

ARKANSAS REPORTS
VOLUME 318

ARKANSAS
APPELLATE REPORTS
VOLUME 47

THIS BOOK CONTAINS
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Volume 318

CASES DETERMINED
IN THE
**Supreme Court
of Arkansas**
FROM
September 19, 1994 – December 6, 1994
INCLUSIVE¹

AND
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Volume 47

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IN THE
**Court of Appeals
of Arkansas**
FROM
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ARKANSAS REPORTS

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CASES DETERMINED
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Supreme Court of Arkansas

FROM
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INCLUSIVE

MARLO MAY BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1994

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OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(September 19, 1994 –
December 6, 1994, inclusive)

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

OFFICERS

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

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

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

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

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

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

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

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Bates v. State, CR 80-205 (Per Curiam), Pro Se Motion for Photocopying at Public Expense denied October 17, 1994.
- Bradley v. State, CR 94-871 (Per Curiam), Appellant's Pro Se Motion for Leave to Supplement Appellant's Brief denied October 31, 1994.
- Buchanan v. State, CR 94-518 (Per Curiam), Pro Se Motion for Access to Transcript and for Extension of Time to File Appellant's Brief granted September 19, 1994.
- Buchanan v. State, CR 94-518 (Per Curiam), appeal reinstated September 26, 1994.
- Buchanan v. State, CR 94-518 (Per Curiam), Pro Se Motion for Access to Transcript and Pro Se Motion for Extension of Time to File Appellant's Brief granted December 5, 1994.
- Clinkscale v. State, CR 94-775 (Per Curiam), Pro Se Motion for Transcript denied and appeal dismissed November 14, 1994.
- Collins v. Burnett, CR 94-873 (Per Curiam), Pro Se Petition for Writ of Mandamus moot September 19, 1994.
- Criddle v. State, CR 94-979 (Per Curiam), Pro Se Motion for Belated Appeal denied November 7, 1994.
- Davis v. State, CR 94-555 (Per Curiam), Pro Se Motion for State to Duplicate Appellant's Brief denied and Extension of Time to File Appellant's Brief granted September 26, 1994.
- Deason v. State, CR 94-364 (Per Curiam), affirmed December 5, 1994.
- Edwards v. Burnett, CR 94-628 (Per Curiam), Pro Se Petition for Writ of Mandamus moot September 19, 1994.
- Ellison v. State, CR 94-761 (Per Curiam), Pro Se Motion to File Belated Brief denied and appeal dismissed November 7, 1994.
- Flint v. Plegge, CR 94-872 (Per Curiam), Pro Se Petition for Writ of Mandamus moot October 10, 1994.
- Franklin v. State, CR 94-686 (Per Curiam), Pro Se Motion for Access to Transcript to Prepare Appellant's Brief and Pro Se Motion for Extension of Time granted October 10, 1994.
- Friar v. State, CR 94-1122 (Per Curiam), Pro Se Motion for Rule on the Clerk denied November 21, 1994.

- Gaffney v. State, CR 94-679 (Per Curiam), Pro Se Motion for Rule on the Clerk denied October 17, 1994.
- Green v. State, CR 94-178 (Per Curiam), rehearing denied October 3, 1994.
- Hair v. Davis, CR 94-784 (Per Curiam), Pro Se Petition for Writ of Mandamus moot September 19, 1994.
- Harbin v. State, CR 94-735 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied October 3, 1994.
- Hart v. State, CR 94-730 (Per Curiam), Pro Se Motion to File Belated Brief denied and appeal dismissed November 7, 1994.
- Henry v. State, CR 94-546 (Per Curiam), Pro Se Motion for Transcript denied and Pro Se Motion of Explanation moot, appeal dismissed October 3, 1994.
- Hill, Clarence J. v. State, CR 94-115 (Per Curiam), Pro Se Motion to Reinstate Appeal denied October 17, 1994.
- Hill, Kenneth v. State, CR 94-840 (Per Curiam), Pro Se Motion to File Handwritten Appellant's Brief and Pro Se Motion for Duplication of Appellant's Brief at Public Expense denied and appeal dismissed November 7, 1994.
- Hill, Sammy v. State, 94-763 (Per Curiam), Pro Se Motions: for Office of Attorney General to Duplicate Appellant's Brief denied; for Extension of Time to File Brief granted; and for Permission to File Handwritten Brief denied October 31, 1994.
- Hollamon v. State, CR 94-348 (Per Curiam), affirmed October 17, 1994.
- Holloway v. Slayden, 94-569 (Per Curiam), Pro Se Motion for Reconsideration of Denial of Pro Se Motion to File a Handwritten Appellant's Brief denied September 19, 1994.
- Howard v. State, CR 94-833 (Per Curiam), Pro Se Petition for Writ of Prohibition denied September 26, 1994.
- Jobes v. State, CR 94-764 (Per Curiam), Pro Se Motion to Dismiss Appeal granted; appeal dismissed with prejudice November 7, 1994.
- Johnson, Jerry Dewayne v. State, CR 94-957 (Per Curiam), Pro Se motion for Extension of Time to File Appellant's Brief denied and appeal dismissed December 5, 1994.
- Johnson, Samuel L. v. State, 94-110 (Per Curiam), affirmed October 3, 1994.
- Jordan, Larry v. State, CR 93-274 (Per Curiam), Pro Se Motion

- for Transcript and Other material at Public Expense denied September 19, 1994.
- Jordan, Lonnie v. State, CR 94-247 (Per Curiam), affirmed October 17, 1994.
- Lawrence v. Pearson, CR 94-668 (Per Curiam), Pro Se Petition for Writ of Mandamus moot October 10, 1994.
- Maxie v. Gaines, 94-313 (Per Curiam), affirmed October 10, 1994.
- Metcalf v. State, CR 94-1021 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed November 14, 1994.
- Neal v. State, CR 94-936 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied October 24, 1994.
- Nesbit v. State, CR 94-182 (Per Curiam), affirmed September 26, 1994.
- Partin v. State, CR 93-682 (Per Curiam), Pro Se Motion for Transcript denied September 26, 1994.
- Pennington v. State, CR 94-839 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief and Pro Se Motion for Access to Transcript denied and appeal dismissed November 14, 1994.
- Reed v. State, CR 94-826 (Per Curiam), Pro Se Motion for Access to Transcript denied and appeal dismissed October 24, 1994.
- Rhodes v. State, CR 94-279 (Per Curiam), affirmed September 26, 1994.
- Richardson v. State, CR 94-408 (Per Curiam), affirmed October 10, 1994.
- Riddle v. State, CR 94-588 (Per Curiam), Pro Se Motion for Belated Appeal granted; writ of certiorari issued October 17, 1994.
- Riddle v. State, CR 94-588 (Per Curiam), Pro Se Motion for Appointment of Counsel denied November 21, 1994.
- Risher v. State, CR 94-508 (Per Curiam), affirmed October 31, 1994.
- Risher v. State, CR 94-508 (Per Curiam), substituted opinion affirmed December 5, 1994.
- Sanders v. State, 94-757 (Per Curiam), Pro Se Motions for Office of Attorney General to Duplicate Appellant's Brief and for Permission to File a Handwritten Brief denied; Motion for Extension of Time to File Brief granted October 31, 1994.

- Scott v. State, CA CR 93-138 (Per Curiam), Pro Se Motion for Transcript denied September 26, 1994.
- Shoffner v. State, CA CR 94-906 (Per Curiam), Pro Se Motion for Transcript, Pro Se Motion for Appointment of Counsel, and Pro Se Motion to Consolidate with CR 94-907 certified to Arkansas Court of Appeals October 31, 1994.
- Shoffner v. State, CR 94-907 (Per Curiam), Pro Se Motion for Rule on the Clerk denied October 31, 1994.
- Shoffner v. State, CR 94-907 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Rule on the Clerk denied November 21, 1994.
- Smith v. State, CR 94-465 (Per Curiam), affirmed October 10, 1994.
- Stanley v. Norris, 94-312 (Per Curiam), affirmed September 26, 1994.
- Talley v. State, CR 94-556 (Per Curiam), Pro Se Motion to File Appellant Brief and for Transcript denied October 3, 1994.
- Tanner v. State, CR 94-276 (Per Curiam), affirmed October 3, 1994.
- Tisdale v. Davis, CR 94-1160 (Per Curiam), Pro Se Petition for Writ of Mandamus moot December 5, 1994.
- Tolbert v. State, CR 94-927 (Per Curiam), Pro Se Motion for Transcript denied and appeal dismissed October 31, 1994.
- Verdict v. State, CR 94-1102 (Per Curiam), Pro Se Motion for Rule on the Clerk and Pro Se Petition for Writ of Certiorari denied November 21, 1994.
- Walker v. State, CR 94-966 (Per Curiam), Pro Se Motion for Transcript and Pro Se Motion for Extension of Time denied and appeal dismissed November 14, 1994.
- Wilson v. State, CR 94-1011 (Per Curiam), Pro Se Motion for Rule on the Clerk denied November 14, 1994.

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APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

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IN RE: ARKANSAS RULES OF
PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered September 26, 1994

PER CURIAM. On March 3, 1993, the Arkansas Bar Association and its Professional Ethics and Grievances Committee, petitioned this Court to consider a revision of the Arkansas Rules of Professional Conduct regarding legal advertising and solicitation. As per our custom, this matter was referred to the Arkansas Supreme Court Committee on Professional Conduct for study and recommendation. The Committee responded on October 14, 1993, by filing its report with this Court.

During this same time frame, this Court learned of pending litigation in the State of Florida involving similar issues. Because of this litigation, we deferred further consideration of the parties' petition until the Florida lawsuit was fully litigated and finalized. We advised the petitioner and our Committee accordingly.

We have now learned that a federal district court has ruled that the Florida Bar's new rules on legal advertising and solicitation were unconstitutional and that the Florida Bar is now seeking certiorari from the United States Supreme Court. For this reason, we continue to defer further consideration of the petitioner's request until there has been a final resolution of the Florida case. The purpose of this Per Curiam is to advise the petitioner, our Committee and the bench and bar as to the status of these requested changes in our rules relating to professional conduct.

IN RE: James Ellis SMEDLEY
Arkansas Bar ID #76116

Supreme Court of Arkansas
Delivered October 3, 1994

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

IN RE: John F. ARENS,
Arkansas Bar ID # 81004

885 S.W.2d 24

Supreme Court of Arkansas
Delivered October 17, 1994

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we grant the committee's petition and order that John F. Arens is hereby barred from the practice of law in the State of Arkansas and direct that Mr. Arens's name be removed from the list of attorneys authorized to practice law in this state.

NEWBERN, J., not participating.

IN RE: ARKANSAS RULE 4.1 OF THE ARKANSAS
RULES OF CRIMINAL PROCEDURE to Include
Warrantless Arrest Procedures in Domestic Violence Cases

887 S.W.2d 514

Supreme Court of Arkansas
Delivered October 17, 1994

PER CURIAM. On July 18, 1994, we published a proposed amended Rule 4.1 of the Arkansas Rules of Criminal Procedure to include subsection (a)(iv) on domestic violence cases. We called for review and comment by the bench and bar within sixty (60) days of the date of the per curiam order. No comments were received. We, therefore, adopt amended Rule 4.1 to read as follows, effective immediately:

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.

(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.

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

94-128

885 S.W.2d 846

Supreme Court of Arkansas
Delivered October 17, 1994

PER CURIAM. The Arkansas IOLTA Foundation has petitioned this court to modify Rule 1.15 of the Model Rules of Professional Conduct so as to convert the IOLTA program from voluntary to comprehensive. The modification would obligate attorneys to make pooled client trust accounts interest bearing

for the benefit of the Arkansas IOLTA program. The petition alleges the following advantages:

- a. Lawyers have a professional responsibility to support the provision of legal services to the poor; IOLTA participation is a natural means to this end. See Rule 6.1, Model Rules of Professional Conduct.
- b. In addition to increased revenue for community-spirited, law-related purposes, client confidence that attorneys are acting properly with regard to client funds is enhanced because of improved trust account practices.
- c. There is a great need for additional funds to better meet the public interest purposes of IOLTA.
- d. A comprehensive program will generate substantially more revenue.
- e. The experience in states that have converted to a comprehensive program is that non-participating banks begin to offer IOLTA accounts after a conversion to comprehensive IOLTA program. If attorneys are required to participate, then the marketplace demands that the banks offer IOLTA accounts to attorney depositors.

The petition further alleges that the organized bar in Arkansas supports conversion to a comprehensive IOLTA program, that the membership of the Arkansas Bar Association approved the proposed modification by referendum vote, that the proposal has the support of the Executive Council, Young Lawyers' Section, and the unanimous endorsement of the Executive Counsel of the Arkansas Bar Association. Exhibits accompanying the complaint include: a Resolution of the House of Delegates, American Bar Association, urging the adoption by each state of a comprehensive IOLTA program; a September, 1993 chart reflecting that, with the exception of Indiana, all states and the District of Columbia have an IOLTA program, twenty-five states having a comprehensive program, eighteen (and the District of Columbia) having an "opt-out" program and only six states having a voluntary program. Other exhibits show the revenues generated under comprehensive plans, in marked contrast to voluntary plans.

In our February 28, 1994, *Per Curiam* we invited the prac-

ting bar and interested parties to submit comments by June 1, 1994, on the proposed modification. A number of individuals have responded to that invitation, with some opposing a comprehensive plan, others favoring it. The responses include letters from the chairman of the Professional Ethics and Grievances Committee, Professor Howard W. Brill, and members of that committee which, though supporting a comprehensive IOLTA plan, oppose the mechanism of achieving the change by amending Rule 1.15 of the Model Rules of Professional Conduct. Pointing out that the Model Rules have no provision for IOLTA, voluntary or comprehensive, Professor Brill states the case for maintaining uniformity between the Model Rules of the American Bar Association and our own Model Rules, thereby keeping Arkansas within the mainstream of professional ethics and providing consistency of interpretation within the sisterhood of states. We find similar views expressed by Chairman Richard A. Reid of the Committee on Professional Conduct. Professor Brill suggests the better approach would be to effectuate the change to a comprehensive plan by amending the IOLTA rules adopted in the *Per Curiam* dated May 5, 1986, 289 Ark. 595, 709 S.W.2d 400, by including language to the effect that violations should be referred to the Committee on Professional Conduct.

The Arkansas IOLTA Foundation, by its president and Board of Directors, has responded to these concerns by pointing out that forty jurisdictions have currently adopted the Model Rules of Professional Conduct and that sixteen have modified the rules pertaining to the safekeeping of clients' property so as to establish a comprehensive IOLTA program, undermining uniformity. Too, the genitor of the Model Rules, the American Bar Association, recommends the adoption of a comprehensive IOLTA program by every state. Finally, a report of the Joint Technical Assistance Committee of the American Bar Association's IOLTA commission and the National Association of IOLTA Programs contains this pertinent finding:

Our experience and research indicates that the adoption of a mandatory IOLTA rule generally has not increased, at all or to any appreciable extent, the monitoring or enforcement activities of state bar counsel or professional conduct commissions. The rule or statute establishing the IOLTA obligation has normally vested the administrative

responsibilities in state IOLTA organizations which have sought attorney compliance with minimal (or no) reliance on formal enforcement procedures.

The IOLTA Board has given assurance by letter of May 27, 1994, that it does not envision that the administrative functions of the proposal would be performed by anyone other than the IOLTA staff, and only if an attorney purposely fails to comply would such infraction be referred to the Committee on Professional Conduct.

Mr. E. Lamar Pettus, who has served as a Director of the IOLTA Foundation, Inc., carefully reviewed the proposed rule and offered eight pertinent comments. We asked the petitioning IOLTA Board to consider those recommendations and the Board has given us a detailed response, incorporating several in the proposed rule.

Having reviewed the allegations of the petition and considered the comments on both sides of the question, we are persuaded the time has come for IOLTA to move from a voluntary to a comprehensive program and, accordingly, we grant the petition of the Arkansas IOLTA Foundation by adopting the proposed revision of Rule 1.15 which is appended to this Per Curiam and made a part hereof by reference. The effective date of the revised rule is January 1, 1995. We express our sincere gratitude to all of those who responded to our request for comments.

Petition granted.

DUDLEY, J., dissents.

New material underlined, deleted material crossed out.

Rule 1.15 Safekeeping Property

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

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

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

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

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

23 (c) When in the course of representation a lawyer is in possession of
24 property in which both the lawyer and another person claim interests, the
25 property shall be kept separate by the lawyer until there is an accounting and
26 severance of their interest. If a dispute arises concerning their respective
27 interests, the portion in dispute shall be kept separate by the lawyer until
28 the dispute is resolved.
29

Attachment 1

- 30 (d) (1) Each trust account referred to in (a) above shall be an interest-
31 bearing trust account in a bank, savings bank, trust company, savings
32 and loan association, savings association, credit union, or federally
33 regulated investment company, and the institution shall be insured by an
34 agency of the federal government.
- 35 (2) A lawyer who receives client funds which in the judgment of the
36 lawyer are nominal in amount, or are expected to be held for such a
37 short period of time that it is not practical to earn and account for
38 income on individual deposits, shall create and maintain an interest-
39 bearing account for such funds. The account shall be maintained in
40 compliance with the following requirements:
- 41 (A) The trust account shall be maintained in compliance with
42 sections (a), (b) and (c) of this rule and the funds shall be
43 subject to withdrawal upon request and without delay.
- 44 (B) No earnings from the account shall be made available to the
45 lawyer or law firm, and,
- 46 (C) The interest accruing on this account, net of reasonable check
47 and deposit processing charges which shall only include items
48 deposited charge, monthly maintenance fee, per item check charge,
49 and per deposit charge, shall be paid to the Arkansas IOLTA
50 Foundation, Inc. All other fees and transaction costs shall be
51 paid by the lawyer or law firm.
- 52 (3) All client funds shall be deposited in the account specified in
53 section (d)(2) unless they are deposited in a separate interest-bearing
54 account for a specific and individual matter for a particular client.
55 There shall be a separate account opened for each such particular
56 matter. Interest so earned must be held in trust as property of each
57 client in the same manner as is provided in (a) and (b) of this rule.
- 58 (4) The interest paid on the account shall not be less than, nor the
59 fees and charges assessed greater than, the rate paid or fees and

Attachment 1

60 charges assessed, to any non-lawyer customers on accounts of the same
61 class within the same institution.
62 (5) The decision whether to use an account specified in section (d)(2)
63 or an account specified in section (d)(3) is within the discretion of
64 the lawyer. In making this determination, consideration should be given
65 to the following:
66 (A) The amount of interest which the funds would earn during the
67 period they are expected to be deposited; and,
68 (B) The cost of establishing and administering the account,
69 including the cost of the lawyer's or law firm's services.
70 (e) All lawyers who maintain accounts provided for in this Rule, must
71 convert their client trust account(s) to interest-bearing account(s) with the
72 interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six
73 months from the date of the order adopting this Rule, unless the account falls
74 within subsection (d)(3). All lawyers shall certify annually that they, their
75 law firm or professional corporation is in compliance with all sections and
76 subsections of this Rule.
77 (f) A lawyer shall certify, in connection with the annual renewal of the
78 lawyer's license, that the lawyer is complying with all provisions of this
79 rule. Certification shall be made on the following form in a manner
80 designated by the Clerk of the Supreme Court.
81 (g) A lawyer or a law firm may be exempt from the requirements of this rule
82 if the Arkansas IOLTA Foundation's Board of Directors, on its own motion, has
83 exempted the lawyer or law firm from participation in the Program for a period
84 of no more than two years when service charges on the lawyer's or law firm's
85 trust account equal or exceed any interest generated.

IN RE: ARKANSAS RULES OF CRIMINAL PROCEDURE
36.5

Supreme Court of Arkansas
Delivered October 31, 1994

PER CURIAM. The Supreme Court Committee on Criminal Practice has recommended the adoption of the following rule relating to appeal bonds. The proposed rule would replace our current Rules of Criminal Procedure 36.5 through 36.8. We publish the proposed rule and invite comment from the bench and bar.

All comments should be sent to:

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

The deadline for receiving comment is January 1, 1995.

RULE 36.5

CRIMINAL APPEALS:

BAIL ON APPEAL

(a) The appeal bond provided for in this rule shall be filed in the office of the clerk of the court in which the conviction is had, and a copy thereof shall be attached to the bill of exceptions and shall be made a part of the transcript to be filed in the Supreme Court.

(b)(1) Except for those offenses provided for in subdivision (b)(2) and (b)(3) of this section, when a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to a criminal offense and is sentenced to serve a term of imprisonment, and the criminal defendant has filed a notice of appeal, the court shall not release the defendant on bail or otherwise pending appeal unless the court finds:

(A) By clear and convincing evidence that the person is not likely to flee or that there is not a substantial risk that the defendant will commit a serious crime, intimidate witnesses, harass or take retaliatory action against any juror, or otherwise interfere with the administration of justice or pose a danger to the safety of any other person; and

(B) That the appeal is not for the purpose of delay and that it raises a substantial question of law or fact.

(2) When a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to a criminal offense of capital murder, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(3) When a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to a criminal offense of murder in the first degree, rape, aggravated robbery, or causing a catastrophe, or the criminal offenses of kidnapping or arson when classified as a Class Y felony and is sentenced to death or a term or imprisonment, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(c) (1) If an appeal bond is granted by the circuit court, the

appeal bond shall be conditioned that the defendant surrender himself to the sheriff of the county in which the trial was held upon the dismissal of the appeal or upon the rendition of final judgment upon the appeal. The trial court may also condition release by imposing restrictions specified in A.R.Cr.P. 9.3 or other restrictions found reasonably necessary.

(2) Following the affirmance or reversal of a conviction, the Clerk of the Supreme Court shall immediately make and forward to the clerk of the circuit court of the county in which the defendant was convicted a certified copy of the mandate of the Supreme Court.

(3) The circuit clerk, upon receipt of a mandate affirming the conviction, shall immediately file the mandate and notify the sheriff and the bail bondsman or, in appropriate cases, other sureties on the bail bond that the defendant should be surrendered to the sheriff as required by the terms of the bail bond.

(4) If the defendant fails to surrender himself to the sheriff in compliance with the conditions of his bond, the sheriff shall notify the clerk of the circuit court, and the circuit court shall direct that fact to be entered on its records and shall adjudge the bail bond of the defendant, or the money deposited in lieu thereof, to be forfeited.

(5) The defendant having failed to surrender, the circuit clerk shall immediately issue a summons against the sureties on the bail bond requiring them to appear and show cause why judgment should not be rendered against them for the sum specified in the bail bond on account of the forfeiture thereof, which summons shall be made returnable and shall be executed as in civil actions, and the action shall be docketed and shall proceed as an ordinary civil action.

(6) The summons may be served in any county in the state, and the service of the summons on the defendant or defendants in any county in the state shall give the court complete jurisdiction of the defendant and cause.

(7) No pleadings on the part of the state shall be required in such cases.

(d) If the court in which the defendant was convicted refuses

to grant an appeal bond and an appeal bond shall thereafter be granted by any Justice or Justices of the Supreme Court, the bond shall be conditioned that, upon the dismissal of the appeal or the rendition of the final judgment therein by the Supreme Court, the defendant shall surrender himself as provided in this rule in execution of the judgment.

- (e) A.R.Cr.P. 36.5 through 36.8 are hereby repealed.
- (f) This rule is effective immediately upon promulgation.

IN THE MATTER OF THE AMENDMENT OF
RULE 37.1(e) AND RULE 37.3(b) OF
THE ARKANSAS RULES OF CRIMINAL PROCEDURE

Supreme Court of Arkansas
Delivered November 14, 1994

On January 1, 1991, this court reinstated Criminal Procedure Rule 37 which had been abolished July 1, 1989. At that time, the rule was revised in several respects. We now find it appropriate to amend the rule to reflect recent decisions of this court respecting the content of a petition under the rule and the discretion of the circuit court to appoint counsel in certain instances.

Rule 37.1 (e) of the Arkansas Rules of Criminal Procedure is amended, effective November 14, 1994, to read:

(e) The petition will state in concise, nonrepetitive, factually specific language, the grounds upon which it is based and shall not exceed ten pages in length. The petition, whether handwritten or typewritten, will be clearly legible, will not exceed thirty lines per page and fifteen words per line, with lefthand and righthand margins of at least one and one-half inches and upper and lower margins of at least two inches. Petitions which are not in compliance with this rule will not be filed without leave of the court.

Rule 37.3 (b) of the Arkansas Rules of Criminal Procedure is amended, effective November 14, 1994, to read:

(b) If the original petition, or a motion for appointment of counsel should allege that the petitioner is unable to pay the cost of the proceedings and to employ counsel, and if the court is satisfied that the allegation is true, the court may at its discretion appoint counsel for the petitioner for any hearing held in the circuit court. If a petition on

which the petitioner was represented by counsel is denied, counsel shall continue to represent the petitioner for an appeal to the Supreme Court, unless relieved as counsel by the circuit court or the Supreme Court. If no hearing was held or the petitioner proceeded *pro se* at the hearing, the circuit court may at its discretion appoint counsel for an appeal upon proper motion by the petitioner.

IN THE MATTER OF RECOMMENDATIONS
OF THE ARKANSAS SUPREME COURT
COMMITTEE ON CIVIL PRACTICE;
Ark. R. Civ. P. 54(d) and 59(a)

Supreme Court of Arkansas
Delivered December 5, 1994

The Arkansas Supreme Court Committee on Civil Practice has submitted its annual recommendations for changes in the Arkansas Rules of Civil Procedure.

This Court has before it a proposal to divide the Arkansas Rules of Appellate Procedure into Civil and Criminal sections as part of a plan to remove from the Arkansas Rules of Criminal Procedure those rules pertaining to appeals and place them, as revised, in the Arkansas Rules of Appellate Procedure. The Committee on Civil Practice has studied the proposed changes and has approved, with minor revisions, the proposed appellate rules for civil cases. Those changes are to be presented in a separate per curiam opinion dealing exclusively with the Arkansas Rules of Appellate Procedure.

We publish the proposed changes and additions to the Rules of Civil Procedure and the added Reporter's Notes for comment from the bench and bar. Unless withdrawn or altered by further order, the changes will become effective January 15, 1995.

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

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

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

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

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

Rule 54, Arkansas Rules of Civil Procedure

1. Subdivision (d) of Rule 54 is hereby amended to read as follows:

(d) Costs. Costs authorized by statute or by these rules shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.

2. The Reporter's Notes accompanying Rule 59 are hereby amended by adding the following:

Addition to Reporter's Notes, 1994 Amendment:
Subdivision (d) of the rule is rewritten for purposes of clarity. No substantive change is intended. The original version of the rule was awkward and led to confusion. *See, e.g., Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994).

Rule 59, Arkansas Rules of Civil Procedure

1. Subdivision (a) of Rule 59 is hereby amended by substituting the word "claim" for the word "issues" in the first sentence.
2. The Reporter's Notes accompanying Rule 59 are hereby amended by adding the following:

Addition to Reporter's Notes, 1994 Amendment:

The first sentence of subdivision (a) is amended by substituting the word "claim" for the word "issues." The amendment is intended to reflect case law prohibiting a partial new trial on the issue of damages (or the issue of liability), on the theory that a jury's verdict cannot be divided by the court. *E.g., Smith v. Walt Bennett Ford*, 314 Ark. 591, 864 S.W.2d 817 (1993). As amended, subdivision (a) does not allow a partial new trial limited to a given issue. However, it expressly authorizes, in cases involving multiple parties or multiple claims, a partial new trial with respect to a single party or single claim.

Appointments to
Committees

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IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Delivered September 19, 1994

PER CURIAM. The Honorable Wiley Branton, Jr., Circuit/Chancery Judge, of Little Rock, Second Congressional District; and Michael Mashburn, Esq., of Fayetteville, Third Congressional District, are reappointed to the Board of Law Examiners. Each reappointment is for a term of three years to expire on September 30, 1997.

The Court thanks Judge Branton and Mr. Mashburn for accepting reappointment to this most important Board.

IN RE: SUPREME COURT COMMITTEE
ON CIVIL PRACTICE

Supreme Court of Arkansas
Delivered September 26, 1994

PER CURIAM. The Honorable John Pittman, Arkansas Court of Appeals, of Little Rock; Carolyn Witherspoon, Attorney-at-Law, of Little Rock; H. David Blair, Esq., of Batesville; and Bill Bristow, Esq., of Jonesboro, are reappointed to our Committee on Civil Practice for terms of three years to expire on July 30, 1997. The term of the Honorable Henry Wilkinson, Circuit Judge, of Forrest City is extended to January 1, 1995.

The Court expresses its appreciation to Judge Wilkinson, Judge Pittman, and Attorneys Witherspoon, Blair and Bristow for their continued service and dedication to this most important Committee.

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- Right to appeal. *Nosal v. Neal*, 727.
- Proceedings before the Client Security Fund Committee, proceedings are carried out for the most part as if the committee was an administrative agency. *Id.*
- Right to appeal, all administrative remedies must first be exhausted. *Id.*
- Client Security Fund, purpose and amendment thereto. *Id.*
- Client Security Fund claim, appellant's claim was not stale. *Id.*
- Client Security Fund, when a client should be reimbursed. *Id.*
- Discharge of employee an administrative decision, circuit court without jurisdiction to review. *Viswanathan v. Mississippi County Community College Bd. of Trustees*, 810.
- Error to conclude appellant unlawfully terminated before given opportunity to submit corrected information. *Arkansas Dep't of Human Servs. v. Arkansas Child Care Consultants, Inc.*, 821.
- Decision not arbitrary and capricious, ample opportunity to be heard provided though not required. *Id.*
- False information submitted in an application in one program constitutes "serious deficiency" which disqualifies institution in another program. *Id.*

ADOPTION:

- Interlocutory decree can be vacated. *Dougan v. Gray*, 6.
- Probate court permitted to set aside interlocutory decree of adoption. *Id.*

APPEAL & ERROR:

- Appellant has duty to abstract, failure to do so precludes issue's consideration. *Manning v. State*, 1.
- Alleged points of error not raised below, court will not consider them. *Id.*
- No advisory opinions issued. *Dougan v. Gray*, 6.
- No final order, appeal dismissed. *Id.*
- Failure to move for mistrial below, issue not considered on appeal. *Cupples v. State*, 28.
- Trial court in better position than appellate court to evaluate whether error requires mistrial. *Id.*
- Failure to request specific relief below. *Id.*
- Argument not raised at trial will not be addressed on appeal, grounds for objection cannot be changed on appeal. *Stricklin v. State*, 36.
- Issues not preserved for review, new grounds not considered by the court. *Id.*
- No objection at trial level, issue not preserved for appeal. *Jackson v. State*, 39.
- Appellant must bring up record sufficient for review of the issue. *Id.*
- Appellant failed to establish that the two photo identifications were sufficiently suggestive, case for unreliability not made. *Id.*
- Motion for rule on the clerk, good cause for granting. *Embry v. State*, 43.
- Failure to lodge record, second offense, contempt and fine. *Jones v. State*, 44.
- Notice of appeal filed prior to entry of judgment has no effect, admission of mistake by counsel was good cause to grant belated appeal. *Mack v. State*, 46.
- Rehearing, points not argued on appeal, no finding of trial court clearly erroneous, rehearing denied. *Suggs v. State*, 547-A.
- Argument not raised below, argument not preserved for appeal. *Owens v. State*, 61.
- Appeals from guilty pleas, factors surrounding. *Scalco v. City of Russellville*, 65.
- Conditional plea of guilt allowed only if the rule complied with, when conditional plea becomes final. *Id.*

- Conditional guilty plea appealed from, appellate court did not reverse, conviction and sentence are final. *Id.*
- Review of trial court's evaluation of challenge for race or gender discrimination in the exercise of peremptory challenges. *Gilland v. State*, 72.
- Appellant may not change his grounds for objecting, issue not preserved for appeal. *Id.*
- Error caused by defense counsel, appellant cannot complain. *Id.*
- Review of criminal case. *Wesley v. State*, 83.
- Review of motion for continuance. *Id.*
- Timely objection not made at trial, issue could not be raised on appeal. *Byrum v. State*, 87.
- Issue raised for the first time on appeal not addressed. *Id.*
- Abstract insufficient to show issue raised below, appellant's duty to abstract material parts of record. *Franklin v. State*, 99.
- Deficient abstract, case affirmed. *Id.*
- Deficient abstract, state's argument not equated to abstract. *Id.*
- Issue not preserved, abstract deficient beyond merely raising the issue of the sufficiency of corroborative evidence. *Id.*
- Belated appeal granted, counsel admitted mistake in filing notice of appeal. *Burress v. Edwards*, 104.
- Belated appeal granted, counsel admitted mistake, good cause shown. *Sumlin v. State*, 105.
- Relief requested at trial granted, no further grounds for objection. *Rank v. State*, 109.
- Must be an objection below to preserve the issue for appeal. *Id.*
- No objection below, issue not preserved for appeal. *Id.*
- Argument not raised below, not reached on appeal. *Truhe v. Grimes*, 117.
- Arguments at trial differed from those made on appeal, arguments not raised at trial waived. *Smith v. State*, 142.
- Party never made an appearance in the appeal, motion to allow filing of amicus brief and to appear at oral argument denied. *Grantors v. Employers Nat'l Ins. Corp.*, 171.
- Motion for belated appeal granted, counsel admitted fault, good cause shown. *Krein v. State*, 172.
- Abstract and brief not filed, even after several months grace, appellant's counsel directed to appear and show cause. *Williams v. State*, 175.
- Settlement entered into by class members, appellant lacked standing to appeal. *Haberman v. Lisle*, 177.
- Charges dismissed, no conviction existed from which to appeal, appeal dismissed. *Cook v. City of Pine Bluff*, 190.
- Points of appeal never decided on below, supreme court will not make original decisions. *Id.*
- Procedural defect in appellant's argument, because case being reversed and remanded even the defective issue was addressed. *Greenlee v. State*, 191.
- Argument on appeal not raised at trial, argument not reached. *Mings v. State*, 201.
- Error alleged as to instruction that was never submitted to the trial court, issue not reached on appeal. *Id.*
- Proffered instruction not included in the record, issue not reached. *Id.*
- Review of denial of continuance, totality of circumstances considered, burden of showing prejudice on appellant. *Davis v. State*, 212.
- Failure to object below, argument waived on appeal. *Id.*
- Abstract deficient where neither the objection nor the nature of the challenged testimony was clear. *Id.*
- Failure to abstract objection below, issue not subject to review. *Id.*
- Review of denial of directed verdict motion. *Id.*
- Abstract insufficient, no grounds stated and nature of objection not apparent from context. *Id.*

- Motion for rule on the clerk, good cause for granting. *Matthews v. State*, 232.
- Contempt, failure to timely file record, admit fault, or show good cause, counsel fined. *Schalchlin v. State*, 233.
- Appeal of a judgment a matter of right, defendant will not be penalized for attorney's inaction. *Young v. State*, 235.
- Counsel directed to file writ of certiorari, motion for rule on the clerk granted. *Id.*
- Court does not issue advisory opinions or decide moot cases. *Arkansas Dep't of Human Servs. v. State*, 294.
- Appellant absolved of responsibility by trial court's action, appeal unreviewable. *Id.*
- Mootness, when case will be reviewed. *Id.*
- Review on appeal limited to record abstracted, failure to abstract, merits not reached, case affirmed. *Burns v. Carroll*, 302.
- Failure to make convincing argument or cite authority, case affirmed. *Galloway v. Arkansas State Hwy. & Transp. Dep't*, 303.
- Motion for rule on the clerk, good cause for granting. *Bilderback v. State*, 323.
- Duty of attorney to file record on time, partial record will suffice. *Franklin v. State*, 324.
- Appeal not timely filed, partial record filed late, attorney breached his duty. *Id.*
- Attorney directed to file a motion for a rule on the clerk. *Id.*
- When a nunc pro tunc order may be entered. *Hansberry v. State*, 326.
- Nunc pro tunc order cannot be used to correct an omission. *Id.*
- Motion for rule on the clerk, good cause for granting. *Lambert v. State*, 327.
- Notice of appeal, when filed, post-conviction motions. *Lawrence Bros. Inc., v. R.J. "Bob" Jones Excavating Contractor, Inc.*, 328.
- Notice of appeal untimely and ineffective. *Id.*
- Preserving objection to empaneled juror. *Patterson v. State*, 358.
- Provisions governing appeal in probate code. *Simmons v. Estate of Wilkinson*, 371.
- Failure to comply with Rules of Appellate Procedure, appeal dismissed, order becomes final. *Id.*
- Appellant not permitted to make second appeal under probate statute, appellant cannot do indirectly what she cannot do directly, argument barred. *Id.*
- Denied motion to set aside judgment never appealed from, order that was appealed from inapplicable to appellant. *Arkansas Dep't of Human Servs. v. Bailey*, 374.
- Appellant not entitled to trial transcript from his attorney. *Nooner v. State*, 385.
- Waiver of right to appeal, filing of notice of appeal demonstrates lack of waiver. *Zucco v. State*, 386.
- Subject-matter jurisdiction may be determined on appeal though not raised below. *Mertz v. States*, 390.
- Issues not raised below will not be addressed on appeal. *Oliver v. Simons*, 402.
- Failure to show prejudice from failure to give proffered instruction, no reversal absent prejudice. *Hill v. State*, 408.
- Review of chancery cases. *Sanders v. Ryles*, 418.
- Objection not raised below, objection not reached on appeal. *Johnson v. State*, 425.
- Summary judgment granted below, no error found. *Brunt v. Food 4 Less, Inc.*, 427.
- No objection at trial, issue not preserved for appeal. *Kempner v. Schulte*, 433.
- Reversal of judgment due to insufficient evidence, award of attorney's fees must also be reversed. *American Health Care Providers, Inc. v. O'Brien*, 438.
- Motion for directed verdict not renewed at the close of the evidence, issue not reachable on appeal. *Id.*
- Affirmance on directed verdict, contract claim remanded for new trial. *Id.*
- Chancery cases tried de novo when reversed. *Pickens v. Black*, 474.
- Review of probate cases, distribution of wrongful death proceeds. *Bell v. Estate of Bell*, 483.
- Appeal of distribution of wrongful death proceeds, burden on appeal. *Id.*
- Failure to raise argument below, issue not considered on appeal. *Id.*

- Review of refusal to transfer from circuit to juvenile court, burden on appeal. *Sebastian v. State*, 494.
- Opinion delivered on Count II, issues raised in Count I moot, petition with respect to Count I dismissed. *Bailey v. McCuen*, 505.
- Abstract and brief presented at contempt hearing, motion to file belated brief granted. *Williams v. State*, 506.
- No advisory opinions. *Walker v. McCuen*, 508.
- Clerk satisfied with brief as submitted, no prejudice in permitting brief to be filed without certificate of service to the trial court. *Amalgamated Clothing v. Earle Indus., Inc.*, 524.
- Preserving sufficiency of the evidence issue for review, motion must be specific. *Clay v. State*, 550.
- Motion not sufficiently specific to preserve issue for appeal. *Id.*
- Order not final. *State v. Morrison*, 563.
- Final order defined. *Id.*
- Lack of final, appealable order jurisdictional. *Id.*
- Review of judge's refusal to recuse. *Reel v. State*, 565.
- Ademption of the savings account occurred, probate court reversed. *In Re: Mayberry v. Mayberry*, 588.
- Final appealable order, foreclosure of mortgage and decree confirming foreclosure are final and appealable orders. *Scherz v. Mundaca Investment Corp.*, 595.
- Notice of appeal untimely. *Id.*
- Motion to vacate couched in terms of motion for new trial, time for appeal delayed until action taken on motion, notice of appeal filed before action taken was untimely. *Id.*
- Objection not made below, basis for an objection may not be changed on appeal. *Watson v. State*, 603.
- To be appealable, order must be final, final order defined. *General Motors Acceptance Corp. v. Eubanks*, 640.
- Generally, action on motion for new trial appealable, if multiple claims or parties involved, finality determined by Ark. R. Civ. P. 54(b). *Id.*
- No piecemeal appeals, burden on appellants to produce record showing jurisdictional requirements met. *Id.*
- Final order in multi-party or multi-claim suit, express findings required that there is no just reason for delay. *Id.*
- Finality of order, "no just reason for delay" explained. *Id.*
- New trial granted, consent decree reserved jurisdiction to trial court for further proceedings. *Id.*
- Appeal from denial of new trial not proper where resolution of partial summary judgment issue still pending. *Id.*
- Decree not effective until entered, new trial motion, no action within thirty days, motion deemed denied. *Id.*
- Motion for JNOV or new trial deemed denied, no specific finding that there was no just reason for delay, order appealed from was not final. *Id.*
- Review of chancery cases, burden on appellant to show error. *Scroggin v. Scroggin*, 648.
- Failure to show error, case affirmed on appeal. *Id.*
- Failure to obtain ruling below, issue waived on appeal. *Id.*
- Orders of dismissal modified to be without prejudice, case remanded. *In Re: Poston v. Fears*, 659.
- Grounds for objection at trial may not be changed on appeal. *Miller v. State*, 673.
- Summary judgment, no issue of fact, standard of review. *City of Little Rock v. Pfeifer*, 679.
- Review of zoning case, review limited. *Id.*
- Review of zoning case, "arbitrary" and "capricious" defined. *Id.*
- Motion for rule on the clerk, good cause for granting. *Duty v. State*, 686.
- Motion for rule on the clerk, good cause for granting. *Franklin v. State*, 687.

- Critical document not abstracted, court could not consider issues raised. *Jones v. McCool*, 688.
- Appellant moved to amend brief to include abstract, motion to amend filed after appellee filed its brief too late. *Id.*
- Review of directed verdict motion. *Goins v. State*, 689.
- Review of motion for continuance, lack of time, totality of circumstances. *Id.*
- Failure to preserve issue of photographic lineup for appeal. *Id.*
- Failure to abstract photographic lineup. *Id.*
- Failure to raise issue below. *Id.*
- Review of motion for directed verdict, sufficiency of the evidence considered before other points on appeal. *Jones v. State*, 704.
- Preserving issue of sufficiency of the evidence for appeal, criminal case. *Id.*
- Objection below insufficiently specific to preserve argument on appeal, failure to renew motion for directed verdict. *Id.*
- Issue not reached, trial court properly exercised its discretion under the circumstances. *Ouachita Mining & Exploration, Inc. v. Wigley*, 750.
- Motion for rule on the clerk, good cause for granting. *Hansberry v. State*, 757.
- Appeal must be filed following the entry of the final judgment, decree announced from the bench ineffective until the date of filing. *Nance v. State*, 758.
- No order denying appellant's request for a new trial was ever filed, appellant's notice of appeal was invalid. *Id.*
- Appellant made no showing that the appeal had merit, motion for appointment of counsel denied. *Mixon v. State*, 762.
- Motion for rule on the clerk, good cause for granting. *Taylor v. State*, 763.
- Review of summary judgment on appeal. *Hampton v. Taylor*, 771.
- Argument made for the first time on appeal, issue not reached. *Silvey Cos. v. Riley*, 788.
- Trial court's decision right for the wrong reason, decision will be affirmed. *Viswanathan v. Mississippi County Community College Bd. of Trustees*, 810.
- Review of waiver of right to counsel once invoked. *Rockett v. State*, 831.
- Review of state's explanation for juror challenge. *Id.*
- Chancery cases, standard of review. *Osborne v. Power*, 858.
- Failure to present justiciable controversy for trial court to decide, appellant cannot now complain of error. *Knowlton v. Ward*, 867.
- Issue not considered if not developed at trial. *Id.*
- Lack of standing to raise issue on appeal that appellant did not raise at trial. *Id.*
- Inappropriate for court to address issues in this appeal that are pending and stayed in another appeal. *Id.*
- No authority for interlocutory appeal. *Gammel v. State*, 880.
- Petition unclear, record returned to appellant. *Id.*
- Motion to order former counsel to turn over material to former client under these circumstances was denied. *Jackson v. State*, 882.
- No right to handwritten brief, when handwritten brief will be accepted. *Miner v. Furman*, 883.
- Appointment of counsel, civil and pro se post-conviction criminal appeals. *Id.*
- Conclusory statement of merit insufficient, request to file handwritten brief denied. *Id.*
- Rule on the clerk granted, counsel filed notice of appeal but never lodged record, counsel substituted. *Smith v. State*, 885.
- Motion for rule on the clerk, good cause for granting. *Stout v. State*, 887.
- Denial of new trial motion never entered, notice of appeal filed when motion orally denied, tendered transcript properly rejected. *Tanner v. State*, 888.
- Contempt, hearing required to determine if meritorious defense exists, master appointed. *In Re Contempt of Counsel, Davis*, 889.
- ARREST:**
- Pretextual arrests discussed, ulterior motive does not necessarily render an arrest pretextual. *Mings v. State*, 201.

Valid reason existed for the stop, stop was not pretextual, evidence properly admitted. *Id.*

ATTORNEY & CLIENT:

Substitution of counsel, motion not considered absent request from counsel to be substituted. *Nooner v. State*, 385.

Representation of criminal defendant through appeal unless permitted to withdraw. *Zucco v. State*, 386.

Attorney files notice of appeal, attorney must perfect appeal or make a timely motion to withdraw. *Id.*

Plea of guilty entered on contempt order, attorney found in contempt. *Williams v. State*, 506.

Appellees not entitled to attorneys' fee under new Civil Rights Act. *City of Little Rock v. Pfeifer*, 679.

Recovery of attorneys' fees, when allowed. *State v. McLeod*, 781.

Attorneys' fees not provided for in the statute, chancellor correctly denied recovery of fees. *Id.*

Fees, agreement obligated guarantor to pay fees outside those statutorily allowed. *Griffin v. First Nat'l Bank*, 848.

Fees, enforcement of a contract, written agreement to pay fees, not statute, governs. *Id.*

Fees, agreement to pay fees is enforceable. *Id.*

Fees should be reasonable. *Id.*

Withdrawal, permission must be sought, trial counsel does not desire to represent appellant on appeal. *Smith v. State*, 885.

Appeal must not be abandoned merely because counsel not paid. *Id.*

BANKS & BANKING:

Sale of insurance under grandfather clause, indirect sharing of profits between the lending institutions within the network violated legislative intent to restrict ownership of full-line insurance agencies by lending institutions. *Arkansas Bank & Trust Co. v. Douglass*, 457.

CERTIORARI, WRIT OF:

Writ not issued, merits of issue not addressed. *Dougan v. Gray*, 6.

When appropriate. *Id.*

Writ not available to look beyond face of the record to determine merits of controversy. *Id.*

Not issued to prohibit contempt hearing, nothing on face of record shows proceeding erroneous. *Id.*

Appropriate to review bail bond proceedings. *Casement v. State*, 225.

Scope and nature of the writ of certiorari. *Id.*

Writ not available to review exercise of discretion. *Skokos v. Gray*, 571.

Review by certiorari, heavy burden on petitioner. *Id.*

Consideration of issue on petition precludes consideration on appeal, matters at trial not precluded. *Id.*

Failure to make convincing argument or to cite authority. *Id.*

When it will lie, generally discussed. *Bates v. McNeil*, 764.

Trial court's orders devoid of fundamental due process, writ of certiorari granted. *Id.*

CIVIL PROCEDURE:

Insurance company failed to respond to suit, omission did not constitute excusable neglect. *Truhe v. Grimes*, 117.

Appellant's contention not convincing, appellant must first satisfy court that a threshold reason exists for denying the default judgment. *Id.*

Federal court interpretations of requests for Rule 11 sanctions, issues presented are considered collateral to the merits of the underlying action. *Spring Creek Living Ctr. Ltd. Partnership v. Sarrett*, 173.

Federal treatment of Rule 11 motions, collateral nature allows trial court to rule on them while the appeal on the merits is still pending. *Id.*

Motions for Rule 11 sanctions are collateral to the merits of the underlying action, insufficient to constitute claims for relief as used in Rule 54(b). *Id.*

Motion to dismiss converted to one for summary judgment, denial of such a motion not subject to review on appeal. *Amalgamated Clothing v. Earle Indus., Inc.*, 524.

Denial of motion for summary judgment, denial neither reviewable or appealable. *Id.*

Intervention discussed. *Gravett v. McGowan*, 546.

Circumstances under which intervention allowed even after final judgment. *Id.*

No motion to intervene ever filed by appellant, appellant had no standing to appeal. *Id.*

Service untimely, second extension properly found invalid. *Dougherty v. Sullivan*, 608.

Judgment on the pleadings, not favored by the court. *In Re: Poston v. Fears*, 659.

Judgment on the pleadings or dismissal, proof pointed to dismissal. *Id.*

Appellant entitled to use adverse party's deposition, hearsay and availability not issues. *Ouachita Mining & Exploration, Inc. v. Wigley*, 750.

Part of deposition offered by appellant, door opened for appellee to use any other parts of same. *Id.*

Rule of civil procedure upon which ruling based referred to by the judge, no abuse of discretion found. *Id.*

Prior notice by appellee that he intended to use his own deposition not required, no error found. *Id.*

COMMERCIAL LAW:

Recovery under the commercial code, reasonable notice a requirement to recovery. *Williams v. Mozark Fire Extinguisher Co.*, 792.

CONSTITUTIONAL LAW:

Right of association, political party not denied right of association, party did not follow proper procedure. *Ivy v. Republican Party*, 50.

Double jeopardy, conviction for separate acts not prohibited. *Hagen v. State*, 139.

Ark. Const. amend. 68, federal injunction prohibited enforcement of Amendment 68. *Unborn Child Amend. Comm. v. Ward*, 165.

Burdens on exercise of constitutional right, State may encourage guilty plea by offering substantial benefits. *Baker v. State*, 223.

Amendments proposed by the general assembly, Constitutional requirements. *Walmsley v. McCuen*, 269.

Statutes presumed constitutional, Constitution must be interpreted according to its plain and common meaning. *Id.*

Art. 19 § 22 clearly requires proposed amendments to be published for six months immediately preceding the general election. *Id.*

Initiated petitions required to have enacting clause. *Mertz v. States*, 390.

Amendment 7 liberally construed, any essential fact must be disclosed in ballot title. *Walker v. McCuen*, 508.

Denial of cross-examination to show possible bias of a witness, may violate the Sixth Amendment right of confrontation. *Watson v. State*, 603.

Commerce Clause, factors to evaluate whether tax violates clause. *City of Little Rock v. AT&T Communications of the S.W., Inc.*, 616.

Right to fair and impartial jury. *Jones v. State*, 704.

Jury must be instructed on reasonable doubt, no particular words required. *Id.*

No prohibition against trial court commenting on law. *Id.*

Gender discrimination, equal protection clause violation found. *Cleveland v. State*, 738.

Requirements governing proof of unconstitutional nature of challenged race-based peremptory strikes also apply to proof of challenged gender-based peremptory strikes in jury selection, required procedure outlined. *Id.*
 Purposeful discrimination, how a prima facie case made. *Id.*
 Prima facie case of purposeful discrimination shown, clear inference that gender of the jurors was a factor in the decision to strike. *Id.*
 State's challenges not shown to be for valid reasons, trial court's error required reversal. *Id.*
 Fourth Amendment, guest in motel room protected against unreasonable searches and seizures. *Rockett v. State*, 831.
 Jury, no challenge to juror solely on basis of race. *Id.*
 Ex Post Facto Clause, retroactive application of changes to sentencing procedure laws not a violation. *Williams v. State*, 846.
 Ex post facto, what is not a violation. *Id.*
 Construction of provisions, words given plain meaning. *Knowlton v. Ward*, 867.
 Amendment 68, § 1, plain meaning stated. *Id.*
 Self-executing provisions, requirements. *Id.*
 Amendment 68, § 2, not self-executing, merely statement of policy. *Id.*

CONTEMPT:

Right inherent in all courts, prohibition will not issue to prevent erroneous exercise of jurisdiction. *Dougan v. Gray*, 6.
 Out-of-court contempts, criminal in nature. *Bates v. McNeil*, 764.
 Civil and criminal contempt differentiated. *Id.*

CONTRACTS:

Parties contract for their own benefit. *Nelson v. State*, 146.
 Hunting lease clearly not intended to benefit third-party trespasser. *Id.*
 Written contracts may be modified orally. *Shumpert v. Arko Tel. Communications, Inc.*, 840.
 Evidence showed issue of subsequent oral modification. *Id.*

CORPORATIONS:

Holding company defined. *Arkansas Bank & Trust Co. v. Douglass*, 457.
 Finding that entity was actively engaged in more than just holding stock supported by the evidence, acquisition of appellant by such a "holding company" did divest appellant of its corporate-agency license. *Id.*
 Piercing the corporate veil, when applicable. *Id.*
 Commissioner pierced the corporate veil, no error found. *Id.*

COURTS:

Probate court has jurisdiction to close adoption records, prohibition not issued to prevent such action. *Dougan v. Gray*, 6.
 Supreme court, original action, issue of fact, master appointed. *Bailey v. McCuen*, 49.
 Enforcement of federal statutes under these circumstances is not the responsibility of the state courts. *Galloway v. Arkansas State Hwy. & Transp. Dep't*, 303.
 Circuit court had jurisdiction to determine the legal validity of the initiative. *Mertz v. States*, 390.
 Where court procedural rules conflict with statute, rules remain supreme. *Hill v. State*, 408.
 Decision whether to transfer from circuit to juvenile court, consideration of statutory factors. *Sebastian v. State*, 494.
 Juvenile should be tried as adult, decision must be supported by clear and convincing evidence. *Id.*
 Repetitive pattern of offenses becoming increasingly more serious, past efforts at rehabilitation unsuccessful, sufficient to prevent decision to try juvenile as an adult from being clearly erroneous. *Id.*

- Use of violence in committing serious offense, factor sufficient to try juvenile as adult, commission of serious offense without violence not sufficient factor. *Id.*
- Factors warranted juvenile being tried as adult, regardless of absence of violence, no error for circuit court to retain jurisdiction. *Id.*
- Juvenile court jurisdiction discussed, action required by court following decision to file certain allowed charges in circuit court. *Webb v. State*, 581.
- Circuit court had jurisdiction over the battery count, subsequent transfer order constituted a waiver and transfer of the case to juvenile court. *Id.*
- Juvenile jurisdiction surrendered by court, refiling of charges upon the juvenile will not reconfer circuit court's jurisdiction. *Id.*
- Battery charge found to have been transferred to juvenile court, juvenile law supported conclusion. *Id.*
- Appellee's argument meritless, statute not violative of the constitution. *Id.*
- Trial court does not have authority to issue orders while ignoring procedural protections, fundamental requirements of due process must be preserved. *Bates v. McNeil*, 764.
- Costs are a creature of statute, not taxed unless authorized by statute. *Shumpert v. Arko Tel. Communications, Inc.*, 840.
- Appellee not entitled to costs merely because provided for in contract, not authorized by statute, action below affirmed to extent addressed, preserved for appeal, and abstracted. *Id.*
- Peace and quiet in a residential neighborhood and protection against encroachments are important rights in civilization. *Osborne v. Power*, 858.
- CRIMINAL LAW:**
- Amendment to an information, when it may be made. *Manning v. State*, 1.
- Amendment to information adding habitual offender allegation proper, permitting amendment not error. *Id.*
- Amendment of information to correct a date, no prejudice found. *Id.*
- Amendment of information, change of date not fatal to the charge. *Id.*
- Murder, intent may be inferred from the circumstances. *Robinson v. State*, 33.
- Evidence sufficient to uphold verdict, conviction affirmed. *Id.*
- Sentence reduction laws, intent was to make laws applicable to felonies committed after June 30, 1993. *State v. Dennis*, 80.
- Law in effect at the time crime committed is the law that applies for sentencing purposes. *Id.*
- Sentence improperly imposed, case remanded for resentencing. *Id.*
- Aggravated robbery, kidnapping, and theft, sufficient evidence. *Wesley v. State*, 83.
- Rape victim's testimony need not be corroborated in order to uphold rape conviction. *Byrum v. State*, 87.
- Use of prior convictions to enhance punishment, when permissible. *Id.*
- Use of prior convictions, test on appeal. *Id.*
- Examination of certified copies of commitment sheet and docket entries for proof of defendant's representation by counsel at a prior conviction, sufficient notice given through pretrial discovery that sentence enhancement for prior convictions was an issue. *Id.*
- Copy of previous conviction certified by circuit clerk, prior conviction proved in compliance with law. *Id.*
- Admissibility of victim's prior sexual conduct pursuant to the Rape Shield Statute, trial court's discretionary ruling not overturned unless clearly erroneous. *Id.*
- No proffer of evidence relevant to the victim's prior sexual conduct made, review of evidence's admissibility on appeal not possible. *Id.*
- Convictions for separate crimes not violation of double jeopardy clause. *Hagen v. State*, 139.
- Kidnapping requires only restraint, when restraint is sufficient to subject a rapist to kidnapping charges. *Smith v. State*, 142.

- Who has the authority to bring felony charges, circuit judge cannot amend the charge as brought by the prosecutor. *State v. Knight*, 158.
- Attempted rape of child younger than fourteen, not necessary that any force be employed. *Daffron v. State*, 182.
- Attempted rape, child younger than fourteen, sufficient evidence that substantial step taken. *Id.*
- Armed robbery, sufficient evidence to support denial of directed verdict motion. *Davis v. State*, 212.
- Sentencing, no error to refuse to set aside life sentence. *Id.*
- Sentencing for habitual offenders, intention of Act 550 of 1993. *State v. Brummett*, 220.
- Sentencing first offenders, when conviction judgment should be entered, when offender entitled to have record expunged. *Baker v. State*, 223.
- Sentencing first offenders, failure to object to entry of conviction judgment. *Id.*
- Double jeopardy clause, when applicable. *Fletcher v. State*, 298.
- Definition of a handgun, definition turns on design rather than operability. *S.T. v. State*, 499.
- Possession of handgun on school property, gun designed to fire particular ammunition, disassembly and missing parts did not prevent prosecution. *Id.*
- Punishment of one accused inadmissible to show what the punishment for another should be. *Watson v. State*, 603.
- Harmless error analysis, factors considered in confrontation clause issues. *Id.*
- Harmless error analysis applied, if error occurred it was harmless beyond a reasonable doubt. *Id.*
- Rape, lack of specificity as to the date of the rape does not require a reversal. *Miller v. State*, 673.
- Victim of a crime not considered an accomplice, victim was under the age of consent. *Id.*
- Result of an equivocal request for counsel, trial court correctly held that interrogation could continue. *Boyd v. State*, 799.
- "Deliver," whether transferor agent of buyer or seller, it is the act that is condemned anytime the transfer is for money or anything of value. *Christian v. State*, 813.

CRIMINAL PROCEDURE:

- Motion to withdraw guilty plea untimely, treated as Rule 37 motion. *Rowe v. State*, 25.
- Postconviction relief, standard of review. *Id.*
- Postconviction relief, showing required to prove ineffective assistance of counsel. *Id.*
- Postconviction relief, substantial evidence to support finding that plea was knowingly, intelligently, and voluntarily entered. *Id.*
- Rape Shield hearing requested but never held, appellant failed to obtain ruling below, he cannot now raise issue on appeal. *Cupples v. State*, 28.
- Failure to proffer excluded evidence of victim's prior sexual activity. *Id.*
- Withdrawal of counsel. *Jones v. State*, 44.
- Accomplice testimony must be corroborated. *Franklin v. State*, 99.
- Directed verdict motion must state specific grounds for motion. *Walker v. State*, 107.
- Waiver of rights, two components. *Clay v. State*, 122.
- Issue of whether statement was voluntary is separate from issues regarding waiver. *Id.*
- Waiver of rights, voluntariness of statement, factors to consider. *Id.*
- Factors considered, totality of circumstances considered, no coercion found. *Id.*
- Conflicting evidence, waiver of rights, state met its burden of proof. *Id.*
- Voluntariness of statement, no evidence of coercion. *Id.*
- Minimal protection provided by Ark. R. Crim. P. 8.1 is fundamental, three-part test. *Id.*

- Delay in taking appellant before judge unnecessary. *Id.*
- Examples of unreasonable delay in taking arrestee before judge, delay was unreasonable. *Id.*
- Prejudicial statement made before unreasonable delay was admissible. *Id.*
- Statement admitting elements of charge was prejudicial and not harmless error. *Id.*
- Unnecessary delay did not taint prior statement. *Id.*
- Prejudicial statement related to delay in taking appellant before a judge. *Id.*
- Unnecessary delay, prejudicial evidence, obtaining of evidence related to delay, reversible error not to exclude statement. *Id.*
- Continuing-course-of-conduct crime, conviction for more than one offense prohibited. *Hagen v. State*, 139.
- Judgment on a plea of guilty or nolo contendere, circuit judge has a duty to inquire as to the factual basis for a plea. *State v. Knight*, 158.
- Decision as to a factual basis for a plea discretionary. *Id.*
- Judge merely seeking means to an end, no factual basis existed upon which to reduce charge. *Id.*
- Statute clear as to appropriate punishment, order of probation based on a reduction of the charge by the circuit judge reversed. *Id.*
- Photo identification followed by in-court identification, when conviction set aside, review. *Davis v. State*, 212.
- Officer's testimony sufficient to support admission of appellant's statement. *Id.*
- Speedy trial, twelve months. *Patterson v. State*, 358.
- Speedy trial, shifting burden of coming forward with evidence, excludable periods. *Id.*
- Speedy trial, computation of time excluded for "trial of other charges." *Id.*
- Speedy trial, time excluded, "trial of other charges." *Id.*
- Speedy trial, no error to deny dismissal for lack of speedy trial. *Id.*
- Interstate Agreement on Detainers Act, requirements. *Id.*
- Interstate Agreement on Detainers Act, failure to demand trial in compliance with act. *Id.*
- Motion for a directed verdict, specific grounds of the motion must be stated. *Reagan v. State*, 380.
- Defense counsel did not properly move for a directed verdict, sufficiency of the evidence not preserved for review. *Id.*
- Bifurcated trial procedure established, even for guilty pleas under certain circumstances, statute prohibiting appeals from guilty pleas repealed. *Hill v. State*, 408.
- Sentencing by jury after guilty plea, new procedure not repugnant to court rule barring appeal from guilty plea. *Id.*
- Appeal from guilty plea not in conflict with court rule so long as appeal of non-jurisdictional matters, and not from plea itself. *Id.*
- Sentencing, evidence of aggravating and mitigating circumstances admissible. *Id.*
- Sentencing, aggravating circumstance defined. *Id.*
- Testimony was clearly aggravating circumstance. *Id.*
- Evidence relevant to sentencing, law applicable to parole. *Id.*
- Joinder and severance rules read together, right to sever offenses joined solely on ground they were of same or similar character. *Clay v. State*, 550.
- Refusal to sever was reversible error. *Id.*
- Post-conviction relief, Criminal Procedure Rule 37 governs over statutes. *Harris v. State*, 599.
- Time limits imposed in Rule 37 jurisdictional, relief may not be granted on an untimely petition. *Id.*
- Time limitation for a petition under the rule exceeded, motion denied. *Id.*
- Photographic lineup, due process, trial court determines indicia of reliability. *Goins v. State*, 689.
- Photographic lineup followed by eyewitness identification, when conviction set aside. *Id.*

Lineup not tainted by newspaper photographs, no showing victim or witness saw paper. *Id.*

Specific objection required to preserve question of sufficiency of evidence for appeal, general motion constitutes waiver. *Jones v. State*, 704.

Rules concerning detained persons discussed, purpose of rules. *Bates v. McNeil*, 764.

Failure to renew directed verdict motion at close of rebuttal evidence, sufficiency issue waived. *Christian v. State*, 813.

Enhanced sentencing, determination in prior conviction that crime was unclassified misdemeanor did not prevent appellate court here from recognizing finding of an earlier case of its own. *Id.*

Sentence enhancement, prior adjudicated conviction that resulted in probation properly used for enhancement. *Id.*

Amendment of information, when proper. *Id.*

Amendment of information, no surprise to accused to allege additional felony conviction. *Id.*

Amendment of information, increasing allegation from two priors to three did not increase the range of punishment permitted, no prejudice. *Id.*

Right to counsel, defendant initiated comments may waive right after it is invoked. *Rockett v. State*, 831.

Waiver of right to counsel supported by record. *Id.*

New bifurcated sentencing laws not violative of Ex Post Facto Clause. *Williams v. State*, 846.

DAMAGES:

Wrongful death proceeds, apportionment supported by evidence. *Bell v. Estate of Bell*, 483.

Wrongful death proceeds, allocation, improper allocation argued. *Id.*

Apportionment of wrongful death proceeds, collateral source rule not applicable here. *Id.*

Lost profits, failure to object to jury instructions, breach put appellee out of business so appellee's going out of business certainly did not bar proof of damages beyond date it went out of business. *Shumpert v. Arko Tel. Communications, Inc.*, 840.

DESCENT & DISTRIBUTION:

When fee tail estate created, fee simple absolute given to the person to whom the estate tail would first pass. *Pickens v. Black*, 474.

Generally the law desires property to vest as soon as possible, chancellor correctly applied law. *Id.*

Chancellor found wife free of any evidence of neglect, appellants failed to show that this finding was clearly erroneous. *Id.*

DISCOVERY:

Witness not on list, but defense had copy of witness's statement, no claim of surprise, no prejudice shown. *Davis v. State*, 212.

Factors considered concerning propriety of denial of a continuance of a trial for the purpose of pursuing additional discovery, when trial court's denial will be reversed. *Jenkins v. International Paper Co.*, 663.

DIVORCE:

Jurisdiction over child support, chancery court has exclusive jurisdiction over such matters. *Boren v. Boren*, 378.

Suit over child support filed in small claims court, chancery court properly had jurisdiction. *Id.*

Law provides that noncustodial parent may be required to continue support of child until high school graduation, minimal interference with fundamental parental right warranted. *McFarland v. McFarland*, 446.

Noncustodial parents obligation to pay support beyond a child's majority, no fundamental right warranting analysis under the strict scrutiny standard found. *Id.*
 Statute's imposition of duty on noncustodial parents to support adult children while in school while no such duty imposed upon married parents discussed, rational basis found for distinction. *Id.*

DRUGS & NARCOTICS:

Constructive possession may be implied, joint occupancy of a vehicle, standing alone, is not enough. *Mings v. State*, 201.
 Joint occupancy of automobile, factors to be considered when attempting to establish joint possession. *Id.*
 Evidence reviewed, sufficient circumstantial evidence for jury to find all three were in joint possession and control of the cocaine. *Id.*

ELECTIONS:

Political party chairman and secretary do not have judicial authority to determine if candidate is ineligible to hold office. *Ivy v. Republican Party*, 50.
 Proper method to remove candidate from ballot. *Id.*
 Statute merely defines term, does not empower party officials. *Id.*
 Expedited consideration requested, contemporaneous briefs and argument ordered. *Lewis v. West*, 237.
 Expedited consideration requested, contemporaneous briefs and argument ordered. *Mertz v. States*, 239.
 Ballot title sufficiency, duty of court upon application for review. *Christian Civic Action Comm. v. McCuen*, 241.
 Ballot title, depended on by voters for information as to contents of proposed measure. *Id.*
 Sufficiency of ballot titles, general principles governing. *Id.*
 Determining the sufficiency of ballot titles, Amendment 7 liberally construed. *Id.*
 Length of ballot title, must not be unduly long. *Id.*
 Length of ballot title alone does not render it insufficient. *Id.*
 Although length of ballot title not totally controlling, length is a consideration. *Id.*
 Ballot title's insufficiency not attributable to length alone. *Id.*
 Ballot language euphemistic, insufficient information provided to the voter. *Id.*
 Ballot title contained specialized terminology, ballot misleading. *Id.*
 Ballot title failed to convey an intelligible idea of the proposed law change, proposed amendment declared ineligible for consideration at the general election. *Id.*
 Amendment never properly published, amendment could not be considered at the next general election. *Walmsley v. McCuen*, 269.
 Ballot title, standard of review. *Bailey v. McCuen*, 277.
 Ballot title, allegations of omitted information, standard of review. *Id.*
 Ballot title, allegations of misleading information, standard of review. *Id.*
 Ballot title, language not misleading. *Id.*
 Ballot title, language omitted was material. *Id.*
 Ballot title, language misleading. *Id.*
 Ballot title, language omitted was material. *Id.*
 Ballot title, synopsis of every provision not required, title must be brief and concise. *Id.*
 Qualified political party. *Lewis v. West*, 334.
 Nominees must be selected by primary election. *Id.*
 Nominee selected by convention, should not be certified. *Id.*
 Failure to comply with statutory requirements, sufficient reason to keep candidate off ballot. *Id.*
 No primary, no candidate on general election ballot. *Id.*
 Remedy for wrongful refusal to accept filing, petition for mandamus and declaratory relief before primary. *Id.*

- Ballot title defective, omissions would have given voters serious ground for reflection. *Page v. McCuen*, 342.
- Ballot title defective, omission made title misleading. *Id.*
- Ballot title defective, undisclosed powers of commission would give any voter serious ground for reflection. *Id.*
- Ballot title defective, omission important. *Id.*
- Amendment too long, no way to write short enough ballot title. *Id.*
- Expedited consideration granted and oral argument ordered. *Walker v. McCuen*, 389.
- Law mandatory if enforcement sought before the election. *Mertz v. States*, 390.
- Deadline for independent candidates to file for municipal race. *Oliver v. Simons*, 402.
- Initiative & referendum, petition with requisite number of signatures filed, people's right of referendum commences. *Walker v. McCuen*, 508.
- Initiative & referendum, date referendum process begins. *Id.*
- Initiative & referendum, ballot title must not mislead and must inform voters with clarity. *Id.*
- Initiative & referendum, ballot title, two standards, omissions, misleading information. *Id.*
- Initiative & referendum, referendum defined. *Id.*
- Initiative & referendum, sufficiency of ballot title, legislative amendments to acts subject to referendum are not considered. *Id.*
- Initiative & referendum, ballot title not misleading. *Id.*
- Insufficient record available for court to consider case on accelerated basis, petition for accelerated proceedings denied. *Wilson v. Cook*, 520.
- Insufficient time before election to brief issues and deliberate decision, motion for expedited consideration denied. *McCuen v. Harris*, 522.
- EVIDENCE:**
- Excited utterance exception to the hearsay rule, the fact that the statement is made in response to an inquiry is merely a factor to be weighed. *Latham v. State*, 19.
- Statement admitted as an excited utterance, no abuse of discretion found. *Id.*
- Ruling on relevancy entitled due deference, standard on review. *Cupples v. State*, 28.
- Hearsay, statement offered to prove statement made, not hearsay. *Id.*
- Directed verdict motion treated as challenge to the sufficiency of. *Robinson v. State*, 33.
- Test for motion for directed verdict on appeal, sufficiency of the evidence discussed. *Id.*
- Motion for directed verdict, treated as a challenge to the sufficiency of the evidence. *Stricklin v. State*, 36.
- Statement offered to show threat, not truth of the matter asserted, statement not hearsay. *Owens v. State*, 61.
- Exception to hearsay rule, statement must still be obtained from the witness's own observation. *Id.*
- Trial court must use its own discretion in determining whether to admit evidence, decision reversed only upon a showing of manifest abuse. *Id.*
- Copies of statute on parole eligibility given to jury, no abuse of discretion found. *Id.*
- Sufficiency of evidence to convict. *Wesley v. State*, 83.
- Challenge to sufficiency of, test on review. *Byrum v. State*, 87.
- Rape victim's testimony clear, evidence found sufficient to support the conviction. *Id.*
- Sufficient foundation laid for introduction of evidence, dates sufficient to allow appellant to prepare defense. *Franklin v. State*, 99.
- Sufficient foundation for introduction of evidence, dates did not conflict, trial court correctly admitted evidence. *Id.*

- Admissible evidence may be referred to during the opening statement, comment not inappropriate to the anticipated proof. *Rank v. State*, 109.
- Admissibility of photographs, admissibility left to trial court, based on certain factors. *Id.*
- Inflammatory nature of photographs alone insufficient for their exclusion, no abuse of discretion found. *Id.*
- Character evidence offered by the accused may be rebutted by the prosecution. *Id.*
- Producing a character witness opens the door for inquiry, cross examination on instances of misconduct limited only by relevancy. *Id.*
- Cross-examination of appellant's character witnesses proper. *Id.*
- Trial court has discretion to determine relevance and balance probative value against unfair prejudice. *Clay v. State*, 122.
- Evidence of escape properly admitted even if escape took place between arrests for two crimes that were related. *Id.*
- Proof clearly showed restraint in excess of that required for rape, conviction affirmed. *Smith v. State*, 142.
- Pleadings generally inadmissible. *Greenlee v. State*, 191.
- Information discussed, information a pleading, not evidence. *Id.*
- Affidavit of detective improperly admitted, affidavit was hearsay. *Id.*
- Admittance of affidavit in error, error was not harmless. *Id.*
- Pedophile exception, admittance of prior convictions for sexual offenses proper. *Id.*
- Child's testimony allowed to be presented by videotaped deposition, good cause found for such a presentation. *Id.*
- Admission of excited utterances, general rule as to the timing of the utterance. *Id.*
- Child's statement to her mother upon awakening ruled an excited utterance, no abuse of discretion found. *Id.*
- Motion for directed verdict defined, factors on review. *Mings v. State*, 201.
- Admission of evidence in discretion of trial court, reenactments permitted. *Davis v. State*, 212.
- Substantial evidence discussed, factors on review. *Hall v. Grimmett*, 309.
- Conflicting testimony to be weighed by the jury. *Id.*
- Evidence viewed in light most favorable to appellee, substantial evidence to support verdict found. *Id.*
- Rulings on admissibility within the trial court's discretion, when reversed. *Partin v. State*, 312.
- Testimony admitted, no clear evidence witness ever hypnotized. *Id.*
- Any error harmless, evidence was properly presented to the jury by other witnesses. *Id.*
- Improper exclusion, proffer required. *Patterson v. State*, 358.
- Extrinsic evidence, prior inconsistent statement, impeachment, witness must be given opportunity to explain or deny. *Id.*
- New evidence admissible in bifurcated sentencing hearing after guilty plea. *Hill v. State*, 408.
- Bifurcated sentencing hearing after guilty plea, introduction of evidence governed by rules of admissibility and exclusion. *Id.*
- Absent prejudice, the State should not be precluded from introducing relevant evidence. *Id.*
- Victim's testimony not prejudicial in light of appellant's own testimony. *Id.*
- Wide discretion in trial court. *Id.*
- Accused rapist may show that the alleged victim made similar accusations that she later admitted were false. *Johnson v. State*, 425.
- Proffer not relevant to victim's condition of mind, appellant's proffer inadmissible. *Id.*
- Evidence was sufficient for jury to conclude that bills incurred prior to trip were the only damage sustained. *Kempner v. Schulte*, 433.
- Collateral source rule defined. *Bell v. Estate of Bell*, 483.

Collateral source rule, applicability in Arkansas. *Id.*
Collateral source rule not applicable to allocation of wrongful death proceeds. *Id.*
Trier of fact determines the weight to be given the evidence, inconsistencies in testimony must be resolved. *Gray v. State*, 601.
Proof sufficient to sustain the conviction, case affirmed. *Id.*
Sufficiency of, considerations on review. *Miller v. State*, 673.
Victim's testimony constituted substantial evidence. *Id.*
Comment merely stated the obvious, requested admonition cured any error, appellant got the requested admonition, appellant cannot now complain. *Jones v. State*, 704.
Prior consistent statement, when admissible. *Id.*
Prior consistent statement "recent fabrication." *Id.*
Prior consistent statement, no error, here, to read entire statement to jury. *Id.*
Hearsay, evidence offered to show prior inconsistent statement made, not for truth of matter asserted, evidence admissible. *Id.*
Expert's reliance on neurosurgeon's report reasonable, reasonable reliance allowed. *Scott v. State*, 747.
Testimony based on hearsay simply raised a question for the jury to weigh, no abuse of discretion found. *Id.*
Substantial evidence supported finding that appellant was negligent. *Williams v. Mozark Fire Extinguisher Co.*, 792.
Evidence introduced not harmful. *Rockett v. State*, 831.
Harmless error explained. *Id.*
Evidence of guilt overwhelming, prejudice caused by evidence harmless. *Id.*
Hearsay objection correctly sustained. *Id.*
Excluded evidence, proffer required before error may be raised on appeal. *Id.*

FISH & GAME:

Terms not statutorily defined, terms defined by common law. *Nelson v. State*, 146.
Lessees of hunting rights are included in "owners or lessees of the real property" in posting laws. *Id.*
Wild animals subject to state regulation and private ownership, ownership must yield to regulation. *Id.*
Lessee of hunting rights may post real property, appellant's prosecution appropriate. *Id.*

FRAUD:

Elements of. *Hampton v. Taylor*, 771.

HIGHWAYS:

No public hearing required, no significant social, economic, environmental, or human impact. *Galloway v. Arkansas State Hwy. & Transp. Dep't*, 303.
Definition of categorical exclusions. *Id.*
No error to dismiss suit and hold no public hearing was necessary. *Id.*

INJUNCTION:

Federal injunction barred enforcement of Ark. Const. Amend 68, state injunction enforced Amendment 68, state injunction stayed pending resolution of federal suit on appeal. *Unborn Child Amend. Comm. v. Ward*, 165.
Security required, discretionary with trial court. *Galloway v. Arkansas State Hwy. & Transp. Dep't*, 303.
Labor dispute, no abuse of discretion in chancellor's issuing temporary injunction. *Amalgamated Clothing v. Earle Indus., Inc.*, 524.
Injunction limited in nature, chancellor's granting of temporary restraining order affirmed. *Id.*
Purpose of restraints on a nuisance, justification for injunctions. *Osborne v. Power*, 858.

Religious beliefs of appellant not in issue, injunction limiting size of display not a burden on freedom of speech. *Id.*

INSURANCE:

Insurer/insured relationship analogous to that of attorney/client, attorney's negligence generally imputed to his client. *Truhe v. Grimes*, 117.

Negligence of insurance company imputed to the appellant. *Id.*

Transfer resulted in loss of grandfather status, holding companies merely holding stock in another lending institution are included within the meaning of Ark. Code Ann. § 23-64-203. *Arkansas Bank & Trust Co. v. Douglass*, 457.

Insurance agent had no duty to advise the insured, insured must educate himself as to matters of coverage. *Scott-Huff Ins. Agency v. Sandusky*, 613.

Insured charged with duty to know the coverage provided, appellant's motion for a directed verdict should have been granted. *Id.*

Insured loss required to be paid within time specified in the policy, later payment of the claim does not defeat the award of penalty and attorney's fees. *Silvey Cos. v. Riley*, 788.

Exception to rule concerning payment of loss existed, exception not applicable. *Id.*

JUDGES:

Recusal, when proper, review. *Reel v. State*, 565.

Recusal, judge was victim of same crimes charged against accused, judge not disqualified because of own life experiences. *Id.*

Refusal to recuse affirmed absent abuse of discretion. *Id.*

No abuse of discretion for judge to refuse to recuse. *Id.*

Duty to recuse, no such duty where no prejudice exists. *Osborne v. Power*, 858.

Decision to recuse difficult, standard on review. *Id.*

JUDGMENT:

Summary judgment, when granted. *Brunt v. Food 4 Less, Inc.*, 427.

Review of summary judgment award, when reversed. *Williams v. Nucor-Yamato Steel Co.*, 452.

Summary judgment proper, appellee had no control over workers. *Id.*

Partial summary judgment granted by the chancellor, no error found. *Pickens v. Black*, 474.

Summary judgment upheld, no showing supplemental discovery would have changed the trial court's decision. *Jenkins v. International Paper Co.*, 663.

Granting of summary judgment, factors to be considered. *Hampton v. Taylor*, 771.

Summary judgment proper, affidavit stating only conclusions insufficient to prove genuine issue of material fact existed. *Id.*

Res judicata, failure to appeal ruling, facts and conclusions become final.

Arkansas Dep't of Human Servs. v. Arkansas Child Care Consultants, Inc., 821.

Res judicata, hearing on counterclaim barred. *Griffin v. First Nat'l Bank*, 848.

Final judgment for res judicata purposes not necessarily same as for other purposes. *Id.*

Res judicata, when doctrine applies. *Id.*

Res judicata, failure to obtain ruling and not raising the issue on appeal, issue barred. *Id.*

Law of the case explained. *Id.*

Law of the case, hearing on remand barred. *Id.*

Summary judgment, prima facie case made, facts not met with facts, summary judgment properly granted. *Knowlton v. Ward*, 867.

JURISDICTION:

Court has duty to raise the issue of subject matter jurisdiction, jurisdiction found lacking. *Viswanathan v. Mississippi County Community College Bd. of Trustees*, 810.

JURY:

- Failure to afford defendant an opportunity to be heard prior to excusing juror as grounds for reversal, prejudice must be shown. *Latham v. State*, 19.
- Removal of juror argued a substantial step, no proof found to support the argument. *Id.*
- Peremptory challenges, exclusion solely on account of race, gender. *Gilland v. State*, 72.
- Appropriate procedure to follow in challenge for race or gender discrimination in the exercise of peremptory challenges. *Id.*
- Batson* not extended to gender challenges within racially cognizable group. *Id.*
- Batson* challenge, presence of minority jurors on jury, equal number seated as challenged, two seated were seated prior to the two challenges, no prima facie case established of purposeful discrimination. *Id.*
- Instruction stating limited purpose for which appellant's prior crimes were admitted given, no error found. *Greenlee v. State*, 191.
- Instruction objected to did not even pertain to the appellant, no error found. *Id.*
- Jury did not attribute expenses incurred to the accident, reasonableness and necessity of medical expenses are questions of fact for the jury. *Kempner v. Schulte*, 433.
- Batson* objection raised, racially neutral explanations given and accepted. *Watson v. State*, 603.
- Right to exclude jurors in trial of co-defendant, no right to exclude potential jurors at trial of co-defendant. *Goins v. State*, 689.
- No error to refuse to strike jury panel. *Id.*
- Venire presumed unbiased and qualified to serve, burden on challenger. *Id.*
- Excusal of farmers, systematic exclusion is error, but case-by-case excusal permitted. *Jones v. State*, 704.
- Error to automatically exclude members of previous day's jury, error cured when they were recalled. *Id.*
- Objections to jury panel must include showing of prejudice. *Id.*
- Mere allegation of error did not demonstrate prejudice, counsel must manage the use of peremptory challenges. *Id.*
- Telling jury that court may impose sentence, when jury may be told. *Id.*
- Verdict already reached, no error to tell jury that judge may impose sentence. *Id.*
- Determining jury cannot agree, law complied with, jury encouraged to further attempt decision on punishment. *Id.*
- When jury should be instructed, instructed prematurely, error harmless here. *Id.*
- Instruction on reasonable doubt, concept hard to define, context of instruction critical. *Id.*
- Instruction on reasonable doubt conveyed sense of model instruction, no prejudice shown. *Id.*
- Instruction on admissibility of prior statement properly given. *Id.*
- Jury instructions unnecessarily singled out particular facts for undue emphasis, trial court erred in allowing them. *Leggett v. Centro, Inc.*, 732.
- Disqualification of juror due to actual bias within trial judge's discretion, no abuse of that discretion found. *Boyd v. State*, 799.
- Challenge on basis of race, shifting burdens, when sensitive inquiry held. *Rockett v. State*, 831.
- Acceptance of state's racially neutral explanation of its challenge was not clearly wrong. *Id.*

LABOR:

- Labor disputes, when injunctive relief has been granted. *Amalgamated Clothing v. Earle Indus., Inc.*, 524.
- Picketing during labor disputes, permissible and impermissible activities. *Id.*
- Worker's right to strike discussed, rights of all parties must be protected. *Id.*

LIMITATION OF ACTIONS:

- Applicable statute, when period begins to run. *Hampton v. Taylor*, 771.
- No evidence of active concealment, three-year statute of limitations properly applied. *Id.*
- Failure to show, as a matter of law, that they came within statute of limitations. *Shumpert v. Arko Tel. Communications, Inc.*, 840.

MASTER & SERVANT:

- Wrongful discharge, employment-at-will doctrine and the exception for employee claiming workers' compensation discussed. *Leggett v. Centro, Inc.*, 732.

MOTIONS:

- Unclear whether motion for release of bail money acted upon, matter remanded to trial court. *Story v. State*, 47.
- Directed verdict motion treated as a challenge to the sufficiency of the evidence. *Byrum v. State*, 87.
- Motion for a continuance, burden of proof and factors on review. *Id.*
- Motion for continuance properly denied, appellant failed to meet his burden of proof. *Id.*
- Directed verdict motion sufficiently specific to preserve issue for appeal. *Daffron v. State*, 182.
- Directed verdict motion insufficiently specific to preserve issue of sufficiency of the evidence for appeal. *Id.*
- Continuance, good cause required, on appeal prejudice must be shown from denial. *Davis v. State*, 212.
- Continuance, lack of due diligence sufficient to support denial. *Id.*
- Continuance, argument conclusory, no showing of prejudice. *Id.*
- Motion for new trial denied, test on appeal. *American Health Care Providers, Inc. v. O'Brien*, 438.
- No evidence presented to show that the appellees were entitled to the verdict awarded, motion for new trial should have been granted. *Id.*
- Failure to make motion for directed verdict specific, issue of sufficiency of the evidence not preserved for appeal. *Goins v. State*, 689.
- Directed verdict motions must be specific or issue waived. *Id.*
- Continuance, no abuse of discretion to deny motion, no diligence in securing presence of witness, no proffer of witness's testimony. *Id.*
- Severance issue not renewed, not preserved for appeal. *Id.*
- Motion for a directed verdict, test for the trial court's ruling. *Williams v. Mozark Fire Extinguisher Co.*, 792.
- Failure to renew directed verdict motion at close of rebuttal evidence, sufficiency issue waived. *Christian v. State*, 813.

MUNICIPAL CORPORATIONS:

- Court filled by countywide election is municipal office. *Oliver v. Simons*, 402.
- Franchise fee may be charged to utilities for "rental" of municipalities' rights-of-way. *City of Little Rock v. AT&T Communications of the S.W., Inc.*, 616.
- Holding of case dealing with fees charged to developers and residents for sewer and water fees was inapplicable to statutorily authorized franchise fee. *Id.*
- Utility franchise fee authorized, telephone companies not excluded. *Id.*
- City's franchise-fee ordinance was authorized by law. *Id.*
- City ordinance establishing franchise fee using time-unit method presumptively reasonable, burden on appellee to show otherwise. *Id.*
- Utility failed to show fee unreasonable. *Id.*
- City not required to use mileage methodology in setting fee for telecommunications charges especially if formula arguably discriminatory. *Id.*
- Franchise fee not an unreasonable burden on interstate commerce. *Id.*
- City has wide discretion to locate levee and in mode of construction. *Scroggin v. Scroggin*, 648.

Zoning, city may change usages or amend zoning plan, while plan adopted, city must follow it. *City of Little Rock v. Pfeifer*, 679.
Zoning decision presumed reasonable. *Id.*

NEGLIGENCE:

Duty of care owed to invitee, factors which must be present in a successful slip and fall case. *Brunt v. Food 4 Less, Inc.*, 427.
General rule when a contractor hires independent contractor to perform work, duty of general contractor to warn of hazardous conditions. *Williams v. Nucor-Yamato Steel Co.*, 452.
No actual control or violation of duty to warn shown, terms of control as found in the contract consulted. *Id.*
Hiring of independent contractor does not remove duty of reasonable care from one who continues to control any part of the work, what constitutes sufficient control. *Id.*
Obvious danger rule defined, when rule inapplicable. *Jenkins v. International Paper Co.*, 663.
Duty of care to invitee forced to work on the premises, circumstances under which owner continues to owe a duty of care. *Id.*
No proof appellee had notice of slippery substance, obvious danger rule negated any duty owed to appellant. *Id.*
No basis for slip and fall liability, no proof of negligence or knowledge on appellee's part. *Id.*
Proximate cause defined. *Williams v. Mozark Fire Extinguisher Co.*, 792.
Appellant's negligence was the proximate cause of her damages. *Id.*
Comparative fault statute calls for a determination of proximate cause before fault can be assessed against a claiming party, such a determination generally left to the jury. *Id.*

NEW TRIAL:

Error in the assessment of the amount of recovery grounds for a new trial, when court will sustain denial of motion for a new trial. *Kempner v. Schulte*, 433.
Adequacy of the award the primary issue, standard on review. *Id.*
Review of denial based on alleged inadequacy of award, considerations. *Id.*

NOTICE:

Redemption of tax-delinquent lands, strict compliance required. *Sanders v. Ryles*, 418.
Appellant failed to give proper notice, directed verdict against the appellant proper. *Williams v. Mozark Fire Extinguisher Co.*, 792.
Purpose of statutory notice requirement for commercial breach, statutory purpose present. *Id.*

NUISANCE:

Chancellor concluded nuisance existed, chancellor's findings not clearly erroneous. *Osborne v. Power*, 858.
Direct physical damage to the premises of other property holders not necessary in order to find a nuisance exists. *Id.*
Abatement of, current restrictions found insufficient. *Id.*

PARDON & PAROLE:

Challenges related to parole matters civil in nature, no right to counsel, but motion for counsel will be entertained. *Mixon v. State*, 762.

PARTIES:

Alternatives available to unsatisfied class member, purpose of class actions. *Haberman v. Lisle*, 177.
Parties who are precluded from appealing a class action settlement. *Id.*
No service of process or pleadings ever filed on the state as a party, relief must be from trial court. *Arkansas Dep't of Human Servs. v. Bailey*, 374.

Appeal taken by one not a party below, as a general rule relief must be afforded by the trial court. *Id.*
 Appellant not a party to the litigation appealed from, relief must be found in the trial court. *Id.*
 Parties improperly dismissed, chancellor's decree modified. *Osborne v. Power*, 858.

PLEADING:

When a guilty plea may be set aside. *Scalco v. City of Russellville*, 65.
 No stay of sentence after appellate court decision became final, trial court's order vacating the original sentence void. *Id.*

PROCESS:

Service of process, when service must be made. *Dougherty v. Sullivan*, 608.
 Service in derogation of common law, statutes providing for such service must be strictly construed. *Id.*
 Service not made as required by the law, no evidence party left the state. *Id.*

PROHIBITION, WRIT OF:

When writ granted, never granted to prohibit erroneous exercise of jurisdiction. *Dougan v. Gray*, 6.
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ARKANSAS
APPELLATE
REPORTS

Volume 47

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
September 14, 1994 – November 30, 1994
INCLUSIVE

MARLO M. BUSH
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

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JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(September 14, 1994 –
November 30, 1994, inclusive)

JUDGES

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JOHN MAUZY PITTMAN
JAMES R. COOPER
JOHN B. ROBBINS
MELVIN MAYFIELD
JUDITH ROGERS

Chief Judge¹
Judge²
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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.

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- Allison v. State, CA CR 93-741 (Robbins, J.), affirmed November 23, 1994.
- Arnold v. Davis, CA 93-1343 (Rogers, J.), affirmed November 9, 1994.
- Arquest, Inc. v. Wilson, CA 93-1304 (Rogers, J.), affirmed October 5, 1994.
- Asplundh Tree Expert Co. v. Corder, CA 93-1057 (Jennings, C.J.), affirmed October 5, 1994.
- B.K.M. v. State, CA CR 93-1200 (Cooper, J.), affirmed October 19, 1994.
- Baker v. Westark Specialties, CA 93-1306 (Jennings, C.J.), affirmed October 19, 1994.
- Banks v. State, CA CR 93-1294 (Mayfield, J.), affirmed November 9, 1994.
- Barnhill v. Lawrence County Tractor Co., CA 94-77 (Pittman, J.), affirmed November 23, 1994.
- Bekaert Steel and Wire v. Director, E 93-220 (Rogers, J.), affirmed November 23, 1994.
- Black v. State, CA CR 94-540 (Per Curiam), Appellant's Pro Se Motion to Supplement Brief and for Transcript denied November 2, 1994.
- Blisard v. LA-Z-BOY, CA 93-1351 (Robbins, J.), affirmed September 14, 1994.
- Booker, Marvin v. State, CA CR 94-49 (Robbins, J.), affirmed November 9, 1994.
- Booker, Tamula E. v. State, CA CR 93-1112 (Jennings, C.J.), affirmed September 21, 1994.
- Bracy v. State, CA CR 93-1119 (Robbins, J.), affirmed November 23, 1994.
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- Bright v. State, CA CR 93-1206 (Pittman, J.), affirmed October 12, 1994.
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- Fulton Sanitation v. Rust, CA 93-1310 (Mayfield, J.), affirmed November 16, 1994.
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- Glenn v. Rogers, CA 93-953 (Jennings, C.J.), reversed and remanded October 26, 1994.
- Green v. J.T. III Contractors, Inc., CA 94-21 (Robbins, J.), affirmed October 26, 1994.
- Grimmett v. State, CA CR 94-5 (Pittman, J.), affirmed November 9, 1994.
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