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APPENDIX

10/11

I. JURISDICTION

SUBJECT MATTER

Constitution: Ark. Const., Amendment 80 §6 (A).

Circuit courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution.

RELEVANT STATUTES

Circuit courts, Ark. Code Ann. §16-88-101.
Lesser included offenses, Ark. Code Ann. §16-88-101.
Territorial jurisdiction, Ark. Code Ann. §16-88-105.
Disposition where no jurisdiction, Ark. Code Ann. §16-89-119.

PERSONAL

1. Jurisdiction obtained by defendant's:

   a. Presence in state; *Pennoyer v. Neff*, 95 U.S. 714 (1877).
   b. Consent either:

      1) Express;
      2) Implied;

   c. Entering general appearance;
   d. Pleading to merits; *Holley v. Holley*, 264 Ark. 35, 568 S.W.2d 487 (1978).

2. The courts of this state shall have personal jurisdiction of all persons, and all causes of action or claims for relief, to the maximum extent permitted by the due process of law clause of the Fourteenth Amendment of the United States Constitution. Ark. Code Ann. §16-4-101.

RELEVANT CASES

Consent to personal jurisdiction: *LaRue v. LaRue*, 268 Ark. 86, 593 S.W.2d 185 (1980).
Minimum contacts: *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).
Burden of proving sufficient contacts: *Hawes Firearm Co. v. Roberts*, 263 Ark. 510, 565 S.W.2d 620 (1978).
Invoking court's jurisdiction as waiver of objection to jurisdiction: *Ark. State Highway Commission v. Marlar*, 247 Ark. 710, 447 S.W.2d 329 (1969).
Minimum contacts measured qualitatively: *Hutson v. Fehr Bros., Inc.*, 584 F.2d 833 (8th Cir. 1978).

Conscious, purposeful exercise of privilege of conducting business: *Hutson v. Fehr Bros., Inc.*, 584 F.2d 833 (8th Cir. 1978); *Davis v. Triumph Corp*, 258 F. Supp. 418 (E.D.Ark. 1966).
Minimum contacts with Arkansas: *SD Leasing, Inc. v. Al Spain & Assoc., Inc.*, 277 Ark. 178, 640 S.W.2d 451 (1982).

IN REM

1. Power to act against the thing itself regardless of personal jurisdiction over owner. *Freeman v. Alderson*, 119 U.S. 185 (1886).

2. Thing may be:

   a. Property;
   b. Status; or
   c. Relation.

3. Thing must be present in state. *Dowdle v. Byrd, Guardian*, 201 Ark. 775, 147 S.W.2d 343 (1941).

4. Owner must have such contacts with state that exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

   Minimum contacts test: *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

QUASI-IN-REM

1. Jurisdiction obtained by seizure, attachment of defendant's property in state. *Harris v. Balk*, 198 U.S. 215 (1905).

2. Defendant has no personal liability beyond value of property seized.

3. Defendant must have such contacts with state that exercise of jurisdiction does not offend traditional notion of fair play and substantial justice.
   Shaffer v. Heitner, 433 U.S. 186 (1977).

   Minimum contacts test: *International Shoe v. Washington*, 326 U.S. 310 (1945).

CHALLENGES TO JURISDICTION - PARTIES

1. A challenge to jurisdiction of parties is waived if not included in:

   a. Motion to dismiss; or

b. Responsive pleading if no motion to dismiss is filed.

2. The defense of lack of jurisdiction over the subject matter is never waived and may be raised at any time. *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003).

RELEVANT RULE

Arkansas Rules of Civil Procedure do not affect jurisdiction or venue: Ark. R. Civ. P. 82.

RELEVANT CASE

Burden of proving insufficient contacts: *Hawes Firearm Co. v. Roberts,* 263 Ark. 510, 565 S.W.2d 620 (1978).

II. VENUE

LOCAL CRIMINAL ACTIONS

Prosecutions shall be in the county where the crime was committed. Ark. Const., Art. 2, §10.

RELEVANT CASE

County line, *Bottom v. State*, 155 Ark. 113, 244 S.W.2d 334 (1922).

TRANSITORY CASES

1. If any offense is committed on the boundary of two counties or if the person committing the offense is on one side of the boundary and the injury occurs on the other side of the boundary, the indictment and trial may be in either county. If the boundary line is uncertain, the indictment and trial may be based in either county. Ark. Code Ann. § 16-88-108.

2. If an offense is committed in a river that is the boundary between two counties or an island in that river, the criminal jurisdiction of each county shall embrace the offense. Ark. Code Ann. § 16-88-108.

3. Where the offense is committed partly in one county and partly in another the jurisdiction is in either county. Ark. Code Ann. §16-88-108.

4. An indictment against an accessory to a felony may be found in the county where the offense of the accessory may have been committed, regardless of where the principal offense may have been committed. Ark. Code Ann. §16-88-114.

CIVIL ACTIONS AND VENUE

Arkansas Code Annotated §16-55-213 states that all civil actions other than those mentioned in §§16-60-101 through 103, § 16-60-107, § 16-60-114, § 16-60-115, and § 16-114-201 must be brought in any of the following counties:

1. The county in which a substantial part of the events or omissions giving rise to the claim occurs;

2. The county in which an individual defendant resides; or

3. The county in which the plaintiff resides.

LOCAL CIVIL ACTIONS

Venue is in the county in which the subject matter of the action is located in actions for:

1. Recovery:

   a. Of real property;
   b. Of an estate; or
   c. On interest therein;

2. Partition of real property;

3. Sale of real property, under:

   a. Mortgage;
   b. Lien;
   c. Other encumbrance or charge;

   Ark. Code Ann. §16-60-101.

4. Injury to real property (Ark. Code Ann. §16-60-101);

5. Enforcement of mechanics' or materialmans' lien (Ark. Code Ann. § 18-44-117);

6. Condemnation of right-of-way by State Highway Commissioner (Ark. Code Ann. §27-67-309);

7. Damage to land condemned; and

8. Enjoining condemnation.

ACTIONS ON DEBT, ACCOUNT, OR NOTE

1. An action on a debt, account, or note, or for goods or services may be brought in the county where the defendant resided at the time the cause of action arose.

2. If a city of the first class, a city of the second class, an incorporated town, a public facilities board, or a county is the defendant, the action shall be brought in the county in which the city, town, public facilities board, or county lies.

Ark. Code Ann. § 16-60-111.

TRANSITORY ACTIONS - CAUSE OF ACTION

Venue is in the county, where all or part of the cause of action arose, in actions:

1. For recovery of fine, penalty, or forfeiture imposed by statute (Ark. Code Ann. §16-60-102);

2. Against a public officer for:

   a. Act done by virtue of or under color of office; and
   b. Neglect of official duty (Ark. Code Ann. §16-60-102);

3. Upon official bond of public officer other than state officer (Ark. Code Ann. §16-60-102);

4. For personal injury or death (also county of victim's residence at time of injury or death) (Ark. Code Ann. §16-60-112);

5. For injury to personal property by wrongful act, conversion, or negligence (also county of owner's residence) (Ark. Code Ann. §16-60-113);

6. Against a nonresident, for damages (also county of victim's residence) (Ark. Code Ann. §16-60-112);

7. Against an insurer by insured or beneficiary for loss, benefit, or right under insurance or annuity contract (also county of insured's residence at time of loss) (Ark. Code Ann. §23-79-204);

8. Against insurer directly where insured immune (also county where one of plaintiffs resided at time of loss) (Ark. Code Ann. §23-79-204); and

9. For medical injury against a medical care provider (Ark. Code Ann. §16-55-213(e)).

TRANSITORY ACTIONS - INDIVIDUAL DEFENDANT

1. Venue is in county where an individual defendant resides or is summoned in actions for:

   a. Injuries or death resulting from out-of-state accident (also county of victim's residence) (Ark. Code Ann. §16-60-112); and
   b. Debt, account, or note (Ark. Code Ann. §16-60-111).

2. Defendant who moves from county of residence after action is commenced shall be served in new county of resident in the same manner as before moved. Ark.

Code Ann. §16-60-116 (e).

TRANSITORY ACTIONS - CORPORATE DEFENDANTS

1. In actions, other than local actions or actions involving the state, venue is in county where corporation:

   a. Is situated;
   b. Has principal or branch office or place of business; or
   c. Chief officer resides.

   Ark. Code Ann. §16-60-104.

2. Venue is the county, where branch bank or insurance agency, out of which cause of action arose, is situated. Ark. Code Ann. §16-60-104.

3. Venue of an action for personal injury or property damage against a railroad company is in any county through which the line passes. Ark. Code Ann. §16-60-106

4. Venue of an action against a foreign corporation is in any county where the corporation:

   a. Owns property; or
   b. Is owed a debt. Ark. Code Ann. §16-60-108.

5. Venue of a cause of action against a noncorporate business association is in any county where business has an office or a branch. Ark. Code Ann. §16-60-105.

6. Venue of an action for personal injury, where corporation resides in county different from one in which injury occurred, is in county of injury. Ark. Code Ann. §16-60-112.

TRANSITORY ACTION - PLAINTIFF'S RESIDENCE

Venue is in the county of plaintiff's residence in any cause of action:

1. On contract against a foreign corporation (Ark. Code Ann. §16-60-109);

2. Against an insurer directly, where insured is immune (Ark. Code Ann. §23-79-204);

3. Against a mutual assessment life and disability insurer by a policy certificate holder or beneficiary. (Ark. Code Ann. §23-72-120).

ACTIONS INVOLVING STATE

1. Venue is in Pulaski County in actions:

   a. Of a civil nature:

      1) In behalf of the State;
      2) In the name of State;
      3) In which the State has a claim or interest;

   b. By state boards, commissioners, officers in official capacity, or on behalf of State;

   c. Against the State, its boards, commissioners, and officers for official acts, except that if the action could otherwise be brought in another county or counties under the venue laws of this state, as provided in Ark. Code Ann. §§ 16-60-101 *et seq*., then the action may be brought either in Pulaski County or the other county or counties.

   Ark. Code Ann. §16-60-103.

2. Venue is in the county of defendant's residence for actions:

   a. On debts due State; and
   b. In favor of State officers, boards, commissioners in official capacity.

   Ark. Code Ann. §16-106-101.

OBJECTIONS TO VENUE

1. Objection to venue is waived if not included in:

   a. Motion to dismiss; or
   b. Responsive pleading if no motion to dismiss is filed.

   Ark. R. Civ. P. 12(h).

2. Objection that one of several defendants was summoned in another county shall be deemed waived if such defendant appears unless made before judgment is entered as to him.

Arkansas Rules of Civil Procedure do not affect jurisdiction or venue. Ark. R. Civ. P. 82.

CHANGE OF VENUE - PROCEDURE

1. Any party to civil action to be tried by a jury may obtain an order for a change of venue by motion upon a petition.

    a. Stating that party believes fair and impartial trial cannot be obtained in county because of undue:

        1) Influence of adversary; or,
        2) Prejudice against:

            a) Defendant;
            b) Cause of action; or
            c) Defense;

    b. Signed by party;
    c. Verified in the same manner as pleadings;
    d. Supported by affidavits of two credible persons:

        1) Who believe the statements in the petition are true;
        2) Who, if party is corporation, are not directly, indirectly connected with corporation; and
        3) Who have received no benefit or favor from such corporation within the preceding twelve months.

    Ark. Code Ann. §16-60-201.

2. Motion shall be made to circuit court of county in which action pending in:

    a. Open court; or
    b. Vacation upon reasonable notice to adverse party and attorney.

    Ark. Code Ann. §16-60-201.

3. Motion may include county in which cause is pending and one additional county. Ark. Code Ann. §16-60-201

4. All defendants must join in moving for change.

5. If change is necessary to obtain fair and impartial trial, court may order change of venue to county:

    a. To which there is no valid objection;
    b. That is most convenient to parties and witnesses.

    Ark. Code Ann. §16-60-203.

6. If motion is granted, movant shall pay fee within statutory period of time allowed by court and clerk shall thereupon transfer necessary papers. Ark. Code Ann. §16-60-204.

7. Trial in new county shall be held at the first term commencing ten days after filing of transferred papers. Ark. Code Ann. §16-60-206.

8. In a civil case, only one order for a change of venue shall be granted to the same party in the same action. Ark. Code Ann. § 16-60-205.

9. In a criminal case, only one change of venue is permitted. Ark. Code Ann. § 16-88-203.

III. SPECIFIC ACTIONS

REAL PROPERTY

EMINENT DOMAIN (ACTION BY CONDEMNOR IN CIRCUIT COURT)

Arkansas Constitution, Art. 2 §23, recognizes the State's right of eminent domain. Arkansas Constitution, Art. 2 §22 recognizes that the right of property is before and higher than any constitutional sanction, and private property shall not be taken, appropriated, or damaged for public use, without just compensation therefore.

1. Condemnor must attempt to reach agreement with property owner. Ark. Code Ann. §§18-15-1202; 18-15-503; 18-15-1303.

2. If no agreement, condemnor must file application with circuit court of county in which all or part of the property is located. Ark. Code Ann. §§18-15-1202; 18-15-503 - 504; 18-15-604; 18-15-705; 18-15-1004; 18-15-1303; 18-15-803; 18-15-1403; 18-15-303; 18-15-403.

3. Application shall:

    a. Describe affected property or make reference to a map or plot. Ark. Code Ann. §§18-15-1202; 18-15-504; 18-15-604; 18-15-705.

4. Notice shall be given to property owners and all interested persons:

    a. By personal service, or certified mail;
    b. By publication of notice for nonresidents, infants, incompetents, or unknown parties; or
    c. By summons or notice by mail to guardian or personal representative of an infant, incompetent, or deceased owner. Ark. Code Ann. §§18-15-1202, 18-15-504; 18-15-1403; 18-15-303; 18-15-408; 18-15-907; 18-15-1004 - 1005.

5. Guardian *ad litem* shall be appointed for any infant or incompetent without a legal representative. Ark. Code Ann. §§18-15-1203; 18-15-505.

6. The court shall set time of hearing, summons a jury, and take evidence. The jury shall determine just compensation. Ark. Code Ann. §§18-15-1204; 18-15-506; 18-15-706; 18-15-1405 - 1406.

7. Judgment for applicant vests title in it on payment of damages to clerk of the court. Ark. Code Ann. §18-15-404.

8. If there is more than one interested party, the court shall divide proceeds. Ark. Code Ann. § 18-15-307.

9. Action shall take precedence over other matters. Ark. Code Ann. §18-15-403.

RELEVANT STATUTES

Right of State: Ark. Const. Art. 2 §23; Art. 17 §9.
Right of municipal and private corporation: Ark. Const. Art. 12 §9.
Flood control by Soil and Water Conservation Commission: Ark. Code Ann. §15-24-107.
Soil and water conservation district: Ark. Code Ann. §14-125-303.
Flood control by county: Ark. Code Ann. §14-16-112.
Municipalities for streets and parking: Ark. Code Ann. §14-302-105.
Game and Fish Commission: Ark. Const. Amend. 35 §8.
Exhibit grounds: Ark. Code Ann. §14-139-104.
Housing authority: Ark. Code Ann. §§14-169-219; 18-15-1503 - 1504.
Sewers: Ark. Code Ann. §14-235-210.
Waterworks and water supply: Ark. Code Ann. §§14-234-215; 14-234-516; 14-234-111.
Consolidated water and light district: Ark. Code Ann. §14-218-133.
Suburban improvement district: Ark. Code Ann. §§14-92-222; 14-92-310.
Central business improvement district: Ark. Code Ann. §14-184-116.
Road and street improvement district: Ark. Code Ann. §14-317-112.
Regional water distribution district: Ark. Code Ann. §14-116-402.
Navigation, coal, and stone companies: Ark. Code Ann. §18-15-807.
Irrigation companies: Ark. Code Ann. §18-15-1101.
Parties and procedure: Ark. Code Ann. §18-15-102.
Public landing: Ark. Code Ann. §18-15-901 *et seq*.
Underground storage of gas: Ark. Code Ann. §15-72-604.
Railroads: Ark. Code Ann. §23-11-209.
Telephone company: Ark. Code Ann. §23-17-101.
Pipeline company: Ark. Code Ann. §23-15-105.
Water power company: Ark. Code Ann. §23-18-406.
Municipal airport: Ark. Code Ann. §14-360-102.
Regional airport authority: Ark. Code Ann. §14-362-120.
County airport: Ark. Code Ann. §14-358-102.
Airport commission: Ark. Code Ann. §14-359-112.
Airports in border municipalities: Ark. Code Ann. §14-361-104.
Highway right-of-way damages: Ark. Code Ann. §27-67-316.
State Highway Commission's authority: Ark. Code Ann. §§27-67-301 - 302.
Procedure when State Highway Commission obtains property: Ark. Code Ann. §§27-67-303 -319.
State Highway Commission's authority for bridges and ferries: Ark. Code Ann. §27-88-121.
County road damages: Ark. Code Ann. §14-298-111.
Improvement district for acquiring rights-of-way: Ark. Code Ann. §14-318-111.
Toll bridges, turnpikes, or causeways: Ark. Code Ann. §27-86-206.

Mississippi River Parkway: Ark. Code Ann. §§27-69-102; 27-69-104.

FORCIBLE ENTRY AND DETAINER

1. Plaintiff shall file a signed complaint with the clerk of the circuit in the county in which the offense has been committed:

    a. Specifying lands, tenements, or possessions forcibly entered and/or detained;
    b. Specifying by whom and when done;
    c. Accompanied by plaintiff's own or another creditable person's affidavit stating:

        1) Plaintiff's lawful possession;
        2) Defendant's forcible entry and/or detainer.

2. Clerk shall issue a summons in customary form and a notice of intention to issue writ of possession in the form prescribed in the statute.

3. Within five days after summons served:

    a. Defendant may file written objections and plaintiff shall obtain and give notice of hearing date by certified mail, postage prepaid; or

    b. Writ of possession shall issue if defendant fails to file written objections.

4. Court shall order issuance of writ of possession if:

    a. At hearing plaintiff presents sufficient evidence to convince court that he or she is likely to succeed on the merits; and

    b. Plaintiff provides adequate security.

5. Defendant may retain possession upon payment, within five days of issuance of writ, of adequate security as determined by court.

6. Housing authority entitled to expedited hearing within ten days of filing of objections by defendant if surrender of possession is sought as a result of defendant convicted of Uniform Controlled Substance Act.

7. If finding or verdict is for plaintiff, court or jury shall assess the amount of:

    a. Rent due and agreed on at time action commenced or up to time of judgment;
    b. Liquidated damages, if no rent agreed on, in amount equal to:

1) Rental value for each month or portion thereof that property unlawfully entered and/or detained if property used for residential purposes only;
2) Three times rental value per month or time of unlawful detention if property used for commercial or residential and commercial purposes.

8. Court shall enter judgment with costs and issue writ of possession if plaintiff not already in possession.

9. Defendant may present evidence showing damages sustained by being dispossessed of land.

10. If finding or verdict is for defendant, court shall:

    a. Give judgment with costs and any damages sustained by dispossession;
    b. Issue a writ of restitution if property is in plaintiff's possession.

11. Title to property shall not be adjudicated upon or given in evidence except to show right and extent of possession.

Ark. Code Ann. §§18-60-302-311.

ESCHEAT

1. The prosecutor may file any information on behalf of the county in the circuit court:

    a. If there is reason to believe that any real estate in the circuit has escheated; and
    b. The estate has not been sold for payment of debts according to law within three years after the death of the last person seized.

2. The information shall:

    a. Describe the estate;
    b. Name the person last lawfully seized;
    c. Name the terre-tenants and persons claiming the estate, if known;
    d. Set out facts and circumstances creating the claimed escheat.

3. The court shall:

    a. Issue a *scire facias* against such claimants requiring them to appear and show cause against the escheat;
    b. Make an order setting forth the contents of the information and requiring all claimants to appear and show cause. The order shall be published for

four weeks in a newspaper printed in the state.

4. Claimants may appear and plead and may traverse the facts on the information any time within three days of the return of the *scire facias*.

5. Other claimants may appear and plead in open court within the time for pleading.

6. If no claimants appear or plead, a default judgment for the county shall be entered.

7. A trial of issues of fact raised by the answer shall be conducted and a survey may be ordered.

8. Judgment shall be entered:

   a. For the county with costs describing and vesting title to the land;

   b. For the claimants with costs if title is in the claimant.

9. Within seven years of the intestate's death any person may appear and claim:

   a. Any money paid into the treasury by filing petition in circuit court (in county in which decedent resided at death) stating nature of claim and amount of money that should be paid. Copy to be served on prosecuting attorney, who is to answer.

   b. The land by filing petition in circuit court (in county where land lies) setting forth nature of demand and asking that land be given over. Copy of petition to be served on prosecuting attorney, who shall answer.

Ark. Code Ann. §§28-13-106 -111.

EJECTMENT

1. Plaintiff may maintain an action for ejectment:

   a. If legally entitled to possession of premises;

   b. If possession is claimed by virtue of:

      1) Entry made with register and receiver of proper land office of U.S.;
      2) Pre-emption right under laws of U.S.;
      3) Improvement plaintiff has made on public lands of U.S. whether or not land surveyed, if another is in possession of improvement.

   c. If claim of possession is based on:

1) Entry made with proper swampland agent or land agent of proper State land office; and
2) Evidence of title in the form of patent certificates granted by aforementioned officers.

2. Action shall be maintained:

   a. In parties' real names;
   b. Against person in possession of or lessor of premises, or both.

3. Person from or through whom defendant claims title may, on defendant's motion, be made co-defendant.

4. Complaint shall:

   a. Set forth and attach as exhibits all deeds and other written evidences of title upon which suit relies;

   b. State such facts as show *prima facie* title in plaintiff.

5. Answer shall:

   a. Set forth and attach as exhibits all deeds and written evidence of title;

   b. State facts showing *prima facie* title in defendant;

   c. Set forth exceptions to plaintiff's documentary evidence which specifically note objections taken.

6. Plaintiff shall, within three days after answer filed, file exceptions to defendant's documentary evidence.

7. Court shall rule on objections, and evidence to which exception is sustained shall not be used at trial unless the defect is covered by amendment.

8. Objections to evidence not specifically raised shall be waived.

9. Plaintiff may recover on a showing that, when action commenced, defendant was in possession of premises and plaintiff had title or right to possession as declared to be sufficient to maintain action of ejectment.

10. If judgment for plaintiff is returned:

    a. It shall be for recovery of premises, damages, and costs;

b. Damages shall consist of rents and profits to the time damages are assessed;

NOTE: If plaintiff seeks to recover an improvement of defendant and plaintiff has entered such improvement in any U.S. land office in state, no damages are recoverable.

c. Writ of inquiry shall be awarded to assess damages;

d. Writ of possession may issue if plaintiff recovers both possession and damages and shall command officer to whom writ is delivered to:

1) Deliver possession of premises to plaintiff;
2) Levy and collect damages and costs as in executions on judgments in personal actions;

e. Plaintiff shall pay to defendant who entered peaceably in belief of ownership:

1) All taxes paid by defendant on premises;
2) Value of improvements defendant has made;

f. Court or jury shall assess:

1) Value of improvements;
2) Damages from waste;
3) *Mesne* profits allowed by law and accruing within three years prior to suit;
4) Taxes paid by occupant;

g. If improvements and taxes exceed in value damages and profits, court shall order, as part of final judgment, that no writ of possession shall issue until balance due occupant shall have been paid;

h. Rents accruing from date of judgment shall be set off against value of improvement and taxes.

Ark. Code Ann. §§18-60-201 - 209; 18-60-213.

EJECTMENT - TAX DEED

1. Action to recover lands sold by the collector or Commissioner of State Lands for nonpayment of taxes or on tax forfeiture or donation deed, may be commenced within two years after sale by owner or owner's successors in interest.

2. Plaintiff shall file affidavit setting forth tender or refusal of tender to purchaser

of:

a. Full amount of taxes and costs first paid on account of lands with 25% interest;

b. Full value of improvements made by purchaser.

3. Court shall dismiss action if above affidavit not filed before commencement of action.

4. If judgment is for plaintiff it shall be for:

a. Recovery of possession only;

b. Damages to defendant for full value of:

1) Taxes and interest;
2) Costs;
3) Improvements.

5. In the event a tax sale is later determined to be void or it is determined that the owner may redeem the forfeiture, deed holder is entitled to value of improvements by reason of any survey holder has caused to be performed.

Ark. Code Ann. §§18-60-212; 18-60-214; 18-61-106.

PARTITION

1. Any person having an interest in land held in joint tenancy, tenancy in common, coparency, or an estate by entirety not a homestead and occupied, may petition for partition.

2. The petitioner shall, *inter alia*, describe the property, name those having an interest, and their extent, and summons all having an interest.

3. When a "stranger" purchases an undivided interest containing ten acres or more, three years must pass before an action for partition can be filed unless partitioners own one-half or more.

4. Guardians appointed for minors or insane persons.

5. Any person having an interest may intervene.

6. Partition is to be ordered when all join or there is a failure to answer.

7. Where partition is ordered, commissioner may be appointed to make the partition

unless partition cannot be made without great prejudice to the owners.

8. On confirmation of the division the commissioners shall make deeds.

9. A reasonable fee should be allowed the attorney filing the partition and costs shall be apportioned in ratio of interest.

10. The land is sold if it cannot be partitioned. After sale, the commissioners shall report proceedings to the court. Upon approval, the commissioners shall execute conveyances.

11. Proceeds of the sale shall be distributed.

12. If court determines that the appointment of commissioners are not necessary, there may be a sale without commissioners.

Ark. Code Ann. §§18-60-401- 426.

ADVERSE POSSESSION STATUTES OF LIMITATIONS

1. All suits for any lands shall be filed within seven years after right accrued unless a minor or not of sound mind and then within three years upon reaching twenty-one or coming of sound mind.

2. Adverse possession does not apply to lands of an improvement district for taxes due.

3. No entry upon land is valid as a claim unless suit is brought within one year after entry and within seven years when the right of entry accrued.

4. No action of ejectment when the plaintiff has not possessed the land for five years.

5. Three years' possession bars a complaint for forcible entry and unlawful detainer.

6. Unimproved and unenclosed land is deemed to be held in possession of the person, who pays taxes, if he has color of title, or if he or someone under whom he claims has paid taxes, for seven years.

Ark. Code Ann. §§18-61-101-106; 18-11-102.

PUBLIC NUISANCES

1. Sale of alcoholic beverages in violation of the law from any place, operation of a roadhouse, tourist camp, public dance hall, nudist camp in violation of law, unlawfully operated businesses or places are public nuisances. Any person

carrying on or permitting use of premises operated or maintained shall be deemed to be carrying on or engaging in the undertaking.

2. Circuit courts have jurisdiction to abate public nuisances by petition of the attorney general, prosecuting attorney, or five freeholders of the county making bond for costs and damages.

3. A hearing is held upon five days' notice for permanent injunction. A violation of an injunction is punishable by contempt.

4. Evidence of payment of tax as a retail liquor dealer or possession of a tax stamp is *prima facie* evidence of sales of intoxicating liquors.

5. Where the nuisance is established, the closing shall be ordered.

Ark. Code Ann. §§16-105-201 - 211; §§ 16-105-301 - 309. *See* Ark. Code Ann. §§ 16-105-401-417, "The Arkansas Drug Abatement Act."

WRITS

HABEAS CORPUS

1. If an infant or married woman is unlawfully detained by or in the custody of any person, an application for *habeas corpus* may be made by:

   a. Father;
   b. Mother;
   c. Guardian; or
   d. Next friend.

2. If an infant or married woman is detained by any religious or other association or an agent of the same, an application for a writ of *habeas corpus* may be made by:

   a. Husband;
   b. Parent;
   c. Guardian; or
   d. Next friend.

3. The writ shall be issued by:

   a. Any circuit judge in term, time, or vacation;
   b. Arkansas Supreme Court; or
   c. County judge when circuit judge absent from county, except that county judge shall have no power to issue writ of *habeas corpus* in case where indictment by grand jury.

4. The writ shall issue without application if the circuit court has evidence from any judicial proceeding that any person is illegally detained within the jurisdiction.

5. Writ shall be granted to any person who shall apply for same:

   a. By petition;
   b. By showing, by affidavit or other evidence that probable cause exists to believe that he is unlawfully detained**;** or
   c. By alleging actual innocence to the offense for which the person was convicted.

6. A bond may be required of the applicant, with surety:

   a. Payable to the State or person against whom the writ is directed;
   b. Conditioned on:

      1) The detainee not escaping; and
      2) Payment of such costs and charges as may be awarded against him.

7. The writ shall:

   a. Be signed by the office (but need not be under seal);
   b. Be directed to the person having custody of detainee:

      1) In his official name;
      2) In his own name; or
      3) By description if the name is unknown;

   c. Be returnable at a time and place specified before the issuing court;
   d. Designate the person having custody by name or office;
   e. Designate the person to be produced by name or description;
   f. Be served by:

      1) Any qualified officer; or
      2) Private individual designated by the judge.

8. The writ shall be returned:

   a. Within three days of the service adding one day for every twenty miles further than twenty miles to be traveled;
   b. Signed by the person served setting out:

      1) Whether or not he has the party in his custody;
      2) If so, the authority and true cause of such custody set forth at

large;
3) A copy of any written authority for the custody;
4) To whom, when, for what cause, and what authority custody has been transferred before service of the writ; and
5) The fact, of illness or infirmity of the detainee making production unsafe and verifying same by oath.

9. Witnesses may be summoned and punished for contempt as in other proceedings.

10. Affidavits of witnesses of either party may be taken and read in evidence in discretion of the court on reasonable notice to his agent or attorney.

11. After hearing, the court may:

a. Discharge the detainee;
b. Remand detainee to custody of person served;
c. Admit detainee to bail; or
d. Make such order as may be proper; and
e. Adjudge costs of the proceeding.

12. No county or probate judge shall permit any evidence other than the return to the writ, if commitment appears regular on its face. (Note: reference to "probate judge" enacted prior to Amendment 80)

13. The judgment on trial of the writ shall be considered and enforced as any judgment.

Ark. Code Ann. §§16-112-102 - 123.

MANDAMUS AND PROHIBITION

1. The circuit courts shall hear and determine petitions for:

a. Writs of mandamus commanding an executive, judicial, or ministerial officer to perform or omit to do an act enjoined by law; and
b. Writs of prohibition to an inferior court prohibiting it from proceeding in a cause or matter over which it has no jurisdiction.

2. An aggrieved party, or the State when the public interest is affected may petition for a writ of mandamus.

3. Written notice of hearing on petition shall:

a. State:
1) Style of the court;
2) Docket number of the action;

3) Place of hearing; and
4) Relief sought;

b. Be served upon the officer or person as prescribed by the court.

4. Petitions for writs shall take precedence over all other actions and shall be determined summarily.

5. It is within the judge's discretion to determine from the petition, records, and files whether an evidentiary hearing is warranted. If hearing deemed necessary, it shall be held within 45 days from the date of application.

6. After proper service and before hearing, the party against whom writ is sought, shall file answer showing why writ should be denied, failing which, after proper showing, suitable relief shall be speedily granted.

7. Court shall hear and determine all issues of law and fact.

8. Order granting or denying writ shall be a final and appealable order.

9. During pendency of proceedings, court may make temporary orders to prevent injury, waste, or damage.

10. A writ of mandamus is a discretionary remedy to be issued only when the petitioner has shown a clear and certain legal right to the relief sought and there is no other adequate remedy. *Saunders v. Neuse*, 320 Ark. 547, 898 S.W.2d 43 (1995); *Rothbaum v. Arkansas Local Police and Fire Retirement System*, 346 Ark. 171, 55 S.W.3d 760 (2001).

Ark. Code Ann. §§16-115-101-108.

See also Ark. R. Civ. P. 78(d) - writs of mandamus and prohibition in election contests.

CERTIORARI

1. Circuit courts have the power to issue writs of *certiorari* to any officer, board of directors, city or town council, or any inferior tribunal to correct any erroneous or void proceeding or ordinance.

2. Application upon reasonable notice. A temporary restraining order may be granted on bond with security.

3. Evidence may be introduced by either party. The record of an inferior tribunal is conclusive.

Ark. Code Ann. §16-13-205.

DISSOLUTION OF CORPORATION

1. The circuit court shall have full power to liquidate the assets and business of a corporation:

   a. In an action by a shareholder when it is established that:
      1) Directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;
      2) Acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;
      3) Shareholders are deadlocked in voting power and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
      4) Corporate assets are being misapplied or wasted.

   b. In an action by a creditor when:
      1) Claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
      2) Corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

   c. When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

2. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

3. Court shall have all powers to supervise liquidation specified in Ark. Code Ann. §4-26-1106.

4. After liquidation, the circuit court of the county in which the corporation is located or wherein its registered office is situated or Pulaski County, otherwise shall enter a decree of dissolution that shall be certified to the Secretary of State and county clerk.

Ark. Code Ann. §§4-26-1106 -1108.

LIQUIDATION OF CORPORATION

1. The circuit court may:

    a. Supervise the liquidation of a dissolved corporation; and
    b. Make all proper orders in connection with winding up the corporate affairs, including:
        1) Additional notice if notice to creditors and claimants is inadequate;
        2) Notice by publication, if no notice given, three consecutive weeks warning creditors and claimants to file within 120 days after first publication or be barred;
        3) Determining the validity and amount of any claims that have been or may be presented to corporation, court, or receiver;
        4) Barring all creditors and claimants whose claims are:
            a) Not timely filed;
            b) Disallowed by court;
        5) Determining and enforcing the liability of any director, officer, shareholder, or subscriber for shares, to the corporation or for liabilities of the corporation;
        6) For payment, satisfaction, or compromise of claims against the corporation, retention of assets for such purpose and determination of adequacy of provisions for payment of corporate liabilities;
        7) Appointing and removing a receiver, who may be an officer, director, shareholder, or other person;
            NOTE: Preference shall be given an officer or substantial shareholder absent compelling reasons to the contrary.
        8) For return, where lawful, of subscription payments;
        9) Making distributions in cash, in kind, or both, to shareholders;
        10) Disposing of or destroying corporate records, documents, and papers;
        11) Issuing injunctions:
            a) Against unauthorized or unlawful acts of corporation or its officials;
            b) Restraining creditors from proceeding against corporation in any other court;
        12) Issuing orders and injunctions for any other purposes tending to safeguard rights of:
            a) Corporation;
            b) Creditors;
            c) Shareholders; and
            d) Claimants;
        13) Ordering and supervising public or private sale of any or all corporate assets on court-approved terms under the court's direction or by court-appointed receiver or commissioner;
        14) Extending time, where equitable, for creditors and claimants to

file claims; and

15) Barring all creditors who have not filed their claims timely from participating in distribution of corporate assets.

2. Petition shall be filed by:

   a. Corporation; or
   b. Creditor, claimant, director, officer, shareholder, subscriber for shares, incorporator, or the attorney general in a situation approved by the court.

3. Court shall make an affirmative finding, if the petition is contested, that:

   a. Corporate assets are being, or are about to be misapplied or wasted;
   b. Creditors or shareholders are threatened with irreparable damage.

4. Orders may be entered *ex parte* except that the court may require notice of hearing and of entry of any orders to corporation and other interested parties in proper manner.

5. All court orders shall be binding on the attorney general, corporation, officers, directors, shareholders, subscribers for shares, incorporators, creditors, and claimants.

6. Orders shall not be binding upon any party, who has not received notice of hearing, if notice was ordered to be given.

7. Jurisdiction once acquired, shall be exclusive in the circuit court.

8. Venue of proceedings shall be in the county in which:

   a. Corporation maintained its principal place of business on date of dissolution; or
   b. Corporation's registered office is located, if it had no principal place of business.

9. Venue of actions as to all other corporations is in Pulaski County.

Ark. Code Ann. §4-26-1106.

UNIFORM ARBITRATION ACT

1. Jurisdiction

   The making of an arbitration agreement confers jurisdiction on the circuit court.

Ark. Code Ann. §16-108-217.

_____2. Venue

a. An initial application shall be made in the county, where the arbitration has been or is to be heard. Otherwise, venue is in the county, where the adverse party resides or has a place of business, and if neither, to the court of any county.
b. Subsequent applications shall be made to the court that heard the original application unless the court directs otherwise.

Ark. Code Ann. §16-108-218.

3. Proceedings to compel or stay

a. The court shall order arbitration upon application of either party unless the opposing party denies the existence of an agreement to arbitrate in which case the court shall proceed summarily to determine the issue and order arbitration if the court finds for the moving party; otherwise the application is denied.
b. Upon application, the court may stay an arbitration proceeding that has begun or is threatened on a showing that there is no agreement to arbitrate. If the court finds for the opposing party, the court shall order the parties to arbitration.

Ark. Code Ann. §16-108-202.

4. Appointment of Arbitrators

a. In the absence of a specified method of appointment within the arbitration agreement, or when an arbitrator fails or is unable to act and a successor has not been appointed, the court on application shall appoint one or more arbitrators.
b. The court appointed arbitrator has all the powers of one named in the agreement.

Ark. Code Ann. §16-108-203.

5. Confirmation of Award

a. The trial court shall confirm an award upon application of a party unless grounds are urged for vacating, modifying, or correcting the award.
b. Judicial review of an arbitration award is more limited than appellate review of a trial court's decision, and where possible, the court must construe an award as valid.

Ark. Code Ann. §16-108-211; *Chrobak v. Jones & Co.*, 46 Ark. App. 105, 878 S.W.2d 760 (1994).

6. Vacating an Award

a. Grounds: *Dean Witter Reynolds v. Deislinger*, 289 Ark. 248, 711 S.W.2d 771 (1986).

(1) Award procured by corruption, fraud, or undue means (*Department of Parks and Tourism v. Resort Managers*, 294 Ark. 255, 743 S.W.2d 389 (1988));
(2) Arbitrator partiality, corruption, or misconduct prejudicing the rights of any party;
(3) Arbitrator exceeded power;
(4) Arbitrator's refusal to postpone hearing for cause or conducted hearing contrary to these provisions (*McLeroy v. Waller*, 21 Ark. App. 292, 731 S.W.2d 789 (1987)); and
(5) No arbitration agreement and none ordered, and party objected to participation in arbitration hearing.

b. Time

(1) Application to vacate must be made within 90 days of delivery of copy of award to applicant, unless,
(2) If application claims corruption, fraud, or undue means, must be made within 90 days after grounds are or should have been known.

c. Rehearing

(1) Unless the court finds there was no agreement, the court may order rehearing before new arbitrators as provided in the agreement.
(2) Otherwise, the court may order rehearing before the arbitrators, who made the award or their appointed successors.

d. Vacation Denied

The court shall confirm the award if the application to vacate is denied and there is no motion pending to modify or correct.

Ark. Code Ann. §16-108-212.

7. Modification or Correction

a. The court shall modify or correct the award where:

(1) Evident miscalculation of figures or evident mistake in a description;

(2) Award upon matter not submitted which can be corrected without affecting the merits of the decision; or
(3) Award imperfect in form, not affecting the merits.

Ark. Code Ann. §16-108-213.

REPLEVIN

1. A suit to recover personal property in circuit court or municipal court. Acts to avoid process or damage and may be prosecuted as a crime.

2. Petition must contain specific allegations under oath to obtain an order for delivery with a bond.

3. Notice is required and an opportunity for a hearing within a reasonable time, unless a genuine danger that the property will be removed. A notice of five days of objection.

4. Execution is by the sheriff where an order of delivery is entered.

Ark. Code Ann. §§18-60-801- 822.

ELECTION CONTESTS

1. Any candidate may contest a certification of nomination or certificate of vote by a suit in the circuit court of the county or Pulaski County.

2. The complaint must be filed within twenty days of certification and verified.

3. Special judges may be appointed where regular judge is unable to dispose of case prior to ten days.

4. The case shall be tried without a jury and any appeal shall not operate as a *supersedeas*.

5. Any contest of state legislative offices shall be in accordance with applicable procedure.

6. A grand jury may be convened if election illegalities are alleged and subsequent trials may be held.

Ark. Code Ann. §§7-5-801; 7-5-803 - 807.

APPEALS TO CIRCUIT COURT

1. Appeals are to be filed within thirty days from the date of entry of the judgment.

2. An appeal from a municipal court judgment is a continuation of the municipal court action. A circuit court's dismissal of a case appealed from municipal court leaves the municipal court's judgment as valid and enforceable. *Wilson v. C & M Used Cars*, 46 Ark. App. 281, 878 S.W.2d 427 (1994).

Ark. R. Crim. P. 36; District Court Rule 9.

UNPAID SELLER'S LIEN

1. Seller of property may bring an action to recover money for purchase unpaid. Such property may not be scheduled or exempt from seizure on attachment or sale on execution.

2. Complaint must be verified describing the property and the value.

3. An order, which may be a part of the summons, may direct the sheriff to hold the property.

4. A bond for retention of the property may be made by the vendee.

5. If there has been disposition of the property, the vendee may be compelled to appear.

Ark. Code Ann. §16-118-104.

ACTIONS ON BONDS

Suit may be brought against those required by law to give bond. Suit is brought in the name of the State on any official bond.

Ark. Code Ann. §§16-107-201-208.

LIS PENDENS

1. Notice of pendency of a suit affecting title or any lien on real or personal property may be filed:

   a. By plaintiff, his attorney, or his agent;
   b. With the recorder of deeds;
   c. In the county in which the property is situated.

2. Notice shall set out:

a. Title of the action;
b. General object of the action;
c. Correct and full description of the affected property;
d. Names of parties; and
e. Style of the court.

3. Said notice shall render the filing of the suit constructive notice to bona fide purchasers or mortgagees of affected property.

4. A properly authenticated copy of the record shall be evidence of the notice and filing in court.

Ark. Code Ann. §§16-59-101-16-59-107.

CONTEMPT

1. Any court of record may summarily punish any contempt committed in its view and presence.

2. Other contempt may be punished only after notice of the accusation and after party charged has had opportunity to make his defense.

3. The substance of the offense must be set out in the order or warrant of commitment whenever a person is committed.

4. The following acts constitute contempt:

   a. Disorderly, contemptuous, or insolent behavior committed during its sitting in the court's immediate view and presence:

      1) Directly tending to interrupt its proceedings; or
      2) Directly tending to impair the respect due its authority;

   b. Any breach of peace, noise, or disturbance directly tending to interrupt the proceedings;
   c. Willful disobedience of any process or order lawfully issued or made by it;
   d. Willful resistance to the lawful order or process of court; and
   e. Contumacious and unlawful refusal to be sworn, and when so sworn, the refusal to answer any legal and proper interrogatory.

5. Contempt may be punished:

   a. As a Class C misdemeanor;
   b. Imprisonment until adjournment of court; or
   c. Imprisonment for up to thirty days for nonpayment of fine in (a).

NOTE: Pursuant to Ark. Const., Art. 7 §26, the legislature may provide by law for punishment of contempt committed outside the presence of the court; however, the power to punish for contempt is inherent in courts and the courts may go beyond the powers given by statute in cases of contempt "committed in the presence or hearing of the courts" or "in disobedience of process." *See Carle v. Burnett*, 311 Ark. 477, 845 S.W.2d 7 (1993).

See also Perroni v. State, 358 Ark. 17, 186 S.W.3d 206 (2004), circuit judge did not err in holding the appellant (an attorney) in criminal contempt for failing to appear at the jury trial of one of the attorney's clients.

Ark. Code Ann. §16-10-108.

AGREED CASES

1. The court may hear, determine, and render judgment on a question:

   a. Potentially the subject of one action;
   b. Agreed upon and presented by the parties.

2. It must appear:

   a. That the court would have jurisdiction of the action;
   b. By affidavit, that the controversy is real; and
   c. That the proceedings are in good faith.

3. The judgment rendered shall be with costs, may be enforced, and shall be subject to reversal, unless otherwise provided in the submission.

4. The case, the submission, and the judgment shall constitute the record.

Ark. Code Ann. § 16-118-101.

5. Court or judge in vacation may grant temporary restraining order upon bond or good security given:

   a. In a sum fixed by the court; and
   b. Conditioned that applicant will perform the judgment of the court.

6. At the hearing:

   a. Affidavits may be read;
   b. Evidence dehors the record may be introduced;
   c. Record of inferior tribunal shall be conclusive as far as it extends;
   d. Acts of executive officer or board of such tribunal shall be *prima facie* evidence of their regularity and legality.

7. Court shall have power to enforce its judgment by mandamus, prohibition, and other applicable writs.

Ark. Code Ann. §16-13-205.

CHANGE OF NAME

1. Circuit courts, upon application for good cause shown, may alter or change the name of any person within its jurisdiction.

2. The application shall be:

   a. By petition;
   b. In writing; and
   c. Embodying the reasons therefor.

3. If allowed, the petition shall be spread upon the record together with court's decree.

Ark. Code Ann. §9-2-101.

REMOVING DISABILITY OF MINORS

1. Circuit courts may authorize any minor, who is over age sixteen and a county resident, as if he has reached majority, to:

   a. Transact business in general;
   b. Do specified acts or things; or
   c. Be granted letters testamentary, of administration, or of guardianship.

2. Circuit courts may remove the disability of minority of any nonresident over sixteen for purposes of conveying or encumbering any real property he owns within the jurisdiction.

Ark. Code Ann. §9-26-104.

SEIZURE AND FORFEITURE

1. Firearm seizure

a. Whenever a person under 18 is unlawfully in possession of a firearm:

   (1) The firearm shall be seized; and

   (2) Shall be subject to forfeiture, after an adjudication of delinquency or a conviction.

Ark. Code Ann. §5-73-130 (a).

b. "Unlawfully in possession of a firearm" shall not include any act of possession of a firearm that is prohibited only by:

(1) Ark. Code Ann. §5-73-127, unlawful to possess loaded center-fire weapons in certain areas; or

(2) A regulation of the Arkansas State Game and Fish Commission.

Ark. Code Ann. §5-73-130 (c).

2. Motor Vehicle Seizure

a. Whenever a felon or a person under 18 is unlawfully in possession of a firearm in a motor vehicle, the motor vehicle shall be:

(1) Subject to seizure; and

(2) Subject to forfeiture, after an adjudication of delinquency or a conviction.

Ark. Code Ann. §5-73-130 (b).

3. Forfeiture and Disposition Procedures

a. The prosecuting attorney of the judicial district within whose jurisdiction the property is seized shall file a petition in the circuit court for an order to show cause why the circuit court should not order forfeiture of such property.

(1) The petition shall be verified and shall set forth:

(a) A statement that the action is brought pursuant to this section;

(b) The law enforcement agency bringing the action;

(c) A description of the property sought to be forfeited;

(d) A statement that on or about a date certain there was an adjudication of delinquency or a conviction and a finding that the property seized is subject to forfeiture;

(e) A statement detailing the facts; and

(f) A list of all persons known to the law enforcement agency,

after diligent search and inquiry, who may claim an ownership interest in the property by title or registration, or by virtue of a lien allegedly perfected in the manner prescribed by law.

Ark. Code Ann. §5-73-130 (d).

b. The judge of the court having jurisdiction shall issue an order to show cause setting forth a statement that Ark. Code Ann. §5-73-130 is the controlling law, upon receipt of petition.

(1) The order shall set a date at least 41 days from the date of first publication of the order for all persons claiming an interest in the property to file such pleadings as they desire as to why the circuit court should not order the forfeiture of such property for use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.

Ark. Code Ann. §5-73-130 (e).

c. The court with jurisdiction shall further order that all persons who do not appear on that date are deemed to have defaulted and waived any claim to the subject property.

Ark. Code Ann. §5-73-130 (e).

d. The prosecuting attorney shall give notice of the forfeiture proceedings by:

(1) Causing to be published a copy of the order to show cause twice each week for two consecutive weeks in a newspaper having general circulation in the county where the property is located, with the last publication being not less than five days before the show cause hearing; and

(2) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of, or a security interest in, the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:

(a) The property is of a type for which title or registration is required by law;

(b) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(c) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, Ark. Code

Ann. §4-1-101 *et seq*.

The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property, and if unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interests in the property shall not be applicable.

Ark. Code Ann. §5-73-130 (f).

4. Forfeiture Hearing

a. The petitioner shall have the burden to establish that the property is subject to forfeiture by a preponderance of the evidence.

b. Forfeiture factors:

(1) Any prior criminal conviction or delinquency adjudication of the felon or juvenile;

(2) Whether or not the firearm was used in connection with any other criminal acts;

(3) Whether the vehicle was used in connection with any other criminal acts;

(4) Whether the juvenile or felon was the lawful owner of the vehicle in question;

(5) If the juvenile or felon is not the lawful owner of the vehicle in question, whether or not the lawful owner knew of the unlawful act being committed which gives rise to the forfeiture penalty; and

(6) Any other factors the court deems relevant.

Ark. Code Ann. §5-73-130 (h).

5. Forfeiture and Protective Orders

a. The order shall perfect in the law enforcement agency right, title, and interest in and to such property and shall relate back to the date of the seizure. Ark. Code Ann. §5-73-130 (i).

b. Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable. Ark. Code Ann. §5-73-130 (j).

c. Upon filing the petition, the prosecuting attorney for the judicial district may also seek such protective orders as are necessary to prevent the transfer, encumbrance, or other disposal of any property named in the petition. Ark. Code Ann. §5-73-130 (k).

6. Forfeiture to Law Enforcement Agency

a. The law enforcement agency to which the property is forfeited shall:

(1) Destroy all forfeited firearms;

(2) Sell the motor vehicle, if the motor vehicle is not subject to a lien preserved by the court, or retain it for official use.

Ark. Code Ann. §5-73-130 (l).

(a) If the law enforcement agency sells, it shall provide notice of the sale by publication at least twice a week for two consecutive weeks in a newspaper having general circulation in the county and by sending a copy of the notice of the sale by certified mail, return receipt requested, to each person having ownership of, or a security interest in, the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:

(i) The property is of a type for which title or registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, Ark. Code Ann. §4-1-101 *et seq*.

Ark. Code Ann. §5-73-130 (m)(1).

(b) The notice of the sale shall include the time, place, and conditions of the sale and a description of the property to be sold. Ark. Code Ann. §5-73-130 (m)(2).

7. Property Proceeds

a. The property shall then be disposed of at public auction to the highest bidder for cash without appraisal. Ark. Code Ann. §5-73-130 (m)(3).

b. The proceeds of any sale and any money forfeited shall be applied:

(1) To payment of the balance due on any lien preserved by the circuit court in the forfeiture proceedings;

(2) To payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;

(3) To payment of the costs incurred by the prosecuting attorney or attorney for the law enforcement agency, approved by the prosecuting attorney, to which the property is forfeited; and

(4) To payment of costs incurred by the circuit court.

(5) Any remaining proceeds or money shall be deposited into a special county fund to be titled the "Juvenile Crime Prevention Fund," and the money in that fund shall be used solely for making grants to community-based nonprofit organizations that work with juvenile crime prevention and rehabilitation.

Ark. Code Ann. §5-73-130 (n);(o).

8. Drug-Forfeiture Proceedings

Arkansas Code Annotated § 5-64-505 controls the forfeiture of property (including currency, vehicles, and real property) associated with violations of the criminal controlled substance statutes. The statute provides for law enforcement procedures to be used in such seizures, and requires the initiation of a civil judicial proceeding by the prosecuting attorney. The statute also governs the disposition of property ordered forfeited by the circuit court.

EXTRADITION

Ark. Code Ann. §§16-94-201 *et seq.*, Uniform Criminal Extradition Act

<u>ARREST WARRANT ISSUED BY COURT</u>

1. A judge shall issue a warrant for the arrest of a person who is charged by:

   a. The sworn statement of a credible person in Arkansas that a person has committed a crime in another state; or
   b. The complaint upon affidavit of a credible person in another state that the accused has been:
   c. Charged with a crime in such other state; and
   d. Has fled from justice in such other state.

2. The magistrate before whom the person is brought shall hold a hearing and if it appears that:

a. Such person is the person charged;
b. Such person probably committed the crime; and
c. Such person has fled from justice; the judge shall commit such person to jail for a time specified in the warrant, unless such person posts bail.

3. Unless the offense charged is punishable by death or life imprisonment in the state of commission, the magistrate shall admit such person to bail in such sum as he deems proper by bond or undertaking, with sufficient sureties.

Ark. Code Ann. §§16-94-213 - 217.

ARREST WARRANT ISSUED BY GOVERNOR

1. A fugitive desiring to test the legality of a Governor's warrant shall be taken before a court of record.

2. Notice of a hearing is to be given the prosecutor of the county and the agent of the demanding state.

Ark. Code Ann. §16-94-210.

WAIVER OF EXTRADITION

1. If a fugitive agrees to waive extradition, he should be brought before a judge who informs him of:

a. The charge against him;
b. His right to the issuance and service of a warrant of extradition; and
c. His right to petition for a writ of *habeas corpus*.

Ark. Code Ann. §§16-94-103; 16-94-210.

RELEVANT STATUTES

Habeas corpus: Ark. Code Ann. §16-94-210.
Arrest prior to Governor's warrant: Ark. Code Ann. §16-94-213.
Arrest without warrant: Ark. Code Ann. §16-94-214.
Hearing before magistrate: Ark. Code Ann. §16-94-215.
Bail: Ark. Code Ann. §16-94-216.
Discharge of warrant: Ark. Code Ann. §16-94-217.
No inquiry as to guilt or innocence: Ark. Code Ann. §16-94-220.

AUTHORITY OF ASYLUM STATE COURT

Once the governor of the asylum state has acted on a requisition for extradition based on the demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue in the asylum state. *Michigan v. Doran*, 439 U.S. 282 (1978).

IV. JUVENILES

1. The prosecutor has the discretion to file in either juvenile division or criminal division:

   a. When a juvenile, who is 14 or 15 at the time of the alleged conduct, is charged with the following crimes:

      1) Capital murder, Ark. Code Ann. §5-10-101;
      2) Murder in the first degree, Ark. Code Ann. §5-10-102;
      3) Kidnapping, Ark. Code Ann. §5-11-102;
      4) Aggravated robbery, Ark. Code Ann. §5-12-103;
      5) Rape, Ark. Code Ann. §5-14-103;
      6) Battery in the first degree, Ark. Code Ann. §5-13-201; and
      7) Terroristic act, Ark. Code Ann. §5-13-310.

   Ark. Code Ann. §9-27-318(c)(2).

   b. When a juvenile, who is 16 at the time of the alleged conduct, is charged with any felony.

   Ark. Code Ann. §9-27-318(c)(1).

2. The State may file a motion in juvenile division to transfer a case to criminal division or designate a case as an extended juvenile jurisdiction offender case when a case involves a juvenile:

   a. Fourteen or fifteen years old when he engages in conduct that, if committed by and adult, would be:

      1) Murder in the second degree, Ark. Code Ann. §5-10-103;
      2) Battery in the second degree in violation of Ark. Code Ann. §5-13-202(a)(2), (3) or (4);
      3) Possession of a handgun on school property, Ark. Code Ann. §5-73-119(a)(2)(A);
      4) Aggravated assault, Ark. Code Ann. §5-13-204;
      5) Unlawful discharge of a firearm from a vehicle, Ark. Code Ann. §5-74-107;
      6) Any felony committed while armed with a firearm;
      7) Soliciting a minor to join a criminal street gang, Ark. Code Ann. §5-74-203
      8) Criminal use of prohibited weapons, Ark. Code Ann. §5-73-104;
      9) First-degree escape, Ark. Code Ann. §5-54-110;
      10) Second-degree escape, Ark. Code Ann. §5-54-111; or
      11) Felony attempt, solicitation, or conspiracy to commit any of the following:

A) Capital murder, Ark. Code Ann. §5-10-101;
B) Murder in the first degree, Ark. Code Ann. §5-10-102;
C) Murder in the second degree, Ark. Code Ann. §5-10-103;
D) Kidnapping, Ark. Code Ann. §5-11-102;
E) Aggravated robbery, Ark. Code Ann. §5-12-103;
F) Rape, Ark. Code Ann. §5-14-103;
G) Battery in the first degree, Ark. Code Ann. §5-13-201;
H) First-degree escape, Ark. Code Ann. §5-54-110; and
I) Second-degree escape, Ark. Code Ann. §5-54-111.

b. At least fourteen years old when he engages in conduct that constitutes a felony under Ark. Code Ann. §5-73-119(a); or

c. At least fourteen years old when he engages in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two years, three times been adjudicated as a delinquent juvenile for acts that would have constituted felonies if they had been committed by an adult.

Ark. Code Ann. §9-27-318(b).

3. The State may proceed with a case as a delinquency only when the case involves a juvenile:

a. Fifteen years of age or younger when the alleged delinquent act occurred, except as provided by subdivision (c)(2) of Ark. Code Ann. §9-27-318; or

b. Less than eighteen years old when he engages in conduct that, if committed by an adult, would be any misdemeanor.

Ark. Code Ann. 9-27-318(a).

4. If a prosecuting attorney can file charges in criminal division for an act allegedly committed by a juvenile, the State may file any other criminal charges that arise out of the same act or course of conduct in the same criminal division court case if, after a hearing before the juvenile division, a transfer is so ordered.

Ark. Code Ann. 9-27-318(d).

5. If a juvenile, who is fourteen or fifteen years old, is found guilty in criminal division of an offense other than an offense listed in subsection (b) or (c)(2) of Ark. Code Ann. §9-27-318, the judge shall enter a juvenile delinquency disposition under Ark. Code Ann. §9-27-330.

Ark. Code Ann. 9-27-318(j).

TRANSFER HEARINGS

1. a. Upon the motion of the court or any party, the judge of the division of court in which a delinquency petition or criminal charges have been filed shall conduct a hearing to determine whether to retain jurisdiction or to transfer the case to another division.

   b. The juvenile division or the criminal division shall conduct a transfer hearing within thirty days, if the juvenile is detained, and no longer than ninety days from the date of the motion to transfer.

   c. In making the decision to retain jurisdiction or to transfer the case, the court shall consider and make written findings on all of the following factors:

      1) The seriousness of the alleged offense and whether the protection of society requires prosecution in criminal division;
      2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
      3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
      4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;
      5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
      6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
      7) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
      8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
      9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
      10) Any other factors deemed relevant by the court.

Ark. Code Ann. § 9-27-318(g).

   d. Upon a finding by clear and convincing evidence that a juvenile should be transferred to another division, the court shall enter an order to that effect.

   e. Upon a finding by the criminal division that a juvenile, who is between the ages of fourteen and seventeen years old and charged with the crimes in

subdivision (c)(2) of Ark. Code Ann. §9-27-318 should be transferred to juvenile division, the criminal division may enter an order to transfer as an extended juvenile jurisdiction case.

Ark. Code Ann. §9-27-318(e) through (i).

2. Court is required to make written findings on all the transfer factors.

Ark. Code Ann. §9-27-318(h)(1).

3. If the case is transferred to another division, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the division to which the case is transferred.

Ark. Code Ann. §9-27-318(k).

4. Any party may appeal from a transfer order.

Ark. Code Ann. §9-27-318(l).

RELEVANT CASES

In a motion to transfer from circuit to juvenile court the trial court must consider all ten factors found at Ark. Code Ann. § 9-27-318(g); however, the trial court is not required to enumerate all ten factors in its findings. The circuit court's failure to specifically mention certain evidence presented by the defendant did not mean that the court ignored or failed to consider the evidence. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001).

The trial court must consider the factors found in Ark. Code Ann. §9-27-318(g); however, the court is not required to give equal weight to each of the factors. *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998).

The use of violence in the commission of a serious offense is a factor sufficient for the circuit court to retain jurisdiction. However, absent a finding that violence was employed, the seriousness of the offense alone is not a sufficient basis to refuse a transfer. *Ponder v. State*, 330 Ark. 43, 953 S.W.2d 555 (1997).

It is of no consequence that the defendant may not have personally used a weapon. The defendant's association with the use of a weapon in the course of crime is sufficient to satisfy the violence criterion. *Thompson v. State*, 330 Ark. 746, 958 S.W.2d 1 (1997).

There must be some evidence to substantiate the serious and violent nature of the charges contained in the information. *Thompson v. State*, 330 Ark. 746, 958 S.W.2d 1 (1997).

In *Thomas v. State*, 345 Ark, 236, 45 S.W.3d 818 (2001), the circuit court transferred a case to juvenile court as an extended juvenile jurisdiction case (EJJ). The juvenile was sixteen years old at the time of the alleged offense and was charged with a terroristic act and first-degree battery. After

learning that EJJ was not available, the judge entered an order to rescind the transfer order. The supreme court found that it lacked appellate jurisdiction because of the State's failure to appeal the original transfer order and the circuit court's ensuing lack of jurisdiction.

In *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W. 3d 549 (2001), the juvenile appealed the circuit court's denial of the juvenile's motion to transfer his case involving a charge of capital murder and first-degree battery to juvenile court. Appellant argued that the circuit court considered improper evidence, including hearsay and a confession that was not voluntarily, knowingly, and intelligently given. The court of appeals found that even if the hearsay statements should not have been admitted, appellant was not prejudiced because there was sufficient testimony to establish the serious and violent nature of the crimes. The appeals court also held that it was not an error for the circuit court to consider the allegedly involuntary confession at the transfer hearing. Transfer hearings are held for the purpose of determining jurisdiction and the statute does not suggest that the trial court should consider motions to suppress at these hearings.

V. *PRO SE* LITIGANTS AND INDIGENTS

CIVIL LITIGANTS

An individual has a right to represent himself in a civil matter. *Stewart v. Hall*, 198 Ark. 493, 129 S.W.2d 238 (1939). A corporation may not. *Ark. Bar Assn. v. Union Nat'l Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954).

Rule 72 of the Arkansas Rules of Civil Procedure requires that the applicant petition for leave to proceed *in forma pauperis*, verified by affidavit in a form approved by the court. The court may, by order, allow the petition if there is a satisfactory showing of a colorable cause of action.

A sample of an affidavit to proceed *in forma pauperis* is found in the Appendix at a-3.

Suits *in forma pauperis* are not permitted for slander, libel, or malicious prosecution.

CRIMINAL DEFENDANTS

A defendant in a criminal case has a constitutional right to counsel or self-representation. *Faretta v. California*, 422 U.S. 806 (1975). However, a defendant who has employed counsel or accepted the appointment of counsel may be found to have waived the right of self-representation. *Monts v. Lessenberry*, 305 Ark. 202, 806 S.W.2d 379 (1991). Where a defendant has an attorney, but desires some participation in the trial, that is to be resolved by the sound discretion of the trial judge. *Mosby v. State*, 249 Ark. 17, 457 S.W.2d 836 (1970). The trial court was held not to have refused to allow appellant to proceed *pro se* where appellant never made an unequivocal request to waive counsel. *Collins v. State*, 338 Ark. 1, 991 S.W.2d 541 (1999).

The trial court erred in forcing the appellant to be represented by counsel at trial, and in refusing to allow him to appear *pro se*. The trial court failed to conduct the proper inquiry into the appellant's request to proceed *pro se*, and the case was reversed and remanded for a new trial. *Pierce v. State*, 362 Ark. 491, 209 S.W.3d 364 (2005).

An Affidavit of Financial Inability to Employ Counsel is found in Appendix at a-10.

The right of counsel extends to matters relating to revocation of probation. *Brooks v. State*, 36 Ark. App. 40, 819 S.W.2d 288 (1991).

There exists a reasonable presumption against a waiver of an attorney. *Brewer v. Williams*, 430 U.S. 387 (1977). The burden is on the State to show that the waiver was voluntarily and intelligently made. Therefore, it is impermissible to presume waiver from a silent record.

The trial judge is required to inquire of a defendant and the record must affirmatively

show that:

1) The waiver of counsel is unequivocal and timely;
2) The waiver is knowingly and intelligently made; and
3) The defendant has not engaged in conduct that would prevent a fair and orderly trial.

Deere v. State, 301 Ark. 505, 785 S.W.2d 31 (1990).

To admonish a defendant that he must accept the consequences alone is not sufficient. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989).

A defendant will not be permitted to manipulate the court under the guise of refusing an attorney then demanding an attorney. *Wade v. State*, 290 Ark. 16, 716 S.W.2d 194 (1986).

A Waiver of Counsel Form is found in the Appendix at a-12.

Waiver of counsel was not voluntary when judge permitted defendant to represent himself then ordered he would be tried in shackles without advising him of the dangers of doing so. *Abdullah v. Groose*, 44 F.3d 692 (8th Cir. 1995).

Because the trial court allowed standby counsel to remain in the case, it did not make even a limited inquiry into the appellant's understanding of the legal process before permitting the appellant to represent himself, which was clearly error. Although the appellant attempted to proceed *pro se*, when it came to the actual presentation of the appellant's case, the appellant relinquished full discretion to standby counsel as to how to conduct significant trial procedures and responsibilities during the trial, and the appellant's conviction was affirmed. *Hatfield v. State*, 346 Ark. 319, 57 S.W.3d 696 (2001).

A defendant may not attempt to delay trial by firing his court-assigned attorney. *Hamilton v. Groose*, 28 F.3d 859 (8th Cir. 1994).

If a petition on which the petitioner was represented by counsel is denied, counsel shall continue to represent the petitioner for an appeal to the Supreme Court, unless relieved as counsel by the circuit court or the Supreme Court. If no hearing was held or the petitioner proceeded *pro se* at the hearing, the circuit court may at its discretion appoint counsel for an appeal upon proper motion by the petitioner. Ark. R. Crim. P. 37.3 (b)

Where counsel is appointed in municipal court, the appointment continues for purposes of Ark. R. Crim. P. Rule 8.2 even in circuit court proceedings, unless and until appointed counsel is relieved or new counsel is appointed.

A circuit court has the jurisdiction to deny counsel's motion to withdraw from

representing an indigent defendant in a criminal case. *Simpson v. Pulaski County Circuit Court*, 320 Ark. 468, 899 S.W.2d 50 (1995).

Appellant's court-appointed trial counsel was allowed to withdraw from an appeal where appellant's ex-wife and siblings provided funds to hire private counsel, despite the fact that a two-volume trial transcript had been provided to appellant at the State's expense. The trial court found that the appellant was still indigent. Appellant's ex-wife and siblings had no obligation to the State to pay the cost of the transcript. *Brewer v. State*, 66 Ark. App. 324, 992 S.W.2d 140 (1999).

VI. CIVIL PROCEDURE

REAL PARTY IN INTEREST

1. Every action shall be brought in name of real party in interest.

2. The following may sue in their own name without joining party to be benefitted:

   a. Executor;
   b. Administrator;
   c. Guardian (conservator);
   d. Bailee;
   e. Trustee of an express trust;
   f. Party with whom or in whose name a contract has been made for the benefit of another;
   g. The State or officer thereof;
   h. Any person authorized by statute;
   i. Any person entitled to enforce the right of claim; and
   j. Any person who can discharge the claim upon which the action is brought and not necessarily the person who will ultimately benefit from recovery. *House, Trustee v. Long*, 244 Ark. 718, 426 S.W.2d 814 (1968).

3. No action shall be dismissed for failure to prosecute in the name of the real party in interest until reasonable time has been allowed, after objection, for ratification by, joinder, or substitution of the real party in interest.

4. Ratification, joinder, or substitution by or of the real party in interest, after objection, shall have same affect as if commencement of action had been in name of real party in interest.

Ark. R. Civ. P. 17(a).

RAISING OBJECTION

1. Objection that plaintiff is not real party in interest may be raised by:

   a. Affirmative defense in answer under Ark. R. Civ. P. 8(c);
   b. Preliminary motion when dismissal may result because real party in interest cannot be joined or substituted; and
   c. As a defense under Ark. R. Civ. P. 12(b).

2. If objection is not made with reasonable promptness, the court may conclude that the defense is waived.

3. Dismissal for failure to join real party in interest is not on the merits.

Ark. R. Civ. P. 12.

JOINDER OF NECESSARY PARTIES

1. Necessary parties shall be joined by order of court and are defined as persons:

    a. Subject to service of process;
    b. Claiming an interest in the subject of the action; and
    c. In such a position that disposition of the matter in his absence may:
        1) Impair or impede his ability to protect that interest;
        2) Leave other parties in substantial risk of incurring inconsistent obligations as a result of his claimed interest; or
        3) Deny complete relief to those who are already parties.

2. Upon the refusal of a necessary party to be joined as plaintiff, the court shall order joinder as:

    a. Defendant; or
    b. In a proper case, an involuntary plaintiff.

3. If necessary party is nonresident of the county in which the action is brought:

    a. He may be joined as a defendant and served in another county;
    b. Judgment shall not be rendered against him if:
        1) No other defendant is a resident of the county where the action was commenced; or
        2) Judgment is discontinued, dismissed, or rendered in favor of resident defendants; and
        3) Necessary party makes timely objection to court's jurisdiction.

Ark. R. Civ. P. 19(a).

PROCEDURE WHEN FAILURE TO JOIN - INDISPENSABLE PARTY

1. If a necessary party cannot be joined, the court shall determine if such party is an indispensable party considering such factors as:

    a. Prejudice to person and parties resulting from a judgment without joining indispensable party;
    b. What relief can be embraced in the judgment to lessen or avoid such prejudice;
    c. Adequacy of any judgment that can be molded to have no affect on indispensable party; and
    d. Existence of adequate remedy for plaintiff if action is dismissed for nonjoinder.

2. If the party is indispensable, the action shall be dismissed.

Ark. R. Civ. P. 19(b).

PERMISSIVE JOINDER OF PARTIES

1. Persons may join in an action as plaintiffs if:

   a. They assert a right to relief:
      1) Jointly;
      2) Severally; or
      3) In the alternative, in respect of or arising from the same transaction, occurrence, or series thereof; and

   b. Any question of law or fact in the action is common to all such persons.

2. Persons may be joined as defendants in an action if:

   a. It is asserted that any right to relief arose against them:
      1) Jointly;
      2) Severally; or
      3) In the alternative, in respect of or arising from the same transaction, occurrence, or series thereof; and
   b. Any question of law or fact in the action is common to all such persons.

3. A plaintiff need not be interested in obtaining all the relief demanded.

4. A defendant need not be interested in defending against all the relief demanded.

5. The court may award judgment:

   a. For one or more of the plaintiffs according to their respective rights; and
   b. Against one or more of the defendants according to their respective liabilities.

Ark. R. Civ. P. 20(a).

SEPARATE TRIALS WHEN IMPROPER JOINDER

When a person is joined against whom a party has no claim or who asserts no claim and such joinder results in:

1. Embarrassment;

2. Delay; or

3. Expense;

The court may:

4. Order separate trials; or

5. Make any other order designed to prevent delay or prejudice.

Ark. R. Civ. P. 20(b).

MISJOINDER AND NONJOINDER OF PARTIES

1. The court may order any party added or dropped at any stage of the action on:

   a. Motion of a party; or
   b. Its own initiative.

2. Misjoinder is not a ground for dismissal.

3. Any claim may be severed and proceedings regarding it held separately.

Ark. R. Civ. P. 21.

INTERPLEADER

1. A plaintiff may require any other person with a claim arising from the same occurrence or transaction to interplead if failure to do so may expose the plaintiff to additional liability.

2. No objection to the joinder may be made on the ground that:

   a. The claims or the title upon which the claims depend do not have a common origin or are not identical, but are adverse to or independent of one another; or
   b. The plaintiff avers no liability in whole or part to any or all claimants.

3. A defendant exposed to similar liability may require such joinder by way of:

   a. Cross-claim;
   b. Third-party complaint; or
   c. Counterclaim.

4. Mandatory interpleader supplements and does not limit permissive joinder.

Ark. R. Civ. P. 22 .

INTERVENTION PROCEDURE

1. A motion to intervene shall:

   a. Be served by intervenor on the parties;
   b. State the grounds therefor; and
   c. Be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

2. If the constitutionality of a statute affecting the public interest is drawn into question the, court may require notification of the Attorney General.

Ark. R. Civ. P. 24(c).

INTERVENTION AS A MATTER OF RIGHT

Any person, upon timely application, may intervene if:

1. A statute confers an unconditional right to do so; or

2. The applicant:
   a. Claims an interest in the subject of the action;
   b. Disposition of the action may impair or impede applicant's ability to protect that interest; and
   c. Has an interest that is not adequately represented by existing parties.

Ark. R. Civ. P 24(a).

PERMISSIVE INTERVENTION

Any person, upon timely application, may be permitted to intervene if:

1. A statute confers a conditional right to do so; or

2. The applicant's claim or defense has a question of law or fact in common with the main action.

Ark. R. Civ. P. 24(b).

RELEVANT STATUTES

Recovery of real or personal property: Ark. Code Ann. §16-61-113.
Partition: Ark. Code Ann. §18-60-408.
Lease of mineral rights: Ark. Code Ann. §15-56-303.
Oil and gas leasehold rights: Ark. Code Ann. §15-73-404.
Workmen's Compensation Carrier: Ark. Code Ann. §11-9-410.

SUBSTITUTION OF PARTIES - DEATH OF A PARTY

1. The action will not abate upon death of a party if there are other plaintiffs or defendants, as the case may be, to which the claims or liability survives.

2. If a party dies, and the claim does not abate:

    a. Motion to substitute another party may be made by any party or by the successor in interest of the deceased party;
    b. Substitution may be ordered:

        1) Without notice; or
        2) On such notice as court may require;

    c. If plaintiff dies:

        1) The personal representative shall be substituted unless the claim of decedent has passed to heirs or devisees; whereupon
        2) The heirs or devisees may be substituted;
    d. If defendant dies, the personal representative shall be substituted;
    e. The court may substitute either heirs, devisees, or personal representative except where subject of the action is recovery of real property or an interest therein;
    f. The court may appoint and substitute a special administrator with powers limited to the pending litigation unless there is a general personal representative, who can be made subject to the court's jurisdiction;
    g. When a general personal representative qualifies after the court has appointed and substituted a special administrator, the court shall, upon motion of any party or the personal representative, substitute the former.

3. The court may dismiss the action as to a deceased party unless a motion for substitution is made:

    a. By any party;
    b. By the successors or representatives of the deceased;
    c. Not later than ninety days after a statement of the fact of death is served on the parties and such service is noted on the record.

Ark. R. Civ. P. 25(a).

SUBSTITUTION OF PARTIES - INCOMPETENCY OF A PARTY

Upon motion alleging incompetency of a party, the court may allow the action to be continued by or against the guardian of the incompetent.

Ark. R. Civ. P. 25(b).

SUBSTITUTION OF PARTIES - TRANSFER OF INTEREST

1. Upon transfer of interest in the subject of the action, the action may continue by or against original party.

2. Upon motion, the court may direct that the transferee be:

   a. Substituted; or
   b. Joined with the original party.

Ark. R. Civ. P. 25(c).

SUBSTITUTION OF PARTIES - PUBLIC OFFICERS - DEATH OR SEPARATION FROM OFFICE

1. The successor to a public officer who dies or otherwise ceases to hold office is automatically substituted in any action in which the predecessor is officially a party.

2. The action does not abate.

3. Any misnomer of substituted party not affecting substantial rights of parties is disregarded.

4. Court may order substitution at any time.

5. Failure to enter order shall not affect substitution.

6. Court may order name of officer added if officer is described by title.

Ark. R. Civ. P. 25(d).

LIMITATION OF Ark. R. Civ. P. 25

The provisions of Ark. R. Civ. P. 25 shall not:

1. Allow a claim otherwise barred by limitations or non-claim; or

2. Be determinative of whether a claim survives the death of a party.

Ark. R. Civ. P. 25(e).

SURVIVAL OF ACTIONS

1. Any action for wrongful damage to the person or property of the plaintiff survives to the executor or administrator of the plaintiff (except libel, slander, or loss of consortium) upon the death of plaintiff. *Miller v. Nuckolls*, 76 Ark. 485, 89 S.W. 88 (1905).

2. An action for wrongful death shall survive the death of such person, and such action shall be brought by the personal representative of the deceased or, if no personal representative, the heirs of the deceased.

3. The decedent's estate may recover for the decedent's loss of life as an independent element of damages.

4. Actions referred to in this section shall be commenced within three years.

Ark. Code Ann. §§ 16-62-101-102.

RELEVANT STATUTES

Joint and several contract liability: Ark. Code Ann. § 16-61-111.
Actions by sureties: Ark. Code Ann. § 16-107-306.
Gambling losses: Ark. Code Ann. § 16-118-103.
Deaths in coal mines: Ark. Code Ann. § 11-7-302.
Employee railroad death: Ark. Code Ann. § 23-12-503.
Survival of actions, generally: Ark. Code Ann. § 16-62-101.

CLASS ACTIONS - PREREQUISITES AND PROCEDURES

1. Class action may be maintained if:

   a. The class is so numerous that joinder of all members is impracticable;
   b. There are questions of law or fact common to the class;
   c. The claims or defenses of the representatives parties are typical of the claims or defenses of the class;
   d. The representative parties and their counsel will fairly and adequately protect the interest of the class and
   e. The court finds that:

      1) Questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and

      2) Class action is superior to other methods for a fair and efficient adjudication of the controversy.

2. The court shall determine by conditional or unconditional order the appropriateness of the action as soon as practicable.

3. An order certifying a class must:
   a. Define the class; and
   b. Define the class claims, issues, or defenses.

4. The court may alter or amend the order at any time before final decision.

5. The court must direct notice to each member of the class. The notice must concisely and clearly state in plain, easily understood language:

   a. The nature of the action;
   b. The definition of the class;
   c. The class claims, issues, or defenses;
   d. That a class member may enter an appearance and participate in person or through counsel;
   e. That the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and
   f. The binding effect of a class judgment on class members.

6. At any stage of the proceedings, the court may issue orders:

   a. Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
   b. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of the members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise come into the action;
   c. Imposing conditions on the representative parties or on intervenors;
   d. Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;
   e. Dividing the class into subclasses, treating each subclass as a class, and construing and applying the provisions of this rule accordingly; and
   f. Dealing with similar procedural matters.

7. Court must approve dismissal or compromise.

8. The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

9. The court may approve any such resolution that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

10. The parties seeking approval of a settlement, voluntary dismissal, or compromise must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.

11. The court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

12. Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval.

13. An objection may be withdrawn only with the court's approval.

Ark. R. Civ. P. 23.

RELEVANT RULES

Derivative actions by shareholders: Ark. R. Civ. P. 23.1.
Member of an unincorporated association as a class: Ark. R. Civ. P. 23.2.

SPECIAL PARTIES - INFANTS AND INCOMPETENTS

1. Suit on behalf of an infant or incompetent shall be maintained by:

   a. Guardian;
   b. Next friend; or
   c. Guardian *ad litem*.

2. If an infant or incompetent is not represented in an action, the court shall:

   a. Appoint a guardian *ad litem*; or
   b. Make such other necessary orders to protect the infant or incompetent.

3. No judgment may be entered against an infant or incompetent unless defended by a guardian or guardian *ad litem* appointed by the court on motion of an interested party.

Ark. R. Civ. P. 17(b).

CIVIL PLEADINGS

FORM OF PLEADINGS - CAPTION

1. Every pleading shall have a caption setting forth:

    a. The name of the court;
    b. The title of the action;
    c. The file number; and
    d. A designation of the pleading as in Ark. R. Civ. P. 7(a).

2. The title of the action shall include:

    a. In a complaint, the names of all the parties; and
    b. In all other pleadings, at least the name of the first party with an indication that there are other parties.

Ark. R. Civ. P. 10(a).

FORM OF PLEADINGS - STATEMENTS OF CLAIM AND DEFENSE

1. All averments of claim or defense shall be:

    a. Made in numbered paragraphs (Ark. R. Civ. P. 10(b));
    b. Limited as far as practicable to a statement of a single set of circumstances; and
    c. Direct and stated in ordinary and concise language. Ark. R. Civ. P. 8(e).

2. A paragraph may be referred to by number in all succeeding pleadings.

3. Each claim founded on a separate transaction or occurrence shall be in a separate count.

4. Each defense other than denials shall be in a separate defense. Ark. R. Civ. P. 10(b).

FORM OF PLEADINGS - ADOPTION BY REFERENCE

1. Statements in a pleading may be adopted by reference in:

    a. Another part of the same pleading;
    b. Another pleading; or

c. Any motion.

2. A copy of any written instrument attached as an exhibit is part of that pleading for all purposes.

Ark. R. Civ. P. 10(c).

FORM OF PLEADINGS - REQUIRED EXHIBITS

A copy of a writing upon which a claim or defense is based shall be:

1. Attached as an exhibit to the appropriate pleading (unless good cause for its absence is shown); and

2. Part of that pleading for all purposes.

Ark. R. Civ. P. 10 (c) and (d).

NOTE: It is the intent that exhibits should be attached in all but exceptional cases. "Good cause" for not attaching is determined by the court. (Ark. R. Civ. P. 10, Rep. Note 4).

FORM OF PLEADINGS - SIGNING

1. When a party is represented by counsel, every pleading shall be signed by and contain the address of at least one attorney.

2. When a party is not represented by counsel, every pleading shall be signed by and contain the address and telephone number of the party.

3. No pleading need be verified or accompanied by an affidavit unless required by the Arkansas Rules of Civil Procedure.

4. The signature of an attorney or party certifies that:

   a. He has read the pleading;
   b. To the best of his knowledge, information, and belief there is good ground to support it;
   c. It is not interposed for delay; and
   d. That it complies with the requirements of Ark. R. Civ P. 5 (c)(2) regarding redaction of confidential information from case records submitted to the court.

5. If a pleading is unsigned or signed with the intent to defeat the purpose of the

rule:

a. It may be stricken;
b. Financial sanctions may be imposed; and
c. For willful violation, attorney may be subjected to disciplinary action.

Ark. R. Civ. P. 11.

CLAIM FOR RELIEF

1. A claim shall contain:

   a. A statement of the grounds for venue and jurisdiction (unless already established);
   b. A statement of facts showing entitlement to relief; and
   c. A demand for the relief to which entitled.

2. A claim may contain:

   a. Claim for relief in the alternative;
   b. Two or more claims (when permitted by Ark. R. Civ. P. 18), provided that each claim shall be set forth in separate, numbered counts.

3. Claims for unliquidated damages must specify amount or recovery is limited to an amount less than that required for federal diversity jurisdiction, unless language of demand indicates a larger amount.

Ark. R. Civ. P. 8 (a).

ANSWER - FORM OF DENIALS

1. Defenses to each claim shall be stated in ordinary and concise language.

2. Admission or denial of each averment shall be made.

3. If party is without sufficient knowledge or information regarding an averment, a statement to that effect shall constitute a denial.

4. Denials shall fairly meet substance of averments denied.

5. A party may specify what part of an averment is true and deny the remainder.

6. When party intends in good faith to deny all averments, including the court's jurisdiction, a general denial may be made.

7. A party shall set forth all of his defenses, legal and equitable.

Ark R. Civ. P. 8.

ANSWER - AFFIRMATIVE DEFENSES

1. When a party responds to a complaint or other claim, the following shall be affirmatively set forth:

    a. Accord and satisfaction;
    b. Arbitration and award;
    c. Comparative fault;
    d. Discharge in bankruptcy;
    e. Duress;
    f. Estoppel;
    g. Exclusiveness of Workmen's Compensation remedy;
    h. Failure of consideration;
    i. Fraud;
    j. Illegality;
    k. Injury by fellow servant;
    l. Laches;
    m. License;
    n. Payment;
    o. Release;
    p. *Res judicata*;
    q. Set-off;
    r. Statute of frauds;
    s. Statute of limitations;
    t. Waiver; and
    u. Any other matter constituting an avoidance or affirmative defense.

2. Where mistakenly designated the court may treat a counterclaim as a defense or a defense as a counterclaim as justice requires.

3. An averment (other than the amount of damage) in a pleading, to which a responsive pleading is required, is deemed admitted unless denied.

4. An averment in a pleading to which no responsive pleading is required is deemed denied.

Ark. R. Civ. P. 8.

COUNTERCLAIMS - COMPULSORY

1. Any existing claim against the opposing party shall be stated if:

   a. It arises out of the same transaction or occurrence; and
   b. Its adjudication does not require third parties over whom the court cannot acquire jurisdiction.

2. A claim need not be stated if:

   a. At the time the action was commenced the claim was the subject of another pending action; or
   b. The suit was brought by attachment or other process whereby the court could not render a personal judgment on that claim, and pleader is not stating any counterclaim under Ark. R. Civ. P. 13.

A.R.Civ.P. 13(a).

COUNTERCLAIMS - PERMISSIVE

1. Any cause of action against the opposing party may be stated even though it did not arise out of the same transaction or occurrence.

Ark. R. Civ. P. 13(b).

COUNTERCLAIMS - EXCEEDING OPPOSING CLAIM

1. A counterclaim may exceed the amount or seek different relief than claimed in pleading of opposing party.

   Ark. R. Civ. P. 13(c).

COUNTERCLAIMS - MATURING OR ACQUIRED AFTER PLEADING

1. A counterclaim maturing or acquired after filing of a pleading, but before all issues are joined, shall be presented by a supplemental pleading.

2. A counterclaim maturing or acquired after all issues are joined may be asserted in a separate action.

Ark. R. Civ. P. 13(d).

COUNTERCLAIMS - OMITTED

1. An omitted counterclaim may be asserted by amended or supplemental pleading subject to Ark. R. Civ. P. 15.

Ark. R. Civ. P. 13(e).

COUNTERCLAIMS - JOINDER OF ADDITIONAL PARTIES

1. Joinder of additional parties as may be required by a counterclaim shall be made in accordance with Ark. R. Civ. P. 19 and 20.

Ark. R. Civ. P. 13(g).

COUNTERCLAIMS - SEPARATE TRIALS AND JUDGMENTS

1. If separate trials of a claim and counterclaim are ordered pursuant to Ark. R. Civ. P. 42(b), judgment on a counterclaim may be rendered under Ark. R. Civ. P. 54(b).

    a. When the court has jurisdiction; and
    b. Even if claim of opposing party is dismissed or otherwise disposed of.

Ark. R. Civ. P. 13(h).

CROSS-CLAIM AGAINST CO-PARTY

1. A party may assert an independent claim against a co-party when such claim:

    a. Arose out of the same transaction or occurrence of original claim or counterclaim; or
    b. Relates to any property that is the subject matter of the original action.

2. The pleader may allege cross-defendant is liable for all or part of any claim asserted against the pleader.

Ark. R. Civ. P. 13(f).

CROSS-CLAIM - JOINDER OF ADDITIONAL PARTIES

1. Joinder of additional parties as may be required by a cross-claim shall be made in accordance with Ark. R. Civ. P. 19 and 20.

Ark. R. Civ. P.13(g).

CROSS-CLAIM - SEPARATE TRIALS AND JUDGMENTS

1. If separate trials of a claim and cross-claim are ordered pursuant to Ark. R. Civ. P. 42(b), judgment on a cross-claim may be rendered under Ark. R. Civ. P. 54(b).

    a. When the court has jurisdiction; and
    b. Even if claim of opposing party is dismissed or otherwise disposed of.

Ark. R. Civ. P. 13(h).

AMENDMENTS TO PLEADINGS

1. Amendments to pleadings may be made at any time without leave of court unless, upon motion, the court finds it would cause:

    a. Prejudice; or
    b. Undue delay;

    Whereupon, the court may:

    c. Strike the amended pleading; or
    d. Grant a continuance.

2. Unless court orders otherwise, a responsive pleading to an amended pleading shall be made with the longer of:

    a. The time remaining for response to the original pleading; or
    b. Twenty days after service of the amended pleading.

Ark. R. Civ. P. 15(a).

AMENDMENTS - TO CONFORM TO EVIDENCE

1. Issues not raised by the pleadings but tried with express or implied consent of the parties shall be treated as if raised by the pleadings.

2. Upon motion of a party at any time, even after judgment, amendments may be made to:

    a. Conform pleadings to the evidence; and
    b. Raise the issues interjected by the evidence.

3. Court has discretion to permit amendment over objection that issue raised is not within the scope of the pleadings.

4. The court may grant a continuance to the party opposing amendment.

Ark. R. Civ. P. 15(b).

AMENDMENTS - RELATION BACK

1. Amendment relates back to original pleading when it arises out of the same conduct, transaction, or occurrence.

2. Amendment changing the party against whom a claim is made relates back if:
   a. The provisions of subsection (1) above are satisfied; and
   b. Within the statute of limitations period the party:

      1) Had such notice of the action that maintaining a defense on the merits is not prejudiced; and
      2) Knew or should have known that the action would have been brought against him, but for a mistake in identity.

Ark. R. Civ. P. 15(c).

SUPPLEMENTAL PLEADINGS

1. Supplemental pleadings may be made at any time without leave of court unless, upon motion, the court finds it would cause:
   a. Prejudice; or
   b. Undue delay.

2. If the court finds prejudice or undue delay would result from the supplemental pleading, it may:
   a. Strike the supplemental pleading; or
   b. Grant a continuance.

3. Unless court orders otherwise, a responsive pleading to an supplemental pleading shall be made with the longer of:
   a. The time remaining for response to the original pleading; or
   b. Twenty days after service of the supplemental pleading.

Ark. R. Civ. P. 15(d).

DEFENSES - WHEN PRESENTED

1. Time for answering:
   a. Resident defendant - thirty days after service;
   b. Nonresident defendant - thirty days after service;

c. Defendant served under Ark. R. Civ. P. 4(f)- thirty days after first publication (but even failing to so answer, may appear and defend at any time prior to judgment and, upon imposing substantial defense, may obtain real time to prepare for trial);
d. Party served with a counterclaim or cross-claim - thirty days after service.
e. Incarcerated defendant - sixty days after service.

2. The court may, on motion, extend time for any responsive pleading.

3. Times for filing responsive pleading are altered by filing of a motion as follows:

a. After action by court on motion under Ark. R. Civ. P. 12 - ten days after notice of action;

b. After more definite statement filed pursuant to granting of motion for same - ten days after service.

Ark. R. Civ. P. 12(a).

DEFENSES - HOW PRESENTED

1. Where responsive pleading required, every defense shall be asserted therein, except the following defenses which may be asserted by motion:

a. Lack of jurisdiction over the subject matter;
b. Lack of jurisdiction over the person;
c. Improper venue;
d. Insufficiency of process;
e. Insufficiency of service of process;
f. Failure to state facts upon which relief can be granted;
g. Failure to join a party under Ark. R. Civ. P. 19; and
h. Pendency of another action between the same parties arising out of the same transaction or occurrence.

2. The motion provided for in 1 above shall be made before pleading if a further pleading is permitted.

3. Defenses or objections are not waived by being joined with others in the responsive pleading or motion.

4. When a responsive pleading to a claim is not required, any defense in law or fact to that claim may be asserted at trial.

5. When a motion asserts a failure to state facts upon which relief can be granted

and the court permits matters outside the pleading to be heard, the motion shall be treated as a motion for summary judgment under Ark. R. Civ. P. 56, and parties shall be given reasonable opportunity to present all pertinent material.

Ark. R. Civ. P. 12(b).

PRELIMINARY HEARINGS OF DEFENSES MADE BY PLEADING OR MOTION

1. Unless the court orders deference until trial, the following matters, upon application of any party, shall be heard and determined before trial:

   a. Any defenses specifically mentioned in Ark. R. Civ. P. 12(b), whether raised by pleading or motion; and
   b. A motion for judgment on the pleadings under Ark. R. Civ. P. 12(c).

Ark. R. Civ. P. 12(d).

WAIVER OF PRESERVATION OF CERTAIN DEFENSES

1. A defense of:

   a. Lack of jurisdiction over person;
   b. Improper venue;
   c. Insufficiency of process;
   d. Insufficiency of service of process; or
   e. Pendency of another action between same parties arising out of same transaction or occurrence;

   is waived if it is:

   a. Omitted from a motion made under Ark. R. Civ. P. 12(g); or
   b. Neither made by motion under Ark. R. Civ. P. 12, nor included in the original responsive pleading.

2. Defenses and objections that are preserved although not made by motion or pleading under Ark. R. Civ. P. 12, and which may be made:

   a. In any pleading permitted or ordered under Ark. R. Civ. P. 7(a);
   b. By motion for judgment on the pleadings; or
   c. At the trial on the merits;

   are failure to:

   a. State facts upon which relief can be granted;

b. Join necessary party as provided in Ark. R. Civ. P. 19; and
c. State a legal defense to a claim.

3. Whenever it appears that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Ark. R. Civ. P. 12(h).

MOTION - CONSOLIDATION OF DEFENSES

1. Movant under Ark. R. Civ. P. 12 may join any other motions:

   a. Provided for in Ark. R. Civ. P. 12; and
   b. Then available.

2. Movant under Ark. R. Civ. P. 12 who omits a defense or objection that may be raised by motion under Ark. R. Civ. P. 12 may not raise such defense or objection by motion, except:

   a. Defense of failure to state facts upon which relief can be granted;
   b. Defense of failure to join indispensable party under Ark. R. Civ. P. 19; and
   c. Objection of failure to state a legal defense to a claim.

Ark. R. Civ. P. 12(g).

MOTION FOR JUDGMENT ON THE PLEADINGS

1. A party may move for judgment on the pleadings:

   a. After pleadings are closed; but
   b. Within such time as to not delay trial.

2. If the court permits matters outside the pleadings to be heard, the motion shall be treated as a motion for summary judgment under Ark. R. Civ. P. 56, and parties shall be given reasonable opportunity to present all pertinent material.

Ark. R. Civ. P. 12(c).

MOTION FOR MORE DEFINITE STATEMENT

1. A party may move for a more definite statement, before interposing a responsive pleading, when the pleading requiring a response is so vague or ambiguous that it is unreasonable to require a responsive pleading.

2. The motion shall point out the defects and the details desired.

3. If there is no compliance with the court's order granting the motion within ten days after notice of the order (or such other time as the court may fix), the court may:

   a. Strike the pleading; or
   b. Make such other orders as is deemed just.

Ark. R. Civ. P. 12(e).

MOTION TO STRIKE

1. The court may strike from any pleading any:

   a. Insufficient defense; or
   b. Redundant, immaterial, impertinent, or scandalous matter.

Ark. R. Civ. P. 12(f).

COMMENCEMENT OF PROCEEDINGS

COMPLAINT

1. A civil action is commenced by filing a complaint with the clerk of the court.

2. The clerk shall note on the complaint the precise time and date of filing.

Ark. R. Civ. P. 3.

TIME - COMPUTATION

1. In computing any period of time prescribed or allowed, the day of the act, event, or default shall not be included.

2. The last day of the period shall be included, unless a Saturday, Sunday, or legal holiday, in which event, the period ends on the next day that the clerk's office is open.

3. When the period of time prescribed or allowed is less than fourteen days, intermediate Saturdays, Sundays, or legal holidays are not counted.

Ark. R. Civ. P. 6(a).

TIME - ENLARGEMENT

1. The court, for good cause and with or without motion or notice, may extend time prior to the expiration of the period previously prescribed.

2. The court, upon motion, may permit an act to be done after the expiration of the period previously prescribed upon a showing of:

   a. Excusable neglect;
   b. Mistake;
   c. Inadvertence;
   d. Surprise; or
   e. Another just cause.

3. The court may not extend time to:

   a. Move to have a verdict and judgment thereon set aside (Ark. R. Civ. P. 50(b));
   b. Move to amend findings of fact or make additional findings (Ark. R. Civ. P. 52(b));
   c. Move for a new trial (Ark. R. Civ. P. 59(b));
   d. File opposing affidavits to a motion for new trial supported by affidavits (Ark. R. Civ. P. 59(d));
   e. Enter an order on its own initiative granting a new trial (Ark. R. Civ. P. 59(e));
   f. Modify, set aside, or vacate a judgment after the expiration of ninety days from the filing thereof (Ark. R. Civ. P. 60(b)); or
   g. Obtain service of summons (Ark. R. Civ. P. 4(i)).

Ark. R. Civ. P. 6(b).

TIME - MOTIONS AND AFFIDAVITS

1. Notice of a hearing on a written motion shall be served on the opposing party not later than twenty days before the time specified for the hearing.

2. Party opposing motion shall serve response within 10 days after service of the motion.

3. The movant shall then have 5 days after service of response in which to serve a reply.

Ark. R. Civ. P. 6(c).

TIME - AFTER SERVICE BY MAIL

1. Three days are added to any prescribed period to do some act after service of any notice or paper by mail, commercial delivery company, or electronic transmission, including e-mail. This does not apply to an answer or pre-answer motion when service of the summons and complaint is by mail or commercial delivery pursuant to Ark. R. Civ. P. 4.

Ark. R. Civ. P. 6(d).

SUMMONS - ISSUANCE

1. Upon filing of complaint, the clerk shall:

    a. Issue a summons;
    b. Cause summons to be delivered to:
        1) Person appointed or authorized by Ark. R. Civ. P. 4 to serve process.

Ark. R. Civ. P. 4(a).

SUMMONS - FORM

1. The summons shall:

    a. Be styled in the name of the court;
    b. Be dated by the clerk;
    c. Be signed by the clerk;
    d. Be under the seal of the court;
    e. Contain the names of the parties;
    f. Be directed to the defendant;
    g. State the name and address of the plaintiff's attorney, if any;
    h. Otherwise the address of the plaintiff;
    i. State the time within which the defendant is required to:
        1) Appear;
        2) File a pleading; and
        3) Defend; and
    j. Inform the defendant that failure to do so will result in the entry of judgment against him for the relief demanded in the complaint.

Ark. R. Civ. P. 4(b).

SERVICE OF SUMMONS AND COMPLAINT - PERSONAL SERVICE INSIDE ARKANSAS

1. Service of summons shall be made by:

   a. Sheriff of the county, where the service is to be made, or his deputy, unless the sheriff is a party to the action;
   b. Any person appointed pursuant to Admin. Order No. 20 for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made;
   c. Any person authorized to serve process under the law of the place outside this state where service is made; or
   d. Plaintiff's attorney or the plaintiff if service is by mail.

Ark. R. Civ. P. 4(c).

2. A copy of the summons and complaint shall be served together.

3. The plaintiff shall supply person making service with sufficient copies. Ark. R. Civ. P. 4(d).

4. Service shall be made as follows:

   a. Upon an individual, not under fourteen years of age or an incompetent, by delivery personally;

   b. If delivery is refused, then by:
      1) Offering a copy to the individual; or
      2) Leaving a copy at individual's place of abode with a resident who is at least fourteen years of age;
   c. Delivering a copy to an agent who is authorized by law or appointment to receive service;

   Ark. R. Civ. P. 4(d)(1).

   d. When individual is an infant under fourteen years of age:

      1) Service shall be made upon parent or guardian having care and control of individual; or
      2) Service shall be made upon any other person having care and control of individual and with whom individual resides.

   Ark. R. Civ. P. 4(d)(2).

e. If individual is a person for whom a guardian has been appointed, service shall be made:

1) Upon appointed guardian and the individual; or
2) If incompetent is confined in institution for mentally ill, upon:
   a) Superintendent or administrator of institution; and
   b) Appointed guardian, if any.

Ark. R. Civ. P. 4(d)(3).

f. If individual is a prisoner, service shall be made upon:

1) Administrator of institution who shall deliver a copy to the individual;
2) Copy sent to the prisoner by 1st class mail, marked "legal mail;" and
3) Spouse of individual, unless the court orders otherwise.

Ark. R. Civ. P. 4(d)(4).

g. If defendant is a corporation, a partnership, a limited liability company, or any unincorporated association subject to suit under a common name, service shall be made upon:
1) An officer;
2) A partner, other than a limited partner;
3) A managing or general agent; or
4) Any agent authorized by appointment or statute to receive service.

Ark. R. Civ. P. 4(d)(5).

h. If defendant is the United States, or an officer or agency thereof, pursuant to the Federal Rules of Civil Procedure or the appropriate federal statute.

Ark. R. Civ. P. 4(d)(6).

i. Upon a state, municipality or government agency, by delivering a copy to:
1) Chief executive officer;
2) Other person designated by appointment or statute to accept service; or
3) Attorney General of the State, if such service is accompanied by an affidavit of a party or his attorney, which states that such officer or designated person is unknown or cannot be located.

Ark. R. Civ. P. 4(d)(7).

SERVICE OF SUMMONS AND COMPLAINT - OTHER SERVICE

1. Whenever the law of this State authorizes service outside this State, the service, when reasonably calculated to give actual notice, may be made:

    a. By personal delivery in the same manner prescribed for service within this state;
    b. In any manner prescribed by the law of the place in which service is made in an action in any of its courts of general jurisdiction;
    c. By mail as in Rule 4(d)(8);
    d. As directed by the 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 county; or
    e. As directed by the court.

Ark. R. Civ. P. 4 (e).

SERVICE OF SUMMONS AND COMPLAINT - IDENTITY AND WHEREABOUTS OF DEFENDANT UNKNOWN

1. When an affidavit of party or his attorney alleges that the identity or whereabouts of a defendant is unknown, or if a party seeks a judgment that affects or may affect the rights of persons who are not and who need not be subject personally to the jurisdiction of the court, service shall be had by a warning order issued by the clerk:

    a. Being published:
        1) Weekly for two successive weeks;
        2) In a newspaper having general circulation in the county where the action is filed; and
    b. Mailing a copy of the complaint and warning order to the defendant at his last known address by a form of mail requiring restricted delivery.

Ark. R. Civ. P. 4(f).

SERVICE OF PLEADINGS FILED SUBSEQUENT TO COMPLAINT - WHEN REQUIRED

1. Every pleading filed subsequent to the complaint shall be served on all parties:

    a. Except one to be heard *ex parte*; or
    b. Unless the court orders otherwise because of numerous parties.

2. It is not necessary to serve parties in default for failure to appear; except when pleading asserts new or additional claim for relief in which event it shall be served pursuant to Ark. R. Civ. P. 4.

3. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Ark. R. Civ. P. 5(a).

SERVICE OF PLEADINGS FILED SUBSEQUENT TO COMPLAINT - HOW MADE

1. When a party is represented by an attorney, service shall be upon the attorney unless the court orders otherwise.

2. Service upon the attorney or party shall be by:

   a. Personally delivering a copy;
   b. Mailing it to last known address; or
   c. If no address known, leaving it with the clerk of court.

3. "Delivery" means:

   a. Handing it to attorney or party;
   b. Leaving it at his office with his clerk or other person in charge; or
   c. If the office is closed or the person has no office, leaving it at his residence or usual place of abode with a resident thereof who is at least fourteen years of age.

4. Service by mail is presumptively complete upon mailing, and service by commercial delivery company is presumptively complete upon depositing the papers with the company. Service by electronic transmission is complete upon transmission but is not effective if it does not reach the person to be served.

Ark. R. Civ. P. 5(b).

PROOF OF SERVICE

1. Every pleading or document required to be served upon a party or his attorney shall contain a statement that it is served in accord and follows the requirements of Ark. R. Civ. P. 5.

RELEVANT STATUTES

Secretary of State: Ark. Code Ann. §16-58-120.
Non-resident or absent motorist: Ark. Code Ann. §16-58-121.
Owner or officer of watercraft: Ark. Code Ann. §16-58-123.
Banks: Ark. Code Ann. §23-48-327.
Insurance company: Ark. Code Ann. §§16-58-129; 23-63-301; 23-72-120.
Constructive service: Ark. Code Ann. §16-58-130 .
Refusal to accept mailed process: Ark. Code Ann. §16-58-132.
Actions local in nature - service anywhere in state: Ark. Code Ann. §16-60-117.
Service on corporations: Ark. Code Ann. §§16-58-124 - 127.
Uniform Interstate and International Procedure Act: Ark. Code Ann. §16-4-102.
Nonprofit corporations: Ark. Code Ann. §4-28-214.
Limited partnership: Ark. Code Ann. §4-47-101 *et seq*.
Securities Act: Ark. Code Ann. §23-42-107.
Railroad tort action: Ark. Code Ann. §23-12-905.
Appointment of Process Servers: Admin. Order No. 20.

FILING OF PLEADINGS SUBSEQUENT TO COMPLAINT

1. Pleadings shall be filed either before service or within a reasonable time thereafter with the clerk of the court who shall note the date and time of filing. Ark. R. Civ. P. 5(c).

2. A judge may permit pleadings to be filed with him whereupon he shall note thereon the date and time of filing and transmit them to the clerk of the court. Ark. R. Civ. P. 5(d).

CONFIDENTIAL INFORMATION AND REDACTION OF PLEADINGS

1. Confidential information shall not be included as part of a case record unless the confidential information is necessary and relevant to the case.

   a. "Confidential" means that the contents of a court record may not be disclosed unless permitted by law. "Confidential" shall also mean that the existence of a court record may not be disclosed. Admin. Order No. 19 § III(A)(11).

   b. A "case record" is any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court in connection with a judicial proceeding. Admin. Order No. 19 § III(A)(2).

c. The following information in case records is excluded from public access and is confidential absent a court order to the contrary; however, if the information is disclosed in open court and is part of a verbatim transcript of court proceedings or included in trial transcript source materials, the information is not excluded from public access:

(i.) information that is excluded from public access pursuant to federal law;

(ii.) information that is excluded from public access pursuant to the Arkansas Code Annotated;

(iii.) information that is excluded from public access by order or rule of court;

(iv.) Social Security numbers;

(v.) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers;

(vi.) information about cases expunged or sealed pursuant to Ark. Code Ann. §§ 16-90-901, *et seq.*;

(vii.) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies; and

(viii.) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.

Admin. Order No, 19 § VII(A).

2. If including confidential information in a case record is necessary and relevant to the case, the confidential information shall be redacted from the case record to which public access is granted.

a. The point in the case record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order].

b. If an entire document is redacted, then the name of the document (with the number of pages redacted specified) should be noted in the publicly available court file and the entire document should be filed under seal.

c. The requirement that the redaction be indicated in case records shall not apply to court records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record.

d. An un-redacted copy of the case record with the confidential information included shall be filed with the court under seal. The un-redacted copy of the case record shall be retained by the court as part of the court record of the case.

3. It is the responsibility of the attorney for a party represented by counsel and the responsibility of a party unrepresented by counsel to ensure that confidential information is omitted or redacted from all case records that they submit to a court.

4. It is the responsibility of the court, court agency, or clerk of court to ensure that confidential information is omitted or redacted from all case records, including orders, judgments, and decrees, that they create.

Ark. R. Civ. P. 5(c).

JOINDER OF CAUSES OF ACTION

1. Any party may join all his claims against adverse party, either independently or alternatively, when asserting:

   a. Original claim;
   b. Counterclaim;
   c. Cross-claim; or
   d. Third-party claim.

   Ark. R. Civ. P. 13(a) and 18(a).

2. Actions usually cognizable only in succession may be joined. Ark. R. Civ. P. 18(c).

3. Relief may be granted in accord with relative substantive rights of parties. Ark. R. Civ. P. 18(c).

SEVERANCE AND TRANSFER OF CLAIMS

1. Trial court may by appropriate order:

    a. Sever claims; and
    b. Transfer claims between divisions in the interest of justice or judicial economy.

Ark. R. Civ. P. 18(b).

THIRD-PARTY PRACTICE

1. Defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to defendant for all or part of plaintiff's claim against defendant.

2. Defendant shall file the third-party complaint:

    a. Without leave of court within ten days after filing answer; or
    b. With leave of court and notice later than ten days after answer filed.

3. Third-party defendant shall make defenses to third-party plaintiff's claim as provided in Ark. R. Civ. P. 12, and counterclaims against third-party plaintiff and cross-claims against other third-party defendants as provided in Ark. R. Civ. P. 13.

4. The third-party defendant may assert against the plaintiff:

    a. Any of third-party plaintiff's defenses against the plaintiff; and
    b. Any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of plaintiff's claim against the third-party plaintiff.

5. Plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of plaintiff's claim against third-party plaintiff.

6. After plaintiff asserts claim as provided in (5) above, third-party defendant shall assert defenses as provided in Ark. R. Civ. P. 12 and counterclaims and cross-claims as provided in Ark. R. Civ. P. 13.

7. Any party may move:

    a. To strike a third-party claim; or

b. For its severance or separate trial.

8. A third-party defendant may similarly proceed under this rule against another person who is not a party to the action but who may be liable to him for all or part of the claim against him.

9. When a counterclaim is asserted against a plaintiff, he may, under proper circumstances, cause a third party to be brought into the action.

Ark. R. Civ. P. 14.

DISCOVERY

SCOPE OF DISCOVERY

The following may be discovered:

1. Any matter, not privileged, which is relevant to the issues in the pending actions, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, identity, and location of any books, documents, or other tangible things and the identity and location of persons who have knowledge of any discoverable matter or who will or may be called as a witness at the trial of any cause;

2. Liability insurance agreements;

3. Material prepared for trial by any party or party's representative:

   a. Upon showing of substantial need and inability to obtain evidence without undue hardship;
   b. Not including mental impressions, conclusions, opinions, or legal theories of party's representative;

4. Statements of party or other person previously made if:

   a. Written, signed statement adopted or approved by declarant; or
   b. Transcribed or recorded contemporaneously by stenographic, mechanical, or electronic means that is substantially verbatim;

5. Identity of expert witnesses as well as subject of testimony and grounds therefore; and

6. Reports of physical or mental examinations conducted by other experts as well as other facts or opinions upon showing of exceptional circumstances making

discovery by other means impractical.

Ark. R. Civ. P. 26(b).

DEPOSITIONS - GENERAL

1. Depositions may be:

   a. Oral (Ark. R. Civ. P. 30);
   b. On written questions (Ark. R. Civ. P. 31); or
   c. Taken to perpetuate testimony. (Ark. R. Civ. P. 27).

2. Depositions shall be taken before a person:

   a. Authorized to administer oaths; or
   b. Designated by court. Ark. R. Civ. P. 28(a).

3. Deposition shall be taken in a foreign state or country before person:

   a. Authorized to administer oaths in said jurisdiction; or
   b. Commissioned by court:

      1) Upon application and notice;
      2) On terms that are just and appropriate;
      3) With designation by name or descriptive title;

   c. Pursuant to letter of request addressed to appropriate authority in foreign jurisdiction. Ark.R.Civ.P.28(b).

4. In order for depositions for use in a foreign jurisdiction to be taken:

   a. Properly authenticated or letter rogatory commission shall be presented to a circuit court in the county of residence of witness or person in possession of thing to be produced;
   b. Court shall subpoena witness for examination at specified time and place; and failure to attend, be sworn, testify, or produce document may be treated as contempt of court. Ark. R. Civ. P. 28(c).

DEPOSITIONS ON ORAL EXAMINATION

1. Without leave of court a deposition may be taken:

   a. Thirty days or more after service of summons and complaint on defendant;

b. Within thirty days of service of summons and complaint:

1) If defendant has sought discovery;
2) Upon special notice, including statement of supporting facts to effect that deponent is about to leave state or country making examination at proper time impossible.

Ark. R. Civ. P. 30(a).

2. A prisoner may be subpoenaed for examination with leave of court. Ark. R. Civ. P. 30(a).

3. Court may, for cause, lengthen or shorten time:

a. To take deposition;
b. To produce documents if request for production accompanies notice of examination.

Ark. R. Civ. P. 30(a) and (b)(5).

4. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound and visual, or stenographic means. Ark. R. Civ. P. 30(b)(3).

5. Evidence objected to during the examination shall be taken subject to objections. Lawyer shall not instruct witness not to answer unless privileged information is sought, or to enforce a limitation on evidence imposed by the court. Ark. R. Civ. P. 30(c) and (d).

6. Court may order party giving notice of examination to pay reasonable expenses and attorney's fees incurred by adverse party in attending examination, when:

a. Party giving notice fails to attend examination; or
b. Party giving notice fails to subpoena deponent.

Ark. R. Civ. P. 30(g).

DEPOSITIONS UPON WRITTEN QUESTIONS

1. Depositions upon written questions may be served after commencement of action.

2. Leave of court unnecessary unless a prisoner is to be subpoenaed.

3. Unless altered by court, time for service of question is:

   a. Cross questions within fourteen days of direct questions;
   b. Redirect questions within seven days of cross questions; and
   c. Recross questions within seven days of redirect questions.

Ark. R. Civ. P. 31(a).

DEPOSITIONS TO PERPETUATE TESTIMONY

Testimony of a witness may be perpetuated for use in subsequent action:

1. Upon filing of a verified petition requesting an order to perpetuate testimony and showing:

   a. Petitioner may be party to action cognizable in court but is presently unable to bring action;
   b. Subject matter of action and petitioner's interest therein;
   c. Facts to be established and reasons for perpetuating testimony;
   d. Names or description of persons petitioner expects will be adverse parties and their addresses if known;
   e. Names and addresses of the persons to be examined and the substance of each witness's testimony.

   Ark. R. Civ. P. 27(a)(1).

2. The court shall:

   a. Issue order if it may prevent failure or delay of justice and designating:
      1) Deponents;
      2) Subject of examination;
      3) Method of examination, whether written, oral, or by interrogatory;
   b. Order service by publication or as justice requires if deponent cannot be personally served despite petitioner's due diligence;
   c. Appoint counsel for deponent who is not served as provided in Ark. R. Civ. P. 4;
   d. Follow procedure in Ark. R. Civ. P. 17(b) if deponent is minor or incompetent;
   e. Order production of documents or mental or physical examinations. Ark. R. Civ. P. 27(a)(3).

3. Pending appeal or the filing of appeal by order of court:

a. Upon motion showing:
   1) Name and address of deponent;
   2) Substances of expected testimony; and
   3) Reasons for perpetuation that may include further trial proceedings;

b. Including production of documents or mental or physical examinations. Ark. R. Civ. P. 27(b).

USE OF DEPOSITION AT TRIAL

1. Deposition may be used:

   a. At trial or hearing on motions or interlocutory proceedings;
   b. In whole or part; NOTE: Adverse party may require introduction of remainder of deposition used in part or may introduce another part.
   c. As though witness were present and testifying;
   d. Subject to rules of evidence;
   e. Against any party:
      1) Present and represented at examination; or
      2) Who had reasonable notice of examination;
   f. For any purpose if court finds the witness:
      1) Through no procurement if movant, is:
         a) Dead;
         b) Outside a 100 mile radius of courthouse;
         c) Out-of-state;
      2) Is unable to testify due to:
         a) Illness;
         b) Infirmity;
         c) Age; or
         d) Imprisonment;
      3) Party offering deposition unable to procure attendance of witness by subpoena;
      4) In the interest of justice.
   g. For any purpose upon application and notice of extraordinary circumstances despite importance of oral testimony in open court making use of deposition desirable in the interest of justice;
   h. Despite substitution of parties; and
   i. In subsequent actions involving same subject and parties or their successors or representatives.

   Ark. R. Civ. P. 32(a).

2. Deposition of a party or of the designee of a corporate party may be used for any

purpose including impeachment.

3. Objections to the deposition may be made on the same grounds as if the witness were present, but:

   a. Objections to notice of examination are waived unless made in writing and promptly served on adverse party (Ark. R. Civ.P. 32(d)(1));
   b. Objections to qualifications of examining officer are waived unless made:
      1) Before deposition taken; or
      2) As soon as discovered; or was discoverable with due diligence.

   Ark. R. Civ. P. 32(d)(2).

   c. Objections to competency of witness or question that could be cured if made contemporaneously are waived including:
      1) Form of question;
      2) Manner of taking deposition;
      3) Form of answers;
      4) Oath or affirmation;
      5) Conduct of parties; and
      6) Other avoidable errors.

   Ark. R. Civ. P. 32(d)(3)(A)(B).

   d. Objections to form of written questions waived unless served in writing upon propounding party within:
      1) Time for succeeding cross or other questions; or
      2) Within five days of service of last authorized questions.

   Ark. R. Civ. P. 32(d)(3)(C).

   e. Motion to suppress all or part of deposition shall be made with reasonable promptness after error discovered or discoverable, or objection is waived to errors in:
      1) Transcription;
      2) Preparation of deposition;
      3) Signature;
      4) Certification;
      5) Sealing;
      6) Endorsing;
      7) Transmittal; and
      8) Filing.

   Ark. R. Civ. P. 32(d)(4).

4. Signature of deponent required only if review is requested and changes are made. Ark. R. Civ. P. 30(e).

INTERROGATORIES

1. Without leave of court, interrogatories may be served:

   a. Upon plaintiff after commencement of action;
   b. Upon any other party with or after service of summons and complaint upon that party.

2. Interrogatories shall be:

   a. Answered:
      1) Fully and separately;
      2) In writing;
      3) Under oath; and
      4) Signed by person answering;
   b. Objected to with reasons and signed by attorney.

3. Answers or objections shall be served:

   a. By any party within thirty days after service of interrogatories;
   b. By defendant within forty-five days after service of summons and complaint, or within thirty days after service of interrogatories, whichever is longer;
   c. Within such time as the court allows. Ark. R. Civ. P. 33(a) and (b).

4. Scope of questions governed by Ark. R. Civ. P. 26(b).

5. Answers may be used as permitted by Rules of Evidence.

6. Question which involves opinion or contention about fact or application of fact to law is not necessarily objectionable, but court may permit delay in answer until designated discovery is completed, pretrial conference, or later. Ark. R. Civ. P. 33(c).

7. Where compilation or examination of records is necessary to answer interrogatory and burden is as great for one party as the other, answering party may merely open records to serving party.

Ark. R. Civ. P. 33.

PRODUCTION OF DOCUMENTS

1. With regard to any evidence or property in the latter's custody or control, any party may serve another with a request:

   a. To produce documents for inspection and reproduction;
   b. To produce any tangible thing for testing, copying, inspection, or sampling; or
   c. To permit entry on land or property for inspection, measurement, surveying, photographing, testing, or sampling. Ark. R. Civ. P. 34(a).

2. Without leave of court, request may be served:

   a. Upon plaintiff after commencement of action;
   b. Upon any other party after service of summons and complaint on that party.

3. The request shall:

   a. Set forth items to be inspected;
   b. Describe each item and category with reasonable particularity; and
   c. Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

4. Written response shall be served:

   a. By any party within thirty days of service of request;
   b. By defendant within forty-five days after service of summons and complaint, or within thirty days of service of request, whichever is longer; or
   c. Within such time as permitted by the court.

5. The response shall:

   a. Permit inspection as to each item or category;
   b. Object to specified items or parts of categories, with inspection permitted as to the remaining parts.

6. Requesting party may move for order under Ark. R. Civ. P. 37(a) with respect to any objection, failure to respond, or failure to permit inspection. Ark. R. Civ. P. 34(b).

7. Independent action against nonparty for production of documents and things or permission to enter land not precluded by Ark. R. Civ. P. 34; Ark. R. Civ. P.

34(c).

Ark. R. Civ. P. 34.

PHYSICAL OR MENTAL EXAMINATION

1. When mental or physical condition of party or person in custody or control of party is in controversy, court may order party to:

   a. Submit to examination; or
   b. Produce person in party's custody or control for examination.

2. Order shall:

   a. Issue only upon:
      1) Motion;
      2) Good cause shown; and
      3) Notice to person to be examined and all parties;
   b. Specify as to examination:
      1) Time, place, and manner;
      2) Conditions and scope; and
      3) Persons by whom it is to be made.

3. Party examined or against whom order is made is entitled upon request or order of court to:

   a. Report of examination;
   b. Tests, diagnosis, conclusions; and
   c. All earlier reports of examinations of the same condition.

4. If report delivered to opponent, party causing examination is entitled to receive like reports of examinations previously or thereafter made.

   NOTE: If report of examination is of a person other than a party, party may show inability to obtain report.

5. If physician fails or refuses to make a report, the court may exclude testimony at trial.

6. The party examined waives any existing privilege in all actions involving the same controversy as to testimony of every past or future examination of the same mental or physical condition, by:

a. Requesting a copy of the examination; or
b. Taking a deposition of the examiner.

7. The party, in executing a medical authorization, is not required to authorize any communication with his physician or psychotherapist other than:

   a. The furnishing of medical records; and
   b. Communications in context of formal discovery procedures.

8. Medical records means writing, document, or electronically stored information pertaining to or created as result of treatment, diagnosis, or examination of party.

Ark. R. Civ. P. 35.

REQUESTS FOR ADMISSIONS

1. For purposes of pending action, a party may serve on another party a written request to admit the truth of any matters within the scope of Ark. R. Civ. P. 26(b).

2. The request shall:

   a. Set forth separately matters to be admitted that relate to statements or opinions of fact;
   b. Describe any documents the genuineness of which is questioned; and
   c. Attach copies of documents unless otherwise furnished or made available for inspection and copying.

3. The request may be served without leave of court:

   a. On plaintiff any time after commencement of the action; or
   b. On any other party after service of summons and complaint on that party.

4. The matter is admitted unless answer or objection served within:

   a. Thirty days of service of request on plaintiff;
   b. Forty-five days of service of summons on defendant, or thirty days after service of request, whichever time is longer; or
   c. Such time as the court allows.

5. Answer shall:

   a. Be written and signed by party or attorney;

b. Specifically admit or deny matter;
c. Set forth in detail reasons why party cannot truthfully admit or deny matter;
d. Fairly meet, in denial, the substance of the requested admission;
e. Qualify answer or admit only part of matter if good faith so requires; and
f. Only give lack of information or knowledge as reason for failure to answer if it is stated that reasonable inquiry has been made and available information is insufficient to enable an answer to be made.

6. Objections shall:

a. Be written and signed;
b. Give reasons therefor; and
c. Not be based solely on the ground that admission presents genuine issue of fact for trial. NOTE: Party may deny matter or set out reasons why matter cannot be admitted or denied, subject to the provisions of Rule 37(c).

7. Requesting party may move to determine sufficiency of answers or objections:

a. If objection is not justified, court shall order answer served;
b. If answer does not comply with the requirements of rule, the court may order:

1) Matter admitted;
2) An amended answer; or
3) Final disposition of request made at pretrial conference or designated time before trial.

Ark. R. Civ. P. 36(a).

8. An admission conclusively establishes matter unless court grants motion for withdrawal or amendment of admission.

9. Admission may be amended under Ark. R. Civ. P. 16 if:

a. Merits of action subserved thereby; and
b. Party fails to satisfy court that withdrawal or amendment will prejudice him in action or defense.

Ark. R. Civ. P. 36(b).

10. Requests for admissions must be in separate document and shall not be combined with interrogatories, document production requests, or any other material. Ark. R. Civ. P. 36(c)

Ark. R. Civ. P. 36.

PROTECTIVE ORDERS

1. The court may make orders justly required to protect party or person from annoyance, embarrassment, oppression, or undue burden or expense:

   a. On motion of party seeking discovery or party examined; and
   b. For good cause shown.

2. Order may:

   a. Preclude discovery;
   b. Permit discovery on specified terms and conditions;
   c. Permit discovery only by a method other than that chosen;
   d. Limit scope of discovery;
   e. Preclude discovery of certain things;
   f. Designate only certain persons to be present at examination;
   g. Require deposition to be sealed and opened only by court order;
   h. Preclude or limit disclosure of confidential research, development, commercial information; or
   i. Require simultaneous filing of specified documents or information in sealed envelopes to be opened only as court directs.

3. If motion for protective order denied, in whole or part, court may order discovery on such terms and conditions as are just.

4. With regard to depositions on oral examination:

   a. Either party or deponent may move to terminate or limit examination, at any time during examination, upon showing of conduct:

      1) In bad faith;
      2) In manner to unreasonably annoy; or
      3) In manner to embarrass or oppress.

   b. Protective order may be issued by:

      1) Court in which action pending; or
      2) Court in district where deposition taken.

   c. Terminated examination may only be resumed by order of court in which action pending;

d. Examination may be suspended for time required to make motion upon demand of moving party.

Ark. R. Civ. P. 26 and 30.

SANCTIONS

1. A motion to compel discovery may be made upon:

   a. Notice to all parties and interested persons (Ark. R. Civ. P. 37(a));
   b. Application to court:
      1) In which action pending;
      2) In place where deposition taken:
         a) In matters concerning the deposition; or
         b) If deponent is not a party.

   Ark. R. Civ. P.37(a)(1).

   c. On grounds that:

      1) Deponent fails to answer question under Ark. R. Civ. P. 30 or 31;
      2) Corporation, business association, or governmental agency fails to make a designation under Ark. R. Civ. P. 30(b)(6), 31(a);
      3) Party fails to answer interrogatories under Ark. R. Civ. P. 33;
      4) Party fails to permit inspection requested under Ark. R. Civ. P. 34; or
      5) Party's answers are evasive or incomplete.

2. Examination may be adjourned or completed before motion made. Ark. R. Civ. P. 37(a)(2)(3).

3. If motion is:

   a. Denied:

      1) Court may issue protective order pursuant to Ark. R. Civ. P. 26(c);
      2) Moving party, attorney, or both shall pay costs incurred in opposing motion:
         a) With opportunity for hearing;
         b) Unless motion justified or award of costs unjust.

   b. Granted:

      1) Movant shall pay reasonable expenses and attorney's fees incurred

in obtaining order:
a) Upon opportunity for hearing;
b) Unless motion justified or award unjust.

2) Granted in part, and denied in part, costs shall be apportioned as justice requires.

Ark. R. Civ. P. 37(a)(4).

4. Upon failure to comply with order to permit discovery:

a. The court in district in which deposition taken may find deponent in contempt for:

1) Failure to be sworn; or
2) Failure to answer.

b. The court in which the action is pending may make order:

1) Establishing facts involved or other designated facts;
2) Forbidding deponent opportunity to oppose or support designated claim or defense;
3) Prohibiting introduction of designated matter in evidence;
4) Striking pleadings or facts of pleadings;
5) Staying further proceedings until discovery permitted;
6) Dismissing action or proceeding or part thereof;
7) Rendering default judgment; or
8) In lieu of or in addition to foregoing:
a) Finding deponent in contempt for failure to permit any discovery except a mental or physical examination; or
b) Requiring payment of costs incurred in obtaining order unless failure to permit discovery justified or award unjust;

Ark. R. Civ. P. 37(b).

5. Upon failure to admit or deny a request to admit if genuineness of document or truth of matter in question is later proved:

a. Party making request and proof may move court for order requiring adverse party to pay costs incurred;
b. Such order shall be made unless:

1) Request to admit was objectionable under Ark. R. Civ. P. 36(a);
2) Admission was of no substantial importance in proceedings;
3) Adverse party had reasonable grounds to believe he might prevail

in objection; or

4) Adverse party demonstrates good reason for failure to answer.

Ark. R. Civ. P. 37(c).

6. If party deponent or designated officer upon proper notice of deposition or other discovery fails to:

   a. Appear for examination;
   b. Serve answer or objection to interrogatories; or
   c. Serve written response to request for inspection of property;

   The court in which the action is pending may upon motion make order:

   d. Establishing facts;
   e. Forbidding opportunity to oppose or support certain claims;
   f. Prohibiting introduction of certain evidence;
   g. Dismissing the action or proceeding or any part thereof;
   h. Entering a default judgment against the disobedient party; or
   i. In lieu of or in addition to above, awarding costs against adverse party, his attorney or both unless failure justified or such award unjust.

7. No failure to respond justified on grounds that discovery is objectionable unless a protective order has been applied for. Ark. R. Civ. P. 37(d).

8. Expenses may not be awarded against the State except as provided by law. Ark. R. Civ. P. 37(f).

Ark. R. Civ. P. 37.

ELECTRONIC DISCOVERY

1. The parties may agree to pursue electronic discovery or the court may order electronic discovery on motion for good cause shown.

2. Any such agreement or motion shall be made within 120 days after the date that the complaint was filed. The court may extend or reopen this period for good cause.

3. Within 30 days of an agreement or order to engage in electronic discovery, the parties shall confer. At this conference, the parties shall discuss and plan for the following issues:

   a. any issues relating to preservation of discoverable information;
   b. the form in which each type of the information will be produced;

c. the period within which the information will be produced;
d. the method for asserting or preserving claims of privilege or of protection of the information such as trial-preparation materials, including the manner in which such claims may be asserted after production;
e. the method for asserting or preserving confidentiality and proprietary status of information relating to a party or a person not a party to the proceeding;
f. whether allocation among the parties of the expense of production is appropriate; and,
g. any other issue relating to the discovery of electronically stored information.

4. Following the planning conference, the parties shall:

a. develop a proposed plan relating to discovery of the information; and
b. not later than 14 days after the conference, submit to the court a written report that summarizes the plan and states the position of each party as to any issue about which they are unable to agree.

5. In a civil proceeding, the court may issue an order governing the discovery of electronically stored information pursuant to:

a. motion by a party seeking discovery of the information or by a party or person from which discovery of the information is sought;
b. a stipulation of the parties and of any person not a party from which discovery of the information is sought, or
c. the court's own motion, after reasonable notice to, and an opportunity to be heard from, the parties and any person not a party from which discovery of the information is sought.

6. An order governing discovery of electronically stored information may address:

a. whether discovery of information is reasonably likely to be sought in the proceedings;
b. preservation of the information;
c. the form in which each type of the information is to be produced;
d. the time within which the information is to be produced;
e. the permissible scope of discovery of the information;
f. the method for asserting or preserving claims of privilege or of protection of the information as trial-preparation material after production;
g. the method for asserting or preserving confidentiality and the proprietary status of information relating to a party or a person not a party to the proceeding;

h. allocation of the expense of production; and
i. any other issue relating to the discovery of the information.

7. Absent exceptional circumstances, the court may not impose sanctions on a party for failure to provide electronically stored information lost as the result of the routine, good-faith operation of an electronic information system.

8. In a civil proceeding, a party may serve on any other party a request for production of electronically stored information and for permission to inspect, copy, test or sample the information.

A. A party on which a request to produce electronically stored information has been served shall, in a timely manner, serve a response on the requesting party. The response must state, with respect to each item or category in the request:

i. that inspection, copying, testing, or sampling of the information will be permitted as requested; or
ii. any objection to the request and the reasons for the objection.

B. Unless the parties otherwise agree or the court otherwise orders:

i. the responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably useful;
ii. if necessary, the responding party shall also produce any specialized software, material, or information not ordinarily available so that the requesting party can access and use the information in its ordinarily maintained form; and
iii. a party need not produce the same electronically stored information in more than one form.

9. A party may object to discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. In its objection, the party shall identify the reason for such undue burden or expense.

10. On motion to compel discovery or for a protective order relating to the discovery of electronically stored information, a party objecting bears the burden of showing that the information is from a source that is not reasonably accessible because of undue burden or expense.

11. The court may order discovery of electronically stored information that is from a source that is not reasonably accessible because of undue burden or expense if

the party requesting discovery shows that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

12. If the court orders discovery of electronically stored information, it may set conditions for discovery of the information, including allocation of the expense of discovery.

13. The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that:

    a. it is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive;
    b. the discovery sought is unreasonably cumulative or duplicative;
    c. the party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or
    d. the likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

14. A claim of privilege or protection after production of electronic data shall be governed by Ark. R. Civ. Pro. (26)(b)(5) unless the application of that rule is modified by agreement of the parties or by order of the court.

15. A subpoena in a civil proceeding may require that electronically stored information be produced and that the party serving the subpoena or person acting on the party's request be permitted to inspect, copy, test, or sample the information.

    A. A party serving a subpoena requiring production of electronically stored information shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.

    B. An order of the court requiring compliance with a subpoena for electronically stored information must provide protection to a person that is neither a party nor a party's officer from undue burden or expense resulting from compliance.

Ark. R. Civ. P. 26.1

PRETRIAL CONFERENCE

1. Pretrial conference may be held in discretion of court.

2. Attorneys for all parties shall appear at conference to consider:

    a. Simplification of issues;
    b. Necessity or desirability of amending pleadings;
    c. Possibility of obtaining admissions of fact and documents to avoid unnecessary proof;
    d. Limiting number of expert witnesses;
    e. Advisability of preliminary reference of issues to master;
    f. Such other matters as may aid in the disposition of the action; and
    g. The possibility of settlement or the use of extrajudicial procedures, including mediation, to resolve the dispute.

3. At conclusion of conference, court shall make order:

    a. Reciting action taken;
    b. Specifying amendments allowed;
    c. Reciting agreements of parties; and
    d. Limiting issues for trial to those not disposed of by admissions or agreements.

4. The order controls the subsequent course of action.

5. The order may be modified at trial to prevent manifest injustice.

6. The court may establish a pretrial calendar:

    a. By rule;
    b. On which actions placed for consideration;
    c. Confined to:
        1) Jury cases;
        2) Nonjury cases; or
        3) All actions.

Ark. R. Civ. P. 16.

ADJUDICATION WITHOUT TRIAL

CHALLENGES TO PLEADINGS

1. A motion for judgment on the pleadings may be made:

a. When pleadings are closed;
b. Within such time as not to delay trial;
c. By any party; and
d. Shall be treated as a motion for summary judgment if:

1) Court permits matters outside the pleadings to be presented; and
2) All parties are given a reasonable opportunity to present all material pertinent to such a motion. Ark. R. Civ. P. 12(c).

2. Unless waived (*See* Ark. R. Civ. P. 12(h)), a party may object by motion or in responsive pleadings to:

a. Subject-matter jurisdiction;
b. Jurisdiction of the person;
c. Venue;
d. Sufficiency of process;
e. Sufficiency of service of process;
f. Pleadings for failure to:

1) State facts upon which relief can be granted;
2) Join a necessary party; or

g. Action because another action between the same parties arising out of the same transaction or occurrence is pending.

3. Other defenses must be asserted in the responsive pleadings. Ark. R. Civ. P. 12(b).

4. In any pleading permitted under Ark. R. Civ. P. 7(a), party may assert the defense that:

a. Pleadings fail to state a cause of action;
b. A necessary party is not joined; or
c. No legal defense is stated. Ark. R. Civ. P. 12(h)(2).

5. A preliminary hearing may be conducted upon application of any party unless deferred until trial by court to determine the motion for judgment or defenses enumerated in (2) above. Ark. R. Civ. P. 12(d).

6. A motion for more definite statement may be made:

a. Before responsive pleadings filed;
b. Pointing out defects in the pleadings and details desired;
c. And if granted, complied with within ten days or time court fixes. Ark.

R. Civ. P. 12(e).

7. A motion to strike may be made:

   a. Before responsive pleadings filed; or
   b. Within twenty days after pleadings served if no responsive pleadings permitted.

8. On its own motion, the court may strike:

   a. Insufficient defenses;
   b. Matters that are:

      1) Redundant;
      2) Impertinent;
      3) Immaterial; or
      4) Scandalous.

Rule Ark. R. Civ. P. 12.

DISMISSAL

1. An action may be dismissed by plaintiff voluntarily without prejudice to further action unless:

   a. Case has been finally submitted to court or jury; or
   b. Plaintiff has once before voluntarily dismissed action in any court of any state or United States and all parties have not agreed in writing to dismiss without prejudice.

2. Despite dismissal, defendant may proceed with a counterclaim or set-off if it has been previously presented. Ark. R. Civ. P. 41(a).

3. Upon the court's own motion or on motion of defendant, an action may be dismissed for failure to prosecute, failure to comply with the Rules of Civil Procedure, or failure to comply with an order of court.

4. Involuntary dismissal is without prejudice unless the action has been previously dismissed, voluntarily or involuntarily. Ark. R. Civ. P. 41(b).

5. The court may order plaintiff to pay the costs of a prior dismissed action upon plaintiff's filing a new action on the same cause against the same defendant and may stay proceedings until plaintiff complies. Ark. R. Civ. P. 41(d).

6. The provisions of this rule are equally applicable to the dismissal of counter, cross, or third-party claims. Ark. R. Civ. P. 41(c).

OFFER OF JUDGMENT

1. More than ten days before trial, a party defending against a claim may serve adverse party with an offer to allow judgment to be taken:

   a. For money specified in offer; or
   b. For property specified in offer; or
   c. To effect specified in offer; and
   d. With costs then accrued.

2. Judgment shall be entered if, within ten days after service, adverse party accepts offer in writing, and either party files:

   a. Offer;
   b. Written notice of acceptance; and
   c. Proof of service of offer and acceptance.

3. An offer not accepted shall be:

   a. Considered withdrawn; and
   b. Inadmissible in evidence except in a proceeding to determine costs.

4. If final judgment obtained, exclusive of interest, is not more than offer, offeree pays costs incurred after offer made.

5. An offer made but not accepted does not preclude a subsequent offer.

6. When liability has been determined by trial, but the amount is to be determined by further proceedings, the party adjudged liable may make an offer as in (1) above if served not less than ten days prior to further proceedings.

Ark. R. Civ. P. 68.

DEFAULT JUDGMENT

1. The court shall enter a default judgment in the kind and amount prayed for in the demand for judgment against a party:

   a. Whom relief is sought;
   b. Who is not an infant or incompetent; and
   c. Who fails to plead or defend;

Upon a motion presented in vacation at any place in the district or circuit, by:

d. Plaintiff;
e. Third-party plaintiff;
f. Cross-complaint; or
g. Counterclaimant. Ark. R. Civ. P. 54(c) and 55(a)(b)(d)(e).

2. A hearing or a jury trial may be conducted if necessary to:

a. Take an account;
b. Determine damages;
c. Establish the truth of an averment;
d. Investigate any other matter.

3. If defendant or his representative has appeared, written notice must be given at least three days prior to hearing. Ark. R. Civ. P. 55(b).

4. The court may set aside default judgment upon showing of:

a. Mistake, inadvertence surprise, or excusable neglect;
b. Judgment is void;
c. Fraud, misrepresentation, or other misconduct of adverse party; or
d. Any other reason justifying relief.

5. If case has been removed to United States Court and thereafter remanded, no judgment by default shall be entered if the party filed an answer or a motion permitted by Rule 12 in the federal court during removal. Ark. R. Civ. P. 55(f).

Ark. R. Civ. P. 54 and 55.

DEFAULT JUDGMENT - SERVICE BY MAIL OR WARNING ORDER

1. When a defendant is served by a warning order, default judgment shall not be taken unless an affidavit has been filed stating thirty days have elapsed since the first publication of the warning order.

Ark. R. Civ. P. 4(f)(4).

SUMMARY JUDGMENT

1. A plaintiff on a complaint, cross-claim, or counterclaim, may move for summary judgment:

a. Twenty days after action commenced; or

b. After service of motion for summary judgment by adverse party;
c. With or without supporting affidavits; and
d. No later than forty-five days before any scheduled trial date.

2. Adverse party shall serve response and supporting materials, if any, within 21 days after motion is served. Moving party may reply within 14 days after service of response. Unless court orders otherwise, no party shall file supporting materials after time for serving a reply.

3. Court may hold hearing on motion not less than 7 days after time for serving a reply.

4. Affidavits in support of or in opposition to the motion shall:
   a. Be based upon personal knowledge;
   b. State facts admissible in evidence;
   c. Show that affiant is competent to testify to matters contained;
   d. Have attached sworn or certified copies of all documents referred to; and
   e. State specific facts showing the existence of a genuine issue of fact, rather than a mere denial by the pleadings.

5. The court may permit affidavits to be supplemented by:
   a. Depositions;
   b. Answers to interrogatories; and
   c. Further affidavits.

6. If, for specified reasons, an affidavit with regard to essential facts in opposition to the motion cannot be obtained, the court may:
   a. Permit more time to obtain affidavits or make discovery;
   b. Refuse the motion; or
   c. Make other just order.

7. If affidavits are made in bad faith or for the purpose of delay, the court shall:
   a. Order the offender to pay reasonable expenses and attorney's fees incurred by the other party; and
   b. Adjudge offender and his attorney in contempt.

8. Movant is entitled to judgment as a matter of law if no issue of fact appears from:

   a. Pleadings;
   b. Depositions;
   c. Answers to interrogatories;
   d. Admissions; and
   e. Affidavits.

9. Interlocutory summary judgment may be rendered on liability alone if a genuine issue of fact remains as to the amount of damages.

10. If summary judgment is not upon the whole case or for all relief prayed:

    a. A hearing shall be conducted to determine the facts actually in good faith controverted based on the:

        1) Pleadings;
        2) Evidence; and
        3) Questions to counsel.

    b. Resulting in an order:

        1) Specifying uncontroverted facts to be deemed established at trial;
        2) Specifying extent to which damages not controverted; and
        3) Directing such further proceedings as are just.

Ark. R. Civ. P. 56.

LIMITATIONS OF ACTIONS

1. The expiration of the statutory period for a particular action before a suit is commenced is a bar to further action.

2. The statutory period generally begins running when the cause of action accrues. *Williams v. Edmonson*, 257 Ark. 837, 520 S.W.2d 260 (1975).

3. The statutory period is tolled by:

    a. Properly commencing an action:
        1) By filing a complaint with the clerk of the proper court;
        2) When the identity of the tortfeasor is unknown, upon affidavit of the fact designating tortfeasor as "John Doe" (Ark. Code Ann. §16-56-125);
    b. Military service in time of war and six months after war (Ark. Code Ann. §16-56-118);
    c. An injunction staying a suit filed within the statutory period (Ark. Code Ann. §16-56-119); and
    d. A disability existing at the time the cause of action accrues including:
        1) Infancy; or
        2) Incompetency;

        Ark. Code Ann. §16-56-116. NOTE: Once one of these disabilities is removed, plaintiff has three years in which to file suit. If concurrent

disabilities exist, all must be removed for the statutory period to run.

e. Defendant's leaving the county, absconding or concealing self, or doing any other improper act to prevent the commencement of the action (Ark. Code Ann. §16-56-120);

f. Foreign debtor fraudulently absconding to this state to avoid suit (Ark. Code Ann. §16-56-121).

4. The statutory period is not tolled by:

   a. A verbal promise or acknowledgment in an action on a contract (Ark. Code Ann. §16-56-122);
   b. A written acknowledgment or promise by a joint contractor or executor as against the other (Ark. Code Ann. §16-56-124); or
   c. The endorsement by the payee of payment on a bond. (Ark. Code Ann. §16-56-123).

5. The statutory period applies to:

   a. Nonresidents as well as residents (Ark. Code Ann. §16-56-101); and
   b. Demands by way of set-off whether by plea, notice, or otherwise. (Ark. Code Ann. §16-56-102).

6. The statutory period does not apply in suits to enforce payment of bills, notes, or evidences of debt issued by bank or moneyed corporation. Ark. Code Ann. §16-56-103.

7. The statute of limitations is an affirmative defense that must be set forth in responsive pleading. Ark. R. Civ. P. 8(c).

DECLARATORY JUDGMENTS

1. The procedure for obtaining a declaratory judgment is outlined in Ark. Code Ann. §16-111-101 *et. seq*.

2. The right to a jury trial shall be controlled by Ark. R. Civ. P. 38 and 39.

3. When appropriate, the existence of another adequate remedy does not preclude a declaratory judgment.

4. The court may advance an action for a declaratory judgment on the docket for a speedy hearing. Ark. R. Civ. P. 57.

5. Courts of record may declare rights, status, and other legal relations although no other relief may be claimed. Ark. Code Ann. §16-111-103.

6. Such declarations shall be treated as a final judgment.

7. A person may seek declaratory relief in any proceeding if the judgment will:

   a. Terminate the controversy; or
   b. Remove an uncertainty. Ark. Code Ann. §16-111-103 and §16-111-108.

RELEVANT STATUTES

Declaration of construction and validity: Ark. Code Ann. §16-111-104.
Powers of fiduciaries: Ark. Code Ann. §16-111-105.

MASTERS

1. Appointment and Compensation

Each court in which an action is pending may appoint a special master. The word "master" includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed a master shall be fixed by the court and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but, when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party. Ark. R. Civ. P. 53(a).

2. Reference

A reference to a master shall be the exception and not the rule. Reference shall be made only in those cases where there is no right to trial by jury or where such right has been waived. Except in matters of account and difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Ark. R. Civ. P. 53(b); *Hutton v. Savage*, 298 Ark. 256, 769 S.W.2d 394 (1989).

3. Power

The order of reference to a master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and

take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them upon oath. The master shall cause a record to be made of the evidence offered and excluded. Ark. R. Civ. P. 53(c).

4. Proceedings

(a) *Meetings*. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall set a time and place for the first meeting of the parties or their attorneys to be held within the time specified by the court or otherwise within a reasonable time after receipt of the order of reference. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(b) *Witnesses*. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Ark. R. Civ. P. 45. If without adequate excuse a witness fails to appear to give evidence, he may be punished for a contempt and be subject to the consequences, penalties, and remedies provided in Ark. R. Civ. P. 37 and Ark. R. Civ. P. 45.

(c) *Statement of Accounts*. When matters of accounting are in issue before the master, he may prescribe the form in which the account shall be submitted and in any proper case may receive or require in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs. Ark. R. Civ. P. 53(d).

5. Report

(a) *Contents and Filing*. The master shall prepare a report upon the matters submitted to him by the order of reference, and, if required to make findings of fact and conclusions of law, he shall set them forth in his report. He shall file the report with the clerk of the court and unless directed by the order of reference shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The

clerk shall forthwith mail to all parties notice of the filing.

(b) *Effect*. The court shall accept the master's findings of fact unless clearly erroneous. Within 20 days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and objections thereto shall be by motion and upon notice as prescribed in Ark. R. Civ. P. 6 (c). The court after hearing may adopt the report or modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(c) *Stipulation as to Findings*. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(d) *Draft Report*. Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Ark. R. Civ. P. 53 (e).

VII. CRIMINAL PROCEDURE

ARREST

SUFFICIENCY OF AFFIDAVIT FOR ARREST WARRANT

1. Is a crime alleged?
2. Is a place set forth?
3. Is the time stated?
4. Is the matter within officer's jurisdiction?
5. Is the accused named or described?
6. Is the affidavit on personal knowledge or hearsay?
7. If hearsay, is the informant reliable?
8. Does reasonable cause exist?

Ark. R. Crim. P. 7.1.

SUFFICIENCY OF ARREST WARRANT

1. Is the offense named or described?
2. Is the county where crime committed named?
3. Does it command officers to arrest a person and bring him or her before judicial officer if unwilling to comply with conditions of release?
4. Is it in writing?
5. Is it in the name of the State?
6. Is it directed to all law enforcement officers in the State?
7. Is it signed by issuing official with his or her title of office?
8. Is it dated?
9. Is the accused named or sufficiently described?
10. Is there a copy of the affidavit attached?
11. Is the judge issuing warrant neutral and detached?

Ark. Code Ann. § 16-81-104; Ark. R. Crim. P. 7.2.

RELEVANT CASE

State v. Richardson, 373 Ark. 1, 280 S.W.3d 20 (2008) (holding that an invalid arrest warrant may call for the suppression of a confession or other evidence but does not entitle a defendant to be discharged from responsibility for the alleged offense).

ARREST WITHOUT WARRANT

1. A law enforcement officer may make an arrest without a warrant when:

    a. A public offense is committed in the presence of the officer;

    b. The officer has reasonable grounds to believe the person arrested has committed a felony;

    c. Ordered by a judicial officer in whose presence public offense is being committed; or

    d. The officer has reasonable cause to believe that the person arrested has committed a traffic offense involving:

        1) Death or physical injury to a person;

        2) Damage to property; or

        3) Driving a vehicle while under the influence of any intoxicating liquor or drug.

    e. The officer has reasonable cause to believe that the person has committed acts of domestic violence occurring within 4 hours of arrest (if no physical injury) or within 12 hours of arrest (if physical injury involved).

    f. The officer has probable cause to believe that a person has violated Ark. Code Ann. §§ 5-60-124 or 5-60-125 by interfering with emergency communications within 4 hours of arrest (if no physical injury) or within 12 hours of arrest (if physical injury involved).

    g. The officer is otherwise authorized by law.

2. A private citizen may make an arrest when:

    a. He has reasonable grounds for believing the person arrested has committed a felony; or

    b. Ordered to by a judicial officer in whose presence a public offense is being committed.

Ark. Code Ann. §§ 16-81-106; Ark. Code Ann. § 16-81-116; Ark. R. Crim. P. 4.1.

SUMMONS FOR MISDEMEANOR OFFENSE

1. A judicial officer with the authority to issue an arrest warrant may issue, or authorize the clerk of the court to issue, a criminal summons in lieu of an arrest warrant in any case in which a complaint, information, or indictment is filed or returned against a person not already in custody.

2. A prosecuting attorney who files an information or approves the filing of a complaint against a person not already in custody may authorize the clerk of a court to issue a criminal summons in lieu of an arrest warrant.

3. A summons shall not be issued if:

   a. The offense, or the manner in which it was committed, involved violence to a person or the risk or threat of imminent serious bodily injury; or

   b. It appeared that the person charged would not respond to a summons.

4. In determining whether the defendant would respond to a summons, appropriate considerations include:

   a. The nature and circumstances of the offense charged;

   b. The weight of the evidence against the person;

   c. Place and length of residence;

   d. Present and past employment;

   e. Family relationship;

   f. Financial circumstances;

   g. Apparent mental condition;

   h. Past criminal record;

   i. Previous record of appearance at court proceedings; and

   j. Any other relevant information available to the judicial officer.

Ark. R. Crim. P. 6.1.

RELEVANT CASES
"Reasonable grounds" same as "probable cause" for warrantless arrest:
United States v. Barber, 557 F.2d 628 (1977).
Warrantless home arrest/DWI: *Norris v. State*, 338 Ark. 397, 993 S.W.2d 918 (1999).

SEARCH AND SEIZURE

SUFFICIENCY OF AFFIDAVIT

1. Is person or place to be searched particularly described?

2. Is person or thing to be seized particularly described?

3. Is affidavit signed?

4. Is affidavit or recorded testimony given under oath?

5. Is affidavit or recorded testimony given before a judicial officer?

6. Are facts and circumstances set forth to make a reasonable person believe that material to be seized is in the place described?

7. If affidavit or recorded testimony is based on hearsay, are facts alleged bearing on informant's reliability?

8. If affidavit or recorded testimony is based on hearsay, are the means whereby informant obtained the information disclosed?

Ark. R. Crim. P. 13.1.

RELEVANT CASES

Night-time search justification: *Garner v. State*, 307 Ark. 353, 820 S.W.2d 446 (1991); _____*Fouse v. State*, 337 Ark. 13, 989 S.W.2d 146 (1999).
Substantial compliance: *Baxter v. State*, 262 Ark. 303, 556 S.W.2d 428 (1977).
Failure to record testimony: *Moya v. State*, 335 Ark. 193, 981 S.W.2d 521 (1998).
Officer's failure to disclose to judge that affidavit was based on hearsay: *State v. Rufus*, 338 Ark. 305, 993 S.W.2d 490 (1999).

SUFFICIENCY OF SEARCH WARRANT

1. Is the identity and title of the issuing judicial officer set forth?

2. Is the date and place of application stated?

3. Is there a finding of reasonable cause by the issuing judicial officer stated?

4. Is the identity of the person to be searched stated or described with particularity?

5. Is the person or thing to be seized stated or described with particularity?

6. Is the time within which the warrant is to be returned stated?

7. Is it directed to any law enforcement officer?

8. Does it command the law enforcement officer to search between the hours of 6:00 a.m. and 8:00 p.m.?

9. If search is to be conducted at night, has the judicial officer made a finding that there is reasonable cause to believe that:

   a. The place to be searched is difficult of speedy access;

   b. The property is in danger of imminent removal; or

   c. The warrant can be safely or successfully executed only at night or under unpredictable circumstances?

10. Is the judge issuing warrant neutral and detached?

Ark. R. Crim. P. 13.2.

KNOCK AND ANNOUNCE

1. Time interval of two to three seconds between officer's announcement and forced entry into residence was insufficient to demonstrate that they were constructively refused entry into residence. *Mazepink v. State*, 336 Ark. 171, 987 S.W.2d 648 (1999).

2. Where officers had seen readily accessible weapons during the first search only a few days before, and where the occupants of the house had an unrestricted view of its surroundings, officers acted reasonably in making a no-knock entry to ensure their safety. *Foster v. State*, 66 Ark. App. 183, 991 S.W.2d 135 (1999).

SEARCH WITHOUT WARRANT - CONSENT

1. If search of person, did person give consent?

2. If search of person under 14, did person and parent, guardian, or a person in *loco parentis* give consent?

3. If search of vehicle, did person to whom vehicle is registered or who is in apparent control of its operation or contents give consent?

4. If search of premises, did person who is apparently entitled to give or withhold consent give consent?

5. Was duration or physical scope of search within limits of consent?

6. Neither the United States Supreme Court nor the Arkansas Supreme Court has ever held that probable cause or reasonable suspicion is necessary in order for an officer to request consent for a search. *Muhammad v. State*, 337 Ark. 291, 988 S.W.2d 17 (1999).

7. Did the State prove by clear and positive evidence that consent was freely and voluntarily given and that there was no actual or implied duress or coercion?

8. Consent search of dwelling not valid unless person giving consent was advised of the right to refuse consent.

Ark. R. Crim. P. 11.1; 11.2; 11.3.

WARRANT EXCEPTIONS

1. Incidental to Arrest:

   a. Permissible purposes

      1) An officer making a lawful arrest may, without a search warrant, search the person or property of the accused:

         a) To protect the officer, the accused, or others;

         b) To prevent the escape of the accused;

         c) To furnish appropriate custodial care if the accused is jailed;

         d) To obtain evidence of the commission of the offense for which the accused has been arrested; or

         e) To seize contraband, the fruits of crime, or other things criminally possessed or used in conjunction with the offense.

   Ark. R. Crim. P. 12.1.

   b. Search of Person

      1) At the police station or place of detention a search may be made of the accused's:

         a) Garments and personal effects ready to hand;

         b) The surface of the body of accused; and

         c) The area within the immediate control of accused.

   Ark. R. Crim. P. 12.2.

   c. Search of Body Cavities of Accused

      1) Search of the blood stream, body cavities, and subcutaneous

tissues of an accused without a warrant may be made only if:

a) Conducted incidental to an arrest;

b) Conducted by a physician or licensed nurse;

c) There is a strong probability that it will disclose things subject to seizure and related to the offense for which the individual was arrested;

d) It reasonably appears that the delay consequent upon procurement of a search warrant would probably result in the disappearance or destruction of the objects of the search; and

e) It reasonably appears that the search is otherwise reasonable under the circumstances of the case, including the seriousness of the offense and the nature of the invasion of the individual's person.

Ark. R. Crim. P. 12.3.

d. Search of Vehicle

1) A vehicle may be searched at the time of arrest of an accused if:

a) The accused is in the vehicle;

b) The accused is in the immediate vicinity of and in apparent control of the vehicle;

c) There is reasonable cause for the arresting officer to believe that the vehicle contains things connected with the offense for which the arrest is made; or

d) The search is made contemporaneously with the arrest or as soon thereafter as is reasonably practical.

Ark. R. Crim. P. 12.4.

2) A vehicle impounded as a consequence of an arrest, or retained in official custody for other good cause, may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents.

Ark. R. Crim. P. 12.6 (b).

e. Search of Premises

1) Search of premises may be made without a warrant if:

a) Made contemporaneously with the arrest of the accused;

b) The entry onto the premises was made for the purpose of making the arrest;

c) The search is limited to the immediate area from which the person may obtain a weapon or in which he may have secreted evidence;

d) It is apparent that the accused is entitled to occupy all or part of the premises; and

e) Circumstances give the officer reason to believe that the premises contain things which are:

i) Subject to seizure;

ii) Connected with the offense for which the arrest is made; and

iii) Likely to be removed or destroyed before a search warrant can be obtained and served.

Ark. R. Crim. P. 12.5.

PLAIN-VIEW DOCTRINE

In order for a seizure to be permissible under the plain-view doctrine, the seizure must be:

1. With a warrant but the item is not covered by the warrant, or

2. Made during a valid intrusion by police officers.

3. Made by an officer who has probable cause to believe the item is subject to seizure.

4. Immediately apparent that it is contraband.

Even though inadvertent discovery is a characteristic of most plain-view seizures, it is not a necessary condition. *Horton v. California*, 496 U.S. 128 (1990).

PLAIN VIEW WITH VEHICLES

During a traffic stop, if there is reasonable suspicion that the person is armed or has weapons in the vehicle, an officer can look in the vehicle's windows for items in plain view.

SEARCH INCIDENT TO TRAFFIC STOP/CITATION

A police officer with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of his search. *Wyoming v. Houghton*, 526 U.S. 295 (1999). The threat to officer safety from issuing a traffic citation is a good deal less than in the case of a custodial arrest. The need to discover and preserve evidence does not exist in a traffic stop because once the person is stopped for speeding and issued a citation, all evidence necessary to prosecute that offense has been obtained. *Knowles v. Iowa*, 525 U.S. 113 (1998).

Pursuant to a lawful traffic stop, police officer's search of locked toolboxes and a briefcase in the bed of appellant's truck was proper based upon the officer's assertion that he smelled marijuana. *McDaniel v. State*, 337 Ark. 431, 990 S.W.2d 515 (1999).

CANINE SNIFFS/ DETENTION

Arkansas cases:

Dowty v. State, 363 Ark. 1, 210 S.W.3d 850 (2005)(canine sniff of defendant's vehicle was not a "search" that implicated federal or state constitutional rights against unreasonable searches); *Burks v. State*, 362 Ark. 558, 210 S.W.3d 62 (2005) (when an officer has reasonable suspicion of criminal activity he may detain a defendant after the legitimate purpose of a traffic stop has ended to run a drug dog around the outside of a vehicle).

PRETEXT

The trial court's finding that the appellant's custodial arrest after a traffic stop would not have occurred but for an ulterior motive (the officer's suspicion that the appellant was involved in narcotics activity) was not clearly against the preponderance of the evidence. The officer's actions were unreasonable police conduct warranting application of the exclusionary rule, and the trial court correctly suppressed the evidence found as a result of the officer's search. *State v. Sullivan* 348 Ark. 647, 74 S.W.3d 215 (2002). *But see State v. Harmon*, 353 Ark. 568, 113 S.W.3d 75 (2003), and *Flores v. State*, 87 Ark. App. 327, 194 S.W.3d 207 (2004)(involving pretextual traffic stops).

DNA SAMPLING UPON ARREST

1. A DNA sample shall be collected from an individual who is arrested for:

   a. capital murder;

   b. murder in the first degree;

   c. kidnapping;

   d. sexual assault in the first degree; and/or

   e. sexual assault in the second degree.

2. A DNA sample shall be collected from an individual whose first appearance in court is caused by a citation or summons for:

   a. capital murder;

   b. murder in the first degree;

   c. kidnapping;

   d. rape;

   e. sexual assault in the first degree; and/or

   f. sexual assault in the second degree.

3. When a charge of capital murder, murder in the first degree, kidnapping, rape, sexual assault in the first degree, and sexual assault in the second degree is brought against a person already in the custody of a law enforcement agency or a correctional agency and the felony charge is separate from the charge or charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall take or cause to be taken a DNA sample of the person in connection with the new felony charge unless the law enforcement agency or the correctional agency can verify that the person's DNA record is stored in the State DNA Data Base or CODIS.

Ark. Code Ann. § 12-12-1006.

INITIAL APPEARANCE OF DEFENDANT

FIRST APPEARANCE

1. At the first appearance of the defendant the judicial officer shall inform defendant of:

   a. The charge against him or her;
   b. The right to say nothing;
   c. The fact that anything he or she says can be used against him or her;
   d. The right to counsel. Whenever practicable the desire for and ability to pay an attorney should be determined before the first appearance.
   e. The right to communicate with counsel, family and friends; and
   f. That reasonable means will be provided to communicate with counsel, family, and friends.

   Ark. R. Crim. P. 8.3.

2. At the first appearance of the defendant, the judicial officer shall conduct a pretrial-release inquiry, unless it has already been conducted, and determine:

a. The defendant's employment status;
b. The defendant's history;
c. The defendant's financial condition;
d. The nature and extent of defendant's family relationship;
e. The defendant's past and present residence;
f. The defendant's character and reputation;
g. The identity of persons who agree to assist defendant in attending court at proper times;
h. That defendant knows the nature of the charge;
i. Any mitigating or aggravating circumstances that may bear on likelihood of conviction and possible penalty;
j. The defendant's prior criminal record;
k. Whether defendant appeared as required for previous releases, if any, pending trial;
l. Any facts indicating possible violations of law if defendant is released without restrictions; and
m. Any other facts tending to indicate that defendant has strong community ties and is not likely to flee the jurisdiction.

Ark. R. Crim. P. 8.5.

3. The pretrial-release inquiry shall be made in all cases where:

a. The maximum penalty for the offense charged exceeds one year; and
b. The prosecuting attorney does not stipulate to release on own recognizance; or
c. The maximum penalty for the offense charged is less than one year; and
d. A law enforcement officer gives notice to the judicial officer of intent to oppose release on own recognizance.

Ark. R. Crim. P. 8.4.

4. In all other cases, the judicial officer may release on own recognizance without a pretrial-release inquiry. It must be presumed that when the maximum penalty is exactly one year an inquiry shall be conducted if prosecuting attorney does not stipulate or law enforcement officer gives notice of intent to oppose.

Ark. R. Crim. P. 8.4.

RELEVANT FORM

An Affidavit of Financial Inability to Employ Counsel is set out in the Appendix at a-10.

WAIVER OF APPOINTMENT OF COUNSEL

A Waiver of Counsel appears in the Appendix at a-12. *See* also section V of this book *Pro Se Litigants and Indigents*, regarding self-representation.

TIME FOR FILING FORMAL CHARGE IF DEFENDANT IN CUSTODY

If the defendant is continued in custody subsequent to the first appearance, the prosecuting attorney shall file an indictment or information in a court of competent jurisdiction within sixty days of the defendant's arrest. Failure to file an indictment or information within sixty days shall not be grounds for dismissal of the case against the defendant, but shall, upon motion of the defendant, result in the defendant's release from custody unless the prosecuting attorney establishes good cause for the delay. If good cause is shown, the court shall reconsider bail for the defendant.

Ark. R. Crim. P. 8.6.

COMPLIANCE WITH ADMINISTRATIVE ORDER NUMBER 19

Every pleading, motion, response, order, and other paper filed in a case, and any document attached to any of them, must comply with the protective requirements for confidential information established by Administrative Order 19.

1. Counsel and unrepresented parties shall follow the redaction and filing procedure established by Arkansas Rule of Civil Procedure 5(c)(2)(A) & (B).

2. That procedure includes:

    a. Eliminating all unnecessary or irrelevant confidential information;

    b. Redacting all necessary and relevant confidential information; and

    c. Filing an unredacted version under seal.

Ark. R. Crim. P. 1.9.

PERMITTED CONDITIONS OF RECOGNIZANCE RELEASE

1. If it is determined that a defendant may be released on personal recognizance or upon an order to appear, the court may impose the following conditions:

    a. Place the defendant under the care of a person or organization agreeing to:
        1) Supervise the defendant; and
        2) Assist the defendant in making required court appearances;
    b. Place the defendant under the supervision of a probation officer or other appropriate official;
    c. Impose reasonable conditions on the defendant's:
        1) Activities;
        2) Movements;
        3) Associations; and

4) Residences;

d. Release the defendant to work and require the return to custody at specified times; or

e. Any other reasonable restriction to insure appearance when required.

Ark. R. Crim. P. 9.1.

REQUIREMENT IF MONEY BAIL SET

1. If it is determined that it is necessary to set a money bail to insure the appearance of the defendant, the court shall require:

   a. The execution of an unsecured bond in an amount determined by the court and may require this bond to be signed by other persons;

   b. The execution of an unsecured bond in an amount determined by the court, accompanied by a cash or security deposit equal to 10% of the bond; or

   c. The execution of a bond in an amount determined by the court and secured by deposit in the full amount of:

      1) Cash;

      2) Other property; or

      3) The obligation of qualified sureties.

Ark. R. Crim. P. 9.2.

AMOUNT OF BAIL TO BE SET

1. In setting the amount of bail to ensure the defendant's appearance, the court should consider:

   a. The defendant's employment status;

   b. The defendant's employment history;

   c. The defendant's financial condition;

   d. The defendant's family ties and relationships;

   e. The defendant's reputation;

   f. The defendant's character;

   g. The defendant's mental condition;

   h. The defendant's past history of response to legal process;

   i. The defendant's past criminal record;

   j. The identity of persons who vouch for defendant;

   k. Insofar as relevant to the risk of fleeing the jurisdiction:

      1) The nature of the charge;

      2) The apparent probability of conviction; and

      3) The likely sentence; and

   l. Any other factors indicating the defendant's roots in the community.

Ark. R. Crim. P. 9.2.

RELEVANT FORM

A bond form is found in the Appendix at a-13. Show cause/ bond forfeiture order at a-79.

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Release on own recognizance conditions: Ark. R. Crim. P. 9.1.
Release on money bail: Ark. R. Crim. P. 9.2.
Failure to appear: Ark. Code Ann. § 5-54-120.
Taking bail: Ark. Code Ann. § 16-84-101, *et seq*.
Person authorized to take bail: Ark. Code Ann. § 16-84-102.
Bail during trial: Ark. Code Ann. § 16-84-111.
Bail before conviction: Ark. Code Ann. § 16-84-110.
Excessive bail: Ark. Const., Art. 2, §9.
Forfeiture of bond: Ark. Code Ann. § 16-84-207.
Bail in extradition proceeding: Ark. Code Ann. § 16-94-216.
No bond in capital case where proof is evident: Ark. Const., Art. 2, §8.
Surrender of defendant: Ark. Code Ann. § 16-84-114 .
Responsibility of officer taking bond: Ark. Code Ann. § 16-84-105.

PRELIMINARY HEARING

RELEVANT CASE

No constitutional right to preliminary hearing. *Goldsby v. U.S.*, 160 U.S. 70 (1895).

PROBABLE CAUSE HEARING

The Fourth Amendment to the Constitution of the United States requires that persons arrested without a warrant have a prompt determination of probable cause, but no later than 48 hours after arrest. Where no determination within that time, the burden shifts to the government to demonstrate a bona fide emergency or other extraordinary circumstances. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

PROCEDURE ON ARRAIGNMENT

1. If attorney not present, court must ascertain:

    a. Whether defendant previously had obtained counsel;
    b. Whether counsel was appointed previously;
    c. If no counsel, then determine if defendant is entitled to appointment of counsel.

2. If defendant has counsel who is absent without defendant's consent, continue arraignment until counsel is present.

3. If defendant has counsel who is absent with defendant's consent:

    a. Advise defendant of constitutional right to have counsel;

b. Ascertain whether defendant waives right to have counsel present; and
c. Ascertain whether defendant wants to proceed with arraignment without counsel.

4. Determine status of defendant by ascertaining:

a. Defendant's true name (error in name does not vitiate indictment or proceedings) (Ark. Code Ann. § 16-85-405);
b. Defendant's age;
c. Extent of defendant's education;
d. Defendant's ability to read and write English; and
e. Whether defendant is presently under the influence of alcohol or drugs or suffering from a mental defect that might affect his ability to enter a competent plea.

5. Inform defendant of charges by ascertaining:

a. Whether defendant has received a copy of indictment (information);
b. Whether defendant desires a copy;
c. Whether indictment (information) has been read to defendant; and
d. Whether defendant desires to have indictment (information) read to him at the present time.

6. As a guarantee that defendant understands nature of proceedings, counsel should be questioned to ascertain:

a. Whether name on the indictment (information) is true name of defendant;
b. Whether counsel read indictment (information) to defendant and explained charge;
c. Whether defendant understands elements of crime charged; and
d. Whether counsel is confident that defendant is aware of consequences of charge.

7. Court should then inform defendant that purpose of arraignment is to enter a plea to charge in the indictment (information).

8. The court should then take the plea of defendant.

RELEVANT STATUTES

Arraignment Generally: Ark. Code Ann. § 16-85-701 *et seq*.

SUFFICIENCY OF INFORMATION (INDICTMENT)

1. Is it in writing?

2. Is it found and presented by a grand jury to court in which grand jury is impaneled?

3. Does it charge a person with a crime?

4. Is it endorsed "a true bill"?

5. Is the endorsement signed by foreperson?

6. Are the names of witnesses examined listed?

7. Does it show under what authority it is brought?

8. Does it name proper court?

9. Does it indicate it is brought in name of the State?

10. Does it name offense charged?

11. If culpable intent is a material element of offense charged, is it alleged?

12. If knowledge is not presumed, is it alleged?

13. If time is a material element of offense charged, is it alleged?

14. Is offense charged one over which court has jurisdiction?

15. Is venue established?

16. Is defendant named?

17. Is offense properly charged?

18. If property is a subject of offense charged, is it sufficiently described?

19. If value of property is an element of offense charged, is it set forth?

20. If there is a fact or circumstance which may influence punishment, is it set forth?

Ark. Code Ann. § 16-85-401 *et seq*.

RELEVANT STATUTES AND RULES

Definition of "information:" Ark. R. Crim. P. 1.6.
Bill of particulars: Ark. Code Ann. § 16-85-301.
Information: Ark. Code Ann. § 16-85-302.
Setting aside indictment: Ark. Code Ann. § 16-85-706.

PLEA OF GUILTY OR *NOLO CONTENDERE*

INFORMATION TO BE OBTAINED FROM DEFENDANT

1. Nature of the charge. Does the defendant understand:

   a. What he or she is charged with;
   b. The mandatory minimum sentence, if any;
   c. The possible maximum sentence;
   d. The possible consecutive sentences for additional counts;
   e. The amount of fine that may be imposed, if any;
   f. What State must prove to be found guilty; and
   g. Consequences, if any, of a previous conviction.

   Ark. R. Crim. P. 24.4.

2. Voluntariness of plea:

   a. Was violence or physical or mental duress used;
   b. Was any threat or intimidation made;
   c. Has anyone made a promise of leniency in return for guilty plea;
   d. Is defendant suffering from a physical or mental disease or affliction -
      1) If "yes," is guilty plea being made in order to receive treatment or medication; and
      2) If "yes," is guilty plea being made freely and voluntarily.

   Ark. R. Crim. P. 24.5.

3. Accuracy of plea:

   a. Is guilty plea being made because defendant, in fact, is guilty; and
   b. What did defendant do.

   Ark. R. Crim. P. 24.6.

4. Right to a jury trial. Does the defendant understand:

   a. That he or she may plead not guilty and be tried by a jury composed of a cross-section of the community;
   b. Right to a speedy and public trial;
   c. That all jurors must find defendant guilty beyond a reasonable doubt;
   d. That defendant is not required to testify and that no one may comment upon defendant not testifying;
   e. Right to see, hear, and cross-examine witnesses for the prosecution; and
   f. Right to present and subpoena witnesses on his or her own behalf.

5. Competency of defendant:

a. Determine whether defendant is under the influence of a drug or alcohol;
b. Determine whether defendant has ever been a patient in a mental institution or under the care of a psychiatrist;
c. Determine whether defendant understands everything presently occurring; and
d. Determine whether it is free and voluntary decision of defendant to enter guilty plea.

6. Plea discussions and plea agreements:

a. Can original charge be supported by evidence;
b. Does plea agreement serve the interest of the public in the effective administration of justice;
c. Did prosecutor reach a plea agreement through discussion with defense counsel;
d. Is decision to enter plea ultimately that of defendant;
e. If court has not previously concurred in plea agreement, is defendant aware that:
   1) The agreement is not binding on the court;
   2) The disposition might be different from that contemplated in the agreement;
f. If court has previously concurred in agreement, but thereafter decides before sentence not to concur, is defendant given opportunity to withdraw plea.

Ark. R. Crim. P. 25.1; 25.2; 25.3.

7. Competency of counsel:

a. Is defendant satisfied that his or her attorney has fully considered surrounding facts and possible defenses to charge; and
b. Is defendant satisfied that his or her attorney has given complete advice.

Ark. R. Crim. P. 24.2; 25.2.

8. Deportation:

If the defendant is not a citizen of the United States, the court may want to ask the defendant if his attorney explained to him that by entering a plea he could be subjecting himself to a risk of deportation.

Padilla v. Kentucky, 130 S.Ct. 1473 (2010).

INFORMATION TO BE OBTAINED FROM COUNSEL FOR DEFENDANT

1. Were all allegations read and explained;

2. Were all facts and possible defenses discussed;

3. Is there any meritorious defense;

4. Were all constitutional rights explained;

5. Is plea in accord with facts as related by defendant;

6. Is plea consistent with advice given; and

7. Does counsel join with defendant in entering plea.

RELEVANT FORMS

In the Appendix, a plea of guilty without recommendation form is at a-16 and a plea of guilty with recommendation form is at a-17.

RELEVANT STATUTE AND RULE

Plea withdrawal: Ark. R. Crim. P. 26.1.
Types of pleas: Ark. Code Ann. § 16-85-709.

PLEA OF NOT GUILTY

1. Pretrial release (or bond hearing if defendant in custody);

2. Discovery orders needed;

3. Protective orders needed;

4. Omnibus hearing setting;

5. Pretrial conference setting; and

6. Trial date setting.

RELEVANT RULES

Court may require disclosure by prosecutor: Ark. R. Crim. P. 17.4.
Protective orders: Ark. R. Crim. P. 19.4.
In camera proceedings: Ark. R. Crim. P. 19.6.
Priorities in scheduling cases: Ark. R. Crim. P. 27.1.
Guilty plea withdrawal: Ark. R. Crim. P. 26.1.

PLEA OF NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT

1. Lack of fitness to proceed (Ark. Code Ann. § 5-2-302).

   (a) No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or her or to assist effectively in his or her own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

   (b) A court shall not enter a judgment of acquittal on the ground of mental disease or defect against a defendant who, as a result of mental disease or defect lacks the capacity to understand the proceedings against him or her or to assist effectively in his or her own defense.

2. Suspension of all further proceedings when:

   (a) A defendant charged in circuit court files notice that he or she intends to rely upon the defense of mental disease or defect;

   (b) There is reason to believe that the mental disease or defect of the defendant will or has become an issue in the cause;

   (c) A defendant charged in circuit court files notice that he or she will put in issue his or her fitness to proceed; or

   (d) There is reason to doubt the defendant's fitness to proceed.

   Ark. Code Ann. § 5-2-305.

3. Mental-health examination of defendant (Ark. Code Ann. § 5-2-305) and subsequent proceedings (Ark. Code Ann. § 5-2-305- 317).

   Form order for mental-health evaluation of defendant and other form orders regarding mental disease or defect are found in the Appendix beginning at a-19.

RELEVANT STATUTES AND RULES

Medical reports: Ark. R. Crim. P. 18.2.
Affirmative defense: Ark. Code Ann. § 5-2-312.
Notice to court: Ark. Code Ann. § 5-2-304.
Determination of fitness by court: Ark. Code Ann. § 5-2-309.
Effect of finding unfitness: Ark. Code Ann. § 5-2-310.
Judgment of acquittal: Ark. Code Ann. § 5-2-313.
Effect of acquittal: Ark. Code Ann. § 5-2-314.

WITHDRAWAL OF GUILTY OR *NOLO CONTENDERE* PLEA

1. Inform defendant that plea agreement, if any, is not binding on court;

2. If judge previously had concurred in agreement and no longer concurs, inform defendant and permit withdrawal of plea;

3. Is motion timely made;

4. Is withdrawal necessary to correct a manifest injustice;

5. Was defendant denied effective assistance of counsel;

6. Was plea entered or ratified by an unauthorized person;

7. Was plea involuntary;

8. Was plea entered without knowledge of nature of charge;

9. Was plea entered without knowledge that sentence imposed could be imposed;

10. Did prosecutor fail to seek or not oppose concessions made in plea agreement; and

11. Is it fair and just to permit withdrawal.

Ark. R. Crim. P. 25.3 and 26.1.

MOTIONS BEFORE TRIAL

JOINDER OF OFFENSES

1. Are offenses of a similar character, even if not part of a single scheme or plan; or

2. Are offenses based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

Ark. R. Crim. P. 21.1.

JOINDER OF DEFENDANTS

1. Is each defendant charged with accountability for each offense charged; or

2. Is each defendant charged with conspiracy and one or more of the defendants is also charged with one or more offenses alleged in furtherance of the conspiracy;

or

3. Even if conspiracy is not charged and all of the defendants are not charged in each count, is it alleged that the several offenses charged:

   a. Were part of a common scheme or plan; or
   b. Were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one charge from proof of the other.

Ark. R. Crim. P. 21.2.

CONSOLIDATION BY COURT

The court, on its own motion, may consolidate:

1. Two or more charges; or

2. Two or more defendants; if the offenses or defendants:

   a. Could have been joined in a single indictment or information;
   b. Without prejudice to any defendant's right to move for severance.

Ark. R. Crim. P. 23.1.

RELEVANT STATUTES AND RULES

Failure to join related offenses: Ark. R. Crim. P. 21.3.
Failure to prove grounds for joinder of defendants: Ark. R. Crim. P. 22.4.
Method of prosecution when conduct constitutes more than one offense:
Ark. Code Ann. § 5-1-110.
Parties to offenses: Ark. Code Ann. §§ 5-2-401-406.
Joinder when offense a misdemeanor: Ark. Code Ann. § 16-89-102.

SEVERANCE OF OFFENSES AND DEFENDANTS - TIMELINESS

1. Motion of defendant or prosecution must be timely made before trial. Exception: Defendant may make motion during or at close of evidence upon a ground not previously known.

2. Defendant may renew overruled pretrial motion upon same grounds before or at the close of evidence.

3. Prosecution motion made after commencement of trial must be consented to by defendant.

Ark. R. Crim. P. 22.1.

SEVERANCE OF OFFENSES

1. Upon motion of defendant court shall grant a severance when offenses joined solely on ground that they are of same or similar character and they are not part of a single scheme or plan.

2. Upon motion of defendant or prosecution, court shall grant a severance if before trial, or during trial with consent of defendant, it will promote a fair determination of defendant's guilt or innocence of each offense.

Ark. R. Crim. P. 22.2.

SEVERANCE OF DEFENDANTS

1. The court shall grant a defendant's motion for severance on the grounds that an out-of-court statement of a co-defendant referring to him or her is inadmissible against him or her unless:

   a. Prosecution elects not to offer statement; or
   b. Deletion of all reference to the moving defendant will eliminate any prejudice to him or her from admission of statement.

2. Upon motion of the defendant or prosecution the court shall grant a severance if before trial, or during trial with the consent of the defendant, it will promote a fair determination of the guilt or innocence of a defendant.

3. The court shall not use a joint trial with dual juries to address the situation of an out-of-court statement of a co-defendant.

Ark. R. Crim. P. 22.3.

SEVERANCE BY COURT

The court, on its own motion, may order severance of offenses or defendants before trial if a severance could be obtained by a defendant or the prosecution.

Ark. R. Crim. P. 23.1.

DEPOSITIONS

A judge may authorize a defendant to take the deposition of a material witness if it is shown by affidavit that:

1. The testimony is material; and

2. There are reasonable grounds to believe that the witness will:

   a. Die;

b. Become mentally incapable of testifying;
c. Become a nonresident of the State;
d. Be unable to attend the trial; or
e. Be prevented from attending the trial.

Ark. Code Ann. §§ 16-44-201 - 202.

RELEVANT STATUTES AND RULES

Discovery of documents: Ark. Code Ann. §§ 16-44-202; 16-89-115 -116.
Court may require disclosure: Ark. R. Crim. P. 17.4.
Matters court may require of defendant: Ark. R. Crim. P. 18.1.
Medical and scientific reports: Ark. R. Crim. P. 18.2.
Protective orders: Ark. R. Crim. P. 19.4 .
In camera proceedings: Ark. R. Crim. P. 19.6.
Sanctions: Ark. R. Crim. P. 19.7.

VIDEOTAPED DEPOSITION OF MINOR VICTIM OF SEX CRIME

Under Ark. Code Ann. § 16-44-203, in any prosecution for a sexual offense or criminal attempt to commit a sexual offense against a minor, upon motion of the prosecuting attorney and after notice to the opposing counsel, the court may, for good cause shown, order the taking of a videotaped deposition (in chambers) of any alleged victim under the age of seventeen years. Examination and cross-examination proceed in the same manner as the questioning of witnesses at trial, and the deposition is admissible at the trial in lieu of the testimony of the minor victim.

RELEVANT STATUTE

Testimony of victim or witness twelve or under by closed-circuit television in a criminal proceeding: Ark. Code Ann. § 16-43-1001.

RAPE-SHIELD STATUTE

1. Ark. Code Ann. § 16-42-101 controls the admissibility of evidence of a victim's prior sexual conduct.

2. The Rape-Shield Statute applies in any criminal prosecution under:
   a. Ark. Code Ann. § 5-14-101 *et seq*.
   b. Ark. Code Ann. § 5-26-202; or
   c. Criminal attempt to commit, criminal solicitation to commit, or criminal conspiracy to commit an offense defined in any of those sections.

3. The Rape-Shield Statute precludes admission of:

   a. Opinion evidence, reputation evidence, or evidence of specific instances of the victim's prior sexual conduct with the defendant or any other person;
   b. Evidence of a victim's prior allegations of sexual conduct with the defendant

or any other person, which allegations the victim asserts to be true; and

c. Evidence offered by the defendant concerning prior allegations of sexual conduct by the victim with the defendant or any other person if the victim denies making the allegations.

4. The Rape-Shield Statute precludes admission of the foregoing evidence by:

   a. The defendant, either through direct examination of any defense witness or through cross-examination of the victim; or
   b. Other prosecution witness.

5. The foregoing evidence may not be used:
   a. To attack the credibility of the victim;
   b. To prove consent or any other defense; or
   c. For any other purpose.

6. Notwithstanding the prohibition against admitting the foregoing evidence, evidence directly pertaining to the act upon which the prosecution is based or evidence of the victim's prior sexual conduct with the defendant or any other person may be admitted at the trial if:

   a. The relevancy of the evidence is determined subject to certain requirements set forth in Ark. Code Ann. § 16-42-101, including:
      i. A written motion filed by the defendant;
      ii. An *in camera* hearing held no later than three days before trial (or at a later time for good cause shown);
      iii. A written order by the court outlining what evidence may be introduced at trial;
      iv. Opportunity for the victim to consult with the prosecutor if the evidence is found to be relevant; and
      v. Opportunity for the State to file an interlocutory appeal.

7. Attempts by counsel or the defendant to circumvent the provisions of Ark. Code Ann. § 16-42-101 may subject counsel or the defendant to appropriate court sanctions.

OMNIBUS HEARING ORDER AND ACTIONS TAKEN

A sample order is found in the Appendix at a-37. A form of recording actions taken follows at a-38.

PRETRIAL CONFERENCE

Matters likely to promote a fair and expeditious trial:

1. Stipulations as to facts about which there is no dispute;

2. Marking for identification various documents and exhibits of the parties;

3. Waivers of foundation as to such documents;

4. Excision from admissible statements of material prejudicial to a co-defendant;

5. Severance of defendants or offense;

6. Seating arrangements for defendant and counsel;

7. Use of jurors and questionnaires;

8. Number and use of peremptory challenges;

9. Objections procedure where there are multiple counsel;

10. Order of presentation of evidence and arguments where there are multiple defendants;

11. Order of cross-examination where there are multiple defendants; and

12. Temporary absence of defense counsel during trial.

Ark. R. Crim. P. 20.4.

ORDER FOR PRETRIAL CONFERENCE

A sample Order for Pretrial Conference is in the Appendix at a-44.

DEFENDANT'S PRETRIAL INFORMATION

A form for use by the defense is found in the Appendix at a-45.

PROSECUTOR'S PRETRIAL INFORMATION

A form for use by the prosecution is found in the Appendix at a-47.

MISCELLANEOUS STIPULATIONS

A convenient means to set out stipulations is found in the Appendix at a-48.

CONTINUANCES

The Court should grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case.

Ark. R. Crim. P. 27.3

RELEVANT STATUTES AND CASES

No delay because joint defendant not arrested: Ark. Code Ann. § 16-89-102.

Denial of motion for continuance was proper where continuance motion was based upon co-defendant's plea bargain with State on eve of trial. *Godbold v. State*, 336 Ark. 251, 983 S.W.2d 939 (1999).

Denial of motion for continuance was proper where appellant knew of State's psychiatric report for four months prior to trial and made no investigation into the matter. *Copeland v. State*, 343 Ark. 327, 37 S.W.3d 567 (2001).

WITHDRAWAL OF COUNSEL - POSSIBLE REASONS

1. Failure of the client to cooperate;

2. Disregard by the client of counsel's advice;

3. Failure of the client to honor his financial obligations to counsel if the client would not be prejudiced;

4. Counsel's personal circumstances - illness, etc.;

5. A strong antagonism between counsel and client; and

6. Counsel's conflict of interest.

The Court should consider permitting an attorney to withdraw only:

1. If a substitute has been approved;

2. If the prosecutor has been notified; and

3. If no delay in trial will result or the defendant seeks a continuance and waives his right to a speedy trial.

RELEVANT RULES

Withdrawal of counsel: Ark. R. Civ. P. 64.
Duties on appeal: Ark. R. App. P. - Crim. - Rule 16.

DISQUALIFICATION OF JUDGE

1. Personal interest;

2. Relation to a party within third degree of consanguinity of affinity; or

3. When the judge has previously been an attorney in the action.

Ark. Code Ann. § 16-13-214; Code of Judicial Conduct, Canon 2.11.

VIII. JURIES

SELECTION OF PROSPECTIVE JURORS

1. Prospective jurors shall be selected in November or December of each year to serve in the following calendar year.

2. Prospective jurors shall be selected from the current list of registered voters of the applicable district or county. As of January 1, 2005, the pool from which grand and petit jurors are chosen may be expanded, at the discretion of the administrative judge, to include the names of licensed drivers and persons issued State identification cards. *See* Ark. Code Ann. §§ 16-32-301-304.

3. The circuit judge in the presence of the circuit clerk shall select at random a number between 1 and 100. That number shall be the starting number. The court shall then select the person whose name appears on the current voter registration list in that numerical position, counting sequentially from the first name on the list. The circuit clerk shall then select every 100th voter registrant after the starting number until the voter list is exhausted. The judge and the clerk shall then repeat the random selection process until the appropriate number of jurors have been selected.

4. The master list of jurors' names and addresses (or the "source list" of potential jurors' names and addresses in counties using a computerized-random process) shall not be available for public inspection, publication, or copying but it may be examined in the presence of the circuit judge by litigants or their attorneys who desire to verify that names drawn from the wheel (or randomly selected by computer) were placed there in the manner provided by law.

5. After the list of prospective jurors has been submitted by the circuit clerk, the circuit judge may authorize clerical assistance in preparing the alphabetized master list and some appropriate means of including the names and addresses of the prospective jurors in the wheel or box. The expense of clerical help shall be paid by the county. The clerical employees shall take an oath set out in Ark. Code Ann. § 16-32-103.

6. The minimum number of prospective jurors is set by statute and is based on the number of qualified registered voters in the county.

7. All circuit clerks who maintain voter registration lists on computers or the enhanced list of prospective jurors as authorized by Ark. Code Ann. § 16-32-302, whether in-house or contracted, may utilize the computers and associated

equipment for the purpose of selecting jury panels from the voter registration lists or the enhanced list of prospective jurors instead of compiling a master list if the computer program is capable of randomly selecting names for the jury panels from the voter registration lists or the enhanced list of prospective jurors.

Ark. Code Ann. § 16-32-103.

USE OF THE JURY WHEEL

1. Electronic or mechanical devices must be used in every step of the selection procedure for grand and petit jurors to assure the random selection of all jury panels. Ark. Code Ann. § 16-32-110.

2. The names and addresses of the prospective jurors selected shall be placed in a circular hollow wheel in the presence of the circuit judge and the circuit clerk. In place of names and addresses, the court may use cards or discs numbered serially to reflect the number of prospective jurors. The master list shall then be numbered serially so that a juror on the list may be identified when his number is drawn for entry in the jury book.

3. The wheel shall remain locked at all times by the use of two separate locks that require separate keys. The clasps into which the locks shall be fitted shall be so arranged that the wheel cannot be opened unless both locks are unlocked. The key to one lock shall be kept by the circuit judge and the key to the other shall be kept by the circuit clerk.

4. The circuit clerk shall keep the wheel in a safe and secure place.

5. If the circuit judge finds that there is reason to believe that the integrity of the contents of the wheel may have been compromised, he or she shall cause the names in the wheel to be compared with the names on the master list. The verified names shall then be placed in the wheel in open court.

6. Any unauthorized person who opens a jury wheel with intent to remove, alter, or add to its contents shall be deemed guilty of a felony and shall be imprisoned in the penitentiary for not less than one year nor more than 21 years.

7. The courts are authorized to use a computer program that is capable of random selection of names from the list of registered voters or the enhanced list of prospective jurors as authorized by Ark. Code Ann. § 16-32-302 instead of maintaining the jury wheel or box.

Ark. Code Ann. § 16-32-104.

DRAWING FOR PETIT JURORS

1. The circuit judge shall enter an order stating a time and place for the initial drawing for the names of petit jurors from the wheel. The order must be entered no less than 15 days prior to the first jury trial in the year for which the prospective jurors were selected.

2. At the time and place designated, the wheel shall be unlocked in open court. After the names have been thoroughly mixed, the circuit judge shall draw the number of names that he or she thinks is necessary to provide a panel of qualified petit jurors for the trial of cases. In determining the number of prospective jurors to be drawn, the judge shall consider that some jurors will be entitled to be excused from jury duty.

3. As the names are drawn, they shall be recorded in the same order by the circuit clerk in a book. If the name of any person known to have died or found to be unfit upon inquiry by the court and disqualified under Ark. Code Ann. § 16-31-102(a) is drawn, that name shall not be used. A notation of the discarding of the name and reason therefor shall be made in the jury book.

4. The drawing and recording of jurors may be accomplished by a computerized-random-jury-selection process.

Ark. Code Ann. § 16-32-105.

SUMMONS OF PETIT JURORS

1. The persons whose names have been selected under Ark. Code Ann. § 16-32-105 shall be summoned to appear on a date set by the court to answer questions concerning their qualifications. Unless excused or disqualified, those persons shall serve the required number of days or for the maximum period during the calendar year for which selected unless discharged sooner.

2. Jurors shall be summoned by the court or by the sheriff, as the court directs, by

   a. First class mail;
   b. Service by telephone;
   c. Personal service of summons; or
   d. Other method as is permitted or prescribed by law.

3. A notice given by first class mail shall be sent on a form approved by the Administrative Office of the Courts or it shall include the following language:

"You are hereby notified that you have been chosen as a prospective juror. You must notify the sheriff [or the court] on or before (date) to confirm that you have received this notice. If you do not notify the sheriff [or the court] to confirm this notice, the sheriff [or the court] will contact you and there will be added cost. Please call the sheriff [or the court] at (phone number)."

If the prospective juror fails to acknowledge receipt of the notice, the sheriff or the court shall contact the prospective juror not less than five days before the prospective juror is to appear.

4. The court has the discretion to determine whether the sheriff or the court will be the prospective juror's primary contact.

5. A juror who has been legally summoned and who fails to attend may be fined not less than $5.00 nor more than $500 unless excused by the circuit judge.

Ark. Code Ann. § 16-32-106.

RELEVANT CASE

Jury duty, summons, and contempt. *Taylor v. State*, 76 Ark. App. 279, 64 S.W.3d 278 (2001).

LENGTH OF SERVICE

_____1. No person shall be required to report for jury duty on more than:

a. Ten days; or
b. For more than a four-month period during the calendar year for which he is selected.

2. An individual's length of jury service may be extended if:

a. He is engaged in the trial of a case at the time of the expiration of the period of permitted service; or
b. He has not been required to report for jury duty during the period of permitted service.

Ark. Code Ann. § 16-31-104.

EXCESS JURORS

If it appears that there are more jurors drawn and listed in the jury book than are needed for jury service, the judge shall designate the number of jurors required. If the jurors are present in court, the judge shall have the correct number of names taken from the jury book in the same order as they appear thereon. If the jurors are not present in court, the judge shall direct the sheriff to summons the number of jurors needed, the names of whom shall be taken from the jury book in the same order as they appear thereon. The names of those who have been excused from attendance shall be exempted. Persons whose names are drawn and recorded in the jury book shall not be disqualified from further duty as provided for in Ark. Code Ann. § 16-31-104(a) until they have been required to report for jury service and sworn therefor. Ark. Code Ann. § 16-32-107.

ADDITIONAL JURORS

If at any time it appears that a sufficient number of qualified jurors are not available to try scheduled cases, additional names may be drawn and recorded in the jury book in open court or randomly selected by computer program. Ark. Code Ann. § 16-32-108.

ALTERNATE JURORS

In civil cases, the court may direct that up to two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In criminal cases, the number of alternate jurors is left to the discretion of the judge.

1. In civil cases, alternate jurors shall replace jurors who become unable to serve prior to the time the jury retires to consider its verdict.

2. Alternate jurors shall replace regular jurors in the order in which the alternates were called.

3. In civil cases, alternate jurors who do not replace regular jurors shall be discharged after the jury retires to consider its verdict.

4. In criminal cases, alternate jurors, who have not replaced regular jurors prior to the time the jury retires for deliberation, shall be instructed to remain at the courthouse during deliberation.

5. Each opposing side shall be entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenges may be used against an alternate juror only. Other peremptory challenges allowed by law shall not be used against an alternate juror.

6. Alternate jurors shall have the same qualifications, shall take the same oath, and have the same functions and privileges as the regular jurors.

7. In criminal cases, if a regular juror dies during deliberation, the court may replace the juror with the next alternate. In such an event, the court shall instruct

the jury to disregard all previous deliberation, and to begin deliberation anew.

8. In criminal cases, if a regular juror becomes ill or dies after a verdict of guilty but before a verdict fixing punishment, the court may replace that juror with the next alternate. The court may first give the defendant, with the agreement of the prosecution, the option to waive jury sentencing or to accept a verdict by the remaining jurors. If defendant agrees to accept a verdict by the remaining jurors, the trial will continue with the alternate juror participating in the penalty phase. The court shall instruct the jury to begin deliberation anew as to the sentencing phase only.

Ark. R. Crim. P. 32.3; Ark. R. Civ. P. 47(b).

NUMBER OF JURORS

1. Jury shall be composed of twelve jurors.

2. Jury may be composed of less than twelve jurors if

   a. Case is other than a felony; and
   b. Parties agree to smaller jury.

Ark. Code Ann. §16-32-202.

GRAND JURY

SELECTION OF GRAND JURY

1. Grand jurors may be called from the same wheel or device as petit jurors or the judge may direct the jury commissioners to provide the minimum number of names for a separate grand-jury wheel.

2. Names shall be drawn to provide a panel of sixteen grand jurors plus a reasonable number of alternates after excuses from attendance have been granted.

3. Names shall be recorded in the grand-jury book as they are drawn.

4. Grand jurors shall be summoned in the same manner as petit jurors.

5. The grand jury shall consist of the first sixteen persons summoned remaining after the elimination of those disqualified or excused.

6. The remaining grand jurors shall be considered as alternates and shall be designated in the order they appear in the grand-jury book to replace regular

grand jurors as they become unable to serve.

7. Grand jurors shall serve during the calendar year in which selected unless sooner discharged by the court.

8. The drawing and recording of grand jurors may be accomplished by a computerized-random-jury-selection process.

Ark. Code Ann. § 16-32-201.

CHALLENGE TO SELECTION OF GRAND JUROR

Any person held to answer a criminal charge may challenge the competency of a grand juror before he is sworn. Ark. Code Ann. § 16-33-301.

SELECTION OF GRAND JURY FOREMAN

The judge convening the grand jury selects the foreman. *Blackmore v. State*, __ Ark. __, 8 S.W. 940 (1888).

JUROR QUALIFICATIONS

QUALIFICATIONS OF PETIT AND GRAND JURORS

Every registered voter, who is a citizen of the United States and a resident of Arkansas and the county in which the person is summoned for jury service, is eligible if not otherwise disqualified under Ark. Code Ann. § 16-31-101 *et seq*.

EFFECT OF UNQUALIFIED JUROR UPON VERDICT

1. No verdict shall be void because a juror fails to possess any of the required qualifications unless the juror knowingly answered falsely on *voir dire* relating to his qualifications.

2. A juror shall be deemed to have answered falsely if he knowingly fails to respond audibly or otherwise as is required by the circumstances to make his position known to the court or counsel when such answer would have revealed a disqualification on the part of the juror.

Ark. Code Ann. § 16-31-107.

EXEMPTION FROM JURY SERVICE

A person may be excused from serving as a grand or petit juror when:

a. The state of his health or that of his family reasonably requires his absence; or

b. For any reason, his own interests or those of the public will be materially injured by his attendance.

Ark. Code Ann. § 16-31-103.

VOIR DIRE EXAMINATION OF JURORS

1. *Voir dire* examination shall be conducted to discover bases for challenge for cause and to gain knowledge to enable the parties to intelligently exercise peremptory challenges.

2. The judge shall initiate the *voir dire* examination by

   a. Identifying the parties;
   b. Identifying the respective counsel;
   c. Revealing the names of those witnesses whose names have been made known to the court; and
   d. Briefly outlining the nature of the case.

3. The judge shall then solicit any information he or she thinks will touch their qualifications to serve as jurors in the trial.

4. The judge shall also permit additional questions by the parties as he or she deems reasonable and proper.

5. The attorneys for the parties shall be precluded from asking for a prospective juror's mailing or residential address or phone number during *voir dire*, but the attorneys or the court may ask prospective jurors their city or town of residence.

Ark. R. Crim. P. 32.2; Ark. R. Civ. P. 47; Ark. Code Ann. §16-33-101.

JUROR QUESTIONNAIRES

1. The court shall require members of petit jury panels to complete written questionnaires setting forth the following information:

a. Age;
b. Marital status;
c. Extent of education;
d. Occupation of juror and spouse; and
e. Prior jury service.

2. Upon request, the questionnaires shall be made available by the clerk of the court to the defendant or his counsel and the prosecuting attorney.

3. Upon a showing of good cause, the court may order that additional information regarding jurors be furnished.

4. The questionnaires may request the prospective juror's mailing or residential address or phone number. However, the address and phone number shall be redacted from the questionnaires before providing completed questionnaires to the attorneys or the parties.

5. Courts may not charge a fee for providing jury questionnaires to the defendant or the prosecuting attorney. *Aikens v. State*, 368 Ark. 641, 249 S.W.3d 788 (2007).

Ark. R. Crim. P. 32.1; Ark. Code Ann. §16-33-101.

CONFIDENTIALITY OF JUROR INFORMATION

1. Upon application by any person, and findings on the record for good cause, any juror information submitted to a circuit court or circuit clerk from which the identity of a particular juror can be determined is confidential and shall not be released or otherwise made available.

2. "Juror information" includes:
   a. An original or a copy of a list of potential jurors;
   b. A list of potential jurors who were sworn and qualified;
   c. Any response to a juror questionnaire; and
   d. A list of an individual *venire* panel.

3. The confidential juror information may be made available to:

   a. Any party eligible to represent a party in a proceeding before the circuit court;
   b. A party appearing *pro se* in a proceeding before the circuit court and limited to the juror information relevant to that particular proceeding;
   c. A governmental agency for the purposes of conducting an audit or similar

activity associated with the administration of a plan or program; or

d. A grand jury or court upon a finding that the juror information is necessary for the determination of an issue before the grand jury or court.

4. The groups identified in (3) above may disclose the confidential information to:

   a. A client or a legally authorized representative of a client of an attorney who receives the information;
   b. An employee of an attorney who receives the information;
   c. An attorney associated with an attorney who receives the information; and
   d. A person with whom an attorney or a party appearing pro se who receives the information may consult or confer regarding potential jurors in a specific case.

5. If the confidential information is released, a signed receipt shall be obtained and stored in the jury records of the circuit clerk.

6. Unauthorized disclosure of the juror information is a Class C misdemeanor.

Ark. Code Ann. § 16-32-111.

DISQUALIFICATION OF JURORS

1. The following persons are disqualified to serve as grand or petit jurors:
   a. Persons who are unable to speak or understand the English language;
   b. Persons who are unable to read or write the English language, except that the judge may exercise discretion to waive reading and writing requirement when person is otherwise found to be a capable juror;
   c. Persons who have been convicted of a felony and have not been pardoned;
   d. Persons who are not of good character or approved integrity, are lacking in sound judgment or reasonable information, are intemperate or are not of good behavior;
   e. Persons who by reason of a physical or mental disability, are unable to render satisfactory jury service; except that no person shall be disqualified solely on the basis of loss of hearing or sight;
   f. Persons who are less than eighteen years of age at the time they are required to appear; and
   g. Persons who served as grand or petit jurors within the last two years.

2. Except by the consent of all the parties, no person shall serve as a petit juror in any case who:

a. Is related to any party or attorney in the cause within the fourth degree of consanguinity or affinity;
b. Is expected to appear as a witness or has been summoned to appear as a witness in the cause;
c. Has formed or expressed an opinion concerning the matter in controversy which may influence his judgment;
d. May have a material interest in the outcome of the case;
e. Is biased or prejudiced for or against any party to the cause or is prevented by any relationship or circumstance from acting impartially; or
f. Was a petit juror in a former trial of the cause or of another case involving any of the same questions of fact.

Ark. Code Ann. § 16-31-102; Ark. Code Ann. § 16-31-104; Ark. Code Ann. § 16-33-304.

CAPITAL PUNISHMENT DISQUALIFICATION

A member of the *venire* shall be excluded if he:

1. Would automatically vote against imposition of the death penalty without regard to any evidence that might be developed at trial; or

2. Would be unable to make an impartial decision as to the defendant's guilt because of the member's attitude toward the death penalty. *Witherspoon v. Illinois*, 391 U.S. 510 (1968); *Davis v. Georgia*, 429 U.S. 122 (1976); *Greene v. State*, 343 Ark. 526, 37 S.W.3d 579 (2001).

HEARING OR VISUALLY IMPAIRED JURORS

1. A qualified interpreter for the hearing impaired or a reader for the visually impaired must be provided when necessary to enable a person with those disabilities to act as a *venire* person or juror.

2. The interpreter or reader must be present throughout jury service, the trial, and when the jury assembles for deliberation.

3. The court shall administer an oath to the interpreter to ensure objective translation and confidentiality of the proceedings.

   Sample oath: Do you solemnly swear (or affirm) that you will make a true, complete and impartial interpretation to (name of juror) of the testimony given in this case, the proceedings of this court and the deliberations of the jury so help you God (or under the pains and penalties of perjury)?

4. The Court shall instruct the interpreter to:

   a. Make a true and complete translation of all testimony and other relevant colloquy; and
   b. Refrain from participating in the deliberation of the jury except for the complete translation of jurors' remarks made during deliberations.

5. The interpreter or reader shall be provided and paid for by the State through the Administrative Office of the Courts. *See* Appendix at a-6 for form to be used in requesting an interpreter from the Administrative Office of the Courts.

Ark. Code Ann. § 16-31-108.

JURY PROTOCOL

JURY ORIENTATION

Prospective jurors shall receive an orientation which informs them of the nature of their duties, trial procedure, and legal terminology. Ark. R. Crim. P. 34.1.

Note: Judges may contact the AOC for copies of the latest Arkansas jury orientation video that may be used to assist in jury orientation.

NOTE TAKING BY JURORS

1. Jurors may take notes regarding the evidence presented to them during the course of a trial.

2. Jurors may keep the notes when the jury retires for its deliberations.

3. Notes shall be treated as confidential and the disclosure of their contents shall be made only to fellow jurors.

Ark. R. Crim. P. 33.5.

QUESTIONS BY JURORS

Jurors shall not be permitted to pose questions to witnesses, either directly or through written questions submitted to the judge or to the parties. Ark. R. Crim. P. 33.8.

EVIDENCE TESTING BY JURORS

Jurors should not consider physical evidence that was not admitted at trial. Individual jurors should not perform tests outside the presence of other jurors and then report the results to them, thus subjecting them to extrinsic evidence. *Banghart v. Origoverken*, 49 F.3d 1302 (8th Cir. 1995).

JURY DELIBERATION

Judge committed reversible error in going to jury room to respond to questions posed by the jury. Although no objection was made at the time, the fact that neither the defendant nor counsel was in the jury room at the time violated the defendant's fundamental right to be present at a critical stage of the criminal proceeding. *Goff v. State*, 329 Ark. 513, 953 S.W.2d 38 (1997); *See also* Ark. Code Ann. § 16-89-125.

Reconvening jury after discharge; amendment of verdict. *Spears v. Mills*, 347 Ark. 932, 69 S.W.3d 407 (2002).

JUROR MISCONDUCT

New trial properly granted where juror introduced extraneous legal materials during deliberations. *Sunrise Enterprises v. Mid-South Road Builders*, 337 Ark. 6, 987 S.W.2d 674 (1999).

New trial properly granted where the prejudice in the case stemmed from the fact that some jurors not only made up their minds about whether the defendant was guilty, but also discussed those opinions with jurors prior to the close of the State's case. The trial court properly limited the scope of the examination of jurors to matters that took place prior to formal deliberations, and did not allow either party to examine jurors with regard to matters involving the jury's actual deliberations. *State v. Cherry*, 341 Ark. 924, 20 S.W.3d 354 (2000); *See also Butler v. State*, 349 Ark. 252, 82 S.W.3d 152 (2002).

See also Ark. R. Evid. 606 regarding juror testimony about deliberations.

CHALLENGES OF JURORS

CHALLENGES TO THE ARRAY

A challenge to the array shall be decided by the court. Ark. Code Ann. §16-33-201.

Fact that panel was drawn entirely from one district of a multi-district county did not constitute a constitutional violation. A jury may properly be drawn from any one district within a county having more than one district. *Britt v. State*, 334 Ark. 142, 974 S.W.2d 436 (1998).

CHALLENGE TO SELECTION OF JURY LIST

1. A challenge to the use of names selected by the jury commissioners may be made only by a litigant in a particular case.

2. If the trial judge sustains the challenge, he or she shall appoint a jury commission to select additional persons from the current voter registration list. Those persons, upon being summoned, shall constitute the panel of jurors for the trial of the cause.

3. A challenge shall be sustained if it appears that there was a substantial irregularity in the drawing or summoning of the jury.

Ark. Code Ann. §16-32-109.

CHALLENGES FOR CAUSE

In addition to a general challenge for want of qualification, jurors may be challenged for bias.

1. Actual bias is the existence of such a state of mind to the case or a party, that the juror cannot try the case impartially and without prejudice to the substantial rights of party challenging.

2. Implied bias may be taken in the case of the juror:

    a. Being related by consanguinity, or affinity, or who stands in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, employer and employed on wages, or alleged to be injured by the offense charged, or on whose complaint prosecution was instituted;
    b. Being adverse to the defendant in a civil suit, or having complained against or being accused by him in a criminal prosecution;
    c. Having served on the grand jury that found the indictment or on the coroner's jury that inquired into the death of the party, whose death is the subject of the indictment;
    d. Having served on a trial jury that has tried another person for the offense charged in the indictment;
    e. Having been one of the former jurors sworn to try the same indictment and whose verdict was set aside, or who were discharged without a verdict;
    f. Having served as a juror in a civil action brought against the defendant for the act charged in the indictment; and
    g. When the offense is punishable with death, the entertaining of such conscientious opinions as would preclude him from finding the defendant guilty.

3. Having formed or expressed an opinion merely from rumor shall not be a cause for challenge.

Ark. Code Ann. §§16-33-303 - 304.

PEREMPTORY CHALLENGES IN CIVIL CASES

Each party shall have three peremptory challenges which may be made:

1. Orally; or

2. From a list created by drawing the names of eighteen jurors from a box containing the names of twenty-four competent jurors on separate slips of paper.

Ark. Code Ann. §16-33-203.

PEREMPTORY CHALLENGES IN CRIMINAL CASES

1. The State shall be entitled to:

   a. Ten peremptory challenges in capital murder cases;
   b. Six peremptory challenges in all other felony cases; and
   c. Three peremptory challenges in misdemeanor cases.

2. The defendant shall be entitled to:

   a. Twelve peremptory challenges in capital murder cases;
   b. Eight peremptory challenges in all other felony cases; and
   c. Three peremptory challenges in prosecution for misdemeanors.

Ark. Code Ann. §16-33-305.

RESTRICTION ON USE OF PEREMPTORY CHALLENGES

1. The equal protection clause of the Fourteenth Amendment and the equal protection component of due process under the Fifth Amendment of the Constitution of the United States forbids the purposeful exclusion of jurors on account of race or gender by peremptory challenges. U.S. Const. Amend. 5 and 14; *Batson v. Kentucky*, 476 U.S. 79 (1986); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994).

2. Racial identity between a party and the excluded juror is not a precondition for a *Batson* challenge. *See Powers v. Ohio*, 499 U.S. 400 (1991) (where prosecutor peremptorily challenged black jurors in a case with a white criminal defendant).

3. Gender exclusion case. *See J.E.B. v. Alabama, ex rel. T.B.*, 511 U.S. 127 (1994)

(where State, in an action against putative father for child support, peremptorily challenged male jurors to form an all-female jury).

4. There is a three-step process in a *Batson* challenge
   a. The opponent of a peremptory challenge must make a *prima facie* case of racial discrimination;
   b. The proponent of the strike must come forward with a race-neutral explanation; and
   c. The trial court must decide whether the opponent has proven purposeful racial discrimination.

MacKintrush v. State, 334 Ark. 390, 978 S.W.2d 293 (1998).

OBJECTION TO USE OF PEREMPTORY CHALLENGE

The person asserting an unconstitutional use of peremptory challenge must make objection at the time the challenge is exercised.

***PRIMA FACIE* SHOWING OF ABUSE OF PEREMPTORY CHALLENGE**

1. A party makes a *prima facie* case of purposeful discrimination by use of peremptory challenges where:

   a. The party is a member of a racial group and the jurors of that race have been excused by the opponent's use of peremptory challenges;
   b. Peremptory challenges constitute a practice that permits discrimination; or
   c. Any other matter that would indicate a discriminatory intention. *Batson v. Kentucky*, *supra*.

2. Striking the sole black juror raises an inference. *Hollamon v. State*, 312 Ark. 48, 846 S.W.2d 663 (1993).

3. Striking both black jurors on the panel leaving an all white jury raises an inference if not a presumption that race was a factor.

4. Race-based use of peremptory challenge is established when white jurors are left on a panel even though they have the same characteristics as black jurors who were stricken. *Davidson v. Harris*, 30 F.3d 963 (8th Cir. 1994).

5. Where the only evidence offered to prove discriminatory intent in the exercise of peremptory challenges was that the party striking jurors struck all the members of a particular race included in the *venire* panel, there was a lack of proof of intent to purposefully discriminate, and the trial court erred in sustaining the State's *Batson* challenge. *Holder v. State*, 354 Ark. 364, 124 S.W.3d 439 (2003).

DEFENSE OF PEREMPTORY CHALLENGE

1. Upon such a showing, the burden shifts to the opponent to provide a neutral explanation of the intended peremptory challenge. The reason need not reach the level justifying a challenge for cause.

2. If there is any doubt about the legitimacy of the explanation provided by the party using the peremptory challenges, the court is to conduct a sensitive inquiry.

IX. TIME AND TYPE OF TRIAL

PRECEDENCE OF FELONY TRIALS

Precedence to be given to felony trials over other matters. Ark. R. Crim. P. 27.1.

PRECEDENCE WHERE VICTIM UNDER AGE OF 14

Precedence to be given to case in which the victim is under the age of fourteen. Ark. Code Ann. § 16-10-130; Administrative Order No. 5.

TIME FOR FILING FORMAL CHARGE WHERE DEFENDANT IN CUSTODY

1. If the defendant is continued in custody subsequent to the first appearance, the prosecuting attorney shall file an indictment or information within sixty days of the defendant's arrest.

2. Failure to file an indictment or information within sixty days shall not be grounds for dismissal of the case against the defendant, but shall, upon motion of the defendant, result in the defendant's release from custody unless the prosecuting attorney establishes good cause for the delay.

3. If good cause is shown, the court shall reconsider bail for the defendant.

Rule: Ark. R. Crim. P. 8.6.

SPEEDY TRIAL

Rules: Ark. R. Crim. P. 28.1-28.3; 30.1-30.2.

TIME TO BE TRIED

1. Incarcerated defendant is entitled to release on recognizance if not tried in nine months.

2. Defendant serving sentence for another offense is to be tried within twelve months.

3. Defendant on bond is to be tried within twelve months.

Ark. R. Crim. P. 28.1.

EXCLUDED PERIODS:

a. Examination and hearing on competency of defendant;
b. Consideration of pretrial motions up to thirty days;

c. Congested docket (provided court makes certain written findings and schedules the trial on the next available date permitted by the trial docket);
d. Continuances requested by the defendant or his attorney (continuance must be to a day certain, and the period of delay is from the date the continuance is granted until subsequent date contained in the order or docket entry granting the continuance);
e. Continuances requested by prosecutor where evidence is unavailable or issues complex;
f. Absence of defendant;
g. Time between dismissal and refiling;
h. Where trial joined with a codefendant whose time for trial has not run; and
i. Any other period for good cause.

Ark. R. Crim. P. 28.3.

4. Excluded time to be set out in writing by the court by order or docket entry. Ark. R. Crim. P. 28.3.

5. Failure to comply with speedy-trial requirements is a bar to prosecution. Ark. R. Crim. P. 30.1.

6. The time for trial runs from the date of the defendant's arrest or from the date the defendant receives service of the summons. Ark. R. Crim. P. 28.2.

7. The motion to dismiss based upon an alleged speedy-trial violation must be made prior to trial. Ark. R. Crim. P. 30.2.

8. Speedy trial is waived by the defendant entering a plea of guilty, but defendant may be able to assert ineffective assistance of counsel. *Clark v. State*, 274 Ark. 81, 621 S.W.2d 857 (1981).

9. Speedy trial applies to a defendant facing multiple charges. *Weaver v. State*, 313 Ark. 55, 852 S.W.2d 130 (1993).

10. The withdrawal of guilty plea has the effect of restarting the time for speedy-trial purposes. *Kelch v. Erwin*, 333 Ark. 567, 970 S.W.2d 255 (1998).

11. The excluded period related to defendant's competency runs from the date a mental exam is ordered to the date the resulting mental report is filed. Upon finding of incompetency, the period of time that the defendant was committed to the State Hospital until his competency is restored is properly excludable. *Morgan v. State*, 333 Ark. 294, 971 S.W.2d 219 (1998).

12. For purposes of speedy trial, the time does not commence running until all the elements of the charged offense have been completed. *Cheatham v. State*, 63 Ark.

App. 106, 974 S.W. 2d 490 (1998).

13. When an appeal is taken from a municipal court decision to the circuit court, the time for speedy trial begins to run from the day the appeal is filed in circuit court. *Johnson v. State*, 337 Ark. 196, 987 S.W.2d 694 (1999).

14. Appellant waived his right to a speedy trial when he failed to move for a dismissal prior to trial. Appellant announced that he was ready to proceed with trial and participated in jury selection before moving for a dismissal. *Rogers v. State*, 66 Ark. App. 283, 989 S.W.2d 568 (1999).

15. The loss of the State's only witness constituted good cause to *nolle pros* the case, and the period of time attributable to the *nolle pros* was excluded from the speedy-trial calculation. *Jones v. State*, 347 Ark. 455, 65 S.W.3d 402 (2002).

TRIAL SETTING

1. Trial date shall be set by the court after issues are joined:

   a. Upon request of any party;
   b. After reasonable time has elapsed; or
   c. On court's own motion without request of a party.

2. Precedence shall be given to actions entitled thereto by statute.

Ark. R. Civ. P. 40.

RELEVANT STATUTE

Time for trial after change of venue: Ark. Code Ann. §16-60-206.

CONTINUANCES

Court may, in its discretion, grant continuances:

1. On oral or written motion with or without notice. Ark. R. Civ. P. 40(b).

2. For good cause shown.

3. When any attorney for a party or whose party is:

   a. A member of the Senate or House of Representative;
   b. A clerk of either branch of the General Assembly; or
   c. Lieutenant Governor, while presiding as president of the Senate (Ark. R. Civ. P. 40(c)).

      i. Any proceeding in a suit pending in this State and involving any

such person shall be stayed for a time not to exceed fifteen days preceding the convening of the General Assembly in regular, special, or extraordinary session, and not less than thirty days after its adjournment.

ii. "Adjournment" means:

A. Adjournment without setting a day certain for reconvening; or
B. Adjournment or recess to a date more than thirty days in the future.

4. When an attorney for a party is a member, or alternate member attending in place of a regular member, of:

a. Legislative Council;
b. Legislative Audit Committee; or
c. Joint Interim Committee of the General Assembly;

i. Any proceeding in a suit pending in this State and involving such attorney shall be stayed, or reset if scheduled, if:

ii. Scheduled on a day any such group of which the attorney is a member is meeting; and

iii. The attorney requests a continuance not less than three days before the meeting is to commence.

Ark. R. Civ. P. 40; *See also* Ark. Code Ann. § 16-63-406.

TYPE OF TRIAL

CIVIL - DEMAND FOR JURY TRIAL

1. When an issue in an action is triable of right by a jury, a party may demand a jury trial by filing a written demand therefor not later than twenty days prior to trial date. Ark. R. Civ. P. 38(a).

2. Failure to timely and properly file a demand constitutes a waiver of a jury trial. Ark. R. Civ. P. 38(c).

3. A demand may not be withdrawn without the consent of all the parties. Ark. R. Civ. P. 38(c).

4. The demand shall be served as required of other pleadings. Ark. R. Civ. P. 5(c).

SPECIFICATION OF ISSUES

1. In a demand for a jury trial the party may specify the issues to be tried by jury.

2. Failure to specify issues shall operate to have all issues triable by jury to be so tried.

3. If issues have been specified in the demand, any other party may file a demand for a jury trial of any other or all issues of fact in the action.

4. The demand provided for in (3) above shall be filed with the clerk within:

   a. Ten days after service of the original demand; or
   b. Such lesser time as the court may order.

Ark. R. Civ. P. 38(b).

TRIAL BY COURT OR JURY

The trial of issues so demanded shall be by jury, unless:

1. Consent to trial by the court without a jury is made by:

   a. Written stipulation filed with the court; or
   b. Oral stipulation in open court and entered in the record; or

2. The court, with or without a motion, finds that right to jury trial does not exist as to any or all of the issues.

Ark. R. Civ. P. 39(a).

_____ Issues for which no demand for jury has been made shall be tried by the court. However, notwithstanding the failure to demand a jury trial as provided in Ark. R. Civ. P. 38, the court, upon motion, may order a jury trial of any or all issues.

Ark. R. Civ. P. 39(b).

When an action not triable of right by jury, the court, with or without a motion, may:

1. Call an advisory jury; or

2. With consent of all parties, order a jury trial with the verdict given same effect as if jury trial had been a matter or right.

Ark. R. Civ. P. 39(c).

RIGHT TO JURY TRIAL/ AMENDMENT 80/ CLEANUP DOCTRINE

A 2001 addition to the Reporter's Notes to Arkansas Rule of Civil Procedure 38 reads as follows:

> Article 2, Section 7 of the Constitution of 1874 provides, in part, that "[t]he right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy. . . ." Rule 38 sets out the procedure for asserting the right to a jury trial.
>
> Constitutional Amendment 80, which merged courts of law and equity, did not repeal or modify Article 2, Section 7. As a result of the merger, however, the Supreme Court will be required to determine the parameters of the right to trial by jury in the new system. The possible impact is most clearly seen in cases involving legal issues formerly decided in chancery court under the cleanup doctrine. In this situation, the Supreme Court held that a litigant was not deprived of his or her right to trial by jury because that right is limited to cases that would have been decided "at law" in 1874. By virtue of the cleanup doctrine, which was well-established by 1874, legal issues could be decided by the chancellor without a jury. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986).
>
> In a merged system, the question is whether Article 2, Section 7 requires trial by jury with respect to legal issues which, prior to merger, would have been heard in chancery under the cleanup doctrine. Faced with this question after the merger of law and equity in the federal courts, the U.S. Supreme Court held that in a case involving both legal and equitable issues, the former will ordinarily be tried first to the jury in order to avoid the preclusive effect of an initial decision by the court on the equitable issues. *See Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962); *Beacon Theatres v. Westover*, 359 U.S. 500 (1959). Federal cases on this point are not binding, because the right to jury trial in state court is governed not by the Seventh Amendment but by state law. *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996); *Colclasure v. Kansas City Life Ins. Co., supra*.

CRIMINAL - WAIVER OF JURY TRIAL

1. A defendant with the assent of the prosecutor may waive a jury trial. The trial court has no discretion under Ark. R. Crim. P. 31.1 to accept the defendant's guilty plea to a felony and pass sentence over the prosecuting attorney's objection. *See State v. Smittie*, 341 Ark. 909, 20 S.W.3d 352 (2000). A waiver may be made in a capital case if the death penalty has been waived. Ark. R. Crim. P. 31.4; Ark. Code Ann. § 16-89-108.

2. The waiver may be made in writing or in open court by the defendant. The defendant's attorney may waive a jury trial in open court where the defendant is present and understands his actions. Ark. R. Crim. P. 31.2; *Bolt v. State*, 314 Ark. 387, 862 S.W.2d 841 (1993).

3. A waiver of jury may be withdrawn with permission of the court before the jury trial begins. Ark. R. Crim. P. 31.5.

A sample of a jury waiver is found in the Appendix at a-49.

BIFURCATION OF CRIMINAL TRIALS

1. For jury trials, bifurcation applies in all cases where defendant is charged with a felony and found guilty of any offense. Ark. Code Ann. §5-4-103(a).

2. For bench trials, bifurcation applies in all cases, felony or misdemeanor, where:

    a. Defendant pleads guilty;
    b. Defendant's guilt is tried by court;
    c. Jury fails to agree on punishment;
    d. Prosecutor and defendant agree court may fix punishment; or
    e. Jury sentence is found by court to be illegal.

Ark. Code Ann. §5-4-103(b).

3. For combination jury/bench trials, bifurcation applies as follows:

    a. After jury finds guilt, defendant may waive jury sentencing if prosecutor agrees and court consents. Ark. Code Ann. §16-97-101(5).
    b. After guilty plea, defendant may be sentenced by jury with agreement of prosecutor and consent of court. Ark. Code Ann. §16-97-101(6).

BIFURCATED SENTENCING PROCEDURE

1. Jury Trials

    a. Jury hears all evidence relevant to every charge and retires to reach verdict.
    b. If defendant found guilty of one or more charges, the jury shall then hear additional evidence relevant to sentencing. Evidence introduced in the guilty phase can be considered but need not be re-introduced.
    c. After introduction of evidence relevant to sentencing, if any, instructions on law and argument, the jury shall retire again and determine sentence within the statutory range.
    d. Court has discretion to instruct jury that counsel may argue alternative sentences for which the defendant may qualify. The jury may, at its discretion, recommend an alternative sentence, however, this is not binding on the court.

    Ark. Code Ann. §16-97-101.

2. Sentencing By the Court

    a. Party may present evidence relevant to sentencing and opposing party may offer rebuttal.
    b. If a sentencing hearing is not requested, court may order one or a pre-sentence investigation pursuant to Ark. Code Ann. §5-4-102.
    c. Court may hear or request argument following a hearing or pre-sentence investigation.

Ark. Code Ann. §16-97-102.

EVIDENCE RELEVANT TO SENTENCING

Evidence relevant to sentencing either by court or jury may include but is not be limited to:

1. Applicable law on parole, meritorious good time, or transfer;

2. Prior felony and misdemeanor convictions of defendant. May advise jury as to nature, date, time, and place sentence received and date of release from confinement or supervision from all prior offenses;

3. Prior judicial determinations of delinquency in juvenile court subject to limitations in Ark. Code Ann. §16-97-103(3);

4. Victim impact evidence or statement;

5. Relevant character evidence;

6. Evidence of aggravating and mitigating circumstances;

7. Evidence relevant to guilt presented in first stage;

8. Evidence held inadmissible in first stage may be submitted for consideration in second stage if basis for exclusion did not apply to sentencing; and

9. Rebuttal evidence.

Ark. Code Ann. §16-97-103.

X. TRIAL TO VERDICT

OPENING COURT

1. State style of case.

2. Ask attorneys if they are ready to proceed.

3. Have the clerk call jury roll.

4. Ask jurors to stand and have clerk administer *voir dire* oath. The oath is found in the Appendix at a-2.

5. Introduce attorney for plaintiff, plaintiff, attorney for defendant, and defendant.

6. Ask attorneys to introduce witnesses.

7. Have court reporter administer oath to witnesses.

8. Thank witnesses for their attendance and explain "The Rule." Ark. R. Evid. 615.

9. Explain nature of suit.

10. Excuse jurors who should be excused.

11. Make finding that remaining jurors are qualified.

VOIR DIRE EXAMINATION

1. The court shall:

   a. Permit the parties or their attorneys to conduct *voir dire*; or
   b. Conduct the examination itself.

2. If the court conducts the examination, the parties or their attorneys shall be permitted to supplement the examination by such inquiry as the court deems proper.

Ark. Code Ann. §16-33-101; Ark. R. Civ. P. 47.

LIMITATION OF *VOIR DIRE*

Reasonable limitations on *voir dire* examinations by counsel are questions that are:

1. Repetitive;

2. Related to the juror's mailing or residential address or phone number (Ark. Code Ann. §16-33-101);

3. Designed to prejudice the juror;

4. Not related to anticipated instructions;

5. Argumentative; and

6. Not referring to hypothetical facts.

RELEVANT CASES

Generally, Arkansas attorneys are afforded considerable latitude in questioning on *voir dire*. *See Stovall v. State*, 233 Ark. 597, 346 S.W.2d 212 (1961) (liquor manufacturer); *Griffin v. State*, 239 Ark. 431, 389 S.W.2d 900 (1965) (self-defense); *Turner v. State*, 171 Ark. 1118, 287 S.W. 400 (1926) (character of prosecuting witness); *Bethel v. State*, 162 Ark. 76, 257 S.W. 740 (1924) (Ku Klux Klan member).

OATH OF JURY

Once the jury has been formed, the clerk administers the oath.

ADMONISHMENT OF JURY

Upon any recess, the jury is to be admonished to not discuss the case among themselves or with others. The form of admonishment is found in the Appendix at a-2.

BURDEN OF PROOF

Burden lies upon party who would be defeated if no evidence is presented. Ark. Code Ann. §16-40-101.

ORDER OF PROOF

The plaintiff, or person who has the burden of proof, first offers proof, followed by the defendant with proof of counterclaim or cross claim and so on until the proof in chief has concluded. The plaintiff may then offer rebuttal proof and the defendant surrebuttal proof.

WITNESSES

1. Every person is competent to testify as a witness except as provided in the Rules of Evidence.

2. Preliminary questions concerning the qualification of a person to be a witness shall be determined by the court.

3. Testimony of witnesses shall be taken in open court, unless otherwise provided by law. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony by contemporaneous transmission from a different location. Ark. R. Civ. P. 43.

4. Before testifying, each witness shall declare that he will testify truthfully, by oath or affirmation administered in a form calculated to:

   a. Awaken his conscience; and
   b. Impress his mind with the duty to do so.

   Ark. R. Evid. 603.

5. A witness may not testify to a matter unless he has personal knowledge of the matter, except as provided in Ark. R. Evid. 702, relating to expert witnesses. Evidence to prove personal knowledge of witness may, but need not, consist of testimony of witness. Ark. R. Evid. 602.

6. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

   a. Effectively ascertain the truth;
   b. Avoid needless consumption of time; and
   c. Protect witnesses from harassment or undue embarrassment.

   Ark. R. Evid. 611 (a).

7. Cross-examination should be limited to:

   a. Subject matter of the direct examination; and
   b. Matters affecting the credibility of witnesses.

   Ark. R. Evid. 611 (b).

   Note: The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

   Wavier of right to cross-examine must be made knowingly. *Suggs v. State*, 317 Ark. 541, 879 S.W.2d 428 (1994)

8. Leading questions should:

a. Not be permitted on direct examination except as may be necessary to develop the testimony of the witness;
b. Ordinarily be permitted:
   1) On cross-examination;
   2) When the witness is:
      a) A hostile witness;
      b) An adverse party; or
      c) A witness, who is identified with an adverse party.

Ark. R. Evid. 611 (c).

9. The court may:

   a. At the suggestion of a party, or on its own motion, call witnesses who shall then be subject to cross-examination by all parties; and
   b. Interrogate any witness.

   Ark. R. Evid. 614.

10. Objections to the court calling or examining witnesses may be made:

   a. At the time; or
   b. At the next opportunity when the jury is not present.

   Ark. R. Evid. 614.

11. A witness qualifies as an expert if, on the basis of his qualifications, he has knowledge of the subject at hand that is beyond that of an ordinary person. *Williams v. Southwestern Bell Telephone Company*, 319 Ark. 626, 893 S.W.2d 770 (1995).

12. The test for admissibility of expert testimony is whether specialized knowledge will aid the trier of fact in understanding the evidence or in determining a fact in issue. *Williams v. Ingram*, 320 Ark. 615, 899 S.W.2d 454 (1995).

13. Regarding scientific expert testimony, the Arkansas Supreme Court adopted the holding of *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which disposed of the "*Frye*" test, in *Farm Bureau v. Foote*, 341 Ark. 105, 14 S.W.3d 512 (2000).

INTERPRETERS

1. Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a defendant in any criminal action

or a witness therein, shall be entitled to an interpreter to aid the person throughout the proceeding. Ark. Code Ann. § 16-89-104.

2. Every person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a party to any civil proceeding or a witness therein shall be entitled to an interpreter to assist such person throughout the proceeding. Ark. Code Ann. § 16-64-111.

3. The Administrative Office of the Courts (AOC) furnishes a certified court interpreter for parties, witnesses, or jurors who are deaf. Services are also provided for sight-impaired jurors. Although attorneys and/or court clerks may request assistance directly from the AOC, if the court is advised of a need for an interpreter, the court should immediately contact the AOC.

4. The Arkansas General Assembly appropriated funds for the purpose of reimbursing the services of eligible foreign language interpreters who serve during in-court proceedings in the State's courts. Because the amount of money available is insufficient to provide for the large number of interpreters providing services in the State, local courts are urged to continue to rely upon available local resources or the resources of the parties involved in the litigation. The Administrative Office of the Courts also employs three full-time Spanish interpreters who are available on request and as time permits to provide direct interpreter services to local courts.

5. When a court becomes aware that a foreign language interpreter will be needed for an in-court proceeding, the AOC should be notified by calling the Foreign Language Interpreting Program Coordinator, Ms. Mara Simmons at 1-800-950-8221, or by faxing a Foreign Language Interpreter Fax Request Form to the AOC at (501) 682-7495.

6. If a Spanish interpreter is required and an AOC interpreter is available, he or she will be scheduled to interpret for the proceeding. If interpretation for a language other than Spanish is required or if an AOC interpreter is not available, the AOC will assist the local court in finding an available interpreter who is listed on the registry of interpreters.

7. The Administrative Office of the Courts' Foreign Language Interpreting Program (FLIP) is charged with the certification process for all language interpreters in the courts of Arkansas. Arkansas law requires all interpreters in any court proceeding to be certified or have undergone language testing, courtroom protocol training, and be approved by FLIP. Ark. Code Ann. § 16-10-127.

8. Courts should not use an interpreter in the courtroom unless the interpreter's name appears on the current Registry of Foreign Language Interpreters. A copy of the Registry of Foreign Language Interpreters, is available on the Arkansas Supreme

Court's website or by contacting the Administrative Office of the Courts. The Registry has two sections: (1) the certified interpreters, who have met all the criteria required by law, and who may interpret in any type of case, and (2) the conditionally approved candidates for certification, who are working toward their certification. The candidates are typically assigned to interpret in misdemeanor cases. However, if a candidate possesses advanced skills, he or she may be approved by FLIP for interpretation in other cases.

9. A copy of the AOC's Foreign Language Interpreter Compensation Policy, a copy of the Request For Reimbursement Form, and a copy of the AOC's Foreign Language Interpreter Fax Request Form are included in the Appendix beginning at a-7.

RELEVANT RULE AND FORM

Ark. R. Civ. P. 43(d)
An oath for the interpreter is found in the Appendix at a-3.

EVIDENCE - VIEW OF SCENE

1. When the court determines it proper, the court may order the jury, conducted in a body under charge of an officer, to the:

   a. Real property that is subject of action; or
   b. Place where a material fact occurred.

2. The place shall be shown by a person appointed by the court for that purpose.

3. During the view, no person, other than the person appointed, may speak to the jury about any subject connected with the trial.

Ark. Code Ann. §16-64-113.

COURT-APPOINTED EXPERTS

1. The court may appoint an expert witness:

   a. On its own motion;
   b. Upon motion of a party;
   c. After requesting nomination from the parties; or
   d. Of its own choosing.

2. Expert witness shall be informed of appointment:

   a. In writing; or
   b. In conference with court that parties may attend.

3. Order shall be filed with court clerk.

4. Expert witness shall inform parties of findings.

5. Expert witness may be:

   a. Required to give deposition;
   b. Called to testify by either party or court; and
   c. Subject to cross-examination by either party.

6. Court may authorize disclosure of fact of appointment to jury.

Ark. R. Evid. 706; Ark. R. Civ. P. 26(b)(4).

THE COURT BAILIFF

1. At the start of a jury trial, the court shall administer the following oath to its bailiff:

   > I do solemnly swear (or affirm) that I will faithfully, impartially, and to the best of my ability, discharge the duties of bailiff of this court, to which office I have been appointed, and strictly obey all orders of the court, as bailiff during the present session now being held.

2. Prior to the deliberation of the jury, the court shall administer the following oath to its bailiff:

   > I do solemnly swear (or affirm) that I will keep this jury together, not allowing any person to speak to them or overhear their deliberations, nor to speak to them myself, unless it is in the performance of my official duties as bailiff to this court.

Ark. Code Ann. § 16-24-101.

THE MEDIA

1. A judge may authorize broadcasting, recording, or photographing of a trial with these exceptions:

   a. Timely objection by party or attorney;
   b. Timely objection by a witness, upon being informed by the court of the right to refuse any of the above;
   c. All juvenile matters in circuit court as well as hearings in probate and domestic relations matters in circuit court, e.g., adoptions, guardianships, divorce, custody, support, and paternity;
   d. *In camera* proceedings unless the court consents; and

e. Jurors, minors without parental or guardian consent, victims in cases involving sexual offenses, and undercover police agents or informants shall not be broadcast, recorded or photographed.

2. The procedure for broadcasting, recording, or photographing of any court proceeding is set out in Administrative Order No. 6.

3. Failure to abide by this Order can result in a contempt citation against the news representative and agency.

Supreme Court Administrative Order Number 6.

XI. EVIDENTIARY ISSUES

JUDICIAL NOTICE

1. Judicial notice is given to a fact that is not subject to reasonable dispute in that it is:

   a. Generally known within the territorial jurisdiction of the court; or
   b. Capable of proof by reasonably unquestioned sources.

2. The court may take judicial notice whether requested or not.

3. The court shall take judicial notice when requested and supported by necessary information.

4. Judicial notice may be taken at any stage of the proceeding.

5. The court shall instruct the jury to take as conclusive a fact judicially noticed.

6. Upon timely request, the court shall hold a hearing as to the propriety of:

   a. Taking judicial notice; and
   b. The tenor of the matter noticed.

7. If no prior notice, the request may be made after judicial notice taken. Ark. R. Evid. 201.

8. Matters of which judicial notice is taken need not be pleaded. Ark. Code Ann. §16-63-212.

9. Courts must take judicial notice of laws of other states. Ark. Code Ann. §16-40-104.

RELEVANT CASE:

The trial judge took judicial notice that the location of the appellant's home would call for a nighttime search. Because there was no evidence, and because the judge's personal knowledge was not subject to cross-examination or review, there was no proper basis for taking judicial notice. *Heaslet v. State*, 77 Ark. App. 333, 74 S.W.3d 242 (2002).

PRESUMPTIONS

1. When not otherwise provided by law or the Rules of Evidence, to disprove a presumption, a party must show that the nonexistence of the presumed fact is more probable than its existence. Ark. R. Evid. 301.

2. If presumptions are inconsistent:

   a. A presumption applies that is founded upon weightier considerations of policy; but
   b. If considerations of policy are of equal weight neither presumption applies. Ark. R. Evid. 301.

3. Presumption respecting a fact to which federal law supplies the rule of decision is determined by federal law. Ark. R. Evid. 302.

4. Presumptions need not be stated in pleadings. Ark. Code Ann. §16-63-212.

5. When the Code provides that proof of particular facts gives rise to a presumption of a fact that is an element of the offense, it has the following consequences:

   a. If there is evidence of the facts giving rise to the presumption, the issue as to the existence of the presumed fact shall be submitted to the jury unless the court determines that the evidence as a whole precludes a finding beyond a reasonable doubt of the presumed fact;

   b. If the issue as to the existence of the presumed fact is submitted to the jury, the court shall charge that evidence of the facts giving rise to the presumption is for the jury's consideration under all the circumstances of the case and to be weighed in determining the issue. Such evidence alone shall not impose the duty of finding the presumed fact, even if the evidence is unrebutted.

Ark. Code Ann. §5-1-111.

6. A person shall be presumed to be dead if he or she abandons his or her spouse and resides beyond the limits of the state for at least five successive years without the spouse knowing he or she is alive during that time. Ark. Code Ann. 9-11-108.

7. Any person absenting himself beyond the limits of the state for five successive years shall be presumed to be dead unless proof is made that he was alive within that time. Ark. Code Ann. §16-40-105.

WITNESSES

Subpoena for witness: Ark. R. Civ. P. 45(a).
Service of subpoena: Ark. R. Civ. P. 45(c).
Issuance of subpoena: Ark. R. Civ. P. 45(d).
Testimony from former trial: Ark. R. Civ. P. 80.
Person present compelled to testify: Ark. Code Ann. §16-43-701.

Segregation of witnesses: Ark. R. Evid. 615.
Competency of judge as witness: Ark. R. Evid. 605.
Competency of juror as witness: Ark. R. Evid. 606.
Who may impeach: Ark. R. Evid. 607.
Evidence of character and conduct of witness: Ark. R. Evid. 608.
Impeachment by evidence of conviction of a crime: Ark. R. Evid. 609.
Religious beliefs or opinions: Ark. R. Evid. 610.
Refreshing memory: Ark. R. Evid. 612.
Prior statements: Ark. R. Evid. 613.

RECORDS

Pleading an official document: Ark. R. Civ. P. 9(d).
Records of Secretary of State: Ark. Code Ann. §25-16-403.
Records of county surveyor: Ark. Code Ann. §14-15-712.
Records of Department of Alcoholic Beverage Control: Ark. Code Ann. §3-2-204.
Articles of Incorporation filed with Secretary of State: Ark. Code Ann. §4-26-1201.
Records of Insurance Department: Ark. Code Ann. §23-61-107.
Registration of trademarks and labels: Ark. Code Ann. §4-71-205.
Documents under seal of Department of Aeronautics: Ark. Code Ann. §27-114-104.
Brands on State Brand Book: Ark. Code Ann. §2-34-211.
Records of Commissioner of Education: Ark. Code Ann. §6-11-117.
Papers executed by Administrator of Employment Security Division: Ark. Code Ann. §11-10-301.
Papers executed by Commissioner of Revenue: Ark. Code Ann. § 19-1-206.

IMPEACHMENT OF ADVERSE WITNESS

1. Bad reputation for truth or veracity (Ark. R. Evid. 405);

2. Prior criminal vicious or immoral act affecting character and tending to show not worthy of belief;

3. Inconsistent or contradictory prior statements;

4. Showing interest, bias, or hostility;

5. Conviction of a crime (Ark. R. Evid. 609);

6. Mentally incapacitated at time of event;

7. Lack of personal knowledge (Ark. R. Evid. 602); or

8. Character and conduct. (Ark. R. Evid. 608).

RELEVANT RULES

Prior statements: Ark. R. Evid. 613.
Admissions: Ark. R. Evid. 801.
Learned treatise: Ark. R. Evid. 803(18).

FIFTH AMENDMENT

1. Judge must determine from form of question if there is possibility that answer will incriminate;

2. If judge determines not incriminating, he or she may order witness to answer; and

3. A further refusal to answer subjects witness to contempt proceedings.

Ark. Code Ann. §16-43-602.

STATUTORY-IMMUNITY ORDER

1. Is application from prosecuting attorney?

2. Did witness refuse to answer questions or did witness request immunity before answering questions?

3. Was refusal to answer on basis of privilege against self-incrimination?

4. Is the proceeding before:

   a. A circuit court;
   b. A properly empaneled grand jury; or
   c. A prosecuting attorney or deputy?

5. Does prosecuting attorney believe;

   a. The testimony is necessary to the public interest;
   b. The witness has or will refuse to answer?

6. Has the witness previously been given immunity under Ark. Code Ann. §§16-43-601- 606.

RELEVANT STATUTES
Self-Incrimination: Ark. Code Ann. §16-43-603.
Issuance of order to testify: Ark. Code Ann. §16-43-604.
Must first refuse to testify: Ark. Code Ann. §16-43-605.
Penalty for refusal after ordered: Ark. Code Ann. §16-43-602.
Limitation on immunity: Ark. Code Ann. §16-43-606.

PRIVILEGES

RELEVANT STATUTES AND RULES

Extent of privilege: Ark. R. Evid. 501.
Lawyer-Client: Ark. R. Evid. 502.
Physician and Psychotherapist-patient: Ark. R. Evid. 503.
Husband-wife: Ark. R. Evid. 504.
Religious: Ark. R. Evid. 505.
Political vote: Ark. R. Evid.506.
Trade secrets: Ark. R. Evid. 507.
State secrets: Ark. R. Evid. 508.
Identity of informer: Ark. R. Evid. 509.
Waiver by voluntary disclosure: Ark. R. Evid. 510.
Compulsion or no opportunity to claim: Ark. R. Evid. 511.
Comment upon claim: Ark. R. Evid. 512.
Reporting of knife and gunshot wounds: Ark. Code Ann. §12-12-602.
Media privilege: Ark. Code Ann. §16-85-510.

CHARACTER EVIDENCE

1. Evidence is admissible that relates to:

   a. Conduct of the offense charged;
   b. Reputation for truth and veracity, when in issue (Ark. R. Evid. 405)
   c. Possession of mild and peaceful traits when charge entails intentional acts of violence; and
   d. Habit or routine practice (Ark. R. Evid. 406).

2. Once defendant puts character in issue, contradictory evidence may be introduced.

RELEVANT STATUTES AND RULES

Character evidence not admissible: Ark R. Evid. 404.
Methods of proving character: Ark. R. Evid. 405.
Habit or routine practice: Ark. R. Evid. 406.
Number of witnesses limited: Ark. Code Ann. §16-43-208.
Admissibility of evidence of similar crimes in sexual assault cases:
Ark. Code Ann. §16-42-103.

RELEVANT CASES

Cross-examination of character witness: *Gooden v. State*, 321 Ark. 340, 902 S.W.2d 226 (1995).

Evidence of prior bad acts admissible when defendant makes mental state a material issue: *U.S. v. Thomas*, 58 F.3d 1318 (8th Cir. 1995).

Pedophile exception: *Hyatt v. State*, 63 Ark. App. 114, 975 S.W.2d 443 (1998); *Brewer v. State*, 68 Ark. App. 216, 6 S.W.3d 124 (1999); *Pickens v. State*, 347 Ark. 904, 69 S.W.3d 10 (2002); *Butler v. State*, 349 Ark. 252, 82 S.W.3d 152 (2002).

Evidence of other crimes allowed to dispute duress defense: *Barr v. State*, 336 Ark. 220, 984 S.W.2d 792 (1999).

Evidence of defendant's pursuit of another potential victim on morning of murder allowed to show motive, opportunity, intent, and a plan: *Williams v. State*, 338 Ark. 97, 991 S.W.2d 565 (1999).

Evidence of appellant's prior bad acts properly admitted: *McCullough v. State*, 2009 Ark. 134, 298 S.W.3d 452 (2009).

XII. VERDICTS AND SENTENCING

RECEIVING THE VERDICT

When the jury has returned from deliberation the judge should:

1. Ask the foreman if the jury has reached a verdict;

2. Instruct the foreman to deliver the verdict to the judge;

3. Ascertain that verdict is complete;

4. Read the verdict aloud;

5. Poll the jury upon request of either party; and

6. If poll discloses jury not unanimous, or in a civil case nine or more have not signed the verdict, return them for further deliberations.

CIVIL VERDICTS

1. Court may require jury to return only a general verdict pronouncing generally on all the issues. Ark. R. Civ. P. 49(a).

2. When verdict agreed upon:

   a. Jury shall be brought into court;
   b. Names of jury shall be called; and
   c. Verdict shall be rendered by foreman.

   Ark. Code Ann. §16-64-119.

3. When verdict announced, either party may require jury to be polled by clerk or court asking each juror if it is his verdict. If any says "No," jury shall be sent out for further deliberation.

4. Verdict shall be:

   a. Written;
   b. Signed by the foreman; and
   c. Read by the court or clerk to the jury.

5. Jury shall be asked if it is their verdict, and:

   a. If any juror disagrees, they shall be sent out again; or
   b. If no disagreement and no request that jury be polled, the jury is

discharged.

Ark. Code Ann. §16-64-119.

GENERAL VERDICT ACCOMPANIED BY ANSWER TO INTERROGATORIES

1. In addition to general verdict forms, the court may submit written interrogatories on one or more issues that shall be answered to reach a general verdict.

2. The court shall make such explanation or instruction as necessary for jury to answer interrogatories and render general verdict.

3. The court shall direct jury to make written answers and to render general verdict.

4. When verdict and answers are harmonious, the appropriate judgment shall be entered.

5. When answers are consistent with each other, but one or more is inconsistent with verdict, court may:

   a. Enter judgment in accordance with answers, notwithstanding the verdict;
   b. Return the jury for further consideration of answers and verdict; or
   c. Order a new trial.

6. When answers are inconsistent with each other and one or more is also inconsistent with the verdict, the court shall not enter judgment, but may:

   a. Return the jury for further consideration; or
   b. Order a new trial.

Ark. R. Civ. P. 49(a).

SPECIAL VERDICT

1. The court may require the jury to return only a special verdict in the form of a special written finding on each issue of fact by:

   a. Submitting written questions that may be answered briefly or categorically; or
   b. Submitting appropriate written forms of the several special findings that might properly be made under the pleadings and evidence; or
   c. Using such other method as the court deems proper.

2. The court shall make such explanation or instruction as necessary for jury to make findings.

3. The party waives a trial by jury of an issue of fact omitted by the court, unless its submission to the jury is demanded before the jury retires.

4. When an issue is omitted without demand for submission:

   a. Court may make a finding; or
   b. If no finding made, a finding in accord with the judgment on the special verdict is deemed made.

Ark. R. Civ. P. 49(b).

ASSESSMENT OF DAMAGES BY JURY

When, by the verdict, either party is entitled to recover money from the adverse party, the jury shall assess amount of recovery in the verdict. Ark. Code Ann. §16-64-121.

TORT REFORM–ASSESSMENT OF FAULT-LIMITATION OF PUNITIVE DAMAGES

Arkansas Code Annotated § 16-55-201 eliminates "joint liability." A defendant's liability shall be determined by multiplying the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault. Arkansas Code Annotated § 16-55-203 sets out a procedure to increase the percentage of a several-share if it is shown the amount of damages against another defendant is uncollectible.

Arkansas Code Annotated § 16-55-202 requires the assessment of percentages of fault of all persons or entities who contributed to the alleged injury, regardless of whether the person or entity was, or could have been, named as a party to the suit, and sets out a procedure with regard to non-parties. It should be noted that in *Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135 (2009), the Arkansas Supreme Court declared this statute unconstitutional.

Arkansas Code Annotated § 16-55-205 creates a statutory cause of action for "acting in concert," that somewhat resembles "conspiracy." It permits recovery against one for the intentional torts of another if both the party and the other person or entity were acting in concert or if the other person or entity was acting as an agent or servant of the party.

To recover punitive damages, the plaintiff must satisfy the burden of proof by clear and convincing evidence. Plaintiff must prove compensatory damages and an "aggravating factor" (1) that the defendant acted with malice (may be inferred from reckless disregard for consequences) or (2) that the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage. Ark. Code Ann. §§ 16-55-206 and 207.

A punitive-damages award shall not be more than the greater of the following: $250,000 or three times the amount of compensatory damages not to exceed one million dollars. (Amounts shall be adjusted as of January 20, 2006, and at three-year intervals thereafter, in accordance with the Consumer Price Index Rate for the previous year as determined by the Administrative Office of the Courts.) If the defendant is found to have intentionally pursued a course of conduct for the purpose

of causing injury or damage, then the limitations do not apply. Ark. Code Ann. § 16-55-208.

FINDINGS BY COURT

1. If requested by a party, in all contested actions tried to the court, the court shall:

   a. Find facts specially;
   b. State separately its conclusions of law thereon; and
   c. Enter judgment pursuant to Ark. R. Civ. P. 58.

   Ark. R. Civ. P. 52.

2. If requested by a party, when granting or refusing interlocutory injunctions, the court shall:

   a. Find facts specially; and
   b. State separately conclusions of law thereon.

3. Requests for findings are not necessary for purposes of review.

   Ark. R. Civ. P. 52.

4. Findings of fact shall:

   a. Not be set aside unless clearly against the preponderance of the evidence; and
   b. Be given due regard as to the opportunity of the court to judge the credibility of witnesses.

   Ark. R. Civ. P. 52.

5. Findings of a master adopted by court are considered findings of court. *See* Ark. R. Civ. P. 52 and 53.

6. If an opinion or memorandum opinion is filed, it is sufficient that findings and conclusions appear therein.

7. Findings and conclusions are unnecessary in decisions of motions under Arkansas Rules of Civil Procedure. Ark. R. Civ. P. 52(a).

8. Upon motion of party not later than ten days after judgment entered, the court may:

   a. Amend its findings of fact; or
   b. Make additional findings; and
   c. Amend judgment accordingly. Ark. R. Civ. P. 52(b).

9. Motion under (8) above may be made with a motion for new trial.

10. Sufficiency of evidence to support any findings of fact made by court may be raised whether or not party raising question made in the trial court:

    a. Objected to finding;
    b. Moved to amend findings; or
    c. Moved for judgment.

Ark. R. Civ. P. 52.

SENTENCING

1. When a defendant is found guilty by a jury or the court, the following dispositions may be utilized:

    a. Death or life imprisonment;
    b. Imprisonment;
    c. Pay a fine;
    d. Make restitution;
    e. Probation;
    f. Suspended imposition of sentence; and
    g. Send or transfer to regional punishment facilities.

Ark. Code Ann. § 5-4-104.

2. The court may not impose a sentence for a specific number of years, and then suspend a portion of the sentence. This practice is referred to as "suspended execution of sentence." *Chadwell v. State*, 80 Ark. App. 133, 91 S.W.3d 530 (2002); *State v. Stephenson*, 340 Ark. 229, 9 S.W.3d 495 (2000); Ark. Code Ann. § 5-4-104 (e)(1)(B)(ii).

SENTENCING STANDARDS

1. The court may apply sentencing standards in all cases of felonies committed after January 1, 1994 where:

    a. The defendant pleads guilty;
    b. The plea is negotiated;
    c. The defendant is found guilty by the court;
    d. The jury fails to agree on punishment; or
    e. The jury's sentence is found by the court to be illegal.

    Ark. Code Ann. § 5-4-103.

2. The standards do not apply to:

a. Misdemeanors;
b. Probation-revocation proceedings;
c. Felonies committed before January 1, 1994;
d. Findings of guilty by a jury; or
e. Convictions of capital murder.

3. The presumptive sentence is arrived at by determining the offense seriousness level (Ark. Code Ann. § 16-90-803(b)(1)) and the offender history score (Ark. Code Ann. § 16-90-803(b)(2)).

   The Offense Seriousness Ranking Table and the Criminal History Worksheets and the Sentencing Grid are published by the Arkansas Sentencing Commission.

Ark. Code Ann. § 16-90-803.

DEPARTURE FROM STANDARDS

1. The court may depart from the presumptive sentence without providing a written justification.

2. If the departure is agreed upon by the parties (negotiated plea), written reasons must be provided by the parties to the court. If the court rejects the agreement, the defendant may withdraw his plea.

Ark. Code Ann. § 16-90-804.

ENHANCEMENTS

HABITUAL OFFENDERS

1. Habitual offenders, that is a person with two or more prior convictions, may receive higher mandatory-minimum sentences.

2. Proof of prior convictions is determined by the trial judge.
   Ark. Code Ann. §§ 5-4-501; 5-4-502.

3. Habitual offenders of violent crimes must serve mandatory sentences of not less than forty years nor more than eighty years, or life in prison for committing two or more serious violent felonies. Ark. Code Ann. § 5-4-501(c)(1)(A).

DOMESTIC ABUSE

1. Any person who commits a felony offense involving homicide, assault, battery, domestic battering, or assault on a family member or household member may be subject to an enhanced sentence of an additional term of imprisonment of not less than one year and not more than ten years if the offense is committed in the

presence of a child.

2. To seek enhancement, the prosecuting attorney must notify the defendant in writing and advise the defendant that he or she is subject to the enhanced penalty. The notice may be included in the criminal information or indictment.

3. The enhanced portion of the sentence is consecutive to any other sentence imposed.

4. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-4-702.

TERRORISM

1. Any person who is found guilty of or who pleads guilty or *nolo contendere* to terrorism, Ark. Code Ann. § 5-54-205, may be subject to an enhanced sentence of an additional term of imprisonment of ten years if the person's acts caused serious physical injury to a law enforcement officer, firefighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism.

2. The enhanced portion of the sentence is consecutive to any other sentence imposed.

3. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-54-206.

MANUFACTURE OF METHAMPHETAMINE IN THE PRESENCE OF CERTAIN PERSONS

_____1. Any person who is found guilty of or who pleads guilty or *nolo contendere* to manufacture of methamphetamine, Ark. Code Ann. § 5-64-423, or possession of drug paraphernalia with the purpose to manufacture methamphetamine, Ark. Code Ann. § 5-64- 443(a)(1), may be subject to an enhanced sentence of an additional term of imprisonment of ten years if the offense is committed:

a. In the presence of a minor, elderly person, or incompetent person who may or may not be related to the person;

b. With a minor, elderly person, or incompetent person in the same home or building where the methamphetamine was being manufactured or where the drug paraphernalia to manufacture methamphetamine was in use or was in

preparation to be used; or

c. With a minor, elderly person, or incompetent person present in the same immediate area or in the same vehicle at the time of the person's arrest for the offense.

2. "Elderly person" means any person seventy years of age or older.

3. "Incompetent person" means any person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated.

4. "Minor" means any person under eighteen years of age.

5. The enhanced portion of the sentence is consecutive to any other sentence imposed.

6. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-64-407.

DRUG OFFENSES THAT OCCUR IN PROXIMITY TO CERTAIN LOCATIONS

1. A person is subject to an enhanced sentence of an additional term of imprisonment of ten years if:

A. He or she possesses a controlled substance in violation of Ark. Code Ann. § 5-64-419 and the offense is a Class C felony or greater; or

B. He or she possesses with the purpose to deliver, delivers, manufactures, or trafficks a controlled substance in violation of Ark. Code Ann. §§ 5-64-420-5-64-440; and

C. The offense is committed on or within one thousand feet of the real property of:

i. A city or state park;
ii. A public or private elementary or secondary school, public vocational school, or private or public college or university;
iii. A designated school bus stop as identified on the route list published by a public school district each year;
iv. A skating rink, Boys Club, Girls Club, YMCA, YWCA, community center, recreation center, or video arcade;
v. A publicly funded and administered multifamily housing development;
vi. A drug or alcohol treatment facility;

vii. A day care center;
viii. A church; or
ix. A shelter as defined in Ark. Code Ann. § 9-4-102.

2. The enhanced portion of the sentence is consecutive or concurrent to any other sentence imposed at the discretion of the court.

3. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-64-411.

USE OF A FIREARM WHILE COMMITTING OR ESCAPING FROM COMMITTING A FELONY

1. Any person convicted of any offense which is classified as a felony, who employed any firearm of any character as a means of committing or escaping from the felony, may be subjected to an additional period of confinement in the state penitentiary for a period not to exceed fifteen years.

2. The period of confinement imposed shall be in addition to any fine or penalty provided by law as punishment for the felony itself.

3. Any additional prison sentence imposed shall run consecutively to any period of confinement imposed for conviction of the felony itself.

4. A separate appeal may be taken to the Arkansas Supreme Court from the imposition of the enhanced sentence and any appeal shall be in the manner prescribed for appellate review of conviction of criminal offenses in general.

   a. The only question to be decided upon the separate appeal shall be whether the evidence warrants a finding that the defendant actually employed a firearm in the commission of, or escape from commission of, the felony for which he or she stands convicted.

   b. Any reversal of a defendant's conviction for the commission of the felony shall automatically reverse the prison sentence which may be imposed under this section.

Ark. Code Ann. § 16-90-120.

COMMITTING THE OFFENSE OF AGGRAVATED CRUELTY TO A DOG, CAT, OR HORSE IN THE PRESENCE OF A CHILD

1. Any person who commits the offense of aggravated cruelty to a dog, cat, or horse

under § 5-62-104, may be subject to an enhanced sentence of an additional term of imprisonment not to exceed five (5) years if the offense was committed in the presence of a child.

2. To seek this enhanced penalty, a prosecuting attorney shall notify the defendant in writing that the defendant is subject to the enhanced penalty.

3. If the defendant is charged by information or indictment, the prosecuting attorney may include the written notice in the information or indictment.

4. The enhanced portion of the sentence is consecutive to any other sentence imposed.

5. Any person convicted under this section is not eligible for early release on parole or community correction transfer for the enhanced portion of the sentence.

Ark. Code Ann. § 5-4-702.

COMMUNITY PUNISHMENT

1. Sentences to community punishment include:

   a. Probation;
   b. Economic-sanctions programs;
   c. Home-detention programs;
   d. Community-service programs;
   e. Work-release programs;
   f. Restitution programs;
   g. Regional-punishment facilities;
   h. Boot camps;
   i. Drug/alcohol treatment services;
   j. Educational programs;
   k. Vocational programs;
   l. Job-skills programs;
   m. Mental health treatment services; and
   n. Parole and post-prison supervision.

Ark. Code Ann. §16-93-1202.

AS CONDITION OF SIS OR PROBATION

1. A defendant may be sentenced to a regional punishment facility as a condition of SIS or probation:

a. If the offense is a target offense, as defined in Ark. Code Ann. §16-93-1202(10)(A);
b. For a designated period of time commensurate with goals of program.

2. Jurisdiction over the defendant remains with the court.

Ark. Code Ann. §5-4-312.

JUDICIAL TRANSFERS

1. The court may commit a defendant to the Department of Correction but specify that the defendant is to be judicially transferred to the Department of Community Correction.

2. The defendant will be transported directly to a regional-punishment facility.

3. The maximum sentence for a judicial transfer is 24 months.

Ark. Code Ann. §§5-4-312; 12-27-127.

CRITERIA TO BE CONSIDERED BY COURT

1. If crime is not capital murder, treason, Class Y felony, murder in the second degree, first-degree rape, kidnapping or aggravated robbery, DWI or engaging in continuing-criminal enterprise and the defendant is not a habitual offender, the court may suspend imposition of sentence or place defendant on probation. In making this determination, the court shall consider whether:

   a. There is undue risk that during the period of a suspension or probation the defendant will commit another offense;
   b. The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
   c. Suspension or probation will discount the seriousness of the defendant's offense; or
   d. The defendant has the means available or is so gainfully employed that restitution or compensation to the victim of his or her offense will not cause an unreasonable financial hardship and will be beneficial to the rehabilitation of the defendant.

2. The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of suspension or probation:

   a. The defendant's conduct neither caused nor threatened serious harm;
   b. The defendant did not contemplate that his or her conduct would cause or threaten serious harm;

c. The defendant acted under strong provocation;
d. There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;
e. The victim of the offense induced or facilitated its commission;
f. The defendant has compensated or will compensate the victim of the offense for the damage or injury that he or she sustained;
g. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before commission of the present offense;
h. The defendant's conduct was the result of circumstances unlikely to recur;
i. The character and attitudes of the defendant indicate that he or she is unlikely to commit another offense;
j. The defendant is particularly likely to respond affirmatively to suspension or probation;
k. The imprisonment of the defendant would entail excessive hardship to him or her or his or her dependents;
l. The defendant is elderly or in poor health; and
m. The defendant cooperated with law enforcement authorities in his/her own prosecution or in bringing other offenders to justice.

Ark. Code Ann. § 5-4-301.

CONDITIONS OF SUSPENSION OR PROBATION

1. The court shall attach such conditions as are reasonably necessary to assist the defendant in leading a law-abiding life. The court shall provide as an express condition of every suspension or probation that defendant not commit an offense punishable by imprisonment during the period of suspension or probation.

2. If the court suspends imposition of sentence on a defendant or places him on probation, it may, as a condition of its order, require that the defendant:

   a. Support his dependents and meet his family responsibilities;
   b. Work faithfully at suitable employment;
   c. Pursue a prescribed secular course of study of vocation training designed to equip him or her for suitable employment;
   d. Undergo available medical or psychiatric treatment, and enter and remain in a specified institution, when required for that purpose;
   e. Participate in a community-based rehabilitative program or work-release program;
   f. Refrain from frequenting unlawful or designated places or consorting with designated persons;
   g. Have no firearms in his or her possession;
   h. Make restitution or reparation to aggrieved parties in an amount he or she can afford to pay, for the actual loss or damage caused by his or her

offense;

i. Post a bond, with or without surety, conditioned on the performance of prescribed conditions; and/or

j. Satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his or her liberty or incompatible with his or her freedom of conscience.

3. If the court places a defendant on probation, it may as a condition of its order, require that the defendant:

   a. Report as directed to the court or probation officer and permit the probation officer visitation at employment or elsewhere;
   b. Remain within the jurisdiction of the court unless granted permission to leave by the court or the probation officer; and/or
   c. Answer all reasonable inquiries by the court or probation officer and promptly notify the court or probation officer of any change in address or employment.

4. If the court suspends the imposition of sentence or places the defendant on probation, the defendant shall be given a written statement explicitly setting forth the conditions of release.

5. If the court suspends the imposition of sentence or places the defendant on probation conditioned upon making restitution or reparation under Ark. Code Ann. § 5-4-303(c)(8), the court shall by concurrence of the victim, defendant, and the prosecuting authority determine the amount to be paid as restitution. The court shall further, after considering the assets, financial condition, and occupation of the defendant, determine whether restitution shall be total or partial, the amounts to be paid if by periodic payments, and if personal services are contemplated, the reasonable value and rate of compensation for services rendered to the victim.

6. The court may order that the defendant spend a period of confinement in a county or city jail or other authorized local detention, correctional or rehabilitative facility, up to 120 days for a felony, 30 days for a misdemeanor, or 365 days in the case of confinement in a community correction's facility.

Ark. Code Ann. §§ 5-4-303 - 304.

RELEVANT STATUTES

"Probation" defined: Ark. Code Ann. § 5-4-101(2).
Probation authorized: Ark. Code Ann. § 5-4-104.
Pre-sentence investigation: Ark. Code Ann. §§ 5-4-102; 5-65-109.

Transfer of jurisdiction: Ark. Code Ann. § 16-93-313.
Expungement: Ark. Code Ann. § 16-93-314; Ark. Code Ann. §§ 16-90-901-906.

RELEVANT FORM

Form Conditions of Suspension or Probation are found in the Appendix at a-52.

REVOCATION OF PROBATION - ARREST

1. At any time before expiration of a period of suspension or probation:

   a. The court may summons or issue a warrant of arrest for probationer;

   b. The warrant may be executed only by a law enforcement officer.

2. A law enforcement officer may arrest a probationer if the officer has reasonable cause to believe the probationer is violating a condition of the suspension or probation.

3. Any probationer arrested under 1 or 2 shall be taken forthwith before the court which suspended sentence or the court supervising probation.

Ark. Code Ann. § 16-93-308.

PRELIMINARY HEARING

When a probationer is arrested for a violation of a suspended sentence or conditions of probation, the probationer shall have a preliminary hearing as soon as practicable. In such cases:

1. The defendant shall be given written notice of:

   a. The time of the preliminary hearing;
   b. The place of the preliminary hearing;
   c. The purpose of the preliminary hearing; and
   d. The condition alleged to have been violated.

2. The preliminary hearing can be held before any court having original criminal jurisdiction and located reasonably near the place of the alleged violation or arrest.

3. The defendant shall be allowed:

   a. To offer evidence in his own behalf;
   b. To hear and controvert relevant (but not necessarily admissible under

Rules of Evidence) evidence against him or her; and

c. Unless the court specifically finds good cause otherwise, to confront and cross-examine adverse witnesses.

4. The preliminary court shall furnish the court that suspended sentence on or probated defendant a summary of the hearing, including the responses of the defendant and the substance of the evidence in support of revocation.

5. If the hearing court finds reasonable cause to revoke, it shall order defendant held for revocation hearing before original court.

6. If the hearing court does not find reasonable cause to revoke, it shall order the defendant released from custody.

7. A preliminary hearing is not required if:

   a. The defendant waives a preliminary hearing;
   b. The revocation is based on the defendant's commission of an offense for which he or she has been tried and found guilty in an independent criminal proceeding; or
   c. The revocation hearing is held promptly after the arrest and reasonably near the place where the alleged violation occurred or where the defendant was arrested.

Ark. Code Ann. § 16-93-307.

REVOCATION HEARING

1. The court granting a suspended sentence or probation shall hold a hearing within 60 days after arrest of defendant.

2. The defendant shall be given written notice of:

   a. The time of the hearing;
   b. The place of the hearing;
   c. The purpose of the hearing; and
   d. The condition alleged to have been violated.

3. The defendant shall be allowed:

   a. To offer evidence in his or her own behalf;
   b. To hear and controvert relevant (but not necessarily admissible under Rules of Evidence) evidence against him or her;
   c. Unless the court specifically finds good cause otherwise, to confront and cross-examine adverse witnesses; and

d. To be represented by counsel.

4. If suspension or probation is revoked, the court shall prepare and furnish to the defendant a written statement of:

   a. The evidence relied upon; and
   b. The reasons for revoking.

Ark. Code Ann. § 16-93-307.

EFFECT OF REVOCATION

If the court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of suspension or probation, it may revoke the suspension or probation:

1. At any time prior to the expiration of the period of suspension or probation; or

2. Subsequent to the expiration of the period of suspension or probation if, prior to the expiration of the period, the defendant was arrested or the warrant of arrest issued; or a petition to revoke has been filed prior to expiration and an arrest warrant is issued within 30 days; or the defendant has been issued a citation or served with a summons prior to the expiration.

Ark. Code Ann. § 16-93-308.

3. Following a revocation hearing held pursuant to Ark. Code Ann. § 16-93-307 and wherein the defendant has been found guilty or has entered a plea of guilty or *nolo contendere*, the court may:

   (1) Continue the period of suspension of imposition of sentence or continue the period of probation;
   (2) Lengthen such periods within the limits set by Ark. Code Ann. § 5-4-306;
   (3) Increase the fine within the limits of Ark. Code Ann. § 5-4-201;
   (4) Impose a period of confinement to be served during the period of suspension of imposition of sentence or period of probation; or
   (5) Impose any conditions that could have been imposed upon conviction of the original offense.

   Ark. Code Ann. § 16-93-309

SEX-OFFENDER REGISTRATION

1. At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form whether or not the offender is required to register as a sex offender. Ark. Code Ann. § 12-12-906(a)(1)(A)(i); *See also* Judgment and Commitment and Judgment and Disposition forms in Appendix beginning at a-62.

2. Sex-offender-registration requirements also apply to persons committed following an acquittal on the grounds of mental disease or defect for a sex offense.

3. Sex offenses are defined at Ark. Code Ann. § 12-12-903 (12).

4. The sentencing court shall assess at sentencing a mandatory fine of $250 on any person required to register. Ark. Code Ann. § 12-12-910.

5. Special procedures apply to those individuals that the prosecutor seeks to classify as "sexually violent predators."

    a. In order to classify a person as a sexually-violent predator, a prosecutor shall allege on the face of an information that the prosecutor is seeking a determination that the defendant is a sexually-violent predator.

    b. If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offenders Assessment Committee to issue a report to the sentencing court that recommends whether the defendant should be classified as a sexually-violent predator. *See* Judgment and Commitment and Judgment and Disposition forms in Appendix beginning at a-62.

    c. After sentencing, the court shall make a determination regarding the defendant's status as a sexually-violent predator.

    d. The sentencing court shall retain jurisdiction to determine whether an offender is a sexually-violent predator for one year after the sentencing or for so long as the offender remains incarcerated for the sex offense.

    Ark. Code Ann. § 12-12-918.

RELEVANT CASE

Adkins v. State, 371 Ark. 159, 264 S.W.3d 523 (2007) (holding that failure to register as a sex offender in accordance with the Sex Offender Registration Act is a strict liability offense).

DNA SAMPLING AFTER ADJUDICATION

1. Persons adjudicated guilty of any felony offense, any sexual offense classified as a misdemeanor, or a repeat offense (as defined in Ark. Code Ann. § 12-12-1103) shall have a DNA sample drawn. Ark. Code Ann. § 12-12-1109. *See* Judgment and Commitment and Judgment and Disposition forms in Appendix beginning at a-62.

2. DNA sampling provisions also apply to persons committed following an acquittal on the grounds of mental disease or defect for any felony offense, any sexual offense classified as a misdemeanor, or a repeat offense (as defined in Ark. Code Ann. § 12-12-1103). Ark. Code Ann. § 12-12-1109.

3. Unless finding that undue hardship would result, the sentencing court shall assess at sentencing a mandatory fine of not less than $250 on any person required to provide a DNA sample. Ark. Code Ann. § 12-12-1118.

EXPUNGEMENT PROCEDURES

A number of statutes provide for the expungement of certain offenses under certain conditions, including but not limited to Act 346 of 1975 (the "First Offender Act," codified at Ark. Code Ann. §§ 16-93-301-305), Ark. Code Ann. § 16-93-1207 (applies to certain persons sentenced for targeted offenses, depending upon prior conviction record), Ark. Code Ann. § 16-98-303 (applies to expungements for drug-court participants), Ark. Code Ann. § 16-90-904 (applies to expungements of misdemeanor convictions), and Ark. Code Ann. § 16-93-314. *See also* Ark. Code Ann. § 5-4-105.

The procedure applicable to most expungements is codified at Ark. Code Ann. §§ 16-90-901-906, and provides for the filing of a "uniform petition to seal records" with the sentencing court. Copies of the uniform petition and order to seal records may be found in the Appendix beginning at a-73.

Persons who pleaded guilty or *nolo contendere* to, or who are found guilty of a sexual offense in which the victim was under the age of eighteen years are ineligible to have their offenses expunged under the procedures set forth in Ark. Code Ann. § 16-90-901.

PARDONS/ EXPUNGEMENT

Upon issuing a pardon, the Governor shall notify the sentencing court, and the court shall issue an order expunging the records relating to the conviction of the person pardoned. This expungement provision does not apply to pardons issued for (1) any offense where the victim is a person under eighteen; (2) any sex offense; or (3) an offense resulting in death or serious physical injury. Ark. Code Ann. § 16-90-605.

XIII. CIVIL POST TRIAL

MOTION FOR DIRECTED VERDICT

1. Party may make a motion requesting a directed verdict at the conclusion of opponent's evidence and may offer evidence if motion is not granted:

   a. Without having reserved the right to do so; and
   b. As if motion had not been made.

2. Party may make motion at conclusion of all evidence.

3. When motion is not granted, trial by jury is not waived although all parties made motion.

4. Motion shall state specific grounds therefor.

5. Court may grant motion without assent of jury.

Ark. R. Civ. P. 50 (a).

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

1. Whenever a motion for directed verdict is denied, the court is deemed to have submitted the action to the jury for later determination of legal questions raised by motion.

2. A party who has moved for a directed verdict may, not more than ten days after entry of judgment, move to have the verdict and judgment set aside and judgment entered in accordance with the motion for directed verdict.

3. A party who has moved for a directed verdict may, when no verdict was returned and within ten days after the jury was discharged, move for judgment in accordance with the motion for directed verdict. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered.

4. The motions in (2) and (3) above may be joined with a motion for new trial, or a new trial may be prayed in the alternative.

5. If verdict was returned, the court may:

   a. Let the judgment stand; or
   b. Reopen the judgment, and:
      1) Order a new trial; or

2) Enter judgment as if requested verdict had been directed.

6. If no verdict was returned, the court may:

   a. Enter judgment as if requested verdict had been directed; or
   b. Order a new trial.

Ark. R. Civ. P. 50(b).

GRANT OF MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT - CONDITIONAL RULINGS ON GRANT OF MOTION

1. If motion for Judgment Notwithstanding the Verdict is granted, the court shall:

   a. Rule on motion for new trial, if any, by determining if it should be granted if judgment later vacated or reversed; and
   b. Specify grounds for granting or denying the motion for a new trial.

2. An order conditionally granting a new trial does not affect the finality of judgment.

3. When motion for new trial is conditionally granted, and judgment is reversed on appeal, a new trial shall proceed unless appellate court orders otherwise.

4. Party whose verdict has been set aside by motion may, within ten days after entry of judgment, file a motion for a new trial pursuant to Ark. R. Civ. P. 59.

Ark. R. Civ. P. 50 (c).

GRANT OF MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT CONDITIONAL RULINGS ON DENIAL OF MOTION

1. If motion for Judgment Notwithstanding the Verdict is denied, the prevailing party in the motion may, as appellee, assert grounds for new trial if appellate court rules trial court erred in denying motion.

2. If appellate court reverses judgment it may:

   a. Determine appellee is entitled to new trial; or
   b. Direct the trial court to make that determination.

Ark. R. Civ. P. 50 (d).

FAILURE TO QUESTION SUFFICIENCY OF EVIDENCE

Objection based on insufficient evidence in jury trial is waived if not raised by motion for directed verdict at conclusion of all evidence. Motion for directed verdict, if made, is deemed denied if for any reason it is not ruled upon. Ark. R. Civ. P. 50 (e).

MOTION FOR NEW TRIAL

1. On motion of any or all aggrieved party, a new trial may be granted on all or part of the claim, when the substantial rights of the movant are affected by any of the following:

    a. Irregularity in proceeding or order of abuse of discretion by court preventing movant from having fair trial;
    b. Misconduct of jury or prevailing party;
    c. Accident or surprise that ordinary prudence could not have prevented;
    d. Excessive damages apparently influenced by passion or prejudice;
    e. Error in assessment of amount of recovery;
    f. Verdict or decision contrary to preponderance of evidence;
    g. Verdict or decision contrary to law;
    h. Newly discovered material evidence that movant could not, with reasonable diligence, have discovered and produced at trial; or
    i. Error of law occurring and objected to by movant at trial.

2. On motion for a new trial when matter tried to court, the court may:

    a. Open judgment, if entered;
    b. Take more testimony;
    c. Amend findings of fact and conclusions of law or make new findings and conclusions; and
    d. Direct entry of a new judgment.

3. Motions shall:

    a. Be filed not later than ten days after entry of judgment; A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court does not rule on the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.
    b. Be written; and
    c. Set forth in separate paragraphs the grounds or assignments of error.

4. Grounds [1(b)], [1(c)] and [1(h)] above shall be supported by affidavits as to truth and may be controverted in same manner.

5. When motion based on affidavits, they shall be filed with motion.

6. When affidavits filed as in (4) above, opposing party may file opposing affidavits:

   a. Up to ten days after service; or
   b. May be extended for not more than twenty days when:

      1) Permitted by court on good cause; or
      2) Stipulated to by parties in writing.

7. The court may, on its own initiative, order a new trial for any reason it may have granted a motion, not later than ten days after entry of judgment.

8. The court may, after giving notice and opportunity to be heard, grant a motion for a ground not stated.

9. The order entered pursuant to (6) and (7) above shall specify the ground.

Ark. R. Civ. P. 59.

XIV. CRIMINAL POST TRIAL

MOTION FOR DIRECTED VERDICT (Ark. R. Crim. P. 33.1)

1. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Mings v. State*, 318 Ark. 201, 884 S.W.2d 596 (1994).

2. The test for determining whether there is sufficient evidence is whether there is substantial evidence to support the verdict. Substantial evidence is evidence that is of enough force and character to compel reasonable minds to reach a conclusion without resorting to suspicion and conjecture. *Miller v. State*, 318 Ark. 673, 887 S.W.2d 280 (1994).

MOTION FOR NEW TRIAL

A new trial should be granted when:

1. Trial was had in absence of defendant;

2. Jury received evidence out of court;

3. Verdict was by lot or other manner than a fair expression of opinion;

4. Erroneous instruction was given or proper instruction was omitted;

5. Verdict was against the evidence and law;

6. Newly discovered evidence; and

7. The defendant did not receive a fair trial.

Ark. Code Ann. §16-89-130.

RELEVANT STATUTES, RULES, AND CASES

Motion for new trial: Ark. Code Ann. §16-91-105; Ark. R. Crim. P. 33.3.
Unnecessary to file motion for new trial to preserve appeal: Ark. Code Ann. §16-91-113.
Newly discovered evidence: *McCullars v. State*, 183 Ark. 376, 35 S.W.2d 1030 (1931).
Verdict by lot: *Blaylack v. State*, 236 Ark. 924, 370 S.W.2d 615 (1963).

MOTION IN ARREST OF JUDGMENT

The allegations of the charge do not constitute an offense.

RELEVANT STATUTE AND CASES

Contents of indictments: Ark. Code Ann. §16-85-403.
Construction of indictment: *Dover v. State*, 165 Ark. 496, 265 S.W. 76 (1924).
Grounds: *Bowen v. State*, 205 Ark. 380, 168 S.W.2d 836 (1943).

CRIMINAL PROCEDURE RULE 37

SCOPE OF REMEDY

Petitioner must be in custody under sentence of circuit court. Persons on parole, probation, free on appeal bond, or whose sentence was suspended are not eligible. Judge may set aside original judgment, discharge the petitioner, resentence him or her, grant a new trial, or otherwise correct the sentence. *See* Rule 37.1 and 37.4 of the Arkansas Rules of Criminal Procedure.

GROUNDS LIMITED

1. Sentence imposed in violation of Constitution and laws of United States or Arkansas which was raised at trial or in the appeal.

2. Sentencing court was without jurisdiction.

3. Sentence was in excess of maximum authorized.

4. Sentence otherwise subject to collateral attack. *e.g.* ineffective assistance of counsel.

Newly discovered evidence not a ground: *Chisum v. State*, 274 Ark. 332, 625 S.W.2d 448 (1981).

FORM OF PETITION

1. If petition is not in proper form, it may be stricken.

2. Petition must be verified with notarized signature of petitioner.

3. Petition may not exceed ten pages in length; if handwritten petition must be legible and not exceed thirty lines per page, fifteen words per line with a left and right margin of 1 and ½ " and upper and lower margins of 2."

Ark. R. Crim. P. 37.1.

PROCEDURE--JUDGMENT ENTERED AFTER JANUARY 1, 1991

1. No petition considered while appeal pending.

2. All grounds must be raised in first petition filed under rule, unless court denied first petition without prejudice for filing second petition.

3. If appeal taken, petition must be filed in trial court within sixty days of date mandate issued by appellate court affirming judgment.

4. If conviction obtained on plea of guilty or petitioner was found guilty by trial court or jury and did not appeal, petition must be filed in trial court within ninety days of date judgment entered.

5. If judgment not entered within ten days of date sentence was pronounced, petition must be filed within ninety days of pronouncement of sentence.

6. No request for rehearing shall be considered.

7. Before court acts on petition, petition may be amended but only if court grants motion to amend.

8. State may respond to petition within twenty days.

Ark. R. Crim. P. 37.2.

JUDGMENTS BETWEEN JULY 1, 1989 AND DECEMBER 31, 1990

1. Obliged to proceed under Criminal Procedure Rule 36.4 (now 33.2) which provided for petitions to be filed on ground of ineffective assistance of counsel only.

2. Persons who were advised by trial judge of right to proceed under Rule 36.4 but did not do so may not file a petition under Rule 37.

3. Persons who were not advised by trial judge of right to proceed under Rule 36.4 may proceed under Rule 37 in its revised form as reinstated in January 1, 1991, but must have filed the petition within sixty days of mandate if appeal was taken or within ninety days of January 1, 1991 if guilty plea entered or no appeal. Any petition not filed within time limit is untimely and must be denied regardless of merits.

JUDGMENTS BEFORE JULY 1, 1989

1. If appeal was taken, petitioner must obtain permission from the Arkansas

Supreme Court before filing a petition in trial court.

2. If appeal was not taken, or if petitioner pleaded guilty, petition can be filed directly in trial court but grounds are limited to those sufficient to void judgment absolutely.

TIME LIMITATION

1. Time limits under Rule 37 are jurisdictional in nature. A judge must deny as untimely any petition filed by a petitioner convicted after January 1, 1991, not filed within the time limit regardless of the merits of the petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Where the case involved the death penalty, and where ambiguous circumstances existed regarding petitioner's legal representation during the window of time in which petitioner could have filed his Rule 37 petition, fundamental fairness "in this narrowest of instances where the death penalty is involved" dictates an exception to allow petitioner to proceed with his Rule 37 petition despite its untimely filing. *Porter v. State*, 339 Ark. 15, 2 S.W.3d 73 (1999).

2. Petitioners under pre-July 1, 1989, rule had three years to file petition. Any petition filed after that date, must state ground to void judgment.

NATURE OF PROCEEDING

1. Petition may be denied without hearing if files and records conclusively show petition meritless.

2. Trial court must make written findings specifying that part of the record relied on in reaching decision.

3. If trial court finds petitioner indigent, counsel may be appointed for any hearing held and for appeal if one is taken.

4. If hearing to be held, court shall notify prosecutor and counsel who represented petitioner at trial of date of hearing.

5. Petitioner shall be present at hearing unless appearance waived or issues can be fairly resolved without presence of petitioner or petitioner can testify by deposition.

6. Rules of Evidence apply at hearing.

7. Court must make written findings of fact and conclusions of law.

8. Order rendered must be mailed to petitioner promptly.

Ark. R. Crim. P. 37.3.

RULE 37.5- SPECIAL RULE FOR PERSONS UNDER SENTENCE OF DEATH

1. Rule 37.5 applies only to persons under a sentence of death.

2. Upon affirmance of a sentence of death by the Supreme Court of Arkansas, the clerk of the court shall forward a copy of the mandate to the circuit court that imposed the sentence of death and to the Attorney General.

3. The circuit court shall conduct a hearing to consider the appointment of an attorney to represent the person in post-conviction proceedings under this rule.
   a. If the Supreme Court affirms a sentence of death, the hearing shall be held not later than 21 days after the mandate is issued by the Supreme Court.
   b. The person under sentence of death shall be present at the hearing.
   c. The circuit court shall inform the person of the existence of possible relief under this rule and shall determine whether the person desires the appointment of an attorney to represent him in proceedings under this rule.
      i. If the person rejects the appointment of an attorney, the waiver shall be made in open court on the record.
      ii. If the circuit court determines that the person is indigent and that he either accepts the appointment of an attorney or is unable to make a competent decision whether to accept or reject an attorney, the circuit court shall issue written findings to that effect and enter a written order appointing an attorney to represent the person in proceedings under this rule.
      iii. If the circuit court determines that the person rejects the appointment of an attorney and understands the legal consequences of his decision, or that the person is not indigent, the circuit court shall issue written findings to that effect and enter a written order declining to appoint an attorney to represent the person in proceedings under this rule. In determining whether the person is indigent, the circuit court shall consider the extraordinary cost of post-conviction proceedings in a capital case.
      iv. The written findings and order required by this subsection shall be issued within seven days after the hearing required by this subsection. The circuit clerk shall forward a copy of the order to the Attorney General.
      v. The appointment of an attorney under this rule shall remain effective through an appeal to the Supreme Court from a proceeding under this rule.

4. Except as provided below, an attorney appointed to represent a person under this

rule, shall meet each of the following standards:

a. Within ten years immediately preceding the appointment, the attorney shall have:
   i. Represented a petitioner under sentence of death in a state or federal post-conviction proceeding; or
   ii. Actively participated as defense counsel in at least five felony jury trials tried to completion, including one trial in which the death penalty was sought; and

b. Within ten years immediately preceding the appointment, the attorney shall have:
   i. Represented a petitioner in at least three state or federal post-conviction proceedings, one of which proceeded to an evidentiary hearing and all of which involved a conviction of a violent felony, including one conviction of murder; or

   ii. Represented a defendant in at least three appeals involving a conviction of a violent felony, including one conviction of murder, and represented a petitioner in at least one evidentiary hearing in a state or federal post-conviction proceeding; and

c. The attorney shall have been actively engaged in the practice of law for at least three years; and

d. Within two years immediately preceding the appointment, the attorney shall have completed at least six hours of continuing legal education or other professional training in the representation of persons in capital trial, capital appellate, or capital post-conviction proceedings.

e. The circuit court may appoint *pro hac vice* an attorney who is not licensed to practice in Arkansas but who meets the standards listed above provided the court also appoints as co-counsel an attorney who is licensed to practice in Arkansas. In such case, the attorney who is licensed to practice in Arkansas is not required to meet the foregoing standards.

f. The court shall make findings, either on the record or in the written order, specifying the qualifications of counsel which satisfy the standards for appointment under this rule.

g. If the circuit court determines that an attorney is clearly qualified because of his unique training, experience, and background to represent a person under sentence of death in a post-conviction proceeding, it may deviate from the foregoing qualifications under certain circumstances. The order appointing such an attorney shall contain written findings specifying the unique training, experience, and background that qualify the attorney for appointment.

h. The circuit court shall not appoint an attorney under this rule if the attorney represented the person under a sentence of death at trial or on direct appeal to the Supreme Court of Arkansas unless the person and the attorney request continued representation on the record. If the circuit court does appoint an attorney who represented the person at trial or on direct appeal, the circuit court shall appoint a second attorney, who did not represent the person at trial or on direct appeal, to assist in the representation of the person.

i. The circuit court may appoint the Capital, Conflicts, and Appellate Office of the Arkansas Public Defender Commission, unless otherwise disqualified.

5. A petition for relief under this rule shall be filed in the circuit court that imposed the sentence of death within ninety days after the entry of the circuit court's order from the hearing, which is discussed in (3) above.

6. Upon the filing of a petition under this rule, the petitioner shall immediately forward a copy of the petition to the circuit judge who entered the order from the hearing, which is discussed in (3) above, the prosecuting attorney for the district, the Attorney General, the petitioner's counsel of record at the trial resulting in the sentence of death, and the Executive Director of the Arkansas Public Defender Commission.

7. When the circuit court enters an order from the hearing, which is discussed in (3) above, the court shall also enter an order staying any sentence of death. The stay of execution shall remain in effect until dissolved by a court with competent jurisdiction. The circuit court shall enter an order dissolving the stay of execution if:

a. A timely petition is not filed under this rule; or
b. A timely petition is filed under this rule but relief is denied by the circuit court, and the time for filing an appeal from the denial of relief has expired without the filing of a notice of appeal.

8. If the circuit court determines that a hearing is necessary, the hearing shall be held within 180 days from the date of the filing of the petition, unless continued for good cause shown.

9. If a hearing on the petition is held, the circuit court shall, within 60 days of the conclusion of the hearing, make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition. If no hearing on the petition is held, the circuit court shall, within 120 days after the filing of the petition, make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each

legal issue raised by the petition. The time within which the circuit court shall make specific written findings of fact and conclusions of law shall be extended by 30 days if the circuit court requests or permits post-hearing briefs.

10. Compensation to be paid to attorneys appointed under this rule, as well as the fees and expenses to be paid for investigative, expert, and other reasonably necessary services, shall be fixed by the circuit and appellate courts in their respective proceedings at such rates or amounts as the courts determine to be reasonable. All compensation and reasonable expenses authorized by the courts shall be paid pursuant to Ark. Code Ann. § 16-91-202(f), or as otherwise provided by law.

_____Ark. R. Crim. P. 37.5.

Please note that Ark. Code Ann. §16-90-111 has been held to conflict with Rule 37 of the Arkansas Rules of Criminal Procedure and has been held to be superseded by Rule 37. *See Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996).

MOTION FOR REDUCTION OR CORRECTION OF SENTENCE

1. Available as remedy only to those persons convicted after July 4, 1983.

2. Provides for correction or reduction of sentence.

3. Petitioner must serve prosecutor with petition.

4. Court may correct an illegal sentence at any time. An "illegal sentence" is defined as a sentence illegal on its face. *Abdullah v. State*, 290 Ark. 537, 720 S.W.2d 902 (1986).

5. Court may correct sentence imposed in an illegal manner within 90 days after sentence imposed or within 60 days after receipt by the court of a mandate issued upon affirmance of judgment or dismissal of appeal.

6. An attack on the sufficiency of the evidence is not cognizable to demonstrate that a sentence was illegally imposed or is illegal. *Guire v. State*, 309 Ark. 209, 832 S.W.2d 457 (1992).

7. Remedy not dependent upon prior objection. *Lowery v. State*, 297 Ark. 47, 759 S.W.2d 545 (1988).

HABEAS CORPUS

1. A petition for a writ of *habeas corpus* must show that a commitment is invalid on its face or that the trial court lacked jurisdiction. *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

2. A writ can be returned only in the county in which it was issued. Therefore, the

petition seeking release must be filed in the county where the petitioner is incarcerated. Ark. Code Ann. §16-112-105.

3. Arkansas Code Annotated §§ 16-112-103 and 16-112-201-208 provide a procedure whereby a convicted person may petition for a writ of *habeas corpus* based on claims of "actual innocence" as proven by new scientific evidence. *See also Echols v. State*, 2010 Ark. 417, __ S.W.3d __ (2010).

RELEVANT CASE

In light of the appellant's plea of guilty, there was no issue of identity at the time of trial, and the trial court did not err in denying the appellant's petition for scientific testing. *See Graham v. State*, 358 Ark. 296, 188 S.W.3d 893 (2004).

ERROR CORAM NOBIS

1. *Error coram nobis* may be filed at any time, but it is not available to a petitioner after his case is affirmed on appeal. *Edgemon v. State*, 292 Ark. 465, 730 S.W.2d 898 (1987). *But see Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997), circuit court can entertain petition for writ of *error coram nobis* after an appeal only if supreme court grants permission.

2. Granted only where there is an error of fact extrinsic to the record that was not known at time of trial and that would have resulted in a different verdict if known. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984).

3. In the review of the granting of a petition for a writ of *error coram nobis* (based upon exculpatory evidence withheld from the defendant by the prosecution), the appellate court will determine whether there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the exculpatory evidence been disclosed at trial. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000); *See also Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001), and *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002).

MOTION FOR COPY OF APPEAL RECORD

1. Movant must cite some compelling need for specific documentary evidence to support some allegation contained in a petition for post-conviction relief. Indigency alone not good cause to grant motion. *Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985).

2. Freedom of Information Act does not require court to provide photocopying at public expense.

MANDATORY DEATH PENALTY REVIEW

In *State v. Robbins*, 339 Ark. 379, 5 S.W.3d 51 (1999), the Arkansas Supreme Court held

that in death-penalty cases, even if the defendant waives his personal right of appeal, the supreme court will conduct an automatic review of the record for egregious and prejudicial errors. Upon imposing a sentence of death, the circuit court shall order the circuit clerk to file a notice of appeal on behalf of the defendant within thirty days after entry of judgment. The procedures to be followed by the circuit courts upon a sentence of death are set forth in Ark. R. App. P.-Crim. 10, and include a form Notice of Appeal to be filed by the circuit court clerk. *See* form in Appendix at a-77.

XV. JUDGMENT ENFORCEMENT

PROVISIONAL REMEDIES - ATTACHMENTS

The Arkansas prejudgment attachment code provisions, Ark. Code Ann. §§ 16-110-101 - 16-110-309, have been struck down as unconstitutionally violative of due process rights. *McCrory v. Johnson*, 296 Ark. 231, 755 S.W.2d 566 (1988); *Duhon v. Gravett*, 302 Ark. 358, 790 S.W.2d 155 (1990) When a statute is declared unconstitutional, it must be treated as if it had never been passed.

PROVISIONAL REMEDIES - GARNISHMENT

1. Set out claim, demand, or judgment;

2. Command officer charged with execution of writ to summons person named as garnishee:

    a. To appear on return day of writ;
    b. To answer as to what goods, chattels, money, credits, and effects he or she may have in hand or possession belonging to defendant; and
    c. To answer such further interrogatories as may be exhibited.
    d. Writ must contain statutory notices to:
        i. Non-employer Garnishee (Ark. Code Ann. § 16-110-401);
        ii. Employer Garnishee (Ark. Code Ann. § 16-110-401);
        iii. Defendant (Ark. Code Ann. § 16-110-402); and
        iv. Employer Garnishee must be given additional notice. (Ark. Code Ann. § 16-110-416).

3. If garnishment is issued before judgment, Plaintiff shall give bond double in amount sought. Ark. Code Ann. § 16-110-401(b).

4. Writs and notice to defendant to be directed and served in same manner as summons.

5. Mailing is to be first class to residence of judgment creditor, but if returned "undeliverable" or not discovered by diligent search, can be sent first class mail to place of employment of judgment creditor. Ark. Code Ann. § 16-110-402(2)(B).

6. Only one notice a year is required to be sent to a judgment creditor. Ark. Code Ann. § 16-110-402.

7. Clerk to include as part of writ, a certificate of service on judgment creditor. Ark. Code Ann. § 16-110-402(4).

8. Judgment debtor is entitled to a prompt hearing upon receipt of writ to claim

exemptions. A hearing will be held within eight working days upon judgment debtor filing claim of exempt property. No hearing required unless judgment creditor files within five days written statement that judgment debtor claim exemption is contested. Ark. Code Ann. § 16-110-402(5).

9. Plaintiff shall file, on the same day as writ sued out, written allegations and interrogatories touching defendant's property and its value in garnishee's possession at time writ is served or any time thereafter. Ark. Code Ann. § 16-110-403.

10. Garnishee shall, on return day, exhibit and file full, direct, true, and sworn answers to all allegations and interrogatories. Ark. Code Ann. §§ 16-110-404.

11. Plaintiff may deny answers deemed untrue and insufficient causing denial to be entered on record. Ark. Code Ann. § 16-110-405.

12. If neither party requires a jury, the court or justice shall try issue made by answer and denial. Ark. Code Ann. § 16-110-405.

13. If garnishee fails or neglects to answer on or before twenty days after service of writ, Plaintiff by motion, can have notice issued to garnishee to appear for hearing not later than ten days from receipt of notice (or date as court may set) and answer allegations and interrogatories. Notice may be served by clerk, by plaintiff, or by any method set in the Arkansas Rules of Civil Procedure for service. After hearing, court may render judgment against garnishee in amount court finds garnishee held at service of writ of goods, chattels, wages, credits, and effects belonging to defendant, not exempt, together with attorney's fees and reasonable expenses. Ark. Code Ann. § 16-110-407.

14. If issue at trial is found for garnishee, garnishment shall be discharged. If issue is found for plaintiff, judgment shall be entered in the amount:

    a. Due from garnishee to defendant in original judgment;

    b. Sufficient to satisfy plaintiff's judgment and costs. Ark. Code Ann. § 16-110-410.

15. On return day, garnishee may surrender to plaintiff all defendant's property in his or her possession and:

    a. Garnishment shall be discharged; and
    b. Court or justice shall enter order releasing and discharging garnishee from all responsibility to defendant relative to surrendered property. Ark. Code Ann. § 16-110-409.

16. Judgment against garnishee on answers to interrogatories shall release garnishee

from all responsibility relative to property for which judgment may have been rendered. Ark. Code Ann. § 16-110-411.

17. Defendant may have any prejudgment garnishment discharged by filing with the clerk of court a bond in double the amount for which garnishment was issued conditioned on payment of any adverse judgments. Ark. Code Ann. § 16-110-408.

18. Clerk shall approve bond and issue signed notice to garnishee of filing and approval and release of garnishment that shall be served by the sheriff and returned as in the case of other writs of process. Ark. Code Ann. § 16-110-408.

RELEVANT STATUTES

Garnishment of wages due by railroad: Ark. Code Ann. § 16-110-414.
Failure of bank to answer: Ark. Code Ann. § 16-110-406.
Issuance of writ of garnishment to and from another county:
Ark. Code Ann. § 16-110-412.
Garnishment against State: Ark. Code Ann. § 16-110-413.
Wage garnishment: Ark. Code Ann. § 16-110-415.

ISSUANCE OF EXECUTION

1. Upon final judgment, an execution may be issued by a court of record for a liquidated sum of money plus interest and costs or for costs alone. Ark. Code Ann. § 16-66-101.

2. Execution may issue:

   a. Ten days after judgment; or an earlier time if the court so orders (Ark. R. Civ. P. 62 (a));
   b. Any time before enforcement of the judgment is barred by the statute of limitations. Ark. Code Ann. § 16-66-103.

3. The execution shall be:

   a. Issued by the clerk of court (Ark. Code Ann. §§ 16-66-104; 16-66-105);
   b. Endorsed with debt, damages, and costs (Ark. Code Ann. § 16-66-105);
   c. Substantially in form as outlined in Ark. Code Ann. § 16-66-104, and contain notice as described in Ark. Code Ann. § 16-66-104(c).

4. Service of writ and notice shall be on judgment debtor by:

   a. Officer authorized to serve process simultaneously with seizure or levy of property; or
   b. Judgment creditor in same manner as service of writs or summons before the duly authorized officer seizes or levies on property of judgment debtor. Ark. Code Ann. § 16-66-104.

5. Mail. Ark. Code Ann. § 16-66-104(d)(2).

6. Annual mail notice. Ark. Code Ann. § 16-66-104(e).

7. Statement of certificate of service by clerk. Ark. Code Ann. § 16-66-104(f).

8. A prompt hearing shall be held upon filing of an exempt property claim to determine validity of claimed exemptions. No hearing required and *supersedeas* shall issue if judgment creditor files written statement that judgment debtor's claim is not contested. Ark. Code Ann. § 16-66-104(g).

9. Judgment creditor has twenty days from receipt of writ to file claim of exemptions. Ark. Code Ann. § 16-66-104(h).

10. If plaintiff is deceased, the death shall be noted on the execution and the names of personal representatives or last survivor shall be listed if all plaintiffs are dead. Ark. Code Ann. § 16-66-107.

11. If there are several defendants, executions against them shall be joint. Ark. Code Ann. § 16-66-106.

12. If the defendant or any of them are dead, execution shall issue against their survivors and their property. Ark. Code Ann. § 16-66-108.

13. An execution operates in any county of the State without order of court. Ark. Code Ann. § 16-66-109.

14. Unless specifically created in the judgment, no lien attaches until the writ of execution is delivered to an officer in the property county. Ark. Code Ann. § 16-66-112.

15. Alias executions are available at plaintiff's expense or if an execution is returned unsatisfied in whole or in part. Ark. Code Ann. § 16-66-113.

RELEVANT STATUTES

Executions against corporation: Ark. Code Ann. § 16-66-114.
Abstract of executions: Ark. Code Ann. § 16-66-115.

Conveyance by Commissioner: Ark. Code Ann. § 16-66-116.
Bonds: Ark. Code Ann. § 16-66-117.
Default of Officers: Ark. Code Ann. § 16-66-118.
Immunity of Law Enforcement Officers: Ark. Code Ann. § 16-66-119.

DISCOVERY TO ENFORCE EXECUTION

1. Procedure

   a. 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 the Arkansas Rules of Civil Procedure. Ark. R. Civ. P. 69.

   b. After an execution of *fieri facias* directed to the county in which the judgment was rendered, or to the county of the defendant's residence, is returned by the proper officer, either as to the whole or part thereof, in substance, no property found to satisfy the execution, the plaintiff in the execution may institute an action, by equitable proceedings, in the court from which the execution issued, or in the court of any county in which the defendant resides or is summoned, for the discovery of any money, chose in action, equitable or legal interest, and all other property to which the defendant is entitled, and for subjecting the money, chose in action, equitable or legal interest, and all other property to which the defendant is entitled to the satisfaction of the judgment.

   c. In such actions, persons indebted to the defendant in the execution or holding the money or property in which he has an interest, or holding the evidences or securities for the same, may be also made defendants.

   d. The answers of all the defendants shall be verified by their own oath and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in the answers by attachment.

   e. In these actions, the plaintiff may have an attachment against the property of the defendant in the execution, without affidavit or bond.

   f. A lien shall be created upon the property of the defendant, the levy of attachment, or service of the summons with the object of the action endorsed thereon, on the person holding or controlling his property.

   g. The court shall enforce the surrender of the money, or security therefor, or of any other property of the defendant in the execution that may be discovered in the action. For this purpose, the court may commit to jail any defendant or garnishee failing or refusing to make such surrender, until it shall be done, or the court is satisfied that it is out of his power to do so.

Ark. Code Ann. § 16-66-418(a)(b)(c)(d) and (e).

h. Before execution may issue there must exist an actionable, final judgment or decree from a court of record for a fixed sum of money. Ark. Code Ann. § 16-66-101.

i. Judgments have a life span of 10 years unless revived before the expiration of the 10-year period, measured from the date rendered. Revival can be by issuance of *scire facias* before execution of the judgment lien.

Ark. Code Ann. § 16-56-114; Ark. Code Ann. § 16-65-501.

PROPERTY SUBJECT TO EXECUTION

The following property is subject to execution:

1. All goods and chattel unless exempt by statute;

2. Rights and shares in stock of a bank, insurance company, or other corporation;

3. Current gold or silver coin returned as money without exposure to sale;

4. A bill or evidence of debt issued by a moneyed corporation belonging to the judgment debtor at time the writ was issued;

5. Real estate, whether or not patented, of the defendant or any person for defendant's use;

6. Unexpired leases of land subject to execution as real estate (Ark. Code Ann. § 16-66-204);

7. Married woman's sole and separate estate (Ark. Code Ann. § 16-66-202); and

8. Encumbered property.

PROPERTY EXEMPT FROM EXECUTION

The following is exempt from execution:

1. State property (Ark. Code Ann. § 16-66-205);

2. Improvements on public lands of the State (Ark. Code Ann. § 16-66-206);

3. Private or public graveyards (Ark. Code Ann. § 16-66-207);

4. The greater of:

a. 75% percent of weekly income after all deductions required by law are withheld;
b. That amount of net weekly income in excess of thirty times the current minimum wage. (15 U.S.C. § 1673).

5. Moneys paid or payable to an insured or designated beneficiary under a life, health, or disability policy (Ark. Code Ann. § 16-66-209);

6. Personal property of a single person, not the head of a household, up to $200 and all wearing apparel (Ark. Const. Art. 9 §1); and

7. Personal property of a married person or the head of household up to $500 and all family wearing apparel. (Ark. Const. Art. 9 §2).

HOMESTEAD EXEMPTIONS

1. The following property is exempt from execution:

   a. The homestead of a married person or head of household, outside the city not exceeding up to 160 acres with selected improvements not exceeding $2,500 in value (Ark. Const. Art. 9 §4); and
   b. The homestead, in a city, not exceeding 1 quarter acre with selected improvements not exceeding $2,500 in value (Ark. Const. Art. 9 §5).

2. To claim this exemption, a verified schedule of all claimant's property must be filed, specifying exempt property, with:

   a. The clerk or judge of the issuing court;
   b. Five days notice to the adverse party and opportunity for hearing.

   Ark. Code Ann. § 16-66-211.

3. If the claim is valid, the sale of the exempt property shall be stayed by a *supersedeas*. Ark. Code Ann. § 16-66-211.

4. Failure to claim the exemption before sale does not preclude defendant from claiming later. Ark. Code Ann. § 16-66-212.

5. Plaintiff may require the clerk to appoint three appraisers to determine the value of the exempt property. Ark. Code Ann. § 16-66-213.

6. If the value of the property is within the constitutional limitations, the property shall be surrendered to defendant and plaintiff shall pay costs. Ark. Code Ann. § 16-66-213.

7. If the value of the property exceeds constitutional limitations, the *supersedeas* shall be revoked as to the excess and defendant shall pay costs. Ark. Code Ann. § 16-66-213.

8. Any resident who has final judgment entered against him, shall file with the clerk, within forty-five days of entry of final judgment, verified schedule of all property and rights. Ark. Code Ann. § 16-66-221.

RELEVANT STATUTES

Election of Bankruptcy Exemptions: Ark. Code Ann. § 16-66-217.
Bankruptcy proceedings - exemptions: Ark. Code Ann. § 16-66-218.
Wedding rings exempt: Ark. Code Ann. § 16-66-219.
Pensions and profit sharing plans: Ark. Code Ann. § 16-66-220.

STAYING WRIT OF EXECUTION

1. Before the writ issues, defendant may execute a bond to stay judgment or decree for six months. Ark. Code Ann. § 16-66-303.

2. After the writ has issued, defendant may obtain a stay of execution upon execution of a bond for costs, interest, and half the commissions. Ark. Code Ann. § 16-66-303.

3. A stay of execution may be waived and the waiver shall be noted on the writ. Ark. Code Ann. § 16-66-305.

4. An agreement to waive a stay shall be specifically enforced. Ark. Code Ann. § 16-66-305.

5. Anyone other than the defendant may stay an execution upon execution of a bond for double the value of the property conditioned upon payment of the value of the property and 10% interest if plaintiff is entitled to the execution:

   a. Appraisers shall be appointed by the issuing officer to determine the value of the property if such a person posts said bond;
   b. The bond with appraisal annexed shall be returned to the levying court;
   c. Plaintiff may move for judgment against the obligors on the bond with ten days notice and the court shall impanel a jury to try the cause;
   d. Said bond does not discharge the levy but leaves the property in the hands of the person with whom it was found subject to a lien pending disposition of the proceedings on the bond.

Ark. Code Ann. § 16-66-304.

QUASHING THE EXECUTION

1. Any person against whom an execution is issued may, by verified petition, apply to the issuing court to quash the execution:

    a. For good cause shown;
    b. With reasonable notice to the opposing party;
    c. Upon execution of a bond conditioned on payment of the debt, damages, and costs recovered by execution; or
    d. Upon surrender of any property subject to execution.

2. The court shall hear the complaint and if justified, grant the stay.

3. All real and personal property of the petitioner is bound as if no stay was granted.

Ark. Code Ann. § 16-66-301.

XVI. APPEALS

NOTICE OF APPEAL

A notice of appeal must be filed with the circuit clerk within thirty days of the date of the judgment. A notice of appeal filed on the same day as the judgment, decree, or order appealed from shall be effective. A notice of appeal filed after the trial court announces a decision but before the entry of the judgment or order shall be treated as filed on the day after the judgment or order is entered. The notice shall also include a designation of the record with service to opposing parties. The notice shall contain a certificate that the transcript has been ordered. Ark. R. App. P.- Crim. 2; Ark. R. App. P.- Civ. 3 and 4.

FILING OF RECORD

The record is to be docketed within ninety days of the notice of appeal. The time for obtaining and filing the transcript may be extended if the trial court makes certain findings, but in no event shall the time be extended more than seven months from the date of judgment. Ark. R. App. P.- Civ. 5; Ark. R. App. P.- Crim. 4.

RELEVANT CASE:

Extensions to file record. The Supreme Court strictly enforces the requirements of Ark. R. App. P.-Civ. 5(b). *Murphy v. Dumas*, 343 Ark. 608, 36 S.W.3d 351 (2001).

BOND FOR COSTS

A bond for costs may be required in a civil appeal, but not a criminal appeal. Ark. Code Ann. §§ 16-67-313; 16-91-108; Ark. R. App. P.- Civ. 8; Ark. R. App. P.- Crim. 5.

An appeal bond in civil litigation shall be limited to twenty-five million dollars. Ark. Code Ann. § 16-55-214.

RELEASE DURING APPEAL

1. At the time of sentencing, the trial judge must advise the defendant of the right to appeal, advise the defendant of the time requirements for filing an appeal, and either fix or deny bond. Ark. R. Crim. P. 33.2; Ark. Code Ann. §16-91-110; Ark. R. App. P.- Crim. 6.

2. Pursuant to Ark. Code Ann. §16-91-110, a defendant who is found guilty of the following offenses may not be released pending appeal for any reason:

   a. First-degree murder;
   b. Rape;
   c. Aggravated robbery;

d. Causing a catastrophe;
e. Kidnapping or arson, when a Class Y felony;
f. Manufacturing methamphetamine; and
g. Capital murder.

STAY

A stay of proceedings on the judgment is presented by the appellant, approved by the trial judge, and issued by the clerk. Ark. R. App. P.- Civ. 8; Ark. R. Civ. P. 62.

XVII. EQUITY

PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

1. **Notice**

(a) A preliminary injunction may only be issued after proper notice to the adverse party.

(b) A temporary restraining order ("T.R.O.") may be issued without written or oral notice to the adverse party or his attorney when it appears by specific facts in an affidavit or verified complaint that clearly shows that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition and the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Ark. R. Civ. P. 65 (a); (b).

2. **Content of temporary restraining order issued without notice**

Every temporary restraining order issued without notice must:

(a) state the date and hour it was issued;

(b) describe the injury and state why it is irreparable;

(c) state why the order was issued without notice; and

(d) be promptly filed in the clerk's office and entered in the record.

3. **Duration of temporary restraining order issued without notice**

A temporary restraining order issued without notice expires at the time after entry—not to exceed 14days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

Ark. R. Civ. P. 65 (b) (2).

4. **Hearing after temporary restraining order issued without notice**

(a) If a temporary restraining order is issued without notice, the motion for a

preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character.

(b) At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

Ark. R. Civ. P. 65 (b) (3).

5. **Motion to dissolve temporary restraining order issued without notice**

(a) On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order.

(b) The court must then hear and decide the motion as promptly as justice requires.

Ark. R. Civ. P. 65 (b) (4).

6. **Hearings on preliminary injunctions**

(a) Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing.

(b) When consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(c) The court must preserve any party's right to a jury trial.

Ark. R. Civ. P. 65 (a)(2).

7. **Security**

(a) The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

(b) Neither the State of Arkansas, its officers, nor its agencies are required to give security.

Ark. R. Civ. P. 65 (c).

8. **Every order granting an injunction and every restraining order must:**

(a) State the reasons why it issued;

(b) State its terms specifically; and

(c) Describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

Ark. R. Civ. P. 65 (d)(1).

9. **An injunction and/or a restraining orders bind the following individuals who receive actual notice of it by personal service or otherwise:**

(a) the parties;

(b) the parties' officers, agents, servants, employees, and attorneys; and

(c) other persons who are in active concert or participation with the parties and the parties' officers, agents, servants, employees, and attorneys.

Ark. R. Civ. P. 65 (d)(2).

QUIET TITLE

1. Proceedings Generally Provided by Statutes

(a) Any person claiming to own wild or improved land or land in which he is in actual possession, or those claiming under him, may have his title confirmed and quieted by proceeding under Ark. Code Ann. §18-60-501.

(b) A claimant shall file in the circuit clerk's office of the county in which the land is situated a petition describing the land and stating facts that show a *prima facie* right and title to the land in himself and that there is no adverse occupant. Ark. Code Ann. §18-60-502(a).

(c) If the petitioner has knowledge of any other person who has, or claims to have,

interest in the lands, the petitioner shall so state, and the person or persons shall be summoned as defendants in the case. Ark. Code Ann. §18-60-502(b).

(d) The petitioner may embrace in his petition as many tracts of land as he sees proper so long as they all lie in the county. Ark. Code Ann. §18-60-502(c).

(e) Upon the filing of the petition, the clerk of the court shall publish a notice of the filing of the petition on the same day of each week, for four weeks in some newspaper published in the county, if there is one, and if not, then in some newspaper having a circulation in the county. Ark. Code Ann. §18-60-503(a).

(f) The petition shall describe the land and call upon all persons who claim any interest in the land or lien thereon to appear in court and show cause why the title of the petitioner should not be confirmed. Ark. Code Ann. §18-60-503(a).

(g) The court within the proper county is authorized and empowered under the notice to find apparent existing liens on the real estate to be barred by the laws of limitation or laches and decree the cancellation of the liens and the records thereof. Ark. Code Ann. §18-60-503(b).

(h) If any person is summoned to appear in the cause, his rights shall be adjudicated according to the principles of equity. Ark. Code Ann. §18-60-504.

(i) After proof of publication that the notice has been filed, the court shall require the petitioner to prove all the allegations of the petition. Ark. Code Ann. §18-60-505 (a).

(j) Proof may be by depositions or by oral testimony in court. Ark. Code Ann. §18-60-505 (b).

(k) If the petitioner cannot show a perfect claim of title to any particular tract or tracts of land, it constitutes a *prima facie* title if he shall show that:

(i) He, and those under whom he claims, have had color of title to the land for more than 7 years; and

(ii) During that time, he, or those under whom he claims, have continuously paid the taxes thereon.

Ark. Code Ann. §18-60-506.

(l) A cotenant or tenant-in-common not in possession, and whose whereabouts are unknown, is conclusively deemed to have waived and abandoned to the cotenant or

tenant-in-common the surface rights to property if no written demand for rents, profits, or possession has been made in 20 years. Ark. Code Ann. §18-11-105.

(m) If a petitioner alleges that his title papers or the record thereof has been lost or destroyed, the court shall have the power to require new title papers to be executed if the party required to execute them has been duly summoned in the cause. Ark. Code Ann. §18-60-507.

(n) If the court is satisfied as to the truth of the facts set out in the petition, it shall render a decree establishing and quieting the petitioner's title against all persons except as provided in (p) below. Ark. Code Ann. §18-60-508 (a).

(o) The decree must describe the boundary line with sufficient specificity that it may be identified solely by reference to the decree. *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997).

(p) The decree in the cause shall not bar or affect the rights of any person who:

(i) Claims through, under, or by virtue of any contract with the petitioner;

(ii) Was an adverse occupant of the land at the time the petition was filed;

(iii) Within seven years preceding had paid the taxes on the land; or

(iv) Is a remainderman, unless the person was made a defendant in the petition and personally summoned to answer it.

Ark. Code Ann. §18-60-508 (b).

(q) Any person may appear within 3 years and set aside the decree if he offers a meritorious defense. Every person having the disability of infancy, lunacy, or idiocy, and those claiming under them, may set aside the decree at any time within 3 years after the removal of their disability. Ark. Code Ann. §18-60-510.

QUIETING TITLE - PUBLIC SALES

1. Procedure

(a) The purchasers, or the heirs and legal representatives of purchasers, of lands at sheriff's sales or those made by the county clerks, or by the Commissioner of State Lands, or from levee or drainage improvement districts, who have acquired title by purchase at the sale held by the sheriff or by foreclosure proceedings for taxes due the districts, in pursuance of any of the laws thereof, or those made by the order,

decree, or authority of any court of record, may protect themselves from eviction of the lands so purchased, or from any responsibility as possessors of them, by proceeding in the manner set out in the Code. Ark. Code Ann. §18-60-601.

(b) A petition for confirmation shall be filed with the circuit clerk at least twenty days prior to the first day of the term of court at which application is to be made. Ark. Code Ann. §18-60-602 (a).

(c) The petitioner, if he is acquainted with the lands, shall file with his petition his affidavit, or the affidavit of some person who is acquainted with the lands, showing that there is no person in actual possession of the lands claiming title adverse to the petitioner. Copies of the tax receipt showing payment of the taxes for three years next preceding the publication of the notice to confirm shall be filed with the petition, and, in the case of levee or drainage improvement districts, copies of tax receipts showing payment of all delinquent taxes.

Ark. Code Ann. §18-60-601(b); *Schuman v. Certain Lands*, 223 Ark. 85, 264 S.W.2d 413 (1954) (section does not apply to an action for confirmation of title to undivided interests in mineral rights); *Pearman v. Pearman*, 144 Ark. 528, 222 S.W. 1064 (1920) (plaintiff cannot maintain a suit in equity to confirm a tax title to land held adversely by defendant).

(d) Purchaser, or heirs and legal representatives of purchasers, at all sales that have been or may be made, may, when lands are not made redeemable by laws of this State applicable to sales, or, if redeemable, at any time after the expiration of the time allowed for the redemption, publish a notice. The notice shall:

(i) Be published four weeks in succession in some newspaper published in the county where the lands lie, if there is a newspaper published in the county or, if not, in the nearest newspaper having a bona fide circulation in the county;

(ii) Call on all persons who can set up any right to the lands so purchased in consequence of any informality or any irregularity connected with the sale to show cause why the sale so made should not be confirmed; and

(iii) State the authority under which the sale took place and give the description of the land purchased and the nature of the title by which it is held.

Ark. Code Ann. §18-60-603(a).

(e) The last insertion of the notice in the newspaper shall be at least twenty days before the application for confirmation is submitted to the court for trial. Ark. Code Ann. §18-60-603(b).

(f) Proof of the publication of the notice shall be made in the same manner as proof of publication of notices in other circuit court causes. Ark. Code Ann. §18-60-603(c).

(g) The clerk of the court shall notify any delinquent tax owner or owners at their last known address by registered mail at least twenty days before the application for confirmation is submitted to the court for trial. Ark. Code Ann. §18-60-603(d).

(h) If the deed or deeds are in proper legal form and properly executed, if the tax receipts show payment of the taxes, and if the evidence shows that no one is in possession adverse to the petitioner, then, in case no one has appeared to show cause against the prayer of the petitioner, the petition shall be taken as confessed and the court shall render final decrees confirming the sale in question. Ark. Code Ann. §18-60-604.

(i) In case any person or persons claiming title to the land opposed confirmation of sale, then the court shall try the validity of the sale and if valid, confirm it; but if the sale has been made contrary to law, the court shall annul it. Ark. Code Ann. §18-60-605.

(j) On the trial of the cause, the petitioner shall exhibit to the court the tax receipts showing the payment of the taxes for at least three successive years and, in the case of lands acquired from levee and drainage improvement districts, all delinquent taxes that have been due; the deed or deeds under which he claims title, or the record thereof, or a certified copy from the record; and oral or written proof by one or more witnesses acquainted with the lands showing that no one is in possession claiming adverse to the petitioner. The name of the witness so sworn shall be preserved in the decree. Ark. Code Ann. §18-60-606 (a).

(k) A sheriff's or land commissioner's deed, given in the usual form, without witnesses, shall be taken and considered by the court as sufficient evidence of the authority under which the sale was made, the description of the land, and the purchase price. Ark. Code Ann. §18-60-606 (b).

(l) There should be no confirmation of the sale of any lands that are in actual possession of any person claiming title adverse to the petitioner, nor shall there be any confirmation of the sale of lands unless the petitioner, or his grantor or those under whom he claims title, has paid the taxes on the lands for at least two years after the expiration of the right of redemption, the payment of taxes to be three consecutive years immediately prior to the application to confirm. Ark. Code Ann. §18-60-607 (a).

(m) With respect to land in levee and drainage improvement districts, there shall be no confirmation of sale unless title has been acquired as referred to in Ark. Code Ann. §18-60-601, nor unless the petitioner, or his grantor or grantors exhibit proof of payment of all taxes that are due against the lands in the district at the time of the

rendition of the decree of confirmation by the court. Ark. Code Ann. §18-60-607 (b).

(n) The judgment of the court confirming the sale shall operate as a complete bar against any and all persons who may thereafter claim the land in consequence of informality or illegality in the proceedings. The title to the land shall be considered as confirmed and complete in the purchaser thereof, his heirs and assigns forever, saving, however, to infants, persons of unsound mind, or individuals imprisoned overseas, the right to appear and contest the title to the land within one year after their disabilities may be removed. Ark. Code Ann. §18-60-608 (a).

(o) The decree shall not be valid for any purpose as against the owner of the land, his heirs or assigns, who was, at the time of the decree rendered, in actual possession of it, unless he is made a party to the action by personal service of notice. Ark. Code Ann. §18-60-608(b).

(p) Effect of title not confirmed shall be as given by existing laws. Ark. Code Ann. §18-60-609.

(q) When no opposition is made to the confirmation of the sale, the costs attending the proceedings shall be paid by the party praying for confirmation. Where opposition is made, the costs shall be borne by the party against whom judgment is rendered. Ark. Code Ann. §18-60-610.

EASEMENTS

1. Types of Easements

(a) Prescriptive

(i) Adverse use of privilege with the knowledge of the person against whom the easement is claimed; or

(ii) Use so open, notorious, and uninterrupted that knowledge will be presumed; and

(iii) Use must be exercised under a claim of right adverse to the owner and acquiesced in by him.

Kelley v. Westover, 56 Ark. App. 56, 938 S.W.2d 235 (1997)*; Owners Assoc. of Foxcroft Woods, Inc., et al. v. Foxglen Associates, et al.,* 346 Ark. 354, 57 S.W.3d 187 (2001); *Gazaway v. Pugh,* 69 Ark. App. 297, 12 S.W.3d 662 (2000) (public prescriptive easement).

(b) Appurtenant

(i) Serves a parcel of land known as the dominant tenement while the parcel of land on which the easement is imposed is known as the servient tenement; and

(ii) Runs with the land.

Riffle v. Worthen, 327 Ark. 470, 939 S.W.2d 294 (1997); *Wilson v. Brown*, 320 Ark. 240, 897 S.W.2d 546 (1995).

(c) In Gross

(i) Benefits a person or entity, not the land so no servient tenement;

(ii) Personal to grantors.

Winningham v. Harris, 64 Ark. App. 239, 981 S.W.2d 540; (1998) *Riffle v. Worthen*, 327 Ark. 470, 939 S.W.2d 294 (1997).

(d) Of Necessity or By Implication

(i) Unity of title as one person or entity once held title to both tracts; and

(ii) Unity of title was severed by conveyance of one of the tracts; and

(iii) Easement is necessary so that owner of dominant tenement may use owner's land (*Kralicek v. Chaffey*, 67 Ark. App. 273, 998 S.W.2d 765 (1999)); and

(iv) Necessity must exist both at time of severance of title and at time easement is exercised.

Riffle v. Worthen, 327 Ark. 470, 939 S.W.2d 294 (1997)*; Black v. Van Steenwyk*, 333 Ark. 629, 970 S.W.2d 280 (1998); *R & T Properties, LLC. v. Reyna*, 76 Ark. App. 198, 61 S.W.3d 229 (2001).

RESTRICTIVE COVENANTS

1. Generally

(a) Courts do not favor restrictions upon the use of land.

(b) If such restrictions exist, they must be clearly apparent.

Holmesley v. Walk, 72 Ark. App. 433, 39 S.W.3d 463 (2001).

2. Guidelines

(a) The intention of the parties as shown by the covenant governs;

(b) Where there is uncertainty in the language by which a grantor in a deed attempts to restrict the use of realty, freedom from restraint should be decreed;

(c) When the language of the covenant is clear and unambiguous, the parties will be confined to the meaning of the language employed;

(d) It is improper to inquire into the surrounding circumstances or the objects and purposes of the restriction for aid in its construction;

(e) Strict rules of construction shall not be applied in such a way as to defeat the plain and obvious purpose of the restriction.

Barber v. Watson, 330 Ark. 250, 953 S.W.2d 579 (1997); *Holaday v. Fraker*, 323 Ark. 522, 920 S.W.2d 4 (1996); *Holmesley v. Walk*, 72 Ark. App. 433, 39 S.W.3d 463 (2001).

3. Statutory Provisions

(a) Courts can use discretion when considering injunctions or damages regarding encroachment of interior setback lines in residential subdivision restrictive covenants.

(b) If the court finds that a violation is *de minimis*, no attorney's fees shall be awarded to party seeking to enforce restriction.

RECEIVERSHIP

1. Appointment

Circuit courts may appoint receivers for any lawful purpose when such appointment shall be deemed necessary and proper. The receiver shall give bond, with sufficient security, in an amount to be approved by the court, for the benefit of all persons in interest. The receiver shall likewise take an oath to faithfully perform the duties reposed in him by the court.

Ark. R. Civ. P. 66 (a); *Fewell v. Pickens,* 346 Ark. 246, 57 S.W.3d 144 (2001) (waiver of statutory

rights); *Fewell v. Pickens,* 344 Ark. 368, 39 S.W.3d 447 (2001) (appointment of receiver); *Union Planters National Bank v. East Central Arkansas Economic Development Corp.*, 340 Ark. 706, 13 S.W.3d 578 (2000).

2. Reports

The receiver shall make a report of his proceedings and actions every six months or at such other times as directed by the court. All money or property collected by the receiver shall be accounted for and deposited into court or otherwise be subject to the orders of the court. Ark. R. Civ. P. 66 (b).

3. Employment of Others

Subject to the approval of the court, the receiver shall have power to employ an attorney, an accountant, or such other persons as may be necessary to conduct the business or affairs entrusted to the receiver. The wages or fees paid by the receiver shall be paid as an expense from the assets collected by him. Ark. R. Civ. P. 66 (c).

4. Removal

Receivers may be removed at any time by the court for good cause. Substitute receivers shall be subject to the same requirements as the previous receiver. Ark. R. Civ. P. 66 (d).

5. Dismissal of Action

No action wherein a receiver has been appointed shall be dismissed except by order of the court. Ark. R. Civ. P. 66 (e).

MECHANICS' AND MATERIALMEN'S LIENS

1. Enforcement

The liens shall be enforced by foreclosure, and the property ordered sold subject to the lien of the prior encumbrance on the real estate.

Ark. Code Ann. §18-44-110; *Simmons First Bank of Arkansas v. Callahan Services, Inc.*, 340 Ark. 692, 13 S.W.3d 570 (2000).

2. Procedure

(a) Such actions must be commenced within fifteen months after the lien is filed and prosecuted without unnecessary delay.

Ark. Code Ann. §18-44-119; *Books-A-Million v. Ark. Paint & Spec.*, 340 Ark. 467, 10 S.W.3d 857 (2000) (notice provisions of Ark. Code Ann. §§18-44-114-115 must be strictly construed).

(b) The proceedings shall be the same as in ordinary civil actions but the petition shall:

(i) Allege facts necessary for securing a lien; and

(ii) Contain a description of the property charged with the lien.

Ark. Code Ann. §18-44-122.

(c) All parties to the contract and all interested persons may be made parties, but those not made parties shall not be bound by outcome. Ark. Code Ann. §18-44-123.

(d) The court shall determine the amount of the indebtedness that may not exceed the amount demanded plus interest and costs. Ark. Code Ann. §18-44-127.

(e) When any contractor, subcontractor, or material supplier, who has filed a lien, gives notice thereof to the debtor or owner of property which has been subjected to the lien in writing sent by registered or certified mail, and the claim has not been paid within twenty days from the date of the mailing, and if the contractor, subcontractor, or material supplier is required to sue for the enforcement of his claim, the court shall allow the successful party in the action a reasonable attorney's fee in addition to other relief to which he may be entitled. Ark. Code Ann. §18-44-128.

EQUITABLE LIENS

1. Purpose

See, Brill, *Equity and Restitutionary Remedies*, 1992 Ark. L. Notes 1.

(a) An equitable lien is defined as a right, not existing at law, to have specific property applied in whole or in part to payment of a particular debt or class of debts.

Ballentine's Law Dictionary.

(b) Remedy is judicially created to prevent unjust enrichment.

(c) Court can fashion terms of the equitable lien to the particular fact situation.

2. Limitations

(a) Remedy does not vest title in the plaintiff.

(b) Scope of priority as to third parties is limited.

(c) Does not award specific restitution.

3. Conditions

(a) Funds must be capable of being traced to a particular *res*.

(b) Party against whom lien is imposed must be liable for the unjust enrichment claim.

4. Examples

(a) The vendor of land has an equitable lien on land for the unpaid purchase price that is valid against both the purchaser and subsequent purchasers with notice. *Back v. Union Life Insurance Co*., 5 Ark. App. 176, 634 S.W.2d 150 (1982).

(b) A similar equitable lien is created in favor of the seller of personal property on the property. *Borengasser v. Chatwell*, 207 Ark. 608, 182 S.W.2d 389 (1944).

(c) Merely lending money for the purchase of property does not create an equitable lien in favor of the lender. *Lowery v. Lowery*, 251 Ark. 613, 473 S.W.2d 431 (1971).

(d) When the evidence shows no agreement to give the lender a lien, or that the lender was defrauded or tricked into making a loan, or that the lender expected any security other than the parties' notes and their promise to repay the loan, it is error to impress an equitable lien upon a homestead as security for the loan. *Hunter v. Johnston*, 226 Ark. 792, 294 S.W.2d 49 (1956).

(e) Divorce case in which parents of couple received a benefit, a house built by the couple on the parents' land. Rather than impose an equitable lien, the appellate court found that, in the absence of fraud, a mere money judgment would be an adequate remedy. *Mitchell v. Mitchell*, 28 Ark. App. 295, 773 S.W.2d 853 (1989).

EQUITABLE DEFENSES

1. Unclean Hands

See, Dan B. Dobbs, *Law of Remedies*, § 2.4, at 92 (2nd. ed. 1993).

(a) Purpose

(i) To protect the interest of the public on the grounds of public policy and to protect the integrity of the court.

Brill, *The Maxims of Equity*, 1993 Ark. Law Notes 29.

(ii) To bar a party from equitable relief.

Grable v. Grable, 307 Ark. 410 , 821 S.W.2d 16 (1991).

(b) Definition

A party has unclean hands when he intentionally engages in illegal, fraudulent, or unconscionable behavior directly related to the subject matter of the litigation or the matter in controversy.

(c) Application

(i) Court has discretion to determine whether the interest of justice requires the application of the unclean-hands doctrine. *Grable v. Grable*, 307 Ark. 410, 821 S.W.2d 16 (1991).

(ii) Only a defendant who has been injured by the conduct can raise the unclean-hands defense. *Moore v. Moore*, 21 Ark. App. 165, 731 S.W.2d 215 (1987).

(iii) The clean-hands maxim bars relief to those guilty of improper conduct in the matter as to which they seek relief. *Word v. Remick*, 75 Ark. App. 390, 58 S.W.3d 422 (2001).

(iv) Equity will not intervene on behalf of a plaintiff whose conduct in connection with the same matter has been unconscientious or unjust.

(v) Public policy may override the defense of unclean hands. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

2. Laches

(a) Purpose

Laches may be raised to bar a party from equitable relief.

Dan B. Dobbs, *Law of Remedies*, § 2.4, at 103 (2nd. ed. 1993).

(b) Definition

Laches is an unreasonable delay by the plaintiff in prosecuting a claim or protecting a right that the plaintiff knew or should have known and under the circumstances causes prejudice to the defendant.

(c) Application

(i) Laches is based on equitable principals premised on some detrimental change in position made in reliance upon the action or inaction of the other party. *Self v. Self*, 319 Ark. 632, 893 SW.2d 775 (1995).

(ii) Party to whom laches is imputed has knowledge of his rights and the opportunity to assert them. Because of his delay, an adverse party has good reason to believe the rights are worthless or have been abandoned. It would be unjust due to the change in the conditions during the delay.

(iii) A party is chargeable with such knowledge as might have been obtained upon reasonable inquiry, provided the facts as known to him were such as to put a duty of inquiry upon a person of reasonable intelligence.

(iv) Each case depends on its particular circumstances.

(v) Doctrine cannot be involved to defeat right of city to enforce its ordinances.

Duchac v. City of Hot Springs, 67 Ark. App. 98, 992 S.W.2d 174 (1999).

3. Equitable Estoppel

See Dan B. Dobbs, *Law of Remedies*,§ 2.3(5) at 86 (2nd. ed. 1993).

(a) Purpose

Estoppel when established affects equitable and legal remedies.

(b) Definition

> The doctrine by which a person may be precluded, by his act or conduct or silence when it is clearly his duty to speak, from asserting a right to which he otherwise would have had.

Black's Law Dictionary, 483 (5th ed. 1979); *Cavaliere v. Skelton*, 73 Ark. App. 188, 40 S.W.3d 844 (2001); *Smith v. Parker*, 67 Ark. App. 221, 998 S.W.2d 1 (1999).

(c) Application

(i) Estoppel involves both parties; the party claiming estoppel must prove that he relied in good faith on some act by the other party and that in reliance on that act he changed his position to his detriment. *Undem v. First National Bank*, 46 Ark. App. 158, 879 SW.2d 451 (1994).

(ii) A party who by his acts, declarations or admissions, or by his failure to act or speak under circumstances where he should do so, either with design or willful disregard of others, induces or misleads another to conduct or dealings which would not have been entered upon, but for such misleading influence, will not be allowed to assert his right to the detriment of the person so mislead.

(iii) Estoppel is applicable as an issue of fact to be decided by the trier of fact.

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AFFINITY AND CONSANGUINITY RELATIONSHIP CHART

		Great grand-uncle 4	Great grandfather's father 4
Second cousin 3	Great uncle's son 3	Great uncle 3	Great Grandfather 3
Son of the cousin-german 3	Cousin-german 2	Uncle 2	Grandfather 2
Grand-nephew 3	Nephew 2	Brother 2	Father 1
			Propositus
			Son 1
			Grandson 2
			Great Grandson 3

VOIR DIRE OATH

"Do each of you solemnly swear that you will truthfully answer all questions that may be asked of you by court or by counsel concerning your qualifications to serve as jurors of this case."

OATH OF JURY - CIVIL

"I do solemnly swear (or affirm) that I will well and truly try each and all of the issues submitted to me as a juror and a true verdict render according to the law and the evidence."

OATH OF JURY - CRIMINAL

"You, and each of you, do solemnly swear, that you will well and truly try the case of the State of Arkansas against A.B., and a true verdict render, unless discharged by the court or withdrawn by the parties." (A.C.A. 16-89-109)

ADMONISHMENT UPON RECESS

"During any recess or adjournment you must not discuss this case among yourselves or with anyone else and you must not permit anyone to discuss the case with you or in your presence. If anyone attempts to discuss the case with you or in your presence, get his name and report him to me immediately.

Furthermore, during any recess or adjournment you must not talk to any of the attorneys, parties, or witnesses about anything. You should not even pass the time of day with them in the courthouse or elsewhere. I say this, not because I think you would discuss this case with them, but simply because it is not proper for you to be seen talking with one side or the other. In other words, it is important that you be, and appear to be, impartial at all times during the trial of this case."

OATH TO BAILIFF

"You solemnly swear that you will suffer no person to speak or communicate with the jury on any subject connected with the trial, nor do so yourself, except the mere showing of the place to be viewed, and return them into court without unnecessary delay, or at _____ (specified time)."

OATH TO INTERPRETER

"Do you solemnly swear (or affirm) that you will justly, truly and impartially interpret to _____ the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court, so help you God (or under the pains and penalties of perjury)?" (A.C.A. 16-89-104)

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, _____, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to pre-pay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed? Yes_____ No_____

   a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.
   b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

   a. Business, profession or any form of self-employment? Yes _____ No _____
   b. Rent payments, interest or dividends? Yes _____ No _____
   c. Pensions, annuities or life insurance payments? Yes _____ No _____
   d. Gifts or inheritances? Yes _____ No _____
   e. Any other sources? Yes _____ No _____

   If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months._____
   _____
   _____

3. Do you own any cash, or do you have money in a checking or savings account? Yes _____ No _____

If the answer is yes, state the total amount in each account: _____

_____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
Yes _____ No _____
If the answer is yes, describe the property and state its approximate value. _____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

_____

_____

6. TO BE COMPLETED IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare fund?
Yes _____ No _____

If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

_____
Signature of Petitioner

STATE OF _____
COUNTY OF _____

Petitioner, _____, being first duly sworn under oath, presents that he/she has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

_____
Notary Public

My Commission Expires:

_____

If the answer to question 6 is yes, the following must be completed.

CERTIFICATE

I hereby certify that the petitioner herein, _____,

has the sum of $_____ on account to his/her credit at the _____ institution where he/she is confined. I further certify that petitioner likewise has the following securities to his/her credit according to the records of said _____ institution. _____

_____

_____.

_____
Authorized Officer of Institution

Defendant (is) (is not) determined to be indigent.

_____
CIRCUIT JUDGE

ENTERED: _____

REQUEST FOR JUROR SERVICES (ACT 897)

County of : _____ _____ **Division**

Date of Request: _____

Date of Jury Orientation: _____

Juror Call in Number: _____

Length of Service: _____

County Contact Person: _____

Telephone Number: _____

Information Regarding Person Requiring Services:

Name: _____

Address: _____

_____

Telephone: (home): VP/TTY/V/TEXT (circle one) Telephone: (work): VP/TTY/V/TEXT (circle one)

_____

_____ Deaf _____ Hard of Hearing _____ Deaf blind _____ Blind
(check what applies)

Type of Accommodation Requested:

_____ American Sign Language (ASL) _____ Oral Interpreter

_____ Amplification Device _____ Reader for visually impaired

_____ Real Time Captioning _____ Other

Additional Pertinent Information: _____

_____

FAX TO COURT INTERPRETER SERVICES AT 501-682-7495

_____
Date Received by AOC

ADMINISTRATIVE OFFICE OF THE COURTS

FOREIGN LANGUAGE INTERPRETER COMPENSATION POLICY

The 2005 Arkansas General Assembly again appropriated funds for the purpose of reimbursing the services of eligible foreign language interpreters who serve during in-court proceedings in the state's circuit and district courts. Because the amount of money available is insufficient to provide for the large number of interpreters providing services in the state, local courts are urged to continue to rely upon available local resources or the resources of the parties involved in the litigation. The Administrative Office of the Courts also employs two full time Spanish interpreters who are available on request and as time permits to provide direct interpreter services to local courts.

ELIGIBLE FOREIGN LANGUAGE INTERPRETER

An **eligible** foreign language interpreter is one whose name appears on the current registry of interpreters maintained by the AOC and who has been appointed by the presiding judge to serve in a particular case or cases. An eligible foreign language interpreter may also be an interpreter currently certified or qualified by another state which is a member of the Consortium for State Court Interpreter Certification or who is certified by the U.S. Courts. Written verification of current certification/qualification by the certifying entity is required.

PROCEDURE FOR PAYMENT

When a state circuit or district court becomes aware that a foreign language interpreter will be needed for an in-court proceeding, the AOC should be notified by calling the Foreign Language Interpreter Program Director, Ms. Mara Simmons at 1-800-950-8221. If a Spanish interpreter is required and the AOC interpreters are available, they will be scheduled to interpret for the proceeding. If interpretation for a language other than Spanish is required or if AOC staff interpreters are not available, the AOC will assist the local court in contracting with an available interpreter who is listed on the registry of interpreters.

At the conclusion of the interpreter's court appointed services, the interpreter will complete the appropriate portion of the interpreter payment form prescribed by the Administrative Office of the Courts and present it to the judge for approval. The judge will certify that the party requiring the interpreter was indigent and unable to otherwise afford the services of an interpreter and that the interpreter provided the services for the court. The interpreter will then forward the form to the Administrative Office of the Courts for payment.

In the event that the services of an interpreter are arranged locally without the knowledge or assistance of the Administrative Office of the Courts, the responsibility for payment of the interpreter's fees and costs will be with the local court.

RATE OF PAYMENT

A **certified interpreter,** as denoted on the registry of interpreters, will be paid $50.00 per hour for in-court services with a guaranteed one hour minimum. Additional hours in increments of 15 minutes will be paid at a rate of $40.00 per hour. Travel time will be reimbursed at the rate of $20.00 per hour. Mileage will be reimbursed at the rate of .37 cents per mile. Travel time and mileage will be reimbursed **ONLY** when the certified interpreter is required to travel outside of the county where he or she resides. Notice of the cancellation of a proceeding for which a certified interpreter has been scheduled should be provided by the Court to the Administrative Office of the Courts as soon as possible. The AOC will contact the certified interpreter immediately. In the event that notice of a cancellation is provided more than 24 hours prior to the commencement of the proceeding the certified interpreter will not be entitled to any payment. In the event that notice of a cancellation is provided less than 24 hours prior to the commencement of the proceeding, the certified interpreter will be paid the one hour minimum for any proceeding which was set for less than one full day and a rate equal to four hours of service for any proceeding which was set for more than one full day.

An interpreter whose name on the registry of interpreters appears as a **candidate for certification** will be paid $20.00 per hour with a guaranteed one hour minimum. Additional hours should be billed in increments of 15 minutes. Mileage will be reimbursed at the rate of .37 cents per mile when the candidate for certification is required to travel outside of the county where he or she resides. (Travel time will not be reimbursed to **candidates for certification** even when traveling outside of the county where he or she resides).

Nothing contained herein precludes the presiding judge from ordering exclusive or additional payment from another source as he or she deems appropriate (provided, Title II of the Americans with Disabilities Act prohibits courts from including interpreter's fees in the "court cost"). 56 Fed Reg 35705-06(July 26, 1991).

LIMITATION

Any payment from state funds is contingent upon verification by the AOC that (1) the interpreter is eligible for payment, (2) the procedures outlined in this policy have been followed, and (3) sufficient funds are available. Should it become necessary, based upon balances within the fund, preference for payment will be given to felony criminal cases and then to juvenile delinquency matters. The Director of the Administrative Office of the Courts will be the final arbiter for contested payments.

Revised: 07/01/05

REQUEST FOR REIMBURSEMENT FOR FOREIGN LANGUAGE INTERPRETER SERVICES

To Be Completed By Interpreter

ᵀrpreter Name and Address

_____

_____

_____

_____

Telephone ( ) _____

☐Certified Interpreter or ☐Candidate for Certification

Language _____

Services Provided to the **INV.#**_____

☐Circuit or ☐District Court of:

City _____

Judge _____

Case Information

_____ v. _____ Case # _____

_____ v. _____ Case # _____

_____ v. _____ Case # _____

Date Services Provided _____

Arrival Time _____ Departure Time _____ Total Time in Court _____

Total Court Fee $ _____

ᵀel Time_____ @ $20.00 hr (Certified Interpreter Only) Total Travel Fee $ _____

ᵉage Incurred From _____

to _____

Total Miles _____ Total fee for mileage @ .37/mile $ _____

TOTAL APPEARANCE FEE REQUESTED $_____

I hereby certify that I am eligible for payment for my services as indicated above and that the information provided is correct to the best of my knowledge and belief.

Submitted this _____ day of _____, _____.

SSN- - - Signature of Interpreter _____

To Be Completed By Judge

I hereby certify that interpreter services were provided to my court as indicated above and that the interpreter is eligible for reimbursement from the AOC. I further certify that the party requiring interpreter services was indigent and unable to afford the services of the interpreter.

Signature of Judge_____

To Be Completed By AOC

Total Fee Approved $_____

Travel Time Approved $_____

Total Mileage Approved $_____

Approved by _____ TOTAL FEE PAID $_____

ADMINISTRATIVE OFFICE OF THE COURTS
FOREIGN LANGUAGE INTERPRETER
FAX REQUEST FORM
FAX 501/682-9410

(NO COVER SHEET NECESSARY WHEN USING THIS FORM)

ALL FAXED REQUESTS MUST MEET A 72 HR. MINIMUM PRIOR TO DATE INTERPRETER IS REQUIRED - IF LESS THAN 72 HRS. PLEASE CALL 501/682-9400 OR 800/950-8221

COUNTY _____ CITY _____

CIRCUIT COURT ☐ DISTRICT COURT ☐ NAME OF JUDGE _____

_____

TELEPHONE NUMBER ____/_____ FAX NUMBER ____/_____.

NAME OF PERSON REQUESTING INTERPRETER _____

DATE F.L.I. REQUIRED _____
(Foreign Language Interpreter)
TIME F.L.I. REQUIRED _____

NAME OF DEFENDANT (S)

_____
_____
_____

CASE NUMBER (S)

_____
_____
_____

CHARGE (S)

_____
_____
_____

TYPE OF CASE (example: Jury Trial, Hearing, etc.)

_____

LANGUAGE REQUESTED

_____

OTHER INFORMATION

_____
_____

REMINDER:
CALL OR FAX-IN ANY CHANGES OR CANCELLATIONS AS SOON AS YOU ARE AWARE OF THEM.

TELEPHONE INTERPRETING ☐
(Please check box if requesting remote interpreting)

FOR AOC USE ONLY

Date request received _____
Date entered into computer _____
Date Interpreter assigned _____
Interpreter's name assigned to case

_____

Date Confirmed _____
by _____

Cancellation received _____

Change of date received _____

Time change received _____

CHANGES TO REQUESTS

CANCEL REQUEST _____

CHANGE DATE TO _____

CHANGE TIME TO _____

AFFIDAVIT OF FINANCIAL INABILITY TO EMPLOY COUNSEL

The undersigned, being first duly sworn on oath, deposes and says:

I am the Defendant in the above-entitled action; I want an attorney to represent me in the defense of the above-entitled action. I am financially unable to obtain the services of an attorney without causing substantial hardship to myself or to my family; the following information is true and is given and intended to be relied upon by the Court and other persons or agencies in determining eligibility for legal services to be furnished me at public expense.

I. General Information.

1. Name _____ Date _____
2. Social Security Number _____
   Birth Date _____
3. Address _____
   _____
4. Married _____ Single _____
   Number of Dependents _____
5. Charge _____
6. Arresting Agency: City _____ County _____ State _____
7. Custody at time of application _____
8. Amount of Bail _____

II. Income and Assets.

1. Monthly or weekly income _____
2. Employer or other source of income (including government agency _____
3. Monthly or weekly income of spouse or dependents
   _____
4. Employer or other source of spouse's and dependent's incomes (including government agency) _____
5. I have no other sources of income or benefits except (include interest, dividends, etc.) _____
6. Cash: Savings Account _____ Checking Account _____
   On Hand _____
7. Home or other real estate: Value _____ Equity _____
8. Automobile _____
9. Motorcycle _____
10. Furniture _____
11. Notes, mortgages, trust deeds _____
12. Stocks, bonds _____
13. Other assets and property _____
14. Jewelry _____
15. Any indebtedness owing to defendant _____
16. Other personal property _____
17. Money:
    a. In jail _____ b. At home _____
    c. Checking account _____ d. Savings account _____
    e. Safe deposit box _____ f. Other _____

III. Expenses and Debts.

1. Monthly living expenses _____
   (Itemize)
   Rent or mortgage _____
   Food _____
   Utilities _____
   Transportation _____
   Installment Payments _____
   Medical and Dental _____
   Insurance _____
   Other _____

2. List the persons who are dependent upon you for support, state your relationship to each person, and show how much you contribute monthly to their support. _____
   _____
   _____

3. Debts:
   Creditor _____ Amount Owed _____
   _____ _____
   _____ _____

I declare under penalty of perjury that the foregoing is true and correct.

DATED AND SIGNED this _____ day of _____, ___.

_____
DEFENDANT

WAIVER OF COUNSEL

I understand that under the constitutions and criminal case law of the United States and the statutes and criminal rules of procedure of the State of Arkansas, I am entitled to and will be provided counsel free of charge if I am financially unable to obtain one without causing substantial hardship to myself or to my family.

I understand further that this Court will not continue further in this proceeding until counsel is provided if I request it, and knowing this, I hereby voluntarily and with knowledge of the above rights waive counsel. I further understand that my waiver of counsel at this time shall not preclude me from claiming a right to counsel in future proceedings in this cause, and I have been so informed orally of this by the Court.

DATED AND SIGNED this _____ day of _____, ____.

_____
DEFENDANT

I have questioned the defendant and find that he/she intelligently and knowingly waived counsel and was competent to do so.

_____
JUDICIAL OFFICER

BOND FORM

BOND FOR RELEASE AND CONDITIONS OF RECOGNIZANCE OR BAIL

Pursuant to the Rules of Criminal Procedure 9.1 or 9.2, the defendant is to be released from jail on this charge absent a detainer upon fulfilling the requirements indicated and, by signing this bond, acknowledges the obligation to not violate any law, to comply with the conditions to appear before this court as required and to keep the court informed in writing of any change of address or employment.

KIND OF BOND

____ Personal Recognizance

____ Unsecured Bond in the amount of $_____

____ Cash Deposit of 10% for bond of $_____

____ Cash, Secured or Surety bond of $_____

SPECIAL CONDITIONS

____ Guaranteed by _____

____ Travel restricted to _____

____ Submit to (drug screens) (substance abuse treatment) ____

____ Other conditions _____

_____

I UNDERSTAND THAT FAILURE TO APPEAR AT SUCH TIMES DIRECTED MAY RESULT IN FORFEITURE OF BOND, THE ISSUANCE OF A WARRANT FOR MY ARREST, ASSESSMENT OF COURT COST AND THE FILING OF ADDITIONAL CHARGES AGAINST ME. I CERTIFY THAT THE INFORMATION SUPPLIED ON THE REVERSE IS CORRECT.

_____
DEFENDANT'S SIGNATURE

I/We guarantee the payment of the above bond in the event that the defendant fails to appear, otherwise this guarantee is to be void.

_____
GUARANTOR

_____
GUARANTEE

APPROVED:

_____
CIRCUIT JUDGE
DATED: _____

CASE ID _____

NAME _____ DOB _____

PRESENT ADDRESS: RACE _____ SEX _____

_____ SS NO. _____

_____ TELEPHONE _____

PRIOR ADDRESS: _____

PRESENT EMPLOYER: _____

ADDRESS: _____ TELEPHONE _____

VEHICLE YOU OWN OR DRIVE: Make _____ Model _____ Color _____

License No. _____ Drivers License No. _____

SPOUSE/ROOMMATE: _____ TELEPHONE _____

EMPLOYER: _____ TELEPHONE _____

LIST NAME AND RELATIONSHIP OF AT LEAST THREE (3) ADULT MEMBERS OF YOUR IMMEDIATE FAMILY (MOTHER/FATHER, BROTHER, SISTER, GRANDPARENT, AUNT/UNCLE). GIVE ADDRESS, TELEPHONE NUMBER AND PLACE OF EMPLOYMENT:

1. _____

2. _____

3. _____

LIST THREE (3) PERSONS OTHER THAN MEMBERS OF YOUR IMMEDIATE FAMILY THAT WOULD NORMALLY KNOW HOW TO CONTACT YOU. GIVE NAME, ADDRESS, TELEPHONE NUMBER AND PLACE OF EMPLOYMENT:

1. _____

2. _____

3. _____

I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT:

_____
DEFENDANT

Guarantor: _____
Address: _____
Telephone: _____
Employer: _____

Guarantor: _____
Address: _____
Telephone: _____
Employer: _____

COMMITMENT TO JAIL TO AWAIT TRIAL

State of Arkansas, County of _____.
_____ having been arrested (on a warrant) for the criminal offense of _____ and brought before me, and after hearing evidence, and having determined a criminal offense was committed and that there is probable cause that the defendant committed the offense, it is ordered that the defendant be committed for trial for the offense of _____.
The jailer of _____county is hereby ordered to receive and safely keep the defendant until discharged by due process of law.

DATED: _____, _____.

_____
JUDICIAL OFFICER

ARRAIGNMENT

On this _____ day of _____, _____, this cause was called with the State of Arkansas appearing by the prosecuting attorney and the defendant, _____, and (his) (her) attorney, _____, being present in court, [(capital cases only] and it appearing to the Court that the defendant [was served with a copy of the (indictment) (information) herein at least two entire days prior to this time] [has waived the 48 hour period prescribed by A.C.A. §16-85-704]] the Court proceeded to cause defendant to be arraigned as follows:

The name of the defendant, _____, as stated in the (indictment) (information) was called and said pleading was then read to the defendant or reading was waived and (he) (she) was asked if (he) (she) was guilty or not guilty as therein charged, whereupon defendant answered in person in open court _____ and the plea of _____ is now entered of record upon the Minutes of this Court.

This cause is hereby set for trial at _____o'clock ____.m. on the _____ day of _____, _____.

_____
JUDICIAL OFFICER

PLEA OF GUILTY WITHOUT RECOMMENDATION

DECLARATIONS, WAIVER OF RIGHTS, AND STATEMENT OF GUILT
NO AGREEMENT OF PUNISHMENT

I, the defendant, appear with my attorney, _____, and with this paper show that I understand the charge(s) against me, the range of punishment, my rights as an accused, that I voluntarily waive those rights and admit my guilt. If my plea of guilty is not accepted by the judge, I may withdraw my plea and nothing here can be used against me. ____ (Initial)

I have completed ____ years of school. I am/am not able to read. I am not under the influence of any alcohol, drug or substance. I know what I am doing. I have not been promised anything and no one has threatened me in any way. ____ (Initial)

I have told my lawyer all of the facts and identity of any witnesses. I have been advised of my rights and possible defenses. I am satisfied with my lawyer who has provide all of the legal services asked except:

____ I am giving up my right to plead not guilty and to:
____ Have the help of a lawyer throughout the trial and appeal if convicted.
____ Have a presumption of innocence in my favor.
____ Make the state prove my guilt beyond a reasonable doubt.
____ See and hear those who testify against me and ask questions of them while they are under oath.
____ Have my own choice to testify or not.
____ Make witnesses attend court and testify.
____ Have a verdict where all jurors agree.
____ Have the jury set my punishment if I am found guilty of anything; and
____ Have an appeal and review by a higher court.

I am charged as stated the range of punishment opposite and enter my written plea:

Count	Offense	M or F	Class	Punishment Range	Plea

We, by our signatures, certify that we understand and have reviewed the above, that the answers are correct and the plea(s) of guilty are justified by the facts.

_____ _____ _____
DATE DEFENSE ATTORNEY DEFENDANT

NO AGREEMENT ON PUNISHMENT

The defendant and defense attorney state that no promise or agreement has been made about probation, suspension, length of imprisonment, early parole, or anything else regarding punishment it being understood that the judge may set punishment up to the maximum authorized.

_____ _____
DEFENSE ATTORNEY DEFENDANT

PLEA OF GUILTY WITH RECOMMENDATION

DECLARATIONS, WAIVER OF RIGHTS, AND STATEMENT OF GUILT
NO AGREEMENT OF PUNISHMENT

I, the defendant, appear with my attorney, _____, and with this paper show that I understand the charge(s) against me, the range of punishment, my rights as an accused, that I voluntarily waive those rights and admit my guilt. The understanding of punishment is written and signed on the reverse. If either my plea of guilty or the understood punishment is not accepted by the judge, I may withdraw my plea and nothing here can be used against me. ____ (Initial)

I have completed ____ years of school. I am/am not able to read. I am not under the influence of any alcohol, drug or substance. I know what I am doing. I have not been promised anything other than that stated on the reverse and no one has threatened me in any way. ____ (Initial)

I have told my lawyer all of the facts and identity of any witnesses. I have been advised of my rights and possible defenses. I am satisfied with my lawyer who has provide all of the legal services asked. ____ (Initial)

____ I am giving up my right to plead not guilty and to:
____ Have the help of a lawyer throughout the trial and appeal if convicted.
____ Have a presumption of innocence in my favor.
____ Make the state prove my guilt beyond a reasonable doubt.
____ See and hear those who testify against me and ask questions of them while they are under oath.
____ Have my own choice to testify or not.
____ Make witnesses attend court and testify.
____ Have a verdict where all jurors agree.
____ Have the jury set my punishment if I am found guilty of anything; and
____ Have an appeal and review by a higher court.

I am charged as stated the range of punishment opposite and enter my written plea:

Count	Offense	M or F	Class	Punishment Range	Plea

We, by our signatures, certify that we understand and have reviewed the above, that the answers are correct and the plea(s) of guilty are justified by the facts.

_____ _____ _____
DATE DEFENSE ATTORNEY DEFENDANT

AGREED RECOMMENDATION OF PUNISHMENT

By our signatures, we, the defendant, defense attorney, and the prosecutor (with the concurrence of the victim(s)) all agree that upon acceptance of the plea(s) of guilty by the Judge, the defendant be punished as follows:

AS TO COUNT(S) _____ (Circle applicable letters and complete)

A. _____ years imprisonment in the Department of Correction with _____ years suspended and credit for _____ jail time
( ) Concurrent ( ) Consecutive

B. Probation for _____ years with _____ supervision and payment of monthly fee of $_____.

C. Suspend imposition of sentence for _____ years.

D. Serve a term of _____ in the County Jail with credit for _____. ( ) Concurrent ( ) Consecutive

E. Pay a fine of $_____ with $_____ suspended.

F. Pay Court costs.

G. Pay restitution of $_____ to victim(s).

H. Cooperatively participate and complete a program for _____.

I. Attend school without unexcused absences or disciplinary problems.

J. Enroll in and complete a course to obtain a GED.

K. Perform community service of _____ hours.

L. One day of Department of Correction under ACT 548.

M. Expungement under ACT 346.

N. Other:_____.

AS TO COUNT(S) _____ (Here specifically write provisions)

_____ _____
DEFENDANT STATE'S ATTORNEY

_____ DATE:_____
DEFENSE ATTORNEY

INSANITY DEFENSE AND ACQUITTAL

Table of Forms

CIRCUIT COURT ORDERS

Form 4.01	Order for Mental Health Evaluation of Defendant
Form 4.02	Not-Fit-To-Proceed Commitment Order
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Form 4.04	Order used when defendant regains fitness to proceed
Form 4.05	Judgment of Acquittal Because of Mental Disease or Defect [Explanation: This order should be used when the defendant raises the issue of mental disease or defect AND defendant remains affected.]
Form 4.06	Judgment of Acquittal Because of Mental Disease or Defect [Explanation: This order should be used when the defendant raises the issue of mental disease or defect AND defendant is no longer affected.]
Form 4.07	Judgment of Acquittal Because of Mental Disease or Defect [Explanation: This order should be used when the issue of mental disease or defect is raised by someone other than the defendant AND defendant remains affected.]

*** Forms Courtesy of Prosecutor Coordinator's Office

Form 4.08 Judgment of Acquittal Because of Mental Disease or Defect

[Explanation: This order should be used when issue of mental disease or defect is raised by someone other than the defendant AND defendant is no longer affected.]

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS

V. **CR_____**

_____ _____ _____ _____

FULL NAME OF DEFENDANT DATE OF BIRTH SEX RACE

_____

DEFENDANT'S CUSTODY STATUS, LOCATION, AND ARREST TRACKING NUMBER

_____

OFFENSE (S) CHARGED

_____

PROSECUTOR'S NAME AND ADDRESS

_____

DEFENSE ATTORNEY'S NAME AND ADDRESS

ORDER FOR MENTAL HEALTH EVALUATION OF DEFENDANT

On the (check the one that applies) ____Motion of Defense Counsel **OR** ____upon reason to believe that mental disease or defect will become an issue in the cause, this Court orders:

1. That subject to the provisions in Ark. Code Ann. 5-2-305, all proceedings in the prosecution shall be immediately suspended.

2. That the Defendant shall undergo examination and observation:

a) ____ by one or more qualified psychiatrists or qualified psychologists, namely _____ practicing at _____.

b) ____ by one or more qualified psychiatrists, namely _____, not practicing in the Arkansas State Hospital, but at _____, to examine and report on the mental condition of the Defendant.

3a. ____ That this is an initial forensic examination and the Director of the Division of Mental Health Services or his designee shall determine the location of the examination;

or

3b. ____ That an examination was conducted pursuant to Ark. Code Ann. 5-2-305(b) and this Court orders further examination and observation to be conducted at the Arkansas State Hospital, or other appropriate facility, namely _____.

4. That the examination shall not exceed thirty (30) days, or such longer period as the Director of the Division of Mental Health Services or his designee determines to be necessary for the purpose of the examination.

5. That the qualified psychiatrist or psychologist designated to conduct the examination shall provide a report to this Court that shall include the following:

a. A description of the nature of the examination;
b. A substantiated diagnosis in the terminology of the current DSM;
c. An opinion on whether the Defendant, as a consequence of mental disease or defect, lacks the capacity to understand the proceedings against him and to assist effectively in his own defense;
d. A description of any evidence that the Defendant is feigning signs and symptoms of mental disease or defect;
e. ____ (check if required) When directed by the Court, an opinion as to the extent, if any, to which the capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired at the time of the conduct alleged. This opinion shall also include a description of the reasoning used by the examiner to support the opinion;
f. ____ (check if required) When directed by the Court, an opinion as to the capacity of the Defendant to have the culpable mental state that is required to establish an element of the offense charged. This opinion shall include a description of the reasoning used by the examiner to support the opinion;
g. A separate explanation of the signs and symptoms of mental disease or defect that led to the opinion on the presence of mental disease or defect;
h. A separate explanation of the evidence that supports the opinion of the examiner on the capacity of the Defendant to understand the proceedings against him or her and the Defendant's capacity to assist is his own defense;

i. If the examination cannot be conducted because of the unwillingness of the defendant to participate therein, then so state and include, if possible, an opinion as to whether such unwillingness of the defendant is the result of mental disease or defect.

6. That all public agencies are ordered to make all existing pertinent medical records available for inspection and copying to the examiners and to counsel.

7. That the examiner shall send copies of the report to the Court. The examiner shall file the report with the circuit clerk, and said clerk shall mail a copy to the defense counsel and to the prosecuting attorney.

IT IS SO ORDERED

_____ _____
SIGNATURE OF JUDGE PRINT JUDGE'S NAME

_____
DATE

Send copy to: Billy Burris, DMHS, 4313 West Markham, Little Rock, Arkansas, 72205
Facsimile transmittal number (501) 686-9182; telephone (501) 686-9174

FORM 4.02

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

V. CR - _____

_____ DEFENDANT

NOT-FIT-TO-PROCEED COMMITMENT ORDER

1. Comes now on this day to be heard the Motion of _____ _____, Defense Counsel, and from matters before the Court the Court DOTH FIND:

2. That based on the evaluation performed by _____ at the _____, it has been determined that the Defendant lacks the fitness to proceed at this time. Pursuant to A.C.A. Sec. 5-2-310, the proceedings against the Defendant are suspended and he/she is hereby committed to the custody of the Director of the Department of Human Services for detention, care and treatment until restoration of fitness to proceed.

3. As required by A.C.A. Sec. 5-2-310, a copy of the report filed pursuant to A.C.A. Sec. 5-2-305 shall be attached to this Order of Commitment.

4. The Director of the Department of Human Services, or his designee, is hereby ordered, pursuant to A.C.A. Sec. 5-2-310, to report back to this Court if within ten months the Defendant regains his fitness to proceed. Otherwise, the Department of Human

Services is to report ten months from the date of this order whether:

A. The defendant's mental disease or defect is of a nature precluding restoration of fitness to proceed; and

B. The defendant presents a danger to himself or to the person or property of others.

IT IS SO ORDERED this ___ day of _____, 20___.

_____
CIRCUIT JUDGE

FORM 4.03

(TO BE USED IF THE DEFENDANT REMAINS UNFIT TO PROCEED AFTER TREATMENT AND IS CONSIDERED DANGEROUS)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

V. CR - _____

_____ DEFENDANT

ORDER

COMES NOW to be heard on this day the report of the designee of the Director of the Department of Human Services regarding whether or not the Defendant remains unfit to proceed, pursuant to A.C.A. Sec. 5-2-310, and from matters before the Court the Court DOTH FIND:

1. That the Defendant remains unfit to proceed at this time;
2. That the Defendant presents a danger to himself or to the person or property of others;

THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED that the Director of the Department of Human Services, or his designee, shall petition forthwith for an involuntary admission, pursuant to A.C.A. Sec. 20-47-201, et. seq. The Director of the Department of Human Services, or his designee, shall report to this Court forthwith when Defendant becomes fit to proceed in this matter.

IT IS SO ORDERED this ___ day of _____, 20___.

_____
CIRCUIT JUDGE

FORM 4.04

(TO BE USED IF THE DEFENDANT BECOMES FIT TO PROCEED AFTER TREATMENT)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

V. CR - _____

_____ DEFENDANT

ORDER

COMES NOW to be heard on this day the report of the designee of the Director of the Department of Human Services regarding whether or not the Defendant remains unfit to proceed, pursuant to A.C.A. Sec. 5-2-310, and from matters before the Court, the Court DOTH FIND:

1. That the Defendant has regained fitness to proceed at this time;

2. That prosecution in the ordinary course may continue in this matter.

IT IS SO ORDERED this ___ day of _____, 20___.

_____
CIRCUIT JUDGE

FORM 4.05

(SAMPLE ORDER TO BE USED WHEN DEFENDANT RAISES ISSUE OF MENTAL DISEASE OR DEFECT AND REMAINS AFFECTED BY MENTAL MENTAL DISEASE OR DEFECT)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

V. CR- _____

_____

DEFENDANT

JUDGMENT OF ACQUITTAL BECAUSE OF MENTAL DISEASE OR DEFECT

Comes now on this day to be heard the Motion of _____, Defense Counsel, and from matters before the Court, the Court doth find:

1. That the above-named Defendant was charged with the criminal offense of _____, A.C.A. Sec. _____, and is represented by _____ as Defense Counsel.

2. That the Defendant was examined by

_____
(facility or individual who conducted evaluation)

pursuant to A.C.A. Sec. 5-2-305, to determine his/her capacity, as a result of mental disease or defect, to conform his conduct to the requirements of law or to appreciate the criminality of his conduct.

3. That _____
(facility or individual who conducted evaluation)

has subsequently completed the evaluation pursuant to the Order of this Court, and the findings concerning the Defendant's capacity or fitness to proceed are made a part of this Order.

4. That based on the evaluations of _____,
(facility or individual who conducted evaluation)
the State of Arkansas agrees that it would be in the best interest of justice that the Defendant be acquitted.

(NOTE: WHEN PREPARING THIS ORDER, USE <u>ONLY</u> <u>ONE</u> OF THE NO. 5 PARAGRAPHS BELOW. <u>DO NOT USE BOTH PARAGRAPHS IN THE SAME ORDER</u>!)

5. That this offense involved bodily injury to another person or serious damage to the property of another or involved a substantial risk of such injury or damage. That Defendant remains affected by mental disease or defect. That pursuant to A.C.A. Sec. 5-2-314, Defendant is committed to the custody of the Director of the Department of Human Services for further examination by a psychiatrist or licensed psychologist. -- OR --

5. That this offense did not involve bodily injury to another person or serious damage to the property of another, or involve a substantial risk of such injury or damage. That the Defendant remains affected by mental disease or defect. That pursuant to A.C.A. Sec. 5-2-314, the Defendant is committed to the custody of the Director of the Department of Human Services for further examination by a psychiatrist or licensed psychologist.

6. That the Director of the Department of Human Services shall file the psychiatric or psychological report with a circuit court having jurisdiction within thirty (30) days following entry of this Order.

7. That pursuant to A.C.A. Sec. 5-2-314, a hearing shall

take place not later than ten (10) days following the filing of the above report. If the acquittee is in need of Counsel for said hearing, it shall be appointed immediately upon filing of the original petition or report.

WHEREFORE, this Court finds that at the time of the offense, the Defendant lacked the capacity, as a result of mental disease or defect, to conform his/her conduct to the requirements of the law or to appreciate the criminality of his/her conduct. In addition, this Court also finds that the Defendant currently has the capacity to understand the proceedings against him/her and can assist effectively in his/her own defense. The Defendant should thus be acquitted of the offense by reason of his/her mental disease or defect and committed to the care and custody of the Director of the Department of Human Services for further treatment and evaluation.

The Sheriff of _____ County, Arkansas, is hereby directed to deliver Defendant to the care, custody and control of the Director the Department of Human Services for said evaluation and treatment.

IT IS SO ORDERED this ____ day of _____, 20___.

_____
CIRCUIT JUDGE

FORM 4.06

(SAMPLE ORDER TO BE USED WHEN DEFENDANT RAISES ISSUE OF MENTAL DISEASE OR DEFECT AND IS NO LONGER AFFECTED BY MENTAL DISEASE OR DEFECT)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

V. CR- _____

_____ DEFENDANT

JUDGMENT OF ACQUITTAL BECAUSE OF MENTAL DISEASE OR DEFECT

Comes now on this day to be heard the Motion of _____, Defense Counsel, and from matters before the Court, the Court doth find:

1. That the above-named Defendant was charged with the criminal offense of _____, A.C.A. Sec. _____, and is represented by _____ as Defense Counsel.

2. That the Defendant was examined by

_____
(facility or individual who conducted evaluation)

pursuant to A.C.A. Sec. 5-2-305, to determine his/her capacity, as a result of mental disease or defect, to conform his/her conduct to the requirements of law or to appreciate the criminality of his/her conduct.

3. That _____
(facility or individual who conducted evaluation)

has subsequently completed the evaluation pursuant to the Order of this Court, and the findings concerning the Defendant's capacity or fitness to proceed are made a part of this Order.

4. That based on the evaluations of

_____,
(facility or individual who conducted evaluation)

the State of Arkansas agrees that it would be in the best interest of justice that the Defendant be acquitted.

(NOTE: WHEN PREPARING THIS ORDER, USE ONLY ONE OF THE NO. 5 PARAGRAPHS BELOW. DO NOT USE BOTH PARAGRAPHS IN THE SAME ORDER!)

5. That this offense involved bodily injury to another person or serious damage to the property of another or involved a substantial risk of such injury or damage. That Defendant is no longer affected by mental disease or defect. -OR-

5. That this offense did not involve bodily injury to another person or serious damage to the property of another, or involve a substantial risk of such injury or damage. That the Defendant is no longer affected by mental disease or defect.

WHEREFORE, this Court finds that at the time of the offense, the Defendant lacked the capacity, as a result of mental disease or defect, to conform his/her conduct to the requirements of the law or to appreciate the criminality of his/her conduct. In addition, this Court finds that the Defendant currently has the capacity to understand the proceedings against him/her and can assist effectively in his/her own defense. The Defendant is therefore acquitted of the offense by reason of mental disease or defect and, as he/she is no longer affected by mental disease or defect, is hereby discharged, pursuant to A.C.A. Sec. 5-2-314.

IT IS SO ORDERED this ____ day of _____, 20___.

_____
CIRCUIT JUDGE

FORM 4.07

(SAMPLE ORDER TO BE USED WHEN ISSUE OF MENTAL DISEASE OR DEFECT IS RAISED BY SOMEONE OTHER THAN DEFENDANT, AND DEFENDANT REMAINS AFFECTED BY MENTAL DISEASE OR DEFECT)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

V. CR- _____

_____ DEFENDANT

JUDGMENT OF ACQUITTAL BECAUSE OF MENTAL DISEASE OR DEFECT

Comes now on this day to be heard the Motion of _____, and from matters before the Court, the Court doth find:

1. That the above-named Defendant was charged with the criminal offense of _____, A.C.A. Sec. _____, and is represented by _____ as Defense Counsel.

2. That the Defendant was examined by

_____,
(facility or individual who conducted evaluation)

pursuant to A.C.A. Sec. 5-2-305, to determine his/her capacity, as a result of mental disease or defect, to conform his/her conduct to the requirements of law or to appreciate the criminality of his/her conduct.

3. That _____
(facility or individual who conducted evaluation)

has subsequently completed the evaluation pursuant to the Order of this Court, and the findings concerning the Defendant's capacity or fitness to proceed are made a part of this Order.

4. That based on the evaluations of _____,
(facility or individual who conducted evaluation)
the State of Arkansas agrees that it would be in the best interest of justice that the Defendant be acquitted.

(NOTE: WHEN PREPARING THIS ORDER, USE ONLY ONE OF THE NO. 5 PARAGRAPHS BELOW. DO NOT USE BOTH PARAGRAPHS IN THE SAME ORDER!)

5. That this offense involved bodily injury to another person or serious damage to the property of another, or involved a substantial risk of such injury or damage. That the Defendant remains affected by mental disease or defect. That pursuant to A.C.A. Sec. 5-2-314, Defendant is committed to the custody of the Director of the Department of Human Services for further examination by a psychiatrist or licensed psychologist. --OR--

5. That this offense did not involve bodily injury to another person or serious damage to the property of another, or involve a substantial risk of such injury or damage. That the Defendant remains affected by mental disease or defect. That pursuant to A.C.A. Sec. 5-2-314, Defendant is committed to the custody of the Director of the Department of Human Services for further examination by a psychiatrist or licensed psychologist.

6. That the Director of the Department of Human Services shall file the psychiatric or psychological report with a circuit court having jurisdiction within thirty (30) days following entry of this Order.

7. That, pursuant to A.C.A. Sec. 5-2-314, a hearing shall take

place not later than ten (10) days following the filing of the above report. If the acquittee is in need of Counsel for said hearing, it shall be appointed immediately upon filing of the original petition or report.

WHEREFORE, this Court finds that the Defendant committed the offense with which he is charged and, at the time of the offense, the Defendant lacked the capacity, as a result of mental disease or defect, to conform his conduct to the requirements of the law or to appreciate the criminality of his conduct. In addition, this Court finds that the Defendant currently has the capacity to understand the proceedings against him/her and can assist effectively in his/her own defense. The Defendant is thus acquitted of the offense by reason of mental disease or defect and committed to the care and custody of the Director of the Department of Human Services for further treatment and evaluation.

The Sheriff of _____ County, Arkansas, is hereby directed to deliver the Defendant to the care, custody and control of the Director of the Department of Human Services for said evaluation and treatment.

IT IS SO ORDERED this ____ day of _____, 20___.

_____
CIRCUIT JUDGE

FORM 4.08

(SAMPLE ORDER TO BE USED WHEN ISSUE OF MENTAL DISEASE OR DEFECT IS RAISED BY SOMEONE OTHER THAN DEFENDANT, AND DEFENDANT IS NO LONGER AFFECTED BY MENTAL DISEASE OR DEFECT)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

V. CR- _____

_____ DEFENDANT

JUDGMENT OF ACQUITTAL BECAUSE OF MENTAL DISEASE OR DEFECT

Comes now on this day to be heard the Motion of _____, and from matters before the Court, the Court doth find:

1. That the above-named Defendant was charged with the criminal offense of _____, A.C.A. Section _____, and is represented by _____ as Defense Counsel.

2. That the Defendant was examined by

_____
(facility or individual who conducted evaluation)

pursuant to A.C.A. Sec. 5-2-305, to determine his/her capacity, as a result of mental disease or defect, to conform his/her conduct to the requirements of law or to appreciate the criminality of his/her conduct.

3. That _____
(facility or individual who conducted evaluation)

has subsequently completed the evaluation pursuant to the Order of this Court, and the findings concerning the Defendant's capacity or fitness to proceed are made a part of this Order.

4. That based on the evaluations of _____,
(facility or individual who conducted evaluation)

the State of Arkansas agrees that it would be in the best interest of justice that the Defendant be acquitted.

(NOTE: WHEN PREPARING THIS ORDER, USE ONLY ONE OF THE NO. 5 PARAGRAPHS BELOW. DO NOT USE BOTH PARAGRAPHS IN THE SAME ORDER!)

5. That this offense involved bodily injury to another person or serious damage to the property of another, or involved a substantial risk of such injury or damage. That the Defendant is no longer affected by mental disease or defect. --OR--

5. That this offense did not involve bodily injury to another person or serious damage to the property of another, or involve a substantial risk of such injury or damage. That Defendant is no longer affected by mental disease or defect.

WHEREFORE, this Court finds that the Defendant committed the offense with which he/she is charged and, at the time of the offense, the Defendant lacked the capacity, as a result of mental disease or defect, to conform his/her conduct to the requirements of the law or to appreciate the criminality of his/her conduct. In addition, this Court finds that the Defendant currently has the capacity to understand the proceedings against him/her and can assist effectively in his/her own defense. The Defendant is thus acquitted of the offense by reason of mental disease or defect, and as he/she is no longer affected by mental disease or defect, is hereby discharged, pursuant to A.C.A. 5-2-314.

IT IS SO ORDERED this ____ day of _____, 20___.

_____
CIRCUIT JUDGE

OMNIBUS HEARING ORDER

It is ORDERED that an Omnibus Hearing shall be held in this cause on _____, _____, at _____o'clock, _____m. at _____, Arkansas.

The defendant(s) and counsel shall be present at the time and place stated unless excused by written order of the Court.

Prior to the hearing, the prosecuting attorney and defense counsel shall confer, and the prosecuting attorney and counsel for the defendant(s) shall complete by typewritten response and execute the Order on Omnibus Hearing, which is attached hereto.

The record made at the hearing, together with the completed Order on Omnibus Hearing, will bind each party unless relieved therefrom by written order of the Court.

DATED the _____ day of _____, ____.

_____
CIRCUIT JUDGE

The clerk is directed to send copies to:
Prosecuting Attorney
Defense Counsel

OMNIBUS HEARING ORDER

ACTIONS TAKEN AT OMNIBUS HEARING
(Number circled shows action taken)

A. DISCOVERY BY DEFENDANT

1. The defense states it has obtained full discovery and (or) has inspected the state file, (Except)

(If state has refused discovery of certain materials, defense counsel shall state nature of material._____
_____.)

2. The prosecution states it has disclosed all evidence in its possession favorable to defendant on the issue of guilt.

3. The defendant requests and moves for -

a. Discovery of all oral, written or recorded statements made by defendant or co-defendant to investigating officers or to third parties and in the possession of the prosecution.
(Granted) (Denied)

b. Discovery of the names of prosecution witnesses.
(Granted) (Denied)

c. Inspection of all physical or documentary evidence in prosecution's possession.
(Granted) (Denied)

4. Defendant, having had discovery of Items #2 and #3, request and moves for discovery and inspection of all further or additional information coming into the state's possession as to Items #2 and #3. (Granted) (Denied)

5. The defendant requests the following information and the prosecution states -

a. The state (will) (will not) rely on prior acts and convictions of a similar nature for proof of knowledge or intent.

b. Expert witness (will) (will not) be called:
1) Name of witness, qualification and subject of testimony, and reports (have been) (will be) supplied to the defense.

c. Reports or text of physical or mental examinations in the control of the prosecution (have been) (will be) supplied.

d. Reports of scientific tests, experiments or comparisons and other reports of experts in the control of the prosecution, pertaining to this case (have been) (will be) supplied.

e. Inspection and/or copying of any books, papers, documents, photographs or tangible objects which the prosecution:
   1) Obtained from or belonging to the defendant or
   2) Which will be used at the hearing or trial, (have been) (will be) made available to defendant for inspection and copying.

f. Information concerning a prior conviction of persons whom the prosecution intends to call as witnesses at the hearing or trial (has been) (will be) supplied to defendant.

g. State will use prior felony conviction for impeachment of defendant if he testifies,
   Date of conviction _____
   Offense _____
   1) Court rules (may) (may not) be used
   2) Defendant stipulates to prior conviction without production of witnesses or certified copy. (yes) (no)

h. Any information state has, indicating entrapment of the defendant (has been) (will be) supplied.

B. MOTIONS REQUIRING SEPARATE HEARING

1. Motions requiring separate hearings:

   a. To suppress physical evidence in Plaintiff's possession on the grounds of:
      1) Illegal search.
      2) Illegal arrest.

   b. Hearing of motion to suppress physical evidence set for _____.

   c. To suppress admissions or confessions made by defendant on the grounds of:
      1) Coercion or unlawful inducement;
      2) Violation of the Miranda Rule;
      3) Unlawful arrest; or
      4) Improper use of line up.

   d. Hearing to suppress admissions or confessions set for:

1) Date of trial; (or) _____.

e. The prosecution states:
1) There (was) (was not) an <u>informer</u> involved;
2) The informer (will) (will not) be called as a witness at the trial;
3) It has supplied the identity of the informer; or
4) It will claim privilege of non-disclosure.

f. <u>Hearing on privilege</u> set for _____.

g. The prosecution states there (has) (has not) been any -
1) Electronic surveillance of the defendant or his premises;
2) Leads obtained by electronic surveillance of defendant's person or premises; or
3) All material will be supplied.

h. <u>Hearing on disclosure</u> set for _____.

i. <u>Hearing on rape shield</u> set for _____.

C. <u>MISCELLANEOUS MOTIONS</u>

1. The defense moves:

a. To <u>dismiss</u> for failure of the information to state an offense. (Granted) (Denied)

b. To <u>dismiss</u> the information (or court _____ thereof) on the ground of duplicity. (Granted) (Denied).

c. To <u>sever</u> case of defendant _____ as to count _____ and for a separate trial. (Granted) (Denied)

d. To <u>sever</u> case of defendant _____ as to count _____ and for a separate trial. (Granted) (Denied)

e. For a <u>Bill of Particulars</u>. (Granted) (Denied)

f. To take a deposition of witness for testimonial purposes and not for discovery. (Granted) (Denied)

g. To require state to secure the appearance of Witness _____, who is subject to state direction at the trial or hearing. (Granted) (Denied)

h. To inquire into the reasonableness of bail. Amount fixed at _____(Affirmed) (Modified to_____)

i. Other:_____

_____

D. DISCOVERY BY THE STATE

Statements by the defense in response to state requests:

1. Competency, Insanity and Diminished Mental Responsibility:

   a. There (is) (is not) claim of incompetency of defendant to stand trial.

   b. Defendant (will) (will not) rely on a defense of insanity at the time of the offense.

   c. Defendant (has) (has not) supplied the name of his witnesses, both lay and professional, on the above issue.

   d. Defendant (has) (has not) permitted the prosecution to inspect and copy all medical reports under his control or the control of his attorney.

2. Alibi:

   a. Defendant (will) (will not) rely on an alibi.
   b. Defendant (will) (will not) furnish a list of his alibi witnesses.

3. Scientific Testing:

   a. Defendant (will) (will not) furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.

   b. Defendant (is) (is not) ordered to produce.

4. Nature of the Defense:

   a. Defense counsel states that the general nature of the defense is:
      1) lack of knowledge of contraband;
      2) lack of specific intent;
      3) mental disease or defect;
      4) entrapment; or
      5) general denial. (Require state to prove)

b. Defense counsel states there (is) (is not) (may be) a probability of a disposition without a trial.

c. Defendant (will) (will not) waive a jury and ask for a court trial.

d. Defendant (may) (will) (will not) testify.

e. Defendant (may) (will) (will not) call additional witnesses.

f. Character witnesses (may) (will) (will not) be called.

g. Defense counsel will supply state with names of additional witnesses for defendant _____ days before trial.

Rulings on state requests and motions:

5. The defendant is directed by the court, upon timely notice to defense counsel:

a. To appear in a lineup;

b. To speak for voice identification by witnesses;

c. To be fingerprinted;

d. To pose for photographs (not involving a reenactment of the crime);

e. To wear articles of clothing;

f. To permit taking of specimens of material under fingernails;

g. To permit taking samples of blood, hair and other materials of his body which involve no unreasonable intrusion;

h. To provide samples of his handwriting;

i. To submit to a physical external inspection of his body.

E. STIPULATIONS

1. It is stipulated between the parties:

a. That if _____ is called as witness and sworn he will testify he is the owner of the motor vehicle on the date referred

to in the information and that on or about that date the motor vehicle disappeared or was stolen, that he never gave the defendant or any other person permission to take the motor vehicle.

b. That the official report of the chemist may be received in evidence as proof of the weight and nature of the substance referred to in the information.

c. That if _____, the official state chemist, is called, qualified as an expert and sworn as a witness, he will testify that the substance referred to in the information has been chemically tested and is _____, contains _____ and the weight is _____.

d. That there has been a continuous chain of custody in state agents from the time of the seizure of the contraband to the time of the trial.

e. Miscellaneous stipulations: _____
_____
_____.

F. CONCLUSION

1. Defense counsel states:

a. That defense counsel knows of no problems involving the Miranda Rule or illegal seizure or arrest, or any other constitutional problem, except as set forth above.

b. That defense counsel has inspected the checklist on this Action Taken form, and knows of no other motion, proceeding or request which he decides to press, other than those checked thereon.

c. The final date a plea negotiation will be accepted by the court is _____.

DATED: _____ APPROVED: _____

_____ CIRCUIT JUDGE

_____ PROSECUTING ATTORNEY

_____ DEFENSE ATTORNEY

ORDER FOR PRETRIAL CONFERENCE

On _____, _____, the defendant together with his/her counsel, _____, appeared in person before the court for arraignment; _____, the attorney for the state, also being present, the Court delivered a copy of the Indictment/Information to the defendant.

Thereupon, came the defendant in person and by counsel and waived formal arraignment and entered his/her plea of "Not Guilty" to the (Indictment) (Information), which was accepted by the Court.

IT IS NOW ORDERED AND ADJUDGED by the Court that this cause be and the same is hereby assigned for a Pretrial Conference on the _____ day of _____, _____, at _____ o'clock _____m.

This _____ day of _____, _____.

_____
CIRCUIT JUDGE

DEFENDANT'S PRETRIAL INFORMATION

In order to assist the court in preparation for the trial of the above-styled criminal action on the _____ day of _____, _____, and to enable the Court to determine the necessity of a pretrial conference in this action, the following information is voluntarily furnished the Court and the prosecutor:

As attorney for defendant, I certify to the Court as follows: (Strike out all inapplicable words that follow)

1. Pursuant to Ark. R. Cr. P. 20.4, and other applicable law, a pretrial conference in this criminal action (is) (is not) requested by the defendant at this time.

2. Defendant (has) (has not) been able to secure from the state the discovery (Ark. R. Cr. P. 17.1) he/she requested by counsel.

3. So far as known to the defendant at this time the state (will) (may) (will not) rely on prior felony convictions for purposes of impeachment of the defendant if he/she testifies at trial.

4. The defendant (will) (may) (will not) call expert witnesses to testify at trial.

5. (There is) (There is not) now in the opinion of the defendant physical evidence which should be suppressed in this case.

6. Please circle any of the following matters which in the opinion of the defendant MAY now be or become an issue on trial of this case:

a. Delay in arraignment.
b. Coercion or unlawful inducement of admissions or confessions.
c. Violation of the Miranda rule.
d. Unlawful arrest.
e. Illegal search and seizure.
f. Entrapment.
g. Improper lineup.
h. Improper use of photographs.
i. Accomplice testimony.
j. Informer testimony.
k. Absence of counsel at preliminary hearing or other stages.
l. Failure of indictments or information to state an offense.
m. Severance and need for separate trial.
n. Dismissal for lack of speedy trial.
o. Competency, insanity or diminished mental responsibility.

p. Alibi.
q. Medical or psychiatric examination.
r. Other scientific tests, experiments or comparisons.
s. Documentary or physical evidence.
t. Self defense.
u. Privilege.
v. Fingerprints, and/or similar evidence.
w. Other (please specify on attached sheet).

7. Defendant's undersigned counsel (does) (does not) at this time know of any motion or matter the defendant desires to present to the court other than those specified on this form. (If answer is affirmative, specify on attached sheet).

8. There (is) (is not) (may be) a probability of a disposition of this case without trial.

9. Defendant (will) (will not) waive a jury and ask for a court trial.

10. Defendant (wishes) (does not wish) the state to furnish a Bill of Particulars (A.C.A. §16-85-301) without the necessity of a formal motion.

11. Defendant (will) (will not) waive husband-wife privilege if applicable.

12. Defendant (will) (may) (will not) testify at trial.

13. Defendant (will) (may) (will not) call additional witnesses after he testifies.

14. Defendant (will) (may) (will not) call character witnesses.

15. Defendant (does) (does not) desire a trial of this case in the _____ term of this Court and prefers to be tried in the _____ term of this Court.

This _____ day of _____, _____.

_____
ATTORNEY FOR DEFENDANT(S)

_____
NAME(S) OF DEFENDANT(S) REPRESENTED

SIGNATURE(S) OF DEFENDANTS

_____

PROSECUTOR'S PRETRIAL INFORMATION

In order to assist the Court in preparation for the trial of the above-styled criminal action on the _____ day of _____, _____, and to enable the Court to determine the necessity of a pretrial conference in this action, the following information is voluntarily furnished the Court and the attorneys for defendants:

As attorney for the state, I certify to the Court as follows: (Strike out all inapplicable words that follow)

1. Pursuant to Ark. R. Crim. P. 20.4, and other applicable law, a pre-trial conference (is) (is not) requested by the State at this time.

2. The state (will) (will not) voluntarily disclose the discovery available to defendant under Ark. R. Crim. P. 17.1.

3. Copies of all indictments or informations in this case are attached hereto for use of the Court.

4. The state (will) (may) (will not) rely on prior felony convictions for purposes of impeachment of the defendant if he/she testifies at trial.

5. The state (will) (may) (will not) call expert witnesses to testify at the trial.

6. Please circle any of the following matters which in the opinion of the state should be reviewed by the Court with all counsel prior to trial:

a. Delay in arraignment.
b. Coercion or unlawful inducement of admissions or confessions.
c. Violation of the Miranda rule.
d. Unlawful arrest.
e. Illegal search and seizure.
f. Entrapment.
g. Improper lineup.
h. Improper use of photographs.
i. Accomplice testimony.
j. Informer testimony.
k. Absence of counsel at preliminary hearing or other stages.
l. Failure of indictments or information to state an offense.
m. Severance and need for separate trial.
n. Dismissal for lack of speedy trial.
o. Competency, insanity or diminished mental responsibility.
p. Alibi.
q. Medical or psychiatric examination.
r. Other scientific tests, experiments or comparisons.
s. Documentary or physical evidence.

t. Self defense.
u. Privilege.
v. Fingerprints, and/or similar evidence.
w. Other (please specify on attached sheet).

7. The grand jury proceedings (were) (were not) reported by a stenographer or recorded.

8. The state (will) (will not) furnish a Bill of Particulars without the necessity for a formal motion.

9. The state (does) (does not) at this time know of any motion or matter it desires to present to the Court other than those specified on this form. (If answer is in affirmative, specify on attached sheet.)

10. There (is) (is not) (may be) a probability of a disposition of this case without trial.

11. The state (does) (does not) desire a trial of this case in the _____ term of this Court and prefers the trial in the _____ term of this Court.

This _____ day of _____, _____.

_____
ATTORNEY FOR THE STATE

MISCELLANEOUS STIPULATIONS

Miscellaneous Stipulations

1. That the official report of the chemist may be received in evidence as proof of the weight and nature of the substance referred to in the (Indictment) or (Information).

_____ _____
Attorney for Defendant Defendant

2. That if _____ the official Government chemist is called, qualified as an expert and sworn as a witness, he will testify that the substance referred to in the Indictment (or Information) has been chemically tested and is _____ and the weight is _____.

_____ _____
Attorney for Defendant Defendant

3. That there has been a continuous chain of custody in Government agents from the time of the seizure of the contraband to the time of the trial.

_____ _____
Attorney for Defendant Defendant

APPROVED MOTION TO WAIVE JURY TRIAL AND ACCEPTANCE

I, the defendant, understand that I am charged with:

Count	Offense	M/F	Punishment	Plea

I understand that I have a right to a jury trial where no verdict would be accepted unless all twelve jurors agreed. If the jury found me to be guilty of anything, I would have the right to have the jury to set my punishment.

I waive my right to have a jury trial. I ask that the judge hear and weigh the evidence and, after applying the law, make a decision if I am guilty of anything. If the judge finds me guilty, the judge sets my punishment.

I understand that I keep all of my other rights.

APPROVED:

_____
DEFENDANT

_____
DEPUTY PROS. ATTORNEY

_____
DEFENSE ATTORNEY

MOTION GRANTED.

_____
CIRCUIT JUDGE

_____
DATE

REGISTER OF USE OF PEREMPTORY CHALLENGES

Jury Selection - Criminal Trial

_____ (Prosecutor)

_____ (Defense Attorney)

Strikes allowed:			
	Capital murder:	State - 10;	Defense - 12
	Felony:	State - 6;	Defense - 8
	Misdemeanor:	State - 3;	Defense - 3
	Alternate:	State - 1;	Defense - 1

Strikes made:

State:	Defense:
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____
10. _____	10. _____
	11. _____
	12. _____

Alternate:

1. _____	1. _____

ADMONITION TO JURY REGARDING MEDIA

"During the time you serve on this jury, there may appear in the newspapers or on radio or television, reports concerning this case, and you may be tempted to read, listen to or watch them. Please do not do so. Due process of law requires that the evidence to be considered by you in reaching your verdict meet certain standards -- for example, a witness may testify about events he himself has seen or heard but not about matters of which he was told by others. Also, witnesses must be sworn to tell the truth and must be subject to cross-examination. News reports about the case are not subject to these standards, and if you read, listen to or watch these reports, you may be exposed to misleading or inaccurate information which unduly favors one side and to which the other side is unable to respond. In fairness to both sides, therefore, comply with this instruction."

In the Circuit Court of _____ County, Arkansas

State of Arkansas Plaintiff

NO. _____

_____ Defendant

Conditions of Suspension or Probation

Now on this _____ day of _____, _____ the defendant having entered a plea of guilty or having been found guilty in the above styled action and the Court having suspended the imposition of sentence or having placed the defendant on probation for a period of _____ months for the offense(s) of _____ _____ **IT IS HEREBY ORDERED** that the following conditions of said suspension or probation are imposed upon the defendant:

1. You must not commit a criminal offense punishable by imprisonment. If arrested or questioned by a law enforcement officer, you will notify your supervising officer within 24 hours, unless such arrest or questioning occurs on a weekend, in which case you will notify your supervising officer the next working day.

2. You must not drink or possess intoxicating or alcoholic beverages, or be present in any establishment where its main source of income is derived from the sale of such beverages.

3. You must not use, sell, distribute, or possess any controlled substance, or associate with any person who is participating in or is known to participate in the illegal use, sale, distribution or possession of controlled substances, or be present in places where such persons congregate. You may use or possess controlled substances pursuant to a legitimate prescription from a physician. You must be able to present proof of your prescription and provide physician's name as requested. You must submit to random testing for the use of illegal substances or intoxicants. Testing may be of your breath, blood or urine at the direction of any supervising officer. You must pay for the expense of such testing.

4. You must not associate with persons who have been convicted of felonies, persons who are engaged in criminal activity, or other persons specified by any supervising officer.

5. You must not purchase, own, control or possess any firearm or other prohibited deadly weapon at any time, or be in the company of any person possessing the same.

6. You must report as directed to a supervising officer and permit him or her to visit you in your residence, place of employment, or other property.

7. You must be gainfully employed or enrolled as a student at all times, pay your share of household expenses, support your legal dependents and pay all court ordered child support. You must notify your supervising officer in advance of any change in your address, employment, education, telephone number, or family status. Where circumstances make it impossible for you to give advance notice, you must give notice as soon as possible. Prior approval from a supervising officer is required for you to change or stay away from your place of residence or to quit your employment.

8. You must remain within the state of Arkansas unless granted permission to leave by a supervising officer. You agree to waive extradition from any jurisdiction in or outside the United States of America and to not contest any effort to return you to the state of Arkansas.

9. You must submit to, and are obligated for the expense of, any non-residential rehabilitative, medical, counseling or psychiatric program, deemed necessary by your supervising officer, for such period of time as may be recommended by the treating institution or person. As evidence of your compliance, you must cause periodic reports to be submitted to your supervising officer by the treating or counseling program.

10. You must participate in, and are obligated for the expense of, any community based programs (such as NA or AA) deemed necessary by your supervising officer.

11. You must report to a day reporting center and subject yourself to the programs provided therein as deemed necessary by your supervising officer.

12. You must be truthful in all statements made to a supervising officer.

13. You must pay by money order a supervision fee of $ _____ per month to the Department of Community Punishment.

14. You must pay restitution to the victim(s) listed below, through _____, in the total amount of $ _____, in regular monthly payments of $ _____ each month beginning on the _____ day of _____, _____ and on the _____ day of each month thereafter until paid in full.

Victim(s) _____

_____

15. You must pay the costs and/or fine(s) listed below to _____, in the total amount of $ _____, in regular monthly payments of $ _____ each month beginning on the _____ day of _____, _____ and on the _____ day of each month thereafter until paid in full.

Court Costs	$ _____
Fine(s)	$ _____
Other	$ _____

16. You must serve a period of confinement for _____ days at _____ _____.

17. You must comply with the special conditions imposed by the court.

18. If the Court revokes your suspension or probation for your violating a condition, it may impose on you a sentence of up to _____ years in Arkansas Department of Correction and/or a fine of up to $ _____.

SPECIAL CONDITIONS

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

Dated _____

_____
Circuit Judge

ACKNOWLEDGMENT

I hereby certify that I have read, understand and will comply with the terms and conditions of my suspension or probation. I understand that if I violate any of the conditions set out in this agreement, the court can revoke my suspension or probation, and impose any sentence on me that it might have imposed originally for the offense for which I was declared guilty.

Dated _____

_____
Defendant

PLEA STATEMENT TO REVOCATION

PLEA STATEMENT TO REVOCATION

I, _____, defendant, appear with my Attorney and hereby acknowledge that I understand the charges against me, the possible punishments, and my rights as an accused. I HEREBY FREELY, KNOWINGLY, AND VOLUNTARILY WAIVE MY RIGHTS AND ADMIT MY GUILT. I understand that if my plea is not accepted by the Court, I may withdraw my plea and nothing contained in my attempted plea or this document may be used against me at a hearing on this matter. _____ (defendant must initial)

I understand that I have been charged with a violation of the terms or conditions of my (probation/suspended imposition of sentence) and the possible punishment(s) are as follows:

ORIGINAL CHARGE:	STATUTE:	F/M	CLASS	PUNISHMENT RANGE

TOTAL POSSIBLE PUNISHMENT: _____

My level of education is:
I can/cannot read and write.

My attorney has/has not read and explained this document and these proceedings to me in detail.

I am not under the influence of alcohol or any non-prescription narcotic drug. Within the last 24 hours I have taken the following medications: _____

I am aware of what I am doing and the possible consequences of these proceedings and this plea.

I HAVE NOT BEEN FORCED, THREATENED, OR PROMISED ANYTHING IN EXCHANGE FOR THIS PLEA EXCEPT THE FOLLOWING PLEA AGREEMENT: _____

_____

_____

The above agreement is a complete statement of all promises that have been made to me in exchange for my plea. I HAVE NOT BEEN PROMISED ANYTHING REGARDING ANY PAROLE, GOOD TIME, EARLY RELEASE EXCEPT AS STATED ABOVE.

_____
DEFENDANT

I understand I have the following rights and that by entering this plea I am knowingly and voluntarily waiving these rights:

____ The right to plead not guilty.

____ The right to be presumed innocent and to have the State prove my guilty by a preponderance of the evidence.
____ The right to confront and cross-examine all witnesses.
____ The right to testify or to remain silent.
____ The right to have compulsory attendance of all witnesses to testify in my behalf.
____ The right to appeal to any other Court.

I understand that in order to sustain this Revocation Petition, the State must prove by a preponderance of the evidence each of the following elements:

1. That I either was convicted of or plead guilty to a felony in this case.
2. That I was represented by an Attorney at the time of the conviction or plea.
3. That I was placed on probation for a period of time.
4. That as a condition of probation, I was given and received written rules of conduct to abide by.
5. That during the period of probation, I willfully disobeyed the rules.

I am satisfied with the services of my Attorney. I am satisfied that my Attorney is fully informed as to all of the facts surrounding my case. My Attorney has discussed with me all possible defenses and I have given my Attorney the names of all possible witnesses in my behalf and discussed their possible testimony with my Attorney. My Attorney has advised me as to all proof the State could present at a trial of this matter and has fully explained each element of each charge that the State would have to prove at trial. I am convinced the State could prove each element of the offense with which I am charged by a preponderance of the evidence if a trial were held.

I AM HEREBY PLEADING GUILTY BECAUSE I AM GUILTY AND FOR NO OTHER REASON.

_____
DEFENDANT

As Attorney for defendant herein, I hereby certify that I have explained the foregoing plea statement to the defendant, the defendant understands the plea statement and these proceedings. The statements contained herein are true and correct to the best of my knowledge and belief, the plea(s) is/are justified by the facts, and the Defendant signed the statement in my presence.

_____
ATTORNEY

_____
DATE

Qualification Oath to Grand Jurors

"Do you solemnly swear (or affirm) that you will make true and perfect answers to such questions as may be demanded of you touching your qualification to serve as grand juror at this term of court, so help you God?"

Oath to Grand Jurors

"Saving yourselves and fellow jurors, you do swear (or affirm) that you will diligently inquire of, and present all treasons, felonies, misdemeanors, and breaches of the penal laws over which you have jurisdiction, of which you have knowledge or may receive information."

DIALOGUE OF CHARGE TO GRAND JURY (Source Unknown)

Ladies and gentlemen, the court instructs you as follows upon your duties and procedure:

The law says you must inquire:

First, into the case of every person imprisoned in the county jail to answer a criminal charge in this court, and who has not been indicted (or against whom an information has not been filed by the prosecuting attorney). Second, into the condition and management of the public prisons of the county. Third, into the willful and corrupt misconduct in office of public officers of every description in the county. As regards county officials those who handle public money (and most of them do) are audited annually by the State Comptroller. If any public officer has been unfaithful or corrupt the comptroller's audit will doubtless reflect it. Therefore you are to feel free to call upon any county official to submit his or her audit for your perusal.

The law also requires that you inquire into all public offenses committed in this county and to indict such persons whom you think guilty. In this connection, you should find an indictment only when all the evidence before you, taken together, would in your judgment, if unexplained, warrant conviction by the trial jury. You are to receive none but legal evidence and the prosecuting attorney will advise with you in this connection. It is your duty to weigh all legal evidence before you. If you believe that other evidence which can be made available will explain away the charge you should order such evidence to be produced. However, you are not bound to hear evidence for the defendant.

If a witness under examination refuses to testify, or to answer a question put to him by you, the foreman shall proceed to bring the witness before the court. The court will hear the facts and decide whether the witness is bound to testify or to answer the

question propounded. If he is, and persists in his refusal, the court will proceed with him as in cases of similar refusal in open court.

If you know, or have reason to believe that a public offense has been committed in this county within the time prescribed by law, it is your duty to disclose the same to your fellow jurors, who must thereupon investigate the same.

In your deliberations the following procedure will be observed:

The court will appoint one of you as foreman.

When you retire to the grand jury room you will elect one of your number as Clerk, who will preserve and keep the minutes of the proceedings and of the evidence given before you. He will also issue subpoenas for witnesses upon the request of the foreman or prosecuting attorney. Your foreman will administer the oath to all witnesses.

During the examination of witnesses or charges, no person except the prosecuting attorney and the witness under examination shall be present. The court reporter may be present if his services are needed to take any testimony. While you are deliberating or voting on a charge no person whatever shall be present, except the jurors.

Every member of the grand jury must keep secret whatever he, or any other grand juror, may have said, or in what manner he, or any grand juror, may have voted on a matter before you. Nor shall you disclose the fact of any indictment having been found against any person not in actual confinement and until he has been arrested thereon.

The foreman will keep an abstract of all persons subpoenaed and appearing as witnesses, the number of days attended and the amount due each witness. He will also issue a certificate to each witness. Forms will be furnished you for this purpose. Upon adjournment the foreman will deliver the abstract to the clerk.

The concurrence of 12 grand jurors is required to find an indictment. When so found it must be endorsed "a true bill" and the endorsement signed by the foreman. When an indictment is found the names of all witnesses who were examined must be written at the foot of or on the indictment. It must be presented by the foreman to the court, filed with the clerk and remain in his office as a public record.

If upon the examination of any charge you do not find an indictment wherein the person has been committed or is on bail, you shall write on one of the papers in the case the word "dismissed" and your foreman shall sign it.

There are other matters of procedure which might arise, the explanation of which would unduly lengthen this charge. But the prosecuting attorney and the court will be at your service at all times to help you with any question.

I hope I have not over-burdened you with procedural matters but it is necessary for two reasons: First, the court is required to charge you relative to your duties. Second, the failure by you to observe the procedural law might compel the court to quash an indictment and thereby render several hours of hard work useless.

I can suggest a procedure by which you can perform all the duties of your office within a reasonable period and at the same time render a fine service. You are not obligated to follow this suggestion because you alone are the judges in that connection.

After you complete your deliberation relative to criminal matters you can divide into committees of three or more. One committee can inspect county property; another can inspect the jails throughout the county; another could inspect the dockets of the justices of the peace, or at least those dockets of justices who are exercising judicial functions; another can check matters relating to the general school fund; another can inspect collecting officers accounts. In the performance of these duties, any or all of the county officials and the prosecuting attorney will be at your disposal.

In conclusion, permit me to make this statement: Contrary to the belief of many people, the power or the authority of the grand jury has not been curtailed or diminished. In relatively recent years the law has been changed to permit the filing of an Information by the prosecuting attorney against any party who allegedly has violated the felony statutes. In effect this has considerably reduced the volume of work of the grand jury. Also, our county officials are now regularly audited by the State Auditorial Department by experienced auditors. This tends to further reduce the volume of work of the grand jury.

Yet these changes in the law do not reduce the power and authority and responsibility of the grand jury. The law provides that grand juries must function. It still provides that the grand jury must be composed of sixteen, from all parts of the county, persons who are temperate and of good behavior, of approved integrity, sound judgment and reasonable information. Persons who are in no way connected with the county government, in order that you may be as impartial as possible and at the same time thoroughly diligent in the inspection of the work and activities of those who come under your jurisdiction.

Who comes under your jurisdiction? Every citizen of this county legally able to commit a crime. Every person regardless of residence who comes into this county and violates the law. Every public official who commits a willful act of misconduct in office in this county, whether he be state, district, county, city or township official.

These inspections can be made at the convenience of the committee members. When the various committees have completed their work you can reassemble and deliberate on their reports and take whatever action the grand jury as a body deems fit.

When you have completed your work I hope you will prepare and present to the court a report on conditions as you find them because in that way offenders and the public can be fully advised.

I am going to appoint _____ to serve as foreman. _____ will please stand and be sworn:

"You do solemnly swear that you will support the constitution of the State of Arkansas, and the constitution of the United States, and faithfully discharge your duties as foreman of the present grand jury as prescribed by law."

a 62- a 67
have been removed from this publication. The new "Sentencing Order" may be found on the Arkansas Supreme Court's Website after January 1, 2012.

.RKANSAS

SENTENCING **DEPARTURE REPORT** COMMISSION

Offender Name(Last, First, Middle) County #

Judge Date of Report Circuit Court Case # Name of

REASON FOR DEPARTURE:

Reference should be made to the complete text of departure criteria found at A.C.A.16-90-804(d).
Please Circle Appropriate Number. At least one departure criteria must be designated to be complete.

A. Mitigating Factors:

1. Victim played an aggressive role or provoked the incident or was a willing participant.
2. Offender lacked capacity of judgement due to mental or physical impairment.
3. Offender played a minor or passive role in the crime.
4. Offender compensated or made effort to compensate for any damage or injury before detection.
5. Offender was lesser participant showing caution or concern for safety or well-being of victim.
6. Offender acted in response to continuing physical or sexual abuse by victim.
7. Policy on multiple offenses in a single course of conduct in offender's prior criminal history results in a sentence which is excessive for this particular offense.
8. Offender has voluntarily admitted sexual offense and sought treatment before detection.
9. Offender has made effort to provide assistance in investigation or prosecution of another as so indicated by motion by the State. Following circumstances may be weighed in mitigation:
   a. Timeliness of assistance
   b. Nature and extent of assistance
   c. Truthfulness, completeness and demonstrable reliability of information or testimony
10. Other (attach extra sheet if necessary)

B. Aggravating Factors:

1. Offender's conduct manifested extreme cruelty during commission of current offense.
2. Offender knew victim vulnerable due to extreme youth, advanced age, disability or ill health.
3. Offense was major economic offense established by one of the following criteria:
   a.Multiple victims or incidents; b.Monetary loss substantially greater than typical;
   c.Degree of sophistication or time; d.Misuse of fiduciary duty; e.Other similar conduct
4. Offense was major controlled substance offense if two or more of the following are present:
   a. Three or more separate transactions involve sale, tranfer or possession with intent;
   b. Amounts substantially larger than the statutory minimums which define the offense;
   c. Offense involved a high degree of planning or lengthy period or broad geographic area;
   d. Offender occupied a high position in the drug distribution hierarchy;
   e. Offender misused position of trust or status or fiduciary duty to facilitate commission;
   f. Offender has received substantial income or resources from drug trafficking.
5. Offender employed firearm in furtherance or flight unless such use is element of offense.
6. Offense was sexual offense and part of pattern with the same or different victims under eighteen.
7. Policy on multiple offenses in a single course of conduct in offender's prior criminal history results in a sentence that is clearly too lenient.
8. Offense was committed in manner that exposed risk of injury to others.
9. Offense was a violent or sexual offense committed in victim's zone of privacy.
10. Offender attempted to cover offense by intimidation of witnesses, tampering of evidence, or misleading authorities.
11. Offense committed to avoid arrest or effect escape.
12. Offender lacks minimum insurance in a vehicular homicide.
13. Statutory minimum sentence overrides the presumptive sentence.
14. Multiple concurrent sentences being entered at this time require a higher sentence.
15. Sentence is higher as a result of other charges being dropped or merged.
16. Other (attach extra sheet if necessary)

Defense Attorney **Judge's Signature**_____

DEPARTURE REPORT

When to Complete: This report should be completed by the judge when (a) the disposition differs from the presumptive disposition; (b) the sentence length imposed differs from the presumptive sentence length; or (c) when the disposition and duration differ from the presumptive disposition and duration provided in the guidelines.

Offender Name: Record the name of the offender as it appears on the *Judgment and Commitment or Judgment and Disposition form.*

County #: The uniform identification number for each county. This number is used in conjunction with the Circuit Case Number as the complete record identifier for this case.

Judge Name: The name of the judge completing the Departure Report.

Circuit Court Case #: The number used for filing cases in the circuit court.

Reasons for Departure: In making decisions about departing from the guidelines, and in writing reasons for departures, judges should consult A.C.A. 16-90-804 (Supp. 1993)

If the departure reasons were stated in open court, a certified transcript of the reasons given may be attached to this report in lieu of listing the reasons.

Reasons stated for departure should be brief, but specific. They should distinguish the unusual nature of the current case, and indicate why the departure is more appropriate, fair, or equitable than the presumptive sentence.

Decisions with respect to sentencing disposition and sentence duration are logically separate. Departures with respect to disposition and duration are logically separate. A judge may depart from a presumptive disposition without departing from the presumptive duration, or vice-versa. If a judge departs from both a presumptive disposition and presumptive duration, two departure decisions have been made, each requiring written reasons. Reasons for both decisions should be given on a single Departure Report.

Distribution: White: Court File; Blue: Arkansas Department of Corrections for those committed to that institution; Green:Arkansas Sentencing Commission, 101 East Capitol, Suite 450, Little Rock, AR 72201; Goldenrod: Prosecutor; Pink: Defense Attorney.

ARKANSAS SENTENCING COMMISSION
CRIMINAL HISTORY WORKSHEET

Offender Name (Last, First, Middle)	Date of Birth	Sex	SID #	Date of Worksheet
			Circuit Case #	County

Offense	Statute #	Date of Offense	Person Completing Form

☐ Criminal History Supplement Attached to Report Additional Prior Offenses ☐ Multiple Offenses-Circle Prior Convictions W/Multiple Offenses

Modifiers ☐ Attempt ☐ Conspiracy ☐ Solicitation

Offense Title	Level	Disp. Date	Points
Adult Felonies Levels VI - X			
1:			
2.			
3.			
4.			
5.			
Adult Felonies Levels I - V			
1.			
2.			
3.			
4.			
Class A Misdemeanors		Offense Date	
Juvenile Adjudications		Offense Date	

Custody Status: If offender was on any type of custody supervision at the time of the current offense, add 1 point.

Probation/SIS ☐ Parole/Post Prison Supervision ☐ Temp. Release ☐ Bond ☐ No CJ Control

Felony Points Levels VI - X: _____

Felony Points Levels I - V: _____

Class A Misdemeanor Points (Maximum of 1): _____

Juvenile Points (Maximum of 2): _____

Custody Status Point (Maximum of 1): _____

TOTAL CRIMINAL HISTORY POINTS (Round Down To Nearest Whole Point): _____

CALCULATION OF PRESUMPTIVE SENTENCE

Current Offense	Seriousness Level	History Score	Presumptive Sentence	LOW TO HIGH Presumptive Sentence Range

We Request That A Copy of This Form be Forwarded To:
ARKANSAS SENTENCING COMMISSION
101 East Capitol, Suite 206
Little Rock, AR 72201

CRIMINAL HISTORY WORKSHEET

Offender Name: Use name most commonly used by the offender.

SID #: Enter the Offender's State Identification Number. It may be obtained from the criminal information sheet or from the local law enforcement agency handling the case.

Circuit Case #: The number used for filing cased in the circuit court.

Offense: Indicate the name of the crime for which the defendant was charged. Show the substantive crime, e.g. rape, theft, murder, etc. Do not Put "conspiracy", "attempted", or "solicitation" in this blank, they should be listed as a modifier.

Statute #: Indicate the Arkansas Code number for the crime for which the defendant was convicted.

Modifiers: The seriousness level for "attempt", "conspiracy", or "solicitation" is one (1) level below the level for the substantive offense.

Criminal History Supplement: If offender has more than five (5) prior convictions in any category, list additional convictions on Criminal History Worksheet Supplement.

Multiple Offenses: Circle the number of any prior conviction which represents the most serious offense among multiple offenses for a single course of conduct. A list of the multiple offenses may be requested for departure criteria purposes and may be listed and identified as such on a Criminal History Worksheet Supplement.

Adult Felonies, Seriousness Levels VI - X: One (1) point for each prior conviction.

Adult Felonies, Seriousness Levels I - V: One-half (.5) point for each prior conviction. Prior felony offenses at these levels will not be counted if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.

Adult Class A Misdemeanors: One-fourth (.25) point for each prior conviction. No more than one point may be accrued from Class A misdemeanor convictions. Prior offenses must have occurred within ten (10) years of the time of the current offense.

Juvenile Adjudications: Requires a judicial decision as to relevancy to current proceedings. One (1) point for capital murder, murder in the first degree, murder in the second degree, kidnapping in the first degree, aggravated robbery, rape or battery in the first degree if committed by an adult. One-fourth (.25) for all other adjudications where the juvenile could have been tried as an adult (felony(s)). No more than one (1) point may be accrued unless one of the prior adjudications was a listed major offense, then no more than two (2) points may be accrued. Offenses must have occurred within ten (10) years of the time of the current offense.

Custody Status: One (1) point is to be added if the offender is under any type of criminal justice restraint/supervision for a felony offense at the time that he committed the current offense. Maximum of one (1) point may be accrued.

Calculation of Presumptive Sentence: Current Offense = Statute #; Seriousness Level = Level of Current Offense; History Score = Total Points on this worksheet; Presumptive Sentence = See Sentencing Standards Grid; Presumptive Sentence Range = 5% under/over Sentencing Standard Presumptive Sentence.

REPORTING FORM FOR
DEFENSE-RELATED DISPOSITIONS
[See Administrative Order Number 8, Section III (a)]

IN THE _____ **COURT OF** _____ **COUNTY, ARKANSAS**
_____ **DIVISION**

State of Arkansas **CASE NUMBER** _____

v.

_____ **ENTRY DATE** _____
(Defendant's Full Name)

Arrest Tracking #: _____ SID # _____

_____ _____
(Date of Arrest) (Date Information Filed)

Count # _____ A.C.A. § _____
_____ _____
_____ _____
_____ _____

*[WHEN MULTIPLE COUNTS ARE INVOLVED, PLACE THE **COUNT #** (NOT "X" OR "✓") ON THE LINE BELOW THAT APPLIES TO EACH COUNT]*

Non-Trial _____ Bench Trial _____ Jury Trial _____

Acquitted _____ Acquitted because of Mental Defect _____

Transferred _____ Transferred to Juvenile Court _____

Dismissed with prejudice because of speedy trial rule _____

Nolle prossed because of speedy trial rule _____

This Form was submitted by: _____
(Signature of Prosecuting Attorney)

_____
(Circuit Judge)

I certify this is a true and correct record of this Court.

Date: _____ Circuit Clerk/Deputy: _____

Pursuant to A.C.A. § 16-90-905, this Petition to Seal form has been adopted and provided by ACIC. Arkansas law mandates the use of this form by all petitioners and by all Circuit and District Courts in the state of Arkansas.

In the _____ Court of _____, Arkansas

_____ Division

Stat e of Arkansas

VS. Case No. _____

_____

(first, middle and last name)

Petition to Seal

(Part 1 of 2)

Comes the Defendant and for his/her petition to seal the record states:

(Please complete the appropriate section: A or B)

Section A

1. Defendant was arrested on the _____ day of _____, and charged with the offense(s) of _____ A.C.A. § _____; the defendant was found guilty of _____ A.C.A. § _____, on the _____ day of _____ and received a sentance of _____.
2. The defendant was sentenced under the provisions of A.C.A. § _____, which provides for the sealing of a Defendant's record.
3. Defendant has satisfactorily complied with the conditions and orders of this Court.
4. Defendant has been rehabilitated.

Section B

1. Defendant was arrested on the _____ day of _____, and charged with the offense(s) of _____ A.C.A. § _____.
2. Date of Final Disposition _____.

☐ Nolle Prossed
☐ Dismissed
☐ Acquitted at Trial
☐ Case Not Filed
☐ Transferred to Juvenile Court

3. Under authority of A.C.A. § 16-90-906, which provides for the sealing of a defendants record, that the Petition to seal the record of the offense(s) should be granted.

The following information is required for proper identification of the defendant in the state and national record systems:

Race _____

Sex _____

DOB _____

Arrest Tracking No. _____

SID No. _____ (if Known)

FBI No. _____ (if Known)

Petition to Seal

(Part 2 of 2)

Acknowledgement and Verification:

I. The defendant, hereby verify, under oath, pursuant to A.C.A. §16-90-905(a)(3), that I:

☐ Have pending felony charges in any state or federal court. The status of the charge(s):

_____ _____

(Charge) (Court)

☐ **Do not** have pending felony charges in any state or federal court..

The requesting party, known by me to be the person identified, did appear before me this _____ day of _____

_____

(Signature of Defendant)

(SEAL)

_____

(Signature of Notary Public)

_____ _____

(County) (Expiration of Commission)

The above information is true and corrent to the best of my knowledge.

Dated this _____ day of _____

_____

(Signature of Attorney for Defendant or Defendant)

_____

(Type or print name of the above)

Certificate of Service

I, _____, do hereby certyfy that a true and corrent copy of the foregoing Petition has been provided to the Prosecuting Attorney (for the county in which the petition is filed) and the arresting agency by U.S. Mail, postage pre-paid, or hand-delivered this _____ day of _____

The following information is required for proper identification of the defendant in the state and national record systems:

Race _____ Arrest Tracking No. _____

Sex _____ SID No. _____ (if Known)

DOB _____ FBI No. _____ (if Known)

Pursuant to A.C.A. § 16-90-905, this Order to Seal form has been adopted and provided by ACIC. Arkansas law mandates the use of this form by all petitioners and by all Circuit and District Courts in the state of Arkansas.

In the _____ Court of _____ Arkansas

_____ Division

State Of Arkansas

Vs

Case No. _____

_____

(First, Middle and last name)

Order to Seal

Now on this _____ day of _____ The Court having examined the petition to seal and other matters presented, finds that the defendant was arrested on the _____ day of _____ and charged with the offense(s) of _____, A.C.A. § _____

and that the defendant was found: *(Please complete the appropriate section: A and/or B)*

Section A

☐ Guilty of _____, A.C.A. § _____, and was sentenced to _____, on the _____ day of _____

The Court further finds that the defendant was sentenced under the provisions of A.C.A. § _____, Which Provides for the sealing of the defendant's record.

The Court now finds that the defendant has satisfactorily complied with the orders of this Court, that the defendant has been rehabilitated and the petition to seal the record of the offense(s) should be granted.

Section B

Date of Final Disposition _____

☐ Nolle Prossed Offense(s) _____

☐ Dismissed _____

☐ Acquitted at Trial _____

☐ Case Not Filed _____

☐ Transferred to Juvenile Court (if Marked, please provide original circuit court disposition, if applicable)

The Court now finds that under authority of A.C.A. § 16-90-906, which provides for the sealing of a defendant's record, the petition to seal the record of the offense(s) should be granted

It is therefore considered, ordered by adjudged that the following offense(s) in this case be sealed to all except those authorized by law to have access: _____

The Court Clerk is directed to mail a copy of this order to the Arkansas Crime Information Center, to the Administrative Office of the Courts, to the arresting agency, and to the prosecuting attorney, who shall seal all records maintained by them relating to the offense(s).

The following information is required for proper identification of the defendant in the state and national record systems:

Race _____ Arrest Tracking No. _____

Sex _____ SID No. _____ (if Known)

DOB _____ FBI No. _____ (if Known)

_____

Signature of Judge

_____

Type or Print name of Judge

ACIC Order-Seal.Doc 06/23/06

Print Form

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FORM: CLERK'S NOTICE OF APPEAL TO THE ARKANSAS SUPREME COURT IN DEATH-SENTENCE CASE PURSUANT TO RULE 10 OF THE RULES OF APPELLATE PROCEDURE—CRIMINAL

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

DIVISION _____ DISTRICT _____

STATE OF ARKANSAS PLAINTIFF

vs.

Case No. _____

_____ DEFENDANT

NOTICE OF APPEAL FROM JUDGMENT IMPOSING DEATH SENTENCE

CONVICTION(S) APPEALED (list all offenses appealed):_____

_____

DATE OF ENTRY OF JUDGMENT:_____

SENTENCE(S) (List all sentences in addition to sentence(s) of death):_____

_____

INDIGENT: ( ) YES ( ) NO

NAME AND COMPLETE ADDRESS OF:

1. COURT REPORTER(S) (List all court reporters; use additional pages if needed):

_____
(name) (telephone)

_____
(address) (city) (state) (zip code)

_____
(name) (telephone)

_____
(address) (city) (state) (zip code)

2. DEFENDANT'S TRIAL COUNSEL (List all attorneys; use additional pages if needed):

_____
(name) (telephone)

_____
(address) (city) (state) (zip code)

_____
(name) (telephone)

_____
(address) (city) (state) (zip code)

THE COURT REPORTER SHALL IMMEDIATELY PREPARE THE ENTIRE RECORD AND TRANSMIT IT IN ACCORDANCE WITH RULE 10(a) OF THE ARKANSAS RULES OF APPELLATE PROCEDURE—CRIMINAL.

THIS NOTICE OF APPEAL MUST BE GIVEN WITHIN THE TIME SPECIFIED IN RULE 2(a) OF THE ARKANSAS RULES OF APPELLATE PROCEDURE—CRIMINAL.

I certify that I have served a copy of this notice of appeal on all parties or their representatives involved in the cause and on the court reporter by mailing a copy of the notice of appeal to the parties or their representatives, to the court reporter, and to the Attorney General on this _____ day of _____, 20__.

_____
CIRCUIT COURT CLERK

"Order for Issuance of Arrest Warrant and Summons/Order for Surety to Appear;" Implementing Act 752 of 2003 Arkansas General Assembly; To be appended to Rule 9.5, Rules of Criminal Procedure.

[Order for Issuance of Arrest Warrant and Summons/Order for Surety to Appear]

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____DIVISION

STATE OF ARKANSAS **PLAINTIFF**

VS. **NO. CR_____**

_____ **DEFENDANT**

ORDER FOR ISSUANCE OF ARREST WARRANT AND SUMMONS/ORDER FOR SURETY TO APPEAR

On this _____ day of _____, 20____, comes on for consideration the oral motion of the State of Arkansas, by its Prosecuting Attorney for this County, requesting the forfeiture of the defendant's bail bond and issuance of an alias bench warrant for the immediate arrest of the defendant.

From the statements of the Prosecuting Attorney, a review of the records applicable to this case, and the applicable law, the Court finds that:

(1) The defendant had been directed to appear before the Court on this date at _____ o'clock _____. m. but failed to respond or to appear before the Court as directed.

(2) The defendant has been released from custody, having caused a bail bond to be executed in favor of _____ County, Arkansas in the penal sum of $_____, with said defendant as principal and _____ as surety thereon, which bond guaranteed the defendant's appearance on said date and on all dates as directed by the Court in these proceedings.

(3) No reasonable excuse has been advanced to justify the defendant's failure to appear as directed.

THEREFORE, it is herein considered, ordered and adjudged that the Circuit Clerk be, and hereby is directed to promptly cause an alias bench warrant to be issued for the immediate arrest of the defendant, and to cause the warrant to be delivered to the Sheriff of this Court for service upon the defendant. Upon the apprehension or surrender of the defendant, the initial appearance (bail) bond shall be $_____; and

IT IS FURTHER ORDERED that the Circuit Clerk be, and hereby is directed to promptly notify the surety (one or more) that the defendant should be surrendered to the Sheriff of this Court as required by the terms of the bail bond and notify the surety (one or more) to appear before the Circuit Court on the _____ day of _____, 20_____, at _____ o'clock ____ m. to show cause why the full amount specified in the bail bond or the money, if any, deposited in lieu of bail should not be forfeited to _____ County.

If the surety (one or more) does not appear at the hearing scheduled by the Court, each surety on the bond shall be liable, jointly and severally, for payment of the amount forfeited. If the surety desires to be represented by an attorney, such attorney should appear at the hearing.

Entry of the Order of Forfeiture by the Court shall constitute a personal judgment against each surety on the bond, for which execution and other lawful process may issue.

The officer who is responsible for taking the bail bond is also ordered to appear before the Court on the date and at the time noted above, unless (1) the surety is a bail bondsman, or (2) the officer accepted cash in the amount of bail.

IT IS SO ORDERED on this _____ day of _____, 20_____.

_____, **CIRCUIT JUDGE**

_____, **CIRCUIT CLERK**

BY:_____
Deputy Circuit Clerk

IN THE _____ COURT OF _____, ARKANSAS

STATE OF ARKANSAS)
) SS
COUNTY OF _____)

DUPLICATE ORIGINAL SEARCH AND SEIZURE WARRANT

DIRECTED TO: ANY POLICEMAN, SHERIFF OR LAW ENFORCEMENT OFFICER IN THE STATE OF ARKANSAS:

_____, Affiant, being duly sworn, pursuant to Ark. Code Ann. Sec. 16-82-201, deposes and says that there is reasonable cause to believe that certain property is evidence of or fruit of a crime or is contraband or is unlawfully possessed or otherwise subject to seizure and is located in a particular premises or in the possession of particular persons described as follows:

Item(s) to be seized:

Upon sworn oral testimony communicated by telephone or _____ to me by the above-named affiant(s) on
(other appropriate means)
this date, I do hereby find that the sworn oral testimony establishes reasonable cause for the issuance of this search warrant to search the above-named place for the above-named item(s).

YOU ARE HEREBY COMMANDED TO CONDUCT A SEARCH:

Within a reasonable time (not to exceed (60) days) between the hours of 6:00 a.m. and 8:00 p.m., of the above-named place and if

the above-named item(s) be found to seize it leaving a copy of this warrant with the occupant thereof, or attached to the premises if unoccupied, along with a receipt fairly describing the item(s) seized, and then make a return of this warrant for the issuing court within five (5) days of the execution of this warrant along with a verified report of the facts and circumstances of execution, including a list of things seized.

This duplicate original search and seizure warrant signed by _____, as directed by the Honorable
(person requesting warrant)

_____, Judge of _____, Arkansas, on

_____, __, at _____ a.m./p.m. at _____,

_____.

_____
Judge

_____
Date