

WITHDRAWN
Arkansas Supreme Court Library

ARKANSAS REPORTS
VOLUME 313

ARKANSAS
APPELLATE REPORTS
VOLUME 42

THIS BOOK CONTAINS
ARKANSAS REPORTS
Volume 313

CASES DETERMINED
IN THE

**Supreme Court
of Arkansas**

FROM
May 3, 1993 — July 5, 1993
INCLUSIVE¹

AND

**ARKANSAS APPELLATE
REPORTS**
Volume 42

CASES DETERMINED
IN THE

**Court of Appeals
of Arkansas**

FROM
April 28, 1993 — June 30, 1993
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1993

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 717. Cite as 313 Ark. — (1993).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 261. Cite as 42 Ark. App. — (1993).

DARBY PRINTING COMPANY
6215 PURDUE DR.
ATLANTA, GEORGIA 30336
1993

ARKANSAS REPORTS

Volume 313

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
May 3, 1993 — July 5, 1993
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1993

CONTENTS

	Page
JUSTICES AND OFFICERS OF THE SUPREME COURT	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Justices of Supreme Court, Per Curiam Opinions, and Per Curiam Orders Adopting or Amending Rules, etc.	xiv
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xvii
TABLE OF OPINIONS NOT REPORTED	xix
OPINIONS REPORTED	1
APPENDIX	
Rules Adopted or Amended by Per Curiam Orders	718
Appointments to Committees	778
INDEX	
Alphabetical Headnote Index	783
References to Acts, Codes, Constitutional Provisions, Rules & Statutes	804

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

**DURING THE PERIOD COVERED
BY THIS VOLUME
(May 3, 1993 —
July 5, 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

TABLE OF CASES REPORTED

A

Adamson (Burns v.)	281
Alphin (Junction City Sch. Dist. v.)	457
Anderson-Martin Mach. Co. (Precision Steel Warehouse, Inc. v.)	258
Angus (Deffenbaugh Indus. v.)	100
Arkansas Kraft v. Cottrell	465
Arkansas Pub. Serv. Comm'n (Lincoln v.)	295
Arkansas State Bd. of Educ. (Fayetteville Sch. Dist. v.)	1
Arkansas State Highway Comm'n v. Townsend	702

B

Babbitt v. Quik-Way Lube & Tire, Inc.	207
Barrett (MIC v.)	527
Baxter County Regional Hosp. (Davis v.)	388
Blastech, Inc. (Southwestern Bell Tel. Co. v.)	202
Bogart v. Nebraska Student Loan Program	656
Bostick (State v.)	596
Boyd v. State	171
Bragg (Hempel v.)	486
Brasel v. Brasel	337
Brissett v. Sykes	515
Burk v. State	652
Burnett v. Burnett	599
Burns v. Adamson	281

C

CTI Trucking Co. (Nazarenko v.)	570
Capeheart (Rhodes v.)	16
Cavin v. State	238
Childres (Scheland v.)	165
City of Fayetteville (Mount Olive Water Ass'n v.)	606
Cockman v. State Farm Auto. Ins. Co.	340

Coleman (Liberty Mut. Ins. Co. v.)	212
Coleman v. State	716
Cottrell (Arkansas Kraft v.)	465
Cox v. State	184
Crain Management Group, Inc. (McClard v.)	472
Crystal Oil Co. v. Warmack	381

D

Davis v. Baxter County Regional Hosp.	388
Davis v. Davis	549
Davis v. Helena-West Sch. Dist.	99
Davis v. Peebles	654
Davlin v. State	218
DeHaven (Waymire v.)	687
Deffenbaugh Indus. v. Angus	100
Denton (Smith v.)	463
Denver Roller, Inc. (Guaranty Nat'l Ins. Co. v.)	128
Diemer v. Dischler	154
Dillard v. State	439
Dischler (Diemer v.)	154
Dougan (John Cheeseman Trucking, Inc. v.)	229

E

ER Arkansas, P.A. (Ruffins v.)	175
Employers Nat'l Ins. Co. v. Grantors	645
Enos v. State	683

F

Fayetteville Sch. Dist. No. 1 v. Arkansas State Bd. of Educ.	1
Fitch v. State	122
Ford Motor Co. v. Massey	345
Friar v. State	253
Friday, Eldredge & Clark (Pope County v.)	83

G

Gaddy (State v.)	677
Gaines v. State	561

Gilliam v. Thompson	698
Grantors (Employers Nat'l Ins. Co. v.)	645
Gray (Kimble v.)	373
Green v. State	87
Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.	128
Gunter v. State	504
Gurley v. Mathis	412

H

Hankins v. McElroy	394
Harmon (Mobley v.)	361
Harp v. State	168
Harshaw v. State	51
Haynes v. State	407
Helena-West Sch. Dist. (Davis v.)	99
Hempel v. Bragg	486
Higginbottom v. Waugh	558
Higgs v. State	272
Hill v. Patterson	322
Hogan v. Hogan	374
Hubbard v. The Shores Group, Inc.	498

I

In Re Review of Habeus Corpus Proceedings	168
---	-----

J

John Cheeseman Trucking, Inc. v. Dougan	229
John Cheeseman Trucking, Inc. v. Pinson	632
Johnson v. Jones	449
Johnson v. State	308
Jones (Johnson v.)	449
Junction City Sch. Dist. v. Alphin	456

K

Kilgore v. State	198
Kimble v. Gray	373
Kolb v. Morgan	274
Kolb (Nature Conservancy v.)	110

L

Laws (Lemon v.)	11
Leach v. State	80
Lemon v. Laws	11
Liberty Mut. Ins. Co. v. Coleman	212
Lincoln v. Arkansas Pub. Serv. Comm'n	295
Lineberger (Lupo v.)	315
Lupo v. Lineberger	315

Mc

McCann (State v.)	286
McClard v. Crain Management Group, Inc.	472
McElroy (Hankins v.)	394
McKinney v. Unger	139
McKinzy v. State	334
McLemore (Morris v.)	53

M

MIC v. Barrett	527
Martin (Razorback Cab of Ft. Smith, Inc. v.)	445
Massey (Ford Motor Co. v.)	345
Mathis (Gurley v.)	412
Matthews v. State	327
Mobley v. Harmon	361
Morgan (Kolb v.)	274
Morris v. McLemore	53
Mosley (State v.)	616
Mount Olive Water Ass'n v. City of Fayetteville	606
Mountain Home Sch. Dist. v. T.M.J. Builders, Inc.	661

N

Nature Conservancy v. Kolb	110
Nazarenko v. CTI Trucking Co.	570
Nebraska Student Loan Program (Bogart v.)	656

O

Owens v. State	520
----------------	-----

P

Parrish v. State	313
Parsons v. State	224
Patterson (Hill v.)	322
Peebles (Davis v.)	654
Pinson (John Cheeseman Trucking, Inc. v.)	632
Pope County v. Friday, Eldredge & Clark	83
Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.	258
Price v. State	96
Provance v. State	169
Pyle v. Robertson	692

Q

Quik-Way Lube & Tire, Inc. (Babbitt v.)	207
---	-----

R

R.J. Griffin & Co. (Skinner v.)	430
Razorback Cab of Ft. Smith, Inc. v. Martin	445
Register v. State	426
Reis v. Yates	300
Reynolds v. Shelter Mut. Ins. Co.	145
Rhodes v. Capeheart	16
Riddick v. Streett	706
Robertson, (Pyle v.)	692
Ruffins v. ER Arkansas, P.A.	175

S

Sargent (Waddle v.)	539
Scheland v. Childres	165
Shelter Mut. Ins. Co. (Reynolds v.)	145
Sheridan v. State	23
Skinner v. R.J. Griffin & Co.	430
Smith v. Denton	463
Smith v. State	93
Smith v. Stevens	534
Southeast Ark. Landfill, Inc. v. State	669
Southwestern Bell Tel. Co. v. Blastech, Inc.	202

State v. Bostick	596
State (Boyd v.)	171
State (Burk v.)	652
State (Cavin v.)	238
State (Coleman v.)	716
State (Cox v.)	184
State (Davlin v.)	218
State (Dillard v.)	439
State (Enos v.)	683
State (Fitch v.)	122
State (Friar v.)	253
State v. Gaddy	677
State (Gaines v.)	561
State (Green v.)	87
State (Gunter v.)	504
State (Harp v.)	168
State (Harshaw v.)	51
State (Haynes v.)	407
State (Higgs v.)	272
State (Johnson v.)	308
State (Kilgore v.)	198
State (Leach v.)	80
State v. McCann	286
State (McKinzy v.)	334
State (Matthews v.)	327
State v. Mosley	616
State (Owens v.)	520
State (Parrish v.)	313
State (Parsons v.)	224
State (Price v.)	96
State (Provance v.)	169
State (Register v.)	426
State (Sheridan v.)	23
State (Smith v.)	93
State (Southeast Ark. Landfill, Inc. v.)	669
State (Tarkington v.)	399
State (Tucker v.)	624
State (Vickers v.)	64
State (Walker v.)	478
State (Watson, Frances v.)	304
State (Watson, Frances v.)	409
State (Weaver v.)	55

State (Williams v.)	451
State (Woodruff v.)	585
State (Zinger v.)	70
State Bank & Trust, N.A. (Wiseman v.)	289
State Farm Auto. Ins. Co. (Cockman v.)	340
Stevens (Smith v.)	534
Streett (Riddick v.)	706
Sykes (Brissett v.)	515

T

T.M.J. Builders, Inc. (Mountain Home Sch. Dist. v.) ..	661
Tarkington v. State	399
The Shores Group, Inc. (Hubbard v.)	498
Thompson (Gilliam v.)	698
Townsend (Arkansas State Highway Comm'n v.)	702
Tucker v. State	624

U

Unger (McKinney v.)	139
---------------------------	-----

V

Vickers v. State	64
------------------------	----

W

Waddle v. Sargent	539
Walker v. State	478
Warmack (Crystal Oil Co. v.)	381
Washington County (West Washington County Emergency Medical Servs. v.)	76
Watson, Frances v. State	304
Watson, Frances v. State	409
Waugh (Higginbottom v.)	558
Waymire v. DeHaven	687
Weaver v. State	55
West Washington County Emergency Medical Servs. v. Washington County	76
Williams v. State	451
Wiseman v. State Bank & Trust, N.A.	289

ARK.]	CASES REPORTED	xiii
Woodruff v. State		585
	Y	
Yates (Reis v.)		300
	Z	
Zinger v. State		70

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

JACK HOLT, JR., CHIEF JUSTICE:

Arkansas Kraft v. Cottrell	465
Cavin v. State	238
Fayetteville Sch. Dist. No. 1 v. Arkansas State Bd. of Educ.	1
Friar v. State	253
Gaines v. State	561
Gurley v. Mathis	412
Lemon v. Laws	11
Lupo v. Lineberger	315
McClard v. Crain Management Group, Inc.	472
Nazarenko v. CTI Trucking Co.	570
Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.	258
Rhodes v. Capeheart	16
Sheridan v. State	23
Walker v. State	478
Woodruff v. State	585

ROBERT H. DUDLEY, JUSTICE:

Boyd v. State	171
Davis v. Peebles	654
Harshaw v. State	51
Hempel v. Bragg	486
Higgs v. State	272
Hubbard v. The Shores Group, Inc.	498
Kolb v. Morgan	274
Morris v. McLemore	53
Register v. State	426
Ruffins v. ER Arkansas, P.A.	175
Skinner v. R.J. Griffin & Co.	430
State v. Bostick	596
Weaver v. State	55

STEELE HAYS, JUSTICE:

Bogart v. Nebraska Student Loan Program	656
Burnett v. Burnett	599
Burns v. Adamson	281
Cox v. State	184
Deffenbaugh Indus. v. Angus	100
Dillard v. State	439
Gunter v. State	504
Hill v. Patterson	322
Hogan v. Hogan	374
Mountain Home Sch. Dist. v. T.M.J. Builders, Inc.	661
Nature Conservancy v. Kolb	110
Razorback Cab of Ft. Smith, Inc. v. Martin	445
Southeast Ark. Landfill, Inc. v. State	669
State v. Gaddy	677
Vickers v. State	64

DAVID NEWBERN, JUSTICE:

Brissett v. Sykes	515
Crystal Oil Co. v. Warmack	381
Enos v. State	683
Kilgore v. State	198
Matthews v. State	327
Mount Olive Water Ass'n v. City of Fayetteville	606
Southwestern Bell Tel. Co. v. Blastech, Inc.	202
Waymire v. DeHaven	687
West Washington County Emergency Medical Servs. v. Washington County	76
Zinger v. State	70

TOM GLAZE, JUSTICE:

Babbitt v. Quik-Way Lube & Tire, Inc.	207
Davis v. Baxter County Regional Hosp.	388
Fitch v. State	122
Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.	128
Johnson v. Jones	449
Leach v. State	80
Liberty Mut. Ins. Co. v. Coleman	212

McKinney v. Unger	139
McKinzy v. State	334
Owens v. State	520
Pope County v. Friday, Eldredge & Clark	83
Pyle v. Robertson	692
State v. McCann	286
Wiseman v. State Bank & Trust, N.A.	289

DONALD L. CORBIN, JUSTICE:

Brasel v. Brasel	337
Cockman v. State Farm Auto. Ins. Co.	340
Davlin v. State	218
Gilliam v. Thompson	698
Green v. State	87
Hankins v. McElroy	394
Lincoln v. Arkansas Pub. Serv. Comm'n	295
MIC v. Barrett	527
Reynolds v. Shelter Mut. Ins. Co.	145
Smith v. State	93
Smith v. Stevens	534
State v. Mosley	616
Tarkington v. State	399
Waddle v. Sargent	539
Williams v. State	451

ROBERT L. BROWN, JUSTICE:

Arkansas State Highway Comm'n v. Townsend	702
Davis v. Davis	549
Diemer v. Dischler	154
Ford Motor Co. v. Massey	345
Haynes v. State	407
Higginbottom v. Waugh	558
Junction City School Dist. v. Alphin	456
Mobley v. Harmon	361
Parsons v. State	224
Price v. State	96
Reis v. Yates	300
Scheland v. Childres	165
Tucker v. State	624
Watson, Frances v. State	304

PHILIP HICKY II, SPECIAL CHIEF JUSTICE:

John Cheeseman Trucking, Inc. v. Pinson 632

TED H. SANDERS, SPECIAL CHIEF JUSTICE:

John Cheeseman Trucking, Inc. v. Dougan 229

JAMES B. SHARP, SPECIAL CHIEF JUSTICE:

Riddick v. Streett 706

GARY D. CORUM, SPECIAL JUSTICE:

Employers Nat'l Ins. Co. v. Grantors 645

PER CURIAM:

Burk v. State 652
Coleman v. State 716
Davis v. Helena-West Helena Sch. Dist. 99
Harp v. State 168
In Re Review of Habeus Corpus Proceedings 168
Johnson v. State 308
Kimble v. Gray 373
Parrish v. State 313
Provance v. State 169
Smith v. Denton 463
Watson, Frances v. State 409

APPENDIX:

Rules Adopted or Amended by Per Curiam Order:

In Re: Appointment of Counsel in Criminal Cases 723
In Re: Belated Criminal Appeals 729
In Re: Board of Certified Court Reporter Examiners 718
In Re: Board of Certified Court Reporter Examiners 719
In Re: Buergler 721
In Re: Cameras in the Courtroom 732
In Re: Hankins 735

In Re: Petition to Amend the Rules of Criminal Procedure to Include Warrantless Arrest Procedures in Domestic Violence Cases	730
In Re: Procedures Regulating Professional Conduct of Attorneys at Law and the Board of Law Examiners	722
In the Matter of Consolidation of Court Business and Programs within the Administrative Office of the Courts	730
In the Matter of the Arkansas Code of Judicial Conduct	735
In the Matter of the Board of Law Examiners	723

Appointments:

In Re: Arkansas Judicial Discipline and Disability Commission	781
In Re: Arkansas Supreme Court Ad Hoc Committee on Uniform Reporting of Case Information in the Arkansas Trial Courts	779
In Re: Client Security Fund Committee	781
In Re: Committee on the Unauthorized Practice of Law	782
In Re: Records of the Arkansas Supreme Court and the Arkansas Court of Appeals	778
In Re: Supreme Court Committee on Civil Practice ...	782

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

- Arnold v. State, CR 93-159 (Per Curiam), Pro Se Motion for Extension of Time to File Pro Se Appellant's Brief and Motion for Documents denied June 28, 1993.
- Ashley v. State, CR 93-390 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief and to be Provided a Copy of the Record granted and Pro Se Motion for Appointment of Counsel denied May 24, 1993.
- Batts v. State, CR 93-1778 (Per Curiam), Pro Se Motion for Copy of Appellant's Brief denied May 17, 1993.
- Baumgarner v. State, CR 93-383 (Per Curiam), Pro Se Motion to Relieve Counsel, Pro Se Motion to Amend Motion to Relieve Counsel, and Pro Se Motion to Stay the Proceedings 180 Days, denied June 7, 1993.
- Bealer v. State, CR 93-365 (Per Curiam), Pro Se Motion for Belated Appeal, remanded May 10, 1993.
- Boyd v. State, CR 93-359 (Per Curiam), Pro Se Motion for Rule on the Clerk and Petition for Writ of Certiorari, remanded May 17, 1993.
- Brewer v. Reynolds, CR 93-494 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 24, 1993.
- Brinkley v. State, CR 92-1313 (Per Curiam), affirmed May 10, 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 Extension of Time denied June 14, 1993.
- Burrell, Ronald v. State, CR 93-113 (Per Curiam), Pro Se Motion for Extension of Time to File Pro Se Brief denied and Pro Se Motion for Transcript moot June 21, 1993.
- Burrell, Ronald v. State, CR 93-113 (Per Curiam), affirmed June 28, 1993.
- Combs v. State, CR 93-425 (Per Curiam), Pro Se Motion for Belated Appeal, denied June 7, 1993.
- Deere v. State, CR 93-286 (Per Curiam), affirmed June 1, 1993.
- Deleon v. State, CR 93-414 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed June 21, 1993.
- Devose v. State, CR 93-575 (Per Curiam), Pro Se Motion for Rule on the Clerk denied June 21, 1993.
- Dupree v. State, CR 92-1399 (Per Curiam), affirmed May 17,

- 1993.
- Furlough v. State, CR 92-1442 (Per Curiam), Pro Se Motion for Photocopies denied July 3, 1993.
- Gaines v. State, CR 92-1471 (Per Curiam), Pro Se Motion for Permission to Supplement the Appellant's Brief and Pro Se Motion to Substitute Counsel denied June 7, 1993.
- Grundy, Robert v. State, CR 92-1326 (Per Curiam), Pro Se Motion for Transcript, Other Material and Appointment of Counsel, denied June 7, 1993.
- Grundy, Robert v. State, CR 92-1326 (Per Curiam), affirmed July 5, 1993.
- Hamm v. State, CR 93-567 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed June 28, 1993.
- Howard, Willie v. State, CR 93-469 (Per Curiam), Pro Se Petition for Writ of Prohibition denied June 1, 1993.
- Howard, Willie v. State, CR 93-469 (Per Curiam), Pro Se Motion for Reconsideration denied June 28, 1993.
- Jackson v. State, CR 93-476 (Per Curiam), Pro Se Motion for Belated Appeal remanded June 14, 1993.
- Jarrett v. State, CR 93-379 (Per Curiam), Pro Se Motion for a Handwritten Brief denied June 14, 1993.
- Jones v. State, CR 93-150 (Per Curiam), affirmed, Motion for Consideration of Prior Appeal Record denied June 14, 1993.
- Lacy v. State, CR 93-675 (Per Curiam), Pro Se motion for Rule on the Clerk denied July 5, 1993.
- May v. State, CR 93-15 (Per Curiam), Pro Se Motion for Reconsideration denied May 3, 1993.
- Morrow v. State, CR 93-139 (Per Curiam), affirmed July 5, 1993.
- Neal v. State, CR 93-424 (Per Curiam), Pro Se Motion for Belated Appeal, remanded June 1, 1993.
- Oliver v. State, CR 93-526 (Per Curiam), Pro Se Motion for Rule on the Clerk granted June 7, 1993.
- Powell v. State, CR 93-323 (Per Curiam), Pro Se Motion for Belated Appeal denied May 3, 1993.
- Prince v. State, CR 93-309 (Per Curiam), Pro Se Motion for Extension of Time to File Brief or for Appointment of Counsel or for Printed Abstract denied and appeal dismissed June 1, 1993.
- Prince v. State, CR 93-309 (Per Curiam), Pro Se Petition for Rehearing denied July 5, 1993.

- Schalchlin v. State, CR 93-270 (Per Curiam), Pro Se Motion for Belated Appeal granted May 10, 1993.
- Shepherd v. State Auto Property & Casualty Ins. Co., 92-411 (Per Curiam), Appellant's Motion for Attorney's Fees and Costs granted May 24, 1993.
- Sheridan v. State, CR 90-295 (Per Curiam), Petition for Award of Attorney's Fees, granted June 1, 1993.
- Smith, Dawney v. State, CR 93-440 (Per Curiam), Pro Se Motion for Belated Appeal denied June 14, 1993.
- Smith, Tommy D. v. State, CR 93-53 (Per Curiam), affirmed June 14, 1993.
- Stegall v. State, CR 93-238 (Per Curiam), Pro Se Motion for Belated Appeal denied May 3, 1993.
- Teas v. State, CR 93-199 (Per Curiam), Pro Se Motion to Proceed in the Circuit Court of Pulaski County Pursuant to Criminal Procedure Rule 37 denied May 10, 1993.
- Williams v. Pearson, CR 93-358 (Per Curiam), Pro Se Petition for Writ of Mandamus, moot May 17, 1993.
- Wilson v. State, CR 93-342 (Per Curiam), Appellee's Motion to Dismiss Appeal granted June 1, 1993.



APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

IN RE: BOARD OF CERTIFIED
COURT REPORTER EXAMINERS

82-283

852 S.W.2d 317

Supreme Court of Arkansas
Delivered May 3, 1993

PER CURIAM. Section 7 of the Rule Providing for Certification of Court Reporters is amended to include the following definitions: "Revoke a certificate" means to unconditionally prohibit the conduct authorized by the certificate. "Suspend a certificate" means to prohibit, whether absolutely or subject to conditions which are reasonably related to the grounds for suspension, for a defined period of time, the conduct authorized by the certificate.

The Court hereby republishes Section 7 of the Rule Providing for Certification of Court Reporters in its entirety as amended.

SECTION 7

REVOCATION OR SUSPENSION

(a) **GENERALLY.** The Board for good cause shown after a hearing by the Board, may revoke or suspend any certificate issued by the Board. The Board's decision may be appealed de novo to Circuit Court.

(b) **DEFINITIONS.**

1. "Revoke a certificate" means to unconditionally prohibit the conduct authorized by the certificate.

2. "Suspend a certificate" means to prohibit, whether absolutely or subject to conditions which are reasonably related to the grounds for suspension, for a defined period of time, the conduct authorized by the certificate.

(c) **SUBPOENAS.** The Board has the authority to issue subpoenas for any witness(es), and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to a hearing held pursuant to Section 7, upon the request of any party. Such process shall be issued by and under the seal of the Board and be signed by the Chair or the

Executive Secretary. The subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. The Board shall provide for its use a seal of such design as it may deem appropriate. The Circuit Court of Pulaski County shall have the power to enforce process. (Amended April 13, 1992)

**IN RE: BOARD OF CERTIFIED
COURT REPORTER EXAMINERS**

82-283

852 S.W.2d 317

Supreme Court of Arkansas
Delivered May 3, 1993

PER CURIAM. By per curiam order dated July 5, 1983, the Court established the Arkansas Supreme Court Board of Certified Court Reporter Examiners and directed that they promulgate relevant regulations for approval by the Court.

On September 26, 1983 the Court approved the Regulations submitted by the Board and has since approved various amendments, the last on July 1, 1991.

On April 9, 1993, the Board filed a Motion once more to amend Sections 9, 12, and 17 of Regulations. Pursuant to Section 3G of the Rule Providing for Certification of Court Reporters, the Court approves and adopts those amendments as recommended effective this date.

The Court hereby republishes Regulations 9, 12, and 17 in their entirety as amended.

Section 9. A reporter's certification will immediately expire if the \$20.00 certificate renewal fee is not remitted to the Clerk of the Supreme Court on or before January 1 of each year. An expired certificate shall be reinstated without examination, within 120 days of the date the certificate expired for failure to timely renew, upon application and payment of a \$100.00 penalty fee as well as the \$20.00 renewal fee. Otherwise, the certificate shall be suspended but may be reinstated during the remainder of the

calendar year in which the certificate expired for failure to timely renew, if the Board finds, based on a sworn affidavit(s) or other credible evidence, that the applicant has retained the professional skills required for original certification and has paid all delinquent renewal and penalty fees. After December 31 of the calendar year in which the certificate expired, an expired certificate shall not be subject to renewal without examination. (Amended July 1, 1991).

Section 12. At the discretion of the Board, any eligible applicant not certified pursuant to the per curiam order of the Supreme Court of Arkansas, dated July 5, 1983, or any eligible applicant who is certified in another state, may be granted a single, non-renewable temporary certificate to enable said applicant to work. The applicant for a temporary certificate must also timely apply to test and must test on the next scheduled examination date. The temporary certificate issued shall expire fourteen days after a reporter receiving such a certificate has had one opportunity to pass the examination. The certificate shall reflect the expiration date on its face as well as the method of reporting (Amended February 24, 1986) (Amended July 1, 1991)

Applicants for temporary certificates will be considered by the Board only if the applicant meets the following requirements:

- a. The applicant has been granted a diploma or equivalent from a court reporting school which is recognized and accepted by the Board, or
- b. the applicant has completed one year's continuous work experience in court reporting in a state which does not require certification, or
- c. the applicant has been certified as a court reporter in a sister state, or by the National Shorthand Reporters' Association, or by the National Stenomask Verbatim Reporters' Association.

Section 17. The Board shall maintain a file containing names and pertinent information on all individuals who have been certified, including all verbatim notes or records, transcripts, and other papers used in connection with testing.

It shall be the responsibility of the certified court reporter to provide the Office of the Supreme Court Clerk with written notification of any change of address within fourteen (14)

working days.

For the purposes of these regulations, written notification by certified or first class mail to the most recent address provided to the Office of the Clerk shall be deemed sufficient.

IN RE: JOHN F. BUERGLER
Arkansas Bar No. 72118

851 S.W.2d 453

Supreme Court of Arkansas
Delivered May 3, 1993

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

**IN RE: PROCEDURES REGULATING
PROFESSIONAL CONDUCT OF ATTORNEYS AT
LAW AND THE BOARD OF LAW EXAMINERS**

852 S.W.2d 317

Supreme Court of Arkansas
Delivered May 3, 1993

PER CURIAM. By per curiam dated July 16, 1990, this court adopted revised rules of procedures entitled "Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys At Law." Section 7 labeled "Sanctions" of those rules authorized the Professional Conduct Committee to temporarily transfer an attorney to inactive status for seven different reasons, one of which includes Section 7 G(1)(g) which reads, "Without cause, the attorney requests to be transferred to a voluntary inactive status." Prior to July 16, 1990, this voluntary inactive status had not been authorized. Section 8A of those revised rules

provides for an annual license fee for each attorney "actively licensed" to practice law in this state; no mention was made of imposing a license fee upon an attorney who was allowed to go on voluntary inactive status.

By per curiam dated May 18, 1992, styled "IN THE MATTER OF THE BOARD OF LAW EXAMINERS," the court adopted rules governing admission to the Bar, and Rule VII of those rules duplicated the attorney license fee subject matter already contained in Section 8 of the Professional Conduct Committee's revised rules. Rule VII also failed to mention the imposition of a license fee upon an attorney on voluntary inactive status.

To avoid duplicity, the court hereby deletes Section 8 from the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, so licensing fees and related matters will be controlled only under Rule VII of the rules governing admission to this Bar adopted by the court on May 18, 1992. Provided, however, Rule VII A should provide for reduced license fees for attorneys on voluntary inactive status; therefore, Rule VII A is amended to read as follows:

A. LICENSE FEE. An annual license fee as set by the court, from time to time, shall be imposed upon each attorney actively licensed to practice law in this State. An annual license fee in an amount equal to fifty per centum (50%) of the fee required for an actively licensed attorney is hereby imposed upon each attorney licensed in this State who has transferred to voluntary inactive status pursuant to subsection G.(1)(g) of Section 7 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. The fee shall be paid annually to the clerk of the Arkansas Supreme Court. The amount shall be payable January 1 of each year, and must be paid not later than March 1 of each year. Funds thus realized shall be used as ordered by the Supreme Court of the State of Arkansas.

IN RE: APPOINTMENT OF COUNSEL IN
CRIMINAL CASES

852 S.W.2d 324

Supreme Court of Arkansas
Delivered May 17, 1993

PER CURIAM. Because appellants in criminal cases are entitled to counsel on direct appeal from a judgment of conviction, this Court on occasion must appoint attorneys to represent indigent appellants. Attorneys who are desirous of such appointments should register with Sue Newbery, Criminal Justice Coordinator, Arkansas Supreme Court, Justice Building, 625 Marshall St., Little Rock, AR 72201. Counsel will be paid a fee after determination of the case, upon a proper motion.

IN THE MATTER OF THE BOARD OF LAW
EXAMINERS: Arkansas Bar Association Recommendation
to Adopt the Multistate Professional Responsibility
Examination

Supreme Court of Arkansas
Delivered June 7, 1993

PER CURIAM. The Arkansas Bar Association filed a Petition on November 2, 1992, requesting that this court adopt a requirement that successful completion of the Multistate Professional Responsibility Examination (hereafter MPRE) should be a condition for admission to the Bar of Arkansas. On December 7, 1992, by per curiam order, this court referred the petition to the Arkansas State Board of Law Examiners for review, comment, and recommendation.

The Arkansas State Board of Law Examiners has now reported and presented this court with the following information:

1. The MPRE is a two-hour test composed of 50 multiple choice questions. Presently, 42 states have adopted the MPRE as an element of their bar admission process.

2. The test is given nationwide during the months of March,

August, and November of each year. The MPRE is not given at any site in Arkansas. The Board was assured by representatives of the National Conference of Bar Examiners (hereinafter NCBE) that in the event this court adopted MPRE as a prerequisite for admission to the Bar of Arkansas, an Arkansas test center would be established.

3. The test examination fee currently is \$35.00 (\$75.00 for late applicants). All matters pertaining to collection of the examination fee, processing of applications, development of the examination, establishment of test sites, conduct of the MPRE, and reporting of results are the responsibility of the NCBE and the American College Testing Center. Some additional administrative responsibilities will be placed on the Executive Secretary of the Board, primarily in the form of record-keeping.

4. The MPRE is based on the American Bar Association Model Rules of Professional Conduct which were initially promulgated in 1983. This court has adopted those Model Rules by way of per curiam orders dated December 16, 1985, and April 16, 1990. In those per curiam orders, there were some minor modifications to the American Bar Association proposal. Appropriate representatives of both Arkansas law schools have assured the Board that these variations will not materially affect the performance of their students on the MPRE.

5. The MPRE allocates approximately 15% of the test content to the American Bar Association Code of Judicial Conduct. Adoption of a revised Code is presently under consideration by this court. The Board has been advised that the School of Law at the University of Arkansas at Fayetteville includes the Code of Judicial Conduct in its Legal Profession course. The School of Law at the University of Arkansas at Little Rock (UALR) does not presently cover that Code in great detail. In the event the MPRE is adopted, the UALR law school will incorporate the Code of Judicial Conduct in its curriculum.

6. A majority of states allow the MPRE to be taken after the bar exam but before admission. A minority of states requires successful completion of the MPRE as a prerequisite to sitting for the bar exam.

7. Passing scale scores among the states range from 72 to 85 with the predominant passing scale score being 75.

8. The period of time during which an MPRE score remains valid varies widely among the states, from one year to indefinitely.

The Board recommends that this court implement the MPRE.

This court is of the opinion that incorporation of the MPRE in the bar admission process is appropriate. Such a requirement would emphasize, at an early stage, the importance of ethics in the legal profession. We, therefore, adopt the following:

1. Passage of the MPRE shall be a prerequisite to sitting for the Arkansas Bar Exam, effective as of the July 1995 bar exam.

2. A passing score shall be a 75% scaled score, and an applicant shall be allowed to retain or transfer an MPRE score for a period of up to three years.

3. Any law school student, in Arkansas or outside the state, may take the MPRE at any time prior to graduation at any site where the exam is offered.

4. There is no limit to the number of times that an applicant may take the MPRE without passing. Further, failure on the general Arkansas Bar Examination will not invalidate a prior successful MPRE score, subject to the three (3) year retention or transfer period mentioned in paragraph (2) of this section.

We are requiring successful completion of the MPRE before taking the Arkansas Bar Exam because to do otherwise would leave the Board with applicants who had passed the general Arkansas Bar Exam but who would not be certified to the clerk for admission to the Bar due to failure to complete the MPRE successfully.

The delay in the effective date for the MPRE is necessary to give the Executive Secretary of the Board an opportunity to notify all American Bar Association accredited law schools of adoption of the MPRE as a condition for admission to the Bar of Arkansas.

Rule IX of the Arkansas Rules Governing Admission to the Bar is amended to read as follows in order to incorporate the MPRE:

IX.

EXAMINATION — SUBJECTS — PASSING GRADE

A. GENERAL EXAMINATION

All examinations shall be in writing and shall cover the subjects hereinafter listed and such other subjects as the Board may direct, subject to prior Court approval.

BUSINESS ORGANIZATIONS

This subject heading may include corporations, partnerships, agency and master-servant relationships.

COMMERCIAL TRANSACTIONS

This subject heading may include the general coverage of the U.C.C. This will not include the general subject of contracts and will not include matters relating to warranties under product liability, both of which may be covered under other headings.

CRIMINAL LAW AND PROCEDURE

This subject heading may include constitutional law as it applies to criminal law and procedure.

CONSTITUTIONAL LAW

This subject heading may include both the Arkansas Constitution and the Constitution of the United States. This subject will not be primarily directed to matters relating to criminal law and procedure.

TORTS

This subject heading may include the entire field of Tort law and questions concerning product liability.

PROPERTY

This subject heading may include the law of real property and, or, personal property. Emphasis here should not be placed on the U.C.C. and other such questions arising primarily under the subject heading "Commercial Transactions."

WILLS, ESTATES, TRUSTS

Because of the broad scope of this subject heading, questions concerning taxation shall not be covered. Guardianship of both the person and the estate may be included.

EVIDENCE**PRACTICE, PROCEDURE & ETHICS**

This subject heading may include both state and federal trial and appellate practice and, where applicable, remedies and choice of forum. This subject may include all Arkansas Supreme Court Rules and Regulations concerning legal or judicial ethics.

**EQUITY AND DOMESTIC RELATIONS
CONTRACTS**

This subject heading should place emphasis upon the traditional basics of contract law. Only where duplication cannot be avoided, should matters such as the application of the Uniform Commercial Code be covered under this heading.

NOTE: Conflict of Laws is not included as a separate subject on the examination. However, conflict questions may arise in the subjects included on the examination and should be recognized as such.

Applicants must make a combined average grade of 75 percent on all subjects in order to pass.

The Board shall destroy all examination papers, including questions and answers, at the time of the next succeeding bar examination. However, the original copy of each question shall be maintained in accordance with Rule III G(3).

A bar examination applicant may elect to retain either the applicant's average Arkansas essay score or the applicant's multistate bar examination scale score for use in the next bar examination following the bar examination in which those scores were achieved. In addition, an applicant may transfer from another jurisdiction the multistate bar examination scale score the applicant obtained from the immediately preceding examination.

B. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

The provisions of Section A of this rule, titled **GENERAL EXAMINATION**, and the provisions of Rules II and IV of the Rules Governing Admission to the Bar shall govern the semiannual general examinations conducted by the Arkansas State Board of Law Examiners.

As a prerequisite to being allowed to take the general examination, each applicant shall be required to obtain a scaled score of 75 % or more on the Multistate Professional Responsibility Examination. This score shall be considered independent of the combined average grade as set out in Rule IV of these rules and Section A of this Rule. Any applicant, in Arkansas or out of state, may take the MPRE at any time prior to graduation at any site where the exam is offered. Individuals who successfully complete the Multistate Professional Responsibility Examination are allowed to retain their passing score or transfer such passing score from another jurisdiction for a period not exceeding three years from the date upon which the individual took the Multistate Professional Responsibility Examination. There is no limit on the number of times that an applicant may take the Multistate Professional Responsibility Examination without passing. (Per Curiam Order, November 1, 1971; Amended by Per Curiam Order, June 18, 1984; Amended by Per Curiam Order, April 4, 1988; Amended by Per Curiam Order, May 18, 1992; Amended by Per Curiam Order June 7, 1993.)

IN RE BELATED CRIMINAL APPEALS; Notice of
Appeal Prior to Judgment

856 S.W.2d 9

Supreme Court of Arkansas
Substituted opinion delivered June 21, 1993¹

PER CURIAM. The following opinion is substituted for the one with the same style delivered on June 14, 1993:

In *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992), it was held that Ark. R. App. P. 4. clearly requires that, to be effective, a notice of appeal must be filed after, and not before, entry of judgment. It was also made clear by the overruling of *State v. Joshua*, 307 Ark. 79, 818 S.W.2d 249 (1991), that the Rule applies in criminal cases.

In *Tucker v. State*, 311 Ark. 446, 844 S.W.2d 335 (1993), we held that the confusion resulting from the overruling of *State v. Joshua, supra*, would constitute a ground for petitioning for a belated appeal.

We give notice that, in view of the fact that our interpretation of the Rule has been a matter of record since July 13, 1992, (the date of the *Kelly v. Kelly* decision), we will not consider the overruling of *State v. Joshua, supra*, as a ground for belated appeal except in cases in which the judgment of conviction was entered prior to July 1, 1993.

¹ Original opinion delivered June 14, 1993.

**IN RE: PETITION TO AMEND THE RULES OF
CRIMINAL PROCEDURE TO INCLUDE
WARRANTLESS ARREST PROCEDURES IN
DOMESTIC VIOLENCE CASES**

**Supreme Court of Arkansas
Delivered June 21, 1993**

PER CURIAM. The Petition to Amend the Rules of Criminal Procedure to Include a Warrantless Arrest Procedure for Domestic Violence Cases to conform with statutes enacted by the Arkansas General Assembly [Ark. Code Ann. §§ 16-81-106, 16-81-113 (Supp. 1991)] is referred to the Committee on Criminal Practice for further review, comment, and recommendation. The court understands that the Criminal Practice Committee currently has this matter under review.

**IN THE MATTER OF CONSOLIDATION OF COURT
BUSINESS AND PROGRAMS WITHIN THE
ADMINISTRATIVE OFFICE OF THE COURTS**

855 S.W.2d 338

**Supreme Court of Arkansas
Delivered June 28, 1993**

PER CURIAM. Act 496 of 1965 created the Arkansas Judicial Department and placed it under the authority of the Chief Justice as the chief administrative officer of the courts to be assisted by an executive secretary. By Act 760 of 1989, § 1, general superintending control over the administration of justice was placed in the Arkansas Supreme Court, and the Chief Justice was made responsible for efficient operation of the judicial branch. Section 2 of Act 760 redesignated the Judicial Department as the Administrative Office of the Courts and created the position of Director of that Office. Act 760 is presently codified as Ark. Code Ann. § 16-10-102 (Supp. 1991).

At the time Act 760 was passed it was the intention of the Supreme Court to have a court administration office with central authority to administer the Court's programs. The Act lists a

number of specific duties of the Director, and it includes in § 2(9) the following: "Attend to the other nonjudicial business of the judicial branch under such rules and regulations as the Supreme Court may by order adopt."

Many administrative functions have indeed been undertaken by the Administrative Office of the Courts and its Director. We have not, however, placed all administrative matters under that agency. We have dealt separately, and in a way that consumes too much time, with several agencies and a large number of committees for which we are responsible. The agencies and committees are essential to our work, but our case load is such that we are unable to devote the time necessary to oversee the many budgetary and administrative details which accompany their operations.

Some committee administration has been undertaken by our Director of Professional Programs whose office has remained separate from the Administrative Office of the Courts. *See In the Matter of the Appointment of the Director of Professional Programs*, 296 Ark. 588, 750 S.W.2d LXVII (1988). The primary job of the Director of Professional Programs is administration of our mandatory continuing legal education program along with the bar examination. *See In re: Arkansas Bar Association Rules and Regulations for Mandatory Continuing Legal Education*, 303 Ark. 701, 792 S.W.2d 875 (1990).

Our Committee on Professional Conduct, with a budget made up of funds from dues paid by members of the Bar of Arkansas, has operated as a separate office under an Executive Secretary. *See In the Matter of Procedures of the Arkansas Supreme Court Committee Regulating Professional Conduct of Attorneys at Law*, 303 Ark. 725, 792 S.W.2d 323 (1990); and *In the Matter of Supreme Court License Fees*, 251 Ark. 800, 483 S.W.2d 174 (1972).

In addition, the Supreme Court Library is a Court operation with a substantial budget which has operated separately, and as with our other agencies, we want it to have adequate administrative support.

All Supreme Court Committees, the Supreme Court Library, and the Director of Professional Programs will hereafter operate under the Administrative Office of the Courts and subject

to the administrative authority of the Director of that Office. We do not place the constitutional offices of Supreme Court Reporter and Supreme Court Clerk, *see Ark. Const. art. 7, § 7*, under the Administrative Office of the Courts. They will remain directly responsible to the Supreme Court although we may choose to transfer certain administrative functions which have been handled by the Clerk to the Administrative Office of the Courts.

**IN RE: CAMERAS IN THE COURTROOM;
Administrative Order Number 6**

Supreme Court of Arkansas
Delivered July 5, 1993

PER CURIAM. The Arkansas Code of Judicial Conduct published by this Court in 1988 is being replaced by separate per curiam order of this date. The former Code contained provisions regulating broadcasting, photographing, and recording court proceedings. The Code as published this date contains no such provisions. We, therefore, promulgate the following as Administrative Order Number 6, which shall be effective this date.

ADMINISTRATIVE ORDER NO. 6

**BROADCASTING, RECORDING, OR
PHOTOGRAPHING IN THE COURTROOM**

- (a). **APPLICATION - EXCEPTION.** This Order shall apply to all courts, circuit, chancery, probate, municipal, and appellate, but it shall not apply to the juvenile division of chancery court as set out below.
- (b). **AUTHORIZATION.** A judge may authorize broadcasting, recording, or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that the participants will not be distracted, nor will the dignity of the proceedings be impaired.
- (c). **EXCEPTIONS.** The following exceptions shall apply:
- (1) An objection timely made by a party or an attorney shall

preclude broadcasting, recording, or photographing of the proceedings;

(2) The court shall inform witnesses of their right to refuse to be broadcast, recorded, or photographed, and an objection timely made by a witness shall preclude broadcasting, recording or photographing of that witness;

(3) All matters in the juvenile division of the chancery court as well as the chancery and probate court hearings in domestic relations matters, e.g., adoptions, guardianships, divorce, custody, support, and paternity shall not be subject to broadcasting, recording, or photographing;

(4) In camera proceedings shall not be broadcast, recorded, or photographed except with consent of the court;

(5) Jurors, minors without parental or guardian consent, victims in cases involving sexual offenses, and undercover police agents or informants shall not be broadcast, recorded or photographed.

(d). **PROCEDURE.** The broadcasting, recording, or photographing of any court proceeding shall comply with the following rules:

(1) The court shall direct that the news media representatives enter into a pooling arrangement for the broadcasting, recording, or photographing of a trial. Any representative of a news medium wanting to broadcast, record, or photograph court proceedings shall present to the court a written statement agreeing to share with other media representatives. The media pool shall select one of its members to serve as pool coordinator. The media pool shall establish its own procedures, not inconsistent with these rules or with the wishes of the court, and the pool coordinator shall arbitrate any problems that arise. If a problem arises that requires the assistance of the court, the pool coordinator alone shall be responsible for coordinating with the court. A plan for the placement of the broadcast equipment shall be prepared and filed by the pool coordinator, subject to the final approval of the court.

(2) The court shall retain ultimate control of the application of these rules over the broadcasting, recording, or photographing of a trial. Decisions made as to the details are final and are not

subject to appeal. The court may in its discretion terminate the broadcasting, recording, or photographing at any time. Such a decision should not be made in an effort to edit the proceedings but only as one necessary in the interest of justice.

(3) The media pool may have two cameras in the courtroom during the course of a trial. One camera shall be used for still photography, and one camera shall be used for television photography. Both cameras shall remain in stationary positions outside the bar of the courtroom. Videotape recording and other electronic equipment not a component part of the cameras shall be located in an area remote from the courtroom to be designated by the court.

(4) One additional audio system for radio broadcasting shall be permitted provided that all microphones and related essential wiring will be unobtrusive and located in places designated in advance by the basic courtroom plan. The pool coordinator shall permit the installation of a pickup distribution box to be located outside the courtroom area to allow additional agencies access to the audio feed.

(5) Only television or photographic equipment that does not require distracting sound or light shall be employed to cover court proceedings. No artificial lighting device shall be employed in connection with television cameras. Any court approved alterations in existing lighting or wiring shall be accomplished by and at the expense of the media pool.

(6) Camera and audio equipment shall be installed or removed only when the court is not in session. Film changes shall not be made while court is in session. No audio equipment shall be used to record conversations between attorneys and clients or conversations between attorneys and the court held outside the hearing of the jury.

(e). CONTEMPT. Failure to abide by any provision of this Order can result in a citation for contempt against the news representative and his or her agency.

IN RE: James Michael HANKINS
Arkansas Bar No. 81235

Supreme Court of Arkansas
Delivered July 5, 1993

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

IN THE MATTER OF THE ARKANSAS CODE OF
JUDICIAL CONDUCT

Supreme Court of Arkansas
Delivered July 5, 1993

PER CURIAM. We adopt, effective this date, the revised Arkansas Code of Judicial Conduct which is published herewith, and we simultaneously repeal the existing Arkansas Code of Judicial Conduct.

On June 28, 1991, the Arkansas Bar Association Committee on the Model Code of Judicial Conduct petitioned this court to adopt its proposed Arkansas Code of Judicial Conduct which amends our present Code of Judicial Conduct. We published notice that the proposed Code had been filed by Per Curiam Order dated July 8, 1991, and we solicited comment from the bench and bar.

On November 16, 1992, we published notice that we have revised the Arkansas Bar Association Committee's proposed Code, and we solicited comment again from the bench and bar.

On February 1, 1993, we published the specific revisions we had made to the proposed Code presented to us by the Arkansas Bar Association Committee.

We note one change in the Code published this date from that made available for comment on November 16, 1992. We have deleted proposed Canon 3B(7)(d) and relettered the one successive subparagraph. The deleted subparagraph reads:

(d) 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.

Comments received on the proposed subparagraph raised the spectre that a judge's participation in settlement conferences may erode the perception of judicial impartiality, should the matter not be settled but go to trial. We urge the Arkansas Bar Association Committee on the Model Code of Judicial Conduct to give this one subparagraph additional consideration in light of the comments received.

CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not

designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with an asterisk () in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.*

“Appropriate authority” denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 5A, 5B, 5C and 5E.

“Continuing part-time judge.” A continuing part-time

judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law. See Application Section C.

“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality. See Sections 3E(1)(c) and 3E(1)(d).

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge’s spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

See Sections 3E(1)(c) and 3E(2)

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 4E.

“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

“Law” denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

“Member of the candidate’s family” denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

“Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3), 4E and 4G.

“Member of the judge’s family residing in the judge’s household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. See Sections 3E(1) and 4D(5).

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

“Periodic part-time judge.” A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis but under a separate appointment for each limited period of service or for each matter. See Application Section D.

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1), 5B(2) and 5C(1).

“Pro tempore part-time judge.” A pro tempore part-time judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

“Public election.” This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5C.

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this

responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also Commentary under Section 2C.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to

* See Terminology, "law."

advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used to gain a personal advantage or to effect an economic advantage.

A judge must void lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness

because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership.

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by state law also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club.

A judge may ordinarily be a member of an organization which is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited, even though that organization is a single sex or single

race organization. Likewise, a judge may ordinarily be a member of an organization which is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, even though in fact its membership is limited. Similarly, a judge may have or retain membership with a university related or other living group, even though its membership is single sex. However, public approval of, or participation in, any discrimination that gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary violates this Code. For example, an organization that conducts lobbying or advocacy on behalf of its members may raise such concerns. Ultimately, each judge must determine in the judge's own conscience whether participation in such an organization violates Canon 2 and Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

* See Terminology, "law."

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the

* See Terminology, "law."

* See Terminology, "require."

proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, or national origin, or other similar factors, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, or national origin, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communication for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's

* See Terminology, "require."

* See Terminology, "law."

* See Terminology, "court personnel."

adjudicative responsibilities or with other judges.

(d) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Section 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is

* See Terminology, "law."

not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a

* See Terminology, "require."

* See Terminology, "court personnel."

personal capacity.

Commentary

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Arkansas Rules of Professional Conduct.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

* See Terminology, "nonpublic information."

* See Terminology, "require."

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge should exercise his 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.)

Commentary:

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Nepotism is the appointing of relatives within the third degree of relationship by affinity or consanguinity. The relationship is determined as of the time of appointment. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. 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.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the

* See Terminology, "knowingly," "knowledge," "known" and "knows."

Rules of Professional Conduct should take appropriate action. 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.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Section 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge

* See Terminology, "knowledge."

believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the

* See Terminology, "knowingly," "knowledge," "known" and "knows."

* See Terminology, "member of the judge's family residing in the judge's household."

* See Terminology "economic interest."

* See Terminology, "de minimis."

proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's qualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualifi-

* See Terminology, "third degree of relationship."

* See Terminology, "knowingly," "knowledge," "known" and "knows."

* See Terminology, "de minimis."

* See Terminology, "fiduciary."

* See Terminology, "economic interests."

cation other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that they party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible no wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning

individuals on the basis of their race, sex, religion, national origin, or other similar factors. See Section 2C and accompanying Commentary.

B. 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.

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

* See Terminology, "law."

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system or the administration of justice or of an educational, religious, charitable,

* See Terminology, "law."

fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

Commentary:

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Section 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now

make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A

* See Terminology, "law."

judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Commentary:

The Time for Compliance provision of this Code (Application, Section D) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information,

such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judge with law firms appearing before the judge, see Commentary in Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activity.

Commentary:

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by

* See Terminology, "member[s] of the judge's family."

the judge and members of the judge's family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family,* or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

Commentary:

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(2), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,* not to accept, a gift, bequest, favor or loan from anyone except for:

* See Terminology, "member of the judge's family."

* See Terminology, "member of the judge's family residing in the judge's household."

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system or the administration of justice;

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a): acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise, or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or

* See Terminology, "law."

benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(c).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

Commentary

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come

before the judge.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,* except for the estate, trust or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

Commentary:

The Time for Compliance provision of this Code (Application, Section D) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

* See Terminology, "fiduciary."

* See Terminology, "member of the judge's family."

* See Terminology, "law."

G. Practice of Law. A judge shall not practice law or appear as counsel in any court within this state. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.*

Commentary:

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. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(b).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

H. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so

received. The judge's report shall be made at least annually and shall be filed as a public document in the office of the Clerk of the Supreme Court.

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.*

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

* See Terminology, "law."

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. All Judges and Candidates.

(1) Except as authorized in Section 5B(2), 5C(1) and 5C(3), a judge or a candidate* for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization*;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political gatherings; or

(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial

* See Terminology, "candidate."

* See Terminology, "political organization."

candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

(2) A judge shall resign from judicial office upon becoming a candidate* for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law* to do so.

(3) A candidate* for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate,* and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;

* See Terminology, "candidate."

* See Terminology, "law."

* See Terminology, "member of the candidate's family."

* See Terminology, "knowingly."

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) announce views on disputed legal or political issues; or

(iii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Arkansas Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or

* See Terminology, "knowingly."

* See Terminology, "candidate."

her candidacy.

(2) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:

(i) retain an office in a political organization,*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate

* See Terminology, "candidate."

* See Terminology, "law."

* See Terminology, "political organization."

support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*:

(a) at any time

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party; and

(iii) contribute to a political organization*;

(b) when a candidate for election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

Commentary:

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(2) A candidate* shall not personally solicit or accept campaign contributions or personally solicit publicly stated

* See Terminology, "candidate."

* See Terminology, "public election."

* See Terminology, "law."

* See Terminology, "political organization."

support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers.

A candidate's committee may solicit contributions and public support for the candidate's campaign no earlier than 180 days before a primary election and no later than 45 days after the last contested election in which the candidate participates during the election year. Funds received prior to the 180 day limitation or after the 45 day limitation shall be returned to the contributor. If funds are received personally by a judicial candidate, the candidate shall promptly turn them over to the campaign committee. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others. Any campaign fund surplus shall be returned to the contributors or turned over to the State Treasurer as provided by law.

Commentary:

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating

an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) Except as prohibited by law,* a candidate* for judicial office in a public election* may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

Commentary:

Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law,* the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary:

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct: an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Arkansas Rules of Professional Conduct.

* See Terminology, "law."

* See Terminology, "candidate."

* See Terminology, "public election."

APPLICATION OF THE CODE OF JUDICIAL
CONDUCT

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Commentary:

The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

B. Continuing Part-time Judge. A continuing part-time judge*:

(1) is not required to comply:

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Commentary:

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any

* See Terminology, "continuing part-time judge."

other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

C. Pro Tempore Part-time Judge or Periodic Part-time Judge.

A pro tempore part-time judge or periodic part-time judge*:

(1) is not required to comply:

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5D.

(2) A person who has been a pro tempore part-time judge or periodic part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

Commentary:

A full time governmental official who has judicial powers which are exercised infrequently, such as a county judge, is a pro tempore part-time judge.

D. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Section 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

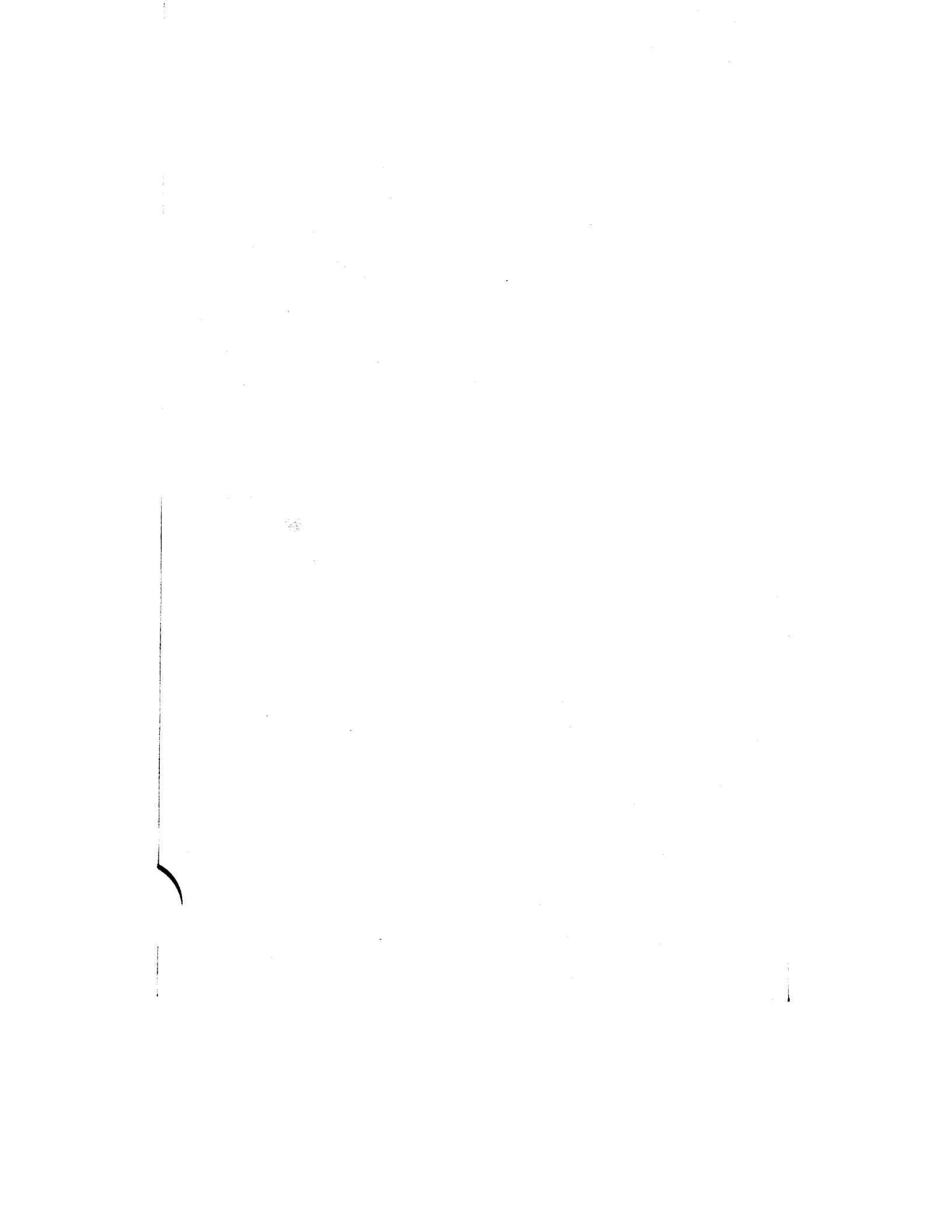
Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the

* See Terminology, "pro tempore part-time judge."

* See Terminology, "periodic part-time judge."

fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.



Appointments to Committees

IN RE: RECORDS OF THE ARKANSAS
SUPREME COURT AND THE
ARKANSAS COURT OF APPEALS

853 S.W.2d 284

Supreme Court of Arkansas
Delivered May 24, 1993

PER CURIAM. Since Arkansas became a state in 1836, the Arkansas Supreme Court has retained all of its records.

Those of the Court of Appeals have been retained since its creation in 1979. The records include all transcripts, briefs, and exhibits. Over time, the availability of space has become a very real problem. Some microfilming of records has been performed, but there has been no formal plan in place and no records have been discarded.

For that reason the Administrative Office of the Courts requested technical assistance from the National Center for State Courts in Williamsburg, Virginia. A consultant from the National Center conducted a study and submitted a report recommending that a records retention schedule be designed.

We now appoint the following members to an ad hoc Arkansas Supreme Court Committee on Appellate Court Records Retention to make recommendation for the Court's consideration on or before October 1, 1993.

1. Leslie Steen, Supreme Court Clerk.
2. J. D. Gingerich, Director, Administrative Office of the Courts, or his designee.
3. Howard B. Eisenberg, Dean, University of Arkansas School of Law, Little Rock, or his designee.
4. Leonard P. Strickman, Dean, University of Arkansas School of Law, Fayetteville, or his designee.
5. Dr. John Ferguson, Arkansas History Commission.
6. Frances Ross, Professor, University of Arkansas at Little Rock.

The Committee's charge is to fully study the issues relating to appellate court records retention as presented in the report and

to make recommendations for the Court's consideration on or before October 1, 1993.

IN RE: ARKANSAS SUPREME COURT AD HOC
COMMITTEES ON UNIFORM REPORTING OF CASE
INFORMATION IN THE ARKANSAS TRIAL
COURTS

854 S.W.2d 355

Supreme Court of Arkansas
Delivered June 14, 1993

PER CURIAM. The Supreme Court has received copies of a report entitled "Arkansas Criminal, Civil and Chancery Courts: Minimum Data Elements." The report was prepared pursuant to a grant by the State Justice Institute of Washington D.C. to the Administrative Office of the Courts to study the need for uniform data elements to be collected and shared among courts and court-related agencies.

The report makes specific findings concerning the need for additional information to be collected in all cases and suggests improvements in the collection and reporting of case information. Because the proposed findings, if adopted, could impact judges, lawyers, prosecutors, clerks and others in the justice system, the Court now appoints the following ad hoc committees to review the report and make such recommendations to the Court as are deemed necessary on or before October 1, 1993.

Criminal Case Information Committee

Hon. H.A. Taylor, Circuit Judge
Hon. John W. Cole, Circuit Judge
Bill Simpson, Esq., Public Defender
Hon. Tom Wynne, Prosecuting Attorney
Mr. David Eberdt, or designee, Arkansas Crime
Information Center
Ms. Barbara Eastin, Circuit Clerk
Lt. Colonel Richard Rail, Arkansas State Police

Ms. Kay Howell, Department of Correction
Leslie Powell, Attorney-at-Law, Arkansas
Sentencing Commission
Ms. Paula Pumphrey, Adult Probation Commission

Civil Case Information Committee

Hon. Tom Smitherman, Circuit/Chancery Judge
Hon. John Plegge, Circuit Judge
Ken Cook, Esq., Arkansas Bar Association
Ms. Sharon Rimmer, Circuit Clerk

Chancery/Probate Case Information Committee

Hon. Ellen Brantley, Chancellor
Hon. Eugene Harris, Chancellor
Mr. Harold Watson, Circuit/Chancery Clerk
Ms. Carolyn Morris, County Clerk
Ms. Debby Nye, Chief Counsel, Department of
Human Services
Glenn Kelley, Esq., Arkansas Bar Association

Juvenile Case Information Committee

Hon. Robert Edwards, Circuit/Chancery Judge
Hon. Watson Villines, Circuit/Chancery Judge
Ms. Pam Crawford, Deputy Chancery Clerk
Ms. Kathleen Bird, Deputy Prosecuting Attorney
Mr. Brad Holloway, Juvenile Intake Officer
Ms. Gina Bunker, Juvenile Probation Officer
Ms. Larance Johnson, Department of Human Services
Ms. Judith Faust, Department of Human Services

**IN RE: ARKANSAS JUDICIAL DISCIPLINE AND
DISABILITY COMMISSION**

Supreme Court of Arkansas
Delivered June 21, 1993

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas, and Act 637 of 1989, the Court reappoints the Honorable Stark Ligon, Circuit Judge, to the Arkansas Judicial Discipline and Disability Commission for an additional six year term expiring June 30, 1999.

The Court expresses its gratitude to Judge Ligon for accepting reappointment to this Commission.

IN RE: CLIENT SECURITY FUND COMMITTEE

Supreme Court of Arkansas
Delivered June 21, 1993

PER CURIAM. James F. Dowden, Esq., of Little Rock, Arkansas, is hereby appointed at-large to the Client Security Fund Committee, replacing George D. Ellis, Esq., of Benton, Arkansas. Mr. Dowden is appointed for a five year term expiring June 30, 1998.

The Court thanks Mr. Dowden for accepting appointment to this important Committee.

The Court expresses its gratitude to Mr. Ellis for his faithful service to the Court.

**IN RE: COMMITTEE ON THE UNAUTHORIZED
PRACTICE OF LAW**

Supreme Court of Arkansas
Delivered June 21, 1993

PER CURIAM. Henry Hodges, Esq., Little Rock, Second Congressional District, is hereby appointed to our Committee on the Unauthorized Practice of Law, replacing Zachary Wilson, Esq., North Little Rock, who has retired from the Committee.

The Court thanks Mr. Hodges for accepting appointment to this Committee.

The Court expresses its gratitude to Mr. Wilson for his longstanding and dedicated service as a member and Chair of this Committee.

**IN RE: SUPREME COURT COMMITTEE ON
CIVIL PRACTICE**

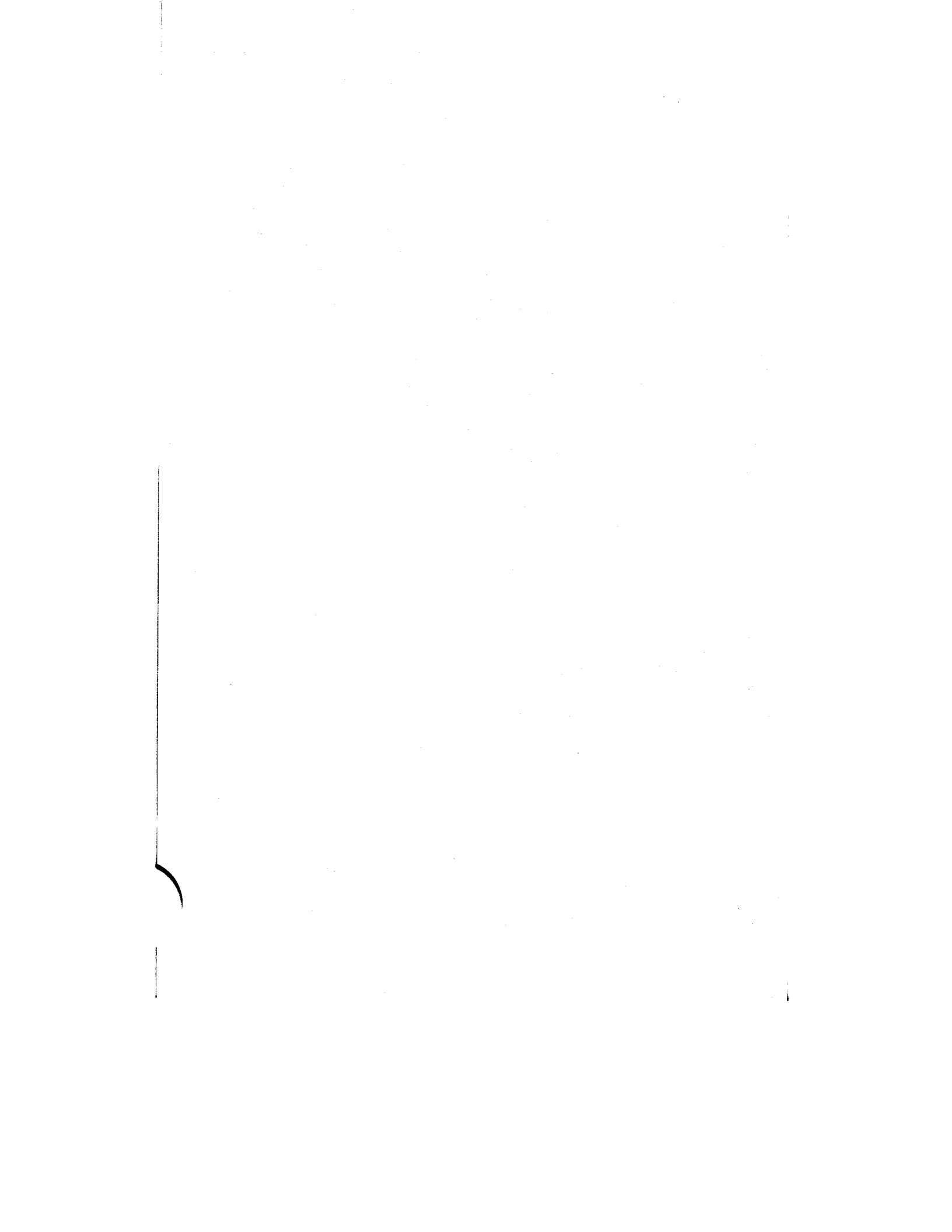
Supreme Court of Arkansas
Delivered July 5, 1993

PER CURIAM. Katherine Gay, Attorney-at-Law, Fayetteville, Arkansas; Elton Rieves, III, Esq., West Memphis, Arkansas; and James Sprott, Esq., Harrison, Arkansas, are reappointed to our Committee on Civil Practice.

The Court expresses its appreciation to them for accepting reappointment to this most important Committee.

Each term of reappointment is for a three-year period expiring July 30, 1996.

**Alphabetical
HEADNOTE
INDEX**



HEADNOTE INDEX

ACTIONS:

- Contract and tort claims consistent when they seek the same relief based on the same evidence. *Lemon v. Laws*, 11.
- Pursuit of concurrent, consistent remedies. *Id.*
- Error to strike contract action in favor of consistent negligence action. *Id.*

ADMINISTRATIVE LAW & PROCEDURE:

- No administrative remedy available to appellant, situation differs from previous case. *Lincoln v. Arkansas Pub. Serv. Comm'n*, 295.
- Claim found on a constitutional right, judicial forum appropriate. *Id.*
- Administrative agencies have some quasi-judicial powers, issues based solely on constitutional claims are not within its jurisdiction. *Id.*
- Agency must be allowed to address the issue before appellant may resort to the courts. *Hankins v. McElroy*, 394.
- Remedial action trust fund act treated as federal government treats the national priority list, similarities listed. *Gurley v. Mathis*, 412.
- Actions of Commission an exercise of its rulemaking powers, no violation of appellants' due process rights found. *Id.*

ADVERSE POSSESSION:

- Possession not adverse and hostile when consistent with grant. *Nature Conservancy v. Kolb*, 110.

APPEAL & ERROR:

- Arguments not addressed unless they are supported by authority. *Fayetteville Sch. Dist. v. Arkansas State Bd. of Educ.*, 1.
- Review of sufficiency of the evidence. *Sheridan v. State*, 23.
- Review of the evidence. *Id.*
- Proportionality review of death penalty cases. *Id.*
- Proportionality review, proper comparison. *Id.*
- Document not abstracted, point affirmed. *Harshaw v. State*, 51.
- Case reversed, appellant stands as though never tried. *Leach v. State*, 80.
- Even constitutional issues may not be raised for the first time on appeal. *Green v. State*, 87.
- No basis for independent jurisdiction, issue not addressed. *Price v. State*, 96.
- Review of workers' compensation case from appellate court. *Deffenbaugh Indus. v. Angus*, 100.
- Reversal of commission decision, requirements. *Id.*
- Issue not reached by trial court, manner of presentation to trial court not clear from abstract. *Nature Conservancy v. Kolb*, 110.
- Chancery cases tried de novo, standard for reversal. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 128.
- Burden to obtain a ruling on the appellant; no ruling, matter waived on appeal. *Id.*
- Granting of motion for summary judgment, review of. *Reynolds v. Shelter Mut. Ins. Co.*, 145.
- New, more specific objections not raised below, appellate court will not address. *Id.*
- Objection raised for first time on appeal not addressed. *Id.*
- New trial, denial not reversed absent manifest abuse of discretion. *Diemer v. Dischler*, 154.

- Interlocutory appeal, appeal premature. *Scheland v. Childres*, 165.
- Failure to file brief, motion to dismiss, order to show cause. *Harp v. State*, 168.
- Attorney admitted error, motion for belated appeal granted. *Provance v. State*, 169.
- Issues raised for first time on appeal are not considered. *Babbitt v. Quik-Way Lube & Tire, Inc.*, 207.
- Substantial step taken without defendant's presence, judgment reversed. *Davlin v. State*, 218.
- Previous holding inconsistent, *Gober v. State* overruled. *Parsons v. State*, 224.
- Circuit court's finding correct, examination of officer's belief as to intoxication of driver before stop was unnecessary. *Id.*
- Review of jury verdict. *John Cheeseman Trucking, Inc. v. Dougan*, 229.
- Cross-appeal conditioned on reversal, not considered. *Id.*
- Issue raised in reply brief not considered because not raised originally. *Id.*
- Review of denial of directed verdict. *Friar v. State*, 253.
- Objection at trial prerequisite to appeal. *Id.*
- No rule absolves party from making contemporaneous objection at trial. *Id.*
- Standard of review of denial of directed verdict. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.
- Preserving issue for appeal, failure to give jury instruction. *Id.*
- No reversal absent prejudice. *Id.*
- Argument raised for first time on appeal, court will not consider it. *Kolb v. Morgan*, 274.
- Court of appeals overlooked nothing, appellant's contention without merit. *Lincoln v. Arkansas Pub. Serv. Comm'n*, 295.
- Motions not abstracted, unclear whether issue preserved for review. *Watson v. State*, 304.
- Substituted instruction not proffered, issue not available on appeal. *Id.*
- Unavailability of witness at issue, no ruling abstracted, no basis for decision existed. *Id.*
- Abstract deficient, scattered references to the transcript no substitute for a proper argument. *Id.*
- Abstract deficient, argument not addressed. *Id.*
- Attorney's duty to timely file record. *Parrish v. State*, 313.
- Record filed late, motion for rule on the clerk, if attorney will concede fault or show other good cause, motion will be granted. *Id.*
- Rule on the clerk will be granted if good cause shown. *Id.*
- Review of chancery cases. *Brasel v. Brasel*, 337.
- Review of denial of motion to set aside jury verdict on liability. *Ford Motor Co. v. Massey*, 345.
- Evidence given all reasonably permissible inferences. *Id.*
- Chancery cases reviewed de novo, standard on review. *Mobley v. Harmon*, 361.
- Matter not raised below, appellate court will not consider. *Id.*
- Chancellor's decision based on case law, no merit to appellant's argument. *Id.*
- Notice of appeal filed one day too early, and therefore had no effect. *Id.*
- Failure to abstract division order. *Crystal Oil Co. v. Warmack*, 381.
- Arguments and briefs, specialized cases, use regular word instead of legal jargon when possible. *id.*
- Administrative remedies not exhausted, case reversed to allow pursuit of administrative remedies. *Hankins v. McElroy*, 394.
- Failure to abstract, case affirmed. *Haynes v. State*, 407.
- Notice of appeal, when filed. *Watson v. State*, 409.
- Belated appeals in criminal cases, cases heard if good cause for delay shown. *Id.*

- Appeal filed prior to the entry of judgment, appeal denied pending filing of affidavit of responsibility by appellant's attorney. *Id.*
- Staff memorandum not a final order, dismissal of appeal affirmed. *Gurley v. Mathis*, 412.
- Standard on review of agencies under their rulemaking procedures, arbitrary & capricious standard applies. *Id.*
- Case affirmed if right result reached, even if wrong reason given. *Register v. State*, 426.
- Erroneous jury instruction, appellant not required to show prejudice, but appellee may demonstrate lack of prejudice. *Skinner v. R. J. Griffin & Co.*, 430.
- Point abandoned on appeal, point not preserved for argument on appeal. *Dillard v. State*, 439.
- Motion effectively withdrawn at trial, appellant failed to present necessary proof, argument without merit. *Id.*
- Verdict not against the preponderance of the evidence, when new trial was granted abuse of discretion resulted. *Razorback Cab of Ft. Smith, Inc. v. Martin*, 445.
- Standard of review, denial of transfer to juvenile court. *Williams v. State*, 451.
- Issuing a stay, appellate court has discretionary authority, considerations. *Smith v. Denton*, 463.
- "Stipulations" not agreed to by both sides, supplementation of record not unnecessary or inappropriate. *McClard v. Crain Management Group, Inc.*, 472.
- Review of denial of directed verdict. *Walker v. State*, 478.
- Preserving issue for appeal, objection must be made at first opportunity. *Id.*
- Life imprisonment, review of all errors that appear prejudicial to appellant. *Id.*
- Standard on review, chancellor's findings reversed only if clearly erroneous. *Hempel v. Bragg*, 486.
- Motion constituted interrogatories to the judge, chancellor's original findings were sufficient to explain his ruling. *Id.*
- Point moot, court will not address. *Id.*
- Error alleged concerning fees, argument not reached where record did not contain necessary proof. *Id.*
- Objection to rate of post-judgment interest, chancellor never informed of current discount rate, judicial notice discretionary. *Id.*
- Judgment awarded to architects reversed, issue not properly before the court. *Id.*
- Trial court may be affirmed for a reason different than the one given by the trial court. *Hubbard v. The Shores Group, Inc.*, 498.
- Issue not presented to trial court, appellate court will not base a reversal on such an issue. *Id.*
- Facts insufficient to state a cause of action, trial court ruled correctly. *Id.*
- Review of sufficiency of the evidence made before review of other assignments of error. *Gunter v. State*, 504.
- Invited error. *Id.*
- Failure to request curative relief, issue not preserved for appeal. *Id.*
- Issue raised for first time on appeal, appellant cannot change argument on appeal. *Owens v. State*, 520.
- Review of general jury verdict. *Davis v. Davis*, 549.
- Decision affirmed if correct, even if different reason given. *Higginbottom v. Waugh*, 558.
- Final order not abstracted, abstractor's note in brief sufficient here. *Gaines v. State*, 561.
- Review of exercise of discretion under rape shield statute. *Id.*

- Review of admissibility of rape victim's prior sexual activity, no proffer made, issue not considered. *Id.*
- Issue raised for first time on appeal not considered. *Id.*
- Review of revocation. *Id.*
- Review of denial of motion for new trial, error of law. *Nazarenko v. CTI Trucking Co., Inc.*, 570
- Review of denial of motion for new trial, manifest abuse of discretion defined. *Id.*
- Lack of contemporaneous objection, failure to preserve issue for appeal. *Id.*
- Review of limitation on cross-examination, standard on appeal. *Woodruff v. State*, 585.
- Failure to raise argument below. *Id.*
- Review of action in supervision of closing argument. *Id.*
- Issue not raised at trial, appellate court will not consider. *Mt. Olive Water Ass'n v. City of Fayetteville*, 606.
- Review of ruling on motion to suppress. *State v. Mosely*, 617.
- Decision limited to argument raised on appeal. *Id.*
- Failure to include hearing transcript in record. *Tucker v. State*, 625.
- Failure to obtain ruling, failure to object. *Id.*
- No collateral attacks or claims of ineffective assistance of counsel on direct appeal. *Id.*
- Abuse of discretion necessary to overturn chancellor, how evidence is viewed on appeal. *Employers Nat'l Ins. Co. v. Grantors*, 645.
- Standard of review for attorneys fees. *Price v. State*, 98-A.
- Abstract flagrantly deficient, order appealed from affirmed. *Davis v. Peebles*, 654.
- Failure to cite authority or make convincing argument. *Bogart v. Nebraska Student Loan Program*, 656.
- Review of chancery cases. *Mountain Home Sch. Dist. v. T.M.J. Builders, Inc.*, 661.
- Case affirmed if correct even if wrong reason given by trial court. *Id.*
- Review of chancery cases. *Southeast Ark. Landfill Inc. v. State*, 669.
- Moot issue not addressed. *Id.*
- Failure to cite authority or make convincing argument. *Id.*
- Trial court's ruling unclear, appellate court will not consider issue. *Enos v. State*, 683.
- Record insufficient, issue not addressed. *Id.*
- Review limited to the record as abstracted, lower court affirmed. *Pyle v. Robertson*, 692.
- Review of denial of motion for new trial. *Gilliam v. Thompson*, 698.
- Failure to proffer jury instruction. *Id.*
- Appellant has burden of showing error on appeal. *Id.*
- Arguments not raised at trial, not considered on appeal. *Id.*
- Review of chancellor's findings, standard on review. *Riddick v. Streett*, 706.
- Chancellor's decree contained mistake, mistake corrected. *Id.*
- Motion for rule on the clerk, good cause for granting. *Coleman v. State*, 716.
- ARREST:**
- Implied consent law, purpose of. *Parsons v. State*, 224.
- Police officer must develop a reasonable belief of intoxication at the time of arrest, statute amended to so state. *Id.*

ASSIGNMENTS:

Assignees receive only the rights of assignor. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 128.

ATTORNEY & CLIENT:

Appellate rules provide for appeal from order disqualifying counsel. *Price v. State*, 96.

Court-appointed counsel removed on trial judge's motion, removal not a disqualification on ethical grounds. *Id.*

Ineffective assistance, required elements of. *Cox v. State*, 184.

Claim of ineffective assistance, no prejudice resulted. *Id.*

Claim of ineffective assistance, inconsistencies minor, admissions overwhelming. *Id.*

Claim of ineffective assistance, trial court properly exercised its discretion. *Id.*
Fees, statute not applicable on appeal. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.

Fees, attorney who files interpleader action not entitled to attorney's fees. *Kolb v. Morgan*, 274.

Clients denied employment, proof showed otherwise. *Mobley v. Martin*, 361.

Employment contract found to exist, chancellor's decision supported by substantial evidence. *Id.*

Attorney who appears in court presumed to be authorized to represent the client. *Id.*

Contract of employment seen, payment made on the basis of that contract. *Id.*
Attorney as advocate and witness, cannot do both. *Id.*

Attorney testifies and receives a fee, when permissible. *Id.*

Attorney clearly aware of potential conflict, no participation in contingent fee allowed. *Id.*

Quantum meruit argument without merit. *Id.*

Fees, criteria to be considered. *Price v. State*, 98-A.

Fees, no fixed formula. *Id.*

Fees, no abuse of discretion. *Id.*

No fees allowed, no error found. *Riddick v. Streett*, 706.

AUTOMOBILES:

Motor vehicle, definition of. *Fitch v. State*, 122.

DWI Act, term motor vehicles in act includes all-terrain vehicles. *Id.*

DWI a traffic offense, said offense may occur on a private roadway. *Id.*

ATV a motor vehicle for purposes of the DWI Act, DWI can occur wherever necessary to protect the public interest. *Id.*

BANKRUPTCY:

Certain debts exempt from discharge, exemption can be discharged if creditor knew of bankruptcy and failed to request court to except it from discharge. *McKinney v. Unger*, 139.

Administrator had knowledge of bankruptcy but failed to file proof of claim; debt discharged, probate court had no jurisdiction. *Id.*

BANKS & BANKING:

Located means the place where its operations are carried on, providing credit to residents of foreign state does not change bank's location. *Wiseman v. State Bank & Trust, N.A.*, 289.

Bank's location clearly Oklahoma, Oklahoma interest rates apply. *Id.*

Joint tenancy CD, statute does not determine ownership to exclusion of other

- tenants. *Hogan v. Hogan*, 374.
 Evidence of intent relative to surviving party. *Id.*
 Statute not conclusive as to ownership of proceeds of account as between joint tenants. *Id.*
- CERTIORARI, WRIT OF:**
 When writ available. *Lupo v. Lineberger*, 315.
 Writ explained. *Id.*
- CIVIL PROCEDURE:**
 Standard for setting aside trial court's finding. *Parsons v. State*, 224.
 Complaint dismissed without prejudice, appellant given chance to plead further. *Hubbard v. The Shore Group, Inc.*, 498.
- COLLEGES & UNIVERSITIES:**
 Guaranteed student loan program, federal preemption applied, factors integral part of federal law. *Bogart v. Nebraska Student Loan Program*, 656.
 Federal preemption barred state action. *Id.*
- CONSTITUTIONAL LAW:**
 Special legislation defined. *Fayetteville School Dist. v. Arkansas State Bd. of Educ.*, 1.
 Legislation not local or special legislation merely because it ultimately affects less than all the state's territory. *Id.*
 Rational basis test, determination of whether separation is arbitrary. *Id.*
 Rational basis test. *Id.*
 Law not special or local. *Id.*
 Death penalty not cruel and unusual punishment. *Sheridan v. State*, 23.
 Challenge to statute on vagueness grounds, appellant had no standing to raise argument. *Vickers v. State*, 64.
 Standing, rights are personal. *Price v. State*, 96.
 Confrontation clause, unavailability of witness. *Register v. State*, 426.
 Confrontation protection, two types. *Gunter v. State*, 504.
 Confrontation protection not violated. *Id.*
 Construed in context of the law in existence at the time of its adoption. *State v. Bostick*, 596.
 Appellate jurisdiction not specifically defined. *Id.*
 Arkansas constitution, right of state to appeal. *Id.*
 Federal preemption. *Bogart v. Nebraska Student Loan Program*, 656.
- CONTRACTS:**
 Funeral benefits contracts, no anti-competitive effect found. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 128.
 Restraint of trade, contracts that only remotely restrain competition are not forbidden. *Id.*
 Merchandise only pre-need contracts, restrictive provisions did not constitute restraint of trade. *Id.*
 Contract provided for merchandise and services, appellant/assignees entitled to same. *Id.*
 Enforcement of the restriction did not result in forfeiture, chancellor not clearly erroneous. *Id.*
 Unjust enrichment, what constitutes. *Id.*
 No unjust enrichment found, chancellor's ruling correct. *Id.*
 Ambiguous terms, customs & usage. *Precision Steel Warehouse, Inc. v.*

Anderson-Martin Mach. Co., 258.
Course of dealing or usage. *Id.*
Usage is factor in determining commercial meaning of contract. *Id.*
Sufficient evidence to support verdict. *Id.*
Architects not liable for breach of contract, direct testimony supported such a finding. *Hempel v. Bragg*, 486.
Stipulations in building and construction contracts, may be avoided by the parties. *Id.*
Stipulations in construction contract not followed, stipulations were not part of the contract, waiver occurred. *Id.*
Contractor awarded judgment, amount of award not clearly erroneous. *Id.*

CORONERS:

Authorization of autopsy. *Cavin v. State*, 238.

CORPORATIONS:

Corporate entity separate from its stockholders, domicile of stockholders has no bearing on corporation's location. *Wiseman v. State Bank & Trust, N.A.*, 289.

COUNTIES:

Emergency medical service financed by service charge, procedural requirements of statute apply. *West Washington County Emergency Medical Servs. v. Washington County*, 76.
Emergency medical service financed by taxes, county may establish such a service. *Id.*

COURTS:

Transfer from circuit to juvenile court sought; burden of going forward. *Williams v. State*, 451.
Transfer of juvenile transfer cases, specific finding not required. *Id.*
Juvenile transfer cases, equal weight need not be given each factor. *Id.*
Juvenile transfer case, denial of transfer not clearly erroneous. *Id.*
Jurisdiction, appeal of attorney's fees by trial appointed counsel who was removed and without normal avenues of appeal. *Price v. State*, 98-A.

CRIMINAL LAW:

Circumstantial evidence. *Sheridan v. State*, 23.
Eyewitness testimony not required. *Id.*
Sufficient evidence victim killed because she informed narcotics agents appellant was involved with drugs. *Id.*
Aggravating circumstance, "prevent an arrest". *Id.*
Death penalty satisfies narrowing requirements. *Id.*
Overlap in statutory definitions permissible. *Id.*
Death penalty, mercy permitted in sentencing phase. *Id.*
Mitigating factors, all factors must be considered. *Id.*
Mitigating factors, all must be admitted and considered. *Id.*
Mitigating factors, deliberate exclusion, presumptively invalid sentence. *Id.*
Mitigating factors, jury invited to consider all factors, no error to submit different form. *Id.*
Instructions on lesser included offenses, only given if rational basis exists. *Vickers v. State*, 64.
Kidnapping, substantial interference with liberty has no minimum time limit, purpose of the restraint may be inferred from circumstantial evidence. *Green v. State*, 87.

Capital murder statute previously found constitutional. *Cox v. State*, 184.
 Sentencing provision constitutional, death statute not mandatory. *Id.*
 Capital murder, statutory scheme provided a genuine narrowing of death eligible persons. *Id.*
 Killing one or more persons automatically a death case, aggravating circumstances existed. *Id.*
 Risk of death also covers actual death. *Id.*
 Interpretation of statute, absurd results not proper. *Id.*
 Sale of drugs, sufficient evidence. *Friar v. State*, 253.
 Sufficiency of circumstantial evidence. *Id.*
 Loitering. *Johnson v. State*, 308.
 Loitering, sufficient evidence. *Id.*
 Fleeing. *Id.*
 Fleeing, sufficient evidence. *Id.*
 Theft by receiving. *Id.*
 Sufficient evidence of theft by receiving and fleeing. *Id.*
 Robbery, aggravated robbery, physical force need only be threatened. *McKinzy v. State*, 334.
 Serious physical injury inflicted on both victims, two convictions for aggravated robbery upheld. *Id.*
 Post-arrest silence by defendant cannot be used for impeachment. *Tarkington v. State*, 399.
 Inadvertent comment by witness was not a *Doyle* violation, mistrial properly denied. *Id.*
 Statement occurred during cross-examination, jury instructed on right to remain silent, motion for mistrial properly denied. *Id.*
 First degree murder, sufficient evidence. *Walker v. State*, 478.
 Circumstantial evidence can be sufficient evidence. *Id.*
 Intent, proof. *Id.*
 Intent inferred from type of weapon and location of wound. *Id.*
 Rape, sufficient evidence, testimony of victim. *Gunter v. State*, 504.
 Rape, sufficient evidence. *Id.*
 Intent to rob, sufficient proof of. *Owens v. State*, 520.
 Petitioner held without legal authority, writ of habeas corpus must issue. *Waddle v. Sargent*, 539.
 Distinction between petition for habeas corpus and one for post-conviction relief, petition for writ not procedurally barred. *Id.*
 Capital murder charge, trial court may refuse to set bond. *Id.*
 Writ issued, petitioner remanded to sheriff. *Id.*

CRIMINAL PROCEDURE:

Speedy trial requirement jurisdictional. *Rhodes v. Capeheart*, 16.
 Speedy trial requirement, burden of proof. *Id.*
 Speedy trial, exclusion for interlocutory appeals. *Id.*
 Speedy trial, basic rule, burden of speedy trial on court and prosecutor. *Id.*
 Speedy trial, excluded periods must be documented. *Id.*
 Speedy trial, offered speedy trial, delay requested and memorialized, appellant cannot complain. *Id.*
 Speedy trial, defense counsel's actions caused delay. *Id.*
 Comparative review of death penalty cases, factors considered. *Sheridan v. State*, 23.
 Death penalty not freakishly or arbitrarily applied. *Id.*
 State concluded speedy trial rule violated, rule not disregarded. *Weaver v. State*,

55.

Speedy trial rules, purpose of. *Id.*

When prior conviction in another state may be used for enhancement purposes.

Green v. State, 87.

Habitual offender status clear, appellant's motion to dismiss properly denied. *Id.*

Speedy trial argument, when burden shifts to state. *Smith v. State*, 93.

Speedy trial argument, state met burden of proving trial fell within the speedy trial time. *Id.*

Juvenile tried as an adult, adult standard applies. *Boyd v. State*, 171.

Juvenile code, parental consent requirement limited to proceedings in the juvenile division of chancery court. *Id.*

Seventeen-year-old tried as adult waived right to remain silent and right to counsel, no error to refuse to suppress confessions. *Id.*

Death penalty, crimes sufficiently heinous for death penalty to stand. *Cox v. State*, 184.

Request for continuance based on publicity for two unrelated executions, no grounds found. *Id.*

Capital murder, aggravating circumstance, double counting permissible under the Eighth Amendment. *Id.*

Plea bargains, plea not fully executed, court not bound. *Kilgore v. State*, 198.

When information may be amended by State. *Id.*

Amendment to information was not a surprise, nature and degree of crime did not change. *Id.*

Defendant has right to be present when a substantial step is taken in his case, what constitutes a substantial step. *Davlin v. State*, 218.

Right to speedy trial, burden of proof. *State v. McCann*, 286.

Speedy trial rule violated. *Id.*

Amending charging petition, change of date did not prejudice appellant. *Johnson v. State*, 308.

Violation of Rule 28.1 (A) not a basis for reversal. *Matthews v. State*, 327.

Speedy trial, burden on state to show delay justified. *Id.*

Speedy trial, excludable periods shown by state, right to speedy trial not violated. *Id.*

Rape, medical records of victim correctly denied to appellant. *Gunter v. State*, 504.

Rape shield statute not total bar. *Gaines v. State*, 561.

Rape shield statute does not violate accused's right to confront witnesses. *Id.*

Revocation of probated or suspended sentence. *Id.*

Sufficient evidence to support revocation. *Id.*

Juvenile transfer denied, no error found. *Tucker v. State*, 625.

Juvenile transfer request, factors not equal, information alone sufficient basis to deny transfer. *Id.*

Defendants convicted and sentence while Rule 37 was not in effect. *Burk v. State*, 652.

Rule 36.4 applicable when appellant convicted, appellant's motion untimely. *Id.*

Plea agreement, record sufficiently clear. *State v. Gaddy*, 677.

Breach of plea agreement by state remedy. *Id.*

Dismissal of charge that was dropped as part of a plea agreement by then refiled. *Id.*

Rule 4(C) applies to criminal cases, appellate court had jurisdiction over the appeal. *Enos v. State*, 683.

DAMAGES:

- Objection to jury instruction insufficiently specific. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.
- Objection to jury instruction insufficiently specific. *Id.*
- No evidence injury temporary, no error to give AMI 2202(B). *Davis v. Davis*, 549.
- Exactness of proof, requirements. *Id.*
- Certainty of proof sufficient. *Id.*
- Testimony of victim, without medical testimony, can provide sufficient foundation for introduction of medical expenses. *Id.*
- Sufficient foundation for medical expense of ECG laid. *Id.*
- No legal basis for damages for mental anguish caused by deceit. *Higginbottom v. Waugh*, 558.
- Mental anguish damages sought in connection with deceit, summary judgment proper. *Id.*

DECLARATORY JUDGMENT:

- Parties must exhaust administrative remedies. *Hankins v. McElroy*, 394.

DEEDS:

- Construction, court determines intent of parties. *Nature Conservancy v. Kolb*, 110.
- General rule, conveyance of right of way. *Id.*
- Construction, conveyance of right of way or fee factors to consider. *Id.*
- Reservations and exceptions, terms not conclusive to intent. *Id.*
- Deed not a nullity merely because constructive trust imposed. *Brasel v. Brasel*, 337.
- Reformation of, parties to. *Riddick v. Streett*, 706.
- Removal of clouds on title, replatting necessary, chancellor so ordered. *Id.*

DISCOVERY:

- Right to take deposition, right to refuse to answer and seek protective order. *Lupo v. Lineberger*, 315.
- Protective order was proper remedy, not writ of prohibition or certiorari. *Id.*
- Motion raised too late. *Gunter v. State*, 504.

DIVORCE:

- Child support, private agreements modifying child support. *Burnett v. Burnett*, 599.
- Unpaid child support, circumstances under which a court may decline to permit the enforcement of a child support judgment. *Id.*
- Indirect determination of child support not possible. *Id.*
- Decree with child support provisions considered a final judgment, appellee must move to modify the order. *Id.*
- Federal statutes indicate orders of child support are judgments by operation of law. *Id.*
- Child support ordered by court, chancellor erred in failing to enter judgment in the accrued amount. *Id.*

DRUGS & NARCOTICS:

- Delivery of controlled substance, accused need only be an agent of the buyer or seller to violate the law. *Higgs v. State*, 272.
- Suspended imposition of sentence denied, denial proper. *Enos v. State*, 683.

EMINENT DOMAIN:

- Power inherent to the state even if not in constitution. *Nature Conservancy v. Kolb*, 110.
Construction of statutes delegating powers of eminent domain, strict construction in favor of landowner. *Id.*

EQUITY:

- Laches, reliance required. *Crystal Oil Co. v. Warmack*, 381.
Enjoining of nuisance. *Southeast Ark. Landfill, Inc. v. State*, 669.
Processes flexible, relief can be created as is justified by proof. *Riddick v. Streett*, 706.

ESTOPPEL:

- Not applicable to the facts. *Pope County v. Friday, Eldredge & Clark*, 83.
Reliance required. *Crystal Oil Co. v. Warmack*, 381.

EVIDENCE:

- Photographs, no evidence jury saw photographs. *Sheridan v. State*, 23.
Cross-examination restricted, no proffer made. *Id.*
Limiting testimony in court's discretion. *Id.*
Expert witness, defense failed to qualify medical examiner as an expert in a particular area of specialty. *Id.*
Reference to appellant's brother being "sheltered" by appellant, matter in court's discretion, no abuse. *Id.*
Sufficiency of, motion for directed verdict must be renewed at the close of the case. *Zinger v. State*, 70.
Photographs, admissibility rests within sound discretion of trial court. *Id.*
Photographs allowed into evidence, no abuse of discretion found. *Id.*
Evidence tending to show third party committed the crime, when admissible. *Id.*
Evidence of similar crime not admitted, no abuse of discretion found. *Id.*
Denial of motion for directed verdict treated as challenge to the sufficiency of the evidence, test for determining sufficiency. *Green v. State*, 87.
Substantial evidence test on appeal, what constitutes substantial evidence. *Id.*
Sufficient to support guilty verdict, no error to deny motion for directed verdict in kidnapping charge. *Id.*
Photographs properly admitted. *Cox v. State*, 184.
Videotape admitted, could be replayed to jury. *Davlin v. State*, 218.
Request by jury to see evidence during deliberations, trial court may infer disagreement from request. *Id.*
Substantial evidence. *John Cheeseman Trucking, Inc. v. Dougan*, 229.
Privileged communications. *Cavin v. State*, 238.
Psychotherapist-patient privilege. *Id.*
Communication not privileged. *Id.*
Privilege waived. *Id.*
Evidence, proper foundation, medical testimony. *Id.*
Rule does not impose affirmative duty on appellate court to review matters for first time on appeal. *Friar v. State*, 253.
Business record. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.
Hearsay, no prejudice. *Johnson v. State*, 308.
Hearsay, no error to admit evidence to show what information police acted on. *Id.*
Relevancy, no prejudice. *Id.*
Qualification of expert in discretion of trial judge. *Ford Motor Co. v. Massey*,

345.

Expert opinion had reasonable basis, constituted substantial evidence. *Id.*
 Evidence or similar occurrences. *Id.*
 Similar occurrences, burden of proof. *Id.*
 Relevance in trial judge's discretion. *Id.*
 Evidence of similar occurrences, showing that must be made varies. *Id.*
 Evidence was relevant, no prejudice shown. *Id.*
 Hearsay, unavailability of witness defined. *Register v. State*, 426.
 Hearsay, unavailability of witness, burden of proof. *Id.*
 Hearsay, unavailability of witness, showing required. *Id.*
 Hearsay, unavailability of witness, no attempt to obtain witness. *Id.*
 Hearsay, unavailability of witness, no effort to secure witness's presence, prior statement not admissible. *Id.*
 Hearsay, unavailability of witness, no distinction between the government and the defendant. *Id.*
 Sufficiency of, testimony sufficient to support verdict. *Dillard v. State*, 439.
 Substantive evidence, choice of possibilities. *Arkansas Kraft v. Cottrell*, 465.
 Taped statement, playing of three questions questionable, but not an abuse of discretion. *Walker v. State*, 478.
 Determining sufficiency of the evidence. *Gunter v. State*, 504.
 Substantial evidence defined. *Id.*
 Determining sufficiency of the evidence, view of evidence. *Id.*
 Relevance, trial court has discretion. *Id.*
 Relevance, no error to admit circumstances of arrest. *Id.*
 Relevance of evidence in discretion of court. *Id.*
 Will considered by judge in his determination, will not in evidence, improperly considered. *Brissett v. Sykes*, 515.
 Sufficiency of, how determined on review. *Owens v. State*, 520.
 Evidence sufficiently substantial to find the appellant was the killer. *Id.*
 Robbery & murder occurred in close proximity, finding of continuous transaction justified. *Id.*
 Ruling on relevance, reversed only upon finding of abuse of discretion. *Id.*
 Knife allowed into evidence, introduction relevant. *Id.*
 Collateral source rule. *Nazarenko v. CTI Trucking Co.*, 570.
 Collateral source rule, false or misleading information about financial condition. *Id.*
 Collateral source rule, one exception. *Id.*
 Failure to explain basis for cross-examination. *Woodruff v. State*, 585.
 Closing argument, limitations. *Id.*

HABEAS CORPUS:

Review proper by appeal only. *In Re Review of Habeas Corpus Proceedings*, 168.

HIGHWAYS:

Encroachments, any encroachment on a highway right-of-way impermissible. *Arkansas State Highway Comm'n v. Townsend*, 702.
 Terms of statute unambiguous, gate, fence and cabins on highway right-of-way violated statute. *Id.*
 Employees had no right to waive the law, sovereign not bound by unauthorized acts of its employees. *Id.*

HUSBAND AND WIFE:

Necessaries doctrine explained. *Davis v. Baxter County Regional Hosp.*, 388.

Necessaries doctrine subject to general rule, credit extended solely to the wife, the husband is not liable. *Id.*

Necessaries, presumption against necessities being obtained on wife's exclusive credit. *Id.*

Necessaries doctrine is the law in Arkansas, change can be made only by the general assembly. *Id.*

Statutes have not superseded the necessities doctrine. *Id.*

Necessaries doctrine not violative of public policy. *Id.*

INJUNCTION:

Issuance in discretion of trial court, review of decision. *Southeast Ark. Landfill, Inc. v. State*, 669.

Posting bond, state exempt. *Id.*

INSTRUCTIONS:

Sudden emergency instruction, when applicable. *Smith v. Stevens*, 534.

INSURANCE:

Pre-need contract with insured, terms subject only to statute & public policy. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 128.

Amendments to law cannot be retroactively applied, public policy regarding burial certificates cannot be used to invalidate pre-need contracts executed prior to amendments. *Id.*

Insured must make prima facie case that damages are covered under the policy, burden then shifts to insurer to prove damages are excluded. *Reynolds v. Shelter Mut. Ins. Co.*, 145.

Improper to elicit evidence of the other party's insurance coverage, collateral source rule. *Babbitt v. Quik-Way Lube & Tire, Inc.*, 207.

Testifying about financial condition in false or misleading manner opens door. *Id.*

Evidence of insurance coverage presented, door opened by appellant. *Id.*

Subrogation, sharing attorneys' fees, general rule when insurer takes no action to enforce rights. *Cockman v. State Farm Auto. Ins. Co.*, 340.

Subrogation, sharing attorneys' fees, insurer not required to pay insured's attorney's fees incurred during settlement. *Id.*

Insurers had notice of the claims against their insured, by denial of coverage and defense of insured insurer assumed the risk that the insured might defend poorly. *Employers Nat'l Ins. Co. v. Grantors*, 645.

JOINT TENANTS:

Accounting. *Hogan v. Hogan*, 374.

JUDGES:

Disqualification discretionary. *Sheridan v. State*, 23.

Disqualification, personal knowledge gleaned from judicial proceedings. *Id.*

Disqualification not required, opinion stated on a matter under consideration. *Id.*

Avoidance of impropriety, review of disqualification by judge. *Matthews v. State*, 327.

Determination of disqualification, full jurisdiction may be reassumed if the disqualification is removed. *Id.*

Disqualification only as to hearing on attorney's fees, reason for disqualification gone, no abuse not to recuse. *Id.*

Judge never authorized to act in the district, judgment of conviction and order of commitment facially invalid. *Waddle v. Sargent*, 539.

JUDGMENT:

- Correction of mistakes, Civil Procedure Rule 60 governs relief for mistakes and errors. *Reis v. Yates*, 300.
- Res judicata defined. *Gurley v. Mathis*, 412.
- Parties and privies not the same, res judicata inapplicable. *Id.*
- Service invalid, default judgment void. *Hubbard v. The Shores Group, Inc.*, 498.
- Default judgment set aside, excusable neglect found. *Id.*
- Default judgment set aside due to excusable neglect, meritorious defense demonstrated. *Id.*
- Res judicata, two facets. *John Cheeseman Trucking, Inc. v. Pinson*, 632.
- Res judicata, issue preclusion. *Id.*
- Res judicata, issue of liability precluded. *Id.*
- Res judicata, actual litigation of issue. *Id.*
- Res judicata, issue preclusion, judgment final though on appeal. *Id.*
- Res judicata, mandatory counterclaim pending in another suit not filed as counterclaim, relitigation of liability not required. *Id.*
- Summary judgment proper, no issue remained. *Id.*
- Motion for summary judgment, factors on review. *Pyle v. Robertson*, 692.
- Appeal from trial court's granting motion for summary judgment, review limited. *Id.*

JURISDICTION:

- Criminal case, when circuit judge may act. *Waddle v. Sargent*, 539.
- Criminal case not within territorial boundaries of judicial district, extraterritorial order void. *Id.*
- Summary judgment, burdens of proof. *Mt. Olive Water Ass'n v. City of Fayetteville*, 606.
- Summary judgment, after initial burden met burden shifts, more than conclusory assertions required. *Id.*

JURY:

- Jury panel selected from registered voters, no denial of impartial jury. *Sheridan v. State*, 23.
- Jury panel of registered voters is not partial. *Id.*
- Juror questioning of witness in court's discretion. *Id.*
- Instructions, failure to proffer an instruction results in the issue's not being preserved for appeal. *Vickers v. State*, 64.
- Instructions neither proffered nor abstracted, appellate court will not consider them. *Id.*
- Instructions, objection to must be timely. *Zinger v. State*, 70.
- Juror not asked about felony conviction, verdict not voidable. *Id.*
- Insurance claim, instruction on burden of proof correct. *Reynolds v. Shelter Mut. Ins. Co.*, 145.
- Definition of hail, refusal to give instruction proper. *Id.*
- No instruction proffered at trial, no right to claim error on appeal. *Id.*
- Alleged misconduct, factors. *Diemer v. Dischler*, 154.
- No request for prohibitive instruction on visiting accident scene or conducting experiments, no admonishment, flagrant disobedience would demonstrate more purposeful conduct than facts here. *Id.*
- Composition of, trial court's decision overturned only upon an abuse of discretion. *Cox v. State*, 184.
- Juror's excusal for cause, no abuse of discretion found. *Id.*
- Instructions to jury, issue covered, giving non-standard instructions. *Cavin v.*

State, 238.
Instructions, refusal to modify instruction correct. *Id.*
Instructions, failure to give blood test, no error to refuse proffered instruction.
Id.
Jurors may believe or disbelieve any witness. *Ford Motor Co. v. Massey*, 345.
Evidentiary matters for jury to weigh and evaluate. *Id.*
Juror misconduct alleged, appellant had burden of proving. *Dillard v. State*, 439.
Communications found not to relate to the trial, no abuse of discretion found.
Id.
Model instruction accurate, should not have been embellished. *McClard v. Crain Management Group, Inc.*, 472.
Determination of credibility. *Walker v. State*, 478.
Jury may consider false, improbable, or contradictory explanations in assessing truthfulness of witness. *Id.*
Objections to instructions, when timely. *MIC v. Barrett*, 527.
Objection to instructions, only one objection properly in the record. *Id.*
Modification of instruction, reason for modification explained in supplemental hearing. *Id.*
Instruction as given inapplicable, no causal relation to the condition of the premises. *Id.*
Erroneous instruction requested, if model instruction found sufficient, it should be used. *Smith v. Stevens*, 534.
Model instruction covered the issue, no error to refuse addition to instruction. *Id.*
Sudden emergency instruction given, no error in giving instruction. *Id.*
Instructions to jury should be based on evidence. *Davis v. Davis*, 549.
Swearing match, jury may believe or disbelieve any witness. *Id.*
Batson procedure. *Tucker v. State*, 625.
No prima facie case of racial discrimination. *Id.*
Batson not extended to gender challenges within a racially cognizable group. *Id.*

JURY INSTRUCTIONS:

Lesser included offense, no obligation to so charge jury without a rational basis.
Tarkington v. State, 399.

LIBEL & SLANDER:

Determination of defamation rests with the court. *Waymire v. DeHaven*, 687.
Distinction between actionable and nonactionable words. *Id.*
Determination that words capable of actionable meaning. *Id.*
Words crook, con & scam did not allege any criminal misconduct. *Id.*
Use of terms presented a jury question, summary judgment improper. *Id.*

LIMITATION OF ACTIONS:

Legal malpractice, when statute begins to run. *Morris v. McLemore*, 53.
Legal malpractice, three year limitation tolled, suit could be filed. *Pope County v. Friday, Eldredge & Clark*, 83.
Full period during which statute tolled is added to the statutory period, no consideration need be given to the time when the limitation would otherwise have expired. *Id.*
Medical malpractice act. *Ruffins v. ER Arkansas, P.A.*, 175.
Cloud on title to real property, action not prohibited even though in existence for more than seven years. *Riddick v. Streett*, 706.

MARRIAGE:

Common law marriage, proof required. *Brissett v. Sykes*, 515.

Evidence necessary to prove common law marriage. *Id.*
 Common law marriage claimed, insufficient proof presented. *Id.*

MINES & MINERALS:

Oil & gas lease, top lease defined. *Crystal Oil Co. v. Warmack*, 381.
 Oil & gas lease, implied covenant to develop. *Id.*
 Oil & gas lease. *Id.*
 Oil & gas lease, violation of implied covenant to develop. *Id.*
 Oil & gas lease, diligence required. *Id.*
 Oil & gas lease, claim based on top lease. *Id.*

MOTIONS:

Movant has burden of obtaining a ruling, failure to constitute a waiver. *Vickers v. State*, 64.
 Motion premature, trial court's denial of motion affirmed. *Leach v. State*, 80.
 Motion for summary judgment properly granted, no cause of action for bad faith. *Reynolds v. Shelter Mut. Ins. Co.*, 145.
 Denial of motion for continuance, when reversed. *Cox v. State*, 184.
 Denial of motion for a continuance, factors on review. *Kilgore v. State*, 198.
 Motion for continuance denied, no abuse of discretion found. *Id.*
 Review of motion to suppress. *Cavin v. State*, 238.
 Denial of motion for directed verdict, factors on review. *Higgs v. State*, 272.
 Motion to dismiss, no provision for such motion before the state presents its case. *Watson v. State*, 304.
 Directed verdict motion treated as challenge to sufficiency of the evidence. *Walker v. State*, 478.
 Motion for mistrial & objection to evidence distinguished. *Enos v. State*, 683.
 Summary judgment, decision to grant should not be based on factual allegations made in the briefs and exhibits. *Pyle v. Robertson*, 692.

MUNICIPAL CORPORATIONS:

Sale of water, what constitutes reasonableness. *Mt. Olive Water Ass'n v. City of Fayetteville*, 606.
 Reasonableness defined. *Id.*
 Wholesale water rates, prima facie showing made by city that rates established were reasonable. *Id.*
 Rates charged by municipal waterworks are subject to judicial review, burden of proving rates unreasonable rests with the complaining party. *Id.*
 City made prima facie case that rates were reasonable, association failed to show rates were unreasonable. *Id.*

NEGLIGENCE:

Sudden emergency instruction, requirements. *Diemer v. Dischler*, 154.
 Sudden emergency instruction, no error to refuse to give instruction. *Id.*
 Sudden emergency instruction, requesting party not entitled to instruction if very strong evidence of some negligence on part of that party. *Id.*
 Evidence of speeding sufficient to deny appellant sudden emergency instruction. *Id.*
 Testimony contradicts photographs, jury entitled to interpret photographs in light of testimony. *John Cheeseman Trucking, Inc. v. Dougan*, 229.
 Sufficient evidence. *Id.*
 Evidence substantial to support jury verdict. *Id.*
 Jury instruction, no error to refuse to give AMI 902. *Id.*
 Proximate cause defined. *Johnson v. Jones*, 449.

Appellee's own miscalculation caused his injury. *Id.*
Prima facie case. *Arkansas Kraft v. Cottrell*, 465.
Proof required. *Id.*
Falls, possible causes do not constitute substantial evidence. *Id.*
Falls do not give rise to inference of negligence. *Id.*
Insufficient evidence. *Id.*
Causation instruction, error may be rendered harmless. *Davis v. Davis*, 549.
Causation instruction, error rendered harmless. *Id.*
Slip and fall, substantial evidence to support verdict. *Gilliam v. Thompson*, 698.
Jury instruction, discretionary part of instruction not supported by facts, no error to omit. *Id.*

NEW TRIAL:

Jury misconduct, burden on moving party. *Diemer v. Dischler*, 154.
Juror misconduct, no abuse of discretion to deny new trial, mere voicing of opinion is not misconduct. *Id.*
Thirty days to rule or jurisdiction is lost. *Reis v. Yates*, 300.
Civil procedure Rule 60 does not extend time for deciding Rule 59 motion beyond thirty days. *Id.*
Trial judge lost jurisdiction by not acting on motion for new trial within thirty days of filing. *Id.*
Law effecting granting a new trial, factor on review. *Razorback Cab of Ft. Smith, Inc. v. Martin*, 445.
When trial court should grant. *Davis v. Davis*, 549.
Denial, test on appeal. *Id.*
Error of law at trial. *Nazarenko v. CTI Trucking Co.*, 570.
Broad latitude of trial judge. *Id.*
Error of law, no manifest abuse of discretion. *Id.*
Discretion available to trial judge. *Gilliam v. Thompson*, 698.

NUISANCE:

Definition. *Southeast Ark. Landfill, Inc. v. State*, 669.
Intrusion must result in physical harm proven beyond mere speculation. *Id.*
Noxious odors. *Id.*
Off-loading waste not nuisance per se, but nuisance nonetheless. *Id.*
Sufficient evidence. *Id.*

PARTIES:

Party named to action after statute of limitations has run, when amendment relates back to time original complaint filed. *Southwestern Bell Tel. Co. v. Blastech, Inc.*, 202.
Amended complaint virtually identical to original, both pleadings arose from the same conduct. *Id.*
Deposition admissible, party had notice of action. *Id.*
New party failed to show prejudice. *Id.*
Requirements of Rule 15(c) met, statute of limitations did not bar suit. *Id.*
Intervention, determination of timeliness. *Employers Nat'l Ins. Co. v. Grantors*, 645.
Intervention, factors used in determining timeliness. *Id.*
Intervention sought, request for intervention untimely. *Id.*

PARTITION:

Severs unity of possession, parties neither gain nor lose. *Kolb v. Morgan*, 274.
Parties own two different estates, partition decree does not include mineral

interests. *Id.*

Family settlement agreement differentiated. *Id.*

Partition decree did not include mineral interests, no evidence of a family settlement agreement found. *Id.*

Family settlement argued, incompetency of one family member a factor, evidence of settlement too speculative. *Id.*

No family settlement found, nothing for family to confirm. *Id.*

PHYSICIANS & SURGEONS:

Notice required before action brought. *Ruffins v. ER Arkansas, P.A.*, 175.

Notice provision of Medical Malpractice Act superseded the inconsistent, pre-existing wrongful death statute. *Id.*

Notice required in wrongful death case. *Id.*

PLEADINGS:

Joinder of claims permitted. *Lemon v. Laws*, 11.

Amendment to conform to proof. *John Cheeseman Trucking, Inc. v. Dougan*, 229.

Appellee failed to properly respond to notice of appeal, finding of excusable neglect by trial court not an abuse of discretion. *Gurley v. Mathis*, 412.

Counterclaim, when one may be raised. *Hempel v. Bragg*, 486.

Mandatory counterclaim pending in another action. *John Cheeseman Trucking, Inc. v. Pinson* 632.

PRETRIAL PROCEDURE:

Pretrial identification by both photographs & eyewitness, when conviction will be set aside. *Matthews v. State*, 327.

First identification almost positive, second identification not improper. *Id.*

PROHIBITION:

Writ of, encroachment on workers' compensation commission warrants writ. *Hill v. Patterson*, 322.

PROHIBITION, WRIT OF:

Writ must be clearly warranted. *Rhodes v. Capeheart*, 16.

When proper to issue. *Id.*

Exclusive remedy lies with Workers' Compensation Commission, writ granted. *Liberty Mut. Ins. Co. v. Coleman*, 212.

Discretionary writ, when proper. *Lupo v. Lineberger*, 315.

When writ properly issued, case overruled. *Id.*

Writ denied, discovery under trial court's jurisdiction. *Id.*

PROPERTY:

Topographical survey wrong, reliance on plat furnished by owners proper. *Hempel v. Bragg*, 486.

Question of survivorship interest, intention determined from the four corners of the deed. *Brissett v. Sykes*, 515.

Creation of a survivorship interest, description of purchasers as husband & wife insufficient. *Id.*

Boundary line disputed, specificity required by chancellor in reciting line. *Riddick v. Streett*, 706.

Replat of subdivision ordered, chancellor's findings correct. *Id.*

Replat of subdivision, angles and directions set without reference to surveyor's pins. *Id.*

Ownership replat ordered, chancellor to remove clouds on title. *Id.*

Appellant a partner in the subdivision, chancellor correctly denied damages. *Id.*

PUBLIC SERVICE COMMISSION:

Abolition of exclusive service territories sought, appellant's misread complaint.
Lincoln v. Arkansas Pub. Serv. Comm'n, 295.

RAILROADS:

Intent of legislature to empower railroad to acquire easement. *Id.*
Easement granted railroads, not fee simple; apparent ambiguity explained. *Id.*

RESCISSION:

Unilateral mistake, essential conditions. *Mountain Home Sch. Dist. v. T.M.J. Builders, Inc.*, 661.
Unilateral mistake, failure to prove first essential condition. *Id.*
Unilateral mistake, failure to prove third essential condition. *Id.*
Unilateral mistake, failure to prove essential conditions, no error to deny rescission. *Id.*

SALES:

Placing defective product in stream of commerce, strict liability, expert, explanation reasonable, jury entitled to believe testimony or not. *Ford Motor Co. v. Massey*, 345.

SCHOOLS & SCHOOL DISTRICTS:

Payback provision legal recoupment. *Fayetteville Sch. Dist. v. Arkansas State Bd. of Educ.*, 1.
Act not ambiguous. *Junction City Sch. Dist. v. Alphin*, 456.
Liability on bid bond, statutes not contradictory. *Mountain Home Sch. Dist. v. T.M.J. Builders, Inc.*, 661.
Liability on bid bond. *Id.*

SEARCH AND SEIZURE:

Search warrant, duties of issuing magistrate and reviewing court. *State v. Mosely*, 617.
Determination of probable cause, record considered on review. *Id.*
No distinction between "reasonable cause" and "probable cause." *Id.*
Search warrant, failure to establish veracity of confidential informant. *Id.*
Probable cause established. *Id.*
Evidence wrongly suppressed. *Id.*

STATUTES:

Constitutionality presumed. *Fayetteville Sch. Dist. v. Arkansas State Bd. of Educ.*, 1.
Interpretation of. *Hawshaw v. State*, 51.
Qualifications of law enforcement officials, no room in act for distinction between employment standards and training standards. *Id.*
Interpretation of, consistent & uniform interpretation important. *Morris v. McLemore*, 53.
Constitutional challenge, party so challenging had burden. *Vickers v. State*, 64.
Constitutional challenge to the murder statute, statutes not unconstitutionally vague. *Id.*
First degree murder statute permissibly broad, flexibility permissible, statute's reach must be clearly defined. *Id.*
Construction of. *Fitch v. State*, 122.
Construction, plain meaning. *Boyd v. State*, 171.

Construction, particular provision construed with reference to whole. *Id.*
Compliance with procedural requirements of law may be waived, non-compliance gives rise to presumption of prejudice. *Davlin v. State*, 218.
No waiver of procedural requirements by appellant, presumption not rebutted. *Id.*
Determining legislative intent, subsequent amendment to statute may be helpful. *Parsons v. State*, 224.
Interpretation by state agency persuasive only if statute needs interpretation. *Junction City Sch. Dist. v. Alphin*, 456.
Construction, give effect to intent of legislature, give words ordinary meaning. *Mountain Home Sch. Dist. v. T.M.J. Builders, Inc.*, 661.
Construction, same subject, not contradictory, must be read together. *Id.*

TAXATION:

Redemption of tax delinquent lands, strict compliance with notice requirements required. *Pyle v. Robertson*, 692.

TORTS:

Bad faith, defined. *Reynolds v. Shelter Mut. Ins.*, 145.
No evidence of malice or ill will on the part of the insurer, evidence not sufficient to prove tort of bad faith. *Id.*
Comparative fault, determination of proximate cause necessary. *Skinner v. R.J. Griffin & Co.*, 430.
Proximate cause usually a jury question. *Id.*
Jury instruction, error to give. *Id.*
Causal connection not established beyond mere conjecture and speculation. *Id.*

TRIAL:

Failure to admonish jury absent request was not error. *Sheridan v. State*, 23.
Closing arguments, defense opened door for state's remarks, no abuse of discretion. *Id.*
Closing argument, control in discretion of trial court. *Id.*
Closing argument, objection too late. *John Cheeseman Trucking, Inc. v. Dougan*, 229.
Opening door for error, complaint not heard on appeal. *Cavin v. State*, 238.
General objection not sufficient, objection to jury instruction. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.
Closing arguments, control in discretion trial court. *Woodruff v. State*, 585.
Closing argument, no error. *Id.*
Closing argument, no abuse of discretion to deny mistrial. *Id.*
Failure to admonish jury not error. *Id.*
Specific finding required form trial court, findings sufficiently specific. *Southeast Ark. Landfill, Inc. v. State*, 669.

TRUSTS:

Trustee cannot assert interest adverse to express trust. *Brasel v. Brasel*, 337.
Constructive trusts explained. *Id.*
Constructive trusts, defendant not treated as real trustee. *Id.*
Constructive trusts, deed not reformed, use merely limited. *Id.*

VENUE:

Determination made on the pleadings. *Junction City Sch. Dist. v. Alphin*, 456.
Co-defendants, joint liability required with resident defendant. *Id.*
Co-defendants, joint liability required. *Id.*
Criminal case, when venue may be waived. *Waddle v. Sargent*, 539.

VERDICT & FINDINGS:

- Motion for directed verdict, challenge to sufficiency of evidence. *Friar v. State*, 253.
- Directed verdict motion, when it should be granted. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.
- Directed verdict, issue of fact not law. *Id.*
- Review of, more than bald assertion of passion or prejudice to reverse, verdict did not shock court. *Davis v. Davis*, 549.

WILLS:

- Signature must be made in presence of two attesting witnesses. *Burns v. Adamson*, 281.
- No error to refuse probate, witness did not see testatrix sign will. *Id.*

WITNESSES:

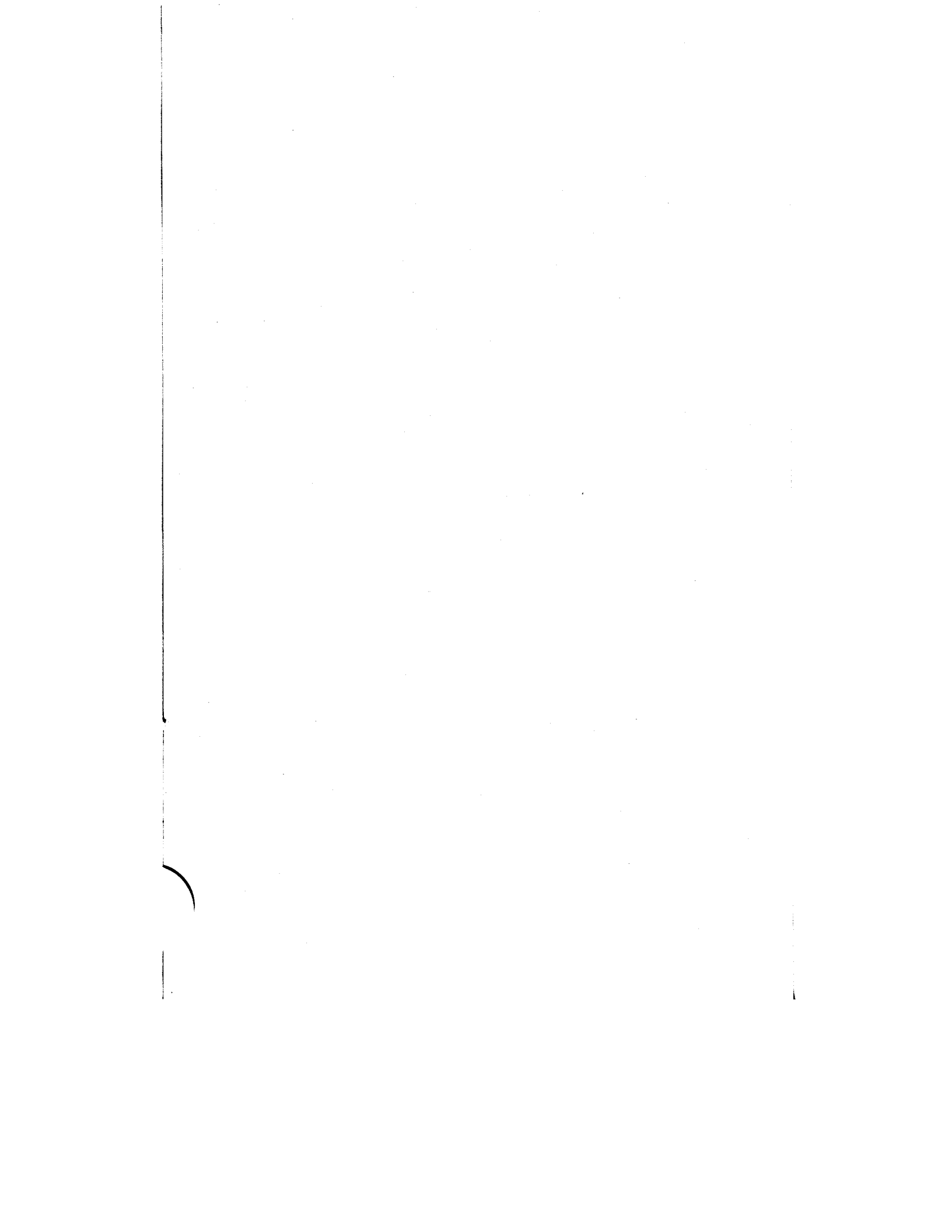
- Existence of accomplice, appellant bears the burden of proving witness is an accomplice. *Vickers v. State*, 64.
- Accomplice defined. *Id.*
- Credibility of expert, chancellor decides weight to be given to opinion. *Guaranty Nat'l Ins. v. Denver Roller, Inc.*, 128.
- Non-expert custodian did not testify outside his expertise. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 258.
- Expert opinion constitutes substantial evidence, weakness of testimony goes to weight. *Ford Motor Co. v. Massey*, 345.
- Weight given expert opinion in province of jury. *Id.*
- Conflicting testimony, determination of jury conclusive. *Id.*
- Expert opinion based on hearsay. *Id.*
- Testimony not irrevocably conflicting. *Id.*
- Conflicts for fact-finder to resolve. *Gunter v. State*, 504.

WORDS & PHRASES:

- "Stipulations" defined. *McClard v. Crain Management Group, Inc.*, 472.

WORKERS' COMPENSATION:

- Burden of proof on claimant. *Deffenbaugh Indus. v. Angus*, 100.
- "Arising out of" and "in the course of" the employment explained. *Id.*
- Course-of-employment requirements. *Id.*
- Resident employee. *Id.*
- Substantial evidence claimant injured "in the course of" his employment. *Id.*
- Injuries arising out of employment. *Id.*
- Positional risk doctrine. *Id.*
- Increased risk doctrine. *Id.*
- Increased risk doctrine requirements. *Id.*
- Increased risk caused injuries. *Id.*
- Claimant may not sue insurer for intentional tort when insurer declines to pay certain medical expenses. *Liberty Mut. Ins. Co. v. Coleman*, 212.
- Remedy for failure to pay certain medical expenses. *Id.*
- Successive injuries. *Id.*
- Intentional infliction of an injury, exception to exclusive remedy provision of act. *Hill v. Patterson*, 322.
- Exception to jurisdiction alleged facts insufficient to sustain allegation. *Id.*
- Dual persona doctrine. *Id.*
- Dual persona, partnerships excluded from operation of doctrine. *Id.*



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

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

ACTS:	Act.....	212, 213, 215, 216 217, 322, 324, 325
Acts by Name:		
Arkansas Administration		
Procedures Act.....	99	
Arkansas Hazardous Waste		
Management Act.....	648	
Arkansas Motor Vehicle		
Commission Act.....	394	
Arkansas Solid Waste		
Management Act.....	671	
Comprehensive Environmental		
Response, Compensation and		
Liability Act of 1980.....	412, 413, 414, 415, 417, 421, 423, 426	
Consolidated Omnibus Budget		
Reconciliation Act		
of 1985.....	498, 500, 503, 504	
Employee Retirement		
Income Security		
Act of 1974.....	503, 504	
Hazardous Substance		
Remedial Action		
Trust Fund.....	412, 424, 425	
Higher Education Act.....	656, 657, 658, 659, 660	
Medical Malpractice		
Act.....	175, 177, 178, 179, 180, 181, 183	
National Bank Act, § 30.....	294	
National Bank Act,		
Rev.Stat. § 5157.....	290	
National Bank Act,		
Rev.Stat. § 5197.....	292	
Omnibus DWI Act.....	122, 123, 124, 125, 127	
RURESA.....	604	
Rape Shield Statute.....	562	
Remedial Action Trust		
Fund Act.....	412, 413, 414, 415, 416, 417, 418, 420, 422, 423, 424, 425, 426, 648, 649, 650	
School Finance Act		
of 1984.....	2, 3, 4, 5, 6, 7, 8, 10	
Social Security Act,		
Title IV-D.....	603	
Teacher Fair Dismissal Act.....	99	
Uniform Controlled Substances		
Act.....	523, 683, 685, 686	
Workers' Compensation		
Arkansas Acts:		
Act of January 11,		
1853.....	110, 111, 112, 113, 116, 120	
Act 51 of 1979.....	77	
Act 34 of 1983.....	456, 457, 458, 459 460, 461, 462, 463	
Act 380 of 1983.....	381, 385	
Act 674 of 1985.....	4	
Act 203 of 1987.....	4	
Act 44 of 1989.....	51, 52	
Act 480 of 1989.....	4	
Act 401 of 1991.....	457	
Act 608 of 1991.....	685	
Act 132 of 1993.....	224, 227, 228	
CODES:		
(See also RULES and STATUTES)		
Arkansas Code Annotated:		
1-2-119.....	389, 392	
1-10-101(a)(4).....	194	
3-3-307.....	618	
4-1-205.....	266, 268	
4-2-202(a).....	266, 267	
4-2-607(3)(a).....	268	
4-2-714(1).....	269	
4-42-201(1).....	327	
5-1-110(c).....	399, 402	
5-1-112(2).....	82	
5-2-202(1).....	484	
5-2-403.....	64	
5-3-201.....	90	
5-3-403.....	80, 81, 82	
5-4-101—5-4-608.....	523	
5-4-301.....	685	
5-4-301(a)(1)(F).....	686	
5-4-309(d).....	569	
5-4-501.....	93, 563	
5-4-503.....	89, 93	
5-4-602.....	185, 191, 192	
5-4-604.....	33, 196	
5-4-604(4).....	194	
5-4-604(5).....	30	
5-10-101.....	33	
5-10-101(a)(1).....	522, 523	
5-10-101(a)(4).....	30, 33, 186, 195, 527	
5-10-102.....	526	

5-10-102(a)(2)	34, 68	9-14-234	599, 603, 605
5-10-103	526	9-14-234(a)(b)	602
5-11-101	91	9-27-302(3)	174
5-11-101(2)	91	9-27-303(1)(a)	172
5-11-102	90, 91	9-27-303(8)	173
5-11-102(a)(4)	90	9-27-317	172, 173, 174
5-12-102(a)	401	9-27-317(a)(3)	174
5-12-103(a)	401	9-27-318	452, 453, 630
5-13-204(a)	401	9-27-318(c)	172
5-14-101	565	9-27-318(e)	625, 630
5-14-103—110	565	11-9-102(4)	107
5-14-108	17	11-9-105(a)	322, 324, 325
5-27-203	305, 306	11-9-401(a)(1)	107
5-36-106	309, 312	11-9-410	326
5-54-125	308, 311	11-9-525	212, 216
5-64-101(f)	273	11-9-802	217
5-64-101 et seq.	685	12-9-108(a)	52
5-64-401	272, 273, 618	12-12-315	246
5-64-407	686	12-12-318	239, 245, 246, 247
5-65-101—117	123, 124	14-14-801	77, 79
5-65-103(a)	124	14-14-801(b)(2)(d)	77
5-65-202	224	14-14-802(b)(2)(D)	80
5-65-202(a)(3)	224, 227, 228	14-234-110	610, 614
5-65-203	226	14-234-110(a)	610
5-71-213(a)(1)	308, 310, 311	14-234-110(b)(1)	611
6-17-1501—1510	99	14-234-110(b)(2)	611
6-17-1510(d)	99	14-234-110(b)(3)	611, 612
6-20-301—319	3	15-73-201(a)	381, 385
6-20-303(c)	462	16-10-101(b)(1)	541
6-20-307(a)	462	16-11-307(a)	462
6-20-310	2	16-13-210	542
6-20-310(a)	3, 4	16-22-308	260, 272
6-20-319	462	16-31-102(5)	74
6-20-319(4)	457	16-31-107	70, 74
6-20-319(4)(a)	461	16-42-101	440, 443, 444, 564, 565
8-4-226(c)(1)	419	16-42-101(a)	565
8-4-227(d)(5)	420	16-42-101(b)	565
8-6-201—221	671	16-42-101(c)	566
8-7-501	412	16-42-101(c)(1-3)	562, 567
8-7-501 et seq.	414, 415, 422	16-42-101(c)(1)	566
8-7-501—522	648	16-42-101(c)(2)(c)	567
8-7-502(a)	414, 423, 426	16-42-101(c)(2)(A)	566, 568
8-7-506	425	16-42-101(c)(2)(B)	566
8-7-507	423	16-42-101(c)(2)(C)	566
8-7-509(d)(2)	412, 423, 425	16-43-901(e)	167
8-7-509(d)(3)	425	16-60-103	397
8-7-509(e)	424, 425	16-60-111	459
8-7-519	416	16-60-112(a)	642
8-7-701	423	16-60-116(a)	459, 460
9-11-107	517	16-60-116(c)	460
9-11-403	663	16-61-201 et seq.	642
9-11-502—508	389, 390, 392	16-61-207	642, 643, 644
9-11-506	393	16-62-102	178
9-11-507	393	16-64-122	433, 435
9-11-508	393	16-88-105	541
9-12-312	599, 603	16-89-103(a)(1)	222
9-12-314	605	16-89-125(e)	218, 219, 220, 221, 222, 223
9-12-314(b)(c)	602		
9-13-210	546		

16-90-111	543	27-67-304(a)	702, 705, 706
16-91-112	598	28-25-103	281, 282, 285
16-91-118	598		
16-112-103	542	Code of Federal Regulations:	
16-112-115	545	45 C.F.R. § 303.106	603
16-114-201(1)	177		
16-114-201(3)	177	Arkansas Code of Judicial Conduct	
16-114-202	177, 178	(1988):	
16-114-204	175, 177, 178, 180, 182, 183	Canon 3(C)	330
16-116-102	358	Canon 3(C)(1)(a)	48, 49
18-12-106(a)	518		
18-60-101	375, 380	United States Code:	
19-11-401—405	666	5 U.S.C. § 553(c)	421
19-11-403	664	11 U.S.C. § 101(4)(A)	144
20-13-301	79	11 U.S.C. § 101(11)	144
20-13-301—307	79	11 U.S.C. § 523(a)(3)(B)	140, 142, 143
20-13-303	77, 78, 79	11 U.S.C. § 523(a)(4)	139, 140, 142, 143
22-8-203	124	11 U.S.C. § 523(c)(1)	142, 143
22-9-203	666, 667	12 U.S.C. § 22	293
23-2-304	299	12 U.S.C. § 37	290
23-2-423(c)(4)	297, 299	12 U.S.C. § 85	292, 293
23-3-114	299	20 U.S.C. § 1070—1099	657
23-3-119	299	20 U.S.C. § 1077	659
23-18-101	296, 297, 299	20 U.S.C. § 1078(a)(2)	660
23-32-1005	374, 376, 378, 379	20 U.S.C. § 1079(a)(b)	658
23-32-1005(1)(A)	374, 376, 379	29 U.S.C. § 1132(e)	504
23-32-1005(1)(B)	374, 376, 378, 380	29 U.S.C. § 1144	503
23-32-1005(2)(A)	374, 377, 379	29 U.S.C. § 1161(b)	503
23-32-1005(2)(B)	374, 378, 380	42 U.S.C. § 666(a)(9)(A)-(C)	602
23-32-1005(2)(C)	374, 377, 378	42 U.S.C. § 9601 et seq.	414
23-32-1005(2)(D)	377	42 U.S.C. § 9604(c)	412, 413, 423, 426
23-40-101—118	131	42 U.S.C. § 9604(c)(3)	412, 415, 423
23-40-109(d)(1)	131	42 U.S.C. § 9605	415, 421
23-71-111	131	42 U.S.C. § 9605(c)	414
23-78-101—125	131	42 U.S.C. § 9605(8)(B)	421
23-78-112(b)	131	42 U.S.C. § 9613(a)	421
23-79-208	669		
23-89-101(b)	649	CONSTITUTIONAL PROVISIONS:	
23-89-207	342	Arkansas Constitution:	
23-112-101 et seq.	394	Amend. 14	6
23-112-102	124	Amend. 28	98-A
23-112-302	395	Article 2, § 10	510
23-112-601	395	Article 2, § 11	540
23-112-601—604	397	Article 2, § 19	296
23-112-603	395, 396, 398	Article 7, § 13	541
25-15-201—214	99	Article 7, § 14	597, 599
26-55-202	124	Article 7, § 20	327, 330
27-14-207(b)	122, 124	Article 14, § 2	8
27-16-207(b)	124	Article 14, § 3	8, 9
27-19-206	124	Article 16, § 5	10
27-21-101—109	124	Article 16, § 13	77
27-21-101	125	Article 19, § 13	291, 496
27-21-102(1)	124		
27-21-106(a)	125		
27-21-109(b)	125		
27-37-701(a)	124		
27-49-219(b)	124		
27-67-302	705		

United States Constitution:

Amend. 4 110, 127
 Amend. 5 305
 Amend. 6 38, 92, 96, 98, 197,
 505, 510, 512, 568,
 591, 596
 Amend. 8 32, 38, 39, 195
 Amend. 14 32, 39

INSTRUCTIONS:

Arkansas Model Jury Instructions
 (Civil):

AMI 102 439
 AMI 301 235
 AMI 303 230, 235
 AMI 305 235
 AMI 405 472, 474, 475, 477
 AMI 501 449, 450, 549, 553,
 554
 AMI 614 155, 156, 157, 158,
 159, 160, 230, 235,
 534, 537, 538
 AMI 901 230, 235, 534, 535,
 537
 AMI 902 230, 232, 235, 236
 AMI 1104A 701
 AMI 1106 528, 529, 530,
 531, 532, 533
 AMI 1106(B) 530, 531, 532,
 699, 701
 AMI 2105 549, 554
 AMI 2202 552, 554
 AMI 2202(B) 549, 552
 AMI 2202(C) 552
 AMI 2206 554

Arkansas Model Jury Instructions
 (Criminal):

AMCI 101 (c) and (d) 250
 AMCI 106 73, 240, 249, 250
 AMCI 144 532
 AMCI 1509 185, 192

RULES:

Arkansas Rules of Appellate
 Procedure (Ark. Code Ann. Court
 Rules [1990]):

Rule 2(a) 98, 165, 167
 Rule 2(a)(2) 501
 Rule 2(a)(8) 96, 97, 98, 98-B
 Rule 2(b) 501
 Rule 3(g) 606
 Rule 4(a) 303, 409
 Rule 4(b) 683, 685
 Rule 4(c) 300, 301, 302, 303,

373, 683, 684, 685
 Rule 4(d) 302
 Rule 5(b) 314

Arkansas Rules of Civil
 Procedure (Ark. Code Ann. Court
 Rules [Supp. 1990]):

A.R.C.P. 1 652
 A.R.C.P. 4(c) 300, 302
 A.R.C.P. 4(c)(2) 498, 501, 502
 A.R.C.P. 8(b) 280
 A.R.C.P. 8(c) 280, 433
 A.R.C.P. 8(d) 419
 A.R.C.P. 12(b) 643
 A.R.C.P. 12(b)(6) 499, 504
 A.R.C.P. 12(b)(8) 642, 643
 A.R.C.P. 12(h)(8) 641
 A.R.C.P. 12(j) 499, 504
 A.R.C.P. 13 497, 632, 637
 A.R.C.P. 13(a) 641, 644
 A.R.C.P. 15(b) 497
 A.R.C.P. 15(c) 203, 204, 206,
 207
 A.R.C.P. 15(6) 230, 237
 A.R.C.P. 18(a) 11, 14
 A.R.C.P. 19 710
 A.R.C.P. 24(a) 647
 A.R.C.P. 26(a) 315, 318, 319
 A.R.C.P. 26(b)(1) 317
 A.R.C.P. 26(c) 319, 320
 A.R.C.P. 26(c)(4) 320
 A.R.C.P. 32(a)(2) 206
 A.R.C.P. 37(a)(4) 320
 A.R.C.P. 44.1 259, 262, 263
 A.R.C.P. 50(a) 445, 446
 A.R.C.P. 50(b) 684
 A.R.C.P. 50(e) 470
 A.R.C.P. 51 146, 147, 153, 154,
 260, 268, 270, 527
 A.R.C.P. 52 488, 494, 670,
 675, 676
 A.R.C.P. 52(a) 224, 227, 361, 368,
 675, 706, 711
 A.R.C.P. 52(b) 685
 A.R.C.P. 55 501
 A.R.C.P. 55(c) 498, 502
 A.R.C.P. 55(c)(1) 498, 502
 A.R.C.P. 56(c) 610, 692, 695
 A.R.C.P. 58 676
 A.R.C.P. 59 300, 301, 302,
 303, 581
 A.R.C.P. 59(a) 155, 157, 160,
 581
 A.R.C.P. 59(a)(5) and (6) 301
 A.R.C.P. 59(a)(8) 570, 581
 A.R.C.P. 59(b) 685
 A.R.C.P. 60 301, 501, 685
 A.R.C.P. 60(a) 301, 302, 303

A.R.C.P. 60(b)	300, 301, 302, 303	A.R.E. 503	243, 244, 245, 512
A.R.C.P. 65(a)(2)	670, 677	A.R.E. 503(b)	239, 244
A.R.C.P. 65(d)	671, 677	A.R.E. 503(d)	239, 245
A.R.C.P. 77(b)	547	A.R.E. 503(d)(3)	244
Federal Rules of Civil Procedure:		A.R.E. 606(b)	161
FRCP 77(b)	547	A.R.E. 702	321
Arkansas Rules of Criminal Procedure (Ark. Code Ann. Court Rules [1990]):		A.R.E. 706	321
A.R.Cr.P. 13.1	624	A.R.E. 803	428
A.R.Cr.P. 13.1(b)	617, 620, 621, 622, 623	A.R.E. 803(6)	270
A.R.Cr.P. 18.3	408	A.R.E. 804	428, 429
A.R.Cr.P. 24.5	680, 681	A.R.E. 804(a)	428
A.R.Cr.P. 25.3	680, 682	A.R.E. 804(a)(5)	427, 428, 429
A.R.Cr.P. 28	63, 286, 288	A.R.E. 804(b)	428
A.R.Cr.P. 28.1	16, 18	Rules of the Arkansas Supreme Court and Court of Appeals (Ark. Code Ann. Court Rules [1990]):	
A.R.Cr.P. 28.1(a)	91, 328, 332	Rule 1-2(a)(2)	89, 94, 219
A.R.Cr.P. 28.1(b)	18, 61, 332	Rule 1-2(a)(3)	662
A.R.Cr.P. 28.1(c)	55, 57, 59, 94, 288	Rule 1-2(a)(8)	98-A, 98-B
A.R.Cr.P. 28.1(d)	17	Rule 1-2(a)(11)	662
A.R.Cr.P. 28.2	92	Rule 1-2(a)(16)	147
A.R.Cr.P. 28.2(a)	19, 61, 94, 288	Rule 4-2	305, 565, 697
A.R.Cr.P. 28.3	58, 94, 286, 289	Rule 4-2(a)(6)	304, 307, 409, 654, 655, 694
A.R.Cr.P. 28.3(a)	16, 20, 21, 56, 286, 287, 288, 289, 332	Rule 4-2(b)(1)	697
A.R.Cr.P. 28.3(c)	19, 94, 95, 332	Rule 4-2(b)(2)	655, 696
A.R.Cr.P. 28.3(e)	94, 95, 96	Rule 4-3(h)	253, 254, 307, 406, 409, 479, 485, 486, 527, 594
A.R.Cr.P. 28.3(h)	60	Rule 4-3(j)	310
A.R.Cr.P. 28.3(i)	16, 22, 56	Rule 8	463, 464
A.R.Cr.P. 30.1(a)	16, 18	Rule 9	305, 409
A.R.Cr.P. 30.1(b)	91	Rule 9(b)	708, 709
A.R.Cr.P. 36.4	188, 197, 549, 652, 653, 654	Rule 9(d)	674
A.R.Cr.P. 36.9	411	Rule 9(e)	51, 53
A.R.Cr.P. 36.21(b)	480	Rule 11(f)	50, 70, 198, 258, 307, 409
A.R.Cr.P. 36.24	254, 258	Rule 15	238
A.R.Cr.P. 37	543, 544, 631, 632, 653, 654	Rule 29(1)(k)	165, 167
Arkansas Rules of Evidence (Ark. Code Ann. Court Rules [1990]):		Rule 29(6)	102
A.R.E. 103	514	STATUTES:	
A.R.E. 103(a)(2)	26, 45, 591	Arkansas Statutes Annotated:	
A.R.E. 103(d)	254, 257, 258	14-114	661, 662, 663, 664, 666, 667
A.R.E. 201	496	14-611	661, 666
A.R.E. 201(b)	278	14-612	661, 666
A.R.E. 401	526	43-2139	223
A.R.E. 403	486, 513, 514	57-639	279
		67-552	379
		81-1319(f)(g)	214
		81-1319(j)	214
		81-1325(c)	214

**ARKANSAS
APPELLATE
REPORTS**

Volume 42

**CASES DETERMINED
IN THE**

**Court of Appeals
of Arkansas**

**FROM
April 28, 1993 — June 30, 1993
INCLUSIVE**

**MARLO M. BUSH
REPORTER OF DECISIONS**

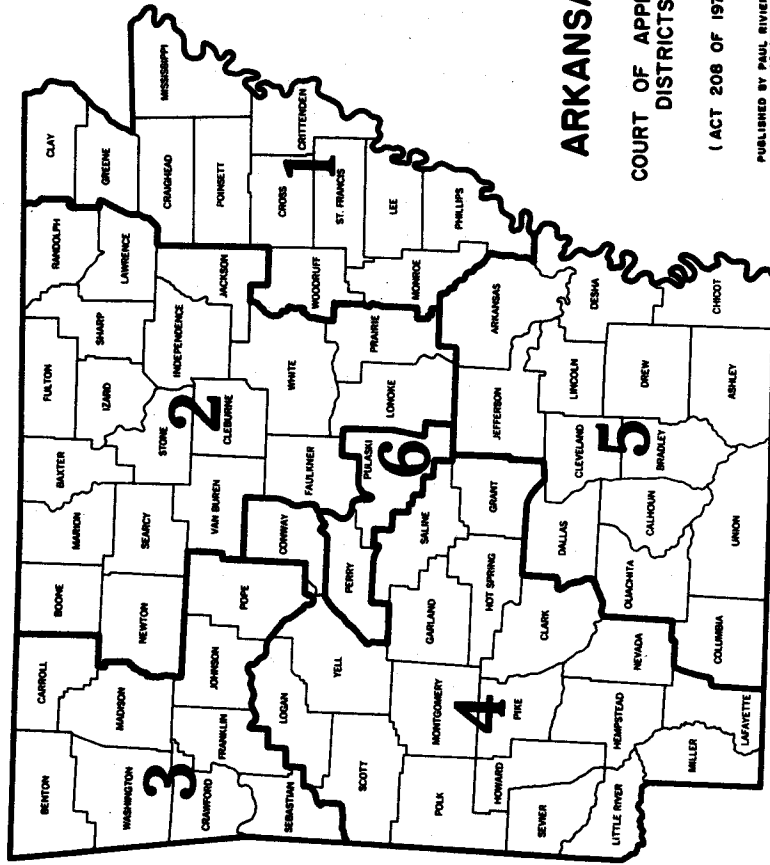
**CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS**

**PUBLISHED BY THE
STATE OF ARKANSAS
1993**

**DARBY PRINTING COMPANY
6215 PURDUE DRIVE
ATLANTA, GEORGIA 30336
1993**

CONTENTS

	Page
MAP OF DISTRICTS FOR COURT OF APPEALS	iv
JUDGES AND OFFICERS OF THE COURT OF APPEALS	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Judges of Court of Appeals and Per Curiam Opinions	x
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xii
TABLE OF OPINIONS NOT REPORTED	xiv
TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION	xx
OPINIONS REPORTED	1
INDEX	
Alphabetical Headnote Index	262
References to Acts, Codes, Constitutional Provisions, Rules & Statutes	270



ARKANSAS
COURT OF APPEALS
DISTRICTS
 (ACT 208 OF 1979)
 PUBLISHED BY PAUL BRUNER
 SECRETARY OF STATE

JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(April 28, 1993—
June 30, 1993, inclusive)

JUDGES

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

OFFICERS

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

¹District 3.
²District 1.
³District 2.
⁴District 4.
⁵District 5.
⁶District 6.

TABLE OF CASES REPORTED

A

Acklin v. Riddell	230
Acme Fence & Iron Co. (Butler Fence Co. v.)	30
Adair (First Nat'l Bank v.)	84
Amstar/First Capital, Ltd. v. McQuade	185
Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n	198
Arkansas Pub. Serv. Comm'n (Arkansas Elec. Coop. Corp. v.)	198
Atlanta Casualty Co. (Swinney v.)	80

B

Bookout v. State	109
Butler Fence Co. v. Acme Fence & Iron Co.	30

C

Cagle Fabrication & Steel, Inc. v. Patterson	168
Caldwell v. Jenkins	157
Chick-A-Dilly Properties, Inc. v. Hilyard	120
Commerce Bank (Magness v.)	72
Crow v. Weyerhaeuser Co.	183

D

Director (Perdrix-Wang v.)	218
----------------------------------	-----

F

F.L. Davis Builders Supply Inc. v. Knapp	52
First Nat'l Bank v. Adair	84

G

Gardner v. Robinson	90
---------------------------	----

ARK. APP.]	CASES REPORTED	vii
General Agents Ins. Co. v. Peoples Bank & Trust	.....	95
Givens v. State	.....	173
Grimes v. North Am. Foundry	.....	137
H		
Hilyard (Chick-A-Dilly Properties, Inc. v.)	.....	120
J		
Jackson (Mid-State Trust II v.)	.....	112
Jenkins (Caldwell v.)	.....	157
K		
King v. State	.....	97
Knapp (F.L. Davis Builders Supply Inc. v.)	.....	52
L		
Liberty Mut. Ins. Co. v. Sexton Foods Co.	.....	102
Little Rock Packaging Co. (Price v.)	.....	238
Loyd (Riverside Furniture Co. v.)	.....	1
Mc		
McDonald v. State	.....	37
McQuade (Amstar/First Capital, Ltd. v.)	.....	185
M		
Magness v. Commerce Bank	.....	72
Maloy v. Stuttgart Memorial Hosp.	.....	16
Mason (Murry v.)	.....	48
Mid-State Trust II v. Jackson	.....	112
Murry v. Mason	.....	48
N		
North Am. Foundry (Grimes v.)	.....	137

O

O'Flarity v. O'Flarity	5
------------------------------	---

P

Patterson (Cagle Fabrication & Steel, Inc. v.)	168
Peoples Bank & Trust (General Agents Ins. Co. v.)	95
Perdrix-Wang v. Director	218
Price v. Little Rock Packaging Co.	238

R

Ramey v. State	242
Riddell (Acklin v.)	230
Riverside Furniture Co. v. Loyd	1
Roberts v. Roberts	180
Robinson (Gardner v.)	90

S

Scalco v. State	134
Sexton Foods Co. (Liberty Mut. Ins. Co. v.)	102
Smith v. Whitener	225
Sonic Drive-In (Wade v.)	260
State (Bookout v.)	109
State (Givens v.)	173
State (King v.)	97
State (McDonald v.)	37
State (Ramey v.)	242
State (Scalco v.)	134
State (Stewart v.)	28
State (Tallant v.)	150
State (Thompson v.)	254
State (Tiller v.)	64
State (Washington v.)	188
State (Williams v.)	184
Stewart v. State	28
Stuttgart Memorial Hosp. (Maloy v.)	16
Swinney v. Atlanta Casualty Co.	80

T

Tallant v. State	150
Thompson v. State	254
Tiller v. State	64

W

Wade v. Sonic Drive-In	260
Washington v. State	188
Weyerhaeuser Co. (Crow v.)	183
Whitener (Smith v.)	225
Williams v. State	184

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

JOHN E. JENNINGS, CHIEF JUSTICE:

Amstar/First Capital, Ltd. v. McQuade	185
Bookout v. State	109
Caldwell v. Jenkins	157
Chick-A-Dilly Properties, Inc. v. Hilyard	120
General Agents Ins. Co. v. Peoples Bank & Trust Co. . . .	95
Maloy v. Stuttgart Memorial Hosp.	16
Stewart v. State	28
Washington v. State	188

JOHN MAUZY PITTMAN, JUDGE:

Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm'n	198
Perdrix-Wang v. Director	218
Smith v. Whitener	225

JAMES R. COOPER, JUDGE:

Butler Fence Co. v. Acme Fence & Iron Co.	30
Cagle Fabricating & Steel, Inc. v. Patterson	168
Givens v. State	173
McDonald v. State	37
Mid-State Trust II v. Jackson	112
Murry v. Mason	48
Riverside Furniture Co. v. Loyd	1
Scalco v. State	134

JOHN B. ROBBINS, JUDGE:

Acklin v. Riddell	230
F.L. Davis Builders Supply, Inc. v. Knapp	52
Price v. Little Rock Packaging Co.	238
Ramey v. State	242

MELVIN MAYFIELD, JUDGE:

King v. State	97
Roberts v. Roberts	180
Tiller v. State	64

JUDITH ROGERS, JUDGE:

First Nat'l Bank v. Adair	84
Gardner v. Robinson	90
Grimes v. North Am. Foundry	137
Liberty Mut. Ins. Co. v. Sexton Foods Co.	102
Magness v. Commerce Bank	72
O'Flarity v. O'Flarity	5
Swinney v. Atlanta Casualty Co.	80
Tallant v. State	150
Thompson v. State	254

PER CURIAM:

Crow v. Weyerhaeuser Co.	183
Wade v. Sonic Drive-In	260
Williams v. State	184

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

- Alexander v. State*, CA CR 92-969 (Mayfield, J.), affirmed June 16, 1993.
- Alford v. Director*, E 92-58 (Mayfield, J.), affirmed April 28, 1993.
- Allen v. Allen*, CA 92-1132 (Mayfield, J.), reversed and remanded June 9, 1993.
- Allstate Ins. Co. v. Continental Casualty Co.*, CA 92-652 (Jennings, C.J.), affirmed May 5, 1993.
- Baker v. Baker*, CA 92-1014 (Per Curiam), Appellee's Motion for Reconsideration of Order Denying Motion to Dismiss Appeal passed, briefing ordered May 19, 1993.
- Barefield v. State*, CA CR 92-1139 (Rogers, J.), affirmed in part, remanded in part May 19, 1993.
- Barnes v. Hudson*, CA 92-834 (Mayfield, J.), affirmed as modified and remanded June 30, 1993.
- Barnett-Robbins v. Director*, E 92-98 (Cooper, J.), affirmed May 5, 1993.
- Batchelor v. Fort Scott Assoc.*, CA 92-1119 (Mayfield, J.), affirmed May 26, 1993.
- Beacon Hill Apartments v. Beacon Hill, Inc.*, CA 92-933 (Cooper, J.) affirmed June 9, 1993.
- Bell v. State*, CA CR 92-1048 (Pittman, J.) affirmed June 23, 1993.
- Big Rock, Inc. v. Mobley Contractors, Inc.*, CA 92-981 (Rogers, J.), affirmed May 12, 1993.
- Blair v. State*, CA CR 92-1007 (Cooper, J.), affirmed June 9, 1993.
- Bowles v. State*, CA CR 92-1151 (Robbins, J.), affirmed June 2, 1993.
- Bradley v. State*, CA CR 92-782 (Mayfield, J.), affirmed June 9, 1993.
- Bryant v. Arkansas Pub. Serv. Comm'n*, CA 93-291 (Per Curiam), Appellant's Motion to Obtain Protected Information and to Stay Brief Time granted June 30, 1993.
- Bryant v. State*, CA CR 92-1111 (Mayfield, J.), affirmed June 2, 1993.
- Burks v. State*, CA CR 92-1185 (Jennings, C.J.), affirmed June 30, 1993.
- Callahan v. State*, CA CR 92-1494 (Per Curiam), Appellee's Motion to Settle the Record granted May 26, 1993.

- Cannon v. State, CA CR 92-1015 (Cooper, J.), affirmed May 19, 1993.
- Carter v. Sherman & James, CA 92-1181 (Robbins, J.), affirmed June 23, 1993.
- CARTI v. Controneo, CA 92-959 (Rogers, J.), affirmed May 19, 1993.
- Casey v. State, CA CR 93-149 (Robbins, J.), affirmed June 30, 1993.
- Central Indus. Elec. Co. v. Kroger Co., CA 92-1403 (Per Curiam), dismissed May 5, 1993.
- Champion v. State, CA CR 92-1382 (Rogers, J.), affirmed June 30, 1993.
- Clark v. State, CA CR 92-1019 (Cooper, J.), affirmed June 2, 1993.
- Clay v. State, CA CR 93-547 (Jennings, C.J.), reversed and remanded June 30, 1993.
- Clinard v. State, CA CR 92-831 (Pittman, J.), appeal dismissed June 30, 1993.
- Coleman v. State, CA CR 92-922 (Rogers, J.), affirmed June 9, 1993.
- Croom v. Quality Foods, Inc., CA 92-906 (Mayfield, J.), affirmed June 2, 1993.
- Davis v. Director, E 90-254 (Jennings, C.J.), affirmed May 19, 1993.
- Decker v. Lowe's, CA 92-937 (Rogers, J.), affirmed May 12, 1993.
- Dooley v. State, CA CR 92-869 (Cooper, J.), affirmed April 28, 1993.
- Doyle v. State, CA CR 92-538 (Jennings, C.J.), affirmed June 2, 1993.
- East v. State, CA CR 92-1231 (Cooper, J.), affirmed June 30, 1993.
- Echols v. Woods, CA 93-44 (Robbins, J.), affirmed May 26, 1993.
- Elkins v. Green, CA 92-1451 (Rogers, J.), affirmed June 16, 1993.
- Faldon v. Stanfield, CA 92-1025 (Pittman, J.), affirmed May 19, 1993.
- Fenwick v. Kralicek Commercial Constr., Inc., CA 92-1008 (Robbins, J.), affirmed May 26, 1993.
- Fisher v. Kahn, CA 90-525 (Per Curiam), Appellant's Motion for Release of Exhibits and Transcript denied in part, granted in

- part, June 30, 1993.
- Gavin v. Gavin, CA 93-9 (Jennings, C.J.), affirmed June 16, 1993.
- Gill v. State, CA CR 92-1307 (Mayfield, J.), affirmed June 30, 1993.
- Glover v. State, CA CR 92-888 (Cooper, J.), affirmed May 12, 1993.
- Goolsby v. State, CA CR 92-1059 (Rogers, J.), dismissed June 30, 1993.
- Green v. Director, E 92-127 (Robbins, J.), affirmed May 26, 1993.
- Guest v. State, CA CR 93-96 (Per Curiam), Appellant's Motion to Supplement the Record remanded June 30, 1993.
- Gunn v. Housing Authority, CA 92-645 (Rogers, J.), affirmed May 5, 1993.
- Hankins v. Alcoholic Beverage Control Bd., CA 93-39 (Rogers, J.), remanded June 2, 1993.
- Hanson v. Hanson, CA 92-837 (Mayfield, J.), affirmed May 19, 1993.
- Harris v. State, CA 92-762 (Pittman, J.), affirmed in part; reversed and remanded in part June 2, 1993.
- Hartness v. State, CA CR 92-970 (Pittman, J.), affirmed in June 23, 1993.
- Haynes v. Conagra Broiler Co., CA 92-1129 (Robbins, J.), reversed and remanded June 16, 1993.
- Hill v. State, CA CR 92-1246 (Pittman, J.), affirmed May 19, 1993.
- Hollis v. State, CA CR 92-1186 (Jennings, C.J.), affirmed June 23, 1993.
- Hudson v. Lawrence Elec. Co., CA 92-976 (Pittman, J.), reversed and remanded May 12, 1993.
- In Re Estate of Whistle, CA 92-1006 (Pittman, J.), affirmed May 5, 1993.
- J. Wade Quinn Co. v. Director, E 92-100 (Mayfield, J.), affirmed May 5, 1993.
- Jackson v. State, CA CR 92-768 (Mayfield, J.), affirmed June 9, 1993.
- James River Corp. v. Peevy, CA 92-938 (Pittman, J.), affirmed April 28, 1993.
- Johnson v. Director, E 92-141 (Robbins, J.), affirmed June 9, 1993.
- Johnson v. Jaco Constr. Co., CA 92-859 (Mayfield, J.), affirmed

- May 12, 1993.
- Johnson v. State, CA CR 92-1493 (Pittman, J.), affirmed June 30, 1993.
- Johnson v. State, CA CR 92-1495 (Jennings, C.J.), affirmed June 30, 1993.
- Jordan v. State, CA CR 92-809 (Rogers, J.), affirmed June 2, 1993.
- Kelly v. Kelly, CA 92-1182 (Rogers, J.), affirmed June 23, 1993.
- Kelnhof v. State, CA CR 92-1205 (Mayfield, J.), affirmed June 30, 1993.
- Keown v. Wells, CA 92-1235 (Robbins, J.), affirmed June 9, 1993.
- Kisling v. State, CA CR 92-907 (Cooper, J.), affirmed May 12, 1993.
- Laster v. Hardin, CA 92-1460 (Cooper, J.), affirmed June 16, 1993.
- Lee v. Whitehouse & Sons, CA 92-961 (Rogers, J.), affirmed June 9, 1993.
- Levingston v. Rental Management, Inc., CA 92-980 (Jennings, C.J.), affirmed June 30, 1993.
- Lewis v. Van Buren County, CA 92-727 (Mayfield, J.), affirmed May 26, 1993.
- Locket v. Super 8 Lodge, CA 92-1055 (Pittman, J.), affirmed May 26, 1993.
- McCoy v. State, CA CR 92-1082 (Robbins, J.), affirmed April 28, 1993.
- McKee Baking Co. v. Director, E 91-173 (Robbins, J.), affirmed May 19, 1993.
- McPherson v. State CA CR 92-936 (Mayfield, J.), affirmed June 23, 1993.
- Mauldin v. State CA CR 92-756 (Mayfield, J.), affirmed June 16, 1993.
- Merchants Dutch Express, Inc. v. Beans, CA 93-85 (Jennings, C.J.), affirmed June 9, 1993.
- Mills v. State, CA CR 92-1094 (Robbins, J.), affirmed May 12, 1993.
- Milner v. Talbert, CA 92-985 (Jennings, C.J.), affirmed June 16, 1993.
- Monterey Constr. Co. v. Wesley, CA 92-993 (Jennings, C.J.), affirmed May 26, 1993.
- Norris v. State, CA CR 92-1024 (Jennings, C.J.), affirmed June 2, 1993.

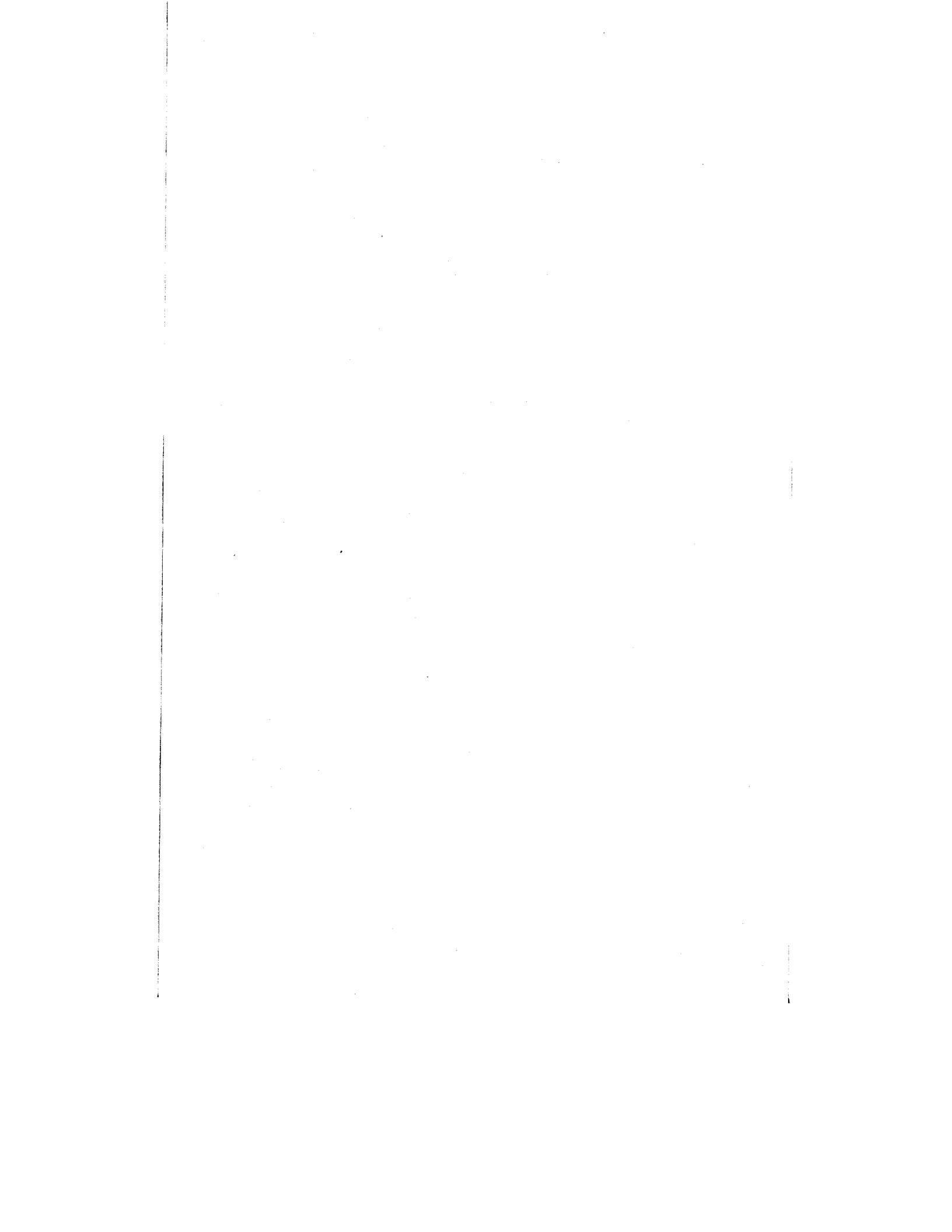
- Norton v. State, CA CR 92-1026 (Mayfield, J.), affirmed May 26, 1993.
- Nutt v. State, CA CR 93-182 (Mayfield, J.), affirmed June 30, 1993.
- Ofochebe v. State, CA CR 91-333 (Rogers, J.), affirmed June 30, 1993.
- Pearson v. Estate of Pearson, CA 92-812 (Mayfield, J.), affirmed May 12, 1993.
- Phillips v. Wittemore, CA 92-1032 (Jennings, C.J.), affirmed April 28, 1993.
- Pine Bluff Warehouse Co. v. Director, E 92-150 (Robbins, J.), affirmed June 16, 1993.
- Poplin v. Poplin, CA 92-1027 (Pittman, J.), affirmed June 16, 1993.
- Potlatch Corp. v. Orr, CA 93-179 (Mayfield, J.), affirmed June 30, 1993.
- Powell v. Miller, CA 92-828 (Mayfield, J.), affirmed in part and remanded in part May 19, 1993.
- Ramada Inn of Jacksonville, Inc. v. Patel, CA 92-1282 (Cooper, J.), affirmed May 26, 1993.
- Reynolds v. Arkansas State Highway Comm'n, CA 92-1333 (Robbins, J.), affirmed May 12, 1993.
- Robinson v. State, CA CR 92-882 (Mayfield, J.), affirmed April 28, 1993.
- Satterfield v. Satterfield, CA 92-1475 (Pittman, J.), affirmed June 2, 1993.
- Shackleford v. University of Arkansas, CA 92-861 (Pittman, J.), remanded May 5, 1993.
- Shetrone v. State, CA CR 92-1105 (Robbins, J.), affirmed June 9, 1993.
- Skil Corp. v. Gutshall, CA 92-1005 (Cooper, J.), affirmed May 26, 1993.
- Smith v. Sims, CA 92-964 (Rogers, J.), affirmed May 19, 1993.
- Smith v. Van Buren County, CA 92-727 (Mayfield, J.), affirmed May 26, 1993.
- Snyder v. Snyder, CA 92-1209 (Jennings, J.), affirmed June 30, 1993.
- Steffy v. State, CA CR 92-934 (Pittman, J.), affirmed as modified June 9, 1993.
- Stuart v. State, CA CR 92-553 (Mayfield, J.), affirmed June 9, 1993.
- Summers v. Green, CA 92-845 (Rogers, J.), affirmed in part;

- reversed in part May 12, 1993.
- Swindle v. State, CA CR 92-820 (Robbins, J.), affirmed June 23, 1993.
- Ticer v. Harris, CA 92-1013 (Pittman J.), dismissed May 19, 1993.
- Tollett v. Rivers, CA 92-957 (Rogers, J.), affirmed June 16, 1993.
- Tucker v. State, CA CR 92-793 (Cooper, J.), affirmed June 2, 1993.
- Tucker v. State, CA CR 92-1252 (Robbins, J.), affirmed June 30, 1993.
- Varnadore v. Director, E 92-119 (Robbins, J.), affirmed April 28, 1993.
- Vonderheide v. Director, E 92-120 (Rogers, J.), affirmed April 28, 1993.
- Waldroupe v. Whirlpool Corp., CA 92-1035 (Robbins, J.), affirmed May 19, 1993.
- Walker v. State, CA CR 92-935 (Mayfield, J.), affirmed May 19, 1993.
- Walker v. State, CA CR 92-1173 (Mayfield, J.), affirmed June 2, 1993.
- White v. State, CA CR 92-1045 (Rogers, J.), affirmed April 28, 1993.
- White v. State, CA CR 92-1103 (Jennings, C.J.), affirmed May 19, 1993.
- Willis v. State, CA CR 92-1000 (Cooper, J.), affirmed June 30, 1993.
- Witty v. State, CA CR 92-1021 (Cooper, J.), affirmed June 2, 1993.
- Woodline Motor Freight v. Butts, CA 92-919 (Rogers, J.), affirmed May 5, 1993.
- Woods v. State, CA CR 92-968 (Pittmam, J.), dismissed April 28, 1993.
- Woods v. State, CA CR 92-968 (Per Curiam), supplemental opinion denying rehearing June 30, 1993.

CASES AFFIRMED BY THE ARKANSAS
COURT OF APPEALS WITHOUT WRITTEN
OPINION PURSUANT TO RULE 21(2),
RULES OF THE ARKANSAS SUPREME COURT
AND COURT OF APPEALS

Armoster v. Director of Labor, E 93-45, June 2, 1993.
Arnold v. Director of Labor, E 93-10, May 19, 1993.
Batemon v. Director of Labor, E 92-270, April 28, 1993.
Bivens v. Director of Labor, E 93-6, May 19, 1993.
Bradford v. Director of Labor, E 93-22, May 26, 1993.
Brown v. Director of Labor, E 93-1, April 28, 1993.
Cartwright v. Director of Labor, E 92-20, June 16, 1993.
Columbo v. Director of Labor, E 92-273, April 28, 1993.
Connor v. Director of Labor, E 93-15, May 19, 1993.
Cunningkin v. Director of Labor, E 93-26, May 26, 1993.
Curtis v. Director of Labor, E 93-52, June 30, 1993.
Dale's Drug v. Director of Labor, E 93-33, June 2, 1993.
Davis v. Director of Labor, E 92-268, May 12, 1993.
Evans v. Director of Labor, E 93-39, June 2, 1993.
Farr v. Director of Labor, E 93-46, June 2, 1993.
Ferris v. Director of Labor, E 93-24, June 2, 1993.
Freeman v. Director of Labor, E 93-2, May 12, 1993.
Hale v. Director of Labor, E 93-12, May 19, 1993.
Hall's Arkansas Oilstones, Inc. v. Director of Labor, E 93-34,
June 2, 1993.
Harper v. Director of Labor, E 92-283, May 12, 1993.
Hatfield v. Director of Labor, E 92-267, May 26, 1993.
Hazelbaker v. Director of Labor, E 93-13, May 19, 1993.
Higgs v. Director of Labor, E 92-280, May 12, 1993.
Jaggers v. Director of Labor, E 93-36, June 16, 1993.
Jennings v. Director of Labor, E 93-5, May 19, 1993.
Jones v. Director of Labor, E 93-27, June 2, 1993.
Kaufman Lumber Co. v. Director of Labor, E 92-23, June 2,
1993.
Lacefield Oil Co. v. Director of Labor, E 93-8, May 19, 1993.
Lyerly v. Director of Labor, E 93-18, May 26, 1993.
Mallett v. Director of Labor, E 92-275, April 28, 1993.
Mega Sack Corp. v. Director of Labor, E 93-14, May 19, 1993.
Meux v. Director of Labor, E 93-16, May 26, 1993.
Mooney v. Director of Labor, E 93-51, June 30, 1993.
Moss v. Director of Labor, E 93-32, June 2, 1993.
Nelson v. Director of Labor, E 92-265, June 16, 1993.

Nelson v. Director of Labor, E 93-50, June 30, 1993.
Notarnicola v. Director of Labor, E 93-11, May 19, 1993.
Nunley v. Director of Labor, E 92-278, May 12, 1993.
Pittman Nursery Corp. v. Director of Labor, E 92-285, April 28,
1993.
Pitts v. Director of Labor, E 93-43, June 16, 1993.
Price v. Director of Labor, E 93-9, May 19, 1993.
Rawls v. Director of Labor, E 93-3, May 19, 1993.
Robinson v. Director of Labor, E 93-42, June 2, 1993.
Rose v. Director of Labor, E 93-21, June 30, 1993.
Ross Ford-Mercury v. Director of Labor, E 93-41, June 16, 1993.
Salehpour v. Director of Labor, E 93-28, June 2, 1993.
Searcy Indus. Laundry, Inc. v. Director of Labor, E 92-284, April
28, 1993.
Slogar v. Director of Labor, E 93-19, May 26, 1993.
Smock v. Director of Labor, E 93-60, June 30, 1993.
Swanson v. Director of Labor, E 93-48, June 30, 1993.
Thomas v. Director of Labor, E 93-7, May 19, 1993.
Trammell v. Director of Labor, E 93-30, June 2, 1993.
Waite v. Director of Labor, E 92-276, May 12, 1993.
Wright v. Director of Labor, E 92-248, June 16, 1993.



**Alphabetical
HEADNOTE
INDEX**

HEADNOTE INDEX

APPEAL & ERROR:

- Burden of proof in probate case concerning clear & convincing evidence. *O'Flarity v. O'Flarity*, 5.
- Review of denial of directed verdict. *F.L. David Builders Supply, Inc. v. Knapp*, 52.
- Review of sufficiency of evidence to support claim, directed verdict. *Id.*
- Review of summary judgment. *Swinney v. Atlanta Casualty Co.*, 80.
- Review of denial of directed verdict of judgment notwithstanding the verdict. *First Nat'l Bank v. Adair*, 84.
- Denial of summary judgment not appealable or subject to review after trial on merits. *Id.*
- Issue abandoned, not properly before court. *Id.*
- Issue preserved for appeal. *Id.*
- Review of ruling on motion to suppress. *Id.*
- Record insufficient to calculate business earnings, case remanded. *Liberty Mut. Ins. Co. v. Sexton Foods Co.*, 102.
- No argument in support of contention, court will not consider issue. *Id.*
- Admissibility of evidence, conditional guilty plea, issue not appealable. *Scalco v. State*, 134.
- Harmless error, no reversal for. *Tallant v. State*, 150.
- Other evidence existed sufficient to suggest intoxication, any error in blood test harmless. *Id.*
- Court of appeals decision reversed and remanded by supreme court, appeal after remand proper in court of appeals. *Cagle Fabricating & Steel, Inc. v. Patterson*, 168.
- Objected to award of attorney's fees, appellant's concession made review unnecessary. *Id.*
- Scope of review of unemployment compensation case. *Perdrix-Wang v. Director*, 218.
- Issues raised for the first time on appeal. *Id.*
- Failure to cite authority. *Id.*
- Review of chancery case. *Smith v. Whitener*, 225.
- Review of trial court's ruling on a motion to suppress evidence. *Ramey v. State*, 242.
- Review of ruling on motion to suppress. *Thompson v. State*, 254.
- Constitutional issues not decided unless essential. *Id.*
- Erroneous denial of motion to suppress, case reversed and remanded with instructions to conduct new trial only if motion to suppress granted following hearing. *Bookout v. State*, 111-A.

ARREST:

- Fresh pursuit, authority to arrest. *King v. State*, 97.
- Officer had reasonable suspicion to stop appellant and the authority to stop and arrest. *Id.*
- Authority to arrest, denial of motion to suppress upheld. *Id.*

ATTORNEY & CLIENT:

- Claim of ineffective assistance of counsel, elements required to prevail. *McDonald v. State*, 37.
- Claim of ineffective assistance, no presumption of prejudice. *Id.*
- Ineffective assistance claim based on counsel's failure to secure witnesses, such complaints disfavored. *Id.*
- Ineffective assistance of counsel claimed, appellant not prejudiced by the absence of certain testimony. *Id.*
- Ineffective assistance counsel, failure to proffer evidence of prior bad acts not prejudicial to defense. *Id.*

Claim of ineffective assistance of counsel, no rational basis for negligent homicide instruction. *Id.*
Claim of ineffective assistance of counsel, impeachment of witnesses would not have caused a different result. *Id.*
Fees in discretion of court when authorized by statute. *Caldwell v. Jenkins*, 157.
Fees, superior position of trial court to set fee. *Id.*
Fee set not an abuse of discretion. *Id.*
Motions for attorney's fees. *Williams v. State*, 184.
Motion for fee untimely, motion denied. *Id.*

AUTOMOBILE:

DWI, request for another test, court not required to believe defendant, rights form should include request for additional test. *King v. State*, 97.
Sale without disclosure, of vehicle knowing odometer has been rolled back. *Caldwell v. Jenkins*, 158.
Sale of vehicle knowing odometer has been altered, question of fact for jury, proof. *Id.*

BILLS & NOTES:

Note payable to two parties, presumption note held as tenants by the entirety. *O'Flarity v. O'Flarity*, 5.
Issue of joint ownership of note properly before the court. *Id.*

CONVERSION:

Defined, requirements for maintaining an action for, *Gardner v. Robinson*, 90.
Liability, settled by appellee's default, proof to the contrary should not have been allowed. *Id.*

CRIMINAL LAW:

State's burden of proof. *Tiller v. State*, 64.
Criminal offense cannot be committed without committing the underlying offense, cannot convict for both offenses. *Tallant v. State*, 150.
DWI an essential component of negligent homicide, conviction for both offenses could not stand. *Id.*

CRIMINAL PROCEDURE:

Conditional plea of guilty or nolo contendere. *Scalco v. State*, 134.
Ruling on admissibility of breath test cannot be reviewed on appeal of conditional plea. *Id.*

DAMAGES:

Breach of implied warranty, measure of damages. *F.L. Davis Builders Supply, Inc. v. Knapp*, 52.
Incidental damages defined. *Id.*
Implied warranties, measure of damages, jury instruction not erroneous. *Id.*
Determination of upon default. *Gardner v. Robinson*, 90.
Default judgment establishes liability but not the extent of damages, defendant may not introduce evidence to defeat plaintiff's cause of action. *Id.*
Suit in equity, not law; consideration of an award of treble damages waived. *Id.*
Sale of vehicle knowing odometer has been rolled back. *Caldwell v. Jenkins*, 157.
Authority of court to double damages awarded by jury. *Id.*

DEEDS:

Merger doctrine. *Roberts v. Roberts*, 180.
Merger not applicable. *Id.*

DESCENT & DISTRIBUTION:

Estate insolvent, personal effects properly ordered sold. *Acklin v. Riddell*, 230.

DISCOVERY:

Supplementation of responses. *F.L. Davis Builders Supply, Inc. v. Knapp*, 52.
Duty to supplement responses, duty imposed in one of three ways. *Id.*
No surprise, no error to permit supplementation. *Id.*

DIVORCE:

Property settlement, enforcement. *Roberts v. Roberts*, 180.

EQUITY:

Fashioning relief. *Mid-State Trust II v. Jackson*, 112.
Unjust enrichment, receipt of value without entitlement. *Smith v. Whitener*, 225.
Unjust enrichment, wrongdoing not required for person to be unjustly enriched.
Id.
Unjust enrichment, privity between parties not required. *Id.*
Unjust enrichment, payment of debt absent obligation to pay debt. *Id.*
Unjust enrichment, error to dismiss action. *Id.*

EVIDENCE:

Use of deposition at trial. *F.L. Davis Builders Supply, Inc. v. Knapp*, 52.
Use of deposition testimony, no waiver found. *Id.*
Qualification of witness as expert, no error. *Id.*
Expert witnesses, qualification in discretion of trial court. *Id.*
Substantial evidence defined. *Tiller v. State*, 64.
Intent, may be inferred from the circumstances. *Id.*
Circumstantial evidence may be sufficiently substantial, when such evidence is sufficient to support a conviction. *Id.*
Evidence of break-in not evidence of intent to commit a crime therein. *Id.*
Fleeing from scene of crime may be considered as a factor for determining guilt, evidence here did not support such a factor. *Id.*
Attempted burglary charge, evidence insufficient to support conviction, judgment reduced to attempted criminal trespass. *Id.*
DWI, health department regulations as to blood alcohol test must be only substantially complied with. *Tallant v. State*, 150.
Lay witnesses, when they may give their opinion as to cause of death. *Id.*
Coroner testified as layman, no abuse of discretion in allowing him to give his opinion as to the victim's cause of death. *Id.*
Parol evidence, collecting under property settlement, not voiding deed. *Roberts v. Roberts*, 180.
Challenge to sufficiency of, considerations. *Ramey v. State*, 242.
Conspiracy to deliver marijuana, sufficient evidence to convict found. *Id.*
Conviction for operating a drug premises, supported by substantial evidence. *Id.*
Conviction for possession of drug paraphernalia, supported by substantial evidence. *Id.*
Delivery of a controlled substance, evidence sufficient to uphold conviction. *Id.*
Possession with intent to deliver, evidence required to uphold conviction. *Id.*
Constructive possession found, conviction for possession with intent to deliver affirmed. *Id.*
Motion to suppress, substantial violation found, motion granted. *Id.*

GARNISHMENT:

Joint account, certificate of deposit. *Maloy v. Stuttgart Memorial Hosp.*, 16.
Joint accounts prima facie subject to garnishment. *Id.*
Burden of proving gift of joint account. *Id.*
Joint account, garnishment permitted. *Id.*

GIFTS:

Title registered in family member's name, law presumes a gift. *O'Flarity v. O'Flarity*, 5.
Elements required for effective *inter vivos* gift, question of fact as to whether gift effective. *Id.*

Elements sufficient to prove appellee's interest in joint account a gift, finding of probate judge not clearly erroneous. *Id.*
Certificates of deposit, same rules apply. *Maloy v. Stuttgart Memorial Hosp.*, 16.
Burden of proving gifts. *Id.*

INSURANCE:

Notice of cancellation, sufficient proof. *Swinney v. Atlanta Casualty Co.*, 80.
Proof of notice of cancellation, contradictory proof, question of fact. *Id.*
Interpretation of contract. *General Agents Ins. Co. v. Peoples Bank & Trust Co.*, 95.
Interpretation of "regular use". *Id.*
Contract correctly interpreted, automobile not furnished for regular use. *Id.*
Business interruption insurance, purpose of. *Liberty Mut. Ins. Co. v. Sexton Foods Co.*, 102.
Assessment of the total amount of loss for purposes of business interruption policy, determination of amount of business income. *Id.*
Wife designated as beneficiary, form unambiguous, parol evidence not allowed. *Acklin v. Riddell*, 230.

JOINT ADVENTURE:

Elements of a joint venture, burden of proof. *First Nat'l Bank v. Adair*, 84.
Burden of proving. *Id.*
Primary attribute, borrower-lender relationship not joint venture. *Id.*
Borrower-lender not joint venture. *Id.*
Insufficient evidence of joint venture. *Id.*

JOINT TENANCY:

Joint bank account, factors to determine the intent of the depositor. *O'Flarity v. O'Flarity*, 5.
Commingling funds in a joint account, presumption of all deposits held jointly. *Id.*
Actions showed intent to jointly own, insufficient evidence presented to overcome presumption. *Id.*
Co-depositors in joint account, withdrawal by one may require an accounting to the other. *Id.*
Partition. *Magness v. Commerce Bank*, 72.
Tenancy in common, characteristics. *Id.*
Decree of partition, effect. *Id.*

JUDGMENT:

Summary judgment, definition & factors on appeal. *Butler Fence Co. v. Acme Fence & Iron Co.*, 30.
Collateral attack of foreign judgment, judgment presumed valid. *Id.*
Enforcement of foreign judgments, U.S. Constitution overrides local regulation of access to the procedures of state courts. *Id.*
Issues of fact remained, summary judgment improper. *Id.*
Res judicata explained. *Murray v. Mason*, 48.
Res judicata applies to new issues and additional remedies. *Id.*
Final judgment protected by principle of res judicata. *Id.*
Divorce decree final, res judicata prevented appeal eight years later. *Id.*
Summary judgment, when granted. *Magness v. Commerce Bank*, 72.
Res judicata explained. *Id.*
Res judicata, full and fair opportunity to litigate. *Id.*
Res judicata barred claim of lifetime leasehold interest in partitioned property. *Id.*
Summary judgment, burden of proof. *Swinney v. Atlanta Casualty Co.*, 80.
Summary judgment, view of proof. *Id.*
Question of fact existed, summary judgment improper. *Id.*

JURISDICTION:

Oklahoma action, requirements for valid service of process. *Butler Fence Co. v. Acme Fence & Iron Co.*, 30.
 In personam jurisdiction, actual notice alone insufficient for jurisdiction. *Id.*
 Service of process of foreign judgment, substantial compliance with Oklahoma law disputed. *Id.*
 Non-resident defendant, due process requirements. *Id.*

JURY:

Determiner of credibility and questions of fact, it may draw inferences from evidence presented. *Caldwell v. Jenkins*, 57.
 Exhaustion of peremptory challenges, preservation of point for appeal. *Givens v. State*, 173.
 Bias in jurors, factors considered in determination of bias. *Id.*
 Juror rehabilitated by court, no error in striking her for cause. *Id.*
 Sequestered individual voir dire, decision to grant, extent & scope of voir dire within discretion of court. *Id.*
 Sequestered individual voir dire denied, no abuse of discretion found. *Id.*
 Representative cross section of community required in selection of jury, factors required to establish violation of cross-section requirement. *Id.*
 Fair cross-section argument made, appellant failed to meet his burden of proof. *Id.*
Batson argument, requirements for establishing a prima facie case. *Id.*
Batson argument made, prima facie case not shown. *Id.*

MORTGAGES:

Right cannot be impaired after execution of valid mortgage. *Amstate v. McQuade*, 185.
 Mortgagee not required to search record for future encumbrances after deed recorded. *Id.*
 Recorded mortgage entitled to priority over subsequent recorded view easement. *Id.*

MOTIONS:

Motion for directed verdict, factors on appeal. *Tiller v. State*, 64.
 Summary judgment, burden of proof. *Magness v. Commerce Bank*, 72.
 Effect of cross motions for summary judgment. *Chick-A-Dilly Properties v. Hilyard*, 120.
 Cross motion for summary judgment, same legal issue, effect. *Id.*

NEW TRIAL:

Decision to grant within trial court's discretion, no reversal unless discretion abused. *O'Flarity v. O'Flarity*, 5.
 Motion for new trial denied, no abuse of discretion found. *Id.*

PROPERTY:

Partition of land, entitlement, possession. *Magness v. Commerce Bank*, 72.

PUBLIC SERVICE COMMISSION:

Authority not exceeded in adopting promotional practice rules. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm.*, 198.
 State interest in conservation substantial. *Id.*
 No blanket prohibitions imposed. *Id.*
 Regulation of promotional practices within authority of commission. *Id.*
 No error to find promotional practices must benefit ratepayers in the aggregate. *Id.*
 Authority to regulate competition among utilities. *Id.*
 Commission cannot regulate non-public activities, sale of appliances and equipment. *Id.*
 Findings must be in sufficient detail. *Id.*
 Findings must be incorporated by reference into findings, sufficient to satisfy

detail requirement. *Id.*
Rule-making function, findings required, sufficiency of detail. *Id.*
Findings sufficiently detailed. *Id.*
Sufficiency of notification. *Id.*
Notice sufficient. *Id.*
Rules must be reasonable. *Id.*
Judicial review of promulgation of rules. *Id.*
Rules reasonable, no arbitrary action taken. *Id.*
Evaluation of testimony for commission, not courts. *Id.*

REFORMATION OF INSTRUMENTS:

Reformation allowed only for mistake. *Acklin v. Riddell*, 230.
Will signed before beneficiary designation on policy, will did not supersede beneficiary designation. *Id.*
Estate insolvent, personal effects properly ordered sold. *Id.*

SALES:

Implied warranty of merchantability, elements. *F.L. Davis Builders Supply, Inc. v. Knapp*, 52.
Implied warranty of merchantability, denial of directed verdict proper. *Id.*
Implied warranty for fitness for a particular purpose, elements. *Id.*
Implied warranties differentiated. *Id.*
Implied warranties, warranties merged, sufficient that plaintiff was person manufacturer might reasonably expect to use its product. *Id.*
Implied warranty for particular purpose, no error to deny directed verdict. *Id.*

SEARCH & SEIZURE:

Chase by police of not a seizure. *Stewart v. State*, 28.
Appellant abandoned rights in property discarded during chase. *Id.*
Standing to invoke exclusionary rule, when evidence should be excluded. *Bookout v. State*, 109.
Possessory interest in vehicle, may be sufficient to give a legitimate expectation of privacy. *Id.*
Appellant in lawful and exclusive possession of vehicle, appellant had standing to challenge its search. *Id.*
Review of chancery findings. *Mid-State Trust II v. Jackson*, 112.
Warrantless search per se unreasonable, exception found for objects in plain view. *Washington v. State*, 188.
Plain view not an independent exception to warrant requirement. *Id.*
Plain view doctrine, criteria for. *Id.*
Entry onto commercial premises by law enforcement officers. *Id.*
Expectation of privacy, commercial premises different from private residence. *Id.*
Objects in plain view in the interior of the business, intrusion of officer by reaching into crawl space constitutionally permissible. *Id.*
Plain view doctrine, when applicable. *Id.*
Search of contents of container, contents could be inferred from their outward appearance. *Id.*
Nighttime search, requirement for. *Ramey v. State*, 242.
Nighttime search, facts insufficient to show reasonable cause for such a search. *Id.*
Nighttime search, facts, not conclusions, must appear in affidavit. *Thompson v. State*, 254.
Computer-generated phrases not necessarily fatal. *Id.*
Conclusory statements in affidavit fatal to warrant. *Id.*
Violation substantial, good faith exception not applied. *Id.*

STATUTES:

Construction, plain meaning. *Arkansas Elec. Coop. Corp. v. Arkansas Pub. Serv. Comm.*, 198.

TRIAL:

Burden of obtaining a ruling. *First Nat'l Bank v. Adair*, 84.
Mistrial, when granted. *Tallant v. State*, 150.
Motion for mistrial denied, judge's admonition sufficient to cure any potential prejudice. *Id.*

UNEMPLOYMENT COMPENSATION:

Disqualification, voluntarily quitting without good cause connected with work.
Perdrix-Wang v. Director, 218.
Burden of proof, good cause defined. *Id.*
Voluntarily leaving, factors to consider. *Id.*
Good cause is question of fact. *Id.*
Voluntarily left employment, substantial evidence. *Id.*
Good cause to quit not shown. *Id.*

VENDOR & PURCHASER:

Foreclosure, acceleration of debt for default in payment of insurance premiums, equity may protect debtor against inequitable acceleration. *Mid-State Trust II v. Jackson*, 112.
Foreclosure, equity may relieve against acceleration that would impose unconscionable hardship. *Id.*
Foreclosure, remedy fashioned was appropriate. *Id.*
Foreclosure, no error to deny foreclosure. *Id.*

VERDICT & FINDINGS:

Conflict in evidence presents jury question. *F.L. Davis Builders Supply, Inc. v. Knapp*, 52.
General verdict, no record jury considered improper factor. *Id.*

WILLS:

Construction of testamentary document, testator's intention expressed by the language of the document. *Acklin v. Riddell*, 230.
Construction of testamentary document, when parol evidence admissible. *Id.*

WITNESSES:

Interested witnesses, trial judge not required to accept testimony. *Maloy v. Stuttgart Memorial Hosp.*, 16.

WORKERS' COMPENSATION:

Credibility of witnesses and weight given to the evidence are in the exclusive province of the commission. *Riverside Furniture Co. v. Loyd*, 1.
Sufficient evidence of compensable injury and proper notice. *Id.*
Contradictions in evidence. *Id.*
Setoff for insurance, employer's entitlement. *Id.*
When employer entitled to setoff. *Id.*
Employer failed to show entitlement to setoff. *Id.*
Remand by commission for presentation of additional evidence, original evidence considered as part of final determination, no useful purpose in remanding for consideration of only this evidence. *Grimes v. North American Foundry*, 137.
Sufficiency of the evidence, determination of on review. *Id.*
Wage loss factor defined. *Id.*
How disability is determined by the commission. *Id.*
Benefits assessed at seven percent, decision supported by substantial evidence. *Id.*
Decision not based on code section, argument without merit. *Id.*
Challenge to sufficiency of the evidence, factors on review. *Cagle Fabricating & Steel, Inc. v. Patterson*, 169.
Hernia, physical distress following the occurrence must have been such as to require the attendance of a physician within a 72-hour period. *Id.*
Commission found appellee's physical distress was such as to require the attendance of a physician within the 72-hour period, no error found. *Id.*
Appeal & error, appellate court refused to stay ruling on motion for attorney's

fees until appellee had exhausted all judicial review of the issue to which it was entitled. *Crow v. Weyerhaeuser Company*, 183.
Judicial review. *Price v. Little Rock Packaging Co.*, 238.
Decision that appellant failed to prove he suffered a compensable hernia was not supported by the evidence. *Id.*



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

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

ACTS:	5-64-101(v)(12)	249
Acts by Name:	5-64-402(a)(3)	248
Arkansas Controlled Substances Act	5-64-403(c)(1)	249
Employment Security Law	5-65-103(a)	154, 155
Energy Conservation Endorsement Act of 1977	5-65-103(b)	154, 155
Federal Motor Vehicle Information and Cost Savings Act of 1972, Title IV	5-65-204	152
Magnuson-Moss Act	5-65-204(e)	101
Uniform Enforcement of Foreign Judgments Act	5-65-204(e)(2)	135, 136
Workers' Compensation Act	11-9-522	138, 139, 150
Arkansas Acts:	11-9-522(b)	138, 144, 146
Act 252 of 1919	11-9-523	240
Act 253 of 1919	11-9-523(a)	169, 170, 172
Act 843 of 1983	11-9-523(a)(5)	170
CODES:	11-9-705(c)(1)	146, 148
(See also RULES and STATUTES)	11-10-513	218, 221
Arkansas Code Annotated:	11-10-513(a)(1)	218, 221
4-2-314	11-10-513(b)	221
4-2-314(2)(c)	11-10-515	225
4-2-315	11-10-515(c)	221, 222, 224
4-2-714(2)	11-10-529(c)(1)	221
4-2-714(3)	16-45-104	94
4-2-715	16-66-602—608	32
4-2-715(1)	18-60-102(a)	91, 94
4-2-715(2)(b)	18-60-401	72, 78
4-59-101	23-1-101	203
4-90-201-206	23-2-301	203
4-90-203	23-2-302	203
4-90-203-206	23-2-304	203
4-90-204	23-2-305	200, 202, 203, 213, 214, 216
4-90-204(d)	23-2-421(a)	202, 210
4-90-206	23-3-114	199, 209
5-1-110	23-3-114(a)(1)	203, 208
5-2-202(2)	23-3-401—405	203
5-2-403(a)(1) and (2)	23-3-401 et seq.	212
5-3-201(a)(2)	23-3-403	204
5-3-401	23-3-404	204
5-10-104(a)(1)	23-3-405(a)(1)	203
5-10-105(a)(1)	23-3-405(a)(2)	204
5-39-201	23-32-1005(1)(A)	13
5-39-203(a)	23-89-304	81
5-64-101	23-89-304(a)(1)	82
5-64-101(f)	23-89-305	80, 82, 83
	27-51-301	97, 101
	28-50-106	231, 236
	28-50-113	231, 236
	United States Code:	
	15 U.S.C. § 1981	165
	15 U.S.C. § 1984	162
	15 U.S.C. § 1989	162, 165, 167

ARK. APP.] INDEX TO RULES, CODES, STATUTES, ETC. 271

CONSTITUTIONAL PROVISIONS:

United States Constitution:

Amendment 4 28, 30, 110, 159,
188, 189, 191,
193, 194, 195,
259
Amendment 6 39, 174, 178
Amendment 14 219
Article IV, § 1 31, 33
Equal Protection Clause 179

Arkansas Constitution:

Amendment 58 171
Article 2, § 15 259

RULES:

Arkansas Rules of Civil
Procedure (Ark. Code Ann. Court
Rules [1990]):

A.R.C.P. 26(e)(1) 55, 63
A.R.C.P. 26(e)(3) 56, 64
A.R.C.P. 32 55, 62
A.R.C.P. 32(a)(3) 54, 61
A.R.C.P. 52(a) 12, 19
A.R.C.P. 55(b) 94
A.R.C.P. 55(c) 33
A.R.C.P. 59 7
A.R.C.P. 59(a) 15

Arkansas Rules of Criminal
Procedure (Ark. Code Ann. Court
Rules [1990]):

A.R.Cr.P. 2.1 29
A.R.Cr.P. 3.1 29, 97, 100,
101
A.R.Cr.P. 13.2 243, 252, 257
A.R.Cr.P. 13.2(c) 258

A.R.Cr.P. 16(c) 244, 254
A.R.Cr.P. 16.2 136, 195
A.R.Cr.P. 16.2(c) 255
A.R.Cr.P. 16.2(e) 259
A.R.Cr.P. 24.3 99, 134, 135,
255
A.R.Cr.P. 24.3(b) 134, 135, 136,
190
A.R.Cr.P. 36.22 39

Arkansas Rules of Evidence
(Ark. Code Ann. Court Rules [1990]):

A.R.E. 405(b) 46
A.R.E. 701 154

Rules of the Arkansas
Supreme Court and Court of Appeals
(Ark. Code Ann. Court Rules [1992]):

Rule 1-2(a)(11) 169, 171
Rule 1-2(f) 27
Rule 2-4 27
Rule 4-2 261
Rule 6-6(c) 184, 185
Rule 9 261
Rule 25(5) 27
Rule 29(1)(j) 171

STATUTES:

Arkansas Statutes Annotated:

34-1215 51
50-105 167
67-521 6, 13
81-1323(b) 171

Federal Rules of Civil
Procedure:

Rule 56 126

