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Special damages, sufficient evidence to support finding by jury that appellant bank accepted contract knowing that appellee would reasonably expect appellant would make good loss incurred by reason of special circumstances in event of failure to perform. *Id.*

Special damages, whether notice of special circumstances was given to breaching party is question of fact. *Id.*

Special damages, sufficient evidence for jury to decide that appellant bank tacitly agreed to pay special damages when it accepted contract under circumstances of case. *Id.*

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Punitive damages, jury's verdict did not offend federal due process. *Id.*

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Instruction, capital-murder instruction harmless where jury rejected charge. *Id.*

Instruction, lesser-included-offense instruction appropriate when supported by even slightest evidence. *Id.*

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Common-law marriage, not recognized by Alberta statutory law at time of decedent's death. *Id.*

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Doctrine of *respondeat superior*, vicarious liability. *Jackson v. Ivory*, 847

Genuine issue of material fact existed as to whether appellee Ivory was vicariously liable under theory of *respondeat superior* for appellee Mullen's alleged negligence, order granting summary judgment in favor of first appellee under theory of *respondeat superior* reversed. *Id.*

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Motions to suppress, standard of review. *Id.*

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Directed verdict, defendant must specifically address elements of lesser-included offense on which he wishes to challenge State's proof. *Grillot v. State*, 294

Directed verdict, defendant must address lesser-included offenses by name or by elements. *Id.*

Directed verdict, appellant failed to address lesser-included offense by name or by elements. *Id.*

Directed verdict, defendant must anticipate instruction of lesser-included offenses. *Id.*

Directed verdict, belief that jury instruction on lesser-included offense should not be submitted does not obviate defendant's duty to make specific motion. *Id.*

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Directed verdict, trial court's denial affirmed where sufficient evidence linked appellant to contraband. *Id.*

Motion to suppress, appellate review. *Id.*

Denial of motion to suppress, standard of review. *Cummings v. State*, 618

Affidavit clearly established requisite factual basis to justify nighttime search, motion to suppress properly denied. *Id.*

Motion to dismiss, appellate review. *Travelers Cas. & Sur. Co. v. Arkansas State Highway Comm'n*, 721

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Directed verdict, trial court's evaluation. *Id.*

New trial & directed verdict, fine distinction between. *Id.*

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Section of Detachment-Annexation Statute subject to two or more reasonable constructions, statute ambiguous. *Id.*

Detachment-Annexation Statutes, stated purpose. *Id.*

Sewer & water services were provided & available to appellee's property, general intent of already met. *Id.*

Legislature, by enactment of Detachment-Annexation Statutes, did not intend to eliminate regional organizations or improvement districts as means by which municipality could provide services to its citizens, circuit court erred in its interpretation of Ark. Code Ann. § 14-40-2001. *Id.*

Appellant city authorized creation of sewer-improvement district, appellee's property served by sewer line made available by appellant. *Id.*

Interpretation posited by appellees would have yielded absurd results, interpretation not accepted. *Id.*

Circuit court incorrectly interpreted Detachment-Annexation Statutes, Ark. Code Ann. § 14-40-2001 *et seq.*, circuit court's November 26, 2001 order reversed & case remanded. *Id.*

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Medical injury, plaintiff must prove applicable standard of care. *Wal-Mart Stores, Inc. v. Tucker*, 730

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Custody, deference to circuit judge greater. *Id.*

Custody, conclusion regarding change of circumstances. *Id.*

Custody, best interest of child is primary consideration. *Id.*
Custody, when award may be modified. *Id.*
Custody, more stringent standards imposed for modification. *Id.*
Custody, no changed conditions warranting modification. *Id.*
Custody, appellee's awareness of superior financial situation & respective parties' educational background at time of custody agreement precluded finding of material change in circumstances. *Id.*
Custody, no proof of sexual relationship between appellant & female friend who had moved into home. *Id.*
Custody, change of custody premised on appearances & potential for future teasing not warranted. *Id.*
Custody, factual finding of harm rather than presumptions of future harm. *Id.*
Custody, order changing custody reversed & remanded where great weight of evidence showed children were well-adjusted & not affected by appellant's living arrangement. *Id.*
Relocation of primary custodian & children alone not material change in circumstance, presumption favoring relocation of custodial parent & child established. *Hollandsworth v. Knyzewski*, 470
Relocation of custodial parent & child, factors to be considered. *Id.*
Relocation of custodial parent & child, appellee noncustodial parent could have adequate visitation. *Id.*
Relocation of custodial parent & child, no testimony that move would be detrimental to children. *Id.*
Relocation of custodial parent & child, reason valid. *Id.*
Relocation of custodial parent & child, appellee failed to establish material change in circumstance & to meet burden of rebutting presumption in favor of relocation. *Id.*
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Letters demanding indemnification, did not constitute complaint. *Id.*
Relation-back doctrine, when it should not be allowed. *Id.*
Relation back not allowed, no cause of action against appellant was stated until July 12, 2001. *Id.*
Failure to plead statute of repose as affirmative defense, not bar to raising issue on appeal. *Id.*

PROBATE:

Standard of review, *de novo* & clearly erroneous. *Craig v. Carrigo*, 761

PROPERTY:

Money, intangible personal property. *Weiss v. McFadden*, 868

REPLEVIN:

Remedy at common law, statutes under which appellee proceeded did not exist until 1973 & refer only to court deciding whether order of delivery should issue. *Drug Task Force v. Hoffman*, 182

Civil proceeding for forfeiture never initiated, appellee entitled to return of money. *Id.*

SEARCH & SEIZURE:

"Fruit of poisonous tree," causal connection required. *Walley v. State*, 586

"Fruit of poisonous tree," evidence seized could not have been fruit of poisonous tree because no search was conducted based on littering arrest warrant. *Id.*

Probable cause, liberal rules apply in determination. *Id.*

Probable cause, distinctive odor of methamphetamine lab was valid contributing factor in establishing. *Id.*

Probable cause, conclusory-sounding statement does not defeat if otherwise supported by facts. *Id.*

Probable cause, search warrant supported by more than mere conclusory statements. *Id.*

Probable cause, no proof second-hand rumor played significant role in establishment of. *Id.*

Search warrant, minor discrepancy in physical description of property not normally fatal. *Id.*

Search warrant, technical error minimized when affiant is also searching officer. *Id.*

Search warrant, highly technical attacks not favored. *Id.*

Search warrant, circuit court did not err in denying appellant's motion to suppress based on partially incorrect address listed in warrant. *Id.*

Nighttime search, exigent circumstances must exist. *Cummings v. State*, 618

Nighttime search warrant, factual basis required. *Id.*

Search warrant issued in violation of rule, when motion to suppress granted. *Id.*

Issuance of nighttime warrant, when error. *Id.*

Issuance of nighttime search warrant, when invalidated. *Id.*

Issuance of nighttime search warrant, when upheld. *Id.*

Nighttime search warrant, affidavit gave reasonable cause for officers to believe that specified items of search would be disposed of or destroyed. *Id.*

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ARKANSAS APPELLATE REPORTS

Volume 82

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
April 30, 2003 — June 25, 2003
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

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STATE OF ARKANSAS
2003



Fiat justitia ruat coelum.
[Let justice be done though
heaven should fall.]

— ATTRIB. CALPURNIUS PISO CAESONINUS
(OBIT 43 B.C.)

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OF ARKANSAS
DURING THE PERIOD COVERED
BY THIS VOLUME
(April 30, 2003 — June 25, 2003 inclusive)

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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
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- ¹ Position 7.
² District 1.
³ District 2.
⁴ District 3.
⁵ Position 4.
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DURING THE PERIOD COVERED BY THIS VOLUME
AND DESIGNATED FOR PUBLICATION

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PER CURIAM:

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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 appeals 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 publication 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

- Adams Excav. *v.* Adams, CA 02-1068 (Roaf, J.), affirmed June 4, 2003.
- Alcoholic Bev. Control Div. *v.* Bethell, CA 02-987 (Crabtree, J.), reversed and remanded on direct appeal; reversed on cross-appeal May 14, 2003.
- Aldridge *v.* State, CA CR 02-971 (Gladwin, J.), rebriefing ordered June 25, 2003.
- Anderson *v.* Roller, CA 02-851 (Vaught, J.), appeal dismissed May 14, 2003.
- Anthony *v.* State, CA CR 02-505 (Vaught, J.), affirmed May 14, 2003.
- Arkansas Dep't of Human Servs. *v.* Jackson, CA 02-802 (Neal, J.), affirmed May 14, 2003.
- Baird *v.* State, CA CR 02-1251 (Bird, J.), affirmed June 4, 2003.
- Baptist Health *v.* Mee, CA 03-75 (Neal, J.), affirmed June 18, 2003.
- Barnes *v.* State, CA CR 02-1097 (Neal, J.), affirmed June 4, 2003.
- Barron *v.* State, CA CR 02-908 (Baker, J.), affirmed June 25, 2003.
- Bower *v.* Bruce, CA 02-1285 (Bird, J.), affirmed in part; reversed in part June 4, 2003.
- Bradley *v.* Conagra Foods, CA 02-1183 (Pittman, J.), affirmed May 14, 2003.
- Bramlett *v.* Brumble, CA 02-1017 (Vaught, J.), affirmed; remanded in part June 4, 2003.
- Britman *v.* State, CA CR 02-1110 (Neal, J.), rebriefing ordered June 25, 2003.
- Broadus *v.* State, CA CR 02-1006 (Baker, J.), reversed and dismissed May 14, 2003.
- Brown, Eric *v.* State, CA CR 02-502 (Pittman, J.), affirmed June 25, 2003.
- Brown, Kimberly Ann *v.* State, CA CR 02-871 (Crabtree, J.), affirmed; Motion to be Relieved granted June 25, 2003.
- Brown, Tyrone *v.* State, CA CR 02-1153 (Griffen, J.), affirmed June 4, 2003. Rehearing denied August 20, 2003.
- Bryans *v.* Arkansas Dep't of Human Servs., CA 02-1114 (Baker, J.), affirmed June 4, 2003.
- Bryant *v.* Stansell, CA 02-854 (Hart, J.), reversed and remanded May 7, 2003.
- Burkett *v.* Burkett, CA 02-587 (Griffen, J.), affirmed April 30, 2003.

- Burmeister *v.* Richman, CA 02-899 (Stroud, C.J.), affirmed May 21, 2003.
- Campbell *v.* Huddle, CA 02-1113 (Robbins, J.), affirmed May 14, 2003.
- Cantrell *v.* State, CA CR 02-1223 (Bird, J.), affirmed June 11, 2003.
- Capitol Lakes Estates, LLC *v.* Oasis Renewal Center, Inc., CA 02-1065 (Griffen, J.), appeal dismissed May 7, 2003.
- Christian *v.* Trimble, CA 02-1151 (Roaf, J.), reversed and remanded June 18, 2003.
- Chrysler Fin. Co. *v.* East, CA 02-1230 (Stroud, C.J.), reversed and remanded May 28, 2003.
- City of Van Buren *v.* Fitzer, CA 02-1323 (Hart, J.), affirmed May 28, 2003.
- Clampitt *v.* Starving Students, Inc., CA 02-1072 (Hart, J.), affirmed June 4, 2003. Rehearing denied July 30, 2003.
- Clark *v.* State, CA CR 02-975 (Per Curiam), contempt order issued April 30, 2003.
- Cloverleaf Express *v.* Fouts, CA 02-1187 (Gladwin, J.), dismissed May 14, 2003.
- Cockrell *v.* Dillard, CA 03-209 (Griffen, J.), affirmed June 25, 2003.
- Cockrell *v.* Union Planters Bank, CA 02-1363 (Per Curiam), dismissed June 11, 2003.
- Conic *v.* State, CA CR 02-1120 (Robbins, J.), affirmed May 21, 2003.
- Consumer Util. Rate Advocacy Div. *v.* Arkansas Pub. Serv. Comm'n, CA 03-222 (Per Curiam), Appellant's Motion to Review Portions of the Record Under Seal granted April 30, 2003.
- Cullum *v.* Jim Harris & Assocs., CA 02-1146 (Bird, J.), affirmed May 14, 2003.
- Cummins *v.* Berry, CA 02-676 (Bird, J.), affirmed May 14, 2003.
- Davis *v.* State, CA CR 01-1389 (Vaught, J.), affirmed May 7, 2003.
- Dayberry *v.* State, CA CR 02-301 (Crabtree, J.), reversed and remanded May 21, 2003.
- Dependable Air Cond. Co. *v.* Ford, CA 02-892 (Baker, J.), affirmed May 7, 2003.
- DePriest *v.* State, CA CR 02-763 (Griffen, J.), affirmed June 25, 2003.
- Ducks & Ducks, Inc. *v.* Drainage Dist. #7 of Poinsett County, CA 02-1375 (Roaf, J.), reversed and remanded June 18, 2003.

- Dunn *v.* University of Ark., CA 02-1124 (Pittman, J.), affirmed April 30, 2003.
- Eash *v.* FM Corp., CA 02-1267 (Vaught, J.), affirmed May 28, 2003.
- Ehlebracht *v.* Dailey, CA 02-827 (Griffen, J.), affirmed April 30, 2003. Rehearing denied June 4, 2003.
- Estate of Coleman *v.* LTB Land and Timber Co., CA 02-1007 (Baker, J.), dismissed May 28, 2003.
- Foley *v.* State, CA CR 02-1346 (Bird, J.), affirmed May 28, 2003.
- Folkes *v.* State, CA CR 02-47 (Gladwin, J.), reversed and dismissed April 30, 2003.
- Ford *v.* State, CA 02-1256 (Gladwin, J.), reversed and dismissed May 7, 2003.
- Fowler *v.* Springer, CA 02-593 (Baker, J.), affirmed April 30, 2003.
- Fulmer *v.* State, CA CR 02-932 (Per Curiam), contempt order issued April 30, 2003.
- Garner *v.* Beaver Water Dist., CA 03-641 (Per Curiam), Appellants' Motion for Stay and Approval of Supersedeas Bond remanded June 25, 2003.
- Glasgow *v.* State, CA CR 02-911 (Robbins, J.), affirmed May 7, 2003.
- Goforth *v.* State, CA CR 02-1035 (Gladwin, J.), affirmed May 21, 2003.
- Golf Cars of Arkansas, Inc. *v.* Union Stand. Ins. Co., CA 02-1135 (Vaught, J.), reversed and remanded May 28, 2003.
- Graves *v.* State, CA CR 01-343 (Pittman, J.), affirmed April 30, 2003.
- Gray *v.* Koons, CA 02-1335 (Vaught, J.), appeal dismissed June 18, 2003.
- Hampton *v.* Arkansas Dep't of Human Servs., CA 02-1105 (Crabtree, J.), affirmed June 4, 2003.
- Hampton *v.* Hampton, CA 02-926 (Robbins, J.), reversed June 18, 2003.
- Hanna *v.* Robinson, CA 02-1157 (Per Curiam), dismissed June 4, 2003.
- Harris *v.* Director, E 02-312 (Roaf, J.), affirmed June 18, 2003.
- Hatch *v.* Smith, CA 02-1158 (Pittman, J.), dismissed May 28, 2003. Rehearing denied July 30, 2003.
- Hazen *v.* Federal Exp. Corp., CA 03-82 (Vaught, J.), affirmed June 18, 2003.
- Hemund *v.* Tigue, CA 02-980 (Stroud, C.J.), affirmed in part; remanded in part June 11, 2003.

- Hite *v.* State, CA CR 02-1125 (Hart, J.), reversed and dismissed June 11, 2003.
- Holt Bonding Co. *v.* State, CA 02-1239 (Neal, J.), reversed June 18, 2003.
- Hughes, Ahki *v.* State, CA 02-1319 (Gladwin, J.), affirmed May 7, 2003.
- Hughes, Carroll L. *v.* State, CA CR 02-816 (Pittman, J.), affirmed June 18, 2003.
- Hunt *v.* State, CA CR 02-1204 (Robbins, J.), affirmed June 11, 2003.
- Hunter *v.* State, CA CR 02-1036 (Bird, J.), rebriefing ordered June 25, 2003.
- Irby *v.* Irby, CA 02-560 (Gladwin, J.), affirmed in part; affirmed as modified in part; reversed and remanded in part May 14, 2003.
- Jackson *v.* State, CA CR 02-1190 (Gladwin, J.), affirmed June 18, 2003.
- Johnson County *v.* Beavers, CA 02-1049 (Gladwin, J.), affirmed April 30, 2003.
- Jones *v.* State, CA CR 02-635 (Roaf, J.), affirmed June 11, 2003.
- Jordan, Kenneth *v.* State, CA CR 02-1040 (Gladwin, J.), affirmed June 4, 2003.
- Jordan, Roland Garcia *v.* State, CA CR 02-837 (Crabtree, J.), affirmed April 30, 2003.
- Karabinus *v.* State, CA CR 02-1103 (Stroud, C.J.), affirmed June 25, 2003.
- King *v.* Baxter County Reg. Hosp., CA 01-996 (Bird, J.), affirmed May 7, 2003.
- Lawhon Farm Servs., Inc. *v.* Mason, CA 02-1348 (Stroud, C.J.), affirmed May 28, 2003.
- Lewis *v.* State, CA CR 01-1327 (Roaf, J.), rebriefing ordered May 14, 2003.
- Liberto *v.* Waddell, CA 02-1232 (Neal, J.), affirmed in part; reversed and remanded in part June 4, 2003.
- Litchford *v.* Arkansas Dep't of Human Servs., CA 02-898 (Gladwin, J.), affirmed May 7, 2003.
- Lord *v.* State, CA CR 02-674 (Vaught, J.), affirmed April 30, 2003.
- Mainard *v.* Arkansas Dep't of Human Servs., CA 02-348 (Gladwin, J.), affirmed June 18, 2003.
- Malone *v.* State, CA CR 02-1062 (Pittman, J.), affirmed April 30, 2003.

Marriott *v.* Hawkins, CA 02-1226 (Robbins, J.), reversed and remanded June 4, 2003.

Martine *v.* State, CA CR 02-886 (Pittman, J.), affirmed May 28, 2003.

Matthews *v.* State, CA 02-1393 (Griffen, J.), affirmed May 28, 2003.

Mays *v.* Godwin, CA 03-172 (Per Curiam), Appellant's Motion to Supplement the Record and for Release of Sealed Record granted May 7, 2003.

McClain *v.* State, CA CR 02-1198 (Hart, J.), affirmed May 7, 2003.

McClina *v.* State, CA CR 03-22 (Neal, J.), affirmed June 11, 2003.

McCullough *v.* State, CA CR 02-578 (Crabtree, J.), affirmed May 14, 2003.

McIntosh *v.* State, CA CR 02-1386 (Stroud, C.J.), affirmed June 11, 2003.

McKiddy *v.* McKiddy, CA 02-1064 (Stroud, C.J.), affirmed June 18, 2003.

Miles *v.* State, CA CR 02-939 (Pittman, J.), Motion of Counsel to Withdraw denied; rebriefing ordered June 25, 2003.

Miller *v.* State, CA CR 02-1308 (Bird, J.), affirmed June 18, 2003.

Moffett *v.* Voith Siemens Hydro Power, CA 03-038 (Vaught, J.), affirmed June 11, 2003.

Moore *v.* State, CA CR 02-1082 (Pittman, J.), affirmed May 28, 2003.

Murphy *v.* Stone, CA 02-1066 (Hart, J.), affirmed May 21, 2003.

Myles *v.* State, CA CR 02-774 (Stroud, C.J.), rebriefing ordered June 25, 2003.

Neal, James E. *v.* State, CA CR 02-1061 (Griffen, J.), affirmed May 14, 2003.

Neal, Shannon *v.* State, CA CR 02-1128 (Vaught, J.), affirmed June 25, 2003.

Nelson *v.* State, CA CR 02-867 (Crabtree, J.), affirmed May 7, 2003. Rehearing denied June 4, 2003.

Nichols-Whitsett *v.* Reddoch, CA 02-1134 (Robbins, J.), affirmed June 11, 2003.

Nuri *v.* State, CA CR 02-835 (Vaught, J.), affirmed June 25, 2003.

Oliver *v.* State, CA CR 02-960 (Hart, J.), rebriefing ordered June 25, 2003.

Owen *v.* State, CA CR 02-1184 (Stroud, C.J.), affirmed June 4, 2003.

- Parker-Blanton *v.* Pine Wood Nursing Home, CA 02-1086 (Bird, J.), affirmed April 30, 2003.
- Partridge *v.* Lochridge Mobile Homes, Inc., CA 02-1169 (Pittman, J.), reversed and remanded with directions June 18, 2003.
- Pat Salmon & Sons, Inc. *v.* Secrest, CA 02-1209 (Gladwin, J.), affirmed May 28, 2003.
- Peoples Bank of Paragould *v.* Unico Bank, CA 02-819 (Bird, J.), affirmed May 14, 2003.
- Peters *v.* State, CA CR 00-203 (Hart, J.), rebriefing ordered June 25, 2003.
- Pflasterer *v.* Summers, CA 03-49 (Bird, J.), affirmed as modified June 18, 2003.
- Phillips, Randy *v.* State, CA CR 02-1240 (Roaf, J.), rebriefing ordered June 25, 2003.
- Phillips, Randy *v.* State, CA CR 02-1238 (Baker, J.), rebriefing ordered June 25, 2003.
- Pifer *v.* Arkansas Dep't of Human Servs., CA 02-1353 (Bird, J.), affirmed May 14, 2003.
- Pine Bluff Cotton Belt Fed. Credit Union *v.* Patterson, CA 02-969 (Baker, J.), affirmed May 7, 2003.
- Pitt *v.* Lueck, CA 02-390 (Vaught, J.), affirmed May 7, 2003. Rehearing denied September 10, 2003.
- Polk *v.* State, CA CR 02-627 (Griffen, J.), affirmed April 30, 2003.
- Pry *v.* Delta Cons. Indus., CA 02-1315 (Vaught, J.), affirmed June 4, 2003.
- Rainwater *v.* State, CA CR 02-1193 (Gladwin, J.), affirmed June 18, 2003.
- Ratliff *v.* Ratliff, CA 02-938 (Roaf, J.), affirmed June 11, 2003.
- Redding *v.* Beck, CA 02-1138 (Hart, J.), affirmed June 11, 2003.
- Reeder, Gregory *v.* State, CA CR 02-422 (Neal, J.), appeal dismissed May 14, 2003.
- Reeder, Gregory *v.* State, CA CR 02-422 (Per Curiam), Appellant's Pro Se Motion for Reconsideration of Dismissal of Appeal; mandate recalled June 18, 2003. Rehearing denied September 10, 2003.
- Reeves *v.* Arnold, CA 02-457 (Bird, J.), reversed and remanded April 30, 2003.
- Renfroe *v.* State, CA CR 02-845 (Baker, J.), affirmed June 18, 2003.
- Riddell Flying Serv., Inc. *v.* Regions Bank, CA 02-1282 (Crabtree, J.), dismissed June 11, 2003.

- Roberts *v.* State, CA CR 02-830 (Baker, J.), rebriefing ordered May 28, 2003.
- Robinson, Latarris Keith *v.* State, CA CR 02-1185 (Neal, J.), affirmed May 21, 2003.
- Robinson, Steve *v.* State, CA CR 02-558 (Neal, J.), affirmed April 30, 2003.
- Roper *v.* Quail Buster, Inc., CA 02-1218 (Robbins, J.), reversed and remanded May 28, 2003. Rehearing denied August 20, 2003.
- Rousseau *v.* State, CA CR 02-788 (Neal, J.), affirmed June 25, 2003.
- Ryles *v.* Riffle, CA 02-1299 (Griffen, J.), affirmed June 18, 2003.
- Sanders *v.* State, CA CR 02-1056 (Griffen, J.), appeal dismissed June 25, 2003.
- Sanford *v.* State, CA CR 02-897 (Roaf, J.), affirmed May 28, 2003.
- Sharum *v.* Coleman, CA 02-758 (Bird, J.), affirmed May 7, 2003.
- Shead *v.* State, CA CR 02-956 (Robbins, J.), affirmed May 14, 2003.
- Sims *v.* State, CA CR 02-1168 (Crabtree, J.), affirmed; Motion to be Relieved granted June 25, 2003.
- Small *v.* Small, CA 02-824 (Stroud, C.J.), reversed April 30, 2003. Rehearing denied June 11, 2003.
- Smith, Fredrick *v.* State, CA CR 02-880 (Pittman, J.), affirmed June 11, 2003.
- Smith, Tiffany *v.* State, CA CR 02-445 (Gladwin, J.), affirmed June 25, 2003.
- Southern Alum. Mfg., Inc. *v.* Reed, CA 02-1351 (Neal, J.), affirmed May 28, 2003.
- Southern Personnel Mng't, Inc. *v.* Wagnon Shale Pit & Excav., Inc., CA 02-879 (Hart, J.), affirmed May 7, 2003.
- St. Joseph's Reg. Health Center *v.* Tadlock, CA 02-1385 (Baker, J.), affirmed June 11, 2003.
- St. Mary's Hosp. Sisters of Mercy Health Sys. *v.* Casso, CA 02-1236 (Griffen, J.), affirmed May 21, 2003.
- Stevenson *v.* State, CA CR 02-935 (Roaf, J.), rebriefing ordered June 25, 2003.
- Stidham *v.* State, CA CR 02-359 (Griffen, J.), affirmed May 7, 2003.
- Stone *v.* Estate of Thomasson, CA 02-1250 (Pittman, J.), affirmed on appeal and cross-appeal June 4, 2003.
- Swanigan *v.* State, CA CR 02-1093 (Bird, J.), affirmed June 4, 2003.

- Tarvin *v.* Director, E 02-259 (Robbins, J.), affirmed April 30, 2003.
- Tew *v.* Arkansas Dep't of Human Servs., CA 02-1089 (Bird, J.), affirmed June 11, 2003.
- Thronebury *v.* State, CA CR 02-974 (Robbins, J.), rebriefing ordered June 25, 2003.
- Tinkes *v.* State, CA CR 02-476 (Stroud, C.J.), affirmed April 30, 2003.
- Trotter *v.* State, CA CR 02-1098 (Crabtree, J.), affirmed June 18, 2003.
- Tucker *v.* Irwin, CA 02-1229 (Bird, J.), affirmed June 18, 2003.
- Tucker *v.* State, CA CR 02-1270 (Robbins, J.), affirmed May 28, 2003.
- Turner *v.* State, CA CR 02-723 (Baker, J.), affirmed May 14, 2003.
- Turner *v.* Turner, CA 02-1281 (Baker, J.), dismissed June 11, 2003.
- Tyus *v.* State, CA CR 02-800 (Neal, J.), affirmed May 7, 2003.
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- Vick *v.* State, CA CR 02-482 (Robbins, J.), affirmed June 25, 2003.
- Walker *v.* Community Water Sys., Inc., CA 03-199 (Gladwin, J.), dismissed June 4, 2003. Rehearing denied June 25, 2003.
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- White *v.* Arkansas Elec. Co-op, Inc., CA 02-1207 (Hart, J.), reversed and remanded June 25, 2003.
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- Young *v.* State, CA CR 02-934 (Per Curiam), contempt order issued April 30, 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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