THIS BOOK CONTAINS THE OFFICIAL

ARKANSAS REPORTS

Volume 349

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
May 21, 2002 — July 11, 2002
INCLUSIVE[1]

AND

ARKANSAS APPELLATE REPORTS

Volume 78

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
June 5, 2002 — July 3, 2002
INCLUSIVE[2]

PUBLISHED BY THE
STATE OF ARKANSAS
2002

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[1]Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 737. Cite as 349 Ark. ___ (2002).
[2]Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 233. Cite as 78 Ark. App. ___ (2002).

ERRATA

345 Ark. at 437; disposition lines:
"*John Bertran*, Judge" should be "*John Bertran Plegge*, Judge."

72 Ark. at 195; "Opinion delivered February 6, 1904" line:
Add asterisk and footnote: "WOOD, J., not participating."

Set in Bembo

JOE CHRISTENSEN PRINTING COMPANY
1540 ADAMS STREET
LINCOLN, NEBRASKA 68521
2002

PER CURIAM:

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VOLUME 349

ARKANSAS
APPELLATE REPORTS
VOLUME 78

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

— SAMUEL JOHNSON
(1709-1784)

ARKANSAS REPORTS

Volume 349

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
May 21, 2002 — July 11, 2002
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

PUBLISHED BY THE
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2002

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JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(May 21, 2002 — July 11, 2002 inclusive)

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

OFFICERS

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

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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

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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

OPINIONS

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

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal 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 publications 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

Azzurro *v.* State, CR 01-1202 (Per Curiam), affirmed May 23, 2002.

Berger *v.* State, CR 02-350 (Per Curiam), Pro Se Motion for Appointment of Counsel denied; Pro Se Motion to Supplement Record granted in part and moot in part; Pro Se Motion for Extension of Time to File Appellant's Brief granted June 27, 2002.

Brown *v.* State, 02-382 (Per Curiam), Motion to Proceed in *Forma Pauperis* denied June 6, 2002.

Bush *v.* State, CR 01-1363 (Per Curiam), affirmed May 23, 2002.

Clay *v.* State, CR 01-469 (Per Curiam), May 30, 2002.

Cloird *v.* State, CR 93-284 (Per Curiam), Appellee's Motion for Rule on Clerk denied June 27, 2002.

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Hall *v.* Pulaski County Sheriff's Dep't, 02-331 (Per Curiam), Pro Se Motion to Proceed *In Forma Pauperis* denied June 13, 2002.

Hazelwood *v.* Burnett, CR 02-413 (Per Curiam), Pro Se Petition for Writ of Mandamus moot May 30, 2002.

Heffernan *v.* State, CR 02-239 (Per Curiam), Pro Se Motion for Appointment of Counsel moot; appeal dismissed June 13, 2002.

Henderson *v.* State, CR 01-616 (Per Curiam), rebriefing ordered June 6, 2002.

Jamison *v.* State, CR 02-356 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied; Pro Se Motion for Appointment of Counsel moot June 13, 2002.

McCullough *v.* State, Ten 94-113 (Per Curiam), Pro Se Motion for Rule on Clerk to Proceed with Appeal of Judgment of Conviction granted in part; denied in part June 6, 2002.

Nichols *v.* Arnold, 01-961 (Per Curiam), affirmed June 27, 2002.

Ragsdale *v.* State, CR 01-1399 (Per Curiam), affirmed May 23, 2002.

Reynolds v. State, 02-418 (Per Curiam), Pro Se Motion for Appointment of Counsel moot; appeal dismissed July 5, 2002.

Ross *v.* State, CR 02-302 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied May 23, 2002.

Shackleford *v.* Terry, 02-23 (Per Curiam), affirmed June 13, 2002.

Stringfellow *v.* State, CR 02-328 (Per Curiam), Pro Se Motion to File Belated Petition for Writ of Certiorari denied June 27, 2002.

Thomas *v.* State, CR 01-1253 (Per Curiam), affirmed May 23, 2002.

Turner *v.* State, CR 01-459 (Per Curiam), Pro Se Motion to File Supplemental Pro Se Appellant's Brief denied July 5, 2002.

Walker, Larry *v.* State, CR 02-384 (Per Curiam), Pro Se Motion for Belated Appeal of Order denied June 13, 2002.

Walker, Mark Douglas *v.* State, CR 02-37 (Per Curiam), affirmed June 13, 2002.

APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ARKANSAS BAR EXAMINATION EXPENSE FEE

Supreme Court of Arkansas
Opinion delivered June 6, 2002

PER CURIAM. In July 2002, the Arkansas Bar Examination will be expanded to include an additional day. Such an increase will incur significant additional expenses for proctors, meeting rooms, and other expenses. In addition, the expanded time frame includes the addition of a separate test segment, the Multistate Performance Test (MPT). There will be additional costs attendant to purchasing that examination from the National Conference of Bar Examiners.

For these reasons, the Arkansas State Board of Law Examiners has unanimously recommended to this Court that the Arkansas Bar Examination fee be increased to $325.00, effective with the February 2003 examination. We agree.

Therefore, as set forth in Rule XI of the *Rules Governing Admission to the Bar* the examination expense fee for the general Arkansas Bar Examination is set at $325.00, effective with the February 2003 examination.

IN RE: ARKANSAS RULES of CRIMINAL PROCEDURE, RULES 3.1, 13.3, and 28.2; and ARKANSAS RULES of APPELLATE PROCEDURE—CRIMINAL, RULE 16

Supreme Court of Arkansas
Delivered June 27, 2002

PER CURIAM. The Arkansas Supreme Court Committee on Criminal Practice has recommended amendments to Rules 3.1, 13.3, and 28.2 of the Arkansas Rules of Criminal Pro-

cedure and Rule 16 of the Arkansas Rules of Appellate Procedure—Criminal.

We are publishing the Committee's proposals for comment from the bench and bar. For ease of reviewing, the rules are published in "line-in, line-out" fashion to illustrate the proposed changes. Following each rule are Reporter's Notes, and they should be consulted for a discussion of the proposed amendments.

Comments and suggestions may be made in writing prior to September 1, 2002. They should be addressed to:

Leslie Steen, Clerk
Arkansas Supreme Court
Attn: Criminal Procedure Rules
Justice Building
625 Marshall Street
Little Rock, AR 72201

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

RULES OF CRIMINAL PROCEDURE

Rule 3.1. Stopping and detention of person: time limit.

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit ~~(1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property~~ a criminal offense, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

Reporter's Notes 2002.

The words "a criminal offense" were substituted in the first sentence to expand the scope of the rule to include any criminal offense.

RULE 13.3. Execution of a search warrant.

(a) A search warrant may be executed by any officer. The officer charged with its execution may be accompanied by such other officers or persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.

(b) Prior to entering a dwelling to execute a search warrant, the executing officer shall make known the officer's presence and authority for entering the dwelling and shall wait a period of time that is reasonable under the circumstances before forcing entry into the dwelling. The officer may force entry into a dwelling without prior announcement if the officer reasonably suspects that making known the officer's presence would, under the circumstances, be dangerous or futile or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. For purposes of this rule, a "dwelling" means a vehicle, building, or other structure (i) where any person lives or (ii) which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a structure divided into separately occupied units is itself a dwelling.

~~(b)~~ (c) In the course of any search or seizure pursuant to the warrant, the executing officer shall give a copy of the warrant to the person to be searched or the person in apparent control of the premises to be searched. The copy shall be furnished before undertaking the search or seizure unless the officer has reasonable cause to believe that such action would endanger the successful execution of the warrant with all practicable safety, in which case he shall, as soon as is practicable, state his authority and purpose and furnish a copy of the warrant. If the premises are unoccupied by anyone in apparent and responsible control, the officer shall leave a copy of the warrant suitably affixed to the premises.

~~(c)~~ (d) The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of such search, the officer discovers things not specified in the warrant which he reasonably believes to be subject to seizure, he may also take possession of the things so discovered.

~~(d)~~ (e) Upon completion of the search, the officer shall make and deliver a receipt fairly describing the things seized to the person from whose possession they are taken or the person in apparent control of the premises from which they are taken. If practicable, the list shall be prepared in the presence of the person to whom the receipt is to be delivered. If the premises are unoccupied by anyone in apparent and responsible control, the executing officer shall leave the receipt suitably affixed to the premises.

~~(e)~~ (f) The executing officer, and other officers accompanying and assisting him, may use such degree of force, short of deadly force, against persons, or to effect an entry or to open containers as is reasonably necessary for the successful execution of the search warrant with all practicable safety. The use of deadly force in the execution of a search warrant, other than in self-defense or defense of others, is justifiable only if the executing officer reasonably believes that there is a substantial risk that the persons or things to be seized will suffer, cause, or be used to cause death or serious bodily harm if their seizure is delayed, and that the force employed creates no unnecessary risk of injury to other persons.

Reporter's Notes 2002.

A new subsection ("b") was added which incorporates the "knock and announce" requirement into the rules governing the execution of a search warrant. The subsection requires an officer executing a search warrant to "make known the officer's presence and authority" rather than "knock and announce the officer's presence and authority" before forcing entry so as to cover the situation where knocking would be superfluous because the occupant of the dwelling is outside the dwelling when the officer

approaches to serve the warrant. The remaining subsections were redesignated.

RULE 28.2 When time commences to run.

~~The time for trial shall commence running, without demand by the defendant, from the following dates:~~

(a) The time for trial shall commence running from the date the charge is filed, except that if prior to that time the defendant has been continuously held in custody or on bail or lawfully at liberty to answer for the same offense or an offense based on the same conduct or arising from the same criminal episode, then the time for trial shall commence running from the date of arrest;.

(b) ~~w~~When the charge is dismissed upon motion of the defendant and subsequently the dismissed charge is reinstated, or the defendant is arrested or charged with the same offense, the time for trial shall commence running from the date the dismissed charge is reinstated or the defendant is subsequently arrested or charged, whichever is earlier; and when the charge is dismissed upon motion of the defendant and subsequently the charge is reinstated following an appeal, the time for trial shall commence running from the date the mandate is issued by the appellate court;.

(c) If the defendant is to be retried following a mistrial~~, an order granting a new trial, or an appeal or collateral attack~~, the time for trial shall commence running from the date of mistrial~~, order granting a new trial or remand~~.

(d) If the defendant is to be retried following an order by the trial court granting a new trial, the time for trial shall commence running from the date of the order granting a new trial, unless the state appeals the order granting a new trial, in which case the time for trial shall commence running from the date the mandate is issued by the appellate court.

(e) If the defendant is to be retried following an appeal of a conviction, the time for trial shall commence running from the date the mandate is issued by the appellate court.

(f) If the defendant is to be retried following a collateral attack of a conviction, the time for trial shall commence running from the date of the order invalidating the conviction, unless the state appeals the order invalidating the conviction, in which case

the time for trial shall commence running on the date of remand by the appellate court.

Reporter's Note 2002.

Prior to the amendment, subsection (c) applied to retrials following a mistrial, retrials following an order granting a new trial, retrials following an appeal, and retrials following a collateral attack. The amendments split these various proceedings into new separate subsections.

The amendments also change the rule regarding a retrial following an appeal of an order granting a new trial. Under new subsection (d), the time for retrial begins running when the appellate court returns the case to the trial court. This changes the rule applied, but not the result reached in *Cherry v. State*, 347 Ark. 606, 66 S.W. 3d 605 (2002)(time for retrial started running when the trial court entered order granting a new trial but the period during which the new trial order was on appeal treated as an excluded period under Ark. R. Crim. P. 28.3).

The amendments were not intended to change the rule that time for trial begins to run without demand by the defendant.

RULES OF APPELLATE PROCEDURE—CRIMINAL

Rule 16. Trial counsel's duties with regard to appeal.

(a) Trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the ~~Arkansas Supreme Court~~ appellate court to withdraw in the interest of justice or for other sufficient cause. After the notice of appeal of a judgment of conviction has been filed, the ~~Supreme Court~~ appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.

(b) If court appointed counsel is permitted ~~by the trial court or the Arkansas Supreme Court~~ to withdraw in the interest of justice or for other sufficient cause in a direct appeal of a conviction or in an appeal in a postconviction proceeding under Ark. R. Crim. P. 37.5, new counsel shall be appointed promptly by

the court exercising jurisdiction over the matter of counsel's withdrawal.

(c) If court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause from an appeal in a postconviction proceeding other than a postconviction proceeding under Ark. R. Crim P. 37.5, new counsel may be appointed in the discretion of the court exercising jurisdiction over the matter of counsel's withdrawal.

Reporter's Notes 2002.

The amendments divide the rule into subsections and add language making it clear that the court has discretion whether to appoint replacement counsel when court appointed counsel is permitted to withdraw in a noncapital postconviction appeal.

IN RE: MINIMUM CONTINUING LEGAL EDUCATION RULES

Supreme Court of Arkansas
Delivered June 27, 2002

PER CURIAM. The Continuing Legal Education (CLE) rules include a requirement that attorneys electing inactive status renew that status annually. Experience has shown that the number of attorneys electing inactive status is small, approximately 200, and that number has remained constant for over ten years. Further, the number of attorneys returning to active status from the inactive designation is smaller still, approximately two a year. Finally, attorneys are presently obliged, by Rule 2.(D)(2) to notify the CLE Board upon return to active practice.

For these reasons, the CLE Board recommends annual renewal of inactive status be removed from the CLE rules. We concur and adopt Rules 2.(D)(1) and 6.(A) of the Arkansas Rules

and Regulations for Minimum Continuing Legal Education as they appear on the attachment to this order.

2.(D)

(1) At anytime during a reporting period, an attorney on active status, with the exception of sitting judges, may take inactive status pursuant to these rules. Inactive status, for the purpose of these rules only, means that an attorney, subsequent to declaration of inactive status, will not engage in the practice of law during the remainder of that reporting period or subsequent reporting periods. Election of inactive status must be in writing. By taking inactive status, the attorney shall be exempt from the minimum educational requirements of Rule 3 for that reporting period and subsequent reporting periods.

6(A)

If an attorney to whom these rules apply either fails: to file timely the acknowledgement of deficiency or cure the deficiency as required by Rule 5.(D); or, to file timely an out of state certification form in accord with Rule 2.(C), the attorney shall not be in compliance with these rules.

IN RE: ADIMINISTRATIVE ORDER NUMBER 14

Supreme Court of Arkansas
Opinion delivered July 11, 2002

PER CURIAM. As we recognized a year ago, the implementation of Amendment 80 is an evolving process. *See In Re Implementation of Amendment 80: Administrative Plans*, 345 Ark. Appx., 49 S.W. 3d (2001). The Arkansas Judicial Council has presented the Court with a request to make certain amendments to Administrative Order Number 14. The Court needs further time to consider many of the items and has taken them

under advisement; however, a timing issue arising under Administrative Order Number 14 needs immediate attention.

The date for submission of plans which would be due on March 1, 2003 under subsection 3 of Administrative Order Number 14[1] is changed to July 1, 2003. Plans submitted on this date, when approved, will go into effect on January 1, 2004. We contemplate amending Administrative Order Number 14 in the future, and at that time, we will determine the date on which plans will be due in subsequent years.

[1] 3. Supreme Court. The administrative plan for the judicial circuit shall be submitted to the Supreme Court by March 1 of each year following the year in which the general election of circuit judges is held. Until a subsequent plan is approved by the Supreme Court, any approved plan currently in effect shall remain in full force.

Appointments to Committees

IN RE: BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Delivered June 27, 2002

PER CURIAM. The Honorable Edwin A. Keaton, Circuit Judge, Thirteenth Judicial Circuit, and Mr. G. Michael Ashcraft, Court Reporter, Tenth Judicial Circuit, Second Division, are appointed to the Board of Certified Court Reporter Examiners for three-year terms to expire on July 31, 2005. The Court expresses its appreciation to Judge Keaton and Mr. Ashcraft for accepting appointment to this important Board.

The Court expresses its appreciation to Judge Leon Jamison of Pine Bluff and Ms. Jana Hawley, Court Reporter, Eighteenth Judicial Circuit-East, whose terms have expired, for their years of dedicated service to the Board.

IN RE: SUPREME COURT COMMITTEE on CIVIL PRACTICE

Supreme Court of Arkansas
Opinion delivered July 5, 2002

PER CURIAM. Marie-Bernarde Miller, Esq., of Little Rock, Gary Corum, Esq., of Little Rock, and Paul Lindsey, Esq., of Camden are appointed to the Supreme Court Committee on Civil Practice for three-year terms to expire on July 31, 2005. The Court expresses its appreciation to these appointees for their willingness to serve.

The Court thanks Katharine Day Wilson, Esq., of Batesville, Thomas H. McGowan, Esq., of Little Rock, and James M. Pratt, Jr., Esq., of Camden, whose terms have expired, for their years of service on the Committee.

Professional Conduct Matters

IN RE: Randell Wayne DIXON,
Arkansas Bar ID # 83052

No. 02-471

Supreme Court of Arkansas
Delivered May 23, 2002

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

It is so ordered.

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ARKANSAS APPELLATE REPORTS

Volume 78

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
June 5, 2002 — July 3, 2002
INCLUSIVE

WILLIAM B. JONES, JR.
REPORTER OF DECISIONS

CINDY M. ENGLISH
DEPUTY
REPORTER OF DECISIONS

VICTORIA M. FREY
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2002

Of Law there can be no less acknowledged
than that her seat is the bosom of God,
her voice the harmony of the world.

— Richard Hooker
(1554–1600)

Set in Bembo

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2002

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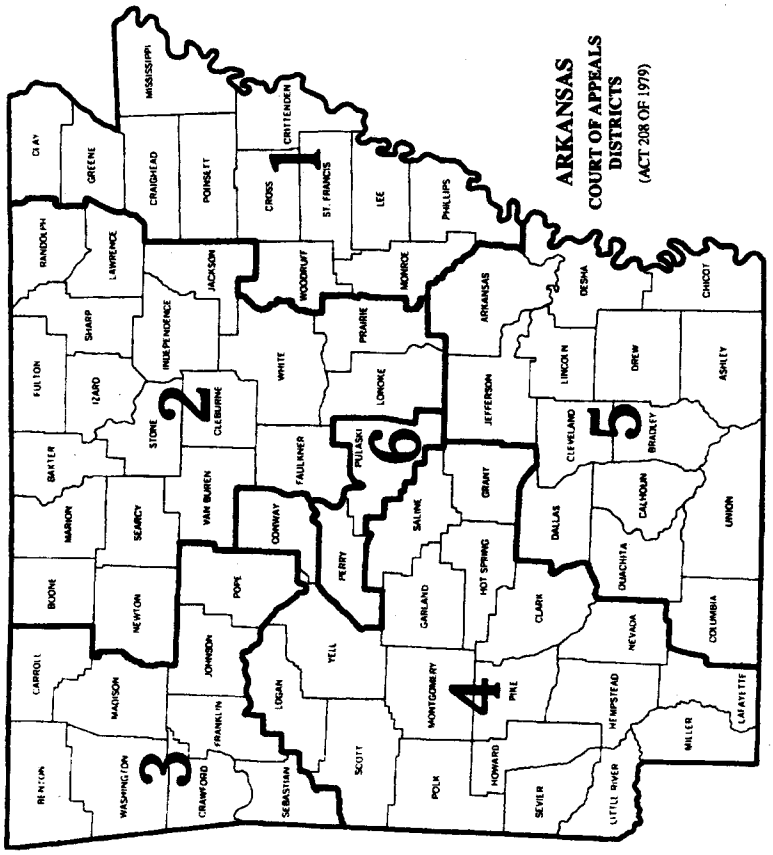
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JUDGES AND OFFICERS
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(June 5, 2002 — July 3, 2002 inclusive)

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JOHN F. STROUD	Chief Judge[1]
JOHN MAUZY PITTMAN	Judge[2]
JOSEPHINE LINKER HART	Judge[3]
JOHN E. JENNINGS	Judge[4]
JOHN B. ROBBINS	Judge[5]
SAM BIRD	Judge[6]
WENDELL L. GRIFFEN	Judge[7]
OLLY NEAL	Judge[8]
LARRY D. VAUGHT	Judge[9]
TERRY CRABTREE	Judge[10]
KAREN R. BAKER	Judge[11]
ANDREE LAYTON ROAF	Judge[12]

OFFICERS

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

[1] Position 7.
[2] District 1.
[3] District 2.
[4] District 3.
[5] Position 4.
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STANDARDS FOR PUBLICATION OF OPINIONS

Rule 5-2

RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

OPINIONS

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

(b) COURT OF APPEALS — OPINION FORM. Opinions of the Court of Appeals may be in conventional form or in memorandum form. They shall be filed with the Clerk. The Opinions need not contain a detailed statement of the facts, but may set forth only such matters as may be necessary to an understandable discussion of the errors urged. In appeal 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 publications 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.

Adams *v.* State, CA CR 01-964 (Crabtree, J.), affirmed June 5, 2002.

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