



ARKANSAS REPORTS
VOLUME 326

ARKANSAS
APPELLATE REPORTS
VOLUME 55

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

— SAMUEL JOHNSON
(1709-1784)

THIS BOOK CONTAINS THE OFFICIAL
ARKANSAS REPORTS

Volume 326

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
September 18, 1996 — December 23, 1996
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS

Volume 55

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
September 18, 1996 — December 23, 1996
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1996

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 1103. Cite as 326 Ark. __ (1996).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 426. Cite as 55 Ark. App. __ (1996).



ERRATA

Reporter's Note: The substituted opinion in *State v. Staton*, 325 Ark. 341 (1996), was originally reprinted in the National Reporter System at 934 S.W.2d 478. That parallel citation appears with the case in Volume 325 of the *Arkansas Reports*. After the hardbound edition of the official reports was printed, West Publishing Co. withdrew its version of the substituted opinion from Volume 934 of the *South Western Reporter*, Second Series, and republished it with previously omitted matter at 942 S.W.2d 804. Thus, the correct citation to the case is *State v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

313 Ark. at 520, headnote 2, line six:
The word "whelps" should be "welts."

313 Ark. at 523, second paragraph, line nine:
The word "whelps" should be "welts."

276 Ark. at 124, headnote 1, line six:
The word "unless" should be "if."

Set in Bembo

DARBY PRINTING COMPANY
6215 PURDUE DRIVE
ATLANTA, GEORGIA 30336
1996

ARKANSAS
REPORTS

Volume 326

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
September 18, 1996 — December 23, 1996
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1996

CONTENTS

	Page
JUSTICES AND OFFICERS OF THE SUPREME COURT	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Justices of Supreme Court, Per Curiam Opinions, and Per Curiam Orders Adopting or Amending Rules, etc.	xviii
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xxv
TABLE OF OPINIONS NOT REPORTED	xxvii
OPINIONS REPORTED	1
APPENDIX	
Rules Adopted or Amended by Per Curiam Orders	1106
Appointments to Committees	1154
Professional Conduct Matters	1160
Ceremonial Observances	1162
INDEX	
Alphabetical Headnote Index	1164
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	1198

JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(September 18, 1996 —
December 23, 1996, inclusive)

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

TABLE OF CASES REPORTED

A

ABC Home Health of Arkansas, Inc. <i>v.</i> Arkansas Health Servs. Comm'n	573
Adams (Tyson Foods, Inc. <i>v.</i>)	300
Allen (Southern Farm Bureau Cas. Ins. Co. <i>v.</i>)	1023
Allen <i>v.</i> State	541
American Drug Stores, Inc. (Thompson <i>v.</i>)	536
Arkansas Appraiser Licensing and Certification Bd. <i>v.</i> Fletcher	628
Arkansas Dep't of Human Servs. (Gullick <i>v.</i>)	475
Arkansas Health Servs. (ABC Home Health of Arkansas, Inc. <i>v.</i>)	573
Arkansas State Highway and Transp. Dep't <i>v.</i> Kidder	595
Arkansas State Highway Comm'n <i>v.</i> Barker	403
Arkansas State Highway Comm'n (Townsend <i>v.</i>)	731
Armer <i>v.</i> State	7
Avery <i>v.</i> Ward	829

B

Baker, Terrell Demond <i>v.</i> State	580
Baker, Terrell Demond <i>v.</i> State	1096
Bakker <i>v.</i> Ralston	575
Ball <i>v.</i> Foehner	409
Banner Real Estate (City of Russellville <i>v.</i>)	673
Barker (Arkansas State Highway Comm'n <i>v.</i>)	403
Bayless <i>v.</i> State	869
Bell <i>v.</i> State	1097
Betts (Betts <i>v.</i>)	544
Betts <i>v.</i> Betts	544
Bhatti <i>v.</i> McCabe	176
Board of Education (Richie <i>v.</i>)	587
Board of Trustees <i>v.</i> Stodola	581
Board of Trustees <i>v.</i> Stodola	1099
Bolin <i>v.</i> Griggs	66

Bowden <i>v.</i> State	266
Branch <i>v.</i> Carter.....	748
Brooks <i>v.</i> State.....	201
Brown <i>v.</i> Finney.....	691
Brown <i>v.</i> State	56
Burge <i>v.</i> Priest.....	67
Burradell <i>v.</i> State	182
Byrd <i>v.</i> State	10

C

Caple <i>v.</i> State	396
Carrigan, James <i>v.</i> State.....	1100
Carrigan, James <i>v.</i> State.....	271
Carroll, Terry Lynn <i>v.</i> State.....	602
Carroll, Terry Lynn <i>v.</i> State.....	882
Carter (Branch <i>v.</i>).....	748
Carter <i>v.</i> State	497
Central Arkansas Transit Authority (Salley <i>v.</i>).....	804
Central Flying Serv., Inc. (Weiss <i>v.</i>)	685
Chalmers <i>v.</i> Toyota Motor Sales, USA, Inc.....	895
Child Support Enforcement Unit (Davis <i>v.</i>).....	677
Chlanda <i>v.</i> Estate of Fuller	551
Chlanda <i>v.</i> Killebrew.....	791
City of Newport (White <i>v.</i>).....	667
City of Russellville <i>v.</i> Banner Real Estate.....	673
Cleveland <i>v.</i> State	46
Clifton <i>v.</i> State.....	251
Clouette (Smothers <i>v.</i>).....	1017
Clowney <i>v.</i> Gill.....	253
Cody <i>v.</i> State	85
Coleman (Equity Fire & Cas. Ins. Co. <i>v.</i>).....	100
Colonial Mortgage Co. (Schwarz <i>v.</i>).....	455
Colson (Russell <i>v.</i>)	112
Crochet <i>v.</i> Priest.....	338
Cupples <i>v.</i> State	31

D

Dabney <i>v.</i> State	382
------------------------------	-----

Danzie <i>v.</i> State.....	34
Davis <i>v.</i> Child Support Enforcement Unit	677
Diamond Mining Co. (International Resource Ventures, Inc. <i>v.</i>)	765
Dodson <i>v.</i> State.....	637
Donovan <i>v.</i> Priest	353
Douthitt <i>v.</i> Douthitt	372
Douthitt (Douthitt <i>v.</i>).....	372
Douthitt <i>v.</i> State	794

E

Echols <i>v.</i> State	917
Equity Fire & Cas. Ins. Co. <i>v.</i> Coleman.....	100
Estate of Fuller (Chlanda <i>v.</i>).....	551
Evans <i>v.</i> State	279

F

Faulkner County (Haynes <i>v.</i>).....	557
Fieldcrest Cannon, Inc. (Rush <i>v.</i>)	849
Finnegan <i>v.</i> Johnson.....	586
Finney (Brown <i>v.</i>)	691
Fletcher (Arkansas Appraiser Licensing and Certification Bd. <i>v.</i>).....	628
Florence <i>v.</i> Taylor	177
Foehner (Ball <i>v.</i>).....	409

G

Gaither <i>v.</i> State	582
Gilbert (Schlaf <i>v.</i>).....	465
Gilbert (Schlaf <i>v.</i>).....	275
Gill (Clowney <i>v.</i>)	253
Gill (Taylor <i>v.</i>)	1040
Glover (Van Dyke <i>v.</i>)	736
Gordon <i>v.</i> Planters & Merchants Bancshares, Inc.	1046
Gordon <i>v.</i> State.....	90
Goston <i>v.</i> State	106
Grace <i>v.</i> Grace.....	312

Grace (Grace <i>v.</i>)	312
Granquist <i>v.</i> Randolph.....	809
Greene, Jack Gordon <i>v.</i> State	179
Greene, Jack Gordon <i>v.</i> State	822
Griggs (Bolin <i>v.</i>).....	66
Gullick <i>v.</i> Arkansas Dep't of Human Servs.	475

H

Hackleton <i>v.</i> Larkan.....	649
Hall, Rammie Earl <i>v.</i> State.....	318
Hall, Rammie Earl <i>v.</i> State.....	823
Hammett (Jones-Blair Co. <i>v.</i>)	74
Harvest Foods, Inc. (Pennington <i>v.</i>)	704
Harvest Foods, Inc. (Pennington <i>v.</i>)	272
Haynes <i>v.</i> Faulkner County	557
Heritage <i>v.</i> State.....	839
Higgins <i>v.</i> State.....	1030
Hinkle (Reeves <i>v.</i>)	724
Hollomon <i>v.</i> Keadle.....	168
Holt <i>v.</i> Priest	277
Hooker <i>v.</i> Producers Tractor Co.....	760
Howard <i>v.</i> Ozark Guidance Ctr.....	224

I

In Re: Arkansas Board of Legal Specialization.....	1154
In Re: Arkansas Continuing Legal Education Board ...	1155, 1158
In Re: Arkansas Rules for Minimum Continuing Legal Education	1146
In Re: Arkansas State Board of Law Examiners	1157
In Re: Board of Law Examiners	1154
In Re: Committee on Automation	1156
In Re: Compensatory Overtime for Official Court Reporters	1147
In Re: Edwards.....	1160
In Re: Rules of the Supreme Court and Court of Appeals..	1146
In Re: Supreme Court Committee on Child Support.....	1156
In the Matter of Arkansas Rules of Civil Procedure 1, 4, 5, 11, 12, 16, 24, 26, 30, 31, 32, 33,	

34, 35, 37, and 54; Arkansas Rules of Appellate Procedure-Civil 3 and 11; Arkansas Inferior Court Rules 1, 3, 4, 5, 6, 7, and 8; Arkansas Rules of Evidence 410.....	1106
In the Matter of the Retirement of Dudley.....	1162
In the Matter of the Supreme Court Committee on Professional Conduct.....	1157
International Resource Ventures, Inc. <i>v</i> Diamond Mining Co.	765
Isbell <i>v</i> State.....	17

J

Jacuzzi, Inc. (Leathers <i>v</i>)	857
Jennings <i>v</i> State	824
Johnson (Finnegan <i>v</i>)	586
Johnson, George Anthony <i>v</i> State	3
Johnson, John Edward (State <i>v</i>)	660
Johnson, John L., Jr. (State <i>v</i>)	189
Johnson, Larry <i>v</i> State.....	761
Johnson, Stacey <i>v</i> State.....	430
Jones <i>v</i> Jones	481
Jones <i>v</i> Jones	828
Jones (Jones <i>v</i>).....	481
Jones (Jones <i>v</i>).....	828
Jones, Demetrius Lamont <i>v</i> State	681
Jones, John, Jr. <i>v</i> State.....	61
Jones, Michael Leonard <i>v</i> State.....	397
Jones-Blair Co. <i>v</i> Hammett.....	74

K

Keadle (Hollomon <i>v</i>)	168
Kemp <i>v</i> State	910
Kidder (Arkansas State Highway and Transp. Dep't <i>v</i>).....	595
Killebrew (Chlanda <i>v</i>)	791
Kindle <i>v</i> State	282

L

Landrum <i>v</i> State	994
Larkan (Hackleton <i>v</i>)	649
Leathers <i>v</i> Jacuzzi, Inc.	857
Lee, Ledell <i>v</i> State	229
Lee, Ledell <i>v</i> State	529
Like <i>v</i> Pierce	802
Little Rock Cleaning Sys., Inc. <i>v</i> Weiss	1007
Lively <i>v</i> State	398
Lovelady <i>v</i> State	196

M

Maddox <i>v</i> State	515
McCabe (Bhatti <i>v</i>)	176
McCoy <i>v</i> State	104
McGraw <i>v</i> Weeks	285
McNeese <i>v</i> State	787
McNeill (Propst <i>v</i>)	623
Miller <i>v</i> State	1101
Munos (St. Joseph's Regional Health Ctr. <i>v</i>)	605
Murdock <i>v</i> Slater	1067
Murphy Oil USA, Inc. (Unigard Security Ins. Co. <i>v</i>)	826

N

Noble, Sherman <i>v</i> State	462
Noble, Sherman <i>v</i> State	912
Noland (Noland <i>v</i>)	617
Noland <i>v</i> Noland	617
Norman <i>v</i> State	210
Nucor Holding Corp. <i>v</i> Rinkines	217

O

Office of Child Support Enforcement <i>v</i> Troxel	524
Ozark Guidance Ctr. (Howard <i>v</i>)	224

P

Parham <i>v.</i> Worthen Trust Company, Inc.....	754
Parker <i>v.</i> Priest.....	123
Parker <i>v.</i> Priest.....	386
Parker <i>v.</i> Priest.....	400
Parker <i>v.</i> Priest.....	464
Parker <i>v.</i> Southern Farm Bureau Cas. Ins. Co.	1073
Pastchol <i>v.</i> St. Paul Fire & Marine Ins. Co.	140
Patterson <i>v.</i> State	1004
Pearson, Evans, and Chadwick (Schmidt <i>v.</i>).....	499
Peeler <i>v.</i> State.....	423
Pennington <i>v.</i> Harvest Foods, Inc.....	272
Pennington <i>v.</i> Harvest Foods, Inc.....	704
Pierce (Like <i>v.</i>).....	802
Planters & Merchants Bancshares, Inc. (Gordon <i>v.</i>).....	1046
Potlatch Corp. (Thompson <i>v.</i>)	244
Priest (Burge <i>v.</i>)	67
Priest (Crochet <i>v.</i>)	338
Priest (Donovan <i>v.</i>).....	353
Priest (Holt <i>v.</i>).....	277
Priest (Parker <i>v.</i>)	123
Priest (Parker <i>v.</i>)	386
Priest (Parker <i>v.</i>)	400
Priest (Parker <i>v.</i>)	464
Priest (Scott <i>v.</i>)	69
Priest (Scott <i>v.</i>)	328
Priest (Scott <i>v.</i>)	466
Priest (Southland Racing Corp. <i>v.</i>).....	1
Priest (Stratton <i>v.</i>)	469
Producers Tractor Co. (Hooker <i>v.</i>)	760
Profit <i>v.</i> State	825
Propst <i>v.</i> McNeill.....	623
Propst <i>v.</i> State.....	1102
Pulaski County Circuit Court (State <i>v.</i>)	886
Purifoy (Western Waste Indus. <i>v.</i>)	256

R

Ralston (Bakker <i>v.</i>).....	575
----------------------------------	-----

Randolph (Granquist <i>v.</i>)	809
Rayford <i>v.</i> State	656
Real Estate (City of Russellville <i>v.</i>)	673
Reed <i>v.</i> State	27
Reeves <i>v.</i> Hinkle	724
Reyes <i>v.</i> State	913
Richie <i>v.</i> Board of Education	587
Richmond <i>v.</i> State	728
Rinkines (Nucor Holding Corp. <i>v.</i>)	217
Rush <i>v.</i> Fieldcrest Cannon, Inc.	849
Russell <i>v.</i> Colson	112

S

Salley <i>v.</i> Central Arkansas Transit Authority	804
Sanders <i>v.</i> State	415
Schlaf <i>v.</i> Gilbert	275
Schlaf <i>v.</i> Gilbert	465
Schmidt <i>v.</i> Pearson, Evans, and Chadwick	499
Schwarz <i>v.</i> Colonial Mortgage Co.	455
Scott <i>v.</i> Priest	69
Scott <i>v.</i> Priest	328
Scott <i>v.</i> Priest	466
Sherman <i>v.</i> State	153
Sims <i>v.</i> State	296
Skiver <i>v.</i> State	914
Slater (Murdock <i>v.</i>)	1067
Smallwood <i>v.</i> State	813
Smith, Allen <i>v.</i> State	238
Smith, Allen <i>v.</i> State	528
Smith, Kenny <i>v.</i> State	520
Smith (Tharp <i>v.</i>)	260
Smith (South <i>v.</i>)	774
Smothers <i>v.</i> Clouette	1017
South <i>v.</i> Smith	774
Southern Farm Bureau Cas. Ins. Co. <i>v.</i> Allen	1023
Southern Farm Bureau Cas. Ins. Co. (Parker <i>v.</i>)	1073
Southland Racing Corp. <i>v.</i> Priest	1
St. Joseph's Regional Health Ctr. <i>v.</i> Munos	605
St. Paul Fire & Marine Ins. Co. (Pastchol <i>v.</i>)	140

Stabbs (Terminix International Co. <i>v.</i>)	239
State (Allen <i>v.</i>)	541
State (Armer <i>v.</i>)	7
State (Baker <i>v.</i>)	580
State (Baker <i>v.</i>)	1096
State (Bayless <i>v.</i>)	869
State (Bell <i>v.</i>)	1097
State (Bowden <i>v.</i>)	266
State (Brooks <i>v.</i>)	201
State (Brown <i>v.</i>)	56
State (Burradell <i>v.</i>)	182
State (Byrd <i>v.</i>)	10
State (Caple <i>v.</i>)	396
State (Carrigan, James <i>v.</i>)	271
State (Carrigan, James <i>v.</i>)	1100
State (Carroll, Terry Lynn <i>v.</i>)	602
State (Carroll, Terry Lynn <i>v.</i>)	882
State (Carter <i>v.</i>)	497
State (Cody <i>v.</i>)	85
State (Cleveland <i>v.</i>)	46
State (Clifton <i>v.</i>)	251
State (Cupples <i>v.</i>)	31
State (Dabney <i>v.</i>)	382
State (Danzie <i>v.</i>)	34
State (Dodson <i>v.</i>)	637
State (Douthitt <i>v.</i>)	794
State (Echols <i>v.</i>)	917
State (Evans <i>v.</i>)	279
State (Gaither <i>v.</i>)	582
State (Gordon <i>v.</i>)	90
State (Goston <i>v.</i>)	106
State (Greene, Jack Gordon <i>v.</i>)	179
State (Greene, Jack Gordon <i>v.</i>)	822
State (Hall, Rammie Earl <i>v.</i>)	318
State (Hall, Rammie Earl <i>v.</i>)	823
State (Heritage <i>v.</i>)	839
State (Higgins <i>v.</i>)	1030
State (Isbell <i>v.</i>)	17
State (Jennings <i>v.</i>)	824
State (Johnson, George Anthony <i>v.</i>)	3

State (Johnson, Larry <i>v.</i>)	761
State (Johnson, Stacey <i>v.</i>)	430
State <i>v.</i> Johnson, John Edward	660
State <i>v.</i> Johnson, John L., Jr.	189
State (Jones, Demetrius Lamont <i>v.</i>)	681
State (Jones, John, Jr. <i>v.</i>)	61
State (Jones, Michael Leonard <i>v.</i>)	397
State (Kemp <i>v.</i>)	910
State (Kindle <i>v.</i>)	282
State (Landrum <i>v.</i>)	994
State (Lee, Ledell <i>v.</i>)	229
State (Lee, Ledell <i>v.</i>)	529
State (Lively <i>v.</i>)	398
State (Lovelady <i>v.</i>)	196
State (Maddox <i>v.</i>)	515
State (McCoy <i>v.</i>)	104
State (McNeese <i>v.</i>)	787
State (Miller <i>v.</i>)	1101
State (Noble, Sherman <i>v.</i>)	462
State (Noble, Sherman <i>v.</i>)	912
State (Norman <i>v.</i>)	210
State (Patterson <i>v.</i>)	1004
State (Peeler <i>v.</i>)	423
State (Profit <i>v.</i>)	825
State (Propst <i>v.</i>)	1102
State <i>v.</i> Pulaski County Circuit Court	886
State (Rayford <i>v.</i>)	656
State (Reed <i>v.</i>)	27
State (Reyes <i>v.</i>)	913
State (Richmond <i>v.</i>)	728
State (Sanders <i>v.</i>)	415
State (Sherman <i>v.</i>)	153
State (Sims <i>v.</i>)	296
State (Skiver <i>v.</i>)	914
State (Smallwood <i>v.</i>)	813
State (Smith, Allen <i>v.</i>)	238
State (Smith, Allen <i>v.</i>)	528
State (Smith, Kenny <i>v.</i>)	520
State (Stephens <i>v.</i>)	401
State (Story <i>v.</i>)	86

State (Tabor <i>v.</i>)	51
State <i>v.</i> Tedder	495
State <i>v.</i> Tien	71
State <i>v.</i> Tien	583
State (Turner <i>v.</i>)	115
State (Wallace <i>v.</i>)	376
State (Weaver <i>v.</i>)	82
State (Webb <i>v.</i>)	878
State (Weber <i>v.</i>)	564
State (Whitfield <i>v.</i>)	762
State (Whitney <i>v.</i>)	206
State (Willingham <i>v.</i>)	468
State (Wright <i>v.</i>)	276
Stephens <i>v.</i> State	401
Stodola (Board of Trustees <i>v.</i>)	581
Stodola (Board of Trustees <i>v.</i>)	1099
Story <i>v.</i> State	86
Stratton <i>v.</i> Priest	469

T

Tabor <i>v.</i> State	51
Taylor <i>v.</i> Gill	1040
Taylor (Florence <i>v.</i>)	177
Tedder (State <i>v.</i>)	495
Terminix International Co. <i>v.</i> Stabbs	239
Tharp <i>v.</i> Smith	260
Thompson <i>v.</i> American Drug Stores, Inc.	536
Thompson <i>v.</i> Potlatch Corp.	244
Tien (State <i>v.</i>)	71
Tien (State <i>v.</i>)	583
Townsend <i>v.</i> Arkansas State Highway Comm'n	731
Toyota Motor Sales, USA, Inc. (Chalmers <i>v.</i>)	895
Troxel (Office of Child Support Enforcement <i>v.</i>)	524
Turner <i>v.</i> State	115
Tyson Foods, Inc. <i>v.</i> Adams	300

U

Unigard Security Ins. Co. <i>v.</i> Murphy Oil USA, Inc.	826
---	-----

V

Van Dyke <i>v.</i> Glover	736
---------------------------------	-----

W

Wallace <i>v.</i> State	376
Ward (Avery <i>v.</i>)	829
Weaver <i>v.</i> State	82
Webb <i>v.</i> State	878
Weber <i>v.</i> State	564
Weeks (McGraw <i>v.</i>)	285
Weiss <i>v.</i> Central Flying Serv., Inc.	685
Weiss (Little Rock Cleaning Sys., Inc. <i>v.</i>)	1007
Western Waste Indus. <i>v.</i> Purifoy	256
White <i>v.</i> City of Newport	667
Whitfield <i>v.</i> State	762
Whitney <i>v.</i> State	206
Willingham <i>v.</i> State	468
Worthen Trust Company, Inc. (Parham <i>v.</i>)	754
Wright <i>v.</i> State	276

OPINIONS DELIVERED BY THE RESPECTIVE
JUSTICES OF THE ARKANSAS SUPREME COURT
DURING THE PERIOD COVERED BY THIS
VOLUME AND DESIGNATED FOR PUBLICATION

BRADLEY D. JESSON, CHIEF JUSTICE:

Avery <i>v.</i> Ward.....	829
Burradell <i>v.</i> State	182
Evans <i>v.</i> State	279
Finnegan <i>v.</i> Johnson.....	586
Gullick <i>v.</i> Arkansas Department of Human Services	475
Heritage <i>v.</i> State.....	839
Johnson, George Anthony <i>v.</i> State	3
Jones <i>v.</i> Jones	481
Jones-Blair Co. <i>v.</i> Hammett.....	74
Lee, Ledell <i>v.</i> State	529
Rayford <i>v.</i> State	656
Richie <i>v.</i> Board of Education	587
Rush <i>v.</i> Fieldcrest Cannon, Inc.	849
State <i>v.</i> Johnson, John Edward.....	660
State <i>v.</i> Johnson, John L., Jr.	189
State <i>v.</i> Tedder.....	495
Stratton <i>v.</i> Priest.....	469
Terminix International Co. <i>v.</i> Stabbs.....	239
Thompson <i>v.</i> American Drug Stores, Inc.	536
Thompson <i>v.</i> Potlatch Corp.	244
Weaver <i>v.</i> State	82
White <i>v.</i> City of Newport	667

ROBERT H. DUDLEY, JUSTICE:

Allen <i>v.</i> State.....	541
Arkansas State Highway & Transportation Dep't <i>v.</i> Kidder	595
Arkansas State Highway Comm'n <i>v.</i> Barker.....	403
Armer <i>v.</i> State	7
Ball <i>v.</i> Foehner	409
Betts <i>v.</i> Betts	544
Chlanda <i>v.</i> Estate of Fuller	551
Cody <i>v.</i> State	85

Echols <i>v.</i> State	917
International Resource Ventures, Inc. <i>v.</i> Diamond Mining	765
Kindle <i>v.</i> State	282
Landrum <i>v.</i> State	994
Leathers <i>v.</i> Jacuzzi, Inc.	857
Lovelady <i>v.</i> State.....	196
McGraw <i>v.</i> Weeks.....	285
Sanders <i>v.</i> State	415
Sims <i>v.</i> State	296
South <i>v.</i> Smith.....	774
State <i>v.</i> Staton	431
Story <i>v.</i> State.....	86
Tyson Foods, Inc. <i>v.</i> Adams	300

DAVID NEWBERN, JUSTICE:

Bayless <i>v.</i> State.....	869
Brooks <i>v.</i> State.....	201
Byrd <i>v.</i> State	10
Carroll <i>v.</i> State.....	602
City of Russellville <i>v.</i> Banner Real Estate	673
Davis <i>v.</i> Child Support Enforcement Unit	677
Equity Fire & Causalty Insurance Co. <i>v.</i> Coleman	100
Gordon <i>v.</i> State.....	90
Grace <i>v.</i> Grace.....	312
Haynes <i>v.</i> Faulkner County	557
Isbell <i>v.</i> State.....	17
Jones, Demetrius Lamont <i>v.</i> State	681
McCoy <i>v.</i> State	104
McNeese <i>v.</i> State.....	787
Peeler <i>v.</i> State.....	423
Reed <i>v.</i> State	27
St. Joseph's Regional Health Center <i>v.</i> Munos.....	605
Weber <i>v.</i> State	564
Whitney <i>v.</i> State.....	206

TOM GLAZE, JUSTICE:

Carter <i>v.</i> State	497
Chlanda <i>v.</i> Killebrew.....	791

Clifton <i>v.</i> State.....	251
Clowney <i>v.</i> Gill.....	253
Douthitt <i>v.</i> State.....	794
Goston <i>v.</i> State.....	106
Hall <i>v.</i> State.....	318
Like <i>v.</i> Pierce.....	802
Noland <i>v.</i> Noland.....	617
Patterson <i>v.</i> State.....	1004
Propst <i>v.</i> McNeill.....	623
Russell <i>v.</i> Colson.....	112
Salley <i>v.</i> Central Arkansas Transit Authority.....	804
Schmidt <i>v.</i> Pearson, Evans, and Chadwick.....	499
Scott <i>v.</i> Priest.....	328
Turner <i>v.</i> State.....	115
Webb <i>v.</i> State.....	878
Weiss <i>v.</i> Central Flying Serv., Inc.....	685
Western Waste Indus. <i>v.</i> Purifoy.....	256

DONALD L. CORBIN, JUSTICE:

ABC Home Health <i>v.</i> Arkansas Health Service Comm'n.....	573
Arkansas Appraiser Licensing & Certification Bd. <i>v.</i> Fletcher.....	628
Bakker <i>v.</i> Ralston.....	575
Brown <i>v.</i> Finney.....	691
Crochet <i>v.</i> Priest.....	338
Cupples <i>v.</i> State.....	31
Danzie <i>v.</i> State.....	34
Dodson <i>v.</i> State.....	637
Donovan <i>v.</i> Priest.....	353
Douthitt <i>v.</i> Douthitt.....	372
Granquist <i>v.</i> Randolph.....	809
Little Rock Cleaning Systems, Inc. <i>v.</i> Weiss.....	1007
Norman <i>v.</i> State.....	210
Parker <i>v.</i> Priest.....	123
Pastchol <i>v.</i> St. Paul Fire & Marine Ins. Co.....	140
Sherman <i>v.</i> State.....	153
Smothers <i>v.</i> Clouette.....	1017
Southern Farm Bureau Casualty Ins. Co. <i>v.</i> Allen.....	1023
Tharp <i>v.</i> Smith.....	260

ROBERT L. BROWN, JUSTICE:

Bolin <i>v.</i> Griggs	66
Carroll <i>v.</i> State	882
Cleveland <i>v.</i> State	46
Hackleton <i>v.</i> Larkan	649
Higgins <i>v.</i> State	1030
Johnson, Stacey <i>v.</i> State	430
Maddox <i>v.</i> State	515
Nucor Holding Corp. <i>v.</i> Rinkines	217
Pennington <i>v.</i> Harvest Foods, Inc.	704
Reeves <i>v.</i> Hinkle	724
Richmond <i>v.</i> State	728
Schwarz <i>v.</i> Colonial Mortgage Co.	455
Smith, Kenny <i>v.</i> State	520
State <i>v.</i> Pulaski County Circuit Court ..	886
Tabor <i>v.</i> State	51
Taylor <i>v.</i> Gill	1040
Townsend <i>v.</i> Arkansas State Highway Comm'n ..	731
Wallace <i>v.</i> State	376

ANDREE LAYTON ROAF, JUSTICE:

Branch <i>v.</i> Carter	748
Brown <i>v.</i> State	56
Chalmers <i>v.</i> Toyota Motor Sales, USA, Inc.	895
Dabney <i>v.</i> State	382
Gordon <i>v.</i> Planters & Merchants Bancshares, Inc.	1046
Hollomon <i>v.</i> Keadle	168
Howard <i>v.</i> Ozark Guidance Center	224
Jones, John, Jr. <i>v.</i> State	61
Lee <i>v.</i> State	229
Murdick <i>v.</i> Slater	1067
Office of Child Support Enforcement <i>v.</i> Troxel	524
Parham <i>v.</i> Worthen Trust Co., Inc.	754
Parker <i>v.</i> Priest	386
Parker <i>v.</i> Southern Farm Bureau Casualty Insurance Co.	1073
Smallwood <i>v.</i> State	813
Van Dyke <i>v.</i> Glover	736

PER CURIAM:

Baker, Terrell Demond <i>v.</i> State	580
Baker, Terrell Demond <i>v.</i> State	1096
Bell <i>v.</i> State	1097
Bhatti <i>v.</i> McCabe	176
Board of Trustees <i>v.</i> Stodola	581
Board of Trustees <i>v.</i> Stodola	1099
Bowden <i>v.</i> State	266
Burge <i>v.</i> Priest	67
Caple <i>v.</i> State	396
Carrigan <i>v.</i> State	1100
Carrington <i>v.</i> State	271
Florence <i>v.</i> Taylor	177
Gaither <i>v.</i> State	582
Greene, Jack Gordon <i>v.</i> State	179
Greene, Jack Gordon <i>v.</i> State	822
Hall <i>v.</i> State	823
Holt <i>v.</i> Priest	277
Hooker <i>v.</i> Producers Tractor Co.	760
Jennings <i>v.</i> State	824
Johnson, Larry <i>v.</i> State	761
Jones <i>v.</i> Jones	828
Jones, Michael Leonard <i>v.</i> State	397
Kemp <i>v.</i> State	910
Lively <i>v.</i> State	398
Miller <i>v.</i> State	1101
Noble, Sherman <i>v.</i> State	462
Noble, Sherman <i>v.</i> State	912
Parker <i>v.</i> Priest	464
Parker <i>v.</i> Priest	400
Pennington <i>v.</i> Harvest Foods, Inc.	272
Profit <i>v.</i> State	825
Propst <i>v.</i> State	1102
Reyes <i>v.</i> State	913
Schlaf <i>v.</i> Gilbert	275
Schlaf <i>v.</i> Gilbert	465
Scott <i>v.</i> Priest	69
Scott <i>v.</i> Priest	466
Skiver <i>v.</i> State	914

Smith, Allen <i>v</i> State	238
Smith, Allen <i>v</i> State	528
Southland Racing Corp. <i>v</i> Priest	1
State <i>v</i> Tien	71
State <i>v</i> Tien	583
Stephens <i>v</i> State.....	401
Unigard Security Insurance Co. <i>v</i> Murphy Oil USA, Inc.	826
Whitfield <i>v</i> State.....	762
Willingham <i>v</i> State	468
Wright <i>v</i> State	276

APPENDIX

RULES ADOPTED OR AMENDED BY PER CURIAM ORDER:

In Re: Administrative Order Number 3.....	1151
In Re: Arkansas Rules for Minimum Continuing Legal Education	1146
In Re: Compensatory Overtime for Official Court Reporters.....	1147
In Re: Rules of the Supreme Court and Court of Appeals	1146
In the Matter of Changes to Rules of Civil Procedure; Rules of Appellate Procedure-Civil; Inferior Court Rules; and Arkansas Rules of Evidence.....	1106

APPOINTMENTS TO COMMITTEES:

In Re: Arkansas Board of Legal Specialization (Per Curiam).....	1154
In Re: Arkansas Continuing Legal Education Board (Per Curiam).....	1155, 1158
In Re: Arkansas State Board of Law Examiners (Per Curiam).....	1157
In Re: Board of Law Examiners (Per Curiam)	1154
In Re: Committee on Automation (Per Curiam)	1156
In Re: Supreme Court Committee on Child Support (Per Curiam).....	1156

In the Matter of the Supreme Court Committee on
Professional Conduct (Per Curiam)..... 1157

PROFESSIONAL CONDUCT MATTERS:

In Re: Edwards (Per Curiam) 1160

CEREMONIAL OBSERVANCES:

In Re: Retirement of Justice Dudley 1162

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

- Acklin v. State, CR 96-242 (Per Curiam), Pro Se Motion to File Belated Appellant's Brief denied and Pro Se Motion for Duplication of Brief at Public Expense moot October 14, 1996.
- Allen v. State, CA CR 93-1410 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied October 14, 1996.
- Barry v. State, CR 96-1145 (Per Curiam), Pro Se Motions to Relieve Counsel and Appoint Counsel denied, to Proceed In Forma Pauperis, for Use of Transcript, and for Extension of time moot October 28, 1996.
- Bell v. State, CR 96-392 (Per Curiam), affirmed October 7, 1996.
- Bonds v. State, CA CR 95-15 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied November 11 1996.
- Bowden v. State, CR 95-1258 (Per Curiam), Pro Se Motion for Copy of Case Files and Transcript at Public Expense and for Appointment of Counsel denied October 28, 1996.
- Boyd v. State, CR 96-579 (Per Curiam), Pro Se Motions to Supplement Record and for Extension of Time granted; Motion to Duplicate Brief at Public Expense denied; Motion to Amend Tendered Brief moot October 7, 1996.
- Bradford v. State, CR 96-140 (Per Curiam), affirmed October 14, 1996.
- Bradford v. State, CR 96-172 (Per Curiam), Motion of Garry J. Corrothers to Withdraw as Counsel for Appellant granted October 28, 1996.
- Brown, Elizabeth Gammon v. State, CR 96-498 (Per Curiam), Pro Se Motion for Extension of Time to File Brief and Motion for Duplication of Brief at Public Expense denied and appeal dismissed October 14, 1996.
- Brown, Jeffery v. State, CR 96-876 (Per Curiam), Pro Se Motion for Record and Pro Se Motion for Extension of Time to File Brief granted December 16, 1996.
- Brown, Henderson v. State, CR 96-495 (Per Curiam), affirmed December 16, 1996.
- Bryant v. State, CR 96-202 (Per Curiam), affirmed September 30, 1996.
-

- Bryant v. State, CR 96-202 (Per Curiam), Petition for rehearing denied November 4, 1996.
- Clay v. State, CR 96-877 (Per Curiam), Pro Se Motion for Record and for Extension of Time to File Brief granted December 16, 1996.
- Cloer v. Norris, CR 96-734 (Per Curiam), Pro Se Petition for Writ of Certiorari denied November 11 1996.
- Collins v. State, CR 96-389 (Per Curiam), affirmed September 23, 1996.
- Cooper v. State, CR 96-880 (Per Curiam), Pro Se Motion for Record and for Extension of Time to File Brief granted December 9, 1996.
- Cravey v. State, CR 91-49 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript and Other Material at Public Expense denied September 23, 1996.
- Daffron v. State, CR 96-14 (Per Curiam), affirmed November 4, 1996.
- Daffron v. State, CR 96-14 (Per Curiam) Petition for Rehearing denied December 9, 1996.
- Danzie v. State, CR 95-1309 (Per Curiam), Motion for Attorney's Fee remanded December 16, 1996.
- Davasher v. State, CR 91-5 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied December 9, 1996.
- Davis v. Davis, 96-1028 (Per Curiam), Pro Se Petition for Writ of Mandamus moot November 4, 1996.
- Davis v. Hilburn, 96-1282 (Per Curiam), Pro Se Motion to Proceed In Forma Pauperis and Pro Se Petition for Writ of Mandamus moot November 25, 1996.
- Donovan v. Priest, 96-1120 (Per Curiam), Motion of State of Arkansas to intervene granted.
- Donovan v. Priest, 96-1120 (Per Curiam), Motion of State of Arkansas to stay or recall mandate denied.
- Farver v. State, CA CR 94-913 (Per Curiam), Pro Se Motion to File Belated Petition for Review denied September 23, 1996.
- Franklin v. State, CR 96-996 (Per Curiam), Pro Se Motion to File Supplemental Appellant's Brief denied November 18, 1996.
- Garrett v. Davis, 96-138 (Per Curiam), Pro Se Petition for Writ of Mandamus moot December 16, 1996.
- Goodwin v. State, CR 96-796 (Per Curiam), Pro Se Motion for

- Clarification denied and appeal dismissed; Appellee's Motion to Dismiss Appeal moot November 25, 1996.
- Gordon v. State, CR 96-878 (Per Curiam), Pro Se Motion for Record and for Extension of Time to File Brief granted December 16, 1996.
- Griffin v. McNeil, CR 96-727 (Per Curiam), Pro Se Motion for Reconsideration of Petition for Writ of Mandamus moot October 21, 1996.
- Johnston v. State, CR 96-742 (Per Curiam), Pro Se Petition for Writ of Certiorari denied October 7, 1996.
- Hardenbrook v. State, CR 96-749 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied November 4, 1996.
- Harris v. State, CR 96-613 (Per Curiam), Pro Se Motion to File a Belated Brief denied and appeal dismissed December 9, 1996.
- Hill v. State, CR 96-667 (Per Curiam), Appellant's Motion to File Belated Response to Motion to Dismiss Appeal moot and Appellee's Motion to dismiss Appeal denied September 30, 1996.
- Horton v. State CR 95-1335 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied October 21, 1996.
- Hill v. State, CR 96-710 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied November 4, 1996.
- Hughes v. State, CR 90-20 (Per Curiam), Pro Se Petition to Proceed in Circuit Court Pursuant to Criminal Procedure Rule 37 denied December 9, 1996.
- Hughey v. State, CR 96-395 (Per Curiam), affirmed October 14, 1996.
- Johnson v. State, CR 96-226 (Per Curiam), affirmed October 21, 1996.
- Johnston v. State, CR 96-742 (Per Curiam), Pro Se Petition for Writ of Certiorari denied October 7, 1996.
- Kilgore v. State, CR 96-581 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed October 28, 1996.
- Kilpatrick v. State, CR 96-926 (Per Curiam), Pro Se Motion for Rule on Clerk denied November 18, 1996.
- Martin v. State, CR 95-1314 (Per Curiam), Pro Se Motion to File Pro Se Supplemental Appellant's Brief and to Proceed Pursuant to Rule 36.24 denied September 30, 1996.
- McLaurin v. State, CR 95-1304 (Per Curiam), Rebriefing Ordered

- November 25, 1996.
- Miller v. State, CR 96-314 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Belated Appeal of Order dismissed October 28, 1996.
- Mills v. State, CR 95-150 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied November 11, 1996.
- Morrow v. State, CR 96-617 (Per Curiam), Pro Se Motion for Extension of Time denied and appeal dismissed October 21, 1996.
- Mosley v. State, CR 95-872 (Per Curiam), Pro Se Motion for Transcript denied September 30, 1996.
- Moten v. State, CR 96-879 (Per Curiam), Pro Se Motion for Record and for Extension of Time to File Brief granted December 16, 1996.
- Passley v. State, CR 96-1007 (Per Curiam), Motion of Kent McLemore to Withdraw as Attorney for Appellant granted October 28, 1996.
- Passley v. State, CR 96-1007 (Per Curiam), Appellant's Motion for Extension of Time to File Brief granted October 28, 1996.
- Prince v. State, CR 95-1349 (Per Curiam), Petition for Rehearing denied October 7, 1996.
- Reed v. State, CR 96-493 (Per Curiam), Pro Se Motion to File Supplemental Abstract granted October 21, 1996.
- Reel v. State, CR 96-614 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied September 23, 1996.
- Roberson v. State, CR 96-390 (Per Curiam), affirmed September 23, 1996.
- Roberson v. State, CR 96-390 (Per Curiam), Petition for Rehearing denied October 28, 1996.
- Rowbottom v. State, CR 96-956 (Per Curiam), Pro Se Motion for Clarification and Discovery and Pro Se Motion for Stay and Extension of Time to File Brief denied September 23, 1996.
- Sanders v. State, CR 96-914 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment dismissed November 18, 1996.
- Shabazz v. State, CR 96-457 (Per Curiam), Pro Se Motion for Appointment of Counsel denied October 21, 1996.
- Stacy v. State, CR 96-696 (Per Curiam), Pro Se Motions for Extension of Time to File Brief and for Appointment of Counsel denied and appeal dismissed November 11 1996.

- Taylor v. State, CR 96-273 (Per Curiam), affirmed December 16, 1996.
- Thomas v. State, CR 96-528 (Per Curiam), Pro Se Motion for Record and Pro Se Motion for Extension of Time to File Brief granted December 9, 1996.
- Tucker v. State, CA CR 94-156 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied November 18, 1996.
- Voss v. Erwin, 96-658 (Per Curiam), Pro Se Petition for Writ of Mandamus moot October 7, 1996.
- Voss v. State, CR 96-485 (Per Curiam), Pro Se Motion and Amended Motion for Extension of Time to File Brief and for Appointment of Counsel granted in part and denied in part; Pro Se Motion to Supplement Record Denied November 25, 1996.
- Wells v. Davis, 96-1089 (Per Curiam), Pro Se Motion for Accelerated Proceedings denied September 30, 1996.
- Wells v. Davis, 96-1089 (Per Curiam), Pro Se Petition for Writ of Mandamus moot November 4, 1996.
- White v. State, CR 86-154 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied October 14, 1996.
- Williams v. State, CR 96-555 (Per Curiam), Pro Se Motion for Photocopy at Public Expense of Petition Contained in Record denied and appeal dismissed November 4, 1996.
- York v. State, CR 96-411 (Per Curiam), affirmed September 30, 1996.

1

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

IN THE MATTER OF CHANGES TO THE RULES OF
CIVIL PROCEDURE, RULES OF APPELLATE
PROCEDURE—CIVIL, INFERIOR COURT RULES, AND
ARKANSAS RULES OF EVIDENCE

Supreme Court of Arkansas
Delivered November 18, 1996

PER CURIAM. The 1995 report of the Arkansas Supreme Court Committee on Civil Practice contained a number of suggested rules changes. Many of the suggestions arose as a result of the 1993 revisions in the Federal Rules of Civil Procedure and our interest in having rules as much like the Federal Rules as possible. The Committee's 1995 suggestions were published by our *per curiam* order of November 13, 1995, so that members of the bench and bar could have an opportunity to comment.

We received a number of letters commenting on the proposed changes, some of them containing suggestions for revision of the Committee's suggestions. The Committee considered the comments and suggestions and revised and added to its suggested changes in its 1996 report.

We have reviewed the Committee's work and, with some minor changes, we publish the results and adopt the following suggested rules changes to be effective March 1, 1997.

We again express our gratitude to the members of our Civil Practice Committee, chaired by Judge John Ward, and to the Committee Reporter, Professor John J. Watkins, for the Committee's diligence in performing the important task of keeping our civil rules current, efficient, and fair.

ARKANSAS RULES OF CIVIL PROCEDURE

1. The second sentence of Rule 1 is amended to read as follows:

They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

The Reporter's Notes accompanying Rule 1 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
This revision, which adds the words "and administered" to

the second sentence, is based on the 1993 amendment to the corresponding federal rule. Its purpose is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. Attorneys, as officers of the court, share this responsibility.

2. Subdivisions (a), (c) and (g) of Rule 4 are amended to read as follows:

(a) **ISSUANCE:** Upon the filing of the complaint, the clerk shall forthwith issue a summons and cause it to be delivered for service to a sheriff or to a person appointed by the court or authorized by law to serve process.

(c) **BY WHOM SERVED:** Service of summons shall be made by (1) a sheriff of the county where the service is to be made, or his or her deputy; (2) any person not less than eighteen years of age appointed for the purpose of serving a summons by either the court in which the action is filed or a court in the county in which service is to be made; or (3) in the event of service by mail pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

(g) **PROOF OF SERVICE:** The person effecting service shall make proof thereof to the clerk within the time during which the person served must respond to the summons. If service is made by a sheriff or his or her deputy, proof may be made by executing a certificate of service or return contained in the same document as the summons. If service is made by a person other than a sheriff or his or her deputy, the person shall make affidavit thereof, and if service has been by mail, shall attach to the affidavit a return receipt, envelope, affidavit or other writing required by Rule 4(d)(8). Proof of service in a foreign country, if effected pursuant to the provisions of a treaty or convention as provided in Rule 4(e)(4), shall be made in accordance with the applicable treaty or convention.

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

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT: Subdivision (a) has been reworded for purposes of clarity; no substantive change is intended. Subdivision (c)(2) has been amended to make plain that "the court" for purposes of appointing a person to serve the summons and complaint is either the court in which the action is filed or the court in the county where service is to be made. This question arose, but was not resolved, in *Hubbard v. The Shores Group, Inc.*, 313 Ark. 498, 855 S.W.2d 924 (1993). The amendment also changes the caption of subdivision (g) from "return" to "proof of service," makes minor grammatical revisions, and adds a sentence dealing with proof of service in a foreign country, a matter not previously addressed by the rule. The new provision is based on language in Rule 4(l) of the Federal Rules of Civil Procedure, as amended in 1993.

3. Subdivision (c) of Rule 5 is amended by designating its text, excluding the caption, as paragraph (1) and by adding a new paragraph (2) as follows:

(2) The clerk may accept facsimile transmissions of any paper filed under this rule, provided that it is transmitted on to bond-type paper that can be preserved for a period of at least ten years or on to nonbond paper if an original is substituted for the facsimile copy within ten days of transmission. Any signature appearing on a facsimile copy shall be presumed authentic until proven otherwise. A facsimile copy shall be deemed received when it is transmitted and received on the clerk's facsimile machine without regard to the hours of operation of the clerk's office. The date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of the filing.

Subdivision (d) of Rule 5 is amended by adding the following new sentence at the end:

If the judge permits filing by facsimile transmission, the provisions of subdivision (c)(2) of this rule shall apply.

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

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:

Subdivision (c) has been amended by designating the former text as paragraph (1) and by adding new paragraph (2), which addresses the filing of papers by facsimile. A statute adopted in 1989 provides that clerks may accept fax copies of pleadings but does not cover other papers that are filed. See Ark. Code Ann. § 16-20-109. Paragraph (2) tracks the language of the statute but applies to any paper filed under this rule. The new sentence added to subdivision (d) makes clear that the judge may permit papers filed with him to be transmitted by facsimile.

4. Rule 11 is amended by designating its text as subdivision (a) and by amending the second sentence to read as follows:

A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address and telephone number, if any.

Rule 11 is amended further by adding a new subdivision (b) as follows:

(b) A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (a). It shall be served as provided in Rule 5 but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

The Reporter's Notes accompanying Rule 11 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The rule has been amended by designating the former text as subdivision (a) and by adding new subdivision (b), which is based Rule 11(c)(1) of the Federal Rules of Civil Procedure, as amended in 1993. In addition, the second sentence of subdivision (a) has been revised to require a party not represented by counsel to provide his telephone number, if any,

along with his address.

New subdivision (b) provides that requests for sanctions must be made as a separate motion, rather than simply be included as an additional prayer for relief in another motion. The motion for sanctions is not to be filed until at least 21 days, or other such period as the court may set, after being served. If the alleged violation is corrected during this period, the motion should not be filed with the court. This provision is intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation.

To emphasize the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the new subdivision provides that the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a letter or telephone call, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

5. Subdivision (h) of Rule 12 is amended by adding the following sentence at the end of paragraph (3):

Whenever it appears that venue is improper, the court shall dismiss the action or direct that it be transferred to a county where venue would be proper, with the plaintiff having an election if the action could be maintained in more than one county.

The Reporter's Notes accompanying Rule 12 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:

Paragraph (3) of subdivision (h) has been amended by adding a new sentence authorizing the court to transfer the case in the event that venue is improper. Rather than dismiss the action, the court may transfer it to any county where venue would be proper, with the plaintiff having an election

if venue would lie in more than one county. The revised provision is generally consistent with Arkansas case law and the practice in the federal courts. See *Terminal Oil Co. v. Gautney*, 202 Ark. 748, 152 S.W.2d 309 (1941); *Goodwin v. Harrison*, 300 Ark. 474, 780 S.W.2d 518 (1989); 28 U.S.C. § 1406(a).

6. Rule 16 is amended by redesignating paragraph (6) as paragraph (7) and by adding new paragraph (6), as follows:

(6) The possibility of settlement or, pursuant to Ark. Code Ann. § 16-7-202, the use of extrajudicial procedures, including mediation, to resolve the dispute;

The Reporter's Notes accompanying Rule 16 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
Former paragraph (6) has been redesignated as paragraph (7) and a new paragraph (6) added to mention the possibility of settlement and the use of extrajudicial procedures, such as mediation. The amended rule, based on a similar provision in the Alabama Rules of Civil Procedure, recognizes that pretrial conferences can be profitably used to discuss settlement. Since it eases congested court dockets and results in savings to litigants and the judicial system, settlement should be facilitated at as early a stage in the litigation as possible. However, settlement conferences are not mandatory and would be a waste of time in many cases. In addition to settlement, paragraph (6) refers to exploring the use of alternative means of dispute resolution, such as mediation, in accordance with Ark. Code Ann. § 16-7-202.

7. The introductory clause of subdivision (c) of Rule 26 is amended to read as follows:

Upon motion by a party or by the person from whom discovery is sought, stating that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment,

oppression, or undue burden or expense, including one or more of the following:

The Reporter's Notes accompanying Rule 26 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The introductory clause of Rule 26(c) has been revised along the lines of the corresponding federal rule, as amended in 1993. A similar change has been made in Rule 37(a). As amended, subdivision (c) provides that a motion for a protective order must contain a statement that the movant has conferred, either in person or by telephone, with the other affected parties in a good faith effort to resolve the discovery dispute without the need for court intervention. If the movant is unable to get opposing parties even to discuss the matter, the efforts in attempting to arrange such a conference should be indicated. Like the motion itself, the statement required by subdivision (c) is subject to Rule 11.

8. Subdivision (b) of Rule 28 is amended to read as follows:

(b) IN FOREIGN STATES OR COUNTRIES. In a foreign state or country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to any applicable treaty or convention or pursuant to a letter of request, whether or not captioned a letter rogatory. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impractical or inconvenient, and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To The Appropriate Authority in [name of the country]." When a letter of

request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

The Reporter's Notes accompanying Rule 28 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
This revision, based on a 1993 change in federal Rule 28(b), is intended to make effective use of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and of any similar treaties that the United States may enter into in the future which provide procedures for taking depositions abroad. The term "letter of request" has been substituted for "letter rogatory" because it is the primary method provided by the Hague Convention. A letter rogatory is essentially a form of a letter of request.

9. Subdivision (b) of Rule 30 is amended by replacing the words "Non-Stenographic Recording" in the caption with the words "Method of Recording"; by inserting the words "under subdivision (a)" after the word "plaintiff" in the first sentence of paragraph (2); by deleting the last sentence of paragraph (2); and by revising paragraphs (3), (4) and (7) to read as follows:

(3) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court

otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes: (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For purposes of these rules, a deposition by such means is taken at the place where the deponent is to answer questions.

Rule 30 is amended further by revising subdivisions (c)-(f) to read as follows:

(c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Arkansas Rules of Evidence, except Rule 103. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(3) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the

deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on either the party taking the deposition in which event he shall (1) transmit such questions to the office, or (2) directly upon the officer, who shall propound them to the witness and record the answers verbatim.

(d) SCHEDULE AND DURATION; MOTION TO TERMINATE OR LIMIT EXAMINATION. (1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. Absent exceptional circumstances, a party or a lawyer for a party may instruct a deponent not to answer only when necessary to preserve a reasonable, good faith claim of privilege, to enforce a limitation on evidence imposed by the court, or to present a motion under paragraph (3).

(2) The court may by order limit the time permitted for the conduct of a deposition, but shall allow additional time if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds that an impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an immediate sanction, including the reasonable costs and attorneys' fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district in which the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court

in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) REVIEW BY WITNESS; CHANGES; SIGNING. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) CERTIFICATION BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING. (1) The officer shall certify that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. The officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [name of witness]" and, if ordered by the court in which the action is pending pursuant to Rule 5(c), promptly file it with the clerk of that court. Otherwise, the officer shall send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to

inspect and copy them, and return them to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to the deposition if it is to be used at trial.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain, for the period established for transcripts of court proceedings in the retention schedule for official court reporters, stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent; provided that it shall be the duty of the party causing the deposition to be taken to furnish one copy to any opposing party, or in the event there is more than one opposing party, a copy may be filed with the clerk for the use of all opposing parties, and the party filing the deposition shall give prompt notice of its filing to all other parties.

The Reporter's Notes accompanying Rule 30 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The changes that have been made in subdivisions (b)-(f) of this rule track the 1993 amendments to federal Rule 30 and are designed in part to take into account the use of video and other recording methods. Provisions in the federal rule limiting the number of depositions were not adopted.

The last sentence of subdivision (b)(2), which dealt with use of the deposition of a party unable to obtain counsel, has been deleted, and this matter is now covered by Rule 32(a)(3). The primary change in subdivision (b) is that parties will be authorized to record deposition testimony by nonstenographic means without first having to obtain permission of the court or agreement from other counsel. Under paragraph (3), the party taking the deposition has the choice of the method of recording. Objections to nonstenographic recording of a deposition, when warranted by the

circumstances, can be presented to the court by motion pursuant to Rule 26(c). Other parties may arrange, at their own expense, for the recording of a deposition by a means in addition to the method designated by the person noticing the deposition. A party choosing to record a deposition only by videotape or audiotape should understand that a transcript will be required if the deposition is later to be offered as evidence at trial under amended Rule 32(c) or on a dispositive motion under Rule 56.

Revised paragraph (4) of subdivision (b) requires that all depositions be recorded by an officer designated or appointed under Rule 28 and contains special provisions designed to provide basic safeguards to assure the utility and integrity of recordings taken other than stenographically. Paragraph (7) has been amended to allow the taking of a deposition not only by telephone but also by other remote electronic means, such as satellite television, when agreed to by the parties or authorized by the court.

Minor changes have been made in subdivision (c). First, the reference to Rule 43(b) has been replaced with a reference to the Arkansas Rules of Evidence. The examination and cross-examination of a deponent are governed by those rules, with the exception of Rule 103, which deals with evidentiary rulings. Second, subdivision (c) has been revised to reflect the changes made in subdivision (b) regarding the method by which a deposition is to be recorded. Finally, the provision that dealt with instructing the deponent not to answer has been deleted and moved to subdivision (d)(1).

Unlike its federal counterpart, subdivision (c) does not contain an exception from Rule 615 of the Rules of Evidence. By virtue of this exception in the federal rule, other potential witnesses are not automatically excluded from a deposition at a party's request, although the court can order their exclusion via a protective order. Because such an exception is not included in revised subdivision (c), depositions in Arkansas will continue to be subject to Rule 615.

The first sentence of subdivision (d)(1) provides that any objections during a deposition must be made concisely

and in a non-argumentative and non-suggestive manner. Depositions frequently have been unduly prolonged, if not unfairly frustrated, by lengthy objections and colloquy, often suggesting how the witness should respond. While objections may, under the revised rule, be made during a deposition, they should ordinarily be limited to those that under Rule 32(d)(3) might be waived if not made at that time, *i.e.*, objections on grounds that might be immediately obviated or cured, such as the form of a question or the responsiveness of an answer. Under Rule 32(b), other objections can, even without the so-called "usual stipulation" preserving objections, be raised for the first time at trial and therefore should be kept to a minimum during a deposition.

The second sentence of subdivision (d)(1) addresses an even more disruptive practice, *i.e.*, instructing the deponent not to answer a question. This provision previously appeared, in slightly different form, in subdivision (c), having been added in 1991. The former language has been retained as to "reasonable, good faith claims of privilege," but new grounds based on the federal rule — to enforce a limitation on evidence imposed by the court and to present a motion under what is now designated as paragraph (3) — have been added.

Paragraph (2) of subdivision (d) dispels any doubts regarding the power of the court to limit, by order, the length of a deposition. This provision also expressly authorizes the court to impose the cost resulting from obstructive tactics that unreasonably prolong a deposition on the person engaged in such obstruction. This sanction may be imposed on a non-party witness as well as a party or attorney. Unlike the federal rule, paragraph (2) does not empower a trial court to establish limits on deposition length by local rule, since such rules are not permissible in Arkansas.

Paragraph (3) authorizes appropriate sanctions not only when a deposition is unreasonably prolonged, but also when an attorney engages in other practices that frustrate the fair examination of the deponent, such as making improper objections or giving directions not to answer prohibited by paragraph (1). In general counsel, should not engage in any

conduct during a deposition that would not be allowed in the presence of a judicial officer. The making of an excessive number of objections may itself constitute sanctionable conduct.

Various changes have been made in subdivision (e) to reduce problems sometimes encountered when depositions are taken stenographically. Reporters frequently have difficulties obtaining signatures from deponents and the return of depositions. Under the revision, pre-filing review by the deponent is required only if requested before the deposition is completed. If review is requested, the deponent will be allowed 30 days to review the transcript or recording and to indicate any changes in form or substance. Signature of the deponent will be required only if review is requested and changes are made.

Subdivision (f) has been revised to reflect changes made in subdivision (b) as to the methods by which a deposition may be taken. If the court does not order the deposition to be filed pursuant to Rule 5(c), the reporter can transmit the transcript or recording to the attorney taking the deposition or ordering the transcript or record, who then becomes custodian for the court of the original record of the deposition. Pursuant to paragraph (2), as under the prior rule, any other party is entitled to secure a copy of the deposition from the officer designated to take it. New language makes clear that the officer must retain a copy of the record or the stenographic notes, unless otherwise ordered by the court or agreed by the parties. The retention period is the same as that specified for transcripts of court proceedings in the record retention schedule for official court reporters in Arkansas.

10. Subdivision (a) of Rule 31 is amended to read as follows:

(a) SERVING QUESTIONS; NOTICE. (1) Any party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison

may be taken only by leave of court on such terms as the court prescribes.

(2) A party must obtain leave of court if the person to be examined is confined in prison or if, without the written stipulation of the parties, a plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery, or if special notice is given as provided in Rule 30(b)(2).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

The Reporter's Notes accompanying Rule 31 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
Subdivision (a) has been divided into four numbered paragraphs. The first two paragraphs make the rule consistent with Rule 30 as to the circumstances under which leave of court is required. Paragraph (3) is the former second paragraph, without substantive change. Paragraph (4) is the

former third paragraph, but the total time for developing cross-examination, redirect, and recross questions is reduced from 50 days to 28 days.

11. Rule 32 is amended by adding the following new sentence at the end of subdivision (a)(3):

A deposition taken without leave of court pursuant to a notice under Rule 30(b)(2) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

Rule 32 is amended further by changing the cross-reference in subdivision (b) from “(c)(3)” to “(d)(3)”, by redesignating subdivision (c) as subdivision (d), and by adding new subdivision (c) as follows:

(c) FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

The Reporter's Notes accompanying Rule 32 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT: Subdivision (a)(3) has been amended by adding a new paragraph that includes not only the substance of provisions formerly found in Rule 30(b)(2), but also new language dealing with the situation in which a party who receives minimal notice of a deposition is unable to obtain a court

ruling on a motion for protective order seeking to delay or change the place of the deposition. Ordinarily, a party does not obtain protection merely by the filing of a motion under Rule 26(c); any such protection is dependent upon the court's ruling. Under the revision, a party receiving less than 11 days notice of a deposition can, provided that its motion for a protective order is filed promptly, be spared the risks resulting from nonattendance at the deposition held before its motion is ruled upon. Although the revision covers only the risk that the deposition could be used against the non-appearing movant, it should also follow that, when the proposed deponent is the movant, the deponent would have "just cause" for failing to appear for purposes of Rule 37(d)(1). Inclusion of this provision is not intended to signify that 11 days' notice is the minimum advance notice for all depositions or that greater than 10 days should necessarily be deemed sufficient in all situations.

Former subdivision (c) has been redesignated as subdivision (d), without change, and a new subdivision (c) added to reflect the increased opportunities for video and audio recording of depositions under revised Rule 30. Under the new provision, a party may offer deposition testimony in any of the forms authorized under Rule 30(b) but, if offering it in a nonstenographic form, must provide the court with a transcript of the portions so offered. On request of any party in a jury trial, deposition testimony offered other than for impeachment purposes is to be presented in a nonstenographic form if available, unless the court directs otherwise.

12. Rule 33 is amended by deleting the semicolon and the words "Procedures for Use" from the caption of subdivision (a); by redesignating subdivisions (b) and (c) as (c) and (d), respectively; and by designating the second paragraph of subdivision (a) as subdivision (b) and amending it to read as follows:

(b) ANSWERS AND OBJECTIONS. (1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. (2) The party answering interrogatories shall repeat each interrogatory

immediately before the answer or objection. The answers are to be signed by the person making them and the objections signed by the attorney making them. (3) The party upon whom the interrogatories have been served shall serve a copy of the answers, or objections within 30 days after the service of the interrogatories, except that a defendant must serve answers or objections within 30 days after the service of the interrogatories upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29. (4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. (5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

The Reporter's Notes accompanying Rule 33 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
Subdivision (a) of the former version of this rule has been divided into two subdivisions, and former subdivisions (b) and (c) have been redesignated as (c) and (d), respectively.

Paragraph (1) of subdivision (b) is based on the former second paragraph of subdivision (a). It emphasizes the duty of the responding party to provide full answers to the extent not objectionable. If, for example, an interrogatory seeking information about numerous facilities or products is deemed objectionable, but an interrogatory seeking information about a lesser number of facilities or products would not have been objectionable, the interrogatory should be answered with respect to the latter even though an objection is raised as to the balance of the facilities or products. Similarly, the fact that additional time may be needed to respond to some questions or parts of questions should not justify a delay in responding to those questions or portions that can be answered within the prescribed time.

Paragraph (2) is taken without change from the former second paragraph of subdivision (a). Paragraph (3) provides, in accordance with the prior version of the rule, that the court may shorten or lengthen the time for responding to interrogatories. New language expressly permits the parties to extend or shorten the response time by written agreement, a modification in discovery procedures that is permissible under Rule 29. Paragraph (4), which is new, makes clear that objections must be specifically justified and that unstated or untimely grounds for objection are ordinarily waived.

13. The first and second sentences of the second paragraph of Rule 34(b) are amended to read as follows:

The party upon whom the request has been served shall serve a written response within 30 days after the service of the request, except that a defendant must serve answers or objections within 30 days after the service of the interrogatories upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

- The Reporter's Notes accompanying Rule 34 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The first and second sentences of the second paragraph of Rule 34(b) have been amended to track Rule 33(b)(3). In accordance with the prior version of Rule 34(b), the court may shorten or lengthen the time for responding to interrogatories. New language expressly permits the parties to extend or shorten the response time by written agreement, a modification in discovery procedures that is permissible under Rule 29.

14. The first sentence of subdivision (a) of Rule 35 is amended to read as follows:

When the mental or physical condition (including the blood group) of a party, or a person in the custody or under the

legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical examination by a physician or a mental examination by a physician or a psychologist or to produce for the examination the person in his custody or legal control.

Subdivision (b) of Rule 35 is amended by revising the caption to read "Report of Examining Physician or Psychologist" and by adding the words "or psychologist" after the word "physician" at each point that the latter appears in paragraphs (1) and (2). The clause preceding the semicolon in the first sentence of subdivision (c) of Rule 35 is amended to read as follows:

Where a party relies upon his physical, mental or emotional condition as an element of his claim or defense, he shall, within 30 days after the request of any other party, execute an authorization to allow such other party to obtain copies of his medical records;

The Reporter's Notes accompanying Rule 35 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
Subdivision (a) has been amended to permit the appointment of psychologists to conduct mental examinations, and subdivision (b) has been revised to reflect this change. As amended, the Arkansas rule is similar to the version of the corresponding federal rule that was in effect from 1988 to 1991. The current federal rule is broader, allowing physical or mental examinations "by a suitably licensed or certified examiner." Because the impact of such an expansive provision at the state level could be considerable, only an incremental step — *i.e.*, permitting mental examinations by psychologists — has been taken at this time, and that step is consistent with Arkansas practice. Under Rule 702 of the Arkansas Rule of Evidence, a psychologist may testify as an expert about the mental condition of a party or other person. *See, e.g., Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993) (divorce); *Walker v. Walker*, 262 Ark. 648, 559 S.W.2d 716 (1978) (child custody). It makes little sense, therefore, to preclude a psychologist from conducting an examination pursuant to Rule 35. Moreover, psychologists are trained to

conduct mental examinations, which are a routine, widely accepted part of the practice of psychology in both forensic and non-forensic settings.

The amendment to subdivision (c) imposes a 30-day deadline for responding to a request for an authorization to obtain copies of a party's medical records. A companion change in Rule 37(a) provides for a motion to compel if the authorization is not provided in a timely manner.

15. Rule 37 is amended by revising paragraphs (2)-(4) of subdivision (a) to read as follows:

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested, or fails to permit inspection as requested, or if a party, in response to a request under Rule 35(a), fails to provide an appropriate medical authorization, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion shall include a statement that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) Evasive or Incomplete Answer or Response. For purposes of this subdivision, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) Expenses and Sanctions. (A) If the motion is granted or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them, to pay to the moving party the

reasonable expenses incurred in making the motion, including attorneys' fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's response or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Rule 37 is amended further by adding the following between the first and second sentences of the first paragraph of subdivision (d):

Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a statement that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action.

The Reporter's Notes accompanying Rule 37 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The major change in this rule appears in paragraph (2) of subdivision (a) and corresponds to an amendment to Rule 26(c). Under paragraph (2), a party moving to compel discovery must state in the motion, subject to Rule 11, that it has attempted to resolve the dispute informally before seek-

ing judicial intervention. Another change corresponds to an amendment to Rule 35(a) establishing a 30-day deadline for responding to a request for authorization to obtain medical records. As amended, paragraph (2) provides for a motion to compel if the authorization is not provided in a timely manner. In addition, the last sentence of paragraph (2) has been moved to paragraph (4).

Under revised paragraph (3) of subdivision (a), evasive or incomplete disclosures and responses to interrogatories and production requests are treated as failures to disclose or respond. Interrogatories and requests for production should not be read or interpreted in an artificially restrictive or hypertechnical manner to avoid disclosure of information fairly covered by the discovery request, and to do so is subject to appropriate sanctions.

Paragraph (4) of subdivision (a) has been divided into three subparagraphs for ease of reference, and in each the phrase "after opportunity for hearing" has been changed to "after affording an opportunity to be heard" to make clear that the court can consider such questions on written submissions as well as on oral hearings. Subparagraph (A) has been revised to cover the situation in which information that should have been produced without a motion to compel is produced after the motion is filed but before a hearing. It also provides that a party should not be awarded expenses for filing a motion that could have been avoided by conferring with opposing counsel. Subparagraph (C) has been amended to include the provision formerly contained in subdivision (a)(2) with respect to protective orders and to include the same requirement of an opportunity to be heard that is specified in subparagraphs (A) and (B).

Under revised subdivision (d), a party seeking discovery via interrogatory or production request must make an attempt to obtain responses before filing a motion for sanctions. The last sentence has been amended to clarify that it is the pendency of a motion for protective order that may be urged as an excuse for a violation of the subdivision. If a motion has been denied, the party cannot argue that its subsequent failure to comply would be justified. In this con-

nection, it should be noted that the filing of a motion under Rule 26(c) is not self-executing. The relief authorized under that rule depends on obtaining the court's order to that effect.

16. Rule 54 is amended by adding new subdivision (e) as follows:

(e) ATTORNEYS' FEES. (1) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(2) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute or rule entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which the claim is made.

(3) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(c) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law, and a judgment shall be set forth in a separate document as provided in Rule 58.

(4) The court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof.

(5) The provisions of subparagraphs (1) through (4) do not apply to claims for fees and expenses as sanctions for violations of these rules.

The Reporter's Notes accompanying Rule 54 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:

New subdivision (e) establishes a procedure for presenting claims for attorney's fees, a frequently recurring form of litigation not initially contemplated by the rules. It is based on federal Rule 54(d)(2), as amended in 1993.

Paragraph (1) makes plain that the subdivision does not apply to attorneys' fees recoverable as an element of damages, as when sought under the terms of a contract. Such damages typically are to be claimed in a pleading and may involve issues to be resolved by a jury. Paragraph (2) provides a deadline for motions for attorneys' fees — 14 days after final judgment unless the court or a statute specifies some other time. Prior law did not prescribe any specific time limit on claims for attorneys' fees. See *Marsh & McLennan v. Herget*, 321 Ark. 180, 900 S.W.2d 195 (1995).

One purpose of this provision is to assure that the opposing party is informed of the claim before the time for appeal has elapsed. Prompt filing affords an opportunity for the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind. It also enables the court in appropriate cases to make its ruling on a fee request in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits.

Filing a motion for fees under subdivision (e) does not affect the finality or appealability of a judgment. If an appeal on the merits of the case is taken, the court may rule on the claim for fees, defer its ruling on the motion, or deny the motion without prejudice and direct under paragraph (2) a new period for filing after the appeal has been resolved. A notice of appeal does not extend the time for filing a fee claim based on the initial judgment, but the court may effectively extend the period by permitting claims to be filed after resolution of the appeal. A new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court or the granting of a motion under Rule 59.

The new subdivision does not require that the motion for attorneys' fees be supported at the time of filing with the evidentiary material bearing on the fees. This material must

be submitted in due course, according to such schedule as the court may direct in light of the circumstances of the case. What is required is the filing of a motion sufficient to alert the adversary and the court that there is a claim for fees and the amount of such fees or a fair estimate.

If directed by the court, the moving party is required to disclose any fee agreement, including those between attorney and client, between attorneys sharing a fee to be awarded, and between adversaries made in partial settlement of a dispute where the settlement must be implemented by court action, as required by Rule 23 and similar provisions. This subdivision does not affect the practice in class action cases whereby claims for fees are presented in advance of hearings to consider approval of the proposed settlement, since the court is permitted to require submissions of fee claims in advance of the entry of judgment.

Paragraph (3) assures the parties of an opportunity to make an appropriate presentation with respect to issues involving the evaluation of legal services. In some cases, an evidentiary hearing may be needed, but this is not required in every case. The amount of time to be allowed for the preparation of submissions both in support of and in opposition to awards should be tailored to the particular case. The court is expressly authorized to make a determination of the liability for fees before receiving submissions by the parties bearing on the amount of an award. This option may be appropriate in actions in which the liability issue is doubtful and the evaluation issues are numerous and complex.

The court may order disclosure of additional information, such as that bearing on prevailing local rates or on the appropriateness of particular services for which compensation is sought. On rare occasion, the court may determine that discovery would be useful to the parties. Fee awards should be made in the form of a separate judgment under Rule 58 since such awards are subject to appellate review. To facilitate such review, paragraph (3) requires the court to set forth its findings of fact and conclusions of law. It is anticipated that this explanation will be quite brief in most cases.

Paragraph (4) authorizes the court to refer issues regarding the amount of a fee to a master under Rule 53. This authorization eliminates any controversy as to whether such references are permitted under Rule 53(b) as "matters of account and difficult computation of damages." Paragraph (5) excludes from this rule the award of fees as sanctions for violations of these rules.

ARKANSAS RULES OF APPELLATE PROCEDURE—CIVIL

1. Subdivision (e) of Rule 3 is amended by revising the last sentence to read as follows:

The notice shall also contain a statement that the appellant has ordered the transcript, or specific portions thereof, and has made any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510(c).

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

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:

The last sentence of subdivision (e) has been revised to require an appellant to state, in the notice of appeal, that he or she not only has ordered the transcript or relevant portions thereof, but also has made the necessary financial arrangements with the court reporter for its preparation. By statute, the court reporter's duty to transcribe and certify the record "may be conditioned upon the payment, when requested by the court reporter, of up to fifty percent (50%) of the estimated cost of the transcript." Ark. Code Ann. § 16-13-510(c). The amendment is intended to eliminate delay that occurred under the previous version of the rule when a lawyer stated in the notice of appeal that he had ordered the transcript but the court reporter did not begin work because payment had not been received or financial arrangements made.

2. The following new rule is adopted:

RULE 11.

CERTIFICATION BY PARTIES AND ATTORNEYS;
FRIVOLOUS APPEALS; SANCTIONS

(a) The filing of a brief, motion or other paper in the Supreme Court or the Court of Appeals constitutes a certification of the party or attorney that, to the best of his knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact; is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and is not filed for

an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party or an attorney who files a paper in violation of this rule, or party on whose behalf the paper is filed, is subject to a sanction in accordance with this rule.

(b) The Supreme Court or the Court of Appeals shall impose a sanction upon a party or attorney or both for (1) taking or continuing a frivolous appeal or initiating a frivolous proceeding, (2) filing a brief, motion, or other paper in violation of subdivision (a) of this rule, (3) prosecuting an appeal for purposes of delay in violation of Rule 6-2 of the Rules of the Supreme Court and Court of Appeals, and (4) any act of commission or omission that has an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. For purposes of this rule, a frivolous appeal or proceeding is one that has no reasonable legal or factual basis.

(c) Sanctions that may be imposed for violations of this rule include, but are not limited to, dismissal of the appeal; striking a brief, motion, or other paper; awarding actual costs and expenses, including reasonable attorneys' fees; imposing a penalty payable to the court; awarding damages attributable to the delay or misconduct; and, where there has been delay, advancing the case on the docket and affirming.

(d) A party may by motion request that a sanction be imposed upon another party or attorney pursuant to this rule, or the court may impose a sanction on its own initiative. A motion shall be in the form required by Rule 2-1 of the Rules of the Supreme Court and Court of Appeals, with citations to the record where appropriate, and will be called for submission three weeks after filing. The opposing party may file a response within 21 days of the filing of the motion. If the court on its own initiative determines that a sanction may be appropriate, the court shall order the party or attorney to show cause in writing why a sanction should not be imposed on the party or attorney or both.

The following Reporter's Notes to accompany Rule 11 are adopted:

REPORTER'S NOTES TO RULE 11: This rule, added in 1996, addresses frivolous appeals and other misconduct, topics that were heretofore not covered by these rules. The Supreme Court has held that Rule 11 of the Rules of Civil Procedure does not apply on appeal, *Wright v. Eddinger*, 320 Ark. 151, 894 S.W.2d 937 (1995), and the Rules of the Supreme Court and the Court of Appeals deal only with specific problems, such as insufficient abstracts and appeals prosecuted for purposes of delay. In contrast, Rule 38 of the Federal Rules of Appellate procedure expressly provides for an award of "just damages and single or double costs" to the appellee if an appeal is frivolous, and two federal statutes also deal with the issue. See 28 U.S.C. §§ 1912, 1927.

Rule 11 does not follow the federal model because confusion has arisen in the federal courts as to the relationship between Rule 38 and the two statutes. Rather, the new rule is based on a proposal offered in response to the problems that have arisen under the federal provisions. See Martineau, *Frivolous Appeals: The Uncertain Federal Response*, 1984 Duke L.J. 845. In addition, the new rule contains a cross-reference to Rule 6-2 of the Rules of the Supreme Court and Court of Appeals, which addresses delay, and sets forth the same procedure specified in that rule.

ARKANSAS INFERIOR COURT RULES

1. Rule 1 is amended to read as follows:

These rules shall govern the procedure in all civil actions in the inferior courts of this state. They shall apply in the small claims division of municipal courts to the extent that they do not conflict with Small Claims Procedure Act, Ark. Code Ann. §§ 16-17-601—16-17-614.

The Reporter's Notes accompanying Rule 1 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The first sentence has been amended by deleting the exception for county courts. Previously, actions brought in county court were considered to be "in the nature of special proceedings," but statutory procedures are virtually nonexistent. To fill the gap, these rules have been made applicable. The second sentence has been added to make clear proceedings in the small claims division of a municipal court are governed by Small Claims Procedure Act. These rules are applicable in such cases to the extent that they do not conflict with the act.

2. Rule 3 is amended to read as follows:

A civil action is commenced by filing a complaint with the clerk of the proper court who shall note thereon the date and precise time of filing. However, an action shall not be deemed commenced as to any defendant not served with the complaint, in accordance with these rules, within 120 days of the date on which the complaint is filed, unless within that time and for good cause shown the court, by written order or docket entry, extends the time for service.

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

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The first sentence of the rule has been rewritten so that it is identical to Rule 3 of the Rules of Civil Procedure. The second sentence, which established a 60-day time limit for service, has been revised to make it consistent with Rule 4(i)

of the Rules of Civil Procedure.

3. Rule 4 is amended to read as follows:

COMPLAINT

A complaint shall be in writing and signed by the plaintiff or his or her attorney, if any. It shall also: (a) state the names of the parties, the nature and basis of the claim, and the nature and amount of the relief sought; (b) warn the defendant to file a written answer with the clerk of the court, and to serve a copy to the plaintiff or his or her attorney, within 20 days after service of the complaint upon him; (c) warn the defendant that failure to file an answer may result in a default judgment being entered against him; (d) recite the address of the plaintiff or his or her attorney, if any; and (e) contain a proof of service form which shall be completed by the person serving the defendant.

Exhibit 4-A accompanying Rule 4 is retitled "Complaint — Form" and amended to read as follows:

COMPLAINT — FORM

_____ Court of _____, Arkansas

Plaintiff

vs.

No. _____

Defendant

Plaintiff's Address: _____

Nature of Claim: _____

Nature and Amount
of Relief Claimed: _____

Date Claim Arose: _____

Factual Basis
of Claim: _____

Plaintiff's Attorney,
if any, and Address:

[Signature of Attorney, if
any, or of Plaintiff]

NOTICE TO DEFENDANT

You are hereby warned to file a written answer with the clerk of the court within 20 days after the date that you receive this complaint and to send a copy to the plaintiff or to his or her attorney. If you do not file an answer within 20 days, or if you fail to file an answer, a default judgment may be entered against you.

[Signature of Clerk or Judge]

PROOF OF SERVICE

STATE OF ARKANSAS
CITY OF _____

I, _____, hereby certify that I served the within complaint on the defendant, _____, at _____ o'clock ____m. on _____, 19____, by [state method of service].

[Signature and Office, if any]

Subscribed and sworn to before me this ____ day of _____, 19____. [To be completed if service is by someone other than sheriff or constable.]

Notary Public or Court Clerk

My Commission Expires:

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

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The rule has been amended to require that the complaint warn the defendant that he must file a written answer within 20 days of service, with a copy to the plaintiff or his or her attorney. This change is necessary in light of the revision in Rule 6, which now requires that the answer be in writing. Previously, a defendant was permitted to appear personally in court, without filing a written answer, on the day stated in the complaint. In addition, the rule now refers to "proof of service" rather than to the "return," a change in terminology consistent with a 1996 amendment to Rule 4(g) of the Rules of Civil Procedure. Rule 4 has also been rewritten for purposes of clarity, and the accompanying form has been revised to take into account the changes made in the rule.

4. Rule 5 is amended by substituting "Service of Complaint" for "Service of Claim Form" in the caption, by substituting "complaint" for "claim form" in subdivision (a), and by revising subdivision (b) to read as follows:

(b) PROOF OF SERVICE. The person serving the complaint shall promptly make proof of service thereof to the clerk of the court. Proof of service shall reflect that which has been done to show compliance with these rules. Service by one other than the sheriff or constable shall state by affidavit the time, place, and manner of service.

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

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
The rule has been amended to replace the term "claim form" with the word "complaint." In addition, subdivision (b) now refers to "proof of service" rather than to "return," a change in terminology consistent with a 1996 amendment to Rule 4(g) of the Rules of Civil Procedure. The word "summons" in subdivision (b) has been replaced with "complaint."

5. Rule 6 is amended to read as follows:

CONTENTS OF ANSWER; TIME FOR FILING

(a) CONTENTS OF ANSWER. An answer shall be in writ-

ing and signed by the defendant or his or her attorney, if any. It shall also state: (1) the reasons for denial of the relief sought by the plaintiff, including any affirmative defenses and the factual bases therefor; (2) any affirmative relief sought by the defendant, whether by way of counterclaim, set-off, cross-claim, or third-party claim, the factual bases for such relief, and the names and addresses of other persons needed for determination of the claim for affirmative relief; and (3) the address of the defendant or his or her attorney, if any.

(b) TIME FOR FILING ANSWER OR REPLY. An answer to a complaint, cross-claim, or third-party claim, and a reply to a counterclaim, shall be filed with the clerk of the court within 20 days of the date that the complaint or other pleading asserting the claim is served. A copy of an answer or reply shall also be served on the opposing party or parties in accordance with Rule 5(b) of the Rules of Civil Procedure.

Exhibit 6-A accompanying Rule 6 is retitled "Answer and Affirmative Relief—Form" and amended to read as follows:

ANSWER AND AFFIRMATIVE RELIEF — FORM

_____ Court of _____, Arkansas

Plaintiff

vs. No. _____

Defendant

Defendant's Address: _____

Reasons for Denial _____

of Plaintiff's Claim: _____

Affirmative Defenses: _____

Nature and Amount _____

of Affirmative Relief Sought: _____

Date Affirmative _____

Claim Arose: _____

Factual Basis of

Affirmative Claim:

Names and Addresses of
Other Persons Needed
for Determination of
Affirmative Claim:

Defendant's Attorney,
if any, and Address:

[Signature of Attorney, if
any, or of Defendant]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing answer was served on [plaintiff or attorney for plaintiff, as appropriate] on the ____ date of _____, 19__, by [state method of service used, e.g., hand delivery, mail, commercial delivery service].

[Signature of Defendant or
Defendant's Attorney]

The Reporter's Notes accompanying Rule 6 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
Former subdivisions (a) and (b) have been collapsed into a single provision that requires a defendant to file a written answer. Under the previous version of the rule, a defendant could simply appear on the trial date without filing a formal answer, unless he intended to assert an affirmative defense or seek affirmative relief, in which case a written answer was necessary. In addition, subdivision (a) now specifies that the answer include information set out in the form accompanying the rule, which has also been revised slightly. Consistent with Rule 4, new subdivision (b) provides that an

answer to a complaint, cross-claim or third-party claim, as well as a reply to a counterclaim, must be filed within 20 days after service. Former subdivision (c) created confusion in this regard by referencing Rule 12(a) of the Rules of Civil Procedure, under which a longer response time is permitted in certain situations.

6. Rule 7 is amended to read as follows:

JURISDICTION — EFFECT OF COUNTERCLAIM,
CROSS-CLAIM, OR THIRD-PARTY CLAIM —
TRANSFER

(a) PLAINTIFF'S CLAIM EXCEEDS JURISDICTIONAL AMOUNT. If the plaintiff's claim is in an amount that exceeds the court's jurisdictional limit, the court, upon its own motion or upon motion of either party, shall dismiss the claim for lack of subject matter jurisdiction.

(b) COMPULSORY COUNTERCLAIM OR SET-OFF. If a compulsory counterclaim or a set-off involves an amount that would cause the court to lose jurisdiction of the case, the court, upon its own motion or upon motion of either party, shall transfer the entire case to circuit court for determination therein as if the case had been appealed.

(c) PERMISSIVE COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM. If a permissive counterclaim, a cross-claim, or a third-party claim involves an amount that would otherwise cause the court to lose jurisdiction of the case, the court shall disregard such counterclaim, cross-claim, or third-party claim and proceed to determine the claim of the plaintiff.

The Reporter's Notes accompanying Rule 7 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT:
Former subdivisions (a) and (b) have been redesignated as subdivisions (b) and (c), respectively, and have been reworded to reflect the terminology of the Rules of Civil Procedure. New subdivision (a) requires the court to dismiss for lack of subject matter jurisdiction if the plaintiff's claim exceeds the jurisdictional amount, which is presently \$3,000.

Previously, the court could transfer the case to circuit court in this situation. *Bonnell v. Smith*, 322 Ark. 141, 908 S.W.2d 74 (1995).

7. Subdivision (a) of Rule 8 is amended to read as follows:

BY DEFAULT. When a party has failed to file an answer or reply within the time specified by Rule 6(b), a default judgment may be rendered against him.

The Reporter's Notes accompanying Rule 8 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT: Subdivision (a) has been amended to take into account the requirement, imposed by amended Rule 6(a), that a formal answer be filed. The previous version provided for a default judgment if the defendant did not appear in court on the trial date. The subdivision has also been revised to correct the cross-reference and to make plain that it applies to any party against whom affirmative relief has been sought.

8. The second sentence of subdivision (b) of Rule 9 is divided into two sentences to read as follows:

It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk.

The Reporter's Notes accompanying Rule 9 are amended by adding the following:

ADDITION TO REPORTER'S NOTES, 1997 AMENDMENT: The second sentence of subdivision (b) has been divided into two sentences and revised to make clear that the clerk's duty to prepare and certify the record for an appeal is conditioned upon the appellant's payment of any fees authorized by law. This requirement is consistent with the notion that the responsibility for perfecting an appeal rests with the appellant, not with the clerk. See *Hawkins v. City of Prairie Grove*, 316 Ark. 150, 871 S.W.2d 357 (1994).

ARKANSAS RULES OF EVIDENCE

Rule 410 is amended to read as follows:

PLEAS AND OFFERS. Evidence of a plea of nolo contendere, whether or not later withdrawn, and of a plea, later withdrawn, of guilty or admission to the charge, or of an offer to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer.

IN RE: RULES OF THE SUPREME COURT AND COURT
OF APPEALS

Supreme Court of Arkansas
Opinion delivered December 9, 1996

PER CURIAM. We adopt the following rule changes, effective January 1, 1997. Rule 2-1(b) of the Rules of the Supreme Court and Court of Appeals is amended as follows:

(b) Number of Copies. In cases pending before the Supreme Court, eight (8) clearly legible copies must be filed on 8 1/2" X 11" paper. In cases pending before the Court of Appeals, fourteen (14) clearly legible copies must be filed on 8 1/2" X 11" paper.

IN RE: ARKANSAS RULES FOR MINIMUM
CONTINUING LEGAL EDUCATION

Supreme Court of Arkansas
Opinion delivered December 16, 1996

PER CURIAM. The Arkansas Continuing Legal Education Board has recommended the adoption of a modification to the continuing legal education rules to provide relief for attorneys who are members of the National Guard or Reserves and are mobilized. We conclude that the following language should be added as an additional paragraph at the end of Rule 5.(D) of the Arkansas Rules and Regulations for Minimum Continuing Legal Education.

Attorney members of the National Guard or Reserves of any branch of the Armed Forces who are mobilized during the reporting period by Gubernatorial or Presidential order shall have an additional 180 days to meet each of the respective filing requirements set forth in the preceding paragraph. Such entitlement shall be based on appropriate documentation to establish the date of mobilization and the date of release from active duty.

IN RE: COMPENSATORY OVERTIME FOR OFFICIAL
COURT REPORTERS AND PROMULGATION OF
ADMINISTRATIVE ORDER NUMBER 9

Supreme Court of Arkansas
Opinion delivered December 16, 1996

PER CURIAM. The enactment of The Court Reporter Fair Labor Amendments of 1995 (29 U.S.C. 207 (o)) necessitated that the state of Arkansas review its procedures to ensure compliance with the Federal Labor Standards Act ("FLSA"). A special committee appointed by the Arkansas Judicial Council composed of judges and court reporters studied the issue and drafted the *Compensatory Time Record Policy for Arkansas Official Court Reporters* ("Policy") and the *Compensatory Time Record for Arkansas Official Court Reporters* ("Time Record"). The Policy and Time Record were considered by the Arkansas Judicial Council and adopted by that body, and were subsequently endorsed by the Board of Certified Court Reporter Examiners and the Arkansas Court Reporters Association. These groups requested that this Court adopt these documents. In addition, they requested that we provide for appropriate enforcement procedures.

We commend the Arkansas Judicial Council, the Board of Certified Court Reporter Examiners, and the Arkansas Court Reporters Association for their work on this issue. The Policy provides that each official court reporter complete the Time Record, that each judge approve the Time Record, and that the Time Records are filed quarterly with the Administrative Office of the Courts.

Having now thoroughly considered the matter, the Court adopts the Policy and promulgates its substantive provisions as Section A of *Administrative Order Number 9 — Compensatory Time Record Policy For Arkansas Official Court Reporters*. As requested by the Arkansas Judicial Council, the Court adopts appropriate enforcement procedures as Section B of the Order. The Court adopts the Time Record which shall be appended to the Order. Administrative Order Number 9 shall be effective January 1, 1997.

ADMINISTRATIVE ORDER NUMBER 9
COMPENSATORY TIME RECORD POLICY
FOR ARKANSAS OFFICIAL COURT REPORTERS

A. *Procedures.* To ensure statewide compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. § 207 (o)(6)), each official court reporter shall complete all sections of the Compensatory Time Record For Arkansas Official Court Reporters form, which is appended hereto, sign the time record to certify that it correctly reports all hours worked in excess of the 40 hour work week that are not excluded by 29 U.S.C. 207 (o), and monthly submit the record to his/her appointing judge for approval.

The appointing judge shall approve and sign each monthly record certifying that, to the best of his/her knowledge, the time record reflects a true and accurate record of compensatory time earned for all hours worked in excess of the 40 hour work week, as defined by the Fair Labor Standards Act ("FLSA"). The appointing judge shall grant the court reporter compensatory time at the rate of one and one-half times the number of hours worked in excess of the 40 hour work week pursuant to this policy.

For the purpose of determining the 40 hour FLSA work week, the established work week shall begin on Saturday at 12:01 a.m. and continue through Friday at 12:00 midnight. Any time excluded by 29 U.S.C. 207 (o) and any time taken off for holidays, compensatory time leave, sick leave, annual leave or any other purpose during the week shall not be counted in determining whether the employee has worked 40 hours.

The appointing judge shall be responsible for maintaining the approved time record and shall forward copies of the previous three months records within the first fifteen days of every calendar quarter (i.e., January 15, April 15, July 15, and October 15) to the Administrative Office of the Courts ("AOC"). The time records shall be retained by the AOC for three years or until completion of an audit by the State Auditor's Office of the AOC, whichever is longer.

Court reporters shall be permitted to use accrued compensatory time as soon as possible when the court is not in session and without unduly disrupting the operations of the court. The appointing judge shall approve use of compensatory time. Compen-

satory time may be used in lieu of sick leave or annual leave.

Under no circumstances shall the outstanding balance of compensatory time exceed 90 hours. The appointing judges are responsible for ensuring that court reporters do not exceed this maximum balance of compensatory time.

Accrued compensatory time should be used prior to the employee's termination of employment. If accrued compensatory time is not used prior to the employee's termination of employment, the appointing judge shall hold the official court reporter position vacant for a period equivalent to the period for which accrued compensatory time is paid. The payment for compensatory time shall be at the ending rate of pay for the employee.

The compensatory time records for official reporters is not intended for use by substitute court reporters. Substitute court reporters shall be governed by the provisions of A.C.A. §16-13-509 as described in the AOC publication, *Arkansas State Trial Court Employee Manual*.

B. *Enforcement.* (i) The failure of court reporters to comply with the requirements of this Order shall constitute grounds for discipline under the provisions of Section 19 (c) of the Regulations of the Board of Certified Court Reporter Examiners and Section 7 of the Rule Providing for Certification of Court Reporters. (ii) The failure of appointing judges to comply with the requirements of this Order shall constitute grounds for discipline under the provisions of Canon 3 (C) of the Arkansas Code of Judicial Conduct.

**COMPENSATORY TIME RECORD
FOR ARKANSAS OFFICIAL COURT REPORTERS**

Name of Reporter _____		Judicial District _____	
Appointing Judge _____		Pay Period/Month _____	
COMPENSATORY TIME			
Prior Month Balance	Earned	Used	Current Month Balance
<p><u>FAIR LABOR STANDARDS ACT (FLSA)</u></p> <p>Court reporters earn compensatory time at the rate of one and one-half the number of FLSA hours worked in excess of 40 hours per work week. Holidays and other time off are not counted in the 40 hour FLSA work week.</p> <p>Hours worked for FLSA purposes are those in which the court reporter performs official work for the court or hours in which the judge requires the court reporter's attendance. Any hours worked in transcript preparation not required by the judge or not performed during hours the court reporter's attendance is required are not considered FLSA hours and should not be counted as hours worked for FLSA purposes.</p> <p>To ensure compliance with the FLSA, complete this record. The record must be signed by the court reporter and the appointing judge. It is required that these records be maintained by the appointing judge and forwarded quarterly to the Administrative Office of the Courts.</p>			
<p><u>CERTIFICATION</u></p> <p>I certify that the reported information is correct:</p>			
Employee Signature _____		Date _____	
Approved:			
Appointing Judge Signature _____		Date _____	

IN RE: ADMINISTRATIVE ORDER NUMBER 3 — TIME
LIMITATIONS — REPORTS

Supreme Court of Arkansas
Opinion delivered December 23, 1996

PER CURIAM. Administrative Order Number 3, subsection (2)(C), is amended by substituting the following new language:

C. Willful noncompliance with the provisions of the order shall constitute grounds for discipline under the provisions of Canon 3 B (8) of the Arkansas Code of Judicial Conduct. Any judge whose quarterly report is not received by the 15th of the month following the end of the previous quarter (i.e., January 15, April 15, July 15, October 15) will be automatically referred to the Judicial Discipline and Disability Commission for possible discipline.

Subsection (3)(C) is amended by changing the Canon reference from 3 A (5) to 3 B (8).

The reference in the first sentence of subsections (2)(C) and (3)(C) was changed from Canon 3 A (5) to Canon 3 B (8) to correspond with changes in the 1972 Model Code Of Judicial Conduct occurring with the adoption of the 1990 Model Code as amended by the *per curiam* order of this Court on July 5, 1993.

The addition of the second sentence in subsection (2)(C) with respect to the late filing of quarterly reports shall become effective with the reports due March 31, 1997, which must be filed no later than April 15, 1997.

—

4

Appointments to
Committees

IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered September 23, 1996

PER CURIAM. Audrey R. Evans of Little Rock, 2nd Congressional District, is appointed to the State Board of Law Examiners for a three-year term ending September 30, 1999. Ms. Evans replaces Kaye McLeod of Little Rock whose term has expired.

Blair Arnold of Batesville, 1st Congressional District, is reappointed to the State Board of Law Examiners for a three-year term ending September 30, 1999.

The Court thanks Ms. Evans for accepting appointment to this Board and Mr. Arnold for accepting reappointment.

The Court expresses its appreciation to Kaye McLeod for her dedicated and faithful service as a member and Chair of the Board.

IN RE: ARKANSAS BOARD OF LEGAL SPECIALIZATION

Supreme Court of Arkansas
Opinion delivered November 18, 1996

PER CURIAM. Bill Penix, Esq., of Jonesboro, First Court of Appeals District, and Winfred A. Trafford, Esq., of Pine Bluff, Fifth Court of Appeals District, are hereby reappointed to the Arkansas Board of Legal Specialization for three-year terms to expire on December 5, 1999.

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

IN RE: ARKANSAS CONTINUING LEGAL EDUCATION
BOARD

Supreme Court of Arkansas
Opinion delivered November 18, 1996

PER CURIAM. The Honorable Sam Bird of Monticello, Fifth Court of Appeals District, and Lisa Mathis-Peters, Attorney at Law, of Little Rock, At-Large Position, are hereby reappointed to the Board of Continuing Legal Education for three-year terms to expire on December 5, 1999. Rex M. Terry, Esq., of Fort Smith, Third Court of Appeals District, is hereby appointed to the Board of Continuing Legal Education for a three-year term to expire on December 5, 1999.

The Court thanks Judge Bird and Ms. Mathis-Peters for accepting reappointment and Mr. Terry for accepting appointment to this most important Board.

The Court expresses its appreciation to Ronald D. Harrison, Esq., of Fort Smith, whose term has expired, for his service on the Board.

IN RE: SUPREME COURT COMMITTEE ON CHILD
SUPPORT

Supreme Court of Arkansas
Opinion delivered November 18, 1996

PER CURIAM. The Honorable Kathleen Bell of West Helena, and Mr. James Barnhill of Little Rock, are hereby reappointed to the Supreme Court Committee on Child Support. These are four-year terms that will expire on November 30, 2000. Ms. Jean Carter, Attorney at Law, of Little Rock, is hereby appointed to the Committee on Child Support for a four-year term to expire on November 30, 2000.

The Court thanks Judge Bell and Mr. Barnhill for accepting reappointment and Ms. Carter for accepting appointment to this most important Committee.

The Court expresses its appreciation to Don Hollingsworth, Esq., of Little Rock, whose term has expired, for his dedicated service to this Committee.

IN RE: COMMITTEE ON AUTOMATION

Supreme Court of Arkansas
Delivered November 25, 1996

PER CURIAM. The Honorable Bentley Story of Forrest City, the Honorable Harry Foltz of Fort Smith, and Stephen C. Sipes, Esq., of Little Rock are reappointed to our Committee on Automation for three-year terms to end on October 31, 1999.

The Court thanks Judges Story and Foltz and Mr. Sipes for accepting reappointment to this most important Committee.

IN THE MATTER OF THE SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Opinion delivered December 9, 1996

PER CURIAM. On December 18, 1989, Richard A. Reid, Esq., of Blytheville was appointed to the Supreme Court Committee on Professional Conduct for a term of seven years, but the *per curiam* order making this appointment erroneously stated that Mr. Reid's term would expire on December 31, 1997 rather than 1996. Mr. Reid has accepted reappointment to the Committee for a second term of seven years to expire on December 31, 2003. The Court expresses its gratitude to Mr. Reid for accepting reappointment to this important Committee.

The Court notes that a similar error concerning the expiration date occurred with respect to the December 21, 1990 order appointing Kenneth Reeves, Esq., of Harrison to the Committee. Mr. Reeves's term properly expires on December 31, 1997, not 1998, as stated in our earlier *per curiam*.

IN RE: ARKANSAS STATE BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered December 16, 1996

PER CURIAM. Jewel E. Brown has petitioned for reinstatement to the Bar of Arkansas. Board member Matthew Horan has advised he will abstain from participation in Mr. Brown's proceeding.

The Court appoints Rick Wade of Fort Smith, Arkansas, to act as a substitute examiner in place of Mr. Horan. Mr. Wade will act as an appointee from the Third Congressional District. This appointment is exclusively for the purpose of authorizing Mr. Wade to participate as a member of the Board of Law Examiners to vote on Mr. Brown's application for reinstatement.

IN RE: ARKANSAS CONTINUING LEGAL EDUCATION
BOARD

Supreme Court of Arkansas
Opinion delivered December 23, 1996

PER CURIAM. The Honorable Carol Anthony of El Dorado, At-Large position, is hereby appointed to our Board of Continuing Legal Education to fill the unexpired term of the Honorable Annabelle Imber, who has resigned. This term expires on December 5, 1998.

The Court thanks Judge Imber for her service and Judge Anthony for accepting appointment to this most important Board.

Professional Conduct
Matters

IN RE: Kenneth Lawton EDWARDS, Jr.;
Arkansas Bar # 85047

Supreme Court of Arkansas
Opinion delivered November 18, 1996

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Kenneth Lawton Edwards, Jr., of Fayetteville, Arkansas to practice law in the State of Arkansas, and direct that Mr. Edwards's name be removed from the list of attorneys authorized to practice law in this state.

Ceremonial
Observances

IN THE MATTER OF THE RETIREMENT OF JUSTICE
ROBERT H. DUDLEY

939 SW2d 811

Supreme Court of Arkansas
Opinion delivered December 9, 1996

PER CURIAM. On the occasion of his retirement from the Supreme Court of Arkansas, the Court expresses its gratitude to Justice Robert H. Dudley for his constant example of civility, scholarship, dignity, and wisdom.

For sixteen years, Justice Dudley has set the highest standards of legal craftsmanship in his opinions and has demonstrated the inestimable value of measured judgment and institutional memory in our deliberations. Like Chaucer's Knight, he is in every respect "a worthy man" who has "loved chivalry, truth and honor, freedom and courtesy."

The Court wishes Justice Dudley godspeed and great joy.

Alphabetical
Headnote
Index

 HEADNOTE INDEX

ACTIONS:

Justiciability, when declaratory relief will lie, requirements satisfied. *Donovan v. Priest*, 353.

ADMINISTRATIVE LAW & PROCEDURE:

Limited review of agency decision. *ABC Home Health of Ark., Inc. v. Arkansas Health Servs. Comm'n*, 573.

Administrative action, appellant's burden on appeal. *Id.*

Judicial review of decisions of administrative agencies, standard of review. *Arkansas State Highway & Transportation Dep't v. Kidder*, 595.

Hearing officer's conclusion that billboard was subject to requirements of state and local acts correct, circuit court's ruling in error. *Id.*

Permits, one cannot accept benefits of permit and then challenge conditions of that permit. *Id.*

Ex parte communication forbidden. *Arkansas Appraiser Licensing & Certification Bd. v. Fletcher*, 628.

Proof of *ex parte* communication required. *Id.*

No evidence of *ex parte* communication, communications between agency members not prohibited. *Id.*

Review of agency decisions, substantial evidence supported appellant board's decision that appellee's appraisal report violated statute. *Id.*

Courts can take judicial notice of published state agency regulations, judicial notice of private foundation's standards not allowed. *Id.*

Suspension or revocation of real-estate appraiser's license. *Id.*

Substantial evidence supported appellant board's decision fining appellee and suspending appraiser's license, order reinstated. *Id.*

Proper judicial review of administrative agency of executive branch, trial court exceeded authority, reversed and remanded. *Leathers v. Jacuzzi, Inc.*, 857.

APPEAL & ERROR:

Petition for review following court of appeals decision, procedure followed. *Armer v. State*, 7.

Trial court never ruled on points, court will not address arguments not made at trial. *Id.*

Breach of duty exception to privileged communications could not be raised by State, issue was not before lower court. *Armer v. State*, 10.

No specific objection made at trial, appellate court will not reverse. *Isbell v. State*, 17.

Failure to obtain ruling on motion, issue not preserved for appeal. *Danzie v. State*, 34.

Trial court's initial denial of motion for expanded juror questionnaires was final ruling, issue preserved for appeal. *Id.*

Failure to abstract proposed juror questionnaire did not bar review of issue. *Id.*

Conditional plea of guilty, strict compliance with A.R.Cr.P. 24.3(b) required to convey appellate jurisdiction. *Tabor v. State*, 51.

Conditional plea of guilty, Rule 24.3(b) not strictly followed, court of appeals obtained no jurisdiction, appeal dismissed. *Id.*

Preservation of argument for appeal, arguments raised for first time on appeal will not be addressed. *Brown v. State*, 56.

Error alleged never called to trial court's attention, court will not address objection to award of consecutive sentences for first time on appeal. *Id.*

- Party cannot change the grounds of argument on appeal. *Id.*
- Relief requested at trial granted, no basis for appeal. *Jones v. State*, 61.
- Argument raised for first time on appeal, court will not address it. *Id.*
- Motion to affirm court's order affirmed, interlocutory appeal dismissed. *State v. Tien*, 71.
- No authority given for argument, argument without merit. *Russell v. Colson*, 112.
- Bare allegation not addressed. *Parker v. Priest*, 123.
- Substitution-of-parties issue not addressed, any survival claim barred by two-year limitations period. *Pastchol v. St. Paul Fire & Marine Co.*, 140.
- When trial court loses jurisdiction, filing of notice of appeal insufficient. *Sherman v. State*, 153.
- When appeal divests trial court of jurisdiction, independent matters remain within trial court's jurisdiction. *Id.*
- Filing of interlocutory appeal on denial of motion to dismiss based on double jeopardy, protection of defendant's double-jeopardy rights requires court to refrain from determining guilt. *Id.*
- Interlocutory appeal, Double Jeopardy Clause protects against more than just being convicted twice for same crime. *Id.*
- Trial court erred in proceeding with trial, interlocutory appeal should have been dealt with first. *Id.*
- Appellant's jeopardy plea with respect to felonies meritless, although trial court erred in proceeding with trial without allowance for interlocutory appeal, reversal not required. *Id.*
- First amendment issue not reached. *Hollomon v. Keadle*, 168.
- Record tendered timely using date and time shown by chancery clerk's facsimile machine, rule on clerk granted. *Bhatti v. McCabe*, 176.
- Committee on Civil Practice directed to recommend whether appellate rules should be modified regarding facsimile transmission. *Id.*
- Trial court erroneously weighed sufficiency of evidence, case properly before appellate court. *State v. Johnson*, 189.
- Trial court invaded jury's province, trial court erred in directing verdict in favor of appellee. *Id.*
- Allegations in information were sufficient to appraise appellee of crime with which he was charged, trial court erred in directing verdict in appellee's favor, error declared. *Id.*
- Appellant's objection sustained at trial, appellant cannot now be heard to complain. *Lovelady v. State*, 196.
- Ineffective-assistance-of-counsel issue not considered by trial court, cannot be raised on direct appeal. *Whitney v. State*, 2206.
- No objection to sentence made before trial court, issue not considered. *Id.*
- Denial of summary-judgment motion, neither reviewable nor appealable. *Nucor Holding Corp. v. Rinkines*, 217.
- Denial of summary-judgment motion, appealability based on qualified immunity firmly established. *Id.*
- Appellate court will not address arguments where effect is tantamount to reviewing denial of summary-judgment motion. *Id.*
- Appeal dismissed for lack of finality. *Id.*
- Argument presented for first time on appeal not considered. *Burradell v. State*, 182.
- Denial of motion to compel arbitration is appealable order. *Terminix International Co. v. Stabbs*, 239.

- Review of trial court's findings, ample evidence to support. *Thompson v. Potlach Corp.*, 244.
- Witness credibility, deference given to superior position of chancellor. *Id.*
- Issues must be brought to chancellor's attention to be reviewable. *Id.*
- Bench conference and in-chambers conference should be on the record, trial court has duty to preserve record after it is made. *Clowney v. Gill*, 253.
- Motion for belated appeal, good cause for granting. *Wright v. State*, 276.
- Grounds for objection cannot be changed on appeal. *Evans v. State*, 279.
- Relevant "documents" not abstracted, review impossible. *Id.*
- Neither videotape nor transcript of statement abstracted, issues surrounding admissibility not addressed. *Id.*
- Appellant's assertions not reached, ruling of circuit court affirmed. *Tyson Foods, Inc. v. Adams*, 300.
- No citation of authority given for argument, no error found. *Hall v. State*, 318.
- Postconviction relief does not allow reargument of points already settled on appeal. *Id.*
- Argument raised for first time on appeal not addressed. *Douthitt v. Douthitt*, 372.
- Issues may not be raised for first time on appeal. *Wallace v. State*, 376.
- Appellant must bring up sufficient record, jury instruction must be proffered and included in record. *Id.*
- First appellant's abstract flagrantly deficient, issue not decided. *Id.*
- Second appellant's abstract fatally deficient, argument not reached. *Id.*
- Motion for rule on clerk, good cause for granting. *Jones v. State*, 397.
- Second motion to direct compliance with supreme court rules granted. *Stephens v. State*, 401.
- Denial of motion for summary judgment, denial not reviewable on appeal. *Ball v. Foehner*, 409.
- Ruling that would not have affected verdict will not be used as basis for reversal. *Id.*
- Party cannot appeal from a favorable ruling, issue not reached. *Id.*
- A party may not change arguments on appeal. *Id.*
- Trial court cannot pass on validity of notice of appeal and dismiss it *sua sponte*. *Noble v. State*, 462.
- Writ of mandamus declined, law does not require vain and useless act. *Id.*
- Motion for rule on clerk, denied. *O.C. Willingham v. State*, 468.
- Review of chancery cases, more stringent standards imposed for modifications. *Jones v. Jones*, 481.
- Failure to request finding on issue submitted to jury on interrogatories constitutes waiver on appeal, court cannot speak for jury. *Schmidt v. Pearson, Evans, & Chadwick*, 499.
- Use or misuse of retainer was not a negligence issue, proximate cause not shown. *Id.*
- Issue unsupported by argument or authority, issue not reached on appeal. *Id.*
- Argument given without citation to authority, point affirmed. *Smith v. State*, 521.
- Chancery proceedings, standard of review. *Office of Child Support Enforcement v. Troxel*, 524.
- Record on appeal confined to that which is abstracted, issue not reached. *Thompson v. American Drug Stores, Inc.*, 536.
- Petition for review, action taken upon granting petition. *Allen v. State*, 541.
- Record on appeal limited to that which is abstracted, court will examine transcript of trial only in order to affirm. *Id.*
- Abstract repeatedly deficient, transcript reference throughout the argument no substitute for a proper abstract. *Id.*
- Argument raised for the first time on appeal, argument not reached. *Betts v. Betts*, 544.

- Trial court reversed only if clearly erroneous, when finding is clearly erroneous. *Id.*
Appellant must make a record sufficient to demonstrate error, appellant failed to
demonstrate prejudice. *Chlanda v. Estate of Fuller*, 551.
- Commission's decision not abstracted, circuit court's order affirmed. *ABC Home Health
of Ark., Inc. v. Arkansas Health Servs. Comm'n*, 573.
- Result affirmed but modified to reflect that dismissals were with prejudice. *Bakker v.
Ralston*, 575.
- Motion to file belated brief granted. *Baker v. State*, 580.
- Attorney's duty to make himself aware of date on which brief was due. *Board of Trustees
v. Stodola*, 581.
- Motion to dismiss denied, motion to file belated brief granted. *Id.*
- Motion for rule on clerk, good cause for granting. *Gaither v. State*, 582.
- Merits of trial court's suppression order not considered in previous appeal, order was
not sustained in its entirety. *State v. Tien*, 583.
- Petition for rehearing granted in part, petition for reversal of dismissal order denied. *Id.*
- Agreement critical to appeal not abstracted, case affirmed without reaching merits.
Finnegan v. Johnson, 586.
- Record cannot be supplemented by statements made in brief. *Arkansas Appraiser
Licensing and Certification Bd. v. Fletcher*, 628.
- Alleged errors not brought to trial court's attention, trial court's sentence affirmed.
Dodson v. State, 637.
- Citation to general authority and lack of ruling on due process precluded further
research or review by appellate court. *City of Russellville v. Banner Real Estate*, 673.
- Argument raised for the first time on appeal not considered, justices will not scour
record. *Reeves v. Hinkle*, 724.
- Appellant's abstract was skeletal at best, supreme court could not ascertain what
arguments resulted in default judgment. *Id.*
- Abstract requirements, scattered references to record throughout argument are not
sufficient. *Richmond v. State*, 728.
- Deficient abstract, issue not addressed. *Id.*
- Deficient abstract, supreme court will not speculate about chancery court's ruling.
Townsend v. Arkansas State Highway Comm'n, 731.
- Legal-remedy issue not timely raised. *Id.*
- Motion to dismiss, standard of review. *Van Dyke v. Glover*, 736.
- Consolidation order voided. *Hooker v. Producers Tractor Co.*, 760.
- Petition to add party to certificate of service for dismissed appeal was moot. *Id.*
- Motion to file brief out of time granted. *Johnson v. State*, 761.
- Attorney's request to withdraw, required contents of accompanying no-merit brief.
Whitfield v. State, 762.
- Attorney's request to withdraw, no-merit brief omitted adverse ruling, attorney ordered
to file new brief. *Id.*
- Case settled after submission, opinion handed down because case had already been
submitted and decided. *International Resource Ventures, Inc. v. Diamond Mining Co.*,
765.
- Abstracting requirement for photographs, copies of photos not properly included in
abstract. *Douthitt v. State*, 794.
- Abstract omissions cause considerable confusion, court will not go to the record in
search of prejudicial error. *Douthitt v. State*, 794.
- No authority given to support appellant's argument, argument without merit. *Id.*
- Alleged error not abstracted, issue not reached. *Id.*

- Argument made without citation to authority, previous decision will be affirmed. *Granquist v. Randolph*, 809.
- Death-sentence case remanded for determination of knowing and intelligent waiver of appeal. *Greene v. State*, 822.
- Petition for rehearing denied. *Hall v. State*, 823.
- Motion for rule on clerk, good cause for granting. *Jennings v. State*, 824.
- Motion for belated appeal, good cause for granting. *Profit v. State*, 825.
- Petition for extraordinary relief and expedited proceedings granted. *Jones v. Jones*, 828.
- Objections not preserved for review, failure to obtain ruling on objection below fatal to claim on appeal. *Bayless v. State*, 869.
- Point not argued on appeal, point waived. *Chalmers v. Toyota Motor Sales, USA, Inc.*, 895.
- Portion of mandate affirming conviction and death sentence recalled and stayed. *Kemp v. State*, 910.
- Motion for belated appeal, good cause for granting. *Noble v. State*, 912.
- Motion for rule on clerk, counsel must concede fault. *Reyes v. State*, 913.
- Rebriefing ordered. *Skiver v. State*, 914.
- Argument cannot be made for first time on appeal. *Echols v. State*, 917.
- Finding that accomplice was reliable informant not clearly in error. *Id.*
- Party cannot obtain relief from favorable ruling. *Id.*
- Law-of-the-case doctrine not applicable. *Id.*
- Specific and timely objection must be made to preserve issue for appeal. *Id.*
- No reversal for asserted leading question where appellant did not request sanction or other relief for upon objection. *Id.*
- Even constitutional arguments are waived when not presented to trial court. *Id.*
- General objection cannot avail on appeal unless there was no reason to admit evidence. *Id.*
- Cumulative-error argument not preserved, plain-error rule not employed. *Id.*
- Trial court erred in discussing reported threats with foreman and juror out of presence of counsel, no prejudice resulted. *Id.*
- Argument raised for first time on appeal not considered, appellant Baldwin received requested relief. *Id.*
- Hearing argument made for first time on appeal, appellant not entitled to new trial because he did not get hearing. *Id.*
- Fact question existed as to whether statute of limitations was tolled and as to when negligent act occurred, trial court reversed. *Smothers v. Clouette*, 1017.
- Failure to obtain ruling on motion constitutes waiver on appeal. *Southern Farm Bureau Cas. Ins. Co. v. Allen*, 1023.
- Abstract did not show that complaint alleged cause of action for tort of outrage, failure to obtain ruling on motion at trial constituted waiver of issue on appeal. *Id.*
- Errors may not be considered for first time on appeal, four exceptions. *Higgins v. State*, 1030.
- Appellant charged with knowledge of when final order was entered, final order commences time for appeal. *Id.*
- Matters pertaining to final order should be raised at trial, issue will not be considered for first time on appeal. *Id.*
- Evidence sufficient to go to jury on issue of punitive damages, directed verdict reversed and case remanded for retrial. *Gordon v. Planters & Merchants Bankshares, Inc.*, 1046.
- Municipal court, when Ark. Code Ann. § 16-96-501 allows for *de novo* appeals. *Murdock v. Slater*, 1067.

Appellant's second motion to file belated brief granted, order forwarded to committee on professional conduct. *Baker v. State*, 1096.
Attorney has responsibility to timely file briefs, motion to file belated brief granted. *Board of Trustees v. Stodola*, 1099.
Show-cause order issued. *Id.*
Motion for rule on the clerk, good cause for granting. *Miller v. State*, 1101.

ARBITRATION:

Written agreements to arbitrate have no application to tort matters, complaint stated cause of action in tort. *Terminix International Co. v. Stabbs*, 239.
Appellees stated legitimate torts claim, trial court correctly refused to compel arbitration. *Id.*

ASSIGNMENTS:

Effect of assignment, appellant was owner of the money that was ordered paid to satisfy the unpaid fine. *Story v. State*, 86.

ATTORNEY & CLIENT:

Purpose of attorney-client privilege. *Byrd v. State*, 10.
Attorney-client privilege extends to statements made by attorney and the client, self initiated attorney communications are included in privilege. *Id.*
Withdrawal of counsel, ARCP Rule 64(b) not complied with. *Jones-Blair Co. v. Hammett*, 74.
Withdrawal of counsel, purpose of ARCP Rule 64(b), findings of fact evidenced misunderstanding of concept. *Id.*
Withdrawal of counsel, trial court's responsibility. *Id.*
Doctrine applied prior to filing of quiet-title action, appellee's negligence not proximate cause of appellant's damages. *Tyson Foods, Inc. v. Ad.*
Claim of ineffective assistance of counsel, proof required. *Hall v. State*, 318.
Ineffective assistance claim, presumption of reasonable assistance exists. *Id.*
Capital murder instruction not correctly given, counsel's failure to object not reversible error. *Id.*
Lesser-included instructions not tendered as matter of trial strategy, matters of trial tactics are not grounds for postconviction relief. *Id.*
Advise of counsel part of trial strategy, no grounds for postconviction relief given. *Id.*
Ineffective assistance of counsel argued, argument without merit. *Id.*
Ineffective counsel argument failed, appellant had no standing to claim an expectation of privacy in property held by another. *Id.*
Legal malpractice, controlling principles. *Schmidt v. Pearson, Evans, and Chadwick*, 499.
Malpractice, attorneys not liable for good-faith errors in judgment. *Id.*
Malpractice, attorneys not liable for mistaken opinion on point of law. *Id.*
Trial court did not find attorneys negligent, trial court was within its authority. *Id.*
Issues raised by appellants were in contract, issues were not the proximate cause of appellant's failure to prevail on their lender-liability claim. *Id.*
No substantial evidence found to support verdict for malpractice, trial court's ruling was correct. *Id.*
Attorney's lien, when available. *Finnegan v. Johnson*, 586.
Model Rule of Professional Conduct 3.7 applies to lawyer's giving evidence by affidavit. *International Resource Ventures, Inc. v. Diamond Mining Company of America, Inc.*, 765.
Reasoning underlying advocate-witness rule. *Id.*
Trial court correctly disqualified attorney after he chose to submit evidentiary affidavit and to testify. *Id.*

Supreme court chose to follow advocate-witness rule and its own interpretations. *Id.*
 Hardship exception to advocate-witness rule did not apply to facts of this case. *Id.*
 Appellee would be prejudiced if appellant's attorney were not disqualified, appellant would not be substantially disadvantaged by disqualification. *Id.*
 Uncontested-issue exception to advocate-witness rule not applicable. *Id.*
 Withdrawal of counsel, requirements. *Rush v. Fieldcrest Cannon, Inc.*, 849.
 Appellant's attorney demonstrated good cause for being relieved as counsel. *Id.*
 Appellant not prejudiced by attorney's withdrawal. *Id.*
 No showing that appellant was prejudiced by State's failure to pay his attorney's fees by time appellate brief was filed. *Echols v. State*, 917.
 Amount of fee awarded, trial court has superior perspective in determining. *Parker v. Southern Farm Bureau Ins. Co.*, 1073.
 Amount of fee awarded, factors to be considered. *Id.*
 Award of fee, factors for determination of amount. *Id.*
 Factors properly considered, no abuse of discretion found in fee awarded. *Id.*
 Fees, interpretation of Rule 6-6 of the Rules of the Arkansas Supreme Court. *Bell v. State*, 1097.
 Rule clear, failure to comply with thirty-day requirement precludes counsel's entitlement to attorney's fees. *Id.*
 Entitlement to fee, when appointed counsel must file motion for fees. *Id.*
 Attorney failed to file brief, fine imposed. *Carrigan v. State*, 1100.

AUTOMOBILES:

DWI, opinion testimony regarding intoxication is admissible. *State v. Johnson*, 189.
 DWI, DWI conviction not dependent upon evidence of blood-alcohol content where there is sufficient other evidence of intoxication. *Id.*

BANKS & BANKING:

D'Oench, Duhme doctrine discussed, common law rule of estoppel precluded borrower from asserting defenses based upon secret or unrecorded side agreements. *Tyson Foods, Inc. v. Adams*, 300.
D'Oench, Duhme doctrine applied to appellant, application to third parties proper. *Id.*
 Doctrine properly applied, no dispute as to material fact existed. *Id.*
 Creation of account is contract, construction and validity of contract governed by law of place contract was made. *South v. Smith*, 774.
 Punitive damages, when allowed under Uniform Commercial Code. *Gordon v. Planters & Merchants Bankshares, Inc.*, 1046.
 UCC general provision on damages, provision made for imposition of other damages. *Id.*
 Punitive damages, allowed in wrongful-dishonor cases. *Id.*
 Punitive damages allowed when pertinent wrongful-dishonor provision did not specifically provide for them, clear that court has not adopted narrow interpretation of Ark. Code Ann. § 4-1-106 (Repl. 1991). *Id.*
 Punitive damages are allowable for Article 4 violations, appellant's failure to assert claim for conversion not fatal to his claim for punitive damages. *Id.*
 Contracts impose duty of good-faith dealing, appellee's breach of this duty could be construed as an exercise of bad faith. *Id.*
 Punitive damages are recoverable for breach of duty of good faith, appellant's right to punitive damages not defeated. *Id.*
 Punitive damages, proof required to go to jury. *Id.*
 Punitive liability also applicable due to bank president's actions, president acted with conscious indifference to appellant's problem. *Id.*

BAIL:

Trial court had statutory authority to apply bail money to unpaid fine, portion of statute used by appellant inapplicable. *Story v. State*, 86.

CERTIORARI:

Appropriate vehicle for relief in bail proceedings. *State v. Pulaski County Circuit Court*, 886.

Writ not warranted under facts of case, circuit judge's reduction of bail amount not erroneous on face. *Id.*

CIVIL PROCEDURE:

Pleadings, when party may amend. *Terminix International Co. v. Stabbs*, 239.

Motion for continuance, when trial court's ruling will be overturned. *Lee v. State*, 529.

No prejudice shown in trial court's denial of continuance motion, no abuse of discretion found. *Id.*

Second dismissal is with prejudice where dismissal is for failure to obtain service and voluntary nonsuit has previously been taken. *Bakker v. Ralston*, 575.

ARCP 4(i), "without prejudice" language not applicable if cause of action barred by statute of limitations. *Id.*

ARCP Rules 4(i) and 41(b) distinguished. *Id.*

Trial court erred in granting second dismissals without prejudice. *Id.*

Scheduling order, purpose. *Rush v. Fieldcrest Cannon, Inc.*, 849.

Motion to dismiss, must be read on conjunction with Ark. R. Civ. P. 8. *Little Rock Cleaning Systems, Inc. v. Weiss*, 1007.

Complaint stated allegations and supported those allegations with facts, chancellor erred in dismissing complaint. *Id.*

CONSPIRACY:

Combination, wheel conspiracy, one group of appellants shared no common questions of law or fact with other group. *Pennington v. Harvest Foods, Inc.*, 704.

CONSTITUTIONAL LAW:

Right to confrontation in criminal cases, trial court may impose reasonable limits on cross-examination. *Gordon v. State*, 90.

Record reviewed to determine if restrictions on cross-examination rise to level of constitutional deprivation, prejudice is not presumed. *Id.*

Appellant failed to show any abuse of discretion or prejudice, judgment affirmed. *Id.*

Ark. Const. amend. 7 cannot empower people to initiate any measure outside reserved powers. *Donovan v. Priest*, 353.

Act of ratification by state derives its authority from United States Constitution, initiative and referendum does not provide same power. *Id.*

Any measure that purports to take away power from state legislature to ratify proposed amendments to United States Constitution is unconstitutional. *Id.*

Confrontation Clause, two types of protection for criminal defendant. *Johnson v. State*, 430.

Confrontation Clause, restrictions on range of admissible hearsay. *Id.*

Ark. Const. amend 6, § 5, addresses subject of gubernatorial succession. *Stratton v. Priest*, 469.

Acts of General Assembly presumed constitutional. *Id.*

Ark. Const. amend. 29 and Ark. Code Ann. § 7-7-105 exist in harmony. *Id.*

Ark. Const. amend. 6 § 2, and Ark. Code Ann. § 7-7-105 do not conflict. *Id.*

Sixth Amendment argument without merit, appellant failed to use statutory provisions that afforded evidentiary protection. *Davis v. Child Support Enforcement Unit*, 677.
 Equal Protection Clause, classifications must meet, rest on differences. *Douthitt v. State*, 794.

Incest statute does not violate Equal Protection Clause, classifications under statute were not arbitrary. *Id.*

Constitutional right to jury trial applies only to those cases so triable at common law, appellant's argument meritless. *Granquist v. Randolph*, 809.

First Amendment, introduction of evidence of beliefs and associations does not violate rights when relevant to crime. *Echols v. State*, 917.

Death penalty is not cruel and unusual punishment. *Id.*

Statutorily-overlapping argument rejected. *Id.*

Statutory "especially cruel or depraved" aggravating circumstance not void for vagueness. *Id.*

Statutory "especially cruel or depraved" aggravating circumstance not unconstitutional as applied to appellant Echols. *Id.*

CONTEMPT:

Attorney fined for contempt of court. *Florence v. Taylor*, 177.

Matter referred to committee on professional conduct. *Id.*

Court has inherent power to punish for contempt, power cannot be abridged by legislation. *Burnadell v. State*, 182.

Purpose of power of contempt, allowing intoxicated defendant to appear for plea hearing under influence of alcohol offends power and dignity of court. *Id.*

Sentence for contempt not intended primarily as means for punishing bad judgment, criminal contempt used to protect court's integrity and authority, regardless of actor's subjective intent. *Id.*

Belated-appeal motion denied, show-cause order issued. *Smith v. State*, 238.

Motion to file belated brief denied, show-cause order issued. *Carrigan v. State*, 271.

Belated-brief motion granted, statements in mitigation considered, no further action necessary. *Smith v. State*, 528.

Extension granted but brief not filed, show-cause order issued. *Propst v. State*, 1102.

CONTRACTS:

Status of prime contractor presupposes work to be done for third party, appellant was not prime contractor, petition for writ of prohibition denied. *Nucor Holding Corp. v. Rinkines*, 217.

Subcontractor may also qualify as independent contractor. *Id.*

Offer and acceptance, offer may be accepted by spoken words or conduct, question for trier of fact. *Van Dyke v. Glover*, 736.

Offer and acceptance, acceptance and payment plan became questions of fact and matters of proof in trial court. *Id.*

Arkansas Unfair Practices Act applies to price discrimination in Arkansas, statutes generally have no effect except within the state's territorial limits. *Chalmers v. Toyota Motor Sales, USA, Inc.*, 895.

Summary judgment granted to appellees not in error, Unfair Practices Act not applicable. *Id.*

CONVERSION:

Conversion claim not resolved, description of jewelry not subject to comparison. *Chlanda v. Killebrew*, 791.

Substantial evidence existed that appellant did not operate in good faith, doctrine of equitable conversion inapplicable. *Higgins v. State*, 1030.
Equitable conversion, doctrine has no application in criminal context. *Id.*

COSTS:

Original action, petitioners and interventions directed to file bond. *Scott v. Priest*, 69.
Original action, costs to be shared equally between parties. *Holt v. Priest*, 277.

COUNTIES:

Assignment of old library building to county museum was not illegal exaction. *Haynes v. Faulkner County*, 557.
No proof of conflicts of interests displayed by county judges, no breach of trust found. *Id.*
County may enter enforceable contracts. *Id.*
County judge has authority to assign use of county property, invalidation of lease upheld. *Id.*

COURTS:

Appellate court decision overruled. *Bakker v. Ralston*, 575.
Dismissal of action, not abuse of discretion. *Rush v. Fieldcrest Cannon, Inc.*, 849.
Dismissal action, inherent power of trial courts. *Id.*
Appellant's willful disregard of court's order flew in face of respect due judicial system. *Id.*
Dismissal of action, proper exercise of discretion. *Id.*
Disqualification, within trial court's discretion, appellant showed neither bias nor prejudice. *Echols v. State*, 917.

CRIMINAL LAW:

Admission of pretrial statement, trial court's overruling of motion to suppress not error. *Isbell v. State*, 17.
Waiver of rights in custodial statements of juveniles, statement must be voluntarily and intelligently given. *Id.*
Appellant repeated all material aspects of pretrial statement at trial, failure to suppress earlier confession harmless. *Isbell v. State*, 17.
Accomplice liability properly imposed, State was not required to show it was appellant's conscious object to commit arson. *Reed v. State*, 27.
Public intoxication, definition of "public place" speaks only in terms of accessibility. *Weaver v. State*, 82.
Public intoxication, pickup truck parked in side yard of private residence was not place to which public had access, appellant's drinking-in-public conviction reversed and dismissed. *Id.*
Accomplice testimony, corroboration required. *Gordon v. State*, 90.
Accomplice testimony, corroborative evidence may be circumstantial. *Id.*
Corroborative evidence less than sufficient, judgment reversed. *Id.*
Order denying motion to dismiss on former jeopardy considerations is appealable. *Sherman v. State*, 153.
Blockburger test, determination as to whether one or two offenses occurred. *Id.*
Potentially overlapping offenses, first-degree battery and aggravated assault are not lesser-included offenses of reckless driving for double-jeopardy purposes. *Id.*
Whether punishments are multiple under Double Jeopardy Clause, legislative intent determinative. *Id.*
Legislative intent clear, fleeing clearly a separate offense. *Id.*

- Collateral estoppel not bar to criminal prosecution, second required element not present. *Id.*
- Res judicata* defense not complete, prosecution and sentences for felonies not precluded by doctrine. *Id.*
- Information, when not considered defective. *State v. Johnson*, 189.
- Statutory rape is serious offense, trial court did not err in concluding that statutory rape involved violence. *Brooks v. State*, 201.
- Rape, uncorroborated testimony of victim will support conviction. *Evans v. State*, 279.
- Appellant's claim without merit, claimed error never occurred. *Hall v. State*, 318.
- Amended information did not change nature or degree of crime charged, appellant's argument without merit. *Id.*
- Information may be sufficient evidence to establish that defendant is charged with violent crime, standard used on review of denial of motion to transfer. *Sanders v. State*, 415.
- Information signed by deputy prosecutor valid, first-amended information had no effect on three properly filed subsequent amendments. *Id.*
- Capital-murder and first-degree-murder statutes pass narrowing requirement, death penalty limited to crimes involving sufficient aggravating circumstances. *Johnson v. State*, 430.
- Capital-murder, aggravating circumstances, "especially cruel" not vague and overbroad. *Id.*
- Aggravating circumstances, avoiding arrest not overbroad. *Id.*
- Narrowing class, argument not addressed, any error was harmless. *Id.*
- Rape and kidnapping charges, factors considered in determining whether a separate kidnapping conviction is supportable. *Lee v. State*, 529.
- Restraint employed by appellant not merely incidental to his rape of the victim, evidence supported appellant's separate conviction for kidnapping. *Id.*
- Admissibility of statement to police, totality of circumstances evaluated. *Weber v. State*, 564.
- Voluntary statement, *Miranda* warning not required. *Id.*
- Lesser included offense, when offense is not lesser included offense. *Id.*
- Lesser included offense, court declined to say that first-degree sexual abuse may not be lesser included offense in rape in any case. *Id.*
- Appellee not deprived of right to counsel, appellant not entitled to have attorney of his choosing present during interrogation. *State v. Johnson*, 660.
- Warrant was not stale, appellant was properly served. *Richmond v. State*, 728.
- When entrapment occurs, when defendant cannot assert entrapment defense. *Heritage v. State*, 839.
- Mitigating circumstances, no significant prior history of criminal activity, weighed by jury. *Echols v. State*, 917.
- Death sentence, Ark. Code Ann. § 5-4-603 does not contain binding instruction, no error in denying motion to declare statute unconstitutional. *Id.*
- Supreme court no longer conducts proportionality reviews of death sentences no longer conducted. *Id.*
- Fraudulent use of credit card, not limited to only those situations where card is stolen. *Patterson v. State*, 1004.
- CRIMINAL PROCEDURE:**
- Oral statements made by defendant disclosed to defense, rebuttal evidence may overlap State's case-in-chief, no abuse of discretion found. *Isbell v. State*, 17.
- Speedy trial, shifting burden. *Cupples v. State*, 31.

- Speedy trial, docket error, defendant's burden to bring matter to trial court's attention. *Id.*
- Speedy trial, docket error, appellant did not timely call objection to trial court's attention. *Id.*
- Speedy trial, appellant was timely tried. *Id.*
- Speedy-trial motion properly denied, appellant tried within required twelve-month period. *Goston v State*, 106.
- Excludable periods under Ark. R. Crim. P. 28.3(i), failure to set forth excludable periods in written order does not result in automatic reversal. *Id.*
- Trial court noted in docket notations what time period was excluded from speedy-trial period, appellant cannot complain about delays he himself caused. *Id.*
- Death penalty appeal may be withdrawn by competent appellant. *Greene v State*, 179.
- Death penalty, motion to withdraw appeal denied. *Id.*
- Testimony of witness properly allowed, no abuse of discretion found. *Lovelady v State*, 196.
- Disclosure rule applies to exculpatory and impeachment evidence, failure to disclose does not warrant reversal without showing of prejudice. *Smith v State*, 521.
- Postconviction relief due to ineffective assistance of counsel, when it may be raised on direct appeal. *Dodson v State*, 637.
- Claim of ineffective assistance of counsel, claim raised on direct appeal must have been fully developed below. *Id.*
- "Deemed denied" ruling insufficient order from which to appeal denial of motion for new trial based on claim of ineffectiveness, fully developed facts and an actual ruling are a necessity. *Id.*
- No evidence of the allegation or actual ruling of trial court presented, "deemed denied" ruling on posttrial motion for new trial an insufficient order from which to raise claim of ineffectiveness on direct appeal, appellant's first point affirmed. *Id.*
- State burden to produce chemist for purposes of cross-examination, appellant must inform the state of his desire to have chemist present at trial. *Id.*
- Appellant charged with controlled substances offenses should have known prosecution would introduce evidence establishing that the substances were illegal drugs, no prejudice demonstrated in appellant's being denied cross-examination of chemist. *Id.*
- Severance, granting is discretionary, no abuse in refusal to sever. *Heritage v State*, 839.
- Motion for directed verdict, when timely raised. *Webb v State*, 878.
- Two-month delay in filing charges was unacceptable. *State v Pulaski County Circuit Court*, 886.
- Joinder and severance, when appropriate. *Echols v State*, 917.
- Joinder and severance, discretionary, factors to be weighed. *Id.* Joinder and severance, almost all factors weighed in favor of joint trial. *Id.*
- Joinder and severance, antagonistic defenses discussed. *Id.*
- Joinder and severance, alleged conflicting strategies did not subject either defendant to compelling evidence. *Id.*
- Joinder and severance, alleged difference in strategy did not mandate severance. *Id.*
- Joinder and severance, no binding commitment to sever, trial court did not abuse discretion in denying severance. *Id.*
- Joinder and severance, Ark. R. Crim. P. 22 gives trial court discretion to grant or deny severance in all cases. *Id.*
- Prosecutorial subpoena power discussed, appellant Baldwin made no showing of abuse. *Id.*
- Purpose of Ark. R. Crim. P. 8.1, statements made by accused after unnecessary delay in arraignment not automatically excluded. *Landrum v State*, 994.

No unnecessary delay occurred between time appellant questioned about murder and time he confessed, no policy reason existed for application of exclusionary rule. *Id.*

Exclusionary rule, purpose of. *Id.*

Exclusionary rule, purpose in context of Fourth Amendment. *Id.*

Confession given freely and without evidence of police misconduct, no reason to exclude appellant's statement. *Id.*

Sixth Amendment right to counsel is offense-specific, fact that appellant would have been appointed an attorney on another charge had he been arraigned as planned no reason to exclude statement given about this case. *Id.*

Invalidation of subsequent waivers in police-initiated interviews is offense specific, to hold otherwise would frustrate public's interest in investigation of crimes. *Id.*

Admissions of guilt resulting from valid *Miranda* waivers are essential to administration of justice, prior invocation of offense-specific Sixth Amendment right with regard to unrelated crime is not equal to invocation of non-offense-specific *Miranda-Edwards* right. *Id.*

Appointment of counsel for one charge did not prevent appellant from being questioned about other, unrelated charges, trial court properly refused to suppress appellant's confession. *Id.*

DAMAGES:

Plaintiff must produce evidence of damages, defendant may produce evidence to mitigate. *Tharp v. Smith*, 260.

No evidence given as to damages, judgment for damages should not have been entered without hearing. *Id.*

Damage not clearly divisible, trial court correctly applied law. *McGraw v. Weeks*, 285.

Measure of damage to crops, model instructions properly followed. *Id.*

Double-damages statute must be strictly construed. *Hackleton v. Larkan*, 649.

Injury to another's property, treble-damages remedy requires showing of intentional wrongdoing. *Id.*

Less than intentional conduct may support double damages under statute. *Id.*

Double-damages remedy should have been pleaded to give appellant adequate notice, trial court abused its discretion in applying remedy, judgment modified. *Id.*

Plaintiff not required to select theory of damages before trial, both remedies may be pursued until jury is instructed. *Pennington v. Harvest Foods, Inc.*, 704.

Verdict must have some relationship to damages proved. *Id.*

Medical expenses, party seeking has burden of proving reasonableness and necessity. *Avery v. Ward*, 829.

Doctrine of *respondet superior* defined and discussed. *Gordon v. Planters & Merchants Bankshares, Inc.*, 1046.

DEEDS:

Forgery cannot divest person of estate in land, forged "correction deed" not bar to appellant's ejectment action. *Schwarz v. Colonial Mig. Co.*, 455.

Forgery, chancellor construed signature as forgery, presenting proof of forgery was not necessary. *Id.*

DISCOVERY:

Pending charge not disclosed, failure to disclose not prejudicial. *Smith v. State*, 521.

Evidence not disclosed, determination of reversible discovery violation. *Weber v. State*, 564.

Reversible discovery violation, appellant must have been prejudiced by prosecutor's failure to disclose. *Rayford v. State*, 656.

Appellant knew inmate would be witness, his counsel had duty to conduct his own investigation. *Id.*

Rules of discovery not violated, prosecutor satisfied his duty to disclose. *d.*

Appellant failed to demonstrate prejudice, sufficient other evidence of premeditation and deliberation was present. *Id.*

No prejudice shown, trial court's denial of motion for new trial affirmed. *Id.*

Prosecutorial discovery violation, when reversible error occurs. *McNeese v. State*, 787.

Alleged discovery violation did not result in unfair prejudice to appellant, testimony was cumulative. *Id.*

Imposition of sanctions rests in trial court's discretion. *Rush v. Fieldcrest Cannon, Inc.*, 849.

Compliance with rules especially important in cases involving complex issues and multiple parties. *Id.*

Trial court has wide discretion, when abuse of discretion will be found. *Parker v. Southern Farm Bureau Cas. Ins. Co.*, 1073.

Goal of discovery to allow litigant to prepare adequately. *Id.*

Protective order properly granted, no abuse of discretion found. *Id.*

Work product not equal to attorney-client privilege. *Id.*

Trial court has broad discretion in matters relating to discovery, no abuse of discretion found. *Id.*

DIVORCE:

Valuation and distribution of marital property after divorce, when potential taxes should be considered in valuing marital assets. *Grace v. Grace*, 312.

When federal tax consequences should be taken into account, no federal income tax consequences would result from the court's division of property. *Id.*

Sale of book of business prospective and not required by the decree, consideration of tax consequences of sale error. *Id.*

Chancellor had no authority to determine validity of an obligation to a third party who was not a party to the divorce, decisions about consideration of marital debts in assigning marital property will not be disturbed unless clearly erroneous. *Id.*

Chancellor's conclusions as to debt's enforceability disregarded, factual conclusions not found to be in error. *Id.*

Arkansas support order may reduce support burden, original out-of-state decree not changed. *Office of Child Support Enforcement v. Troxel*, 524.

Local orders contained no language specifically nullifying out-of-state decree, Nebraska decree still valid. *Id.*

Appellant attempting to enforce contract for support in circuit court, support of minor child exclusively chancery matter. *Granquist v. Randolph*, 809.

EJECTMENT:

Action lies in law. *Schwarz v. Colonial Mtg. Co.*, 455.

Action not barred by Ark. Code Ann. § 18-61-103 (1987) where appellant claimed title to lot. *Id.*

ELECTIONS:

Consent order, Secretary of State directed to remove proposed amendment from ballot. *Southland Racing Corp. v. Priest*, 1.

Motion for expedited-scheduling order and original-action petition dismissed as moot. *Burge v. Priest*, 67.

Original action, master appointed. *Scott v. Priest*, 69.

- Popular name, need not contain information required of ballot title. *Parker v. Priest*, 123.
- Ballot title, sufficiency of, requirements. *Id.*
- Ballot title, sufficiency of, popular name to be considered. *Id.*
- Ballot title, relied upon voters, supreme court's duty to ensure voters allowed to make intelligent choice. *Id.*
- Ballot title, length and complexity are considerations. *Id.*
- Ballot title, approved with respect to length, complexity, and design. *Id.*
- Ballot title, not misleading simply because it presents multiple considerations. *Id.*
- Ballot title, casino gambling clearly disclosed. *Id.*
- Initiative process, purpose of. *Id.*
- Initiative process, supreme court's function. *Id.*
- Initiative process, purpose not undermined by presentation of issue that benefits few. *Id.*
- Ballot title, placement of lottery first not misleading. *Id.*
- Ballot title, no date certain set for casino gambling. *Id.*
- Ballot title, sufficient if it conveys scope and import of proposed law. *Id.*
- Ballot title, pari-mutuel franchisee clearly identified. *Id.*
- Ballot title, voter able to understand that total of three casinos would be authorized. *Id.*
- Ballot title, language did not expressly authorize wagering on dog racing by way of proposed amendment. *Id.*
- Supreme court concerned only with legal issues pertaining to popular name and ballot title, unnecessary to appoint special master or to order discovery. *Schlaf v. Priest*, 275.
- Original action raised questions of fact, master appointed. *Holt v. Priest*, 277.
- Ballot title, length does not render insufficient. *Scott v. Priest*, 328.
- Ballot title, sufficiency of, requirements. *Id.*
- Ballot title, failed to mention preferential treatment given certain licensees. *Id.*
- Ballot title, failed to convey change in voter-approval percentage requirement. *Id.*
- Ballot title, failed to reveal proposal's definition of "Gross Gambling Revenue". *Id.*
- Ballot title, erroneously represented that no more than eleven licensed casinos could be simultaneously operated. *Id.*
- Ballot title, failed to disclose unequal edge in treatment given new casino licensees. *Id.*
- Proposed measure must be of size capable of having ballot title that imparts description so that voters can vote intelligently. *Id.*
- Ballot title, declared insufficient, placement on ballot enjoined. *Id.*
- Popular name, need not contain information required of ballot title. *Crochet v. Priest*, 338.
- Ballot title, sufficiency of, requirements. *Id.*
- Ballot title, determining sufficiency of, Ark. Const. amend. 7 liberally construed. *Id.*
- Supreme court vested with original and exclusive jurisdiction over sufficiency of statewide petitions. *Id.*
- Practical constraint on length of proposed amendment and its ballot title. *Id.*
- Ballot title, supreme court declined to hold insufficient on length alone. *Id.*
- Ballot title, material information concerning powers of lottery commission omitted. *Id.*
- Popular name and ballot title, use of term "video terminal games" misleading, tinged with partisan coloring. *Id.*
- Ballot title, reference to "twenty-five cent video terminal games" misleading. *Id.*
- Popular name and ballot title held constitutionally insufficient, request for injunctive relief granted. *Id.*
- Initiative & referendum, supreme court's jurisdiction to hear challenge is original and exclusive. *Donovan v. Priest*, 353.
- Initiative & referendum, burden of proof, scope of Amendment 7. *Id.*

- Initiative & referendum, justiciability, factors to be weighed. *Id.*
- Initiative & referendum, justiciability, when case is ripe. *Id.*
- Initiative & referendum, review of sufficiency of proposed measure includes review of whether proponents are entitled to invoke direct initiative process. *Id.*
- Initiative & referendum, proposed amendment nothing more than coercive attempt to compel state legislature to do as majority wished. *Id.*
- Initiative & referendum, proposed amendment clearly violative of U.S. Const. art. 5. *Id.*
- Initiative & referendum, injunctive relief granted. *Id.*
- Ballot title, must not be misleading, must disclose enough information so that voters can make intelligent choice. *Parker v. Priest*, 386.
- Initiative process, not undermined by initiative that benefits few. *Id.*
- Ballot title, party challenging bears burden of proof. *Id.*
- Ballot title, sufficiency of, requirements. *Id.*
- Ballot title, sufficiency of, further requirements. *Id.*
- Ballot title, not clear that voter would know that two racetracks were designated sites for casino gaming. *Id.*
- Ballot title, concealed from voters direct benefit to two racetracks. *Id.*
- Ballot title, identities of two racetracks constituted essential fact that should have been disclosed. *Id.*
- Ballot title, failure to disclose information was material omission that rendered the ballot title fatally defective. *Id.*
- Ballot title, injunctive relief granted. *Id.*
- Original action, issues raised in petition rendered moot, petition dismissed. *Parker v. Priest*, 400.
- Original action, second action dismissed as moot. *Schlaf v. Gilbert*, 465.
- Original action, dismissed as moot. *Scott v. Priest*, 466.
- Original action, motion to disqualify, dismissed as moot. *Id.*
- Ark. Code Ann. § 7-7-105 does not conflict with Ark. Const. art. 6, § 14, or amend. 6, § 5. *Stratton v. Priest*, 469.

EMINENT DOMAIN:

- Recognized formulas for measuring just compensation, measure of damages in partial-taking cases. *Arkansas State Highway Comm'n v. Barker*, 403.
- Error to allow deduction for drive installation and maintenance in reaching after-taking value, case reversed and remanded for new trial. *Id.*
- Evidence of appraisal of nearby tract admitted at trial, sale made by condemnor not considered a voluntary transaction, admission was in error. *Id.*
- Measure of damages in partial-taking cases, order of remittitur inappropriate. *Id.*

ESTOPPEL:

- Promissory estoppel, when it arises. *Van Dyke v. Glover*, 736.
- Promissory estoppel, reasonable detrimental reliance may defeat statute-of-frauds defense. *Id.*
- Promissory estoppel, appellants sufficiently stated cause for promissory estoppel or detrimental reliance, reversed and remanded. *Id.*

EVIDENCE:

- Challenge to sufficiency, scissors are clearly a deadly weapon. *Johnson v. State*, 3.
- Threat of physical force upon victim with deadly weapon clearly shown. *Id.*
- Evidence of threat to employ physical force upon victim with deadly weapon found, evidence was sufficient to support appellant's conviction. *Id.*

- Information revealed was confidential, privileged information should not have been revealed. *Byrd v. State*, 10.
- Trial court properly admitted evidence of gunshot residue, any error in admitting testimony was harmless. *Isbell v. State*, 17.
- Effect of judicial confessions, judicial confessions do not universally cure trial error. *Id.*
- Error predicated on ruling admitting evidence must be based on timely objection. *Jones v. State*, 61.
- Proponent bears burden of proving unavailability of witnesses, good faith effort must be made. *Id.*
- Trial court found appellant failed in good faith to use reasonable efforts to locate witness, no abuse of discretion found. *Id.*
- When evidentiary error is considered harmless. *Id.*
- Jury's verdict supported by substantial evidence, trial court's denial of motion for new trial affirmed. *Russell v. Colson*, 112.
- Insufficient evidence discussed, distinction between credibility and sufficiency of evidence. *State v. Johnson*, 189.
- Competent evidence existed to support DWI charge, jury to determine weight and credibility of evidence. *Id.*
- Issue preserved for appeal, A.R.E. 103(a)(2) does not apply to hearings limited to construction of statutes as a matter of law.
- Id.*
- Challenge to sufficiency of not properly preserved for appeal, what is required in motion for directed verdict. *Lovelady v. State*, 196.
- Collateral matter not probative of truthfulness, no error found. *Id.*
- Evidence supporting criminal verdict must be substantial, substantial evidence defined. *Lee v. State*, 229.
- Fingerprints can constitute evidence sufficient to sustain conviction. *Id.*
- Evidence of rape overwhelming, trial court did not err in denying motion for directed verdict. *Id.*
- Blood samples require conclusive chain of custody, evidence matters are within sound discretion of the trial court and will not be disturbed absent abuse of discretion. *Id.*
- Purpose of establishing chain of custody, mere possibility of access to blood is not enough to render test results from that blood inadmissible. *Id.*
- DNA evidence and testimony properly admitted, testimony revealed continuous chain of custody. *Id.*
- Blood samples revealed successive chain of custody, no abuse of discretion found in admitting samples. *Id.*
- Preservation of sufficiency of evidence argument on appeal, argument not properly preserved. *Clowney v. Gill*, 253.
- Review of denial of motion to suppress, when reversed. *Evans v. State*, 279.
- Trial judge excluded evidence, no abuse of discretion found. *Id.*
- Testimony not harmful, testimony not the basis for jury's award. *McGraw v. Weeks*, 285.
- Testimony not allowed as measure of damages, no error in allowing testimony. *Id.*
- Invocation of "the rule", exception to excluded witness rule. *Id.*
- Trial court allowed witness to remain in court under exception to rule, no abuse of discretion found. *Id.*
- Jury allowed to view fields where a material fact of the trial occurred, no abuse of discretion found. *Id.*
- Determination of no unfair prejudice under A.R.E. Rule 403 not reversed absent manifest abuse of discretion. *Wallace v. State*, 376.

- Credibility of appellant's alibi defense and belief concerning officers were matters for trier of fact. *Id.*
- Review of sufficiency of evidence, factors on review. *Dabney v. State*, 382.
- Evidence more than sufficient to support trial court's conclusion, attempted rape conviction affirmed. *Id.*
- Hearsay, hearsay admitted without objection may constitute substantial evidence. *Sanders v. State*, 415.
- Corroborative evidence, requirements. *Peeler v. State*, 423.
- Corroborative evidence, test for sufficiency of. *Id.*
- Corroborative evidence independently established crime and connected accused with it. *Id.*
- Hearsay, excited-utterance exception, requirements. *Johnson v. State*, 430.
- Hearsay, excited-utterance exception, request to identify followed by deliberate choosing from lineup does not qualify as excited utterance. *Id.*
- Hearsay, officer's testimony about child's selection from photo lineup should have been excluded as unreliable hearsay and violative of confrontation right, case reversed and remanded for new trial. *Id.*
- Hearsay, excited-utterance exception, criteria to be weighed in considering. *Id.*
- Hearsay, excited-utterance exception, statement made by child more than nine hours after discovery of mother's body not inconsistent with spontaneity and impulsiveness of excited utterance. *Id.*
- Hearsay, excited-utterance exception, child's description of crime other than photo-lineup identification admissible at retrial as excited utterance. *Id.*
- Other crimes, wrongs, or acts, testimony about drug trafficking permissible. *Id.*
- DNA testimony, statistical probabilities, any challenge to conclusions of expert is matter for litigation and cross-examination, no error in admitting evidence. *Id.*
- Unduly speculative testimony properly excluded. *Id.*
- Evidence abounded that murder was perpetrated in especially cruel manner. *Id.*
- Victim-impact testimony, no objection to or request for admonition regarding prosecutor's statements, application victim-impact statute not *ex post facto* law. *Id.*
- Victim-impact testimony, underlying constitutionality previously upheld. *Id.*
- Rape, uncorroborated testimony of child rape victim sufficient to sustain conviction. *Weber v. State*, 564.
- Voluntary statement, trial court did not err in refusing to suppress. *Id.*
- Hearsay, child victim's written statement merely cumulative of evidence admitted without objection. *Id.*
- Hearsay, erroneous admission of hearsay evidence not reversed if cumulative. *Id.*
- Hearsay, appellant was not prejudiced by admission of child victim's written statement. *Id.*
- Substantial evidence, factors on review. *Arkansas State Highway and Transportation Dep't v. Kidder*, 595.
- Hearing officer's findings of fact supported by substantial evidence, circuit court erred. *Id.*
- No substantial evidence that appellant officer acted on behalf of appellant corporate employer, verdict against appellant corporate employer reversed and dismissed. *St. Joseph's Regional Health Ctr. v. Munos*, 605.
- Forensic chemist's report properly admitted, appellant chose to rush to trial and could not assert lack of preparedness on appeal. *Dodson v. State*, 637.
- Attestation in chemist's report was sufficient, report contained indicia of truthfulness. *Id.*
- Failure to sever counts not error, same evidence was admissible in each count of sexual abuse. *Douthitt v. State*, 794.

- Consent not an issue in incest cases, appellant's argument without merit. *Id.*
- Denial of proffer not error, no prejudice shown. *Id.*
- Credibility in issue when criminal defendant takes stand, when the State may inquire about prior acts of misconduct. *Smallwood v. State*, 813.
- Objections to questions about prior acts of misconduct, preservation of issues for appeal. *Id.*
- Questions asked about previous burglary convictions, failure to timely object waived issue on appeal. *Id.*
- Questions asked about drug sales, failure to object at first opportunity constituted waiver on appeal. *Id.*
- Admission to gang involvement on cross-examination, counsel's failure to object precluded review on appeal. *Id.*
- Appellant's own words opened door to questions about his propensity to violence, trial court properly allowed appellee to question appellant about other violent acts. *Id.*
- Insufficient proof that hernia operation was normal consequence of original impairment. *Avery v. Ward*, 829.
- Hospital bill including unrelated expenses was erroneously admitted. *Id.*
- Substantial evidence defined, standard of review. *Heritage v. State*, 839.
- Ample evidence of appellant's intent to deliver. *Id.*
- Circumstantial evidence supported jury's verdict. *Id.*
- Motion to suppress, finding not reversed unless against preponderance of evidence. *Id.*
- Relevance, trial judge's ruling will not be disturbed absent abuse of discretion. *Id.*
- Attorneys are entitled to talk with witnesses before putting them on the stand, prosecuting attorney has right to interview witnesses before putting them on the stand. *Bayless v. State*, 869.
- Sequestration rule necessity in trial practice, Ark. R. Evid. 615 imposes no per se bar on attorney's ability to properly prepare witnesses. *Id.*
- No violation of rule found, prosecutor's communication with witness was proper witness preparation and nothing more. *Id.*
- Trial court permitted use of bank statement, appellant's argument procedurally barred. *Id.*
- Standard of review, substantial evidence. *Echols v. State*, 917.
- Confession sufficient to sustain conviction if accompanied by other proof that offense was committed by someone. *Id.*
- Substantial evidence of appellant Echol's guilt. *Id.*
- Mitigating circumstances, jury not required to find. *Id.*
- Mitigating circumstances, jury may generally refuse to believe defendant's mitigating evidence. *Id.*
- Mitigating circumstances, jury did not arbitrarily refuse to find that appellant Echols had no significant history of criminal activity. *Id.*
- Testimony that murders had "trappings of occultism" admitted as proof of motive. *Id.*
- State entitled to produce evidence showing circumstances that explain act. *Id.*
- Relevancy and prejudicial impact, trial court's ruling afforded great deference. *Id.*
- Relevance, book on history of witches was relevant to show appellant Echol's interest in occult. *Id.*
- Relevance, testimony about clothing and staffs was relevant. *Id.*
- Relevancy requirement satisfied by evidence of occult practices. *Id.*
- Trial court correctly allowed evidence of appellant Baldwin's participation in occult activities. *Id.*
- Hearsay, scholarly treatise exception, reliability must be established, no foundation laid. *Id.*

Appellant made sufficient offer of proof of questions for victim's stepfather. *Id.*
Facts that witness may have been abused and may have committed unrelated bad acts created only reckless inference that he murdered victims. *Id.*
Accused is not entitled to offer evidence of other suspects on wholly speculative basis. *Id.*
Records of State Crime Laboratory, evidence analysis, purpose of governing statute. *Id.*
Evidence of third-party guilt must have tendency to negate defendant's guilt, sufficient nexus not required. *Id.*
Trial court did not abuse its discretion in refusing to allow appellants to call witness and make him claim testimonial privilege. *Id.*
No error to allow expert's testimony regarding knife wounds. *Id.*
Character and conduct, inquiry on cross-examination limited to specific instances of conduct probative of veracity. *Id.*
Trial court did not abuse discretion in finding evidence of alleged substance abuse not probative of veracity. *Id.*
Impeachment, prosecutor properly brought up altercation between appellant Echols and his father. *Id.*
Rebuttal evidence, testimony of State's rebuttal witness was direct response to unexpected testimony of another State's witness on cross-examination, name of witness did not have to be disclosed. *Id.*
Relevance, review of ruling. *Id.*
Relevance, trial court did not abuse discretion in admitting knife into evidence. *Id.*
Relevance, trial court did not abuse discretion in admitting two sticks found near bodies of victims. *Id.*
Substantial evidence of unauthorized use of credit card by appellant, conviction affirmed. *Patterson v. State*, 1004.
Substantial evidence of bank employee's intentional and malicious purpose, evidence sufficient to present issue of punitive damages to jury. *Gordon v. Planters & Merchants Bankshares, Inc.*, 1046.

FORFEITURES:

Civil forfeitures do not impose "punishment" for double jeopardy purposes, two-part test to determine whether forfeiture is "punishment" for double jeopardy purposes. *Sims v. State*, 296.
Subchapter containing forfeiture provision generally remedial, some criminal sanctions also present. *Id.*
Statute clearly applied as civil sanction, suit was file against the money. *Id.*
Little evidence found to suggest that forfeiture proceedings were criminal in nature, forfeiture imposes an economic penalty. *Id.*
In rem civil forfeiture neither punishment nor criminal, Double Jeopardy Clause not violated. *Id.*

FRAUD:

Mere allegation of fraud insufficient to create issue of material fact. *Chalmers v. Toyota Motor Sales, USA, Inc.*, 895.

GAMING:

Pari-mutuel wagering on dog racing allowed by statutory law. *Parker v. Priest*, 123.

INSURANCE:

General Assembly required common carriers to obtain liability insurance, public transit systems come within Arkansas's definition of common carrier. *Salley v. Central Arkansas Transit Auth.*, 804.

Appellee included in definition of common carrier, summary judgment reversed. *Id.*

JOINT TENANCY:

Withdrawal of funds, effect. *South v. Smith*, 774.

Appellant's ownership in proceeds from joint accounts continued, joint tenant's ownership terminated at death. *Id.*

Appellant's withdrawal of funds not conversion. *Id.*

Appellant did not acquire ownership to exclusion of joint tenant by withdrawing funds. *Id.*

Statutory provisions concerning payment of funds to joint tenant do not determine ownership to exclusion of other joint tenants. *Id.*

No dispute between living tenants, governing principle stated. *Id.*

Appellant's withdrawal of funds did not terminate her survivorship right in property, joint accounts as substitutes for testamentary disposition. *Id.*

JUDGES:

Recusal, when a judge must disqualify. *Noland v. Noland*, 617.

Bias discussed, when a judge's decision will be reversed on disqualification. *Id.*

Chancellor's explanation adequate absolved herself of actual or statutory bias that would mandated recusal. *Id.*

Recusal, failure to show actual bias resulted in appellant's having burden to show some objective demonstration of prejudice. *Id.*

Chancellor's questions of witness were needed for clarification, no prejudice shown. *Id.*

Chancellor's award did not demonstrate any need for recusal, trial court affirmed. *Id.*

JUDGMENT:

Summary judgement, when appropriate. *Hollomon v. Keadle*, 168.

Default judgment, judgment establishes liability but not damages. *Tharp v. Smith*, 260.

Judgment of liability upheld, no abuse of discretion found. *Id.*

Default judgment proper, appellant's argument without merit. *Id.*

Summary judgment, when granted. *Tyson Foods, Inc. v. Adams*, 300.

Granting of summary judgment may be appropriate in malpractice suit. *Id.*

Summary judgment proper, appellant's argument meritless. *Id.*

Summary judgment inappropriate, order reversed and remanded for trial. *Schwarz v. Colonial Mig. Co.*, 455.

Judgment notwithstanding the verdict, when trial court may enter such judgment.

Schmidt v. Pearson, Evans, and Chadwick, 499.

Summary judgment, standard of review. *Chlanda v. Estate of Fuller*, 551.

When summary judgment is appropriate, summary judgment was proper here. *Id.*

Summary judgment properly granted, meaning and effect of will clear. *Id.*

Summary judgment, chancellor correctly concluded no genuine issue of material fact remained. *Haynes v. Falkner County*, 557.

Summary judgment, appellee was not entitled to judgment as matter of law in view of chancellor's misapplication of statute. *City of Russellville v. Banner Real Estate*, 673.

Default judgment, standard of review, appellant was unable to show erroneous decision or abuse of discretion. *Reeves v. Hinkle*, 724.

Summary judgment sought, how evidence in support of such a motion must be viewed. *Chlanda v. Killebrew*, 791.

Summary judgment inappropriate, case reversed and remanded. *Id.*
No genuine issue of material fact shown, summary judgment for appellee affirmed. *Like v. Pierre*, 802.

Grant of summary judgment, standard of review. *Chalmers v. Toyota Motor Sales, USA, Inc.*, 895.

Consent judgment defined, appellant neither agreed nor consented to judgment. *Murdock v. Slater*, 1067.

JURISDICTION:

Subject-matter jurisdiction, parties cannot consent to or waive, appellate court obligated to raise question on its own. *Douthitt v. Douthitt*, 372.

Chancery court may obtain jurisdiction pursuant to clean-up doctrine, not applicable in this case. *Id.*

No tenable nexus between remainder of divorce proceeding and third-party tort claim. *Id.*

Trial court lacked subject-matter jurisdiction over tort claim, intervenor's tort claim ordered transferred to circuit court. *Id.*

Initial action contained claim for partition as well as ejectment, basis for equitable jurisdiction present. *Schwarz v. Colonial Mig. Co.*, 455.

Subject-matter jurisdiction, question as to jurisdiction may be raised at any time. *State v. Tedder*, 495.

Chancery court did not have subject-matter jurisdiction over remaining members of proposed class, chancellor erred in certifying class. *Id.*

Abstract flagrantly deficient, points not considered on appeal. *Carter v. State*, 497.

Chancellor did not lack jurisdiction, no need to transfer to circuit court. *Haynes v. Faulkner County*, 557.

Appellant's argument without merit, appellant never claimed he was not a resident of county in which order for support was entered. *Davis v. Child Support Enforcement Unit*, 677.

When equity jurisdiction exists. *Townsend v. Arkansas State Highway Comm'n.*, 731.

Determined from pleadings. *Id.*

Subject-matter jurisdiction, raised by appellate court on its own motion. *Id.*

Equity, adequacy of legal remedy may not be raised first on appeal. *Id.*

Circuit court did not have subject-matter jurisdiction over child support matter, order setting aside default judgment affirmed. *Granquist v. Randolph*, 809.

Municipal court was limited to determining whether reasonable cause existed that juvenile committed offense and whether he should be detained. *State v. Pulaski County Circuit Court*, 886.

JURY:

Instructions to jury were proper, AMCI instructions should be used if they accurately state the law. *Reed v. State*, 27.

Voir dire, trial court's actions did not restrict appellant's examination, no prejudice shown. *Danzie v. State*, 34.

Voir dire, extent and scope of, within trial court's discretion. *Id.*

Voir dire, denial of motion for expanded juror questionnaires was within trial court's discretion. *Id.*

Selection process, no requirement that jury reflect distinctive groups in population. *Id.*

Selection process, defendant entitled to require no deliberate or systematic denial of right to participate as jurors to members of his race. *Id.*

Selection process, test to establish prima facie violation of fair-cross-section requirement. *Id.*

- Selection process, test to establish prima facie violation of fair-cross-section requirement not met. *Id.*
- Selection process, appellant produced no evidence showing alleged underrepresentation of blacks was due to systematic exclusion in jury-selection system. *Id.*
- Selection process, excusing jurors because of their refusal to consider death penalty is not evidence of systematic exclusion of distinctive group. *Id.*
- Batson* argument, issue prima facie showing moot where no challenge is raised and court hears race-neutral explanations. *Cleveland v. State*, 46.
- Batson* argument, standard of review for reversal of trial court's ruling. *Id.*
- Batson* arguments, no fault in trial court's acceptance of prosecutor's reasons for peremptory strikes. *Id.*
- Batson* argument, presence of members of race in question and State's use of only seven of ten peremptory challenges satisfied *Batson*. *Id.*
- Preservation of objection concerning instructions, grounds of objection must be clear at trial. *Clowney v. State*, 253.
- No objection to instruction found in record, objections could not be considered on appeal. *Id.*
- Instructions made issues clear, verdict not sought against appellant under doctrine of respondeat superior. *McGraw v. Weeks*, 285.
- Giving of erroneous instruction, showing of prejudice not required. *Hall v. State*, 318.
- Giving of erroneous instruction, determination as to whether reversible error occurred. *Id.*
- Instructions, when reversal may be warranted. *Thompson v. American Drug Stores, Inc.*, 563.
- Instruction proffered by appellant incomplete, court's failure to issue proffered instructions did not warrant reversal. *Id.*
- No error to refuse instruction unsupported by evidence. *Heritage v. State*, 839.
- Jury instructions, no error in refusing to give instruction not warranted by evidence. *Webb v. State*, 878.
- Jury instructions, model criminal instructions to be used so long as they accurately state law. *Id.*
- Appellant not entitled to mere presence instructions, accomplice liability clearly applicable. *Id.*
- Impartiality, deference to trial court, jurors' assurances of objectivity supported refusal to grant mistrial. *Echols v. State*, 917.
- Duty to resolve conflicts in testimony and determine witness credibility belongs to jury. *Southern Farm Bureau Cas. Ins. Co. v. Allen*, 1023.
- JURY INSTRUCTIONS:**
Trial court correctly gave accomplice instruction, supported by evidence. *Echols v. State*, 917.
- JUVENILES:**
Juvenile transfer, factors. *Brooks v. State*, 201.
- Juvenile transfer, court not required to give factors equal weight. *Id.*
- Juvenile transfer, serious and violent nature of offense sufficient basis for denying motion. *Id.*
- Juvenile transfer, information was sufficient evidence of serious and violent nature of crime, no additional element of violence necessary. *Id.*
- Eighteen year old cannot be committed to youth-services center. *Id.*
- Juvenile transfer, trial court's decision that juvenile should be tried as adult was not clearly erroneous. *Id.*

- Consideration for transfer of juvenile from circuit to juvenile court, burden of proof and factors on review. *Kindle v. State*, 282.
- Transfer from circuit court to juvenile court, factors considered in making determination. *Id.*
- Act of appellant sufficiently violent to uphold denial of transfer to juvenile court, trial court's ruling not clearly erroneous. *Id.*
- Motion to transfer to juvenile court, burden of proof and evidence required. *Sanders v. State*, 415.
- Alleged offenses were serious and of a violent nature, no error in denying appellant's motion to transfer to juvenile court. *Id.*
- Additional factor supported denial of appellant's motion, appellant would be eighteen in four months. *Id.*
- Juvenile transfer, factors considered. *Maddox v. State*, 515.
- Juvenile transfer, decision must be supported by clear and convincing evidence, court not required to give factors equal weight. *Id.*
- Juvenile transfer, use of violence, sufficient for circuit court to retain jurisdiction. *Id.*
- Juvenile transfer, first-degree criminal mischief satisfies seriousness requirement. *Id.*
- Juvenile transfer, violent act lay at core of alleged crime, sufficient to sustain refusal to transfer. *Id.*
- Juvenile transfer, appellant's age was relevant to prospects for rehabilitation. *Id.*
- Juvenile transfer, factors to be considered. *Carroll v. State*, 602.
- Juvenile transfer, serious and violent nature of offense is sufficient basis for denying motion. *Id.*
- Juvenile transfer, information alone will support order denying motion. *Id.*
- Juvenile transfer, strong evidence of extreme violence presented, trial court did not err in denying motion. *Id.*
- Decision to retain jurisdiction in Circuit Court must be supported by clear and convincing evidence, when circuit court will be reversed. *Jones v. State*, 681.
- Factors required to be considered in deciding transfer motion need not be given weight, information alone is sufficient evidence of serious and violent nature of crime. *Id.*
- Evidence supported court's denial of motion to transfer, no error found. *Id.*
- Decision to try juvenile as an adult must be supported by clear and convincing evidence, statutory factors need not be given equal weight. *Carrol v. State*, 882.
- Serious and violent nature of offense sufficient by itself for trying juvenile as adult, juvenile need not have committed the violence himself. *Id.*
- Juvenile accomplice to violent crime subject to being charged as an adult, trial court's denial of transfer to juvenile court affirmed. *Id.*
- Ark. Code Ann. § 9-27-309(a) gives juvenile court discretion to open files. *Echols v. State*, 917.

LANDLORD & TENANT:

- Caveat lessee doctrine discussed. *Propst v. McNeill*, 623.
- Legislature must make changes to law, caveat lessee rule still adhered to. *Id.*
- Appellant could appreciate risk of storing plane in old hangar, facts did not warrant departure from caveat lessee rule. *Id.*
- Latent-defect exception inapplicable, appellant's proof lacking. *Id.*
- Retention-of-control exception not recognized, Commission not shown to have any duty to repair or maintain the hangar. *Id.*

LIMITATION OF ACTIONS:

- Medical injury governed by Medical Malpractice Act, two-year statute of limitations controlling. *Pastchol v. St. Paul Fire & Marine Company*, 140.
- Appellant's cause of action was for medical malpractice, trial court correctly applied two-year period. *Id.*
- Medical malpractice, when cause of action accrues. *Id.*
- Medical malpractice, continuous-treatment doctrine, when applicable. *Id.*
- Medical malpractice, continuous treatment doctrine applicable. *Id.*
- Medical malpractice, appellant's claim barred by statute of limitations, appellees entitled to summary judgment. *Id.*
- Five-year statute pertaining to cancellation of instruments inapplicable. *Schwarz v. Colonial Mtg. Co.*, 455.
- Seven-year statute for recovery of lands applicable. *Id.*
- Saving Statute, effect of. *Bakker v. Ralston*, 575.
- Child support, power of legislature over statute of limitations. *Branch v. Carter*, 748.
- Power of legislature to enlarge, retroactivity determined by legislative intent. *Id.*
- Two limitations periods involved here, when limitations begin to run. *Chalmers v. Toyota Motor Sales, USA, Inc.*, 895.
- Statute of limitations raised as defense, burden of proof. *Id.*
- Fraud will suspend the running of the statute, how long suspension remains effective. *Id.*
- Three-year limitation applies to negligent acts, fraudulent-concealment action may be suited to summary judgment. *Id.*
- Appellant knew or should have known of alleged fraud at least six years prior to filing complaint, statute of limitations had run. *Id.*
- Fraudulent concealment alleged, promises to cure and offers of settlement admissible in action otherwise barred by statute of limitations. *Id.*
- Evidence showed no promise to cure or offer of settlement by appellee, statute of limitations not tolled. *Id.*
- Three-year limitation applies to actions against attorney for negligence, when statute begins to run. *Smothers v. Clouette*, 1017.

MANDAMUS:

- When writ will issue, trial court erred in granting summary judgment in appellee's favor. *Richie v. Board of Education*, 587.

MASTER & SERVANT:

- Respondeat superior*, employer's vicarious liability. *St. Joseph's Regional Health Ctr. v. Munos*, 605.
- Borrowed-servant doctrine discussed. *Id.*
- Status of servant, when issue is one of law. *Id.*
- Employee officer stood in shoes of partners and was incapable of interfering with contract, entitled to directed verdict. *Id.*
- Employee's actions motivated by personal, pecuniary interest, employee acting within scope of employment when he caused charge-back to appellant's account. *Gordon v. Planters & Merchants Bankshares, Inc.*, 1046.
- Ratification of employee's actions, ratification discussed. *Id.*

MOTIONS:

- Denial of motion for directed verdict, factors on review. *Johnson v. State*, 3.
- When motion for directed verdict must be made, issue waived on appeal. *Jones v. State*, 61.

- Motion for judgment NOV or new trial granted only rarely, appellant bore burden of proof. *Russell v. Colson*, 112.
- Denial of motion for continuance, factors on review. *Turner v. State*, 115.
- Motion for continuance, factors considered by trial court in reaching decision. *Id.*
- Appellant failed to act diligently in making continuance request, trial court's denial of motion not an abuse of discretion. *Id.*
- Motion for continuance denied, no prejudice shown. *Id.*
- Summary judgment, when appropriate. *Pasthol v. St. Paul Fire & Marine Co.*, 140.
- Summary judgment, burden of proof. *Id.*
- When mistrial motion properly granted, mistrial not called for here. *Lovelady v. State*, 196.
- Directed verdict, general motion does not preserve sufficiency-of-evidence issue for appeal. *Whitney v. State*, 2206.
- Motion to suppress, standard of review. *Norman v. State*, 210.
- Review of decision on motion to set aside default judgment, standard on review. *Tharp v. Smith*, 260.
- Motions to amend brief and to supplement record, motions granted. *Bowden v. State*, 266.
- Motion to stay appeal, granted as to separate appellants. *Pennington v. Harvest Foods, Inc.*, 272.
- Motion to stay appeal, stay required if action was originally brought against debtor, counterclaims not stayed when debtor counterclaims against plaintiff. *Id.*
- Motion to stay appeal, no authority requiring stay of appeal of judgment in favor of appellee. *Id.*
- Question of fact existed as to proximate cause, motion for directed verdict properly denied. *McGraw v. Weeks*, 285.
- Directed-verdict motion discussed, substantial evidence defined. *Peeler v. State*, 423.
- Motion for mistrial discussed, when granted. *Id.*
- Motion for mistrial denied, problem could have been cured by jury admonition that was refused, no error occurred. *Id.*
- Denial of directed-verdict motion, standard of review. *St. Joseph's Regional Health Ctr. v. Munos*, 605.
- Directed-verdict motion properly denied, argument without merit. *Douthitt v. State*, 794.
- Motion for directed verdict discussed, issue here not properly preserved. *Smallwood v. State*, 813.
- Motions to file joint abstract and for clarification of briefing schedule granted. *Unigard Security Ins. Co. v. Murphy Oil USA, Inc.*, 826.
- Motions to stay appeal and briefing schedule granted, cross-motion to consolidate appeals denied, motion to file joint abstract granted. *Id.*
- Mistrial, drastic step, trial court's denial upheld. *Heritage v. State*, 839.
- Motion to dismiss, trial court's considerations. *Little Rock Cleaning Systems, Inc. v. Weiss*, 1007.
- Motion to dismiss not treated as one for summary judgment, chancellor did not look beyond complaint. *Id.*
- Matters outside pleadings considered, motion treated as one for summary judgment. *Smothers v. Clouette*, 1017.
- Summary judgment discussed, factors on review. *Id.*
- Denial of directed verdict, standard on review. *Southern Farm Bureau Cas. Ins. Co. v. Allen*, 1023.
- Denial of directed verdict, factors on review. *Higgins v. State*, 1030.

Directed verdict denied, no error found. *Id.*
Denial of directed verdict, standard of review. *Taylor v. Gill*, 1040.
Motion to dismiss appeal made, motion granted. *Carrigan v. State*, 1100.

MUNICIPAL CORPORATIONS:

Municipal immunity from tort, a city may be liable to extent it carries liability insurance. *White v. City of Newport*, 667.
Zoning authority must be exercised in accordance with both state and local law. *City of Russellville v. Banner Real Estate*, 673.

NEGLIGENCE:

Slip-and-fall cases, proof required in foreign-substance cases. *Thompson v. American Drug Stores, Inc.*, 563.
Causation, fact question for jury to decide, no reversible error. *Avery v. Ward*, 829.

NEW TRIAL:

Counsel's withdrawal prevented fair trial, party must be diligent in protecting own interests. *Jones-Blair Co. v. Hammett*, 74.
Appellant displayed misunderstanding rather than lack of diligence. *Id.*
Trial court erred in denying ARCP Rule 60 relief, case reversed and remanded for new trial. *Id.*
Speedy-trial rule, prima facie case of violation established, burden shifted to state. *Lively v. State*, 398.
Speedy-trial violation, State offered no proof that sheriff attempted to serve arrest warrant, writ of prohibition granted. *Id.*
When new trial cannot be avoided by entry of remittitur. *Avery v. Ward*, 829.
Case reversed and remanded for new trial. *Id.*

OIL, GAS, & MINERALS:

Fractional share royalty defined. *Parham v. Worthen Bank & Trust Co., Inc.*, 754.
Fraction of a share royalty discussed, distinguished from fractional-share royalty. *Id.*
Language in granting clause of release deed clearly established fractional share, chancellor's ruling correct. *Id.*
Appellant's argued explanatory phrases in deed led to different conclusion, intent of grantors clear. *Id.*

PARENT & CHILD:

Child subject to serious physical abuse, sufficient emergency existed for removal of child from the home. *Gullick v. Arkansas Dep't of Human Servs.*, 475.
Custody, best interest of child. *Jones v. Jones*, 481.
Custody, parent living in statistically safer area should not have advantage in custody disputes. *Id.*
Custody, move to another city not material change in circumstances. *Id.*
Custody, change of circumstances of noncustodial parent not sufficient to justify modifying consent. *Id.*
Custody, appellee's remarriage did not constitute material change in circumstances. *Id.*
Custody, when award may be modified. *Id.*
Custody, party seeking modification of order has burden of showing material change in circumstances. *Id.*
Custody, agreement of parties tends to show attitude at time original divorce suit was filed. *Id.*
Custody, *ex parte* communication improper, letters from two doctors should not have been considered by chancellor. *Id.*

Custody, chancellor cannot delegate judicial function to someone outside of court. *Id.*
Custody, chancellor erroneously shifted burden of proof to appellant. *Id.*
Custody, chancellors' decision to change custody was clearly erroneous, reversed and remanded. *Id.*
Act clearly intended to be retroactive, causes of action already barred on act's effective date could not be revived. *Branch v. Carter*, 748.
Appellant entitled to recover additional support due to retroactive expansion of statute of limitations, holding of court of appeals affirmed. *Id.*

PARTITION:

Action may be filed in law or equity. *Schwarz v. Colonial Mtg. Co.*, 455.

PARTNERSHIP:

Relationship of trust and confidence. *St. Joseph's Regional Health Ctr. v. Munos*, 605.
Fiduciary obligation of partners. *Id.*
Fiduciary duty not breached by dismissal of partner from independent-contractor position. *Id.*
Appellant hospital owed appellee physician no fiduciary duty in its contractual relationship, hospital's directed-verdict motion should have been granted. *Id.*

PHYSICIANS & SURGEONS:

Medical malpractice, negligent injury defined. *Howard v. Ozark Guidance Ctr.*, 224.
Malpractice act, distinction between ordinary negligence and malpractice. *Id.*
Malpractice requires a medical injury, trial court properly treated action as one for negligence and applied proper statute of limitations. *Id.*

PLEADINGS:

Later pleadings allowed on issue of liability, appellant's timely filed answer and counterclaim after appeal to circuit court could be relied upon. *Murdock v. Slater*, 1067.

PRINCIPAL & AGENT:

Manager owes fiduciary duty to his business. *Pennington v. Harvest Foods, Inc.*, 704.
Agency relationship discussed, two essential elements. *Taylor v. Gill*, 1040.
Agency defined, gratuitous undertaking may fall under umbrella of agency relationship. *Id.*
Submission by one giving service to direction and control of one receiving it applies equally to master-servant and principal-agent relationships. *Id.*
Independent contractor, distinguished from agent. *Id.*
No substantial evidence regarding existence of agency relationship, judgment of trial court as to appellants reversed. *Id.*

PROCESS:

Service, record did not reflect issuance of summons, necessary to satisfy due process, chancellor correctly denied motions to strike for default judgment. *Thompson v. Potlach Corp.*, 244.

PROHIBITION:

When appropriate, directed to court itself. *State v. Pulaski County Circuit Court*, 886.
Essential prerequisite lacking because circuit court did not wholly lack subject-matter jurisdiction. *Id.*

PROHIBITION, WRIT OF:

Standard of review, workers' compensation context. *Nucor Holding Corp. v Rinkines*, 217.

Appellant's trial was held within the twelve-month speedy-trial time, writ of prohibition denied. *Clifton v State*, 251.

Issuance of workers' compensation cases, when prohibition proper. *Western Waste Indus. v Purifoy*, 256.

General rule as to exclusivity of recovery under Workers' Compensation Act, exception to rule. *Id.*

Appellee made election of remedies thereby barring any subsequent common-law remedy, writ of prohibition granted. *Western Waste Indus. v Purifoy*, 256.

PROPERTY:

Appellant's argument without merit, plain meaning of deed clear. *Parham v Worthen Bank and Trust Co., Inc.*, 754.

SCHOOLS & SCHOOL DISTRICTS:

Right of student to appeal suspension an issue of public importance, such cases will not be dismissed for mootness. *Richie v Board of Education*, 587.

Governmental entity must strictly adhere to its own procedures for punishing infractions, procedural-due-process protections violated where district failed to adhere to its own written policy. *Id.*

SEARCH & SEIZURE:

Contents of search warrant requirements. *Norman v State*, 210.

Search warrant, highly technical attacks not favored, tested in common-sense fashion. *Id.*

Search warrant, particularity requirement, test for adequacy of description of place to be searched. *Id.*

Special agent's explanation of discrepancy between search warrant and affidavit was reasonable, face of warrant included "premises", search of outbuilding and land authorized. *Id.*

Permissible purpose, officer may look for fruits and instrumentalities of crime. *Heritage v State*, 839.

When reasonable cause exists. *Id.*

Reasonable cause to arrest appellant existed, warrantless search justified. *Id.*

Misstatement by officer in affidavit did not invalidate warrant. *Id.*

Good-faith exception, test for determining when warrant falls outside. *Echols v State*, 917.

Warrant, standard for invalidating requires knowing intent to deceive or reckless disregard of truth. *Id.*

Rest of warrant contained sufficient showing for probable cause. *Id.*

Affidavit, appellant did not meet burden of showing that detective knowingly and intentionally stated falsehood. *Id.*

Trial court did not err in finding that issuing judge was neutral and detached. *Id.*

Warrant, all items were described with particularity except fibers. *Id.*

Fourth Amendment allows seizure of mere evidence if there is probable cause to believe it will aid in conviction. *Id.*

Nighttime search, review of propriety. *Id.*

Nighttime search justified. *Id.*

SENTENCING:

- Appellant waived any voir dire issue about punishment when he waived jury sentencing, no reversal of sentence on grounds of irregularity in jury selection. *Armer v. State*, 7.
- Determination to run sentences consecutively solely within trial court's province, trial court's informing appellant of possible consequences of conviction was not in error. *Brown v. State*, 56.
- Sentencing controlled by statute, trial court correctly ruled governing statute was one in effect at time appellant committed crimes. *Cody v. State*, 85.
- Decision to impose consecutive-concurrent sentences up to trial judge. *Smallwood v. State*, 813.
- Request for concurrent sentences not supported by argument, trial judge not required to set forth in writing that he exercised discretion. *Id.*
- Jury fixes punishment, assessment of probation lies with discretion of trial court. *Higgins v. State*, 1030.
- Sentence and fine as originally imposed by jury not legal, trial court did not err in sending jury back to reconsider. *Id.*

STATUTE OF FRAUDS:

- Land-sale contract, essential terms must be ascertainable from writing itself or reference to something else. *Van Dyke v. Glover*, 736.
- Land-sale contract, terms and conditions, price to be paid, and time for payment must be shown. *Id.*
- Land-sale contract, land must be sufficiently described. *Id.*
- Land-sale contract, time and method of payment must be set forth. *Id.*

STATUTES:

- DWI conviction, information sufficient for conviction. *State v. Johnson*, 189.
- Construction of, effect given to legislative intent. *Richie v. Board of Ed.*, 587.
- Meaning of statute clear, no occasion to resort to rules of statutory construction. *Id.*
- Power of legislature over common law, when common law may be altered. *White v. City of Newport*, 667.
- Enactment of municipal-tort-immunity statute a reasonable means of achieving a permissible public policy objective, statute not violative of Arkansas Constitution. *Id.*
- Interpretation of, unambiguous statute to be given effect just as it reads. *Weiss v. Central Flying Service, Inc.*, 685.
- Construction of acts, all acts are to be reconciled if possible. *Salley v. Central Arkansas Transit Auth.*, 804.

TAXATION:

- Statutory gross-receipt-tax provisions, sale of all tangible-personal property generally taxable unless exemption applies. *Weiss v. Central Flying Service, Inc.*, 685.
- Aircraft dealer may use plane purchased for resale without payment of sales or use tax for one year from purchase, failure to sell aircraft in one-year period results in dealer-purchaser liability for tax based on purchase price. *Id.*
- Appellee's argument without merit, when one-year exemption ends general-gross-receipts tax becomes applicable. *Id.*
- Appellee's interpretation of law would have absurd results, intent of General Assembly clear. *Id.*
- 1982 instruction booklet did not provide for filing combined returns, chancellor erred in so finding. *Leathers v. Jacuzzi, Inc.*, 857.

Appellant's refusal to allow four combined returns was not because the corporation had in effect filed consolidated returns, chancellor erred in so finding. *Id.*

Combined reporting, differentiated from consolidated reporting. *Id.*

Statute cited by chancellor did not support his ruling, Ark. Code Ann. § 26-51-805(1987) did not mandate the filing of a combined return or the filing of any specific type of return. *Id.*

Combined reporting, Ark. Code Ann. § 26-51-718 contains discretionary provisions upon which combined reporting can be allowed, statute found to be permissive in terms of allowing state to accept combined reporting. *Id.*

Combined method of apportionment consistent with apportionment method,

Commissioner had discretionary power to require or permit apportionment on a combined basis of the income of a taxpayer that is part of a unitary business. *Id.*

Chancellor erred in ruling that appellee's filing of combined returns was not prohibited by law, appellee failed to petition appellant for permission to use combined method. *Id.*

TORTS:

Outrage, must be considered first. *Hollomon v. Keadle*, 168.

Outrage, elements of. *Id.*

Outrage, appellant failed to show that employer was made aware that she was peculiarly susceptible to emotional distress. *Id.*

Outrage, appellant failed to show that employer had notice of alleged severity of emotional distress. *Id.*

Outrage, narrow view taken in recognizing claim. *Id.*

Outrage, conduct that meets standard must be determined on case-by-case basis. *Id.*

Outrage, appellant knew that employer was given to yelling and cursing, allegations insufficient to state claim. *Id.*

Party to contract may sue on independent tort claim. *Terminix Int'l Co. v. Stabbs*, 239.

Joint and several liability, how determined. *McGraw v. Weeks*, 285.

Interference with contract, issue should not have gone to jury. *St. Joseph's Regional Health Ctr. v. Munos*, 605.

Interference with contract, verdict against appellant officer reversed and dismissed, party to contract and agents cannot be held liable to interference with party's own contract. *Id.*

Eggshell plaintiff, appellee qualified. *Avery v. State*, 829.

Personal-injury case, plaintiff's burden to establish causal nexus between his injuries and defendant's negligence. *Id.*

Civil conspiracy defined. *Chalmers v. Toyota Motor Sales, USA, Inc.*, 895.

Continuous-tort theory not recognized in Arkansas, limitations begin to run at the date of the wrongful act. *Id.*

Bad faith, components of tort. *Southern Farm Bureau Cas. Ins. Co. v. Allen*, 1023.

Two instances where jury question as to bad faith were raised, trial court did not err in denying appellant's directed verdict motion. *Id.*

Insurance companies, when liability for bad faith may be incurred. *Parker v. Southern Farm Bureau Ins. Co.*, 1073.

Bad faith, affirmative misconduct must be present for liability to be incurred. *Id.*

None of appellee's conduct after filing of complaint could be used by appellant to support his claim of bad faith, appellee's action did not rise to level of bad faith. *Id.*

TRIAL:

- Appellant forced to stand trial over valid jeopardy-based objection, prejudice cannot be shown when the trial was for a charge that was not jeopardy-barred. *Sherman v. State*, 153.
- Reversible error, timely objection required. *Whitney v. State*, 206.
- Penalty phase, trial court did not err in sustaining objection to testimony that had no bearing upon sentence. *Id.*
- Closing argument, when reversal may be required. *Lee v. State*, 529.
- Appellee's closing argument merely rebutted appellant's closing, no error in trial court's refusal to grant mistrial. *Id.*
- Joinder or severance, order pursuant to ARCP Rule 42 within trial court's discretion. *Pennington v. Harvest Foods, Inc.*, 704.
- Joinder or severance, purpose of rule, abuse of discretion demonstrated by showing of prejudice. *Id.*
- Separate trials, three factors to be weighed. *Id.*
- Separate trials, unfair prejudice resulted from failure to sever. *Id.*
- Separate trials, trial court abused its discretion in denying severance. *Id.*
- Directed verdict, when proper, substantial evidence defined. *Avery v. Ward*, 829.
- Directed verdict, trial court appropriately denied directed-verdict motion. *Id.*
- Trial court did not arbitrarily stop appellant's counsel from asking proper questions of victim's stepfather. *Echols v. State*, 917.
- Trial judge's questions did not constitute unmerited rebuke of defense counsel. *Id.*
- Closing argument, no abuse of discretion in allowing prosecutor to compare cuts made by two knives. *Id.*
- Jury admonition was sufficient, mistrial is extreme remedy. *Id.*
- Appellant entitled to *de novo* review of municipal-default judgment in circuit court, law makes no distinction between appeal from default judgment or appeal after trial. *Murdock v. Slater*, 1067.

TRUSTS:

- Constructive and implied trusts discussed, when constructive trust arises. *Betts v. Betts*, 544.
- Constructive trust, when imposed. *Id.*
- Constructive trust, burden of proof and standard of review. *Id.*
- Conflicting evidence was presented, trial court's finding affirmed. *Id.*

VENUE:

- Plaintiffs' action improperly brought in their county of residence, action here was contractual and not for personal injury. *Equity Fire & Cas. Ins. Co. v. Coleman*, 100.
- Statute permitting contract action against nonresident foreign corporation in county of plaintiffs' residence unconstitutional when corporation is qualified to do business in state, special venue statute inapplicable to these facts. *Id.*
- Defendant neither resided in nor was summoned in county where action was brought, action should have been brought in Pulaski County after proper service. *Id.*
- Local-action rule inapplicable as used in appellee's argument, case reversed and dismissed. *Id.*

WILLS:

- Ruling of probate court correct, rules of construction come into play only where testator's intent is unclear from face of will. *Chlanda v. Estate of Fuller*, 551.
- Court's construction led to partial intestacy, no error found. *Id.*
- Extrinsic evidence will not be used unless ambiguity exists, no ambiguity here. *Id.*

WITNESSES:

- Rebuttal witness, State need not provide defense with names of rebuttal witnesses. *Isbell v. State*, 17.
- Credibility of determined by jury, jury free to believe State's witnesses. *Jones v. State*, 61.
- Jury determines both credibility of as well as weight and value of testimony. *Russell v. Colson*, 112.
- Proper witness preparation not the same thing as impermissible influencing, violation of Rule 615 determined on case-by-case basis. *Bayless v. State*, 869.
- Expert witnesses, qualification of. *Echols v. State*, 917.
- Expert witness, witness had much more than ordinary knowledge of nontraditional groups, no abuse of discretion in allowing him to testify. *Id.*
- Neither prosecution nor defense may call a witness knowing he will claim testimonial privilege. *Id.*
- Expert witness, qualification discretionary with trial court, no error in allowing testimony regarding anal injuries. *Id.*
- Expert witness, any weaknesses in bases for opinions would go to weight and credibility rather than admissibility. *Id.*
- Expert witness, weight and credibility of testimony for jury to determine. *Id.*
- Defendant in criminal case, credibility becomes issue. *Id.*
- Credibility of, review on appeal. *Patterson v. State*, 1004.

WORDS & PHRASES:

- "Premises" defined. *Norman v. State*, 210.

WORKERS' COMPENSATION:

- Appellee sought remedy under Workers' Compensation Act, tort action for same claim precluded. *Western Waste Indus. v. Purifoy*, 256.
- Exclusivity provision mirrors general purpose of Workers' Compensation Act, exclusive-benefits provision favors both employer and employee. *Brown v. Finney*, 691.
- Employer has duty to provide safe place for employee to work, duty cannot be delegated. *Id.*
- Failure to provide safe place to work, both supervisory and nonsupervisory employees are immune from suit for negligence. *Id.*
- Work place defined. *Id.*
- Appellee was performing an assigned task when injury to appellant occurred, employer alone had duty to provide safe place to work. *Id.*
- Appellee was immune from suit for appellant's injuries, trial court's judgment affirmed. *Id.*

ZONING & PLANNING:

- Changes in plan may be made by majority vote of city council without further planning-commission review. *City of Russellville v. Banner Real Estate*, 673.
- No requirement that zoning ordinance be made available prior to its adoption. *Id.*

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited

INDEX TO
ACTS, CODES, CONSTITUTIONAL PROVISIONS,
INSTRUCTIONS, RULES, AND
STATUTES CITED

ACTS:

Acts by Name:

Administrative Procedure Act.....	632	Act 424 §4(a), (b) of 1981.....	807
Adoption Assistance and Child Welfare Act of 1980.....	478	Act 267 of 1987.....	921, 949
Arkansas Acts Ex. Session 77, 104.....	593	Act 267 §4(a) of 1987.....	921, 949
Arkansas State Highway Beautification Act.....	596, 598, 599	Act 431 of 1987.....	1071
Federal Arbitration Act.....	242	Act 590 § 3 of 1987.....	808
Federal Highway Beautification Act.....	599	Act 273 of 1989.....	481
Financial Reform, Recovery, and Enforcement Act of 1989.....	308	Act 280 of 1989.....	334
Medical Malpractice Act of 1979.....	144	Act 417, §5 of 1989.....	89
	149, 150	Act 542 of 1991.....	807
Motor Vehicle Safety Responsibility Act.....	805, 808	Act 683 of 1991.....	987
Public Transit System Act.....	805	Act 870 of 1991.....	748, 749, 750, 751, 752, 753
RURESAs.....	524, 525, 526, 527	Act 870(b)-(e) of 1991.....	750, 751
Unfair Practices Act.....	897, 898, 900, 906, 907	Act 292 of 1993.....	807
Uniform Controlled Substance Act..	296, 299	Act 468 of 1993.....	526
Uniform Division of Income for Tax Purposes Act (UDITPA)...	858, 859, 860, 862, 863, 864, 866	Act 796 of 1993.....	219, 223
Uniform Interstate Family Support Act.....	525, 526, 528, 677, 678, 681	Act 67 § 1 of 1994.....	21
Uniform Partnership Act.....	607	Act 68 § 1 of 1994.....	21
Uniform Residential Landlord and Tenant Act.....	626	Act 533 of 1995.....	477
Welfare Act of 1980.....	478	Act 567 of 1995.....	591
Workers' Compensation Act.....	218, 219, 220, 221, 223, 257, 258, 259, 699, 700	Act 1261 of 1995.....	422
		Act 1337 of 1995.....	477
Arkansas Acts:			
Act 53 of 1883.....	151		
Act 169 of 1931.....	593		
Act 29 of 1937.....	654		
Act 197 §2 of 1945.....	1071		
Act 4 §4 of 1949.....	700		
Act 347 of 1953.....	805, 806, 808		
Act 347 § 12 of 1953.....	808		
Act 347 § 27 of 1953.....	808		
Act 640 of 1967.....	599		
Act 165 of 1969.....	670, 672, 807		
Act 893 of 1975.....	805, 807, 808		
Act 441 of 1979.....	591		
Act 424 of 1981.....	807, 808		
		CODES:	
		(See also RULES and STATUTES)	
		Arkansas Code Annotated:	
		1-2-103(a).....	949
		4-1-106.....	1047
		4-1-106.1.....	1052, 1053, 1065, 1066
		4-1-203.....	1047, 1055, 1066
		4-4-102(2)(a).....	1067
		4-4-103.....	1046, 1054, 1055, 1064, 1065
		4-4-103(e).....	1066
		4-4-106.....	1047, 1055
		4-4-106(1).....	1052, 1053, 1064, 1066
		4-4-203.....	1047, 1055, 1066
		4-4-213.....	1049, 1051, 1055
		4-4-215.....	1047, 1051, 1054, 1055
		4-4-215(d).....	1052, 1063, 1064, 1065, 1066
		4-4-402.....	1054, 1065
		4-4-402(b).....	1054, 1065, 1066
		4-13-204(b).....	418
		4-26-1101 — 1109.....	506
		4-26-1103(2).....	507
		4-26-1103(3).....	507
		4-27-830 — 831.....	705, 722

4-27-842.....	705, 722	5-13-204(b).....	418
4-42-404(1).....	615	5-13-301.....	418
4-42-405.....	615	5-13-301(a)(2).....	418
4-59-101(a)(4).....	740, 742	5-14-101.....	385
4-75-201.....	906	5-14-101(1).....	568
4-75-207(a).....	906	5-14-101(5).....	384
4-75-207(b).....	898, 907	5-14-101(8).....	572
5-1-102(4).....	6	5-14-103(a)(1).....	383, 385
5-1-109(f).....	730, 731	5-14-103(a)(3).....	202, 566, 571, 573
5-1-110.....	166	5-14-104(a).....	572
5-1-110(b).....	566, 571, 572	5-14-106(a).....	572
5-1-110(c).....	571	5-14-108(a).....	566
5-1-112.....	166	5-14-108(a)(3).....	571, 573
5-1-113.....	166	5-14-108(a)(3).....	795, 799, 800
5-1-113(1)(a).....	162	5-26-202.....	1035
5-2-203(b).....	655	5-36-101(7).....	85
5-2-209.....	847	5-36-103.....	1035
5-2-305.....	117, 118, 120, 122	5-36-103(a)(1).....	870
5-2-305(d)(1)-(5).....	118	5-36-103(a)(2).....	85
5-2-305(f).....	116, 117, 119	5-36-103(b)(2)(A).....	1004, 1005, 1006
5-2-403.....	815, 820	5-37-207.....	1005
5-2-403(a).....	27, 28, 29, 31	5-37-207(a)1-4, (b).....	1004, 1005
5-2-403(b).....	29	5-37-207(a)(4).....	787
5-3-207.....	1004, 1005, 1006	5-38-301.....	30
5-3-207(a)(4).....	1004, 1005	5-38-301(a).....	789
5-4-103.....	989, 1037	5-38-301(b).....	164
5-4-201.....	1037	5-54-125.....	155, 165
5-4-201(a)(1).....	1037, 1038	5-54-125(b).....	104
5-4-301.....	1037	5-63-401(a).....	104
5-4-309(e).....	728, 730	5-63-401(a)(1).....	104
5-4-401(a)(3).....	1037	5-63-401(a)(2).....	207
5-4-401(a)(4).....	519	5-64-401(a).....	207
5-4-403.....	815, 820	5-64-401(a)(1)(i).....	95
5-4-501.....	870	5-64-401(b).....	844
5-4-602(4).....	433, 434, 450	5-64-401(d).....	207
5-4-603-605.....	988	5-64-408(a).....	104
5-4-603.....	433, 448, 449, 932, 984, 985, 986, 989	5-64-411(a)1, 2.....	296, 298
5-4-603(a) & (b).....	984	5-64-505.....	299
5-4-603(b)(3).....	985	5-64-505(m).....	299
5-4-603(d).....	449	5-64-508.....	195
5-4-603-605.....	989	5-65-102(1).....	11, 190, 194
5-4-604.....	986	5-65-103.....	189, 191, 193, 194
5-4-604(8).....	433, 448, 932, 985, 986, 987	5-65-103(a).....	190, 193, 194
5-4-605.....	918	5-65-103(b).....	193
5-4-605(6).....	918, 941	5-65-206(a)(2).....	82, 84
5-10-101.....	982	5-71-101(6).....	82, 83, 84
5-10-101(a)(1).....	19, 323	5-71-212(c).....	893
5-10-101(a)(4).....	323	5-74-107.....	888
5-10-102.....	983	5-74-107(b)(1).....	888
5-11-102(a)(4).....	533	5-74-107(b)(2).....	787
5-12-102.....	6	5-83-301.....	422
5-12-103.....	6, 603, 605	5-113-204(a).....	592
5-13-201(a)(1), (2), (3).....	163	6-18-502.....	591, 594, 595
5-13-204.....	164	6-18-502(c).....	592
5-13-204(a).....	418, 422	6-18-503.....	591
		6-18-507.....	588, 589, 590, 591, 592, 593, 595

7-5-522	130	11-9-410... 692, 694, 695, 697, 701, 703
7-5-522(d)	343	11-9-410(a)(1)(A)
7-7-105	469, 470, 471, 472, 474	695, 700
7-9-402(2)	341	12-12-313
9-10-108(a)(3)(A)	680	639, 640, 644, 645, 646,
9-10-110	679, 680	647, 648
9-10-110(a)	679	12-12-313(a)
9-10-110(b)	679	926, 962
9-12-315	679	12-12-313(a-c), (d)(1), (2), (3)
9-12-315(a)(1)(A)(ix)	316	645
9-12-315(a)(1)(A)(ix)	313, 314	13-5-501
9-13-101	487	558, 562
9-14-105(a)	809, 811, 812	13-5-504
9-14-223	748, 753	558, 562
9-14-236	749, 751	13-43-212
9-14-331	527	934, 993
9-15-315(a)(1)(A)(vii)	317	14-14-802(a)(1)
9-17-316	679	560
9-17-316(f)	680	14-14-802(b)(2)(C)(v)
9-17-401(c)	678	558, 560, 562,
9-17-902	678	563
9-26-202	795, 799, 800	14-14-803
9-27-309(a)	924, 957	563
9-27-317	17, 20, 21	14-14-1102(b)(3)
9-27-317(a) through (f)	21	558, 559, 561, 562,
9-27-317(f)	20	563
9-27-317(g)(2)(A)	21, 498	14-14-1102(3)
9-27-317(g)	17, 21	563
9-27-318	201, 602	14-56-422
9-27-318(b)	202, 604	673, 675, 676
9-27-318(b)(1)	202, 419, 604, 683	14-56-423
9-27-318(b)(1)-(3)	683, 684	673, 675, 676
9-27-318(b)(1)(e)(1)-(3)	203	14-334-101
9-27-318(b)(2)(f)	283	807
9-27-318	886	14-334-104
9-27-318(d)(1)	604	807
9-27-318(d)(2)	604	16-10-108(a)1-5
9-27-318(d)(3)	604	184
9-27-318(e)	202, 282, 283, 284, 415,	16-10-108(a)
9-27-318(e)(1)	417, 419, 515, 518, 682, 882, 883, 885	185
9-27-318(e)(1)	202, 415, 419, 420, 516,	16-13-201(a)
9-27-318(e)(2)	519, 684	809, 812
9-27-318(e)(3)	202, 419, 684	16-13-203
9-27-318(f)	283, 419, 518, 684, 885	890
9-27-328	477, 479	16-13-204
9-27-328(a)	477	890
9-27-328(b)	475, 478	16-13-312
9-27-331(a)(1)	204	619
9-27-332	479	16-17-703
9-27-337	479	1071
9-27-343(a)	480	16-20-109
9-27-343(c)	480	176
9-28-208(d)	202, 205, 416, 422, 520,	16-22-301
886		586
11-9-105	692, 693, 701	16-22-302
11-9-105(a)	218, 219, 221, 222, 223,	587
258, 691, 694, 700		16-22-308
		243, 1063
		16-40-103(b)
		492
		16-43-212
		934, 993
		16-43-402(a)
		119
		16-45-104
		263
		16-56-105
		1020
		16-56-105(1)
		317
		16-56-105(3)
		896, 901
		16-56-111(a)
		455, 460, 462
		16-56-111(b)
		901
		16-56-115
		749, 750
		16-56-126
		512, 576, 579
		16-60-109
		100, 102, 149
		16-60-112
		101
		16-60-113(b)
		726
		16-60-116(a)
		100, 103
		16-62-101
		142, 143, 148, 149
		16-62-102
		143, 149, 150
		16-63-402(a)
		119, 933, 992
		16-64-113
		293
		16-84-113(c)
		89
		16-84-115
		86, 88
		16-84-115(2)
		88
		16-84-115(3)
		86, 88, 89, 90
		16-85-207
		892
		16-89-111
		938
		16-89-111(e)
		91, 423

16-89-111(c)(1) 91, 95, 96, 423, 427
 16-91-113(a) 27
 16-96-501 1067, 1072
 16-96-507 1067, 1068, 1069, 1072
 16-97-101 8
 16-97-101(4) 1037
 16-108-201 242
 16-111-106(b) 681
 16-112-122 892
 16-114-201 — 209 150
 16-114-201(3) 144, 149, 227
 16-114-202 150
 16-114-203 143, 144
 16-114-203(a) 140, 144
 16-114-203(b) 141, 145
 17-14-205 631
 17-14-206 629, 630, 635, 636, 637
 17-14-206(1) 630, 635
 17-14-206(4) 629, 630, 635, 636
 17-14-305 635, 636
 17-14-305(a) 630
 18-60-102 650, 651, 652, 654
 18-60-102(a) 649, 650, 654, 655
 18-60-103 650, 651, 652, 653
 18-60-401 459
 18-61-101 456, 460
 18-61-101(a) 461
 18-61-103 456, 461
 18-65-207 892
 20-8-103 574
 20-8-104 574
 20-22-304
 649, 650, 651, 653, 654, 655
 21-9-301 667, 668, 669, 670, 671
 21-9-301-303 807
 23-16-301 805, 806, 807, 808
 23-16-301(a) 805, 806, 808, 809
 23-16-302 805, 806, 807, 808
 23-32-1005 780, 781, 785
 23-32-1005(1)(a) 778, 780, 781
 23-32-1005(1)(b) 775, 778, 780, 781, 783, 784
 23-32-1005(2)(a) 778, 780, 781
 23-32-1005(2)(b) 775, 780, 781, 783
 23-32-1005(2)(c) 779, 780, 781, 783
 23-32-1005(5) 779, 780, 781
 23-111-101 — 515 126, 137
 23-79-204 100, 102
 23-79-208 1086, 1087, 1096
 23-89-101 101, 102
 23-89-101(a), (b) 102
 23-89-202 1025
 23-89-203 1025
 23-89-204 102
 23-89-301—308 1088
 23-89-304 1077, 1088

23-89-304(a)(1) 1088
 23-89-304(a)(2) 1078, 1093, 1095
 25-15-209 628, 630, 631, 632
 25-15-209(a) 629, 631, 634, 635
 25-15-209(b) 629, 632, 634, 635
 25-15-212 597, 630
 25-15-212(a) 597
 25-15-212(b) 597
 25-15-212(h) 597, 598
 25-15-212(h)(4) 597
 25-15-212(h)(5) 597
 25-15-212(h)(6) 597
 26-18-405 1009
 26-18-406 1009
 26-18-507(c)(2)(A) 495, 496, 497
 26-35-902 472
 26-51-701—723 862
 26-51-718 858, 859, 862, 865, 866, 867, 868
 26-51-805 858, 862
 26-52-103 1013
 26-52-103(a)(4) 687, 1010, 1013, 1015
 26-52-301 687, 1013
 26-52-401(12) 687
 26-52-401(12)(A) 687
 26-52-401(17) 495
 26-52-409
 685, 686, 687, 688, 689, 690
 26-52-409(a)(1) 685, 686, 688, 689
 26-52-501 686, 687, 689
 26-54-112 514
 26-67-304 733, 734
 27-19-101 806
 27-19-212 805, 808
 27-19-604 806
 27-19-605 805, 808
 27-50-308(a) 163
 27-50-308(b)(1)(A) 163
 27-51-901 164
 27-67-304 733, 735
 27-67-304(a) 734
 27-74-101—502 599
 27-74-209 600
 85-4-103(1) 1055
 85-4-103(5) 1055

FEDERAL CODES:

United States Code:

12 U.S.C. § 1823(e) 308
 Title 23 U.S.C. 600
 42 U.S.C. §§ 670 - 676 478
 42 U.S.C. § 671(a)(1) 478
 42 U.S.C. § 672(a)(1) 478
 43 U.S.C. § 671(a)(15) 478

Code of Federal Regulations:

23 C.F.R. § 750.106(b)(6)	601
23 C.F.R. § 750.303(e)	600
23 C.F.R. § 750.707(c)	600
23 C.F.R. § 750.707(d)	600

United States Bankruptcy Code
(Supp. II[1978]):

Title 11 § 362	272, 273
----------------------	----------

PUBLIC LAWS:

Public Law 96-272	
-------------------	--

CONSTITUTIONAL PROVISIONS:

Arkansas Constitution:

Amendment 6, § 2	469
Amendment 6, § 3	472
Amendment 6, § 4	470
Amendment 6, § 5	469, 470, 471
Amendment 7	68, 70, 124, 127, 133, 134, 278, 328, 329, 330, 331, 332, 334, 335, 337, 338, 339, 340, 341, 342, 343, 344, 345, 348, 353, 354, 356, 357, 358, 359, 360, 371, 388, 392, 466, 467 949
Amendment 21	322
Amendment 26	700, 703
Amendment 29	469
Amendment 55, § 3	558, 562
Article 2, § 7	809, 811, 813, 1067, 1072
Article 2, § 9	433, 434, 448, 450
Article 2, § 13 ..	668, 669, 670, 671, 672
Article 2, § 21	677
Article 5, § 20	496
Article 5, § 32 ..	668, 669, 672, 700, 703
Article 6, § 14	469, 470, 471
Article 7, § 11	890
Article 7, § 14	890
Article 7, § 20	619
Article 7, § 23	971
Article 7, § 43	892
Article 19, § 14	125, 134
Article 19, § 22	345

United States Constitution:

First Amendment	169, 170, 175, 360, 923, 955, 956
Fourth Amendment	212, 213, 215, 922, 951, 953, 995,

	1001
Fifth Amendment	569, 663, 666, 927, 963, 964, 965, 995, 996, 1001, 1002
Sixth Amendment	36, 42, 43, 54, 94, 267, 268, 269, 318, 430, 439, 440, 666, 677, 995, 996, 1001, 1002
Seventh Amendment	810, 813
Eighth Amendment	433, 448, 450, 987, 988
Tenth Amendment	353
Fourteenth Amendment	433, 448, 450, 987, 995, 1000, 1016
Art. 1 § 4	371
Art. 3 § 2	811
Art. 5	355, 356, 360, 365, 367, 368, 369, 370, 371, 466
Confrontation Clause	928, 973
Double Jeopardy Clause ...	153, 154, 298
Equal Protection Clause	35, 36, 42

INSTRUCTIONS:

Arkansas Model Jury Instructions
(Civil):

AMI 3d 203	803
AMI 3d 701	1044
AMI 3d 1104	538, 539, 540, 541
AMI 3d 1105	538, 539, 540

Arkansas Model Jury Instructions
(Criminal):

AMCI 196	938
AMCI 401	27, 31
AMCI 1509	918, 941
AMCI 2d 101(e)	450
AMCI 2d 401	28, 30, 879
AMCI 2d 9103	1037
AMCI 2d 9111	1037
AMCI 3d 401	981
AMCI 3d 709	295
AMCI 3d 2220	290, 291
AMCI 3d 2221	290
AMCI 3d 2225	290, 291

RULES:

Arkansas Rules of Appellate
Procedure Civil (Ark. Code Ann. Court
Rules [1995]):

Ark. R. App. P. 2(a)	479, 480
Ark. R. App. P. 2(a)8	767
Ark. R. App. P. 4	177
Ark. R. App. P. 4(a)	462, 463

Ark. R. App. P. 4(c) 638, 641, 642, 643, 644
 Ark. R. App. P. 5 177

Arkansas Rules of Appellate
 Procedure Criminal (Ark. Code Ann.
 Court
 Rules [1995]):

Ark. R. App. P.—Crim. 1 55, 267
 Ark. R. App. P.—Crim. (2) 638, 643, 644
 Ark. R. App. P.—Crim. 2(a)(1) 1039
 Ark. R. App. P.—Crim. 2(a)(3) 643
 Ark. R. App. P.—Crim. 3 267, 664, 665
 Ark. R. App. P.—Crim. 3(a) 664
 Ark. R. App. P.—Crim. 3(c) ... 191, 267, 663, 664
 Ark. R. App. P.—Crim. 3(d) ... 583, 584

Arkansas Rules of Civil
 Procedure (Ark. Code Ann. Court
 Rules [1995]):

ARCP Rule 4 577, 894
 ARCP Rule 4(b) 249
 ARCP Rule 4(d) 249
 ARCP Rule 4(d)(5) 244, 249
 ARCP Rule 4(i) 575, 576, 577, 578, 579
 ARCP Rule 8 1007, 1011
 ARCP Rule 8(d) 263
 ARCP Rule 8(f) 1007, 1008, 1011
 ARCP Rule 11 733
 ARCP Rule 12(a) 248
 ARCP Rule 12(b) 258, 1007, 1011
 ARCP Rule 12(b)(2) 767
 ARCP Rule 12(b)(3) 767
 ARCP Rule 12(b)(5) 767
 ARCP Rule 12(b)(6) 248, 258, 736, 738, 741, 745, 747, 1007, 1008, 1009, 1010, 1011, 1012, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1049, 1051
 ARCP Rule 15(a) ... 242, 501, 509, 510
 ARCP Rule 15(b) 654
 ARCP Rule 16 854, 855
 ARCP Rule 16(4) 855
 ARCP Rule 20 715, 719
 ARCP Rule 20(a) 715, 723
 ARCP Rule 20(b) 705, 715, 719
 ARCP Rule 23 495, 496
 ARCP Rule 24(c) 681
 ARCP Rule 26(b)(1) 1090

ARCP Rule 26(b)(3) 1082
 ARCP Rule 37 854
 ARCP Rule 41 577, 578, 579
 ARCP Rule 41(a) 767
 ARCP Rule 41(b) ... 576, 577, 578, 579
 ARCP Rule 42 704, 715, 716
 ARCP Rule 42(a) 716
 ARCP Rule 42(b) ... 705, 716, 719, 722
 ARCP Rule 50(a) 255
 ARCP Rule 50(b) 504
 ARCP Rule 50(e) 255
 ARCP Rule 51 541
 ARCP Rule 52(a) 81, 250, 317, 487
 ARCP Rule 54(b) 675, 725, 741
 ARCP Rule 53 69, 70, 277, 278
 ARCP Rule 55 260, 262, 264
 ARCP Rule 55(b) 260, 264
 ARCP Rule 55(c) .. 261, 264, 265, 1070
 ARCP Rule 55(c)(4) 262, 264
 ARCP Rule 56 558, 561, 910, 1011, 1018, 1019, 1020
 ARCP Rule 56(c) 140, 142, 151, 171, 556, 676
 ARCP Rule 59 993, 994
 ARCP Rule 59(a)(1) 74, 79
 ARCP Rule 59(a)(6) 113
 ARCP Rule 60 75, 80, 81, 771
 ARCP Rule 60(b) 310
 ARCP Rule 60(c) 74, 80
 ARCP Rule 60(c)(1) 74, 79
 ARCP Rule 60(c)(4) 767
 ARCP Rule 64 74, 78, 79, 80, 849, 850, 853, 854
 ARCP Rule 64(b) .. 74, 75, 78, 79, 849, 851, 853

Federal Rules of Civil Procedure:

FRCP 15 509

Arkansas Rules of Criminal
 Procedure (Ark. Code Ann. Court
 Rules [1995]):

A.R.Cr.P. Article IV 919, 944
 A.R.Cr.P. 2.3 665
 A.R.Cr.P. 4.1(e) 888, 892
 A.R.Cr.P. 5.1(a) 252
 A.R.Cr.P. 5.2(a) 252
 A.R.Cr.P. 8.1 994, 998, 999
 A.R.Cr.P. 8.3(c) 888, 892
 A.R.Cr.P. 9.2(e)(i) 890
 A.R.Cr.P. 12.1 845
 A.R.Cr.P. 13.2 923, 953
 A.R.Cr.P. 13.2(b) 210, 213, 923
 A.R.Cr.P. 13.2(c)(ii) 953
 A.R.Cr.P. 13.3(c) 211, 213

- A.R.Cr.P. 16.2(e) 210, 214
A.R.Cr.P. 17.1 198, 788,
789, 871, 873
A.R.Cr.P. 17.1(a) 198
A.R.Cr.P. 17.1(a)(i) 197
A.R.Cr.P. 17.1(a)(ii) 25
A.R.Cr.P. 17.1(a)(iii) 658
A.R.Cr.P. 17.1(a)(v) 570, 877
A.R.Cr.P. 17.1(d) 520, 522
A.R.Cr.P. 19.2 18, 25, 658
A.R.Cr.P. 19.4 522
A.R.Cr.P. 19.7 23, 198, 658
A.R.Cr.P. 21.2 919, 944
A.R.Cr.P. 22 920, 921, 949
A.R.Cr.P. 22.2 844
A.R.Cr.P. 22.3 919, 944
A.R.Cr.P. 24.3(b)
..... 51, 52, 53, 54, 55, 56
A.R.Cr.P. 24.4(c) 60
A.R.Cr.P. 27.3 119, 534
A.R.Cr.P. 28.1 12, 13, 31, 398
A.R.Cr.P. 28.1(a) 32
A.R.Cr.P. 28.1(b) 398, 399
A.R.Cr.P. 28.1(c) 108
A.R.Cr.P. 28.2(a) 108, 252
A.R.Cr.P. 28.2(b) 398, 399
A.R.Cr.P. 28.3 32, 109
A.R.Cr.P. 28.3(a) 33, 108, 110
A.R.Cr.P. 28.3(c) 33, 106, 110, 112
A.R.Cr.P. 28.3(e) 13, 399, 400
A.R.Cr.P. 28.3(h) 108, 110
A.R.Cr.P. 28.3(i) 106, 111
A.R.Cr.P. 32.1 40
A.R.Cr.P. 32.2 35, 41
A.R.Cr.P. 33.1 104, 105, 207, 879
A.R.Cr.P. 33.3 643, 1039
A.R.Cr.P. 36.9 167
A.R.Cr.P. 36.21(b) 38, 105, 197, 813,
817
A.R.Cr.P. 36.22 934, 993, 994, 1039
A.R.Cr.P. 36.10 665
A.R.Cr.P. 37 206, 208, 637, 638,
641, 643, 644, 854,
1032, 1038
A.R.Cr.P. 37.2(c) 910, 911
- Arkansas Rules of Evidence
(Ark. Code Ann. Court Rules [1995]):
- A.R.E. Article V 964
A.R.E. 103(a)(2) 190, 194, 925, 962,
973
A.R.E. 103(d) 199
A.R.E. 401 924, 957, 980
A.R.E. 403 376, 379, 432, 445, 964
A.R.E. 404(b) 379, 432, 444, 445,
720, 795, 800, 926,
929, 964, 976
A.R.E. 408 723
A.R.E. 501 964
A.R.E. 501(a) 964
A.R.E. 502 15
A.R.E. 502(a)(5) 15
A.R.E. 502(b) 14
A.R.E. 502(d)(3) 11, 15
A.R.E. 512 963
A.R.E. 512(b) 964
A.R.E. 608 973
A.R.E. 608(b) 200, 814, 818,
928, 973
A.R.E. 609 814, 818
A.R.E. 613 200
A.R.E. 614(a) 622
A.R.E. 615 286, 293, 869, 870, 871,
874, 875, 876, 877
A.R.E. 615(3) 293
A.R.E. 801 451, 570
A.R.E. 802 570
A.R.E. 803(2) 66, 430, 431, 432,
439, 443, 451, 454
A.R.E. 803(18) 925, 959
A.R.E. 804(a)(5) 62, 64, 65
A.R.E. 804(b)(3) 64
A.R.E. Article V 964
- Rules of the Arkansas
Supreme Court and Court of Appeals
(Ark. Code Ann. Court Rules [1995]):
- Rule 1-2(a)(1) 810
Rule 1-2(a)(2) 32, 37, 156, 211, 640
Rule 1-2(a)(3) 75, 142, 262, 1008
Rule 1-2(a)(11) 484
Rule 1-2(a)(12) 767
Rule 1-2(a)(15) 373, 756, 1018, 1024
Rule 1-2(a)(16) 142
Rule 1-2(a)(17)(vi) .. 574, 630, 692, 756
Rule 1-2(d) 577
Rule 1-2(d)(1) 810
Rule 1-2(f) 749
Rule 1-2(f)(1) 75, 484
Rule 1-4(b) 630
Rule 2-1(a) 630
Rule 4-2(a)(6) 281, 542, 543, 574,
575, 724, 725, 727,
729, 730, 799
Rule 4-2(b) 381, 731
Rule 4-2(b)(2) 497, 498, 587, 727,
730, 731
Rule 4-2(a)(6) 574, 724, 725
Rule 4-3(g) 401, 402, 497, 498
Rule 4-3(h) 21, 27, 35, 40,
44, 51, 266, 267, 401,
402, 429, 535, 660, 933,

990, 994, 1003	85-4-103.....	1055
Rule 4-3(j) 762, 763, 764, 914, 916	85-4-103(1).....	1055
Rule 4-3(j)(2)..... 763, 764, 916	85-4-103(5).....	1055
Rule 4-4(a) 580, 581, 582, 1099, 1100	Arkansas Code of Judicial Conduct:	
Rule 6-5..... 127, 388	Canon 2.....	620
Rule 6-5(a) 69, 70, 278	Canon 2B.....	464
Rule 6-5(b) 69, 70, 275, 277, 278	Canon 3.....	620
Rule 6-6..... 1097, 1098	Canon 3B(1).....	464, 465
Rule 6-6(c) 1097, 1098, 1099	Canon 3E(1)(a).....	620
Rules Governing Admission to the Bar:	Model Rule of Professional Conduct:	
Rule XV(G)(1)(b) 229	Rule 3.7.....	765, 769, 771, 772, 773
RULES:	Rule 3.7(1).....	769
Rule 37.....	Rule 3.7(2).....	769
Rule 60(b).....	Rule 3.7(3).....	765, 769, 772
STATUTES:	Revised Regulations for Issuance of Permits for Outdoor Advertising Devices and Signs:	
Pub. L. No. 101-73, § 501,	Section 3, p. 21	
103 Stat. 183, 363, 370.....	Section 6, p. 23	
308	USPAP:	
Arkansas Statutes Annotated:	Rule 1-4(b).....	635, 636
43-1802.....	Rule 2-1(a).....	635, 636
921, 949	Uniform Commercial Code:	
44-502.....	UCC §1-106.....	1047
1072	UCC §1-203.....	1047, 1056
48-943.....	UCC Art. 4.....	1047, 1053, 1054
85		
66-3239.....		
1086		
66-4007—4013.....		
1088		
66-4008.....		
1088		
66-4009.....		
1088		
81-1304.....		
695, 701		
81-1340.....		
701		

—

ARKANSAS
APPELLATE
REPORTS

Volume 55

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
September 18, 1996 — December 23, 1996
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1996

ERRATA

25 Ark. App. at 341, headnote 5, line three:
The word "scribner" should be "scrivener."

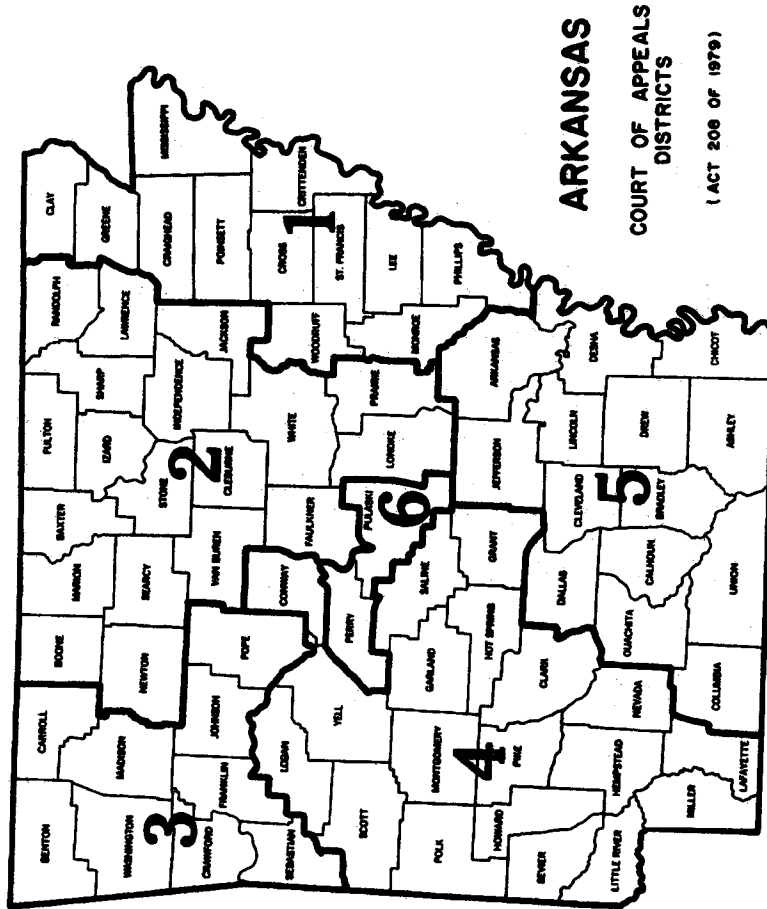
25 Ark. App. at 346, line five:
The word "scribner" (misquoted) should be "scrivener."

Set in Bembo

DARBY PRINTING COMPANY
6215 PURDUE DRIVE
ATLANTA, GEORGIA 30336
1996

CONTENTS

	Page
MAP OF DISTRICTS FOR COURT OF APPEALS	iv
JUDGES AND OFFICERS OF THE COURT OF APPEALS	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Judges of Court of Appeals and Per Curiam Opinions	xi
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xiv
TABLE OF OPINIONS NOT REPORTED	xvi
TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION	xxv
OPINIONS REPORTED	1
INDEX	
Alphabetical Headnote Index	428
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	440



JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(September 18, 1996 —
December 23, 1996, inclusive)

JUDGES

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

OFFICERS

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

¹District 3.
²District 1.
³District 2.
⁴District 4.
⁵District 5.
⁶District 6.
⁷Position 7.
⁸Position 8.
⁹Position 9.

TABLE OF CASES REPORTED

A

AAA Bail Bond Co. <i>v.</i> State	35
Ahrend <i>v.</i> Director	71
Air Systems, Inc. (<i>Baysinger v.</i>)	174
Alexander <i>v.</i> State	148
American Investors Life Ins. Co. <i>v.</i> Hudson.....	360
Arkansas Crane & Crawler (<i>Christian v.</i>)	306
Arkansas Dep't of Human Servs. (<i>Johnston v.</i>)	392
Arkansas Employment Sec. Dep't (<i>Smith v.</i>).....	348
Arkansas Public Serv. Comm'n (<i>Bryant v.</i>)	125
Ashley (<i>Breckenridge v.</i>).....	242

B

<i>Baysinger v.</i> Air Systems, Inc.	174
Blackford <i>v.</i> Director	418
Blatt (<i>Sparks Regional Medical Ctr. v.</i>)	311
<i>Breckenridge v.</i> Ashley	242
Brown <i>v.</i> State	107
<i>Bryant v.</i> Arkansas Public Serv. Comm'n	125

C

C & J Chem. Co. (<i>Teague v.</i>)	335
Calcagno <i>v.</i> Shelter Mutual Ins. Co.	321
Carpenter <i>v.</i> Director	39
Cherry (<i>Cherry v.</i>).....	178
Cherry <i>v.</i> Cherry.....	178
Childs <i>v.</i> Mid-Century Ins. Co.	168
<i>Christian v.</i> Arkansas Crane & Crawler	306
Chronister <i>v.</i> State.....	93
City of Fort Smith (<i>Torrey v.</i>)	226
<i>Coleman's Service Ctr., Inc. v.</i> Federal Deposit Ins. Corp.	275

Columbia Mut. Ins. Co. (Rosser <i>v.</i>).....	77
Crawford <i>v.</i> Pace Indus.	60

D

Dale <i>v.</i> State	184
Director (Ahrend <i>v.</i>)	71
Director (Blackford <i>v.</i>)	418
Director (Carpenter <i>v.</i>)	39
Director (Dray <i>v.</i>)	66
Director (Kilpatrick <i>v.</i>).....	193
Director (Owens <i>v.</i>)	255
Director (Thomas <i>v.</i>).....	101
Dray <i>v.</i> Director	66
Duke <i>v.</i> Regis Hairstylists	328

E

Employment Sec. Dep't (Smith <i>v.</i>)	348
Estate of Spicer (Spicer <i>v.</i>).....	267

F

Federal Compress & Warehouse Co. <i>v.</i> Risper	300
Federal Deposit Ins. Corp. (Coleman's Service Ctr., Inc. <i>v.</i>) ..	275
Feltman (Roberts <i>v.</i>)	142

G

Goston, Lee <i>v.</i> State.....	1
Goston, Lee <i>v.</i> State.....	17

H

Harold Austin Constr., Inc. (Whitten <i>v.</i>)	409
Harrington <i>v.</i> Harrington	22
Harrington (Harrington <i>v.</i>).....	22
Howard <i>v.</i> Weathers.....	121
Hudson (American Investors Life Ins. Co. <i>v.</i>)	360
Hugh Chalmers Chevrolet-Cadillac-Toyota, Inc. <i>v.</i> Lang	26

J

Jeffcoat <i>v.</i> Second Injury Fund.....	249
Jefferson <i>v.</i> Munsey Prods., Inc.	105
Johnson <i>v.</i> Triple T Foods.....	83
Johnson <i>v.</i> State.....	117
Johnston <i>v.</i> Arkansas Dep't of Human Servs.....	392

K

Kilpatrick <i>v.</i> Director	193
KMS, Inc. (Trent <i>v.</i>)	355

L

Lang (Hugh Chalmers Chevrolet-Cadillac-Toyota, Inc. <i>v.</i>)	26
Lonigro (Lonigro <i>v.</i>)	253
Lonigro <i>v.</i> Lonigro	253
Looney (Minnesota Mut. Life Ins. Co. <i>v.</i>).....	384
Lowell <i>v.</i> Lowell	211
Lowell (Lowell <i>v.</i>)	211

M

Meeks <i>v.</i> State	220
Mid-Century Ins. Co. (Childs <i>v.</i>)	164
Mid-Century Ins. Co. <i>v.</i> Miller.....	303
Miller (Mid-Century Ins. Co. <i>v.</i>).....	303
Minnesota Mut. Life Ins. Co. <i>v.</i> Looney	384
Moody (Schwarz <i>v.</i>).....	6
Munsey Prods., Inc. (Jefferson <i>v.</i>).....	105

N

Nason <i>v.</i> State	164
Noland <i>v.</i> Noland	232
Noland (Noland <i>v.</i>)	232

O

O'Neal <i>v.</i> O'Neal	57
O'Neal (O'Neal <i>v.</i>)	57
Olsten Kimberly Quality Care <i>v.</i> Pettey	343
Owens <i>v.</i> Director.....	255

P

Pace Indus. (Crawford <i>v.</i>).....	60
Pennington <i>v.</i> Rhodes	42
Pettey (Olsten Kimberly Quality Care <i>v.</i>)	343
Pickett <i>v.</i> State.....	261
Pyles <i>v.</i> State	201

R

Reavis <i>v.</i> State	388
Regis Hairstylists (Duke <i>v.</i>)	328
Rhodes (Pennington <i>v.</i>).....	42
Risper (Federal Compress & Warehouse Co. <i>v.</i>)	300
Roberts <i>v.</i> Feltman.....	142
Rosser <i>v.</i> Columbia Mut. Ins. Co.	77

S

Schwarz <i>v.</i> Moody	6
Second Injury Fund (Jeffcoat <i>v.</i>)	249
Shelter Mutual Ins. Co. (Calcagno <i>v.</i>).....	321
Smith <i>v.</i> Arkansas Employment Sec. Dep't	348
Smith <i>v.</i> State	97
Sparks Regional Medical Ctr. <i>v.</i> Blatt.....	311
Spicer <i>v.</i> Estate of Spicer	267
State (AAA Bail Bond Co. <i>v.</i>)	35
State (Alexander <i>v.</i>)	148
State (Brown <i>v.</i>)	107
State (Chronister <i>v.</i>)	93
State (Dale <i>v.</i>),	184
State (Goston, Lee <i>v.</i>).....	1
State (Goston, Lee <i>v.</i>).....	17

State (Johnson <i>ν</i>)	117
State (Meeks <i>ν</i>)	220
State (Nason <i>ν</i>)	164
State (Pickett <i>ν</i>)	261
State (Pyles <i>ν</i>)	201
State (Reavis <i>ν</i>)	388
State (Smith <i>ν</i>)	97
State (W. D. <i>ν</i>)	88
State (Wallace <i>ν</i>)	114
State (Washington <i>ν</i>)	423
State (Williams <i>ν</i>)	156
State (Zollicoffer <i>ν</i>)	166

T

Teague <i>ν</i> C & J Chem. Co.	335
Thomas <i>ν</i> Director	101
Torrey <i>ν</i> City of Fort Smith	226
Trent <i>ν</i> KMS, Inc.	355
Triple T Foods (Johnson <i>ν</i>)	83

W

W. D. <i>ν</i> State	88
Wallace <i>ν</i> State	114
Washington <i>ν</i> State	423
Weathers (Howard <i>ν</i>)	121
Weaver <i>ν</i> Whitaker Furniture Co., Inc.	400
Whitaker Furniture Co., Inc., (Weaver <i>ν</i>)	400
Whitten <i>ν</i> Harold Austin Constr., Inc.	409
Williams <i>ν</i> State	156
Winans <i>ν</i> Winans	272
Winans (Winans <i>ν</i>)	272

Z

Zollicoffer <i>ν</i> State	166
----------------------------------	-----

OPINIONS DELIVERED BY THE RESPECTIVE
 JUDGES OF THE ARKANSAS COURT OF APPEALS
 DURING THE PERIOD COVERED BY THIS
 VOLUME AND DESIGNATED FOR PUBLICATION

JOHN E. JENNINGS, CHIEF JUDGE:

Nason *v.* State 164

JOHN MAUZY PITTMAN, JUDGE:

Teague *v.* C & J Chem. Co. 336
 Zollicoffer *v.* State..... 166
 Pickett *v.* State 261
 Spicer *v.* Estate of Spicer 267
 Lonigro *v.* Lonigro 253
 Johnson *v.* State..... 117
 Calcagno *v.* Shelter Mut. Ins. Co. 321
 Duke *v.* Regis Hairstylists 328
 Jeffcoat *v.* Second Injury Fund..... 249
 O'Neal *v.* O'Neal 57
 Owens *v.* Director..... 255

JAMES R. COOPER, JUDGE:

Winans *v.* Winans 272
 Olsten Kimberly Quality Care *v.* Pettey 343

JOHN B. ROBBINS, JUDGE:

Coleman's Serv. Ctr. *v.* Federal Deposit Ins. Corp. 275
 Goston, Lee *v.* State..... 17
 Trent *v.* KMS, Inc. 355
 Federal Compress & Warehouse Co. *v.* Risper..... 300
 Childs *v.* Mid-Century Ins. Co. 168
 Smith *v.* Arkansas Employment Sec. Dep't 348
 Crawford *v.* Pace Indus. 60
 Kilpatrick *v.* Director 194
 Brown *v.* State 107
 Harrington *v.* Harrington 22

Pyles <i>v.</i> State	201
-----------------------------	-----

MELVIN MAYFIELD, JUDGE:

Chronister <i>v.</i> State	93
American Investors Life Ins. Co. <i>v.</i> Hudson	360
Goston, Lee <i>v.</i> State	1
Alexander <i>v.</i> State	148
Winchel <i>v.</i> Craig	374
Wallace <i>v.</i> State	114

JUDITH ROGERS, JUDGE:

Williams <i>v.</i> State	156
Johnson <i>v.</i> Triple T Foods	83
Smith <i>v.</i> State	97
Mid-Century Ins. Co. <i>v.</i> Miller	303
Minnesota Mut. Life Ins. Co. <i>v.</i> Looney	384
Howard <i>v.</i> Weathers	121
Reavis <i>v.</i> State	388

JOHN F. STROUD, JR., JUDGE:

Schwarz <i>v.</i> Moody	6
Bryant <i>v.</i> Arkansas Public Serv. Comm'n	125
Baysinger <i>v.</i> Air Systems, Inc.	174
Weaver <i>v.</i> Whitaker Furniture Co., Inc.,	400
Lowell <i>v.</i> Lowell	211
Cherry <i>v.</i> Cherry	178
Thomas <i>v.</i> Director	101
Hugh Chalmers Chevrolet-Cadillac-Toyota, Inc. <i>v.</i> Lang	26
Johnston <i>v.</i> Arkansas Dep't of Human Servs.	392

OLLY NEAL, JUDGE:

Carpenter <i>v.</i> Director	40
Roberts <i>v.</i> Feltman	142
Whitten <i>v.</i> Harold Austin Constr., Inc.	409
Christian <i>v.</i> Arkansas Crane & Crawler	306
Torrey <i>v.</i> City of Fort Smith	226

Meeks *v* State 220
 Dray *v* Director 66
 AAA Bail Bond Co. *v* State 35

WENDELL L. GRIFFEN, JUDGE:

Noland *v* Noland 232
 Ahrend *v* Director 71
 Rosser *v* Columbia Mut. Ins. Co. 77
 Sparks Regional Medical Ctr. *v* Blatt..... 311
 Pennington *v* Rhodes 42
 Dale *v* State 184
 Blackford *v* Director..... 418

STEELE HAYS, SPECIAL JUDGE:

Jefferson *v* Munsey Prods., Inc. 105
 W.D. *v* State 88

PER CURIAM:

Breckenridge *v* Ashley 242
 Washington *v* State 423

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 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

- Abel v. Kowalski, CA 94-988 (Griffen, J.), affirmed December 23, 1996.
- Allen v. State, CA CR 96-107 (Pittman, J.), affirmed October 16, 1996.
- Alverson v. Director, E 94-198 (Jennings, C.J.), affirmed November 20, 1996.
- Anagnostopoulos v. Michalopoulos, CA 95-1049 (Hayes, S.J.), affirmed October 16, 1996.
- Anderson v. Anderson, CA 95-1050 (Neal, J.), affirmed in part; reversed and remanded in part October 30, 1996.
- Arkansas State Board of Pharmacy v. Fenwick, CA 95-904 (Hays, S.J.), reversed October 2, 1996.
- Arkansas State Board of Pharmacy v. Fenwick, CA 95-904 (Per Curiam), Petition for Rehearing denied December 18, 1996. Mayfield, J., would grant.
- Arkansas State Highway Comm'n v. Post, CA 95-906 (Neal, J.), affirmed November 6, 1996. Rehearing denied December 4, 1996.
- Armour v. State, CA CR 96-24 (Robbins, J.), affirmed November 20, 1996.
- Baker v. State, CA CR 95-1310 (Jennings, C.J.), affirmed November 20, 1996.
- Barnes v. Davis, CA 95-637 (Neal, J.), reversed and remanded October 23, 1996.
- Berry v. Cornee's Downtown Beauty Shop, CA 96-118 (Griffen, J.), affirmed December 4, 1996.
- Block v. State, CA CR 96-56 (Rogers, J.), affirmed December 4, 1996.
- Blount v. State, CA CR 94-1380 (Robbins, J.), affirmed October 16, 1996.
- Bob White Assoc. v. Manley, CA 95-1246 (Cooper, J.), affirmed December 23, 1996.
- Bozeman v. Southwestern Trading Co., CA 95-1045 (Rogers, J.), affirmed October 9, 1996.
- Bradley v. State, CA CR 95-861 (Griffen, J.), affirmed November 20, 1996.
- Bray v. Golden Eagle of Arkansas, Inc., CA 95-989 (Griffen, J.), affirmed December 18, 1996.

-
- Brown v. State, CA CR 95-1250 (Neal, J.), affirmed September 18, 1996.
- Brown v. State, CA CR 95-1344 (Pittman, J.), affirmed November 20, 1996.
- Buis v. Buis, CA 95-1040 (Pittman, J.), affirmed December 11, 1996. Bumpers v. State, CA CR 95-1248 (Rogers, J.), affirmed October 9, 1996.
- Campbell v. State, CA 96-840 (Per Curiam), Appellee's Motion to Dismiss Appeal denied December 18, 1996.
- Carlisle v. City of Rogers, CA CR 95-693 (Hays, S.J.), affirmed September 25, 1996.
- Colonia Underwriters Ins. Co. v. Mackey, CA 95-618 (Neal, J.), affirmed in part; reversed in part and remanded October 9, 1996.
- Conway v. Church of God of Prophecy, CA 95-946 (Robbins, J.), affirmed October 23, 1996.
- Cox v. Dodson, CA 95-1216 (Rogers, J.), affirmed November 20, 1996.
- Cox v. Klipsch & Associates, CA 96-160 (Robbins, J.), affirmed November 6, 1996.
- Croom v. Shelter Mut. Ins. Co., CA 95-608 (Mayfield, J.), reversed and remanded December 23, 1996.
- Cudjoe v. Yeen-Keen, CA 96-169 (Robbins, J.), affirmed December 4, 1996.
- Davis v. Delta Beverage Group, Inc., CA 95-1288 (Hays, S.J.), affirmed October 30, 1996.
- Davison v. Jones, CA 95-1151 (Stroud, J.), affirmed November 6, 1996. Rehearing denied December 11, 1996.
- Davison v. Davison, CA 95-1320 (Jennings, C.J.), affirmed December 23, 1996.
- Dickerson v. State, CA CR 95-1190 (Pittman, J.), affirmed December 23, 1996.
- Diver v. Peterson Indus., Inc., CA 96-213 (Griffen, J.), affirmed December 23, 1996.
- Dodd v. Colson Caster Corp., CA 96-108 (Stroud, J.), reversed and remanded November 20, 1996.
- Douglas v. Norwood, CA 95-1315 (Jennings, C.J.), affirmed December 18, 1996.
- Downing v. Fisher, CA 95-852 (Mayfield, J.), affirmed September 25, 1996.

-
- Dunahue v. State, CA CR 96-386 (Per Curiam), appellee's motion to dismiss appeal denied November 20, 1996.
- Eichler v. Campbell, CA 95-1068 (Stroud, J.), affirmed October 23, 1996.
- El Dorado Paper Bag Mfg. Co. v. O'Guinn, CA 96-59 (Griffen, J.), affirmed October 30, 1996.
- Farm Bureau Mut. Ins. Co. v. Edwards, CA 95-668 (Griffen, J.), reversed and remanded October 30, 1996.
- Fitzgerald v. Mid-States Pipe Fabricating, Inc., CA 96-50 (Robbins, J.), affirmed October 30, 1996.
- Franks v. State, CA CR 95-1244 (Mayfield, J.), affirmed October 16, 1996.
- Ganoung v. Carden, CA 95-768 (Hays, S.J.), affirmed in part and reversed in part on direct appeal; affirmed on cross-appeal October 23, 1996.
- Gilbertson v. Gilbertson, CA 96-32 (Jennings, C.J.), rebriefing allowed December 23, 1996.
- Glenn v. Blackburn v. Glenn, CA 95-1245 (Stroud, J.), affirmed on appeal and on cross-appeal November 20, 1996.
- Goss v. State, CA CR 96-28 (Neal, J.), affirmed October 30, 1996.
- Gregory v. State, CA CR 95-976 (Mayfield, J.), affirmed September 25, 1996.
- Hamilton v. Hope Brick Works, CA 95-1331 (Jennings, C.J.), affirmed October 9, 1996.
- Hargrove v. Saline Memorial Hosp., CA 95-760 (Jennings, C.J.), affirmed October 30, 1996.
- Harris v. State, CA CR 96-19 (Jennings, C.J.), affirmed December 4, 1996. Rehearing denied January 15, 1997.
- Harrywell, Inc. v. Johnson, CA 95-1036 (Mayfield, J.), affirmed October 9, 1996.
- Helton v. George, CA 95-1212 (Robbins, J.), affirmed November 20, 1996.
- Hempstead County v. Gilbert, CA 96-8 (Jennings, C.J.), affirmed October 23, 1996.
- Henson v. State, CA CR 96-25 (Stroud, J.), affirmed October 23, 1996.
- Herrod v. Knights Super Food Store, Inc., CA 95-1325 (Pittman, J.), affirmed December 11, 1996.
- Higgins v. Jones, CA 95-1021 (Stroud, J.), affirmed October 2, 1996.
-

-
- Higgs v. State, CA 95-896 (Robbins, J.), reversed and remanded December 23, 1996.
- Hillcrest Nursing Home v. Burnside, CA 96-159 (Pittman, J.), affirmed December 11, 1996.
- Hook v. Hook, CA 95-1140 (Hays, S.J.), affirmed October 2, 1996.
- Holder v. Helms, CA 95-1273 (Pittman, J.), affirmed December 18, 1996.
- Holmes v. State, CA CR 96-337 (Rogers, J.), affirmed December 23, 1996.
- Holzhauser v. Holzhauser, CA 95-787 (Pittman, J.), affirmed October 16, 1996. Rehearing denied December 11, 1996.
- Hornbeck v. Hornbeck, CA 95-1210 (Griffen, J.), affirmed October 30, 1996.
- Houston v. State, CA CR 95-996 (Pittman, J.), affirmed September 18, 1996.
- Howard v. Howard, CA 95-1191 (Cooper, J.), affirmed November 20, 1996.
- Howard v. Weathers, CA 95-1224 (Per Curiam), order to supplement the record September 18, 1996.
- Hudnall v. Arkansas Dep't of Human Serv., CA 95-295 (Mayfield, J.), affirmed October 16, 1996.
- Ivy v. State, CA CR 95-135 (Pittman, J.), affirmed December 23, 1996. Rehearing denied January 22, 1997.
- Jackson v. State, CA CR 96-30 (Griffen, J.), affirmed December 23, 1996.
- Jacuzzi Bros. v. Black, CA 96-52 (Neal, J.), affirmed October 30, 1996.
- Jennings v. State, CA CR 96-27 (Jennings, C.J.), affirmed December 18, 1996.
- Jester v. Jester, CA 95-859 (Mayfield, J.), affirmed December 23, 1996.
- Johnson v. Bradbury, CA 96-682 (Per Curiam), dismissed November 20, 1996.
- Kelly v. Kelly, CA 95-913 (Hays, S.J.), reversed and remanded October 9, 1996.
- Kirby v. State, CA CR 95-1189 (Hays, S.J.), affirmed October 23, 1996.
- Law v. State, CA CR 95-1043 (Hays, S.J.), affirmed September 18, 1996.
- Lee v. State, CA CR 95-492 (Stroud, J.), affirmed September 18,

- 1996.
- Lewisville Sch. Dist. v. Anderson, CA 95-826 (Pittman, J.), affirmed September 25, 1996.
- Lockett v. State, CA CR 95-1336 (Jennings, C.J.), affirmed October 16, 1996.
- Lopez v. State, CA CR 95-1018 (Pittman, J.), affirmed September 18, 1996.
- MacIntrush v. State, CA CR 95-1346 (Cooper, J.), affirmed December 11, 1996.
- Malone v. Malone, CA 95-876 (Griffen, J.), affirmed as modified December 18, 1996.
- Mardanlou v. Moore, CA 95-1268 (Robbins, J.), affirmed October 23, 1996.
- Martin v. State, CA CR 95-1143 (Hays, S.J.), affirmed October 9, 1996.
- Mays v. General Dynamics CA 95-1342 (Rogers, J.), affirmed October 2, 1996.
- McElhaney v. Jewell, CA 95-771 (Griffen, J.), affirmed as modified December 23, 1996.
- McElhanon v. State, CA CR 96-80 (Mayfield, J.), affirmed December 23, 1996.
- McElroy v. State, CA CR 96-281 (Griffen, J.), affirmed December 18, 1996.
- McKown v. Director, E 95-2 (Stroud, J.), affirmed October 2, 1996. McMahan v. State, CA CR 95-1293 (Griffen, J.), affirmed September 25, 1996.
- McNeil v. State, CA CR 95-1281 (Rogers, J.), affirmed December 23, 1996.
- Meyers v. State, CA CR 95-1097 (Neal, J.), affirmed October 2, 1996.
- Montgomery v. Branscum, CA 95-675 (Rogers, J.), affirmed October 9, 1996.
- Myers v. Riverfront Marina, Inc., CA 95-915 (Robbins, J.), reversed and remanded October 9, 1996.
- Nash v. State, CA CR 95-1296 (Stroud, J.), affirmed November 20, 1996.
- Neil v. Jackson CA 96-84 (Per Curiam), Order to Supplement the Record October 9, 1996.
- Neil v. Jackson, CA 96-84 (Neal, J.), affirmed December 18, 1996.

-
- Mosley v. State, CA CR 96-235 (Robbins, J.), affirmed December 23, 1996.
- Norful v. State, CA CR 96-211 (Griffen, J.), affirmed November 20, 1996.
- Novak v. State, CA CR 95-1109 (Pittman, J.), affirmed October 23, 1996.
- Nutt v. State, CA CR 95-1096 (Rogers, J.), affirmed September 25, 1996.
- Ollis v. State, CA CR 96-306 (Pittman, J.), affirmed December 23, 1996.
- Parker v. State, CA CR 95-1356 (Robbins, J.), affirmed November 6, 1996.
- Pearson v. Southern Cotton Oil, CA 95-1057 (Hays, S.J.), affirmed September 25, 1996.
- Pepper Source, Ltd. v. Cintas Corp. No. 49, CA 95-1107 (Griffen, J.), reversed and remanded October 2, 1996.
- Perry v. State, CA CR 95-752 (Rogers, J.), affirmed December 18, 1996.
- Pledger v. State, CA CR 95-1265 (Rogers, J.), affirmed December 11, 1996.
- Poolaw v. Poolaw, CA 95-1149 (Jennings, C.J.), affirmed October 30, 1996.
- Progressive Constructors, Inc. v. Dale Ming Masonry, Inc., CA 95-686 (Stroud, J.), affirmed October 16, 1996.
- Qualls v. State, CA CR 95-1247 (Mayfield, J.), affirmed October 2, 1996.
- Ray v. State, CA CR 96-473 (Per Curiam), Appellee's Motion to Dismiss Appeal denied December 11, 1996.
- Robason v. Phillips County Child Support Enforcement Unit, CA 96-193 (Rogers, J.), affirmed December 23, 1996.
- Robinson v. State, CA CR 95-1341 (Jennings, C.J.), affirmed December 23, 1996.
- Roden v. State, CA CR 96-161 (Stroud, J.), affirmed December 18, 1996.
- Rodgers v. State, CA CR 95-1031 (Jennings, C.J.), affirmed October 9, 1996.
- Ross v. State, CA CR 95-1255 (Cooper, J.), affirmed November 20, 1996.
- Roten v. State, CA CR 95-1207 (Hays, S.J.), affirmed October 30, 1996.

- Sampson v. Wilson, CA 96-195 (Stroud, J.), affirmed December 18, 1996. Rehearing denied January 15, 1997.
- Saylor v. State, CA CR 95-1232 (Jennings, C.J.), affirmed October 2, 1996.
- Schramm v. Piazza, CA 95-1153 (Rogers, J.), affirmed November 20, 1996. Rehearing denied December 23, 1996.
- Smith v. Aetna Cas. & Surety Co., CA 94-1359 (Pittman, J.), dismissed November 20, 1996.
- Sorenson v. Sorenson, CA 95-1274 (Neal, J.), affirmed November 20, 1996. Rehearing denied December 18, 1996.
- Stamps Pub. Sch. v. Colvert, CA 95-318 (Pittman, J.), affirmed on direct appeal; dismissed on cross-appeal September 18, 1996.
- Stevens v. State, CA CR 96-61 (Griffen, J.), affirmed November 6, 1996.
- Stewart v. State, CA CR 95-1229 (Rogers, J.), affirmed September 18, 1996.
- Stuart v. Arkansas Waterwell Constr. Comm'n, CA 95-997 (Jennings, C.J.), affirmed October 16, 1996. Rehearing denied November 20, 1996.
- Stuckey v. State, CA CR 95-1078 (Per Curiam), order directing additional briefing September 18, 1996.
- Stuckey v. State, CA CR 95-1078 (Griffen, J.), affirmed December 11, 1996.
- Summers Chevrolet, Inc. v. Director, E 94-268 (Mayfield, J.), affirmed September 25, 1996.
- Sullivan v. State, CA CR 96-31 (Rogers, J.), affirmed December 23, 1996.
- Taylor v. State, CA CR 95-1165 (Pittman, J.), affirmed October 2, 1996.
- Thomas v. Siloam Springs Mem'l Hosp., CA 96-57 (Neal, J.), affirmed November 6, 1996.
- Thompson v. State, CA CR 95-1305 (Jennings, C.J.), affirmed November 6, 1996.
- Thompson v. State, CA CR 96-38 (Robbins, J.), affirmed December 4, 1996.
- Timms v. Sanco Corp., CA 95-1126 (Pittman, J.), affirmed September 18, 1996.
- Todd v. Ruth's Employment Serv., CA 94-1152 (Per Curiam), Appellant's Motion for Attorney's Fees and Costs granted November 6, 1996.

-
- Tolbert v. State, CA CR 95-1292 (Stroud, J.), affirmed September 25, 1996.
- Tyson Foods, Inc. v. Adams, CA 95-1269 (Hays, S.J.), affirmed September 18, 1996.
- Ugwu v. State, CA CR 96-7 (Mayfield, J.), affirmed October 16, 1996.
- Urrey v. Jr. Food Mart, CA 96-55 (Stroud, J.), affirmed December 11, 1996.
- Ursery v. State, CA CR 95-1044 (Stroud, J.), affirmed September 18, 1996.
- Wagner v. Wagner, CA 95-1193 (Neal, J.), reversed and remanded October 23, 1996.
- Ward v. Lemmond, CA 95-1012 (Jennings, C.J.), affirmed December 23, 1996.
- Washington v. Medical Center of South Arkansas, CA 95-733 (Rogers, J.), remanded October 30, 1996.
- Waters v. State, CA CR 95-1360 (Hays, S.J.), affirmed October 23, 1996.
- Watkins v. State, CA CR 95-114 (Robbins, J.), affirmed September 18, 1996.
- Weaver v. Rebrod, Inc., CA 95-965 (Stroud, J.), affirmed September 18, 1996.
- Weaver v. State, CA CR 95-860 (Cooper, J.), affirmed December 18, 1996.
- Weir v. State, CA CR 95-1213 (Mayfield, J.), affirmed September 18, 1996.
- Wells v. State, CA CR 95-1295 (Griffen, J.), affirmed September 25, 1996.
- West Fork Pub. Sch. v. Blasi, CA 95-924 (Jennings, C.J.), affirmed September 25, 1996. Rehearing denied October 30, 1996.
- White v. White, CA 95-1121 (Rogers, J.), affirmed November 6, 1996.
- Whiteis v. Whiteis, CA 95-928 (Rogers, J.), affirmed October 2, 1996.
- Wilbon v. Cal-Maine Food, Inc., CA 95-1101 (Stroud, J.), affirmed October 16, 1996.
- Williams v. Director, E 94-292 (Rogers, J.), reversed October 2, 1996.
- Williams v. State, CA CR 96-39 (Neal, J.), affirmed October 9,

- 1996.
- Williams v. State, CA CR 95-1332 (Griffen, J.), affirmed October 30, 1996.
- Williams v. State, CA CR 96-252 (Stroud, J.), affirmed December 23, 1996.
- Wilson v. Wilson, CA 96-164 (Per Curiam), dismissed October 16, 1996. Rehearing denied November 20, 1996.
- Wilson v. State, CA CR 95-511 (Jennings, C.J.), affirmed December 23, 1996.
- Wollitz v. State, CA CR 95-1354 (Stroud, J.), affirmed October 9, 1996.
- Wood v. Wood, CA 95-894 (Pittman, J.), affirmed on direct and cross-appeal October 2, 1996.
- Woodruff v. State, CA CR 96-90 (Rogers, J.), affirmed October 16, 1996.
- Woods v. Foote's Grocery, CA 95-1163 (Pittman, J.), affirmed September 18, 1996.
- Woods v. Spann, CA 96-187 (Per Curiam), dismissed October 16, 1996.
- Wooten v. State, CA CR 96-153 (Mayfield, J.), affirmed November 20, 1996.
- Worsham v. State, CA CR 96-1135 (Per Curiam), Appellant's Motion to Stay Brief Time granted December 11, 1996.
- Zucco v. State, CA CR 94-46 (Neal, J.), reversed and remanded October 16, 1996.
-

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

- Alexander *v.* Director of Labor, E 95-190, September 26, 1996.
Bartlett *v.* Director of Labor, E 96-066, December 4, 1996.
Burger King *v.* Director of Labor, E 95-135, September 26, 1996.
Butler *v.* Director of Labor, E 95-211, October 9, 1996.
Calhoun *v.* Director of Labor, E 95-036, October 9, 1996.
Conley *v.* Director of Labor, E 95-189, September 26, 1996.
Cordell *v.* Director of Labor, E 95-213, October 9, 1996.
Cross County Hosp. *v.* Director of Labor, E 95-195, September 26,
1996.
Crutchfield *v.* Director of Labor, E 95-187, September 18, 1996.
Dailey *v.* Director of Labor, E 95-203, October 9, 1996.
Delaney *v.* Director of Labor, E 95-250, October 9, 1996.
Elrod *v.* Director of Labor, E 95-208, October 9, 1996.
Foster *v.* Director of Labor, E 96-020, December 4, 1996.
Geiger *v.* Director of Labor, E 95-212, October 23, 1996.
Graham *v.* Director of Labor, E 95-204, October 9, 1996.
Hargrett *v.* Director of Labor, E 95-200, October 9, 1996.
Hicks *v.* Director of Labor, E 95-198, September 26, 1996.
Hillard *v.* Director of Labor, E 95-172, September 18, 1996.
Howard *v.* Director of Labor, E 95-202, October 23, 1996.
Hughes *v.* Director of Labor, E 96-069, December 4, 1996.
Jenkins *v.* Director of Labor, E 95-199, October 9, 1996.
Johnson *v.* Director of Labor, E 95-222, October 23, 1996.
Jones *v.* Director of Labor, E 95-232, December 4, 1996.
Linn *v.* Director of Labor, E 95-186, September 26, 1996.
McDaniel *v.* Director of Labor, E 95-209, October 9, 1996.
Methodist Nursing Home *v.* Director of Labor, E 95-216, October
9, 1996.
Moore *v.* Director of Labor, E 95-214, October 9, 1996.
Morrison *v.* Director of Labor, E 95-192, October 9, 1996.
Parker *v.* Director of Labor, E 95-238, December 4, 1996.
Pledger *v.* Director of Labor, E 95-207, October 23, 1996.
Price *v.* Director of Labor, E 95-234, December 4, 1996.
Prince *v.* Director of Labor, E 95-201, October 9, 1996.
-

-
-
- Reed *v.* Director of Labor, E 95-196, September 18, 1996.
Roberson *v.* Director of Labor, E 95-205, October 9, 1996.
Rhodes *v.* Director of Labor, E 95-220, October 23, 1996.
Starks *v.* Director of Labor, E 95-210, October 9, 1996.
Stone *v.* Director of Labor, E 95-173, September 18, 1996.
Thomas *v.* Director of Labor, E 95-233, December 4, 1996.
Tompkins *v.* Director of Labor, E 95-197, September 18, 1996.
Williams *v.* Worthen Nat'l Bank, CA 95-947 (Mayfield, J.),
affirmed November 20, 1996.
Wilson *v.* Director of Labor, E 95-180, September 18, 1996.
York *v.* Conagra Frozen Foods, CA 95-1284 (Mayfield, J.), affirmed
November 20, 1996.
-

Alphabetical
Headnote
Index

HEADNOTE INDEX

ACTION:

- Unlawful detainer, limited in scope. *Coleman's Serv. Ctr. v. Federal Deposit Ins. Corp.*, 275.
- Splitting cause of action, adjudication reached on first action bars second. *Id.*
- Test for determining whether second action is for same cause as first, factual grouping as "transaction" for *res judicata* purposes, contract considered "transaction." *Id.*
- Unlawful detainer, action could be entertained in circuit court because of dismissal without prejudice by federal court. *Id.*
- Unlawful detainer, two-step process, issuance of writ of possession not final adjudication. *Id.*

ADMINISTRATIVE LAW & PROCEDURE:

- When administrative action may be regarded as arbitrary and capricious. *Bryant v. Arkansas Pub. Serv. Comm'n*, 125.

APPEAL & ERROR:

- Chancery cases reviewed de novo, chancellor's finding that there was no significant change in circumstances not clearly against preponderance of evidence. *Schwarz v. Moody*, 6.
- Argument made without authority or convincing argument, issue without merit. *Id.*
- Excessive abstracting violative of rules, appellant's counsel guilty of excessive abstracting. *Id.*
- Issue not raised at trial, issue may not be raised for first time on appeal. *Goston v. State*, 17.
- Review of chancery cases. *Harrington v. Harrington*, 22.
- Tentative ruling on motion made at trial, definite ruling necessary. *Hugh Chalmers Chevrolet-Cadillac-Toyota, Inc. v. Lang*, 26.
- Argument not raised at trial will not be heard on appeal. *AAA Bail Bond Co. v. State*, 35.
- Judgment reversed and remanded for remittitur or new trial. *Pennington v. Rhodes*, 42.
- Review of chancery cases. *O'Neal v. O'Neal*, 57.
- Arguments raised for the first time on appeal not addressed. *Ahrend v. Director*, 71.
- Arguments made without citation to authority, standard of review used by appellant inapplicable. *Id.*
- Appeals from circuit court, appellate court reviews only those errors assigned. *Rosser v. Columbia Mut. Ins. Co.*, 77.
- Question of credibility, deference to trial court. *Brown v. State*, 107.
- Appeals from chancery courts decided *de novo*, standard on review. *Roberts v. Feltman*, 142.
- Point not raised below, point not reached on appeal. *Williams v. State*, 156.
- When chancery court decisions will be reversed. *Childs v. Mid-Century Ins. Co.*, 168.
- Issue not preserved for appeal, subject to review. *Baysinger v. Air Systems, Inc.*, 174.
- Arguments raised for the first time on appeal not considered. *Cherry v. Cherry*, 178.
- Chancellor did not consider matters not submitted into evidence, appellant not denied right to cross examine witness. *Id.*
- Abstracting error, abstract added critical language not in record, misstated record. *Dale v. State*, 184.
- Abstracting error, duty imposed on counsel not to misstate record, error was not inadvertent. *Id.*
- Abstract, appellant courts rely upon attorneys' representations. *Id.*
- Appellant did not object to judge's failure to appoint guardian ad litem, could not argue as basis for reversal. *Lowell v. Lowell*, 211.
- Chancery cases, standard of review. *Id.*

Allegations of error not considered absent citation to authority or convincing argument.
Id.
Abstracting abuses, excessive abstracting is as violative of rules as omissions. *Id.*
Unsupported argument will not be considered on appeal. *Meeks v. State*, 220.
Equity appeals reviewed de novo, when affirmed. *Noland v. Noland*, 232.
Chancellor's decision that joint tenant cannot convey his interest to a stranger was in error, error found harmless. *Id.*
Motion for new trial untimely, notice of appeal untimely, no appellate jurisdiction.
Breckenridge v. Ashley, 242.
Appeal dismissed on strength of controlling case law regarding untimely notices of appeal. *Id.*
Mootness, appellate court generally will not address moot issues, no exception in this case. *Coleman's Serv. Ctr. v. Federal Deposit Ins. Corp.*, 275.
Abstract deficiency, judgment may be affirmed for noncompliance with abstracting rule.
Id.
When findings of circuit judge are set aside, clearly erroneous standard discussed. *Mid-Century Ins. Co. v. Miller*, 303.
No objection at trial, argument waived on appeal. *Minnesota Mut. Life Ins. Co. v. Looney*, 384.
Record on appeal confined to that which is abstracted, abstract failed to reflect that either of issues raised on appeal were advanced at trial. *Reavis v. State*, 391.
Abstract deficient, lower court's ruling automatically affirmed. *Id.*
Chancellor's finding of fact, not reversed unless clearly erroneous. *Whitten v. Harold Austing Constr., Inc.*, 409.
When notice of appeal timely filed, when decision announced from the bench becomes effective. *Washington v. State*, 423.
Notice of appeal not timely filed, motion to dismiss appeal granted. *Id.*

ATTORNEY & CLIENT:

Award of attorney's fees in domestic relations proceedings, chancellor's decision will not be disturbed absent an abuse of discretion. *Schwarz v. Moody*, 6.
Award of attorney's fees, no abuse of discretion or failure of proof found. *Id.*
Chancellor's finding challenged, argument without merit. *Id.*
Award of attorney's fees as cost against party who has filed flagrantly deficient brief.
Rosser v. Columbia Mut. Ins. Co., 77.
Appellant's appeal would not have been reached but for appellee's supplemental abstract, appellee awarded attorney's fees to be paid by appellant's counsel. *Id.*
Award of attorney's fees without express statutory authority improper, chancellor's decision modified. *Roberts v. Feltman*, 142.
Change of counsel, review of denial request for continuance. *Alexander v. State*, 148.
Change of counsel, right to counsel of choice not absolute, factors. *Id.*
Change of counsel, trial court did not abuse discretion in denying motion for continuance or request for new counsel. *Id.*
Ineffective assistance of counsel, not considered on direct appeal unless considered below, may be raised in A.R.Cr.P. Rule 37 petition. *Id.*
Chancery ruling not in error, appellant failed to comply with attorney's lien statute.
Childs v. Mid-Century Ins. Co., 168.
Appellant's argument not reached, argument based on false premise. *Id.*
Award of attorney's fees discretionary, no error in award of attorney's fees to appellee.
Winans v. Winans, 272.

ATTORNEY'S FEES:

Not allowed except when provided for by statute. *Sparks Regional Medical Ctr. v. Blatt*, 311.

BAIL:

Duties of security, surety assumes custody of defendant. *AAA Bail Bond Co. v. State*, 35.

Surety Failed to show that it exercised effort required to return defendant to custody, surety is responsible for securing appearance of its principal. *Id.*

CIVIL PROCEDURE:

Rule 11 sanctions, how determined and reviewed. *Schwarz v. Moody*, 7.

Rule 11 sanctions not in error, no abuse of discretion found. *Id.*

Briefs were properly considered by trial court, appellant's argument without merit. *Cherry v. Cherry*, 178.

Interventions, discretionary matter, trial court did not abuse discretion in allowing. *Lowell v. Lowell*, 211.

Intervention, motions contained statements of relief sought and supporting affidavits, trial court did not abuse its discretion in allowing interventions. *Id.*

Appellee's motion to dismiss granted with respect to issues related to original decree, Ark. R. Civ. P. 60(c) could not properly be invoked. *Winans v. Winans*, 272.

Set-off, affirmative defense that must be pleaded, no indication appellant pleaded set-off. *Coleman's Serv. Ctr. v. Federal Deposit Ins. Corp.*, 275.

CONSTITUTIONAL LAW:

Confrontation Clause, protection afforded accused. *Gosten v. State*, 1.

Confrontation Clause, judge required to give defendant opportunity to be in courtroom regardless of previous conduct, case reversed and remanded. *Id.*

Right to counsel, State may not deny defendant's request to conduct own defense. *Id.*

Right to be present at one's criminal prosecution may be waived, proper way for trial judge to handle obstreperous defendant. *Gosten v. State*, 17.

Trial court properly prohibited appellant from being present at trial, no abuse of discretion found. *Id.*

Appellant was not denied due process because court denied motion for continuance. *Alexander v. State*, 148.

CONTRACTS:

Unjust enrichment, principle explained. *Coleman's Serv. Ctr. v. Federal Deposit Ins. Corp.*, 275.

Unjust enrichment, when principle is not applicable. *Id.*

Quasi-contract, duty frequently based on doctrine of unjust enrichment. *Sparks Regional Med. Ctr. v. Blatt*, 311.ql

Quasi-contract defined. *Id.*

Quasi-contract, doctrine of unjust enrichment discussed. *Id.*

Quasi-contract, unjust enrichment, when found. *Id.*

Quasi-contract, courts should be hesitant to employ where underlying express contract exists, attorney not unfairly denied fee. *Id.*

Ratification, how proved. *Whitten v. Harold Austin Constr., Inc.*, 409.

Two-day period not unreasonable, manifestation of assent may be proved by circumstantial evidence. *Id.*

CORPORATIONS:

Conditions under which corporate entity may disregarded vary with circumstances. *Winchel v. Craig*, 373.

COURTS:

Appeals from municipal to circuit court are tried *de novo*, statutory discovery notice must be renewed in the circuit court proceeding. *Smith v. State*, 97.

CRIMINAL LAW:

Rape, victim less than fourteen years of age, affirmative defense. *W.D. v. State*, 88.

Rape, appellant more than two years older than victim, affirmative defense no available, evidence sufficient to show appellant committed rape. *Id.*

DWI, wording other than that in statute may be used when the words convey the same meaning. *Johnson v. State*, 117.

DWI, language in information amended from "offenses" to "arrests", no prejudice shown. *Id.*
DWI, offender need not be punished as a third offender before being punished as a fourth offender, no error in appellant's felony conviction. *Id.*
DWI, element of fourth-offense DWI was based on number of prior offenses, not on how they were designated. *Id.*
DWI, amendment to information not error, oral amendments not prohibited. *Id.*
Custodial statements, determination as to whether statement is voluntary. *Williams v. State*, 156.
Trial court found custodial statement found voluntary, no error found. *Id.*
Written waiver of rights not required, appellant's argument without merit. *Id.*
First-degree battery, satisfaction of culpability requirement. *Meeks v. State*, 220.

CRIMINAL PROCEDURE:

Right to be present during felony trial cannot be waived. *Gosten v. State*, 1.
Suspended imposition of sentence, all condition must be in writing, revocation of suspension reversed and dismissed. *Zollicoffer v. State*, 166.
Sentencing, authorizing particular form of punishment is far cry from mandating that it be considered. *Dale v. State*, 184.
Sentencing, criminal defendant has no right to suspended sentence. *Id.*

DAMAGES:

Breach of warranty for newly constructed house, two recognized measures of damages. *Pennington v. Rhodes*, 42.
Determination of disproportionate repair costs. *Pennington v. Rhodes*, 42.
Aesthetic value as factor. *Id.*
Breach of warranty for newly constructed house, injured party not limited to only one measure of damages. *Id.*
Jury not forced to conjecture where appellees presented proof on cost of repairs but none on difference in market value. *Id.*
Defective performance of contract for newly constructed house, general rule prefers cost-of-repairs measure of damages. *Id.*
Defective performance of contract for newly constructed house, sellers-builder's burden. *Id.*

DISCOVERY:

Granting of continuance for further discovery discretionary, requirements for reversal of denial. *O'Neal v. O'Neal*, 57.
Chancery court did not abuse discretion in denying continuance. *Id.*
Production of books and documents, "fishing expedition" prohibited. *Bryant v. Arkansas Pub. Serv. Comm'n*, 125.
Attorney general did not demonstrate that discovery was necessary regarding upgrades. *Id.*
Attorney general failed to demonstrate denial of access to any relevant and material information. *Id.*
Attorney general failed to demonstrate relevance and materiality of broad discovery requests. *Id.*

DIVORCE:

Consideration in deciding petition for change of custody, chancellor has heavy burden to determine child's best interests. *Schwarz v. Moody*, 6.
Requirement for modification of child support, chancellor's refusal to terminate child support not clearly erroneous. *Id.*
Marital property, assets acquired after separation and before divorce. *O'Neal v. O'Neal*, 57.
Marital property, determining factor. *Id.*

Marital property, chancery court's determination that money from appellee's new employer was advanced compensation and not marital property was not clearly erroneous. *Id.*

Military retirement pay is marital property, how retirement pay is divided upon divorce. *Cherry v. Cherry*, 178.

Chancellor's method of calculating appellant's share of retirement pay not in error, appellant's argument without merit. *Id.*

EMPLOYMENT SECURITY:

Standard of review. *Dray v. Director*, 66.

Misconduct defined. *Id.*

Misconduct, how established. *Id.*

Employer's rules or regulations not part of record, impossible to ascertain whether appellant violated any. *Id.*

Employer failed to show that actual harm resulted from appellant's conduct. *Id.*

Appellant's contention that he had no intention of adversely affecting employer's interest supported by record. *Id.*

Board of Review's decision not supported by substantial evidence, reversed. *Id.*

ESTOPPEL:

Doctrine not applicable. *Whitten v. Harold Austin Constr., Inc.*, 409.

EVIDENCE:

Denial of motion in limine an abuse of discretion, statement should be prohibited on retrial. *Hugh Chalmers Chevrolet-Cadillac-Toyota, Inc. v. Lang*, 26.

Verdict did not conform to cost-of-repairs proof. *Pennington v. Rhodes*, 42.

Witnesses, lay witness may give their opinion as to intoxication. *Smith v. State*, 92.

Relevant evidence defined. *Wallace v. State*, 114.

Evidence of other crimes is admissible if independently relevant and probative value outweighs danger of unfair prejudice. *Id.*

Trial court not wrong in concluding probative value of evidence of appellant's offer of restitution outweighed danger of unfair prejudice. *Id.*

Review of sufficiency of in criminal case, substantial evidence defined. *Alexander v. State*, 148.

Circumstantial evidence not insubstantial. *Id.*

Police officer's testimony sufficient to support appellant's conviction. *Id.*

Unsworn statements made by witness are hearsay, when extrinsic evidence of prior inconsistent statement can be introduced. *Williams v. State*, 156.

Appellee sought to impeach witness with prior statement by giving particulars of that statement, attempt to impeach witness was improper. *Id.*

Cumulative testimony was sufficient for jury to infer the appellant inflicted substantial pain. *Dale v. State*, 184.

Review of trial court's denial of motion to suppress, factors on review. *Pyles v. State*, 201.

Accomplices, corroborating evidence must to substantial degree connect defendant to commission of crime. *Pickett v. State*, 261.

Presence of accused in close proximity to crime relevant for determining accomplice connection, such proof alone insufficient corroboration of defendant's connection to it. *Id.*

Independent evidence established commission of crimes, independent evidence lacking to show appellant's connection to crime. *Id.*

Newly discovered evidence, what constitutes. *Winans v. Winans*, 272.

Substantial evidence supported jury verdict. *Winchel v. Craig*, 373.

FRAUD:

Elements of tort of fraud. *Rosser v. Columbia Mut. Ins. Co.*, 77.

Necessary elements for tort of fraud not fulfilled, trial court's decision to grant appellee's motion for summary judgment not error. *Id.*

GIFTS:

- Valid *inter vivos* gift, proof required. *Howard v. Weathers*, 121.
- Delivery required for valid *inter vivos* gift, what constitutes. *Id.*
- Elements necessary to establish valid gift lacking, dominion and control over property not surrendered. *Id.*
- Gift *inter vivos* cannot be made to take effect in the future, appellant entitled to recover funds held by appellee. *Id.*

INSURANCE:

- Policy renewed upon receipt of overdue payment, trial court erroneously found that policy was reinstated. *Mid-Century Ins. Co. v. Miller*, 303.
- Appellant's failure to act unreasonable, appellant should have taken action after expiration of self-imposed deadline. *Minnesota Mutual Life Ins. Co. v. Looney*, 384.
- Appellant's argument without merit, appellant failed to file interpleader in timely manner. *Id.*

JUDGES:

- Recusal argument meritless, chancellor's refusal to recuse not an abuse of discretion. *Schwarz v. Moody*, 6.
- Only external matters are considered for recusal purposes, development of opinions during a trial does not create such bias as to require disqualification. *Id.*

JUDGMENT:

- Judgment held satisfied, no error found. *Roberts v. Feltman*, 142.
- Appellee entitled to complete setoff and satisfaction of adverse judgment, chancellor's finding not clearly erroneous. *Id.*
- Res judicata* explained. *Coleman's Serv. Ctr. v. Federal Deposit Ins. Corp.* 275.
- Res judicata*, applies to new issues and additional remedies. *Id.*
- Res judicata*, applies only when party had fair and full opportunity to litigate issue. *Id.*
- Collateral estoppel, when applicable. *Id.*
- Collateral estoppel, four criteria. *Id.*
- Res judicata*, test for determining applicability. *Id.*
- Identical cases between same parties pending in federal and state courts, first judgment is binding. *Id.*
- Res judicata*, does not bar subsequent action where court has made express reservation of right to future litigation in earlier action. *Id.*
- Summary judgment, standard of review. *Sparks Regional Med. Ctr. v. Blatt*, 311.
- Appellee not entitled to judgment as matter of law, appellants not unjustly enriched by appellee's legal services. *Id.*
- Undisputed facts rendered summary judgment inappropriate. *Id.*
- Summary judgment inappropriate because any enrichment of appellants was not unjust. *Id.*
- Summary judgment, when proper. *Calcagno v. Shelter Mut. Ins. Co.*, 321.
- Summary judgment, standards for review. *Trent v. KMS, Inc.*, 355.
- Summary judgment should not have been granted, genuine issues of fact remained to be determined. *Id.*
- Res judicata*, claim preclusion. *American Investors Life Ins. Co. v. Hudson*, 360.
- Collateral estoppel, to whom it applies, concept of privity. *Id.*
- Collateral estoppel, appellant estopped from claiming it was not responsible for full satisfaction of judgment in favor of appellee. *Id.*
- Collateral estoppel, trial court's decision holding appellant fully liable affirmed. *Id.*

JURISDICTION:

- Failure to file timely notice of appeal deprives appellate court of jurisdiction. *Breckenridge v. Ashley*, 242.
- Failure to file timely notice of appeal in civil case requires dismissal of appeal. *Id.*
- Circuit courts, scope. *Winchel v. Craig*, 373.
- Chancery courts, jurisdiction may not be enlarged. *Id.*

Circuit courts, correct way to determine jurisdiction. *Id.*
 Piercing corporate veil, appellant did not show that chancery court had been granted exclusive jurisdiction. *Id.*

JURY:

Batson objection, proof required to sustain. *Hugh Chalmers Chevrolet-Cadillac-Toyota, Inc. v. Lang*, 26.
Batson inquiry, second and third steps of process discussed. *Id.*
 Reasons given by prosecutor for striking prospective juror were sufficient to satisfy second prong of *Batson*, trial court's ruling reversed and remanded. *Id.*
 Trial court's finding was against preponderance of evidence, case reversed and remanded for new trial on cross appeal. *Id.*
 Not required to set aside its common knowledge. *Wallace v. State*, 114.
 Not required to believe the testimony of criminal defendant. *Alexander v. State*, 148.
 Weight and value of evidence lies within jury's exclusive province. *Winchel v. Craig*, 373.

LIMITATIONS OF ACTIONS:

Limitation on insurance agent's negligence three years, suit properly dismissed where limitations period had run. *Calcagno v. Shelter Mut. Ins. Co.*, 321.

MOTIONS:

Directed-verdict motion, purpose. *Pennington v. Rhodes*, 42.
 Motion for judgment notwithstanding the verdict, purpose. *Id.*
 Directed-verdict motions is condition precedent for motion for judgment n.o.v. *Id.*
 Review of directed-verdict motion and denial. *Id.*
 Directed-verdict motion on notice issue properly denied. *Id.*
 Directed-verdict motion on damages issue properly denied. *Id.*
 Directed-verdict and judgment n.o.v. motions on measure-of-damages issue properly denied. *Id.*
 Directed-verdict motion defined, review of sufficiency of evidence. *W.D. v. State*, 88.
 Motion to suppress, review of ruling. *Brown v. State*, 107.
 Denial of motion to suppress, standard on review. *Williams v. State*, 156.
 Directed-verdict motion must state specific grounds. *Dale v. State*, 184.
 Specified directed-verdict motion, general renewal sufficient to preserve issue for appeal. *Id.*
 Intervention, timeliness discretionary, factors considered. *Lowell v. Lowell*, 211.
 Intervention, appellant did not show prejudice, juvenile court did not abuse discretion in finding motion timely. *Id.*
 Directed verdict, defendant bears burden of obtaining ruling on both motions, sufficiency issue not preserved for appeal. *Meeks v. State*, 220.
 New trial, motion for new trial filed prior to entry of judgment is not effective. *Id.*
 Judgment notwithstanding the verdict, review of denial. *Winchel v. Craig*, 373.

OFFICERS:

De facto official, acts are as valid as if person were officer by right. *Chronister v. State*, 93.
De facto official, rule governing validation of acts based on public policy. *Id.*
 Indicia of collateral attack upon title of public official. *Id.*
 City attorney was *de facto* official, attack upon his authority was collateral and could not be maintained. *Id.*

PARENT & CHILD:

Child custody, modification of order. *Harrington v. Harrington*, 22.
 Question of custody must be decided on an individual basis, gender-based presumptions are not allowed. *Id.*
 Chancellor's determination of material change based on broad gender-based generalizations, change-of-custody order was against preponderance of evidence. *Id.*

Parent has legal duty to support child, award of past support rests upon equities of each particular case. *Nason v. State*, 164.
Statute did not abrogate general rule, parent is legally obligated to support his child even in absence of court order. *Id.*
Juvenile courts have exclusive original jurisdiction for dependency-neglect proceedings. *Lowell v. Lowell*, 211.
Allegations of dependency-neglect separated case from ordinary custody matters, consolidation of divorce proceedings with juvenile action was appropriate. *Id.*
Custody, chancellor's superior position. *Id.*
Custody, trial judge's refusal to restore to appellant was not clearly erroneous. *Id.*
Custody, lower court gave careful consideration to restricted visitation schedule. *Id.*
Custody decisions are within chancellor's discretion, chancellor's assignment of custody affirmed. *Lonigro v. Lonigro*, 253.
Court erred in failing to make child-support determination, case remanded. *Id.*
Chancellor's finding regarding appellant's income not against preponderance of evidence, no error found. *Id.*
Dependency-neglect proceedings, emergency custody, purpose of adjudication hearing. *Johnston v. Arkansas Dep't of Human Svcs.*, 392.
Dependency-neglect proceedings, standard of review. *Id.*
"Dependent-neglected child" defined, "neglect" defined. *Id.*
Adjudication hearing, chancellor present with conflicting testimony, decision to credit clinical therapist's testimony not clearly erroneous. *Id.*

PARTIES:

Appellant involved in litigation from its inception. *American Investors Life Ins. Co. v. Hudson*, 360.

PRINCIPAL & AGENT:

Multiple listing Services (MLS) transaction, selling agent is subagent of seller. *Whitten v. Harold Austin Constr., Inc.*, 409.
Non-MLS transaction, irrational to hold that real estate agent represents seller under circumstances. *Id.*
Non-MLS transaction, how existence of agency relationship may be established. *Id.*
Chancellor's finding that bank employee acted as buyer's agent not precluded as matter of law. *Id.*
Bank employee and principal had notice of restrictions on party's ability to sell property. *Id.*
Sellin agent entitled to commission regardless of outcome of agreement. *Id.*

PUBLIC SERVICE COMMISSION:

Standard of judicial review. *Bryant v. Arkansas Pub. Serv. Comm'n*, 125.
Broad discretion in exercise of regulatory authority. *Id.*
Appellant must prove that Commission's action was willful and unreasoning. *Id.*
When decision must be affirmed. *Id.*
Rules, any party may obtain discovery to extent that it is relevant and material. *Id.*
Authorized to find that documents were protected and to limit their discovery. *Id.*
Previous order was not disregarded. *Id.*
Annual review conducted on issue of revenues. *Id.*
No abuse of discretion in denial of discovery requests. *Id.*

SEARCH & SEIZURE:

Search warrant, contents. *Brown v. State*, 107.
Search warrant, highly technical attacks not favored. *Id.*
Search warrant, test for sufficiency of description. *Id.*
Search warrant, officer who provided description also executed warrant, mistaken search unlikely. *Id.*
Search warrant, description was sufficient. *Id.*

Search warrant, typographical error not substantial violation requiring suppression of evidence. *Id.*

Rules of criminal procedure applicable to facts, search for weapons was for officers' personal safety. *Pyles v. State*, 201.

Search incidental to lawful arrest may be made with or without probable cause, fact of lawful arrest establishes authority to search. *Id.*

Arkansas rules interpreted in same manner as Supreme Court rationale, search incident to arrest requires no additional justification. *Id.*

Officer searched appellant pursuant to valid arrest warrant, trial court properly denied appellant's motion to suppress. *Id.*

SETOFF & COUNTERCLAIM:

Appellee entitled to setoff of judgment for reimbursement and contribution against appellant, chancellor's order not clearly erroneous. *Roberts v. Feltman*, 142.

STATUTES:

Construction, Plain meaning. *W.D. v. State*, 88.

Interpretation of, words are given their ordinary meaning. *Nason v. State*, 164.

Interpretation of, basic rule of statutory construction. *Torrey v. City of Fort Smith*, 226.

TRIAL:

Trial court refused to dismiss for lack of speedy trial, no error found. *Goston v. State*, 17.

Closing argument, no abuse of discretion in trial court's overruling of appellant's objection. *Pennington v. Rhodes*, 42.

TRUSTS:

Procurement of trust or testamentary instrument by beneficiary, burden of proof. *Noland v. Noland*, 232.

Chancellor's finding of procurement not in error, trial court's decision affirmed. *Id.*

Chancellor's ruling not clearly erroneous, considerable proof presented that decedent lacked mental capacity and was unduly influenced regarding Trust and related conveyance. *Id.*

UNEMPLOYMENT COMPENSATION:

Review of Board's findings, when reversed. *Carpenter v. Director*, 39.

Leaving work without good cause, good cause defined. *Id.*

Whether claimant refused suitable employment, distance of work from claimant's residence a factor. *Id.*

Board's findings that appellant left her last work for reasons that did not constitute good cause were not supported by substantial evidence, appellant did not fail to accept suitable work. *Id.*

Appellant made no effort to preserve job rights, Board of Review's determination not in error. *Ahrend v. Director*, 71.

Good cause for leaving employment, what constitutes good cause a question of fact. *Id.*

Finding good cause a question of fact, Board's decision that appellant did not have good cause for leaving her employment supported by substantial evidence. *Id.*

Appellant's situation did not constitute personal emergency, condition precedent to making such a determination not met. *Id.*

Misconduct, what constitutes. *Thomas v. Director*, 101.

Misconduct, what does not constitute. *Id.*

Misconduct, question of fact for Board of Review. *Id.*

Board's findings conclusive if supported by substantial evidence. *Id.*

Scope of judicial review. *Id.*

Board's finding that claimant was discharged for misconduct was not supported by substantial evidence. *Id.*

Appeal from Board of Review, standard of review. *Kilpatrick v. Director*, 193.

Misconduct, criteria. *Id.*

Board of Review's decision that appellant was discharged for misconduct was supported by substantial evidence. *Id.*

Burden of proving good cause for leaving employment, what constitutes good cause. *Owens v. Director*, 255.

Review of Board's determination on appeal, factors on review. *Id.*

Board's findings supported by substantial evidence, decision affirmed. *Id.*

Appeal from board of Review, factors on review. *Smith v. Arkansas Employment Sec. Dep't*, 348.

Benefits denied if discharged for misconduct, what constitutes misconduct. *Id.*

Board's determination supported by substantial evidence, appellant-employee's conduct could have been found to constitute disregard of appellant's duties. *Id.*

Board's refusal to receive additional evidence could have been error, even so, error was harmless. *Id.*

Scope of appellant review. *Blackford v. Arkansas Employment Sec. Dep't*, 418.

Discharge for misconduct connected with work, what constitutes misconduct. *Id.*

Discharge for misconduct not supported by substantial evidence, decision of Board of Review reversed and remanded. *Id.*

WILLS:

Appellant was interested person under law, case reversed and remanded. *Spicer v. Estate of Spicer*, 267.

WITNESSES:

Opinion testimony by lay person allowed, it is not required in all circumstances that a witness be qualified as an expert in order to state opinion. *Smith v. State*, 97.

Witness's testimony simply described appellant's observed behavior, no error in allowing testimony. *Id.*

Witness allowed to testify that in her opinion appellant could not safely drive, no abuse of discretion found. *Id.*

WORKERS' COMPENSATION:

Review of decisions from Commission, factors on review. *Crawford v. Pace Indus.*, 60.

Appellant not denied benefits for reason given by counsel, appellants argument failed. *Id.*

Claim not supported by objective medical findings, Commission's finding supported by substantial evidence. *Id.*

Commission reviews administrative law judge's decision de novo, appellate court reviews only the findings of the Commission. *Id.*

Commission weighs testimony of witnesses, Commission's decision against appellant supported by substantial evidence. *Id.*

Appellant clearly filed claim when no justiciable issue present, Commission did not exceed its authority in dismissing appellants claim. *Johnson v. Triple T Foods*, 83.

Commission had authority to impose reasonable necessary sanctions, Commission did not abuse its discretion in imposing sanctions on appellant's attorney. *Id.*

Constitutional issues must be raised before the Commission and rule on by it in order to preserve them for appeal, case remanded to Commission for ruling on constitutional question. *Jefferson v. Munsey Products, Inc.*, 105.

Carpal tunnel syndrome caused by rapid repetitive motion is compensable injury, burden of proof. *Baysinger v. Air Systems, Inc.*, 174.

Commission erred in finding that appellant did not meet burden of proof regarding carpal tunnel syndrome, reversed and remanded. *Id.*

Review of decision, substantial evidence defined. *Torrey v. City of Fort Smith*, 226.

Legislative intent clear, worker should be allowed to reenter work force. *Id.*

Applicability of Ark. Code Ann. § 11-9-505(a)(1996), prerequisites. *Id.*

Commission's narrow interpretation of reasonable cause allowed employer to nullify stated legislative purpose, appellee made no real effort to facilitate appellant's reentry into workplace, case reversed and remanded. *Id.*

- Commission's finding in error, period of refusal lasts as long as employer does business. *Id.*
- Request for change of physician properly denied, Commission vested with discretion to make such a determination. *Id.*
- Commission misinterpreted law in determining second injury fund liability, case remanded for application of Ark. Code Ann. §11-9-525(b)(5) for determination based on total permanent disability. *Jeffcoat v Second Injury Fund*, 249.
- Scheduled injuries, partial permanent impairment to eyes come within this category. *Federal Compress & Warehouse Co. v Risper*, 300.
- Commission may have improperly considered appellee's eye injury when determining amount of wage-loss benefits, Commission's opinion reversed and remanded. *Id.*
- Appeal from Commission's decision, factors on review. *Christian v Arkansas Crane & Crawler*, 306.
- Evidence supported decision that appellant was appellee's employee, decision of Commission reversed and remanded. *Id.*
- Administrative agencies better equipped to analyze issues, factors on appeal. *Teague v C & J Chem. Co.*, 336.
- Appellant failed to establish her injury with medical evidence supported by objective findings, tests in which patient describes sensations produced by various stimuli do not constitute objective findings. *Duke v Regis Hairstylists*, 328.
- Act calls for strict construction, Commission's denial and dismissal of claim affirmed. *Id.*
- Abstract devoid of evidence concerning current rate of pay for nursing services, no error found in Commission's decision. *Id.*
- Argument raised for first time on appeal not reached. *Id.*
- Review of decisions, factors on review. *Id.*
- Commission's findings supported by substantial evidence, decision affirmed. *Id.*
- Review of administrative agency's decision, interpretation of statute by agency highly persuasive. *Olsen Kimberly Quality Care v Petty*, 343.
- Traveling to patient's homes was essential to service being provided, "performing employment services" covered appellee on her way to patient's home. *Id.*
- Rebuttable presumption, whether overcome by evidence is question of fact for Commission. *Weaver III v Whitaker Furniture Co., Inc.*, 400.
- Finding of fact, standard of review. *Id.*
- Credibility of witnesses, within Commission's province. *Id.*
- Rebuttable presumption not overcome, Commission's finding supported by substantial evidence. *Id.*
- VENDOR & PURCHASER:**
- Breach of warranty for newly constructed house, notification of defects, sufficiency of notice. *Pennington v Rhodes*, 42.

Index to
Acts, Codes, Constitutional
Provisions, Rules, and
Statutes Cited

INDEX TO
ACTS, CODES, CONSTITUTIONAL PROVISIONS,
INSTRUCTIONS, RULES, AND
STATUTES CITED

ACTS:**Arkansas Acts:**

Act 166 of 1903	378
Act 209 of 1991	322, 324, 325
Act 335 of 1987	325
Act 793 of 1993	229
Act 796 of 1993	63, 328, 330, 332, 344, 347, 401, 405
Act 1123 of 1991	325
Workers' Compensation Act	226

CODES:

(See also RULES and STATUTES)

Arkansas Code Annotated

4-26-1103	381
4-58-101	146
4-59-204(a)	146
5-1-102(14)	186
5-4-104	185, 191
5-4-303	166, 168
5-13-201	220, 222
5-13-201(a)	223
5-13-201(3)	223
5-13-202(a)(4)	186
5-13-202(a)(4)(C)	91
5-14-103(a)(1)	89
5-14-103(a)(3)	88, 89, 90, 92
5-39-201(b)(1)	149, 153
5-65-103	94, 119
5-65-111	118, 120
5-65-111(b)(3)	119
5-65-206(d)(2)	99
9-12-312(a)(2)	253, 254, 255
9-13-101	22, 24
9-14-236(b)	164, 165, 166
9-27-303(12)	392, 398
9-27-303(23)(D)	392
9-27-306(a)(1)	214
9-27-310(b)(3)(A)	214
9-27-325(h)(2)(B)	398
11-7-104(c)(3)	400, 403
11-9-101	229, 230
11-9-102	63
11-9-102(B)(iv)	406

11-9-102(5)(iv)	400, 403
11-9-102(5)(a)(i)	63
11-9-102(5)(a)(ii)	63
11-9-102(5)(a)(ii)(a)	174, 175
11-9-102(5)(b)	63
11-9-102(5)(b)(iii)	343, 344, 346
11-9-102(5)(b)(iv)	400, 402, 404, 405
11-9-102(5)(b)(iv)(b)	105, 106,
11-9-102(5)(D)	328, 333
11-9-102(5)(e)(ii)	174, 176
11-9-102(10)(A)	309
11-9-102(12)(A)(ii)	309
11-9-102(16)	328, 329, 333
11-9-102(16)(A)(i)	328, 330, 333
11-9-102(16)(A)(ii)	334
11-9-205(a)(1)(A)	86
11-9-301	251
11-9-501—11-9-506	252
11-9-505	228, 230
11-9-505(a)	226, 227, 230, 231
11-9-505(a)(1)	227, 228
11-9-505(a)(1)(2)	229
11-9-505(4)(d)	229
11-9-508	87
11-9-514(2)(A)	231
11-9-521	300, 302
11-9-521(a)	301
11-9-521(a)(14)	301
11-9-521(f)	300, 301, 302
11-9-525(b)(3)	251, 252
11-9-525(b)(4)	251, 252
11-9-525(b)(5)	249, 251
11-9-702(a)(1)-(3)	86
11-9-702(a)(4)	85, 86
11-9-704(c)(3)	332, 345, 347
11-9-707(4)	401
11-9-714	84
11-9-717	84, 87
11-9-717(a)(4)	87
11-9-1001	228, 229, 230, 333, 344
11-10-513	73, 198
11-10-513(a)	40
11-10-513(a)(1)	256
11-10-513(a)(2)	354
11-10-513(b)	71, 72, 74, 76, 198, 200
11-10-514	194, 198
11-10-514(a)	419
11-10-514(a)(1)	101, 103, 348, 349,

11-10-514(a)(3)	350	Article 7, § 11	377
11-10-515	352, 354	Article 7, § 15	378
11-10-515(b)	41	United States Constitution:	
11-10-515(b)	70	Fourth Amendment	201, 204, 210
11-10-529(a)(2)(A)	351	Sixth Amendment	1, 3, 20
11-10-529(c)(1)	194, 196, 257	INSTRUCTIONS:	
16-13-301	378	Arkansas Model Jury Instructions	
16-21-115	94, 95, 96	(Criminal):	
16-22-304(a)(1)	171, 173	AMCI 2d 103	117
16-56-105(3)	322 325	AMCI 2d 9111	190
16-65-602	143, 147, 148	RULES:	
16-65-602(b)(1)	146, 147	Arkansas Rules of Appellate	
16-65-602(b)(2)	147	Procedure (Ark. Code Ann. Court	
16-65-602(b)(3)	147	Rules [1995]):	
16-65-602(c)(1)	147, 148	Rule 3(c)	9
16-65-602(c)	143	Rule 4	245, 273
16-65-602(c)(2)	143	Rule 4(b)	244, 246, 247
16-65-603	143, 146, 147	Crim. Rule 2(e)	426
16-65-603(a)	146	Arkansas Rules of Civil	
16-65-603(b)	146	Procedure (Ark. Code Ann. Court	
16-84-201	37	Rules [1995]):	
16-85-405(a)(2)	119	ARCP 4	243, 244
16-85-405(a)(1)(C)	119	ARCP 4(a)	243
16-85-405(k)	119	ARCP 4(b)	243
16-85-407(b)	121	ARCP 8	277, 298
16-89-111(e)(1)	262, 263, 264	ARCP 11	7, 8, 9, 14, 15
16-96-507	97, 99	ARCP 12(b)(1)	289
16-97-101(4)	185, 191	ARCP 12(b)(6)	321
18-12-603	239	ARCP 24(b)	212, 215
18-60-307	277, 296	ARCP 24(c)	212, 216, 217
18-60-307(d)(1)	297	ARCP 50(a)	42, 47, 48
18-60-307(e)	285	ARCP 50(b)	42, 47, 48, 187, 188
18-60-308	292	ARCP 52(a)	305, 361, 369, 398
18-60-312	292	ARCP 54(b)	289
23-1-103(a)	138	ARCP 56	321
23-2-316	127, 138	ARCP 59	55, 243, 244, 245
23-2-316(b)(1)	138	ARCP 59(b)	242, 243, 247
23-2-316(b)(2)	138	ARCP 60(c)	272, 274
23-2-423(c)(3)	125, 134	ARCP 60(c)(1)	273
23-2-423(c)(4)	125, 134	Federal Rules of Civil Procedure:	
23-2-423(c)(5)	125, 134	FRCP 24(c)	217
23-79-208	385, 386	Arkansas Rule of Criminal	
23-79-208(a)	386	Procedure (Ark. Code Ann. Court	
23-81-113(b)	386	Rules [1995]):	
23-89-209(a)	322, 323, 324, 326	A.R.Cr.P. 8.1	157, 161
23-89-306	305	A.R.Cr.P. 12.1	203, 205, 206, 208, 210
28-1-102	267		
28-1-102(a)(11)	267, 268, 269		
28-9-214(l)	269		
28-40-113	271		
28-40-113(a)	268, 270		
CONSTITUTIONAL PROVISIONS:			
Arkansas Constitution			
Article 2, § 10	1, 3, 20		

A.R.Cr.P. 12.1(a)	201, 202, 203, 204, 206, 207, 208, 211
A.R.Cr.P. 12.1(b)	203, 206
A.R.Cr.P. 12.1(c)	203, 206
A.R.Cr.P. 12.1(d)	201, 202, 203, 204, 205, 206, 207, 208
A.R.Cr.P. 13.2	107, 111
A.R.Cr.P. 13.2(b)	111
A.R.Cr.P. 13.2(b)(i)	111
A.R.Cr.P. 13.2(b)(ii)	111
A.R.Cr.P. 13.2(b)(iii)	112
A.R.Cr.P. 13.2(b)(iv)	112
A.R.Cr.P. 13.2(b)(v)	112
A.R.Cr.P. 13.2(c)112, 113	
A.R.Cr.P. 16.2(2)	107
A.R.Cr.P. 16(c)	113
A.R.Cr.P. 16.2(e)	112
A.R.Cr.P. 24.3(b)	108
A.R.Cr.P. 28.1(b)	18
A.R.Cr.P. 28.2	19
A.R.Cr.P. 28.3	19
A.R.Cr.P. 28.3(i)	20
A.R.Cr.P. 33.1	187, 192
A.R.Cr.P. 36.21	225
A.R.Cr.P. 36.21(b)	220, 223, 224, 225
A.R.Cr.P. 37	149, 150

Arkansas Rules of Evidence
(Ark. Code Ann. Court Rules [1995]):

A.R.E. 401	114, 401
A.R.E. 403	114, 116, 117, 163
A.R.E. 404(b)	114, 116
A.R.E. 407	359
A.R.E. 607	163
A.R.E. 613	158, 159
A.R.E. 613(b)	163
A.R.E. 701	97, 100, 101

Rules of the Arkansas

Supreme Court and Court of Appeals
(Ark. Code Ann. Court Rules [1995]):

Rule 1-2(a)(3)	246
Rule 1-2(a)(10)	426
Rule 1-2(a)(16)	356
Rule 4-2(a)(4)	173
Rule 4-2(a)(6)	16, 64, 184, 189, 219, 277, 298
Rule 4-2(b)	77, 78
Rule 4-2(b)(1)	81
Rule 4-2(b)(2)	278
Rule 4-3(j)	150, 155

Public Service Commission's
Rules of Practice and Procedure:

Rule 3.02	128, 141
Rule 13	126, 135
Rule 13.01	126, 135
Rule 13.02	126, 135
Rule 13.02(a)	126, 135, 141
Rule 13.05	127, 135, 137, 138
Rule 13.08(c)	132, 133
Section 4	128, 141
Section 13	135

Workers' Compensation
Commission Rules

Rule 13	85, 86
---------------	--------

STATUTES:

Ark. Stat. Ann. § 27-2101	247
Ark. Stat. Ann. § 81-1106(a)	198