

ARKANSAS REPORTS  
VOLUME 324

ARKANSAS  
APPELLATE REPORTS  
VOLUME 53

*[T]he law is the last result of human  
wisdom acting upon human experience  
for the benefit of the public.*

— SAMUEL JOHNSON  
(1709-1784)

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Volume 324 of the *Arkansas Reports* and Volume 53 of the *Arkansas Appellate Reports* mark the completion of a new, unified design for the series. Various elements have been introduced incrementally in recent volumes. The parallel-line motif is intended to echo the pinstripes on the spine, to give greater prominence to the running heads, and to evoke a traditional style.

This book was set in Bembo, a modern revival of a typeface created for the pioneering Venetian printer and publisher Aldus Manutius (1449-1515) by Francesco Griffo (*fl.* late 15th century), who is credited with setting the pattern for the principal roman faces and cutting the earliest italic type. The name derives from the font's first appearance in *De Aetna* (1496) by Pietro Cardinal Bembo (1470-1547), a leading literary figure of the Italian Renaissance.

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THIS BOOK CONTAINS THE OFFICIAL  
ARKANSAS REPORTS

Volume 324

CASES DETERMINED  
IN THE

Supreme Court  
of Arkansas

FROM  
March 25, 1996 — May 28, 1996  
INCLUSIVE<sup>1</sup>

AND

ARKANSAS APPELLATE  
REPORTS

Volume 53

CASES DETERMINED  
IN THE

Court of Appeals  
of Arkansas

FROM  
March 20, 1996 — May 22, 1996  
INCLUSIVE<sup>2</sup>

PUBLISHED BY THE  
STATE OF ARKANSAS  
1996

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<sup>1</sup>Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 534. Cite as 324 Ark. \_\_ (1996).

<sup>2</sup>Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 300. Cite as 53 Ark. App. \_\_ (1996).



ERRATUM

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309 Ark. at 179; first paragraph, line eleven:  
The word "appellant" should be "appellee."

Set in Bembo

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ARKANSAS  
REPORTS

Volume 324

CASES DETERMINED  
IN THE

Supreme Court  
of Arkansas

FROM  
March 25, 1996 — May 28, 1996  
INCLUSIVE

WILLIAM B. JONES, JR.  
REPORTER OF DECISIONS

CINDY M. ENGLISH  
ASSISTANT  
REPORTER OF DECISIONS

PUBLISHED BY THE  
STATE OF ARKANSAS  
1996

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OF THE  
SUPREME COURT OF  
ARKANSAS

DURING THE PERIOD COVERED  
BY THIS VOLUME  
(March 25, 1996 —  
May 28, 1996, inclusive)

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JUSTICES

BRADLEY D. JESSON	Chief Justice
ROBERT H. DUDLEY	Justice
DAVID NEWBERN	Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANDREE LAYTON ROAF	Justice

OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian
WILLIAM B. JONES, JR.	Reporter of Decisions

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**STANDARDS FOR PUBLICATION OF OPINIONS**

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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

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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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**OPINIONS NOT DESIGNATED FOR PUBLICATION**

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- Barnes *v.* State, CR 96-114 (Per Curiam) Pro Se Motion for Belated Appeal denied March 25, 1996.
- Baumgarner *v.* State, CR 96-308 (Per Curiam), Pro Se Motion for Rule on Clerk denied May 20, 1996.
- Bowden *v.* State, CR 95-1258 (Per Curiam), Pro Se Motion for Transcript at Public Expense denied May 20, 1996.
- Bradford *v.* State, CR 95-449 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Belated Appeal and for Appointment of Counsel denied May 13, 1996.
- Bradley *v.* State, CR 95-895 (Per Curiam), Pro Se Motion to Supplement Counsel's Brief and for Counsel to Raise Certain Issues On Appeal denied May 6, 1996.
- Carrasco *v.* State, CR 95-1254 (Per Curiam), affirmed May 28, 1996.
- Chatten *v.* State, CR 95-987 (Per Curiam), Pro Se Motion for Reconsideration denied and Pro Se Petition for Writ of Certiorari denied March 25, 1996.
- Coleman *v.* State, CR 96-133 (Per Curiam), affirmed April 22, 1996.
- Davis *v.* State, CR 95-1235 (Per Curiam), affirmed April 22, 1996.
- Dunn *v.* Yates, CR 96-263 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 6, 1996.
- Echols *v.* State, CR 96-76 (Per Curiam), affirmed May 13, 1996.
- Gaines *v.* Jones, CR 96-176 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 1, 1996.
- Green, Isaac *v.* State, CR 96-221 (Per Curiam), affirmed May 6, 1996.
- Greene, Jack Gordon *v.* State, CR 93-523 (Per Curiam), Pro Se Petition for Writ of Mandamus and Writ of Habeas Corpus moot April 29, 1996.
- Huffman *v.* State, CR 85-190 (Per Curiam), Pro Se Motion for All Court Documents at Public Expense denied April 29, 1996.
- Hughey *v.* State, CR 96-68 (Per Curiam), Pro Se Motion for Record and Extension of Time to File Brief denied and appeal dismissed April 29, 1996.
- Jackson *v.* State, CR 95-520 (Per Curiam), affirmed May 6, 1996.
- Jones *v.* Davis, CR 96-192 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 28, 1996.
- Lovell *v.* State, CR 96-301 (Per Curiam), Pro Se Motion for Rule

- on Clerk denied May 6, 1996.
- Matthews *v.* State, 95-869 (Per Curiam), Petition for Rehearing denied April 29, 1996.
- Miller *v.* State, CR 96-314 (Per Curiam), Pro Se Motion for Belated Appeal of Order and Motion to Amend Motion, motion for belated appeal denied; motion to amend moot May 13, 1996.
- Monk *v.* State, CR 95-1219 (Per Curiam), Pro Se Belated Motion for Extension of Time denied and appeal dismissed April 22, 1996.
- Mormon *v.* State, CR 96-302 (Per Curiam), Pro Se Motion for Rule On Clerk denied May 6, 1996.
- Morrow *v.* State, CR 95-878 (Per Curiam), Pro Se Petition for Writ of Prohibition dismissed April 22, 1996.
- Nolen *v.* State, CR 96-191 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment remanded April 29, 1996.
- Norman *v.* McCorkindale, CR 96-356 (Per Curiam), Pro Se Petition for Writ of Mandamus and Pro Se Motion to Supplement Record moot May 13, 1996.
- Olles *v.* State, CR 96-64 (Per Curiam), affirmed April 29, 1996; Motion for Appointment of Counsel moot.
- Owens *v.* State, CR 95-1187 (Per Curiam), affirmed May 28, 1996.
- Prince *v.* State, CR 95-1349 (Per Curiam), affirmed May 20, 1996.
- Reynolds *v.* State, CR 95-1343 (Per Curiam), affirmed May 13, 1996.
- Robinson *v.* State, CR 96-110 (Per Curiam), Pro Se Motion for Rule on the Clerk denied March 25, 1996.
- Seaton *v.* State, CR 96-65 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed April 22, 1996.
- Shabazz *v.* Davis, 96-344 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 1, 1996.
- Smith *v.* State, CR 96-285 (Per Curiam), Pro Se Motion for Access to Record and Motion for Extension of Time denied and appeal dismissed May 20, 1996.
- Spencer *v.* State, CR 96-113 (Per Curiam), Pro Se Motion for Belated Appeal of Order dismissed March 25, 1996.
- Walker *v.* State, CR 96-112 (Per Curiam), Pro Se Motions for Extension of Time to File Brief, for Appointment of Counsel, and for Release On Bond, motion for extension of time

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granted; motions for appointment of counsel and release on bond denied May 6, 1996.

Watts *v.* State, CR 95-1350 (Per Curiam), affirmed April 29, 1996.

Weaver *v.* State, CR 95-1205 (Per Curiam), Pro Se Motion for Transcript at Public Expense denied April 1, 1996.

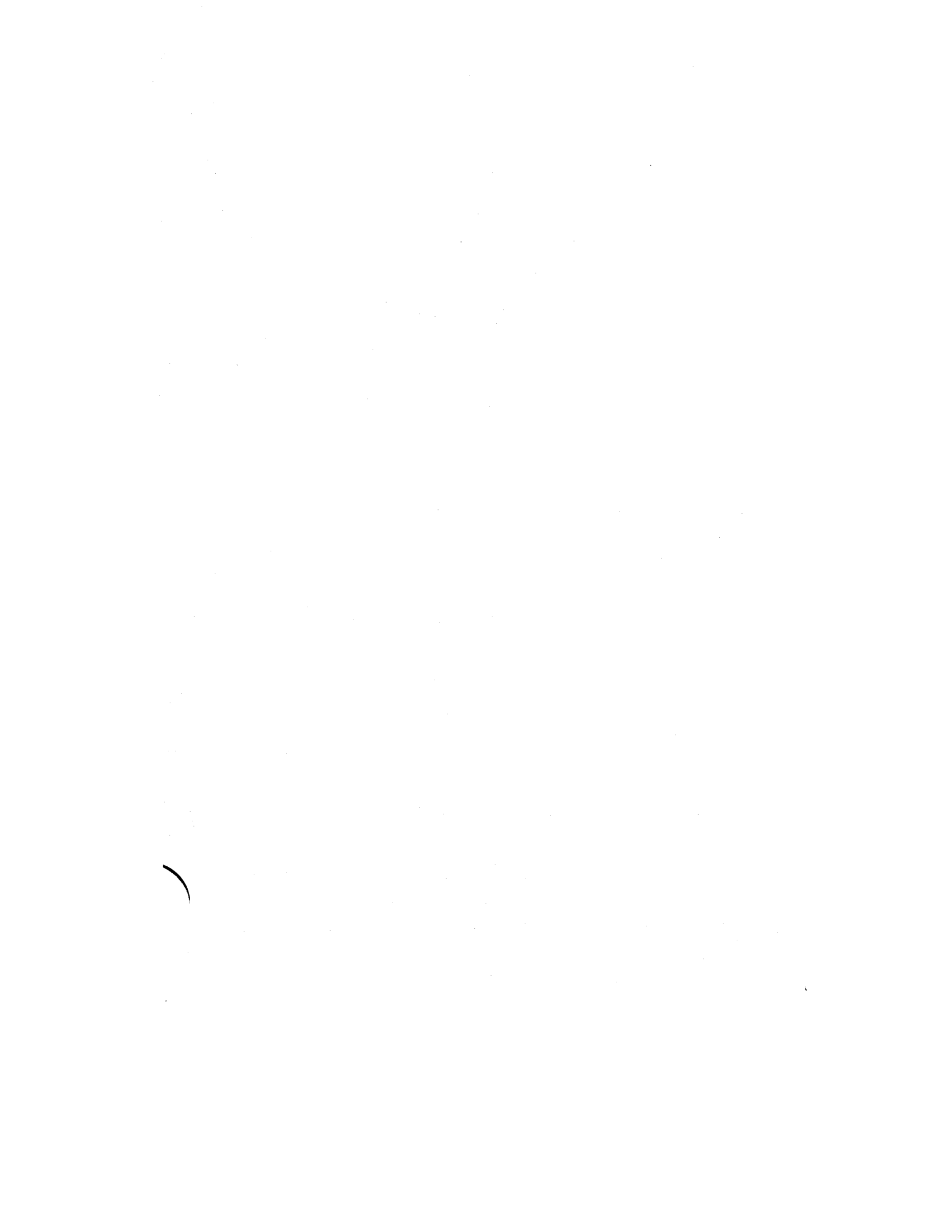
Williams *v.* State, 95-1362 (Per Curiam), affirmed April 22, 1996.

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APPENDIX

Rules Adopted  
or Amended by  
Per Curiam Orders



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IN RE: RULE XIII GOVERNING ADMISSION  
TO THE BAR

Supreme Court of Arkansas  
Opinion delivered May 13, 1996

PER CURIAM. The Arkansas State Board of Law Examiners has studied the issues raised where an applicant has exhibited recent behavior which brings into question the character and fitness of the applicant for initial admission to the Bar of Arkansas. The Board has concluded that the time has come to implement an alternative procedure whereby such applicants may have an opportunity to establish the requisite character and fitness in order to secure admission to the Bar of Arkansas. After considering a variety of proposals, the Board recommends the adoption of a deferral of licensure program.

In the opinion of the Board, this procedure balances the Board's obligation to protect the public interest when considering applicants for initial admission, and the applicant's obligation to establish to the Board's satisfaction a degree of good moral character and emotional stability which might warrant his or her admission to the Bar of Arkansas.

In the course of developing this deferral of licensure program, the Board scrutinized the entirety of our existing Rule XIII, presently titled "General Information." The Board suggests that the existing rule be given a new title and reorganized. The objective is to more precisely describe the procedures to be followed in connection with the admission process.

The Court finds that a deferral of licensure procedure is a worthwhile addition to the existing methods through which an applicant for initial admission may secure admission to the Bar of Arkansas. The Court also finds that it is appropriate to revise the organization and description of our existing Rule XIII.

Effective immediately, the Court hereby adopts and republishes in its entirety the attached Rule XIII, which will supersede existing Rule XIII. However, the provisions for deferral of initial admission shall not become available until the February 1997 Arkansas bar examination.

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ARKANSAS RULES GOVERNING ADMISSION  
TO THE BAR

Rule XIII.

STANDARDS FOR ADMISSION — INITIAL REVIEW

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

In addition to meeting all other requirements of the Rules Governing Admission to the Bar, every applicant for admission to practice by examination and every applicant for reinstatement of license to practice must be of good moral character and mentally and emotionally stable. The determination of the eligibility of every such applicant shall be made in accordance with this rule and the burden of establishing eligibility shall be on the applicant. The standard of proof in these proceedings is preponderance of the evidence.

Every such applicant shall complete and file with the Executive Secretary of the Board an application, verified under oath, on a form approved by the Board. The Board shall require the submission of proof of good moral character and mental and emotional stability, and the Board may conduct whatever investigation it deems appropriate as to any applicant and may, at its discretion, require additional proof of these qualifications. Upon receipt of a petition seeking reinstatement of license to practice law after disbarment, or surrender of license, the Board shall cause a public notice of the pendency of the petition for reinstatement to be placed in a newspaper of general circulation in the State and at least one newspaper of local circulation. The determination of the site for publication of the local notice shall be left within the discretion of the Executive Secretary based upon the circumstances surrounding the applicant's surrender or disbarment. These notices shall be published at least 30 days prior to the hearing or decision by the Chair pursuant to this rule. The notice shall solicit information regarding the petition and shall be in such form as shall be designated by rule of the Board.

Any applications for initial admission, or reinstatement after disbarment, surrender, or suspension pursuant to Rule VII(D) shall be submitted to the Executive Secretary of the Board. The Execu-

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tive Secretary shall review all such applications. Any application which raises questions of eligibility based upon the standards as set out in this rule shall be referred to the Chair of the Board for review. The Chair, applying the standards as set out in this rule, shall determine: whether the applicant is eligible for initial admission or reinstatement; whether to recommend the deferral of the initial admission decision; or, that the Chair is unable to determine eligibility for initial admission or reinstatement.

#### INITIAL ADMISSION OR REINSTATEMENT GRANTED

In the event the Chair determines that an initial applicant is eligible, the Chair shall notify the Executive Secretary, who shall then certify to the Clerk that the initial applicant is eligible for admission to the Bar of Arkansas. In the event the Chair determines that an applicant for reinstatement whose license has been suspended for failure to pay fees only is eligible, the Chair shall certify to the Clerk that the applicant is eligible for reinstatement to the Bar of Arkansas. In his or her discretion, the Chair may condition such reinstatement upon the applicant for reinstatement taking the examinations as set forth in Rule IX or its successor rule.

In the event the Chair concludes that an applicant for reinstatement after disbarment or surrender of license is eligible, without the necessity of an evidentiary proceeding, the Chair shall so notify the applicant. The applicant will then be required to file a motion with the Arkansas Supreme Court as set forth in the portion of this rule titled BOARD DECISION — EVIDENTIARY HEARING INITIAL ADMISSION OR REINSTATEMENT RECOMMENDED. In his or her discretion, the Chair may condition such reinstatement upon the applicant for reinstatement taking the examinations as set forth in Rule IX or its successor rule.

#### DEFERRAL OF INITIAL ADMISSION DECISION

In the event the Chair concludes that an initial applicant might otherwise be eligible for admission absent circumstances as set out hereafter, then the Chair may defer a determination of the eligibility decision and provide the applicant with the alternative of participation in a deferral of initial admission program as more fully described below. The circumstances which might warrant such a deferral are: an applicant currently has a condition or impairment resulting from alcohol and other chemical or substance abuse which

in any way currently adversely affects the applicant's ability to practice law in a competent and professional manner.

In such cases, the applicant shall be notified of the Chair's determination by certified, return receipt, restricted delivery mail. The applicant shall have thirty (30) days from receipt of notice in which to advise the Chair that he or she is agreeable to deferral of determination of eligibility for initial admission on such terms, and for such period of time, as the deferral of admission committee may set. Failure of the applicant to timely agree to deferral shall cause the initial application proceeding to be referred to the Board and processed as set forth in the next section of this rule.

The Chair of the Board shall annually appoint a Deferral of Admission Committee composed of three (3) members. The committee members shall serve terms of one year subject to reappointment by the Chair of the Board. The Chair shall not be eligible to serve on the committee. The Chair of the Board shall designate the Chair of the committee.

In the event an applicant elects the option of deferral of determination of eligibility for initial instatement, the committee shall secure such evidence as may be necessary to establish the terms and duration of any deferral of eligibility determination. Such materials may include: documentary evidence supplied by the applicant; evidence secured by the Executive Secretary; evidence acquired by an informal conference with members of the committee; or such other evidence as the committee may consider necessary to their decision. Prior to establishing the terms and duration of any deferral of admission decision, the committee may elect to reject the applicant as a candidate for the deferral of determination of eligibility program. In such case, the applicant shall then be referred to the full Board and processed as set forth in the next section of this rule.

In the event the committee accepts the applicant as a participant in the deferral of eligibility program, then the applicant will sign an agreement with the committee which sets forth the terms and duration of the deferral understanding. All expenses relating to the deferral procedure shall be borne by the applicant, and this shall be part of the agreement. Within ninety (90) days of the applicant's acquiescence to the deferral agreement, the terms and conditions of that agreement shall be referred to the Board for review. In the

event the Board, by a majority vote, concludes that the terms and conditions are insufficient, then the agreement shall be null and void and the matter shall be referred back to the committee. The committee may then, with the advice of the Board, revise the terms and conditions of the deferral agreement and the applicant will be given another opportunity to sign a revised agreement. In the event the applicant does not sign the revised agreement within thirty (30) days of notification thereof, the deferral of initial admission for that applicant shall be deemed to have been waived. The applicant shall then be referred to the Board for disposition in accord with the next section of this rule.

The deferral agreement may continue for a period not to exceed two (2) years.

At the conclusion of the deferral period, or anytime prior thereto, the committee shall determine whether the applicant has complied with all terms and conditions of the deferral agreement, and the committee shall so notify the Board. The Board shall then, by majority vote, make a determination as to whether the applicant has complied with the agreement. In the event of a favorable Board vote, the Executive Secretary shall then certify to the Clerk that the initial applicant is eligible for admission to the Bar of Arkansas.

In the event the Board determines that the applicant has failed to comply with the terms and requirements of the deferral agreement he or she shall be referred to the full Board for disposition in accord with the provisions of the next section of this rule.

#### REFERRAL TO BOARD — HEARING — PROCEDURES

In the event the Chair is unable to determine eligibility of the referred applicant, or in instances where other provisions of this rule mandate referral of the applicant to the full Board for determination of eligibility, then the applicant shall be notified of such determination. Such notice shall be sent by certified, return receipt, restricted delivery mail. The applicant shall have thirty (30) days from receipt of the notice of decision by the Chair finding inability to determine eligibility to request a hearing. Such request shall be in writing and addressed to the Chair of the Board and the hearing shall be set by the Chair of the hearing panel (to be appointed as hereinafter provided) for a day certain. Absent exigent circumstances, the hearing shall be conducted within 60 days after the Chair of the Board is

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notified that the applicant requests a hearing. For good cause shown, the Chair of the hearing panel may grant extensions of time.

The applicant shall be advised that he or she has a right to a hearing on the question and the right to be represented by counsel at the expense of the applicant. Upon request of the applicant, the Chair of the Board shall appoint a subcommittee from the Board comprised of not less than three members who shall proceed to a hearing as hereinafter provided. The Chair shall not be eligible to serve thereon.

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

The Executive Secretary of the Board shall act as evidence officer for the hearing and shall be charged with the responsibility of presenting any evidence that may be pertinent to the hearing, either for or against the applicant, and shall have the further responsibility of procuring evidence of parties or witnesses as hereinafter provided. However, for good cause shown, the Chair of the Board is authorized to appoint a substitute evidence officer.

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

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

All costs and expenses incident to such proceedings, including



the preparation and distribution of the transcript, shall be borne by the applicant. The applicant may be required to post a bond as set by the Executive secretary to insure payment of such costs and expenses. The hearing panel shall have authority to issue summons for any person or subpoenas for any witness, directed to any Sheriff or State Police Officer within the state, requiring the presence of any party or the attendance of any witness before it, to include production of pertinent documents or records. Such process shall be issued under the seal of the Supreme Court of the State of Arkansas and be signed by the Chair of the Board, or the Executive Secretary. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Likewise, the affected applicant shall be entitled to compel, by subpoena issued in the same manner, the attendance and testimony of witnesses, and the production of pertinent documents or records. The Circuit Court of Pulaski County shall have the power to enforce process. Disobedience of any summons or subpoena or refusal to testify shall be regarded as constructive contempt of the Supreme Court.

Failure of the applicant to timely request a hearing or tender the bond required by the Executive Secretary shall cause the application to be administratively terminated. After such administrative termination, the applicant must file a new application for initial admission or reinstatement, accompanied by the appropriate fees, and, in the Board's discretion, the applicant may be required to take the examinations set forth in Rule IX of these rules, or its successor rule.

#### BOARD DECISION — EVIDENTIARY HEARING APPEAL AFTER DENIAL

At the conclusion of the hearing, a copy of the transcript of proceedings shall be submitted without comment by the hearing panel to each member of the Board. The Board, within thirty (30) days of receipt of the transcript, after considering the entire record de novo, shall by majority vote of the full Board, determine the eligibility of the applicant. Thereafter, within ninety (90) days of said vote the Board shall cause to be filed with the Executive Secretary the findings of fact and conclusions of the Board, a copy of which shall be delivered to the applicant. Any concurrence or dissent in writing shall be made a part of the record and a copy

thereof furnished to the applicant.

Within thirty (30) days of receipt of written findings of the full Board denying eligibility, the applicant may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested from the Executive Secretary. The Executive Secretary shall certify the record as being a true and correct copy of the record as designated by the parties and it shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Arkansas State Board of Law Examiners. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

BOARD DECISION — EVIDENTIARY HEARING  
INITIAL ADMISSION OR REINSTATEMENT  
RECOMMENDED

The Board may by majority vote recommend that an applicant be certified for initial admission to the Bar of Arkansas. In such cases, the Executive Secretary shall certify to the Clerk of the Supreme Court that the applicant is eligible for initial admission to the Bar of Arkansas.

In the event the Board, or the Chair of the Board, shall recommend reinstatement of an applicant subsequent to disbarment, surrender of license, or suspension of license pursuant to Rule VII (D) where a hearing panel has been appointed, the applicant shall have the burden of filing with the Court a motion pursuant to Rule 2-1 of the Rules of the Supreme Court, or its successor rule. Such a motion must be filed within thirty (30) days of receipt of notice that the Board, or the Chair of the Board, has

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recommended reinstatement. The applicant shall file a single copy of the original transcript of the hearing, if one has been conducted, or, the original copy of the authorization for recertification which has been issued by the Chair of the Board pursuant to this Rule. The motion filed in conjunction with the transcript or recommendation from the Chair of the Board shall briefly summarize the circumstances leading to the disbarment, surrender, or suspension. The matter shall then be referred to the Arkansas Supreme Court for disposition in accordance with regular motion practice pursuant to Supreme Court Rule 2-1 or its successor rule.

#### GENERAL

All other rules governing admission to the Bar are hereby amended to conform with the provisions of this rule.

The provisions for deferral of initial admission shall not become available until the February, 1997 Arkansas bar examination.

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

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Appointments to  
Committees

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IN RE: SUPREME COURT COMMITTEE ON  
MODEL JURY INSTRUCTIONS — CIVIL

Supreme Court of Arkansas  
Opinion delivered April 22, 1996

PER CURIAM. H. David Blair, Esq., of Batesville; Phillip Carroll, Esq., of Little Rock; Robert L. Jones, Jr., Esq., of Fort Smith; and the Honorable David Bogard of Little Rock are reappointed to our Committee on Model Jury Instructions — Civil, for three-year terms to expire on April 30, 1999.

The Court thanks Mr. Blair, Mr. Carroll, Mr. Jones, and Judge Bogard for accepting reappointment to this most important Committee.

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IN RE: SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT

Supreme Court of Arkansas  
Opinion delivered April 22, 1996

PER CURIAM. Stacey DeWitt of Little Rock is hereby appointed to the Supreme Court Alternate Committee on Professional Conduct. Ms. DeWitt replaces James W. Steinsiek of Blytheville, whose term expires March 9, 1997.

The court thanks Ms. DeWitt for accepting appointment to this most important Committee and expresses appreciation to Mr. Steinsiek for his years of service to this Committee.

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IN RE: SUPREME COURT COMMITTEE ON THE  
UNAUTHORIZED PRACTICE OF LAW

Supreme Court of Arkansas  
Opinion delivered May 13, 1996

PER CURIAM. Alex G. Streett, Esq., of Russellville, Third Congressional District, is hereby reappointed to our Committee on the Unauthorized Practice of Law for a three-year term to expire on May 31, 1999. Ernest B. Matkin, Jr., of Fayetteville, is hereby reappointed to an At-Large position on the Committee for a three-year term to expire on May 31, 1999.

The Court expresses thanks to Mr. Streett and Mr. Matkin for accepting reappointment to this most important Committee.

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IN RE: ARKANSAS STATE BOARD OF  
LAW EXAMINERS

Supreme Court of Arkansas  
Opinion delivered May 28, 1996

PER CURIAM. Sam L. Anderson, Jr., has petitioned for reinstatement to the Bar of Arkansas. Board member William Bridgforth has advised that he will abstain from participation in Mr. Anderson's proceeding.

The Court hereby appoints Frank Morledge of Forest City, Arkansas, to act as a substitute examiner in place of Mr. Bridgforth. This appointment is exclusively for the purpose of participating as a member of the hearing panel convened to receive evidence in Mr. Anderson's case, and to vote on Mr. Anderson's application for reinstatement.

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Proof needed to prevail on claim of legal malpractice, proof needed to show damages and proximate cause. *Anthony v. Kaplan*, 52.

Appellant failed to establish proximate cause, trial court correct in granting summary judgment. *Id.*

Objection to appointment as counsel, request to withdraw granted. *Bradford v. State*, 110.

Previously appointed counsel relieved. *Id.*

Attorney's pending suspension had no tangible effect on appellant's trial, no violation of appellant's right to counsel. *Shibley v. State*, 212.

#### ATTORNEY'S FEES:

Title VII claim, prevailing party entitled to reasonable fee. *Smith v. Quality Ford, Inc.*, 272.

Title VII claim, party seeking award of fees should submit supporting evidence. *Id.*

Not allowed except when expressly provided for by statute. *Pledger v. Halvorson*, 302.

Additional fee not warranted on facts of case. *Farm Bureau Mut. Ins. Co. v. David*, 387.

#### AUTOMOBILES:

DWI, DWI conviction not dependent on evidence of blood-alcohol content where there is sufficient other evidence of intoxication. *Tauber v. State*, 47.

DWI, appellant failed to demonstrate any prejudice from failure to submit two verdict forms. *Id.*

DWI, breathalyzer test, appellant did not have right to counsel before taking test. *Hudgens v. State*, 169.

#### BAIL:

Criminal defendant has absolute right before conviction to reasonable bail, conditions may be placed upon bail if defendant is determined to be dangerous. *Henley v. Taylor*, 114.

Non-capital defendant's absolute right to bail may be curbed, but not absolutely denied, mental examination could have been basis for setting stringent conditions for release, but not for denying release altogether. *Id.*

#### CERTIORARI:

Review of circuit court's determination of bail availability, certiorari proper remedy for such review. *Henley v. Taylor*, 114.

Circuit court's jurisdiction over mentally ill defendants is limited, writ of certiorari granted and case remanded. *Id.*

When certiorari will lie, certiorari's purpose to find errors on face of record. *King v. Davis*, 253.

Appellant's attorney failed to timely file record, petition for writ of certiorari denied. *Watson v. State*, 351.

#### CIVIL PROCEDURE:

Dismissal of cause, pendency of another action between same parties arising out of same transaction or occurrence. *Tortorich v. Tortorich*, 128.

Findings by court, court must make special findings of fact upon request, failure to request amounts to waiver. *Smith v. Quality Ford, Inc.*, 272.

Findings by court, no request by appellant, right waived. *Id.*

When judgment notwithstanding verdict may be entered, factors on review. *McLaughlin v. Cox*, 361.

Complaint improperly served, motion to dismiss for failure of service of process should have been granted. *Carruth v. Design Interiors, Inc.*, 373.

Both statutory service requirements and those imposed by court rules must be strictly construed, judgments arising from proceedings conducted where attempted service was invalid are *void ab initio*. *Id.*

**CONSTITUTIONAL LAW:**

Use of suspect's silence against him later a deprivation of due process, appellant's silence was not used for impeachment purposes, no violation found. *Wilkins v. State*, 60. Sixth Amendment rights not violated, judicial districts remained intact. *Kemp v. State*, 178.

Procedures to be followed when *Batson* argument is raised, how *prima facie* case is established. *Powell v. State*, 335.

Race-neutral explanation for peremptory challenge given, preliminary issue of whether defendant made *prima facie* case moot. *Id.*

State's use of peremptory challenges not violative of Equal Protection Clause, no error found. *Id.*

Emergency clauses controlled by Amendment 7 to the Arkansas Constitution, when not enacting law no emergency clause required. *Sanders v. County of Sebastian*, 433.

**CONTEMPT:**

Contempt arguments met by controlling case. *Roberts v. State*, 68.

Show-cause hearing, counsel directed to appear. *Norman v. State*, 455.

**CORPORATIONS:**

Liability for breach of fiduciary duty, conduct of directors subject to rigorous scrutiny. *Long v. Lampton*, 511.

No breach of fiduciary duty found, trial court did not err in denying motion for new trial. *Id.*

Business-judgment rule, two elements necessary to invoke rule. *Id.*

Meaning of "disinterested director", when director may be disqualified. *Id.*

Reliance on business-judgment rule proper, no error found. *Id.*

**COUNTIES:**

Administration of justice, duty to provide for necessary services. *Villines v. Tucker*, 13.

Role defined, administration of justice, one of primary reasons for existence of county. *Id.*

Administration of justice, appellant failed to prove administration of justice in each county not uniform across state. *Id.*

Ordinance calling special election not a law, no emergency clause required. *Sanders v. County of Sebastian*, 433.

**COURTS:**

Concurrent jurisdiction, priority of jurisdiction. *Tortorich v. Tortorich*, 128.

Jurisdiction, authority of court of competent jurisdiction. *Id.*

Jurisdiction, county where initial action was filed was proper venue. *Id.*

Subject-matter jurisdiction cannot be conferred by agreement, parties may agree on court if subject-matter jurisdiction is appropriate. *Hardy Constr. Co. v. Arkansas State Highway & Transp. Dep't*, 496.

Chancery court had subject-matter jurisdiction to enforce contracts under Uniform Arbitration Act. *Id.*

**CRIMINAL LAW:**

Substantial evidence existed to support capital-murder conviction, no error found. *Allen v. State*, 1.

- Evidence needed to support capital-felony-murder conviction, evidence here sufficient to support conviction. *Clay v. State*, 9.
- First-degree murder defined, "purposely" defined. *Walker v. State*, 106.
- Intent in first-degree murder seldom capable of proof by direct evidence, inferred from circumstances of killing. *Id.*
- Accomplice liability. *Cooper v. State*, 135.
- Jury instructions, lesser-included offense, skip rule, appellant not prejudiced. *Id.*
- Jury instructions, lesser-included offense, no error to instruct on manslaughter. *Id.*
- Advising jury of nature of previous conviction, live testimony from crime victim went beyond advising jury of nature of conviction. *Rush v. State*, 147.
- Jury heard testimony from previous victim of appellant in sentencing phase of trial, case reversed and remanded for resentencing. *Id.*
- Pretrial identification and due process, when the court will reverse ruling on admissibility of identification. *Bohanan v. State*, 158.
- Pretrial identification, factors to determine reliability. *Id.*
- Pretrial identification reliable, trial court not clearly erroneous. *Id.*
- Sentencing by same judge on reconviction, more severe sentence may not be imposed because of court's vindictiveness. *Hudgens v. State*, 169.
- Sentencing by same judge on reconviction, requirements for imposition of more severe sentence. *Id.*
- Resentencing, trial court did not meet requirements, sentence modified and judgment affirmed. *Id.*
- Capital murder statute not unconstitutionally vague. *Kemp v. State*, 178.
- Mental capacity of accused to waive constitutional rights question of fact for trial court, intoxication alone will not invalidate statement. *Id.*
- Appellant's argument meritless, trial court resolved issue against him. *Id.*
- "Avoiding arrest" aggravating circumstance, murder committed in order to avoid arrest or eliminate witness to another offense committed in connection with murder. *Id.*
- Statutory harmless-error analysis performed in penalty phase only if no mitigating circumstances found by jury, jury found two mitigating circumstances on each count, case reversed for resentencing. *Id.*
- Victim-impact statute not void for vagueness, State has legitimate interest in counteracting defendant's mitigating evidence. *Id.*
- Victim-impact statute, statute not violative of Ark. Code Ann. §§5-4-603—604. *Id.*
- Victim-impact statute, Eighth Amendment not violated. *Id.*
- Victim-impact statute, statute not violative of Arkansas Constitution. *Id.*
- Victim-impact testimony allowed at trial, testimony not so unduly prejudicial that it rendered appellant's trial fundamentally unfair. *Id.*
- Assertions of error foreclosed by *Blystone v. Pennsylvania*. *Id.*
- Refusal to strike "risk of death to others" aggravating circumstance not error, court refused to overrule *Cox v. State*. *Id.*
- Information can constitute sufficient evidence that defendant is charged with serious and violent crime. *Lammers v. State*, 222.
- Accomplices, accomplice is responsible for activities of his cohort. *Id.*
- Accomplice liability, when applicable. *Carter v. State*, 249.
- Accomplice defined, relevant factors in determining connection of accomplice to crime present here. *Id.*
- Controverted confession, all material witnesses must be produced. *Bell v. State*, 258.
- State failed to meet its burden to produce material witness or provide adequate explanation for his absence, cause remanded for new suppression hearing. *Id.*



Premeditation and deliberation required for capital murder may be inferred from circumstantial evidence, intent and state of mind must usually be inferred. *Weaver v. State*, 290.

Keeping of gambling house, essence of offense. *McDougal v. State*, 354.

Keeping of gambling house, substantial evidence that appellant was maintaining place where gambling occurred. *Id.*

Keeping of gambling house, not necessary to prove appellant engaged in wagering. *Id.*

State's evidence more than sufficient, appellant clearly violated conditions of probation and suspension. *Greene v. State*, 465.

## CRIMINAL PROCEDURE:

Public defender, case remanded for eligibility hearing. *Lovelady v. State*, 35.

Speedy trial, State has burden of showing that delay was result of defendant's conduct or otherwise justified. *Tanner v. State*, 37.

Speedy trial, desire to give priority to pending murder must yield to another defendant's right to speedy trial unless there are exceptional circumstances, must be noted by trial court. *Id.*

Speedy trial, commencement of capital-murder trial on appellant's trial date did not, standing alone, constitute exceptional circumstance, time period could not be excluded for "good cause." *Id.*

Speedy trial, defendant does not have to bring himself to trial, burden on courts and prosecutors to see that trials are held in timely fashion. *Id.*

Speedy trial, appellant did not waive right to move for dismissal based on speedy-trial violation. *Id.*

Factors used by trial court in deciding motion for continuance. *Wilkins v. State*, 60.

Motion for continuance properly denied, no abuse of discretion found. *Id.*

Severance, factors to be considered in deciding whether to grant. *Cooper v. State*, 135.

Severance, defenses were not antagonistic. *Id.*

Severance, first appellant demonstrated no prejudice in denial of severance. *Id.*

Search warrant not required here, warrantless search of auto was appropriate. *Bohanan v. State*, 158.

Illegal arrest or detention, defendant not entitled to dismissal of charge when prompt-first-appearance rule is violated. *Hudgens v. State*, 169.

Rule 37 petition must be filed after mandate is issued. *Tapp v. State*, 176.

Postconviction relief, appeal of denial of relief not permitted to go forward where appeal is without merit. *Seaton v. State*, 236.

Postconviction relief, ninety-day period for filing Rule 37 petitions also applies to pleas of *nolo contendere*, judgment based on *nolo contendere* plea may be challenged under Rule 37. *Id.*

Postconviction relief, Rule 37 time limitations are jurisdictional, appellant filed untimely petition and was entitled to no relief. *Id.*

Postconviction relief, time to file notice of appeal does not expire until thirty days after disposition of motion for reconsideration, appellant's notice was timely filed. *Collins v. State*, 322.

When pretrial identification violates Due Process Clause, impermissibly suggestive identification reviewed under totality of circumstances. *Prowell v. State*, 335.

Reliability of pretrial identification, factors considered. *Id.*

In-court identification not in error, even if pretrial identification was impermissibly suggestive, witness's identification was reliable. *Id.*

Seizure violative of Fourth Amendment, appellant suffered no prejudice from photograph taken at station. *Id.*

Petitioner has right to appeal adverse ruling on petition for postconviction relief, even pro se petitioner must file timely notice of appeal. *Leavy v. Norris*, 346.

Petitioner failed to prove petition mailed in timely manner, motion for belated appeal denied. *Id.*

Failure to disclose criminal record of prosecution witness, determining if reversible violation exists. *Nelson v. State*, 404.

Prosecution failed to disclose in advance witness's criminal history, no prejudice shown. *Id.*

Review of denial of suppression motion, burden of proof and factors on review. *Baxter v. State*, 440.

Officers had reasonable cause to believe appellant had committed felony, suppression motion properly denied at trial. *Id.*

Postconviction relief, petitioner must show compelling need for photocopying at public expense, petitioner did not show need for free photocopies. *Moore v. State*, 453.

Resentencing, trial court may impose any lawful sentence. *Meadows v. State*, 505.

Illegal sentence, trial court has authority to correct. *Id.*

Illegal sentence, resentencing appropriate, no fault found in trial court's assessed punishment. *Id.*

**DAMAGES:**

Proximate cause usually jury question, when issue becomes question of law. *Anthony v. Kaplan*, 52.

Award of punitive damages proper under circumstances, no error found. *Dixon Ticonderoga Co. v. Winburn Tile Mfg. Co.*, 266.

Compensatory damages properly awarded, jury had the right to believe expert's testimony. *Id.*

When instruction for punitive damages may be given. *McLaughlin v. State*, 361.

What is necessary to support award for punitive damages, jury could have concluded facts were intentionally mischaracterized by appellant. *Id.*

Award of compensatory damages supported by evidence. *Id.*

Punitive damages, factors on review. *Id.*

When damages may be reduced, amount of punitive damages awarded supported by the evidence. *Id.*

**DISCOVERY:**

Foreign-object exception, appellants not entitled to one-year discovery extension. *Howard v. Northwest Surgical Clinic, P.A.*, 375.

**ELECTIONS:**

Cause of action not stated by pleading merely alleging contestant received more legal votes than contestee. *King v. Davis*, 253.

Action brought to declare election void is still election contest. *Id.*

When circuit court may set aside election, general rule. *Id.*

Trial court's findings sufficient, trial court did not act in excess of its jurisdiction by holding election void. *Id.*

Trial court has no authority to direct election commission to call new election, only General Assembly may create such remedy. *Id.*

Error clear on face of record, certiorari granted. *Id.*

**EQUITY:**

Specific performance is equitable remedy. *Hardy Constr. Co. v. Arkansas State Highway & Transp. Dep't*, 496.

## EVIDENCE:

- Jury's consideration of evidence concerning pistol proper, no abuse of discretion in admitting evidence. *Clay v. State*, 9.
- Witness not qualified as expert, appellant failed to proffer excluded evidence. *Tauber v. State*, 47.
- Challenge to sufficiency of evidence, factors on review. *Puckett v. State*, 81.
- Ample evidence of forcible compulsion existed, no error found. *Id.*
- Testimony of rape victim need not be corroborated, jury has duty to determine credibility. *Id.*
- Circumstantial evidence may constitute substantial evidence, must exclude every other reasonable hypothesis consistent with innocence. *Walker v. State*, 106.
- Substantial evidence for jury to conclude that appellant's conscious objective was to engage in conduct that resulted in victim's death. *Id.*
- Sufficient evidence to support accomplice conviction. *Cooper v. State*, 135.
- Evidence of motive behind criminal offense is admissible, appellant not prejudiced by admission of testimony. *Id.*
- Sufficient evidence to support finding of guilt. *Id.*
- Appeal from trial court's ruling on motion to suppress, factors on review. *Bohanan v. State*, 158.
- Relevant evidence defined, factors on review. *Id.*
- Bullet properly allowed into evidence, no abuse of discretion found. *Id.*
- Determination of relevancy left to trial court, no abuse of discretion shown here. *Id.*
- No right to independent chemical test where appellant refused to take breathalyzer test. *Hudgens v. State*, 169.
- No right to be released to gather exculpatory evidence. *Id.*
- Challenge to sufficiency of, factors on review. *Kemp v. State*, 178.
- Challenge to sufficiency of, evidence was sufficient to show killings were premeditated and deliberated acts. *Id.*
- Review of sufficiency of, evidence of aggravating or mitigating circumstances should be submitted to jury. *Id.*
- "Avoiding arrest" aggravating circumstance discussed, purpose of. *Id.*
- Appellant never used force to remove girlfriend from trailer, appellee's argument fatally flawed. *Id.*
- Evidence as to one victim left room for inference that appellant killed stranger to avoid arrest, submission of aggravating circumstance as to him alone proper. *Id.*
- Purposeful conduct discussed, evidence sufficient to show appellant purposefully engaged in conduct that created a substantial danger of death or serious physical injury to victim. *Carter v. State*, 249.
- Denial of motion for new trial, factors on review. *Dixon Ticonderoga Co. v. Winburn Tile Mfg. Co.*, 266.
- Motion for directed verdict considered challenge to sufficiency of evidence, factors on review. *Weaver v. State*, 290.
- Evidence more than sufficient to uphold convictions, trial court properly denied directed verdict motion. *Id.*
- First-degree battery conviction required finding of serious physical injury, substantial evidence supported finding that injury was serious. *Id.*
- Relevance defined, standard of review. *Id.*
- Evidence concerning rat poison was properly admitted, no abuse of discretion found. *Id.*
- Sufficiency of, trial errors disregarded. *Prowell v. State*, 335.
- Substantial evidence defined, factors on review. *Id.*

Witness identified appellant as assailant, evidence was sufficient to sustain conviction. *Id.*  
 Admissibility of in-court identification, factors considered. *Id.*  
 Review of sufficiency, substantial evidence defined. *McDougal v. State*, 354.  
 Viewed in light most favorable to support conviction. *Id.*  
 Testimony of plaintiff's father properly allowed, no abuse of discretion found.  
*McLaughlin v. Cox*, 361.  
 Circumstantial evidence, sufficiency, fact-finder's role. *Carter v. State*, 395.  
 Proof that death resulted from criminal agency necessary to sustain conviction. *Id.*  
 Circumstantial evidence, requirements. *Id.*  
 Suicide not reasonable hypothesis for victim's death, State's evidence of murder was substantial. *Id.*  
 Motion for directed verdict, when it must be made. *Baxter v. State*, 440.  
 Testimony describing house as appellant's initial location appropriate, revocation petition relied upon both new drug charge and previous conviction. *Greene v. State*, 465.  
 Clear and convincing evidence defined. *Booker v. State*, 468.  
 Clear and convincing evidence defined. *Butler v. State*, 476.

#### FRAUD:

Appellee charged with fraud in acquisition of authorization to provide motor vehicle transportation of property, substantial evidence existed from which jury could conclude no reasonable person would think appellants were being defrauded.  
*McLaughlin v. Cox*, 361.

#### INSURANCE:

Suits on construction bonds, statutory penalty applicable to sureties. *R.J. "Bob" Jones Excavating Contr., Inc. v. Firemen's Ins. Co.*, 282.  
 Suits on construction bonds, no demand other than filing of suit required under statute. *Id.*  
 Insurance company's confession of judgment did not affect attachment of penalty and attorney's fees, trial court's findings not clearly erroneous. *Farm Bureau Mut. Ins. Co. v. David*, 387.  
 Insurance company can avoid penalty and attorney's fees if it confesses judgment when plaintiff reduces amount demanded, principle inapplicable in this case. *Id.*  
 Purpose of statute providing for penalty and attorney's fees, Ark. Code Ann. § 23-79-208 and A.R.C.P. Rule 68 are not in conflict. *Id.*

#### JUDGMENT:

Appellant sought declaratory judgment, no proof of any case or controversy. *Thomas v. Arkansas Bd. of Correction & Community Punishment*, 6.  
 Once *prima facie* entitlement to summary judgment established, burden of proof shifts, opposing party must meet proof with proof. *Anthony v. Kaplan*, 52.  
 Multiple parties, factual underpinnings supporting Ark. R. Civ. P. 54(b) certification must be set out in trial court's order and abstracted. *Howard v. Dallas Morning News, Inc.*, 91.  
 Multiple parties, abstracted order reflected that trial court stated facts sufficient to justify entry of final, appealable order. *Id.*  
 Summary judgment, burden of proof on movant, respondent must meet proof with proof, burden not improperly shifted. *Id.*  
 Summary judgment, trial court erred in granting summary judgment rather than ordering joinder of Dental Board. *Arkansas State Medical Bd. v. Bolding*, 238.  
 Summary judgment, standard of review. *Id.*

Summary judgment, doctors' affidavit and deposition presented mixed question of law and fact, summary judgment precluded. *Id.*  
Summary judgment, standard of review. *R.J. "Bob" Jones Excavating Contr., Inc. v Firemen's Ins. Co.*, 282.  
Summary judgment properly entered as to one appellee, appellants presented no proof to counter appellee's affidavit. *Howard v. Northwest Arkansas Surgical Clinic, P.A.*, 375.  
Final order must have been entered for court to have jurisdiction, what constitutes final order. *Office of Child Support Enforcement v. Oliver*, 447.  
Standard for review of summary judgment, respective burdens of proof. *McCaskill v. Fort Smith Public Sch. Dist.*, 488.  
Appellee met burden of showing entitlement to judgment as a matter of law, appellant failed to meet proof with proof. *Id.*

#### JURISDICTION:

Territorial jurisdiction of lower courts in criminal trials discussed, circuit courts limited to trying accusations of crimes which occurred in their counties or judicial districts. *Kemp v. State*, 178.  
Appellant's argument without merit, no constitutional or legislative division of judicial district. *Id.*  
Reliance on case misplaced, electoral subdistricts not intended to be self-contained judicial districts. *Id.*  
Court found appellant lacking in mental capacity to have committed crimes, jurisdiction of probate court established by "automatic" order of commitment. *Hattison v. State*, 317.

#### JURY:

Jury members never needed to consider lesser-included offense, prosecutor's characterization of instruction not prejudicial. *Wilkins v. State*, 60.  
*Batson* objection, *prima facie* case of discrimination must be made. *Cooper v. State*, 135.  
*Batson* objection, how *prima facie* case may be established. *Id.*  
*Batson* objection, one peremptory strike of minority venireperson is not sufficient to establish *prima facie* case. *Id.*  
*Batson* objection, presence of minority members on jury is significant, nothing in challenge to venireperson that would have required explanation or inquiry. *Id.*  
Persons comprising venire presumed unbiased and qualified, burden on party challenging to prove actual bias, no error in trial court's rulings. *Id.*  
Proffered instruction omitted some of applicable law, instruction properly refused. *Kemp v. State*, 178.  
Jury instruction refused, trial court's refusal to proffer instruction did not violate appellant's due process rights. *Id.*  
Standard for excusal of juror for cause, when claim of error is preserved, trial court's ruling not disturbed absent abuse of discretion. *Id.*  
Juror fit to serve, appellant's argument rejected. *Id.*  
Jury instruction properly refused, non-model instructions given only in limited instances. *Id.*  
Potential jurors may not be challenged solely on basis of race, requirements for establishing *prima facie* case of racial discrimination. *Bell v. State*, 258.  
When burden shifts to state, standard of review for *Batson* rulings. *Id.*  
Jury exclusions not based on race, no *Batson* error shown. *Id.*  
Right to trial by twelve-member jury is fundamental right, violation renders judgment void, appellant could raise issue for first time in Rule 37 proceedings. *Collins v. State*, 322.

Violation of appellant's jury-trial right required new trial, judgment reversed and remanded. *Id.*

AMI 2203 not merely damage a instruction, instruction embraces definite aspects of proximate causation. *Primm v. U.S. Fidelity & Guaranty Ins. Corp.*, 409.

Eggshell-plaintiff rule incorporated into damages section of uniform instructions, rule equally applicable to probable cause. *Id.*

Eggshell-plaintiff rule should have been given to jury, error found. *Id.*

Basis for jury's verdict unclear, appellate court will not speculate of jury's findings. *Id.*

No error in trial court's refusal to give Presumption Instruction, proof did not support fact that handwritten document was withheld from appellant. *Id.*

Duty owed always question of law, judge has duty to instruct jury on law of case with clarity, leaving no grounds for mistake. *Long v. Lampton*, 511.

Erroneous instruction, presumed prejudice may be rendered harmless by other factors. *Id.*

Instructions to jury not reviewed in isolation, instructions should be considered as a whole. *Id.*

Instruction given was erroneous, testimony and other instructions rendered error harmless. *Id.*

#### JURY INSTRUCTIONS:

AMCI Form 3 not violative of Eighth Amendment, jury expressly allowed to list mitigating circumstances found by some, but not all, of its members. *Kemp v. State*, 178.

#### JUVENILES:

Requirements considered in juvenile transfer case. *Wilkins v. State*, 60.

Juvenile transfer cases, burden of proof and factors on review. *Id.*

Appellant charged with serious offense, trial court's decision supported by record. *Id.*

Juvenile transfer, burden of proof. *Lammers v. State*, 222.

Juvenile transfer, trial court not required to give equal weight to each statutory factor, violence considered. *Id.*

Juvenile transfer, standard of review. *Id.*

Juvenile transfer, introduction of evidence of each statutory factor not required, serious and violent nature of crime sufficient to deny transfer. *Id.*

Denial of transfer from circuit to juvenile court, standard of review, appellant did not meet burden of proof. *Booker v. State*, 468.

Juvenile transfer, determination that juvenile should be tried as adult must be supported by clear and convincing evidence. *Id.*

Juvenile transfer, factors to be considered. *Id.*

Juvenile transfer, specific findings encouraged though not required. *Id.*

Appellant's association with beating of victim was sufficient to satisfy violence criterion. *Id.*

Juvenile transfer, use of violence, sufficient reason for circuit court's denial of transfer. *Id.*

Juvenile transfer, factors need not be given equal weight, ample evidence presented that offense was serious and that appellant employed violence. *Id.*

Juvenile transfer, circuit court could have properly considered appellant's subsequent criminal acts, denial of transfer not clearly erroneous. *Id.*

Limited jurisdiction of circuit court. *Butler v. State*, 476.

Circuit court never had jurisdiction of theft charges, theft counts dismissed. *Id.*

Denial of transfer from circuit to juvenile court, standard of review, appellant did not meet burden of proof. *Id.*

Juvenile transfer, determination that juvenile should be tried as adult must be supported by clear and convincing evidence. *Id.*

Juvenile transfer, factors to be considered. *Id.*

Juvenile transfer, factors need not be given equal weight, serious and violent nature of charged offenses warranted denial of transfer to juvenile court. *Id.*

Juvenile transfer, use of violence, sufficient reason for circuit court's denial of transfer. *Id.*

Appellant's association with use of weapon was sufficient to satisfy violence criterion. *Id.*

Juvenile transfer, circuit court's denial on aggravated robbery counts not clearly erroneous. *Id.*

**LIMITATION OF ACTIONS:**

Medical malpractice, knowledge of wrong done necessary prerequisite to tolling statute. *Howard v. Northwest Arkansas Surgical Clinic, P.A.*, 375.

Language of statute did not preclude action, summary judgment erroneously granted two appellees. *Id.*

Appellant's argument barred, election results not challenged in timely manner. *Sanders v. County of Sebastian*, 433.

**MASTER & SERVANT:**

Relationship created through submission by one giving service to direction and control of one receiving it. *Howard v. Dallas Morning News*, 91.

Independent contractor defined. *Id.*

Independent contractor, right of control is principal factor in determining nature of relationship. *Id.*

Creation of relationship, question of responsibility not dependent upon existence of actual contractual relationship. *Id.*

**MISTRIAL:**

Mistrial discussed, trial court has wide discretion in granting or denying, attorneys given leeway in closing remarks. *Kemp v. State*, 178.

Prosecutor's statement not of such magnitude to require mistrial, admonition to jury cured any prejudice. *Id.*

Trial court's denial of proffered instructions proper, leeway given to both sides during closing arguments. *Id.*

**MOTIONS:**

Motion for continuance addressed to trial court's discretion, when reversed. *Wilkins v. State*, 60.

Motion for verdict of acquittal equivalent to motion for directed verdict. *Smith v. State*, 74.

Defendant's failure to move for directed verdict on insufficiency of evidence at close of State's evidence and close of case constitutes waiver of issue, appellant waived issue on appeal. *Id.*

Motion for mistrial discussed, when granted. *Puckett v. State*, 81.

Mistrial not appropriate, no error found. *Id.*

Motion for mistrial denied, no error found. *Id.*

Directed-verdict motion is challenge to sufficiency of evidence, standard of review. *Walker v. State*, 106.

Directed-verdict motion discussed, substantial evidence discussed. *Cooper v. State*, 135.

Appellant's motion to suppress evidence did not pertain to suppression of evidence illegally obtained, not governed by ten-day limitation. *Hudgens v. State*, 169.  
Motion to quash properly denied, no prejudice shown. *Kemp v. State*, 178.  
When motion for directed verdict should be granted, standard for determining sufficiency of evidence on review. *McLaughlin v. State*, 361.  
Directed-verdict motion defined, substantial evidence defined. *Carter v. State*, 395.  
Denial of motion for continuance within sound discretion of trial court, appellant bears burden of demonstrating prejudice. *Nelson v. State*, 404.  
Motion for continuance denied, no abuse of discretion found. *Id.*  
Conspiracy count not included in motion for directed verdict, issue not preserved for review. *Baxter v. State*, 440.  
Review of denial of motion for directed verdict, failure to challenge sufficiency of evidence results in waiver. *Love v. State*, 526.

**NEGLIGENCE:**

Duty of driver, evidence demonstrated course of conduct contrary to that which ordinary person would have undertaken. *Young v. Honeycutt*, 120.

**NEW TRIAL:**

Appellant's argument without merit, present rules of civil procedure do not require judge to state with particularity reasons for granting new trial. *Young v. Honeycutt*, 120.  
When new trial may be granted, trial court's discretion is limited. *Id.*  
Review of trial court's granting of new trial, standard on review. *Id.*  
New trial ordered, no abuse of discretion found. *Id.*  
When new trial may be granted, trial court's discretion limited. *Diamond State Towing Co. v. Cash*, 226.  
Test on review. *Id.*  
Trial court did not abuse its discretion in granting of. *Id.*  
When ordered. *Bell v. State*, 258.  
Motion filed before entry of judgment and commitment order was untimely and ineffective. *Hicks v. State*, 450.  
Review of denial of motion for new trial, substantial evidence discussed. *Long v. Lampton*, 511.  
Trial court has discretion in setting aside jury verdict, when verdict should be disturbed. *Id.*

**PARTIES:**

Necessary parties, Dental Board should have been joined as necessary party. *Arkansas State Medical Bd. v. Bolding*, 238.

**PRINCIPAL & AGENT:**

Creation and nature of relationship, trial court misstated law by declaring that appellants must provide proof that parties intended relationship to exist. *Howard v. Dallas Morning News, Inc.*, 91.  
Relationship does not depend upon intent of parties, must be agreement but not necessarily contract. *Id.*  
Agency becomes question of law where facts are undisputed, appellants provided proof of genuine issue of material fact. *Id.*



**PRINCIPAL & SURETY:**

- Public contractors' bonds, laborers and materialmen may sue surety on contractor's bond without making contractor party. *R.J. "Bob" Jones Excavating Contr., Inc. v. Firemen's Ins. Co.*, 282.
- Public contractors' bonds, contractors are proper but not necessary parties to suits on their bonds. *Id.*
- Surety's payment of claim when principal not liable, no recovery allowed. *Id.*
- No liability of surety to subcontractor because of litigation between subcontractor and general contractor, surety entitled to judgment as matter of law. *Id.*

**PROHIBITION:**

- Extraordinary writ, used only where court proposes to act in excess of its jurisdiction. *Boswell, Tucker & Brewster v. Shirron*, 276.
- Issuance of writ is discretionary. *Id.*
- No basis for requested relief. *Id.*
- Record did not show that prohibition was clearly warranted, petition denied. *Id.*

**PROPERTY:**

- Fixtures, test for determining. *Pledger v. Halvorson*, 302.
- Fixtures, intention to make permanent, consideration of primary importance. *Id.*
- Fixtures, evidence did not support finding that annexation was intended to be permanent. *Id.*

**RECORDS:**

- Motion to release consolidated trial record granted. *Skokos v. Skokos*, 119.

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- Appellant's sentence within statutory range, court declined to review what appellant termed excessive sentence. *Cupit v. State*, 438.
- Prior sentences properly used for enhancement, appellant's argument meritless. *Baxter v. State*, 440.
- Verdict containing habitual-sentencing range correct, appellant's argument without merit. *Id.*
- Sentence received by codefendant not relevant to appellant's guilt, innocence, or punishment. *Id.*
- Determination as to consecutive or concurrent sentences rests solely with trial court, appellant had duty to show trial judge abused his discretion. *Love v. State*, 526.

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- Local or special acts, legislation relating to administration of justice must meet dictates of Ark. Const. amend 14 prohibiting local or special acts. *Villines v. Tucker*, 13.

- Local or special acts, statutes designed to meet area's judicial needs on non-discriminatory basis are not local or special within meaning of Ark. Const. amend 14, requirements. *Id.*
- Local or special acts, General Assembly should strive for uniform judicial system, factors to be considered. *Id.*
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- Clear and unambiguous language, court's task is to follow, not interpret. *Public Employee Claims Div. v. Chitwood*, 30.
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- Liberal-construction statute not utilized by trial judge, issue not addressed. *Id.*
- Common-law exception for fraudulent concealment still in effect, medical malpractice statute of limitations did not obviate rule. *Howard v. Northwest Arkansas Surgical Clinic, P.A.*, 375.
- Ordinance did not levy taxes within meaning of statute, appellant's argument without merit. *Sanders v. County of Sebastian*, 433.

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- Defamation, distinction between words that are actionable *per se* and those that are not. *Id.*
- Defamation, appellant not prejudiced by failure of trial court to give instruction on republication. *Id.*
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- Bad faith, tort not proved. *Id.*
- Bad faith, surety had good-faith defense and proved it was entitled to summary judgment. *Id.*
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- Statute of limitations, fraudulent concealment a continuing act that tolls statute. *Id.*
- Foreign-object cases, mere existence of foreign object in patient no longer equated to fraudulent concealment, statute of limitations specifically extends limitations period. *Id.*
- "Eggshell-plaintiff" rule. *Primm v. U.S. Fidelity & Guaranty Ins. Corp.*, 409.
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- Negligence, liability for acts of others, special relationship required, no such relationship in this case. *Id.*
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ARKANSAS  
APPELLATE  
REPORTS

Volume 53

CASES DETERMINED  
IN THE

Court of Appeals  
of Arkansas

FROM  
March 20, 1996 — May 22, 1996  
INCLUSIVE

WILLIAM B. JONES, JR.  
REPORTER OF DECISIONS

CINDY M. ENGLISH  
ASSISTANT  
REPORTER OF DECISIONS

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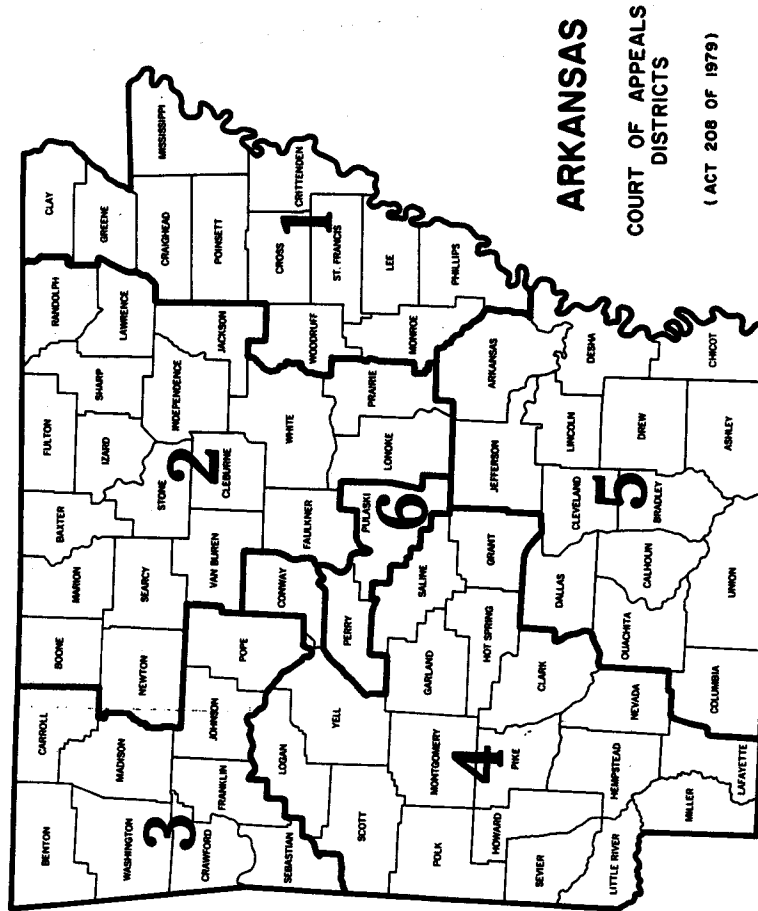
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1996

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# JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED  
BY THIS VOLUME  
(March 20, 1996 —  
May 22, 1996, inclusive)

## JUDGES

JOHN E. JENNINGS	Chief Judge <sup>1</sup>
JOHN MAUZY PITTMAN	Judge <sup>2</sup>
JAMES R. COOPER	Judge <sup>3</sup>
JOHN B. ROBBINS	Judge <sup>4</sup>
MELVIN MAYFIELD	Judge <sup>5</sup>
JUDITH ROGERS	Judge <sup>6</sup>
JOHN F. STROUD, JR.	Judge <sup>7</sup>
OLLY NEAL	Judge <sup>8</sup>
WENDELL L. GRIFFEN	Judge <sup>9</sup>

## OFFICERS

WINSTON BRYANT	Attorney General
LESLIE W. STEEN	Clerk
JACQUELINE S. WRIGHT	Librarian
WILLIAM B. JONES, JR.	Reporter of Decisions

<sup>1</sup>District 3.

<sup>2</sup>District 1.

<sup>3</sup>District 2.

<sup>4</sup>District 4.

<sup>5</sup>District 5.

<sup>6</sup>District 6.

<sup>7</sup>Position 7. Appointed effective January 1, 1996, by Governor Jim Guy Tucker.

<sup>8</sup>Position 8. Appointed effective January 1, 1996, by Governor Jim Guy Tucker.

<sup>9</sup>Position 9. Appointed effective January 1, 1996, by Governor Jim Guy Tucker.

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## JOHN B. ROBBINS, JUDGE:

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STANDARDS FOR PUBLICATION OF OPINIONS

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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 estop-

pel, 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

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- A.K. Indus. Contractors *v* Manuel, CA 95-674 (Mayfield, J.), affirmed May 22, 1996.
- Alamo Courts Motel, Inc. *v* Murphy, (Mayfield, J.), affirmed March 20, 1996.
- Arkansas Abatement Servs., Inc. *v* White Co., Inc., CA 95-550 (Neal, J.), affirmed May 1, 1996.
- Arkansas Oklahoma Gas Corp. *v* Holland, CA 95-503 (Mayfield, J.), affirmed May 22, 1996.
- Arkansas Trucking Servs., Inc. *v* Graham, CA 95-512 (Pittman, J.), affirmed May 1, 1996.
- Aycock Auto World *v* Ellis, CA 95-586 (Neal, J.), affirmed April 3, 1996.
- B.W. *v* State, CA 95-154 (Mayfield, J.), affirmed May 8, 1996.
- Barton *v* Standard Register Co., CA 95-501 (Rogers, J.), affirmed April 24, 1996.
- Baugus *v* Borg-Warner Automotive, CA 95-61 (Cooper, J.), affirmed May 15, 1996.
- Baxter *v* Baxter, CA 95-482 (Rogers, J.), affirmed May 22, 1996.
- Bearfield *v* State, CA CR 95-659 (Stroud, J.), affirmed May 22, 1996.
- Bivins *v* State, CA CR 95-574 (Neal, J.), affirmed April 17, 1996.
- Board of Commissioners *v* Miller, CA 95-579 (Robbins, J.), affirmed on appeal and cross-appeal May 8, 1996.
- Bostic *v* Cartwright Van Lines, CA 94-1226 (Mayfield, J.), affirmed in part, and reversed and remanded in part March 27, 1996.
- Boston *v* Cain, CA 95-192 (Rogers, J.), affirmed May 22, 1996.
- Brewer *v* State, CA CR 95-607 (Jennings, C.J.), affirmed May 1, 1996.
- Browder *v* Holden, CA 95-201 (Jennings, C.J.), affirmed May 8, 1996.
- Brown *v* State, CA CR 95-644 (Robbins, J.), affirmed May 22, 1996.
- Burlington Indus. *v* Barnett, CA 95-857 (Stroud, J.), affirmed May 22, 1996.
- Burris *v* McGowne, CA 95-116 (Neal, J.), affirmed March 27, 1996.
- Bush-Caldwell *v* Stovall, CA 95-916 (Neal, J.), affirmed May 22, 1996.
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- Cardwell *v.* State, CA CR 95-325 (Rogers, J.), affirmed April 3, 1996.
- Carr *v.* Platt, CA 95-338 (Cooper, J.), affirmed March 27, 1996.
- Christian *v.* State, CA CR 95-394 (Neal, J.), affirmed March 20, 1996.
- City of West Helena Fire Department *v.* Scott, CA 95-730 (Griffen, J.), affirmed May 15, 1996.
- Clover *v.* State, CA CR 95-345 (Rogers, J.), affirmed March 27, 1996.
- Compton's Oak Grove Lodge *v.* Brown, CA 95-425 (Mayfield, J.), affirmed in part and remanded May 15, 1996.
- Cook *v.* State, CA 94-1396 (Neal, J.), affirmed May 8, 1996.
- Cooley *v.* State, CA CR 95-171 (Rogers, J.), affirmed March 20, 1996.
- Cornilous *v.* State, CA CR 95-767 (Neal, J.), affirmed, April 24, 1996.
- Cummings *v.* Forrest City School District #7, CA 95-539 (Robbins, J.), affirmed April 24, 1996.
- Darrough *v.* International Paper Company, CA 95-22 (Jennings, C.J.), affirmed May 15, 1996. Rehearing denied June 19, 1996.
- Davis *v.* City of Little Rock, CA CR 95-650 (Griffen, J.), affirmed May 1, 1996.
- Douglas *v.* Thomas, CA 95-466 (Rogers, J.), affirmed April 10, 1996.
- Dunlap *v.* Purina Mills, Inc., CA 95-13 (Pittman, J.), affirmed May 1, 1996. Rehearing denied June 5, 1996. Griffen, J., would grant.
- Elder *v.* State, CA CR 95-430 (Pittman, J.), affirmed March 20, 1996.
- Estate of Buchanan *v.* Estate of Starnes, CA 95-658 (Stroud, J.), reversed and remanded May 15, 1996.
- Faulkner *v.* Faulkner, CA 95-660 (Neal, J.), affirmed May 15, 1996.
- Fiorito *v.* Bonds Lucky Foods, Inc., CA 95-525 (Jennings, C.J.), affirmed May 8, 1996.
- Flanigan *v.* State, CA CR 95-699 (Neal, J.), affirmed May 22, 1996.
- Franklin *v.* Stephens Prod. Co., CA 95-611 (Stroud, J.), affirmed April 24, 1996.
- Frazier *v.* State, CA CR 95-493 (Rogers, J.), affirmed April 17, 1996.

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- Freeman *v.* Freeman, CA 96-382 (Per Curiam), Appellant's Motion to Supplement the Record and for Brief Time denied May 22, 1996.
- Garman *v.* Pinkerton, CA 95-289 (Robbins, J.), reversed and remanded April 10, 1996.
- Glover Machine Works, Inc. *v.* Rice, CA 95-803 (Neal, J.), affirmed May 15, 1996.
- Godwin *v.* State, CA CR 95-370 (Neal, J.), affirmed March 27, 1996.
- Goodman *v.* Estate of DePriest, CA 95-227 (Griffen, J.), affirmed March 27, 1996.
- Gramling *v.* State, CA CR 95-130 (Griffen, J.), affirmed April 24, 1996.
- Greene *v.* Estate of Greene, CA 94-1099 (Griffen, J.), affirmed May 8, 1996.
- Gregory *v.* State, CA CR 94-1358 (Jennings, C.J.), affirmed March 20, 1996.
- Griffin *v.* Griffin, CA 95-219 (Cooper, J.), affirmed April 17, 1996.
- Grubbs *v.* State, CA CR 95-446 (Jennings, C.J.), affirmed May 8, 1996.
- Hayes *v.* State, CA CR 95-621 (Robbins, J.), affirmed May 1, 1996.
- International Paper Co. *v.* Tatum, CA 95-697 (Cooper, J.), affirmed May 1, 1996.
- International Paper Co. *v.* Douglas, CA 95-569 (Pittman, J.), affirmed May 1, 1996.
- J.C.J. *v.* State, CA 95-918 (Griffen, J.), affirmed May 15, 1996.
- Jackson *v.* PHP Healthcare Corp., CA 95-490 (Pittman, J.), affirmed April 24, 1996.
- Jackson *v.* State, CA CR 95-431 (Jennings, C.J.), affirmed April 17, 1996.
- Jesep *v.* State, CA CR 95-676 (Robbins, J.), affirmed May 8, 1996.
- Jordan *v.* State, CA CR 95-220 (Mayfield, J.), affirmed May 15, 1996.
- Kemp *v.* State, CA CR 94-1212 (Per Curiam), Petition for Rehearing denied March 20, 1996.
- Kidd *v.* A.D.I. Realty Corp., CA 95-331 (Neal, J.), reversed and remanded March 20, 1996.
- Lakeview Country Club, Inc. *v.* Superior Products, CA 95-170 (Per Curiam), Case Certified to Supreme Court May 22, 1996.
- Lamb *v.* Lamb, CA 95-531 (Pittman, J.), affirmed May 8, 1996.

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- Larry Delk & Assocs. *v.* Snyder, CA 95-347 (Jennings, C.J.), affirmed March 20, 1996.
- Leonard *v.* Quality Church Furniture, CA 95-673 (Robbins, J.), affirmed May 8, 1996.
- Lester *v.* State, CA CR 94-1312 (Jennings, C.J.), affirmed March 20, 1996.
- Liberty Mut. Ins. Co. *v.* Sexton Foods Co., CA 95-291 (Griffen, J.), affirmed in part and modified in part March 20, 1996.
- Littlefield *v.* Estate of Littlefield, CA 95-486 (Neal, J.), affirmed April 24, 1996.
- M. K. *v.* State, CA 95-561 (Pittman, J.), affirmed May 8, 1996.
- Martin *v.* Whitmire, CA 95-214 (Jennings, C.J.), affirmed March 20, 1996.
- Matthews *v.* State, CA CR 94-1007 (Mayfield, J.), affirmed April 17, 1996.
- McCaslin *v.* State, CA CR 95-489 (Cooper, J.), affirmed April 3, 1996.
- McClanahan Lumber Co. *v.* Adamson, CA 95-646 (Griffen, J.), affirmed May 15, 1996.
- McClung *v.* McClung, CA 95-88 (Stroud, J.), appeal dismissed March 20, 1996.
- McGill *v.* Smith, CA 94-1453 (Mayfield, J.), affirmed April 17, 1996.
- McKinney *v.* State, CA CR 95-577 (Neal, J.), affirmed April 3, 1996.
- Meadows *v.* Meadows, CA 95-369 (Rogers, J.), affirmed May 8, 1996.
- Mease *v.* Tri-City Concrete, Inc., CA 95-704 (Stroud, J.), affirmed May 8, 1996.
- Miller *v.* State, CA CR 95-403 (Griffen, J.), affirmed March 27, 1996.
- Miller *v.* State, CA CR 95-609 (Mayfield, J.), affirmed May 15, 1996.
- Moore *v.* State, CA CR 95-348 (Stroud, J.), reversed and dismissed March 27, 1996. Rehearing denied May 1, 1996.
- Murray *v.* State, CA CR 95-636 (Rogers, J.), affirmed April 17, 1996.
- Nelson *v.* State, CA CR 95-543 (Stroud, J.), affirmed April 24, 1996.
- Palmer *v.* Palmer, CA 94-1180 (Stroud, J.), affirmed April 10, 1996.

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- Pierce *v.* Pierce, CA 95-383 (Jennings, C.J.), affirmed April 24, 1996.
- Pocahontas Schools *v.* Prewitt, CA 95-476 (Cooper, J.), affirmed May 22, 1996.
- Pomeroy *v.* Mountain View Lodge, Inc., CA 95-77 (Rogers, J.), affirmed March 20, 1996.
- Potlatch Corp. *v.* Hollingsworth, CA 95-661 (Neal, J.), affirmed April 24, 1996.
- Preston *v.* Director, E 94-203 (Pittman, J.), affirmed March 27, 1996.
- Rasmussen Group *v.* Guthrie, CA 95-405 (Neal, J.), affirmed April 10, 1996.
- Reeves *v.* State, CA CR 95-177 (Pittman, J.), affirmed May 8, 1996.
- Ricks *v.* State, CA CR 95-353 (Stroud, J.), affirmed April, 1, 1996.
- Robbins *v.* Swift-Eckrich, Inc., CA 95-725 (Stroud, J.), affirmed May 15, 1996.
- Rogers *v.* Federal Savings Bank, CA 95-467 (Stroud, J.), affirmed May 15, 1996. Rehearing denied June 19, 1996.
- Russell *v.* John Sanders Logging, CA 95-616 (Jennings, C.J.), affirmed May 22, 1996.
- Savage *v.* State, CA CR 95-544 (Stroud, J.), reversed and dismissed March 27, 1996.
- Schmeckenbecher *v.* Schmeckenbecher, CA 95-31 (Cooper, J.), affirmed May 8, 1996.
- Schock *v.* Heritage Publishing Co., CA 95-726 (Robbins, J.), affirmed May 15, 1996.
- Schwarz *v.* State, CA CR 93-1227 (Pittman, J.), reversed and remanded April 17, 1996.
- Selected Fin. Properties, Inc. *v.* Taylor, CA 95-593 (Griffen, J.), affirmed April 24, 1996.
- Self *v.* IBS Financial Service, CA 95-499 (Stroud, J.), affirmed March 27, 1996.
- Sellars *v.* Fruit of the Loom, Inc., CA 94-1211 (Stroud, J.), reversed and remanded March 27, 1996. Rehearing denied June 19, 1996. Pittman and Cooper, JJ., dissent.
- Service Chevrolet *v.* Rutherford, CA 95-429 (Jennings, C. J.), affirmed April 3, 1996.
- Sharp *v.* Watson, CA 95-223 (Robbins, J.), affirmed March 20, 1996.



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- Shores *v* Wayne & Associates, CA 95-804 (Robbins, J.) affirmed May 22, 1996.
- Smith *v* Aetna Casualty & Surety Co., CA 94-1359 (Per Curiam), Appellant's Motion for Reconsideration of Order Dismissing Appeal granted April 17, 1996.
- Smith *v* State, CA CR 94-63 (Per Curiam), Order to File Brief May 22, 1996.
- Southwestern Energy Co. *v* Arkansas Power and Light Co., CA 95-261 (Stroud, J.), appeal dismissed April 3, 1996.
- Stegall *v* Land O'Frost, Inc., CA 95-688 (Rogers, J.), affirmed May 22, 1996.
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- Taco Tico *v* Cottingham, CA 95-715 (Rogers, J.), affirmed May 8, 1996.
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- Thompson *v* State, CA CR 96-38 (Per Curiam), Appellant's Pro Se Motions to File Pro Se Brief, for Appointment of Counsel, and to Expedite Motions for Transcript denied March 20, 1996.
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- Wheeler *v* Southern Brick and Tile Co., CA 95-635 (Neal, J.), affirmed May 15, 1996.
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- Wilhelmina Medical Ctr. *v* Blake, CA 95-584 (Rogers, J.), affirmed April 24, 1996.
- Wilkerson *v* State, CA CR 95-89 (Per Curiam), Substitution of New Counsel for Appellant issued March 27, 1996. Rehear-

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*Willamette Indus., Inc. v. Hood*, CA 95-785 (Neal, J.), affirmed May 1, 1996.

*Young v. State*, CA CR 95-571 (Pittman, J.), affirmed April 24, 1996.

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

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Reversible error, timely objection required. *Wallace v State*, 199.

Improper closing argument, immediate objection required, prosecutor's statement not improper. *Id.*

**UNEMPLOYMENT COMPENSATION:**

Determination whether good cause existed for employee to quit his job question of fact, determining sufficiency of evidence on review. *Clafin v Director*, 126.

Factors involved in determining whether "good cause" existed for employee to quit. *Id.*

Appellant lacked good cause for quitting her job, Board's finding supported by substantial evidence. *Id.*

**WITNESSES:**

Credibility, testimony on circumstances surrounding custodial statement, trial court's determination. *Lanes v State*, 266.

**WORKERS' COMPENSATION:**

Employee fired for claiming workers' compensation benefits has common law action against his employer. *Rohrer v Hart's Mfg. Co.*, 4.

Meaning of word injuries as used in section 41 of Act 796 of 1993. *Id.*

Appellant discharged prior to act's effective date, act inapplicable. *Id.*

Claim not barred by language of joint petition, trial court reversed and remanded. *Id.*

Denial of compensation by Commission, findings of fact required to justify denial. *Shelton v Freeland Pulpwood*, 16.

When finding of fact is sufficient to permit meaningful review. *Id.*

- Commission merely recited testimony, case reversed and remanded for specific findings of fact. *Id.*
- Standard of review. *St. Vincent Infirmary Med. Ctr. v. Brown*, 30.
- "Compensable injury" defined. *Id.*
- Employer takes employee as he finds him. *Id.*
- Commission's decision in appellee claimant's favor supported by substantial evidence. *Id.*
- Shippers' Transport* defense, factors. *Id.*
- Shippers' Transport* defense, evidence did not prove that appellee knowingly and willingly made false representation about her physical condition. *Id.*
- Non compensable injury, what constitutes. *Ramirez v. Hudson Foods, Inc.*, 49.
- Factors on review. *Id.*
- Appellant's actions did not warrant denial of benefits, Commission's decision not supported by substantial evidence. *Id.*
- Shippers' Transport* rule, three-part test. *James River Corp. v. Walters*, 59.
- Challenge to sufficiency of evidence, standard of review. *Id.*
- Credibility of witnesses and weight of testimony, exclusively within Commission's province. *Id.*
- There was substantial evidence that appellant failed to prove that it was entitled to rely on *Shippers' Transport* defense. *Id.*
- Commission must make findings sufficient to justify denial of compensation, sufficient findings of fact discussed. *Lowe v. Car Care Mktg.*, 100.
- Composition of sufficient finding of fact, conclusory language is not sufficient. *Id.*
- Opinion consisted almost entirely of narration of testimony, case remanded for specific findings. *Id.*
- Requirements for Second Injury Fund liability. *Second Injury Fund v. James River Corp.*, 204.
- Factors on review of Commission's decision, substantial evidence discussed. *Id.*
- "Latent" as used in Ark. Code Ann. § 11-9-525(a)(3), when injury is latent. *Id.*
- Pulmonary disease not discovered until after appellee's injury, condition did not qualify as prior disability. *Id.*
- Vascular problems not diagnosed or treated prior to injury, condition was latent. *Id.*
- Second Injury Fund not liable for injuries sustained during employment by one employer, conditions did not support Second Injury Fund Liability. *Id.*
- Impairment must be substantial in nature to qualify claimant as handicapped under the statute. *Id.*
- When Commission's decision will be reversed, substantial nature of employee's physical condition insufficient to support finding that he was handicapped. *Id.*
- Pre-existing conditions not shown to combine with present injury to cause current disability status, physical ability to work before work-related injury may be considered. *Id.*
- Current disability arose from combination of latent conditions, prior injuries, and current injury, Second Injury Fund not liable for any compensation to which employee entitled. *Id.*
- Challenge to sufficiency of evidence, factors on review. *W.W.C. Bingo v. Zwierzynski*, 288.
- Records supported Commission's findings, Commission's award of benefits affirmed. *Id.*
- Commission has broad discretion in admission of evidence, no abuse of discretion found. *Id.*
- Appellant had responsibility to obtain ruling by Commission, appellate court would not consider issue. *Id.*
- Administrative law judge should have allowed proffer of evidence, refusal to allow proffer harmless error. *Id.*





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