ARKANSAS REPORTS
VOLUME 375

ARKANSAS
APPELLATE REPORTS
VOLUME 104

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

— SAMUEL JOHNSON
(1709-1784)

THIS BOOK CONTAINS THE OFFICIAL

ARKANSAS REPORTS

Volume 375

CASES DETERMINED

IN THE

Supreme Court of Arkansas

FROM

November 6, 2008 — February 12, 2009

INCLUSIVE[1]

AND

ARKANSAS APPELLATE REPORTS

Volume 104

CASES DETERMINED

IN THE

Court of Appeals of Arkansas

FROM

November 5, 2008 — February 11, 2009

INCLUSIVE[2]

PUBLISHED BY THE
STATE OF ARKANSAS
2010

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[1]Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 553. Cite as 375 Ark. ___ (2008 or 2009).

[2]Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 382. Cite as 104 Ark. App. ___ (2008 or 2009).

ERRATA

370 Ark. 147, at 155, line 16 from bottom:
delete the comma after "circuit court," and
delete the words "and use the abuse-of-discretion standard"

370 Ark. 147, at 155, the final sentence should read:
"While Rule 16.2 does not require every untimely motion to be denied, we do not find error in the circuit court's denial and affirm on this point."

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ARKANSAS REPORTS

Volume 375

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
November 6, 2008 — February 12, 2009
INCLUSIVE

SUSAN P. WILLIAMS
REPORTER OF DECISIONS

AMY DUNN JOHNSON
DEPUTY
REPORTER OF DECISIONS

JEFFREY D. BARTLETT
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2010

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JUSTICES AND OFFICERS
OF THE
SUPREME COURT OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(November 6, 2008 — February 12, 2009, inclusive)

JUSTICES

JIM HANNAH	Chief Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
JIM GUNTER	Justice
PAUL E. DANIELSON	Justice
ELANA CUNNINGHAM WILLS	Justice

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LESLIE W. STEEN	Clerk
AVA M. HICKS	Director, Library
SUSAN P. WILLIAMS	Reporter of Decisions
AMY DUNN JOHNSON	Deputy Reporter of Decisions

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STANDARDS FOR PUBLICATION OF OPINIONS

RULE 5-2

RULES OF THE ARKANSAS SUPREME COURT AND COURT OF APPEALS

OPINIONS

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

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

Bader *v.* State, CR00-565 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied; Pro Se Motion for Continuance moot February 12, 2009 (BROWN, J., not participating.

Barnett *v.* State, CR08-154 (PER CURIAM), Pro Se Motion for Belated Appeal denied December 19, 2008.

Bell *v.* State, CR08-774 (PER CURIAM), Pro Se Motion for Extension of Time to File Appellant's Brief granted November 6, 2008.

Belt *v.* State, CR07-984 (PER CURIAM), affirmed January 30, 2009.

Boldin *v.* State, CR08-1029 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted November 20, 2008 (DANIELSON, J., not participating).

Britt *v.* State, CR08-841 (PER CURIAM), Appellee's Motion to Dismiss Appeal denied; Appellant's Pro Se Motion for Extension of Time to File Brief moot; Appellee's Motion for Extension of Time to File Brief granted November 20, 2008.

Buckhanna *v.* State, CACR06-1488 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in Trial Court to Consider a Petition for Writ of Error Coram Nobis denied; Motion to Supplement the Pleadings moot January 22, 2009.

Burnett *v.* State, CR07-683 (PER CURIAM), affirmed; Motion to Withdraw as Counsel granted January 15, 2009.

Cartwright *v.* State, CR07-905 (PER CURIAM), remanded December 11, 2008.

Casey *v.* State, CR07-171 (PER CURIAM), Pro Se Motion Under Court Rule 2.2 for Ineffective Assistance of Counsel treated as Second Motion to File Belated Petition for Review and denied January 30, 2009.

Cluck *v.* State, CR08-1204 (PER CURIAM), Pro Se Motion for Reconsideration of Notice of Appeal treated as Motion for Belated Appeal and dismissed December 11, 2008.

Creggett *v.* State, CR08-1173 (PER CURIAM), Pro Se Petition for Review dismissed; Motion to Supplement Petition moot November 13, 2008.

Davie *v.* State, CR07-1228 (PER CURIAM), affirmed November 13, 2008.

Davis *v.* State, CR92-575 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in Circuit Court to Consider a Petition for Writ of Error Coram Nobis denied December 4, 2008.

Dickinson, John Patrick *v.* State, CR08-1090 (PER CURIAM), Pro Se Motion for Rule on Clerk denied November 20, 2008.

Dickinson, John Patrick *v.* State, CR08-1090 (PER CURIAM), Pro Se Application for Leave to Appeal treated as Motion for Reconsideration of Motion for Rule on Clerk and denied February 12, 2009 (BROWN, J., not participating).

Dodd *v.* State, CR08-763 (PER CURIAM), Pro Se Petition and Amended Petitions for Writ of Mandamus denied; Pro Se Motion to Supplement Record moot January 30, 2009.

Dunlap *v.* State, CACR07-452 (PER CURIAM), Pro Se Requests for Photocopying at Public Expense Pursuant to the Freedom of Information Act denied November 20, 2008.

Ervin *v.* State, CACR07-962 (PER CURIAM), Pro Se Motion for Photocopy of Transcript at Public Expense denied December 4, 2008.

Ester *v.* State, CACR07-866 (PER CURIAM), Pro Se Motion for Photocopy of Transcript at Public Expense denied December 4, 2008.

Fair, Zane *v.* State, CR08-1203 (PER CURIAM), Pro Se Petition for Writ of Certiorari denied January 22, 2009.

Fair, Zane *v.* State, CR08-1203, (PERCURIAM), Pro Se Petition for Writ of Certiorari denied December 11, 2008.

Gaye *v.* State, CR08-941 (PER CURIAM), Pro Se Motions to Supplement Brief and for Writ of Certiorari moot; appeal dismissed February 5, 2009.

Granger *v.* Norris, 08-979 (PER CURIAM), Pro Se Motion for Belated Appeal or for Writ of Certiorari treated as Motion for Rule on Clerk and denied November 13, 2008.

Halfacre, Kenny *v.* State, 08-648 (PER CURIAM), affirmed January 22, 2009.

Halfacre, Kenny *v.* State, CR86-183 & CR86-184 (PER CURIAM), Pro Se petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition Under Rule 37.1 dismissed November 13, 2008.

Hall *v.* Hudson, 09-66 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot February 12, 2009 (BROWN, J., not participating).

Hampton *v.* State, CR07-1263 (PER CURIAM), Petition for Rehearing denied December 4, 2008 (IMBER, J. not participating).

Harris, Lee Mark *v.* State, CR08-762 (PER CURIAM), Pro Se Motion for Transcript denied January 22, 2009.

Harris, Lee Mark *v.* State, CR08-762 (PER CURIAM), Pro Se Motion for Appointment of Counsel denied December 19, 2008.

Hendrix *v.* Rogers, 08-1287 (PER CURIAM), Pro Se Petition for Writ of Mandamus denied February 12, 2009 (BROWN, J., not participating).

Hill *v.* State, CR08-637 (PER CURIAM), Pro Se Motions for Appointment of Counsel and Enlarged Brief moot; Motions to Supplement Addendum and for Oral Argument denied; appeal affirmed January 30, 2009.

Hutcherson *v.* State, CACR00-645 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in Trial Court to Consider a Petition for Writ of Error Coram Nobis denied January 15, 2009.

Jackson, Anarian Chad *v.* State, CACR03-1127 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied December 11, 2008.

Jackson, Anarian Chad *v.* Norris, 07-785 (PER CURIAM) affirmed December 4, 2008.

Jackson, James Lee *v.* State, CR08-1108 (PER CURIAM), Pro Se Motion for Rule on Clerk denied; Pro Se Petition for Writ of Certiorari to Complete the Record moot December 4, 2008.

Johnson *v.* State, CACR01-1015 (PER CURIAM), Pro Se Petition for Leave to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied December 19, 2008.

King *v.* State, CR08-628 (PER CURIAM), appeal dismissed; Pro Se Motion for Extension of Brief Time moot November 13, 2008.

Lamb *v.* State, CR08-1370 (PER CURIAM), Pro Se Motion to Proceed with Appeal of Order treated as Motion for Rule on Clerk and denied February 12, 2009 (BROWN, J., not participating).

Lofton *v.* State, CR08-1212 (PER CURIAM), Pro Se Motions for Transcript and Extension of Time to File Brief moot; appeal dismissed January 15, 2009.

Loveless *v.* Norris, 08-533 (PER CURIAM), Pro Se Motion for Reconsideration of Dismissal of Appeal denied; Motion to Duplicate at State Expense moot November 20, 2008.

Marks *v.* State, CR08-918 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted November 20, 2008.

Mars *v.* State, CR08-928 (PER CURIAM), appeal dismissed; Pro Se Motions for Extension of Time to File Appellant's Brief moot November 6, 2008.

Marshall *v.* State, CACR07-708 & CACR07-1090 (PER CURIAM), Pro Se Motion for Transcripts at Public Expense denied December 19, 2008.

Martin *v.* Mobley, 08-1291 (PER CURIAM), Pro Se Petition for Leave to Proceed In Forma Pauperis with Tendered Motion for Rule on Clerk denied February 5, 2009.

Mazurek *v.* State, CR07-1002 (PER CURIAM), appeal dismissed November 13, 2008.

McCullough *v.* State, CACR05-1183 (PER CURIAM), Pro Se Petition and Supplemental Petition to Reinvest Jurisdiction in Trial Court to Consider a Petition for Writ of Error Coram Nobis denied February 5, 2009.

McDonald *v.* State, CACR04-1130 (PER CURIAM), Pro Se Motion to Dismiss Without Prejudice, Pro Se Petition to Reinvest Jurisdiction in Trial Court to Consider a Petition for Writ of Error Coram Nobis granted November 6, 2008.

Mendiola *v.* State, CR07-915 (PER CURIAM), affirmed January 15, 2009 (IMBER, J., not participating).

Moles *v.* State, CR08-1211 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted January 15, 2009.

Montgomery *v.* Norris, 08-1358 (PER CURIAM), Pro Se Motion for Belated Appeal of Order denied February 12, 2009 (BROWN, J., not participating).

Munson *v.* Reynolds, 08-647 (PER CURIAM), Pro Se Petition for Writ of Mandamus denied December 11, 2008.

Nelson *v.* Norris, 08-1071 (PER CURIAM), Pro Se Motion for Extension of Time to File Brief moot; appeal dismissed January 22, 2009.

Norton *v.* State, CR08-1020 (PER CURIAM), Pro Se Motion for Belated Appeal of Judgments of Conviction dismissed November 20, 2008.

Owens *v.* Steen, 08-1286 (PER CURIAM), Pro Se Motion for Rule on Clerk denied February 5, 2009.

Parmley *v.* Norris, 07-813 (PER CURIAM), affirmed February 12, 2009 (BROWN, J., not participating).

Patterson *v.* Norris, CR08-949 (PER CURIAM), Pro Se Petition for Writ of Habeas Corpus denied November 6, 2008.

Peppers *v.* State, CR08-1258 (PER CURIAM), Pro Se Motion for Belated Appeal of Judgment of Conviction dismissed January 15, 2009.

Plunkett *v.* State, CACR06-1064 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in Trial Court to Consider a Petition for Writ of Error Coram Nobis denied February 5, 2009.

Polivka *v.* State, CR08-431 (PER CURIAM), Pro Se Motion for Appointment of Counsel denied; Motion for Extension of Time granted December 4, 2008.

Prince/Qadosh *v.* Norris, 08-78 (PER CURIAM), Pro Se Petition for Rehearing denied; Petition for Writ of Mandamus moot January 15, 2009.

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Sanders, Clemont *v.* State, CR07-788 (PER CURIAM), affirmed November 13, 2008.

Sanders, Daniel *v.* State, CR08-704 (PER CURIAM), Motion for Extension of Time to File Petition for Writ of Certiorari granted November 20, 2008.

Sanders, Daniel *v.* State, CR08-704 (PER CURIAM), Motion to Be Relieved as Counsel and Pro Se Motion for Appointment of Counsel granted November 20, 2008.

Scott *v.* State, CR98-1167 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied December 4, 2008.

Sexton *v.* State, CR08-819 (PER CURIAM), Appellant's Pro Se Motion to File Belated Brief denied; Appellee's Motion to Dismiss Appeal granted December 11, 2008.

Shelton *v.* State, CR08-426 (PER CURIAM), affirmed November 20, 2008.

Sims *v.* State, CR08-917 (PER CURIAM), Pro Se Motion for Permission to Proceed Without Certified Record treated as Motion for Rule on Clerk and denied December 19, 2008.

Smith, Dennis James *v.* State, CR01-1132 & CR02-895 (PER CURIAM), Pro Se Petitions to Reinvest Jurisdiction in Trial Courts to Consider a Petition for Writ of Error Coram Nobis denied; Pro Se Motions for Issuance of Subpoenas moot February 12, 2009 (BROWN, J., not participating).

Smith, James E. *v.* Norris, 08-733 (PER CURIAM), Pro Se Motion for Status of Case moot; Pro Se Motion for Reconsideration

of Dismissal of Appeal denied; Pro Se Motion to Compel Response moot January 30, 2009.

Smith, Raechio *v.* Norris, 08-469 (PER CURIAM), Pro Se Motion for Rule on Clerk denied December 4, 2008.

Sparks *v.* State, CR08-550 (PER CURIAM), Pro Se Motions to Supplement Record, to Relieve Counsel and Proceed Pro Se on Appeal, and for Oral Argument denied November 6, 2008.

Steinkuehler *v.* Sims, CR08-1038 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot November 6, 2008.

Stivers *v.* State, CR08-203 (PER CURIAM), Pro Se Motion for Belated Appeal treated as Motion for Belated Brief and moot; appeal dismissed January 22, 2009.

Strong *v.* State, CR08-1079 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted November 13, 2008.

Thompson *v.* State, CR08-773 (PER CURIAM), Pro Se Motion for Access to Record and for Extension of Time to File Appellant's Brief granted November 6, 2008.

Tice *v.* State, CACR03-1314 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied December 11, 2008.

Trotter *v.* State, 08-433 (PER CURIAM), Pro Se Motions for Extension of Time to File Appellant's Brief granted in part and denied in part November 6, 2008.

Tubbs *v.* State, CR08-1284 (PER CURIAM), Pro Se Motion for Belated Appeal of Order granted February 5, 2009.

Van Vliet *v.* State, CR08-540 (PER CURIAM), Pro Se Motion for En Banc Reconsideration of Denial of Motion for Leave to Proceed in Forma Pauperis on Appeal denied December 4, 2008.

Velcoff *v.* State, CR07-709 (PER CURIAM), appeal dismissed January 22, 2009.

Watson *v.* State, CR08-772 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted November 20, 2008.

Watts *v.* State, CR08-1280 (PER CURIAM), Appellant's Pro Se Motion to Dismiss appeal granted in part and denied in part; appeal dismissed January 30, 2009.

Wheat *v.* State, CR08-1289 (PER CURIAM), Pro Se Motions for Appointment of Counsel and Extension of Time to File Appellant's Brief moot; appeal dismissed February 5, 2009.

White *v.* Finch, 08-1368 (PER CURIAM), Pro Se Petition for Writ of Mandamus and Injunction as to Petitioner Helen Louise

White dismissed; Pro Se Petition for Writ of Mandamus and Injunction as to Petitioner Christopher Newton White denied; Pro Se Motion to Intervene moot January 30, 2009.

White, Christopher Newton *v.* State, CR07-1340 (PER CURIAM), affirmed December 4, 2008.

White, Christopher Newton *v.* State, CR07-1340 (PER CURIAM), rehearing denied February 5, 2009 (IMBER, J., not participating).

Williams *v.* Norris, 08-993 (PER CURIAM), Pro Se Motion for Rule on Clerk denied November 20, 2008.

APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ADMINISTRATIVE ORDER NUMBER 20 and RULES of the SUPREME COURT and COURT of APPEALS 4-1 and 4-4

Supreme Court of Arkansas
Opinion delivered December 11, 2008

PER CURIAM. Administrative Order Number 20, which provides minimum qualifications and uniform appointment procedures for private civil process servers, has been in place for almost a year. Experience with the Administrative Order has revealed the need for clarifying amendments. We thank the members of the bench and bar, and the private process servers, who brought these issues to our attention. We amend and republish Administrative Order Number 20 in its entirety. The Explanatory Note at the end of the amended Order describes the minor changes and clarifications. These amendments are effective immediately.

On October 23, 2008, we issued a per curiam adopting various rule amendments to implement Administrative Order 19 at the beginning of 2009. We see the need for two more amendments about redactions in appellate briefs. We have therefore added language to Rules 4-1 and 4-4 of the Supreme Court and Court of Appeals. The new provisions appear at the end of Rule 4-1(d) and the end of Rule 4-4(a), (b), & (c). The changes are largely self-explanatory. If confidential information is necessary and relevant to the issues on appeal, then the party should file the usual seventeen copies of the brief — with eight copies redacted, and nine copies unredacted. The unredacted copies should be filed under seal. The cover of each brief should note REDACTED or UNREDACTED to distinguish the versions. For the next few years, some appellate records will contain confidential information that is not necessary or relevant to the issues on appeal. In these cases, the parties should simply omit any confidential information from every part of every brief, including the abstract and the addendum. If confidential information is integrated with necessary information, then the confidential information should be redacted. But there is no need to file unredacted copies of the briefs in such cases because the appellate court will not need the confidential information to decide the case. These amendments to Rule 4-1 and 4-4 are effective January 1, 2009.

A. ADMINISTRATIVE ORDER

Administrative Order Number 20 is hereby amended and republished in its entirety.

ADMINISTRATIVE ORDER NUMBER 20

Private Civil Process Servers

Appointment — Qualifications

(a) *Authority to Appoint Persons to Serve Process in Civil Cases.* The administrative judge of a judicial district, or any circuit judge(s) designated by the administrative judge, may issue an order appointing an individual to make service of process pursuant to Arkansas Rule of Civil Procedure 4(c)(2) in cases pending in each county of the district wherein approval has been granted. The appointment shall be effective for every division of circuit court, and for every district court, in the county.

(b) *Minimum Qualifications to Serve Process.* Each person appointed to serve process must have these minimum qualifications:

(1) be not less than 18 years old and a citizen of the United States;

(2) have a high school diploma or equivalent;

(3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment;

(4) hold a valid driver's license from one of the United States; and

(5) demonstrate familiarity with the various documents to be served.

Each judicial district may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.

(c) *Appointment Procedure.*

(1) A person seeking court appointment to serve process shall file an application with the circuit clerk. In a multi-county district, an applicant may file an application in one county seeking

appointment in one or more counties of the district. The application shall be accompanied by an affidavit stating the applicant's name, address, occupation, and employer, and establishing the applicant's minimum qualifications pursuant to section (b) of this Administrative Order. Neither the application nor the affidavit shall require disclosure of the applicant's social security number. The General Assembly will set any application fee charged by the circuit court.

(2) The circuit judge shall determine from the application and affidavit, and from whatever other inquiry is needed, whether the applicant meets the minimum qualifications prescribed by this Administrative Order and any additional qualifications prescribed in that district. If the judge determines that the applicant is qualified, then the judge shall issue an order of appointment. The circuit clerk shall file the order, and provide a certified copy of it to the process server and to the sheriff of the county in which the person will serve process. The circuit clerk of each county shall maintain and post a list of appointed civil process servers. In multi-county districts, if the applicant has sought appointment in more than one county, then the order shall specify the counties in which the process server is qualified. In this instance, the circuit clerk shall also provide a certified copy of the order to the sheriff and circuit clerk of each county in which the person will serve process.

(d) *Identification.* When serving process, each process server shall carry a certified copy of his or her order of appointment and a valid driver's license. He or she shall, upon request or inquiry, present this identification at the time service is made.

(e) *Duration, Renewal, and Revocation.*

A judge shall appoint process servers for a fixed term not to exceed three years. Appointments shall be renewable for additional three-year terms. A process server seeking a renewal appointment shall file an application for renewal and supporting affidavit demonstrating that he or she meets the minimum qualifications prescribed by this Administrative Order and the judicial district. The General Assembly shall set any renewal fee charged by the circuit court. Upon notice to the administrative judge, any circuit judge may revoke an appointment to serve process for his or her division for any of the following reasons: (1) making a false return of service; (2) serious and purposeful improper service of process; (3)

failing to meet the minimum qualifications for serving process; (4) misrepresentation of authority, position, or duty; or (5) other good cause.

(f) *Forms.* Forms for the application, affidavit, order of appointment, and renewal of appointment are available at the Administrative Office of the Courts section of the Arkansas Judiciary website, http://courts.state.ar.us.

Explanatory Note, 2008 Amendment: The Administrative Order has been clarified in various respects. The change in subsection (a) confirms that the Administrative Order and Rule 4(c)(2) must be read in harmony. Moreover, the circuit court's authority extends to appointing process servers for the district courts within the judicial district. In subsection (b), the requirement of having an Arkansas driver's license has been changed to having a valid driver's license from any state. In subsection (c), the procedure for appointment in multi-county districts has been spelled out: an applicant may seek a multi-county appointment by applying to any circuit court in a multi-county district. The circuit clerk in the county where the petition is filed must provide certified copies of any appointment order to the circuit clerks and sheriffs in all counties covered by the appointment. As amended, the Administrative Order prohibits requiring an applicant to disclose his or her social security number during the application process. Finally, the Administrative Order clarifies that any fee related to an application for appointment or renewal shall be set by the General Assembly.

B. RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rules 4-1(d) and 4-4(a),(b) & (c) are hereby amended as follows:

Rule 4-1. Style of briefs.

. . . .

(d) *Compliance with Administrative Order 19 required.* All parts of all briefs, including the abstract and any document attached to any brief in the addendum, must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Pro-

cedure 5(c)(2)(A) & (B). That procedure includes (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal. If the record contains confidential information that is neither necessary nor relevant for the appellate court's consideration of the case, then the party shall omit that information throughout the brief, including the abstract and addendum. If confidential information is integrated with necessary information, then the party should redact the confidential information in the abstract and addendum. In this situation, the party need not file an unredacted version of the brief. If the confidential information is necessary and relevant to a decision on appeal, pursuant to Rule 4-4, the party must file eight redacted copies and nine unredacted copies of the brief for a total of seventeen copies. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

Rule 4-4 Filing and service of brief in civil cases.

(a) *Appellant's brief.*

. . . .

When a party has determined that confidential information is necessary and relevant to the appellate court's consideration of the case, redaction shall be done pursuant to Rule 4-1(d), and the party shall file eight redacted copies and nine unredacted copies of the appellant's brief. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

(b) *Appellee's brief — Cross-appellant's brief.*

. . . .

When a party has determined that confidential information is necessary and relevant to the appellate court's consideration of the case, redaction shall be done pursuant to Rule 4-1(d), and the party shall file eight redacted copies and nine unredacted copies of the appellee's brief or cross-appellant's brief. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

(c) *Reply brief — cross-appellant's reply brief.*

. . . .

When a party has determined that confidential information is necessary and relevant to the appellate court's consideration of the case, redaction shall be done pursuant to Rule 4-1(d), and the party shall file eight redacted copies and nine unredacted copies of the reply brief or cross-appellant's reply brief. The unredacted copies shall be filed under seal. The cover of each brief shall indicate clearly whether it is REDACTED or UNREDACTED.

IN RE: ADOPTION of RULE 1.9, RULES of CRIMINAL PROCEDURE

Supreme Court of Arkansas
Opinion delivered December 11, 2008

PER CURIAM. In February 2007, we adopted Administrative Order 19, which governs the public's access to court records. In our per curiam order we asked our Committees on Civil and Criminal Practice to study this comprehensive new Administrative Order and recommend any needed changes in our court rules. On October 23, 2008, we adopted the recommendations of the Civil Practice Committee for changes in numerous rules. *See In Re: Rules of Civil Procedure 5, 11 & 58; Administrative Orders 19 and 19.1; Rules of Appellate Procedure–Civil 6 and 11; Rules of Supreme Court and Court of Appeals 1-2, 2-1, 2-3, 2-4, 3-1 and 4-1*, 374 Ark. App'x ___ (October 23, 2008).

Based on the rules framework that has been adopted, the Criminal Practice Committee recommends the adoption of Rule of Criminal Procedure 1.9. We agree with this approach and adopt the rule as set out below to be effective January 1, 2009. We reiterate what we said in our October 23 order:

> These rule changes are comprehensive and significant. Starting on January 1, 2009, litigants and their lawyers must, in so far as possible,

> first eliminate all confidential information from all court filings. If the information is essential to the case, then litigants and their lawyers must redact it in the publicly available copy of the filed document and file a duplicate, unredacted copy under seal for use by the parties and the court. These new procedures will start implementing Administrative Order 19's careful balance between the public's right to access their courts' records with litigants' rights to keep confidential information private. We expect that refinements will be needed. We therefore encourage the bench and bar to suggest further rule changes based on their experience with these procedures in practice in 2009.

Id.

Today, we ask the criminal bench and bar to focus on the pleadings and court forms as we start implementing Administrative Order Number 19 with an eye to improvements. We expect good faith in attempting to comply with Administrative Order Number 19, but we know that there will be lapses, and we counsel leniency regarding enforcement in the early stages.

Rules of Criminal Procedure

Rule 1.9. Compliance with Administrative Order 19 — Confidential Information.

Administrative Order Number 19 requires that "confidential information" be excluded from the "case record,"as those terms are therein defined. Every pleading, motion, response, order, and other paper filed in a case, and any document attached to any of them, must comply with the protective requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes the following: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Reporter's Note: Administrative Order No. 19 requires that any necessary and relevant confidential information in a case record must be redacted. Unrepresented parties, counsel, and judges must follow the redaction/duplicate-filing-under-seal procedure outlined in Rules of Civil Procedure (5)(c)(2)(A) & (B) and

58 for all case records, as that term is defined by Administrative Order No. 19, section III (A)(2), and which includes all pleadings and papers and any attached materials. *See* Reporter's Notes, 2008 Amendment to Rules of Civil Procedure 5 and 58.

IN RE: RULES of CRIMINAL PROCEDURE, RULES 24.3(b) and 28.1; ADMINISTRATIVE ORDER NUMBER 4

Supreme Court of Arkansas
Opinion delivered January 8, 2009

PER CURIAM. The Supreme Court Committee on Criminal Practice has submitted several proposals to the court as set out in detail below. We express our gratitude to the members of the Criminal Practice Committee for their work. These proposals are being published for comment, and the comment period shall end on April 1, 2009. (New language is underlined in the rules set out below.)

Comments should be submitted in writing to: Clerk of the Arkansas Supreme Court, Attention: Criminal Practice Committee, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

1. Amendments to Arkansas Rule of Criminal Procedure 28.1 and Arkansas Rule of Criminal Procedure 24.3(b) to clarify defendant's right to review when speedy trial motion is denied by trial court.

A. The Committee recommends the following changes to Rule 28.1 (consult the accompanying Reporter's Note for explanation of changes):

Rule 28.1. Limitations and consequences.

(a) Any defendant charged with an offense ~~in circuit court~~ and incarcerated in a city or county jail in this state pending trial

shall be released on his own recognizance if not brought to trial within nine (9) months from the time provided in Rule 28.2, excluding only such periods of necessary delay as are authorized in Rule 28.3.

(b) Any defendant charged with an offense ~~in circuit court~~ and incarcerated in prison in this state pursuant to conviction of another offense shall be entitled to have the charge dismissed with an absolute bar to prosecution if not brought to trial within twelve (12) months from the time provided in Rule 28.2, excluding only such periods of necessary delay as are authorized in Rule 28.3.

(c) Any defendant charged ~~after October 1, 1987, in circuit court~~ with an offense and held to bail, or otherwise lawfully set at liberty, including released from incarceration pursuant to subsection (a) hereof, shall be entitled to have the charge dismissed with an absolute bar to prosecution if not brought to trial within twelve (12) months from the time provided in Rule 28.2, excluding only such periods of necessary delay as are authorized in Rule 28.3.

(d) ~~Motion for dismissal of a charge pursuant to subsection (b) or (c) hereof shall be made to the trial court, but if denied, may be presented to the Arkansas Supreme Court by petition for writ of prohibition~~. Any defendant who is charged with an offense in circuit court, including a defendant who appeals a district court conviction to circuit court, and who is entitled to a dismissal of the charge because not brought to trial in the circuit court as provided in subsection (b) or (c) hereof may move the circuit court for dismissal of the charge. If the circuit court denies the motion to dismiss, the defendant may raise the denial in a post-trial appeal of a conviction as grounds for reversing the conviction and dismissing the charge The defendant whose motion is denied by the circuit court shall not be entitled to seek interlocutory review of the denial by appeal or by petition for writ of prohibition, but the defendant may, in appropriate cases, seek interlocutory review by petition for writ of certiorari. The failure of a defendant to seek interlocutory review by petition for writ of certiorari shall not constitute a waiver of the defendant's right to raise the denial of rights under subsection (b) or (c) hereof in a post-trial appeal.

(e) Any defendant charged with an offense in district court who is entitled to dismissal of the charge because not brought

to trial in the district court as provided in subsection (b) or (c) may move the district court for dismissal of the charge. If the district court denies the motion for dismissal, there shall be no right to interlocutory review of the denial, but the defendant who appeals a district court conviction to the circuit court may move the circuit court for dismissal of the charge because not brought to trial in the district court as provided in subsection (b) or (c) hereof. If the circuit court denies the motion for dismissal, there shall be no right to interlocutory review of the denial except by writ of certiorari as provided in subsection (d) hereof, but the defendant who appeals a conviction in the circuit court may raise the denial as grounds for reversing the conviction and dismissing a charge.

~~(e)~~ (f) The dismissal of a charge pursuant to subsection (b) or (c) hereof shall also be an absolute bar to prosecution for any other offense required to be joined with the charge dismissed.

~~(f)~~ (g) (1) If the district court denies a defendant's motion to dismiss because not brought to trial in the district court as provided in subsection (b) and (c) hereof, the defendant may thereafter enter a plea of guilty in district court without waiving the right to move the circuit court for dismissal of the charge because the defendant was not brought to trial in the district court as provided in subsection (b) or (c) hereof.

(2) If the circuit court denies a defendant's motion to dismiss because not brought to trial in either the circuit court or the district court as provided in subsection (b) or (c) hereof, the defendant may enter a conditional plea of guilty in the circuit court as provided in Rule 24.3(b).

(3) Failure of a defendant to move for dismissal of a charge pursuant to subsection (b) or (c) hereof prior to a plea of guilty or trial shall constitute a waiver of ~~his~~ rights under ~~these rules~~ this rule.

~~(g)~~ (h) This rule shall have no effect in those cases which are expressly governed by the "Interstate Agreement on Detainers Act" (Act 705 of 1971).

Reporter's Notes to 2009 Amendments

The 2009 amendments deleted references to the "circuit court" in subsections (a), (b), and (c) of this rule. The Supreme Court had

previously held that the speedy trial requirements of the rule applied to a proceeding in municipal court, the predecessor of the district court. Stephens v. State, 295 Ark. 541, 750 S.W.2d 52 (1988); Whittle v. Washington County Circuit Court, 325 Ark. 136, 925 S.W.2d 383 (1996).

Prior to the change, a defendant whose speedy trial motion was denied by the circuit court could seek interlocutory Supreme Court review of the decision by filing a writ of prohibition. See former Rule 28.1(d). Similarly, the defendant in district court could file petition for writ of prohibition in the circuit court, and if the circuit court also denied the speedy trial motion, the defendant could seek Supreme Court review by writ of prohibition. Cf. Prine v. State, 370 Ark. 232, 258 S.W.3d 347 (2007); McFarland v. Lindsey, 338 Ark. 588, 2 S.W.3d 48 (1999). As a result of such interlocutory review, a rule designed to encourage prompt disposition of criminal cases often resulted in lengthy delays in the trial of such cases.

The 2009 amendments substantially limited the defendant's right to seek interlocutory review of an adverse ruling on a speedy trial motion. Subsection (e) makes it clear that there is no right to interlocutory review of a district court's denial of a speedy trial motion. Under revised subsection (d), a circuit court's denial of a speedy trial motion is not reviewable prior to trial except by writ of certiorari.

It is anticipated that a writ of certiorari will be issued to a circuit court only in extraordinary cases where the record clearly demonstrates that the circuit court has grossly abused its discretion by denying the defendant's speedy trial motion. The standards for determining the propriety of a writ of certiorari are set out in numerous recent Supreme Court opinions:

1. A writ of certiorari is extraordinary relief.

2. The appellate court will not look beyond the face of the record to ascertain the actual merits of a controversy, or to control discretion, or to review a finding of fact, or to reverse a trial court's discretionary authority.

3. A writ of certiorari lies only where it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, or that there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record.

4. Certiorari is available in the exercise of the Supreme Court's review of a tribunal which is proceeding illegally where no other mode of review has been provided.

5. There can be no other adequate remedy but for the writ of certiorari.

See Evans v. Blankenship, 374 Ark. 104, 286 S.W.3d 137 (2008); Helana-West Helena School Dist. #2 of Phillips County v. Phillips County Circuit Court, 368 Ark. 549, 247 S.W.3d 823 (2007); Arkansas Game & Fish Comm'n v. Herndon, 365 Ark. 180, 226 S.W.3d 776 (2006); Ark. Department of Human Services v. Collier, 351 Ark. 506, 95 S.W.3d 772 (2003)(writ of certiorari granted when trial court made a decision that was contrary to the plain language of a statute); Cooper Communities, Inc. v. Benton County Circuit Court, 336 Ark. 136, 984 S.W.2d 429 (1999); and Oliver v. Pulaski County Circuit Court, 340 Ark. 681, 13 S.W.3d 156 (2000).

Prior to the 2009 amendments a guilty plea waived the defendant's right to raise an alleged denial of speedy trial. Revised subsection (g)(1) makes it clear that a defendant whose speedy trial motion is denied by the district court may thereafter plead guilty in the district court, file an appeal with the circuit court, and renew the speedy trial motion in the circuit court. A similar procedure does not apply in circuit court, but revised subsection (g)(2) does permit the defendant whose speedy trial motion is denied by the circuit court to enter a conditional plea of guilty and still appeal the speedy trial issue to an appellate court provided the requirements of Rule 24.3(b) are otherwise satisfied.

B. The Committee also recommends that, if proposed subsection (g)(2) of Rule 28.1 is adopted, the following conforming amendment should be made to Arkansas Rule of Criminal Procedure 24.3(b) and the conditional plea form:

Rule 24.3. Pleading by defendant.

. . . .

(b) With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on

appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement or a pretrial motion to dismiss a charge because not brought to trial within the time provided in Rule 28.1 (b) or (c). If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

. . . .

Reporter's Notes to 2009 Amendments

The 2009 change permitted a defendant to enter a conditional plea of guilty following the court's denial of a motion to dismiss due to a violation of the defendant's right to speedy trial as provided in Rule 28.1.

2. Amendment to Administrative Order No. 4 regarding verbatim record of court communications with jurors

The Committee recommends amending Administrative Order Number 4 to address ex parte conversation between a circuit judge and a juror. *See Barritt v. State*, 372 Ark. 395, ___ S.W.3d ___ (2008). Administrative Order No. 4 would be amended as follows:

Order 4. Verbatim Trial Record

(a) Verbatim Record. Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings, including any communications between the court and one or more members of the jury, pertaining to any contested matter before ~~it~~ the court or the jury.

(b) Back-up System. When making a verbatim record, an official court reporter or substitute court reporter shall always utilize a back-up system in addition to his or her primary reporting system in order to insure preservation of the record.

(c) Exhibits. Physical exhibits received or proffered in evidence shall be stored pursuant to the requirements of Section 21 of the Regulations of the Board of Certified Court Reporter Examiners, Official Court Reporter Retention Schedule.

(d) Sanctions. Any person who fails to comply with these requirements shall be subject to the discipline provisions of the

Rules and Regulations of the Board of Certified Court Reporter Examiners in addition to the enforcement powers of the court, including contempt.

IN RE: BOARD of CERTIFIED COURT REPORTER EXAMINERS

Supreme Court of Arkansas
Opinion delivered January 15, 2009

PER CURIAM. On October 30, 2008, we published for comment a proposal for changes to the Rule Providing for Certification of Court Reporters, the Regulations of the Board of Certified Court Reporter Examiners, and Administrative Order No. 7 received from The Board of Certified Court Reporter Examiners. We thank everyone who reviewed the proposal. We accept the Board's recommendations with one minor change.[1] We adopt the following amendments to the Rule Providing for Certification of Court Reporters, the Regulations of the Board of Certified Court Reporter Examiners, and Administrative Order No. 7 to be effective immediately, and republish the Regulations and Rules as set out below.

RULE PROVIDING FOR CERTIFICATION OF COURT REPORTERS

Section 2. Officers of the board; meetings

A. At the first meeting of the Board, the Board will organize by electing one of its members as chairman and one as secretary,

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[1] We have added a definition to Section 7 of the Rule Providing for Certification of Court Reporters to clarify the duties of the Special Prosecutor and to ensure that his or her responsibilities are not confused with the duties of a Prosecutor in the context of a criminal proceeding.

each of whom shall serve for one year and until his successor is elected. The Clerk of this Court shall serve as treasurer.

B. The Board shall meet at least twice a year at such times and places as the Board shall designate.

Section 3. Duties of the board

The Board is charged with the duty and invested with the power and authority:

A. To determine the eligibility of applicants for certification.

B. To determine the content of examinations to be given to applicants for certification as certified court reporters.

C. To determine the applicant's ability to make a verbatim record of court proceedings by any recognized system designated by the Board.

D. To issue certificates to those found qualified as certified court reporters.

E. To set a fee to be paid by each applicant at the time the application is filed and an annual license fee.

F. To develop a records retention schedule for official court reporters of state trial courts.

G. To develop, implement, and enforce a continuing education requirement for court reporters certified pursuant to this Rule.

H. To promulgate, amend and revise regulations relevant to the above duties and to implement this Rule. Such regulations are to be consistent with the provisions of this Rule and shall not be effective until approved by this Court.

I. To provide a system and procedure for receiving complaints against court reporters, investigating such complaints, filing formal disciplinary Complaints against reporters, and for hearing, consideration, and determination of validity of charges and appropriate sanctions to be imposed upon any reporter.

Section 4. Application for certification

Every applicant for examination for certification as a certified court reporter shall file with the clerk of this court a written application in the form prescribed by the Board. Upon request, the clerk of this court shall forward to any interested person applica-

tion forms together with the text of this rule and a copy of the regulations promulgated by the Board under the provisions of Rule 3E.

Section 5. Eligibility for certification

Applicants shall:

a. be at least 18 years of age,

b. be of good moral character,

c. not be a convicted felon, and

d. not have been adjudicated or found guilty, or entered a plea of guilty or nolo contendere to, any felony, or to any misdemeanor that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a reporter in other respects, or to any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a felony.

Section 7. Discipline

(a) Sanctions. For violating any of the provisions of Sections 19 or 22 of the "Regulations of the Board of Certified Court Reporter Examiners," the Board for good cause shown, and by a majority of four (4) votes from the Board concurring, after a public hearing by the Board, may sanction a reporter by ordering a public admonition, or by suspending or revoking any certificate issued by the Board. The Board, with four (4) votes concurring, may sanction a reporter for minor or lesser misconduct with a private, non-public admonition by discipline by consent, as set out in Section 8 of these Rules.

(b) Definitions.

1. "Revoke a certificate" means to unconditionally prohibit the conduct authorized by the certificate. If a reporter's certificate is revoked, the reporter is not eligible to apply for a new reporter's certificate for a period of five (5) years after the date the revocation order becomes effective after final Board action or after final action by the Supreme Court of Arkansas, if there is an appeal.

2. "Suspend a certificate" means to prohibit, whether absolutely or subject to conditions which are reasonably related to the grounds for suspension, for a defined period of time, the conduct

authorized by the certificate. No suspension shall be for less than one (1) month nor for more than sixty (60) months.

3. "Admonition" means a written order or opinion of the Board stating the specific misconduct or failure to perform duties by the reporter. The admonition shall be designated as being private or public by the Board. A private admonition shall be a confidential document known and available only to the Board and the reporter.

4. "Special Prosecutor" refers to an individual, who is charged with the duties of investigating complaints presented to the Board, which pertain to alleged violations of the Rules and Regulations; drafting proposed Complaints for the Board's review, which outline the alleged violations of the Rules and Regulations; serving as a prosecutorial officer before and during any hearing or proceeding, which result from the investigation and/or filing of the Complaint; and performing additional tasks as assigned by the Board.

(c) Subpoenas. The Board has the authority to issue subpoenas for any witness(es), and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to a hearing held pursuant to Section 7 upon the request of any party. Such process shall be issued by and under the seal of the Board and be signed by the Chair or the Executive Secretary. The subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. The Board shall provide for its use a seal of such design as it may deem appropriate. The Circuit Court of Pulaski County shall have the power to enforce process.

(d) Special Prosecutor.

(1) When requested in writing by the Board to so serve, the Executive Director of the Arkansas Supreme Court Office of Professional Conduct ("Office") may, if time, work demands, and resources of that Office permit, act as the investigating, charging, and prosecutorial officer for Complaints of this Board. Any expenses of that Office attributed to handling a Complaint from this Board shall be paid to the Bar of Arkansas account from funds available to this Board after review and approval by the Chair of this Board of any such expense claims. By agreement between this Board and the Office, reasonable reimbursement for attorney time may be made by the Board to the Office.

(2) The Board may employ on contract, from funds within its budget, such attorneys as it deems necessary for the investigation, charging, and prosecution of Complaints before the Board.

(e) Immunity. The Board, its individual members, and any employees and agents of the Board, including the Executive Director and staff of the Office of Professional Conduct when acting for the Board, are absolutely immune from suit or action for their activities in discharge of their duties hereunder to the full extent of judicial immunity in Arkansas.

(f) Confidentiality. Subject to the exceptions listed in (4) below in this subsection:

(1) All communications, Complaints, formal Complaints, testimony, and evidence filed with, given to or given before the Board, or filed with or given to any of its employees and agents during the performance of their duties, that are based upon a Complaint charging a reporter with violation of the Board Rules, shall be absolutely privileged and confidential; and

(2) All actions and activities arising from or in connection with an alleged violation of the Board Rules by a reporter certified by the Board are absolutely privileged and confidential.

(3) These provisions of privilege and confidentiality shall apply to complainants.

(4) Exceptions.

(i.) Except as expressly provided in these Rules, disciplinary proceedings under these Rules are not subject to the Arkansas Rules of Civil Procedure regarding discovery.

(ii.) The records of public hearings conducted by the Board are public information.

(iii.) In the case of revocation, the Board is authorized to release any information that it deems necessary for that purpose.

(iv.) The Board is authorized to release information:

(a) For statistical data purposes;

(b) To a corresponding reporter disciplinary authority or an authorized agency or body of a foreign jurisdiction engaged in the regulation of reporters;

(c) To the Commission on Judicial Discipline and Disability;

(d) To any other committee, commission, agency or body within the State empowered to investigate, regulate, or adjudicate matters incident to the legal profession when such information will assist in the performance of those duties; and

(e) To any agency, body, or office of the federal government or this State charged with responsibility for investigation and evaluation of a reporter's qualifications for appointment to a governmental position of trust and responsibility.

(5) Any reporter against whom a formal Complaint is pending shall have disclosure of all information in the possession of the Board and its agents concerning that Complaint, including any record of prior Complaints about that reporter, but excepting "attorney work product" materials.

(6) The reporter about whom a Complaint is made may waive, in writing, the confidentiality of the information.

(g) Procedure.

1. Standard of Proof. Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to or from inactive status shall be established by a preponderance of the evidence.

2. Burden of Proof. The burden of proof in proceedings seeking discipline is on the Board or its special prosecutor. The burden of proof in proceedings seeking reinstatement is on the reporter seeking such action.

3. Limitations on Actions. The institution of disciplinary actions pursuant to these Procedures shall be exempt from all statutes of limitation.

4. Evidence and Procedures. Except as noted in these Rules, the Arkansas Rules of Evidence and the Arkansas Rules of Civil Procedure shall not generally apply to discipline proceedings before the Board.

5. Pleadings. All pleadings filed before the Board shall be captioned "Before the Supreme Court Board of Certified Court Reporter Examiners" and be styled "In re _____" to reflect the name of the respondent reporter.

(h) Ex Parte Communication.

(1) Members of the Board shall not communicate "ex parte" with any complainant, attorney acting as Board prosecutor, the Executive Director, or the staff of the Office of Professional Conduct, or the respondent reporter or his or her counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or these Rules, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits of the case or Complaint.

(2) A violation of this rule may be cause for removal of any member from the Board before which a matter is pending.

(i) Probable cause determination. Before a formal Complaint may be prepared on any reporter, the written approval of four (4) members of the Board shall be given to the complaint as filed. Before any formal Complaint may be served on a reporter, it shall be approved by the signature of the Board Chair.

(j) Complaint. The Complaint to be served upon a reporter shall state with reasonable specificity each Board Rule alleged to have been violated by the reporter and summarize the conduct or omission by the reporter that supports the Rule violation. Affidavits of those persons having knowledge of the facts and court records and documents may be attached as exhibits to the Complaint.

(k) Service of Complaint. The Complaint shall be served by one of the following methods:

1. By certified, restricted delivery, return receipt mail to the reporter at the address of record for the reporter currently on file with the Board,

2. By personal service as provided by the Arkansas Rules of Civil Procedure or an Investigator with the Office of Professional Conduct; or,

3. When reasonable attempts to accomplish service by (k)(1) and (k)(2) have been unsuccessful, then a warning order, in such form as prescribed by the Board, shall be published weekly for two consecutive weeks in a newspaper of general circulation within this State or within the locale of the respondent reporter's address of record. In addition, a copy of the formal Complaint and warning order shall be sent to the respondent reporter's address of record by regular mail.

4. A reporter's failure to provide an accurate, current mailing address to the Board or the failure or refusal to receipt certified mailing of a formal Complaint, shall be deemed a waiver of confidentiality for the purposes of the issuance of a warning order.

5. Unless good cause is shown for a reporter's non-receipt of a certified mailing of a formal Complaint, the reporter shall be liable for the actual costs and expenses for service or the attempted service of a formal Complaint, to include all expenses associated with the effectuation of service. Such sums will be due and payable to the Board before any response to a formal Complaint will be accepted or considered by the Board.

6. After service has been effected by any of the aforementioned means, subsequent mailings by the Board to the respondent reporter may be by regular mail to the reporter's address of record, to the address at which service was accomplished, to any counsel for the reporter, or to such address as may have been furnished by the reporter, as the appropriate circumstance may dictate, except that notices of hearings and letters or orders of admonition, suspension, or revocation shall also be sent by certified, return receipt mail or be served upon the reporter in a manner authorized in Section 7(k)(2).

7. Service on a non-resident reporter may be accomplished pursuant to any option available herein, or in any manner prescribed by the law of the jurisdiction to which the service is directed.

(l) Time and Manner of Response; Rebuttal.

(1) Upon service of a formal Complaint, pursuant to Section 7(k) or after the date of the first publication, pursuant to Section 7(k)(3), the respondent reporter shall have twenty (20) days in which to file a written response in affidavit form with the Board of Certified Court Reporters Examiners by filing the response at the Office of the Clerk of the Arkansas Supreme Court, 625 Marshall Street, Little Rock, AR 72201, except when service is upon a non-resident of this State, in which event the respondent reporter shall have thirty (30) days within which to file a response. In the event that a response has not been filed with the Board of Certified Court Reporters Examiners within twenty (20) days or within thirty (30) days, as the appropriate case may be, following the date of service, and an extension of time has not been granted, the Executive Secretary shall proceed to issue the Complaint to the Board by mail as a "failed to respond" case.

(2) At the written request of a reporter, the Board Chair is authorized to grant an extension of reasonable length for the filing of a response.

(3) The Executive Secretary shall provide a copy of the reporter's response to the complainant within seven (7) calendar days of receiving it and advise that the complainant has ten (10) calendar days in which to rebut or refute any allegations or information contained in the reporter's response. The Executive Secretary shall include any rebuttal made by the complainant as a part of the material submitted to the Board for decision and any such rebuttal shall be provided to the respondent reporter for informational purposes only, with no response required. If any rebuttal submitted contains allegations of violations of Board Rules not previously alleged, a supplemental or amended Complaint may be prepared and served on the respondent reporter, who shall be permitted surrebuttal in the manner prescribed herein for filing a response to a Complaint.

(4) The calculation of the time limitations specified herein shall commence on the day following service upon the respondent reporter. If the due date of a response, rebuttal, or surrebuttal falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next regular business day.

(m) Failure to Respond; Reconsideration.

(1) A reporter's failure to provide, in the prescribed time and manner, a written response to a formal Complaint served in compliance with Section 7(k) shall constitute separate and distinct grounds for the imposition of sanctions notwithstanding the merits of the underlying, substantive allegations of the Complaint; or,

(2) May be considered for enhancement of sanctions imposed upon a finding of violation of the Rules.

(3) The separate imposition or the enhancement of sanctions for failure to respond may be accomplished by the Board's notation of such failure in the appropriate sanction order and shall not require any separate or additional notice to the respondent reporter.

(4) Failure to timely respond to a formal Complaint shall constitute an admission of all factual allegations of the Complaint and an admission of all alleged violations of Rules and Regulations in the Complaint.

(5) Failure to timely respond to a formal Complaint shall extinguish a respondent reporter's right to a public hearing on the formal Complaint.

(6) Reconsideration:

(a) Provided, however, that in a case where a timely response was not filed by a respondent reporter, within ten (10) calendar days after receiving a written notice from the Board setting the case for hearing, the respondent reporter may file with the Board, through the Office of the Clerk of the Arkansas Supreme Court, a petition for reconsideration in affidavit form, stating under oath clear, compelling, and cogent evidence of unavoidable circumstances sufficient to excuse or justify the failure to file a timely response to the Complaint.

(b) Upon the filing of a petition for reconsideration for failure to timely file a response to a Complaint, the Executive Secretary of the Board shall provide each member of the Board a copy of the petition for reconsideration for a vote by written ballot on granting or denying the petition, the ballot to be marked and returned to the Executive Secretary within a reasonable time.

(c) If four (4) members of the Board, upon a finding of clear and convincing evidence, vote to grant the petition for reconsideration, the Board shall permit the reporter to submit a belated affidavit of response to the substantive allegations of the formal Complaint and the matter shall proceed as though the response had been made timely.

(d) If four (4) Board members vote to deny the petition for reconsideration, the case shall be placed on the agenda at the next meeting of the Board, and the Board shall determine the appropriate sanction from a review of the file, without giving consideration or weight to any response that may have been untimely filed.

(n) Pretrial procedure.

(1) The Board Chair may set and conduct such pretrial conferences as the Chair deems needed for the case. The Board Chair shall also issue an order setting any Complaint for hearing before the Board.

(2) The Board Chair shall hear and decide all pretrial matters and all motions, including any motion to dismiss the Complaint or any part thereof.

(o) Hearings.

(1) Hearings shall be conducted at such times and places as the Board may designate.

(2) A hearing shall not be conducted unless at least five (5) Board members are present.

(3) After hearing all the testimony and receiving all the evidence in a case, the Board shall deliberate in private and reach a decision on the Complaint. At least four (4) votes are required to find a Rule or Regulation violation and to order a sanction. The same four (4) Board members are not required to vote for both the rule violation(s) and the sanction.

(4) If at least four (4) Board members agree on the Rule or Regulation violated by the reporter, and on a sanction, an Order consistent with such vote shall be prepared and provided to the Board Chair for review and approval. Upon approval, such Order shall be filed with the Clerk of the Arkansas Supreme Court and a filed copy shall be promptly provided to the respondent reporter and any counsel for the reporter.

(5) In addition to any available disciplinary sanction, the Board may also order a reporter to pay:

(a) The costs of the investigation and hearing, excluding any attorney's fees,

(b) A fine not to exceed $1,000.00 and

(c) Full restitution to any person or entity which has suffered a financial loss due to the reporter's violation of any Board Rule or Regulation, but only to the extent of the costs of any reporter's transcript and fees and expenses associated with a transcript of any court proceeding or deposition.

(6) Once a public hearing has commenced, a private, confidential admonition is not an available sanction.

Section 8. Surrender of certificate – Discipline by consent.

(a) Surrender of Certificate. A reporter may surrender his or her certificate upon the conditions agreed to by the reporter and the Board:

(1) In lieu of disciplinary proceedings where serious misconduct by the reporter is admitted by the reporter to exist, or

(2) On a voluntary surrender basis of his or her certificate at any time where there is no pending Complaint against the reporter.

(3) No petition to the Supreme Court for voluntary surrender of a certificate by a reporter shall be granted until referred to and approved by the Board and the recommendations of the Board are received by the Supreme Court.

(4) If the Supreme Court accepts any form of surrender of a reporter's certificate, it will do so by per curiam order.

(b) Discipline by Consent.

(1) A reporter against whom a formal Complaint has been served may, at any stage of the proceedings not less than ten (10) business days prior to the commencement of a public hearing tender a written conditional acknowledgment and admission of violation of some or all of the Rules and Regulations alleged, in exchange for a stated disciplinary sanction in accordance with the following:

(2) With service of a Complaint, the respondent reporter shall be advised in writing that if a negotiated disposition by consent is contemplated that the respondent reporter should contact the Board Chair or the Board's special prosecutor to undertake good faith discussion of a proposed disposition. All discipline by consent proposals must be approved in writing by the Board Chair, or by the Board's special prosecutor before the consent proposal can be submitted to the Board.

(3) Upon a proposed disposition acceptable to the respondent reporter and the Board Chair or representative, the respondent reporter shall execute and submit a consent proposal on a document prepared by the Board setting out the necessary factual circumstances, admissions of violation of the Board Rules and Regulations, and the terms of the proposed sanction.

(4) The consent proposal, along with copies of the formal Complaint, and the recommendations of the Board Chair or representative, shall be presented to the Board by written ballot to either accept or reject the proposed disposition. The respondent reporter will be notified immediately in writing of the Board's decision. Rejection will result in the continuation of the formal Complaint process.

(5) No appeal is available from a disciplinary sanction entered by the consent process.

(6) The Board shall file written evidence of the terms of any public sanction discipline by consent, in the form of an order, with the Clerk of the Supreme Court.

(c) Serious Misconduct. If the discipline by consent involves allegations of serious misconduct, for which a suspension or revocation of the certificate is to be imposed, the Supreme Court shall also approve any agreed consent proposal and any sanction.

(1) The Board shall present to the Supreme Court, under such procedures as the Supreme Court may direct, any discipline by consent proposal involving serious misconduct, which the Board has reached with a respondent reporter.

(2) If the Supreme Court does not approve the proposed discipline by consent or the voluntary surrender of the certificate, the matter shall be referred back to the Board which shall resume the proceedings at the stage at which they were suspended when the consent proposal was made and submitted to the Supreme Court.

Section 9. Appeal.

(a) Within thirty (30) days of receipt of written findings of the Board issuing an admonition, or suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested.

(b) The Executive Secretary of the Board shall prepare the record for appeal consisting of the pleadings, orders, and other documents of the case, and include therein the transcript of proceedings that is provided by the respondent reporter. The Chair of the Board shall certify the record prepared by the Executive Secretary.

(c) The respondent reporter shall be responsible for obtaining the transcript of any case proceedings and hearings and for timely providing same to the Executive Secretary of the Board. It

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

Section 10 Funds—Disbursement of.

All fees and other monies accruing under the Rule shall be deposited by the Clerk of this Court in an account called, "Certified Court Reporters Fund." All expenses incurred by the Board shall be paid out of this fund as authorized and directed by the Board. Travel and other necessary expenses of the members of the Board shall be paid from said fund.

Section 11. Scope.

(a) After the effective date of this Rule, all transcripts taken in court proceedings, depositions, or before any grand jury will be accepted only if they are certified by a court reporter who holds a valid certificate under this Rule. Provided, however, that depositions taken outside this state for use in this state are acceptable if they comply with the Arkansas Rules of Civil Procedure.

(b) *Disciplinary Authority.* An Arkansas certified court reporter is subject to the disciplinary authority of this jurisdiction, regardless of where the court reporter's conduct occurs. A court reporter not certified in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the court reporter provides or offers to provide any court reporter services in this jurisdiction. A court reporter may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Section 12. Effective date.

The effective date of this Rule is February 1, 1984.

Section 13. Continuing education requirement.

Reporters certified pursuant to this rule must acquire thirty (30) continuing education credits every three years through activities approved by the Board or a committee of the Board. Such

three year period shall be known as the "reporting period." Each reporting period shall begin on January 1 and extend through December 31 three years hence. The reporting period for reporters newly certified pursuant to this Rule shall begin January 1 following certification by the Board. If a reporter acquires, during such reporting period, approved continuing education in excess of (30) thirty hours, the excess credit may be carried forward and applied to the education requirement for the succeeding reporting period only. The maximum number of continuing education hours one may carry forward is ten (10).

A continuing education credit is presumed to be 60 minutes in length. However, the Board in its discretion may grant greater or lesser credits per hour of education as each individual program may warrant. Court reporters certified pursuant to this rule who maintain a residence address outside the State of Arkansas are subject to this requirement. However, continuing education activities approved by the appropriate authority in their resident jurisdiction shall be applicable to this requirement.

To establish compliance with this continuing education requirement the Board may accept continuing education hours acquired to meet the continuing education requirements of the National Court Reporters Association or the National Verbatim Reporters Association.

Exceptions to Requirement.

In cases where extreme hardship or extenuating circumstances are shown, the Board may grant a waiver of the continuing education requirement or extensions of time within which to fulfill the requirements. Such waivers or extensions shall be considered only upon written request from the certificate holder. As a condition of any waiver or extension, the Board may set such terms and conditions as may be appropriate under the circumstances.

Any reporter certified pursuant to this rule who attains age 65 or 30 years of certification, during any reporting period, is exempt from all requirements of this rule for that reporting period as well as all subsequent reporting periods.

At any time during a reporting period a reporter may take inactive status as it pertains to the continuing education requirement of this rule. Inactive status means that a reporter will not practice court reporting until such time as the reporter returns to

active status. Election of inactive status must be in writing. Election of inactive status must be annually renewed and the Board shall provide a form for renewal of inactive status. Such annual renewal shall be filed with the Board on or before March 31 of each year subsequent to the year of election of inactive status. For the purpose of this paragraph court reporting means "verbatim reporting" as defined in Section 1 of the "Regulations of the Board of Certified Court Reporter Examiners" and, verbatim reporting regardless of the context, including administrative or regulatory proceedings and non-judicial proceedings. A reporter may return to active status at any time upon written notice to the Board. In such case the reporter shall be subject to the thirty hour requirement of this rule for the reporting period beginning the following January 1.

Continuing Education Activities Content.

Continuing education credit may be obtained by attending or participating in Board approved seminars, conventions, or workshops, or other activities approved by the Board. To be approved for continuing education credit the activity must: be presented by individuals who have the necessary experience or academic skills to present the activity; include quality written materials; and, the course must be subject to evaluation. The continuing education activity must contribute directly to the competence and professionalism of court reporters. The Board is authorized to approve continuing education activities which include but are not limited to the following subject areas: language; academic knowledge; statutes and regulations; reporting technology and business practice; and, ethical practices-professionalism.

Administrative Procedures.

The Board shall be the authority for approval of continuing education programs. Such authority may be delegated by the Board to a committee. It is presumed that program approval will be sought and determined well in advance of the educational activity. However, the Board or its committee may approve an educational activity after the event.

The Board is authorized to develop appropriate forms and other administrative procedures as necessary to efficiently administer this continuing education requirement.

The Board shall require that reporters certified pursuant to this rule maintain and provide such records as necessary to establish compliance with this continuing education requirement. The

Board may also require that sponsors provide evidence of attendance at programs in such form as the Board may direct.

On or before January 31 after the conclusion of the immediately preceding reporting period, the Board shall provide a final report by first class mail to reporters whose reporting period concluded the preceding December 31. The number of continuing education credits stated on the final report shall be presumed correct unless the reporter notifies the Board otherwise. In the event the final report shows that the reporter has failed to acquire 30 continuing education credits for the applicable reporting period, the reporter shall be in noncompliance with the requirements of this rule.

In the event of noncompliance, the certificate of the affected reporter shall be subject to suspension as set forth in the following section. Prior to initiation of suspension proceedings, the Board shall provide notice to allow the reporter to achieve compliance. Board approved continuing education credits obtained subsequent to the relevant reporting period and prior to a vote of suspension shall be accepted in order to cure noncompliance. However, such hours will be subject to a late filing fee in an amount not to exceed $100.00.

Suspension of License – Reinstatement.

Section 7 of this rule - Discipline and Section 19 of the "Regulations of the Board of Certified Court Reporter Examiners" shall govern suspension or revocation proceedings for failure to comply with the continuing education requirements set out in Section 13 of this rule.

After a Board vote of suspension or revocation of a certificate, the Board shall notify the affected reporter by way of certified mail, restricted delivery, return receipt requested. In addition, the Board shall file the order of suspension with the Clerk of this Court and provide such other notice as the Board may consider appropriate.

A reporter whose certificate has been suspended pursuant to this Section who desires reinstatement shall file a petition for reinstatement with the Board. The petition shall be properly acknowledged by a notary public or an official authorized to take oaths. It shall be in such form as the Board may direct. The petitioner may request a hearing before the Board. Upon appropriate notice and hearing, the Board may take action on the

petition for reinstatement. In the event the certificate is reinstated, the Board may set additional educational requirements, including successful completion of a certification examination, as a condition of reinstatement and may assess reinstatement fees in an amount not to exceed $250.00.

REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

Section 18

Any person desiring to file a grievance against a Certified Court Reporter may file a written statement on a form provided by the Board, attaching any pertinent documentary evidence thereto, with the Board of Certified Court Reporters Examiners through the Office of the Clerk of the Arkansas Supreme Court, for delivery to the Executive Secretary of the Board for investigation and determination of probable cause for a formal Complaint.

Section 19

Pursuant to Section 7 of the Rule Providing for Certification of Court Reporters, the Board may issue an admonition or revoke or suspend any certificate issued after proper notice and hearing, on the following grounds:

a. Conviction of any felony, or having been adjudicated or found guilty, or entered a plea of guilty or nolo contendere to, any felony, or to any misdemeanor that reflects adversely on the reporter's honesty, trustworthiness, or fitness as a reporter in other respects, or to any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a felony.

b. misrepresentation or omission of material facts in obtaining certification.

c. any intentional violation of, noncompliance with or gross negligence in complying with any rule or directive of the Supreme Court of Arkansas, any other court of record within this State, or this Board.

d. fraud, dishonesty, gross incompetence or habitual neglect of duty.

e. unprofessional conduct, which shall include, but not be limited to:

1. failing to deliver a transcript to a client or court in a timely manner as determined by statute, court order, or agreement;

2. intentionally producing an inaccurate transcript;

3. producing an incomplete transcript except upon order of a court, agreement of the parties, or request of a party;

4. failing to disclose as soon as practical to the parties or their attorneys existing or past financial, business, professional or family relationships, including contracts for court-reporting services, which might reasonably create an appearance of partiality;

5. advertising or representing falsely the qualifications of a certified court reporter or that an unlicensed individual is a certified court reporter;

6. failing to charge all parties or their attorneys to an action the same price for an original transcript and failing to charge all parties or their attorneys the same price for a copy of a transcript or for like services performed in an action;

7. failing to disclose upon request an itemization in writing of all rates and charges to all parties in an action or their attorneys;

8. reporting of any proceeding by any person, who is a relative of a party or their attorney, unless the relationship is disclosed and any objection thereto is waived on the record by all parties;

9. reporting of any proceeding by any person, who is financially interested in the action, or who is associated with a firm, which is financially interested in the action;

10. failing to notify all parties, or their attorneys, of a request for a deposition transcript, or any part thereof, in sufficient time for copies to be prepared and delivered simultaneously with the original;

11. going "off the record" during a deposition when not agreed to by all parties or their attorneys unless otherwise ordered by the court;

12. giving, directly or indirectly, benefitting from or being employed as a result of any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed $100 in the aggregate for each recipient each year; and

13. charging an unreasonable rate for a copy of an original deposition transcript, or an official reporter charging fees in violation of Ark. Code Ann. Section 16-13-506.

ADMINISTRATIVE ORDER NUMBER 7—ARKANSAS SUPREME COURT AND COURT OF APPEALS RECORDS RETENTION SCHEDULE

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Section 6. Retention schedule.

Record Type	Retention Instructions
Supreme Court and Court of Appeals Docket Books:	Retain Permanently.
Supreme Court and Court of Appeals Case Indices:	Retain Permanently.
Supreme Court and Court of Appeals Record of Proceedings:	Retain Permanently.
Civil Case Records and Case Files: After 1940	Retain seven (7) years after case is closed, then offer for donation.
Criminal Case Records and Case Files:	
After 1940 Death Penalty.	Retain Permanently.
Life without Parole.	Retain Permanently.
Life.	Retain Permanently.

Felony with greater than 10 year sentence	Retain ten (10) years after case is closed, then offer for donation.
Other criminal cases with 10 year sentence or less	Retain five (5) years after case is closed, then offer for donation.
Civil and Criminal Records:	
Prior to and including 1940	Retain Permanently.
Rule on Clerk Denied Records: Supreme Court and Court of Appeals Case Record and Case File.	Retain five (5) years.
Employment Security Division:	
Case Record and Case File.	Retain three (3) years.
Supreme Court and Court of Appeals Opinions: Original copy of Opinions and Per Curiam Opinions.	Retain Permanently.
Financial Records including: Supreme Court & Court of Appeals, Clerk's Office, Court Library, Appellate Committees, Personnel, Arkansas Attorneys, Arkansas Bar Account, Court Reporters, Client Security Fund: Vouchers, Ledgers, Receipts, Contracts, Cancelled Checks, Bank Statements, Fees, Audit Reports, Tax Reports, Social Security Reports, Retirement Reports, Purchase Orders, Insurance Reports, and Requisition Reports.	Retain three (3) years following legislative audit.

Other Supreme Court and Court of Appeals Documents including: All case related motions, petitions, summons, mandates, and bonds, which have been filed separately from the case file.	Retain as long as Case case file is maintained.
Original actions, motions, and petitions.	Retain seven (7) years.
Per Curiam Orders.	Retain as long as Case file is maintained.
Arkansas Attorney Records:	
Petitions for Licenses.	Retain Permanently.
Student Practice, Rule 15 Petitions.	Retain five (5) years.
Professional Association Members List.	Retain Permanently.
Professional Association Members Receipts.	Retain three (3) years following Legislative audit.
Committee on Professional Conduct Files.	Retain Permanently.
Correspondence and Misc. Letters.	Retain three (3) years.
Certification of Registration.	Retain three (3) years.
Board of Certified Court Reporter Examiners Disciplinary files, which may include, but is not limited to: Grievance Forms, Complaints, Responses, Probable Cause Vote Sheets, Motions, Discovery, Final Orders, Notices of Appeal, Transcripts from Hearings, and Opinions from the Supreme Court	Retain Permanently.

Applications for Certification and related files	Retain two (2) years following the date of testing.
Records from Board meetings	Retain Permanently.
Correspondence	Retain three (3) years.
All other documents not referenced in this section or other rules or regulations	Retain seven (7) years.
United States Supreme Court Records:	
US Supreme Court Mandates.	Retain as long as Case File is maintained.
US Supreme Court Writs of Certiorari.	Retain as long as Case File is maintained.
Other Records maintained by Clerk's Office including: Court of Appeals Motion Assignment Sheet, Court of Appeals Motion Pending file, Supreme Court and Court of Appeals Syllabus, Court of Appeals Oral Argument file, Court of Appeals Submissions file, Condition of Supreme Court Docket Summary file.	Immediate Disposal.
Court Clerk Correspondence including: Correspondence to Civil Procedure Committee, Letters to Clerk Certifying Briefs, Employment Security Division Late Filing Correspondence, Oral Arguments Confirmation Letters, Library Delinquent Accounts Correspondence.	Immediate Disposal.
Miscellaneous or General Correspondence:	Retain one (1) year.

IN RE: RULES and REGULATIONS for MINIMUM CONTINUING LEGAL EDUCATION

Supreme Court of Arkansas
Opinion delivered January 22, 2009

PER CURIAM. Currently, members of the bar or judiciary who participate in panel presentations are granted "enhanced" credit. The purpose of such an award is to recognize the additional time and effort each of them contributes prior to the presentation. The current rule is confusing in its application because of its reference to the preparation of written materials. At the unanimous request of the Arkansas Continuing Legal Education Board, in order to remove the uncertainties attendant to the language, we amend Regulation 3.01(2) as it appears on the attachment to this per curiam order. The current rule with deleted language stricken through appears on the attachment as well.

Rule as Amended

3.01

(2) Panel Discussions

A participant in a panel presentation shall receive three (3) hours credit for every one (1) hour of the panel presentation in which he or she participates.

Current Rule with deleted language stricken through

3.01

(2) Panel Discussions

A participant in a panel presentation shall receive ~~two (2) hours for each one (1) hour of the entire panel presentation in which he or she participates directly, unless the participant shall have prepared for distribution to the audience written~~

~~materials supporting his or her portion of the panel presentation, in which event~~ three (3) hours credit ~~shall be given~~ for every one (1) hour of the ~~entire~~ panel presentation in which he or she participates ~~directly~~.

Appointments to Committees

IN RE: ARKANSAS SUPREME COURT COMMITTEE on CHILD SUPPORT

Supreme Court of Arkansas
Opinion delivered November 13, 2008

PER CURIAM. Hon. Leon Jamison of Pine Bluff, Ms. Jennifer Stone of El Dorado, and Ms. Barbara Morris-Williams of Little Rock are reappointed to the Arkansas Supreme Court Committee on Child Support for four-year terms to expire on November 30, 2012. We thank these members for their continued service.

IN RE: APPOINTMENTS TO THE ARKANSAS CONTINUING LEGAL EDUCATION BOARD

Supreme Court of Arkansas
Opinion delivered December 4, 2008

PER CURIAM. Lynn D. Lisk of Fort Smith is appointed to the Continuing Legal Education Board for a three-year term concluding on December 5, 2011. Mr. Lisk will be an at-large representative and replaces Mike Hodson whose term has concluded.

Roy Beth Kelley of Russellville is appointed to the Continuing Legal Education Board for a three-year term to expire on December 5, 2011. Ms. Kelley will be an at-large representative and replaces retired Judge Gerald Pearson whose term has concluded.

Judge Waymond Brown of Pine Bluff is reappointed to the Continuing Legal Education Board for a three-year term to conclude on December 5, 2011. Judge Brown will continue to represent the 4th Congressional District.

The Court extends its sincere appreciation to Mr. Lisk, Ms. Kelley, and Judge Brown for accepting appointment to this important Board. The Court thanks Mike Hodson for his many years of work on this Board, including one year as Chair of the Board. The Court also extends its appreciation to Judge Pearson for his service on the Board.

IN RE: SUPREME COURT COMMITTEE on PROFESSIONAL CONDUCT

Supreme Court of Arkansas
Opinion delivered December 4, 2008

PER CURIAM. By this Per Curiam Order, the Court makes appointments and reappointments of members of the Court's Committee on Professional Conduct (the "Committee"), all effective January 1, 2009.

Panel A: Elaine Dumas of Little Rock, currently serving as a reserve member of the Committee on Professional Conduct for a term expiring December 31, 2011, is reassigned to Panel A, as an at-large non-attorney member, replacing Dr. Pat Youngdahl who is term-limited.

Panel B: Carolyn Morris of Danville is appointed for a six year term on Panel B, expiring December 31, 2014, as a non-attorney at-large member, replacing Dr. Rose Marie Word who is term-limited. Stephen R. Crane of Magnolia is appointed to a six year term on Panel B, expiring December 31, 2014, as the attorney member for the Fourth Congressional District, replacing John L. Rush who is term-limited.

Panel C: Searcy W. Harrell, Jr., of Camden is reappointed for a second six year term, expiring December 31, 2014, on Panel C as the attorney member for the Fourth Congressional District.

Panel D: The present "reserve panel" of five members is hereafter designated as Panel D, and is expanded to a membership of seven, with five attorneys and two non-attorneys as are the other panels.

Thomas Benton Smith, Jr., of Jonesboro is appointed to a six year term that expires December 31, 2014, to serve in the First Congressional District attorney position.

Joe A. Polk of Little Rock, currently serving a term that expires December 31, 2011, is designated to serve in the Second Congressional District attorney position.

William P. Watkins, III, of Rogers, currently serving a term that expires December 31, 2011, is designated to serve in the Third Congressional District attorney position.

James A. Ross, Jr., of Monticello, currently serving a term that expires December 31, 2011, is designated to serve in the Fourth Congressional District attorney position.

E. Kent Hirsch of Springdale is appointed to a six year term that expires December 31, 2014, to serve in the attorney at-large position.

Sue Winter of Little Rock, currently serving a term that expires December 31, 2011, is designated to serve in a non-attorney at-large position.

Ronnie Williams of Menifee is appointed to a six year term that expires December 31, 2014, to serve in a non-attorney at-large position.

The Court expresses its appreciation and gratitude to Ms. Morris, Mr. Crane, Mr. Williams, Mr. Hirsch, and Mr. Smith for their willingness to serve and for accepting their new appointments to the Committee.

The Court expresses its appreciation, gratitude, and best wishes for the future to Dr. Youngdahl, Dr. Word, and Mr. Rush for their long service to the Court, the Committee, and the public.

IN RE: SUPREME COURT COMMITTEE on MODEL JURY INSTRUCTIONS–CIVIL

Supreme Court of Arkansas
Opinion delivered December 11, 2008

PER CURIAM. Louise Tausch, Esq., of Texarkana, is appointed to the Committee on Model Jury Instructions –Civil for a three-year term to expire on September 30, 2011. The court thanks Ms. Tausch for her willingness to serve on this important committee.

The Honorable Michael Mashburn of Fayetteville, Amy Lee Stewart, Esq., of Little Rock, and Teresa Wineland, Esq., of Little Rock are reappointed to the Committee on Model Jury Instructions–Civil for three-year terms to expire on September 30, 2011. The court extends its appreciation to these members for their continued service.

The court expresses its appreciation to Jennifer Haltom Doan, Esq., of Texarkana, who is term-limited, for her many years of valuable service to this committee.

The court posthumously recognizes the dedicated service of Kent J. Rubens, Esq., of West Memphis. On his untimely passing, we acknowledge his service not only to the committee but to the Arkansas legal system. The Arkansas Supreme Court expresses its sincere condolences to his family.

IN RE: SUPREME COURT COMMITTEE on CRIMINAL PRACTICE

Supreme Court of Arkansas
Opinion delivered January 22, 2009

PER CURIAM. Hon. Jim Hudson, Circuit Judge, Eighth-South Judicial Circuit, and Hon. Robin Green, Circuit Judge, Nineteenth-West Judicial Circuit, are reappointed to our Committee on Criminal Practice for three-year terms to expire on January 31, 2012. We thank them for their continued service. We also designate Judge Hudson as the new chair.

Hon. Marion Humphrey, Circuit Judge, Sixth Judicial Circuit, Hon. Duncan Culpepper, Circuit Judge, Eighth-North Judicial Circuit, Vada Berger, Esq., Office of Attorney General, Jack Lassiter, Esq., of Little Rock, and Ellen Reif, Esq., Office of Public Defender, are appointed to the Committee on Criminal Practice for three-year terms to expire on January 31, 2012. We thank each of these new members for accepting service on this important committee.

The court expresses its gratitude to Judge David Clinger, David Raupp, Tim Dudley, and Tom Devine, whose terms have expired, for their years of service to the committee. We also appreciate the service of Judge Brian Miller, who resigned from the committee upon his confirmation to the federal bench.

IN RE: SUPREME COURT AUTOMATION COMMITTEE

Supreme Court of Arkansas
Opinion delivered February 12, 2009

PER CURIAM. Ms. Vickie Asher, District Court Clerk, Hot Springs, Arkansas, is appointed to replace Ms. Judy West, to the Committee on Automation for a one-year term to expire October 31, 2009. The court expresses its appreciation to Ms. West for her willingness to serve and for her valuable service to this committee.

Professional Conduct Matters

IN RE: Stanley E. ADELMAN,
Arkansas Bar No. 98044

08-1431

Supreme Court of Arkansas
Opinion delivered December 19, 2008

PER CURIAM. On recommendation of the Supreme court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Stanley E. Adelman, of Albany, New York, to practice law in the State of Arkansas. Mr. Adelman's name shall be removed from the registry of attorneys licensed by the State of Arkansas, and he is barred and enjoined from engaging in the practice of law in this state.

It is so ordered.

IN RE: Bill R. HOLLOWAY,
Arkansas Bar No. 65022

08-1411

Supreme Court of Arkansas
Opinion delivered December 19, 2008

PER CURIAM. On recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the surrender, in lieu of probable disbarment proceedings, of the law license of Bill R. Holloway, formerly of McGehee, Arkansas, to practice law based on a license from the State of Arkansas. Mr. Holloway entered a guilty plea to two felony offenses in federal court on November 21, 2008. In his Petition to Surrender to this Court, filed December 3, 2008, he acknowledged converting to other uses

substantial funds from a number of his clients. The name of Bill R. Holloway 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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Professional conduct, panel did not clearly err in treating appellant's failure to timely respond as an admission of the factual allegations in the complaint. *Donovan v. Supreme Court Comm. on Prof'l Conduct*, 350

Professional conduct, appellant's personal circumstances did not present compelling and cogent evidence for why she failed to request an extension before the twenty-day period elapsed. *Id.*

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Appeals of indigent adults from Adult Maltreatment Custody Act actions, no-merit brief considered where appellant's counsel followed *Anders* procedures. *Id.*

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Cause of action accrued before filing of bankruptcy, cause of action was the property of the estate, debtor lacked standing. *Bibbs v. Community Bank of Benton*, 150

Subsequent ratification did not cure standing deficiency. *Id.*

Bankruptcy trustees were the real parties in interest, subsequent ratification did not cure standing deficiency. *Id.*

Relation-back doctrine did not apply, complaint was invalid, nothing to which amended complaint could relate back. *Id.*

Substitution of parties did not constitute an amendment to the original complaint, complaint was barred by the statute of limitations. *Id.*

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Amendment of pleadings, allowing appellee to assert charitable immunity defense in amended answer was prejudicial to appellants. *Id.*

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Class certification, trial court did not err in finding that Appellees established the requirement of typicality. *Id.*

Class certification, predominance requirement was satisfied where claims were sufficiently similar that they could be resolved in a single trial, fact that damages may vary for individuals did not defeat predominance finding. *Id.*

Bifurcation of class action proceedings, allowing case to proceed as a class action did not violate Appellant's due process rights. *Id.*

Class certification, trial court did not err in finding that superiority requirement was met. *Id.*

Class certification, exclusion of personal-injury and property-damage claims did not render class certification order inconsistent. *Id.*

Jurisdiction, dismissal of appeal did not deprive circuit court of jurisdiction to act on a Rule 60 motion. *Johnson v. Cincinnati Ins. Co.*, 164

No basis to set aside circuit court's order, no proof of fraud. *Id.*

Ark. R. Civ. P. 15(c) did not apply to allow amendments or changes to plaintiffs, statute of limitations had run on appellants' claims. *Bryant v. Hendrix*, 200

Application of law concerning substitution of plaintiffs, relation-back doctrine did not apply. *Id.*

Affirmative defenses, the affirmative defense of charitable immunity was not waived where it was raised for the first time in an amended answer and there was no motion to strike the amended answer as prejudicial. *Seth v. St. Edward Mercy Med. Ctr.*, 413

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CONSTITUTIONAL LAW:

Right to jury trial, because no factual issues existed, appellant was not unconstitutionally denied his right to a jury trial. *Anglin v. Johnson Reg'l Med. Ctr.*, 10

Construction & interpretation, the plain meaning of article 19, section 16 restricted its application to county contracts. *Gatzke v. Weiss*, 207

Construction & interpretation, historical context supported the circuit judge's reading that article 19, section 16 applies only to county contracts. *Id.*

Construction & interpretation, case law lends support to the interpretation that bidding requirements of the provision apply only to county contracts. *Id.*

Right to jury trial, argument that Arkansas Rule of Civil Procedure 56 is unconstitutional was rejected. *Scamardo v. Sparks Reg'l Med. Ctr.*, 300

Void-for-vagueness challenge, appellant was not an "entrapped innocent" and thus cannot complain that the statute is unconstitutionally vague. *Law v. State*, 505

Void-for-vagueness challenge, fact that statute may be questionable in its application to speculative situations was immaterial where statute clearly applied to appellant's conduct. *Id.*

Due process, appellant did not have a liberty interest in the Arkansas Department of Correction procedures to be administered. *Munson v. Arkansas Dep't of Corr.*, 549

Due process, appellant's petition did not set forth any conditions resulting from the proceedings that would show an atypical and substantive deprivation. *Id.*

Due process, appellant's loss of class status and privileges, even if impacting good time, did not compromise a liberty interest. *Id.*

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Mutuality of obligation, even if circuit court's ruling did require both parties to have the same remedies, that decision could be affirmed for the reason that mutuality of obligation was required and was lacking here. *Id.*

Arbitration clause, circuit court did not run afoul of *Buckeye Check Cashing, Inc. v. Cardegna* in holding that a term outside and independent of the arbitration provision rendered the arbitration provision unenforceable. *Id.*

Arbitration clause, trial court correctly denied Appellants' motion to compel arbitration where Appellee challenged the arbitration provision on an independent basis from the challenge to the contract as a whole. *Id.*

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Small claims, appellant was a collection agency, which is restricted from bringing an action in the small-claims division of the district court. *Wilson v. Yell County Dist. Court,* 294

Small claims, because appellant was assigned the judgments in the cases at issue, the circuit court properly ruled that appellant engaged in the practice of acting as a collection agency. *Id.*

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Substantial evidence supported appellant's conviction for capital murder. *Jackson v. State,* 321

Jury instructions, there was no rational basis for giving the jury manslaughter instruction. *Id.*

Attempted capital murder, substantial evidence supported jury's finding of premeditation and deliberation. *Johnson v. State,* 462

Rape, it was for the jury to resolve any inconsistencies in the victims's testimony with respect to when and where the incidents occurred. *Kelley v. State,* 483

Rape, evidence was sufficient to sustain a conviction for rape. *Id.*

Restitution, Bluebonnet Equine Humane Society was a victim entitled to restitution under Ark. Code Ann. § 5-4-205 as a result of appellant's cruelty-to-animals offenses. *Brown v. State,* 499

Restitution, statutory definition of "victim" did not require the court to find that BEHS seized the horses lawfully. *Id.*

Adult abuse and neglect, State proved that the victim was an endangered or impaired adult. *Law v. State,* 505

Adult abuse and neglect, there was substantial evidence that appellant was his mother's "caregiver" as defined in Ark. Code Ann. § 5-28-101(3). *Id.*

Adult abuse and neglect, there was substantial evidence showing that appellant was his mother's caregiver as that word is used in the definition of neglect. *Id.*

Adult abuse and neglect, appellant had a legal duty to act. *Id.*

Adult abuse and neglect, there was substantial evidence that appellant should have been aware of the risk to his mother and that his failure to perceive the risk was a gross deviation from the standard of care. *Id.*

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Petition for postconviction relief, circuit judge erred in dismissing appellant's Rule 37 petition on the basis of waiver where appellant alleged a double jeopardy violation and ineffective assistance of counsel. *Reed v. State,* 277

Postconviction relief, none of appellant's points on appeal were so conclusive on the face of the petition or on the face of the record to show that no Rule 37 relief was warranted, order dismissing Rule 37 petition without written findings of fact was reversed and remanded. *Id.*

Speedy trial, burden shifted to State to show that delay was the result of appellant's conduct or was otherwise justified. *Davis v. State,* 368

Speedy trial, where circuit court simply excluded time on its own motion by issuance of an order, contemporaneous objection was not required. *Id.*

Speedy trial, date of cover letter transmitting mental evaluation report to trial court was accepted as the last date of exclusion attributable to appellant. *Id.*

Speedy trial, where nothing in the record revealed that remaining 170 days excluded by the trial court for the mental evaluation was attributable to appellant, that time was not excludable. *Id.*

Speedy trial, no contemporaneous objection required where trial court did not hold hearing on State's motion for continuance. *Id.*

Speedy trial, circuit court did not abuse its discretion in concluding that appellant sought to continue his case to the next three open trial days on the court's docket when appellant requested a three-day trial. *Id.*

Speedy trial, circuit court did not deny appellant his right to a speedy trial. *Id.*

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Annexation, appellant's argument that circuit court erroneously failed to address the *Marion* reasonableness standard was rejected where argument was not addressed by circuit court and where case law only required application of the *Vestal* critera. *Id.*

Annexation, Ark. Code Ann. § 14-56-103 did not prohibit appellee's annexation of tracts within appellant's extraterritorial jurisdiction. *Id.*

Annexation, Ark. Code Ann. § 14-56-426 did not prohibit appellee's annexation of property subject to Appellant's AICUZ ordinances, but did obligate appellee to comply with those ordinances. *Id.*

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Neutral-principles approach to resolution of church property dispute, nothing in the language of the deed reflected that property was held in trust for appellants. *Id.*

Neutral-principles approach to resolution of church property dispute, deed did not follow requirements of local church charter or general constitution. *Id.*

Neutral-principles approach to resolution of church property dispute, nothing indicated any intention to create a trust in favor of appellants in accordance with Arkansas statutory law. *Id.*

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Charitable immunity, three of the factors set forth in *George* were clearly established based upon evidence in the record. *Id.*

Charitable immunity, in some years, appellee earned a profit, and in others it did not. *Id.*

Charitable immunity, record established that any surplus shall be used to fund the hospital to fully perpetuate its charitable community benefit of providing medical assistance to the public. *Id.*

Charitable immunity, record showed that appellee's goal is to not operate at a loss and to use any surplus to fund improvements for the hospital. *Id.*

Charitable immunity, it did not appear that appellee depends on contributions and donations for its existence. *Id.*

Charitable immunity, articles of incorporation state directors and officers can receive reasonable compensation, but shall receive no part of appellee's net earnings. *Id.*

Charitable immunity, fact that hospital anticipated that it might make a profit was not dispositive. *Id.*

Charitable immunity, fact that appellee sues patients to collect unpaid medical bills was not determinative of its charitable status. *Id.*

Charitable immunity, circuit court did not err in concluding that appellee met the requirements of a charitable entity for purposes of asserting the defense of the charitable-immunity doctrine. *Id.*

Charitable immunity, eight factors. *Scamardo v. Sparks Reg'l Med. Ctr.*, 300

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Charitable immunity, third, fourth, fifth, and seventh *George* factors were satisfied. *Id.*

Charitable immunity, fact that appellee receives most of its funding through sources other than contributions or donations did not negate its overriding charitable purpose. *Id.*

Charitable immunity, compensation paid for senior administrative positions required to manage hospital did not put the hospital in the position of being maintained for private gain, profit, or advantage of its organizers. *Id.*

Charitable immunity, trial court did not err in granting appellee's motion for summary judgment based on charitable immunity. *Id.*

Charitable immunity, eight factors. *Jackson v. Sparks Reg'l Med. Ctr.*, 533

Charitable immunity, first and second *George* factors were satisfied by hospital's Articles of Incorporation. *Id.*

Charitable immunity, third, fourth, fifth, and seventh *George* factors were satisfied. *Id.*

Charitable immunity, fact that hospital receives most of its funding through sources other than contributions or donations did not negate its overriding charitable purpose. *Id.*

Charitable immunity, compensation paid for certain positions required to manage hospital did not put the hospital in the position of being maintained for private gain, profit, or advantage of its organizers. *Id.*

Charitable immunity, trial court did not err in granting hospital's motion for summary judgment based on charitable immunity. *Id.*

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ARKANSAS APPELLATE REPORTS

Volume 104

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
November 5, 2008 — February 11, 2009
INCLUSIVE

SUSAN P. WILLIAMS
REPORTER OF DECISIONS

AMY DUNN JOHNSON
DEPUTY
REPORTER OF DECISIONS

JEFFREY D. BARTLETT
EDITORIAL ASSISTANT

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2010

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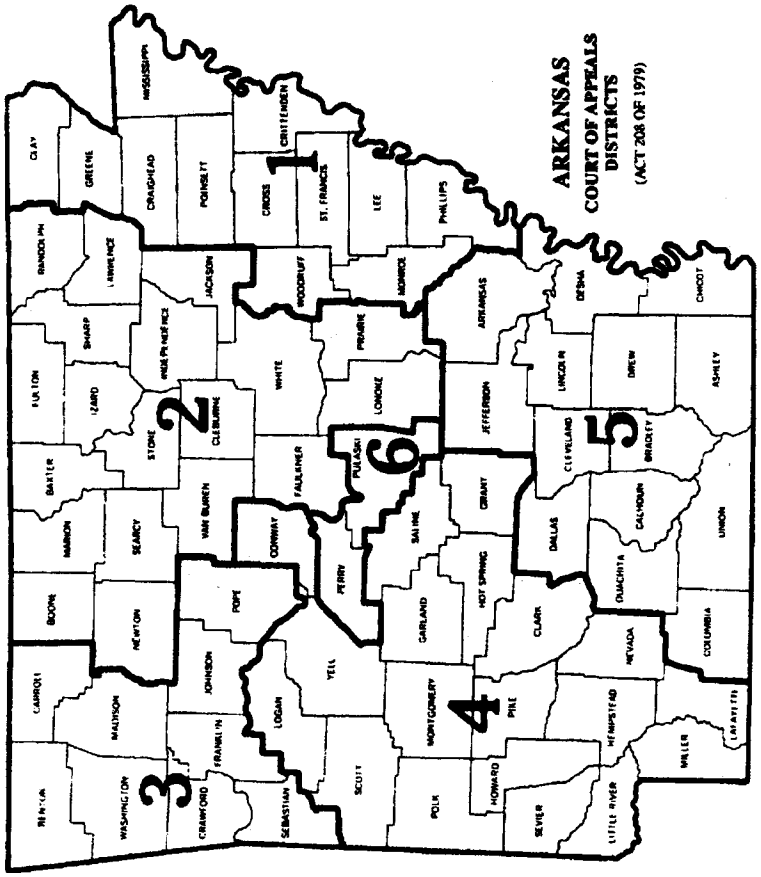
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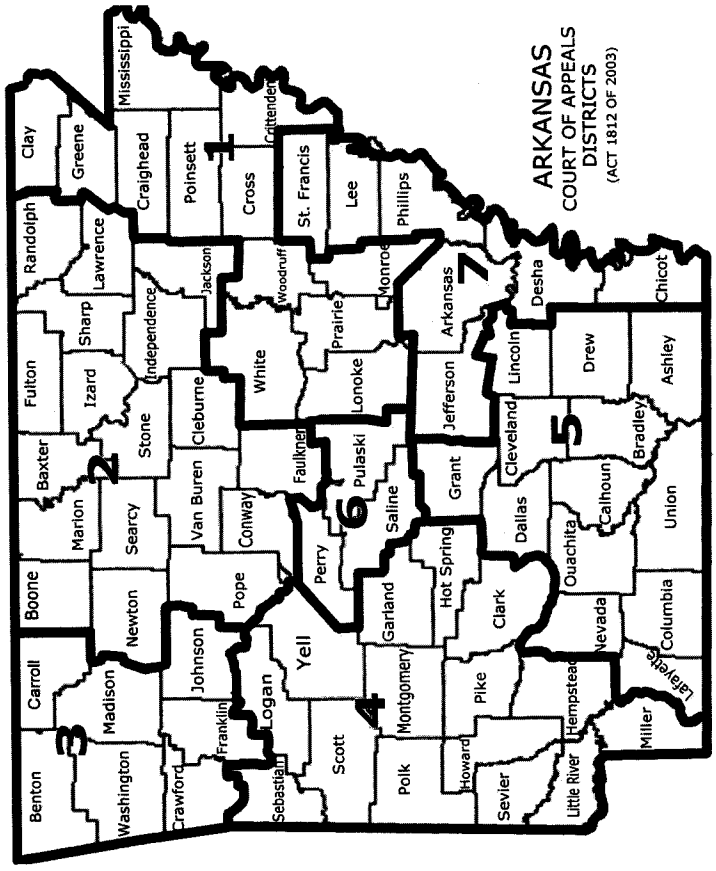
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JUDGES AND OFFICERS
OF THE
COURT OF APPEALS
OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(November 5, 2008 — February 11, 2009, inclusive)

JUDGES*

LARRY D. VAUGHT	Chief Judge[1]
JOHN MAUZY PITTMAN	Judge[2]
D.P. MARSHALL JR.	Judge[3]
JOSEPHINE LINKER HART	Judge[4]
KAREN R. BAKER	Judge[5]
ROBERT J. GLADWIN	Judge[6]
COURTNEY HUDSON HENRY	Judge[7]
JOHN B. ROBBINS	Judge[8]
DAVID M. GLOVER	Judge[9]
M. MICHAEL KINARD	Judge[10]
RITA W. GRUBER	Judge[11]
WAYMOND M. BROWN	Judge[12]
SARAH J. HEFFLEY	Judge[13]
SAM BIRD	Judge[14]
WENDELL L. GRIFFEN	Judge[15]
EUGENE HUNT	Judge[16]

OFFICERS

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AMY DUNN JOHNSON	Deputy Reporter of Decisions

*REPORTER'S NOTE: Act 1812 of 2003 redistricted the state judicial districts for the Arkansas Court of Appeals. Each footnote shows the district and position from which each judge was or will be elected and the statute pursuant to which each was elected at the time the opinions in this volume were written.

[1] District 6, Position 2; Act 1812 of 2003; sworn in as Chief Judge on January 7, 2009.

[2] District 1, Position 1; Act 1812 of 2003.

[3] District 1, Position 2; Act 1812 of 2003.

[4] District 2, Position 1; Act 208 of 1979.

[5] District 2, Position 2; Act 1812 of 2003.

[6] District 3, Position 1; Act 208 of 1979.

[7] District 3, Position 2; Act 1812 of 2003; elected May 2008; sworn in January 7, 2009.

[8] District 4, Position 1; Act 1812 of 2003.

[9] District 4, Position 2; Act 1812 of 2003.

[10] District 5; Act 1812 of 2003; appointed November 25, 2008 to succeed retiring Judge Sam Bird.

[11] District 6, Position 2; Act 1812 of 2003; elected May 2008; sworn in January 7, 2009.

[12] District 7, Act 1812 of 2003; elected May 2008; sworn in January 7, 2009.

[13] District 3, Position 2; Act 1812 of 2003; term expired December 31, 2008.

[14] District 5, Position 1; Act 1812 of 2003; retired December 31, 2008.

[15] District 6, Position 1; Act 208 of 1979; term expired December 31, 2008.

[16] District 7; Act 1812 of 2003; term expired December 31, 2008.

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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.

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Hale *v.* State, CACR08-755 (GLADWIN, J.), affirmed January 7, 2009.

Hall *v.* State, CACR08-617 (PITTMAN, C.J.), affirmed December 3, 2008.

Hammond *v.* Arkansas Dep't of Human Servs., CA08-1015 (BROWN, J.), Motion granted, affirmed February 4, 2009

Hampton *v.* Roberts, CA08-349 (PITTMAN, C.J.), affirmed December 10, 2008.

Heathman, Montgomery Dwight *v.* State, CACR08-350 (HART, J.), rebriefing ordered December 3, 2008.

Heathman, Montgomery Dwight *v.* State, CACR08-464 (PITTMAN, C.J.), affirmed December 10, 2008.

Heister *v.* State, CACR08-420 (GLADWIN, J.), affirmed November 19, 2008.

Henry *v.* Henry, CA08-253 (PITTMAN, J.), affirmed in part, reversed and remanded in part February 4, 2009.

Herman *v.* State, CACR08-418 (PITTMAN, J.), affirmed, Motion to Withdraw granted January 14, 2009.

Hodges *v.* Arkansas Dep't of Human Servs., CA08-933 (GRUBER, J.), affirmed February 4, 2009.

Holleman *v.* State, CACR08-524 (GLADWIN, J.), affirmed December 17, 2008.

Hollister-Davis *v.* Arkansas Dep't of Human Servs., CA08-914 (HENRY, J.), affirmed January 28, 2009.

Holt *v.* Arkansas Dep't of Human Servs., CA08-745 (MARSHALL, J.), affirmed; Motion to Withdraw granted November 12, 2008.

Home Depot *v.* Brasel, CA08-706 (GLOVER, J.), affirmed December 3, 2008.

Horvath *v.* State, CACR07-1282 (HART, J.), affirmed February 11, 2009.

Howard *v.* State, CACR08-573 (MARSHALL, J.), affirmed November 19, 2008.

Jenkins *v.* Yoder, CA08-411 (VAUGHT, J.), affirmed November 5, 2008.

Jones, Curtis W. *v.* AAC Risk Mgmt. Servs., CA08-837 (HART, J.), affirmed February 4, 2009.

Jones, Kenneth Ray *v.* State, CACR08-659 (PITTMAN, J.), affirmed January 28, 2009.

King *v.* State, CACR08-569 (BAKER, J.), affirmed November 19, 2008.

L&W Janitorial, Inc. *v.* Williams, CA08-571 (GRUBER, J.), affirmed February 11, 2009.

Lackey *v.* Mays, CA06-521 (ROBBINS), dissenting opinion on denial of rehearing November 12, 2008.

Legacy Dev. of Nw. Ark. *v.* Kinne, CA08-477 (BAKER, J.), affirmed November 5, 2008.

Lemaster *v.* State, CACR08-74 (GLOVER, J.), affirmed December 17, 2008.

Lewis *v.* Arkansas Pulpwood Co., CA07-1187 (GLADWIN, J.), affirmed November 19, 2008.

Liberto *v.* Waddell, CA08-474 (VAUGHT, J.), affirmed November 12, 2008.

Lovell *v.* Central Ark. Dev. Council, CA08-202 (GLADWIN, J.), affirmed December 3, 2008.

Marczuk *v.* Griffin-Orellano, CA08-405 (VAUGHT, J.), dismissed December 3, 2008.

Mason *v.* State, CACR08-408 (VAUGHT, C.J.), Rebriefing ordered January 14, 2009.

Mathews *v.* Mathews, CA08-341 (PITTMAN, J.), affirmed January 14, 2009.

Maxwell *v.* State, CACR08-658 (GLADWIN, J.), affirmed January 28, 2009.

McDaniel *v.* Arkansas Pub. Serv. Comm'n, CA08-364 (PER CURIAM), Appellant's Motion for Stay and Extension of Time to File Reply Briefs granted January 21, 2009.

McKee Foods Corp. *v.* Balli, CA08-682 (GLOVER, J.), reversed January 7, 2009.

Measel *v.* Guideone Elite Ins. Co., CA08-178 (BAKER, J.), affirmed December 31, 2008.

Mendoza, Claudia *v.* Arkansas Dep't of Human Servs., CA08-643 (BAKER, J.), Motion granted, affirmed November 19, 2008.

Mendoza, Claudia *v.* Arkansas Dep't of Human Servs., CA08-643 (BAKER, J.), Motion granted, affirmed December 10, 2008.

Mitchner *v.* State, CACR08-446 (MARSHALL, J.), affirmed November 19, 2008.

Montgomery *v.* Arkansas Dep't of Human Servs., CA08-1027 (MARSHALL, J.), affirmed January 28, 2009.

Morgan, Johnny Elmo *v.* State, CACR08-306 (HART, J.), reversed and dismissed November 5, 2008.

Morgan, Letesha Dean *v.* Deluxe Video Servs., Inc., CA08-325 (VAUGHT, J.), affirmed November 5, 2008.

Morris *v.* State, CACR08-298 (HART, J.), affirmed November 5, 2008.

Mullins *v.* Abernathy Motor Co., CA08-541 (ROBBINS, J.), affirmed November 5, 2008.

Nazimuddin *v.* Self, CA07-1304 (VAUGHT, J.), affirmed December 3, 2008.

Nguyen *v.* Riverside Furniture, CA08-495 (PITTMAN, C.J.), affirmed December 17, 2008.

Nixon *v.* Arkansas Dep't of Human Servs., CA08-977 (KINARD, J.), affirmed January 28, 2009.

Osborn *v.* Bryant, CA08-589 (GLADWIN, J.), reversed January 14, 2009.

Parkerson *v.* McMurtrey, CA08-174 (MARSHALL, J.), affirmed February 11, 2009.

Penson *v.* State, CACR07-468 (GLADWIN, J.), affirmed, Motion to Withdraw granted January 14, 2009.

Posey *v.* Arkansas Dep't of Human Servs., CA08-892 (HENRY, J.), affirmed February 4, 2009.

Powers *v.* Adams, CA08-66 (VAUGHT, C.J.), affirmed in part, reversed and dismissed in part February 4, 2009.

Rakestraw *v.* State, CACR07-278 (VAUGHT, C.J.), affirmed, Motion to Withdraw granted January 14, 2009.

Ramey *v.* State, CACR08-874 (MARSHALL, J.), affirmed February 11, 2009.

Ramos *v.* State, CA08-314 (GRIFFEN, J.), affirmed November 12, 2008.

Reddin *v.* State, CACR08-596 (GLOVER, J.), affirmed November 5, 2008.

Reese *v.* State, CACR08-737 (HART, J.), Rebriefing ordered January 7, 2009.

Reeves *v.* State, CACR07-1149 (VAUGHT, J.), reversed and remanded December 10, 2008.

Rice *v.* State, CACR08-228 (GLADWIN, J.), affirmed December 3, 2008.

Richards *v.* State, CACR08-59 (PITTMAN, C.J.), affirmed November 5, 2008.

Richardson *v.* State, CACR08-321 (GLADWIN, J.), affirmed November 19, 2008.

Roberts *v.* Yang, CA08-52 (MARSHALL, J.), rebriefing ordered November 19, 2008.

Robertson *v.* State, CACR08-419 (HART, J.), rebriefing ordered November 12, 2008.

Rogers, Chamika Shanta *v.* State, CACR08-815 (ROBBINS, J.), affirmed January 14, 2009.

Rogers, Kimberly Garrett *v.* Arkansas Dep't of Health & Human Servs., CA08-549 (MARSHALL, J.), affirmed, motion to withdraw granted November 12, 2008.

Rohr *v.* Arkansas Dep't of Human Servs., CA08-768 (BAKER, J.), affirmed November 19, 2008.

Rush-Bradley *v.* Van Ore, CA08-467 (HART, J.), affirmed February 4, 2009.

Russell *v.* State, CACR06-1425 (ROBBINS, J.), affirmed December 10, 2008.

Sanders *v.* Arkansas Dep't of Human Servs., CA08-965 (VAUGHT, C.J.), affirmed January 28, 2009.

Sawney *v.* State, CACR08-208 (BAKER, J.), affirmed November 12, 2008.

Schleifer *v.* Sells, CA08-286 (HUNT, J.), affirmed November 5, 2008.

Scott *v.* State, CACR08-385 (ROBBINS, J.), affirmed November 5, 2008.

Scucchi *v.* State, CACR08-428 (ROBBINS, J.), affirmed November 12, 2008.

Sharp *v.* Tucker, CA08-237 (VAUGHT, J.), affirmed December 17, 2008.

Sheffield *v.* Sheffield, CA08-379 (HART, J.), reversed and remanded December 17, 2008.

Sherry Holdings, LLC *v.* Hefley, CA07-1154 (VAUGHT, J.), reversed and remanded November 5, 2008.

Shouse *v.* Hegwood, CA08-625 (GLOVER, J.), affirmed February 11, 2009.

Simone-Lewis *v.* Arkansas Dep't of Human Servs., CA08-670 (GLADWIN, J.), affirmed December 17, 2008.

Smith, Aaron Dwain *v.* State, CACR08-260 (PITTMAN, C.J.), reversed and remanded November 12, 2008.

Smith, Jennifer *v.* Smith, CA08-577 (HENRY, J.), affirmed January 28, 2009.

Snider *v.* State, CACR08-507 (HART, J.), Rebriefing ordered January 28, 2009.

Southern States Coop. *v.* Stokes, CA07-1205 (HART, J.), affirmed on direct appeal and on cross-appeal November 19, 2008.

Stepping Stone School *v.* Ferrari, CA08-655 (KINARD, J.), affirmed January 28, 2009.

Stiles *v.* Long Ago Antiques, CA07-1102 (BAKER, J.), affirmed February 4, 2009.

Sunbelt Business Brokers of Ark., Inc. *v.* James, CA08-320 (PER CURIAM), Appellant's Motion to Reinstate Appeal and Forego Briefing denied December 17, 2008.

Superior Indus. *v.* Shaddock, CA08-766 (MARSHALL, J.), affirmed February 11, 2009.

Tanner *v.* Carroll County, CA08-118 (HART, J.), affirmed November 5, 2008.

Thomas *v.* State, CACR07-395 (PITTMAN, J.), affirmed, Motion to Withdraw granted January 14, 2009.

Tubbs *v.* State, CACR08-580 (VAUGHT, J.), affirmed December 31, 2008.

Tuohey *v.* Tuohey, CA08-279 (GLADWIN, J.), affirmed November 5, 2008.

V.L., Minor Mother *v.* Arkansas Dep't of Human Servs., CA08-671 (GLOVER, J.), affirmed December 3, 2008.

Vaughan *v.* Arkansas Dep't of Human Servs., CA08-912 (BROWN, J.), affirmed January 28, 2009.

Vinson, Brian *v.* State, CACR07-495 (PITTMAN, C.J.), affirmed November 19, 2008.

Vinson, Elizabeth Roden *v.* Dollar Gen. Stores, CA08-743 (HENRY, J.), affirmed February 11, 2009.

Wal-Mart Stores, Inc. *v.* Parker, CA08-437 (GLOVER, J.), reversed and remanded December 10, 2008.

Walton *v.* State, CACR08-545 (GLADWIN, J.), affirmed December 10, 2008.

Watson *v.* State, CACR07-500 (HART, J.), affirmed December 10, 2008.

Watts *v.* Nelson Util. Constr., CA08-206 (MARSHALL, J.), affirmed November 19, 2008.

Webb *v.* State, CACR07-948 (PER CURIAM), rehearing denied December 31, 2008 (HEFFLEY and BAKER, JJ., would grant).

Webster *v.* State, CACR08-57 (ROBBINS, J.), dismissed December 10, 2008.

Wentz *v.* Labor Ready, CA08-522 (ROBBINS, J.), affirmed December 3, 2008.

West *v.* Arkansas Dep't of Human Servs., CA07-1150 (GLOVER, J.), affirmed November 12, 2008.

Whitfield *v.* Seminole Contracting, Inc., CA08-370 (GLOVER, J.), reversed and remanded November 5, 2008.

Whitham *v.* Arkansas Dep't of Human Servs., CA08-752 (GRUBER, J.), affirmed January 28, 2009.

Williams, John Edward *v.* Arkansas Dep't of Human Servs., CA08-753 (VAUGHT, J.), affirmed December 10, 2008.

Williams, LaShonna *v.* State, CACR07-801 (MARSHALL, J.), affirmed January 7, 2009.

Wise *v.* State, CACR07-1173 (VAUGHT, C.J.), reversed and remanded February 4, 2009.

Woodruff *v.* Shaver Foods, CA08-701 (VAUGHT, C.J.), affirmed January 7, 2009.

Wortham-Huggins *v.* Arkansas Dep't of Human Servs., CA08-1175 (BAKER, J.), Motion to Withdraw granted; affirmed February 11, 2009.

Wright *v.* McMillan, Turner, McCorkle & Curry, CA08-317 (HART, J.), affirmed November 12, 2008.

Young *v.* Young, CA08-212 (HART, J.), affirmed December 10, 2008.

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CASES AFFIRMED BY THE ARKANSAS COURT OF APPEALS WITHOUT WRITTEN OPINION PURSUANT TO RULE 5-2(B), RULES OF THE ARKANSAS SUPREME COURT

Bales *v.* Director, E08-143, January 7, 2009.
Barnum *v.* Director, E08-144, January 7, 2009.
Bedford *v.* Director, E08-126, November 19, 2008.
Box *v.* Director, E08-150, January 7, 2009.
Brewer *v.* Director, E08-173, February 11, 2009.
Brooks *v.* Director, E08-119, November 5, 2008.
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Diggs *v.* Director, E08-171, February 11, 2009.
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Gant *v.* Director, E08-142, December 10, 2008.
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Greenwood *v.* Director, E08-154, January 28, 2009.
Harris *v.* Director, E08-167, February 11, 2009.
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Horace *v.* Director, E08-116, November 5, 2008.
Hoyt *v.* Director, E08-115, November 5, 2008.
Huff *v.* Director, E08-127, November 19, 2008.
Hughes, Deodies D. *v.* Director, E08-141, December 10, 2008.
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Knippers *v.* Director, E08-149, January 7, 2009.

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Page-Namoku *v.* Director, E08-122, November 19, 2008.
Perkins *v.* Director, E08-151, December 10, 2008.
Qualls *v.* Director, E08-130, December 3, 2008.
Ratzlaff *v.* Director, E08-123, November 19, 2008.
Russellville Family Clinic, P.A. *v.* Director, E08-117, November 5, 2008.
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No due-process violation where restrictions were imposed, appellant did not demonstrate that the Commission's restrictions denied it a full and fair hearing. *Id.*

No error where the Commission did not consider additional, post-hearing testimony, the applicable practice and procedure rules did not require the Commission's acceptance of posthearing testimony. *Id.*

Storm restoration costs were disallowed, recovery of those costs would have constituted improper, retroactive ratemaking. *Id.*

Ratemaking proceeding is not the place to satisfy past, unmet expenses. *Id.*

Conflicting evidence, it was the Commission's prerogative to accept explanation of one witness over another. *Id.*

Commission did not act arbitrarily in disallowing certain costs, appellant should have petitioned for approval of costs as a future regulatory asset. *Id.*

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APPENDIX

Rules Adopted or Amended by Per Curiam Orders

IN RE: ADOPTION of AMENDMENTS to RULES of PROCEDURE of the Arkansas Judicial Discipline and Disability Commission in Response to Arkansas Bar Association Petition

07-444

Supreme Court of Arkansas
Opinion delivered March 13, 2008

PER CURIAM. Amendment 66 to the Arkansas Constitution created the Arkansas Judicial Discipline and Disability Commission, and subsection (f) of the amendment provides that the Supreme Court shall make procedural rules implementing this amendment. In 2005, the court requested the Arkansas Bar Association to perform a comprehensive review of the current Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission and report its findings. In response to this request, the Bar Association appointed the Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission composed of six circuit judges and nine lawyers. The Bar Association filed a petition with the court to present the work of the Task Force. On May 24, 2007, we published for comment the Task Force's Report, a Summary of Recommendations, and Recommended Changes in Rules, Policies, and Guidelines. *In re Arkansas Bar Association Petition to Revise Procedural Rules of the Arkansas Judicial Discipline and Disability Commission*, 370 Ark. App'x (2007).

Upon review of the Task Force's recommendations and consideration of the comments received, we are in agreement with the Task Force's proposal with only minor changes. We adopt the amendments to the Procedural Rules of the Arkansas Judicial Discipline and Disability Commission as set out below, and republish the rules.[1] This amendment shall be effective for complaints brought to the Commission on or after June 1, 2008.

[1] Revised Intake Instructions and Complaint Forms were published for comment. They do not require Supreme Court action pursuant to Rule 2 of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, and we understand that these recommendations have been acted on.

The changes include the addition of a new subsection (F) to Rule 1 and a new Rule 15. Prior Rules 8, 9, and 11 are being combined into new Rules 8 and 9. Also, prior Rules 6 and 11 are being replaced by new provisions. To highlight some of the changes:

– all but anonymous complaints must be signed;

– *ex parte* communications are prohibited on matters of substance between persons involved in the investigation and persons involved in the adjudication of a complaint;

– screening hearings and the probable cause hearings are being replaced by the use of separate Investigation Panels and Hearing Panels to provide for the screening and hearing of complaints and the involvement of Commission members in early decision-making on complaints and investigations; and

– a timetable for the adjudication of complaints is established.

We also agree with the Task Force's recommendations as explained in its report that the Commission establish appropriate deadlines for presenting intake complaints to the panel and completing the investigation.

Again, we thank the Bar Association for assisting the court in this endeavor and especially the members of the Task Force: Judges Kathleen Bell, Elizabeth Danielson, Robert Edwards, Mary Ann Gunn, Willard Proctor, and Hamilton Singleton; Attorneys Vince Chadick, Nate Coulter, Thomas Curry, Barbara Halsey (now circuit judge), Larry Jegley, Sean Keith, Gary Nutter, Kent Rubens, and the Task Force's chair, Robert Cearley, Jr.

RULES OF PROCEDURE OF THE ARKANSAS JUDICIAL DISCIPLINE AND DISABILITY COMMISSION

Rule 1. Organization of Commission.

A. *Composition of Commission.* In accordance with Ark. Const. amend. 66 and Act 637 of 1989, the Commission on Judicial Discipline and Disability shall have nine members who shall be residents of Arkansas. Three members shall be justices or judges

appointed by the Supreme Court (judicial members); three shall be lawyers admitted to practice in this state, who are not justices or judges, one appointed by the Attorney General, one by the President of the Senate, and one by the Speaker of the House of Representatives (lawyer members); and three members who are neither lawyers nor sitting or retired justices or judges shall be appointed by the Governor (public members).

B. *Meetings.* The Commission shall hold an organization meeting immediately upon establishment and biannually thereafter, and shall meet at least monthly at announced dates and places, except when there is no business to be conducted. Meetings shall be called by the Chair or upon the written request of three members of the Commission.

C. *Terms of Commission Members and Alternates.* With the exception of the initial appointees, whose initial terms shall be made so that reappointments and later appointments are to be staggered, Commission members and alternates shall serve for terms of six (6) years and shall be eligible for reappointment to second full terms. (Initial appointees shall be eligible for second terms of six (6) years.) At its organization meeting, the members of the Commission shall draw for lengths of initial terms so that one member in each group of members, judicial, lawyer, and public, shall have a four (4) year initial term, one member in each group shall have a five (5) year term, and one member in each group shall have a six (6) year term. After the terms of the initial appointees have been established, slips of paper, each with the name of the alternate, shall be placed in a container. Each member shall draw one of the slips of paper, and the alternate whose name is thus drawn shall have the same length of term as the member who drew his or her name.

D. *Officers.* At the organization meeting the members of the Commission shall elect one among them to serve as chair and another to serve as vice-chair. The vice-chair shall perform the duties of the chair whenever he is absent or unable to act.

E. *Quorum; Voting Requirements.* Five members of the Commission shall constitute a quorum for the transaction of business. A finding of probable cause shall require the concurrence of a majority of the members present.

Any alternate member may serve in the place of any member of the same category whenever such member is disqualified or unable to serve and upon the call of, or on behalf of, the chair. An alternate member who is present at a Commission meeting but who has not been called to serve may neither be included in a quorum count nor vote on any matter being considered at such meeting. Whenever an alternate member is called to serve in the place of a member of the Commission, an announcement with respect thereto shall be made at the commencement of the meeting.

A recommendation that discipline be imposed shall require the concurrence of a majority of the members of the Commission.

F. *Investigation Panels and Hearing Panels.* The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chair shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge. Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.

Rule 2. Powers and duties of the Commission.

A. *Rules and Forms.* The Commission may recommend to the Supreme Court adoption or amendment of rules with regard to all disciplinary and disability proceedings, promulgate additional rules of procedure not inconsistent with these rules, and require the use of appropriate forms.

B. *Annual Report.* The Commission shall have prepared an annual report of its activities for presentation to the Supreme Court and the public at the end of each calendar year.

Rule 3. Financial arrangements for Commission.

A. *Compensation Proscribed.* The Commission members shall serve without compensation for their services.

B. *Expenses Allowed.* The Commission members shall be reimbursed for expenses necessarily incurred in the performance of their duties.

C. *Authorization for Payments.* Expenses or the Commission as provided in section 2(d) of Act 637 of 1989, shall be authorized to be paid in accordance with the approved Commission budget.

Rule 4. Commission office.

The Commission shall establish a permanent office in a building open to the public. The office shall be open and staffed at announced hours.

Rule 5. Duties of the director.

The Commission shall prescribe the duties and responsibilities of the director which shall include the authority to:

(1) Consider information from any source and receive allegations and complaints;

(2) Make preliminary evaluations;

(3) Screen complaints;

(4) Conduct investigations;

(5) Maintain and preserve the Commissions records, including all complaints, files and written dispositions;

(6) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;

(7) Prepare the Commission's budget for its approval and administer its funds;

(8) Employ and supervise other members of the Commission's staff;

(9) Prepare an annual report of the Commission's activities; and

(10) Employ, with the approval of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court.

Rule 6. Jurisdiction.[1]

The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below.

A. *Establishment of Grounds for Discipline.* The grounds for discipline are those established in part (b) of Ark. Const. amend. 66 and those established by Act 637 of 1989.

B. *Distinguished from Appeal.* In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings.

C. *Judge-in-Office.* As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, referee, whether full-time or part-time. The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.

D. *Former Judge.* The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge unless the person has actively concealed material facts giving rise to the complaint.

E. *Overlapping Jurisdiction.* Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct.

Rule 7. Disclosure.

A. Any action taken by the Commission after investigation of a judge shall be communicated to the judge by letter which shall become public information. If the allegations leading to the investigation have proven to be groundless, the letter to the judge shall so state.

B. If the Commission finds it necessary to file a formal statement of allegations against a judge and to proceed to a hearing, the statement of allegations and the hearing shall be open to the public as shall the records of formal proceedings. The Commission may, however, conduct its deliberations in executive session which shall not be open to the public. Any decision reached by the Commission in such an executive session shall be announced in a session open to the public.

C. Investigatory records, files, and reports of the Commission shall be confidential, and no disclosure of information, written, recorded, or oral, received or developed by the Commission in the course of an investigation relating to alleged misconduct or disability of a judge, shall be made except as stated in A and B above or as follows:

(1) Upon waiver in writing by the judge under consideration at the formal statement of allegations stage of the proceedings;

(2) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges;

(3) In cases in which the subject matter or the fact of the filing of charges has become public, if deemed appropriate by the Commission, it may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, and to state that the judge denies the allegations;

(4) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority;

(5) Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed shall be released by the Commission;

(6) If during the course of or after an investigation or hearing the Commission reasonably believes that there may have been a violation of any rules of professional conduct of attorneys at law, the Commission may release such information to any committee, commission, agency or body within or outside the State empowered to investigate, regulate or adjudicate matters incident to the legal profession; or

(7) If during the course of or after an investigation or hearing, the Commission reasonably believes that there may have been a violation of criminal law, the Commission shall release such information to the appropriate prosecuting attorney.

D. It shall be the duty of the Commission and its staff to inform every person who appears before the Commission or who obtains information about the Commission's work of the confidentiality requirements of this rule.

E. Any person who knowingly violates the confidentiality requirements of this rule shall be subject to punishment for contempt of the Arkansas Supreme Court.

Rule 8. Procedures of Commission regarding conduct of a judge.[2]

A. *Initiation of Inquiry.* In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge.

All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director, but not sworn. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the sworn complaint.

All contacts with potential witnesses shall be in accordance with these Rules.

B. *Screening.* The Executive Director shall dismiss all complaints that are clearly outside of the Commission's jurisdiction. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal.

C. *Investigation of Complaints.* All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt,

discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant and the judge shall be informed in writing of the dismissal.

D. *Mandatory Notice to the Judge.* If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct.

The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

E. *Dismissal or Formal Statement of Allegations.* The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, or it may direct a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support the alleged violation(s) be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure.

F. *Answer.* The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge.

Rule 9. Hearing on formal statement of allegations.[3]

A. *Hearing.* The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine-member Commission on which no member of the Investigation Panel which considered the initial complaint may serve. This same nine-member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day.

B. *Scheduling.* The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing.

C. *Discovery.* The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process.

D. *Right to Counsel.* The judge shall be entitled to counsel of his/her own choice at his or her own expense.

E. *Conduct of Hearing.* The Arkansas Rules of Evidence shall apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim.

F. *Immunity from Prosecution.* The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. §§ 16-43-601 et seq.

G. *Public Hearing.* The hearing shall be open to the public and recorded by a certified court reporter.

H. *Determination.* The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge.

I. *Disposition.* In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct; and (3) If it finds there has been conduct that is cause for formal discipline, it shall be imposed as set forth in Rule 9(J).

J. *Commission Decision – Formal Discipline.* The recommendation for formal discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following: (1) A recommendation to the Supreme Court that the judge be removed from office; (2) A recommendation to the Supreme Court that the judge be suspended, with or without pay; (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay; (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for his/her retirement benefits, pursuant to Ark. Code Ann. § 24-8-217 (1987); (5) Reprimand or censure.

K. *Dissent.* If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court.

L. *Opinion to be Filed.* The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition.

M. *Witness Fees.* All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them.

Rule 10. Interim sanctions.

A. *Suspension with Pay.* In instances of the (1) filing of an indictment or information charging a judge with a felony under state or federal law, or (2) the filing of a misdemeanor charge against a judge or justice where his ability to perform the duties of his office is adversely affected, the Commission shall convene within ten (10) days for the purpose of considering a recommendation to the Supreme Court that the judge or justice be temporarily suspended with pay pending the outcome of any disciplinary determination.

B. *Effect on Commission Action.* A temporary suspension with pay as an interim sanction shall not preclude action by the Commission with respect to the conduct that was the basis for the felony or misdemeanor charge, nor shall the disposition of the charge in any manner preclude such action.

Rule 11. *Ex parte* communications.[4]

Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.

Rule 12. Supreme Court review.

A. *Filing and Service.* The Commission shall file its report, record, findings, and recommendations with the Supreme Court and shall serve copies thereof upon the judge no later than thirty (30) days after the report of the factfinder is submitted. On application by the Commission, the court may direct the withholding of a recommendation regarding discipline pending the determination of other specified matters.

B. *Prompt Court Consideration.* The Clerk of the Supreme Court shall docket any Commission matter for expedited consideration.

C. *Brief and Supplementary Filings.* The Commission and the judge shall file with the Supreme Court briefs in accordance with court rules within twenty (20) days of the filing and service of the Commission report. No responsive briefs shall be filed unless requested by the court. If the court desires an expansion of the record or additional findings, either with respect to the recommendation for discipline or sanction to be imposed, it shall remand the case to the Commission for the appropriate directions, retaining jurisdiction, and shall withhold action pending receipt of the additional filing.

The Supreme Court may order additional filings or oral argument as to the entire case or specified issues. The Supreme Court may accept or solicit supplementary filings with respect to medical or other information without remand and prior to an imposition of discipline provided that the parties have notice and an opportunity to be heard thereon.

D. *Scope of Discipline.* The Supreme Court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal is deemed appropriate, the court shall notify the judge, the Commission and the Supreme Court Committee on Professional Conduct and give each an opportunity to be heard on the issue of the imposition of lawyer discipline.

E. *Decision.* Based upon a review of the entire record the Supreme Court shall file a written opinion and judgment directing such disciplinary action as it finds just and proper. It may accept, reject, or modify in whole or in part, the findings and recommendation of the Commission. In the event that more than one recommendation for discipline for the judge is filed, the court may render a single decision or impose a single sanction with respect to all recommendations. The court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the court does not so direct, the respondent may file a motion for rehearing within fifteen (15) days of the filing of the decision.

F. *Certiorari.* The Supreme Court may bring up for review any action taken upon any complaint filed with the Commission, and may also bring up for review a case in which the Commission has failed to act.

Rule 13. Cases involving allegations of mental and physical disability.

A. *Procedure.* In considering allegations of mental and physical disability, the Commission shall, insofar as applicable and except as provided in Paragraph B, follow procedure established by these rules.

B. *Special Provisions.*

(1) If a complaint or statement of allegation involves the mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.

(2) In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission.

(3) The Commission shall bear the costs of the proceedings, including the cost of a physical or mental examination ordered by it.

Rule 14. Involuntary retirement.

A judge who is advised to retire voluntarily and who refuses may be retired involuntarily by the Supreme Court following the filing of a formal complaint, a public hearing thereon before the Commission, and a report containing a finding that he is physically or mentally disabled, and recommendation to the court that such action be taken.

Rule 15. Complaints shall be adjudicated or dismissed within 18 months.

A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:

A. All periods of delay granted at the request of the judge from and to a date certain.

B. All periods of suspension under Rule 10.

C. All periods of time in which the judge has concealed or conspired to conceal facts that would be evidence or could lead to evidence of any violation of the code of judicial conduct.

The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have been joined with the complaint dismissed.

END NOTES

1.

~~Rule 6. Jurisdiction.~~

~~A. Judge in Office. The authority of the Commission extends to judges and justices in office, and the term "judge" includes anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, magistrate, whether full-time or part-time. Allegations regarding conduct of a judge or justice occurring prior to or during service in judicial office, including the service of a retired judge who has been recalled, are within the jurisdiction of the Commission and shall be considered by it.~~

~~B. Former Judge. Conduct of a former judge which has been adjudicated by a final decision reached by the Commission shall not become the subject of disciplinary proceedings before the Supreme Court Committee on Professional Conduct.~~

2.

~~Rule 8. Procedures of commission regarding conduct of a judge.~~

~~A. Initiation of Inquiry. In accordance with these rules, any information submitted by a complainant or otherwise brought to the attention of the Commission stating facts that, if true, would be grounds for discipline shall initiate an inquiry relating to the conduct of the judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge.~~

~~B. Screening. Upon receipt of a complaint or other information as to conduct that might constitute grounds for discipline of a judge, the executive officer shall make a prompt, discreet, and confidential investigation and evaluation. Under guidelines approved by the Commission, and in light of the initial investigation and evaluation,~~

~~the executive officer shall determine whether there exists sufficient cause to proceed to a probable cause determination.~~

~~The executive officer shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge, if he has been given notice thereof, shall be informed in writing of the dismissal.~~

~~C. Optional Notice to the Judge. Notice to the judge that a complaint has been received or an inquiry undertaken may be given at any time.~~

~~D. Mandatory Notice to the Judge. Except upon good cause shown and with the approval of the Commission, no action other than dismissal of the complaint shall be taken as to any complaint about which the judge is not notified within ninety (90) days of the receipt of such complaint.~~

~~E. Sworn Complaint or Statement in Lieu of Complaint. If, after initial investigation and evaluation, it appears that there is sufficient cause to proceed, the complainant, if any, shall be asked to file a detailed, signed, sworn complaint against the judge. The sworn complaint shall state the names and addresses of the complainant and the judge, the facts constituting the alleged misconduct and, so far as is known, whether the same or a similar complaint by that complainant against that judge has ever been made to and considered by the Commission. Immediately upon receipt of the sworn complaint, the executive officer shall make written acknowledgement thereof to the complainant.~~

~~When a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by the executive officer.~~

~~When more than one act of misconduct is alleged, each should be clearly set forth in the sworn complaint or in the statement in lieu of complaint, as the case may be.~~

~~F. Commencement of the Case. Upon receipt of each sworn complaint or the preparation of a statement in lieu thereof, a file shall be opened in the Commission office.~~

~~G. Required Notice. The judge shall immediately be served with a copy of the sworn complaint or statement of allegations.~~

~~H. Answer. Within twenty (20) days after the service upon him of the sworn complaint or statement, the judge shall file a written answer with the executive officer. The answer may include a description of circumstances of a mitigating nature bearing on the charge. A personal appearance before the Commission shall be permitted in lieu of or in addition to a written response. If the judge elects to appear personally his statement shall be recorded verbatim.~~

~~I. Review Prior to Probable Cause Determination. Upon receipt and review of the judge's answer, the Commission may terminate the proceeding and dismiss the complaint and, in that event, shall give notice to the judge and each complainant that it has found insufficient cause to proceed.~~

~~J. Amending Allegations. Amendment of the allegations regarding the misconduct of a judge, whether presented to the Commission in a sworn complaint or in a statement in lieu thereof, shall be permitted prior to a finding of probable cause, provided that notice thereof and an opportunity further to respond within ten (10) days is given to the judge.~~

~~K. Right to Counsel. The judge shall be entitled to counsel of his own choice.~~

~~L. Subpoenas and Summonses. The Commission has the authority to issue summonses for any person(s) and subpoenas for any witness(es), including the judge concerned, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. Such process shall be issued by and under the seal of the Commission and be signed by the Chairman, Vice-Chairman or the Executive Director. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Upon receiving notice from the Commission of the pendency of a proceeding, the judge concerned shall be entitled to compel, by subpoena issued in the same manner, the attendance and testimony of witnesses, and the production of papers, books, accounts, documents and testimony relevant to the investigation or the proceeding. The Commission shall provide for its use a seal of such design as it may deem appropriate. The Circuit Court of Pulaski County shall have the power to enforce process.~~

~~M. Immunity. The Commission is authorized to request the appropriate prosecuting authorities to seek to obtain immunity from criminal prosecution for a reluctant witness, using the procedure found in Ark. Code Ann. §§ 16-43-601 through 16-43-606.~~

3.

~~Rule 9. Probable cause.~~

~~A. Establishment of Grounds of Discipline. The grounds for discipline are those established in part (b) of Ark. Const., Amend. 66 and those established by Act 637 of 1989.~~

~~B. Distinguished from Appeal. In the absence of fraud, corrupt motive or bad faith, the Commission shall not taken action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he understands it. Claims of error shall be considered only in appeals from court proceedings.~~

~~C. Probable Cause Determination. The Commission shall promptly schedule and hold a formal meeting at which the strict rules of evidence need not be observed. A complete verbatim record shall be made. All witnesses shall be duly sworn. A complainant and the judge against whom he has complained shall have the right to be present, with their attorneys, if any, except during Commission deliberations.~~

~~D. Findings and Report. The Commission shall prepare a written report containing its findings of fact and its conclusions on each issue presented, and shall file its report with the executive officer.~~

~~E. Disposition. In its report the Commission shall dispose of the case in one of the following ways:~~

~~(1) If it finds that there has been no misconduct, the director shall be instructed to send the judge and each complainant notice of dismissal.~~

~~(2) If it finds, by concurrence of a majority of members present, that there has been conduct that is or might be or might become cause for discipline but for which an admonition or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct.~~

~~(3) If it finds, by concurrence of a majority of members present, that there is probable cause to believe that there has been misconduct of a~~

~~nature requiring a formal disciplinary proceeding, the director shall cause the judge to be served with the report, the formal statement of the charges, the record of the probable cause determination, and all documents upon which the determination was based. The service upon the judge constitutes notice that he must respond within [twenty] (20) days.~~

4.

~~Rule 11. Formal disciplinary hearing.~~

~~A. Scheduling. The Commission shall, upon receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing not less than thirty (30) nor more than forty-five (45) days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time, and place of hearing.~~

~~B. Discovery. The judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure.~~

~~C. Factfinder. The formal hearing shall be conducted before a factfinder which may be the entire Commission or a three-member panel thereof appointed by the Commission chairman.~~

~~D. Conduct of Hearing. The Arkansas Rules of Evidence apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the factfinder. The judge whose conduct is in question shall be permitted to adduce evidence and cross-examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim.~~

~~E. Amendment of Allegations. By leave of the Commission or by consent of the judge, the formal charges may be amended after commencement of the public hearing only if the amendment is technical in nature and if the judge and his counsel are given adequate time to prepare a response.~~

~~F. Determination. A factfinder other than the entire Commission shall, within sixty (60) days after the hearing, submit its findings and recommendation, together with the record and transcript of the proceedings, to the Commission for review and shall contemporaneously serve them upon the judge.~~

~~The judge, or Commission counsel, may submit written objections to the findings and recommendations.~~

~~The findings, conclusions and accompanying materials, together with the objections, if any, shall be promptly reviewed by the Commission.~~

~~The Commission may make independent findings of fact from the record or, if the entire Commission served as factfinder, it shall prepare its findings and recommendations.~~

~~G. Commission Decision. The recommendations for discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following:~~

~~(1) A recommendation to the Supreme Court that the judge be removed from office;~~

~~(2) A recommendation to the Supreme Court that the judge be suspended, with or without pay;~~

~~(3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay;~~

~~(4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for retirement benefits, pursuant to Arkansas Code Annotated § 24-8-217 (1987);~~

~~(5) Reprimand or censure.~~

~~H. Dissent. If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court.~~

~~I. No Disciplinary Recommendation. If a majority of the members of the Commission recommend no discipline the case shall be dismissed.~~

~~J. Opinion to be Filed. The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the Clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven days of rendition.~~

~~K. Witness Fees. All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them.~~

IN RE: ADMINISTRATIVE ORDER NO. 17 — PROFESSIONAL PRACTICUM REQUIREMENT

Supreme Court of Arkansas
Opinion delivered April 10, 2008

PER CURIAM. The current version of the Professional Practicum Rule gives the Professional Practicum Committee (Committee) limited flexibility in granting extensions of the requirement. This limitation has been particularly burdensome in connection with active duty military personnel who are having difficulty arranging their schedule to appear at the Practicum which occurs only once a year. For that reason and others, the Committee has asked this Court to amend the Professional Practicum Rule to provide the Committee with more flexibility in granting extensions.

We conclude that the request of the Committee is well founded and amend Administrative Order No. 17 as appears on the attachment to this Order. Also attached to this Order is the previous version of the Rule with deleted language "stricken through" and new language appearing in *italics*.

Order 17. Professional Practicum Rule

Each person admitted to the Bar of Arkansas (Bar), by examination, shall complete a professional practicum. The course shall be completed within two years after the date an attorney is certified for admission to the Clerk of the Arkansas Supreme Court.

The goal of the professional practicum is to enhance the quality of legal services provided to the public. The professional practicum shall

consist of not less than one day's instruction, focusing on lawyers' roles as an officer of the Court and as a member of the Bar, and lawyers' relation to community, clients, and courts, and may include topics regarding the professional and ethical implications of private and non-private practice. The course is not designed to address the topic of law office economics. The practicum shall also focus on the practical aspects of practicing law in Arkansas and common areas of disciplinary concerns. The course will not be an overview of traditional law school courses.

The practicum will be organized, prepared, and presented under the direction of the Professional Practicum Committee (Committee) of the Supreme Court of Arkansas. The Committee may present the program itself or through contract with a third-party provider, which may be the Arkansas Bar Association.

Upon good cause shown, an attorney may be entitled to an extension of time in which to meet this requirement. Such relief shall extend to the immediately succeeding professional practicum only. "Good cause," for purposes of this rule, includes but is not limited to military service or a family or medical emergency during or immediately before a scheduled professional practicum. In exceptional cases the Committee may grant further extension or allow the attorney to achieve compliance in some manner other than attendance at the practicum.

An attorney who fails to meet this requirement shall have his or her license suspended. Such suspension shall be lifted only upon completion of the professional practicum.

The Office of Professional Programs (Office) shall be the repository for all records pertaining to administration of this rule. The Office shall be responsible for providing notice to all persons seeking admission to the Bar of this requirement, course dates and locations. Further, the Office shall maintain all records pertaining to compliance and provide all notices required for enforcement of the provisions of this rule.

Order 17. Professional Practicum Rule

~~[EFFECTIVE FOR NEW ADMITTEES AFTER JANUARY 1, 2005]~~

Each person admitted to the Bar of Arkansas (Bar), by examination, ~~after January 1, 2005~~, shall complete a professional practicum. The course shall be completed within two years after the date an attorney is certified for admission to the Clerk of the Arkansas Supreme Court.

The goal of the professional practicum is to enhance the quality of legal services provided to the public. The professional practicum shall consist of not less than one day's instruction, focusing on lawyers' roles as an officer of the Court and as a member of the Bar, and lawyers' relation to community, clients, and courts, and may include topics regarding the professional and ethical implications of private and non-private practice. The course is not designed to address the topic of law office economics. The practicum shall also focus on the practical aspects of practicing law in Arkansas and common areas of disciplinary concerns. The course will not be an overview of traditional law school courses.

The practicum will be organized, prepared, and presented under the direction of the Professional Practicum Committee (Committee) of the Supreme Court of Arkansas. The Committee may present the program itself or through contract with a third-party provider, which may be the Arkansas Bar Association.

Upon good cause shown ~~upon motion~~, an attorney may be entitled to an extension of time in which to meet this requirement. Such relief shall extend to the immediately succeeding professional practicum only. "Good cause," for purposes of this rule, *includes but is not limited to* military service or a family or medical emergency during or immediately before a scheduled professional practicum. *In exceptional cases the Committee may grant further extension or allow the attorney to achieve compliance in some manner other than attendance at the practicum.*

An attorney who fails to meet this requirement shall have his or her license suspended. Such suspension shall be lifted only upon completion of the professional practicum.

The Office of Professional Programs (Office) shall be the repository for all records pertaining to administration of this rule. The Office shall be responsible for providing notice to all persons seeking admis-

sion to the Bar of this requirement, course dates and locations. Further, the Office shall maintain all records pertaining to compliance and provide all notices required for enforcement of the provisions of this rule.

IN RE: ARKANSAS DISTRICT COURT RULES; RULES of CIVIL PROCEDURE; RULES of EVIDENCE; RULES of the SUPREME COURT and COURT of APPEALS; and RULES of APPELLATE PROCEDURE – CIVIL

Supreme Court of Arkansas
Opinion delivered April 17, 2008

PER CURIAM. The Arkansas Supreme Court Committee on Civil Practice has submitted its annual proposals and recommendations for changes in rules of procedure affecting civil practice. We have reviewed the Committee's work, and we now publish the suggested amendments for comment from the bench and bar. The Notes explain the changes, and the proposed changes are set out in "line-in, line-out" fashion (new material is italicized; deleted material is lined through).

We express our gratitude to the Chair of the Committee, Judge Henry Wilkinson, its Reporter, Judge D.P. Marshall Jr., and all the Committee members for their faithful and helpful work with respect to the Rules.

Comments on the suggested rules changes should be made in writing before June 1, 2008, to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Civil Procedure Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

A. ARKANSAS DISTRICT COURT RULES

DCTR 1. Scope of rules.

(a) *Except as provided in subdivision (b),* ~~T~~these rules shall govern the procedure in all civil actions in the district courts and county courts (hereinafter collectively called the "district courts") of this state. They shall apply in the small claims division of district courts except as may be modified by Rule 10 of these rules.

(b) These rules shall not apply to an appeal of a tax assessment from an equalization board to the county court. Rule 9 of these rules, however, shall apply to a tax-assessment appeal from county court to circuit court.

(~~b~~*c*) Where applicable and unless otherwise specifically modified herein, the Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence shall apply to and govern matters of procedure and evidence in the district courts of this State. Actions in the small claims division of district court shall be tried informally before the court with relaxed rules of evidence, *see* Rule 10(d)(2) of these rules.

(~~c~~*d*) Rules specific to criminal proceedings in district court shall so indicate, and in such cases, such rules shall apply to actions pending in city courts.

(~~d~~*e*) Other matters affecting district courts may be found in Administrative Order Number 18.

Addition to Reporter's Notes, 2008 Amendment. *Subdivision (b) is new. It recognizes that our statutes prescribe specific procedures for appealing a tax assessment from an equalization board to the county court. Ark. Code Ann. §§ 26-27-311, 318. Those statutory procedures, not the District Court Rules, govern such cases in the county court with one exception. The exception is that Rule 9 governs appeals in tax-assessment cases from county court to circuit court. Former subdivisions (b)–(d) have been redesignated as (c)–(e).*

DCTR 9. Appeals to circuit court.

(a) *Time for Taking Appeal From District Court.* All appeals in civil cases from district courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within 30 days from the date *of a docket entry awarding judgment regardless of whether a formal judgment is entered* ~~of the entry of judgment~~. The 30-day period is not extended by a motion for new trial, a motion to amend the court's findings of fact or to make additional findings, or any other motion to vacate, alter or amend the judgment.

~~(b) *How Taken.* An appeal from a district court to the circuit court shall be taken by filing a record of the proceedings had in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk.~~

(b) How Taken From District Court. A party may take an appeal from a district court by filing a certified copy of the district court's docket sheet, which shows the awarding of judgment and all prior entries, with the clerk of the circuit court having jurisdiction over the matter. Neither a notice of appeal nor an order granting leave to appeal shall be required. The appealing party shall serve a copy of the certified docket sheet upon counsel for all other parties, and any party proceeding pro se, by any form of mail that requires a signed receipt.

~~*(c) Unavailability of Record.* When the clerk of the district court, or the court in the absence of a clerk, neglects or refuses to prepare and certify a record for filing in the circuit court, the person desiring an appeal may perfect his appeal on or before the 30th day from the date of the entry of the judgment in the district court by filing an affidavit in the office of the circuit court clerk showing that he has requested the clerk of the district court (or the district court) to prepare and certify the records thereof for purposes of appeal and that the clerk (or the court) has neglected to prepare and certify such record for purposes of appeal. A copy of such affidavit shall be promptly served upon the clerk of the district court (or the court) and the adverse party.~~

(c) Procedure on Appeal From District Court.

(1) All the parties shall assert all their claims and defenses in circuit court. Within thirty days after a party perfects its appeal to circuit court by filing a certified copy of the district court docket sheet with the circuit clerk, the party who was the plaintiff in district court shall file a complaint and plead all its claims in circuit court. The party who was the defendant in district court shall file its answer, motions, and claims within the time and manner prescribed by the Arkansas Rules of Civil Procedure. All the parties shall serve their pleadings and other papers on counsel for all opposing parties, and on any party proceeding pro se, by any form of mail which requires a signed receipt.

(2) At the time they file their complaint, answer, motions, and claims, the parties shall also file with the circuit clerk certified copies of any district court

papers that they believe are material to the disputed issues in circuit court. Any party may also file certified copies of additional district court papers at any time during the proceeding as the need arises.

(3) As soon as practicable after the pleadings are closed, the circuit court shall establish a schedule for discovery, motions, and trial.

(4) Except as modified by the provisions of this rule, and except for the inapplicability of Rule of Civil Procedure 41, the Arkansas Rules of Civil Procedure shall govern all the circuit court proceedings on appeal of a district court judgment as if the case had been filed originally in circuit court.

(d) *Supersedeas Bond* On Appeal From District Court. Whenever an appellant entitled thereto desires a stay on appeal to circuit court in a civil case, he shall present to the district court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall satisfy and perform the judgment, decree, or order of the inferior court. All proceedings in the district court shall be stayed from and after the date of the court's order approving the supersedeas bond.

(e) Special Provisions For Appeals From County Court to Circuit Court.

Unless otherwise provided in this subdivision, the requirements of subdivisions (a), (b), (c), and (d) govern appeals from county court to circuit court. A party may take an appeal from the final judgment of a county court by filing a notice of appeal with the clerk of the circuit court having jurisdiction over the matter within thirty (30) days from the date that the county court filed its order with the county clerk. A certified copy of the county court's final judgment must be attached to the notice of appeal. In the circuit-court proceeding, the party who was the petitioner or plaintiff in county court shall have all the obligations of the plaintiff in a case that has been appealed from district court to circuit court. If there were no defendants in the county-court proceeding, then the petitioner/plaintiff shall name all necessary, adverse parties as defendants in its complaint filed in circuit court.

(f) Administrative Appeals.

(1) If an applicable statute provides a method for filing an appeal from a final decision of any governmental body or agency and a method for preparing the record on appeal, then the statutory procedures shall apply.

(2) If no statute addresses how a party may take such an appeal or how the record shall be prepared, then the following procedures apply.

(A) Notice of Appeal. A party may appeal any final administrative decision by filing a notice of appeal with the clerk of the circuit court having jurisdiction of the matter within thirty (30) days from the date of that decision. The notice of appeal shall describe the final administrative decision being appealed and specify the date of that decision. The date of decision shall be either the date of the vote, if any, or the date that a written record of the vote is made. The party shall serve the notice of appeal on all other parties, including the governmental body or agency, by serving any person described in Arkansas Rule of Civil Procedure 4(d)(7), by any form of mail that requires a return receipt.

(B) The Record on Appeal. Within thirty (30) days after filing its notice of appeal, the party shall file certified copies of all the materials the party has or can obtain that document the administrative proceeding. Within 30 days after these materials are filed, any opposing party may supplement the record with certified copies of any additional documents that it believes are necessary to complete the administrative record on appeal. At any time during the appeal, any party may supplement the record with a certified copy of any document from the administrative proceeding that is not in the record but the party believes the circuit court needs to resolve the appeal.

(C) Procedure on Appeal. As soon as practicable after all the parties have made their initial filing of record materials, the court shall establish a schedule for briefing, hearings, and any other matters needed to resolve the appeal.

Addition to Reporter's Notes, 2008 Amendment. *The rule has been substantially rewritten to eliminate several points of confusion and difficulty.*

Subdivision (a) has been amended. The rule prescribes that the thirty-day time to appeal from a district court runs from the date that the court makes a docket entry of judgment. This change conforms the rule to precedent. E.g., Lewis v. Robertson, *96 Ark. App. 114, 239 S.W.3d 30 (2006). This change also preserves the flexibility that district courts need to dispose of many cases with only a docket entry. Counsel and parties proceeding pro se must monitor the district court's docket carefully to determine when the time to appeal begins to run.*

The procedure prescribed in subdivision (b) for taking an appeal has been changed. Instead of having to file a certified copy of the entire district court record, now the appealing party must file with the circuit clerk only a certified copy of the district court docket sheet. This document should show all proceedings in the district court, including the judgment appealed from. This

simplification makes it easier to perfect an appeal. It eliminates the difficulty that parties often encountered in getting a complete certified record from the district court clerk within thirty days of the judgment. This change also eliminates the need for former subdivision (c), which provided an affidavit procedure when the certified district court record was unavailable and which resulted in litigation about that procedure. E.g., Nettles v. City of Little Rock, *96 Ark. App. 86, 238 S.W.3d 635 (2006). New subdivision (b) also conforms the rule to case law. In* McNabb v. State, *367 Ark. 93, 238 S.W.3d 119 (2006), the supreme court held that a party satisfied former rule 9's requirement that the appealing party file "a record of the proceedings" in the district court by filing a certified district court docket sheet with the circuit clerk.*

To ensure notice of the appeal to opposing parties, the appealing party must serve the docket sheet on all other parties by some form of mail that generates a signed receipt. This provision echoes the requirements of Arkansas Rule of Appellate Procedure–Civil 3(f) about serving a notice of appeal. Rule of Civil Procedure 4 does not apply and service of process is not required.

Former Rule 9 was silent about the procedure that circuit courts should follow in perfected appeals from district court. This silence led to confusion. E.g., Wright v. City of Little Rock, *366 Ark. 96, 233 S.W.3d 644 (2006). New subdivision (c) outlines the procedure in circuit court: the party who was the plaintiff in the district court must file a complaint and plead its claims again; the other parties must file their answers, motions, and claims; all the parties must file certified copies of whatever district court materials they believe are important; and then the circuit court should handle the case like any other matter pursuant to the Arkansas Rules of Civil Procedure.*

The requirement to plead again is new. It better captures the truth that appeals from district court are appellate in form but original in fact. This new pleading requirement generated a corresponding amendment in Rule of Civil Procedure 81(b), which formerly made pleading again discretionary with the circuit court.

Under settled precedent, an appeal from a district court judgment may not be dismissed without prejudice, either by a party's voluntary nonsuit or by the circuit court. Such a dismissal leaves the district court's judgment intact and finally adjudicates the matter. Wright, supra; Watson v. White, *217 Ark. 853, 233 S.W.2d 544 (1950). With that exception, and subject to the particularized requirements of this rule, the Arkansas Rules of Civil Procedure apply to circuit court proceedings on appeal from a district court's judgment. To*

insure that all parties have notice of the claims and defenses in circuit court, and to avoid defaults, all the parties must serve their pleadings by some form of mail requiring a signed receipt.

New subdivision (e) contains some needed special provisions for appeals to circuit court from final orders of the county court. Unless subdivision (e) provides a different procedure, the provisions of subdivisions (a), (b), (c), and (d) govern appeals from county courts to circuit court. This new provision conforms Rule 9 to precedent: the district court rules govern appeals from county courts. Pike Ave. Dev. Co. v. Pulaski County, *343 Ark. 338, 37 S.W.3d 177 (2001). Under the Arkansas Constitution, the county courts have jurisdiction over a number of matters, most prominently county taxes (including those on real property) and roads.* See generally *David Newbern & John J. Watkins,* 2 Arkansas Practice Series: Civil Practice & Procedure *§ 2:6 (4th ed. 2005 & Supp. 2007). Former Rule 9 was written solely in terms of appeals from district court, and its requirements did not fit appeals from county courts well. The revised provisions of Rule 9 (a)–(d) are a better fit, but some special provisions for appeals in county-court cases are nonetheless needed.*

The procedures used in county courts vary. Some, for example, do not maintain a docket sheet for each matter. All final orders of county courts, however, are filed with the county clerk. New subdivision (e) ties the time for taking an appeal from a county court, and the method of perfecting that appeal, to the filing of the county court's final order. A party seeking to appeal must file a notice of appeal with the appropriate circuit clerk within thirty days of the date that the county court enters its final order. The notice should describe the order being appealed from and must attach a certified copy of that order. The timely filing of this notice is jurisdictional, as was the timely filing of a certified record or affidavit of unavailability under the former rule. Pike Ave., supra. *Some cases in county court involve petitioners and respondents, rather than plaintiffs and defendants, and some have no adverse party named. New subdivision (e) addresses these issues by making the party who sought relief in the county court the plaintiff in any appeal to circuit court and obligates that party to open the pleadings with a complaint naming all necessary, adverse parties as defendants. Whether a party is necessary should be determined by reference to Rule of Civil Procedure 19 and the cases interpreting it. Absent a specific and contrary provision in subdivision (e), all the provisions of subdivisions (a), (b), (c), and (d) apply to appeals from county court to circuit court.*

Subdivision (f) is new. Rule 9 has long governed appeals from decisions by certain governmental bodies, such as zoning boards and city councils, to circuit

court. See generally *Newbern & Watkins,* supra *§ 2:4. The fit between the provisions of the rule and these administrative appeals, however, was imprecise. This resulted in problems for litigants in perfecting their appeals.* E.g., Bd. of Zoning Adjustment of City of Little Rock v. Cheek, *328 Ark. 18, 942 S.W.2d 821 (1997);* Franks v. Mountain View, *99 Ark. App. 205, ___ S.W.3d ___ (2007). The provisions of new subdivision (f) are tailored for administrative appeals.*

Paragraph (f)(1) is a default provision: if a statute prescribes the method for filing an appeal or preparing the record on appeal, or both, then the statutory procedures apply. Paragraph (f)(2) and its subparts describe the governing procedures if no applicable statutory procedure exists. A party perfects its appeal under new paragraph (f)(2)(A) by filing a timely notice of appeal with the circuit court. The notice should describe the administrative decision being appealed and the date of that decision. The thirty-day window in which to file the notice is standard. Ark. R. App. P.–Civ. 4(a). In cases involving administrative action, uncertainty sometimes arose about the exact date of the decision: was it, for example, when a vote was taken or when the minutes reflecting a vote were approved? Cf. Cheek, supra. *The revised rule eliminates this uncertainty by allowing either the date of any vote, or the date of a writing embodying the decision (e.g., a letter determination or approved minutes), to be the date of decision. This provision is intended to loosen the governing standard so that parties do not lose their rights to seek judicial review of an administrative decision based on a hyper-technical concern about precisely when the government body made its decision. This new provision ensures that all parties will be informed about the appeal by mandating service of the notice of appeal by any form of mail that requires a return receipt. The certificate of service on the notice should show compliance with this requirement.*

New provision (f)(2)(B) creates a new and less rigid procedure for getting the administrative record to the circuit court. The former rule's problematic requirement linking the filing of the record to perfecting the appeal has been eliminated. The record-keeping practices of local administrative bodies vary widely, but this variance should not handicap litigants. Getting any needed administrative record materials to the circuit court is a housekeeping matter, not a jurisdictional requirement. The revised rule instructs all the parties to take turns filing certified copies of whatever materials they possess or can obtain that document the administrative proceedings. And the parties may supplement the record at any time during the circuit court proceeding if important documents from the administrative process become available.

New provision (f)(2)(C) clarifies that, once the parties have made their initial record filings, the circuit court should enter an order scheduling whatever proceedings are needed—discovery, briefing, or hearings—to resolve the case.

B. ARKANSAS RULES OF CIVIL PROCEDURE

Rule 50. Motion for directed verdict and for judgment notwithstanding verdict.

. . . .

(e) Appellate Review. ~~When there has been a trial by jury, the failure of a party to move for a directed verdict at the conclusion of all the evidence, because of insufficiency of the evidence will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the jury verdict.~~ *In a jury trial, a party who does not have the burden of proof on a claim or defense must move for a directed verdict based on insufficient evidence at the conclusion of all the evidence to preserve a challenge to the sufficiency of the evidence for appellate review. A party who has the burden of proof on a claim or defense need not make such a motion to challenge on appeal the sufficiency of the evidence supporting a jury verdict adverse to that party.* If for any reason the motion is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

Addition to Reporter's Notes, 2008 Amendment: *Subdivision (e) has been amended and clarified. In a series of cases, the court of appeals had interpreted former subdivision (e) to require the party with the burden of proof to move for a directed verdict on the party's own claim or defense in order to challenge on appeal the sufficiency of the evidence supporting the fact-finder's decision for the opposing party.* Laird v. Weigh Sys. S. II, Inc., *98 Ark. App. 393, 255 S.W.3d 900 (2007);* King v. Powell, *85 Ark. App. 212, 148 S.W.3d 792 (2004);* Sw. Bell Tel. Co. v. Garner, *83 Ark. App. 226, 125 S.W.3d 844 (2003). This interpretation required a motion that would rarely be granted and served no useful purpose.* King, *85 Ark. App. at 228–29, 148 S.W.3d at 802 (Bird, J., concurring). Revised subdivision (e) makes clear that only the party against whom a claim or defense is asserted must*

move for a directed verdict to preserve its right to challenge on appeal the sufficiency of the evidence. The amendment overrules the contrary holdings in Garner, King, *and* Laird.

Rule 54. Judgment; costs.

. . . .

(b) Judgment Upon Multiple Claims or Involving Multiple Parties.

. . . .

(5) Named but Unserved Defendant. Any claim against a named but unserved defendant, including a "John Doe" defendant, is dismissed by the circuit court's final judgment or decree.

. . . .

(d) Costs.

. . . .

(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; *fees of translators appointed by the court pursuant to Rule 1009 of the Arkansas Rules of Evidence;* and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

Addition to Reporter's Notes, 2008 Amendments. *Subdivision (b) has been amended by adding a new paragraph (5), which addresses the "named but not served defendant" problem. Cases asserting claims against multiple defendants are commonplace. In some of those cases, a defendant is never served but nonetheless remains listed as a party and is never dismissed even though the circuit court has resolved all the claims against all the other parties. This situation creates problems on appeal. It wastes litigants' time and money and scarce judicial resources when, after the case has been appealed and briefed, the appellate court discovers a forgotten defendant whose presence destroys the finality of the judgment being appealed.* E.g., Grooms v. Myers, *308 Ark.*

324, 823 S.W.2d 901 (1992). This problem often arises with "John Doe" defendants. E.g., Downing v. Lawrence Hall Nursing Ctr., *368 Ark. 51, 243 S.W.3d 263 (2006). New paragraph (5) solves this problem by mandating that any claim against a named but unserved defendant (including any John Doe) is dismissed by the circuit court's final judgment or decree.*

Paragraph (d)(2) has also been amended. The change reflects that Rule of Evidence 1009, also adopted in 2008, authorizes the circuit court to appoint a qualified translator and requires the court to tax the reasonable value of the appointed translator's services as costs.

Rule 81. Applicability of rules.

. . . .

(b) *Actions Appealed From Lower Court.* These rules shall apply to civil actions which are appealed to a court of record and which are triable de novo. ~~Repleading is not necessary unless so ordered by the court on appeal.~~

. . . .

Addition to Reporter's Notes, 2008 Amendment: *Subdivision (b) of this rule has been amended to eliminate the circuit court's discretion about pleading again. The 2008 amendment to District Court Rule 9 requires pleading again in every civil case appealed to circuit court from district court. The change here conforms the two rules.*

C. ARKANSAS RULES OF EVIDENCE

Rule 1009. Translation of foreign-language documents and recordings.

(a) Translations. *A translation of foreign-language documents and recordings, including transcriptions, that is otherwise admissible under the Arkansas Rules of Evidence shall be admissible upon the affidavit of a "qualified translator," as defined in paragraph (h) of this rule, setting forth the qualifications of the translator, and certifying that the translation is fair and accurate. This affidavit, along with the translation and the underlying foreign-language documents or recordings, shall be served upon all parties at least forty-five (45) days before the date of trial.*

(b) Objections. *Any party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation. This objection shall be served upon all parties at least fifteen (15) days before the date of trial.*

(c) Effect of Failure to Object or Offer Conflicting Translation. *If no conflicting translation or objection is timely served, the court shall admit a translation submitted under paragraph (a) without need of proof, provided however that the underlying foreign-language documents or recordings are otherwise admissible under the Arkansas Rules of Evidence. Failure to serve a conflicting translation under paragraph (a), or failure to timely and properly object to the accuracy of a translation under paragraph (b), shall preclude a party from attacking or offering evidence contradicting the accuracy of the translation at trial.*

(d) Effect of Objections or Conflicting Translations. *In the event of conflicting translations under paragraph (a), or if objections to another party's translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.*

(e) Expert Testimony of Translator. *Except as provided in paragraph (c), this rule does not preclude the admission of a translation of foreign-language documents and recordings at trial either by live testimony or by deposition testimony of a qualified translator.*

(f) Varying of Time Limits. *The court, upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this rule.*

(g) Court Appointment. *The court, if necessary, may appoint a qualified translator, the reasonable value of whose services shall be taxed as court costs.*

(h) Qualified Translator. *A "qualified translator" is an interpreter satisfying the requirements established by the Arkansas Supreme Court in* In re: Certification for Foreign Language Interpreters in Arkansas Courts, *338 Ark. App'x 827 (1999) and Administrative Order Number 11. A Registry of Interpreters is maintained by the Administrative Office of the Courts.*

Reporter's Explanation. *Foreign-language documents and recordings are becoming increasingly common in litigation. This new rule prescribes who must translate these materials, how translations must be certified, when translations must be provided to other parties, and how to present objections and conflicting*

translations. The rule also provides that, when necessary, the circuit court may appoint a qualified translator, whose fees shall be taxed as court costs.

D. ARKANSAS RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 4-4. Filing and service of briefs in civil cases.

(a) Appellant's brief. In all civil cases the appellant shall, within 40 days of lodging the record, file 17 copies of the appellant's brief with the Clerk and furnish evidence of service upon opposing counsel and the circuit court. Each copy of the appellant's brief shall contain every item required by Rule 4-2. Unemployment compensation cases appealed from the Arkansas Board of Review may be submitted to the Court of Appeals for decision as soon as the transcript is filed, unless the petition for review shows it is filed by an attorney, or notice of intent to file a brief for the appellant is filed with the Clerk prior to the filing of the transcript.

(b) Appellee's brief—Cross-appellant's brief. The appellee shall file 17 copies of the appellee's brief, and of any further abstract or Addendum thought necessary, within 30 days after the appellant's brief is filed, and furnish evidence of service upon opposing counsel and the circuit court. If the appellee's brief has a supplemental abstract or Addendum, it shall be compiled in accordance with Rule 4-2 and included in or with each copy of the brief. This Rule shall apply to cross-appellants. If the cross-appellant is also the appellee, the two separate arguments may be contained in one brief, but each argument is limited to 25 pages.

(c) Reply brief—*Cross-appellee's brief*—Cross-appellant's reply brief. The appellant may file 17 copies of a reply brief within 15 days after the appellee's brief is filed and shall furnish evidence of service upon opposing counsel and the circuit court. *If the appellant is also the cross-appellee, however, the party shall have thirty (30) days after the cross-appellant files its opening brief to file any reply brief in the main appeal and its cross-appellee's brief. A party may combine these two briefs into one, but the argument sections must conform to the page limitations prescribed by Rule 4-1(b). The provisions of Rule 4-4(b) about the number of copies,*

service, and any supplemental abstract or addendum shall apply to cross-appellee's briefs. This Rule shall apply to the cross-appellant's reply brief except it must be filed within 15 days after the cross-appellee's brief is filed.

(d) Evidence of service. Briefs tendered to the Clerk will not be filed unless evidence of service upon opposing counsel and the circuit court has been furnished to the Clerk. Such evidence may be in the form of a letter signed by counsel, naming the attorney or attorneys and the circuit court to whom copies of the brief have been mailed or delivered.

(e) Submission. The case shall be subject to call on the next Thursday (in the Supreme Court) or Wednesday (in the Court of Appeals) after the expiration of the time allowed for filing the reply brief of the appellant or the cross-appellant.

(f) Continuances and extensions of time.

(1) The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral request. *The party requesting a Clerk's extension must confirm the extension by sending a letter immediately to the Clerk or the deputy clerk with a copy to all counsel of record and any pro se party.* If such an extension is granted, no further extension shall be granted except by the Clerk for compliance with these Rules as provided in Rule 4-2(c) or by the Court upon a written motion showing good cause.

(2) Stipulations of counsel for continuances will not be recognized. Any request for an extension of time (except in (f)(1)) for the filing of any brief must be made by a written motion, addressed to the Court, setting forth the facts supporting the request. Eight copies of the motion must be filed for Supreme Court cases and fourteen copies of the motion must be filed for Court of Appeals cases. Counsel who delay the filing of such a motion until it is too late for the brief to be filed if the motion is denied, do so at their own risk.

Reporter's Explanation. *Subdivision (c) has been expanded with clarifying instructions for appellants who are also cross-appellees. This is the usual situation. The revised rule reflects current practice about combining the reply brief in the main appeal with the cross-appellee's brief in the cross appeal. The revised rule makes one important change in current practice: it makes the due date for the reply brief and the cross-appellee's brief the same date by extending the usual fifteen-day period for a reply brief to thirty days. This change will*

eliminate the need for an extension motion to make the two dates the same. It should also encourage the filing of combined reply/cross-appellee briefs, which are more efficient for the parties and the court.

Subdivision (f)(1) has been amended to reflect current practice. The Clerk has long required a letter confirming a seven-day Clerk's extension of any brief's due date. It is particularly important that parties send that letter, with a copy to all other parties, promptly.

Rule 6-1. ~~Petitions for extraordinary relief and expedited considerations.~~ *Extraordinary writs, expedited consideration, and temporary relief.*

(a) ~~Pleadings — Number of copies. In cases in which the jurisdiction of the Court is in fact appellate although in form original, such as petitions for writs of prohibition, certiorari, or mandamus, the pleadings with certified exhibits from the circuit court (if applicable) are treated as the record.~~ Extraordinary writs. *(1) Proceedings for an extraordinary writ such as prohibition, mandamus, and certiorari are commenced by filing an original petition in the Supreme Court. These writs are not available if appeal is an adequate remedy. A party seeking appellate review of a circuit court's decision on a request for an extraordinary writ must file a notice of appeal in the circuit court, not a petition for the writ in the appellate court. When a party petitions the appellate court for an extraordinary writ, the pleadings with certified exhibits from the circuit court, if applicable, are treated as the record.*

(2) If the petition falls within subsection (b) or (c) of this Rule, the ~~pleader~~ *petitioner* is required to file the original and seven copies of the ~~pleading~~ *petition* along with the record with the Clerk. Evidence of service of a copy upon the adverse party or his or her counsel of record in the circuit court is required. If the proceeding falls within subsection (e) of this Rule, the ~~pleader~~ *petitioner* is required to file only the original ~~pleading~~ *petition* along with the certified record.

(3) When the petition includes a certified copy of the record in the circuit court, ~~it is not necessary that a copy of such exhibit be served upon~~ *the petitioner shall serve a copy of that record on* the adverse party or his or her counsel. In prohibition cases, *the petitioner shall also serve a copy of the record on* ~~a copy of the pleadings will also be served upon~~ the circuit judge, who is ordinarily a nominal party and is not required to file a response.

. . . .

Reporter's Explanation. *The rule has been retitled to better capture what all its provisions cover. Subdivision (a) has been partially rewritten, and divided into three subject-based subsections, to reduce confusion. In particular, the rule as revised makes plain that a party seeking appellate review of a circuit court's decision to grant or deny one of the extraordinary writs (e.g., mandamus) must file a timely notice of appeal with the circuit court. Petitions asking the appellate court for a writ in the first instance are a different matter. In those instances, which call on the appellate court's original jurisdiction, no notice of appeal is required. The only substantive change is the petitioner's new obligation in (a)(3) to serve a copy of the record on adverse parties. Accelerated briefing often occurs in writ cases. This new requirement will assist the bar in doing their work on an expedited basis.*

E. ARKANSAS RULES OF APPELLATE PROCEDURE—CIVIL

Rule 2. Appealable matters; priority.

. . . .

(c) Except as provided in Rule 6-9 of the Rules of the Supreme Court and Court of Appeals, appeals in juvenile cases shall be made in the same time and manner provided for appeals from circuit 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 circuit court retains jurisdiction to conduct ~~review~~ *further* 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.

. . . .

Reporter's Explanation. *Replacing the limiting word "review" with the broader word "further" in subsection (c)(2) conforms the rule to Ark. Code Ann. § 9-27-343(c) and the holding in* Harwell-Williams v. Ark. Dep't. of Human Servs., *368 Ark. 183, 243 S.W.3d 898 (2006). Under the statute as construed by* Harwell-Williams, *the circuit court retains jurisdiction to conduct various kinds of hearings, not just review hearings, during an appeal involving a juvenile out-of-home placement.*

IN RE: AMENDMENT TO RULES of THE SUPREME COURT and COURT of APPEALS, RULE 4-7(d)

Supreme Court of Arkansas
Opinion delivered May 15, 2008

PER CURIAM. We amend Rule 4-7 (d) of the Rules of the Supreme Court and Court of Appeals to reduce the number of briefs which must be filed from seventeen to eight. This amendment is effective immediately, and we republish the rule as set out below.

Rule 4-7. Briefs in Postconviction and Civil Appeals Where Appellant is Incarcerated and Proceeding Pro Se.

. . . .

(d) *Number of briefs and time for filing.*

(1) *Briefs in chief.* The appellant shall have 40 days from the date the transcript is lodged to file 8 copies of the brief with the Clerk.

(2) *Appellee's brief.* The appellee shall have 30 days from the filing of the appellant's brief to file 8 copies of the brief with the Clerk and serve a copy on the appellant.

(3) *Reply brief.* The appellant shall have 15 days from the date that the appellee's brief is filed to file 8 copies of the reply brief.

(4) *Continuances and extensions of time.* The Clerk or a deputy clerk may extend the due date of any brief by seven (7) calendar days upon oral or letter request. If such an extension is granted, no further extension shall be granted except by the Court upon a written motion showing good cause.

IN RE: RULES GOVERNING ADMISSION TO THE BAR of ARKANSAS

Supreme Court of Arkansas
Opinion delivered May 29, 2008

PER CURIAM. By per curiam order issued February 26, 2004, we adopted Rule XVI of the Rules Governing Admission to the Bar of Arkansas (Rules) reinstating Admission on Motion (AOM). In the intervening years, hundreds of applications have been filed and seen through to completion. However, the Board of Law Examiners (Board) has advised that, rarely, an applicant does not complete the admission process in a timely fashion or does not provide the Board with requested information in a timely fashion. For administrative reasons, the Board wishes to secure authority to bring such unresolved applications to a conclusion. The Board cites this court to Regulation 2 of the Rules, which relates to applicants who seek admission by examination. Such applicants must complete the

admission process within one year, or their passing score becomes invalid, and they will be required to take the examination again.

Therefore, the Board has unanimously requested that Rule XVI be amended to provide the Board with the authority to bring unfinished applications for Admission on Motion to a conclusion. We agree with the Board's request and republish Rule XVI as it appears on the attachment to this order. The requested changes appear in paragraphs 5 and 6. Following the new Rule XVI is a "marked up" version of the previous rule with new language appearing in *italics*.

Rule XVI. Admission on Motion

1. An applicant who meets the requirements of (a) through (i) of this rule may, upon motion, be admitted to the practice of law in this jurisdiction.

   The applicant shall:

   (a) have been admitted to practice law in another state, territory, or the District of Columbia;

   (b) hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the American Bar Association at the time the degree was conferred;

   (c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;

   (d) establish that the state, territory, or the District of Columbia in which the applicant has or had his or her principal place of business for the practice of law, for the two year period immediately preceding application under this rule, would allow attorneys from this State a similar accommodation as set forth in this rule; however, applicants who have been on continuous active military duty for five of the seven years mentioned in (c) above may, in the discretion of the Board, be excused from the two year requirement of this rule;

   (e) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(f) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(g) establish that the applicant possesses the character and fitness to practice law as set out in Rule XIII of these rules;

(h) designate the Clerk of this Court for service of process; and,

(i) pay a fee as may be set by this Court.

2. For the purposes of this rule, the 'active practice of law' shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed within Arkansas in advance of bar admission here, be accepted toward the durational requirement:

(a) representation of one or more clients in the practice of law;

(b) service as a lawyer with a local, state, territorial or federal agency, including military service;

(c) teaching law at a law school approved by the American Bar Association;

(d) service as a judge in a federal, state, territorial or local court of record;

(e) service as a judicial law clerk; or,

(f) service as corporate counsel.

3. For the purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

4. An applicant who has failed a bar examination administered in Arkansas within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

5. Proceedings under this rule shall be governed by the relevant provisions of Rule XIII of these rules. Further, the applicant must

complete the Petition and Oath and file same with the Clerk of the Supreme Court along with all required fees for licensure within one year of the date of certification of eligibility for admission. Failure to do so will extinguish the application and forfeit the fee and the applicant will be required to file a new application and pay another fee if the applicant wishes to proceed to secure admission.

6. Upon request of the Executive Secretary, where an application has been pending for more than one year, the Board may cancel the pending application, after appropriate notice to the applicant, and forfeit the fee and require the applicant to submit a new application and pay another fee in order to proceed.

Rule XVI. Admission on Motion

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   The applicant shall:

   (a) have been admitted to practice law in another state, territory, or the District of Columbia;

   (b) hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the American Bar Association at the time the degree was conferred;

   (c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;

   (d) establish that the state, territory, or the District of Columbia in which the applicant has or had his or her principal place of business for the practice of law, for the two year period immediately preceding application under this rule, would allow attorneys from this State a similar accommodation as set forth in this rule; however, applicants who have been on continuous active military duty for five of the seven years mentioned in (c) above may, in the discretion of the Board, be excused from the two year requirement of this rule;

(e) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(f) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(g) establish that the applicant possesses the character and fitness to practice law as set out in Rule XIII of these rules;

(h) designate the Clerk of this Court for service of process; and,

(i) pay a fee as may be set by this Court.

2. For the purposes of this rule, the 'active practice of law' shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed within Arkansas in advance of bar admission here, be accepted toward the durational requirement:

(a) representation of one or more clients in the practice of law;

(b) service as a lawyer with a local, state, territorial or federal agency, including military service;

(c) teaching law at a law school approved by the American Bar Association;

(d) service as a judge in a federal, state, territorial or local court of record;

(e) service as a judicial law clerk; or,

(f) service as corporate counsel.

3. For the purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

4. An applicant who has failed a bar examination administered in Arkansas within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

5. Proceedings under this rule shall be governed by the relevant provisions of Rule XIII of these rules. *Further, the applicant must complete the Petition and Oath and file same with the Clerk of the Supreme Court along with required fees within one year of the date of certification of eligibility for admission. Failure to do so will extinguish the application and forfeit the fee and the applicant will be required to file a new application and pay another fee if the applicant wishes to proceed to secure admission.*

6. *Upon request of the Executive Secretary, where an application has been pending for more than one year, the Board may cancel the pending application, after appropriate notice to the applicant, and forfeit the fee and require the applicant to submit a new application and pay another fee in order to proceed.*

IN RE RULES of CIVIL PROCEDURE 5, 11, and 58; PROPOSED ADMINISTRATIVE ORDER 19.1; RULE of APPELLATE PROCEDURE–CIVIL 11; RULES of the SUPREME COURT and COURT of APPEALS 1-2, 2-1, 2-3, 3-4, and 4-1

Supreme Court of Arkansas
Opinion delivered June 5, 2008

PER CURIAM. In February 2007, we adopted Administrative Order 19, which governs access to court records. In our per curiam we asked our Committee on Civil Practice to study this comprehensive new Administrative Order and recommend any needed changes in our court rules for civil cases. The Committee has completed its work and made a special report. We have reviewed the Committee's work, and we now publish for comment from the bench and bar the suggested amendments and a proposed new Administrative Order about administrative records created by courts.

The proposed changes are comprehensive: they reach three Rules of Civil Procedure and six rules about appellate practice. The Notes explain the changes, and the proposed changes are set out in "line-in, line-out" fashion (new material is italicized; deleted material is lined through).

We express our gratitude to the Chair of the Committee, Judge Henry Wilkinson, its Reporter, Judge D.P. Marshall Jr., and all the Committee members for their faithful and helpful work with respect to the Rules.

Comments on these suggested rule changes should be made in writing before July 30, 2008 to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Civil Procedure Rules–Redaction, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201. Administrative Order 19's redaction requirements will become effective in January 2009. We will therefore act promptly after receiving comments so that the bench and bar will be ready to comply with the redaction requirements at the start of the new year.

• RULES OF CIVIL PROCEDURE

Rule 5. Service and Filing of Pleadings and Other Papers.

. . .

(c) Filing.

(1) All papers after the complaint required to be served upon a party or his attorney shall be filed with the clerk of the court either before service or within a reasonable time thereafter. The clerk shall note the date and time of filing thereon. However, proposed findings of fact, proposed conclusions of law, trial briefs, proposed jury instructions, and responses thereto may but need not be filed unless ordered by the court. Depositions, interrogatories, requests for production or inspection, and answers and responses thereto shall not be filed unless ordered by the court. When such discovery documents are relevant to a motion, they or the relevant portions thereof shall be submitted with the motion and attached as an exhibit unless such documents have already been filed. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in the proper form. In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement for any

pleading, paper, order, judgment, decree, or notice of appeal shall be satisfied when the document is filed with either the circuit clerk or the county clerk.

(2) Confidential information as defined and described in Sections III(A)(11) and VII(A) of Administrative Order 19 shall not be included as part of a case record unless the confidential information is necessary and relevant to the case. Section III(A)(2) of the Administrative Order defines a case record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding. If including confidential information in a case record is necessary and relevant to the case:

(A) The confidential information shall be redacted from the case record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the case record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting the following in brackets: [Information Redacted] or [I.R.]. The requirement that the redaction be indicated in case records shall not apply to court records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and

(B) An un-redacted copy of the case record with the confidential information included shall be filed with the court under seal. The un-redacted copy of the case record shall be retained by the court as part of the court record of the case. It is the responsibility of the attorney for a party represented by counsel and the responsibility of a party unrepresented by counsel to ensure that confidential information is omitted or redacted from all case records that they submit to a court. It is the responsibility of the court, court agency, or clerk of court to ensure that confidential information is omitted or redacted from all case records, including orders, judgments, and decrees, that they create.

~~(2)~~*(3)* 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.

Addition to Reporter's Notes 2008 Amendment: *Subdivision (c) of the rule has been amended to incorporate Administrative Order 19's requirements, which grant the public broad access to case records while*

safeguarding confidential information in those records. (The Administrative Order is appended to the Rules of Civil Procedure.) Amended Rule 5(c) obligates lawyers, and pro se litigants, to identify and shield confidential information that is necessary and relevant to the case by redacting that information in all publicly available documents they file with the court. The rule places primary responsibility for protecting information that the law has adjudged confidential on those individuals best situated to recognize and protect that information—lawyers and pro se parties. They know the facts of their cases better than court staff or courts; they create almost all the documents coming into the court's record; and they have the greatest incentive to minimize and protect confidential information in case records.

Under subdivision 2(B), courts, court agencies, and clerks are responsible for omitting or redacting confidential information from case records—including orders, judgments, and decrees—that they create. A parallel change reflecting this obligation in judgments and decrees has been made in Rule of Civil Procedure 58.

Administrative Order 19 defines categories of confidential information and the Commentary to the Order explains the legal basis for the confidentiality. Section VII of the Order lists the following categories of confidential information in case records that are excluded from public access absent a court order allowing disclosure:

(1) information excluded from public access pursuant to federal law;

(2) information excluded from public access pursuant to the Arkansas Code Annotated;

(3) information excluded from public access by order (including protective order) or rule of court;

(4) Social Security numbers;

(5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);

(6) information about cases expunged or sealed pursuant to Ark. Code Ann. § 16-90-901, et seq.;

(7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies; and

(8) litigant addresses and phone numbers.

The Commentary to Section VII of Administrative Order 19 discusses confidential information protected from public disclosure under federal and Arkansas law. The Commentary includes a non-exhaustive list

of Arkansas Code Annotated sections regarding confidentiality of records whose confidentiality may extend to the records even if they become court records. See also the Arkansas Personal Information Protection Act, Ark. Code Ann. § 4-110-101, et seq.

New subsection (c)(2) embodies Order 19's important threshold requirement: only confidential information that is "necessary and relevant to the case" should be in a case record. Litigants are likewise best able to make this evaluation. And because they must redact any such information in a case record, litigants will have an incentive to reduce redactions by screening out unnecessary and irrelevant confidential information when creating documents for filing.

The amended rule provides two methods of redaction: blacking out the protected information or inserting a bracketed reference to the fact of redaction. Both achieve Administrative Order 19's balance between public access and confidentiality.

Because a litigant will have deemed redacted information necessary and relevant, the court will need access to that information in handling and deciding the case. To allow this access, subdivision 2(B) obligates litigants to file unredacted copies of all their court papers under seal.

Former subsection (c)(2) has been renumbered, and is now (c)(3).

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

(a) Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, ~~and~~ that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation~~.~~*, and that it complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information from case records submitted to the court.*

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Addition to Reporter's Notes, 2008 Amendment: *Subdivision (a) has been amended by adding a new element to the certifications made by a pro se party or an attorney when that person signs a pleading, motion, or other paper. The attorney or party is now also certifying compliance with Administrative Order 19's mandate for redaction of necessary and relevant confidential information in the case record being filed. The incorporation of Administrative Order 19's mandate here gives the circuit court a ready method for enforcing this mandate.*

Rule 58. Entry of Judgment or Decree

Subject to the provisions of Rule 54(b), upon a general or special verdict, or upon a decision by the court granting or denying the relief sought, the court may direct the prevailing party to promptly prepare and submit, for approval by the court and opposing counsel, a form of judgment or decree which shall then be entered as the judgment or decree of the court. The court may enter its own form of judgment or decree or may enter the form prepared by the prevailing party without the consent of opposing counsel. *A judgment or decree shall omit or redact confidential information as provided in Rule 5(c)(2).*

Every judgment or decree shall be set forth on a separate document. A judgment or decree is effective only when so set forth and entered as provided in Administrative Order No. 2. Entry of judgment or decree shall not be delayed for the taxing of costs.

Reporter's Note, 2008 Amendment: The rule has been amended to reflect Administrative Order 19's requirement that any necessary and relevant confidential information in a case record—a category which includes judgments and decrees—must be redacted. See Addition to Reporter's Notes, 2008 Amendment to Rule of Civil Procedure 5.

• ADMINISTRATIVE ORDERS

ADMINISTRATIVE ORDER NUMBER 19.1 — REDACTION IN ADMINISTRATIVE RECORDS

Confidential information as defined and described in Sections III(A)(11) and VII(B) of Administrative Order 19 shall not be included as part of an administrative record unless the confidential information is necessary to the administration of the judicial branch of government. Section III(A)(3) of the Order defines an administrative record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government. If inclusion of confidential information in an administrative record is necessary to the administration of the judicial branch of government:

(A) The confidential information shall be redacted from the administrative record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the administrative record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting the following in brackets: [Information Redacted] or [I.R.]. The requirement that the redaction be indicated in an administrative record shall not apply to administrative records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and

(B) An un-redacted copy of the administrative record with the confidential information included shall be filed with the court under seal. It is the responsibility of a court, court agency, or clerk of court creating an administrative record to ensure that confidential information is omitted or redacted from administrative records. As noted in Section XI of Administrative Order 19, a court may use its inherent contempt powers to enforce this rule.

Reporter's Explanatory Note: This new Order implements Administrative Order 19's redaction requirements for court "Administrative Records"—documents, information, data, or any other item created, collected, received, or maintained by any court, court agency, or clerk related to judicial administration. This Order is needed because courts, court agencies, and clerks are responsible for generating these materials, and therefore must complete all needed redactions themselves.

• RULES OF APPELLATE PROCEDURE—CIVIL

Rule 11. Certification by Parties and Attorneys; Frivolous Appeals; Sanctions.

(a) The filing of a brief, motion or other paper in the Supreme Court or the Court of Appeals constitutes a certification of the party or attorney that, to the best of his knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact; is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; ~~and~~ is not filed for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation~~.~~*; and that the document complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information.* A party or an attorney who files a paper in violation of this rule, or party on whose behalf the paper is filed, is subject to a sanction in accordance with this rule.

. . .

Addition to Reporter's Notes, 2008 Amendment: *Subdivision (a) has been amended by adding a new element to the certifications made by a party or an attorney when that person signs a brief, motion, or other paper, including a petition for rehearing or review. The change parallels the 2008 amendment to Rule of Civil Procedure 11. When counsel or a pro se litigant signs a brief, motion, petition, or other paper filed with the appellate court, the person is also certifying compliance with Administrative Order 19's mandate for redaction of necessary and relevant confidential information in the paper being filed. The redaction/filing-under-seal procedure for confidential information is outlined in Rule of Civil Procedure 5(c)(2)(A) & (B) and explained in the Addition to Reporter's Notes, 2008 Amendment to that Rule.*

• RULES OF THE SUPREME COURT AND COURT OF APPEALS

Rule 1-2. Appellate jurisdiction of the Supreme Court and court of appeals.

The Informational Statement is described in subdivision (c) of this Rule and appended to the Rule.

INFORMATIONAL STATEMENT

. . .

VI. CONFIDENTIAL INFORMATION

(1) Does this appeal involve confidential information as defined by Sections III(A)(11) and VII(A) of Administrative Order 19?

___ *Yes* ___ *No*

(2) If the answer is "yes," then does this brief comply with Rule 4-1(d)?

___ *Yes* ___ *No*

Reporter's Explanatory Note: This amendment creates a new section for the Informational Statement mandated by Rule 1-2(c) and Rule 4-2(a)(2). The new section requires parties to evaluate and state whether the appeal involves confidential information as defined by Administrative Order 19. If it does, then the party filing the brief must confirm compliance with Rule 4-1(d)'s requirements for handling that confidential information: eliminate it from all parts of the brief if possible; and if not, redact it in the publicly available copy of the brief and file a duplicate brief without any redactions under seal. This new section will alert parties to the special requirements for handling confidential information in appellate briefs and will alert the appellate court to the presence of confidential information in the case.

Rule 2-1. Motions, general rules.

. . .

(f) Compliance with Administrative Order 19 required. Every motion, response, similar paper, memorandum of authorities, and any document attached to any of those papers, must comply with the redaction requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Reporter's Explanatory Note: Subdivision (f) is new. It reflects that Administrative Order 19's protections for necessary and relevant confidential information apply to all filings on appeal,

including motions and related papers. Unrepresented parties and counsel must follow the redaction/filing-under-seal procedure outlined in Rule of Civil Procedure (5)(c)(2)(A) & (B) for all "case records." That term is defined by Administrative Order 19 Section III (A)(2), and it includes all motions, responses, memoranda of authorities, and any similar paper filed on appeal. The term also includes any materials attached to these papers. See Addition to Reporter's Notes, 2008 Amendment to Rule of Civil Procedure 5.

Rule 2-3. Petitions for rehearing.

. . .

(l) *Compliance with Administrative Order 19 required. Every petition for rehearing, brief in support, and brief in response must comply with the redaction requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.*

Reporter's Explanatory Note: Subdivision (l) is new. It reflects that Administrative Order 19's protections for necessary and relevant confidential information apply to all filings on appeal, including petitions for rehearing and related papers. Unrepresented parties and counsel must follow the redaction/filing-under-seal procedure outlined in Rule of Civil Procedure (5)(c)(2)(A) & (B) for all "case records." That term is defined by Administrative Order 19 Section III (A)(2), and it includes petitions for rehearing and related papers. See Addition to Reporter's Notes, 2008 Amendment to Rule of Civil Procedure 5.

Rule 2-4. Petitions for review.

. . .

(g) Compliance with Administrative Order 19 required. Every petition for review, response, and supplemental brief of any kind on review must comply with the redaction requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

Reporter's Explanatory Note: Subdivision (g) is new. It reflects that Administrative Order 19's protections for necessary and relevant confidential information apply to all filings on appeal, including petitions for review and all related papers. Unrepresented parties and counsel must follow the redaction/filing-under-seal procedure outlined in Rule of Civil Procedure (5)(c)(2)(A) & (B) for all "case records." That term is defined by Administrative Order 19 Section III (A)(2), and it includes petitions for review, responses to these petitions, and all related briefs filed on appeal. See Addition to Reporter's Notes, 2008 Amendment to Rule of Civil Procedure 5.

Rule 4-1. Style of briefs.

. . .

(d) Compliance with Administrative Order 19 required. All parts of all briefs, including the abstract and any document attached to any brief in the addendum, must comply with the redaction requirements for confidential information established by Administrative Order 19. Counsel and unrepresented parties shall follow the filing procedure established by Rule of Civil Procedure 5(c)(2)(A) & (B). That procedure includes: (1) eliminating all unnecessary or irrelevant confidential information; (2) redacting all necessary and relevant confidential information; and (3) filing an unredacted version under seal.

~~(d)~~*(e) Non-compliance.* Briefs not in compliance with this Rule shall not be accepted by the Clerk.

Reporter's Explanatory Note: Former subdivision (d) has been redesignated as (e). New subdivision (d) addresses confidential information in appellate briefs. It reflects that Administrative Order 19's protections for necessary and relevant confidential information apply to all filings on appeal, including briefs and the record material in both the abstract and the addendum to briefs. Unrepresented parties and counsel must follow the redaction/filing-under-seal procedure outlined in Rule of Civil Procedure (5)(c)(2)(A) & (B) for all "case records." That term is defined by Administrative Order 19 Section III (A)(2), and it includes appellate briefs. The term includes the abstract of hearings and trial. The term also includes any materials attached to briefs. Therefore, confidential information in any document in the addendum must be redacted too. See Addition to Reporter's Notes, 2008 Amendment to Rule of Civil Procedure 5.

Appointments to Committees

IN RE: SUPREME COURT COMMITTEE ON CRIMINAL PRACTICE

Supreme Court of Arkansas
Opinion delivered March 13, 2008

PER CURIAM. Judge Sam Pope of Hamburg, Circuit Judge, Tenth Judicial Circuit; David Gibbons of Russellville, Prosecuting Attorney of the Fifth Judicial Circuit; and Judge Olly Neal of Marianna, Arkansas Court of Appeals, retired, are hereby appointed to our Committee on Criminal Practice for three-year terms to expire on January 31, 2011. We thank these new members for accepting appointment to this important committee.

We designate Judge David Clinger of Bentonville, a current member of the committee, to serve as the new chair.

The court expresses its gratitude to Judge Charles Yeargan, Thomas Deen, and Colette Honorable, whose terms have expired, for their years of service to the committee.

IN RE: SUPREME COURT COMMITTEE on AUTOMATION

Supreme Court of Arkansas
Opinion delivered April 3, 2008

PER CURIAM. Judge Vann Smith, 6th Judicial Circuit, of Little Rock, Judge Sherry Burnett of 7th Judicial Circuit, of Malvern, and Mr. David A. Danielson of Fayetteville, are appointed to the Supreme Court Committee on Automation for four-year terms

to expire on October 31, 2011. The court thanks these new members for accepting appointment to this important committee.

The court expresses its appreciation to Judge Chris Williams of Malvern, Robert Thompson of Paragould, and Judge Robert Abney of Des Arc, whose terms have expired, for their service to the committee.

IN RE: SUPREME COURT COMMITTEE on MODEL JURY INSTRUCTIONS–CRIMINAL

Supreme Court of Arkansas
Opinion delivered April 10, 2008

PER CURIAM. Hon. Charles Yeargan of Murfreesboro, Circuit Judge, Ninth Judicial Circuit – West, Hon. Thomas Deen of Monticello, Prosecuting Attorney, Tenth Judicial Circuit, and Greg Parrish, Esq., of Camden are hereby appointed to our Committee on Model Jury Instructions – Criminal for three-year terms to expire on February 28, 2011. We thank them for their willingness to serve on this important committee.

Hon. Kirk Johnson, Circuit Judge of the Eighth Judicial Circuit – South, Hon. Philip Smith, Circuit Judge of the Third Judicial Circuit, Hon. Brent Davis, Prosecuting Attorney of the Second Judicial Circuit, and Hon. John Threet, Prosecuting Attorney of the Fourth Judicial Circuit, are reappointed to our Committee on Model Jury Instructions – Criminal for three-year terms to expire on February 28, 2011. We thank these members for their continued service.

We designate Judge Gordon Webb, a current member of the committee, as the chair of the committee and thank him for his willingness to assume this role.

The court expresses its gratitude to Judge John Langston, the outgoing chair of the committee, Larry Jegley, and United States

Magistrate James Marschewski, whose terms have expired, for their years of valuable service to the committee.

IN RE: APPOINTMENT to PROFESSIONAL PRACTICUM COMMITTEE

Supreme Court of Arkansas
Opinion delivered April 17, 2008

PER CURIAM. By per curiam order of July 1, 2004, this Court appointed five members to serve on the Professional Practicum Committee. In accord with the dictates of that Per Curiam Order, Murray Claycomb of Warren received an initial term of two years. That term concluded on July 1, 2006. Mr. Claycomb has graciously continued to serve consonant with the provision of the Professional Practicum Rule which provides "members shall continue to serve beyond their designated term until such time as their successor is qualified and appointed by the Court." Mr. Claycomb has expressed a willingness to continue his excellent service on the Committee.

The Court reappoints Mr. Claycomb as the representative from the Fourth Congressional District for an additional term to conclude on July 1, 2012. This period of time represents an additional six-year term, as provided in our per curiam order of July 1, 2004, with a beginning date effective retroactively to July 1, 2006.

The Court expresses deep gratitude for the willingness of Mr. Claycomb to continue his participation in the important activities of this Committee.

IN RE REAPPOINTMENT to PROFESSIONAL PRACTICUM COMMITTEE

Supreme Court of Arkansas
Opinion delivered June 5, 2008

PER CURIAM. By per curiam order of July 1, 2004, Tom Daily of Fort Smith was appointed to serve on the Professional Practicum Committee. Mr. Daily received, by luck of the draw, an initial term of four years, which concludes on July 1, 2008. Mr. Daily has graciously agreed to continue his service on the Committee.

The Court reappoints Mr. Daily as the representative on the Committee from the Third Congressional District for an additional six-year term to conclude on July 1, 2014.

The Court is grateful for the willingness of Mr. Daily to continue participation on this Committee.

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ARKANSAS REPORTS

Volume 373

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
March 13, 2008 — June 5, 2008
INCLUSIVE[1]

AND

ARKANSAS APPELLATE REPORTS

Volume 102

CASES DETERMINED
IN THE

Court of Appeals of Arkansas

FROM
March 12, 2008 — June 4, 2008
INCLUSIVE[2]

PUBLISHED BY THE
STATE OF ARKANSAS
2009

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[1]Arkansas Supreme Court cases (ARKANSAS REPORTS) are in the front section, pages 1 through 611. Cite as 373 Ark. ___ (2008).

[2]Arkansas Court of Appeals cases (ARKANSAS APPELLATE REPORTS) are in the back section, pages 1 through 395. Cite as 102 Ark. App. ___ (2008).

[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 373

ARKANSAS
APPELLATE REPORTS
VOLUME 102

ARKANSAS REPORTS

Volume 373

CASES DETERMINED
IN THE

Supreme Court of Arkansas

FROM
March 13, 2008 — June 5, 2008
INCLUSIVE

SUSAN P. WILLIAMS
REPORTER OF DECISIONS

AMY D. JOHNSON
DEPUTY
REPORTER OF DECISIONS

JEFFREY D. BARTLETT
EDITORIAL ASSISTANT

PUBLISHED BY THE
STATE OF ARKANSAS
2009

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BY THIS VOLUME
(March 13, 2008 — June 5, 2008, inclusive)

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JIM HANNAH	Chief Justice
TOM GLAZE	Justice
DONALD L. CORBIN	Justice
ROBERT L. BROWN	Justice
ANNABELLE CLINTON IMBER	Justice
JIM GUNTER	Justice
PAUL E. DANIELSON	Justice

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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

Barnett *v.* State, CR08-154 (PER CURIAM), Pro Se Motion for Belated Appeal remanded March 20, 2008.

Blue *v.* State, CR07-1329 (PER CURIAM), appeal dismissed; Pro Se Motions for Extension of Time to File Appellant's Brief and for Access to Record moot March 13, 2008.

Brewer *v.* State, CR08-355 (PER CURIAM), Pro Se Motion for Belated Appeal dismissed April 24, 2008.

Bullock *v.* State, 08-368 (PER CURIAM), appeal dismissed; Pro Se Motion for Extension of Time to File Appellant's Brief moot May 15, 2008.

Case *v.* State, 08-244 (PER CURIAM), appeal dismissed; Pro Se Motion for Extension of Brief Time moot May 15, 2008.

Chandler *v.* State, CR07-1221 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted April 24, 2008.

Clark *v.* Phillips, CR08-425 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot May 8, 2008.

Croston *v.* State, CR08-246 (PER CURIAM), appeal dismissed; Pro Se Motion for Extension of Time to File Appellant's Brief moot May 8, 2008.

Daniels *v.* State, CACR07-592 & CACR07-647 (PER CURIAM), Pro Se Motions for Transcript denied May 1, 2008.

David *v.* State, CR08-97 (PER CURIAM), appeal dismissed; Pro Se Motions for Trial Transcript and Extension of Time to File Appellant's Brief moot April 3, 2008.

Davis *v.* State, CR97-401 (PER CURIAM), Pro Se Motion for Reconsideration of Denial of Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied April 10, 2008.

Douglas *v.* Gibson, CR08-454 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot May 29, 2008.

Early *v.* Norris, 08-465 (PER CURIAM), appeal dismissed; Pro Se Motion to File an Enlarged Brief and Motion for Duplication at Public Expense moot June 5, 2008.

Fisher *v.* Lay, 07-1204 (PER CURIAM), appeal dimissed; Pro Se Motion to Hold Appeal in Abeyance and for Extension of Time to File Reply Brief moot April 3, 2008.

Goodwin *v.* State, CR07-906 (PER CURIAM), Pro Se Motion for Photocopies at Public Expense denied June 5, 2008.

Harris *v.* State, CR07-1039 (PER CURIAM), affirmed March 13, 2008.

Henderson *v.* State, CR08-162 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted May 29, 2008.

Hendrix, Alfonzo *v.* State, CR07-269 (PER CURIAM), affirmed March 13, 2008 (GUNTER, J., not participating).

Hendrix, Alfonzo *v.* Wright, 08-309 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot April 24, 2008 (GUNTER, J., not participating).

Hendrix, Alfonzo *v.* State, CR07-269 (PER CURIAM), rehearing denied April 24, 2008 (GUNTER, J., not participating).

Hill *v.* State, CR96-270 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied, Pro Se Motion to Quash Response denied March 13, 2008.

Holsombach *v.* State, CR06-550 (PER CURIAM), Pro Se Petition to Proceed in the Trial Court with Rule 37.1 Petition dismissed April 3, 2008.

Holt *v.* Dennis, CR08-438 (PER CURIAM), Pro Se Petition for Writ of Mandamus, amended response requested May 8, 2008.

Hutcherson *v.* Norris, 08-337 (PER CURIAM), appeal dismissed; Pro Se Motion to File Belated Brief moot May 22, 2008.

Jarrett *v.* State, CR08-470 (PER CURIAM), Pro Se Motion to Lodge Appeal or for a Writ of Mandamus, for Appointment of Counsel, and for Extension of Brief Time treated as Motion for Rule on Clerk and denied in part and moot in part June 5, 2008.

Johnson, Narvell *v.* McDaniel, 08-404 (PER CURIAM), Pro Se Motion for Rule on Clerk treated as Motion for Belated Appeal and denied May 15, 2008.

Johnson, Robert Singleton Jr. *v.* State, CR08-329 (PER CURIAM), appeal dismissed; Pro Se Motion to Supplement the Record moot May 15, 2008.

Johnson, Terrance *v.* State, CR06-1304 (PER CURIAM), affirmed April 24, 2008.

Jones *v.* State, CR88-05 (PER CURIAM), Pro Se Motion for Reconsideration of Denial of Petition for Leave to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied; Motion to Depose Witness denied; Motion to Supplement Motion for Reconsideration granted April 3, 2008.

Kindall *v.* State, CR08-409 (PER CURIAM), Pro Se Motion for Rule on Clerk or for Belated Appeal or Petition for Writ of Certiorari dismissed May 15, 2008.

Koontz, Morris B. *v.* Norris, 08-75 (PER CURIAM), Pro Se Motion for Appointment of Counsel denied March 13, 2008.

Koontz, Morris B. *v.* Norris, 08-75 (PER CURIAM), affirmed June 5, 2008 (GUNTER, J., not participating).

Linell *v.* Norris, 08-142 (PER CURIAM), Pro Se Motions to Correct Record and for Duplication of Brief at Public Expense denied April 17, 2008.

Logwood *v.* Fogleman, CR08-190 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot March 13, 2008.

Long *v.* State, CR08-109 (PER CURIAM), Pro Se Motion for Belated Appeal remanded; Pro Se Motion to Proceed In Forma Pauperis granted March 20, 2008.

Loveless, Edward *v.* Agee, 08-144 (PER CURIAM), Pro Se Motion for Extension of Time granted in part and denied in part; Pro Se Motion for Appointment of Counsel denied May 1, 2008.

Loveless, Edward *v.* Agee, 08-144 (PER CURIAM), Pro Se Motion to Supplement the Record denied May 29, 2008.

Madden *v.* State, CR08-272 (PER CURIAM), Pro Se Motion for Belated Appeal denied April 10, 2008.

Marshall *v.* State, CR08-391 (PER CURIAM), Pro Se Motion for Belated Appeal denied May 1, 2008.

Matthews *v.* State, CR79-162 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied May 15, 2008.

McAdory *v.* State, CACR06-708 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied April 10, 2008.

McArty *v.* Norris, 08-77 (PER CURIAM), affirmed June 5, 2008.

McJames *v.* State, CR07-1267 (PER CURIAM), Pro Se Motion for Reconsideration denied March 20, 2008.

Miller, Haywood *v.* Proctor, 07-1335 (PER CURIAM), Pro Se Motion for Reconsideration of Denial of Motion for Leave to Proceed In Forma Pauperis denied April 24, 2008.

Miller, James Aaron *v.* State, CR08-499 (PER CURIAM), Motion to Withdraw as Counsel granted May 8, 2008.

Mitchell *v.* State, CR08-98 (PER CURIAM), appeal dismissed; Pro Se Motion for Extension of Time to File Appellant's Brief moot April 3, 2008.

Morgan *v.* State, CR07-967 (PER CURIAM), Pro Se Motion for Reconsideration of Dismissal of Appeal denied March 13, 2008.

Musgrove *v.* State, CR07-1251 (PER CURIAM), affirmed April 10, 2008.

Newton *v.* State, CR07-645 (PER CURIAM), affirmed April 17, 2008.

Oden, Kenneth Ray *v.* State, CR08-125 (PER CURIAM), appeal dismissed; Pro Se Motions for Extension of Time to File Brief, for Access to Record, and for Appointment to Counsel moot April 10, 2008.

Oden, Kenneth Ray *v.* State, CR08-125 (PER CURIAM), Pro Se Motion for Reconsideration of Dismissal of Appeal denied May 22, 2008.

Peterson *v.* Norris, 07-1331 (PER CURIAM), Pro Se Motion for Reconsideration of Denial of Motion for Belated Appeal denied April 10, 2008.

Pinder *v.* State, CR07-710 (PER CURIAM), affirmed May 22, 2008.

Plunkett *v.* State, CR08-180 (PER CURIAM), Pro Se Motion to Reverse Trial Court's Order for Belated Appeal treated as Motion for Rule on Clerk and denied March 20, 2008.

Polivka *v.* State, CR08-431 (PER CURIAM), Pro Se Motion for Duplication of Brief at Public Expense denied; Pro Se Motion for Extension of Brief Time granted in part and denied in part May 22, 2008.

Rahim *v.* Norris, 08-248 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted June 5, 2008.

Rogers *v.* State, CR08-225 (PER CURIAM), Pro Se Motion for Belated Appeal and to Proceed In Forma Pauperis granted May 22, 2008.

Roy, Dallas Gene *v.* State, CR08-249 (PER CURIAM), Pro Se Motion to Proceed In Forma Pauperis moot; Pro Se Motion for Appointment of Counsel denied April 3, 2008.

Roy, Dallas Gene *v.* State, CR08-249 (PER CURIAM), Pro Se Motion for Extension of Time to File Appellant's Brief granted in part and denied in part May 15, 2008.

Scott *v.* State, CR08-48 (PER CURIAM), Pro Se Motion for Reconsideration of Dismissal of Appeal denied May 8, 2008.

Shelton, Derick *v.* Jones, CR08-290 (PER CURIAM), Pro Se Petition for Writ of Mandamus denied April 17, 2008.

Shelton, Derick *v.* Wyatt, CR08-480 (PER CURIAM), Pro Se Petition for Writ of Mandamus moot May 8, 2008.

Sherman, Patrick L. *v.* Wyatt, CR08-333 (PER CURIAM), Pro Se Motion for Rule on Clerk to File Petition for Writ of Mandamus and Motion for Hearing denied April 24, 2008.

Sherman, Patrick L. *v.* Wyatt, CR08-333 (PER CURIAM), Pro Se Motion and Amended Motion for Reconsideration of Motion for Rule on Clerk to File Petition for Writ of Mandamus denied May 29, 2008.

Shoemate *v.* State, CR08-01 (PER CURIAM), Pro Se Motion to Supplement Record granted; appeal dismissed March 20, 2008.

Smith, Kiara *v.* Wyatt, 08-392 (PER CURIAM), Pro Se Petition for Writ of Mandamus and Amended Petition for Writ of Mandamus denied May 8, 2008.

Smith, Raechio *v.* Wyatt, 08-469 (PER CURIAM), Pro Se Petition for Writ of Mandamus, amended response requested May 22, 2008.

Stine, Charles *v.* State, CR07-1300 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted April 17, 2008.

Stine, Charles *v.* State, CR07-1300 (PER CURIAM), appellant's Pro Se Motion and Supplemental Motion for Reconsideration of Dismissal of Appeal denied May 22, 2008.

Taylor *v.* Norris, 08-344 (PER CURIAM), appeal dismissed; Pro Se Motion for Duplication of Brief at Public Expense moot May 29, 2008.

Thompson, Mark *v.* State, 08-252 (PER CURIAM), Pro Se Motion for Belated Appeal denied April 10, 2008.

Thompson, Robert Earl *v.* State, CR08-02 (PER CURIAM), appeal dismissed, Pro Se Motion for Extension of Brief Time and Motion to Amend Brief and for Duplication of Brief at Public Expense moot April 10, 2008.

Velcoff *v.* State, CR07-709 (PER CURIAM), Pro Se Motion for Appointment of Counsel denied May 8, 2008.

Vidal *v.* State, CR07-259 (PER CURIAM), Pro Se Motion for Reconsideration of Dismissal of Appeal denied April 17, 2008.

Viveros *v.* State, CR07-1229 (PER CURIAM), Pro Se Motion for Extension of Time to File Appellant's Brief granted, final extension May 1, 2008.

Washington *v.* State, CACR04-18 (PER CURIAM), Pro Se Petition to Reinvest Jurisdiction in the Trial Court to Consider a Petition for Writ of Error Coram Nobis denied May 8, 2008.

White *v.* State, CR08-204 (PER CURIAM), Pro Se Motions for Transcript denied May 1, 2008.

Williams, Robert III *v.* State, CR08-165 (PER CURIAM), Pro Se Motion for Belated Appeal denied March 20, 2008.

Williams, Rodney *v.* State, CR08-245 (PER CURIAM), Appellee's Motion to Dismiss Appeal granted May 29, 2008.

Professional Conduct Matters

IN RE: Lee David ANDERSON,
Arkansas Bar No. 95235

08-270

Supreme Court of Arkansas
Opinion delivered March 13, 2008

PER CURIAM. Upon the initiation of his petition and by recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Lee David Anderson, Pittsburgh, Pennsylvania, to practice law in the State of Arkansas. Mr. Anderson'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.

IN RE: Stark LIGON, as Executive Director of the Supreme Court Committee on Professional Conduct *v.* Horace Alvin WALKER

08-071

Supreme Court of Arkansas
Opinion delivered March 13, 2008

PER CURIAM. This is an original action for disbarment, filed January 15, 2008. Respondent Walker was personally served with Summons and the Petition for Disbarment on January 17, 2008. He has not filed an answer or other responsive pleading. On February 14, 2008, Petitioner filed a motion for default judgment, seeking an order disbarring Respondent. Respondent has not filed any response to that motion.

Respondent Horace A. Walker is ordered to appear before this Court at 9:00 a.m., on Thursday, April 3, 2008, to show cause, if any he can, why the motion for default judgment should not be granted and an order disbarring him should not be issued. The Arkansas State Police or any sheriff's department are respectfully requested to assist this Court by timely serving this order upon Mr. Walker.

IN RE: Roger Kyle IPSON,
Arkansas Bar No. 85199

08-377

Supreme Court of Arkansas
Opinion delivered April 10, 2008

PER CURIAM. Upon the initiation of his petition and by recommendation of the Supreme Court Committee on Professional Conduct, we hereby accept the sworn petition and voluntary surrender of law license of Roger Kyle Ipson, Tucson, Arizona, to practice law in the State of Arkansas. Mr. Ipson'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.

Stark LIGON, as Executive Director of the Supreme Court Committee on Professional Conduct *v.*
Oscar Amos STILLEY

08-73

Supreme Court of Arkansas
Opinion delivered April 14, 2008

PER CURIAM. Petitioner Stark Ligon, Executive Director of the Arkansas Supreme Court Committee on Professional Conduct, has filed a complaint for disbarment against Respondent Oscar Amos Stilley. A pro se answer to the Petition for Disbarment was filed April 3, 2008 and the issues appear to be joined by the pleadings.

Petitioner now moves for the appointment of a special judge to preside over the disbarment proceedings, pursuant to section 13(a) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. As provided in section 13(A), the special judge shall hear all evidence relevant to the alleged misconduct and then make findings of fact, conclusions of law, and recommendations of an appropriate sanction, and shall file them, along with a transcript and the record of the proceedings, with the Clerk of the Supreme Court.

We hereby appoint the Honorable John Lineberger as special judge to hear this matter and provide this court with his finding of fact, conclusions of law, and recommendation of an appropriate sanction. Upon receipt of those items, we will render a decision in this matter.

It is so ordered.

Stark LIGON, as Executive Director of the Supreme Court Committee on Professional Conduct *v.*
Horace Alvin WALKER

08-71

Supreme Court of Arkansas
Opinion delivered April 14, 2008

PER CURIAM. Petitioner Stark Ligon, Executive Director of the Arkansas Supreme Court Committee on Professional Conduct, has filed a complaint for disbarment against Respondent Horace A. Walker. Mr. Walker was personally served with a summons and the complaint, but he failed to file a timely answer. This court held a hearing on April 3, 2008, to permit Mr. Walker to show why the Committee's motion for default judgment should not be summarily granted.

Mr. Walker appeared at the hearing, and at the end of the parties' arguments, there appeared to be a question raised by Mr. Walker as to whether he was physically or mentally able to respond to the disbarment petition served on him.

Special Judge Jack Lessenberry is appointed in this proceeding to conduct a hearing to consider and decide the matter set out above and to take whatever actions that may be necessary to bring this proceeding to a conclusion as required under Section 13 of the Procedures Regulating Professional Conduct.

It is so ordered.

IN RE: Vance Benton ROLLINS,
Arkansas Bar No. 75108

08-448

Supreme Court of Arkansas
Opinion delivered April 24, 2008

PER CURIAM. Upon the initiation of his petition, by recommendation of the Supreme Court Committee on Professional Conduct, and in lieu of further disciplinary proceedings and disbarment, we hereby accept the sworn petition and voluntary surrender of law license of Vance Benton Rollins, Pine Bluff, Arkansas to practice law in the State of Arkansas. Mr. Rollins'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.

IN RE: Donny G. GILLASPIE,
Arkansas Bar No. 61010

08-490

Supreme Court of Arkansas
Opinion delivered May 1, 2008

PER CURIAM. Upon the initiation of his petition, by recommendation of the Supreme Court Committee on Professional Conduct and in lieu of disbarment proceedings, we hereby accept the sworn petition and surrender of law license of Donny G. Gillaspie, El Dorado, Arkansas, to practice law in the State of Arkan-

sas. Mr. Gillaspie'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.

Ceremonial Observances

IN RE: LESLIE W. STEEN, SUPREME COURT CLERK and COURT of APPEALS CLERK

Supreme Court of Arkansas
Opinion delivered March 13, 2008

PER CURIAM. On Friday, February 29, 2008, Leslie W. Steen's twenty-eight years of service to this court vested, and he became eligible for full retirement. Mr. Steen has served this court admirably since 1980 as a law clerk to a Supreme Court Justice, as Chief Deputy Clerk of the Court, and, since 1987, as Supreme Court Clerk and Court of Appeals Clerk.

Mr. Steen has overseen multiple changes as Clerk of the Courts. Since 1987, his staff has increased due to the expansion of the Court of Appeals. In 1987, communication technology and word processing were in their embryonic stages. Today, the court's docket is administered according to sophisticated software, opinions are circulated by e-mail to attorneys and the press, and a pilot program is underway for attorneys to file their briefs electronically.

Despite the era of automation and computers, Mr. Steen is known for his guidance and his hands-on assistance to the attorneys of this state, both in explaining the procedures of his office and in resolving problems that may arise. He is also a popular and informative speaker at bar meetings throughout the state.

We take this opportunity to express our gratitude to Mr. Steen and thank him for his faithful years of service to this court, to the Court of Appeals, and to this state. We look forward to his continued service as Clerk in the years to come.

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Volume 102

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IN THE

Court of Appeals of Arkansas

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AMY D. JOHNSON
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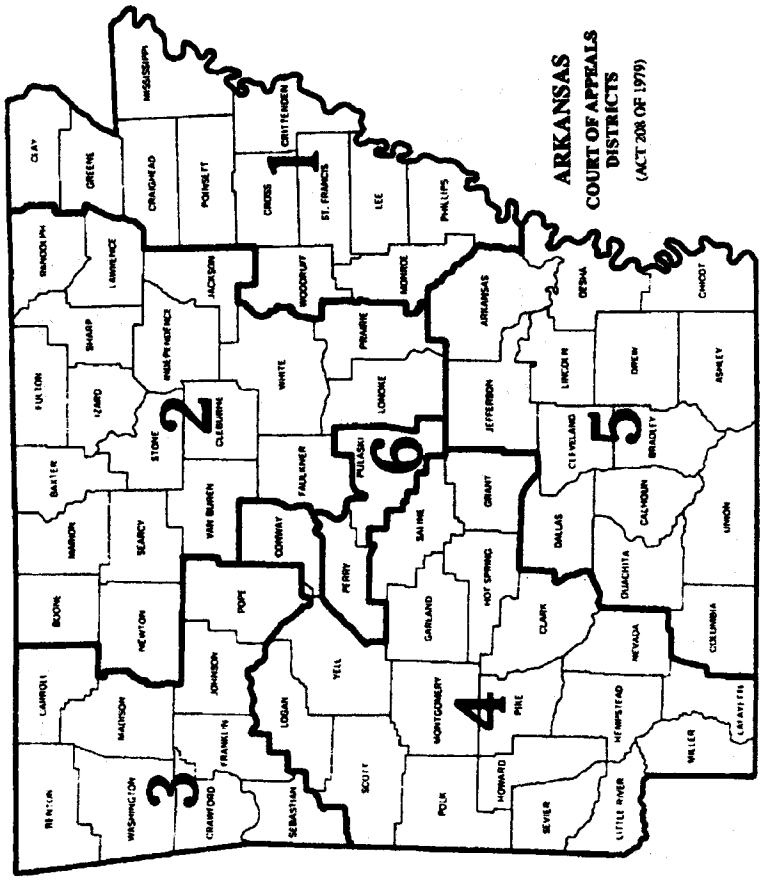
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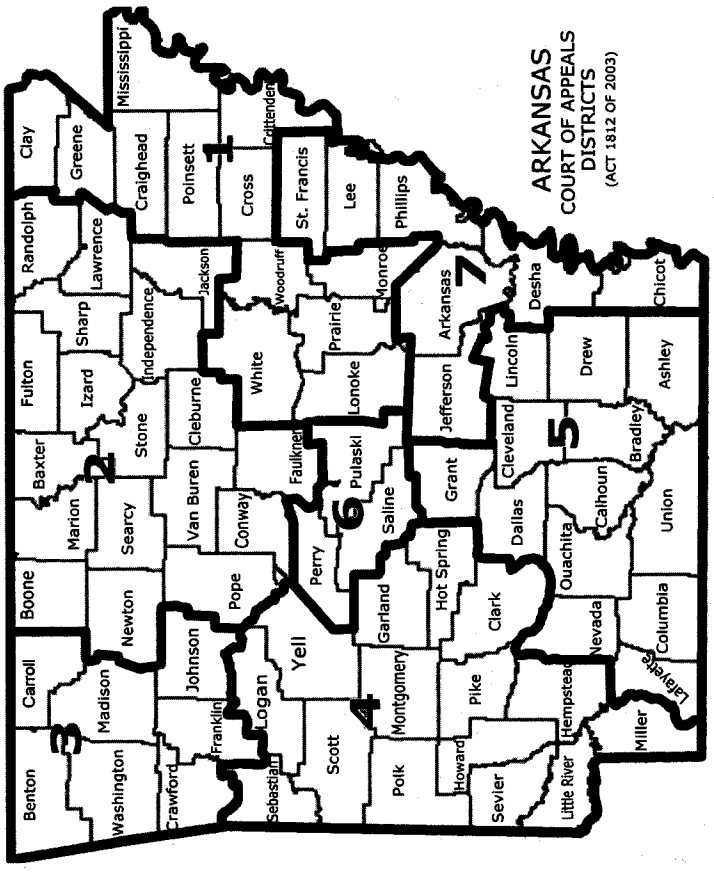
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JUDGES AND OFFICERS
OF THE
COURT OF APPEALS
OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME
(March 12, 2008 — June 4, 2008, inclusive)

JUDGES*

JOHN MAUZY PITTMAN	Chief Judge[1]
D.P. MARSHALL JR.	Judge[2]
JOSEPHINE LINKER HART	Judge[3]
KAREN R. BAKER	Judge[4]
ROBERT J. GLADWIN	Judge[5]
SARAH J. HEFFLEY	Judge[6]
JOHN B. ROBBINS	Judge[7]
DAVID M. GLOVER	Judge[8]
SAM BIRD	Judge[9]
WENDELL L. GRIFFEN	Judge[10]
LARRY D. VAUGHT	Judge[11]
BRIAN S. MILLER	Judge[12]

OFFICERS

DUSTIN McDANIEL	Attorney General
LESLIE W. STEEN	Clerk
AVA M. HICKS	Director, Library
SUSAN P. WILLIAMS	Reporter of Decisions
AMY D. JOHNSON	Deputy Reporter of Decisions

*REPORTER'S NOTE: Act 1812 of 2003 redistricted the state judicial districts for the Arkansas Court of Appeals. Each footnote shows the district and position from which each judge was or will be elected and the statute pursuant to which each was elected at the time the opinions in this volume were written.

[1] District 1, Position 1; Act 208 of 1979.
[2] District 1, Position 2; Act 1812 of 2003.
[3] District 2, Position 1; Act 208 of 1979.
[4] District 2, Position 2; Act 1812 of 2003.
[5] District 3, Position 1; Act 208 of 1979.
[6] District 3, Position 2; Act 1812 of 2003.
[7] District 4, Position 1; Act 1812 of 2003.
[8] District 4, Position 2; Act 1812 of 2003.
[9] District 5, Position 1; Act 1812 of 2003.

[10] District 6, Position 1; Act 208 of 1979.
[11] District 6, Position 2; Act 1812 of 2003.
[12] District 7; Act of 1812 of 2003.

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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

Adams *v.* State, CACR07-1243 (GRIFFEN, J.), affirmed May 7, 2008.

Aegis Sec. Ins. Co. *v.* Robertson, CA07-872 (PITTMAN, C.J.), affirmed March 12, 2008.

Almatis Holdings, Inc. *v.* AIG Claim Servs., CA07-1012 (HEFFLEY, J.), affirmed May 7, 2008.

Anderson *v.* State, CACR07-1297 (GLADWIN, J.), affirmed May 21, 2008.

Ashford *v.* Wallace, CA07-820 (HART, J.), affirmed April 2, 2008.

Ashworth *v.* Penney, CA07-1327 (HART, J.), affirmed June 4, 2008.

Avery *v.* State, CACR07-1158 (HART, J.), affirmed June 4, 2008.

Babb *v.* State, CACR07-279 (PER CURIAM), rehearing denied; substituted opinion delivered March 19, 2008.

Barber *v.* Blackford, CA07-1352 (GLADWIN, J.), affirmed May 7, 2008.

Beaver Water Dist. *v.* Garner, CA07-777 (GRIFFEN, J.), affirmed March 12, 2008.

Beggs *v.* Beggs, CA07-767 (HART, J.), affirmed April 9, 2008.

Belk *v.* Teague, CA07-1336 (HART, J.), affirmed June 4, 2008.

Black *v.* Arkansas Dep't of Health & Human Servs., CA08-207 (BIRD, J.), affirmed June 4, 2008.

Blake *v.* Urritica, Inc., CA07-863 (HEFFLEY, J.), affirmed March 19, 2008.

Bost Human Dev. Servs. *v.* Cumbie, CA07-1095 (HART, J.), affirmed April 16, 2008.

Brown *v.* State, CACR07-980 (MARSHALL, J.), affirmed April 9, 2008.

Bubba Props., LLC *v.* Bell, CA08-92 (HEFFLEY, J.), remanded to supplement the record; rebriefing ordered May 28, 2008.

Buercklin *v.* Landes, CA07-604 (GRIFFEN, J.), reversed and remanded May 21, 2008.

Bufkin *v* . State, CACR07-1110 (BIRD, J.), affirmed May 7, 2008.

Burks *v.* State, CACR07-1148 (VAUGHT, J.), affirmed May 14, 2008.

C & C Trucking & Equip., Inc. *v.* Nolen, CA07-1161 (GLADWIN, J.), affirmed May 28, 2008.

C. Bean Transp., Inc. *v.* Justice, CA07-1258 (MARSHALL, J.), affirmed June 4, 2008.

Central Moloney, Inc. *v.* Ringo, CA07-895 (MARSHALL, J.), affirmed March 12, 2008.

Chandler *v.* Chandler, CA07-923 (GRIFFEN, J.), affirmed May 28, 2008.
Clark *v.* Tobias, CA07-16 (BAKER, J.), affirmed March 12, 2008.
Clay *v.* Clay, CA07-578 (VAUGHT, J.), affirmed April 16, 2008.
Clifton *v.* Arkansas Dep't of Human Servs., CA07-1207 (HEFFLEY, J.), affirmed April 9, 2008.
Coghlan *v.* Smedley Enters., Inc., CA07-1349 (BAKER, J.), affirmed June 4, 2008.
Collins *v.* Arkansas Dep't of Health & Human Servs., CA08-157 (GLOVER, J.), affirmed May 28, 2008.
Combs *v.* Arkansas Dep't of Human Servs., CA07-1183 (GLADWIN, J.), affirmed April 30, 2008.
Croft *v.* State, CACR07-1135 (HEFFLEY, J.), affirmed May 21, 2008.
Cuellar *v.* State, CACR07-1055 (ROBBINS, J.), affirmed March 19, 2008.
Davitt *v.* State, CACR07-1213 (MARSHALL, J.), affirmed April 2, 2008.
Dayberry *v.* State, CACR07-1301 (GRIFFEN, J.), affirmed June 4, 2008.
Delpozo *v.* Arkansas Dep't of Human Servs., CA07-1289 (GLOVER, J.), affirmed March 19, 2008.
Dickey *v.* Superior Indus., CA07-1076 (BAKER, J.), affirmed April 2, 2008.
Diebold, Inc. *v.* Webber, CA08-38 (MARSHALL, J.), affirmed June 4, 2008.
Dooly *v.* Dooly, CA07-765 (BIRD, J.), affirmed April 2, 2008.
Dubois *v.* State, CACR07-944 (BAKER, J.), affirmed May 28, 2008.
Dumas *v.* Dumas, CA07-1050 (PER CURIAM), appeal dismissed April 9, 2008.
Eldridge *v.* State, CACR07-1233 (GLADWIN, J.), affirmed April 30, 2008.
England *v.* Alston, CA07-892 (HART, J.), affirmed March 12, 2008.
Ervin *v.* State, CACR07-962 (HART, J.), affirmed June 4, 2008.
Ester *v.* State, CACR07-866 (MARSHALL, J.), affirmed May 28, 2008.
Fiore *v.* State, CACR07-1108 (MARSHALL, J.), affirmed May 28, 2008.
Fiser *v.* Fiser, CA07-901 (GLADWIN, J.), reversed and dismissed April 23, 2008.
Flemons *v.* State, CACR07-1147 (GLOVER, J.), affirmed April 9, 2008.

Foster *v.* Arkansas Dep't of Health & Human Servs., CA08-50 (GRIFFEN, J.), affirmed May 28, 2008.

Fudge *v.* State, CACR07-879 (GRIFFEN, J.), affirmed April 23, 2008.

Gaither Appliance *v.* Stewart, CA07-878 (PITTMAN, C.J.), rebriefing ordered April 30, 2008.

Gehre *v.* Gehre, CA07-838 (MARSHALL, J.), affirmed April 16, 2008.

Georgia-Pacific Corp. *v.* Bradshaw, CA07-1092 (GLOVER, J.), affirmed May 14, 2008.

Gibson *v.* State, CACR07-1238 (PITTMAN, C.J.), affirmed May 28, 2008.

Gillis *v.* State, CACR07-971 (VAUGHT, J.), affirmed April 2, 2008.

Granados *v.* Arkansas Dep't of Human Servs., CA07-1271 (BIRD, J.), affirmed May 7, 2008.

Grassi *v.* Isabel, CA07-806 (GLOVER, J.), affirmed on direct appeal and cross-appeal April 9, 2008.

Gwinup *v.* Arkansas Dep't of Human Servs., CA08-49 (GLOVER, J.), affirmed June 4, 2008.

Hajjeh *v.* Hajjeh, CA07-1156 (HEFFLEY, J.), reversed and dismissed April 16, 2008.

Hamilton *v.* State, CACR07-857 (GRIFFEN, J.), affirmed May 7, 2008.

Hayes *v.* State, CACR07-1184 (BIRD, J.), affirmed June 4, 2008.

Henderson *v.* State, CACR07-844 (BIRD, J.), affirmed April 2, 2008.

Henry *v.* Citibank, N.A., CA07-1109 (HART, J.), affirmed April 23, 2008.

Hensley *v.* Estate of Reddell, CA07-1291 (GLOVER, J.), reversed and remanded June 4, 2008.

Hicks *v.* Death & Permanent Total Disability Fund, CA08-501 (PER CURIAM), Appellant's Motion for Stay Pending Appeal and to Approve Supersedeas Bond granted June 4, 2008.

Highlines Constr. Co. *v.* Teague, CA07-1260 (BIRD, J.), affirmed May 14, 2008.

Hogan *v.* State, CACR07-1070 (BIRD, J.), affirmed March 19, 2008.

Holland *v.* State, CA07-1142 (BAKER, J.), affirmed April 16, 2008.

Home Servs. of Camden, Inc. *v.* Stark, CA07-856 (GLOVER, J.), affirmed March 12, 2008.

Hudson *v.* Hudson, CA07-1000 (BIRD, J.), affirmed March 19, 2008.

Ingram *v.* White, CA07-1060 (BAKER, J.), reversed and remanded April 30, 2008.

Jackson, Amy *v.* Arkansas Dep't of Human Servs., CA08-35 (GRIFFEN, J.), affirmed June 4, 2008.

Jackson, Broderick E. *v.* State, CACR07-739 (BAKER, J.), affirmed June 4, 2008.

Jackson, Roger D. *v.* Harris, CA07-827 (GLOVER, J.), affirmed May 7, 2008.

Jacobs *v.* State, CACR07-721 (HART, J.), affirmed March 12, 2008.

Johnston *v.* Johnston, CA07-930 (GRIFFEN, J.), affirmed on direct appeal and cross-appeal May 7, 2008.

Jones, Chenequa *v.* Arkansas Dep't of Human Servs., CA08-11 (GLADWIN, J.), affirmed May 21, 2008.

Jones, Mary *v.* Citibank S.D., N.A., CA07-870 (BAKER, J.), reversed and remanded March 12, 2008.

Jordan *v.* Home Depot, Inc., CA07-1031 (HART, J.), reversed and remanded March 19, 2008.

Josenberger *v.* State, CACR07-1294 (GLADWIN, J.), affirmed May 14, 2008.

Keene *v.* Arkansas Dep't of Health & Public Employee Claims Div., CA07-861 (GLOVER, J.), reversed and remanded June 4, 2008.

Kelley *v.* State, CACR07-633 (BAKER, J.), rebriefing ordered March 19, 2008.

King *v.* State, CACR07-847 (PITTMAN, C.J.), affirmed June 4, 2008.

King *v.* State, CACR07-1242 (BAKER, J.), affirmed May 14, 2008.

Lamar *v.* State, CACR07-677 (GRIFFEN, J.), affirmed April 30, 2008.

Lance *v.* Scott, CA07-976 (ROBBINS, J.), affirmed March 19, 2008.

Lawson *v.* State, CACR07-1014 (GLADWIN, J.), affirmed June 4, 2008.

Legrand *v.* Arkansas Dep't of Health & Human Servs., CA08-295 (VAUGHT, J.), affirmed June 4, 2008.

Loar *v.* Arkansas Dep't of Human Servs., CA07-1211 (BAKER, J.), affirmed; Motion to Withdraw granted April 2, 2008.

Long *v.* State, CACR07-674 (HEFFLEY, J.), affirmed March 12, 2008.

Lyons *v.* State, CACR07-946 (PITTMAN, C.J.), affirmed May 28, 2008.

Marshall *v.* State, CACR07-1090 (GRIFFEN, J.), affirmed March 19, 2008.

Martinez *v.* Ozark Patterned Concrete, CA07-1033 (BAKER, J.), affirmed May 7, 2008.

Massey *v.* State, CACR07-1111 (GLOVER, J.), affirmed March 19, 2008.

Matlock *v.* State, CACR07-1094 (MARSHALL, J.), affirmed May 7, 2008.

Mayo *v.* Estate of Wofford, CA07-998 (GRIFFEN, J.), affirmed May 7, 2008.

McCullough, Alvin Travis *v.* State, CACR07-849 (GLADWIN, J.), affirmed April 9, 2008.

McCullough, Maria *v.* Arkansas Dep't of Human Servs., CA08-24 (ROBBINS, J.), affirmed; Motion to Withdraw granted May 14, 2008.

McDonald, Asa Joe *v.* McDonald, CA07-986 (VAUGHT, J.), affirmed April 16, 2008.

McDonald, Florine *v.* Brown, CA07-955 (ROBBINS, J.), reversed and remanded; Motion to Remand moot May 7, 2008.

McGinley *v.* Little Rock Sheet Metal, CA07-1196 (GRIFFEN, J.), affirmed June 4, 2008.

McMillan *v.* McMillan, CA07-1043 (VAUGHT, J.), affirmed April 23, 2008.

Melancon *v.* State, CACR07-1295 (GLADWIN, J.), affirmed May 28, 2008.

Moore *v.* State, CACR07-1083 (BIRD, J.), affirmed May 7, 2008.

Moran *v.* C&A/GFSP Joint Venture, CA07-1062 (BAKER, J.), affirmed May 21, 2008.

Morgan *v.* Garrison, CA07-577 (GLADWIN, J.), affirmed April 9, 2008.

Morris *v.* Baptist Health, CA07-1054 (PITTMAN, C.J.), affirmed April 30, 2008.

Mouzy *v.* Mouzy, CA07-549 (PITTMAN, C.J.), affirmed March 19, 2008.

National Home Ctrs. *v.* Sadler, CA07-1017 (GLOVER, J.), affirmed March 12, 2008.

Nazimuddin *v.* Self, CA07-1304 (VAUGHT, J.), rebriefing ordered June 4, 2008.

Norwood *v.* State, CACR07-978 (HEFFLEY, J.), affirmed April 16, 2008.

O'Guinn *v.* State, CACR07-1061 (ROBBINS, J.), affirmed April 23, 2008.

Owen *v.* Quarles, CA07-465 (MARSHALL, J.), affirmed in part; reversed in part and remanded May 28, 2008.

Ozark Capital Corp. *v.* Roberson, CA07-1165 (PITTMAN, C.J.), affirmed May 14, 2008.

Pathfinder, Inc. *v.* Williams, E07-156 (MARSHALL, J.), affirmed June 4, 2008.

Pearson *v.* State, CACR07-311 (HART, J.), affirmed April 9, 2008.

Peele *v.* State, CACR07-865 (GLADWIN, J.), affirmed March 19, 2008.

Perry *v.* State, CACR07-672 (HART, J.), affirmed April 2, 2008.

Pilgrim's Pride Corp. *v.* Perren, CA07-1248 (GRIFFEN, J.), affirmed June 4, 2008.

Polly *v.* State, CACR07-927 (MARSHALL, J.), affirmed April 2, 2008.

Powers, Patrick *v.* Powers, CA07-880 (PITTMAN, C.J.), affirmed May 14, 2008.

Powers, Patrick *v.* Powers, CA07-881 (PITTMAN, C.J.), affirmed May 14, 2008.

Powers, Patrick *v.* Adams, CA07-884 (VAUGHT, J.), affirmed May 14, 2008.

Powers, Patrick J. *v.* Williams, CA07-882 (BIRD, J.), affirmed May 14, 2008.

Pugh *v.* State, CACR07-828 (PITTMAN, C.J.), affirmed March 12, 2008.

Rawls, LaTonya Michelle *v.* State, CACR07-947 (GRIFFEN, J.), affirmed April 16, 2008.

Rawls, Tauji *v.* State, CACR07-825 (BIRD, J.), affirmed March 12, 2008.

Reed *v.* State, CACR07-1244 (MARSHALL, J.), affirmed April 23, 2008.

Reeves *v.* State, CACR07-1149 (VAUGHT, J.), rebriefing ordered April 9, 2008.

Releford *v.* State, CACR07-1097 (PITTMAN, C.J.), affirmed May 14, 2008.

Reliford *v.* State, CACR07-1099 (ROBBINS, J.), reversed and remanded; Motion to Remand moot May 7, 2008.

Richardson *v.* Tyson, Inc., CA07-868 (HEFFLEY, J.), affirmed April 9, 2008.

Riley *v.* First Baptist Church of Higginson, CA07-1234 (HART, J.), affirmed May 14, 2008.

Roberts *v.* State, CA07-1056 (HEFFLEY, J.), affirmed April 2, 2008.

Robinson, Charlie *v.* Arkansas Dep't of Human Servs., CA08-7 (BIRD, J.), affirmed May 21, 2008.

Robinson, Jackie Elliot *v.* State, CACR07-931 (GLOVER, J.), affirmed April 2, 2008.

Roe *v.* Arkansas Dep't of Human Servs., CA07-1167 (VAUGHT, J.), affirmed; Motion to Withdraw granted March 12, 2008.

Rose *v.* Sparks Med. Found., CA07-902 (ROBBINS, J.), affirmed April 23, 2008.

Rothwell *v.* Steven L. Yeager, LLC, CA07-1004 (VAUGHT, J.), affirmed May 7, 2008.

Sanders, Brandon D. *v.* State, CACR07-196 (HEFFLEY, J.), affirmed June 4, 2008.

Sanders, Loretta L. *v.* State, CACR07-876 (GRIFFEN, J.), affirmed March 12, 2008.

Shelton *v.* State, CACR07-935 (HEFFLEY, J.), affirmed June 4, 2008.

Shipman *v.* State, CACR07-1130 (GLOVER, J.), affirmed April 30, 2008.

Silvey *v.* State, CACR08-145 (GLOVER, J.), affirmed June 4, 2008.

Singleton *v.* Arkansas Dep't of Human Servs., CA07-1320 (HART, J.), affirmed May 14, 2008.

Skallerup *v.* City of Hot Springs, CA07-1022 (HEFFLEY, J.), reversed and remanded May 7, 2008.

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