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**ARKANSAS**  
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THIS BOOK CONTAINS  
**ARKANSAS REPORTS**  
Volume 312

CASES DETERMINED  
IN THE  
**Supreme Court  
of Arkansas**

FROM  
February 8, 1993 — April 26, 1993  
INCLUSIVE<sup>1</sup>

AND  
**ARKANSAS APPELLATE  
REPORTS**  
Volume 41

CASES DETERMINED  
IN THE  
**Court of Appeals  
of Arkansas**

FROM  
February 3, 1993 — April 21, 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 611. Cite as 312 Ark. — (1993).

<sup>2</sup>Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 226. Cite as 41 Ark. App. — (1993).



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1993**

# ARKANSAS REPORTS

## Volume 312

CASES DETERMINED  
IN THE

### Supreme Court of Arkansas

FROM  
February 8, 1993 — April 26, 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  
(February 8, 1993 —  
April 26, 1993, inclusive)

JUSTICES

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

OFFICERS

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

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## STANDARDS FOR PUBLICATION OF OPINIONS

## Rule 5-2

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

## OPINIONS

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

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

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

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case). Opinions not

designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

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

## OPINIONS NOT DESIGNATED FOR PUBLICATION

- Allen v. Plegge, CR 93-51 (Per Curiam), Pro Se Petition for Writ of Mandamus moot February 22, 1993.
- Bates v. State, CR 80-205 (Per Curiam) Pro Se Motion for Copy of the Appeal Briefs denied March 1, 1993.
- Blakes v. State, CR 92-1464 (Per Curiam), Pro Se Motion for Permission to File a Handwritten Brief moot; Appellees Motion to Dismiss Appeal granted March 15, 1993.
- Bloomfield v. State, CR 92-946 (Per Curiam), Pro Se Petition for Rehearing denied February 22, 1993.
- Brazle v. State, CR 74-144 (Per Curiam), Pro Se Motion for Documents denied March 1, 1993.
- Bryant v. State, RC 90-55 (Per Curiam), Pro Se Motion for Transcript denied March 1, 1993.
- Bryant v. State, RC 90-55 (Per Curiam), Pro Se Motion for Transcript denied May 3, 1993.
- Bullock v. State, CR 93-200 (Per Curiam), Pro Se Motion for Transcript and for Permission to File A Handwritten Pro Se Brief denied; Motion for Extension of Time to File the Appellant's Brief granted April 26, 1993.
- Burnett v. State, CR 93-137 (Per Curiam), affirmed March 22, 1993.
- Carter v. State, CR 93-110 (Per Curiam), Pro Se Motion for Belated Appeal denied March 29, 1993.
- Cobb v. State, CR 93-89 (Per Curiam), Pro Se Motion for Permission to File Handwritten Brief moot, and Appellee's Motion to Dismiss Appeal granted March 15, 1993.
- Coleman, Lee M. v. State, CR 92-1291 (Per Curiam), Pro Se Motion to Dismiss Appeal Without Prejudice, appeal dismissed with prejudice February 8, 1993.
- Coleman, Lee M. v. State, CR 93-81 (Per Curiam), Pro Se Motion for Transcript and Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed March 22, 1993.
- Collins v. Davis, CR 93-332 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 19, 1993.
- Crossley v. State, CR 92-1037 (Per Curiam), affirmed February 22, 1993.
- Cucchiara v. State, CR 93-106 (Per Curiam), Pro Se Motion for Rule on the Clerk denied March 1, 1993.
- Dupree v. State, CR 92-1399 (Per Curiam), Pro Se Motion for

- Appointment of Counsel denied, and Pro Se Motion for Extension of Time to File Brief granted February 8, 1993.
- Ellis v. Davis, CR 93-240 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 5, 1993.
- Ellis v. State, CR 92-1295 (Per Curiam), affirmed March 29, 1993.
- Fellows v. Gunter, CR 93-330 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 19, 1993.
- Friar v. State, CR 92-1346 (Per Curiam), Pro Se Motion to Supplement the Appellant's Brief denied April 5, 1993.
- Furr v. State, CR 92-1200 (Per Curiam), affirmed March 8, 1993.
- Gidron v. State, CR 92-1388 (Per Curiam), Pro Se Motion for Rule on the Clerk and Pro Se Petition for Writ of Certiorari granted; Pro Se Motion to Relieve Counsel and for Appointment of Counsel denied February 8, 1993.
- Gidron v. State, CR 92-1388 (Per Curiam), Appellant's attorney, Davis Lofton, is directed to appear before this court on February 22, 1993, and show cause why he should not be held in contempt of court for failure to perfect the appeal in this case February 8, 1993.
- Gordon v. State, CR 93-43 (Per Curiam), Pro Se Motion to File a Handwritten Brief denied and appeal dismissed April 5, 1993.
- Hagen v. State, CR 92-1218 (Per Curiam), Pro Se Motion for Permission to File a Handwritten Supplemental Abstract denied and appeal dismissed February 15, 1993.
- Hamilton v. State, CR 93-33 (Per Curiam), affirmed April 19, 1993.
- Henderson v. State, CR 92-167 (Per Curiam), Pro Se Motion for Transcript denied March 8, 1993.
- Hill v. State, CR 92-1066 (Per Curiam), reversed and remanded March 15, 1993.
- Hughes v. State, CR 93-231 (Per Curiam), Pro Se Motion for Belated Appeal denied April 26, 1993.
- Hunter v. State, CR 92-1280 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed February 15, 1993.
- Jackson v. State, CR 90-274 (Per Curiam), affirmed February 8, 1993.
- Jarrett v. State, CR 92-1479 (Per Curiam), Pro Se Motion for Permission to Proceed with a Handwritten Brief denied
-

March 29, 1993.

- Johnson v. State, CR 92-1416 (Per Curiam), Pro Se Motion to File a Handwritten Brief moot, and Appellee's Motion to Dismiss Appeal granted March 1, 1993.
- Jones, Tyree v. State, CR 93-10 (Per Curiam), Pro Se Motion for Permission to File a Handwritten Brief, Pro Se Motion for Extension of Time to File Petitioner's Brief, and Pro Se Motion for Transcript moot; Appellee's Motion to Dismiss Appeal granted March 15, 1993.
- Jones, William Frank, Jr. v. State, CR 93-150 (Per Curiam), Pro Se Motion for Permission to File a Handwritten Brief, Motion for Appointment of Counsel, Motion to Supplement the Record, Motion to Supplement the Record with Trial Transcript, Motion to File an Enlarged Brief, and Motion for Extension of Time to File Brief; pro se motions for appointment of counsel and motion to supplement record denied; all other pro se motions moot April 26, 1993.
- Lever v. State, CR 92-1362 (Per Curiam), affirmed April 19, 1993.
- Loy v. State, CR 92-1031 (Per Curiam), affirmed February 22, 1993.
- Marshall v. State, CR 92-1366 (Per Curiam), Pro Se Motion for Permission to Supplement the Appellant's Brief denied and appeal dismissed February 22, 1993.
- May v. State, CR 93-15 (Per Curiam), Pro Se Motion for Rule on the Clerk denied March 1, 1993.
- Minniefield v. Glover CR 93-74 (Per Curiam), Pro Se Petition for Writ Mandamus moot March 8, 1993.
- Neese v. State, CR 92-825 (Per Curiam), affirmed February 15, 1993.
- Peterson v. State, CR 93-117 (Per Curiam), Pro Se Motion for Permission to File a Handwritten Brief and Pro Se Motion for Appointment of Counsel moot; Appellee's Motion to Dismiss Appeal granted March 22, 1993.
- Richmond v. State, CR 92-1256 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed February 15, 1993.
- Roberson v. Griffin, CR 93-267 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 19, 1993.
- Stacy v. State, CR 93-276 (Per Curiam), Pro Se Motion to File a Belated Petition for Writ of Certiorari; denied April 26, 1993.

**Williams v. State, CR 93-92 (Per Curiam), Pro Se Motion for Appointment of Counsel denied March 15, 1993.**  
**Withers v. State, CR 92-823 (Per Curiam), affirmed April 26, 1993.**



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

**IN RE: ARKANSAS SUPREME COURT COMMITTEE  
ON CRIMINAL PRACTICE**

Supreme Court of Arkansas  
Delivered February 15, 1993

**PER CURIAM.** By Per Curiam Order of November 20, 1989, this Court adopted a name change for its committee then known as the Arkansas Supreme Court Committee on Rules of Pleading, Practice, and Procedure (Civil). This committee advises the Court on amendments to the Rules of Civil Procedure. The name was changed to and is currently known as the "Arkansas Supreme Court Committee on Civil Practice."

The Court deems it appropriate to likewise change the name of the Supreme Court Committee on Rules of Pleading, Practice and Procedure in Criminal Cases which advises the Court on amendments to the Rules of Criminal Procedure. Therefore, this committee shall now be known as the "Arkansas Supreme Court Committee on Criminal Practice."

**IT IS SO ORDERED.**

---

**IN RE: Jimmy Dale TATE, Jr. Arkansas Bar No. 90164**

846 S.W.2d 186

Supreme Court of Arkansas  
Opinion delivered February 22, 1993

**PER CURIAM.** On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Jimmy Dale Tate, Jr. to practice law in the State of Arkansas.

IN RE: CLIENT SECURITY FUND  
In Re: Rules Governing Admission to the Bar  
In Re: Rules Governing Continuing Legal Education  
In Re: Rules Governing Professional Conduct

Supreme Court of Arkansas  
Delivered March 29, 1993

PER CURIAM. The Arkansas Bar Association has petitioned this court recommending modification and amendment of rules pertaining to the Supreme Court client security fund, rules governing admission to the bar, continuing legal education and professional conduct.

It has been a longstanding custom and practice for the court to refer requests of this nature to our respective committees for study, comment and recommendations to the court.

Accordingly, the following motions filed on behalf of the Arkansas Bar Association are referred as follows:

Civil filing 92-1206, to the client security fund committee.

Civil filing 92-1288, to the state board of bar examiners.

Civil filing 92-243(a) to the continuing legal education board.

Civil filing 92-243(b) to the Supreme Court committee on professional conduct.

Civil filing 92-243(c) to the professional conduct committee.

The named committees are to study, conduct appropriate hearings when necessary, and furnish to the court within a reasonable period of time, its recommendations as to these proposed amendments or changes to our rules.

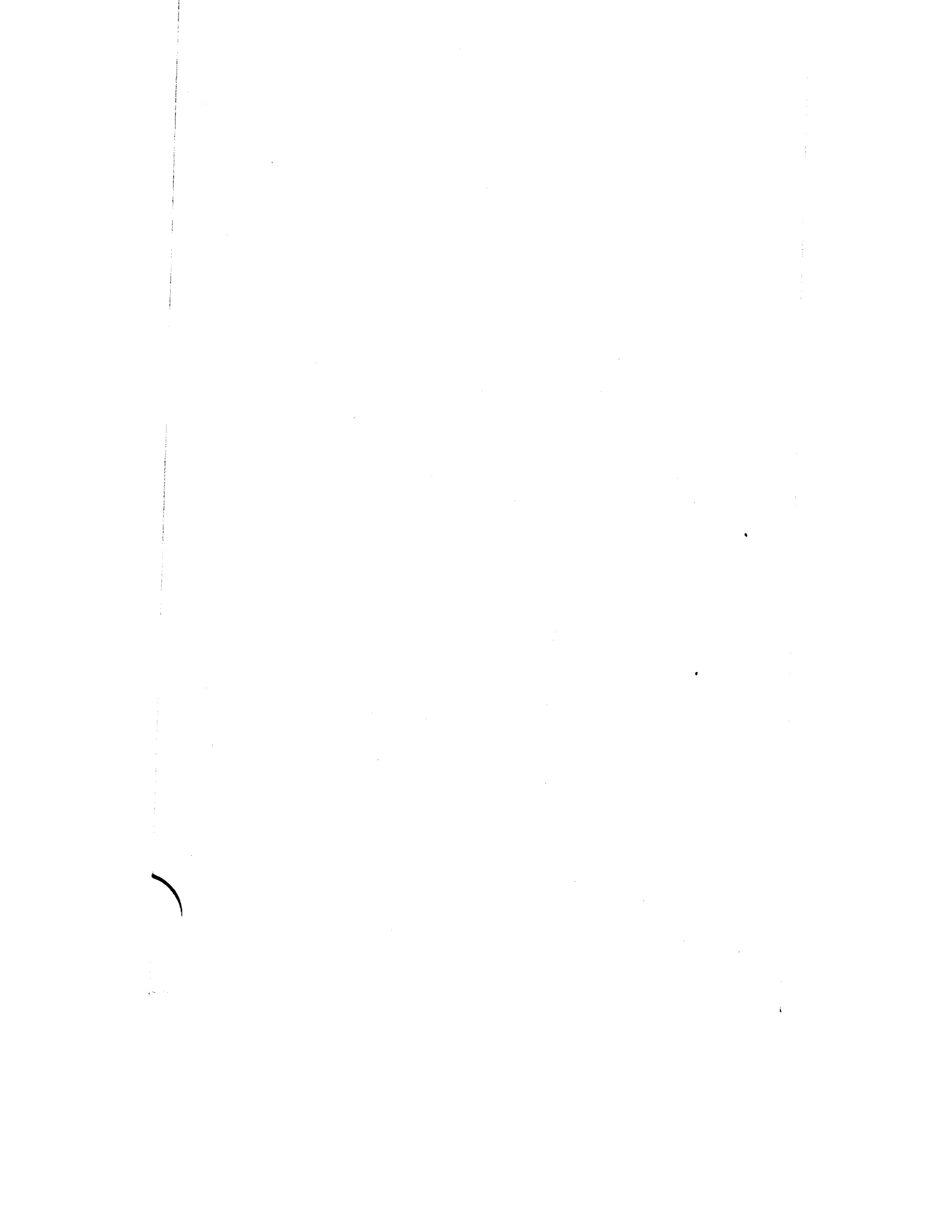
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IN RE: Barry J. WATKINS  
Arkansas Bar No. 77140

848 S.W.2d 428

Supreme Court of Arkansas  
Delivered March 29, 1993

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



**Appointments to  
Committees**

IN RE: ARKANSAS CONTINUING LEGAL  
EDUCATION

Supreme Court of Arkansas  
Delivered February 15, 1993

PER CURIAM. Margaret Woolfolk, Attorney-at-Law, West Memphis, First Court of Appeals District; William G. Wright, Esq., Arkadelphia, Fourth Court of Appeals District; and Chancellor Annabelle Clinton Imber, Little Rock, At-Large, are appointed to this Board for three year terms to expire December 5, 1995. The appointees replace Harry Truman Moore, Esq. of Paragould, John Stroud, Esq. of Texarkana, and Hon. Robin Mays of Little Rock who have retired from the Board.

The Court thanks Judge Imber, Ms Woolfolk, and Mr. Wright and for accepting appointments to this most important Board.

The Court expresses its gratitude to Judge Mays, Mr. Moore, and Mr. Stroud for their faithful and exemplary service as members of the Board and to Mr. Stroud for his dedicated service as Chair of the Board.

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IN RE: SUPREME COURT COMMITTEE ON  
CRIMINAL PRACTICE

Supreme Court of Arkansas  
Delivered February 15, 1993

PER CURIAM. Helen Rice Grinder, Attorney-at-Law, Conway, is hereby appointed to the Supreme Court Committee on Criminal Practice, replacing Arthur Allen, Esq., who no longer resides in Arkansas. The Court thanks Ms Grinder for accepting appointment to this most important committee.

The Court thanks Mr. Allen for his service to the Committee.

IN RE: SUPREME COURT COMMITTEE ON MODEL  
JURY INSTRUCTIONS, CIVIL

Supreme Court of Arkansas  
Delivered February 15, 1993

PER CURIAM. Circuit Judge David Bogard, Little Rock, and Paula Jamell Storeygard, Attorney at Law, North Little Rock, are appointed to the Supreme Court Committee on Model Jury Instruction, Civil, replacing the late Hon. George Rose Smith, Little Rock, and Dale Price, Esq., Little Rock, who has resigned from the Committee.

The Court thanks Judge Bogard and Ms Storeygard for accepting appointment to this most important committee.

The Court recognizes Justice Smith posthumously for his dedicated service to the committee and expresses its gratitude to Mr. Price for his faithful service as a member of the committee.

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IN RE: BOARD OF LEGAL SPECIALIZATION

847 S.W.2d 716

Supreme Court of Arkansas  
Delivered March 15, 1993

PER CURIAM. Richard N. Moore, Jr., Esq. of Little Rock, Arkansas, Sixth Court of Appeals District, is hereby appointed to the Court's Board of Legal Specialization.

Mr. Moore replaces Wendell Griffen, Esq. of Little Rock, who has resigned to accept appointment to the Court's Committee on Professional Conduct. This term will expire December 5, 1994.

The Court thanks Mr. Moore for accepting appointment to this most important Board. The Court expresses its appreciation to Mr. Griffen for his dedicated service as chair of this Board.

IN RE: SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT

847 S.W.2d 716

Supreme Court of Arkansas  
Delivered March 15, 1993

PER CURIAM. Wendell Griffen, Esq., of Little Rock, is hereby appointed to the Supreme Court Committee on Professional Conduct, At-Large, for a term of seven years, expiring March 15, 2000. Mr. Griffen replaces Eddie Walker, Esq., of Fort Smith, who retires from the Committee.

The Court thanks Mr. Griffen for accepting appointment to this most important committee.

The Court expresses its gratitude to Mr. Walker for his dedicated and faithful service as a member and chair of the Committee.

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IN RE: SUPREME COURT COMMITTEE ON  
CRIMINAL PRACTICE

848 S.W.2d 936

Supreme Court of Arkansas  
Delivered March 29, 1993

PER CURIAM. The Honorable Gordon Webb, of Harrison, Prosecuting Attorney for the Fourteenth Judicial District, is hereby appointed to the Supreme Court Committee on Criminal Practice, replacing Thomas Scott Hunter, Esq., of Jonesboro, who has resigned. The Court thanks Mr. Webb for accepting appointment to his most important committee.

The Court thanks Mr. Hunter for his dedicated service to the Committee.



IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas  
Delivered April 26, 1993

PER CURIAM. For the purpose of the July 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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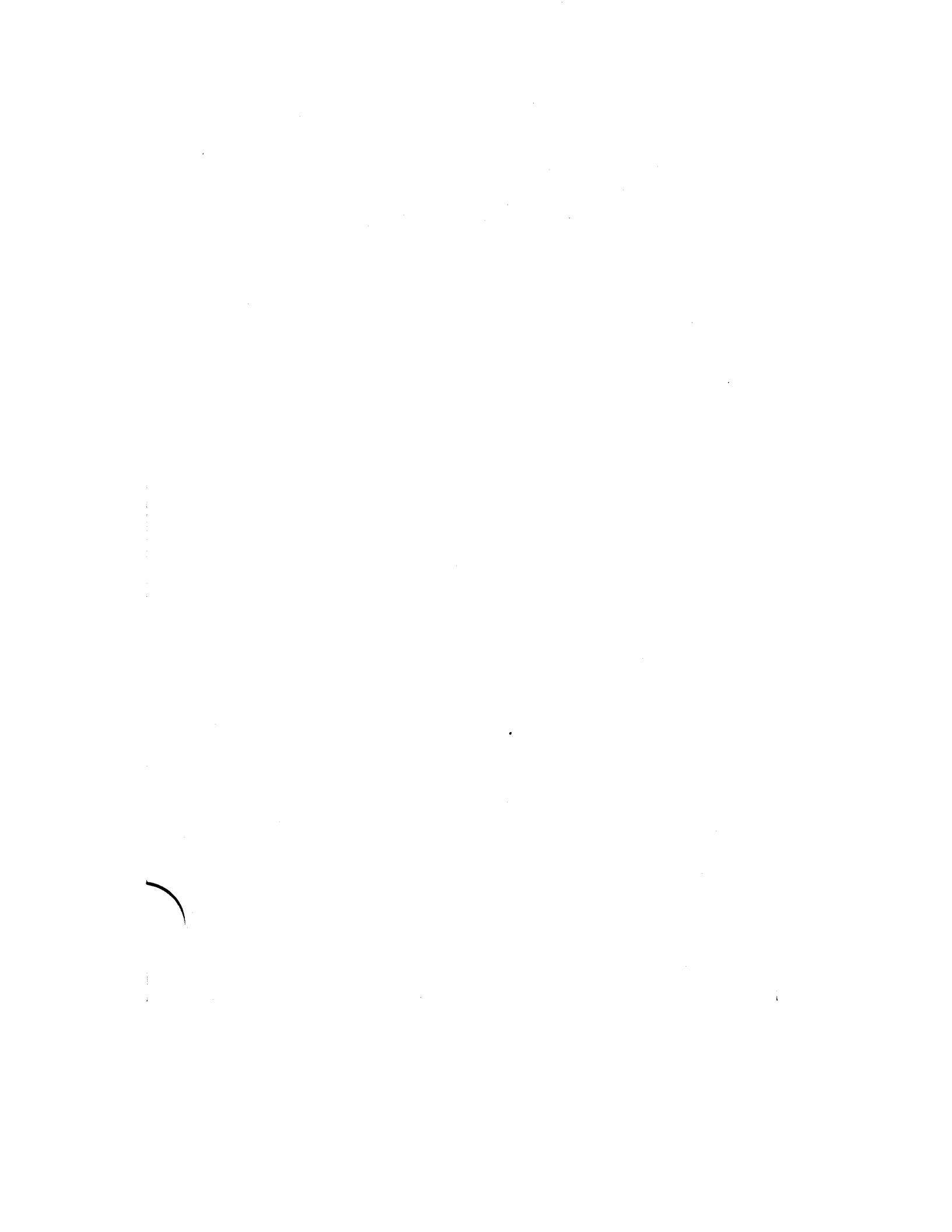
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# ARKANSAS APPELLATE REPORTS

Volume 41

CASES DETERMINED  
IN THE

## Court of Appeals of Arkansas

FROM  
February 3, 1993 — April 21, 1993  
INCLUSIVE

MARLO M. BUSH  
REPORTER OF DECISIONS

CINDY M. ENGLISH  
ASSISTANT  
REPORTER OF DECISIONS

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**JUDGES AND OFFICERS  
OF THE  
COURT OF APPEALS  
OF ARKANSAS**

**DURING THE PERIOD COVERED  
BY THIS VOLUME  
(February 3, 1993—  
April 21, 1993, inclusive)**

**JUDGES**

<b>JOHN E. JENNINGS</b>	<b>Chief Judge<sup>1</sup></b>
<b>JOHN MAUZY PITTMAN</b>	<b>Judge<sup>2</sup></b>
<b>JAMES R. COOPER</b>	<b>Judge<sup>3</sup></b>
<b>JOHN B. ROBBINS</b>	<b>Judge<sup>4</sup></b>
<b>MELVIN MAYFIELD</b>	<b>Judge<sup>5</sup></b>
<b>JUDITH ROGERS</b>	<b>Judge<sup>6</sup></b>

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<sup>1</sup>District 3.  
<sup>2</sup>District 1.  
<sup>3</sup>District 2.  
<sup>4</sup>District 4.  
<sup>5</sup>District 5.  
<sup>6</sup>District 6.

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**STANDARDS FOR PUBLICATION OF OPINIONS****Rule 5-2****Rules of the Arkansas Supreme Court and Court of Appeals****OPINIONS**

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

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

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

(d) **COURT OF APPEALS — UNPUBLISHED OPINIONS.** Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case). Opinions not



designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

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

## OPINIONS NOT DESIGNATED FOR PUBLICATION

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- Alexander v. State, CA CR 92-969 (Per Curiam), Authorization to File New Briefs April 7, 1993.
- Allen v. Riceland Foods, CA 92-723 (Robbins, J.), affirmed March 10, 1993.
- Area Agency on Aging of S.E. Ark., Inc. v. Director, E 92-59 (Rogers, J.), affirmed March 3, 1993.
- Area Agency on Aging of W. Ark., Inc. v. Arkansas Health Servs. Agency, CA 92-696 (Rogers, J.), affirmed February 10, 1993.
- Arkansas State Bd. of Dental Examiners v. Smith, CA 92-662 (Rogers, J.), remanded February 17, 1993.
- Askew, Charles v. State, CA CR 92-966 (Jennings, C.J.), affirmed April 14, 1993.
- Askew, Charles v. State, CA CR 92-967 (Robbins, J.), affirmed April 14, 1993.
- Beyah v. Premier Pontiac/Nissan, CA 92-461 (Jennings, C.J.), affirmed February 10, 1993.
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- City of Fort Smith v. McGuire, CA 92-433 (Mayfield, J.), affirmed February 3, 1993.

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- Clark v. One Nat'l Bank, CA 92-508 (Cooper, J.), appeal dismissed March 24, 1993.
- Clark v. St. Louis S.W. Ry. Co., CA 92-789 (Pittman, J.), reversed and remanded April 21, 1993.
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- Cooper v. Womack, CA 92-835 (Mayfield, J.), affirmed in part and reversed in part April 14, 1993.
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