



ARKANSAS REPORTS
VOLUME 332

ARKANSAS
APPELLATE REPORTS
VOLUME 61

*[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 332

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
February 26, 1998 — April 23, 1998
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS
Volume 61

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

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PUBLISHED BY THE
STATE OF ARKANSAS
1998

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 671. Cite as 332 Ark. ____ (1998).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 281. Cite as 61 Ark. App. ____ (1998).



ERRATUM

327 Ark. at 241, third paragraph, line eleven:
Code section "23-52-1005" should be section "23-32-1005."

Set in Bembo

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ARKANSAS
REPORTS

Volume 332

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
February 26, 1998 — April 23, 1998
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1998

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OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(February 26, 1998 —
April 23, 1998, inclusive)

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

OFFICERS

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

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

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

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

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

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not

be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Allen *v.* State, CR 96-881 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief granted April 16, 1998.
- Bass *v.* State, CR 96-1389 (Per Curiam), affirmed February 26, 1998.
- Block *v.* State, CR 98-34 (Per Curiam), Pro Se Motion for Access to Record and Pro Se Motion for Extension of Time granted March 26, 1998.
- Bradford *v.* State, CR 97-1409 (Per Curiam), Pro Se Motion for Court to Direct Attorneys to Represent Appellant denied March 19, 1998.
- Buchanan *v.* State, CR 97-214 (Per Curiam), affirmed March 5, 1998.
- Calloway *v.* State, CR 97-398 (Per Curiam), Pro Se Motion for Transcript and Pro Se Motion for Appointment of Counsel denied March 19, 1998.
- Carlock *v.* State, CR 96-1549 (Per Curiam), remanded February 26, 1998.
- Cherry *v.* State, CR 97-75 (Per Curiam), affirmed April 23, 1998.
- Coleman *v.* State, CR 98-224 (Per Curiam), Pro Se Motion for Access to Record and Pro Se Motion for Extension of Time granted April 16, 1998.
- Davis *v.* State, CR 97-101 (Per Curiam), affirmed March 12, 1998.
- Dix *v.* State, CR 97-1261 (Per Curiam), Pro Se Motion for Reconsideration of Pro Se Motion for Rule on Clerk denied March 19, 1998.
- Douthitt *v.* State, CR 98-272 (Per Curiam), Pro Se Motion for Rule on Clerk denied April 16, 1998.
- Entwistle *v.* State, CR 98-100 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment granted April 23, 1998.
- Fielding *v.* Harkey, 98-461 (Per Curiam), Pro Se Petition for Writ of Mandamus; tendered petition declined April 23, 1998.
- Foote *v.* State, CR 97-414 (Per Curiam), affirmed April 23, 1998.

- Gray *v.* State, CR 98-104 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied March 26, 1998.
- Hubbard *v.* State, CR 96-1534 (Per Curiam), Pro Se Motion for Transcript denied March 12, 1998.
- Jackson *v.* State, CR 97-79 (Per Curiam), affirmed March 19, 1998.
- Kain *v.* Burnett, CR 97-1389 (Per Curiam), Pro Se Motion to Reconsider Petition for Writ of Mandamus moot March 5, 1998.
- Leding *v.* State, 98-123 (Per Curiam), Pro Se Motion for Rule on Clerk denied March 19, 1998.
- Luckey *v.* State, CR 97-1575 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed March 26, 1998.
- Mallett, Don *v.* State, CR 97-930 (Per Curiam), Pro Se Motion for Reconsideration of Motion to Set Appeal Bond denied March 5, 1998.
- Mallett, Don *v.* State, CR 97-930 (Per Curiam), Pro Se Motion for Reconsideration of Motion to Set Appeal Bond and Pro Se Motion for Extension of Time to File Appellant's Brief denied March 26, 1998.
- Malone *v.* State, CR 97-656 (Per Curiam), Petition for Rehearing denied March 19, 1998.
- Mauppin *v.* State, CR 93-380 (Per Curiam), Pro Se Motion for Trial Record at Public Expense denied March 26, 1998.
- Meux *v.* State, CR 97-1542 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment remanded March 12, 1998.
- Mitchell *v.* State, CR 95-834 (Per Curiam), Pro Se Motion for Photocopying at Public Expense denied April 16, 1998.
- Moore *v.* State, CR 97-178 (Per Curiam), affirmed March 5, 1998.
- Morrow *v.* Norris, CR 97-1368 (Per Curiam), Pro Se Appellant's Motion to Dismiss Appeal granted; appeal dismissed March 12, 1998.
- Nelson *v.* State, CR 97-1369 (Per Curiam), Pro Se Motion for Extension of Time denied and appeal dismissed March 19, 1998.

- Pitts *v.* Heffley, 97-663 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Appointment of Counsel denied February 26, 1998.
- Polletta *v.* State, CR 97-218 (Per Curiam), affirmed March 26, 1998.
- Reece, Reginald *v.* Gunter, CR 98-93 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 5, 1998.
- Reece, Reginald *v.* State, CR 98-2 (Per Curiam), Pro Se Motion for Rule on Clerk denied March 5, 1998.
- Richards *v.* Erwin, CR 97-1244 (Per Curiam), Pro Se Petition for Writ of Mandamus moot March 19, 1998.
- Ricketts *v.* State, CR 97-1455 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed March 19, 1998.
- Risher *v.* State, CR 92-923 (Per Curiam), Pro Se Petition for Leave to Proceed in Circuit Court With Petition for Writ of Error Coram Nobis denied April 16, 1998.
- Robinson *v.* State, CR 97-297 (Per Curiam), affirmed March 26, 1998.
- Shields *v.* State, CR97-1315 (Per Curiam), Pro Se Motions for Extension of Time to File Brief, for Appointment of Counsel, and for Access to Record denied and appeal dismissed February 26, 1998.
- Talley *v.* State, CR 96-1518 (Per Curiam), affirmed February 26, 1998.
- Tempel *v.* State, CR 96-1400 (Per Curiam), Petition for Rehearing denied April 16, 1998
- Walker *v.* State, CR 97-197 (Per Curiam), Pro Se Motion for Additional Arguments denied April 16, 1998.
- Washington *v.* State, CR 98-94 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed March 26, 1998.
- Weaver *v.* State, CR 97-690 (Per Curiam), Pro Se Motion to Amend Appellant's Brief denied April 16, 1998.
- Whitfield *v.* State, CR 96-522 (Per Curiam), affirmed March 12, 1998.

Williams, Jackie Lee *v.* State, CR 97-1499 (Per Curiam), Pro Se Motion for Appointment of Counsel and Writ of Certiorari granted and Pro Se Motion for Transcript denied April 23, 1998.

Williams, Rodney D. *v.* State, CR 97-361 (Per Curiam), affirmed April 16, 1998.

Willis *v.* State, CR 95-1218 (Per Curiam), Pro Se Motion to Reinstate Appeal granted March 5, 1998.

Young *v.* State, CA CR 96-632 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript at Public Expense denied March 12, 1998.

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders



IN RE: RULES GOVERNING ADMISSION TO
THE BAR OF ARKANSAS

Supreme Court of Arkansas
Opinion delivered March 26, 1998

PER CURIAM. By per curiam dated January 8, 1998, the Court adopted revisions to the "Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law." (Procedures) It is necessary that Rule XIII of the Rules Governing Admission to the Bar be modified to be consistent with the revised Procedures.

To that end, we adopt and republish Rule XIII of the Rules Governing Admission to the Bar of Arkansas, a copy of which is appended to this order.

RULE XIII.
STANDARDS FOR ADMISSION — INITIAL REVIEW

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

In addition to meeting all other requirements of the Rules Governing Admission to the Bar, every applicant for admission to practice by examination and every applicant for readmission or reinstatement of license to practice must be of good moral character and mentally and emotionally stable. Further, where an application is for readmission subsequent to disbarment or surrender of license, such application shall be subject to the limitations set forth in Section 7.L. — Readmission to the Bar — Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, or its successor rule. The determination of the eligibility of every applicant shall be made in accordance with this rule and the burden of establishing eligibility shall be on the applicant. The standard of proof in these proceedings is preponderance of the evidence.

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

petition and shall be in such form as shall be designated by rule of the Board.

Any applications for initial admission, readmission after disbarment or surrender, or reinstatement after suspension pursuant to Rule VII(D), shall be submitted to the Executive Secretary of the Board. The Executive Secretary shall review all such applications. Any application which raises questions of eligibility based upon the standards as set out in this rule shall be referred to the Chair of the Board for review. The Chair, applying the standards as set out in this rule, shall determine: whether the applicant is eligible for initial admission, readmission, or reinstatement; whether to recommend the deferral of the initial admission decision; or, that the Chair is unable to determine eligibility for initial admission, readmission, or reinstatement.

INITIAL ADMISSION, READMISSION, OR REINSTATEMENT GRANTED

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

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

cant for readmission taking the examinations as set forth in Rule IX or its successor rule.

DEFERRAL OF INITIAL ADMISSION DECISION

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

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

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

In the event an applicant elects the option of deferral of determination of eligibility for initial instatement, the committee shall secure such evidence as may be necessary to establish the terms and duration of any deferral of eligibility determination. Such materials may include: documentary evidence supplied by the applicant; evidence secured by the Executive Secretary; evidence acquired by an informal conference with members of the

committee; or such other evidence as the committee may consider necessary to their decision. Prior to establishing the terms and duration of any deferral of admission decision, the committee may elect to reject the applicant as a candidate for the deferral of determination of eligibility program. In such case, the applicant shall then be referred to the full Board and processed as set forth in the next section of this rule.

In the event the committee accepts the applicant as a participant in the deferral of eligibility program, then the applicant will sign an agreement with the committee which sets forth the terms and duration of the deferral understanding. All expenses relating to the deferral procedure shall be borne by the applicant, and this shall be part of the agreement. Within ninety (90) days of the applicant's acquiescence to the deferral agreement, the terms and conditions of that agreement shall be referred to the Board for review. In the event the Board, by a majority vote, concludes that the terms and conditions are insufficient, then the agreement shall be null and void and the matter shall be referred back to the committee. The committee may then, with the advice of the Board, revise the terms and conditions of the deferral agreement and the applicant will be given another opportunity to sign a revised agreement. In the event the applicant does not sign the revised agreement within thirty (30) days of notification thereof, the deferral of initial admission for that applicant shall deem to have been waived. The applicant shall then be referred to the Board for disposition in accord with the next section of this rule.

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

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

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

REFERRAL TO BOARD — HEARING — PROCEDURES

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

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

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

The Executive Secretary of the Board shall act as evidence officer for the hearing and shall be charged with the responsibility of presenting any evidence that may be pertinent to the hearing, either for or against the applicant, and shall have the further responsibility of procuring evidence of parties or witnesses as

hereinafter provided. However, for good cause shown, the Chair of the Board is authorized to appoint a substitute evidence officer.

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

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

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

any summons or subpoena or refusal to testify shall be regarded as constructive contempt of the Supreme Court.

Failure of the applicant to timely request a hearing or tender the bond required by the Executive Secretary shall cause the application to be administratively terminated. After such administrative termination, the applicant must file a new application for initial admission, readmission, or reinstatement, accompanied by the appropriate fees.

*BOARD DECISION — EVIDENTIARY HEARING
INITIAL ADMISSION, READMISSION OR
REINSTATEMENT DENIED
APPEAL*

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

Within thirty (30) days of receipt of written findings of the full Board denying eligibility, the applicant may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested from the Executive Secretary. The Executive Secretary shall certify the record as being a true and correct copy of the record as designated by the parties and it shall be the

responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Arkansas State Board of Law Examiners. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

*BOARD DECISION — EVIDENTIARY HEARING
INITIAL ADMISSION, READMISSION, OR
REINSTATEMENT RECOMMENDED*

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

The Board may recommend readmission of an applicant subsequent to disbarment or surrender of license, or reinstatement after suspension of license pursuant to Rule VII (D) where a hearing panel has been appointed. In the Board's discretion, the applicant may be required to take the examinations set forth in Rule IX of these rules, or its successor rule. Subsequent to such recommendation the applicant shall have the burden of filing with the Court a motion pursuant to Rule 2-1 of the Rules of the Supreme Court, or its successor rule. Such a motion must be filed within thirty (30) days of receipt of notice that the Board, or the Chair of the Board, has recommended reinstatement. The applicant shall file a single copy of the original transcript of the hearing, if one has been conducted, or, the original copy of the authorization for recertification which has been issued by the Chair of the Board pursuant to this Rule. The motion filed in conjunction with the transcript or recommendation from the Chair of the Board shall briefly summarize the circumstances leading to the disbarment, surrender, or suspension. The matter shall then be referred to the Arkansas Supreme Court for disposition, at its dis-

cretion, in accordance with regular motion practice pursuant to Supreme Court Rule 2-1 or its successor rule.

GENERAL

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

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

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

IN RE: ARKANSAS RULES FOR MINIMUM
CONTINUING LEGAL EDUCATION

Supreme Court of Arkansas
Opinion delivered April 16, 1998

PER CURIAM. Effective July 1, 1998, Regulation 4.04(1) of the Arkansas Rules and Regulations for Minimum Continuing Legal Education is abolished.

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Appointments to
Committees

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IN RE: SUPREME COURT COMMITTEE
ON CHILD SUPPORT

Supreme Court of Arkansas
Opinion delivered February 26, 1998

PER CURIAM. Chancery Judge Ellen Brantley and Court of Appeals Judge Judith Rogers are hereby reappointed to the Committee on Child Support for four-year terms to expire on November 30, 2001.

The Court expresses thanks to Judge Brantley and Judge Rogers for accepting reappointment to this most important committee.

IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Opinion delivered March 19, 1998

PER CURIAM. Frank Morledge, Esq., of Forrest City, First Congressional District, is appointed to the Board of Law Examiners for the purpose of grading the February 1998 Bar Examination. Mr. Morledge replaces Blair Arnold, Esq., of Batesville.

The Court thanks Mr. Morledge for accepting appointment to this Board for purposes of grading this examination.

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

Supreme Court of Arkansas
Opinion delivered March 19, 1998

PER CURIAM. Paula Storeygard, Attorney at Law, of North Little Rock, and John C. Everett, Esq., of Fayetteville, are reappointed to our Committee on Model Jury Instructions—Civil for three-year terms to expire on April 30, 2001.

R. Gary Nutter, Esq., of Texarkana, and Peter Kumpe, Esq., of Little Rock, are hereby appointed to the Committee on Model Jury Instructions—Civil for three-year terms to expire on April 30, 2001.

The Court extends its thanks to Ms. Storeygard and Mr. Everett for accepting reappointment, and to Mr. Nutter and Mr. Kumpe for accepting appointment to this most important Committee.

The Court expresses its appreciation to Judge Henry Woods of Little Rock, and James H. McKenzie, Esq., of Prescott, whose terms have expired, for their service as members of this Committee.

IN RE: SUPREME COURT ALTERNATE COMMITTEE
ON PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Opinion delivered March 26, 1998

PER CURIAM. Richard F. Hatfield, Esq., of Little Rock, Second Congressional District, is hereby reappointed to the Supreme Court Alternate Committee on Professional Conduct for a seven-year term to expire on March 9, 2005.

The Court thanks Mr. Hatfield for accepting reappointment to this most important Committee.

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

Supreme Court of Arkansas
Opinion delivered March 26, 1998

PER CURIAM. The Honorable John Cole of Malvern is hereby appointed to the Supreme Court Committee on Model Jury Instructions—Criminal for a three-year term to expire on February 28, 2001.

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

The Court expresses its appreciation to Judge John Patterson, whose term has expired, for his years of faithful service to this Committee.

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

Supreme Court of Arkansas
Opinion delivered March 26, 1998

PER CURIAM. Bob McMahan, Esq., of Little Rock, is hereby appointed to the Supreme Court Committee on Model Jury Instructions—Criminal for a three-year term to expire on February 28, 2001.

The Court thanks Mr. McMahan for accepting appointment to this most important Committee.

The Court expresses its appreciation to Tom Wynne, III, Esq., whose term has expired, for his years of faithful service to this Committee.

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

Supreme Court of Arkansas
Opinion delivered March 26, 1998

PER CURIAM. Scott Stafford, Esq., of Little Rock, and Leslie Powell, Attorney at Law, of Little Rock, are hereby reappointed to the Supreme Court Committee on Model Jury Instructions—Criminal for three-year terms to expire on February 28, 2001.

The Court thanks Mr. Stafford and Ms. Powell for accepting reappointment to this most important Committee.

IN RE: SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Opinion delivered March 26, 1998

PER CURIAM. Bart Virden, Esq., of Morrilton, Second Congressional District, is hereby reappointed to the Supreme Court Committee on Professional Conduct for a seven-year term to expire on March 31, 2005.

The Court thanks Mr. Virden 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 April 16, 1998

PER CURIAM. Noyl Houston, Esq., of Jonesboro, First Congressional District, and Ms. Mary Bennett of Little Rock, At-Large Position, are hereby reappointed to the Supreme Court Committee on Unauthorized Practice of Law for three-year terms to expire on May 31, 2001.

The Court expresses thanks to Mr. Houston and Ms. Bennett for accepting reappointment to this most important Committee.

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Professional Conduct
Matters

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IN RE: Larry E. KUCA,
Arkansas Bar ID # 80081

Supreme Court of Arkansas
Opinion delivered March 5, 1998

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender of the license of Larry E. Kuca, of Little Rock, Arkansas, to practice law in the State of Arkansas. Mr. Kuca's name shall be removed from the registry of licensed attorneys, and he is permanently barred from engaging in the unlicensed practice of law in this state.

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- Professional conduct, Procedures Section 6(B) not unconstitutional. *Id.*
- Professional misconduct, Model Rule 8.4(b) definition. *Id.*
- Disbarment proceeding, appellant's federal conviction precluded relitigation of elements of crime. *Id.*
- Disbarment proceeding, trial court erred in finding law of case mandated summary judgment. *Id.*
- Disbarment proceeding, finding that appellant violated Model Rule 8.4(b) affirmed. *Id.*
- Disbarment proceeding, summary judgment appropriate, full trial not required. *Id.*
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- Professional conduct, sanction determination, aggravating factors. *Id.*
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- Professional conduct, affirmed in part, remanded for sanction hearing. *Id.*
- Criteria for assessing effectiveness of counsel, proof required. *State v. Slocum*, 207
- Ineffective-assistance claim, deficient performance discussed. *Id.*
- Ineffective trial strategy, not basis for meeting *Strickland* test. *Id.*
- Ineffective-assistance claim, two-part standard applies to guilty-plea challenges. *State v. Herred*, 241
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- Committee could have concluded that attorney-client relationship was formed with respect to wrongful-discharge claim, Model Rule of Professional Conduct 1.16(d) applicable. *Cortinez v. Supreme Court Comm. on Prof'l Conduct*, 456
- Case cited in support of argument inapplicable, clear notice given of allegations concerning Rule ultimately found to have been violated. *Id.*
- Appellant's argument without merit, evidence existed from which Committee could have found that appellant had client's papers in his possession and failed to return them. *Id.*
- Appellant's argument meritless, language of Rule does not require demand from client to trigger obligation to return papers. *Id.*
- Trial court refused to allow certain questions of appellee's own attorney, attorney not witness, no showing that ruling was erroneous. *New Prospect Drilling Co. v. First Commercial Trust, N.A.*, 466
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- Attorney's fees in partition actions, justification for statutory provision. *Id.*
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- Attorney's fees in partition actions, trial court did not abuse discretion in awarding appellee's attorney fee of five percent of total sales price of partitioned parcels. *Id.*
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Presumption of vindictiveness limited, reasonable likelihood of actual vindictiveness in sentencing necessary. *Id.*

Establishing claim for prosecutorial vindictiveness, actual vindictiveness. *Id.*

Little objective evidence of actual vindictiveness, failed to satisfy appellant's burden. *Id.*

Appellant established prima facie due-process violation in charging. *Id.*

Presumption of vindictiveness, how overcome. *Id.*

Presumption of vindictiveness, objective explanation on record sufficient to rebut. *Id.*

Prosecutor produced objective evidence to justify addition of habitual-offender count, trial court did not err in allowing State to amend information. *Id.*

Decisions relied upon by appellant concerning interpretation of Article 16, Section 5(b), of Arkansas Constitution inapplicable, cases did not involve municipality acting in furtherance of Amendment 49 or Act 9 of 1960 for public purpose of securing and developing industry. *Pulaski County v. Jacuzzi Bros. Div.*, 91

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Sovereign immunity, 42 U.S.C. § 1983 action, suits against persons in official capacities do not qualify as suits against persons. *Id.*

Sovereign immunity, 42 U.S.C. § 1983 action, claim of state immunity must yield. *Id.*

Sovereign immunity, appellants not immune from federal civil-rights or state tort claims. *Id.*

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Court order must be definite before one may be held in contempt for violating, trial court found that appellant disobeyed clear order of court. *Id.*

Contempt holding supported by substantial evidence, no error found. *Id.*

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Postconviction relief, when findings reversed. *Id.*
Defendant who has pleaded guilty has difficulty in establishing prejudice. *Id.*
Threats or offers of leniency to third party, good-faith standard, satisfied by probable cause to prosecute third party. *Id.*

Trial court clearly erred in finding that appellant's guilty plea resulted from ineffective assistance or State coercion, State had probable cause to arrest and prosecute appellant and third party. *Id.*

Trial court clearly erred in granting postconviction relief, failed to find counsel's purported deficiencies prejudiced appellant. *Id.*

Trial court clearly erred in ruling that counsel was deficient in failing to object to warrant's facial sufficiency. *Id.*

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Speedy trial, Ark. R. Crim. P. 28.1(a) and 28.2(a) discussed. *Marks v. State*, 374

Speedy trial, time begins to run when information filed, no error in trial court's denial of motion to dismiss. *Id.*

Exigent circumstances, officer allowed to enter and to seize that which is in plain view. *Hodge v. State*, 377

Exigent circumstances existed, report of death made it incumbent upon officer to go to scene. *Id.*

Exigent circumstances existed, not inconceivable that one or two victims might have been alive. *Id.*

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Alleged violations, appellant's objection not timely. *Id.*

Alleged violations, trial court did not abuse discretion in allowing notebook and printout as evidence, defendant cannot rely on discovery as substitute for his own investigation. *Id.*

Undisclosed evidence, appellant's burden. *Id.*

Prosecutor's failure to comply with requirements, trial court's options. *Id.*

Failure to disclose information held by police does not warrant reversal absent prejudice. *Id.*
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Other substantial evidence supported conviction, appellant failed to demonstrate prejudice resulting from admission of evidence. *Id.*
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Jury concluded appellant shot victims in head, sufficient evidence of premeditation and deliberation. *Id.*

Totality of circumstances considered when considering whether one has been seized, none of instances complained of were shown to have constituted seizure, evidence of statements given by appellant was admissible. *Id.*

Evidence showed that appellant initiated conversation, no unfair prejudice resulted from introduction of holster into evidence. *Id.*

Admission of photographs, gruesome nature does not automatically require exclusion from evidence. *Id.*

Photographs were pertinent and not cumulative, prejudicial effect did not outweigh probative value. *Id.*

Statements not remote in time, statements came within exception to hearsay rule. *Id.*

Statements relevant, no abuse of discretion found. *Id.*

Evidence of appellant's party behavior admitted, no abuse of discretion found. *Id.*

Taped statement not *per se* inculpatory, to extent transcript varied from tape recording there was no prejudice. *Id.*

Witness's testimony about statement made some six months prior to murder, no abuse of discretion found. *Id.*

Photograph excluded as cumulative, no abuse of discretion found. *Id.*

Evidence correctly excluded, conviction and release from incarceration more than ten years old. *Id.*

Testimony allowed at trial, no prejudice found. *Id.*

Testimony showed that appellant remained in possession of pistol for several days after killings, no abuse of discretion to allow. *Id.*

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Statements by appellee bank's representatives did not support fraud action, no facts pleaded by appellant to show justifiable reliance. *Id.*

Statements by appellee bank's representatives did not support fraud action, bank had right to refuse loan. *Id.*

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ARKANSAS
APPELLATE
REPORTS

Volume 61

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
February 25, 1998— April 22, 1998
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1998

ERRATA

59 Ark. App. at vi:

The name "Bosquet" should be "Bousquet."

59 Ark. App. at x:

The name "Bosquet" should be "Bousquet."

59 Ark. App. at 54:

The name "BOSQUET" should be "BOUSQUET."

59 Ark. App. at 55-76, running heads:

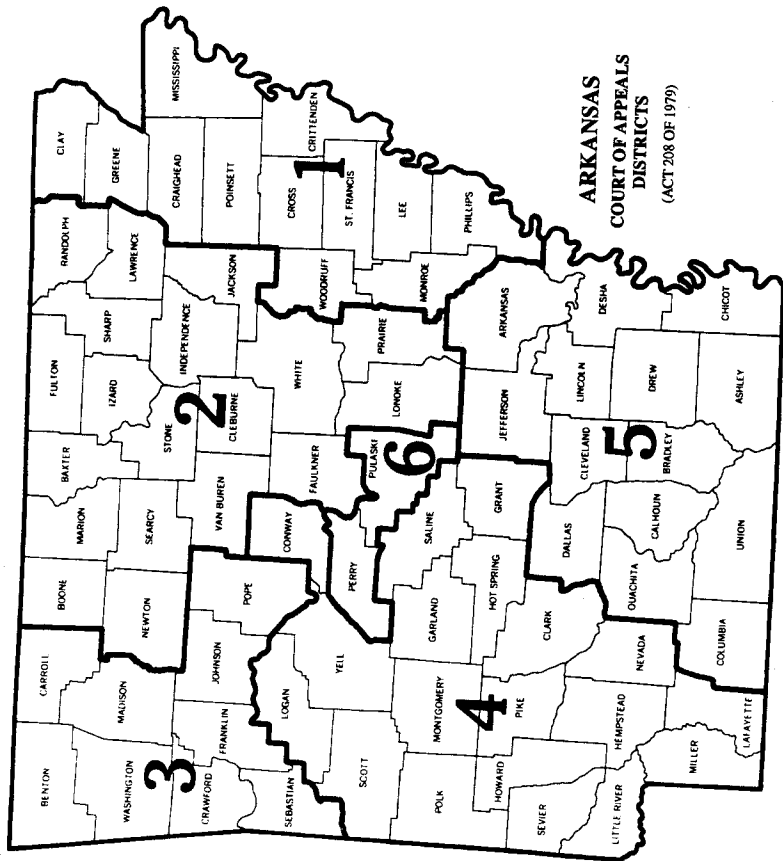
The name "BOSQUET" should be "BOUSQUET."

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1998

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COURT OF APPEALS
DISTRICTS
(ACT 208 OF 1979)

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DURING THE PERIOD COVERED
BY THIS VOLUME
(February 25, 1998 — April 22, 1998, inclusive)

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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

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LESLIE W. STEEN	Clerk
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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.

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

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

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

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

(d) COURT OF APPEALS — UNPUBLISHED OPINIONS. Opinions of the Court of Appeals not designated for publication shall not be published in the *Arkansas Reports* and shall not

be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as *res judicata*, collateral estoppel, or law of the case). Opinions not designated for publication shall be listed in the *Arkansas Reports* by case number, style, date, and disposition.

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Airtherm Prods., Inc. v. Coleman*, CA 97-1147 (Jennings, J.), affirmed April 15, 1998.
- Allen v. State*, CA CR 97-998 (Roaf, J.), affirmed March 11, 1998.
- Allen Canning Co. v. Lewis*, CA 97-956 (Crabtree, J.) affirmed March 18, 1998.
- Amonette v. Amonette*, CA 97-957 (Stroud, J.), reversed March 11, 1998.
- Arkansas Dep't of Human Servs. v. Callahan*, CA 97-1080 (Rogers, J.), dismissed March 4, 1998.
- Arkansas State Police v. Couch*, CA 97-1033 (Neal, J.), reversed and remanded March 18, 1998.
- B.C. v. State*, CA 97-985 (Meads, J.), affirmed February 25, 1998.
- Bales v. Dean Marvel Constr.*, CA 97-1104 (Jennings, J.), affirmed April 22, 1998.
- Benson v. Osmon*, CA 97-959 (Griffen, J.), affirmed April 8, 1998.
- Benson v. State*, CA CR 97-1062 (Rogers, J.), affirmed April 1, 1998.
- Bogan v. State*, CA CR 97-842 (Arey, J.), affirmed April 22, 1998.
- Bong v. South Point Properties, Inc.*, CA 97-1117 (Crabtree, J.), affirmed April 8, 1998.
- Braxton v. State*, CA CR 97-777 (Arey, J.), affirmed April 1, 1998.
- Brown v. State*, CA CR 97-965 (Pittman, J.), affirmed March 18, 1998.
- Caple v. State*, CA CR 96-799 (Per Curiam), Order Directing Appellant's Attorney to File Abstract and Brief by April 1, 1998 issued March 11, 1998.
- Carr v. State*, CA CR 97-951 (Robbins, C.J.), affirmed as modified April 22, 1998.
- Case v. Unifirst Corp.*, CA 97-782 (Jennings, J.), affirmed March 18, 1998.
- City of Fort Smith v. Brooks*, CA 97-823 (Pittman, J.), affirmed March 25, 1998.
- Clark v. Clark*, CA 97-768 (Pittman, J.), affirmed April 8, 1998.

- Clute *v.* State, CA CR 97-774 (Pittman, J.), affirmed April 8, 1998.
- Cody Ice *v.* Etter, CA 97-645 (Jennings, J.), affirmed March 25, 1998. Rehearing denied April 22, 1998.
- Collins *v.* Collins, CA 97-945 (Arey, J.), reversed and dismissed in part and affirmed in part on appeal; affirmed in part and reversed and remanded in part on cross-appeal March 11, 1998.
- Collymore *v.* State, CA CR 97-537 (Crabtree, J.), affirmed March 4, 1998.
- Colson Caster Corp. *v.* Williams, CA 97-1000 (Pittman, J.), affirmed March 11, 1998.
- Coones *v.* Coones, CA 97-603 (Griffen, J.), reversed and remanded March 25, 1998.
- Copas *v.* Copas, CA 97-390 (Neal, J.), affirmed in part; affirmed as modified in part; reversed and remanded in part on direct appeal; affirmed in part; affirmed as modified in part on cross-appeal April 8, 1998. Rehearing denied May 20, 1998.
- Deloach *v.* Manpower, Inc., CA 97-1115 (Roaf, J.), reversed and remanded April 8, 1998.
- Didion Mid-South Corp. *v.* Director, E 97-78 (Griffen, J.), affirmed April 15, 1998. Rehearing denied May 20, 1998.
- Dodson *v.* State, CA CR 97-1487 (Per Curiam), Appellant's Pro Se Motion for Appointment of Counsel, for Extension of Time, for Appeal Bond, for Use of Transcript, and to Proceed In Forma Pauperis granted in part; denied in part March 4, 1998.
- Dudley *v.* Dudley, CA 98-12 (Per Curiam), Appellee's Motion to Release Sealed Record granted March 18, 1998.
- Duke *v.* State, CA CR 97-1181 (Robbins, C.J.), affirmed April 8, 1998.
- Dunham *v.* Arkansas Dep't of Human Servs., CA 97-1123 (Roaf, J.) affirmed March 18, 1998.
- Easterling *v.* State, CA CR 97-579 (Meads, J.), affirmed March 4, 1998.
- Edmondson *v.* State, CA CR 97-614 (Neal, J.), affirmed March 11, 1998.
- Ennen *v.* The Eye Group, L.L.C., CA 97-1130 (Crabtree, J.), reversed and remanded March 11, 1998.

- Ewing v. Rohrscheib*, CA 97-918 (Bird, J.), affirmed April 1, 1998.
- Federal Compress & Warehouse Co. v. Risper*, CA 97-1220 (Robbins, C.J.), affirmed April 22, 1998.
- Federal Express v. Edwards*, CA 97-1124 (Pittman, J.), affirmed on appeal and on cross-appeal April 22, 1998.
- Fields v. State*, CA CR 97-1112 (Jennings, J.), affirmed March 18, 1998.
- Financial Benefit Life Ins. Co. v. Weedman*, CA 97-953 (Meads, J.), affirmed March 11, 1998. Rehearing denied April 15, 1998.
- Foster v. Waits*, CA 97-1183 (Robbins, C.J.), reversed and remanded March 4, 1998.
- French v. State*, CA CR 97-1155 (Stroud, J.), affirmed April 15, 1998.
- Gardner v. State*, CA CR 97-681 (Pittman, J.), affirmed February 25, 1998.
- Garrett v. Garrett*, CA 97-916 (Robbins, C.J.), affirmed April 1, 1998.
- Gaston v. Timex Corp.*, CA 97-1026 (Roaf, J.), affirmed March 4, 1998. Rehearing denied April 8, 1998.
- Gilbreth v. Director*, E 97-77 (Neal, J.), affirmed April 15, 1998.
- Grammer v. Evans*, CA 97-1284 (Bird, J.), reversed and remanded April 15, 1998.
- Green v. State*, CA CR 97-973 (Arey, J.), affirmed March 4, 1998.
- Griffin v. Edwards*, CA 97-988 (Neal, J.), affirmed April 8, 1998.
- Hambrick v. Farmers and Merchants Bank*, CA 97-867 (Rogers, J.), affirmed February 25, 1998.
- Hardin v. Hardin*, CA 97-1011 (Arey, J.), affirmed February 25, 1998.
- Hardin v. State*, CA CR 97-265 (Neal, J.), affirmed March 4, 1998.
- Harter v. Wheatley*, CA 97-1036 (Roaf, J.), affirmed April 15, 1998.
- Harvey v. Director*, E 95-266 (Stroud, J.), affirmed March 18, 1998.
- Hawthorne v. State*, CA CR 97-1021 (Pittman, J.), affirmed March 18, 1998.

- Healey *v.* Phillips, CA 97-798 (Neal, J.), affirmed as modified April 8, 1998.
- Henning *v.* Director, E 96-39 (Crabtree, J.), affirmed April 8, 1998.
- Henry *v.* American Investors Life Ins. Co., CA 97-838 (Neal, J.), reversed and remanded March 4, 1998. Rehearing denied April 15, 1998.
- Herrmann *v.* State, CA 97-1065 (Neal, J.), reversed and dismissed March 11, 1998.
- Hoffman *v.* State, CA CR 97-922 (Crabtree, J.), affirmed March 11, 1998.
- Huff *v.* State, CA CR 97-554 (Rogers, J.), affirmed February 25, 1998.
- Hunt *v.* State, CA CR 97-864 (Stroud, J.), affirmed April 1, 1998.
- Hutchins *v.* Hutchins, CA 97-429 (Per Curiam), Appellant's Motion for Reinstatement of Appeal, for Brief Time and Motion for Stay granted in part; denied in part March 18, 1998.
- Integrated Distrib., Inc. *v.* Director, E 97-41 (Roaf, J.), affirmed March 18, 1998.
- International Paper Co. *v.* Director, E 96-221 (Rogers, J.), affirmed April 8, 1998.
- J&P Reithemeyer Land, Inc. *v.* AMP Farms, Inc., CA 97-996 (Rogers, J.), affirmed with limited remand March 25, 1998.
- Jackson *v.* State, CA CR 97-799 (Roaf, J.), affirmed April 8, 1998.
- Jenkins *v.* State, CA CR 96-1481 (Bird, J.), affirmed April 8, 1998.
- Johnson *v.* State, CA CR 97-893 (Bird, J.), affirmed April 15, 1998.
- Jones *v.* General Indus., CA 97-876 (Crabtree, J.), affirmed March 25, 1998.
- Jones *v.* Little Rock Family Planning Servs., P.A., CA 97-309 (Roaf, J.), affirmed in part; reversed and remanded in part April 8, 1998. Rehearing denied May 13, 1998.
- Kannady *v.* State, CA CR 97-484 (Meads, J.), affirmed March 25, 1998.
- Kee *v.* Sims, CA 97-824 (Jennings, J.), affirmed March 4, 1998.
- Kuykendall *v.* Kuykendall, CA 97-822 (Neal, J.), reversed and remanded February 25, 1998.

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- Massey v. Southern Bag Corp.*, CA 97-1135 (Meads, J.), affirmed April 8, 1998.
- Maverick Transp. v. Lee*, CA 97-1242 (Robbins, C.J.), affirmed April 15, 1998. Rehearing denied May 20, 1998.
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- McKim v. State*, CA CR 97-955 (Bird, J.), affirmed April 22, 1998.
- McMichael v. State*, CA CR 97-773 (Roaf, J.), affirmed April 1, 1998.
- McSparrin v. State*, CA CR 97-1270 (Meads, J.), affirmed April 22, 1998.
- Mearns v. Mearns*, CA 98-71 (Per Curiam), Appellant's Motion to Supplement the Record and Motion to Take Judicial Notice of Mandate denied and appeal dismissed March 25, 1998.

- Minton *v.* State, CA CR 97-597 (Meads, J.), affirmed as modified April 8, 1998.
- Meyers *v.* State, CA CR 97-1014 (Stroud, J.), affirmed April 22, 1998.
- Mitchell *v.* Director, E 97-86 (Roaf, J.), affirmed April 22, 1998.
- Monaco *v.* Fleming, CA 97-1178 (Bird, J.), affirmed April 22, 1998.
- Morgan *v.* Batesville Casket Co., CA 97-1019 (Neal, J.), affirmed March 11, 1998.
- Morton *v.* State, CA CR 97-695 (Griffen, J.), affirmed April 8, 1998.
- Moro Motors, Inc. *v.* First State Bank of Warren, CA 97-727 (Neal, J.), affirmed April 22, 1998.
- Motel 6 *v.* Hasbargen, CA 97-862 (Jennings, J.), affirmed in part; reversed and remanded in part April 22, 1998.
- Moyer *v.* State, CA CR 97-719 (Griffen, J.), affirmed April 8, 1998.
- Mullins *v.* State, CA 97-886 (Meads, J.), affirmed February 25, 1998.
- Nix *v.* State, CA CR 97-1201 (Robbins, C.J.), affirmed March 25, 1998.
- Oglesby *v.* State, CA CR 97-921 (Crabtree, J.), affirmed February 25, 1998.
- Oglesby *v.* Thornton, CA 97-1254 (Griffen, J.), reversed and dismissed April 15, 1998.
- Payne *v.* State, CA CR 97-1031 (Neal, J.), affirmed April 22, 1998.
- Pellham *v.* McGinnis, CA 97-283 (Stroud, J.), affirmed March 4, 1998.
- Peterson *v.* State, CA CR 97-1102 (Arey, J.), affirmed March 18, 1998.
- Petit Jean Poultry *v.* Taylor, CA 97-997 (Roaf, J.), affirmed in part, reversed in part and remanded February 25, 1998.
- Pettis *v.* State, CA CR 97-857 (Pittman, J.), affirmed April 15, 1998.
- Phillips *v.* City of West Memphis, CA 97-855 (Robbins, C.J.), affirmed March 11, 1998.
- Pinewood Transport *v.* Yarbrough, CA 97-1029 (Bird, J.), remanded March 4, 1998.

- Poe *v.* State, CA CR 97-885 (Griffen, J.), affirmed April 22, 1998.
- Polk County *v.* Morgan, CA 97-718 (Jennings, J.), affirmed February 25, 1998.
- Pretty *v.* Acme Frame Co., CA 97-1046 (Bird, J.), affirmed March 11, 1998.
- Raines *v.* Copy Systems, Inc., CA 97-455 (Roaf, J.), reversed and remanded March 11, 1998.
- Red Arrow Freight Lines *v.* Bledsoe, CA 97-1103 (Jennings, J.), affirmed April 15, 1998.
- Red Lobster *v.* Morris, CA 97-1142 (Arey, J.), affirmed in part; reversed and remanded in part March 25, 1998.
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- Richison *v.* Boatmen's Arkansas, Inc., CA 97-584 (Per Curiam), appeal dismissed February 25, 1998.
- Robinson *v.* State, CA CR 97-861 (Bird, J.), affirmed March 25, 1998.
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- Skiles *v.* State, CA CR 97-515 (Roaf, J.), affirmed April 15, 1998.
- Skinner *v.* Quality Foods, CA 97-1173 (Robbins, C.J.), affirmed April 8, 1998.
- Smith *v.* Smith, CA 97-666 (Meads, J.), affirmed April 22, 1998.
- Smith *v.* Director, E 96-158 (Griffen, J.), affirmed April 22, 1998.
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- St. Paul Fire & Marine *v.* Stonesifer, CA 97-1066 (Stroud, J.), affirmed April 8, 1998.
- Strothers *v.* State, CA CR 97-850 (Arey, J.), affirmed April 15, 1998.

- Superior Indus. *v.* Cooper, CA 97-750 (Pittman, J.), affirmed March 4, 1998.
- Superior Indust. *v.* Konert, CA 97-1107 (Rogers, J.), affirmed March 11, 1998.
- Superior Indus. *v.* Washausen, CA 97-1144 (Rogers, J.), dismissed March 18, 1998.
- Sutterfield *v.* Sutterfield, CA 97-946 (Rogers, J.), reversed and remanded March 18, 1998.
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- Thetford *v.* State, CA CR 97-601 (Stroud, J.), affirmed February 25, 1998.
- Thompson *v.* State, CA CR 97-856 (Jennings, J.), affirmed April 1, 1998.
- Trotter *v.* Director, E 97-169 (Neal, J.), remanded April 8, 1998.
- Tyson Foods *v.* Klein, CA 97-1120 (Crabtree, J.), affirmed March 18, 1998.
- United Parcel Serv. *v.* Spence, CA 97-1002 (Rogers, J.), affirmed March 4, 1998. Rehearing denied April 15, 1998.
- Vestal *v.* Director, E 97-54 (Neal, J.), affirmed April 8, 1998.
- Waddle *v.* State, CA CR 97-71 (Stroud, J.), affirmed March 4, 1998.
- Warren *v.* State, CA CR 97-166 (Crabtree, J.), affirmed April 1, 1998.
- Watson *v.* Your Employment Service, CA 97-1051 (Griffen, J.), affirmed April 8, 1998.
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- Williams *v.* State, CA CR 97-478 (Meads, J.), affirmed March 18, 1998.
- Wilson *v.* Harris, CA 97-963 (Arey, J.), affirmed March 18, 1998.
- Your Employment Servs. *v.* Garrett, CA 97-1139 (Rogers, J.), affirmed April 15, 1998.

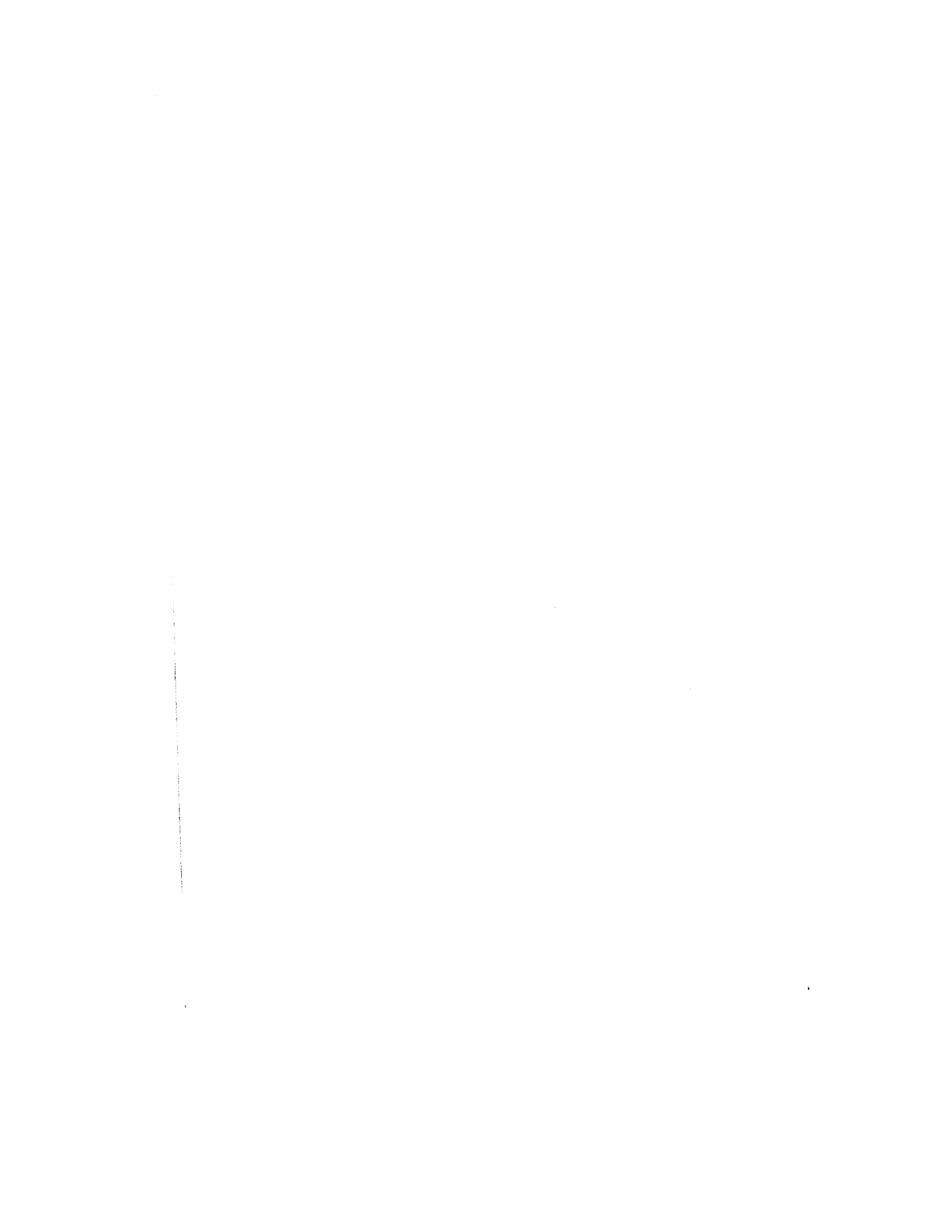
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AND COURT OF APPEALS

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