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Volume 283

CASES DETERMINED
IN THE
**Supreme Court
of Arkansas**

FROM
JUNE 11, 1984 — OCTOBER 29, 1984
INCLUSIVE¹

AND
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IN THE
**Court of Appeals
of Arkansas**

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ARKANSAS REPORTS

Volume 283

CASES DETERMINED
IN THE
**Supreme Court
of Arkansas**

FROM
JUNE 11, 1984 — OCTOBER 29, 1984
INCLUSIVE

CLYDE DICKENS CALLIOTTE
REPORTER OF DECISIONS

MARLO M. BUSH
ASSISTANT
REPORTER OF DECISIONS

PUBLISHED BY THE
STATE OF ARKANSAS
1984

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SUPREME COURT OF
ARKANSAS**

**DURING THE PERIOD COVERED
BY THIS VOLUME**

(June 11, 1984—
October 29, 1984, inclusive)

RICHARD B. ADKISSON	Chief Justice ¹
WEBB HUBBELL	Chief Justice ²
GEORGE ROSE SMITH	Associate Justice
DARRELL HICKMAN	Associate Justice
JOHN I. PURTLE	Associate Justice
ROBERT H. DUDLEY	Associate Justice
STEELE HAYS	Associate Justice
P. A. HOLLINGSWORTH	Associate Justice

OFFICERS

STEVE CLARK	Attorney General
DONA L. WILLIAMS	Clerk
JACQUELINE S. WRIGHT	Librarian
CLYDE DICKENS CALLIOTTE	Reporter of Decisions

¹Resigned August 31, 1984.

²Appointed by Governor Clinton and sworn in September 4, 1984.

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Rule 21

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

1. All signed opinions of the Supreme Court shall be designated for publication.

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

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

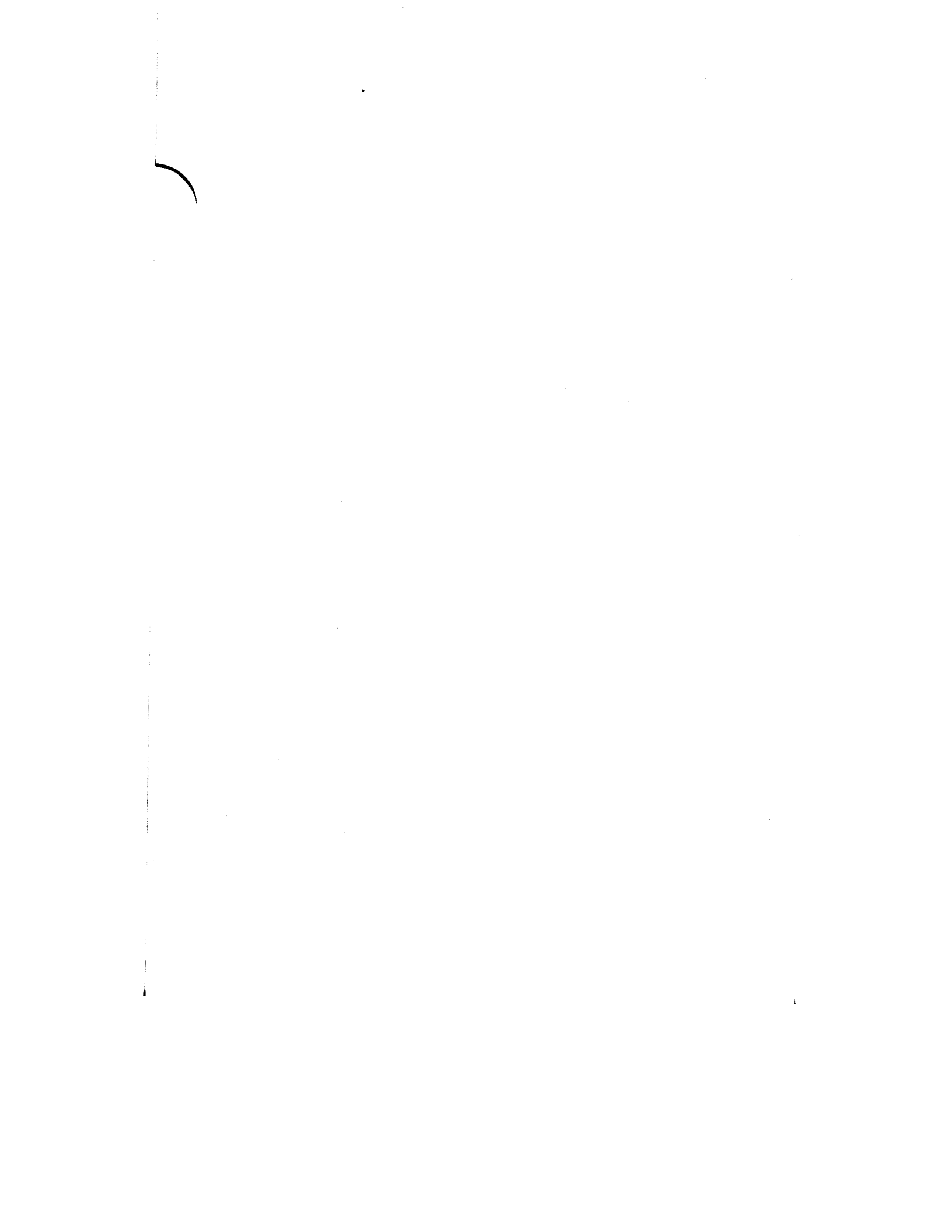
4. Opinions of the Court of Appeals not designated for publication shall not be published in the official reports and shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue 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.

5. Copies of All Opinions Available. — In every case the Clerk will furnish without charge one typewritten copy of all of either 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.

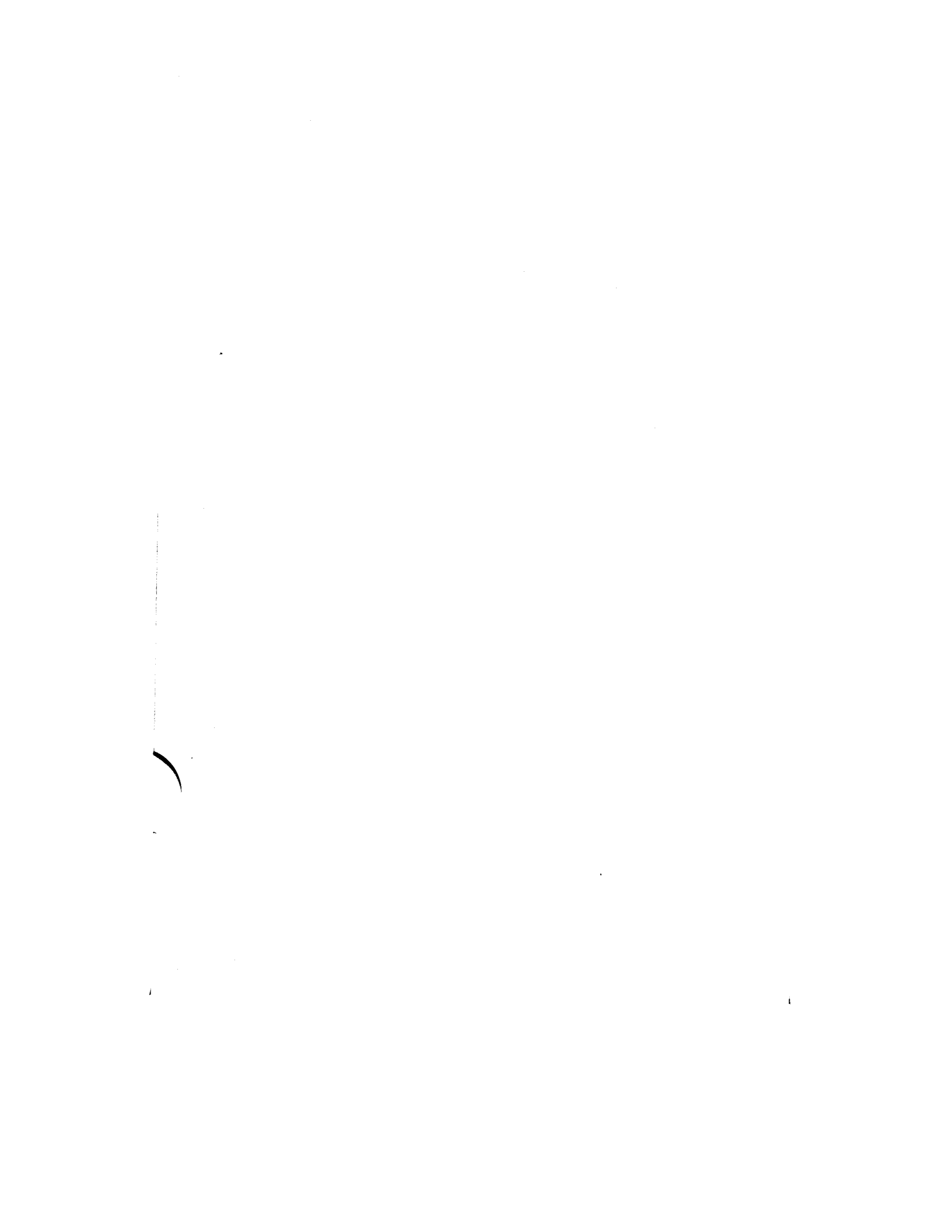
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- Allen v. State, (Per Curiam), Pro Se Rule 37 Petition denied July 2, 1984.
- Arkansas Women's Political Caucus v. Riviere, 84-215 (Per Curiam), preliminary order October 8, 1984.
- Berry v. State, CR 82-114 (Per Curiam), Pro Se Rule 37 Petition granted in part and denied in part June 18, 1984
- Blackmon v. State, (Per Curiam), Motion for Rule on the Clerk denied October 1, 1984.
- Bryant v. State, CR 84-123 (Per Curiam), Pro Se Rule 37 Petition denied September 24, 1984.
- Buckner v. Buckner, 84-204 (Per Curiam), Transferred to Court of Appeals September 17, 1984
- Clemons v. State, CR 84-99 (Per Curiam), Pro Se Rule 37 Petition denied September 10, 1984.
- Davis v. State, CR 81-108 (Per Curiam), Pro Se Rule 37 Petition denied September 10, 1984
- Defoure v. State, CR 84-84 (Per Curiam), Pro Se Rule 37 Petition denied September 17, 1984.
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- Hall v. State, CR 84-64 (Per Curiam), affirmed September 17, 1984.
- Heffernan v. State, CR 81-82 (Per Curiam), Rule 37 Petition denied June 11, 1984.
- Helloms v. State, CR 84-100 (Per Curiam), Pro Se Motion for Transcript at Public Expense denied July 9, 1984.
- Herrington v. State, (Per Curiam), Motion for Rule on the Clerk denied July 2, 1984
- Hogan v. state, CR 83-83 (Per Curiam), Pro Se Petition to Proceed in Circuit Court Pursuant to Rule 37 denied September 10, 1984.
- Hutchinson v. State, (Per Curiam), Pro Se Motion for Belated Appeal denied June 25, 1984.
- Jackson v. State, CR 84-46 (Per Curiam), affirmed September 17, 1984.

- Jones v. State, CR 84-35 (Per Curiam), affirmed September 17, 1984.
- Keys v. State, CR 84-96 (Per Curiam), affirmed September 24, 1984.
- Lewis v. State, CR 84-17 (Per Curiam), affirmed June 18, 1984.
- Long v. State, CR 84-19 (Per Curiam), affirmed October 29, 1984.
- Lott v. State, CR 81-75 (Per Curiam), Pro Se Motion for Transcript at Public Expense denied June 18, 1984.
- Lowery v. State, (Per Curiam), Pro Se Motion for Belated Appeal granted October 1, 1984.
- Miller v. State, CR 82-152 (Per Curiam), Pro Se Rule 37 Petition denied September 10, 1984.
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- Scott v. State, (Per Curiam), Pro Se Motion for Transcript dismissed July 9, 1984.
- Shockley v. State, CR 83-149 (Per Curiam), Pro Se Motion for Transcript at Public Expense denied June 18, 1984.
- Smith v. State, CR 83-135 (Per Curiam), Pro Se Rule 37 Petition denied September 24, 1984.
- Spillers v. State, CR 80-238 (Per Curiam), Rule 37 Petition denied June 25, 1984.
- Treats v. State, CR 83-75 (Per Curiam), Pro Se Rule 37 Petition denied September 24, 1984.
- Watson v. State, CR 84-60 (Per Curiam), Pro Se Rule 37 Petition denied June 18, 1984.
- Williams v. State, CR 83-36 (Per Curiam), Pro Se Rule 37 Petition denied June 18, 1984.
- Williams v. State, CR 84-124 (Per Curiam), Pro Se Petition for Transcript at Public Expense denied September 24, 1984.



APPENDIX
Rules Adopted
or Amended
by Per Curiam Orders



IN RE: PRO SE MOTIONS FOR TRANSCRIPT
FILED PURSUANT TO
SUPREME COURT RULE 11 (h)

Supreme Court of Arkansas
July 9, 1984

When an attorney in the appeal of a criminal case concludes that the appeal has no merit, our Rule 11 (h) requires that counsel file a motion to be relieved and an abstract and brief raising all issues that might arguably support the appeal. Counsel must also list the objections made by the appellant which were overruled and all requests which were denied, accompanied by the reason counsel considers that the points would not support the appeal. The clerk provides the appellant with a copy of counsel's brief and advises him that he has 30 days within which to raise any points that he chooses. *See Anders v. California*, 386 U.S. 738 (1967).

Upon receipt of counsel's brief, appellants often request a copy of the record to aid in preparing their brief. It has been the practice of this Court to deny such appellants a copy of the transcript at public expense but allow them access to the record by mailing it to the Attorney for Inmates. Frequently, however, the motions for transcript are received without any factual basis for the request and some appellants who are provided access to the record do not actually file a brief. As a result, in the future, transcripts will not be made available to appellants unless the appellant can present reasonable grounds to show that the abstract provided in counsel's brief is inadequate to allow for a fair review of his or her trial.

IN THE MATTER OF AN AMENDMENT TO
THE RULES OF THE SUPREME COURT
AND COURT OF APPEALS
OF THE STATE OF ARKANSAS

Supreme Court of Arkansas
October 15, 1984

84-220

676 S.W.2d XLIX

PER CURIAM. Rule 20(e) is hereby amended to read as follows:

Argument in Civil Cases Must be Printed — Exception.
The petition and supporting brief, if any, may be typewritten in civil cases when their entire contents, including the style of the case and the certificate of counsel, do not exceed two legal size, or three letter size, double-spaced, typewritten pages. In civil cases the petition and supporting argument must otherwise be printed in accordance with Rule 8.

IN THE MATTER OF
THE ARKANSAS BAR ASSOCIATION: PETITION
FOR THE ADOPTION OF NEW SUPREME COURT
RULES ON PROFESSIONAL CONDUCT.

83-187

674 S.W.2d 941

Supreme Court of Arkansas
Opinion delivered September 17, 1984

John P. Gill, John F. Stroud, Ralph M. Cloar, Arkansas
Bar Association, for petitioner.

Alyson LaGrossa, for respondent.

STEELE HAYS, Justice. It became apparent during oral argument that there were parts of the rules on professional conduct of lawyers proposed by the joint committee of the Arkansas Bar Association and Arkansas Bar Foundation that were not opposed by the members of the Supreme Court Committee on Professional Conduct. Each side having expressed a willingness to meet for the purpose of determining what changes would be mutually acceptable, we request that they do so and give us the benefit of those discussions. Where the committee disagrees with the proposed changes we would like to know its reasons.

IN RE: THE ARKANSAS STATE BOARD OF
LAW EXAMINERS

Supreme Court of Arkansas
June 18, 1984

PER CURIAM. Rule VIII of the Rules Governing Admission to the Bar entitled "Examination — Subjects — Passing Grade" is hereby amended to add the following paragraph:

A bar examination applicant may elect to retain either his average essay score or his multi-state bar examination scale score for use in the next bar examination following the bar examination in which those scores were achieved.

IN RE: AMENDMENTS TO
THE RULES OF CIVIL PROCEDURE

671 S.W.2d XCII

Supreme Court of Arkansas
July 9, 1984

PER CURIAM. The Committee on Rules of Civil Procedure has made its annual recommendations for changes, and we accept all except that on local rules.

The provisions changed are set out as an addendum to this per curiam, and along with the reporter's notes, may be substituted for the previous provisions.

These changes are effective September 1, 1984.

Rule 4

SUMMONS

(a) . . .

(d) Personal service Inside the State: A copy of the summons and of the complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual, other than an infant by delivering a copy of the summons and complaint to him personally, or if he refuses to receive it, by offering a copy thereof to him, or by leaving a copy thereof at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age, or by delivering a copy thereof to an agent authorized by appointment or by law to receive service of summons.

. . .

(3) Where the defendant is a person for whom a plenary, limited or temporary guardian has been appointed, the service must be upon the individual and the guardian. If

the person for whom the guardian has been appointed is confined in a public or private institution for the treatment of the mentally ill, service shall be upon the superintendent or administrator of such institution and upon the guardian.

. . .

(8) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5), and (7) of this subdivision of this rule may be made by the plaintiff or an attorney of record for the plaintiff by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. Service pursuant to this paragraph shall not be the basis for the entry of a default or judgment by default unless the record contains a return receipt signed by the addressee or the agent of the addressee or a returned envelope, postal document or affidavit by a postal employee reciting or showing refusal of the process by the addressee. If delivery of mailed process is refused, the plaintiff or attorney making such service, promptly upon receipt of notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default may be rendered against him unless he appears to defend the suit. Any such default or judgment by default may be set aside pursuant to Rule 55 (c) or Rule 60 (b) if the addressee demonstrates to the court that the return receipt was signed or delivery was refused by someone other than the addressee.

. . .

(e) (4) As directed by a foreign authority in response to a letter rogatory or pursuant to the provisions of any treaty or convention pertaining to the service of a document in a foreign country.

(f) Service Upon Defendant Whose Identity or Whereabouts is Unknown: (1) Where it appears by the affidavit of a party or his attorney that, after diligent inquiry, the identity or whereabouts of a defendant remains unknown, service shall be by warning order issued by the clerk and published weekly for two consecutive weeks in a newspaper

having general circulation in a county wherein the action is filed and by mailing a copy of the complaint and warning order to such defendant at his last known address, if any, by any form of mail with delivery restricted to the addressee or the agent of the addressee. This subsection shall not apply to actions against unknown tort-feasors. (2) In all actions in which the plaintiff has been granted leave to proceed as an indigent without prepayment of costs, where it appears by the affidavit of a party or his attorney that, after diligent inquiry, the whereabouts of a defendant remains unknown, service shall be by warning order issued by the clerk and conspicuously posted for a continuous period of 30 days at the courthouse or courthouses of the county wherein the action is filed and by mailing by the plaintiff or his attorney of a copy of the complaint and warning order to the defendant at his last known address, if any, by any form of mail with delivery restricted to the addressee or the agent of the addressee.

(i) **Time Limit for Service:** If service of the summons is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon motion or upon the court's initiative. If a motion to extend is made within 120 days of the filing of the suit, the time for service may be extended by the court upon a showing of good cause. If service is made by mail pursuant to this rule, service shall be deemed to have been made for the purpose of this provision as of the date on which the process was accepted or refused. This paragraph shall not apply to service in a foreign country pursuant to Rule 4 (e) or to complaints filed against unknown tortfeasors.

. . .

(j) **Service by Warning Order:** In any case in which a party seeks a judgment which affects or may affect the rights of persons who are not and who need not be subject personally to the jurisdiction of the court, the clerk shall issue a warning order. The warning order shall state the caption of the pleadings, a description of the property or other res to be affected by the judgment of the court, and it

shall warn any interested person to appear within 30 days from the first date of publication of the warning order or be barred from answering or asserting his interest. The warning order shall be published weekly for at least two weeks in a newspaper of general circulation in the county in which the court is held. No default judgment shall be taken pursuant to this procedure unless the party seeking the judgment or his attorney has filed with the court an affidavit stating that thirty days have elapsed since the first publication of the warning order. In any case in which an interested person is known to the party seeking judgment or his attorney, the affidavit shall also state that 30 days have elapsed since a letter enclosing a copy of the warning order and the pleadings was sent to the known interested person at his last known address by a form of mail restricting delivery to the addressee or the agent of the addressee.

Rule 4 Addition to Reporter's Notes

1984 Amendment

Rule 4 (d) (1) is amended to remove the words "or an incompetent person," and Rule 4 (d) (3) is amended to provide for service upon any person for whom a guardian has been appointed. The terminology is from the Limited Guardianship Act, Ark. Stat. Ann. §§ 57-801 through 57-820 (Supp. 1983). To the extent this Act has not supplanted other forms of guardianships, i.e., those provided in Chapters 5 and 6 of the Arkansas Probate Code, there may be appointments of "guardians of the person" and "guardians of the estate." The term "plenary guardian" is intended to apply to those cases, and service should be upon the guardian and the individual or the superintendent of an institution in which the individual may be confined.

Rule 4 (d) (8) is amended to permit service by mail upon all classes of defendants except the United States and its agencies. If service is by mail, it should be directed to the person or officer to whom the service would otherwise be "delivered" pursuant to this Rule. Subsection (8) is also amended by insertion of the words "or the agent of the

addressee" in the second sentence.

Rule 4 (e) is amended to permit service in foreign countries by means provided in any applicable treaty, convention or executive agreement.

That which had been Rule 4 (f) has become 4 (f) (1) with the addition of the last sentence which makes it clear there is no need to publish or mail notice to "John Doe" in an action brought against an unknown tortfeasor. Subsection 4 (f) (2) has been added to assist trial courts in their efforts to comply with the requirements of *Boddie v. Connecticut*, 401 U.S. 371 (1971).

Rule 4 (i) is amended by removal of the requirement of notice to a plaintiff of dismissal of a complaint not served within 120 days and by addition of an exception making it inapplicable to actions against unknown tortfeasors.

Rule 4 (j) has been added to bring into the Rule a notice procedure to be followed when the court is exercising its power in rem, e.g., an action for divorce seeking no personal judgment. The mailing procedure replaces any requirement that an attorney ad litem be appointed for the defendant in these cases.

Rule 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a)

(b) Service: How made. Whenever under this rule, service is required or permitted to be made upon a party represented by an attorney, the service shall be upon the attorney unless the court orders service upon the party himself or service is to be with respect to an action in which a final judgment has been entered but the court has continuing jurisdiction. Service upon an attorney of record in a case in which there is a final judgment but the court has continuing jurisdiction is not sufficient, but service shall be

upon the party to be served. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means handing it to the attorney or to the party; or, by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing.

(c) **Filing.** 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, depositions, interrogatories, requests for production or inspection, proposed findings of fact, proposed conclusions of law, trial briefs, proposed jury instructions, and responses thereto may, but need not be filed with the clerk 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.

Rule 5, Additions to Reporter's Notes

1984 Amendments

Rule 5 (b) is amended to incorporate provisions from Ark. Stat. Ann. § 27-632 (Repl. 1979), which is now deemed superseded, making insufficient service of papers on an attorney in a case in which there has been a final order, but reserved continuing jurisdiction.

Rule 5 (c) is amended to do away with the requirement that the papers mentioned be filed. Although discovery papers are among those which need no longer be filed, requests for admission and responses to requests for admission must be filed.

Rule 12

**DEFENSES AND OBJECTIONS — WHEN AND HOW
PRESENTED — BY PLEADING OR MOTION —
MOTION FOR JUDGMENT ON THE PLEADINGS**

(a)

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or pendency of another action between the same parties arising out of the same transaction or occurrence is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in the original responsive pleading. Objection to venue may be made, however, if the action is dismissed or discontinued as to a defendant upon whose presence venue depends.

Rule 12, Additions to Reporter's Notes**1984 Amendments**

Rule 12 (h) (1) is amended to make it clear that the stated "waivable" defenses must be raised by motion pursuant to this rule or in the first responsive pleading or they are waived. The final sentence in this subsection excepts the objection to venue in the circumstances described in Ark. Stat. Ann. § 27-614 (Repl. 1979), which is now superseded.

Rule 15

AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. With the exception of pleading the defenses mentioned in Rule 12 (h) (1), a party may amend his pleadings at any time without leave of the court. Where, however, upon motion of an opposing party, the court determines that prejudice would result or the disposition of the cause would be unduly delayed because of the filing of an

amendment, the court may strike such amended pleading or grant a continuance of the proceeding. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

Rule 15, Additions to Reporter's Notes

1984 Amendments

Rule 15 (a) is amended so that the first sentence takes account of the amendment to Rule 12 (h) (1) making it clear that a waivable defense may not be raised by amendment "at any time."

The Rule is also amended to enlarge from 10 to 20 days the time to respond to an amended pleading.

Rule 25

SUBSTITUTION OF PARTIES

(a)

(b) Guardians. If a plenary, limited or temporary guardian is appointed for a party, the court shall upon such terms as it considers just and upon motion of a party or the guardian allow the guardian to be substituted to the extent of his judiciary capacity, for the party for whom the guardian has been appointed.

Rule 25, Additions to Reporter's Notes

1984 Amendments

Rule 25 (b) is amended to make it compatible with the Limited Guardianship Act and Rule 4 (d) (1) and (3). The purpose of providing for substitution of a guardian only "to the extent of his judiciary capacity" is to permit the individual to remain a party in cases in which issues in excess of the guardian's capacity are to be decided.

Rule 30

DEPOSITIONS UPON ORAL EXAMINATION

(a)

(f) Certification by Officer; Exhibits; Copies; Notice of Filing. (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to the deposition if it is to be used at trial.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent; provided that it shall be the duty of the party causing the deposition to be taken to furnish one copy to any opposing party, or in the event there is more than one opposing party, a copy may be filed with the clerk for the use of all opposing parties, and the party filing the deposition shall give prompt notice of its filing to all other parties.

Rule 30, Additions to Reporter's Notes

1984 Amendments

Rule 30 (f) is amended to remove references to the filing

requirement which no longer exists in view of the change to Rule 5 (c). The provision for optional filing as a means of giving access to the deposition to multiple parties remains, and the provision for notice of filing formerly found in Rule 30 (f) (3) is contained in Rule 30 (f) (2).

Rule 31

DEPOSITIONS UPON WRITTEN QUESTIONS

(a)

(c) **Copies; Notice of Filing.** The party causing the deposition to be taken shall furnish one copy of the deposition to any opposing party, or if there is more than one opposing party, a copy may be filed with the clerk for the use of all opposing parties, and the party filing the deposition shall give prompt notice of its filing to all other parties.

Rule 31, Additions to Reporter's Notes

1984 Amendments

Rule 31 (c) is amended to make it consistent with the amendment to Rule 5 (c) making filing of discovery documents optional. The same means of giving access to depositions upon written questions as are found in the amended Rule 30 with respect to depositions upon oral examination are provided in the amendment.

Rule 32

(a)

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any other purpose permitted by the Uniform Rules of Evidence, Ark. Stat. Ann. § 28-1000.

Rule 32, Additions to Reporter's Notes

1984 Amendments

Rule 32 (a) (1) is amended to broaden the uses of depositions at trial beyond impeachment by permitting their use for any purpose permitted by the evidence rules.

Rule 33**INTERROGATORIES TO PARTIES**

(a) **Availability; Procedures For Use.** Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The party answering interrogatories shall repeat each interrogatory immediately before the answer or objection. The answers are to be signed by the person making them and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, or objections within 30 days after the service of the interrogatories, except that a defendant must serve answers or objections within 30 days after the service of the interrogatories upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. The court may lengthen or shorten these time periods. The party submitting the interrogatories may move for an order under Rule 37 (a) with respect to any objection to or other failure to answer an interrogatory.

Rule 33, Additions to Reporter's Notes

1984 Amendments

Rule 33 (a) is amended by changing the fourth sentence in the second paragraph to make it clear that a party responding to interrogatories must do so within 30 days after they are served or 45 days after service of the summons and complaint, whichever period is longer.

Rule 36

REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action, of the truth of any matters within the scope of Rule 26 (b) set forth in the request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. However, a defendant shall have 30 days after service of the request or 45 days after he has been served with the summons and complaint to answer, whichever time is longer. These time periods may be shortened or lengthened by the court. If objection is made, the reasons therefor shall be stated. The party answering requests for admissions shall repeat each request immediately before the answer or objection. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly

meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37 (c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37 (a) (4) apply to the award of expenses incurred in relation to the motion.

If an attorney for a party to whom requests for admission are addressed signs an answer, his signature shall be deemed his oath as to the correctness of the answer and his specific authority to bind the party on whose behalf he signs.

Rule 36, Additions to Reporter's Notes

1984 Amendments

Rule 36 (a) is amended by stating separately the power of the court to shorten or lengthen the response time and by changing the third sentence of the second paragraph to make it clear that a party responding to admissions requests must do so within 30 days after the requests are served or 45 days after service of the summons and complaint, whichever

period is longer.

Rule 41

(a)

(b) **Involuntary Dismissal.** In any case in which there has been a failure of the plaintiff to comply with these rules or any order of court or in which there has been no action shown on the record for the past 12 months, the court shall cause notice to be mailed to the attorneys of record, and to any party not represented by an attorney, that the case will be dismissed for want of prosecution unless on a stated day application is made, upon a showing of good cause, to continue the case on the court's docket. A dismissal under this subdivision is without prejudice to a future action by the plaintiff unless the action has been previously dismissed, whether voluntarily or involuntarily, in which event such dismissal operates as an adjudication on the merits.

Rule 41, Additions to Reporter's Notes

1984 Amendments

Rule 41 (b) is amended to make specific the time period after which the court must order cause to be shown why the case should not be dismissed for want of prosecution. While Rule 10 of the Uniform Rules for Circuit and Chancery Courts provided such a dismissal was without prejudice, this rule provides it is with prejudice if it is the second dismissal, whether the previous dismissal was voluntary or involuntary.

Rule 50

(a) **Motion for Directed Verdict or Dismissal When Made; Effect.** A party may move for a directed verdict at the close of the evidence offered by an opponent and may offer evidence in the event that the motion is not granted, without having reserved the right to do so and to the extent as if the motion had not been made. A party may also move for a directed verdict at the close of all of the evidence. A motion

for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury. In non-jury cases a party may challenge the sufficiency of the evidence at the conclusion of the opponent's evidence by moving either orally or in writing to dismiss the opposing party's claim for relief. The motion may also be made at the close of all of the evidence and in every instance the motion shall state the specific grounds therefor.

Rule 50

MOTION FOR DIRECTED VERDICT AND FOR JUDGMENT NOT-WITHSTANDING VERDICT

(a)

(e) Failure to Question the Sufficiency of the Evidence. 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, or to move for judgment notwithstanding the verdict, 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.

Rule 50, Additions to Reporter's Notes

1984 Amendments

Rule 50 (a) is amended to substitute the words "non-jury" for the word "equity" in the sixth sentence. This makes clear the means of raising the issue of sufficiency of a party's evidence to warrant further proceedings, regardless of the nature of a non-jury case. For example, the motion should be made by the defendant at the close of the plaintiff's evidence in a bench trial in circuit court.

Rule 50 (e) is amended to make it clear that a timely, oral directed verdict or n.o.v. motion satisfies the requirement of

the rule and thus precludes waiver of the issues raised by those motions though they may not be in writing or "filed" as was previously required.

Rule 59

(a)

(f) Motion for new trial not necessary for appeal. A motion for a new trial shall not be necessary to preserve for appeal an error which could be the basis for granting a new trial.

Rule 59, Additions to Reporter's Notes

1984 Amendments

Rule 59 (f) is added to reinstate the principle of superseded Ark. Stat. Ann. § 27-2127.5 (Repl. 1962). The matter of the necessity of a motion for new trial to preserve error for appeal had not been addressed in these rules.

Rule 60

Relief From or Modification of Judgment, Decree or Order

(a)

(b) **Ninety-Day Limitation.** To correct any error or mistake or to prevent the miscarriage of justice, a decree or order of a circuit, chancery or probate court may be modified or set aside on motion of the court or any party, with or without notice to any party, within ninety days of its having been filed with the clerk.

(c) . . . (5) For erroneous proceedings against an infant or person of unsound mind where the condition of such defendant does not appear in the record, nor the error in the proceedings.

Rule 60, Additions to Reporter's Notes

1984 Amendments

Rule 60 (b) is modified to remove the references to the law prior to January 1, 1970, and to replace it with language from cases describing the broad power of a court to modify or set aside its judgment during the term of court in which it was entered. See, *Karoley v. A.R. & T. Electronics*, 235 Ark. 609, 363 S.W.2d 120 (1962), and the cases cited in that opinion.

Rule 60 (c) (5) is amended to remove "married women" from the classes of persons to which the Rule applies.

The caption of the Rule is amended to include "Modification."

Rule 64

WITHDRAWAL OF COUNSEL

A lawyer may not withdraw from any proceeding or from representation of any party to a proceeding without permission of the court in which the proceeding is pending. Permission to withdraw may be granted for good cause shown if counsel seeking permission presents a motion therefor to the court showing he (1) has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel; (2) has delivered or stands ready to tender to the client all papers and property to which the client is entitled; and (3) has refunded any unearned fee or part of a fee paid in advance, or stands ready to tender such a refund upon being permitted to withdraw.

Rule 64, Reporter's Notes

Prior to 1984, there was no Rule 64. The Rule was adopted in 1984 to state the procedural requirements for withdrawal of counsel which had been addressed in Rule 9 of the Uniform Rules for Circuit and Chancery Courts. The

new Rule is based upon DR2-2110 of the Code of Professional Conduct.

Rule 69

EXECUTION DISCOVERY

In aid of a judgment or execution, a judgment creditor or his successor in interest, when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

Rule 69, Reporter's Notes

Prior to 1984, there was no Rule 69. The Rule was adopted in 1984 to make the discovery procedures available to parties pursuing execution. The Rule is not intended to supersede the independent action for discovery found in Ark. Stat. Ann. §§ 30-901 through 30-908 (Repl. 1979), however, it supersedes Ark. Stat. Ann. § 30-906 (Repl. 1979), as it is to an extent duplicative of that section.

Rule 78

(a)

(b) Briefs. All motions shall be in writing and shall be supported by a brief statement of the factual and legal basis for such motion, including citations relied upon by the movant. Any respondent opposing a motion shall file his brief supporting statement within 10 days after service of the motion upon him. The movant shall have 5 days thereafter within which to file a reply brief if he so desires. Failure to file briefs in accordance with this rule shall be grounds for the court's striking the motion or response. The court is not required to grant a motion solely because no response or brief has been filed.

Rule 78, Additions to Reporter's Notes

1984 Amendments

Rule 78 (b) is amended by adding the last sentence of the subsection to assure that no court will consider it necessary to grant a frivolous motion even though there has been no response to the motion.

**IN RE: AMENDMENT OF RULE 37.2 (a)
OF THE RULES OF CRIMINAL PROCEDURE**

674 S.W.2d LXXVIII

Supreme Court of Arkansas
Opinion delivered September 17, 1984

PER CURIAM. Rule 37.2 (a) is amended as follows:

(a) If the conviction in the original case was appealed to the Supreme Court or Court of Appeals, then no proceedings under this rule shall be entertained by the circuit court without prior permission of the Supreme Court.

**IN RE: AMENDMENT OF RULE 37.1
OF THE RULES OF CRIMINAL PROCEDURE**

Supreme Court of Arkansas
October 1, 1984

PER CURIAM. Rule 37.1 is amended by inserting the words "or the Court of Appeals" after the words "the Supreme Court" in the first paragraph:

A prisoner, in custody under sentence of a circuit court and whose case was not appealed to the Supreme Court or Court of Appeals, claiming a right to be released, or to have a new trial, or to have the original sentence modified on the ground:

Vertical line of text, possibly a page number or header, located on the left side of the page.



Appointments to Committees

IN THE MATTER OF
THE BOARD OF LAW EXAMINERS

Supreme Court of Arkansas
June 25, 1984

PER CURIAM. The Honorable Guy Amsler, Jr. is hereby appointed to serve as a member of the Board of Law Examiners for the examination to be given in July, 1984.

IN RE: COMMITTEE ON PROFESSIONAL CONDUCT

Supreme Court of Arkansas
July 9, 1984

Per Curiam. The Honorable Berl Smith of Jonesboro is appointed to the unexpired term of the Honorable Robert Branch of Paragould whose term expires December 31, 1989.

Mr. Branch has resigned and the Court thanks him for his service.

IN RE: AMENDMENTS TO THE CODE OF
PROFESSIONAL RESPONSIBILITY AND
CANONS OF JUDICIAL ETHICS

672 S.W.2d LIII

Supreme Court of Arkansas
July 16, 1984

PER CURIAM. The term of Ms. Carol Smelley as a member of the Advisory Committee to the Board of Legal Specialization having expired, Ms. Carol Williams of Little Rock is appointed as her successor, her term to expire on December 31, 1986. Mr. John A. Lewis of Ft. Smith is appointed to replace Mr. Clay Robinson, who has resigned. Mr. George McClure of Malvern is appointed Chairman of the Advisory Committee and Mr. Richard Hatfield is reappointed Chairman of the Board of Legal Specialization. Mr. D. L. D'Auteuil of Searcy is appointed to replace Mr. E. D. Yancey who has resigned from the Advisory Committee.

Copies of the Rules and Regulations of the Board of Legal Specilization and Standards for Certification as a Specialist in Tax Law have been filed with the court. The court acknowledges the service of Ms. Smelley, Mr. Robinson and Mr. Yancey with appreciation.

IN THE MATTER OF THE CLIENT SECURITY FUND

675 S.W.2d L

Supreme Court of Arkansas
October 1, 1984

PER CURIAM. The Honorable James V. King, of Pocahontas, First Congressional District, is hereby appointed to our Committee on the Client Security Fund for a term expiring June 30, 1989.

The court expresses its gratitude to the Honorable C. B. Nance, Jr., for his faithful service as a member of this committee.

**ARKANSAS
APPELLATE
REPORTS
Volume 12**

**CASES DETERMINED
IN THE
Court of Appeals
of Arkansas**

**FROM
June 6, 1984 — October 31, 1984
INCLUSIVE**

**CLYDE DICKENS CALLIOTTE
REPORTER OF DECISIONS**

**MARLO M. BUSH
ASSISTANT
REPORTER OF DECISIONS**

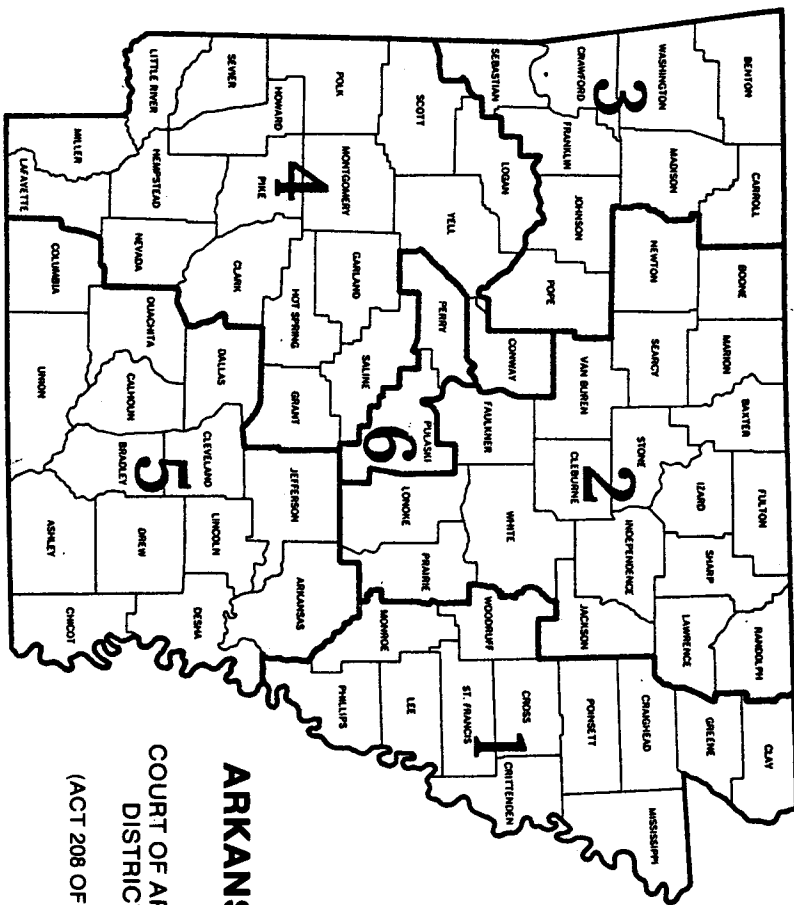
**PUBLISHED BY THE
STATE OF ARKANSAS
1984**

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1984

ARK. APP.] iii

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ARKANSAS
COURT OF APPEALS
DISTRICTS
 (ACT 208 OF 1979)

JUDGES AND OFFICERS OF THE COURT OF APPEALS OF ARKANSAS

DURING THE PERIOD COVERED
BY THIS VOLUME

(June 6, 1984 —
October 31, 1984 inclusive)

JUDGES

MELVIN MAYFIELD	Chief Judge ¹
GEORGE K. CRACRAFT	Chief Judge ²
JAMES R. COOPER	Judge ³
LAWSON CLONINGER	Judge ⁴
DONALD L. CORBIN	Judge ⁵
TOM GLAZE	Judge ⁶

OFFICERS

STEVE CLARK	Attorney General
DONA L. WILLIAMS	Clerk
JACQUELINE S. WRIGHT	Librarian
CLYDE DICKENS CALLIOTTE	Reporter of Decisions

¹District 5. Resigned as Chief Judge July 5, 1984.

²District 1. Appointed Chief Judge by Chief Justice Adkisson July 15, 1984.

³District 2.

⁴District 3.

⁵District 4.

⁶District 6.

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DONALD L. CORBIN, Judge:

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MELVIN MAYFIELD, Judge:

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TOM GLAZE, Judge:

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PER CURIAM:

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Rule 21

Rules of the Arkansas Supreme Court and Court of Appeals

OPINIONS

1. All signed opinions of the Supreme Court shall be designated for publication.

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

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

4. Opinions of the Court of Appeals not designated for publication shall not be published in the official 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.

5. Copies of All Opinions Available. — In every case the Clerk will furnish without charge one typewritten copy of all of either 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

- ABC Trucking, Inc. *v.* Stiles, E 83-161 (Cloninger), affirmed October 10, 1984.
- Aherns *v.* Director of Labor, E 84-39 (Corbin), affirmed October 31, 1984.
- Albee *v.* First National Bank of Hot Springs, CA 83-382 (Mayfield), affirmed August 29, 1984.
- Alcoholic Beverage Control Board *v.* Langston, CA 83-379 (Corbin), reversed and remanded August 29, 1984.
- American Fidelity Fire Ins. Co. *v.* Delcher, CA 83-418 (Mayfield), affirmed October 3, 1984.
- Andrews *v.* State, CA CR 84-71 (Mayfield), affirmed September 26, 1984.
- Arkansas Express Co. *v.* Liberty Mutual Ins. Co., CA 84-119 (Cloninger), affirmed September 26, 1984.
- Arkansas Funeral Plans, Inc. *v.* Director of Labor, E 84-11 (Corbin), reversed and remanded September 26, 1984.
- Arkansas Game and Fish Comm'n *v.* Director of Labor, E 84-3 (Cracraft), affirmed September 19, 1984.
- Arkansas State Highway Comm'n *v.* Calabria, CA 83-410 (Cooper), affirmed October 3, 1984.
- Avery *v.* Avery, CA 83-155 (Cloninger), affirmed June 13, 1984.
- Bailey *v.* Bailey, CA 83-340 (Glaze), affirmed June 27, 1984.
- Baptist Medical Center *v.* Matthews, CA 84-194 (Cooper), affirmed October 24, 1984.
- Beaver *v.* Jones, CA 84-22 (Corbin), reversed and remanded October 31, 1984.
- Biggs *v.* King, CA 83-390 (Cooper), reversed and remanded August 29, 1984.
- Booker *v.* State, CA CR 84-18 (Mayfield), affirmed June 6, 1984.
- Bowen Restaurants, Inc. *v.* Sitzes, CA 84-159 (Cracraft), affirmed October 10, 1984.
- Brents *v.* State, CA CR 82-5 (Corbin), affirmed June 20, 1984.
- Brents *v.* State, CA CR 82-5 (Per Curiam), Motion for Release on Bond denied October 24, 1984.
- Brown, Jerry A. *v.* State, CA CR 84-73 (Cloninger), affirmed September 19, 1984.
- Brown, Joe Nathan *v.* State, CA CR 84-100 (Cooper), affirmed October 31, 1984.

- Broyles v. Little, Maddox and Standefer Architects, Inc.*, CA 83-401 (Corbin), September 5, 1984.
- Buckner v. Buckner*, CA 84-323 (Per Curiam), Motion for Writ of Certiorari remanded October 24, 1984.
- Burt v. Smith*, CA 84-26 (Cracraft), affirmed October 24, 1984.
- Burton v. State*, CA CR 84-83 (Cloninger), reversed and remanded October 10, 1984.
- Busby v. Adams*, CA 83-43 (Mayfield), reversed and remanded June 20, 1984.
- Campbell v. Phillips*, CA 83-322 (Corbin), affirmed June 13, 1984.
- Chadwell v. State*, CA CR 83-178 (Mayfield), affirmed July 5, 1984.
- Chatley v. State*, CA 84-41 (Per Curiam), affirmed September 12, 1984.
- City of DeQueen v. Brewer*, CA 83-402 (Mayfield), affirmed September 5, 1984.
- Clayton v. State*, CA CR 84-107 (Cloninger), affirmed October 31, 1984.
- Coleman v. State*, CA CR 84-36 (Cloninger), reversed and remanded September 19, 1984.
- Commercial Builders, Inc. v. Dukes*, CA 84-166 (Cloninger), affirmed October 10, 1984.
- Cossey v. Wheat*, CA 83-421 (Cracraft), affirmed October 10, 1984.
- Davis v. Green*, CA 83-150 (Mayfield), affirmed June 27, 1984.
- Delight Oak Flooring Co. v. Arkansas Louisiana Gas Co.*, CA 84-177 (Per Curiam), Motion to Supplement the Record denied September 5, 1984.
- Denison v. Lawrence County Bank*, CA 83-337 (Mayfield), affirmed July 5, 1984.
- Dent v. State*, CA CR 84-23 (Mayfield), affirmed September 19, 1984.
- Deparalta v. State*, CA CR 84-33 (Cooper), affirmed September 5, 1984.
- Draper v. Victor Metal Products*, CA 84-65 (Cloninger), affirmed August 29, 1984.
- Duggar v. State*, CA CR 84-46 (Cooper), affirmed September 12, 1984.
- Duke v. State*, CA CR 84-31 (Cracraft), affirmed July 5, 1984.
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- Dunn *v.* Aeroquip Corp., CA 83-413 (Cracraft), affirmed September 26, 1984.
- Dunn *v.* Taylor, CA 83-423 (Cracraft), affirmed October 24, 1984.
- Easiley *v.* State, CA CR 84-58 (Cracraft), affirmed September 12, 1984.
- East Arkansas Machinery and Supply Co. *v.* Collateral Control Corp., CA 83-362 (Cracraft), affirmed July 5, 1984.
- Evans *v.* City of Springdale, CA CR 84-79 (Mayfield), affirmed September 19, 1984.
- Fane *v.* Pratt, CA 83-405 (Cooper), affirmed September 19, 1984.
- Flowers *v.* Flowers, CA 83-446 (Cooper), reversed and remanded October 31, 1984.
- Fowler *v.* Fowler, CA 83-428 (Cracraft), reversed and remanded October 10, 1984.
- Franks *v.* State CA CR 84-56 (Glaze), affirmed September 19, 1984.
- Fuller *v.* Fausett & Co., CA 83-316 (Cooper), reversed and remanded June 20, 1984.
- Garcia *v.* State, CA CR 84-9 (Mayfield), affirmed July 5, 1984.
- Gilbert *v.* City of Decatur, CA CR 84-34 (Cloninger), affirmed June 20, 1984.
- Gunter *v.* State, CA CR 84-57 (Glaze), affirmed September 12, 1984.
- Hale *v.* State, CA CR 84-45 (Cracraft), affirmed September 12, 1984.
- Hamilton *v.* Edgar, CA 83-470 (Cloninger), affirmed October 10, 1984.
- Hardin *v.* Bass, CA 83-334 (Mayfield), reversed July 5, 1984.
- Harvey *v.* State, CA CR 84-11 (Per Curiam), affirmed June 27, 1984.
- Helena-West Helena School District *v.* Pittman, CA 84-128 (Corbin), affirmed October 24, 1984.
- Hembree *v.* Baxter, CA 83-387 (Cooper), affirmed August 29, 1984.
- Hemmer *v.* Hemmer, CA 83-377 (Cloninger), affirmed August 29, 1984.
- Horton *v.* State, CA CR 84-39 (Corbin), affirmed September 5, 1984.

- Howard *v.* State, CA CR 84-28 (Cooper), affirmed June 13, 1984.
- Howell *v.* Howell, CA 83-328 (Cooper), affirmed June 13, 1984.
- Hughes *v.* State, CA 83-404 (Glaze), affirmed September 5, 1984.
- Huff *v.* Huff, CA 83-433 (Cooper), affirmed October 17, 1984.
- Jack *v.* Brown & Williamson Tobacco Co., CA 84-63 (Cracraft), affirmed June 20, 1984.
- Jackson *v.* State, CA CR 84-55 (Corbin), affirmed September 12, 1984.
- Jacksonville Dodge, Inc. *v.* Ray, CA 83-307 (Corbin), affirmed June 6, 1984.
- Jarvis *v.* State, CA CR 84-53 (Per Curiam), affirmed September 5, 1984.
- Jetton *v.* Dillard Department Stores, Inc., CA 84-3 (Corbin), affirmed October 24, 1984.
- Joe E. Edwards Trust *v.* Risley, CA 83-467 (Cracraft), affirmed September 19, 1984.
- Johnson *v.* State, CA CR 84-19 (Cloninger), affirmed September 5, 1984.
- Kats *v.* Patton, CA 83-330 (Cloninger), affirmed June 20, 1984.
- Kirk *v.* Director of Labor, E 83-150 (Mayfield), reversed and remanded July 5, 1984.
- Lace *v.* Halstead Metal Products, CA 83-358 (Cracraft), affirmed June 27, 1984.
- Lawson *v.* Cathey, CA 83-302 (Corbin), affirmed in part, reversed and remanded in part June 13, 1984.
- Light *v.* Fair, CA 84-160 (Cracraft), affirmed September 19, 1984.
- Little Rock Nursing Home *v.* Williams, CA 84-184 (Cloninger), affirmed October 24, 1984.
- Looper *v.* American Ins. Co., CA 84-28 (Cracraft), affirmed October 24, 1984.
- Lowery *v.* Welsco, Inc., CA 83-385 (Cracraft), reversed and remanded August 29, 1984.
- Luben Industries, Inc. *v.* Sparks, CA 84-23 (Mayfield), affirmed June 20, 1984.
- McBead Drilling Co. *v.* Dickinson Corp., CA 83-406 (Cloninger), affirmed September 26, 1984.

- McCoy *v.* McCoy, CA 83-124 (Mayfield), affirmed June 20, 1984.
- McElroy *v.* State, CA CR 84-70 (Cracraft), affirmed September 19, 1984.
- McWilliams *v.* Cross, CA 83-416 (Mayfield), affirmed July 5, 1984.
- Maples *v.* Hyden, CA 83-414 (Cloninger), affirmed October 3, 1984.
- Massey *v.* State, CA CR 84-72 (Cooper), affirmed September 26, 1984.
- Meadows *v.* Romney International Hotels, CA 83-422 (Cooper), affirmed October 10, 1984.
- Merrell *v.* Arkansas State Highway Comm'n, CA 83-458 (Glaze), affirmed October 24, 1984.
- Milks *v.* Holcombe, CA 83-319 (Mayfield), affirmed June 13, 1984.
- Miller's Spectacular Rides, Inc. *v.* Hertz Commercial Leasing Corp., CA 83-354 (Glaze), reversed and remanded June 27, 1984.
- Mitchell *v.* International Paper Co., CA 84-192 (Mayfield), affirmed October 17, 1984.
- Mitchell, Albert Clayton *v.* State, CA CR 84-93 (Cracraft), affirmed October 10, 1984.
- Mitchell, Thomas *v.* State, CA CR 83-170 (Mayfield), affirmed September 5, 1984.
- Monette State Bank *v.* Harrell, CA 83-295 (Cracraft), affirmed June 6, 1984.
- Moore *v.* Moore, CA 83-323 (Mayfield), affirmed June 27, 1984.
- Muradian and Co. *v.* Powers, CA 83-366 (Corbin), affirmed as modified July 5, 1984.
- Nelson *v.* State, CA CR 83-194 (Cracraft), affirmed September 5, 1984.
- Newberry *v.* Newberry, CA 83-224 (Mayfield), reversed and remanded June 20, 1984.
- Newberry *v.* Newberry, CA 83-224 (Mayfield), supplemental opinion on denial of rehearing October 3, 1984.
- Nicklin *v.* Cobel, CA 83-144 (Mayfield), affirmed July 5, 1984.
- Noe *v.* Smith, CA 83-457 (Mayfield), affirmed October 24, 1984.
- Nord *v.* State, CA CR 83-176 (Glaze), affirmed July 5, 1984.

- Norris *v.* Lewis, CA 84-120 (Cooper), affirmed September 26, 1984.
- Norwood *v.* Norwood, CA 83-260 (Mayfield), reversed and remanded June 27, 1984.
- Ozark Gas Transmission System *v.* Moye, CA 84-70 (Glaze), affirmed October 10, 1984.
- Perez-Aguilera *v.* State, CA CR 84-29 (Cooper), affirmed June 27, 1984.
- Pickle *v.* Zunamon, CA 83-289 (Cooper), affirmed June 13, 1984.
- Pine Bluff Parks and Recreation *v.* Porter, CA 82-169 (Corbin), reversed and remanded September 26, 1984.
- Plunk *v.* State, CA CR 84-47 (Cloninger), affirmed September 12, 1984.
- Poe *v.* State, CA CR 84-30 (Corbin), affirmed June 27, 1984.
- Pope *v.* State, CA CR 84-21 (Cloninger), affirmed June 27, 1984.
- Pride *v.* State, CA CR 83-190 (Corbin), affirmed June 6, 1984.
- Pritchard *v.* State, CA CR 84-14 (Per Curiam), affirmed June 27, 1984.
- Pyle *v.* State, CA CR 84-66 (Cracraft), affirmed September 5, 1984.
- Reynolds Metals Co. *v.* Smith, CA 84-89 (Cooper), affirmed July 5, 1984.
- Rhine *v.* Campbell Soup Co., CA 84-131 (Mayfield), affirmed September 12, 1984.
- Rice *v.* Rice, CA 83-450 (Mayfield), affirmed June 27, 1984.
- Riddle *v.* State, CA CR 84-63 (Cracraft), affirmed October 17, 1984.
- Rigdon *v.* Denver Community, CA 83-424 (Glaze), affirmed October 10, 1984.
- Riley *v.* Riley, CA 83-298 (Cooper), affirmed June 6, 1984.
- Roberts *v.* City of Benton, CA 84-121 (Cracraft), affirmed October 10, 1984.
- Robinson *v.* Lowery, CA 83-336 (Corbin), affirmed June 20, 1984.
- Robinson *v.* Robinson, CA 83-320 (Glaze), reversed and remanded June 13, 1984.
- Robinson *v.* State, CA CR 84-117 (Per Curiam), Motion for Writ of Certiorari to Supplement the Record denied August 29, 1984.
- Rubbo *v.* State, CA CR 84-67 (Glaze), affirmed September 12, 1984.

- Safeco Ins. Co. of America *v.* Roberts International Corp., CA 84-31 (Cracraft), affirmed October 24, 1984.
- Safeway Stores, Inc. *v.* Hensley, CA 84-116 (Cracraft), affirmed September 26, 1984.
- Sanyo Mfg. Corp. *v.* Stiles, E 84-34 (Cracraft), affirmed September 26, 1984.
- Scott *v.* State, CA CR 83-127 (Per Curiam), Motion to Supplement the Record granted; Motion for Reconsideration granted to the extent the trial court is reinvested with jurisdiction to consider a petition for a writ of error *coram nobis* June 20, 1984.
- Shumaker *v.* Duvall, CA 83-332 (Corbin), reversed and remanded June 20, 1984.
- Skidmore *v.* Gilcrease, CA 83-444 (Cooper), affirmed October 10, 1984.
- Smith *v.* Buck, CA 83-454 (Corbin), affirmed as modified October 17, 1984.
- Smithson *v.* Smithson, CA 84-35 (Corbin), affirmed as modified September 26, 1984.
- Southard *v.* State, CA CR 84-15 (Corbin), affirmed August 29, 1984.
- Southern Accoustical & Drywall *v.* Construction Engineers, Inc., CA 84-265 (Per Curiam), Motion to Dismiss Appeal denied October 17, 1984.
- Stanley *v.* Smith, CA 83-272 (Mayfield), affirmed October 17, 1984.
- State *v.* Safeco Ins. Co., CA 83-434 (Cloninger), affirmed October 17, 1984.
- Steven *v.* American Transportation Co., CA 84-126 (Cooper), affirmed September 26, 1984.
- Superior Federal Savings and Loan Ass'n *v.* Central Arkansas Production Credit Ass'n, CA 83-361 (Cloninger), affirmed July 5, 1984.
- Sutterfield *v.* Schneider, CA 83-445 (Cracraft), affirmed October 10, 1984.
- Taurus Engineering, Inc. *v.* East End School District of Bigelow, CA 83-453 (Cloninger), affirmed October 31, 1984.
- Teague *v.* Brodine, CA 83-342 (Cracraft), affirmed July 5, 1984.
- Terry *v.* Tyson Foods, Inc., CA 84-10 (Cloninger), affirmed June 13, 1984.

- Tex-Ark Joist Co. v. Hempstead County Sand and Gravel, Inc.*, CA 83-471 (Glaze), affirmed October 24, 1984.
- Thrasher v. Mar-Bax Shirt Co.*, CA 84-83 (Cooper), affirmed October 17, 1984.
- Troutt v. State*, CA CR 83-182 (Glaze), affirmed September 5, 1984.
- Turner's Mill v. Lawrence*, CA 84-64 (Cooper), affirmed June 6, 1984.
- Underwood v. State*, CA CR 84-5 (Per Curiam), affirmed June 11, 1984.
- Walls v. Walls*, CA 83-349 (Cloninger), reversed and remanded June 27, 1984.
- Ware v. State*, CA CR 84-3 (Per Curiam), affirmed June 11, 1984.
- Warren v. State*, CA CR 83-197 (Cooper), affirmed September 5, 1984.
- Weathersbee v. Hagler*, CA 84-333 (Per Curiam), Motion to Amend the Style of the Case on Appeal denied without prejudice October 10, 1984.
- Welch Motor Co. v. Director of Labor*, E 84-28 (Glaze), affirmed September 19, 1984.
- White v. State*, CA CR 84-75 (Corbin), affirmed September 19, 1984.
- Williams v. State*, CA CR 84-16 (Cooper), affirmed June 20, 1984.
- Wilson v. Southwest Development Co.*, CA 83-368 (Corbin), affirmed July 5, 1984.
- Winkler v. AOA Land Co.*, CA 83-435 (Corbin), affirmed October 10, 1984.
- Wright v. State*, CA CR 84-60 (Cooper), affirmed September 19, 1984.
- Young v. Planters Peanuts*, CA 84-171 (Allen, H. William) affirmed October 10, 1984.
- Zeno v. Golden*, CA 83-383 (Glaze), affirmed August 29, 1984.

CASES AFFIRMED BY THE ARKANSAS COURT OF
APPEALS WITHOUT WRITTEN OPINION PURSUANT TO
RULE 21 (2), RULES OF THE ARKANSAS SUPREME
COURT AND COURT OF APPEALS

- Ainsworth *v.* Director of Labor, E 84-51, September 12, 1984.
Ames *v.* Director of Labor, E 84-33, September 5, 1984.
Auterson *v.* Director of Labor, E 84-93, October 17, 1984.
Bailey *v.* Director of Labor, E 84-32, June 27, 1984.
Baldrige *v.* Director of Labor, E 84-29, June 6, 1984.
Banquet Food Corp. *v.* Director of Labor, E 84-75, Sep-
tember 26, 1984.
Bearing *v.* Director of Labor, E 84-48, September 12, 1984.
Becker *v.* Director of Labor, E 84-101, October 17, 1984.
Bristol *v.* Director of Labor, E 84-112, October 31, 1984.
Burks *v.* Director of Labor, E 84-78, September 26, 1984.
Byrd *v.* Director of Labor, E 84-105, October 24, 1984.
Callahan *v.* Director of Labor, E 84-57, September 19, 1984.
Carter *v.* Director of Labor, E 84-77, September 26, 1984.
Collins *v.* Director of Labor, E 84-54, October 24, 1984.
Corns *v.* Director of Labor, E 84-53, September 19, 1984.
Crawford *v.* Director of Labor, E 84-74, September 26, 1984.
Cross County Hospital *v.* Director of Labor, E 84-66,
October 10, 1984.
Davis *v.* Director of Labor, E 84-27, June 6, 1984.
Ellis, James *v.* Director of Labor, E 84-31, June 27, 1984.
Ellis, Shirley *v.* Director of Labor, E 84-68, September 19,
1984.
Finley *v.* Director of Labor, E 84-99, October 17, 1984.
Flowers *v.* Director of Labor, E 84-71, September 26, 1984.
Ford *v.* Director of Labor, E 84-85, September 26, 1984.
Fuller *v.* Director of Labor, E 84-87, September 26, 1984.
Haney *v.* Director of Labor, E 84-107, October 31, 1984.
Henson *v.* Director of Labor, E 84-50, September 12, 1984.
Hopkins *v.* Director of Labor, E 84-67, September 19, 1984.
Inland Container Corp. *v.* Director of Labor, E 84-65,
September 19, 1984.
Inland Container Corp. *v.* Director of Labor, E 84-122,
October 31, 1984.
Jordon *v.* Director of Labor, E 84-82, October 10, 1984.
Johnson, Billye *v.* Director of Labor, E 84-12, June 6, 1984.

- Johnson, Brenda *v.* Director of Labor, E 84-118, October 31, 1984.
- Johnson, Debra *v.* Director of Labor, E 84-58, September 19, 1984.
- Kath *v.* Director of Labor, E 84-95, October 10, 1984.
- Koehler Baker Co. *v.* Director of Labor, E 84-88, October 24, 1984.
- Lane Processing, Inc. *v.* Director of Labor, E 84-47, September 12, 1984.
- Lewis *v.* Director of Labor, E 84-117, October 31, 1984.
- March *v.* Director of Labor, E 84-25, June 6, 1984.
- Mays *v.* Director of Labor, E 84-62, September 19, 1984.
- Miller, Kevin *v.* Director of Labor, E 84-102, October 17, 1984.
- Miller, Roland *v.* Director of Labor, E 84-60, September 19, 1984.
- Moore *v.* Director of Labor, E 84-94, October 17, 1984.
- New Prospect Drilling Co. *v.* Director of Labor, E 84-72, October 10, 1984.
- Newton *v.* Director of Labor, E 84-35, June 27, 1984.
- Nichols *v.* Director of Labor, E 84-92, October 10, 1984.
- Nicley *v.* Director of Labor, E 84-23, June 6, 1984.
- OK Farms, Inc. *v.* Director of Labor, E 84-111, October 24, 1984.
- Oickle *v.* Director of Labor, E 84-63, September 19, 1984.
- Parks *v.* Director of Labor, E 84-104, October 31, 1984.
- Pickard *v.* Director of Labor, E 84-70, September 26, 1984.
- Powers *v.* Director of Labor, E 84-108, October 24, 1984.
- Riceland *v.* Director of Labor, E 84-22, June 6, 1984.
- Robinson *v.* Director of Labor, E 84-40, September 5, 1984.
- Rosbia *v.* Director of Labor, E 84-98, October 17, 1984.
- Seymour *v.* Director of Labor, E 84-36, June 27, 1984.
- Silica Transport, Inc. *v.* Director of Labor, E 84-76, September 26, 1984.
- Smith, Nettie *v.* Director of Labor, E 84-37, June 27, 1894.
- Smith, Richard C. *v.* Director of Labor, E 84-81, September 26, 1894.
- Smothers *v.* Director of Labor, E 84-38, September 5, 1984.
- Stewart, Goldia *v.* Director of Labor, E 84-43, September 5, 1984.
- Stewart, Janice *v.* Director of Labor, E 84-21, September 5, 1984.

- Stitt *v.* Director of Labor, E 84-61, September 19, 1984.
Thomas *v.* Director of Labor, E 84-69, September 26, 1984.
Todd *v.* Director of Labor, E 84-41, September 5, 1984.
Walker *v.* Director of Labor, E 84-79, October 10, 1984.
Ward *v.* Director of Labor, E 84-39, October 10, 1984.
Wilson *v.* Director of Labor, E 84-46, September 12, 1984.
Woodus *v.* Director of Labor, E 84-55, October 10, 1984.
Worthey *v.* Director of Labor, E 84-80, September 26, 1984.
Wynne Auto Electric *v.* Director of Labor, E 84-26, September 5, 1984.



APPENDIX
Rules Adopted
and/or Amended
by Per Curiam Orders

ACCELERATED CIVIL CASE LIST

Arkansas Court of Appeals
En Banc
July 5, 1984

PER CURIAM. Under the law, criminal, workers' compensation, and unemployment benefit cases are given preference over other civil cases for submission to the Arkansas Court of Appeals. However, if the attorneys in these other civil cases want a case submitted as soon as possible, they may request that the case be placed on an accelerated civil list.

Where the attorneys for both sides notify the clerk of this court that they want a case placed on the accelerated civil list, that case will be set for oral argument as soon as possible and, unless the court finds it would not be feasible, the case will be decided by a memorandum opinion, not designated for publication, issued fourteen (14) days after the argument.

Cases will not be placed on the accelerated civil list unless they are argued orally by both sides.

This procedure will not be available in those cases docketed after July 5, 1984, in which extensions of briefing time have been granted.

