

**ARKANSAS REPORTS
VOLUME 315**

**ARKANSAS
APPELLATE REPORTS
VOLUME 44**

THIS BOOK CONTAINS
ARKANSAS REPORTS
Volume 315

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

FROM
November 8, 1993 – February 7, 1994
INCLUSIVE¹

AND
**ARKANSAS
APPELLATE REPORTS**
Volume 44

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

FROM
November 3, 1993 – February 2, 1994
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1994

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 737. Cite as 315 Ark. ____ (1993) or 315 Ark. ____ (1994).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 160. Cite as 44 Ark. App. ____ (1993) or 44 Ark. App. ____ (1994).



ARKANSAS REPORTS

Volume 315

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
November 8, 1993 – February 7, 1994
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1994

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

**DURING THE PERIOD COVERED
BY THIS VOLUME
(November 8, 1993 –
February 7, 1994, inclusive)**

JUSTICES

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| 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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TOM GLAZE, ASSOCIATE JUSTICE:

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DONALD L. CORBIN, ASSOCIATE JUSTICE:

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PHILIP D. HOUT, SPECIAL ASSOCIATE JUSTICE:

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

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

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In 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

- Akbar v. State, CR 93-966 (Per Curiam), Pro Se Motion to Supplement Appellant's Brief denied January 24, 1994.
- Bealer v. State, CR 93-365 (Per Curiam), Pro Se Motion to Dismiss Attorney denied December 6, 1993.
- Benoit v. Pearson, CR 93-1146 (Per Curiam), Pro Se Petition for Writ of Mandamus moot November 22, 1993.
- Benson v. State, CR 93-609 (Per Curiam), affirmed November 22, 1993.
- Bilal v. Thompson, CR 93-1038 (Per Curiam), Pro Se Petition for Writ of Mandamus moot January 18, 1994.
- Charles v. Davis, CR 93-999 (Per Curiam) Pro Se Petition for Writ of Mandamus moot, January 10, 1994.
- Collins v. State, CR 93-818 (Per Curiam), Pro Se Petition for Rehearing denied December 6, 1993.
- Dixon v. State, CR 93-1222 (Per Curiam), Pro Se Motion for Appointment of Counsel denied December 13, 1993.
- Duvall v. State, CR 93-1072 (Per Curiam), affirmed February 7, 1994.
- Ellis v. State, CR 93-1173 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed December 13, 1993.
- Ford v. State, CR 93-841 (Per Curiam), affirmed November 22, 1993.
- Furlough v. State, CR 92-1442 (Per Curiam), Pro Se Motion for Production of Documents denied November 8, 1993.
- Griffen v. State, CR 93-539 (Per Curiam), Pro Se Motion for Extension of Time to File Pro Se Appellant's Brief denied December 6, 1993.
- Griffin v. State, CR 93-539 (Per Curiam), affirmed January 10, 1994.
- Gross v. State, CR 93-1139 (Per Curiam), Pro Se Motion to File Belated Brief denied and appeal dismissed February 7, 1994.
- Harris v. State, CR 93-255 (Per Curiam), affirmed January 24, 1994.
- Harrison v. State, CR 93-986 (Per Curiam), affirmed January 31, 1994.
- Hill v. State, CR 93-1180 (Per Curiam), Pro Se Motion for Belated Appeal denied January 24, 1994.

- Holloway v. Collins, CR 93-1045 (Per Curiam), Pro Se Motion to File a Handwritten Brief denied and appeal dismissed November 8, 1993.
- Hughey v. State, CR 93-916 (Per Curiam), affirmed November 15, 1993.
- Johnson v. State, CA CR 91-256 (Per Curiam), Pro Se Motion for Photocopy of Transcript and Brief denied November 8, 1993.
- Jones, Charles L. v. State, CR 93-938 (Per Curiam), affirmed December 20, 1993.
- Jones, William Frank v. State, CR 93-1046 (Per Curiam) affirmed February 7, 1994.
- Jones, William Frank v. State, CR 93-1046 (Per Curiam) Supplemental Opinion on Denial of Rehearing March 14, 1994.
- Luna-Holbird v. State, CR 93-1239 (Per Curiam), Pro Se Motions to Supplement Record, Proceed on Handwritten Pleadings, and Join Jared Holbird on Appeal denied and appeal dismissed December 13, 1993.
- McCullough v. Burnett, CR 93-843 (Per Curiam), Pro Se Petition for Writ of Mandamus moot November 22, 1993.
- Miller v. Davis, CR 93-1256 (Per Curiam), Pro Se Petition for Writ of Mandamus moot December 20, 1993.
- Nichols v. State, CR 93-819 (Per Curiam), affirmed November 15, 1993.
- Osborne v. Glover, CR 93-1001 (Per Curiam), Pro Se Petition for Writ of Mandamus moot January 24, 1994.
- Saffell v. State, CR 93-1066 (Per Curiam), Pro Se Motion to Dismiss Appeal granted December 6, 1993.
- Smith v. State, CR 93-604 (Per Curiam), affirmed November 22, 1993.
- Spohn v. State, CR 93-746 (Per Curiam), affirmed November 15, 1993.
- Stokes v. State, CR 93-828 (Per Curiam), affirmed November 8, 1993.
- Thomas v. State, CR 92-1474 (Per Curiam), Pro Se Motion to Supplement Appellant's Brief moot November 22, 1993
- Webb v. State, CR 93-1140 (Per Curiam), Pro Se Motion to File Handwritten Abstract and Brief denied and appeal dismissed January 24, 1994.
- White v. State, CR 93-1213 (Per Curiam), affirmed January 31, 1994.

- Williams v. State, CR 93-777 (Per Curiam), affirmed November 8, 1993.**
- Williams v. State, CR 93-977 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed February 7, 1994.**
- Williams v. State, CR 93-1193 (Per Curiam), Pro Se Motion for Transcript and Other Documents denied and appeal dismissed January 31, 1994.**
- Wilson, Darrell Allen v. State, CR 88-139 (Per Curiam), Pro Se Petition to Proceed in the Circuit Court of Saline County Pursuant to Criminal Procedure Rule 37 denied November 15, 1993.**
- Wilson, Darrell Allen v. State, CR 88-166 (Per Curiam), Pro Se Petition to Proceed in the Circuit Court of Garland County Pursuant to Criminal Procedure Rule 37 denied November 15, 1993.**

APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

IN RE: COMMITTEE ON THE UNAUTHORIZED
PRACTICE OF LAW

78-11

Supreme Court of Arkansas
Opinion delivered November 8, 1993

PER CURIAM: On December 18, 1978, the Court by Per Curiam Order established the Committee on the Unauthorized Practice of Law to receive inquiries and complaints regarding the unauthorized practice of law; to investigate those inquiries and complaints; to conduct hearings, if requested; to issue advisory opinions; and, if necessary, to bring legal action in the appropriate court.

Once the Committee was appointed, it adopted Rules of Procedure which have been amended once by Per Curiam Order on April 13, 1992.

The Committee has now requested that the Court once again amend its Rules of Procedure, and, for the first time, amend certain of the Rules Creating the Committee on the Unauthorized Practice of Law.

Having carefully considered the Committee's request, the Court adopts these recommendations in their entirety and republishes the Rules Creating the Committee on the Unauthorized Practice of Law and the Rules of Procedure in their entirety as amended.

RULES OF COURT CREATING A COMMITTEE ON
THE UNAUTHORIZED PRACTICE OF LAW

Rule I.

COMPOSITION OF COMMITTEE ON UNAUTHORIZED
PRACTICE OF LAW

The Court shall appoint a committee composed of four lawyers and three persons who are not lawyers. One lawyer member of the committee shall be from each Congressional district and the balance of the members shall be from the state at large.

Members shall be appointed to serve a three year term and may be reappointed to a second three year term. A member whose term has expired, shall continue to serve until a replacement is appointed. The committee shall select one of its members as Chair, one as Vice-Chair, and another as secretary.

A majority of the committee shall constitute a quorum.

Rule II.

NAME — SEAL — POWERS

The name of the Committee shall be "The Supreme Court Committee on the Unauthorized Practice of Law." The Committee shall provide for its use a seal of such design as it may deem appropriate, and in the performance of its duties imposed by Rule of Court and by its own rules promulgated pursuant to Rule of Court, shall have authority to issue subpoena for any witness, including the production of documents, books, records, or other evidence, directed to any Sheriff or State Police officer within the state, requiring the presence of any person before it. Such process shall be issued under the seal of the committee and be signed by the Chair or Secretary. Disobedience of any subpoena or a refusal to testify may be regarded as constructive contempt of the Arkansas Supreme Court, and punishable by proceedings in that court.

Rule III.

INQUIRIES AND COMPLAINTS

All inquiries and Complaints relating to the unauthorized practice of law shall be directed to the Committee, in writing, through the Administrative Office of the Courts. Upon receipt of such inquiry or Complaint the Committee may:

a. Without formal investigation make a determination that the action or course of conduct does not constitute unauthorized practice of law, or

b. Determine that probable cause exists for the conduct of a formal investigation and to conduct such investigation as is indicated, including the calling of witnesses for testimony under oath. Thereafter, the Committee shall:

1. Make a determination of whether in the opinion of the Committee, the action or course of conduct under investigation constitutes unauthorized practice of law.

2. Publish an advisory opinion directed to the interested parties and reflecting the decision of the Committee.

c. In the event of a finding of unauthorized practice of law and a continuation of the action or course of conduct after receipt of the Committee's advisory opinion, the Committee may bring an action or actions in the proper Court(s) seeking to enjoin that conduct deemed to constitute unauthorized practice of law, and to pursue such action(s) in the name of the committee to a final conclusion.

Rule IV.

ADOPTION OF RULES

The Committee shall adopt rules of procedure for the handling of inquiries and complaints, and a copy of said rules of procedure shall be filed with the Clerk of the Arkansas Supreme Court, upon approval by the Court, and shall be subject to inspection and made available upon request of any interested person.

Rule V.

EXPENSES

The members of the Committee may be entitled to receive per diem and reasonable reimbursement for the expenses of participating in the work of the Committee, including the cost of meals, lodging and transportation. The rate of reimbursement and per diem and all such expenditures shall be set and approved by the Director of the Administrative Office of the Courts.

Rule VI.

MEETINGS OPEN TO PUBLIC — LEGAL ACTION

All inquiries and Complaints which proceed to hearing(s) before this Committee shall be open to the public and the news media. No advisory opinion issued by this Committee shall be construed as an Order of the Court. However, nothing in this section shall be deemed to restrict or in any manner inhibit the Committee from commencing such legal action as an arm of state

government as it deems proper, to enjoin or restrain an activity or course of conduct deemed by a majority of the Committee to be unauthorized practice of law within the statutes and laws of this state.

**THE SUPREME COURT COMMITTEE ON THE
UNAUTHORIZED PRACTICE OF LAW
RULES OF PROCEDURE**

Pursuant to Section IV of the Per Curiam Rule of the Arkansas Supreme Court dated December 18, 1978, numbered 78-11, the following rules of Procedure for the handling of inquiries and complaints are adopted by the Committee:

1. All matters directed to the attention of the Committee shall be in writing and signed.

2. All matters directed to the attention of the Committee shall be submitted to the Administrative Office of the Courts. The Administrative Office of the Courts will retain the original and promptly mail a copy to each member of the Committee.

3. Each inquiry and/or complaint shall be considered by the entire Committee.

4.(a). The Committee shall meet as needed and shall be subject to the call of the Chair upon seven (7) days notice. The Chair shall issue a call upon receipt of six (6) inquiries or complaints subsequent to the last meeting of the Committee.

(b). At the Chair's discretion, a meeting may be scheduled by telephone conference call.

5. Upon full discussion and consideration of an inquiry or complaint, a. if the Committee determines that there is probable cause that an act or acts of the unauthorized practice of law has occurred, the Committee may issue a letter to that effect, directing that the party cease and desist said act or acts. A copy of the letter shall be mailed to the complaining party. b. When necessary, the inquiry or complaint may be assigned to a member of the Committee to draft a formal opinion detailing the Committee's findings of probable cause that an act or acts of the unauthorized practice of law has occurred. In that instance, the opinion may, at the Committee's request, be circulated to all members

for final approval before it is issued and mailed to the parties. c. If the Committee determines that there is insufficient evidence on which to proceed, the Committee shall issue a response to the complaining party to that effect.

6. The Administrative Office of the Courts shall prepare and shall send by certified mail return receipt requested, all necessary correspondence at the direction of the Chair and shall send copies of said correspondence to each member of the Committee. The Administrative Office of the Courts shall maintain a file of all documents submitted or prepared in each case.

7. In the event unauthorized practice of law is indicated, notice of right to a formal hearing shall be included with the Committee's opinion sent to the party by certified mail.

(a). If a formal hearing is desired, the request must be made in writing and must specify that part of the opinion to be challenged.

(b). A hearing shall be held as soon as practical but no later than 120 days after receipt of the request.

(c). A list by name and address, of all witnesses expected to be called to testify at the formal hearing shall be exchanged by the party and the Committee at least 48 hours prior to the hearing.

(d). The party may obtain the issuance of subpoenas for witnesses by request to the Committee Chair. The request shall include the name and residence address of the proposed witness.

(e). The party may request of the Committee that a transcript be made of the proceedings. The requesting party shall bear the cost of the preparation of the transcript.

(f). The formal hearing shall be conducted in a manner prescribed by the Committee Chair, who shall preside, or designate a Committee member to preside.

(g). The burden of proving action constituting the unauthorized practice of law shall be with the Committee.

(h). At the close of all the evidence the Committee shall deliberate and shall reconvene the hearing to announce its decision.

(i). If warranted, the Chair shall appoint a member of the Committee to draft a new opinion or supplemental opinion to be handled as provided in paragraphs numbered 5 and 6 herein.

IN THE MATTER OF RECOMMENDATIONS
OF THE ARKANSAS SUPREME COURT
COMMITTEE ON CIVIL PRACTICE; Ark. R. Civ. P. 4, 5, 15,
22, 44, 49, and 58; Ark. R. App. P. 2, and 4;
Arkansas Supreme Court and Court of Appeals
Rule 2-3.

Supreme Court of Arkansas
Delivered November 8, 1993

PER CURIAM. The Arkansas Supreme Court Committee on Civil Practice has submitted its annual recommendations for changes in the Arkansas Rules of Civil Procedure as well as proposals for changes in the Arkansas Rules of Appellate Procedure, Rules of the Arkansas Supreme Court and Arkansas Court of Appeals, and Administrative Orders.

We publish the following changes to the Rules and the Reporter's Notes for comment from the bench and bar. Unless withdrawn or altered by further order, the changes will become effective January 1, 1994.

We again express our gratitude to the Chair of the Committee, Judge Henry Wilkinson, its Reporter, Professor John J. Watkins, and the Committee membership for their faithful and helpful work with respect to the Rules.

Comments and suggestions on these prospective rules changes may be made in writing addressed to:

Clerk, Arkansas Supreme Court
Attn: Civil Procedure Rules
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

Comments and suggestions on the Arkansas Rules of Civil Procedure, generally, should be addressed to:

Professor John J. Watkins
Leflar Law Center
University of Arkansas
Fayetteville, Arkansas 72701

Rule 4, Arkansas Rules of Civil Procedure

1. Subdivision (d)(5) of Rule 4 is hereby amended to read as follows:

Upon a domestic or foreign corporation or upon a partnership, limited liability company, or any unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, partner other than a limited partner, managing or general agent, or any agent authorized by appointment or by law to receive service of summons.

2. Subdivision (d)(8)(A) of Rule 4 is hereby amended by inserting the following between the first and second sentences:

The addressee must be a natural person specified by name.

3. The Reporter's Notes accompanying Rule 4 are hereby amended by adding the following:

Addition to Reporter's Notes, 1993 Amendment: Subdivision (d)(5) is amended by inserting the term "limited liability company." As a result of the amendment, these entities are to be served in the same manner as other business organizations, such as corporations and partnerships. Act 1003 of 1993, the Small Business Entity Tax Pass Through Act, provides for service on the registered agent of a limited liability company and, in some cases, on the Secretary of State. However, the Act expressly provides that it does not limit or restrict "the rights to serve process in any other manner now or hereafter provided by law." Act 1003, § 107(c). This provision plainly contemplates that alternative methods of service, such as those set out in Rule 4, may be employed. See *CMS Jonesboro Rehabilitation, Inc. v. Lamb*, 306 Ark. 216, 812 S.W.2d 472 (1991) (discussing analogous statute).

Subdivision (d)(8)(A) is amended to provide that when service is made by mail pursuant to this provision, the addressee must be "a natural person specified by name." The amendment is necessary to comply with Postal Service rules. Under Section 933.1 of the Domestic Mail Manual, "[r]estricted delivery service permits a mailer to direct

delivery only to the addressee or the addressee's authorized agent," and "[t]he addressee must be an individual (or natural person) specified by name."

Rule 5, Arkansas Rules of Civil Procedure

1. Subdivision (c) of Rule 5 is hereby amended by adding the following at the end of the subdivision:

The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in the proper form.

2. The Reporter's Notes accompanying Rule 5 are hereby amended by adding the following:

Addition to Reporter's Notes, 1993 Amendment:

Rule 5(c) is amended by adding a new sentence providing that the clerk shall not refuse to accept any paper for filing solely because it is not presented in the proper form. Virtually identical language was added to Rule 5(e) of the Federal Rules of Civil Procedure in 1991. The amendment reflects the view that a judge, not the clerk, is the proper official to make determinations of this type. Moreover, a clerk's refusal to accept a document for filing exposes litigants to the hazards of time bars.

Rule 15, Arkansas Rules of Civil Procedure

1. Subdivision (c) of Rule 15 is hereby amended to read as follows:

(c) Relation Back of Amendments: An amendment of a pleading relates back to the date of the original pleading when:

(1) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(2) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (1) is satisfied and, within the period provided by Rule 4(i) for service of the summons and com-

plaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

2. The Reporter's Notes accompanying Rule 15 are hereby amended by adding the following:

Addition to Reporter's Notes, 1993 Amendment: Subdivision (c) is revised to prevent parties against whom claims are made from taking unfair advantage of otherwise inconsequential pleading errors to sustain a limitations defense. The changes are based on the 1991 amendments to the corresponding federal rule.

Paragraph (1) is simply a restatement of the general "relation back" principle and works no change in the law. However, paragraph (2) effectively overturns the interpretation that had been given FRCP 15 with respect to a misnamed defendant. See *Schiavone v. Fortune*, 477 U.S. 21 (1986), cited with approval in *Harvill v. Community Methodist Hospital Ass'n*, 302 Ark. 39, 786 S.W.2d 577 (1986), and *Southwestern Bell Tel. Co. v. Blastech, Inc.*, 313 Ark. 202, 852 S.W.2d 813 (1993). Under the revised rule, an intended defendant who is notified of an action with the period allowed by Rule 4(i) for service of a summons and complaint may not defeat the action on account of a defect in the pleading with respect to the defendant's name, provided that the requirements of clauses (A) and (B) have been satisfied. If the notice is received within the period specified in Rule 4(i), including an extension granted pursuant to that rule, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentification.

Rule 22, Arkansas Rules of Civil Procedure

1. Rule 22 is hereby amended by redesignating the present text of the rule as subdivision (a) and by adding the following as subdivision (b):

(b) A plaintiff who disclaims any interest in the money or property that is the subject of the interpleader action shall, upon depositing the money or property in the registry of the court, be discharged from all liability. The trial court may make an award of reasonable litigation expenses, including attorneys' fees, to such a plaintiff.

2. The Reporter's Notes accompanying Rule 22 are hereby amended by adding the following:

Addition to Reporter's Notes, 1993 Amendment:

Rule 22 is amended by adding new subdivision (b), which provides that a disinterested stakeholder—*i.e.*, a plaintiff who disclaims any interest in the money or property—is to be discharged from liability upon depositing the money or property in the registry of the court. Further, such a disinterested stakeholder may be awarded attorneys' fees and other litigation expenses, in the discretion of the court. Subdivision (b) is based on a statute that was superseded when Rule 22 was adopted; however, the revised rule departs from the statute by making a fee award discretionary rather than mandatory. *See* Ark. Stat. Ann. § 27-816 (Repl. 1962). Absent express authorization, a fee award is impermissible in an interpleader action, even though the stakeholder is disinterested and brings about resolution of the conflicting claims by initiating the action. *See, e.g., Saunders v. Kleier*, 296 Ark. 25, 751 S.W.2d 343 (1988).

Rule 44, Arkansas Rules of Civil Procedure

1. Subdivision (a)(1) of Rule 44 is hereby amended by substituting the following for the first sentence:

An official record kept within the United States, or any state, district or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody.

2. Subdivision (a)(2) of Rule 44 is hereby amended by adding the following new sentence at the end of the subdivision:

The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

3. The Reporter's Notes accompanying Rule 44 are hereby amended by adding the following:

Addition to Reporter's Notes, 1993 Amendment:

The changes made in subdivisions (a)(1) and (a)(2) are identical to those made in the corresponding federal rule in 1991. The amendment to subdivision (a)(1) strikes the references to specific territories, two of which are no longer subject to the jurisdiction of the United States, and adds a generic term to describe governments having a relationship with the United States such that their official records should be treated as domestic records.

The amendment to subdivision (a)(2) adds a sentence to dispense with the final certification by diplomatic officers when the United States and the foreign country where the record is located are parties to a treaty or convention that abolishes or displaces the requirement. In that event the treaty or convention is to be followed. This changes the former procedure for authenticating foreign official records only with respect to records from countries that are parties to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. It does not affect the former practice of attesting the records, but only changes the method of certifying the attestation. *See generally* Comment, 11 Harv. Int'l L.J. 476 (1970).

Rule 49, Arkansas Rules of Civil Procedure

1. The final sentence of subdivision (a) of Rule 49, Arkansas Rules of Civil Procedure, is hereby amended to read as follows:

When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the

jury for further consideration of its answers and verdict or shall order a new trial.

Rule 58, Arkansas Rules of Civil Procedure

1. The publisher of the Arkansas Court Rules is directed to delete the "publisher's note" following Rule 58, Arkansas Rules of Civil Procedure. The note is no longer accurate in light of the 1990 amendment to the rule.

Rule 2, Arkansas Rules of Appellate Procedure

1. Subdivision (b) of Rule 2, Arkansas Rules of Appellate Procedure, is hereby amended by adding a period at the end of the subdivision, following the word "judgment."

Rule 4, Arkansas Rules of Appellate Procedure

1. Subdivision (b) of Rule 4, Arkansas Rules of Appellate Procedure, is hereby amended to read as follows:

Upon timely filing in the trial court of a motion for judgment notwithstanding the verdict under ARCP 50(b), of a motion to amend the court's findings of fact or to make additional findings under ARCP 52(b), or of a motion for a new trial under ARCP 59(b), the time for filing of the notice of appeal shall be extended as provided in this rule.

2. The final sentence of subdivision (c) of Rule 4, Arkansas Rules of Appellate Procedure, is hereby amended to read as follows:

No additional fees shall be required for such filing.

Rule 2-3, Arkansas Supreme Court Rules

Subdivision (b) of Rule 2-3 is hereby amended to read as follows:

(b) RESPONSE. The respondent may file a brief on the following Monday (in the Supreme Court) or Wednesday (in the Court of Appeals) or within seven (7) days from the filing of the petition for rehearing, whichever last occurs, or may, on or before that time, obtain an extension of one (1) week upon written motion to the Court.

IN RE: SUPREME COURT COMMITTEES AND BOARDS

Supreme Court of Arkansas
Delivered December 13, 1993

PER CURIAM. The Court, with the assistance of the Administrative Office of the Courts, has conducted a study of the structure, functions, and needs of its various committees and boards and finds that two issues require the Court's attention.

First, currently four committees of the fourteen standing committees and boards, Criminal Practice, Civil Jury Instructions, Automation, and Child Support have no set terms. In addition, the Criminal Jury Instructions Committee previously provided for terms which have now expired. Second, there is no uniformity regarding budgets, rates of reimbursement, per diem, and expenditures among the committees and boards.

To provide consistency yet considering the diverse functions of the committees and boards, the Court issues this Per Curiam to establish terms for those committees listed above and to state the procedure which will apply to all of the Court's committees and boards consistent with the administrative and budgeting revisions recently adopted by the Court.

The Committee on Criminal Practice currently consists of 18 attorneys and judges statewide, including the Court's liaison Justice who serves at will. Members shall be appointed by the Court to serve a three-year term and may be reappointed to a second three-year term. A member whose term has expired, shall continue to serve until a replacement is appointed. Provided, the existing committee members shall draw for staggered terms in the following manner, said staggered terms to expire on January 31 of the applicable calendar year. Four members shall draw for terms of one (1) year; five members shall draw for terms of two (2) years; and eight members shall draw for terms of three (3) years. Through attrition, the Committee on Criminal Practice shall be limited to a maximum of 15 members.

The Committee on Model Jury Instructions-Criminal shall continue to consist of 14 attorneys and judges statewide, including the Court's liaison Justice who serves at will. Members shall

be appointed by the Court to serve a three-year term and may be reappointed to a second three-year term. A member whose term has expired, shall continue to serve until a replacement is appointed. Provided, the existing committee members shall again draw for staggered terms in the following manner, said staggered terms to expire on the last day of February of the applicable calendar year. Four members shall draw for terms of one (1) year; four shall draw for terms of two (2) years; and five shall draw for terms of three (3) years.

The Committee on Model Jury Instructions-Civil shall continue to consist of 13 attorneys and judges statewide, including the Court's liaison Justice who serves at will. Members shall be appointed by the Court to serve a three-year term and may be reappointed to a second three-year term. A member whose term has expired, shall continue to serve until a replacement is appointed. Provided, the existing committee members shall draw for staggered terms in the following manner, said staggered terms to expire on April 30 of the applicable calendar year. Four members shall draw for terms of one (1) year; four shall draw for terms of two (2) years; and four shall draw for terms of three (3) years.

The Committee on Automation shall be expanded from seven to nine members to consist of lawyers and judges statewide, including the Court's liaison Justice and the Reporter from the Administrative Office of the Courts who serve at will. Members shall be appointed by the Court to serve a three-year term and may be reappointed to a second three-year term. A member whose term has expired, shall continue to serve until a replacement is appointed. Provided, the existing and newly-appointed committee members shall draw for staggered terms in the following manner, said staggered terms to expire on October 31 of the applicable calendar year. Two members shall draw for terms of one (1) year; two shall draw for terms of two (2) years; and three (3) shall draw for terms of three (3) years.

The Committee on Child Support shall consist of ten members, to include one Arkansas Court of Appeals Judge, three chancellors, one juvenile division circuit/chancery judge, one legal services attorney, one Child Support Enforcement Unit attorney, two attorneys of the private bar, and one attorney member of the

Arkansas General Assembly. Members shall be appointed by the Court to serve a four-year term and may be reappointed to a second four-year term. A member whose term has expired, shall continue to serve until a replacement is appointed. Provided, the newly constituted committee shall draw for staggered terms in the following manner, said staggered terms to expire on November 30 of the applicable calendar year. Two members shall draw for terms of one (1) year; three shall draw for terms of (2) two years; three (3) shall draw for terms of three years; and two shall draw for terms of four (4) years.

Previous per curiams and/or established rules and regulations of committees and boards provide for the authority to pay members for per diem, travel, and related expenses. In order to assure that the administrative and budgeting revisions recently adopted by the Court can be implemented and coordinated, the budgets, rates of reimbursement, per diem, and all expenditures of Supreme Court committees and boards shall be set and approved by the Director of the Administrative Office of the Courts.

IN RE: COMPLIANCE WITH RULE 1.15 OF THE MODEL
RULES OF PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered December 20, 1993

PER CURIAM. The Arkansas Bar Association has filed a petition with the Court stating that there are attorneys licensed to practice law in Arkansas who continue to ignore the provisions of Rule 1.15 of the Model Rules of Professional Conduct by commingling and using clients' funds without appropriate trust accounts.

The Rule states in pertinent part:

"A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall

be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person."

The Comment to the Rule states in pertinent part:

"A lawyer should hold property of others with the care required of a professional fiduciary. . . . All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities."

The ABA proposes that the Court require certification by attorneys each year, when paying the licensure renewal fee, that the attorney has complied with and will continue to comply with all ethical rules concerning the maintenance of a trust account into which a client's funds or those funds in which a client may have an interest will be deposited pending proper disposition of said funds. The ABA submits that in this way attention would be focused on the importance of complying with Rule 1.15.

By an earlier Per Curiam the Court referred the Petition to the Committee on Professional Conduct for review and advice, and the Committee has responded that it concurs with the ABA's position.

Having now thoroughly considered the matter, the Court directs that henceforth when paying the annual Arkansas Supreme Court license renewal fee, an attorney shall certify that he or she has complied with and will continue to comply with all ethical rules concerning the maintenance of a trust account into which a client's funds or those funds in which a client may have an interest will be deposited pending proper disposition of said funds.

Further, willful failure to provide said certification shall constitute grounds for discipline under the provisions of Section 1 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

NEWBERN, J., dissents and DUDLEY, J., joins in the dissent.

DAVID NEWBERN, Justice, dissenting. It is inconceivable to me that a person who graduates from an accredited school of law and passes the Arkansas bar examination could be unaware of the requirements of Rule 1.15 of the Model Rules of Professional Conduct. It provides simple requirements for separating clients' funds from lawyers' funds and for record keeping. The Rule is no less accessible than any of the other Model Rules.

Nothing about Rule 1.15 suggests to me that it is in any particular way related to the annual renewal of an attorney's license. By selecting compliance with one rule for periodic certification we make it seem that the numerous other, and equally important, rules need not be kept in mind. It would be more appropriate to require a certification of past and future compliance with respect to all of the rules or perhaps a certification that the lawyer has reread the rules within 30 days prior to renewal of his or her license.

Lawyers should be held to exacting standards of compliance with all of the Model Rules of Professional Conduct. To require this sort of "reminder" trivializes those rules.

I respectfully dissent.

DUDLEY, J., joins in this dissent.

IN RE: RULES GOVERNING ADMISSION TO THE BAR

Supreme Court of Arkansas
Delivered December 20, 1993

PER CURIAM. On June 18, 1991, the Arkansas Board of Law Examiners filed with the Court proposed changes to the Rules Governing Admission to the Bar. Those proposals were later amended and resubmitted on April 22, 1992. No changes to Rule XV, *Student Practice*, were submitted during that period of time.

By Per Curiam of May 18, 1992, we adopted the amended rules as proposed by the Board. In that per curiam, we inadvertently omitted any reference to unamended Rule XV.

Although the Court has some concerns regarding the provisions of Rule XV in its present form, it was not our intent to omit the Rule. Therefore, we now republish Rule XV in its entirety. Further, we refer Rule XV to the Board of Law Examiners for study and recommendations to the Court.

Rule XV.**STUDENT PRACTICE****A. Purpose**

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, this rule is adopted.

B. Activities

1. An eligible law student may appear in any court or before any administrative tribunal in this State on behalf of any indigent person if the person on whose behalf he or she is appearing has indicated in writing his or her consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

(a) *Any civil matter.* In such cases the supervising lawyer is not required to be personally present in court if both (a) the court or administrative tribunal before whom an appearance is being made, after reasonable advance notice in writing, and (b) the person on whose behalf an appearance is being made, consent to his or her absence.

(b) Any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer is not required to be personally present in court if both (a) the court of [or] administrative tribunal before whom an appearance is being made, after reasonable advance notice in writing, and (b) the person on whose behalf an appearance is being made, consents to his or her absence.

(c) Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

2. An eligible law student may also appear in any criminal matter on behalf of the State with the written approval of the prosecuting attorney or his or her authorized representative and of the supervising lawyer.

3. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

C. Requirements and Limitations

In order to make an appearance pursuant to this rule, the law student must:

1. Be duly enrolled in this State in law school approved by the American Bar Association.

2. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis.

3. Have certified by the dean of his or her law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

4. Be introduced to the court in which he or she is appearing by an attorney admitted to practice in that court.

5. Neither ask for nor receive any compensation of any kind for his services in connection with any court appearance.

6. Certify in writing that he or she has read and is familiar with the Model Rules of Professional Conduct adopted by this court.

D. Certification

The certification of a student by the law school dean:

1. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination the certification shall continue in effect until the date he or she is admitted to the bar.

2. May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.

3. May be terminated by this Court at any time without notice or hearing and without any showing of cause. Notice of the termination may be filed with the Clerk of the Court.

4. After a law student has appeared in a trial court on one or more occasions, a judge of the trial court may terminate the authority of any such student to appear subsequently in the court or division thereof over which he presides, for good cause.

E. Other Activities

1. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:

(a) Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

(b) Preparation of briefs, abstracts, and other documents to be filed in appellate courts of this State, but such documents must be signed by the supervising lawyer.

(c) Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.

F. Supervision

The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

1. Be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled.

2. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

3. Assist the student in his or her preparation to the extent

the supervising lawyer considers it necessary.

G. Miscellaneous

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that he or she might lawfully do prior to the adoption of this rule. [Adopted April 27, 1987.]

IN RE: CHILD SUPPORT COMMITTEE

Supreme Court of Arkansas
Delivered December 20, 1993

PER CURIAM. By Per Curiam of October 25, 1993, in which we adopted revised guidelines for child support, we gave notice of our intention to reconstitute the Child Support Committee as the original members had tirelessly served since the Committee's inception in 1990.

As a result, we now announce that the Committee shall henceforth consist of ten members to include one Arkansas Court of Appeals Judge, three chancellors, one juvenile division circuit/chancery judge, one legal services attorney, one Office of Child Support Enforcement attorney, two attorneys of the private bar, and one attorney member of the Arkansas General Assembly and make the following appointments.

The Honorable Judith Rogers of Little Rock is appointed as the Arkansas Court of Appeals member. The Honorable Ellen Brantley of Little Rock, Honorable Warren Kimbrough of Ft. Smith, and Honorable Kathleen Bell of West Helena are appointed as the chancery judge members. The Honorable Terry Crabtree of Bentonville is appointed as the juvenile division circuit/chancery judge member. Don Hollingsworth, Esq. of Little Rock is appointed as the legal services attorney. James Barnhill, Attorney Supervisor, is appointed as the Office of Child Support Enforcement member. Larry Carpenter, Esq. of North Little Rock

and Harry Truman Moore, Esq. of Paragould are appointed as the private bar members. The Honorable Jodie Mahony, State Representative of El Dorado is appointed as the Arkansas General Assembly member.

As provided in our Per Curiam of December 13, 1993, the members are instructed to draw for staggered terms as follows: two members shall draw for terms of one (1) year; three shall draw for terms of two (2) years; three shall draw for terms of three (3) years; and two shall draw for terms of four (4) years. The staggered terms shall expire on November 30 of the applicable calendar year. Thereafter, members shall be appointed by the Court for terms of four years, and each may be reappointed to a second four-year term. A member whose term has expired shall continue to serve until a replacement is appointed.

The Court thanks the appointees for agreeing to serve on this most important Committee as reconstituted and expresses its gratitude to each member of the original Committee for their tireless and dedicated service to Court. The Court posthumously recognizes Ben Rowland, Esq. of Little Rock for his exemplary service as a member of the original Committee. Mr. Rowland retired from the Committee prior to his death this year.

IN RE: RULES GOVERNING ADMISSION TO THE BAR

Supreme Court of Arkansas
Delivered January 18, 1994

PER CURIAM. The Board of Law Examiners has submitted proposed amendments in the last paragraph of Rule IX, *Examination-Subjects-Passing Grade* to permit retention and use of an applicant's passing essay score or passing score on the Multistate Bar Examination in examinations given within the next three years; subparagraph 4 of Rule XII, *Requirements For Taking Examination* to allow for taking the Arkansas Bar Examination an unlimited number of times; and the fourth paragraph of section A of

Rule XIII, *General Information*, of the Rules Governing Admission to the Bar to provide that the Executive Secretary of the Board shall conduct initial reviews of applications for initial instatement or reinstatement to the Arkansas Bar. Having carefully considered these proposals, the Court adopts the proposed amendments and republishes Rules IX, XII, and XIII in their entirety as amended. The amended Rules become effective immediately.

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 any succeeding examination if such examination is given within three years or six consecutive examination sessions after either score is obtained, whichever period of time is longer. In addition, an applicant may transfer from another jurisdiction a Multistate Bar Examination scale score provided that such score may be transferred for a period of up to three years or six consecutive examination sessions after its acquisition, whichever is longer.

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.)

Rule XII.

REQUIREMENTS FOR TAKING EXAMINATION

1. Graduation from a law school shall not confer the right

of admission to the bar, and every candidate shall be subject to an examination.

2. No candidate shall be allowed to take the bar examination who is not a citizen of the United States or an alien lawfully residing in the United States.

3. No candidate shall be allowed to take the bar examination unless the applicant has graduated, or completed the requisites for graduation, from a Law School approved by the American Bar Association.

4. An applicant shall not be limited in the number of times he or she may take the Arkansas Bar Examination.

Rule XIII.

GENERAL INFORMATION

SECTION A

The practice of law is a privilege. Admission to practice is based upon the grade made on the examination, moral qualifications, and mental and emotional stability.

In addition to meeting all other requirements of the Rules Governing Admission to the Bar, every applicant for admission to practice by examination and every applicant for reinstatement of license to practice must be of good moral character and mentally and emotionally stable. The determination of the eligibility of every such applicant shall be made by the Board and the burden of establishing eligibility shall be on the applicant.

Every such applicant shall complete and file with the Executive Secretary of the Board an application, verified under oath, on a form approved by the Board. The Board shall require the submission of proof of good moral character and mental and emotional stability, and the Board may conduct whatever investigation it deems appropriate as to any applicant and may, at its discretion, require additional proof of these qualifications. Upon receipt of a petition seeking reinstatement of license to practice law after disbarment, or surrender of license, the Board shall cause a public notice of the pendency of the petition for reinstatement to be placed in a newspaper of general circulation in the State and at least one newspaper of local circulation for at least 30 days prior

to the hearing or decision by the Chairman pursuant to this rule. The notice shall solicit information regarding the petition and shall be in such form as shall be designated by rule of the Board.

Any applications for initial instatement, or reinstatement after disbarment, surrender, or suspension pursuant to Rule VII(D) shall be submitted to the Executive Secretary of the Board. The Executive Secretary shall review all such applications. Any application which raises questions of eligibility based upon the standards as set out in this rule, shall be referred to the Chairman of the Board for review. The Chairman, applying the standards as set out in this rule, shall determine whether the initial applicant, or applicant for reinstatement, is eligible for initial admission or reinstatement.

In the event the Chairman determines that an initial applicant is eligible, he shall so notify the Executive Secretary, who shall then certify to the Clerk that the initial applicant is eligible for admission to the Bar of Arkansas. In the event the Chairman determines that an applicant for reinstatement, whose license is suspended for failure to pay fees only, is eligible, the Chairman shall certify to the Clerk that the applicant is eligible for reinstatement to the Bar of Arkansas.

In the event the Chairman is unable to determine eligibility of the referred applicant, then the applicant shall be notified of such determination. In such instances, the applicant shall be advised that the applicant has a right to a hearing on the question and the right to be represented by counsel at the expense of the applicant. At the Chairman's discretion, or upon request of the applicant, the Chairman of the Board shall appoint a subcommittee from the Board comprised of not less than three members who shall proceed to a hearing as hereinafter provided. The Chairman shall not be eligible to serve thereon.

This panel shall be appointed for the sole purpose of making a full and accurate record of all facts and circumstances affecting the application. The appointing officer shall designate a member to serve as Chairman of the hearing panel.

The Executive Secretary of the Board shall act as evidence officer for the hearing and shall be charged with the responsibility of presenting any evidence that may be pertinent to the hearing,

either for or against the applicant, and shall have the further responsibility of procuring evidence of parties or witnesses as hereinafter provided. However, for good cause shown, the Chairman of the Board is authorized to appoint a substitute evidence officer.

The burden of establishing eligibility shall remain with the applicant. At the initiation of the hearing, the evidence officer shall provide a brief background of the actions that have been taken by the parties which have resulted in the necessity of a hearing, and the evidence officer shall establish that all procedural requirements have been met as required by this rule. The applicant shall then be permitted to present evidence in support of the application without regard to technical rules of evidence but subject, however, to cross-examination. At the close of the applicant's presentation, the evidence officer shall then present any evidence which is pertinent to the issues, subject to cross-examination, and the applicant shall then be permitted to introduce any evidence which may be pertinent in rebuttal, subject to cross-examination.

A complete transcript, in writing, of all proceedings and exhibits shall be prepared and a copy thereof provided to the applicant and to each member of the Board.

All costs and expenses incident to such proceedings shall be borne by the applicant. The applicant may be required to post a bond as set by the Executive Secretary to insure payment of such costs and expenses. The hearing panel shall have authority to issue summons for any person or subpoenas 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, to include production of pertinent documents or records. Such process shall be issued under the seal of the Supreme Court of the State of Arkansas and be signed by the Chairman of the Board, or the Executive Secretary. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Likewise, the affected attorney shall be entitled to compel, by subpoena issued in the same manner, the attendance and testimony of witnesses, and the production of pertinent documents or records. The Circuit Court of Pulaski County shall have the power to enforce

process. Disobedience of any summons or subpoena or refusal to testify shall be regarded as constructive contempt of the Supreme Court.

The applicant shall have thirty days from receipt of the notice of decision by the Chairman denying eligibility, or decision by the Chairman indicating inability to determine eligibility to request a hearing. Such request shall be in writing and addressed to the Chairman of the Board and the hearing shall be set by the Chairman of the hearing panel for a day certain. Absent exigent circumstances, the hearing shall be conducted within 60 days after the chairman of the hearing panel is notified that the applicant requests a hearing. For good cause shown, the Chairman of the hearing panel may grant extensions of time.

At the conclusion of the hearing, a copy of the transcript of proceedings shall be submitted without comment by the hearing panel to each member of the Board. The Board, within thirty days of receipt of the transcript, after considering the entire record de novo shall by majority vote of the full Board, determine the eligibility of the applicant. Thereafter, within 90 (ninety) days of said vote the Board shall cause to be filed with the Executive Secretary the findings of fact and conclusions of the Board, a copy of which shall be delivered to the applicant. Any concurrence or dissent in writing shall be made a part of the record and a copy thereof furnished to the applicant.

Within thirty days of receipt of written findings of the full Board denying eligibility, the applicant may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chairman of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested from the Executive Secretary. The Executive Secretary shall certify the record as being a true and correct copy of the record as designated by the parties and it shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with

the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Arkansas State Board of Law Examiners. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

In the event the Board, or the Chairman of the Board, shall recommend recertification of an applicant subsequent to disbarment, surrender of license, or suspension of license pursuant to Rule VII(D) where a hearing panel has been appointed, the applicant shall have the burden of filing with the Court a motion pursuant to Rule III of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas. The applicant shall file a single copy of the original transcript of the hearing, if one has been conducted, or, the original copy of the authorization for recertification which has been issued by the Chairman of the Board pursuant to this Rule. The motion filed in conjunction with the transcript or recommendation from the Chairman of the Board shall briefly summarize the circumstances leading to the disbarment, surrender, or suspension. The matter shall then be referred to the Arkansas Supreme Court for disposition in accordance with regular motion practice pursuant to Rule III or its successor rule.

All other rules governing admission to the Bar are amended hereby to conform herewith.

This section shall apply to any applicant whose eligibility for admission to the Bar of this State shall not have been determined by the Board prior to adoption of these Rules.

Any proceedings at which the testimony of witnesses is being taken under oath shall be open to the public.

SECTION B

The examination is in writing. Each applicant must provide the necessary pens and paper.

Questions from previous examinations are on file in the Supreme Court Library.

For information relative to the examination and application to take same, consult the Executive Secretary, who should be addressed as Executive Secretary of State Board of Law Examiners, Little Rock, Arkansas. (Per Curiam Order, May 18, 1992.)

IN RE: AMENDMENT TO RULE 36.9 OF THE ARKANSAS
RULES OF CRIMINAL PROCEDURE REGARDING TIME
AND METHOD OF TAKING CRIMINAL APPEAL

Supreme Court of Arkansas
Delivered January 31, 1994

PER CURIAM. There has been some uncertainty surrounding the application of the "deemed denied" principle of Rule 4(c) of the Appellate Rules of Procedure to criminal appeals following a post-trial motion. Rule 4(c) by its terms embraces post-trial motions made under the Rules of Civil Procedure but there is no specific reference in Rule 4(c) to post-trial motions in criminal appeals. Nor is there a reference to the "deemed denied" principle of Rule 4(c) in Criminal Procedure Rule 36.9 which concerns criminal appeals. We have held in this regard that the "deemed denied" principle of Rule 4(c) does apply to criminal appeals where a post-trial motion for a new trial has been filed. *Giacona v. State*, 311 Ark. 664, 846 S.W.2d 185 (1993) (per curiam).

We adopt this Amended Rule 36.9, effectively immediately, to clarify that if a post-trial motion in the nature of a motion for a new trial or amendment of judgment is not resolved by the trial court within 30 days from the date of its filing, it is deemed denied under Rule 4(c), and an appeal must be taken within 30 days from the date that the motion is deemed denied.

We further include in amended Rule 36.9 a provision arising out of our case law relating to the invalidity of a notice of appeal filed before the entry of the judgment or order or on or before the "deemed denied" date for purposes of Rule 4(c). See *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992); *Kimble v.*

Gray, 313 Ark. 373, 853 S.W.2d 890 (1993) (per curiam), *affirming Kimble v. Gray*, 40 Ark. App. 196, 842 S.W.2d 473 (1992).

Finally, the amended rule provides that the "deemed denied" principle does not apply to Rule 37 petitions. Appeals may be taken within 30 days after the Rule 37 petition is actually denied by the trial court irrespective of whether that denial occurs more than 30 days after the petition is filed.

RULE 36.9. TIME AND METHOD OF TAKING APPEAL.

(a) Within thirty (30) days from

- (1) the date of entry of a judgment; or
- (2) the date of entry of an order denying a post-trial motion under Rule 36.22; or
- (3) the date a post-trial motion under Rule 36.22 is deemed denied pursuant to Rule 4(c) of the Rules of Appellate Procedure; or
- (4) the date of entry of an order denying a petition for postconviction relief under Rule 37,

the person desiring to appeal the judgment or order shall file with the trial court a notice of appeal identifying the parties taking the appeal and the judgment or order appealed.

(b) A notice of appeal is invalid if it is filed prior to the entry of the judgment or order appealed from or if it is filed on or before the date a post-trial motion under Rule 36.22 is deemed denied pursuant to Rule 4(c) of the Rules of Appellate Procedure.

(c) The notice of appeal shall include either a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter or a petition to obtain the record as a pauper if, for the purposes of the appeal, a transcript is deemed essential to resolve the issues on appeal.

(d) Notification of the filing of the notice of appeal shall be given to all other parties or their representatives involved in the cause by mailing a copy of the notice of appeal to the parties or their representatives and to the Attorney General, but failure to give such notification shall not affect the validity of the appeal.

(e) Failure of the appellant to take any further steps to secure the review of the appealed conviction shall not affect the validity of the appeal but shall be ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken. If no judgment of conviction was entered of record within ten (10) days of the date sentence was pronounced, application for belated appeal must be made within eighteen (18) months of the date sentence was pronounced.

(f) If an appeal has not been docketed in the Supreme Court, the parties, with the approval of the trial court, may dismiss the appeal by stipulation filed in that court or that court may dismiss the appeal upon a motion and notice by the appellant. [Amended by per curiam October 25, 1976; amended December 18, 1978; amended by per curiam January 25, 1988, effective March 1, 1988; amended by per curiam January 31, 1994.]

Commentary

This rule applies in Rule 37 cases only as to appeals from an actual denial of the Rule 37 petition: the "deemed denied" provision of Appellate Procedure Rule 4(c) does not apply to Rule 37 petitions.

IN RE: ARKANSAS RULES OF CRIMINAL PROCEDURE

Supreme Court of Arkansas
Delivered January 31, 1994

PER CURIAM. The Supreme Court Committee on Criminal Practice has proposed changes in the Arkansas Rules of Criminal

Procedure. We publish the proposed changes to Rule 4.1, *Authority to Arrest without Warrant*; Rule 7.1(c), *Arrest with a Warrant: Basis for Issuance of Arrest Warrant*; Rule 28.2(c), *When Time Commences to Run*; and Rule 31.2, *Waiver of Trial by Jury: Personal Request*, along with comments supplied by the Committee so that they may be studied by members of the bench and bar.

Written comments on the proposed changes should be sent to the Clerk of the Supreme Court, Justice Building, 625 Marshall Street, Little Rock, AR 72201 within 60 days from date of this per curiam order.

Rule 4.1 should be amended to add new subsection (e) as follows:

(e) A person arrested without a warrant shall not be held in custody unless a judicial officer determines, from affidavit, recorded testimony, or other information, that there is reasonable cause to believe that the person has committed an offense. Such reasonable cause determination shall be made promptly, but in no event longer than forty-eight (48) hours from the time of arrest, unless the prosecuting attorney demonstrates that a bona fide emergency or other extraordinary circumstance justifies a delay longer than forty-eight (48) hours. Such reasonable cause determination may be made at the first appearance of the arrested person pursuant to Rule 8.1.

COMMENT

In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the United States Supreme Court ruled that a person arrested without a warrant is entitled to a prompt judicial determination of probable cause. Last year, in *County of Riverside v. McLaughlin*, 111 S.Ct. 1661 (1991) the Court held that a judicial determination of probable cause within 48 hours of arrest will generally satisfy the promptness requirement of *Gerstein*, but the court recognized that a longer delay may be justified by "bona fide emergency or other extraordinary circumstance." The proposed change to Rule 4.1 codifies *Gerstein* as modified by *Riverside*.

In most cases the probable cause determination can be made at the first appearance of the arrested person pursuant to Rule

8.1. *Gerstein*, however, does not require a formal probable cause hearing complete with such safeguards as counsel, confrontation, cross-examination, and compulsory process. The proposed change is flexible enough to permit an informal, nonadversarial probable cause determination in those cases in which a prompt Rule 8.1 appearance is not feasible.

Rule 7.1 (c) should be amended to read as follows:

A judicial officer who has determined in accordance with Rule 7.1(b) that an arrest warrant should be issued may authorize the clerk of the court or his deputy to issue the warrant.

COMMENT

In *Fairchild v. Lockhart*, No. P2-C-85-282 (E.D. Ark., Sept. 11, 1987), Judge Eisele concluded that current Rule 7.1(c) was unconstitutional to the extent it allows clerks to rubber-stamp arrest warrants at the request of the prosecutor. *Shadwick v. City of Tampa*, 407 U.S. 345 (1972) requires the issuing officer to meet two tests: "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search." A prosecutor does not meet the first test, and most clerks do not meet the second test. The proposed rule allows clerks to issue warrants, but only after a judicial officer has first made a probable cause determination.

1. Rule 28.2 should be amended to add new subsection (c) as follows:

(c) When the initial charge is nolle prossed or otherwise dismissed without prejudice on motion of the State, and subsequently the defendant is arrested or charged with the same offense, then the time for trial shall nonetheless commence running, pursuant to Rule 28.2(a), from the date of the initial charge in circuit court or the initial arrest, as the case may be, as if no order of nolle prosequi had been entered.

2. The present subsection (c) shall be redesignated (d).

COMMENT

This rule is to memorialize *Cox v. Lineberger*, 304 Ark. 231, 805 S.W.2d 947; *rev'sed on rehearing* 304 Ark. 234-A, 803 S.W.2d 555 (1991).

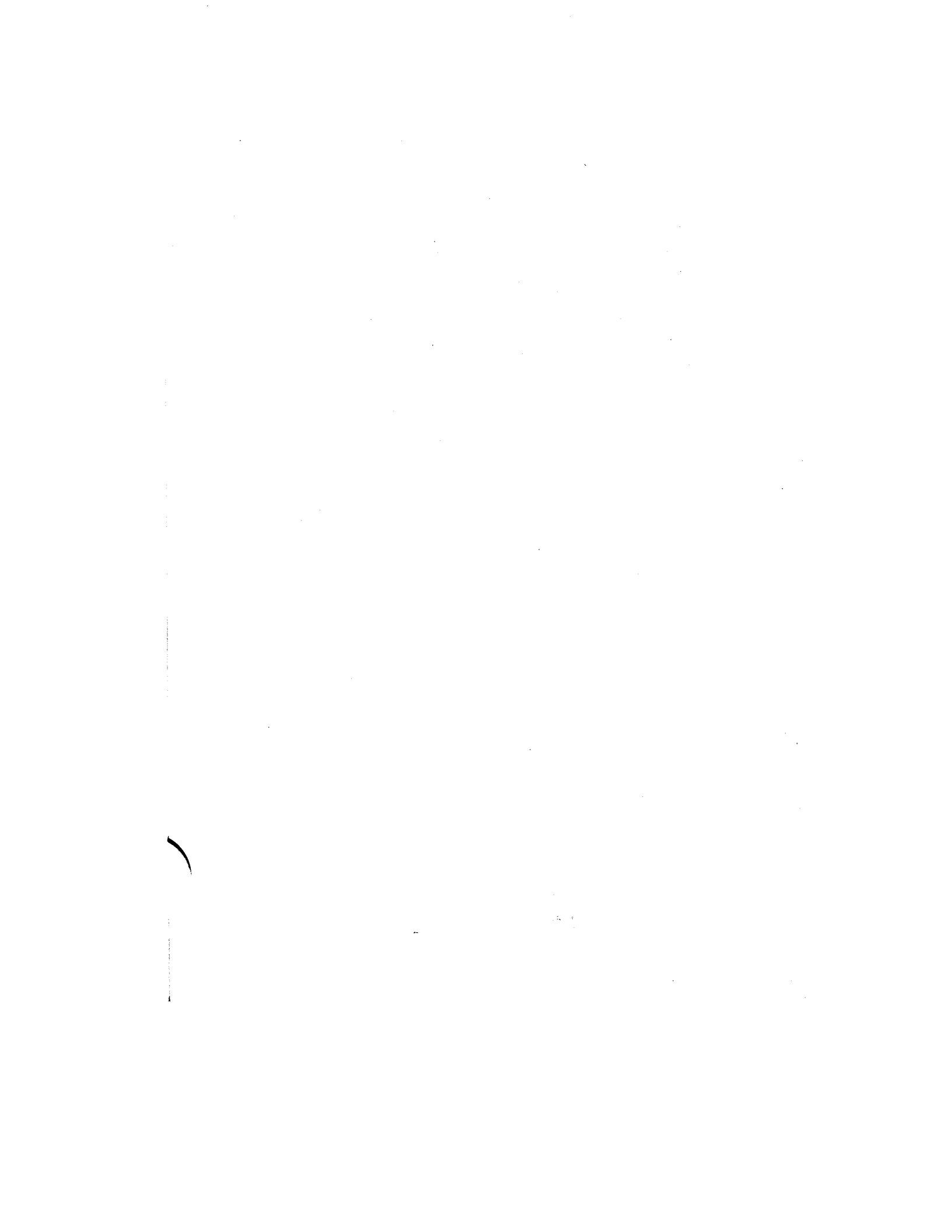
The rule embodies a policy decision: The clock is not restarted by virtue of a nolle pros. When, following a nolle pros, the defendant is recharged with the same offense, the time for trial begins running either from the date of the initial arrest or the initial charge in circuit court.

Rule 31.2 Waiver of Trial by Jury.

Should a defendant desire to waive his right to trial by jury, he may do so either (1) personally in writing or in open court or (2) through counsel if the waiver is made in open court and in the presence of the defendant. A verbatim record of any proceedings at which a defendant waives his right to a trial by jury in person or through counsel shall be made and preserved.

COMMENT

The purpose of this rule is to memorialize *Bolt v. State*, 314 Ark. 387, 862 S.W.2d 841 (1993).



**Appointments to
Committees**

IN RE: SUPREME COURT
COMMITTEE ON CRIMINAL PRACTICE

Supreme Court of Arkansas
Delivered November 15, 1993

PER CURIAM. The Honorable Philip B. Purifoy, Circuit/Chancery Judge, of Texarkana, and the Honorable Ronald G. Fields, of Fort Smith, Prosecuting Attorney for the Twelfth Judicial Circuit, have resigned from the Supreme Court Committee on Criminal Practice.

The Court thanks Judge Purifoy and Mr. Fields for their service to this most important Committee.

IN RE: BOARD OF LEGAL SPECIALIZATION

Supreme Court of Arkansas
Delivered November 22, 1993

PER CURIAM. Bill Penix, Esq. of Jonesboro, First Court of Appeals District, and Winfred A. Trafford, Esq. of Pine Bluff, Fifth Court of Appeals District, are hereby reappointed to the Court's Board of Legal Specialization for three year terms to expire on December 5, 1996.

The Court thanks Mr. Penix and Mr. Trafford for accepting reappointment to this most important Board.

IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Delivered December 6, 1993

PER CURIAM. Kaye McLeod, attorney-at-law, of Little Rock, Second Congressional District, is reappointed to the Board of Law Examiners for a term of three years ending September 30, 1996.

The Court thanks Ms. McLeod for accepting reappointment to this most important Board.

Blair Arnold, Esq. of Batesville, First Congressional District, is appointed to the Board replacing Michael L. Gibson, Esq. of Osceola whose term has expired. Mr. Arnold will also serve a term of three years ending on September 30, 1996.

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

The Court thanks Mr. Arnold for accepting appointment to this most important Board, excuses Mr. Arnold from further service on the Continuing Legal Education Board, and thanks him for his faithful and dedicated service to that Board.

IN RE: ARKANSAS CONTINUING LEGAL
EDUCATION BOARD

Supreme Court of Arkansas
Delivered December 13, 1993

PER CURIAM. Ronald D. Harrison, Esq. of Fort Smith, Third Court of Appeals District, is reappointed to the Arkansas Continuing Legal Education Board for a three year term to end on December 5, 1996.

The Honorable Sam Bird of Monticello, Fifth Court of Appeals District, is appointed to replace the Honorable H.A. Taylor of Pine Bluff, whose term has expired. Lisa G. Mathis, Attorney-at-Law, of Little Rock is appointed At-Large to replace Jerry Malone, Esq. of Little Rock, whose term has also expired. These are three year terms to end on December 5, 1996.

Philip D. Hout, Esq. of Newport, Second Court of Appeals District, is appointed to serve the unexpired term of Blair Arnold, Esq. of Batesville who has been excused from further service on Continuing Legal Education Board to accept appointment to the Board of Law Examiners. This unexpired term will end on December 5, 1994.

The Court thanks Mr. Harrison for accepting reappointment and Judge Bird, Ms. Mathis, and Mr. Hout for accepting appointments to this most important Board. The Court again thanks Mr. Arnold for his exemplary service to the Board.

The Court expresses its gratitude to Judge Taylor and Mr. Malone for their faithful and dedicated service as members of the Board since its inception and to Mr. Malone as well as a former chair of the Board.

IN RE: ARKANSAS JUDICIAL DISCIPLINE
AND DISABILITY COMMISSION

Supreme Court of Arkansas
Delivered December 13, 1993

PER CURIAM. In accordance with Amendment 66 of the Constitution of Arkansas and Act 637 of 1989, the Court appoints the Honorable Rice Van Ausdall, Chancery Judge of the Second Judicial Circuit, to an alternate position on the Arkansas Judicial Discipline and Disability Commission to fill the unexpired term of the Honorable Harry Barnes who was recently appointed Federal Judge for the Western District of Arkansas. This term will expire on June 30, 1994.

The Court thanks Judge Van Ausdall for accepting appointment to this most important Commission.

The Court congratulates Judge Barnes on his appointment to the federal bench and expresses its gratitude for his dedicated and faithful service to the Commission.

IN RE: COMMITTEE ON THE UNAUTHORIZED
PRACTICE OF LAW

Supreme Court of Arkansas
Delivered December 20, 1993

PER CURIAM. K. LeAnne Daniel, Attorney at Law, of Arkadelphia, Fourth Congressional District, is hereby appointed to our Committee on the Unauthorized Practice of Law, replacing Carolyn Clegg, Attorney at Law, of Magnolia, who has resigned from the Committee.

The Court thanks Ms. Daniel for accepting appointment to this most important Committee.

The Court expresses its gratitude to Ms. Clegg for her faithful and dedicated service to the Committee.

IN RE: COMMITTEE ON AUTOMATION

Supreme Court of Arkansas
Delivered January 18, 1994

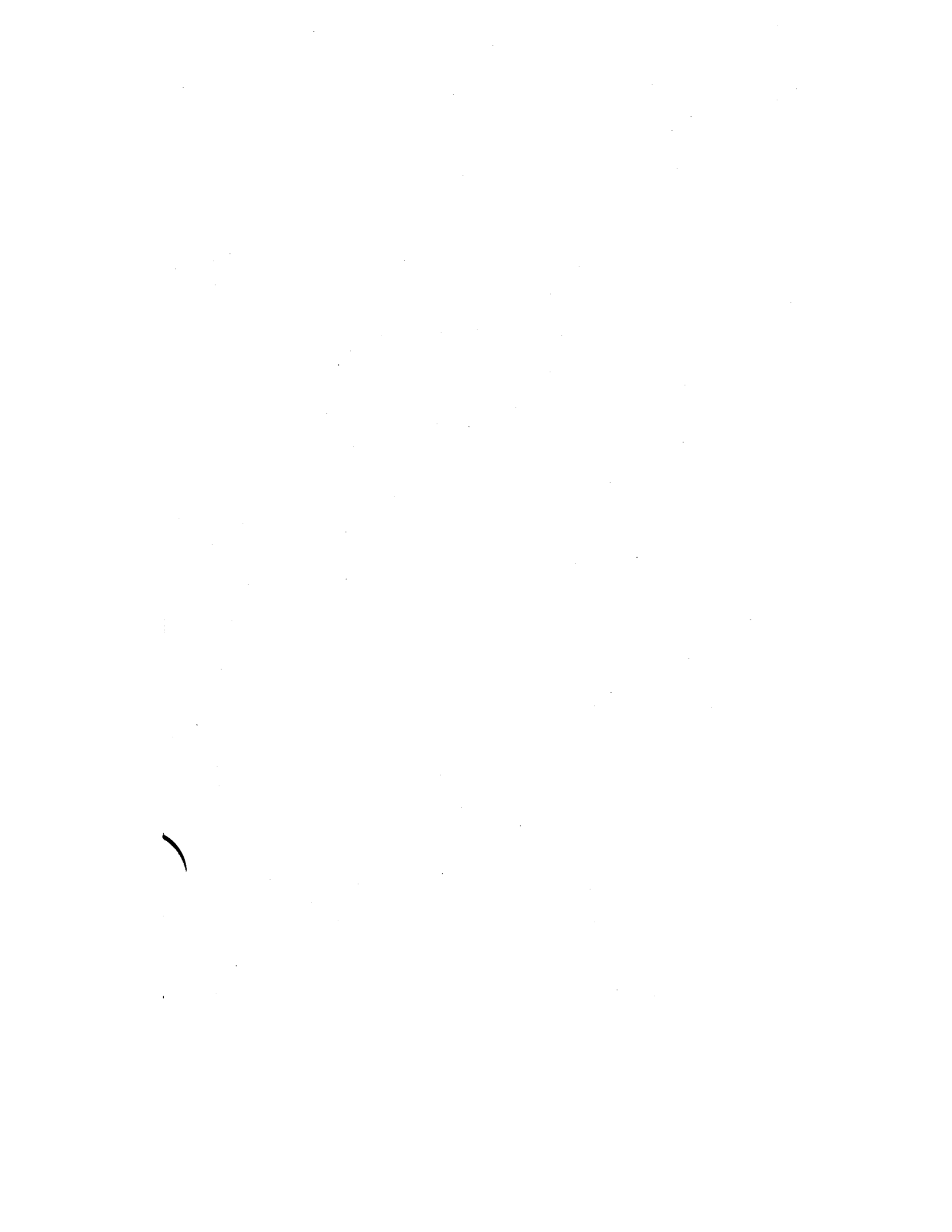
PER CURIAM. Jacqueline Wright, attorney-at-law and Supreme Court Librarian; Stanley D. Rauls, Esq., Chair of the Electronic Data Network Committee of the Arkansas Bar Association; and Stephen C. Sipes, Esq., Pulaski County Chancery Clerk are

appointed to the Committee on Automation whose membership has now been expanded to ten members.

The Committee members, with the exception of the Court's liaison justice and the Reporter from the Administrative Office of the Courts who serve at the pleasure of the Court, are directed to draw for staggered terms in the following manner, said staggered terms to expire on October 31 of the applicable calendar year. Two members shall draw for terms of one (1) year; three shall draw for terms of two (2) years; and three shall draw for terms of three (3) years. Thereafter, members shall be appointed by the Court to serve a three-year term and may be reappointed to a second three-year term. A member whose term has expired, shall continue to serve until a replacement is appointed.

The Court thanks Ms. Wright, Mr. Rauls, and Mr. Sipes for accepting appointment to this most important Committee.

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Reformation of, authority of courts. *Morton v. Park View Apartments*, 400.
Non-recourse provision signed and validated, individual liability did not change upon execution of warranty deed. *Id.*
Deed alleged to be a mortgage, document presumed to be what it appears to be. *Balch v. Leader Fed. Bank*, 444.

DIVORCE:

Marital property statute applies only to actions based in a divorce. *Ellis v. Ellis*, 475.
Marital property, independent action permitted, but independent action based in a divorce. *Id.*

EASEMENTS:

Easements, unbounded easement grants a valid right of way. *City of Sherwood v. Cook*, 115.

ELECTIONS:

No stay sought, election held and decided, issue moot. *McCuen v. McGee*, 561.

EMINENT DOMAIN:

Burden on condemnor to prove notice given to owner. *Arkansas State Highway Comm'n v. Cordes Motors, Inc.*, 285.
Condemnation, no notice given, entry on property to move fencing was sufficient to give owners notice. *Id.*
Physical entry on land gave notice of claim of right to land described in court order, not just to the extent actually occupied. *Id.*
Sufficient notice given of condemnation, no action brought within period of limitations. *Id.*

EQUITY:

Laches, right to enforce restrictive covenant lost. *Baldischwiler v. Atkins*, 32.
Chancery court reached a decision, court had power to take any act necessary to finalize it. *Barker v. Nelson*, 170.
Court must follow law if clearly defined. *Maumelle Boulevard Water & Sewer District No. 1 v. Davis*, 353.
Chancellor has broad power to fashion remedy. *Chambers v. Manning*, 369.

EVIDENCE:

Explanation of photos not allowed, specific questions never asked. *Carton v. Missouri Pac. R.R.*, 5.
Pictures allowed for impeachment, appellant cannot complain about a ruling in her favor. *Id.*
Pictures found more prejudicial than probative, no error found. *Id.*
Proof of subsequent remedial measures not admissible, trial court correctly applied rule. *Id.*
Substantial evidence defined. *Cleveland v. State*, 91.
Written statement properly admitted, no error found. *Edwards v. State*, 126.

- Medical record allowed to be read to the jury only in closing argument, no prejudice found. *Id.*
- Substantial evidence defined. *Moore v. State*, 131.
- Admissibility, wide discretion in trial court. *Id.*
- Card not relevant, correctly excluded. *Id.*
- Fruits of an unlawful arrest. *Friend v. State*, 143.
- Hearsay, inconsistency of evidence not normally a requirement for admissibility. *Buchanan v. State*, 227.
- Hearsay defined, statement offered not for truth of matter asserted, but to show exculpatory additions to trial testimony not present in earlier statement. *Id.*
- Admitted inaccuracy of transcript of recorded statement not related to accuracy of witness's statement. *Id.*
- Relevance, exclusion of proffered evidence not abuse of discretion. *P.A.M. Transp., Inc. v. Arkansas Blue Cross & Blue Shield*, 234.
- Proffer insufficient to establish relevance. *Id.*
- Insufficient foundation for admission of form letter. *Id.*
- Substantial evidence, determining the existence of. *Rathbun v. Ward*, 264.
- Substantial evidence found to support jury's verdict, trial court's decision correct. *Id.*
- Evidence as to driving skill and experience relevant, no abuse of discretion found. *Id.*
- Any error resulting from disallowing the testimony harmless. *Id.*
- Appellant found to be in actual physical control of vehicle, evidence sufficient to support verdict. *Hill v. State*, 297.
- Insufficient evidence for a jury instruction on the tort of outrage. *Dillard Dept. Stores, Inc. v. Adams*, 303.
- Evidence sufficient for jury to conclude failure to slow contributed to the accident, jury should have been allowed to address disputed fact question. *Parker v. Holder*, 307.
- False statements admissible to prove guilt. *Hall v. State*, 385.
- Other crime, no error to decide probative value outweighed prejudice. *Id.*
- Newly discovered evidence, requirements not met. *Id.*
- Hearsay properly excluded. *Id.*
- No error to exclude misleading evidence. *Id.*
- Document ruled an offer of compromise and denied admission by trial court, no abuse of discretion found. *Swindle v. Lumbermens Mut. Casualty Co.*, 415.
- Affidavits must be factual, conclusory affidavits are insufficient. *Id.*
- Affidavit did not meet requirements, no dispute as to the fact of ownership existed. *Id.*
- No error to exclude release and offer to compromise. *Id.*
- Evidence on human bite marks widely accepted. *Verdict v. State*, 436.
- No error to admit doctor's testimony, time bite mark made relevant. *Id.*
- Burdens of proof, clear & convincing evidence defined. *Balch v. Leader Fed. Bank*, 444.
- Burden of proof by clear & convincing evidence, party with burden may not take advantage of a lesser standard. *Id.*
- Burden of proving existence of encumbrance on appellee, burden of proof the clear and convincing evidence standard. *Id.*
- Sufficiency of, factors of review. *Brown v. State*, 466.
- Substantial evidence of crimes existed. *Id.*
- Sufficiency of, factors on review. *Langley v. State*, 472.
- Evidence sufficient to sustain convictions. *Id.*
- Admissibility of photograph for demonstrative purpose not abuse of discretion. *Kinney v. State*, 481.
- Demonstrative photograph, admission not an abuse of discretion. *Id.*
- Cause of death testimony by medical examiner where autopsy report stated cause of death was undetermined. *Id.*
- Exclusion, no review absent proffer, acquiescence renders error harmless. *Munn v. Munn*, 494.

Introduction of prior conviction, trial court has discretion in deciding whether to admit. *Thomas v. State*, 518.

Admissibility of evidence of prior convictions determined on a case by case basis. *Id.*

Prior criminal conviction properly admitted, no abuse of discretion found. *Id.*

Relevant evidence, admission left to sound discretion of trial judge. *Weger v. State*, 555.

Photographs, when admissible. *Id.*

Photographs, when not admissible. *Id.*

No error to admit photographs. *Id.*

Subsequent remedial measures, rule and exception. *Miller v. Nix*, 569.

Evidence rule exception, issue must actually be in controversy. *Id.*

Subsequent remedial action, no error to not admit testimony. *Id.*

Six-months limit on prior number of times appellee's cattle had been at-large, no showing that limit was unfair or unreasonable. *Id.*

Leading questions permitted when necessary to elicit truth where very young females are alleged victims of sexual crimes. *Clark v. State*, 602.

No error to permit leading questions of child victims. *Id.*

Discretion to determine if probative value outweighs prejudicial effect, credibility of witness, admissibility decided case-by-case. *Coleman v. State*, 610.

No error to admit evidence of prior convictions. *Id.*

Sufficiency of, standard on review. *Akbar v. State*, 627.

First degree murder, circumstantial evidence may be sufficient to prove. *Id.*

First degree murder conviction, substantial evidence found to support the conviction. *Id.*

Evidence objected to but found admissible, either party may use the evidence. *Burnett v. Fowler*, 646.

Trial court has discretion to determine relevance, evidence of habits may be relevant. *Id.*

Sufficiency of the evidence discussed, substantial evidence defined. *Banks v. State*, 666.

Accomplice liability discussed, accomplice defined. *Id.*

Factors used to determine the connection of an accomplice to a crime. *Id.*

Accomplice liability, evidence sufficient to support conviction as an accomplice. *Id.*

Proof sufficient to show possession of gun, felon in possession of a firearm charge upheld. *Id.*

Challenge to sufficiency of, how evidence considered on review. *Stipes v. State*, 719.

EXECUTORS & ADMINISTRATORS:

Survival statute, actions for injury to person or property of deceased not the result of a wrongful act. *Ellis v. Ellis*, 475.

Survival statute, recovery pursuant to statute belongs to estate, and settlement is for benefit of estate. *Id.*

FRAUD:

Complaint insufficient, no justifiable reliance alleged. *Wiseman v. Batchelor*, 85.

Constructive fraud defined. *Id.*

Elements of actual fraud. *Id.*

Element of deceit, misrepresentation of past or present fact, not future event. *P.A.M. Transp., Inc. v. Arkansas Blue Cross & Blue Shield*, 234.

Verdict finding deceit properly set aside. *Id.*

Elements of deceit. *Wheeler Motor Co. v. Roth*, 318.

Award of restitution for valid revocation plus punitive damages is acceptable. *Id.*

Conflicting evidence, sufficient evidence to support verdict. *Id.*

An intentional tort, tort of negligent misrepresentation not recognized. *South County, Inc. v. First Western Loan Co.*, 722.

Breach of fiduciary duty not the only element needed to prove constructive fraud, test for constructive fraud. *Id.*
 Constructive fraud not proven, no proof of any material false statement or misrepresentation of fact. *Id.*
 Five elements. *Evans Industrial Coatings, Inc. v. Chancery Court*, 728.
 Complaint alleged mere broken promise, not fraud. *Id.*
 Constructive fraud defined. *Id.*
 When representations are fraudulent. *Id.*
 Constructive fraud, fiduciary relationship not vital. *Id.*
 Insufficient allegation of constructive fraud. *Id.*
 Constructive fraud distinctive cause of action from breach of contract. *Id.*

HUSBAND & WIFE:

Passing of personal property by operation of law, if claim entirely governed by statute, statute governs. *Ellis v. Ellis*, 475.

INSURANCE:

Clause ambiguous. *P.A.M. Transp., Inc. v. Arkansas Blue Cross & Blue Shield*, 234.
 Personal injury protection, "cost of collection" defined. *Wenrick v. Crater*, 361.
 Personal injury protection, "less cost of collection," discretion in trial court limited. *Id.*
 Trial court has discretion to determine reasonableness of attorney's fee as a cost of collection. *Id.*
 Arkansas Property and Casualty Insurance Guaranty Act, no "resident" corporation here. *Douglass v. Levi Strauss & Co.*, 380.
 Insurer may contract with insured upon whatever terms the parties agree so long as not contrary to public policy. *Shelter General Ins. v. Williams*, 409.
 Premium paid commensurate with the risks assumed, insurance provisions in accordance with statutes cannot be contrary to public policy. *Id.*
 No-fault benefits may be rejected in writing, summary judgment entered by trial court improper. *Id.*
 Amendment to uninsured motorist law did not change the law, the substitution of a vehicle still constitutes issuance of a new insurance policy requiring that uninsured coverage be offered. *American Nat'l Property & Casualty Co. v. Ellis*, 524.
 Uninsured motorist coverage, application only when collision between insured's car and uninsured motorist's car. *Pardon v. Southern Farm Bureau Casualty Ins. Co.*, 537.
 Uninsured motorist coverage, policy requiring second vehicle to trigger uninsured motorist provision not against public policy. *Id.*
 Uninsured motorist coverage, car other than plaintiff-insured's car must be involved. *Id.*
 Parties free to contract to any provisions that are not against public policy. *Id.*
 Uninsured motorist coverage, purpose. *Id.*
 Proof of mailing notice of cancellation sufficient. *Atlanta Casualty Co. v. Swinney*, 565.
 Proof of mailing notice of cancellation was sufficient to support summary judgment regardless of appellee's denial he received notice. *Id.*
 Factors for determining whether a contract or activity constitutes insurance. *Douglass v. Dynamic Enter., Inc.*, 575.
 Debt cancellation contracts, when considered insurance. *Id.*
 Primary purpose of debt-cancellation contract profit, contract considered insurance. *Id.*
 Uninsured motorist coverage, limitation of coverage to collision involving another vehicle that was uninsured not against public policy. *Williams v. Shelter Mut. Ins. Co.*, 701.

INTEREST:

- Award of prejudgment interest was properly denied. *Wheeler Motor Co. v. Roth*, 318.
- No interest rate established by contract, no error to apply Constitutional rate. *Chambers v. Manning*, 369.
- Post-judgment interest on judgment entered. *Id.*
- Error not to impose post-judgment interest. *Id.*
- Post-judgment interest, error to merely impose Constitutional rate of 6%. *Id.*

JUDGES:

- Exchange authorized by statute and agreement empowers judges, signature on agreement not jurisdictional. *Lynch v. State*, 47.
- Judge presided with impartiality, no reason to disqualify. *Carton v. Missouri Pac. R.R.*, 5.
- Mistrial the fault of appellant's attorney, no valid reason for judge to disqualify. *Id.*
- Reason for disqualification. *Id.*
- Ruling evidenced no impartiality. *Id.*
- Temporary exchange by agreement, *Lynch v. State*, 47.
- Duty to instruct jury with clarity. *Parker v. Holder*, 307.
- Knowledge of case obtained through previous judicial participation in the case, not grounds for recusal. *U.S. Term Limits, Inc. v. Hill*, 685.
- Code of Judicial Conduct, amendment granted more discretion to judges in area of recusal. *Id.*
- Disqualifying bias must stem from extra-judicial source. *Id.*
- Duty to remain on case unless valid reason to disqualify. *Id.*

JUDGMENT:

- Modification must be entered within 90 days or court loses authority to act. *Griggs v. Cook*, 74.
- Modification not clarification where new evidence considered. *Id.*
- Nunc pro tunc order, when proper. *Id.*
- Granting of summary judgment, factors on review. *Gann v. Parker*, 107.
- Res ipsa loquitur not applicable, summary judgment proper. *Id.*
- Dismissal with prejudice conclusive, effect of voluntary dismissal on counter-claims and cross-claims. *Security Pacific Housing Services, Inc. v. Friddle*, 178.
- Error made prior to voluntary dismissal with prejudice resolved against movant. *Id.*
- Denial of judgment n.o.v., no error where there was substantial evidence to support verdict. *Id.*
- Genuine issue of fact existed, summary judgment should not have been granted. *Wright v. Compton, Prewett, Thomas & Hickey*, 213.
- Summary judgment, when granted. *Cox v. McLaughlin*, 338.
- Summary judgment, burden of proof, resolution of doubts. *Id.*
- Error to grant summary judgment, facts in dispute. *Id.*
- Error to grant summary judgment. *Id.*
- Summary judgment improper, too many disputes left to be resolved. *Id.*
- Summary judgment, 10 days notice required by the rule not always mandatory. *Campbell v. Bard*, 366.
- Summary judgment without notice improper in this situation, error to act on motion while appellant was without counsel. *Id.*
- Summary judgment, burdens of proof discussed. *Wyatt v. St. Paul Fire & Marine Ins. Co.*, 547.
- Default judgment, standard of review. *Arnold & Arnold v. Williams*, 632.
- Default judgment granted, no abuse of discretion found. *Id.*
- Law of the case, directed verdict not cross-appealed. *Van Houten v. Pritchard*, 688.
- Summary judgment, burdens of proof and considerations on appeal. *South County*,

Inc. v. First Western Loan Co., 722.

Summary judgment properly granted on constructive fraud claim, no error found.
Id.

JURISDICTION:

Federal law allowed plaintiff to bring action in state court, state procedural requirements stand. *Maumelle Co. v. Eskola*, 25.

Final order lacking, appeal dismissed by court. *Ashmore v. Paccar, Inc.*, 490.

Motion based on insufficient contacts, denial of motion does not relieve plaintiff from establishing jurisdiction. *Fausett v. Host*, 527.

Issue of jurisdiction must be decided by the trial court, error corrected on appeal, not on prohibition. *Id.*

State failed to file notice of appeal from juvenile order, appellate court without jurisdiction. *State v. Hatton*, 583.

JURY:

Error to disclose compensation that will not be deducted from the recovery. *Carton v. Missouri Pac. R.R.*, 5.

General verdict returned for defendant, no prejudice shown. *Id.*

Instruction refused by judge, refusal proper. *Id.*

Juror not shown to be within the prohibited degree of relationship, no error shown.
Id.

Juror's relationship must be shown to be within the prohibited degree, otherwise no error to allow to sit on jury. *Id.*

Material interest of juror argued, none shown. *Id.*

Notice by telephone sanctioned. *Cleveland v. State*, 91.

Petit jury not required to mirror racial make-up of community. *Id.*

Defendant entitled to jury free of deliberate or systematic exclusion of his race.
Id.

Burden of proving systematic exclusion on appellant, establishing prima facie violation. *Id.*

Motion to quash panel not supported by showing panel not representative of racial composition of the population, systematic exclusion must be shown to shift burden of proof. *Id.*

Failure to establish prima facie case of racial discrimination. *Id.*

Nine of ten peremptory challenges used to exclude women, male appellant had no standing to challenge. *Id.*

Inadvertent comment on the first day of a week-long voir dire was not cause for mistrial. *Id.*

Objection to jury instructions. *Security Pacific Housing Services, Inc. v. Friddle*, 178.

Instruction on fiduciary relationship proper where foundation for it established.
P.A.M. Transp., Inc. v. Arkansas Blue Cross & Blue Shield, 234.

Amount of verdict and distribution of fault up to jury. *Rathbun v. Ward*, 264.

Instructions to, no error to deny the proposed instruction. *Id.*

Instruction properly refused, no evidence appellee driving unreasonably fast. *Id.*

Erroneous instruction given, jury rendered verdict from which prejudice due to the error could not be ascertained, reversal called for. *Dillard Dept. Stores, Inc. v. Adams*, 303.

Jury instructions should be based on the evidence in the case. *Parker v. Holder*, 307.

Proffered instruction not abstract, testimony clearly related to instruction. *Id.*

Instruction should have been given. *Id.*

Trier of fact is sole judge of credibility. *Wheeler Motor Co. v. Roth*, 318.

Batson not extended to peremptory challenges based on gender. *Cleveland v. State* 106-A.

Proffered instructions properly refused, jury properly charged. *Langley v. State*, 472.

Proper time to object to jury verdict is while jury still available to cure inconsistency. *P.A.M. Transp., Inc. v. Arkansas Blue Cross & Blue Shield*, 250-A.
Resolving inconsistencies in testimony. *Clark v. State*, 602.

LIENS:

Landlord's lien, when it attaches. *Herringer v. Mercantile Bank*, 218.
Landlord's lien, no perfection required, priority depends on time of attachment. *Id.*
Landlord's lien strictly construed against landlord. *Id.*

LIMITATION OF ACTIONS:

Debt payable in installments, how statute runs. *Karnes v. Marrow*, 37.
Foreclosure of mortgages, promissory notes under seal, five year limit, partial payment tolls statute. *Id.*
Mortgages, action on three payments barred by statute. *Id.*
Mortgages, clear error to concluding the statute of limitations was tolled. *Id.*
Sanctions properly refused, limitations argument meritless. *Farm Bureau Mut. Ins. Co. v. Campbell*, 136.
Savings statute, timely action commenced, dismissal or involuntary nonsuit, plaintiff has one year to refile. *Forrest City Machine Works, Inc. v. Lyons*, 173.
Original suit timely, suffered nonsuit, refiled within one year of nonsuit, suit timely. *Id.*
Statute tolled by filing complaint and serving defendant, subsequent ruling of service invalid does not disinherit plaintiff from benefit of saving statute. *Id.*
Applicable statute three years, when it began to run. *Wright v. Compton, Prewett, Thomas & Hickey*, 213.
Malpractice cases, limitation period begins to run upon the occurrence of the last element essential to the cause of action. *Id.*

MANDAMUS, WRIT OF:

Issued to enforce right already established. *Redd v. Sossamon*, 512.
Petitioner must show clear right exists, writ not used to establish right. *Id.*
No error to deny writ when sought to be used to establish a right. *Id.*

MASTER & SERVANT:

No proof appellee had control over roofer, roofer employed by appellant, judgment notwithstanding the verdict correct. *Dickens v. Farm Bureau Mut. Ins. Co.*, 514.

MORTGAGES:

Burden of proof, failure to show mortgagee in possession. *Karnes v. Marrow*, 37.
Evidence of government payments alone was insufficient to prove recipient was mortgagee in possession. *Id.*
Failure to prove mortgagee in possession. *Id.*
Mortgagee in possession, requirements. *Id.*
No error to find no payment made on promissory note or another agreement. *Id.*
Payment is affirmative defense, burden of proof on party asserting defense. *Id.*

MOTIONS:

Motion to dismiss for failure to state a claim, facts in complaint treated as if true. *Wiseman v. Batchelor*, 85.
Directed verdict, specific ground must be stated. *Security Pacific Housing Services, Inc. v. Friddle*, 178.
Directed verdict motion is condition precedent to motion for judgment n.o.v., new ground cannot be presented in motion for judgment n.o.v. *Id.*
Judgment n.o.v. motion based on insufficient evidence, other possible bases for motion not addresses since they were not preserved for appeal. *Id.*
Summary judgment, procedure outlined. *Wright v. Compton, Prewett, Thomas & Hickey*, 213.

- Denial of motions for new trial and directed verdict, factors on review. *Rathbun v. Ward*, 264.
- Directed verdict motion condition precedent to motion for judgment n.o.v. *Wheeler Motor Co. v. Roth*, 318.
- Motion for judgment n.o.v. not proper when evidence disputed. *Id.*
- Motion to dismiss not timely filed, no error to deny. *Brown v. State*, 466.
- Motion to dismiss properly denied, no prejudice established. *Id.*
- Motion for severance, severance waived by failure to renew the motion. *Id.*
- Directed verdict motion, additional evidence presented by movant, reliance on motion waived. *Thomas v. State*, 504.
- When directed verdict granted. *Miller v. Nix*, 569.
- Directed verdict motion, challenge to sufficiency of the evidence, test, standard of review, definition. *Coleman v. State*, 610.
- Motion in limine, motion sufficient to call attention to potential error. *Burnett v. Fowler*, 646.
- Directed verdict, motion correctly denied by trial court. *Banks v. State*, 666.
- Motion to recuse, hearing not required, facts not in dispute. *U.S. Term Limits, Inc. v. Hill*, 685.

MUNICIPAL CORPORATION:

- Improvement district, direct or collateral attack. *Maumelle Boulevard Water & Sewer District No. 1 v. Davis*, 353.
- Improvement district, limitation on challenge to assessment. *Id.*
- Improvement district, collateral attack for fraud or demonstrable error. *Id.*
- Improvement district, assessment may be set aside only for error is obvious from the fact of the assessment, demonstrable mistake defined. *Id.*
- Improvement district, error for chancellor to go outside face of record to find extraneous evidence of error. *Id.*
- Improvement district, no increase or decrease in assessment except for physical change. *Id.*
- Improvement district, change did not occur after the original assessment. *Id.*
- Improvement district, case law contemplates actual physical change. *Id.*
- Improvement district, ruling diminished total benefits assessed, action prohibited. *Id.*
- Improvement district, mistaken belief in amount property worth, still required to pay assessment. *Id.*

NEGLIGENCE:

- Determination of negligence and apportionment of fault is issue for finder of fact. *Hickman v. Carter*, 678.
- Appellant sole cause of accident. *Id.*

NEW TRIAL:

- Motion denied, denial sustained absent manifest abuse of discretion. *Rathbun v. Ward*, 264.
- Motion denied, appellant failed to demonstrate even the appearance of misconduct. *Id.*
- Motion for new trial denied, no abuse of discretion found. *Swindle v. Lumbermens Mut. Casualty Co.*, 415.
- Escrow agreement for costs incurred in repairing the foundation, no error in the amount of recovery. *Id.*
- No irregularity found, new trial properly denied. *Id.*
- Trial court has discretion to grant. *Burnett v. Fowler*, 646.
- Reversing decision to grant or deny, abuse of discretion necessary but not evident. *Id.*

NOTICE:

- Entry on land sufficient to show landowner knew of condemnation. *Arkansas State Highway Comm'n v. Cordes Motors, Inc.*, 285.

Eminent domain, sufficiency of notice of condemnation. *Id.*

PARENT & CHILD:

Change of circumstances required for change of custody. *Norwood v. Robinson*, 255.

Fathers of illegitimate children bear the same burden as fathers of legitimate children when seeking a change of custody, order establishing paternity implicitly determines custody. *Id.*

No change in circumstances sufficient to warrant change of custody shown, finding not against the preponderance of the evidence. *Id.*

Stepfather had no legal interest in children, no evidence of standing in loco parentis. *Stair v. Phillips*, 429.

Child support, change of circumstances, fiscal responsibility not relevant. *Munn v. Munn*, 494.

Child support, lump-sum settlement, no right to lump-sum settlement declared by court. *Id.*

Appellant failed to request information, apply for withholding for child support, or reserve in the decree any interest in a future workers' compensation settlement. *Id.*

Compliance with decree in effect, inappropriate to apply sanctions. *Id.*

Material change of circumstances, effect on income of settlement was relevant. *Id.*

Use of child support chart. *Id.*

No abuse of discretion in awarding increased child support. *Id.*

Child support, material change of circumstances, burden of proof. *Id.*

Determining amount of child support, other considerations. *Id.*

PARTIES:

Appellant's argument moot. *Stair v. Phillips*, 429.

PLEADINGS:

Amendments, failure to offer amendment, issue not preserved for appeal. *Wiseman v. Batchelor*, 85.

Defenses need not be realleged, supplemental answer permissible. *Farm Bureau Mut. Ins. Co. v. Campbell*, 136.

Determining factor as to entry of appearance, affirmative relief not requested. *Id.*

When issues are joined. *United-Bilt Homes, Inc. v. Sampson*, 156.

Court looks at substance, not form. *Wise Co. v. Clay Circuit*, 333.

Content of petition for writ of prohibition identical to what trial court had before it on summary judgment, appellate court will not review denials of motions for summary judgment. *Id.*

Circumstances constituting fraud must be stated with particularity. *Evans Industrial Coatings, Inc. v. Chancery Court*, 728.

Constructive fraud must be pled with particularity. *Id.*

PHYSICIANS & SURGEONS:

Malpractice and ordinary negligence distinguished. *Wyatt v. St. Paul Fire & Marine Ins. Co.*, 547.

No medical injury found, not error to grant summary judgment. *Id.*

PRINCIPAL & AGENT:

Agent not liable to third party for contractual obligations made by disclosed principal. *Cox v. McLaughlin*, 338.

PROCESS:

Service of, estoppel inapplicable where service of process void. *Farm Bureau Mut. Ins. Co. v. Campbell*, 136.

Service of, no evidence service ever made. *Johnson v. Davis*, 199.

PROHIBITION:

Determining whether writ of prohibition will lie, review confined to the pleadings.

Wise Co. v. Clay Circuit, 333.

When issued. *Fausett v. Host*, 527.

Determination as to minimum contacts, prohibition not the proper means to challenge decision that jurisdiction lies. *Id.*

PROHIBITION, WRIT OF:

Determining jurisdiction, limited to consideration of pleadings only. *Wise v. Clay*, 336-A.

Case overruled to extent it conflicts. *Id.*

Petitioners must produce record sufficient to show writ warranted. *Beasley v. Graves*, 663.

Insufficient record of trial court arguments and rational for appellate court to rule, speedy trial issue. *Id.*

Insufficient record of trial court arguments and rational for appellate court to rule, nolle prosequi issue. *Id.*

Not granted on incomplete or unclear facts. *Id.*

PROPERTY:

Ownership, business invitee, factors for recovery from the failure of homeowner to use ordinary care. *Gann v. Parker*, 107.

Ownership, ordinary care defined. *Id.*

Ownership, no showing that by the use of ordinary care the possessor would have discovered the defects, no genuine issue of material fact existed. *Id.*

Essential elements of dedication. *City of Sherwood v. Cook*, 115.

When dedication will result from sales with reference to a plat. *Id.*

When streets are dedicated to the public use. *Id.*

Plat made by one not the owner, no dedication as against the owner. *Id.*

When an owner is said to have adopted a plat as to all his property. *Id.*

Property never sold by reference to the plat, strip of land never dedicated as a public street. *Id.*

Petition for city to abandon claim not a recognition of the easement. *Id.*

Existence of fence did not constitute recognition of the easement. *Id.*

That the area looked like an easement irrelevant. *Id.*

Derivative title principle, preclusion exception. *Wood v. Corner Stone Bank*, 200.

Appellants' conduct precluded them from disputing bank's proprietary interest in the trailer, trial court's finding of conversion correct. *Id.*

Personal property annexed to land, when treated as a fixture. *Sanders v. Putman*, 251.

Evidence insufficient to treat trailer as a fixture. *Id.*

Intention of owner to encumber property not established by speculation. *Balch v. Leader Fed. Bank*, 444.

No clear evidence of intent to encumber property, property found free of encumbrance. *Id.*

Restrictive covenant not waived, violation acquiesced in. *Ingram v. Wirt*, 565-A.

No violation of restrictive covenants. *Id.*

RELIGIOUS SOCIETIES:

Impermissible for state courts to substitute their own interpretation of religious doctrine for the interpretation of the religious organization. *Belin v. West*, 61.

Interpretation of church doctrine or polity by courts, violation of the First Amendment. *Id.*

Promissory estoppel claim, could not be decided without inquiring into church doctrine. *Id.*

SALES:

Installment sales contract, optional acceleration clause, cause of action arises on entire debt only after option exercised. *United-Bilt Homes, Inc. v. Sampson*, 156.

SCHOOLS & SCHOOL DISTRICTS:

Fair teacher dismissal act, substantial compliance sufficient. *Teague v. Walnut Ridge Schools*, 424.

Sole power to terminate a teacher's contract rests with school district's board of education. *Id.*

SEARCH & SEIZURE:

Search & seizure clauses are restraints on the government and its agents, not private individuals. *Hill v. State*, 297.

Detention by private citizens did not implicate the Fourth Amendment, exclusionary rule not invoked. *Id.*

SECURED TRANSACTIONS:

Perfected purchased money security interest conflicting with landlord's lien, what law applies. *Herringer v. Mercantile Bank*, 218.

Purchase money security interest (PMSI). *Id.*

When PMSI was perfected. *Id.*

When security interest attaches. *Id.*

Bank's security interest attached when equipment was delivered to leasee. *Id.*

Perfected PMSI took priority over simultaneous landlord's lien. *Id.*

SHERIFFS & CONSTABLES:

Deputy sheriff in planned community has same legislative authority as a sheriff.

Gritts v. State, 1.

Legislative intent clear, officer had the authority to make arrest. *Id.*

STATUTES:

Interpretation of, factors to consider. *Gritts v. State*, 1

Construction of penal statutes. *Thomas v. State*, 79

Construction, basic rule, intent of legislature governs. *Id.*

Retroactive application of civil acts, retroactivity alone insufficient to invalidate. *Arkansas Dep't of Human Serv. v. Walters*, 204.

Determination as to whether statute is prospective or retroactive, event that triggers determination. *Id.*

Application of, general rule. *Id.*

Application of remedial legislation, act clearly intended to have retroactive effect. *Id.*

When statutes can operate retroactively. *Id.*

Determination of retroactivity and vested rights. *Id.*

Need to preserve the integrity of the Medicaid program found to be sufficient justification for making act retroactive. *Id.*

Statute clear, trial court did not err in preventing the appellant from arguing contribution to the jury. *Rathbun v. Ward*, 264.

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**ARKANSAS
APPELLATE
REPORTS**

Volume 44

**CASES DETERMINED
IN THE**

**Court of Appeals
of Arkansas**

**FROM
November 3, 1993 – February 2, 1994
INCLUSIVE**

**MARLO M. BUSH
REPORTER OF DECISIONS**

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

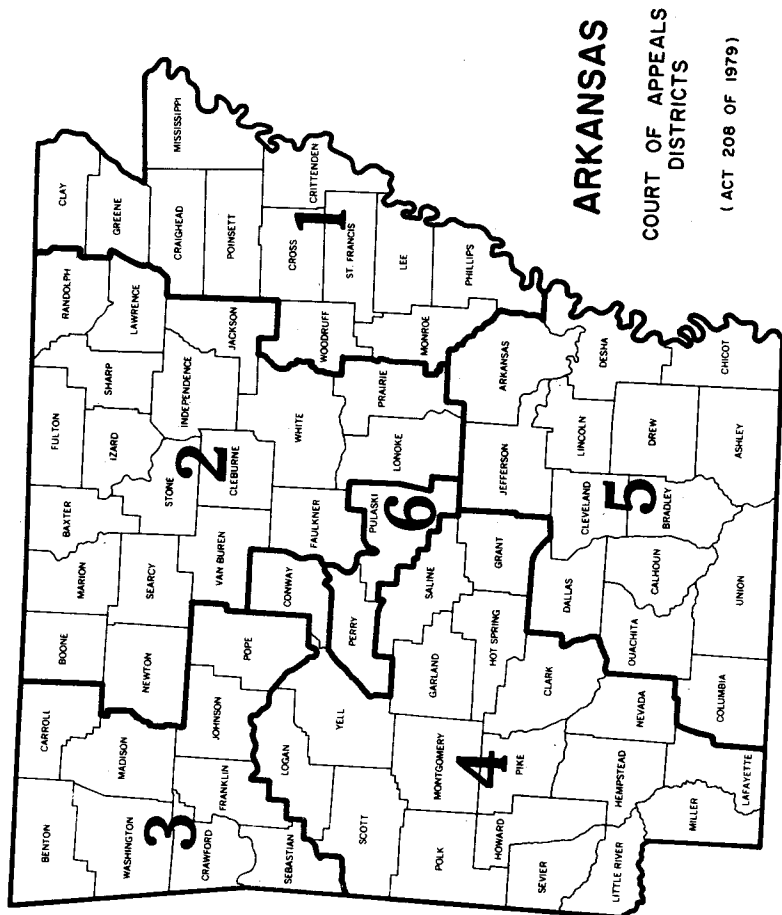
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OF THE
COURT OF APPEALS
OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(November 3, 1993 –
February 2, 1994, inclusive)

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| JOHN MAUZY PITTMAN | Judge ² |
| JAMES R. COOPER | Judge ³ |
| JOHN B. ROBBINS | Judge ⁴ |
| MELVIN MAYFIELD | Judge ⁵ |
| JUDITH ROGERS | Judge ⁶ |

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²District 1.

³District 2.

⁴District 4.

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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

- Adair v. Alumax-Magnolia, CA 92-1328 (Mayfield, J.), affirmed January 26, 1994.
- Adams v. Johnson County Regional Hosp., CA 93-273 (Pittman, J.), affirmed January 19, 1994.
- Amussen v. McNamara, CA 93-584 (Jennings, C.J.), affirmed December 15, 1993.
- Barton v. State, CA CR 93-262 (Pittman, J.), affirmed January 26, 1994.
- Berry v. Cooper Tire & Rubber Co., CA 93-333 (Pittman, J.), affirmed February 2, 1994.
- Birdsong v. State, CA CR 93-524 (Mayfield), affirmed February 2, 1994.
- Bosley v. State, CA CR 92-1476 (Rogers, J.), affirmed November 17, 1993.
- Bowman v. State, CA CR 93-195 (Jennings, C.J.), affirmed December 22, 1993.
- Bingo v. Zwierzynski, CA 92-1321 (Mayfield, J.), affirmed November 24, 1993.
- Brammell v. Baldwin Piano, CA 93-49 (Pittman, J.), affirmed December 22, 1993.
- Bratcher v. Bratcher, CA 93-98 (Rogers, J.), affirmed in part, reversed and remanded in part December 15, 1993.
- Bridges v. State, CA CR 93-600 (Mayfield, J.), affirmed January 5, 1994.
- Bright v. State, CA CR 93-1206 (Per Curiam), Appellant's Motion for Authority to Open Sealed Exhibit granted December 15, 1993.
- Britton v. City of Conway, CA 93-112 (Mayfield, J.), affirmed December 22, 1993.
- Buffalo v. Blackmon, CA 93-155 (Robbins, J.), affirmed January 12, 1994.
- Butler v. Easco Handtools, Inc., CA 93-46 (Jennings, C.J.), affirmed December 22, 1993.
- Caldwell v. Director, E 92-282 (Jennings, C.J.), affirmed February 2, 1994.
- Callahan v. State, CA CR 92-1494 (Mayfield, J.), affirmed in part, reversed and remanded in part December 15, 1993.
- Callahan v. State, CA CR 92-1494 (Mayfield, J.), Corrected and Substituted Opinion Granting Rehearing March 16, 1994.

- Caudle v. Caudle, CA 93-3 (Rogers, J.), affirmed December 22, 1993.
- Cannon v. City of Forrest City, CA CR 92-1065 (Jennings, C.J.), affirmed November 17, 1993.
- Carter v. State, CA CR 93-624 (Jennings, C.J.), affirmed January 5, 1994.
- Chang v. Chang, CA 92-1232 (Pittman, J.), reversed and remanded January 12, 1994.
- Childers v. Kettelhut, CA 93-634 (Cooper, J.), affirmed January 5, 1994.
- Church v. Mid-South Mfg. Co., CA 92-1425 (Robbins, J.), affirmed November 7, 1993.
- Church v. Mid-South Mfg. Co., CA 92-1425 (Robbins, J.), affirmed November 7, 1993.
- City of Gillett v. Gordon, CA 93-93 (Jennings, C.J.), affirmed December 8, 1993.
- Clark v. State, CA CR 93-69 (Cooper, J.), affirmed January 26, 1994.
- Clinard v. State, CA CR 92-831 (Robbins, J.), affirmed December 22, 1993.
- Cobb v. State, CA CR 93-288 (Robbins, J.), affirmed December 15, 1993.
- Colbert v. State, CA CR 93-792 (Per Curiam), Appellant's Motion for Brief Time granted December 1, 1993.
- Coleman v. State, CA CR 92-1377 (Mayfield, J.), affirmed December 8, 1993.
- Collins v. State, CA CR 92-1468 (Cooper, J.), affirmed November 3, 1993.
- Cottrell v. State, CA CR 93-235 (Jennings, C.J.), affirmed January 5, 1994.
- Cox v. Arkansas Dep't of Correction, CA 92-1424 (Robbins, J.), affirmed December 15, 1993.
- Crawford v. State, CA CR 93-702 (Mayfield, J.), affirmed February 2, 1994.
- Cross Country Bank of Wynne v. Denton, CA 93-457 (Jennings, C.J.), affirmed November 3, 1993.
- Cullen v. Williams, CA 93-443 (Cooper, J.), affirmed November 10, 1993.
- Curry v. State, CA CR 93-413 (Robbins, J.), CA CR 93-413 affirmed January 5, 1994.
- Curry v. Whirlpool, CA 93-45 (Robbins, J.), affirmed December 1, 1993.

- Daniel v. State, CA CR 93-406 (Rogers, J.), affirmed December 15, 1993.
- David v. Arkansas Best Corp., CA 92-1331 (Jennings, C.J.), affirmed December 1, 1993.
- Dotson v. State, CA CR 93-290 (Jennings, C.J.), affirmed January 26, 1994.
- Dowdle v. Dowdle, CA 93-807 (Robbins, J.), affirmed January 26, 1994.
- Dumas v. State, CA CR 93-684 (Cooper, J.), affirmed February 2, 1994.
- Elliott v. Covington Court, CA 93-18 (Pittman, J.), affirmed November 24, 1993.
- Ethridge v. State, CA CR 92-1350 (Jennings, C.J.), reversed and remanded November 17, 1993.
- Farris v. State, CA CR 93-1133 (Per Curiam), Appellee's Motion to Dismiss Appeal denied February 2, 1994.
- Fulce v. Phillips, CA 93-448 (Mayfield, J.), affirmed January 19, 1994.
- Garland v. State, CA CR 93-620 (Pittman, J.), affirmed January 19, 1994.
- Georgia-Pacific Corp. v. Rice, CA 92-1427 (Mayfield, J.), affirmed January 26, 1994.
- Gritus v. State, CA CR 92-1397 (Rogers, J.), affirmed December 15, 1993.
- Haltiwanger v. State, CA CR 93-625 (Jennings, C.J.), affirmed January 19, 1994.
- Handy v. State, CA CR 92-1317 (Mayfield, J.), reversed and remanded January 19, 1994.
- Harris v. State, CA CR 93-193 (Rogers, J.), affirmed December 22, 1993.
- Harvest Foods v. McCoy, CA 92-1437 (Mayfield, J.), affirmed November 17, 1993.
- Harville v. Weyerhaeuser Corp., CA 93-264 (Rogers, J.), affirmed January 26, 1994.
- Hayden v. State, CA CR 92-1356 (Robbins, J.), affirmed February 2, 1994.
- Hayes v. Cooper Engineered Products, CA 92-1381 (Rogers, J.), affirmed December 22, 1993.
- Hayes v. Director, E 93-248 (Per Curiam), Appellee's Motion to Dismiss Appeal denied December 1, 1993.
- Hearnberger v. Roberts, CA 93-375 (Mayfield, J.), reversed and remanded December 8, 1993.

- Hill, A. J. v. State, CA CR 93-62 (Rogers, J.), affirmed February 2, 1994.
- Hill, Cedric Quinn v. State, CA CR 93-217 (Robbins, J.), affirmed January 19, 1994.
- Hill, Christopher v. State, CA CR 93-640 (Per Curiam), Appellee's Motion to Remand to Settle the Record and Stay Brief Time granted November 10, 1993.
- Hill, Jeff v. State, CA CR 92-1113 (Robbins, J.), affirmed December 1, 1993.
- Hill, Kenneth D. v. State, CA CR 92-12 (Cooper, J.), affirmed February 2, 1994.
- Hodges v. Director, E 93-141 (Mayfield, J.), affirmed in part, remanded in part December 15, 1993.
- Horton v. State, CA CR 93-28 (Jennings, C.J.), affirmed January 19, 1994.
- Hudson v. Tyson Foods, Inc., CA 93-1077 (Per Curiam), Appellant's Motion to Supplement the Record and to Stay Brief Time granted December 1, 1993.
- Irwin v. State, CA CR 93-495 (Cooper, J.), affirmed December 22, 1993.
- Jack v. Around the World Travel, CA 93-77 (Mayfield, J.), affirmed January 12, 1994.
- Jarrett v. Terry Fricks, Inc., CA 92-1269 (Cooper, J.), affirmed December 1, 1993.
- Jeffries v. State, CA 92-1452 (Jennings, C.J.), affirmed December 15, 1993.
- Jordan v. Tyson Foods, Inc., (Rogers, J.), reversed and remanded February 2, 1994.
- Keech v. Cargill, Inc., CA 93-50 (Cooper, J.), affirmed December 8, 1993.
- Kellett v. State, CA CR 92-1426 (Rogers, J.), affirmed December 1, 1993.
- Kings Row Inn v. Solomon, CA 92-1443 (Cooper, J.), affirmed November 10, 1993.
- Lawhon v. State, CA CR 92-1297 (Pittman, J.), affirmed November 17, 1993.
- Lewis, Ray Anthony v. State, CA CR 92-1371 (Jennings, C.J.), affirmed January 5, 1994.
- Lewis, Ray Anthony v. State, CA CR 92-1372 (Robbins, J.), affirmed January 5, 1994.
- Lonoke Sheriff's Dep't v. Director, E 92-246 (Rogers, J.), affirmed January 19, 1994.
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- Looper v. State, CA CR 92-1340 (Rogers, J.), affirmed December 22, 1993.
- Lovell v. Papco Constr.Co., CA 93-107 (Jennings, C.J.), affirmed December 22, 1993.
- Lyle v. Barham, CA 93-419 (Jennings, C.J.), affirmed December 22, 1993.
- Lyons v. Arkansas Dep't of Human Serv., CA 93-555 (Mayfield, J.), affirmed December 15, 1993.
- Mabin v. State, CA CR 93-40 (Cooper, J.), affirmed November 24, 1993.
- Maronay v. State, CA CR 93-362 (Pittman, J.), affirmed December 15, 1993.
- Mauldin v. State, CA CR 92-1159 (Jennings, C.J.), affirmed November 24, 1993.
- MAW Leasing v. Spinks, CA 92-1323 (Pittman, J.), affirmed November 3, 1993.
- McGraw v. State, CA CR 92-1303 (Mayfield, J.), affirmed November 3, 1993.
- Mitchell v. State, CA 93-763 (Per Curiam), Appellant's Pro Se Motion for Appointment of Attorney denied; Motion of Robert W. Bush to be Relieved as Counsel for Appellant granted November 17, 1993.
- Morrilton Plastics v. Second Injury Fund, CA 92-1221 (Mayfield, J.), affirmed November 3, 1993.
- Musgrove v. Compton Management Riverview, CA 93-204 (Rogers, J.), affirmed January 19, 1994.
- Myers v. State, CA CR 93-1035 (Per Curiam), Appellee's Motion to Dismiss Appeal granted February 2, 1994.
- Naney v. Monroe Auto Equip., CA 92-1324 (Pittman, J.), affirmed November 17, 1993.
- Nathaniel v. State, CA CR 93- 725 (Robbins, J.), affirmed January 26, 1994.
- National Equity Corp. v. Rustic Time Shares, Inc., CA 92-979 (Mayfield, J.), affirmed December 22, 1993.
- Overby Law Firm v. Wyse, CA 92-1483 (Per Curiam), Motion to Supplement the Record granted, rebriefing ordered December 8, 1993.
- Pierce v. State, CA CR 92-1337 (Cooper, J.), affirmed November 24, 1993.
- POM, Inc. v. Taylor, CA 92-1250 (Cooper, J.), reversed and remanded December 1, 1993.
- Reather v. Dillard's, Inc., CA 93-100 (Pittman, J.), affirmed

- December 22, 1993.
- Riley v. Riley, CA 93-191 (Pittman, J.), affirmed November 17, 1993.
- Roberts v. State, CA CR 93-6 (Rogers, J.), reversed November 17, 1993.
- Robinson v. State, CA CR 93-158 (Cooper, J.), affirmed December 15, 1993.
- Sage v. Harvey, CA 93-386 (Cooper, J.), affirmed December 15, 1993.
- Scaife v. State, CA CR 92-1445 (Robbins, J.), affirmed November 17, 1993.
- Schulteis v. Shelter Mut. Ins. Co., CA 93-61 (Cooper, J.), affirmed December 15, 1993.
- Scott v. State, CA CR 93-138 (Robbins, J.), affirmed December 1, 1993.
- Shell v. D & H Constr. Co., CA 92-1408 (Cooper, J.), affirmed November 3, 1993.
- Shelton v. State, CA CR 93-842 (Cooper, J.), affirmed January 26, 1994.
- Slaughter v. Thornsberry, CA 93-48 (Rogers, J.), affirmed December 8, 1993.
- Simmons Indus. v. Martin, CA 93-126 (Robbins, J.), affirmed January 26, 1994.
- Sims v. St. Vincent Infirmary, CA 93-27 (Cooper, J.), affirmed December 22, 1993.
- Smith v. Hastings, CA 93-589 (Rogers, J.), affirmed December 1, 1993.
- Smith v. Pulaski County Sheriff's Dep't, CA 92-1432 (Rogers, J.), affirmed December 15, 1993.
- Smith v. State, CA CR 93-265 (Jennings, C.J.), affirmed February 2, 1994.
- Smith v. Weaver-Bailey Constr. Co., CA 92-1467 (Rogers, J.), reversed and remanded December 8, 1993.
- Snedeker v. Tonitown Repair Serv., CA 93-56 (Jennings, C.J.), affirmed January 5, 1994.
- Southern Steel & Wire v. Box, CA 92-1036 (Jennings, C.J.), affirmed December 22, 1993.
- Spradlin v. Johnson, CA 93-704 (Pittman, J.), affirmed December 22, 1993.
- Stewart v. Hackett Public Schools, CA 93-94 (Robbins, J.), affirmed January 19, 1994.
- Stokes v. State, CA CR 93-251 (Rogers, J.), affirmed Febru-

- ary 2, 1994.
- Stringer v. State, CA CR 92-1279 (Mayfield, J.), reversed and dismissed January 19, 1994.
- Talley v. State, CA CR 92-1348 (Mayfield, J.), affirmed November 17, 1993.
- Terminella v. Farmer, CA 93-445 (Robbins, J.), affirmed November 10, 1993.
- Tolston v. State, CA CR 93-313 (Cooper, J.), affirmed February 2, 1994.
- Townsend v. State, CA CR 93-55 (Cooper, J.), affirmed December 8, 1993.
- Travis v. Robbins-Sykes Hardwood Flooring, CA 92-1421 (Jennings, C.J.), affirmed November 17, 1993.
- Troy Bradley Pulpwood v. Johnson, CA 92-1482 (Pittman, J.), affirmed December 22, 1993.
- Tyler v. State, CA CR 92-1463 (Mayfield, J.), affirmed November 10, 1993.
- USA Truck, Inc. v. Thomas, CA 92-1447 (Jennings, C.J.), reversed and remanded December 1, 1993.
- Vickers v. Tyson Foods, Inc., CA 93-82 (Robbins, J.), affirmed December 22, 1993.
- Walton v. State, CA CR 93-294 (Pittman, J.), affirmed in part, reversed and remanded in part February 2, 1994.
- Watson v. State, CA CR 93-70 (Jennings, C.J.), affirmed December 8, 1993.
- Watts v. State, CA CR 93-253 (Jennings, C.J.), affirmed February 2, 1994.
- Westphal v. Mitchell, CA 92-1351 (Mayfield, J.), affirmed December 15, 1993.
- Wheeler v. State, CA CR 93-95 (Robbins, J.), affirmed November 24, 1993.
- Whitmore v. State, CA CR 92-1099 (Jennings, C.J.), affirmed December 22, 1993.
- Whittington v. Martin, CA 93-672 (Cooper, J.), affirmed December 15, 1993.
- Whorton v. State, CA CR 93-499 (Rogers, J.), affirmed January 5, 1994.
- Williams, Nathaniel Wayne v. State, CA CR 92-1155 (Mayfield, J.), affirmed December 1, 1993.
- Williams, Thomas v. State, CA CR 93-168 (Cooper, J.), affirmed November 17, 1993.
- Williamson v. Transervice Corp., CA 93-104 (Cooper, J.),

- affirmed January 5, 1994.
- Womack v. Big D Enter., Inc.*, CA 93-460 (Robbins, J.), affirmed December 1, 1993.
- Woodson v. State*, CA CR 93-594 (Rogers, J.), affirmed January 19, 1994.
- Woolums v. H.B. Zachary Co.*, CA 92-1449 (Rogers, J.), affirmed November 17, 1993.
- Yankey v. State*, CA CR 92-1409 (Per Curiam), Supplemental Opinion on Denial of Rehearing December 15, 1993.

CASES AFFIRMED BY THE ARKANSAS
COURT OF APPEALS WITHOUT WRITTEN
OPINION PURSUANT TO RULE 5-2(b),
RULES OF THE ARKANSAS SUPREME COURT
AND COURT OF APPEALS

- Anderson v. Director of Labor, E 93-156, November 10, 1993.
Bailey, Debbie v. Director of Labor, E 93-213, February 2,
1994.
Bailey, Robert, III v. Director of Labor, E 93-192, December
22, 1993.
Ballard v. Director of Labor, E 93-204, January 19, 1994.
Bradley v. Director of Labor, E 93-206, January 19, 1994.
Burleson v. Director of Labor, E 93-195, January 12, 1994.
Burney v. Director of Labor, E 93-209, January 26, 1994.
Clark v. Director of Labor, E 93-159, November 24, 1993.
Cobb v. Director of Labor, E 93-175, December 22, 1993.
Cox v. Director of Labor, E 93-201, January 12, 1994.
Cullison v. Director of Labor, E 93-176, December 1, 1993.
Cumberland v. Director of Labor, E 93-203, January 19, 1994.
Fulton v. Director of Labor, E 93-177, November 24, 1993.
Goodhue v. Director of Labor, E 93-168, November 24, 1993
Gribble v. Director of Labor, E 93-208, January 26, 1994.
Hedge v. Director of Labor, E 93-136, November 24, 1993.
Hickory Springs Mfg. Co. v. Director of Labor, E 93-160,
November 10, 1993.
Hooks v. Director of Labor, E 93-217, February 2, 1994.
Hunt v. Director of Labor, E 93-172, December 1, 1993.
Jones v. Director of Labor, E 93-170, December 1, 1993.
Jones v. Director of Labor, E 93-183, December 22, 1993.
Kingsby v. Director of Labor, E 93-190, December 1, 1993.
Leach v. Director of Labor, E 93-157, November 10, 1993.
Lee v. Director of Labor, E 93-199, January 12, 1994.
Lewis, Aaron v. Director of Labor, E 93-174, November 24,
1993.
Lewis, Jerome v. Director of Labor, E 93-151, November 10,
1993.
Magsby v. Director of Labor, E 93-221, February 2, 1994.
McDonald v. Director of Labor, E 93-214, February 2, 1994.
McGhee v. Director of Labor, E 93-196, January 12, 1994.
McKinney v. Director of Labor, E 93-163, November 10, 1993.

Moore v. Director of Labor, E 93-200, January 12, 1994.
New v. Director of Labor, E 93-211, February 2, 1994.
Olson v. Director of Labor, E 93-207, January 19, 1994.
Paxton v. Director of Labor, E 93-198, January 19, 1994.
Payne v. Director of Labor, E 93-218, February 2, 1994.
Porter v. Director of Labor, E 93-179, December 22, 1993.
Reid v. Director of Labor, E 93-154, November 10, 1993.
Rhoads v. Director of Labor, E 93-216, February 2, 1994.
Robinson v. Director of Labor, E 93-162, November 24, 1993.
Ross v. Director of Labor, E 93-169, December 1, 1993.
Smith v. Director of Labor, E 93-210, January 26, 1994.
Stewart v. Director of Labor, E 93-191, December 22, 1993.
Still v. Director of Labor, E 93-219, February 2, 1994.
Taylor v. Director of Labor, E 93-194, January 12, 1994.
Timmins v. Director of Labor, E 93-184, February 2, 1994.
West v. Director of Labor, E 93-171, December 22, 1993.
Yarberry v. Director of Labor, E 93-205, January 19, 1994.