

THIS BOOK CONTAINS  
**ARKANSAS REPORTS**  
Volume 311

CASES DETERMINED  
IN THE

**Supreme Court  
of Arkansas**

FROM  
November 9, 1992 — February 1, 1993  
INCLUSIVE<sup>1</sup>

AND

**ARKANSAS APPELLATE  
REPORTS**  
Volume 40

CASES DETERMINED  
IN THE

**Court of Appeals  
of Arkansas**

FROM  
November 4, 1992 — January 27, 1993  
INCLUSIVE<sup>2</sup>

**PUBLISHED BY THE  
STATE OF ARKANSAS  
1993**

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<sup>1</sup>Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 665. Cite as 311 Ark. — (1992) or 311 Ark. — (1993).  
<sup>2</sup>Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 212. Cite as 40 Ark. App. — (1992) or 40 Ark. App. (1993).

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1993

# ARKANSAS REPORTS

Volume 311

CASES DETERMINED  
IN THE

## Supreme Court of Arkansas

FROM  
November 9, 1992 — February 1, 1993  
INCLUSIVE

MARLO M. BUSH  
REPORTER OF DECISIONS

CINDY M. ENGLISH  
ASSISTANT  
REPORTER OF DECISIONS

PUBLISHED BY THE  
STATE OF ARKANSAS  
1993

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**JUSTICES AND OFFICERS  
OF THE  
SUPREME COURT OF  
ARKANSAS**

**DURING THE PERIOD COVERED  
BY THIS VOLUME  
(November 9, 1992 —  
February 1, 1993, inclusive)**

**JUSTICES**

<b>JACK HOLT, JR.</b>	<b>Chief Justice</b>
<b>ROBERT H. DUDLEY</b>	<b>Justice</b>
<b>STEELE HAYS</b>	<b>Justice</b>
<b>DAVID NEWBERN</b>	<b>Justice</b>
<b>TOM GLAZE</b>	<b>Justice</b>
<b>DONALD L. CORBIN</b>	<b>Justice</b>
<b>ROBERT L. BROWN</b>	<b>Justice</b>

**OFFICERS**

<b>WINSTON BRYANT</b>	<b>Attorney General</b>
<b>LESLIE W. STEEN</b>	<b>Clerk</b>
<b>JACQUELINE S. WRIGHT</b>	<b>Librarian</b>
<b>MARLO M. BUSH</b>	<b>Reporter of Decisions</b>

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## STANDARDS FOR PUBLICATION OF OPINIONS

## Rule 21

Rules of the Arkansas Supreme Court and Court of Appeals  
OPINIONS

1. All signed opinions of the Supreme Court shall be designated for publication.

2. 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.

3. 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.

4. Opinions of the Court of Appeals not designated for publication shall not be published in the official 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.

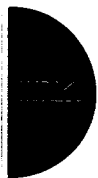
5. Copies of All Opinions Available. — In every case the Clerk will furnish without charge one typewritten copy of all of either court's published or unpublished opinions in the case to counsel for every party on whose behalf a separate brief was filed. The charge for additional copies is fixed by statute.

## OPINIONS NOT DESIGNATED FOR PUBLICATION

- Allen v. State, CR 87-219 (Per Curiam), Pro Se Motion for Transcript denied December 7, 1992.
- Bealer v. State, CR 92-1177 (Per Curiam), Pro Se Motion for Belated Appeal remanded November 23, 1992.
- Bishop v. State, CR 92-769 (Per Curiam), Pro Se Motion for Permission to File a Belated Pro Se Brief Pursuant to Rule 11(h) denied December 7, 1992.
- Bishop v. State, CR 92-769 (Per Curiam), affirmed January 19, 1993.
- Bloomfield v. State, CR 92-946 (Per Curiam), affirmed December 14, 1992.
- Bowman v. State, CR 92-413 (Per Curiam), affirmed November 16, 1992.
- Caffey v. State, CR 92-1192 (Per Curiam), Pro Se Motion to File a Belated Petition for Writ of Certiorari, denied December 14, 1992.
- Combs v. State, CR 92-797 (Per Curiam), affirmed December 21, 1992.
- Easter v. State, CR 92-297 (Per Curiam), affirmed November 16, 1992.
- Eaton v. State, CR 92-996 (Per Curiam), Pro Se Motion for Extension of Time to File Brief and Pro Se Motion to File Handwritten Brief moot; Appellee's Motion to Dismiss Appeal granted, November 9, 1992.
- Franklin v. State, CR 92-685 (Per Curiam), Pro Se Motion for Transcript denied November 9, 1992.
- Franklin v. State, CR 92-596 (Per Curiam), affirmed November 23, 1992.
- Gonzales v. State, CR 89-114 (Per Curiam), Pro Se Petition to Proceed in the Circuit Court of Sebastian County Pursuant to Criminal Procedure Rule 37 denied January 11, 1993.
- Green v. State, CR 92-1194 (Per Curiam), Appellant's Motion for Rule on the Clerk to Lodge Transcript denied November 16, 1992.
- Hooper v. State, CR 91-232 (Per Curiam), Pro Se Motion to Supplement Appellant's Brief denied November 16, 1992.
- Hopes v. State, CR 92-724 (Per Curiam), affirmed November 16, 1992.
- Jackson v. State, CR 92-932 (Per Curiam), Appellee's Motion to Dismiss Appeal granted; Pro Se Motion to File Handwritten Brief moot November 9, 1992.
- Johnson v. State, CR 92-725 (Per Curiam), affirmed November 23, 1992.
- King v. Burnett, CR 93-1 (Per Curiam), Pro Se Petition for Writ

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- Lowrance v. State, CR 92-965 (Per Curiam), affirmed January 19, 1993.
- Marshall v. State, CR 92-1091 (Per Curiam), affirmed February 1, 1993.
- Matthews v. State, CR 79-162 (Per Curiam), Pro Se Petition to Proceed in the Circuit Court of Jefferson County Pursuant to Criminal Procedure Rule 37 denied December 14, 1992.
- Miller v. State, CR 92-1040 (Per Curiam), Pro Se Motion for Belated Appeal remanded November 16, 1992.
- Mullins v. State, CR 92-650 (Per Curiam), Pro Se Motion for Permission to File a Nonconforming Brief denied and appeal dismissed December 7, 1992.
- Nelson v. State, CR 92-1241 (Per Curiam), Pro Se Motion to File a Handwritten Appellant's Brief moot; Appellee's Motion to Dismiss Appeal granted January 19, 1993.
- Pennington v. State, CR 92-1196 (Per Curiam), Pro Se Appellant's Motion for Permission to Proceed as Joint Appellants; for Permission to File Handwritten Brief; for Appointment of Nonconforming Brief; and for Extension of Time to File Brief; Appellee's Motion to Dismiss Appeal granted; appellant's motion moot December 14, 1992.
- Perry v. State, CR 92-1210 (Per Curiam), Pro Se Motion for Transcript denied December 21, 1992.
- Phelps v. State, CR 92-1160 (Per Curiam), Pro Se Motion for Rule on the Clerk denied December 21, 1992.
- Rains v. State, CR 92-1051 (Per Curiam), Pro Se Motion for Permission to File a Nonconforming Brief moot; Appellee's Motion to Dismiss Appeal granted December 7, 1992.
- Reed v. State, CR 92-41 (Per Curiam), Pro Se Motion to Proceed Pro Se denied November 23, 1992.
- Risher v. State, CR 92-923 (Per Curiam), Pro Se Motion to Dismiss Rule 37 Petition granted November 23, 1992.
- Sales v. Reynolds, CR 92-1212 (Per Curiam), Pro Se motion for Writ of Mandamus moot November 23, 1992.
- Smith v. State, CR 92-702 (Per Curiam), Pro Se Motion for Writ of Certiorari moot; Order to Lodge Record issued November 16, 1992.
- Wallace v. State, CR 92-1197 (Per Curiam), Pro Se Appellant's Motion for Permission to File a Nonconforming Brief and Appellee's Motion to Dismiss Appeal granted January 11, 1993.
- Webster v. Roberts, CR 92-1175 (Per Curiam), Pro Se Petition for Writ of Mandamus moot November 23, 1992.
- Westbrook v. State, CR 81-68 (Per Curiam), Pro Se Motion for Transcript denied December 7, 1992.
- Wiley v. State, CR 92-1384 (Per Curiam), Pro Se Motion for

Belated Appeal denied January 19, 1993.  
Wilson v. State, CR 92-751 (Per Curiam), reversed and dismissed January 11, 1993.  
York v. State, CR 92-1354 (Per Curiam), Pro Se Motion for Belated Appeal denied January, 11 1993.  
Zinger v. State, CR 92-923 (Per Curiam), Petition to Proceed Pursuant to Criminal Procedure Rule 37 dismissed November 23, 1992.



**APPENDIX**  
**Rules Adopted**  
**or Amended by**  
**Per Curiam Orders**

IN THE MATTER OF THE ARKANSAS CODE OF  
JUDICIAL CONDUCT

Supreme Court of Arkansas  
Delivered November 16, 1992

PER CURIAM. The Arkansas Bar Association Committee on the Model Code of Judicial Conduct submitted its proposed Arkansas Code of Judicial Conduct by petition to this court on June 28, 1991. We published notice that the proposed Code had been filed by Per Curiam Order dated July 8, 1991, and solicited comment from the bench and bar.

We have made certain changes to the proposed Code, and we now publish the proposed Code as amended by this court for additional comment from the bench and bar.

We express our gratitude to the Chair of the Committee, Howard W. Brill and Co-Chair, Judge Randall L. Williams, and to the Committee membership for their faithful and helpful work with respect to the Code.

Comments and suggestions on the proposed Code changes may be made in writing addressed to:

Clerk, Arkansas Supreme Court  
Attn: Arkansas Code of Judicial Conduct  
Justice Building  
625 Marshall Street  
Little Rock, AR 72201

---

IN RE: David Scott POST  
Arkansas Bar No. 85132

840 S.W.2d 808

Supreme Court of Arkansas  
Delivered November 23, 1992

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of David Scott Post to practice law in the



State of Arkansas.

DUDLEY, J., not participating.

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IN RE: ARKANSAS BAR ASSOCIATION  
RECOMMENDATION TO AMEND THE RULES  
GOVERNING ADMISSION TO THE BAR AND  
REQUIRE THAT APPLICANTS FOR ADMISSION  
PASS THE MULTISTATE PROFESSIONAL  
RESPONSIBILITY EXAMINATION

92-1288

Supreme Court of Arkansas  
Delivered December 7, 1992

PER CURIAM. The Arkansas Bar Association has filed a petition to amend the rules governing admission to the Arkansas bar and to require that applicants for admission to the bar pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners. The petition is referenced to the Arkansas State Board of Law Examiners for review, comment and recommendation.

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IN THE MATTER OF ARKANSAS RULES OF CIVIL  
PROCEDURE 8(a)

Supreme Court of Arkansas  
Delivered December 14, 1992

PER CURIAM. The first complete sentence of Ark. R. Civ. P. 8(a) is amended to read as follows:

A pleading which sets forth a claim for relief, whether a complaint, counterclaim, crossclaim, or third party claim, shall contain (1) a statement in ordinary and concise language of facts showing that the court has jurisdiction of the claim and is the proper venue and that the pleader is

entitled to relief, and (2) a demand for the relief to which the pleader considers himself entitled.

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IN RE: Christopher Donald MITCHELL

842 S.W.2d 49

Supreme Court of Arkansas  
Delivered December 21, 1992

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Christopher Donald Mitchell to practice law in the State of Arkansas.

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IN THE MATTER OF ARKANSAS RULES OF CIVIL  
PROCEDURE 8(a)

Supreme Court of Arkansas  
Delivered January 25, 1993

PER CURIAM. The following Addition to Reporter's Notes, 1992 Amendment, with respect to Ark. R. Civ. P. 8(a) is promulgated for publication:

*Addition to Reporter's Notes, 1992 Amendment:*  
Rule 8(a) is amended to require that the complaint and other pleadings that set forth claims for relief include facts showing that the court has jurisdiction and that venue is proper. The requirement is consistent with statements in the case law regarding personal and subject matter jurisdiction. *E.g., Malone & Hyde, Inc. v. Chisley*, 308 Ark. 308, 825 S.W.2d 558 (1992) (personal jurisdiction is to be determined on the basis of facts alleged in the complaint); *Hesser v. Johns*, 288 Ark. 264, 704 S.W.2d 165 (1986) (question of whether court has jurisdiction over the subject matter is determined from allegations in the complaint). Moreover, the Supreme Court has recognized that a

complaint may on its face reveal that venue is improper. *E.g., Mack Trucks of Arkansas, Inc. v. Jet Asphalt & Rock Co.*, 246 Ark. 101, 437 S.W.2d 459 (1969). Nonetheless, some confusion arose in light of the 1983 amendment of Rule 8(a) deleting a requirement, found in the original version of the rule, that the complaint contain a statement of "the grounds upon which venue and the court's jurisdiction depend." However, elimination of the requirement that grounds be pleaded was apparently not intended to modify the role of the factual allegations in the determination of jurisdiction and venue. The 1992 amendment, which is designed to clarify the obligations of the pleader as to jurisdiction and venue, is consistent with the requirement that a complaint allege facts constituting a cause of action. *See Harvey v. Eastman Kodak Co.*, 271 Ark. 783, 610 S.W.2d 582 (1981).

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IN THE MATTER OF THE ARKANSAS CODE OF  
JUDICIAL CONDUCT

Supreme Court of Arkansas  
Delivered February 1, 1993

PER CURIAM. The Arkansas Bar Association Committee on the Model Code of Judicial Conduct submitted its proposed Arkansas Code of Judicial Conduct by petition to this Court on June 28, 1991. We published notice that the proposed Code had been filed by Per Curiam Order dated July 8, 1991, and solicited comment from the bench and bar.

We subsequently made changes to the proposed Code. On November 16, 1992, we published notice that the proposed code with our changes was available for review in the office of the Supreme Court Clerk.

We now publish the language in the proposed Code submitted by the Arkansas Bar Association Committee, which we have amended, and the changes in that language proposed by the Court.

*Canon 2B Commentary, First Paragraph, Last Sentence:*

Similarly, judicial letterhead must not be used for conducting a judge's personal business.

*Court Change:* Similarly, judicial letterhead must not be used to gain a personal advantage or to effect an economic advantage.

*Canon 3B(7)(d):* A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

*Court Change:* A judge may, with the consent of all parties and their lawyers, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

*Canon 3C(4):* A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

*Court Change:* A judge shall not make unnecessary appointments. A judge should exercise his or her power of appointment only on the basis of merit, avoiding nepotism and favoritism. No judge shall employ a spouse or other relative unless it has been affirmatively demonstrated to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position. A judge shall not approve compensation of appointees beyond the fair value of services rendered. (Amended by Per Curiam November 19, 1990, effective July 1, 1991.)

*Canon 3C(4) Commentary, Second Sentence:* Nepotism is the appointing of relatives within the third degree of relationship.

*Court Change:* Nepotism is the appointing of relatives within the third degree of relationship by affinity or consanguinity.

*Canon 3D(1), Second Sentence:* A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for

office shall inform the appropriate authority.\*

*Court Change:* A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall either communicate directly with respect to the violation with the judge who has committed the violation or report the violation to the Judicial Discipline and Disability Commission.

*Canon 3D(2), Second Sentence:* A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.\*

*Court Change:* A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall either communicate directly with respect to the violation with the lawyer who has committed the violation or report the violation to the Arkansas Supreme Court Committee on Professional Responsibility.

*Canon 4B: Avocational Activities.* A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law\*, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

*Court Change: Avocational Activities.* A judge may speak, write, lecture, teach on and participate in other extra-judicial activities concerning the law,\* the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

*Canon 4G, First Sentence:* Practice of Law. A judge shall not practice law.

*Court Change: Practice of Law.* A judge shall not practice law or appear as counsel in any court within this state.

*Canon 4G Commentary, First Sentence:* This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity.

*Court Change:* This prohibition refers to the practice of law in a representative capacity under the Arkansas Constitution, Article 7, § 24 and not in a pro se capacity.

*Canon 5C(1)(b)(iv):* A judge or a candidate subject to public election may, except as prohibited by law . . . (b) when a candidate for election . . . (iv) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

*Court Change:* Paragraph (iv) has been deleted.

We invite additional comment concerning these changes from the bench and bar.

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IN THE MATTER OF RULES OF THE  
ARKANSAS SUPREME COURT AND THE  
ARKANSAS COURT OF APPEALS

Supreme Court of Arkansas  
Delivered February 1, 1993

PER CURIAM. By per curiam order of July 20, 1992, we published a draft of revised Rules of the Arkansas Supreme Court and Court of Appeals. We asked for comments and suggestions from members of the bench and bar. A number of comments and suggestions were received.

The Clerk and the Administrative Office of the Courts restudied the published draft of the Rules and presented further revisions to the Court, many of them based upon the comments and suggestions received in response to our earlier order. The Court has now concluded its review of the Rules and expresses its gratitude to those who responded.

The following Rules of the Arkansas Supreme Court and Court of Appeals will replace the Rules of the Arkansas Supreme Court and Court of Appeals currently published in the Court

Rules volume accompanying the Arkansas Code Annotated. The new Rules become effective May 1, 1993.

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## RULE 1-1

## HOURS OF MEETING

The Supreme Court shall convene each Monday at 9:00 a.m. and the Court of Appeals each Wednesday at 9:00 a.m., except during recess or as announced by either Court.

## RULE 1-2

## APPELLATE JURISDICTION OF THE SUPREME COURT AND COURT OF APPEALS

(a) SUPREME COURT JURISDICTION. All cases appealed shall be filed in the Court of Appeals, except that the following cases shall be filed in the Supreme Court:

1. All cases involving the interpretation or construction of the Constitution of Arkansas;
2. Criminal cases in which the death penalty, life imprisonment, or a cumulative sentence of more than 30 years imprisonment has been imposed;
3. Cases, other than appeals from the Workers' Compensation Commission, the Public Service Commission, or the Board of Review created by the Employment Security Law, in which the validity, interpretation, construction, or constitutionality of an act of the General Assembly, an ordinance of a municipality or county, or a rule or regulation of any court, administrative agency, or regulatory body is in question; declaratory judgment actions pertaining to the validity or applicability of a rule of an agency subject to the Administrative Procedure Act;
4. Cases appealed from orders of the Arkansas Highway Commission and the Arkansas Pollution Control and Ecology Commission as well as cases involving rates for public utilities fixed by municipal authorities;
5. Appeals in cases based on petitions for post-conviction relief under Rule 37 of the Arkansas Rules of Criminal Procedure;
6. Cases of quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit, chancery, or probate courts;

7. Cases pertaining to elections and election procedures;
8. Cases involving the discipline of attorneys-at-law and other cases arising under the power of the Supreme Court to regulate the practice of law;
9. Cases involving the discipline and disability of judges;
10. Motions for rule on the clerk under Rule 2-2 of the Rules of the Supreme Court and Court of Appeals; and when the case in which relief is sought has not previously been docketed in the Court of Appeals and a transcript filed, motions or petitions for writ of certiorari to complete the record and for admission to bail;
11. Cases in which the current appeal is a second or subsequent appeal following an appeal which has been decided in the Supreme Court;
12. Interlocutory appeals permitted by statute or by the Arkansas Rules of Appellate Procedure, the Arkansas Rules of Civil Procedure, or the Arkansas Rules of Criminal Procedure;
13. Cases presenting a question about usury;
14. Cases presenting a question about products liability;
15. Cases presenting a question about oil, gas, or mineral rights;
16. Cases presenting a question about the law of torts;
17. Cases presenting a question about the construction of deeds or wills.

(b) **PROCEDURE TO INVOKE SUPREME COURT JURISDICTION.** An appellant who contends that the appeal should be heard in the Supreme Court pursuant to Rule 1-2(a), instead of in the Court of Appeals, shall designate on the notice of appeal and designation of the record the applicable subdivision of Rule 1-2(a) which gives the Supreme Court jurisdiction. In addition, the appellant shall preface the brief with a jurisdictional statement not exceeding two pages in length.

(c) **TRANSFER BETWEEN COURTS.** The Supreme Court may transfer to the Court of Appeals any case appealed to the Supreme Court and may transfer to the Supreme Court any

case appealed to the Court of Appeals.

(d) **CERTIFICATION FROM COURT OF APPEALS TO SUPREME COURT.** A case which has been appealed to the Court of Appeals may be certified to the Supreme Court by the Court of Appeals if the Court of Appeals finds that the case: (1) is excepted from its jurisdiction by section (a) hereof; or (2) involves an issue of significant public interest or a legal principle of major importance. The Supreme Court may accept for its docket cases so certified or may remand any of them to the Court of Appeals for decision.

(e) **IMPROPER FILING.** No case filed in either the Supreme Court or the Court of Appeals shall be dismissed for having been filed in the wrong Court but shall be transferred or certified to the proper Court.

(f) **PETITION FOR REVIEW.** No appeal as of right shall lie from the Court of Appeals to the Supreme Court. A petition for review may be granted by the Supreme Court for review of a decision of the Court of Appeals only if the Supreme Court determines that the case (1) should have come to the Supreme Court originally under Section (a) of this Rule, (2) should have been certified to the Supreme Court under Section (d)(2) of this Rule, or (3) was decided in the Court of Appeals by a tie vote.

(g) **EQUALIZATION OF WORKLOAD.** This Rule is intended to achieve an equalization of the appellate workload between the Supreme Court and the Court of Appeals. If the classifications do not achieve this objective, adjustments will be made.

#### **RULE 1-3**

#### **UNIFORM PAPER SIZE**

All briefs, motions, pleadings, records, transcripts, and other papers required or authorized by these Rules shall be on 8 1/2" x 11" paper.

#### **RULE 1-4**

#### **CLERK'S OFFICE BUSINESS HOURS**

The Clerk will record the exact time and date of filing or tender upon any document filed or tendered for filing in the

Clerk's Office. Filings shall occur only between business hours of 8:00 a.m. and 5:00 p.m. on business days.

If the Clerk discovers documents left in or about the Clerk's Office after business hours with a written request for filing or tender, and the documents are in order for filing or tender, they may be marked as filed or tendered as of the beginning of the following business day. Neither the Clerk nor any member of the Clerk's Office staff shall be responsible to see to it that documents are filed or tendered unless they are presented during business hours by a person delivering them to the Clerk's Office.

#### RULE 1-5

#### CONTEMPT

No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the trial court.

#### RULE 1-6

#### EMPLOYEES OF THE COURT

No employee of either Court shall engage in the practice of law or have a pecuniary interest in any concern that does business with either Court.

#### RULE 1-7

#### PRACTICE ABSENT SPECIFIC RULE

In cases where no provision is made by statute or other rule, proceedings in the Court shall be in accordance with existing practice.

#### RULE 2-1

#### MOTIONS, GENERAL RULES

(a) **WRITING REQUIRED.** All motions must be in writing.

(b) **NUMBER OF COPIES.** Eight clearly legible copies must be filed on 8 1/2" x 11" paper.

(c) **SERVICE.** Evidence of service of motions upon opposing counsel must be furnished at time of filing.

(d) **RESPONSE.** A response may be filed within 10 calendar days of the filing of a motion. Evidence of service is required.

(e) **MEMORANDUM OF AUTHORITIES.** With any motion, application for temporary relief, or other action of the Court that is sought before the regular submission of the case, the moving party shall file and serve upon opposing counsel or an unrepresented party a short citation of statutes, rules of court, and other authorities upon which the movant relies. Any party responding to any such motion or application shall likewise file a memorandum of authorities.

## RULE 2-2

### MOTION FOR RULE ON CLERK

(a) **RECORD TENDERED LATE.** Where a record is tendered which, on its face, appears to be outside the time allotted for docketing the case, it shall be the duty of the Clerk to notify the attorney representing the appellant and note on the record the date the tender was made.

(b) **DOCKETING FOR PURPOSE OF PRESENTING REQUEST FOR RULE — SERVICE OF MOTION.** If the appellant contends that the Clerk is in error in refusing to file the record, then upon payment of the regular filing fee, the case shall be tentatively docketed and numbered. The appellant shall then file a motion in accordance with Rule 2-1 to require the Clerk to docket the case as an appeal. A copy of the motion shall be served by the appellant upon opposing counsel, and evidence of service shall be furnished to the Clerk with the motion at the time of filing.

(c) **PROCEDURE WHEN RULE GRANTED.** If the motion is granted, the case shall proceed in the regular manner for appeals without payment of any additional fee.

(d) **PROCEDURE WHEN RULE DENIED.** If the motion is denied, the case shall be stricken from the docket, the jurisdiction of the Court terminated, and the filing fee forfeited.

## RULE 2-3

## PETITIONS FOR REHEARING

(a) **FILING AND SERVICE.** A petition for rehearing, a brief in support of the petition, and evidence of service of the petition, brief, and a certificate of merit stating that the petition is not filed for the purpose of delay, shall be filed within 17 days from the date of decision.

(b) **RESPONSE.** The respondent may file a brief on the following Monday (in the Supreme Court) or Wednesday (in the Court of Appeals) or may, on or before that day, obtain an extension of one week upon written motion to the Court.

(c) **ADDITIONAL TIME.** Neither party will be granted further time than as indicated above, except upon written motion to the Court and a showing of illness of counsel or other unavoidable casualty.

(d) **NUMBER OF COPIES TO BE FILED.** Eight copies of the petition must be filed, and a copy must be served upon opposing counsel.

(e) **PAGE LENGTH.** In all cases, both civil and criminal, the petition and supporting brief, if any, including the style of the case and the certificate of counsel, shall not exceed ten 8 1/2" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a), except that if the petition and supporting argument are not more than three pages, they need not be bound as set forth in Rule 4-1(a).

(f) **GROUND(S) STATED.** The petition must specifically state the ground(s) relied upon.

(g) **ENTIRE CASE NOT TO BE REARGUED.** The petition for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain. Counsel are expected to argue the case fully in the original briefs, and the brief on rehearing is not intended to afford an opportunity for a mere repetition of the argument already considered by the Court.

(h) **PREVIOUS REFERENCE IN ABSTRACT.** In no case will a rehearing petition be granted when it is based upon any fact thought to have been overlooked by the Court, unless

reference has been clearly made to it in the abstract of the record prescribed by Rules 4-2 and 4-3.

(i) **NO ORAL ARGUMENT.** Oral argument will not be permitted on a petition for rehearing.

(j) **LIMITED TO ONE PETITION.** A party may submit only one petition for rehearing.

(k) **NEW COUNSEL.** Litigants will not be permitted to substitute new counsel for the purpose of filing a petition for rehearing. Additional counsel may, however, participate in a petition for rehearing, or in opposition to the petition, by joining with the original counsel in the petition and brief, or by obtaining permission of the Court by motion.

#### RULE 2-4

#### PETITIONS FOR REVIEW

(a) **CONTENTS OF PETITION.** A petition to the Supreme Court for review of a decision of the Court of Appeals must be in writing and must be filed within 17 days from the date of the decision, regardless of whether a petition for rehearing is filed with the Court of Appeals. The petition may be typewritten and shall not exceed three 8 1/2" x 11", double-spaced pages in length. The petition must briefly and distinctly state the basis upon which the case should be reviewed and may include citations of authority or references to statutes or constitutional provisions.

(b) **BRIEFS AND ORAL ARGUMENT PROHIBITED.** Briefs will not be accepted and oral arguments will not be heard in support of petitions for review. However, the petitioner may attach a copy of the petition for rehearing to the petition for review.

(c) **REQUIREMENT FOR ASSERTING RULE 1-2(d)(2).** To invoke the Supreme Court's jurisdiction asserting that the case involves an issue of significant public interest or a legal principle of major importance as set forth in Rule 1-2(d)(2), the petitioner must have filed a motion in the Court of Appeals requesting certification to the Supreme Court before the case was submitted to the Court of Appeals. The motion must contain a certificate of counsel stating that it is filed in good faith belief that the case should be certified to the Supreme Court.

This requirement does not apply to cases appealed to the Court of Appeals from the Workers' Compensation Commission, the Employment Security Board of Review, or the Public Service Commission.

(d) **RESPONSE.** A response to a petition for review must be filed within 10 calendar days of the date the petition was filed. Responses are subject to the same limitations as petitions. The respondent may attach a copy of the response to the petition for rehearing to the response to the petition for review.

(e) **CLERK'S NOTIFICATION; REQUEST FOR ORAL ARGUMENT.** When the Supreme Court grants a petition for review, the Clerk shall promptly notify all counsel and parties appearing pro se. Within two weeks of notification, fourteen additional copies of the briefs previously submitted to the Court of Appeals shall be filed with the Clerk. Requests for oral argument must also be made to the Clerk in writing within those two weeks.

(f) **SUPPLEMENTAL AND REPLY BRIEFS; REQUEST FOR ORAL ARGUMENT.** Any party may request permission to submit a supplemental brief by motion, filed with the Clerk and served upon all other parties, within two weeks after the granting of review. The moving party's brief shall be due twenty days from the granting of the motion. Other parties may file responsive supplemental briefs within ten days of the date the moving party's supplemental brief is filed. A reply brief may be filed within five days after the filing of a responsive supplemental brief. No supplemental brief, responsive supplemental brief, or reply brief submitted pursuant to this Rule shall exceed ten pages in length. These briefs shall otherwise conform to the requirements of Rule 4-1.

Oral argument may be requested not more than five days after a reply brief is served or becomes due, whichever occurs first. The request for oral argument shall be by letter, separate from any brief, filed with the Clerk and served upon all parties.

#### RULE 3-1

#### PREPARATION OF THE RECORD

(a) **GENERALLY.** All records shall begin with the style of the court in which the controversy was heard, the name of the



judge presiding when the decree, judgment or order was rendered and its date, the names of all the parties litigant, and the nature of the suit or motion. For example: "Trial before A.B., judge of \_\_\_\_\_ court, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_;

John Doe, Plaintiff  
vs. Action on Promissory Note"  
Jane Doe, Defendant

(b) DATES. Whenever an order of the court is mentioned, the date shall be specifically stated, rather than by reference to the day and year "aforesaid".

(c) DUPLICATIONS. No part of the record shall be copied more than once. When a particular record recurs, a reference should be made to pages in the preceding part of the record.

(d) DEPOSITIONS. When depositions are taken on interrogatories and included in the record, the answers must be placed immediately after the questions to which they are responsive.

(e) RECORD ON SECOND APPEAL. When a cause has been once before the Court and a record is again required (for the purpose of correcting error which occurred on retrial), the second record shall begin where the former ended; that is, with the judgment of the appellate Court, which should be entered of record in the trial court, omitting the opinion of the appellate Court. The appeal or supersedeas bond should be the last entry included.

(f) TABLE OF CONTENTS. Every record shall include a table of contents, which refers to pages in the record where the matter identified is copied. For example:

Complaint .....	Page 1
Exhibit A (note of J.B. to C.F.) .....	Page 3
Answer .....	Page 4
Exhibit B (deed from A to B) .....	Page 5
Decree (or judgment) .....	Page 6

(g) FEE FOR INDEX. Clerks may add to their fee for the record a reasonable charge for these items where no charge is fixed by statute.

(h) RECORD FEE AND COSTS CERTIFIED. The fee for the production of the record must be certified in all cases; in addition, all costs in the trial court must be reported, and by

whom paid.

(i) **CLERK'S RECORD AND REPORTER'S TRANSCRIPT — PAPER SIZE AND PREPARATION.** The transcript must be prepared in plain typewriting or computer or word processor printing of the first impression, not copies, on 8 1/2" x 11" paper. The record, as defined in paragraph (m) of this Rule, shall be fastened on the left of the page. All transcripts shall be prepared by certified court reporters and comport with the following rules:

- (1) No fewer than 25 typed lines on standard 8 1/2" x 11" paper;
- (2) No fewer than 9 or 10 characters to the typed inch;
- (3) Left-hand margins to be set at no more than 1 3/4";
- (4) Right-hand margins to be set at no more than 3/8";
- (5) Each question and answer to begin on a separate line;
- (6) Each question and answer to begin at the left-hand margin with no more than 5 spaces from the "Q" and "A" to the text;
- (7) Carry-over "Q" and "A" lines to begin at the left-hand margin;
- (8) Colloquy material, quoted material, parentheticals and exhibit markings to begin no more than 15 spaces from the left-hand margin with carry-over lines to begin no more than 10 spaces from the left-hand margin;
- (9) All transcripts to be prepared in the lower case;
- (10) All depositions prepared for use as evidence in any court to comply with these Rules, except that the left-hand margin is to be set at no more than 1 3/4" and bound on the left.

(j) **EXHIBITS.** Documents of unusual bulk or weight shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical exhibits other than documents shall not be transmitted by the trial court clerk except by order of the Court.

(k) **FOLDING OF RECORD.** Records must be transmitted to the Clerk without being folded or creased.

(l) **SURVEYS.** Real property surveys which form a part of the record shall not be fastened to the record.

(m) **RECORD IN VOLUMES.** Where the record is too large to be conveniently bound in one volume, it shall be divided into separate volumes of convenient size and numbered sequentially.

(n) **DEFINITION OF RECORD.** The term "record" in civil cases, and as used in these Rules, refers only to the pleadings, judgment, decree, order appealed, transcript, exhibits, and certificates.

### RULE 3-2

#### ITEMS TO BE OMITTED FROM THE RECORD

(a) **GENERALLY.** The clerks of the circuit, chancery and probate courts, in making records to be transmitted to the Court, shall, unless excepted by the provisions of this Rule, include all matters in the record as required by Rule 3-1(n).

(b) **SUMMONS.** In cases where the defendant has appeared, the clerk shall not set out any summons or other writ of process for appearance or the return thereof, but shall state: "Summons issued", (showing date) "and served", (showing date).

(c) **AMENDED PLEADINGS.** In case of an amendment to the pleadings by substitution, the clerks shall treat the amended pleading as the only one and shall refrain from copying into the records any pleadings withdrawn, waived or superseded by amendment, unless it is expressly called for by a party's designation of the record.

(d) **INCIDENTAL MATTERS.** Clerks shall not insert in the record any matter concerning the organization or adjournment of court, the impaneling or swearing of the jury, the names of jurors, including any motion, affidavit, or order or ruling in reference thereto, any continuance or commission to take testimony or the return thereto, any notice to take depositions or the caption or certificate of the officer before whom such depositions are taken, or any other incidental matter, unless it is expressly called for by a party's designation of the record.

## RULE 3-3

## RECORD IN CIVIL CASES

Not all records in civil cases will have the same contents. To the extent possible, items will be arranged in the following sequence:

1. The Complaint;
  2. Plaintiff's exhibits which accompany the Complaint;
  3. Statement regarding summons, set out in Rule 3-2(b);
  4. Answer;
  5. Defendant's exhibits which accompany the Answer;
  6. Subsequent pleadings and orders in chronological order;
  7. Final judgment, decree, or order appealed;
  8. Post-judgment decree, order or motion (e.g., motions for new trial);
  9. Orders granting or denying post-judgment motions;
  10. Notice of appeal and designation of record;
  11. Statement of points to be relied upon if abbreviated record designated;
  12. Extensions of time to file record on appeal;
  13. Stipulations to abbreviated records;
  14. Narrative of testimony upon stipulations;
  15. Depositions introduced;
  16. Reporters' transcription of testimony;
  17. Supersedeas bond;
  18. Certificate, duly acknowledged;
  19. Certificate of costs, indicating payor.
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## RULE 3-4

## RECORD IN CRIMINAL CASES

(a) **ORDER OF RECORD.** In all criminal cases, after the caption set forth in Rule 3-1, the record shall be organized in the following sequence:

1. Return of the indictment or information;
2. Defendant's pleadings;
3. Subsequent pleadings and orders in chronological order;
4. Final judgment and commitment or order appealed;
5. Motion for new trial, to set aside, amend, etc.;
6. Order granting or denying above motions;
7. Notice of appeal and designation of record;
8. Extensions of time to file record on appeal;
9. Reporters' transcription of testimony;
10. Appeal bond;
11. Certificate, duly acknowledged.

(b) **RECORD OF JURY MATTERS.** The record shall not include the impaneling or swearing of the jury, the names of the jurors, or any motion, affidavit, order or ruling in reference thereto unless expressly called for by a party's designation of the record.

(c) **EXHIBITS.** Photographs, charts, drawings and other documents that can be inserted into the record shall be included. Documents of unusual bulk or weight shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the Clerk of the Court. Physical evidence, other than documents, shall not be transmitted unless directed by an order of the Court.

## RULE 3-5

## CERTIORARI TO COMPLETE THE RECORD

## (a) AUTHORIZATION FOR WRIT OF CERTIORARI.

When jurisdiction is conferred by filing, within the time allowed for appeal, a dated and certified copy of the order or judgment appealed from, the Clerk may, upon authorization by the Court, issue a writ of certiorari to the clerk of the trial court, the reporter, or any other person charged with the duty of preparing the record on appeal, directing that any omissions or errors in the record be corrected.

(b) CONTENTS OF WRIT. The writ shall order that the record be completed and certified within thirty days, and the explanation for any default in complying with the writ must be made on the return within the time directed. This procedure may be used in appeals of civil, criminal, and administrative agency or commission cases.

## RULE 3-6

## DISPOSAL OF RECORD AND EXHIBITS

(a) PROCEDURE TO OBTAIN — FAILURE TO RETURN. Attorneys may obtain from the Clerk the record in a disposed of case by giving a receipt and may retain the record for a period of not more than thirty days. No extension of time will be granted until the record has been returned, and then only upon order of the Court. Upon failure to return the record within the time allotted, the Clerk shall demand its return. If the demand is not complied with within ten days, the delinquency shall be reported to the Court at which time a citation shall issue commanding the attorney to appear before the Court immediately and show cause why a citation for contempt should not issue.

(b) FAILURE TO CLAIM EXHIBITS IN CIVIL CASES. All exhibits filed in civil cases and not attached to the transcript, in the Supreme Court and Court of Appeals, must be claimed by the party who presented the exhibit to the trial court and be removed from the Clerk's office within 90 days from the date the mandate is issued. The attorney receiving the exhibits must sign the docket showing their receipt. If an exhibit is not claimed within the 90 days, the Clerk may destroy or dispose of it after giving the parties, or the attorneys of record, 30 days notice

of the Clerk's intention to do so.

(c) **EXHIBITS IN CRIMINAL CASES.** (1) Exhibits in cases in which the mandate has been issued for more than five years shall be disposed of in the following manner:

(A) Physical exhibits consisting of weapons, in whatever form shall be transferred to the U.S. Bureau of Alcohol, Tobacco & Firearms for disposal pursuant to Bureau policy.

(B) Controlled substances, in whatever form, shall be transferred to the Arkansas Department of Health for disposal pursuant to Department policy.

(C) All other exhibits, except those contained in the record, may be destroyed at the discretion of the Clerk.

(2) All exhibits shall be retained in cases that are subject to continuing litigation or in which the defendant received a sentence of death.

(3) Exhibits in cases which are reversed on appeal shall be transferred to the Office of the Prosecutor Coordinator when the mandate from the Court issues.

#### RULE 4-1

#### STYLE OF BRIEFS

(a) **BRIEFS — SIZE — PAPER — TYPE.** All briefs shall be typewritten or produced with computer or word processing equipment. Briefs shall be of uniform size on opaque, unglazed 8 1/2" x 11" white paper and firmly bound on the left hand margin by staples or other binding devices. If staples are used, they should be covered by tape. Briefs shall be double-spaced, except for quoted material, which may be single-spaced and indented. Footnote lines, except quotations, shall be double-spaced. Use of footnotes is not encouraged and should be used sparingly. Carbon copies are not acceptable, but copies produced by offset printing, positive photocopy, or other dry photoduplicating process which produces a clearly legible black-on-white reproduction may be used. Each page shall be numbered, and both sides of the page may be used. The margin at the top, outer edge, and bottom of each page shall be not less than one inch, and the margin at the binding edge shall be wide enough to allow the text to be read

easily. If a standard typewriter is used, type shall be no smaller than 10 point, i.e., 10 characters to the inch. If a computer or word processor is used, the type shall be no smaller than a 10 pitch font. Commercial organizations or members of the bar maintaining equipment for duplicating may submit to the Clerk samples for prior approval. If the Clerk is satisfied that such duplicating process will produce documents which conform to the specifications of this Rule, it will be approved.

(b) **LENGTH OF ARGUMENT.** Unless leave of the Court is first obtained, the argument portion of a brief shall not exceed 25 double-spaced pages including the conclusion, if any. The appellant's reply brief shall not exceed 15 double-spaced pages and shall not include any supplemental abstract unless permitted by the Court upon motion. Motions for an expansion of the page limit must set forth the reason or reasons for the request and must state that a good faith effort to comply with this Rule has been made. The motion must specify the number of additional pages requested.

(c) **PRO SE BRIEFS.** Where the appellant in a criminal appeal is entitled to representation by counsel, pro se briefs will be accepted only when the appellant has filed an affidavit stating that the appellant has knowingly and intelligently refused the services of an attorney on appeal. Such a brief shall also be accompanied by an affidavit that the appellant has prepared it without the paid assistance of any other prison inmate.

(d) **NON-COMPLIANCE.** Briefs not in compliance with this Rule shall not be accepted by the Clerk.

#### **RULE 4-2**

#### **CONTENTS OF BRIEFS**

(a) **CONTENTS.** The contents of the brief shall be in the following order:

(1) **TABLE OF CONTENTS.** Each brief must include a table of contents. It should reference the page number for the beginning of each of the major sections identified in Rule 4-2(a)(1)-(7). Within the abstract section of the brief, it should reference the page number for the beginning of each witness' testimony and should note the page at which each pleading and document is



abstracted.

(2) **JURISDICTIONAL STATEMENT.** In any case filed with the Supreme Court, whether civil or criminal, a jurisdictional statement is required. It shall specifically cite the subsection of Rule 1-2(a) which confers jurisdiction on the Supreme Court, and shall meet the requirements of Rule 1-2(b). A jurisdictional statement is not required in cases filed with the Court of Appeals.

(3) **STATEMENT OF THE CASE.** The appellant's brief shall contain a concise statement of the case, without argument. This statement, ordinarily not exceeding two pages in length, shall not exceed five pages without leave of the Court. The statement of the case should be sufficient to enable the court to read the abstract with an understanding of the nature of the case, the general fact situation, and the action taken by the trial court. The appellee's brief need not contain this statement unless the appellant's statement is deemed to be controverted or insufficient.

(4) **POINTS ON APPEAL.** Following the appellant's statement of the case, the appellant shall list and separately number, concisely and without argument, the points relied upon for a reversal of the judgment or decree. The appellee will follow the same sequence and arrangement of points as contained in the appellant's brief and may then add additional points. Either party may insert under any point not more than two citations which either considers to be the principal authorities on that point.

(5) **TABLE OF AUTHORITIES.** The table of authorities shall be an alphabetical listing of authorities with a designation of the page number of the brief on which the authority appears. The authorities shall be grouped as follows:

- (A) Cases
- (B) Statutes/rules
- (C) Books and treaties
- (D) Miscellaneous

(6) **ABSTRACT.** The appellant's abstract or abridg-

ment of the record should consist of an impartial condensation, without comment or emphasis, of *only* such material parts of the pleadings, proceedings, facts, documents, and other matters in the record as are necessary to an understanding of all questions presented to the Court for decision. A document, such as a will or contract, may be photocopied and attached as an exhibit to the abstract. However, the document or the necessary portions of the document must be abstracted. Mere notation such as "plaintiff's exhibit no. 4" is not sufficient. On a second or subsequent appeal, the abstract shall include a condensation of all pertinent portions of the record filed on any prior appeal. Not more than two pages of the record shall in any instance be abstracted without a page reference to the record. In the abstracting of testimony, the first person (i.e., "I") rather than the third person (i.e., "He, She") shall be used. The Clerk will refuse to accept a brief if the testimony is not abstracted in the first person or if the abstract does not contain the required references to the record. In the abstracting of depositions taken on interrogatories, requests for admissions, and the responses thereto, and interrogatories to parties and the responses thereto, the abstract of each answer must immediately follow the abstract of the question. Whenever a map, plat, photograph, or other similar exhibit, which cannot be abstracted in words, must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by photography or other process and attach it to the copies of the abstract filed in the Court and served upon the opposing counsel, unless this requirement is shown to be impracticable and is waived by the Court upon motion.

(7) ARGUMENT. Arguments shall be presented under subheadings numbered to correspond to the outline of points to be relied upon. Citations of decisions of the Court which are officially reported must be from the official reports. All citation of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible. The number of pages for argument shall comply with Rule 4-1(b).

(8) **COVER FOR BRIEFS.** On the cover of every brief there should appear the number and style of the case in the Supreme Court or Court of Appeals, a designation of the court from which the appeal is taken, and the name of its presiding judge, the title of the brief (e.g., "Abstract and Brief for Appellant"), and the name or names of individual counsel who prepared the brief, including their addresses and telephone numbers.

(b) **INSUFFICIENCY OF APPELLANT'S ABSTRACT.** Motions to dismiss the appeal for insufficiency of the appellant's abstract will not be recognized. Deficiencies in the appellant's abstract will ordinarily come to the Court's attention and be handled in either of two ways:

(1) If the appellee considers the appellant's abstract to be defective, the appellee's brief may call the deficiencies to the Court's attention and may, at the appellee's option, contain a supplemental abstract. When the case is considered on its merits, the Court may impose or withhold costs to compensate either party for the other party's noncompliance with this Rule. In seeking an award of costs under this paragraph, counsel must submit a statement showing the cost of the supplemental abstract and a certificate of counsel showing the amount of time that was devoted to the preparation of the supplemental abstract.

(2) Whether or not the appellee has called attention to deficiencies in the appellant's abstract, the Court may treat the question when the case is submitted on its merits. If the Court finds the abstract to be flagrantly deficient, or to cause an unreasonable or unjust delay in the disposition of the appeal, the judgment or decree may be affirmed for noncompliance with the Rule. If the Court considers that action to be unduly harsh, the appellant's attorney may be allowed time to revise the brief, at his or her own expense, to conform to Rule 4-2(a)(6). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct.

(c) **NON-COMPLIANCE.** Briefs not in compliance with the format required by this Rule shall not be accepted for filing by the Clerk.

#### RULE 4-3

#### BRIEFS IN CRIMINAL CASES

(a) **BRIEFS IN CHIEF — WHEN THE STATE IS THE APPELLEE.** In criminal cases in which the State is the appellee and in which appellant is not indigent, the appellant shall have 40 days from the date the transcript is lodged to file 17 copies of the brief with the Clerk. Upon the filing of the brief, the appellant shall submit proof of service of two additional copies of the brief upon the Attorney General and one copy upon the trial court.

(b) **BRIEFS IN CHIEF — WHEN STATE IS THE APPELLANT.** In criminal cases in which the State is the appellant, the procedure shall be the same as in subsection (a) except the State shall file only 17 copies of the brief with the Clerk and furnish evidence of service upon opposing counsel and the trial court.

(c) **APPELLEE'S BRIEF.** The appellee shall have 30 days from the filing of the appellant's brief to file 17 copies of the brief with the Clerk and such further abstract as may be necessary to a fair determination of the case. Proof of service upon opposing counsel and the trial court is required.

(d) **REPLY BRIEF.** The appellant shall have 15 days from the date that the appellant's brief is filed to file 17 copies of the reply brief and furnish evidence of service upon the opposing counsel and the trial court.

(e) **PAGE LIMITS ON BRIEFS.** The argument portion of the appellant's and the appellee's briefs shall not exceed 25 double-spaced typewritten pages including the conclusion, if any, with a 15 typewritten page limit upon the reply brief, except that if either limitation is shown to be too stringent in a particular case, and there has been a good faith effort to comply with the page limits, it may be waived on motion.

(f) **MISDEMEANOR CASES SUBJECT TO DISMISSAL.** In misdemeanor cases, failure of the appellant to file a brief within the time limit renders the case subject to dismissal as in civil cases pursuant to Rule 4-5.

(g) **APPELLANT'S DUTY TO ABSTRACT RECORD.** In all felony cases it is the duty of the appellant, whether represented by retained counsel, appointed counsel or a public defender, or acting pro se, to abstract such parts of the record, but *only* such parts of the record as are material to the points to be argued in the appellant's brief.

(h) **COURT'S REVIEW OF ERRORS IN DEATH OR LIFE IMPRISONMENT CASES.** When the sentence is death or life imprisonment, the Court must review all errors prejudicial to the appellant in accordance with Ark. Code Ann. Sec. 16-91-113(a). To make that review possible, the appellant must abstract all rulings adverse to him or her made by the trial court on all objections, motions and requests made by either party, together with such parts of the records as are needed for an understanding of each adverse ruling. The Attorney General will make certain and certify that all of those objections have been abstracted and will brief all points argued by the appellant and any other points that appear to involve prejudicial error.

(i) **PREPARATION OF BRIEFS FOR INDIGENT APPELLANTS.** When an indigent appellant is represented by appointed counsel or a public defender, the attorney may have the briefs reproduced by submitting one double-spaced typewritten manuscript to the Attorney General and one to the Clerk not later than the due date of the brief. In such instances, the time for the filing of the Attorney General's brief is extended by five days.

(j) **WITHDRAWAL OF COUNSEL.** (1) Any motion by counsel for a defendant in a criminal or a juvenile delinquency case for permission to withdraw made after notice of appeal has been given shall be addressed to the Court, shall contain a statement of the reason for the request and shall be served upon the defendant personally by first-class mail. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the trial court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract section of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the trial court.

(2) The Clerk shall furnish the appellant with a copy of the appellant's counsel's brief, and advise the appellant that he or she has 30 days within which to raise any points that he or she chooses, and that this may be done in typewritten or hand printed form and accompanied by an affidavit that no paid assistance from any inmate of the Department of Correction or of any other place of incarceration has been received in the preparation of the response.

(3) The Clerk shall serve all such responses by an appellant on the Attorney General, who shall file a brief for the State, pursuant to sections (e) and (i) of this Rule, within 30 days after such service and serve a copy on the appellant, as well as on the appellant's counsel.

(4) After a reply brief has been filed, or after the time for filing such a brief has expired, the motion for withdrawal shall be submitted to the Court as other motions are submitted. If, upon consideration of the motion, it shall appear to the Court that the judgment of the trial court should be affirmed or reversed, the Court may take such action on its own motion, without any supporting opinion.

**(k) CONTINUANCES AND EXTENSIONS OF TIME.**

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

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

**RULE 4-4**

**FILING AND SERVICE OF BRIEFS IN CIVIL CASES**

(a) **APPELLANT'S BRIEF.** In all civil cases the appellant shall, within 40 days of lodging the record, file 17 copies of the appellant's brief with the Clerk and furnish evidence of service upon opposing counsel and the trial court. Each copy of the

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appellant's brief shall contain every item required by Rule 4-2. Unemployment compensation cases appealed from the Arkansas Board of Review may be submitted to the Court of Appeals for decision as soon as the transcript is filed, unless the petition for review shows it is filed by an attorney, or notice of intent to file a brief for the appellant is filed with the Clerk prior to the filing of the transcript.

(b) **APPELLEE BRIEF — CROSS-APPELLANT'S BRIEF.** The appellee shall file 17 copies of the appellee's brief, and of any further abstract thought necessary, within 30 days after the appellant's brief is filed, and furnish evidence of service upon opposing counsel and the trial court. If the appellee's brief has a supplemental abstract, it shall be compiled in accordance with Rule 4-2 and included in or with each copy of the brief. This Rule shall apply to cross-appellants. If the cross-appellant is also the appellee, the two separate arguments may be contained in one brief, but each argument is limited to 25 pages.

(c) **REPLY BRIEF — CROSS-APPELLANT'S REPLY BRIEF.** The appellant may file 17 copies of a reply brief within 15 days after the appellee's brief is filed and shall furnish evidence of service upon opposing counsel and the trial court. This Rule shall apply to the cross-appellant's reply brief except it must be filed within 15 days after the cross-appellee's brief is filed.

(d) **EVIDENCE OF SERVICE.** Briefs tendered to the Clerk will not be filed unless evidence of service upon opposing counsel and the trial court has been furnished to the Clerk. Such evidence may be in the form of a letter signed by counsel, naming the attorney or attorneys and the trial court to whom copies of the brief have been mailed or delivered.

(e) **SUBMISSION.** The case shall be subject to call on the next Monday (in the Supreme Court) or Wednesday (in the Court of Appeals) after the expiration of the time allowed for filing the reply brief of the appellant or the cross-appellant.

(f) **CONTINUANCES AND EXTENSIONS OF TIME.**  
(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) days upon oral request. If such an extension is granted, no further extension shall be entertained except by the Court upon a written motion showing good cause.

(2) Stipulations of counsel for continuances will not be

recognized. Any request for an extension of time (except in (f)(1)) for the filing of any brief must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Eight copies of the motion are required. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

#### RULE 4-5

### FAILURE TO FILE BRIEFS IN CIVIL CASES

If the appellant's brief has not been filed in a civil case within the time allowed by Rule 4-4, the Court may dismiss the appeal and affirm the judgment or decree at cost to the appellant. When the appellee has failed to appear and file a brief, the Court may, when the case is called for submission, proceed and give judgment according to the requirements of the case.

#### RULE 4-6

### AMICI CURIAE ATTORNEYS

(a) **BRIEFS.** Amici Curiae attorneys may file briefs with the permission of the Court. The motion for permission should state the reasons why such a brief is thought to be necessary. If the amicus brief supports the appellant's position or is neutral, it is due at the same time as the appellant's brief; if it supports the appellee's position, it is due at the same time as the appellee's brief.

(b) **ORAL ARGUMENTS.** Amici Curiae attorneys will not be permitted to participate in oral arguments.

(c) **PETITIONS FOR REHEARING.** Amici Curiae attorneys will not be permitted to file a petition for rehearing in their own names and may participate only by first securing permission of the regular attorneys or of the Court to join in the motion or brief.

#### RULE 5-1

### ORAL ARGUMENTS

(a) **WRITTEN REQUEST REQUIRED.** Where either side desires to make an oral argument in any case, counsel shall give the Court and opposing counsel written notice by letter,



separate from any brief or any cover letter accompanying the tender of briefs. The letter shall be filed with the Clerk not more than five days after the appellant's reply brief is filed or becomes due, whichever occurs first.

Counsel who have not requested oral argument are not required to appear at the argument but must, at least five days before the date the argument is to be heard, notify the Clerk in writing that they do not intend to appear.

(b) **COUNSEL AND TIME LIMITATIONS.** Only two attorneys will be heard for each side, and not more than 20 minutes will be allowed to each side for argument unless special leave of Court has been granted prior to the argument. Applications for additional time for argument must be by written notice, filed not less than one week before the case is scheduled for submission, and setting forth the reasons why additional time is necessary.

(c) **APPORTIONMENT OF TIME.** The time allowed may be apportioned between the counsel on the same side at their discretion; provided, always, that a fair presentation of the case shall be made by the party having the opening and closing argument.

(d) **READING FROM BOOKS.** Counsel are not permitted to read from books, briefs, or records, except those short extracts which they consider necessary to properly emphasize some point.

(e) **SUBSTANCE OF AUTHORITIES STATED.** Instead of reading authorities, counsel are expected to cite them in their briefs and to state the substance in argument.

(f) **INTERRUPTIONS NOT PERMITTED.** Counsel will not be permitted to interrupt opposing counsel with questions or otherwise, except by leave of the Court.

(g) **PETITIONS FOR REHEARING.** Oral arguments are not permitted in support of or in opposition to petitions for rehearing.

(h) **AMICI CURIAE COUNSEL.** Amici Curiae counsel will not be permitted to participate in the oral argument.

(i) **ARGUMENT DATE FIXED.** Within 15 days of the mailing of the letter notifying the Clerk and the other party or parties of the request for oral argument, counsel and the parties

may submit to the Clerk, in writing, dates when they will be unavailable for argument. The Clerk will notify counsel or the parties of the date oral argument is to be held. Thereafter, the date for argument may be changed only upon written motion to the Court and upon a showing of good cause. If it appears that attempts to schedule oral argument may result in undue delay, the Court may decide any case without oral argument.

(j) **CITING CASES OUTSIDE THE BRIEF.** If a case outside the brief is to be cited during oral argument, the citation must be furnished opposing counsel and the Court before the date of argument.

#### RULE 5-2

#### 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.

### RULE 5-3

### MANDATE

(a) **MANDATE TO BE ISSUED IN ALL CASES.** In all cases, civil and criminal, the Clerk will issue a mandate when the decision becomes final and will mail it to the clerk of the trial court for filing and recording. A decision is not final until the time for filing of petition for rehearing or, in the case of a decision of the Court of Appeals, the time for filing a petition for review has expired or, in the event of the filing of such petition, until there has been a final disposition thereof.

(b) **IMMEDIATE ISSUANCE, UPON LEAVE OF COURT.** No transcript of any judgment, decision or opinion of the Court shall be certified by the Clerk, or mandate issued, within 17 calendar days after the judgment is rendered without special leave of the Court or upon stipulation of counsel, except in the case of the denial of a petition under Rule 37 of the Arkansas Rules of Criminal Procedure, in which case the decision of the Court shall be certified by the Clerk and the mandate issued on the day the decision is rendered.

(c) **STAY OF MANDATE.** Parties desiring to prosecute proceedings to the Supreme Court of the United States, either by appeal or certiorari, may obtain an order either staying the issuance of a mandate or recalling a mandate, upon motion to the Court (or to an individual judge) and a showing that an order has been placed with the Clerk for a copy of the record, with payment

of an advance deposit of \$50.00. Such stay is discretionary.

Bond may be required as a condition for granting the stay.

(d) **MOTION TO RECALL MANDATE.** A motion to recall the mandate must be served upon opposing counsel, and an objection to the motion may be filed.

Should the motion be granted, the moving party shall pay all costs accrued after the filing of the mandate.

#### RULE 6-1

### PETITIONS FOR EXTRAORDINARY RELIEF AND EXPEDITED CONSIDERATIONS

(a) **PLEADINGS — NUMBER OF COPIES.** In cases in which the jurisdiction of the Court is in fact appellate although in form original, such as petitions for writs of prohibition, certiorari, or mandamus, the pleadings with certified exhibits from the trial court (if applicable) are treated as the record. If the petition falls within subsection (b) or (c) of this Rule, the pleader is required to file the original and seven copies of the pleading along with the record with the Clerk. Evidence of service of a copy upon the adverse party or his or her counsel of record in the trial court is required. If the proceeding falls within subsection (e) of this Rule, the pleader is required to file only the original pleading along with the certified record. When the petition includes a certified copy of the record in the trial court, it is not necessary that a copy of such exhibit be served upon the adverse party or his or her counsel. In prohibition cases, a copy of the pleadings will also be served upon the trial judge, who is ordinarily a nominal party and is not required to file a response.

(b) **EMERGENCY OR ACCELERATED PROCEEDINGS.** In situations where time limitations do not allow a proper response time of ten days, upon the filing of the pleading, the pleader shall inform the Clerk's office of the need for an emergency or accelerated hearing by the Court. Upon notification, the Court will determine the date of the response and date of consideration of the pleading. If the pleader desires oral argument, such argument will be addressed to the Court at the regularly called sessions at 9:00 a.m. on Monday or Wednesday morning; otherwise, oral argument will not be entertained. The pleading must be properly filed and the party or attorney of record

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notified before oral argument will be heard.

(c) **APPLICATIONS FOR TEMPORARY RELIEF.** When the petitioner intends to apply to the full Court for temporary relief staying the trial court proceedings pending the consideration of the petition upon its merits, eight copies of the petition must be filed, and reasonable notice of the application for temporary relief must be served upon the other party or the counsel of record in the trial court and the trial court. If, after its review and consideration of the record and pleading filed, the Court shall determine that a temporary stay is warranted and granted, briefs shall be required as in other cases under Rule 4-4, and the parties' brief time will be calculated from the date the temporary relief is granted. However, the Court may decide the matter without ruling on the request for a briefing schedule.

(d) **RESPONSE.** A response to an application for temporary relief in subsection (c) may be filed within 10 calendar days unless modified by the Court. Additional time for filing a response must be requested within the 10 day period.

(e) **TIME FOR FILING BRIEFS.** If the proceedings in the trial court have been stayed, or the time before a hearing or trial will allow a briefing schedule, briefs are required as in other cases, the parties' brief time under Rule 4-4 for filing a brief to be calculated from the date on which the petition is filed. The mere filing of a petition for relief under this section does not automatically entitle the petitioner to file briefs and stay the proceedings in the trial court.

#### RULE 6-2

#### APPEALS PROSECUTED FOR PURPOSES OF DELAY

(a) **MOTION ALLEGING DELAY.** When counsel for the appellee has examined the record and believes that the appeal has been prosecuted merely for the purposes of delay, the counsel may file a motion alleging such delay with a plea to the Court to advance and affirm.

(b) **CONTENTS OF MOTION.** The motion shall provide citations to the record to show that the appeal has been prosecuted merely for the purpose of delay. Counsel shall state in the motion that he or she has carefully examined the record and specify the reasons for the belief that the appeal has been filed for the purpose

of delay.

(c) **PROCEDURE.** The motion shall be in the form required by Rule 2-1 and will be called for submission three weeks after filing.

(d) **RESPONSE.** Counsel for the appellant may file a response within 21 days of the filing of the motion.

#### RULE 6-3

### ANONYMITY IN CERTAIN APPELLATE PROCEEDINGS, OPINIONS AND CASE STYLES

(a) **SCOPE.** In an appeal in which counsel for either side believes that a person's identity should be protected by the Court, counsel may move the Court to do so. These cases may include, but are not limited to, adoptions and appeals from the juvenile division of chancery court.

(b) **APPELLANT AS MOVANT.** If the movant is the appellant in the case, the motion shall be filed at the time the transcript is tendered for filing to the Clerk. The person whose identity is sought to be protected shall be referred to using the initials of the first and last names in the motion and on the cover of the transcript, if applicable. Upon filing the motion, the Clerk shall seal the record pending the Court's decision on the motion.

(c) **APPELLEE AS MOVANT.** If the movant is the appellee in the case, the motion shall be filed within 5 days, excluding weekends and holidays, of the date the record is filed. The person whose identity is sought to be protected shall be referred to using the initials of the first and last names in the motion. Upon filing the motion, the Clerk shall seal the record pending the Court's decision on the motion.

(d) **SERVICE.** A copy of the motion must be served upon opposing counsel who will have 10 days to respond and serve the movant. Opposing counsel shall also use only the initials of the first and last names of the person at issue in any response.

(e) **MOTION GRANTED.** If the Court grants the motion, the Clerk shall ensure that the cover of the tendered transcript complies with the Court's order. Counsel and the Court shall preserve the person's anonymity by using the initials of the first and last names in all subsequent captions, opinions, motions, and

briefs, as well as in oral argument, if any. The records and papers on appeal shall be open for inspection only to the counsel of record, or, only upon order of the Court, to others demonstrating by written motion a proper interest in the documents.

(f) **MOTION DENIED.** If the Court denies the motion, the Clerk shall substitute the person's full name on the cover of the transcript, if applicable, and the appeal shall proceed in accordance with these Rules.

#### RULE 6-4

### MOTION REQUESTING DISQUALIFICATION

Counsel for any party may file a motion requesting that one or more justices or judges disqualify. The motion shall be in the form required by Rule 2-1 and shall state the particular facts alleged to require the disqualification. The motion shall be filed a reasonable time prior to the submission of the case to the Court.

#### RULE 6-5

### ORIGINAL ACTIONS

(a) **PROCEDURE.** In cases in which the jurisdiction of the Supreme Court is original rather than appellate, such as suits attacking the validity of statewide petitions filed under Amendment 7 of the Arkansas Constitution, the procedure will conform to that prevailing in the chancery courts. Upon filing the original and seven copies of the pleading and payment of a filing fee, a summons or other process will be issued by the Clerk. The respondent's pleading must be filed within the time allowed in chancery cases as provided under the Rules of Civil Procedure.

(b) **FACT FINDING.** Evidence upon issues of fact will be taken by a master to be appointed by the Court. As a condition to the appointment of a master, the Court may require both parties to file a bond for costs to be approved by the Clerk. Upon the filing of the master's findings, the parties shall file briefs as in other cases.

(c) **FACT FINDING UNNECESSARY.** When the issues involve questions of law only, and there is no need for appointment of a master to determine facts, the parties shall file briefs as in other cases. Time limits under Rule 4-4 will be calculated from the date the respondent's pleading is filed or due to be filed.

RULE 6-6

PAUPER'S OATH AND MOTIONS FOR ATTORNEY'S FEES IN CRIMINAL CASES

(a) PAUPER'S OATH AND AFFIDAVIT; REQUIREMENT. It shall be required that all pro se petitions or motions and all petitions or motions filed by counsel seeking relief on behalf of a client who is claiming the status of an indigent, filed in the Court, be accompanied by an assertion of indigency, verified by a supporting affidavit. The affidavit form will be provided by the Court for such purposes. Any petition or motion not in compliance with this Rule will be returned to the petitioner or counsel for failure to comply.

(b) FORM FOR AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS. The form of the affidavit shall be as follows:

IN THE SUPREME COURT OF ARKANSAS

\_\_\_\_\_ PETITIONER  
v. No. \_\_\_\_\_  
STATE OF ARKANSAS RESPONDENT

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, \_\_\_\_\_, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

- 1. Are you presently employed? Yes \_\_\_ No \_\_\_  
(a) If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. \_\_\_\_\_  
\_\_\_\_\_



- (b) If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. \_\_\_\_\_

2. Have you received within the past twelve months any money from any of the following sources?

- (a) Business, profession or any form of self-employment?  
Yes \_\_\_\_ No \_\_\_\_
- (b) Rent payments, interest or dividends?  
Yes \_\_\_\_ No \_\_\_\_
- (c) Pensions, annuities or life insurance payments?  
Yes \_\_\_\_ No \_\_\_\_
- (d) Gifts or inheritances? Yes \_\_\_\_ No \_\_\_\_
- (e) Any other sources? Yes \_\_\_\_ No \_\_\_\_

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months. \_\_\_\_\_

3. Do you own any cash, or do you have money in a checking or savings account? Yes \_\_\_\_ No \_\_\_\_

If the answer is yes, state the total amount in each account. \_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes \_\_\_\_ No \_\_\_\_

If the answer is yes, describe the property and state its approximate value. \_\_\_\_\_

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. \_\_\_\_\_

6. TO BE COMPLETED ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare funds?  
Yes \_\_\_\_ No \_\_\_\_

If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution. \_\_\_\_\_

I understand that false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

\_\_\_\_\_  
Signature of Petitioner

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Petitioner, \_\_\_\_\_, being first duly sworn under oath, presents that he/she has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

C E R T I F I C A T E

(To be completed by authorized officer of penal institution)

I hereby certify that the petitioner herein, \_\_\_\_\_, has the sum of \$\_\_\_\_\_ on account to his/her credit at the \_\_\_\_\_ institution where he/she is confined. I further certify that petitioner likewise has the following securities to his/her credit according to the records of said \_\_\_\_\_ institution:  
\_\_\_\_\_  
\_\_\_\_\_

Authorized Officer of Institution

(c) **CONTENT OF MOTIONS FOR ATTORNEY'S FEES.** All motions for attorney's fees from attorneys appointed to represent indigent appellants in criminal cases shall contain the following information: (1) the date of appointment; (2) the court which appointed counsel; (3) the number of hours expended by counsel in research, court appearances, and preparation of pleadings and briefs; (4) counsel's customary rate of compensation in similar cases; (5) the customary rate of compensation in similar cases of attorneys in the community; (6) expenses incurred by counsel which are directly attributable to the case; (7) the experience of counsel in the representation of criminal appellants; and (8) the relative complexity of the case. The motion shall be filed not later than 30 days after the issuance of the mandate.

RULE 6-7

TAXATION OF COSTS

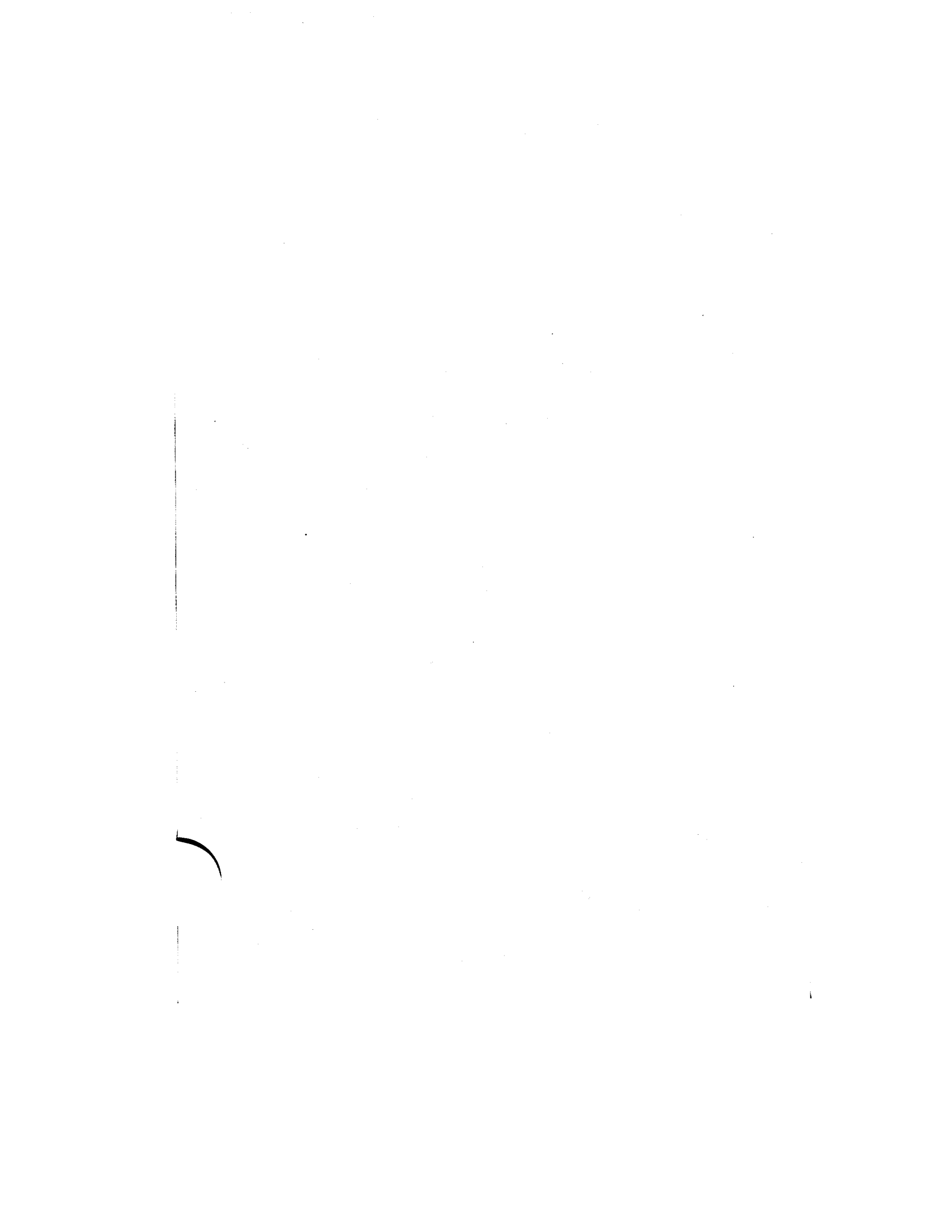
(a) **AFFIRMANCE.** The appellee may recover brief costs not to exceed \$3.00 per page; total costs not to exceed \$500.00.

(b) **REVERSAL.** The appellant may recover brief costs not to exceed \$3.00 per page; total costs not to exceed \$500.00, the filing fee of \$100.00 and the certified costs of the transcript.

(c) **AFFIRMED IN PART AND REVERSED IN PART — LAW.** In cases at law, the appellant is entitled to the appeal costs if a reversal is ordered, and a substantial recovery is made.

(d) **AFFIRMED IN PART AND REVERSED IN PART — CHANCERY CASES.** In chancery cases, the Court may assess appeal costs according to the merits of the case.

(e) **IMPOSING OR WITHHOLDING COSTS.** Whether the case be affirmed or reversed, the Court will impose or withhold costs in accordance with Rule 4-2(b).



**Appointments to  
Committees**

IN RE: ARKANSAS JUDICIAL DISCIPLINE AND  
DISABILITY COMMISSION

Supreme Court of Arkansas  
Opinion delivered January 11, 1993

PER CURIAM. In accordance with Ark. Const. amend. 66 and Act 637 of 1989, the Court appoints the Honorable John Robbins, Arkansas Court of Appeals, to the Arkansas Judicial Discipline and Disability Commission to fill the unexpired term of the Honorable George Cracraft, Arkansas Court of Appeals, who has resigned.

The Court expresses its gratitude to Judge George Cracraft for his dedicated and faithful service to this Commission.

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IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas  
Opinion delivered January 11, 1993

PER CURIAM. For the purpose of the February 1993 Bar Examination, E. Lamar Pettus is appointed to replace A. Watson Bell as an At Large member of the Arkansas Board of Law Examiners.

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IN RE: ARKANSAS JUDICIAL DISCIPLINE AND  
DISABILITY COMMISSION

Supreme Court of Arkansas  
Delivered January 19, 1993

PER CURIAM. In accordance with Ark. Const. Amend. 66 and Act 637 of 1989, the Court appoints the Honorable Andrew Fulkerson, Municipal Judge, Paragould, Arkansas, to the Arkansas Judicial Discipline and Disability Commission to fill the unexpired term of William Gilliam, Esq., former Municipal

Judge, Malvern, Arkansas. This term will expire June 30, 1995.

The Court expresses its gratitude to Mr. Gilliam for his dedicated and faithful service to this Commission.

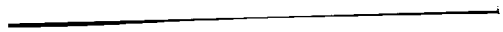
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IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas

Delivered February 1, 1993

PER CURIAM. For the purpose of the February 1993 Bar Examination, Hon. Joyce Williams Warren is appointed to replace Webb Hubbell, Esq. as a Second District member of the Arkansas Board of Law Examiners.





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 Municipality's authority over streets did not take jurisdiction from the county, no conflict found between the jurisdiction of the two entities. *Id.*  
 Code gives county authority to establish private roads. *Id.*  
 County court allowed to exercise jurisdiction in the city, no violation of separation of powers found. *Id.*

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Jurisdiction, modification of sentence. *Kelley v. Washington*, 73.  
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 Subject-matter jurisdiction cannot be conferred by waiver, appellee's failure to tell court of other conviction cannot be basis for retained jurisdiction. *Id.*  
 Court may not do indirectly that which it is prohibited from doing directly. *State v. Robinson*, 133.  
 Venue and jurisdiction distinct concepts, venue may be waived. *Loewer v. National Bank of Ark.*, 354.  
 Waiver of venue, entry of appearance, permissive counterclaim filed. *Id.*  
 Appellate court jurisdiction. *State v. Mills*, 363.  
 Res judicata, five elements. *Fisher v. Jones*, 450.  
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 Transfer from circuit court to juvenile court. *Holland v. State*, 494.

## COVENANTS:

Restriction against mobile home, structure was a mobile home. *Welchman v. Norman*, 52.  
 Character of mobile home remains regardless of placement on permanent foundation. *Id.*  
 Existence of general plan for development, test. *Id.*  
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Passenger found by trial court not to be an accomplice, remaining evidence clearly connected appellant to the crime. *Gray v. State*, 209.  
 Sufficient evidence for conviction. *Tisdale v. State*, 220.  
 Kidnapping, capital murder, and attempted capital murder, sufficient evidence. *Id.*



Conviction for kidnapping and capital murder. *Id.*  
Possession of controlled substance is a lesser included offense of delivery of a controlled substance. *Whitener v. State*, 377.  
Probation or suspension of sentence not available for delivery of marijuana, request properly denied. *Id.*  
Appellant found eligible, but not appropriate for alternative sentencing, no abuse of discretion found. *Id.*  
Confessions, statement found to be voluntary. *Henderson v. State*, 398.  
Death penalty not unconstitutional, issue previously decided. *Id.*  
Death penalty case, comparative review. *Id.*  
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Appellant not in custody during conversation, no *Miranda* warning required. *Dillon v. State*, 529.  
Lying about whereabouts of victim, evidence of guilt. *Brenk v. State*, 579.  
Murder, substantial evidence. *Id.*  
Accomplice testimony, what is required to support a felony conviction. *Franklin v. State*, 601.  
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## CRIMINAL PROCEDURE:

Sentencing, statute applicable to assess consecutive punishment whether appellee was on parole from a federal or a state institution. *Kelley v. Washington*, 73.  
Sentencing, parole eligibility. *Id.*  
Sentencing, amendment proper. *Id.*  
Postconviction relief not addressed on direct appeal. *Tisdale v. State*, 220.  
Effectiveness of counsel raised during trial, issue addressed on appeal. *Id.*  
Postconviction relief, trial strategy. *Id.*  
Postconviction relief, effectiveness of counsel, failure to call witness, issue moot. *Id.*  
Postconviction relief, effectiveness of counsel. *Id.*  
Transfer to juvenile court, equal weight need not be given to each factor, proof need not be introduced on each factor. *Hogan v. State*, 262.  
Denial of transfer to juvenile court proper. *Id.*  
Appealability of judgment, no provision for interlocutory appeal from order entered by court in pretrial procedures. *Butler v. State*, 334.  
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When defendant may appeal. *Id.*  
No conviction & proceeding not equitable, no appeal or injunction will lie. *Id.*  
Rape-shield law, interlocutory appeal by the state. *State v. Mills*, 363.  
Revocation proceeding for juveniles, original action proper, later revocation not allowed. *Avery v. State*, 391.  
Whether to grant a continuance usually discretionary, review of trial court's decision. *Henderson v. State*, 398.  
Continuance denied, no abuse of discretion found. *Id.*  
Appellant properly charged by information. *Id.*  
Prosecutor has right to close arguments in the penalty phase, state has the burden of proof. *Id.*  
Waiver of rights, totality of circumstances reviewed. *Bogard v. State*, 412.  
Read rights, understood rights, later confusion irrelevant. *Id.*  
Severance, felon in possession of a firearm and murder charges, reversible error not to sever. *Sutton v. State*, 435.  
Involuntary confession, confession induced by promises of immunity, wrong remedy pursued, no error. *Id.*

Statement induced by promise of immunity, no error. *Id.*

Good reason for failure to file appeal, motion for rule on the clerk treated as motion for belated appeal, motion granted. *Tucker v. State*, 446.

Confession, no single factor determinative of voluntariness. *Leach v. State*, 485.

Voluntary statement, focus on voluntariness of statement, not whether inducement was a promise or threat. *Id.*

Voluntary statement, factors considered. *Id.*

Not unfair for prosecutor to advise appellant of what was within his power to do. *Id.*

Refusal to transfer to juvenile court not clearly erroneous. *Holland v. State*, 494.

Charge of capital felony murder, first degree murder instruction must also be given. *Odum v. State*, 576.

Speedy trial rule, no basis for exception. *Id.*

Speedy trial rule applied, motion to dismiss properly denied. *Id.*

Admissibility of in-court identification, burden of proof on appeal. *Hayes v. State*, 645.

Reliability is linchpin in determining admissibility of identification testimony. *Id.*

Factors to consider in determining reliability of identification testimony. *Id.*

Identification testimony admissible if identification reliable, even if technique is impermissibly suggestive. *Id.*

Photo lineups reliable, correct finding. *Id.*

Lineup, not absolutely impermissible for police to tell witness that suspect is in a lineup. *Id.*

Postconviction relief not available while appeal pending. *Haynes v. State*, 651.

#### DAMAGES:

Damages recovered at trial, sufficient evidence for jury's finding. *Dr. Pepper Bottling Co. v. Frantz*, 136.

Some latitude given, reasonable certain losses need only be stated proximately. *Id.*

Taxation, no evidence commissioner disregarded tax law. *Leathers v. A & B Dirt Movers*, 320.

Punitive damages, no fixed standard for measurement. *Cater v. Cater*, 627.

#### DISCOVERY:

Refusal to impose sanctions not abuse of discretion. *Loewer v. National Bank of Ark.*, 354.

Use at trial, answers to interrogatories, objections are not answers. *Piercy v. Wal-Mart Stores, Inc.*, 424.

Interrogatories are hearsay, generally inadmissible in case-in-chief but admissible to impeach answering party. *Id.*

#### DIVORCE:

Spouse with cause of action in tort, can choose to pursue claim in circuit court. *Cater v. Cater*, 627.

Res judicata & collateral estoppel not applicable, claim not previously litigated. *Id.*

#### ELECTION OF REMEDIES:

Doctrine applies to remedies, not to causes of action. *Cater v. Cater*, 627.

Doctrine not relevant, remedies sought were consistent. *Id.*

#### ELECTIONS:

Want of notice. *Hannah v. Deboer, et al.*, 215.

Contest filed prior to election but in wrong court, mandatory nature of laws not preserved. *Id.*

Election contest, action to contest certification of vote. *Hasha v. City of Fayetteville*, 460.

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Electric company not actively diligent, finding not against the preponderance of the evidence. *Rich Mountain Elec. Coop. v. Revels*, 1.

Admissibility of photographs, relevancy. *Id.*

Photos not of site of incident, trial court erred in admitting them into evidence. *Id.*

Photos inadmissible, other evidence of negligence sufficient to uphold verdict. *Id.*

No statement made to intake officer, no violation of statute. *Manatt v. State*, 17.

Actual malice claimed, whether evidence supports finding a question of law.

*Fuller v. Russell*, 108.

Substantial evidence defined. *Muskogee Bridge Co. v. Stansell*, 113.

Substantial evidence reviewed. *Id.*

Circumstantial evidence may establish any material fact in issue. *Id.*

Substantial evidence found, finding of negligence supported. *Id.*

Lay witness, witness's testimony admissible. *Id.*

Whether or not there was good cause for termination, issue one for jury. *Dr.*

*Pepper Bottling Co. v. Frantz*, 136.

Hearsay rule, one requirement of the business records exception. *Hooper v.*

*State*, 154.

Similar evidence previously admitted without objection, later testimony not prejudicial. *Id.*

Negligence action, traffic violation, probation contract not admissible here. *Ice v. Bramlett*, 157.

Evidence of bias not collateral matter. *Wood v. White*, 168.

Evidence of bias erroneously excluded. *Id.*

Sufficiency, standard of review. *Tisdale v. State*, 220.

Substantial evidence defined. *Id.*

Sufficiency of evidence distinguished from credibility of the evidence. *State v. Long*, 248.

Variances and discrepancies in proof go to the credibility of the evidence, resolution left to factfinder. *Id.*

Circumstantial evidence, whether is substantial evidence to support a verdict, resolution left to factfinder. *Id.*

Proffered exhibit essential to appellate review. *Allen v. Burton*, 253.

Judicial notice, error harmless, *Williams v. Spelic*, 279.

Subscribing witness's testimony required to authenticate writing only if required by laws of originating jurisdiction, burden of showing requirements of originating state lies with party challenging the document. *Barnes v. Barnes*, 287.

Appellant challenged blood test, failed to meet burden of proof. *Id.*

Common-law exception to hearsay rule, requirement of residual hearsay exception. *Id.*

Residual hearsay exception requested by appellant, no circumstantial guarantees of trustworthiness offered. *Id.*

Supported finding appellant not incapacitated, trial court's finding not clearly erroneous. *Anderson v. State*, 332.

Substantial evidence defined, burden of proof. *McKinley v. Arkansas Dep't of Human Servs.*, 382.

Substantial evidence found to support board's decision. *Id.*

Prior inconsistent statements normally inadmissible hearsay, exception.

*Henderson v. State*, 398.

Relevancy ruling, review. *In Re Adoption of K.F.H. and K.F.H.*, 416.  
Irrelevant testimony admitted, bench trial. *Id.*  
Statements proving motive are not excluded by the hearsay rule. *Piercy v. Wal-Mart Stores, Inc.*, 424.  
Relevancy of medical history, discretionary, standard of review. *Id.*  
Testimony of appellant as lay expert, no abuse of discretion to exclude testimony. *Id.*  
Impeachment, use of extrinsic evidence on a collateral matter. *Sutton v. State*, 435.  
Hearsay properly excluded. *Id.*  
Offer to plead guilty not admissible against offeror, letter hearsay and properly excluded. *Id.*  
Impeachment, letter not admissible for impeachment because it did not evidence a consummated agreement. *Id.*  
Some extrinsic evidence prohibited by ARE 608, reference to transcript for purpose of impeachment not prohibited. *Dillon v. State*, 529.  
Credibility of witness, conditions under which it may be attacked. *Id.*  
Cross examination went to credibility, questioning was proper. *Id.*  
Rape case, modus operandi admissible to prove a common plan. *Id.*  
Substantial evidence defined. *Young v. Johnson*, 551.  
Evidence of contributory negligence insubstantial, circuit court erred in not directing verdict on negligence issue. *Id.*  
Error to admit luminol test results here. *Brenk v. State*, 579.  
Prejudicial error to admit luminal test photos and testimony that blood caused the reaction. *Id.*  
Threats to ex-wife admissible in trial for murder of current wife to show intent, plan, and identity. *Id.*  
Testimony not excludable as prior bad act. *Id.*  
Same evidence admitted without objection, potential error harmless. *Id.*  
Hearsay defined. *Id.*  
Testimony not hearsay. *Id.*  
Waiver of right to object. *Id.*  
State of mind testimony permitted. *Id.*  
Sufficiency of, review on appeal. *Franklin v. State*, 601.  
Substantial evidence of crimes found. *Id.*  
Accomplice testimony given, sufficient corroborating evidence for jury to believe all of testimony. *Id.*  
Substantial evidence found, conviction upheld. *Dixon v. State*, 613.  
Trial court's decision on relevancy given great weight, reversal only if abuse of discretion found. *Id.*

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Collateral estoppel, four elements. *Fisher v. Jones*, 450.  
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**FOOD STAMPS:**

Eligibility determined by household, not individual. *Arkansas Dep't of Human Servs. v. Spears*, 96.  
Parents and children treated as household. *Id.*  
Benefits that exceed entitlement, repayment household liable. *Id.*  
Decision that appellee was not liable for overpayment of food stamps to her

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mother was not clearly erroneous. *Id.*

**GUARDIAN & WARD:**

Prospective ward not domiciliary of state, court had jurisdiction. *In Re Guardianship of Powers*, 101.

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Payor of advances to laborers or suppliers does not make payor a supplier of labor or materials for purposes of a claim against the surety. *Integon Indem. Corp. v. Bull*, 61.

Surety entitled to indemnity from assigned funds on uncompleted public works project, jury instruction not prejudicial to appellee. *Id.*

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Mention of coverage at trial, reversible error here. *Id.*

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Statutory penalty & prejudgment interest, no basis for claim where award reversed. *Id.*

**JUDGES:**

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Defaulting defendant, hearing on amount of damages, general considerations. *Divelbliss v. Suchor*, 8.

No timely answer filed, no subsequent appearance entered, plaintiffs entitled to both default and damages without further notice to appellant. *Id.*

Review of summary judgment. *Lively v. Libbey Memorial Physical Medicine Ctr., Inc.*, 41.

Summary judgment granted, material issues of fact existed. *Id.*

Summary judgment proper, no material question of fact. *Wilson v. General Elec. Capital Auto Lease, Inc.*, 84.

Denial of judgment notwithstanding the verdict, review of. *Dr. Pepper Bottling Co. v. Frantz*, 136.

Summary judgment, when proper. *Bushong v. Garmon Co.*, 228.

Summary judgment, proof of material element of claim lacking. *Id.*

Motion of summary judgment, appellant failed to provide proof required to withstand motion. *Id.*

Res judicata, claim preclusion. *Cater v. Cater*, 627.

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Res judicata & collateral estoppel, no bar to subsequent action where court has expressly reserved rights to future litigation. *Id.*

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Paternity cases, chancery court exercises concurrent jurisdiction with the juvenile division. *Barnes v. Barnes*, 287.

## JURY:

- Failure to give instruction not error if it would have misled or confused the jury. *Richey v. Luffman*, 81.
- May accept or reject testimony, superior position to judge credibility. *Muskogee Bridge Co. v. Stansell*, 113.
- Sovereign immunity, jury properly instructed. *Id.*
- Lack of interrogatories to jury on findings. *Olmstead v. Moody*, 163.
- Individually sequestered voir dire. *Leach v. State*, 485.
- Sequestered voir dire denied, trial court's action not reviewed, no prejudice shown. *Id.*
- Instruction properly denied, serious physical injury not an element of the crime of rape. *Dillon v. State*, 529.
- Objections to jury instructions, must be made either before or at the time instructions are given. *Young v. Johnson*, 551.
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- Credibility of identification testimony for jury to decide. *Hayes v. State*, 645.

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- Affirmative act on concealment tolls statute. *Wilson v. General Elec. Capital Auto Lease*, 84.
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- Fraud allegedly concealed, plaintiffs failed to exercise reasonable diligence to examine contract. *Id.*
- Recovery on life insurance policy, tort action. *First Pyramid Life Ins. Co. v. Stoltz*, 313.
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- No fraudulent concealment, statute not tolled. *Id.*
- Fraud, effect. *Id.*
- What constitutes fraudulent concealment. *Id.*
- Estate beneficiaries on notice that estate was potential beneficiary of insurance policy, information could have been discovered, action barred. *Id.*
- Ignorance of right does not toll statute. *Id.*
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- Directed verdict, when granted. *Muskogee Bridge Co. v. Stansell*, 113.
- Motion for default judgment, standard of review. *Maple Leaf Canvas, Inc. v. Rogers*, 171.
- Motion for directed verdict, test for trial court in ruling on. *Young v. Johnson*, 551.
- Motion for summary judgment, burden of proof. *Tulloch v. Eck*, 564.
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- Denial of motion for summary judgment, not an appealable order. *Cater v. Cater*, 627.
- Content more important than titles, motion was for postconviction relief, not a new trial. *Haynes v. State*, 651.

## MUNICIPAL CORPORATIONS:

- Control & supervision over the streets a chief objective of incorporating, county court and municipality do not both have control of the streets. *Yates v. Sturgis*, 618.

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- Duty of electric company, burden of proof. *Rich Mountain Elec. Coop. v. Revels*, 1.  
Electric companies, duty of care. *Id.*  
Apportionment of comparative negligence not reviewed. *Olmstead v. Moody*, 163.  
Substantial evidence appellant was 50% responsible for her own injuries. *Id.*  
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- Motion deemed denied if not ruled upon within 30 days. *Arkansas State Highway Comm'n v. Ayers*, 212.  
Newly discovered evidence, new trial not favored, ruling in discretion of trial judge. *Piercy v. Wal-Mart Stores, Inc.*, 424.  
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Newly discovered evidence that would merely impeach a witness is insufficient reason to warrant a new trial. *Id.*

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- Notice included indicated infraction, notice was sufficient. *McKinley v. Arkansas Dep't of Human Servs.*, 382.

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- Laws regulating, failure to place limitations on the time within which a censorship board decision maker must make a determination violates first amendment. *Orrell v. City of Hot Springs*, 301.  
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Prior restraint, procedural safeguards to ensure expeditious decision making. *Id.*  
Ordinance conditioned issuance of license upon approval by other municipal inspection agencies without sitting time limit for their inspections, licensing scheme lacked adequate procedural safeguards. *Id.*  
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## OFFICERS &amp; PUBLIC EMPLOYEES:

- Civil service commission rules have force of law. *Williams v. Taylor*, 94.  
Civil service commission, rule requires hearing on any grievance. *Id.*  
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## PARENT &amp; CHILD:

- Purposes served by revised uniform reciprocal enforcement of support act, collateral matters may not be raised as a defense. *State v. Robinson*, 133.  
RURESA prohibited court from determining visitation, court could not attempt to do so indirectly. *Id.*  
Support and visitation under RURESA, general rule. *Id.*  
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Paternity proceeding, burden of proof. *Barnes v. Barnes*, 287.  
Blood test & testimony gave rise to presumptions of paternity. *Id.*  
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Child support chart, weekly pay determined after deduction for presently paid support. *Id.*

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*Id.*  
Insufficient pleading. *Id.*  
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Petitioners failed to show there was no other adequate or appropriate remedy, writ denied. *Id.*

**PROPERTY:**

Landowner's duty to licensee. *Lively v. Libbey Memorial Physical Medicine Ctr., Inc.*, 41.

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Federal statutes not specifically enacted to countermand the FOIA, no exemption provided. *Id.*  
FOIA, liberal construction. *Sebastian County Chap. of the Am. Red Cross v. Weatherford*, 656.  
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FOIA, meaning of public funds. *Id.*  
FOIA, act not applicable, no direct payment of government funds. *Id.*

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Probable cause existed to issue warrants. *Brenk v. State*, 579.  
Search warrant, issuing judges's duty, duty of reviewing court. *Id.*  
Warrants not invalid, sufficiently specific about time criminal activity took place.  
*Id.*  
Judicial officers authorized to issue warrants not limited. *Id.*  
Search not a nighttime search, but a continuation of an earlier search. *Id.*



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- Objection to definition of delinquent juvenile, no disposition of appellant under that definition, issue not reached. *Manatt v. State*, 17.
- No conflict between statutes, no repeal by implication. *Id.*
- Repeal by implication is favored. *Id.*
- Avoidance of vagueness under due process, what is required. *McKinley v. Arkansas Dep't of Human Servs.*, 382.
- Day care licensing requirements, substantial compliance is clearly delineated. *Id.*
- Statutory construction in general, construction of workers' compensation act. *City of Ft. Smith v. Tate*, 405.
- Construction of, determination of legislative intent. *Id.*
- Each word construed if possible, unnecessary or contradictory clauses may be deleted. *Id.*
- Description & map properly filed with clerk, appellant's argument meritless. *City of Springdale v. Town of Bethel Heights*, 497.
- Found unconstitutional in part, if possible, valid portion will remain in effect. *State v. Post*, 510.
- Fee cap portion of attorney fee statute unconstitutional, remainder of statute interwoven and so also unconstitutional. *Id.*
- County ordinance contained provisions similar to unconstitutional statute, ordinance also unconstitutional. *Id.*
- Payment of indigent's attorney's fees, no statute delegating duty to pay to county, state must bear expense. *Id.*
- Interpretation of. *Gibson v. City of Trumann*, 561.
- 1981 act allows mayor to vote whenever his vote is needed, language applies to any ordinance, including appropriations ordinance. *Id.*
- Use of word shall, mandatory compliance intended. *Campbell v. State*, 641.
- Petition for involuntary commitment, must be filed within 72 hours of detention, failure to file required dismissal. *Id.*

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- Specific objections to valuation clear, reassessment under different method proper. *Potlatch Corp. v. Arkansas City School Dist.*, 145.
- Assessment of property, review by the courts. *Id.*
- Appeals from county courts tried de novo, remand for new valuation based on the proper formula. *Id.*
- Power to discriminate, tax law may not be purely arbitrary. *Medlock v. Leathers*, 175.
- When court will strike a tax law. *Id.*
- When tax law upheld. *Id.*
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- Gross receipts taxation, distinction between cable tv and satellite tv, rational basis. *Id.*
- Burden of proof on challenger. *Id.*
- Levy of tax, burden of proof, shifting burden. *Leathers v. A & B Dirt Movers, Inc.*, 320.
- Gross receipts tax, records unclear. *Id.*
- Taxpayer's testimony alone not sufficient to refute reasonableness of estimated tax assessments. *Id.*
- Municipal corporations have no inherent power to tax. *Hasha v. City of Fayetteville*, 460.
- Local sales and use tax adoption authorized. *Id.*
- Abolition of local sales tax by city council or initiative. *Id.*
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Bond penny authorized. *Id.*  
 Bond penny, pledge of existing tax. *Id.*  
 Pay-as-you-go capital improvements. *Id.*  
 Illegal exaction suit not election contest. *Id.*  
 Estoppel not applicable to bar contest of tax. *Id.*  
 Tax tied to vote to issue bonds to construct facilities for school district. *Id.*  
 Illegal exaction defined. *Id.*  
 Illegal exaction occurred. *Id.*  
 Equal protection challenge, rational basis test applicable. *Howard v. City of Fort Smith*, 505.  
 Discrimination in taxation inherent in power to tax, deference given to legislative determinations. *Id.*  
 Classification made by taxation legislation, when appellate court may strike. *Id.*  
 Statute discriminates in favor of one class, when determined to be arbitrary. *Id.*  
 Difference in treatment of taxpayers based on rational distinction, appellants failed to meet their burden. *Id.*  
 Legislation concerning, due process analysis the same as equal protection analysis. *Id.*

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 Congress did not preempt field of cable television. *Id.*

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Misrepresentation, materiality is matter for factfinder. *Ellis v. Litter*, 35.  
 Misrepresentation, proof of materiality. *Id.*  
 Misrepresentation, defect in foundation of structure not trivial, question for jury. *Id.*  
 Misrepresentation, intent of sellers in remaining silent was jury question. *Id.*  
 Deceit, credibility and weight of evidence for jury. *Id.*  
 Misrepresentation and negligence, failure to prove knowledge of defect by bank. *Id.*  
 Invitee & licensee distinguished. *Lively v. Libbey Memorial Physical Medicine Ctr., Inc.*, 41.  
 Invitee, public and business invitee distinguished. *Id.*  
 Wanton or willful conduct, what constitutes. *Id.*  
 Questions of fact remained, jury should have been allowed to make a determination. *Id.*  
 Landowner must warn of hidden dangers, jury could have determined there were such dangers, summary judgment not appropriate. *Id.*  
 Labels, Adequacy of warnings generally for the jury. *Bushong v. Garmon Co.*, 228.  
 Claim for inadequate warning, failure to read label does not automatically preclude claim. *Id.*  
 Failure to read label precluded claim, no error found. *Id.*  
 Interference with contractual relations or business expectancy, elements. *Fisher v. Jones*, 450.  
 Interference with contractual relation, claim precluded. *Id.*  
 Failure to prove issue regarding knowledge of business relationship or expectancy, summary judgment proper. *Id.*  
 Interference with contractual relation, claim barred. *Id.*  
 Interference must be improper. *Id.*  
 Interference with contract, factors. *Id.*  
 Interference with contract, actor having financial interest in business of person induced. *Id.*

Malicious prosecution, elements. *Hollingsworth v. First Nat'l Bank & Trust Co.*, 637.  
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Malicious prosecution, malice defined. *Id.*  
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Trade name valuable, neither competition nor confusion required. *Williams v. Spelic*, 279.  
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Use of family name in trade name runs risk of losing its individual identity. *Id.*

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Test results not made available to defense prior to trial, recess cured any prejudice. *Tisdale v. State*, 220.  
Failure to make record violated administrative order 4. *Allen v. Burton*, 253.  
Comment by judge during voir dire, appellant concedes mistrial not warranted. *Id.*  
Burden on complaining party to request cautionary instruction. *Id.*  
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Argument to jury, golden rule, argument cut off before error occurred. *Piercy v. Wal-Mart Stores, Inc.*, 424.  
Order of trial, discretion. *Id.*  
Order of trial, no abuse of discretion. *Id.*  
Discretion in controlling argument of counsel. *Brenk v. State*, 579.  
Argument of counsel, not error to permit. *Id.*  
Comments on parole prohibited. *Haynes v. State*, 651.  
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## TRUSTS

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**ARKANSAS  
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**Volume 40**

**CASES DETERMINED  
IN THE**

**Court of Appeals  
of Arkansas**

**FROM  
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INCLUSIVE**

**MARLO M. BUSH  
REPORTER OF DECISIONS**

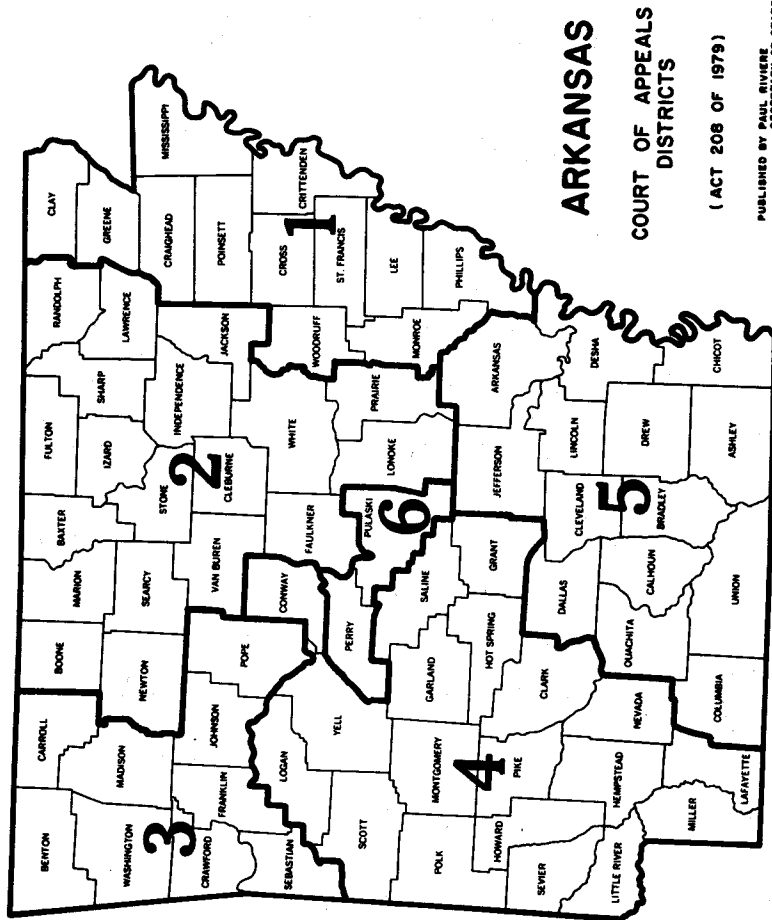
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# ARKANSAS

## COURT OF APPEALS DISTRICTS

(ACT 208 OF 1979)

PUBLISHED BY PAUL BIVIERE  
SECRETARY OF STATE



# JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED  
BY THIS VOLUME  
(November 4, 1992—  
January 27, 1993, inclusive)

## JUDGES

GEORGE K. CRACRAFT	Chief Judge <sup>1</sup>
JOHN E. JENNINGS	Chief Judge <sup>2</sup>
JOHN MAUZY PITTMAN	Judge <sup>3</sup>
JAMES R. COOPER	Judge <sup>4</sup>
ELIZABETH W. DANIELSON	Judge <sup>5</sup>
JOHN B. ROBBINS	Judge <sup>6</sup>
MELVIN MAYFIELD	Judge <sup>7</sup>
JUDITH ROGERS	Judge <sup>8</sup>

## OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian
MARLO M. BUSH	Reporter of Decisions

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<sup>1</sup>District 1. Retired December 31, 1992.

<sup>2</sup>District 3. Appointed Chief Judge and sworn in on January 6, 1993.

<sup>3</sup>District 1. Elected and sworn in on January 6, 1993.

<sup>4</sup>District 2.

<sup>5</sup>District 4. Term expired December 31, 1992.

<sup>6</sup>District 4. Elected and sworn in on January 6, 1993.

<sup>7</sup>District 5.

<sup>8</sup>District 6.

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## STANDARDS FOR PUBLICATION OF OPINIONS

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## Rules of the Arkansas Supreme Court and Court of Appeals

## OPINIONS

1. All signed opinions of the Supreme Court shall be designated for publication.
2. 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.
3. 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.
4. Opinions of the Court of Appeals not designated for publication shall not be published in the official 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.

5. Copies of All Opinions Available. — In every case the Clerk will furnish without charge one typewritten copy of all of either 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.



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- Adams v. Adams, CA 92-271 (Cooper, J.), affirmed November 4, 1992.
- Adams v. State, CA CR 92-305 (Cracraft, C.J.), affirmed December 2, 1992.
- Aden v. Aden, CA 92-743 (Cooper, J.), affirmed in part, reversed and remanded in part December 23, 1992.
- Alcoholic Beverage Control Bd. v. Froehler, CA 92-567 (Rogers, J.), reversed and remanded December 30, 1992.
- Allen, Clarence v. State, CA CR 92-361 (Cracraft, C.J.), affirmed December 2, 1992.
- Allen, Matthew v. State, CA CR 92-235 (Jennings, J.), affirmed November 25, 1992.
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- Atkins v. State, CA CR 92-417 (Danielson, J.), affirmed December 16, 1992.
- Ault v. State, CA CR 92-503 (Rogers, J.), affirmed December 30, 1992.
- Austin v. State, CA CR 92-349 (Danielson, J.), affirmed November 12, 1992.
- Baker v. Malvern Pulpwood/Outlaw Express, CA 92-104 (Mayfield, J.), affirmed December 9, 1992.
- Banks v. State, CA CR 92-576 (Danielson, J.), affirmed December 16, 1992.
- Barnhill of Springdale, Inc. v. Dunray Services, CA 92-640 (Cracraft, C.J.), affirmed November 25, 1992.
- Bell v. State, CA CR 92-465 (Jennings, C.J.), affirmed January 20, 1993.
- Bishop v. State, CA CR 92-419 (Mayfield, J.), affirmed January 20, 1993.
- Brannen v. State, CA CR 91-317 (Cracraft, C.J.), affirmed November 25, 1992.
- Bratton v. State, CA CR 92-35 (Coper, J.), affirmed November 18, 1992.
- Brown v. State, CA CR 92-328 (Cracraft, C.J.), affirmed November 25, 1992.
- Bryant v. State, CA 92-219 (Jennings, J.), affirmed November 25, 1992.
- Bullard v. Bullard, CA 92-472 (Cracraft, C.J.), reversed and remanded November 18, 1992.
- Bullock v. International Paper Co., CA 92-312 (Rogers, J.), affirmed December 23, 1992.

- Burnett v. State, CA CR 92-745 (Cracraft, C.J.), affirmed December 23, 1992.
- Busch v. Easco Hand Tools, CA 92-327 (Jennings, C.J.), affirmed January 27, 1993.
- Butler v. Jewell-Brite Car Wash, CA 92-27 (Mayfield, J.), reversed and remanded December 23, 1992.
- Campbell v. State, CA CR 92-223 (Jennings, J.), affirmed November 4, 1992.
- Clark v. Allen Canning Co., CA 92-443 (Mayfield, J.), affirmed January 20, 1993.
- Cole v. State, CA CR 92-268 (Cracraft, C.J.), affirmed November 4, 1992.
- Collins v. State, CA CR 92-414 (Jennings, J.), affirmed December 16, 1992.
- Cowart v. Cowart, CA 92-195 (Mayfield, J.), affirmed December 30, 1992.
- Cross v. State, CA CR 90-311 (Cooper, J.), affirmed December 2, 1992.
- Crow v. Custom Insulation, Inc., CA 92-134 (Mayfield, J.), affirmed January 27, 1993.
- Crow v. Weyerhaeuser Co., CA 91-479 (Mayfield, J.), reversed and remanded December 23, 1992.
- Cusseta Wood Prod., Inc. v. Forrest, CA 92-232 (Cooper, J.), reversed and remanded December 23, 1992.
- Daniel v. Daniel, CA 92-509 (Jennings, J.), affirmed December 2, 1992.
- Daniels v. State, CA CR 92-255 (Cooper, J.), affirmed November 4, 1992.
- Davis v. State, CA CR 92-284 (Cooper, J.), affirmed in part; reversed in part January 27, 1993.
- Death & Total Permanent Disability Trust Fund v. Smith, CA 92-57 (Per Curiam), Motion of Appellant for Attorneys Fees denied November 18, 1992.
- Doffin v. Weeks, CA 92-267 (Rogers, J.), affirmed December 23, 1992.
- Doolittle v. Finch, CA 92-72 (Pittman, J.), affirmed January 27, 1993.
- Edwards v. Baughman, CA 92-618 (Rogers, J.), affirmed November 25, 1992.
- Ellis v. Ellis, CA 92-646 (Jennings, C.J.), affirmed January 20, 1993.
- Epperson v. Epperson, CA 92-731 (Mayfield, J.), affirmed December 16, 1992.
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- Farver v. State, CA CR 92-530 (Rogers, J.), affirmed December 2, 1992.
- Finch v. State, CA CR 92-324 (Cooper, J.), affirmed December 16, 1992.
- Flowers v. Burns Int Sec. Serv., CA 92-422 (Cooper, J.), affirmed December 16, 1992.
- Frigon v. Frigon, CA 92-489 (Rogers, J.), affirmed December 16, 1992.
- Gaston v. Weyerhaeser Co., CA 92-130 (Danielson, J.), affirmed November 12, 1992.
- GenCorp Automotive v. Rogers, CA 92-40 (Mayfield, J.), appeal dismissed November 12, 1992.
- Gibson v. State, CA 92-593 (Cracraft, C.J.), affirmed December 16, 1992.
- Goodwin v. State, CA CR 92-79 (Mayfield, J.), affirmed December 9, 1992.
- Griggs v. State, CA CR 92-206 (Jennings, C.J.), affirmed January 20, 1993.
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- Harris, Ross v. State, CA CR 92-400 (Cracraft, C.J.), affirmed December 2, 1992.
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- Hill v. Ozark Financial Serv., Inc., CA 92-600 (Pittman, J.), affirmed January 27, 1993.
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- Hunter v. State, CA CR 90-318 (Mayfield, J.), affirmed January

- 13, 1993.  
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- Nabert v. State, CA CR 92-55 (Cooper, J.), affirmed December 23, 1992.
- Petty v. Woodward, CA 92-300 (Danielson, J.), affirmed November 18, 1992.
- Pinegar v. State, CA CR 92-279 (Mayfield, J.), affirmed December 2, 1992.
- Pope v. Sears, Roebuck & Co., CA 92-360 (Jennings, J.), affirmed November 18, 1992.
- Reams v. State, CA CR 92-333 (Danielson, J.), affirmed November 12, 1992.
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- Reynolds v. Southside School Dist. No. 3, CA 92-176 (Cracraft, C.J.), affirmed November 12, 1992.
- Rice v. State, CA CR 92-204 (Cracraft, C.J.), affirmed November 4, 1992.
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- S.M. Lawrence Co. v. Duncan, CA 92-236 (Jennings, J.), affirmed December 16, 1992.
- Saucier v. State, CA CR 92-241 (Mayfield, J.), reversed and remanded December 23, 1992.
- Sharum v. State, CA CR 92-157 (Rogers, J.), affirmed November 12, 1992.
- Sierra v. Little River Memorial Hosp., CA 91-474 (Cooper, J.), affirmed November 12, 1992.
- Simpson v. Smith Fiberglass, Inc., CA 92-432 (Jennings, J.), affirmed November 12, 1992.
- Skil Corp. v. Jordon, CA 92-166 (Rogers, J.), affirmed December 2, 1992.
- Smith-Chevrolet-Cadillac-Geo v. Covey, CA 92-215 (Cooper, J.), affirmed November 25, 1992.
- Sobba v. White, CA 92-298 (Robbins, J.), affirmed January 27, 1993.
- Sparks v. Jones, CA 91-511 (Jennings, J.), affirmed December 23, 1992.
- Stephens v. Stivers, CA 92-539 (Jennings, J.), affirmed December 23, 1992.
- Superfoods, Etc. v. Director, E 92-7 (Danielson, J.), affirmed December 2, 1992.
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- Thomas v. Farm Credit Bank, CA 92-177 (Jennings, J.), affirmed November 12, 1992.
- Thomason v. State, CA CR 92-525 (Cracraft, C.J.), affirmed December 16, 1992.
- Toby v. Darling Store Fixtures, CA 92-401 (Danielson, J.), affirmed December 9, 1992.
- Trott v. State, CA 92-286 (Rogers, J.), affirmed December 16, 1992.
- Tyson Foods v. Buchalla, CA 92-309 (Rogers, J.), affirmed November 25, 1992.
- United States Fidelity & Guar. Ins. Co. v. Eads Brothers Furniture Co., CA 92-315 (Rogers, J.), affirmed November 12, 1992.
- Upton v. Estate of Upton, CA 92-73 (Danielson, J.), affirmed December 30, 1992.
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- Vick v. General Motors Corp., CA 92-49 (Mayfield, J.), affirmed November 4, 1992.
- Walls v. State, CA CR 92-698 (Danielson, J.), affirmed December 23, 1992.
- Weathers v. First Nat'l Bank, CA 92-534 (Per Curiam), dismissed December 16, 1992.
- Weekly v. State, CA CR 92-293 (Danielson, J.), reversed and dismissed December 9, 1992.
- Westridge v. Fawks, CA 92-516 (Per Curiam), Appellant's Motion Objecting to Denial of Motion for Extension of Time denied November 12, 1992.
- White v. Zini, CA 91-480 (Per Curiam), Appellant's Motion for Clarification, per curiam issued December 16, 1992.
- Yoder v. Yoder, CA 92-709 (Cooper, J.), affirmed November 18, 1992.

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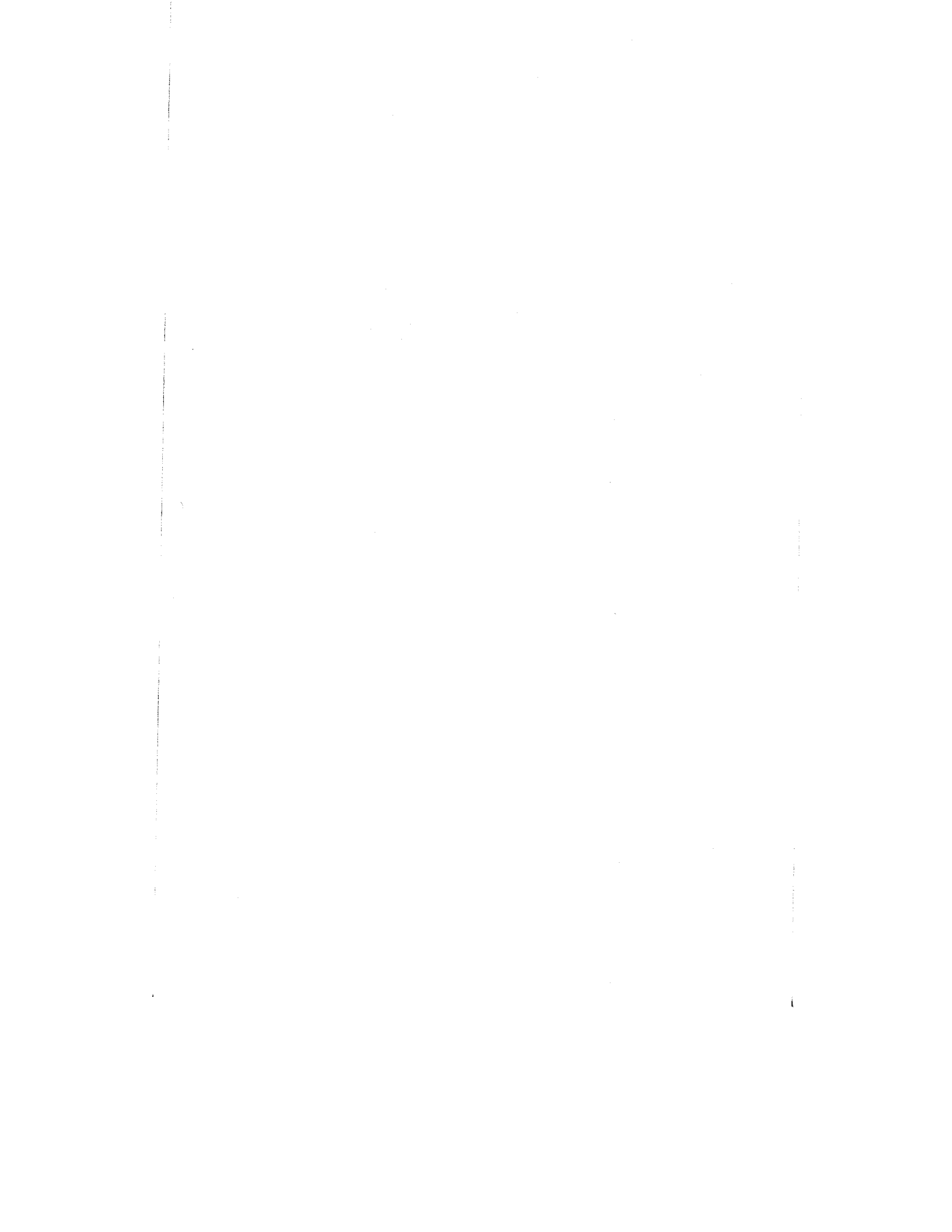
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