



ARKANSAS REPORTS
VOLUME 333

ARKANSAS
APPELLATE REPORTS
VOLUME 62

*[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 333

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
April 30, 1998 — June 25, 1998
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS
Volume 62

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
April 29, 1998 — June 24, 1998
INCLUSIVE²

PUBLISHED BY THE
STATE OF ARKANSAS
1998

¹Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 722. Cite as 333 Ark. ____ (1998).

²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 302. Cite as 62 Ark. App. ____ (1998).



ERRATA

331 Ark. at 66; lines eleven and twelve:
"824 S.W.2d 387 (1992)" should be "940 S.W.2d 445 (1997)."

330 Ark. at 315; case style:
"ASSOCIATED" should be "ASSOCIATES."

330 Ark. at 316-323; running heads:
"ASSOCIATED" should be "ASSOCIATES."

Set in Bembo

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ARKANSAS
REPORTS

Volume 333

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
April 30, 1998 — June 25, 1998
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1998

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 | 723 |
| Appointments to Committees | 737 |
| INDEX | |
| Alphabetical Headnote Index | 739 |
| References to Acts, Codes, Constitutional Provisions, Rules, and Statutes | 763 |

JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(April 30, 1998 — June 25, 1998, 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

| | |
|--|-----|
| A.C.E., Inc. <i>v.</i> Inland Mortgage Co. | 232 |
| Adams <i>v.</i> Arthur | 53 |
| Arkansas Dep't of Fin. & Admin. <i>v.</i> Pharmacy Assocs., Inc. | 451 |
| Arkansas Dep't of Human Servs. (Moore <i>v.</i>) | 288 |
| Arkansas Dep't of Human Servs. <i>v.</i> R.P. | 516 |
| Arkansas P.C. & E. Comm'n (Hamilton <i>v.</i>) | 370 |
| Arkansas State Claims Comm'n (Hanley <i>v.</i>) | 159 |
| Arthur (Adams <i>v.</i>) | 53 |
| Ayers <i>v.</i> State | 116 |
| Ayers <i>v.</i> State | 393 |

B

| | |
|--|-----|
| Baldwin Piano & Organ (Kildow <i>v.</i>) | 335 |
| Barr <i>v.</i> State | 576 |
| Bedford <i>v.</i> Fox | 509 |
| Black <i>v.</i> Van Steenwyk | 629 |
| Bone (Layman <i>v.</i>) | 121 |
| Boyd <i>v.</i> Weiss | 684 |
| Brown <i>v.</i> State | 698 |
| Butcher (UMLIC 2 Funding Corp. <i>v.</i>) | 442 |

C

| | |
|---|-----|
| Calandro <i>v.</i> Parkerson | 603 |
| Campbell <i>v.</i> City of Cherokee Village West | 310 |
| Carson <i>v.</i> Weiss | 561 |
| City of Cherokee Village West (Campbell <i>v.</i>) | 310 |
| City of Siloam Springs (Thompson <i>v.</i>) | 351 |
| Coats <i>v.</i> Gardner | 581 |
| Collins <i>v.</i> Keller | 238 |
| Collums (Southern Transit Co. <i>v.</i>) | 170 |

| | |
|--|-----|
| Cook <i>v.</i> State | 22 |
| Crossett Pub. Sch. (<i>Gourley v.</i>) | 178 |

D

| | |
|--|-----|
| Daniels (Ozarks Unlimited Resources Coop., Inc. <i>v.</i>) | 214 |
| Daniels <i>v.</i> State | 620 |
| Dellinger <i>v.</i> First Nat'l Bank of Russellville | 460 |
| Dillard <i>v.</i> State | 418 |
| Donihoo <i>v.</i> State | 340 |
| Donihoo <i>v.</i> State | 577 |

E

| | |
|---|-----|
| Earl (State <i>v.</i>) | 489 |
| Eid <i>v.</i> State | 465 |
| Ellington (<i>McAdams v.</i>) | 362 |
| Ellis <i>v.</i> Norris | 200 |
| Erwin (<i>Kelch v.</i>) | 567 |
| Estate of Jolly (<i>Jolly v.</i>) | 394 |

F

| | |
|--|-----|
| Financial Benefit Life Ins. Co. <i>v.</i> Weedman | 269 |
| First Commercial Bank, N.A. <i>v.</i> Walker | 100 |
| First Nat'l Bank of Russellville (<i>Dellinger v.</i>) | 460 |
| First State Bank of Crossett (<i>Mitcham v.</i>) | 598 |
| Flemings (<i>Littles v.</i>) | 476 |
| Fox (<i>Bedford v.</i>) | 509 |
| Fultz <i>v.</i> State | 586 |

G

| | |
|--|-----|
| Garcia <i>v.</i> State | 26 |
| Gardner (<i>Coats v.</i>) | 581 |
| Giffin (<i>Swink v.</i>) | 400 |
| Golden <i>v.</i> Westark Community College | 41 |
| Golden Tee, Inc. <i>v.</i> Venture Golf Schs., Inc. | 253 |
| <i>Gourley v.</i> Crossett Pub. Sch. | 178 |
| Gwynn <i>v.</i> State | 206 |

H

| | |
|---|-----|
| Hales (Seeco, Inc. <i>v.</i>) | 469 |
| Hamilton <i>v.</i> Arkansas P.C. & E. Comm'n | 370 |
| Hanley <i>v.</i> Arkansas State Claims Comm'n | 159 |
| Henderson <i>v.</i> Little Rock Sch. Dist. | 448 |
| Hodges <i>v.</i> Huckabee | 247 |
| Hope (Hope <i>v.</i>) | 324 |
| Hope <i>v.</i> Hope | 324 |
| Huckabee (Hodges <i>v.</i>) | 247 |

I

| | |
|---|-----|
| In Re: Adoption of Samant | 471 |
| Inland Mortgage Co. (A.C.E., Inc. <i>v.</i>) | 232 |

J

| | |
|---|-----|
| Jameson <i>v.</i> State | 128 |
| Johnson, James Wesley <i>v.</i> State | 1 |
| Johnson, Perry Eugene <i>v.</i> State | 673 |
| Jolly <i>v.</i> Estate of Jolly | 394 |
| Jones <i>v.</i> State | 208 |

K

| | |
|--|-----|
| Kelch <i>v.</i> Erwin | 567 |
| Keller (Collins <i>v.</i>) | 238 |
| Kildow <i>v.</i> Baldwin Piano & Organ | 335 |

L

| | |
|---|-----|
| Langdon (Robinson <i>v.</i>) | 662 |
| Layman <i>v.</i> Bone | 121 |
| Lever <i>v.</i> State | 377 |
| L.H. <i>v.</i> State | 613 |
| Liberty Mut. Ins. Co. <i>v.</i> Thomas | 655 |
| Little Rock Sch. Dist. (Henderson <i>v.</i>) | 448 |
| Littles <i>v.</i> Flemings | 476 |

M

| | |
|--|-----|
| Malone <i>v.</i> Texarkana Pub. Schs. | 343 |
| Mason <i>v.</i> Wal-Mart Stores, Inc. | 3 |
| Matthews, Freddie Davis <i>v.</i> State | 578 |
| Matthews, Shirley <i>v.</i> State | 701 |
| McAdams <i>v.</i> Ellington | 362 |
| McGrew <i>v.</i> State | 207 |
| M.D. Limbaugh Constr. Co. (Stapleton <i>v.</i>) | 381 |
| Mitcham <i>v.</i> First State Bank of Crossett | 598 |
| Moore <i>v.</i> Arkansas Dep't of Human Servs. | 288 |
| Moore <i>v.</i> State | 272 |
| Moory <i>v.</i> Quadras, Inc. | 624 |
| Morgan <i>v.</i> State | 294 |
| Morris' <i>v.</i> State | 466 |
| Mosley <i>v.</i> State | 273 |
| Myers <i>v.</i> State | 706 |

N

| | |
|----------------------------------|-----|
| Norman (Norman <i>v.</i>) | 644 |
| Norman <i>v.</i> Norman | 644 |
| Norris (Ellis <i>v.</i>) | 200 |

O

| | |
|---|-----|
| One 1993 Toyota Camry (State <i>v.</i>) | 503 |
| Ozarks Unlimited Resources Coop., Inc. <i>v.</i> Daniels | 214 |

P

| | |
|--|-----|
| Parker <i>v.</i> State | 137 |
| Parkerson (Calandro <i>v.</i>) | 603 |
| Payne <i>v.</i> State | 154 |
| Pharmacy Assocs., Inc. (Arkansas Dep't of Fin. & Admin. <i>v.</i>) | 451 |
| Phillips <i>v.</i> Town of Oak Grove | 183 |
| Prudential Ins. Brokerage (Vincent <i>v.</i>) | 414 |

Q

| | |
|---|-----|
| Quadras, Inc. (<i>Moory v.</i>) | 624 |
|---|-----|

R

| | |
|--|-----|
| R.P. (Arkansas Dep't of Human Servs. <i>v.</i>) | 516 |
| Roberts (<i>Thompson v.</i>) | 544 |
| Robinson <i>v.</i> Langdon | 662 |
| Ross <i>v.</i> Southern Farm Bureau Cas. Ins. Co. | 227 |

S

| | |
|---|-----|
| Schlesier <i>v.</i> State | 117 |
| Seeco, Inc. <i>v.</i> Hales | 469 |
| Sheriff of Dallas County (<i>Simpson v.</i>) | 277 |
| <i>Simpson v.</i> Sheriff of Dallas County | 277 |
| <i>Sims v.</i> State | 405 |
| Skokos (<i>Skokos v.</i>) | 396 |
| <i>Skokos v.</i> Skokos | 396 |
| Southern Farm Bureau Cas. Ins. Co. (<i>Ross v.</i>) | 227 |
| Southern Transit Co. <i>v.</i> Collums | 170 |
| <i>Stapleton v.</i> M.D. Limbaugh Constr. Co. | 381 |
| State (<i>Ayers v.</i>) | 116 |
| State (<i>Ayers v.</i>) | 393 |
| State (<i>Barr v.</i>) | 576 |
| State (<i>Brown v.</i>) | 698 |
| State (<i>Cook v.</i>) | 22 |
| State (<i>Daniels v.</i>) | 620 |
| State (<i>Dillard v.</i>) | 418 |
| State (<i>Donihoo v.</i>) | 340 |
| State (<i>Donihoo v.</i>) | 577 |
| State (<i>Eid v.</i>) | 465 |
| State (<i>Fultz v.</i>) | 586 |
| State (<i>Garcia v.</i>) | 26 |
| State (<i>Guynn v.</i>) | 206 |
| State (<i>Jameson v.</i>) | 128 |
| State (<i>Johnson, James Wesley v.</i>) | 1 |
| State (<i>Johnson, Perry Eugene v.</i>) | 673 |
| State (<i>Jones v.</i>) | 208 |
| State (<i>Lever v.</i>) | 377 |

| | |
|--|-----|
| State (L.H. <i>v.</i>)..... | 613 |
| State (Matthews, Freddie Davis <i>v.</i>) | 578 |
| State (Matthews, Shirley <i>v.</i>) | 701 |
| State (McGrew <i>v.</i>)..... | 207 |
| State (Moore <i>v.</i>)..... | 272 |
| State (Morgan <i>v.</i>)..... | 294 |
| State (Morris <i>v.</i>) | 466 |
| State (Mosley <i>v.</i>) | 273 |
| State (Myers <i>v.</i>) | 706 |
| State (Parker <i>v.</i>) | 137 |
| State (Payne <i>v.</i>) | 154 |
| State (Schlesier <i>v.</i>) | 117 |
| State (Sims <i>v.</i>)..... | 405 |
| State (Tabor <i>v.</i>) | 429 |
| State (Thompson <i>v.</i>)..... | 92 |
| State (Wickliffe <i>v.</i>) | 342 |
| State (Wickliffe <i>v.</i>) | 720 |
| State (Williams <i>v.</i>)..... | 580 |
| State (Wofford <i>v.</i>) | 120 |
| State <i>v.</i> Earl..... | 489 |
| State Farm Gen. Ins. Co. (Village Market, Inc. <i>v.</i>) | 552 |
| State <i>v.</i> One 1993 Toyota Camry | 503 |
| Swink <i>v.</i> Giffin | 400 |

T

| | |
|---|-----|
| Tabor <i>v.</i> State | 429 |
| Texarkana Pub. Schs. (Malone <i>v.</i>) | 343 |
| Thomas (Liberty Mut. Ins. Co. <i>v.</i>)..... | 655 |
| Thompson <i>v.</i> City of Siloam Springs | 351 |
| Thompson <i>v.</i> Roberts | 544 |
| Thompson <i>v.</i> State | 92 |
| Tortorich (Tortorich <i>v.</i>)..... | 15 |
| Tortorich <i>v.</i> Tortorich | 15 |
| Town of Oak Grove (Phillips <i>v.</i>) | 183 |

U

| | |
|---|-----|
| UMLIC 2 Funding Corp. <i>v.</i> Butcher | 442 |
|---|-----|

V

| | |
|---|-----|
| Van Camp (Van Camp <i>v.</i>) | 320 |
| Van Camp <i>v.</i> Van Camp | 320 |
| Van Steenwyk (Black <i>v.</i>) | 629 |
| Venture Golf Schs., Inc. (Golden Tee, Inc. <i>v.</i>)..... | 253 |
| Village Market, Inc. <i>v.</i> State Farm Gen. Ins. Co..... | 552 |
| Vincent <i>v.</i> Prudential Ins. Brokerage | 414 |

W

| | |
|--|-----|
| Wal-Mart Stores, Inc. (Mason <i>v.</i>) | 3 |
| Walker (First Commercial Bank, N.A. <i>v.</i>)..... | 100 |
| Weedman (Financial Benefit Life Ins. Co. <i>v.</i>) | 269 |
| Weiss (Boyd <i>v.</i>) | 684 |
| Weiss (Carson <i>v.</i>)..... | 561 |
| Westark Community College (Golden <i>v.</i>)..... | 41 |
| Wickliffe <i>v.</i> State | 342 |
| Wickliffe <i>v.</i> State | 720 |
| Williams <i>v.</i> State | 580 |
| Wofford <i>v.</i> State..... | 120 |

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:

| | |
|---|-----|
| Coats <i>v.</i> Gardner | 581 |
| Fultz <i>v.</i> State | 586 |
| Jones <i>v.</i> State | 208 |
| Liberty Mut. Ins. Co. <i>v.</i> Thomas | 655 |
| Malone <i>v.</i> Texarkana Pub. Schs. | 343 |
| Moore <i>v.</i> Arkansas Dep't of Human Servs. | 288 |
| Morgan <i>v.</i> State | 294 |
| Ozarks Unlimited Resources Coop., Inc. <i>v.</i> Daniels | 214 |
| Thompson <i>v.</i> City of Siloam Springs | 351 |

DAVID NEWBERN, JUSTICE:

| | |
|--|-----|
| In Re: Adoption of Samant | 471 |
| Johnson, James Wesley <i>v.</i> State | 1 |
| Jolly <i>v.</i> Estate of Jolly | 394 |
| Layman <i>v.</i> Bone | 121 |
| Littles <i>v.</i> Flemings | 476 |
| Mason <i>v.</i> Wal-Mart Stores, Inc. | 3 |
| McAdams <i>v.</i> Ellington | 362 |
| Robinson <i>v.</i> Langdon | 662 |
| Ross <i>v.</i> Southern Farm Bureau Cas. Ins. Co. | 227 |
| Skokos <i>v.</i> Skokos | 396 |
| Swink <i>v.</i> Giffin | 400 |

TOM GLAZE, JUSTICE:

| | |
|--|-----|
| A.C.E., Inc. <i>v.</i> Inland Mortgage Co. | 232 |
| Collins <i>v.</i> Keller | 238 |
| Hamilton <i>v.</i> Arkansas P.C. & E. Comm'n | 370 |
| Jameson <i>v.</i> State | 128 |
| Johnson, Perry Eugene <i>v.</i> State | 673 |
| Mitcham <i>v.</i> First State Bank of Crossett | 598 |

| | |
|---|-----|
| Sims <i>v.</i> State | 405 |
| State <i>v.</i> Earl | 489 |
| State <i>v.</i> One 1993 Toyota Camry | 503 |
| Tortorich <i>v.</i> Tortorich | 15 |
| Vincent <i>v.</i> Prudential Ins. Brokerage | 414 |

DONALD L. CORBIN, JUSTICE:

| | |
|--|-----|
| Calandro <i>v.</i> Parkerson | 603 |
| Campbell <i>v.</i> City of Cherokee Village West | 310 |
| Dillard <i>v.</i> State | 418 |
| L.H. <i>v.</i> State | 613 |
| Parker <i>v.</i> State | 137 |
| Tabor <i>v.</i> State | 429 |
| UMLIC 2 Funding Corp. <i>v.</i> Butcher | 442 |
| Van Camp <i>v.</i> Van Camp | 320 |

ROBERT L. BROWN, JUSTICE:

| | |
|--|-----|
| Bedford <i>v.</i> Fox | 509 |
| Boyd <i>v.</i> Weiss | 684 |
| Brown <i>v.</i> State | 698 |
| Cook <i>v.</i> State | 22 |
| Daniels <i>v.</i> State | 620 |
| Garcia <i>v.</i> State | 26 |
| Golden <i>v.</i> Westark Community College | 41 |
| Henderson <i>v.</i> Little Rock Sch. Dist. | 448 |
| Hodges <i>v.</i> Huckabee | 247 |
| Hope <i>v.</i> Hope | 324 |
| Payne <i>v.</i> State | 154 |

ANNABELLE CLINTON IMBER, JUSTICE:

| | |
|---|-----|
| Adams <i>v.</i> Arthur | 53 |
| Arkansas Dep't of Human Servs. <i>v.</i> R.P. | 516 |
| Hanley <i>v.</i> Arkansas State Claims Comm'n | 159 |
| Lever <i>v.</i> State | 377 |
| Moory <i>v.</i> Quadras, Inc. | 624 |
| Southern Transit Co. <i>v.</i> Collums | 170 |
| Stapleton <i>v.</i> M.D. Limbaugh Constr. Co. | 381 |
| Thompson <i>v.</i> Roberts | 544 |

| | |
|--|-----|
| Thompson <i>v.</i> State | 92 |
| Village Market, Inc. <i>v.</i> State Farm Gen. Ins. Co. | 552 |

RAY THORNTON, JUSTICE:

| | |
|--|-----|
| Arkansas Dep't of Fin. & Admin. <i>v.</i> Pharmacy Assocs., Inc. | 451 |
| Black <i>v.</i> Van Steenwyk..... | 629 |
| Carson <i>v.</i> Weiss | 561 |
| Dellinger <i>v.</i> First Nat'l Bank of Russellville | 460 |
| First Commercial Bank, N.A. <i>v.</i> Walker | 100 |
| Golden Tee, Inc. <i>v.</i> Venture Golf Schs., Inc. | |
| Gourley <i>v.</i> Crossett Pub. Schs..... | 178 |
| Kelch <i>v.</i> Erwin..... | 567 |
| Kildow <i>v.</i> Baldwin Piano & Organ | 335 |
| Norman <i>v.</i> Norman | 644 |
| Phillips <i>v.</i> Town of Oak Grove | 183 |

PER CURIAM:

| | |
|--|-----|
| Ayers <i>v.</i> State | 116 |
| Ayers <i>v.</i> State | 393 |
| Barr <i>v.</i> State | 576 |
| Donihoo <i>v.</i> State | 340 |
| Donihoo <i>v.</i> State | 577 |
| Eid <i>v.</i> State | 465 |
| Ellis <i>v.</i> Norris | 200 |
| Financial Benefit Life Ins. Co. <i>v.</i> Weedman..... | 269 |
| Guynn <i>v.</i> State | 206 |
| Matthews, Freddie Davis <i>v.</i> State | 578 |
| Matthews, Shirley <i>v.</i> State..... | 701 |
| McGrew <i>v.</i> State | 207 |
| Moore <i>v.</i> State | 272 |
| Morris <i>v.</i> State | 466 |
| Mosley <i>v.</i> State | 273 |
| Myers <i>v.</i> State | 706 |
| Schlesier <i>v.</i> State | 117 |
| Seeco, Inc. <i>v.</i> Hales | 469 |
| Simpson <i>v.</i> Sheriff of Dallas County | 277 |
| Wickliffe <i>v.</i> State | 342 |

| | |
|---------------------------------|-----|
| Wickliffe <i>v.</i> State | 720 |
| Williams <i>v.</i> State | 580 |
| Wofford <i>v.</i> State | 120 |

APPENDIX:

RULES ADOPTED OF AMENDED BY PER CURIAM ORDER:

| | |
|---|-----|
| In Re: Adoption of a Rule of Criminal Procedure Governing Alternate Jurors in Criminal Trials: Rule 32.3 (Per Curiam) | 732 |
| In Re: Arkansas Rule of Criminal Procedure 26.1 (Per Curiam) | 730 |
| In Re: Arkansas Rules for Minimum Continuing Legal Education (Per Curiam) | 735 |
| In Re: Rules Governing Admission to the Bar of Arkansas (Per Curiam) | 723 |

APPOINTMENTS TO COMMITTEES:

| | |
|--|-----|
| In Re: Board of Certified Court Reporter Examiners (Per Curiam) | 737 |
| In Re: Client Security Fund Committee Appointment (Per Curiam) | 738 |
| In Re: Supreme Court Committee on Professional Conduct (Per Curiam) | 737 |
| In Re: Supreme Court of Arkansas Committee on Civil Practice (Per Curiam) | 738 |

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

- Barry *v.* State, CR 96-1145 (Per Curiam), affirmed May 14, 1998.
- Boyd *v.* Keith, CR 97-991 (Per Curiam), Pro Se Motion to Compel Circuit Judge to Act moot June 4, 1998.
- Bragg *v.* State, CR 98-341 (Per Curiam), Pro Se Motion for Rule on Clerk denied and Pro Se Motion to Reverse Order moot May 21, 1998.
- Brown *v.* Ross, 98-66 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied May 14, 1998.
- Bryant *v.* Erwin, 97-1072 (Per Curiam), Pro Se Petition for Writ of Mandamus moot June 4, 1998.
- Carlock *v.* State, CR 96-1549 (Per Curiam), rebriefing schedule set June 11, 1998.
- Carter *v.* State, CR 98-273 (Per Curiam), Pro Se Motion for Belated Appeal of Order granted and Pro Se Motion for Appointment of Counsel for appointment of counsel moot May 21, 1998.
- Choate *v.* State, CR 97-90 (Per Curiam), affirmed June 11, 1998.
- Coleman *v.* Norris, CR 97-771 (Per Curiam), petition for rehearing denied April 30, 1998
- Delong *v.* State, CR 98-508 (Per Curiam), Pro Se Motion for Rule on Clerk denied May 28, 1998.
- Dixon *v.* Cole, CR 97-792 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 14, 1998.
- Frazier *v.* State, CR 97-131 (Per Curiam), affirmed April 30, 1998.
- Friend *v.* State, CR 98-55 (Per Curiam), Pro Se Motion for Rule on Clerk to File Belated Reply Brief denied and appeal dismissed June 4, 1998.
- Hancock *v.* Patterson, CR 98-274 (Per Curiam), Pro Se Petition for Writ of Mandamus moot April 30, 1998.
- Hawthorne *v.* State, CA CR 97-1021 (Per Curiam), Pro Se Motion for Photocopy of Material at Public Expense denied June 11, 1998.
- Heard *v.* State, CR 93-1261 and CR 95-445 (Per Curiam), Pro Se Motion for Photocopies of Pages from Transcripts denied May 21, 1998.

- Hill *v.* State, CR 97-1462 (Per Curiam), Pro Se Motion for Belated Appeal of Order granted and Pro Se Motion for Trial Transcript denied May 21, 1998.
- Jones *v.* State, CR 97-1167 (Per Curiam), Pro Se Motion to File a Substituted Brief or Supplemental Abstract granted May 28, 1998.
- Jones, Howard W. *v.* State, 98-547 (Per Curiam), Pro Se Motion for Rule on Clerk and Pro Se Motion for Appointment of Counsel denied June 11, 1998.
- Kain *v.* State, CR 98-460 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Brief denied and appeal dismissed June 25, 1998.
- Leding *v.* State, 98-123 (Per Curiam), Pro Se Motion to Reconsider Motion for Rule on Clerk denied May 7, 1998.
- Looper *v.* State, CR 98-24 (Per Curiam), Pro Se Motions for Extension of Time, for Appointment of counsel, and to Supplement Record denied and appeal dismissed May 28, 1998.
- Lukach *v.* State, CR 97-256 (Per Curiam), affirmed April 30, 1998.
- Macfarland *v.* State, CR 98-404 (Per Curiam), Pro Se Motion for Appointment of New Counsel denied June 11, 1998.
- Mathis *v.* State, CR 98-291 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment granted May 7, 1998.
- Meux *v.* State, CR 97-1542 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment denied April 30, 1998.
- Mosley *v.* State, CR 95-1345 (Per Curiam), Pro Se Petition for Leave to Proceed in Circuit Court with Petition for Writ of Error Coram Nobis denied May 21, 1998.
- Natt *v.* State, CR 97-1481 (Per Curiam), Pro Se Motion to File Belated Appellant's Brief denied and appeal dismissed May 14, 1998.
- Newton *v.* State, CA CR 96-1455 (Per Curiam), Pro Se Motion for Photocopy of Trial Transcript and Other Material at Public Expense denied April 30, 1998.
- Noble *v.* State, CR 96-1442 (Per Curiam), affirmed June 11, 1998.
- Nooner *v.* State, CR 98-577 (Per Curiam), Pro Se Motion to Supplement Appellant's Brief denied June 4, 1998.
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- Norman *v.* State, CR 98-582 (Per Curiam), Pro Se Motion for Judicial Review and to Proceed Pro Se denied June 25, 1998.
- Owens *v.* State, CR 97-163 (Per Curiam), Pro Se Joint Motion to File Amended Appellants' Brief and for Extension of Time to File Appellant's Brief granted; Pro Se Joint petition for Writ of Certiorari denied April 30, 1998.
- Pike *v.* State, CR 96-1326 (Per Curiam), affirmed May 7, 1998.
- Ramos *v.* State, CR 98-730 (Per Curiam), Pro Se Motion for Rule on Clerk to Proceed with Belated Appeal granted; Writ of Certiorari issued; Show Cause Order issued June 25, 1998.
- Risher *v.* State, CR 92-923 (Per Curiam), Pro Se Petition for Rehearing of Motion to Proceed in Circuit Court with Petition for Writ of Error Coram Nobis, for Writ of Certiorari, to Settle the Record, and to Produce Records denied June 11, 1998.
- Robinson *v.* State, CR 97-403 (Per Curiam), affirmed May 28, 1998.
- Rowbottom *v.* State, CR 98-5 (Per Curiam), Pro Se Motion for Leave to Amend Appellant's Abstract granted and Pro Se Petition for Writ of Certiorari moot June 11, 1998.
- Sanders *v.* State, CR 97-679 (Per Curiam), affirmed May 14, 1998.
- Shibley *v.* Taylor, CR 98-453 (Per Curiam), Pro Se Petition for Writ of Mandamus denied May 7, 1998.
- Slocum *v.* State, CR 97-1557 (Per Curiam), Pro Se Motion for Continuance denied May 7, 1998.
- Smith, Earl Edward *v.* State, CR 97-560 (Per Curiam), reversed and remanded May 28, 1998
- Smith, Robert Lee *v.* State, CR 98-491 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment granted May 28, 1998.
- Stigger *v.* State, CR 98-530 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied June 4, 1998.
- Stipes *v.* May, CR 97-1343 (Per Curiam), Pro Se Motion for Duplication of Brief at Public Expense denied and appeal dismissed April 30, 1998.
- Stout *v.* State, CR 97-372 (Per Curiam), affirmed May 7, 1998.

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- Taylor *v.* State, CR 98-286 (Per Curiam), Pro Se Motion for Belated Appeal of Judgment granted May 7, 1998.
- Voss *v.* State, CR 98-258 (Per Curiam), Pro Se Petition for Writ of Certiorari denied and appeal dismissed May 14, 1998.
- Walker *v.* State, CR 97-197 (Per Curiam), Pro Se Motion for Extension of Time granted May 28, 1998.
- Wilson *v.* Cass, CR 97-430 (Per Curiam), affirmed May 21, 1998.
- Young *v.* State, CR 97-1392 (Per Curiam), Pro Se Motion for Extension of Time to File Brief denied and appeal dismissed May 7, 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 May 7, 1998

PER CURIAM. On January 15, 1998, we published proposed changes to Rule XV of the Rules Governing Admission to the Bar and sought comment. We have considered the comments received. We conclude that the proposed modifications to Rule XV of the Rules Governing Admission to the Bar should be adopted.

Accordingly, we adopt and republish the entirety of Rule XV as it appears on the attachment to this order.

RULE XV.
STUDENT PRACTICE

A. Purpose

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction of varying kinds, this rule is adopted by the Arkansas Supreme Court (Court).

B. Activities

1. An eligible law student (student) may appear in any court or before any administrative tribunal in this State on behalf of any person if the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer (lawyer) has also indicated in writing approval of that appearance.

2. A student may also appear in any criminal matter on behalf of the State or prosecuting authority with the written

approval of the prosecuting attorney (lawyer) or his or her authorized representative.

3. When a student appears pursuant to paragraphs B(1) or (2) above the lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

4. In civil cases and cases in which the student represents a defendant in a criminal case, the written consent of the person on whose behalf an appearance is being made and the approval of the lawyer shall be filed in the record of the case. In courts or administrative tribunals in which the student represents the State or prosecuting authority, the approval of the lawyer shall be filed of record with the clerk of the court or administrative tribunal.

5. An eligible law student may also participate in a law school clinical program emphasizing transactional and drafting skills including client counseling.

C. Requirements of Eligibility

In order to make an appearance or provide counsel pursuant to this rule, the law student shall:

1. Be duly enrolled in a law school approved by the American Bar Association;

2. Have completed a course in professional responsibility, or the equivalent of such a course;

3. File with the Clerk of this Court the law school dean certification described in paragraph E of this rule;

4. File with the Clerk of this Court the supervising lawyer certification described in paragraph F of this rule;

5. Neither ask for nor receive any compensation or remuneration of any kind directly from the person on whose behalf services are rendered, but this shall not prevent an attorney, law firm, legal aid bureau, public defender agency, or the state, county, or municipality from paying compensation not otherwise prohibited by these rules to the student.

6. Certify in writing that he or she has read and will comply with this rule and with the Model Rules of Professional Conduct adopted by this Court. This certification shall be incorporated in the law school dean certification described in paragraph E of this rule.

7. If appearing under paragraphs B(1), (2) or (3), have completed legal studies amounting to at least forty-eight (48) credit hours, or the equivalent if the school is on some basis other than a semester basis, including courses in civil procedure, evidence, criminal procedure, and professional responsibility or the equivalent of such courses.

D. Limitations

1. A student is authorized to practice under this rule only under the supervision of:

(a) The lawyer who signs the supervising lawyer certification described in paragraph F of this rule; or,

(b) A lawyer who is admitted to practice in this State and who otherwise meets the requirements of Section H of this rule and is a member of the same law firm as the supervising lawyer; or, a lawyer who is admitted to practice in this State and is employed by the same law school or public office as the supervising lawyer; or,

(c) A lawyer employed full time by an Arkansas Law School accredited by the American Bar Association, may engage in supervision under this section for no more than one year without being admitted to practice in this State, providing the lawyer:

(1) is admitted to practice and is in good standing in another state; and;

(2) has had at least five years of practice in another state or states; and,

(3) it shall be the responsibility of the Arkansas law school which employs a full time lawyer pursuant to this section to secure and maintain documentation

confirming that the lawyer meets the requirements of this section, and, the law school dean certification shall contain an affirmation by the dean to that effect.

2. The authority of a law student to practice under this rule may be terminated by this Court at any time without notice or hearing and without any showing of cause. Notice of the termination shall be filed with the Clerk of this Court.

3. After a law student has appeared in a court or administrative tribunal on one or more occasions, a judge of the trial court or tribunal may terminate, for good cause, the authority of any such student to appear subsequently in the court or division thereof, or the administrative tribunal, over which the Judge presides.

E. Law School Dean Certification

The certification of a law student by the law school dean shall:

1. Unless sooner withdrawn, remain in effect until: the expiration of eighteen (18) months after it is filed; or, the student graduates; or, the student officially withdraws from law school;

2. Certify that the law student is of good moral character and competent legal ability and is adequately trained to perform as an eligible law student under this rule;

3. Be subject to withdrawal by the dean at any time by mailing a notice to that effect to the Clerk of this Court and it is not necessary that the notice state the cause for withdrawal; and,

4. The law school dean certification required by this section shall contain an affirmation that the dean of the certifying institution will promptly notify the Clerk of this Court in the event the student's eligibility ceases pursuant to this section.

F. Supervising Lawyer Certification

The certification of a law student by a lawyer shall:

1. Be signed by a lawyer admitted to practice in this State who agrees to act as a supervising lawyer with respect to practice by a law student under this rule;
2. Unless sooner withdrawn, remain in effect until: the expiration of six (6) months after it is filed; or, the student graduates; or, the student officially withdraws from law school;
3. Be subject to renewal by filing a new certification;
4. Certify that the lawyer has read and will comply with this rule and with the Model Rules of Professional Conduct adopted by this Court; and,
5. Be subject to withdrawal by the lawyer at any time by mailing a notice to that effect to the Clerk of this Court and it is not necessary that the notice state the cause for withdrawal.

G. Other Activities

1. In addition, a student may engage in other activities, but outside the personal presence of the lawyer, including:
 - (a) Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear under paragraphs B(1), (2) or (3), but such pleadings or documents must be signed by the lawyer;
 - (b) Preparation of briefs, abstracts, and other documents to be filed in appellate courts of this State by a student eligible under paragraphs B(1), (2) or (3), but such documents must be signed by the lawyer; and,
 - (c) Preparation of contracts, incorporation papers and by-laws, agreements, filings required by a state, federal or other governmental agency or body, proposed legislation and other documents for a client's consideration by a student certified under paragraph B(5). Such documents must be reviewed by the lawyer prior to presentation to the client and signed by the lawyer if a lawyer's signature is necessary. In preparation of these documents, the student may give legal advice if such advice has been approved or is supervised by the lawyer. Approval or supervision by the

lawyer shall be accomplished through preparation of the student and videotaping of client contacts or the lawyer's presence during client contacts. The other activities set forth in this paragraph (c) are authorized exclusively for students representing persons receiving assistance from a law school clinical program which emphasizes transactional and drafting skills including client counseling.

2. The taking of a deposition shall be considered a court appearance subject to the provisions and requirements of section B of this rule.

H. Supervision

The lawyer under whose supervision a student does any of the things permitted by this rule shall:

1. Be a lawyer who is licensed in this State (except as may be otherwise provided by this rule) and who has been actively engaged in the practice of law in this State or any other jurisdiction for a period of at least two years and is in good standing with the Supreme Court of Arkansas;

2. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work;

3. Assist the student in preparation to the extent the lawyer considers it necessary; and,

4. The lawyer may not charge the client for services of a student practitioner pursuant to activities under section B of this rule.

I. Duties of the Clerk of this Court

The Clerk shall establish such records as are appropriate to administer and enforce the provisions of this rule.

J. Miscellaneous

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that he or she might lawfully do prior to the adoption of this rule. (Adopted April 27, 1987; republished December 20, 1993; amended by Per Curiam July 17, 1995.)

IN RE: ARKANSAS
RULE OF CRIMINAL PROCEDURE 26.1

Supreme Court of Arkansas
Delivered May 21, 1998

PER CURIAM. The Supreme Court Committee on Criminal Practice recommended changes to Rule 26.1 of the Rules of Criminal Procedure. We published the proposed rule for comment on January 22, 1998, and the comment period has now expired.

We conclude that the proposed changes should be adopted. Accordingly, we adopt, effective immediately, and republish Rule 26.1 as it appears below.

Rule 26.1. PLEA WITHDRAWAL.

(a) A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right before it has been accepted by the court. A defendant may not withdraw his or her plea of guilty or nolo contendere as a matter of right after it has been accepted by the court; however, before entry of judgment, the court in its discretion may allow the defendant to withdraw his or her plea to correct a manifest injustice if it is fair and just to do so, giving due consideration to the reasons advanced by the defendant in support of his or her motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea. A plea of guilty or nolo contendere may not be withdrawn under this rule after entry of judgment.

(b) Withdrawal of a plea of guilty or nolo contendere shall be deemed to be necessary to correct a manifest injustice if the defendant proves to the satisfaction of the court that:

- (i) he or she was denied the effective assistance of counsel;
- (ii) the plea was not entered or ratified by the defendant or a person authorized to do so in his or her behalf;

(iii) the plea was involuntary, or was entered without knowledge of the nature of the charge or that the sentence imposed could be imposed;

(iv) he or she did not receive the charge or sentence concessions contemplated by a plea agreement and the prosecuting attorney failed to seek or not to oppose the concessions as promised in the plea agreement; or

(v) he or she did not receive the charge or sentence concessions contemplated by a plea agreement in which the trial court had indicated its concurrence and the defendant did not affirm the plea after receiving advice that the court had withdrawn its indicated concurrence and after an opportunity to either affirm or withdraw the plea.

(c) The defendant may move to withdraw his or her plea of guilty or nolo contendere to correct a manifest injustice without alleging that he or she is innocent of the charge to which the plea was entered.

Reporter's Notes to 1998 Amendment: Paragraphs (a) and (e) were amended and combined as new paragraph (a). It now provides that prior to acceptance of the plea by the court, the defendant may withdraw his or her plea as a matter of right. After acceptance and before entry of judgment, the court in its discretion may allow a plea withdrawal upon proof that it is necessary to correct a manifest injustice. After entry of the written judgment, the plea may not be withdrawn under this rule. Paragraph (b) was deleted and the remaining paragraphs were redesignated.

These changes were made to clarify when a plea could be withdrawn under this rule [i.e., after acceptance of the plea, after pronouncement of sentence, after entry of judgment, *see Johnson v. State*, 330 Ark. 381 (1997); *Scalco v. City of Russellville*, 318 Ark. 65, 883 S.W.2d 813 (1993)], and under what standard; and also to clarify when a motion to withdraw a plea was proper under this rule as opposed to Rule 37 of these rules. Under Rule 26.1, a motion to withdraw a plea must be filed prior to entry of the written judgment.

IN THE MATTER OF ADOPTION OF A RULE OF
CRIMINAL PROCEDURE GOVERNING ALTERNATE
JURORS IN CRIMINAL TRIALS: RULE 32.3

Supreme Court of Arkansas
Delivered May 21, 1998

PER CURIAM. The Arkansas Supreme Court Committee on Criminal Practice recommended the adoption of a new Rule of Criminal Procedure to govern the use of alternate jurors in criminal trials when a regular juror is unable to serve or is disqualified. On January 22, 1998, we published the proposed rule for comment, and the comment period has now expired.

We conclude that the rule should be adopted. Accordingly, we adopt, effective immediately, and publish Rule 32.3 of the Rules of Criminal Procedure as set out below.

Rule 32.3. Alternate Jurors.

(a) The court may direct that additional jurors be called and impanelled in addition to the regular jury to sit as alternate jurors. The number of alternate jurors shall be at the discretion of the court, taking into consideration the estimated length and cost of the trial, the number of witnesses, and the ages and health of the regular jurors. Alternate jurors in the order in which they are called shall replace jurors who are discharged by the court for good cause upon being found unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. Each side shall be entitled to one peremptory challenge for each alternate juror to be impanelled. The additional peremptory challenge may be used against an alternate juror only, and all other peremptory challenges allowed by law shall not be used against an alternate juror.

(b) Any alternate juror, who has not replaced a regular juror prior to the time the jury retires to consider its verdict, shall be

further instructed by the court in addition to the usual instruction regarding discussion of the case and not permitting any one to discuss the case with him or her, to remain at the courthouse during deliberation. During deliberation, should any regular juror die, or upon good cause shown to the court be found unable or disqualified to perform his or her duties, the court may order the juror to be discharged. The court may in its discretion, as an alternative to mistrial, replace such juror with the next alternate. In such event, the court shall instruct the jury to disregard all previous deliberation, and to commence deliberation anew. The trial court in its discretion may seat additional alternates as jurors in this manner as needed.

(c) In the case of a capital murder trial or any other bifurcated trial in which the court cannot fix punishment pursuant to Ark. Code Ann. § 5-4-103 (b), and in which there are alternate jurors remaining after the jury has returned a verdict of guilty, the next alternate jurors, not to exceed two, shall be placed in the jury box along with the regular jurors. Any alternate jurors in addition to these two shall be dismissed. The trial will proceed with the penalty phase. When the jury retires to deliberate the penalty, the remaining alternate juror or jurors will again remain at the courthouse during deliberation.

(1) If at any time after a verdict of guilty, but before a verdict fixing punishment, a juror who participated in the guilt phase of a capital murder trial or other trial described above dies, becomes ill, or is otherwise found to be unable or disqualified to perform his or her duties, such juror shall be discharged. The court may in its discretion, as an alternative to mistrial or any other option available by statute or these rules, replace such juror with the next alternate. However, in such event, the court may first give the defendant, with the agreement of the prosecution, the option to waive jury sentencing, in which case the court shall impose sentence, or to accept a verdict by the remaining jurors. If the defendant does not waive jury sentencing, or agree to accept a verdict by the remaining jurors, the trial will continue with the alternate participating in the penalty phase. In such event, the court shall instruct the jury to commence deliberation anew as to the sentencing phase only.

(2) Notwithstanding Ark. Code Ann. § 5-4-602(3), which requires that the same jury sit in the sentencing phase of a capital murder trial, the court may in its discretion proceed pursuant to this rule and seat an alternate juror.

Reporter's Notes: In *Johnson v. State*, 328 Ark. 526 (1997), the Supreme Court held that Ark. Code Ann. § 5-4-103 (b) (3) authorized the trial court to fix punishment when the twelfth juror became disqualified in the sentencing phase. "[T]he court was authorized to fix punishment when the jury was unable to agree upon the punishment because only eleven jurors remained after one was disqualified."

IN RE: ARKANSAS RULES FOR MINIMUM
CONTINUING LEGAL EDUCATION

Supreme Court of Arkansas
Delivered June 25, 1998

PER CURIAM. The Arkansas Continuing Legal Education Board seeks an amendment to Rule 4.(B) of the Rules for Minimum Continuing Legal Education to improve the administrative procedures pertaining to course review and accreditation. We find that the proposed amendment is appropriate.

We hereby adopt and republish Rule 4.(B) of the Arkansas Rules and Regulations for Minimum Continuing Legal Education as set forth in the attachment to this order.

- 4.(B) Approval of Accredited Sponsors:
- (1) An organization, or entity, may seek Board designation as an accredited sponsor;
 - (2) In order to receive such a designation the organization or entity must establish to the satisfaction of the Board that it is regularly engaged in offering continuing legal education and is recognized as a provider of continuing legal education on a national basis;
 - (3) Subsequent to designation as an accredited sponsor, programs offered by that sponsor outside this State shall be approved provided such courses meet the requirements of Rule 4.(C);
 - (4) Programs conducted by sponsors accredited in another state or by a national continuing legal education accrediting body may be approved, provided the Secretary is satisfied that the sponsor meets the requirements of this Rule; and,
 - (5) Accredited sponsors must abide by all reasonable requests for information or course materials from the Board, or its Secretary, and the Board reserves the right to withdraw accredited sponsor designation for failure to meet the requirements of these rules.



Appointments to
Committees

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IN RE: SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Delivered June 10, 1998

PER CURIAM. Win A. Trafford, Esq., of Pine Bluff, Fourth Congressional District, is hereby appointed to our Committee on Professional Conduct for a seven-year term to expire December 31, 2005. The Court thanks Mr. Trafford for accepting appointment to this important Committee.

The Court expresses its gratitude to Mr. Alan Humphries, Esq., of Pine Bluff, whose term has expired, for his years of service to this Committee.

IN RE: BOARD OF CERTIFIED COURT
REPORTER EXAMINERS

Supreme Court of Arkansas
Delivered June 18, 1998

PER CURIAM. The Honorable David Clinger of Bentonville and Ms. Debbie Dudley of Little Rock are appointed to our Board of Certified Court Reporter Examiners. Each term is for three years and expires on July 31, 2001.

The Court expresses its gratitude to Judge Clinger and Ms. Dudley for accepting appointment to this important Board.

The Court expresses its appreciation to Judge Tom Hilburn and Ms. Fern Nicholson, whose terms have expired, for their years of dedicated service to the Board.

IN RE: CLIENT SECURITY FUND COMMITTEE
APPOINTMENT

Supreme Court of Arkansas
Delivered June 25, 1998

PER CURIAM. Benjamin C. McMinn, Esq., of Little Rock, is hereby appointed to an At-Large position on the Client Security Fund Committee for a five-year term to expire July 31, 2003.

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

The Court expresses its appreciation to Mr. James F. Dowden, Esq., of Little Rock, whose term has expired, for his service to this Committee.

IN RE: THE SUPREME COURT OF ARKANSAS
COMMITTEE ON CIVIL PRACTICE

Supreme Court of Arkansas
Delivered June 25, 1998

PER CURIAM. Professor Ken Gould of the University of Arkansas at Little Rock and attorneys Claiborne W. Patty of North Little Rock and Thomas D. Deen of Dermott are hereby appointed to the Committee on Civil Practice. The Court expresses its appreciation to the appointees for their willingness to serve.

The new appointees replace Comer Boyett, Jr., of Searcy, Stephen A. Matthews of Pine Bluff, and David J. Manley of Little Rock, whose terms expire July 5, 1998. The Court expresses its gratitude for their faithful and dedicated service as members of the Committee.

Alphabetical
Headnote
Index

—

HEADNOTE INDEX

ACTION:

Class action, illegal-exaction suit as. *Carson v. Weiss*, 561

ADMINISTRATIVE LAW & PROCEDURE:

Review of judgment by administrative agency, factors on review. *Kildow v. Baldwin Piano & Organ*, 335

Denial of permit to rebuild, appellants failed to exhaust administrative remedies. *Thompson v. City of Siloam Springs*, 351

Review of administrative decisions, factors applied. *Hamilton v. Arkansas P.C. & E. Comm'n*, 370

When *res judicata* bars relitigation in subsequent suit. *Id.*

Judicial action by administrative board, decision may be *res judicata* in second proceeding involving same question. *Id.*

Doubt whether second action is for same cause of action as first, how to determine whether *res judicata* applies. *Id.*

First order did not bar subsequent application, second application related to different business or operation. *Id.*

Freedom of Information Act, construction of. *Arkansas Dep't of Fin. and Admin. v. Pharmacy Assocs., Inc.*, 451

Freedom of Information Act, trial court erred in interpretation of. *Id.*

FOIA, trial court erred in interpretation of. *Id.*

FOIA, trial court erred in interpretation of. *Id.*

FOIA, exception to disclosure rule, intent clear. *Id.*

FOIA, parallel provision of federal FOIA construed. *Id.*

FOIA, state does have special interest in protecting integrity of bidding process. *Id.*

FOIA, use of proprietary information sought by appellee could be used to improve its competitive position. *Id.*

ADOPTION:

Law as to residence changed, *Pollock* case effectively overruled. *In Re: Adoption of Samant*, 471

Word "residence" not included in subsection (a)(2) of Ark. Code Ann. § 9-9-205, jurisdiction for adoptions based upon physical presence of the petitioner or the person to be adopted. *Id.*

APPEAL & ERROR:

No-merit appeal, abstract required. *Johnson v. State*, 1

Abstract, contents of. *Id.*

Abstract flagrantly deficient, case affirmed. *Id.*

Supreme court need not address moot issues, exception to mootness doctrine applicable. *Cook v. State*, 22

Petition for review, standard of review. *Thompson v. State*, 92

Standing and capacity issue preserved by directed-verdict motion. *First Commercial Bank, N.A. v. Walker*, 100

Law of case, effect on subsequent appeal. *Id.*

- Law of case, review of standing and capacity not barred by. *Id.*
- Individual appellee did not have standing as either stockholder-officer or guarantor of corporate debts. *Id.*
- Additional briefing ordered. *Wofford v. State*, 120
- One cannot change basis for objection on appeal. *Parker v. State*, 137
- Appeal must be from final order, when order is final. *Payne v. State*, 154
- Order contemplating further action not final. *Id.*
- Order reserving judgment on damages or failing to reduce award to liquidated sum not final. *Id.*
- Order appealed from not final, appeal dismissed without prejudice. *Id.*
- Issue not ruled on at trial not considered on appeal. *Hanley v. Arkansas State Claims Comm'n*, 159
- Claims Commission is arm of General Assembly, rulings may be appealed only to General Assembly. *Id.*
- Erroneous application of law by chancellor will result in reversal, no error in law or fact found in chancellor's ruling. *Phillips v. Town of Oak Grove*, 183
- Motion for belated appeal, good cause for granting. *Gwynn v. State*, 206
- Motion for rule on clerk, good cause for granting. *McGrew v. State*, 207
- Failure to address order's appealability, appellate court must determine jurisdiction. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214
- Sovereign-immunity defense, case warranted appellate review. *Id.*
- Arguments not presented to trial court are not reviewable. *Id.*
- Issue not ruled on at trial not considered on appeal. *Collins v. Keller*, 238
- Appellants failed to object to trial court's findings, right to raise issue on appeal waived. *Id.*
- Usury claim never ruled on at trial, issue summarily dismissed. *Id.*
- Issue not ruled upon below, issue not reached on appeal. *Id.*
- Issue not raised at trial not addressed on appeal. *Id.*
- Failure to comply with Ark. R. Civ. P. 54(b) is jurisdictional, renders matter not final. *Hodges v. Huckabee*, 247
- Subject-matter jurisdiction cannot be waived. *Id.*
- Trial court's order failed to dispose of appellant's complaint against appellee governor, appeal dismissed without prejudice. *Id.*
- Statements alleged must appear in record to be considered well grounded in fact, appellant's petition for review not well grounded in fact, appellee's request for attorney's fees granted. *Financial Benefit Life Ins. Co. v. Weedman*, 269
- Motion for rule on clerk, counsel must concede fault. *Moore v. State*, 272
- Writ of error *coram nobis*, circuit court can entertain petition for only after supreme court grants permission. *Mosley v. State*, 273
- Writ of error *coram nobis*, when appropriate. *Id.*
- Writ of error *coram nobis*, newly discovered evidence not basis for relief. *Id.*
- Writ of error *coram nobis*, grounds for issuance. *Id.*
- Writ of error *coram nobis*, petitioner did not demonstrate necessary grounds for issuance, petition denied. *Id.*
- Unsupported arguments not considered. *Morgan v. State*, 294
- Appeal from county court ruling, general rule on standing. *Campbell v. City of Cherokee Village West*, 310

- Review following decision by court of appeals. *Kildow v. Baldwin Piano & Organ*, 335
Petition for review, treated as if filed originally in supreme court. *Malone v. Texarkana
Pub. Schs.*, 343
- Arguments not presented to trial court not reviewable. *Id.*
- Whether value of parties' shares in phone companies to be relitigated on remand not
answered by court in original opinion, rehearing granted to address issue of
chancellor's decision to truncate cross-examination of appellee's expert witness.
Skokos v. Skokos, 396
- Appeal costs, authority to assess. *Id.*
- Even constitutional arguments not addressed for first time on appeal. *Tabor v. State*, 429
- Issue ruled upon favorably at trial, issue may not be raised on appeal. *Arkansas Dep't of
Fin. and Admin. v. Pharmacy Assocs., Inc.*, 451
- Cross-appeal, notice required. *Id.*
- Appellee seeking more relief than it received from trial court, required notice not
given, issue not reached. *Id.*
- Argument not made at trial, not reached on appeal. *Dellinger v. First Nat'l Bank of
Russellville*, 460
- Equitable right of redemption not argued below, issue not reached on appeal. *Id.*
- Motion for belated appeal, good cause for granting. *Eid v. State*, 465
- Interlocutory appeal by State, supreme court had jurisdiction. *State v. Earl*, 489
- Appeal by state agency, proper procedure. *Arkansas Dep't of Human Servs. v. R.P.*, 516
- Appellant followed proper procedure, appellant had standing and filed timely notice of
appeal. *Id.*
- Issue not raised below, issue not reached on appeal. *Id.*
- Interlocutory appeal from denial of class certification, abuse-of-discretion standard.
Carson v. Weiss, 561
- Motion to dismiss appeal denied, appellant's attorney remained counsel of record. *Barr
v. State*, 576
- Withdrawal of counsel, appellate rule applies to appeals of denial of postconviction
relief. *Matthews v. State*, 578
- Withdrawal of counsel, only appellate court may relieve counsel after notice of appeal. *Id.*
- Withdrawal of counsel, motion denied. *Id.*
- Issue not reached, seizure valid under plain-view doctrine, consent irrelevant. *Fultz v.
State*, 586
- Issue not preserved for review, general motion for directed verdict does not preserve
for appeal issues regarding sufficiency of evidence. *Id.*
- No objection below, issue not preserved for review. *Id.*
- Abstract, judgment or order essential part of. *L.H. v. State*, 613
- Failure to obtain ruling precludes review. *Id.*
- Appellant's burden to provide sufficient record. *Id.*
- No authority cited for proposition that case should be overruled, strong presumption
exists in favor of validity of prior decisions. *Daniels v. State*, 620
- Matters outside record not considered. *Black v. Van Steenwyk*, 629
- Supreme court may hear chancery cases *de novo*. *Norman v. Norman*, 644
- Facts developed fully in record, supreme court heard case *de novo*. *Id.*
- Petition for review, treatment in supreme court. *Liberty Mut. Ins. Co. v. Thomas*, 655

Denial of summary-judgment motion, argument did not fall under any exception to general rule, merits not reached. *Id.*

Appeals from denial of summary judgment generally not allowed, exception for qualified-immunity claim. *Robinson v. Langdon*, 662

No reversal absent citation to authority or convincing argument. *Id.*

Appellee's cross-appeal of summary judgment favoring employer failed. *Id.*

Argument not made at trial, argument not reached on appeal. *Johnson v. State*, 673

Argument made without citation to authority, argument not considered. *Id.*

No motion made at trial about brevity of deliberations, issue raised for first time on appeal not preserved for review. *Brown v. State*, 698

Deficient abstract, review precluded. *Matthews v. State*, 701

Issue not ruled on below, appellate review precluded. *Id.*

ATTORNEY & CLIENT:

Attorney's fees, when awarded. *Thompson v. City of Siloam Springs*, 351

Attorney's fees, trial court did not err in denying appellee city's request for. *Id.*

Model Rules of Professional Conduct, occasionally cited by appellate court. *McAdams v. Ellington*, 362

Disqualification in adversary proceeding, criteria. *Id.*

Appearance of impropriety in attorney's representation of appellant's former wife and another party. *Id.*

Appearance of impropriety, supreme court could not countenance subsequent representation of appellant's former wife by attorney. *Id.*

Motion for attorney's fees denied, each party to be responsible for own fees. *Skokos v. Skokos*, 396

Model Rules of Professional Conduct, purpose of. *Norman v. Norman*, 644

Model Rules of Professional Conduct, applicable in disqualification procedures, chancery court erred. *Id.*

Application of Model Rules of Professional Conduct, caution required in determining counsel disqualification. *Id.*

Appellee's attorney shared conflict-of-interest disability, interests of parties were materially adverse. *Id.*

Attorney must have actual knowledge of information protected by Rules 1.6 and 1.9(c) during his former association before attorney and his firm will be disqualified, applicable presumptions discussed. *Id.*

Confidentiality, burden of proving lack of knowledge rests with challenged attorney, presumption not rebutted here. *Id.*

Conflict under Rules 1.9 and 1.10, finding of prejudice not required. *Id.*

Ambiguity discussed, clear possibility that parties and attorneys who represented them could have been called to testify as to meaning of term found in original settlement. *Id.*

Appellee's attorney had conflict of interest, disqualification of attorney and firm warranted. *Id.*

Ineffective assistance of counsel, joint representation of co-defendants. *Myers v. State*, 706

Ineffective assistance based on conflict of interest, how to successfully assert. *Id.*

Waiver of right to counsel, conflict must be timely disclosed. *Id.*

Potential conflict of interest not brought to court's attention until Rule 37 petition filed, appellant waived alleged conflict of interest. *Id.*

Appellant claimed guilty plea not voluntary, circuit court's denial of relief not clearly erroneous. *Id.*

AUTOMOBILES:

License suspension as provided by Ark. Code Ann. § 5-65-104(f) (Repl. 1997), courts may suspend licenses for certain violations. *Cook v. State*, 22
Circuit court may suspend licenses for moving traffic violations, appellant's license properly suspended by circuit court. *Id.*

BANKS & BANKING:

Drawer discharged when draft accepted by bank, "check" defined. *A.C.E., Inc. v. Inland Mortgage Co.*, 232
Case relied upon by appellant inapplicable, appellant had possession of check and opportunity to endorse it. *Id.*
Appellant delivered possession of check to other joint payee, under Ark. Code Ann. § 4-3-414(c) appellee's underlying obligation on debt was discharged when payment was made on check. *Id.*
Conversion of instrument, court's dismissal proper, conversion could not lie against appellee. *Id.*
Negligence alleged against appellee, appellee's failure to timely stop payment on check did not inure to appellant's benefit. *Id.*

BUSINESS & COMMERCIAL LAW:

Revocation of acceptance, when effective. *Mitcham v. First State Bank of Crossett*, 598
Revocation of acceptance, appellant failed to provide exact date of notification of intent to revoke and failed to communicate to sellers clear intent to revoke. *Id.*

CERTIORARI, WRIT OF:

Trial court's ruling, when reversed. *Hanley v. Arkansas State Claims Comm'n*, 159
When proper, when principles applicable. *Id.*
Sovereign immunity prevents State and its agencies from being named as defendants, Arkansas Claims Commission created as arm of legislature to resolve claims against State. *Id.*
Dissent's argument without merit, argument misconstrued statute and nature of hospital's claim. *Id.*
Appellant failed to satisfy elements that would entitle it to writ, unclear from record that Commission did not have jurisdiction over hospital's claim against appellant. *Id.*

CIVIL PROCEDURE:

Enlargement of time for filing answer, trial court did not abuse discretion in denying. *Layman v. Bone*, 121
Default judgment, basic rule. *Id.*
Default judgment, setting aside, meritorious defense required. *Id.*
Timely answer, trial court did not abuse discretion in finding no mistake or other reason for appellant's failure to comply with requirement. *Id.*
Default judgment, granting of, abuse-of-discretion standard applied on review. *Id.*
Default judgment, revision of Ark. R. Civ. P. 55 made grant discretionary. *Southern Transit Co. v. Collums*, 170
Default judgment, factors to be considered in deciding whether to enter. *Id.*

- Default judgment, setting aside, requirements. *Id.*
- Default judgment, setting aside, meritorious defense must be shown. *Id.*
- Default judgment, void if defendant improperly served. *Id.*
- Default judgment, trial court could have rendered void on basis of defective summons. *Id.*
- Lack of personal jurisdiction separate defense from insufficiency of process. *Id.*
- Default judgment, trial court did not abuse discretion in granting as to appellant's liability. *Id.*
- Ark. R. Civ. P. 60(a), power of trial court to set aside or modify order. *Ross v. Southern Farm Bureau Cas. Ins. Co.*, 227
- Ark. R. Civ. P. 60(b), ninety-day limit applies to clerical errors. *Id.*
- Unclear whether error was clerical, ninety-day limit on modification by trial court applicable. *Id.*
- Default judgment, entry discretionary. *Collins v. Keller*, 238
- Amendment of pleadings to conform to evidence introduced at trial, Ark. R. Civ. P. 15(b) discussed. *Hope v. Hope*, 324
- Proof raised issue that resulting timber deed represented mutual mistake of fact, no manifest abuse of discretion by trial court. *Id.*
- Summary judgment, when appropriate. *Stapleton v. M.D. Limbaugh Constr. Co.*, 381
- Dismissal of actions, chancellor erred in assessing credibility of testimony before conclusion of evidentiary portion of trial. *Swink v. Giffin*, 400
- Dismissal of actions, when permitted. *Id.*
- Dismissal of actions, plaintiff established *prima facie* case on issue of ownership. *Id.*
- Ark. R. Civ. P. 54(b), matter must be final for purposes of appeal. *Henderson v. Little Rock Sch. Dist.*, 448
- Back-pay issue undecided, supreme court lacked subject-matter jurisdiction. *Id.*

CONSTITUTIONAL LAW:

- Application of statutory presumption did not violate due process rights, case affirmed. *Garcia v. State*, 26
- Equal Protection Clause, age not suspect classification. *Golden v. Westark Community College*, 41
- No fundamental right advanced for receipt of full workers' compensation benefits, equal protection claim of age-based discrimination analyzed under rational-basis standard. *Id.*
- Rational basis for classification, how determined. *Id.*
- No rational basis found for offsetting the two benefits irrespective of age, statute unconstitutional. *Id.*
- Challenge to Medical Malpractice Act's statute of limitations, rational-basis standard of review. *Adams v. Arthur*, 53
- Equal protection, rational-basis requirement for legislation affording different treatment for different classifications. *Id.*
- Rational basis not lacking in Medical Malpractice Act's statute of limitations. *Id.*
- Trial court did not err in declining to find Medical Malpractice Act's limitations period unconstitutional. *Id.*
- Equal protection clause does not require that all persons be dealt with identically, application of rational-basis test. *Phillips v. Town of Oak Grove*, 183
- Rational-basis test, burden of proof, presumption of validity. *Id.*

- Appellant's argument without merit, classification does not fail rational-basis review because in practice it results in some inequality. *Id.*
- Ex Post Facto* Clause, United States and Arkansas Constitutions. *Ellis v. Norris*, 200
- Ex Post Facto* Clause, when law violates. *Id.*
- Ex Post Facto* Clause, case law unhelpful to appellant. *Id.*
- Ex Post Facto* Clause, Acts 536 and 558 of 1993 did not operate to increase appellant's sentence. *Id.*
- Sovereign immunity, doctrine discussed. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214
- Sovereign immunity, trial court did not err in determining that appellant cooperative was not entitled to. *Id.*
- Arkansas Constitution, Article 5 Section 32 discussed. *Stapleton v. M.D. Limbaugh Constr. Co.*, 381
- Ark. Const. art. 5, § 32, effect of statutory employment relationship between prime contractor and subcontractor's employees. *Id.*
- No real or quasi-employment relationship existed, legislature could not limit appellant's right to recover damages. *Id.*
- Ark. Code Ann. § 11-9-105(a) as amended by 1993 Ark. Acts 796 § 4 unconstitutional, order of dismissal reversed and case remanded. *Id.*
- Sovereign immunity, exception to. *Arkansas Dep't of Human Servs. v. R.P.*, 516
- Trial court empowered to order family services to prevent juvenile from being removed from parent, sovereign immunity waived. *Id.*
- Due process requirements for criminal proceedings, court has power to punish for criminal contempt. *Id.*
- Notice of show-cause hearing, no constitutional deficiency found. *Id.*
- Sovereign immunity, waiver, jurisdictional issue. *Carson v. Weiss*, 561
- Sovereign immunity, general rule. *Id.*
- Conflict between illegal-exaction and sovereign-immunity provisions, specific provision controls general, illegal-exaction clause specific. *Id.*
- Illegal-exaction clause, provides for constitutionally established class of interested persons, order denying class certification reversed and remanded. *Id.*
- Civil rights, agency employee did not have "fair warning" of violation. *Robinson v. Langdon*, 662
- Civil rights, agency employee not guilty of violating "established right" of appellee, no property interest in employment. *Id.*
- Property interest, potential injury to reputation does not constitute deprivation of. *Id.*
- Civil rights, summary judgment against appellee's § 1983 claim was proper. *Id.*
- Statute clearly prohibits possessing firearm while possessing illegal drugs, Ark. Code Ann. § 5-74-106 constitutional. *Johnson v. State*, 673
- Special and local legislation distinguished. *Boyd v. Weiss*, 684
- Act 48 of 1977, drawing of line for affected area along city boundary was reasonable and not arbitrary, collateral impact on area outside line did not render legislation special. *Id.*
- Act 48 of 1977, limitation to state-street-line border cities not arbitrary. *Id.*
- Statute affecting less than all of state not necessarily local or special legislation. *Id.*
- When act applicable to portion of state is constitutional. *Id.*

- Act 48 of 1977, geographical limitation did not render legislation "local", rational relation to purposes of act. *Id.*
- Act 48 of 1977, legitimate state objective. *Id.*
- Act 48 of 1977, state-street-line classification identifies cities inextricably intertwined with out-of-state counterparts. *Id.*
- Act 48 of 1977, not local legislation in providing tax incentive for people in surrounding cities to move to Texarkana. *Id.*

CONTEMPT:

- Show-cause order issued. *Ayers v. State*, 116
- Order to appear and show cause dismissed. *Schlesier v. State*, 117
- Motions setting aside dismissal granted, show-cause order issued. *Donihoo, Larry v. State*, 340
- Show-cause order issued. *Wickliffe v. State*, 342
- Fine imposed upon finding of contempt. *Ayers v. State*, 393
- For violation of court order, one need not be party to action to be held in contempt. *Arkansas Dep't of Human Servs. v. R.P.*, 516
- Order clear as to obligations imposed on appellant, appellant's argument rejected. *Id.*
- Attack on underlying order, supreme court does not look behind order to determine validity. *Id.*
- Order definite as to duties imposed, area manager clearly had knowledge of order and specifically instructed subordinate not to pay bills with agency's funds. *Id.*
- Rules of civil procedure do not apply to criminal contempt proceeding, applicable provisions for criminal contempt. *Id.*
- Area manager had proper notice of accusation, finding of contempt affirmed. *Id.*
- Principal justification for contempt, sentence modified. *Id.*
- Counsel's guilty plea accepted, reinstatement of appellant's appeal granted. *Donihoo, Larry v. State*, 577
- Counsel held in contempt and fined. *Id.*
- Contempt order issued. *Williams v. State*, 580
- Master not appointed, counsel complied with sentencing portion of earlier per curiam. *Wickliffe v. State*, 720
- Order referring matter to Professional Conduct Committee. *Id.*

CONTRACTS:

- Tortious interference with contractual relationship, proof required. *Mason v. Wal-Mart Stores, Inc.*, 3
- Tortious interference with contractual relationship, *Restatement (Second) of Torts*, § 766 requires showing of improper conduct by defendant. *Id.*
- Interference with contractual relationship, only appellee business entities could assert claim. *First Commercial Bank, N.A. v. Walker*, 100
- Modification of, both parties must agree. *Van Camp v. Van Camp*, 320
- No mutual agreement to modification of postmajority-support contract, chancellor lacked authority to modify agreement. *Id.*
- Action to recover against insurer for failure to pay loss is contractual in nature, insurer as prevailing party entitled to attorney's fee. *Village Market, Inc. v. State Farm Gen. Ins. Co.*, 552
- Breach-of-contract argument rejected. *Robinson v. Langdon*, 662

CONVERSION:

Only appellee business entities could assert claim. *First Commercial Bank, N.A. v. Walker*, 100

Argument without merit, laches and statute of limitations barred any right appellants may have had under Truth-in-Lending Act. *Collins v. Keller*, 238

Equitable conversion argued, trial court correctly rejected appellants' argument, forfeiture provisions of parties' contract were valid and timely enforced. *Id.*

CORPORATIONS:

Corporation and stockholders separate entities. *First Commercial Bank, N.A. v. Walker*, 100

Attributes of corporation. *Id.*

Officers, no individual right of action for corporate injuries. *Id.*

Officers, no showing that individual appellee made contribution toward payment of guaranteed notes. *Id.*

Corporation not in existence cannot initiate lawsuit. *Id.*

Appellee business entities lost capacity to file suit following dissolution of joint venture and revocations of corporate charters. *Id.*

Derivative and individual actions, distinction. *Golden Tee, Inc. v. Venture Golf Schs., Inc.*, 253

Direct action by shareholder, when appropriate. *Id.*

COURTS:

Discretion to control dockets crucial. *Calandro v. Parkerson*, 603

Rules of decision, *stare decisis*. *Liberty Mut. Ins. Co. v. Thomas*, 655

CRIMINAL LAW:

Rape, penetration can be shown by circumstantial evidence, proof sufficient for finding of rape by deviate sexual activity. *Jameson v. State*, 128

Evidence ample to show required elements of rape, denial of appellant's directed-verdict motion affirmed. *Id.*

Two kidnapping felonies potentially applicable, trial court's determination that jury should determine question of fact as to which law applied was affirmed. *Id.*

Insanity defense, burden of establishing, standard of review. *Morgan v. State*, 294

Capital and first-degree murder, meaningful distinction exists. *Lever v. State*, 377

Degree of proof necessary to establish capital murder, factors considered. *Id.*

Substantial evidence of premeditated and deliberated purpose, conviction affirmed. *Id.*

CRIMINAL PROCEDURE:

Erroneous denial of detainee's request for release under Rule 28.1(a) may result in mooted issue, alleged violation of Rule 28.1(a) not basis for reversal. *Simpson v. Sheriff of Dallas County*, 277

Ark. R. Crim. P. 28.1(a), burden on State to justify delay in holding appellant more than nine months. *Id.*

Appellant met burden of justifying delay, time in which pretrial motions filed by appellant held under advisement excludable. *Id.*

Speedy trial, eighty-nine-day period resulting from mental examination properly excluded. *Morgan v. State*, 294

Speedy trial, 199-day period resulting from incompetency properly excluded. *Id.*

Speedy trial, forty-two-day period resulting from continuance properly excluded. *Id.*
 Speedy trial, State met burden, trial court did not err in denying motion to dismiss. *Id.*
 Severance, decision to grant motion discretionary with trial court. *Dillard v. State*, 418
 Severance, when defendant has right to. *Id.*
 Severance, evidence of proximity considered. *Id.*
 Severance, when exception to Rule 22.2 allowed. *Id.*
 Severance, evidence supported trial court's denial of. *Id.*
 Severance, trial court did not abuse discretion in denying evidence from each victim would be relevant and admissible in separate trials. *Id.*
 Parole eligibility, prerogative of Department of Correction. *Morris v. State*, 466
 Parole eligibility, recomputation, no *Ex Post Facto* violation. *Id.*
 Parole eligibility, date corrected to conform with proper interpretation of law, circuit court correctly denied writ of mandamus and declaratory relief. *Id.*
 Authority to arrest without warrant, when officer may exercise. *State v. Earl*, 489
 Speedy trial, governing rule is jurisdictional. *Kelch v. Erwin*, 567
 Speedy trial, exceptions to rule. *Id.*
 Speedy trial, State's burden. *Id.*
 Speedy trial, effect of order allowing withdrawal of guilty plea. *Id.*
 Amendment of information, standard. *Id.*
 Amendment of information to conform with proof. *Id.*
 Speedy trial, withdrawal of guilty plea restarted speedy-trial time on amended information. *Id.*
 Speedy trial, amendment to information did not alter nature or degree of offense charged, appellant's right not violated, prohibition denied. *Id.*
 No right to appeal from guilty plea, exception for sentencing issue. *L.H. v. State*, 613
 Investigatory stop, when permitted. *Johnson v. State*, 673
 Tip carried sufficient evidence of reliability, investigatory stop justified. *Id.*

DAMAGES:

Diminution in property value, recoverable element. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214
 Appellees' effective termination of lease rendered jury instruction permitting award for damages after sale date erroneous. *Id.*
 Trial court did not err in setting aside portion of award for damages after sale date. *Id.*

DAMAGES:

Prejudgment interest, when recoverable. *Mitcham v. First State Bank of Crossett*, 598

DEEDS:

Reformation based on mutual mistake, when proper. *Hope v. Hope*, 324
 Proof confirmed intention of parties at time of contract and deed, trial court not clearly erroneous in finding mutual mistake of fact in wording of deed. *Id.*
 Appellant had no intent to take land in fee simple, deed as worded would have run counter to purpose of Trust. *Id.*
 Trial court did not err in concluding parties' intent differed from actual wording of deed, reformation of deed proper. *Id.*
 Reformed timber deed allowed for select cutting "within reasonable time, finality of judgment not undercut. *Id.*

DISCOVERY:

Sanctions, trial court's discretion. *Calandro v. Parkerson*, 603
Sanctions, trial court not required to make finding of willful or deliberate disregard. *Id.*
Appellants' failure to serve full and complete answers to interrogatories could not be excused under Ark. R. Civ. P. 37(d). *Id.*
Trial court did not abuse discretion in dismissing with prejudice appellants' deceit claim, decision affirmed. *Id.*
When violation reversible, appellant failed to show prejudice. *Johnson v. State*, 673

DIVORCE:

Chancellor's order of alimony arrearages proper, letter opinions part of court's findings. *Tortorich v. Tortorich*, 15
Cases cited by appellant inapplicable, appellee never accepted other county's venue. *Id.*
Ark. Code Ann. § 9-12-303(a) and (c) (Repl. 1993), had statute been followed action could have been avoided. *Id.*

EASEMENTS:

Quasi-easement, what constitutes. *Black v. Van Steenwyk*, 629
Implied easement, general rule. *Id.*
Implied easement, when most readily inferred. *Id.*
Whether necessary is question of fact, "necessary" defined. *Id.*
Evidence sufficient to support decree granting easement. *Id.*

ELECTION OF REMEDIES:

General rule. *Coats v. Gardner*, 581
Appellants' negligence claim barred by, appellants had received workers' compensation settlement, circuit court's decision affirmed. *Id.*

EMINENT DOMAIN:

Municipality's constitutional obligation. *Thompson v. City of Siloam Springs*, 351
"Taking" discussed. *Id.*
Inverse condemnation, appellants' proof did not support claim for. *Id.*
Taking, evidence did not support appellants' claim that appellee city damaged property so as to substantially oust them. *Id.*
Appellants did not show appellee city ever took possession of property. *Id.*
Taking, appellee city's actions did not constitute. *Id.*

ESTOPPEL:

Necessary elements. *Bedford v. Fox*, 509
All elements present for establishing estoppel against appellees. *Id.*
Trial court erred in finding that elements of estoppel were not met by appellant. *Id.*
Trial court erred in ruling that person to be estopped must have created infirmity, reversed and remanded. *Id.*

EVIDENCE:

When suppressed evidence admissible, convictions would have been affirmed in any event. *Thompson v. State*, 92
Rulings on admission of evidence within trial court's discretion, rulings set aside only if discretion abused. *Jameson v. State*, 128

- Factors under A.R.E. Rule 807(b)(7) carefully considered by trial judge, no abuse of discretion in allowing testimony. *Id.*
- Review of evidentiary errors, abuse-of-discretion standard. *Parker v. State*, 137
- Evidentiary rulings, trial court's broad discretion. *Id.*
- Jury's role. *Id.*
- Expert testimony, trial court has discretion in admissibility of. *Id.*
- Expert testimony, admissibility, balancing test. *Id.*
- Expert testimony, admissibility, critical factor. *Id.*
- Expert testimony, out-of-state authority rejected. *Id.*
- Expert testimony, trial court did not abuse discretion in excluding forensic psychologist's testimony. *Id.*
- Demonstrative evidence, general rule. *Id.*
- Demonstrative evidence, ski mask appellant sought to use was not similar to one described by eyewitnesses, demonstration not critical to defense. *Id.*
- Demonstrative evidence, trial court did not abuse discretion in excluding ski mask. *Id.*
- Prejudicial evidence, trial court's discretion. *Id.*
- Other crimes, admissibility, showing motive. *Id.*
- Attempted drug transaction, trial court did not err in admitting testimony about. *Id.*
- Prior threat, trial court did not abuse discretion in allowing witness to testify about meaning of appellant's statement. *Id.*
- Substantial evidence defined. *Morgan v. State*, 294
- Relevance, trial court's discretion. *Id.*
- Trial court did not abuse discretion in refusing to admit commitment order. *Id.*
- Substantial evidence discussed, factors on review. *Lever v. State*, 377
- Prior offenses, when admissible. *Dillard v. State*, 418
- Prior offenses, evidence of prior sexual abuse of children admissible. *Id.*
- Prior offenses, focal point of exceptions analysis. *Id.*
- Prior offenses, evidence of prior sexual abuse of children independently admissible under Ark. R. Evid. 404(b). *Id.*
- Trial court's denial of motion to suppress statements not clearly erroneous. *Tabor v. State*, 429
- Criminal contempt proceeding, proof required, factors on review. *Arkansas Dep't of Human Servs. v. R.P.*, 516
- Finding of willful contempt, supported by substantial evidence. *Id.*
- Denial of motion to suppress, review of. *Fultz v. State*, 586
- Challenge to sufficiency of, factors on review. *Id.*
- Possession conviction, constructive possession sufficient. *Id.*
- Appellant had constructive possession of drugs, evidence sufficient to support conviction. *Id.*
- Timely objections made under Ark. R. Evid. 404(b), trial court's decision regarding admission of evidence not reversed absent manifest abuse of discretion. *Id.*
- Direct evidence given of appellant's participation in conspiracy, trial court did not manifestly abuse its discretion in admitting testimony. *Id.*
- Challenges to sufficiency of, only evidence favorable to appellee need be considered. *Johnson v. State*, 673
- Conviction for simultaneous possession under Ark. Code Ann. § 5-74-106, evidence sufficient to support. *Id.*

Ark. R. Evid. 404(b), interpretation of. *Id.*
Prior similar acts admissible to show intent, no abuse of discretion found. *Id.*

EXECUTORS & ADMINISTRATORS:

Jurisdiction of probate court, cannot try title to property claimed by stranger to estate.
Jolly v. Estate of Jolly, 394
Appellant was stranger to estate, probate court lacked jurisdiction, case remanded to probate court for transfer to proper court. *Id.*

FORFEITURES:

Construction of, burdens of proof under Ark. Code Ann. § 5-64-505(a)(4) clear. *State v. One 1993 Toyota Camry*, 503
Ark. Code Ann. § 5-64-505, State met its burden of proof, proof then required by vehicle's owner to avoid forfeiture. *Id.*
Trial court erred in ruling that forfeiture statute did not compel vehicle's owner to show both that she lacked knowledge that her car was illegally used to transport drugs and that boyfriend had no such knowledge, case reversed and remanded. *Id.*
Federal forfeiture law, compared to Arkansas's law. *Id.*

FRAUD:

Only appellee business entities could assert claim. *First Commercial Bank, N.A. v. Walker*, 100
Elements of. *Golden Tee, Inc. v. Venture Golf Schs., Inc.*, 253
Failure to prove essential element, summary judgment appropriate. *Id.*
Future events or conduct may not form basis of claim. *Id.*
Appellant did not meet burden of proving misrepresentations, trial court did not err in granting summary judgment. *Id.*
Appellant's allegations concerning charging of future lease payments against partnership should have been pursued in derivative suit. *Id.*
Chancellor properly dismissed appellant's complaint. *McAdams v. Ellington*, 362
Elements of, appellant did not allege facts sufficient to satisfy. *Id.*
Fraudulent conveyance, sale of diamonds did not constitute. *Id.*

GARNISHMENT:

Subject-matter jurisdiction, garnishee cannot be held upon garnishment without it.
Moory v. Quadras, Inc., 624
Writ of, distinguished from writ of execution. *Id.*
Plural phrase "writs of execution" refers to one form of collecting on judgment with writ of execution, trial court correct in quashing appellants' writs of garnishment. *Id.*

GUARANTY:

Promises of debtor and guarantor are independent. *First Commercial Bank, N.A. v. Walker*, 100
Majority shareholder did not have standing to pursue causes of action belonging to corporate borrowers, acted only as guarantor. *Id.*

HABEAS CORPUS:

Petition for, when granted. *Simpson v. Sheriff of Dallas County*, 277
"Typical" case, when petitioner's detention not seen as "without lawful authority." *Id.*

Extraordinary remedy, when invoked. *Id.*
 Detainee held in violation of Ark. Rule Crim. P. 28.1(a), no way of obtaining appellate review of trial judge's adverse ruling on his motion for release unless detainee allowed to bring petition for extraordinary writ in supreme court. *Id.*
 Pretrial detainee denied release under Rule 28.1(a) may seek writ of *mandamus* in supreme court, possible availability of *mandamus* does not foreclose availability of *habeas corpus* writ. *Id.*
 Pretrial detainee denied motion for release under Rule 28.1 may file petition for *habeas corpus* in supreme court. *Id.*
 Appellant's detention not in violation of Rule 28.1(a), petition for writ denied. *Id.*

INSURANCE:

Review of policies, interpretation of. *Vincent v. Prudential Ins. Brokerage*, 414
 Exclusion provision clear, appellant's argument failed. *Id.*
 Appellant's argument without merit, Medicare is not "other insurance." *Id.*
 Omnibus clause, initial-permission rule. *Liberty Mut. Ins. Co. v. Thomas*, 655
 Omnibus clause, initial-permission rule, conversion exception not applicable. *Id.*

INTEREST:

Prejudgment interest, when allowable. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214
 Prejudgment interest, trial court did not err in awarding to appellees. *Id.*

JUDGES:

Appearance of bias to be avoided, determination of abuse of discretion. *Arkansas Dep't of Human Servs. v. R.P.*, 516
 Alleged bias insufficient to warrant recusal, issue affirmed on merits. *Id.*
 Argument and allegations as to bias already made, trial court affirmed. *Id.*
 Recusal, hearing not requested, decision on merits not reversed. *Black v. Van Steenwyk*, 629
 Recusal, discretionary decision, review. *Id.*
 Presumption of impartiality, burden on party seeking disqualification. *Id.*
 Bias, newspaper articles not part of record are not relied upon, communication of bias needed for reversal. *Id.*
 Bias, evidence based on matters not in record is not considered. *Id.*
 Bias, no evidence of communication of. *Id.*

JUDGMENT:

Summary judgment, when granted. *Adams v. Arthur*, 53
 Summary judgment, standard of review. *Id.*
 Summary judgment, when trial court may resolve fact issues as matter of law. *Id.*
 Summary judgment, allegation of fraudulent concealment not well suited for. *Id.*
 Summary judgment for doctors affirmed in appellant A's case. doctor's statements did not create fact question as to fraudulent concealment. *Id.*
 Summary judgment for doctors reversed in appellants R and S's case, representation concerning nature of material to be used in surgery created fact question as to fraudulent concealment. *Id.*
 Summary judgment for doctors reversed in case of appellants B and C, alleged misrepresentation created fact question as to fraudulent concealment. *Id.*

Summary judgment for doctors affirmed in case of appellants G and H, fact question as to fraudulent concealment not established. *Id.*

Summary judgment for doctors affirmed in case of appellants L and M, no representations made concerning material to be used in surgery. *Id.*

Summary judgment for doctors reversed in cases of appellants E and F, P and Q, N and O, K, and D, representations created fact question as to fraudulent concealment. *Id.*

Summary judgment for doctors reversed in case of appellants I and J, representation that material was "not experimental" created fact question as to fraudulent concealment. *Id.*

Summary judgment for doctors reversed in case of appellants T and U, appellant T not told material was fractured. *Id.*

Summary judgment for hospitals affirmed on fraudulent-concealment claims, evidence of affirmative conduct lacking. *Id.*

Summary judgment for hospitals Limitation of actions, Medical Malpractice Act's two-year period governed appellants' product-liability claims. *Id.*

Res judicata, when applicable. *First Commercial Bank, N.A. v. Walker*, 100

Res judicata, did not require circuit court to adopt chancellor's rulings on remand. *Id.*

Purpose of summary judgment, trial court's grant of summary judgment proper. *Gourley v. Crossett Pub. Sch.*, 178

Summary judgment, denial of motion generally not reviewable or appealable. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214

Summary judgment, when general rule regarding denial inapplicable. *Id.*

Summary judgment, appeal of denial, standard of review. *Id.*

Summary judgment, standard of review. *Golden Tee, Inc. v. Venture Golf Schs., Inc.*, 253

Summary judgment, response and supporting material must show genuine issue of fact. *Id.*

Summary judgment, guidelines. *Thompson v. City of Siloam Springs*, 351

Summary judgment, allegations in complaint are not proof. *Id.*

Summary judgment, matters to be considered in proceedings. *UMLIC 2 Funding Corp. v. Butcher*, 442

Summary judgment, when allowed. *Id.*

Summary judgment, appropriate when statute of limitations bars action. *Id.*

Summary judgment, when granted. *Village Market, Inc. v. State Farm Gen. Ins. Co.*, 552

Summary judgment, standard of review. *Id.*

Summary judgment, appellee entitled to due to appellant's failure to comply with duty under policy to set aside damaged property for inspection. *Id.*

Summary judgment, standard of review. *Liberty Mut. Ins. Co. v. Thomas*, 655

Summary judgment, trial court did not err in awarding to appellee. *Id.*

JUDICIAL SALES:

When complete, may be set aside before confirmation for legitimate reason. *Dellinger v. First Nat'l Bank of Russellville*, 460

JURISDICTION:

Arkansas Constitution confers on supreme court authority to entertain and grant petitions for writs of *habeas corpus*. *Simpson v. Sheriff of Dallas County*, 277

Habeas corpus statute allows members of supreme court to issue writ "upon proper application", power of court to issue writs is coextensive with state. *Id.*

Domicile and residence defined. *In Re: Adoption of Samant*, 471

Term defined. *Kelch v. Erwin*, 567

How probate-court jurisdiction established, late psychiatric report will not deprive court of jurisdiction. *Daniels v. State*, 620

JURY:

Authority of trier of fact. *Parker v. State*, 137

Verdict affirmed if supported by substantial evidence. *Morgan v. State*, 294

Not bound to find expert's testimony conclusive. *Id.*

Determines weight to be given evidence. *Id.*

JUVENILES:

Juvenile criminal case, factors on review. *Garcia v. State*, 26

Engaging in violent criminal activity is enhancement of punishment statute rather than substantive offense. *Jones v. State*, 208

Circuit court had no jurisdiction to try separate appellant for second-degree battery, case reversed and remanded in part for transfer to juvenile court. *Id.*

Criteria for family services met, trial court ordered services to prevent child from being removed from her mother. *Arkansas Dep't of Human Servs. v. R.P.*, 516

Requirements of statute inapplicable, trial court's order was not defective under Ark. Code Ann. § 9-27-328 (Repl. 1993). *Id.*

Juvenile court's orders, need not comply with appellant agency's policy. *Id.*

Funds available to pay bills, trial court's order did not exceed statutory authority. *Id.*

Distinctive treatment of juvenile offenders. *L.H. v. State*, 613

LACHES:

Requirement, defendants did not show position changed to their detriment in reliance upon plaintiffs' delay in bringing claim. *Swink v. Giffin*, 400

LANDLORD & TENANT:

Termination of lease by landlord's reentry. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214

LIMITATION OF ACTIONS:

Running of statute of limitations as defense, shifting burden. *Adams v. Arthur*, 53

Fraud suspends running of statute of limitations. *Id.*

Fraudulent concealment, requirements for tolling statute. *Id.*

Two-year period in Medical Malpractice Act supersedes three-year period in Product Liability Act. *Id.*

Public-policy matter, General Assembly's prerogative. *Id.*

Foreclosure action, six-year federal limitations period adopted. *UMLIC 2 Funding Corp. v. Butcher*, 442

Foreclosure action, timely filed by appellant. *Id.*

Foreclosure action, trial court erred in finding suit barred because it was not filed within one year, reversed and remanded. *Id.*

MANDAMUS, WRIT OF:

Trial court's ruling on, when reversed. *Hanley v. Arkansas State Claims Comm'n*, 159

When appropriate, first factor to be established. *Id.*

When appropriate, second factor to be established. *Id.*

Appellant failed to establish both factors, no abuse of discretion in trial court's denial of appellant's petition for writ. *Id.*

MASTER & SERVANT:

Appellee's right to employment nonexistent. *Robinson v. Langdon*, 662
Discharge, violation of public policy, no authority cited or argument made by appellee. *Id.*
Employee handbook, requirements. *Id.*

MORTGAGES:

Right of redemption, waiver of. *Dellinger v. First Nat'l Bank of Russellville*, 460
Buyer of property at judicial sale, protections afforded. *Id.*
Statutory waiver of right to redemption absolute bar to mortgagor's right to redeem, no error in chancery court's finding that appellants waived their right to redemption. *Id.*

MOTIONS:

Denial of motion to suppress, standard of review. *Thompson v. State*, 92
Directed verdict, review of denial. *Jameson v. State*, 128
Continuance, factors to be considered. *Morgan v. State*, 294
Continuance, expert's expected testimony would have been cumulative, trial court did not err in denying appellant's motion. *Id.*
Directed verdict, trial court did not err in denying. *Id.*
Acquittal, when order may be entered or properly denied, discretionary decision. *Id.*
Acquittal, trial court did not abuse discretion in denying. *Id.*
Motion to suppress, review of. *Tabor v. State*, 429
Motion for expedited consideration of motion to stay granted, temporary stay granted, motion to expedite appeal granted, briefing schedule set. *Seeco, Inc. v. Hales*, 469
When motion to dismiss will be treated as summary-judgment motion. *Coats v. Gardner*, 581
Inculpatory statement admitted, motion to suppress properly denied. *Johnson v. State*, 673
Posttrial, ineffective because filed prior to entry of judgment. *Brown v. State*, 698

MUNICIPAL CORPORATIONS:

Powers of, expressly conferred by legislature. *Phillips v. Town of Oak Grove*, 183
Exercise of police power, when justified. *Id.*
Ark. Code Ann. § 14-54-102(1987), power granted. *Id.*
Power granted, appellee town could legislate for protection of public health. *Id.*
Regulation under police power, mere possibility of public harm is sufficient basis for. *Id.*
Lawful business that poses possibility of harm can be regulated even if ordinance excludes operation of business within city limits, ordinance here does so. *Id.*
"Regulation versus prohibition" rule not rigidly applied, appellee may regulate and prohibit commercial swine and fowl businesses under its police power unless such deprivation without rational basis. *Id.*
Distinction based on keeping fowl for commercial or private purposes, rational nexus for distinction apparent. *Id.*
Equal protection allows legislation that recognizes degrees of evil, appellee did not act arbitrarily, capriciously, or unreasonably in enacting ordinance. *Id.*

Appellant's assertion without merit, court's role not to discover actual basis for legislation, court considers whether rational basis for law exists. *Id.*

Petition for incorporation, hearing, statutory use of term "may" indicated interested persons could rather than must appear and contest. *Campbell v. City of Cherokee Village West*, 310

Complaint to prevent organization, character of action. *Id.*

Complaint to prevent organization, standing to file in circuit court, only "person interested" required by statute. *Id.*

Complaint to prevent organization, "person interested" defined, test for determining interest. *Id.*

Complaint to prevent organization, appellant had standing to bring complaint and was entitled to hearing, case reversed and remanded. *Id.*

Incompatibility doctrine. *Thompson v. Roberts*, 544

Incompatibility doctrine, trial court erred in finding that appellants failed to carry burden of proof, bookkeeper subject to supervisory power of mayor. *Id.*

Interest in offices or contracts by council members prohibited by statute, applicable to mayors, appellee's position as bookkeeper could be seen as prohibited interest. *Id.*

quantum meruit defense, issue not reached by trial court, determination to be made on remand. *Id.*

PARENT & CHILD:

Termination of parental rights, Act 1227 of 1997, Department of Human Services not required to have physical or legal custody to bring petition. *Moore v. Arkansas Dep't of Human Servs.*, 288

Termination of parental rights, appellee continued to have legal custody of child until chancery court dismissed action. *Id.*

Termination of parental rights, clear and convincing evidence that child was dependent-neglected, chancellor's order affirmed. *Id.*

Parental obligation of support, parent may contractually agree to support child past age of majority. *Van Camp v. Van Camp*, 320

Order did not change obligations of parties under negotiated property-settlement agreement, no reversible error in chancellor's issuance of order to "correct" order purporting to terminate appellant's legal obligation to support child past age of majority. *Id.*

Child support, modification of. *Littles v. Flemings*, 476

Support modification, effect of Ark. Code Ann. § 9-10-115(d) (Supp. 1995), chancellor erred in declining to terminate appellant's obligation for future child-support payments. *Id.*

Future support obligations, when "adjudicated father" may be entitled to relief from. *Id.*

"Unclean hands" conduct alleged by appellant unsupported by cited caselaw, any false testimony by appellee was intrinsic fraud and not ground for reversal. *Id.*

PARTIES:

Judicial immunity, absolute immunity. *Robinson v. Langdon*, 662

Judicial immunity, test for. *Id.*

Judicial immunity, agency hearing officer's role met description of facts warranting. *Id.*

Qualified immunity, applicable to state agency employees under 42 U.S.C. § 1983, standard. *Id.*

PARTNERSHIP:

- Derivative or individual action by limited partner, criteria. *Golden Tee, Inc. v. Venture Golf Schs., Inc.*, 253
- Action for breach of partnership agreement, may be brought as individual or partnership action. *Id.*
- Action for breach of partnership agreement, limited partner should have asserted claims in derivative suit, summary judgment affirmed. *Id.*
- Fiduciary obligation of partners. *Id.*
- Statutory fiduciary duty. *Id.*
- Fiduciary duty owed by general partners to partnership, derivative action required. *Id.*
- Action for fraud may be brought as individual or derivative suit. *Id.*
- When limited partner may bring action in right of limited partnership. *Id.*
- Derivative actions, policy considerations. *Id.*

PHYSICIANS & SURGEONS:

- Medical malpractice, proof of knowing concealment not always necessary to show fraudulent concealment. *Adams v. Arthur*, 53
- Medical malpractice, alleged breach of duty to obtain informed consent not equated with fact question as to fraudulent concealment. *Id.*
- Medical malpractice, heart of appellants' case was whether consent was informed. *Id.*
- Medical malpractice, limitations period, affirmative misrepresentation regarding surgery may operate to conceal patient's cause of action. *Id.*

PLEADING:

- Denial of allegation not equivalent to stating facts sufficient to support defense. *Southern Transit Co. v. Collums*, 170

PROCESS:

- Summons, compliance with technical requirements must be exact. *Southern Transit Co. v. Collums*, 170
- Insufficiency of, when defense is waived. *Id.*
- Insufficiency of, appellant's defense waived. *Id.*
- Insufficiency of, appellant's denial that court had personal jurisdiction did not sufficiently raise defense. *Id.*
- Service, appellant's exhibits satisfied Ark. R. Civ. P. 4, denial of motion for default judgment reversed. *McAdams v. Ellington*, 362

PROHIBITION, WRIT OF:

- When appropriate. *Kelch v. Erwin*, 567
- Authorized by rules of criminal procedure. *Id.*

PROPERTY:

- Appellants' request for rescission untimely, federal Truth-in-Lending Act limits obligor's right to rescind consumer-credit transaction. *Collins v. Keller*, 238
- Interstate Land Sales Act, rescission by purchaser of property limited by provisions. *Id.*
- Appellants failed to act timely under provisions of Truth-in-Lending and Interstate Land Sales Acts, defense not asserted until more than three years after contract consummated. *Id.*

Appellants not entitled to rescission of contract, trial court appropriately addressed rental damages due appellees under contract. *Id.*
Inverse condemnation discussed. *Thompson v. City of Siloam Springs*, 351

REFORMATION OF INSTRUMENTS:

Power of trial court, standard of review. *Hope v. Hope*, 324
Courts of equity, when writing will be reformed. *Id.*
Reformation of deed based on mutual mistake, whole body of testimony reviewed. *Id.*

SCHOOLS & SCHOOL DISTRICTS:

Education service cooperatives, comparable to school districts. *Ozarks Unlimited Resources Coop., Inc. v. Daniels*, 214
Education service cooperatives, governing legislative act. *Id.*
Trial court did not err in finding appellant's five-year lease was not violative of Ark. Code Ann. § 6-20-402. *Id.*

SEARCH & SEIZURE:

Warrantless inventory search of vehicle, when allowed. *Thompson v. State*, 92
Warrantless inventory search of vehicle, action must be taken in good faith and in accordance with standard police procedures. *Id.*
Inventory search of impounded vehicle, when permissible. *Id.*
Inventory search, officer justified in impounding and completing inventory of vehicle. *Id.*
Inventory search, opening closed containers. *Id.*
Inventory search, opening closed container, standard policy required officer to open container. *Id.*
Inventory search, appellant's Fourth Amendment rights not violated. *Id.*
Anticipatory warrant, validity of. *Sims v. State*, 405
Warrant defective, contraband evidence remained admissible, officers executed warrant in good faith. *Id.*
Suppression, exclusionary rule cannot be used to bar use of evidence seized with reliance on invalid warrant. *Id.*
Issuance of warrant, totality of circumstances may be used in assessing good faith. *Id.*
No intention to mislead judge shown, warrant not to be executed until delivery accepted, trial court's denial of appellant's motion to suppress affirmed. *Id.*
Lawful searches, when permitted. *State v. Earl*, 489
Lawful searches, officer with probable cause to arrest pursuant to Ark. R. Crim. P. 4.1 may validly conduct search incident to arrest under Ark. R. Crim. P. 5.5. *Id.*
Officer authorized to arrest appellee could lawfully conduct search, decision to issue citation does not affect officer's right to conduct search of same scope as one incident to arrest. *Id.*
When search conducted before arrest is valid, not important that search preceded arrest. *Id.*
Search incident to arrest automatically permissible when valid custodial arrest occurs. *Id.*
Distinction between search incident to arrest and limited search for weapons, more intrusive search permissible under search-incident-to-arrest exception to warrant requirement. *Id.*
Officer making lawful custodial arrest may search passenger compartment and contents of any containers within. *Id.*

Officer had power to search contents of bottle, trial court erred in granting motion to suppress, reversed and remanded. *Id.*
Search conducted outside judicial process per se unreasonable under Fourth Amendment, exceptions. *Fultz v. State*, 586
Plain-view exception, when objects may be seized. *Id.*
Warrantless seizure of evidence in plain view, inadvertent discovery not required under Arkansas Constitution. *Id.*
Officers had probable cause to believe car was evidence and instrumentality of crime, trial court's admission of evidence seized not clearly against preponderance of evidence. *Id.*
Warrant arose from evidence discovered during illegal search, evidence may be admissible if discovered through independent source. *Id.*
Search warrant independently supported by probable cause, trial court's refusal to suppress evidence found during execution of warrant not erroneous. *Id.*

STATUTES:

Statutory presumptions, limitations. *Garcia v. State*, 26
Limits of presumptions in criminal cases, permissive inference discussed. *Id.*
Presumptions, mandatory and permissive distinguished. *Id.*
Presumed constitutional, burden of proving otherwise on party challenging enactment. *Golden v. Westark Community College*, 41
Ark. Code Ann. § 11-9-522(f) (1996) worked disincentive on those age sixty-five or older to seek gainful employment to supplement social security benefits, no acceptable rationale behind inconsistency in treatment. *Id.*
Workers' compensation and social security compensation, different policy considerations, no logical premise for legislative conclusion that two benefits are duplicative and should offset one another. *Id.*
Construction of, doctrines of *ejusdem generis* and *noscitur a sociis* discussed. *Hanley v. Arkansas State Claims Comm'n*, 159
Principles of construction applied to Ark. Code Ann. § 19-10-204(b) (Supp. 1997), claim here for breach of contract, Claims Commission clearly had jurisdiction. *Id.*
Statutory requirements, compliance must be exact. *Southern Transit Co. v. Collums*, 170
Challenge to constitutionality, standard of review. *Jones v. State*, 208
Challenge to constitutionality, vagueness test. *Id.*
Meeting vagueness challenge. *Id.*
Ark. Code Ann. § 5-74-108 sufficiently clear to overcome vagueness challenge, case affirmed in part. *Id.*
Construction of, applicable rules. *Kildow v. Baldwin Piano & Organ*, 335
Interpretation of, supreme court will not add words to convey meaning not there. *Id.*
Construction of, rules applied. *Stapleton v. M.D. Limbaugh Constr. Co.*, 381
Presumed constitutional, burden of proof on challenger. *Id.*
Public policy found in constitution and statutes, appellant failed to provide support for her argument. *Vincent v. Prudential Ins. Brokerage*, 414
Construction of, presumption that General Assembly aware of decisions made pursuant to preexisting law. *In Re: Adoption of Samant*, 471
Version of Act in existence at time petition filed applicable, amendment enacted without emergency clause. *Littles v. Flemings*, 476

Retroactive application, statute did not provide for. *Id.*
Construction of, acts relating to same subject should be reconciled. *L.H. v. State*, 613
Construction of, determination of legislative intent. *Id.*
Construction of, general yields to specific. *Id.*
Specific Juvenile Code provision controlling, chancellor's ruling affirmed as to applicability of Ark. Code Ann. § 9-27-309 to appellant's adjudication in juvenile court. *Id.*
Chancellor never addressed difference between two code provisions, ruling affirmed. *Id.*
Construction, repeal by implication not favored. *Robinson v. Langdon*, 662
Construction, state immunity and qualified-immunity provisions read in harmony. *Id.*
Statutes dealt with two separate offenses, argument meritless. *Johnson v. State*, 673
Presumption of constitutionality, burden on attacking party. *Boyd v. Weiss*, 684

TAXATION:

Act 48 of 1977, purpose. *Boyd v. Weiss*, 684
Act 48 of 1977, no unlawful delegation of legislative authority, act was complete in itself. *Id.*
Act 48 of 1977, purpose not negated by state treasury's receipt of revenues from increased sales tax. *Id.*

TORTS:

Improper conduct alleged, none found. *Mason v. Wal-Mart Stores, Inc.*, 3
Product-liability claims against hospitals not moot. *Adams v. Arthur*, 53

TRIAL:

Cross-examination, reasonable limitations. *Parker v. State*, 137
Trial court has wide discretion in determining propriety of closing arguments, no abuse of discretion found. *Johnson v. State*, 673

USURY:

Defense of, when debtor may be estopped from asserting. *Bedford v. Fox*, 509

VENUE:

Issue of jurisdiction of person, when writ of prohibition will issue. *Tortorich v. Tortorich*, 15
Second chancery court had no power to issue order, original county's orders remained effectual. *Id.*

WITNESSES:

Cross-examination of witnesses, trial judge must permit full fair and reasonable cross-examination. *Skokos v. Skokos*, 396
Chancellor abused discretion in terminating cross-examination of expert witness. *Id.*
Suppression hearing, credibility for trial judge to determine. *Tabor v. State*, 429
Conflicts in testimony for trial judge to resolve. *Id.*
Immunity, not constitutional right. *Id.*
Immunity, rationale, prosecutorial discretion. *Id.*
Immunity, claimant's burden. *Id.*
Equitable immunity discussed, determination within trial court's discretion. *Id.*

Equitable immunity, trial court did not abuse discretion in refusing to recognize appellant's claim. *Id.*

Immunity, trial court did not abuse discretion in ruling appellant not entitled to immunity from use of incriminating statements against him. *Id.*

Credibility of, for trier of fact to determine. *Myers v. State*, 706

WORDS & PHRASES:

"In concert" defined. *Jones v. State*, 208

"Pro forma statement" defined. *Golden Tee, Inc. v. Venture Golf Schs., Inc.*, 253

"May" and "shall" distinguished, when "may" will be construed as "shall." *Campbell v. City of Cherokee Village West*, 310

WORKERS' COMPENSATION:

Review of appeals from Commission, factors on review. *Golden v. Westark Community College*, 41

Suitable employment available to appellant, Commission's decision finding twenty percent permanent partial disability supported by substantial evidence. *Id.*

Case affirmed in part and reversed in part, Ark. Code Ann. § 11-9-522(f) violates Equal Protection Clause, statute void on its face. *Id.*

When exclusivity doctrine applies. *Gourley v. Crossett Pub. Sch.*, 178

Willful and intentional injury of employee, employer not immune from suit. *Id.*

Injured employee's right to recover for job-related injuries is exclusively under Workers' Compensation Act, exception to general rule. *Id.*

Appellant recovered for injury under Workers' Compensation Act, appellant precluded from recovering again under intentional-tort theory. *Id.*

Eligibility, compensable injury defined. *Kildow v. Baldwin Piano & Organ*, 335

Rapid repetitive motion, carpal tunnel syndrome considered compensable. *Id.*

Commission erred in interpretation of law, carpal tunnel syndrome specifically categorized as compensable injury. *Id.*

Legislative intent expressed in Ark. Code Ann. § 11-9-1001 (Repl. 1996), strict and literal construction of workers' compensation statutes mandated. *Id.*

Act provides safeguards to protect employers from claims that are feigned. *Id.*

Rapid repetitive motion, Commission erred by applying rejected definition. *Malone v. Texarkana Pub. Schs.*, 343

Standard of review. *Id.*

Rapid repetitive motion, expanded definition. *Id.*

Rapid repetitive motion, establishment of compensability. *Id.*

Rapid repetitive motion, two-pronged test. *Id.*

Rapid repetitive motion, reasonable minds could conclude that appellant's duties did not satisfy definition. *Id.*

Rapid repetitive motion, Commission had substantial evidence to conclude that appellant's job duties did not satisfy, decision affirmed. *Id.*

Prime contractor as statutory employer, liable to subcontractor's employee for workers' compensation benefits. *Stapleton v. M.D. Limbaugh Constr. Co.*, 381

Construction of amendment to Ark. Code Ann. § 11-9-105, intent clear. *Id.*

Argument misconstrued remedies available to injured party under two provisions, appellant's argument without merit. *Id.*

Public-policy argument without merit, policy decision clearly made by legislature. *Id.*

Intent of General assembly to extend tort immunity clear, trial court properly held that appellant's tort action against appellee was barred under amended exclusive-remedy provision. *Id.*

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

—

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

| | |
|---|---|
| <p>ACTS:</p> <p>ACTS BY NAME:</p> <p>Administrative Procedure Act . . . 169</p> <p>Arkansas Civil Rights Act of 1993 662, 667, 669, 671</p> <p>Arkansas Criminal Gang, Organization, or Enterprise Act 208, 211</p> <p>Arkansas Fraudulent Conveyance Act 365, 366</p> <p>Arkansas Public Employees' Retirement System Act 166, 168</p> <p>Arkansas Revised Limited Partnership Act . . 254, 258, 264, 265</p> <p>Arkansas Teacher Retirement System Act 166, 168</p> <p>Arkansas Uniform Partnership Act 254, 265</p> <p>Education Service Cooperative Act 215, 222, 223, 224</p> <p>Employment Security Law . . 166, 168</p> <p>Freedom of Information Act (FOIA) 451, 452, 453, 454, 455, 456, 457</p> <p>Medical Malpractice Act 54, 59, 60, 61, 64, 65, 85, 86, 87, 88, 89, 92</p> <p>Omnibus DWI Act 25</p> <p>Product Liability Act 59, 84, 85, 86, 87, 88</p> <p>Revised Uniform Adoption Act 474</p> <p>State Police Retirement System Act 166, 168</p> <p>Strict Liability Act 59, 84, 87, 88</p> <p>Teacher Fair Dismissal Act 449</p> | <p>Uniform Controlled Substances Act 436</p> <p>Workers' Compensation Act 45, 178, 179, 180, 181, 182, 221, 335, 337, 338, 340, 384, 385, 386, 387, 388, 584, 585</p> <p>Workers' Compensation Law 166, 168</p> <p>ARKANSAS ACTS:</p> <p>Act 462 of 1949 § 2 168</p> <p>Act 470 of 1949 403</p> <p>Act 143 of 1961 24, 25</p> <p>Act 457 of 1961 30, 35</p> <p>Act 202 of 1967 627</p> <p>Act 696 of 1975 35</p> <p>Act 48 of 1977 . . 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697</p> <p>Act 511 of 1979 59, 88</p> <p>Act 709 of 1979 59, 87, 88</p> <p>Act 485 of 1981 550</p> <p>Act 273 of 1987 201, 205, 206</p> <p>Act 658 of 1991 473, 474, 475</p> <p>§ (a)(1) 475</p> <p>§ (a)(2) 475</p> <p>Act 791 of 1991, § 5 642</p> <p>Act 536 of 1993 201, 202, 205, 206</p> <p>Act 558 of 1993 201, 202, 205, 206</p> <p>Act 796 of 1993 382</p> <p>§ 4 384, 385, 392</p> <p>§ 6 388</p> <p>Act 739 of 1995 692, 693</p> <p>Act 802 of 1995 22, 24, 25</p> <p>Act 33 of 1997 165</p> <p>Act 251 of 1997 47</p> |
|---|---|

| | | | |
|--------------------------------|---------------------|-------------------------------|-------------------------|
| § 3 | 47 | 4-43-101 to -1206 | 258, 264 |
| Act 1227 of 1997 | 288, 292, 293 | 4-43-403(a) | 254, 265 |
| Act 1296 of 1997 | 477, 484, 485 | 4-43-1001 | 256, 259, 268 |
| § 8 | 484 | 4-59-201 through 4-59-207 ... | 365 |
| UNITED STATES ACTS: | | | |
| Federal Medicaid Act | 163 | 4-59-204 | 362, 366 |
| Freedom of Information Act | | 4-75-601 to 4-75-607 | 401 |
| (FOIA) | 453, 458 | 5-2-313 | 297, 304, 305 |
| Interstate Land Sales Act ... | 238, 239, | 5-2-314(d) | 620, 621, 622, 623 |
| 240, 241, 242, 243, 244, 245 | | 5-2-314(f) | 623 |
| § 1703(b) | 239, 244 | 5-4-104(d) | 31 |
| § 1703(d) | 244 | 5-4-201(b)(1) | 31 |
| § 1703(d)(1) | 244 | 5-4-311 | 617 |
| § 1703(d)(2) | 244 | 5-4-401 | 135 |
| § 1703(d)(3) | 244 | 5-4-401(b)(1) | 31 |
| Social Security Act | 417 | 5-10-101 | 141 |
| Title XIX | 248 | 5-10-101(a)(4) ... | 377, 378, 380, 381 |
| Truth-in-Lending Act | 239, 240, | 5-10-102(a)(2) | 377, 378, 380 |
| 241, 242, 243, 244, 246 | | 5-11-102 | 135 |
| § 1635 | 239, 244 | 5-13-202(a)(1) | 209, 213 |
| § 1635(a) | 239, 244 | 5-14-101(1)(A) | 132 |
| § 1635(f) | 244 | 5-14-101(1)(B) | 132 |
| CODES: | | | |
| (See also RULES and STATUTES): | | | |
| ARKANSAS CODE ANNOTATED: | | | |
| 2-32-101 | 192 | 5-14-103 | 420 |
| 4-2-608 | 602 | 5-14-103(a)(1) | 428 |
| 4-3-104(3)(f) | 232, 236 | 5-14-103(a)(3) | 132 |
| 4-3-110(d) | 237 | 5-14-108 | 421 |
| 4-3-118 | 444, 445 | 5-14-108(a)(4) | 428 |
| 4-3-203(b) | 447 | 5-64-401 | 569 |
| 4-3-309(a) | 232, 237 | 5-64-407 | 617 |
| 4-3-309(a)(i) | 237 | 5-64-505 | 503, 504, 507, 508 |
| 4-3-309(a)(ii) | 237 | 5-64-505(a) | 504, 506 |
| 4-3-309(a)(iii) | 237 | 5-64-505(a)(1) | 506 |
| 4-3-406 | 238 | 5-64-505(a)(2) | 506 |
| 4-3-414(c) | 232 | 5-64-505(a)(4) | 503, 505, 506 |
| 4-3-414(c) | 232, 233, 234, 235, | 5-64-505(a)(4)(ii) | 503, 504, 506, |
| 236, 237 | | 507 | |
| 4-3-420(a) | 233, 238 | 5-64-706 | 436 |
| 4-3-501 | 236 | 5-64-706(a) | 436 |
| 4-26-204(a)(2) | 110 | 5-64-706(b) | 436 |
| 4-42-404(1) | 264, 265 | 5-64-706(c) | 436 |
| 4-42-405 | 255, 265 | 5-64-710 | 23, 25 |
| | | 5-65-101 through 311 | 25 |
| | | 5-65-104 | 23, 24, 25 |
| | | 5-65-104(a)(9)(c) | 25 |
| | | 5-65-104(f) | 22, 25 |
| | | 5-65-116 | 23, 25 |
| | | 5-73-120 | 28, 30, 31, 34, 35, 40, |
| | | | 675, 681, 682 |

| | | | |
|-------------------------------|---|-----------------------------|---------------------------------|
| 5-73-120(a) | 30 | 9-10-115(g)(1) | 484 |
| 5-73-120(b)(2) | 31 | 9-10-120 | 479 |
| 5-73-120(C)(1) | 681 | 9-12-303(a) | 16, 21 |
| 5-73-120(C)(4) | 681 | 9-12-303(c) | 16, 21 |
| 5-73-120(d)(2) | 31 | 9-12-314(b) | 476, 481 |
| 5-73-121 | 28, 29, 30, 31, 32, 33, 34, 35 | 9-12-314(c) | 481 |
| 5-73-121(a) | 30, 35 | 9-14-234 | 481, 483, 485, 486 |
| 5-73-121(b) | 30, 35, 36, 40 | 9-14-234(b) | 481 |
| 5-73-121(c) | 35 | 9-14-234(c) | 485 |
| 5-73-123(b) | 30, 35 | 9-27-303 | 290 |
| 5-74-102(e) | 211 | 9-27-303(17) | 517, 529, 530, 532 |
| 5-74-103(c) | 210 | 9-27-303(17)(A) | 529, 532 |
| 5-74-106 | 673, 674, 675, 677, 678, 681, 682 | 9-27-303(17)(B) | 529, 532 |
| 5-74-108 | 208, 209, 210, 212 | 9-27-303(17)(C) | 529, 532 |
| 5-74-108(a) | 210 | 9-27-303(26) | 293 |
| 5-74-108(b) | 210, 213 | 9-27-309 | 614, 616, 617, 618, 619 |
| 6-13-1000 to -1025 | 218 | 9-27-309(a) | 618 |
| 6-13-1001 to -1025 | 215, 221 | 9-27-309(a)(2) | 618 |
| 6-13-1002 | 222 | 9-27-309(b) | 618 |
| 6-13-1006(d) | 223, 224 | 9-27-310(b)(3)(A) | 532 |
| 6-13-1012 | 224 | 9-27-318(b)(1) | 212, 619 |
| 6-13-1012(c) | 224 | 9-27-318(b)(2) | 209, 213 |
| 6-20-402 | 216, 217, 218, 223, 224, 226 | 9-27-325(f) | 616 |
| 6-20-801 et seq. | 223 | 9-27-328 | 517, 530 |
| 6-20-1201 et seq. | 223 | 9-27-328(a) | 517, 530, 532 |
| 8-4-213 | 372 | 9-27-332(1) | 531 |
| 8-4-213(a) | 372 | 9-27-338 | 293 |
| 8-4-213(b) | 372, 375 | 9-27-338(a) | 293 |
| 8-4-222—8-4-229 | 372 | 9-27-338(a)(1) | 293 |
| 9-9-201 through 9-9-224 | 474 | 9-27-341 | 288, 291, 292, 293 |
| 9-9-205 | 471, 472, 473 | 9-27-341(a) | 292 |
| 9-9-205(a) | 473 | 9-27-341(b) | 289, 291, 292, 293 |
| 9-9-205(a)(1) | 471, 473 | 9-27-341(b)(1) | 292 |
| 9-9-205(a)(2) | 471, 473 | 9-27-341(b)(1)(B) | 292 |
| 9-10-108 | 479 | 9-27-341(b)(2) | 292 |
| 9-10-115 | 479, 482, 484 | 9-27-341(b)(2)(A) | 293 |
| 9-10-115(a) | 476, 481 | 9-27-341(b)(2)(B) | 293 |
| 9-10-115(c) | 478, 482, 484 | 9-27-341(b)(2)(F) | 292 |
| 9-10-115(c)(1) | 479 | 9-27-341(b)(2)(H)(I) | 293 |
| 9-10-115(c)(2) | 479 | 11-9-101 et seq. | 166, 168 |
| 9-10-115(d) | 476, 477, 480, 481, 482, 483, 484, 485, 487, 488 | 11-9-101(b) | 48, 51 |
| 9-10-115(d)(1) | 483 | 11-9-102(5) | 335, 338 |
| 9-10-115(d)(2) | 483 | 11-9-102(5)(A)(ii) | 335, 336, 338, 339, 348 |
| | | 11-9-102(5)(A)(ii)(a) | 335, 338, 345, 346, 347, 348 |

| | | | |
|--------------------------|--|-------------------------------------|---------------------------------|
| 11-9-102(5)(D) | 336, 340 | 16-22-309(a)(1) | 361 |
| 11-9-102(5)(E)(ii) | 337, 340 | 16-22-309(b) | 361 |
| 11-9-105 ... | 178, 181, 382, 383, 384, 387, 389, 390, 392 | 16-43-605 | 436 |
| 11-9-105(a) | 384, 385, 386, 388, 390, 392 | 16-56-111 | 444, 445 |
| 11-9-106 | 586 | 16-65-117(a)-(c) | 628 |
| 11-9-402 | 382, 383, 384, 387, 388, 389, 390, 391, 392 | 16-66-102 | 625, 627, 629 |
| 11-9-402(a) | 386 | 16-66-104 | 628 |
| 11-9-410 | 386, 387, 388 | 16-66-114 | 628 |
| 11-9-519(g) | 47, 48 | 16-66-114(a)-(b)] | 628 |
| 11-9-522(f) | 42, 43, 44, 45, 47, 48, 49, 50, 51, 52 | 16-67-201(a) | 311, 315, 318 |
| 11-9-522(f)(1) | 47 | 16-85-407 | 573 |
| 11-9-522(f)(2) | 47, 48, 51 | 16-90-601 | 617 |
| 11-9-1001 | 336, 339 | 16-90-602 | 617 |
| 11-10-101 et seq. | 166, 168 | 16-90-605 | 617 |
| 14-38-101 | 314 | 16-90-901 | 614, 615, 616, 617, 618, 619 |
| 14-38-103 ... | 310, 313, 314, 316, 317 | 16-91-901(a) | 617 |
| 14-38-103(a)(1) | 314 | 16-91-901(b) | 617 |
| 14-38-103(a)(2) | 310, 311, 314 | 16-93-301 — 16-93-303 | 617 |
| 14-38-103(b)(1) | 314 | 16-93-1207 | 617 |
| 14-38-103(b)(2) | 314 | 16-106-109(a) | 505 |
| 14-38-106 | 311, 312, 313, 314, 315, 316, 318, 319 | 16-110-401 | 628 |
| 14-38-106(a) | 315 | 16-110-412 | 624, 626 |
| 14-38-106(b) | 315 | 16-112-102(a) | 277, 282 |
| 14-38-107 | 312, 319 | 16-112-102(a)(1) | 277, 281 |
| 14-40-604 | 316 | 16-112-103(a) | 277, 279, 282, 283 |
| 14-42-107 | 545, 548, 549, 550, 551 | 16-114-201(1) | 86 |
| 14-42-107(a)(1) | 550 | 16-114-201(3) | 86 |
| 14-42-107(a)(2) | 550 | 16-114-202 | 87 |
| 14-42-107(b)(1) | 545, 550 | 16-114-203 | 59, 60, 89, 90 |
| 14-42-107(b)(2) | 550 | 16-114-203(a) | 54, 61, 65 |
| 14-43-504 | 549 | 16-114-203(b) | 63, 90 |
| 14-54-102 | 184 | 16-114-206(b)(1) | 55, 65 |
| 14-54-103 | 190 | 16-115-101 | 159, 164 |
| 14-55-102 | 184, 189 | 16-116-102(5) | 86 |
| 14-262-102 | 190 | 16-116-103 | 85 |
| 16-10-108 | 518, 520, 534, 535, 539, 540 | 16-116-107 | 85 |
| 16-13-205 | 165 | 16-123-101 through 16-123-108 | 667 |
| 16-22-308 | 552, 558, 559, 560, 561 | 16-123-105(a) | 662, 667, 668 |
| 16-22-309 | 361 | 18-44-101 | 559 |
| | | 18-49-104(c) | 462 |
| | | 18-49-106 | 460, 463 |
| | | 19-10-305(a) | 662, 667, 669 |
| | | 19-10-204 | 168, 169, 170 |
| | | 19-10-204(b) | 161, 166, 167, 168 |
| | | 19-10-208(c) | 169 |
| | | 19-10-211 | 165 |

21-9-301 355, 356, 359
 23-51-301(d) 565
 23-51-507 565
 23-79-208 558, 559, 560, 561
 23-79-208(a) 558
 23-79-208(b) 558
 23-79-208(c) 558
 23-79-208(d) 558
 23-85-122 417
 23-85-132 414, 416, 417, 418
 23-85-132(a) 416
 23-85-132(b) 417
 24-4-101 et seq. 166, 168
 24-6-201 et seq. 166, 168
 24-7-201 et seq. 166, 168
 25-15-212 169
 25-19-103(1) 456, 457
 25-19-105(a) 456
 25-19-105(b) 452, 456, 457
 25-19-105(b)(9)(A) 456, 457
 26-18-507 564
 26-18-507(a) 564
 26-18-507(e)(2)(A) 564
 26-51-301(d) 563
 26-52-601 687
 26-52-601 to -606 684, 687
 27-16-914 23, 25
 27-50-306 23, 24, 25, 26
 27-50-306(1) 25, 26
 Title 18 365

ARKANSAS CODE OF JUDICIAL CONDUCT:

Canon 2(a) 639
 Canon 3(e) 639
 Canon 3E(1) 641
 Canon 3F 642
 Canon 4D(1)(b) 641
 Canon 4D(4) 641

UNIFORM COMMERCIAL CODE:

U.C.C. § 3-116(b) 232, 237
 U.C.C. § 3-414(c) 232, 236
 U.C.C. § 3-802(1)(b) 237

UNITED STATES CODE:

5 U.S.C. § 552(b)(4) 458

12 U.S.C. § 1821(d)(14) ... 442, 444, 445, 447
 12 U.S.C. § 1821(d)(14)(A) 445, 446
 12 U.S.C. § 1821(d)(14)(A)(i) .. 445
 12 U.S.C. § 1821(d)(14)(A)(i)(I) 445
 12 U.S.C. § 1821(d)(14)(A)(i)(II) 445
 12 U.S.C. § 1821(d)(14)(B) 442, 445, 447
 12 U.S.C. § 1821(d)(14)(B)(i) 446
 12 U.S.C. § 1821(d)(14)(B)(ii) 446
 12 U.S.C. § 1823(e) 446
 15 U.S.C. § 1601 et seq 241
 15 U.S.C. § 1701 et seq 241
 21 U.S.C. § 848 208, 211, 212
 21 U.S.C. § 881 504, 507
 21 U.S.C. § 881(a) 508
 21 U.S.C. § 881(a)(1) 508
 21 U.S.C. § 881(a)(2) 508
 21 U.S.C. § 881(a)(4) 504, 507, 508
 21 U.S.C. § 881(a)(4)(B) 508
 21 U.S.C. § 881(a)(4)(C) 508
 21 U.S.C. § 881(a)(9) 508
 21 U.S.C. § 881(B) 504, 507
 21 U.S.C. § 881(c) 504, 507
 42 U.S.C. § 402(a) 48
 42 U.S.C. § 1983 355, 663, 664, 667, 670, 671, 672

CONSTITUTIONAL PROVISIONS:

ARKANSAS CONSTITUTION:

Amend. 14 685, 686, 690, 692, 694
 Amend. 26 391
 Amend. 60 510
 Amend. 68 248, 249, 250
 Art. 2, § 10 307, 308
 Art. 2, § 13 89
 Art. 2, § 15 502, 587, 590, 592, 594
 Art. 2, § 17 200, 202
 Art. 2, § 22 354, 357, 358
 Art. 2, § 23 690
 Art. 5, § 20 214, 217, 218, 219, 221, 562, 564, 565

| | | | |
|-----------------------------------|--|------------------------------|--------------------------------------|
| Art. 5, § 32 | 383, 384, 385, 390, 391, 392 | Rule 2(a)(2) | 220 |
| Art. 7, § 4 | 277, 281 | Rule 2(a)(4) | 173 |
| Art. 7, § 33 | 315 | Rule 2(a)(9) | 563 |
| Art. 12, § 4 | 189 | Rule 4 | 207, 528 |
| Art. 16, § 13 | 249, 562, 565 | Rule 11 | 269, 270, 272 |
| Art. 19, § 13 | 510 | Rule 11(a) | 271 |
| Equal Protection Clause | 48, 185, 195 | Rule 11(c) | 269, 272 |
| Ex Post Facto Clause | 200, 202 | | |
| UNITED STATES CONSTITUTION: | | | |
| Amend. 2 | 675, 682 | | |
| Amend. 4 | 94, 100, 355, 405, 409, 499, 500, 502, 586, 587, 590, 592, 593 | | |
| Amend. 6 | 307, 308, 706, 717 | | |
| Amend. 14 | 36, 45, 192, 355 | | |
| Art. 1, § 10 | 200, 202 | | |
| Due Process Clause | 36, 37, 38, 518, 520, 535, 539 | | |
| Equal Protection Clause | 41, 43, 44, 45, 48, 52, 169, 688, 695 | | |
| Ex Post Facto Clause | 200, 201, 202, 203, 204, 205 | | |
| INSTRUCTIONS: | | | |
| ARKANSAS MODEL JURY INSTRUCTIONS | | | |
| (CIVIL): | | | |
| AMI 406 | 10, 13 | | |
| ARKANSAS MODEL JURY INSTRUCTIONS | | | |
| (CRIMINAL): | | | |
| AMCI 2d 1101-Exp | 135 | | |
| AMCI 2d 1101-VF | 136 | | |
| AMCI 3d 406 | 14-A, 14-B, 14-D, 14-E | | |
| AMCI 3d 407 | 14-A, 14-D, 14-E, 14-F | | |
| AMCI 201 | 704 | | |
| RULES: | | | |
| ARKANSAS RULES OF APPELLATE | | | |
| PROCEDURE — CIVIL: | | | |
| Rule 2 | 155, 159 | Rule 2(a)(2) | 220 |
| | | Rule 2(a)(4) | 173 |
| | | Rule 2(a)(9) | 563 |
| | | Rule 4 | 207, 528 |
| | | Rule 11 | 269, 270, 272 |
| | | Rule 11(a) | 271 |
| | | Rule 11(c) | 269, 272 |
| | | ARKANSAS RULES OF APPELLATE | |
| | | PROCEDURE — CRIMINAL: | |
| | | Rule 3(c) | 492 |
| | | Rule 16 | 576, 578, 579, 580 |
| | | ARKANSAS RULES OF CIVIL | |
| | | PROCEDURE: | |
| | | ARCP Rule 4 | 171, 175, 362, 367 |
| | | ARCP Rule 4(d)(8) | 367 |
| | | ARCP Rule 6(b)(2) | 121, 124, 125, 126, 127 |
| | | ARCP Rule 8 | 177 |
| | | ARCP Rule 8(b) | 177 |
| | | ARCP Rule 8(c) | 177 |
| | | ARCP Rule 9(b) | 365 |
| | | ARCP Rule 12(a) | 121, 122, 125, 127 |
| | | ARCP Rule 12(b) | 177, 584 |
| | | ARCP Rule 12(b)(2) | 172, 177 |
| | | ARCP Rule 12(b)(4) | 171, 172, 176, 177 |
| | | ARCP Rule 12(b)(6) | 13, 235, 381, 385 |
| | | ARCP Rule 12(c) | 584 |
| | | ARCP Rule 12(h)(1) | 171, 176 |
| | | ARCP Rule 12(h)(3) | 365, 396 |
| | | ARCP Rule 15(b) | 324, 329, 330 |
| | | ARCP Rule 19 | 235 |
| | | ARCP Rule 23 | 562, 563, 565, 566 |
| | | ARCP Rule 26(c) | 603, 610, 611 |
| | | ARCP Rule 33 | 607 |
| | | ARCP Rule 33(b) | 603, 610 |
| | | ARCP Rule 33(b)(3) | 610 |
| | | ARCP Rule 33(b)(4) | 610 |
| | | ARCP Rule 33(b)(5) | 610 |
| | | ARCP Rule 37 | 603, 604, 605, 606, 607, 608, 612 |
| | | ARCP Rule 37(a) | 610 |

| | | | |
|--|--|------------------------------------|--|
| ARCP Rule 37(a)(2) | 607 | A.R.Cr.P. Rule 4.1(a)(ii)(C) . . . | 500 |
| ARCP Rule 37(a)(3) | 607 | A.R.Cr.P. Rule 4.1(a)(iii) | 494, 500, 501 |
| ARCP Rule 37(b) | 607 | A.R.Cr.P. Rule 5.5 | 489, 490, 491, 492, 493, 494, 496, 500, 501 |
| ARCP Rule 37(b)(2)(C) | 607 | A.R.Cr.P. Rule 6.3 | 539 |
| ARCP Rule 37(d) | 603, 610, 611 | A.R.Cr.P. Rule 8.3 | 287 |
| ARCP Rule 49 | 226 | A.R.Cr.P. Rule 12.6 | 93, 97, 98, 99 |
| ARCP Rule 50(a) | 402, 403 | A.R.Cr.P. Rule 13.1(b) | 412 |
| ARCP Rule 54(b) | 247, 248, 251, 252, 448, 449, 450, 451, 664, 672 | A.R.Cr.P. Rule 15.2 | 156 |
| ARCP Rule 55 | 124, 125, 170, 174, 175 | A.R.Cr.P. Rule 22.2 | 419, 423, 424, 427, 428 |
| ARCP Rule 55(a) | 121, 122, 124, 125, 126, 127, 170, 174, 240, 245 | A.R.Cr.P. Rule 22.2(a) | 423, 428 |
| ARCP Rule 55(c) | 121, 124, 126, 171, 174, 367 | A.R.Cr.P. Rule 24.3 | 431, 432, 613, 616 |
| ARCP Rule 55(c)(1) | 174 | A.R.Cr.P. Rule 24.3(b) | 120, 406, 432 |
| ARCP Rule 55(c)(2) | 171, 174, 175 | A.R.Cr.P. Rule 26.1 | 432 |
| ARCP Rule 55(c)(3) | 174 | A.R.Cr.P. Rule 27.3 | 295, 301, 308 |
| ARCP Rule 55(c)(4) | 174 | A.R.Cr.P. Rule 28 | 298 |
| ARCP Rule 56 | 259, 381, 385, 445, 659 | A.R.Cr.P. Rule 28.1 | 279, 567, 570 |
| ARCP Rule 56(c) | 7, 253, 259, 442, 445, 607 | A.R.Cr.P. Rule 28.1(a) | 278, 279, 280, 281, 282, 284, 285, 286, 288 |
| ARCP Rule 59 | 528, 529 | A.R.Cr.P. Rule 28.1(c) | 299 |
| ARCP Rule 59(a)(1) | 538 | A.R.Cr.P. Rule 28.1(d) | 567, 570 |
| ARCP Rule 59(a)(6) | 523 | A.R.Cr.P. Rule 28.2 | 279, 280, 286, 567, 570, 571 |
| ARCP Rule 60 | 322, 516, 528, 529 | A.R.Cr.P. Rule 28.2(a) | 286, 299, 570, 571, 572 |
| ARCP Rule 60(a) | 227, 228, 229, 231, 322 | A.R.Cr.P. Rule 28.2(c) | 571 |
| ARCP Rule 60(b) | 227, 228, 231, 322 | A.R.Cr.P. Rule 28.3 | 279, 280, 299, 570, 571 |
| ARCP Rule 60(c) | 229, 231, 523 | A.R.Cr.P. Rule 28.3(a) | 279, 286, 294, 299, 300 |
| ARKANSAS RULES OF CRIMINAL PROCEDURE: | | | |
| A.R.Cr.P. Rule 2.1 | 674, 678, 679 | A.R.Cr.P. Rule 28.3(c) | 295, 300, 309 |
| A.R.Cr.P. Rule 3.1 | 674, 678, 679, 680 | A.R.Cr.P. Rule 28.3(d) | 570 |
| A.R.Cr.P. Rule 4.1 | 489, 490, 491, 493, 494, 496 | A.R.Cr.P. Rule 30.1(a) | 567, 570 |
| A.R.Cr.P. Rule 4.1(a) | 500, 501 | A.R.Cr.P. Rule 33.3 | 275 |
| A.R.Cr.P. Rule 4.1(a)(i) | 500 | A.R.Cr.P. Rule 36.4 | 2 |
| A.R.Cr.P. Rule 4.1(a)(ii) | 500 | A.R.Cr.P. Rule 37 | 274, 341, 579, 702, 706, 707, 708, 712, 713, 714, 715, 718 |
| A.R.Cr.P. Rule 4.1(a)(ii)(A) | 500 | | |
| A.R.Cr.P. Rule 4.1(a)(ii)(B) | 500 | | |

| | | | |
|--|---|---------------------------------------|------------------|
| A.R.Ct.P. Rule 37.2(d) | 705-A, 705-B, 705-C, 705-D | Ark. Sup. Ct. R. 1-2(a)(2) . . . | 140, 298 |
| | | Ark. Sup. Ct. R. 1-2(a)(7) . . . | 431, 604 |
| | | Ark. Sup. Ct. R. 1-2(a)(11) . . . | 173 |
| | | Ark. Sup. Ct. R. 1-2(a)(17)(i) . . . | 218 |
| | | Ark. Sup. Ct. R. 1-2(a)(17)(vi) . . . | 218 |
| | | Ark. Sup. Ct. R. 1-2(b)(1) | 443, 615, 677 |
| | | Ark. Sup. Ct. Rule 1-2(b)(3) . . . | 677 |
| | | Ark. Sup. Ct. R. 1-2(b)(4) | 443 |
| | | Ark. Sup. Ct. R. 1-2(b)(5) | 420, 677 |
| | | Ark. Sup. Ct. R. 1-2(b)(6) | 312, 615 |
| | | Ark. Sup. Ct. R. 1-2(d)(2) | 321, 582 |
| | | Ark. Sup. Ct. R. 2-2 | 207, 705-B |
| | | Ark. Sup. Ct. R. 2-4 | 345, 657 |
| | | Ark. Sup. Ct. R. 4-2 | 616 |
| | | Ark. Sup. Ct. R. 4-2(a)(5) | 3 |
| | | Ark. Sup. Ct. R. 4-2(a)(6) | 2, 616 |
| | | Ark. Sup. Ct. R. 4-2(a)(8) | 616 |
| | | Ark. Sup. Ct. R. 4-2(b)(2) | 616 |
| | | Ark. Sup. Ct. R. 4-2(b)(3) | 400 |
| | | Ark. Sup. Ct. R. 4-3(h) | 136, 154, 381 |
| | | Ark. Sup. Ct. R. 4-3(j) | 2 |
| | | Ark. Sup. Ct. R. 4-3(j)(1) | 1, 2, 580 |
| | | Ark. Sup. Ct. R. 6-1(a) | 281 |
| | | Ark. Sup. Ct. R. 6-7 | 397, 399 |
| | | Ark. Sup. Ct. R. 6-7(d) | 397, 399 |
| STATUTES: | | | |
| ARKANSAS STATUTES ANNOTATED: | | | |
| | | 19-102 | 317 |
| | | 19-307 | 319 |
| | | 19-909 | 550, 551 |
| | | 27-1729 | 403 |
| | | 31-513 | 626, 627 |
| | | 56-205(a) | 471, 473 |
| | | 56-205(a)(1) | 471 |
| | | 56-205(a)(2) | 471 |
| | | 81-1304 | 387 |
| | | 81-1306 | 387, 391 |
| A.R.E. Rule 37.2(d) 705-A, 705-B, 705-C, 705-D | | | |
| ARKANSAS RULES OF EVIDENCE: | | | |
| A.R.E. Rule 401 | 298 | | |
| A.R.E. Rule 403 | 137, 146, 425 | | |
| A.R.E. Rule 404(b) | 139, 149, 419, 423, 424, 425, 426, 427, 428, 589, 590, 597, 675, 680, 681 | | |
| A.R.E. Rule 701 | 152 | | |
| A.R.E. Rule 701(1) | 152 | | |
| A.R.E. Rule 701(2) | 152 | | |
| A.R.E. Rule 702 | 137, 146 | | |
| A.R.E. Rule 801(d)(2)(v) | 705 | | |
| A.R.E. Rule 804 | 554 | | |
| A.R.E. Rule 804(b)(7) | 133 | | |
| A.R.E. Rule 804(b)(7)(A) | 129, 133, 135 | | |
| A.R.E. Rule 807(b)(7) | 128 | | |
| MODEL RULES OF PROFESSIONAL CONDUCT: | | | |
| Rule 1.6 | 646, 652, 653 | | |
| Rule 1.7 | 651, 652 | | |
| Rule 1.7(b) | 650 | | |
| Rule 1.8(c) | 652 | | |
| Rule 1.9 | 369, 645, 646, 647, 651, 652, 653, 654 | | |
| Rule 1.9(a) | 368 | | |
| cmt. 2 | 368 | | |
| Rule 1.9(b) | 646, 652, 653 | | |
| Rule 1.9(b)(1) | 652 | | |
| Rule 1.9(b)(2) | 652 | | |
| Rule 1.9(c) | 646, 652, 653 | | |
| Rule 1.10 | 645, 646, 650, 651, 652, 654 | | |
| Rule 1.10(a) | 646, 652, 653 | | |
| Rule 2.2 | 652 | | |
| Rule 3.7 | 652 | | |
| RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS: | | | |
| Ark. Sup. Ct. R. 1-2(a)(1) | 218 | | |

ARKANSAS
APPELLATE
REPORTS

Volume 62

CASES DETERMINED
IN THE

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1998

ERRATUM

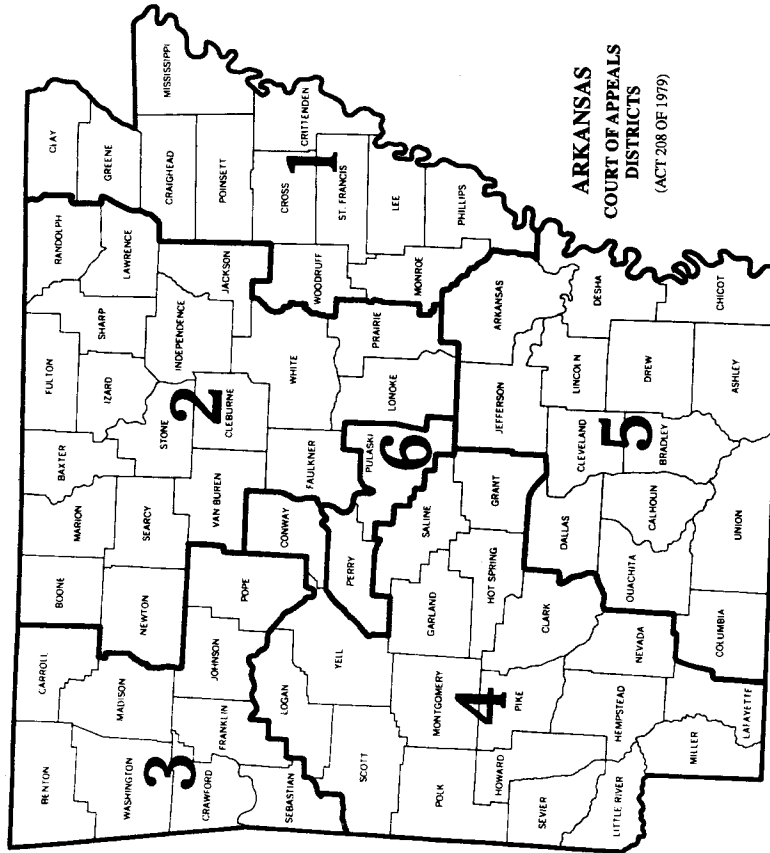
60 Ark. App. at 295; line one:
The word "appellant" should be "appellee."

Set in Bembo

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LINCOLN, NEBRASKA 68521
1998

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 | xiii |
| TABLE OF OPINIONS NOT REPORTED | xv |
| TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION | xxiii |
| OPINIONS REPORTED | 1 |
| INDEX | |
| Alphabetical Headnote Index | 303 |
| References to Acts, Codes, Constitutional Provisions, Rules, and Statutes | 313 |



JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(April 29, 1998 — June 24, 1998, 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

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

-
- ¹ District 4.
 - ² District 1.
 - ³ District 2.
 - 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

| | |
|---|-----|
| Adair (Joe Brennan Gen. Contracting <i>v.</i>) | 240 |
| Adaway <i>v.</i> State | 272 |
| Adkinson <i>v.</i> Kilgore | 247 |
| Anderson <i>v.</i> Seward Luggage Co. | 186 |
| Anderson <i>v.</i> State | 1 |
| Arkansas Dep't of Human Servs. (Dover <i>v.</i>) | 37 |
| Arkansas Dep't of Human Servs. <i>v.</i> Strickland | 215 |
| Arkansas Highway & Transp. Dep't (Flowers <i>v.</i>) | 108 |
| Arkansas Pub. Serv. Comm'n (Bryant <i>v.</i>) | 154 |

B

| | |
|---|-----|
| B.R. McGinty Mech. (Jeter <i>v.</i>) | 53 |
| Barnett <i>v.</i> Natural Gas Pipeline Co. | 265 |
| Boyd <i>v.</i> Dana Corp. | 78 |
| Breedlove <i>v.</i> State | 219 |
| Brooks <i>v.</i> Director | 85 |
| Bryant <i>v.</i> Arkansas Pub. Serv. Comm'n | 154 |

C

| | |
|--|-----|
| Cantrell-Waind & Assocs., Inc. <i>v.</i> Guillaume Motorsports, Inc. | 66 |
| Carter (Georgia-Pacific Corp. <i>v.</i>) | 162 |
| City of Eureka Springs (Vera Lee Weaver Living Trust <i>v.</i>) . | 15 |
| City of North Little Rock (Williford <i>v.</i>) | 198 |
| City of Texarkana (Harding <i>v.</i>) | 137 |
| Cleek <i>v.</i> Great Southern Metals | 177 |
| Coble <i>v.</i> Modern Business Sys. | 26 |
| Conway <i>v.</i> State | 125 |
| Crouch <i>v.</i> State | 33 |

D

| | |
|---|-----|
| Dana Corp. (Boyd <i>v.</i>) | 78 |
| Deere Credit Servs., Inc. (Hooker <i>v.</i>) | 293 |
| Director (Brooks <i>v.</i>) | 85 |
| Dover <i>v.</i> Arkansas Dep't of Human Servs. | 37 |

E

| | |
|---|-----|
| Eckhardt <i>v.</i> Willis Shaw Express, Inc. | 224 |
| Eckel (Lammey <i>v.</i>) | 208 |

F

| | |
|--|-----|
| Flowers <i>v.</i> Arkansas Highway & Transp. Dep't | 108 |
| Furman (Second Injury Fund <i>v.</i>) | 194 |

G

| | |
|--|-----|
| General Elec. Railcar Repair Servs. <i>v.</i> Hardin | 120 |
| Georgia-Pacific Corp. <i>v.</i> Carter | 162 |
| Going (Guess <i>v.</i>) | 19 |
| Great Southern Metals (Cleek <i>v.</i>) | 177 |
| Grider (Grider <i>v.</i>) | 99 |
| Grider <i>v.</i> Grider | 99 |
| Guess <i>v.</i> Going | 19 |
| Guillaume Motorsports, Inc. (Cantrell-Waind & Assocs., Inc. <i>v.</i>) | 66 |

H

| | |
|---|-----|
| Hardin (General Elec. Railcar Repair Servs. <i>v.</i>) | 120 |
| Harding <i>v.</i> City of Texarkana | 137 |
| Heagerty <i>v.</i> State | 283 |
| Highfill (Oak Grove Lumber Co. <i>v.</i>) | 42 |
| Holloway <i>v.</i> Stuttgart Reg'l Med. Ctr. | 140 |
| Home Mutual Fire Ins. Co. <i>v.</i> Jones | 182 |
| Hooker <i>v.</i> Deere Credit Servs., Inc. | 293 |
| Hope Livestock Auction Co. <i>v.</i> Knighton | 74 |
| Hunter <i>v.</i> State | 275 |

I

| | |
|-------------------------------|-----|
| In re: Adoption of K.M.C..... | 95 |
| Irvin <i>v.</i> State | 143 |

J

| | |
|---|-----|
| James <i>v.</i> Taylor | 130 |
| Jeter <i>v.</i> B.R. McGinty Mech. | 53 |
| Joe Brennan Gen. Contracting <i>v.</i> Adair..... | 240 |
| Jones (Home Mutual Fire Ins. Co. <i>v.</i>)..... | 182 |

K

| | |
|--|-----|
| Kilgore (Adkinson <i>v.</i>) | 247 |
| King <i>v.</i> State | 112 |
| Knight <i>v.</i> State | 230 |
| Knighton (Hope Livestock Auction Co. <i>v.</i>) | 74 |

L

| | |
|------------------------------|-----|
| Lammey <i>v.</i> Eckel | 208 |
| Lewis <i>v.</i> State | 150 |

M

| | |
|---|----|
| Modern Business Sys. (Coble <i>v.</i>) | 26 |
|---|----|

N

| | |
|---|-----|
| Nash <i>v.</i> Scott | 8 |
| Natural Gas Pipeline Co. (Barnett <i>v.</i>) | 265 |

O

| | |
|---|----|
| Oak Grove Lumber Co. <i>v.</i> Highfill | 42 |
|---|----|

P

| | |
|------------------------------|----|
| Pentz <i>v.</i> Romine | 12 |
|------------------------------|----|

R

| | |
|---------------------------------|-----|
| Ramey <i>v.</i> State | 204 |
| Romine (Pentz <i>v.</i>) | 12 |

S

| | |
|--|-----|
| Scott (Nash <i>v.</i>) | 8 |
| Second Injury Fund <i>v.</i> Furman | 194 |
| Second Injury Fund <i>v.</i> Stephens | 255 |
| Seward Luggage Co. (Anderson <i>v.</i>) | 186 |
| State (Adaway <i>v.</i>) | 272 |
| State (Anderson <i>v.</i>) | 1 |
| State (Breedlove <i>v.</i>) | 219 |
| State (Conway <i>v.</i>) | 125 |
| State (Crouch <i>v.</i>) | 33 |
| State (Heagerty <i>v.</i>) | 283 |
| State (Hunter <i>v.</i>) | 275 |
| State (Irvin <i>v.</i>) | 143 |
| State (King <i>v.</i>) | 112 |
| State (Knight <i>v.</i>) | 230 |
| State (Lewis <i>v.</i>) | 150 |
| State (Ramey <i>v.</i>) | 204 |
| State (Thomas <i>v.</i>) | 168 |
| Stephens (Second Injury Fund <i>v.</i>) | 255 |
| Strickland (Arkansas Dep't of Human Servs. <i>v.</i>) | 215 |
| Stuttgart Reg'l Med. Ctr. (Holloway <i>v.</i>) | 140 |

T

| | |
|---------------------------------|-----|
| Taylor (James <i>v.</i>) | 130 |
| Thomas <i>v.</i> State | 168 |

V

| | |
|--|----|
| Vera Lee Weaver Living Trust <i>v.</i> City of Eureka Springs .. | 15 |
| Vier (Vier <i>v.</i>) | 89 |
| Vier <i>v.</i> Vier | 89 |

W

| | |
|---|-----|
| Williford <i>v.</i> City of North Little Rock | 198 |
| Willis Shaw Express, Inc. (Eckhardt <i>v.</i>) | 224 |

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:

| | |
|--|-----|
| Anderson <i>v.</i> Seward Luggage Co. | 186 |
| Anderson <i>v.</i> State | 1 |
| Coble <i>v.</i> Modern Business Sys. | 26 |
| Second Injury Fund <i>v.</i> Furman | 194 |
| Vier <i>v.</i> Vier | 89 |

JOHN MAUZY PITTMAN, JUDGE:

| | |
|---|-----|
| Harding <i>v.</i> City of Texarkana | 137 |
| In re: Adoption of K.M.C. | 95 |
| James <i>v.</i> Taylor | 130 |
| Knight <i>v.</i> State | 230 |
| Nash <i>v.</i> Scott | 8 |

D. FRANKLIN AREY, III, JUDGE:

| | |
|---|-----|
| Crouch <i>v.</i> State | 33 |
| Dover <i>v.</i> Arkansas Dep't of Human Servs. | 37 |
| Grider <i>v.</i> Grider | 99 |
| Joe Brennan Gen. Contracting <i>v.</i> Adair | 240 |
| Oak Grove Lumber Co. <i>v.</i> Highfill | 42 |

JOHN E. JENNINGS, JUDGE:

| | |
|---|----|
| Jeter <i>v.</i> B.R. McGinty Mech. | 53 |
|---|----|

SAM BIRD, JUDGE:

| | |
|--|-----|
| Arkansas Dep't of Human Servs. <i>v.</i> Strickland | 215 |
| Cantrell-Waind & Assocs., Inc. <i>v.</i> Guillaume Motorsports, Inc. | 66 |
| Pentz <i>v.</i> Romine | 12 |

JUDITH ROGERS, JUDGE:

| | |
|--|-----|
| Adkinson <i>v.</i> Kilgore | 247 |
| Holloway <i>v.</i> Stuttgart Reg'l Med. Ctr. | 140 |
| Vera Lee Weaver Living Trust <i>v.</i> City of Eureka Springs .. | 15 |
| Williford <i>v.</i> City of North Little Rock | 198 |

JOHN F. STROUD, JR., JUDGE:

| | |
|--|-----|
| Flowers <i>v.</i> Arkansas Highway & Transp. Dep't | 108 |
| Irvin <i>v.</i> State | 143 |
| King <i>v.</i> State | 112 |
| Second Injury Fund <i>v.</i> Stephens | 255 |

OLLY NEAL, JUDGE:

| | |
|-----------------------------|-----|
| Lewis <i>v.</i> State | 150 |
|-----------------------------|-----|

WENDELL L. GRIFFEN, JUDGE:

| | |
|--|-----|
| Barnett <i>v.</i> Natural Gas Pipeline Co. | 265 |
| Breedlove <i>v.</i> State | 219 |
| Bryant <i>v.</i> Arkansas Pub. Serv. Comm'n | 154 |
| General Elec. Railcar Repair Servs. <i>v.</i> Hardin | 120 |
| Georgia-Pacific Corp. <i>v.</i> Carter | 162 |
| Thomas <i>v.</i> State | 168 |

TERRY CRABTREE, JUDGE:

| | |
|---|-----|
| Adaway <i>v.</i> State | 272 |
| Hope Livestock Auction Co. <i>v.</i> Knighton | 74 |
| Hunter <i>v.</i> State | 275 |
| Ramey <i>v.</i> State | 204 |

MARGARET MEADS, JUDGE:

| | |
|---|-----|
| Boyd <i>v.</i> Dana Corp. | 78 |
| Cleek <i>v.</i> Great Southern Metals | 177 |

ANDREE LAYTON ROAF, JUDGE:

| | |
|---------------------------------|-----|
| Brooks <i>v.</i> Director | 85 |
| Conway <i>v.</i> State | 125 |

| | |
|---|-----|
| Eckhardt <i>v.</i> Willis Shaw Express, Inc. | 224 |
| Guess <i>v.</i> Going | 19 |
| Heagerty <i>v.</i> State | 283 |
| Hooker <i>v.</i> Deere Credit Servs., Inc. | 293 |
| Lammey <i>v.</i> Eckel | 208 |

PER CURIAM:

| | |
|---|-----|
| Home Mutual Fire Ins. Co. <i>v.</i> Jones | 182 |
|---|-----|

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

- A-Team *v.* Haynes, CA 97-1234 (Griffen, J.), affirmed June 3, 1998.
- Arkadelphia Pub. Schs. *v.* Tipton, CA 97-1505 (Stroud, J.), reversed June 3, 1998.
- Bailey *v.* State, CA CR 97-1341 (Meads, J.), affirmed June 17, 1998.
- Baker *v.* GenCorp Automotive, Inc., CA 97-784 (Griffen, J.), affirmed May 13, 1998.
- Ball *v.* Mid-Century Ins. Co., CA 97-1219 (Roaf, J.), affirmed May 13, 1998.
- Ballenger Paving Co. *v.* Johnson, CA 98-20 (Per Curiam), Motion of Separate Appellee, Lillian Bastedo, for Writ of Certiorari to Complete the Record; granted in part and denied in part May 20, 1998.
- Baugh *v.* State, CA CR 97-1005 (Bird, J.), reversed and remanded May 6, 1998.
- Baxter County Reg'l Hosp. *v.* Munson, CA 97-1041 (Bird, J.), affirmed May 13, 1998.
- Beasley *v.* State, CA CR 97-1143 (Crabtree, J.), affirmed May 27, 1998.
- Beavers *v.* Edward Bros., Inc., CA 97-1361 (Neal, J.), affirmed May 27, 1998.
- Bechtel Power Corp. *v.* Furr, CA 97-1419 (Crabtree, J.), affirmed May 20, 1998.
- Blackstone *v.* Everett, CA 97-992 (Jennings, J.), affirmed June 17, 1998.
- Boner *v.* State, CA CR 97-1519 (Robbins, C.J.), affirmed June 24, 1998.
- Booker *v.* State, CA CR 97-1211 (Neal, J.), affirmed May 13, 1998.
- Brazille *v.* Brazille, CA 97-1384 (Arey, J.), reversed May 20, 1998.
- Bridger *v.* Rowbotham, CA 97-1193 (Crabtree, J.), affirmed June 17, 1998. Rehearing denied August 19, 1998.
- Calvert *v.* State, CA CR 97-1508 (Griffen, J.), affirmed; Attorney's Petition to Withdraw granted June 17, 1998.
- Campbell *v.* Midsouth Mfg., Inc., CA 97-1288 (Rogers, J.), affirmed May 13, 1998.

- Claybaugh *v.* State, CA CR 97-1321 (Meads, J.), affirmed May 20, 1998.
- Clute *v.* State, CA CR 97-1429 (Rogers, J.), affirmed June 3, 1998.
- Collins *v.* Collins, CA 97-945 (Per Curiam), Petition for Rehearing granted in part; denied in part April 29, 1998.
- Colonial Earth Grains *v.* Freeman, CA 97-1420 (Meads, J.), affirmed May 20, 1998.
- Colvin *v.* State, CA CR 97-1353 (Pittman, J.), affirmed June 17, 1998. Rehearing denied August 26, 1998.
- Combs *v.* State, CA CR 97-1322 (Meads, J.), affirmed as modified May 6, 1998.
- Cothren *v.* State, CA CR 97-1230 (Stroud, J.), affirmed May 6, 1998.
- Covin *v.* State, CA CR 97-1035 (Rogers, J.), affirmed May 6, 1998.
- Cullum *v.* Richards, CA 97-1405 (Griffen, J.), appeal dismissed May 27, 1998.
- Dana Corp. *v.* Weeks, CA 97-1087 (Pittman, J.), affirmed May 6, 1998.
- Daniels *v.* State, CA CR 97-1262 (Roaf, J.), affirmed May 27, 1998.
- Davis *v.* Davis, CA 97-736 (Jennings, J.), affirmed as modified; reversed in part; and affirmed on cross-appeal June 17, 1998.
- Davis *v.* Ms. G's Deli, CA 97-1295 (Arey, J.), reversed and remanded May 6, 1998.
- Davis *v.* State, CA CR 97-1237 (Crabtree, J.), affirmed May 13, 1998.
- Dollar *v.* State, CA CR 97-1383 (Arey, J.), affirmed May 20, 1998.
- Ducharme *v.* Tapp, CA 97-1110 (Bird, J.), affirmed on direct appeal; affirmed as modified on cross-appeal May 27, 1998.
- Dunn *v.* State, CA CR 97-858 (Jennings, J.), affirmed May 6, 1998.
- E.H. Wiley Trucking Co. *v.* Smith, CA 97-1352 (Rogers, J.), affirmed May 6, 1998.
- Embry *v.* State, CA CR 97-1229 (Robbins, C.J.), affirmed May 20, 1998.

- Ensey *v.* State, CA CR 97-852 (Jennings, J.), affirmed April 29, 1998.
- Essex *v.* Essex, CA 97-1393 (Neal, J.), affirmed on direct appeal; reversed and remanded on cross-appeal April 29, 1998.
- Farms *v.* White, CA 97-1424 (Bird, J.), remanded May 27, 1998.
- Fisher *v.* Mitchell, CA 97-1148 (Robbins, C.J.), affirmed April 29, 1998. Rehearing denied June 17, 1998.
- Garcia *v.* State, CA CR 97-1024 (Rogers, J.), affirmed April 29, 1998.
- Garner *v.* State, CA CR 97-1249 (Neal, J.), affirmed April 29, 1998.
- Garrett *v.* State, CA CR 97-1304 (Crabtree, J.), affirmed April 29, 1998.
- Gates *v.* State, CA CR 97-1255 (Griffen, J.), affirmed May 27, 1998.
- Goings *v.* State, CA CR 97-1410 (Jennings, J.), affirmed June 17, 1998.
- Green *v.* Spanhanks, CA 97-317 (Griffen, J.), affirmed May 6, 1998.
- Gregson *v.* Tri County Water Distrib. Dist., CA 97-1468 (Robbins, C.J.), affirmed May 27, 1998.
- Hamilton *v.* State, CA CR 97-1503 (Rogers, J.), affirmed June 17, 1998.
- Henry *v.* State, CA CR 97-778 (Robbins, C.J.), remanded for rebriefing May 6, 1998.
- Hill *v.* State, CA CR 97-1348 (Roaf, J.), affirmed April 29, 1998.
- Hudson *v.* State, CA CR 97-1156 (Meads, J.), affirmed May 27, 1998.
- Hudson Foods, Inc. *v.* Coker Bldg. Co., CA 97-1141 (Neal, J.), reversed and remanded June 17, 1998.
- Hutchins Greenhouse & Nursery, Inc. *v.* Vaughn, CA 97-1274 (Pittman, J.), appeal dismissed June 17, 1998.
- Hutchinson *v.* State, CA CR 97-1094 (Rogers, J.), affirmed May 20, 1998.
- Ingram *v.* State, CA CR 97-1114 (Rogers, J.), affirmed May 27, 1998.
- International Paper Co. *v.* Bollier, CA 97-1324 (Jennings, J.), dismissed May 20, 1998.

- J&P Reithemeyer Land, Inc. *v.* AMP Farms, Inc., CA 97-1158 (Stroud, J.), appeal dismissed May 6, 1998.
- J.B. Hunt Transport *v.* Reed, CA 97-1445 (Jennings, J.), affirmed June 3, 1998.
- J.C. Penney Co. *v.* Risner, CA 97-1527 (Crabtree, J.), affirmed in part; reversed and remanded in part June 17, 1998.
- Jackson *v.* Utley, CA 97-1436 (Griffen, J.), appeal dismissed June 3, 1998.
- Janes *v.* State, CA CR 97-738 (Jennings, J.), affirmed May 20, 1998.
- Jefferson *v.* Munsey Prods., Inc., CA 97-851 (Jennings, J.), affirmed May 20, 1998.
- Jefferson *v.* State, CA CR 97-1408 (Arey, J.), affirmed June 24, 1998.
- Johnson, Charles Wesley *v.* State, CA CR 97-964 (Arey, J.), affirmed May 13, 1998.
- Johnson, Ervin *v.* State, CA CR 97-1375 (Bird, J.), affirmed June 3, 1998.
- Johnson, Jerry Dewayne *v.* State, CA CR 97-1351 (Pittman, J.), affirmed June 24, 1998.
- Johnson, Joseph Henry *v.* State, CA CR 97-776 (Pittman, J.), affirmed April 29, 1998.
- Johnson, Lee Marre *v.* State, CA CR 97-1480 (Robbins, C.J.), affirmed June 17, 1998.
- Jones, Anthony Tyrone *v.* State, CA CR 97-1570 (Stroud, J.), affirmed June 17, 1998.
- Kelley *v.* State, CA CR 97-1336 (Roaf, J.), affirmed May 6, 1998. Rehearing denied June 17, 1998.
- Kilgore *v.* State, CA CR 97-1473 (Rogers, J.), affirmed June 24, 1998.
- Killion *v.* Systems Contracting, Inc., CA 97-1489 (Arey, J.), affirmed May 27, 1998.
- Lea *v.* State, CA CR 97-279 (Neal, J.), affirmed June 3, 1998.
- Lincoln *v.* Vandesteeg, CA 97-1137 (Jennings, J.), reversed and remanded May 20, 1998.
- Lineberry *v.* Bailey, CA 97-1194 (Crabtree, J.), affirmed May 13, 1998.
- Littlejohn *v.* Littlejohn, CA 97-1275 (Rogers, J.), dismissed April 29, 1998.

- Livingston *v.* State, CA CR 97-1287 (Meads, J.), affirmed June 3, 1998.
- Love *v.* State, CA CR 97-1282 (Crabtree, J.), affirmed in part; reversed and remanded for sentencing May 6, 1998.
- Mackey *v.* Baggett, CA 97-1514 (Meads, J.), affirmed June 24, 1998. Rehearing denied August 19, 1998.
- Marina, LLC *v.* Burton, CA 97-1013 (Stroud, J.), affirmed on direct and cross-appeal May 6, 1998. Rehearing denied June 17, 1998.
- Martin *v.* Director, E 98-52 (Roaf, J.), reversed and remanded June 24, 1998.
- Martin *v.* State, CA CR 97-1128 (Stroud, J.), affirmed May 20, 1998.
- Mason *v.* State, CA CR 97-1338 (Pittman, J.), affirmed June 3, 1998.
- McCaughan *v.* McCaughan, CA 97-1226 (Pittman, J.), appeal and cross-appeal dismissed May 13, 1998.
- McConnell *v.* Peoples Bank & Trust, CA 97-1238 (Crabtree, J.), affirmed May 13, 1998.
- Merry *v.* State, CA CR 97-1370 (Arey, J.), affirmed June 17, 1998.
- Miller *v.* Miller, CA 97-947 (Jennings, J.), remanded May 6, 1998.
- Mitchell *v.* State, CA CR 97-1475 (Neal, J.), affirmed June 24, 1998.
- Moore *v.* State, CA CR 97-1059 (Bird, J.), affirmed May 20, 1998.
- Moorhead *v.* Faulkner Trucking Co., CA 97-1513 (Jennings, J.), affirmed June 17, 1998.
- Murphy *v.* State, CA CR 97-999 (Jennings, J.), affirmed April 29, 1998.
- Neal *v.* State, CA CR 97-1497 (Jennings, J.), affirmed May 27, 1998.
- Neely *v.* State, CA CR 97-1486 (Bird, J.), affirmed June 17, 1998.
- Nesbitt *v.* Hogrobrooks, CA 97-1127 (Bird, J.), affirmed May 20, 1998.
- New Prospect Drilling *v.* Norman, CA 97-1437 (Stroud, J.), affirmed on direct appeal; remanded on cross-appeal May 27, 1998.

- Odem *v.* State, CA CR 97-1106 (Stroud, J.), affirmed April 29, 1998.
- Olles, Bobby *v.* Bastion, CA 97-1171 (Robbins, C.J.), affirmed June 3, 1998.
- Olles, Bobby *v.* Bastion, CA 97-983 (Robbins, C.J.), affirmed June 17, 1998.
- Olson *v.* State, CA CR 97-756 (Pittman, J.), affirmed May 20, 1998.
- Olympus Constr. Co. *v.* Cullum, CA 97-1247 (Pittman, J.), reversed and remanded June 17, 1998.
- Owens *v.* State, CA CR 97-1349 (Griffen, J.), affirmed June 17, 1998.
- Parsley *v.* Parsley, CA 97-1027 (Neal, J.), affirmed May 27, 1998.
- Petit Jean Poultry, Inc. *v.* Khamsothou, CA 97-1319 (Pittman, J.), reversed and remanded April 29, 1998.
- Phoenix Technologies *v.* Spurlock, CA 97-1320 (Arey, J.), affirmed June 3, 1998.
- Pike *v.* State, CA CR 98-21 (Neal, J.), affirmed June 17, 1998.
- Plyler *v.* Harding & Harding Motors, Inc., CA 97-938 (Arey, J.), affirmed April 29, 1998. Rehearing denied May 27, 1998.
- Poole *v.* Brown, CA 97-1265 (Roaf, J.), affirmed as modified June 17, 1998.
- Ramsey *v.* State, CA CR 97-1239 (Rogers, J.), affirmed May 6, 1998.
- Randolph *v.* State, CA CR 97-1500 (Stroud, J.), affirmed June 3, 1998.
- Reams *v.* State, CA CR 97-1466 (Jennings, J.), affirmed June 17, 1998.
- Remley *v.* State, CA CR 97-1382 (Crabtree, J.), affirmed June 17, 1998.
- Ritter *v.* State, CA CR 97-944 (Neal, J.), affirmed May 27, 1998. Rehearing denied August 26, 1998.
- Rohloff *v.* State, CA CR 97-1494 (Arey, J.), affirmed May 27, 1998.
- Saunders *v.* Dearmore, CA 97-1039 (Jennings, J.), affirmed June 3, 1998.
- Scroggins *v.* State, CA CR 97-1248 (Neal, J.), rebriefing ordered May 20, 1998.

- Second Injury Fund *v.* Allen, CA 97-1216 (Neal, J.), affirmed May 20, 1998.
- Seiz Co. *v.* Seiz, CA 97-1047 (Crabtree, J.), affirmed in part and reversed in part on direct appeal; affirmed on cross-appeal June 17, 1998. Rehearing denied August 19, 1998.
- Sharp Chevrolet, Inc. *v.* Sharp, CA 97-1337 (Jennings, J.), affirmed May 13, 1998.
- Sharpe *v.* State, CA CR 97-1071 (Bird, J.), affirmed April 29, 1998.
- Shelter Mut. Ins. Co. *v.* Tallent, CA 97-1296 (Stroud, J.), affirmed in part; reversed in part April 29, 1998. Rehearing denied May 27, 1998.
- Smith *v.* Trinova/Aeroquip, CA 97-1207 (Meads, J.), affirmed May 27, 1998.
- Snyder *v.* State, CA CR 97-1250 (Griffen, J.), affirmed May 13, 1998.
- Southern Steel & Wire *v.* Barnette, CA 97-1452 (Bird, J.), affirmed June 24, 1998.
- Spurlock *v.* State, CA CR 97-1260 (Griffen, J.), affirmed May 20, 1998.
- Stocks *v.* Stocks, CA 97-1023 (Stroud, J.), affirmed May 20, 1998.
- Stormes *v.* State, CA CR 97-1259 (Crabtree, J.), remanded for rebriefing May 20, 1998.
- Straw *v.* State, CA CR 97-1223 (Griffen, J.), affirmed May 20, 1998.
- Superior Indus. *v.* Walker, CA 97-1465 (Robbins, C.J.), affirmed May 20, 1998.
- Talley *v.* State, CA CR 97-1202 (Meads, J.), affirmed as modified as to Carter; affirmed as to Talley June 24, 1998.
- Thessing *v.* City of Conway, CA 97-1532 (Robbins, C.J.), affirmed June 3, 1998.
- Thomas *v.* State, CA CR 97-1411 (Bird, J.), affirmed June 24, 1998.
- Todd *v.* Ruth's Employment Serv., CA 97-1251 (Pittman, J.), affirmed June 24, 1998. Rehearing denied August 19, 1998.
- Tyson Foods, Inc. *v.* Cisneros, CA 97-1421 (Roaf, J.), affirmed May 20, 1998. Rehearing denied June 24, 1998.
- UAMS *v.* Harwell, CA 97-1423 (Robbins, C.J.), affirmed May 27, 1998.

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- Uniserve South, Inc. *v.* Burt, CA 97-1448 (Roaf, J.), affirmed May 27, 1998.
- Walton *v.* State, CA CR 97-1292 (Pittman, J.), affirmed June 24, 1998.
- Webber *v.* Arkansas Dep't of Human Servs., CA 97-1085 (Jennings, J.), affirmed May 13, 1998.
- West *v.* State, CA CR 97-1187 (Griffen, J.), affirmed April 29, 1998.
- Western Arkansas Area Agency On Aging *v.* Gregg, CA 97-1430 (Pittman, J.), affirmed on appeal and cross-appeal May 13, 1998.
- Williams *v.* Ash Grove Cement Co., CA 97-1164 (Griffen, J.), affirmed May 13, 1998.
- Williams *v.* State, CA CR 97-1272 (Crabtree, J.), affirmed May 6, 1998.
- Wilson *v.* State, CA CR 97-1461 (Jennings, J.), reversed and remanded June 17, 1998.
- Woods *v.* State, CA CR 97-1328 (Meads, J.), affirmed May 6, 1998.
- Yancey *v.* State, CA CR 96-1127 (Jennings, J.), Counsel Relieved; New Counsel Appointed; rebriefing ordered May 6, 1998.

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

- Abdullah *v.* Director of Labor, E 98-26, May 27, 1998.
Allen *v.* Director of Labor, E 97-278, May 6, 1998.
Bader *v.* Director of Labor, E 96-185, June 17, 1998.
Barber *v.* Director of Labor, E 98-15, May 20, 1998.
Blankenship *v.* Director of Labor, E 97-274, May 6, 1998.
Boone *v.* Director of Labor, E 98-2, May 20, 1998.
Bradford *v.* Director of Labor, E 96-112, June 24, 1998.
Butler *v.* Director of Labor, E 97-267, May 6, 1998.
Carroll *v.* Director of Labor, E 98-18, May 27, 1998.
Cockrum *v.* Director of Labor, E 97-283, May 20, 1998.
Cooper *v.* Director of Labor, E 98-36, June 3, 1998.
Culver *v.* Director of Labor, E 98-22, May 27, 1998.
Danaher Tool Group *v.* Director of Labor, E 98-39, June 17,
1998.
Dandridge *v.* Director of Labor, E 98-30, June 3, 1998.
Daniel, Billie J. *v.* Director of Labor, E 98-24, May 27, 1998.
Daniels, Debbie A. *v.* Director of Labor, E 98-25, May 27, 1998.
Davis, Christy *v.* Director of Labor, E 98-12, May 20, 1998.
Davis, Lori J. *v.* Director of Labor, E 98-23, May 27, 1998.
Davis, Nancy *v.* Director of Labor, E 96-172, June 17, 1998.
Drayton *v.* Director of Labor, E 96-105, June 17, 1998.
Ellington *v.* Director of Labor, E 98-47, June 24, 1998.
Fletcher *v.* Director of Labor, E 96-178, June 17, 1998.
Foltz *v.* Director of Labor, E 96-111, June 24, 1998.
Freeman *v.* Director of Labor, E 98-46, June 17, 1998.
Gray *v.* Director of Labor, E 98-49, June 24, 1998.
Green *v.* Director of Labor, E 96-177, June 24, 1998.
Hakimi *v.* Director of Labor, E 96-170, June 24, 1998.
Hardiman *v.* Director of Labor, E 98-31, June 3, 1998.
Hardy *v.* Director of Labor, E 97-282, May 6, 1998.
Hicks *v.* Director of Labor, E 98-6, May 20, 1998.
Hinton *v.* Director of Labor, E 96-83, June 24, 1998.
Hughes *v.* Director of Labor, E 97-254, May 6, 1998.

- Jones, Elizabeth A. *v.* Director of Labor, E 98-27, June 3, 1998.
Jones, Nathaniel *v.* Director of Labor, E 96-179, June 24, 1998.
Kendall *v.* Director of Labor, E 98-50, June 24, 1998.
Kirkhuff *v.* Director of Labor, E 98-34, June 3, 1998.
Kitchens *v.* Director of Labor, E 98-28, June 3, 1998.
Lakewood Printing & Pub. Co. *v.* Director of Labor, E 98-48,
June 24, 1998.
Lecompte *v.* Director of Labor, E 98-19, June 3, 1998.
Lowe *v.* Director of Labor, E 98-10, May 20, 1998.
Lucas *v.* Director of Labor, E 96-169, June 17, 1998.
Marshall, Marlon D. *v.* Director of Labor, E 98-40, June 17, 1998.
Marshall, Maxine *v.* Director of Labor, E 98-29, June 3, 1998.
Martin *v.* Director of Labor, E 98-38, June 3, 1998.
Mellon *v.* Director of Labor, E 98-44, June 24, 1998.
Mellor *v.* Director of Labor, E 97-272, May 6, 1998.
Miller, James F. *v.* Director of Labor, E 97-281, May 6, 1998.
Miller, Rhonda K. *v.* Director of Labor, E 98-32, June 3, 1998.
Mogensen *v.* Director of Labor, E 98-7, May 20, 1998.
Moore, Susan *v.* Director of Labor, E 97-224, May 27, 1998.
Moore, Willis Marie *v.* Director of Labor, E 98-5, May 20, 1998.
Neighbor *v.* Director of Labor, E 97-277, May 6, 1998.
Richard *v.* Director of Labor, E 98-16, May 27, 1998.
Richardson *v.* Director of Labor, E 98-8, May 20, 1998.
Roden *v.* Director of Labor, E 96-174, June 24, 1998.
Sayles *v.* Director of Labor, E 98-45, June 17, 1998.
Scott *v.* Director of Labor, E 97-275, May 6, 1998.
Shavers *v.* Director of Labor, E 98-14, May 20, 1998.
Stroud *v.* Director of Labor, E 97-166, May 27, 1998.
Sutton *v.* Director of Labor, E 97-271, May 6, 1998.
The Park Hotel *v.* Director of Labor, E 96-195, May 20, 1998.
Thomas *v.* Director of Labor, E 98-11, May 20, 1998.
Timmons *v.* Director of Labor, E 98-21, May 27, 1998.
Wagnon *v.* Director of Labor, E 98-41, June 17, 1998.
Wertz *v.* Director of Labor, E 98-37, June 3, 1998.
Wilson, Beverly *v.* Director of Labor, E 98-33, June 3, 1998.
Wilson, Shelia *v.* Director of Labor, E 97-273, May 6, 1998.
Woodard *v.* Director of Labor, E 98-17, May 27, 1998.

Alphabetical
Headnote
Index

HEADNOTE INDEX

ADOPTION:

Heavy burden upon party seeking to adopt child without consent of natural parents. *Vier v. Vier*, 89

Appellee met burden of proving that appellant failed significantly and without justifiable cause to communicate with daughter. *Id.*

Probate judge did not err in finding appellant unjustifiably failed to maintain contact with daughter. *Id.*

Parent's failure to seek enforcement of visitation rights, factor to be considered. *Id.*

Unreasonably withheld consent, evidence admissible. *In re: Adoption of K.M.C.*, 95

Probate judge erred in limiting evidence of appellee's actions to four-month period between child's birth and adoption hearing. *Id.*

Probate judge erred in refusing to consider psychological evidence, reversed and remanded. *Id.*

APPEAL & ERROR:

Sufficiency-of-evidence argument considered first. *Anderson v. State*, 1

Moot issues not addressed. *Pentz v. Romine*, 12

Appeal dismissed for mootness, property had been sold in foreclosure sale, appellants could not deliver title. *Id.*

Denial or granting of petition to remove administrator, order final and appealable. *Guess v. Going*, 19

Probate cases reviewed *de novo*, clearly erroneous defined. *Id.*

Orders not final, appellate court had no jurisdiction, appeal dismissed without prejudice. *Dover v. Arkansas Dep't of Human Servs.*, 37

Probate proceedings, standard of review. *Vier v. Vier*, 89

Argument unsupported by authority or convincing argument. *Id.*

Issue not preserved, issue not reached on appeal. *King v. State*, 112

Appellate court cannot overrule precedent set by supreme court, request for certification to supreme court denied. *Conway v. State*, 125

Arguments, cannot be changed on appeal. *Holloway v. Stuttgart Reg'l Med. Ctr.*, 140

Appellant changed argument on appeal, summary-judgment order affirmed. *Id.*

Argument raised at trial not used on appeal, argument not addressed. *Id.*

Harmless-error rule. *Thomas v. State*, 168

Appellate court will affirm right result. *Id.*

Failure to proffer or abstract desired instruction fatal to appellate argument. *Id.*

Appeal by nonparty, general rule, appellate court cannot act. *Arkansas Dep't of Human Servs. v. Strickland*, 215

Appeal by nonparty, appellant not party to action below. *Id.*

Appeal by nonparty, exception to general rule for nonparty pecuniarily affected by judgment. *Id.*

Appeal by nonparty, appellant not pecuniarily affected by trial court's order. *Id.*

Appellant's remedy, appeal dismissed. *Id.*

Appellate court does not consider arguments raised for first time on appeal. *Breedlove v. State*, 219

Chancery cases, reviewed *de novo*. *Adkinson v. Kilgore*, 247
De novo review of fully developed chancery record, appellate court may enter order
chancellor should have entered. *Id.*
Evidence in record conflicting, case remanded to chancellor. *Id.*
Deficient abstract, issue not addressed. *Barnett v. Natural Gas Pipeline Co.*, 265
Request to withdraw, briefing requirements. *Adaway v. State*, 272
Rebriefing ordered. *Id.*
Abstracting deficiency, merits considered where appellee cures. *Hooker v. Deere Credit
Servs., Inc.*, 293
Abstracting deficiency, appellees' request for award of costs granted. *Id.*
Appellant's duty to bring up sufficient record on appeal. *Id.*

ATTORNEY & CLIENT:

Appellant forced to trial without presence of attorney of record, trial court abused
discretion in denying continuance. *Irvin v. State*, 143
Attorney's fees, general rule. *Second Injury Fund v. Furman*, 194
Only lawyers can represent another in court. *Hooker v. Deere Credit Servs., Inc.*, 293

CIVIL PROCEDURE:

Defenses, chancellor erred in ruling that appellants' rule-against-perpetuities argument
presented at trial was untimely. *Nash v. Scott*, 8
Declaratory judgment, purpose, when action should be dismissed. *Hooker v. Deere
Credit Servs., Inc.*, 293
Declaratory-judgment action properly dismissed. *Id.*

COMMERCIAL LAW:

Letter of credit discussed. *Home Mutual Fire Ins. Co. v. Jones*, 182

CONSTITUTIONAL LAW:

Right to assistance of counsel, U.S. and Arkansas constitutional provisions. *Irvin v. State*, 143
Right to counsel, waiver of. *Id.*
Voluntary and intelligent waiver of right to counsel, how established. *Id.*
Waiver of right to counsel, three requirements for knowing and intelligent waiver. *Id.*

CONTRACTS:

Condition precedent in contract, decision left to discretion of one party, when courts
will become involved. *Cantrell-Waind & Assoc., Inc. v. Guillaume Motorsports, Inc.*, 66
Party's liability dependent on performance of condition precedent, one who prevents
performance of condition precedent cannot avail himself of its nonperformance. *Id.*
Parties to, obligations implied. *Id.*
Nonoccurrence of condition of duty, when excused. *Id.*
Duty of good faith and fair dealing included in contract, circuit court erred in failing
to recognize duty. *Id.*
Unjust enrichment discussed, when applicable. *Adkinson v. Kilgore*, 247

COURTS:

Probate court, jurisdiction of. *Guess v. Going*, 19
Probate court's jurisdiction, extent of. *Id.*

Buyers not subject to probate court jurisdiction, court without jurisdiction to determine validity of land-sale contract. *Id.*
Probate court lacked jurisdiction to grant equitable relief, action belonged in chancery court. *Id.*
Rules, appellate court obliged to apply supreme court's interpretation. *Anderson v. Seward Luggage Co.*, 186

CRIMINAL LAW:

Defrauding secured creditors, insufficient evidence that appellant purposefully acted to hinder enforcement of secured interest. *Anderson v. State*, 1
Defrauding secured creditors, appellate court reversed conviction on issue of requisite purposeful intent. *Id.*
Suspended sentences are convictions within meaning of habitual-offender statute, appellant's unrevoked probation sufficient to show prior finding of guilt for habitual-offender purposes. *King v. State*, 112
Routine traffic stop, does not constitute custodial interrogation for *Miranda* purposes. *Conway v. State*, 125
Appellant's sentence fixed, trial court failed to effectively suspend imposition of appellant's sentence. *Lewis v. State*, 150
Trial court acted in excess of its statutory authority, appellant's sentence improper. *Id.*
Probation, revocation of. *Ramey v. State*, 204
Probation defined, sentence allowed on revocation. *Id.*
Probation revoked pursuant to first hearing, trial court erred in sentencing appellant twice on revocation. *Id.*
Sentencing, modification of. *Id.*
State's argument without merit, court clearly intended to modify sentence already executed. *Id.*
Res gestae, when properly submitted to jury. *Hunter v. State*, 275
Circumstances of crime part of *res gestae*, testimony properly admitted. *Id.*

CRIMINAL PROCEDURE:

Posttrial motions, trial court generally required to set date for hearing. *Crouch v. State*, 33
Posttrial motions, hearing would have permitted review on direct appeal, matter remanded. *Id.*
Revocation petition filed within probationary period, appellant's testimony sufficient to establish violation of Ark. Code Ann. § 5-60-120. *Lewis v. State*, 150
Appeal from guilty plea, exception to rule prohibiting. *Knight v. State*, 230
Custodial statements, presumptively involuntary, State's burden. *Id.*
Voluntariness of confessions, review of. *Id.*
Voluntariness of confessions, factors on review. *Id.*
Custodial statements, credibility of witnesses for trial court to determine. *Id.*
Voluntariness of confessions, statement induced by false promise not voluntary. *Id.*
Voluntariness of confessions, misstatement by officer does not invalidate confession, false promise of probation not made. *Id.*
Voluntariness of confessions, false promise of reward not made. *Id.*
Voluntariness of confessions, false promise of leniency not made, denial of motion to suppress affirmed. *Id.*
Arkansas Rules of Criminal Procedure 2 and 3.1 discussed. *Hunter v. State*, 275

DEEDS:

- Statutory presumption creates tenancy in common. *James v. Taylor*, 130
- Actual use of words "joint tenancy" not required, intent of grantor to convey survivorship may be sufficient. *Id.*
- Nothing in deed indicated grantor's intent to convey survivorship, several ownership constitutes denial of joint ownership. *Id.*
- Conveyance to grantees "jointly," joint tenancy not created. *Id.*
- Term "jointly and severably" insufficient to create joint tenancy, divining intent of grantor must not conflict with settled principles of law and rules of property. *Id.*
- Evidence of grantor's intention cannot prevail over statute. *Id.*
- Deed did not create joint tenancy in grantees, language of deed insufficient to overcome statutory presumption of tenancy in common, reversed and remanded. *Id.*

EMINENT DOMAIN:

- Condemnation of property, compensation required. *Weaver Living Trust v. City of Eureka Springs*, 15
- Condemnation of property, cause for finding bad faith. *Id.*
- Condemnation action abandoned, bad faith evident, case reversed and remanded for award of attorney's fees and costs. *Id.*

EVIDENCE:

- Sufficiency of, standard of review. *Anderson v. State*, 1
- Intent, seldom provable by direct evidence. *Id.*
- Intent, jury allowed to infer from circumstances. *Id.*
- Intent, presumption regarding. *Id.*
- Circumstantial evidence, requirement for finding culpable mental state. *Id.*
- Substantial evidence defined. *Oak Grove Lumber Co. v. Highfill*, 42
- Substantial evidence defined. *Brooks v. Director*, 85
- Relevance, determination of within trial court's discretion. *In re: Adoption of K.M.C.*, 95
- No error in trial court's refusal to allow appellant to impeach victim with summary of evidence prepared by someone else, fact that jury was presented with evidence of prior inconsistent statement made by victim rendered any potential error harmless. *King v. State*, 112
- Prior inconsistent statement, may not be quoted into evidence as part of impeachment process, no error found. *Id.*
- Supervisor properly allowed to testify as to DNA profile, what expert must show. *Id.*
- Certified copy of information from circuit court files showing conviction properly admitted, previous conviction may be proved by certified copy of conviction record. *Id.*
- Review of trial court's denial of motion to suppress inculpatory statement, factors on review. *Conway v. State*, 125
- Substantial evidence defined. *Georgia-Pacific Corp. v. Carter*, 162
- Hearsay, "dying declaration" exception discussed. *Thomas v. State*, 168
- Hearsay, dying declaration, when determination may be reversed. *Id.*
- Hearsay, victim not possessed of sense of imminent and inevitable death, "dying declaration" exception not extended. *Id.*
- Hearsay, trial court mistakenly admitted testimony from victim's ex-wife under "dying declaration" exception, admissible under present sense impression and then-existing mental condition exceptions. *Id.*

Hearsay, appellant's statements to witness established relevancy of testimony. *Id.*
Sufficiency of, factors on review. *Breedlove v. State*, 219
Substantial evidence defined. *Id.*
Ruling on, when reversed. *Hunter v. State*, 275
Trial court directed verdict in appellant's favor on possession charge, no prejudice found. *Id.*
Discrepancies in proof go to credibility, jury as factfinder resolves inconsistencies. *Id.*

EXECUTORS & ADMINISTRATORS:

Duty of executor, appellee failed to discharge duty. *Guess v. Going*, 19
Administrator may be removed when unsuitable, unsuitable defined. *Id.*
Executrix clearly had conflict of interest, probate court's refusal to replace executrix clearly erroneous. *Id.*
Case reversed, probate court to appoint administrator. *Id.*

FAMILY LAW:

Property settlement agreement, chancellor had power to enforce under Ark. Code Ann. § 9-12-313. *Grider v. Grider*, 99
Property settlement agreement, separate-maintenance decree did not foreclose chancellor's jurisdiction to enforce. *Id.*
Chancellor has no authority to dispose of property rights in separate-maintenance award. *Id.*
Property settlement agreement, case law does not prevent chancellor from enforcing. *Id.*
Property settlement agreement, case reversed and remanded. *Id.*

JUDGES:

Reversible error for judge to express opinion concerning facts in presence of jury, court's refusal to comment on evidence proper. *King v. State*, 112

JUDGMENT:

When case becomes moot. *Pentz v. Romine*, 12
Criteria for appealability. *Dover v. Arkansas Dep't of Human Servs.*, 37

JURISDICTION:

Term defined. *Hooker v. Deere Credit Servs., Inc.*, 293

JURY:

When equal protection clause violated, racial discrimination not proven. *King v. State*, 112
Use of instruction challenged, validity of instruction previously upheld. *Conway v. State*, 125
Similar jury instruction upheld by U.S. Supreme Court, permissive inference promulgated by instruction did not infringe on the accused's privilege against self-incrimination. *Id.*
Juror bias, test. *Breedlove v. State*, 219
Juror bias, trial judge followed proper procedure. *Id.*

JUVENILES:

Circuit court's decision to retain jurisdiction of criminal charges, clear-and-convincing-evidence standard. *Heagerty v. State*, 283
Juvenile transfer, denial of motion, standard of review. *Id.*
Juvenile transfer, factors to be considered. *Id.*

Juvenile transfer, trial judge misapplied law in denying motion, nonadjudicated charges not proof of recidivism under Ark. Code Ann. § 9-27-318(e)(2). *Id.*
Juvenile-delinquency laws, penal in nature, strictly construed. *Id.*
Juvenile transfer, no evidence of failed attempt at rehabilitation. *Id.*
Juvenile transfer, appellant was seventeen at time of hearing, age may be considered in evaluating availability of rehabilitative services. *Id.*
Juvenile transfer, rationale for denying person near or over eighteen years of age had no application to case. *Id.*
Juvenile transfer, trial court clearly erroneous to deny motion, matter reversed and remanded. *Id.*

LANDLORD & TENANT:

Testimony pointed to agreement to reduce pasture rental, chancellor's finding not clearly erroneous. *Adkinson v. Kilgore*, 247
No testimony supporting renegotiation of crop lease, chancellor erred. *Id.*
Doctrine of *caveat lessee* defined. *Id.*
Entitlement to restitution, if specific contract exists quasi-contract will not be implied. *Id.*
Appellee had no basis to expect recoupment of costs of improvement, appellant entitled to payment of rent, no unjust enrichment. *Id.*

MISTRIAL:

When proper, trial court has discretion. *Hunter v. State*, 275
Motion denied, no error found. *Id.*

MOTIONS:

Motion to dismiss, cannot be granted before State has opportunity to present its case. *Anderson v. State*, 1
Directed verdict, challenge to sufficiency of evidence. *Id.*
Summary judgment, factors on review. *Cantrell-Waind & Assoc., Inc. v. Guillaume Motorsports, Inc.*, 66
Genuine issue of fact remained for trial, summary judgment improperly entered, case reversed and remanded. *Id.*
Directed verdict, denial of, factors on review. *King v. State*, 112
Evidence sufficient to connect appellant to crimes, directed verdict properly denied. *Id.*
Granting of continuance so criminal defendant may obtain new attorney, discretionary with trial court. *Irvin v. State*, 143
Directed verdict, challenge to sufficiency of evidence. *Breedlove v. State*, 219
Denial of motion to suppress, review of. *Hunter v. State*, 275

NEGLIGENCE:

Duty of care, requirements of. *Holloway v. Stuttgart Reg'l Med. Ctr.*, 140

PARENT & CHILD:

Emergency custody, emergency-hearing order not final for purposes of appeal. *Dover v. Arkansas Dep't of Human Servs.*, 37
Emergency custody, purpose of adjudication hearing. *Id.*
Cases involving small child's welfare, weight accorded trial judge's observations. *Vier v. Vier*, 89
Termination of parental rights, trial court's duty. *In re: Adoption of K.M.C.*, 95

PERPETUITIES:

- Rule against, common-law rule. *Nash v. Scott*, 8
Rule against, repurchase option in deed subject to. *Id.*
Rule against, violated by repurchase option in deed, option void. *Id.*

PROPERTY:

- Chancellor erred in ruling that repurchase option effected waiver of appellants' right to partition, reversed and remanded. *Nash v. Scott*, 8
Boundary by agreement, necessary factors. *Lammey v. Eckel*, 208
Boundary by acquiescence, nature of. *Id.*
Valid boundary-line agreement, line must be definite, certain, and clearly marked. *Id.*
Proof concerning boundary location not conclusive, chancellor's finding that proof insufficient to establish definite agreed-upon boundary line affirmed. *Id.*
Trial court uncertain about location of line, appellants precluded from prevailing on either theory. *Id.*

PUBLIC SERVICE COMMISSION:

- Standard of review, findings must be in sufficient detail. *Bryant v. Arkansas Pub. Serv. Comm'n*, 154
Appellate court must know what findings are before giving conclusive weight. *Id.*
Appellate court could not conduct meaningful review. *Id.*
Order reversed and remanded for adequate findings of fact. *Id.*

SEARCH & SEIZURE:

- Probable cause, how determined. *Hunter v. State*, 275
Sufficient probable cause existed, testimony properly admitted. *Id.*

STATUTES:

- Legislature declares public policy. *Harding v. City of Texarkana*, 137

SUPERSEDEAS:

- Bond discussed. *Home Mutual Fire Ins. Co. v. Jones*, 182
Costs and damages discussed. *Id.*
Letter of credit may constitute acceptable surety for supersedeas bond. *Id.*
Motion for stay denied, appellant directed to file bond with instrument sufficient to pay costs and damages. *Id.*

TRIAL:

- Mistrial, when appropriate, trial court's discretion. *Breedlove v. State*, 219
Handcuffed defendant, not prejudicial per se. *Id.*
Handcuffed defendant, appellant failed to demonstrate prejudice. *Id.*

UNEMPLOYMENT COMPENSATION:

- Factors on review. *Brooks v. Director*, 85
Preservation of job rights, reasonable efforts required, futile gesture not required. *Id.*
No substantial evidence supported Board's finding that appellant had voluntarily quit employment without good cause, reversed and remanded. *Id.*

WORKERS' COMPENSATION:

- Standard of review, substantial evidence defined. *Coble v. Modern Business Sys.*, 26

- Substantial evidence supported Commission's finding that appellant was not performing "employment services" at time of accident, decision that appellant failed to establish compensable injury affirmed. *Id.*
- Public-policy argument rejected, appellant was able to file claim before limitations period had run. *Id.*
- Commission's role as finder of fact, Commission did not err as matter of law in not finding that appellee's second injury occurred as result of independent intervening cause. *Oak Grove Lumber Co. v. Highfill*, 42
- Standard of review, substantial evidence defined. *Id.*
- Medical opinion, Commission's authority and duty. *Id.*
- Substantial evidence supported Commission's decision that appellee's second injury was compensable consequence of first. *Id.*
- Factors on review, substantial evidence defined. *Jeter v. B.R. McGinty Mechanical*, 53
- Commission weighs witness credibility, Commission has duty to weigh medical evidence. *Id.*
- Employer responsible when primary injury arises out of and in course of employment. *Id.*
- Commission must translate evidence into findings of fact, Commission's resolution of medical evidence has force and effect of jury verdict. *Id.*
- Existence of causal connection, question of fact. *Id.*
- Commission found causal connection to be lacking, Commission's opinion displayed substantial basis for denial of relief sought. *Id.*
- Controversion of claim question of fact for Commission, Commission's conclusion regarding controversion and attorney's fees affirmed. *Id.*
- Factors on review, substantial evidence defined. *Hope Livestock Auction Co. v. Knighton*, 74
- Provisions of workers' compensation statues strictly construed, evidence must be weighed impartially. *Id.*
- Commission conducted extrajudicial review of documentation not introduced into evidence, case reversed and remanded. *Id.*
- Factors on review, substantial evidence defined. *Boyd v. Dana Corp.*, 78
- Case relied upon by Commission inapplicable, fair-minded persons could not have reached Commission's conclusion denying benefits. *Id.*
- Administrative body may not arbitrarily disregard testimony of witness. *Id.*
- Commission's conclusion based upon speculation, evidence indicated that appellant's carpal tunnel syndrome was work related. *Id.*
- Commission relied on language in dissent, Commission not at liberty to use dissent as precedent. *Id.*
- Claim denied because claimant failed to show entitlement by preponderance of evidence, factors on review. *Flowers v. Arkansas Highway & Transp. Dep't*, 108
- Denial of appellant's claim based on Ark. Code Ann. § 11-9-102(5)(B), burden of proof under statute. *Id.*
- Appellant was performing services for employer when injury occurred, injury was compensable, Commission's decision reversed and remanded. *Id.*
- Standard of review, substantial evidence defined. *General Elec. Railcar Repair Servs. v. Hardin*, 120
- Commission's function to determine credibility of witnesses. *Id.*
- When Commission's decision may be reversed. *Id.*
- Reasonable and necessary treatment, fact question for Commission. *Id.*

- Physician's notes constituted substantial evidence in support of Commission's finding that continued treatments were necessary. *Id.*
- "Major cause" analysis inapplicable. *Id.*
- Compensable injury, employment services defined. *Harding v. City of Texarkana*, 137
- Act applicable, Commission did not err in finding appellant was not performing employment services when she was injured. *Id.*
- Appellant's contention without merit, issues not addressed for first time on appeal. *Id.*
- Standard of review. *Georgia-Pacific Corp. v. Carter*, 162
- Claimant's burden. *Id.*
- Questions of credibility, Commission's province. *Id.*
- Appellate court limited by standard of review. *Id.*
- Conflicting evidence, Commission's province. *Id.*
- Factors on review. *Id.*
- Commission's decision supported by substantial evidence. *Id.*
- Temporary total disability and healing period defined. *Id.*
- Evidence supported conclusion that healing period had not ended. *Id.*
- Subsequent episode as recurrence or aggravation, test for determining. *Id.*
- Taking stress test not unreasonable under circumstances. *Id.*
- Factors on review, substantial evidence discussed. *Cleek v. Great Southern Metals*, 177
- Attorney's fees, when allowed. *Id.*
- Award of attorney's fees affirmed. *Id.*
- Second Injury Fund, statute did not provide for attorney's fee. *Second Injury Fund v. Furman*, 194
- Second Injury Fund, strict construction of statute would require denial of award of attorney's fee. *Id.*
- Standard of review, substantial evidence defined. *Williford v. City of North Little Rock*, 198
- Denial of claim, substantial-evidence analysis. *Id.*
- When decision will be reversed. *Id.*
- Appellate assessment of evidence. *Id.*
- No substantial basis for Commission's finding that deceased's work activity was not major cause of heart attack, reversed and remanded for award of benefits. *Id.*
- Commission erred in relying on NCCI guidelines, wages as defined by Arkansas law more inclusive as to what constitutes compensation. *Eckhardt v. Willis Shaw Express, Inc.*, 224
- Appellate review, duty of court. *Id.*
- Commission's decision based on erroneous interpretation of law, case reversed and remanded for recalculation of benefits. *Id.*
- Wage-loss factor discussed. *Id.*
- Commission erred in calculating appellant's weekly wage, Commission's failure to recognize full amount by which appellant's earning capacity reduced resulted in reversal. *Id.*
- Claim filed years after date of injury and payment of last compensation, new claim was for additional compensation. *Joe Brennan Gen. Contracting v. Adair*, 240
- Claim for additional compensation, limitations period in Ark. Code Ann. § 11-9-702(b) applicable. *Id.*
- Statute of limitations not tolled, appellee did not file timely claim for additional benefits. *Id.*
- Ark. Code Ann. § 11-9-702(b) barred appellee's claim, reasonable necessity of appellee's medical treatment rendered on or after November 22, 1995 was moot. *Id.*

Second Injury Fund, requirements for liability. *Second Injury Fund v. Stephens*, 255
Second Injury Fund, guidelines for liability unchanged after new Workers'
Compensation Act. *Id.*
Factors on review, substantial evidence defined. *Id.*
Appellate court will not extend statute or case law to support argument. *Id.*
Ark. Code Ann. § 11-9-102, claimant need only prove that compensable injury was
major cause of two percent impairment rating. *Id.*
Ark. Code Ann. § 11-9-102(5)(F), major-cause requirement satisfied. *Id.*
Second Injury Fund, three-prong requirements for liability met. *Id.*
Appellant's argument without merit, statute will not be expanded to support argument. *Id.*
Appellant's major-cause argument rejected, injury major cause of claimant's disability,
Second Injury Fund may still be liable for additional benefits. *Id.*
Permanent-disability argument failed, no evidence that either Second Injury Fund or
employer suggested plan of rehabilitation. *Id.*
Standard of review, substantial evidence defined. *Barnett v. Natural Gas Pipeline Co.*, 265
Accidental injury defined. *Id.*
Credibility of witnesses, Commission's province to determine. *Id.*
Commission did not err in finding appellant failed to prove compensable injury. *Id.*

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

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

| | | |
|---------------------------------|-------------------------|-----------------------------|
| ACTS: | 5-37-203 | 3 |
| | 5-37-203(a) | 3 |
| ACTS BY NAME: | 5-37-203(b) | 3 |
| First Offenders Act | 5-60-120 | 151, 152 |
| Habitual-Offender Statute | 5-64-401 | 151 |
| Workers' Compensation Act ... | 9-2-315 | 106 |
| 137, 256, 259 | 9-9-207(a) | 92 |
| Workers' Compensation Law ... | 9-9-207(a)(2) | 92 |
| 50, | 9-9-207(a)(2)(i) | 92 |
| 79, 84, 228, 270 | 9-9-207(a)(2)(ii) | 92 |
| ARKANSAS ACTS: | 9-9-220 | 96 |
| Act 290 of 1941 | 9-9-220(a) | 96 |
| Act 346 of 1975 | 9-9-220(c) | 97 |
| Act 705 of 1979 | 9-9-220(c)(3) | 97 |
| Act 176 of 1993 | 9-12-313 | 99, 101, 102, 103, 105, 106 |
| Act 796 of 1993 | 9-12-315(a) | 99, 103 |
| 52, 137, 138, 139, 243, 256, | 9-12-315(a)(1)(A) | 106 |
| 259 | 9-27-303 | 290 |
| CODES: | 9-27-314 | 39, 217 |
| (See also RULES and STATUTES): | 9-27-315 | 38, 40 |
| ARKANSAS CODE ANNOTATED: | 9-27-315(a)(1)(A) | 39 |
| 4-5-102(a)(8) | 9-27-315(d) | 39 |
| 4-5-102(a)(10) | 9-27-318(e) | 283, 286, 287, 291 |
| 4-5-104 | 9-27-318(e)(1) | 287 |
| 5-2-202(1) | 9-27-318(e)(2) | 283, 284, 287, 288 |
| 5-4-101(2) | 9-27-318(e)(3) | 287 |
| 5-4-104(c) | 9-27-318(f) | 287 |
| 5-4-104(e)(B)(I) | 9-27-326 | 217 |
| 5-4-301(a)(1)(C) | 9-27-327(a) | 40 |
| 5-4-309(d) | 9-27-328 | 217 |
| 5-4-309(f) | 9-27-330 | 290, 292 |
| 5-4-401 | 9-27-331(a)(1) | 289 |
| 5-4-504(1) | 9-28-209 | 284, 290 |
| 5-5-101(1) | 9-28-209(a)(1) | 289 |
| 5-14-108(a)(4) | 11-9-102 | 82, 256, 261 |
| | 11-9-102(5)(A) | 82 |

| | | | |
|---------------------------------|-------------------------------------|---|----------------------------|
| 11-9-102(5)(A)(i) | 108, 110, 265, 268, 271 | 11-9-711(b)(1)(A) | 191 |
| 11-9-102(5)(A)(ii) | 82 | 11-9-711(b)(4) | 229, 230 |
| 11-9-102(5)(A)(ii)(a) | 83 | 11-9-715 | 180, 197 |
| 11-9-102(5)(A)(iv) | 201 | 11-9-715(a)(1) | 195, 196 |
| 11-9-102(5)(B) | 30, 50, 108, 110 | 11-9-715(a)(2)(A) | 195, 196 |
| 11-9-102(5)(B)(i) | 109, 110, 111, 112 | 11-9-715(a)(2)(B)(ii) | 178, 179, 180, 181 |
| 11-9-102(5)(B)(ii) | 30, 45, 47, 48, 50, 51 | 11-9-715(b) | 179, 196 |
| 11-9-102(5)(B)(iii) | 30, 45, 47, 48, 50, 51, 137, 138 | 11-9-715(b)(1) | 194, 195, 196 |
| 11-9-102(5)(E) | 108, 111 | 11-9-715(b)(2) | 196 |
| 11-9-102(5)(E)(i) | 166 | 11-9-1001 | 52 |
| 11-9-102(5)(E)(ii) | 121, 124 | 11-10-513(b) | 85, 88 |
| 11-9-102(5)(F) | 256, 261, 263 | 16-22-206 | 297 |
| 11-9-102(5)(F)(i) | 261 | 16-48-105(a)(1) | 19, 24 |
| 11-9-102(5)(F)(ii) | 256, 257, 262, 264 | 16-90-111 | 153-D |
| 11-9-102(5)(F)(ii)(a) | 257, 261, 262, 263 | 16-91-105(b)(4) | 34 |
| 11-9-102(5)(F)(ii)(b) | 121, 124, 261 | 16-93-303 | 153-D |
| 11-9-102(5)(F)(iii) | 44, 45, 261 | 16-93-402(e)(5) | 151, 153 |
| 11-9-102(14)(A) | 262 | 18-12-603 | 130, 131, 132, 133, 136 |
| 11-9-102(14)(B) | 262 | 18-15-201 | 16 |
| 11-9-102(19) | 224, 228 | 21-6-401 | 190 |
| 11-9-113 | 74, 75, 77 | 23-2-421(a) | 159 |
| 11-9-113(2) | 77 | 28-1-116 | 23 |
| 11-9-114 | 201 | 28-48-103 | 23 |
| 11-9-114(a) | 201 | 28-48-103(f) | 23 |
| 11-9-205(5)(A)(i) | 108 | 28-49-101 | 24 |
| 11-9-205(5)(E) | 108 | | |
| 11-9-301 | 260 | CONSTITUTIONAL PROVISIONS: | |
| 11-9-505(b) | 257, 264 | ARKANSAS CONSTITUTION: | |
| 11-9-505(b)(3) | 264 | Art. 2, § 8 | 128 |
| 11-9-508 | 121, 123 | Art. 2, § 10 | 143, 145 |
| 11-9-522(c)(1) | 229 | Art. 7, § 23 | 114, 119 |
| 11-9-525(b)(3) | 256, 259 | UNITED STATES CONSTITUTION: | |
| 11-9-525(b)(4) | 256, 259, 260 | Amend. 6 | 113, 117, 143, 145 |
| 11-9-701(b)(1)(B) | 267 | Amend. 14 (Due Process Clause) | 143, 145 |
| 11-9-702 | 242 | Equal Protection Clause | 113, 117 |
| 11-9-702(b) | 241, 242, 243, 244, 245, 246 | INSTRUCTIONS: | |
| 11-9-704(c)(2) | 77 | ARKANSAS MODEL JURY INSTRUCTIONS | |
| 11-9-704(c)(3) | 195 | (CRIMINAL): | |
| 11-9-704(c)(4) | 77 | AMCI 111 | 125, 126, 128, 129 |
| | | AMCI 3605 | 125, 126, 127, 128, 129 |

RULES:

ARKANSAS RULES OF APPELLATE
PROCEDURE — CIVIL:

| | |
|------------------------|----------|
| Rule 2(a)(1) | 39 |
| Rule 5 | 187 |
| Rule 8 | 184, 185 |
| Rule 8(a) | 184 |
| Rule 8(b) | 182, 184 |
| Rule 8(c) | 182, 184 |

ARKANSAS RULES OF CIVIL

PROCEDURE:

| | |
|------------------------------|----------|
| ARCP Rule 8(c) | 8, 10 |
| ARCP Rule 12(b) | 8, 10 |
| ARCP Rule 12(b)(8) | 295 |
| ARCP Rule 61 | 169, 175 |

ARKANSAS RULES OF CRIMINAL

PROCEDURE:

| | |
|----------------------------------|-------------------|
| A.R.Cr.P. Rule 2 | 276, 280 |
| A.R.Cr.P. Rule 3.1 | 276, 280 |
| A.R.Cr.P. Rule 3.3 | 280 |
| A.R.Cr.P. Rule 4.1 | 280 |
| A.R.Cr.P. Rule 24.3(b) | 230, 232 |
| A.R.Cr.P. Rule 33.3 | 33, 34, 35, 36 |
| A.R.Cr.P. Rule 37 | 35, 37, 153-B |
| A.R.Cr.P. Rule 37.3 | 34 |

ARKANSAS RULES OF EVIDENCE:

| | |
|------------------------------|----------|
| A.R.E. Rule 103(a) | 169, 175 |
| A.R.E. Rule 402 | 176 |
| A.R.E. Rule 801(b) | 173 |
| A.R.E. Rule 801(c) | 173 |

| | |
|---------------------------------|-----------------------|
| A.R.E. Rule 802 | 173 |
| A.R.E. Rule 803 | 173, 175 |
| A.R.E. Rule 803(1) | 170, 171, 175, 176 |
| A.R.E. Rule 803(3) | 170, 171, 175, 176 |
| A.R.E. Rule 804 | 173, 174 |
| A.R.E. Rule 804(a) | 174 |
| A.R.E. Rule 804(b) | 168, 174 |
| A.R.E. Rule 804(b)(2) | 171, 174 |

RULES OF THE ARKANSAS SUPREME
COURT AND COURT OF APPEALS:

| | |
|--------------------------------------|----------------------------|
| Ark. Sup. Ct. R. 1-2(a)(1) | 302 |
| Ark. Sup. Ct. R. 4-2 | 296, 300, 301 |
| Ark. Sup. Ct. R. 4-2(a) | 301 |
| Ark. Sup. Ct. R. 4-2(a)(8) | 296 |
| Ark. Sup. Ct. R. 4-2(b)(1) | 293, 296 |
| Ark. Sup. Ct. R. 4-2(b)(2) | 298 |
| Ark. R. Sup. Ct. 4-3(j) | 115, 120, 272, 273, 274 |
| Ark. Sup. Ct. R. 4-3(j)(2) | 273 |

STATUTES:

ARKANSAS STATUTES ANNOTATED:

| | |
|----------------------|-----|
| 34-1214 | 104 |
| 41-803 | 153 |
| 41-1208(6) | 153 |
| 81-1332 | 180 |

