APPENDIX
Rules Adopted or Amended by Per Curiam Orders

IN RE: AMENDMENT TO THE MODEL RULES OF PROFESSIONAL CONDUCT

780 S.W.2d XLVIII

Supreme Court of Arkansas
Delivered December 18, 1989

PER CURIAM. The Arkansas Bar Association, through its Special Committee on Model Rules of Professional Conduct, has petitioned us to consider and approve proposed amendments to the Model Rules of Professional Conduct. The proposals were adopted by the House of Delegates of the American Bar Association in February 1987 and February 1989. The proposed changes affect Rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 3,7, 6.3, 7.2, 7.3, and 7.4. The changes, in part, are intended to bring the rules into conformity with the Supreme Court's decision in *Shapero* v. *Kentucky Bar Association*, 486 U.S. 466, 108 S. Ct. 1916 (1988).

As is customary, before acting on these proposals, we invite comments from the bench and bar, as well as from interested parties in general, with respect to these proposals. Such comments should be filed with the Supreme Court Clerk on or before March 1, 1990. Copies of the proposed amendments may be obtained from the Supreme Court Clerk.

IN RE: ARKANSAS BAR ASSOCIATION RULES AND REGULATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION

780 S.W.2d XLVII

Supreme Court of Arkansas
Delivered December 18, 1989

PER CURIAM. The Arkansas Continuing Legal Education Board has presented to this Court a motion to amend the Arkansas Rules for Minimum Continuing Legal Education, which were adopted by our Per Curiam Order dated March 6, 1989, and a motion to adopt proposed regulations to be implemented by the Board if approved by this Court. In our March 6 per curiam order, we directed the Board to develop regulations

consistent with the Arkansas Rules for Minimum Continuing Legal Education and submit them to this Court for final approval.

Inasmuch as the Board has now presented to us proposed amendments to the Arkansas Rules for Minimum Continuing Legal Education, along with comprehensive regulations, we wish to solicit comment from members of the bench and the bar between this date and March 1, 1990. We hope to receive not only general remarks, but invite specific suggestions with respect to the Board's proposals and encourage recommendations as to any additional guidelines that might assist the Board in fulfilling its duties.

Copies of the proposed amendments and regulations may be obtained from the Supreme Court Clerk.

IN RE: UNIFORM STANDARD FOR TRANSCRIPTS, Amendments to Rule 12 of the Rules of the Arkansas Supreme Court and Court of Appeals

782 S.W.2d 368

Supreme Court of Arkansas
Delivered January 16, 1990

PER CURIAM. When we amended Rule 12 of the Rules of the Arkansas Supreme Court and Court of Appeals by *per curiam* delivered May 15, 1989, we changed the paper size for transcripts to 8½" x 11" paper. In doing so, we reduced the number of typed lines per page to 22, and continued the practice of fastening the record at the top of the page. In our amendment of Rule 12 by *per curiam* delivered July 7, 1986, we provided that transcripts, except those prepared with the aid of a computer, should be prepared with left-hand margins to be set at no more than 1".

The recommended uniform standards provide for 25 lines on 8½" x 11" paper, fastened on the left side of the transcript, with left-hand margins set at no more than 1¾". It would be appropriate and in the best interests of the administration of justice to make our standards in this regard the same as most other courts. Therefore we amend the following subsections of Rule 12 of the Supreme Court as follows:

Rule 12 (i)(1) and (3)

The opening sentence of subsection (i) is amended to read: The record must be made out in plain typewriting of the first impression, not copies, on 8½" x 11" paper and fastened on the left of the page.

Subsection (i)(1) is amended to read: No fewer than 25 typed lines on standard 8½" x 11" paper.

Subsection (i)(3) is amended to read: Left-hand margins to be set at no more than 1¾".

This rule is effective April 1, 1990. All depositions prepared and all transcripts certified after March 31, 1990, should conform to these guidelines.

IN RE: CERTIFIED COURT REPORTERS AND CERTIFIED COURT REPORTERS' EXAMINING BOARD

782 S.W.2d 369

Supreme Court of Arkansas
Delivered January 22, 1990

PER CURIAM. It is time to pause and reexamine some of the facets of our policy for certified court reporters.

We were petitioned by the court reporters to make their corps exclusive—that is only certified reporters could serve as court reporters or take court depositions. We did so in the interest of improving the quality of the administration of justice.

Since instituting that program, some questions have been raised and resolved; some remain. We have adopted uniform standards for transcripts. Our board is available to conduct hearings regarding court reporters and the rules regulating them. Examinations are conducted twice a year. Few pass the examination.

We need to determine if there are a sufficient number of qualified reporters in Arkansas to serve our legal system, and if

not, what should be done to remedy the problem.

We also need to examine the subject of charges which court reporters make for court transcripts and their services. The legislature appropriates salaries for court reporters and also determines the cost per page of transcripts. We need to examine this question and see if we can or should decide what charges court reporters can make for all their services. This examination should also review charges made by official court reporters for per diem charges to attorneys.

The committee may hold any hearings necessary on these questions. The staff of Administrative Office of the Courts will assist them in their research, study and investigation of these questions.

We request a report by September 1, 1990, reviewing the advisability of this program, suggesting any changes and making recommendations on policy and the questions mentioned, and informing us of any other questions or problems needing our attention.

ATTORNEYS, JUDGES, COURT REPORTERS AND THOSE INTERESTED ARE INVITED TO FILE COMMENTS, CRITICISM AND RECOMMENDATIONS WITH THE CLERK OF THIS COURT NO LATER THAN APRIL 1, 1990.

IN RE: ARKANSAS BAR ASSOCIATION RULES AND REGULATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION

85-302 783 S.W.2d 837

Supreme Court of Arkansas
Delivered February 5, 1990

PER CURIAM. On December 18, 1989, we entered a per curiam order allowing interested parties until March 1, 1990, to comment upon rules and regulations proposed for the Arkansas Continuing Legal Education Program.

Some regulatory issues must be resolved, temporarily at least, before March 1. Those issues are: (1) Regulation 3.01 — Enhanced Credit for Speakers; (2) Regulation 4.04(1) — Credit for Bar Examiners; (3) Regulation 4.04(2) — Authorship of Law Articles; and, (4) Regulation 4.04(3) — Attendance at Law School Courses.

According to our per curiam order of March 6, 1989, the first reporting period ends June 30, 1990. If we do not resolve these issues now, many attorneys and judges will be uncertain of the number of CLE hours they have accumulated toward the end of the first reporting period.

We adopt, with modifications, regulations 3.01 and 4.04 which were proposed on December 14, 1989, by the Arkansas Continuing Legal Education Board as part of the comprehensive regulations.

After the period set aside for comments from the bench and bar, we will enter a final order on the Board's motion for adoption of the comprehensive regulations. Those we adopt today may be altered when they are reconsidered in the light of the other regulations and the comments we receive.

The following interim regulations are hereby adopted:

3.01 ENHANCED CREDIT

(1) SOLO SPEAKERS

Anyone who presents a speech or program at an approved CLE course shall be allowed four (4) hours credit for each hour of the initial presentation and two (2) hours credit for each hour of each subsequent presentation of the same material.

(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.

(3) QUESTION AND ANSWER SESSIONS

Question and answer sessions following individual or panel presentations shall be counted as part of the presentation time for which credit is to be given.

(4) WRITTEN MATERIALS

To serve as a basis upon which credit for an individual or panel presentation is given, accompanying written materials must comply with Rule 4(c)(3).

4.04 APPROVED CLE ACTIVITIES

(1) BAR EXAMINERS

Credit may be earned through service as a bar examiner in Arkansas. Six (6) hours of credit will be awarded for the preparation and grading of each bar examination administered during a given year. No more than twelve (12) hours of credit can be awarded in any year for bar examination preparation and grading.

(2) AUTHORSHIP OF LAW ARTICLES AND BOOKS

In accordance with objective standards to be developed and applied by the Board, up to twelve (12) hours of credit may be earned through the authorship of a law related article published by an American Bar Association accredited law school, a state bar journal, an official publication of the American Bar Association, or through authorship of a published book on legal matters. Any attorney may petition the Board for credit for the authorship of an article or book. Entitlement to publication credit will accrue as of the date of documented acceptance of the article by the publisher.

(3) LAW SCHOOL COURSES

Credit may be earned through part-time teaching, formal enrollment for credit, or official audit and attendance at a course offered by a law school accredited by the American Bar Association. Twelve (12) credit hours will be awarded for each academic credit hour taught, officially audited, or successfully completed, provided the applicant certifies attendance of at least seventy-five percent (75%) of the

class sessions. For the purpose of this regulation, "part-time teaching" is defined as teaching one course which awards four or fewer hours of academic credit.

HICKMAN, J., observing.

GLAZE, J., not participating.

DARRELL HICKMAN, Justice, observing. This is not really a dissent. I have already dissented to the Mandatory Legal Education Program. *In Re: Bar of Arkansas Membership Dues*, 293 Ark. 622, 739 S.W.2d LI (1987) (Hickman, J., dissenting); *In Re: Arkansas Bar Association Rules and Regulations for Mandatory Continuing Legal Education*, 298 Ark. 638, 766 S.W.2d 415 (1989).

The court approved the Bar's request, set up a committee, hired a director and it runs itself. Actually, the Arkansas Bar Association, the C.L.E. Institute, and the Arkansas Trial Lawyers Association provide the overwhelming bulk of the programs. Lawyers must attend these seminars to stay qualified to practice law.

This has little or no effect on me personally, and I would remain silent except for the fact that no other court member seems to care what happens, and what is happening affects over 5,000 lawyers.

These remarks are really for the benefit of those free-thinking, fire-eating, independent lawyers who share my lack of enthusiasm for this nonsense—mandatory legal education. Short of a miracle, we're stuck with it.

Now, one of the first things a good bureaucrat thinks of is to change the name of the bureaucracy. If it can veil the purpose of the organization, fine; even better if it is deceptive. Our latest bureaucracy, the mandatory legal education program, did that right off by renaming itself the Minimum Continuing Legal Education Program. That way maybe the lawyers would not know it was required, and they would not realize that if they didn't abide by the rules they could lose their law licenses. It makes it sound like a good thing too, this minimum continuing legal education. You cannot be against that sort of thing.

The next thing a good bureaucrat will do is take care of the big shots. Big shots will not tolerate treatment like everybody else.

Unless they are given special treatment, there will be Ned to pay. Heads will roll. A bureaucrat picks up on this early. So before we have even considered the permanent rules on this matter, our bureaucracy has requested special treatment immediately for some folks. It sounds all right in some respects. Perhaps our law examiners should get credit for preparing law examinations, but a lot of others are equally deserving. Where does it stop? But the special treatment in this case is really for the speakers and lecturers selected by the promoters to reeducate the Bar. These folks can get their requirements merely by talking to the ordinary lawyers. Now you take your ordinary small town lawyer who might be selected to give a lecture on examining abstracts. (Actually the title companies are putting these people out of business.) He ought to get four hours credit for appearing before a group of lawyers and telling them the real dope on examining abstracts. It is not your ordinary nickel and dime legal business. It might look like it, but it's not. It can get you in serious trouble if you don't know what you're doing. Now, I don't expect any small town lawyers to be invited to do this, but I just use it as an example. More than likely, it will be some expert; a judge, or a law professor or a governor or senator taking his or her valuable time to tell us about something we are really not interested in. These folks deserve special credit because it would be unseemly for them to endure 12 hours of bone-numbing lectures that your ordinary lawyer needs to suffer through to keep a license. Some are more equal than others. Any bureaucrat that fails to recognize this will find himself extinct.

So, I'm glad to see that our promoters of this idea were quick to catch onto this principle. There is another thing a bureaucrat learns early and that is to stomp the little people. These people have to learn their place—especially those who might expose the bureaucracy to ridicule. No one except those under the strict guidance and control of bureaucrats should be allowed to do anything. Any spontaneous effort to actually accomplish the goal of the agency must be squashed. Our people did that right quick and deserve credit for putting out a brushfire that could have become a conflagration.

This is what happened. A group of Pulaski County lawyers have for years been meeting to discuss and debate the latest court decisions by Arkansas and the federal courts that affect them. It is a voluntary organization and experienced practicing lawyers

volunteer to present these decisions to the group for discussion. This group has been doing what we want done—staying current on the law. Now this group applied to our bureaucracy so that those who attend this little seminar might get some credit towards their mandatory legal education requirements. To the credit of our people they squelched this idea right quick. Good ideas are anathema to bureaucrats. First of all, it was feared such study groups might pop up all over Arkansas and that would mean the lawyers might actually educate themselves. Also, it would not cost anything. And the location is not right. The lawyers wouldn't have to go to a convention center or some exotic place and spend a lot of money. They could get their hours in by just going down the street. We can't have that!

But worse yet, the lawyers might not attend the programs of the Bar, the ATLA or CLE Institute. These organizations might have to cut back on their expensive charges for this program. They might have to offer better promotions for membership.

My brethren have not decided yet whether to go along with our board in ignoring this study group, but you can see right off that if such a thing were to spring up all over the state, this minimum Continuing Legal Education Program could go right down the drain.

Now I'm not so naive to believe that some people are not going to get special treatment. But we ought to consider the merits of a program that would help the promoters who select those speakers who happen to be boring, ill-prepared, or downright ignorant. The promoters get to select the speakers, but the lawyers have to listen to them. Maybe we ought to let the lawyers decide if a speaker deserves extra credit—after the speech. We could have the speakers graded, either pass or fail. If they pass, give them the extra credit. But if they fail, make them endure six hours of lectures in addition to the minimum requirements. Wouldn't that be fair? I expect the performance of the participants would be kept at a fairly high level. I originally thought a giant gong ought to be available at these lectures. That way the people could dispatch a speaker right on the spot and lawyers could get on with their education and not have to suffer through an entire hour unnecessarily. But we would have to have quite a few substitute speakers on hand with this idea and I doubt the court would approve a big enough gong to get the job done. Besides it's not dignified. So I'll stay with my first recom-

mendation.

I would not want to close without mentioning the cost of this program. It has not been cheap. In fact our program, like any good government program, exceeded its budget the first year ($114,000). No telling how much has been spent on it through our private legal organizations. Of course, we should not really concern ourselves because the taxpayers will pick up most of the tab for this program anyway. It's all tax deductible and it creates jobs. Of course the judges get theirs paid for directly, as I expect most public employees do.

I'll try to keep you informed as we progress on this project.

Happy trails (trials) to all you counselors out there, and may all your camels have two humps.

IN RE: GUIDELINES FOR CHILD SUPPORT ENFORCEMENT

784 S.W.2d 589

Supreme Court of Arkansas
Delivered February 5, 1990

PER CURIAM. The Arkansas General Assembly enacted Act 948 of 1989, amending Ark. Code Ann. § 9-12-312(a) (Repl. 1987), and providing in part for guidelines for child support enforcement.

> "9-12-312(a)(1) When a decree is entered, the court shall make such orders concerning the alimony of the wife or the husband and care of the children, if there are any, as are reasonable from the circumstances of the parties and the nature of the case.
>
> (2) In determining a reasonable amount of support initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support, that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding

or specific finding on the record that the application of the support chart would be unjust or inappropriate as determined under established criteria set forth in the support chart, shall the presumption be rebutted.

(3) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of the Arkansas Supreme Court to ensure that the support amounts are appropriate for child support awards. The committee shall also establish the criteria for deviation from use of the chart amount.

(4) The Arkansas Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish same through per curiam order of the court."

Subsequent to the enactment of this legislation the Chief Justice appointed a committee to examine and revise the family support chart previously utilized by the trial court as prescribed by section 9-12-312(a)(2). In addition, the committee was charged with the responsibility to establish the criteria for deviation from the use of the chart.

The following persons were appointed to the committee: Honorable Ellen Brantley; Larry Carpenter, Esq.; Hon. Fred D. Davis; Hon. Jim Gunter; Don Hollingsworth, Esq.; Hon. Warren Kimbrough; Rep. Jodie Mahony; Harry Truman Moore, Esq.; Hon. Andre McNeil; Jeff Pence, Esq.; Hon. Judith Rogers; and Ben Rowland, Esq.

The Committee members met and filed a formal report establishing child support guidelines and deviation criteria.

In accordance with this Court's rule making authority, Act 948 of 1989 and Family Support Act of 1988, Pub. L. No. 100-485 (1988), this Court adopts the formal report of the Committee and as a result, provisionally adopts the Family Support Chart, which was established by a Family Law section committee of the Arkansas Bar Association effective July 1, 1987, pursuant to section 9-12-312(a)(2). A copy of this chart is attached to this per curiam and made a part hereof.

In adopting this per curiam, the Court creates a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the

amount of child support to be awarded in any judicial proceeding for dissolution of marriage, separation, or child support.

It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support Chart is correct, if the court enters in the case a written finding or specific finding on the record that the amount so calculated, after consideration of all relevant factors, is unjust or inappropriate.

Relevant factors to be considered by the court in determining appropriate amounts of child support shall include:

1. Food;
2. Shelter and utilities;
3. Clothing;
4. Medical expenses;
5. Educational expenses;
6. Dental expenses;
7. Child Care;
8. Accustomed standard of living;
9. Recreation;
10. Insurance;
11. Transportation expenses; and
12. Other income or assets available to support the child from whatever source.

Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and/or maintenance of life insurance, health insurance, dental insurance for the children's benefit;
2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g. orthopedic shoes, glasses, braces, etc.);
3. The creation or maintenance of a trust fund for the children;
4. The provision or payment of special education needs or expenses of the child;
5. The provision or payment of day care for a child; and
6. The extraordinary time spent with the non-custodial parent, or shared or joint custody arrangements.

Weekly take home pay, as it relates to the Family Support

Chart, refers to the definition of income in the federal income tax laws, less proper deductions for:

1. Federal and state income tax;
2. Social security (FICA) or railroad retirement equivalent;
3. Medical insurance; and
4. Presently paid support for other dependents by Court order.

In addition to the award of child support, the court order shall provide for the child's health care needs, which would normally include health insurance if available to either parent at reasonable cost.

In publishing its per curiam, this Court recognizes that the trial court has continuing jurisdiction to modify child support orders to advance the welfare of the child when there is a material change in circumstances. *See Hilt* v. *Maynard*, 256 Ark. 31, 576 S.W.2d 211 (1979); *Lively* v. *Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953). Approval of the Family Support Chart by this Court does not per se create a material change in circumstances. In determining requested modifications of child support orders entered prior to the effective date hereof, the trial court should consider the totality of the present circumstances of the parties and avoid modifications that would work undue hardship on the parties or any persons presently dependent thereon.

Inasmuch as this is a provisional order of the Court, the Court directs the Chief Justice and the Committee on Child Support to continue its charge to study, and revise where necessary, the guidelines for child support to ensure the proper enforcement of child support awards in this state.

GLAZE, J., concurs.

HICKMAN and NEWBERN, JJ., dissent.

WEEKLY FAMILY SUPPORT CHART (Effective July 1, 1987)

WEEKLY TAKE-HOME PAY	DEPENDENTS ONE	TWO	THREE	FOUR	FIVE
$100.00	25.00	30.00	40.00	50.00	60.00
$110.00	27.50	33.00	44.00	55.00	66.00
$120.00	30.00	36.00	48.00	60.00	72.00
$130.00	32.50	39.00	52.00	65.00	78.00
$140.00	35.00	42.00	56.00	70.00	84.00
$150.00	37.50	45.00	60.00	75.00	90.00
$160.00	40.00	48.00	64.00	80.00	96.00
$170.00	42.50	51.00	68.00	85.00	102.00
$180.00	45.00	54.00	72.00	90.00	108.00
$190.00	47.50	57.00	76.00	95.00	114.00
$200.00	50.00	60.00	80.00	100.00	120.00
$210.00	51.00	62.00	83.00	104.00	125.00
$220.00	52.00	64.00	86.00	108.00	130.00
$230.00	53.00	66.00	89.00	112.00	135.00
$240.00	54.00	68.00	92.00	116.00	140.00
$250.00	55.00	70.00	95.00	120.00	145.00
$260.00	56.00	72.00	98.00	124.00	150.00
$270.00	57.00	74.00	101.00	128.00	155.00
$280.00	58.00	76.00	104.00	132.00	160.00
$290.00	59.00	78.00	107.00	136.00	165.00
$300.00	60.00	80.00	110.00	140.00	170.00
$310.00	61.00	82.00	113.00	144.00	175.00
$320.00	62.00	84.00	116.00	148.00	180.00
$330.00	63.00	86.00	119.00	152.00	185.00
$340.00	64.00	88.00	122.00	156.00	190.00
$350.00	65.00	90.00	125.00	160.00	195.00
$360.00	66.00	92.00	128.00	164.00	200.00
$370.00	67.00	94.00	131.00	168.00	205.00
$380.00	68.00	96.00	134.00	172.00	210.00
$390.00	69.00	98.00	137.00	176.00	215.00
$400.00	70.00	100.00	140.00	180.00	220.00
$410.00	71.00	102.00	143.00	184.00	225.00
$420.00	72.00	104.00	146.00	188.00	230.00
$430.00	73.00	106.00	149.00	192.00	235.00
$440.00	74.00	108.00	152.00	196.00	240.00
$450.00	75.00	110.00	155.00	200.00	245.00
$460.00	76.00	112.00	158.00	204.00	250.00
$470.00	77.00	114.00	161.00	208.00	255.00
$480.00	78.00	116.00	164.00	212.00	260.00
$490.00	79.00	118.00	167.00	216.00	265.00
$500.00	80.00	120.00	170.00	220.00	270.00
$510.00	81.00	122.00	173.00	224.00	275.00
$520.00	82.00	124.00	176.00	228.00	280.00
$530.00	83.00	126.00	179.00	232.00	285.00
$540.00	84.00	128.00	182.00	236.00	290.00
$550.00	85.00	130.00	185.00	240.00	295.00
$560.00	86.00	132.00	188.00	244.00	300.00
$570.00	87.00	134.00	191.00	248.00	305.00
$580.00	88.00	136.00	194.00	252.00	310.00
$590.00	89.00	138.00	197.00	256.00	315.00
$600.00	90.00	140.00	200.00	260.00	320.00

MONTHLY SUPPORT CHART (Effective July 1, 1987)

MONTHLY TAKE-HOME PAY	DEPENDENTS ONE	TWO	THREE	FOUR	FIVE
$ 500.00	125.00	150.00	200.00	250.00	300.00
$ 550.00	137.50	165.00	220.00	275.00	330.00
$ 600.00	150.00	180.00	240.00	300.00	360.00
$ 650.00	162.50	195.00	260.00	325.00	390.00
$ 700.00	175.00	210.00	280.00	350.00	420.00
$ 750.00	187.50	225.00	300.00	375.00	450.00
$ 800.00	200.00	240.00	320.00	400.00	480.00
$ 850.00	210.00	255.00	340.00	425.00	510.00
$ 900.00	220.00	265.00	355.00	445.00	535.00
$ 950.00	225.00	275.00	370.00	465.00	560.00
$1000.00	230.00	285.00	385.00	485.00	585.00
$1050.00	235.00	295.00	400.00	505.00	610.00
$1100.00	240.00	305.00	415.00	525.00	635.00
$1150.00	245.00	315.00	430.00	545.00	660.00
$1200.00	250.00	325.00	445.00	565.00	685.00
$1250.00	255.00	335.00	460.00	585.00	710.00
$1300.00	260.00	345.00	475.00	605.00	735.00
$1350.00	265.00	355.00	490.00	625.00	760.00
$1400.00	270.00	365.00	505.00	645.00	785.00
$1450.00	275.00	375.00	520.00	665.00	810.00
$1500.00	280.00	385.00	535.00	685.00	835.00
$1550.00	285.00	395.00	550.00	705.00	860.00
$1600.00	290.00	405.00	565.00	725.00	885.00
$1650.00	295.00	415.00	580.00	745.00	910.00
$1700.00	300.00	425.00	595.00	765.00	935.00
$1750.00	305.00	435.00	610.00	785.00	960.00
$1800.00	310.00	445.00	625.00	805.00	985.00
$1850.00	315.00	455.00	640.00	825.00	1010.00
$1900.00	320.00	465.00	655.00	845.00	1035.00
$1950.00	325.00	475.00	670.00	865.00	1060.00
$2000.00	330.00	485.00	685.00	885.00	1085.00
$2050.00	335.00	495.00	700.00	905.00	1110.00
$2100.00	340.00	505.00	715.00	925.00	1135.00
$2150.00	345.00	515.00	730.00	945.00	1160.00
$2200.00	350.00	525.00	745.00	965.00	1185.00
$2250.00	355.00	535.00	760.00	985.00	1210.00
$2300.00	360.00	545.00	775.00	1005.00	1235.00
$2350.00	365.00	555.00	790.00	1025.00	1260.00
$2400.00	370.00	565.00	805.00	1045.00	1285.00
$2450.00	375.00	575.00	820.00	1065.00	1310.00
$2500.00	380.00	585.00	835.00	1085.00	1335.00
$2550.00	385.00	595.00	850.00	1105.00	1360.00
$2600.00	390.00	605.00	865.00	1125.00	1385.00
$2650.00	395.00	615.00	880.00	1145.00	1410.00
$2700.00	400.00	625.00	895.00	1165.00	1435.00
$2750.00	405.00	635.00	910.00	1185.00	1460.00
$2800.00	410.00	645.00	925.00	1205.00	1485.00
$2850.00	415.00	655.00	940.00	1225.00	1510.00
$2900.00	420.00	665.00	955.00	1245.00	1535.00
$2950.00	425.00	675.00	970.00	1265.00	1560.00
$3000.00	430.00	685.00	985.00	1285.00	1585.00

TOM GLAZE, Justice, concurring. From my reading of my colleague's dissent, I note that Justice Hickman disagrees with this court's decision to follow the General Assembly's directives contained in Act 948 of 1989 (now compiled as Ark. Code Ann. § 9-12-312(a)(4) (Supp. 1989)). By adopting by rule the child support chart and deviation factors, he complains that this court has violated the separation of powers doctrine. In sum, he says such matters are substantive law and the General Assembly has the sole power to legislate such child support matters. Perhaps. However, there is legitimate authority to the contrary. *See Schenek* v. *Schenek*, 780 P.2d 413 (Ariz. App. 1989) (child support guidelines promulgated by the supreme court held procedural in concept because they operated as presumptions); *Dalton* v. *Clanton*, 559 A.2d 1197 (Del. Super. Ct. 1989) (family court's adoption of procedure in making child support determinations was held consistent with its statutory obligation to make and publish court rules governing policies, processes, practices and procedures); *Surman* v. *Surman*, No. 88 C.A. 85 (Ohio App. June 22, 1989) (LEXIS, LEXSEE Service) (child support guidelines adopted by supreme court held not in violation of separation of powers); *see contra Fitzgerald* v. *Fitzgerald*, 566 A.2d 719 (D.C. 1989).

While Act 948 might eventually be held to grant unlawful authority to this court, we must allow the system or process to work its normal course. In each of the jurisdictions above, party litigants challenged the child support guidelines adopted under the various courts' rulemaking authority, and then the various appellate courts decided the validity or constitutionality of the courts' actions. Undoubtedly, an Arkansan will file litigation and raise similar challenges to Act 948's constitutionality and to this court's decision to comply with the dictates of that Act. If, indeed, Act 948 is shown to be unconstitutional, I have every confidence that this court will so declare. Meanwhile, Act 948 is presumptively constitutional, and this court is obliged to follow it.

DARRELL HICKMAN, Justice, dissenting. At the eleventh hour we are told that if we do not adopt this support chart and guidelines, the state will lose "federal funds." (I suppose that means millions since the federal government only deals in such denominations.) That is entirely irrelevant to our obedience to the constitution.

A committee was hastily formed two weeks ago, quickly

rubberstamped the proposal and a majority of this court has abdicated its responsibility to uphold the constitution.

The legislature cannot order us to adopt legislation and this court cannot legislate. These are fundamental principles of constitutional law expressed in the Arkansas Constitution, Art. 4, §§ 1 and 2. *See* 16 Am.Jur.2d *Constitutional Law*, §§ 335 and 337. We have held, as all courts have held, that the legislative bodies cannot delegate their power to enact laws to the executive or judicial branch of government. *Wenderoth* v. *City of Ft. Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971).

In this case by Act 948 of 1989, we have the legislature unequivocally delegating to a court the power to legislate. Actually the legislature *orders us* to adopt this legislation. Ark. Code Ann. § 9-12-312(a)(4) (Supp. 1989) reads: "The Arkansas Supreme Court *shall* approve the family support chart and criteria upon revision by the committee for use in this state and *shall* publish same through per curiam order of the court." (Italics supplied.)

It is ridiculous to uphold an act that orders a court to approve a report of a committee. *See Ball* v. *Roberts*, 291 Ark. 84, 722 S.W.2d 829 (1987); *McConnell* v. *State*, 227 Ark. 988, 302 S.W.2d 805 (1957). What we are saying is that when this committee adopts what the law will be regarding support then we *shall* approve it and make it law.

This act not only illegally delegates the legislative power, but it also invades the power of this court to adjudicate. Is this act some sort of legal joke?

Neither can the court invoke its "inherent power" to make rules. That does not encompass the right to enact substantive law. Whether a parent supports a child and according to what criteria, is purely a matter of substantive law. It is not remotely procedural. *See* 16 Am.Jur.2d § 311.

I am appalled that this court would so easily and quietly abide by the legislation without serious consideration. No one has asked us to do this. The court is, on its own, pursuant to the act, writing this legislation. It is a serious breach of the constitution and degrades this institution. It matters not that the legislature had the good intentions: we are better able to decide this question than they. It matters not that other states may have ignored their

constitutional duty. When this legislation was proposed, the lawyers for the legislature, the governor, or the judicial department should have told the general assembly that it was unconstitutional. The general assembly should have been promptly informed after it was passed that this act is blatantly unconstitutional, and that we could not comply with the act.

The concurring opinion suggests we cannot question the constitutionality of a rule we adopt. I respectfully dissent.

NEWBERN, J., joins the dissent.

IN THE MATTER OF THE COMMITTEE ON RULES OF PLEADING, PRACTICE, AND PROCEDURE—CRIMINAL

783 S.W.2d 840

Supreme Court of Arkansas
Delivered February 5, 1990

PER CURIAM. Effective March 1, 1990, the following changes in the Arkansas Rules of Criminal Procedure will take effect:

A.R.Cr.P. Rule 13.1(b) is hereby amended to read as follows:

> (b) The application for a search warrant shall describe with particularity the persons or places to be searched and the persons or things to be seized, and shall be supported by one (1) or more affidavits or recorded testimony under oath before a judicial officer particularly setting forth the facts and circumstances tending to show that such persons or things are in the places, or the things are in possession of the person, to be searched. If an affidavit or testimony is based in whole or in part on hearsay, the affiant or witness shall set forth particular facts bearing on the informant's reliability and shall disclose, as far as practicable, the means by which the information was obtained. An affidavit or testimony is sufficient if it describes circumstances establishing reasonable cause to believe that things subject

to seizure will be found in a particular place. Failure of the affidavit or testimony to establish the veracity and bases of knowledge of persons providing information to the affiant shall not require that the application be denied, if the affidavit or testimony viewed as a whole, provides a substantial basis for a finding of reasonable cause to believe that things subject to seizure will be found in a particular place.

Reporter's Note

The underlined language, suggested by the United States Supreme Court's decision in *Illinois* v. *Gates*, 462 U.S. 213, 76 L.Ed.2d 527 (1983), has been added to make it clear that failure to meet the "particular facts" requirement of the second sentence of subpart (b) does not require that the warrant be quashed on the evidence suppressed if this affidavit provides "a substantial basis for a finding of reasonable cause to believe" that the things seized were in a particular place.

Rule 38 is hereby added to the Rules of Criminal Procedure, to read as follows:

No rule of court or judicial order shall be promulgated that prohibits representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case.

Reporter's Note

This proposal was recommended by the Arkansas Bar Association Committee on Minimum Standards for the Administration of Criminal Justice.

Rule 37.2 of the Arkansas Rules of Criminal Procedure is hereby amended by adding the following:

(f) Within *twenty* days after service of a motion under this rule, the state may file a response thereto, with evidence of service on opposing counsel or on the movant if he or she is acting *pro se*.

Reporter's Note

This proposal gives the state twenty days rather than ten to answer Rule 37 petitions.

HICKMAN, J., dissents.

DARRELL HICKMAN, Justice, dissenting. I dissent to this court's illegal adoption of a substantive rule of law. This court cannot legislate and the adoption of A.R.Cr.P. Rule 13.1(b) is unconstitutional and void.

It is elementary that courts adjudicate and legislatures legislate and neither can encroach upon the domain of the other. While courts have some powers to adopt practice and procedural rules relating to *courts*, they have none to adopt principles or statements of substantive law as "procedure." 16 Am.Jur.2d *Constitutional Law* § 316.

We find ourselves in the novel situation of taking the decisions of the Supreme Court interpreting the United States Constitution, reducing them to rules and then following the rules instead of the Supreme Court decisions. The criminal rules of procedure need to be purged of all provisions that do not relate strictly to court practice and procedure.

IN RE: William P. "Billy" SWITZER, Crossett Municipal Judge

783 S.W.2d 857

Supreme Court of Arkansas
Delivered February 12, 1990

PER CURIAM. The Judicial Discipline and Disability Commission recommends that Municipal Judge William P. "Billy" Switzer be suspended from his duties with pay, pending the disposition of criminal charges against him in the Ashley County Circuit Court.

It is so ordered.

IN RE RULES OF THE SUPREME COURT AND COURT OF APPEALS: AMENDMENT OF RULE 11(g)

784 S.W.2d 173

Supreme Court of Arkansas
Delivered February 26, 1990

PER CURIAM. The following sentence is added to Rule 11(g) as it appears in the provisional changes to the Rules of the Arkansas Supreme Court and Court of Appeals published by our per curiam order of May 15, 1989.

> In such instances the time for the filing of the Attorney General's brief is extended by five days.

Appointments to Committees

IN RE: SUPREME COURT COMMITTEE ON MODEL JURY INSTRUCTIONS, CIVIL

780 S.W.2d XLIX

Supreme Court of Arkansas
Delivered December 18, 1989

PER CURIAM. H. David Blair, a present member of this Committee, is designated as its Chairman in place of Winslow Drummond.

The Court expresses its gratitute to Winslow Drummond for his faithful service as Chairman of this Committee.

IN THE MATTER OF THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

781 S.W.2d XLIX

Supreme Court of Arkansas
Delivered December 18, 1989

PER CURIAM. Richard A. Reid, Esq. of Blytheville, Arkansas, is appointed to the Supreme Court Committee on Professional Conduct for a term of seven years, expiring December 31, 1997. Mr. Reid is appointed as a member from the First Congressional District, replacing Berl Smith, Esq. of Jonesboro, Arkansas, whose term has expired.

The Court expresses its gratitude to Berl Smith for his dedicated and faithful service to the Committee.

IN RE: SUPREME COURT COMMITTEE ON MODEL JURY INSTRUCTIONS, CRIMINAL

782 S.W.2d 369

Supreme Court of Arkansas
Delivered January 22, 1990

PER CURIAM. Judge John Dan Kemp, Mountain View, Arkansas is appointed to the Supreme Court Committee on Model Jury Instructions, Criminal, to serve at the pleasure of the Court.

The Court expresses its gratitude to Judge Stark Ligon for his faithful service on this Committee.

IN THE MATTER OF THE COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

782 S.W.2d 370

Supreme Court of Arkansas
Delivered January 22, 1990

PER CURIAM. Ms. Patricia L. Van Ausdall, of Harrisburg, Arkansas, is hereby appointed as a representative of the First Congressional District to our Committee on the Unauthorized Practice of Law, replacing Kathleen Bell.

The Court expresses its gratitude to Kathleen Bell for her faithful services as a member of this Committee.