

THIS BOOK CONTAINS THE OFFICIAL
ARKANSAS REPORTS

Volume 336

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
January 7, 1999 — March 11, 1999
INCLUSIVE¹

AND

ARKANSAS APPELLATE
REPORTS

Volume 65

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

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1999

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²Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 282. Cite as 65 Ark. App. ____ (1999).



*[T]he main thing of all must still
be justice. . . .*

— ROBERT LOUIS STEVENSON
(1850-1894)

Set in Bembo

JOE CHRISTENSEN PRINTING COMPANY
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LINCOLN, NEBRASKA 68521
1999

ARKANSAS
REPORTS

Volume 336

CASES DETERMINED
IN THE

Supreme Court
of Arkansas

FROM
January 7, 1999 — March 11, 1999
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1999

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.	xii
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xvi
TABLE OF OPINIONS NOT REPORTED	xviii
OPINIONS REPORTED	1
APPENDIX	
Rules Adopted or Amended by Per Curiam Orders	585
Appointments to Committees	653
Professional Conduct Matters	655
INDEX	
Alphabetical Headnote Index	659
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	677

JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF
ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(January 7, 1999 — March 11, 1999, inclusive)

JUSTICES

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

OFFICERS

WINSTON BRYANT	Attorney General ¹
MARK PRYOR	Attorney General ²
LESLIE W. STEEN	Clerk
TIMOTHY N. HOLTHOFF	Librarian ³
WILLIAM B. JONES, JR.	Reporter of Decisions

¹ Term expired January 12, 1999.

² Assumed office January 12, 1999.

³ Appointed effective January 1, 1999.

TABLE OF CASES REPORTED

A

Allison <i>v.</i> Long	432
Arkansas Contractors Licensing Bd. (<i>Poyner v.</i>)	83
Arkansas Dep't of Human Servs. <i>v.</i> Estate of Ferrel	297
Arkansas Pulpwood Co. (<i>Dugal Logging, Inc. v.</i>)	55
Arkansas State HVACR Lic. Bd. (<i>Brown v.</i>)	34

B

Baker <i>v.</i> Frozen Food Express Transp.	451
Barnett <i>v.</i> State	165
Barr <i>v.</i> State	220
Beavers (<i>Lovell v.</i>)	551
Bohanan <i>v.</i> State	367
Brown <i>v.</i> Arkansas State HVACR Lic. Bd.	34
Burlington Indus. <i>v.</i> Pickett	515
Burns <i>v.</i> First Nat'l Bank	406

C

Campbell <i>v.</i> Campbell	379
Campbell (<i>Campbell v.</i>)	379
Cardinal Freight Carriers, Inc. <i>v.</i> J.B. Hunt Transp. Servs., Inc.	143
Chatman <i>v.</i> State	323
Chem-Fab Corp. (<i>Weiss v.</i>)	21
Circuit Court of Benton County (<i>Cooper Communities,</i> <i>Inc. v.</i>)	136
Circuit Court of Lincoln County (<i>State v.</i>)	122
City of Arkadelphia (<i>Smith v.</i>)	42
Collins, Kingrale <i>v.</i> State	81
Collins, Kingrale <i>v.</i> State	263

Cooper Communities, Inc. <i>v.</i> Circuit Court of Benton County	136
Cummings (<i>Grummer v.</i>)	447

D

D.B. Griffin Warehouse, Inc. <i>v.</i> Sanders	264
D.B. Griffin Warehouse, Inc. <i>v.</i> Sanders	456
Dillard <i>v.</i> Keith	521
Dugal Logging, Inc. <i>v.</i> Arkansas Pulpwood Co.	55

E

Eagle (Office of Child Support Enforcem't <i>v.</i>)	51
Earl (<i>State v.</i>)	271
Estate of Donley <i>v.</i> Pace Indus.	101
Estate of Ferrel (Arkansas Dep't of Human Servs. <i>v.</i>)	297
Estate of Swaffar (<i>Nash v.</i>)	235
Evans <i>v.</i> Harry Robinson Pontiac-Buick, Inc.	155

F

Farm Bureau Ins. Co. (<i>Reaves v.</i>)	269
First Nat'l Bank (<i>Burns v.</i>)	406
Fort Smith Planning Comm'n (Night Clubs, Inc. <i>v.</i>)	130
Frozen Food Express Transp. (<i>Baker v.</i>)	451
Furman <i>v.</i> Second Injury Fund	10

G

Glover <i>v.</i> Overstreet	1
Godbold <i>v.</i> State	251
Green <i>v.</i> State	435
Grummer <i>v.</i> Cummings	447
Guntharp (<i>McQuay v.</i>)	534

H

Haire <i>v.</i> State	48
Hale <i>v.</i> State	345
Hall <i>v.</i> Tucker	112
Hamm <i>v.</i> Office of Child Support Enforcem't	391
Hampton (Home Mut. Fire Ins. Co. <i>v.</i>)	522
Harry Robinson Pontiac-Buick, Inc. (Evans <i>v.</i>)	155
Hartford Ins. Co. <i>v.</i> Mullinax	335
Henrickson (Pearson <i>v.</i>)	12
Home Mut. Fire Ins. Co. <i>v.</i> Hampton	522
Hussey <i>v.</i> State	309

I

In Re: Elmer	266
Isbell (Mary Kay, Inc. <i>v.</i>)	374

J

Jackson <i>v.</i> State	530
Jarrett <i>v.</i> State	526
J.B. Hunt Transp. Servs., Inc. (Cardinal Freight Carriers, Inc. <i>v.</i>)	143
J.C.S. <i>v.</i> State	364
Jones <i>v.</i> State	191

K

Keith (Dillard <i>v.</i>)	521
King (State Bd. of Workforce Educ. <i>v.</i>)	409
Kinhead <i>v.</i> Spillers	60
Kirby <i>v.</i> State	82

L

Lewis <i>v.</i> State	469
Long (Allison <i>v.</i>)	432
Looney (Looney <i>v.</i>)	542
Looney <i>v.</i> Looney	542
Lovell <i>v.</i> Beavers	551

M

Marta <i>v.</i> State	67
Mary Kay, Inc. <i>v.</i> Isbell	374
Mayo <i>v.</i> State	275
Mazepink <i>v.</i> State	171
McDermott (McDermott <i>v.</i>)	557
McDermott <i>v.</i> McDermott	557
McQuay <i>v.</i> Guntharp	534
Mullinax (Hartford Ins. Co. <i>v.</i>)	335

N

Nash <i>v.</i> Estate of Swaffar	235
Newberry <i>v.</i> Scruggs	570
Night Clubs, Inc. <i>v.</i> Fort Smith Planning Comm'n	130

O

Office of Child Support Enforcem't <i>v.</i> Eagle	51
Office of Child Support Enforcem't (Hamm <i>v.</i>)	391
Overstreet (Glover <i>v.</i>)	1

P

Pace Indus. (Estate of Donley <i>v.</i>)	101
Pack <i>v.</i> State	268
Pearson <i>v.</i> Henrickson	12
Phelps <i>v.</i> U.S. Life Credit Life Ins. Co.	257
Pickett (Burlington Indus. <i>v.</i>)	515
Pitts <i>v.</i> State	580
Poyner <i>v.</i> Arkansas Contractors Licensing Bd.	83
Prostaff Temps. (Williams <i>v.</i>)	510

R

R&A Investment Co. (State <i>v.</i>)	289
Raines <i>v.</i> State	49
Reaves <i>v.</i> Farm Bureau Ins. Co.	269
Robbins (State <i>v.</i>)	377
Russey <i>v.</i> State	401

S

Sanders (D.B. Griffin Warehouse, Inc. <i>v.</i>).....	264
Sanders (D.B. Griffin Warehouse, Inc. <i>v.</i>).....	456
Scruggs (Newberry <i>v.</i>).....	570
Second Injury Fund (Furman <i>v.</i>).....	10
Skiver <i>v.</i> State.....	86
Slaton (Slaton <i>v.</i>).....	211
Slaton <i>v.</i> Slaton.....	211
Smith <i>v.</i> City of Arkadelphia.....	42
Spillers (Kinkead <i>v.</i>).....	60
State (Barnett <i>v.</i>).....	165
State (Barr <i>v.</i>).....	220
State (Bohanan <i>v.</i>).....	367
State (Chatman <i>v.</i>).....	323
State (Collins, Kingrale <i>v.</i>).....	81
State (Collins, Kingrale <i>v.</i>).....	263
State (Godbold <i>v.</i>).....	251
State (Green <i>v.</i>).....	435
State (Haire <i>v.</i>).....	48
State (Hale <i>v.</i>).....	345
State (Hussey <i>v.</i>).....	309
State (Jackson <i>v.</i>).....	530
State (Jarrett <i>v.</i>).....	526
State (J.C.S. <i>v.</i>).....	364
State (Jones <i>v.</i>).....	191
State (Kirby <i>v.</i>).....	82
State (Lewis <i>v.</i>).....	469
State (Marta <i>v.</i>).....	67
State (Mayo <i>v.</i>).....	275
State (Mazepink <i>v.</i>).....	171
State (Pack <i>v.</i>).....	268
State (Pitts <i>v.</i>).....	580
State (Raines <i>v.</i>).....	49
State (Russey <i>v.</i>).....	401
State (Skiver <i>v.</i>).....	86
State (Swanigan <i>v.</i>).....	285
State (Thompson <i>v.</i>).....	436
State (Trimble <i>v.</i>).....	437

State (Tucker <i>v.</i>).....	244
State (Walls <i>v.</i>).....	490
State <i>v.</i> Circuit Court of Lincoln County.....	122
State <i>v.</i> Earl.....	271
State <i>v.</i> R&A Investment Co.	289
State <i>v.</i> Robbins.....	377
State Bd. of Workforce Educ. <i>v.</i> King.....	409
State Office of Child Support Enforcem't <i>v.</i> Terry	310
Swanigan <i>v.</i> State.....	285

T

Taylor (Yell County Tel. Co. <i>v.</i>).....	108
Terrell (Zinger <i>v.</i>).....	423
Terry (State Office of Child Support Enforcem't <i>v.</i>).....	310
Thompson <i>v.</i> State.....	436
Trimble <i>v.</i> State.....	437
Tucker (Hall <i>v.</i>).....	112
Tucker <i>v.</i> State.....	244

U

U.S. Life Credit Life Ins. Co. (Phelps <i>v.</i>).....	257
---	-----

W

Walls <i>v.</i> State.....	490
Warnock (Warnock <i>v.</i>).....	506
Warnock <i>v.</i> Warnock.....	506
Weiss <i>v.</i> Chem-Fab Corp.....	21
Williams <i>v.</i> Prostaff Temps.....	510
Witty (Yarbrough <i>v.</i>).....	479

Y

Yarbrough <i>v.</i> Witty.....	479
Yell County Tel. Co. <i>v.</i> Taylor.....	108

Z

Zinger <i>v.</i> Terrell.....	423
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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:

Baker <i>v.</i> Frozen Food Express Transp.	451
Cooper Communities, Inc. <i>v.</i> Circuit Court of Benton County	136
D.B. Griffin Warehouse, Inc. <i>v.</i> Sanders	456
Estate of Donley <i>v.</i> Pace Indus.	101
Grummer <i>v.</i> Cummings	447
Mayo <i>v.</i> State	275
Office of Child Support Enforcem't <i>v.</i> Eagle	51
Swanigan <i>v.</i> State	285

TOM GLAZE, JUSTICE:

Campbell <i>v.</i> Campbell	379
Cardinal Freight Carriers, Inc. <i>v.</i> J.B. Hunt Transp. Servs., Inc.	143
Dugal Logging, Inc. <i>v.</i> Arkansas Pulpwood Co.	55
Evans <i>v.</i> Harry Robinson Pontiac-Buick, Inc.	155
Glover <i>v.</i> Overstreet	1
Hamm <i>v.</i> Office of Child Support Enforcem't	391
Jarrett <i>v.</i> State	526
Lewis <i>v.</i> State	469
Russey <i>v.</i> State	401
Yarbrough <i>v.</i> Witty	479

DONALD L. CORBIN, JUSTICE:

Barnett <i>v.</i> State	165
Burns <i>v.</i> First Nat'l Bank	406
Furman <i>v.</i> Second Injury Fund	10
Jackson <i>v.</i> State	530
Kinthead <i>v.</i> Spillers	60
Mazepink <i>v.</i> State	171
McQuay <i>v.</i> Guntharp	534

State <i>v.</i> R&A Investment Co.	289
State Office of Child Support Enforcem't <i>v.</i> Terry	310
Yell County Tel. Co. <i>v.</i> Taylor	108

ROBERT L. BROWN, JUSTICE:

Chatman <i>v.</i> State	323
Hall <i>v.</i> Tucker	112
Hartford Ins. Co. <i>v.</i> Mullinax	335
Jones <i>v.</i> State	191
Looney <i>v.</i> Looney	542
Lovell <i>v.</i> Beavers	551
State <i>v.</i> Circuit Court of Lincoln County.....	122
State Bd. of Workforce Educ. <i>v.</i> King.....	409
Walls <i>v.</i> State	490
Zinger <i>v.</i> Terrell	423

ANNABELLE CLINTON IMBER, JUSTICE:

Hale <i>v.</i> State	345
Marta <i>v.</i> State	67
McDermott <i>v.</i> McDermott.....	557
Night Clubs, Inc. <i>v.</i> Fort Smith Planning Comm'n.....	130
Pearson <i>v.</i> Henrickson	12
Slaton <i>v.</i> Slaton	211
Weiss <i>v.</i> Chem-Fab Corp.....	21

RAY THORNTON, JUSTICE:

Barr <i>v.</i> State	220
Brown <i>v.</i> Arkansas State HVACR Lic. Bd.....	34
J.C.S. <i>v.</i> State	364
Nash <i>v.</i> Estate of Swaffar.....	235
Newberry <i>v.</i> Scruggs	570
Smith <i>v.</i> City of Arkadelphia	42
Tucker <i>v.</i> State	244
Warnock <i>v.</i> Warnock	506
Williams <i>v.</i> Prostaff Temps.	510

LAVENSKI R. SMITH, JUSTICE:

Allison <i>v.</i> Long	432
Arkansas Dep't of Human Servs. <i>v.</i> Estate of Ferrel.....	83
Bohanan <i>v.</i> State	367
Burlington Indus. <i>v.</i> Pickett	515
Godbold <i>v.</i> State	251
Phelps <i>v.</i> U.S. Life Credit Life Ins. Co.	257

PER CURIAM:

Collins, Kingrale <i>v.</i> State	81
Collins, Kingrale <i>v.</i> State	263
D.B. Griffin Warehouse, Inc. <i>v.</i> Sanders	264
Dillard <i>v.</i> Keith	521
Green <i>v.</i> State.....	435
Haire <i>v.</i> State	48
Home Mut. Fire Ins. Co. <i>v.</i> Hampton	522
Hussey <i>v.</i> State	309
In Re: Elmer	266
Kirby <i>v.</i> State	82
Mary Kay, Inc. <i>v.</i> Isbell	374
Pack <i>v.</i> State	268
Pitts <i>v.</i> State	580
Poyner <i>v.</i> Arkansas Contractors Licensing Bd.	83
Raines <i>v.</i> State	289
Reaves <i>v.</i> Farm Bureau Ins. Co.	269
Skiver <i>v.</i> State.....	86
State <i>v.</i> Earl.....	271
State <i>v.</i> Robbins	377
Thompson <i>v.</i> State	436
Trimble <i>v.</i> State	437

APPENDIX

RULES ADOPTED BY PER CURIAM ORDER:

In Re: Arkansas Rules of Civil Procedure 4, 5, 26, 33, 34, 41, 50, 52, 54, 55, 59; Arkansas Rules of Appellate Procedure—Civil 4; Arkansas Code Annotated Sections 16-20-109 and 16-58-131 (Per Curiam)	588
--	-----

In Re: Committee on Professional Conduct (Per Curiam)	585
In Re: Official Probate Forms; Administrative Order Number 12 (Per Curiam)	603
In Re: Rule 3, Rules of Appellate Procedure—Civil (Per Curiam)	645
In Re: Rule 2, Rules of Appellate Procedure—Criminal (Per Curiam)	647
In Re: Rule of Appellate Procedure—Civil, Rule 2 (Per Curiam)	649
In Re: Section 22 of the Regulations of the Board of Certified Court Reporter Examiners (Per Curiam)...	651

APPOINTMENTS TO COMMITTEES:

In Re: Arkansas Continuing Legal Education Board (Per Curiam)	653
In Re: Board of Law Examiners (Per Curiam)	654
In Re: Committee on Automation (Per Curiam)	654
In Re: Supreme Court Committee on Criminal Practice (Per Curiam)	653

PROFESSIONAL CONDUCT MATTERS

In Re: Beavers (Per Curiam)	655
In Re: Belcher (Per Curiam)	656
In Re: Bethea (Per Curiam)	655
In Re: Fitzhugh (Per Curiam)	658
In Re: McBeth (Per Curiam)	656

STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND
COURT OF APPEALS

OPINIONS

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

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

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

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

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

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

OPINIONS NOT DESIGNATED FOR PUBLICATION

- Allen *v.* State, CR 96-881 (Per Curiam), affirmed January 7, 1999.
- Banks *v.* State, CR 97-1188 (Per Curiam), affirmed January 28, 1999.
- Barbee *v.* State, CR 97-1198 (Per Curiam), affirmed January 28, 1999.
- Bennett *v.* Glover, CR 98-1294 (Per Curiam), Pro Se Petition for Writ of Mandamus moot February 18, 1999.
- Bohanan *v.* State, CR 96-1505 (Per Curiam), affirmed January 21, 1999.
- Bradford *v.* Reed, 98-1462 (Per Curiam), Pro Se Petitions for Writs of Certiorari and Pro Se Motions to Amend Petition for Writ of Certiorari, to Remand to Circuit Court, and for Appointment of Counsel; petitions and motions denied and appeal dismissed March 4, 1999.
- Brown *v.* State, CR 98-920 (Per Curiam), Pro Se Motion for Reconsideration of Motion for Belated Appeal of Order denied February 4, 1999.
- Cates *v.* State, CR 97-263 (Per Curiam), Pro Se Motion for Photocopy at Public Expense denied January 21, 1999.
- Chavis *v.* Chavis, TEN 98-56 (Per Curiam), Pro Se Motion to Proceed In Forma Pauperis with Motion for Belated Appeal of Judgment denied January 7, 1999.
- Chavis *v.* State, 98-1235 (Per Curiam), Pro Se Motion for Extension of Time denied and appeal dismissed March 4, 1999.
- Coleman *v.* Norris, CR 98-1029 (Per Curiam), Pro Se Petition for Writ of Certiorari denied and appeal dismissed January 14, 1999.
- Dillard *v.* Storey, CR 98-1423 (Per Curiam), Pro Se Motion for Rule on Clerk to File Petition Without Record moot; Pro Se Petition for Writ of Mandamus, or in the Alternative for Writ of Prohibition moot in part and denied in part February 18, 1999.
- Dodson *v.* State, CR 99-75 (Per Curiam), Petition for rehearing denied February 4, 1999.
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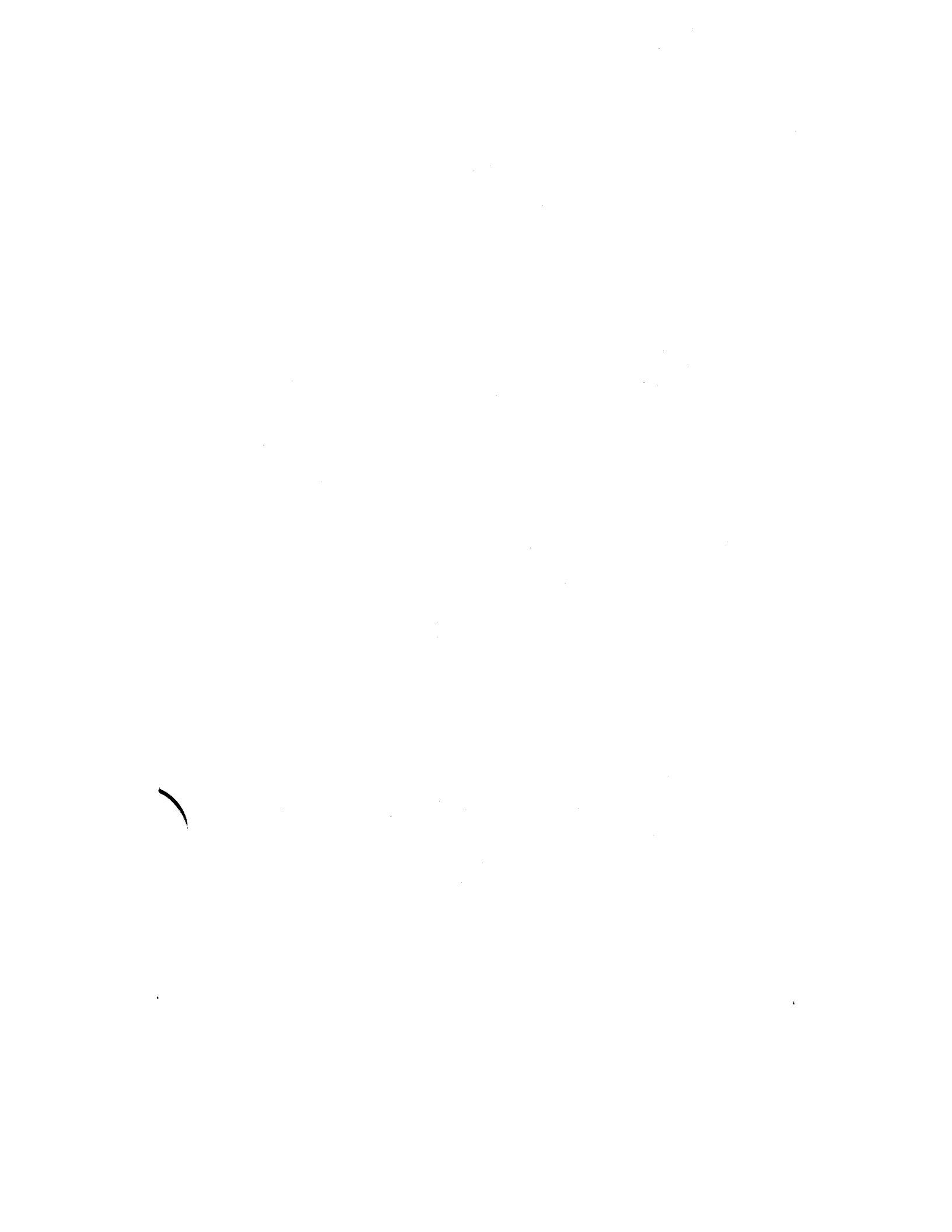
- Drury *v.* State, CR 99-43 (Per Curiam), Pro Se Motions to Set Appeal Bond, for Appointment of Counsel, to Expedite Motions, and for Extension of Time denied and appeal dismissed March 11, 1999.
- Emery *v.* State, CR 97-993 (Per Curiam), Pro Se Motion to Relieve Counsel and Appoint Other Counsel denied January 14, 1999.
- Gaines *v.* State, CR 99-88 (Per Curiam), Pro Se Petition for Release of All Documents denied March 11, 1999.
- Hale *v.* Arkansas Post Prison Transfer Bd., 97-1058 (Per Curiam), Pro Se Motion to File Supplemental Appellants' Brief denied January 7, 1999.
- Haltiwanger *v.* State, CR 98-1346 (Per Curiam), Pro Se Motion for Belated Appeal of Order and Pro Se Motion and Amended Motion for Appointment of Counsel denied February 4, 1999.
- Harris *v.* Davis, 98-1466 (Per Curiam), Pro Se Petition for Writ of Mandamus moot January 14, 1999.
- Hawthorne *v.* State, CA CR 97-1021 (Per Curiam), Pro Se Motion for Photocopy of Material at Public Expense denied January 21, 1999.
- Hunter *v.* State, CA CR 97-1092 (Per Curiam), Pro Se Motion for Photocopy of Material at Public Expense denied February 11, 1999.
- Jarrett *v.* State, CR 92-171 (Per Curiam), Pro Se Motion for Photocopy at Public Expense denied January 28, 1999.
- Johnson *v.* Norris, 98-1123 (Per Curiam), Pro Se Motion for Extension of Time to File Reply Brief granted February 18, 1999.
- Johnson, Jerry Chris *v.* State, CR 97-1306 (Per Curiam), affirmed March 4, 1999.
- Johnson, Jerry Dewayne *v.* State, CR 98-1210 (Per Curiam), Pro Se Motion for Photocopy of Material at Public Expense denied February 25, 1999.
- Jones *v.* State, CR 97-1167 (Per Curiam), Appellant's Pro Se Motions to Resubmit by Motion a Supplemental Abstract and to File a Supplemental Abstract in Reply Brief, to Correct Deficient Abstract in Appellant's Substituted Brief,

- and for Extension of Time to File Reply Brief denied; new briefing schedule set February 25, 1999.
- Kilpatrick *v.* State, CR 97-1180 (Per Curiam), Pro Se Petition for Writ of Certiorari denied and appeal dismissed January 28, 1999.
- Lewis *v.* Davis, CR 98-1474 (Per Curiam), Pro Se Petition for Writ of Mandamus moot January 14, 1999.
- London *v.* State, CR 97-1006 (Per Curiam), affirmed March 11, 1999.
- McCready *v.* State, 98-1125 (Per Curiam), Pro Se Motion for Duplication of Brief at Public Expense and Pro Se Motion to Supplement the Record denied and appeal dismissed February 4, 1999.
- Meny *v.* Norris, CR 98-1143 (Per Curiam), Pro Se Motion for Extension of Time to File Brief granted January 28, 1999.
- Mobbs *v.* Hanshaw, CR 98-972 (Per Curiam), Pro Se Motion for Reconsideration of Petition for Writ of Mandamus denied January 21, 1999.
- Myran *v.* State, CR 98-1032 (Per Curiam), Pro Se Motion to File a Belated Brief denied and appeal dismissed March 4, 1999.
- Norman *v.* Board of Correction and Community Punishment, 98-1239 (Per Curiam), Pro Se Motion for Rule on Clerk denied January 14, 1999.
- Norman *v.* State, CR 98-582 (Per Curiam), Pro Se Motion for Judicial Notice denied January 21, 1999.
- Orsini *v.* Beck, 98-1011 (Per Curiam), Pro Se Motion for Duplication of Brief at Public Expense moot; Motions for Continuance to Prevent Appellee from Relying on Certain Citations of Legal Authority, to Supplement Motion, and to Strike Appellee's Response denied; January 7, 1999.
- Pardue *v.* State, CR 98-970 (Per Curiam), Pro Se Motion to File Supplemental Abstract granted February 11, 1999.
- Peterson *v.* State, CR 98-980 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed January 14, 1999.
- Petty *v.* State, CR 98-1305 (Per Curiam), Pro Se Motion for Appointment of Counsel denied and appeal dismissed February 18, 1999.

- Rayford *v.* State, CR 98-1322 (Per Curiam), Pro Se Motion to Consolidate Record moot February 11, 1999.
- Reece *v.* State, CR 98-1370 (Per Curiam), Pro Se Motion and Amended Motion for Belated Appeal of Order and Pro Se Motion for Appointment of Counsel dismissed February 11, 1999.
- Richards, Arty *v.* State, CR 97-1536 (Per Curiam), Pro Se Motion to Expedite Appeal denied January 28, 1999.
- Richards, Arty *v.* State, CR 97-1536 (Per Curiam), Rebriefing Ordered February 4, 1999.
- Sims *v.* State, CR 98-978 (Per Curiam), Pro Se Motion for Extension of Time to File Appellant's Reply Brief denied and appeal dismissed February 4, 1999.
- Smith *v.* City of Arkadelphia, 98-87 (Per Curiam), Petition for Review denied February 4, 1999.
- Smith, Austin Wayne *v.* State, CR 98-1054 (Per Curiam), Pro Se Motion to File Substituted Brief denied and appeal dismissed February 4, 1999.
- Smith, Earl Edward *v.* State, CR 98-1363 (Per Curiam), Pro Se Motions to Supplement Trial Record and to Supplement Original Postconviction Appeal Record denied; Motion for Copy of Postconviction Appeal Record moot February 25, 1999.
- Stickley-McPhearson *v.* Bryant, 98-1030 (Per Curiam), Pro Se Motion to File Reply Brief Containing Supplemental Abstract denied without prejudice to submitting substituted brief-in-chief February 11, 1999.
- Thrash *v.* State, CR 86-161 (Per Curiam), Pro Se Petition for Leave to Proceed in Circuit Court with Petition for Writ of Error Coram Nobis denied; Motion to Amend Petition and Motion to Amend Motion denied February 11, 1999.
- Voss *v.* State, CR 96-485 (Per Curiam), affirmed January 21, 1999.
- Watson *v.* State, CR 97-1482 (Per Curiam), Pro Se Motion to Reinstate Postconviction Appeal denied January 21, 1999.
- Weaver *v.* State, CR 97-690 (Per Curiam), Pro Se Petition for Leave to Proceed in Circuit Court with Petition for Writ of Error Coram Nobis denied February 4, 1999.

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- Williams, Leroy *v.* State, CR 97-1076 (Per Curiam), affirmed February 4, 1999.
- Williams, Michael Wayne *v.* State, CR 97-1040 (Per Curiam), affirmed March 11, 1999.
- Yisrayl *v.* Huckabee, 98-1025 (Per Curiam), Pro Se Motion to File Handwritten Brief and Pro Se Motion for Appointment of Counsel denied February 25, 1999.

Appointments to
Committees



Alphabetical
Headnote
Index



HEADNOTE INDEX

ADMINISTRATIVE LAW & PROCEDURE:

Statutory interpretation by agency, highly persuasive. *Weiss v. Chem-Fab Corp.*, 21
Appellate review, court's role. *Brown v. Arkansas State HVACR Lic. Bd.*, 34
Appellate review, preservation of issues. *Id.*
Notice of hearing, statutory requirement satisfied. *Id.*
Limitations argument not presented to board, issue not preserved. *Id.*
Failure of board chairman to recuse, issue not preserved. *Id.*
Appellant did not pursue statutory procedure, issue not considered. *Id.*
Agency interpretation of rules, may be rejected if contrary to plain meaning of regulation. *Burlington Indus. v. Pickett*, 515

ADVERSE POSSESSION:

Must be proved, mere possession not enough. *Kinhead v. Spillers*, 60
Setting forth defense does not defeat jurisdiction, transfer to circuit court on ejection theory premature. *Id.*

APPEAL & ERROR:

Motion for rule on clerk, good cause for granting. *Haire v. State*, 48
Belated appeal denied where appellant failed to show good cause for failure to comply with procedure. *Raines v. State*, 49
Chancery cases, standard of review. *Office of Child Support Enforcem't v. Eagle*, 51
Notice of appeal may be invalid for failure to include relevant statement, omission renders notice voidable until annulled. *Dugal Logging, Inc. v. Arkansas Pulpwood Co.*, 55
Challenge to appeal, may be made prior to lodging of record on appeal. *Id.*
Appellant's motion to dismiss not timely filed, motion denied. *Id.*
Argument raised on appeal, must first have been raised at trial. *Marta v. State*, 67
Statute never brought up at trial, issue procedurally barred. *Id.*
Motion to file belated appeal, remanded. *Kirby v. State*, 82
Matter remanded to allow trial court to settle record. *Poyner v. Arkansas Contractors Licensing Bd.*, 83
Sufficiency-of-evidence arguments considered first. *Skiver v. State*, 86
Conclusory arguments not considered. *Id.*
Issue not considered for first time on appeal. *Evans v. Harry Robinson Pontiac-Buick, Inc.*, 155
Dismissal of appellee appropriate, trial court affirmed. *Id.*
Order rendered in absence of jurisdiction is void *ab initio*, cannot be incorporated by reference into subsequent order. *Slaton v. Slaton*, 211
Review of chancery cases, when reversed. *Id.*
Trial court's conclusion that later order incorporated child-support & custody terms of earlier order was clearly erroneous. *Id.*
Law of case, doctrine discussed. *Id.*
Cross-appeal should have been filed, appellee's request for affirmative relief not considered. *Id.*

- Argument unsupported by authority, supreme court will not research point. *Barr v. State*, 220
- Unsupported assignments of error not considered. *Nash v. Estate of Swaffar*, 235
- Law of case, doctrine discussed. *Id.*
- Law of case, appellant bound by, probate court affirmed. *Id.*
- Argument not presented at trial, not addressed on appeal. *Tucker v. State*, 244
- Timely filing of record, effect of subsequent payment of fee. *D.B. Griffin Warehouse, Inc. v. Sanders*, 264
- Record considered filed as of date of tender. *Id.*
- Period for correcting errors in form & paying filing fee may be longer than seven days, motion to dismiss for lack of jurisdiction denied. *Id.*
- Motion for belated appeal, good cause for granting. *Pack v. State*, 268
- Motion for rule on clerk, denied. *Reaves v. Farm Bureau Ins. Co.*, 269
- Motion to recall mandate denied, no timely constitutional challenge to Ark. R. Crim. P. 5.5. *State v. Earl*, 271
- Arguments not considered without authority or convincing argument. *Mayo v. State*, 275
- Arguments not preserved at trial, ruling of trial court affirmed. *Swanigan v. State*, 285
- Motion for rule on clerk, good cause for granting. *Hussey v. State*, 309
- Moot case, when merits reached by supreme court. *Chatman v. State*, 323
- Issue preserved for review, counsel clearly objected to hearing. *Id.*
- Interlocutory appeal, appropriate for supreme court to consider denials of motions to dismiss. *Hale v. State*, 345
- Arguments not preserved for review, trial court affirmed. *J.C.S. v. State*, 364
- Request to use one abstract in both cases, granted. *Mary Kay, Inc. v. Isbell*, 374
- Request to be allowed to correct nonconforming exhibit, denied. *Id.*
- Motion to strike exhibits, granted. *Id.*
- Motion to strike exhibits to abstract, granted in part. *Id.*
- Motion to strike exhibits to abstract, denied in part. *Id.*
- Motion to strike Editor's notes, granted. *Id.*
- Chancery cases, standard on review. *Campbell v. Campbell*, 379
- Civil cases, burden of proof. *Hamm v. Office of Child Support Enforcem't*, 391
- Standard on review, when chancellor reversed. *Id.*
- Argument not made below, point summarily affirmed. *Burns v. First Nat'l Bank*, 406
- Mootness, state senator's nonparticipation in appeal did not diminish interest of appealing board & commission. *State Bd. of Workforce Educ. v. King*, 409
- Chancery cases, standard of review. *Id.*
- Assignments of error not addressed, abstract inadequate. *Allison v. Long*, 432
- Motion for rule on clerk, good cause for granting. *Green v. State*, 435
- Motion to be relieved as counsel, denied & remanded to settle record. *Thompson v. State*, 436
- Petition for review, treated as if originally filed in supreme court. *Baker v. Frozen Food Express Transp.*, 451
- Petition for review, appeal treated as if originally filed in supreme court. *Lewis v. State*, 469
- Abstracting requirements, bare essentials. *Warnock v. Warnock*, 506
- Trial transcript, supreme court will not examine to reverse. *Id.*
- Trial transcript, did not contain all necessary orders. *Id.*
- Sufficiency of record, appellant's burden. *Id.*

Appellate review, limited to record as abstracted. *Id.*
Constitutional issue, not addressed if not brought to trial court's attention. *Id.*
Petition for review, case considered as if originally filed in supreme court. *Burlington Indus. v. Pickett*, 515
Ark. Sup. Ct. R. 6-1, pleadings with certified exhibits treated as record. *Dillard v. Keith*, 521
Motion for rule on clerk to file mandamus petition, without record court had no jurisdiction, motion dismissed. *Id.*
Chancery cases, *de novo* review. *Newberry v. Scruggs*, 570
Claim of improper conviction of felony murder, petitioner was aware of charge & could have challenged felony information at time of trial. *Pitts v. State*, 580

ATTORNEY & CLIENT:

Intervention of former attorney to challenge client's position, supreme court not presented with authority for argument. *Nash v. Estate of Swaffar*, 235
Professional conduct, trial court did not err in refusing to allow appellant-attorney to participate in hearing on ownership of certificates of deposit. *Id.*
Ineffective-assistance claim, showings necessary to prevail. *Trimble v. State*, 437
Ineffective-assistance claim, reasonable-probability test. *Id.*
Ineffective-assistance claim, appellant's counsel did not perform deficiently by failing to make meritless objection. *Id.*
Ineffective-assistance claim, no merit to argument concerning attorney's failure to object to testimony of witnesses prosecutor had made commitment not to use. *Id.*
Trial tactics & strategy, outside purview of Ark. R. Crim. P. 37. *Id.*
Contingent fees, sharing with former spouse. *McDermott v. McDermott*, 557

BAR APPLICATION:

Motion to waive strict enforcement of bar application deadline denied. *In Re: Elmer*, 266

BUSINESS & COMMERCIAL LAW:

Deceptive Trade Practices Act, statutory language not too vague for enforcement. *State v. R&A Investment Co.*, 289

CERTIORARI:

Extraordinary writ, when granted. *Cooper Communities, Inc. v. Circuit Court of Benton County*, 136
Petition for writ denied, petitioners failed to pursue other adequate remedies at law. *Id.*
Petition for writ denied, circuit court lacked jurisdiction to dismiss case, petitioners failed to pursue remedies. *Id.*

CIVIL PROCEDURE:

Issuance of preliminary injunction, posting of security, discretionary with court. *Cardinal Freight Carriers, Inc. v. J.B. Hunt Transp. Servs., Inc.*, 143
Trial court did not require appellee to post bond, no error found. *Id.*
Service of process, insufficiency of. *Hamm v. Office of Child Support Enforcem't*, 391
Insufficient service of process, defense waived. *Id.*
Appointment of guardian *ad litem* unnecessary, appellant represented throughout proceedings. *Id.*
Counterclaims, compulsory nature discussed. *Allison v. Long*, 432

Pleading amended by supplemental pleading to assert counterclaim, chancellor properly denied appellant's motion to dismiss. *Id.*

Posttrial motion, held untimely where filed outside ten-day period specified in rules. *Home Mut. Fire Ins. Co. v. Hampton*, 522

Facsimile transmission, evidence of reception required. *Id.*

Appellant's posttrial motion & notice of appeal were untimely, appellee's motion to dismiss appeal granted. *Id.*

Ark. R. Civ. P. 36, not applicable where appellee never filed requests for admission. *Looney v. Looney*, 542

CONSTITUTIONAL LAW:

Sovereign immunity, prohibition of suits against state discussed. *Brown v. Arkansas State HVACR Lic. Bd.*, 34

Sovereign immunity, preserved within Arkansas Civil Rights Act. *Id.*

Sovereign immunity, appellant effectively named State in civil-rights claim by naming appellee board, trial court did not err in dismissing claim. *Id.*

Local & special legislation distinguished, Arkansas statutes presumed constitutional. *Hall v. Tucker*, 112

Constitutionality of statute that applies to only one area of state, rational-basis standard of review. *Id.*

Rational basis existed for law affecting border school districts, law not arbitrary & capricious. *Id.*

Appellant's allegations did not undermine or invalidate legitimate purposes behind statute, appellant failed to meet burden of proof. *Id.*

Due Process Clause, prosecution not required to prove nonexistence of all affirmative defenses. *Jones v. State*, 191

Harmless-error analysis, erroneous denial of defendant's opportunity to impeach witness subject to. *Id.*

Right to counsel, discussed. *Mayo v. State*, 275

Right to counsel, when criminal defendant may represent himself. *Id.*

Waiver of right to counsel, how established. *Id.*

Waiver of right to counsel, whether intelligently made. *Id.*

Waiver of right to counsel, determination whether defendant is competent to represent himself. *Id.*

Right to counsel, defendant's competency in issue, trial court properly denied appellant right to represent himself. *Id.*

Denial of right of self-representation, not amenable to harmless-error analysis. *Id.*

Double Jeopardy Clause, protection afforded. *Hale v. State*, 345

Dual-sovereignty doctrine, discussed. *Id.*

Dual-sovereignty doctrine, when inapplicable. *Id.*

Dual-sovereignty doctrine, applicable to appellant's case. *Id.*

Immunity, federal government may prosecute defendant given immunity from state government if evidence obtained from source independent of protected statements. *Id.*

Immunity, appearance of deputy prosecutor's father-in-law's at federal trial where appellant testified too remote for State's prosecution to be tainted by immunized federal testimony. *Id.*

- Immunity, mere cooperation between state & federal authorities occurred in appellant's case. *Id.*
- Immunity, credibility determination on prosecutor's averment regarding transcript of immunized testimony left to trier of fact. *Id.*
- Immunity, supreme court affirmed trial court's ruling that state prosecution of appellant was not barred by federal grant of immunity. *Id.*
- Federal preemption, doctrine discussed. *Id.*
- Federal preemption, presumption that state's powers are not superseded by federal laws. *Id.*
- Federal preemption, burden on moving party to prove congressional intent. *Id.*
- Federal preemption, limitations on authority of Independent Counsel. *Id.*
- Federal preemption, state prosecution of appellant not preempted by Independent Counsel Reauthorization Act. *Id.*
- Double jeopardy, overruling necessity required for court to grant mistrial without barring subsequent prosecution. *Id.*
- Double jeopardy, trial court has discretion to determine whether overruling necessity requires mistrial. *Id.*
- Appellant's illness was overruling necessity justifying mistrial, double jeopardy did not prevent retrial. *Id.*
- Separation of powers, state senator forbidden to exercise power of executive branch by participation on appellant board & commission. *State Bd. of Workforce Educ. v. King*, 409
- Separation of powers, legislative power makes but does not enforce laws. *Id.*
- Separation of powers, legislator's simultaneous service in state Senate & on appellant board & commission violated Arkansas Constitution. *Id.*
- Unambiguous act or constitutional amendment, court will not adopt interpretation that leads to absurd result. *Yarbrough v. Witty*, 479
- Substantial compliance with constitutional provisions conferring power to initiate or refer law to voters required, rationale applies equally to county & municipal initiative & referendum powers. *Id.*
- Ark. Const. amend. 7, liberal construction. *Id.*
- Ark. Const. amend. 7, use of different measuring race will not necessarily do violence to intent of Amendment. *Id.*
- Ark. Const. amend. 7, signatures required. *Id.*
- Petition fell short of signatures required, appellant precluded from submitting further signatures. *Id.*
- Zero-count theory, properly rejected by trial court. *Id.*
- Ark. Const. amend. 7, holding affirmed that appellant's failure to submit more signatures or offer proof of rejected signatures deprived her of right to prevail. *Id.*

CONTEMPT:

- Show-cause order issued. *Collins, Kingrale v. State*, 81
- Order issued. *Poyner v. Arkansas Contractors Licensing Bd.*, 83
- Order issued. *Collins, Kingrale v. State*, 263
- Review of, when finding reversed. *Burns v. First Nat'l Bank*, 406

CONTRACTS:

- Rescission of instruments, legal & equitable remedies discussed. *Phelps v. U.S. Life Credit Life Ins. Co.*, 257

Cancellation of instrument was appellee's objective in seeking rescission, circuit court did not err in transferring case to chancery court. *Id.*
 Unconscionability, test for determining. *State v. R&A Investment Co.*, 289

CORPORATIONS:

Proxy votes for nonprofit organizations, applicable statute. *Glover v. Overstreet*, 1
 Terms of Association's articles or bylaws not complied with, board powers must be transferred to members before taking action to remove incumbent directors. *Id.*
 Ouster of entire board, Association had no existing bylaw that would permit such removal. *Id.*
 Directors, removal of. *Id.*
 Directors, results of illegal removal of. *Id.*
 Removal of directors, requirements of Association not met. *Id.*
 Corporate governance & operation, general policy of courts. *Id.*
 Appellant members had opportunity to remedy errors, trial court affirmed. *Id.*
 Trade secrets, injunction to prevent misappropriation. *Cardinal Freight Carriers, Inc. v. J.B. Hunt Transp. Servs., Inc.*, 143
 Breach of contract, remedy by injunction. *Id.*
 Arkansas Trade Secrets Act, information subject to protection. *Id.*
 Arkansas Trade Secrets Act, secrets contained in confidential agreement signed by employees protected by. *Id.*
 Arkansas Trade Secrets Act, trial court did not err in finding appellee protected by. *Id.*
 Arkansas Trade Secrets Act, when injunction may issue. *Id.*
 Appellant-employees servicing same customers serviced when employed by appellee, evidence sufficient to show threatened or inevitable misappropriation of trade secrets. *Id.*

COURTS:

Motion for clarification granted. *State v. Robbins*, 377
 Precedent, historical reluctance to overturn. *Zinger v. Terrell*, 423
 Precedent, justification for changing common law. *Id.*
 Precedent, previous common law on relitigation of issue of culpability after conviction overruled. *Id.*
 Precedent, holding that acquittal in murder trial does not bar later civil proceeding left intact. *Id.*

CRIMINAL LAW:

Felony conviction by accomplice testimony, test for corroborating evidence. *Marta v. State*, 67
 Accomplices, factors considered in connecting accomplice to crime. *Id.*
 Possession of stolen property, consideration in determining whether evidence tended to connect accused with crime. *Id.*
 Appearance of word "use" in aggravated-robbery instruction, appellant not prejudiced by refusal to modify verdict form. *Skiver v. State*, 86
 Capital murder, defendant does not have to prove affirmative defense until prosecution meets burden on charged offense. *Jones v. State*, 191
 Burden of proof in capital case, not necessary for prosecution to show appellant took active part in killing where he participated in robbery. *Id.*
 Felony murder, defendant need only have requisite intent to commit underlying felony. *Id.*

Defense of duress, requirements. *Barr v. State*, 220
Rape, uncorroborated testimony of victim sufficient to sustain conviction. *Russey v. State*, 401
Sentence suspended, differs from suspended imposition of sentence. *Lewis v. State*, 469
Sentencing, guilty plea entered pursuant to probation terms under First Offenders Act, no adjudication of guilt or sentence imposed. *Id.*
Revocation of probation, defendant may be sentenced to term of imprisonment larger than term of probation. *Id.*
Appellant violated probation, circuit court was authorized to impose sentence that could have been originally given. *Id.*
Revocation proceeding, burden of proof. *Id.*
Claim of unlawful interception & recording supported by evidence, trial court's decision not clearly against the preponderance of the evidence, revocation of probation affirmed. *Id.*
Sentencing, relevancy of victim-impact evidence. *Walls v. State*, 490
Sentencing, relevant evidence, bench trial different from jury trial. *Id.*
Sentencing, bench trial, subsequent objections to testimony not necessary. *Id.*
Bench trial, continuous objections to same testimony not necessary, issue preserved for review. *Id.*
Evidence, introduction of after objections overruled. *Id.*
Cross-examination of witness after objections overruled, objection not waived. *Id.*
Sentencing, evidence of another crime cloaked as victim-impact evidence, evidence irrelevant & prejudicial. *Id.*
Sentencing, when evidence of prior uncharged crime admissible. *Id.*
Sentencing, evidence of prior uncharged crime inadmissible. *Id.*
Sentencing, circuit judge abused discretion, reversed & remanded. *Id.*

CRIMINAL PROCEDURE:

Information, when State may amend. *Skiver v. State*, 86
Information, amendment adding habitual-offender allegation does not change nature or degree of crime. *Id.*
Information, trial court did not err in allowing State to amend to include habitual-offender allegation. *Id.*
Sentencing, additional relevant evidence admissible. *Id.*
Sentencing, trial court did not abuse discretion in allowing evidence of appellant's attempted escape. *Id.*
Postconviction relief, unavailable when judgment & sentence void. *State v. Circuit Court of Lincoln County*, 122
Postconviction relief, petition must be filed in sentencing court. *Id.*
Postconviction relief, nonsentencing circuit court without jurisdiction over Rule 37 petition. *Id.*
Postconviction relief, sentencing court should decide Rule 37 petitions. *Id.*
Conditional plea of guilty, general rule & exception. *Barnett v. State*, 165
Conditional plea of guilty, strict compliance with writing requirement. *Id.*
Conditional plea of guilty, first plea statement did not strictly comply with Ark. R. Crim. P. 24.3(b). *Id.*

- Conditional plea of guilty, second plea statement did not strictly comply with Ark. R. Crim. P. 24.3(b). *Id.*
- Orders inconsistent with appellant's assertion that he entered conditional plea, appeal dismissed. *Id.*
- Physical restraints in courtroom, trial court's discretion. *Tucker v. State*, 244
- Physical restraints in courtroom, general rules. *Id.*
- Physical restraints in courtroom, when use upheld. *Id.*
- Physical restraints in courtroom, when no prejudice results. *Id.*
- Offense committed during confinement, no prejudice where defendant tried wearing prison garb. *Id.*
- Prison clothes & restraints in courtroom, trial court did not err in denying appellant's motion to wear civilian clothes & not be restrained. *Id.*
- Voluntariness of statement, standard of review. *Godbold v. State*, 251
- Statement voluntarily given to parole officer, trial court did not err in admitting. *Id.*
- Denial of motion for continuance, when reversed. *Id.*
- Motion for continuance denied, no abuse of discretion found. *Id.*
- No pleadings filed to challenge Sex & Child Offender Registration Act's applicability, Ark. R. Crim. P. 33.3 applicable. *J.C.S. v. State*, 364
- Ark. R. Crim. P. 37, purpose of. *Bohanan v. State*, 367
- Ark. R. Crim. P. 37, "in custody" construed. *Id.*
- Postconviction relief, legal custody maintained over paroled inmate not synonymous with "in custody." *Id.*
- Issues, when moot. *Id.*
- Rule 37 petition, rendered moot by appellant's release from custody. *Id.*
- Postconviction relief, points settled on direct appeal may not be reargued. *Trimble v. State*, 437
- Postconviction relief, no difference between ineffective-assistance claim raised in Rule 37 petition & one decided on direct appeal. *Id.*
- Writ of error *coram nobis*, when circuit court can entertain. *Pitts v. State*, 580
- Writ of error *coram nobis*, when allowed. *Id.*
- Writ of error *coram nobis*, newly discovered evidence not basis for relief. *Id.*
- Writ of error *coram nobis*, newly developed scientific-testing ground raised by petitioner insufficient to warrant. *Id.*
- Writ of error *coram nobis*, categories of error addressed by. *Id.*
- Writ of error *coram nobis*, guidelines for consideration of petition. *Id.*
- Writ of error *coram nobis*, newly developed scientific-testing claim should be submitted to executive branch. *Id.*
- DAMAGES:**
- Award alleged to be excessive, standard of review. *Pearson v. Henrickson*, 12
- Amount awarded not excessive, trial court's denial of new-trial motion not clear & manifest abuse of discretion. *Id.*
- Action lies in law. *Kinkead v. Spillers*, 60
- EQUITY:**
- Clean-hands doctrine, discussed. *Cardinal Freight Carriers, Inc. v. J.B. Hunt Transp. Servs., Inc.*, 143
- Clean-hands defense, appellant had no right to invoke. *Id.*

ESTOPPEL:

- Parties precluded from rearguing issue of estoppel by law-of-case doctrine, party cannot reassert arguments dispensed with on first appeal. *Slaton v. Slaton*, 211
- Collateral estoppel, elements. *Zinger v. Terrell*, 423
- Collateral estoppel, person adjudged guilty of murder estopped from relitigating same issue in civil proceeding to take victim's property. *Id.*
- Collateral estoppel, elements necessary to establish. *Looney v. Looney*, 542

EVIDENCE:

- State sufficiently connected appellant to capital murder, denial of appellant's directed-verdict motion affirmed. *Marta v. State*, 67
- Medical examiner's testimony, when official who actually performed autopsy must appear at trial for cross-examination. *Id.*
- Contemporaneous-objection rule, purpose of. *Id.*
- Denial of cross-examination, prejudice must be shown. *Id.*
- Physician who performed autopsy unable to appear at trial, appellant failed to demonstrate prejudice. *Id.*
- Sufficiency of, test on appeal. *Skiver v. State*, 86
- Sufficient evidence that appellant rather than another person committed crime. *Id.*
- Substantial evidence to support aggravated-robbery conviction. *Id.*
- Excited-utterance exception to hearsay rule, application. *Id.*
- Excited-utterance exception to hearsay rule, admission of victim's statement to witness upheld. *Id.*
- Testimony of police officers not hearsay, offered to explain subsequent actions. *Id.*
- Opinion testimony by lay witnesses, personal-knowledge test. *Id.*
- Opinion testimony by lay witnesses, unnecessary for officer to see appellant carrying items. *Id.*
- Opinion testimony by lay witnesses, appellant failed to satisfy second requirement of Ark. R. Evid. 701. *Id.*
- Other crimes or wrongs, trial court's discretion. *Id.*
- Evidentiary rulings, trial court's discretion. *Id.*
- Relevancy, weight accorded trial court's ruling. *Id.*
- Prior bad acts reflecting consciousness of guilt, test for admissibility. *Id.*
- Trial court did not err in allowing "penitentiary" remark to remain in appellant's statement, any error in determination of probative value was harmless. *Id.*
- Motion to suppress, review of denial. *Mazepink v. State*, 171
- Challenge to sufficiency of, considered first on appeal. *Jones v. State*, 191
- Challenge to sufficiency of, factors on review. *Id.*
- Sufficient evidence to convict appellant of attempted aggravated robbery. *Id.*
- Bias of witness, trial court's wide discretion. *Id.*
- Impeachment of witness, trial court's error in refusing to allow was harmless. *Id.*
- Victim photographs, admissibility. *Id.*
- Victim photographs, other purposes warranting admission. *Id.*
- Victim photographs, when excluded. *Id.*
- Victim photographs, close-up photograph properly admitted because it assisted in identification. *Id.*

Court-ordered evaluation, claim of privilege is not defeated by inadvertent disclosure. *Barr v. State*, 220

Court-ordered evaluation was necessary material for trial court & prosecutors, claim of privilege not defeated by inadvertent disclosure. *Id.*

Admissibility of, relevance defined. *Id.*

Report & testimony properly excluded, trial court affirmed. *Id.*

Charge supported by substantial evidence, trial court's denial of appellant's directed-verdict motion affirmed. *Id.*

Jury has duty to weigh, witness credibility also for jury to determine. *Id.*

Duty of supreme court, substantial evidence discussed. *Id.*

Charge supported by substantial evidence, trial court's denial of appellant's directed-verdict motion affirmed. *Id.*

Other crimes, when admissible. *Id.*

Admission under Ark. R. Evid. 404(b), standard of review. *Id.*

Other crimes, properly admitted. *Id.*

Introduction of, objections must be made at first opportunity. *Swanigan v. State*, 285

Exclusionary rule, argument not timely raised. *Id.*

Sufficiency of, standard of review. *Russey v. State*, 401

Substantial evidence showed victim had been raped by appellant, trial court's rejection of appellant's directed-verdict motion affirmed. *Id.*

Admission of, when ruling reversed. *Grummer v. Cummings*, 447

Balancing probative value against prejudice, trial judge's discretion. *Id.*

Trial court abused discretion in admitting seat-belt-nonuse evidence, reversed & remanded. *Id.*

Substantial evidence, standard of review. *D.B. Griffin Warehouse, Inc. v. Sanders*, 456

Substantial evidence, supreme court could not say there was no evidence of existence of any defect or hazardous condition at site of accident. *Id.*

Sentencing, victim-impact evidence governed by rules of admissibility. *Walls v. State*, 490

Sentencing, relevant victim-impact evidence. *Id.*

Proof of intent, must usually be inferred. *Jarrett v. State*, 526

Ark. R. Evid. 404(b), evidence offered under must be independently relevant. *Id.*

Evidence admitted under Ark. R. Evid. 404(b), not abuse of discretion. *Id.*

Admission of, when trial court's decision reversed. *Id.*

Testimony more probative than prejudicial, no abuse of discretion found. *Id.*

Review of evidentiary errors, abuse-of-discretion standard. *Lovell v. Beavers*, 551

Evidentiary rulings, trial court's broad discretion. *Id.*

Relevant evidence, when trial court may exclude. *Id.*

Exclusion of medical records, trial court did not abuse discretion. *Id.*

INSURANCE:

Policies, construction of. *Phelps v. U.S. Life Credit Life Ins. Co.*, 257

Policies, construction when ambiguous. *Id.*

Policy provision ambiguous, chancellor erred in not construing it against appellee. *Id.*

Underinsured motorist coverage, policy considerations. *Hartford Ins. Co. v. Mullinax*, 335

Underinsurance carrier, need not intervene in every lawsuit between its insured & tortfeasor. *Id.*
Subrogation statute, trial court erred in deciding that statute voided all common-law rights. *Id.*

JUDGES:

Recusal, presumption of impartiality. *Trimble v. State*, 437
Recusal, trial court's discretion. *Id.*
Disqualification, party seeking bears burden of proving bias or prejudice. *Id.*
Recusal, denial of motion for recusal of circuit judge affirmed. *Id.*

JUDGMENT:

Summary judgment, factors on review. *Estate of Donley v. Pace Indus.*, 101
Summary judgment, trial court did not err in granting. *Id.*
Review of summary-judgment order, principles used. *Hall v. Tucker*, 112
Summary judgment, standard of review. *Evans v. Harry Robinson Pontiac-Buick, Inc.*, 155
Summary judgment, affirmed. *Id.*
Writings, when incorporated by reference into document. *Slaton v. Slaton*, 211
Summary judgment, when appropriate. *State v. R&A Investment Co.*, 289
Summary judgment, denial of motion neither reviewable nor appealable. *Hartford Ins. Co. v. Mullinax*, 335
Material question of fact remained, breach-of-contract claim not ripe for summary judgment. *Id.*
Order of summary judgment reversed, appellant not required to intervene in negligence action or else be bound by bogus judgment. *Id.*
Summary judgment correctly granted for wrong reason, trial court affirmed. *Id.*
Prevailing view adopted, prior criminal conviction bars relitigation of same issue for same defendant in civil court. *Zinger v. Terrell*, 423
Construction of, determinative factor. *Lewis v. State*, 469
Res judicata, when relitigation in subsequent suit barred. *Looney v. Looney*, 542
Final judgment, definition. *Id.*
Finality, initial order of partition not final. *Id.*

JURISDICTION:

Tested on pleadings. *Yell County Tel. Co. v. Taylor*, 108
Definition. *State v. Circuit Court of Lincoln County*, 122
Judgment by circuit court outside judicial district where charges filed is void, lack of jurisdiction cannot be waived. *Id.*
Adequacy of legal remedy, chancery court not rendered wholly without jurisdiction. *Evans v. Harry Robinson Pontiac-Buick, Inc.*, 155
Equity not without jurisdiction, matter properly in chancery court. *Id.*
Defects in, supreme court must raise. *Chatman v. State*, 323
Courts, when given authority to act. *Id.*
Probate judge without jurisdiction, order of commitment void. *Id.*
Circuit & chancery courts, concurrent jurisdiction. *Burns v. First Nat'l Bank*, 406
Complaint correctly filed in chancery court, chancery court properly exercised subject-matter jurisdiction over entire action. *Id.*

JURY:

- Instructions, presumption that jury obeyed. *Pearson v. Henrickson*, 12
- Jury properly instructed to consider evidence in determining value of remaining leasehold interest, verdict rendered on general-verdict form is indivisible entity. *Id.*
- Instructions, when given. *Jones v. State*, 191
- Instructions, use of non-model instructions. *Id.*
- Instructions, trial court did not err in denying appellant's requested modification of AMCI 2d 401. *Id.*
- Instructions, unnecessary to give where substance covered by other instructions. *Id.*
- Instructions, proffered instruction not relevant to case. *Id.*
- Instructions, refusal to instruct on "mere presence" not reversible error. *Id.*
- Instructions, trial court did not err in refusing to instruct on second-degree murder. *Id.*
- Instructions, no abuse of discretion in rejection of proffered instruction on underlying felony that deleted reference to "accomplice." *Id.*
- Use of nonmodel instructions, when proper. *Mayo v. State*, 275
- Model instructions, properly stated law. *Id.*

LANDLORD & TENANT:

- Waiver, defined. *Pearson v. Henrickson*, 12
- Appellees specifically reserved leasehold rights, no waiver of right to recover damages for loss of value to leasehold interest. *Id.*
- Surrender of premises under threat of legal process, surrender not considered voluntary. *Id.*
- Consent order agreed to in face of imminent eviction, surrender of premises involuntary. *Id.*
- Surrender of premises involuntary, loss of leasehold interest properly considered as element of damages. *Id.*
- Loss of value to leasehold interest, correct measure of damages. *Id.*
- Value of improvements, may be considered in determining value of remaining leasehold interest. *Id.*
- Ultimate issue was value of unexpired lease, evidence provided competent basis for jury's verdict. *Id.*

LICENSES & PERMITS:

- Building permits not revoked, trial court affirmed. *Smith v. City of Arkadelphia*, 42
- Building permit, no contract between city & appellant. *Id.*

LIMITATION OF ACTIONS:

- Complaint properly stated cause of action for outrage, complaint timely filed, reversed & remanded. *McQuay v. Guntharp*, 534

MARRIAGE:

- Marital property, discussed. *McDermott v. McDermott*, 557
- Marital property, defined by Act 705 of 1979. *Id.*
- Marital property, included pension plan benefits. *Id.*
- Marital property, "expectancy" discussed. *Id.*
- Marital property, enforceable contract rights are property rights. *Id.*
- Marital property, enforceable contract rights exist in contingency-fee agreements & are property rights. *Id.*

Marital property, inability to place value on asset unpersuasive. *Id.*
Marital property, valuation of contingency-fee contracts. *Id.*
Contingency-fee contracts acquired during marriage were marital property, marital share of proceeds received under contingency-fee contracts limited to portion of fee attributable to work done during marriage. *Id.*

MASTER & SERVANT:

Question of agency versus independent contractor, factors considered. *D.B. Griffin Warehouse, Inc. v. Sanders*, 456
Finding of agency could only have been based on suspicion or conjecture, evidence required ruling that deceased's employer was independent contractor. *Id.*
Trial court erred in not directing verdict in favor of appellant on deceased's employer's status as independent contractor. *Id.*

MISTRIAL:

When granted, standard on review. *Marta v. State*, 67
Any prejudice cured by admonition, denial of motion for mistrial affirmed. *Id.*

MOTIONS:

Motion to dismiss, review of decision on. *Brown v. Arkansas State HVACR Lic. Bd.*, 34
Directed verdict, factors on review. *Marta v. State*, 67
Directed verdict, substantial evidence discussed. *Barr v. State*, 220
Directed verdict, treated as challenges to sufficiency of evidence. *Russey v. State*, 401
Directed verdict, review of denial. *D.B. Griffin Warehouse, Inc. v. Sanders*, 456
Directed verdict, failure to direct verdict on deceased employer's status as independent contractor required reversal & remand for new trial. *Id.*
To dismiss, review of. *McQuay v. Guntharp*, 534

MUNICIPAL CORPORATIONS:

Grant of license, reservation of right to impose reasonable police regulations implied. *Smith v. City of Arkadelphia*, 42
Police power, possibility of public harm, sufficient basis for municipality to regulate using police power. *Id.*
Property, not exempt from operation of subsequent ordinances. *Id.*
Exercise of police power legitimate, trial court not in error. *Id.*
Effective date of ordinance had rational basis, application of ordinance was valid exercise of police powers. *Id.*

NEGLIGENCE:

Imputed or vicarious liability, tied to negligence of employee. *Hartford Ins. Co. v. Mullinax*, 335
Duty of care, issue for trial court. *D.B. Griffin Warehouse, Inc. v. Sanders*, 456
Duty of care, independent contractor not required to warn of obvious hazards that are integral part of work. *Id.*
Culpable negligence, definition. *Newberry v. Scruggs*, 570
Chancellor's finding that abstract company committed culpable negligence not clearly erroneous. *Id.*

NEW TRIAL:

- Motion proper, argument preserved for appeal. *Pearson v. Henrickson*, 12
Appellate review after denial, standard of review. *Id.*
Challenge to jury's verdict on damages, proper standard of review. *Id.*

PARENT & CHILD:

- Responding court may vary amount of support obligation in underlying order, without specific provision arrearages continue to accumulate under original order. *Office of Child Support Enforcem't v. Eagle*, 51
Order of responding court did not specifically modify or nullify underlying support order, arrearages continued to accumulate pursuant to underlying support order. *Id.*
Final divorce decree superseded temporary order, payments made by appellant were voluntary. *Slaton v. Slaton*, 211
Arguments barred from reconsideration by law-of-case doctrine, trial court's ruling affirmed. *Id.*
Assignment of child-support rights, determination of real party in interest, immaterial whether custodial parent receiving assistance. *State Office of Child Support Enforcem't v. Terry*, 310
Assignment of child-support rights, no legitimate reason for distinguishing custodial parents who receive public assistance from those who do not. *Id.*
Assignment of child-support rights, chancellor erred in concluding that agency was representing appellee's ex-wife, client was State. *Id.*
Assignment of child-support rights, chancellor's ruling prohibiting agency attorneys from acting on behalf of assigned rights was erroneous. *Id.*
Assignment of child-support rights, no conflict of interest in permitting agency to enforce obligation owed to State, reversed & remanded. *Id.*
Custody, modification of. *Campbell v. Campbell*, 379
Custody, modification of, evidence allowed. *Id.*
Change of custody ordered by chancellor, no material change of circumstances had occurred, appellant should have retained custody. *Id.*
Change of custody, attitudes & wishes of child may be considered. *Id.*
Change of custody, when warranted. *Id.*
Change of custody, chancellor's decision reversed. *Id.*
Change of custody, promiscuous conduct by parents not condoned. *Id.*
Paternity cases, ordering paternity tests. *Hamm v. Office of Child Support Enforcem't*, 391
Paternity tests ordered, appellee ostensibly presented *prima facie* case. *Id.*
Paternity tests ordered, appellant rebutted *prima facie* case. *Id.*
Chancellor found sufficient evidence to prove paternity, chancellor's findings not clearly erroneous. *Id.*
Putative father below age of consent, liability for child resulting from union. *Id.*
General Assembly could have excluded minor parents from responsibility for paternity and child support, no such provision made. *Id.*
Child-support obligation, modification of. *Id.*

PARTITION:

- Jurisdiction, limits upon. *Kinkead v. Spillers*, 60
Statutory joinder requirement not met, order reversed with instructions to require joinder of certain parties. *Id.*

Decree ordering partition in kind or by sale, not final order. *Looney v. Looney*, 542
Initial order not affected by Ark. R. Civ. P. 59 & 60(b). *Id.*
Order of partition not final until chancellor's judgment confirming commissioner's report was issued, chancellor was free to reconsider & modify initial order. *Id.*

PHYSICIANS & SURGEONS:

Medical malpractice, negligent acts. *McQuay v. Guntharp*, 534
Medical injuries, need for expert testimony. *Id.*
Medical injuries, ordinary negligence & malpractice distinguished. *Id.*
Medical injury, what constitutes. *Id.*
Improper touching alleged, appellee physician's actions did not constitute rendering of professional services. *Id.*

PRINCIPAL & AGENT:

Agency relationship discussed. *Newberry v. Scruggs*, 570
Chancellor should not have found agency relationship existed between appellants & abstract company, imputation of abstract company's negligence to appellants was clearly erroneous. *Id.*

PROHIBITION, WRIT OF:

Purpose, when appropriate. *Yell County Tel. Co. v. Taylor*, 108
Proper where trial court jurisdiction depends on question of law, petitioner's burden. *Id.*
Writ denied, respondent correctly granted plaintiffs' motion to require clerk to correct error, respondent had jurisdiction to hear action. *Id.*
When appropriate. *State v. Circuit Court of Lincoln County*, 122
Review confined to pleadings. *Id.*
Not proper remedy for appeal of denial of motion to dismiss, jurisdictional exception to general rule. *Id.*

PROPERTY:

Standing, appellant had none to appeal denial of participation on merits of ownership of certificates of deposit. *Nash v. Estate of Swaffar*, 235

PUBLIC HEALTH & WELFARE:

Medical assistance, recovery of ADHS expenditures. *Arkansas Dep't of Human Servs. v. Estate of Ferrel*, 297
Medical assistance, ADHS has absolute right to amount of Medicaid payments made. *Id.*
Medical assistance, statutory methods for ADHS recovery of expended funds. *Id.*
Medical assistance, record indicated appellee failed to notify ADHS of settlement. *Id.*
Medical assistance, legislature chose not to subject ADHS to traditional subrogation principles, reversed & remanded. *Id.*
Involuntary commitment, probable-cause hearing mandatory. *Chatman v. State*, 323
Involuntary commitment, probable-cause hearing not held. *Id.*
Involuntary commitment, failure to conduct probable-cause hearing was fatal defect, order directing treatment reversed & case dismissed. *Id.*

PUBLIC OFFICERS & EMPLOYEES:

General Assembly, members ineligible for civil office. *State Bd. of Workforce Educ. v. King*, 409

Civil office defined, constitutional protection against conflicts of interest. *Id.*
Civil office, position on Board of Workforce Education constituted. *Id.*
Civil office, position on Capitol Arts & Grounds Commission constituted. *Id.*
Civil office, nonvoting status cannot cure illegality of legislative appointment to. *Id.*

SEARCH & SEIZURE:

Knock & announce, standing analysis. *Mazepink v. State*, 171
Legitimate expectation of privacy, appellant had standing to challenge legality of search. *Id.*
Legitimate expectation of privacy, encompassed right to expect privacy for appellant's family & invitees. *Id.*
No-knock entry, test for justification. *Id.*
Knock & announce, requirements. *Id.*
Knock & announce, mere technical compliance not sufficient. *Id.*
Knock & announce, time interval between announcement & forced entry insufficient to show constructive refusal to admit. *Id.*
Testimony based on general experience not sufficient to show exigent circumstances, officers' conduct violated Fourth Amendment. *Id.*
Violation of Fourth Amendment rights, exclusion of evidence was appropriate remedy. *Id.*
Execution of legally obtained warrant directly connected to illegal entry, denial of motion to suppress reversed & case remanded. *Id.*
Taking of blood, court order not required where drawing is voluntary. *Russey v. State*, 401
Taking of blood, determination of voluntariness. *Id.*

STATE GOVERNMENT:

Board of Workforce Education, statutory duties. *State Bd. of Workforce Educ. v. King*, 409
Capitol Arts & Grounds Commission, statutory duties. *Id.*

STATUTES:

Constitutionality of, factors on review. *Night Clubs, Inc. v. Fort Smith Planning Comm'n*, 130
Due process standards, when law is unconstitutionally vague. *Id.*
Requirements of Ark. Code Ann. § 14-56-425 (Repl. 1998), previously interpreted. *Id.*
When statute not void for vagueness, court's interpretation of statute becomes part of statute. *Id.*
Code provision clearly construed, statute not void for vagueness. *Id.*
Ark. Code Ann. § 14-56-425 not unconstitutionally vague, circuit court's dismissal of appeal affirmed. *Id.*
Ark. Code Ann. § 23-79-107 inapplicable, case reversed & remanded. *Phelps v. U.S. Life Credit Life Ins. Co.*, 257
Construction, basic rule. *State v. R&A Investment Co.*, 289
Construction, basic rule. *State Office of Child Support Enforcem't v. Terry*, 310
Power to alter common law, statutes in derogation of common law strictly construed. *Hartford Ins. Co. v. Mullinax*, 335
Interpretation of, statute will not be interpreted to reach absurd conclusion. *Jackson v. State*, 530
Conviction for terroristic act, affirmed. *Id.*

SUBROGATION:

- Principles, when insurer's right arises. *Arkansas Dep't of Human Servs. v. Estate of Ferrel*, 297
- Insurance-company analogy not applicable to Arkansas Department of Human Services, ADHS role. *Id.*
- Equitable subrogation, doctrine discussed. *Newberry v. Scruggs*, 570
- Equitable subrogation, advance of money to pay off incumbrance on realty. *Id.*
- Chancellor erred by not applying principle of equitable subrogation, reversed & remanded. *Id.*

TAXATION:

- Exemptions, standard of review. *Weiss v. Chem-Fab Corp.*, 21
- Exemptions, claimant's burden. *Id.*
- Exemptions, "equipment" defined for purposes of gross-receipts tax. *Id.*
- Exemptions, chemicals constituted implements, tools, or devices of some degree of complexity. *Id.*
- Exemptions, chemicals had continuing utility. *Id.*
- Chemicals came within definition of "equipment" as used in exemption statute & tax regulation, ruling that appellee was entitled to exemption affirmed. *Id.*
- Exemptions, requirements for replacement purchases of machinery & equipment. *Id.*
- Exemptions, appellee failed to establish entitlement to exemption for replacement chemicals, ruling that appellee was entitled to exemption reversed. *Id.*

TRIAL:

- Trial court must control orderly progression of matters before it, motion *in limine* properly granted. *Hall v. Tucker*, 112
- Allegedly improper closing argument, factors on review. *Barr v. State*, 220
- Trial court in best position to decide issue of prejudice, mistrial discussed. *Id.*
- Mistrial, supreme court can declare error harmless where evidence of guilt overwhelming & error slight. *Id.*
- Mistrial, motion properly denied. *Id.*
- Mistrial drastic remedy, when proper. *Godbold v. State*, 251
- Admonishment cured potential prejudice, denial of motion for mistrial not abuse of discretion. *Id.*
- Court's prior rulings & decisions, reconsideration before final judgment. *Looney v. Looney*, 542

USURY:

- Definition, burden of proof. *Evans v. Harry Robinson Pontiac-Buick, Inc.*, 155
- Foreign state's law may be chosen to govern transaction, jurisdiction must bear reasonable relationship to transaction. *Id.*
- Foreign state's law governing transaction, determining whether choice-of-law state bears reasonable relationship to transaction. *Id.*
- Foreign state's law governed transaction, choice-of-law provision & interest charged valid. *Id.*
- Constitutional provisions, General Assembly's authority. *State v. R&A Investment Co.*, 289
- Attorney general's standing, State did not bring personal usury claim. *Id.*

State policy, purpose reflected in constitution & Deceptive Trade Practices Act. *Id.*
Attorney General had standing to enforce provisions of Deceptive Trade Practices Act,
reversed & remanded. *Id.*

WITNESSES:

Credibility, to be determined by jury. *Marta v. State*, 67
Conflicts in testimony, trial court not clearly erroneous in finding appellant's consent
to giving blood sample was voluntary. *Russey v. State*, 401

WORDS & PHRASES:

"Implement" defined. *Weiss v. Chem-Fab Corp.*, 21
"Competent" & "competent authority" defined. *Hale v. State*, 345

WORKERS' COMPENSATION:

Second Injury Fund not mentioned in statute providing for attorney's fees, denial of
motion for attorney's fees affirmed. *Furman v. Second Injury Fund*, 10
Abrogated "dual persona" doctrine, holding in *Thomas* case. *Estate of Donley v. Pace
Indus.*, 101
Abrogated "dual persona" doctrine, holding in *Thomas* case not extended. *Id.*
"Dual persona" doctrine unequivocally annulled by legislature, trial court did not err
in finding expansion of exception not warranted. *Id.*
Ark. Code Ann. § 11-9-105(a), appellants lacked standing to challenge constitutionality. *Id.*
Jurisdiction, overcoming rebuttable presumption. *Baker v. Frozen Food Express Transp.*, 451
Standard of review. *Id.*
Jurisdiction, statutory presumption. *Id.*
Jurisdiction, grounds considered by Commission. *Id.*
Jurisdiction, Commission had substantial evidence to determine it lacked jurisdiction
over appellant's claim. *Id.*
Standard of review. *Williams v. Prostaff Temps.*, 510
Causal connection between primary injury & additional injuries, Commission's
determination. *Id.*
Medical evidence, Commission's duty to weigh. *Id.*
Testimony of witnesses, Commission not required to believe. *Id.*
Factual findings, Commission not required to address every conceivable point of
contention. *Id.*
Subsequent abnormalities not causally related to workplace injury, finding supported by
substantial evidence. *Id.*
Standard of review. *Burlington Indus. v. Pickett*, 515
Commission Rule 30, policy. *Id.*
Commission rules, Commission's interpretation given great weight. *Id.*
Award of interest on incurred medical expenses was erroneous where expenses were not
identified or submitted for payment in accordance with Commission Rule 30, reversed
& remanded. *Id.*

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

—

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

ACTS:

ACTS BY NAME:

Arkansas Administrative
Procedures Act 39, 40, 41

Arkansas Civil Rights
Act 34, 37, 38

Arkansas Gross Receipts Act 23

Arkansas Nonprofit Corporation
Act of 1963 8

Arkansas Nonprofit Corporation
Act of 1993 3, 8

Arkansas Trade Secrets
Act 143, 144, 145, 146, 147,
149, 151, 152

Child Welfare Act 319

Deceptive Trade Practices Act
(DTPA) 290, 291, 292, 293,
295, 296, 297

Equitable School Finance System
Act of 1995 115

Federal Civil Rights Act 35, 38

First Offenders Act 469, 474, 475

Hospital Records Act of 1995 551,
552, 553, 556

HVACR Enabling Act 39

Independent Counsel
Reauthorization Act 348, 349,
358, 359, 360, 361

§ 594(a) 359

Medical Malpractice Act 538

Revised Uniform Reciprocal
Enforcement of Support Act
(RURESAS) 51, 52, 53, 54

Sex & Child Offender
Registration Act 364, 365,
366, 367

School Finance Act of 1984 115

Social Security Act, Title

IV-D 310, 317, 318, 319,
320, 321

Uniform Interstate Family

Support Act (UIFSA) 54, 314

Workers' Compensation Act 101,
104, 105

ARKANSAS ACTS:

Act 4 of 1941 417

Act 176 of 1963 8

Act 92 of 1971 290, 295

Act 346 of 1975 365, 366, 472,
473, 474, 475

Act 705 of 1979 557, 561, 564

Act 335 of 1987 341

Act 676 of 1987 568

Act 28 of 1989 324, 330, 331

Act 1167 of 1991 568

Act 587 of 1993 290, 295

Act 1180 of 1993 341

Act 1043 of 1997 410, 415

Act 1224 of 1997 334-A

CODES:

(See also RULES and STATUTES):

ARKANSAS CODE ANNOTATED:

4-1-105(1) 156, 161

4-28-201-224 3

4-28-212 1, 6

4-28-212(c)(1) 6

4-28-212(c)(4) 6

4-28-224 6

4-33-101-1701 8

4-33-808 8

4-75-601(2)(B) 152

4-75-601 - 607	145	6-11-106	410, 415
4-75-604	143, 147, 152	6-17-404	113, 114, 115, 116, 117, 118, 119, 120
4-75-601(4)	148	6-20-301 - 322	115
4-88-101 - 115	292	7-5-315	489
4-88-107	292	7-5-315(1)	489
4-88-107(a)	290, 295	8-6-205(a)(4)	533
4-88-107(a)(10) ...	290, 294, 295, 296	9-5-11	305
4-88-107(b)	290, 295	9-10-105	395
5-1-111(c)	530, 533	9-10-108(a)(1)	396
5-1-111(c)(3)	532, 533	9-10-108(a)(6)(A).....	392, 396
5-1-112	352	9-10-115	397
5-1-112(3)	350, 362, 363	9-12-314	218
5-2-208	222, 231	9-12-315	558, 559, 560, 562, 563, 565, 566, 567, 568, 569
5-2-208(a)	231	9-12-315(a)(1)(A).....	568
5-2-208(b)	231	9-12-315(a)(1)(B).....	568
5-2-403(a)	193, 203, 204	9-12-315(b)	568
5-2-403(b)	193, 203, 204	9-12-315(b)(6)	563
5-2-403(b)(1)	203	9-13-101(a)	388
5-2-403(b)(2)	203	9-14-109	314
5-2-406	193, 204, 205	9-14-201 - 240	321
5-3-201	198, 528	9-14-201(d)	393, 398
5-4-309(d)	476, 477	9-14-206	321
5-4-309(f)	470, 474, 476	9-14-206(c)	321
5-10-101	192	9-14-210 ...	311, 313, 314, 315, 321
5-10-101(a)(1) ...	196, 199, 202, 210	9-14-210(d) ...	310, 312, 313, 314, 315, 318
5-10-101(a)(3)	528	9-14-210(d)(1)	314
5-10-101(b) ...	192, 199, 200, 201, 202	9-14-210(d)(2)	310, 314, 315
5-12-102	94, 198	9-14-210(d)(3)	314
5-12-103	88, 97, 198	9-14-210(e)	312, 313, 318
5-13-310	531	9-14-210(e)(1)	314
5-13-310(a)	530, 531, 533	9-14-210(e)(2)	314
5-13-310(a)(1)	531	9-14-210(e)(3)	311, 314, 321
5-14-101(2)	405	9-14-212	321
5-14-101(9)	405	9-14-213	321
5-14-103	405	9-14-214	321
5-14-109	393	9-14-234	218
5-26-401	322	9-14-801 - 807	321
5-37-208	229	9-17-101 <i>et seq.</i>	314
5-37-208(b)	229	11-9-105(a) ...	101, 102, 103, 104, 106, 107
5-60-120(a)	471, 476, 478	11-9-107(e)	106
5-60-120(b)	478	11-9-517	519
5-60-120(c)(1)-(3)	478	11-9-707	452, 454
5-64-401	471	11-9-715	11
5-73-103	532		
5-73-103(a)	532		
5-73-103(a)(1)	532		

11-9-715(b)(1)	10, 11	16-123-105(c)	38
11-9-802(b)	518	17-25-312	39
11-9-809	517, 518	17-33-201	39
12-12-313	68, 78, 79, 80	17-33-203	39
12-12-313(a)	78	18-60-401	66
12-12-313(b)	79	18-60-401-426	66
12-12-313(c)	79	18-60-403(a)	66
12-12-313(d)(1)	79	18-60-412	544, 547
12-12-313(d)(2)	79	18-60-414	62, 544
12-12-313(d)(3)	79	18-60-414(a)	547
12-12-901-920	365	18-60-416	547
14-14-914	481, 482, 488	18-60-416(c)	543, 547, 548
14-14-914(c)	483	18-60-418	61
14-14-915(e)	487	18-60-419(a)	550
14-47-124	485	18-60-419(b)	550
14-55-102	46	18-60-420	62
14-56-201	46	18-60-801-822	407
14-56-425	130, 131, 132, 133, 135	18-60-804	408
16-1-97-103(6)	492	18-60-811	409
16-13-210	126, 127	20-47-201-222	323, 327
16-22-301	565	20-47-201(a)(3)	333
16-22-302-304	565	20-47-205(b)	328
16-22-304	240, 566	20-47-205(e)	334, 334-A, 334-B
16-22-304(a)	243	20-47-205(g)	325, 328, 330, 331, 334-A
16-22-304(a)(1)	240	20-47-207	327, 329
16-46-108	553	20-47-209	328, 329
16-56-105	536, 537, 542	20-47-209(a)(1)	328, 329, 332
16-88-108(c)	222, 229, 230	20-47-210	327, 328, 329, 331, 332
16-89-111(e)(1)	73	20-47-210(a)	332, 333
16-90-1112	503	20-47-214	328, 330, 331, 334-A, 334-B
16-93-301-305	364	20-47-215	330, 331, 334-A
16-93-303	474	20-77-109	314
16-93-402(e)(5)	470, 476	20-77-301	298, 303
16-97-101(2)	89, 99	20-77-301(a)	299, 307
16-97-103	490, 493	20-77-301-303	298
16-97-103(4)	493, 500	20-77-301-313	298, 300, 301, 303
16-97-103(5)	493	20-77-302	298, 303, 308
16-97-103(6)	492, 493, 501	20-77-305	298, 299, 303, 308
16-97-104(5)	500	20-77-307	298, 299, 303, 308, 314
16-114-201(1)	538	20-77-307(b)	304
16-114-201(3)	534, 535, 537, 538, 542	20-77-307(c)	304
16-114-203	536	22-3-502	410, 415
16-114-206	534, 538	22-3-503	410, 415
16-123-101-108	37		
16-123-104	34, 38		

Art. 19, § 13(a)(ii) 294
 Art. 19, § 13(b) . . . 161, 289, 292, 294

UNITED STATES CONSTITUTION:

Amend. 4 171, 172, 173, 174,
 175, 176, 177, 178, 179, 180,
 181, 182, 183, 184, 187, 188,
 189, 191, 271, 272, 273, 274
 Amend. 5 (Double Jeopardy
 Clause) 226, 345, 353, 355, 362
 Amend. 6 275, 279
 Amend. 11 38
 Amend. 14 (Due Process
 Clause) 192, 199, 200, 275, 279,
 490, 493
 Supremacy Clause 347, 358

INSTRUCTIONS:

ARKANSAS MODEL JURY INSTRUCTIONS
 (CIVIL):

AMI 303 539
 AMI 1501 534, 538, 539
 AMI 1505 534

ARKANSAS MODEL JURY INSTRUCTIONS
 (CRIMINAL):

AMCI2d 401 193, 202, 203, 204
 AMCI2d 1001A 210

RULES:

ARKANSAS RULES OF APPELLATE
 PROCEDURE — CIVIL:

Ark. R. App. P.—Civ. 3 57
 Ark. R. App. P.—Civ. 3(e) 58
 Ark. R. App. P.—Civ. 4 270
 Ark. R. App. P.—Civ. 4(a) . . . 270, 523
 Ark. R. App. P.—Civ. 4(b) . . . 523
 Ark. R. App. P.—Civ. 4(c) 15
 Ark. R. App. P.—Civ. 5 57
 Ark. R. App. P.—Civ. 5(a) . . . 57, 309
 Ark. R. App. P.—Civ. 5(b) . . . 57, 58
 Ark. R. App. P.—Civ. 6(d) . . . 83, 85,
 437
 Ark. R. App. P.—Civ. 6(e) 83, 85

ARKANSAS RULES OF APPELLATE
 PROCEDURE — CRIMINAL:

Ark. R. App. P.—Crim. 1(a) . . . 168
 Ark. R. App. P.—Crim. 4(a) . . . 437

ARKANSAS RULES OF CIVIL
 PROCEDURE:

ARCP Rule 2 141
 ARCP Rule 4 35, 40, 395
 ARCP Rule 4(d) 394
 ARCP Rule 4(d)(2) 394
 ARCP Rule 4(g) 394
 ARCP Rule 5 524
 ARCP Rule 5(b) 315
 ARCP Rule 5(c)(2) 522, 524, 525
 ARCP Rule 6(a) 523
 ARCP Rule 12 391, 395
 ARCP Rule 12(b) 391, 394
 ARCP Rule 12(b)(6) 34, 37, 157,
 165
 ARCP Rule 12(h)(1) 394, 434
 ARCP Rule 12(h)(3) 132
 ARCP Rule 13(a) 432, 433, 434
 ARCP Rule 13(e) 432, 434
 ARCP Rule 15 432, 434
 ARCP Rule 15(a) 434
 ARCP Rule 17(a) 138
 ARCP Rule 17(b) 395
 ARCP Rule 17(c) 426
 ARCP Rule 25(e) 138
 ARCP Rule 36 543, 549
 ARCP Rule 36(b) 549
 ARCP Rule 41(a) 109, 111, 339,
 344
 ARCP Rule 50(b) 522, 523
 ARCP Rule 52(a) 120, 414
 ARCP Rule 52(b) 523
 ARCP Rule 54(b) 62
 ARCP Rule 56 106
 ARCP Rule 59 543, 550
 ARCP Rule 59(b) 522, 523, 524
 ARCP Rule 59(c) 18
 ARCP Rule 60 550
 ARCP Rule 60(b) 108, 109, 111,
 543, 550
 ARCP Rule 65(a)(2) 145, 154

ARCP Rule 65(d)	145, 154	A.R.E. Rule 503(b)	226
ARKANSAS RULES OF CRIMINAL PROCEDURE:		A.R.E. Rule 503(d)(2)	227
A.R.Cr.P. Rule 1	373	A.R.E. Rule 602	87, 96
A.R.Cr.P. Rule 4.1(iii)	274	A.R.E. Rule 607	206
A.R.Cr.P. Rule 5.5	271, 272, 273, 274	A.R.E. Rule 609	256
A.R.Cr.P. Rule 18.1(a)(vii)	403	A.R.E. Rule 611	206
A.R.Cr.P. Rule 24.3	176	A.R.E. Rule 701	87, 88, 96, 97, 250
A.R.Cr.P. Rule 24.3(b)	165, 166, 167, 168, 169, 170, 175, 191	A.R.E. Rule 701(1)	96
A.R.Cr.P. Rule 27.3	255	A.R.E. Rule 701(2)	96
A.R.Cr.P. Rule 28.4	124	A.R.E. Rule 801(c)	94
A.R.Cr.P. Rule 33.1	288	A.R.E. Rule 802	94
A.R.Cr.P. Rule 33.3	364, 365, 366	A.R.E. Rule 803(2)	87, 94
A.R.Cr.P. Rule 33.4	245, 246, 247, 249, 250	A.R.E. Rule 803(6)	551, 552, 553, 554, 555, 556
A.R.Cr.P. Rule 37	122, 123, 124, 125, 128, 129, 367, 368, 369, 370, 371, 372, 373, 374, 425, 429, 439, 441, 442, 446, 447, 582	FEDERAL RULES OF EVIDENCE:	
A.R.Cr.P. Rule 37.1	368, 369, 370, 371, 372, 373	FRE 403	555
A.R.Cr.P. Rule 37.1(a)	370	MODEL RULES OF PROFESSIONAL CONDUCT:	
A.R.Cr.P. Rule 37.1(b)	370	Rule 1.16(a)(3)	236, 241
A.R.Cr.P. Rule 37.1(c)	370	Rule 1.7	236, 242
A.R.Cr.P. Rule 37.1(d)	122, 125, 126, 370	Rule 1.7(a)	242
A.R.Cr.P. Rule 37.1(e)	370	Rule 5.4	558, 567
A.R.Cr.P. Rule 37.2	371	Rule 5.4(a)	567
A.R.Cr.P. Rule 37.2(c)	374	RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS:	
A.R.Cr.P. Rule 37.3(a)	369	Ark. Sup. Ct. R. 1-2(a)(1)	175, 292, 407
A.R.Cr.P. Rule 37.5	377, 378	Ark. Sup. Ct. R. 1-2(a)(2)	277
ARKANSAS RULES OF EVIDENCE:		Ark. Sup. Ct. R. 1-2(a)(3)	109
A.R.E. Rule 401	228	Ark. Sup. Ct. R. 1-2(a)(7)	61, 536
A.R.E. Rule 402	228	Ark. Sup. Ct. R. 1-2(b)(1)	3, 103, 258, 292, 433
A.R.E. Rule 403	90, 99, 100, 448, 450, 451, 500, 529, 551, 554	Ark. Sup. Ct. R. 1-2(b)(4)	103, 258
A.R.E. Rule 404	223, 528, 529, 556	Ark. Sup. Ct. R. 1-2(b)(5)	103, 433
A.R.E. Rule 404(b)	89, 100, 222, 223, 230, 231, 232, 501, 526, 528, 529	Ark. Sup. Ct. R. 1-2(b)(6)	103, 258, 292, 407
A.R.E. Rule 503	226, 227	Ark. Sup. Ct. R. 1-2(d)	3, 312, 531
		Ark. Sup. Ct. R. 1-2(e)	10, 167
		Ark. Sup. Ct. R. 1-2(e)(i)	516
		Ark. Sup. Ct. R. 1-4	268
		Ark. Sup. Ct. R. 2-4	454, 511
		Ark. Sup. Ct. R. 4-2	508

Ark. Sup. Ct. R. 4-2(a)(6)	375, 376, 377, 509	WORKERS' COMPENSATION	
Ark. Sup. Ct. R. 4-2(b)(3) ..	507, 509	COMMISSION RULE:	
Ark. Sup. Ct. R. 4-3(h)	100, 210, 235, 251, 284, 406, 529	W.C.C. Rule 30	515, 516, 518, 520
Ark. Sup. Ct. R. 4-3(j)	90	W.C.C. Rule 30I(A)(a)	519
Ark. Sup. Ct. R. 4-3(k)	266	W.C.C. Rule 30I(A)(e)	519
Ark. Sup. Ct. R. 5-3(d)	272	W.C.C. Rule 30I(A)(f)	519
Ark. Sup. Ct. R. 6-1	521	W.C.C. Rule 30I(A)(m)	519
Ark. Sup. Ct. R. 6-1(a)	521	W.C.C. Rule 30I(F)(4)	519
		W.C.C. Rule 30I(F)(55)	519
		W.C.C. Rule 30I(I)(1)	520
RULES OF THE ARKANSAS INFERIOR		STATUTES:	
COURTS:		ARKANSAS STATUTES ANNOTATED:	
Inferior Ct. R. 8	130, 131, 133, 135	19-717	485
Inferior Ct. R. 9	130, 131, 133, 134, 135	28-928(6)	554
Inferior Ct. R. 9(a)	133	41-1208(6)	474
Inferior Ct. R. 9(b)	134	85-1-105(1)	162
Inferior Ct. R. 9(c)	134		

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ARKANSAS
APPELLATE
REPORTS

Volume 65

CASES DETERMINED
IN THE

Court of Appeals
of Arkansas

FROM
January 6, 1999 — March 10, 1999
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1999



*Great is Law — great are the old few
landmarks of the law. . . .*

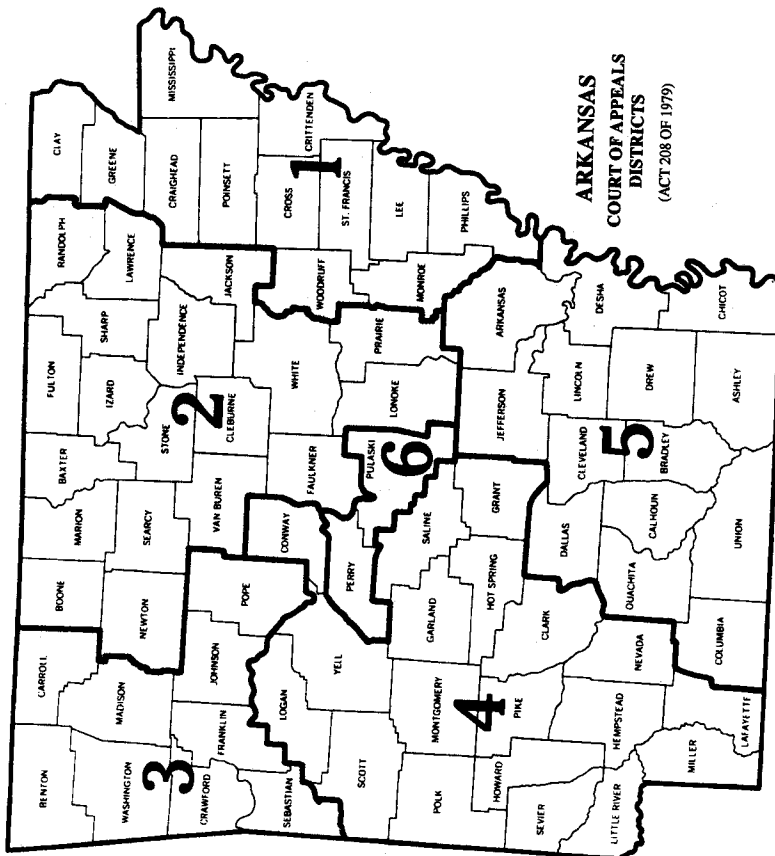
— WALT WHITMAN
(1819-1892)

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JOE CHRISTENSEN PRINTING COMPANY
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1999

CONTENTS

	Page
MAP OF DISTRICTS FOR COURT OF APPEALS	iv
JUDGES AND OFFICERS OF THE COURT OF APPEALS	v
TABLE OF CASES REPORTED	
Alphabetical	vi
Opinions by Respective Judges of Court of Appeals and Per Curiam Opinions	x
STANDARDS FOR PUBLICATION OF OPINIONS	
Rule 5-2, Rules of the Supreme Court and Court of Appeals	xii
TABLE OF OPINIONS NOT REPORTED	xiv
TABLE OF CASES AFFIRMED WITHOUT WRITTEN OPINION	xxi
OPINIONS REPORTED	1
INDEX	
Alphabetical Headnote Index	283
References to Acts, Codes, Constitutional Provisions, Rules, and Statutes	291



**ARKANSAS
COURT OF APPEALS
DISTRICTS
(ACT 208 OF 1979)**

JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(January 6, 1999 — March 10, 1999, inclusive)

JUDGES

JOHN B. ROBBINS	Chief Judge ¹
JOHN MAUZY PITTMAN	Judge ²
JOSEPHINE LINKER HART	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 ¹³
MARK PRYOR	Attorney General ¹⁴
LESLIE W. STEEN	Clerk
TIMOTHY N. HOLTHOFF	Librarian ¹⁵
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.
¹³ Term expired January 12, 1999.
¹⁴ Assumed office January 12, 1999.
¹⁵ Appointed effective January 1, 1999.

TABLE OF CASES REPORTED

A

Anderson <i>v.</i> Holliday	165
Arkansas Dep't of Human Servs. <i>v.</i> Southerland	97
Arkansas Pub. Serv. Comm'n (Lavaca Tel. Co. <i>v.</i>)	263
Arthur (Johnson <i>v.</i>)	220
Arthur (Martin <i>v.</i>)	276

B

Barnes (National Sec. Fire & Cas. Co. <i>v.</i>)	13
Beck <i>v.</i> Director	8
Bitzer (Bitzer <i>v.</i>)	162
Bitzer <i>v.</i> Bitzer	162
Bob Cole Bail Bonds, Inc. <i>v.</i> State	1
Bob Cole Bail Bonds, Inc. <i>v.</i> State	5
Bud Avants Co. (Seward <i>v.</i>)	88
Burrell <i>v.</i> State	272

C

Cariker <i>v.</i> Ozark Opportunities	60
Clemmons (Office of Child Supp. Enforcem't <i>v.</i>)	84
Columbia Mut. Ins. Co. <i>v.</i> Estate of Baker	22
Coplin (S & S Constr., Inc. <i>v.</i>)	251
Crossett Sch. Dist. <i>v.</i> Fulton	63
Cyphers <i>v.</i> United Parcel Serv.	107

D

Didion Mid-South Corp. (Employers Ins. of Wausau <i>v.</i>)	201
Director (Beck <i>v.</i>)	8
Diversicare Leasing Corp. (Smith <i>v.</i>)	138

E

Employers Ins. of Wausau <i>v.</i> Didion Mid-South Corp.....	201
Estate of Baker (Columbia Mut. Ins. Co. <i>v.</i>).....	22
Evans <i>v.</i> State	232

F

FJN Contractors, Inc. (Triple D-R Dev. <i>v.</i>)	192
Foreman <i>v.</i> State	18
Fulton (Crossett Sch. Dist. <i>v.</i>)	63

H

Harwood <i>v.</i> Monroe	57
Helms <i>v.</i> University of Missouri—Kansas City	155
Hill <i>v.</i> State	131
Hill-Rom Co. <i>v.</i> Swink	71
Holliday (Anderson <i>v.</i>)	165
Hollinger (Hollinger <i>v.</i>)	110
Hollinger <i>v.</i> Hollinger	110

J

Johnson <i>v.</i> Arthur	220
--------------------------------	-----

K

Kearse <i>v.</i> State	144
------------------------------	-----

L

Lavaca Tel. Co. <i>v.</i> Arkansas Pub. Serv. Comm'n	263
--	-----

M

Marquez (Moon <i>v.</i>)	78
Marshall <i>v.</i> Shelter Ins. Cos.	255
Martin <i>v.</i> Arthur	276
McDaniel <i>v.</i> State	41
Meister <i>v.</i> Safety Kleen	259
Mixon (Mixon <i>v.</i>)	240
Mixon <i>v.</i> Mixon	240

Monroe (Harwood <i>v.</i>)	57
Moon <i>v.</i> Marquez	78
Moon <i>v.</i> Moon Enters., Inc.	246
Moon Enters., Inc. (Moon <i>v.</i>)	246

N

National Sec. Fire & Cas. Co. <i>v.</i> Barnes	13
--	----

O

Office of Child Supp. Enforcem't <i>v.</i> Clemmons	84
Ozark Opportunities (Cariker <i>v.</i>)	60

P

Parrish <i>v.</i> State	66
Pascale <i>v.</i> State	29

R

Ray <i>v.</i> State	209
---------------------------	-----

S

S & S Constr., Inc. <i>v.</i> Coplin	251
Safety Kleen (Meister <i>v.</i>)	259
Seward <i>v.</i> Bud Avants Co.	88
Shaw <i>v.</i> State	186
Shelter Ins. Cos. (Marshall <i>v.</i>)	255
Smith <i>v.</i> Diversicare Leasing Corp.	138
Smith <i>v.</i> State	216
Southerland (Arkansas Dep't of Human Servs. <i>v.</i>)	97
State (Bob Cole Bail Bonds, Inc. <i>v.</i>)	1
State (Bob Cole Bail Bonds, Inc. <i>v.</i>)	5
State (Burrell <i>v.</i>)	272
State (Evans <i>v.</i>)	232
State (Foreman <i>v.</i>)	18
State (Hill <i>v.</i>)	131
State (Kearse <i>v.</i>)	144
State (McDaniel <i>v.</i>)	41

State (Parrish <i>v.</i>)	66
State (Pascale <i>v.</i>).....	29
State (Ray <i>v.</i>)	209
State (Shaw <i>v.</i>)	186
State (Smith <i>v.</i>)	216
State (Thomas <i>v.</i>)	134
State (Williams <i>v.</i>).....	176
State (Wortham <i>v.</i>)	81
Swink (Hill-Rom Co. <i>v.</i>).....	71

T

Thomas <i>v.</i> State	134
Triple D-R Dev. <i>v.</i> FJN Contractors, Inc.....	192

U

United Parcel Serv. (Cyphers <i>v.</i>).....	107
University of Missouri—Kansas City (Helms <i>v.</i>)	155

W

Williams <i>v.</i> State	176
Wortham <i>v.</i> State.....	81

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:

Bob Cole Bail Bonds, Inc. <i>v.</i> State	1
Hill-Rom Co. <i>v.</i> Swink	71
Hollinger <i>v.</i> Hollinger	110

JOHN MAUZY PITTMAN, JUDGE:

Hill <i>v.</i> State	131
Marshall <i>v.</i> Shelter Ins. Cos.	255
McDaniel <i>v.</i> State	41
Meister <i>v.</i> Safety Kleen	259
Triple D-R Dev. <i>v.</i> FJN Contractors, Inc.	192

JOSEPHINE LINKER HART, JUDGE:

Employers Ins. of Wausau <i>v.</i> Didion Mid-South Corp.	201
Ray <i>v.</i> State	209
Thomas <i>v.</i> State	134

JOHN E. JENNINGS, JUDGE:

Hill-Rom Co. <i>v.</i> Swink	71
Kearse <i>v.</i> State	144
Lavaca Tel. Co. <i>v.</i> Arkansas Pub. Serv. Comm'n	263

SAM BIRD, JUDGE:

Columbia Mut. Ins. Co. <i>v.</i> Estate of Baker	22
Seward <i>v.</i> Bud Avants Co.	88

JUDITH ROGERS, JUDGE:

Burrell <i>v.</i> State	272
Helms <i>v.</i> University of Missouri—Kansas City	155
Smith <i>v.</i> State	216

JOHN F. STROUD, JR., JUDGE:

Arkansas Dep't of Human Servs. <i>v.</i> Southerland	97
Harwood <i>v.</i> Monroe	57

Johnson <i>v.</i> Arthur	220
Martin <i>v.</i> Arthur	276
Smith <i>v.</i> Diversicare Leasing Corp.....	138

OLLY NEAL, JUDGE:

Pascale <i>v.</i> State	29
-------------------------------	----

WENDELL L. GRIFFEN, JUDGE:

Bob Cole Bail Bonds, Inc. <i>v.</i> State	5
Evans <i>v.</i> State	232
Mixon <i>v.</i> Mixon	240

TERRY CRABTREE, JUDGE:

Bitzer <i>v.</i> Bitzer	162
Cariker <i>v.</i> Ozark Opportunities.....	60
Crossett Sch. Dist. <i>v.</i> Fulton.....	63
Moon <i>v.</i> Marquez	78
Moon <i>v.</i> Moon Enters., Inc.	246
Wortham <i>v.</i> State.....	81

MARGARET MEADS, JUDGE:

Anderson <i>v.</i> Holliday	165
Beck <i>v.</i> Director	8
Cyphers <i>v.</i> United Parcel Serv.	107
National Sec. Fire & Cas. Co. <i>v.</i> Barnes.....	13
Office of Child Supp. Enforcem't <i>v.</i> Clemmons.....	84
Parrish <i>v.</i> State	66
S & S Constr., Inc. <i>v.</i> Coplin	251
Williams <i>v.</i> State	176

ANDREE LAYTON ROAF, JUDGE:

Shaw <i>v.</i> State	186
----------------------------	-----

PER CURIAM:

Foreman <i>v.</i> State	18
-------------------------------	----

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

- Abram v. Moore*, CA 98-409 (Roaf, J.), affirmed January 20, 1999. Rehearing denied February 17, 1999.
- Adcock v. State*, CA CR 98-673 (Pittman, J.), affirmed February 24, 1999.
- Alexander v. State*, CA CR 98-470 (Griffen, J.), affirmed January 20, 1999.
- Allen v. State*, CA CR 98-787 (Neal, J.), affirmed March 3, 1999.
- Amaral v. State*, CA CR 98-462 (Rogers, J.), affirmed January 6, 1999.
- Arkansas Dep't of Human Servs. v. Walker*, CA 98-886 (Pittman, J.), reversed and remanded February 24, 1999.
- Arkansas Land Agency, Inc. v. Pope*, CA 97-1432 (Griffen, J.), affirmed February 10, 1999.
- Ashley v. State*, CA CR 98-658 (Meads, J.), affirmed February 3, 1999.
- Atkinson v. State*, CA CR 98-718 (Bird, J.), affirmed March 3, 1999.
- Baker v. Cheyenne Indus.*, CA 98-799 (Griffen, J.), reversed and remanded February 24, 1999.
- Baugus v. State*, CA CR 98-515 (Neal, J.), affirmed February 3, 1999.
- Bennett v. Gaylord Container Corp.*, CA 98-1174 (Per Curiam), Appellant's Motion to Consolidate CA98-1175, CA98-1176, CA98-1177, CA98-1178, and CA98-1179 with this Appeal for Modification of Briefing Procedure and Schedule, and for Brief Time granted in part; denied in part February 17, 1999.
- Benson v. State*, CA CR 98-533 (Meads, J.), affirmed January 27, 1999.
- Big Island Land Co. v. Vance Cupp & Sons, Inc.*, CA 98-786 (Neal, J.), appeal dismissed March 3, 1999.
- Biggs v. State*, CA CR 98-526 (Crabtree, J.), affirmed January 27, 1999.
- Black v. Cache Valley Elec. Co.*, CA 98-816 (Stroud, J.), affirmed.
- Bland v. Mead Containerboard*, CA 97-1472 (Rogers, J.), affirmed September 9, 1996.

- Boykins *v.* State, CA CR 98-664 (Pittman, J.), affirmed February 17, 1999.
- Brewer *v.* State, CA CR 98-937 (Jennings, J.), affirmed March 3, 1999.
- Bridewell *v.* Bridewell, CA 97-962 (Neal, J.), affirmed as modified February 24, 1999.
- Brock *v.* Difani, CA 98-351 (Griffen, J.), reversed and remanded January 20, 1999.
- Brown *v.* State, CA CR 98-769 (Roaf, J.), affirmed February 3, 1999.
- Brown *v.* State, CA CR 98-968 (Bird, J.), affirmed February 24, 1999.
- Burnell *v.* State, CA CR 98-516 (Griffen, J.), affirmed February 3, 1999.
- Campbell *v.* State, CA CR 98-578 (Roaf, J.), affirmed January 27, 1999.
- Canada *v.* State, CA CR 98-854 (Bird, J.), affirmed February 10, 1999.
- Capps *v.* Gilmer Wood Prods., CA 98-681 (Robbins, C.J.), dismissed January 27, 1999.
- Carrington *v.* Excelsior Hotel, CA 98-1001 (Stroud, J.), affirmed February 24, 1999.
- Carruth *v.* State, CA CR 98-726 (Rogers, J.), affirmed March 3, 1999.
- Casey *v.* Casey, CA 98-900 (Griffen, J.), affirmed March 10, 1999.
- Choate *v.* Levi Strauss & Co., CA 98-666 (Hart, J.), reversed and remanded January 27, 1999. Rehearing denied February 24, 1999.
- Clark *v.* Clark, CA 98-773 (Roaf, J.), affirmed February 24, 1999.
- Clifton *v.* Arthur, CA 98-999 (Meads, J.), affirmed March 10, 1999.
- Cole *v.* Office of Child Support Enforcement, CA 98-758 (Per Curiam), dismissed January 20, 1999.
- Crawford *v.* Mega Market, CA 98-324 (Griffen, J.), affirmed February 17, 1999.
- Cromwell *v.* State, CA CR 98-810 (Stroud, J.), affirmed February 17, 1999.

- Curry *v.* Alumax, CA 98-684 (Rogers, J.), reversed and remanded February 3, 1999.
- Cutts *v.* State, CA CR 98-887 (Hart, J.), affirmed March 10, 1999.
- Davis *v.* Hogan, CA 98-356 (Robbins, C.J.), affirmed March 10, 1999.
- De Timmerman *v.* Director, E 98-235 (Roaf, J.), reversed and remanded March 3, 1999.
- Dean Management, Inc. *v.* Billington, CA 98-710 (Robbins, C.J.), affirmed February 3, 1999.
- Dodson *v.* State, CA CR 97-1487 (Robbins, C.J.), affirmed January 6, 1999.
- Durham *v.* State, CA 98-1010 (Neal, J.), affirmed March 10, 1999.
- Eddins *v.* Style Optics, Inc., CA 98-862 (Crabtree, J.), dismissed February 10, 1999. Rehearing denied March 10, 1999.
- Efurd *v.* State, CA CR 98-142 (Bird, J.), affirmed February 3, 1999.
- Emcasco Ins. Co. *v.* State Auto Property & Cas. Ins. Co., CA 98-731 (Bird, J.), affirmed February 3, 1999.
- Fields *v.* State, CA CR 98-706 (Roaf, J.), affirmed March 10, 1999.
- Flinn *v.* State, CA CR 98-223 (Stroud, J.), affirmed February 10, 1999.
- Flurry *v.* State, CA CR 98-455 (Bird, J.), affirmed January 13, 1999.
- Franks *v.* State, CA CR 98-794 (Rogers, J.), affirmed February 17, 1999.
- Garza *v.* State, CA CR 98-221 (Stroud, J.), affirmed January 27, 1999.
- General Elec. Capital Corp. *v.* McKiever, CA 98-581 (Neal, J.), affirmed February 17, 1999.
- Gipson *v.* State, CA CR 98-114 (Roaf, J.), affirmed February 17, 1999.
- Gonzalez *v.* State, CA CR 98-944 (Robbins, C.J.), affirmed March 3, 1999.
- Griffith *v.* Gosack, CA 98-336 (Jennings, J.), affirmed January 20, 1999.

- Hamaker *v.* State, CA CR 98-503 (Meads, J.), affirmed February 24, 1999.
- Hamilton *v.* State, CA CR 98-963 (Stroud, J.), affirmed March 3, 1999.
- Headley *v.* Superior Indus., CA 98-930 (Robbins, C.J.), affirmed March 10, 1999.
- Helms *v.* State, CA CR 98-950 (Robbins, C.J.), affirmed February 24, 1999.
- Hobbs *v.* State, CA CR 98-903 (Neal, J.), reversed and remanded February 10, 1999.
- Hollis *v.* Hollis, CA 98-868 (Per Curiam), appeal dismissed February 24, 1999.
- Hopkins *v.* State, CA CR 98-849 (Crabtree, J.), affirmed March 10, 1999.
- Hopper *v.* Daniel, CA 98-823 (Jennings, J.), appeal dismissed February 10, 1999. Rehearing denied March 10, 1999.
- Humerickhouse *v.* Johnson, CA 98-554 (Robbins, C.J.), affirmed February 10, 1999.
- Hunt *v.* Hunt, CA 98-766 (Neal, J.), affirmed March 3, 1999.
- Hutchins *v.* Hutchins, CA 97-429 (Roaf, J.), affirmed February 10, 1999.
- Inman's Auto Sales *v.* King, CA 98-522 (Rogers, J.), affirmed January 20, 1999.
- ITT Hartford *v.* Black, CA 98-885 (Roaf, J.), affirmed February 17, 1999.
- Jetton *v.* Maxfield, CA 98-32 (Crabtree, J.), affirmed in part; reversed and remanded in part March 3, 1999.
- Johnson, Jewel Eugene *v.* State, CA CR 98-35 (Neal, J.), affirmed February 17, 1999. Rehearing denied March 17, 1999.
- Johnson, Julius *v.* State, CA CR 98-393 (Meads, J.), affirmed March 10, 1999.
- Johnson, Marcus *v.* State, CA CR 98-1019 (Griffen, J.), affirmed March 10, 1999.
- Johnson *v.* State, CA CR 98-466 (Stroud, J.), affirmed January 6, 1999.
- Jones *v.* Blue Heron Farms, Inc., CA 98-745 (Robbins, C.J.), reversed and remanded March 3, 1999.
- Jones *v.* State, CA CR 98-632 (Roaf, J.), affirmed January 6, 1999.

- Jones *v.* State, CA CR 98-1003 (Stroud, J.), affirmed March 10, 1999.
- Jones *v.* Williams, CA 98-744 (Roaf, J.), affirmed March 3, 1999.
- Jordan *v.* Chastain, CA 98-562 (Neal, J.), affirmed March 3, 1999.
- Kearse *v.* State, CA CR 98-727 (Jennings, J.), affirmed January 27, 1999.
- Kent *v.* Fre-Mac Indus., CA 98-572 (Griffen, J.), affirmed February 10, 1999.
- King *v.* Bruce Kennedy Sand & Gravel, CA 98-864 (Robbins, C.J.), affirmed March 3, 1999.
- Kuykendall *v.* American Nat'l Property & Cas., CA 98-723 (Stroud, J.), affirmed on direct appeal; affirmed in part and reversed in part on cross-appeal March 3, 1999.
- Largent *v.* Arkansas Dep't of Human Servs., CA 98-809 (Roaf, J.), affirmed March 10, 1999.
- Marks *v.* State, CA CR 98-176 (Rogers, J.), affirmed February 3, 1999.
- Martin *v.* Willamette Indus., CA 98-685 (Pittman, J.), affirmed February 3, 1999.
- Mathis, James Randy *v.* State, CA CR 98-899 (Jennings, J.), affirmed February 24, 1999. Rehearing denied April 7, 1999.
- Mathis, Michael R. *v.* State, CA CR 98-291 (Meads, J.), affirmed March 3, 1999.
- McDaniel *v.* Coca Cola Bottling Co., CA 98-653 (Griffen, J.), affirmed January 27, 1999. Rehearing denied February 24, 1999.
- Meachum *v.* State, CA CR 98-449 (Griffen, J.), affirmed February 24, 1999.
- Mid-South Road Builders, Inc. *v.* Norwood, CA 98-170 (Neal, J.), affirmed February 10, 1999.
- Mixon *v.* State, CA CR 98-427 (Roaf, J.), affirmed March 3, 1999.
- Moore *v.* State, CA CR 98-464 (Crabtree, J.), affirmed February 10, 1999.
- Moore *v.* State, CA CR 98-478 (Crabtree, J.), affirmed February 24, 1999.
- Moshner *v.* Dugan, CA 98-768 (Bird, J.), reversed and remanded February 10, 1999.

- Myrick *v.* Myrick, CA 98-400 (Jennings, J.), affirmed February 10, 1999. Rehearing denied March 17, 1999.
- Newman *v.* McCaskill, CA 98-204 (Crabtree, J.), affirmed January 20, 1999. Rehearing denied February 10, 1999.
- O'Hara *v.* J. Christy Constr., CA 98-599 (Meads, J.), affirmed March 3, 1999.
- Parsley *v.* Parsley, CA 98-836 (Bird, J.), affirmed February 24, 1999.
- Peterson *v.* State, CA CR 98-802 (Jennings, J.), affirmed February 24, 1999.
- Ray *v.* State, CA CR 98-244 (Griffen, J.), reversed March 3, 1999.
- Redmon *v.* State, CA CR 98-490 (Stroud, J.), affirmed February 3, 1999.
- Reid *v.* State, CA CR 98-759 (Jennings, J.), affirmed February 17, 1999.
- Rodriguez *v.* Kroger Co., CA 98-814 (Robbins, C.J.), affirmed February 3, 1999.
- Schmidt *v.* French, CA 98-575 (Roaf, J.), affirmed February 3, 1999.
- Scroggins *v.* State, CA CR 97-1248 (Neal, J.), affirmed January 27, 1999.
- Sheffield *v.* Teague, CA 98-630 (Jennings, J.), affirmed March 10, 1999.
- Sheridan Pub. Schs. *v.* Woodall, CA 98-861 (Crabtree, J.), affirmed February 17, 1999.
- Simmons *v.* State, CA CR 98-860 (Griffen, J.), affirmed February 17, 1999.
- Smith *v.* State, CA CR 98-414 (Rogers, J.), affirmed February 3, 1999.
- Smith, Lacumba *v.* State, CA CR 98-857 (Crabtree, J.), affirmed January 20, 1999.
- Sneed *v.* Prescolite, CA 98-654 (Jennings, J.), affirmed February 3, 1999.
- Snuggs *v.* Griffin Elec. Heating & Air, CA 98-225 (Stroud, J.), reversed and remanded February 3, 1999. Rehearing denied March 3, 1999.
- Starks *v.* State, CA CR 98-837 (Robbins, C.J.), affirmed February 10, 1999.

- Stuart *v.* State, CA CR 98-203 (Crabtree, J.), affirmed March 3, 1999.
- Taylor *v.* State, CA CR 98-286 (Griffen, J.), affirmed February 3, 1999.
- Thomas *v.* State, CA CR 98-216 (Robbins, C.J.), affirmed January 27, 1999. Rehearing denied February 24, 1999.
- Thompson *v.* Davidson, CA 98-279 (Pittman, J.), reversed and remanded February 3, 1999.
- Tilley *v.* Smith, CA 98-249 (Roaf, J.), affirmed January 13, 1999. Rehearing denied March 3, 1999.
- TPI Restaurants *v.* Clements, CA 98-713 (Crabtree, J.), affirmed in part; reversed and remanded in part January 13, 1999.
- Weir *v.* Weir, CA 98-614 (Rogers, J.), affirmed February 17, 1999.
- Welch *v.* State, CA CR 98-895 (Bird, J.), affirmed March 10, 1999.
- Wiggins *v.* State, CA CR 98-570 (Meads, J.), affirmed February 10, 1999.
- Wiley *v.* State, CA CR 98-592 (Roaf, J.), affirmed February 10, 1999.
- Williams *v.* State, CA CR 98-591 (Pittman, J.), affirmed February 10, 1999.
- Williams, Paul Scott *v.* State, CA CR 98-394 (Hart, J.), affirmed February 17, 1999.
- Winfrey *v.* State, CA CR 98-878 (Crabtree, J.), affirmed February 17, 1999. Rehearing denied March 17, 1999.
- Witherspoon *v.* Arkansas Dep't of Correction, CA 97-1470 (Neal, J.), affirmed February 24, 1999.
- Williams, Paul Scott *v.* State, CA CR 98-394 (Hart, J.), affirmed February 17, 1999.
- Winfrey *v.* State, CA CR 98-878 (Crabtree, J.), affirmed February 17, 1999.
- Woods *v.* State, CA CR 98-605 (Crabtree, J.), affirmed January 20, 1999.
- Wray *v.* State, CA CR 98-672 (Hart, J.), appeal dismissed March 3, 1999.
- Yonce *v.* State, CA CR 98-736 (Robbins, C.J.), affirmed February 17, 1999.

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

Armstrong *v.* Director of Labor, E 98-184, February 17, 1999.
Bennett *v.* Director of Labor, E 98-221, January 27, 1999.
Blake *v.* Director of Labor, E 98-234, February 17, 1999.
Brannon *v.* Director of Labor, E 98-246, February 24, 1999.
Bridgeforth *v.* Director of Labor, E 98-215, January 27, 1999.
Brown *v.* Director of Labor, E 98-239, February 24, 1999.
Brown *v.* Director of Labor, E 98-261, March 10, 1999.
Bunch *v.* Director of Labor, E 98-241, February 24, 1999.
Burnes *v.* Director of Labor, E 98-200, January 6, 1999.
Carroll *v.* Director of Labor, E 98-210, January 27, 1999.
Cline *v.* Director of Labor, E 98-260, March 10, 1999.
Cobb *v.* Director of Labor, E 98-219, January 27, 1999.
Cockrell *v.* Director of Labor, E 98-255, March 10, 1999.
Collins *v.* Director of Labor, E 98-222, February 17, 1999.
Cooper *v.* Director of Labor, E 98-248, February 24, 1999.
Davidson-Branscomb *v.* Director of Labor, E 98-208, January 27,
1999.
Davis *v.* Director of Labor, E 98-223, February 17, 1999.
Davis *v.* Director of Labor, E 98-258, March 10, 1999.
De Los Santos *v.* Director of Labor, E 98-232, February 17, 1999.
Denham *v.* Director of Labor, E 98-259, March 10, 1999.
Gaines *v.* Director of Labor, E 98-220, February 17, 1999.
Grimsley *v.* Director of Labor, E 98-224, February 17, 1999.
Hanthorne *v.* Director of Labor, E 98-253, March 10, 1999.
Hartsfield *v.* Director of Labor, E 98-214, January 27, 1999.
Hawkins *v.* Director of Labor, E p98-230, February 17, 1999.
Herring *v.* Director of Labor, E 98-201, January 6, 1999.
Hollender *v.* Director of Labor, E 98-231, February 17, 1999.
Horner *v.* Director of Labor, E 98-244, February 24, 1999.
Howe *v.* Director of Labor, E 98-206, January 6, 1999.
Johnson *v.* Director of Labor, E 98-243, February 24, 1999.
Jones *v.* Director of Labor, E 98-267, March 10, 1999.
Kilcrease *v.* Director of Labor, E 98-212, January 27, 1999.

-
- Lowe *v.* Director of Labor, E 98-249, February 24, 1999.
Martin *v.* Director of Labor, E 98-203, January 6, 1999.
McGlue *v.* Director of Labor, E 98-205, January 6, 1999.
Means *v.* Director of Labor, E 98-216, January 27, 1999.
Meatheney *v.* Director of Labor, E 98-217, January 27, 1999.
Lawrence *v.* Director of Labor, E 98-251, March 10, 1999.
Monaco *v.* Director of Labor, E 98-257, March 10, 1999.
Owens *v.* Director of Labor, E 98-204, January 6, 1999.
Parker *v.* Director of Labor, E 98-256, March 10, 1999.
Payton *v.* Director of Labor, E 98-242, February 24, 1999.
Richardson *v.* Director of Labor, E 98-202, January 6, 1999.
Richart *v.* Director of Labor, E 98-211, January 27, 1999.
Satterlee *v.* Director of Labor, E 98-198, January 6, 1999.
Smith *v.* Director of Labor, E 98-250, March 10, 1999.
Stewart *v.* Director of Labor, E 98-229, February 17, 1999.
 Rehearing denied March 17, 1999.
Tanzie *v.* Director of Labor, E 98-213, January 27, 1999.
Taylor *v.* Director of Labor, E 98-227, February 17, 1999.
Weatherford *v.* Director of Labor, E 98-245, February 24, 1999.
West *v.* Director of Labor, E 98-199, January 6, 1999.
Williams *v.* Director of Labor, E 98-252, February 24, 1999.
Winford *v.* Director of Labor, E 98-254, March 10, 1999.
Wohr *v.* Director of Labor, E 98-228, March 3, 1999.
Wright *v.* Director of Labor, E 98-238, February 24, 1999.

Alphabetical
Headnote
Index

HEADNOTE INDEX

ACCORD & SATISFACTION:

Essential elements, Missouri law. *Helms v. University of Missouri—Kansas City*, 155
Burden of proving, Missouri law. *Id.*
Trial court's finding of none absolving appellant of obligation to pay past-due tuition not clearly erroneous. *Id.*

APPEAL & ERROR:

Remanded on motion for substitution of counsel. *Foreman v. State*, 18
Finding of fitness to stand trial, when affirmed. *Pascale v. State*, 29
Trial court did not modify order of dismissal, "Amended Complaint" set forth new cause of action. *Hill-Rom Co. v. Swink*, 71
Appellate court without jurisdiction, orders not final, matter dismissed. *Id.*
Chancery cases, review of. *Moon v. Marquez*, 78
Chancery cases, standard of review. *Office of Child Supp. Enforcem't v. Clemmons*, 84
Order final & appealable, order put court's directive into execution & ended litigation. *Arkansas Dep't of Human Servs. v. Southerland*, 97
Abstracting deficiencies, no flagrant examples in appellant's abstract. *Id.*
Briefing requirements for second appeals, appellant failed to comply. *Cyphers v. United Parcel Serv.*, 107
Abstract insufficient, case remanded for rebriefing. *Id.*
Chancery cases, standard on review. *Hollinger v. Hollinger*, 110
Chancery cases, reviewed *de novo* on appeal. *Id.*
Supreme court decisions, court of appeals lacks authority to overrule. *Kearse v. State*, 144
No authority cited for argument, sufficient reason to affirm. *Id.*
Argument not made below not addressed on appeal. *Helms v. University of Missouri—Kansas City*, 155
Chancery decisions, *de novo* review. *Bitzer v. Bitzer*, 162
Chancery findings of fact, deference to chancellor's superior position. *Id.*
Chancery decisions, review of. *Anderson v. Holliday*, 165
Argument not made at trial, argument not preserved for review. *Id.*
Doctrine of invited error, defined. *Williams v. State*, 176
Hearsay objection, not made at trial. *Id.*
Issue not raised at trial, not addressed on appeal. *Employers Ins. of Wausau v. Didion Mid-South Corp.*, 201
Finding of jury, when affirmed. *Id.*
Standard of review, substantial evidence defined. *Smith v. State*, 216
Ruling on motion to suppress, factors on review. *Evans v. State*, 232
Chancery cases, standard of review. *Mixon v. Mixon*, 240
Chancery cases, standard of review. *Moon v. Moon Enters., Inc.*, 246
Chancery cases, decision may be affirmed if correct for any reason. *Id.*
Ruling not obtained, issue not preserved. *Id.*
Argument inviting court to search record for errors is insufficient. *Lavaca Tel. Co. v. Arkansas Pub. Serv. Comm'n*, 263

Speedy-trial argument, objection to time excluded must have been made at trial.
Burrell v. State, 272

ARREST:

Outside officer's jurisdiction, when authority exists. *Thomas v. State*, 134
Extraterritorial arrest, when valid. *Id.*
Outside officer's jurisdiction, arrest illegal without warrant or statutory authority. *Id.*
Outside officer's jurisdiction, appellee failed to show statutory authority, trial court erred in denying motion to suppress. *Id.*

AUTOMOBILES:

DWI, insubstantial evidence of intoxication. *Pascale v. State*, 29
DWI, necessary proof. *Wortham v. State*, 81
DWI, trial court properly relied on officers' testimony, conviction affirmed. *Id.*

BAIL:

Appearance-bond surety, responsibility for defendant. *Bob Cole Bail Bonds, Inc. v. State*, 1
Forfeiture, "promptly" requirement strictly construed. *Id.*
Forfeiture, eighteen-month time lapse did not satisfy statutory "promptly" requirement, judgment reversed. *Id.*

BONDS:

Forfeiture of, actual knowledge of defendant's nonappearance insufficient, statute strictly construed. *Bob Cole Bail Bonds, Inc. v. State*, 5
Forfeiture, statutory notice requirements must be exactly followed, trial court reversed. *Id.*

COMPROMISE & SETTLEMENT:

Operation of, discussed. *Marshall v. Shelter Ins. Cos.*, 255

CONSTITUTIONAL LAW:

Search & seizure, warrantless searches. *Evans v. State*, 232
Search of purse, expectation of privacy. *Id.*

CONTRACTS:

Fiduciary, liability of. *Employers Ins. of Wausau v. Didion Mid-South Corp.*, 201
Appellant breached fiduciary duty, finding supported by evidence. *Id.*
Fiduciary & contractual duties compatible, fiduciary duty breached without breaching contractual obligations. *Id.*

CORPORATIONS:

Appellant's failure to comply with statutory demand provision required dismissal of complaint, statutes applied according to plain meaning. *Moon v. Moon Enters., Inc.*, 246

CRIMINAL LAW:

Jury trial, waiver of. *Williams v. State*, 176
Written waiver of jury trial, contents of waiver. *Id.*
Appellant waived right to jury trial, waiver written & made in open court. *Id.*
Revocation of suspended sentence, requirement. *Shaw v. State*, 186
Revocation of suspended sentence, appellate review. *Id.*
Revocation of suspended sentence, evidence sufficient to support. *Id.*

Revocation of suspended sentence, not clearly against preponderance of evidence that appellant failed to obey all state laws. *Id.*
Defendant's intent rarely capable of proof by direct evidence, may be inferred. *Smith v. State*, 216

CRIMINAL PROCEDURE:

Sentencing, constitutional right to be present discussed. *Parrish v. State*, 66
Waiver, discussed. *Id.*
Custodial interrogation, waiver of rights. *Id.*
Voluntary absence of defendant at trial, right to be present effectively waived. *Id.*
Appellant waived right to be present at trial, revocation hearing properly conducted in appellant's absence. *Id.*
Revocation hearing, defendant entitled to due process. *Hill v. State*, 131
Revocation hearing, State must properly notify appellant regarding basis upon which revocation sought. *Id.*
State introduced evidence of violations not enumerated in petition to revoke, revocation reversed & case remanded. *Id.*
Search & seizure, warrantless search, medical-emergency exception. *Evans v. State*, 232
Warrantless search, administrative-duty exception. *Id.*
Warrantless search, medical-emergency exception inapplicable. *Id.*
Warrantless search, administrative-duty exception inapplicable. *Id.*
Warrantless search not lawful, motion to suppress should have been granted, reversed & remanded. *Id.*
Speedy-trial violation, burden of proof. *Burrell v. State*, 272
Speedy trial, failure to comply with Ark. R. Crim. P. 28.3(i) does not result in automatic reversal. *Id.*
Motion to dismiss properly denied, no speedy-trial violation found. *Id.*

DAMAGES:

Proof of, exactness not required. *Employers Ins. of Wausau v. Didion Mid-South Corp.*, 201
Jury's award supported by evidence, damage award affirmed. *Id.*

EVIDENCE:

Evidence substantial that appellant could assist in defense, trial court did not err in refusing further examination. *Pascale v. State*, 29
Motion to suppress, review of denial *McDaniel v. State*, 41
Motion to suppress, trial court did not err in denying where probable cause & exigent circumstances existed. *Id.*
Sufficiency of, substantial evidence defined. *Wortham v. State*, 81
Officer's observations may be competent evidence to support DWI charge, trial court determines weight & credibility of evidence. *Id.*
Parol evidence, record did not indicate trial court relied on. *Helms v. University of Missouri—Kansas City*, 155
Sufficiency of, standard on review. *Williams v. State*, 176
Hearsay evidence admitted without objection, may constitute substantial evidence. *Id.*
Unlawful entry, finding supported by substantial evidence. *Id.*
Value of property, established by victim's testimony. *Id.*
Criminal defendant, intent rarely capable of proof by direct evidence. *Id.*

Intent to take another's property, supported by testimony. *Id.*
 Standard of review. *Employers Ins. of Wausau v. Didion Mid-South Corp.*, 201
 Aggravated robbery, evidence sufficient to support conviction. *Smith v. State*, 216

EXECUTORS & ADMINISTRATORS:

Order appointing special administrator, no appeal from. *Harwood v. Monroe*, 57
 Order refusing to appoint special administrator, no appeal from. *Id.*
 Order granting petition to remove special administrator not appealable, appeal from removal dismissed. *Id.*

FAMILY LAW:

"Supporting his spouse," chancellor's finding not erroneous. *Bitzer v. Bitzer*, 162

HOMESTEAD:

Exemption, personal right. *Triple D-R Dev. v. FJN Contractors, Inc.*, 192
 Remedial purpose of laws, liberal construction. *Id.*
 Exemption, removed only by waiver or abandonment. *Id.*
 Exemption, chancellor erred in finding conveyors received no benefit from claiming homestead exemption. *Id.*
 Exemption, may be raised as defense even though property has been conveyed. *Id.*
 Sale of, conveys title free of judgment lien. *Id.*
 Occupation of property as, sufficient to claim personal privilege against judgment creditor's sale. *Id.*
 Exemption, judgment debtor's right to assert. *Id.*

INSURANCE:

Uninsured motorist coverage, legislative intent. *Columbia Mut. Ins. Co. v. Estate of Baker*, 22
 Uninsured motorist coverage, circuit court did not err in finding garage owner's policy included automobile liability coverage protecting deceased. *Id.*
 Uninsured motorist coverage, appellant obligated by law to offer under garage owner's liability policy. *Id.*
 Uninsured motorist coverage, appellee's summary judgment reversed where fact issue remained on rejection of coverage. *Id.*
 Appellant effectively received underinsured motorist benefits pursuant to compromise & settlement agreement, appellant barred from recovering uninsured motorist benefits. *Marshall v. Shelter Ins. Cos.*, 255

JUDGMENT:

Default judgment, not favored. *National Sec. Fire & Cas. Co. v. Barnes*, 13
 Default judgment, review of denial of motion to set aside. *Id.*
 Summary judgment, when granted. *Columbia Mut. Ins. Co. v. Estate of Baker*, 22
 Summary judgment, factors on review. *Id.*
Res judicata, discussed. *Moon v. Marquez*, 78
 Summary judgment, when granted. *Triple D-R Dev. v. FJN Contractors, Inc.*, 192
 Summary judgment, standard of review. *Id.*
 Summary judgment for appellee reversed, case remanded with directions to grant appellant summary judgment on basis of homestead exemption. *Id.*
 Summary judgment, when granted. *Johnson v. Arthur*, 220

Summary judgment, standard of review. *Id.*
Summary judgment, when trial court may resolve fact issues as matter of law. *Id.*
Summary judgment against appellant A affirmed, *Adams v. Arthur* standard applied. *Id.*
Summary judgment against appellants B & C affirmed, *Adams v. Arthur* standard applied. *Id.*
Grant of summary judgment, review of. *Marshall v. Shelter Ins. Cos.*, 255

JUVENILES:

Foster care, maintenance payments made only on behalf of children placed in foster family homes. *Arkansas Dep't of Human Servs. v. Southerland*, 97
Foster care, "foster family home" defined. *Id.*
Foster care, juvenile court order directing payment of appellee for providing foster care reversed & dismissed for lack of statutory authority. *Id.*
Prosecution as adult, subject to penalties & procedures prescribed for adults. *Ray v. State*, 209
Factors considered for transfer, serious & violent crime. *Id.*
Appellant charged with capital murder, serious & violent nature of offense alone sufficient to try juvenile as adult. *Id.*
Factors considered for transfer, character traits & prospects for rehabilitation. *Id.*
Evidence of theft of property & pleasure in committing murder, bad character & diminished chance for rehabilitation shown. *Id.*
Circuit court's decision to retain jurisdiction, standard of review. *Id.*
Circuit court did not err in retaining jurisdiction or in admitting confession, affirmed. *Id.*

LIMITATION OF ACTIONS:

Public-policy matter, General Assembly's prerogative. *Smith v. Diversicare Leasing Corp.*, 138
Medical Malpractice Act, rational basis not lacking. *Id.*
Medical Malpractice Act, general repealer clause. *Id.*
Medical Malpractice Act, two-year statute superseded three-year general statute. *Id.*
Missouri law, action filed within five-year period for contracts not in writing. *Helms v. University of Missouri—Kansas City*, 155
Arkansas law, three-year period for contracts not under seal & not in writing. *Id.*
Breach of contract, when cause of action accrues. *Id.*
Voluntary partial payment tolls running of statute, payment must be voluntary. *Id.*
Cause of action accrued when appellant repudiated performance, trial court did not err in finding appellee's action not barred. *Id.*
Medical injury, two-year period. *Johnson v. Arthur*, 220
Running of statute as defense, shifting burden. *Id.*
Fraud suspends running of statute, extent of suspension. *Id.*
Claim based on lack of informed consent, something more than nondisclosure necessary to toll statute. *Id.*
Claim based on lack of informed consent, something more than nondisclosure necessary to toll statute. *Martin v. Arthur*, 276
Adams v. Arthur standard applied, finding that fraud & fraudulent concealment did not toll statute affirmed. *Id.*
Product liability, statute begins to run when negligent damage occurs. *Id.*
Products liability, finding affirmed that statute had run as to appellee manufacturer. *Id.*

MASTER & SERVANT:

Liability of master, release of servant does not preclude further action against master for master's own conduct. *National Sec. Fire & Cas. Co. v. Barnes*, 13
Appellee's settlement agreement with former codefendant inured to benefit of appellant, matter reversed & dismissed. *Id.*

MOTIONS:

Motion to suppress, standard of review. *Thomas v. State*, 134
Denial of motion to suppress, standard of review. *Kearse v. State*, 144

NEGLIGENCE:

Limited application of discovery rule. *Martin v. Arthur*, 276

PARENT & CHILD:

Custody, modification of orders. *Moon v. Marquez*, 78
Change of child's surname, duty of chancellor. *Id.*
Action not barred by *res judicata*, chancellor affirmed. *Id.*
Uniform Interstate Family Support Act, purpose. *Office of Child Supp. Enforcem't v. Clemmons*, 84
Uniform Interstate Family Support Act, chancellor may not consider collateral matters. *Id.*
Uniform Interstate Family Support Act, visitation issues are collateral matters. *Id.*
Chancellor directly contravened UIFSA's purpose, case reversed & remanded. *Id.*
Custody, change of. *Hollinger v. Hollinger*, 110
Change of custody, remarriage of one parent insufficient to support change of circumstances. *Id.*
Change of custody, move by custodial parent to better finances insufficient to support change of circumstances. *Id.*
Change of custody, chancellor's finding not clearly against preponderance of evidence in finding material change in circumstances. *Id.*
Change of custody, child's preference one factor to be considered. *Id.*
Change of custody granted, chancellor's order affirmed. *Id.*
Child support terminated upon child's eighteenth birthday, chancellor properly recalculated actual amounts owed. *Mixon v. Mixon*, 240

PHYSICIANS & SURGEONS:

Medical malpractice, fraudulent concealment must rise to level of positive act of fraud. *Johnson v. Arthur*, 220

PLEADING:

Answer by codefendant, general rule & exception. *National Sec. Fire & Cas. Co. v. Barnes*, 13
Codefendant's answer inured to appellant's benefit, appellant not in default for failure to answer. *Id.*
Answer by codefendant, continues to inure to benefit of party against whom default judgment sought. *Id.*
"Amended Complaint" construed as original complaint, filing did not prejudice appellant. *Hill-Rom Co. v. Swink*, 71
Appellees' complaint against appellant was not amendment to earlier dismissed complaint against hospital. *Id.*

Adverse possession, how established. *Anderson v. Holliday*, 165
Adverse possession, when open, visible, & notorious. *Id.*
Adverse possession, predecessor-in-title had actual notice. *Id.*
Adverse possession, events occurring years after predecessor-in-interest could have obtained ownership by adverse possession were not proof against adverse possession. *Id.*
Adverse possession, improvement of section of drainage ditch sufficient to communicate intent to adversely possess property. *Id.*
Adverse possession, use need not be active. *Id.*
Adverse possession, public use of land, does not render adverse possessor's use nonexclusive. *Id.*
Adverse possession, appellees' use exclusive. *Id.*
Adverse possession established, recognition that others might claim property would not divest appellees of ownership. *Id.*
Adverse possession, decree quieting title in appellees affirmed. *Id.*
Value, determination of. *Williams v. State*, 176

PUBLIC SERVICE COMMISSION:

Legislative functions, broad discretion. *Lavaca Tel. Co. v. Arkansas Pub. Serv. Comm'n*, 263
Standard of review. *Id.*
Appellate court's task. *Id.*
Rational-basis test. *Id.*
Adopted rules, local exchange service distinguished from interexchange service. *Id.*
Act 77 of 1997, costs-benefits analysis required only for new rules. *Id.*
Objection to order, appellate review requires raising in application for rehearing. *Id.*
Quality-of-service rules, Commission did not act arbitrarily & capriciously in failing to identify. *Id.*

SEARCH & SEIZURE:

Warrantless search, when justified. *McDaniel v. State*, 41
Vehicular search, strong odor of marijuana from appellant's truck gave rise to probable cause to search. *Id.*
Vehicular search, risk of contraband being removed constituted exigent circumstances. *Id.*
Pat-down search, when justified. *Kearse v. State*, 144
Search incident to lawful arrest, trial court's finding not clearly erroneous. *Id.*

STATUTES:

Statutory service requirements, strict construction & exact compliance required. *Bob Cole Bail Bonds, Inc. v. State*, 1
Legislative acts relating to same subject, construction of. *Seward v. Bud Avants Co.*, 88
Statutes covering same subject matter, older statute repealed by implication. *Mixon v. Mixon*, 240
Meaning of Ark. Code Ann. § 9-14-237 clear, support obligation terminated as matter of law. *Id.*

UNEMPLOYMENT COMPENSATION:

Findings of Board of Review, factors on review. *Beck v. Director*, 8
Misconduct, defined & discussed. *Id.*
Appellant's actions constituted misconduct, Board's denial of benefits affirmed. *Id.*

WITNESSES:

Credibility, deference to trial court, denial of motion to suppress not clearly erroneous.
Kearse v. State, 144

WORKERS' COMPENSATION:

Subsequent period of complications may entitle claimant to additional benefits, when
res judicata will not bar reasonable & necessary treatment. *Cariker v. Ozark*
Opportunities, 60

Treatment of appellant's compensable injury not barred by *res judicata*, Commission's
decision reversed in part. *Id.*

Factors on review, substantial evidence defined. *Crossett Sch. Dist. v. Fulton*, 63

Appellee was performing employment services at time of injury, Commission's decision
affirmed. *Id.*

Attorney's fees, determination of total amount due. *Seward v. Bud Avants Co.*, 88

Later opinion merely calculated amount of attorney's fee, issue not barred by *res*
judicata. *Id.*

One-half of attorney's fee deducted from appellant's benefits, supported by language of
order. *Id.*

Lump-sum statute, purpose of. *Id.*

Fee-splitting & lump-sum statutes, to be construed together. *Id.*

Intention of legislature in enacting fee-splitting & lump-sum statutes, Commission's
decision on payment of attorney's fee affirmed. *Id.*

Attorney's fee, Commission's calculation of portion of fee to be paid by appellant
reversed & remanded. *Id.*

Attorney's fee, Commission's calculation of portion of fee chargeable to employer
affirmed. *Id.*

Workers' Compensation Commission, duty of. *S & S Constr., Inc. v. Coplin*, 251

Workers' Compensation Commission, review of decisions. *Id.*

Workers' Compensation Commission, majority decision required. *Id.*

No majority decision handed down, issue remanded. *Id.*

Standard of review, substantial evidence defined. *Meister v. Safety Kleen*, 259

Reasonable minds could have reached Commission's conclusion, affirmed. *Id.*

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

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

ACTS:	4-26-904(d)	246, 249, 250
	5-4-309(d)	186, 189
ACTS BY NAME:	5-12-102	218
Arkansas Domestic Abuse Act of	5-12-103	217
1991	5-12-103(a)	218
185	5-12-103(a)(1)	218
Federal Consumer Protection	5-12-103(a)(2)	218
Act	5-36-101(11)(i)	181
163	5-36-101(11)(ii)	181
Federal Telecommunications Act	5-36-103(a)(1)	181, 219
of 1996	5-36-103(b)(4)(A)	181
265, 266, 268	5-39-101(4)	181
Medical Malpractice Act	5-39-201(a)(1)	180
138, 139,	5-64-101	189
140, 141, 142, 143, 223, 278	5-64-101(d)	190
Omnibus DWI Act	5-64-101(e)	189
34	5-64-101(e)(1)	190
Product Liability Act	5-64-101(e)(2)	190
143, 277, 281	5-64-101(e)(3)	190
Revised Uniform Reciprocal	5-64-101(e)(4)	190
Enforcement of Support Act	5-64-101(e)(5)	190
87	5-64-101(e)(6)	190
Telecommunications Regulatory	5-64-101(e)(7)	190
Reform Act	5-64-401(a)	186, 191
265	5-64-401(b)	186, 189, 191
Uniform Interstate Family	5-65-103	35
Support Act (UIFSA)	5-65-103(a)	83
84, 85,	5-65-103(b)	83
87, 88	9-14-204—9-14-236	240, 245
	9-14-234	240, 243, 245
	9-14-234(b)	243
	9-14-234(c)	243
	9-14-235	244
	9-14-237	240, 242, 243, 244,
		245
	9-14-237(a)(1)	243
	9-14-237(a)(2)	244
	9-14-237(b)(1)	244
ARKANSAS ACTS:		
Act 77 of 1997		264, 265, 266,
		267, 268, 269, 270, 271
§ 2		269
§ 6(c)		267, 269, 270
§ 11(c)		267, 269
§ 11(d)		264, 266, 269, 271
§ 11(e)		264, 266, 267, 270, 271
§ 12(h)		267, 269, 270
CODES:		
(See also RULES and STATUTES):		
ARKANSAS CODE ANNOTATED:		
4-26-904		250
4-26-904(a)		246, 249, 250

9-14-237(b)(2)	244	16-114-203	138, 139, 140, 142, 143, 220, 224, 225
9-14-237(b)(3)	244	16-114-203(a) ...	138, 140, 143, 223, 281
9-15-103—9-15-211	185	16-114-203(b)	277, 281
9-17-101	84	16-114-203(e) ...	139, 140, 141, 143
9-17-101 et seq.	87	16-116-103	277, 280, 281
9-17-305(d)	84, 87	18-11-102	171
9-27-303(19)	105	18-11-106(a)(1)(A)	171
9-27-317	213	23-2-423(c)(2)	264, 271
9-27-317(g)	214	23-2-423(c)(3)	263, 268
9-27-317(g)(2)(A)	213	23-2-423(c)(4)	263, 268
9-27-317(g)(2)(A)(ii)	213	23-2-423(c)(5)	263, 268
9-27-318	213	23-89-403	26, 28
9-27-318(b)	213	23-89-403(2)	28
9-27-318(b)(1)	213	23-89-403(a)	22, 23, 26, 28
9-27-318(d)	213	23-89-403(a)(1)	26
9-27-318(e)	209, 210, 213, 214	23-90-101-123	91
9-27-318(e)(1)	213	23-90-103(2)	91
9-27-318(e)(2)	213	27-19-605	25, 26
9-27-318(e)(3)	210, 213, 214	28-1-116(a)	57, 59
9-27-318(f)	214	28-1-116(b)	57, 59
9-27-337(b)(1)	105	28-48-103(f)	57, 59
11-9-102(5)(B)(iii)	64, 65		
11-9-102(5)(D)	260, 262	UNITED STATES CODE:	
11-9-102(16)	260	15 U.S.C. § 1672	163
11-9-102(16)(A)(i)	262	15 U.S.C. § 1673	163
11-9-204(b)(1)	253	15 U.S.C. § 1673(a)	163
11-9-207(a)(5)	253	15 U.S.C. § 1673(a)(1)	163
11-9-711(b)(4)(A)	254	15 U.S.C. § 1673(a)(2)	163
11-9-715	89, 91, 92, 93, 94, 95	15 U.S.C. § 1673(b)	163
11-9-715(a)(1)(B)	93	15 U.S.C. § 1673(b)(2)	163
11-9-715(a)(2)(B)(i)	89, 90, 94, 95	15 U.S.C. § 1673(b)(2)(A)	162, 163, 164
11-9-716	89, 91, 92, 93, 94, 95	15 U.S.C. § 1673(b)(2)(B)	164
11-9-801	91, 92	15 U.S.C. § 1675	163
16-10-302(b)	76	21 U.S.C. § 352	190
16-10-309	77	21 U.S.C. § 353	190
16-56-105(1)	156, 161	29 U.S.C. § 206(a)(1)	163
16-56-116	139, 140, 143	42 U.S.C. § 672(b)(1)	97, 100
16-56-116(a)	140, 141	42 U.S.C. § 672(c)(1)	97, 100
16-56-116(b)	140		
16-65-117	197	CONSTITUTIONAL PROVISIONS:	
16-84-201	1, 2	ARKANSAS CONSTITUTION:	
16-84-201(a)(1)(A)	3, 6	Art. 9, § 3	197
16-84-201(a)(1)(B)	5, 6, 7, 8		
16-84-201(c)	4		

UNITED STATES CONSTITUTION:

- Amend. 4 52, 54, 56, 147, 149, 232, 235
- Amend. 14 (Due Process Clause) 149, 191

RULES:

ARKANSAS RULES OF APPELLATE PROCEDURE — CIVIL:

- Ark. R. App. P.—Civ. 2(a) 72, 75
- Ark. R. App. P.—Civ. 2(a)(1) 106
- Ark. R. App. P.—Civ. 2(a)(2) 97, 101
- Ark. R. App. P.—Civ. 6(d) 115
- Ark. R. App. P.—Civ. 6(e) 115

ARKANSAS RULES OF CIVIL PROCEDURE:

- ARCP Rule 3 76
- ARCP Rule 8(f) 72, 74, 76
- ARCP Rule 44.1 160
- ARCP Rule 52(a) 84, 88, 160
- ARCP Rule 60 74

ARKANSAS RULES OF CRIMINAL PROCEDURE:

- A.R.Cr.P. Rule 3.1 49, 147
- A.R.Cr.P. Rule 3.4 53, 147
- A.R.Cr.P. Rule 4.1 144
- A.R.Cr.P. Rule 4.1(a)(iii) 148
- A.R.Cr.P. Rule 5.5 147

- A.R.Cr.P. Rule 12.1 49
- A.R.Cr.P. Rule 12.4 45, 49, 50, 52
- A.R.Cr.P. Rule 14.1(a) 43, 53
- A.R.Cr.P. Rule 14.1(a)(i) 43
- A.R.Cr.P. Rule 24.3(b) 234
- A.R.Cr.P. Rule 28.1(c) 273
- A.R.Cr.P. Rule 28.2(a) 273
- A.R.Cr.P. Rule 28.3 273
- A.R.Cr.P. Rule 28.3(h) 272, 276
- A.R.Cr.P. Rule 28.3(i) 272, 274, 275
- A.R.Cr.P. Rule 31.2 178, 182, 184

RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS:

- Ark. Sup. Ct. R. 4-2(a)(5) 103
- Ark. Sup. Ct. R. 4-2(a)(6) 107, 108, 109
- Ark. Sup. Ct. R. 4-2(b)(2) 98, 101, 108, 109
- Ark. Sup. Ct. R. 4-4 109

WORKERS' COMPENSATION COMMISSION RULE:

- W.C.C. Rule 10 91, 92

STATUTES:

ARKANSAS STATUTES ANNOTATED:

- 30-210 200



ARKANSAS REPORTS
VOLUME 336

ARKANSAS
APPELLATE REPORTS
VOLUME 65

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

— SAMUEL JOHNSON
(1709-1784)

APPENDIX

Rules Adopted
or Amended by
Per Curiam Orders

1

IN RE: COMMITTEE ON PROFESSIONAL CONDUCT;
Alternate Committee on Professional Conduct:
Term Adjustments for Professional Conduct Committee and
Alternate Committee

Supreme Court of Arkansas
Delivered January 7, 1999

PER CURIAM. The Court previously created the Committee on Professional Conduct and the Alternate Committee on Professional Conduct and provided that each Committee consist of five lawyer members and two nonlawyer members. Originally, the terms of appointment were seven years for lawyer members and four years for nonlawyer members. By Per Curiam of July 16, 1990, the Court increased the term of appointment for nonlawyer members of the Committee on Professional Conduct from four to seven years and by subsequent Per Curiam Order provided for a like term for nonlawyer members of the Alternate Committee.

In the interest of continuity, it was, and remains, the Court's intent that each Committee would establish staggered terms so that only one term of appointment would expire in any calendar year. Due, in part, to the term change for nonlawyer members and several appointments having been made to replace members who were unable to complete their full terms, each of the Committees is now out of compliance with the plan of staggered terms contemplated by the Court.

Therefore, the Per Curiam previously issued appointing the current members of the Committee on Professional Conduct and the Alternate Committee on Professional Conduct are revised to reflect the expiration date of each member's term of appointment as set out herein. In order to achieve staggered terms consonant with the Court's intent it is necessary to make an adjustment of some of the members' current terms. Hereafter, all terms of appointment to the Committee on Professional Conduct shall have a regular expiration date of September 30 of the appropriate anniversary year, and terms for the Alternate Committee shall

expire on March 30 of the appropriate year. An appointment to fill a vacancy created by a member's inability to complete the term to which he or she was appointed will be made for the duration of the unexpired term. Members may be appointed to serve not more than two full terms. Prior to future publication of Per Curiam's appointing members to these two Committees, the Committee's Executive Director will consult with and advise the Court's liaison to these Committees.

Attached to and made a part of this Order are the membership lists and term expiration dates for the Committee on Professional Conduct (APPENDIX A) and the Alternate Committee on Professional Conduct (APPENDIX B).

APPENDIX A

Effective on the date of publication of this Order, the following expiration dates for terms of appointment to the Committee on Professional Conduct are applicable to the members indicated below:

COMMITTEE ON PROFESSIONAL CONDUCT

<u>Name</u>	<u>Position</u>	<u>Term Expiration</u>
Carlton Bailey, Esq. Fayetteville, AR	Lawyer (at large)	9/30/2000
Sue Winter Little Rock, AR	Nonlawyer (at large)	9/30/2001
Dr. Patricia Youngdahl Little Rock, AR	Nonlawyer (at large)	9/30/2002
Richard A. Reid, Esq. Blytheville, AR	Lawyer (1st Cong. District)	9/30/2003
Kenneth Reeves, Esq. Harrison, AR	Lawyer (3rd Cong. District)	9/30/2004
Bart Virden, Esq. Morrilton, AR	Lawyer (2nd Cong. District)	9/30/2005
Win A. Trafford, Esq. Pine Bluff, AR	Lawyer (4th Cong. District)	9/30/2006

APPENDIX B

Effective on the date of publication of this Order, the following expiration dates for terms of appointment to the Alternate Committee on Professional Conduct are applicable to the members indicated below:

ALTERNATE COMMITTEE ON PROFESSIONAL CONDUCT

<u>Name</u>	<u>Position</u>	<u>Term Expiration</u>
David Solomon, Esq. Helena, AR	Lawyer (1st Cong. District)	3/30/1999
Dr. Rose Word Pine Bluff, AR	Nonlawyer (at large)	3/30/2001
John Rush, Esq. Pine Bluff, AR	Lawyer (4th Cong. District)	3/30/2002
James M. Cogbill, Esq. Fort Smith, AR	Lawyer (3rd Cong. District)	3/30/2003
Rita M. Harvey Little Rock, AR	Nonlawyer (at large)	3/30/2004
Richard F. Hatfield Little Rock, AR	Lawyer (2nd Cong. District)	3/30/2005
— Vacant —	Lawyer (at large)	3/30/2006

IN RE: ARKANSAS RULES OF CIVIL PROCEDURE 4, 5, 26, 33, 34, 41, 50, 52, 54, 55, 59; ARKANSAS RULES OF APPELLATE PROCEDURE—CIVIL 4; ARKANSAS CODE ANNOTATED §§ 16-20-109 and 16-58-131

Supreme Court of Arkansas
Delivered January 28, 1999

PER CURIAM. The 1998 report of the Arkansas Supreme Court Committee on Civil Practice contained a number of suggested rules changes. The Committee's suggestions were published in our *per curiam* order of November 5, 1998, so that members of the bench and bar could have an opportunity to comment. We thank those who took the time to review the proposals and submit comments.

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

The adoption of the revised Official Probate Forms is addressed in a separate order. As noted in our earlier order, the adoption of the amendment to Ark. R. Civ. P. 5 supersedes Ark. Code Ann. §§ 16-20-109 and 16-58-131.

We adopt the following amendments to be effective immediately, and republish the rules as set out below.

Arkansas Rules of Civil Procedure

1. **Rule 4** is amended by deleting the word "a" before the word "summons" in subdivision (c)(2) and by revising subdivision (e)(3) to read as follows:

By mail as provided in subdivision (d)(8) of this rule;
The Reporter's Notes accompanying Rule 4 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment: Subdivision (c)(2) has been amended by deleting the word "a" before the word "summons." This amendment is intended to make plain that private process servers may be appointed by standing order as well as on a case-by-case basis. In addition, subdivision (e)(3) has been amended to provide that service by mail outside the state in accordance with the requirements of subdivision (d)(8), which governs service by mail inside the state. This change makes the two provisions consistent.

2. Ark. Code Ann. §§ 16-20-109 and 16-58-131 are deemed superseded.

3. Rule 5 is amended by revising subdivision (b) to read as follows:

(b) Service: How Made. (1) Whenever under this rule or any statute service is required or permitted to be made upon a party represented by an attorney, the service shall be upon the attorney, except that service shall be upon the party if the court so orders or the action is one in which a final judgment has been entered and the court has continuing jurisdiction.

(2) Except as provided in paragraph (3) of this subdivision, service upon the attorney or upon the party shall be made by delivering a copy to him or by sending it to him by regular mail at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy for purposes of this paragraph means handing it to the attorney or to the party; by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing. When service is permitted upon an attorney, such service may be effected by electronic transmission, provided that the attorney being served has facilities within his office to receive and reproduce verbatim electronic transmissions, or such service may be made by a commercial delivery service which maintains permanent records of actual delivery.

(3) If a final judgment or decree has been entered and the court has continuing jurisdiction, service upon a party by mail shall comply with the requirements of Rule 4(d)(8)(A).

Rule 5 is further amended by revising paragraph (2) of subdivision (c) to read as follows:

(2) If the clerk's office has a facsimile machine, the clerk shall accept facsimile transmissions of any paper filed under this rule and may charge a fee of \$1.00 per page. Any signature appearing on a facsimile copy shall be presumed authentic until proven otherwise. The clerk shall stamp or otherwise mark a facsimile copy as filed on the date and time that it is received on the clerk's facsimile machine during the regular hours of the clerk's office or, if received outside those hours, at the time the office opens on the next business day.

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

Addition to Reporter's Notes, 1999 Amendment:

Subdivision (b) has been divided into three paragraphs, but only one change has been made. Previously, service by regular mail was sufficient in all cases. See *Office of Child Support v. Ragland*, 330 Ark. 280, 954 S.W.2d 218 (1997) (motion requesting judgment for unpaid child support). Paragraph (2) provides for service by regular mail as a general rule; however, paragraph (3) creates an exception by incorporating the requirements of Rule 4(d)(8)(A) for service by mail on a party when, as in *Ragland*, a final judgment or decree has been entered and the court has continuing jurisdiction. In this situation, paragraph (1) requires, as did the prior version of the rule, that service be made on the party, not his or her attorney. Ark. Code Ann. § 16-58-131, which addressed these issues and other matters now governed by Rules 4 and 5, has been deemed superseded.

Several changes have been made in subdivision (c)(2) concerning facsimile filings. The statute on which the rule was originally based, Ark. Code Ann. § 16-20-109, has been deemed superseded.

The first sentence of subdivision (c)(2) has been amended to require any clerk with a facsimile machine to accept facsimile filings of any paper filed under this rule and to allow the clerk to charge a fee of \$1.00 per page. Previously, the rule provided that a clerk with a facsimile machine "may accept" papers filed by fax. Apparently, some clerks refused to accept papers filed in this manner even though they had the necessary equipment. Also, language in the first sentence requiring that an original document be substituted for a fax filing if the latter were not made on bond-type paper has been deleted. This provision was considered unnecessary in light of improvements in the quality of fax machines.

The third sentence of subdivision (c)(2) has been amended to require that the clerk stamp or otherwise mark the facsimile copy as filed on the date and time that it is received in the clerk's office or, if received when the office is closed, on the next business day. The last sentence of the prior version of the rule, which provided that "[t]he date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of filing," has been deleted because the date and time are printed by the sender's facsimile machine, not the clerk's.

4. **Rule 26** is amended by inserting the words "any books, documents, or other tangible things and the identity and location of" between the words "of" and "persons" in the first sentence of paragraph (1) of subdivision (b), and by revising paragraph (2) of subdivision (e) to read as follows:

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

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

Addition to Reporter's Notes, 1999 Amendment: The first sentence of subdivision (b)(1) has been revised to correct an oversight that dates to the rule's adoption. As amended, this sen-

tence provides for discovery not only as to persons who may have knowledge of discoverable matters or who may be called as witnesses at trial, but also as to "books, documents, or other tangible things." The new language is taken from Federal Rule 26(b)(1), on which the Arkansas rule was based.

Subdivision (e)(2) has been revised to track the corresponding federal rule, as amended in 1993. The duty to supplement, while imposed on a "party," applies whether the corrective information is learned by the client or by the attorney. Supplementa-tion need not be made as each new item of information is learned but should be made at appropriate intervals during the discovery period, and with special promptness as the trial date approaches. Under the revised rule, the obligation to supplement applies to interrogatories, requests for production, and requests for admissions, but not ordinarily to deposition testimony. However, sup-plementation is required under subdivision (e)(1) with respect to changes in the opinions of experts, whether in response to inter-rogatories under subdivision (b)(4)(A) or in a deposition.

The obligation to supplement under subdivision (e)(2) arises whenever a party learns that its prior responses are "in some mate-rial respect" incomplete or incorrect. The "knowing concealment" standard found in the former version of the rule has been deleted. A formal amendment of a response is not necessary if the correc-tive or supplemental information has been made known to the parties in writing or during the discovery process, as when a wit-ness not previously disclosed is identified during the taking of a deposition.

5. **Rule 33** is amended by adding the following sentence at the end of subdivision (d):

A specification shall be in sufficient detail to permit the inter-rogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

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

Addition to Reporter's Notes, 1999 Amendment:

Subdivision (d) has been amended by adding the last sentence. Taken from the corresponding federal rule, this provision makes clear that a party responding to interrogatories by producing business records has the duty to specify, by category and location, the records from which answers to interrogatories can be derived. Without such guidance, the burden of deriving the answers would not be substantially the same for the party serving the interrogatories as for the responding party. A similar requirement has been added to Rule 34(b).

6. **Rule 34(b)** is amended by numbering the two paragraphs as (1) and (2), respectively; by adding the phrase "and inspection permitted of the remaining parts" at the end of the fourth sentence of paragraph (2); and by adding the following as new paragraph (3):

(3) A party who produces documents for inspection shall

(A) organize and label them to correspond with the categories in the production request or

(B) produce them as kept in the usual course of business if the party seeking discovery can locate and identify the relevant records as readily as can the party who produces the documents.

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

Addition to Reporter's Notes, 1999 Amendment: The first and second paragraphs of subdivision (b) have been numbered and a new paragraph (3) added. The fourth sentence of the second paragraph has been amended to require a party who objects to part of a request for production to permit inspection with respect to the unobjectionable portions. The corresponding federal rule was so amended in 1993. A similar requirement for answers to interrogatories appears in Rule 33(b)(1).

The new third paragraph, based on Federal Rule 34(b), provides that a party from whom production is sought must (1) organize and label the documents in accordance with the categories set out in the production request, or (2) produce them as kept

in the usual course of business. However, the second option is available only if "the party seeking discovery can locate and identify the relevant documents as readily as can the party who produces them." This requirement is intended to eliminate a problem that has arisen under the federal rule, which appears to give the producing party the right to produce records as kept in the usual course of business even though the party seeking discovery would be forced to sift through a jumble of documents in order to find those that are responsive to the production request. A similar requirement has been added to Rule 33(d), which allows the production of business records in response to interrogatories.

7. **Rule 41** is amended by revising subdivision (a) to read as follows:

(a) Voluntary Dismissal; Effect Thereof. (1) Subject to the provisions of Rule 23(d) and Rule 66, an action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the jury, or to the court where the trial is by the court.

Although such a dismissal is a matter of right, it is effective only upon entry of a court order dismissing the action.

(2) A voluntary dismissal under paragraph (1) operates as an adjudication on the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based upon or including the same claim, unless all parties agree by written stipulation that such dismissal is without prejudice.

(3) In any case where a set-off or counterclaim has been previously presented, the defendant shall have the right of proceeding on his claim although the plaintiff may have dismissed his action.

Rule 41 is further amended by adding the following new sentence at the end of subdivision (d):

For purposes of this rule, the term "costs" means those items taxable as costs under Rule 54(d)(2).

The Reporter's Notes accompanying Rule 41 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment:

Subdivision (a) has been divided into three numbered paragraphs and revised to reflect case law. In *Blaylock v. Shearson Lehman Brothers, Inc.*, 330 Ark. 620, 954 S.W.2d 939 (1997), the Supreme Court noted that it had "long interpreted [Rule 41(a)] as creating an absolute right to a nonsuit prior to submission of the case to the jury or to the court." In the same case, the Court held that "a court order is necessary to grant a nonsuit and the judgment or decree must be entered to be effective."

A new sentence has been added to subdivision (d) defining "costs" as those recoverable under Rule 54(d)(2), a new provision. A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. See, e.g., *Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

8. **Rule 50** is amended by revising subdivision (b) to read as follows:

(b) Motion for Judgment Notwithstanding the Verdict.

(1) Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.

(2) Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party within 10 days after the jury has been discharged may move for judgment in accordance with his motion for directed verdict. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor

denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

(3) A motion for a new trial may be joined with a motion for judgment notwithstanding the verdict, or a new trial be prayed in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

The Reporter's Notes accompanying Rule 50 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment:

Subdivision (b) has been divided into three numbered paragraphs. The new second sentence of paragraph (2) makes plain that a pre-judgment motion for JNOV is permissible.

This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was ineffective. See *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new third sentence provides that a motion for JNOV not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure—Civil but was added here as a reminder to counsel.

9. **Rule 52** is amended by revising subdivision (b) to read as follows:

(b) **Amendment.** (1) Upon motion of a party made not later than 10 days after entry of judgment, the court may amend its findings of fact or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor

denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

(2) When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

The Reporter's Notes accompanying Rule 52 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment:

Subdivision (b) has been divided into two numbered paragraphs. The new third sentence of paragraph (1) makes plain that a pre-judgment motion to amend findings or to make additional findings is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was not effective. See *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997) (motion for new trial). The new fourth sentence provides that a motion to amend findings or for additional findings not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure—Civil but was added here as a reminder to counsel.

10. **Rule 54** is amended by revising subdivision (d) to read as follows:

(d) **Costs.** (1) Costs shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.

(2) Costs taxable under this rule are limited to the following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed

by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

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

Addition to Reporter's Notes, 1999 Amendment: A new paragraph has been added to subdivision (d) defining the term "costs." A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. *See, e.g., Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

11. **Rule 55** is amended by replacing the word "appear" in subdivision (a) with the word plead."

The Reporter's Notes accompanying Rule 55 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment:

Subdivision (a) has been amended by replacing the word "appear" with the word "plead," the terminology used in the corresponding federal rule. This revision, while minor, is intended to eliminate potential confusion stemming from the fact that appearance is also relevant under subdivision (b), which requires notice of a hearing on a motion for default judgment if the party against whom the judgment is sought "has appeared in the action. . . ."

In addition, use of the word "plead" in subdivision (a) indicates that the phrase "otherwise appear" has independent meaning. Arkansas cases suggest that this phrase means the same thing as an appearance, in which case it would be a redundancy. *E.g., Tapp v. Fowler*, 291 Ark. 309, 724 S.W.2d 176 (1987) (defendant appeared or otherwise defended within meaning of Rule 55(a) by filing motion to dismiss and motion for summary judgment). Under the federal rule, the phrase "otherwise defend" refers to motions, which by definition are not pleadings. *E.g., Bass v. Hoagland*, 172 F.2d 205 (5th Cir.), *cert. denied*, 338 U.S. 816 (1949). *See also* Ark. R. Civ. P. 7(a) & (b) (distinguishing plead-

ings and motions). Amended subdivision (a) reflects the dichotomy recognized by the federal courts.

12. **Rule 59** is amended by deleting the semicolon and the words "Amendment of Judgments" from the title and by adding the following two sentences at the end of subdivision (b):

A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

The Reporter's Notes accompanying Rule 59 are amended by adding the following:

Addition to Reporter's Notes, 1999 Amendment: Subdivision (b) has to amended by adding a new second sentence that effectively overturns *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997), which held that a motion for new trial filed before entry of judgment is ineffective. As amended, the rule reflects the practice in the federal courts. The new third sentence provides that a motion for new trial not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure—Civil but was added here as a reminder to counsel.

In addition, the title of the rule has been modified by striking the words "amendment of judgments." A provision in the original version of the rule dealing with this issue was deleted in 1983. See Addition to Reporter's Notes, 1983 Amendment.

Arkansas Rules of Appellate Procedure—Civil

Rule 4 is amended to read as follows:

(a) **Time for Filing Notice of Appeal.** Except as otherwise provided in subdivision (b) of this rule, a notice of appeal shall be filed within thirty (30) days from the entry of the judgment, decree or order appealed from. A notice of cross-appeal shall be filed within ten (10) days after receipt of the notice of appeal, except that in no event shall a cross-appellant have less than thirty (30) days from the entry of the judgment, decree or order within which to file a notice of cross-appeal. A notice of appeal filed after the trial court announces a decision but before the entry of the judgment, decree, or order shall be treated as filed on the day after the judgment, decree, or order is entered.

(b) **Extension of Time for Filing Notice of Appeal.** (1) Upon timely filing in the trial court of a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules of Civil Procedure, a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), or a motion for a new trial under Rule 59(a), the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the trial court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.

(2) A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such a notice is effective to appeal the underlying judgment, decree, or order. A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice, complying with Rule 3(e). No additional fees will be required for filing an amended notice of appeal.

(3) Upon a showing of failure to receive notice of the judgment, decree or order from which appeal is sought and a determi-

nation that no party would be prejudiced, the trial court may, upon motion filed within 180 days of entry of the judgment, decree, or order, extend the time for filing the notice of appeal for a period of fourteen (14) days from the date of entry of the extension order. Notice of any such motion shall be given to all other parties in accordance with Rule 5 of the Arkansas Rules of Civil Procedure.

(c) **When Judgment Is Entered.** A judgment, decree or order is entered within the meaning of this rule when it is filed with the clerk of the court in which the claim was tried. A judgment, decree or order is filed when the clerk stamps or otherwise marks it as "filed" and denotes thereon the date and time of filing.

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

Addition to Reporter's Notes, 1999 Amendment: The rule has been revised to incorporate some features of Rule 4 of the Federal Rules of Appellate Procedure, as amended in 1991 and 1993. On balance, the effect of the amendment is to liberalize prior Arkansas practice.

Subdivision (a) now provides that a premature notice of appeal is to be treated as if it had been filed after entry of the judgment, decree, or order. Previously, such a notice was ineffective. *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992). Subdivision (f) of the prior version of the rule, which provided that a notice of appeal was effective if filed on the same day but earlier in time than the judgment, decree, or order, has been deleted. Also deleted are two sentences in subdivision (a) dealing with the situation in which a party has not received notice of entry of a judgment, decree, or order. This issue is now addressed in paragraph (3) of subdivision (b).

Amended subdivision (b) combines subdivisions (b), (c), and (d) of the prior version of the rule. Paragraph (b)(1) is essentially former subdivision (b), with one clarifying change. A timely motion for new trial, judgment notwithstanding the verdict, or amendment of findings extends for all parties the time for filing a notice of appeal. If there are multiple motions, the 30-day period for filing a notice of appeal begins to run from entry of the order

disposing of “the last motion outstanding” or the date on which such motion is deemed denied by operation of law.

Paragraph (b)(2), based on Federal Rule 4(a)(4), is new. It provides that a notice of appeal filed before disposition of one of the specified posttrial motions becomes effective on the day after a dispositive order is entered or the motion is deemed denied by operation of law. Under prior practice, a premature notice of appeal was ineffective. *Chickasaw Chemical Co. v. Beasley*, 328 Ark. 472, 944 S.W.2d 511 (1997); *Kimble v. Gray*, 313 Ark. 373, 853 S.W.2d 890 (1993). The effect of paragraph (b)(2) is to suspend a premature notice until the motion is ruled on or deemed denied, and a new notice is not necessary to appeal the underlying case. However, a party seeking to appeal from disposition of the post-trial motion must amend the original notice to so indicate. No additional fees are required in this situation, since the notice is an amendment of the original and not a new notice of appeal.

Paragraph (b)(3) is a revised version of a provision previously found in subdivision (a), under which a party who did not receive notice of the judgment or order that he or she wished to appeal could obtain an extension from the trial court “for a period not to exceed sixty (60) days from the expiration of the time otherwise prescribed by these rules.” This rule proved restrictive in operation. *See, e.g., Jones-Blair Co. v. Hammitt*, 51 Ark. App. 112, 911 S.W.2d 263 (1995), rev’d on other grounds, 326 Ark. 74, 930 S.W.2d 335 (1997); *Chickasaw Chemical Co. v. Beasley, supra*. Accordingly, paragraph (b)(3) expands the period during which an extension may be sought. The trial court may extend the time for filing the notice of appeal “upon motion filed within 180 days of entry of the judgment, decree, or order.” If such an extension is granted, the notice of appeal must be filed within fourteen days from the date on which the extension order is entered. These time frames are taken from the corresponding federal rule. *See* Rule 4(a)(6), Fed. R. App. P. Like the federal rule, paragraph (b)(3) also requires a determination by the trial court that no party would be prejudiced by the extension of time. The term “prejudice” means some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal. Prejudice might arise, for example, if the appellee had taken some action in reliance on the expiration of the normal time period for filing a notice of appeal.

IN RE: OFFICIAL PROBATE FORMS
ADMINISTRATIVE ORDER
NUMBER 12

Supreme Court of Arkansas
Delivered January 28, 1999

PER CURIAM. The 1998 report of the Arkansas Supreme Court Committee on Civil Practice contained a proposal to revise the Official Probate Forms. The Committee's suggestions were published in our *per curiam* order of November 5, 1998, so that members of the bench and bar could have an opportunity to comment. We thank those who took the time to review the proposals and submit comments.

We hereby adopt, effective immediately, and republish the Official Probate Forms as set out below. These official forms supersede all earlier versions. We again express our gratitude to the members of our Civil Practice Committee.

We are adopting the revised Official Probate Forms by way of Administrative Order Number 12; however, we direct that the forms themselves not be published in the *Arkansas Court Rules Volume* published every year. The forms will be published this one time by this *per curiam* order and will be permanently memorialized in the *Arkansas Reports*.

We direct that with respect to Administrative Order Number 12 only the following appear in the *Arkansas Court Rules* Volume :

“ADMINISTRATIVE ORDER NUMBER 12

OFFICIAL PROBATE FORMS

The Court, pursuant to Ark. Code Ann. § 28-1-114 and its constitutional and inherent powers to regulate procedure in the courts, has adopted thirty-three probate forms. These official forms supersede all earlier versions. The forms are published in 336 Ark. Appendix (1999).”

[The materials appearing below shall not be published in the *Arkansas Court Rules*.]

ADMINISTRATIVE ORDER NUMBER 12
OFFICIAL PROBATE FORMS

Section 1. Authority. The Court, pursuant to Ark. Code Ann. § 28-1-114 and its constitutional and inherent powers to regulate procedure in the courts, adopts the following probate forms. These official forms supersede all earlier versions.

Section 2. Captions and Affidavits. When the word “caption” appears on a form, the following format should be used:

In The Probate Court of _____ County, Arkansas
In The Matter of the Estate of
_____, Deceased No. _____

-OR-

In the Matter of _____,
An Incapacitated Person

When the word “affidavit” appears on a form, the following format should be used:

STATE OF ARKANSAS
COUNTY OF _____

Subscribed and sworn to before me on [date].

[Signature]

[Official Title]

(Seal)

My commission expires: _____

Reporter’s Notes to Section 2: The statutes governing guardianship proceedings, Ark. Code Ann. §§ 28-65-101 — 28-

65-603, use the term "incapacitated person" to refer both to persons who are impaired by reason of various forms of disability and to persons under the age of 18 whose disabilities have not been removed. The term "minor" may be used with respect to the latter.

By statute, "[e]very application to the [probate] court, unless otherwise provided, shall be by petition signed and verified by or on behalf of the petitioner." Ark. Code Ann. § 28-1-109(a). Other documents require verification only if the governing statute so provides. These statutes are cited in the Reporter's Notes accompanying those forms, other than applications, that require an affidavit.

Section 3. Forms.

Form 1.

[Caption]

DEMAND FOR NOTICE OF PROCEEDINGS FOR
PROBATE OF WILL
OR APPOINTMENT OF PERSONAL
REPRESENTATIVE

The undersigned, _____, respectfully demands notice of any proceeding to probate a will of _____, deceased, who resided at _____, Arkansas, or for the appointment of a personal representative to administer [his] [her] estate.

My address is _____.

My interest in the estate is that of _____.

My attorney, authorized to represent me in this proceeding, and to accept notice for me, is _____, whose address is _____.

Date: _____, _____.

[Signature]

Reporter's Notes to Form 1: See Ark. Code Ann. § 28-40-108(a).

Form 2.

[Caption]

PETITION FOR APPOINTMENT
OF [ADMINISTRATOR] [ADMINISTRATRIX]

_____, whose address is _____, and whose interest in the decedent's estate is that of _____, petitions that letters of administration of the estate be issued. The facts known to petitioner are:

1. The decedent, _____, aged _____, who resided at _____ in _____ County, Arkansas, died intestate at _____ on or about [date].

2. The surviving spouse and heirs of the decedent, and their respective ages, relationships to the decedent, and residence addresses, are:

Name	Age	Relationship	Residence Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. The probable value of the decedent's estate is:

Real property \$ _____

Personal property \$ _____

4. Petitioner nominates _____, whose residence address is _____, for appointment as [administrator] [administratrix] of the estate. The relationship, if any, of the nominee to the decedent, and other facts, if any, which entitle the nominee to appointment are: _____.

THEREFORE, petitioner requests that this court make an order determining the fact of the death and of the intestacy of the decedent, and appointing petitioner's nominee [administrator] [administratrix] of the estate.

[Signature of Petitioner]

[Affidavit]

Reporter's Notes to Form 2: See Ark. Code Ann. § 28-40-107. The term "heir" is defined by statute as "a person entitled by the law of descent and distribution to the real and personal property of an intestate decedent, but does not include a surviving spouse." Ark. Code Ann. § 28-1-102(a)(10).

Form 3.

[Caption]

PETITION FOR PROBATE OF WILL AND
APPOINTMENT OF PERSONAL
REPRESENTATIVE

_____, whose address is _____, and whose interest in the decedent's estate is that of _____, petitions that a certain written instrument be admitted to probate as the last will of the decedent, and for the appointment of a personal representative. The facts known to petitioner are:

1. The decedent, _____, aged _____, who resided at _____ in _____ County, Arkansas, died at _____ on or about [date].

2. The decedent left as his last will a written instrument dated the _____ day of _____, _____, which has been filed in this court. Proof of its execution in the manner required by law has been made or will be made at the time of presentation of this petition.

3. The surviving spouse, heirs, and devisees of the decedent, and their respective ages, relationships to the decedent, and residence addresses, are:

Name	Age	Relationship	Residence Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. The probable value of the decedent's estate is:

Real property \$ _____

Personal property \$ _____

5. The will of the decedent nominates _____ as [executor] [executrix]. (Petitioner nominates for appointment as _____, _____ of _____ to administer the estate.) The relationship, if any, of the nominee to the decedent, and other facts, if any, which entitle the nominee to appointment are: _____.

THEREFORE, petitioner requests that this court make an order determining (1) the fact of the death of the decedent; (2) that the proffered instrument was executed in all respects according to law when the testator was competent to do so and acting without undue influence, fraud or restraint, has not been revoked and is decedent's last will; and (3) appointing the nominee to administer the decedent's estate.

[Signature of Petitioner]

[Affidavit]

Reporter's Notes to Form 3: See Ark. Code Ann. § 28-40-107. The sentence in parentheses in paragraph 5 is to be substituted for the preceding sentence if the petitioner seeks appoint-

ment of a personal representative who is not nominated in the decedent's will.

Form 4.

[Caption]

PROOF OF WILL

I, _____, state on oath:

I am one of the subscribing witnesses to the attached written instrument, dated the _____ day of _____, _____, which purports to be (a codicil to) the last will of _____, deceased. On the execution date of the instrument the [testator] [testatrix], in my presence, and in the presence of the other attesting witnesses, signed the instrument at the end, or acknowledged [his] [her] signature, declared the instrument to be [his] [her] will, and requested that I attest [his] [her] execution of it. Then, in the presence of the [testator] [testatrix] and the other witnesses, I signed my name as an attesting witness. At the time of execution of the instrument, the [testator] [testatrix] appeared to be eighteen years of age or older, of sound mind, and acting without undue influence, fraud or restraint.

Date: _____, _____.

[Signature]

[Affidavit]

Reporter's Notes to Form 4: This form is designed for execution and filing with the court when the original will did not include a "proof of will." Because it is not always practical to have multiple witnesses appear simultaneously, the form is for a single witness. This form is for an attested will and should not be used for a holographic will. An attested will must be proved by at least two attesting witnesses or as otherwise provided by statute. Ark. Code Ann. § 28-40-117(a). If the instrument is a codicil, the language in parentheses should be included. An affidavit is required by Ark. Code Ann. § 28-40-118(a).

Form 5.

[Caption]

NOTICE OF HEARING ON PETITION

To all persons interested in the estate of _____,
deceased:

You are hereby notified that a petition has been filed in this court (to admit to probate the will of _____, and) for the appointment of a personal representative for this estate; that this petition will be heard at ____ o'clock __.m. on [date], at _____, or at a later time or other place to which the hearing may be adjourned or transferred.

Date: _____, _____

_____, Clerk.

By: _____, Deputy Clerk.

Reporter's Notes to Form 5: See Ark. Code Ann. § 28-40-110. The language in parentheses should be used when the petitioner seeks probate of a will.

Form 6.

[Caption]

BOND OF PERSONAL REPRESENTATIVE

The undersigned, _____, as principal, having been appointed [executor] [executrix] of the will of (or [administrator] [administratrix] of the estate of) _____, deceased, and _____, as suret ____, acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use and benefit of all persons interested in the estate, in the penal sum of _____ Dollars (\$ _____) conditioned as follows:

If the undersigned [executor] [executrix] (or [administrator] [administratrix]) shall well and faithfully account for his administration of the estate, as required by law, this bond shall

become void. Otherwise, this bond will remain in full force and effect.

Date: _____, _____.

_____, as Principal.

_____, as Surety.

_____, as Surety.

Approved this date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

Approved this date: _____, _____.

_____, Judge.

Reporter's Notes to Form 6: See Ark. Code Ann. § 28-48-204. The references to administrator and administratrix in parentheses are to be substituted for the references to executor and executrix if the personal representative was not nominated in the decedent's will. If a corporate surety is used, the power of attorney of agent should be attached. If the sureties are individuals, their qualifying affidavit (Form 7) should be attached.

Form 7.

[Caption]

QUALIFYING AFFIDAVIT OF PERSONAL SURETIES

The undersigned, being the sureties on the bond filed in this estate, state on oath that we collectively own property in the State of Arkansas, in excess of our liabilities and subject to execution, of a value equal to the amount of the bond.

Date: _____, _____.

_____, Surety.

_____, Surety.

_____, Surety.

[Affidavit]

Reporter's Notes to Form 7: See Ark. Code Ann. § 28-48-205. This form is only for individual sureties. It may be used with the guardian's bond (Form 27). An affidavit is required by Ark. Code Ann. § 28-48-205(b).

Form 8.

[Caption]

ACCEPTANCE OF APPOINTMENT AS PERSONAL
REPRESENTATIVE

The undersigned, _____, having been appointed _____ of the estate of _____, deceased, accepts the appointment.

Date: _____, _____.

[Signature]

Reporter's Notes to Form 8: See Ark. Code Ann. § 28-48-102(a). This form is to be used only when no bond is required of the personal representative.

Form 9.

[Caption]

DESIGNATION OF PROCESS AGENT

The undersigned, _____, as _____ of the estate of _____, appoints the clerk of this court and his successors in office, (or _____, whose residence address is _____,) as agent in behalf of the undersigned,

to accept service of process and notice in all actions and proceedings with respect to the estate.

Date: _____, _____.

[Signature]

Reporter's Notes to Form 9: See Ark. Code Ann. § 28-48-101(b)(6). This form is for use by a nonresident personal representative or guardian. The language in parentheses should be substituted for the language immediately preceding it if someone other than the clerk of the court is appointed. The statute does not require an affidavit or acknowledgment.

Form 10.

[Caption]

LETTERS OF ADMINISTRATION

_____, whose address is _____, having been appointed and qualified as [administrator] [administratrix] of the estate of _____, deceased, who died on or about [date], is hereby authorized to act as [administrator] [administratrix] for and in behalf of the estate and to take possession of the estate's property as authorized by law.

Issued this date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 10: See Ark. Code Ann. § 28-48-102. This form shall used if the personal representative was not nominated in the decedent's will. Appropriate modifications should be made to this form for letters of administration with will annexed, administration in succession, and special administration.

Form 11.

[Caption]

LETTERS TESTAMENTARY

_____, whose address is _____, having been appointed and qualified as [executor] [executrix] of the will of _____, deceased, who died on or about [date], is hereby authorized to act as [executor] [executrix] for and in behalf of the estate and to take possession of the estate's property as authorized by law.

Issued this date: _____, ____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 11: See Ark. Code Ann. § 28-48-102. This form shall used if the personal representative was nominated in the decedent's will.

Form 12.

[Caption]

NOTICE OF APPOINTMENT AS
[ADMINISTRATOR] [ADMINISTRATRIX]

Last known address: _____

Date of Death: _____, ____

The undersigned was appointed [administrator] [administratrix] of the estate of _____, deceased, on [date].

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within three (3) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate. How-

ever, claims for injury or death caused by the negligence of the decedent shall be filed within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

This notice first published on [date].

[Administrator] [Administratrix]

[Mailing Address]

Reporter's Notes to Form 12: See Ark. Code Ann. § 28-40-111. This form shall used if no will was admitted to probate.

Form 13.

[Caption]

NOTICE OF APPOINTMENT AS [EXECUTOR]
[EXECUTRIX] (OR [ADMINISTRATOR]
[ADMINISTRATRIX] WITH WILL
ANNEXED)

Last known address: _____

Date of Death: _____, _____

An instrument dated _____, _____ was admitted to probate on [date] as the last will of _____, deceased, and the undersigned has been appointed [executor] [executrix] (or [administrator] [administratrix]) thereunder. Contest of the probate of the will can be effected only by filing a petition within the time provided by law.

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within three (3) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate. How-

ever, claims for injury or death caused by the negligence of the decedent shall be filed within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

This notice first published on [date].

[Executor] [Executrix] [Administrator]
[Administratrix]

[Mailing Address]

Reporter's Notes to Form 13: See Ark. Code Ann. § 28-40-111. This form shall be used if a will was admitted to probate and a personal representative was appointed. The language in parentheses in the first paragraph should be substituted for the language immediately preceding it if the personal representative was not nominated in the decedent's will. The form to be used when a will is probated but no personal representative appointed may be found in Ark. Code Ann. § 25-40-111(c)(3). Because such proceedings are infrequent, no official form was adopted.

Form 14.

[Caption]

NOTICE TO SURVIVING SPOUSE

The will of the _____, deceased, dated _____, _____, was admitted to probate by this court on [date].

Any right which you may have to take against the will must be exercised by written election filed in this court within one month after the expiration of the time limited for the filing of claims against the estate; except, however, that in the particular circumstances set forth in Ark. Code Ann. § 28-39-403, you may be entitled to make such election at a later date.

Dated: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 14: See Ark. Code Ann. § 28-39-402. This notice must be mailed by the clerk to the surviving spouse of the decedent within one month after a will has been admitted to probate.

Form 15.

[Caption]

REQUEST FOR SPECIAL NOTICE OF HEARING

The undersigned, _____, respectfully requests written notice by ordinary mail of the time and place of all hearings on the settlement of accounts, on final distribution, and on any other matters for which any notice is required by law, by rule of court, or by an order in this case.

My address is _____.

My interest in the estate is that of _____.

My attorney, authorized to represent me in this proceeding, and to accept notice for me, is _____, whose address is _____.

Dated: _____, _____.

[Signature]

PROOF OF SERVICE

1. (To be used if acknowledged by personal representative or his attorney)

The undersigned acknowledges receipt of this notice on [date].

[Personal Representative]

By: _____

[Attorney]

(To be used when not so acknowledged)

The undersigned duly served this notice on _____, the personal representative of this estate, on [date] in the following manner: [Insert the method of service as specified in Ark. Code Ann. § 28-1-112.]

[Affidavit]

Reporter's Notes to Form 15: See Ark. Code Ann. § 28-40-108(b). This form is to be used only after a personal representative has been appointed and must be prepared in duplicate, with one copy served on the personal representative. An affidavit is required only if Paragraph 2 is used and must be sworn to unless signed by an officer authorized by law to serve civil process, or signed by the clerk or by an attorney of this state. See Ark. Code Ann. § 28-1-112(f).

Form 16.

[Caption]

PETITION FOR AWARD OF STATUTORY
ALLOWANCES

The decedent, _____, is survived by the persons named below who constitute the surviving spouse, if any, and all of the decedent's minor children, if any.

Name of surviving spouse: _____.

Children:

Name of Child	Sex	Age	Name of Guardian
_____	___	___	_____
_____	___	___	_____

The surviving spouse, who was living with the decedent at the time of the decedent's death, is entitled to the award of the following items of household furniture, furnishings, appliances, implements and equipment which are reasonably necessary for the use and occupancy of the family dwelling by the surviving spouse and minor children, if any:

HOUSEHOLD FURNITURE AND EQUIPMENT

[Itemizing is required only to the extent necessary to distinguish the selected items from other household furniture and equipment, if any, of the decedent's estate.]

Among the items of personal property of the estate of the decedent are those described below, which the undersigned surviving spouse of the decedent (or the undersigned guardian of the decedent's minor children) have selected to be assigned to and vested in the surviving spouse and minor children of the decedent as provided by law. Each item of property has the value stated opposite its description.

ITEMIZED DESCRIPTION OF PROPERTY

Description	Value
_____	\$ _____
_____	\$ _____
_____	\$ _____

The surviving spouse and minor children of the decedent are entitled to be awarded sustenance for a period of two months after the death of the decedent as follows:

THEREFORE, petitioner requests that this court enter an order assigning to and vesting in the surviving spouse and minor children of the decedent the personal property described above, to which they are respectively entitled under the provisions of Ark. Code Ann. §§ 28-39-101 through 28-39-104.

[Capacity of Petitioner]

[Affidavit]

Reporter's Notes to Form 16: See Ark. Code Ann. §§ 28-39-101 — 28-39-104. The total value under "Itemized Description of Property" is limited to \$1,000 as against creditors and \$2,000 as against distributees. If minor children are not the children of the surviving spouse, the petition should be revised to reflect that the allowance vests in the surviving spouse to the extent of one-half thereof, and the remainder vests in the decedent's minor children in equal shares. Award for sustenance for period of two months after death of decedent shall be a reasonable amount, not exceeding \$500 in the aggregate. Ark. Code Ann. § 28-39-101(c). Beneath the signature line, the capacity of the petitioner should be identified (e.g., as the personal representative, the surviving spouse, or the guardian of minor children). If the petitioner is the guardian of minor children, the language in parentheses should be substituted for the language immediately preceding it.

Form 17.

[Caption]

INVENTORY OF DECEDENT'S ESTATE

The undersigned, _____ of the estate of _____, deceased, states on oath that to the best of my

knowledge and belief, the following is a complete and accurate inventory of all property owned by the decedent, and its fair market value, at the time of the decedent's death.

REAL ESTATE

	Legal Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
Homestead:	_____	_____	\$ _____
Other real estate:	_____	_____	\$ _____

Total Value of Real Estate: \$ _____

PERSONAL PROPERTY

Household Goods and Personal Effects

[This list should include, but not be limited to, furniture, household and yard equipment, clothing, jewelry, etc.]

	Legal Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
	_____	_____	\$ _____
	_____	_____	\$ _____

Other Tangible Personal Property

[This list should include, but not be limited to, automobiles and other motor vehicles, farm equipment, livestock, agricultural products, stocks of merchandise, any going business enterprise or interest therein, etc.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	\$ _____
_____	_____	\$ _____

Intangible Personal Property

[List separately in detail: cash on hand; money on deposit, stating names and addresses of depositories; bonds, stating names of issuers, interest rates, classes, maturity dates, serial numbers, face amounts, and dates to which interest is paid; corporate stocks, stating certificate numbers, names of issuers, classes, and number of shares; notes receivable, stating the names and addresses of makers, dates, amounts, interest rates, and dates to which interest paid, balances due, maturities, and security, if any; accounts receivable, stating names of debtors, dates of last items and balances due; and other intangibles, describing in detail.]

Description	Encumbrances, Liens, etc., and Respective Amounts Thereof	Net Value
_____	_____	\$ _____
_____	_____	\$ _____

Total Value of Personal Property: \$ _____

SUMMARY

Total real property: \$ _____

Total personal property: \$ _____

Total estate: \$ _____

The undersigned was not indebted or obligated to the decedent at the time of the decedent's death except as stated herein.

Date: _____, _____.

[Signature]

[Affidavit]

Reporters Notes to Form 17: See Ark. Code Ann. § 28-49-110. This form should be filed by the personal representative within two months after qualification, unless the requirement is waived pursuant to Ark. Code Ann. § 28-49-110(c)(1). Inventory should not include any property owned jointly with right of survivorship by the decedent and a third party, or any insurance proceeds or other benefits payable by beneficiary designation, unless such benefits are payable to the decedent's estate. An affidavit is required by Ark. Code Ann. § 28-49-110(a)(2).

Form 18.

[Caption]

AFFIDAVIT TO CLAIM AGAINST ESTATE

I, _____, do swear that the attached claim against the estate of _____, deceased, is correct, that nothing has been paid or delivered toward the satisfaction of the claim except as noted, that there are no offsets to this claim, to the knowledge of this affiant, except as therein stated, and that the sum of _____ Dollars (\$ _____) is now justly due (or will or may become due as stated). I further state that if this claim is based upon a written instrument, a true and complete copy, including all endorsements, is attached.

Date: _____, _____.

[Signature]

[Affidavit]

Reporter's Note to Form 18: See Ark. Code Ann. §§ 28-50-103 — 28-50-104. If this affidavit is made by a corporation, organization, or anyone other than an individual in his or her own behalf, the representative capacity of the affiant must be clearly stated in the first line in the form and below the signature line. An affidavit is required by Ark. Code Ann. § 28-50-103(a).

Form 19.

[Caption]

APPRAISAL

The undersigned, _____, _____ and _____, having been appointed to appraise the property described below, represented to us by _____ as _____ to be property of the captioned estate, do appraise the value of each item as:

REAL ESTATE

Legal Description of Property and Interest Therein Owned by the Estate	Value
_____	\$ _____
_____	\$ _____
Total Value: \$ _____	

Each of the undersigned states on oath that [he] [she] is not interested in the estate, the property appraised, or the sale of any of this property; that [he] [she] believes [himself] [herself] to be well informed concerning the value of the property appraised; and that the foregoing appraisal is on the basis of the full and fair value of the property.

Date: _____, _____.

[Appraiser]

 [Appraiser]

 [Appraiser]

[Affidavit]

Reporter's Note to Form 19: See Ark. Code Ann. § 28-51-302. This form is to be used by personal representatives and guardians of estates when real estate of the decedent or ward is to be sold, and in sales of personal property when an appraisal is required by the court. The court may approve the appointment of one appraiser instead of the three contemplated by the form to appraise real property, unless an heir or beneficiary of the estate objects. By statute, the appraisers must certify the appraisal under oath. Ark. Code Ann. § 28-51-302(b).

Form 20.

[Caption]

ACCOUNTING BY PERSONAL REPRESENTATIVE

_____ respectfully submits to the court [his] [her] account as _____ of this estate for the period beginning on [date] and ending on [date]. This account is submitted because [insert the occasion for filing of account as set forth in Ark. Code Ann. § 28-52-103(a)].

1. Charges to accountant: [If this is the first account, the first item should be the value of the estate as reflected by the inventory. If a subsequent account, the first item should be the balance shown by the previous account. Thereafter list separately, described in detail: (a) additional property received by accountant; (b) all income; and (c) gains from the sale, conveyance or other disposition of any property received by the accountant during the accounting period. Show the date of each transaction.]

Total Charges to Accountant: \$ _____

2. Credits, other than payments to distributees, to which accountant is entitled: [List separately (a) all disbursements, other than payments to distributees, and (b) all losses sustained on sales, conveyances or other dispositions of any property, describing each item in full. Show the date of each transaction.]

Total: \$ _____

3. Credits for money paid or assets delivered to distributees: [Itemize each disbursement of cash and describe in detail other assets delivered, showing opposite each asset the amount at which its value was estimated in the inventory or, if purchased by the accountant, its cost. Show the date of each transaction.]

Total: \$ _____

SUMMARY OF ACCOUNT

Charges to accountant:	\$ _____
Credits as per paragraph 2:	\$ _____
Credits as per paragraph 3:	\$ _____
Total Credits:	\$ _____
Balance remaining in hands of accountant:	\$ _____

4. Description of balance remaining in hands of accountant: [List separately and describe in detail each item of property remaining in the accountant's hands, showing the inventory value or cost of each.]

5. Changes in form of assets not affecting balance: [List separately and describe in detail all changes in the form of assets resulting from collections or sales at inventory or cost value and other such transactions. Show the date of each transaction.]

6. All outstanding liabilities of the estate of which accountant has knowledge are:

Total Liabilities: \$ _____

Vouchers evidencing cash disbursements and receipts evidencing other assets delivered for which accountant has taken credit are attached to this account.

THEREFORE, having fully accounted for the administration of this estate for the period set out above, accountant requests that, after proper advertisement and notice, if any, required by law or by the court, this account be examined, approved, and confirmed by the court, and that accountant be allowed the sum of \$ _____ as [his] [her] fee for services rendered during the period covered by this account.

[Signature]

[Affidavit]

Reporter's Notes to Form 20: See Ark. Code Ann. §§ 28-52-103 — 28-52-104. In the case of a final account, a request for an order of final distribution should be added, pursuant to Ark. Code Ann. § 28-52-105(b). This form should be filed by the personal representative unless the requirement is waived pursuant to Ark. Code Ann. § 28-52-104(c). Verification of the account is required by Ark. Code Ann. § 28-52-103(a). Form 31 is to be used for an accounting by a guardian.

Form 21.

[Caption]

NOTICE OF FILING OF ACCOUNTS

Pursuant to Ark. Code Ann. § 28-52-106, notice is given that accounts of the administration of the estates listed below have been filed on the dates shown by the named personal representatives.

All interested persons are called on to file objections to such accounts on or before the sixtieth day following the filing of the respective accounts, failing which they will be barred forever from excepting to the account.

Name of Estate	Name and Address of Personal Representative	Nature of Account	Date Filed
_____	_____	_____	_____
_____	_____	_____	_____

Date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Note to Form 21: By statute, the clerk must publish, in a newspaper published or having a general circulation in the county, a notice of estates in which accounts have been filed by personal representatives during the preceding month, listing in alphabetical order the names of the estates. Ark. Code Ann. § 28-52-106.

Form 22.

[Caption]

CITATION FOR FAILURE TO PRESENT ACCOUNT

To _____, the personal representative of this estate:

Being delinquent in the filing of your account of your administration of this estate, you are required to file that account within thirty (30) days after the date of service of this citation and to show cause why an attachment should not be issued against you for your failure to present your account according to law.

Date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 22: See Ark. Code Ann. § 28-52-103(c).

Form 23.

[Caption]

**AFFIDAVIT FOR COLLECTION OF SMALL ESTATE
BY DISTRIBUTEE**

_____, _____ and _____, for the purpose of dispensing with administration of this estate, deceased, state on oath:

1. The decedent _____, aged _____, who resided at _____ in _____ County, Arkansas, died at _____ on or about [date]. No petition for the appointment of a personal representative for the decedent's estate is pending or has been granted.

2. More than forty-five (45) days have elapsed since decedent's death.

3. The value, less encumbrances, of all property owned by the decedent at the time of death, excluding the homestead of and statutory allowances for the benefit of the surviving spouse or minor children, if any, of the decedent, does not exceed fifty thousand dollars (\$50,000).

4. There are no unpaid claims or demands against the decedent or the decedent's estate, and the Department of Human Services furnished no federal or state benefits to the decedent (or, that if such benefits have been furnished, the Department of Human Services has been reimbursed in accordance with state and federal laws and regulations).

5. An itemized description and valuation of the decedent's personal property; a legal description and valuation of the decedent's real property, including homestead, if any; and the names

and addresses of persons having possession thereof or residing on any of the decedent's real property, are:

Description of Property, and Extent and Details of Encumbrances, if Any	Valuation Less Encumbrances	In Possession of
_____	_____	_____
_____	_____	_____

6. The names, ages, relationships to the decedent and residence addresses of the persons entitled to receive the property of the decedent as surviving spouse, heirs or devisees of decedent's will are:

Name	Age	Relationship	Residence Address
_____	_____	_____	_____
_____	_____	_____	_____

THEREFORE, the distributee[s] of this estate shall be entitled to distribution of the property identified above, without the necessity of an order of the court or other proceeding, upon furnishing a copy of this Affidavit, certified by the clerk, to any person owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right of the decedent.

Date: _____, _____.

[Affiant]

[Affiant]

[Affiant]

[Affidavit]

CERTIFICATE OF CLERK

The undersigned Clerk of the Probate Court of _____ County, Arkansas, certifies that this is a true copy of an affidavit filed in this court on [date], that the affidavit remains on file and that no petition for the appointment of a personal representative of this estate has been filed in this court.

Date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 23: See Ark. Code Ann. § 28-41-101. The language in parentheses in Paragraph 4 should be substituted for the language immediately preceding it if the Department of Human Services furnished benefits to the decedent. An affidavit by the distributee is required by Ark. Code Ann. § 28-41-101(a)(4). If an estate collected pursuant to this affidavit contains real property, the distributee, to allow for presentation of claims against the estate, may publish a notice promptly after the affidavit has been filed. Ark. Code Ann. § 28-41-101(b)(2).

Form 24.

[Caption]

PETITION FOR APPOINTMENT OF GUARDIAN
OF THE PERSON AND ESTATE

The petitioner respectfully represents to this court that a guardian of the person and of the estate should be appointed for the incapacitated person whose name, date of birth, sex, and address are:

Name	Date of Birth	Sex	Residence Address
------	---------------	-----	-------------------

The nature of the incapacity and purpose of the guardianship sought for the incapacitated person are: [Insert the nature of incapacity and purpose of guardianship, in accordance with the definitions and classifications set forth in Ark. Code Ann. §§ 28-65-101 & 28-65-104.]

The nature, extent and value of the property of the incapacitated person and the interest of the incapacitated person in that property, are: [Include approximate value and description of property, including any compensation, pension, insurance or allowance to which the incapacitated person may be entitled].

There is no guardian of the person or estate of the incapacitated person, except as follows: [State whether a guardian has been appointed in any state for the estate or person of the incapacitated person and if not, write "none."]

_____, whose address is _____, is related to or interested in the incapacitated person by reason of _____ and is legally qualified to serve as guardian of the person and estate of the incapacitated person.

[He] [She] is at present serving as guardian of the persons or estates of the incapacitated persons whose names and addresses are as follows: [List the names and addresses of any wards for whom the person whose appointment is sought is already guardian.]

Insofar as the petitioner has been able to ascertain, the persons most closely related, by blood or marriage, to the incapacitated person are:

Name	Relationship	Residence Address
_____	_____	_____
_____	_____	_____
_____	_____	_____

The nature of the proposed ward's alleged disability is: [Set forth a statement of the alleged disability as defined by Ark. Code Ann. §§ 28-65-101(1) & 28-65-104.]

Petitioner recommends the following type of guardianship, having the scope and duration indicated: [Include a recommendation proposing the type, scope and duration of guardianship.]

The following facility or agency from which the proposed ward is receiving services has been notified of the proceedings: [Include a statement that any facility or agency from which the respondent is receiving services has been notified of the proceedings.]

The names and addresses of others having knowledge of the proposed ward's disability are:

Name	Residence Address
_____	_____
_____	_____

 [Signature of Petitioner]

[Affidavit]

Reporter's Notes to Form 24: This petition is for a guardianship of both the person and the estate. It should be modified if the guardianship is only of one or the other. By statute, incapacitated persons include those who are impaired by certain specified mental and physical disabilities, as well as persons under the age of 18 whose disabilities have not been removed and persons who are detained or confined by a foreign power or who have disappeared. Ark. Code Ann. §§ 28-65-101 & 28-65-104. Matters that must be enumerated in the petition are set forth in Ark. Code Ann. § 28-65-205. *See also* Ark. Code Ann. §§ 28-65-105 — 28-65-106 (purpose of guardianship proceedings and rights of incapacitated persons).

Form 25.

[Caption]

NOTICE OF HEARING FOR APPOINTMENT

To: _____

You are hereby notified that a petition has been filed in this court for the appointment of a guardian of the [person] [estate] [person and estate] of _____, an incapacitated person, and that the petition will be heard at ____ o'clock __.m., on [date] at the _____ County Courthouse, or at a later time or other place to which the hearing may be adjourned or transferred.

Date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

Reporter's Notes to Form 25: See Ark. Code Ann. § 28-65-207 (notice of hearing for appointment and methods for service of such notice); Ark. Code Ann. § 28-65-208 (persons who must be notified of the hearing). At least 20 days notice of the hearing must be given. Ark. Code Ann. § 28-65-207(c)(2).

Form 26.

[Caption]

APPLICATION FOR WRITTEN NOTICE

To: _____

The undersigned, _____, in accordance with Ark. Code Ann. § 28-65-209, requests written notice of all hearings on petitions for settlement of accounts, for the sale, mortgage, lease, or exchange of any property of this guardianship estate, for an allowance of any nature payable from the ward's estate, for the investment of funds of the estate, for the removal, suspension, or

discharge of the guardian, or for final termination of the guardianship, and any other matter affecting the welfare or care of the incapacitated person or [his] [her] property.

The requested notice should be sent to the undersigned at the following address:

Date: _____, _____.

[Applicant or attorney]

[Mailing Address]

Reporter's Notes to Form 26: Pursuant to Ark. Code Ann. § 28-65-209, an interested party may, in person or by attorney, serve upon the guardian and upon his attorney, and file with the clerk of the court where the proceedings are pending, with a written admission or proof of service, a written request stating that he desires notice of some or all of the matters enumerated in this form. Unless the court directs otherwise, upon filing the request, the person shall be entitled to notice of all such hearings or of such of them as he designates in his request.

Form 27.

[Caption]

GUARDIAN'S BOND

The undersigned, _____, as principal, having been appointed guardian of the [person] [estate] [person and estate] of _____, an incapacitated person; and _____, as suret _____, acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use and benefit of all persons interested, in the penal sum of _____ Dollars (\$ _____), conditioned as follows:

If the undersigned guardian shall well and faithfully account for his guardianship, as by law required, this bond shall become void; otherwise, it will remain in full force and effect.

Date: _____, _____.

_____, as Principal.

_____, as Surety.

_____, as Surety.

Approved this date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

Approved this date: _____, _____.

_____, Judge.

Reporter's Notes to Form 27: See Ark. Code Ann. § 28-65-215 (requirement for a bond). For the qualifying affidavit of personal sureties, see Form 7.

Form 28.

[Caption]

ACCEPTANCE OF APPOINTMENT AS GUARDIAN

The undersigned, _____, having been appointed guardian of the [person] [estate] [person and estate] of _____, an incapacitated person, hereby accepts the appointment.

Date: _____, _____.

[Signature]

Reporter's Notes to Form 28: This form is to be used only when no bond is required of the guardian.

Form 29.

[Caption]

LETTERS OF GUARDIANSHIP OF THE PERSON
AND ESTATE

Be It Known:

_____, whose address is _____, having been appointed guardian of the person and estate of _____, an incapacitated person, and having qualified as guardian, is hereby authorized to have the care and custody of and exercise control over the incapacitated person and to take possession of and administer the property of the incapacitated person, as authorized by law.

Date: _____, _____.

_____, Clerk.

By: _____, Deputy Clerk.

(Seal)

Reporter's Notes to Form 29: This form, prescribed by Ark. Code Ann. § 28-65-217, is for a guardianship of both the person and the estate. It should be modified if the guardianship is only of one or the other. If the powers, authorities, and duties of the guardian are limited, the letters of guardianship must clearly state, in bold print, that they are so restricted and the word "limited" must appear in both the title and in the body of the form. For designation of a process agent by a non-resident, see Form 9.

Form 30.

[Caption]

INVENTORY OF WARD'S ESTATE

The undersigned, guardian of the estate of _____, an incapacitated person, states on oath that to the best of my knowledge and belief, the following is a complete and accurate inventory of all property owned by the ward at the time of my appointment as such guardian, and that the amount set opposite each item of property is its fair market value at the time it came under my control as guardian:

REAL ESTATE

Legal Description and Extent of Ward's Interest	Encumbrances, Liens, Etc., and Respective Amounts Thereof	Net Value
_____	_____	\$ _____
_____	_____	\$ _____

Total value of real estate: \$ _____

PERSONAL PROPERTY

Household Goods and Personal Effects

[This list should include, but not be limited to, furniture, household and yard equipment, clothing, jewelry, etc.]

Description	Encumbrances, Liens, Etc., and Respective Amounts Thereof	Net Value
_____	_____	\$ _____
_____	_____	\$ _____

Other Tangible Personal Property

[This list should include, but not be limited to, automobiles and other motor vehicles, farm equipment, livestock, agricultural products, stocks of merchandise, any going business enterprise or interest therein, etc.]

Description	Encumbrances, Liens, Etc., and Respective Amounts Thereof	Net Value
_____	_____	\$ _____
_____	_____	\$ _____

Intangible Personal Property

[List separately in detail: cash on hand; money on deposit, stating names and addresses of depositories; bonds, stating names of issuers, interest rates, classes, maturity dates, serial numbers, face amounts, and dates to which interest is paid; corporate stocks, stating certificate numbers, names of issuers, classes, and number of shares; notes receivable, stating the names and addresses of makers, dates, amounts, interest rates, and dates to which interest paid, balances due, maturities, and security, if any; accounts receivable, stating names of debtors, dates of last items and balances due; and other intangibles, describing in detail.]

Description	Encumbrances, Liens, Etc., and Respective Amounts Thereof	Net Value
_____	_____	\$ _____
_____	_____	\$ _____

Total value of personal property: \$ _____

SUMMARY

Total real property: \$ _____

Total personal property: \$ _____

Total estate: \$ _____

The undersigned is not indebted or obligated to the ward except as stated herein.

Date: _____, _____.

[Signature]

[Affidavit]

Reporter's Notes to Form 30: Paragraph (a) of Ark. Code Ann. § 28-65-321 provides that the inventory is subject to the same requirements for the inventory of a decedent's estate. See Ark. Code Ann. § 28-49-110. Among those requirements is an affidavit.

Form 31.

[Caption]

ACCOUNTING BY GUARDIAN

_____ respectfully submits to the court [his] [her] account as guardian of the estate of _____ for the period beginning on [date] and ending on [date]. This account is submitted because [insert the occasion for filing of account as set forth in Ark. Code Ann. § 28-65-320].

1. Charges to accountant: [If this is the first account, the first item should be the value of the estate as reflected by the inventory.]



If a subsequent account, the first item should be the balance shown on the previous account. Thereafter list separately and describe in detail (a) additional property received by accountant; (b) all income; and (c) gains from the sale, conveyance or other disposition of any property received by the accountant during the accounting period. Show the date of each transaction.]

Total charges to accountant: \$ _____

2. Credits, other than payments to distributees, to which accountant is entitled: [List separately (a) all disbursements, other than payments to distributees, and (b) all losses sustained on sales, conveyances or other dispositions of any property, describing each item in full. Show the date of each transaction.]

Total: \$ _____

3. Credits for money paid or assets delivered to distributees: [Itemize each disbursement of cash and describe in detail other assets delivered, showing opposite each asset the amount at which its value was estimated in the inventory or, if purchased by the accountant, its cost. Show the date of each transaction.]

Total: \$ _____

SUMMARY OF ACCOUNT

Charges to accountant:	\$ _____
Credits as per paragraph 2:	\$ _____
Credits as per paragraph 3:	\$ _____
Total Credits:	\$ _____
Balance remaining in hands of accountant:	\$ _____

4. Description of balance remaining in hands of accountant: [List separately and describe in detail each item of property remaining in the accountant's hands, showing the inventory value or cost of each.]

5. Changes in form of assets not affecting balance: [List separately and describe in detail all changes in the form of assets resulting from collections or sales at inventory or cost value and other such transactions. Show the date of each transaction.]

6. All outstanding liabilities of the estate of which accountant has knowledge are:

Total Liabilities: \$ _____

Vouchers evidencing cash disbursements and receipts evidencing other assets delivered for which accountant has taken credit are attached to this account.

THEREFORE, having fully accounted for the administration of this estate for the period set out above, accountant requests that, after proper advertisement and notice, if any, required by the law or by the court, this account be examined, approved, and confirmed by the court, and that accountant be allowed the sum of \$ _____ as [his] [her] fee for services rendered during the period covered by this account.

[Signature]

[Affidavit]

Reporter's Notes to Form 31: Pursuant to Ark. Code Ann. § 28-65-320, a guardian of the estate must file with the court annually, within 60 days after the anniversary date of his or her appointment and also within 60 days after termination of his or her guardianship, a written verified accounting. Notice of hearing of every accounting must be given to the same persons in the same manner as required in connection with the petition to appoint the guardian, except that the court may dispense with notice to a mentally incompetent ward upon a satisfactory showing that such notice would be detrimental to his or her well-being.

Form 32.

[Caption]

ANNUAL REPORT OF GUARDIAN

_____, the duly appointed, qualified, and acting guardian of _____, an incapacitated person, submits this annual report to the court in accordance with Ark. Code Ann. § 28-65-322.

The current mental, physical, and social condition of the incapacitated person is: [Provide a summary.]

The present living arrangements of the incapacitated person are: [Describe those arrangements.]

The need for continued guardianship services is: [State whether there is a need for such services.]

Submitted with this annual report is the petitioner's accounting of the guardianship estate for the period beginning on [date] and ending on [date].

[Signature]

Reporter's Notes to Form 32: All guardians must file an annual report with the court, setting forth the matters reflected in this form. See Ark. Code Ann. § 28-65-322. Any other information which is requested by the court or is necessary in the opinion of the guardian must also be included.

Form 33.

[Caption]

AGREEMENT OF DEPOSITORY

The undersigned, being [a bank in Arkansas insured by the Federal Deposit Insurance Corporation] [a savings and loan association in Arkansas insured by the Federal Savings & Loan Associa-

tion Corporation] [a credit union in Arkansas insured by the National Credit Union Administration], received on deposit from _____, as guardian of the estate of _____, an incapacitated person, the sum of _____ Dollars (\$ _____) in cash on [date] and agrees not to permit any withdrawal from these funds unless authorized by order of this court.

Date: _____, ____.

[Authorized Officer or Agent of Depository]

Reporter's Notes to Form 33: By statute, the court may dispense with a bond for the guardian when the entire guardianship is in cash deposited on interest in any of the institutions identified in the form, provided that the value of the estate so deposited is not greater than the maximum amount of insurance provided by law for a single depositor. Ark. Code Ann. § 28-65-215(e). This form must be executed on behalf of the depository and filed with the probate clerk. For an enumeration of the types of authorized investments for guardianship funds, see Ark. Code Ann. § 28-65-311.

IN RE: RULE 3, RULES OF APPELLATE
PROCEDURE—CIVIL

Supreme Court of Arkansas
Delivered January 28, 1999

PER CURIAM. Rule 3 of the Rules of Appellate Procedure—Civil was amended in 1997 to provide that a notice of appeal is invalid if it does not contain the statement that the transcript has been ordered and financial arrangements have been made with the court reporter. This provision appears in subsection (e) and has proven to be unsatisfactory. We now strike this sentence from subsection (e) as illustrated below. For additional explanation concerning this change, refer to the Court's Comments at the conclusion of the amended rule.

Effective immediately, Rule 3 is so amended, and subsection (e) is republished as amended.

Rule 3. APPEAL — HOW TAKEN

.....

(e) Content of Notice of Appeal or Cross-Appeal. A notice of appeal or cross-appeal shall specify the party or parties taking the appeal; shall designate the judgment, decree, order or part thereof appealed from and shall designate the contents of the record on appeal. The notice shall also contain a statement that the appellant has ordered the transcript, or specific portions thereof, if oral testimony or proceedings are designated, and has made any financial arrangements required by the court reporter pursuant to Ark. Code. Ann. § 16-13-510 (c). ~~A notice of appeal is invalid if it does not contain this statement, or a statement that no oral testimony or proceedings have been designated as part of the record.~~ The notice shall also state whether the appeal is to the Court of

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Rule 3. APPEAL — HOW TAKEN

. . . .

(e) Content of Notice of Appeal or Cross-Appeal. A notice of appeal or cross-appeal shall specify the party or parties taking the appeal; shall designate the judgment, decree, order or part thereof appealed from and shall designate the contents of the record on appeal. The notice shall also contain a statement that the appellant has ordered the transcript, or specific portions thereof, if oral testimony or proceedings are designated, and has made any financial arrangements required by the court reporter pursuant to Ark. Code. Ann. § 16-13-510 (c). The notice shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the appellant shall designate the applicable subdivision of Supreme Court Rule 1-2 (a) which gives the Supreme Court jurisdiction. This declaration shall be for the purpose of placing the case with one court or the other for preliminary administration. It shall not preclude the appellant from filing his or her Brief pursuant to Supreme Court Rules 4-3 and 4-4 in the alternative court if that is later determined by the appellant to be appropriate.

Court's Comments: The sentence in subsection (e) rendering a notice of appeal invalid for violating requirements for ordering and paying for the transcript has been deleted from the rule. The reasons for this amendment are discussed in *Clayton v. Ideal Chemical and Supply Co.*, 335 Ark. 73, 977 S.W.2d 228 (1998).

IN RE: RULE 2, RULES OF APPELLATE
PROCEDURE—CRIMINAL

Supreme Court of Arkansas
Delivered January 28, 1999

PER CURIAM. Rule 2 of the Rules of Appellate Procedure—Criminal was amended in 1997 to provide that a notice of appeal is invalid if it does not contain the statement that the transcript has been ordered and financial arrangements have been made with the court reporter. This provision appears in subsection (c)(3) and has proven to be unsatisfactory. We now strike subsection (c)(3) as illustrated below and renumber the remaining subsection. For additional explanation concerning this change, refer to the Reporter's Notes at the conclusion of the amended rule.

Effective immediately, Rule 2 is so amended, and subsection (c) is republished as amended.

Rule 2. TIME AND METHOD OF TAKING APPEAL

(c) Certificate That Transcript Ordered. (1)

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~~(3) A notice of appeal is invalid if it does not contain the certification/affidavit, the pauper petition, or a statement that no oral testimony or proceedings have been designated as part of the record.~~

(43) It shall not be necessary to file with either the notice of appeal or the designation of contents of record any portion of the reporter's transcript of the evidence of proceedings.

Rule 2. TIME AND METHOD OF TAKING APPEAL

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(c) **Certificate That Transcript Ordered.** (1) If oral testimony or proceedings are designated, the notice of appeal shall include a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter, and, except for good cause, that any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510 (c) have been made. If the appealing party is unable to certify that financial arrangements have been made, then he shall attach to the notice of appeal an affidavit setting out the reason for his inability to so certify. A copy of the notice of appeal shall be mailed to the court reporter.

(2) Alternatively, the notice of appeal shall include a petition to obtain the record as a pauper if, for the purposes of the appeal, a transcript is deemed essential to resolve the issues on appeal.

(3) It shall not be necessary to file with either the notice of appeal or the designation of contents of record any portion of the reporter's transcript of the evidence of proceedings.

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Reporter's Notes: Former subsection (c)(3) has been deleted from the rule, and (c)(4) has been redesignated in its place. The reasons for this amendment are discussed in *Clayton v. Ideal Chemical and Supply Co.*, 335 Ark. 73, 977 S.W.2d 228 (1998).

IN RE: RULES OF APPELLATE PROCEDURE—CIVIL,
RULE 2

Supreme Court of Arkansas
Delivered March 4, 1999

PER CURIAM. In 1995 the Arkansas Supreme Court appointed an Ad Hoc Committee on Foster Care and Adoption to assess court processes, make findings and recommendations, and implement plans for improvements in court practice to enable children who are abused and neglected to be placed in safe and permanent homes in a timely fashion.

This committee issued its report of findings and recommendations in 1997 and is working diligently to implement its recommended improvements. The committee has drafted legislation designed to expedite trial court proceedings and now recommends an amendment to Ark. R. App. P.—Civ. 2 to expedite appeals in these cases. We commend the committee for its work and dedication to the children in our state. Having considered the committee's proposal we adopt and republish Rule 2, as amended, effective immediately.

Rule 2. APPEALABLE MATTERS; PRIORITY

(a) An appeal may be taken from any of the following orders entered by a circuit, chancery, or probate court:

1. A final judgment or decree entered by the trial court;
2. An order which in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action;
3. An order which grants or refuses a new trial;
4. An order which strikes out an answer, or any part of an answer, or any pleading in an action;

5. An order which vacates or sustains an attachment or garnishment;

6. An interlocutory order by which an injunction is granted, continued, modified, refused, or dissolved, or by which an application to dissolve or modify an injunction is refused;

7. An interlocutory order appointing a receiver, or refusing to wind up a pending receivership or to take the appropriate steps to accomplish the purposes thereof, such as directing a sale or other disposal of property held thereunder;

8. An order which disqualifies an attorney from further participation in the case;

9. An order granting or denying a motion to certify a case as a class action in accordance with Rule 23 of the Arkansas Rules of Civil Procedure.

(b) An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment.

(c) All appeals from juvenile court shall be made in the same time and manner provided for appeals from chancery court.

1. In delinquency cases, the state may appeal only under those circumstances that would permit the state to appeal in criminal proceedings.

2. Pending an appeal from any case involving a juvenile out-of-home placement, the juvenile court retains jurisdiction to conduct review hearings.

3. In juvenile cases where an out-of-home placement has been ordered, orders resulting from the hearings set below are final appealable orders:

(A) adjudication and disposition hearings;

(B) review and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P., Rule 54(b); and

(C) termination of parental rights.

(d) All final orders awarding custody are final appealable orders.

(e) Appeals in criminal cases have priority over all other business. With respect to civil cases, appeals under subdivisions (a)(6), (a)(7), (a)(9), (c)(3), and (d) of this rule take precedence.

IN RE: SECTION 22 of the REGULATIONS of the
BOARD of CERTIFIED COURT
REPORTER EXAMINERS

Supreme Court of Arkansas
Delivered March 4, 1999

PER CURIAM. Our Board of Certified Court Reporter Examiners has recommended that the Court prohibit the practice commonly known as "third-party contracting."

Having considered the request including soliciting and reviewing the comments from court reporters, judges, practicing attorneys, and other interested entities, we find that the proposal has merit as it is a prohibition of the practice of providing services under any contractual agreement that undermines the impartiality of the court reporter or which gives or appears to give an exclusive advantage to any party.

Therefore, effective immediately, we adopt and publish Section 22 of the Regulations of the Board of Certified Court

Reporter Examiners, a prohibition of the practice of "third-party contracting."

REGULATIONS OF THE BOARD OF CERTIFIED
COURT REPORTER EXAMINERS

Section 22.

It is the purpose of this Regulation to ensure that when a Court Reporter is providing services under any contractual agreement, the Court Reporter maintains his or her impartiality and not give or appear to give an exclusive advantage to any party.

Therefore, Court Reporters, or any entity providing the services of a Court Reporter, are hereby prohibited from providing services under any contractual agreement that: (1) requires the Court Reporter to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney; or (2) requires a Court Reporter to provide any service not made available to all parties to an action.

IN RE: ARKANSAS CONTINUING
LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Opinion delivered January 28, 1999

PER CURIAM. Cindy Grace Thyer of Jonesboro, First Court of Appeals District, and Tony L. Yocum of Hope, Fourth Court of Appeals District, are hereby appointed to the Board of Continuing Legal Education for three-year terms to expire on December 5, 2001. Carol Anthony of El Dorado is hereby reappointed to the Board of Continuing Legal Education for a three-year term to expire on December 5, 2001.

The court thanks Ms. Thyer and Mr. Yocum for accepting appointments and Ms. Anthony for accepting reappointment to this Board.

The court expresses its appreciation to Margaret Woolfork of Marion, and William G. Wright of Arkadelphia, whose terms have expired, for their service as members of this Board.

IN RE: SUPREME COURT COMMITTEE ON
CRIMINAL PRACTICE

Supreme Court of Arkansas
Opinion delivered January 28, 1999

PER CURIAM. The Honorable Tom Keith of Bentonville, Raymond Abramson, Esq., of Clarendon, Frank Newell, Esq., of Little Rock, Scott Stafford, Esq., of Little Rock, and the Honorable Gordon Webb of Harrison, are hereby reappointed to the Supreme Court Committee on Criminal Practice for three-year terms to expire on January 31, 2002.

The court thanks those members for accepting reappointment to this most important Committee.

IN RE: COMMITTEE ON AUTOMATION

Supreme Court of Arkansas
Delivered February 18, 1999

PER CURIAM. Terry Lynn, Esq., of Heber Springs and Senator David Malone of Fayetteville are reappointed to our Committee on Automation for three-year terms to end on October 31, 2001. Tim Holthoff, Attorney at Law and Supreme Court Librarian, of Little Rock is also appointed to the Committee for a three-year term ending October 31, 2001.

The Court thanks Mr. Lynn and Senator Malone for accepting reappointment to this most important Committee. The Court further thanks Mr. Holthoff for accepting this appointment.

IN RE: BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
Delivered March 11, 1999

PER CURIAM. Wyman R. Wade, Esq., of Fort Smith, Third Congressional District, is appointed to the Board of Law Examiners for the purpose of grading the February 1999 Bar Examination. Mr. Wade replaces Matthew Horan, Esq., of Fort Smith.

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

Professional Conduct
Matters



IN RE: Andrew Hunter BEAVERS
Arkansas Bar ID # 89063

Supreme Court of Arkansas
Delivered January 21, 1999

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

IN RE: William C. BETHEA,
Arkansas Bar ID # 81016

Supreme Court of Arkansas
Delivered February 4, 1999

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

IN RE: Mark Wayne McBETH,
Arkansas Bar ID # 94052

Supreme Court of Arkansas
Delivered February 4, 1999

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

IN RE: Richard Neil BELCHER,
Arkansas Bar ID # 83191

Supreme Court of Arkansas
Delivered February 11, 1999

PER CURIAM. Richard Neil Belcher was granted the privilege of practicing law in the State of Arkansas by this Court on August 24, 1983. Subsequently, Mr. Belcher was admitted to the Oregon State Bar where he actively engaged in the practice of law until September 1994.

In October 1998, the Arkansas Supreme Court Committee on Professional Conduct learned that the Oregon State Bar previously had caused severe lawyer disciplinary sanctions to be imposed on Mr. Belcher. In 1993, the Oregon State Bar suspended Mr. Belcher from the practice of law for forty-five days for violation of that jurisdiction's rules governing professional conduct of lawyers. He was found to have engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; and willful deceit or misconduct in the profession.

On September 28, 1994, the Oregon Supreme Court accepted Mr. Belcher's resignation from the Oregon State Bar and ordered his name to be stricken from roll of attorneys authorized

to practice in that State. Mr. Belcher's verified petition tendering his voluntary resignation acknowledged the pendency of the Oregon State Bar's formal complaint alleging his unprofessional conduct and the investigation of other charges against him. According to Mr. Belcher's resignation petition, the complaint against him alleged, in pertinent part, that he represented a client in a matter which arose out of and was connected to a legal matter in which he formerly represented the adverse party; that he caused a falsified and deceptive quitclaim deed to be delivered for recording; and, that he placed his own funds in his lawyer trust account and converted to his own use client funds deposited therein. All of the cited conduct was in violation of Oregon's Disciplinary Rules. The resignation petition expressed Mr. Belcher's desire not to contest or defend against the allegations of misconduct and, further, stated his knowledge and understanding that, upon acceptance of his resignation, any future application by him to reinstatement as a member of the Oregon State Bar would be treated as an application by one who had been disbarred for misconduct. His petition also acknowledged his prior entry of a guilty plea to the criminal offense of forgery arising out of one of the abovementioned allegations.

On December 1, 1998, pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Section 7M, DISBARMENT RECIPROCAL, the Committee on Professional Conduct filed with the Court its petition seeking reciprocal disbarment of Mr. Belcher in this jurisdiction. Mr. Belcher was duly served with the Petition and notice of the time in which he could submit a response to the Court. On the last date permitted for filing of a response, the attorney filed a document entering his appearance as attorney of record in the action but offered no comment or response to the substance of the petition pending against him. In subsequent correspondence between the Committee's Executive Director and the attorney, Mr. Belcher sent a letter explaining that his filing an entry of appearance as attorney of record was intended to reflect his intent not to oppose reciprocal disbarment and voluntarily surrender his Arkansas law license.

From the record before it, the Court finds that Mr. Belcher's voluntary resignation from State Bar of Oregon while disciplinary charges were pending against him is that State's equivalent of this jurisdiction's voluntary surrender of law license in lieu of disbarment, and that his resignation in Oregon is properly a disbarment for purposes of reciprocal disbarment in Arkansas. Further, the respondent attorney was duly served with the Committee's petition containing the pertinent, certified copies of the Oregon disciplinary proceedings reflecting the serious misconduct found to have been committed in that State, and he elected not to contest the Committee's petition for reciprocal disbarment.

The petition of the Committee on Professional Conduct is granted.

Richard Neil Belcher's license to practice law in the State of Arkansas is hereby revoked. Mr. Belcher's name shall be removed from the registry of licensed attorneys, and he is permanently barred from engaging in the unlicensed practice of law in this state.

It is so ordered.

IN RE: Eugene FITZHUGH,
Arkansas Bar ID #55010

Supreme Court of Arkansas
Delivered February 25, 1999

PER CURIAM. Upon consideration of the Findings and Order of the Pulaski County Circuit Court in the matter of the the disbarment of Eugene C. Fitzhugh, Little Rock, Arkansas, and the Petition of the Supreme Court Committee on Professional Conduct seeking entry of an Order of Disbarment, we grant the Petition. The Court hereby revokes Mr. Fitzhugh's license to practice law in the State of Arkansas. It is further ordered that his name shall be removed from the registry of licensed attorneys, and that he is permanently barred from engaging in the practice of law in this state.

It is so ordered.
