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ARKANSAS REPORTS

Volume 328

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
April 7, 1997 — June 2, 1997
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS

Volume 57

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IN THE

Court of Appeals
of Arkansas

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PUBLISHED BY THE
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²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 337. Cite as 57 Ark. App. ____ (1997).



ERRATA

326 Ark. at 306; fourth paragraph, line one:
The word "cause" should be inserted after "proximate."

326 Ark. at 311; second paragraph of indented quotation, line seven:
The word "An" should be "And."

Set in Bembo

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ARKANSAS
REPORTS

Volume 328

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
April 7, 1997 — June 2, 1997
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

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1997

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JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(April 7, 1997 —
June 2, 1997, inclusive)

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W.H. "DUB" ARNOLD	Chief Justice
DAVID NEWBERN	Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
RAY THORNTON	Justice

OFFICERS

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

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STANDARDS FOR PUBLICATION OF OPINIONS

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

- Allen *v.* State, CR 96-881 (Per Curiam), Pro Se Motion for Appointment of Counsel and to File Supplemental Brief, denied June 2, 1997.
- Anderson *v.* State, CR 96-1239 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed April 28, 1997.
- Austin *v.* State, CR 97-57 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed May 27, 1997.
- Barrow *v.* Reed, CR 96-1152 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed April 7, 1997.
- Barry, William *v.* State, CR 96-1145 (Per Curiam), Pro Se Motions for Writ of Certiorari to Complete Record, for Evidentiary Hearing, and for Permission to File Pro Se Reply Brief denied May 12, 1997.
- Barry, William *v.* State, CR 96-1145 (Per Curiam), remanded June 2, 1997.
- Bohanan *v.* State, CR 96-1505 (Per Curiam), Pro Se Motion for Extension of Time to File Brief moot; Motions for Copy of Record, to File Enlarged Brief, and for Duplication of Brief, denied June 2, 1997.
- Boyd *v.* State, CR 96-579 (Per Curiam), Pro Se Motions to Withdraw Motion for Duplication of Brief at Public Expense and Pro Se Motion to File Belated Brief granted April 7, 1997.
- Brown *v.* State, CR 96-876 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted May 5, 1997.
- Choate *v.* State, CR 97-90 (Per Curiam), Pro Se Motion to File Partially Handwritten Brief granted; Pro Se Motion for Duplication of Appellant's Brief at Public Expense denied May 19, 1997.
- Cravey *v.* State, CR 91-49 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript and Other Material at Public Expense denied May 19, 1997.

- Cupples *v.* Norris, CR 96-1276 (Per Curiam), Pro Se Motions for Extensions of Time to File Appellant's Brief denied and appeal dismissed May 12, 1997.
- Davis *v.* State, CR 97-382 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment moot April 21, 1997.
- Dulaney *v.* State, CR 97-276 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied June 2, 1997.
- Ellis *v.* Norris, 97-104 (Per Curiam), Pro Se Motion to Supplement Record granted May 27, 1997.
- Glenn *v.* State, CR 96-1275 (Per Curiam), Pro Se Motion for Appointment of Counsel and Pro Se Motion to File Handwritten Appellant's Brief denied and appeal dismissed May 5, 1997.
- Hefley *v.* State, CR 96-387 (Per Curiam), appeal dismissed May 19, 1997.
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- Hunter *v.* State, CR 97-138 (Per Curiam), Pro Se Motion to Proceed In Forma Pauperis, for Appointment of Counsel, and for Order for Trial Transcript to be Prepared at Public Expense remanded May 12, 1997.
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- Langston *v.* State, CR 96-1471 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment remanded May 12, 1997.
- Leavy *v.* State, CR 96-1273 (Per Curiam), Pro Se Motions to File Belated Brief, for Appointment of Counsel, and for Objection of Joinder of Parties denied and appeal dismissed April 28, 1997.
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- Lester *v.* State, CR 96-1325 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed May 5, 1997.
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- Morris *v.* Norris, 96-1190 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted May 5, 1997.
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APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

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IN RE: ADMINISTRATIVE ORDER NUMBER 8 —
FORMS FOR REPORTING CASE INFORMATION IN
ALL ARKANSAS TRIAL COURTS

Supreme Court of Arkansas
Opinion delivered April 14, 1997

PER CURIAM. On February 26, 1996, this Court issued Administrative Order Number 8 — Forms for Reporting Case Information in All Arkansas Trial Courts. The Order required that beginning July 1, 1996, standardized forms would be used for the collection of case data in all general jurisdiction trial courts.

Since the inception of the new reporting procedures, the Court has received feedback from judges and court clerks recommending certain clarifications and/or modifications.

Having carefully considered these recommendations, effective immediately upon issuance, the Court republishes Administrative Order Number 8 in its entirety incorporating those recommendations the Court deems appropriate.

*ADMINISTRATIVE ORDER NO 8 — FORMS FOR
REPORTING CASE INFORMATION IN ALL ARKANSAS
TRIAL COURTS*

SECTION 1. SCOPE.

Beginning July 1, 1996, in every action filed in the circuit, chancery, and probate courts, a form designed for the uniform collection of case data shall be completed and filed with the initial pleading and again at final disposition. The civil, chancery, probate and juvenile forms, while required, are solely for the purpose of collecting statistical case data and shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or the rules of this Court. This Order in no way affects the use of the Judgment and Commitment Order or Judgment and Disposition Order in judicial proceedings as authorized by Court Rule or statute.

SECTION II. RESPONSIBILITY FOR FORMS.

a. Administrative Office of the Courts.

The Administrative Office of the Courts (AOC) shall be responsible for the content and format of the forms after consultation with other appropriate agencies or as may be required by law. The AOC shall be responsible for training in the use of these forms and for initial dissemination of the forms.

b. Court Clerk.

The court clerk shall not accept an initial pleading which is not accompanied by the appropriate completed form. The court clerk shall maintain a supply of forms to ensure their availability to attorneys or pro se litigants. The court clerk shall weekly forward a copy of the forms which have been filed to the AOC unless the court clerk or other official as designated by the trial court reports electronically to the AOC. Those counties which report electronically should not send copies of the paper forms unless specifically requested to do so by the AOC. These forms shall replace all forms currently used for reporting case data to the AOC. For the purposes of this Administrative Order, court clerk means the elected circuit, chancery, or county clerk, or his/her deputy clerks in whose office a pleading, order, judgment, or decree is filed.

SECTION III. PROCEDURE.

a. Criminal Cases.

The office of the prosecuting attorney shall be responsible for completion of the criminal information form and for filing it in the Office of the Circuit Clerk who shall forward a copy to the AOC pursuant to SECTION II.b.

Upon conviction and sentencing to the Arkansas Department of Correction, the office of the prosecuting attorney shall be responsible for completion of the Judgment and Commitment Order. The Order shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b.

Where the final disposition does not result in a commitment to the Arkansas Department of Correction but may include any of the following — an order of probation, suspended imposition of sentence, commitment to the Department of Community Punishment or to the county jail, a fine, restitution, and/or court costs — the office of the prosecuting attorney shall be responsible for completion of the Judgment and Disposition Order which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk. The clerk shall forward a copy to the AOC pursuant to SECTION II.b.

b. Civil Circuit, Chancery, and Probate Cases.

When an action is commenced, the attorney or pro se litigant filing the initial pleading shall be responsible for completion of the filing information on the appropriate reporting form, and that form shall be filed with the court clerk. The court clerk shall not accept the pleading unless it is accompanied by the reporting form. The court clerk shall file the original in the case file and shall forward a copy of the reporting form to the AOC pursuant to SECTION II.b.

When the final order/decreed/judgment is filed with the court clerk, the clerk or other appropriate official as designated by the trial court shall complete the disposition information on the original form in the case file. The court clerk shall sign, date, and forward a copy of the completed reporting form to the AOC pursuant to SECTION II.b.

c. Juvenile Division Chancery Cases.

When an action is commenced, unless otherwise designated by the juvenile division judge, the attorney or pro se litigant filing the petition shall be responsible for completion of the filing information on the appropriate reporting form, and that form shall be filed with the court clerk. The court clerk shall not accept an initial pleading unless it is accompanied by the reporting form. The court clerk shall forward a copy of the reporting form to the AOC pursuant to Section II.b.

Pursuant to A.C.A. Sec. 16-13-603(d)(2), the juvenile division judge shall designate a staff person who shall be responsible for completing the disposition information on the appropriate juvenile reporting form when an order is entered and forwarding the form to the court clerk for filing. The court clerk shall not accept the order unless it is accompanied by the reporting form. The court clerk shall sign, date, and forward a copy of the reporting form to the AOC pursuant to SECTION II.b.

IN RE: SUPREME COURT RULE 6-6

Supreme Court of Arkansas
Opinion delivered May 27, 1997

PER CURIAM. Supreme Court Rule 6-6 is amended and republished as follows:

RULE 6-6. PAUPER'S OATH AND MOTIONS FOR ATTORNEY'S FEES IN CRIMINAL CASES

(a) PAUPER'S OATH AND AFFIDAVIT; REQUIREMENT. It shall be required that all pro se petitions or motions and all petitions or motions filed by counsel seeking relief on behalf of a client who is claiming the status of an indigent, filed in the *Supreme Court or the Court of Appeals*, be accompanied by an assertion of indigency, verified by a supporting affidavit. The affidavit form will be provided by the *Clerk of the Court* for such purposes. Any petition or motion not in compliance with this Rule will be returned to the petitioner or counsel for failure to comply.

(b) FORM FOR AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS. The form of the affidavit shall be as follows:

IN THE
SUPREME COURT OF ARKANSAS

or

ARKANSAS COURT OF APPEALS

[form not otherwise changed]

IN RE: RULES GOVERNING ADMISSION TO THE
BAR OF ARKANSAS

Supreme Court of Arkansas
Opinion delivered June 2, 1997

PER CURIAM. On June 7, 1993, we adopted the Multi-State Professional Responsibility Examination (MPRE) as an element of the bar admission process, including successful completion of the MPRE as a prerequisite to sit for the general bar examination. By per curiam order of January 27, 1997, we asked the Board of Law Examiners to reconsider successful completion of the MPRE as a prerequisite to sitting for the general examination.

The Board of Law Examiners has suggested modifications to Rule II and Rule IX of the Rules Governing Admission to the Bar. The proposed changes will allow an initial applicant to either complete the MPRE within (3) three years before the general examination, or, within (1) one year after successful completion of the general examination. We conclude that adoption of the proposed changes is appropriate. Therefore, we adopt and republish Rule II and Rule IX as they appear on the attachment to this per curiam order. The changes will take place effective with the February 1998 general examination.

RULE II.

TIME AND PLACE OF EXAMINATION

The Board shall hold semiannual examinations of applicants to be given in the months of February or March and July or August of each year in Little Rock, or at other locations it may designate. The Board shall meet following each of said examinations for the purpose of grading examination papers and certifying the grades thereon. The grades on such examinations shall be certified to the Clerk of the Court within 45 days following the giving of the examination, unless further investigation of moral or

ethical character is deemed necessary by the Board; or, receipt of additional scores is required.

The Board may meet at such other times as it may designate to carry out its duties specified herein. (Per Curiam, May 18, 1992.)

RULE IX

B. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

The provisions of Section A of this rule, titled GENERAL EXAMINATION, and the provisions of Rules II and IV of the Rules Governing Admission to the Bar shall govern the semiannual general examinations conducted by the Arkansas State Board of Law Examiners.

As a prerequisite for admission to the Bar of Arkansas, each applicant shall be required to attain a scaled score of 75% or more on the Multistate Professional Responsibility Examination (MPRE). This score shall be considered independent of the combined average grade as set out in Rule IV of these rules, and Section A of this rule. Any applicant may take the MPRE prior to a general examination, or within one (1) year from the conduct of a general examination at which the applicant receives a passing score. Individuals who successfully complete the MPRE are allowed to retain, or transfer from another jurisdiction, their passing score for a period not exceeding three years from the date upon which the individual took the MPRE. There is no limit on the number of times that an applicant may take the MPRE without passing. (Per Curiam, November 1, 1971; amended by Per Curiam, June 18, 1984; amended by Per Curiam, April 4, 1988; amended by Per Curiam, May 18, 1992; amended by Per Curiam, June 7, 1993; amended by Per Curiam, January 18, 1994; amended by Per Curiam, May 15, 1995.)

IN RE: RULES GOVERNING ADMISSION TO THE
BAR OF ARKANSAS

Supreme Court of Arkansas
Opinion delivered June 2, 1997

PER CURIAM. The Arkansas State Board of Law Examiners has recommended a change in the application filing date for initial admission to the Bar. The purpose of such change is to provide the Board with additional time in which to conduct character and fitness investigations pursuant to Rule XIII of the Rules Governing Admission to the Bar. We conclude that moving the application deadline forward will enhance the ability of the Board to conduct such investigations. Accordingly, we adopt and republish Rule X and Regulation V as they appear on the attachment to this per curiam.

Recognizing that this modification of the Rules is a significant change, we find that deferral of its implementation for a substantial period of time is advised. Hence, the revised Rule X and Regulation V will not take effect until the filing period established for the July 1999 general bar examination.

RULE X

All applications for leave to take the examination shall be filed with the Executive Secretary on or before November 15 of the year which precedes the February examination and April 1 which precedes the July examination. If such date falls on a Saturday, Sunday, or legal holiday, the application deadline shall be on the next day which is not a Saturday, Sunday, or legal holiday.

REGULATION 5

The application required by these rules shall be in the office of the Secretary of the State Board of Law Examiners no later than 5:00 p.m. on the date that is determined by the provisions of Rule X.

Appointments to
Committees

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IN RE: ARKANSAS STATE BOARD OF
LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered April 28, 1997

PER CURIAM. John D. Anderson has petitioned for reinstatement to the Bar of Arkansas. By per curiam order of September 16, 1996, Mr. Watson Bell was appointed as an at-large member of the State Board of Law Examiners. He replaced Jim Van Dover, Chairman of the State Board of Law Examiners, who had disqualified from hearing Mr. Anderson's petition.

The court is informed that three other members of the State Board of Law Examiners have disqualified from the Anderson proceeding. Those members are: Judge Wiley Branton — Second Congressional District; Michael Mashburn and Matthew Horan — Third Congressional District.

The Court appoints Kaye McLeod of the Second Congressional District, and Lamar Pettus and Rick Wade of the Third Congressional District, to act as substitute examiners in place of the three members who have disqualified. This appointment is exclusively for the purpose of authorizing the appointees to act as voting members of the Board of Law Examiners in connection with the petition for reinstatement of Mr. Anderson.

IN RE: SUPREME COURT COMMITTEE ON CHILD
SUPPORT

Supreme Court of Arkansas
Opinion delivered April 14, 1997

PER CURIAM. The Honorable Gary Arnold of Benton is hereby appointed to the Supreme Court Committee on Child Support to fill the unexpired term of Judge Terry Crabtree, who has resigned. This position is designated as the juvenile division circuit/chancery judge and the term expires on November 30, 1999.

The Court thanks Judge Arnold for accepting appointment to this most important Committee.

The Court expresses its appreciation to Judge Crabtree for his dedicated service to this Committee.

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

Supreme Court of Arkansas
Opinion delivered May 5, 1997

PER CURIAM. Laurie A. Bridewell, Attorney at Law, of Lake Village, and Floyd M. Thomas, Jr., Esq., of El Dorado are reappointed to our Committee on Model Jury Instructions—Civil for three-year terms to expire on April 30, 2000.

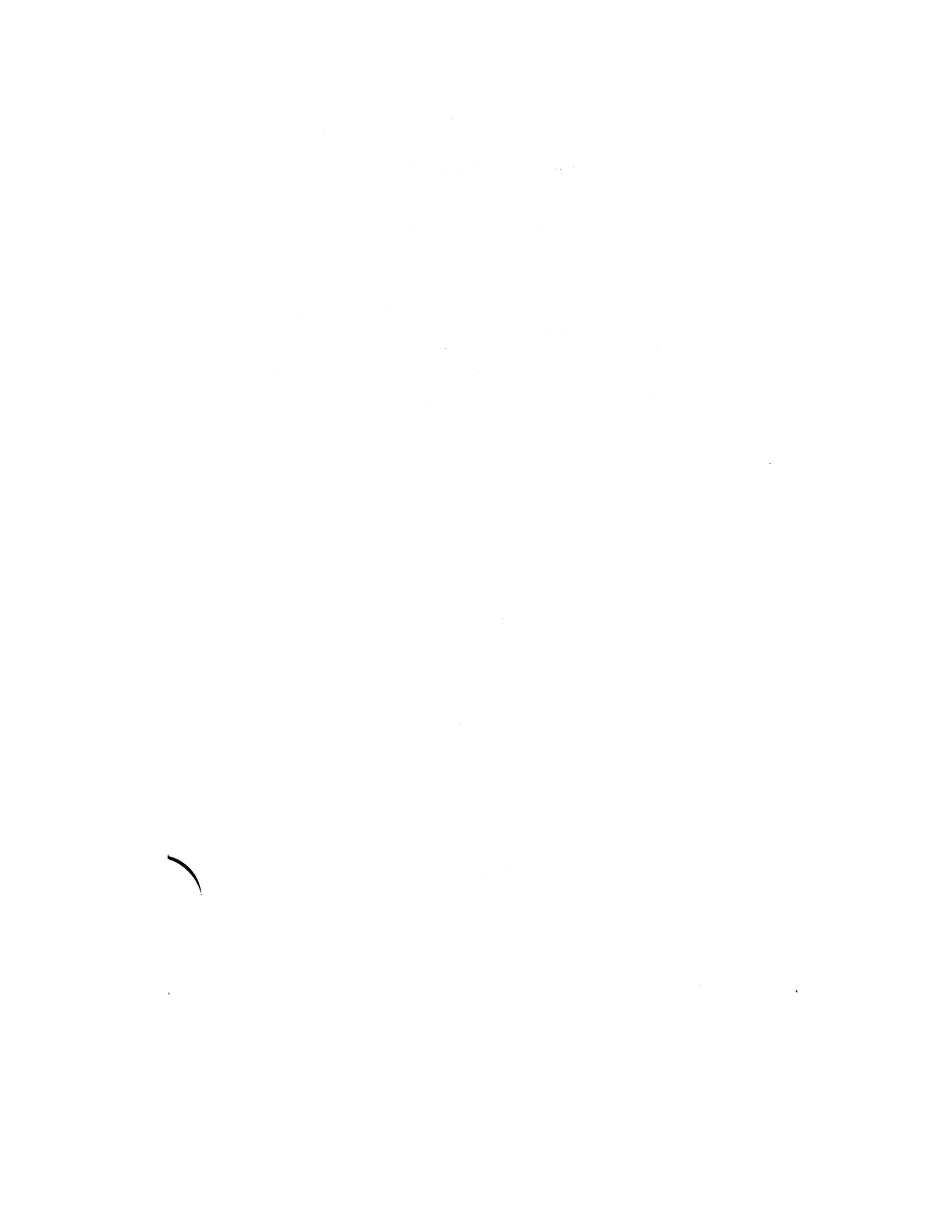
William B. Wiggins, Esq., of Fort Smith, and Scott Emerson, Esq., of Jonesboro are hereby appointed to the Committee on Model Jury Instructions—Civil for three-year terms to expire on April 30, 2000.

The Court extends its thanks to Ms. Bridewell and Mr. Thomas for accepting reappointment, and to Mr. Wiggins and Mr. Emerson for accepting appointment to this most important Committee.

The Court expresses its appreciation to Tilden P. Wright, III, Esq., of Fayetteville, and Philip S. Anderson, Jr., Esq., of Little Rock, whose terms have expired, for their service as members of this Committee.

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Professional Conduct
Matters



IN RE: John Riley HENRY, Arkansas Bar ID # 67023

941 S.W.2d 427

Supreme Court of Arkansas
Opinion delivered April 14, 1997

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of John Riley Henry, of Harrisburg, Poinsett County, Arkansas, to practice law in the State of Arkansas, and direct that Mr. Henry's name be removed from the list of attorneys authorized to practice law in this state.

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Appellant attorney's actions were sufficient to support finding that they were prejudicial to administration of justice and to support sanction. *Id.*
Acts of attorney equivalent to acts of client, client bound by attorney's actions absent fraud. *Scarlett v. Rose Care, Inc.*, 672

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DWI, observations of officers that appellant was intoxicated constituted competent evidence to support DWI charge. *Id.*

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Certification for class action, trial judge has broad discretion. *Id.*

Class actions, typicality requirement discussed. *Id.*

Class actions, typicality requirement met even though damages suffered vary among class members. *Id.*

Class actions, trial court did not abuse its discretion in determining that typicality requirement had been met. *Id.*

Class actions, supreme court declined to decertify subclasses, factual dispute existed as to whether appellee suffered damages. *Id.*

Certification of class action, trial court's focus should be on whether requirements of Rule 23 are met, merits of case are not issue. *Id.*

Class action certification, "adequacy of representation" prerequisite described. *Id.*

Certification of class actions, trial court acted within its discretion in concluding that appellee will adequately and fairly represent interests of two subclasses. *Id.*

Class actions, appellant's merit-based argument inappropriate for contest to class certification, appellee's interest in action clearly sufficient to satisfy Rule 23 (a)(4). *Id.*

Statutes of limitation constitute affirmative defense, limitations generally not jurisdictional, prohibition not available as remedy if statute of limitations governing particular proceeding is not jurisdictional. *Tatro v. Langston*, 548

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Intervention, three requirements for intervention as matter of right. *Id.*

Intervention, burden to demonstrate adequacy of representation falls on party opposing intervention. *Id.*

Intervention, when interest of litigant adequately represented. *Id.*

Intervention, party's interest in enforcing arbitration rights is significant factor in determining whether to allow intervention as of right pursuant to federal rule. *Id.*

Intervention, appellant should have been allowed to intervene to protect its right to arbitration. *Id.*

Intervention, appellant entitled to intervene; intervention limited to protection of right to defend reimbursement claim, reversed and remanded. *Id.*

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- Statement made by accused after he asks for counsel, accused may countermand his election. *Stephens v. State*, 81
- Acts of General Assembly presumed constitutional, challenger's burden. *McCutchen v. Huckabee*, 202
- Special and local legislation distinguished. *Id.*
- Standard of review, "rational basis" and "rational relationship" used interchangeably. *Id.*
- Statute not necessarily local or special legislation because it affects less than all of state's territory. *Id.*
- When act that applies only to portion of state is constitutional, decision to apply act to one area must be rational. *Id.*
- Determination of rational reason for application of act to one county, supreme court may consider judicially noticed facts. *Id.*
- Decision to construct civic center in Pulaski County was rationally related to purposes of Act 739 of 1995. *Id.*
- Act 739 of 1995 was not local legislation, did not violate Ark. Const. amend. 14. *Id.*
- Act 739 of 1995 did not violate Ark. Const. art. 5, § 29. *Id.*
- State did not become stockholder or interested party in facility board. *Id.*
- Mere speculation does not equate to proof of racial motive or disparate impact. *Foster v. Jefferson County Bd. of Election Comm'rs*, 223
- Sixth Amendment, defendants not entitled to jury trial for petty offenses. *Medlock v. State*, 229
- Appellant had no Sixth Amendment right to jury trial. *Id.*
- Conviction for refusal to submit to breath test is subject to Arkansas law guaranteeing right to jury trial. *Id.*
- Statute unconstitutionally infringes upon right to jury trial, trial court erred in denying request to submit refusal-to-submit charge to jury, conviction reversed. *Id.*
- Sovereign immunity, doctrine discussed. *Cross v. Arkansas Livestock & Poultry Comm'n*, 255
- Sovereign immunity, exceptions. *Id.*
- Sovereign immunity, trial court lacked jurisdiction to hear claim, dismissal affirmed. *Id.*
- Standing, constitutional rights are personal rights, exception not applicable. *Morrison v. Jennings*, 278
- Interpretation of Arkansas Constitution. *Oldner v. Villines*, 296
- Powers of government, delegation of taxing authority to municipal corporations. *Id.*
- Civil commitment results in significant deprivation of liberty requiring due process protection, State's burden of proof. *Edwards v. State*, 394
- When double-jeopardy protection attaches, civil commitment does not meet double-jeopardy test, trial court's denial of motion to dismiss for double jeopardy affirmed. *Id.*
- Ark. Const. amend. 68 must give way to Hyde Amendment to Title XIX of Social Security Act so long as Arkansas participates in Medicaid program. *Unborn Child Amendment Comm. v. Ward*, 454
- Ark. Const. amend 68, §2, mere expression of public policy, did not prohibit injunction imposed by chancellor on UAMS. *Id.*

Construction of provisions, words given obvious and natural meaning. *Id.*
Ark. Const. amend. 68, § 1, proof required of violation of. *Id.*
Ark. Const. amend 68, § 1, does not prohibit use of public funds to pay for any activity that might further or advance performance of abortions, "pay" defined. *Id.*
Ark. Const. amend 68, use of public funds must go to pay for abortion for prohibition to apply, use of things paid for by public funds not prohibited. *Id.*
Ark. Const. amend. 68 does not prohibit performance of abortions *Id.*
Ark. Const. amend 68, § 1, appellant failed to meet its burden, trial court did not err in finding that direct and indirect costs of abortion could be reasonably calculated and in ordering UAMS to see that its charge covers calculated costs. *Id.*
Right to jury trial, secured only in cases so triable at common law. *Hopper v. Garner*, 516
Right to jury trial, usurpation-of-office case, right exists if plaintiff makes claim for fees or emoluments. *Id.*
Right to jury trial, usurpation-of-office case, trial court did not err in granting appellee jury trial. *Id.*
Separation-of-powers doctrine not violated, no error in informing jury as to correct state law regarding parole and transfer eligibility. *Teague v. State*, 724

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Voluntariness of custodial statements, two components to totality-of-circumstances test. *Stephens v. State*, 81
Preponderance of evidence showed that confession was voluntary, trial court properly admitted confession at trial. *Id.*

- Statement made after accused asks for lawyer, knowing and intelligent waiver required for admission. *Id.*
- Appellant initiated contact with police after requesting counsel, appellant's waiver voluntary. *Id.*
- Disposition of proceeds from forfeited property under Ark. Code Ann. § 5-64-505(k). *Board of Trustees v. Stodola*, 194
- No distinction made between petty offenses and other misdemeanors. *Medlock v. State*, 229
- Lack of capacity, affirmative defense, defendant's burden to prove. *Edwards v. State*, 394
- Accomplices, defendant in criminal case has burden of proof that witness is accomplice whose testimony must be corroborated. *Williams v. State*, 487
- Witnesses to crimes aided appellants in committing offense of conspiracy to deliver methamphetamine, witnesses were accomplices to crime. *Id.*
- Sentencing, trial court properly instructed jury on law applicable to parole, meritorious good time, and transfer, irrelevant testimony ordered by appellant properly excluded. *Clark v. State*, 501
- Sentencing controlled by statute since enactment of criminal code. *Spann v. State*, 509
- Sentencing, parole and transfer eligibility, appellant's argument on asserted conflict between holding in case and subsequent act was without merit. *Id.*
- Instruction on lesser included offense, rational-basis standard. *Id.*
- Instruction on manslaughter, not error to refuse without evidence of extreme emotional disturbance. *Id.*
- Homicide, reduction of grade from murder to manslaughter. *Id.*
- Instruction on manslaughter, anger alone is insufficient to support element of extreme emotional disturbance, trial court correctly refused instruction. *Id.*
- Sentencing, trial court may only fix punishment under statutorily enumerated circumstances. *Johnson v. State*, 526
- Sentencing, jury cannot agree when member cannot be impartial in passing sentence. *Id.*
- Sentencing, trial court correctly exercised its statutory authority to fix punishment. *Id.*
- Proof of identity of accused. *Bragg v. State*, 613

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- Plea withdrawal, motion untimely after sentence placed into execution. *McCuen v. State*, 46
- Plea withdrawal, trial court correctly ruled that appellant could not withdraw guilty pleas, petition to vacate correctly treated as one for postconviction relief. *Id.*
- Postconviction relief, right to counsel ends after direct appeal, State not obligated to provide counsel in postconviction proceedings. *Id.*
- Postconviction relief, ineffective assistance not basis upon which pleas could be vacated. *Id.*
- Postconviction relief, petitioner limited to one petition unless first petition was specifically denied without prejudice, nothing in order suggested that it was entered without prejudice. *Id.*
- Ark. R. Crim. P. 24.3(b) provides for appeal from conviction based on guilty plea. *Ray v. State*, 176

- Appellant's argument that plea was conditional not supported by record, supreme court without jurisdiction to hear appeal. *Id.*
- Death penalty, appellant's motion to dismiss appeal denied. *Greene v. State*, 218
- Waiver of right to jury trial. *Medlock v. State*, 229
- Party entitled to jury trial when conviction is appealed from municipal to circuit court, appellant did not waive right. *Id.*
- Speedy trial, rule applied to incarcerated persons. *Hulsey v. Smitherman*, 234
- Defendant not brought to trial within twelve-month period, State has burden of showing delay legally justified. *Id.*
- Speedy trial, upon *prima facie* showing that rule violated, state bears burden of showing legal justification for time excluded. *Id.*
- Speedy trial, delay in examining mental state of petitioner resulted from other proceedings concerning defendant, petition for writ of prohibition denied. *Id.*
- Postconviction relief due to ineffective assistance of counsel, when addressed on direct appeal. *Chavis v. State*, 251
- "Deemed denied" provision of Ark. R. App. P.—Civ. 4(c) inapplicable to case, order reciting trial court's findings necessary for review. *Id.*
- Sufficient order from trial court not presented, judgment affirmed. *Id.*
- Arrested person to be taken before magistrate without unnecessary delay, three-part test to determine if evidence obtained during delay should be suppressed. *Landrum v. State*, 361
- Determination of point in time during which inculpatory statement obtained from accused can reasonably be considered related to delay in arraignment, factors considered. *Landrum v. State*, 361
- Inculpatory statement properly admitted, exclusionary rule inapplicable. *Id.*
- Ark. R. Crim. P. 2.3, bright-line rule, statement must be suppressed if police fail to inform person of right to refuse request to come to station for questioning. *Martin v. State*, 420
- Ark. R. Crim. P. 2.3, violation of bright-line rule, trial court erred in refusing to suppress taped statement. *Id.*
- Ark. R. Crim. P. 2.3, probable-cause exception to bright-line rule, not considered. *Id.*
- Ark. R. Crim. P. 2.3, harmless-error exception to bright-line rule, introduction of same evidence not prejudicial. *Id.*
- Ark. R. Crim. P. 2.3, siblings' testimony was almost verbatim recitation of appellant's alibi statement, failure to suppress taped statement was not prejudicial or reversible. *Id.*
- When *Miranda* safeguards are applicable, warnings should have been given to appellant. *Id.*
- Violation of *Miranda* safeguards, harmless error. *Id.*
- Custodial confessions presumed involuntary, burden is on State to show statement voluntarily made. *Clark v. State*, 501
- No evidence appellant's confession obtained in exchange for false promise, waiver of rights signed by appellant specifically provided that no promises had been made. *Id.*
- Statements by accused while in custody presumed involuntary, State's burden to prove voluntariness. *Foreman v. State*, 583
- Law-of-case doctrine discussed and defined. *Id.*

No previous determination that custodial statement was involuntary or inadmissible, trial court not barred from considering voluntariness issue. *Id.*

Law-of-case doctrine not bar to producing witness at second *Denno* hearing, prohibition against former jeopardy not in issue. *Id.*

Stop and arrest based on reasonable cause, appellant's argument meritless. *Hazelwood v. State*, 602

Search incident to arrest requires no additional justification, custodial arrest of suspect based on probable cause is reasonable intrusion under Fourth Amendment. *Id.*

Appellant lawfully arrested, controlled substances found in course of lawful search properly seized. *Id.*

Speedy trial, lack of file mark on information had no impact on decision whether appellant had been accorded speedy trial, trial court had jurisdiction when speedy-trial motion was denied. *Bradford v. State*, 701

Sentencing controlled by statute, separate consideration of defendant's guilt and punishment called for under law. *Teague v. State*, 724

Sentencing, public policy of state found in legislation, passage of Act 535 of 1993 declared public's desire for truth in sentencing. *Id.*

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Hearing required when extent of damages remains in question. *Polselli v. Aulgur*, 111

Evidence sufficient to support damages awarded. *Id.*

Trial court did not err in sustaining objection to question that went to issue of liability rather than damages. *Id.*

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Elections of special judges presumed valid, appellant has burden to show that attack on election was made at trial. *Travis v. State*, 442

Constitutional challenge to special judges election not made below, issues raised for first time on appeal not reached. *Id.*

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Necessary elements, when estoppel applied against State. *State v. Wallace*, 183

State refused to pursue judgment for arrearage, State estopped from obtaining benefits from that judgment. *Id.*

Collateral estoppel, elements required to establish. *Edwards v. State*, 394

Test for validity of collateral-estoppel defense to prosecution. *Id.*

State was not collaterally estopped from contending that appellant had capacity to form requisite criminal intent. *Id.*

Appellant's letter created genuine issue of fact on issue of conditional withdrawal of resignation, no merit to factual challenge to estoppel instruction. *Hopper v. Garner*, 516

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Determination of relevancy, broad discretion given trial court. *Bowden v. State*, 15

Determination of relevancy, no abuse of discretion in view of confusing nature of evidence sought to be presented and failure of appellant to demonstrate relevancy. *Id.*

Admission of videotapes, factors considered. *Jefferson v. State*, 23

- Admission of photographs, when admissible. *Id.*
- Trial court carefully considered admission of videotape before allowing it into evidence, no abuse of discretion found. *Id.*
- False explanations of incriminating circumstances, admissible as proof of guilt. *Stephens v. State*, 81
- Evidence relevant, no abuse of discretion found. *Id.*
- Evidence of appellant's bad character regarding marital infidelity not shown to be prejudicial. *Id.*
- Trial court did not err in declining to consider equitable estoppel as cause of action, order of dismissal affirmed. *Lee v. Villines*, 189
- Jury's verdict supported by substantial evidence, court would not question jury's general verdict. *Esry v. Carden*, 153
- Ruling on admission or exclusion of evidence not reversed absent abuse of discretion, door may be opened for otherwise inadmissible evidence under collateral-source rule. *Id.*
- Trial court determined door had not been opened for introduction of insurance-related evidence, no abuse of discretion found. *Id.*
- Admission by lower court, reversed only upon finding abuse of discretion. *Sonny v. Balch Motor Co.*, 321
- Admission by lower court, no abuse of discretion found. *Id.*
- Substantial evidence presented by appellee from which jury could infer violation of law, violation of Ark. Code Ann. § 5-54-105 clearly shown. *Puckett v. State*, 355
- Cross examination concerning letter allowed by trial court, no abuse of discretion found. *Id.*
- Purpose of chain of custody, proof required. *Crisco v. State*, 388
- Authenticity of drug tested not sufficiently established, trial court abused its discretion by receiving substance into evidence. *Id.*
- Circumstantial evidence, sufficiency of, determination for fact-finder. *McGehee v. State*, 404
- Reargument of credibility of evidence, appellate court may not consider. *Id.*
- Substantial evidence was introduced of rape and burglary. *Id.*
- Substantial evidence was introduced of conduct manifesting extreme indifference to value of human life. *Id.*
- Sufficiency of, determination. *Martin v. State*, 420
- Sole appellate inquiry concerned sufficiency of evidence supporting underlying crime of aggravated robbery. *Id.*
- Direct evidence not required to support underlying charge of aggravated robbery. *Id.*
- Sufficient evidence to support jury's conclusion that victim's rings were removed and taken by person who killed her. *Id.*
- Character evidence, State entitled to produce evidence to show motive. *Id.*
- Wide latitude given trial court in allowing introduction of character evidence showing motive. *Martin v. State*, 420
- Character evidence, trial court did not abuse discretion in allowing witnesses to testify about appellant's drug use. *Id.*
- Expert testimony, police witness had specialized training and experiences in drug trade, trial court did not abuse discretion in allowing testimony. *Id.*

- Dismissal warranted when only evidence was given by accomplice. *Williams v. State*, 487
- Testimony of accomplices insufficient without corroboration, retrial of defendant would result in double jeopardy, case reversed and dismissed. *Id.*
- Substantial evidence defined. *Johnson v. State*, 526
- Testimony of rape victim alone is sufficient, proof of digital penetration sufficient to sustain rape conviction. *Id.*
- Sufficiency of, factors on review. *Mace v. State*, 536
- State's proof constituted sufficient evidence of refusal-to-submit violation, circuit court's dismissal declared error. *Id.*
- Relevancy, trial court did not err in ruling that documents were not relevant to issue of nursing staff's negligence, no abuse of discretion demonstrated. *Berry v. St. Paul Fire & Marine Ins. Co.*, 553
- Chart listing possible causes of death used for demonstrative purposes only, trial court did not abuse discretion in denying motion for new trial. *Id.*
- Admissibility of demonstrative evidence is within discretion of trial court. *Id.*
- Circumstantial evidence, when sufficient to sustain conviction. *Foreman v. State*, 583
- Sufficient circumstantial evidence existed for case to go to jury, denial of directed-verdict motion not error. *Id.*
- Hearsay discussed. *Bragg v. State*, 613
- Hearsay, exception for statement offered to show basis of officer's action. *Id.*
- Hearsay, appellant could not demonstrate prejudice by admission of three statements, trial court did not abuse discretion. *Id.*
- Character evidence, independent relevance. *Id.*
- Independent relevance, identity of perpetrator. *Id.*
- Exclusion of relevant evidence, balancing of probative value and unfair prejudice, trial court's discretion. *Id.*
- Subsequent drug transaction, relevance went to identification, probative value not outweighed by unfair prejudice. *Id.*
- Subsequent drug transaction, relevant to show appellant's intent or lack or absence of mistake. *Id.*
- Prior arrest, trial court did not abuse discretion in admitting testimony concerning. *Id.*
- Board's decision denying license renewal supported by substantial evidence. *Mid-South R.d. Builders, Inc. v. Arkansas Contractors Licensing Bd.*, 630
- Substantial evidence defined, establishing absence of substantial evidence in administrative context. *Moore v. King*, 639
- Use of prior felony convictions for impeachment, probative value of admission must outweigh prejudicial effect. *Hubbard v. State*, 658
- Admissibility of prior convictions for impeachment, factors to be considered by trial court. *Id.*
- Impeachment with prior offense allowed at trial, no abuse of discretion found. *Id.*
- Relevance of, rulings of trial court not reversed absent abuse of discretion. *Teague v. State*, 724
- Mother's testimony clearly relevant to appellant's intent and state of mind, trial court did not abuse its discretion in admitting testimony. *Id.*

EXECUTORS & ADMINISTRATORS:

Statute mandates that powers given to more than two executors be exercised only by joint action of majority. *Dunklin v. Ramsay*, 263
Appellant co-executor lacked standing to oppose majority's action and interpretation of will. *Id.*

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Action for misrepresentation, elements of. *O'Mara v. Dykema*, 310
Appellants failed to present essential elements of claim, summary judgment properly granted on claim of misrepresentation. *Id.*
Fraudulent representation, when grant of summary judgment on claim of misrepresentation is appropriate. *Id.*

INSURANCE:

Valid endorsement becomes part of insurance contract as if actually incorporated, general condition governing changes to policy applicable to vacancy permit. *Schultz v. Farm Bureau Mut. Ins. Co.*, 64
Documents satisfied policy's general condition regarding changes, trial court's grant of summary judgment affirmed. *Id.*
Subrogation, entitlement to by insurer. *Franklin v. Healthsource of America*, 163
Subrogation, objectives of. *Id.*
Contractual right of subrogation, when insurer entitled to reimbursement. *Id.*
Higginbotham overruled, equitable nature of subrogation requires that no distinction be made between equitable and conventional rights of subrogation. *Id.*
Double recovery not possible for appellant, insurer's right to subrogation should have arisen only where recovery by insured exceeded total amount of damages incurred, case reversed and remanded. *Id.*

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Review of refusal to recuse. *Id.*
Presumption of impartiality, burden of showing bias on party seeking disqualification. *Id.*
Recusal, appellant did not meet burden of proving bias, issue not well developed. *Id.*
Record did not show regular judge peculiarly qualified to hear case, special judge did not abuse discretion in refusing to step down. *Travis v. State*, 442
Recusal, no bias demonstrated, recusal not required. *Bradford v. State*, 701

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Default judgment establishes liability but not damages. *Polselli v. Aulgur*, 111
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Summary judgment, standard of review. *Dunklin v. Ramsay*, 263
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Grant of summary judgment, standard of review. *O'Mara v. Dykema*, 310

Summary judgment, burden of proof and factors on review. *Id.*
When grant of summary judgment proper, failure to present proof of essential element of claim entitles movant to summary judgment as matter of law. *Id.*
Doctrine of res judicata discussed, privity of parties defined. *Bruns Foods of Morrilton, Inc. v. Hawkins*, 416
Decree entered by default is as conclusive as any other judgment, an issue previously resolved by default judgment is barred from relitigation under doctrine of res judicata. *Id.*
Res judicata barred appellant's action, trial court's ruling affirmed. *Id.*
Summary judgment, factors on review. *Angle v. Alexander*, 714

JURISDICTION:

Trial court loses jurisdiction to set aside guilty plea once it has been accepted and sentencing completed. *McCuen v. State*, 46
Issue not raised within time prescribed by Rule 37, trial court was without jurisdiction to resentence. *Lawhon v. State*, 335
Trial court lacked jurisdiction, appellate court also lacked jurisdiction. *Id.*
How subject-matter jurisdiction is determined, juvenile-court assignment is based upon offense charged. *Jensen v. State*, 349
Appellant charged with felony, circuit court had jurisdiction. *Id.*

JURY:

Decision to restrict voir dire will not be reversed on appeal absent abuse of discretion, no abuse of discretion found. *Stephens v. State*, 81
Appellant cannot complain about losing peremptory challenge without showing biased juror was seated, no showing made. *Id.*
Proper basis of general verdict, without knowledge of basis for verdict, jury's findings will not be questioned. *Esry v. Carden*, 153
Burden of persuasion regarding racial motivation rests with opponent of strike, trial court must use its discretion to eliminate racial discrimination in jury selection and to protect practice of peremptory challenges. *Sonny v. Balch Motor Co.*, 321
Batson objection, reversible error to force counsel to make such objection in front of jury. *Id.*
First requirement of *Batson* objection, upon a prima facie showing of prohibited discrimination burden shifts to state to provide racially neutral explanation. *Id.*
Explanation to rebut prima facie case of discrimination required, when explanation offered trial court must determine whether explanation is sufficient. *Id.*
Great deference given to trial court's exercise of discretion in determining discriminatory intent relating to use of peremptory strike, decision reversed only if against preponderance of evidence. *Id.*
Prima facie case made, racially neutral explanation given, trial court's acceptance of explanation not clearly against preponderance of evidence. *Id.*
Course and conduct of voir dire primarily within judge's discretion, no reversal absent abuse of discretion. *Clark v. State*, 501
Appellant not charged with nor did State's proof have any connection with drugs, no abuse of discretion in trial court's denial of appellant's proposed questioning on voir dire as irrelevant. *Id.*

- Instructions, must be given if evidence supports, trial court must give a jury instruction if there is some evidence to support it. *Hopper v. Garner*, 516
- Instructions, evidence supported appellee's argument that appellant accepted incompatible position, trial court's decision to instruct on resignation by implication affirmed. *Id.*
- Juror misconduct, when verdict is void or voidable based on juror's lack of qualifications. *Berry v. St. Paul Fire & Marine Ins. Co.*, 553
- Juror misconduct, moving party bears burden of proving prejudice. *Id.*
- Preservation of objection to empaneled juror. *Id.*
- Persons comprising venire presumed unbiased and qualified, burden on challenging party. *Id.*
- Qualifications, discretion of trial court. *Id.*
- Appellant failed to show that two jurors were biased or unqualified, trial court did not abuse discretion in refusing to excuse for cause. *Id.*
- Selection process, Equal Protection Clause not violated unless State has purposefully or deliberately denied blacks participation in jury selection. *Bragg v. State*, 613
- Selection process, test to establish prima facie violation of fair-cross-section requirement, shifting burden. *Id.*
- Selection process, appellant failed to make prima facie showing of racial discrimination, trial court did not err in denying motion to quash venire. *Id.*
- Selection process, requirements for establishing prima facie case of racial discrimination. *Id.*
- Selection process, State provided sufficient racially neutral explanations regarding peremptory challenges, trial court correctly denied motion to quash jury. *Id.*
- Instructions, when party is entitled to jury instruction. *Coca-Cola Bottling Co. v. Priddy*, 666
- Instructions, trial court did not abuse discretion in concluding that there was not enough evidence to support giving of AMI Civ. 3d 2214. *Id.*

JUVENILES:

- Juvenile transfer, defendant has burden of proving that transfer is warranted. *McClure v. State*, 35
- Juvenile transfer, decision to retain jurisdiction must be supported by clear and convincing evidence, standard of review. *Id.*
- Juvenile transfer, factors considered. *Id.*
- Juvenile transfer, serious and violent nature of offense sufficient for denial of motion to transfer. *Id.*
- Juvenile transfer, commission of serious crime without use of violence, may support retention of jurisdiction when combined with other factors. *Id.*
- Juvenile transfer, trial court was not clearly erroneous in denying motion to transfer case to juvenile court. *Id.*
- Juvenile transfer, trial court did not abuse discretion in admitting two documents pertaining to prior adjudications. *Id.*
- Juvenile transfer, testimony concerning subsequent criminal acts indicative of prospects for rehabilitation, trial court did not err in considering evidence of appellant's complicity in unrelated murder. *Id.*

Transcript of transfer hearing not provided, trial court assumed to have ruled correctly, trial court's decision not to transfer appellant to juvenile court affirmed. *Miller v. State*, 121

Trial court need not give equal weight to statutory factors considered in deciding whether to transfer a case to juvenile court, decision to try juvenile as adult must be supported by clear and convincing evidence. *Jensen v. State*, 349

Juvenile transfer, age of appellant relevant to prospects for rehabilitation, age an important factor in reviewing denial of motion to transfer. *Id.*

Juvenile transfer, appellant's age and juvenile record considered in review of denial of motion to transfer, trial court's decision to deny motion not clearly erroneous. *Id.*

Juvenile transfer, trial court not required to give equal weight to statutory factors. *Smith v. State*, 736

Juvenile transfer, decision to try juvenile as adult must be supported by clear and convincing evidence. *Id.*

Age can be critical factor in determining whether rehabilitative services are available. *Id.*

Juvenile transfer, trial court not clearly erroneous in denying transfer to juvenile court. *Id.*

LANDLORD & TENANT:

When landowner is barred by statute of limitations tenant is also barred, judgment that determines interest in real property against landlord bars relitigation of same matter by tenant. *Brun's Foods of Morrilton, Inc. v. Hawkins*, 416

LIMITATION OF ACTIONS:

Five-year limitation on actions for damages caused by deficiencies in construction, applicable to claim for breach of warranty of habitability. *Rogers v. Mallory*, 116
Ark. Code Ann. § 16-56-112(a) is more accurately described as statute of repose rather than of limitations. *Id.*

General Assembly's purpose in enacting Ark. Code Ann. § 16-56-112(a). *Id.*

Ark. Code Ann. § 16-56-112(a) did not conflict with implied-warranty-of-habitability cases, must be followed. *Id.*

Two-year statute of limitations for medical injury applicable to alleged cause of decedent's death. *Morrison v. Jennings*, 278

Appellant's wrongful-death claim against appellees barred by two-year statute of limitations, dismissal of action with prejudice affirmed. *Id.*

Involuntary commitment, basis for. *Edwards v. State*, 394

Limitation period applicable for wrongful death resulting from medical injury, Medical Malpractice Act specifically applies and supersedes any inconsistent provision in law. *Scarlett v. Rose Care, Inc.*, 672

Appellant could not show detrimental reliance on actions of attorney, ruling that malpractice action was barred by two-year statute of limitations affirmed. *Id.*

MOTIONS:

Defendant required to address lesser-included offenses in motion for directed verdict to preserve challenge to sufficiency of evidence necessary to support conviction for lesser-included offense. *Webb v. State*, 12

- Appellant failed to question sufficiency of evidence for first-degree murder, argument not preserved for review. *Id.*
- Motion to remand for indigency determination denied, affidavit of indigency filed pursuant to Ark. Sup. Ct. R. 6-6 would allow court to address issue. *Burkhalter v. State*, 93
- Motion for continuance, review of. *Miller v. State*, 121
- Deciding continuance motion, factors considered. *Id.*
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ARKANSAS
APPELLATE
REPORTS

Volume 57

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
March 26, 1997 — May 28, 1997
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

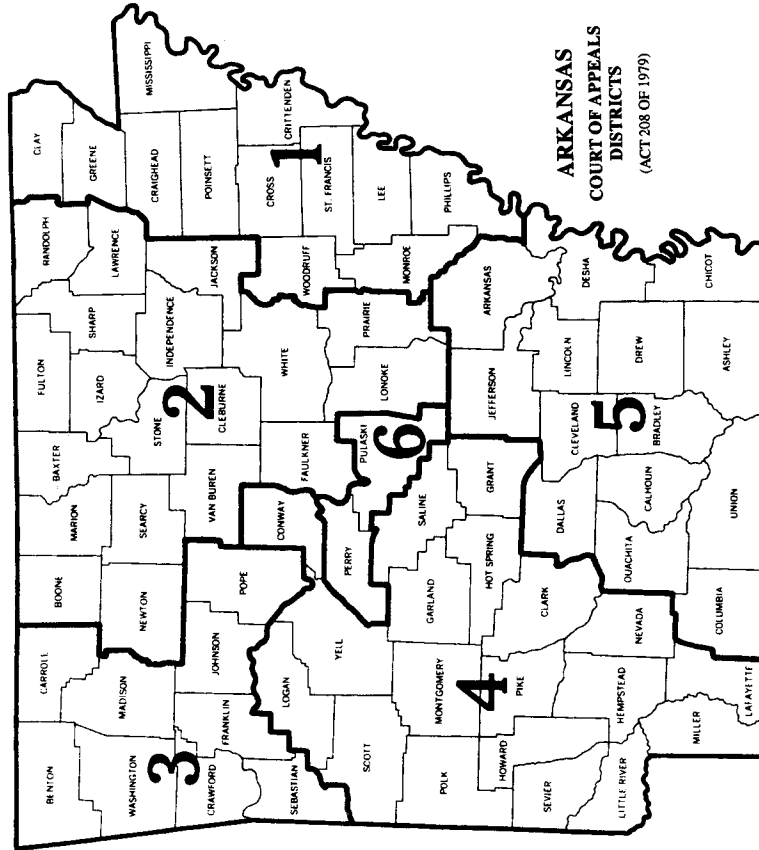
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JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(March 26, 1997 —
May 28, 1997, inclusive)

JUDGES

JOHN B. ROBBINS	Chief Judge ¹
JOHN MAUZY PITTMAN	Judge ²
JAMES R. COOPER	Judge ³
D. FRANKLIN AREY, III	Judge ⁴
JOHN E. JENNINGS	Judge ⁵
SAM BIRD	Judge ⁶
JUDITH ROGERS	Judge ⁷
JOHN F. STROUD, JR.	Judge ⁸
OLLY NEAL	Judge ⁹
WENDELL L. GRIFFEN	Judge ¹⁰
TERRY CRABTREE	Judge ¹¹
MARGARET MEADS	Judge ¹²
ANDREE LAYTON ROAF	Judge ¹³

OFFICERS

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

-
- ¹ District 4.
 - ² District 1.
 - ³ District 2; *obit*, May 3, 1997.
 - ⁴ District 2; appointed, effective May 9, 1997, by Governor Mike Huckabee.
 - ⁵ District 3.
 - ⁶ District 5.
 - ⁷ District 6.
 - ⁸ Position 7.
 - ⁹ Position 8.
 - ¹⁰ Position 9.
 - ¹¹ Position 10.
 - ¹² Position 11.
 - ¹³ Position 12.

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RULES OF THE ARKANSAS SUPREME COURT AND
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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

- Alexander *v.* P.A.M. Transp., CA 96-919 (Neal, J.), affirmed April 23, 1997.
- Arkansas State Highway Comm'n *v.* Hux, CA 96-417 (Bird, J.), affirmed April 30, 1997. Rehearing denied May 21, 1997.
- Armstrong *v.* Armstrong, CA 96-775 (Crabtree, J.), affirmed in part; reversed and remanded in part May 28, 1997.
- Armstrong *v.* State, CA CR 96-182 (Pittman, J.), appeal dismissed April 23, 1997.
- Arnold *v.* State, CA CR 96-885 (Neal, J.), affirmed May 7, 1997. Rehearing denied June 4, 1997.
- Atkinson *v.* Director, E 95-179 (Roaf, J.), affirmed May 14, 1997.
- Barger *v.* Hatfield, CA 96-194 (Crabtree, J.), affirmed May 7, 1997.
- Bartoni *v.* Carson, CA 96-537 (Griffen, J.), affirmed April 2, 1997.
- Bias *v.* State, CA CR 96-1026 (Rogers, J.), affirmed May 14, 1997.
- Black *v.* State, CA CR 96-939 (Rogers, J.), affirmed April 2, 1997.
- Bowman *v.* State, CA CR 96-1114 (Crabtree, J.), affirmed May 21, 1997.
- Boyd *v.* State, CA CR 96-1046 (Roaf, J.), affirmed May 7, 1997.
- Brothers *v.* Berg, CA 96-1108 (Meads, J.), affirmed May 28, 1997.
- Brown *v.* Brown, CA 96-531 (Stroud, J.), affirmed May 28, 1997. Rehearing denied July 2, 1997.
- Bryant *v.* State, CA CR 96-1066 (Stroud, J.), affirmed May 21, 1997.
- Burton *v.* State, CA CR 96-1054 (Hays, S.J.), affirmed May 14, 1997.
- Bush *v.* Bush, CA96-822 (Pittman, J.), affirmed May 28, 1997.
- Butler *v.* State, CA 96-856 (Jennings, J.), dismissed May 7, 1997.
- Bynum *v.* Venable, CA 96-1112 (Bird, J.), appeal dismissed May 21, 1997.
- Camp *v.* State, CA CR 96-460 (Per Curiam), Supplemental Opinion Issued on denial of petition for rehearing April 9, 1997.

- Cathey v. State*, CA CR 96-896 (Griffen, J.), affirmed May 21, 1997.
- Choate v. State*, CA CR 96-643 (Roaf, J.), affirmed April 2, 1997.
- Clark v. Sheridan Animal Clinic*, CA 96-882 (Griffen, J.), affirmed April 23, 1997.
- Clark v. Young*, CA 96-833 (Bird, J.), reversed April 9, 1997.
- Cockerham v. Mid South Ins. Co.*, CA 96-886 (Neal, J.), affirmed April 9, 1997. Rehearing denied May 7, 1997.
- Cockrum v. Cockrum*, CA 96-343 (Neal, J.), affirmed March 26, 1997.
- Collins v. State*, CA CR 96-560 (Pittman, J.), affirmed April 30, 1997. Rehearing denied May 28, 1997.
- Corley v. State*, CA CR 96-797 (Robbins, C.J.), affirmed April 30, 1997.
- Cornwell v. State*, CA CR 96-753 (Roaf, J.), affirmed March 26, 1997.
- Cox v. Tancre*, CA 96-716 (Neal, J.), affirmed May 21, 1997.
- Cross v. Director*, E 95-105 (Crabtree, J.), affirmed April 30, 1997.
- Cusick v. Cusick*, CA 96-455 (Meads, J.), affirmed March 26, 1997.
- Davis v. State*, CA CR 96-1067 (Roaf, J.), affirmed May 28, 1997.
- Davis v. State*, CA CR 96-934 (Pittman, J.), affirmed May 7, 1997.
- Dell v. Dooly*, CA 96-532 (Jennings, J.), affirmed March 26, 1997.
- Dyer v. Tyson Foods, Inc.*, CA 96-1023 (Crabtree, J.), affirmed April 30, 1997.
- Edwards v. State*, CA CR 96-951 (Per Curiam), Motion of Daniel D. Becker for Attorney's Fees granted May 21, 1997.
- Edwards v. State*, CA CR 96-951 (Rogers, J.), affirmed April 23, 1997.
- Elwart v. James Flying Serv., Inc.*, CA 96-872 (Stroud, J.), affirmed April 2, 1997.
- England Sch. Dist. v. Dunbar*, CA 96-681 (Bird, J.), affirmed May 7, 1997.

- Ferguson *v.* Ferguson, CA 96-607 (Rogers, J.), affirmed May 28, 1997. Rehearing denied July 2, 1997.
- Fields *v.* State, CA CR 96-863 (Bird, J.), affirmed April 2, 1997.
- Flowers Baking Company of Texarkana, Inc. *v.* Pratt, CA 96-1346 (Robbins, C.J.), affirmed May 28, 1997.
- Freeman *v.* Freeman, CA 96-382 (Crabtree, J.), affirmed March 26, 1997. Rehearing denied April 16, 1997.
- G & S Constr. *v.* Brown, CA 96-1030 (Hays, S.J.), affirmed May 14, 1997.
- Gilbertson *v.* Gilbertson, CA 96-32 (Jennings, J.), affirmed March 26, 1997.
- Gordon *v.* State, CA CR 96-844 (Stroud, J.), affirmed April 16, 1997.
- Gray *v.* Director, E 95-103 (Stroud, J.), affirmed April 30, 1997. Rehearing denied June 4, 1997.
- Green *v.* Cooper Tire & Rubber Co., CA 96-91 (Meads, J.), affirmed April 23, 1997.
- Guinn *v.* Estate of Dumas, CA 96-507 (Neal, J.), affirmed March 26, 1997.
- Hall *v.* State, CA CR 96-539 (Pittman, J.), affirmed March 26, 1997.
- Harrelson *v.* The Transervice Corp., CA 96-810 (Neal, J.), affirmed April 2, 1997.
- Harris *v.* State, CA CR 96-254 (Robbins, C.J.), affirmed April 23, 1997.
- Harry Robinson Pontiac Buick *v.* Adkins, CA 96-1230 (Griffen, J.), affirmed.
- Hart *v.* Division of Children & Family Servs., CA 96-675 affirmed May 21, 1997.
- Hays *v.* Patterson, CA 96-525 (Cooper, J.), reversed and remanded April 2, 1997.
- Henderson *v.* Estate of Henderson, CA 96-947 (Pittman, J.), affirmed May 7, 1997.
- Hernandez *v.* State, CA CR 96-952 (Stroud, J.), affirmed May 14, 1997.
- Hill *v.* Director, E 95-143 (Griffen, J.), affirmed March 26, 1997.
- Hill *v.* State, CA CR 96-928 (Bird, J.), affirmed April 23, 1997.
- Hodges *v.* State, CA CR 96-1559 (Neal, J.), affirmed May 28, 1997.

- Holland *v.* Fruit of the Loom, CA 94-1230 (Meads, J.), affirmed March 26, 1997.
- Holloway *v.* Ray White Lumber Co., CA 96-1205 (Bird, J.), remanded May 28, 1997.
- Hudson Foods, Inc. *v.* Williams, CA 96-929 (Pittman, J.), affirmed April 23, 1997.
- Huffman *v.* Generali - U.S. Branch, CA 96-559 (Roaf, J.), affirmed April 9, 1997.
- Hulsey *v.* State, CA 96-148 (Roaf, J.), affirmed April 23, 1997.
- Ingram *v.* State, CA CR 96-891 (Cooper, J.), affirmed April 9, 1997.
- Jackson *v.* Jackson, CA 96-1012(Jennings, J.), affirmed May 28, 1997.
- Jackson *v.* State, CA CR 96-249 (Jennings, J.), affirmed April 23, 1997.
- Jackson *v.* State, CA CR 96-890 (Jennings, J.), affirmed May 14, 1997.
- Jackson *v.* Target Distribution Ctr., CA 96-755 (Stroud, J.), affirmed March 26, 1997.
- Jarman *v.* Wolfe, CA 97-188 (Per Curiam), Appellees' Motion to Supplement the Record and for Brief Time granted May 28, 1997.
- Jennings *v.* State, CA CR 96-262 (Bird, J.), affirmed April 23, 1997.
- Johnson *v.* Drivers Control, CA 96-786 (Stroud, J.), affirmed April 9, 1997.
- Johnson *v.* Johnson, CA 96-807 (Cooper, J.), affirmed April 9, 1997.
- Johnson *v.* Magnolia Hosp., CA 96-746 (Griffen, J.), affirmed May 28, 1997.
- Johnson *v.* State, CA CR 96-1177 (Meads, J.), affirmed May 21, 1997.
- Johnson *v.* State, CA CR 96-676 (Stroud, J.), affirmed May 14, 1997. Rehearing denied June 18, 1997.
- Johnson *v.* State, CA CR 96-766 (Hays, Special Judge), reversed and dismissed May 21, 1997.
- Jones *v.* State, CA CR 96-922 (Crabtree, J.), affirmed May 7, 1997.

- Jones *v.* State, CA CR 97-95 (Per Curiam), Appellee's Motion to Dismiss Appeal denied April 30, 1997.
- Keisling *v.* Keisling, CA 96-1065 (Per Curiam), rebriefing ordered May 7, 1997.
- Kent *v.* State, CA CR 96-823 (Neal, J.), affirmed April 16, 1997.
- Kirkpatrick *v.* McAllen Oil Co., CA 96-912 (Rogers, J.), affirmed April 23, 1997.
- Kittler *v.* Kittler, CA 96-557 (Robbins, C.J.), affirmed March 26, 1997.
- Lewis *v.* Ward, CA 96-708 (Stroud, J.), reversed and dismissed April 2, 1997.
- Lewis *v.* Wright, CA 96-1223 (Rogers, J.), affirmed May 28, 1997.
- Lincks *v.* State, CA CR 96-1181 (Bird, J.), affirmed May 28, 1997.
- Lincks *v.* State, CA CR 96-997 (Rogers, J.), affirmed May 21, 1997.
- Lockett *v.* Rome Cemetery, CA 96-902 (Jennings, J.), affirmed May 21, 1997.
- Loftis *v.* State, CA CR 96-1178 (Jennings, J.), affirmed May 28, 1997.
- Lofton *v.* State, CA CR 96-1185 (Jennings, J.), affirmed May 21, 1997.
- Luster *v.* State, CA CR 96-609 (Pittman, J.), affirmed April 30, 1997.
- Manes *v.* State, CA CR 96-760 (Pittman, J.), affirmed May 7, 1997.
- Manis *v.* Ben E. Keith Co., CA 96-1104 (Crabtree, J.), affirmed May 14, 1997.
- Manley *v.* Manley, CA 96-593 (Pittman, J.), affirmed April 23, 1997.
- Martin *v.* Hale, CA 96-1024 (Bird, J.), affirmed May 7, 1997.
- McCasland *v.* State, CA CR 96-611 (Pittman, J.), affirmed April 2, 1997.
- McDougal *v.* McDougal, CA 96-860 (Meads, J.), affirmed April 23, 1997.
- McHan *v.* State, CA CR 96-933 (Bird, J.), affirmed May 21, 1997.

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- McVey *v.* State, CA CR 96-918 (Robbins, C.J.), affirmed May 14, 1997.
- McWilliams *v.* Sullivan, CA 96-316 (Roaf, J.), reversed in part and remanded; affirmed in part May 28, 1997.
- Merritt *v.* Merritt, CA 96-726 (Jennings, J.), affirmed April 23, 1997.
- Miller *v.* Miller, CA 96-589 (Griffen, J.), affirmed March 26, 1997.
- Miller *v.* Order of United Commercial Travelers, CA 96-365 (Neal, J.), affirmed March 26, 1997. Rehearing denied April 30, 1997.
- Miller *v.* State, CA CR 96-585 (Griffen, J.), affirmed March 26, 1997.
- Miller *v.* State, CA CR 96-641 (Griffen, J.), affirmed April 2, 1997.
- Morris *v.* Dillard's Dep't Stores, CA 96-925 (Meads, J.), affirmed April 16, 1997.
- Morris *v.* State, CA CR 96-805 (Cooper, J.), affirmed April 30, 1997.
- Mosely *v.* Junction City Wood, 96-1259 (Meads, J.), affirmed May 21, 1997.
- Mowry *v.* State, CA CR 96-1110 (Arey, J.), dismissed May 28, 1997.
- Munds *v.* Consolidated Freightways, CA 96-1242 (Stroud, J.), affirmed May 21, 1997.
- Murdock *v.* State, CA CR 96-135 (Meads, J.), affirmed March 26, 1997.
- N.H. *v.* State, CA 96-326 (Pittman, J.), affirmed April 23, 1997.
- Nash *v.* State, CA CR 96-970 (Meads, J.), affirmed April 23, 1997.
- Natural Springs, Inc. *v.* Copenhaver, CA 96-1041 (Neal, J.), affirmed May 14, 1997.
- Nelms Chevrolet *v.* Napier, CA 96-741 (Bird, J.), affirmed April 16, 1997.
- Oakley *v.* State, CA CR 96-818 (Robbins, C.J.), affirmed April 16, 1997.
- Owens *v.* Arkansas Child Care Facility Review Bd., CA 96-704 (Pittman, J.), affirmed April 9, 1997.

- Phillips *v.* State, CA CR 96-927 (Jennings, J.), affirmed April 16, 1997.
- Piggee *v.* State, CA CR 96-841 (Roaf, J.), affirmed April 16, 1997.
- Porter *v.* Director, E 97-32 (Per Curiam), Motion for Rule on Clerk to Lodge Petition for Review; remanded to Board of Review May 7, 1997.
- Posey *v.* State, CA CR 96-861 (Per Curiam), rebriefing ordered May 21, 1997.
- Potter *v.* Magee, CA 96-1525 (Per Curiam), Appellee's Motion for Clarification of Order Granting Supersedeas granted April 2, 1997.
- Pratt *v.* State, CA CR 96-619 (Cooper, J.), affirmed April 30, 1997.
- Qualls *v.* Monroe Auto Equip., CA 96-806 (Griffen, J.), affirmed April 23, 1997.
- R.C.L. *v.* State, CA 96-691 (Crabtree, J.), affirmed April 9, 1997.
- Reed *v.* Southern Refrigeration Transp., CA 96-1235 (Hays, Special Judge), affirmed May 21, 1997.
- Reed *v.* State, CA CR 96-1005 (Crabtree, J.), affirmed May 14, 1997.
- Riggin *v.* State, CA CR 96-229 (Cooper, J.), affirmed April 23, 1997.
- Robertson *v.* Robertson, CA 96-935 (Rogers, J.), affirmed April 30, 1997.
- Roten *v.* Roten, CA 96-849 (Rogers, J.), affirmed April 30, 1997.
- Roy *v.* Guardianship of Wilson, CA 96-1171 (Meads, J.), affirmed May 21, 1997.
- Royce *v.* White-Rodgers, CA 96-1256 (Neal, J.), affirmed May 21, 1997.
- Sansom *v.* State, CA CR 96-620 (Griffen, J.), appeal dismissed April 9, 1997.
- Sawyer *v.* State, CA CR 96-897 (Robbins, C.J.), affirmed April 2, 1997. Rehearing denied April 30, 1997.
- Sharp *v.* Garner, CA 96-1076 (Neal, J.), affirmed May 21, 1997.
- Shores *v.* Boston, CA 96-857 (Stroud, J.), reversed and dismissed April 23, 1997.
- Shue *v.* State, CA CR 96-974 (Neal, J.), affirmed May 14, 1997.

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- Simkins v. State*, CA CR 96-583 (Crabtree, J.), affirmed April 2, 1997.
- Simpson v. Simpson*, CA 96-778 (Crabtree, J.), affirmed April 23, 1997.
- Sims v. Sims*, CA 96-664 (Rogers, J.), affirmed March 26, 1997.
- Sloan v. Campbell Soup Co.*, CA 96-963 (Stroud, J.), affirmed.
- Sneed v. Grisham*, CA 96-1011 (Stroud, J.), affirmed April 30, 1997.
- Southern v. Whirlpool Corp.*, CA 96-898 (Jennings, J.), affirmed April 2, 1997.
- Southwestern Energy Co. v. Arkansas Power and Light Co.*, CA 96-1002 (Stroud, J.), affirmed May 7, 1997. Rehearing denied June 4, 1997.
- Speed v. State*, CA CR 96-903 (Robbins, C.J.), affirmed May 21, 1997.
- Stacy v. Boatmen's Trust Co.*, CA 96-506 (Meads, J.), dismissed May 7, 1997.
- Stephens v. Director*, E 95-79 (Griffen, J.), affirmed April 23, 1997.
- Stiles v. Tyson Foods, Inc.*, CA 96-1097 (Griffen, J.), affirmed May 21, 1997.
- Stuart v. State*, CA CR 96-815, (Robbins, C.J.), affirmed March 26, 1997.
- Superior Industries v. Dunnagan*, CA 96-1044 (Meads, J.), affirmed April 30, 1997.
- T.R.D., Inc. v. City of Fayetteville*, CA 96-336 (Neal, J.), affirmed April 9, 1997.
- Tackett v. Blasingame*, CA CR 96-1036 (Griffen, J.), affirmed May 28, 1997.
- Tanner v. State*, CA CR 96-965 (Robbins, C.J.), affirmed May 7, 1997.
- Taylor v. Shannon*, CA 96-988 (Hays, Special Judge), affirmed May 21, 1997.
- Thackeray v. Thackeray*, CA 96-1191 (Rogers, J.), affirmed May 21, 1997.
- Thomas v. Director*, E 96-17 (Rogers, J.), affirmed April 2, 1997.
- Thomas v. Office of Child Support Enforcement*, CA 96-500 (Roaf, J.), affirmed April 30, 1997. Rehearing denied June 4, 1997.
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- Thomas *v.* State, CA CR 96-1061 (Bird, J.), affirmed May 7, 1997.
- Thompson *v.* Arkansas Power & Light Company, CA 96-1236 (Hays, Special Judge), affirmed May 21, 1997.
- Thornsberry *v.* Arkansas Children's Hosp., CA 96-1251 (Robbins, C.J.), affirmed May 21, 1997.
- Thornton *v.* State, CA CR 96-475 (Meads, J.), affirmed May 14, 1997.
- Todd *v.* State, CA CR 96-975 (Meads, J.), affirmed May 14, 1997.
- Tucker *v.* Tucker, CA 96-556 (Jennings, J.), affirmed March 26, 1997.
- Underwood *v.* State, CA CR 96-1027 (Meads, J.), affirmed May 7, 1997.
- VanZant *v.* VanZant, CA 96-554 (Meads, J.), affirmed in part; reversed in part and remanded April 9, 1997.
- Veterans of Foreign Wars *v.* Lions Club, CA 96-646 (Bird, J.), affirmed April 2, 1997.
- Vincent *v.* Estate of Vincent, CA 96-656 (Bird, J.), affirmed March 26, 1997.
- Wagner *v.* Arkansas Dep't of Human Servs., CA 96-893 (Cooper, J.), affirmed April 30, 1997.
- Walker *v.* State, CA CR 96-931 (Rogers, J.), affirmed March 26, 1997.
- Wallace *v.* Southwestern Sales, CA 96-1010 (Neal, J.), affirmed April 30, 1997. Rehearing denied June 4, 1997.
- Watkins *v.* State, CA CR 96-277 (Stroud, J.), affirmed April 23, 1997.
- Watson *v.* State, CA CR 96-425 (Neal, J.), affirmed March 26, 1997.
- Watson *v.* State, CA CR 96-699 (Cooper, J.), affirmed April 23, 1997.
- Weaver *v.* White Rodgers Co., CA 96-769 (Pittman, J.), affirmed April 2, 1997.
- Webber *v.* Webber, CA 96-776 (Neal, J.), affirmed April 23, 1997.
- Weyerhaeuser Co. *v.* Walton, CA 95-795 (Robbins, C.J.), affirmed May 14, 1997.
- White *v.* State, CA CR 96-813 (Jennings, J.), affirmed March 26, 1997.

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- Wilde v. Arkansas Dep't of Human Servs.*, CA 96-1158 (Stroud, J.), affirmed May 28, 1997.
- Wildes v. State*, CA CR 96-687 (Cooper, J.), affirmed April 30, 1997.
- Williams v. State*, CA CR 96-143 (Cooper, J.), affirmed March 26, 1997.
- Williams v. State*, CA CR 96-725 (Jennings, J.), affirmed April 2, 1997.
- Willis v. McCurry*, CA 96-679 (Meads, J.), affirmed April 2, 1997.
- Willmuth v. Doyle*, CA 96-1106 (Roaf, J.), affirmed May 21, 1997.
- Wisely v. Reed*, CA 96-812 (Meads, J.), reversed and dismissed April 30, 1997.
- Woods v. Bayou Grain & Chemical Group*, CA 96-551 (Griffen, J.), affirmed April 2, 1997.
- Woolsey v. Melvin*, CA 96-859 (Pittman, J.), affirmed April 30, 1997.
- Wrigley v. Terra Int'l, Inc.*, CA 96-714 (Cooper, J.), affirmed April 23, 1997.
- Young v. McCowen*, CA 96-772 (Stroud, J.), affirmed April 23, 1997.
- Young v. Smith*, CA 96-642 (Pittman, J.), affirmed April 30, 1997.
- Young v. State*, CA CR 96-632 (Meads, J.), affirmed April 2, 1997.

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COURT OF APPEALS WITHOUT WRITTEN
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Thompson *v.* Director of Labor, E 96-10, May 7, 1997.
Torbert *v.* Director of Labor, E 96-247, April 16, 1997.
Travis *v.* Director of Labor, E 96-26, May 14, 1997.
Umekwe *v.* Director of Labor, E 96-286, May 28, 1997.
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Walker *v.* Director of Labor, E 96-5, April 23, 1997.
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Whitson *v.* Director of Labor, E 96-284, May 28, 1997.
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Williams *v.* Director of Labor, E 96-87, May 7, 1997.

APPENDIX

In
Memoriam

IN THE MATTER OF THE UNTIMELY PASSING OF
JUDGE JAMES R. COOPER

Court of Appeals of Arkansas
En Banc

Memorial Opinion delivered May 7, 1997

PER CURIAM. From January 1, 1981, until his death on May 3, 1997, Judge James R. Cooper faithfully served the State of Arkansas as a member of the Arkansas Court of Appeals. Upon the occasion of his death, the court wishes to express its sincere condolences to Judge Cooper's family and takes this moment to recognize the dignity and civility that he displayed during his service on the court.

Following the creation of the Arkansas Court of Appeals in 1979, Judge Cooper became one of the initially elected judges, and at the time of his departure he was the last of these original elected judges who remained on the court. During his years as an appellate judge, he maintained a commitment to justice and fairness and stood as a positive example for the other judges with whom he served. Judge Cooper truly had a profound and enduring impact on the direction of the law in this state over a period of nearly two decades. He will be sorely missed on both a professional and personal level by his many friends and colleagues.

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