



ARKANSAS REPORTS
VOLUME 329

ARKANSAS
APPELLATE REPORTS
VOLUME 58

*[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 329

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
June 9, 1997 — September 25, 1997
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS

Volume 58

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
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INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1997

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 638. Cite as 329 Ark. ____ (1997).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 343. Cite as 58 Ark. App. ____ (1997).

ERRATA

327 Ark. at 420; headnote 2, line two:
"Ark. R. Crim. P." should be "Ark. Sup. Ct. R."

327 Ark. at 421; line one:
"Ark. R. Crim. P." should be "Ark. Sup. Ct. R."

284 Ark. at 460; line nine:
The word "muzzel" should be "muzzle."

Set in Bembo

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1997

ARKANSAS
REPORTS

Volume 329

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
June 9, 1997 — September 25, 1997
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1997

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.	xiii
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xvii
TABLE OF OPINIONS NOT REPORTED	xix
OPINIONS REPORTED	1
APPENDIX	
Rules Adopted or Amended by Per Curiam Orders	639
Appointments to Committees	685
Professional Conduct Matters	689
INDEX	
Alphabetical Headnote Index	691
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	711

JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(June 9, 1997 —
September 25, 1997, inclusive)

JUSTICES

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

TABLE OF CASES REPORTED

A

ACW, Inc. <i>v.</i> Weiss	302
Allen <i>v.</i> State	566
Aluminum Co. of America <i>v.</i> Weiss.....	225
Arkansas Dep't of Human Servs. (J.T. <i>v.</i>).....	243
Arkansas State Highway Comm'n <i>v.</i> Frisby	506
Arkansas State Police Comm'n (Stueart <i>v.</i>).....	46
Armored Sch. Dist. # 9 (Hannon <i>v.</i>)	267

B

Bell (State <i>v.</i>)	422
Benedict <i>v.</i> National Bank of Commerce	590
Beshears <i>v.</i> State	469
Bettis (Doty <i>v.</i>)	120
Boatmen's Nat'l Bank <i>v.</i> Cole	209
Bogan <i>v.</i> State	490
Bradford <i>v.</i> State	620
Bristol-Meyers Squibb Co. <i>v.</i> Saline County Circuit Court	357

C

Cates <i>v.</i> State	585
Childress <i>v.</i> Humphrey	504
Chlanda <i>v.</i> Killebrew	39
Coca-Cola Bottling Co. (Green <i>v.</i>)	345
Cole (Boatmen's Nat'l Bank <i>v.</i>).....	209
County of Scott (Massongill <i>v.</i>).....	98
Covin <i>v.</i> State.....	635

D

Dirickson <i>v.</i> State	572
Dority <i>v.</i> State	631
Doty <i>v.</i> Bettis	120

E

Edmondson <i>v.</i> State	234
---------------------------------	-----

F

Failla (Minor <i>v.</i>)	274
Ferritor (Qualls <i>v.</i>)	235
Finch <i>v.</i> State	319
Fleetwood <i>v.</i> State	327
Frisby (Arkansas State Highway Comm'n <i>v.</i>)	506

G

Goff <i>v.</i> State	513
Gooden <i>v.</i> State	485
Graydon <i>v.</i> State	596
Green <i>v.</i> Coca-Cola Bottling Co.	345
Greene <i>v.</i> State	491
Greene (Suen <i>v.</i>)	455
Griffin <i>v.</i> State	493

H

Hall <i>v.</i> State	567
Hannon <i>v.</i> Armored Sch. Dist. # 9	267
Harshfield (Porter, Randy <i>v.</i>)	130
Hart (State <i>v.</i>)	582
Henderson <i>v.</i> State	526
Hills <i>v.</i> State	362
Hodge <i>v.</i> State	57
Hood <i>v.</i> State	21
Hopes <i>v.</i> State	494
Houston <i>v.</i> Knoedl	91
Humphrey (Childress <i>v.</i>)	504

I

In Re: Adoption of Lybrand	163
Ivy <i>v.</i> State	495

J

J.T. <i>v.</i> Arkansas Dep't of Human Servs.	243
James <i>v.</i> State	58
Jones <i>v.</i> Jones	320
Jones (Jones <i>v.</i>)	320
Jones, Jack, Jr. <i>v.</i> State	62
Jones, Paul Steven <i>v.</i> State	603

K

Killebrew (Chlanda <i>v.</i>)	39
Knoedl (Houston <i>v.</i>)	91

L

Love <i>v.</i> Smackover Sch. Dist.	4
--	---

M

Mackey <i>v.</i> State	229
Massongill <i>v.</i> County of Scott	98
Masterson <i>v.</i> State	443
McElhanon <i>v.</i> State	261
Mergen (Ouachita Wilderness Inst. <i>v.</i>)	405
Milligan (Sexton Law Firm, P.A. <i>v.</i>)	285
Minor <i>v.</i> Failla	274
Mixon <i>v.</i> State	61
Morris <i>v.</i> State	636

N

National Bank of Commerce (Benedict <i>v.</i>)	590
National Enters., Inc. <i>v.</i> Rea	332
Neal (Wilson <i>v.</i>)	125
Nettleton Sch. Dist. <i>v.</i> Owens	367

O

Oglesby <i>v.</i> State	127
Ouachita Wilderness Inst. <i>v.</i> Mergen	405
Owens (Nettleton Sch. Dist. <i>v.</i>)	367

P

Partin <i>v.</i> State Bd. of Law Examiners	496
Phillips Dev. Corp. (<i>Wheeler v.</i>)	354
Phillips <i>v.</i> State	498
Polk <i>v.</i> State	174
Porter <i>v.</i> Harshfield	130
Porter <i>v.</i> Porter	42
Porter (<i>Porter v.</i>)	42
Pyles <i>v.</i> State	73

Q

Qualls <i>v.</i> Ferritor	235
---------------------------------	-----

R

Rains <i>v.</i> State	607
Rankin <i>v.</i> State	379
Rea (<i>National Enters., Inc. v.</i>)	332
Reyes, Basilio <i>v.</i> State	499
Reyes, Rogelio <i>v.</i> State	539
Rice (<i>State v.</i>)	219
Richardson <i>v.</i> Rodgers	402
Riggins <i>v.</i> State	171
Rodgers (<i>Richardson v.</i>)	402
Roseby <i>v.</i> State	554
Ross (<i>State v.</i>)	1

S

Saline County Circuit Court (<i>Bristol-Meyers Squibb Co.</i> <i>v.</i>)	357
Sanders, Anthony <i>v.</i> State	571
Sanders, Raymond <i>v.</i> State	363
Schenebeck (<i>Schenebeck v.</i>)	198
Schenebeck <i>v.</i> Schenebeck	198
Schlesier, Robin K. <i>v.</i> State	124
Schlesier, Robin K. <i>v.</i> State	501
Scollard (<i>Scollard v.</i>)	83
Scollard <i>v.</i> Scollard	83

Sexton Law Firm, P.A. <i>v.</i> Milligan.....	285
Shannon <i>v.</i> Wilson	143
Sherrill <i>v.</i> State	593
Sims <i>v.</i> State	350
Skiles <i>v.</i> State	365
Smackover Sch. Dist. (<i>Love v.</i>)	4
Smith <i>v.</i> State	238
Smith (Travelers Ins. Co. <i>v.</i>).....	336
Standridge <i>v.</i> State	473
State (<i>Allen v.</i>)	566
State <i>v.</i> Bell.....	422
State (<i>Beshears v.</i>)	469
State Bd. of Law Examiners (<i>Partin v.</i>)	496
State (<i>Bogan v.</i>)	490
State (<i>Bradford v.</i>)	620
State (<i>Cates v.</i>)	585
State (<i>Covin v.</i>)	635
State (<i>Crisco v.</i>)	393
State (<i>Dirickson v.</i>).....	572
State (<i>Dority v.</i>).....	631
State (<i>Edmondson v.</i>)	234
State (<i>Finch v.</i>).....	319
State (<i>Fleetwood v.</i>)	327
State (<i>Goff v.</i>).....	513
State (<i>Gooden v.</i>)	485
State (<i>Graydon v.</i>)	596
State (<i>Greene v.</i>)	491
State (<i>Griffin v.</i>).....	493
State (<i>Hall v.</i>)	567
State <i>v.</i> Hart	582
State (<i>Henderson v.</i>)	526
State (<i>Hills v.</i>).....	362
State (<i>Hodge v.</i>).....	57
State (<i>Hood v.</i>)	21
State (<i>Hopes v.</i>)	494
State (<i>Ivy v.</i>)	495
State (<i>James v.</i>)	58
State (<i>Jones, Jack, Jr. v.</i>)	62
State (<i>Jones, Paul Steven v.</i>)	603

State (Mackey <i>v.</i>)	229
State (Masterson <i>v.</i>)	443
State (McElhanon <i>v.</i>)	261
State (Mixon <i>v.</i>)	61
State (Morris <i>v.</i>)	636
State (Oglesby <i>v.</i>)	127
State (Phillips <i>v.</i>)	498
State (Polk <i>v.</i>)	174
State (Pyles <i>v.</i>)	73
State (Rains <i>v.</i>)	607
State (Rankin <i>v.</i>)	379
State (Reyes, Basilio <i>v.</i>)	499
State (Reyes, Rogelio <i>v.</i>)	539
State <i>v.</i> Rice	219
State (Riggins <i>v.</i>)	171
State (Roseby <i>v.</i>)	554
State <i>v.</i> Ross	1
State (Sanders, Anthony <i>v.</i>)	571
State (Sanders, Raymond <i>v.</i>)	363
State (Schlesier, Robin K. <i>v.</i>)	124
State (Schlesier, Robin K. <i>v.</i>)	501
State (Sherrill <i>v.</i>)	593
State (Sims <i>v.</i>)	350
State (Skiles <i>v.</i>)	365
State (Smith <i>v.</i>)	238
State (Standridge <i>v.</i>)	473
State (Stewart <i>v.</i>)	502
State (Warren <i>v.</i>)	637
State (Watson <i>v.</i>)	511
State (White <i>v.</i>)	487
State (Williams, Clarence <i>v.</i>)	8
State (Williams, Wake <i>v.</i>)	503
State <i>v.</i> Zawodniak	179
Stewart <i>v.</i> State	502
Stueart <i>v.</i> Arkansas State Police Comm'n	46
Suen <i>v.</i> Greene	455

T

Travelers Ins. Co. <i>v.</i> Smith	336
------------------------------------	-----

W

Warren <i>v.</i> State.....	637
Watson <i>v.</i> State.....	511
Webb (<i>Wiles v.</i>).....	108
Weiss (<i>ACW, Inc. v.</i>).....	302
Weiss (<i>Aluminum Co. of America v.</i>).....	225
Wheeler <i>v.</i> Phillips Dev. Corp.....	354
White <i>v.</i> State.....	487
Wiles <i>v.</i> Webb.....	108
Williams, Clarence <i>v.</i> State.....	8
Williams, Wake <i>v.</i> State.....	503
Wilson <i>v.</i> Neal.....	125
Wilson (<i>Shannon v.</i>).....	143

Z

Zawodniak (<i>State v.</i>).....	179
------------------------------------	-----

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

W.H. "DUB" ARNOLD, Chief Justice:

Dirickson <i>v.</i> State	572
Fleetwood <i>v.</i> State	327
Jones, Jack, Jr. <i>v.</i> State	62
Nettleton Sch. Dist. <i>v.</i> Owens	367
Oglesby <i>v.</i> State	127
Porter, Randy <i>v.</i> Harshfield	130
Pyles <i>v.</i> State	73
Shannon <i>v.</i> Wilson	143
Standridge <i>v.</i> State	473
State <i>v.</i> Hart	582

DAVID NEWBERN, Justice:

Arkansas State Highway Comm'n <i>v.</i> Frisby	506
Cates <i>v.</i> State	585
In Re: Adoption of Lybrand	163
Rankin <i>v.</i> State	379
Richardson <i>v.</i> Rodgers	402
Riggins <i>v.</i> State	171
Scollard <i>v.</i> Scollard	83
State <i>v.</i> Ross	1
Watson <i>v.</i> State	511

TOM GLAZE, Justice:

Benedict <i>v.</i> National Bank of Commerce	590
Goff <i>v.</i> State	513
Houston <i>v.</i> Knoedl	91
Massongill <i>v.</i> County of Scott	98
Polk <i>v.</i> State	174
Qualls <i>v.</i> Ferritor	235
Sherrill <i>v.</i> State	593
Smith <i>v.</i> State	238
State <i>v.</i> Zawodniak	179

DONALD L. CORBIN, Justice:

Graydon <i>v.</i> State	596
J.T. <i>v.</i> Arkansas Dep't of Human Servs.	243
Jones, Paul Steven <i>v.</i> State	603
Love <i>v.</i> Smackover Sch. Dist.	4
McElhanon <i>v.</i> State	261
National Enters., Inc. <i>v.</i> REA	332
Ouachita Wilderness Institute <i>v.</i> Mergen	405
Rains <i>v.</i> State	607

ROBERT L. BROWN, Justice:

Hannon <i>v.</i> Armored Sch. Dist. # 9	267
Henderson <i>v.</i> State	526
Minor <i>v.</i> Failla	274
Reyes, Rogelio <i>v.</i> State	539
Schenebeck <i>v.</i> Schenebeck	198
Sexton Law Firm, P.A. <i>v.</i> Milligan	285
State <i>v.</i> Bell	422
The Travelers Ins. Co. <i>v.</i> Smith	336
Wiles <i>v.</i> Webb	108
Williams, Clarence <i>v.</i> State	8

ANNABELLE CLINTON IMBER, Justice:

Boatmen's Nat'l Bank <i>v.</i> Cole	209
Bradford <i>v.</i> State	620
Doty <i>v.</i> Bettis	120
Green <i>v.</i> Coca-Cola Bottling Co.	345
Hood <i>v.</i> State	21
Roseby <i>v.</i> State	554
Sims <i>v.</i> State	350
State <i>v.</i> Rice	219

RAY THORNTON, Justice:

ACW, Inc. <i>v.</i> Weiss	302
Aluminum Co. of America <i>v.</i> Weiss	225
Chlanda <i>v.</i> Killebrew	39
Dority <i>v.</i> State	631
Gooden <i>v.</i> State	485
Mackey <i>v.</i> State	229
Masterson <i>v.</i> State	443

Porter <i>v.</i> Porter	42
Stueart <i>v.</i> Arkansas State Police Comm'n	46
Suen <i>v.</i> Greene	455
Wheeler <i>v.</i> Phillips Dev. Corp.	354
White <i>v.</i> State	487

PER CURIAM:

Allen <i>v.</i> State	566
Beshears <i>v.</i> State	569
Bogan <i>v.</i> State	490
Bristol-Meyers Squibb Co. <i>v.</i> Saline County Circuit Court	357
Childress <i>v.</i> Humphrey	504
Covin <i>v.</i> State	635
Edmondson <i>v.</i> State	234
Finch <i>v.</i> State	319
Greene <i>v.</i> State	491
Griffin <i>v.</i> State	493
Hall <i>v.</i> State	567
Hills <i>v.</i> State	362
Hodge <i>v.</i> State	57
Hopes <i>v.</i> State	474
Ivy <i>v.</i> State	495
James <i>v.</i> State	58
Jones <i>v.</i> Jones	320
Mixon <i>v.</i> State	61
Morris <i>v.</i> State	636
Partin <i>v.</i> State Bd. of Law Examiners	496
Phillips <i>v.</i> State	498
Reyes, Basilio <i>v.</i> State	499
Sanders, Anthony <i>v.</i> State	571
Sanders, Raymond <i>v.</i> State	363
Schlesier, Robin K. <i>v.</i> State	124
Schlesier, Robin K. <i>v.</i> State	501
Skiles <i>v.</i> State	365
Stewart <i>v.</i> State	502
Warren <i>v.</i> State	637
Williams, Wake <i>v.</i> State	503
Wilson <i>v.</i> Neal	125

APPENDIX

RULES ADOPTED OR AMENDED BY PER CURIAM ORDER:

In Re: Administrative Order Number 10: Arkansas Child Support Guidelines	668
In Re: Adoption of Rule 37.5 of the Rules of Criminal Procedure	641
In Re: Rule 2 of the Rules of Appellate Procedure—Criminal and Rule 3 of the Rules of Appellate Procedure—Civil	648
In Re: Rule 28.3 of the Rules of Criminal Procedure	639
In Re: Supreme Court Rules 1-1, 2-3(a), 4-4(e), 5-1, 5-3(b), 6-1(b) and 6-5	651
In Re: Supreme Court Rule 1-2, Rule 2-4 and Rule 4-2(a), Rule 2 of the Rules of Appellate Procedure—Criminal, and Rule 3 of the Rules of Appellate Procedure—Civil	656

APPOINTMENT TO COMMITTEES:

In Re: Application for Initial Admission to the Bar of Arkansas: Mark Ashley Crossley	688
In Re: Appointment of Counsel in Criminal Cases	687
In Re: Board of Certified Court Reporter Examiners	686
In Re: Client Security Fund Committee Appointments ...	685
In Re: Committee on Automation	687
In Re: Supreme Court Ad Hoc Committee on Foster Care and Adoption Assessment	688
In Re: Supreme Court Committee on the Unauthorized Practice of Law	685
In Re: The Supreme Court of Arkansas Committee on Civil Practice	686

PROFESSIONAL CONDUCT MATTERS

In Re: Karen King Johnson	689
---------------------------------	-----

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

- Avery *v.* Pope, CR 97-725 (Per Curiam), Pro Se Motion to Amend Petition for Writ of Mandamus moot; petition dismissed September 18, 1997.
- Avery *v.* State, CR 87-15 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied June 23, 1997.
- Ayers *v.* State, CR 97-203 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed July 7, 1997.
- Baker *v.* State, CR 96-502 (Per Curiam), Pro Se Motion for Appointment of Counsel granted; rebriefing ordered September 25, 1997.
- Beaty *v.* State, CR 96-1293 (Per Curiam), Pro Se Motion to Amend Appellant's Brief, for Extension of Time, and for Appointment of Counsel denied and appeal dismissed June 23, 1997.
- Betts *v.* State, CR 96-852 (Per Curiam), affirmed September 11, 1997.
- Bohanan *v.* State, CR 96-1505 (Per Curiam), Appellee's Motion for Compliance denied and Appellant's Pro Se Motion for Leave to Proceed with Enlarged Argument granted June 30, 1997.
- Brooks *v.* Glover, CR 97-215 (Per Curiam), Pro Se Motion for Reconsideration denied July 14, 1997.
- Brown *v.* State, CR 96-876 (Per Curiam), affirmed July 7, 1997.
- Choate *v.* State, CR 97-90 (Per Curiam), Pro Se Motion for Duplication of Appellant's Brief at Public Expense denied September 18, 1997.
- Clay *v.* State, CR 96-877 (Per Curiam), Pro se motion for Appointment of Counsel and to Supplement Appellant's Brief denied June 9, 1997.
- Clay *v.* State, CR 96-877 (Per Curiam), affirmed September 25, 1997.
- Coleman *v.* State, CR 96-883 (Per Curiam), reversed and remanded June 30, 1997.

- Cooper *v.* State, CR 96-880 (Per Curiam), Pro Se Motion for Appointment of Counsel and to Supplement Appellant's Brief denied June 9, 1997.
- Cooper *v.* State, CR 96-880 (Per Curiam), affirmed September 18, 1997.
- Cornelious *v.* State, CR 97-424 (Per Curiam), Pro Se Motion for Rule on Clerk denied July 14, 1997.
- Gant *v.* State, CR 97-254 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed July 14, 1997.
- Garner *v.* State, CR 97-643 (Per Curiam), Pro Se Motion for Rule on Clerk and Pro Se Motion for Appointment of Counsel denied; Pro Se Motion for Duplication of pleadings moot September 25, 1997.
- Gilbert *v.* Brownlee, 97-433 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted September 18, 1997.
- Gonzales *v.* State, CR 96-819 (Per Curiam), affirmed June 23, 1997.
- Gordon *v.* State, CR 96-878 (Per Curiam), Pro Se Motion for Appointment of Counsel and to Supplement Appellant's Brief denied June 9, 1997.
- Gordon *v.* State, CR 96-878 (Per Curiam), affirmed September 18, 1997.
- Grabow *v.* Davis, CR 97-609 (Per Curiam), Pro Se Petition for Writ of Mandamus moot June 30, 1997.
- Hoffner *v.* Humphrey, CR 97-1008 (Per Curiam), Pro Se Petition for Writ of Mandamus moot September 18, 1997.
- Holloway *v.* State, CR 97-174 (Per Curiam), Pro Se Motions to File Belated Brief and to Proceed In Forma Pauperis denied and appeal dismissed July 14, 1997.
- Houston *v.* State, CR 97-225 (Per Curiam), Pro Se Motion for Transcript and Extension of Time to File Appellant's Brief denied and appeal dismissed July 7, 1997.
- Jenkins *v.* State, CR 97-292 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment granted; Pro Se Motion for Appointment of Counsel moot June 16, 1997.

- Jones, Edward *v.* Hanshaw, 97-866 (Per Curiam), Pro Se Petition for Writ of Mandamus and Pro Se Motion for Photocopies at Public expense denied September 18, 1997.
- Jones, Howard W. *v.* State, 97-872 (Per Curiam), Pro Se Motion for Rule on Clerk and Pro Se Motion for Appointment of Counsel dismissed September 11, 1997.
- Jones, Michael L. *v.* State, CR 96-1192 (Per Curiam), Pro Se Motion for Photocopies at Public Expense denied September 11, 1997.
- MacKintrush *v.* State, CA CR 95-1346 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied June 9, 1997.
- MacKintrush *v.* State, CA CR 95-1346 (Per Curiam), Pro Se Motion for Appointment of Counsel denied June 23, 1997.
- Mayzes *v.* State, CR 96-1056 (Per Curiam), Pro Se Motion to Supplement Brief denied June 23, 1997.
- Mayzes *v.* State, CR 96-936 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed September 25, 1997.
- McCready *v.* State, CR 96-763 (Per Curiam), affirmed June 9, 1997.
- Midgett *v.* State, CR 97-319 (Per Curiam), Pro Se Motion for Duplication of Appellant's Brief at Public Expense denied and appeal dismissed September 11, 1997.
- Moss *v.* Erwin, CR 97-371 (Per Curiam), Pro Se Petition for Writ of Mandamus moot June 30, 1997.
- Moten *v.* State, CR 96-879 (Per Curiam), Pro Se Motion for Appointment of Counsel and to Supplement Appellant's Brief denied June 9, 1997.
- Moten *v.* State, CR 96-879 (Per Curiam), affirmed September 18, 1997.
- Noel *v.* State, CR 97-117 (Per Curiam), Pro Se Motion to Stop Appeal denied June 16, 1997.
- Owens *v.* State, CR 97-163 (Per Curiam), Joint Pro Se Motion for Extension of Time to File Appellants' Brief granted in part and denied in part June 16, 1997.
- Partin *v.* State, CR 93-682 (Per Curiam), Pro Se Motion for Photocopy at Public Expense denied June 30, 1997.

- Pennington *v.* Tucker, 97-370 (Per Curiam), Pro Se Motion to Proceed In Forma Pauperis on Appeal denied June 30, 1997.
- Pinegar *v.* State, CR 97-374 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied July 7, 1997.
- Pitts *v.* Arkansas Dep't of Correction, 97-331 (Per Curiam), Pro Se Motion for Appointment of Counsel denied June 16, 1997.
- Pruitt *v.* State, CR 97-1063 (Per Curiam), Pro Se Petition for Writ of Prohibition moot September 18, 1997.
- Sheilds *v.* State, CR 97-386 (Per Curiam), Pro Se Motions to File Belated Appellant's Brief and for Appointment of Counsel denied, motions to Dismiss Appeal and to Withdraw Motion to Dismiss Appeal moot July 14, 1997.
- Slocum *v.* State, CR 97-244 (Per Curiam), Appellant's Pro Se Motion to Dismiss Appeal denied.
- Smith *v.* State, CR 96-662 (Per Curiam), affirmed June 30, 1997.
- Sullivan *v.* State, CR 86-3 (Per Curiam), Pro Se Petition to Proceed in Circuit Court Pursuant to Criminal Procedure Rule 37 denied July 14, 1997.
- Taylor *v.* State, CR 88-21 (Per Curiam), Pro Se Petition to Proceed in Circuit Court Pursuant to Criminal Procedure Rule 37 denied July 7, 1997.
- Tidwell *v.* State, CR 97-363 (Per Curiam), Pro Se Motion for Rule on Clerk denied July 7, 1997.
- Van *v.* State, CR 96-1144 (Per Curiam), Pro Se Motion for Amended Appeal denied September 25, 1997.
- Walker *v.* State, CR 96-855 (Per Curiam), affirmed September 18, 1997.
- Wells *v.* State, 97-60 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted; final extension June 9, 1997.
- Williams *v.* State, CR 97-299 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied June 30, 1997.
- Wilson *v.* Cass, 97-430 (Per Curiam), Pro Se Motion to File Belated Reply Brief granted; Pro Se Motion to Proceed In Forma Pauperis moot September 25, 1997.

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders



IN RE: RULE 28.3 OF THE RULES OF CRIMINAL
PROCEDURE

Supreme Court of Arkansas
Opinion delivered June 16, 1997

PER CURIAM. The Arkansas Supreme Court Committee on Criminal Practice has recommended amendments to Rule 28.3(b) and (i) of the Rules of Criminal Procedure. As explained in the accompanying Reporter's Notes, these changes were proposed to address recurrent problems arising in the application of the speedy-trial rule. We express our gratitude to the members of the Criminal Practice Committee for their work on this matter.

We publish the proposed amendment to Rule 28.3, subsections (b) and (i) of the Rules of Criminal Procedure and the accompanying Reporter's Notes for comment by the bench and bar for a period up to and including September 1, 1997.

RULE 28.3. EXCLUDED PERIODS.

.....

(b) The period of delay resulting from a continuance attributable to congestion of the trial docket if in a written order or docket entry at the time the continuance is granted: (1) the court explains with particularity the reasons the trial docket does not permit trial on the date originally scheduled; (2) the court determines that the delay will not prejudice the defendant; and (3) the court schedules the trial on the next available date permitted by the trial docket.

.....

(i) All excluded periods shall be determined by the court in a written order or docket entry, but it shall not be necessary for the trial court to make the determination until the defendant has moved for dismissal pursuant to Rule 28.1. The number of days of the excluded period or periods shall be added to the number of months applicable to the defendant as set forth in Rule 28.1(a), (b) and (c) to determine the limitations and consequences applicable to the defendant.

Reporter's Notes to 1997 Amendment: Subsections (b) and (i) have been amended to address recurrent problems arising in cases. *E.g.*, *Hicks v. State*, 305 Ark. 393, 808 S.W.2d 348 (1991).

Subsection (b) was amended to make more practical a continuance granted because of congestion of the trial docket. The three-pronged finding was substituted for the previous standard which required a finding of "exceptional circumstances." This requirement of the entry of a contemporaneous written order explaining the reasons for the continuance, finding that the defendant is not prejudiced, and scheduling a new trial date is in addition to the finding required by subsection (i) as to the periods to be excluded. Typically, the period to be excluded under subsection (b) will be from the date on which the trial was scheduled as specified in (b)(1) to the rescheduled date as specified in (b)(3).

Subsection (i) was amended to allow the trial court to determine the excluded periods when the defendant has moved for dismissal pursuant to Rule 28.1 rather than at an earlier date although the judge is still free to do so earlier. The finding required by this subsection is a determination of the excluded periods.

IN RE: ADOPTION OF RULE 37.5 OF THE RULES OF
CRIMINAL PROCEDURE

Supreme Court of Arkansas
Opinion delivered June 23, 1997

PER CURIAM. On March 31, 1997, the General Assembly enacted 1997 Ark. Acts 925, the Arkansas Effective Death Penalty Act of 1997, in response to the federal Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, 28 U.S.C.S. § 2261 et seq. Section 8 of Act 925 states:

In the event that any provision of this act is found to be an invalid encroachment upon the rule-making authority of the Supreme Court of Arkansas, that provision shall be deemed to be a resolution of the General Assembly of the State of Arkansas recommending the adoption of the provision by court rule.

We find that such is the case with respect to most of Sections 5 and 6 of the Act. We directed our Committee on Criminal Practice to study these areas, and it has prepared a proposal to accomplish the purpose of Act 925, that is, to “opt-in” to the benefits of the federal act establishing restrictions on federal habeas corpus review of state prisoners under sentence of death. The committee’s proposal is in essence these sections of Act 925 with modifications.

We thank the committee for its prompt action on our request. We have reviewed the proposal, and now adopt it as Rule 37.5 of the Rules of Criminal Procedure. As stated in section “k” of the rule, it shall be effective as of August 1, 1997 subject to the retroactive provisions therein stated.

Rule 37.5 shall supersede Sections 5 and 6 of Act 925 [Title 16, Chapter 91, Section 201 and Section 202] *except for* the last paragraph of subsection 5(c) [§ 16-91-202(c)], which provides for education programs by the Arkansas Public Defender Commission, and all of subsection 5(f) [§ 16-91-202(f)], which pro-

vides for the funding of the fees and expenses awarded under the rule through the Arkansas Public Defender Commission.

RULES OF CRIMINAL PROCEDURE.

RULE 37.5. SPECIAL RULE FOR PERSONS UNDER SENTENCE OF DEATH.

(a) **Purpose and scope.** This rule shall apply only to persons under a sentence of death. Except as otherwise provided in this rule, the provisions of Rules 37.1, 37.2, 37.3 and 37.4 shall apply to a petition for post-conviction relief filed by a person under sentence of death. The intent of this rule is to comply with the provisions of 28 United States Code § 2261 et seq.

(b) **Requirement of hearing on appointment of attorney.**

(1) Upon affirmance of a sentence of death by the Supreme Court of Arkansas, the clerk of the court shall forward a copy of the mandate to the circuit court that imposed the sentence of death. The circuit court shall conduct a hearing to consider the appointment of an attorney to represent the person in post-conviction proceedings under this rule. If the Supreme Court affirms a sentence of death or affirms the trial court's finding of competency to waive an appeal from a sentence of death, the hearing shall be held not later than twenty-one (21) days after the mandate is issued by the Supreme Court. If an appeal is taken from the sentence of death but later dismissed by the Supreme Court, the hearing shall be held not later than twenty-one (21) days after the date the appeal is dismissed. If a timely notice of appeal is filed with the trial court but the trial record is never lodged in the Supreme Court, the hearing shall be held not later than twenty-one (21) days after the last date for lodging the trial record in the Supreme Court. If no timely notice of appeal is filed, the hearing shall be held not later than twenty-one (21) days after the last date on which a notice of appeal could have been filed.

(2) The person under sentence of death shall be present at the hearing. At the hearing the circuit court shall inform the person of the existence of possible relief under this rule and shall determine whether the person desires the appointment of an attorney to represent him in proceedings under this rule. If the person

rejects the appointment of an attorney, the waiver shall be made in open court on the record. If the circuit court determines that the person is indigent and that he either accepts the appointment of an attorney or is unable to make a competent decision whether to accept or reject an attorney, the circuit court shall issue written findings to that effect and enter a written order appointing an attorney to represent the person in proceedings under this rule. If the circuit court determines that the person rejects the appointment of an attorney and understands the legal consequences of his decision, or that the person is not indigent, the circuit court shall issue written findings to that effect and enter a written order declining to appoint an attorney to represent the person in proceedings under this rule. In determining whether the person is indigent, the circuit court shall consider the extraordinary cost of post-conviction proceedings in a capital case. The written findings and order required by this subsection shall be issued within seven (7) days after the hearing required by this subsection.

(3) The appointment of an attorney under this rule shall remain effective through an appeal to the Supreme Court from a proceeding under this rule.

(c) *Qualifications of appointed attorney.*

(1) Except as provided in subsection (c)(4) of this rule, an attorney appointed to represent a person under this rule shall meet each of the following standards:

(A) Within ten (10) years immediately preceding the appointment, the attorney shall have:

(i) represented a petitioner under sentence of death in a state or federal post-conviction proceeding; or

(ii) actively participated as defense counsel in at least five (5) felony jury trials tried to completion, including one trial in which the death penalty was sought; and

(B) Within ten (10) years immediately preceding the appointment, the attorney shall have:

(i) represented a petitioner in at least three state or federal post-conviction proceedings, one of which proceeded to an evi-

dentiary hearing and all of which involved a conviction of a violent felony, including one conviction of murder; or

(ii) represented a defendant in at least three (3) appeals involving a conviction of a violent felony, including one conviction of murder, and represented a petitioner in at least one evidentiary hearing in a state or federal post-conviction proceeding; and

(C) The attorney shall have been actively engaged in the practice of law for at least three (3) years; and

(D) Within two (2) years immediately preceding the appointment, the attorney shall have completed at least six (6) hours of continuing legal education or other professional training in the representation of persons in capital trial, capital appellate, or capital post-conviction proceedings.

(2) The circuit court may appoint pro hac vice an attorney who is not licensed to practice in Arkansas but who meets the standards of (c)(1) provided the court also appoints as co-counsel an attorney who is licensed to practice in Arkansas. In such case, the attorney who is licensed to practice in Arkansas is not required to meet the standards of (c)(1).

(3) The court shall make findings, either on the record or in the written order required by subsection (b) of this rule, specifying the qualifications of counsel which satisfy the standards for appointment under this rule.

(4) The circuit court may appoint an attorney who does not meet the standards of (c)(1)(A) and (c)(1)(B), but who does meet the standards of (c)(1)(C) and either (c)(1)(A), (B), or (D), if the circuit court determines that the attorney is clearly qualified because of his unique training, experience, and background to represent a person under sentence of death in a post-conviction proceeding. The order appointing such an attorney shall contain written findings specifying the unique training, experience, and background that qualify the attorney for appointment.

(5) The circuit court shall not appoint an attorney under this rule if the attorney represented the person under a sentence of death at trial or on direct appeal to the Supreme Court of Arkan-

sas unless the person and the attorney request continued representation on the record. If the circuit court does appoint an attorney who represented the person at trial or on direct appeal, the circuit court shall appoint a second attorney, who did not represent the person at trial or on direct appeal, to assist in the representation of the person. At least one of the attorneys shall meet the standards of (c)(1) or (c)(4).

(6) In accordance with the terms of this rule, the circuit court may appoint the Capital, Conflicts, and Appellate Office of the Arkansas Public Defender Commission, unless otherwise disqualified.

(d) **Access to records.** If a person is under sentence of death, any attorney who represented such person at trial or on appeal in connection with the conviction that resulted in the sentence of death shall make available the complete files in connection with such conviction to the attorney who represents such person in post-conviction proceedings under this rule. The attorney who represents such person in post-conviction proceedings may inspect and photocopy such files, but the attorneys who represented such person at trial or on appeal shall maintain custody of their respective files, except for material which was admitted into evidence in any trial proceeding, for at least five (5) years following completion of their representation of such person.

(e) **Time for filing post-conviction petition.** A petition for relief under this rule shall be filed in the circuit court that imposed the sentence of death within ninety (90) days after the entry of the order required in subsection (b)(2) of this rule.

(f) **Notification of filing of petition.** Upon the filing of a petition under this rule, the petitioner shall immediately forward a copy of the petition to the circuit judge who entered the order required in subsection (b)(2) of this rule, the prosecuting attorney for the district, the Attorney General, the petitioner's counsel of record at the trial resulting in the sentence of death, and the Executive Director of the Arkansas Public Defender Commission.

(g) **Effect on sentence of death.** When the circuit court enters an order under subsection (b) of this rule, the court shall also enter

an order staying any sentence of death. The stay of execution shall remain in effect until dissolved by a court with competent jurisdiction. The circuit court shall enter an order dissolving the stay of execution if:

(1) A timely petition is not filed under this rule; or

(2) A timely petition is filed under this rule but relief is denied by the circuit court under subsection (i) of this rule, and either the denial of relief is affirmed on appeal or the time for filing an appeal from the denial of relief has expired.

(h) **Hearing on petition.** If the circuit court determines that a hearing is necessary, the hearing shall be held within one hundred eighty (180) days from the date of the filing of the petition, unless continued for good cause shown.

(i) **Decision.** If a hearing on the petition is held, the circuit court shall, within sixty (60) days of the conclusion of the hearing, make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition. If no hearing on the petition is held, the circuit court shall, within one hundred twenty (120) days after the filing of the petition, make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition. The time within which the circuit court shall make specific written findings of fact and conclusions of law shall be extended by thirty (30) days if the circuit court requests or permits post-hearing briefs.

(j) **Compensation of appointed attorney.** Compensation to be paid to attorneys appointed under this rule, as well as the fees and expenses to be paid for investigative, expert, and other reasonably necessary services, shall be fixed by the circuit and appellate courts in their respective proceedings at such rates or amounts as the courts determine to be reasonable. All compensation and reasonable expenses authorized by the courts shall be paid pursuant to Ark. Code Ann. § 16-91-202(f), or as otherwise provided by law.

(k) *Effective date.* The effective date of this rule is August 1, 1997. This rule shall apply to all persons under sentence of death who became eligible to file a petition under Rule 37.2(c) on or after March 31, 1997. For persons who were eligible to file a petition between March 31, 1997 and August 1, 1997, the hearing required by subsection (b)(1) of this rule shall be conducted no later than twenty-one (21) days after the effective date of this rule. In all other cases, the hearing shall be conducted within the time set forth in subsection (b)(1) of this rule. In all cases, the time for filing the petition shall be governed by subsection (e) of this rule.

REPORTER'S NOTES:

1. The effective date of the rule is August 1, 1997. As provided in subsection (k), the rule, as opposed to Act 925, shall apply to all eligible death penalty prisoners. Thus, there is a retroactivity clause for those prisoners eligible to file a petition under the Act between its effective date of March 31, 1997 and the effective date of the rule. The hearing required by subsection (b) to consider the appointment of counsel for such prisoners shall be held on or before August 21, 1997.
2. All references to the "Supreme Court" in Rule 37.5 are intended to mean the Arkansas Supreme Court.
3. As used in this rule, the term "represent" is meant to include an attorney who is counsel of record for a defendant/petitioner, including an attorney who serves as co-counsel or as part of a defense team.

IN RE: RULE 2 OF THE RULES OF APPELLATE
PROCEDURE—CRIMINAL and RULE 3 OF THE RULES
OF APPELLATE PROCEDURE—CIVIL

Supreme Court of Arkansas
Opinion delivered June 23, 1997

PER CURIAM. The Arkansas Supreme Court Committee on Criminal Practice has recommended an amendment to Rule 2(c) of the Rules of Appellate Procedure — Criminal. This change is similar to the recent amendment to Rule 3 of the Rules of Appellate Procedure — Civil. Both of these changes relate to Ark. Code Ann. § 16-13-510(c) providing for payment to the court reporter for preparation of the trial transcript.

The amendment to Rule 2 is more extensive than the amendment to the corresponding civil appellate rule because provision had to be made in the criminal context for an inability to make the required certification at the time of filing of the notice of appeal.

When the Court considered the Criminal Practice Committee's proposed rule, we decided that an additional provision needed to be inserted to the effect that a failure to include the certification would render the notice of appeal invalid. A similar provision has been added to Rule 3 of the Rules of Appellate Procedure - Civil, and the amended rule appears at the end of this order.

We express our gratitude to the members of the Criminal Practice Committee for their work on this matter.

Effective immediately, Rule 2 (c) of the Rules of Appellate Procedure — Criminal is amended by substituting the language set out below, and the accompanying Reporter's Notes are adopted:

Rule 2. TIME AND METHOD OF TAKING APPEAL.

.....

(c) *Certificate That Transcript Ordered.* (1) The notice of appeal shall include a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter, and, except for good cause, that any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510(c) have been made. If the appealing party is unable to certify that financial arrangements have been made, then he shall attach to the notice of appeal an affidavit setting out the reason for his inability to so certify. A copy of the notice of appeal shall be mailed to the court reporter. (2) Alternatively, the notice of appeal shall include a petition to obtain the record as a pauper if, for the purposes of the appeal, a transcript is deemed essential to resolve the issues on appeal. (3) A notice of appeal is invalid if it does not contain the certification/affidavit or the petition as required hereunder. (4) It shall not be necessary to file with either the notice of appeal or the designation of contents of record any portion of the reporter's transcript of the evidence of proceedings.

.....
Reporter's Notes, 1997 Amendment: Subsection (c) 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 or she had ordered the transcript, but the court reporter did not begin work because payment had not been received or financial arrangement made. If an appellant is unable to make the certification, then it is necessary that he or she make an affidavit with the notice of appeal explaining the reasons. A copy of the notice of appeal must be sent to the court reporter. An alternative to the certification/affidavit procedure is to petition to obtain the transcript as an indigent. The failure to include these items as required renders the notice of appeal invalid.

RULES OF APPELLATE PROCEDURE — CIVIL

Rule 3(e) Content of Notice of Appeal or Cross-Appeal.

Effective immediately, subdivision (e) is amended by adding a new third sentence. The second and third sentences, as amended, 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). A notice of appeal is invalid if it does not contain this statement.” . . .

[The remaining sentences of subsection (e) are not changed.]

IN RE: SUPREME COURT RULES 1-1, 2-3(a), 4-4(e), 5-1,
5-3(b), 6-1(b) and 6-5

Supreme Court of Arkansas
Opinion delivered June 30, 1997

PER CURIAM. Effective September 1, 1997, the Supreme Court's regular session will be changed from Monday to Thursday. Rules 1-1, 2-3(a), 4-4(e), 5-3(b), and 6-1(b) of the Rules of the Supreme Court are amended to reflect this change in the meeting date.

Effective immediately, Supreme Court Rule 5-1 is amended to provide for the circumstances in which a request for oral argument will not be granted.

Effective immediately, Supreme Court Rule 6-5 is amended by adding a new subsection (a) and redesignating the remaining subsections.

The amended rules are republished below:

RULE 1-1. HOURS OF MEETING.

The Supreme Court shall convene each Thursday at 9:00 a.m. and the Court of Appeals each Wednesday at 9:00 a.m., except during recess or as announced by either Court.

RULE 2-3. PETITIONS FOR REHEARING.

(a) *FILING AND SERVICE*. A petition for rehearing, a brief in support of the petition, and evidence of service of the petition, brief, and a certificate of merit stating that the petition is not filed for the purpose of delay, shall be filed within 18 days from the date of decision.

RULE 4-4. FILING AND SERVICE OF BRIEFS IN CIVIL CASES.

(e) *SUBMISSION*. The case shall be subject to call on the next Thursday (in the Supreme Court) or Wednesday (in the

Court of Appeals) after the expiration of the time allowed for filing the reply brief of the appellant or the cross-appellant.

RULE 5-1. ORAL ARGUMENTS.

(a) *WRITTEN REQUEST REQUIRED.* Any party may request oral argument by filing, contemporaneously with that party's brief, a letter, separate from the brief, stating the request with a copy to all parties. Oral argument will be allowed upon request unless it is determined that

- (1) the appeal is frivolous;
- (2) the dispositive issue or set of issues has been decided authoritatively; or
- (3) the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the decision-making process.

Within 15 days of the mailing of the letter notifying the Clerk and the other party or parties of the request for oral argument, counsel and the parties may submit to the Clerk, in writing, dates when they will be unavailable for argument. In addition to the reasons listed above, if it appears that attempts to schedule oral argument may result in undue delay, the Court may decide any case without oral argument.

The court may at its discretion and on its own motion select any case for oral argument when it appears to the court that the matters presented for consideration are such that oral arguments are appropriate for a full presentation of the issues.

(b) *ARGUMENT DATE FIXED.* The Clerk will notify counsel or the parties of the date oral argument is to be held or that the case will be submitted on briefs only. Thereafter, the date for argument may be changed only upon written motion to the Court and upon a showing of good cause. Counsel who have not requested oral argument are not required to appear at the argument but must, at least five days before the date the argument is to be heard, notify the Clerk in writing that they do not intend to appear. If counsel fails to provide notification and makes no

appearance, he or she shall be subject to sanctions under Rule 11 of the Rules of Appellate Procedure—Civil.

(c) *COUNSEL AND TIME LIMITATIONS.* Only two attorneys will be heard for each side, and not more than 20 minutes will be allowed to each side for argument unless special leave of Court has been granted prior to the argument. Applications for additional time for argument must be by written motion, filed not less than one week before the case is scheduled for submission, and setting forth the reasons why additional time is necessary.

(d) *APPORTIONMENT OF TIME.* The time allowed may be apportioned between the counsel on the same side at their discretion; provided, always, that a fair presentation of the case shall be made by the party having the opening and closing argument.

(e) *READING FROM BOOKS.* Counsel are not permitted to read from books, briefs, or records, except those short extracts which they consider necessary to properly emphasize some point.

(f) *SUBSTANCE OF AUTHORITIES STATED.* Instead of reading authorities, counsel are expected to cite them in their briefs and to state the substance in argument.

(g) *INTERRUPTIONS NOT PERMITTED.* Counsel will not be permitted to interrupt opposing counsel with questions or otherwise, except by leave of the Court.

(h) *PETITIONS FOR REHEARING.* Oral arguments are not permitted in support of or in opposition to petitions for rehearing.

(i) *AMICI CURIAE COUNSEL.* Amici Curiae counsel will not be permitted to participate in the oral argument.

(j) *CITING CASES OUTSIDE THE BRIEF.* If a case outside the brief is to be cited during oral argument, the citation must be furnished opposing counsel and the Court before the date of argument.

RULE 5-3. MANDATE.

(b) *IMMEDIATE ISSUANCE, UPON LEAVE OF COURT.* No transcript of any judgment, decision or opinion of the Court shall be certified by the Clerk, or mandate issued, within 18 calendar days after the judgment is rendered without special leave of the Court or upon stipulation of counsel, except in the case of the denial of a petition under Rule 37 of the Arkansas Rules of Criminal Procedure, in which case the decision of the Court shall be certified by the Clerk and the mandate issued on the day the decision is rendered.

RULE 6-1. PETITIONS FOR EXTRAORDINARY RELIEF AND EXPEDITED CONSIDERATIONS.

(b) *EMERGENCY OR ACCELERATED PROCEEDINGS.* In situations where time limitations do not allow a proper response time of ten days, upon the filing of the pleading, the pleader shall inform the Clerk's office of the need for an emergency or accelerated hearing by the Court. Upon notification, the Court will determine the date of the response and date of consideration of the pleading. If the pleader desires oral argument, such argument will be addressed to the Court at the regularly called sessions at 9:00 a.m. on Thursday (in the Supreme Court) or Wednesday (in the Court of Appeals) morning; otherwise, oral argument will not be entertained. The pleading must be properly filed and the party or attorney of record notified before oral argument will be heard.

RULE 6-5. ORIGINAL ACTIONS.

(a) *ORIGINAL JURISDICTION.* The Supreme Court shall have original jurisdiction in extraordinary actions as required by law, such as suits attacking the validity of statewide petitions filed under Amendment 7 of the Arkansas Constitution, or where the Supreme Court's contempt powers are at issue.

(b) *PROCEDURE.* In such proceedings, the procedure will conform to that prevailing in the chancery courts. Upon filing the original and seven copies of the pleading and payment of a filing

fee, a summons or other process will be issued by the Clerk. The respondent's pleading must be filed within the time allowed in chancery cases as provided under the Rules of Civil Procedure.

(c) *FACT FINDING*. Evidence upon issues of fact will be taken by a master to be appointed by the Court. As a condition to the appointment of a master, the Court may require both parties to file a bond for costs to be approved by the Clerk. Upon the filing of the master's findings, the parties shall file briefs as in other cases.

(d) *FACT FINDING UNNECESSARY*. When the issues involve questions of law only, and there is no need for appointment of a master to determine facts, the parties shall file briefs as in other cases. Time limits under Rule 4-4 will be calculated from the date the respondent's pleading is filed or due to be filed.

IN RE: SUPREME COURT RULE 1-2, RULE 2-4 and
RULE 4-2(a), RULE 2 OF THE RULES OF APPELLATE
PROCEDURE—CRIMINAL, and RULE 3 OF THE RULES
OF APPELLATE PROCEDURE—CIVIL

Supreme Court of Arkansas
Opinion delivered June 30, 1997

PER CURIAM. By *per curiam* order dated July 15, 1996, Supreme Court Rule 1-2 was revised to begin the process of adjusting the jurisdiction between the Supreme Court and the Court of Appeals in light of the expansion of the Court of Appeals to twelve members. At that time we said:

It is generally recognized that a state's supreme court, in our case sitting en banc as a court of seven, should hear those cases presenting the opportunity to develop or expound substantial legal principles. A court of appeals, usually sitting in panels of three, should decide cases applying existing legal principles. . . . Our objectives are a fair allocation of the cases between the two courts, the expeditious disposition of appeals, and better insuring that the Supreme Court decides those cases of significant public interest and major legal importance, such as appeals involving issues of first impression, appeals seeking to overrule precedents, and appeals presenting opportunities to resolve conflicting precedents.

The changes we then implemented have been in place for approximately ten months. During this same period, the Court of Appeals has done yeoman's work in reducing its backlog, and the twelve judges are now in place.

Thus, it is now time for the next step in the process, that is, a reallocation of the cases between the two courts based on the objectives outlined above while still striving for a fair workload allocation.

Effective for cases in which the record is lodged in the Supreme Court or Court of Appeals on or after September 1, 1997, we hereby amend Supreme Court Rules 1-2, 2-4, and 4-2(a), Rule 2 of the Rules of Appellate Procedure—Criminal, and

Rule 3 of the Rules of Appellate Procedure—Civil as set out below.

RULE 1-2. APPELLATE JURISDICTION OF THE SUPREME COURT AND COURT OF APPEALS.

(a) SUPREME COURT JURISDICTION. All cases appealed shall be filed in the Court of Appeals except that the following cases shall be filed in the Supreme Court:

1. All appeals involving the interpretation or construction of the Constitution of Arkansas;

2. Criminal appeals in which the death penalty or life imprisonment has been imposed;

3. Petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit, chancery, or probate courts;

4. Appeals pertaining to elections and election procedures;

5. Appeals involving the discipline of attorneys-at-law and or arising under the power of the Supreme Court to regulate the practice of law;

6. Appeals involving the discipline and disability of judges;

7. Second or subsequent appeals following an appeal which has been decided in the Supreme Court; and

8. Appeals required by law to be heard by the Supreme Court.

(b) REASSIGNMENT OF CASES. Any case is subject to reassignment by the Supreme Court, and in doing so, the Supreme Court will consider but not be limited to the following:

(1) issues of first impression,

(2) issues upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,

(3) issues involving federal constitutional interpretation,

(4) issues of substantial public interest,

(5) significant issues needing clarification or development of the law, or overruling of precedent, and

(6) appeals involving substantial questions of law concerning the validity, construction, or interpretation of an act of the General Assembly, ordinance of a municipality or county, or a rule or regulation of any court, administrative agency, or regulatory body.

(c) INFORMATIONAL STATEMENT AND JURISDICTIONAL STATEMENT.

(1) The Informational Statement and Jurisdictional Statement in appellant's brief are for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit.

(A) The Informational Statement which is to be contained within the brief, as provided in Rule 4-2(a)(2), shall be on a form which may be copied from that provided below and which shall be available from the Clerk.

(B) The Jurisdictional Statement, in narrative form, shall be completed on separate page(s), not to exceed three 8 1/2" x 11" double-spaced, typewritten pages and shall comply with the provisions of Rule 4-1(a). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The attorney's signature may appear on a separate page at the end and shall not count against the three-page limit. The style of the case should not be stated, and, beginning with the first page, the Jurisdictional Statement shall contain in the order indicated:

(i) The first numbered paragraph which shall concisely state all issues of law raised on appeal. The issues should be expressed in the terms and circumstances of the case but without unnecessary detail.

(ii) The second numbered paragraph which shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes." Then, the appellant shall discuss as many of the issues listed in

Rule 1-2 (b) which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

(2) If a cross-appeal is filed, the cross-appellant shall include in his or her brief an Informational Statement and Jurisdictional Statement in the same format as that for the appellant limited to the issues raised by the cross-appeal.

(3) If there is substantial disagreement on the part of an appellee or cross-appellee with the information in the appellant's Jurisdictional Statement, the appellee or cross-appellee may include in the appellee's or cross-appellee's brief a statement entitled "Appellee's Response to Jurisdictional Statement", in which the appellee or cross-appellee may dispute or clarify any of the appellant's statements, concluding with the following certification. "I express a belief, based on a reasoned and studied professional judgment, that the statements made by the appellant in the appellant's Jurisdictional Statement to which I have taken exception are material to understanding correctly the nature of this appeal and its disposition in the appropriate appellate court." The page requirements for the appellee's response shall comply with the provisions of subsection (c) except that it shall not exceed two pages. The appellee's response shall not include an Informational Statement.

(d) **TRANSFER AND CERTIFICATION.** The Supreme Court may transfer to the Court of Appeals any case appealed to the Supreme Court and may transfer to the Supreme Court any case appealed to the Court of Appeals. If the Court of Appeals seeks to transfer a case, the Court of Appeals shall find and certify that the case: (1) is excepted from its jurisdiction by Rule 1-2(a), or (2) otherwise involves an issue of significant public interest or a legal principle of major importance. The Supreme Court may accept for its docket cases so certified or may remand any of them to the Court of Appeals for decision. The Clerk of the Court shall notify the parties or their counsel of the transfer of any case.

(e) **PETITION FOR REVIEW.** No appeal as of right shall lie from the Court of Appeals to the Supreme Court. The

Supreme Court will exercise its discretion to review an appeal decided by the Court of Appeals only on application by a party to the appeal, upon certification of the Court of Appeals, or if the Supreme Court decides the case is one that should have originally been assigned to the Supreme Court. In determining whether to grant a petition to review, the following, while neither controlling nor fully measuring the Supreme Court's discretion, indicate the character of reasons that will be considered: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is arguably in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals arguably erred in some way related to one of the grounds listed in Rule 1-2(b).

(f) **IMPROPER FILING.** No case filed in either the Supreme Court or the Court of Appeals shall be dismissed for having been filed in the wrong court but shall be transferred or certified to the proper court.

(g) **ALLOCATION OF WORKLOAD.** Notwithstanding the foregoing provisions, cases may be assigned and transferred between the courts by Supreme Court order to achieve a fair allocation of the appellate workload between the Supreme Court and the Court of Appeals.

RULE 2-4. PETITIONS FOR REVIEW.

(a) **CONTENTS OF PETITION.** A petition to the Supreme Court for review of a decision of the Court of Appeals must be in writing and must be filed within 18 days from the date of the decision, regardless of whether a petition for rehearing is filed with the Court of Appeals. The petition may be typewritten and shall not exceed three 8 1/2" x 11", double-spaced pages in length. The petition must briefly and distinctly state the basis upon which the case should be reviewed and may include citations of authority or references to statutes or constitutional provisions. The petition can only be filed by a party to the appeal and is otherwise subject to Rule 1-2(e).

(b) *BRIEFS AND ORAL ARGUMENT PROHIBITED.* Briefs will not be accepted and oral arguments will not be heard in support of petitions for review. However, the petitioner may attach a copy of the petition for rehearing to the petition for review.

(c) *GROUNDINGS FOR REVIEW.* A petition for review must allege one of the following: (i) the case was decided in the Court of Appeals by a tie vote, (ii) the Court of Appeals rendered a decision which is in conflict with a prior holding of a published opinion of either the Supreme Court or the Court of Appeals, or (iii) the Court of Appeals otherwise erred with respect to one of the grounds listed in Rule 1-2(b).

(d) *RESPONSE.* A response to a petition for review must be filed within 10 calendar days of the date the petition was filed. Responses are subject to the same limitations as petitions. The respondent may attach a copy of the response to the petition for rehearing to the response to the petition for review.

(e) *CLERK'S NOTIFICATION; REQUEST FOR ORAL ARGUMENT.* When the Supreme Court grants a petition for review, the Clerk shall promptly notify all counsel and parties appearing pro se. Within two weeks of the notification, fourteen additional copies of the briefs previously submitted to the Court of Appeals shall be filed with the Clerk. Any party may request oral argument by filing, contemporaneously with that party's filing of the additional copies of the briefs, a letter, separate from the brief, stating the request with a copy to all parties. The decision to grant the request for oral argument and other aspects of oral argument are governed by Rule 5-1.

(f) *SUPPLEMENTAL AND REPLY BRIEFS.* Any party may request permission to submit a supplemental brief by motion, filed with the Clerk and served upon all other parties, within two weeks after the granting of review. The moving party's brief shall be due twenty days from the granting of the motion. Other parties may file responsive supplemental briefs within ten days of the date the moving party's supplemental brief is filed. A reply brief may be filed within five days after the filing of a responsive supplemental brief. No supplemental brief, responsive supplemental brief, or

reply brief submitted pursuant to this Rule shall exceed ten pages in length. These briefs shall otherwise conform to the requirements of Rule 4-1.

RULE 4-2. CONTENTS OF BRIEFS.

(a) *CONTENTS*. The contents of the brief shall be in the following order:

(1) *TABLE OF CONTENTS*. Each brief must include a table of contents. It should reference the page number for the beginning of each of the major sections identified in Rule 4-2(a)(2)-(7). Within the abstract section of the brief, it should reference the page number for the beginning of each witness' testimony and should note the page at which each pleading and document is abstracted.

(2) *INFORMATIONAL STATEMENT AND JURISDICTIONAL STATEMENT*. The Informational Statement and Jurisdictional Statement required by Supreme Court Rule 1-2(c).

(3) *STATEMENT OF THE CASE*. The appellant's brief shall contain a concise statement of the case, without argument. This statement, ordinarily not exceeding two pages in length, shall not exceed five pages without leave of the Court. The statement of the case should be sufficient to enable the court to read the abstract with an understanding of the nature of the case, the general fact situation, and the action taken by the trial court. The appellee's brief need not contain a statement of the case unless the appellant's statement is deemed to be controverted or insufficient.

(4) *POINTS ON APPEAL*. Following the appellant's statement of the case, the appellant shall list and separately number, concisely and without argument, the points relied upon for a reversal of the judgment or decree. The appellee will follow the same sequence and arrangement of points as contained in the appellant's brief and may then state additional points. Either party may insert under any point not more than two citations which either considers to be the principal authorities on that point.

(5) *TABLE OF AUTHORITIES*. The table of authorities shall be an alphabetical listing of authorities with a designation of

the page number of the brief on which the authority appears. The authorities shall be grouped as follows:

- (A) Cases
- (B) Statutes/rules
- (C) Books and treatises
- (D) Miscellaneous

(6) ABSTRACT. The appellant's abstract or abridgment of the record should consist of an impartial condensation, without comment or emphasis, of only such material parts of the pleadings, proceedings, facts, documents, and other matters in the record as are necessary to an understanding of all questions presented to the Court for decision. A document, such as a will or contract, may be photocopied and attached as an exhibit to the abstract. However, the document or the necessary portions of the document must be abstracted. Mere notation such as "plaintiff's exhibit no. 4" is not sufficient. On a second or subsequent appeal, the abstract shall include a condensation of all pertinent portions of the record filed on any prior appeal. Not more than two pages of the record shall in any instance be abstracted without a page reference to the record. In the abstracting of testimony, the first person (i.e., "I") rather than the third person (i.e., "He, She") shall be used. The Clerk will refuse to accept a brief if the testimony is not abstracted in the first person or if the abstract does not contain the required references to the record. In the abstracting of depositions taken on interrogatories, requests for admissions, and the responses thereto, and interrogatories to parties and the responses thereto, the abstract of each answer must immediately follow the abstract of the question. Whenever a map, plat, photograph, or other similar exhibit, which cannot be abstracted in words, must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by photography or other process and attach it to the copies of the abstract filed in the Court and served upon the opposing counsel, unless this requirement is shown to be impracticable and is waived by the Court upon motion.

(7) ARGUMENT. Arguments shall be presented under sub-headings numbered to correspond to the outline of points to be

relied upon. Citations of decisions of the Court which are officially reported must be from the official reports. All citations of decisions of any court must state the style of the case and the book and page in which the case is found. If the case is also reported by one or more unofficial publishers, these should also be cited, if possible. The number of pages for argument shall comply with Rule 4-1(b).

(8) COVER FOR BRIEFS. On the cover of every brief there should appear the number and style of the case in the Supreme Court or Court of Appeals, a designation of the court from which the appeal is taken, and the name of its presiding judge, the title of the brief (e.g., "Abstract and Brief for Appellant"), and the name or names of individual counsel who prepared the brief, including their addresses and telephone numbers.

RULE 3 OF THE RULES OF APPELLATE PROCEDURE—CIVIL at the end of subsection (e), *Content of Notice of Appeal or Cross-Appeal*, and RULE 2 OF THE RULES OF APPELLATE PROCEDURE—CRIMINAL at the end of subsection (a), *Notice of Appeal*, are amended and shall appear as follows:

"The notice shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the appellant shall designate the applicable subdivision of Supreme Court Rule 1-2(a) which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing his or her Brief pursuant to Supreme Court Rules 4-3 and 4-4 in the alternative court if that is later determined by the appellant to be appropriate."

[APPENDIX TO OPINION]
INFORMATIONAL STATEMENT

- I. ANY RELATED OR PRIOR APPEAL (Identify)
- II. BASIS OF SUPREME COURT JURISDICTION (see Rule 1-2(a))

(___) Check here if no basis for Supreme Court Jurisdiction is being asserted, or check below all applicable grounds on which Supreme Court Jurisdiction is asserted.

- (1) ___ Construction of Constitution of Arkansas
(2) ___ Death penalty, life imprisonment
(3) ___ Extraordinary writs
(4) ___ Elections and election procedures
(5) ___ Discipline of attorneys
(6) ___ Discipline and disability of judges
(7) ___ Previous appeal in Supreme Court
(8) ___ Appeal to Supreme Court by law

III. NATURE OF APPEAL

- (1) ___ Administrative or regulatory action
(2) ___ Rule 37
(3) ___ Rule on Clerk
(4) ___ Interlocutory appeal
(5) ___ Usury
(6) ___ Products liability
(7) ___ Oil, gas, or mineral rights
(8) ___ Torts
(9) ___ Construction of deed or will
(10) ___ Contract
(11) ___ Criminal

[Write a brief statement limited to the space provided describing the case on appeal, and set out the causes of action (i.e., in a civil case, tort, contract, etc., or in a criminal case, the convicted

offenses, whether felony or misdemeanor, and the punishment) underlying the judgment from which the appeal is taken.]

IV. IS THE ONLY ISSUE ON APPEAL WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JUDGMENT?

V. EXTRAORDINARY ISSUES. (Check if applicable, and discuss in PARAGRAPH 2 of the Jurisdictional Statement.)

- appeal presents issue of first impression,
- appeal involves issue upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,
- appeal involves federal constitutional interpretation,
- appeal is of substantial public interest,
- appeal involves significant issue needing clarification or development of the law, or overruling of precedent.
- appeal involves significant issue concerning construction of statute, ordinance, rule, or regulation.

*INSTRUCTIONS FOR JURISDICTIONAL
STATEMENT*

Counsel should keep in mind the Jurisdictional Statement is to be used for jurisdictional purposes only, and the discussion of the issues on appeal should be limited to their jurisdictional relevance, and not to argue their substantive merit.

The Jurisdictional Statement pursuant to Rule 1-2(c) shall be completed on separate page(s), not to exceed three pages, and is subject to the provisions of Rule 1-2(c). All requested information shall be contained in the body of the Statement. No separate supporting materials shall be affixed. The style of the case should not be stated, and, beginning with the first page, it shall contain in the order indicated:

1. The first numbered paragraph shall concisely state all issues of law raised on appeal. They should be expressed in the terms and circumstances of the case but without unnecessary detail.

2. The second numbered paragraph shall state the following: "I express a belief, based on a reasoned and studied professional judgment, that this appeal raises (no) (the following) question(s) of legal significance for jurisdictional purposes." Then, the appellant shall explain each of the issues checked on PART V of the Informational Statement which are relevant to the appeal. Each issue should be stated with accuracy, brevity, and clarity, and should include the citations of any cases sought to be overruled or perceived to be in conflict.

IN RE: ADMINISTRATIVE ORDER NUMBER 10:
ARKANSAS CHILD SUPPORT GUIDELINES

Supreme Court of Arkansas
Opinion delivered September 25, 1997

PER CURIAM. On February 5, 1990, this Court first adopted guidelines for child support in response to P.L. 100-485 and Ark. Code Ann. § 9-12-312(a). Effective October, 1989, P.L. 100-485 required that all states adopt guidelines for setting child support; that it be a rebuttable presumption that the amount of support calculated from the child-support chart is correct; and that each state's guidelines be reviewed and revised, as necessary, at least every four years. In response to the federal law, the Arkansas General Assembly enacted Ark. Code Ann. § 9-12-312 which included the federal provisions and authorized the Arkansas Supreme Court to develop guidelines based on recommendations submitted to the Court by a committee appointed by the Chief Justice.

The Committee on Child Support initially made recommendations to the Court which formed the substance of the 1990 Per Curiam Order. On May 13, 1991, pursuant to the Committee's recommendations, the Court issued a new Per Curiam Order which supplemented the original. Then, in compliance with the four-year requirement of P.L. 100-485, the Committee again submitted recommendations to the Court in October, 1993, and the Court issued the most recent Per Curiam Order on October 23, 1993, adopting the guidelines which are published in the Court Rules Volume of the Arkansas Code Annotated.

In the ensuing four years, the Committee continued to study the existing guidelines pursuant to federal and state law and has once again submitted its recommendations.

Having carefully considered these most recent recommendations, the Court adopts and publishes Administrative Order Number 10 — Arkansas Child Support Guidelines, effective October 1, 1997. This Administrative Order includes and incor-

porates by reference the weekly and monthly family support charts and the Affidavit of Financial Means which are attached to Administrative Order Number 10.

The Court thanks the Committee for its service, and as it has done in the past, directs the Committee and the Chief Justice, as its liaison, to continue its charge pursuant to law and the rules of this Court.

NEWBERN, J. dissents. I dissent for the reasons stated in the dissenting opinion of HICKMAN, J., when the *per curiam* order adopting the guidelines was issued. *In re: Guidelines for Child Support Enforcement*, 301 Ark. 627, 784 S.W.2d 589 (1990).

ADMINISTRATIVE ORDER NUMBER 10 — CHILD SUPPORT GUIDELINES

SECTION I. AUTHORITY AND SCOPE.

Pursuant to Act 948 of 1989, as amended, codified at Ark. Code Ann. § 9-12-312(a) and the Family Support Act of 1988, Pub. L. No. 100-485 (1988), the Court adopts and publishes Administrative Order Number 10 — Child Support Guidelines. This Administrative Order includes and incorporates by reference the attached weekly and monthly family support charts and the attached Affidavit of Financial Means.

It is a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the amount of child support to be awarded in any judicial proceeding for divorce, separation, paternity, or child support. The court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support.

It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support Chart is correct, if the court enters in the case a specific written finding within the Order that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate. Findings that

rebut the guidelines shall state the payor's income, recite the amount of support required under the guidelines, recite whether or not the Court deviated from the Family Support Chart and include a justification of why the order varies from the guidelines as may be permitted under SECTION V. hereinafter.

SECTION II. DEFINITION OF INCOME.

Income means any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest less proper deductions for:

1. Federal and state income tax;
2. Withholding for Social Security (FICA), Medicare, and railroad retirement;
3. Medical insurance paid for dependant children, and
4. Presently paid support for other dependents by Court order.

SECTION III. CALCULATION OF SUPPORT.

a. Basic Considerations.

The most recent revision of the family support charts is based on the weekly/monthly income of the payor parent as defined in Section II.

For purposes of computing child-support payments, a month consists of 4.334 weeks. Biweekly means a payor is paid once every two weeks or 26 times during a calendar year. Bimonthly means a payor is paid twice a month or 24 times during a calendar year.

Use the lower figure on the chart for income to determine support. Do not interpolate (i.e., use the \$200.00 amount for all income pay between \$200.00 and \$210.00 per week.)

The amount paid to the Clerk of the Court or to the Arkansas Clearinghouse for administrative costs pursuant to Ark. Code Ann. § 9-12-312(e)(3); § 9-10-109(b)(1); and § 9-14-804 is not to be included as support.

b. Income Which Exceeds Chart.

When the payor's income exceeds that shown on the chart, use the following percentages of the payor's weekly or monthly income as defined in SECTION II. to set and establish a sum certain dollar amount of support:

One dependent: 15%

Two dependents: 21%

Three dependents: 25%

Four dependents: 28%

Five dependents: 30%

Six dependents: 32%

c. Nonsalaried Payors.

For Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and/or children on account of the payor's disability.

For Veteran's Administration disability recipients, Workers' Compensation disability recipients, and Unemployment Compensation recipients, the court shall consider those benefits as income.

For military personnel, see latest military pay allocation chart and benefits. BAQ (quarters allowance) should be added to other income to reach total income. Military personnel are entitled to draw BAQ at a "with dependents" rate if they are providing support pursuant to a court order. However, there may be circumstances in which the payor is unable to draw BAQ or may draw BAQ only at the "without dependents" rate. Use the BAQ for which the payor is actually eligible. In some areas, military personnel receive a variable allowance. It may not be appropriate to include this allowance in calculation of income since it is awarded to offset living expenses which exceed those normally incurred.

For commission workers, support shall be calculated based on minimum draw plus additional commissions.

For self-employed payors, support shall be calculated based on last year's federal and state income tax returns and the quarterly estimates for the current year. Also the court shall consider the amount the payor is capable of earning or a net worth approach based on property, life-style, etc.

d. Imputed Income.

If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support.

e. Spousal Support.

The chart assumes that the custodian of dependent children is employed and is not a dependent. For the purposes of calculating temporary support, a dependent custodian should be counted as two dependents as a guide in determining support. For final hearings, the court should consider all relevant factors, including the chart, in determining the amount of any spousal support to be paid.

f. Allocation of Dependents for Tax Purposes.

Allocation of dependents for tax purposes belongs to the custodial parent pursuant to the Internal Revenue Code. However, the Court shall have the discretion to grant dependency allocation, or any part of it, to the noncustodial parent if the benefit of the allocation to the noncustodial parent substantially outweighs the benefit to the custodial parent.

g. Health Insurance.

In addition to the award of child support, the court order shall provide for the child's health care needs, which would normally include health insurance if available to either parent at a reasonable cost.

SECTION IV. AFFIDAVIT OF FINANCIAL MEANS.

The Affidavit of Financial Means shall be used in all family support matters. The trial court shall require each party to complete and exchange the Affidavit of Financial Means prior to a hearing to establish or modify a support order.

SECTION V. DEVIATION CONSIDERATIONS.

a. Relevant Factors.

Relevant factors to be considered by the court in determining appropriate amounts of child support shall include:

1. Food;
2. Shelter and utilities;
3. Clothing;
4. Medical expenses;
5. Educational expenses;
6. Dental expenses;
7. Child care;
8. Accustomed standard of living;
9. Recreation;
10. Insurance;
11. Transportation expenses; and
12. Other income or assets available to support the child from whatever source.

b. Additional Factors.

Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and/or maintenance of life insurance, health insurance, dental insurance for the children's benefit;
2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g. orthopedic shoes, glasses, braces, etc.);
3. The creation or maintenance of a trust fund for the children;
4. The provision or payment of special education needs or expenses of the child;
5. The provision or payment of day care for a child;
6. The extraordinary time spent with the noncustodial parent, or shared or joint custody arrangements; and
7. The support required and given by a payor for dependent children, even in the absence of a court order.

SECTION VI. ABATEMENT OF SUPPORT DURING EXTENDED VISITATION.

The guidelines assume that the noncustodial parent will have visitation every other weekend and for several weeks during the summer. Excluding weekend visitation with the custodial parent, in those situations where a child spends in excess of 14 consecutive days with the noncustodial parent, the court should consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent which are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents. Any partial abatement or reduction of child support should not exceed 50% of the child-support obligation during the extended visitation period of more than 14 consecutive days.

In situations in which the noncustodial parent has been granted annual visitation in excess of 14 consecutive days, the court may prorate annually the reduction in order to maintain the same amount of monthly child-support payments. However, if the noncustodial parent does not exercise said extended visitations during a particular year, the noncustodial parent shall be required to pay the abated amount of child support to the custodial parent.

SECTION VII. PROVISION FOR PAYMENT.

All orders of child support should fix the dates on which payments should be made. All support orders issued shall include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement as required by Ark. Code Ann. § 9-14-218(a)(3)(A). Payment should be made through the Clerk of the Court or the Arkansas Clearinghouse pursuant to Ark. Code Ann. § 9-14-805. Times for payment should ordinarily coincide with the payor's receipt of salary, wages, or other income.

ARKANSAS WEEKLY FAMILY SUPPORT CHART					
PAYOR NET WEEKLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN
100	24	35	42	46	50
110	26	39	46	50	55
120	29	42	50	55	59
130	31	45	54	59	64
140	34	49	58	64	69
150	36	52	61	68	74
160	38	55	65	72	78
170	40	58	69	76	83
180	43	62	73	80	87
190	45	65	77	85	92
200	47	68	80	89	96
210	49	72	84	93	101
220	52	75	88	97	106
230	54	78	92	102	110
240	56	82	96	106	115
250	59	85	100	110	120
260	60	87	102	113	123
270	61	89	104	115	125
280	62	90	106	117	127
290	64	92	108	120	130
300	65	94	110	122	132
310	66	95	112	124	134
320	67	97	114	126	136
330	68	98	115	128	138
340	69	100	117	129	140
350	70	101	119	131	142
360	71	103	121	133	144
370	73	105	123	136	147
380	74	107	125	138	150
390	76	109	128	141	153
400	77	111	130	144	156
410	79	114	133	147	159
420	80	116	136	150	162
430	82	118	138	153	165
440	83	120	141	155	168
450	85	122	143	158	171
460	86	124	146	161	174
470	88	126	148	164	177
480	89	128	150	166	180
490	91	130	153	169	183
500	92	132	155	171	186
510	93	134	157	174	188
520	95	136	160	176	191
530	96	138	162	179	194
540	98	140	164	182	197
550	99	142	167	184	200
560	100	144	169	187	202
570	102	146	171	189	205

REV 10/97

ARKANSAS WEEKLY FAMILY SUPPORT CHART

PAYOR NET WEEKLY INCOME	ONE CHLD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN
580	103	148	174	192	208
590	104	150	176	195	211
600	106	152	178	197	214
610	107	154	181	200	217
620	108	156	185	202	219
630	109	158	186	204	222
640	110	159	187	206	224
650	111	161	189	208	226
660	112	162	190	210	228
670	113	164	192	212	230
680	115	165	194	214	232
690	116	167	196	216	235
700	117	168	198	219	237
710	118	170	200	221	239
720	119	171	201	223	241
730	120	173	203	225	243
740	121	174	205	227	246
750	122	176	207	229	248
760	123	178	209	231	251
770	124	180	212	234	253
780	126	182	214	236	256
790	127	183	216	238	258
800	128	185	218	241	261
810	129	187	220	243	263
820	130	189	222	245	266
830	132	190	224	248	268
840	133	192	226	250	271
850	134	194	228	252	273
860	135	195	230	254	275
870	136	197	232	256	278
880	137	198	234	258	280
890	138	200	235	260	282
900	139	202	237	262	284
910	140	203	239	264	286
920	142	205	241	266	289
930	143	206	243	268	291
940	144	208	245	270	293
950	145	209	247	272	295
960	146	211	248	274	297
970	147	213	250	275	300
980	148	214	252	276	302
990	149	216	254	281	304
1000	150	217	256	283	306

ARKANSAS MONTHLY FAMILY SUPPORT CHART

PAYOR NET MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN
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500	122	177	210	232	252
550	133	193	229	253	274
600	144	210	248	274	297
650	155	226	266	294	319
700	166	242	285	315	342
750	178	258	304	336	364
800	189	274	323	357	387
850	200	290	342	377	409
900	212	307	361	399	433
950	223	323	381	421	456
1000	235	340	400	442	479
1050	246	357	420	464	503
1100	257	372	438	485	525
1150	263	381	448	495	537
1200	269	389	458	506	548
1250	275	397	467	516	560
1300	280	405	477	527	571
1350	286	413	486	537	582
1400	291	421	495	547	593
1450	297	429	503	556	603
1500	302	436	512	566	613
1550	308	444	521	575	624
1600	314	453	531	587	636
1650	322	464	544	601	651
1700	330	475	556	615	667
1750	338	486	569	629	682
1800	345	497	582	643	697
1850	353	508	595	657	712
1900	360	518	607	671	727
1950	368	529	620	685	742
2000	375	540	632	698	757
2050	382	550	645	712	772
2100	389	560	656	725	786
2150	396	570	668	738	800
2200	404	581	679	751	814
2250	411	591	691	764	828
2300	418	601	703	776	841
2350	425	611	714	789	856
2400	431	620	726	802	870
2450	438	630	738	815	884
2500	445	640	750	828	898
2550	452	650	762	842	912
2600	458	660	773	855	926
2650	465	670	785	868	940
2700	471	679	796	879	953
2750	476	686	805	889	964
2800	481	694	814	899	975
2850	486	701	823	910	986

REV 10/97

ARKANSAS MONTHLY FAMILY SUPPORT CHART					
PAYOR NET MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN

2900	491	709	832	920	997
2950	496	716	841	930	1008
3000	501	724	851	940	1019
3050	506	731	860	950	1030
3100	511	739	869	960	1041
3150	517	746	878	970	1052
3200	522	755	888	981	1064
3250	528	764	899	993	1076
3300	534	772	909	1004	1089
3350	540	781	919	1016	1101
3400	546	790	930	1028	1114
3450	552	799	940	1039	1126
3500	558	807	951	1051	1139
3550	564	816	961	1062	1151
3600	570	825	972	1074	1164
3650	576	834	982	1085	1176
3700	582	842	991	1095	1187
3750	587	849	1000	1106	1198
3800	593	857	1010	1116	1209
3850	598	865	1019	1126	1220
3900	604	873	1028	1136	1231
3950	609	881	1037	1146	1242
4000	615	889	1046	1156	1254
4050	620	897	1056	1167	1265
4100	626	905	1065	1177	1276
4150	631	913	1074	1187	1287
4200	637	920	1083	1197	1298
4250	642	928	1092	1207	1309
4300	648	936	1102	1217	1320
4350	653	944	1111	1228	1331
4400	659	952	1120	1238	1342
4450	664	960	1129	1248	1353
4500	670	968	1138	1258	1364
4550	675	976	1148	1268	1375
4600	681	983	1157	1278	1386
4650	686	991	1166	1289	1397
4700	691	998	1174	1297	1406
4750	695	1004	1182	1306	1415
4800	699	1011	1189	1314	1425
4850	704	1017	1197	1323	1434
4900	708	1024	1205	1331	1443
4950	713	1030	1213	1340	1453
5000	717	1037	1220	1348	1462

IN THE CHANCERY COURT OF _____ COUNTY, ARKANSAS

Division

STATE OF ARKANSAS)
) SS
COUNTY OF)

AFFIDAVIT OF FINANCIAL MEANS
REVISED 10-97

Plaintiff _____

vs.

Defendant _____

Case No. _____

THE AFFIANT, BEING DULY SWORN, SAYS UNDER PENALTY OF PERJURY THAT AFFIANT IS THE PLAINTIFF ()
DEFENDANT () PARTY() (CHECK ONE) TO THIS SUPPORT ACTION HEREIN, HAS PREPARED THIS FINANCIAL
STATEMENT, KNOWS THE CONTENTS THEREOF, AND THAT IT IS TRUE AND CORRECT.

INCOME

Complete item 27 on page 3

1. My weekly take-home pay (from line 27 (i) on page 3) _____.
2. I claim _____ dependents for the purpose of determining my State of Arkansas withholding. I claim _____ dependents for the purpose of determining my federal withholding. I did () or did not () (check one) claim myself as dependent. I do () or do not () (check one) have additional amount withheld from my payroll checks for tax purposes and, if so, that amount is _____ per week of _____ per pay period and itemized on reverse side. All other deductions taken from my payroll check before I receive it total: _____ (from line j8 on page 3).
3. I have income from the following other sources: _____
4. I have cash on hand in the amount of _____ from the following source(s): _____
5. I have on deposit in banks and savings institutions _____ and its source was _____
6. I have stocks and bonds in the amount of _____ and their source was _____

(Attach additional schedules as needed)

CREDITORS

Complete items 28,29 and 30 on page 4

7. Debts in the name of the plaintiff only: ALL CREDITORS LISTED ON PAGE 4
TOTAL UNPAID BALANCES \$ (a) _____ TOTAL MONTHLY PAYMENTS \$ (b) _____
8. Debts in the name of defendant only: ALL CREDITORS LISTED ON PAGE 4
TOTAL UNPAID BALANCES \$ (a) _____ TOTAL MONTHLY PAYMENTS \$ (b) _____
9. Debts in our JOINT NAMES are: ALL CREDITORS LISTED ON PAGE 4
TOTAL UNPAID BALANCES \$ (a) _____ TOTAL MONTHLY PAYMENTS \$ (b) _____

MONTHLY EXPENSES

10. My present necessary monthly expenses to support myself and _____ child(ren) are:

(a) Rent or housepayment \$ _____	(i) Medical \$ _____
(b) Gas and electricity \$ _____	(j) Drugs \$ _____
(c) Water \$ _____	(k) Life Insurance \$ _____
(d) Telephone \$ _____	(l) Auto Insurance \$ _____
(e) Food \$ _____	(m) Fire Insurance \$ _____
(f) Clothing \$ _____	(n) Transportation \$ _____
(g) Laundry \$ _____	(o) Other Expenses \$ _____

TOTAL..... \$ _____
(Attach schedule if needed)

A check mark should be placed by all expenses which are not being paid currently.

GENERAL INFORMATION

11. My full name is _____
12. My social security number is _____ Military I.D. No. (if applicable) _____
13. My Arkansas Driver's License Number is _____
14. My date of birth is _____ My place of birth is _____
15. My present resident address is _____ Zip Code _____
16. The full name of children born (or legally adopted) of this marriage are:
- (1) _____ Date of Birth _____ S.S. No. _____
- (2) _____ Date of Birth _____ S.S. No. _____
- (3) _____ Date of Birth _____ S.S. No. _____
- (4) _____ Date of Birth _____ S.S. No. _____
- (5) _____ Date of Birth _____ S.S. No. _____
- (6) _____ Date of Birth _____ S.S. No. _____
(Attach additional schedule for additional children)
17. My employer is _____
18. My employer's full address is _____ Zip Code _____
19. My home telephone number is _____ My work telephone number is _____

INFORMATION ABOUT OPPOSING PARTY IN THIS CASE, IF KNOWN (DO NOT GUESS)

20. The opposing party's full name is _____
21. The opposing party's social security number is _____ Military I.D. No. (if applicable) _____
22. The opposing party's Arkansas Driver's License Number is _____
23. The opposing party's present resident address is _____ Zip Code _____
24. The opposing party's employer is _____
25. The opposing party's employer's address _____ Zip Code _____
26. The opposing party's home telephone number _____ work telephone _____

INCOME

27. How often are you paid, and what are your gross wages, salary or commissions due each time?

- WEEKLY
52 times a year
 BIWEEKLY
26 times a year
 SEM-MONTHLY
24 times a year
 MONTHLY
12 times a year
 OTHER
explain

PAYROLL DEDUCTIONS

(a) GROSS WAGES.....(a) \$ _____

(b) Federal Income Tax Withheld.....(b) _____

(c) Arkansas Income Tax Withheld.....(c) _____

(d) Social Security (FICA), Medicare, or railroad retirement equivalent.....(d) _____

(e) Health Insurance (children only).....(e) _____

(f) Court ordered child support for dependents of previous marriage or previously legally determined adopted or illegitimate children.....(f) _____

(g) TOTAL WITHHELD (b) thru (f) above.....(g) \$ _____

(h) INCOME PAY PER PAY PERIOD
(Subtract (g) from (a) above).....(h) \$ _____

(i) CONVERT TO WEEKLY INCOME & CARRY TO LINE 1 (on front).....27 (i) \$ _____

Example: h above \$300 & is received bi-weekly,
26 X \$300 = \$7,800 divided by 52 = \$150 per week
Carry \$150 to line 1 on front

(j) OTHER ITEMS WITHHELD FROM MY CHECK ARE:

(1) Union Dues.....	(1) _____
(2) Credit Union, thrift plans.....	(2) _____
(3) Pension Benefits, stock purchase plans.....	(3) _____
(4) Charitable contributions.....	(4) _____
(5) Debt Payments, garnishments.....	(5) _____
(6) Life Insurance payments.....	(6) _____
(7) Other (identify).....	(7) _____

Items (1) through (7) above are not allowed in computing income.

(8) TOTAL WITHHELD (total (1) thru (7) above).....j (8) _____

CREDITORS & DEBTS

28. Debts in the name of PLAINTIFF/Party only are:

Creditors	(Total Unpaid Balance)	(Monthly Payments)
1. _____	1. \$ _____	1. \$ _____
2. _____	2. \$ _____	2. \$ _____
3. _____	3. \$ _____	3. \$ _____
4. _____	4. \$ _____	4. \$ _____
5. _____	5. \$ _____	5. \$ _____
6. _____	6. \$ _____	6. \$ _____
Attach additional schedules as needed, the TOTAL:	*Carry to line 7a on page 1	*Carry to line 7b on page 1

29. Debts in the name of DEFENDANT only are:

Creditors	(Total Unpaid Balance)	(Monthly Payments)
1. _____	1. \$ _____	1. \$ _____
2. _____	2. \$ _____	2. \$ _____
3. _____	3. \$ _____	3. \$ _____
4. _____	4. \$ _____	4. \$ _____
5. _____	5. \$ _____	5. \$ _____
6. _____	6. \$ _____	6. \$ _____
Attach additional schedules as needed, the TOTAL:	*Carry to line 8a on page 1	*Carry to line 8b on page 1

30. Debts in our JOINT NAMES are:

Creditors	(Total Unpaid Balance)	(Monthly Payments)
1. _____	1. \$ _____	1. \$ _____
2. _____	2. \$ _____	2. \$ _____
3. _____	3. \$ _____	3. \$ _____
4. _____	4. \$ _____	4. \$ _____
5. _____	5. \$ _____	5. \$ _____
6. _____	6. \$ _____	6. \$ _____
Attach additional schedules as needed, then TOTAL:	*Carry to line 9a on page 1	*Carry to line 9b on page 1

31. The weekly income of the opposing party is.....\$ _____

32. All other income of the opposing party is.....\$ _____

Signature of Affiant

Subscribed and sworn to before me on this _____ day of _____ (month) (year)

My commission expires: _____

NOTICE

BOTH PARTIES MUST COMPLETE AND EXCHANGE THIS FOUR PAGE AFFIDAVIT PRIOR TO ANY HEARING TO ESTABLISH OR MODIFY A SUPPORT ORDER. BOTH PARTIES MUST SUPPLY THE ORIGINAL NOTARIZED AFFIDAVIT TO THE COURT. THE COURT WILL PUNISH PERJURY BY APPROPRIATE ACTION.

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Appointments to
Committees

—

IN RE: CLIENT SECURITY FUND COMMITTEE
APPOINTMENTS

Supreme Court of Arkansas
Opinion delivered June 9, 1997

PER CURIAM. Judith A. DeSimone of Pine Bluff, Fourth Congressional District, is hereby reappointed to the Client Security Fund Committee for a five-year term to expire July 31, 2002. The Court thanks Ms. DeSimone for accepting reappointment to this most important Committee.

IN RE: SUPREME COURT COMMITTEE on the
UNAUTHORIZED PRACTICE of LAW

Supreme Court of Arkansas
Opinion delivered June 9, 1997

PER CURIAM. Henry Hodges, Esq., of Little Rock, Second Congressional District, and K. LeAnne Daniel, Attorney-at-Law, of Arkadelphia, Fourth Congressional District, are hereby reappointed to the Committee on the Unauthorized Practice of Law for three-year terms to expire on May 31, 2000. Sharon Prassey of Little Rock is hereby appointed to an at-large, non-lawyer position on the Committee for a three-year term to expire on May 31, 2000.

The Court expresses thanks to Mr. Hodges and Ms. Daniel for accepting reappointment and to Ms. Prassey for accepting appointment to this most important Committee.

The Court expresses its gratitude to William R. Russell of Sherwood, whose term has expired, for his service on this Committee.

IN RE: The SUPREME COURT of ARKANSAS
COMMITTEE on CIVIL PRACTICE

Supreme Court of Arkansas
Opinion delivered June 30, 1997

PER CURIAM. The Honorable John Ward is reappointed as Chair of the Committee on Civil Practice. Also appointed to the Committee are The Honorable Andree Roaf and attorneys Scotty Shiveley of Little Rock, Russell Berry of DeWitt, and D.P. Marshall of Jonesboro. The Court expresses its appreciation to the appointees for their willingness to serve.

The Court expresses its gratitude to The Honorable John Pittman, and attorneys David Blair, Bill Bristow, and Carolyn Witherspoon for their faithful service as members of the Committee.

IN RE: BOARD of CERTIFIED COURT REPORTER
EXAMINERS

Supreme Court of Arkansas
Opinion delivered June 30, 1997

PER CURIAM. The Honorable Tom Smitherman of Hot Springs, the Honorable Robert McCorkindale, II, of Harrison, and Ms. Joyce Helms of Arkadelphia are appointed to our Board of Certified Court Reporter Examiners. Each term is for three years and expires on July 31, 2000. Judge Smitherman will serve as the Chairman of the Board.

The Court expresses its gratitude to Judges Smitherman and McCorkindale and Ms. Helms for accepting appointment to this important Board.

The Court expresses its appreciation to Judge Jim Hannah, Judge John Cole, and Ms. Maria Lafferty, whose terms have expired, for their years of dedicated service to the Board.

IN RE: APPOINTMENT OF COUNSEL IN
CRIMINAL CASES

Supreme Court of Arkansas
Opinion delivered July 7, 1997

PER CURIAM. Because appellants in criminal cases are entitled to counsel on direct appeal from a judgment of conviction, this Court on occasion must appoint attorneys to represent indigent appellants. Attorneys who are desirous of such appointments should register with Sue Newbery, Criminal Justice Coordinator, Arkansas Supreme Court, Justice Building, 625 Marshall St., Little Rock, AR 72201. Counsel will be paid a fee after determination of the case, upon a proper motion.

IN RE: COMMITTEE ON AUTOMATION

Supreme Court of Arkansas
Opinion delivered September 11, 1997

PER CURIAM. The Honorable David Bogard of Little Rock and Stanley Rauls, Esq., of Little Rock are reappointed to our Committee on Automation for three-year terms to end on October 31, 2000.

The Court thanks Judge Bogard and Mr. Rauls for accepting reappointment to this most important Committee.

IN RE: SUPREME COURT AD HOC COMMITTEE ON
FOSTER CARE AND ADOPTION ASSESSMENT

Supreme Court of Arkansas
Opinion delivered September 11, 1997

PER CURIAM. The Honorable Vicki Cook of Hot Springs and Lynn Pence, Attorney at Law, of Little Rock are hereby appointed to the Supreme Court Ad Hoc Committee on Foster Care and Adoption Assessment.

The Court thanks Judge Cook and Ms. Pence for accepting appointment to the Committee.

The Court expresses its appreciation to the Honorable Gayle Ford of Mena and David Manley, Esq., of Little Rock for their years of faithful service to this Committee.

IN RE: APPLICATION FOR INITIAL ADMISSION TO
THE BAR OF ARKANSAS: MARK ASHLEY CROSSLEY

Supreme Court of Arkansas
Opinion delivered September 18, 1997

PER CURIAM. Mr. Crossley successfully completed the February 1997 Arkansas Bar Examination. Pursuant to Rule XIII of the Rules Governing Admission to the Bar, his file was referred to James Van Dover, who was then Chairman of the State Board of Law Examiners. On August 23, 1997, Mr. Jim Ross succeeded Mr. Van Dover as Chairman of the state Board of Law Examiners. Mr. Ross has disqualified from participation in this matter.

Therefore, Mr. Van Dover should be designated as Chairman of the Arkansas State Board of Law Examiners solely for the purpose of making the initial determination as to Mr. Crossley's eligibility for admission as required by Rule XIII.

Professional Conduct
Matters

—

IN RE: Karen King JOHNSON
Arkansas Bar ID #84084

946 S.W.2d 184

Supreme Court of Arkansas
Opinion Delivered June 9, 1997

On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Karen King Johnson, of Little Rock, Pulaski County, Arkansas, to practice law in the State of Arkansas, and direct that Ms. Johnson's name be removed from the list of attorneys authorized to practice law in this state.

—

Alphabetical
Headnote
Index

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HEADNOTE INDEX

ADMINISTRATIVE LAW & PROCEDURE:

- Appellee State Police Commission failed to follow its own rules, unlawful-procedure standard of review. *Stueart v. Arkansas State Police Comm'n*, 46
- Unlawful procedure defined, agency bound by its own regulations. *Id.*
- Appellant deprived of opportunity for expert to provide other explanation for positive result, breach could not be cured with affidavits and testimony. *Id.*
- Appellee Commission's failure to follow its own rules required reversal of decision to terminate appellant, supreme court directed reinstatement, reversed and remanded. *Id.*

ADOPTION:

- Jurisdiction, trial court had personal jurisdiction of appellant. *In Re: Adoption of Lybrand*, 163
- Adoption statutes strictly construed, finding that consent unnecessary on account of nonsupport or failure to communicate not reversed unless clearly erroneous. *Id.*
- Principles relevant for examination of consent statutes, duty to support not excused on basis of other people's conduct unless that conduct prevents performance of duty. *Id.*
- Abandonment of child given as ground for adoption, trial court's decision that appellant's consent unnecessary not clearly erroneous. *Id.*
- Decision regarding best interest of child to be adopted, when reversed. *Id.*
- Evidence in support of adoption positive, no error found in trial court's granting of petition for adoption. *Id.*

APPEAL & ERROR:

- Supreme court will not reverse on issue not presented at trial, argument could not be considered on appeal. *State v. Ross*, 1
- Double jeopardy rights require review of sufficiency challenge before review of trial errors. *Williams v. State*, 8
- Appellant failed to adduce apposite authority or make convincing argument, unclear whether appellant obtained ruling, use immunity issue without merit. *Id.*
- Issue not preserved for appellate review, court's ruling not abstracted. *Hood v. State*, 21
- Record sufficient for review, dates of suppression hearings known. *Id.*
- Reconstruction hearings were substantial and adequate, appellant's argument without merit. *Id.*
- Record sufficient for review, appellant's argument without merit. *Id.*
- Jury instructions not abstracted, argument not considered. *Id.*
- Abstract is record for purposes of appellate review, burden is on appealing party to provide both record and abstract sufficient for review. *Porter v. Porter*, 42
- Contents and purpose of abstract, supreme court may affirm for noncompliance when abstract is flagrantly deficient. *Id.*
- Abstract flagrantly deficient, case affirmed. *Id.*
- When exhibits need not be abstracted. *Hodge v. State*, 57
- Abstracting, what should be abstracted. *Id.*
- Abstracting, failure to abstract prejudicial parts precludes consideration of videotape on appeal, motion for leave not to abstract denied. *Id.*

- Motion for rule on clerk granted, belated brief accepted. *James v. State*, 58
- Motion for belated appeal, good cause for granting. *Mixon v. State*, 61
- Argument not raised below, appellant barred from arguing new ground for first time on appeal. *Houston v. Knoedl*, 91
- Motion for rule on clerk, good cause for granting. *Schlesier v. State*, 124
- Petition for writ of mandamus denied, mandamus does not lie for matters involving trial court's discretion. *Wilson v. Neal*, 125
- Negligence claims were tried by express or implied consent, claims treated as if raised in appellant's complaint. *Porter v. Harshfield*, 130
- Abstract did not reflect ruling on issue at trial, issue not reached on appeal. *In Re: Adoption of Lybrand*, 163
- de novo* review of probate cases. *Schenebeck v. Schenebeck*, 198
- When supreme court accepts State appeals. *State v. Rice*, 219
- State's appeal from dismissal of revocation petition dismissed. *Id.*
- State's appeal from dismissal of felony charge implicated correct and uniform administration of criminal law, review required. *Id.*
- Contemporaneous-objection rule. *Mackey v. State*, 229
- Contemporaneous objection necessary to preserve issue whether prior convictions should have been considered in bench-trial sentencing phase. *Id.*
- Appellant procedurally barred from appealing habitual-offender finding. *Id.*
- Motion for rule on clerk, good cause for granting. *Edmondson v. State*, 234
- Abstracting, what must be abstracted. *Qualls v. Ferritor*, 235
- Argument on appeal premised on document not abstracted, abstracted documents not considered at trial could not be considered on appeal. *Id.*
- Appellant's burden to demonstrate reversible error, failure to cite authority or make convincing argument results in affirmance. *Id.*
- No legal authority for argument, abstract flagrantly deficient, trial court's ruling affirmed. *Id.*
- Appeal authorized by Ark. R. App. P.,Crim. 2(b), notice of appeal filed within thirty-day period from trial court's conviction judgment was effective even though appellant had also filed motion for new trial. *Smith v. State*, 238
- Review of chancery court decisions, clearly erroneous standard. *J.T. v. Arkansas Dep't of Human Servs.*, 243
- Appellant must develop issue for appeal. *Minor v. Failla*, 274
- Motion to supplement record, remanded to trial court to settle record. *Finch v. State*, 319
- Frivolous appeal, sanctions imposed under Ark. R. App. P.,Civil 11. *Jones v. Jones*, 320
- Rule 11 sanctions, respondent and counsel ordered to pay petitioner costs and attorney's fees. *Id.*
- Motion for sanctions for amended petition for change of custody denied. *Id.*
- Record on appeal confined to that which is abstracted, failure to abstract critical documents precludes appellate consideration. *National Enters., Inc. v. REA*, 332
- Abstract flagrantly deficient, judgment of trial court affirmed. *Id.*
- Motion for belated appeal, good cause for granting. *Hills v. State*, 362
- Postconviction relief, original attorney obligated to continue representation and to lodge record. *Sanders v. State*, 363

- Postconviction relief, appeal of order denying, appellate rule providing for continued representation of counsel applicable. *Id.*
- Motion for rule on clerk granted. *Id.*
- Motion for belated appeal, good cause for granting. *Skiles v. State*, 365
- Trial court gave different reason for ruling, trial court's ruling affirmed if right result reached. *Nettleton Sch. Dist. v. Owens*, 367
- Holding that termination void rendered appellee's argument moot, supreme court does not usually discuss moot issues. *Id.*
- Failure to comply with ARCP Rule 54 *Richardson v. Rodgers*, 402
- When order is appealable. *Id.*
- When order is not appealable. *Id.*
- Appellants failed to produce record showing Rule 54 *Id.*
- No showing that argument was ever presented to trial court, arguments raised for first time on appeal not reached. *Ouachita Wilderness Inst. v. Mergen*, 405
- Law-of-case defense cannot be raised for first time on appeal. *State v. Bell*, 422
- Trial court's decision reversed, new trial not warranted, convictions and sentences affirmed. *Id.*
- Chancery ruling, supreme court will not reverse unless clearly erroneous. *Masterson v. State*, 443
- Court of appeals properly applied law, appellant's argument without merit. *Standridge v. State*, 473
- Motion to set aside order not timely. *Gooden v. State*, 485
- Trial court did not err in declining to set aside judgment, appeal dismissed. *Id.*
- Movant must obtain ruling below to have argument addressed on appeal. *White v. State*, 487
- Motion for rule on clerk, counsel must concede fault. *Bogan v. State*, 490
- Motion for writ of habeas corpus denied. *Greene v. State*, 491
- Motion to withdraw appeal denied. *Id.*
- Motion for rule on clerk, good cause for granting. *Griffin v. State*, 493
- Motion to release transcript granted. *Ivy v. State*, 495
- Motion for rule on clerk, good cause for granting. *Phillips v. State*, 498
- Motion for extension of time to file record of testimony, court reporter's failure to comply with writ of certiorari good cause for granting. *Schlesier v. State*, 501
- Motion for rule on clerk treated as motion for belated appeal, good cause for granting. *Stewart v. State*, 502
- Motion for rule on clerk, good cause for granting. *Williams v. State*, 503
- Motion for expedited appeal granted. *Childress v. Humphrey*, 504
- Certiorari proper for review of determination on bail, mandamus petition treated as certiorari petition. *Id.*
- Petition for writ of certiorari granted. *Id.*
- Sufficiency argument not considered in view of decision to reverse and remand. *Arkansas State Highway Comm'n v. Frisby*, 506
- Appellant must present record showing proffer of requested instruction, issue not considered on appeal. *Watson v. State*, 511
- Failure to abstract critical document precludes appellate consideration of issues concerning it. *Id.*

Contemporaneous objection generally must be made at trial to raise argument on appeal, denial of right to trial by jury in criminal case without waiver is exception to contemporaneous-objection rule. *Goff v. State*, 513

Party cannot change grounds for objection on appeal, appellant's sufficiency argument not reached. *Henderson v. State*, 526

Sufficiency of evidence considered first. *Reyes v. State*, 539

Ruling must be obtained at trial to preserve argument for appeal, trial court decided disclosure issue adversely to appellants. *Id.*

Challenge to sufficiency of evidence addressed before other issues. *Roseby v. State*, 554

Motion for belated appeal, good cause for granting. *Allen v. State*, 566

Motion for belated appeal remanded. *Sanders v. State*, 571

Record on appeal confined to that which is abstracted, appellant's argument not considered. *Dirickson v. State*, 572

When appeals by State accepted, correct and uniform administration of justice not in issue. *State v. Hart*, 582

Litigant may not agree with ruling at trial and then attack it on appeal. *Sherrill v. State*, 593

No authority given for argument, argument not reached. *Id.*

Arguments not raised at trial not addressed on appeal. *Rains v. State*, 607

Motion for rule on clerk, good cause for granting. *Covin v. State*, 635

Motion for belated appeal, good cause for granting. *Morris v. State*, 636

Belated appeal granted. *Warren v. State*, 637

ARREST:

Arrest made outside officer's jurisdiction, four instances where authority to do so exists. *Henderson v. State*, 526

Detective had no authority to arrest appellant in Lonoke County, appellant's arrest was illegal. *Id.*

ATTORNEY & CLIENT:

Attorney's fees, not chargeable as costs unless permitted by statute. *Love v. Smackover Sch. Dist.*, 4

Fees, trial court did not exercise discretion, case reversed and remanded for determination whether award of fees was warranted. *Id.*

Attorney's fees, proof required for award under Ark. Code Ann. §16-22-309(a)(1) and Ark. R. Civ. P. 11. *Chlanda v. Killebrew*, 39

Claim not grounded in fact, how such violation is established. *Id.*

Disputed factual issues remained unanswered, award of attorney's fees reversed and remanded. *Id.*

Counsel filing notice of appeal must continue to represent defendant throughout appeal unless relieved by supreme court, steps attorney must take before he may be relieved. *James v. State*, 58

Appropriate steps to be relieved as counsel not taken, portion of motion requesting supreme court to appoint another attorney denied. *Id.*

Plea agreement, failure to communicate offer to defendant constitutes ineffective assistance of counsel. *Riggins v. State*, 171

Trial court found no substantial evidence to support defendant's claim, judge not required to believe all testimony. *Id.*

Denial-of-counsel issue must be raised on direct appeal or be waived. *Smith v. State*, 238

Decision in *Furr v. State* controlling, appellant's failure to object to lack of counsel at trial did not preclude such argument on appeal, time of sentencing is critical phase in criminal case. *Id.*

Trial court had duty to advise appellant of right to be represented by counsel in sentencing phase, case reversed and remanded for resentencing. *Id.*

Motion to be relieved as counsel denied. *Hopes v. State*, 494

Bar admission, supreme court's jurisdiction solely for appellate review. *Partin v. State Bd. of Law Examiners*, 496

Bar admission, petition dismissed for lack of original jurisdiction, motion and request moot. *Id.*

Motion for appointment of counsel granted in part and denied in part. *Reyes v. State*, 499

Right to counsel of choice not absolute. *Roseby v. State*, 554

Change of counsel, granting of continuance discretionary, factors considered. *Id.*

Change of counsel, no abuse of discretion in denial of continuance. *Id.*

Claim of ineffective assistance of counsel, proof required to prevail. *Hall v. State*, 567

CIVIL PROCEDURE:

Directed-verdict motion requires specific grounds, issue not preserved for review. *Ouachita Wilderness Inst. v. Mergen*, 405

New-trial motion, when deemed denied. *Benedict v. National Bank of Commerce*, 590

Appellant argued petition for rehearing treated as new-trial motion, petition not timely filed. *Id.*

Appellant required to file notice of appeal within thirty days after entry of order, appeal dismissed as untimely. *Id.*

CONSTITUTIONAL LAW:

Drug testing, procedure must satisfy reasonableness requirements. *Stueart v. Arkansas State Police Comm'n*, 46

Drug testing, determining reasonableness, instructive guidelines. *Id.*

Drug testing, appellant had substantial rights placed at risk, appellee Commission's failure to follow its own rules deprived appellant of rights that procedure was designed to protect. *Id.*

Statutory authority existed to support ordinance, constitutional argument without merit. *Massongill v. County of Scott*, 98

Double Jeopardy Clause, appellee sought termination of proceedings on basis unrelated to factual guilt or innocence, no double-jeopardy injury suffered. *State v. Zawodniak*, 179

Double Jeopardy Clause, retrial where trial court applied erroneous law affords defendant opportunity to obtain fair adjudication of guilt. *Id.*

Double Jeopardy Clause, forfeiture action was civil in nature and did not constitute punishment, trial court erred in finding that forfeiture barred subsequent prosecution on possession charge. *State v. Rice*, 219

Double Jeopardy Clause, trial court's dismissal on double jeopardy grounds was not acquittal, order dismissing possession charge reversed and remanded. *Id.*

"Overlap" and "vagueness" arguments rejected, equal protection argument rejected.
Rankin v. State, 379

CONTEMPT:

Show-cause order issued to court reporter. *Schlesier v. State*, 501
Counsel's conduct warranted no finding of contempt. *Warren v. State*, 637

CORPORATIONS:

Not-for-profit corporations and Arkansas Volunteer Immunity Act discussed, appellant not entitled to charitable immunity. *Ouachita Wilderness Inst. v. Mergen*, 405

COUNTIES:

Objective of appropriation measures, ordinance was not appropriation. *Massongill v. County of Scott*, 98
Error in adding emergency clause did not render entire ordinance inoperative, act became effective thirty calendar days after ordinance's publication. *Id.*
Monopoly theory without merit, no evidence of monopoly shown. *Id.*
Competitive bidding laws not violated, law provides that any bid may be rejected. *Id.*
Quorum court members precluded from receiving health-insurance benefits, ordinance illegal, case reversed and remanded. *Id.*

COURTS:

Judicially created rules should be modified when outmoded or unjust, court free to amend common law. *Shannon v. Wilson*, 143
Jurisdiction, testamentary trust, probate court has no jurisdiction to administer. *Schenebeck v. Schenebeck*, 198
Jurisdiction, testamentary trust, prorated rent due estate, probate court had authority to enforce collection of. *Id.*
Jurisdiction, testamentary trust, distribution of trust income, probate court lacked jurisdiction to decide. *Id.*
Jurisdiction, testamentary trust, costs attributable to trust, probate court was without jurisdiction to determine. *Id.*
Jurisdiction, testamentary trust, removal of trustee, probate court had no jurisdiction to remove appellant from duties. *Id.*
Order granting certification of class reversed, chancellor lacked authority to certify members of class who had not filed refund claims. *ACW, Inc. v. Weiss*, 302

CRIMINAL LAW:

Accomplice liability, elements. *Williams v. State*, 8
Accomplice liability, sufficient proof that appellant assisted in crimes. *Id.*
Accomplice liability, sufficient corroborative proof offered by victim's testimony and appellant's statement. *Id.*
Custodial confession presumed involuntary, factors considered when reviewing voluntariness of confession. *Hood v. State*, 21
Voluntariness of confessions, misrepresentations of fact do not necessarily render otherwise voluntary confessions inadmissible. *Id.*
Officers' statements not contrary to basic notions of fairness, statements not improper. *Id.*
Totality of circumstances considered, appellant's statement made voluntarily. *Id.*

- Intent, nature and extent of victim's wounds relevant to showing of. *Jones v. State*, 62
- Death penalty, harmless-error review, clarification of *Skipper* interpretation, harmless-error analysis not precluded regarding errors in jury's consideration of mitigating evidence. *Id.*
- Death penalty, harmless-error review, clarification of previous interpretations of Ark. Code Ann. § 5-4-603 *Id.*
- Death penalty, harmless-error review, inconsistent verdict forms regarding mitigating factors constituted harmless error. *Id.*
- Voluntariness of confessions, challenge examined on case-by-case basis, totality-of-circumstances standard. *Pyles v. State*, 73
- Voluntariness of confessions, confession not voluntary if officer makes statements calculated to deceive. *Id.*
- Appellant emotional and vulnerable, officer's actions constituted false promise that resulted in involuntary confession. *Id.*
- Necessity or choice of evils, justification defense unavailable if actor is reckless or negligent in creating situation requiring choice of evils. *Polk v. State*, 174
- Necessity or choice of evils, when valid defense to charge of unlawful possession of handgun. *Id.*
- Necessity or choice of evils, narrow construction and application of Ark. Code Ann. § 5-2-604. *Id.*
- Necessity or choice of evils, record supported trial court's finding that appellant was not justified in possessing firearm. *Id.*
- Broader purpose of Ark. Code Ann. § 5-74-106(*State v. Zawodniak*, 179
- Proof offered at trial sufficient to convict appellee of simultaneous-possession charge. *Id.*
- How defendant may be charged, when information is sufficient. *McElhanon v. State*, 261
- DUI not lesser-included offense of DWI, factors considered in finding lesser-included offense. *Id.*
- Defendant charged with greater offense may be found guilty of lesser-included offense. *Id.*
- DUI not lesser-included offense of DWI, municipal court erred in changing offense, circuit court erred in convicting appellant of uncharged offense. *Id.*
- Charges for DWI may not be reduced pursuant to Ark. Code Ann. § 5-65-107 (Repl. 1993), charge erroneously changed to separate offense. *Id.*
- Appellant charged with one offense but found guilty of another, case reversed and remanded so that appellant might be tried for proper offense. *Id.*
- Finding that defendant is not mentally retarded affirmed if supported by substantial evidence. *Rankin v. State*, 379
- Mental retardation, appellant not entitled to presumption of. *Id.*
- Mental retardation, substantial evidence supported trial court's finding that appellant was not mentally retarded at time of murders. *Id.*
- Voluntary intoxication not defense to any criminal charge, appellant's argument for different treatment for crimes requiring specific intent without merit. *Standridge v. State*, 473

- Judge improperly entered jury room during deliberations, trial judge's violation of Ark. Code Ann. § 16-89-125(e) prejudicial to appellant, case reversed and remanded for resentencing. *Goff v. State*, 513
- Judgment of conviction reversed for insufficient evidence, double-jeopardy clause precludes second trial. *Henderson v. State*, 526
- Miranda* warnings insufficient to salvage incriminating statement made by appellant following illegal arrest, appellant's statement should have been excluded, error found. *Id.*
- Rape, uncorroborated testimony of victim may constitute substantial evidence to sustain rape conviction. *Hall v. State*, 567
- Rape, testimony of victim need not be corroborated. *Sherrill v. State*, 593
- Rape-shield statute, conditions for admissibility of victim's prior sexual conduct. *Graydon v. State*, 596
- Rape-shield statute, purpose. *Id.*
- Rape-shield statute, trial court's discretion. *Id.*
- Sexual offenses, prior acts of sexual conduct not evidence of consent in subsequent sexual act. *Id.*
- Rape-shield statute, primary purposes. *Id.*
- Rape-shield statute, trial court's decision to deny admission of proffered evidence upheld. *Id.*
- Rape, single crime rather than continuing offense. *Rains v. State*, 607
- Rape, uncorroborated testimony of victim will support conviction. *Id.*
- Sexual abuse, victim's testimony need not be corroborated. *Id.*
- Sexual abuse, unnecessary for State to prove motive of sexual gratification. *Id.*
- Sexual offenses, State need not prove when and where each act occurred, time not essential element. *Id.*
- Attempted rape, necessary proof. *Id.*
- Sexual abuse, evidence sufficient to sustain convictions on two counts. *Id.*
- Rape, evidence sufficient to sustain convictions on two counts of rape and one count of attempted rape. *Id.*
- Rape, evidence sufficient to sustain convictions on four counts of rape. *Id.*

CRIMINAL PROCEDURE:

- Request for postconviction relief denied, trial court's decision not clearly erroneous. *Riggins v. State*, 171
- Variance between wording of information and proof at trial generally does not warrant reversal, amendment of information, appellant was prejudiced by change. *McElhanon v. State*, 261
- Right to hearing on voluntariness of statement, pretrial suppression motion sufficient to trigger trial court's obligation to hold hearing. *Rankin v. State*, 379
- Limited remand for hearing on knowing and intelligent waiver of rights. *Id.*
- Difference between involuntary statement and knowing and intelligent waiver. *Id.*
- Suppression hearing, what trial court should determine. *Id.*
- Limited remand, directions to trial court. *Id.*
- Ark. R. Crim. P. 2.3, any error associated with appellee's first interview was harmless. *State v. Bell*, 422
- Arrest, probable cause, failure to give Rule 2.3 warning irrelevant. *Id.*

- Arrest, probable cause discussed. *Id.*
- Arrest, probable cause, test for determining. *Id.*
- Ark. R. Crim. P. 2.3, trial court erred in suppressing second statement for failure to give Rule 2.3 warning and in finding probable cause did not exist. *Id.*
- Ark. R. Crim. P. 2.3, prospective retreat from imposition of bright-line rule. *Id.*
- Waiver of rights, components. *Id.*
- Waiver of rights, analysis. *Id.*
- Factors preponderated in favor of knowing and intelligent waiver of rights, trial court erred in suppressing statement. *Id.*
- Postconviction relief, written findings of fact and conclusions of law mandatory, reversed and remanded. *Beshears v. State*, 469
- Custodial statements presumed involuntary, factors on review. *Standridge v. State*, 473
- Invocation of right to counsel must be made with specificity, answering questions following statement that purports to invoke right may constitute waiver. *Id.*
- Appellant failed to make unequivocal invocation of right to remain silent, appellant waived right. *Id.*
- Capacity to waive constitutional rights question of fact for trial court, intoxication goes to credibility of statement rather than to admissibility. *Id.*
- Appellant's contention without merit, trial court's admission of statement affirmed. *Id.*
- Jury instruction properly included, no error found. *Id.*
- Revocation proceeding, appellant waived argument for dismissal by asking that revocation hearing track substantive proceedings. *White v. State*, 487
- Sentencing, illegal-sentence argument meritless, appellant sentenced according to statutory requirement. *Id.*
- Informant's privilege, failure to disclose identity not violative of constitutional rights. *Reyes v. State*, 539
- Disclosure of informant's identity, when privilege yields. *Id.*
- Disclosure of informant's identity, balancing test. *Id.*
- Disclosure of informant's identity, defendant's burden. *Id.*
- Denial of request to disclose informant's identity, when not abuse of discretion. *Id.*
- Failure to move for disclosure of confidential informant, no error by trial court. *Id.*
- Continuance, trial court's discretion, factors considered. *Dirickson v. State*, 572
- Appellant's proof lacking, trial court's denial of appellant's motions for expert funds and continuance not abuse of discretion. *Id.*
- Issue presented by State's appeal involved mixed question of law and fact, appeal under Ark. R. App. P.—Crim. 3(c) not accepted by supreme court. *State v. Hart*, 582
- Speedy trial, State's burden when defendant not brought to trial within twelve months. *Jones v. State*, 603
- Speedy trial, State's burden upon defendant's *prima facie* showing of violation of rule. *Id.*
- Speedy trial, burden on courts and prosecutors to hold trials in timely fashion. *Id.*
- Speedy trial, shifting burden. *Id.*
- Speedy trial, continuances, trial court's responsibility. *Id.*
- Speedy trial, fifty-seven-day period excluded, delay granted at appellant's request. *Id.*
- Speedy trial, seventy-day period excluded, delay granted at appellant's request, denial of motion to dismiss affirmed. *Id.*
- Speedy trial, when time is excluded. *Bradford v. State*, 620

Speedy trial, contemporaneous record of proceedings reflecting delay caused by defendant sufficient for exclusion of time. *Id.*
Speedy trial, trial held outside applicable period, State's failure to meet burden resulted in reversal. *Id.*
Probation revocation, hearing not stage of criminal prosecution. *Dority v. State*, 631
Probation revocation, no absolute right to hearing within twelve months. *Id.*
Probation revocation, appellant had no right to hearing within twelve months. *Id.*
Probation revocation, standard of review. *Id.*
Probation revocation, trial court's finding that violations were inexcusable upheld. *Id.*

DAMAGES:

Award alleged to be excessive, standard of review. *Houston v. Knoedl*, 91
Appellees presented sufficient evidence to support award, amount awarded not excessive. *Id.*

DISCOVERY:

Violation, complaint about failure to update, trial court's discretion. *Arkansas State Highway Comm'n v. Frisby*, 506
Violation, trial court's granting of two-hour continuance was abuse of discretion, case reversed and remanded. *Id.*

DUTY:

Determination of fiduciary duty is matter of law. *Sexton Law Firm, P.A. v. Milligan*, 285
Claims for breach of fiduciary duty and breach of contract are not identical, liability distinguished. *Id.*
Trial court erred in granting appellee's directed-verdict motion on breach-of-fiduciary-duty claim. *Id.*

ELECTIONS:

Challenge to initiative, preelection and postelection remedies. *Doty v. Bettis*, 120
Challenge to initiative, election results unknown, appellants failed to show how outcome would have been different absent alleged irregularities, merits not reached. *Id.*

ELECTION OF REMEDIES:

Trial court erred in refusing to submit claim of breach of fiduciary duty to jury, election-of-remedies doctrine does not limit number of causes of action to be submitted to jury. *Sexton Law Firm, P.A. v. Milligan*, 285
General rule. *Travelers Ins. Co. v. Smith*, 336
Respondent's action not barred by election of remedies, writ denied. *Id.*

EMINENT DOMAIN:

Partial-taking cases, formulas for measuring just compensation. *Arkansas State Highway Comm'n v. Frisby*, 506
Value of property, owner's testimony must be grounded in market value. *Id.*
Value of property, motion to strike owner's testimony based on "feeling" should have been granted. *Id.*
Value of property, business value must be separated from market value. *Id.*

EQUITY:

Chancellor generally has no criminal jurisdiction, exception to general rule that equity will not enjoin commission of crime when remedy at law is adequate. *Masterson v. State*, 443

Public nuisance, equity has authority to abate. *Id.*

Act both public nuisance and crime, when injunction is warranted. *Id.*

Gambling house nuisance under common law, when equity may act to suppress. *Id.*

Chancellor's conclusions not clearly erroneous, chancellor had subject-matter jurisdiction. *Id.*

Injunctions for otherwise criminal acts may be issued where property interests are involved, protection of property rights of public affected by illegal gambling activities meets test for relief. *Id.*

Commercial bingo hall is common-law public nuisance, equity may act to suppress public nuisance where remedy at law is inadequate and incomplete. *Id.*

EVIDENCE:

Challenge to sufficiency of, factors on review. *Williams v. State*, 8

Ark. R. Evid. 806 not applicable, credibility of appellant's first statement not attacked, trial court did not abuse discretion in denying introduction of second statement. *Id.*

Residual hearsay exception not applicable, reliability of second statement questioned, trial court did not err in excluding. *Id.*

Photographs, admission and relevancy within trial court's discretion. *Jones v. State*, 62

Photographs, when admissible. *Id.*

Photographs, trial court did not abuse discretion in admitting photo of victim's skull prior to surgery. *Id.*

Admissibility of evidence tending to show that someone other than defendant committed crime charged, direct or circumstantial evidence must link third person to actual perpetration of crime. *Pyles v. State*, 73

Testimony did not directly link third party with commission of crime, trial court did not abuse discretion in excluding testimony. *Id.*

Survey properly admitted into evidence, engineer's testimony relevant and probative. *Houston v. Knoedl*, 91

Deeds of neighboring property could have been confusing to jury, trial court did not abuse discretion in excluding deeds. *Id.*

Refusal to admit testimony within sound discretion of trial court, no abuse of discretion found. *Id.*

Trial court erred in excluding appellant's handbook, appellant entitled to new trial on breach-of-contract claim. *Sexton Law Firm, P.A. v. Milligan*, 285

Testimony of former and present attorneys at law firm regarding agreements not cumulative, trial court abused discretion in excluding. *Id.*

Admission of correspondence concerning expense audits within trial court's discretion. *Id.*

No abuse of discretion by trial court in receiving expense audits. *Id.*

Review of sufficiency required before consideration of other assignments of error. *Rankin v. State*, 379

Evidence regarding voluntary intoxication irrelevant, voluntary intoxication not defense. *Standridge v. State*, 473

- Sufficiency of, when sufficient to support conviction. *Goff v. State*, 513
- Defendant's statements explaining suspicious circumstances admissible as proof of guilt. *Id.*
- Admission of photographs within sound discretion of trial court, circumstances under which even gruesome photos are admissible. *Id.*
- Disputed photos aided understanding of nature and extent of victim's injuries, trial court did not abuse discretion in allowing into evidence. *Id.*
- Evidence remaining after exclusion of appellant's statement to deputy sheriffs insufficient to support guilty verdict, appellee's argument without merit. *Henderson v. State*, 526
- Statements by co-conspirator are not hearsay, Ark. R. Evid. 801 *Id.*
- Impeachment, witness's prior statement admissible where reasonable person could infer that two statements were produced by inconsistent beliefs. *Roseby v. State*, 554
- Impeachment, trial court did not abuse discretion in allowing. *Id.*
- Impeachment, proper cautionary instruction given twice. *Id.*
- Hostile witness not called for sole purpose of introducing inadmissible hearsay through impeachment. *Id.*
- Sufficient evidence existed for conviction without evidence seized pursuant to warrant, appellant not prejudiced by attorney's failure to suppress evidence that served to corroborate victim's testimony. *Hall v. State*, 567
- Sufficiency of, determination. *Cates v. State*, 585
- Sufficient evidence presented to permit case to go to jury. *Id.*

FRAUD:

- Elements of, even constructive fraud requires material misrepresentation of fact. *Scollard v. Scollard*, 83
- Elements required to establish claim. *Sexton Law Firm, P.A. v. Milligan*, 285
- Substantial evidence that appellee's conduct constituted fraud, issue should have gone to jury. *Id.*

INTOXICATING LIQUORS:

- Strict nonliability rule against one selling liquor to minor, existing common-law rule takes away basic jury function of determining proximate cause. *Shannon v. Wilson*, 143
- Selling of alcohol may be proximate cause of injuries along with proximate cause of consumption, injury-producing behavior is reasonably foreseeable. *Id.*
- Seller's duty to act with care when selling liquor to patrons found in affirmative requirements of statutes, public policy of state to protect minors from adverse consequences of alcohol consumption. *Id.*
- Common-law cause of action against vendor who knowingly sells alcohol to minor recognized, juries allowed to determine whether violation of criminal statute prohibiting sale of alcohol to minors is proximate cause of subsequent alcohol-related injury to minor or third party. *Id.*
- Rule of liability prospective, rule given immediate effect on claim at issue, matter reversed and remanded. *Id.*

JUDGES:

- Disqualification, discretionary decision. *Beshears v. State*, 469

Trial judge did not abuse discretion in denying motion to recuse. *Id.*

JUDGMENT:

Summary judgment, standard of review, burdens of proof. *Porter v. Harshfield*, 130
Order entered following hearing on summary-judgment motion treated as judgment following bench trial. *Hannon v. Armored Sch. Dist. # 9*, 267
Summary judgment, when appropriate, movant's burden. *Wheeler v. Phillips Dev. Corp.*, 354
No evidence of agreement removing landlord from general rule, trial court correctly granted motion for summary judgment. *Id.*

JURISDICTION:

Court's authority to try person for crime is question of territorial jurisdiction. *Cates v. State*, 585
When State is required to prove court's jurisdiction, presumption favoring place where charge filed. *Id.*
Appellant's jurisdictional claim without merit. *Id.*

JURY:

Instructions, not error to refuse nonuniform instruction when uniform instruction accurately reflects law. *Williams v. State*, 8
Objections to jury instructions must be timely, appellant made only general objections, objections made too late. *Houston v. Knoedl*, 91
Instruction arguments not preserved, failure to move for directed verdict at end of appellees' case-in-chief constituted waiver, motion must be specific. *Id.*
Failure to give assumption-of-risk instruction not error, doctrine no longer applicable in Arkansas. *Ouachita Wilderness Inst. v. Mergen*, 405
Error may have occurred in giving of erroneous instruction on damages, damages awarded were allowable, any error found harmless. *Id.*
Batson challenge, three-step analysis. *Roseby v. State*, 554
Batson challenge, burden of persuasion, deference accorded trial court's determination. *Id.*
Batson challenge, *prima facie* determination, when moot. *Id.*
Batson challenge, *prima facie* determination, trial court ruled on issue, not moot. *Id.*
Batson challenge, *prima facie* case of discriminatory use of peremptory challenges, elements. *Id.*
Batson challenge, trial court's ruling that appellant failed to establish *prima facie* not clearly against preponderance of evidence. *Id.*
Duty to resolve inconsistencies in testimony. *Rains v. State*, 607

JUVENILES:

Ruling on motion to transfer, decision to try juvenile as adult must be supported by clear and convincing evidence. *Oglesby v. State*, 127
Transfer to juvenile court, movant bears burden of proving transfer warranted. *Id.*
Defense offered no evidence that motion to transfer was warranted, trial court's ruling not clearly erroneous. *Id.*
Transfer to juvenile court, age of juvenile permissible factor to evaluate when determining whether transfer is proper. *Id.*

Transfer to juvenile court, denial supported by factors considered, denial was not clearly erroneous. *Id.*

Ruling on motion to transfer, factors considered. *Fleetwood v. State*, 327

Motion to transfer, movant has burden to prove transfer to juvenile court warranted. *Id.*

Appellant's argument without merit, whether case should be transferred to juvenile court not dependent upon affirmative defenses. *Id.*

Motion to transfer, age of juvenile permissible factor to consider. *Id.*

Motion to transfer, factors considered supported denial, trial court's decision not clearly erroneous. *Id.*

Motion to transfer, factors considered, standard of review. *Sims v. State*, 350

Motion to transfer, trial court properly evaluated statutory factors in denying motion, trial court's denial not clearly erroneous. *Id.*

LANDLORD & TENANT:

Tenant not invitee on landlord's land, has equal right to exclusive possession. *Wheeler v. Phillips Dev. Corp.*, 354

Duties, Massachusetts rule, when grant of summary judgment for landlord will be sustained. *Id.*

Duty, question whether duty owed always one of law. *Id.*

LIMITATION OF ACTIONS:

Constructive fraud, statute of limitations began to run when appellee discovered or should have discovered that appellant had no intention of recognizing appellee's claim to property. *Scollard v. Scollard*, 83

Tolling of statute will avoid dismissal, party resisting limitations defense has burden of showing statute tolled. *Id.*

Argument that previous chancery action tolled limitations period for filing circuit court action without merit, two actions were not identical, tolling of statute did not occur. *Id.*

MASTER & SERVANT:

Theory of master-servant liability, when master liable for servant's intentional tort. *Porter v. Harshfield*, 130

Employee's sexual assault of appellant unexpected and not within scope of employment, employer not liable for employee's actions, appellee entitled to summary judgment. *Id.*

Negligent-hiring claim without merit, no evidence admitted to support claim. *Id.*

Negligent-retention claim without merit, appellant failed to meet proof with proof. *Id.*

Negligent-supervision claim unsupported by convincing argument or authority, argument not considered. *Id.*

Public-policy considerations argument without merit, decision of trial court affirmed. *Id.*

Employment at will, handbook provisions may become part of employment contract. *Sexton Law Firm, P.A. v. Milligan*, 285

MOTIONS:

- Directed verdict, challenge to sufficiency of evidence. *Williams v. State*, 8
- Directed verdict, review of order granting. *Minor v. Failla*, 274
- Directed verdict, trial court correctly granted motion in favor of appellees.
- Directed verdict, review of order granting. *Sexton Law Firm, P.A. v. Milligan*, 285
- Directed-verdict motion waived, appellant's contention meritless. *Nettleton Sch. Dist. v. Owens*, 367
- Directed verdict, requirements for preservation of sufficiency issue. *Rankin v. State*, 379
- Directed verdict, renewal must occur before jury is charged. *Id.*
- Directed verdict, attempt to renew untimely, sufficiency argument not preserved. *Id.*
- Directed verdict, review of denial. *Ouachita Wilderness Inst. v. Mergen*, 405
- Directed-verdict motion properly denied, question of proximate cause existed for jury to decide. *Id.*
- Evidence more than sufficient to establish appellant murdered her husband, directed-verdict motion properly denied. *Goff v. State*, 513
- Directed verdict, general motion and failure to renew result in procedural bar. *Reyes v. State*, 539
- Denial of motion to suppress evidence, factors on review. *Id.*
- Directed verdict, specific motion required. *Roseby v. State*, 554
- Directed verdict, motion lacked specificity, issue not preserved for appeal. *Id.*
- Directed verdict, challenge to sufficiency of evidence. *Cates v. State*, 585
- Directed verdict properly denied, evidence presented overwhelming and un rebutted. *Sherrill v. State*, 593
- Directed verdict, general renewal of specific motion preserves sufficiency challenge for review. *Rains v. State*, 607
- Directed verdict, stating additional grounds in final motion does not bar review. *Id.*
- Directed verdict, challenge to sufficiency of evidence, factors on review. *Id.*

NEGLIGENCE:

- Sudden-emergency instruction abolished. *Wiles v. Webb*, 108
- Sudden-emergency instruction, requirements and limitations before abolition. *Id.*
- Sudden-emergency instruction, necessary findings by trial court. *Id.*
- Sudden-emergency instruction, tantamount to instructing jury that appellee's responsibility was all but nullified. *Id.*
- Sudden-emergency instruction, trial court erred in giving, matter reversed and remanded. *Id.*
- Proximate cause is efficient and responsible cause, intervening causes will not necessarily relieve original actor of liability. *Shannon v. Wilson*, 143
- Proof required for, duty discussed. *Id.*
- Violation of statute is evidence of negligence, licensed vendor's violation of statute prohibiting sale of alcohol to minors is evidence of negligence to be submitted to jury. *Id.*
- Comparative fault, determination of proximate cause required before fault can be assessed against claiming party. *Ouachita Wilderness Inst. v. Mergen*, 405
- When original act eliminated as proximate cause, intervening causes and liability discussed. *Id.*

Substantial evidence of appellant's negligence, trial court did not err in denying directed-verdict motion. *Id.*

NEW TRIAL:

Decision to grant new trial should not be disturbed absent manifest abuse of discretion, burden on party moving for new trial. *Suen v. Greene*, 455

Grounds for, misconduct of prevailing party includes misconduct of that party's attorney. *Id.*

Plaintiff's and defendant's counsel vigorously and professionally advocated interests of their clients, grant of new trial was manifest abuse of discretion. *Id.*

Failure to strike physician's testimony not error, appellee not deprived of fair trial. *Id.*

Verdict may not be set aside arbitrarily and without reasonable cause, granting new trial on basis that witness was unresponsive was arbitrary and unreasonable. *Id.*

Trial court should not substitute its view of evidence for that of jury, decision to order new trial was manifest abuse of discretion. *Id.*

Doctor's comments on standard of care *Id.*

Physician's entire testimony stricken from record, motion for mistrial never renewed after testimony stricken, trial court did not commit error in failing to order mistrial. *Id.*

Trial court acted to insure appellee fair trial, jury verdict upheld, grant of motion for new trial overruled. *Id.*

Motion deemed denied if not resolved by trial court within thirty days. *Rains v. State*, 607

Notice of appeal of denial untimely, part of appeal dismissed. *Id.*

PARENT & CHILD:

Termination of parental rights, burden on party seeking to terminate relationship. *J.T. v. Arkansas Dep't of Human Servs.*, 243

Termination of parental rights, basis for order. *Id.*

Trial court's determination that appellant did not have capacity to be type of parent that child needed not clearly erroneous, trial court's decision to terminate parental rights supported by clear and convincing evidence. *Id.*

Proceeding to terminate parental rights, two-step process, trial court made necessary finding that appellant was unfit parent. *Id.*

Termination of parental rights, Americans With Disabilities Act requires that "reasonable accommodations" be made to parents with disabilities. *Id.*

"Reasonable accommodations" as required by ADA made, parent's rights under ADA must be subordinated to rights of child. *Id.*

Appellant's contention without merit, case relied upon inapplicable. *Id.*

Termination of parental rights, no unlawful delegation of judicial authority by trial court, therapists and caseworkers must be allowed some discretion. *Id.*

PROHIBITION, WRIT OF:

When issued. *Boatmen's Nat'l Bank v. Cole*, 209

Improper assertion of personal jurisdiction justifies issuance. *Id.*

Review confined to pleadings. *Id.*

Complaint alleged joint liability, venue proper as to petitioner in respondent court. *Id.*

When appropriate, review. *Travelers Ins. Co. v. Smith*, 336

SCHOOLS & SCHOOL DISTRICTS:

Action brought under Teacher Fair Dismissal Act is civil action within meaning of Ark. Code Ann. § 16-22-308, attorney's fees allowed for "labor or services" claim. *Love v. Smackover Sch. Dist.*, 4

Actions pursuant to Teacher Fair Dismissal Act are actions in contract for labor or services, attorney's fees may be awarded, federal decision was erroneous interpretation of state law. *Id.*

Teacher Fair Dismissal Act, strict compliance with notice provisions required. *Hannon v. Armored Sch. Dist. # 9*, 267

When cause for termination is arbitrary and capricious. *Id.*

Appellant's termination was arbitrary and capricious, school board relied exclusively on past conduct. *Id.*

Termination, specific conduct constituting pattern of conduct must be set out in notice of termination. *Id.*

Termination must not be used as "backup" to flawed nonrenewal. *Id.*

Circuit court's order reversed and remanded for determination of damages, reinstatement issue moot. *Id.*

Majority vote required on truth of each reason given in support of recommended termination, trial court's ruling affirmed for different reason. *Nettleton Sch. Dist. v. Owens*, 367

District failed to give appellee notice that previous incidents would be considered at hearing in compliance with Ark. Code Ann. § 6-17-1507 (c), decision to terminate appellee's contract void. *Id.*

Claim for attorney's fees procedurally barred, issue not reviewed. *Id.*

Attorney's fee statute inapplicable, trial court correctly denied appellee's request. *Id.*

SEARCH & SEIZURE:

Search incident to arrest required no further justification, motion to suppress properly denied. *Pyles v. State*, 73

Standing to challenge, defendant must show expectation of privacy in object of search. *Reyes v. State*, 539

Standing to challenge, one of two appellants had deficient expectation of privacy. *Id.*

Warrantless search unauthorized, exigency exception. *Id.*

Warrantless vehicular search, when reasonable cause exists. *Id.*

Warrantless vehicular search, facts supporting reasonable cause. *Id.*

Warrantless vehicular search, car on motel parking lot was in "area open to public." *Id.*

Constitutional protection of automobile less than that of home. *Id.*

When vehicular seizure justified, mobility. *Id.*

When vehicular search justified, mobility. *Id.*

Mobility as exigent circumstance. *Id.*

Trial court did not err in refusing to suppress items taken from car. *Id.*

STATUTES:

Construction of, trial court's reading of simultaneous-possession statute contrary to general rules. *State v. Zawodniak*, 179

Interpretation of, agency interpretations of statutes highly persuasive. *Aluminum Co. of America v. Weiss*, 225

Legislative use of emergency clauses in taxation, what constitutes emergency. *ACW, Inc. v. Weiss*, 302

Emergency legislation, facts must show necessity for immediate action. *Id.*

Presumed constitutional, burden of proof is on challenger. *Id.*

Adoption of emergency clause does not negate right to refer measure to popular vote. *Id.*

When ambiguous, statute found ambiguous. *Id.*

Ambiguous statute, how effect given to legislative intent. *Id.*

TAXATION:

Tax cases reviewed de novo on record, chancellor reversed only if clearly erroneous. *Aluminum Co. of America v. Weiss*, 225

Applicability of exemption provided by statute, exemption does not apply to monitoring equipment. *Id.*

Tax-exempt provisions must be strictly construed, strong presumption operates in favor of taxing power. *Id.*

Appellee's interpretation of exemption based on plain language of statute, supreme court agreed with appellee's determination that statutory exemption did not apply to appellant's lease of equipment for reclamation project. *Id.*

Public policy of state clearly favored sustaining public schools and defraying necessary expenses of government, act complied with provisions of Ark. Const. art. V, § 38, emergency found to have existed. *ACW, Inc. v. Weiss*, 302

Appellant's argument without merit, overhead costs to be expected. *Id.*

Tax cannot be imposed except by express words indicating purpose, any doubts must be resolved in favor of taxpayer. *Id.*

Statute found to impose graduated tax applicable to all corporations for first \$100,000 of net income, flat tax applied to entire net income over \$100,000. *Id.*

Tax rate uniformly applied to all corporations, confiscatory taxation and equal protection arguments resolved. *Id.*

When sovereign immunity waived in taxation cases, trial court acquires no jurisdiction where suit is against state and sovereign immunity is not waived. *Id.*

Taxation of bingo operations in no way connected to whether operation is nuisance, statute provides only for taxation of bingo revenues. *Masterson v. State*, 443

TORTS:

Joint and several liability, determined by impact. *Boatmen's Nat'l Bank v. Cole*, 209

Joint and several liability, jury may apportion fault. *Id.*

Defamation, elements. *Minor v. Failla*, 274

Defamation, case involving spoken words appropriately termed one for slander. *Id.*

Defamation, test for establishing. *Id.*

Defamation, no evidence of actual losses required. *Id.*

Defamation, whether words of appellees were actionable was question of fact for jury, substantial evidence that appellees accused appellant of crime. *Id.*

Defamation, determination of existence of privilege is matter of law. *Id.*

Defamation, when publication may be privileged. *Id.*

Defamation, when qualified privilege may be invoked. *Id.*

Defamation, qualified privilege must be exercised in reasonable manner and for proper purpose, when privilege may be lost. *Id.*

Defamation, whether statement falls outside scope of qualified privilege is question of fact for jury. *Id.*

Defamation, communication was in fulfillment of appellees' official duties, qualified privilege attached. *Id.*

Establishment of prima facie case, negligence discussed. *Ouachita Wilderness Inst. v. Mergen*, 405

Assumption of risk, doctrine no longer applicable in Arkansas as separate theory. *Id.*

Immunity from liability under common-law doctrine of charitable immunity, factors. *Id.*

Appellant not immune from tort liability under common-law doctrine of charitable immunity, trial court did not err in determining that appellant not entitled to immunity. *Id.*

TRIAL:

Mistrial, drastic remedy, trial court's discretion. *Williams v. State*, 8

Mistrial, trial court did not abuse discretion in denying motion for mistrial. *Id.*

Trial judge must see that trial proceeds efficiently, only great prejudice will constitute abuse of discretion. *Pyles v. State*, 73

Judge not required to believe appellant. *Polk v. State*, 174

Mistrial, trial court did not err by failing to order, *Rankin v. State*, 379

Review of ruling denying mistrial. *Standridge v. State*, 473

No evidence appellant prejudiced in any manner, trial court did not abuse discretion in denying motion for mistrial. *Id.*

Jury in deliberation must be brought into open court before any information may be given to it, noncompliance gives rise to presumption of prejudice. *Goff v. State*, 513

Defendant using insanity defense entitled to access to competent psychiatrist, defendant's right to examination protected by state hospital examination, appellant's examination at state hospital sufficient. *Dirickson v. State*, 572

Appellant's burden to prove existence of mental disease or defect, appellant failed to secure information necessary for defense. *Id.*

TRUSTS:

Constructive trust, when imposed. *Scollard v. Scollard*, 83

VENUE:

Co-defendants, joint liability required with resident defendant. *Boatmen's Nat'l Bank v. Cole*, 209

Personal-injury action, requirements, application of venue provision mandatory. *Bristol-Meyers Squibb Co. v. Saline County Circuit Court*, 357

Controlled by statutory provisions. *Id.*

Determined by real character of action. *Id.*

Mandatory provisions of venue statute applied. *Id.*

Improper venue with respect to plaintiffs whose accident occurred in other counties, writ of prohibition issued. *Id.*

Denial of change-of-venue motion, not error where impartial jury is selected. *Rankin v. State*, 379

Denial of change-of-venue motion, prejudice not demonstrated. *Id.*

Denial of change-of-venue motion, no abuse of discretion. *Id.*

WILLS:

Specific legacies do not bear interest. *Schenebeck v. Schenebeck*, 198

Legacy to appellee was general, statutory interest rate applicable, probate court's assessment reversed. *Id.*

WITNESSES:

Use immunity, granting of discretionary with prosecutor. *Williams v. State*, 8

Expert testimony, decision to allow within trial court's discretion, trial court correctly excluded law professor's testimony. *Sexton Law Firm, P.A. v. Milligan*, 285

Expert witnesses, when testimony can include hearsay. *Goff v. State*, 513

Witness qualified without objection as DNA expert, no abuse of discretion found in trial court's allowing testimony. *Id.*

WORKERS' COMPENSATION:

Compensable injury, physical injury must precede mental injury, no remedy for respondent's alleged extreme mental anguish. *Travelers Ins. Co. v. Smith*, 336

Respondent's action based on nonphysical injury, claims for misrepresentation and outrage not barred by exclusive-remedy provisions of Act, writ denied. *Id.*

"Quasi-course of employment" doctrine summarized. *Green v. Coca-Cola Bottling Co.*, 345

Prohibited-conduct test applied by appellate court, appellant's injuries found compensable. *Id.*

Issues of first impression not resolved without specific request or adequate legal argument, request for review of court of appeals decision denied. *Id.*

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

—

—

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

ACTS:	Section 5	641
Acts by Name:	Section 5(c)	641
Americans With Disabilities	Section 5(f)	641
Act	Section 6	641
244, 245, 254, 255,	Section 8	641
256, 257, 258, 269	Act 939 of 1993	449
Arkansas Criminal Gang,	Act 948 of 1989	669
Organization, or Enterprise Act	Act 1052 ...	303, 305, 306, 307, 310,
Arkansas Effective Death Penalty	311, 313, 315, 316, 317, 318	
Act of 1997	§ 9	307, 317
449		
Arkansas Volunteer Immunity		
Act	CODES:	
409, 417, 418, 419	(See also RULES and STATUTES):	
Drug Free Workplace Act of	Arkansas Code Annotated:	
1988	3-3-201	162
48	3-3-202	159
Family Support Act of 1988 ...	3-3-202(a)(1)	162
669	3-3-202(b)(1)	159
Federal Antiterrorism and	3-3-202(b)(2)(A)	159
Effective Death Penalty Act of	3-3-202(b)(2)(B)	159
1996	3-3-206 — 210	148
641	3-3-209	161
Putative Father Registry Act	3-3-218(a)	158
164, 168	3-3-218(b)	158
Teacher Fair Dismissal Act of	3-3-604	148
1983	3-4-803(a)	158
4, 5, 6, 7, 8, 267, 269,	3-8-902(a)	123
271, 274	5-1-111(b)	586, 589
Uniform Contribution Among	5-2-302	391
Tortfeasors Act	5-2-305	572, 576
217	5-2-403	8, 16, 431
Workers' Compensation Act ...	5-2-604	174, 175, 176, 177
336	5-2-604(a)(1)	175, 176
337, 339, 341, 342, 343, 344	5-2-604(a)(2)	175, 176
Workers' Compensation Act (i)	5-2-604(c)	174, 177
342	5-4-104(c)(1)	181
Workers' Compensation Act (ii)		
342		
Workers' Compensation Act (iii)		
342		
Arkansas Acts:		
Act 277 of 1967		161
Act 309		471
Act 314 of 1939		360
Act 420 of 1993		389
Act 875 of 1993		159, 161
Act 925 of 1997		641, 647

5-4-309	634	5-66-119	451
5-4-309(d)	634	5-73-103	177
5-4-310	242, 488	5-73-103(a)	175
5-4-310(b)(1)	488	5-73-103(a)(1)	175
5-4-310(b)(2)	488	5-74-101 — 108	182
5-4-401(a)(1)	181	5-74-102	179, 182
5-4-501	230	5-74-106	179, 181, 186, 195
5-4-603(a)	69	5-74-106(a)	179, 180, 181, 182, 184, 190, 194, 197
5-4-603(b)	69	5-74-106(b)	181
5-4-603(c)	69	6-17-1501 to -1510	5, 369
5-4-603(d)	63, 71	6-17-1503	271, 374
5-4-618	380, 389, 390, 391	6-17-1504(c)	374
5-4-618(a)(1)(A)-(B)	389	6-17-1506(a)	271
5-4-618(a)(2)	380, 389, 393	6-17-1506(b)	271
5-4-618(a)(2)(A)	389	6-17-1506(c)	272
5-4-618(a)(2)(B)	389	6-17-1507	268, 272, 273
5-4-618(b)	389	6-17-1507(a)	267, 273
5-4-618(c)	389	6-17-1507(b)	267, 273
5-4-618(d)(1)	390	6-17-1507(c)	367, 368, 373, 374, 376, 377
5-4-618(d)(2)	390	6-17-1510	377
5-4-618(d)(2)(A)	390	6-17-1510(c)	367, 368, 371, 372, 373, 374, 375, 376, 377, 378
5-4-618(d)(2)(A)(i)	390	7-9-104(c)	123
5-4-618(d)(2)(A)(ii)	390	8-6-212	104
5-4-618(d)(2)(B)	390	9-9-202(7)	169
5-10-101(a)(1)	531	9-9-207	168
5-10-101(a)(4)	66, 397, 558	9-9-207(a)(1)	164, 168, 169
5-10-102	588	9-9-207(a)(2)	168, 169
5-10-102(a)	588	9-10-109(b)(1)	670
5-10-102(a)(2)	397, 522	9-12-312	668
5-10-102(2)	588	9-12-312(a)	668, 669
5-13-310(a)(2)	512	9-12-312(e)(3)	670
5-14-101(1)	612	9-14-218(a)(3)(A)	675
5-14-101(8)	613	9-14-239	2, 3
5-14-103	612	9-14-239(b)(1)(A)(i)	3
5-14-103(a)(3)	594	9-14-239(d)(1)	3
5-14-108	613	9-14-239(d)(2)	3
5-64-401	181	9-14-804	670
5-64-401(1)	182	9-14-805	675
5-64-403	181, 195	9-27-102	257
5-64-505	219, 222, 223, 224	9-27-303	246
5-64-505(a)(6)	220	9-27-318	128, 330
5-64-705	526, 534	9-27-318(a)(3)	128
5-65-103	262, 263, 264, 266		
5-65-107	262, 263, 266		
5-65-303	263, 264		
5-66-103	453		

9-27-318(e)	127, 128, 129, 327, 330, 350, 352	16-6-104(c)	417
9-27-318(e)(1)	128, 330, 352	16-13-510(c)	648, 649, 650
9-27-318(e)(2)	128, 330, 352	16-17-1507(b)	377
9-27-318(e)(3)	129, 330	16-17-1507(c)	377
9-27-318(f)	127, 129, 330, 353	16-19-1105	266
9-27-318(h)	128, 328, 352	16-22-308	4, 5, 6, 7, 368, 375
9-27-341	246, 249	16-22-309	40, 41
9-27-341(a)	249	16-22-309(a)(1)	39, 41
9-27-341(b)	249	16-30-102(c)	396
9-27-341(b)(2)(A)	244, 256	16-42-101	596, 598, 601
9-27-341(b)(2)(E)	254	16-56-105	86
9-27-341(b)(2)(E)(i)	257	16-57-104(a)	88
9-27-341(b)(2)(E)(ii)	255, 257	16-60-112	357
9-27-431	244	16-60-112(a)	358, 360, 361
9-28-203	411	16-60-113(b)	360, 361
9-28-212	410, 418	16-60-116(a)	209, 210, 213, 214, 218
11-9-102(5)	336	16-61-201	217
11-9-102(5)(A)	342	16-61-202(4)	209, 217
11-9-105(a)	339	16-64-122	407, 408, 414, 417
11-9-113	342	16-64-122(c)	420
11-9-113(a)(1)	336, 342	16-81-105	526, 534
11-9-802	341	16-81-106(3)-(4)	526, 534
14-14-801	99, 104	16-81-301	526, 534
14-14-801(a)	99, 104	16-88-105(b)	588
14-14-801(b)	99, 104	16-88-201	395
14-14-802	99, 104	16-88-204	394
14-14-802(b)(1)	99, 104	16-89-107(b)	382
14-14-802(b)(2)(F)(ii)	99, 104	16-89-107(b)(1)	382, 399, 400
14-14-905(e)	99, 103	16-89-109(b)(1)	400
14-14-907	102	16-89-118	524
14-14-907(a)	102	16-89-125(e)	515, 523, 524, 525
14-14-907(a)(1)	102, 103	16-90-107(e)	171, 173
14-14-907(a)(3)(A)	102, 103	16-91-113(a)	73
14-14-907(a)(3)(B)	102	16-91-201	641
14-14-907(a)(3)(C)	102, 103	16-91-202	641
14-14-908(b)	99, 102, 103	16-91-202(c)	641
14-14-1205	100, 106, 107	16-91-202(f)	641, 646
14-14-1205(c)	100, 106, 107	16-93-303	487, 489
14-22-111	100, 105	18-14-601	332, 333, 336
14-22-111(a)	105	19-10-305(a)	237
14-22-111(b)(1)	105	20-18-701 — 705	164, 168
15-14-101(1)(A)	594	20-18-702	166
15-14-101(1)(B)	594	25-15-212(h)(3)	48, 51
15-14-101(9)	594	26-18-507	316
16-6-101—105	409, 417		

- 26-18-507(e)(2)(A) 305, 314, 315
 26-51-205 304, 311
 26-51-205(a) 311
 26-51-205(a)(1) 311, 312
 26-51-205(a)(2) 312
 26-51-205(b) 312
 26-52-402(a)(3) 225, 226, 227
 26-52-402(b)(3) 228
 26-52-402(c)(1) 228
 26-52-1501—1507 444, 445, 449
 28-1-104 204, 205
 28-48-105 207
 28-53-112 200
 28-53-112(a) 200, 207, 208
 28-53-112(b) 207
- Arkansas Code of Judicial Conduct:
 Canon 3(c) 469, 472
- United States Code:
 18 U.S.C.
 § 3161 629
 § 3161-3174 629
 § 3162 629
 28 U.S.C.
 § 2261 et seq. 641, 642
 42 U.S.C.
 § 12132 255
 IRS § 501(c)(3) 409, 417, 418
- CONSTITUTIONAL PROVISIONS:
 Arkansas Constitution:
 Amend. 7 309, 317, 318, 654
 Amend. 19 307, 308, 309, 316,
 317, 318
 Amend. 21, § 1 264
 Amend. 55, § 1 100, 106, 107
 Art. 2, § 8 194, 264, 504, 505
 Art. 2, § 10 394, 588
 Art. 2, § 19 99, 100, 103, 104
 Art. 5, § 20 237, 304, 314
 Art. 5, § 38 302, 303, 306, 307,
 310, 311, 315, 316
 Art. 7, § 20 469, 472
 Art. 7, § 34 203
- Art. 16, § 13 306
 Art. 19, § 14 450
- United States Constitution:
 Amend. 4 47, 52, 423, 431,
 437, 438 535, 538, 539,
 540, 541, 546, 549
 Amend. 5 77, 194, 423, 432, 433
 Amend. 6 239, 240, 423, 432,
 433, 567, 568, 633, 634
 § 41-1209 242
 Amend. 14 77, 256, 555, 560
 Double Jeopardy Clause 180, 182,
 183, 184, 185, 186, 187,
 188, 189, 190, 194, 196,
 197, 219, 220, 222, 223, 224
 Due Process Clause 47, 52
 Equal Protection Clause 381,
 555, 560
- INSTRUCTIONS:
 Arkansas Model Jury Instructions (Civil):
 AMI Civ. 3d 301 118, 119
 AMI Civ. 3d 303 115
 AMI Civ. 3d 614 108, 109, 113,
 114, 116, 117, 118
 AMI 301 420
- Arkansas Model Jury Instructions
 (Criminal):
 AMCI 2d 401 20
 AMCI 301 34
 AMCI 2103 34
 AMCI 8101 34
 AMCI 8301 34
 AMCI 9202 34
 Fed. R. Crim. P. 32.1 634
- RULES:
 Arkansas Rules of Appellate Procedure
 — Civil:
 Ark. R. App. P.—Civ. 3 648,
 656, 657, 664
 Ark. R. App. P.—Civ. 3(e) 650, 664
 Ark. R. App. P.—Civ. 4 590

Ark. R. App. P.—Civ. 4(a) . . . 590, 591
 Ark. R. App. P.—Civ. 4(b) 590, 592
 Ark. R. App. P.—Civ. 4(c) . . . 240, 592
 Ark. R. App. P.—Civ. 6 27
 Ark. R. App. P.—Civ. 6(d) . . . 319
 Ark. R. App. P.—Civ. 11 . . . 320, 321,
 322, 324, 325, 326, 653
 Ark. R. App. P.—Civ. 11(a) . . . 320,
 324, 325
 Ark. R. App. P.—Civ. 11(b) . . . 320,
 324, 326

Arkansas Rules of Appellate Procedure
 — Criminal:

Ark. R. App. P.—Crim. 2 609,
 617, 648, 656, 664
 Ark. R. App. P.—Crim. 2(a) . . . 664
 Ark. R. App. P.—Crim. 2(a)(2) 241
 Ark. R. App. P.—Crim. 2(a)(3) 240,
 241
 Ark. R. App. P.—Crim. 2(b) 238, 241
 Ark. R. App. P.—Crim. 2(c) . . . 648,
 649
 Ark. R. App. P.—Crim. 2(c)(1) 649
 Ark. R. App. P.—Crim. 2(c)(2) 649
 Ark. R. App. P.—Crim. 2(c)(3) 649
 Ark. R. App. P.—Crim. 2(c)(4) 649
 Ark. R. App. P.—Crim. 3 181,
 219,
 Ark. R. App. P.—Crim. 3(b) 219, 221
 Ark. R. App. P.—Crim. 3(c) . . . 219,
 221, 582, 584, 585
 Ark. R. App. P.—Crim. 5(a) 319, 364
 Ark. R. App. P.—Crim. 16 . . . 58, 60,
 363, 364

Arkansas Rules of Civil Procedure:

ARCP Rule 11 39, 40, 41, 320, 325
 ARCP Rule 12(b)(6) 146
 ARCP Rule 15(b) 138
 ARCP Rule 23 306
 ARCP Rules 26 through 37 . . . 41
 ARCP Rule 26(e)(1) 506, 509
 ARCP Rule 50(a) 95, 413
 ARCP Rule 50(e) 95

ARCP Rule 54(b) 402, 403, 404,
 405
 ARCP Rule 55(c) 403
 ARCP Rule 55(3) 166
 ARCP Rule 56 135, 354, 356
 ARCP Rule 56(c) 270, 356
 ARCP Rule 59 455, 458, 459,
 590, 592
 ARCP Rule 59(a) 458, 459, 466, 592
 ARCP Rule 59(a)(1) 459
 ARCP Rule 59(a)(1)-(2) 459
 ARCP Rule 59(a)(2) 459
 ARCP Rule 59(b) 590, 592
 ARCP Rule 60 485, 486
 ARCP Rule 60(c)(4) 485, 486

Arkansas Rules of Criminal Procedure:

A.R. Cr.P. Rule 2.1 430
 A.R. Cr.P. Rules 2.2 — 3.5 . . . 425
 A.R. Cr.P. Rule 2.3 . . . 422, 423, 428,
 429, 430, 431, 433, 434, 435,
 436, 437, 438, 441, 442
 A.R. Cr.P. Rule 4.1(d) 440, 441
 A.R. Cr.P. Rule 5(a) 364
 A.R. Cr.P. Rule 12.1 81
 A.R. Cr.P. Rule 12.1(a) 81
 A.R. Cr.P. Rule 12.1(d) 75, 81
 A.R. Cr.P. Rule 14.1 540, 541,
 547, 548
 A.R. Cr.P. Rule 14.1(a) 540, 547
 A.R. Cr.P. Rule 14.1(a)(i) 547
 A.R. Cr.P. Rule 17.5(b) 552
 A.R. Cr.P. Rule 27.3 574
 A.R. Cr.P. Rule 28 606, 621,
 628, 629, 630
 A.R. Cr.P. Rule 28.1 487, 488,
 489, 603, 605, 620, 622, 631, 632,
 633, 634, 639, 640
 A.R. Cr.P. Rule 28.1(a) 639
 A.R. Cr.P. Rule 28.1(b) 639
 A.R. Cr.P. Rule 28.1(c) 639
 A.R. Cr.P. Rule 28.2 603, 605
 A.R. Cr.P. Rule 28.2(a) 621
 A.R. Cr.P. Rule 28.3 605, 606,
 620, 622, 628, 639
 A.R. Cr.P. Rule 28.3(a) 627

A.R.Cr.P. Rule 28.3(b)	639, 640	A.R.Cr.P. Rule 37.5(c)(2)	644
A.R.Cr.P. Rule 28.3(b)(i)	639, 640	A.R.Cr.P. Rule 37.5(c)(3)	644
A.R.Cr.P. Rule 28.3(b)(1)	639, 640	A.R.Cr.P. Rule 37.5(c)(4)	643, 644, 645
A.R.Cr.P. Rule 28.3(b)(2)	639	A.R.Cr.P. Rule 37.5(c)(5)	644
A.R.Cr.P. Rule 28.3(b)(3)	639, 640	A.R.Cr.P. Rule 37.5(c)(6)	645
A.R.Cr.P. Rule 28.3(c)	606, 622, 624, 625, 626, 627	A.R.Cr.P. Rule 37.5(d)	645
A.R.Cr.P. Rule 28.3(e)	625	A.R.Cr.P. Rule 37.5(e)	645, 647
A.R.Cr.P. Rule 28.3(i)	603, 604, 605, 606, 620, 622, 623	A.R.Cr.P. Rule 37.5(f)	645
A.R.Cr.P. Rule 33.1	38, 379, 385, 554, 558, 618	A.R.Cr.P. Rule 37.5(g)	645
A.R.Cr.P. Rule 36.4	494, 568	A.R.Cr.P. Rule 37.5(g)(1)	646
A.R.Cr.P. Rule 36.10	222, 585	A.R.Cr.P. Rule 37.5(g)(2)	646
A.R.Cr.P. Rule 37	172, 319, 363, 364, 365, 469, 470, 471, 472, 495, 654, 665	A.R.Cr.P. Rule 37.5(g)(2)(i)	646
A.R.Cr.P. Rule 37.1	642	A.R.Cr.P. Rule 37.5(h)	646
A.R.Cr.P. Rule 37.2	642	A.R.Cr.P. Rule 37.5(i)	646
A.R.Cr.P. Rule 37.2(c)	647	A.R.Cr.P. Rule 37.5(j)	646
A.R.Cr.P. Rule 37.3	469, 471, 642	A.R.Cr.P. Rule 37.5(k)	641, 647
A.R.Cr.P. Rule 37.3(c)	471		
A.R.Cr.P. Rule 37.4	642	Arkansas Rules of Evidence:	
A.R.Cr.P. Rule 37.5	641, 642, 647	A.R.E. Rule 403	66
A.R.Cr.P. Rule 37.5(a)	642	A.R.E. Rule 404(a)	483
A.R.Cr.P. Rule 37.5(b)	642, 644, 645, 647	A.R.E. Rule 408	288, 289 301, 302
A.R.Cr.P. Rule 37.5(b)(1)	642, 647	A.R.E. Rule 509	551
A.R.Cr.P. Rule 37.5(b)(2)	642, 645	A.R.E. Rule 613	556, 562, 564
A.R.Cr.P. Rule 37.5(b)(3)	643	A.R.E. Rule 613(b)	557, 563, 564
A.R.Cr.P. Rule 37.5(c)	643	A.R.E. Rule 703	521
A.R.Cr.P. Rule 37.5(c)(1)	643, 644, 645	A.R.E. Rule 801(d)(2)	563
A.R.Cr.P. Rule 37.5(c)(1)(A)	643, 644	A.R.E. Rule 801 [d](2)(iii),	18
A.R.Cr.P. Rule 37.5(c)(1)(A)(i)	643	A.R.E. Rule 801 [d](2)(iv),	18
A.R.Cr.P. Rule 37.5(c)(1)(A)(ii)	643	A.R.E. Rule 801 [d](2)(v)	18
A.R.Cr.P. Rule 37.5(c)(1)(B)	643, 644	A.R.E. Rule 801(d)(2)(v)	527, 536
A.R.Cr.P. Rule 37.5(c)(1)(B)(i)	643	A.R.E. Rule 803(8)	520
A.R.Cr.P. Rule 37.5(c)(1)(B)(ii)	644	A.R.E. Rule 803(8)(i)	520
A.R.Cr.P. Rule 37.5(c)(1)(C)	644	A.R.E. Rule 803(8)(ii)	520
A.R.Cr.P. Rule 37.5(c)(1)(D)	644	A.R.E. Rule 803(8)(iii)	520
		A.R.E. Rule 803(8)(iv)	520
		A.R.E. Rule 803(8)(v)	521
		A.R.E. Rule 803(24)	10, 18, 19
		A.R.E. Rule 806	9, 18
		Federal Rules of Civil Procedure:	
		F.R.C.P. 11(d)	41, 42
		F.R.C.P. 14	218

Rules of the Arkansas Supreme Court
and Court of Appeals:

Ark. Sup. Ct. R. 1-1.....	651	Ark. Sup. Ct. R. 2-3.....	651
Ark. Sup. Ct. R. 1-2	36, 656, 657	Ark. Sup. Ct. R. 2-3(a).....	651
Ark. Sup. Ct. R. 1-2(a).....	647,	Ark. Sup. Ct. R. 2-3(g).....	326
	657, 659, 664, 665	Ark. Sup. Ct. R. 2-4	656, 660
Ark. Sup. Ct. R. 1-2(a)(1)....	657	Ark. Sup. Ct. R. 2-4(a).....	660
Ark. Sup. Ct. R. 1-2(a)(2)....	597,	Ark. Sup. Ct. R. 2-4(b).....	661
	610, 657	Ark. Sup. Ct. R. 2-4(c).....	661
Ark. Sup. Ct. R. 1-2(a)(3)....	657	Ark. Sup. Ct. R. 2-4(c)(i)....	661
Ark. Sup. Ct. R. 1-2(a)(4)....	657	Ark. Sup. Ct. R. 2-4(c)(ii)....	661
Ark. Sup. Ct. R. 1-2(a)(5)....	657	Ark. Sup. Ct. R. 2-4(c)(iii)....	661
Ark. Sup. Ct. R. 1-2(a)(6) ..	210, 657	Ark. Sup. Ct. R. 2-4(d).....	661
Ark. Sup. Ct. R. 1-2(a)(7)....	657	Ark. Sup. Ct. R. 2-4(e).....	661
Ark. Sup. Ct. R. 1-2(a)(8)....	657	Ark. Sup. Ct. R. 2-4(f).....	661
Ark. Sup. Ct. R. 1-2(a)(10)...	5	Ark. Sup. Ct. R. 4-1.....	662
Ark. Sup. Ct. R. 1-2(a)(11) 128,	328	Ark. Sup. Ct. R. 4-1(a).....	658
Ark. Sup. Ct. R. 1-2(a)(15) 163,	410	Ark. Sup. Ct. R. 4-1(b).....	664
Ark. Sup. Ct. R. 1-2(a)(17)(vi) 246,		Ark. Sup. Ct. R. 4-2.....	662
	333, 604	Ark. Sup. Ct. R. 4-2(a) 656,	662
Ark. Sup. Ct. R. 1-2(b).....	657,	Ark. Sup. Ct. R. 4-2(a)(1)....	662
	659, 660, 661	Ark. Sup. Ct. R. 4-2(a)(2)....	658,
Ark. Sup. Ct. R. 1-2(b)(1)....	657		662
Ark. Sup. Ct. R. 1-2(b)(2) ..	657, 659	Ark. Sup. Ct. R. 4-2(a)(2)-(7) ..	662
Ark. Sup. Ct. R. 1-2(b)(3) ..	657, 659	Ark. Sup. Ct. R. 4-2(a)(3)....	662
Ark. Sup. Ct. R. 1-2(b)(4)....	657	Ark. Sup. Ct. R. 4-2(a)(4)....	662
Ark. Sup. Ct. R. 1-2(b)(5)....	658	Ark. Sup. Ct. R. 4-2(a)(5)....	662
Ark. Sup. Ct. R. 1-2(b)(6)....	658	Ark. Sup. Ct. R. 4-2(a)(5)(A) ..	663
Ark. Sup. Ct. R. 1-2(c).....	658,	Ark. Sup. Ct. R. 4-2(a)(5)(B) ..	663
	659, 662, 667	Ark. Sup. Ct. R. 4-2(a)(5)(C) ..	663
Ark. Sup. Ct. R. 1-2(c)(1)....	658	Ark. Sup. Ct. R. 4-2(a)(5)(D) ..	663
Ark. Sup. Ct. R. 1-2(c)(1)(A) ..	658	Ark. Sup. Ct. R. 4-2(a)(6) ...	38, 42,
Ark. Sup. Ct. R. 1-2(c)(1)(B) ..	658		44, 45, 57, 237, 332,
Ark. Sup. Ct. R. 1-2(c)(1)(B)(i) 658			333, 335, 663
Ark. Sup. Ct. R. 1-2(c)(1)(B)(ii) 658		Ark. Sup. Ct. R. 4-2(a)(7)....	663
Ark. Sup. Ct. R. 1-2(d).....	659	Ark. Sup. Ct. R. 4-2(a)(8)....	664
Ark. Sup. Ct. R. 1-2(d)(1)....	659	Ark. Sup. Ct. R. 4-2(b).....	237
Ark. Sup. Ct. R. 1-2(d)(2)....	659	Ark. Sup. Ct. R. 4-2(b)(2)....	38
Ark. Sup. Ct. R. 1-2(e).....	263,	Ark. Sup. Ct. R. 4-3.....	664
	348, 659, 660	Ark. Sup. Ct. R. 4-3(h).....	30, 73,
Ark. Sup. Ct. R. 1-2(e)(i)....	660		401, 484, 525, 554, 565, 589,
Ark. Sup. Ct. R. 1-2(e)(ii)....	660		594, 596, 602, 618
Ark. Sup. Ct. R. 1-2(e)(iii)....	660	Ark. Sup. Ct. R. 4-3(j)(1).....	60
Ark. Sup. Ct. R. 1-2(f).....	230, 660	Ark. Sup. Ct. R. 4-4.....	651,
Ark. Sup. Ct. R. 1-2(g).....	660		655, 664
		Ark. Sup. Ct. R. 4-4(e).....	651
		Ark. Sup. Ct. R. 5-1.....	651,
			652, 661

Ark. Sup. Ct. R. 5-1(a)	652	Ark. Sup. Ct. R. 6-1	654
Ark. Sup. Ct. R. 5-1(a)(1)	652	Ark. Sup. Ct. R. 6-1(b)	651, 654
Ark. Sup. Ct. R. 5-1(a)(2)	652	Ark. Sup. Ct. R. 6-5	651, 654
Ark. Sup. Ct. R. 5-1(a)(3)	652	Ark. Sup. Ct. R. 6-5(a)	651, 654
Ark. Sup. Ct. R. 5-1(b)	652	Ark. Sup. Ct. R. 6-5(b)	654
Ark. Sup. Ct. R. 5-1(c)	653	Ark. Sup. Ct. R. 6-5(c)	655
Ark. Sup. Ct. R. 5-1(d)	653	Ark. Sup. Ct. R. 6-5(d)	655
Ark. Sup. Ct. R. 5-1(e)	653		
Ark. Sup. Ct. R. 5-1(f)	653	Arkansas Statutes Annotated:	
Ark. Sup. Ct. R. 5-1(g)	653	48-309	148
Ark. Sup. Ct. R. 5-1(h)	653	48-901	148
Ark. Sup. Ct. R. 5-1(i)	653	49-8-901	148
Ark. Sup. Ct. R. 5-1(j)	653	48-901	149
Ark. Sup. Ct. R. 5-3	654	48-903	161
Ark. Sup. Ct. R. 5-3(b)	651, 654		

ARKANSAS
APPELLATE
REPORTS

Volume 58

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
June 4, 1997 — September 24, 1997
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

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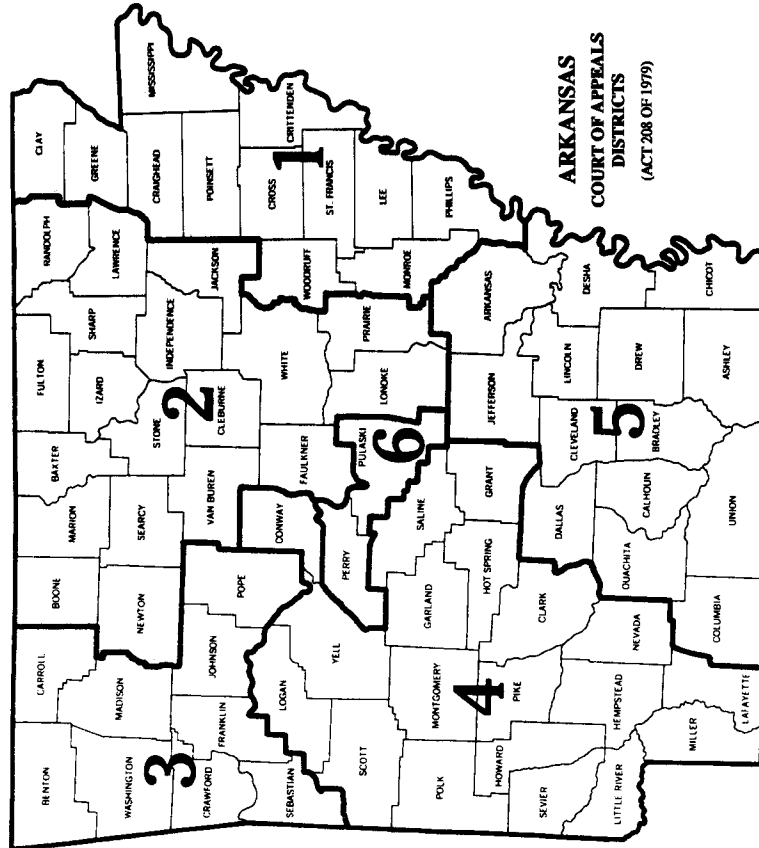


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CONTENTS

	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	x
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xii
TABLE OF OPINIONS NOT REPORTED	xiv
TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION	xxv
OPINIONS REPORTED	1
INDEX	
Alphabetical Headnote Index	345
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	357



JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(June 4, 1997 — September 24, 1997, inclusive)

JUDGES

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

OFFICERS

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WILLIAM B. JONES, JR.	Reporter of Decisions

- ¹ District 4.
- ² District 1.
- ³ District 2.
- ⁴ District 3.
- ⁵ District 5.
- ⁶ District 6.
- ⁷ Position 7.
- ⁸ Position 8.
- ⁹ Position 9.
- ¹⁰ Position 10.
- ¹¹ Position 11.
- ¹² Position 12.

TABLE OF CASES REPORTED

A

Abraham (Jones, Julia <i>v.</i>)	17
Arkansas Dep't of Human Servs. (Gregg <i>v.</i>)	337
Arkansas Dep't of Human Servs. (M.T. <i>v.</i>)	302
Arkansas Public Serv. Comm'n (Southwestern Bell Tel. Co. <i>v.</i>)	145

B

Baldwin & Shell Constr. (Tillman <i>v.</i>)	177
Baldwin Piano & Organ (Kildow <i>v.</i>)	194
Blankenship <i>v.</i> Office of Child Support Enforcem't	260
Branch <i>v.</i> State	241
Brimmage (Morrilton Manor <i>v.</i>)	252

C

Calhoun (Fulkerson <i>v.</i>)	63
Cannon <i>v.</i> State	182
Clark <i>v.</i> Director	1
Cox-Hilstrom <i>v.</i> State	109

D

Dickens (Georgia-Pac. Corp. <i>v.</i>)	266
Director (Clark <i>v.</i>)	1
Director (Garrett <i>v.</i>)	7
Director (Rollins <i>v.</i>)	58

E

Ellison (St. Edward Mercy Med. Ctr. <i>v.</i>)	100
---	-----

F

Fielder (McKimmey <i>v.</i>)	317
Frette <i>v.</i> State	81
Fulkerson <i>v.</i> Calhoun	63

G

Garrett <i>v.</i> Director	7
Georgia-Pac. Corp. <i>v.</i> Dickens	266
Golden <i>v.</i> Westark Community College	209
Gray (Stepp <i>v.</i>)	229
Gregg <i>v.</i> Arkansas Dep't of Human Servs.	337

H

Hot Springs Village Golf Sch. (Lee <i>v.</i>)	293
--	-----

J

Jones, Julia <i>v.</i> Abraham	17
Jones, Kendra <i>v.</i> Little Rock Family Planning Servs., P.A.	250

K

Kenyon <i>v.</i> State	24
Kildow <i>v.</i> Baldwin Piano & Organ	194
King <i>v.</i> State	298

L

Lay <i>v.</i> United Parcel Serv.	35
Lee <i>v.</i> Hot Springs Village Golf Sch.	293
Liberty Mut. Ins. Co. <i>v.</i> Thomas	289
Lindsey (Min-Ark Pallet Co. <i>v.</i>)	309
Little Rock Family Planning Servs., P.A. (Jones, Kendra <i>v.</i>)	250

M

M.T. <i>v.</i> Arkansas Dep't of Human Servs.	302
McGuire <i>v.</i> Smith	68

McKimmey <i>v.</i> Fielder	317
Meadors (<i>Meadors v.</i>).....	96
Meadors <i>v.</i> Meadors	96
Mearns (<i>Mearns v.</i>).....	42
Mearns <i>v.</i> Mearns	42
Meyer <i>v.</i> Riverdale Harbor Mun. Prop. Owners Imp. Dist. No. 1	91
Millican (<i>Stephens Truck Lines v.</i>)	275
Min-Ark Pallet Co. <i>v.</i> Lindsey.....	309
Moore <i>v.</i> State	120
Morgan (<i>Strong v.</i>)	272
Morrilton Manor <i>v.</i> Brimmage	252
O	
Office of Child Support Enforcem't (<i>Blankenship v.</i>)	260
P	
Priest <i>v.</i> United Parcel Serv.....	282
R	
Rector (<i>Rector v.</i>)	132
Rector <i>v.</i> Rector.....	132
Reynolds Metals Co. (<i>Wirth v.</i>)	161
Riverdale Harbor Mun. Prop. Owners Imp. Dist. No. 1 (<i>Meyer v.</i>).....	91
Roberson <i>v.</i> Waste Managem't	11
Rollins <i>v.</i> Director	58
S	
St. Edward Mercy Med. Ctr. <i>v.</i> Ellison	100
Smith (<i>McGuire v.</i>).....	68
Southwestern Bell Tel. Co. <i>v.</i> Arkansas Public Serv. Comm'n	145
Sparks Reg'l Med. Ctr. (<i>Wentworth v.</i>)	242
State (<i>Branch v.</i>)	241
State (<i>Cannon v.</i>)	182
State (<i>Cox-Hilstrom v.</i>)	109

State (Frette <i>v.</i>).....	81
State (Kenyon <i>v.</i>).....	24
State (King <i>v.</i>)	298
State (Moore <i>v.</i>).....	120
State (Travis <i>v.</i>)	320
Stephens Truck Lines <i>v.</i> Millican	275
Stepp <i>v.</i> Gray	229
Strong <i>v.</i> Morgan	272

T

Thomas (Liberty Mut. Ins. Co. <i>v.</i>).....	289
Tillman <i>v.</i> Baldwin & Shell Constr.....	177
Travis <i>v.</i> State	320

U

United Parcel Serv. (Lay <i>v.</i>)	35
United Parcel Serv. (Priest <i>v.</i>)	282

W

Waste Managem't (Roberson <i>v.</i>).....	11
Wentworth <i>v.</i> Sparks Reg'l Med. Ctr.....	242
Westark Community College (Golden <i>v.</i>).....	209
Wirth <i>v.</i> Reynolds Metals Co.....	161

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

JOHN B. ROBBINS, Chief Judge:

Strong <i>v.</i> Morgan	272
-------------------------------	-----

JOHN MAUZY PITTMAN, Judge:

Cox-Hilstrom <i>v.</i> State	109
Frette <i>v.</i> State	81
Stephens Truck Lines <i>v.</i> Millican	275
Tillman <i>v.</i> Baldwin & Shell Constr.	177

D. FRANKLIN AREY, III, Judge:

Meyer <i>v.</i> Riverdale Harbor Mun. Prop. Owners Imp. Dist.	91
Priest <i>v.</i> United Parcel Serv.	282

JOHN E. JENNINGS, Judge:

Liberty Mut. Ins. Co. <i>v.</i> Thomas	289
Moore <i>v.</i> State	120
Wentworth <i>v.</i> Sparks Reg'l Med. Ctr.	242

SAM BIRD, Judge:

Morrilton Manor <i>v.</i> Brimmage	252
Rector <i>v.</i> Rector	132

JUDITH ROGERS, Judge:

Lee <i>v.</i> Hot Springs Village Golf Sch.	293
McKimmey <i>v.</i> Fielder	317
Meadors <i>v.</i> Meadors	96
Southwestern Bell Tel. Co. <i>v.</i> Arkansas Public Serv. Comm'n	145
Wirth <i>v.</i> Reynolds Metals Co.	161

JOHN F. STROUD, JR., Judge:

Clark <i>v.</i> Director	1
Garrett <i>v.</i> Director	7
King <i>v.</i> State	298
M.T. <i>v.</i> Arkansas Dep't of Human Servs.	302
Min-Ark Pallet Co. <i>v.</i> Lindsey	309
Roberson <i>v.</i> Waste Managem't	132

OLLY NEAL, Judge:

Rollins <i>v.</i> Director	58
----------------------------------	----

WENDELL L. GRIFFEN, Judge:

Travis <i>v.</i> State	320
------------------------------	-----

TERRY CRABTREE, Judge:

Blankenship <i>v.</i> Office of Child Support Enforcement	260
Cannon <i>v.</i> State	182
Fulkerson <i>v.</i> Calhoun	63
Jones, Julia <i>v.</i> Abraham	17
Kenyon <i>v.</i> State	24
Kildow <i>v.</i> Baldwin Piano & Organ	194
McGuire <i>v.</i> Smith	68

MARGARET MEADS, Judge:

Gregg <i>v.</i> Arkansas Dep't of Human Servs.	337
---	-----

ANDREE LAYTON ROAF, Judge:

Georgia-Pac. Corp. <i>v.</i> Dickens	266
Golden <i>v.</i> Westark Community College	209
Lay <i>v.</i> United Parcel Service	35
Mearns <i>v.</i> Mearns	42
St. Edward Mercy Med. Ctr. <i>v.</i> Ellison	100
Stepp <i>v.</i> Gray	229

PER CURIAM:

Branch <i>v.</i> State	241
Jones <i>v.</i> Little Rock Family Planning Servs., P.A.	250

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

- Akin *v.* State, CA CR 96-1497 (Rogers, J.), affirmed June 25, 1997.
- Alale *v.* Alale, CA 96-1364 (Robbins, C.J.), reversed and remanded June 4, 1997.
- Allen *v.* State, CA CR 96-1215 (Stroud, J.), affirmed June 4, 1997.
- Arkansas Pizza Group, Inc. *v.* Wilkins, CA 96-1257 (Griffen, J.), affirmed September 24, 1997.
- Arnold *v.* State, CA CR 96-885 (Per Curiam), rehearing denied June 4, 1997.
- Asher Restaurant Equip. Sales & Serv., Inc. *v.* Rector, CA 96-1189 (Per Curiam), dismissed June 25, 1997.
- Atkins *v.* State, CA CR 96-1352 (Roaf, J.), affirmed August 27, 1997.
- Aycock *v.* Aycock, CA 96-1395 (Neal, J.), affirmed September 3, 1997.
- Banks *v.* Bennett Truck Lines, CA 96-1394 (Crabtree, J.), affirmed September 10, 1997.
- Bannister *v.* State, CA CR 96-1082 (Griffen, J.), affirmed June 11, 1997.
- Bates *v.* State, CA CR 96-1285 (Robbins, C.J.), affirmed September 24, 1997.
- Bhatti *v.* McCabe, CA 96-964 (Roaf, J.), affirmed July 2, 1997; rehearing denied August 20, 1997.
- Blankenship *v.* National Home Ctrs., Inc., CA 96-943 (Jennings, J.), affirmed July 2, 1997.
- Boley *v.* State, CA CR 96-377 (Jennings, J.), affirmed June 25, 1997.
- Branch *v.* State, CA CR 96-737 (Robbins, C.J.), reversed and remanded June 25, 1997.
- Brice *v.* State, CA CR 96-1299 (Roaf, J.), affirmed June 25, 1997.
- Brown *v.* Prince Gardner, Inc., CA 96-1250 (Bird, J.), affirmed June 18, 1997.
- Bull's Office Sys. *v.* Bull, CA 96-1199 (Pittman, J.), reversed and remanded June 4, 1997.

- Bullard *v.* State, CA CR 96-1381 (Jennings, J.), affirmed September 3, 1997.
- Caldwell *v.* Department of Human Servs., CA 96-801 (Rogers, J.), affirmed June 11, 1997.
- Calloway *v.* Meyer's Bakeries, Inc., CA 96-1092 (Rogers, J.), affirmed June 4, 1997.
- Canada *v.* Cliff Truck Line, Inc., CA 97-158 (Meads, J.), reversed and remanded September 17, 1997.
- Carson Fin. Group, Inc. *v.* Potty Pals, Inc., CA 96-1157 (Jennings, J.), affirmed July 2, 1997.
- Cavanaugh Motors, Inc. *v.* Thompson, CA 96-1547 (Stroud, J.), affirmed September 3, 1997.
- Chambers *v.* State, CA 96-921 (Stroud, J.), reversed and dismissed June 18, 1997.
- Cheek *v.* Glover, CA 96-1342 (Robbins, C.J.), affirmed September 24, 1997.
- Childers *v.* Arkansas Valley Technical Inst., CA 96-599 (Bird, J.), affirmed June 4, 1997.
- Childers *v.* State, CA CR 97-34 (Crabtree, J.), affirmed September 3, 1997.
- Chipolla *v.* State, CA CR 96-1102 (Pittman, J.), affirmed June 4, 1997.
- City of Eureka Springs *v.* Overcash, CA 96-1437 (Robbins, C.J.), reversed August 27, 1997.
- City of Russellville *v.* Hodges, CA 97-152 (Per Curiam), Appellant's Motion to Waive Supreme Court Rule 4-2(a)(6) granted June 11, 1997.
- Clark *v.* Columbia Sewing Co., CA 96-1345 (Robbins, C.J.), affirmed June 4, 1997.
- Comstock *v.* Town & Country Discount Foods, CA 96-1506 (Stroud, J.), affirmed September 24, 1997.
- Cooper Tire & Rubber Co. *v.* Sanders, CA 96-1000 (Pittman, J.), reversed and remanded June 11, 1997.
- Cox *v.* State, CA CR 96-1163 (Griffen, J.), affirmed June 18, 1997.
- Cox *v.* Thines, CA 96-1247 (Meads, J.), affirmed August 27, 1997.
- Creative Contact Ink, Inc. *v.* Witt, CA 96-1393 (Jennings, J.), affirmed September 10, 1997.

-
- Curtwright v. Crabtree*, CA 96-1456 (Robbins, C.J.), dismissed September 10, 1997.
- Darden v. Director*, E 96-127 (Meads, J.), reversed and remanded August 27, 1997.
- Davis v. State*, CA CR 96-1337 (Roaf, J.), affirmed June 18, 1997.
- Dawson v. Estate of Chapman*, CA 96-901 (Stroud, J.), affirmed June 18, 1997.
- Dean v. Gause*, CA 96-990 (Arey, J.), affirmed September 24, 1997.
- Deere v. State*, CA CR 96-1188 (Pittman, J.), affirmed June 4, 1997.
- Dollarhide v. Conway Reg'l Med. Ctr.*, CA 96-1113 (Meads, J.), affirmed June 11, 1997.
- Dougan v. State*, CA CR 96-1422 (Arey, J.), affirmed September 17, 1997.
- Dunahue v. State*, CA CR 96-386 (Rogers, J.), affirmed June 11, 1997.
- Edwards v. National Union Fire Ins. Co.*, CA 96-1475 (Jennings, J.), appeal dismissed September 24, 1997.
- Fletcher v. State*, CA CR 97-44 (Robbins, C.J.), affirmed July 2, 1997.
- Flinn v. State*, CA CR 96-1300 (Roaf, J.), affirmed June 18, 1997.
- Gardner v. State*, CA CR 96-1253 (Roaf, J.), affirmed June 18, 1997.
- Garner v. State*, CA CR 96-1452 (Arey, J.), affirmed August 27, 1997.
- Gilbert, Ernest v. State*, CA CR 96-1062 (Arey, J.), affirmed September 24, 1997.
- Gilbert, Mary v. State*, CA CR 96-1090 (Jennings, J.), affirmed September 24, 1997.
- Goss v. State*, CA CR 96-1073 (Stroud, J.), affirmed June 25, 1997; rehearing denied August 20, 1997.
- Gray v. Director*, E 95-103 (Per Curiam), rehearing denied June 4, 1997.
- GTE Arkansas Inc. v. Arkansas Pub. Serv. Comm'n*, CA 96-157 (Per Curiam), Order for Supplemental Briefs issued September 10, 1997.

- Haden *v.* Sappington, CA 96-998 (Bird, J.), affirmed June 18, 1997.
- Hale, Kevin Wayne *v.* State, CA CR 97-192 (Per Curiam), Appellee's Motion to Dismiss Appeal denied September 3, 1997.
- Hale, Sherry Marie *v.* State, CA CR 97-191 (Per Curiam), Appellee's Motion to Dismiss Appeal denied September 3, 1997.
- Hall *v.* State, CA CR 96-1529 (Pittman, J.), affirmed September 10, 1997.
- Hancock *v.* State, CA CR 96-1270 (Griffen, J.), affirmed June 18, 1997.
- Handy *v.* State, CA CR 97-73 (Pittman, J.), affirmed July 2, 1997.
- Harold Ives Trucking Co. *v.* Freeman, CA 97-37 (Meads, J.), affirmed September 10, 1997; rehearing denied October 8, 1997.
- Harper *v.* Hi-Way Express, CA 96-1459 (Robbins, C.J.), affirmed September 3, 1997.
- Harp's Food Stores, Inc. *v.* Darnell, CA 97-118 (Bird, J.), affirmed September 17, 1997; rehearing denied October 15, 1997.
- Heinmiller *v.* Rogers Grocery Store, CA 96-1391 (Arey, J.), affirmed as modified June 11, 1997.
- Helms *v.* Helms, CA 96-1179 (Rogers, J.), affirmed in part; reversed and remanded in part September 3, 1997.
- Helton *v.* Douglas & Lomason, CA 96-1485 (Rogers, J.), affirmed September 10, 1997.
- Hency *v.* Murphy, CA 96-1162 (Neal, J.), affirmed June 4, 1997.
- Hendrix *v.* State, CA CR 96-1318 (Meads, J.), affirmed August 27, 1997.
- Henry *v.* Shelter Life Ins. Co., CA 96-1526 (Griffen, J.), affirmed in part; reversed in part September 24, 1997.
- Hester *v.* State, CA CR 96-1309 (Stroud, J.), affirmed June 11, 1997.
- Hill *v.* Hill, CA 96-1260 (Meads, J.), affirmed June 4, 1997.
- Hill *v.* State, CA CR 96-1413 (Jennings, J.), affirmed June 18, 1997.
- Hilton *v.* Director, E 96-65 (Roaf, J.), affirmed September 24, 1997.

- Hooker *v.* Union Planters Bank, CA 96-1320 (Neal, J.), affirmed September 17, 1997.
- Horton *v.* State, CA CR 96-1473 (Bird, J.), affirmed September 3, 1997.
- House *v.* City of West Memphis, CA 96-1278 (Jennings, J.), affirmed June 25, 1997.
- In the Matter of Contempt of Counsel (Per Curiam), George Stone Ordered to Appear and Show Cause July 2, 1997.
- Ivy *v.* Kimbrough, CA 97-441 (Per Curiam), Appellant's Pro Se Motion for Clarification of Lower Court Order granted; Appellant's Pro Se Motion to Transmit Sealed Documents granted; Appellant's Pro Se Motion to Stay Brief Time granted September 3, 1997.
- Jackson *v.* American General Life & Accident Ins. Co., CA 96-1193 (Neal, J.), reversed and remanded June 11, 1997.
- Jackson, Deloris *v.* State, CA CR 96-1015 (Roaf, J.), affirmed September 3, 1997.
- Jackson, Detra *v.* State, CA CR 95-1138 (Roaf, J.), affirmed September 17, 1997.
- James *v.* Douglass, CA 96-1246 (Pittman, J.), affirmed June 18, 1997.
- Johnson *v.* Flower Dome, Inc., CA 96-1219 (Pittman, J.), affirmed September 17, 1997.
- Johnson, Felecia Ann *v.* State, CA CR 97-151 (Stroud, J.), affirmed July 2, 1997.
- Johnson, Michael *v.* State, CA CR 96-676 (Per Curiam), rehearing denied June 18, 1997.
- Kaplan *v.* Rodgers, CA 96-1291 (Crabtree, J.), affirmed June 18, 1997.
- Keisling *v.* Keisling, CA 96-1065 (Roaf, J.), affirmed September 17, 1997.
- Kent *v.* Fre-Mac Indus., CA 96-1279 (Pittman, J.), reversed and remanded August 27, 1997.
- Kingsby *v.* State, CA CR 96-1418 (Arey, J.), affirmed June 25, 1997.
- Krueger *v.* American Greetings, CA 96-1457 (Rogers, J.) affirmed August 27, 1997.
- Lachut *v.* State, CA CR 96-1334 (Bird, J.), affirmed September 24, 1997.

- Lamb *v.* State, CA CR 96-1493 (Stroud, J.), affirmed September 3, 1997.
- Lambert *v.* State, CA CR 96-1357 (Arey, J.), affirmed June 4, 1997.
- Lea *v.* State, CA CR 96-1348 (Pittman, J.), affirmed June 18, 1997.
- Lewis *v.* Burdine Constr., CA 97-121 (Meads, J.), affirmed September 24, 1997.
- Lewis *v.* Lewis, CA 96-329 (Bird, J.), affirmed on direct appeal and on cross-appeal June 4, 1997.
- Lewis *v.* United Servs. Auto. Ass'n, CA 96-383 (Arey, J.), affirmed June 4, 1997; rehearing denied July 2, 1997; Pittman, J., not participating.
- Long Brothers Oil Co. *v.* Jerry, CA 96-1252 (Crabtree, J.), affirmed June 11, 1997.
- Love *v.* State, CA CR 96-1371 (Arey, J.), affirmed June 18, 1997.
- Luster *v.* State, CA CR 96-1541 (Arey, J.), affirmed September 10, 1997.
- M.L. *v.* State, CA 96-869 (Bird, J.), affirmed June 4, 1997.
- Malone *v.* Texarkana Pub. Sch., CA 96-1510 (Neal, J.), reversed and remanded August 27, 1997; rehearing denied September 24, 1997.
- Manley, Alvin *v.* State, CA CR 96-1091 (Pittman, J.), affirmed June 11, 1997.
- Manley, Merike *v.* State, CA CR 96-808 (Meads, J.), affirmed September 3, 1997.
- Martin *v.* City of Conway, CA 96-1175 (Bird, J.), affirmed June 11, 1997.
- Martin, James *v.* State, CA CR 96-1335 (Meads, J.), affirmed June 4, 1997.
- Martin, William Nathan *v.* State, CA CR 97-87 (Rogers, J.), affirmed September 17, 1997.
- Matlock *v.* State, CA CR 96-1454 (Rogers, J.), affirmed June 18, 1997.
- Maxey *v.* Dyer, CA 96-666 (Robbins, C.J.), affirmed August 27, 1997.
- McChristian *v.* State, CA CR 96-1336 (Arey, J.), affirmed June 11, 1997.

- McLaughlin *v.* State, CA CR 96-1552 (Robbins, C.J.), affirmed September 10, 1997.
- Miles *v.* Goines, CA 96-1128 (Neal, J.), affirmed August 27, 1997.
- Miles *v.* State, CA CR 97-96 (Crabtree, J.), affirmed September 17, 1997.
- Miller *v.* State, CA CR 96-1448 (Rogers, J.), affirmed September 3, 1997.
- Moore *v.* State, CA CR 96-1267 (Crabtree, J.), affirmed June 11, 1997.
- Moore *v.* Weaver, CA 96-1476 (Bird, J.), affirmed September 17, 1997.
- Motley *v.* State, CA CR 96-1520 (Roaf, J.), affirmed September 10, 1997.
- Mulvania *v.* Mires, CA 96-1109 (Jennings, J.), affirmed June 4, 1997.
- Neal *v.* State, CA CR 96-1447 (Robbins, C.J.), affirmed September 3, 1997.
- Nearns *v.* Quincy Soybean Co., CA 96-1445 (Jennings, J.), affirmed September 3, 1997; rehearing denied October 1, 1997.
- Noel *v.* State, CA CR 97-78 (Bird, J.), affirmed July 2, 1997.
- Northwest Med. Ctr. *v.* White, CA 97-10 (Neal, J.), affirmed September 10, 1997.
- Office of Child Support Enforcement *v.* Offutt, CA 96-1321 (Per Curiam), Appellee's Motion to File a Belated Brief granted September 17, 1997.
- Oliver *v.* St. Joseph's Regional Health Ctr., CA 96-1353 (Griffen, J.), reversed and remanded June 18, 1997.
- P.V. *v.* State, CA 96-1139 (Robbins, C.J.), reversed June 18, 1997.
- Parker *v.* State, CA CR 96-1296 (Meads, J.), affirmed June 11, 1997.
- Phillips *v.* Childers, CA 96-1427 (Griffen, J.), affirmed September 3, 1997.
- Plummer *v.* State, CA CR 96-1373 (Jennings, J.), affirmed June 25, 1997.
- Poulan/Weed Eater *v.* Davis, CA 96-1262 (Griffen, J.), reversed in part; affirmed in part July 2, 1997.

- Pounds *v.* State, CA CR 96-1436 (Pittman, J.), affirmed September 3, 1997.
- Price *v.* Covington Court, CA 96-1467 (Bird, J.), affirmed September 10, 1997.
- R.W. *v.* State, CA 96-1121 (Neal, J.), reversed and dismissed June 18, 1997.
- Rea *v.* State, CA CR 96-1241 (Meads, J.), affirmed June 18, 1997.
- Redding *v.* Ouachita County Hosp., CA 96-1331 (Pittman, J.), affirmed June 4, 1997.
- Ried *v.* Robinson Int'l Trucks, Inc., CA 97-4 (Stroud, J.), affirmed September 10, 1997.
- Roberts *v.* State, CA CR 96-989 (Neal, J.), affirmed June 11, 1997.
- Robertson *v.* Chris King Elec., CA 96-1440 (Bird, J.), affirmed August 27, 1997.
- Ronnie Dowdy Trucking Serv., Inc. *v.* Director, E 95-215 (Bird, J.), affirmed August 27, 1997.
- Russell *v.* State, CA CR 96-1304 (Pittman, J.), affirmed June 18, 1997.
- Salyards *v.* Gemini Mfg., Inc., CA 96-1243 (Robbins, C.J.), affirmed June 11, 1997.
- Sanders *v.* Sanders, CA 96-752 (Griffen, J.), affirmed July 2, 1997.
- Scroggins *v.* Hutchinson, CA 96-1444 (Robbins, C.J.), reversed and remanded September 10, 1997.
- Shepherd *v.* Stockton, CA 96-1332 (Stroud, J.), reversed and remanded June 18, 1997.
- Silvey *v.* Gillooley, CA 96-1509 (Griffen, J.), affirmed September 24, 1997.
- Sloan *v.* Tribble, CA 96-1266 (Meads, J.), affirmed September 10, 1997.
- Smith *v.* Lambert, CA 96-1483 (Roaf, J.), affirmed August 27, 1997.
- Smith, Marlon *v.* State, CA CR 96-1071 (Griffen, J.), affirmed on direct appeal; affirmed on cross-appeal July 2, 1997.
- Smith, Ronnie *v.* State, CA CR 96-895 (Griffen, J.), affirmed June 11, 1997.
- Southwestern Energy Co. *v.* Arkansas Power & Light Co., CA 96-1002 (Per Curiam), rehearing denied June 4, 1997.

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- Spence *v.* The Estate of Thomas, CA 96-719 (Pittman, J.), affirmed June 25, 1997.
- Spence *v.* Thomas, CA 96-831 (Stroud, J.), affirmed June 25, 1997.
- Springdale Mem'l Hosp. *v.* Gibson, CA 96-1035 (Neal, J.), affirmed June 18, 1997.
- Sprinkle *v.* Shelton, CA 96-1100 (Arey, J.), affirmed June 4, 1997.
- Standridge *v.* State, CA CR 96-124 (Griffen, J.), affirmed July 2, 1997.
- Stephenson *v.* State, CA 96-1428 (Robbins, C.J.), affirmed September 17, 1997.
- Stone *v.* State, CA CR 96-1214 (Arey, J.), affirmed September 3, 1997.
- Taco Bell *v.* Lawton, CA 96-1209 (Roaf, J.), affirmed on appeal and cross appeal June 18, 1997.
- Tatum *v.* Baird Mfg., Inc., CA 96-1532 (Stroud, J.), affirmed August 27, 1997.
- Tetra Technologies *v.* Sanders, CA 97-8 (Crabtree, J.), affirmed on appeal and cross-appeal September 24, 1997.
- Thomas *v.* Office of Child Support Enforcement, CA 96-500 (Per Curiam), rehearing denied June 4, 1997.
- Thompson *v.* Thompson, CA 96-1115 (Stroud, J.), affirmed August 27, 1997.
- Thornton *v.* Regis Corp., CA 97-92 (Crabtree, J.), reversed and remanded September 24, 1997.
- Threadgill *v.* State, CA 96-1398 (Rogers, J.), affirmed June 4, 1997.
- Thurmond *v.* State, CA CR 96-1368 (Robbins, C.J.), affirmed June 11, 1997.
- Tindall *v.* State, CA CR 96-1149 (Neal, J.), affirmed June 25, 1997.
- Torre *v.* State, CA CR 96-1226 (Crabtree, J.), affirmed June 18, 1997.
- Turpen *v.* State, CA CR 96-1183 (Crabtree, J.), affirmed August 27, 1997.
- Universal Life Ins. Co. *v.* Jones, CA 96-1221 (Crabtree, J.), affirmed August 27, 1997.
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- V.B. *v.* Arkansas Dep't of Human Servs., CA 97-577 (Per Curiam), Motion for Anonymity of Minor Children granted September 3, 1997.
- Vaughn *v.* Huey, CA 96-732 (Pittman, J.), affirmed June 11, 1997.
- Vongvone *v.* State, CA CR 96-1384 (Jennings, J.), affirmed June 11, 1997.
- W.L.S. *v.* State, CA 96-1474 (Neal, J.), reversed and dismissed September 3, 1997.
- Wal-Mart Stores, Inc. *v.* Bushur, CA 96-1383 (Roaf, J.), affirmed September 17, 1997.
- Walker *v.* State, CA CR 96-1515 (Griffen, J.), affirmed September 17, 1997.
- Wallace *v.* Southwestern Sales, CA 96-1010 (Per Curiam), rehearing denied June 4, 1997.
- Walls *v.* State, CA CR 96-1093 (Rogers, J.), affirmed June 18, 1997.
- Walton *v.* State, CA CR 97-89 (Neal, J.), affirmed September 17, 1997.
- Ward *v.* TCS, Inc., CA 97-243 (Roaf, J.), affirmed September 24, 1997.
- Warren *v.* Anderson, CA 96-1211 (Jennings, J.), affirmed June 18, 1997.
- Warren *v.* Tuminello, CA 96-587 (Jennings, J.), reversed and remanded July 2, 1997.
- Waters *v.* Kroger Co., CA 97-837 (Per Curiam), Motion for Rule On Clerk to Lodge Transcript remanded September 10, 1997.
- Watkins *v.* Watkins, CA 97-184 (Pittman, J.), appeal dismissed September 24, 1997; rehearing denied October 29, 1997.
- Watson *v.* State, CA CR 96-1224 (Crabtree, J.), affirmed June 25, 1997.
- Weatherly *v.* State, CA CR 96-1429 (Bird, J.), affirmed June 18, 1997.
- Wells *v.* State, CA CR 97-64 (Crabtree, J.), affirmed September 24, 1997.
- Wheeler *v.* Newton County Health Unit, CA 96-832 (Pittman, J.), affirmed June 18, 1997.
- White-Rodgers *v.* Buffalo, CA 96-1362 (Arey, J.), affirmed August 27, 1997.

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- Whitehead *v.* King, CA 96-570 (Jennings, J.), affirmed June 11, 1997.
- Wilburn *v.* State, CA CR 96-1311 (Meads, J.), affirmed June 25, 1997.
- Wilkerson *v.* Atkinson, CA 96-1159 (Griffen, J.), affirmed June 11, 1997.
- Williams, Floyd *v.* State, CA CR 96-906 (Bird, J.), affirmed, subject to acceptance of modification June 4, 1997.
- Williams, Harmon I. *v.* State, CA CR 96-1298 (Meads, J.), affirmed September 10, 1997.
- Wright *v.* Tyson Foods, Inc., CA 96-1203 (Neal, J.), affirmed September 10, 1997.
- Zaharopoulos *v.* Murrey, CA 96-612 (Pittman, J.), affirmed June 11, 1997.
- Zufari *v.* Brackman, CA 96-1212 (Bird, J.), affirmed June 11, 1997.

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

- Allen *v.* Director of Labor, E 96-104, September 17, 1997.
Alsip *v.* Director of Labor, E 96-165, September 24, 1997.
Arguelles *v.* Director of Labor, E 96-131, September 24, 1997.
Barnes *v.* Director of Labor, E 96-164, September 24, 1997.
Bertschy *v.* Director of Labor, E 96-166, June 25, 1997.
Blankenship *v.* Director of Labor, E 96-2, June 4, 1997.
Bowles *v.* Director of Labor, E 96-294, June 4, 1997.
Brown *v.* Director of Labor, E 96-134, September 3, 1997.
Burnside *v.* Director of Labor, E 96-167, September 24, 1997.
Byrd *v.* Director of Labor, E 96-106, September 17, 1997.
Cagle *v.* Director of Labor, E 96-51, August 27, 1997.
Camp *v.* Director of Labor, E 96-60, September 17, 1997.
Carter *v.* Director of Labor, E 96-143, June 25, 1997.
Chandler *v.* Director of Labor, E 96-297, June 4, 1997.
Chatman *v.* Director of Labor, E 96-129, September 3, 1997.
Cole *v.* Director of Labor, E 96-153, September 10, 1997.
Coleman *v.* Director of Labor, E 96-124, August 27, 1997.
Conrow *v.* Director of Labor, E 96-144, June 25, 1997.
Crain Automotive, Inc. *v.* Director of Labor, E 97-26, June 18,
1997.
Credit Bureau Data Services *v.* Director of Labor, E 96-49,
September 3, 1997.
Crump *v.* Director of Labor, E 96-126, September 24, 1997.
Crutchfield *v.* Director of Labor, E 96-135, September 3, 1997.
Davis, Charles E. *v.* Director of Labor, E 96-99, September 10,
1997.
Davis, Kelvin B. *v.* Director of Labor, E 96-119, August 27, 1997.
Doublin *v.* Director of Labor, E 97-30, June 18, 1997.
Dozier *v.* Director of Labor, E 96-94, September 10, 1997.
Dunnivant *v.* Director of Labor, E 96-109, June 4, 1997.
Edwards *v.* Director of Labor, E 96-181, September 24, 1997.
Ferren *v.* Director of Labor, E 96-149, September 10, 1997.
Garland *v.* Director of Labor, E 96-156, September 24, 1997.

Gatson *v.* Director of Labor, E 96-121, August 27, 1997.
Green *v.* Director of Labor, E 97-5, June 18, 1997.
Greer *v.* Director of Labor, E 97-21, June 18, 1997.
Griffin *v.* Director of Labor, E 96-117, August 27, 1997.
Halim *v.* Director of Labor, E 96-122, September 17, 1997.
Hammond *v.* Director of Labor, E 96-116, August 27, 1997.
Harber *v.* Director of Labor, E 96-133, September 17, 1997.
Harrington *v.* Director of Labor, E 96-139, September 24, 1997.
Havertys Furniture *v.* Director of Labor, E 96-159, September 10, 1997.
Hawkins *v.* Director of Labor, E 96-138, September 3, 1997.
Henson *v.* Director of Labor, E 96-50, June 25, 1997.
Hobbs *v.* Director of Labor, E 97-8, June 18, 1997.
Humphrey *v.* Director of Labor, E 96-101, September 17, 1997.
Jackson *v.* Director of Labor, E 96-295, June 4, 1997.
Joao *v.* Director of Labor, E 96-146, September 10, 1997.
Johnson, Masco *v.* Director of Labor, E 97-10, June 18, 1997.
Johnson, Thomas *v.* Director of Labor, E 97-6, June 18, 1997.
Jones *v.* Director of Labor, E 97-9, June 18, 1997.
Jordan *v.* Director of Labor, E 96-162, June 25, 1997.
Justice, Betty *v.* Director of Labor, E 97-1, June 4, 1997.
Justice, Donnie R. *v.* Director of Labor, E 97-3, June 18, 1997.
Kee *v.* Director of Labor, E 96-113, September 17, 1997.
Kesee *v.* Director of Labor, E 96-141, September 3, 1997.
King *v.* Director of Labor, E 97-2, June 18, 1997.
Kramer *v.* Director of Labor, E 96-157, June 25, 1997.
Kunkle *v.* Director of Labor, E 96-128, August 27, 1997.
Lambert *v.* Director of Labor, E 96-147, September 10, 1997.
Larue *v.* Director of Labor, E 96-54, August 27, 1997.
Marx *v.* Director of Labor, E 96-152, September 10, 1997.
Matthews *v.* Director of Labor, E 96-163, September 24, 1997.
McHughes *v.* Director of Labor, E 96-173, September 24, 1997.
McCurdy *v.* Director of Labor, E 96-108, September 17, 1997.
Mode *v.* Director of Labor, E 96-120, August 27, 1997.
Nuss *v.* Director of Labor, E 96-59, June 25, 1997.
Oster *v.* Director of Labor, E 97-27, June 18, 1997.
Plummer *v.* Director of Labor, E 96-299, June 4, 1997.
Professional Security, Inc. *v.* Director of Labor, E 96-161
September 10, 1997.

- Putman *v.* Director of Labor, E 96-57, June 25, 1997.
Ramsey *v.* Director of Labor, E 96-36, September 17, 1997.
Randall *v.* Director of Labor, E 96-48, June 4, 1997.
Reedy *v.* Director of Labor, E 96-64, June 4, 1997.
Riddle *v.* Director of Labor, E 96-61, June 25, 1997.
Robinson *v.* Director of Labor, E 96-150, September 24, 1997.
Roby *v.* Director of Labor, E 96-100, September 10, 1997.
Roper *v.* Director of Labor, E 96-97, September 10, 1997.
Russell, Marion D. *v.* Director of Labor, E 96-102, September 17, 1997.
Russell, William David *v.* Director of Labor, E 96-289, June 4, 1997.
Sanders *v.* Director of Labor, E 96-300, June 4, 1997.
Sees *v.* Director of Labor, E 96-160, June 25, 1997.
Sharpley *v.* Director of Labor, E 96-58, August 27, 1997.
Shumate *v.* Director of Labor, E 96-263, June 4, 1997.
Simmons *v.* Director of Labor, E 96-55, August 27, 1997.
Skipton *v.* Director of Labor, E 97-25, June 18, 1997.
Smith *v.* Director of Labor, E 96-130, September 3, 1997.
Stanley *v.* Director of Labor, E 96-103, September 17, 1997.
Taylor *v.* Director of Labor, E 96-52, June 4, 1997.
Thomas *v.* Director of Labor, E 96-154, June 25, 1997.
Wal-Mart Store #01-0241 *v.* Director of Labor, E 96-114, September 17, 1997.
Walker *v.* Director of Labor, E 96-56, September 17, 1997.
Walsh *v.* Director of Labor, E 96-140, September 24, 1997.
Whinnery *v.* Director of Labor, E 96-145, September 3, 1997.
Whitehead *v.* Director of Labor, E 96-155, September 10, 1997.
Williams, Keith *v.* Director of Labor, E 96-136, September 3, 1997.
Williams, Kentry *v.* Director of Labor, E 96-125, June 25, 1997.
Wilson *v.* Director of Labor, E 96-132, September 3, 1997.
Woodbury *v.* Director of Labor, E 96-137, September 3, 1997.

Alphabetical
Headnote
Index

HEADNOTE INDEX

ACTIONS:

Plaintiff asserts cause of action against another, right to dismiss action rests with plaintiff. *M.T. v. Arkansas Dep't of Human Servs.*, 302

ADMINISTRATIVE LAW & PROCEDURE:

When administrative action may be regarded as arbitrary and capricious. *Southwestern Bell Tel. Co. v. Arkansas Public Serv. Comm'n*, 145

APPEAL & ERROR:

Copies of photographs in issue not provided in abstract, argument not determined on merits. *Kenyon v. State*, 24

Admission of photographs in issue on appeal, failure to include in abstract fatal to review. *Id.*

Chancellor's finding of fact not reversed unless clearly erroneous. *Mearns v. Mearns*, 42

Abstracting, exhibits necessary to understanding testimony must be abstracted, failure to abstract results in summary affirmance. *Fulkerson v. Calhoun*, 63

Abstract flagrantly deficient, case summarily affirmed. *Id.*

Issue raised not properly before court, issue not reached. *Frette v. State*, 81

Law of case governs appellate court's actions on subsequent appeal. *Meyer v. Riverdale Harbor Mun. Prop. Owners Imp. Dist. No. 1*, 91

Chancellor not apprised of issue, issue not reached for first time on appeal. *Meadors v. Meadors*, 96

Appellate review of sufficiency of evidence. *St. Edward Mercy Med. Ctr. v. Ellison*, 100

Injury sustained by appellant not compensable, issue not addressed. *Tillman v. Baldwin & Shell Constr.*, 177

Bare essentials of abstract, record on appeal confined to that which is abstracted.

Cannon v. State, 182

Timely filing of notice of appeal is jurisdictional, appellate court lacks jurisdiction

absent effective notice of appeal. *Cannon v. State*, 182

Abstract flagrantly deficient, judgment affirmed. *Cannon v. State*, 182

Case remanded for further consideration of depreciation issue, determination left to chancellor's discretion. *Stepp v. Gray*, 229

Allegation not supported by evidence, appellant failed to bring up record sufficient to demonstrate error. *Id.*

Issue raised by appellant not included in record, issue not reached. *Id.*

Motion to correct record granted, appellant's counsel ordered to correct pages containing highlighted sections or notations. *Jones v. Little Rock Family Planning Servs., P.A.*, 250

Record on appeal not to be tampered with in any fashion. *Id.*

Arguments not developed below not addressed on appeal. *Lee v. Hot Springs Village Golf Sch.*, 293

Factual allegation made in trial brief improperly considered. *Id.*

Factual misstatement did not alter result — appellee not entitled to judgment as matter of law. *Id.*

Chancellor did not err in considering limitations issue but erred in not applying Arkansas statute of limitations. *King v. State*, 298

Matter remanded for computation of arrearages after application of Arkansas statute of limitations. *Id.*

Abstract flagrantly deficient, decision affirmed based on appellant's failure to submit proper abstract. *McKimmy v. Fielder*, 317

Abstracting requirements apply to cross-appellants, cross-appellant's abstract deficient, issue raised on appeal unreachable. *Id.*

"Clearly erroneous" standard of review cannot be reason for affirming where no evidence supports finding of reasonable suspicion or reasonable cause for arrest. *Travis v. State*, 320

Result below not consistent with Fourth Amendment or criminal procedure rules, reversed and remanded. *Id.*

ARREST:

Probable cause, more than strong suspicion of offense required. *Travis v. State*, 320

Probable cause for warrantless arrest. *Id.*

Reasonable cause for warrantless arrest under Ark. R. Crim. P. 4.1(a). *Id.*

Probable-cause requirement not met, deputy had no factual basis for arresting appellant on any charge. *Id.*

ATTORNEY & CLIENT:

Fees, Ark. Code Ann. § 16-22-308 authorizes award in contract but not in tort actions. *Meyer v. Riverdale Harbor Mun. Prop. Owners Imp. Dist. No. 1*, 91

Fees, award to prevailing party under Ark. Code Ann. § 16-22-308 proper only when action based primarily in contract. *Id.*

Fees, award reversed where action based primarily in tort. *Id.*

Fees, second counsel awarded additional fee. *Branch v. State*, 241

Fees, co-counsel must submit applications for fees jointly or at the same time. *Id.*

AUTOMOBILES:

DWI, evidence of blood-alcohol test correctly admitted. *Kenyon v. State*, 24

CIVIL PROCEDURE:

Summary-judgment testimony must be supported with admissible testimony, affidavits that are conclusory rather than factual are insufficient. *Jones v. Abraham*, 17

Chancellor refused to give weight to affidavits, impossible without adversarial hearing to determine if affidavits were admissible, grant of summary judgment reversed and remanded. *Id.*

Wrongful-death action, notice of petition to authorize settlement, ARCP Rules 1 and 5 not controlling, ARCP Rule 81 exception applicable. *McGuire v. Smith*, 68

Wrongful-death action, appellants not entitled to notice of petition to authorize settlement under Ark. Code Ann. §§ 16-62-102 and 28-49-104. *Id.*

Wrongful-death action, appellants not entitled to notice of petition to authorize settlement under case law. *Id.*

Defense of lack of personal jurisdiction, defense not raised in timely manner waived by appellant. *Blankenship v. Office of Child Support Enforcement*, 260

Collateral estoppel and *res judicata* distinguished, *res judicata* found applicable. *Id.*

Res judicata discussed, when applicable. *Id.*
First suit and dismissal satisfied elements of *res judicata*, case reversed and dismissed. *Id.*
Applicability of *res judicata*, privity of parties discussed. *Id.*
Authority of trial court to set aside order, authority under Ark. R. Civ. P. 60(b) lost after expiration of ninety days from date of entry of order. *Strong v. Morgan*, 272
Chancery court failed to set aside order in time allowed under rule, chancery court's order setting aside judicial sale reversed and case remanded. *Id.*

CONSTITUTIONAL LAW:

Statutory classifications, Equal Protection Clause does not preclude all. *Golden v. Westark Community College*, 209
Statutory classifications, reviewing court's role, rational-basis test. *Id.*
Statutory classifications, must be upheld if any rational basis exists for disparate treatment. *Id.*
Statutory classifications, court will not strike down for mere underinclusiveness. *Id.*
Supremacy Clause, doctrine of federal preemption. *Id.*
Federal preemption, test for determining, factors. *Id.*
Implied preemption. *Id.*
Federal preemption, burden on moving party to prove congressional intent. *Id.*
Federal preemption, no clear expression of congressional intent to preempt state's administration of workers' compensation benefits, preemption could not be implied. *Id.*

CONTEMPT:

Factual finding. *Mearns v. Mearns*, 42
Chancellor's finding of contempt not clearly against preponderance of evidence. *Id.*

CONTRACTS:

Ambiguity, construed against party who prepared contract. *Lee v. Hot Springs Village Golf Sch.*, 293

CRIMINAL PROCEDURE:

Investigatory stop, justification for. *Frette v. State*, 81
Investigatory stop made without investigation or independent verification of unknown informant's information, appellant's motion to suppress should have been granted. *Id.*
Defendant should not be forced to appear for trial in prison garb, lack of description of attire worn by appellant precluded review. *Cannon v. State*, 182

DEATH:

Wrongful death, damages recovered from settlement of claim did not become assets of estate. *McGuire v. Smith*, 68
Wrongful death, personal representative was only party with duty and right to pursue claim or to choose counsel. *Id.*
Wrongful death, probate court did not err in denying motion to set aside order approving settlement and authorizing payment of percentage of recovery to attorney. *Id.*

DEEDS:

Chain of title and other available evidence clearly in appellee's favor, chancellor's judgment for appellees would have been affirmed on merits had abstract been sufficient. *Fulkerson v. Calhoun*, 63

DIVORCE:

- Child support, amount lies within sound discretion of chancellor. *Mearns v. Mearns*, 42
- Child support, reference to family support chart is mandatory. *Id.*
- Child support, when chancellor may deviate from family support chart. *Id.*
- Child support, self-employed payors, basis for support, chancellor erred in assessing same level of support based upon income from business ordered sold. *Id.*
- Child support, chancellor's deviation from support chart was abuse of discretion, appellant not relieved of support obligation, support issue reversed and remanded. *Id.*
- Alimony, award is discretionary, when appellate court can reverse. *Id.*
- Alimony, factors considered in awarding. *Id.*
- Alimony, chancellor abused discretion in failing to award alimony to appellant. *Id.*
- Alimony, case reversed and remanded to chancellor to set appropriate amount for appellant. *Id.*
- Purpose of alimony and property settlements, chancellor directed to look only to alimony to provide for appellant. *Id.*
- Expenditure of marital property during pendency of proceedings, chancellor has discretion to determine if offset is appropriate, discretion properly exercised. *Id.*
- Two types of property settlement agreements recognized, agreement in question was independent contract. *Meadors v. Meadors*, 96
- Decree did not contain judgment for amount specified in property settlement agreement, agreement was independent contract subject to five-year statute of limitations. *Id.*
- Chancery cases reviewed de novo, best interest of child standard used in custody hearings. *Rector v. Rector*, 132
- Child-support calculation based upon income as defined in federal income tax laws, chancellor may not use only one of several definitions of income found in tax code. *Stepp v. Gray*, 229
- Child-support modification, depreciation deduction should be considered in awarding child support, tax return alone not accurate indicator of noncustodial parent's available expendable income. *Id.*
- Child-support calculation, how presumption of support chart's correctness rebutted. *Id.*
- Child-support modification, income exceeding amounts set by chart necessitated separate calculation, written findings necessary for deviation from guidelines. *Id.*
- Child support, omission of spendable income without specific finding error, chancellor deviated from child-support chart without making requisite written findings. *Id.*
- Rental income considered in calculating support obligation. *Id.*
- Child-support calculation, trial court did not err in allowing appellee self-employed health-insurance tax deduction. *Id.*
- Child-support modification, chancellor has discretion to modify child-support obligation retroactively, such award not mandatory. *Id.*

Child-support modification, no abuse of discretion in making award retroactive for only six months. *Id.*

Child-support modification, award of attorney's fees and expert-witness fees discretionary. *Id.*

EVIDENCE:

Evidence improperly excluded, no ruling made on admissibility in light of present-intent exception to hearsay rule. *Jones v. Abraham*, 17

Admission of photographs left to sound discretion of trial court, trial court will not be reversed absent abuse of discretion. *Kenyon v. State*, 24

Trial court selectively admitted photographs, no abuse of discretion found. *Id.*

Expert testimony, test for admissibility, discretion of trial court. *Mearns v. Mearns*, 42

Expert testimony, no abuse of discretion in allowing automobile collector to testify. *Id.*

Substantial evidence supported chancellor's valuation of automobile, finding was not clearly erroneous. *Id.*

Denial of motion to suppress, factors on review. *Frette v. State*, 81

Directed-verdict motion is challenge to sufficiency of evidence, sufficiency of evidence reviewed before trial errors. *Cox-Hilstrom v. State*, 109

Sufficiency of, factors on review. *Id.*

No evidence to support appellant's conviction of theft by deception, conviction reversed. *Id.*

Counsel's offer of proof on witness's anticipated testimony sufficient. *Id.*

Evidence that someone other than defendant may have committed crime, when admissible. *Id.*

Directed-verdict motion is challenge to sufficiency of evidence, substantial evidence discussed. *Moore v. State*, 120

Intent seldom provable by direct evidence, presumption exists that person intends natural and probable consequences of his acts. *Id.*

Appellant's conviction supported by substantial evidence, jury could have inferred that appellant's actions were done with purpose of causing serious physical injury. *Id.*

Reconciling conflicts in testimony and weighing evidence are exclusive province of jury, jury allowed to draw upon common knowledge and experience. *Id.*

Admission of lay-opinion testimony not reversed absent abuse of discretion. *Id.*

Ark. R. Evid. 701, intent and requirements of. *Id.*

Testimony of lay witnesses, when permitted. *Id.*

Lay-opinion testimony, coroner's testimony properly allowed, no abuse of discretion found. *Id.*

Chancellor found allegation of long-past sexual abuse never properly linked to case at hand, no abuse of discretion found in chancellor's ruling that testimony was irrelevant. *Rector v. Rector*, 132

Chancellor's ruling on relevance reversed only upon finding abuse of discretion. *Id.*

Chancellor's consideration of appellant's prescription drug use as factor in determining child's best interest not an abuse of discretion. *Id.*

Chancellor did not rely on drug tests, chancellor's decision to place child in father's custody not clearly against preponderance of evidence. *Id.*

Appellee's illegal drug use not discounted by chancellor, decision to place child in appellee's custody not clearly against preponderance of evidence. *Id.*

FRAUD:

Cancellation of judgment for, necessary showing. *McGuire v. Smith*, 68

Constructive fraud defined. *Id.*

Appellee did not practice fraud to obtain order granting authority to settle wrongful-death claim. *Id.*

INSURANCE:

Initial-permission rule, coverage not affected by permissive use exceeding or differing from that specified or intended by vehicle owner. *Liberty Mut. Ins. Co. v. Thomas*, 289

Supreme court decision controlled, summary judgment affirmed. *Id.*

JUDGMENT:

Summary judgment, burdens of proof. *Jones v. Abraham*, 17

Summary judgment erroneously based on heightened standard of proof required of oral contracts, requiring clear, cogent and, convincing evidence at summary judgment level constituted impermissible weighing of evidence. *Id.*

Summary judgment analysis should not include weighing and resolving conflicting testimony, proper analysis should only evaluate evidence to determine whether dispute exists, chancellor's determination was inappropriate. *Id.*

Relief from order, ninety-day limitation, exceptions, fraud alleged. *McGuire v. Smith*, 68

Fraud as ground for vacating, burden of proof. *Id.*

Formal requirements of. *Meadors v. Meadors*, 96

Judgment n.o.v., when trial court may enter. *St. Edward Mercy Med. Ctr. v. Ellison*, 100

Summary judgment, when granted, burden of proof. *Wirth v. Reynolds Metals Co.*, 161

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

Summary judgment, appellee made prima facie showing of entitlement, appellants failed to show genuine issue of material fact. *Id.*

Summary judgment, moving party entitled to when party cannot present proof on essential element. *Id.*

Summary judgment, trial court did not err in granting motion for. *Id.*

Summary judgment, when granted. *Lee v. Hot Springs Village Golf Sch.*, 293

Contract contained ambiguities, question of fact remained, trial court erred in granting appellee's motion for summary judgment. *Id.*

JURY:

Instructions given in criminal case, test for error. *Cox-Hilstrom v. State*, 109

Refusal to give instruction not error, instructions given by court sufficient. *Id.*

No error in refusing to give instruction where no evidence supported giving it. *Id.*

LIMITATION OF ACTIONS:

Child-support arrearages. *King v. State*, 298

Child-support arrearages, Arkansas limitations period was longer and should have been applied. *Id.*

MASTER & SERVANT:

Employment-at-will doctrine. *St. Edward Mercy Med. Ctr. v. Ellison*, 100

Employment-at-will doctrine, limited exceptions. *Id.*

Employment-at-will doctrine, appellee's employment did not fall within exception, employer's document contained no provision promising termination only for cause. *Id.*

Employment-at-will doctrine, progressive disciplinary policy did not guarantee termination in accordance with policy, at-will employment expressly stated in handbook. *Id.*

Employment-at-will doctrine, no express provision against termination without cause in twelve-hour-shift agreement. *Id.*

MOTIONS:

Directed-verdict motion is condition precedent to motion for judgment n.o.v. *St. Edward Mercy Med. Ctr. v. Ellison*, 100

Appellate review of denial of motions for directed verdict or judgment n.o.v. *Id.*

Judgment n.o.v., trial court erred in denying appellant's motion for, case reversed and dismissed. *Id.*

PARENT & CHILD:

Grounds for termination of parental rights must be proven by clear and convincing evidence, clearly erroneous standard used on appellate review. *M.T. v. Arkansas Dep't of Human Servs.*, 302

Termination of parental rights is extreme remedy, when parental rights will not be enforced. *Id.*

Trial judge's personal observations given great weight in matters involving welfare of children, chancellor's determination to terminate parental rights not clearly erroneous. *Id.*

Trial court's termination of parental rights made pursuant to statutory authority, no error found. *Id.*

Grounds for termination of parental rights proved by clear and convincing evidence, factors considered on appeal. *Gregg v. Arkansas Dep't of Human Servs.*, 337

Termination of parental rights an extreme remedy, parental rights not enforced to detriment of child. *Id.*

Chancellor's finding not clearly erroneous, appellee proved by clear and convincing evidence that child was victim of abuse perpetrated by appellants. *Id.*

PARTIES:

Trial court did not err in ruling appellants lacked standing to assert corporate claim as affirmative defense, allegations made by appellants did not support appellee's claimed breach of covenant of good faith and fair dealing. *Lee v. Hot Springs Village Golf Sch.*, 293

Appellant lacked standing, appellant had no right to appeal trial court's refusal to allow petitioner to withdraw its cause of action. *M.T. v. Arkansas Dep't of Human Servs.*, 302

PLEADINGS:

Amendments, trial court's discretion. *King v. State*, 298

PUBLIC SERVICE COMMISSION:

Standard of appellate review. *Southwestern Bell Tel. Co. v. Arkansas Public Serv. Comm'n*, 145

Broad discretion. *Id.*

When Commission's decision must be affirmed. *Id.*

Orders establishing AICCLP and CCL charges not included in record, appellate court unable to determine whether AICCLP components had been determined on single-issue basis and deferred to Commission's discretion. *Id.*

Appellants failed to show that Commission engaged in single-issue ratemaking. *Id.*

Burden on appellants at hearing to justify revised tariffs, appellants' conclusion regarding rate of return was supposition and not evidence. *Id.*

Ratemaking, legislative function, when rate orders may be superseded. *Id.*

Method used in calculating rates must be based on substantial evidence. *Id.*

Substantial evidence supported reduction in AICCLP's rate of return. *Id.*

Objection to order must have been urged before Commission in application for rehearing to ensure appellate consideration. *Id.*

Due process requirements, appellants advised of issues and given opportunity to present evidence, no denial of due process. *Id.*

Supervisory and regulatory authority, created to act for General Assembly. *Id.*

Rate regulation, Commission may consider stipulations, independent finding on stipulation required. *Id.*

Decision not to consider interexchange carriers' credits in setting rate of return was not arbitrary and capricious. *Id.*

Substantial evidence supported finding that 12% rate of return should be reduced to 9.2%, orders affirmed. *Id.*

SEARCH & SEIZURE:

Seizure within meaning of Fourth Amendment, seizure occurred when officer ordered appellant to step from his vehicle. *Frette v. State*, 81

Vehicular stop, stopping and detaining constitutes seizure. *Travis v. State*, 320

Vehicular stop, stopping and detaining driver to check license and registration inherently unreasonable. *Id.*

Vehicular stop, balancing test. *Id.*

Vehicular stop, reasonable where police have probable cause to believe traffic violation occurred. *Id.*

Reasonable suspicion, what it entails. *Id.*

Vehicular stop, totality of circumstances did not support conclusion that deputy had reasonable suspicion justifying stop. *Id.*

Vehicular stop, Arkansas statutes governing license plates inapposite. *Id.*

Fourth Amendment protects motorists from baseless interference with right to be left alone. *Id.*

STATUTES:

Interpretation of, words given ordinary meaning. *Kildow v. Baldwin Piano & Organ*, 194

Construction of, first rule. *Id.*
Construction of, deference to agency's construction. *Id.*
Equal protection challenge, rational-basis test. *Golden v. Westark Community College*, 209
Presumption of constitutionality. *Id.*
Offset statute did not violate appellant's equal protection right, wisdom or expediency of statute is for legislature alone, courts do not make law. *Id.*
Best evidence of public policy. *Liberty Mut. Ins. Co. v. Thomas*, 289

TORTS:

Negligence, *post hoc ergo propter hoc* not sound as evidence or argument. *Wirth v. Reynolds Metals Co.*, 161
Proximate causation, essential element for negligence action. *Id.*
Proximate causation, when question of law presented. *Id.*
Proximate causation, coincidence not basis. *Id.*

TRIAL:

When mistrial should be granted, denial of motion for mistrial reversed only upon showing of abuse of discretion. *Kenyon v. State*, 24
Motion for mistrial properly denied, no abuse of discretion shown. *Id.*
Right to cross-examine may be waived. *Priest v. United Parcel Serv.*, 282

UNEMPLOYMENT COMPENSATION:

Review of Board of Review's decision, substantial evidence defined. *Clark v. Director*, Misconduct, factors constituting. *Id.*
Substantial evidence supported Board's findings, decision affirmed. *Id.*
Good cause defined, what constitutes good cause ordinarily question of fact for Board to determine. *Garrett v. Director*, 7
Review of Board's decision, substantial evidence defined. *Id.*
Finding of Board not supported by substantial evidence, appellant left job for good cause, case reversed and remanded. *Id.*
Review of Board's decision, substantial evidence defined. *Rollins v. Director*, 58
Discharge for misconduct disqualifies employee from receiving benefits, what constitutes misconduct. *Id.*
Actions of appellant insufficient to constitute misconduct, case reversed and remanded for award of benefits. *Id.*

WILLS:

Oral contract to make will devising real estate, when valid. *Jones v. Abraham*, 17

WITNESSES:

No evidence linking employee to theft of lessor's property, no abuse of discretion in exclusion of testimony. *Cox-Hilstrom v. State*, 109
Credibility of, chancellor must resolve conflicts in testimony. *Rector v. Rector*, 132

WORDS & PHRASES:

Post hoc ergo propter hoc defined. *Wirth v. Reynolds Metals Co.*, 161
"Rapid" defined. *Kildow v. Baldwin Piano & Organ*, 194

WORKERS' COMPENSATION:

- Denial of claim, substantial-evidence standard of review. *Roberson v. Waste Managem't*, 11
- Temporary total disability defined. *Id.*
- Healing period defined. *Id.*
- Medical evidence, Commission's duty to weigh. *Id.*
- Review of Commission's decisions. *Id.*
- Orthopedic surgeon's evaluation supported Commission's denial of additional temporary total disability benefits and related medical treatment, decision affirmed. *Id.*
- Credibility of witnesses and weight of testimony within Commission's province. *Lay v. United Parcel Serv.*, 35
- Standard of review. *Id.*
- Commission's finding that appellant did not prove that he sustained compensable traumatic injury supported by substantial evidence. *Id.*
- Compensable injury, rapid repetitive motion. *Id.*
- Commission did not err in ruling that appellant had not met burden of proving job involved rapid repetitive motions. *Id.*
- Compensable injuries specifically defined by legislature, injuries not included in statutory definition must be addressed by legislature. *Tillman v. Baldwin & Shell Constr.*, 177
- No error found in Commission's ruling that hemorrhoids are not compensable injury, statute in no way ambiguous. *Id.*
- Standard of review. *Kildow v. Baldwin Piano & Organ*, 194
- Rapid repetitive motion injury, Commission's requirement that claimants prove "exact, or almost exactly the same movement again and again" erroneous as matter of law. *Id.*
- Commission's restrictive application of term "rapid" not supported by substantial evidence. *Id.*
- Appellant's assembly-line work qualified as "rapid repetitive" in ordinary and generally accepted meaning of words, matter reversed and remanded for award of benefits. *Id.*
- Carpal tunnel syndrome, not exempted from proof requirement of other gradual-onset injuries, affirmed in part. *Id.*
- Arkansas offset statutes founded upon legitimate governmental concerns. *Golden v. Westark Community College*, 209
- Rational relationship found between legitimate governmental purposes and age classification in offset statutes. *Id.*
- Age classification based on reasonable distinction. *Id.*
- Age classification not arbitrary and capricious. *Id.*
- Substantial evidence supported Commission's finding that appellant was entitled to twenty percent disability rating. *Id.*
- When worker is considered "disabled." *Id.*
- Commission did not err in finding physical impairment included within definition of "disability." *Id.*
- Employer or carrier entitled to opportunity to intervene in action against third party. *Wentworth v. Sparks Reg'l Med. Ctr.*, 242

- Proceeds of compromise settlement of tort claim subject to lien of employer or carrier absent court or Commission approval. *Id.*
- Commission's decision allowing appellee credit based upon settlement between appellant and third party affirmed. *Id.*
- Compensable injury, presence of intoxicant, burden on claimant to prove by preponderance of evidence that injury was not caused by alcohol or drugs. *Morrilton Manor v. Brimmage*, 252
- Evidence, standard of review. *Id.*
- Rebuttable presumption, whether overcome by evidence is question of fact for Commission. *Id.*
- Finding of fact, standard of review. *Id.*
- Credibility of witnesses, within Commission's province. *Id.*
- Commission was within fact-finding authority in determining statutory presumption had been rebutted. *Id.*
- No evidence that claimant was intoxicated at time of injury, presumption never arose and would have been rebutted. *Id.*
- No evidence appellee given benefit of doubt, no evidence appellee intoxicated before injury. *Id.*
- Substantial evidence supported Commission's decision. *Id.*
- Reasonable and necessary treatment, question of fact for Commission. *Georgia-Pac. Corp. v. Dickens*, 266
- Standard of review. *Id.*
- Substantial evidence existed that appellee's follow-up medical care was reasonably necessary for treatment of compensable injury. *Id.*
- Standard of review, substantial evidence defined. *Stephens Truck Lines v. Millican*, 275
- Evidence, credibility of witnesses and weight of testimony for Commission to determine. *Id.*
- Substantial evidence supported Commission's finding that appellee sustained compensable neck injury. *Id.*
- Evidence, inconsistencies in testimony are matters exclusively within Commission's province. *Id.*
- Strict and literal construction of law. *Id.*
- Requirement that compensable injury must be established by medical evidence supported by objective findings applies only to existence and extent of injury. *Id.*
- Case reversed and remanded for Commission to make findings sufficient for appellate court to determine whether healing-period issue was resolved. *Id.*
- Matter reversed and remanded for Commission to make specific findings of fact on due process issue. *Priest v. United Parcel Serv.*, 282
- Parties appearing before Commission should not be deprived of due process of law. *Id.*
- Right to cross-examine adverse witnesses extends to parties before Commission. *Id.*
- Hearing cannot be conducted so that party is denied right to cross-examine adverse witness. *Id.*
- Commission's discretion to issue subpoenas cannot be exercised to deny party reasonable opportunity to cross-examine adverse witness. *Id.*
- Review on appeal, when Commission's decision affirmed. *Min-Arke Pallet Co. v. Lindsey*, 309

Requirements of Ark. Code Ann. § 11-9-523 *Id.*

Requirements of Ark. Code Ann. § 11-9-523 *Id.*

Statutes must be construed in entirety, "occurrence" as used in Ark. Code Ann. § 11-9-523 clearly meant happening of hernia itself. *Id.*

Notice requirement satisfied, substantial evidence supported Commission's finding. *Id.*
Ark. Code Ann. § 11-9-523 *Id.*

Appellant's argument without merit, determination of credibility within sole province of Commission. *Id.*

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

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

ACTS:	5-36-115(d)	117
Acts by Name:	5-36-115(e)	110, 116, 118
Age Discrimination Act	5-36-115(e)(1)	118
211, 213,	5-36-115(e)(2)	118
219, 220, 224	5-36-115(e)(3)	118
Uniform Interstate Family	5-36-115(e)(4)	118
Support Act	5-36-115(f)	115
301	5-65-204	29
Workers' Compensation Act 178, 180,	5-65-204(e)	29
210, 219, 247	5-65-204(e)(1)(2)	29
Workers' Compensation Law	5-73-103	324
206,	9-10-108	263
208, 276, 279	9-10-108(a)(1)(4)	262
Arkansas Acts:	9-11-522(f)	224, 228
Act 238 of 1993	9-12-312(a)(2)	42, 43, 48, 49,
Act 793 of 1993	230, 236	
Act 796 of 1993	9-13-101	136
181, 200, 202, 225,	9-14-107	240
252, 257	9-14-236	301
Act 870 of 1991	9-17-604(b)	298, 301
Act 1227 of 1997	9-27-341	304, 308
	9-27-341(a)	303, 306, 307
	9-27-341(b)	305, 339
	11-7-104(c)(3)	257
	11-9-101	210, 217
	11-9-101(b)	225
	11-9-102(4)	207
	11-9-102(5)	38, 40, 41, 179, 279
	11-9-102(5)(A)	202, 207
	11-9-102(5)(A)(i)	178, 179, 207, 279
	11-9-102(5)(A)(ii)	178, 179, 180,
	202, 204, 207, 208	
	11-9-102(5)(A)(ii)(a)	36, 41, 178,
	181, 197, 201, 202, 203	
	11-9-102(5)(A)(ii)(b)	178, 181
	11-9-102(5)(A)(ii)(c)	178, 181
	11-9-102(5)(B)(i)	279
	11-9-102(5)(B)(iii)	279
CODES:		
(See also RULES and STATUTES):		
Arkansas Code Annotated:		
5-2-202(2)	112	
5-2-202(2)(i)	113	
5-2-202(2)(ii)	113	
5-2-202(2)(iii)	113	
5-2-202(2)(v)	113	
5-36-101(3)(A)	113	
5-36-103	116	
5-36-103(a)(2)	112	
5-36-103(c)	117	
5-36-103(d)	117	
5-36-115	110, 115, 116, 118	
5-36-115(a)	115, 116	
5-36-115(c)	115, 117, 118	

11-9-102(5)(B)(iv)	254, 255, 258	11-9-704(c)(3)	179, 257, 279
11-9-102(5)(B)(iv)(a)	255	11-9-705(a)	286
11-9-102(5)(B)(iv)(d)	253, 257	11-9-705(c)(2)(B)	284
11-9-102(5)(B)(iv)(b)	255	11-9-706(a)	284, 287
11-9-102(5)(B)(iv)(c)	256	11-9-707(4)	257
11-9-102(5)(B)(iv)(d)	256	11-9-711(b)(4)	180, 282
11-9-102(5)(D)	40, 279	11-9-711(b)(4)(A)	180
11-9-102(5)(F)(i)	282	11-9-711(b)(4)(B)	180
11-9-102(9)	222	11-9-711(b)(4)(C)	180
11-9-105	226	11-9-711(b)(4)(D)	180
11-9-410	242, 244, 245, 249	11-9-811	282
11-9-410(a)	244, 245	11-9-1001	179, 280
11-9-410(a)(1)	244, 248, 249	11-10-512	4
11-9-410(a)(2)	244	11-10-514	3
11-9-410(a)(2)(A)	244	11-10-514(a)	62
11-9-410(a)(2)(B)	244	11-10-514(a)(1)	3, 6, 60
11-9-410(a)(2)(C)	245	11-10-514(a)(3)	4
11-9-410(a)(2)(D)	245	11-10-514(b)	4
11-9-410(b)	245	16-22-308	91, 92, 93, 94
11-9-410(b)(1)	245	16-56-111	98
11-9-410(b)(2)	245	16-56-114	99
11-9-410(b)(3)	245	16-62-102	69, 72, 75
11-9-410(c)	245, 247, 249	16-62-102(b)	75, 76, 79
11-9-410(c)(1)	245	16-62-102(d)	75, 76
11-9-410(c)(2)	245	16-62-102(e)	76
11-9-410(c)(3)	249, 250, 253, 257	16-62-102(g)	76
11-9-502(5)(A)(i)	177	16-62-102(h)	76
11-9-502(5)(A)(ii)	177, 178	16-66-408(a)	273
11-9-508(a)	266, 269	18-60-607	64, 67
11-9-511(b)	282	23-1-101	148, 157
11-9-519(g)	215	23-2-301	148, 156, 157
11-9-522(a)	222	23-2-304	158
11-9-522(b)(1)	221	23-2-304(b)	159
11-9-522(f)	209, 210, 212, 213, 214, 215, 217, 218, 219, 220, 223, 224, 225, 227, 228	23-2-423(c)(2)	147, 156
11-9-522(f)(1)	215	23-2-423(c)(3)	145, 151
11-9-522(f)(2)	215, 225	23-2-423(c)(4)	145, 151
11-9-523	310, 311, 312, 314, 316	23-4-407	150
11-9-523(a)	312	27-14-704(a)	322, 330, 335
11-9-523(a)(1)	309, 310, 312, 313, 314, 315	27-14-1005	335
11-9-523(a)(2)	309, 312, 314	27-14-1018	335
11-9-523(a)(3)	309, 312, 314, 316	27-19-713(f)(1)	292
11-9-523(a)(4)	310, 312, 314, 315, 316	27-23-113	83
11-9-523(a)(5)	310, 312, 314, 316	28-1-115	80, 81
		28-1-115(a)	80
		28-9-209(d)	71
		28-24-101	17, 22
		28-48-108	80

28-49-104 69, 72, 75
 28-49-104(a) 76

United States Code:

26 U.S.C. § 61 229, 235
 26 U.S.C. § 62 229, 235
 26 U.S.C. § 63 229, 235

CONSTITUTIONAL PROVISIONS:

Arkansas Constitution:

Art. 2, § 8 286
 Equal Protection Clause ... 213, 214,
 215

United States Constitution:

Amend. 4 82, 86, 89, 90, 320,
 321, 322, 323, 324, 325, 326,
 327, 329, 330, 332, 333, 334, 335
 Amend. 14 30, 188
 Due Process Clause 30
 § 1 286
 Art. 6 211, 219
 Equal Protection Clause ... 209, 213,
 214, 215
 Supremacy Clause 211, 219

RULES:

Arkansas Rules of Appellate Procedure

— Civil:

Rule 6(e) 250, 251

Arkansas Rules of Civil Procedure (Ark.
 Code Ann. Court Rules [1996]):

ARCP Rule 1 69, 73, 75
 ARCP Rule 5 69, 73, 75
 ARCP Rule 8(c) 300
 ARCP Rule 12 260, 262
 ARCP Rule 15(b) 300
 ARCP Rule 41 306
 ARCP Rule 52(a) 54
 ARCP Rule 56 21, 22
 ARCP Rule 56(c) 21
 ARCP Rule 56(e) ... 18, 23, 165, 166
 ARCP Rule 60 72, 73, 80, 81
 ARCP Rule 60(b) 68, 73, 272,
 274, 275

ARCP Rule 60(c) 68, 73
 ARCP Rule 60(c)(3) 275
 ARCP Rule 60(c)(4) ... 68, 69, 73, 75
 ARCP Rule 81 69, 75

Arkansas Rules of Criminal Procedure
 (Ark. Code Ann. Court Rules [1996]):

A.R.Cr.P. Rule 2.1 84, 323, 324,
 328, 335
 A.R.Cr.P. Rule 2.2 82, 85, 86,
 88, 90
 A.R.Cr.P. Rule 3.1 82, 84, 86,
 88, 89, 321, 323, 324, 328,
 329, 335
 A.R.Cr.P. Rule 4.1 323, 324, 335
 A.R.Cr.P. Rule 4.1(a) .. 322, 329, 330
 A.R.Cr.P. Rule 4.1(a)(iii) 334
 A.R.Cr.P. Rule 24.3(b) 82, 83,
 87, 324

Arkansas Rules of Evidence (Ark. Code
 Ann. Court Rules [1996]):

A.R.E. Rule 103(a)(2) 114
 A.R.E. Rule 401 137, 141
 A.R.E. Rule 403 129
 A.R.E. Rule 602 121, 127
 A.R.E. Rule 701 121, 126, 127,
 128, 129
 A.R.E. Rule 702 45, 53
 A.R.E. Rule 803 18, 24
 A.R.E. Rule 803(3) 18, 24
 A.R.E. Rule 803(c) 23

Federal Rules of Civil Procedure:

F.R.C.P. 60 80, 81

Rules of the Arkansas Supreme Court
 and Court of Appeals (Ark. Code Ann.
 Court Rules [1996]):

Ark. Sup. Ct. R. 1-2(a)(15) ... 163
 Ark. Sup. Ct. R. 4-2 67, 189
 Ark. Sup. Ct. R. 4-2(a)(6) ... 65, 66,
 183, 190, 318
 Ark. Sup. Ct. R. 4-2(b) 189
 Ark. Sup. Ct. R. 4-2(b)(1) 189
 Ark. Sup. Ct. R. 4-2(b)(2) ... 63, 67,
 189, 319

STATUTES:	27-908	78
	81-1340	245, 246
Arkansas Statutes Annotated:	81-1340(c)	246
27-907		78