

ARKANSAS REPORTS
VOLUME 316

ARKANSAS
APPELLATE REPORTS
VOLUME 45

THIS BOOK CONTAINS
ARKANSAS REPORTS
Volume 316

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

FROM
February 14, 1994 – May 2, 1994
INCLUSIVE¹

AND
**ARKANSAS
APPELLATE REPORTS**
Volume 45

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

FROM
February 9, 1994 – April 27, 1994
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PUBLISHED BY THE
STATE OF ARKANSAS
1994

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ARKANSAS REPORTS

Volume 316

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
February 14, 1994 – May 2, 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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OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(February 14, 1994 –
May 2, 1994, inclusive)

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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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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

- Black v. State, CR 94-186 (Per Curiam), Pro Se Motion for Transcript denied and appeal dismissed April 18, 1994.
- Brooks v. State, CR 94-62 (Per Curiam), Pro Se Motion for Rule on the Clerk and Pro Se Motion for Appointment of Counsel denied February 28, 1994.
- Brown v. State, CR 93-1138 (Per Curiam), Pro Se Motion for Belated Appeal denied March 28, 1994.
- Burris v. Hudson, CR 94-105 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 7, 1994.
- Clay v. State, CR 93-1262 (Per Curiam), In Re Findings of Fact Submitted on Remand to Circuit Court of Crittenden County February 21, 1994.
- Coleman v. State, CR 93-676 (Per Curiam), Pro Se Motion for Transcript denied May 2, 1994.
- Davis v. Davis, CR 94-193 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 28, 1994.
- Dyas v. State, CR 93-1074 (Per Curiam), affirmed February 21, 1994.
- Dyas v. State, CR 93-1074 (Per Curiam), Supplemental Opinion on Denial of Rehearing April 11, 1994.
- Ellis v. State, CR 93-1173 (Per Curiam), affirmed; Pro Se Motion for Reconsideration moot April 25, 1994.
- Franks v. Burnett, CR 94-135 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 14, 1994.
- Goodwin v. State, CR 94-104 (Per Curiam), Pro Se Motion for Belated Appeal denied March 21, 1994.
- Green v. Pearson, CR 94-275 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 18, 1994.
- Gross v. State, CR 94-127 (Per Curiam), Pro Se Motion to File Brief Tendered in CR 93-1139 in Instant Case denied and appeal dismissed April 18, 1994.
- Guinther v. State, CR 93-650 (Per Curiam), Pro Se Motion for Transcript denied March 21, 1994.
- Henderson v. State, CR 93-849 (Per Curiam), affirmed March 14, 1994.
- Hickman v. State, CR 93-1168 (Per Curiam), affirmed March 21, 1994.
- Hobgood v. State, CR 93-1238 (Per Curiam), affirmed; Motion

- in *Limine* moot April 25, 1994.
- Holloway v. State*, CR 94-66 (Per Curiam), Pro Se Motion for Belated Appeal denied March 14, 1994.
- Hughes v. State*, CR 93-1325 (Per Curiam), affirmed April 25, 1994.
- Johnson v. State*, CR 94-175 (Per Curiam), Pro Se Motion for Transcript and Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed April 11, 1994.
- Jones v. State*, CR 93-1046 (Per Curiam), March 14, 1994.
- Jones v. Thompson*, CR 94-250 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 2, 1994.
- King, Willie v. State*, CA 93-872 (Per Curiam), affirmed February 28, 1994.
- King, Christopher v. State*, CR 88-170 (Per Curiam), Pro Se Motion for Transcript denied March 21, 1994.
- Lambert v. State*, CR 93-669 (Per Curiam), affirmed April 11, 1994.
- Lewis v. State*, CR 93-1234 (Per Curiam), Pro Se Motion for Belated Appeal denied February 28, 1994.
- Locklear v. State*, CR 94-248 (Per Curiam), Pro Se Motion to Stay Brief Time denied and appeal dismissed April 18, 1994.
- Love v. State*, CR 94-304 (Per Curiam), Pro Se Motion for Transcript denied and appeal dismissed May 2, 1994.
- Marshall v. State*, CR 93-1048 (Per Curiam), affirmed February 14, 1994.
- May v. State*, CR 94-32 (Per Curiam), affirmed May 2, 1994.
- McFarland v. Hudson*, CR 94-1 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 7, 1994.
- Mosby v. Arkansas Bd. of Pardons & Paroles*, 93-1340 (Per Curiam), affirmed April 25, 1994.
- Pardue v. State* CR 94-189 (Per Curiam), Pro Se Motion to File Belated Petition for Writ of Certiorari denied April 11, 1994.
- Perry v. State*, CR 93-1136 (Per Curiam), affirmed March 7, 1994.
- Pitts v. State*, CR 94-24 (Per Curiam), Pro Se Motion for Transcript and Pro Se Motion for Recusal of Justices denied and appeal dismissed February 28, 1994.

- Prince v. State, CR 93-1020 (Per Curiam), Supplemental Opinion on Denial of Rehearing February 14, 1994.
- Renfrow v. State, CR 93-1179 (Per Curiam), affirmed March 21, 1994.
- Schalchlin v. State, CR 93-270 (Per Curiam), Appellant's Motion for Rule on the Clerk denied April 11, 1994.
- See v. Reed, 94-34 (Per Curiam), affirmed April 25, 1994.
- Smith v. State, CR 94-63 (Per Curiam), Pro Se Motion for Belated Appeal granted March 14, 1994.
- Stanley v. State, CR 93-1023 (Per Curiam), Pro Se Motion to File Pro Se Supplemental Appellant's Brief denied March 21, 1994.
- Sumlin v. State, CR 94-362 (Per Curiam), Pro Se Motion for Rule on the Clerk granted and Pro Se Motion for Appointment of Counsel per curiam issued May 2, 1994.
- Sumlin v. State, CR 94- 362 (Per Curiam), Claudell Woods directed to appear before the court on Monday, May 16, 1994, at 9:00 a.m., per curiam issued May 2, 1994.
- Tarkington v. State, CR 94-14 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and Pro Se Motion for Extension of Time to File Brief granted March 28, 1994.
- Watson v. Pearson, CR 94-190 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 21, 1994.
- West v. State, CR 94-133 (Per Curiam), Pro Se Motion for Belated appeal denied March 28, 1994.
- Zucco v. State, CR 94-46 (Per Curiam), Pro Se Motion for Rule on the Clerk remanded March 7, 1994.

APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The names are: Mr. J. H. Smith, Mr. J. B. Jones, Mr. J. C. Brown, Mr. J. D. White, Mr. J. E. Black, Mr. J. F. Green, Mr. J. G. Gray, Mr. J. H. White, Mr. J. I. Black, Mr. J. K. Green, Mr. J. L. Gray, Mr. J. M. White, Mr. J. N. Black, Mr. J. O. Green, Mr. J. P. Gray, Mr. J. Q. White, Mr. J. R. Black, Mr. J. S. Green, Mr. J. T. Gray, Mr. J. U. White, Mr. J. V. Black, Mr. J. W. Green, Mr. J. X. Gray, Mr. J. Y. White, Mr. J. Z. Black.

IN THE MATTER OF A PETITION OF THE ARKANSAS
IOLTA FOUNDATION, INC., to Modify Model Rule
of Professional Conduct 1.15

Supreme Court of Arkansas
Delivered February 28, 1994

PER CURIAM. The Arkansas IOLTA Foundation, Inc., by its President, Mr. Weldon Ramey, has petitioned for modification of Model Rules of Professional Conduct 1.15. The proposed modification would change the Rule so as to require attorneys to maintain their general trust accounts as interest bearing accounts with the interest generated to be paid to the Arkansas IOLTA Foundation, Inc.

Attached to the petition is a "marked up" copy showing additions and deletions to the current Rule 1.15. The attachment is published below.

Members of the bench and bar and other interested citizens who wish to do so may, prior to June 1, 1994, send comments on the proposed change to the following address:

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

Attachment 1

New material underlined, deleted material crossed out.

Rule 1.15 Safekeeping Property

1 (a) All lawyers shall hold property of clients or third persons that is in
2 a lawyer's possession in connection with a representation separate from the
3 lawyer's own property.

4 (1) Funds of a client shall be kept in a separate account deposited and
5 maintained in one or more identifiable trust accounts in the state where
6 the lawyer's office is situated, or elsewhere with the consent of the
7 client or third person. The lawyer or law firm may not deposit funds
8 belonging to the lawyer or law firm in any account designated as the
9 trust account, other than the amount necessary to cover bank charges, or
10 comply with the minimum balance required for the waiver of bank charges.

11 (2) Other property shall be identified as such and appropriately
12 safeguarded.

13 (3) Complete records of such account funds and other property shall be
14 kept by the lawyer and shall be preserved for a period of (five years)
15 after the termination of the representation.

16 (b) Upon receiving funds or other property in which a client or third
17 person has an interest, a lawyer shall promptly notify the client or third
18 person. Except as stated in this Rule or otherwise permitted by law or by
19 agreement with the client, a lawyer shall promptly deliver to the client or
20 third person any funds or other property that the client or third person is
21 entitled to receive and, upon request by the client or third person, shall
22 promptly render a full accounting regarding such property.

23 (c) When in the course of representation a lawyer is in possession of
24 property in which both the lawyer and another person claim interests, the
25 property shall be kept separate by the lawyer until there is an accounting and
26 severance of their interest. If a dispute arises concerning their respective
27 interests, the portion in dispute shall be kept separate by the lawyer until
28 the dispute is resolved.

29 (d) (1) Each trust account referred to in (a) above shall be an
30 interest-bearing trust account in a bank, savings bank, trust
31 company, savings and loan association, savings association, credit
32 union, or federally regulated investment company, and the
33 institution shall be insured by an agency of the federal
34 government.

35 (2) A lawyer who receives client funds which in the judgment of the
36 lawyer are nominal in amount, or are expected to be held for such a
37 short period of time that it is not practical to earn and account for
38 income on individual deposits, shall create and maintain an interest-
39 bearing account for such funds. The account shall be maintained in
40 compliance with the following requirements:

41 (A) The trust account shall be maintained in compliance with

42 sections (a), (b) and (c) of this rule and the funds shall be
43 subject to withdrawal upon request and without delay;
44 (B) No earnings from the account shall be made available to the
45 lawyer or law firm; and,
46 (C) The interest accruing on this account, net of reasonable check
47 and deposit processing charges, which shall only include items-
48 deposit charge, monthly maintenance fee, per item-check charge,
49 and per-deposit charge, shall be paid to the Arkansas IOLTA
50 Foundation, Inc. All other fees and transaction costs shall be
51 paid by the lawyer or law firm.

52 (3) All client funds shall be deposited in the account specified in
53 section (d)(2) unless they are deposited in a separate interest-bearing
54 account for a specific and individual matter for a particular client.
55 There shall be a separate account opened for each such particular
56 matter. Interest so earned must be held in trust as property of each
57 client in the same manner as is provided in (a) and (b) of this rule.

58 (4) The interest paid on the account shall not be less than, nor the
59 fees and charges assessed greater than, the rate paid or fees and
60 charges assessed, to any non-lawyer customers on accounts of the same
61 class within the same institution.

62 (5) The decision whether to use an account specified in section (d)(2)
63 or an account specified in section (d)(3) is within the discretion of
64 the lawyer. In making this determination, consideration should be given
65 to the following:

66 (A) The amount of interest that the funds would earn during the
67 period they are expected to be deposited; and,
68 (B) The cost of establishing and administering the account,
69 including the cost of the lawyer's or law firm's services.

70 (e) All lawyers who maintain accounts provided for in this Rule, must convert
71 their client trust account(s) to interest-bearing account(s) with the interest
72 to be paid to the Arkansas IOLTA Foundation, Inc., no later than six months
73 from the date of the order adopting this Rule, unless the account falls within
74 subsection (d)(3). All lawyers shall certify annually that they, their law
75 firm or professional corporation is in compliance with all sections and
76 subsections of this Rule.

77 (f) A lawyer shall certify, in connection with the annual renewal of the
78 lawyer's license, that the lawyer is complying with all provisions of this
79 rule. Certification shall be made on the following form in a manner
80 designated by the Clerk of the Supreme Court.

81 (g) An attorney or a law firm may be exempt from the requirements of this
82 rule if the Arkansas IOLTA Foundation's Board of Directors, on its own motion,
83 has exempted the attorney or law firm from participation in the Program for a
84 period of no more than two years when service charges on the attorney's or law
85 firm's trust account equal or exceed any interest generated.

TRUST ACCOUNT IOLTA CERTIFICATE

(All licensed attorneys in Arkansas must check the appropriate box and sign below.)

- I am an attorney who in the course of the practice of law in Arkansas receives or disburses client funds, and, in order to comply with the Model Rules of Professional Conduct Rule 1.15, I have my law firm (and/or the public or private entity for which I work) has established one or more pooled client trust accounts, all of which are interest-bearing for the benefit of the Arkansas IOLTA Foundation.
- I am engaged in the practice of law in Arkansas, but in the course of my practice I do not receive client funds.
- I am not required to maintain a client trust account because I do not practice law in Arkansas, receive client funds in Arkansas, or receive funds from Arkansas clients.
- Because I am a full-time judge, government attorney or military attorney, I do not handle client funds and do not maintain a client trust account.

Signature of Lawyer

Date

Supreme Court NUMBER

IN RE: Gary E. JOHNSON

870 S.W.2d 395

Supreme Court of Arkansas
Opinion delivered March 7, 1994

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Gary E. Johnson of Pulaski County, Arkansas to practice law in the State of Arkansas.

IN RE: ARKANSAS RULES FOR MINIMUM CONTINUING LEGAL EDUCATION AND REGULATIONS of the Arkansas Continuing Legal Education Board

Supreme Court of Arkansas
Delivered March 14, 1994

PER CURIAM. The Arkansas Continuing Legal Education Board has proposed changes in the Arkansas Rules for Minimum Continuing Legal Education and the Regulations of the Arkansas Continuing Legal Education Board regarding the day to day administration of the program. In addition, having considered a formal petition filed by the Arkansas Bar Association to add a mandatory ethics requirement, the Board recommends that Rule 3.(A) be amended to include one hour per year of ethics within the existing 12 hour requirement.

We publish these proposed changes so that they may be studied by members of the bench and bar. The deadline for written comments is May 14, 1994. They may be sent to Leslie Steen, Esq., Clerk of the Supreme Court and Court of Appeals, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

The proposed changes to the Rules and Regulations are as follows:

PROPOSED REVISIONS TO CLE RULES
AND REGULATIONS

RULE 1

- 1.(A) There is hereby established the Arkansas Continuing Legal Education Board (hereinafter referred to as the "Board"). The Board shall be composed of nine voting members, appointed by the Arkansas Supreme Court, all of whom are resident members of the Bar of Arkansas. In addition, the Dean of each Arkansas law school accredited by the American Bar Association shall be an ex-officio member, without vote.
- 1.(D) The Board shall annually, by majority vote, elect a chairman from among its voting members. The Director of the Office of Professional Programs for the Arkansas Supreme Court shall serve as Secretary without a vote. Board members shall be entitled to reasonable reimbursement for expenses and such per diem compensation as the Court may from time to time direct.
- 1.(E)(3) The Board may appoint committees as may be necessary to efficiently administer these rules; however, all matters concerning sanctions for noncompliance with these rules shall be the duty and responsibility of the Board.

RULE 2

- 2.(C) Non Resident Attorneys:
- (1) Attorneys who are members of the Bar of Arkansas, but reside outside this State, are required to meet the minimum continuing legal education requirements of their resident state. Such attorneys shall complete annual certification forms to that effect. These forms will be filed with the Arkansas Continuing Legal Education Board on or before the October 31 which succeeds the reporting period in question. Such certifications shall be subject to verification through the agency which administers the continuing legal education program for such resident state. In the event

an attorney is a member of the Bar of Arkansas, yet resides in a state or foreign jurisdiction where there is no continuing legal education requirement, such attorneys shall be annually required to file with the Arkansas Continuing Legal Education Board a certification form confirming that fact. This form shall be filed on or before the October 31 which succeeds the reporting period in question. Further, in the event an attorney returns to the practice of law in the state of Arkansas from a state where there has been no continuing legal education requirement that attorney shall be required, by the end of the first reporting period after the attorney's return, to acquire thirty-six (36) hours of accredited continuing legal education. Twelve (12) of those hours shall be a basic skills course or bar examination review course as approved by the Board.

(2) Nonetheless, an Arkansas licensed attorney or judge who resides: in a state which does not require continuing legal education; in a foreign jurisdiction; or, in a state which requires continuing legal education but is not licensed in that state and is therefore prohibited from participating in the continuing legal education program of that state, may remain current as regards Arkansas CLE requirements. Such attorneys may do so by meeting the twelve (12) hour requirement as set out in Rule 3.(A). The Secretary shall obtain from such attorneys appropriate documentation to confirm compliance with the Arkansas CLE program. In the event attorneys are in compliance with the Arkansas CLE program during the year preceding their return to the practice of law in Arkansas, they shall not be subject to the thirty-six (36) hour requirement mentioned in paragraph 2.(C)(1) above. In the event an attorney has elected to remain current, yet fails to acquire 12 hours of approved CLE during any reporting period, that attorney shall be subject to the sanctions of Rule 6.

2.(D) Inactive Status:

(1) At anytime during a reporting period, an attorney on active status, with the exception of sitting

judges, may take inactive status pursuant to these rules. Inactive status, for the purpose of these rules only, means that an attorney, subsequent to declaration of inactive status, will not engage in the practice of law during the remainder of that reporting period. Election of inactive status must be in writing. By taking inactive status, the attorney shall be exempt from the minimum educational requirements of Rule 3 for that reporting period, and subsequent reporting periods if the attorney chooses to annually recertify inactive status. The Board shall provide a form for renewal of inactive status. Attorneys claiming inactive status shall file with the Board an inactive status renewal form on or before October 31 of each succeeding reporting period.

RULE 3

- 3.(A) Every member of the Bar of Arkansas, except as may be otherwise provided by these rules and, excepting those attorneys granted voluntary inactive status by the Arkansas Supreme Court Committee on Professional Conduct, shall complete 12 hours of approved continuing legal education during each reporting period as defined by Rule 5.(A) below. Of those 12 hours, at least one hour shall be ethics as defined by Regulation 3.02. In addition, an attorney or judge may carry over accredited hours in accord with the provisions of Rule 5.(A), including one hour of ethics which may be carried forward to the succeeding reporting period.

RULE 4

- 4.(A) The Board shall be the exclusive authority for accreditation of continuing legal education sponsors or programs. However, the Board may delegate to a subcommittee, in accord with Rule 1.(E)(3), the authority to review submissions by new sponsors. Further, the Board may delegate to its Secretary the authority to approve or deny programs submitted by previously accredited sponsors, or by sponsors who have previously had individual program(s) approved by the Board.

The Board, through its Secretary, shall provide an annual report to the Arkansas Supreme Court which shall reflect summary information with regard to program approvals or denials, attorney suspension information, and such other matters as the Board may direct.

RULE 5

Reporting

- 5.(A) Credit for approved continuing legal education hours will be given for courses or activities conducted from July 1 through June 30 of each year, and for the purposes of these rules, this period of time shall be known as the "reporting period." If an attorney or a judge acquires, during such reporting period, approved continuing legal education in excess of twelve (12) hours, the excess credit may be carried forward and applied to the education requirement for the succeeding reporting period only. The maximum number of CLE hours one may carry forward is twelve (12), which may include one hour of ethics.
- 5.(B) Sponsors may be required to report attendance to the Board or its Secretary. Such reports may be required promptly after completion of each program or activity. Attorneys may also report approved activities using a certificate approved by the Board.
- 5.(C) The Board, through its Secretary, shall maintain current records of CLE attendance for each attorney to whom these rules apply. Pursuant to Board regulation, they shall be made available to such attorneys.
- 5.(D) During the course of the reporting period, the Board, through its Secretary, may provide interim reports by first class mail to those attorneys subject to the 12 hour requirement of Rule 3.(A). Such reports will state the number of approved CLE hours each attorney has of record with the Board. On or before July 31 after the conclusion of the immediately preceding reporting period, the Board, through its Secretary, shall provide a final report by first class mail to those attorneys. The number of approved CLE hours stated in

the interim and final reports shall be presumed correct unless the attorney notifies the Board otherwise. If the final report shows acquisition of 12 or more approved CLE hours during the reporting period, the attorney shall be deemed to be in compliance with these rules and need not take any further action for the immediately preceding reporting period.

In the event the final report reflects that an attorney has failed to meet the 12 hour requirement of Rule 3.(A), the final report will be accompanied by an acknowledgment of deficiency form. Such attorneys shall sign the acknowledgment of deficiency form and file it with the Board on or before the following August 31. Subsequently, such attorneys shall cure any deficiency by December 1 and provide appropriate documentation to the Board no later than the following December 15. CLE hours reported to the Board pursuant to the acknowledgment of deficiency shall first be applied to the deficiency and any remaining hours will be applied to the current reporting period.

- 5.(E) The Board is authorized to assess costs against delinquent attorneys in the form of a reasonable fee for filing late and filing a deficiency plan.
- 5.(F) Newly admitted attorneys shall be subject to the twelve hour minimum requirement during the reporting period that follows the reporting period in which they are admitted.
- 5.(G) All filings pursuant to Rule 5 will be made with the Secretary to the Arkansas Continuing Legal Education Board, unless the Board directs otherwise. In addition, all such filings that require the signature of an attorney shall be subject to the requirements of Rule 8.4 of the Model Rules of Professional Conduct for Lawyers or its successor rule.

RULE 6

Noncompliance and Sanctions

- 6.(A) If an attorney to whom these rules apply either fails: to file timely the acknowledgment of deficiency or

cure the deficiency as required by Rule 5.(D); to file timely an inactive renewal form pursuant to Rule 2.(D); or, to file timely an out of state certification form in accord with Rule 2.(C), the attorney shall not be in compliance with these rules.

- 6.(B) Within 30 days after an attorney fails to comply with any provision of the preceding paragraph, the Board, through its Secretary, shall serve a notice of non-compliance on the affected attorney. Such notice shall be sent by first class mail to the address the attorney maintains with the office of the Arkansas Supreme Court Clerk.
- 6.(C) The notice shall contain a statement of the nature of the noncompliance. The attorney must, within 30 days of the date of the notice of noncompliance, provide the Board written evidence that the attorney is either in compliance or has corrected the noncompliance.
- 6.(D) If within the allotted time as set out in paragraph 6.(C) above, the attorney fails either to provide written evidence of compliance or that the noncompliance has been corrected, the Board, through its Secretary, shall serve a notice of intent to suspend upon the affected attorney. Such notice shall be mailed to the address the attorney maintains with the Clerk of the Arkansas Supreme Court. The notice shall be sent by certified mail, restricted delivery, return receipt requested. Such notice shall apprise the attorney that his or her Arkansas law license shall be considered for suspension at the next regularly scheduled meeting of the Board. Such notice shall be sent at least 20 days prior to that meeting. Upon written request of the attorney, a hearing shall be conducted at that meeting.
- 6.(E) Hearing procedure:
- (1) The Board, in the performance of its responsibilities under these rules, shall have the authority to request issuance of summons or subpoena from the Office of the Supreme Court Clerk, and the Clerk shall

issue same. Such requests shall be signed by the Chairman of the Board, or its Secretary.

(2) Witnesses may be sworn by the Board Chairman or any member acting in his stead, or by any individual authorized to administer oaths, and upon request, a record shall be made at the expense of the attorney. Such hearings are civil in nature and the standard for decision is preponderance of the evidence.

(3) The hearing shall be open to the public.

(4) After the hearing, the Board may retire to executive session to deliberate. Thereafter, its decision shall be publicly announced and, if not unanimous, there shall be a statement of votes by individual members.

(5) The Board shall take action by a majority vote of the voting members present.

6.(F) Authorized dispositions at Board meeting subsequent to service of notice of intent to suspend.

(1) The Board may dismiss the matter if records in possession of the Board show that the attorney has achieved compliance. However, such dismissal may be made contingent upon payment of a delinquency assessment as authorized by Rule 5.(E) and the regulations adopted pursuant to that rule; or,

(2) The Board may enter an order deferring further action for no more than 90 days to allow the attorney to achieve compliance. Subsequent to the period of deferment, the Board may suspend the attorney in accordance with Rule 6.(F)(3), or, dismiss the action in accord with the preceding paragraph, or, take such other permissible actions it may deem appropriate; or,

(3) The Board may suspend the license of the attorney subject to reinstatement pursuant to paragraph 6.(H) below. Such suspension shall become effective

on the date of filing of the notice and order of suspension with the Arkansas Supreme Court Clerk. (Hereinafter referred to as "The Order of Suspension.")

- 6.(G) Promptly after a Board vote of suspension, the Secretary shall notify the affected attorney by way of certified mail, restricted delivery, return receipt requested. In addition, the Secretary shall promptly file the order of suspension with the Clerk of the Arkansas Supreme Court and notify Arkansas state judges of general jurisdiction and the United States District Court Clerk.

Attorneys who are suspended may request a stay of such suspension pending a hearing by the Board. Such a request shall be made in conjunction with a petition for reinstatement. The request shall be presented to the Board, through its Secretary, in the form required by Rule 6.(H). Such submissions shall be ruled upon by the Board Chairperson, or a member designated by the Chairperson. To be considered for review, the petition for reinstatement and request for stay must either: (a) establish that the attorney had obtained the requisite number of CLE hours, or filed the appropriate documents, to be in compliance on or before the vote of suspension on that attorney; or, (b) confirm that subsequent to the vote of suspension, but prior to filing the petition for reinstatement and request for stay, the attorney had obtained the requisite number of CLE hours to be in compliance or had filed appropriate documents to achieve compliance. Any request for stay of suspension must contain an affirmation by the attorney that he or she has not engaged in the practice of law subsequent to receipt of notification of suspension or actual knowledge of suspension, whichever is earlier.

- 6.(H) An attorney who has been suspended pursuant to these rules who desires reinstatement shall file a petition for reinstatement (which in appropriate cases may incorporate a request for stay of suspension) with the

Secretary of the Board. The petition shall be sworn and properly acknowledged by a notary public or any official authorized to take oaths. The petition may include the applicant's reason(s) for noncompliance, state that the applicant is presently in compliance, or provide any other material information pertinent to the applicant's petition. The petition must contain an affirmation that the petitioner has not engaged in the practice of law subsequent to receipt of notification of suspension or actual knowledge of suspension, whichever is earlier. The petitioner may request a hearing before the Board. In such case, a hearing will be conducted in accordance with the provisions set out in Rules 6.(E) and 6.(F), and Section 6 of the regulations. In the event the attorney is reinstated, the Board may set additional educational requirements as a condition of reinstatement and may assess reinstatement fees and late filing fees consistent with its regulations.

SECTION 3 — MINIMUM REQUIREMENTS

- 3.02 Ethics presentations shall be distinct segments no less than one hour in length, shall be specifically designated separately on the program application and shall be accompanied by appropriate documentation. Likewise, claims for ethics credit shall be designated separately on certificates of attendance submitted to the Secretary.

Ethics shall be defined as follows: "Legal ethics includes, but is not necessarily limited to, instruction on the Model Rules of Professional Responsibility for Lawyers and the Code of Judicial Conduct. It does not include such topics as attorney fees, client development, law office economics, and practice systems except to the extent that professional responsibility is directly discussed in connection with these topics."

In accord with Rule 2.(C) "out of state" attorneys shall not be subject to the one hour ethics requirement set forth in Rule 3.(A) except insofar as their resident states require ethics credits.

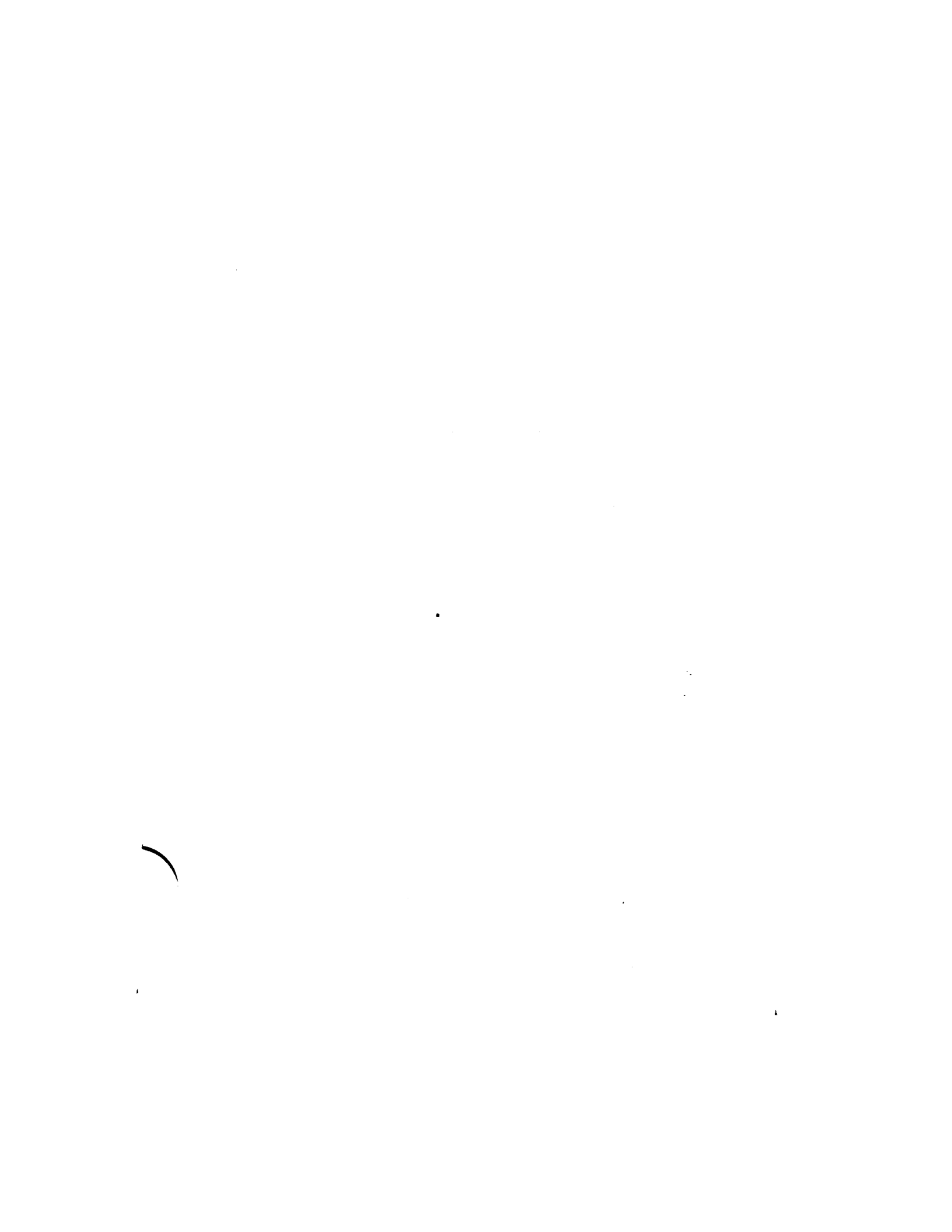
SECTION 5 — REPORTING — FEES

- 5.01 After a reporting period has ended, and at any time prior to a vote of suspension by the Board, an attorney may file:
- (1) Documentation to establish compliance with the provisions of Rule 3.(A). If filed between July 1 and August 31, such documentation shall be accompanied by a deficiency fee of \$75.00 if the documents submitted are for CLE credits acquired after July 1;
 - (2) An acknowledgment of deficiency form. If filed between July 1 and August 31, such a filing shall be accompanied by a deficiency fee of \$75.00;
 - (3) An acknowledgment of deficiency, if filed after August 31, shall be subject to the \$75.00 deficiency fee set out in paragraph (2) above, and a late filing fee of \$25.00. After timely filing of an acknowledgment of deficiency and payment of the required fee, no late filing fee will be assessed for hours submitted to cure timely the deficiency. However, documentation of hours obtained after December 1 to cure a deficiency shall be accompanied by a late filing fee of \$100.00. Documentation to establish compliance with Rule 3.(A) for CLE credits acquired before July 1, but filed after August 31, shall be subject to a \$25.00 late filing fee;
 - (4) An out of state certification pursuant to Rule 2.(C); or, an inactive renewal pursuant to Rule 2.(D). Such filings shall be accompanied by a late filing fee of \$25.00 if filed after October 31; and,
 - (5) Documentation tendered in accord with the preceding paragraphs will not be accepted unless accompanied by the appropriate filing fee and unless all other applicable requirements have been met.
- 5.02 All fees shall be made payable to the Bar of Arkansas.

SECTION 6 — HEARINGS PROCEDURES/SANCTIONS

- 6.01(4) Not less than ten days before a hearing, at the request of either the Board or the attorney, each shall apprise the other of the names, addresses, and phone numbers of witnesses and provide copies of all exhibits each intends to present at the hearing.

**Appointments to
Committees**



IN RE: COMMITTEE ON THE UNAUTHORIZED
PRACTICE OF LAW

Supreme Court of Arkansas
Delivered February 28, 1994

PER CURIAM. By Per Curiam of November 8, 1993, the Court adopted amended rules of procedure for the Committee on the Unauthorized Practice of Law and established three-year terms for its members who had previously served at the pleasure of the Court. We inadvertently failed to request that the current members of the Committee initially draw for staggered terms in order that all terms not expire at the same time.

Therefore, we now request that the Committee on the Unauthorized Practice of Law draw for staggered terms in the following manner, said staggered terms to expire on May 31 of the applicable calendar year. One lawyer member and one non-lawyer member shall draw for terms of one (1) year; one lawyer member and one non-lawyer member shall draw for terms of two (2) years; and two lawyer members and one non-lawyer member shall draw for terms of three (3) years. Thereafter, as stated in the November 8, 1993, Per Curiam, appointments shall be for periods of three (3) years, subject to reappointment to a second three-year term.

IN RE: AD HOC COMMITTEE ON RULE XV OF THE
RULES GOVERNING ADMISSION TO THE BAR

Supreme Court of Arkansas
Delivered March 14, 1994

PER CURIAM. There is hereby created an Ad Hoc Committee to study and advise the Court on recommended changes in Rule XV of the Rules Governing Admission to the Bar concerning law student work with practicing attorneys.

The members are:

Scott Stafford - Little Rock
Bill Simpson - Little Rock
Larry Jegley - Little Rock
Marcia McIver - Fayetteville
Frank Morledge - Forrest City

The committee is given the authority to meet at such times and places as it deems necessary and to promulgate such rules and procedures as it deems necessary.

The committee will issue its report to this Court within six months from date of this order.

IN RE: BOARD OF LAW EXAMINERS

873 S.W.2d 817

Supreme Court of Arkansas
Delivered April 25, 1994

PER CURIAM. For the purpose of grading and certifying the results of the July 1994 Bar Examination, Michael L. Gibson is appointed to replace W. Frank Morledge as a First District member of the Arkansas Board of Law Examiners.

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HEADNOTE INDEX

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- Cause of action accrued on date guilty plea entered, conviction triggers mandatory disbarment action against an attorney. *Neal v. Wilson*, 588.
- Applicable rules and procedures in effect at time appellant pled guilty, application proper. *Id.*

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- Issue must be raised below to be raised on appeal. *Finch v. Neal*, 530.
- Committee on Professional Conduct not bound by rules of court. *Id.*

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- Withdrawal of consent to adopt after interlocutory order, when allowed. *Martin v. Martin*, 765.
- Jurisdiction of probate court to order an adoption, mother's consent necessary. *Id.*
- Complaints without merit, no prejudice found. *Id.*
- Mother's consent given, order not entered until ten day withdrawal period had expired, jurisdiction proper. *Id.*
- Adoption statutes ensure finality, stability of the family relationship outweighs any loss to the birth parent. *Id.*
- Birth mother fully informed about time in which to withdraw consent, refusal to set aside decree affirmed. *Id.*

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- Appeal from municipal court to circuit court, notice of appeal timely, but failure to file record timely was fatal. *Id.*
- Notice of appeal not required in appeal from inferior court to circuit court and does not perfect appeal. *Id.*
- Issues raised for first time on appeal not addressed. *Id.*
- Duty to perfect appeal rests on counsel. *Id.*
- Pro se litigants must conform to rules. *Id.*
- Review of chancery cases. *Leathers v. W.S. Compton Co.*, 10.
- Release of information would confer an advantage upon competitor, no error found. *Id.*
- Motion for rule on the clerk, good cause for granting. *Kelly v. State*, 15.
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- Standard of review, tax cases. *Pledger v. C.B. Form Co.*, 22.
- Arguments raised for first time on appeal not considered. *Id.*
- Appeal from municipal court to circuit court. *Smith v. State*, 32.
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- Inferior Court Rule 9 applies in criminal cases. *Id.*
- Thirty-day requirement mandatory and jurisdictional. *Id.*
- Appeal from municipal court to circuit court. *Id.*
- Appeal from municipal court, motion to proceed as pauper, no compliance with rule. *Id.*
- Stay of time for appeal during pendency of certain post-trial motions, rule not applicable to motion to proceed as a pauper in circuit court. *Id.*

- Circuit court has no authority to accept untimely appeal or to grant a belated appeal. *Id.*
- Review of juvenile court proceedings. *Nance v. Arkansas Dep't of Human Servs.*, 43.
- Abstract flagrantly deficient. *Sturch v. Sturch*, 53.
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- Abstract mere reprint of the transcript, court would not reach merits of appeal. *Muldrow v. Douglass*, 86.
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- Appellate court will not explore record for prejudicial error. *Pogue v. State*, 428.
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Broad exclusion not a mere exercise of regulatory power, Amendment 73 disqualifies congressional incumbents from further service. *Id.*
Qualifications for congressional office set by Constitution, any attempt to alter those qualifications by the states conflicts with the Supremacy Clause. *Id.*
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- Jurisdiction, circuit judge has authority to preside in any county within judicial district from which that judge was elected. *Id.*
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- Amendment to charge properly allowed, amendment went to manner of the commission of the crime, nature of the crime not changed by amendment. *Id.*
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Appellant presumed competent, burden of proving his incompetence not met. *Id.*
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- Post-conviction relief, timeliness of petition. *Pogue v. State*, 428.
- Post-conviction relief, petition was timely filed. *Id.*
- Post-conviction relief, ineffective assistance of counsel, standard of review. *Id.*
- Post-conviction relief, strong presumption counsel's performance reasonable, burden on appellant to show otherwise. *Id.*
- Post-conviction relief, trial strategy not basis for relief. *Id.*
- Post-conviction relief, prejudice must be shown. *Id.*
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- Speedy trial, felony, when charges filed, date information filed. *Id.*
- Speedy trial, charges filed when information filed, arrested before information filed, time began to run with arrest. *Id.*
- Speedy trial, no error to deny motion to dismiss. *Id.*
- Duty to disclose all pertinent tests, but not required to make certain tests on all material seized. *State v. Pulaski County Circuit Court*, 514.
- Violation of Interstate Agreement On Detainers Act a non-jurisdictional error, such error is waivable by a criminal defendant. *Hutcherson v. State*, 551.
- Voluntariness of confession, standard on review. *Midgett v. State*, 553.
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- Intoxication claimed at time statement made, test for an intelligent waiver. *Id.*
- Evidence sufficient to show an intelligent waiver, motion to suppress properly denied by trial court. *Id.*
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- No felony charge ever filed against appellant, circuit court had no authority to proceed. *Id.*
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- Amendments to information did not change the original charge against the appellant, no surprise existed. *Id.*
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- Felon in possession of firearm, jury entitled to know nature and circumstances of prior conviction. *Id.*
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- Sentencing, exercise of discretion in determining whether sentences run concurrently or consecutively. *Id.*
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Attorney-client privilege, admissibility covered by Ark. R. Evid. 502(b). *Nance v. Arkansas Dep't of Human Servs.*, 43.
Attorney-client privilege, no confidential communication involved. *Id.*
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Parol evidence properly admitted, documents silent on points necessary to a complete understanding of the agreement of the parties. *Id.*
Burden of proof when motion in limine has been requested. *Benson v. Shuler Drilling Co.*, 101.
Injured party's description of injury as basis for hearsay exception, test for determining trustworthiness of statements made to physician and offered at trial. *Id.*

Medical records exception to the hearsay rule discussed. *Id.*
Statements relating to another's symptoms, determination of admissibility. *Id.*
Physician's statements admitted, abuse of discretion found. *Id.*
Business records exception to hearsay rule, seven requirements. *Id.*
Discharge summary, business records exception not applicable. *Id.*
Test for determining the sufficiency of, substantial evidence discussed. *Piercefield v. State*, 128.
Intent inferred from appellant's possession of 200 milligrams of the drug, motion for directed verdict properly denied. *Id.*
Hearsay alleged, none found. *Id.*
Trial court's finding that a knowing and intelligent waiver had been made supported by the evidence. *Id.*
Admissibility of expert testimony, standard of review, abuse of discretion. *Stewart v. State*, 153.
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Possession with intent to deliver, possession of firearm relevant to prove intent. *Id.*
Review on appeal, substantial evidence discussed. *Young v. State*, 225.
Substantial evidence found, motion for directed verdict properly denied. *Id.*
Admission of luminol test without also admitting evidence of follow-up tests erroneous. *Id.*
Follow-up tests failed to confirm the presence of human blood, admission of luminol tests in error. *Id.*
State had burden of proving an independent source for disputed evidence used in appellant's trial. *Id.*
Testimony a direct result of appellant's grant of immunity, burden of showing a legitimate independent source not met, abuse of discretion found. *Id.*
Knowing use of false evidence violates defendant's Fourteenth Amendment rights, no proof evidence was known to be false when used. *Id.*
Error argued in admission of videotaped statement, statement never shown to jury, no error occurred. *Id.*
No authority cited requiring prosecutor's recusal, prosecutor not required to recuse. *Id.*
All elements required for an abuse of process claim sufficiently proven, trial court properly denied motion for a new trial. *McNair v. McNair*, 299.
Timely objection required stating specific ground for objection if ground not apparent. *Gidron v. State*, 352.
Photograph showed no new evidence, no prejudice shown from its admission. *Id.*
Admission in discretion of trial judge. *Id.*
Cross-examination limited, trial court's determination of irrelevance not an abuse of discretion. *Cook v. State*, 384.
Testimony on direct denying any collateral acts of misconduct, door opened for impeachment by contradiction. *Smith v. State*, 407.
Extrinsic evidence of prior misconduct allowed at trial, no error found. *Id.*
Sufficiency of, analysis for determining. *Laughlin v. State*, 489.
Testimony sufficient for proof of rape by deviate sexual activity, no corroboration required. *Id.*
Extrinsic evidence allowed if probative of truthfulness, evidence merely probative of dishonesty not allowed. *Id.*
Questioning properly disallowed, specific instances of theft did not translate into examples of untruthfulness. *Id.*

Evidence sufficient to support convictions. *Midgett v. State*, 553.
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Substantial evidence existed, conviction upheld. *Id.*
Expert witnesses, qualifications, range of testimony permitted. *Redman v. St. Louis S.W. Ry. Co.*, 636.
Expert witness, qualifications in discretion of trial court. *Id.*
State trooper permitted to testify as expert on reaction times of motorists. *Id.*
Witness not formally declared expert, but no other conclusion possible, no error. *Id.*
Opinion testimony about the dangerousness of the crossing did not amount to an instruction on the law to be applied. *Id.*
Accused offers character evidence, witness may be cross-examined as to knowledge of specific instances of conduct irrespective of prejudice. *Smith v. State*, 413-A.
Ark. R. Evid. 403 not applicable to cross-examination of character witnesses. *Id.*
Failure to object at trial. *Tolbert v. State*, 671.
Trial court found appellant not to be intoxicated at the time of her confession, reasonable amount of time had passed since her last drink. *McClendon v. State*, 688.
Photographs or videotapes, same rules apply generally. *Williams v. State*, 694.
Photographs, rules governing admission and exclusion. *Id.*
Photographs, no error to admit photographs or tape. *Id.*
Photographs, discretion is not carte blanche, photographs excluded only if prejudice outweighs probative value. *Id.*
Photographs, no abuse of discretion to admit evidence. *Id.*
Statement not hearsay, statement about identification after perception not hearsay if declarant subject to cross-examination. *Jacobs v. State*, 698.
Witness testified and was cross-examined, detective's statement about witness's identification of appellant was not hearsay. *Id.*
Sufficiency of, factors on review. *Gibson v. State*, 705.
Law enforcement officers, officers have duty to preserve the peace 24 hours a day. *Id.*
Victim employed as a police officer, victim was acting as a law enforcement officer in the line of duty when injured. *Id.*
Evidence sufficient to support finding that the appellant knew the victim was a law enforcement officer. *Id.*
Similar evidence previously admitted without objection, admission of later testimony on the same subject was not prejudicial. *Id.*
Sufficiency of, factors on review. *Martin v. State*, 715.
Evidence found sufficient, conviction sustained. *Id.*
Exception to the hearsay rule found, no error found. *Id.*
Lay witness, opinion testimony. *Brown v. State*, 724.
Lay opinion testimony correctly admitted. *Id.*
Hearsay, court's own docket book not hearsay. *Heard v. State*, 731.
Challenge to sufficiency of evidence must be renewed at close of all evidence, ineffective if after jury charged. *Marshall v. State*, 753.
Decision on admissibility, no reversal unless clearly erroneous. *Id.*
Questions about witness's ability to perceive incident go to weight not admissibility. *Id.*
Admissibility of photographs, gruesome photos. *Id.*
Photographs admissible if help jury. *Id.*
Remedial measures taken after date of accident not admissible to prove negligence. *Jacuzzi Brothers, Inc. v. Todd*, 785.
Rule proscribing evidence of post-accident remedial measures is not akin to a privilege, violation does not require automatic reversal. *Id.*
Acts of prior consensual conduct between the victim and the accused admissible

only when consent is at issue, consent not an issue where the victims were younger than the age of consent. *Drymon v. State*, 799.

Rape victims, incidents of individual masturbation by a victim have no relevance in a rape case. *Id.*

Masturbation testimony not allowed by trial court, no abuse of discretion found. *Id.*

Acts did not constitute sexual conduct under the statute, no error to exclude the evidence. *Id.*

Challenge to validity of custodial statement, factors considered, intoxication no defense. *Id.*

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Eighth Amendment provides insane person right not to be executed, procedural means state must provide to protect this right. *Singleton v. Endell*, 133.

State statute for determination of competency of an individual under sentence of death constitutional. *Id.*

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Conflict of interest, taint removed by appointment of special administrator. *Pickens v. Black*, 499.

Report of special administrator well-reasoned, orders based on it not clearly erroneous. *Id.*

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Joint account, parol evidence admissible to show respective contributions. *Maloy v. Stuttgart Memorial Hosp.*, 447.

Joint account, presumption all is garnishable, burden on depositor to show portion actually owned. *Id.*

Burden not on garnishor to prove delivery, account presumed to be garnishable, burden on depositor to prove otherwise. *Id.*

HABEAS CORPUS:

When proper, proper form of review is appeal. *Davis v. Reed*, 575.

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Law encourages the resumption of marital relations, reconciliation agreements not against public policy. *Ducharme v. Ducharme*, 482.

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Harm, when considered irreparable. *Brown v. SEECO, Inc.*, 336.

Record supported finding of irreparable harm, no abuse of discretion in granting injunction. *Id.*

INSURANCE:

Surety and indemnity bonds distinguished. *American Ins. Co. v. Cazort*, 314.

Indemnity bond, no right to pursue indemnity except for losses caused by insureds. *Id.*

Direct action on indemnitor's bond, action cannot be with regard to principal's liability. *Id.*

Exclusion clear and unambiguous, failure to repeat exclusion under the general heading for exclusions not fatal. *State Farm Mut. Ins. Co. v. Thomas*, 345.

Underinsured motorists statute, underinsurance should not pertain until it is determined that the insured is, in fact, underinsured. *Id.*

Underinsured carrier need not investigate or evaluate a claim prior to the payment of liability coverage by the tortfeasor's insurance company, trial court's order assessing a penalty and fees was reversed. *Id.*

Breach of cooperation clause, failure to show up for trial, burden of proof. *Shelter Mut. Ins. Co. v. Page*, 623.

Insured failed to appear at trial to defend, insurer failed to show due diligence, no breach of cooperation clause. *Id.*

Liability insurance, standard for questioning the venire regarding. *Watkins Motor Lines v. Hedrick*, 683.
 Appellant had knowledge that no insurance existed, proper foundation not laid for questioning jurors. *Id.*

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Refusal to recuse not error. *Trimble v. State*, 161.
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 Res judicata, determining if it applies. *Id.*
 Res judicata, appellant's claim is a non-issue. *Id.*
 When summary judgment proper. *Rodgers v. La Quinta Motor Inn*, 644.
 When summary judgment is proper, when burden of proof shifts. *Young v. Paxton*, 655.
 Summary judgment, review on appeal. *Id.*
 Summary judgment proper, appellant clearly a licensee, no material issue of fact existed. *Id.*
 Payment of interest on judgments, purpose of. *Estate of Otto v. Estate of Fair*, 674.
 Judgment must be a final determination capable of enforcement. *Id.*
 Final judgment defined. *Id.*
 Order not final, no error not to award interest. *Id.*
 Proper service required or judgment void. *Sides v. Kirchoff*, 680.
 Judgment rendered without jurisdiction over the defendants, judgment had no force as res judicata. *Id.*

JURISDICTION:

Conversion and contract interpretation at issue, trial court had jurisdiction to reach these issues. *McNair v. McNair*, 299.
 Juvenile charged with act that would constitute a felony if committed by an adult, prosecutor has discretion to file charges in circuit court. *State v. Pulaski County Circuit-Chancery Court*, 473.
 Felony charges in circuit court, required to be brought by indictment or information. *Id.*
 Municipal courts, lack jurisdiction to try felony cases. *Id.*
 Juveniles must be taken before court out of which warrant issued for proper jurisdiction to be determined. *Id.*
 No dispute as to point of collision, long-arm statute not applicable. *Watkins Motor Lines v. Hedrick*, 683.

JURY:

- Jury not required to believe appellant's version of the murder. *Trimble v. State*, 161.
- Misconduct is basis for granting new trial, decision discretionary. *Id.*
- Misconduct, burden of proof. *Id.*
- Misconduct, decision deferred to circuit judge. *Id.*
- Jury may request further instructions, whether to give jury additional information discretionary. *Farm Credit Bank v. Miller*, 388.
- Instructions requested by the jury denied by court, no abuse of discretion found. *Id.*
- Calling jury's attention to the fact that insurance is involved in a case, general rule. *Watkins Motor Lines v. Hedrick*, 683.
- Defendant had no right to exclude potential jurors who had not actually served as a juror in a prior trial involving the same offense, argument unsupported by authority not considered. *McClendon v. State*, 688.
- Credibility of witnesses for jury to resolve. *Jacobs v. State*, 698.
- Selection, statute only requires the judge to cause the names to be drawn, judge need not be present. *Marshall v. State*, 753.
- Names to be drawn in public courtroom. *Id.*

LIENS:

- Vendor's lien, how to establish in a warranty deed. *Agri Bank FCB v. Maxfield*, 566.
- Practical considerations apply, parties should be able to rely on public records for protection. *Id.*
- Language in deed referring to assumed debt insufficient to put third parties on notice, vendor's lien not evidenced by the deed. *Id.*
- Change in statute intended to broaden coverage, not to change lien priorities. *BB & B Constr. Co. v. F.D.I.C.*, 663.
- Lien statutes strictly construed. *Id.*
- One statute defines the nature and extent of a lien and to whom it applies, a different statute sets the priority of the lien as to other encumbrances and the nature of attachment. *Id.*
- Materialman lien or prior mortgage, first in time, first in right, unless improvement removable. *Id.*

LIMITATION OF ACTIONS:

- Medical malpractice, two year period strictly construed. *Green v. Nat'l Health Lab., Inc.*, 5.
- Malpractice action not barred by statute, defendants not entitled to summary judgment. *Id.*
- Determination as to which statute of limitations applies. *Ernest F. Loewer, Jr. Farms v. National Bank of Ark.*, 54.
- Gist of complaint sounded in tort, three-year statute of limitation applied. *Id.*
- Statute not shortened, appellant not entitled to notice. *Thomas v. Cornell*, 366.
- Statute properly applied, partial payment begins the running of the statute. *Jones v. Hempel*, 647.
- Voluntary partial payment is an acknowledgement of the existence of the indebtedness. *Id.*

MASTER & SERVANT:

- At-will employees, general rule. *City of Green Forest v. Morse*, 540.
- Employment-at-will doctrine, exceptions. *Id.*
- Recovery for wrongful discharge properly denied, statutory duty and public policy exceptions not applicable. *Id.*

MOTIONS:

- Hearing not required on motion to dismiss. *Ottens v. State*, 1.

Motion for certiorari treated as motion for rule on the clerk, motion granted. *Stone v. State*, 97.

Motion in limine, purpose of. *Benson v. Shuler Drilling Co.*, 101.

Motion for continuance discussed, factors on review. *Baumgarner v. State*, 373.

Motion for continuance properly denied, appellant failed to meet his burden of proof. *Id.*

No error in refusal to grant continuance after amendment made, no abuse of discretion or prejudice shown. *Id.*

Motion for continuance properly denied, no prejudice shown. *Id.*

Defense counsel failed to renew directed verdict motion at the end of all the evidence, issue not preserved for review. *Jackson v. State*, 405.

Implied motion for a directed verdict not recognized, specific motion required. *Id.*

Failure to renew motion for severance, waiver of objection. *Wynn v. State*, 414.

Failure of counsel should not deprive criminal defendant of his appeal, motion to file belated brief granted. *Robinson v. State*, 587.

Denial of motion for continuance, factors on review. *Martin v. State*, 715.

No showing of surprise or inadequate representation, no abuse of discretion in trial court's denial of continuance. *Id.*

Abstract did not show basis for directed verdict motion, motion insufficient to preserve specific issues for appeal. *Brown v. State*, 724.

Continuance, procuring presence of witnesses, affidavit required, applies in criminal cases, no abuse to deny continuance if no compliance. *Marshall v. State*, 753.

New trial, issue not liability, denial is sustained unless discretion clearly and manifestly abused. *Jacuzzi Brothers, Inc. v. Todd*, 785.

NEGLIGENCE:

Duty owed plaintiff alleging negligence a question of law, appellate court will sustain the trial court if correct result reached. *Lawhon Farm Supply, Inc. v. Hayes*, 69.

Duty of utility companies when supplying power, duty to act with reasonable care. *Bellanca v. Arkansas Power & Light Company*, 80.

Utility activated power at pole and turned on breakers, whether activation of breakers constituted a breach of duty of reasonable care a question of fact. *Id.*

Foreseeability a necessary ingredient. *Benson v. Shuler Drilling Co.*, 101.

Foreseeability of the accident was in issue, instruction including foreseeability language was correctly given. *Id.*

Duty of care, proof required to prevail in slip & fall case. *House v. Wal-Mart Stores, Inc.*, 221.

Slip & fall, factors considered to determine whether negligence occurred. *Id.*

Evidence insufficient to show negligence, directed verdict in favor of appellee proper. *Id.*

Duty owed by property owner to invitee. *Black v. Wal-Mart Stores, Inc.*, 418.

Slip and fall case, necessary proof. *Id.*

Slip and fall, mere description of floor as slippery is not sufficient to support case for negligence, summary judgment proper. *Id.*

No cause of action stated, suit for damage to trees on land condemned for pipeline. *Cramer v. Arkansas Okla. Gas Corp.*, 465.

Sufficient evidence to submit question of appellant's negligence to jury. *Druckemiller v. Cluff*, 517.

Sudden emergency instruction, when it may be given, rule changed. *Id.*

Sudden emergency instruction, no error to refuse to give under the circumstances. *Id.*

Owner's duty to protect business invitees from harmful insects. *Rodgers v. La Quinta Motor Inn*, 644.

Business invitee, duty of care is the same whether at a residence or business. *Id.*

Business invitee bitten by harmful insect, failed to offer sufficient proof, summary judgment correctly granted for appellee. *Id.*

Essential elements. *Young v. Paxton*, 655.

Duty owed by property owner to licensee, what constitutes willful or wanton conduct. *Id.*

No proof of willful or wanton conduct by landowner. *Id.*

Duty of care toward an invitee, no obligation to protect invitee against dangers that are known to him. *Id.*

Regardless of status, appellee did not breach duty of care, summary judgment proper when element necessary for negligence was lacking. *Id.*

NOTICE:

Medical malpractice cases, requirement of notice and extension of statute of limitations after notice given have been superseded. *Thomas v. Cornell*, 366.

Inherent power of trial court to modify order with or without notice, within ninety days of filing. *Young v. Young*, 456.

PARENT & CHILD:

Juvenile court custody order supersedes any existing orders. *Nance v. Arkansas Dep't of Human Servs.*, 43.

Juvenile procedures, 18-month review not conducted, no error to transfer custody. *Id.*

Juvenile Code, dependent-neglected proceedings, burden of proof. *Id.*

Dependent-neglected juvenile defined. *Id.*

Neglect defined. *Id.*

Sufficient evidence of neglect. *Id.*

Reunification is important goal, need not be achieved if not in best interest of child. *Id.*

Home study requirements met. *Id.*

Interstate Compact on the Placement of Children was not applicable here. *Id.*

Blood tests, policy behind statute to ease admissibility. *Parks v. Ewans*, 91.

Appellant entitled to reasonable notice that blood test contested, reasonable notice not given. *Id.*

Child support charts, reference mandatory, award of chart amount not mandatory if unjust and reasons specified. *Arkansas Dep't of Human Servs. v. Hardy*, 119.

Abuse of discretion to deviate from child support chart here. *Id.*

Adjustment to child support award permitted when child spends extraordinary amount of time with non-custodial parent. *Id.*

Availability of government aid is no reason to reduce child support award. *Id.*

Denial of back child support not against the preponderance of the evidence. *Id.*

Child support, error to not order income withholding. *Id.*

Error to fail to provide for child's health-care needs. *Id.*

Determination of child support, all relevant factors may be considered, use of chart. *Carlton v. Carlton*, 618.

Failure to visit child, no automatic, *per diem* increase in child support required. *Id.*

Where non-custodial parent has custody more than 14 consecutive days, child support may be partially abated, converse not true. *Id.*

No hard and fast rules, child support, chancellor's discretion significant. *Id.*

Dependent-neglect case, Juvenile Code applicable, periodic reviews obligatory. *Nance v. Arkansas Dep't of Human Servs.*, 52-A

Procedures of Juvenile Code must be followed, other dispositions available if reasonable efforts to deliver family services have not been made. *Id.*

Error to dismiss dependent-neglect case where original custodial parent in substantial compliance with DHS case plan. *Id.*

PARTIES:

News media has standing to question exclusion from *voir dire*. *Memphis Pub. Co. v. Burnett*, 176.

Joinder, when judgment binds stranger to it. *Maloy v. Stuttgart Memorial Hosp.*, 447.

No prejudice or request to intervene, case not remanded sua sponte to join co-tenant of the account as a party. *Id.*
Appellants not interested parties, action of court did not make them interested parties. *Pickens v. Black*, 499.
Failure to join assessor or board of equalization as a party, void left as to who would effect a reassessment on remand. *IBM Credit Corp. v. Pulaski County*, 580.

PRINCIPAL & AGENT:

Burden of proof, agency defined. *Pledger v. Troll Book Clubs, Inc.*, 195.

PROCESS:

Commencement of an action, when one-year savings statute applies. *Hicks v. Clark*, 148.
Service never completed, action properly dismissed with prejudice. *Id.*

PROHIBITION, WRIT OF:

Extraordinary writ, when available. *West Memphis Sch. Dist. No. 4 v. Circuit Court*, 290.
When denied. *Id.*
When granted, not proper remedy for failure to grant motion to dismiss. *Id.*
When granted. *State v. Pulaski County Circuit-Chancery Court*, 473.
Writ denied, record unclear. *Id.*
Only granted when clearly warranted. *Archer v. Benton County Circuit Court*, 477.
Writ issued where circuit court lacked authority to order state to perform DNA tests. *State v. Pulaski County Circuit Court*, 514.

PROPERTY:

Sufficiency of description of land on which crops are grown, data must be supplied for separating the intended property from the mass. *Lawhon Farm Supply, Inc. v. Hayes*, 69.

RAILROADS:

City must condemn part of right-of-way for crossing, circuit court has subject-matter jurisdiction. *Union Pac. R.R. Co. v. State Ex. Rel. Faulkner County*, 609.
Statute did not confer jurisdiction on chancery court. *Id.*
Common law duty, adequate warnings required at abnormally dangerous crossings. *Redman v. St. Louis S.W. Ry. Co.*, 636.
Abnormally dangerous crossing, AMI 1805 properly given. *Id.*

RECORDS:

FOIA, error not to review *in camera* the file requested before granting a narrow exemption. *Johninson v. Stodola*, 423.
FOIA, disclosure of public records, exemption for undisclosed investigations of suspected criminal activity. *Id.*
FOIA, liberal interpretation, exemptions narrowly construed. *Id.*
FOIA, investigatory records, undisclosed investigation, terms defined. *Id.*
FOIA, court must peruse the pertinent data in order to make an informed decision about whether to invoke exception. *Id.*

SEARCH & SEIZURE:

Determination of probable cause, standard same for search and arrest. *Hudson v. State*, 360.
No error to deny motion to suppress, reasonable cause existed to justify search and seizure. *Id.*
Standing to assert right of privacy and challenge affidavit for search warrant. *Heard v. State*, 731.
Affidavit sufficiently indicated time frame for illegal activity. *Id.*
Affidavit failed to establish veracity of informant, defect no longer fatal under

totality-of-the-circumstances test if affidavit provides substantial basis to find reasonable cause. *Id.*

Appellant had no standing to object to search of his mother's house, no showing he had been overnight guest. *Marshall v. State*, 753.

SECURED TRANSACTIONS:

Appellant did not satisfy UCC requirements, trial court's dismissal proper. *Lawhon Farm Supply, Inc. v. Hayes*, 69.

SENTENCING:

Code calls for subsequent sentence to run concurrently with any undischarged portion of the previous sentence. *Ricks v. State*, 601.

Code cite covered consecutive sentences, defendant may be required to serve entire misdemeanor sentence when already serving time for a prior, unrelated felony. *Id.*

Suspended sentence already revoked when appellant sentenced on misdemeanor, order to remand appellant to serve remainder of sentence for misdemeanor proper. *Id.*

STATES:

Claim of immunity by state employee is a defense to be adjudicated. *West Memphis Sch. Dist. No. 4 v. Circuit Court*, 290.

STATUTES:

Interpretation of when language clearly understandable. *Leathers v. W.S. Compton Co.*, 10.

Interpretation of ambiguous language. *Id.*

Statute not ambiguous, advantage to competitors meant any advantage. *Id.*

Legislative intent gathered from language used. *Pledger v. C.B. Form Co.*, 22.

Compensable injury sustained by worker, may be held personally liable for unnecessary charges. *Taggart v. Northeast Ark. Rehabilitation Hosp.*, 39.

Use of blood tests in paternity actions, contest to results on chain-of-custody grounds must be made within 30 days of trial. *Parks v. Ewans*, 91.

Construction, severability. *U.S. Term Limits, Inc. v. Hill*, 251.

Statute penal, penalty directed against unwarranted delays by insurers. *State Farm Mut. Ins. Co. v. Thomas*, 345.

Construction, give effect to intent of legislation. *Thomas v. Cornell*, 366.

Invalidate part, when it invalidates whole statute. *Id.*

Plain meaning clear, statute of limitations began running from the date of the five-dollar payment. *Jones v. Hempel*, 647.

Interpretation of when the language is plain and unambiguous. *Mings v. State*, 650.

Ark. Code Ann. § 16-21-1102 interpreted, plain and ordinary meaning includes power to stop for DWIs. *Id.*

Legislature's intent clear, investigators appointed by the prosecutor have powers throughout the district. *Id.*

Interpretation of, statute will not be interpreted to reach an absurd conclusion. *Id.*

Statutory section clear, investigator had the power to stop and detain the appellant. *Id.*

TAXATION:

Exemptions strictly construed. *Pledger v. C.B. Form Co.*, 22.

Gross receipts tax, exemption for machinery and equipment includes molds and dies. *Id.*

Exemption for products sold for resale to prevent double taxation, not applicable here. *Id.*

Interpretation not required where terms defined, "machinery and equipment" defined to include molds and dies. *Id.*

No expressed legislative intent that molds be required to have continuing utility.
Id.

Section erroneously cited as additional authority for chancellor's holding, result the same. *Id.*

Mold and die exception, initial purchases or replacements, only repairs not exempt. *Id.*

Review of administrative tax decisions. *Pledger v. Troll Book Clubs, Inc.*, 195.

Use tax, commerce clause limits a state's ability to tax out-of-state entities. *Id.*

Use tax on out-of-state entity, necessary agency relationship not found. *Id.*

Jurisdiction over county taxes, void or illegal tax assessment. *Pockrus v. Bella Vista Village Property Owners Ass'n*, 468.

When suit for illegal exaction will lie. *Id.*

Taxes assessed by county authorized by law, objection only to reassessment and tax collection scheme not within chancery court's jurisdiction. *Id.*

Assessment, grant of reassessment rare, court has no jurisdiction to assess tax but must remand. *IBM Credit Corp. v. Pulaski County*, 580.

Assessment, cost-less-depreciation method approved as uniform, another method may be more accurate, but cannot be uniformly applied. *Id.*

Assessment, user of straight line depreciation to value computers was not arbitrary, capricious or confiscatory. *Id.*

TORTS:

Abuse of process, elements of. *McNair v. McNair*, 299.

Abuse of process, willful act requirement discussed. *Id.*

Slip & fall cases, res ipsa loquitur not applicable. *Alexander v. Town & Country Discount Foods, Inc.*, 446.

Wrongful death, persons entitled to recover damages for mental anguish. *Pickens v. Black*, 499.

Tort of outrage in employment situations narrowly viewed, duty owed. *City of Green Forest v. Morse*, 540.

Outrage alleged, facts surrounding discharge insufficient to support tort. *Id.*

Outrage alleged, other indignities endured in his job also insufficient to support tort. *Id.*

At-will employee discharged, exception to at-will discharge not applicable. *Id.*

Public and business invitees distinguished, status as a licensee. *Young v. Paxton*, 655.

TRIAL:

No authority for court to seal final order. *Arkansas Dep't of Human Servs. v. Hardy*, 119.

Sealing of records, public's right to information balanced against need for secrecy in certain situations. *Id.*

Objection to jury instructions, timeliness. *Stewart v. State*, 153.

Error to exclude public from *voir dire*, not error to exclude other members of venire. *Memphis Pub. Co. v. Burnett*, 176.

Failure to request limiting instruction, omission cannot inure to his benefit on appeal. *Hendrickson v. State*, 182.

Failure to request limiting instruction to jury, issue not preserved for appeal. *Id.*

New trial, when granted. *Richardson v. Flanery*, 310.

New trial, court has some discretion. *Id.*

No abuse of discretion to grant new trial. *Id.*

Objection to jury instructions, preserving issue for appeal. *Newton v. Chambliss*, 334.

No record of jury selection, no objection made until second day, issue not preserved for appeal. *Gidron v. State*, 352.

Going to trial without objection to the jury impaneled, appellant deemed to have waived any irregularity. *Id.*

- Burden on movant to obtain a ruling, unresolved questions and objections waived. *Id.*
- Failure to reduce charge cured by guilty verdict for lesser charge. *Id.*
- Jury instructions, failure to instruct for lesser included offense cured by conviction for greater offense. *Id.*
- Jury instructions, negligent homicide, no reason to believe jury would have found appellant guilty of that lesser crime, lesser crime not supported by facts. *Id.*
- Mistrial, when appropriate, factors on review. *Cook v. State*, 384.
- Refusal to grant mistrial, no abuse of discretion found. *Id.*
- General renewal of objections does not make clear grounds for objection. *Wynn v. State*, 414.
- Jury instructions, no error to give non-AMI instruction where no relevant AMI instruction existed. *Redman v. St. Louis S.W. Ry. Co.*, 636.
- Mistrial, when proper. *Williams v. State*, 694.
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ARKANSAS
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REPORTS

Volume 45

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IN THE

Court of Appeals
of Arkansas

FROM
February 9, 1994 – April 27, 1994
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
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DURING THE PERIOD COVERED
BY THIS VOLUME
(February 9, 1994 –
April 27, 1994, inclusive)

JUDGES

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

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

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DURING THE PERIOD COVERED BY THIS VOLUME
AND DESIGNATED FOR PUBLICATION

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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

- Akis v. Chicopee, CA 93-467 (Cooper, J.), affirmed April 6, 1994.
- Allen v. Ozark Import Specialist, CA 93-504 (Robbins, J.), affirmed March 16, 1994.
- Allen v. State, CA CR 93-363 (Cooper, J.), affirmed March 9, 1994.
- Arkansas W. Gas Co. v. Arkansas Public Serv. Comm'n, CA 94-116 (Per Curiam), Appellant's Motion to Certify to the Supreme Court denied April 13, 1994.
- Arkansas W. Gas Co. v. Arkansas Public Serv. Comm'n, CA 94-116 (Per Curiam), Motion of the Attorney General to Dismiss Appeal moot April 13, 1994.
- Bailey, Louberta v. State, CA CR 93-271 (Robbins, J.) affirmed February 9, 1994.
- Bailey, Travis v. State, CA CR 92-1487 (Cooper, J.), affirmed February 23, 1994.
- Baker Fin. Servs. v. Stacy, CA 92-1128 (Robbins, J.), reversed and remanded February 23, 1994.
- Balleza v. Anthony Forest Prods., CA 93-370 (Mayfield, J.), affirmed March 30, 1994.
- Barrie v. MacSteel Division of Quantrex, CA 93-666 (Robbins, J.), affirmed April 6, 1994.
- Barrier v. Barrier, CA 93-572 (Cooper, J.), affirmed April 20, 1994.
- Beatty v. State, CA CR 93-477 (Pittman, J.), affirmed April 13, 1994.
- Bieson v. Northside Cafe, CA 93-20 (Robbins, J.), affirmed February 9, 1994.
- Bonds v. Bonds, CA 93-252 (Mayfield, J.), reversed and remanded March 16, 1994.
- Boudreaux v. GLI Holding Co., CA 93-534 (Robbins, J.), affirmed March 9, 1994.
- Brown v. State, CA CR 93-527 (Rogers, J.), affirmed March 23, 1994.
- Bruce v. Director E 93-90 (Robbins, J.), affirmed April 13, 1994.
- Buckley v. Buckley, CA 93-428 (Robbins, J.), affirmed March 30, 1994.
- Bunting v. State, CA CR 93-225 (Mayfield, J.), affirmed Feb-

- ruary 9, 1994.
- Burlington Indus. v. Woods, CA 93-783 (Pittman, J.), affirmed April 27, 1994.
- Callahan v. State, CA CR 92-1494 (Per Curiam), Supplemental Opinion Granting Rehearing March 2, 1994.
- Callahan v. State, CA CR 92-1494 (Per Curiam), Corrected and Substituted Supplemental Opinion Granting Rehearing March 16, 1994.
- Carnley v. State, CA CR 92-1375 (Rogers, J.), affirmed March 16, 1994.
- Carr v. H.M. Heckle & Co., CA 93-551 (Rogers, J.), affirmed April 6, 1994.
- City of Fort Smith v. Findlay, CA 93-1391 (Per Curiam), Appellant's Motion to Quash denied April 20, 1994.
- City of Fort Smith v. Findlay, CA 93-1391 (Per Curiam), Appellant's Motion for Stay of Judgment or Supersedeas granted April 20, 1994.
- City of Fort Smith v. Findlay, CA 93-1391 (Per Curiam), Appellee's Motion to Dismiss Appeal denied April 20, 1994.
- Clark v. State, CA CR 93-374 (Rogers, J.), affirmed April 13, 1994.
- Curry v. State, CA CR 93-373 (Pittman, J.), affirmed March 30, 1994.
- Davis v. Ebby's Cafe, CA 93-324 (Cooper, J.), affirmed on direct appeal; affirmed on cross-appeal March 2, 1994.
- Department of Human Servs. v. Bailey, CA 93-1386 (Per Curiam), Appellant's Pro Se Motions to Supplement the Record, one denied, one granted February 16, 1994.
- Dickerson v. State, CA CR 93-307 (Pittman, J.), affirmed March 23, 1994.
- Dickerson v. Town House Motel, CA 93-376 (Jennings, C.J.), affirmed February 23, 1994.
- Dockery v. State, CA CR 93-203 (Pittman, J.), affirmed February 23, 1994.
- Dowler v. Wear, CA 93-1208 (Per Curiam), Joint Motion to Remand granted February 9, 1994.
- Duggar v. State, CA CR 93-304 (Jennings, C.J.), affirmed March 23, 1994.
- Earle Indus., Inc. v. Director, E 92-263 (Pittman, J.), affirmed April 6, 1994.

- Emerson Elec. Co. v. McGuffey, CA 93-586 (Cooper, J.), affirmed April 13, 1994.
- Engle v. Engle, CA 93-560 (Pittman, J.), affirmed as modified and remanded April 20, 1994.
- Evans v. Southern Cast Prods., CA 93-327 (Mayfield, J.), affirmed March 30, 1994.
- Ford v. State, CA CR 93-322 (Pittman, J.), affirmed April 6, 1994.
- Foster v. First State Bank of Newport, CA 93-544 (Robbins, J.), affirmed March 23, 1994.
- Garcia v. State, CA CR 93-747 (Cooper, J.), affirmed April 6, 1994.
- Glasson v. State, CA CR 93-512 (Rogers, J.), affirmed March 2, 1994.
- Glover v. Glover, CA 93-757 (Mayfield, J.), affirmed in part, reversed in part March 16, 1994.
- Green v. State, CA CR 93-343 (Jennings, C.J.), affirmed March 2, 1994.
- Griffin v. Cooper Tire & Rubber Co., CA 93-282 (Cooper, J.), affirmed February 9, 1994.
- Griffin v. Weyerhaeuser Co., CA 92-1124 (Jennings, C.J.), affirmed March 2, 1994.
- Guest v. West, CA CR 93-96 (Jennings, C.J.), affirmed March 2, 1994.
- Haggans v. State, CA CR 93-353 (Mayfield, J.), affirmed March 23, 1994.
- Hall Tank Co. v. Director, E 93-63 (Jennings, C.J.), affirmed April 13, 1994.
- Harper v. State, CA CR 93-751 (Mayfield, J.), affirmed April 27, 1994.
- Harris v. Central Ark. Maintenance, CA 93-655 (Mayfield, J.), affirmed April 20, 1994.
- Hayes v. Wall Servs., CA 93-392 (Jennings, C.J.), affirmed April 20, 1994.
- Hazel v. Wayne Poultry, CA 93-387 (Rogers, J.), dismissed March 9, 1994.
- Higgins v. State, CA CR 93-803 (Cooper, J.), affirmed April 27, 1994.
- Hill v. State, CA CR 93-515 (Robbins, J.), affirmed March 16, 1994.
- Hill v. That Place, CA 93-301 (Robbins, J.), affirmed March

- 2, 1994.
- Holloway v. State, CA CR 93-403 (Robbins, J.), affirmed February 16, 1994.
- Jefferson v. State, CA CR 93-463 (Jennings, C.J.), affirmed March 9, 1994.
- Johnson, Billy Ray v. State, CA CR 93-497 (Robbins, J.), reversed March 2, 1994.
- Johnson, Janice v. State, CA CR 93-66 (Mayfield, J.), affirmed February 23, 1994.
- Johnson, Johnnie Bert v. State, CA CR 93-636 (Mayfield, J.), affirmed April 6, 1994.
- Johnson, William Jay v. State, CA CR 93-724 (Cooper, J.), affirmed April 13, 1994.
- Jones v. State, CA CR 93-369 (Cooper, J.), affirmed March 2, 1994.
- Keeling v. State, CA CR 93-500 (Cooper, J.), affirmed April 20, 1994.
- Ketten v. Director, E 93-86 (Jennings, C.J.), affirmed March 30, 1994.
- Leader Fed. Bank v. Brown, CA 93-207 (Per Curiam), Appellant's Motion for Correction or Modification of the Record remanded February 9, 1994.
- Martin v. State, CA CR 93-228 (Per Curiam), Order Granting Leave to File Supplemental Brief March 23, 1994.
- McCullar v. Southern Pavers, Inc., CA 93-621 (Mayfield, J.), affirmed April 13, 1994.
- McCullough v. State, CA CR 93-454 (Jennings, C.J.), affirmed March 23, 1994.
- McGuire v. State, CA CR 93-439 (Jennings, C.J.), affirmed March 9, 1994.
- McTyre v. State, CA CR 93-715 (Robbins, J.), affirmed April 13, 1994.
- Mize v. Whirlpool Corp., CA 93-348 (Jennings, C.J.), affirmed March 9, 1994.
- Montgomery v. Arkansas Highway Dep't, CA 93-377 (Jennings, C.J.), affirmed February 16, 1994.
- Montgomery v. State, CA CR 93-433 (Pittman, J.), affirmed March 16, 1994.
- Moore v. Director, E 93-37 (Robbins, J.), affirmed March 16, 1994.
- Morgan Bldg. Sys. v. Bagwell, CA 93-357 (Jennings, C.J.),

- affirmed March 23, 1994.
- Morgan v. State, CA CR 93-216 (Robbins, J.), affirmed February 23, 1994.
- Morris v. Springdale Memorial Hosp., CA 93-325 (Rogers, J.), affirmed February 23, 1994.
- Murphy v. State, CA CR 93-784 (Jennings, C.J.), affirmed April 27, 1994.
- Nail v. State, CA CR 94-11 (Per Curiam), Appellant's Pro Se Motion for Bond Pending Appeal denied April 20, 1994.
- Pearcy v. State, CA CR 93-244 (Pittman, J.), remanded April 13, 1994.
- Pennington v. State, CA CR 93-411 (Jennings, C.J.), affirmed March 2, 1994.
- Penny v. State, CA CR 93-453 (Jennings, C.J.), affirmed February 9, 1994.
- Phifer v. State, CA CR 93-579 (Cooper, J.), affirmed March 30, 1994.
- Phillips v. Ensco, CA 93-345 (Pittman, J.), affirmed March 23, 1994.
- Pieri v. McCarty Motors, CA 93-768 (Mayfield, J.), affirmed April 20, 1994.
- Pilgrim's Pride Corp. v. Slack, CA 93-882 (Robbins, J.), affirmed April 27, 1994.
- Pollack v. State, CA CR 93-590 (Robbins, J.), affirmed March 9, 1994.
- Poole v. Burcliff Indus., CA 93-319 (Mayfield, J.), affirmed March 9, 1994.
- Pope v. Amoco Foam Prod. Co., CA 93-764 (Robbins, J.), affirmed April 20, 1994.
- Professional Drycleaners v. Director, E 93-49 (Pittman, J.), affirmed April 6, 1994.
- Rea v. Rapistan, CA 93-505 (Mayfield, J.), affirmed April 6, 1994.
- Reed v. State, CA CR 93-356 (Rogers, J.), affirmed April 6, 1994.
- Rockefeller v. Rockefeller, CA 94-205 (Per Curiam), Appellant's Motion for Stay of Briefing Schedule granted April 13, 1994.
- Rouse v. State, CA CR 93-257 (Cooper, J.), affirmed March 2, 1994.
- Runyan v. Spa Muffler, CA 93-256 (Mayfield, J.), affirmed

- February 23, 1994.
- Russell v. State, CA CR 93-628 (Mayfield, J.), affirmed April 13, 1994.
- Scott v. State, CA CR 93-232 (Cooper, J.), affirmed February 9, 1994.
- Second Injury Fund v. Wentz, CA 93-509 (Rogers, J.), reversed and remanded March 9, 1994.
- Sheard v. State, CA CR 93-788 (Mayfield, J.), affirmed February 16, 1994.
- Short v. Caddo Broadcasting Co., CA 93-279 (Jennings, C.J.), affirmed February 23, 1994.
- Slate v. Springdale Memorial Hosp., CA 93-388 (Pittman, J.), affirmed March 2, 1994.
- Smith v. State, CA CR 92-702 (Pittman, J.), affirmed March 16, 1994.
- Stephens v. State, CA CR 93-147 (Mayfield, J.), affirmed March 2, 1994.
- Swofford v. Owens, CA 93-462 (Pittman, J.), affirmed March 30, 1994.
- Tate Containers v. Gregory, CA 93-277 (Pittman, J.), affirmed February 9, 1994.
- Taylor v. Champion Auto Parts, CA 93-557 (Jennings, C.J.), affirmed March 16, 1994.
- Thomas v. State, CA CR 92-1125 (Robbins, J.), affirmed February 9, 1994.
- Thompson v. State, CA CR 93-701 (Robbins, J.), affirmed April 20, 1994.
- Thornton v. State, CA CR 93-452 (Mayfield, J.), affirmed March 30, 1994.
- Threets v. State, CA CR 93-767 (Rogers, J.), affirmed April 20, 1994.
- Tucker v. State, CA CR 92-994 (Mayfield, J.), affirmed March 9, 1994.
- Tyson Foods, Inc. v. Klein, CA 93-516 (Pittman, J.), affirmed March 16, 1994.
- Van Oil Co. v. Director, E 93-29 (Rogers, J.), affirmed February 23, 1994.
- Wagner v. State, CA CR 93-732 (Robbins, J.), affirmed April 13, 1994.
- Walker, David v. State, CA CR 93-514 (Cooper, J.), affirmed March 30, 1994.

- Walker, Robert Lee v. State, CA CR 93-318 (Cooper, J.), affirmed February 23, 1994.
- Walker, Robert Lee v. State, CA CR 93-665 (Jennings, C.J.), affirmed April 6, 1994.
- Wallace v. American Cedar, Inc., CA 93-254 (Jennings, C.J.), affirmed April 20, 1994.
- Washington v. State, CA CR 93-596 (Robbins, J.), affirmed March 23, 1994.
- Wesley v. State, CA CR 93-11 (Cooper, J.), affirmed March 23, 1994.
- Watson v. State, CA CR 92-275 (Jennings, C.J.), affirmed April 13, 1994.
- Westridge v. Fawks, CA 92-656 (Rogers, J.), reversed on cross appeal March 2, 1994.
- Whillhite v. State, CA CR 93-183 (Rogers, J.), affirmed March 9, 1994.
- White v. Jensen Constr. Co., CA 93-236 (Cooper, J.), affirmed March 30, 1994.
- Williams, Jimmy Lee v. State, CA CR 93-364 (Jennings, C.J.), affirmed March 23, 1994.
- Williams, Larry D. v. State, CA CR 92-1170 (Robbins, J.), affirmed February 9, 1994.
- Winters v. O.K. Foods, Inc., CA 93-320 (Mayfield, J.), affirmed February 16, 1994.
- Woods v. State, CA CR 92-968 (Robbins, J.), affirmed March 30, 1994.
- Young v. State, CA CR 93-787 (Pittman, J.), affirmed April 20, 1994.

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

Anderson v. Director of Labor, E 93-148, February 16, 1994.
Ashley v. Director of Labor, E 93-285, April 6, 1994.
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Briggs v. Director of Labor, E 93-237, March 2, 1994.
Brown v. Director of Labor, E 93-280, March 23, 1994.
Campbell v. Director of Labor, E 93-261, March 9, 1994.
Clary v. Director of Labor, E 93-246, March 9, 1994.
Chandler v. Director of Labor, E 93-236, March 2, 1994.
Conley v. Director of Labor, E 93-266, March 16, 1994.
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Edgerson v. Director of Labor, E 93-240, March 2, 1994.
Erwin v. Director of Labor, E 93-267, March 16, 1994.
Eyiuche v. Director of Labor, E 93-181, February 23, 1994.
Farrell v. Director of Labor, E 93-186, February 23, 1994.
Felkner v. Director of Labor, E 93-225, February 9, 1994.
Ferguson v. Director of Labor, E 93-238, March 2, 1994.
Fields v. Director of Labor, E 93-188, February 23, 1994.
Fulmer v. Director of Labor, E 93-241, March 2, 1994.
Hancock v. Director of Labor, E 93-180, February 23, 1994.
Hargrove v. Director of Labor, E 93-254, March 9, 1994.
Harper v. Director of Labor, E 93-193, February 23, 1994.
Harrison v. Director of Labor, E 93-277, March 23, 1994.
Hayes v. Director of Labor, E 93-248, March 16, 1994.
Hodge v. Director of Labor, E 93-275, March 23, 1994.
Holder v. Director of Labor, E 93-289, April 27, 1994.
Howard, Amy Julie v. Director of Labor, E 93-278, March 30,
1994.
Howard, Joel v. Director of Labor, E 93-300, March 30, 1994.
Husted v. Director of Labor, E 93-239, March 2, 1994.
Jackson v. Director of Labor, E 93-229, February 9, 1994.

- Ketchum v. Director of Labor, E 93-242, March 2, 1994.
KTHS Radio v. Director of Labor, E 93-222, March 30, 1994.
Lane v. Director of Labor, E 93-250, March 9, 1994.
Lusty v. Director of Labor, E 93-161, February 16, 1994.
McMahan v. Director of Labor, E 93-270, March 23, 1994.
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Manley v. Director of Labor, E 93-274, March 23, 1994.
Miller v. Director of Labor, E 93-258, March 16, 1994.
Mitchell v. Director of Labor, E 93-262, April 27, 1994.
Molette v. Director of Labor, E 93-271, March 23, 1994.
Monette v. Director of Labor, E 93-223, February 9, 1994.
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Nellis v. Director of Labor, E 93-166, February 16, 1994.
Nolen v. Director of Labor, E 93-226, February 9, 1994.
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Powell v. Director of Labor, E 93-224, February 9, 1994.
Rayford v. Director of Labor, E 93-245, March 9, 1994.
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Seawood v. Director of Labor, E 93-284, April 6, 1994.
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Standridge v. Director of Labor, E 93-233, February 23, 1994.
Stewart v. Director of Labor, E 93-288, April 27, 1994.
Thomas v. Director of Labor, E 93-167, February 16, 1994.
Turner v. Director of Labor, E 93-272, March 23, 1994.
Vanderbush v. Director of Labor, E 93-108, February 16, 1994.
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- Objection to testimony not made below, objection not reached on appeal. *Id.*
- Appellant's own pleadings made the issue moot, appellant bound by his pleadings. *Bryant v. Arkansas Pub. Serv. Comm'n*, 47.
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- Moot issues defined and discussed. *Id.*
- Moot issues decided when subject to repetition and tend to expire before review can be had. *Id.*
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- Objection to part of the record, objection not abstracted or referred to on appeal, all of record considered. *McCarty v. Board of Trustees*, 102.
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- Illegal sentence raised by court, illegal sentence defined. *Brunson v. State*, 161.
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Conspiracy, how proven. *Jones v. State*, 28.

Possession of contraband, joint occupancy, factors. *Bond v. State*, 177.

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