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ARKANSAS REPORTS
Volume 317

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

FROM
May 9, 1994 – September 12, 1994
INCLUSIVE¹

AND

**ARKANSAS
APPELLATE REPORTS**
Volume 46

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

FROM
May 4, 1994 – September 7, 1994
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1994

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ARKANSAS REPORTS

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CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
May 9, 1994 – September 12, 1994
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

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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
(May 9, 1994 –
September 12, 1994, inclusive)

JUSTICES

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

OFFICERS

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

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

Rules of the Arkansas Supreme Court and Court of Appeals
OPINIONS

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

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

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

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

Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Arias v. State, CR 93-1125 (Per Curiam), affirmed May 16, 1994.
- Arias v. State, CR 93-1125 (Per Curiam), Supplemental Opinion on Denial of Rehearing, June 20, 1994.
- Barnes v. State, CR 93-1247 (Per Curiam); affirmed; motion granted May 23, 1994.
- Bilal v. State, CR 94-425 (Per Curiam), Pro Se Motion for Extension of Time denied and appeal dismissed June 20, 1994.
- Brown v. State, CR 94-239 (Per Curiam), affirmed and Pro Se Motion denied June 6, 1994.
- Campbell v. State, CR 94-368 (Per Curiam), affirmed July 5, 1994.
- Campbell v. State, CR 94-368 (Per Curiam), Supplemental Opinion on Denial of Rehearing, October 10, 1994.
- Carpenter v. Davis, CR 94-530 (Per Curiam), Pro Se Petition for Writ of Mandamus moot July 11, 1994.
- Chambers v. State, CR 94-397 (Per Curiam), Pro Se Motion for Belated Appeal denied May 31, 1994.
- Davis v. State, CR 94-555 (Per Curiam), Pro Se Motion to Supplement Record granted in part and denied in part and Pro Se Petition for Writ of Certiorari to Complete the Record moot July 11, 1994.
- Denton v. State, CR 94-254 (Per Curiam), affirmed June 27, 1994.
- Dewitt v. State, CR 94-538 (Per Curiam), Pro Se Motion for Belated Appeal denied July 5, 1994.
- Dixon v. State, CR 93-1222 (Per Curiam), affirmed May 9, 1994.
- Dunn v. State, CR 86-146 (Per Curiam), Pro Se Motion for Transcript denied May 23, 1994.
- Edgemon v. State, 94-118 (Per Curiam), affirmed June 27, 1994.
- Findley v. State, CR 91-34 (Per Curiam), Pro Se Motion for Complete Record Denied May 31, 1994.
- Franklin v. Kemp, CR 93-810 (Per Curiam), Pro Se Petition for Writ of Mandamus moot July 5, 1994.
- Franks v. State, CR 94-409 (Per Curiam), motion denied; appeal dismissed July 11, 1994.

- Gilkey v. State, CA CR 92-442 (Per Curiam), Pro Se Motion for Transcript denied July 5, 1994.
- Green v. State, CR 94-178 (Per Curiam), affirmed June 20, 1994.
- Green v. State, CR 94-178 (Per Curiam), Supplemental Opinion on Denial of Rehearing October 3, 1994.
- Guinther v. State, CR 93-650 (Per Curiam), Counsel's Motion to be Relieved granted; Pro Se Motion denied May 9, 1994.
- Halfacre v. State, CR 94-191 (Per Curiam), affirmed June 20, 1994.
- Haskins v. State, CR 93-1373 (Per Curiam), affirmed May 16, 1994.
- Hawkins v. State, CR 94-126 (Per Curiam), affirmed June 6, 1994.
- Hill v. Yates, 94-356 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 23, 1994.
- Holloway v. Slayden, 94-569 (Per Curiam), Pro Se Motion to File a Handwritten Appellant's Brief denied and Pro Se Motion for State to Duplicate Brief moot July 11, 1994.
- Holloway v. State, CR 92-1180 (Per Curiam), Pro Se Motion for Transcript denied May 31, 1994.
- Howard v. State, CR 94-280 (Per Curiam), affirmed June 20, 1994.
- Jones v. Sumner, 94-353 (Per Curiam), Pro Se Motion for Office of Attorney General to Duplicate Appellant's Brief denied May 31, 1994.
- Luckey v. State, CR 89-192 (Per Curiam), Pro Se Motion for Transcript denied July 5, 1994.
- Marcum v. Norris, 94-124 (Per Curiam), affirmed July 11, 1994.
- Maxie v. Gaines, 94-313 (Per Curiam), Pro Se Motion to Arkansas Department of Correction to Pay Cost of Duplicating Appellant's Brief or Duplicate the Brief denied; Pro Se Motion for Extension of Time to File Appellant's Brief and Reply Brief granted July 11, 1994.
- Neely v. State, CR 94-320 (Per Curiam), affirmed June 27, 1994.
- Price v. State, CR 93-1326 (Per Curiam), affirmed; motion granted May 23, 1994.
- Randleman v. State, CR 94-31 (Per Curiam), affirmed June 27, 1994.

- Ray v. State, CR 94-47 (Per Curiam), affirmed June 20, 1994.
- Reagan v. State, CR 94-237 (Per Curiam), Pro Se Motion to Stay Appeal denied May 16, 1994.
- Richie v. State, 94-378 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed June 27, 1994.
- Richmond v. State, CR 94-307 (Per Curiam), affirmed July 11, 1994.
- Ridgell v. Ligon, CR 94-530 (Per Curiam), Pro Se Petition for Writ of Mandamus moot July 11, 1994.
- Sanders v. Yates, 94-355 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 23, 1994.
- Shankle v. State, CR 93-1296 (Per Curiam), affirmed May 31, 1994.
- Timmons v. State, CR 94-390 (Per Curiam), Pro Se Motion for Transcript and Extension of Time to File Appellant's Brief denied and appeal dismissed May 31, 1994.
- Wesley v. State, CR 94-376 (Per Curiam), Pro Se Motion for Appointment of Counsel and Extension of Time to Lodge the Record moot May 16, 1994.
- Zucco v. State, CR 94-46 (Per Curiam), Pro Se Motion for Rule on the Clerk remanded May 16, 1994.



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APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

IN RE: ARKANSAS RULES OF CRIMINAL PROCEDURE

Supreme Court of Arkansas

Delivered June 6, 1994

PER CURIAM. The Supreme Court Committee on Criminal Practice has proposed changes in the Arkansas Rules of Criminal Procedure. We published those proposed changes by per curiam order dated January 31, 1994, and asked the bench and bar for comment within 60 days from date of that order. No comments were received on the following rule changes to Rule 4.1, *Authority to Arrest without Warrant*; Rule 7.1(c), *Arrest with a Warrant: Basis for Issuance of Arrest Warrant*; and Rule 31.2, *Waiver of Trial by Jury: Personal Request*. We adopt those rule changes, effective immediately:

Rule 4.1 is amended to add a new subsection (e) as follows:

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

COMMENT

In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the United States Supreme Court ruled that a person arrested without a warrant is entitled to a prompt judicial determination of probable cause. In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), the Court held that a judicial determination of probable cause within 48 hours of arrest will generally satisfy the promptness requirement of *Gerstein*, but the court recognized that a longer delay may be justified by "bona fide emergency or other extraordinary circumstance." The change to Rule 4.1 codifies *Gerstein* as modi-

fied by *Riverside*. This new rule is to be applied retroactively to all criminal cases currently pending trial on the merits and to all direct appeals currently in progress. See *Powell v. Nevada*, 114 S.Ct. 1280 (1994).

Rule 7.1 (c) is amended to read as follows:

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

Rule 31.2 is amended to read as follows:

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

COMMENT

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

The proposed rule change to Rule 28.2(c), *When Time Commences to Run*, relating to the speedy trial rule may be in conflict with other speedy trial rules, and we refer the proposed rule to the Criminal Practice Committee for further study.

IN RE: ADMINISTRATIVE ORDER NUMBER 7:
Arkansas Supreme Court and Court of Appeals
Records Retention Schedule

Supreme Court of Arkansas
Delivered June 20, 1994

PER CURIAM. Since Arkansas became a state in 1836, the Supreme Court of Arkansas has retained all of its records. Those of the Court of Appeals have been retained since its creation in 1979. Over time, the availability of space has become a problem. In an effort to address this problem, the Administrative Office of the Courts sought technical assistance from the National Center for State Courts, and, after a study, the consultant recommended the adoption of a records retention plan for the appellate courts. The Supreme Court then appointed an ad hoc committee to further study the issue and report its recommendations to us.

Having considered the report submitted by the Committee and pursuant to the Court's inherent authority to adopt such a plan and Ark. Code Ann. § 16-11-111, we hereby adopt Administrative Order Number 7 entitled *Arkansas Supreme Court and Court of Appeals Records Retention Schedule* to become effective upon date of issuance.

ADMINISTRATIVE ORDER NUMBER 7
ARKANSAS SUPREME COURT AND COURT OF
APPEALS RECORDS RETENTION SCHEDULE

SECTION 1. Statement of Policy.

Unless otherwise provided by law or as set forth herein, all records of the Arkansas Supreme Court and Court of Appeals shall be permanently maintained.

SECTION 2. Transfer of Permanent Records.

a. Physical custody of any record to be maintained permanently, may be transferred to any institution which maintains a special collections department by letter agreement upon approval by the Arkansas Supreme Court. Title to records which must be permanently maintained shall remain with the Arkansas Supreme Court.

b. The Clerk shall permanently maintain a log of transferred records. The log shall list record series, description of records transferred, to whom transferred, and the date of transfer.

SECTION 3. Alternatives to Permanent Retention.

a. Once microfilmed in a manner approved by the Administrative Office of the Courts, any paper record may be destroyed or donated by the Clerk, regardless of the number of years stated for retention in the Retention Schedule found in Section 6 below.

b. Once the period of retention has expired, or the record has been microfilmed, whichever occurs first, the paper record may be donated, transferring full title and possession to any institution which maintains a special collections department.

c. Any interested institution shall advise the Clerk of the institution's desire to receive notification when records become available for donation or transfer. The Clerk shall determine the recipient of the record(s) where more than one institution requests custody or custody and title. Records which are available for donation or transfer and which have not been requested within ninety (90) days of the notification shall be subject to disposal as set forth in Section 4 below.

d. The Clerk shall permanently maintain a log of donated

records. The log shall list record series, descriptions of records donated, to whom donated, and date of donation.

SECTION 4. Disposal of Records.

a. When records have been damaged or destroyed by decay, vermin, fire, water, or by other means which renders them illegible, the Clerk may dispose of the remains as provided in subsection b.

b. Records shall be disposed of by burning, shredding, recycling, or by depositing them in a public landfill.

c. Exhibits shall be disposed of as provided in Rule 3-6 of the Rules of the Arkansas Supreme Court and Court of Appeals.

d. The Clerk shall permanently maintain a log of disposed of records. The log shall list record series, descriptions of records disposed of, and method and date of disposal.

SECTION 5. Records Omitted.

a. Any record not listed in the Records Retention Schedule shall be maintained permanently or until provided for otherwise in the retention schedule.

b. Omitted records should be brought to the attention of the Administrative Office of the Courts by letter which includes a description of the record, age of the record, and such photocopies as will assist in understanding the content and purpose.

c. Any recommendations for changes in the Retention Schedule should be brought to the attention of the Administrative Office of the Courts.

SECTION 6. Retention Schedule.

Record Type

Retention Instructions

Supreme Court and Court of Appeals Docket Books:

Retain Permanently.

Supreme Court and Court of Appeals Case Indices:

Retain Permanently.

Supreme Court and Court of Appeals Record of Proceedings:

Retain Permanently.

<u>Record Type</u>	<u>Retention Instructions</u>
Civil Case Records and Case Files: After 1940	Retain seven (7) years after case is closed, then offer for donation.
Criminal Case Records and Case Files: After 1940	
Death Penalty.	Retain Permanently.
Life without Parole.	Retain Permanently.
Life.	Retain Permanently.
Felony with greater than 10 year sentence.	Retain ten (10) years after case is closed, then offer for donation.
Other criminal cases with 10 year sentence or less.	Retain five (5) years after case is closed, then offer for donation.
Civil and Criminal Records: Prior to and including 1940	Retain Permanently.
Rule on Clerk Denied Records:	
Supreme Court and Court of Appeals Case Record and Case File.	Retain five (5) years.
Employment Security Division:	
Case Record and Case File.	Retain three (3) years.
Supreme Court and Court of Appeals Opinions:	
Original copy of Opinions and Per Curiam Opinions.	Retain Permanently.
Financial Records including:	
Supreme Court & Court of Appeals, Clerk's Office, Court Library,	

Record Type**Retention Instructions**

Appellate Committees,
Personnel, Arkansas Attorneys,
Arkansas Bar Account,
Court Reporters, Client
Security Fund:

Vouchers, Ledgers, Receipts,
Contracts, Cancelled Checks,
Bank Statements, Fees, Audit
Reports, Tax Reports, Social
Security Reports, Retirement
Reports, Purchase Orders,
Insurance Reports, and
Requisition Reports.

Retain three (3) years
following legislative
audit.

Other Supreme Court and Court of Appeals
Documents including:

All case related motions,
petitions, summons, mandates,
and bonds, which have been
filed separately from the
case file.

Retain as long as Case
file is maintained.

Original actions, motions,
and petitions.

Retain seven (7) years.

Per Curiam Orders.

Retain as long as Case
file is maintained.

Arkansas Attorney Records:

Petitions for Licenses.

Retain Permanently.

Student Practice,
Rule 15 Petitions.

Retain five (5) years.

Professional Association
Members List.

Retain Permanently.

Professional Association
Members Receipts.

Retain three (3) years
following Legislative audit.

<u>Record Type</u>	<u>Retention Instructions</u>
Committee on Professional Conduct Files.	Retain Permanently.
Correspondence and Misc. Letters.	Retain three (3) years.
Certification of Registration.	Retain three (3) years.
United States Supreme Court Records:	
US Supreme Court Mandates.	Retain as long as Case File is maintained.
US Supreme Court Writs of Certiorari.	Retain as long as Case File is maintained.
Other Records maintained by Clerk's Office including:	
Court of Appeals Motion Assignment Sheet, Court of Appeals Motion Pending file Supreme Court and Court of Appeals Syllabus, Court of Appeals Oral Argument file, Court of Appeals Submissions file, Condition of Supreme Court Docket Summary file.	Immediate Disposal.
Court Clerk Correspondence including:	
Correspondence to Civil Procedure Committee, Letters to Clerk Certifying Briefs, Employment Security Division Late Filing Correspondence, Oral Arguments Confirmation Letters, Library Delinquent Accounts Correspondence.	Immediate Disposal.
Miscellaneous or General Correspondence:	Retain one (1) year.

SECTION 7. Definitions.

- a. Clerk: The Clerk of the Supreme Court and Court of Appeals.
- b. Immediate Disposal: The record(s) may be disposed of at the discretion of the Clerk.
- c. Retain as long as Case File is Maintained: The record(s) should be returned to the case file if possible, but if this is not possible, the record shall be retained in accordance with the instructions for retention of the case file to which it would belong.
- d. Retain Permanently: The record(s) must forever be retained by the Clerk, transferred pursuant to Section 2(a), or microfilmed pursuant to Section 3(a).
- e. Retain (#) years, then offer for donation: The record(s) shall be retained the specified period and then offered for donation, pursuant to Section 3.
- f. Retain (#) years following legislative audit: The record(s) shall be retained the specified number of years from the date of publication of the legislative audit report.
- g. Retain (#) years: The record(s) shall be retained for the specified period.
- h. Case Closed: Supreme Court and Court of Appeals cases shall be considered closed once a mandate is issued or another written order of final disposition is entered.
- i. Case Record: The trial court or administrative tribunal case record, and the court reporter's certified transcript, lodged with the appellate court as provided by Rules 3-1, 3-2, 3-3, and 3-4 of the Rules of the Arkansas Supreme Court and Court of Appeals, as well as the attorneys' briefs.
- j. Case File: All correspondence, motions, petitions, orders, dispositions, and mandates issued and filed during the appellate process.

IN RE: ARKANSAS IOLTA FOUNDATION, INC.,
Board of Directors

Supreme Court of Arkansas
Delivered June 27, 1994

PER CURIAM. The membership of the Board of Directors of the Arkansas IOLTA Foundation, Inc., is hereby modified to authorize the President of the Arkansas Bar Association to designate an agent to serve in his or her stead. Therefore the Per Curiam Order of November 9, 1987, IN THE MATTER OF THE ARKANSAS BAR ASSOCIATION, PETITION TO AUTHORIZE A PROGRAM GOVERNING INTEREST ON LAWYERS' TRUST ACCOUNTS, 293 Ark. 511, 738 S.W.2d 803 (1987), is modified as follows:

6. The qualified recipient of interest earnings on lawyers' trust accounts should be a newly created Arkansas nonprofit corporation to be governed by a Board of Directors comprised of the Chief Justice or designated agent; five (5) members of the lay public appointed by the Governor of Arkansas, three (3) of whom shall be representatives of low income persons from a list recommended to the Governor by the nineteen community action organizations pursuant to Act 345 of 1985; five (5) lawyers appointed by the President of the Arkansas Bar Association; and the President of the Arkansas Bar Association or designated agent; twelve (12) in all. With the exception of the Chief Justice or designated agent, and the President of the Arkansas Bar Association or designated agent, terms of the Directors should be on a staggered basis.

The Board of Directors of the Arkansas IOLTA Foundation, Inc., should amend its Bylaws and Articles of Incorporation to reflect this amendment.

IN RE: ARKANSAS RULES FOR MINIMUM
CONTINUING LEGAL EDUCATION AND REGULATIONS
OF THE ARKANSAS CONTINUING LEGAL
EDUCATION BOARD

85-302

Supreme Court of Arkansas
Delivered June 27, 1994

PER CURIAM. On March 14 we issued a per curiam order announcing proposed changes in the Arkansas Rules and Regulations for Minimum Continuing Legal Education. In that order, we requested comment from interested parties no later than May 14, 1994.

After considering the comments received, we conclude that the proposed amendments to the Arkansas Rules and Regulations for Minimum Continuing Legal Education should be adopted effective with the reporting period beginning July 1, 1994. Further, the initial one (1) hour of ethics required by Rule 3.(A) shall not be due until June 30, 1996.

We hereby adopt and republish the entirety of the Arkansas Rules and Regulations for Minimum Continuing Legal Education as they appear on the attachment to this order.

ARKANSAS RULES FOR
MINIMUM CONTINUING LEGAL EDUCATION

RULE 1.

CONTINUING LEGAL EDUCATION BOARD

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. (B) There shall be at least one Board member from each of the six Arkansas Court of Appeals districts. The initial Board shall draw terms so that three members will serve a one year term, three will serve a two year term, and three will serve a three year term.
1. (C) All subsequent appointments shall be made by the Arkansas Supreme Court for terms of three years. Board members may be reappointed, but may serve no more than two terms of three years. The Arkansas Supreme Court shall fill all vacancies, with the appointee to serve the remaining term, for such position, subject to reappointment in accord with this paragraph. Any Board member whose term expires shall continue in office until his successor is appointed and qualified.
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) The Board shall have the following duties and responsibilities:
 - (1) Exercise general supervisory authority over these

rules, to include the imposition of sanctions for noncompliance with these rules, as well as the implementation and administration of these rules;

- (2) Adopt regulations consistent with these rules, to be submitted to the Arkansas Supreme Court for approval prior to their implementation;
 - (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.
 - (4) In cases of extreme hardship due to mental or physical disability, the Board may approve a substitute plan by which individuals may meet the requirements of these rules; and
 - (5) Such other specific grants of authority as may be set out in these rules.
1. (F) A majority of all voting Board members shall constitute a quorum.

RULE 2.

SCOPE

2. (A) Except as noted elsewhere in Rule 2, these rules shall apply to every member of the Bar of Arkansas, including all levels of the State and Federal Judiciary, and all attorneys who may be suspended during any reporting period due to nonpayment of license fee or action by the Supreme Court Committee on Professional Conduct. When used in the course of these rules, the word attorney shall include judges.
2. (B) Exemptions: Any attorney or Judge who attains age 70 or completes 40 years of licensure as an Arkansas lawyer, during any given reporting period, is exempt from all requirements of the Arkansas Rules for Minimum Continuing Legal Education (hereinafter referred to as CLE)

for that reporting period as well as all subsequent reporting periods.

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 Rule 3(A) during the reporting period 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.

(2) If, during any reporting period, an attorney who has previously declared inactive returns to the practice of law, the attorney must immediately so advise the Board. Such attorney, who is returning to active status, shall be subject to a reinstatement fee, to be set by the Board, in an amount not to exceed \$250.00. The attorney will receive no educational credits for courses taken before the reinstatement fee has been paid. Provided that the attorney returning to active practice notifies the Board and pays the reinstatement fee, then qualified continuing legal education credits may be applied pursuant to paragraph 2.(D)(3) below.

(3) Such attorneys shall be required to obtain thirty-six (36) hours of qualified continuing legal education between the date of return to active status (which is the date the reinstatement fee is received by the Board) and the end of the next succeeding reporting period. Twelve (12) of those hours will be a basic skills course, or bar examination review course, either of which must be approved by the Board.

RULE 3.

MINIMUM EDUCATIONAL REQUIREMENTS

- 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.
- 3.(B) This minimum requirement must be met through courses conducted by sponsors approved by the Board, or individual courses that have been approved by the Board, or such other programs, courses, or other educational materials that the Board may approve pursuant to Rule 4.
- 3.(C) An hour of continuing legal education shall include at least sixty minutes of instruction, exclusive of meals, introductions, or other non-educational activities.
- 3.(D) The Board is authorized and encouraged to consider the requirement of particular course content, such as professional or judicial ethics, as part of the minimum educational requirement.

RULE 4.

ACCREDITATION

- 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.
- 4.(B) Approval of Accredited Sponsors:
- (1) An organization, or individual, may seek Board designation as an accredited sponsor;
 - (2) Such a request must be accompanied by evidence the sponsor has conducted, during the three years preceding application, at least three courses that substantially comply with the individual course requirements of Rule 4.(C);
 - (3) Subsequent to approval as an accredited sponsor, courses offered by that sponsor may be automatically approved, provided that the Secretary is satisfied such courses meet the requirements of Rule 4.(C);
 - (4) Likewise, sponsors accredited by another state or a national continuing legal education accrediting body may be automatically approved, provided the Secretary is satisfied that the sponsor meets the requirements of Rule 4.(B); and,
 - (5) Accredited sponsors must abide by all reasonable requests for information or course materi-

als from the Board, or its Secretary, and the Board reserves the right to withdraw sponsor accreditation for failure to meet the requirements of these rules.

4.(C) Individual course or activity approval:

The Board may, upon application, approve continuing legal education courses or activities provided such courses meet the following standards:

- (1) The course must contribute directly to professional competence of attorneys and judges, or to their education with respect to professional or ethical obligations;
- (2) Course presenters must have the necessary experience or academic skills to conduct the course effectively;
- (3) Prior to, during, or after the course, each attendee must be provided with written course materials of a quality and quantity which indicate that adequate time has been devoted to the speaker's preparation and that the written materials will be of value to the attendees in the course of their practice. In the event written materials are not provided before, or during the program, the program will not be subject to pre-approval by the Board. In the event materials are submitted after the program, the Board will make a determination as to what, if any, credit shall be given for the course;
- (4) The course must be presented in a suitable setting, which provides attendees with adequate writing surfaces, provided that the Secretary is satisfied that the course substantially complies with the requirements of Rule 4.(C);
- (5) During activities presented by means of videotape, audiotape, or other such systems, there must be an opportunity to ask questions of course faculty or a qualified commentator;

- (6) The sponsor must encourage participation by attorneys as planners, authors, panelists, or lecturers;
 - (7) The sponsor must make available to the Board, or its Secretary, upon request, information concerning the course, which might include a list of attendees or individual affidavits signed by attendees, the course brochure, a description of the method or manner of presentation, and a set of all written materials pertinent to the course; and
 - (8) The course must be subject to evaluation before, during, and after presentation.
- 4.(D) The Board is authorized and encouraged to grant approval to all sources of continuing legal education which meet the relevant standards of Rule 4.(C), including: publication of law related articles in legal journals; preparation of bar examination materials; preparation for, and conduct of, approved continuing legal education courses; participation in regularly scheduled courses conducted by American Bar Association accredited law schools; and "In House" educational programs conducted by law firms or other law related entities. The Board shall also be authorized to determine the amount of approved hours such activities are worth and may limit the number of such hours that may be applied to the minimum requirement.
- 4.(E) It is presumed that sponsor accreditation, or individual program accreditation, will be sought well in advance of the event. However, the Board may accredit a sponsor or individual program after the event.
- 4.(F) In the event the Secretary denies approval of an individual course or sponsor, the aggrieved sponsor may, in writing, request that the Board review such denial.

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 noncom-

pliance 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 Chair or any member acting in his or her 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 require-

ments as a condition of reinstatement and may assess reinstatement fees and late filing fees consistent with its regulations.

RULE 7.

APPEALS

- 7.(A) Final determinations as to accreditation of a sponsor by the Secretary or a committee of the Board shall, upon request of the aggrieved sponsor, be reviewed by the Board. There shall be no further review of such determinations.
- 7.(B) Final determinations by the Board, which result in suspension of an attorney, may be appealed to the Arkansas Supreme Court. Such appeal shall be heard de novo on the record from the Board proceedings.
- 7.(C) To effect an appeal, the suspended attorney shall file the record with the Supreme Court Clerk within thirty days from the entry of order of suspension. The appellant shall bear the cost of record preparation.

REGULATIONS OF THE
ARKANSAS CONTINUING LEGAL EDUCATION BOARD
SECTION 1 - THE BOARD

1.01 PREFACE

These regulations are cumulative to and explanatory of the Arkansas Rules for Minimum Continuing Legal Education (hereinafter the Rules) which were adopted by Per Curiam Order of the Arkansas Supreme Court on March 6, 1989, 298 Ark. 638 (1989). In the event of a conflict between these regulations and the Rules, the provisions of the Rules shall prevail. Rule 6 of the Arkansas Rules of Civil Procedure shall govern calculation of time whenever an action is required to be taken under the Rules or these Regulations unless otherwise provided. Members of the Arkansas Continuing Legal Education Board (hereinafter Board) and the Secretary to the Board (hereinafter Secretary) shall be absolutely immune from suit for all conduct in the course of their official duties in connection with the administration of the Arkansas Minimum Continuing Legal Education Program (hereinafter CLE).

1.02 RULES OF PROCEDURE

All proceedings by the Board will be conducted pursuant to Roberts Rules of Order.

1.03 MEETINGS

Meetings will be called as to date, time and place by the Chairman or by five Members of the Board.

1.04 OFFICIAL FORMS

The Secretary is authorized to develop appropriate forms, verification procedures, and other administrative procedures as necessary to efficiently administer the CLE program.

1.05 PRIOR BOARD RULINGS

The Secretary shall maintain an index of rulings of the

Board, which are not implemented as regulations, and shall make such rulings available to potential sponsors or attorneys upon request.

1.06 REMOVAL OF MEMBERS

Upon good cause shown, which may include failure to attend meetings on a regular basis, the Board may recommend to the Arkansas Supreme Court that a Board member be removed from office. Upon such recommendation, the Court may declare the position vacant and appoint a replacement pursuant to Rule 1.(C).

1.07 RECORDS RETENTION

The Board shall maintain all records in connection with the CLE Program for a period of three (3) years after each approved CLE course or activity is concluded. Further, where Accredited Sponsors have submitted documentation pursuant to Rule 4.(B)(2), the Board may discard such documentation after three (3) years, after acquiring satisfactory evidence that the accredited sponsor continues to conduct programs which meet the requirements of Rule 4.(C). Fiscal records pertaining to the CLE Program shall be maintained by the Board for a period of five (5) years.

1.08 SPONSOR RECORDS

Accredited or individual course sponsors shall maintain course records in connection with programs which have been approved by the Board. These records shall be maintained in the possession of the sponsor for a period of one (1) year after the program or activity. Such records shall include: the course outline or brochures; all written materials; the faculty information; the evaluations; and, the attendance records.

1.09 AMENDMENT

These regulations may be amended by a majority vote of the Board, subject to subsequent approval by the Arkansas Supreme Court.

SECTION 2 - SCOPE**2.01 NON-RESIDENT ATTORNEYS**

An attorney's residence is presumed to be the address the attorney maintains with the Office of the Arkansas Supreme Court Clerk. Attorneys who maintain Arkansas licenses, but reside outside this state and are licensed in the state of their residence, are required to meet the minimum continuing legal education requirements of their resident state. Arkansas licensed attorneys residing in a state which requires continuing legal education but who are not licensed in that state, are inactive in that state, or for any other reason are denied the opportunity to participate in the continuing legal education programs of that state, are considered in compliance with the requirements of their resident CLE state. However, such attorneys who return to the practice of law in Arkansas shall be required to acquire thirty six (36) hours of approved CLE courses by the end of the first reporting period that succeeds the reporting period in which they return. Twelve (12) of those hours shall be a basic skills course or bar examination review course as determined by the Board. Notwithstanding this provision, the attorney may choose to remain current in Arkansas pursuant to Rule 2(C). Attorneys who move from a state which does not require minimum continuing legal education to a state other than Arkansas which does require minimum continuing legal education are required to meet the requirements of that state.

2.02 INACTIVE STATUS**(1) REINSTATEMENT FEE**

The reinstatement fee, pursuant to Rule 2.(D)(2), shall be FIFTY DOLLARS (\$50.00). The Board, in its discretion, may waive this fee under extraordinary circumstances.

(2) DEFINITION: PRACTICE OF LAW

The practice of law shall be defined as any service rendered, regardless of whether compensation is received

therefor, involving legal knowledge or legal advice. It shall include representation, provision of counsel, advocacy, whether in or out of court, rendered with respect to the rights, duties, regulations, liabilities, or business relations of one requiring the legal services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document, or law. Inactive attorneys may not, at any time, or in any manner, hold themselves out as lawyers to the general public. Nonetheless, it shall not be considered the practice of law for attorneys to represent themselves or family members to the third degree of consanguinity.

SECTION 3 - MINIMUM REQUIREMENTS

3.01 ENHANCED CREDIT

(1) SOLO SPEAKERS

An attorney who presents a speech or program at an approved CLE course shall be allowed four (4) hours credit for each hour of the initial presentation and two (2) hours credit for each hour of each subsequent presentation of the same material.

(2) PANEL DISCUSSIONS

A participant in a panel presentation shall receive two (2) hours for each one (1) hour of the entire panel presentation in which he or she participates directly, unless the participant shall have prepared for distribution to the audience written materials supporting his or her portion of the panel presentation, in which event three (3) hours credit shall be given for every one (1) hour of the entire panel presentation in which he or she participates directly.

(3) QUESTION AND ANSWER SESSIONS

Question and answer sessions following individual or panel presentations shall be counted as part of the presentation time for which credit is to be given.

(4) WRITTEN MATERIALS

To serve as a basis upon which credit for an individual or panel presentation is given, accompanying written materials must comply with Rule 4(C)(3).

3.02 ETHICS

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.

3.03 HARSHIPS

In cases of extreme hardship due to mental or physical disability which substantially inhibits the ability of an attorney or Judge to participate in extended seminar presentations, the Secretary shall, in cooperation with the affected party, develop an appropriate program of substituted compliance. Such programs shall, to the extent possible, comply with relevant sections of Rule 4.(C) and must be approved by the Board.

SECTION 4 - ACCREDITATION

4.01 ACCREDITED SPONSORS

The Secretary of the Board shall keep a current list of accredited sponsors and include thereon the date of

accreditation by the Board, current address, and phone number of each sponsor.

4.02 PROGRAM ADJUSTMENTS

(1) The Secretary is authorized to make adjustments in the number of approved CLE credit hours or approved substitute program content where, during the presentation of a program previously approved by the Board, there is a deviation from the program content or length. If a program segment is abbreviated due to illness or other emergency and is 90% or more completed, it shall be given full credit. Otherwise, the credit time allowed for that particular program segment shall be adjusted to the nearest one-quarter (1/4) hour. In such event it is the obligation of the sponsor to notify attendees immediately and amend the certificates of attendance, if possible, and when submitting the certificates of attendance, advise the Secretary of the diminished hours available for the particular program segment in question.

(2) The Secretary is authorized to adjust hours when determining the number of hours for which programs are to be submitted for credit. In such cases courses are to be adjusted to the nearest one-quarter (1/4) hour.

(3) In addition, it is the obligation of the Sponsor to notify attendees immediately when any previously approved program segment fails to meet the minimum course standards set out in Rule 4.(C) and advise the attendees that credit may not be available for that particular program segment due to the deficiency. The Sponsor shall also notify the Secretary of such deficiencies.

4.03 RECIPROCAL ACCREDITATION - INDIVIDUAL ATTENDANCE

Upon receipt of a completed certificate of attendance form or other documentation by the Secretary from an Arkansas attorney confirming attendance at an out-of-state continuing legal education program approved by the situs state, the attorney shall be entitled to CLE credits in Arkansas. The Secretary shall verify the program's

approval by the situs state's continuing legal education agency.

4.04 APPROVED CLE ACTIVITIES

(1) BAR EXAMINERS

Credit may be earned through service as a bar examiner in Arkansas. Six (6) hours of CLE credit will be awarded for the preparation and grading of each bar examination. No more than twelve (12) hours of CLE credit can be awarded in any year for bar examination preparation and grading.

(2) AUTHORSHIP OF LAW ARTICLES

In accordance with objective standards to be developed and applied by the Board, up to twelve (12) hours of credit may be earned through the authorship of a law related article published by an American Bar Association accredited law school, a state bar journal, an official publication of the American Bar Association, or through authorship of a published book on legal matters. Any attorney may petition the Board for credit for the authorship of an article or book. Entitlement to credit will accrue as of the date of publication of the article or documented date of acceptance for publication.

(3) LAW SCHOOL COURSES

Credit may be earned through part-time teaching, formal enrollment for credit, or official audit and attendance at a course offered by a law school accredited by the American Bar Association. Twelve (12) credit hours will be awarded for each academic credit hour taught, officially audited, or successfully completed, provided the applicant certifies attendance of at least seventy-five percent (75%) of the class sessions. For the purpose of this regulation, "part-time teaching" is defined as teaching one course which awards four or fewer hours of academic credit.

(4) IN-HOUSE PROGRAMS

In-house programs are available as a means of acquiring CLE credits provided:

(a) The program complies with Rule 4.(C) of the Arkansas Rules for Minimum Continuing Legal Education; and,

(b) The application and documentation for in-house programs conducted in Arkansas must be submitted to the Secretary in advance of the scheduled event and be approved *before* the scheduled event.

In addition, private law firms which conduct in-house programs shall be subject to the following requirements:

(c) A minimum of three (3) "out-of-firm" attorneys must be allowed to attend such programs. Each firm may set reasonable limits on the total number of such "out-of-firm" attendees and the firm must provide appropriate notification of the program to local attorneys who may wish to attend;

(d) Any "out-of-firm" attorney who desires to attend an in-house CLE program may be responsible for a proportionate share of the costs of the program; and,

(e) Attorneys may receive a maximum of six (6) hours CLE credit for in-house programs conducted during any reporting period.

(5) SATELLITE PROGRAMS

All satellite television programs which otherwise comply with the Rules may be approved.

(6) VIDEO PROGRAMS

Video CLE programs are an acceptable means of obtaining CLE credits, provided:

(a) The original program upon which the video replay is based has been approved by the Board;

(b) The program must have the original faculty members present or the original faculty members must make known their addresses or phone numbers in order that they can respond to written or phoned inquiries subsequent to the program; and,

(c) There must be a moderator present.

(7) LIVE TELEPHONE CONFERENCES

CLE programs presented via live telephone conferences are acceptable provided such programs comply with relevant portions of Rule 4.(C).

(8) SHORT COURSES

No course shall be approved unless it contains at least one continuous hour of instruction accompanied by written materials consistent with Rule 4.(C)(3), and is conducted in a suitable educational environment.

(9) ADVANCE SHEET REVIEW GROUPS

Programs consisting of review of advance sheet court opinions shall be approved, provided written materials consisting of analysis in addition to the advance opinions themselves, are provided by the persons responsible for the discussion of a case or cases, and regular and special group meeting times and places are published to the Board at least two weeks in advance to assure compliance with the evaluation requirement of Rule 4.(C)(8).

4.05 UNAPPROVED CLE ACTIVITIES:

(1) PUBLIC PRESENTATIONS

No CLE credits are available for attorneys speaking or presenting any program to the lay public without prior approval of the Board.

(2) SELF-STUDY

Self-study courses are not approved as a means of acquiring CLE credits.

(3) AUDIO TAPES

Audio tape programs are not approved as a means of acquiring CLE credit.

(4) LAW PROFESSORS

No full-time or adjunct law school professors may obtain

CLE credits for teaching regularly scheduled courses, subject to the exception of Regulation. 4.04 (3).

(5) LAW FIRM OPERATIONS

Individual programs which deal solely with the internal financial operations of a law firm will not be considered acceptable as a means of acquiring CLE credits in Arkansas.

SECTION 5 - REPORTING-FEES

LATE FILINGS/DEFICIENCY PLANS

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 - HEARING PROCEDURES/SANCTIONS

6.01 (1) In the absence of the Chairman of the Board, the remaining voting members of the Board shall elect from among its number, by a majority vote, a presiding officer for the hearing in question.

(2) The expense of a court reporter's attendance, if a record is requested, shall be paid by the affected attorney.

(3) The burden of proof as to compliance with the Rules shall remain with the attorney.

(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.

(5) The Rules of Evidence shall apply subject to the exercise of reasonable discretion by the majority of the Board.

(6) In addition, pursuant to Rule 6, the Board may assess a reinstatement fee not to exceed TWO HUNDRED FIFTY DOLLARS (\$250.00). Such fees shall be payable to the Bar of Arkansas.

SECTION 7 - APPEALS

7.01 RIGHT TO REVIEW

An attorney who is suspended by the Board shall have the right to review of the ruling by the Arkansas Supreme Court.

7.02 OBTAINING THE RECORD

To effect such a review, the suspended attorney, within

ten (10) days of receipt of notice of suspension shall, in writing, request a copy of the record of the proceedings from the Secretary. Such record shall include all pertinent documents on file with the Board and the transcript of any pertinent hearings conducted by the Board. The Secretary shall promptly respond to such requests. The Secretary shall deliver, by registered mail, a single copy of such record to the suspended attorney.

7.03 COSTS

The suspended attorney shall be responsible for the costs attendant to record preparation and filing, including the expense of preparing the transcript of any hearings.

7.04 FILING

Thereafter, the suspended attorney shall have ten (10) days from receipt of the record to file same with the Clerk of the Arkansas Supreme Court. A single copy of the record shall be filed, accompanied by eight (8) copies of the attorney's motion for further review by the Arkansas Supreme Court. The motion and record shall be filed pursuant to Arkansas Supreme Court Rule 2-1, and the Clerk's Office will process such motions for review pursuant to procedures established under said Rule 2-1, or its successor rule.

7.05 MEMORANDUM

The suspended attorney may accompany the motion with a brief memorandum setting out grounds for reversal of the decision of the Continuing Legal Education Board. The Board may file a response as authorized by Rule 2-1.

7.06 DECISION BY THE ARKANSAS SUPREME COURT

The findings of the Board shall not be reversed unless the Arkansas Supreme Court finds them to be clearly erroneous. The Arkansas Supreme Court shall review the case de novo upon the record presented.

IN RE: BAR OF ARKANSAS LICENSE FEES

878 S.W.2d 409

Supreme Court of Arkansas
Delivered July 11, 1994

PER CURIAM. Five-year projections of the operational requirements of the Bar of Arkansas indicate the need for an increase in license fees. Therefore, beginning January 1, 1995, the annual license fee for the Bar of Arkansas shall be \$100.00 for lawyers who have been licensed for three or more years. The annual fee for new enrollees who have been licensed for less than three years shall be \$75.00.

Lawyers who are sixty-five years of age or older on or before January 1 of the year for which license fees are payable may pay at the reduced annual rate of \$10.00 by certifying that their earnings do not exceed the amount that would prevent a person of their age from drawing the maximum Social Security benefits.

The Arkansas Bar Association, through its house of delegates, and individual members of the Bar of Arkansas, have recommended that this Court consider increasing its annual fees sufficiently to provide adequate funding for staff and the operations of our various committees. Further, it has been recommended that such funds be increased to the extent that they provide necessary services.

Our boards and committees have asked this Court to take steps to improve their ability to carry out what they perceive to be their responsibilities. In order to do so, it is necessary that we acquire sufficient administrative fundings to provide appropriate staff and funds for general administrative expenses to accomplish these entities' assigned tasks.

An increase in fees has been under consideration for some time because of a need for additional funding of our Committee on Professional Conduct, the Unauthorized Practice of Law Committee, and the Office of Court Programs. In addition, it is necessary to expand the availability of the Supreme Court Client Security Fund's monies.

More particularly, because of the increase in applications filed with the State Board of Law Examiners and complaints filed with the Supreme Court Committee on Professional Conduct and the Supreme Court Committee on the Unauthorized Practice of Law, all three committees are unable to investigate adequately the submitted petitions or complaints. It is, therefore, imperative for these bodies to hire more investigative assistants.

The increase in the work required of these committees has led to a greater burden on the appointed lawyers who are being asked to provide large amounts of uncompensated time to maintain the work of the Court. While we support and encourage *pro bono* service by the profession, we recognize the need at least to provide reasonable defrayment of the expenses of attorneys who accept appointment to Supreme Court boards and committees.

We also note that the special increase in payments by the Client Security Fund Committee has led to payments exceeding income this year, even though this Court recently increased the amount of license fees dedicated to the fund.

For these reasons, this new schedule of annual fees shall become effective on January 1, 1995. Lawyers are responsible for notifying the Clerk of the Supreme Court of changes of address on or before November 1, 1994, to ensure the correct mailing of notices for the 1995 annual license fees.

BROWN, J., dissents.

ROBERT L. BROWN, Justice, dissenting. I agree that license fees should be increased to \$75 but I disagree that they should be doubled to \$100 without more justification. Our history of increases in license fees is as follows:

From 1955-1971, fees were \$2.00.

From 1972-1973, fees were \$17.00. *See Per Curiam*, 251 Ark. 800 (1972).

From 1974-1980, fees were \$17.00. Effective in 1974, \$2.00 of the \$17.00 was credited to the Client Security Fund. *See Per Curiam*, 254 Ark. 1075 (1973).

From 1981-1984, fees were \$20.00. *See Per Curiam*, 270 Ark. 1020 (1980).

From 1985-1987, fees were \$25.00. *See Per Curiam, 284 Ark. 580 (1984).*

From 1988 to the present, fees have been \$50.00. *See Per Curiam, 294 Ark. 663 (1987).*

For the last two years we have experienced deficits in our budget and have used our reserves to make up the difference. By the end of the 1993-94 fiscal year, we will still have reserves exceeding \$130,000.

The justification for an increase in license fees is an arbitrary, across-the-board 5% annual increase in the cost of programs, compounded over the next 5 years. The increase is not tied to specific staff positions or new or expanded programs. Rather, the per curiam talks of a general need for additional funding for our various committees. At this point we have not quantified what that "need" is. We certainly do not have a pending proposal before us for additional "investigative assistants" or any other staff positions. Because this information is not available, the per curiam justifies the increase based on a percentage increase in total costs. Using the 5% compounded increase, the projection is that our expenses will soar from \$510,446 in 1993-94 to \$660,007 in 1998-99, for almost a 30% increase.

Raising license fees to \$75 would meet even the 5% projection in costs until 1996-97 when a deficit of \$2,266 will first be realized. But doubling the amount of the license fees seems imprudent at this juncture. My preference is to increase the fees to \$75 and then assess where we are in three years. Certainly our reserves of \$130,000 are sufficient to handle any contingencies. Otherwise, we run the risk of putting the cart before the horse, that is, doubling the fees and then finding staff positions to fill and programs to fund or expand. I prefer having identified staff positions and programs before us with estimated dollar amounts before committing to such a significant increase.

For these reasons I would assess \$75 as license fees for all lawyers, commencing January 1, 1995.

IN RE: COMMITTEE ON THE UNAUTHORIZED
PRACTICE OF LAW

Supreme Court of Arkansas
Delivered July 11, 1994

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

Once the Committee was appointed, it adopted Rules of Procedure which have been amended twice since their original adoption. The Rules Creating the Committee have been amended once.

The Committee now requests certain amendments to the Rules of Procedure and Rules Creating the Committee. The Committee submits that these changes will enable the Committee to consider inquiries and complaints in a fair and expeditious manner and avoid unnecessary expense.

Having considered the Committee's request in light of its function and purpose, the Court adopts and republishes the Rules of Court Creating a Committee on the Unauthorized Practice of Law and Rules of Procedure in their entirety as amended.

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

Rule I.

COMPOSITION OF COMMITTEE ON UNAUTHORIZED
PRACTICE OF LAW

The Court shall appoint a committee composed of four lawyers and three persons who are not lawyers. One lawyer member of the committee shall be from each Congressional district and the balance of the members shall be from the state-at-large. Members shall be appointed to serve a three year term and may be reappointed to a second three year term. A member whose term has expired, shall continue to serve until a replacement is appointed. The committee shall select one of its members as Chair, one as Vice-Chair, and another as secretary.

A majority of the committee shall constitute a quorum.

Rule II.

NAME – SEAL – POWERS

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

Rule III.

INQUIRIES AND COMPLAINTS

All inquiries and Complaints relating to the unauthorized practice of law shall be directed to the Committee, in writing,

through the Administrative Office of the Courts. Upon receipt of such inquiry or Complaint the Committee may:

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

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

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

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

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

Rule IV.

ADOPTION OF RULES

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

Rule V.

EXPENSES

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

by the Director of the Administrative Office of the Courts.

Rule VI.

MEETINGS OPEN TO PUBLIC – LEGAL ACTION

All inquiries and Complaints which proceed to hearing(s) before this Committee shall be open to the public and the news media. No advisory opinion issued by this Committee shall be construed as an Order of the Court. However, nothing in this section shall be deemed to restrict or in any manner inhibit the Committee from commencing such legal action as an arm of state government as it deems proper, to enjoin or restrain an activity or course of conduct deemed by a majority of a quorum of the Committee to be unauthorized practice of law within the statutes and laws of this state.

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

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

1. All matters directed to the attention of the Committee shall be in writing and signed.
2. All matters directed to the attention of the Committee shall be submitted to the Administrative Office of the Courts. The Administrative Office of the Courts will retain the original and promptly mail a copy to each member of the Committee.
3. Each inquiry and/or complaint shall be considered at a meeting attended by a quorum of the members. No decision can be reached on an inquiry or complaint by less than a majority of the quorum.
4. (a). The Committee shall meet as needed and shall be subject to the call of the Chair upon seven (7) days notice. The Chair shall issue a call upon receipt of six (6) inquiries or complaints subsequent to the last meeting of the Committee.
(b). At the Chair's discretion, a meeting may be scheduled by telephone conference call.
5. Pursuant to Rule III a. of the Rules Creating a Committee on the Unauthorized Practice of Law, if, after discussion and consideration of an inquiry or complaint, the Committee determines that there is insufficient evidence on which to proceed with a formal investigation, the Committee shall issue a response to the complaining party to that effect.
6. Pursuant to Rule III b. of the Rules Creating a Committee on the Unauthorized Practice of Law, if the Committee determines that a formal investigation is warranted, the Committee may use its discretion to proceed with the investigation as it deems appropriate, which may include the calling of witnesses before one or more members of the Committee to give sworn testimony at an investigative hearing(s).

a. Investigative hearings should be conducted as soon as practical after the Committee receives the inquiry or complaint.

b. The investigative hearing shall be conducted in a manner prescribed by the Chair, who shall preside, or who shall designate a Committee member to preside.

c. If, as a result of its formal investigation, the Committee determines that an act or acts of the unauthorized practice of law has occurred, the Committee shall issue an advisory opinion to that effect, directing that the party cease and desist said act or acts. Copies shall be mailed to the interested parties by certified mail.

7. Pursuant to Rule III c. of the Rules Creating a Committee on the Unauthorized Practice of Law, the Committee, in its own name, may seek injunctive relief in the appropriate Court(s) if issuance of the advisory opinion does not result in cessation of those acts or course of conduct the Committee has pronounced to be the unauthorized practice of law.

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

IN RE: PETITION TO INCLUDE WARRANTLESS ARREST
PROCEDURES IN DOMESTIC VIOLENCE CASES

Supreme Court of Arkansas
Delivered July 18, 1994

PER CURIAM. We hereby publish the following proposed amended Rule 4.1 of the Arkansas Rules of Criminal Procedure for review and comment by the bench and bar. Comments shall be filed with Les Steen, Supreme Court Clerk, within sixty (60) days of the date of this per curiam order.

RULE 4.1 Authority to Arrest Without Warrant.

(a) A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed

(i) a felony;

(ii) a traffic offense involving:

(A) death or physical injury to a person; or

(B) damage to property; or

(C) driving a vehicle while under the influence of any intoxicating liquor or drug;

(iii) any violation of law in the officer's presence;

(iv) *acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding the arrest.*

(b) A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony.

(c) An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer or private citizen is unable to determine the particular offense which may have been committed.

(d) A warrantless arrest by an officer not personally

possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency which collectively possesses knowledge sufficient to constitute reasonable cause.

IN RE: David Loy HALE
Arkansas Bar No. 66024
Supreme Court of Arkansas
Delivered July 25, 1994

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

DUDLEY and HAYS, JJ., not participating.

Appointments to Committees

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

Supreme Court of Arkansas
Delivered May 31, 1994

PER CURIAM. The Court accepts the resignation of Winslow Drummond, Esq. from the Supreme Court Committee on Model Jury Instructions, Civil.

The Court expresses its gratitude to Mr. Drummond for his dedicated and faithful service as a member and former chair of this most important Committee.

IN RE: BOARD OF CERTIFIED
COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Delivered June 13, 1994

PER CURIAM. Chancery Judge Jim Hannah, Searcy, Arkansas; Circuit Judge John Cole, Sheridan, Arkansas; and Ms. Maria Lafferty, CCR, Pine Bluff, Arkansas, are reappointed to our Board of Certified Court Reporter Examiners.

Each term of reappointment is for a three-year period expiring July 8, 1997.

The Court expresses its gratitude to Judge Hannah, Judge Cole and Ms. Lafferty for accepting reappointment to this most important Board.

IN RE: ARKANSAS JUDICIAL DISCIPLINE
AND DISABILITY COMMISSION

Supreme Court of Arkansas
Delivered June 20, 1994

PER CURIAM. In accordance with Ark. Const. Amend. 66 and Act 637 of 1989, the Court appoints the Honorable Rice Van Ausdall, Chancellor, Harrisburg, Arkansas, to the Arkansas Judicial Discipline and Disability Commission, effective July 1, 1994, to replace the Honorable Thomas Butt, Chancellor, Fayetteville, Arkansas, whose term will expire on June 30, 1994. This is a six (6) year term to expire on June 30, 2000.

Effective July 1, 1994, the Court appoints the Honorable John B. Plegge, Circuit Judge, Little Rock, Arkansas, to the alternate position to be vacated by Judge Van Ausdall on June 30, 1994. This is a six (6) year term to expire on June 30, 2000.

Effective July 1, 1994, the Court appoints the Honorable Olly Neal, Circuit Judge, Marianna, Arkansas, to an alternate position on the Commission for a six (6) year term to expire on June 30, 2000. Judge Neal replaces the Honorable John Robbins, Arkansas Court of Appeals, Hot Springs, Arkansas, whose term will expire on June 30, 1994. The Court expresses its appreciation to Judge Robbins for his service as an alternate member of the Commission.

The Court thanks Judge Van Ausdall for accepting appointment to this most important Commission and for his prior service as an alternate member. The Court also thanks Judge Plegge and Judge Neal for accepting appointments as alternate members of the Commission.

The Court expresses its gratitude to Judge Butt for his faithful and dedicated service as an original member and Chair of the Commission.

IN RE: CLIENT SECURITY FUND COMMITTEE

Supreme Court of Arkansas
Delivered June 20, 1994

PER CURIAM. Richard A. Jarboe, Esq., Walnut Ridge, Arkansas, First Congressional District, is hereby reappointed to the Client Security Fund Committee for a five year term to expire June 30, 1999.

The Court thanks Mr. Jarboe for accepting reappointment to this most important Committee.

IN RE: SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered June 20, 1994

PER CURIAM. Dr. Patricia Youngdahl, Little Rock, Arkansas, is appointed, At Large, to the Supreme Court Committee on Professional Conduct for a seven year term to expire June 20, 2001. Dr. Youngdahl replaces Dr. Wilma Diner, Little Rock, Arkansas, whose term has expired.

The Court thanks Dr. Youngdahl for accepting appointment to this most important Committee.

The Court expresses its gratitude to Dr. Diner for her dedicated and faithful service to the Committee.

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- Instruction on first degree murder properly given, no abuse of discretion found. *Id.*
- CRIMINAL PROCEDURE:**
- In-court identification, evaluation. *Robinson v. State*, 17.
- Burden on appellant to show pretrial identification procedure flawed. *Id.*
- Pretrial identification, when procedure violates due process. *Id.*
- Pretrial identification not tainted by fact victims had seen appellant in the neighborhood before the incident. *Id.*
- Pretrial identification. *Id.*
- Pretrial identification, trial court determines reliability, standard of review. *Id.*
- Pretrial identification, determination identification reliable was not clearly erroneous. *Id.*
- Representation by trial counsel, representation continues unless permitted to withdraw by court. *Franklin v. State*, 42.
- Direct appeal of a conviction is a matter of right, such right cannot be cut off by attorney's failure to follow the rules. *Id.*
- Determining reliability of identification, factors. *Wilburn v. State*, 73.
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- Determination of competency, court may rely on second evaluation. *Jones v. State*, 131.
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- Post-conviction relief, appeal denied, clearly meritless. *Peterson v. State*, 151.
- Post-conviction relief, argument insufficient to show sentence illegal on its face. *Id.*
- Statute does not require re-examination of validity of convictions use to establish habitual-offender status. *Id.*
- Statute giving prosecutor discretion to charge juvenile of sixteen as juvenile or adult not constitutionally violative. *Beck v. State*, 154.
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- DWI, interpretation of second-test statute, results of first test need not be told to accused before second test decision made. *State v. Johnson*, 226.
- Speedy trial rule, general provisions. *Thornton v. State*, 256.
- Trial not held within the requisite twelve-month period, appellee's failed to meet burden of showing excludable periods of delay. *Id.*
- Speedy trial commencement date from the date of the appellant's arrest proper, state's argument without merit. *Id.*
- Speedy trial, appeal time should properly be excluded from consideration under the Speedy Trial Clause. *Id.*
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- Appeal of denial of post-conviction relief, when dismissed. *Reed v. State*, 286.
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- Statute concerning sentences illegally imposed conflicted with rule, petitions to correct sentence not timely, appellant not entitled to relief. *Id.*
- False promise renders confession involuntary, not an honored promise. *King v. State*, 293.
- Venue in county of crime, venue may be changed at request of accused. *Sanders v. State*, 328.

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Defense cannot rely on discovery as substitute for own investigation. *Id.*
Appellant cannot complain of untimely revelations, appellant had sufficient information if he had been diligent. *Id.*
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Omissions from affidavit not exculpatory. *Id.*
Probable cause was present in warrant, omissions and credibility not in issue. *Id.*
Voluntariness of confession determined by trial court on totality of circumstances. *Higgins v. State*, 555.
Confession, no error to admit, explanation given, no evidence contradicted finding. *Id.*
Ambiguous reference to attorney not sufficient to invoke right to counsel. *Id.*
Information not provided as part of discovery, burden on appellant to show the omission was sufficient to undermine the trial's outcome. *Davis v. State*, 592.

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Breach of warranty, insufficient proof death of cows caused by vitamin deficiency in feed, general verdict included damages for dead cows, other damages clearly included, remand for new trial. *Purina Mills, Inc. v. Askins*, 58.
No error for jury to determine feed was worthless at time of sale and to refuse to award merchant anything for the amount appellees owed him for the feed. *Id.*
Boat motor, cost of repair or appraisal acceptable evidence of value before and after damage. *First Marine Ins. Co. v. Booth*, 91.
Damages probably never even considered by jury, no reversal in the absence of prejudice. *Mikel v. Hubbard*, 125.
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Both fraud and breach of contract pled, buyer may pursue but not recover both revocation and damages. *Id.*
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Punitive damages waived, no error in refusing to award. *Id.*

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Sanctions for discovery violations, when trial judge's ruling will be reversed. *Marvel v. Parker*, 232.
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Failure to show prejudice, dismissal unwarranted. *Id.*
Material sought did not exist, no prejudice from court's denial of motion. *Johninson v. State*, 431.
Defense cannot rely on discovery as substitute for own investigation. *Id.*
Appellant cannot complain of untimely revelations, appellant had sufficient information if he had been diligent. *Id.*

State must notify defense of witnesses unless true rebuttal witness. *Jacobs v. State*, 454.

State failed to notify defense of witness, no error because no prejudice shown. *Id.* Error by prosecutor, open-file should contain documents identical to those to be offered at trial. *Robinson v. State*, 512.

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Property settlement agreement, fact appellant entered agreement that later appeared improvident, no ground for relief. *Id.*

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Ruling admitting evidence in question, prejudice necessary for reversal not present. *Id.*
Evidence of defendant's character allowed to raise reasonable doubt as to guilt, type of character evidence allowed. *Id.*
Testimony came within the realm of specific conduct, objection to testimony properly sustained. *Id.*
Objection to witness's general impression improperly sustained, no prejudice shown by error, no reversal granted. *Id.*
Other parties' threats relevant to prove motive of one other than the accused, reverse 404(b) explained. *Id.*
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strated. *Id.*
No error to bar expert testimony, testimony would have been only broad overview
of gangs. *Id.*
Expert testimony on bias would have invaded province of jury, no error to bar tes-
timony. *Id.*
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485.
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prior consistent statements properly applied. *Id.*
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Evidence of flight to avoid arrest may be considered as corroborative of guilt, evi-
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Id.
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Admission of facsimile documents, no prejudice shown, no error. *Id.*
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it. *Id.*
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 395.
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 Appellants failed to meet burden of showing that broker was a general agent, trial court's conclusion that broker had no authority to issue policy covering property already destroyed was correct. *Id.*
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- Permit may be revoked after inactive for six months, regulation does not prevent ABC from extending inactive status. *Blann v. Alcoholic Beverage Control Bd.*,
 98.
 Permits never revoked, permits remained inactive until transferred. *Id.*
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 Regulation forbidding issuance of permit for location where permit was revoked within one year of application is not applicable to approval of transfer of permit. *Id.*
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Matters omitted from affidavit of probable cause, intent to mislead required, information must be material. *Biggers v. State*, 414.
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Strict liability, no direct proof of defect, sufficient to negate possible causes not attributable to defendant. *Id.*

Strict liability, issue should have been presented to jury. *Id.*

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Strict liability, required showing. *West v. G.D. Searle & Co.*, 525.

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- Reference to defendant's prior convictions made at trial, factors considered on review. *Id.*
- Prejudicial response not elicited by the state, no abuse of discretion found in trial court's denial of motion for mistrial. *Id.*
- Not error to submit case to jury on alternative theories of recovery. *Purina Mills, Inc. v. Askins*, 58.
- Failure to object until eighth time, argument waived. *Wilburn v. State*, 73.
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- Failure to renew an objection constitutes waiver, no ruling ever given. *Marvel v. Parker*, 232.
- Mistrial, drastic remedy, wide discretion in trial judge, review. *King v. State*, 293.
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ARKANSAS
APPELLATE
REPORTS

Volume 46

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
May 4, 1994 – September 7, 1994
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

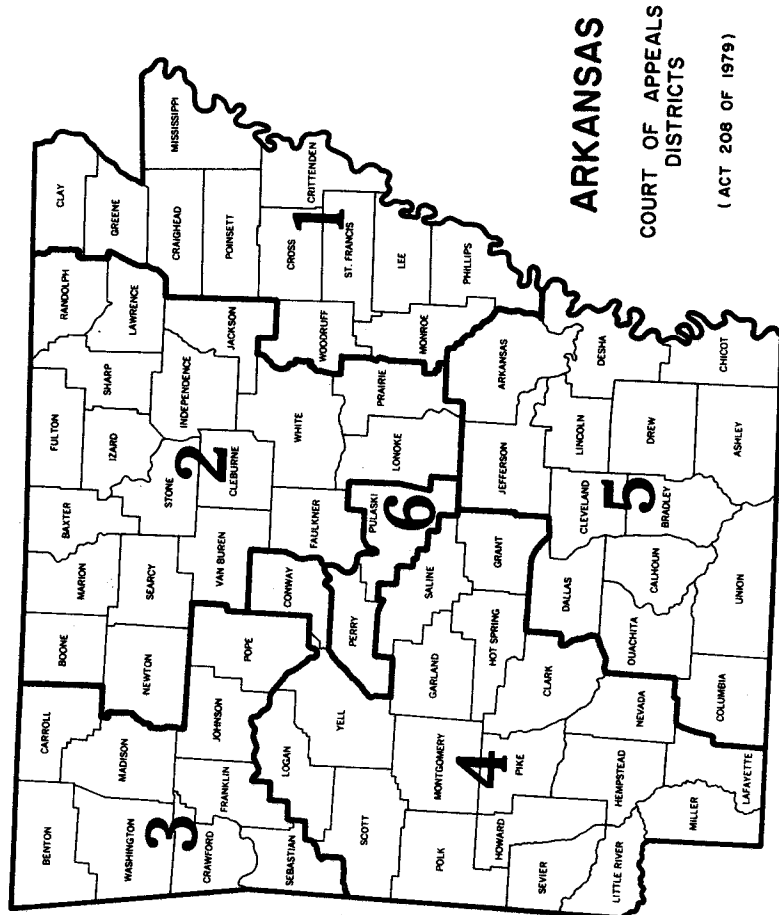
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1994

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

**DURING THE PERIOD COVERED
BY THIS VOLUME
(May 4, 1994 –
September 7, 1994, inclusive)**

JUDGES

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

OFFICERS

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

¹District 3.

²District 1.

³District 2.

⁴District 4.

⁵District 5.

⁶District 6.

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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

- ABC Advertising, Inc. v. Director, E 93-128 (Robbins, J.), affirmed June 1, 1994.
- Ad Craft of Ark., Inc. v. Director, E 93-134 (Robbins, J.), affirmed July 6, 1994.
- Advanced Distribution Sys., Inc. v. Monington, CA 93-1100 (Robbins, J.), affirmed August 31, 1994.
- American Prestige, Inc. v. Director, E 93-109 (Mayfield, J.), reversed and remanded May 4, 1994.
- Anderson v. State, CA CR 93-697 (Cooper, J.), affirmed May 11, 1994.
- Andres v. Smith, CA 93-547 (Mayfield, J.), affirmed June 29, 1994.
- Arkansas State Medical Bd. v. Young, CA 93-905 (Pittman, J.), affirmed September 7, 1994.
- Atkins v. Medical Ctr. of S. Ark., CA 93-836 (Rogers, J.), affirmed May 11, 1994.
- B.D. v. State, CA 93-879 (Pittman, J.), affirmed June 22, 1994.
- Baker v. State, CA CR 93-827 (Cooper, J.), affirmed May 25, 1994.
- Banks v. State, CA CR 93-954 (Rogers, J.), affirmed May 18, 1994.
- Barnes v. State, CA CR 93-1004 (Robbins, J.), affirmed August 24, 1994.
- Batesville Guard Record v. Director, E 93-35 (Rogers, J.), affirmed July 6, 1994.
- Bean v. State, CA CR 93-1055 (Mayfield, J.), affirmed September 7, 1994.
- Bearden v. Petit Jean Poultry, CA 93-831 (Cooper, J.), affirmed August 31, 1994.
- Blackford v. Sides, CA 94-273 (Per Curiam), Appellee's Motion for Stay granted May 18, 1994.
- Boles v. State, CA CR 93-1039 (Mayfield, J.), affirmed June 29, 1994.
- Brand v. North Am. Phillips Lighting Co., CA 93-859 (Cooper, J.), reversed and remanded May 25, 1994.
- Braswell v. State, CA CR 93-748 (Cooper, J.), affirmed May 25, 1994.
- Brown v. State, CA CR 93-853 (Robbins, J.), reversed and remanded May 4, 1994.

- Burlington Indus. v. Gardner, CA 93-933 (Jennings, C.J.), affirmed May 25, 1994.
- Cannady v. Wal-Mart Stores, Inc., CA 93-922 (Jennings, C.J.), affirmed May 25, 1994.
- Cargill, Inc. v. Director, E 93-164 (Pittman, J.), affirmed June 29, 1994.
- Carrasco v. State, CA CR 93-729 (Pittman, J.), affirmed May 4, 1994.
- Clark v. State, CA CR 93-943 (Robbins, J.), affirmed May 25, 1994.
- Cleburne County Lumber Co. v. Walker, CA 93-635 (Mayfield, J.), affirmed June 29, 1994.
- Cogswell Motors, Inc. v. Lackey, CA 93-793 (Cooper, J.), affirmed May 25, 1994.
- Collins v. State, CA CR 93-578 (Jennings, C.J.), affirmed June 15, 1994.
- Copelin v. Director, E 93-158 (Mayfield, J.), affirmed June 22, 1994.
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- Dawson v. State, CA CR 93-980 (Robbins, J.), affirmed May 18, 1994.
- Dollarway Sch. v. Bailey, CA 93-657 (Robbins, J.), affirmed August 24, 1994.
- Eberlein v. State, CA CR 93-29 (Rogers, J.), reversed and remanded June 29, 1994.
- Edmonston v. Estate of Edmonston, CA 93-366 (Jennings, J.), affirmed June 15, 1994.
- Estes v. State, CA 93-854 (Mayfield, J.), affirmed June 1, 1994.
- Farmer v. State, CA CR 93-781 (Pittman, J.), affirmed June 1, 1994.
- Fennell v. State, CA CR 93-903 (Jennings, C.J.), affirmed May 25, 1994.
- Flynn v. Ayers Furniture, CA 93-825 (Cooper, J.), reversed and remanded May 18, 1994.
- Fort Biscuit Co. v. Adamson, CA 93-1058 (Robbins, J.), affirmed June 29, 1994.
- Gaddy v. Rogers Tool Works, CA 93-865 (Robbins, J.), dismissed May 11, 1994.
- Gallagher v. Wade, CA 93-1225 (Per Curiam), Appellant's

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- Gann v. Patterson Constr., CA 93-1092 (Jennings, C.J.), affirmed August 31, 1994.
- Garrett v. State, CA CR 93-965 (Jennings, C.J.), affirmed August 31, 1994.
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- Harris v. Arnold Lehman Builders, Inc., CA 93-511 (Mayfield, J.), affirmed June 22, 1994.
- Harris v. Turner, CA 93-601 (Jennings, C.J.), affirmed June 29, 1994.
- Heeb v. Heeb, CA 93-488 (Rogers, J.), affirmed May 4, 1994.
- Helms v. State, CA CR 93-962 (Jennings, C.J.), affirmed May 18, 1994.
- Hernandez v. Tyson Foods, Inc., CA 93-485 (Jennings, C.J.), affirmed June 22, 1994.
- Hickerson v. Director, E 93-44 (Pittman, J.), affirmed May 25, 1994.
- Hodge v. First Nat'l Bank, CA 93-627 (Robbins, J.), affirmed in part, reversed and remanded in part May 4, 1994.
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- Hooten v. State, CA CR 93-951 (Jennings, C.J.), affirmed as modified June 1, 1994.
- In Re: Bennett v. Hopkins, CA 93-1059 (Cooper, J.), affirmed July 6, 1994.
- In the Matter of the Estate of Hunting v. Beard-Hunting, CA 93-778 (Jennings, C.J.), affirmed June 22, 1994.
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- Johnson, Rickey Dean v. State, CA CR 93-670 (Cooper, J.), affirmed June 15, 1994.
- Jones v. State, CA CR 93-896 (Mayfield, J.), affirmed May 11, 1994.
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- King v. State, CA CR 93-1174 (Robbins, J.), affirmed September 7, 1994.
- Lakey v. Wilmoth, CA 93-813 (Mayfield, J.), affirmed August 31, 1994.
- Leader Fed. Bank v. Brown, CA 93-207 (Pittman, J.), reversed and remanded May 25, 1994.
- Leader Fed. Bank v. Renaissance Properties Ltd., CA 93-564 (Cooper, J.), affirmed June 29, 1994.
- Lee v. Conley Transp., CA 93-826 (Rogers, J.), affirmed August 24, 1994.
- Lee v. Lee, CA 93-416 (Robbins, J.), affirmed May 18, 1994.
- Lewis v. Director of Labor, E 94-153 (Per Curiam), motion for Rule on the Clerk to Lodge Petition for Review denied August 31, 1994.
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- Lovell v. State, CA CR 93-1022 (Robbins, J.), affirmed June 15, 1994.

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- McCollum v. State, CA CR 93-845 (Pittman, J.), affirmed May 18, 1994.
- Merrie v. State, CA CR 93-886 (Pittman, J.), affirmed May 4, 1994.
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- Modlin v. Baxter County Rd. Dep't, CA 93-821 (Robbins, J.), affirmed May 18, 1994.
- Moore v. Conagra Broiler Co., CA 93-920 (Cooper, J.), affirmed June 22, 1994.
- Morgan v. Conagra Frozen Foods, CA 93-911 (Rogers, J.), affirmed May 18, 1994.
- Mueller v. Mueller, CA 93-677 (Jennings, C.J.), affirmed May 4, 1994.
- Mullinax v. Mullinax, CA 93-1377 (Rogers, J.), affirmed September 7, 1994.
- Nelson v. Consolidated Properties, Inc., CA 93-891 (Pittman, J.), affirmed May 25, 1994.
- Nibco, Inc. v. Director, E 93-178 (Robbins, J.), affirmed June 22, 1994.
- Norton v. State, CA CR 93-1073 (Cooper, J.), affirmed August 24, 1994.
- Nowlin v. City of Cotter, CA 93-1336 (Per Curiam), Motion to Dismiss Appeal as to Appellees passed June 15, 1994.
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- Parker v. State, CA CR 93-973 (Robbins, J.), affirmed August 31, 1994.
- Pearson v. Estate of Pearson, CA 93-737 (Pittman, J.), reversed and remanded June 15, 1994.
- Pennington v. Cates Constr. Co., CA 93-1111 (Mayfield, J.), affirmed August 24, 1994.
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- Porchia v. State, CA CR 93-967 (Cooper, J.), affirmed August 31, 1994.
- Pryor v. State, CA CR 93-111 (Rogers, J.), affirmed June 15, 1994.
- Pulaski County Child Support Enforcement Unit v. Barnes, CA 93-653 (Pittman, J.), reversed and remanded May 4, 1994.
- Reeves v. Terry, CA 93-834 (Jennings, C.J.), affirmed September 7, 1994.
- Richardson v. Barr, CA 93-612 (Cooper, J.), affirmed June 15, 1994.
- Riddle v. State, CA CR 93-461 (Jennings, C.J.), affirmed June 29, 1994.
- Robinson v. Poultry, CA 93-924 (Robbins, J.), affirmed May 25, 1994.
- Robinson v. State, CA CR 93-633 (Rogers, J.), affirmed May 4, 1994.
- Rockett v. State, CA CR 93-820 (Pittman, J.), affirmed May 4, 1994.
- Rupert v. State, CA CR 93-420 (Jennings, C.J.), affirmed in part; reversed and remanded in part May 11, 1994.
- Sawyer v. Champion Parts Rebuilders, CA 93-1076 (Rogers, J.), affirmed August 24, 1994.
- Schmaus v. Bradshaw-Clark Corp., CA 93-804 (Rogers, J.), affirmed May 4, 1994.
- Scott v. Modern Window & Door, CA 93-929 (Mayfield, J.), affirmed May 25, 1994.
- Sease v. Alexander, CA 93-607 (Rogers, J.), affirmed on direct appeal; affirmed on cross-appeal May 11, 1994.
- Slifkin v. Noark Pipeline System, CA 94-325 (Per Curiam), Appellee's Motion to Dismiss Appeal denied June 1, 1994.
- Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm'n, CA 93-508 (Per Curiam), Appellant's Motion for Stay granted May 18, 1994.
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- Smith, Jerry v. State, CA CR 92-761 (Rogers, J.), affirmed June 15, 1994.
- Stanley v. State, CA CR 93-919 (Jennings, C.J.), affirmed June 22, 1994.

- State v. Montgomery*, CA CR 93-883 (Mayfield, J.), reversed and remanded May 18, 1994.
- Steinert v. Director*, E 93-146 (Pittman, J.), affirmed August 31, 1994.
- Suggs v. Suggs*, CA 93-782 (Jennings, C.J.), affirmed June 1, 1994.
- Sullivan v. Hartline*, CA 93-824 (Pittman, J.), affirmed May 4, 1994.
- Sullivan v. School Apparel, Inc.*, CA 93-946 (Jennings, C.J.), affirmed August 31, 1994.
- Taylor v. Hiland Dairy*, CA 93-878 (Jennings, C.J.), affirmed May 18, 1994.
- Tosh v. State*, CA CR 93-1005 (Jennings, C.J.), affirmed September 7, 1994.
- Travis Lumber Co. v. Lannigan*, CA 93-1080 (Jennings, C.J.), affirmed August 31, 1994.
- Tyson Foods, Inc. v. Holmes*, CA 93-1010 (Rogers, J.), affirmed June 15, 1994.
- U.S. Fire Ins. Co. v. Mid-South Sec. Sys., Inc.*, CA 93-815 (Pittman, J.), reversed and remanded June 15, 1994.
- Van Dyke v. State*, CA CR 93-1000 (Mayfield, J.), affirmed August 31, 1994.
- Vickery v. Mountain Home Nursing Home Ctr.*, CA 93-532 (Robbins, J.), affirmed May 18, 1994.
- Waddill v. Kroger Co.*, CA 93-895 (Pittman, J.), affirmed June 15, 1994.
- Wade v. Sonic Drive-In*, CA 93-545 (Cooper, J.), affirmed in part, reversed in part, and remanded June 22, 1994.
- Wade v. Sonic Drive-In*, CA 93-545 (Cooper, J.), Supplemental Opinion on Denial of Rehearing September 21, 1994.
- Walker v. State*, CA CR 93-662 (Pittman, J.), affirmed June 15, 1994.
- Wallace v. Wallace*, CA 93-1086 (Rogers, J.), affirmed June 29, 1994.
- Warner v. Skil Corp.*, CA 93-829 (Mayfield, J.), affirmed May 11, 1994.
- Welch v. State*, CA CR 93-1051 (Jennings, C.J.), affirmed September 7, 1994.
- West v. State*, CA CR 93-1026 (Mayfield, J.), affirmed June 1, 1994.

Williams v. LTV Missles, CA 93-957 (Robbins, J.), affirmed
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Williford v. Campbell Soup Co., CA 93-1043 (Mayfield, J.),
affirmed in part and remanded July 6, 1994.

Zimmerman v. State, CA CR 93-888 (Cooper, J.), affirmed
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AND COURT OF APPEALS

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Aynes v. Director of Labor, E 94-075, August 31, 1994.
Baxter County Regional Hosp. v. Director of Labor, E 94-003,
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Benton v. Director of Labor, E 93-294, June 15, 1994.
Bradley v. Director of Labor, E 94-004, August 31, 1994.
Branch v. Director of Labor, E 93-312, June 1, 1994.
Dawson v. Director of Labor, E 93-292, May 4, 1994.
Dennis v. Director of Labor, E 93-314, June 29, 1994.
Edmonds v. Director of Labor, E 94-066, August 31, 1994.
Evans v. Director of Labor, E 93-104, June 15, 1994.
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