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ARKANSAS REPORTS
Volume 314

CASES DETERMINED
IN THE

**Supreme Court
of Arkansas**

FROM
July 12, 1993 — November 1, 1993
INCLUSIVE¹

AND

**ARKANSAS APPELLATE
REPORTS**
Volume 43

CASES DETERMINED
IN THE

**Court of Appeals
of Arkansas**

FROM
July 7, 1993 — October 27, 1993
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1993

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 633. Cite as 314 Ark. — (1993).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 210. Cite as 43 Ark. App. — (1993).



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ARKANSAS REPORTS

Volume 314

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

FROM
July 12, 1993 — November 1, 1993
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1993

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OF THE
SUPREME COURT OF
ARKANSAS**

**DURING THE PERIOD COVERED
BY THIS VOLUME
(July 12, 1993 —
November 1, 1993, inclusive)**

JUSTICES

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

OFFICERS

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

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

Rules of the Arkansas Supreme Court and Court of Appeals
OPINIONS

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

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

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

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

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

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Arnold v. State, CR 93-159 (Per Curiam), affirmed September 13, 1993.
- Ashley v. State, CR 93-390 (Per Curiam), affirmed October 18, 1993.
- Ashley v. State, Cr 93-968 (Per Curiam), Pro Se Motion to Stay Brief Time and Motion for Appointment of Counsel denied and appeal dismissed November 1, 1993.
- Bailey v. State, CR 93-274 (Per Curiam), affirmed July 12, 1993.
- Baumgarner v. State, CR 93-383 (Per Curiam), Pro Se Motion to Supplement Record and Motion to Amend Motion to Supplement denied September 27, 1993.
- Blevins v. State, CR 93-472 (Per Curiam), affirmed October 11, 1993.
- Boyd v. State, CR 93-359 (Per Curiam), Pro Se Motion for Rule on the Clerk; Motion to Amend Motion; and Motion to File a New Motion for Rule on the Clerk, or Supplemental Motion denied September 13, 1993.
- Boyd v. State, CR 93-359 (Per Curiam), Pro Se Motion for Writ of Mandamus and Other Material at Public Expense denied October 18, 1993.
- Craig v. State, CR 93-529 (Per Curiam), Pro Se Motion to Supplement Appellant's Brief denied and appeal dismissed September 13, 1993.
- Collins v. State, CR 93-818 (Per Curiam), Pro Se Motion to Supplement Record and Pro Se Motion for Appointment of Counsel denied October 11, 1993.
- Dixon v. Parker, CR 93-941 (Per Curiam), Pro Se Petition for Writ of Mandamus moot October 18, 1993.
- Dixon v. State, CR 93-759 (Per Curiam), Pro Se Motion for Belated Appeal denied September 20, 1993.
- Dumond v. State, CR 93-431 (Per Curiam), affirmed October 4, 1993.
- Eveland v. State, CR 93-242 (Per Curiam), Pro Se Joint Motion to Relieve Counsel and for Appointment of Attorneys granted September 13, 1993.
- Fox v. State, CR 93-306 (Per Curiam), Pro Se Motion to Supplement Appellant's Brief denied September 27, 1993.
- Green v. State, CR 92-1194 (Per Curiam), affirmed November 1, 1993.
- Greene v. State, CR 93-523 (Per Curiam), Pro Se Motion to

- Relieve Counsel and Substitute Counsel denied September 27, 1993.
- Harp v. State, CR 92-1484 (Per Curiam), affirmed October 25, 1993.
- Harris v. State, CR 93-565 (Per Curiam), Pro Se Motion to Stay Appeal denied September 13, 1993.
- Hefley v. State, CR 93-378 (Per Curiam), affirmed July 19, 1993.
- Howard v. State, CR 92-1236 (Per Curiam), affirmed September 27, 1993.
- Huffman v. State, CR 93-541 (Per Curiam), affirmed October 11, 1993.
- Jones v. Thompson, CR 93-909 (Per Curiam), Pro Se Petition for Writ of Mandamus moot October 4, 1993.
- King v. State, CR 93-771 (Per Curiam), Pro Se Motion for Rule on the Clerk, Motion for Appointment of Counsel, and Motion to File a Handwritten Brief denied September 13, 1993.
- King v. State, CR 93-872 (Per Curiam), Appellant's Pro Se Motion to Stay Brief Time granted November 1, 1993.
- McLemore v. McCorkindale, CR 93-678 (Per Curiam), Pro Se Petition for Writ of Mandamus moot July 12, 1993.
- Miller v. State, CR 92-1040 (Per Curiam), Pro Se Motion for Belated Appeal denied October 4, 1993.
- Nard v. State, CR 92-1378 (Per Curiam), Pro Se Motion for Appointment of Counsel and Pro Se Motion for Transcript denied, and Pro Se Motion for Extension of Time granted September 29, 1993.
- Nard v. State, CR 92-1378 (Per Curiam), affirmed November 1, 1993.
- Parker v. State, CR 93-790 (Per Curiam), Pro Se Motion for Rule on the Clerk denied September 20, 1993.
- Parkman v. State, CR 93-391 (Per Curiam), affirmed July 19, 1993.
- Smith v. State, CR 93-758 (Per Curiam), Pro Se Motion for Belated Appeal and Pro Se Motion for Appointment of Counsel granted October 4, 1993.
- Smith v. State, CR 93-921 (Per Curiam), Pro Se Motion for Belated Appeal denied October 25, 1993.
- Stanley v. State, CR 93-919 (Per Curiam), Motion for Rule on the Clerk to Lodge Transcript denied September 20, 1993.
- Stout v. State, CR 93-480 (Per Curiam), affirmed October 25, 1993.

- White v. State, CR 93-308 (Per Curiam), affirmed July 19, 1993.
Wicoff v. McCorkindale, CR 93-263 (Per Curiam), Pro Se
Petition for Writ of Mandamus moot September 27, 1993.
Williams v. Goodson, CR 93-752 (Per Curiam), Pro Se Petition
for Writ of Mandamus moot November 1, 1993.
Williams v. State, CR 93-394 (Per Curiam), affirmed July 19,
1993.
Williams v. State, CR 93-92 (Per Curiam), Pro Se Motion to
Supplement Record granted September 20, 1993.
Williams v. State, CR 93-712 (Per Curiam), Pro Se Motion to
Dismiss Appeal Without Prejudice denied and appeal dis-
missed October 4, 1993.



APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

IN THE MATTER OF RULE 7 OF THE RULES OF
PROCEDURE OF THE ARKANSAS JUDICIAL
DISCIPLINE AND DISABILITY COMMISSION

Supreme Court of Arkansas
Delivered July 12, 1993

PER CURIAM. Rule 7.C. of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission is amended to read as follows:

C. Investigatory records, files, and reports of the Commission shall be confidential, and no disclosure of information, written, recorded, or oral, received or developed by the Commission in the course of an investigation relating to alleged misconduct or disability of a judge, shall be made except as stated in A. and B. above or as follows:

(1) Upon waiver in writing by the judge under consideration at any stage of the proceedings;

(2) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges;

(3) In cases in which the subject matter or the fact of the filing of charges has become public, if deemed appropriate by the Commission, it may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, and to state that the judge denies the allegations;

(4) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority;

(5) Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed shall be released by the Commission;

(6) If during the course of or after an investigation or hearing the Commission reasonably believes that there

may have been a violation of any rules of professional conduct of attorneys at law, the Commission may release such information to any committee, commission, agency or body within or outside the State empowered to investigate, regulate or adjudicate matters incident to the legal profession; or

(7) If during the course of or after an investigation or hearing, the Commission reasonably believes that there may have been a violation of criminal law, the Commission shall release such information to the appropriate prosecuting attorney.

The following is added to Rule 8. as subsection M.:

M. The Commission is authorized to request the appropriate prosecuting authorities to seek to obtain immunity from criminal prosecution for a reluctant witness, using the procedure found in Ark. Code Ann. § 16-43-601 through 16-43-606.

IN THE MATTER OF
THE CLIENT SECURITY FUND

858 S.W. 2d 670

Supreme Court of Arkansas
Delivered July 12, 1993

PER CURIAM. In 1973 this court, by per curiam order, created the Client Security Fund. *See In The Matter Of Client Security Fund*, 254 Ark. 1075, 493 S.W.2d 422 (1973). The purpose of this trust fund is to protect clients from losses caused by the dishonest conduct of members of the Bar of Arkansas. Over the past twenty years, a number of changes have been made in the operation of the fund. *See per curiam orders In The Matter Of The Client Security Fund*, 310 Ark. 812, 832 S.W.2d 815 (1992); 306 Ark. 656 (1991); 300 Ark. 643, 782 S.W.2d 357 (1989); & 291 Ark. 647, 722 S.W.2d LVIII (1987). We have received a number of suggestions for changes in the operation of

the Fund, and some of those suggestions have merit. The various suggestions have been made by the Arkansas Bar Association, individual members of the Bar of Arkansas, and judges.

The Arkansas Bar Association and some individual members of the Bar of Arkansas have suggested that the Fund is under-utilized because of lack of public information about the Fund. We have requested that the Administrative Office of the Courts prepare a press release for the news media that would give information about the Fund. In addition, we have requested that the Administrative Office of the Courts prepare a draft of a pamphlet for future placement in courthouses.

Claims made on the Fund must be filed with the Clerk of the Supreme Court. The Clerk maintains a supply of claim forms and will mail a form to anyone who so requests. The Clerk's name and address are:

Mr. Leslie Steen
Clerk of the Supreme Court
Supreme Court of Arkansas
625 Marshall Street
Little Rock, Arkansas 72201

Various members of the Bar have stated that it is difficult to find information about the Fund. The citations to the various per curiam opinions creating and modifying the operations of the Fund are set out above. In addition, this per curiam order and the prior per curiam orders concerning the Client Security Fund are being merged into one order so that the current Rules for the Client Security Fund will appear in the next edition of the *Court Rules* volume of the Arkansas Code of 1987 Annotated.

It has been suggested that we raise the maximum amount that the Fund is authorized to pay to each client. Through the years we have raised the maximum amount from the initial \$5,000 in 1973 to the current maximum amount of \$25,000. Today, we raise the maximum amount to \$40,000. However, we retain the language from our original per curiam that reimbursements to a client are a matter of grace, not a matter of right, that no client or member of the public has any right in the Client Security Fund as a third party beneficiary or otherwise, and that the Client Security Fund Committee is empowered to admit or reject claims in whole or in part to the extent that funds are

available to it.

The Arkansas Bar Association has asked us to change the criteria for the payment of claims by the Client Security Fund Committee. The suggestion has merit, and today we slightly modify the criteria for eligible claims. At present the Committee is authorized to pay claims only for "reimbursement of losses from defalcations" by a member of the Bar. Commencing with the publication date of this order, the criteria for the Committee's payment of claims will be as follows:

A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a lawyer-client relationship or a fiduciary relationship between the lawyer and the claimant.

B. The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.

C. As used herein, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value. A dispute over the reasonableness of a lawyer's fee is not an eligible claim.

D. Except as provided by Section F herein, the following losses shall not be reimbursable:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates, and employees of lawyer(s) causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by

the lawyer, any person or entity described in Section D(1), (2), or (3) hereof;

(5) Losses incurred by any governmental entity or agency.

E. In cases of extreme hardship or special and unusual circumstances, the Client Security Fund Committee may, in its discretion, recognize a claim which would otherwise be excluded under this Order.

F. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Client Security Fund Committee may, in its discretion, deny the claim.

It has been suggested that we establish even broader criteria for the payment of claims. We decline to do so. The Fund is not designed to cover negligence or similar acts. Its purpose is to reimburse clients, to the extent money is available and up to the maximum allowable amount, for the dishonest conduct of a lawyer. It is not insurance.

Various suggestions have been made for quicker payment of claims. Some of the suggestions are not practical because of their cost. Some, however, can be implemented, and we have modified the operation of the Client Security Fund Committee and the Committee on Professional Conduct to provide more prompt action. The Client Security Fund Committee may now reject claims without their first being fully processed by the Committee on Professional Conduct. In this way, if a client files a claim reimbursement for malpractice, for example, the committee can immediately reject the claim and so notify the client. If the client desires, he or she can still proceed to have the lawyer disciplined by the Committee on Professional Conduct. We retain the requirement that no claim can be paid until the lawyer shall have been disbarred, or suspended, from the practice of the law; has voluntarily, but permanently, surrendered his license to practice law; or has died before disbarment or suspension could take place. We provide that the Client Security Fund Committee can now vote by mail and facsimile transmission. This change is made because it is often difficult for five busy lawyers to find a convenient time to meet. In addition, more staff personnel have been added to the Committee on Professional Conduct, and that

fact should have a beneficial indirect effect on the time required to pay a claim. These changes should benefit both the clients as well as the members of the Bar of Arkansas.

RULES OF THE CLIENT SECURITY FUND

Supreme Court of Arkansas
Delivered July 12, 1993

PER CURIAM. The Supreme Court of Arkansas, pursuant to its constitutional power to regulate the practice of law and to collect fees for such practice, hereby adopts the following Rules of the Client Security Fund Committee effective on the publication date of this per curiam order.

RULE 1

Scope of Rules

The following rules are for the regulation of the Client Security Fund and shall apply to all claims filed commencing with the publication date of this order. At that time these rules will replace the per curiam order creating the Client Security Fund, 254 Ark. 1075, 493 S.W.2d 422 (1973), and the later amending per curiam orders, 310 Ark. 812, 832 S.W.2d 815 (1992); 306 Ark. 656 (1991); 300 Ark. 643, 782 S.W.2d 357 (1989); 291 Ark. 647, 722 S.W.2d LVIII (1987).

RULE 2

Committee

In 1973 the Court appointed a committee of five lawyers, one from each Congressional District, and one from the State at large, to serve at the pleasure of the Court. The member first appointed from the First Congressional District served a term of one year from the date of his appointment, the first member from the Second District, two years, the first member from the Third District, three years, the first member from the Fourth District, four years, and the first member from the State at large, five years. The successors of the members first appointed have been, and shall continue to be, appointed for terms of five years each.

The Committee shall annually select one of its members as Chairperson, and another as Secretary, and shall adopt rules governing its procedures, which shall be subject to approval by this Court. A majority of committee members shall constitute a quorum.

RULE 3

Name of Committee—Authority To Issue Summonses and Subpoenas—Disobedience Thereof Contempt of Court

The name of the Committee shall be “The Client Security Fund Committee.” The Committee shall provide for its use a seal of such design as it may deem appropriate, and in the performance of duties imposed by rules of this Court and by its own regulations in aid of the Court’s rules, shall have authority to issue summonses for any person or subpoena for any witness, directed to any sheriff or state police officer within the State, requiring the presence of any party or the attendance of any witness before it. Such process shall be issued under the seal of the Committee and signed by the Chairperson or Secretary thereof. Disobedience of any summons or subpoena or refusal to testify shall be regarded as constructive contempt of the Supreme Court.

RULE 4

Eligible Claims—Maximum Allowable Amount

Commencing with the publication date of this order, the criteria for the Committee’s payment of claims will be as follows:

- A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a lawyer-client relationship or a fiduciary relationship between the lawyer and the claimant.
- B. The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.
- C. As used herein, “dishonest conduct” means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value. A dispute over the reasonableness of a lawyer’s fee is not an eligible claim.

D. Except as provided by Section F herein, the following losses shall not be reimbursable:

- (1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates, and employees of lawyer(s) causing the losses;
- (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;
- (3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
- (4) Losses incurred by any business entity controlled by the lawyer, any person or entity described in Section D(1), (2), or (3) hereof;
- (5) Losses incurred by any governmental entity or agency.

E. In cases of extreme hardship or special and unusual circumstances, the Client Security Fund Committee may, in its discretion, recognize a claim which would otherwise be excluded under this Order.

F. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Client Security Fund Committee may, in its discretion, deny the claim.

Provided, however, that no claim shall be paid by the Committee until the Committee on Professional Conduct has certified that the member of the Bar of Arkansas has been disbarred or suspended from the practice of law, or has voluntarily resigned from the practice of law and surrendered his or her license to practice, or died before a disbarment, suspension, or surrender of license could take place. At that time the Executive Director of the Committee on Professional Conduct shall prepare for the Committee a summary of the evidence indicating the amount of the loss due to the dishonesty of the lawyer.

The Committee is authorized and empowered to admit or reject such claims in whole or in part to the extent that funds are available to it, and the Committee shall have complete discretion in determining the order and manner of payment of claims. No claim shall be allowed for an amount in excess of \$40,000. All reimbursements shall be a matter of grace and not of right, and no client or member of the public shall have any right in the Client Security Fund as third party beneficiary or otherwise. No attorney shall be compensated for prosecuting a claim against the Fund.

RULE 5

Place of Filing Claim

Claims shall be filed with the Clerk of the Supreme Court, and he shall promptly forward the claim to the Committee's representative. The Clerk's address is:

Clerk of the Supreme Court
Supreme Court of Arkansas
625 Marshall Street
Little Rock, Arkansas 72201

RULE 6

Provision for Expenses of Committee

From the Fund created, members of the Committee shall be entitled to receive their actual, necessary travel and hotel expenses and reimbursement for postage, stationery, communication, and other incidental expenses, including stenographic bills and court costs chargeable against them. Upon instructions from the Supreme Court, the Committee may reimburse the Committee on Professional Conduct for actual expenses it might incur in performing services for the Committee. All such items shall be paid by the Clerk of this Court by check on said Fund, signed by the Clerk and countersigned by the Chairperson and Secretary of the Committee as true and correct.

RULE 7

Manner of Payment

The Committee may authorize payment from the Client Security Fund as provided herein. If the Committee finds, by a

majority vote, that the claimant is entitled to payment from the Fund, it may determine the amount of any payment to be made to the claimant from the Fund. If it is not convenient for the members of the Committee to meet in person in a reasonable amount of time, the Chairperson of the Committee may submit by mail or facsimile transmission all of the necessary information to the Committee members, and they may vote by mail or facsimile transmission. A report, approving payment of any claims, shall be signed by a majority of the Committee members, and filed with the Clerk of this Court. Upon receipt of the aforesaid report, the Clerk will issue a check signed by the Clerk and countersigned by the Chief Justice for payment to the claimant from the Client Security Fund.

RULE 8

Reports

The Committee shall provide a full report of its activities at least yearly to this Court, and it shall make such other reports of its activities and give such publicity to same as the Court may deem advisable.

RULE 9

Subrogation

Payment shall be made from the Fund only upon condition that the Fund receive a pro-tanto assignment from the claimant for such payment of the claimant's rights against the lawyer involved, his personal representatives, and his estate and assigns, on condition that the Fund shall be entitled to reimbursement on such terms as the Committee may deem proper under the circumstances. Any sums collected by reason of such subrogation shall be for the sole benefit of the Fund and applied thereto.

RULE 10

Funding

The Client Security Fund shall be financed by a portion of the annual license fees paid by the members of the Bar of Arkansas. Four dollars of the annual license fee paid by each attorney to the Clerk of this Court shall be credited to the Client Security Fund, until further Order of this Court. The Committee

shall have available to it the services of the employed personnel of the Supreme Court Committee on Professional Conduct.

IN RE: Robert H. SMITH, Arkansas Bar No. 88164

860 S.W.2d 271

Supreme Court of Arkansas
Delivered September 13, 1993

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

IN RE: GUIDELINES FOR CHILD SUPPORT

863 S.W.2d 291

Supreme Court of Arkansas
Delivered October 25, 1993

PER CURIAM. The Arkansas General Assembly enacted Act 948 of 1989, amending Ark. Code Ann. 9-12-312(a) (Supp. 1991), and providing in part for guidelines for child support enforcement.

“9-12-312(a)(1) When a decree is entered, the court shall make such orders concerning the alimony of the wife or the husband and care of the children, if there are any, as are reasonable from the circumstances of the parties and the nature of the case.

(2) In determining a reasonable amount of support initially or upon review to be paid by the non-custodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support, that the amount contained in the family support chart is

the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate as determined under established criteria set forth in the support chart, shall the presumption be rebutted.

(3) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of the Arkansas Supreme Court to ensure that the support amounts are appropriate for child support awards. The committee shall also establish the criteria for deviation from use of the chart amount.

(4) The Arkansas Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish same through per curiam order of the court.

Subsequent to the enactment of this legislation the Chief Justice appointed a committee to examine and revise the family support chart previously utilized by the trial court as prescribed by Section 9-12-312(a)(2). In addition, the committee was charged with the responsibility to establish the criteria for deviation from the use of the chart.

The following persons were appointed to the committee: Hon. Ellen Brantley, Larry Carpenter, Esq.; Hon. Fred D. Davis; Hon. Jim Gunter; Don Hollingsworth, Esq.; Hon. Warren Kimbrough; Rep. Jodie Mahony; Harry Truman Moore, Esq.; Hon. Andre McNeil; Jeff Pence, Esq.; Hon. Judith Rogers; and Ben Rowland, Esq. Debby Nye, Chief Counsel for the Department of Human Services, was later added to the Committee.

The Committee members met and filed a formal report establishing child support guidelines and deviation criteria.

In accordance with this Court's rule making authority, Act 948 of 1989 and Family Support Act of 1988, Pub. L. No. 100-485 (1988), this Court adopted the formal report of the Committee on February 5, 1990, and as a result, provisionally adopted the Family Support Chart, which was established by a Family Law section committee of the Arkansas Bar Association effective July 1, 1987, pursuant to Section 9-12-312(a)(2). A copy of that chart was attached to that per curiam and made a part thereof.

On May 13, 1991, the court also provisionally adopted additions to the guidelines including the attached extended child support chart to be used when the payor's income exceeds the original chart. When the payor's income exceeds that shown on the extended chart, the trial court was advised to disregard the chart and use these percentages of the payor's weekly or monthly income as defined hereinafter to set and establish the dollar amount of support:

One dependent: 13%

Two dependents: 22%

Three dependents: 32%

Four dependents: 42%

Five dependents: 52%

Pursuant to Act 948 of 1989 and the Family Support Act of 1988, Pub. L. No. 100-485 (1988), requiring that the guidelines be reviewed and revised as necessary every four years, the Committee, having considered all relevant data as required by 45 CFR 302.56(h), has submitted its recommendations for revision of the guidelines. After careful deliberation, the Court once more provisionally adopts the following guidelines in their entirety as proposed by the Committee, including the support charts and extended percentages referred to above.

Income refers to the definition in the federal income tax laws, less proper deductions for:

1. Federal and state income tax;
2. Social security (FICA) or railroad retirement equivalent;
3. Medical insurance paid for dependent children; and
4. Presently paid support for other dependents by Court order.

For Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and/or children.

For Veteran's Administration disability recipients, support shall be calculated based on those benefits.

For Workers Compensation disability recipients, support shall be calculated based on those benefits.

For Unemployment Compensation recipients, support shall be calculated based on those benefits.

For military personnel, see latest military pay allocation chart and benefits. BAQ (quarters allowance) should be added to other income to reach total income. Military personnel are entitled to draw BAQ at a "with dependents" rate if they are providing support pursuant to a court order. However, there may be circumstances in which the payor is unable to draw BAQ or may draw BAQ only at the "without dependents" rate. Use the BAQ for which the payor is actually eligible. In some areas, military personnel receive a variable allowance. It may not be appropriate to include this allowance in calculation of income since it is awarded to offset living expenses which exceed those normally incurred.

For commission workers, support shall be calculated based on minimum draw plus additional commissions.

For self-employed payors, support shall be calculated based on last year's federal and state income tax returns and the quarterly estimates for the current year. Also the court shall consider the amount the payor is capable of earning or a net-worth approach based on property, life-style, etc.

Use the lower figure on the chart for take-home pay to determine support. Do not interpolate (i.e., use the \$200.00 amount for all take-home pay between \$200.00 and \$210.00 per week.)

The amount paid to the clerk for administrative costs pursuant to Ark. Code Ann. 9-12-312(e)(3) is not to be included as support.

In adopting this per curiam, the Court creates a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the amount of child support to be awarded in any judicial proceeding for divorce, separation, paternity, or child support. The court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support.

It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support Chart is correct, if the court enters in the case a written finding or specific finding on the record that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

The chart assumes that the custodian of dependent children is employed and is not a dependent. For the purposes of calculating temporary support, a dependent custodian should be counted as two dependents as a guide in determining support. For final hearings, the court should consider all relevant factors, including the chart, in determining the amount of any spousal support to be paid.

Relevant factors to be considered by the court in determining appropriate amounts of child support shall include:

1. Food;
2. Shelter and utilities;
3. Clothing;
4. Medical expenses;
5. Educational expenses;
6. Dental expenses;
7. Child care;
8. Accustomed standard of living;
9. Recreation;
10. Insurance;
11. Transportation expenses; and
12. Other income or assets available to support the child from whatever source.

Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and/or maintenance of life insurance, health insurance, dental insurance for the children's benefit;
2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g. orthopedic shoes, glasses, braces, etc.);
3. The creation or maintenance of a trust fund for the children;
4. The provision or payment of special education needs or expenses of the child;
5. The provision or payment of day care for a child;
6. The extraordinary time spent with the non-custodial parent, or shared or joint custody arrangements; and
7. The support required and given by a payor for dependent children, even in the absence of a court order.

The child support chart assumes that the non-custodial parent will have visitation every other weekend and for several weeks during the summer. Excluding weekend visitation with the custodial parent, in those situations where a child spends in excess of 14 consecutive days with the non-custodial parent, the court should consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent which are attributable to the child, to the increased costs of the non-custodial parent associated with the child's visit, and to the relative incomes of both parents. Any partial abatement or reduction of child support should not exceed 50% of the child support obligation during the extended visitation period of more than 14 consecutive days.

In situations in which the non-custodial parent has been granted annual visitation in excess of 14 consecutive days, the court may prorate annually the reduction in order to maintain the same amount of monthly child support payments. However, if the non-custodial parent does not exercise said extended visitations during a particular year, the non-custodial parent shall be required to pay the abated amount of child support to the custodial parent.

In addition to the award of child support, the court order shall provide for the child's health care needs, which would normally include health insurance if available to either parent at a reasonable cost.

Allocation of dependents for tax purposes belongs to the custodial parent unless the parties otherwise agree. See Sec. 152(e) of the Internal Revenue Code.

All orders of child support should fix the dates on which payments should be made and the method of such payment, such as through the Clerk of the Court or by wage assignment. Times for payment should ordinarily coincide with the payor's receipt of salary, wages, or other income.

For purposes of computing child support payments, a month consists of 4.334 weeks. Bi-weekly means a wage earner is paid once every two weeks or 26 times during a calendar year. Bi-monthly means a wage earner is paid twice a month or 24 times during a calendar year.

The Court hereby approves and adopts the attached revised Affidavit of Financial Means for use in all family support matters. The trial court shall require each party to complete and exchange the attached Affidavit of Financial Means prior to a hearing.

Inasmuch as this is a provisional order of the Court, the Court directs the Chief Justice and the Committee on Child Support to continue its charge to study, and revise where necessary, the guidelines for child support to ensure the proper enforcement of child support awards in this state.

The Court notes that the Committee has requested that it now be reconstituted, having served for four years, and that terms be established for its members. The Court thanks the Committee and its Chair, Hon. Ellen Brantley, for their tireless and dedicated service and will, in due time, reappoint a Committee with set terms to continue the work of reviewing and revising the guidelines.

NEWBERN, J. dissents; see *In re: Guidelines for Child Support Enforcement*, 301 Ark. 627, 784 S.W.2d 589 (1990) (Hickman, J., dissenting).

WEEKLY FAMILY SUPPORT CHART

WEEKLY TAKE- HOME PAY	DEPENDENTS				
	ONE	TWO	THREE	FOUR	FIVE
\$100.00	25.00	30.00	40.00	50.00	60.00
\$110.00	27.50	33.00	44.00	55.00	66.00
\$120.00	30.00	36.00	48.00	60.00	72.00
\$130.00	32.50	39.00	52.00	65.00	78.00
\$140.00	35.00	42.00	56.00	70.00	84.00
\$150.00	37.50	45.00	60.00	75.00	90.00
\$160.00	40.00	48.00	64.00	80.00	96.00
\$170.00	42.50	51.00	68.00	85.00	102.00
\$180.00	45.00	54.00	72.00	90.00	108.00
\$190.00	47.50	57.00	76.00	95.00	114.00
\$200.00	50.00	60.00	80.00	100.00	120.00
\$210.00	51.00	62.00	83.00	104.00	125.00
\$220.00	52.00	64.00	86.00	108.00	130.00
\$230.00	53.00	66.00	89.00	112.00	135.00
\$240.00	54.00	68.00	92.00	116.00	140.00
\$250.00	55.00	70.00	95.00	120.00	145.00
\$260.00	56.00	72.00	98.00	124.00	150.00
\$270.00	57.00	74.00	101.00	128.00	155.00
\$280.00	58.00	76.00	104.00	132.00	160.00
\$290.00	59.00	78.00	107.00	136.00	165.00
\$300.00	60.00	80.00	110.00	140.00	170.00
\$310.00	61.00	82.00	113.00	144.00	175.00
\$320.00	62.00	84.00	116.00	148.00	180.00
\$330.00	63.00	86.00	119.00	152.00	185.00
\$340.00	64.00	88.00	122.00	156.00	190.00
\$350.00	65.00	90.00	125.00	160.00	195.00
\$360.00	66.00	92.00	128.00	164.00	200.00
\$370.00	67.00	94.00	131.00	168.00	205.00
\$380.00	68.00	96.00	134.00	172.00	210.00
\$390.00	69.00	98.00	137.00	176.00	215.00
\$400.00	70.00	100.00	140.00	180.00	220.00
\$410.00	71.00	102.00	143.00	184.00	225.00
\$420.00	72.00	104.00	146.00	188.00	230.00
\$430.00	73.00	106.00	149.00	192.00	235.00
\$440.00	74.00	108.00	152.00	196.00	240.00
\$450.00	75.00	110.00	155.00	200.00	245.00
\$460.00	76.00	112.00	158.00	204.00	250.00
\$470.00	77.00	114.00	161.00	208.00	255.00
\$480.00	78.00	116.00	164.00	212.00	260.00
\$490.00	79.00	118.00	167.00	216.00	265.00
\$500.00	80.00	120.00	170.00	220.00	270.00
\$510.00	81.00	122.00	173.00	224.00	275.00
\$520.00	82.00	124.00	176.00	228.00	280.00
\$530.00	83.00	126.00	179.00	232.00	285.00
\$540.00	84.00	128.00	182.00	236.00	290.00
\$550.00	85.00	130.00	185.00	240.00	295.00

WEEKLY FAMILY SUPPORT CHART (cont'd)

WEEKLY TAKE-HOME PAY	DEPENDENTS				
	ONE	TWO	THREE	FOUR	FIVE
\$560.00	86.00	132.00	188.00	244.00	300.00
\$570.00	87.00	134.00	191.00	248.00	305.00
\$580.00	88.00	136.00	194.00	252.00	310.00
\$590.00	89.00	138.00	197.00	256.00	315.00
\$600.00	90.00	140.00	200.00	260.00	320.00
\$610.00	91.00	142.00	203.00	264.00	325.00
\$620.00	92.00	144.00	206.00	268.00	330.00
\$630.00	93.00	146.00	209.00	272.00	335.00
\$640.00	94.00	148.00	212.00	276.00	340.00
\$650.00	95.00	150.00	215.00	280.00	345.00
\$660.00	96.00	152.00	218.00	284.00	350.00
\$670.00	97.00	154.00	221.00	288.00	355.00
\$680.00	98.00	156.00	224.00	292.00	360.00
\$690.00	99.00	158.00	227.00	296.00	365.00
\$700.00	100.00	160.00	230.00	300.00	370.00
\$710.00	101.00	162.00	233.00	304.00	375.00
\$720.00	102.00	164.00	236.00	308.00	380.00
\$730.00	103.00	166.00	239.00	312.00	385.00
\$740.00	104.00	168.00	242.00	316.00	390.00
\$750.00	105.00	170.00	245.00	320.00	395.00
\$760.00	106.00	172.00	248.00	324.00	400.00
\$770.00	107.00	174.00	251.00	328.00	405.00
\$780.00	108.00	176.00	254.00	332.00	410.00
\$790.00	109.00	178.00	257.00	336.00	415.00
\$800.00	110.00	180.00	260.00	340.00	420.00
\$810.00	111.00	182.00	263.00	344.00	425.00
\$820.00	112.00	184.00	266.00	348.00	430.00
\$830.00	113.00	186.00	269.00	352.00	435.00
\$840.00	114.00	188.00	272.00	356.00	440.00
\$850.00	115.00	190.00	275.00	360.00	445.00
\$860.00	116.00	192.00	278.00	364.00	450.00
\$870.00	117.00	194.00	281.00	368.00	455.00
\$880.00	118.00	196.00	284.00	372.00	460.00
\$890.00	119.00	198.00	287.00	376.00	465.00
\$900.00	120.00	200.00	300.00	380.00	470.00
\$910.00	121.00	202.00	303.00	384.00	475.00
\$920.00	122.00	204.00	306.00	388.00	480.00
\$930.00	123.00	206.00	309.00	392.00	485.00
\$940.00	124.00	208.00	312.00	396.00	490.00
\$950.00	125.00	210.00	315.00	400.00	495.00
\$960.00	126.00	212.00	318.00	404.00	500.00
\$970.00	127.00	214.00	321.00	408.00	505.00
\$980.00	128.00	216.00	324.00	412.00	510.00
\$990.00	129.00	218.00	327.00	416.00	515.00
\$1,000.00	130.00	220.00	330.00	420.00	520.00

MONTHLY FAMILY SUPPORT CHART

MONTHLY TAKE- HOME PAY	DEPENDENTS				
	ONE	TWO	THREE	FOUR	FIVE
\$ 500.00	125.00	150.00	200.00	250.00	300.00
\$ 550.00	137.50	165.00	220.00	275.00	330.00
\$ 600.00	150.00	180.00	240.00	300.00	360.00
\$ 650.00	162.50	195.00	260.00	325.00	390.00
\$ 700.00	175.00	210.00	280.00	350.00	420.00
\$ 750.00	187.50	225.00	300.00	375.00	450.00
\$ 800.00	200.00	240.00	320.00	400.00	480.00
\$ 850.00	210.00	255.00	340.00	425.00	510.00
\$ 900.00	220.00	265.00	355.00	445.00	535.00
\$ 950.00	225.00	275.00	370.00	465.00	560.00
\$1000.00	230.00	285.00	385.00	485.00	585.00
\$1050.00	235.00	295.00	400.00	505.00	610.00
\$1100.00	240.00	305.00	415.00	525.00	635.00
\$1150.00	245.00	315.00	430.00	545.00	660.00
\$1200.00	250.00	325.00	445.00	565.00	685.00
\$1250.00	255.00	335.00	460.00	585.00	710.00
\$1300.00	260.00	345.00	475.00	605.00	735.00
\$1350.00	265.00	355.00	490.00	625.00	760.00
\$1400.00	270.00	365.00	505.00	645.00	785.00
\$1450.00	275.00	375.00	520.00	665.00	810.00
\$1500.00	280.00	385.00	535.00	685.00	835.00
\$1550.00	285.00	395.00	550.00	705.00	860.00
\$1600.00	290.00	405.00	565.00	725.00	885.00
\$1650.00	295.00	415.00	580.00	745.00	910.00
\$1700.00	300.00	425.00	595.00	765.00	935.00
\$1750.00	305.00	435.00	610.00	785.00	960.00
\$1800.00	310.00	445.00	625.00	805.00	985.00
\$1850.00	315.00	455.00	640.00	825.00	1010.00
\$1900.00	320.00	465.00	655.00	845.00	1035.00
\$1950.00	325.00	475.00	670.00	865.00	1060.00
\$2000.00	330.00	485.00	685.00	885.00	1085.00
\$2050.00	335.00	495.00	700.00	905.00	1110.00
\$2100.00	340.00	505.00	715.00	925.00	1135.00
\$2150.00	345.00	515.00	730.00	945.00	1160.00
\$2200.00	350.00	525.00	745.00	965.00	1185.00
\$2250.00	355.00	535.00	760.00	985.00	1210.00
\$2300.00	360.00	545.00	775.00	1005.00	1235.00
\$2350.00	365.00	555.00	790.00	1025.00	1260.00
\$2400.00	370.00	565.00	805.00	1045.00	1285.00
\$2450.00	375.00	575.00	820.00	1065.00	1310.00
\$2500.00	380.00	585.00	835.00	1085.00	1335.00
\$2550.00	385.00	595.00	850.00	1105.00	1360.00
\$2600.00	390.00	605.00	865.00	1125.00	1385.00
\$2650.00	395.00	615.00	880.00	1145.00	1410.00
\$2700.00	400.00	625.00	895.00	1165.00	1435.00
\$2750.00	405.00	635.00	910.00	1185.00	1460.00

MONTHLY FAMILY SUPPORT CHART (cont'd)

MONTHLY TAKE- HOME PAY	DEPENDENTS				
	ONE	TWO	THREE	FOUR	FIVE
\$2800.00	410.00	645.00	925.00	1205.00	1485.00
\$2850.00	415.00	655.00	940.00	1225.00	1510.00
\$2900.00	420.00	665.00	955.00	1245.00	1535.00
\$2950.00	425.00	675.00	970.00	1265.00	1560.00
\$3000.00	430.00	685.00	985.00	1285.00	1585.00
\$3,050.00	435.00	695.00	1,000.00	1,305.00	1,610.00
\$3,100.00	440.00	705.00	1,015.00	1,325.00	1,635.00
\$3,150.00	445.00	715.00	1,030.00	1,345.00	1,660.00
\$3,200.00	450.00	725.00	1,045.00	1,365.00	1,685.00
\$3,250.00	455.00	735.00	1,060.00	1,385.00	1,710.00
\$3,300.00	460.00	745.00	1,075.00	1,405.00	1,735.00
\$3,350.00	465.00	755.00	1,090.00	1,425.00	1,760.00
\$3,400.00	470.00	765.00	1,105.00	1,445.00	1,785.00
\$3,450.00	475.00	775.00	1,120.00	1,465.00	1,810.00
\$3,500.00	480.00	785.00	1,135.00	1,485.00	1,835.00
\$3,550.00	485.00	795.00	1,150.00	1,505.00	1,860.00
\$3,600.00	490.00	805.00	1,165.00	1,525.00	1,885.00
\$3,650.00	495.00	815.00	1,180.00	1,545.00	1,910.00
\$3,700.00	500.00	825.00	1,195.00	1,565.00	1,935.00
\$3,750.00	505.00	835.00	1,210.00	1,585.00	1,960.00
\$3,800.00	510.00	845.00	1,225.00	1,605.00	1,985.00
\$3,850.00	515.00	855.00	1,240.00	1,625.00	2,010.00
\$3,900.00	520.00	865.00	1,255.00	1,645.00	2,035.00
\$3,950.00	525.00	875.00	1,270.00	1,665.00	2,060.00
\$4,000.00	530.00	885.00	1,285.00	1,685.00	2,085.00
\$4,050.00	535.00	895.00	1,300.00	1,705.00	2,110.00
\$4,100.00	540.00	905.00	1,315.00	1,725.00	2,135.00
\$4,150.00	545.00	915.00	1,330.00	1,745.00	2,160.00
\$4,200.00	550.00	925.00	1,345.00	1,765.00	2,185.00
\$4,250.00	555.00	935.00	1,360.00	1,785.00	2,210.00
\$4,300.00	560.00	945.00	1,375.00	1,805.00	2,235.00
\$4,350.00	565.00	955.00	1,390.00	1,825.00	2,260.00
\$4,400.00	570.00	965.00	1,405.00	1,845.00	2,285.00
\$4,450.00	575.00	975.00	1,420.00	1,865.00	2,310.00
\$4,500.00	580.00	985.00	1,435.00	1,885.00	2,335.00
\$4,550.00	585.00	995.00	1,450.00	1,905.00	2,360.00
\$4,600.00	590.00	1,005.00	1,465.00	1,925.00	2,385.00
\$4,650.00	595.00	1,015.00	1,480.00	1,945.00	2,410.00
\$4,700.00	600.00	1,025.00	1,495.00	1,965.00	2,435.00
\$4,750.00	605.00	1,035.00	1,510.00	1,985.00	2,460.00
\$4,800.00	610.00	1,045.00	1,525.00	2,005.00	2,485.00
\$4,850.00	615.00	1,055.00	1,540.00	2,025.00	2,510.00
\$4,900.00	620.00	1,065.00	1,555.00	2,045.00	2,535.00
\$4,950.00	625.00	1,075.00	1,570.00	2,065.00	2,560.00
\$5,000.00	630.00	1,085.00	1,585.00	2,085.00	2,585.00

IN THE CHANCERY COURT OF _____ COUNTY, ARKANSAS
 _____ Division

TATE OF ARKANSAS)
) SS
 QUNTY OF)

AFFIDAVIT OF FINANCIAL MEANS
 REVISED 10-93

 Plaintiff
 vs.

 Defendant

Case No. _____

The affiant, being duly sworn, says under penalty of perjury that affiant is the plaintiff () defendant () (check one) herein, and as prepared this financial statement, knows the contents thereof, and that it is true and correct.

INCOME
 Complete item 29 on the page 3

1. My Weekly take-home pay (from line 29 (l) on page 3) _____
2. I claim _____ dependents for the purpose of determining my State of Arkansas withholding. I claim _____ dependents for the purpose of determining my federal withholding. I did () or did not () (check one) claim myself as dependent. I do () or do not () (check one) have additional amount withheld from my payroll checks for tax purposes and, if so, that amount is _____ per week of _____ per pay period and itemized on reverse side.
 All other deductions taken from my payroll check before I receive it total: _____ (from line k8 on page 3).
3. I have income from the following other sources: _____
4. I have cash on hand in the amount of _____ from the following sources(s): _____
5. I have on deposit in banks and savings institutions _____ and its source was _____
6. I have stocks and bonds in the amount of _____ and their source was _____

(Attach additional schedules as needed)

CREDITORS

Complete items 30, 31 and 32 on page 4

7. Debts in the name of plaintiff only: ALL CREDITORS LISTED ON PAGE 4
 TOTAL UNPAID BALANCES \$ (a) _____ TOTAL MONTHLY PAYMENTS \$ (b) _____
8. Debts in the name of defendant only: ALL CREDITORS LISTED ON PAGE 4
 TOTAL UNPAID BALANCES \$ (a) _____ TOTAL MONTHLY PAYMENTS \$ (b) _____
9. Debts in our JOINT NAMES are: ALL CREDITORS LISTED ON PAGE 4
 TOTAL UNPAID BALANCES \$ (a) _____ TOTAL MONTHLY PAYMENTS \$ (b) _____

MONTHLY EXPENSES

3. My present necessary monthly expenses to support myself and _____ child _____ are:
- | | | | |
|--------------------------|----------|------------------------------|----------|
| (a) Rent or housepayment | \$ _____ | (i) Medical | \$ _____ |
| (b) Gas and electricity | \$ _____ | (j) Drugs | \$ _____ |
| (c) Water | \$ _____ | (k) Life Insurance | \$ _____ |
| (d) Telephone | \$ _____ | (l) Auto Insurance | \$ _____ |
| (e) Food | \$ _____ | (m) Fire Insurance | \$ _____ |
| (f) Clothing | \$ _____ | (n) Transportation | \$ _____ |
| (g) Laundry | \$ _____ | (o) Other Expenses | \$ _____ |
| (h) Child care | \$ _____ | | |
| | | (Attach schedules if needed) | |
| | | TOTAL..... | \$ _____ |

A check mark has been placed by all expenses which are not being paid currently.

GENERAL INFORMATION

11. My full name is _____
12. My social security number is _____ Military I.D. No. (if applicable) _____
13. My Arkansas Driver's License Number is _____
14. My date of birth is _____ My place of birth is _____
15. My father's full name is _____
My mother's full name is _____
(They)(He)(She) _____
16. My present resident address is _____ Zip Code _____
17. The full name of children born (or legally adopted) of this marriage are: _____ Zip Code _____
- (1) _____ Date of Birth: _____ S.S. No. _____
- (2) _____ Date of Birth: _____ S.S. No. _____
- (3) _____ Date of Birth: _____ S.S. No. _____
- (4) _____ Date of Birth: _____ S.S. No. _____
- (5) _____ Date of Birth: _____ S.S. No. _____
- (6) _____ Date of Birth: _____ S.S. No. _____
(Attach additional schedule for additional children)
18. My employer is _____
19. My employer's full address is _____ Zip Code _____
20. My home telephone number is _____ My work telephone number is _____
- INFORMATION ABOUT OPPOSING PARTY IN THIS CASE, IF KNOWN (DO NOT GUESS)**
21. The opposing party's full name is _____
22. The opposing party's social security number is _____ Military I.D. No. (if applicable) _____
23. The opposing party's Arkansas Driver's License Number is _____
24. (a) The opposing party's father's full name is _____
(b) The opposing party's mother's full name is _____
(c) (They)(He)(She) reside at _____
(f) (M) deceased (check if applicable) _____ Zip Code _____
25. The opposing party's present resident address is _____ Zip Code _____
26. The opposing party's employer is _____ Zip Code _____
27. The opposing party's employer's address _____ Zip Code _____
28. The opposing party's home telephone number _____ work telephone _____ Zip Code _____

INCOME

29. How often are you paid, and what are your gross wages, salary or commissions due each time?

- WEEKLY
52 times a year
- BIWEEKLY
26 times a year
- SEMI-MONTHLY
24 times a year
- MONTHLY
12 times a year
- OTHER
explain

PAYROLL DEDUCTIONS

(a) GROSS WAGES (a) \$ _____

(b) Federal Income Tax Withheld (b) _____

(c) Arkansas Income Tax Withheld (c) _____

(d) F.I.C.A. (Soc. Sec.) or railroad retirement equivalent (d) _____

(e) Health Insurance (children only) (e) _____

(f) Court ordered child support for dependents of previous marriage or previously legally determined adopted or illegitimate children (f) _____

(g) TOTAL WITHHELD (b) thru (f) above (g) \$ _____

(h) NET TAKE HOME PAY PER PAY PERIOD
(Subtract (g) from (a) above) (h) \$ _____

(i) CONVERT TO WEEKLY TAKE HOME PAY &
CARRY TO LINE 1 on front 29(i) \$ _____
Example (h) above \$300 & is received bi-weekly:
26 x \$300 = \$7,800 divided by 52 = \$150 per week
Carry \$150 on line 1 on front

(j) OTHER ITEMS WITHHELD FROM MY CHECK ARE:

(1) Union Dues	(1) _____
(2) Credit Union, thrift plans	(2) _____
(3) Pension Benefits, stock purchase plans	(3) _____
(4) Charitable contributions	(4) _____
(5) Debt Payments, garnishments	(5) _____
(6) Life Insurance payments	(6) _____
(7) Other (identify)	(7) _____

Items (1) thru (7) above are not allowed in computing take home pay.

(k) TOTAL WITHHELD (total (1) through (7) above) (k) \$ _____

CREDITORS & DEBTS

30. Debts in the name of PLAINTIFF only are:

Creditors		(Total Unpaid Balance)	(Monthly Payments)
1.	_____	1. \$ _____	1. \$ _____
2.	_____	2. \$ _____	2. \$ _____
3.	_____	3. \$ _____	3. \$ _____
4.	_____	4. \$ _____	4. \$ _____
5.	_____	5. \$ _____	5. \$ _____
Attach additional schedules as needed, then TOTAL:		6. \$ _____	6. \$ _____

* Carry to line 7c on page 1

31. Debts in the name of DEFENDANT only are:

Creditors		(Total Unpaid Balance)	(Monthly Payments)
1.	_____	1. \$ _____	1. \$ _____
2.	_____	2. \$ _____	2. \$ _____
3.	_____	3. \$ _____	3. \$ _____
4.	_____	4. \$ _____	4. \$ _____
5.	_____	5. \$ _____	5. \$ _____
Attach additional schedules as needed, then TOTAL:		6. \$ _____	6. \$ _____

* Carry to line 8c on page 1

32. Debts in our JOINT NAMES are:

Creditors		(Total Unpaid Balance)	(Monthly Payments)
1.	_____	1. \$ _____	1. \$ _____
2.	_____	2. \$ _____	2. \$ _____
3.	_____	3. \$ _____	3. \$ _____
4.	_____	4. \$ _____	4. \$ _____
5.	_____	5. \$ _____	5. \$ _____
Attach additional schedules as needed, then TOTAL:		6. \$ _____	6. \$ _____

* Carry to line 9c on page 1

33. The weekly take-home pay of the opposing party is.....\$ _____

34. All other income of the opposing party is.....\$ _____

Signature of Affiant

Subscribed and sworn to before me on this _____ day of _____, 199_____

My commission expires:

NOTARY PUBLIC

NOTICE

BOTH PARTIES MUST COMPLETE AND EXCHANGE THIS FOUR PAGE AFFIDAVIT PRIOR TO THE TEMPORARY HEARING. BOTH PARTIES MUST SUPPLY THE ORIGINAL NOTARIZED AFFIDAVIT TO THE COURT. THE COURT WILL PUNISH PERJURY BY APPROPRIATE ACTION.

IN RE: Loyd Thomas HARPER
Arkansas Bar No. 71037

862 S.W.2d 845

Supreme Court of Arkansas
Delivered November 1, 1993

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Loyd Thomas Harper of Sharp County, Arkansas to practice law in the State of Arkansas.

**Appointments to
Committees**

IN RE: BOARD OF CERTIFIED COURT REPORTER
EXAMINERS

Supreme Court of Arkansas
Delivered July 12, 1993

Chancery Judge Graham Partlow, Blytheville, Arkansas; and Ms Jill Barber, Heber Springs, Arkansas, are reappointed to our Board of Certified Court Reporter Examiners.

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

The Court expresses its gratitude to Judge Partlow and Ms Barber for accepting reappointment to this most important Board.

IN RE: BOARD OF LAW EXAMINERS

861 S.W.2d 313

Supreme Court of Arkansas
Delivered October 11, 1993

PER CURIAM. Circuit/Chancery Judge Wiley Branton, Jr. of Little Rock, Second Congressional District, is appointed to the Board of Law Examiners to serve the remainder of the unexpired term of Webster Hubbell, Esq., who has resigned to accept a position in the United States Department of Justice in Washington, D.C. The term will expire on September 30, 1994.

Circuit/Chancery Judge Joyce Warren, who was appointed as interim board member in Mr. Hubbell's place for the previous two examinations, is released from her appointment. The Court extends its gratitude to Judge Warren for her interim service on the Board.

The Court thanks Judge Branton for accepting appointment to this most important Board.

The Court expresses its appreciation to Mr. Hubbell for his faithful service to the Board.

IN RE: SUPREME COURT COMMITTEE ON
CRIMINAL PRACTICE

Supreme Court of Arkansas
Delivered October 11, 1993

PER CURIAM. Raymond R. Abramson, Esq., Clarendon, Arkansas, is hereby appointed to the Supreme Court Committee on Criminal Practice, replacing David Williams, Esq., Little Rock, Arkansas, who has resigned. The Court thanks Mr. Abramson for accepting appointment to this most important Committee. The Court thanks Mr. Williams for his dedicated service to the Committee.

IN RE: SUPREME COURT COMMITTEE ON CIVIL
PRACTICE

Supreme Court of Arkansas
Delivered October 25, 1993

PER CURIAM. David J. Manley, Esq. of Little Rock is hereby appointed to the Supreme Court Committee on Civil Practice, to serve the remainder of the unexpired term of William R. Wilson, Jr., Esq. of Little Rock, who has resigned from the Committee. This term will end on July 5, 1995.

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

The Court expresses its gratitude to Mr. Wilson for his dedicated service as a member of the Committee.

**IN RE: SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT**

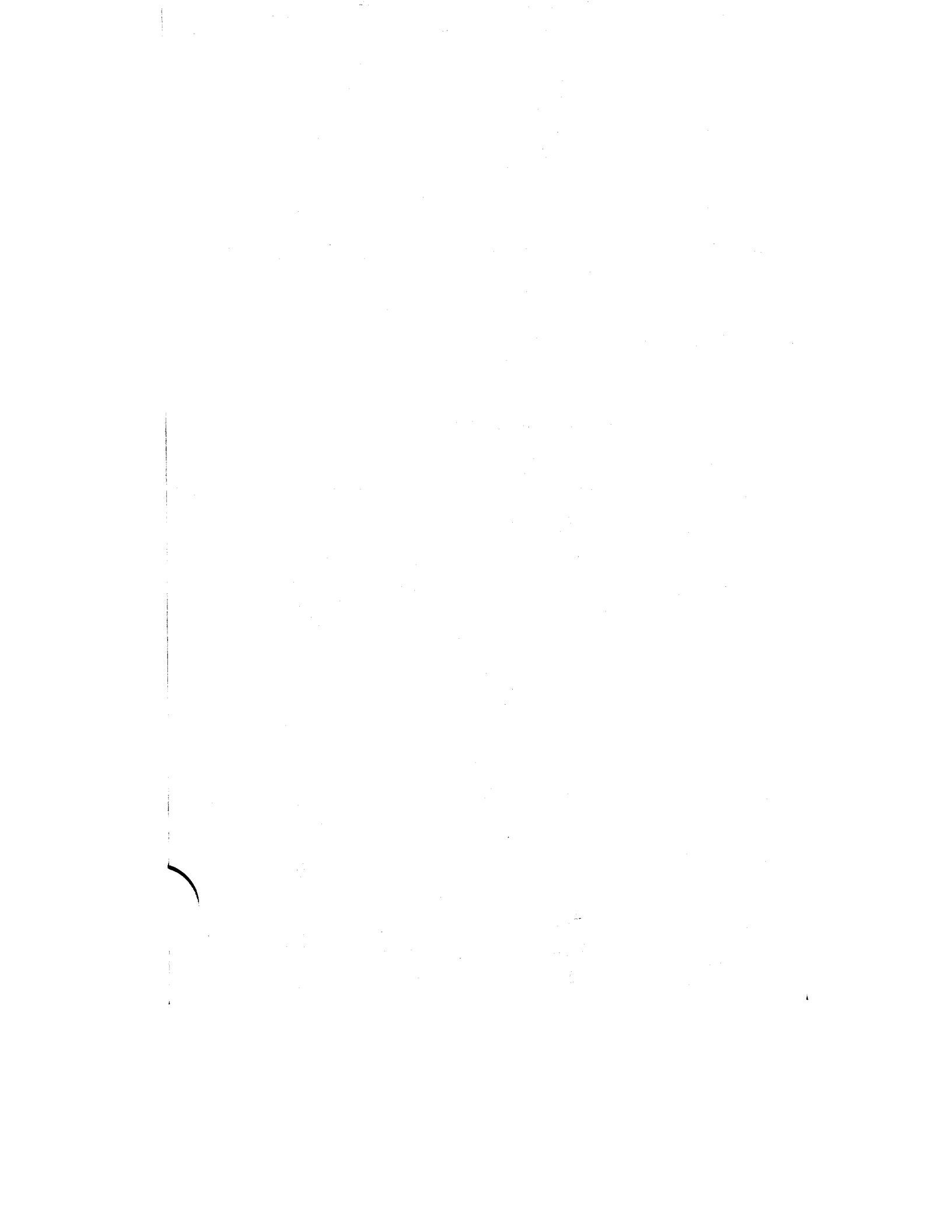
**Supreme Court of Arkansas
Delivered October 25, 1993**

PER CURIAM. Carlton Bailey, Associate Professor of Law, University of Arkansas at Fayetteville, is hereby appointed to the Supreme Court Committee on Professional Conduct, At-Large, to serve the remainder of the unexpired term of Wendell Griffen, Esq., of Little Rock, who has resigned from the Committee. The seven year term will end on March 15, 2000.

The Court thanks Professor Bailey for accepting appointment to this most important Committee.

The Court expresses its gratitude to Mr. Griffen for his service as a member of the Committee.

**Alphabetical
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HEADNOTE INDEX

ADOPTION:

- Grandparent's rights, no absolute right to visitation or intervention. *Suster v. Arkansas Dept. of Human Servs.*, 92.
- Grandparent's rights derivative of son's or daughter's parental rights, subject to divestment. *Id.*
- Law & public policy favor severing all ties with biological family upon adoption. *Id.*
- Grandparent's rights were derivative of daughter's, no right to intervene existed. *Id.*

ADMINISTRATIVE LAW & PROCEDURE:

- Standard of review. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n.*, 98.
- When action arbitrary, review directed toward agency decision. *Id.*
- Determining substantial evidence. *Id.*
- Revoking permit, violation. *Id.*
- Sufficient evidence to support revocation of permit. *Id.*
- Decision could not be arbitrary and capricious if supported by substantial evidence. *Id.*
- Transfer prohibited by permit, substantial evidence of transfer, no rule required to authorize revocation. *Id.*
- Powers of boards, such powers not judicial in nature. *Spradlin v. Arkansas Ethics Comm'n.*, 108.
- Authority of commission limited, function not judicial. *Id.*

APPEAL & ERROR:

- Burden to obtain ruling on party advancing ruling, failure to obtain ruling. *Morgan v. Neuse*, 4.
- Review of ruling on evidence, probative value verses unfair prejudice. *Peters v. Pierce*, 8.
- No reasons given for reversal of order, order remains in effect. *Arkansas Dept. of Human Servs. v. Estate of Hogan*, 19.
- Sufficiency of the evidence, factors on review. *McClure v. State*, 35.
- Review of probate court. *In Re Estate of Spears*, 54.
- Conflict over whether hearing held, absent conflicting information in record, appellate court presumes actions support findings. *Id.*
- Evidence not before trial court, not considered on appeal. *Id.*
- Arguments not timely presented below are not preserved for review. *Id.*
- Res judicata barred appellee's recovery, no injustice found. *Arkansas La. Gas Co. v. Taylor*, 62.
- Rehearing, reargument of points made on appeal prohibited. *Precision Steel Warehouse, Inc. v. Anderson-Martin Mach. Co.*, 272-A.
- Denial of an intervention right based on a claimed interest in litigation, constitutes an appealable order. *Suster v. Arkansas Dept. of Human Servs.*, 92.
- Motion for rule on clerk, good cause for granting. *Buchanan v. State*, 129.
- Misstatement of facts in original opinion was not grounds of rehearing where the decision did not turn on the misstated facts. *Smith v. Stevens*, 538-A.
- Review of custodial, incriminating statement. *Bryant v. State*, 130.
- Review of the evidence on appeal. *Coleman v. State*, 143.

- Jury made a determination as to intent, conclusion a reasonable one. *Id.*
- Motion for rule on the clerk, good cause for granting. *Langford v. State*, 151.
- Criminal statutes strictly construed. *Graham v. State*, 152.
- Record on appeal, abstract. *Meny v. State*, 158.
- Standard of review, search & seizure cases. *Pyle v. State*, 165.
- Review of trial court decision, affirmed on different grounds. *Nationwide Mut. Ins. Co. v. Worthey*, 185.
- Trial court's ruling upheld if correct for any reason, trial judge has considerable discretion as to the scope of cross-examination. *Warren v. State*, 192.
- Motion for rule on the clerk, counsel must concede fault. *Britton v. State*, 220.
- Motion for rule on the clerk, counsel must concede fault. *Garrett v. State*, 225.
- Motion for rule on the clerk, good cause for granting. *Hendrickson v. State*, 228.
- Record not timely filed as to original decree, timely filed record as to supplemental decree to be considered on appeal. *Sunland Enter., Inc. v. Andrews*, 229.
- Argument not heard, no objection raised at trial. *Leavy v. State*, 231.
- Failure to raise constitutional arguments below. *Robinson v. State*, 243.
- Failure to abstract prior convictions, appellate court could not review trial court rulings without abstracts of the prior convictions. *Id.*
- Writ of certiorari, reason for delay shown. *Partin v. State*, 255.
- Erroneous ruling critical, case reversed. *Hill v. State*, 275.
- Failure to abstain ruling at trial. *Patrick v. State*, 285.
- Preserving issue for appeal, issue must be stated clearly and specifically to trial court. *Id.*
- Issue procedurally barred because not specifically presented to trial court. *Id.*
- Grounds for objection may not be changed on appeal. *Cloird v. State*, 296.
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- Arguments not considered for first time on appeal. *Id.*
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- Indigency petition not contested, granted. *Id.*
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- Authority to go to record to affirm. *Id.*
- Burden to produce record showing prejudicial error on appellant. *Id.*
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- preparation that preceded hearings. *Hall v. Staha*, 71.
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- Rules of the road, yielding to vehicle first to enter narrow passage, rule
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- Computation of allowable interest expense was in error, proof still sufficient to
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- Trial court's power to act, lost after ninety days from the filing of the judgment.
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- Appointment of officers not involved in the administration of justice, legislature
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- Custodial statement, voluntary, knowing, and intelligent waiver. *Bryant v. State*, 130.
- Right to counsel did not attach when counsel appointed in another state to advise on extradition. *Id.*
- Right to remain silent. *Miranda* rights impliedly waived. *Id.*
- No requirement *Miranda* warnings be repeated each time appellant questioned. *Id.*
- Warnings and waiver the day before, were sufficient to make confession admissible. *Id.*
- Miranda* warnings and waiver sufficient to waive Fifth and Sixth Amendment rights. *Id.*
- Sixth Amendment, right to confront witnesses, statements of co-conspirators. *Pyle v. State*, 165.
- Due process, substantial compliance with commitment order and statutory requirements for mental exam sufficient. *Hufford v. State*, 181.
- Criminal statutes, when due process requirement of definiteness is violated. *Leavy v. State*, 231.
- Death qualified juries repeatedly found to be constitutional. *Davis v. State*, 257.
- Constitution provides for changes to elective county offices, constitutional provisions take precedence over legislation. *Gravett v. Villines*, 320.
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- Right to remain silent, officers refused to talk to appellant. *Franklin v. State*, 329.
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- Interpretation of, law in effect when contract formed used for interpretive purposes. *City of Lamar v. City of Clarksville*, 413.
- Contracts for water were with the city, utility operators had no authority to modify. *Id.*
- Modification of, appellee did not ratify the unauthorized modification. *Id.*
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- Shareholder derivative suit, actions not in best interest of shareholders. *Id.*
- Shareholder derivative suit, what is beneficial to shareholders. *Id.*
- Shareholder derivative suit, buy-out offer, duty to investigate. *Id.*
- Shareholder derivative suit, actions of limited partnership not separated from actions of the forming partners. *Id.*
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Shareholder derivative suit, review of actions by court. *Id.*
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 Shareholder derivative suit, excessive compensation, fixing cost of fringe benefit package, finding not supported by evidence. *Id.*
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Felon in possession of firearm, "authorization" clause creates defense, it is not an element of the crime. *Fendley v. State*, 435.

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Possession a lesser included offense of manufacturing, manufacturing offense barred by double jeopardy. *Id.*
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Custodial statement not coerced when detective's statement to appellant was made after the statement. *Id.*
Officers need not inform appellant of exact range of possible penalties before he makes custodial statement. *Id.*
Appellant clearly understood consequences of waiver of rights. *Id.*
Critical question, did appellant understand consequences of waiver of right to counsel. *Id.*
Miranda warnings and waiver sufficient for confession made two days later. *Id.*
Statement initiated by appellant, right to counsel waived, conflicting testimony for trier of fact to resolve. *Id.*
Failure of police to follow appellant's counsel's instructions not to question appellant does not affect validity of otherwise valid waiver. *Id.*
No unreasonable delay in taking appellant before magistrate, delay did not cause the statements to be given. *Id.*
Appellant was not tried without knowing charges against him. *Meny v. State*, 158.
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- Admissibility of in-court identification, review on appeal. *Id.*
- Factors to consider in determining admissibility of in-court identification. *Id.*
- In-court identification reliable. *Id.*
- Speedy trial, trial within 12 months of arrest. *Id.*
- Speedy trial, burden shifts to state. *Id.*
- Speedy trial, trial court required to enter written notation of reasons for delay, failure does not require reversal. *Id.*
- Speedy trial, psychiatric exam time exclusions, state met burden of proof. *Id.*
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- Disclosure of identity of informant, court's balancing test, factors to consider. *Id.*
- Disclosure of identity of informant, burden of proof on defendant. *Id.*
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- Preserving challenge to sufficiency of the evidence. *Patrick v. State*, 285.
- Severance, factors in determining whether to grant. *Cloird v. State*, 296.
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- Identification testimony of victim sufficient to convict, jury decides credibility. *Haynes v. State*, 354.
- Denial of motion to sever, when proper. *Littlepage v. State*, 361.
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- Delay in bringing defendant before judicial officer, when a confession taken during delay will be excluded. *Adams v. State*, 431.
- Probable cause hearing, when not conducted within forty-eight hour period following arrest burden of proof shifts to the government. *Id.*
- No unnecessary delay found, confession admissible. *Id.*
- Appellant confined for less than twenty-four hours, appellant failed to meet his burden of proof. *Id.*
- No basis in fact to argument that confessions were involuntary. *Id.*
- Attorney explicitly submitted case for a bench trial, appellant bound by his attorney's action. *Johnson v. State*, 471.
- Arkansas has no implied-consent admonition form, appellant adequately informed of the consequences of refusing to take the chemical test. *Id.*
- Postconviction relief, issue of ineffective counsel raised on direct appeal and addressed. *Missildine v. State*, 500.
- Postconviction relief, claim of ineffective counsel, required showing. *Id.*
- Postconviction relief, judicial review of effectiveness of counsel. *Id.*
- Postconviction relief, matters of trial strategy not grounds for finding ineffective assistance of counsel. *Id.*
- Postconviction relief, failure to show trial court erred in finding trial fair. *Id.*

Failure of sufficient proof, charge should have been dropped. *Richardson v. State*, 512.

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Refusal to sever case, no abuse of discretion. *Id.*

No unfair surprise, case reversed and remanded, appellant well aware of charges. *Id.*

Sentencing enhancement, use of pardoned offenses and charged offenses. *Id.*

Competency test, competence to stand trial. *Mauppin v. State*, 566.

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Collateral source rule violated, error not prejudicial. *Id.*

Evidence sufficiently substantial to support verdict. *Mask v. State*, 25.

Evidence was substantial enough to support a jury verdict, jury not required to believe testimony of the accused. *Id.*

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- Evidence supporting conviction more than substantial, conviction affirmed. *McClure v. State*, 35.
- Directed verdict defined, standard of review when the motion is overruled. *Coleman v. State*, 143.
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- Knowledge, proof using extrinsic evidence. *Id.*
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- Statements of a co-conspirator, not prior inconsistent statements; statements therefore not hearsay and are admissible. *Id.*
- Scope of rebuttal witness's testimony. *Id.*
- Rebuttal evidence defined. *Id.*
- Proper rebuttal, prior bad acts for purpose of showing knowledge. *Id.*
- Determination of relevancy, broad discretion given trial court. *Id.*
- Act done for sexual gratification, direct proof not necessary. *Warren v. State*, 192.
- Exclusion of hearsay testimony proper, question outside of scope of direct examination. *Id.*
- Review of photographs admitted at trial, no reversal absent a manifest abuse of trial court's discretion. *Id.*
- Photographs reviewed by trial court prior to their admittance, no abuse of discretion found. *Id.*
- Photos similar but each was used for a slightly different purpose and were helpful to the jury, no error found. *Id.*
- Denial of motion to suppress, standard of review. *King v. State*, 205.
- Affidavit for search warrant contained minor inaccuracies, no error found in circuit court's refusal to suppress the evidence seized. *Id.*
- Chain of custody, purpose of. *Pryor v. State*, 212.
- Issue of untrustworthiness due to a break in the custody chain, objection must be made at the time the evidence is offered. *Id.*
- Objections not timely, issue not preserved for appeal. *Id.*
- Previous nolo contendere plea used for impeachment, no undue prejudice found. *Id.*
- Use of transcriptions of tape recordings, rule concerning. *Leavy v. State*, 231.
- Use of transcript of tape, trial court properly used its discretion. *Id.*
- Proof sufficient to show appellant functioned as manager. *Id.*
- Proof of substantial income clear. *Id.*
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- Potentially prejudicial evidence, balancing test proper and not to be reversed absent manifest abuse. *Id.*
- State's examination for identification purposes only, rules of evidence not violated. *Smith v. State*, 241.
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- Balancing of probative value against potential prejudice for trial court. *Id.*
- Prior acts of aggression against defendant by someone other than the victim, no abuse of discretion to exclude. *Id.*
- Preservation of an appellant's right to freedom from double jeopardy, review of sufficiency of the evidence required. *Davis v. State*, 257.
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Hearsay, evidence offered to show entrapment not truth of statement, error to exclude it as hearsay. *Hill v. State*, 275.

Hearsay, evidence of entrapment. *Id.*

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Admission of crime lab report into evidence, chemist's presence may be required for purposes of cross-examination. *Lockhart v. State*, 394.

State's tardiness caused inability to comply with ten day notice requirement, no reasonable basis for enforcement of rule in these circumstances. *Id.*

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State policy clear, trial court did not err in refusing to violate policy. *Id.*

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Prima facie case made that wife was a named insured, appellant's use of word "estranged" was not sufficient to raise a question of fact. *Id.*
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Res judicata, no jurisdictional defect, subsequent action barred by parties to first action. *Id.*
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Juror's answers did not render her unfit to serve. *Id.*
Venire presumed unbiased and qualified, burden on contestant. *Id.*
Peremptory strikes not expanded beyond twelve, no authority cited or reasoning offered, issue not reached. *Id.*
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- Motion for continuance due to unavailable witness, factors to be considered. *Cloird v. State*, 296.
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- Motion for directed verdict after state's case, motion waived by presentation of defense evidence, motion renewed at end of all evidence, that motion reviewed on appeal. *Mitchell v. State*, 343.
- Directed verdict is challenge to sufficiency of evidence. *Id.*
- Directed verdict motion challenges sufficiency of the evidence. *Littlepage v. State*, 361.
- Motion for directed verdict denied, no error found. *Harris v. State*, 379.
- Severance within the province of the court, motion to dismiss properly denied. *Lockhart v. State*, 394.
- Granting of motion for mistrial discretionary, when appropriate. *Hall v. State*, 402.
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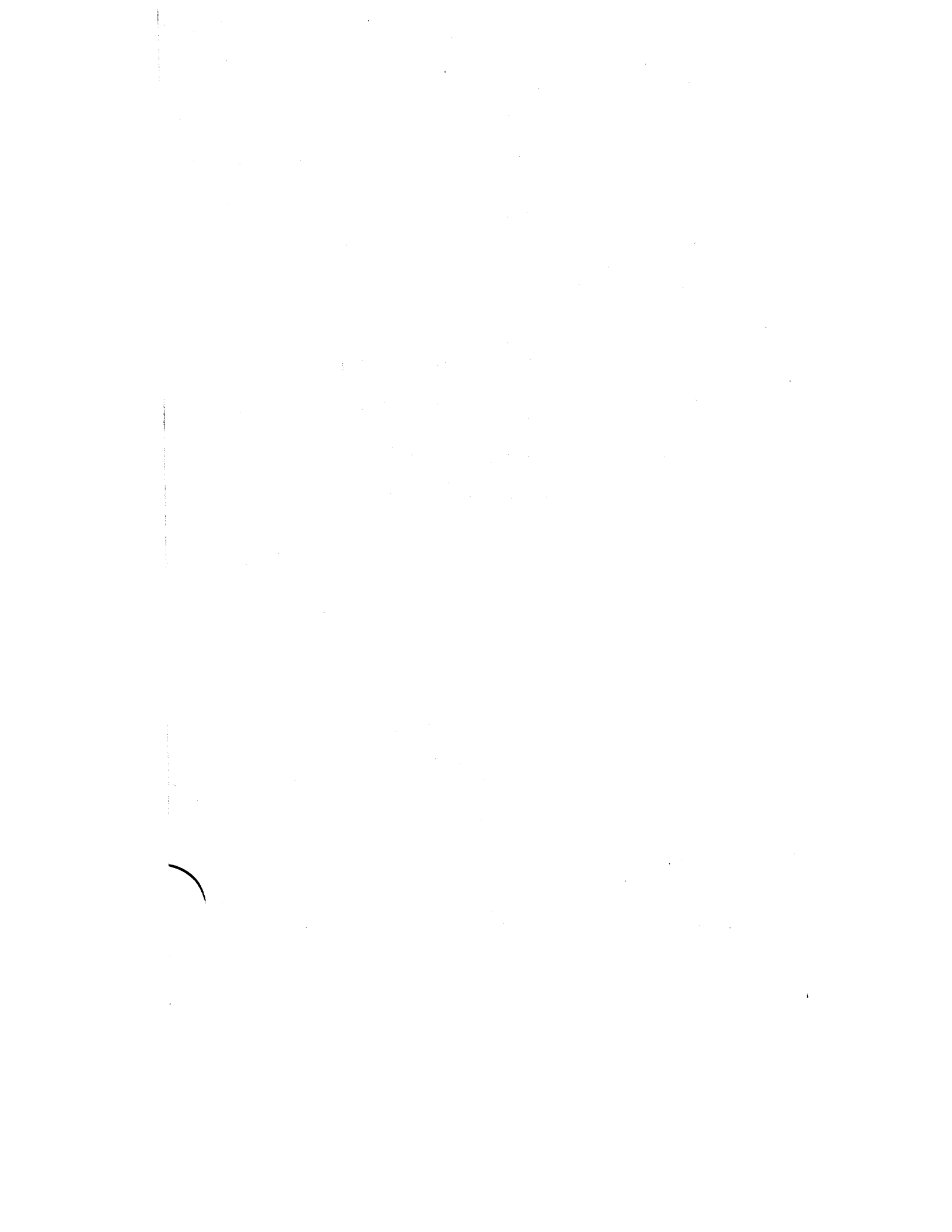
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**ARKANSAS
APPELLATE
REPORTS**

Volume 43

**CASES DETERMINED
IN THE**

**Court of Appeals
of Arkansas**

**FROM
July 7, 1993 — October 27, 1993
INCLUSIVE**

**MARLO M. BUSH
REPORTER OF DECISIONS**

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

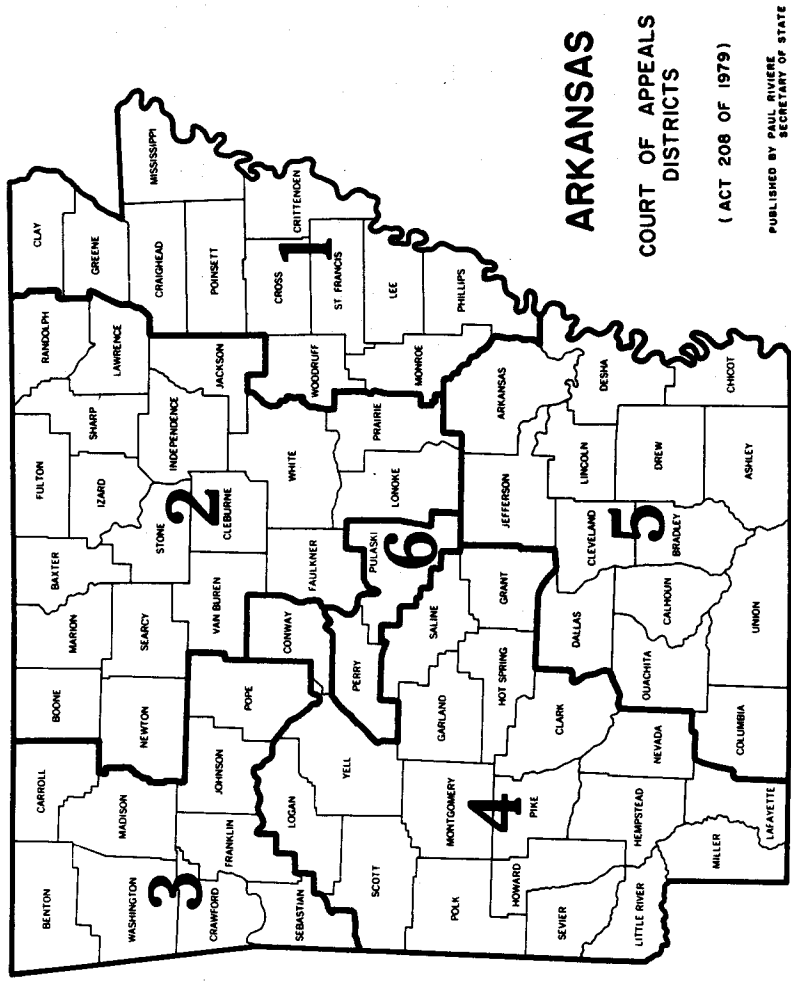
**PUBLISHED BY THE
STATE OF ARKANSAS
1993**



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ARKANSAS

COURT OF APPEALS DISTRICTS

(ACT 208 OF 1979)

PUBLISHED BY PAUL RIVIERE
SECRETARY OF STATE

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

**DURING THE PERIOD COVERED
BY THIS VOLUME
(July 7, 1993—
October 27, 1993, inclusive)**

JUDGES

JOHN E. JENNINGS	Chief Judge¹
JOHN MAUZY PITTMAN	Judge²
JAMES R. COOPER	Judge³
JOHN B. ROBBINS	Judge⁴
MELVIN MAYFIELD	Judge⁵
JUDITH ROGERS	Judge⁶

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.

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

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

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

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

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

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

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Anchor v. Richards, CA 92-1254 (Rogers, J.), affirmed September 8, 1993.
- Arkansas Automatic Sprinklers v. Chapman, CA 92-1319 (Robbins, J.), affirmed September 15, 1993.
- Arkansas Blue Cross & Blue Shield v. Hicky, CA 92-1258 (Per Curiam), appeal dismissed October 20, 1993.
- Arkansas Prod. Mach. Co. v. Lancaster, CA 92-1106 (Cooper, J.), affirmed August 25, 1993.
- Armer v. Davidson, CA 93-351 (Cooper, J.), affirmed September 22, 1993.
- Barnes v. Hudson, CA 92-834 (Per Curiam), supplemental opinion on denial of rehearing September 1, 1993.
- Beaty v. State, CA CR 92-1415 (Robbins, J.), affirmed October 6, 1993.
- Beaverfork Volunteer Fire Dep't, Inc. v. Faulkner-Cleburne County Regional Water Dist., CA 92-1379 (Rogers, J.), affirmed September 22, 1993.
- Bell v. State, CA CR 92-1033 (Robbins, J.), affirmed September 29, 1993.
- Bernd v. Springer, CA 93-421 (Jennings, C.J.), affirmed September 22, 1993.
- Betts v. State, CA CR 92-1281 (Robbins, J.), affirmed September 8, 1993.
- Black v. Black, CA 93-174 (Pittman, J.), affirmed September 22, 1993.
- Bookout v. State, CA CR 92-1245 (Rogers, J.), affirmed September 29, 1993.
- Bowling v. State, CA CR 92-1329 (Rogers, J.), affirmed September 1, 1993.
- Bridger v. Rowbothams, CA 92-1247 (Cooper, J.), affirmed October 20, 1993.
- Brown v. State, CA CR 92-1457 (Rogers, J.), affirmed October 20, 1993.
- Bryant v. Arkansas Public Serv. Comm'n, CA 93-210 (Per Curiam), Motion of Appellee, Southwestern Bell Telephone Co., to Dismiss Appeal, denied September 8, 1993.
- Bryant v. Arkansas Public Serv. Comm'n, CA 93-210 (Per Curiam), Motion of Appellee, Southwestern Bell Telephone Co., to Stay Briefing Schedule, per curiam issued September 8, 1993.

- Charles v. State, CA CR 93-160 (Jennings, C.J.), affirmed October 13, 1993.
- Crews v. State, CA CR 92-1248 (Pittman, J.), affirmed August 25, 1993.
- Crook v. State, CA CR 92-1114 (Mayfield, J.), affirmed September 29, 1993.
- Davis v. Davis, CA 92-1169 (Mayfield, J.), affirmed as modified and remanded July 7, 1993.
- Davis v. State, CA CR 92-1461 (Pittman, J.), affirmed October 20, 1993.
- Dawson v. Hanson Indus., CA 92-1420 (Robbins, J.), affirmed in part; reversed and remanded in part October 20, 1993.
- Dixon v. State, CA CR 92-973 (Cooper, J.), affirmed September 1, 1993.
- Fagan v. Fagan, CA 92-1187 (Robbins, J.), affirmed September 8, 1993.
- Fields v. State, CA CR 93-245 (Robbins, J.), affirmed October 13, 1993.
- First Fed. Sav. & Loan Ass'n v. Jones, CA 93-481 (Pittman, J.), affirmed October 20, 1993.
- Foley v. State, CA CR 92-1268 (Rogers, J.), affirmed October 13, 1993.
- Fugitt v. Fugitt, CA 93-302 (Cooper, J.), reversed and remanded October 13, 1993.
- Ganaway v. Galaxie Office Furniture, CA 92-1309 (Rogers, J.), affirmed October 27, 1993.
- Garner v. Garner, CA 92-1244 (Rogers, J.), affirmed September 8, 1993.
- Glass v. State, CA CR 92-1204 (Cooper, J.), affirmed September 8, 1993.
- Graham v. State, CA CR 92-1296 (Cooper, J.), affirmed September 29, 1993.
- Grizzle v. Gregory, CA 93-26 (Mayfield, J.), affirmed October 13, 1993.
- Halk v. Sisk Trucking Co., CA 92-889 (Jennings, C.J.), affirmed September 1, 1993.
- Hancock v. Owings, CA 93-328 (Robbins, J.), dismissed September 29, 1993.
- Harps Foods, Inc. v. Director, E 92-156 (Cooper, J.), affirmed July 7, 1993.
- Heard v. State, CA CR 92-1300 (Cooper, J.), affirmed October 6, 1993.
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- Henderson v. Springdale Nursing Ctr., CA 93-24 (Robbins, J.), affirmed October 27, 1993.
- High v. Southland Racing Corp., CA 92-794 (Jennings, C.J.), affirmed September 15, 1993.
- Horton v. Horton, CA 93-80 (Robbins, J.), affirmed September 22, 1993.
- Hunter v. State, CA CR 92-1396 (Mayfield, J.), affirmed September 8, 1993.
- Ingram v. State, CA CR 92-1400 (Jennings, C.J.), affirmed September 29, 1993.
- In the Matter of the Adoption of S.J.F., CA 92-1230 (Mayfield, J.), affirmed September 1, 1993.
- Jefferson Regional Medical Ctr. v. Garrison, CA 92-1439 (Pittman, J.), affirmed October 27, 1993.
- Jones v. State, CA CR 92-1112 (Cooper, J.), affirmed September 29, 1993.
- Kelly v. State, CA 92-1002 (Rogers, J.), dismissed September 22, 1993.
- King v. Jimco Mfg. Co., CA 92-1320 (Mayfield, J.), affirmed September 22, 1993.
- Kingsbury v. Robertson, CA 93-705 (Per Curiam), appeal dismissed October 13, 1993.
- Krygowski v. Krygowski, CA 92-873 (Cooper, J.), affirmed September 22, 1993.
- Livesay v. Livesay, CA 93-52 (Rogers, J.), dismissed September 8, 1993.
- McCall v. Shawnee Milling Co., CA 93-221 (Jennings, C.J.), affirmed on appeal; reversed on cross-appeal October 20, 1993.
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- Manning v. Kennedy Trucking Co., CA 92-1162 (Jennings, C.J.), affirmed September 15, 1993.
- Matthews, Inc. v. Director, E 92-171 (Rogers, J.), affirmed August 25, 1993.
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- Michael Curran & Assoc. v. Huntsman, CA 92-1406 (Jennings, C.J.), affirmed September 22, 1993.
- Murphy v. Director, E 92-202 (Robbins, J.), affirmed October

- 20, 1993.
- Naff v. Barnes, CA 92-1391 (Pittman, J.), affirmed on appeal and cross-appeal September 8, 1993.
- Nooner v. Nooner, CA 92-1278 (Pittman, J.), affirmed September 8, 1993.
- North Am. Foundry Co. v. Gopher Pattern Works, Inc., CA 92-1405 (Cooper, J.), affirmed in part, reversed and remanded in part October 6, 1993.
- Nutt v. State, CA CR 92-1260 (Robbins, J.), affirmed September 1, 1993.
- Osmose Wood Preserving Co. v. Rankins, CA 93-25 (Jennings, C.J.), affirmed October 27, 1993.
- Painter v. Townsends of Ark., Inc., CA 92-1050 (Rogers, J.), affirmed September 29, 1993.
- Phillips v. State, CA CR 92-1478 (Pittman, J.), affirmed September 29, 1993.
- Pierce v. Pierce, CA 92-1164 (Robbins, J.), affirmed August 25, 1993.
- Pollard v. State, CA CR 92-609 (Pittman, J.), affirmed September 15, 1993.
- R.G., Jr. v. State, CA CR 92-1001 (Mayfield, J.), affirmed August 25, 1993.
- Randolph County Medical Ctr. v. Vinson, CA 92-1255 (Cooper, J.), affirmed October 6, 1993.
- Ratliff Enter., Inc. v. Arctic Ice Ltd. Partnership, CA 92-1072 (Robbins, J.), affirmed October 6, 1993.
- Reagie v. State, CA CR 92-1433 (Pittman, J.), affirmed September 15, 1993.
- Rector v. State, CA CR 92-1390 (Jennings, C.J.), affirmed September 22, 1993.
- Robertson v. State, CA CR 92-1046 (Cooper, J.), reversed and remanded July 7, 1993.
- Robin v. State, CA CR 92-733 (Rogers, J.), affirmed September 29, 1993.
- Robinson v. State, CA CR 92-918 (Rogers, J.), affirmed October 6, 1993.
- Rogers v. Ayer Chair Makers, CA 92-1335 (Robbins, J.), affirmed September 22, 1993.
- Sharp v. Leeper, CA 92-1448 (Mayfield, J.), affirmed September 15, 1993.
- Shaw v. State, CA CR 92-1203 (Mayfield, J.), affirmed August 25, 1993.

- Shurley v. State, CA CR 92-1207 (Jennings, C.J.), affirmed September 8, 1993.
- Skil Corp. v. Cornelison, CA 92-1133 (Jennings, C.J.), affirmed August 25, 1993.
- Small v. State, CA CR 92-1213 (Rogers, J.), affirmed August 25, 1993.
- Southeast Foods, Inc. v. Morris, CA 93-13 (Robbins, J.), affirmed October 20, 1993.
- Spears v. Director, E 92-193 (Pittman, J.), affirmed October 6, 1993.
- Spence v. Spence, CA 92-1446 (Jennings, J.), affirmed September 29, 1993.
- State Volunteer Mut. Ins. Co. v. American Physicians Ins. Exchange, CA 92-1430 (Rogers, J.), affirmed October 20, 1993.
- Stegall v. Siegal-Robert, Inc., CA 92-1322 (Jennings, C.J.), affirmed October 13, 1993.
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- Stovall v. Stovall, CA 92-1078 (Rogers, J.), affirmed September 8, 1993.
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- Tyson Foods, Inc. v. Turner, CA 92-631 (Pittman, J.), affirmed September 15, 1993.
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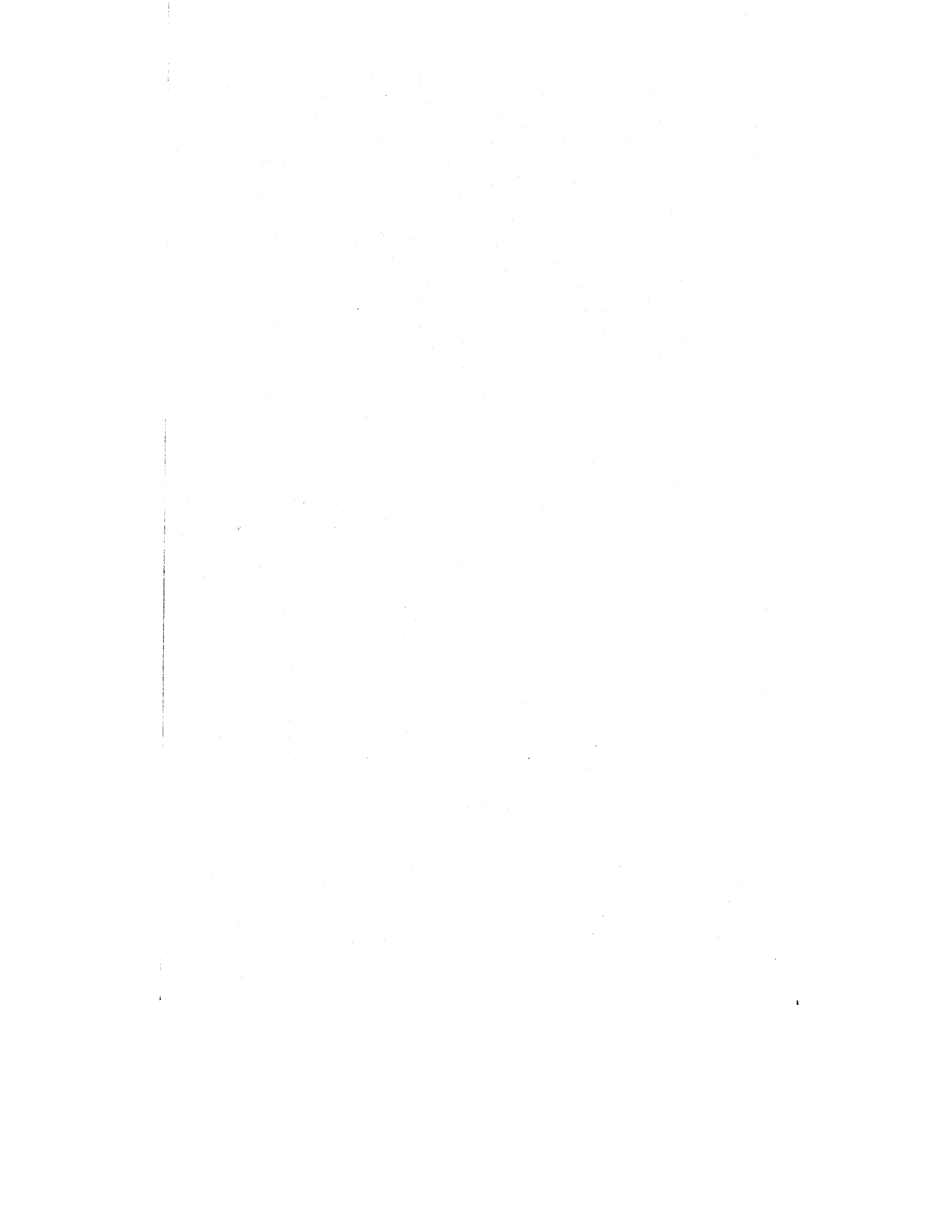
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Yankey v. State, CA CR 92-1409 (Cooper, J.), affirmed October
20, 1993.

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

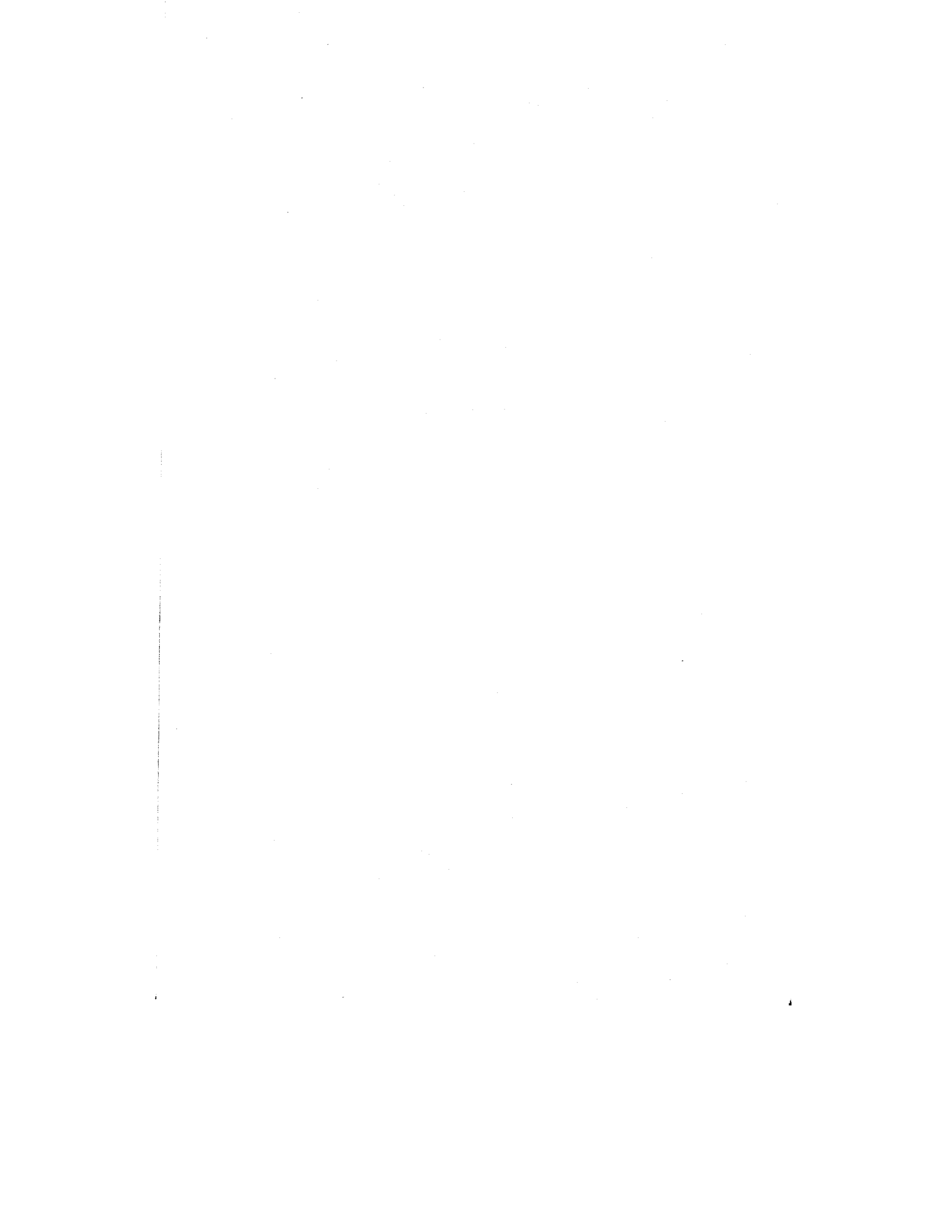
- Abbott v. Director of Labor, E 93-135, October 27, 1993.
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- Review of chancery cases. *Home Federal Savings & Loan Association v. Citizens Bank*, 99.
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