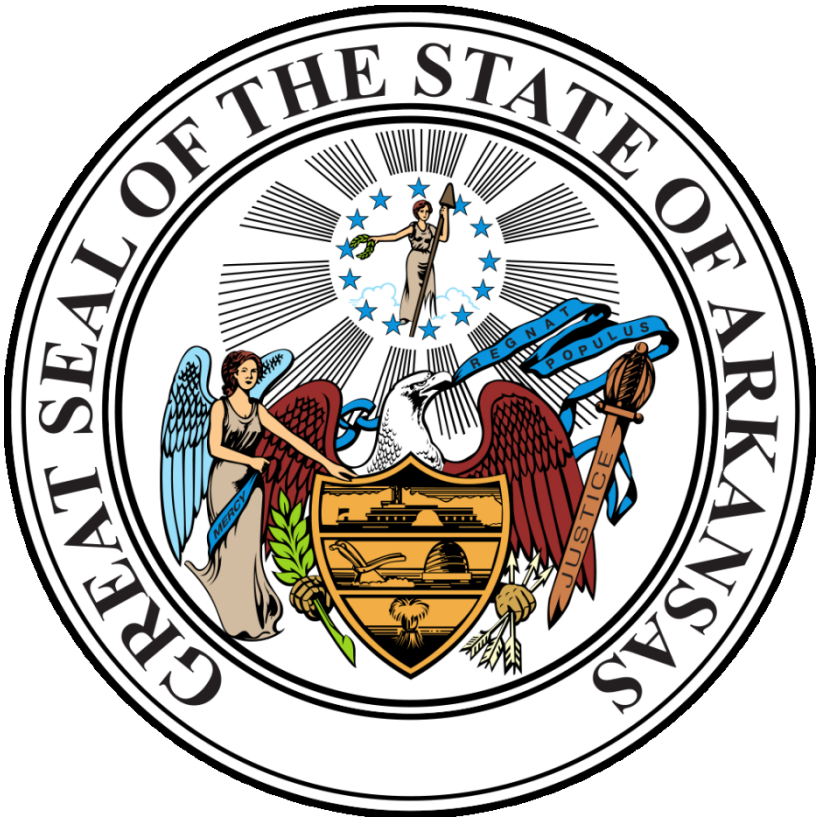
Arkansas Circuit Courts

Judges' Benchbook

Civil & Criminal Divisions



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Welcome to the updated Circuit Court Judges' Benchbook for the Criminal and Civil Divisions. We are pleased to provide you with this up-to-date resource that we hope will aid you in your legal research and decision-making.

The new format of the Benchbook lends itself to both hardcopy and digital formats. To make the most of this Benchbook, we suggest that you utilize the embedded links to cases, court rules, and other resources. In order to access the case law, you will need to sign in to your Fastcase account using your Arkansas Bar Association log in. It is easy to do. You will need to repeat this process each session that you use the Benchbook. You may consider "bookmarking" these links for future reference. If you do not have access to Fastcase because you are not a member of the Arkansas Bar, find out more about becoming a member at https://www.arkbar.com/pages/Join_Renew_Membership_Online.aspx.

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As always, the staff at the Administrative Office of the Courts is here to help. If you have any questions, please contact:

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I. Jurisdiction

Subject Matter Jurisdiction

Circuit courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Arkansas Constitution. Ark. Const., Amendment 80 §6 (A).

The circuit court shall have original jurisdiction, exclusive of the district court, for the trial of offenses defined as felonies by state law and shall have original jurisdiction concurrent with the district court for the trial of offenses defined as misdemeanors by state law. Ark. Code Ann. § 16-88-101.

The local jurisdiction of circuit courts shall be of offenses committed within the respective counties in which they are held. Ark. Code Ann. § 16-88-105.

Relevant Statute

If, during the trial, it shall appear that the offense was committed out of the jurisdiction of the court, but within the jurisdiction of some other court of this state, the court shall stop the trial, discharge the jury, and transfer the case to the proper court.

If it appears the offense was committed out of the state, the trial shall be stopped and the defendant either discharged or ordered to be retained in custody for a reasonable time until the counsel for the state shall have an opportunity to inform the chief executive officer of the state in which the offense was committed of the facts and to allow the officer an opportunity to require the delivery of the offender.

Ark. Code Ann. § 16-89-119.

Personal Jurisdiction

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.

An individual domiciled in Arkansas is subject to in personam jurisdiction in the state's courts, as is a corporation organized under Arkansas law. Milliken v. Meyer, 311 U.S. 457, 61 S. Ct. 339 (1940)(domicile alone is a sufficient basis of personal jurisdiction even if the defendant is served outside the state).

A court can exert personal jurisdiction over a party if that party is served with process while physically present within the state. Pennoyer v. Neff, 95 U.S. 714 (1877).

"Due process of law" requires only that in order to subject a defendant to a judgment in personam, if he be not present within territory of forum, he has certain minimum contacts with it such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310 (1945).

> In order to satisfy due process in cases in which service of process is accomplished by means of a long-arm statute, the foreign corporation must have certain minimum contacts with the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice, and in addition, it is essential in each case that there be some act by which defendant purposefully avails itself of the privilege of conducting activities within the forum state. Hutson v. Fehr Bros., Inc., 584 F.2d 833 (8th Cir. 1978).
>
> Foreseeability that is critical to due process analysis of state court's jurisdiction of a nonresident defendant is not mere likelihood that a product will find its way into the forum state but rather it is that a defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980).
>
> A single contract can provide the basis for exercise of personal jurisdiction over a nonresident defendant if there is a substantial connection between the contract and the forum state. SD Leasing, Inc. v. Al Spain & Associates, Inc., 277 Ark. 178, 640 S.W.2d 451 (1982)(Arkansas court had jurisdiction over Florida defendant in suit brought by Arkansas corporation for default

on noncancellable lease agreement where, though lease was executed in Florida, it was mailed to lessor in Arkansas where it was reviewed, approved and finally accepted, lessee mailed its monthly payments directly to lessor in Arkansas as well as two memos informing lessor that it was going out of business, lease agreement specifically provided that it would be governed by Arkansas law, and lease also provided that, in event of default, lessee would consent to and be subject to jurisdiction of Arkansas courts).

A foreign corporation that has qualified to do business in Arkansas and designated an agent for service of process is subject to general jurisdiction if it has substantial operations and employees in the state and owns property here, either directly or through a wholly owned subsidiary. *See* Volunteer Transport, Inc. v. House, 357 Ark. 95, 162 S.W.3d 456 (2004); Davis v. St. John's Health System, Inc., 348 Ark. 17, 71 S.W.3d 55 (2002).

The plaintiff has the burden of proving that a non-resident defendant has sufficient contacts with Arkansas to be sued in personam. Hawes Firearm Co. v. Roberts, 263 Ark. 510, 565 S.W.2d 620 (1978).

Any cause of action arising out of acts done in this state by an individual in this state or by an agent or servant in this state of a foreign corporation may be sued upon in this state, although the defendant has left this state, by process served upon or mailed to the individual or corporation outside the state. Ark. Code Ann. § 16-58-120.

A defendant may consent to jurisdiction, impliedly or expressly. *See* Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982); Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196 (8th Cir.1990).

See also Hutson v. Fehr Bros., Inc., 584 F.2d 833 (8th Cir. 1978)(Arkansas state law permitted in personam jurisdiction over Italian corporation, that repackaged and resold allegedly defective chain which broke and caused personal injury to plaintiffs, since the corporation's alleged acts or omissions outside of Arkansas caused the tortious injury in Arkansas, and since the corporation, while at least two steps removed from American company which allegedly derived $74,551.35 in revenue

from Arkansas sales over a four-year period, could be said to have derived "substantial revenue" from the sale of its chains in Arkansas).

For a thorough discussion of all of the above issues, see 2 Arkansas Civil Prac. & Proc. § 10:2 (5th ed.).

In Rem Jurisdiction

An "in rem action" is one in which the court is required to act directly on property or on title to property. RMP Rentals v. Metroplex, Inc., 356 Ark. 76, 146 S.W.3d 861 (2004).

Only a court with geographic jurisdiction over the county where the land is located has in rem jurisdiction. RMP Rentals v. Metroplex, Inc., 356 Ark. 76, 146 S.W.3d 861 (2004).

Courts need not have in personam jurisdiction of all persons whose interests may be affected by an in rem determination of title to property. Arndt v. Griggs, 134 U.S. 316 (1890).

> The only limitation is that the best possible notice must be given to a person whose interests are to be affected. Ingram v. Luther, 244 Ark. 260, 424 S.W.2d 546 (1968).

In rem jurisdiction is founded upon physical power and the basis of the jurisdiction is the presence of the subject property within the territorial jurisdiction of the forum state. In re: Estate of Torian v. Smith, 263 Ark. 304, 564 S.W.2d 521 (1978).

The U.S. Supreme Court's decision in *Shaffer v. Heitner* extended to in rem jurisdiction the "minimum contacts" requirement developed initially for in personam jurisdiction. Shaffer v. Heitner, 433 U.S. 186 (1977).

See also RMP Rentals v. Metroplex, Inc., 356 Ark. 76, 146 S.W.3d 861 (2004)(where the court has subject-matter jurisdiction, forum-selection clauses are enforceable if enforcement would be fair and reasonable);

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

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

Quasi-in-Rem Jurisdiction

A proceeding in rem has been defined to be a proceeding against the property while a proceeding "quasi in rem" is a proceeding against a person in respect to the property. Simpson v. Reinman, 146 Ark. 417, 227 S.W. 15 (1920).

Quasi in rem jurisdiction as well as personal jurisdiction over an absent defendant depend on the defendant's contacts with the forum state so as to meet traditional notions of fair play and substantial justice, the formula stated in *International Shoe Co. v. Washington*. Levi Strauss & Co. v. Crockett Motor Sales, Inc., 293 Ark. 502, 739 S.W.2d 157 (1987). [Note: Actions involving receivership, marshaling of assets, and administration of trusts are quasi in rem. A quasi-in-rem action may also be based on a claim for money begun by attachment or other seizure of property when the court has no jurisdiction over the person of the defendant but has jurisdiction over a thing belonging to the defendant or over a person who either is indebted or owes a duty to the defendant.]

Although a judgment in rem affects the interests of all persons in designated property, a judgment quasi in rem affects the interests of particular persons in designated property and refers to actions in which the plaintiff is seeking to secure a preexisting claim in the subject property, and to extinguish or establish the nonexistence of similar interests of particular persons, and to actions in which the plaintiff seeks to apply what he or she concedes to be the property of the defendant to the satisfaction of a claim against the defendant. 20 Am. Jur. 2d Courts § 70.

Challenges to Jurisdiction

A challenge to jurisdiction of parties is waived if not included in a motion to dismiss or other responsive pleading if no motion to dismiss is filed. Ark. R. Civ. P. 12(h).

The defense of lack of jurisdiction over the subject matter is never waived and may be raised at any time. Ark. R. Civ. P. 12(h).

Subject-matter jurisdiction is always open, cannot be waived, can be questioned for the first time on appeal, and can be raised by the Supreme Court. Terry v. Lock, 343 Ark. 452, 37 S.W.3d 202 (2001).

The Arkansas Rules of Civil Procedure shall not be construed to extend or limit the jurisdiction of circuit court. Ark. R. Civ. P. 82.

II. Venue

Civil Actions In General

In general, all civil actions (other than those mentioned in Ark. Code Ann. §§ 16-60-102–109, 16-106-101, and specific venue provisions codified in another title of the Arkansas Code) shall be brought in any of the following counties:

The county in which a substantial part of the event or omission giving rise to the cause of action occurred;

The county in which an individual defendant resided at the time of the event or omission giving rise to the cause of action;

If the defendant is an entity other than an individual, the civil action shall be brought in the county where the entity had its principal office in this state at the time of the event or omission giving rise to the cause of action; or

The county in which the plaintiff resided at the time of the event or omission giving rise to the cause of action.

If the plaintiff is an entity other than an individual, the civil action shall be brought in the county where the plaintiff had its principal office in this state at the time of the events or omissions giving rise to the cause of action. Ark. Code Ann. § 16-60-101.

The residence of a properly joined named class representative may be considered in determining proper venue in a class action. Ark. Code Ann. § 16-60-101.

The residence of a putative or actual member of a class other than a named representative shall not be considered in determining proper venue for a class action. Ark. Code Ann. § 16-60-101.

In a civil action with multiple plaintiffs, venue shall be proper as to each named plaintiff joined in the civil action unless:

The plaintiffs establish that they assert any right to relief against the defendant jointly, severally, or arising out of the same transaction or occurrence; and

The existence of a substantial number of questions of law or material fact common to all the plaintiffs not only will arise in the civil action, but also that:

The common questions of law or material fact will predominate over individual questions of law or material fact pertaining to each plaintiff;

The civil action can be maintained more efficiently and economically for all parties than if prosecuted separately; and

The interest of justice supports the joinder of the parties as plaintiffs in one civil action. Ark. Code Ann. § 16-60-101.

When venue is proper as to one defendant, it is also proper as to any other defendant with respect to all causes of action arising out of the same transaction or occurrence. Ark. Code Ann. § 16-60-101.

Local Civil Actions

A civil action for the following causes shall be brought in the county in which the subject of the civil action, or some part of the civil action, is situated:

The recovery of real property, or of an estate or interest therein;

The partition of real property;

The sale of real property under a mortgage, lien, or other encumbrance; or

An injury to real property. Ark. Code Ann. § 16-60-102.

Actions by the State Highway Commission to condemn a right-of-way shall be brought in the county where the land is situated. Ark. Code Ann. § 27-67-309.

In an action to enforce a mechanics' or materialmans' lien, venue is proper in the county in which the building, erection, or other improvement to be charged with the lien is situated. Ark. Code Ann. § 18-44-117.

Actions on Debt, Account, or Note

A civil action on a debt, account, or note, or for goods or services against a city of the first class, a city of the second class, an incorporated town, a public facilities board, or a county shall be brought in the county in which the city, town, public facilities board, or county lies. Ark. Code Ann. § 16-60-106.

Actions for medical injury

A civil action for medical injury brought under Ark. Code Ann. §§ 16-114-201 et seq. against a medical care provider, as defined in Ark. Code Ann. § 16-114-201, shall be filed in the county in which the alleged act or omission occurred. Ark. Code Ann. § 16-60-105.

Contract actions by resident subcontractor, supplier, or materialman against nonresident prime contractor or subcontractor

A civil action in contract by a resident subcontractor, supplier, or materialman against a prime contractor or subcontractor who is a nonresident of this state or who is a foreign corporation may be brought in the county in which the plaintiff resided at the time the cause of action arose. Ark. Code Ann. § 16-60-107.

Action by insured or beneficiary against surety on contractor's performance bond

A civil action brought in this state by or in behalf of an insured or beneficiary against a domestic or foreign surety on a contractor's payment or performance bond may be brought in the county:

In which the loss occurred;

Of the insured's residence at the time of loss; or

Of the beneficiary's residence at the time of loss. Ark. Code Ann. § 16-60-108.

Actions against a public school district

A civil action, other than a civil action described in Ark. Code Ann. § 16-60-104 or a civil action for personal injury or death, against a public school district, a public school district board of directors, or a public school district's officer, agent, servant, or employee acting within the course and scope of his or her agency or employment

shall be brought in the county or in the judicial district of the county in which the public school district is situated or has its principal office. Ark. Code Ann. § 16-60-109.

Local Criminal Actions

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

When the crime is committed on a boundary line, either county has concurrent jurisdiction. Bottom v. State, 155 Ark. 113, 244 S.W.2d 334 (1922).

Transitory Cases

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.

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.

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.

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.

Transitory Actions

Causes of Action

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

For recovery of fine, penalty, or forfeiture imposed by statute.

Against a public officer for an act done by virtue of or under color of office, or for neglect of official duty.

Upon official bond of public officer other than state officer.
Ark. Code Ann. § 16-60-103.

Actions Involving the State

Venue is proper in Pulaski County in the following actions:

Civil actions on behalf of the state, or which may be brought in the name of the state, or in which the state has or claims an interest, except as provided in Ark. Code Ann. § 16-106-101;

Actions brought by state boards, state commissioners, or state officers in their official capacity, or on behalf of the state, except as provided in Ark. Code Ann. § 16-106-101;

Actions against the state and all actions against state boards, state commissioners, or state officers on account of their official acts, except that if an 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; and

Civil actions brought against an organization that regulates extracurricular interscholastic activities in grades seven through twelve in both public and private schools if the organization's main administrative office is located in Pulaski County.

Ark. Code Ann. § 16-60-104.

Objections to Venue

Unless venue objections are waived by the defendant or by unanimous agreement of multiple defendants, if venue is improper for any plaintiff joined in the civil action, then the claim of the plaintiff shall be severed and transferred to a court where venue is proper.

> If severance and transfer is mandated and venue is appropriate in more than one court, a defendant sued alone or multiple defendants, by unanimous agreement, may select another court to which the civil action shall be transferred.
>
> If there are multiple defendants who are unable to agree on another court, the court in which the civil action was originally filed may transfer the action to another court. Ark. Code Ann. § 16-60-101.

An objection to venue is waived if not included in a motion to dismiss, or other responsive pleading if no motion to dismiss is filed. Ark. R. Civ. P. 12(h). [Note: The Arkansas Rules of Civil Procedure are intended to be procedural only and do not affect any substantive issues such as venue and jurisdiction. These rules assume that venue and jurisdiction are proper. Whether this is true depends upon substantive law and due process requirements. Ark. R. Civ. P. 82.]

Change of Venue Procedure - Civil

Any party to a civil action to be tried by a jury may obtain an order for a change of venue by motion upon a petition. The petition should state that the petitioner believes that he or she cannot obtain a fair and impartial trial because of undue influence of his or her adversary, or of the undue prejudice against the petitioner, his or her cause of action, or defense.

The petition must be signed by the party and verified as pleadings are verified. It must also be supported by the affidavits of at least two credible persons who believe the statements of the petition are true.

> When a corporation files the petition, neither of the credible persons may be directly or indirectly connected with the corporation in any way and neither shall receive any benefit or favor from the corporation within the next 12 months.

The motion shall be made to the circuit court where the action is pending. It may be made in open court or with reasonable notice to the adverse party and attorney.

Ark. Code Ann. § 16-60-201.

If a change is necessary to obtain a fair and impartial trial, the court may order a change of venue to another county to which there is no valid objection and which is most convenient to the parties and witnesses. Ark. Code Ann. § 16-60-203.

If the motion is granted, the clerk shall thereupon transfer the necessary papers. The movant shall be responsible for paying the necessary fees and costs within the statutory time required. Ark. Code Ann. § 16-60-204.

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.

Change of Venue Procedure - Criminal

Any criminal cause pending in any circuit court may be removed by the order of the court, to the circuit court of another county whenever it shall appear, that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair and impartial trial cannot be had in that county. Ark. Code Ann. § 16-88-201.

When there are several defendants in any indictment or criminal prosecution and the cause of the removal of the defendants exists only as to one or more of them, the other defendants shall be tried and all proceedings had against them in the county in which the case is pending, in all respects as if no order of removal had been made as to any defendant. Ark. Code Ann. § 16-88-202.

Only one change of venue shall be granted in any criminal case or prosecution. Ark. Code Ann. § 16-88-203.

The application of the defendant for an order of removal shall be by petition setting forth the facts on account of which the removal is requested. The truth of the allegations in the petition shall be supported by the affidavits of two credible persons who are qualified electors, actual residents of the county, and not related to the defendant in any way.

> Reasonable notice of the application shall be given to the prosecuting attorney.

> The court shall hear the application and, after considering the facts set forth in the petition and the affidavits accompanying it and any other affidavits or counter affidavits that may be filed and, after hearing any witnesses produced by either party, shall either grant or refuse the petition according to the truth of the facts alleged in it and established by the evidence.
>
> The order shall state whether it is made on the application of the party or on facts within the knowledge of the judge making the order, and shall specify the cause of removal, and designate the county to which the cause is to be removed.
>
> Ark. Code Ann. § 16-88-204.

When the order is made, the defendant, if not in custody and the offense charge is bailable, shall enter into recognizance with sufficient security for his or her appearance to answer the charges in the court to which the cause is to be removed. Ark. Code Ann. § 16-88-205.

If the defendant is in actual custody, the court granting the order of removal shall also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed. Ark. Code Ann. § 16-88-206.

III. Specific Actions

Real Property

Eminent Domain

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

The eminent domain procedures are by and large found in Title 18, Subtitle 2, Chapter 15 of the Arkansas Code. They include:

> The condemnor should first attempt to reach agreement with property owner. Ark. Code Ann. § 18-15-1303.
>
> If no agreement, the 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. The application shall describe the affected property or make reference to a map or plat. Ark. Code Ann. § 18-15-604.
>
> Notice shall be given to property owners and all interested persons by personal service or certified mail, by publication of notice for nonresidents, incompetents or unknown parties, or by summons or notice by mail to the 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, & 18-15-1005.
>
> An eminent domain action shall take precedence over other matters. Ark. Code Ann. § 18-15-403.
>
> A guardian *ad litem* shall be appointed for any infant or incompetent individual without a legal representative. Ark. Code Ann. § 18-15-1203.

The circuit court shall set time of hearing, summon a jury, and take evidence. The jury shall determine just compensation. Ark. Code Ann. § 18-15-1204.

At the trial of the cause, a jury shall assess the amount of damages the applicant shall pay for the property taken in the proceedings. Thereafter, a judgment shall be entered stating that title to the property shall vest in the applicant upon payment to the clerk of the court of the amount of damages so assessed. Ark. Code Ann. § 18-15-404.

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

For more information or an overview of the eminent domain process, you may look to Part II, Chapter 18 of the Arkansas Law of Damages.

You may also find helpful the following law review article: Carol J. Miller & Stanley A. Leasure, Post-Kelo Determination of Public Use and Eminent Domain in Economic Development Under Arkansas Law, 59 Ark. L. Rev. 43 (2006).

Index for other 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.

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

A person shall be guilty of a forcible entry and detainer if the person shall:

> Enter into or upon any lands, tenements, or other possessions and detain or hold them without right or claim to title;
>
> Enter by breaking open the doors and windows or other parts of the house, whether any person is in it or not;
>
> Threaten to kill, maim, or beat the party in possession or use words and actions as have a natural tendency to excite fear or apprehension of danger;
>
> Put out of doors or carry away the goods of the party in possession; or
>
> Enter peaceably and then turning out by force or frightening by threats or other circumstances of terror the party to yield possession.
>
> Ark. Code Ann. § 18-60-303.

Likewise, a person shall be guilty of an unlawful detainer if the person shall, willfully and without right:

> Hold over any land, tenement, or possession after the determination of the time for which it was demised or let to him or her, or the person under whom he or she claims;
>
> Peaceably and lawfully obtain possession of any land, tenement, or possession and hold it willfully and unlawfully after demand made in writing

for the delivery or surrender of possession of the land, tenement, or possession by the person having the right to possession or his or her agent or attorney;

Fail or refuse to pay the rent for the land, tenement, or possession when due, and after three days' notice to quit and demand made in writing for the possession of the land, tenement, or possession by the person entitled to the land, tenement, or possession or his or her agent or attorney, shall refuse to quit possession;

Fail to maintain the premises in a safe, healthy, or habitable condition; or

Cause or permit the premises to become a public or common nuisance (See Ark. Code Ann. §§ 14-54-1501 et seq., Ark. Code Ann. § 16-105-401 et seq., Ark. Code Ann. § 14-54-701 et seq.). Ark. Code Ann. § 18-60-304.

The plaintiff shall file a signed complaint with the clerk of the circuit court in the county in which the offense has been committed. The complaint should specify the lands, tenements or possessions forcibly entered and/or detained, specify by whom and when done, and it should be accompanied by plaintiff's own or another credible person's affidavit stating the plaintiff's lawful possession and the defendant's forcible entry and/or detainer. Ark. Code Ann. §§ 18-60-306 – 307.

The clerk shall then issue a summons in the customary form and a notice of intention to issue writ of possession. Within five days after the summons is served, the defendant may file written objections and the plaintiff shall obtain and give notice of hearing date by certified mail, postage prepaid. If defendant fails to file written objections, a writ of possession shall issue. Ark. Code Ann. § 18-60-307.

The court shall order issuance of writ of possession if the plaintiff presents sufficient evidence at the hearing to convince the court that he or she is likely to succeed on the merits and if the plaintiff provides adequate security. Within five days of issuance of the writ, the defendant may retain possession upon payment of adequate security as determined by the court. Ark. Code Ann. § 18-60-307.

A plaintiff demanding an immediate writ of possession who is a housing authority is entitled to an expedited hearing within ten days of the filing of objections by

defendant if surrender of possession is sought as a result of defendant being convicted under Uniform Controlled Substance Act. Ark. Code Ann. § 18-60-307.

If the court's finding or the jury's verdict is for the plaintiff, the court shall enter judgment with costs and issue a writ of possession if the plaintiff is not already in possession. The court or jury shall assess the amount of rent due if agreed upon (if not, then the fair rental value). In addition, liquidated damages shall be assessed in the amount equal to the rental value for each month, or portion thereof, that the defendant has forcibly entered and detained or unlawfully detained the property if the property is for residential purposes only. If the property is for commercial or residential and commercial purposes, then the liquidated damages will be three times the rental value per month for the time that the defendant has unlawfully detained the property. Ark. Code Ann. § 18-60-309.

If the finding or verdict is for the defendant, the court shall enter a judgment with costs and damages sustained by dispossession and issue a writ of restitution if the property is in plaintiff's possession. The defendant may present evidence showing damages sustained by being dispossessed of the land or property. Ark. Code Ann. § 18-60-309.

Title to property shall not be adjudicated upon or given in evidence except to show right and extent of possession. Ark. Code Ann. § 18-60-308.

The sheriff shall execute the writ of possession in accordance with the procedures in Ark. Code Ann. § 18-60-310.

Escheated Estates

The prosecutor may file an information on behalf of the county in the circuit court if there is reason to believe that any real estate in the county has escheated and the estate has not been sold for payment of the debts of the deceased within three years after the death of the last person seized. The information shall describe the estate, name the person last lawfully seized, name the terre-tenants and persons claiming the estate, if known, and set out facts and circumstances creating the claimed escheat. Ark. Code Ann. § 28-13-106.

The court shall issue a *scire facias* against such claimants requiring them to appear

and show cause against the escheat. The court shall also 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. Ark. Code Ann. § 28-13-106.

Claimants may appear and plead and may contest the facts on the information any time within three days of the return of the *scire facias*. Other claimants may appear and plead in open court within the time for pleading. If no claimants appear or plead, a default judgment for the county shall be entered. Ark. Code Ann. § 28-13-106.

If any person appears and denies the title set up by the county, or contests any material fact in the information, the issue shall be tried as other issues of fact. A survey may be ordered as in other cases where the titles or boundaries of land are drawn in question. Ark. Code Ann. § 28-13-106.

If it appears from the facts found or admitted that the county has good title to the lands and tenements in the information mentioned, or any part thereof, then judgment shall be rendered that the county is seized thereof and shall recover costs against the defendant. When any judgment shall be rendered that the county is seized of any real estate, the judgment shall contain a description of the real estate and shall vest the title in the county. Ark. Code Ann. § 28-13-107.

If it appears that the county has no title in the estate, the defendant shall recover his or her costs, to be taxed and certified by the clerk and the county treasurer shall issue a warrant therefor on the treasury of the county. However, no defendant shall be entitled to recover costs unless the title to the estate appears to the court, by the facts found, to be in him or her. Ark. Code Ann. § 28-13-107.

Ejectment – In General

The action of ejectment may be maintained in all cases in which the plaintiff is legally entitled to the possession of the premises. Ark. Code Ann. § 18-60-201. This includes under or by virtue of:

An entry made with the register and receiver of the proper land office of the United States,

A preemption right under the laws of the United States, or

When the plaintiffs makes an improvement on public lands if another person is in possession of the improvement. Ark. Code Ann. § 18-60-202. The action also includes claims of possession under or by virtue of an entry made with the proper swampland agent or land agent of proper state land office. Ark. Code Ann. § 18-60-203.

The action shall be maintained in the parties' real names. It may be brought against the person in possession of the premises or his or her lessor, or both. The person from or through whom the defendant claims title to the premises may, on his or her motion, be made a codefendant. Ark. Code Ann. § 18-60-204.

The complaint shall set forth and attach as exhibits all deeds and other written evidences of title upon which suit relies and shall state such facts that show *prima facie* title in plaintiff. The answer shall set forth and attach as exhibits all deeds and written evidence of title, state facts showing *prima facie* title in defendant, and set forth exceptions to plaintiff's documentary evidence which specifically note objections taken. Ark. Code Ann. § 18-60-205.

The plaintiff shall, within three days after the answer is filed, file exceptions to defendant's documentary evidence. The 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. Objections to evidence not specifically raised shall be waived. Ark. Code Ann. § 18-60-205.

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. Ark. Code Ann. § 18-60-206.

If judgment for plaintiff is returned, it shall be for recovery of premises, damages, and costs. Damages shall consist of rents and profits to the time damages are assessed. [NOTE: If plaintiff seeks to recover an improvement from defendant and plaintiff has entered such improvement in any U.S. land office in the state, no damages are recoverable.] If judgment should be rendered against the defendant, the judgment shall be for the recovery of the premises, and a writ of inquiry shall be

awarded to assess the damages. Ark. Code Ann. §§ 18-60-207 & 209.

A writ of possession may issue if plaintiff recovers both possession and damages and shall command officer to whom writ is delivered to deliver possession of premises to plaintiff, and levy and collect damages and costs as in executions on judgments in personal actions. Ark. Code Ann. § 18-60-208.

Plaintiff shall pay to defendant who entered peaceably in belief of ownership all taxes paid by defendant on premises and the value of improvements defendant has made. Ark. Code Ann. § 18-60-213.

The court or jury shall assess the value of improvements, damages from waste, mense profits allowed by law and accruing within three years prior to suit, and taxes paid by occupant. 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. Rents accruing from date of judgment shall be set off against value of improvement and taxes. Ark. Code Ann. § 18-60-213.

Ejectment – Tax Deed

An 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.

The plaintiff shall file affidavit setting forth that the claimant has tendered to the purchaser(s) thereof the full amount of taxes and costs first paid on account of lands with 25% interest and the full value of improvements made by purchaser. The court shall dismiss the action if the affidavit is not filed before commencement of the action.

If judgment is for plaintiff, it shall be for the possession of the premises in question and damages shall be assessed in favor of the defendant for the full amount of all taxes, costs, and interest, and the value of all improvements. It shall be a lien upon the land until satisfied.

Ark. Code Ann. § 18-60-212.

If a tax sale is later determined to be void, or it is determined that the owner may redeem the forfeiture, the rightful deed holder is entitled to recover the value of any improvements or betterments made to the land by reason of a survey. The holder of the tax deed shall have a lien on the lands for this amount, which may be enforced by equitable proceedings at any time within three years after the date of the judgment. Ark. Code Ann. § 18-60-214.

Partition

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 seek partition. Ark. Code Ann. § 18-60-401.

The petition must contain a description of the property, the names of those having an interest in it, the amount of those interests, and a prayer for the division of the property. The petition must also summons all having an interest if they have not joined in the petition. Ark. Code Ann. § 18-60-401. Parties may be constructively summoned as provided by Rule 4 of the Arkansas Rules of Civil Procedure. Ark. Code Ann. § 18-60-407. Those summoned have a right to contest the petition by filing a written answer. Ark. Code Ann. § 18-60-410.

Any person having an interest may intervene by showing his or her interest by affidavit. Ark. Code Ann. § 18-60-408. Guardians should be appointed for minors and insane or incompetent persons. Ark. Code Ann. §§ 18-60-405; 18-60-406.

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. Ark. Code Ann. § 18-60-404.

Partition is to be ordered when all join or there is a failure to answer. Ark. Code Ann. § 18-60-409. Even upon default, the petitioners should present their case by exhibition to the court of the evidence of their title upon which they claim. Ark. Code Ann. § 18-60-411. The court shall determine and declare the rights, titles, and interests of all the parties to the proceedings and give judgment that partition be made according to those rights. Ark. Code Ann. § 18-60-412.

Upon judgment, the court should appoint commissioners to partition the land in

accordance with Ark. Code Ann. §§ 18-60-414 – 426. They will report to the court whether partition is feasible and can be made without great prejudice to the owners, upon which they will either issue deeds to the partitioned land or direct the court to issue an order of sale with the proceeds to be divided among the interested parties according to their rights.

For a discussion on these procedures and the related case law, see 2 Arkansas Civil Prac. & Proc. § 39:7 (5th ed.).

Adverse Possession & the Statute of Limitations for Land Actions

Unimproved and unenclosed land is deemed and held to be in possession of the person who pays the taxes thereon if he or she has color of title and has paid the taxes for at least seven years in succession. Ark. Code Ann. § 18-11-102.

All suits for any lands shall be filed within seven years after the right accrued unless the party is a minor or not of sound mind and then within three years upon reaching twenty-one or coming of sound mind. Ark. Code Ann. § 18-61-101.

> All actions against a purchaser for the recovery of lands sold at judicial sales shall be brought within five years after the date of the sale, unless the party is a minor or not of sound mind and then within three years upon reaching twenty-one or coming of sound mind. Ark. Code Ann. § 18-61-105.

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. Ark. Code Ann. § 18-61-102.

No action of ejectment can be brought when the plaintiff has not possessed the land for five years. Ark. Code Ann. § 18-61-103.

Three years' peaceable and uninterrupted possession of the premises bars a complaint for forcible entry and unlawful detainer. Ark. Code Ann. § 18-61-104.

Public Nuisances

The sale of alcoholic beverages in violation of the law, and the operation of a roadhouse, tourist camp, public dance hall, or nudist camp in violation of law, are public nuisances. Any person carrying on or permitting use of the premises shall be

deemed to be carrying on or engaging in the undertaking. Ark. Code Ann. § 16-105-204.

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. Ark. Code Ann. §§ 16-105-205 & 206.

The defendant shall be given five days' notice in writing before the hearing of a permanent injunction, but no notice shall be required of the hearing of a temporary injunction. Violation of an injunction is punishable by contempt as provided in Ark. Code Ann. § 16-105-203; Ark. Code Ann. § 16-105-207.

Evidence of the general reputation of the building or place where the nuisance is alleged to exist shall be admissible for the purpose of proving or tending to prove the existence of the nuisance. 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. Ark. Code Ann. § 16-105-208.

If the existence of the nuisance is established, the court shall enter an order of abatement in accordance with Ark. Code Ann. § 16-105-209.

See Title 16, Subtitle 7, Chapter 105 for other provisions concerning the abatement of nuisances, including dance halls, drug nuisances, and noise pollution.

See also 1 Arkansas Law Of Damages § 28:2 (5th ed.) for a summary of the chapter and pertinent case law.

Specific Writs

Mandamus and Prohibition

The circuit courts shall hear and determine petitions for writs of mandamus (commanding an executive, judicial, or ministerial officer to perform or omit to do an act enjoined by law) and writs of prohibition (to an inferior court prohibiting an inferior court from proceeding in a cause or matter over which it has no jurisdiction). Ark. Code Ann. §§ 16-115-101 & 102 (as modified by Stilley v. Makris, 343 Ark. 673, 38 S.W.3d 889 (2001)).

Petitions for writs of mandamus or prohibition shall have precedence over all other actions and proceedings and shall be heard and determined summarily. Ark. Code Ann. § 16-115-103.

It is within the judge's discretion to determine from the petition, records, and files whether an evidentiary hearing is warranted. If a hearing is deemed necessary, it shall be held within forty-five days from the date of application. Ark. Code Ann. § 16-115-104. Written notice of the hearing shall be served upon the officer or persons against whom the relief is sought, and shall state the style of the court, the docket number of the action or proceeding, the date and place of hearing, and the relief sought. Ark. Code Ann. § 16-115-105.

The party against whom the writ of mandamus or prohibition is sought, when properly served with notice, shall file an answer before the hearing and show cause why the writ should not be granted; otherwise, upon a proper showing, suitable relief shall be speedily granted. Ark. Code Ann. § 16-115-106.

The court shall hear and determine all issues of law and fact. The order granting or denying writ shall be a final and appealable order. Ark. Code Ann. § 16-115-107. During pendency of proceedings, court may make temporary orders to prevent injury, waste, or damage. Ark. Code Ann. § 16-115-108.

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).

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

Certiorari

Circuit courts have the power to issue writs of certiorari to any officer or board of officers, city or town council, or any inferior tribunal of their respective counties in order to correct any erroneous or void proceeding or ordinance.

An application for a writ of certiorari may be made on reasonable notice. A temporary restraining order may be granted on bond.

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

The court shall have power in such cases to enforce its judgment by mandamus, prohibition, and other appropriate writs. Ark. Code Ann. § 16-13-205.

Corporations

Dissolution & Liquidation

The processes and procedures by which a corporation may be dissolved and liquidated are found in Ark. Code Ann. §§ 4-26-1101 – 1109. They include:

The circuit court shall have full power to liquidate the assets and business of a corporation in an action by a shareholder when it is established that:

> The 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;
>
> The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;
>
> The shareholders are deadlocked in voting power and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
>
> The corporate assets are being misapplied or wasted.
>
> Ark. Code Ann. §4-26-1108.

The circuit court shall have full power to liquidate the assets and business of a corporation in an action by a creditor when:

> The 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
>
> The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.
>
> Ark. Code Ann. §4-26-1108.

The circuit court shall also have full power to liquidate the assets and business of a corporation upon an action filed by the attorney general to dissolve a corporation when it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution. Ark. Code Ann. §§4-26-1107 - 1108.

The court shall have all the powers to supervise liquidation specified in Ark. Code Ann. § 4-26-1106, which include: notice to creditors and claimants; determination of the validity of claims; barring untimely creditors; determination and enforcement of the liability of any director, officer, shareholder, or subscriber; payment and satisfaction of claims; return of subscription payments; destruction of records; issuance of injunctions; and ordering and supervising the sale of assets.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. Ark. Code Ann. §4-26-1108.

Orders of the court shall be binding upon the attorney general, the corporation, its officers, directors, shareholders, subscribers for shares, incorporators, creditors, and claimants but shall not be binding upon any party who has not received notice of the hearing if the court had directed that notice be given to such party. Ark. Code Ann. § 4-26-1106.

Venue will be the county in which the corporation maintained its principal place of business on the date of dissolution or, if it had no such principal place of business, in the county wherein its registered office is located; otherwise the venue shall be Pulaski County. Ark. Code Ann. § 4-26-1106.

After liquidation has been completed, the court shall enter a decree dissolving the corporation and the dissolution will be certified to the Secretary of State and the county clerk. Ark. Code Ann. § 4-26-1108.

Uniform Arbitration Act

Jurisdiction

A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award pursuant to the Uniform Arbitration Act. Ark. Code Ann. § 16-108-226.

Venue

A motion for judicial relief under Ark. Code Ann. § 16-108-205 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs. Ark. Code Ann. § 16-108-227.

Motions to Compel or Stay

The court shall order arbitration when, upon a person's motion showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement, the refusing party either does not appear or does not oppose the motion. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

If a party makes a motion to the court to order arbitration, the court shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration. Likewise, if the court orders arbitration, the court shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim. Ark. Code Ann. § 16-108-207.

Appointment of Arbitrators

If the parties agree on a method for appointing an arbitrator, that method must be followed unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an appointed arbitrator fails, the court, on motion of a party to the arbitration proceeding, shall appoint a neutral arbitrator, who shall have all the powers of an arbitrator designated in the agreement. Ark. Code Ann. § 16-108-211.

Confirmation of an Award

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless grounds are urged for vacating, modifying, or correcting the award under Ark. Code Ann. § 16-108-220, Ark. Code Ann. § 16-108-224 or Ark. Code Ann. § 16-108-223. Ark. Code Ann. § 16-108-222.

In Arkansas, arbitration is strongly favored by public policy and is looked upon with approval by courts as a less expensive and expeditious means of settling litigation and relieving congested court dockets. The decision of the arbitration board on all questions of law and fact is conclusive, and the award shall be confirmed unless grounds are established to support vacating or modifying the award. McLeroy v. Waller, 21 Ark. App. 292, 731 S.W.2d 789 (1987).

Vacating an Award

Upon a motion, the court shall vacate an award made in the arbitration proceeding if:

The award was procured by corruption, fraud, or other undue means;

> There was evident partiality by an arbitrator appointed as a neutral arbitrator, corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
>
> An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Ark. Code Ann. § 16-108-215 so as to prejudice substantially the rights of a party to the arbitration proceeding;
>
> An arbitrator exceeded his or her powers;
>
> There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under Ark. Code Ann. § 16-108-215(c) not later than the beginning of the arbitration hearing;
>
> Or the arbitration was conducted without proper notice of the initiation of an arbitration as required in Ark. Code Ann. § 16-108-209 so as to prejudice substantially the rights of a party to the arbitration proceeding.
>
> Ark. Code Ann. § 16-108-223.

The motion to vacate must be made within ninety days of the delivery of the copy of the award to the applicant. However, if the application claims corruption, fraud, or undue means, it must be made within ninety days after grounds are or should have been known.

The court may order rehearing before new arbitrators if there was corruption, fraud, undue means, partiality, or misconduct. Otherwise, the court may order rehearing before the arbitrators who made the award or their appointed successors.

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. § 16-108-223.

An award should not be vacated unless it clearly appears that it was made without authority, or was the result of fraud or mistake, or misfeasance or malfeasance. Moreover, the illegality must appear on the face of the award. Even a gross mistake of fact will not vitiate an award unless the mistakes are apparent on the face of the

award. 200 Garrison Associates Ltd. P'ship v. Crawford Const. Co., Inc., 53 Ark. App. 7, 918 S.W.2d 195 (1996).

See Hart v. McChristian, 344 Ark. 656, 42 S.W.3d 552 (2001)(the arbitrators' failure to record a ruling did not amount to statutory grounds for vacating, modifying, or correcting the award, nor was it an act in excess of the arbitrators' jurisdiction).

Modification or Correction of an Award

The court shall modify or correct the award upon a timely motion (ninety days) if:

> There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
>
> The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
>
> The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted. Ark. Code Ann. § 16-108-224.

Recovery of Personal Property

Replevin

When a party claims a right of possession of property in the possession of another, the party may apply by petition to the circuit court or the district court for issuance of an order of delivery of the property. If the petition recites facts which, if established by proof, support the existence of a right of possession in the petitioner, an order shall be issued, directing the party against whom the order of delivery is sought to appear before the judge and show cause why the order of delivery should not be entered and the property seized and delivered to the petitioner. Ark. Code Ann. § 18-60-804.

The order shall inform the party against whom it is directed that civil and criminal penalties may be assessed if the property is willfully damaged, concealed, or removed from the court's jurisdiction, or if the party refuses to release the property to the officer designated to serve the order of delivery. Ark. Code Ann. § 18-60-805.

If at the hearing, the court determines that there are facts supporting the existence of a right of possession in the petitioner, an order of delivery shall issue. Ark. Code Ann. § 18-60-806.

The order will be executed by the sheriff. Ark. Code Ann. §§ 18-60-811 – 813.

The petitioner may alternatively file for immediate delivery by filing an affidavit with the court clerk in order to obtain an order secured by bond. Ark. Code Ann. §§ 18-60-810 – 822.

Damages may be recovered in actions for replevin. For a more thoughtful discussion, see 1 Arkansas Law Of Damages § 14:4 (5th ed.).

Replevin actions seeking property valued at less than the jurisdictional amount commence in district court. Upon a determination that the property is more valuable, the district court should transfer the action to circuit court. Bonnell v. Smith, 322 Ark. 141, 908 S.W.2d 74 (1995).

The jurisdictional amount is currently $5,000 for the recovery of personal property. District court has concurrent jurisdiction with circuit court in actions for the recovery of personal property where the value of the property does not exceed the jurisdictional amount. Administrative Order No. 18.

Unpaid Seller's Lien

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

The complaint must be verified describing the property and stating its value.

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

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

When it appears that the property has been disposed of or concealed, the vendee may be compelled to appear. Failure to appear is punishable by contempt. Ark. Code Ann. § 16-118-104.

Lis Pendens

In a suit affecting title or a lien on real or personal property, the plaintiff should file a notice of the pendency of the suit with the recorder of deeds of the county in which the property to be affected is located in order to give constructive notice of the pendency of the suit to bona fide purchasers or mortgagees of the affected property. Ark. Code Ann. § 16-59-101.

The notice should set out the title of the cause of action, the general object of the action, a correct and full description of the property, the names of the parties, and the style of the case. Ark. Code Ann. § 16-59-102.

A properly authenticated copy of the record shall be evidence of the notice and filing in court. Ark. Code Ann. § 16-59-107.

Election Contests

A right of action is conferred on any candidate to contest the certification of nomination or the certificate of vote as made by the appropriate officials in any election by bringing an action in the circuit court of the county in which the certification of nomination or certificate of vote is made or in the Pulaski County Circuit Court when the office of United States Senator or any state office is involved. The complaint shall be verified by affidavit and filed within twenty days of the certification. The complaint shall be answered within twenty days. Ark. Code Ann. § 7-5-801.

The action shall be given precedence and be speedily determined. Ark. Code Ann. § 7-5-802. Special judges may be appointed where the regular judge is unable to dispose of the case within ten days. Ark. Code Ann. § 7-5-803.

The election contest shall be tried by the circuit judge in open court without a jury. An appeal may be taken from the judgment. However, the appeal shall not operate as a stay until reversed. Ark. Code Ann. § 7-5-804.

Any contest of state legislative offices shall be in accordance with applicable procedure. Ark. Code Ann. § 7-5-805.

A grand jury may be convened if election illegalities are alleged and subsequent trials may be held. Ark. Code Ann. § 7-5-807.

Actions on Bond

Arkansas Code Annotated §§ 16-107-201 – 208 govern actions on bonds. The statutes provide the procedures by which suit may be brought against those required by law to give bond. In the case of an official bond, the suit is brought in the name of the state. Ark. Code Ann. § 16-107-205.

In the complaint, the plaintiff is to set out the conditions of bond and as many breaches as he or she thinks proper.

When the action is pending, the defendant may, at any time before judgment is rendered, pay to the plaintiff or bring into court the principal sum and interest due on the bond, with the costs, and at which point the action shall be discontinued. Ark. Code Ann. § 16-107-202.

Upon the trial of the action if the jury finds that any of the breaches are true, they shall assess the damages occasioned by the breach, in addition to their finding. Ark. Code Ann. § 16-107-203. If the jury finds that any assignment of breaches is not true, this finding shall be a bar to any other or further suit. Ark. Code Ann. § 16-107-204.

If judgment is recovered on any such bond, the judgment shall be rendered for the sum of money due, according to the condition, with interest and costs, and execution shall issue thereon accordingly. Ark. Code Ann. § 16-107-202.

Whenever further breaches occur, the plaintiff shall have a *scire facias* upon the judgment. Ark. Code Ann. § 16-107-204. A *scire facias* is a judicial writ used to enforce the execution of a judgment. 30 Am. Jur. 2d Executions, Etc. § 15. The writ outlines the breaches alleged and commands the defendant to appear and show cause why an execution should not be had upon the judgment for the amount of damages sustained by the further breaches. If the plaintiff recovers, judgment shall be rendered to collect the amount of damages assessed and costs. Ark. Code Ann. § 16-107-204. [Note: Common bonds include bonds for construction projects on public buildings, governmental officers, guardians and personal representatives, and itinerant merchants and often involve a contract of suretyship. See 1 Arkansas Law Of Damages § 17:11 (5th ed.) for a more thorough overview of this process.]

Contempt

The court has the power to punish for criminal contempt the following acts:

> Disorderly, contemptuous, or insolent behavior committed during the court's sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;
>
> Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings;
>
> Willful disobedience of any process or order lawfully issued or made by it;
>
> Resistance willfully offered by any person to the lawful order or process of the court; and
>
> The contumacious and unlawful refusal of any person to be sworn as a witness and when so sworn a similar refusal to answer any legal and proper questions. Ark. Code Ann. § 16-10-108.

Punishment for contempt is a Class C misdemeanor. Ark. Code Ann. § 16-10-108.

Any court of record may summarily punish any contempt committed in its view and presence. Other contempt may be punished only after notice of the accusation and after party charged has had opportunity to make his defense. The substance of the offense must be set out in the order or warrant of commitment whenever a person is committed. Ark. Code Ann. § 16-10-108.

Ark. Const. Art. VII, § 26 provides that the General Assembly shall have the power to regulate by law the punishment of contempt not committed in the presence or hearing of the courts, or in disobedience of process.

The power to punish for contempt is inherent in courts. Carle v. Burnett, 311 Ark. 477, 845 S.W.2d 7 (1993)(the attorney's actions in disobeying the circuit court's order fell within the inherent powers of the circuit court to punish).

See also Perroni v. State, 358 Ark. 17, 186 S.W.3d 206 (2004)(circuit judge did not err in holding the attorney in criminal contempt for failing to appear at the jury trial of one of the attorney's clients); Ivy v. Keith, 351 Ark. 269, 92 S.W.3d 671 (2002)(abuse of discretion in using criminal contempt as a penalty for the failure to pay Rule 11 sanctions); and Johnson v. Johnson, 343 Ark. 186, 33 S.W.3d 492 (2000)(prosecutors' writ of certiorari denied as to contempt citation but granted as to punishment after judge incarcerated petitioners for

criminal contempt in refusing to proceed with a scheduled criminal trial motion for continuance was denied).

See also Terry Crabtree, Contempt Law in Arkansas, 51 Ark. L. Rev. 1 (1998)(exploring contempt in Arkansas and direct versus indirect contempt, criminal versus civil contempt, and contempt penalties).

Agreed Cases

Parties to a question that might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends and present a submission of the case to any court that would have jurisdiction if an action had been brought.

It must appear by affidavit that the controversy is real and the proceedings are in good faith to determine the rights of the parties.

The court shall, upon submission of the case, hear and determine the case and render judgment as if an action were pending.

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

The judgment rendered shall be with costs, may be enforced, and shall be subject to reversal, unless otherwise provided in the submission. Ark. Code Ann. § 16-118-101.

Change of Name

Upon the application of any person within the jurisdiction of the court, the circuit court shall have power, upon good reasons shown, to alter or change the name of the person.

The application shall be by petition, in writing, embodying the reasons for the application.

When allowed, the petition shall by order of the court be spread upon the record, together with the decree of the court. Ark. Code Ann. § 9-2-101.

Removing Disability of Minors

Circuit courts may authorize any minor, who is over age sixteen and a county resident, as if he has reached majority, to transact business in general and any particular business specified in like manner and with the same effect as if such act or thing were done by a

person who had attained majority. Every act done by a person so authorized shall have the same force and effect in law and equity as if done by a person of full age.

Circuit courts may also remove the disability of any nonresident minor over sixteen for purposes of conveying or encumbering any real property he owns within the jurisdiction. Ark. Code Ann. § 9-26-104.

Seizure & Forfeiture

Firearm / Motor Vehicle Seizure & Forfeiture

If a person under eighteen years of age is unlawfully in possession of a firearm, the firearm shall be seized and, after an adjudication of delinquency or a conviction, is subject to forfeiture.

If a felon or a person under eighteen years of age is unlawfully in possession of a firearm in a motor vehicle, the motor vehicle is subject to seizure and, after an adjudication of delinquency or a conviction, subject to forfeiture.

"Unlawfully in possession of a firearm" does not include an act that is prohibited only by:

Arkansas Code Annotated § 5-73-127, unlawfully possessing a loaded center-fire weapon in certain areas; or

a regulation of the Arkansas State Game and Fish Commission. Ark. Code Ann. § 5-73-130.

Procedure

The following process is typical for all forfeiture proceedings.

The prosecuting attorney (of the jurisdiction where the property is located) shall file a petition in circuit court for an order to show cause why the court should not order forfeiture of the property. The petition shall be verified and set forth:

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

The law enforcement agency bringing the action;

A description of the property sought to be forfeited;

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;

A statement detailing the facts; and

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).

Upon receipt of the petition, the circuit court shall issue an order to show cause.

The order shall set a date at least forty-one 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 the property for use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.

The circuit court shall further order that any person who does not appear on that date is deemed to have defaulted and waived any claim to the subject property. Ark. Code Ann. § 5-73-130(e).

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

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

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:

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

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

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 shall not be applicable. Ark. Code Ann. § 5-73-130(f).

Forefeiture Hearing

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

The court may take into consideration the following factors:

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

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

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

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

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

Any other factors the court deems relevant. Ark. Code Ann. § 5-73-130(h).

Forfeiture & Protective Orders

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.

Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable.

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.

Forfeiture to Law Enforcement Agency

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

Destroy all forfeited firearms;

Sell the motor vehicle, if the motor vehicle is not subject to a lien preserved by the court, or

Retain it for official use.

If the law enforcement agency sells the property, 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:

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

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

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 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.

Sale Proceeds

The property shall then be disposed of at public auction to the highest bidder for cash without appraisal. The proceeds of any sale and any money forfeited shall be applied:

> To payment of the balance due on any lien preserved by the circuit court in the forfeiture proceedings;
>
> To payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;
>
> 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
>
> To payment of costs incurred by the circuit court.

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.

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.

Other Crimes for Which Forfeiture Is Available

Arkansas Code Annotated § 5-5-201 provides that upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel is subject to forfeiture if it is used in the commission or attempt of:

A burglary;

A robbery;

A theft;

An arson; or

Trafficking of persons, Ark. Code Ann. § 5-18-103.

However, there are exceptions for conveyances used as common carriers (unless the owner was a consenting party or privy to the commission of the offense) and for conveyances used without the knowledge or consent of the owner. Ark. Code Ann. § 5-5-201.

Extradition

The Uniform Criminal Extradition Act

It is the duty of the Governor to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. Ark. Code Ann. § 16-94-202.

The demand for the extradition must be in writing and accompanied by a copy of an indictment or information supported by an affidavit together with a copy of any warrant which was issued thereon. Ark. Code Ann. § 16-94-203.

A warrant of extradition may be issued when the documents show that:

the accused was present in the demanding state at the time of the commission of the alleged crime,

and thereafter fled from the state;

the accused is now in this state;

and he or she is lawfully charged by indictment or information supported by affidavit and sufficient facts. Ark. Code Ann. § 16-94-205.

Other procedures of the Uniform Criminal Extradition Act can be found in Ark. Code Ann. §§ 16-94-201 – 231.

The prospective extraditee may have a right to bail. For a thorough discussion of these issues, see 13 A.L.R.5th 118 (1993).

Arrest Warrant Issued by the Court

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

> The sworn statement of a credible person in Arkansas that a person has committed a crime in another state; or
>
> The complaint upon affidavit of a credible person in another state that the accused has been charged with a crime in such other state and has fled from justice in that state. Ark. Code Ann. § 16-94-213.

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

Such person is the person charged;

Such person probably committed the crime;

And 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.

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. § 16-94-216.

Arrest Warrant Issued by Governor

A fugitive desiring to test the legality of a Governor's warrant shall be taken before a court of record. Notice of a hearing is to be given to the prosecutor of the county and the agent of the demanding state. Ark. Code Ann. § 16-94-210.

Waiver of Extradition

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

The charge against him; his right to the issuance and service of a warrant of extradition;

And his right to petition for a writ of *habeas corpus*. Ark. Code Ann. §§ 16-94-103 & 16-94-210.

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).

Equity

Preliminary Injunctions & Temporary Restraining Orders

Notice. A preliminary injunction may only be issued on notice to the adverse party. However, the court may issue a temporary restraining order without written or oral notice to the adverse party or his attorney when specific facts in an affidavit or a verified complaint clearly show 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.

Content. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record.

Duration. The order expires at the time after entry-not to exceed fourteen days-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.

Hearing. 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. 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.

Motion to Dissolve. 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. The court must then hear and decide the motion as promptly as justice requires.

> Ark. R. Civ. P. 65.

Preliminary Injunction Hearing. 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. Even 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. The court must preserve any party's right to a jury trial. Ark. R. Civ. P. 65(a)(2).

Security. 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. Neither the state of Arkansas, its officers, nor its agencies are required to give security. Ark. R. Civ. P. 65(c).

Contents. Every order granting an injunction and every restraining order must:

> State the reasons why it issued;
>
> State its terms specifically; and
>
> 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).

Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

> The parties;
>
> The parties' officers, agents, servants, employees, and attorneys; and
>
> 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).

Standard. In determining whether to issue a preliminary injunction pursuant to Rule 65, the trial court must consider two things:

Whether irreparable harm will result in the absence of an injunction or restraining order, and

Whether the moving party has demonstrated a likelihood of success on the merits. Baptist Health v. Murphy, 365 Ark. 115, 226 S.W.3d 800, (2006).

Quiet Title

Any person claiming to own land that is wild or improved or land that is in the actual possession of himself or herself, or those claiming under him or her, may have his or her title to the land confirmed and quieted. Ark. Code Ann. § 18-60-501.

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).

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).

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).

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 a newspaper published in the

county, if there is one, and if not, then in a newspaper having a circulation in the county. Ark. Code Ann. § 18-60-503(a).

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).

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).

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 twenty years. Ark. Code Ann. § 18-11-105.

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.

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 the decree in the cause shall not bar or affect the rights of any person who:

> Claims through, under, or by virtue of any contract with the petitioner;
>
> Was an adverse occupant of the land at the time the petition was filed;
>
> Within seven years preceding had paid the taxes on the land; or
>
> 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).

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).

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.

Case Law

In suits to quiet title, the plaintiff is not entitled to recover unless he is currently in possession, his title claim to title is equitable in nature, or, having legal title, the land is wild and unoccupied. St. Louis Refrigerator & Wooden Gutter Co. v. Thornton, 74 Ark. 383, 86 S.W. 852 (1905).

A plaintiff may not maintain a suit to quiet title to property against a defendant who is in possession of the property. Eades v. Joslin, 219 Ark. 688, 244 S.W.2d 623 (1951).

Where land is wild and unimproved it is considered in constructive possession of person holding legal title. Hensley v. Phillips, 215 Ark. 543, 221 S.W.2d 412 (1949).

A *prima facie* case to quiet title requires a showing that the plaintiff has legal title to the property and is in possession. Potlatch Corp. v. Triplett, 70 Ark. App. 205, 16 S.W.3d 279 (2000).

Quieting Title – Public Sales

Purchasers, who have acquired title by purchase at a sale held by the sheriff, may protect themselves from eviction by proceeding in the manner provided to quiet title, described in Ark. Code Ann. § 18-60-601.

A petition for confirmation shall be filed with the clerk of the circuit court. The petitioner, if he or she is acquainted with the lands, shall file with his or her petition his or her 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,

Proof that taxes owed on the lands were either paid,

Settled, or

Released shall be filed with the petition and,

In the case of levee or drainage improvement districts,

Proof of payment,

Settlement, or

Release of all delinquent taxes. Ark. Code Ann. § 18-60-602.

> *See* 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 to confirm a tax title to land held adversely by defendant).

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:

> Be published four weeks in succession in a 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;
>
> 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
>
> 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).
>
> The last notice in the newspaper shall be at least twenty days before the application for confirmation is submitted to the court. Ark. Code Ann. §18-60-603(b).
>
> 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).
>
> 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. Ark. Code Ann. § 18-60-603(d).

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,

And if no one has appeared to challenge the petitioner,

The petition shall be taken as confessed and the court shall render final decrees confirming the sale. Ark. Code Ann. § 18-60-604.

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.

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).

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).

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).

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. Ark. Code Ann. § 18-60-608(a).

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).

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.

Adverse Possession

To prove the common-law elements of adverse possession,

A claimant must show that he has been in possession of the property continuously for more than seven years and that his possession has been visible,

Notorious, distinct,

Exclusive,

Hostile,

And with the intent to hold against the true owner. Trice v. Trice, 91 Ark. App. 309, 210 S.W.3d 147 (2005).

It is ordinarily sufficient proof of adverse possession that the claimant's acts of ownership are of such a nature as one would exercise over his own property and would not exercise over the land of another. Id.

Easements

Prescriptive. A prescriptive easement may be created only by the adverse use of privilege with the knowledge of the person against whom the easement is claimed, or by use so open, notorious, and uninterrupted that knowledge will be presumed, and the use must be exercised under a claim of right adverse to the owner and acquiesced to by him. Kelley v. Westover, 56 Ark. App. 56, 938 S.W.2d 235 (1997).

> An easement by prescription is established by a showing by a preponderance of the evidence that one's use has been adverse to the true owner and under a claim of right for the statutory period. Owners Ass'n of Foxcroft Woods, Inc. v. Foxglen Associates, 346 Ark. 354, 57 S.W.3d 187 (2001).

> Overt activity on the part of the user is necessary to make it clear to the owner of the property that an adverse use and claim are being exerted. Mere permissive use of an easement cannot ripen into an adverse claim without clear action, which places the owner on notice. Id.
>
> *See also* Gazaway v. Pugh, 69 Ark. App. 297, 12 S.W.3d 662 (2000)(finding that a public prescriptive easement existed on a gravel road).

Appurtenant or In Gross. Easements appurtenant run with the land and easements in gross are personal to the grantors. An easement appurtenant serves a parcel of land called the dominant tenement. The property on which the easement is imposed is the servient tenement. Wilson v. Brown, 320 Ark. 240, 897 S.W.2d 546 (1995).

> The person who asserts an easement has the burden of proving the existence of the easement. Riffle v. Worthen, 327 Ark. 470, 939 S.W.2d 294 (1997).
>
> An easement in gross does not have a servient tenement because it benefits a person or an entity, not the land. When the deed in question does not specify whether the right of ingress and egress is appurtenant or in gross, the court must interpret the deed, giving primary consideration to the intent of the grantor. Id.

Of Necessity or By Implication. To establish easement of necessity, plaintiffs have burden of proving:

> Unity of title in the sense that same person or entity once held title to both tracts,
>
> That unity of title was severed by conveyance of one tract,
>
> That easement is necessary so that owner of dominant tenement may use his land, and
>
> That the necessity existed 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).
>
>> Degree of necessity required for easement of necessity must be more than mere convenience. Id.

> Joint ownership of one of two tracts of land does not meet unity of title requirement for an easement of necessity. Id.

See also Black v. Steenwyk, 333 Ark. 629, 970 S.W.2d 280 (1998)(use of the road prior to division of the property into the two parcels in question, combined with the absence of alternatives to the use of the road to reach a house on the landowner's parcel, created an easement by implication).

See also R & T Properties, LLC v. Reyna, 76 Ark. App. 198, 61 S.W.3d 229 (2001)(owner of farmland had adequate alternate method of ingress and egress to property, via placement of culvert in ditch, and thus easement over road through residential property was not necessity).

Restrictive Covenants

By statute, "restrictive covenant" means a restriction on the use or development of real property regardless of whether the restriction is created by a covenant in a deed or bill of assurance, or by any other instrument. Ark. Code Ann. § 18-12-103.

> An instrument creating a restrictive covenant is not effective to restrict the use or development of real property unless the instrument purporting to restrict the use or development of the real property is executed by the owners of the real property and recorded in the office of the recorder of the county in which the property is located. Id.

See McGuire v. Bell, 297 Ark. 282, 761 S.W.2d 904 (1988)(where statute requiring that restricted covenants be executed by the "owners" of the real property, it was sufficient that bills of assurance were executed by the owners of the subdivisions involved, and it was not required that mineral owners join in the execution or filing of the bills of assurance).

Generally, courts do not favor restrictions upon the use of land, and if there is a restriction on the use of land, it must be clearly apparent. Holmesley v. Walk, 72 Ark. App. 433, 39 S.W.3d 463 (2001).

The general rule governing the interpretation, application, and enforcement of restrictive covenants is the intention of the parties as shown by the covenant. Barber v. Watson, 330 Ark. 250, 953 S.W.2d 579 (1997).

Where the language of the restrictive covenant is clear and unambiguous, the parties will be confined to the meaning of the language employed, so long as the meaning does not defeat the plain and obvious purpose of the restriction. Id.

> Strict rules of construction shall not be applied in such a way as to defeat the plain and obvious purpose of the restriction. Id.

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; the restrictive covenant will be unenforceable. Holaday v. Fraker, 323 Ark. 522, 920 S.W.2d 4 (1996)

See also Holmesley v. Walk, 72 Ark. App. 433, 39 S.W.3d 463 (2001)(parties who are fully aware of restrictive covenants, and who choose to rely on a mistaken assumption that they were acting legally and properly, do so at their own risk).

Receivership

Appointment. A receiver may be appointed 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).

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 moneys 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).

Employment of Others. 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).

Removal. Receivers may be removed at any time by the court for good cause. Ark. R. Civ. P. 66(d).

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).

Case Law

A receiver ordinarily will only be appointed when it can be established to the satisfaction of a court that the appointment is necessary to save property at issue from injury or threatened loss or destruction. Dunaway v. Garland Cnty. Fair & Livestock Show Ass'n, Inc., 97 Ark. App. 181, 245 S.W.3d 678 (2006).

Situations warranting receivers include when it is in the best interests of both parties, where waste is occurring, where cotenant wrongfully assumes exclusive possession of common property, or mismanages common property so as to cause its loss, or where preservation of subject matter of the suit requires it. Chapin v. Stuckey, 286 Ark. 359, 692 S.W.2d 609 (1985).

Mechanics' and Materialmen's Liens

Mechanics' and materialmens' 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.

> The materialmen's lien attaches to the improvement and enjoys priority over all prior encumbrances on the real estate except those given for the purpose of funding the construction. Simmons First Bank of Arkansas v. Bob Callahan Servs., Inc., 340 Ark. 692, 13 S.W.3d 570 (2000).

Actions on mechanics' and materialmens' liens must be commenced within fifteen months after the lien is filed and prosecuted without unnecessary delay. Ark. Code Ann. § 18-44-119. [Note: The notice provisions of Ark. Code Ann. § 18–44–115 are to be strictly construed. Books-A-Million v. Ark. Paint & Spec., 340 Ark. 467, 10 S.W.3d 857 (2000).]

The proceedings are the same as in ordinary civil actions, but the petition shall allege the facts necessary for securing a lien and shall contain a description of the property to be charged with the lien. Ark. Code Ann. § 18-44-122.

All parties to the contract and all interested persons may be made parties, but those not made parties shall not be bound by the outcome. Ark. Code Ann. § 18-44-123.

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.

Equitable Liens

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. The court can fashion the terms of the equitable lien to the particular fact situation. An equitable lien is an extraordinary remedy.

> *See* Howard W. Brill, Equity and the Restitutionary Remedies: Constructive Trust, Equitable Lien, and Subrogation, 1992 Ark. L. Notes 1, (1992)(thorough overview of equitable liens in Arkansas law).

"An equitable lien is not an estate or property in the thing itself, nor is it a right to recover the thing; that is, it is not a right that may be the basis of a possessory action. It is merely a charge on property for the purpose of security, and it is ancillary to and separate from the debt itself. It is neither a debt nor a right of property, but merely a remedy for a debt." An equitable lien does not divest the debtor of title or possession. 51 Am. Jur. 2d Liens § 31.

Case Law Examples

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).

An 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).

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).

Equitable Defenses

Unclean Hands

The purpose of the doctrine of unclean hands is to protect the interest of the public on the grounds of public policy and to protect the integrity of the court. The court should be reluctant to expend energy to unravel the affairs of those parties whose confused state or unfortunate position arises from their own improper activities.

A party may be barred from equitable relief under the doctrine if he intentionally engaged in illegal, fraudulent, or unconscionable conduct directly related to the

transaction that is the subject of the controversy and which was of such magnitude that it persuades the court in its equitable discretion to deny relief.

Howard W. Brill, The Maxims of Equity, 1993 Ark. L. Notes 29, (1993).

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).

The unclean-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).

Public policy may override the defense of unclean hands. Hood v. Hood, 206 Ark. 1057, 178 S.W.2d 670 (1944).

Laches

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.

It is based on the equitable principle that an unreasonable delay by the party seeking relief precludes recovery when the circumstances are such as to make it inequitable or unjust for the party to seek relief. The laches defense requires a detrimental change in the position of the one asserting the doctrine, as well as an unreasonable delay by the one asserting his or her rights against whom laches is invoked. In addition, the application of the doctrine to each case depends on its particular circumstances. The issue of laches is one of fact. Royal Oaks Vista, L.L.C. v. Maddox, 372 Ark. 119, 271 S.W.3d 479 (2008).

It is also based on the assumption that the party to whom laches is imputed has knowledge of his rights and the opportunity to assert them, that by reason of his delay some adverse party has good reason to believe those rights are worthless or have been abandoned, and that because of a change of conditions during this delay it would be unjust to the latter to permit him to assert them. Self v. Self, 319 Ark. 632, 893 S.W.2d 775 (1995).

Laches requires a demonstration of prejudice to the party alleging it as a defense, resulting from a plaintiff's delay in pursuing a claim. Goforth v. Smith, 338 Ark. 65, 991 S.W.2d 579 (1999).

See also Duchac v. City of Hot Springs, 67 Ark. App. 98, 992 S.W.2d 174 (1999)(equitable doctrine of laches could not be successfully invoked to defeat the right of a city to enforce its ordinances).

Equitable Estoppel

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. Kearney v. Shelter Ins. Co., 71 Ark. App. 302, 29 S.W.3d 747 (2000).

The doctrine of equitable estoppel has four requirements:

the party to be estopped must know the facts;

the party to be estopped must intend that his or her conduct be acted on or must so act that the party asserting the estoppel had a right to believe it was so intended;

the latter must be ignorant of the true facts; and

the latter must rely on the former's conduct to his or her injury. Cavaliere v. Skelton, 73 Ark. App. 188, 40 S.W.3d 844 (2001).

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).

Estoppel is applicable as an issue of fact to be decided by the trier of fact. Taylor v. Taylor, 2009 Ark. App. 605, 343 S.W.3d 335 (2009).

Case Law Examples

Smith v. Parker, 67 Ark. App. 221, 998 S.W.2d 1 (1999)(lessor's wife was estopped from claiming that lease of homestead property was void due to lack of her signature on lease)

Chitwood v. Chitwood, 92 Ark. App. 129, 211 S.W.3d 547 (2005)(equitable estoppel barred mother's attempts to collect child support from father; mother knew that agreement she had with father, in which father was to give up his parental rights and stop making child support payments, was not enforceable and that the child support obligations would continue to accrue, mother did not contact father about paying child support or about visitation after receiving letter from father stating that he was surrendering his parental rights and terminating child support payments per mother's request, and father testified that it was his belief that the agreement relinquishing his parental rights and stopping child support payments was enforceable).

Howard Bldg. Ctr. v. Thornton, 282 Ark. 1, 665 S.W.2d 870 (1984)(materialman was estopped from enforcing materialman's lien against owners by entering into secret agreement with contractor whereby all payments made to materialman by contractor would be applied to past-due accounts without regard to account to which money rightfully should have been applied).

IV. Juveniles

Prosecutorial Discretion

Under Ark. Code Ann. § 9-27-318(c)(2), the prosecutor has the discretion to file in either juvenile division or criminal division when a juvenile, who is **fourteen or fifteen** at the time of the alleged conduct, is charged with the following crimes:

Capital murder, Ark. Code Ann. § 5-10-101;

Murder in the first degree, Ark. Code Ann. § 5-10-102;

Kidnapping, Ark. Code Ann. § 5-11-102;

Aggravated robbery, Ark. Code Ann. § 5-12-103;

Rape, Ark. Code Ann. § 5-14-103;

Battery in the first degree, Ark. Code Ann. § 5-13-201; and

Terroristic act, Ark. Code Ann. § 5-13-310;

Or when a juvenile, who is **sixteen** at the time of the alleged conduct, is charged with any felony.

The Supreme Court of Arkansas has held that the state cannot appeal a transfer order to juvenile court. The state's ability to appeal is strictly limited to the circumstances described in Rule 3 of the Rules of Appellate Procedure - Criminal, which does not provide that the state may bring an interlocutory appeal from a juvenile-transfer order. State v. A.G., 2011 Ark. 244, 383 S.W.3d 317 (2011).

Charging as an Adult or EJJ

Under Ark. Code Ann. § 9-27-318(b), 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 who is **fourteen or fifteen** years old when he engages in conduct that, if committed by an adult, would be:

Murder in the second degree, Ark. Code Ann. § 5-10-103;

Battery in the second degree, Ark. Code Ann. § 5-13-202(a)(2), (3) or (4);

Possession of a handgun on school property, Ark. Code Ann. § 5-73-119(a)(2)(A);

Aggravated assault, Ark. Code Ann. § 5-13-204;

Unlawful discharge of a firearm from a vehicle, Ark. Code Ann. § 5-74-107;

Any felony committed while armed with a firearm;

Soliciting a minor to join a criminal street gang, Ark. Code Ann. § 5-74-203;

Criminal use of prohibited weapons, Ark. Code Ann. § 5-73-104;

First-degree escape, Ark. Code Ann. § 5-54-110;

Second-degree escape, Ark. Code Ann. § 5-54-111; or

Felony attempt, solicitation, or conspiracy to commit any of the following:

Capital murder, Ark. Code Ann. § 5-10-101;

Murder in the first degree, Ark. Code Ann. § 5-10-102;

Murder in the second degree, Ark. Code Ann. § 5-10-103;

Kidnapping, Ark. Code Ann. § 5-11-102;

Aggravated robbery, Ark. Code Ann. § 5-12-103;

Rape, Ark. Code Ann. § 5-14-103;

Battery in the first degree, Ark. Code Ann. § 5-13-201;

First-degree escape, Ark. Code Ann. § 5-54-110; and

Second-degree escape, Ark. Code Ann. § 5-54-111.

Or when a juvenile is at least **fourteen** years old when he engages in conduct that constitutes a felony under Ark. Code Ann. § 5-73-119(a);

Or when a juvenile is 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.

Delinquency

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).

> *See* Ark. Code Ann. § 9-27-330 for possible dispositions following a delinquency determination.

If a prosecuting attorney can file charges in the 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).

Transfer Hearings

Upon the motion of the court or any party, the judge of the division of the 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. Ark. Code Ann. § 9-27-318.

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. Ark. Code Ann. § 9-27-318.

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:

> The seriousness of the alleged offense and whether the protection of society requires prosecution in criminal division;
>
> Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

The culpability of the juvenile, including the level of planning and participation in the alleged offense;

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;

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;

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;

Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

Any other factors deemed relevant by the court.

Ark. Code Ann. § 9-27-318(g).

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. Ark. Code Ann. § 9-27-318.

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.

The court is required to make written findings on all the transfer factors. Ark. Code Ann. § 9-27-318(h)(1).

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).

Relevant Cases

In a motion to transfer from criminal division to juvenile division 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 criminal division of 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. Id.

In Witherspoon v. State, 74 Ark. App. 151, 46 S.W. 3d 549 (2001), the juvenile appealed the criminal division of 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 the juvenile division of the circuit 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. Id.

After an order to transfer has been entered, the court no longer has jurisdiction to set aside that order. The criminal division will lose its jurisdiction once the case has been transferred to the juvenile division. C.H. v. State, 2010 Ark. 279, 365 S.W.3d 879 (2010).

Sentencing

The United States Supreme Court recently held that mandatory life without parole sentences for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. Miller v. Alabama, 132 S. Ct. 2455 (2012).

Accordingly, the Arkansas Supreme Court has invalidated the previously mandatory language found in Ark. Code Ann. § 5-10-101 as applied to juveniles and held that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. Whiteside v. State, 2013 Ark. 176, 426 S.W.3d 917 (2013).

The "harshest possible penalty for juveniles" is life without parole in light of the U.S. Supreme Court's decision in *Roper v. Simmons* which invalidated the death penalty for all juvenile offenders under the age of eighteen. Roper v. Simmons, 543 U.S. 551 (2005).

V. Pro Se Litigants & Indigent Defendants

Pro Se 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* represent itself through a licensed attorney in connection with its own business or affairs. But a corporation may *not* represent itself through an employee who is a licensed attorney while acting as administrator, executor, guardian or other fiduciary, on the theory that the corporation is not representing itself in connection with its own affairs. Ark. Bar Assn. v. Union Nat'l Bank, 224 Ark. 48, 273 S.W.2d 408 (1954).

In Forma Pauperis

Rule 72 of the Arkansas Rules of Civil Procedure requires that the applicant petition for leave to proceed *in forma pauperis*, verified by an 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 colorable cause of action that is required to support a petition to proceed *in forma pauperis* is a claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law or a reasonable and logical extension of modification of current law. Boles v. Huckabee, 340 Ark. 410, 12 S.W.3d 201 (2000).

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

An *In Forma Pauperis* Affidavit and Petition can be found on Appendix pages 127 and 131.

Criminal Defendants

Rule 8.2 of the Arkansas Rules of Criminal Procedure

Whenever an indigent person is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent, unless they are charged with a misdemeanor and the court has determined that

under no circumstances will incarceration be imposed as a part of the punishment if the indigent is found guilty. Ark. R. Crim. P. 8.2 (a).

> A suspended or probationary sentence shall be considered a sentence to incarceration if revocation of the suspended or probationary sentence may result in incarceration. Ark. R. Crim. P. 8.2 (b).

An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable. Ark. R. Crim. P. 8.2 (a). [Note for post-conviction: If a post-conviction 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).]

Case Law

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 judge is required to inquire of a defendant and the record must affirmatively show that:

> The waiver of counsel is unequivocal and timely;
>
> The waiver is knowingly and intelligently made; and
>
> 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).

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. Burgett v. Texas, 389 U.S. 109, 88 S. Ct. 258, 19 L. Ed. 2d 319 (1967).

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 and 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).

To admonish a defendant that he must accept the consequences of self-representation is not alone 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).

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 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).

You may want to direct pro se litigants and indigent defendants to the Arkansas Access to Justice website, where they can find free sample legal forms, or to the Center for Arkansas Legal Services and Legal Aid of Arkansas where they can find free legal information and find out how to apply for free legal aid.

VI. Civil Procedure

Parties

Real Party in Interest

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

The following parties may sue in their own name without joining the party for whose benefit the action is being brought: an executor, administrator, guardian (conservator), bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or the state or any officer thereof or any person authorized by statute to do so.

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest.

Ratification, joinder, or substitution by or of the real party in interest, after objection, shall have same effect as if commencement of action had been in name of real party in interest. Ark. R. Civ. P. 17.

Raising an Objection to Real Party in Interest

An objection that plaintiff is not a real party in interest may be raised by:

Affirmative defense in answer under Ark. R. Civ. P. 8(c);

Preliminary motion when dismissal may result because real party in interest cannot be joined or substituted; and

As a defense under Ark. R. Civ. P. 12(b).

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

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

Ark. R. Civ. P. 12.

Joinder of Necessary Parties

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

Subject to service of process;

Claiming an interest in the subject of the action; and

In such a position that disposition of the matter in his absence may:

Impair or impede his ability to protect that interest;

Leave other parties in substantial risk of incurring inconsistent obligations as a result of his claimed interest; or

Deny complete relief to those who are already parties.

If a necessary party has not been joined, the court shall order that he be made a party. If he should join as a plaintiff, but refuses to do so, he may be made a defendant; or, in a proper case, an involuntary plaintiff.

If the necessary party is not a resident of the county in which the action is brought, he may be joined as a defendant and served in another county. Judgment shall not be rendered against him if:

No other defendant is a resident of the county where the action was commenced; or

Judgment is discontinued, dismissed, or rendered in favor of resident defendants; and

Necessary party makes timely objection to court's jurisdiction.

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

Failure to Join Indispensable Party

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

Prejudice to person and parties resulting from a judgment without joining indispensable party;

What relief can be embraced in the judgment to lessen or avoid such prejudice;

Adequacy of any judgment that can be molded to have no affect on indispensable party; and

Existence of adequate remedy for plaintiff if action is dismissed for nonjoinder.

If the party is indispensable, the action shall be dismissed. Ark. R. Civ. P. 19(b).

When reviewing a dismissal for failure to join an indispensable party, the reviewing court treats facts alleged in complaint as true and views them in light most favorable to party who filed the complaint. Wilmans v. Sears, Roebuck and Co., 355 Ark. 668, 144 S.W.3d 245 (2004).

Permissive Joinder of Parties

Persons may join in an action as **plaintiffs** if they assert a right to relief jointly, severally or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact in the action is common to all such persons.

Persons may be joined as **defendants** in an action if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

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

The court may award judgment for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities. Ark. R. Civ. P. 20(a).

Separate Trials When Joinder is Improper

The court may order separate trials or make other orders to prevent delay or prejudice when a person is joined against whom a party has no claim or who asserts no claim and such joinder results in embarrassment, delay, or expense. Ark. R. Civ. P. 20(b).

Misjoinder and Nonjoinder of Parties

The court may order any party added or dropped at any stage of the action on the motion of a party, or on its own initiative.

Misjoinder is not a ground for dismissal.

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

Ark. R. Civ. P. 21.

Interpleader

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.

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

> 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
>
> The plaintiff avers no liability in whole or part to any or all claimants.

A defendant exposed to similar liability may require such joinder by way of cross-claim, third-party complaint or counterclaim.

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

Ark. R. Civ. P. 22.

Intervention as a Matter of Right

Any person, upon timely application, may intervene if:

> A statute confers an unconditional right to do so; or

The applicant:

Claims an interest in the subject of the action;

Disposition of the action may impair or impede applicant's ability to protect that interest; and

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:

A statute confers a conditional right to do so; or

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).

Intervention Procedure

A motion to intervene shall:

Be served by the intervenor on the parties;

State the grounds therefor; and

Be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

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).

Relevant Statutes:

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.

In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard. Ark. Code Ann. § 16-111-106.

Special Parties: Infants and Incompetents

Whenever an infant or incompetent person has a guardian, the guardian must sue or defend on behalf of the infant or incompetent person.

If an infant or incompetent person does not have a duly appointed guardian, he may sue by his next friend or by a guardian ad litem.

If an infant or incompetent is not represented in an action, the court shall appoint a guardian ad litem or make such other orders as necessary to the infant or incompetent.

No judgment shall be rendered against an infant or incompetent until after a defense by a guardian or guardian ad litem, who shall be appointed by the court upon application of any interested party.

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

Substitution of Parties

Death of a Party

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

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;

Substitution may be ordered without notice or on such notice as the court may require. The action may be dismissed as to the deceased party if the motion for substitution is not made within ninty days after the death is known to the parties.

If **plaintiff** dies, the personal representative shall be substituted unless the claim of decedent has passed to heirs or devisees, whereupon the heirs or devisees may be substituted.

If **defendant** dies, the personal representative shall be substituted. However, where the subject of the action is recovery of real property or an interest therein, the court may substitute either heirs, devisees, or a personal representative.

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. 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.

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

Incompetency

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).

Transfer of Interest

Upon transfer of interest in the subject of the action, the action may be continued by or against the original party. However, upon motion, the court may direct that the transferee be substituted or joined with the original party.

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

Public Officers; Death or Separation from Office

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. The action does not abate.

Any misnomer of substituted party that doesn't affect the substantial rights of the parties is disregarded. Failure to enter such an order does not affect substitution.

When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added. Ark. R. Civ. P. 25(d).

Limitations on Rule 25

The provisions of Ark. R. Civ. P. 25 shall not allow a claim to be maintained that is otherwise barred by limitations or non-claim; or be determinative of whether a claim survives the death of a party.

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

Survival of Actions

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).

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. Ark. Code Ann. §§ 16-62-101 – 102.

Other 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.

Class Actions

Prerequisites

One or more members of a class may sue or be sued as representative parties on behalf of all only if:

The class is so numerous that joinder of all members is impracticable,

There are questions of law or fact common to the class,

The claims or defenses of the representative parties are typical of the claims or defenses of the class, and

The representative parties and their counsel will fairly and adequately protect the interests of the class.

The court must also find that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The court shall determine by conditional or unconditional order the appropriateness of the action as soon as practicable. An order certifying a class action must define the class and the class claims, issues, or defenses.

Ark. R. Civ. P. 23(a) & (b).

Notice

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

The nature of the action;

The definition of the class;

The class claims, issues, or defenses;

That a class member may enter an appearance and participate in person or through counsel;

That the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and

The binding effect of a class judgment on class members.

Ark. R. Civ. P. 23(c).

Orders

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

Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

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;

Imposing conditions on the representative parties or on intervenors;

Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

Dividing the class into subclasses, treating each subclass as a class, and construing and applying the provisions of this rule accordingly; and

Dealing with similar procedural matters.

Ark. R. Civ. P. 23(d).

Dismissal or Compromise

Court must approve dismissal or compromise.

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.

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

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.

The court may not 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.

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

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

Ark. R. Civ. P. 23(e).

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.

Commencement of Proceedings

Complaint

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

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

Ark. R. Civ. P. 3.

Time Computation

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

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.

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

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

The court, upon motion, may permit an act to be done after the expiration of the period previously prescribed where the failure to act was the result of mistake, inadvertence, surprise, excusable neglect, or other just cause.

The court may **not** extend time to:

Move to have a verdict and judgment thereon set aside Ark. R. Civ. P. 50(b));

Move to amend findings of fact or make additional findings (Ark. R. Civ. P. 52(b);

Move for a new trial Ark. R. Civ. P. 59(b);

File opposing affidavits to a motion for new trial supported by affidavits Ark. R. Civ. P. 59(d);

Enter an order on its own initiative granting a new trial Ark. R. Civ. P. 59(e);

Modify, set aside, or vacate a judgment after the expiration of ninety days from the filing thereof Ark. R. Civ. P. 60(b); or

Obtain service of summons Ark. R. Civ. P. 4(i).

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

Time for Motions & Affidavits

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.

The party opposing the motion shall serve a response within ten days after service of the motion.

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

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

Time After Service by Mail

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

Upon the filing of the complaint, the clerk shall issue a summons. Ark. R. Civ. P. 4(a).

The summons shall:

Be styled in the name of the court;

Be dated by the clerk;

Be signed by the clerk;

Be under the seal of the court;

Contain the names of the parties;

Be directed to the defendant;

State the name and address of the plaintiff's attorney, if any, otherwise the address of the plaintiff;

State the time within which the defendant is required to appear, file a pleading and defend; and

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

In General

If service of the summons and a copy of the complaint is not made upon a defendant within one hundred twenty days after the filing of the complaint (or within the time granted by an extension), the action shall be dismissed as to that defendant without prejudice. If service is by mail or by commercial delivery company, service shall be deemed to have been made for purposes of this rule on the date that the process was accepted or refused.

The court, upon written motion and for good cause shown, may extend the time for service if the motion is made within one hundred twenty days of the filing of the suit (or within the time granted by an extension). To be effective, an order granting an extension must be entered within thirty days after the motion to extend is filed, by the end of the one hundred twenty day period (or by the end of the period established by the previous extension, whichever is later).

This section does not apply to service in a foreign country.

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

Personal Service Inside Arkansas

Service of summons shall be made by:

> The sheriff of the county, where the service is to be made, or his deputy, unless the sheriff is a party to the action;
>
> 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;
>
> Any person authorized to serve process under the law of the place outside this state where service is made; or
>
> The plaintiff's attorney or the plaintiff if service is by mail.
>
> Ark. R. Civ. P. 4(c).

To be appointed to serve process under Admin. Order No. 20, the person must meet the minimum qualifications, file an application with the circuit clerk, and attach an affidavit stating that they meet the minimum qualifications. The circuit judge will then determine whether further inquiry is needed. If the person is qualified, the judge shall issue an order of appointment, to be filed by the clerk and a certified copy given to the person and to the county sheriff. The person should then be added to the list of appointed civil process servers in the county.

A uniform petition and order for appointment to serve legal process can be found on Appendix pages 162 and 164, and on the AOC's website.

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

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

Service shall be made upon an **individual**, not under fourteen years of age and not an incompetent, by delivery personally. If delivery is refused, then service shall be made by offering a copy to the individual, or leaving a copy at the individual's place of abode with a resident who is at least fourteen years of age, or by delivering a copy to an agent who is authorized by law or appointment to receive service. Ark. R. Civ. P. 4(d)(1).

When the individual is an **infant** under fourteen years of age, service shall be made upon the parent or guardian having care and control of the individual, or upon any other person having care and control of the individual and with whom the individual resides. Ark. R. Civ. P. 4(d)(2).

If the individual is a **prisoner**, service shall be made upon the administrator of the institution who shall deliver a copy to the individual. A copy shall also be sent to the prisoner by first class mail, marked "legal mail," and to the prisoner's spouse, unless the court orders otherwise. Ark. R. Civ. P. 4(d)(4).

If the 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 an officer, partner other than a limited partner, managing or general agent, or any agent authorized by appointment or by law to receive service of summons. Ark. R. Civ. P. 4(d)(5).

If the defendant is the **United States**, or an officer or agency thereof, service shall be made pursuant to the Federal Rules of Civil Procedure or the appropriate federal statute. Ark. R. Civ. P. 4(d)(6).

If the defendant is a **state** or municipal corporation or other governmental organization or agency, service shall be made by delivering a copy to the chief executive officer, or other person designated by appointment or by statute to receive such service, or upon the Attorney General of the state if such service is accompanied by an affidavit of a party or his attorney that such officer or designated person is unknown or cannot be located. Ark. R. Civ. P. 4(d)(7).

Service Outside of Arkansas

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

> By personal delivery in the same manner prescribed for service within this state;
>
> 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;

By mail as in Ark. R. Civ. P. 4(d)(8);

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

As directed by the court. Ark. R. Civ. P. 4 (e).

Service Where Identity or Whereabouts is Unknown

When an affidavit of a 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.

The warning order shall be published weekly for two successive weeks in a newspaper having general circulation in the county where the action is filed. A copy of the complaint and warning order shall also be mailed to the defendant at his last known address by a form of mail requiring restricted delivery. Ark. R. Civ. P. 4(f).

Rule 4 Strictly Construed

The service requirements set out by Ark. R. Civ. P. 4 must be strictly construed and compliance with them must be exact. Substantial compliance will not suffice.

See Smith v. Sidney Moncrief Pontiac, Buick, GMC Co., 353 Ark. 701, 120 S.W.3d 525 (2003); Patsy Simmons Ltd. P'ship v. Finch, 2010 Ark. 451, 370 S.W.3d 257 (2010); Verbitski v. Union Pac. R. Co., 2011 Ark. App. 6, 380 S.W.3d 459 (2011); and Dobbs v. Discover Bank, 2012 Ark. App. 678, 425 S.W.3d 50 (2012).

Service of Pleadings Filed Subsequent to the Complaint

When Required

Every pleading filed subsequent to the complaint shall be served on all parties, except one to be heard ex parte or unless the court orders otherwise because of numerous parties.

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

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).

How Made

When a party is represented by an attorney, service shall be upon the attorney unless the court orders otherwise.
Service upon the attorney or party shall be by personally delivering a copy, mailing it to the last known address, or if no address is known, leaving it with the clerk of the court.

"Delivery" means handing it to the attorney or to the party; by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least fourteen years of age.

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

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.

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

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.

Refusal to accept mailed process: Ark. Code Ann. § 16-58-132.

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. § 4-47-114.

Securities Act: Ark. Code Ann. § 23-42-107.

Railroad tort action: Ark. Code Ann. § 23-12-905.

Filing of Pleadings Subsequent to Complaint

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).

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 & Redaction of Pleadings

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

"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).

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).

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:

> Information that is excluded from public access pursuant to federal law;
>
> Information that is excluded from public access pursuant to the Arkansas Code Annotated;
>
> Information that is excluded from public access by order or rule of court;
>
> Social Security numbers;
>
> Account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers;
>
> Information about cases expunged or sealed pursuant to Ark. Code Ann. §§ 16-90-1401 et seq.;
>
> Notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies; and
>
> All home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.
>
> Admin. Order No, 19 § VII(A).

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.

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].

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.

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.

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

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

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

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

Joinder of Causes of Action

Any party may join all his claims against adverse party, either independently or alternatively, when asserting an original claim, counterclaim, cross-claim or third-party claim. Ark. R. Civ. P. 13(a) and 18(a).

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

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

Severance & Transfer of Claims

Any claim against a party may be severed and proceeded with separately.

If the court determines that the action, or a particular claim, should in the interest of justice or judicial economy be heard in another division, the court may transfer it to that division.

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

Third-Party Practice

A defending party, 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.

The defendant shall file the third-party complaint within ten days after filing his answer without leave of court, or with leave of court and notice to all parties if later than ten days after filing his answer.

The third-party defendant shall make defenses to the third-party plaintiff's claim(s) as provided in Ark. R. Civ. P. 12. He may also make counterclaims and cross-claims against other third-party defendants as provided in Ark. R. Civ. P. 13.

The third-party defendant may assert against the plaintiff any of the third-party plaintiff's defenses against the plaintiff, and 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.

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.

> After plaintiff asserts a claim as provided, the 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.

Any party may move to strike a third-party claim or for its severance or separate trial.

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.

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.

Pleadings

Form of Pleadings

Caption

Every pleading shall have a caption setting forth the name of the court, the title of the action, the file number and a designation of the pleading.

In a complaint, the title of the action shall include the names of all the parties. In all other pleadings, the title shall include at least the name of the first party with an indication that there are other parties.

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

Statements of Claim & Defense

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.

A paragraph may be referred to by number in all succeeding pleadings. Each claim founded on a separate transaction or occurrence shall be in a separate count.

Each defense other than denials shall be in a separate defense.

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

Statements should be direct and stated in ordinary and concise language. Ark. R. Civ. P. 8(e).

Adoption by Reference

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any

written instrument which is an exhibit to a pleading is a part thereof for all purposes. Ark. R. Civ. P. 10(c).

Required Exhibits

A copy of a writing upon which a claim or defense is based shall be attached as an exhibit to the appropriate pleading (unless good cause for its absence is shown). Ark. R. Civ. P. 10(d). [NOTE: It is the intent of Ark. R. Civ. P. 10 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).]

Signing

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

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

The signature of an attorney or party certifies that:

> The pleading, motion, or other paper is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> The factual contentions have evidentiary support;
>
> The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information;
>
> When a party's claim or affirmative defense may only be established in whole or in part by expert testimony, the party has

consulted with at least one expert, or has learned in discovery of the opinion of at least one expert, who

Is believed to be competent under Ark. R. Evid. 702 to express an opinion in the action and

Concludes on the basis of the available information that there is a reasonable basis to assert the claim or affirmative defense; and

The pleading, motion, or other paper complies with the requirements of Ark. R. Civ. P. 5(c)(2) regarding redaction of confidential information from case records submitted to the court.

Ark. R. Civ. P. 11(b)

Failure to comply with Rule & Sanctions

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon any attorney or party who violated this rule an appropriate sanction.

Sanctions that may be imposed for violations of this rule include, but are not limited to:

An order dismissing a claim or action;

An order striking a pleading or motion;

An order entering judgment by default;

An order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee;

An order to pay a penalty to the court;

An order awarding damages attributable to the delay or misconduct;

An order referring an attorney to the Supreme Court Committee on Professional Conduct or the appropriate disciplinary body of another state.

The court's order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction. If a monetary sanction is imposed, the order shall explain how it was determined.

The court shall not impose a monetary sanction against a represented party for violating Ark. R. Civ. P. 11(b)(2) on its own initiative, unless it issued a show-cause order under Ark. R. Civ. P. 11 (c)(6) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

A motion for sanctions shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Ark. R. Civ. P. 11(b). It shall be served as provided in Ark. R. Civ. P. 5 but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion, or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

On its own initiative, the court may order an attorney or party to show cause why conduct specifically described in the order has not violated Ark. R. Civ. P. 11 (b). The order shall afford the attorney or party a reasonable time to respond, but not less than fourteen days.

Ark. R. Civ. P. 11 (c)

Claim for Relief

A claim shall contain:

A statement of the grounds for venue and jurisdiction (unless already established);

A statement of facts showing entitlement to relief; and

A demand for the relief to which entitled.

A claim may contain:

Claim for relief in the alternative;

Two or more claims (when permitted by Ark. R. Civ. P. 18), provided that each claim shall be set forth in separate, numbered counts.

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).

Denials

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

Admission or denial of each averment shall be made.

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

Denials shall fairly meet substance of averments denied.

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

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

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

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

Affirmative Defenses

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

Accord and satisfaction;

Arbitration and award;

Comparative fault;

Discharge in bankruptcy;

Duress;

Estoppel;

Exclusiveness of Workmen's Compensation remedy;

Failure of consideration;

Fraud;

Illegality;

Injury by fellow servant;

Laches;

License;

Payment;

Release;

Res judicata;

Set-off;

Statute of frauds;

Statute of limitations;

Waiver; and

Any other matter constituting an avoidance or affirmative defense.

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

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

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

Ark. R. Civ. P. 8.

Counterclaims

Compulsory

Any existing claim against the opposing party shall be stated if it arises out of the same transaction or occurrence and its adjudication does not require third parties over whom the court cannot acquire jurisdiction.

A claim need not be stated if at the time the action was commenced the claim was the subject of another pending action, or the suit was brought by attachment or other process whereby the court could not render a personal judgment on that claim, and the pleader is not stating counterclaim under

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

Permissive

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).

Exceeding Opposing Claim

A counterclaim may exceed the amount or seek different relief than claimed in pleading of opposing party. Ark. R. Civ. P. 13(c).

Omitted Counterclaims

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

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

Joinder of Additional Parties

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).

Separate Trials & Judgments

If the court orders separate trials as provided in Ark. R. Civ. P. 42(b), judgment on a counterclaim may be rendered in accordance with the terms

of Ark. R. Civ. P. 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of. Ark. R. Civ. P. 13(h).

Cross-Claims

Against Co-Party

A party may assert an independent claim against a co-party when such claim arose out of the same transaction or occurrence of the original claim or counterclaim, or relates to any property that is the subject matter of the original action.

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).

Joinder of Additional Parties

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).

Separate Trials & Judgments

If the court orders separate trials as provided in Ark. R. Civ. P. 42(b), judgment on a cross-claim may be rendered in accordance with the terms of Ark. R. Civ. P. 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of. Ark. R. Civ. P. 13(h).

Amendments

To Pleadings

Amendments to pleadings may be made at any time without leave of court unless, upon motion, the court finds it would cause prejudice or undue delay (whereupon, the court may strike the amended pleading or grant a continuance).

Unless the court orders otherwise, a responsive pleading to an amended pleading shall be made with the longer of: the time remaining for response

to the original pleading, or twenty days after service of the amended pleading. Ark. R. Civ. P. 15(a).

To Conform with Evidence

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.

Upon motion of a party at any time, even after judgment, amendments may be made to conform the pleadings to the evidence and raise issues interjected by the evidence.

The court has discretion to permit amendment of the pleadings over an objection that an issue raised is not within the scope of the pleadings.

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

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

Relation Back

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

An amendment changing the party against whom a claim is made relates back if:

> It arises out of the same conduct, transaction, or occurrence; and
>
> Within the statute of limitations period, the party:
>
> > Had such notice of the action that maintaining a defense on the merits is not prejudiced; and
> >
> > 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

Supplemental pleadings may be made at any time without leave of court unless, upon motion, the court finds it would cause prejudice or undue delay (whereupon, the court may strike the amended pleading or grant a continuance).

Unless the court orders otherwise, a responsive pleading to a supplemental pleading shall be made with the longer of: the time remaining for response to the original pleading, or twenty days after service of the supplemental pleading. Ark. R. Civ. P. 15(d).

Defenses

When Presented

The time for answering the complaint is as follows:

Resident defendant – thirty days after service;

Nonresident defendant – thirty days after service;

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 time to prepare for trial);

Party served with a counterclaim or cross-claim – thirty days after service.

Incarcerated defendant – sixty days after service.

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

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

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

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

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

How Presented

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

Lack of jurisdiction over the subject matter;

Lack of jurisdiction over the person;

Improper venue;

Insufficiency of process;

Insufficiency of service of process;

Failure to state facts upon which relief can be granted;

Failure to join a party under Ark. R. Civ. P. 19; and

Pendency of another action between the same parties arising out of the same transaction or occurrence.

The motion shall be made before pleading if a further pleading is permitted.

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

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

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 on Defenses

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

Any defenses specifically mentioned in Ark. R. Civ. P. 12(b), whether raised by pleading or motion; and

A motion for judgment on the pleadings under Ark. R. Civ. P. 12(c).

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

Waiver or Preservation

A defense of lack of jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, or pendency of another action between same parties arising out of same transaction or occurrence is waived if it is:

Omitted from a motion made under Ark. R. Civ. P. 12(g); or

Neither made by motion under Ark. R. Civ. P. 12, nor included in the original responsive pleading.

A defense of failure to state facts upon which relief can be granted, a defense of failure to join a party indispensable under Ark. R. Civ. P. 19, and an objection of failure to state a legal defense to a claim, although not made by motion or pleading under Ark. R. Civ. P. 12, may be made in any pleading permitted or ordered under Ark. R. Civ. P. 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

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

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

Consolidation

A movant under Ark. R. Civ. P. 12 may join with it any other motions provided for in Ark. R. Civ. P. 12 and then available to him.

A movant 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 for:

Defense of failure to state facts upon which relief can be granted;

Defense of failure to join indispensable party under Ark. R. Civ. P. 19; and

Objection of failure to state a legal defense to a claim.

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

Motion for Judgment on the Pleadings

A party may move for judgment on the pleadings after pleadings are closed; but within such time as to not delay trial.

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 a More Definite Statement

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

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 strike the pleading or make such other orders as is deemed just.

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

Motion to Strike

The court may strike from any pleading any insufficient defense or redundant, immaterial, impertinent, or scandalous matter. Ark. R. Civ. P. 12(f).

Discovery

Scope of Discovery

Parties may obtain discovery regarding:

> 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;
>
> Liability insurance agreements;
>
> Material prepared for trial by any party or party's representative, upon a showing of substantial need and inability to obtain evidence without undue hardship (does not include mental impressions, conclusions, opinions, or legal theories of party's representative);
>
> Statements of party or other person previously made if it is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.
>
> The identity of expert witnesses as well as subject of testimony and grounds therefore; and
>
> 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

In General

Depositions may be oral (Ark. R. Civ. P. 30), on written questions (Ark. R. Civ. P. 31), or taken to perpetuate testimony. (Ark. R. Civ. P. 27).

Depositions shall be taken before a person authorized to administer oaths; or designated by court. Ark. R. Civ. P. 28(a).

Depositions shall be taken in a foreign state or country before a person either authorized to administer oaths in said jurisdiction or by a person either commissioned by the court or by letter of request. A commission shall be issued upon application and notice, upon terms that are just and appropriate, and with designation by name or descriptive title. Ark. R. Civ. P. 28(b).

A party desiring to take a deposition for use in a judicial proceeding in a foreign jurisdiction must produce a letter rogatory to a judge of the circuit court in the county where the witness or person in possession of the thing to be produced is located. The court shall issue a subpoena requiring the witness to attend at a specified time and place for examination. In case of failure of the witness to attend or refusal to be sworn or to testify or to produce the document or thing requested, the court may find the witness in contempt. Ark. R. Civ. P. 28(c).

Oral Examination

A deposition may be taken without leave of court after the expiration of thirty days after service of the summons and complaint on the defendant. Leave of court is also not required within thirty days if the defendant has sought discovery or if special notice has been given, including a statement of supporting facts to the effect that the deponent is about to leave the state or country making examination at a proper time impossible. Ark. R. Civ. P. 30.

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

The court may, for cause, lengthen or shorten the time to take a deposition or produce documents. Ark. R. Civ. P. 30(a) and (b)(5).

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).

Evidence objected to during the examination shall be taken subject to objections. A lawyer shall not instruct a 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).

The court may order a party giving notice of examination to pay reasonable expenses and attorney's fees incurred by adverse party in attending examination, when party giving notice fails to attend the examination or fails to subpoena the deponent. Ark. R. Civ. P. 30(g).

Written Questions

Depositions upon written questions may be served after commencement of action. Leave of court is not necessary unless a prisoner is to be subpoenaed.

Unless altered by the court, the time for service of questions is:

Cross questions within fourteen days of direct questions;

Redirect questions within seven days of cross questions; and

Recross questions within seven days of redirect questions.

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

To Perpetuate Testimony

Testimony of a witness may be perpetuated for use in a subsequent action upon the filing of a verified petition requesting an order to perpetuate testimony. The petition must show:

That the petitioner expects to be a party to an action cognizable in a court in this state but is presently unable to bring it;

The subject matter of action and petitioner's interest therein;

The facts to be established and reasons for perpetuating testimony;

The names or a description of persons petitioner expects will be adverse parties and their addresses if known; and

The names and addresses of the persons to be examined and the substance of each witness's testimony. Ark. R. Civ. P. 27(a)(1).

The petitioner must serve those named in the petition at least twenty days before the date of the hearing. If service cannot be made after due diligence, the court may order service by publication. The court shall appoint counsel for persons not served in the manner provided in Ark. R. Civ. P. 4. If any expected adverse party is a minor or incompetent, the provisions of Ark. R. Civ. P. 17(b) apply. Ark. R. Civ. P. 27(a)(2).

The court shall order perpetuation of the testimony if it is satisfied that it may prevent a failure or delay or justice. The order shall designate the persons whose depositions may be taken and specify the subject matter of the examination and whether the deposition shall be taken upon oral examination or written interrogatories. Ark. R. Civ. P. 27(a)(3).

Use at Trial

Any part or all of a deposition may be used at trial or a hearing or an interlocutory proceeding as though the witness were present and testifying, subject to the rules of evidence, as long as the adverse party was present or represented at the taking of the deposition or at least had reasonable notice thereof. Ark. R. Civ. P. 32(a)(1).

The deposition of a witness may be used by any party for any purpose if the court finds:

That the witness is dead;

That the witness is out of state or at a greater distance than one hundred miles from the courthouse;

That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

That such exceptional circumstances exist as to make it desirable, in the interest of justice. Ark. R. Civ. P. 32(a)(3).

When an action has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used in the latter.

A deposition previously taken may also be used as permitted by the Arkansas Rules of Evidence, e.g. for impeachment purposes. Ark. R. Civ. P. 32(a)(4).

Objections

Objections to the deposition may be made on the same grounds as if the witness were present.

However, objections to notice of examination are waived unless they are made in writing and promptly served on the adverse party. Ark. R. Civ. P. 32(d)(1).

Objections to qualifications of the examining officer are waived unless made before the deposition was taken or as soon as the disqualification becomes known or could have been discovered with reasonable diligence. Ark. R. Civ. P. 32(d)(2).

Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are waived if the objection is one that might have been cured if presented at that time. Ark. R. Civ. P. 32(d)(3)(A).

The following objections, based on errors occurring at the oral examination, are waived unless a seasonable objection thereto is made at the deposition:

Form of question;

Manner of taking deposition;

Form of answers;

Oath or affirmation;

Conduct of parties; and

Other avoidable errors. Ark. R. Civ. P. 32(d)(3)(B).

Objections to the form of written questions are waived unless served in writing upon propounding party within the time allowed for succeeding cross or other questions and within five days of service of the last authorized questions. Ark. R. Civ. P. 32(d)(3)(C).

Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, or filed are waived unless a motion to suppress is made with reasonable promptness after the error is discovered or discoverable. Ark. R. Civ. P. 30(e).

Interrogatories

Without leave of court, interrogatories may be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Interrogatories shall be answered separately and fully, in writing, under oath, and signed by the person answering. Objections shall be stated with the reasons for the objection and signed by the attorney objecting. The party shall answer to the extent the interrogatory is not objectionable.

Answers or objections shall be served:

By any party within thirty days after service of interrogatories;

By defendant within forty-five days after service of summons and complaint, or within thirty days after service of interrogatories, whichever is longer; or

Within such time as the court allows.

Interrogatories may relate to any matters which can be inquired into under Ark. R. Civ. P 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory that involves an opinion or contention about a fact or the application of law to a fact is not necessarily objectionable, but the court may delay an answer until after designated discovery has been completed or until a pretrial conference or another later time.

Where compilation or examination of records is necessary to answer an interrogatory and the burden is as great for one party as the other, the answering party may merely open their records to the serving party.

Ark. R. Civ. P. 33.

Production of Documents

A party may serve another with a request:

To produce documents for inspection and reproduction;

To produce any tangible thing for testing, copying, inspection, or sampling; or

To permit entry on land or property for inspection, measurement, surveying, photographing, testing, or sampling. Ark. R. Civ. P. 34(a).

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

The request shall set forth the items to be inspected and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and, manner of making the inspection and performing the related acts.

A written response shall be served:

By any party within thirty days of service of request;

By defendant within forty-five days after service of summons and complaint, or within thirty days of service of request, whichever is longer; or

Within such time as permitted by the court.

The response shall permit inspection as to each item or category. The party may object as to specified items or parts of categories, with the reasons for the objection stated and allowing inspection of the remaining parts.

The party submitting the request may move for an order under Ark. R. Civ. P. 37(a) with respect to any objection to or other failure to respond or failure to permit inspection as requested.

An independent action against a nonparty for production of documents and things or permission to enter land is not precluded by this rule.

A party who produces documents for inspection shall organize and label them to correspond with the categories in the production request, or produce them as kept in the usual course of business.

Ark. R. Civ. P. 34.

Physical or Mental Examination

When the mental or physical condition of a party, or a person in the custody of a party, is in controversy, the court may order the party to submit to an examination or to produce the person in the party's custody or legal control for examination.

The order shall issue only on motion for good cause shown and upon notice to the person to be examined and to all parties. It shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

The party examined or to whom order is made is entitled to a copy of the report of the examining physician or psychologist setting out his findings, including results of all tests made, diagnoses and conclusions, and all earlier reports of examinations of the same condition.

After delivery, the party causing the examination shall be entitled, upon request to receive the same.

If the physician fails or refuses to make a report, the court may exclude his or her testimony at trial.

By requesting and obtaining a report of the examination or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect to the same mental or physical condition.

A party who relies upon his or her physical, mental, or emotional condition as an element of his or her claim or defense shall execute an authorization to allow such other party to obtain copies of his or her medical records. They shall do so within thirty days of the request unless a shorter or longer time is agreed to or ordered by the court.

A party shall not be required, by order of court or otherwise, to authorize any communication with his or her physician or psychotherapist other than:

The furnishing of medical records, and

Communications in the context of formal discovery procedures.

"Medical records" means any writing, document, or electronically stored information pertaining to or created as a result of treatment, diagnosis, or examination of a patient.

Ark. R. Civ. P. 35.

Requests for Admission

For purposes of a 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). The request may be served without leave of court on the plaintiff any time after commencement of the action, or on any other party after service of summons and complaint on that party. The request shall:

Set forth separately matters to be admitted that relate to statements or opinions of fact;

Describe any documents the genuineness of which is questioned; and

Attach copies of documents unless otherwise furnished or made available for inspection and copying.

The answer shall be written and signed by the party or their attorney. It shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.

A denial shall fairly meet the substance of the requested admission.

The answer shall only qualify the answer or admit only part of the matter if good faith so requires.

The answer shall only give lack of information or knowledge as a reason for failure to answer if it is stated that a reasonable inquiry has been made and available information is insufficient to enable an answer to be made.

Objections shall be written and signed and give the reasons for the objection. An objection shall not solely be based on the ground that the admission presents a genuine issue of fact for trial. The party may deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. If the objection is not justified, the court shall order the answer served.

If the answer does not comply with the requirements of Ark. R. Civ. P. 36, the court may order the matter admitted or order an amended answer.

The court may, also determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

An admission conclusively establishes a matter unless the court grants a motion for withdrawal or amendment of admission.

An admission may be amended under Ark. R. Civ. P. 16 when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense.

Requests for admissions must be filed in a separate document and shall not be combined with interrogatories, document production requests, or any other material.

Ark. R. Civ. P. 36.

Protective Orders

On the motion of a party seeking discovery or examination and for good cause shown, the court may make orders justly required to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

The movant should state that they have conferred with or attempted to confer with the other party in good faith in an effort to resolve the dispute without court action.

The order may:

Preclude discovery;

Permit discovery on specified terms and conditions;

Permit discovery only by a method other than that chosen;

Limit the scope of discovery;

Preclude discovery of certain things;

Designate only certain persons to be present at examination;

Require a deposition to be sealed and opened only by court order;

Preclude or limit disclosure of confidential research, development, or commercial information; or

Require simultaneous filing of specified documents or information in sealed envelopes to be opened only as court directs.

If a motion for a protective order is denied, in whole or part, the court may order discovery on such terms and conditions as are just. Ark. R. Civ. P. 26(c).

With regard to depositions on oral examination – either party or deponent may move to terminate or limit examination, at any time during examination, upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party.

Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. Ark. R. Civ. P. 30(d)(4).

Sanctions

A party may apply for an order compelling discovery. The application must be made to the court in which the action is pending or, on matters relating to a deposition, to the court in the place where the deposition is being taken. It shall include a statement that the party has attempted in good faith to resolve the issue without court action. The party may complete or adjourn the examination before he applies for an order. Reasonable notice must be given to all parties. Ark. R. Civ. P.37(a).

A party may move for an order compelling discovery on the following grounds:

Deponent fails to answer a question under Ark. R. Civ. P. 30 or 31;

Corporation, business association, or governmental agency fails to make a designation under Ark. R. Civ. P. 30(b)(6), 31(a);

Party fails to answer interrogatories under Ark. R. Civ. P. 33;

Party fails to permit inspection requested under Ark. R. Civ. P. 34; or

Party's answers are evasive or incomplete. Ark. R. Civ. P. 37(a).

If the motion is granted, the court shall, after an opportunity for a hearing, require the party or deponent whose conduct necessitated the motion (or their attorney) to pay reasonable expenses and attorney's fees incurred in obtaining the order, unless however, the court finds:

That the movant did not make a good faith effort to obtain the discovery without court action;

That the opposing party's response or objection was substantially justified; or

That other circumstances make an award of expenses unjust.

If the motion is denied, the court may enter any protective order authorized under Ark. R. Civ. P. 26(c). With opportunity for hearing, the court may also order the moving party, attorney, or both to pay the costs incurred in opposing the motion, unless it finds that the motion was justified or that an award of expenses would be unjust. Ark. R. Civ. P. 37(a).

If the motion is granted in part and denied in part, costs shall be apportioned as justice so requires.

Upon failure to comply with the order to permit discovery, the court in the district in which the deposition is taken may find deponent in contempt for failure to be sworn or failure to answer. Ark. R. Civ. P. 37(b).

The court in which the action is pending may make an order:

Establishing facts involved or other designated facts;

Forbidding deponent an opportunity to oppose or support designated claim or defense;

Prohibiting introduction of designated matter in evidence;

Striking pleadings or facts of pleadings;

Staying further proceedings until discovery permitted;

Dismissing action or proceeding or part thereof;

Rendering default judgment; or

In lieu of or in addition to foregoing:

Finding deponent in contempt for failure to permit any discovery except a mental or physical examination; or

Requiring payment of costs incurred in obtaining order unless failure to permit discovery is justified or award unjust.

Ark. R. Civ. P. 37(b).

Upon a failure to admit or deny a request to admit if the genuineness of the document or the truth of the matter in question is later proved, the party making the request may apply for an order requiring the other party to pay the reasonable expenses incurred in making that proof. Such an order shall be made unless:

Request to admit was objectionable under Ark. R. Civ. P. 36(a);

Admission was of no substantial importance in the proceedings;

Adverse party had reasonable grounds to believe that he might prevail in objection; or

Adverse party demonstrates good reason for failure to answer.

Ark. R. Civ. P. 37(c).

If party deponent or designated officer upon proper notice of deposition or other discovery fails to:

Appear for examination;

Serve answer or objection to interrogatories; or

Serve written response to request for inspection of property;

The court in which the action is pending may upon motion make an order:

Establishing facts;

Forbidding opportunity to oppose or support certain claims;

Prohibiting introduction of certain evidence;

Dismissing the action or proceeding or any part thereof;

Entering a default judgment against the disobedient party; or

In lieu of or in addition to above, awarding costs against adverse party, his attorney or both unless the failure is justified or such award unjust.

The failure to act may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Ark. R. Civ. P 26(c).

Ark. R. Civ. P. 37(d).

Expenses may not be awarded against the state except as provided by law. Ark. R. Civ. P. 37(f).

Electronic Discovery

The parties may agree to pursue electronic discovery or the court may order electronic discovery on motion for good cause shown. Any such agreement or motion shall be made within one hundred twenty days after the date that the complaint was filed. The court may extend or reopen this period for good cause. Ark. R. Civ. P. 26.1(b).

Within thirty 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:

Any issues relating to preservation of discoverable information;

The form in which each type of the information will be produced;

The period within which the information will be produced;

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;

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;

Whether allocation among the parties of the expense of production is appropriate; and,

Any other issue relating to the discovery of electronically stored information.

Following the planning conference, the parties shall:

Develop a proposed plan relating to discovery of the information; and

Not later than fourteen 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.

Ark. R. Civ. P. 26.1(c).

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;

A stipulation of the parties and of any person not a party from which discovery of the information is sought, or

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.

An order governing discovery of electronically stored information may address:

Whether discovery of information is reasonably likely to be sought in the proceedings;

Preservation of the information;

The form in which each type of the information is to be produced;

The time within which the information is to be produced;

The permissible scope of discovery of the information;

> The method for asserting or preserving claims of privilege or of protection of the information as trial-preparation material after production;
>
> 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;
>
> Allocation of the expense of production; and
>
> Any other issue relating to the discovery of the information.
>
> Ark. R. Civ. P. 26.1(d).

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. Ark. R. Civ. P. 26.1(e).

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 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:

> That inspection, copying, testing, or sampling of the information will be permitted as requested; or
>
> Any objection to the request and the reasons for the objection.
>
> Ark. R. Civ. P. 26.1(f).

Unless the parties otherwise agree or the court otherwise orders:

> The responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably useful;
>
> 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

A party need not produce the same electronically stored information in more than one form. Ark. R. Civ. P. 26.1(g).

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.

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.

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.

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.

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:

It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive;

The discovery sought is unreasonably cumulative or duplicative;

The party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or

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. Ark. R. Civ. P. 26.1(h).

A claim of privilege or protection after production of electronic data shall be governed by Ark. R. Civ. P. 26(b)(5) unless the application of that rule is modified by agreement of the parties or by order of the court. Ark. R. Civ. P. 26.1(i).

A subpoena 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 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.

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(j).

Pre-Trial Conference

A pretrial conference may be held at the discretion of the court. The attorneys for all parties shall appear at the conference to consider:

Simplification of issues;

Necessity or desirability of amending pleadings;

Possibility of obtaining admissions of fact and documents to avoid unnecessary proof;

Limiting number of expert witnesses;

Advisability of preliminary reference of issues to master;

Such other matters as may aid in the disposition of the action; and

The possibility of settlement or the use of extrajudicial procedures, including mediation, to resolve the dispute.

At the conclusion of the conference, the court shall make an order:

Reciting the action(s) taken;

Specifying the amendments allowed to the pleadings;

Reciting the agreements made by the parties; and

Limiting the issues for trial to those not disposed of by admissions or agreements of counsel.

The order controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration. The court may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

Ark. R. Civ. P. 16.

There is a sample Scheduling Order in the Appendix on page 177.

Adjudication Without Trial

Summary of Challenges to Pleadings

A motion for judgment on the pleadings may be made after the pleadings are closed and within such a time as not to delay trial. Such a motion can be made by any party. The motion shall be treated as one for summary judgment and disposed of as provided in Ark. R. Civ. P. 56, meaning that all parties are to be given a reasonable opportunity to present all material pertinent to such a motion. Ark. R. Civ. P. 12(c).

Unless waived (*See* Ark. R. Civ. P. 12(h)), a party may object by motion or in responsive pleadings to:

Subject-matter jurisdiction;

Jurisdiction of the person;

Venue;

Sufficiency of process;

Sufficiency of service of process;

Failure to state facts upon which relief can be granted;

Failure to join a necessary party; or

Another action between the same parties arising out of the same transaction or occurrence is pending.

Other defenses must be asserted in the responsive pleadings.

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

A party may assert the following defenses in a motion for a judgment on the pleadings:

Failure to state facts upon which relief can be granted,

Failure to join a party indispensable under Ark. R. Civ. P. 19, and

Failure to state a legal defense. Ark. R. Civ. P. 12(h)(2).

A preliminary hearing may be conducted upon application of any party, unless deferred until trial by the court, to determine the motion for judgment on the pleadings or any of the defenses listed in Ark. R. Civ. P. 12(b).

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

A motion for a more definite statement may be made before responsive pleadings are filed, pointing out the defects in the pleadings and the details desired. If the motion is granted, the order of the court must be complied with within ten days or such time as the court fixes, or the court may strike the pleading. Ark. R. Civ. P. 12(e).

A motion to strike may be made before responsive pleadings are filed, or within thirty days after service of the pleading, or upon the court's own initiative at any time, by which the court may order stricken from any pleading any insufficient

defense or any redundant, immaterial, impertinent, or scandalous matter. Ark. R. Civ. P. 12(f).

Dismissal

Voluntary Dismissal

An action may be dismissed by the plaintiff voluntarily without prejudice to further action unless the case has been finally submitted to the court or jury, or the plaintiff has once before voluntarily dismissed an action based upon the same claim (unless all parties agree by written stipulation that such dismissal is without prejudice).

Despite a voluntary dismissal by the plaintiff, the defendant may proceed with a counterclaim or set-off if it has been previously presented. Ark. R. Civ. P. 41(a).

Involuntary Dismissal

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.

Involuntary dismissal is without prejudice unless the action has been previously dismissed, voluntarily or involuntarily. Ark. R. Civ. P. 41(b).

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).

The provisions of Ark. R. Civ. P. 41 are equally applicable to the dismissal of counter, cross, or third-party claims. Ark. R. Civ. P. 41(c).

Offer of Judgment

More than ten days before trial, a party defending against a claim may serve an adverse party with an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued.

Judgment shall be entered if, within ten days after service, the adverse party accepts offer in writing, and either party files the offer and notice of acceptance together with proof of service.

An offer not accepted shall be considered withdrawn and is inadmissible in evidence except in a proceeding to determine costs.

If the final judgment obtained (exclusive of interest) is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

An offer made but not accepted does not preclude a subsequent offer.

When liability has been determined by trial, but the amount of damages is to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial, if it is served not less than ten days prior to the further proceedings.

Ark. R. Civ. P. 68.

Default Judgment

When a party against whom relief is sought has failed to plead or otherwise defend, the court may enter a default judgment in the kind and amount prayed for in the demand for judgment (as long as the defaulting party is not an infant or incompetent). Ark. R. Civ. P. 55(a).

A hearing or a jury trial may be conducted if necessary to:

Take an account;

Determine damages;

Establish the truth of an averment; or

Investigate any other matter.

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).

The court may set aside default judgment upon showing of:

Mistake, inadvertence surprise, or excusable neglect;

Judgment is void;

Fraud, misrepresentation, or other misconduct of adverse party; or

Any other reason justifying relief. Ark. R. Civ. P. 55(c).

If the case has been removed to federal 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).

Default Judgment with Service by Mail or Warning Order

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

A party seeking to recover upon a claim, counterclaim, or cross-claim may move, with or without supporting affidavits, for summary judgment twenty days after the action has commenced or after service of a motion for summary judgment by the adverse party. The party must file any such motion no later than forty-five days before any scheduled trial date (absent leave of court for good cause shown). Ark. R. Civ. P. 56(a).

The adverse party shall serve his/her response and supporting materials, if any, within twenty-one days after the motion is served. The moving party may reply within fourteen days after service of response. Unless the court orders otherwise, no party shall file supporting materials after the time for serving a reply. Ark. R. Civ. P. 56(b) & (c)(1).

The court may hold a hearing on the motion not less than *seven* days after the time for serving a reply (or less, for good cause shown). Ark. R. Civ. P. 56(c)(1).

Affidavits in support of or in opposition to the motion shall:

Be based upon personal knowledge;

State facts admissible in evidence;

Show that affiant is competent to testify to matters contained;

Have attached sworn or certified copies of all documents referred to; and

> State specific facts showing the existence of a genuine issue of fact, rather than a mere denial by the pleadings.

The court may permit affidavits to be supplemented by depositions, answers to interrogatories, and further affidavits. Ark. R. Civ. P. 56(e).

If for specified reasons an affidavit with regard to essential facts cannot be obtained, the court may refuse the application, permit more time to obtain affidavits for discovery, or make such other order as is just. Ark. R. Civ. P. 56(f).

If affidavits are made in bad faith or for the purpose of delay, the court shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. Ark. R. Civ. P. 56(g).

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion." Ark. R. Civ. P. 56(c)(2).

A partial summary judgment, interlocutory in character, may be rendered on any issue in the case, including liability.

If summary judgment is not rendered upon the whole case or for all the relief prayed, the court shall conduct a hearing to ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just.

> Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.
>
> Ark. R. Civ. P. 56(d).

Limitations of Actions

The expiration of the statutory period for a particular action before a suit is commenced is a bar to further action. The statute of limitations is an affirmative defense that must be set forth in responsive pleading. Ark. R. Civ. P. 8(c).

The statutory period generally begins running when the cause of action accrues. Williams v. Edmonson, 257 Ark. 837, 520 S.W.2d 260 (1975).

The statutory period is tolled by:

Properly commencing an action by filing a complaint with the clerk of the proper court.

When the identity of the tortfeasor is unknown, upon affidavit of the fact designating tortfeasor as "John Doe" (Ark. Code Ann. § 16-56-125);

Military service in time of war and six months after war (Ark. Code Ann. § 16-56-118);

An injunction staying a suit filed within the statutory period (Ark. Code Ann. § 16-56-119);

A disability existing at the time the cause of action accrues, including infancy or 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.]

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);

Foreign debtor fraudulently absconding to this state to avoid suit (Ark. Code Ann. § 16-56-121).

The statutory period is not tolled by:

A verbal promise or acknowledgment in an action on a contract (Ark. Code Ann. § 16-56-122);

A written acknowledgment or promise by a joint contractor or executor as against the other (Ark. Code Ann. § 16-56-124); or

The endorsement by the payee of payment on a bond. Ark. Code Ann. § 16-56-123.

The statutory period applies to demands by way of set-off whether by plea, notice, or otherwise. Ark. Code Ann. § 16-56-102.

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.

Declaratory Judgments

The procedure for obtaining a declaratory judgment is outlined in Ark. Code Ann. §§ 16-111-101 *et. seq*. Courts may declare rights, status, and other legal relations whether or not further relief is or could be claimed. Ark. Code Ann. § 16-111-103.

Such declarations shall be treated as a final judgment. Ark. Code Ann. § 16-111-109.

A person may seek declaratory relief in any proceeding if the judgment will terminate the controversy or remove an uncertainty. Ark. Code Ann. § 16-111-103 and Ark. Code Ann. § 16-111-108.

The issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions. Ark. Code Ann. § 16-111-107.

The right to a jury trial is controlled by Ark. R. Civ. P. 38 and 39.

The court may advance an action for a declaratory judgment on the docket for a speedy hearing. Ark. R. Civ. P. 57.

Relevant Statutes

Declaration of construction and validity: Ark. Code Ann. § 16-111-104.
Powers of fiduciaries: Ark. Code Ann. § 16-111-105.

Masters

Appointment & 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).

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).

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).

Proceedings

Meetings. When a reference is made, the clerk shall 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.

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.

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).

Report

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 mail to all parties notice of the filing.

Effect. The court shall accept the master's findings of fact unless clearly erroneous. Within twenty 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.

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.

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

A judicial officer may issue a warrant for the arrest of a person if, from affidavit, recorded testimony, or other information, it appears there is reasonable cause to believe an offense has been committed and the person committed it. Ark. R. Crim. P. 7.1.

An affidavit or other documented information in support of an arrest warrant may be transmitted to the issuing judicial officer by facsimile or by other electronic means. Recorded testimony in support of an arrest warrant may be received by telephone or other electronic means provided the issuing judicial officer first administers an oath by telephone or other electronic means to the person testifying in support of the issuance of the warrant.

Id.

See the Criminal Checklists beginning on Appendix page 1.

Sufficiency of Arrest Warrant

Every arrest warrant shall:

Be in writing and in the name of the state;

Be directed to all law enforcement officers in the state;

Be signed by the issuing official with the title of his office and the date of issuance;

Specify the name of the accused or, if his name is unknown, any name or description by which he can be identified with reasonable certainty;

Have attached a copy of the information, if filed, or, if not filed, a copy of any affidavit supporting issuance; and

Command that the accused be arrested and that unless he complies with the terms of release specified in the warrant that he be brought before a judicial officer without unnecessary delay.

The warrant may specify the manner in which it is to be executed, and may specify terms of release and requirements for appearance. Ark. R. Crim. P. 7.2.

The judge or magistrate must be satisfied that there are reasonable grounds for believing the charge, either from his or her personal knowledge or from information given to him or her on oath.

The arrest warrant shall name or describe the offense charged and the county in which it was committed. The warrant shall command the officer to arrest the person named therein as the offender and bring him or her before some judge or magistrate of the county in which the offense was committed. Ark. Code Ann. § 16-81-104.

See the Criminal Checklists beginning on Appendix page 1.

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. State v. Richardson, 373 Ark. 1, 280 S.W.3d 20 (2008).

Phone Warrants

General Rule. If the circumstances make it reasonable to dispense with a written affidavit, any judicial officer of this state may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

Application. The person who is requesting the warrant shall prepare a document, to be known as a duplicate original warrant and shall read such duplicate original warrant verbatim to the judicial officer.

The judicial officer shall enter verbatim what is so read to such magistrate on a document to be known as an original warrant.

The judicial officer may direct that the warrant be modified.

Issuance. If the judicial officer is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the judicial officer shall order the issuance of a warrant by directing the person requesting the warrant to sign the judicial officer's name on the duplicate original warrant.

The judicial officer shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued.

The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

Recording and Certification of Testimony. When a caller informs the judicial officer that the purpose of the call is to request a warrant, the judicial officer shall immediately place under oath each person whose testimony forms a basis for the application and each person applying for that warrant.

If a voice recording device is available, the judicial officer shall record by means of the device all of the call after the caller informs the judicial officer that the purpose of the call is to request a warrant.

Otherwise, a stenographic or longhand verbatim record shall be made immediately.

If a voice recording device is used or a stenographic record made, the judicial officer shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court.

If a longhand verbatim record is made, the judicial officer shall file a signed copy with the court.

Motion to Suppress Precluded. Absent a finding of bad faith, evidence obtained pursuant to a phoned warrant issued is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

Ark. Code Ann. § 16-82-201.

Arrest Without a Warrant

A law enforcement officer may arrest a person without a warrant if:

> The officer has reasonable cause to believe that such person has committed a felony;

> The officer has reasonable cause to believe that such person has committed a traffic offense involving: death or physical injury to a person, damage to property; or driving a vehicle while intoxicated;
>
> The officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence;
>
> The officer has reasonable cause to believe that such person has committed acts of domestic violence occurring within four hours of arrest (if no physical injury) or within twelve hours of arrest (if physical injury involved)
>
> The officer is otherwise authorized by law. Ark. R. Crim. P. 4.1.

See also Ark. Code Ann. § 16-81-106 which says that a law enforcement officer may make an arrest without a warrant where:

> A public offense is committed in his or her presence;
>
> He or she has reasonable grounds for believing that the person arrested has committed a felony; or
>
> The officer has probable cause to believe that the person has committed battery upon another person, the officer finds evidence of bodily harm, and the officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.

A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony, Ark. R. Crim. P. 4.1, or when he is ordered to by a judicial officer in whose presence a public offense is being committed. Ark. Code Ann. § 16-81-106.

Summons for a Misdemeanor Offense

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 thereof in any case in which a complaint, information, or indictment is filed or returned against a person not already in custody. Ark. R. Crim. P. 6.1.

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. Ark. R. Crim. P. 6.1.

A summons shall not be issued if:

> 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
>
> It appears that the person charged would not respond to a summons.
>
> Ark. R. Crim. P. 6.1.

In determining whether the defendant would respond to a summons, appropriate considerations include, but are not limited to:

> The nature and circumstances of the offense charged;
>
> The weight of the evidence against the person;
>
> Place and length of residence;
>
> Present and past employment;
>
> Family relationship;
>
> Financial circumstances;
>
> Apparent mental condition;
>
> Past criminal record;
>
> Previous record of appearance at court proceedings; and
>
> Any other relevant information.
>
> Ark. R. Crim. P. 6.1.

Warrantless entry into a person's home to effect a warrantless arrest for misdemeanor driving while intoxicated (DWI) is unreasonable. Norris v. State, 338 Ark. 397, 993 S.W.2d 918 (1999).

But see Stutte v. State, 2014 Ark. App. 139 (2014) (where there was sufficient evidence of resisting arrest to justify intrusion).

DNA Sampling Upon Arrest

A DNA sample shall be collected from:

> An individual who is arrested for any felony offense;
>
> An individual whose first appearance in court is caused by a citation or summons for a felony offense; and
>
> An individual who is already in the custody of a law enforcement agency or a correctional agency and is the subject of a new felony charge when the new felony charge is separate from the charge or charges for which the person was previously arrested or confined and the law enforcement agency or the correctional agency cannot verify that the person's DNA record is stored in the state DNA Data Base or CODIS.

Ark. Code Ann. § 12-12-1006.

DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. Maryland v. King, 133 S. Ct. 1958, 186 L. Ed. 2d 1 (2013).

Search & Seizure

Sufficiency of Affidavit

The application for a search warrant shall describe with particularity the persons or places to be searched and the persons or things to be seized, and shall be supported by one or more affidavits or recorded testimony under oath before a judicial officer particularly setting forth the facts and circumstances tending to show that such persons or things are in the places, or the things are in possession of the person, to be searched.

If an affidavit or testimony is based in whole or in part on hearsay, the affiant or witness shall set forth particular facts bearing on the informant's reliability and shall disclose, as far as practicable, the means by which the information was obtained.

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

An application for a search warrant and the affidavit in support of the search warrant may be transmitted to the issuing judicial officer by facsimile or by other electronic means. Recorded testimony in support of a search warrant may be received by telephone or other electronic means provided the issuing judicial officer first administers an oath by telephone or other electronic means to the person testifying in support of the issuance of the warrant.

The judicial officer may examine the affiants or witnesses. He shall make and keep a fair written summary of the proceedings and the testimony taken before him. The proceedings shall be conducted in secret when appropriate.

If the judicial officer finds that the application meets the requirements of this rule and that, on the basis of the proceedings before him, there is reasonable cause to believe that the search will discover persons or things specified in the application and subject to seizure, he shall issue a search warrant based on his finding and in accordance with the requirements of Ark. R. Crim. P. 13.1. If he does not so find, the judicial officer shall deny the application.

An application for a search warrant and the affidavit in support of the search warrant may be transmitted to the issuing judicial officer by facsimile or by other electronic means. Recorded testimony in support of a search warrant may be received by telephone or other electronic means provided the issuing judicial officer first administers an oath by telephone or other electronic means to the person testifying in support of the issuance of the warrant. After signing a search warrant, the judicial officer issuing the warrant may transmit a copy of the warrant by facsimile or other electronic means to the applicant for the warrant. The original signed search warrant shall be retained by the judicial officer issuing the warrant

and shall be filed with the record of the proceeding as provided in Ark. R. Crim. P. 13.4(c).

After signing a search warrant, the judicial officer issuing the warrant may transmit a copy of the warrant by facsimile or other electronic means to the applicant for the warrant. The original signed search warrant shall be retained by the judicial officer issuing the warrant and shall be filed with the record of the proceeding as provided in Ark. R. Crim. P. 13.4(c).

Ark. R. Crim. P. 13.1.

See the Criminal Checklists beginning on Appendix page 1.

Case Law

Substantial compliance:

> Although warrant to search defendant's house for controlled substances only described place as "the house occupied by [defendant]," there was substantial compliance with rule requiring that warrant describe location and designation of place to be searched with particularity where affidavit attached to warrant described place with great particularity as "residence is located approximately one quarter mile north of the stop sign where Hwy 229 intersects the Old Oklahoma Road being located just past a rock house on the left, down a gravel driveway, approximately two hundred yards. Said residence being a black and white mobile home with a screen-in porch across the front and a small fence around the front yard." Baxter v. State, 262 Ark. 303, 556 S.W.2d 428 (1977).

Failure to record testimony:

> The general rule is that unrecorded oral testimony may not be considered, by the trial court or appellate courts, when determining whether there was sufficient probable cause to issue a search warrant. Where there is neither a written affidavit nor sworn, recorded testimony in support of a search warrant, the appellate court will not apply the good-faith exception to uphold the search warrant. Where, however, there is a written affidavit in support of the search warrant that later is ruled deficient, the court will go

beyond the four corners of the affidavit and consider unrecorded oral testimony to determine whether the officers executing the search warrant did so in objective good-faith reliance on the judge's having found probable cause to issue the search warrant. Moreover, the court may also consider information known to the executing officers that may or may not have been communicated to the issuing judge. Moya v. State, 335 Ark. 193, 981 S.W.2d 521 (1998).

When an officer omits facts from a search warrant affidavit, the evidence will be suppressed if the defendant establishes by a preponderance of the evidence that:

The officer omitted facts knowingly and intentionally, or with reckless disregard; and

The affidavit, if supplemented with the omitted information, is insufficient to establish probable cause. State v. Rufus, 338 Ark. 305, 993 S.W.2d 490 (1999).

Sufficiency of Search & Seizure Warrant

A search warrant shall be dated and describe with particularity:

The identity of the issuing judicial officer and the date and place where application for the warrant was made;

The judicial officer's finding of reasonable cause for issuance of the warrant;

The identity of the person to be searched, and the location and designation of the places to be searched;

The persons or things constituting the object of the search and authorized to be seized; and

The period of time, not to exceed five days after execution of the warrant, within which the warrant is to be returned to the issuing judicial officer.

Ark. R. Crim. P. 13.2.

See the Criminal Checklists beginning on Appendix page 1.

Nighttime Searches

Except as hereafter discussed, the search warrant shall provide that it be executed between the hours of 6:00 AM and 8:00 PM, and within a reasonable time, not to exceed sixty days.

To conduct a nighttime search, there must be reasonable cause to believe that:

The place to be searched is difficult of speedy access; or

The objects to be seized are in danger of imminent removal; or

The warrant can only be safely or successfully executed at nighttime.

Ark. R. Crim. P. 13.2.

Case Law

Conclusory statements in search warrant affidavit indicating that place to be searched was "difficult of speedy access" and that warrant could only be safely or successfully executed at night did not provide sufficient factual basis for warrant authorizing nighttime search of defendant's house. Garner v. State, 307 Ark. 353, 820 S.W.2d 446 (1991).

Search warrant was deficient under rules of criminal procedure and did not show exigent circumstances warranting a nighttime search in drug case; the portion of the affidavit prepared by the detective that touched on imminent removal stating that the chemicals used to manufacture methamphetamine were volatile and subject to explode or cause a fire and could be a danger to surrounding houses in a residential setting was merely conclusory. Fouse v. State, 337 Ark. 13, 989 S.W.2d 146 (1999).

Affidavit in support of nighttime warrant for defendant's residence was insufficient to justify issuance of warrant, as there were no facts in the affidavit to support a finding that children who lived in the residence, or anyone else, would be safe during the execution of the warrant only if the execution took place in the cover of darkness. However, even though night-time search warrant for defendant's residence, in which law enforcement officers believed methamphetamine was being manufactured, was invalid, evidence seized in execution of warrant was admissible under good-faith exception to exclusionary rule, as officers acted in good faith in executing warrant; officer testified that diapers found in defendant's garbage, in

which items relating to methamphetamine were also found, were "fresh" and that the coffee filters that had been found were wet, indicating they had just been used, and, at the time these discoveries were made, it was the evening hour, which common sense would suggest made it even more likely that children were home. State v. Tyson, 2012 Ark. 107, 388 S.W.3d 1 (2012) .

Knock & Announce Rule

The Fourth Amendment not only requires officers to go through the motions of knocking and announcing, it also requires them to wait a reasonable period of time sufficient to be deemed a constructive refusal of entry by the occupants before the officers may force their entry into the premises. Mazepink v. State, 336 Ark. 171, 987 S.W.2d 648 (1999).

There is no exact measurement of time following knock and announcement required before the officers are said to have been constructively refused entry and thus may reasonably force entry into the premises to execute a search warrant. Id.

The test for whether a knock on the door and an announcement of the officers' presence and purpose is required for a search to be reasonable under the Fourth Amendment is whether the police have a reasonable suspicion that knocking and announcing their presence would be dangerous or futile, or that it would inhibit the officers' effective investigation of the crime, such as resulting in the destruction of evidence. Id.

A time interval of two to three seconds between the officer's announcement and forced entry into the residence was insufficient to demonstrate that they were constructively refused entry into the residence. Id.

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).

Consent Searches – Without a Warrant

An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search.

The state has the burden of proving by clear and positive evidence that consent to a search was freely and voluntarily given and that there was no actual or implied duress or coercion.

A search of a dwelling based on consent shall not be valid under this rule unless the person giving the consent was advised of the right to refuse consent.

Ark. R. Crim. P. 11.1.

The consent justifying a search and seizure can only be given, in the case of:

> A search of an individual's person, by the individual in question or, if the person is under fourteen years of age, by both the individual and his parent, guardian, or a person in loco parentis;
>
> A search of a vehicle, by the person registered as its owner or in apparent control of its operation or contents at the time consent is given; and
>
> A search of premises, by a person who, by ownership or otherwise, is apparently entitled to give or withhold consent.

Ark. R. Crim. P. 11.2.

A search based on consent shall not exceed, in duration or physical scope, the limits of the consent given. Ark. R. Crim. P. 11.3.

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).

Warrant Exceptions

Searches Incident to Arrest

> An officer who is making a lawful arrest may, without a search warrant, conduct a search of the person or property of the accused:
>
> > To protect the officer, the accused, or others;
> >
> > To prevent the escape of the accused;

> To furnish appropriate custodial care if the accused is jailed; or
>
> To obtain evidence of the commission of the offense for which the accused has been arrested or 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.

The search of an accused prior to his arrival at a police station shall be only as extensive as is reasonably necessary to effect the arrest with all practicable safety, or to prevent escape or the destruction of evidence. Comment to Ark. R. Crim. P. 12.1.

Search of Person

An officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search of the accused's garments and personal effects ready to hand, the surface of his body, and the area within his immediate control. Ark. R. Crim. P. 12.2.

Search of Body Cavities

Search of an accused's blood stream, body cavities, and subcutaneous tissues conducted incidental to an arrest may be made only:

> If there is a strong probability that it will disclose things subject to seizure and related to the offense for which the individual was arrested; and
>
> If 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
>
> If 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; and
>
> If the search is conducted by a physician or a licensed nurse.
>
> Ark. R. Crim. P. 12.3.

Search of Vehicle

A vehicle may be searched at the time of arrest of an accused if:

> The accused is in the vehicle;
>
> The accused is in the immediate vicinity of and in apparent control of the vehicle;
>
> 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
>
> The search is made contemporaneously with the arrest or as soon thereafter as is reasonably practical.
>
> Ark. R. Crim. P. 12.4.

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).

Search of Premises

Search of premises may be made without a warrant if:

> It is contemporaneous with the arrest of the accused;
>
> The entry onto the premises was made for the purpose of making the arrest;
>
> The search is limited to the immediate area from which the person may obtain a weapon or in which he may have hidden evidence;
>
> It is apparent that the accused is entitled to occupy all or part of the premises; and
>
> Circumstances give the officer reason to believe that the premises contain things which are:
>
> > Subject to seizure;

Connected with the offense for which the arrest is made; and

Likely to be removed or destroyed before a search warrant can be obtained and served.

Ark. R. Crim. P. 12.5.

Plain-View Doctrine

The "plain view" doctrine permits the warrantless seizure of property where certain conditions are met: first, the officer must lawfully make an initial intrusion or otherwise properly be in a position from which she or he can view a particular area, and second, it must be immediately apparent to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure.

Thus, an article may be seized without a warrant if the police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object.

68 Am. Jur. 2d Searches and Seizures § 241.

The Fourth Amendment does not prohibit warrantless seizure of evidence of crime in plain view, even if discovery of evidence was not inadvertent; although inadvertence is characteristic of most legitimate "plain view" seizures, it is not a necessary condition. Horton v. California, 496 U.S. 128 (1990).

The basic test for the "plain view" exception to the prohibition on warrantless searches is whether the officer had a right to be in the position he was when objects fell into his plain view. Washington v. State, 42 Ark. App. 188, 856 S.W.2d 631 (1993)(search was not unconstitutional where police officer reached his arm through an opening in the foundation of a snack bar and pool hall to seize a match box and film canister that were in plain view from the interior of the business, and officer saw containers being hidden in floor through window, from a place he was legally entitled to be).

See also Phillips v. State, 53 Ark. App. 36, 918 S.W.2d 721 (1996)(cellophane package of marijuana in defendant's wallet was admissible in prosecution for possession of controlled substance where officer approached automobile, which

was parked in middle of road, to see if anything was wrong, officer smelled marijuana when defendant rolled down window, defendant admitted to having smoked marijuana earlier in day, and officer noticed cellophane package rolled up in defendant's wallet when defendant was flipping through wallet to find driver's license); and

Percefull v. State, 2011 Ark. App. 378, 383 S.W.3d 905 (2011)(defendant did not have a reasonable expectation of privacy in the area where police officer was standing when he viewed forty marijuana plants alongside edge of driveway on defendant's property; officer observed the marijuana in plain view while standing on steps that led from defendant's driveway to hog pens located on hillside behind defendant's house, an area that would have been used by any person responding to defendant's signs advertising that he had "pigs for sale" on his property).

Investigatory Stops

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit

A felony, or

A misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. Ark. R. Crim. P. 3.1.

An officer acting under Ark. R. Crim. P. 3.1 may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen minutes or for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense (if warranted). Ark. R. Crim. P. 3.1.

Both investigative stops and arrests are seizures under the Fourth Amendment but, while investigative stop must be supported by reasonable and articulable suspicion that criminal activity may be afoot, arrest must be supported by probable cause; in an investigative stop, means employed should be the least intrusive means

reasonably available to verify or dispel officer's suspicion in a short period of time, but officer may take such steps as are reasonably necessary to protect his personal safety and maintain status quo so that limited purposes of the stop may be achieved. United States v. Brown, 51 F.3d 131 (8th Cir. 1995).

The test to be applied in determining whether an investigatory stop has been made consistent with the mandates of the Fourth Amendment is a balancing of the nature and quality of the intrusion against the importance of the governmental interests alleged to justify that intrusion, and where felonies or crimes involving a threat to public safety are concerned, the government's interests in solving the crime and promptly detaining the suspect outweighs the individual's right to be free from a brief stop and detention. Miller v. State, 21 Ark. App. 10, 727 S.W.2d 393 (1987). See also Reeves v. State, 20 Ark. App. 17, 722 S.W.2d 880 (1987)(where court held that investigatory stop of vehicle was both reasonable and warranted, though driver did not commit any traffic violation in officer's presence, and officer's entry into vehicle to check weapon that he had observed protruding from between seats was both reasonable and warranted).

After making a valid investigative stop, police officers must diligently work to confirm or dispel their suspicions in a short period of time. United States v. Bell, 183 F.3d 746 (8th Cir. 1999).

Nervous, evasive behavior is a pertinent factor in determining reasonable suspicion to stop an individual. Davis v. State, 351 Ark. 406, 94 S.W.3d 892 (2003). Whether a person flees is a relevant factor in determining whether there is reasonable suspicion for an investigatory stop. Jefferson v. State, 349 Ark. 236, 76 S.W.3d 850 (2002).

Among the factors to consider in determining whether an officer has grounds to "reasonably suspect" the commission of a criminal offense, warranting an investigatory stop, are: the time of day or night the suspect is observed; the particular streets and area involved; any information received from third persons, whether known or unknown; the suspect's proximity to known criminal conduct; and the incidence of crime in the immediate neighborhood. Lamb v. State, 77 Ark. App. 54, 70 S.W.3d 397 (2002).

An investigative stop of a vehicle does not violate the Fourth Amendment where police have a reasonable suspicion that occupant of vehicle is engaged in criminal activity; there is no requirement that there be a traffic violation. United States v. Briley, 319 F.3d 360 (8th Cir. 2003).

Stop and Frisk

The Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer stops a suspect on the street and frisks him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person may be armed and presently dangerous. Terry v. Ohio, 392 U.S. 1 (1968).

When an officer is justified in believing that an individual he is investigating at close range is armed and dangerous, a pat-down search may be conducted to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. Kearse v. State, 65 Ark. App. 144, 986 S.W.2d 423 (1999).

Search Incident to Traffic Stop or Citation

To make a valid traffic stop, a police officer must have probable cause to believe that a traffic law has been violated. Burks v. State, 362 Ark. 558, 210 S.W.3d 62 (2005).

Once an automobile has been stopped, the officer is entitled to conduct an investigation reasonably related in scope to the circumstances that initially prompted the stop. United States v. McCoy, 200 F.3d 582 (8th Cir. 2000).

To further detain a defendant following the conclusion of a traffic stop, an officer must develop reasonable suspicion of criminal activity before the legitimate purpose of the traffic stop has ended, and whether there is reasonable suspicion depends upon whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating that the person may be involved in criminal activity. Malone v. State, 364 Ark. 256, 217 S.W.3d 810 (2005).

Occupants of a vehicle have standing to assert their own Fourth Amendment rights, independent of owner's, to challenge the initial stop or seizure of their person, even

though the passenger(s) may not have an expectation of privacy in the search of vehicle. Dixon v. State, 327 Ark. 105, 937 S.W.2d 642 (1997).

Search of a Vehicle

An officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:

> On a public way or waters or other area open to the public;
>
> In a private area unlawfully entered by the vehicle; or
>
> In a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.

If the officer does not find the things subject to seizure by his search of the vehicle, and if:

> The things subject to seizure are of such a size and nature that they could be concealed on the person; and
>
> The officer has reason to suspect that one or more of the occupants of the vehicle may have the things subject to seizure so concealed;

Then the officer may search the suspected occupants. [Note: This provision does not apply to individuals traveling as passengers in a vehicle operating as a common carrier.]

Ark. R. Crim. P. 14.1.

A police officer with probable cause to search a car may inspect the 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 Sniff

In general, canine sniffs are not "searches" within the meaning of the Fourth Amendment. United States v. Place, 462 U.S. 696 (1983).

A canine sniff of a defendant's vehicle is not a "search" that implicates federal or state constitutional rights against unreasonable searches. Dowty v. State, 363 Ark. 1, 210 S.W.3d 850 (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. Burks v. State, 362 Ark. 558, 210 S.W.3d 62 (2005).

Pretextual Arrests & Stops

Pretextual arrests—arrests that would not have occurred but for an ulterior investigative motive—are unreasonable police conduct warranting application of the exclusionary rule. Inquiry into whether arrest was pretextual is a threshold matter to be resolved before inquiring into other bases for suppression. The intrusiveness of an arrest warrants inquiry into an officer's subjective intentions to determine validity of arrest under state constitution. However, so long as an arresting officer's actions are objectively reasonable, there is no Fourth Amendment violation even if the officer's actions are wholly pretextual. State v. Sullivan, 348 Ark. 647, 74 S.W.3d 215 (2002).

Pretextual traffic stop of defendant whom police officer suspected of engaging in illegal drug activity, on basis that defendant had broken brake light, did not violate state Constitution's prohibition against unreasonable searches and seizures. State v. Harmon, 353 Ark. 568, 113 S.W.3d 75 (2003).

That traffic stop of defendants' vehicle might have been pretextual did not invalidate subsequent consensual search of vehicle, even though trial court found that one reason for stop was defendants' race. Law enforcement officer had probable cause to make traffic stop for speeding; defendants' vehicle was traveling seventy-four miles per hour in seventy-miles-per-hour zone, which was a violation of speed-limit statute. Flores v. State, 87 Ark. App. 327, 194 S.W.3d 207 (2004).

Fruit of the Poisonous Tree

Evidence that is discovered by exploitation of an illegality can be suppressed as "fruit of the poisonous tree." There must be a causal connection between the alleged illegal conduct by the police and the discovery of the evidence that is claimed to be the "fruit" of the illegality. Hudspeth v. State, 349 Ark. 315, 78 S.W.3d 99 (2002).

The Arkansas Supreme Court has cited directly from Wong Sun v. United States, 371 U.S. 471 (1963), stating "We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" Summers v. State, 90 Ark. App. 25, 203 S.W.3d 638 (2005).

The policies of the fruit of the poisonous tree rule do not make any logical distinction between physical and verbal evidence. Keenom v. State, 349 Ark. 381, 80 S.W.3d 743 (2002).

The fruit of the poisonous tree doctrine has not been limited to cases in which there has been a Fourth Amendment violation, but has also been applied to violations of the Sixth Amendment and the Fifth Amendment. However, there is a critical difference between a mere defect in the administration of *Miranda* warnings "without more" and police-initiated interrogation conducted after a suspect unambiguously invokes the right to have counsel present during questioning as the latter is a violation of a constitutional right. Osburn v. State, 2009 Ark. 390, 326 S.W.3d 771(2009)(second confession obtained from defendant one hour and twenty minutes after officers illegally obtained a statement in violation of defendant's

previously-invoked right to counsel was subject to suppression in murder prosecution).

Motions to Suppress

Objection to the use of any evidence, on the grounds that it was illegally obtained, shall be made by a motion to suppress evidence.

The phrase "objection to the use of any evidence, on the grounds that it was illegally obtained," shall include but is not limited to evidence which:

> Consists of tangible property obtained by means of an unlawful search and seizure;
>
> Consists of a record of potential testimony reciting or describing declarations or conversations overheard or recorded by means of eavesdropping;
>
> Consists of a record or potential testimony reciting or describing a confession or admission of a defendant involuntarily made;
>
> Was obtained as a result of such evidence; or
>
> Consists of the prospective in-court identification of the defendant based on an unlawful pre-trial confrontation. The motion shall be made to the court which is to conduct the trial at which such evidence may be offered in evidence.

The motion to suppress shall be timely filed but not later than ten days before the date set for the trial of the case, except that the court for good cause shown may entertain a motion to suppress at a later time.

Renewal of a motion to suppress which has been denied may be allowed on the ground of newly discovered evidence or as the interests of justice require.

An order granting a motion to suppress prior to trial shall be reviewable on appeal pursuant to Ark. R. App. P.–Crim. 3.

A motion to suppress evidence shall be granted only if the court finds that the violation upon which it is based was substantial, or if otherwise required by the

Constitution of the United States or of this state. In determining whether a violation is substantial the court shall consider all the circumstances, including:

> The importance of the particular interest violated;
>
> The extent of deviation from lawful conduct;
>
> The extent to which the violation was willful;
>
> The extent to which privacy was invaded;
>
> The extent to which exclusion will tend to prevent violations of these rules;
>
> Whether, but for the violation, such evidence would have been discovered; and
>
> The extent to which the violation prejudiced moving party's ability to support his motion, or to defend himself in the proceedings in which such evidence is sought to be offered in evidence against him.

Ark. R. Crim. P. 16.2.

Motion to suppress evidence should only be granted if the court finds that a substantial violation of the rules has occurred or if the Federal or State Constitutions otherwise require suppression. Lipovich v. State, 265 Ark. 55, 576 S.W.2d 720 (1979).

As the proponent of the motion to suppress, the defendant bears the burden of establishing that his rights have been violated. Ramage v. State, 61 Ark. App. 174, 966 S.W.2d 267 (1998).

Initial Appearance

First Appearance

At the first appearance of the defendant the judicial officer shall inform defendant of:

> The charge against him or her;
>
> The right to say nothing;

> The fact that anything he or she says can be used against him or her;
>
> The right to counsel;
>
> The right to communicate with counsel, family, and friends; and
>
> That reasonable means will be provided to communicate with counsel, family, and friends.
>
> Ark. R. Crim. P. 8.3.

At the first appearance of the defendant, the judicial officer shall conduct a pretrial-release inquiry, unless it has already been conducted, and assess relevant pretrial release factors such as:

> The defendant's employment status, history, and financial condition;
>
> The nature and extent of his family relationships;
>
> His past and present residence;
>
> His character and reputation;
>
> Persons who agree to assist him in attending court at the proper times;
>
> The nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;
>
> The defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;
>
> Any facts indicating the possibility of violations of law if the defendant is released without restrictions; and
>
> Any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee the jurisdiction.

Ark. R. Crim. P. 8.5.

The pretrial-release inquiry shall be made in all cases where:

> The maximum penalty for the offense charged exceeds one year; and

The prosecuting attorney does not stipulate to release on own recognizance; or

The maximum penalty for the offense charged is less than one year; and

A law enforcement officer gives notice to the judicial officer of intent to oppose release on own recognizance.

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 the prosecuting attorney does not stipulate or a law enforcement officer gives notice of intent to oppose.

Ark. R. Crim. P. 8.4.

Waiver of Appointment of Counsel

See Section V on Pro Se Litigants & Indigent Defendants.

A sample Waiver of Counsel form can be found on Appendix page 261.

Time for Filing Formal Charges

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.

Administrative Order No. 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.

Counsel and unrepresented parties shall follow the redaction and filing procedure established by Arkansas Rule of Civil Procedure 5(c)(2)(A) & (B).

That procedure includes:

Eliminating all unnecessary or irrelevant confidential information;

Redacting all necessary and relevant confidential information; and

Filing an unredacted version under seal.

Permitted Conditions of Recognizance Release

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:

Place the defendant under the care of a person or organization agreeing to supervise the defendant and assist the defendant in making required court appearances;

Place the defendant under the supervision of a probation officer or other appropriate official;

Impose reasonable conditions on the defendant's activities, movements, associations, and residences;

Release the defendant to work and require the return to custody at specified times; or

Any other reasonable restriction to insure appearance when required.

Ark. R. Crim. P. 9.1.

Requirements if Money Bail is Set

If it is determined that it is necessary to set a money bail to insure the appearance of the defendant, the court shall require:

The execution of an unsecured bond in an amount determined by the court and may require this bond to be signed by other persons;

The execution of an unsecured bond in an amount determined by the court, accompanied by a cash or security deposit equal to ten percent of the bond; or

The execution of a bond in an amount determined by the court and secured by deposit in the full amount of cash, other property or the obligation of qualified sureties.

Ark. R. Crim. P. 9.2.

Setting Bail

In setting the amount of bail to ensure the defendant's appearance, the court should consider:

The defendant's employment status;

The defendant's employment history;

The defendant's financial condition;

The defendant's family ties and relationships;

The defendant's reputation;

The defendant's character;

The defendant's mental condition;

The defendant's past history of response to legal process;

The defendant's past criminal record;

The identity of persons who vouch for defendant;

Insofar as relevant to the risk of fleeing the jurisdiction:

The nature of the charge;

The apparent probability of conviction; and

The likely sentence; and

Any other factors indicating the defendant's roots in the community.

Ark. R. Crim. P. 9.2.

A sample Bond Form can be found on Appendix page 92.

Other Relevant Constitutional Provisions, Statues & 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

There is no constitutional right to a 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 forty-eight hours after arrest. Where there is 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).

Indictments

An "indictment" is an accusation in writing, found and presented by a grand jury to the court in which they are impaneled, charging a person with the commission of a public offense. Ark. Code Ann. § 16-85-401.

The concurrence of twelve grand jurors is required to find an indictment. When so found, it must be endorsed "a true bill" and signed by the foreman. The names of all witnesses who were examined must be written at the foot of or on the indictment. The indictment must be presented by the foreman of the grand jury to the court, be filed with the clerk, and remain in his or her office as a public record. Ark. Code Ann. § 16-85-402.

The indictment must include the title of the prosecution, the name of the court in which the indictment is presented, and the name of the parties. It must be direct and certain as to the party charged, the offense(s) charged, the county in which they were committed, and the particular circumstances when they are necessary to constitute a complete offense or offenses.

At the defendant's request, the state shall file a bill of particulars setting out the act or acts upon which it relies for conviction. Ark. Code Ann. § 16-85-403.

The indictment is sufficient if it can be understood from the indictment:

> That it was found by a grand jury of a county, impaneled in a court having authority to receive the indictment;
>
> That the offense was committed within the jurisdiction of the court and at some time prior to the time of finding the indictment; and
>
> That the act or omission charged as the offense is stated with such a degree of certainty so as to satisfy due process of law.

An error as to the name of the defendant shall not vitiate the indictment or proceedings on the indictment. If the defendant's true name is discovered at any time before execution of the indictment, an entry shall be made on the docket of the court of the defendant's true name, referring to the fact of the defendant's being

indicted by the name mentioned in the indictment, and the subsequent proceedings shall be in the defendant's true name.

The statement in the indictment as to the time at which the offense was committed is not material except as a statement that it was committed before the time of finding the indictment (except where the time is a material ingredient in the offense). Ark. Code Ann. § 16-85-405.

Criminal Information & Bill of Particulars

The bill of particulars shall state the action relied upon by the state in sufficient detail and with sufficient certainty as to apprise the defendant of the specific crime with which charged, in order to enable him or her to prepare his or her defense.

A supplemental bill of particulars may be required upon order of the trial court if the bill of particulars filed by the prosecuting attorney is not sufficiently definite to apprise the defendant of the specific crime with which he or she is charged.

When a bill of particulars is filed with the clerk, a copy of it shall be furnished to the defendant upon his or her request.

Ark. Code Ann. § 16-85-301.

Pleading

Pleas

There are but three kinds of pleas to an indictment or information:

A plea of guilty;

A plea of nolo contendere; or

A plea of not guilty.

Ark. Code Ann. § 16-85-709.

However, the United States Supreme Court in North Caroline v. Alford, 400 U.S. 25 (1970) recognized that a defendant may enter a guilty plea and still maintain his or innocence, stating that "[w]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty. An individual accused of crime may

voluntarily, knowingly and understandably consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." Id.

The Supreme Court of Arkansas has likewise recognized that a court may accept a guilty plea from a defendant who maintains his innocence, otherwise known as an *Alford* Plea, provided the court finds an adequate factual basis for the plea of guilty; typically, a defendant will utilize an *Alford* plea when he intelligently concludes that his interests require entry of a guilty plea in light of strong evidence of actual guilt with the intention of limiting the penalty to be imposed. Davis v. State, 366 Ark. 401, 235 S.W.3d 902 (2006).

Receiving the Plea

A defendant shall not be required to plead until he has had an opportunity to retain counsel, or, if he is eligible for the appointment of counsel, until counsel has been appointed, or, in either case, unless he has waived or refused the assistance of counsel. Ark. R. Crim. P. 24.2.

The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally, informing him of and determining that he understands:

> The nature of the charge;
>
> The mandatory minimum sentence, if any, on the charge;
>
> The maximum possible sentence on the charge, including that possible from consecutive sentences;
>
> That if the offense charged is one for which a different or additional punishment is authorized because the defendant has previously been convicted of an offense or offenses one or more times, the previous conviction or convictions may be established after the entry of his plea in the present action, thereby subjecting him to such different or additional punishment; and

> That if he pleads guilty or nolo contendere he waives his right to a trial by jury and the right to be confronted with the witnesses against him, except in capital cases where the death penalty is sought.
>
> Ark. R. Crim. P. 24.4.

See the Sample Criminal Checklists beginning on page 1 of the Appendix.

The court shall not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary. The court shall determine whether the tendered plea is the result of a plea agreement. If it is, the court shall require that the agreement be stated. The court shall also address the defendant personally and determine whether any force or threats, or any promises apart from a plea agreement, were used to induce the plea. Ark. R. Crim. P. 24.5.

The court shall not enter a judgment upon a plea of guilty or nolo contendere without making such inquiry as will establish that there is a factual basis for the plea. Ark. R. Crim. P. 24.6.

The court shall cause a verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved. Ark. R. Crim. P. 24.7.

Conditional Pleas

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

> To review an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement;
>
> To review an adverse determination of a pretrial motion to dismiss a charge because not brought to trial within the time provided in Ark. R. Crim. P. 28.1 (b) or (c); or
>
> To review an adverse determination of a pretrial motion challenging the constitutionality of the statute defining the offense with which the defendant is charged.

Ark. R. Crim. P. 24.3.

See the Conditional Plea Form found on page 98 of the Appendix.

Plea Agreements

In cases in which it appears that it would serve the interest of the public in the effective administration of justice, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. He shall engage in plea discussions and reach a plea agreement with the defendant only through defense counsel, except when the defendant has waived or refused his right to be represented by appointed or retained counsel.

Similarly situated defendants shall be afforded equal opportunities for plea discussions and plea agreements.

Ark. R. Crim. P. 25.1.

Defense counsel shall conclude a plea agreement only with the consent of the defendant and shall ensure that the decision whether to enter a plea of guilty or nolo contendere is ultimately made by the defendant.

Ark. R. Crim. P. 25.2.

The judge shall not participate in plea discussions.

If a plea agreement has been reached which contemplates entry of a plea of guilty or nolo contendere in the expectation that the charge or charges will be reduced, that other charges will be dismissed, or that sentence concessions will be granted, upon request of the parties the trial judge may permit the disclosure to him of the agreement and the reasons therefor in advance of the time for tender of the plea. He may then indicate whether he will concur in the proposed disposition.

If, after the judge has indicated his concurrence with a plea agreement and the defendant has entered a plea of guilty or nolo contendere, but before sentencing, the judge decides that the disposition should not include the charge or sentence concessions contemplated by the agreement, he shall so advise the parties and then in open court call upon the defendant to either affirm or withdraw his plea.

If the parties have not sought the concurrence of the trial judge in a plea agreement or if the judge has declined to indicate whether he will concur in the agreement, he shall advise the defendant in open court at the time the agreement is stated that:

The agreement is not binding on the court; and

If the defendant pleads guilty or nolo contendere, the disposition may be different from that contemplated by the agreement.

Ark. R. Crim. P. 25.3.

Plea Withdrawal

A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right before it has been accepted by the court. A defendant may not withdraw his or her plea of guilty or nolo contendere as a matter of right after it has been accepted by the court; however, before entry of judgment, the court in its discretion may allow the defendant to withdraw his or her plea to correct a manifest injustice if it is fair and just to do so, giving due consideration to the reasons advanced by the defendant in support of his or her motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea. A plea of guilty or nolo contendere may not be withdrawn after entry of judgment.

Withdrawal of a plea of guilty or nolo contendere shall be deemed to be necessary to correct a manifest injustice if the defendant proves to the satisfaction of the court that:

He or she was denied the effective assistance of counsel;

The plea was not entered or ratified by the defendant or a person authorized to do so in his or her behalf;

The plea was involuntary, or was entered without knowledge of the nature of the charge or that the sentence imposed could be imposed;

He or she did not receive the charge or sentence concessions contemplated by a plea agreement and the prosecuting attorney

failed to seek or not to oppose the concessions as promised in the plea agreement; or

He or she did not receive the charge or sentence concessions contemplated by a plea agreement in which the trial court had indicated its concurrence and the defendant did not affirm the plea after receiving advice that the court had withdrawn its indicated concurrence and after an opportunity to either affirm or withdraw the plea.

The defendant may move to withdraw his or her plea of guilty or nolo contendere to correct a manifest injustice without alleging that he or she is innocent of the charge to which the plea was entered.

Ark. R. Crim. P. 26.1.

Although defendant has the right to withdraw his guilty plea, he must do so before sentencing or entry of judgment, otherwise his motion will be considered one for post-conviction relief. Webb v. State, 365 Ark. 22, 223 S.W.3d 796 (2006).

To be entitled to withdraw guilty plea due to ineffective assistance of counsel, petitioner must show that there is reasonable probability that, but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial. State v. Herred, 332 Ark. 241, 964 S.W.2d 391 (1998).

See also Mangrum v. State, 70 Ark. App. 46, 14 S.W.3d 889 (2000)(conflict between defendant and his attorney as to whether they should proceed to trial did not constitute ineffective assistance of counsel, such that defendant would be entitled to withdraw unconditional guilty plea).

Not Guilty by Reason of Mental Disease or Defect

In general. No person who lacks the capacity to understand a proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect shall be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures. Ark. Code Ann. § 5-2-302.

A court shall not enter a judgment of acquittal on the ground of mental disease or defect against a defendant who lacks the capacity to understand a proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect. Ark. Code Ann. § 5-2-302.

As a defense. When a defendant intends to raise mental disease or defect as a defense in a prosecution or put in issue his or her fitness to proceed, the defendant shall notify the prosecutor and the court at the earliest practicable time. Ark. Code Ann. § 5-2-304.

> *See also* Ark. Code Ann. § 5-2-312 which provides that it is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged he or she lacked capacity as a result of mental disease or defect to:
>
> Conform his or her conduct to the requirements of law; or
>
> Appreciate the criminality of his or her conduct.

A defendant shall not be found not guilty by reason of mental disease or defect in the absence of proof of a mental disease or defect. Ark. Code Ann. § 5-2-305.

Suspension of proceedings. The court shall immediately suspend any further proceedings in a prosecution if a defendant charged in circuit court files notice that he or she intends to rely upon the defense of mental disease or defect, or any other party or the court raises the issue of the defendant's fitness to proceed. Ark. Code Ann. § 5-2-305.

Examination. The court shall order a fitness-to-proceed examination if it finds there is a reasonable suspicion that a defendant is not fit to proceed.

> The fitness-to-proceed examination, and the criminal responsibility examination and request for an opinion on the defendant's criminal responsibility, are two distinctly different examinations.
>
> The fitness-to-proceed examination and the criminal responsibility examination may be done at the same time only if the defendant simultaneously raises the issue of the defendant's fitness to proceed and

files notice that he or she intends to rely upon the defense of mental disease or defect.

In all other cases the process is bifurcated.

Ark. Code Ann. § 5-2-305.

Uniform Examination Order. The Uniform Fitness to Proceed Examination Order can be found on Appendix page 117.

Procedure. Upon suspension of further proceedings in the prosecution, the court shall enter an order:

Directing that the defendant undergo examination and observation by one or more qualified psychiatrists or qualified psychologists;

Appointing one or more qualified psychiatrists not practicing within the Arkansas State Hospital to make an examination and report on the mental condition of the defendant; or

Directing the Director of the Division of Behavioral Health Services of the Department of Human Services to determine who will examine and report upon the mental condition of the defendant.

The Director of the Division of Behavioral Health Services of the Department of Human Services or his or her designee shall determine the location of the examination.

The examination shall be for a period not exceeding sixty days or such longer period as the Director of the Division of Behavioral Health Services of the Department of Human Services or his or her designee determines to be necessary for the purpose of the examination.

Ark. Code Ann. § 5-2-305.

Subsequent examination. When the defendant has previously been found fit to proceed, the court may order a second or subsequent examination to determine a defendant's fitness to proceed only if the court:

> Finds reasonable cause to believe that new or previously undiscovered evidence calls into question the factual, legal, or scientific basis of the opinion upon which the previous finding of fitness relied;
>
> Finds reasonable cause to believe that the defendant's mental condition has changed; or
>
> Sets forth in the order a factual or legal basis upon which to order another examination.
>
> Ark. Code Ann. § 5-2-305.

Whether a second mental evaluation is necessary is within the trial court's discretion to determine. Avery v. State, 93 Ark. App. 112, 217 S.W.3d 162 (2005).

Commitment. Upon completion of an examination, the court may enter an order providing for further examination and may order the defendant committed to the Arkansas State Hospital or other appropriate facility for further examination and observation if the court determines that commitment and further examination and observation are warranted. Ark. Code Ann. § 5-2-305.

Restoration or Release. If the court determines that a defendant lacks fitness to proceed, the proceeding against him or her shall be suspended and the court may commit the defendant to the custody of the Department of Human Services for detention, care, and treatment until restoration of fitness to proceed.

However, if the court is satisfied that the defendant may be released without danger to himself or herself or to the person or property of another, the court may order the defendant's release and the release shall continue at the discretion of the court on conditions the court determines necessary.

A copy of the report filed pursuant to Ark. Code Ann. § 5-2-305 shall be attached to the order of commitment or order of conditional release.

Within a reasonable period of time, but in any case within ten months of a commitment pursuant to this section, the department shall file with the committing court a written report indicating whether the defendant is fit to proceed, or if not, whether:

The defendant's mental disease or defect is of a nature precluding restoration of fitness to proceed; and

The defendant presents a danger to himself or herself or to the person or property of another.

The court shall make a determination within one year of a commitment pursuant to this section.

> If the court determines that the defendant is fit to proceed, prosecution in ordinary course may commence.
>
> If the defendant lacks fitness to proceed but does not present a danger to himself or herself or to the person or property of another, the court may release the defendant on conditions the court determines to be proper.
>
> If the defendant lacks fitness to proceed and presents a danger to himself or herself or the person or property of another, the court shall order the department to petition for an involuntary admission.

Upon filing of an order finding that the defendant lacks fitness to proceed, the circuit clerk or the probate clerk shall submit a copy of the order to the Arkansas Crime Information Center.

On the court's own motion or upon application of the department, the prosecuting attorney, or the defendant, and after a hearing if a hearing is requested, if the court determines that the defendant has regained fitness to proceed, the criminal proceeding shall be resumed.

However, if the court is of the view that so much time has elapsed since the alleged commission of the offense in question that it would be unjust to resume the criminal proceeding, the court may dismiss the charge.

Ark. Code Ann. § 5-2-310.

Acquittal. On the basis of the report filed pursuant to Ark. Code Ann. § 5-2-305 and after a hearing, if a hearing is requested, the court may enter judgment of acquittal

on the ground of mental disease or defect if the court is satisfied that the following criteria are met:

> The defendant currently has the capacity to understand the proceedings against him or her and to assist effectively in his or her own defense; and
>
> At the time of the conduct charged, the defendant lacked capacity as a result of mental disease or defect to conform his or her conduct to the requirements of law or to appreciate the criminality of his or her conduct.
>
> Ark. Code Ann. § 5-2-313.

When a defendant is acquitted on the ground of mental disease or defect, a circuit court is required to determine and to include the determination in the order of acquittal one of the following:

> (1) The offense involved bodily injury to another person or serious damage to the property of another person or involved a substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant remains affected by mental disease or defect;
>
> (2) The offense involved bodily injury to another person or serious damage to the property of another person or involved a substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant is no longer affected by mental disease or defect;
>
> (3) The offense did not involve bodily injury to another person or serious damage to the property of another person nor did it involve substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant remains affected by mental disease or defect; or
>
> (4) The offense did not involve bodily injury to another person or serious damage to the property of another person nor did it involve a substantial risk of bodily injury to another person or serious damage to the property of

> another person, and that the defendant is no longer affected by mental disease or defect.

If the circuit court enters a determination based on (1) or (3) above, the circuit court shall order the defendant committed to the custody of the Department of Human Services for an examination by a psychiatrist or a licensed psychologist.

If the circuit court enters a determination based on (2) or (4) above, the circuit court shall immediately discharge the defendant.

Ark. Code Ann. § 5-2-314.

Acquittal followed by commitment. The department shall file the psychiatric or psychological report with the probate clerk of the circuit court having venue within thirty days following receipt of an order of acquittal. If before thirty days the department makes application to the circuit court for an extension of time to file the psychiatric or psychological report and the circuit court finds there is good cause for the delay, the circuit court may order that additional time be allowed for the department to file the psychiatric or psychological report. A hearing shall be conducted by the circuit court and shall take place not later than ten days following the filing of the psychiatric or psychological report with the circuit court.

> If the psychiatric or psychological report is not filed within thirty days following the department's receipt of an order of acquittal or within such additional time as authorized by the circuit court, the circuit court may grant a petition for a writ of *habeas corpus* ordering the release of the defendant under terms and conditions that are reasonable and just for the defendant and societal concerns about the safety of persons and property of others.

A person found not guilty on the ground of mental disease or defect of an offense involving bodily injury to another person or serious damage to the property of another person or involving a substantial risk of bodily injury to another person or serious damage to the property of another person has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another person due to a present mental disease or defect.

> With respect to any other offense, the person has the burden of proof by a preponderance of the evidence.

A person acquitted whose mental condition is the subject of a hearing has a right to counsel. If it appears to the circuit court that the person acquitted is in need of counsel, an attorney shall be appointed immediately upon filing of the original petition.

It is the duty of the prosecuting attorney's office in the county where the petition is filed to represent the state of Arkansas at any hearing held pursuant to this section except a hearing pending at the Arkansas State Hospital in Pulaski County.

Ark. Code Ann. § 5-2-314.

Release of acquittees. When the Director of the Department of Human Services or his or her designee determines that a person acquitted has recovered from his or her mental disease or defect to such an extent that his or her release or his or her conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to the property of another person, the director shall promptly file an application for discharge or conditional release of the person acquitted with the circuit court that ordered the commitment.

Within twenty days after receiving the application for discharge or conditional release of the person acquitted, the attorney for the state may petition the circuit court for a hearing to determine whether the person acquitted should be released.

If the circuit court finds after a hearing that the person acquitted has recovered from his or her mental disease or defect to such an extent that:

> The discharge of the person acquitted would no longer create a substantial risk of bodily injury to another person or serious damage to property of another person, then the circuit court shall order that the person acquitted be immediately discharged; or
>
> The conditional release of the person acquitted under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer

create a substantial risk of bodily injury to another person or serious damage to property of another person,

Then the circuit court shall order:

That the person acquitted be conditionally released under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been:

(i) Prepared for the person acquitted;

(ii) Certified to the circuit court as appropriate by the director of the facility in which the person acquitted is committed; and

(iii) Found by the circuit court to be appropriate; and

Explicit conditions of release, including without limitation requirements that:

(i) The person acquitted comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment;

(ii) The person acquitted be subject to regularly scheduled personal contact with a compliance monitor for the purpose of verifying compliance with the conditions of release;

(iii) Compliance with the conditions of release be documented with the circuit court by the compliance monitor at ninety-day intervals or at such intervals as the circuit court may order; and

(iv) Impose the conditions of release for a period of up to five years.

If the circuit court determines that the person acquitted has not met his or her burden of proof under subsection (c) of this section, the person acquitted shall continue to be committed to the custody of the Department of Human Services. Ark. Code Ann. § 5-2-315.

Conditions. A person ordered to be in charge of a prescribed regimen of medical, psychiatric, or psychological care or treatment of a person acquitted shall provide:

The prescribed regimen of medical, psychiatric, or psychological care or treatment;

Periodic written documentation to a compliance monitor of compliance with the conditions of release, including, but not limited to, documentation of compliance with the prescribed:

(A) Medication;

(B) Treatment and therapy;

(C) Substance abuse treatment; and

(D) Drug testing; and

Written notice of any failure of the person acquitted to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment to the:

(i) Compliance monitor;

(ii) Attorney for the person acquitted;

(iii) Attorney for the state; and

(iv) Circuit court having jurisdiction.

Written notice shall be provided immediately upon the failure of the person acquitted to comply with a condition of release.

The person acquitted may be detained and shall be taken without unnecessary delay before the circuit court having jurisdiction over him or her.

After a hearing, the circuit court shall determine whether the person acquitted should be remanded to an appropriate facility on the ground that, in light of his or her failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his or her continued release would create a

substantial risk of bodily injury to another person or serious damage to property of another person.

At any time after a hearing employing the same criteria, the circuit court may modify or eliminate the prescribed regimen of medical, psychiatric, or psychological care or treatment.

Ark. Code Ann. § 5-2-315.

Pre-Trial Matters

Joinder of Offenses

Two or more offenses may be joined when the offenses are of the same or similar character (even if not part of a single scheme or plan) or when they are based on the same conduct or on a series of connected acts constituting parts of a single scheme or plan. Ark. R. Crim. P. 21.1.

Joinder of Defendants

Two or more defendants may be joined in one information or indictment when:

> Each of the defendants is charged with accountability for each offense included, or
>
> When each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy, or
>
> When, even if conspiracy is not charged and all of the defendants are not charged in each count, it is alleged that the several offenses charged
>
> > Were part of a common scheme or plan; or
> >
> > 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 others.
>
> Ark. R. Crim. P. 21.2.

Consolidation by the Court

The court may order consolidation of two or more charges if the offenses, and the defendants if there are more than one, could have been joined in a single indictment or information without prejudice to any defendant's rights to move for severance under preceding provisions. Ark. R. Crim. P. 23.1.

Relevant Statues 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 is a misdemeanor: Ark. Code Ann. § 16-89-102.

Severance

Timeliness

A motion for severance must be timely made before trial. Exception: The defendant may make such a motion during or at close of evidence if it's based upon a ground not previously known.

The defendant may renew an overruled pretrial motion upon same grounds before or at the close of evidence.

The prosecution may not make a motion for severance after commencement of trial unless consented to by the defendant.

Ark. R. Crim. P. 22.1.

Severance of the Offenses

The defendant has a right to a severance of the offenses that have been joined for trial solely on the ground that they are of the same or similar character and they are not part of a single scheme or plan.

The court shall grant a motion for severance either by the prosecution or the defense 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 the Defendants

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 the prosecution elects not to offer the statement, or deletion of all reference to the moving defendant will eliminate any prejudice to him or her from admission of statement.

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.

Upon a 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. The court should consider the defendant's right to a speedy trial and/or potentially prejudicial publicity against the other defendant. Ark. R. Crim. P. 22.3.

Severance by the 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 the testimony is material, and there are reasonable grounds to believe that the witness will die, will become mentally incapable of giving testimony or physically incapable of attending the trial, or will become a nonresident of the state. 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 a 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

Arkansas Code Annotated § 16-42-101 controls the admissibility of evidence of a victim's prior sexual conduct.

The Rape-Shield Statute applies in any criminal prosecution under Ark. Code Ann. §§ 5-14-101 et seq. or Ark. Code Ann. § 5-26-202, or for criminal attempt to commit, criminal solicitation to commit, or criminal conspiracy to commit an offense defined in any of those sections.

The Rape-Shield Statute precludes admission of:

> Opinion evidence, reputation evidence, or evidence of specific instances of the victim's prior sexual conduct with the defendant or any other person;

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

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.

The Rape-Shield Statute precludes admission of the foregoing evidence by the defendant, either through direct examination of any defense witness or through cross-examination of the victim, or other prosecution witness.

The foregoing evidence may not be used to attack the credibility of the victim, to prove consent or any other defense, or for any other purpose.

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:

The relevancy of the evidence is determined subject to certain requirements set forth in Ark. Code Ann. § 16-42-101, including:

A written motion filed by the defendant;

An in camera hearing held no later than three days before trial (or at a later time for good cause shown);

A written order by the court outlining what evidence may be introduced at trial;

Opportunity for the victim to consult with the prosecutor if the evidence is found to be relevant; and

Opportunity for the state to file an interlocutory appeal.

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

Unless the court otherwise directs, all motions, and other requests prior to trial should be reserved for the omnibus hearing and presented orally.

All issues presented at the omnibus hearing may be raised without prior notice either by counsel or by the court.

If discovery, investigation, preparation, or evidentiary hearing, or a formal presentation is necessary for a fair determination of any issue, the omnibus hearing should be continued until all matters are properly disposed of.

Any pretrial motion, request or issue which is not raised at the omnibus hearing shall be deemed waived, unless the party concerned did not have the information necessary to make the motion or request or raise the issue.

Stipulations by any party or his counsel shall be binding upon the parties at trial unless set aside or modified by the court in the interests of justice.

A verbatim record or comprehensive summary of the omnibus hearing shall be made and preserved. This record shall include the disclosures made, all rulings and orders of the court, stipulations of the parties, and an identification of other matters determined or pending.

Ark. R. Crim. P. 20.3.

Case Law

An omnibus hearing at which a defendant moves to reduce bail and dismiss the charges is a "critical stage" of the criminal process, necessitating assistance of counsel. Smith v. Lockhart, 923 F.2d 1314 (8th Cir. 1991).

An omnibus hearing is not mandatory in every case. The court's failure to hold an omnibus hearing is not reversible error unless it prejudices the defendant. Jones v. City of Newport, 29 Ark. App. 42, 780 S.W.2d 338 (1989).

A sample Omnibus Hearing Order and Checklist can be found on Appendix pages 134 and 135.

Pre-Trial Conference

Whenever a trial is likely to be protracted or unusually complicated, or upon request by or agreement of counsel, the trial court, whether or not an omnibus hearing has been held, may hold one or more pretrial conferences with trial counsel present to consider such matters as will promote a fair and expeditious trial.

Matters which might usefully be considered include, but are not limited to:

Stipulations as to facts about which there is no dispute;

Marking for identification various documents and other exhibits of the parties;

Waivers of foundation as to such documents;

Excision from admissible statements of material prejudicial to a codefendant;

Severance of defendants or offenses;

Seating arrangements for defendant and counsel;

Use of jurors and questionnaires;

Number and use of peremptory challenges;

Procedure on objections where there are multiple counsel;

Order of presentation of evidence and arguments where there are multiple defendants;

Order of cross-examination where there are multiple defendants; and

Temporary absence of defense counsel during trial.

Pretrial conferences should be recorded. Ark. R. Crim. P. 20.4.

A sample Order for Pretrial Conference can be found on Appendix page 161,

A sample form for a Defendant's Pretrial Information can be found on Appendix page 114,

A sample form for a Prosecutor's Pretrial Information can be found on Appendix page 166; &

A convenient means to set out Miscellaneous Pretrial Stipulations can be found on Appendix page 133.

No Statute of Limitations of Certain Offenses

A prosecution for the following offenses may be commenced at any time:

Capital murder, Ark. Code Ann. § 5-10-101;

Murder in the first degree, Ark. Code Ann. § 5-10-102;

Murder in the second degree, Ark. Code Ann. § 5-10-103;

Rape, Ark. Code Ann. § 5-14-103, if the victim was a minor at the time of the offense;

Sexual indecency with a child, Ark. Code Ann. § 5-14-110;

Sexual assault in the first degree, Ark. Code Ann. § 5-14-124;

Sexual assault in the second degree, Ark. Code Ann. § 5-14-125, if the victim was a minor at the time of the offense;

Incest, Ark. Code Ann. § 5-26-202, if the victim was a minor at the time of the offense;

Engaging children in sexually explicit conduct for use in visual or print medium, Ark. Code Ann. § 5-27-303;

Transportation of minors for prohibited sexual conduct, Ark. Code Ann. § 5-27-305;

Employing or consenting to the use of a child in a sexual performance, Ark. Code Ann. § 5-27-402;

Producing, directing, or promoting a sexual performance by a child, Ark. Code Ann. § 5-27-403; and

Computer exploitation of a child in the first degree, Ark. Code Ann. § 5-27-605.

Despite any statute of limitation, prosecution may be commenced for a violation of the following offenses if, when the alleged violation occurred, the offense was committed against a minor, the violation has not previously been reported to a law enforcement agency or prosecuting attorney, and the victim has not reached the age of twenty-eight:

Sexual assault in the third degree, Ark. Code Ann. § 5-14-126;

Sexual assault in the fourth degree, Ark. Code Ann. § 5-14-127;

Endangering the welfare of a minor in the first degree, Ark. Code Ann. § 5-27-205;

Permitting abuse of a minor, Ark. Code Ann. § 5-27-221; and

Computer child pornography, Ark. Code Ann. § 5-27-603.

Despite any statute of limitation, prosecution may be commenced for a violation of the following offenses if, when the alleged violation occurred, the offense was committed against a minor, the violation has not previously been reported to a law enforcement agency or prosecuting attorney, and the victim has not reached the age of eighteen:

Battery in the first degree, Ark. Code Ann. § 5-13-201;

Battery in the second degree, Ark. Code Ann. § 5-13-202;

Aggravated assault, Ark. Code Ann. § 5-13-204;

Terroristic threatening in the first degree, Ark. Code Ann. § 5-13-301;

Kidnapping, Ark. Code Ann. § 5-11-102;

False imprisonment in the first degree, Ark. Code Ann. § 5-11-103;

Permanent detention or restraint, Ark. Code Ann. § 5-11-106; and

Criminal attempt, criminal solicitation, or criminal conspiracy to commit any offense listed in this subsection, Ark. Code Ann. §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401.

Ark. Code Ann. § 5-1-109.

Statute of Limitations for Other Offenses

A prosecution for another offense shall be commenced within the following periods of limitation after the offense's commission:

Class Y felony or Class A felony, six years; however, for rape, the period of limitation is eliminated if biological evidence of the alleged perpetrator is identified that is capable of producing a deoxyribonucleic acid (DNA) profile;

Class B felony, Class C felony, Class D felony, or an unclassified felony, three years;

Misdemeanor or violation, one year; however, for failure to notify by a mandated reporter, the period of limitation is ten years after the child victim reaches eighteen years of age if the child in question was subject to child maltreatment; and

Municipal ordinance violation, one year unless a different period of time not to exceed three years is set by ordinance of the municipal government.

If the period has expired, a prosecution may nevertheless be commenced for:

Any offense involving either fraud or breach of a fiduciary obligation, within one year after the offense is discovered or should reasonably have been discovered by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense; and

Any offense that is concealed involving felonious conduct in office by a public servant at any time within five years after he or she leaves public office or employment or within five years after the offense is discovered or should reasonably have been discovered, whichever is sooner.

However, in no event does this section extend the period of limitation by more than ten years after the commission of the offense.

A defendant may be convicted of any offense included in the offense charged, notwithstanding that the period of limitation has expired for the included offense, if as to the offense charged the period of limitation has not expired or there is no period of limitation, and there is sufficient evidence to sustain a conviction for the offense charged.

An offense is deemed committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time the course of conduct or the defendant's complicity in the course of conduct is terminated.

Time starts to run on the day after the offense is committed.

A prosecution is commenced when an arrest warrant or other process is issued based on an indictment, information, or other charging instrument if the arrest warrant or other process is sought to be executed without unreasonable delay.

The period of limitation does not run during any time when the accused is continually absent from the state or has no reasonably ascertainable place of abode or work within the state. However, in no event does this rule extend the period of limitation otherwise applicable by more than three years.

If there is biological evidence connecting a person with the commission of an offense and that person's identity is unknown, the prosecution is commenced if an indictment or information is filed against the unknown person and the indictment contains the genetic information of the unknown person and the genetic information is accepted to be likely to be applicable only to the unknown person.

When deoxyribonucleic acid (DNA) testing implicates a person previously identified through a search of the state DNA Data Base or National DNA Index System, a statute of limitation shall not preclude prosecution of the offense.

Ark. Code Ann. § 5-1-109.

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

According to Arkansas Rule of Civil Procedure 64, a lawyer may not withdraw from any proceeding or from representation of any party to a proceeding without permission of the court in which the proceeding is pending.

Permission to withdraw may be granted for good cause shown if counsel seeking permission presents a motion therefor to the court showing he has:

> Taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel;
>
> Delivered or stands ready to tender to the client all papers and property to which the client is entitled; and
>
> Refunded any unearned fee or part of a fee paid in advance, or stands ready to tender such a refund upon being permitted to withdraw. Ark. R. Civ. P. 64.

According to Model Rule of Professional Conduct 1.16, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the rules of

professional conduct or other law, the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client, or the lawyer is discharged.

A lawyer may withdraw from representing a client if:

> Withdrawal can be accomplished without material adverse effect on the interests of the client;
>
> The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
>
> The client has used the lawyer's services to perpetrate a crime or fraud;
>
> A client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
>
> The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
>
> Other good cause for withdrawal exists.

A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation.

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Ark. R. Prof. Conduct 1.16.

Further, according to Arkansas Supreme Court Rule 4-3, there are special procedures an attorney must follow to withdraw as counsel for a defendant in a criminal or a juvenile delinquency case once notice of appeal has been filed.

Ark. R. App. P. Crim. 16 requires trial counsel, whether retained or court-appointed, to continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause.

The Rule provides that if no notice of appeal of a conviction has been filed with the trial court, the trial court shall have exclusive jurisdiction to relieve counsel and appoint new counsel. A motion filed with the trial court to be relieved as counsel or a motion to the trial court for appointment of counsel shall clearly state that no notice of appeal has been filed with the trial court.

If a notice of appeal of a conviction has been filed with the trial court, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.

VIII. Juries

In General

Selection of Prospective Jurors

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.

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

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.

Jurors shall be summoned by the court or by the sheriff, as the court directs, by:

First class mail;

Service by telephone;

Personal service of summons; or

Other method as is permitted or prescribed by law.

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.

The court has the discretion to determine whether the sheriff or the court will be the prospective juror's primary contact.

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

Prospective juror appealed from decision finding her in contempt for failing to appear for jury duty. The Court of Appeals held that service of the summons for jury duty failed to comply with the statutory requirements. Because prospective juror was not lawfully summoned to jury duty, she could not be found in contempt for failing to appear for jury duty. Taylor v. State, 76 Ark. App. 279, 64 S.W.3d 278 (2001).

Length of Service

No person shall be required to report for jury duty on more than ten days, or for more than a four-month period during the calendar year for which he or she is selected.

An individual's length of jury service may be extended if he is engaged in the trial of a case at the time of the expiration of the period of permitted service, or 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 civil cases, alternate jurors shall replace jurors who become unable to serve prior to the time the jury retires to consider its verdict.

In criminal cases, the number of alternate jurors is left to the discretion of the judge.

Alternate jurors shall replace regular jurors in the order in which the alternates were called.

In civil cases, alternate jurors who do not replace regular jurors shall be discharged after the jury retires to consider its verdict.

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.

Each opposing side shall be entitled to one peremptory challenge that may be used against an alternate juror. Other peremptory challenges allowed by law shall not be used against an alternate juror.

Alternate jurors shall have the same qualifications, shall take the same oath, and have the same functions and privileges as the regular jurors.

In civil 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.

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

In a criminal case, the jury shall be composed of twelve jurors. However, if the case is not a felony, the jury may be composed of less than twelve jurors by agreement of the parties. Ark. Code Ann. § 16-32-202. The verdict in criminal cases must be unanimous. Ark. Const., Art. 2, § 8.

In a civil case, the parties can stipulate to a jury of any number less than twelve and to a verdict of an agreed-to majority. If the verdict is unanimous, only the foreman shall sign it. If the verdict is less than unanimous, all jurors consenting to the verdict shall sign it. Ark. R. Civ. P. 48.

Grand Juries

Selection of Grand Jurors

Grand jurors shall be summoned in the same manner as petit jurors.

The grand jury shall consist of the first sixteen persons summoned remaining after the elimination of those disqualified or excused.

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.

Grand jurors shall serve during the calendar year in which selected unless sooner discharged by the court.

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 the Selection of a 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, 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 on Verdict

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.

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:

> The state of his health or that of his family reasonably requires his absence; or
>
> 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**

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.

The judge shall initiate the *voir dire* examination by

> Identifying the parties;
>
> Identifying the respective counsel;
>
> Revealing the names of those witnesses whose names have been made known to the court; and
>
> Briefly outlining the nature of the case.

The judge shall then solicit any information he or she thinks will touch their qualifications to serve as jurors in the trial.

The judge shall also permit additional questions by the parties as he or she deems reasonable and proper.

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.

A sample script for a Jury Qualification and Orientation can be found beginning on Appendix page 6. A Jury Selection Worksheet can be found at Appendix page 47.

Juror Questionnaires

The court shall require members of petit jury panels to complete written questionnaires setting forth the following information:

Age;

Marital status;

Extent of education;

Occupation of juror and spouse; and

Prior jury service.

Upon request, the questionnaires shall be made available by the clerk of the court to the defendant or his counsel and the prosecuting attorney.

Upon a showing of good cause, the court may order that additional information regarding jurors be furnished.

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.

Ark. R. Crim. P. 32.1; Ark. Code Ann. §16-33-101.

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).

Confidentiality of Juror Information

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 may be considered confidential and shall not be released or otherwise made available.

"Juror information" includes:

An original or a copy of a list of potential jurors;

A list of potential jurors who were sworn and qualified;

Any response to a juror questionnaire; and

A list of an individual venire panel.

The confidential juror information may be made available to:

Any party eligible to represent a party in a proceeding before the circuit court;

A party appearing pro se in a proceeding before the circuit court and limited to the juror information relevant to that particular proceeding;

A governmental agency for the purposes of conducting an audit or similar activity associated with the administration of a plan or program; or

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.

The groups identified above may disclose the confidential information to:

A client or a legally authorized representative of a client of an attorney who receives the information;

An employee of an attorney who receives the information;

An attorney associated with an attorney who receives the information; and

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.

If the confidential information is released, a signed receipt shall be obtained and stored in the jury records of the circuit clerk.

Unauthorized disclosure of the juror information is a Class C misdemeanor.

Ark. Code Ann. § 16-32-111.

Disqualification of Jurors

The following persons are disqualified to serve as grand or petit jurors:

Individuals who are unable to speak or understand the English language;

Individuals who are unable to read or write the English language, except that the judge may exercise discretion to waive reading and writing requirement when the person is otherwise found to be a capable juror;

Individuals who have been convicted of a felony and have not been pardoned;

Individuals 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;

Individuals 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;

Individuals who are less than eighteen years of age at the time they are required to appear; and

Individuals who served as grand or petit jurors within the last two years.

Except by the consent of all the parties, no person shall serve as a petit juror in any case who:

Is related to any party or attorney in the cause within the fourth degree of consanguinity or affinity;

Is expected to appear as a witness or has been summoned to appear as a witness in the cause;

Has formed or expressed an opinion concerning the matter in controversy which may influence his judgment;

May have a material interest in the outcome of the case;

Is biased or prejudiced for or against any party to the cause or is prevented by any relationship or circumstance from acting impartially; or

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. [*See* Elmore v. State, 355 Ark. 620, 144 S.W.3d 278 (2004)(allowing a trial judge's spouse to serve as a juror in a case where the trial judge presides creates an appearance of impropriety; dismissal of trial judge's wife from jury for cause was warranted in criminal prosecution, even though there was no indication of any actual impropriety).].

Capital Punishment Disqualification

A member of the venire shall be excluded if he:

Would automatically vote against imposition of the death penalty without regard to any evidence that might be developed at trial; or

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

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.

The interpreter or reader must be present throughout jury service, the trial, and when the jury assembles for deliberation.

The court shall administer an oath to the interpreter to ensure objective interpretation 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)?

The Court shall instruct the interpreter to:

> Make a true and complete interpretation of all testimony and other relevant colloquy; and
>
> Refrain from participating in the deliberation of the jury except for the complete interpretation of jurors' remarks made during deliberations.
>
> The interpreter or reader shall be provided and paid for by the state through the Administrative Office of the Courts.
>
> Ark. Code Ann. § 16-31-108.

For information on requesting an interpreter, see the Court Interpreter Resources section of the Appendix beginning on Appendix page 268.

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.

The Arkansas Jury Orientation video is available on the AOC website at https://courts.arkansas.gov/jury.

A sample script for a Jury Qualification and Orientation can be found beginning on Appendix page 6.

Note-Taking by Jurors

Jurors may take notes regarding the evidence presented to them during the course of a trial.

Jurors may keep the notes when the jury retires for its deliberations.

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.

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).

For example, the use of toy cars, brought to the jury room for the purpose of a demonstration, came close to the bringing in of extraneous evidence. Although it should not have occurred, the court did not find that there was a reasonable possibility of prejudice resulting from their presence in the jury room. The jurors could have used other inanimate objects and it would not have resulted in evidence testing sufficient to prove misconduct. New Prospect Drilling Co. v. First Commercial Trust, N.A., 332 Ark. 466, 966 S.W.2d 233 (1998).

A juror visiting the scene of an accident may result in misconduct if it results in bringing in extrinsic evidence to the juror room. The Arkansas Supreme Court considers the following factors from Diemer v. Dischler, 313 Ark. 154, 852 S.W.2d 793 (1993), in determining whether juror misconduct warrants a new trial: (1) whether the trial court instructed the jury not to visit the site of the accident; (2) whether the juror offender simply voiced an opinion or engaged in an experiment relating to a crucial issue; (3) whether the offending juror's observations impugned a fact presented by a party; (4) whether the affiant describes the alleged juror with sufficient specificity, which would include identifying the names of the jurors who engaged in the complained of acts. Campbell v. Hankins, 2009 Ark. App. 479, 324 S.W.3d 358 (2009).

[**Note**: Ark. Code Ann. § 16-89-125 requires that after the jury retires for deliberation, if there is a disagreement between them as to any part of the evidence or if they desire to be informed on a point of law, the court must require the officer to bring the jury into open court in order to answer the question, on the record. Further, the information must be given in the presence of or after notice to the counsel of the parties.].

Juror Questions to Witnesses

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.

Jurors Viewing the Scene

When, in the opinion of the court, it is necessary that the jury should view the place in which the offense is charged to have been committed or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by the judge or by a person appointed by the court for that purpose.

The officers must be sworn to refrain from speaking or communicating with the jury on any subject connected with the trial. He shall show the jury the place to be viewed, and return them to court without unnecessary delay or at a specified time.

Ark. Code Ann. § 16-89-118.

Challenges

Challenges to the Array

A challenge to the array shall be decided by the court. Ark. Code Ann. § 16-33-201.

The fact that the 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).

Challenges to the Selection of Jury List

A challenge to the use of names selected by the jury commissioners may be made only by a litigant in a particular case.

If the trial judge sustains the challenge, he or she shall appoint a jury commissioner 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.

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.

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.

Implied bias may be taken in the case of the juror:

> 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;
>
> Being adverse to the defendant in a civil suit, or having complained against or being accused by him in a criminal prosecution;
>
> 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;
>
> Having served on a trial jury that has tried another person for the offense charged in the indictment;

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;

Having served as a juror in a civil action brought against the defendant for the act charged in the indictment; and

When the offense is punishable with death, the entertaining of such conscientious opinions as would preclude him from finding the defendant guilty.

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 orally. Ark. Code Ann. §16-33-203(a).

However, if either party desires a panel, the court shall draw 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(b)(1).

Each party shall be furnished with a copy of the list, from which each may strike the names of three jurors and return the list so struck to the judge, who shall strike from the original list the names so stricken from the copies, and the first twelve names remaining on the original list shall constitute the jury. Ark. Code Ann. §16-33-203(b)(2).

Peremptory Challenges in Criminal Cases

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 forbid the purposeful exclusion of jurors on account of race or gender by peremptory challenges. *See* Batson v. Kentucky, 476 U.S. 79 (1986)(landmark case forbidding prosecutor from challenging potential jurors solely on account of their race); Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991)(extended

Batson to private litigants in civil cases); and J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994)(extended to basis of gender).

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).

Intentional discrimination on the basis of **gender** by state actors in use of peremptory strikes in jury selection violates equal protection clause. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 114 S. Ct. 1419 (1994)(where putative father successfully appealed from order entered on jury verdict finding him to be father of the child, challenging state's use of peremptory challenges to exclude men from jury).

There is a three-step process in a *Batson* challenge:

> The opponent of a peremptory challenge must make a *prima facie* case of racial discrimination;
>
> The proponent of the strike must come forward with a race-neutral explanation; and
>
> 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 a peremptory challenge must make a timely objection to preserve the record for appeal. Lewis v. State, 84 Ark. App. 327, 139 S.W.3d 810 (2004)(defendant failed to preserve appellate review of trial court's alleged error in cutting off state's race-neutral explanation, at second step of three-step *Batson* inquiry).

A *Batson* challenge will be considered timely so long as the objection is made before the jury is sworn. Weston v. State, 366 Ark. 265, 234 S.W.3d 848 (2006).

Prima Facie Showing of Abuse of Peremptory Challenge

A party makes a *prima facie* case of purposeful discrimination by use of peremptory challenges where:

> 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;
>
> Peremptory challenges constitute a practice that permits discrimination; or
>
> Any other matter that would indicate a discriminatory intention.
>
> Batson v. Kentucky, 476 U.S. 79 (1986)

Striking the sole black juror raises an inference of purposeful discrimination. Hollamon v. State, 312 Ark. 48, 846 S.W.2d 663 (1993).

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 a Peremptory Challenge

Upon a presumptive 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. *See Batson*, *supra*.

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. *See Batson*, *supra*.

The state's race-neutral explanation must be more than a mere denial of racial discrimination, but need not be persuasive or even plausible. Under step three of the *Batson* procedure, the ultimate burden of persuasion that there is a purposeful intent rests with and never shifts from the party opposing the strikes. Williams v. State, 2009 Ark. 433, 373 S.W.3d 237 (2009).

Unless discriminatory intent appears in prosecution's explanation for challenged peremptory juror strike, the reason provided is deemed race-neutral. Holder v. State, 354 Ark. 364, 124 S.W.3d 439 (2003).

See also Riley v. State, 2009 Ark. App. 613, 343 S.W.3d 327 (2009)(although prosecutor exercised peremptory challenge in part for discriminatory purpose, trial court's decision that the prosecutor would have used peremptory challenge to exclude African American juror, regardless of her race, was not clearly against the preponderance of the evidence; prosecutor articulated race neutral reasons for peremptory strike of juror, such as juror did not complete juror questionnaire, she was young and soft-spoken, and she was not enrolled in school or employed, but prosecutor also stated that defendant and the accomplices' shared race played role in his decision to strike juror from the jury, and trial court was in best position to assess credibility of prosecutor, who gave number of race-neutral reasons for striking juror before adding one reason that was discriminatory); and

Jackson v. State, 375 Ark. 321, 290 S.W.3d 574 (2009)(where the state's reason for exercising peremptory strikes against African-American jurors, on the basis that they expressed reservation about the death penalty, was race-neutral, for *Batson* purposes, in capital murder prosecution; the state struck every juror, not just the African-American jurors, who expressed reservation about imposing the death penalty. When the state offers a race-neutral reason for a peremptory against an African-American, it is incumbent on the defense to show that it is pretext, and further questioning may be required).

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.

The time to correct a verdict based upon a claim that the jury misunderstood the instructions is prior to the jury's discharge. The jury has full power over its verdict and may amend it or recede from it at any time before the verdict has been received

and recorded and before the jury has been discharged. Once the jury has been discharged and has left the presence of the court, it is without power to correct or amend its verdict. Spears v. Mills, 347 Ark. 932, 69 S.W.3d 407 (2002).

Juror Misconduct

A new trial was properly granted after a juror introduced extraneous legal materials during deliberations. Sunrise Enterprises v. Mid-South Road Builders, 337 Ark. 6, 987 S.W.2d 674 (1999).

A new trial was 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);

> *But see* Butler v. State, 349 Ark. 252, 82 S.W.3d 152 (2002)(where denial of defendant's mistrial motion brought after juror revealed for first time in deliberations that he knew something about defendant's prior trial and was concerned that defendant had already served three years in jail, was not abuse of discretion because statements were in defendant's favor).

A new trial was warranted in a capital murder case where one juror was sleeping and another juror was tweeting during the trial. The trial court abused its discretion by not removing the sleeping juror after counsel notified the court that the juror was continually dozing, defendant objected to the juror's presence on the panel, and the court could have easily substituted an alternate juror. The tweeting juror admitted that he disregarded the court's instruction not to tweet and continued to tweet, specifically during sentencing deliberations. Dimas-Martinez v. State, 2011 Ark. 515, 385 S.W.3d 238 (2011).

A new trial was warranted where trial court improperly sent bailiff into jury chambers during deliberations in prosecution on rape and robbery charges,

especially where it appeared that bailiff might have engaged in inappropriate discussion with jury concerning evidence. Gold v. State, 2013 Ark. 220 (2013).

See also Ark. R. Evid. 606 regarding juror testimony about deliberations.

Jury Trial Process

Opening Court

See the Appendix for sample scripts and checklists concerning opening court in a trial.

Voir Dire Examination

In all cases, both civil and criminal, the court shall examine all prospective jurors under oath upon all matters set forth in the statutes as disqualifications. Ark. Code Ann. § 16-33-101.

The court shall permit the parties or their attorneys to conduct *voir dire* or conduct the examination itself. 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. R. Civ. P. 47.

Limitation of *Voir Dire*

Reasonable limitations on *voir dire* examinations by counsel are questions that are:

Repetitive;

Related to the juror's mailing or residential address or phone number (Ark. Code Ann. §16-33-101);

Designed to prejudice the juror;

Not related to anticipated instructions;

Argumentative; and

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 the Jury

Once the jury has been formed, the clerk administers the oath.

A sample **criminal** oath is found in Ark. Code Ann. § 16-89-109. It states:

> "You, and each of you, do solemnly swear, that you will well and truly try the case of the state of Arkansas against _____, and a true verdict render, unless discharged by the court or withdrawn by the parties."

As found on page 18 of the Appendix in the sample script, the oath could similarly read:

> "Do you and each of you solemnly swear that you will well and truly try the case of _____vs._____ and render a true verdict unless discharged by the court or withdrawn by the parties?"

A sample **civil** oath is found in Ark. Code Ann. § 16-30-103. It states:

> "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."

Admonishment of Jury

Upon any recess, the jury must be admonished by the court that it is their duty not to communicate with anyone on any subject connected to the trial. Ark. Code Ann. § 16-89-118.

Arkansas Model Jury Instruction—Crim. 2d 100-B suggests the following language:

"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. Do not email, blog, tweet, text, or post information about this case on social networking sites during this trial. 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.

Do not do any research on the internet or otherwise; or make any investigation about the case or the parties on your own.

> A. [During any recess or adjournment you must not read any newspaper account of this trial, and you must not listen to any radio report or watch any T.V. report regarding this case. Do not let anyone discuss any such account or report with you.]
>
> B. [If you have a cell phone, pager, or other communication device, you must turn that device off while in the courtroom. Unless otherwise instructed, you can use those devices only during recesses. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you.]
>
> [Or]
>
> [Do not bring cell phones, pagers, or other communication devices to the courtroom. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you. If you need to contact someone, the court will make a telephone available to you.]
>
> C. [I again remind you not to discuss this case, or talk at all with any attorneys, parties, or witnesses in this case.]

This instruction should be given before the first recess. Thereafter, bracketed paragraph "C" may be given instead of the entire instruction.

Bracketed paragraph "A" should be given before each lunch break and evening recess if there is a possibility that the case will attract media coverage.

Bracketed paragraph "B" has two options depending upon whether the judge permits communication devices in the courtroom.

Sample jury admonishments can be found in the Appendix on pages 48, and in the sample jury trial scripts.

See AMCI 2d 100-A for a cautionary instruction regarding the commencement of trial.

IX. Trial Timing, Type of Trial & Sentencing

Trial Timing

Precedence of Felony Trials & the Incarcerated

Except for extraordinary circumstances, precedence is given to criminal felony trials over other matters before the court. Precedence is also given to the trials of those persons who are incarcerated. Ark. R. Crim. P. 27.1.

Precedence Where Victim is Under Age of 14

Precedence is also to be given to a case in which the victim is under the age of fourteen. Ark. Code Ann. § 16-10-130.

Pursuant to Administrative Order No. 5, when a case affected by Ark. Code Ann. § 16-10-130 is not tried within nine months following the filing of a criminal information in the circuit court, the circuit judge, before whom the case is pending, will inform the Administrative Office of the Courts in writing the reason or reasons therefor. Thereafter, at intervals of ninety days the trial court will inform the Administrative Office of the Courts as to the status of the case. During the pendency of the case, no continuance shall be granted on motion of either the state or the defendant except upon written order detailing the reasons for and the duration of the delay.

Time for Filing Formal Charge When in Custody

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.

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.

Speedy Trial

The rules for speedy trial are found in Arkansas Rules of Criminal Procedure 27 to 30, specifically:

Ark. R. Crim. P. 28.1 – Limitations and Consequences

Ark. R. Crim. P. 28.2 – When Time Commences to Run

Ark. R. Crim. P. 28.3 – Excluded Periods

Ark. R. Crim. P. 30.1 – Absolute Discharge

Ark. R. Crim. P. 30.2 – Waiver

The Sixth Amendment guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy...trial." This constitutional guarantee has universally been thought essential to protect at least three basic demands of criminal justice: to (1) prevent undue and oppressive incarceration prior to trial; (2) minimize anxiety and concern accompanying public accusation; and (3) limit the possibilities that long delay will impair the ability of an accused to defend himself. Jolly v. State, 358 Ark. 180, 189 S.W.3d 40 (2004).

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.

Time To Be Tried

An incarcerated defendant is entitled to release on recognizance if not tried in **nine** months.

A defendant serving a sentence for another offense is to be tried within **twelve** months.

A defendant on bond is to be tried within **twelve** months.

Ark. R. Crim. P. 28.1.

Excluded Periods

The following periods shall be excluded in computing the time for trial:

Examination and hearing on competency of defendant;

Consideration of pretrial motions up to thirty days;

Congested docket (provided court makes certain written findings and schedules the trial on the next available date permitted by the trial docket);

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);

Continuances requested by prosecutor where evidence is unavailable or issues complex;

Absence of defendant;

Time between dismissal and refiling;

Where trial is joined with a codefendant whose time for trial has not run; and

Any other period for good cause. Ark. R. Crim. P. 28.3.

Excluded time to be set out in writing by the court by order or docket entry.

Failure to comply with speedy-trial requirements is a bar to prosecution. Ark. R. Crim. P. 30.1.

The motion to dismiss based upon an alleged speedy-trial violation must be made prior to trial. Ark. R. Crim. P. 30.2.

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).

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).

The withdrawal of a 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).

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).

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).

When an appeal is taken from a district 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).

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).

The burden is upon the state to show good cause for an untimely delay in bringing an accused to trial within the period required by the speedy trial rules. Chandler v. State, 284 Ark. 560, 683 S.W.2d 928 (1985).

Once a defendant presents a *prima facie* case of a violation of his right to speedy trial, the burden is upon the state to show that the delay was the result of the defendant's conduct or was otherwise legally justified. Meine v. State, 309 Ark. 124, 827 S.W.2d 151 (1992).

The duty falls on the state to exercise "due diligence" to arrest an accused and to bring that person to trial. The burden is on the state to prove that it has met this burden. Duncan v. Wright, 318 Ark. 153, 883 S.W.2d 834 (1994).

See also Weaver v. State, 313 Ark. 55, 852 S.W.2d 130 (1993) (prosecution of defendant 868 days after his arrest violated speedy trial rules and required dismissal of robbery charges and convictions. The Supreme Court would not accept state's invitation to prospectively change speedy trial rules; speedy trial rules had worked relatively well and only meaningful way to ensure that public policy behind speedy trial rules was effectuated was to discharge any defendant who had not been promptly tried, even though reversal and dismissal of convictions was an unpleasant task).

Interstate Agreement on Detainers

The Interstate Agreement on Detainers is an interstate compact to which Arkansas is a signatory. Article III provides that where a detainer is lodged against a prisoner based upon an untried indictment, information or complaint of another state, the prisoner, upon request, must be brought to trial on the untried charges within 180 days. Failure to accord a timely trial may mandate dismissal of the underlying charge. The compact is designed to standardize interstate rendition procedures in order to protect the inmate's right to speedy trial. *See* Ark. Code Ann. § 16-95-101.

See also Padilla v. State, 279 Ark. 100, 648 S.W.2d 797 (1983)(charge of violation of probation, absent an allegation of commission of an indictable offense, was not an untried indictment, information, or complaint within scope and meaning of prompt disposition provisions of the Interstate Agreement on Detainers Act); and

Dotson v. State, 2013 Ark. 382 (2013)(Interstate Agreement on Detainers inapplicable where no detainer was filed).

Trial Setting

Cases shall be set for trial at the request of any party after the issues have been joined. The court may assign a trial date, on its own motion, even though neither

party has requested a setting. Precedence shall be given to actions entitled thereto by any statute. Ark. R. Civ. P. 40.

Continuances

The court may, upon motion and for good cause shown, continue any case previously set for trial. Ark. R. Civ. P. 40(b).

Proceedings where any party is a member of the Senate or House of Representatives or is a Clerk of either branch of the General Assembly, or Lieutenant Governor while presiding as president of the Senate, shall be stayed for a time not to exceed fifteen days preceding the convening of the General Assembly and not less than thirty days after its adjournment. Ark. R. Civ. P. 40(c)(1).

Proceedings in which any attorney for either party is a member of the Legislative Council, or the Legislative Audit Committee, or any Joint Interim Committee of the General Assembly, shall be stayed or reset if said proceeding has been scheduled on any day upon which the Legislative Council, Legislative Audit Committee, or any Joint Interim Committee is meeting. The attorney shall request the continuance of the Court no less than three days before said proceeding is to commence. Ark. R. Civ. P. 40(c)(2).

See also Ark. Code Ann. § 16-63-406.

Type of Trial

Civil Demand for Jury Trial

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.

Failure to timely and properly file a demand constitutes a waiver of a jury trial.

A demand may not be withdrawn without the consent of all the parties.

Ark. R. Civ. P. 38.

The demand shall be served as required of other pleadings. Ark. R. Civ. P. 5(c).

Specification of Issues

In a demand for a jury trial, the party may specify the issues to be tried by jury. Failure to specify issues shall operate to have all issues triable by jury to be so tried.

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.

The demand shall be filed with the clerk within:

Ten days after service of the original demand; or

Such lesser time as the court may order.

Ark. R. Civ. P. 38(b).

Trial by Court or Jury

When trial by jury has been demanded as provided in Ark. R. Civ. P. 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

Consent to trial by the court without a jury is made by written stipulation and filed with the court, or by oral stipulation in open court and entered in the record; or

The court, with or without a motion, finds that right to jury trial does not exist as to any or all of the issues.

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.

In all actions not triable of right by a jury, the court upon motion or of its own initiative, may try any issue with an advisory jury or, with the consent of all parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Ark. R. Civ. P. 39.

Right to Jury Trial / Amendment 80 / Cleanup Doctrine

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. . . ."

In November 2000, Arkansas voters approved Constitutional Amendment 80. One of the amendment's fundamental purposes was the merger of law and equity, a feat accomplished by abolishing courts of chancery and establishing circuit courts as the state's trial courts of general jurisdiction. Previously, subject matter jurisdiction had been divided among the circuit, chancery, and probate courts. The consolidation of subject matter jurisdiction in general and the merger of law and equity in particular raise questions with respect to the right to trial by jury. Because the Seventh Amendment of the United States Constitution does not apply to the states, the parameters of this right are defined solely by Arkansas law. John J. Watkins, The Right to Trial by Jury in Arkansas After Merger of Law and Equity, 24 U. Ark. Little Rock L. Rev. 649 (2002).

The Supreme Court has held that Amendment 80 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 *Kansas City Life Ins.*, the Supreme Court held that the 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 has 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).

> However, 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*.

David Newbern suggests as a matter of practice that when a case with legal and equitable claims involves common questions of fact, the preferable approach is to try those questions to the jury, perhaps on written interrogatories as allowed by Ark. R. Civ. P. 49(a), before the court determines whether equitable relief is appropriate. The jury's findings would be binding on the court, which would serve as fact-finder only as to non-common factual questions arising in connection with the equitable relief. If the order of trial is arranged in this fashion, the right to jury trial on the legal claims would be ensured. Temporary equitable relief, if appropriate, could be granted pending a final adjudication on the merits. 2 Arkansas Civil Prac. & Proc. § 29:3 (5th ed.).

See Ludwig v. Bella Casa, LLC, 2010 Ark. 435, 372 S.W.3d 792 (2010)(trial court could submit to jury fact questions regarding appeal by neighboring landowners of decision by county board of adjustment that landowner's construction of a private airstrip was not an airport or landing field and that it was for private recreational use; while there was no right to a jury trial at common law for appeals from administrative agencies because these agencies did not exist at common law and were creatures of statute, legislature specifically and clearly intended the right to a jury trial attach to these types of claims); and

Nat'l Bank of Arkansas v. River Crossing Partners, LLC, 2011 Ark. 475, 385 S.W.3d 754 (2011)(count of mortgagee's complaint seeking foreclosure of mortgage and a determination of the loan amount was improperly submitted to jury and should have been tried by the court; a foreclosure proceeding was an equitable proceeding, and the loan amount was essential to the foreclosure proceeding itself).

Waiver of Jury Trial in a Criminal Case

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 of jury 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.

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).

A waiver of a jury may be withdrawn with permission of the court before the jury trial begins. Ark. R. Crim. P. 31.5.

A sample Waiver of Jury Trial can be found on Appendix page 262.

Bifurcation of Criminal Trials

For jury trials, bifurcation applies in all cases where the defendant is charged with a felony and found guilty of any offense. Ark. Code Ann. § 5-4-103.

Except in capital punishment / death penalty cases, the court shall fix punishment in any case in which:

> The defendant pleads guilty to an offense;
>
> The defendant's guilt is tried by the court;
>
> The jury fails to agree on punishment;
>
> The prosecution and the defense agree that the court may fix punishment; or
>
> A jury sentence is found by the trial court or an appellate court to be in excess of the punishment authorized by law.
>
> Ark. Code Ann. § 5-4-103.

For combination jury/bench trials, bifurcation applies as follows:

After the jury finds the defendant guilty, the defendant may waive jury sentencing if the prosecutor agrees and the court consents. Ark. Code Ann. §16-97-101(5).

After a guilty plea, the defendant may be sentenced by the jury with agreement of the prosecutor and consent of the court. Ark. Code Ann. §16-97-101(6).

Bifurcated Sentencing

Jury Trials

The jury hears all evidence relevant to every charge and retires to reach a verdict.

If the defendant is found guilty of one or more charges, the jury shall then hear additional evidence relevant to sentencing. Evidence introduced in the guilt phase can be considered but need not be re-introduced.

After introduction of evidence relevant to sentencing, if any, instructions on the law, and arguments, the jury shall retire again and determine a sentence within the statutory range.

The court has discretion to instruct the 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.

Sentencing by the Court

A party may present evidence relevant to sentencing and the opposing party may offer rebuttal evidence.

If a sentencing hearing is not requested, the court may order one or a pre-sentence investigation pursuant to Ark. Code Ann. § 5-4-102.

The 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 a court or a jury may include but is not limited to:

Applicable law on parole, meritorious good time, or transfer;

Prior felony and misdemeanor convictions of the 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;

Prior judicial determinations of delinquency in juvenile court subject to limitations in Ark. Code Ann. §16-97-103(3);

Victim impact evidence or statement;

Relevant character evidence;

Evidence of aggravating and mitigating circumstances;

Evidence relevant to guilt presented in first stage;

Evidence held inadmissible in first stage may be submitted for consideration in second stage if basis for exclusion did not apply to sentencing; and

Rebuttal evidence.

Ark. Code Ann. § 16-97-103.

Under bifurcated-proceedings statute, sentencing is now a trial in and of itself, in which new evidence may be submitted. Hill v. State, 318 Ark. 408, 887 S.W.2d 275 (1994).

X. Trial to Verdict

Burden of Proof

The burden of proof lies with the party who would be defeated if no evidence were given on either side. Ark. Code Ann. § 16-40-101.

Order of Proof

The order of proof shall be regulated by the court so as to expedite the trial and enable the tribunal to obtain a clear view of all the evidence.
Ordinarily, 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.

Ark. Code Ann. § 16-40-102.

See also Ark. R. Evid. 611.

Testifying Witnesses

Every person is competent to testify as a witness except as provided in the Rules of Evidence. Ark. R. Evid. 601.

Preliminary questions concerning the qualification of a person to be a witness shall be determined by the court. Ark. R. Evid. 104.

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.

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so. Ark. R. Evid. 603. *See also* Ark. Code Ann. § 16-40-102 regarding administering oaths.

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 the witness may, but need not, consist of the testimony of the witness himself. Ark. R. Evid. 602.

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to: (1) make the interrogation and presentation effective for the ascertainment of the truth; (2) avoid needless consumption of time; and (3) protect witnesses from harassment or undue embarrassment. Ark. R. Evid. 611.

Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.

> The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. Ark. R. Evid. 611.
>
> Wavier of one's right to cross-examine must be made knowingly. Suggs v. State, 317 Ark. 541, 879 S.W.2d 428 (1994).

Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. Whenever a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. Ark. R. Evid. 611.

The court, at the suggestion of a party or on its own motion, may call witnesses. All parties are entitled to cross-examine witnesses thus called.

> The court may interrogate witnesses, whether called by itself or by a party.
>
> Objections to the calling of witnesses by court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.
>
> Ark. R. Evid. 614.

Witness Subpoenas

Subpoenas are governed by Ark. R. Civ. P. 45. A subpoena commands each person to whom it is directed to appear and give testimony at the time and place therein specified.

> A subpoena may be served by the sheriff of the county in which it is to be served, by his deputy, or by any other person who is not a party and is not less than eighteen years of age. Service shall be made by delivering a copy of the subpoena to the person named.
>
> A subpoena for a trial or hearing may be served by telephone by a sheriff or his deputy when the trial or hearing is to be held in the county of the witness's residence.
>
> A subpoena for a trial or hearing or for a deposition may also be served by an attorney of record for a party by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or agent of the addressee.
>
> When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arrest directing that the witness be brought before the court at a time and place to be fixed in the warrant, to give testimony and answer for contempt.

In criminal cases, out-of-state witnesses must be directed by court order to appear under the Uniform Act to Secure Attendance of Witnesses from Without State in Criminal Cases. Ark. Code Ann. §§ 16-43-402 – 16-43-406.

> A defendant in a criminal case has no absolute right to have the court subpoena out-of-state witnesses or to have witnesses appear at government expense. Whether such a request will be granted is in the discretion of the trial court. Sullivan v. State, 289 Ark. 323, 711 S.W.2d 469 (1986).
>
> However, the defendant has a right to production of an unlimited number of witnesses from out-of-state, if they are material. The defendant must show that a witness is material and necessary to show that denial of the witness's

production is a denial of confrontation. *See* Mackey v. State, 279 Ark. 307, 651 S.W.2d 82 (1983).

Experts

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).

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).

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), in favor of consideration of the "*Daubert* Factors."

> Under this standard, the factors that may be considered in determining whether the methodology is valid are: (1) whether the theory or technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community.

See Paul C. Giannelli, Daubert Factors, 23 Crim. Just. 42 (2008-2009).

Interpreters

Arkansas requires court proceedings to be conducted in English. Ark. Code Ann. § 16-10-1101.

A person with limited English proficiency who is a party to or a witness in a court proceeding is entitled to a qualified interpreter to interpret for the person throughout the court proceeding. Ark. Code Ann. § 16-10-1103.

The Administrative Office of the Courts is committed to providing excellent translator and interpretive services.

To familiarize yourself with the policies and procedures of interpretive services, see the "Bench Card for Judges: Working with Interpreters" which can be found on Appendix page 263.

You also can find other helpful publications in the Court Interpreter Resources section of the Appendix beginning on Appendix page 265, such as: a Guide for Clerks, the Court Interpreter Compensation Policy, the Court Interpreter Reimbursement Forms, Instructions for Requesting an Interpreter, a Language Identification Card, the Supreme Court Per Curiam Order, and the Registry of Interpreters.

These resources can also be found online at: https://courts.arkansas.gov/administration/interpreters/court-interpreter-resources.

The Administrative Office of the Courts also furnishes a certified court interpreter for parties, witnesses, or jurors who are deaf. Services are also provided for sight-impaired jurors.

As soon as the court is aware that an interpreter is needed, it should contact the Administrative Office of the Courts and request an interpreter. More information on requesting an interpreter can be found on the Administrative Office of the Courts' website at: https://courts.arkansas.gov/administration/interpreters/request-court-interpreter

See also Ark. R. Civ. P. 43 (providing for the appointment of interpreters); and Ark. R. Evid. 1009 (regarding admission of translated materials).

Viewing the Scene

When the court determines it proper, the court may order the jury, conducted in a body under the charge of an officer, to the real property that is subject of action or the place where a material fact occurred.

The place shall be shown by a person appointed by the court for that purpose.

During the viewing, 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.

When, in the opinion of the court, it is necessary that the jury should view the place in which the offense is charged to have been committed or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by the judge or by a person appointed by the court for that purpose.

The officers *must be sworn* to suffer no person to speak or communicate with the jury on any subject connected with the trial, nor do so themselves, except for the mere showing of the place to be viewed, and to return them into court without unnecessary delay or at a specified time.

Ark. Code Ann. § 16-89-118 (emphasis added).

See Jefferson v. State, 328 Ark. 23, 941 S.W.2d 404 (1997)(where the trial court's failure to instruct the bailiff to keep jurors from communicating about the case during jury view, as required by statute, did not affect the essential fairness of the defendant's trial, and was not reversible error; the defendant did not object to the bailiff's taking charge of jury without receiving special statutory oath, and nothing in the record suggested that any misconduct occurred or that prejudice resulted during the jury view).

Court-Appointed Experts

The court may appoint an expert witness on its motion or upon the motion of a party. The court may request nomination(s) from the parties or may appoint an expert witness of its own choosing.

An expert witness shall not be appointed by the court unless he consents to act. The witness shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. Ark. R. Evid. 706(a).

The expert witness shall inform the parties of his findings. He or she may be required to give a deposition, be called to testify by either party or the court, and be subject to cross-examination by either party.

The court may authorize disclosure to the jury of the fact that the court appointed the expert witness. Ark. R. Evid. 706.

See also Ark. R. Civ. P. 26(b)(4).

The Bailiff

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.

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

A judge may authorize broadcasting, recording, or photographing of a trial with these exceptions:

> Timely objection by party or attorney;
>
> Timely objection by a witness, upon being informed by the court of the right to refuse any of the above;
>
> 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;

In camera proceedings unless the court consents; and

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.

The procedure for broadcasting, recording, or photographing of any court proceeding is set out in Administrative Order No. 6.

The court shall direct that the news media representatives enter into a pooling arrangement for the broadcasting, recording, or photographing of a trial. The media pool may have two cameras in the courtroom during the course of a trial. No artificial lighting device shall be employed.

Electronic devices shall not be used in the courtroom to broadcast, record, photograph, e-mail, blog, tweet, text, post, or transmit by any other means except as may be allowed by the court.

Failure to abide by Administrative Order No. 6 can result in a contempt citation against the news representative and agency.

Ark. Sup. Ct. Admin. Order No. 6.

Disqualification of Judge

Unless the parties waive the disqualification, no judge shall sit on the determination of any case in which he or she is interested in the outcome, is related to any party within the third degree of consanguinity or affinity, has been of counsel in the case or presided over it in any inferior court, or is otherwise disqualified under the Arkansas Code of Judicial Conduct. Ark. Code Ann. § 16-13-214.

The Arkansas Code of Judicial Conduct states that a judge shall disqualify himself in any proceeding in which the judge's impartiality might reasonably be questioned. This includes situations where:

The judge has a personal bias or prejudice;

The judge or his or her family member has an interest in the proceeding or is likely to be a material witness in the proceeding;

The judge has made public statements about the outcome of the case; or

The judge has served as a lawyer in the matter in controversy.

Ark. Code Jud. Conduct Canon 2.11.

See Huffman v. Arkansas Judicial Discipline & Disability Comm'n, 344 Ark. 274, 42 S.W.3d 386 (2001)(where the fact that a judge and his wife owned approximately twelve thousand shares of retailer's stock worth about seven hundred thousand dollars created an appearance of impropriety in ruling on retailer's motion for a temporary restraining order (TRO) against union, and, thus, recusal was required, even if the ownership interest was de minimus and could not be substantially affected by his decision; the judge's conduct would create in reasonable minds the perception that his ability to carry out judicial responsibilities with integrity, impartiality, and competence was impaired).

XI. Evidentiary Issues

Judicial Notice

Judicial notice is given to a fact that is not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Ark. R. Evid. 201.

A court may take judicial notice, whether requested or not. But the court must take judicial notice if requested by a party and supplied with the necessary information.

A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

Judicial notice may be taken at any stage of the proceeding.

The court shall instruct the jury to accept as conclusive any fact judicially noticed. Ark. R. Evid. 201.

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

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.

If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies. Ark. R. Evid. 301.

When the Criminal Code provides that proof of a particular fact gives rise to a presumption as to the existence of a fact that is an element of the offense, 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.

However, the evidence of the fact giving rise to the presumption alone does not impose a duty of finding the presumed fact, even if the evidence is unrebutted.

Ark. Code Ann. § 5-1-111.

The Witness

Testimony from Former Trial. When admissible, the testimony of any witness given in any court at any former trial between the same parties or their privies and involving the same issue or claim for relief may be proved by the duly certified transcript thereof. Ark. R. Civ. P. 80.

Exclusion of Witnesses. At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause. Ark. R. Evid. 615.

> The rule is mandatory and requires the exclusion of witnesses when it is invoked. Lard v. State, 2014 Ark. 1, 431 S.W.3d 249, (2014)(court committed error in not excluding members of a murder victim's family during the trial, after the rule had been invoked, when they were to testify in the sentencing phase).

Judge As Witness. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the issue for appellate review. Ark. R. Evid. 605.

Juror As Witness. A member of the jury may not testify as a witness before the jury in the trial of the case in which he is sitting as a juror. If he is called to testify, the

opposing party shall be afforded an opportunity to object out of the presence of the jury. Ark. R. Evid. 606.

Who May Impeach. The credibility of a witness may be attacked by any party, including the party calling him. Ark. R. Evid. 607.

Evidence of Character & Conduct of Witness. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise. Ark. R. Evid. 608.

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. Ark. R. Evid. 608.
>
> **Case Law:** Neither Arkansas Rule of Evidence 608, nor Rules 609, 613, or 806, permit impeachment by extrinsic evidence on a collateral matter. Teas v. State, 23 Ark. App. 154, 744 S.W.2d 739 (1988).
>
> Since it cannot be said that a defendant's truthfulness has been attacked simply because he takes the witness stand, a defendant who takes the witness stand cannot support his testimony by offering evidence that shows his character for truthfulness among his associates or in the community. Rios v. State, 262 Ark. 407, 557 S.W.2d 198 (1977).
>
> The mere fact that a witness's testimony has been contradicted by other evidence does not constitute an attack upon the witness's character for truthfulness. Collins v. State, 11 Ark. App. 282, 669 S.W.2d 505 (1984).

In interpreting Rule 608, the threefold test of admissibility is (1) the question must be asked in good faith, (2) the probative value must outweigh its prejudicial effect, and (3) the prior conduct must relate to the witness's truthfulness. Mackey v. State, 279 Ark. 307, 651 S.W.2d 82 (1983).

Evidence of Conviction of Crime. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party or a witness, or (2) involved dishonesty or false statement, regardless of the punishment. Ark. R. Evid. 609.

Ten-year time limit on use of a conviction (since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is later).

Conviction not admissible if has been the subject of a pardon or equivalent procedure based on a finding of innocence.

Evidence of juvenile adjudications is generally not admissible under this rule. Except as otherwise provided by statute, however, the court may in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission of the evidence is necessary for a fair determination of the issue of guilt or innocence.

A pending appeal from a conviction does not render it inadmissible.

Ark. R. Evid. 609.

See Willis v. State, 334 Ark. 412, 977 S.W.2d 890 (1998)(Under rules of evidence, once an accused takes the stand, his credibility may be impeached

with prior felony convictions; however, the convictions may not be used as proof of guilt).

Religious Beliefs or Opinions. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of his nature his credibility is impaired or enhanced. Ark. R. Evid. 610.

Writing or Object Used to Refresh Memory. If, while testifying, a witness uses a writing or object to refresh his memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying. A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. Ark. R. Evid. 612.

Prior Statements. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel. Ark. R. Evid. 613.

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent. Ark. R. Evid. 613.

Case Law: A prior inconsistent statement cannot be quoted into evidence as part of the impeachment process. Williams v. State, 55 Ark. App. 156, 934 S.W.2d 931 (1996).

Where a witness admits having made a prior inconsistent statement, the court should not allow extrinsic evidence of the prior statement, nor evidence to prove the statement is incorrect. Rouse v. Goode, 293 Ark. 272, 737 S.W.2d 447 (1987); Ford v. State, 296 Ark. 8, 753 S.W.2d 258 (1988).

Statements are clearly relevant for impeachment purposes where they contradict testimony, and are therefore admissible under Rule 613. McDaniel v. State, 291 Ark. 596, 726 S.W.2d 679 (1987).

Unsworn prior statements made by a witness cannot be introduced as substantive evidence in a criminal case to prove the truth of the matter asserted therein. Lewis v. State, 41 Ark. App. 89, 848 S.W.2d 955 (1993).

Admissibility is not limited to the admission of prior inconsistent statements in which diametrically opposite assertions have been made, instead, a witness's prior statement is admissible whenever a reasonable man could infer on comparing the whole effect of the two statements that they have been produced by inconsistent beliefs. Truck Ctr. of Tulsa, Inc. v. Autrey, 310 Ark. 260, 836 S.W.2d 359 (1992).

Records

Pleading an Official Document. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law. Ark. R. Civ. P. 9.

Records of Secretary of State. The Secretary of State shall reside and keep his or her office at the seat of government and shall have the custody of all records, rolls, and documents which properly belong to the state. Ark. Code Ann. § 25-16-403.

Records of County Surveyor. A certified copy of the record of any county surveyor, under the hand of the surveyor, shall be admitted as *prima facie* evidence in any court of record in this state. Ark. Code Ann. § 14-15-712.

Records of Dept. of Alcohol Beverage Control. Judicial notice shall be taken of sealed and authenticated records of the Alcoholic Beverage Control Board. Ark. Code Ann. § 3-2-204.

Articles of Incorporation. The document certified by the Secretary of State, when introduced in evidence, shall constitute *prima facie* proof of the facts therein recited and shall constitute *prima facie* evidence that the corporate purpose sought to be effected by the filing has been lawfully accomplished. Ark. Code Ann. § 4-26-1201.

Records of Insurance Department. The Commissioner shall maintain as confidential, and not subject to subpoena, financial information regarding material transactions of insurers. Certain data and reports are not to be open to public inspection and shall not be admissible in evidence in any action or proceeding, other than those brought by the Commissioner. Ark. Code Ann. § 23-61-107.

Registration of Trademarks & Labels. Any certificate of registration issued by the Secretary of State, duly certified by the Secretary of State, shall be admissible in evidence as competent and sufficient proof of the registration of a mark in any actions or judicial proceedings in any court of this state. Ark. Code Ann. § 4-71-205.

Documents Under Seal of Dept. of Aeronautics. Any certified copies or certified photostatic copies of any records, books, papers, documents, determinations, rulings, or orders of the Arkansas Department of Aeronautics, when certified under the seal of the department, shall be acceptable as evidence in the courts. Ark. Code Ann. § 27-114-104.

State Brand Book. Brands appearing in the current edition of the State Brand Book or supplements thereto shall be *prima facie* evidence of ownership and shall take precedence over brands of like kind should the question of ownership arise. Ark. Code Ann. § 2-34-211.

Records of Commissioner of Education. Copies of any papers or documents on file in the office of the Commissioner of Education authenticated by him or her with the seal of the State Board of Education shall be admissible in evidence with the same effect as the original. Ark. Code Ann. § 6-11-117.

Papers Executed by Administrator of Employment Security Division. The Director shall procure an official seal, and every paper executed by the director in pursuance of law and sealed with the seal of his or her office shall be received in evidence in any court or other tribunal in this state and may be recorded in the same manner and with like effect as instruments regularly acknowledged. Ark. Code Ann. § 11-10-301.

Papers Executed by Commissioner of Revenue. Every paper executed by the Director of the Department of Finance and Administration or by any other employee

of the Department and sealed with its official seal shall be received in evidence in any court or other tribunal and may be recorded in the same manner and with like effect as deeds regularly acknowledged. Ark. Code Ann. § 19-1-206.

Impeachment of Adverse Witness

A witness's credibility may be impeached on the following grounds:

Bad reputation for truth or veracity (Ark. R. Evid. 405);

Prior criminal vicious or immoral act affecting character and tending to show not worthy of belief;

Inconsistent or contradictory prior statements;

Showing interest, bias, or hostility;

Conviction of a crime (Ark. R. Evid. 609);

Mentally incapacitated at time of event;

Lack of personal knowledge (Ark. R. Evid. 602); or

Character and conduct. (Ark. R. Evid. 608).

Fifth Amendment

The Constitutions of the United States and the State of Arkansas prohibit compelling an individual to give testimony against himself or herself. Ark. Const., Art. 2, § 8.

The privilege of a witness against self-crimination is not dependent on the nature of the current proceeding. Rather, the test is whether the testimony of the witness might later subject the witness to criminal prosecution. The privilege is thus available to a witness in a civil proceeding as well as to a defendant in a criminal prosecution. McCarthy v. Arndstein, 266 U.S. 34 (1924); Dunkin v. Citizens Bank of Jonesboro, 291 Ark. 588, 727 S.W.2d 138 (1987).

It is the duty of a court to determine the legitimacy of a witness's reliance upon the privilege against compelled self-incrimination. Dunkin, *supra*.

The judge must determine from the form of the question if there is possibility that the answer will incriminate the witness. If the judge determines that it will not be

incriminating, he or she may order the witness to answer. A further refusal to answer the question subjects the witness to contempt proceedings under Ark. Code Ann. § 16-43-602.

Parties should not call a witness that they know will refuse to testify based on their Fifth Amendment privilege, and the court must not allow a party to attempt to build its case out of inferences arising from use of the testimonial privilege. "The evil in the non-testimony of such a witness is not the mere calling of the witness, but the obvious inferences drawn by a jury to a series of questions, to all of which the witness refuses to answer on Fifth Amendment grounds. In that case the questions themselves may well have been the equivalent in the jury's mind of testimony." Foster v. State, 285 Ark. 363, 687 S.W.2d 829 (1985).

Allowing the state to call a witness while knowing that witness will invoke his or her Fifth Amendment privilege, deprives the defendant of his Sixth Amendment right to cross-examine the witnesses against him. Dodson v. State, 341 Ark. 41, 14 S.W.3d 489 (2000).

Statutory Immunity Order

In the case of any individual who has been or may be called to testify, the circuit court shall issue, upon the request of the prosecuting attorney, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

> A prosecuting attorney may request an immunity order when, in his judgment: (1) The testimony or other information from the individual may be necessary to the public interest; and (2) The individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination. Ark. Code Ann. § 16-43-604.

No such immunity shall be granted until after the individual has declined to answer questions or has requested immunity before answering questions. Ark. Code Ann. § 16-43-605.

No testimony or other information compelled under the order, or any other information directly or indirectly derived from such testimony or other information,

may be used against the witness in any criminal case except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. Ark. Code Ann. § 16-43-603.

An individual who has once been granted immunity under the provisions of this subchapter for an offense in connection with which his testimony has been sought shall not again be granted immunity under this subchapter in connection with any subsequent offenses. Ark. Code Ann. § 16-43-606.

Privileges

Unless otherwise provided by constitution, statute, or rule, no person has a privilege to: (1) refuse to be a witness; (2) refuse to disclose any matter; (3) refuse to produce any object or writing; or (4) prevent another from being a witness or disclosing any matter or producing any object or writing. Ark. R. Evid. 501.

Lawyer-Client. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client between himself or his representative and his lawyer or his lawyer's representative. Ark. R. Evid. 502.

Exceptions includes: furtherance of a crime or fraud, claimants through the same deceased client, breach of duty by lawyer or client, document attested to by a lawyer, joint clients, and public officer or agency.

Case Law: Inherent in the idea of waiver of the attorney-client privilege is the understanding that the client is allowing disclosure of something that was previously privileged as a confidential communication; in other words, confidentiality is a characteristic of the communication at the time it is made, and the question of whether or not the privilege might be waived in the future is irrelevant for purposes of determining whether the communication was confidential when it was made. Holt v. McCastlain, 357 Ark. 455, 182 S.W.3d 112 (2004).

Physician and Psychotherapist-Patient. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing his medical records or

confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition. Ark. R. Evid. 503.

> Exceptions include: Proceedings for hospitalization, examination by order of court, and when the condition is an element of a claim or defense. Ark. R. Evid. 503.

Husband-Wife. An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse. Ark. R. Evid. 504.

> Exceptions include: When one spouse is charged with a crime against the other or a child of either or a person residing in the household of either.
>
> **Case Law**: The burden of proving that a privilege applies is upon the party asserting it. Shankle v. State, 309 Ark. 40, 827 S.W.2d 642 (1992).
>
> "Marital confidential communication privilege" prohibits testimony concerning statements privately communicated between spouses during their marriage, and the nontestifying spouse may invoke the privilege even if the marriage has been dissolved, but the privilege does not protect information communicated after the couple has permanently separated. United States v. Jackson, 939 F.2d 625 (8th Cir. 1991).
>
> The marital privilege applies to communications, not to what the spouse heard, saw, and observed in relation to a criminal charge. MacKool v. State, 365 Ark. 416, 231 S.W.3d 676 (2006).

Religious. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser. Ark. R. Evid. 505.

Political Vote. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot. Ark. R. Evid. 506.

Trade Secrets. A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal

fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require. Ark. R. Evid. 507.

State Secrets. The state must recognize a governmental privilege created under the laws of the United States. Ark. R. Evid. 508.

Identity of Informer. There exists a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer conducting an investigation. Ark. R. Evid. 509.

> Exceptions include: Voluntary disclosure and testimony on relevant issue.
>
> **Case Law**: Absent surprise or other mitigating factors, orderly procedures of a trial are best served by a preliminary ruling on whether the the state should be compelled to disclose the identity of a confidential informant. Warrior v. State, 299 Ark. 337, 772 S.W.2d 592 (1989).

Waiver by Voluntary Disclosure. A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. (This rule does not apply if the disclosure itself is privileged.) Ark. R. Evid. 510.

Compulsion. A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege. Ark. R. Evid. 511.

Comment Upon Claim. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom. Ark. R. Evid. 512.

Media Privilege. Before any editor, reporter, or other writer for any newspaper, periodical, radio station, television station, or Internet news source, or publisher of any newspaper, periodical, or Internet news source, or manager or owner of any radio station shall be required to disclose to any grand jury or to any other authority

the source of information used as the basis for any article he or she may have written, published, or broadcast, it must be shown that the article was written, published, or broadcast in bad faith, with malice, and not in the interest of the public welfare. Ark. Code Ann. § 16-85-510.

Character Evidence

Under Ark. R. Evid. 404(a), evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

> **Character of Accused**. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;
>
> **Character of Victim**. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; and
>
> **Character of Witness**. Evidence of the character of a witness, as provided in Ark. R. Evid. 607, 608, and 609.

Evidence of other **crimes, wrongs, or acts** is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Ark. R. Evid. 404(b).

Case Law

The list of exceptions set out in the evidentiary rule governing evidence of other crimes, wrongs, or acts is exemplary and not exhaustive. Spencer v. State, 348 Ark. 230, 72 S.W.3d 461 (2002).

Evidence of a defendant's character or a trait of his character can be admissible if it is independently relevant and not offered to show merely

that the defendant has bad character. Simmons v. State, 95 Ark. App. 114, 234 S.W.3d 321 (2006).

There are two requirements for admission of Ark. R. Evid. 404(b) evidence: (1) it must have independent relevance, and (2) its relevance must not be substantially outweighed by the danger of unfair prejudice. Price v. State, 268 Ark. 535, 597 S.W.2d 598 (1980).

To be sufficiently probative of intent to be admissible, defendant's prior bad act must be similar to the crime charged. Osburn v. State, 2009 Ark. 390, 326 S.W.3d 771 (2009).

Evidence of a victim's violent character, including evidence of specific violent acts, is admissible where claim of justification is raised, for such evidence is relevant to the issue of who was the aggressor and whether accused reasonably believed he was in danger of suffering unlawful deadly physical force. Smith v. State, 273 Ark. 47, 616 S.W.2d 14 (1981).

Evidence of prior bad acts is admissible in the government's case-in-chief when the defendant places his state of mind in issue, even if state of mind is placed in issue by means of a general denial defense. However, when the defendant denies only the criminal act, he does not place his state of mind in issue. United States v. Thomas, 58 F.3d 1318 (8th Cir. Ark. 1995).

When Ark. R. Evid. 404(b) evidence is admitted, the defendant is entitled to a limiting instruction that the proof of other crimes is admitted solely for the limited purposes listed in Ark. R. Evid. 404(b) and should not be considered as evidence of guilt. *See* Price v. State, 268 Ark. 535, 597 S.W.2d 598 (1980).

Arkansas courts have long recognized a "**pedophile exception**," which allows proof of similar acts with the same child or other children in the same household when it is helpful in showing a proclivity toward a specific act with a person or class of persons with whom the accused has an intimate relationship. Such evidence not only helps to prove the depraved sexual instinct of the accused but is also admissible to show the familiarity of the parties and antecedent conduct toward one another and to corroborate the

testimony of the victim. 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).

For the pedophile exception to apply, there must be a sufficient degree of similarity between the evidence to be introduced and the sexual conduct of the defendant. Similarities in age and gender of victims are demonstrative of a depraved sexual instinct, such that the pedophile exception is applicable. Kelley v. State, 2009 Ark. 389, 327 S.W.3d 373 (2009).

Additionally, for the pedophile exception to apply, there must be an "intimate relationship" between the perpetrator and the victim of the prior act. An "intimate relationship," does not necessarily require that the child live in the home of the accused. The Arkansas Supreme Court has defined an "intimate relationship," as close in friendship or acquaintance, familiar, near, or confidential. For purposes of the pedophile exception, the Court has admitted the testimony of a child living in the same household or staying as an overnight guest in the perpetrator's home. The Supreme Court has also admitted evidence against a perpetrator who babysat a child, or who gained access to the child. Id.

Finally, evidence admitted pursuant to the pedophile exception to Rule 404 (b) must not be too separated in time, so as to make the evidence unduly remote. *See* Lamb v. State, 372 Ark. 277, 275 S.W.3d 144 (2008), in which the Court concluded that admission of evidence about the defendant's prior sexual abuse of a child that occurred approximately twenty years prior to his trial was not too remote and was properly admitted pursuant to the pedophile exception.

Reputation. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. Ark. R. Evid. 405.

Case Law: It is necessary to allow evidence of a defendant's character so that defendant might have a chance to raise reasonable doubt in the minds of the jury; however, type of character evidence which may be offered on direct examination is limited to opinion or reputation evidence, and specific instances of conduct may not be used. Larimore v. State, 317 Ark. 111, 877 S.W.2d 570 (1994).

Once character evidence is admissible, one permissible method to admit such evidence is by reputation or opinion testimony, and on cross-examination, inquiry is allowable into relevant specific instances of conduct. Frye v. State, 2009 Ark. 110, 313 S.W.3d 10 (2009).

Proof of character by specific instances of conduct may be introduced in cases in which character or trait of character is essential element of a charge, claim, or defense; such character trait must be operative fact which, under substantive law, determines rights and liabilities of the parties. Solomon v. State, 323 Ark. 178, 913 S.W.2d 288 (1996).

Habit. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine. Ark. R. Evid. 406.

Case Law: "Habit," for purpose of the rule of evidence governing admissibility of evidence thereof, is an acquired or developed mode of behavior or function that has become nearly or completely involuntary; it is regular response to repeated specific situation which may become semiautomatic. Henry v. Cline, 275 Ark. 44, 626 S.W.2d 958 (1982).

XII. Verdicts & Sentencing

Receiving the Verdict

There is a Checklist on Appendix page 5 outlining the procedure that a judge should follow when the jury has returned from deliberation with a verdict.

Civil Verdicts

The court may require the jury to return only a general verdict pronouncing generally on all the issues. Ark. R. Civ. P. 49(a).

When the jury has agreed upon its verdict, it must be brought into court, the names called by the clerk, and the verdict rendered by their foreman. Ark. Code Ann. § 16-64-119.

When the verdict is announced either party may require the jury to be polled, which is done by the clerk or court asking each juror if it is his or her verdict. If any one answers in the negative, the jury must again be sent out for further deliberation. Ark. Code Ann. § 16-64-119.

General Verdict Accompanied by Answer to Interrogatories

In addition to a general verdict, the court may submit written interrogatories on one or more issues that shall be answered to reach a general verdict.

The court shall make such explanation or instruction as necessary for the jury to answer interrogatories and render a general verdict.

The court shall direct the jury to make written answers and to render a general verdict.

When verdict and answers are harmonious, the appropriate judgment shall be entered.

When answers are consistent with each other, but one or more is inconsistent with verdict, the court may:

Enter judgment in accordance with answers, notwithstanding the verdict;

Return the jury for further consideration of answers and verdict; or

Order a new trial.

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 return the jury for further consideration, or order a new trial.

Ark. R. Civ. P. 49(a).

Special Verdict

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:

Submitting written questions that may be answered briefly or categorically; or

Submitting appropriate written forms of the several special findings that might properly be made under the pleadings and evidence; or

Using such other method as the court deems proper.

The court shall make such explanation or instruction as necessary for the jury to make findings.

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.

When an issue is omitted without demand for submission:

Court may make a finding; or

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

Ark. Code Ann. § 16-55-201 eliminates "joint liability." Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault. 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. Ark. Code Ann. § 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.

Ark. Code Ann. § 16-55-202 directs that in assessing percentages of fault, the fact finder shall consider the fault of all persons or entities who contributed to the alleged injury or death or damage to property, tangible or intangible, regardless of whether the person or entity was or could have been named as a party to the suit.

> **Caution**! This provision has been held unconstitutional and in conflict with Ark. Const., Art. 4, § 2 and Ark. Const., Amend. 80, § 3 because rules regarding pleading, practice, and procedure are solely the responsibility of the supreme court; the nonparty-fault provision bypassed the rules of pleading, practice, and procedure by setting up a procedure to determine the fault of a nonparty and mandating the consideration of that nonparty's fault in an effort to reduce a plaintiff's recovery. Johnson v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).
>
> *See also* ProAssurance Indem. Co. v. Metheny, 2012 Ark. 461 (2012) where the circuit court's rejection of the defendant's request to place nonparties on the verdict form was upheld because Ark. Code Ann. § 16-55-201 only allocates liability as to "each defendant." In so doing, the Supreme Court of Arkansas declined to hold that a defendant is vested with a substantive right of allocation of liability to a nonparty.

Allocation of Fault

Jury Allocation

In an action for personal injury, medical injury, wrongful death, or property damage, the jury shall determine the fault of all persons or entities, including those not made

parties, who may have joint liability or several liability for the alleged injury, death, or damage to property.

The jury shall determine the fault of a nonparty only if:

> The claimant entered into a settlement agreement with the nonparty, or a defending party has given notice, as provided in Ark. R. Civ. P. 9(h), that the nonparty was wholly or partially at fault; and
>
> The defending party has carried the burden of establishing a *prima facie* case of the nonparty's fault.

The jury shall allocate the fault, on a percentage basis, among those persons or entities, including those not made parties, found to have contributed to the injury, death, or property damage.

Assessment of the percentage of a nonparty's fault shall be used only for determining the percentage of fault of the parties.

A finding of fault shall not subject a nonparty to liability in any action or be introduced as evidence of liability in any action.

Ark. R. Civ. P. 49(c).

Allocation by Court

In an action for personal injury, medical injury, wrongful death, or properly damage tried without a jury, the court shall determine the fault of all persons or entities, including those not made parties, who may have joint liability or several liability for the alleged injury, death, or damage to property.

The court shall determine the fault of a nonparty only if:

> The claimant entered into a settlement agreement with the nonparty, or a defending party has given notice, as provided in Ark. R. Civ. P. 9(h), that the nonparty was wholly or partially at fault; and

The defending party has carried the burden of establishing a *prima facie* case of the nonparty's fault.

The court shall allocate the fault, on a percentage basis, among those persons or entities, including those not made parties, found to have contributed to the injury, death, or property damage.

Assessment of the percentage of a nonparty's fault shall be used only for determining the percentage of fault of the parties.

A finding of fault shall not subject a nonparty to liability in any action or be introduced as evidence of liability in any action.

Ark. R. Civ. P. 52 (a)(2).

Punitive Damages

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.

Bifurcated trial

All actions tried before a jury in which punitive damages are sought shall, on the motion of any party and if warranted by the evidence, be conducted in a bifurcated trial before the same jury.

The jury shall first determine the liability of the defendant or defendants for compensatory damages, the amount of compensatory damages to be awarded, and, at the discretion of the circuit court, the liability of the defendant or defendants for punitive damages.

> Should it be necessary, the jury will then determine, in a separate proceeding, the liability of the defendant or defendants for punitive damages, if that issue was not decided previously, and the amount of punitive damages to be awarded.
>
> Evidence of a defendant's financial condition shall not be admitted in the first proceeding unless relevant to an issue other than the amount of punitive damages.

Ark. R. Civ. P. 42 (b)(2).

Finally, Ark. Code Ann. § 16-55-208 says that a punitive-damages award shall not be more than the greater of the following: two hundred-fifty thousand dollars 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.

> **Caution**! This statute was held unconstitutional under Article 5, Section 32, which says that "no law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property," because it limits the amount of recovery outside of the employment relationship. Bayer CropScience LP v. Schafer, 2011 Ark. 518 (2011).

Uniform Contribution Among Tortfeasors Act

In 2013, the General Assembly adopted portions of the Uniform Contribution Among Tortfeasors Act. It contains the following provisions:

> The right of contribution exists among joint tortfeasors.
>
> A joint tortfeasor is not entitled to a money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share of the common liability.
>
> The right of contribution is not limited to money damages but also includes the right to an allocation of fault as among all joint tortfeasors and the rights provided for in Ark Code Ann. § 16-61-204.

> A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.
>
> Ark. Code Ann. § 16-61-202.

As to the effect of releases on an injured person's claim and on the right of contribution, the UCATA says:

> A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasors unless the release so provides.
>
> A release by the injured person of a joint tortfeasor does not relieve the released tortfeasor from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other joint tortfeasor to secure a money judgment for contribution has accrued and provides for a reduction, to the extent of the pro rata share of the released joint tortfeasor, of the injured person's damages recoverable against all other joint tortfeasors.
>
> When the injured person releases a joint tortfeasor, the injured person's damages recoverable against all the other joint tortfeasors shall be reduced by the greatest of the following:
>
> > The amount of the consideration paid for the release;
> >
> > The pro rata share of the released joint tortfeasor's responsibility for the injured person's damages; or
> >
> > Any amount or proportion by which the release provides that the total claim shall be reduced.
>
> When the injured person releases a joint tortfeasor, the remaining defendants are entitled to a determination by the finder of fact of the released joint tortsfeasor's pro rata share of responsibility for the injured person's damages.

Ark. Code Ann. § 16-61-204.

Note: The Act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003. *See also* J-McDaniel Const. Co. v. Dale E. Peters Plumbing Ltd., 2014 Ark. 282, 436 S.W.3d 458 (2014).

The Arkansas Lawyer Vol. 49 No. 1 has several informative articles on the pros and cons of the legislation.

Also note that Ark. Code Ann. § 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.

Findings by the Court

If requested by a party at any time prior to entry of judgment, in all contested actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Ark. R. Civ. P. 58.

If requested by a party, when granting or refusing interlocutory injunctions, the court shall find the facts specially and state separately its conclusions of law thereon.

Requests for findings are not necessary for purposes of review.

Findings of fact shall not be set aside unless clearly erroneous (clearly against the preponderance of the evidence), and due regard shall be given to the opportunity of the circuit court to judge the credibility of the witnesses.

Findings of a master adopted by the court are considered findings of the court.

If an opinion or memorandum opinion is filed, it is sufficient that findings and conclusions appear therein.

Upon motion of a party made not later than ten days after entry of judgment, the court may amend its findings of fact previously made or make additional findings and may amend the judgment accordingly.

The motion may be made with a motion for a new trial pursuant to Ark. R. Civ. P. 59.

When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the circuit court an objection to such findings or has made a motion to amend them or a motion for judgment.

Ark. R. Civ. P. 52.

Sentencing

A defendant who is found guilty of capital murder shall be sentenced to death or life imprisonment without parole in accordance with Ark. Code Ann. §§ 5-4-601 – 608, unless the defendant was younger than eighteen years of age at the time he or she committed the capital murder. *See* Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); Ark. Code Ann. § 5-4-104(b).

A defendant convicted of a Class Y felony or murder in the second degree shall be sentenced to a term of imprisonment in accordance with Ark. Code Ann. §§ 5-4-401 – 404. In addition to a term of imprisonment, the trial court may sentence the defendant to:

Pay a fine as authorized by Ark. Code Ann. §§ 5-4-201 and 202;

Make restitution as authorized by Ark. Code Ann. § 5-4-205; or

Suspend imposition of an additional term of imprisonment in accordance with Ark. Code Ann. § 5-4-304.

Ark. Code Ann. § 5-4-104(c).

A defendant convicted of an offense other than capital murder, murder in the second degree, treason, or a Class Y felony may be sentenced to any one or more of the following:

> Imprisonment as authorized by Ark. Code Ann. §§ 5-4-401 – 404;
>
> Probation as authorized by Ark. Code Ann. §§ 5-4-301 – 307 and Ark. Code Ann. §§ 16-93-306 – 314;
>
> Payment of a fine as authorized by Ark. Code Ann. §§ 5-4-201 and 202;
>
> Restitution as authorized by a provision of Ark. Code Ann. § 5-4-205; or
>
> Imprisonment and payment of a fine.
>
> Ark. Code Ann. § 5-4-104(d).

The court may not suspend imposition of sentence as to a term of imprisonment nor place the defendant on probation for:

> Capital murder, treason, a Class Y felony (except to suspend imposition of an additional term of imprisonment, see above and Ark. Code Ann. § 5-4-304), DWI, BWI, murder in the second degree (except to suspend imposition of an additional term of imprisonment, see above and Ark. Code Ann. § 5-4-304), or engaging in a criminal enterprise.
>
> In any other case, the court may suspend imposition of sentence or place the defendant on probation, in accordance with Ark. Code Ann. §§ 5-4-301 – 307 and Ark. Code Ann. §§ 16-93-306 – 314.
>
> Ark. Code Ann. § 5-4-104(e).

If the offense is punishable by fine and imprisonment, the court may sentence the defendant to pay a fine and suspend imposition of the sentence as to imprisonment or place the defendant on probation. Ark. Code Ann. § 5-4-104(e).

The court may not suspend execution of a sentence.

When a sentence is pronounced and then suspended, the trial court has suspended execution of sentence. State v. Stephenson, 340 Ark. 229, 9 S.W.3d 495 (2000).

The Sentencing Order forms can be found beginning on Appendix page 180.

Case Law

The suspended portion of a sentence of imprisonment commences to run upon release from confinement. The trial court could revoke a five-year suspended sentence only during those five years, which began upon release from incarceration, and not after the suspended sentence is completed. Matthews v. State, 265 Ark. 298, 578 S.W.2d 30 (1979).

For example, a habitual offender was sentenced to a ten year term of imprisonment (the statutory minimum) and ten years suspended (the maximum). Two years after he was released, the court imposed the ten years suspended. The appellate court held the trial court could only imposed a sentence of no more than ten years less the length of time from the defendant's release until his revocation, roughly eight years. Chadwell v. State, 80 Ark. App. 133, 91 S.W.3d 350 (2002).

The trial court could not sentence defendants to the statutory minimum for their Class Y felony (ten years) and then suspend the sentence. When a defendant is convicted of a Class Y felony, a trial court shall not suspend imposition of sentence as to a term of imprisonment or place the defendant on probation. State v. Stephenson, 340 Ark. 229, 9 S.W.3d 495 (2000).

Conditions of Incarceration

The sentencing court may not impose conditions of incarceration. Once the circuit court enters a judgment and commitment order, jurisdiction is transferred to the Department of Correction—the Executive Branch—and it is for that branch to determine any conditions of incarceration. For example, ordering drug treatment during incarceration is prohibited. Richie v. State, 2009 Ark. 602, 357 S.W.3d 909 (2009).

Post-Conviction No Contact Orders

At the request of the prosecuting attorney, a court shall determine whether to issue an extended post-conviction no contact order to a person convicted of one or more of the following offenses:

> Capital murder or attempted capital murder, murder in the first degree or attempted murder in the first degree, murder in the second degree or attempted murder in the second degree, kidnapping, battery in the first degree, battery in the second degree, rape, sexual assault in the first degree, domestic battering in the first degree, or domestic battering in the second degree.

If such a request is made, the court shall order the defendant to show cause why an extended post-conviction no contact order shall not be issued and shall hold a show cause hearing at the sentencing of the defendant.

A victim has the right to be heard at the show cause hearing.

If the court determines after the show cause hearing that the defendant should be subject to an extended post-conviction no contact order, the court shall:

> Enter written findings of fact and the grounds on which the extended post-conviction no contact order is issued;
>
> Determine the time period the extended post-conviction no contact order is effective, up to the life of the defendant, and include the time period in the extended post-conviction no contact order;
>
> Determine the additional terms described below to be included in the extended post-conviction no contact order and include the terms in the extended post-conviction no contact order;
>
> Issue the extended post-conviction no contact order in a separate document from the judgment imposing the sentence on the defendant; and
>
> Provide a copy of the extended post-conviction no contact order to the defendant.

The court may include one or more of the following terms in the extended post-conviction no contact order:

Order the defendant not to threaten, visit, assault, molest, abuse, injure or otherwise interfere with the victim;

Order the defendant not to follow the victim, including following the victim to his or her workplace;

Order the defendant not to harass the victim;

Order the defendant not to contact the victim by telephone, written communication, or electronic means; or

Order the defendant to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified place at times when the victim is present.

Ark. Code Ann. § 5-4-106.

Sentencing Standards

The court may apply sentencing standards in felony cases when:

The defendant pleads guilty;

The plea is negotiated;

The defendant is found guilty by the court;

The jury fails to agree on punishment; or

The jury's sentence is found by the court to be illegal.

Ark. Code Ann. § 5-4-103.

The standards do not apply to:

Misdemeanors;

Probation-revocation proceedings;

Felonies committed before January 1, 1994;

Findings of guilty by a jury; or

Convictions of capital murder.

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, the Criminal History Worksheets and the Sentencing Grid are published by the Arkansas Sentencing Commission.

The Seriousness References Tables are found here.

The Criminal History Worksheets are found here and on Appendix page 100.

The Sentencing Grids are found here.

Ark. Code Ann. § 16-90-803.

Departure from Standards

The sentencing standards are not mandatory. The trial court may deviate from the presumptive sentence without providing a written justification.

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.

A list of mitigating factors can be found in Ark. Code Ann. § 16-90-804(c)(1).

A list of aggravating factors can be found in Ark. Code Ann. § 16-90-804(c)(2).

The Sentencing Order forms can be found beginning on Appendix page 180. The Sentencing Order replaces and combines the former Judgment and Commitment, Judgment and Disposition, and Departure Report forms.

Habitual Offenders

Habitual offenders (those who have committed multiple felonies) may be sentenced to an extended term of imprisonment according to the guidelines set forth in Ark. Code Ann. § 5-4-501.

The guidelines in Ark. Code Ann. § 5-4-501(a)(1) describe those offenders who have committed more than one but fewer than four felonies. Their extended sentence is set out in Ark. Code Ann. § 5-4-501(a)(2) according to the class of felony that has been committed.

The guidelines in Ark. Code Ann. § 5-4-501(b)(1) describe those offenders who have committed four or more felonies. Their extended sentences are set out in Ark. Code Ann. § 5-4-501(b)(2).

The guidelines in Ark. Code Ann. § 5-4-501(c)(1) describe those offenders who are convicted of a serious felony involving violence who have previously committed a serious felony involving violence. Those persons must serve mandatory sentences of not less than forty years nor more than eighty years.

An offender who is convicted of rape or sexual assault involving a victim less than 14 years of age and who has previously been convicted of a serious felony involving violence shall be sentenced to life in prison without the possibility of parole. Ark. Code Ann. § 5-4-501(c)(3).

The guidelines in Ark. Code Ann. § 5-4-501(d)(1) describe those offenders who have committed two or more felonies involving violence, as defined in the statute. Their mandatory extended sentences are set out in Ark. Code Ann. § 5-4-501(d)(1), according to the class of felony that has been committed.

The jury shall first hear all the evidence and render a verdict. Then, the court, out of the hearing of the jury, shall hear evidence of the defendant's prior felony convictions and shall determine the number of prior serious felonies involving violence convictions, if any. The trial court shall then instruct the jury as to the number of prior convictions for a serious felony involving violence and the statutory sentencing range. The jury shall retire again and then determine a sentence within the statutory range. Ark. Code Ann. § 5-4-501(c)(4).

Domestic Abuse

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.

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.

The enhanced portion of the sentence is consecutive to any other sentence imposed.

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

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.

The enhanced portion of the sentence is consecutive to any other sentence imposed.

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

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:

> In the presence of a minor, elderly person, or incompetent person who may or may not be related to the person;
>
> 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
>
> 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.
>
> "Elderly person" means any person seventy years of age or older.
>
> "Incompetent person" means any person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated.
>
> "Minor" means any person under eighteen years of age.

The enhanced portion of the sentence is consecutive to any other sentence imposed.

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

A person is subject to an enhanced sentence of an additional term of imprisonment of ten years if:

> 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

He or she possesses with the purpose to deliver, delivers, manufactures, or traffics a controlled substance in violation of Ark. Code Ann. §§ 5-64-420, 5-64-440; and

The offense is committed on or within one thousand feet of the real property of:

A city or state park;

A public or private elementary or secondary school, public vocational school, or private or public college or university;

A designated school bus stop as identified on the route list published by a public school district each year;

A skating rink, Boys Club, Girls Club, YMCA, YWCA, community center, recreation center, or video arcade;

A publicly funded and administered multifamily housing development;

A drug or alcohol treatment facility;

A day care center;

A church; or

A shelter as defined in Ark. Code Ann. § 9-4-102.

The enhanced portion of the sentence is consecutive or concurrent to any other sentence imposed at the discretion of the court.

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

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.

The period of confinement imposed shall be in addition to any fine or penalty provided by law as punishment for the felony itself.

Any additional prison sentence imposed shall run consecutively to any period of confinement imposed for conviction of the felony itself.

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.

> 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.

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

Any person who commits the offense of aggravated cruelty to a dog, cat, or horse under Ark. Code Ann. § 5-62-104, may be subject to an enhanced sentence of an additional term of imprisonment not to exceed five years if the offense was committed in the presence of a child.

To seek this enhanced penalty, a prosecuting attorney shall notify the defendant in writing that the defendant is subject to the enhanced penalty.

The prosecuting attorney may include the written notice in the information or indictment.

The enhanced portion of the sentence is consecutive to any other sentence imposed.

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.

Stacking Enhancements

There is no constitutional barrier to the enhancement of separate punishments for distinct crimes. For example, the punishment for each of three separate crimes, each committed with a firearm, could be enhanced for each of the three offenses. Welch v. State, 269 Ark. 208, 599 S.W.2d 717 (1980).

See McKeever v. State, 367 Ark. 374, 240 S.W.3d 583 (2006)(where the commission of each of three terroristic acts was a separate offense, each of which could have been committed with or without a firearm, the punishment for each of the three offenses could be enhanced under the firearm statute).

Pre-Adjudication Probation

The court has the option of creating a pre-adjudication probation program as an additional alternative to the disposition of criminal offenders to assist the offender in atoning for his or her criminal transgression and promote the enforcement of the state's criminal statutes while easing the inmate burden on the county jails and the Department of Correction. Ark. Code Ann. § 5-4-901.

The structure, method, and operation of the pre-adjudication probation program may differ and shall be based upon the specific needs of and resources available to the judicial district where the pre-adjudication probation program is located. The program may incorporate services from various state agencies, including without limitation the Department of Community Correction and the Department of Human Services. Ark. Code Ann. § 5-4-903.

A person charged with a felony is eligible to participate in a pre-adjudication probation program if the circuit court with jurisdiction over the case and the prosecuting attorney agree, and the person is not charged with one of the following criminal offenses:

A criminal offense for which the person would be required to register as a sex offender;

A felony involving violence as listed in Ark. Code Ann. § 5-4-501(d)(2);

A felony involving a victim who was seventeen years of age or younger at the time the felony was committed; or

A felony involving a victim who was sixty-five years of age or older at the time the felony was committed.

A person charged with a traffic offense committed in any type of motor vehicle who was a holder of a commercial learner's permit or commercial driver license at the time the traffic offense was committed is ineligible to participate in a pre-adjudication probation program.

Ark. Code Ann. § 5-4-904.

A pre-adjudication probation program judge may impose sanctions on a program participant who fails to complete certain court-ordered program requirements or fails to meet certain court-ordered program goals. Sanctions may include:

Time spent in the custody of the county sheriff;

Additional fines;

Community service;

Substance abuse testing;

Written assignments; and

Volunteer work for a nonprofit organization.

Ark. Code Ann. § 5-4-905.

Participants are eligible to have their records sealed. Ark. Code Ann. § 5-4-906.

The pre-adjudication probation program judge shall establish a schedule for the payment of costs, fees, and restitution. The judge may order the offender to pay such costs and fees as listed in Ark. Code Ann. § 5-4-907, including court costs, drug

testing costs, substance abuse treatment costs, mental health treatment costs, supervision fees, and restitution.

Community Correction

Upon a determination by the court that a defendant is an eligible offender and that placement in a community correction program is proper, the court may suspend the imposition of the sentence or place the defendant on probation and assign the defendant to a community correction program as a condition of probation for a designated period of time commensurate with goals of program.

Jurisdiction over the defendant remains with the court

If after receipt of an order directing a defendant to a community correction center, the Department of Community Correction determines that the defendant is not eligible for placement in a community correction program under Ark. Code Ann. §§ 16-93-1201 et seq., the Department of Community Correction shall not admit the defendant but shall immediately notify the prosecuting attorney in writing.

After receipt of the notice, the prosecuting attorney shall notify the court of the defendant's ineligibility for placement in a community correction center and the court shall resentence the defendant accordingly.

Ark. Code Ann. § 5-4-312.

Judicial Transfers

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. Ark. Code Ann. § 5-4-312(b)(2)(A).

Unless a commitment specifies that the inmate is to be judicially transferred to the Department of Community Correction, the commitment shall be treated as a commitment to the Department of Correction and subject to regular transfer eligibility. Ark. Code Ann. § 12-27-127.

The Parole Board may release from confinement an inmate who has been sentenced and judicially transferred to the Department of Community Correction, incarcerated for a minimum of two hundred seventy days, and determined by the Department of

Community Correction to have successfully completed its therapeutic program. Ark. Code Ann. § 12-27-127.

Sentencing Criteria to be Considered by the Court

If the crime is NOT capital murder, treason, Class Y felony, murder in the second degree, first-degree rape, kidnapping or aggravated robbery, DWI, BWI, or engaging in continuing-criminal enterprise and the defendant is not a habitual offender, the court may suspend imposition of sentence or place the defendant on probation. In making this determination, the court shall consider whether:

> There is undue risk that during the period of a suspension or probation the defendant will commit another offense;
>
> The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
>
> Suspension or probation will discount the seriousness of the defendant's offense; or
>
> 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.

The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of suspension or probation:

> The defendant's conduct neither caused nor threatened serious harm;
>
> The defendant did not contemplate that his or her conduct would cause or threaten serious harm;
>
> The defendant acted under strong provocation;
>
> There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;
>
> The victim of the offense induced or facilitated its commission;

The defendant has compensated or will compensate the victim of the offense for the damage or injury that he or she sustained;

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;

The defendant's conduct was the result of circumstances unlikely to recur;

The character and attitudes of the defendant indicate that he or she is unlikely to commit another offense;

The defendant is particularly likely to respond affirmatively to suspension or probation;

The imprisonment of the defendant would entail excessive hardship to him or her or his or her dependents;

The defendant is elderly or in poor health; and

The defendant cooperated with law enforcement authorities in his or her own prosecution or in bringing other offenders to justice.

Ark. Code Ann. § 5-4-301.

Conditions of Suspension or Probation

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.

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:

Support his dependents and meet his family responsibilities;

Undergo available medical or psychiatric treatment, and enter and remain in a specified institution, when required for that purpose;

Participate in a community-based rehabilitative program or work-release program;

Refrain from frequenting unlawful or designated places or consorting with designated persons;

Have no firearms in his or her possession;

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;

Post a bond, with or without surety, conditioned on the performance of prescribed conditions; and/or

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.

If the court places a defendant on probation, it may as a condition of its order, require that the defendant:

Report as directed to the court or probation officer and permit the probation officer visitation at employment or elsewhere;

Remain within the jurisdiction of the court unless granted permission to leave by the court or the probation officer; and/or

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.

If the court suspends imposition of sentence on a defendant or places him or her on probation, the court shall require that the defendant either:

Work consistently in suitable employment for the entire duration of his or her suspended sentence or probation or for three years, whichever occurs earlier; or

If the defendant is unemployed, pursue a prescribed secular course of study and show continuous progress in improving academic skills and education by increasing his or her reading, math, and communication skills to at least the ninth grade level regardless of a prior high school or other educational credentials.

If the defendant is unemployed, he/she shall also meet at least one of the following benchmarks:

Earn a Career Readiness Certificate;

Earn a Workforce Alliance for Growth in the Economy Certificate;

Earn a high school diploma by passing the Department of Career Education approved assessment; or

Enroll in vocational training designed to equip him or her for suitable employment.

If the defendant is serving a suspended sentence or is on probation at the end of the required study or training, he or she shall work in suitable employment for the remainder of his or her suspended sentence or probation or for three years, whichever occurs earlier.

If the court suspends imposition of sentence on a defendant or places him or her on probation, the court shall give the defendant a written statement explicitly setting forth the conditions under which he or she is being released.

Ark. Code Ann. § 5-4-303.

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)(6), the court shall by concurrence of the victim, defendant, and the prosecuting attorney 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.

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 one hundred twenty days for a felony, thirty days for a misdemeanor, or three hundred sixty-five days in the case of confinement in a community correction's facility.

Ark. Code Ann. §§ 5-4-303 - 304.

See also Ark. Code Ann. § 5-4-102 on Presentence Investigations.

See also Ark. Code Ann. § 16-93-314 on Discharge of Probation.

See also Ark. Code Ann. § 16-93-303 on First Time Offenders.

Revocation of Probation

At any time before the expiration of a period of suspension or probation, a court may summon a defendant to appear before it or may issue a warrant for the defendant's arrest.

At any time before the expiration of a period of suspension or probation, any law enforcement officer may arrest a defendant without a warrant if the law enforcement officer has reasonable cause to believe that the defendant has failed to comply with a condition of his or her suspension or probation.

A defendant arrested for violation of suspension or probation shall be taken immediately before the court that suspended imposition of sentence or, if the defendant was placed on probation, before the court supervising the probation.

If a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his or her suspension or probation, the court may revoke the suspension or probation at any time prior to the expiration of the period of suspension or probation. The revocation may be punished as contempt under Ark. Code Ann. § 16-10-108.

If a court revokes a suspension or probation, the court may enter a judgment of conviction and may impose any sentence on the defendant that might have been imposed originally for the offense of which he or she was found guilty.

A court shall not revoke a suspension of sentence or probation because of a person's inability to achieve a high school diploma, high school equivalency diploma approved by the Department of Career Education, or gainful employment. Ark. Code Ann. § 16-93-308.

However, the court may revoke a suspension of sentence or probation if the person fails to make a good faith effort to achieve a high school diploma, high school equivalency diploma approved by the Department of Career Education, or gainful employment. Ark. Code Ann. § 16-93-308.

Preliminary Hearings

A defendant arrested for a violation of suspension or probation is entitled to a preliminary hearing to determine whether there is reasonable cause to believe that he or she has violated a condition of suspension or probation.

The defendant shall be given prior notice of the time and place of the hearing, the purpose of the hearing, and the condition alleged to have been violated.

The defendant has the right to hear and controvert evidence against him or her and to offer evidence in his or her own behalf. He or she also has the right to counsel and to cross-examine witnesses.

If the court conducting the preliminary hearing finds that there is reasonable cause to believe that the defendant has violated a condition of suspension or probation, it may order the defendant to be detained or it may return the defendant to supervision with conditions. If the court conducting the preliminary hearing does not find reasonable cause, it shall order the defendant released from custody.

The court conducting the preliminary hearing shall prepare and furnish to the court that suspended imposition of sentence on the defendant or placed him or her on probation a summary of the preliminary hearing, including the

responses of the defendant and the substance of the documents and evidence given in support of revocation.

A preliminary hearing is not required if:

The defendant waives the preliminary hearing;

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

The revocation hearing is held promptly after the arrest and in the judicial district where the alleged violation occurred or where the defendant was arrested.

Ark. Code Ann. § 16-93-307.

A suspension or probation shall not be revoked except after a revocation hearing.

The hearing shall be within sixty days of the defendant's arrest.

The defendant shall be given prior notice of the time and place of the hearing, the purpose of the hearing, and the condition alleged to have been violated.

The defendant has the right to hear and controvert evidence against him or her and to offer evidence in his or her own behalf. He or she also has the right to counsel and to cross-examine witnesses.

If suspension or probation is revoked, the court shall prepare and furnish to the defendant a written statement of the evidence relied on and the reasons for revoking suspension or probation.

Ark. Code Ann. §16-93-307.

As matter of due process, a defendant is entitled to advanced notice of the evidence relied upon for revocation of his or her probation. A defendant cannot properly prepare for a revocation hearing without knowing in advance what charges of misconduct are to be investigated. The burden is on the state to properly notify the

defendant of such evidence. If the basis for revocation was not stated in the revocation petition, the defendant will be entitled to a reversal. Hill v. State, 65 Ark. App. 131, 985 S.W.2d 342 (1999).

Effect of Revocation

Following revocation, the court may:

> Continue the period of suspension of imposition of sentence or continue the period of probation;
>
> Lengthen the period of suspension or the period of probation within the limits set by Ark. Code Ann. § 5-4-306;
>
> Increase the fine within the limits set by Ark. Code Ann. § 5-4-201;
>
> Impose a period of confinement to be served during the period of suspension of imposition of sentence or period of probation; or
>
> Impose any conditions that could have been imposed upon conviction of the original offense.

Ark. Code Ann. § 16-93-309.

Sex-Offender Registration

At the time of adjudication of guilt, the sentencing court shall enter on the sentencing order whether the offender is required to register as a sex offender.

> If the sentencing court finds the offender is required to register as a sex offender, then at the time of adjudication of guilt the sentencing court shall require the sex offender to complete the sex offender registration form prepared by the Director of the Arkansas Crime Information Center pursuant to Ark. Code Ann. § 12-12-908 and shall forward the completed sex offender registration form to the Arkansas Crime Information Center.
>
> A sex offender subject to lifetime registration under Ark. Code Ann. § 12-12-919 shall report in person every six months after registration to the local law enforcement agency having jurisdiction to verify registration.

> A sexually dangerous person subject to lifetime registration under Ark. Code Ann. § 12-12-919 shall report in person every ninety days after registration to the local law enforcement agency having jurisdiction to verify registration.
>
> Ark. Code Ann. § 12-12-906.

Sex offenses are defined at Ark. Code Ann. § 12-12-903(12).

The sentencing court shall assess at the time of sentencing a mandatory fine of two hundred fifty dollars on any person who is required to register. Ark. Code Ann. § 12-12-910.

Special procedures apply to those individuals that the prosecutor seeks to classify as "sexually dangerous person."

> To classify a person as a sexually dangerous person, a prosecutor may allege in the information that the prosecutor is seeking a determination that the defendant is a sexually dangerous person.
>
> If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offender Assessment Committee to issue a report to the sentencing court that recommends whether or not the defendant should be classified as a sexually dangerous person.
>
> After sentencing, the court shall make a determination regarding the defendant's status as a sexually dangerous person.
>
> The sentencing court shall retain jurisdiction to determine whether a defendant is a sexually dangerous person for one year after sentencing or for so long as the defendant remains incarcerated for the sex offense.
>
> Ark. Code Ann. § 12-12-918.

A person required to register as a sex offender shall verify registration every six months after the person's initial registration date during the period of time in which the person is required to register. The verification shall be done in person at a local law enforcement agency having jurisdiction. The person shall sign and date a Sex

Offender Acknowledgment Form in which a law enforcement officer shall also witness and sign. Ark. Code Ann. § 12-12-909.

A person required to register as a sex offender who claims to be homeless shall verify his or her registration every thirty days during the period of time in which the person is required to register as a sex offender and claims to be homeless. Ark. Code Ann. § 12-12-909.

Sex offender registration requirements are mandatory, and failure to comply with those duties is a strict liability offense. Adkins v. State, 371 Ark. 159, 264 S.W.3d 523 (2007).

DNA Sampling

Persons adjudicated guilty of a qualifying offense (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.

> A person who is acquitted on the grounds of mental disease or defect of the commission of a qualifying offense and committed to an institution or other facility shall also have a DNA sample drawn.

Unless finding that undue hardship would result, the sentencing court shall assess at sentencing a mandatory fine of not less than two hundred fifty dollars on any person required to provide a DNA sample. Ark. Code Ann. § 12-12-1118.

Record Sealing

The Comprehensive Criminal Record Sealing Act of 2013

The Comprehensive Criminal Record Sealing Act of 2013 is codified at Ark. Code Ann. §§ 16-90-1401 et seq. It repealed the provisions of Ark. Code Ann. §§ 16-90-901 *et seq.*, but left the provisions of Ark. Code Ann. §§ 16-93-301 *et seq.*, (concerning first time offenders and probation) intact. It was effective January 1, 2014.

The Act provides that a person is eligible to file a uniform petition to seal his or her record of a **misdemeanor or violation** sixty days after completion of his or her sentence, including full payment of restitution and court costs.

There is not a limit to the number of times a person may file a uniform petition to seal the record of a misdemeanor or violation except that a person may not file:

A new uniform petition to seal one of the following criminal offenses until after a period of five years has elapsed since the completion of the person's sentence for the conviction of:

Negligent homicide, Ark. Code Ann. § 5-10-105, if it was a Class A misdemeanor;

Battery in the third degree, Ark. Code Ann. § 5-13-203;

Indecent exposure, Ark. Code Ann. § 5-14-112;

Public sexual indecency, Ark. Code Ann. § 5-14-111;

Sexual assault in the fourth degree, Ark. Code Ann. § 5-14-127;

Domestic battering in the third degree, Ark. Code Ann. § 5-26-305; or

A misdemeanor violation of Ark. Code Ann. § 5-65-103;

A new uniform petition to seal a criminal offense listed above before one year from the date of the order denying the previous uniform petition;

A new uniform petition to seal any other misdemeanor or violation before ninety days from the date of an order denying a uniform petition to seal the misdemeanor or violation;

A new uniform petition to seal a misdemeanor or violation under this section if an appeal of a previous denial of a uniform petition to seal a misdemeanor or violation for the same misdemeanor or violation is still pending; or

A new uniform petition to seal a misdemeanor or violation under this section if:

The person was a holder of a commercial driver license or commercial learner's permit at the time the misdemeanor or violation was committed; and

The misdemeanor or violation was a traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation, committed in any type of motor vehicle.

Ark. Code Ann. § 16-90-1405.

For a uniform petition filed under Ark. Code Ann. § 16-90-1405, unless the circuit court or district court is presented with and finds that there is clear and convincing evidence that a misdemeanor or violation conviction should not be sealed under this subchapter, the court shall seal the misdemeanor or violation conviction. Ark. Code Ann. § 16-90-1415.

If a person has no more than one previous **felony** conviction, he or she may petition a court to seal a record of a conviction after five years has elapsed since the completion of the person's sentence for:

A Class C felony or Class D felony;

An unclassified felony;

An offense under Ark. Code Ann. §§ 5-64-401 et seq., that is a Class A felony or Class B felony;

Solicitation to commit, attempt to commit, or conspiracy to commit the substantive offenses listed above; or

A felony not involving violence committed while the person was less than eighteen years of age.

Ark. Code Ann. § 16-90-1406.

The following felonies are not eligible to be sealed:

A Class Y felony, Class A felony, or Class B felony, except as provided above;

Manslaughter, Ark. Code Ann. § 5-10-104;

An unclassified felony if the maximum sentence of imprisonment for the unclassified felony is more than ten years;

A felony sex offense;

A felony involving violence under Ark. Code Ann. § 5-4-501(d)(2); and

A felony for which a person served any portion of his or her sentence as an inmate in the Department of Correction.

Ark. Code Ann. § 16-90-1408.

A uniform petition filed under Ark. Code Ann. § 16-90-1406 may be granted if the court finds by clear and convincing evidence that doing so would further the interests of justice, considering the following factors:

Whether the person appears likely to reoffend;

The person's other criminal history;

The existence of any pending charges or criminal investigations involving the person;

Input from the victim of the offense for which the person was convicted, if applicable; and

Any other information provided by the state that would cause a reasonable person to consider the person a further threat to society.

Ark. Code Ann. § 16-90-1415.

A person may petition the court to seal a record of a conviction for possession of a **controlled substance**, Ark. Code Ann. § 5-64-419, or counterfeit substance, Ark. Code Ann. § 5-64-441, upon the completion of the person's sentence if, prior to sentencing:

An intake officer appointed by the court, where applicable, determines that the person has a drug addiction and recommends the person as a candidate for residential drug treatment;

The court places the person on probation and includes as part of the terms and conditions of the probation that:

The person successfully complete a drug treatment program approved by the court; and

The person remain drug-free until successful completion of probation; and

The person successfully completes the terms and conditions of the probation.

Ark. Code Ann. § 16-90-1407.

A uniform petition filed under Ark. Code Ann. § 16-90-1407 may be granted if the court finds that doing so is in the best interest of the petitioner and the state. Ark. Code Ann. § 16-90-1415.

A person may petition a district court or circuit court to seal a record of a prior **arrest** if charges have not been filed by the prosecuting attorney within one year of the date of the arrest. The petition shall be filed in the county in which the arrest was made. Ark. Code Ann. § 16-90-1409.

A person may petition to seal the records of a case in which there was for any reason:

Entry of an order **nolle prosequi** upon motion of the prosecuting attorney after one year has passed since the date of the entry of the order nolle prosequi;

Entry of an order of **dismissal**;

An **acquittal**, unless that acquittal was for reason of mental disease or defect under Ark. Code Ann. §§ 5-2-301 et seq.; or

A decision by the prosecuting attorney not to file charges.

The petition shall be filed in the court in which the order nolle prosequi or order of dismissal was entered. Ark. Code Ann. § 16-90-1410.

A uniform petition filed under Ark. Code Ann. § 16-90-1409 or Ark. Code Ann. § 16-90-1410 shall be granted unless the state shows by a preponderance of the evidence that doing so would place the public at risk, or not further the interests of justice. Ark. Code Ann. § 16-90-1415.

The court shall issue an order sealing the record of a conviction of a person **pardoned** by the Governor. (This mandate does not apply to a person convicted for a sex offense, an offense resulting in death or serious physical injury, or any offense where the victim was under eighteen years of age.)

A person shall have his or her record of a conviction sealed by the court if the person:

(1) Committed a felony in this state while under sixteen years of age;

(2) Was convicted and given a suspended sentence;

(3) Received a pardon for the conviction; and

(4) Has not been convicted of another criminal offense.

This section does not prevent a person from requesting that his or her criminal record be sealed under Ark. Code Ann. § 16-90-1405 or 1406.

Ark. Code Ann. § 16-90-1411.

A uniform petition filed under Ark. Code Ann. § 16-90-1411 shall be granted if the court finds that the requirements of Ark. Code Ann. § 16-90-1411 are met. Ark. Code Ann. § 16-90-1415.

The **procedure** for sealing of records begins with a person, who is eligible under the Act, filing a uniform petition in the circuit or district court in the county where the offense was committed and in which the person was convicted for the offense.

> If a person has previously petitioned the court and was denied, the person may not file another uniform petition until one year has passed.
>
> A copy of the petition shall be served upon the prosecuting attorney and the arresting party if that person is a named party (not required).
>
> The prosecuting attorney may file a notice of opposition within thirty days. The court must set a hearing if a notice of opposition is filed and the person is otherwise eligible to have his record sealed under this subchapter or if the offense is an eligible felony conviction.
>
> The court must wait ninety days to grant the petition after it is served on the prosecuting attorney, but it can deny a petition at any time.
>
> The clerk shall certify copies of the uniform order to the prosecuting attorney, arresting agency, ACIC, and the district court where the person appeared before the transfer or appeal to circuit court.
>
> The circuit court clerk, and the district court clerk if applicable, shall remove all documents relating to the record, and sequester them in a file in a separate and confidential holding area within the clerk's office. A docket sheet shall be replaced by the sealed docket sheet; it shall contain the docket number, a statement that the record has been sealed, and the date that the order to seal the record was issued. All indices to the file of the person with a sealed record shall be maintained in a way to prevent general access to the identification of the person.
>
> The prosecuting attorney shall likewise remove all documents relating to the record and sequester them in a file in a separate and confidential holding area in his or her office. The arresting agency shall do the same.
>
> Ark. Code Ann. § 16-90-1413.

ACIC shall provide the uniform petitions and uniform orders. Ark. Code Ann. § 16-90-1414.

All of the Uniform Petitions and Orders to Seal can be found beginning on Appendix page 195.

An **appeal** of the grant or denial of the uniform petition to seal may be taken by either party. Ark. Code Ann. § 16-90-1415.

The custodian of a sealed record shall not disclose the existence of the sealed record or release the sealed record except when requested by:

> The person whose record was sealed or the person's attorney when authorized in writing by the person;
>
> A criminal justice agency, as defined in Ark. Code Ann. § 12-12-1001, and the request is accompanied by a statement that the request is being made in conjunction with:
>
> An application for employment with the criminal justice agency by the person whose record has been sealed; or
>
> A criminal background check under the Polygraph Examiners Licensing Act, Ark. Code Ann. §§ 17-39-101 et seq., or the Private Security Agency, Private Investigator, and School Security Licensing Act, Ark. Code Ann. §§ 17-40-101 et seq.;
>
> A court, upon a showing of:
>
> > A subsequent adjudication of guilt of the person whose record has been sealed; or
> >
> > Another good reason shown to be in the interests of justice;
>
> A prosecuting attorney, and the request is accompanied by a statement that the request is being made for a criminal justice purpose; or
>
> The Arkansas Crime Information Center.
>
> Ark. Code Ann. § 16-90-1416.

The **effect** of a sealed record is as follows: a person whose record has been sealed shall have all privileges and rights restored, and the record that has been sealed shall not affect any of his or her civil rights or liberties unless otherwise specifically provided by law.

A person who wants to reacquire the right to vote, which was removed from him or her as the result of a felony conviction, must follow the procedures in Arkansas Constitution, Amendment 51, § 11.

A petition granted pursuant to the Comprehensive Record Sealing Act of 2014 does not reconfer the right to carry a firearm if that right was removed as the result of a felony conviction.

Upon the entry of the uniform order, the person's underlying conduct shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist.

The Act does not prevent the use of a prior conviction otherwise sealed under this subchapter for the following purposes:

Any criminal proceeding for any purpose not otherwise prohibited by law;

Determination of offender status under the former Ark. Code Ann. § 5-64-413;

Habitual offender status, Ark. Code Ann. §§ 5-4-501 et seq.;

Impeachment upon cross-examination as dictated by the Arkansas Rules of Evidence; or

Any disclosure mandated by Rule 17, 18, or 19 of the Arkansas Rules of Criminal Procedure.

Ark. Code Ann. § 16-90-1417.

The clerk shall collect a fifty dollar **filing fee** when a petition to seal is filed unless the petitioner is indigent and the fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure. Ark. Code Ann. § 16-90-1419.

Relevant Case Law

See Bolin v. State, 2015 Ark. 149, 459 S.W.3d 788 for a discussion on whether the Comprehensive Criminal Record Sealing Act of 2013 [CCRSA] should be applied retroactively. In *Bolin*, the Court concluded "the legislature expressly designated

that the CCRSA should be retroactive with regard to misdemeanors but chose to exclude that retroactivity with regard to felonies. Had the legislature intended for the CCRSA to govern the sealing of felony records for offenses occurring before January 1, 2014, it could have included language to that effect[.]"

First-time Offenders

Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit court or district court, in the case of a defendant who previously has not been convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one year, under such terms and conditions as may be set by the court.

> A sentence of a fine not exceeding thirty-five hundred dollars or an assessment of court costs against a defendant does not negate the benefits provided by the First Offender Act or cause the probation placed on the defendant to constitute a conviction.
>
> No person shall be eligible for sealing of his or her record as a first-time offender whose offense is a serious felony involving violence or a felony involving violence under Ark. Code Ann. § 5-4-501, or a sexual offense under Ark. Code Ann. §§ 5-14-101 et seq., and Ark. Code Ann. §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605.
>
> Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.
>
> Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and seal the record, consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013, Ark. Code Ann. §§ 16-90-1401 et seq.

During the period of probation, a defendant is considered as not having a felony conviction except for:

(1) Application of any law prohibiting possession of a firearm by certain persons;

(2) A determination of habitual offender status;

(3) A determination of criminal history; (4) A determination of criminal history scores;

(5) Sentencing; and

(6) The purposes of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

After successful completion of probation placed on the defendant under the First Offender Act, a defendant is considered as not having a felony conviction except for:

(1) A determination of habitual offender status;

(2) A determination of criminal history;

(3) A determination of criminal history scores;

(4) Sentencing; and

(5) The purposes of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

A person, whose records have been sealed pursuant to the First Offender Act, may look to Ark. Code Ann. § 5-73-103 to determine eligibility to possess a firearm..

A court as a condition of probation shall order the defendant to:

> Enroll in and complete a vocational, technical, educational, or similar program if the court finds that the defendant's lack of an employable or marketable skill contributes to the defendant's being unemployed.

The court may order the person to pay tuition for any vocational, technical, educational, or similar program in installments after the completion of the education or training program.

If the defendant is on probation at the end of the vocational, technical, educational, or similar program, he or she shall be required to work in suitable employment for the remainder of his or her probation or for three years, whichever occurs earlier; or

Work consistently in suitable employment for the entire duration of his or her probation or for three years, whichever occurs earlier.

Ark. Code Ann. § 16-93-303.

All district court judges and circuit court judges shall immediately report to the Arkansas Crime Information Center, in the form prescribed by the Center, all probations of criminal defendants under Ark. Code Ann. §§ 16-93-301 - 16-93-303.

Prior to granting probation to a criminal defendant under Ark. Code Ann. §§ 16-93-301 - 16-93-303, the court shall query the Center to determine whether the criminal defendant has previously been granted probation under the provisions of Ark. Code Ann. §§ 16-93-301 - 16-93-303.

If the center determines that an individual has utilized Ark. Code Ann. §§ 16-93-301 - 16-93-303 more than one time, the Center shall notify the last sentencing judge of that fact.

During the probationary period, the Center shall report the case as pending and shall not record it as guilty until the circuit court or district court enters an adjudication of guilt.

Ark. Code Ann. § 16-93-304.

ACIC provides a First Offender Probation Online Search database of individuals who have previously been granted probation.

Upon placing a person on probation, the court shall issue an order, in writing, setting forth that the offender is being placed on probation, that the offender has knowledge and understanding of the consequences of probation and violations thereof, any terms and conditions of the probation, as well as any presentence investigation completed. Ark. Code Ann. § 16-93-1207.

Alternative Sentencing Options

Drug court programs are an interdisciplinary, non-adversarial judicial process for diverting an offender (or alleged offender) who has a demonstrated dependence on alcohol or an illicit drug, into a strenuous treatment program that includes frequent drug testing, required employment, treatment and counseling and regular court appearances to monitor program compliance. Drug courts are typically staffed by a team consisting of the judge and court staff, a prosecutor, a public defender or private attorney representing the offender, a probation or parole officer, and a drug counselor.

Upon successful completion of a drug court program, an individual may have his or her criminal record(s) sealed. See Ark. Code Ann. §16-98-303.

Find out more about drugs courts on the AOC's website or read the latest legislative report.

XIII. Post Trial

Civil Post Trial

Motion for a Directed Verdict

A party may move for a directed verdict at the close of the evidence offered by an opponent and may offer evidence in the event that the motion is not granted, without having reserved the right to do so and to the extent as if the motion had not been made.

A party may also move for a directed verdict at the close of all of the evidence.

A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts.

A motion for a directed verdict shall state the specific grounds therefor.

The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Ark. R. Civ. P. 50(a).

Motion for Judgment Notwithstanding the Verdict

Whenever a motion for a directed verdict is denied, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.

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 entered in accordance with his motion for a directed verdict.

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 his 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.

> If the court neither grants nor denies the motion within thirty days of the date on which it is filed or treated as filed, it shall be deemed denied as of the thirtieth day.

A motion for a new trial may be joined with a motion for judgment notwithstanding the verdict, or a new trial may be prayed in the alternative.

If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed.

If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Ark. R. Civ. P. 50(b).

Grant of Motion for Judgment Notwithstanding the Verdict – Conditional Rulings

If the motion for judgment notwithstanding the verdict is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial.

If the motion for a new trial is conditionally granted, the order thereon does not affect the finality of the judgment.

If the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. If the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may file a motion for a new trial pursuant to Arkansas Rule of Civil Procedure not later than ten days after entry of the judgment notwithstanding the verdict.

Ark. R. Civ. P. 50(c).

Denial of Motion for Judgment Notwithstanding the Verdict – Conditional Rulings

If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new

trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict.

If the appellate court reverses the judgment, it may determine the appellee is entitled to a new trial or it may direct the trial court to determine whether a new trial shall be granted.

Ark. R. Civ. P. 50(d).

Failure to Question Sufficiency of the Evidence

In a jury trial, a party who does not have the burden of proof on a claim or defense must move for a directed verdict based on insufficient evidence at the conclusion of all the evidence to preserve a challenge to the sufficiency of the evidence for appellate review. (Otherwise it is waived.)

A party who has the burden of proof on a claim or defense need not make such a motion to challenge on appeal the sufficiency of the evidence supporting a jury verdict adverse to that party.

If for any reason the motion is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

Ark. R. Civ. P. 50(e).

Motion for a New Trial

On the motion of any aggrieved party, a new trial may be granted to all or any of the parties and on all or part of the claim for any of the following grounds materially affecting the substantial rights of such party:

(1) Any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial;

(2) Misconduct of the jury or prevailing party;

(3) Accident or surprise which ordinary prudence could not have prevented;

(4) Excessive damages appearing to have been given under the influence of passion or prejudice;

(5) Error in the assessment of the amount of recovery, whether too large or too small;

(6) The verdict or decision is clearly contrary to the preponderance of the evidence or is contrary to the law;

(7) Newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial; or

(8) Error of law occurring at the trial and objected to by the party making the application.

On a motion for a new trial in an action tried without a jury, the court may:

Open the judgment if one has been entered;

Take additional testimony;

Amend findings of fact and conclusions of law; or

Make new findings and conclusions, and direct the entry of a new judgment.

Motions shall:

Be written;

Set forth in separate paragraphs the grounds or assignments of error; and

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 thirty days of the date on which it is filed or treated as filed, it shall be deemed denied as of the thirtieth day.

If the motion is based on grounds (2), (3), or (7) above, the motion must be accompanied by supporting affidavits. The opposing party may file opposing affidavits.

> The opposing party shall have ten days after service within which to file opposing affidavits which period may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

The court may, on its own initiative, order a new trial for any reason for which it might have granted a new trial on motion of a party, not later than ten days after entry of judgment.

> After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely filed, for a reason not stated in the motion.
>
> In either case, the court shall specify in the order the ground therefor.

Ark. R. Civ. P. 59.

Relief from Judgment, Decree, or Order

Relief from a judgment is governed by Ark. R. Civ. P. 60 (which differs substantially from its federal counterpart). Under Ark. R. Civ. P. 60(a), the trial court may modify or vacate a judgment "[t]o correct errors or mistakes or to prevent the miscarriage of justice … within ninety days of its having been filed with the clerk." This action may be taken "on motion of the court or any party, with prior notice to all parties." The court has "broad authority" to prevent the miscarriage of justice but cannot modify a judgment to take action that, in retrospect, it should have taken but did not in fact take.

After expiration of the ninety-day period, the court may modify or vacate a judgment only under the circumstances described in Ark. R. Civ. P. 60(b) and (c).

Arkansas Rule Civil Procedure 60(b) provides that a clerical error or an error of "oversight or omission" may be corrected "at any time" with prior notice to all parties. If an appeal has been docketed, "such mistakes … may be so corrected with leave of the appellate court." Clerical errors occur when, for example, the judgment includes an inaccurate dollar amount because of a mistake in addition, misidentifies the parties and contains internal inconsistences, or inadvertently omits portions of a ruling announced in open court.

By contrast, amending a divorce decree to include division of retirement benefits not mentioned in the judge's findings cannot be characterized as a correction of clerical error. Nor does the dismissal of a suit for failure to prosecute based on a mistaken view of the underlying circumstances constitute such an error. In addition, an error resulting from the negligence of a party or his or her attorney is not the sort of mistake contemplated by Ark. R. Civ. P. 60(b).

Arkansas Rule Civil Procedure 60(c) establishes the conditions under which a judgment may be set aside after ninety days. The court may act if grounds for a new trial have been discovered after expiration of that period. If the basis for the motion is "newly discovered evidence," the motion to set aside must be made within one year from the time the evidence was discovered or one year from the filing of the judgment, "whichever is the earlier." Notice of the motion must be served upon the other parties to the action within the time limit for making the motion. The moving party must show that the newly discovered evidence could not, with reasonable diligence, have been discovered in time to present it at the trial.

In addition, a motion to set aside a judgment may be made by a party who was constructively served and did not appear. Such a motion must be made within two years after the filing of the judgment or within one year after the judgment has been served upon him, whichever is earlier. Notice of the filing of the motion must be served upon any adverse party within the time for filing the motion.

A judgment may also be set aside for "misrepresentation or fraud (whether heretofore denominated intrinsic or extrinsic) by an adverse party." The original version of Ark. R. Civ. P. 60(c) required a showing of "fraud practiced by the successful party in obtaining the judgment," i.e., extrinsic fraud. This limitation, which produced troublesome results, was eliminated in 2000 when the rule was amended to abolish the "unfair distinction between extrinsic and intrinsic fraud." Consequently, any type of fraud or misrepresentation is sufficient, except that proof of extrinsic fraud has been held necessary in adoption cases. Even if fraud occurred, however, as a matter of public policy an adjudication of paternity in a divorce decree cannot be corrected through Ark. R. Civ. P. 60.

The remaining grounds for setting aside a judgment, as provided in Ark. R. Civ. P. 60(c), are misprisions of the clerk; erroneous proceedings against an infant or person of unsound mind when neither the condition of the defendant nor the error appears in the proceedings; death of one of the parties before judgment; and errors of judgment shown by an infant within twelve months after reaching age eighteen, upon a showing of cause.

The trial court loses jurisdiction to act after ninety days, even if the motion was made during that period. However, the ninety day limitation does not apply to injunctions or to other cases in which the court has continuing jurisdiction, to certifications made pursuant to Ark. R. Civ. P. 54(b), or to probate orders so long as the court's action is taken within the time allowed for appeal after a final judgment. In addition, a judgment may be modified after ninety days to reflect accurately the court's decision or to clarify its original intention.

After ninety days have elapsed from the entry of judgment, the trial court's control is limited by Ark. R. Civ. P. 60(c), with the exceptions previously noted. By its terms, this subdivision does not apply to default judgments, which are governed by Ark. R. Civ. P. 55(c). Whether or not the ninety day period has expired, a plaintiff moving to set a judgment aside must make a *prima facie* showing of a valid cause of action, and a defendant making the motion must make a *prima facie* showing of a valid defense. The motion is addressed to the sound discretion of the trial court.

2 Arkansas Civil Prac. & Proc. § 31:7 (5th ed.).

Remittitur and Additur

If a trial court considers the jury's award of damages to be excessive in view of the evidence, it may conditionally grant a new trial, subject to the prevailing party's agreement to remit the excess amount. A new trial is ordered if the victor rejects the reduced award. By accepting the lower amount, the winning party acquiesces in the judgment and thus cannot appeal, although he or she may cross-appeal in the event of an appeal by the losing party.

The court's power with respect to remittitur is inherent, applies to compensatory and punitive damages, and may be exercised *sua sponte* as well as in response to a motion for new trial. Remittitur is appropriate when the amount of compensatory

damages cannot be sustained by the evidence, "shocks the conscience of the court or demonstrates that jurors were motivated by passion or prejudice."

2 Arkansas Civil Prac. & Proc. § 32:3 (5th ed.), see also O'Neal Ford, Inc. v. Davie, 299 Ark. 45, 770 S.W.2d 656 (1989).

Implicit in Ark. R. Civ. P. 59 is the trial court's power to grant a new trial where the damages are excessive unless the prevailing party agrees to a remittitur. Shepherd v. Looper, 293 Ark. 29, 732 S.W.2d 150 (1987).

Additur, the converse of remittitur, is not recognized in Arkansas. Routh Wrecker Serv., Inc. v. Washington, 335 Ark. 232, 980 S.W.2d 240 (1998).

Criminal Post Trial

Trial Counsel's Duties on Appeal

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

If court appointed counsel is permitted to withdraw in the interest of justice or for other sufficient cause in a direct appeal of a conviction or in an appeal in a postconviction proceeding under Ark. R. Crim. P. 37.5, new counsel shall be appointed promptly by the court exercising jurisdiction over the matter of counsel's withdrawal.

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

Ark. R. App. P. Crim. 16.

Motion for a Directed Verdict

In a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all of the evidence. A motion for directed verdict shall state the specific grounds therefor.

In a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all of the evidence. The motion for dismissal shall state the specific grounds therefor. If the defendant moved for dismissal at the conclusion of the prosecution's evidence, then the motion must be renewed at the close of all of the evidence.

A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient.

> A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment.

A renewal at the close of all of the evidence of a previous motion for directed verdict or for dismissal preserves the issue of insufficient evidence for appeal. If for any reason a motion or a renewed motion at the close of all of the evidence for directed verdict or for dismissal is not ruled upon, it is deemed denied for purposes of obtaining appellate review on the question of the sufficiency of the evidence.

Ark. R. Crim. P. 33.1.

Case Law

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).

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).

To preserve a challenge to the sufficiency of the evidence for appeal, a defendant must make a specific motion for a directed verdict at the close of the state's case that advises the circuit court of the exact element of the crime the state failed to prove. Duggar v. State, 2013 Ark. App. 135 (2013).

Motion for a New Trial

A new trial should be granted when:

Trial was had in absence of defendant;

Jury received evidence out of court;

Verdict was by lot or other manner than a fair expression of opinion;

Erroneous instruction was given or proper instruction was omitted;

Verdict was against the evidence and law;

Newly discovered evidence; and

The defendant did not receive a fair trial.

Ark. Code Ann. § 16-89-130.

Relevant Rules & Case Law

Post Trial Motions: Ark. R. Crim. P. 33.3.

A motion for new trial shall be filed not more than thirty days after the entry of judgment. Ark. R. Crim. P. 33.3.

Newly discovered evidence – It is the duty of the trial judge, where it appears that the defendant has discovered important evidence in his favor since the verdict that he could not have before anticipated or obtained by the exercise of due diligence, to grant a new trial. McCullars v. State, 183 Ark. 376, 35 S.W.2d 1030 (1931).

A verdict by lot is a verdict by chance, such as by flipping a coin or drawing straws. A verdict reached by a jury through a compromise of their views is not a verdict by lot. Blaylack v. State, 236 Ark. 924, 370 S.W.2d 615 (1963).

An acquittal cannot be set aside by the court. Cummins v. United States, 232 F. 844 (8th Cir. 1916).

Decision whether to grant a new trial is left to the sound discretion of the trial judge and will not be reversed absent an abuse of discretion or manifest prejudice to complaining party. Richmond v. State, 302 Ark. 498, 791 S.W.2d 691 (1990).

There is no abuse of discretion in refusing a new trial on the ground of newly discovered cumulative testimony. Crouthers v. State, 154 Ark. 372, 242 S.W. 815 (1922).

Rule 37

Scope of Remedy

The 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.

The judge may set aside the original judgment, discharge the petitioner, resentence him or her, grant a new trial, or otherwise correct the sentence.

See Ark. R. Crim. P. 37.1 and 37.4.

See also Branning v. State, 2010 Ark. 401 (2010)(defendant was not eligible for postconviction relief since he was not in custody at the time he filed the petition).

Note: 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).

Grounds

A person in custody under sentence of a circuit court claiming a right to be released, or to have a new trial, or to have the original sentence modified may file a petition on the following grounds, praying that the sentence be vacated or corrected:

> That the sentence was imposed in violation of the Constitution and laws of the United States or this state; or
>
> That the court imposing the sentence was without jurisdiction to do so; or

That the sentence was in excess of the maximum sentence authorized by law; or

That the sentence is otherwise subject to collateral attack.

Ark. R. Crim. P. 37.1.

Form of Petition

If the petition is not in the proper form, it may be dismissed.

The petition must be verified with the notarized signature of petitioner.

The petition shall state in concise, nonrepetitive, factually specific language, the grounds upon which it is based. The petition, whether handwritten or typed, shall be clearly legible, and shall not exceed ten pages of thirty lines per page and fifteen words per line, with left and right margins of at least one and one-half inches and upper and lower margins of at least two inches.

In addition to filing the petition with the clerk of the court, the petitioner shall send a letter to the judge of the circuit court that imposed the sentence notifying the judge that the petition has been filed and file with the clerk a copy of the letter.

The letter to the judge shall enclose all copies of pleadings and documents relating to the petition and shall reflect service on the prosecuting attorney.

Filings pursuant to this subsection shall be used solely for purposes of Administrative Order No. 3, and failure to comply shall not be grounds for dismissing the petition.

Administrative Order No. 3 requires circuit judges to report cases under advisement for more than ninety days to the Administrative Office of the Courts. The ninety-day period does not start to run on a Rule 37 petition until the judge is notified as provided.

Ark. R. Crim. P. 37.1.

Time Limits

No proceedings under this rule shall be entertained by the circuit court while the appeal is pending.

All grounds must be raised in the first petition filed under the rule, unless the court denied the first petition without prejudice.

If a conviction was obtained on a plea of guilty, or the petitioner was found guilty at trial and did not appeal the judgment of conviction, the petition must be filed in the appropriate circuit court within ninety days of the date of entry of judgment.

> If a petition is filed before the entry of the judgment, the petition shall be treated as filed on the day after the entry of the judgment.

If an appeal was taken of the judgment of conviction, the petition must be filed in the circuit court within sixty days of the date the mandate is issued by the appellate court.

> If a petition is filed after a conviction is affirmed by the appellate court but before the mandate is issued, the petition shall be treated as filed on the day after the mandate is issued.

In the event an appeal was dismissed, the petition must be filed in the appropriate circuit court within sixty days of the date the appeal was dismissed.

If the appellate court affirms the conviction but reverses the sentence, the petition must be filed within sixty days of a mandate following an appeal taken after resentencing.

> If no appeal is taken after resentencing, then the petition must be filed with the appropriate circuit court within ninety days of the entry of the judgment.

The decision of the court in any proceeding under this rule shall be final when the judgment is rendered. No petition for rehearing shall be considered.

Before the court acts upon a petition, the petition may be amended with leave of the court.

The state may file a response within twenty days after service of a petition, with evidence of service on opposing counsel or on the petitioner if he or she is acting pro se.

Ark. R. Crim. P. 37.2.

Note: The 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). However, 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).

See McJames v. State, 2010 Ark. 74 (2010)(Rule 33.3's 30 day deemed-denied provision held to be inapplicable to Rule 37 proceedings).

Nature of Proceedings

The petition may be denied without a hearing if the files and records conclusively show that the petition is meritless.

The trial court must make written findings specifying the part of the record relied on in reaching its decision.

If the trial court finds that the petitioner is indigent, counsel may be appointed for any hearing held and for any appeal if one is taken.

> 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 a hearing is to be held, the court shall notify the prosecutor and counsel who represented petitioner at the trial level of the date of the hearing.

The petitioner shall be present at the hearing unless the petitioner waives the right to appear, the trial court determines that the issues to be addressed at the hearing can be fairly resolved without the presence of the petitioner, or the trial court directs that the testimony of petitioner be taken by deposition.

The Rules of Evidence shall apply at any hearing.

The court must make written findings of fact and conclusions of law.

When an order is rendered, the circuit court shall promptly mail a copy of the order to the petitioner.

Ark. R. Crim. P. 37.3.

Special Rule for Those Under Sentence of Death – Rule 37.5

Rule 37.5 applies only to persons under a sentence of death.

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.

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.

> If the Supreme Court affirms a sentence of death, the hearing shall be held not later than twenty-one days after the mandate is issued.

The person under sentence of death shall be present at the hearing.

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.

> If the person rejects the appointment of an attorney, the waiver shall be made in open court on the record.
>
> 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.
>
> 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.

The written findings and order shall be issued within seven days after the required hearing. The circuit clerk shall forward a copy of the order to the Attorney General.

The appointment of an attorney under Rule 37.5 shall remain effective through any appeal to the Supreme Court.

An attorney appointed to represent a person under Rule 37.5 shall meet the following standards, unless they represented the person at the trial level or in post-conviction proceedings.

Within ten years immediately preceding the appointment, the attorney shall have represented a petitioner under sentence of death in a state or federal post-conviction proceeding; or 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

Within ten years immediately preceding the appointment, the attorney shall have 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 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

The attorney shall have been actively engaged in the practice of law for at least three years; and

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.

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.

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.

If the circuit court determines that an attorney is clearly qualified because of his unique training, experience, and background to represent a person under a 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.

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.

The circuit court may appoint the Capital, Conflicts, and Appellate Office of the Arkansas Public Defender Commission, unless otherwise disqualified.

If a person is under sentence of death, any attorney who represented such person at trial or on appeal in connection with the conviction that resulted in the sentence of death shall make available the complete files in connection with such conviction to the attorney who represents such person in post-conviction proceedings under this rule. The attorney who represents such person in post-conviction proceedings may inspect and photocopy such files, but the attorneys who represented such person at trial or on appeal shall maintain custody of their respective files, except for material which was admitted into evidence in any trial proceeding, for at least five years following completion of their representation of such person.

A Rule 37 petition 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.

Upon the filing of a Rule 37 petition, the petitioner shall immediately forward a copy of the petition to the circuit judge who entered the order, the prosecuting attorney, 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.

When the circuit court enters an order appointment counsel to assist in post-conviction proceedings, 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:

(1) A timely Rule 37 petition is not filed; or

(2) A timely petition is filed 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.

If the circuit court determines that a hearing is necessary, the hearing shall be held within one hundred eighty days from the date of the filing of the petition, unless continued for good cause shown.

If a hearing on the petition is held, the circuit court shall, within sixty 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 one hundred twenty 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 thirty days if the circuit court requests or permits post-hearing briefs.

Ark. R. Crim. P. 37.5.

Motion for Reduction or Correction of Sentence

Any circuit court, upon receipt of petition by the aggrieved party for relief and after the notice of the relief has been served on the prosecuting attorney, may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided in this section for the reduction of sentence.

Ark. Code Ann. § 16-90-111.

The proper time limitations are provided in Ark. R. Crim. P. 37.2.

The time limitations in the statute have been superseded to the extent that they conflict with the time limitations for postconviction relief in Rule 37. Heringer v. State, 2009 Ark. 376 (2009).

Case Law

An "illegal sentence" is defined as a sentence illegal on its face. Abdullah v. State, 290 Ark. 537, 720 S.W.2d 902 (1986).

A circuit court has jurisdiction to correct an illegal sentence even if it has been placed into execution. Gavin v. State, 354 Ark. 425, 125 S.W.3d 189 (2003).

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).

Habeas Corpus

The writ of *habeas corpus* shall be granted to any person who shall apply for the writ by petition showing, by affidavit or other evidence, probable cause to believe he or she is detained without lawful authority, is imprisoned when by law he or she is entitled to bail, or is actually innocent of the offense or offenses for which the person was convicted. Ark. Code Ann. § 16-112-103.

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 his or her father, mother, guardian or next friend. 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 his or her husband, parent, guardian or next friend. Ark. Code Ann. § 16-112-103.

The writ of *habeas corpus* shall be issued upon proper application by a Justice of the Supreme Court or a judge of the circuit court. Ark. Code Ann. § 16-112-102.

A bond may be required of the applicant, with surety, payable to the state or person against whom the writ is directed, and conditioned on the detainee not escaping and payment of such costs and charges which may be awarded against him. Ark. Code Ann. § 16-112-104.

The writ shall be signed by the officer and be directed to the person having custody of the detainee (in his official name, in his own name, or by description if the name is unknown). It shall designate the person having custody by name or office and designate the person to be produced by name or description. The writ shall be returnable at a time and place specified before the issuing court. It shall be served by any qualified officer or by a private individual designated by the judge. Ark. Code Ann. §§ 16-112-105 – 107.

The writ shall be returned within three days of service, adding one day for every twenty miles further than twenty miles to be traveled. It shall be signed by the person served and shall set out whether or not he has the party in his custody, and if so, the authority and true cause of such custody set forth at large. The party shall also return a copy of any written authority for the custody. If the party has transferred custody before service of the writ, the party shall set out to whom,

when, for what cause, and what authority custody has been transferred. Ark. Code Ann. § 16-112-108.

If the person to be produced cannot be brought before the court without danger, from sickness or other infirmity, the person in whose custody he or she is may state the fact in his or her return, verifying the fact by his or her oath. The court or judge, if satisfied of the truth of the allegations, shall proceed thereon to dispose of the matter in the same manner as if the prisoner were brought before him. Ark. Code Ann. § 16-112-112.

Witnesses may be summoned and punished for contempt as in other proceedings. 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. Ark. Code Ann. § 16-112-114.

After a hearing, the judge shall either discharge or remand the petitioner, admit the prisoner to bail, or make such order as may be proper. He or she shall adjudge the costs of the proceeding, including the charge for transporting the prisoner. The payment may be enforced by attachment or otherwise. Ark. Code Ann. § 16-112-115.

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.

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), see also Carter v. Norris, 367 Ark. 360, 240 S.W.3d 124 (2006).

Detention for an illegal period of time is precisely what a writ of *habeas corpus* is designed to correct; however, a *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal or postconviction relief. Friend v. Norris, 364 Ark. 315, 219 S.W.3d 123 (2005).

Ordinarily, a person must be confined in order to avail himself of *habeas corpus* relief. A person who has been released on bond, the conditions of which do not

restrict his movements, is not entitled to relief through writ of *habeas corpus*. Lane v. State, 217 Ark. 114, 229 S.W.2d 43 (1950).

Relevant Case Law

Habeas corpus does not provide a remedy to a defendant desirous of attacking a plea on the grounds that defendant had a history of mental illness, or that the plea was coerced or obtained by false promises, threats, misinformation, deception, or misconduct. The matter could, and should, have been raised in a petition for postconviction relief, rather than a *habeas corpus* petition. Graham v. State, 358 Ark. 296, 188 S.W.3d 893 (2004).

Writ of *habeas corpus* was not the appropriate remedy for petitioner's claim that guilty pleas to capital murder were invalid due to trial court's alleged failure to establish factual basis for pleas, where the claim did not raise a question of trial court's jurisdiction or of a void or illegal sentence. Friend v. Norris, 364 Ark. 315, 219 S.W.3d 123 (2005).

Based on New Scientific Evidence

A person convicted of a crime may commence a proceeding for relief by *habeas corpus* petition when scientific evidence not available at trial establishes the petitioner's actual innocence, or the scientific predicate for the claim could not have been previously discovered through the exercise of due diligence. Ark. Code Ann. § 16-112-201.

See Echols v. State, 2010 Ark. 417, 373 S.W.3d 892 (2010)(death-row inmate was not required to conclusively prove that he had not committed the capital murders of which he was convicted in order to obtain new trial under *habeas* statute after postconviction DNA testing of evidence; rather, inmate was required to establish by compelling evidence that a new trial would result in an acquittal).

Error Coram Nobis

Due diligence is required in making application for relief by writ of *error coram nobis*. Dansby v. State, 343 Ark. 635, 37 S.W.3d 599 (2001).

Error coram nobis is a common law writ of error that is directed to a court for review of its own judgment based on alleged errors of fact. It may be brought when

there are facts, if they had been known to the trial court, which would have prevented the judgment.

Click here for a historical description of the writ.

Case Law

Error corum nobis is 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).

> Circuit court can entertain petition for writ of *error coram nobis* after an appeal only if Supreme Court grants permission. Larimore v. State, 327 Ark. 271, 938 S.W.2d 818 (1997).
>
> *See also* Smith v. State, 301 Ark. 374, 784 S.W.2d 595 (1990)(where the newly discovered evidence was not a basis for writ of *coram nobis*).
>
> *And see* Newman v. State, 2009 Ark. 539, 354 S.W.3d 61 (2009)(where Supreme Court granted permission after the conviction was affirmed on appeal because defendant appeared to have a meritorious claim that he was incompetent at the time of trial).

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

Movant must cite some compelling need for specific documentary evidence to support some allegation contained in a petition for postconviction relief. Indigency alone not good cause to grant motion. Austin v. State, 287 Ark. 256, 697 S.W.2d 914 (1985).

Freedom of Information Act does not require court to provide photocopying at public expense. *See* Moore v. State, 324 Ark. 453, 921 S.W.2d 606 (1996).

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.

> 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 court reporter shall transcribe all portions of the criminal proceedings consistent with Article III of the Rules of the Supreme Court and shall file the transcript with the circuit clerk within ninety days after entry of the judgment. Within thirty days after receipt of the transcript, the circuit clerk shall compile the record consistent with Article III and shall file the record with the clerk of the Arkansas Supreme Court for mandatory review consistent with this rule and for review of any additional issues the appellant may enumerate.

See the sample form on Appendix page 95.

XIV. Judgment Enforcement

Provisional Remedies

Attachment

The Arkansas prejudgment attachment code provisions, Ark. Code Ann. §§ 16-110-101 *et seq.*, 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.

Garnishment

A plaintiff may apply for a writ of garnishment setting forth the claim, demand, or judgment and commanding the officer charged with the execution thereof to summon the person named as garnishee.

> The summons shall order the garnishee to:
>
> Appear at the return day of the writ and answer what goods, chattels, moneys, credits, and effects he or she may have in his or her hands or possession belonging to the defendant to satisfy the judgment, and
>
> Answer such further interrogatories as may be exhibited against him. Ark. Code Ann. § 16-110-401.

If the garnishment is issued before the judgment, the plaintiff shall give bond in double the amount for which the garnishment is issued.

Upon application for a writ of garnishment by any qualified judgment creditor, the clerk of the court shall attach to the writ of garnishment a "Notice to the Defendant." As an alternative, the "Notice to Defendant" may be incorporated as a part of the writ of garnishment.

A writ of garnishment together with the "Notice to Defendant" shall be directed, served, and returned in the same manner as a writ of summons.

The judgment creditor or the judgment creditor's attorney shall mail a copy of the writ of garnishment and the "Notice to Defendant" to the judgment debtor and the

judgment debtor's attorney, if any, within five days from the date the writ of garnishment is served on the garnishee.

The judgment creditor or the judgment creditor's attorney is not required to mail another "Notice to Defendant" to the judgment debtor for future garnishments on the same debt within twelve months of the original garnishment.

If further garnishments are filed after the original garnishment, then the "Notice to Defendant" is required to be mailed by the judgment creditor or the judgment creditor's attorney annually.

The judgment debtor may claim exemptions according to law after service of the writ of garnishment on the garnishee by filing an exemption claim with the clerk.

Within five days after an exemption claim is filed with the clerk, the judgment debtor or the judgment debtor's attorney shall notify the judgment creditor or the judgment creditor's attorney by fax transmission and concurrent mailing of the judgment debtor's exemption claim.

A hearing shall not be required and a writ of supersedeas shall issue unless the judgment creditor files within ten days from the date the judgment debtor or judgment debtor's attorney files an exemption claim a statement in writing that the judgment debtor's claim of exemption is contested.

Ark. Code Ann. § 16-110-402.

The plaintiff shall, on the day on which he or she sues out the writ of garnishment, file all the allegations and interrogatories, touching the goods and chattels, moneys, credits, and effects of the defendant, and its value thereof, in the garnishee's possession, at the time of the service of the writ or at any time thereafter. Ark. Code Ann. § 16-110-403.

> The garnishee shall, on the return day named in the writ, exhibit and file, under his oath, full, direct, and true answers to all such allegations and interrogatories as may have been exhibited against him or her by the plaintiff. Ark. Code Ann. § 16-110-404.

> If the garnishee files his or her answer to the interrogatories exhibited and the plaintiff deems the answers untrue or insufficient, he or she may deny the answer and cause his or her denial to be entered on the record.
>
> The court, if neither party requires a jury, shall proceed to try the facts put in issue by the answer of the garnishee and the denial of the plaintiff. Ark. Code Ann. § 16-110-405.

If any garnishee that is a bank, savings bank, or trust company domiciled in this state, after having been served with a writ of garnishment ten days before the return day thereof, shall neglect to answer on or before the return day the writ or any interrogatories which have been exhibited against it, the court shall enter judgment in general terms against the garnishee. Ark. Code Ann. § 16-110-406.

If any garnishee, after having been duly served with a writ of garnishment, shall neglect or refuse to answer the interrogatories exhibited to him or her, on or before thirty days after service of the writ, the court, upon motion of the plaintiff, may issue a notice to the garnishee, requiring him or her to appear personally at a hearing not later than ten days after receipt of said notice or at such other later date as the court may fix and answer the allegations and interrogatories of the plaintiff.

> Service of the notice may be made either by the clerk, or by the plaintiff, by any method prescribed by the Arkansas Rules of Civil Procedure for service of notice.
>
> The court, after hearing and reviewing the evidence and testimony of both parties, may then render judgment against the garnishee in such amount, if any, as the court finds the garnishee held at the time of service of the writ of garnishment, of any goods, chattels, wages, credits and effects belonging to the defendant, not otherwise exempt under state or federal law; together with attorney's fees and such other reasonable expenses incurred by the plaintiff, as the court may deem appropriate under the facts and circumstances. Ark. Code Ann. § 16-110-407.

Important Case Law:

Despite the language in Ark. Code Ann. § 16-110-401, a defaulting garnishee's liability is limited to the amount of non-exempt wages held at the time of service of the writ of garnishment, plus attorney's fees and other expenses appropriate under the facts and circumstances. Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III, L.P., 374 Ark. 489, 288 S.W.3d 627 (2008).

The defendant may have any prejudgment garnishment discharged by filing with the clerk of the court a bond in double the amount for which the garnishment was issued, conditioned on payment of any adverse judgments. Ark. Code Ann. § 16-110-408.

> If the clerk shall approve the bond, he or she shall file it and shall issue a notice directed to the garnishee notifying him or her of the filing and approval of the bond and the release of the garnishment. The notice shall be signed by the clerk, bear the seal of the court, and be served on the garnishee by the sheriff or constable, and return shall be made thereon as in cases of other writs of process.

If on the return day of any writ of garnishment the garnishee shall surrender to the plaintiff all the goods and chattels, moneys, credits, and effects which may be in his or her hands or possession belonging to the defendant, he or she shall be discharged with costs.

> The court shall enter an order releasing and discharging the garnishee from all responsibility to the defendant, in relation to the goods, chattels, moneys, credits, and effects so surrendered. Ark. Code Ann. § 16-110-409.

If the court finds in favor of the garnishee, he or she shall be discharged without further proceedings.

> However, if the court finds for the plaintiff, judgment shall be entered for the amount due from the garnishee to the defendant in the original judgment, or so much thereof as will be sufficient to satisfy the plaintiff's judgment, with costs. Ark. Code Ann. § 16-110-410.

In all cases where judgment shall be rendered against any garnishee on an answer to interrogatories filed, the judgment shall have the effect to release the garnishee from all responsibility in relation to the goods and chattels, moneys, credits, and effects for which the judgment may have been rendered. Ark. Code Ann. § 16-110-411.

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

An execution may issue on any final judgment order of a court of record for a liquidated sum of money and for interest and costs, or for costs alone. Ark. Code Ann. § 16-66-101.

The circuit court in which a judgment is rendered by a court of competent jurisdiction in another county of this state has been registered in accordance with the provisions of Ark. Code Ann. § 16-65-117(a)-(c) shall have power to issue writs of execution upon any such judgment. Ark. Code Ann. § 16-66-102.

An execution may be issued upon a judgment at any time until the collection of it is barred by the statute of limitations. Ark. Code Ann. § 16-66-103.

> Ark. R. Civ. P. 62(a) provides that no execution or enforcement proceedings shall issue on any judgment or decree until after the expiration of ten days from the entry thereof.

The execution shall be:

Issued by the clerk of court (Ark. Code Ann. §§ 16-66-104; 16-66-105);

Endorsed with debt, damages, and costs (Ark. Code Ann. § 16-66-105);

Substantially in the form outlined in Ark. Code Ann. § 16-66-104; and

Contain notice as described in Ark. Code Ann. § 16-66-104(c).

The notice to defendant together with a copy of the writ of execution shall be served on the judgment debtor by an officer authorized to serve process simultaneously with seizure or levy of property, or the judgment creditor in the same manner as service of writs or summons before the day the officer authorized to serve process seizes or levies on property of the judgment debtor. Ark. Code Ann. § 16-66-104(d).

Upon filing a claim of exempt property, a prompt hearing shall be held to determine the validity of the claimed exemptions. Provided, no hearing shall be required and a writ of supersedeas shall issue as to the claimed exemption or exemptions if the judgment creditor files a statement in writing that the judgment debtor's claim of exemption is not contested. Ark. Code Ann. § 16-66-104(g).

Upon receipt of a writ of execution and notice to defendant, the judgment debtor shall have twenty days to file a petition to claim any of the exemptions provided by law. Ark. Code Ann. § 16-66-104(h).

If there are several defendants, executions against them shall be joint. Ark. Code Ann. § 16-66-106. If the defendant or any of them are dead, execution shall issue against their survivors or personal representative. Ark. Code Ann. § 16-66-108. The death of only part of the defendants shall not prevent execution being issued. Ark. Code Ann. § 16-66-108.

An execution operates in any county of the state without order of court. Ark. Code Ann. § 16-66-109.

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.

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.

Immunity of Law Enforcement Officers: Ark. Code Ann. § 16-66-119.

Discovery to Enforce Execution

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 by the Arkansas Rules of Civil Procedure. Ark. R. Civ. P. 69.

After 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 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.

> 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 evidence or securities for the same, may be also made defendants.
>
> The answers of each defendant shall be verified by his or her own oath and the court shall enforce full and explicit discoveries in his or her answers.
>
> The plaintiff may have an attachment against the property of the defendant in the execution, without either the affidavit or bond therein required.
>
> A lien shall be created upon the property of the defendant, the levy of the attachment, or service of the summons with the object of the action endorsed thereon, on the person holding or controlling his property.
>
> The court shall enforce the surrender of the money, or security therefor, or of any other property of the defendant in the execution which 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 or her power to do so.

Ark. Code Ann. § 16-66-418.

Actions on all judgments and decrees shall be commenced within ten years after the cause of action accrues. Ark. Code Ann. § 16-56-114.

The plaintiff or his or her legal representatives at any time before the expiration of the lien of a judgment may sue out a scire facias to revive the judgment in accordance with Ark. Code Ann. § 16-65-501.

Property Subject to Execution

The following described property shall be liable to be seized and sold under any execution upon any judgment, order, or decree of a court of record:

All goods and chattels unless exempt by statute;

The rights and shares in the stock of any bank, insurance company, or other corporation;

Any current gold or silver coin, which shall be returned as so much money collected, without exposing the current gold or silver coin to sale;

A bill or evidence of debt issued by a moneyed corporation belonging to the judgment debtor at the time the writ was issued;

All real estate, whether patented or not, of which the defendant or any person for his or her use, was seized on the day of rendition of the judgment, order, or decree upon which the execution is issued, or at any time thereafter;

Ark. Code Ann. § 16-66-201.

Unexpired leases of land subject to execution as real estate (Ark. Code Ann. § 16-66-204); and

A married woman's sole and separate estate (Ark. Code Ann. § 16-66-202).

Property Exempt from Execution

The following is exempt from execution:

State property (Ark. Code Ann. § 16-66-205);

Improvements on public lands of the state (Ark. Code Ann. § 16-66-206);

Private or public graveyards (Ark. Code Ann. § 16-66-207);

The greater of:

Seventy-five percent of weekly income after all deductions required by law are withheld;

That amount of net weekly income in excess of thirty times the current minimum wage. (15 U.S.C. § 1673).

Moneys paid or payable to an insured or designated beneficiary under a life, health, or disability policy (Ark. Code Ann. § 16-66-209);

Personal property of a single person, not the head of a household, up to two hundred dollars and all wearing apparel (Ark. Const. Art. 9 §1); and

Personal property of a married person or the head of household up to five hundred dollars and all family wearing apparel. (Ark. Const. Art. 9 §2).

Whenever a defendant desires to claim any of the exemptions provided for by law, he or she shall prepare a schedule, verified by affidavit, of all his or her property. This schedule shall include moneys, rights, credits, and choses in action held by himself or herself or others for him or her and specifying the particular property which he or she claims as exempt under the provisions of the Arkansas Constitution, Article 9

Arkansas Code Annotated § 16-66-221 provides that 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.

If the claim of exemption is determined to be valid, then supersedeas shall issue, staying any sale or further proceeding under the execution, process, or attachment against the property

described in the schedule, and claimed as exempted, and by returning the property to the defendant. Ark. Code Ann. § 16-66-211.

If it appears that the debtor has more property in value than is exempt by law, he or she shall select his or her exemptions. The remainder of the property shall be subject to the levy of the execution, whether the property is included in any former schedule or not. Ark. Code Ann. § 16-66-211.

The plaintiff may require the clerk to appoint three appraisers to determine the value of the exempt property.

> If the value of the property is within the constitutional limitations, the property shall be surrendered to the defendant and the plaintiff shall pay costs.
>
> If the value of the property exceeds constitutional limitations, the supersedeas shall be revoked as to the excess and the defendant shall pay costs.
>
> Ark. Code Ann. § 16-66-213.

Relevant Statutes

Election of Bankruptcy Exemptions: Ark. Code Ann. § 16-66-217.

Wedding rings exempt: Ark. Code Ann. § 16-66-219.

Pensions and profit sharing plans: Ark. Code Ann. § 16-66-220.

Homestead Exemption

The following property is exempt from execution under the Arkansas Constitution:

> The homestead of a married person or head of household, outside the city not exceeding up to one hundred sixty acres with selected improvements not exceeding two thousand five hundred dollars in value (Ark. Const. Art. 9 §4); and
>
> The homestead, in a city, not exceeding one quarter acre with selected improvements not exceeding two thousand five hundred dollars in value (Ark. Const. Art. 9 §5).

A debtor's right of homestead shall not be lost or forfeited by his or her omission to select and claim it as exempt before the sale thereof on execution, nor by his or her failure to file a

description or schedule of the homestead in the recorder's or clerk's office. Ark. Code Ann. § 16-66-212.

Staying a Writ of Execution

Before a writ issues, the defendant may execute a bond to stay the judgment or decree for six months. Ark. Code Ann. § 16-66-303.

After the writ has issued, the defendant may obtain a stay of execution upon a bond for costs, interest, and half the commissions. Ark. Code Ann. § 16-66-303.

An agreement to waive the right of stay shall be specifically enforced. Ark. Code Ann. § 16-66-305.

The sale of personal property upon which an execution is levied shall be suspended at the instance of any person, other than the defendant in the execution, claiming the property, who shall execute a bond for double the value of the property conditioned upon payment of the value of the property and ten percent interest if plaintiff is entitled to the execution.

> Appraisers shall be appointed by the issuing officer to determine the value of the property if such a person posts said bond;
>
> The bond with appraisal annexed shall be returned to the levying court;
>
> The 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;
>
> 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

Any person against whom an execution is issued may, by verified petition, apply to the issuing court to quash the execution:

> For good cause shown;
>
> With reasonable notice to the opposing party;

Upon execution of a bond conditioned on payment of the debt, damages, and costs recovered by execution; or

Upon surrender of any property subject to execution.

The court shall hear the complaint and if justified, grant the stay.

Ark. Code Ann. § 16-66-301.

XV. Appeals

Notice of Appeal

An appeal shall be taken by filing a notice of appeal with the clerk of the circuit court that entered the judgment, decree, or order from which the appeal is taken. Ark. R. App. P. Civ. 3.

A notice of appeal shall be filed within thirty days from the entry of the judgment, decree, or order appealed from. Ark. R. App. P. Civ. 4.

The time for filing a notice of appeal shall be extended for all parties upon a timely filing in the circuit court of a motion for judgment notwithstanding the verdict, a motion to amend the court's findings, a motion for a new trial, or any other motion to vacate, alter, or amend the judgment made no later than ten days after entry of judgment.

> The notice of appeal shall be filed within thirty days from entry of the order disposing of the last motion outstanding. However, if the circuit court neither grants nor denies the motion within thirty days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty days from that date. Ark. R. App. P. Civ. 4.
>
> 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. Ark. R. App. P. Crim. 2.
>
> Notification of the filing of the notice of appeal shall be given to all other parties or their representatives involved in the cause by mailing a copy of the notice of appeal to the parties or their representatives (and to the Attorney General in criminal cases), but failure to give such notification shall not affect the validity of the appeal. Ark. R. App. P. Crim. 2.

The Record on Appeal

The record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within ninety days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court. Ark. R. App. P. Civ. 5.

The time can be extended but in no event shall the time be extended more than seven months from the date of judgment. Ark. R. App. P. Civ. 5.

When, however, an appeal is taken from an interlocutory order the record must be filed with the clerk of the Supreme Court within thirty days from the entry of such order. Ark. R. App. P. Civ. 5.

> *See* Murphy v. Dumas, 343 Ark. 608, 36 S.W.3d 351 (2001)(the rule governing extensions of time to file record will be strictly enforced.)
>
> *See* Ark. R. App. P. Crim. 4 for the time extensions in criminal cases.
>
> The notice of appeal shall include a certificate by the appealing party or his attorney that a transcript of the trial record has been ordered from the court reporter. Ark. R. App. P. Crim. 2.
>
> *See* Clerk's Notice of Appeal in Death Penalty Case on Appendix page 95, and Order to Extend the Time to File the Record on Appendix page 145.

Stay and Bond for Cost – Civil

A supersedeas is a written order commanding appellee to stay proceedings on the judgment, decree, or order being appealed from and is necessary to stay such proceedings.

> A supersedeas shall be issued by the clerk of the circuit court that entered the judgment, decree, or order being appealed from unless the record has been lodged with the appellate court in which event the supersedeas shall be issued by the clerk of the appellate court.
>
> Whenever an appellant entitled thereto desires a stay on appeal, he shall present to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall satisfy and perform the judgment, decree, or order of the circuit court.
>
> Ark. R. App. P. Civ. 8.

Appeal Bond in Criminal Cases

At the time the sentence is pronounced and judgment entered, the trial judge must advise the defendant of his right to appeal, the period of time prescribed for perfecting the appeal, and either fix or deny an appeal bond. Ark. R. Crim. P. 33.2.

When a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to an offense other than murder in the first degree, rape, aggravated robbery, or causing a catastrophe, or kidnapping or arson when classified as a Class Y felony, and he is sentenced to serve a term of imprisonment, and he has filed a notice of appeal, the trial court shall not release the defendant on bail or otherwise pending appeal unless it finds:

> By clear and convincing evidence that the defendant is not likely to flee or that there is no substantial risk that the defendant will commit a serious crime, intimidate witnesses, harass or take retaliatory action against any juror, or otherwise interfere with the administration of justice or pose a danger to the safety of any other person; and
>
> That the appeal is not for the purpose of delay and that it raises a substantial question of law or fact.

When the defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to capital murder, the trial court shall not release the defendant on bail or otherwise, pending appeal for any reason.

When the defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to murder in the first degree, rape, aggravated robbery, or causing a catastrophe, or kidnapping or arson when classified as a Class Y felony, and he has been sentenced to death or imprisonment, the trial court shall not release him on bail or otherwise, pending appeal or for any reason.

Ark. R. App. P. Crim. 6.

However, there is no bond *for costs* to appeal a criminal conviction. Ark. R. App. P. Crim. 5.

De Novo Appeals to Circuit Court

Amendment 80, § 7(A) of the Arkansas Constitution establishes district courts as the trial courts of limited jurisdiction as to amount and subject matter, subject to the right of appeal to circuit courts for a trial de novo.

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

> *See* Wright v. City of Little Rock, 366 Ark. 96, 233 S.W.3d 644 (2006)(timely filing of record with circuit court clerk perfected appeal even though appellants failed to perfect service).

The procedures for **criminal appeals** are provided in Ark. R. Crim. P. 36, which says that appeals are to be filed within thirty days from the date of entry of the judgment by filing a record of the district court proceedings with the circuit court clerk and serving a notice of appeal to the prosecuting attorney.

The procedures for **civil appeals** are provided in Ark. Dist. Ct. R. 9, which says that appeals are to be filed within thirty days from the date of a docket entry awarding judgment, regardless of whether a formal judgment is entered, by filing with the circuit court clerk

A certified copy of the district court's docket sheet showing the award of judgment and all prior entries, or a certified copy of the record of the district court proceedings consisting of all documents and motions filed in the district court, and

A certified copy of the complaint filed in the district court, if filed in accordance with District Court Rule 10, or a certified copy of the small claims division claim form. Neither a notice of appeal nor an order granting leave to appeal shall be required.

The appealing party must serve copies of the above documents upon counsel for all other parties, and any party proceeding pro se. Service may be made by certified mail requiring a signed receipt. It may also be made by delivering copies, sending copies by a commercial delivery company, or serving on counsel by electronic transmission, as described in Ark. R. Civ. P. 5(b)(2).

> Failure to serve certified copies of the district court docket sheet or district court record and a certified copy of the district court complaint or claim form shall not affect the validity of the appeal. The filing of the certified copy of the district court complaint or claim form with the clerk of the circuit court shall constitute the filing of the complaint for purposes of commencing the action in circuit court in accordance with Ark. R. Civ. P. 3(a).
>
> If the district court clerk does not prepare or certify a record for filing in the circuit court in a timely manner, a party may take an appeal by filing an affidavit with the circuit court clerk within forty days from the date of the entry of the judgment in the district court, showing that the appealing party has requested the district court *clerk to prepare and certify the record for purposes of appeal and that the clerk* has not done so within thirty days from the date of the entry of the judgment in the district court.
>
> The appealing party shall promptly serve a copy of the affidavit upon the clerk of the district court and upon the opposing attorney or party. The circuit court shall acquire jurisdiction of the appeal upon the filing of the affidavit. On motion of the appealing party, the circuit court may order the clerk of the district court to prepare, certify, and file the record in the circuit court.
>
> Ark. Dist. Ct. R. 9.

If service of the certified copies of the district court docket sheet or record and the complaint or claim form is not made within one hundred twenty days after filing the district court complaint or claim form with the circuit court or within the time period established by an extension granted pursuant to this subdivision, the action shall be dismissed without prejudice upon motion or upon the court's initiative.

> The court, upon written motion and a showing of good cause, may extend the time for service if the motion is made within one hundred twenty days of the filing with the circuit court the district court complaint or claim form or within the time period established by a previous extension. To be effective, an order granting an extension must be entered within thirty days after the motion to extend is filed, by the end of the one hundred twenty day period, or by the end of the period established by the previous extension, whichever date is later.

> Ark. Dist. Ct. R. 9.

All the parties shall assert all their claims and defenses in circuit court.

> Within thirty days after a party serves upon counsel for all other parties, and upon any party not represented by counsel, certified copies of the district court docket sheet or district court record and a certified copy of the district court complaint or claim form, the party who was the defendant in district court shall file its answer, motions, and claims within the time and manner prescribed by the Arkansas Rules of Civil Procedure and the case shall otherwise proceed in accordance with those rules.
>
> At the time they file their complaint, answer, motions, and claims, the parties shall also file with the circuit clerk certified copies of any district court papers that they believe are material to the disputed issues in circuit court. Any party may also file certified copies of additional district court papers at any time during the proceeding as the need arises.
>
> As soon as practicable after the pleadings are closed, the circuit court shall establish a schedule for discovery, motions, and trial.
>
> Except as modified by the provisions of Arkansas District Court Rule 9, and except for the inapplicability of Rule of Civil Procedure 41, the Arkansas Rules of Civil Procedure shall govern all the circuit court proceedings on appeal of a district court judgment as if the case had been filed originally in circuit court.
>
> Ark. Dist. Ct. R. 9.

Whenever an appellant entitled thereto desires a stay on appeal to circuit court in a civil case, he shall present to the district court for its approval a **supersedeas bond** which shall have such surety or sureties as the court requires. The bond shall be to the effect that appellant shall pay to appellee all costs and damages that shall be affirmed against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall satisfy and perform the judgment,

decree, or order of the inferior court. All proceedings in the district court shall be stayed from and after the date of the court's order approving the supersedeas bond.

Ark. Dist. Ct. R. 9.

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We would like to thank Judge Yeargan, Judge Herb Wright, and Judge Cox for making their sample scripts and materials available to you in this edition of the Benchbook. We hope that these materials are helpful to you in forming your own scripts and checklists.

Criminal Checklists

Sufficiency of Affidavit for Arrest

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; 7.2.

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.

Sufficiency of Affidavit for Search & Seizure

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.

Sufficiency of Search & Seizure 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.

Consent Searches – Without a Warrant

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.

Sufficiency of an 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 over one 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. §§ 16-85-403; 405.

Opening Court in a Jury Trial

1. State the style of the 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.

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 the nature of the suit.

10. Excuse jurors who should be excused.

11. Make finding that remaining jurors are qualified.

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.

Sample Script for Jury Qualification and Orientation

Madam Clerk, please call the roll of the jury. Is there any juror present whose name was not called? Any juror summoned to appear and has failed to do so should be turned over to the Sheriff for follow up on why they did not appear.

All jurors please rise and be sworn to answer questions touching your qualifications to serve as Petit Jurors:

- **"DO YOU SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL MAKE TRUE AND PERFECT ANSWERS TO SUCH QUESTIONS AS MAY BE DEMANDED OF YOUR QUALIFICATIONS TO SERVE AS PETIT JURORS AT THE PRESENT TERM OF THIS COURT?"**

Good morning ladies and gentlemen and welcome to jury duty! I am sure many of you have been looking forward to this day with great anticipation. Please, let me express my appreciation for your attendance here today.

If you have visited any of the websites dedicated to "how to get off jury duty," please know I have visited those sites and have a copy of all the excuses they list there.

Jury duty is one of the important services of being a citizen of this community. There are many ways that you as a citizen can

serve your community and this service represents your contribution to the judicial system.

We have found that busy, responsible people generally make the best jurors. In order for you to be a good juror you need to know that in no way will you be embarrassed, asked to give up a vacation or trip you may have already planned, or do anything that might cause you an undue hardship. Defining undue hardship is sometimes difficult. Please know the court will respect your schedules and accommodate you whenever possible.

Every effort will be made to see that your time is not wasted, and every consideration will be given you to avoid any discomfort or inconvenience. All we ask is that if you have a problem; please let us know about it ahead of time so we can make appropriate arrangements. If at any time you need to confer with the court about your personal welfare, please feel free to do so.

A little history:

Our jury system has its roots all the way back to the signing of the Magna Carta on June 15, 1215 by King John at Runnymede, England, and has evolved to the system we have today. A right to a trial by jury is protected by our Federal and State Constitutions and many people have given their lives in protecting these important documents.

Through the years, many people have sat where you sit today and served this community as jurors. Some of you may have had two or three generations of relatives who have previously served. And hopefully, you will have generations who will survive you to serve as well.

The point I wish to make is: **jury duty may be at times, inconvenient, lengthy, costly, and even at times, boring, but it remains and must always be considered a sacred privilege granted to each of us to assist and protect the rights of individuals and entities as set forth in our Constitutions.**

Many people do not want to serve on a jury. Please be mindful that you might, at some point in your lives, be depending on a jury's decision, or maybe you have already been through this experience. You can expect a decision to be as good or as flawed as the people who make up the jury pool. Most people, maybe even you, don't think it will ever happen to them.

Since this is the first day for the new term of this panel, I will be taking some extra time to go over your qualifications to serve as jurors and then a brief orientation of your expected duties.

PLAY VIDEO IF AVAILABLE AND EQUIPMENT WORKING.

The first question you may have is how did I get selected to be here today? Every registered voter who is a citizen of the United States and a resident of Arkansas and this county is an eligible

juror, if not otherwise disqualified. Each county has a computer program that assigns numbers to the voters and then a desired number is picked at random.

Arkansas law provides few disqualifications for jury service but let me quickly go over those that are:

These items are now covered in the new juror questionnaire

- Persons who are unable to read or write the English language (Court may waive);
- Persons who have been convicted of a felony and have not been pardoned;
- Person 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;
- Person 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 in any degree.
- Is there anyone present who would fall in any of these categories?

Our law does provide that you may be exempted from jury service under the following conditions:

- The state of health requires the person's absence.

- A person has a family member whose state of health requires the attention of that person.
- The interest of the person or public will be materially injured by such service.
- You have served as a grand or Petit juror within the past two years.
- Your length of service can be no longer than 4 months and you may not serve more than 10 days during that 4 month period.

  Your term begins and ends:_____.

  Pay: you now earn $15.00 each day for showing up and $50.00 for each day you serve on a jury.

Let me also point out that Arkansas Code Annotated 16-31-106 provides that employers are prohibited from discharging you or making you use vacation time or sick leave due to your absent because of jury duty.

I hope that these few remarks have served to help you feel at ease and provide you with a general overview of the operation of the court. I further hope I have impressed upon you the importance of your service to the community and the judicial system. When you have completed your service, I believe most of you will have a better impression of our Judicial System, and will be glad you had the opportunity to serve.

Would you now stand and be sworn on the panel?

(Administer oath by Clerk or Judge):

- **"DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL AND TRULY TRY EACH AND ALL OF THE ISSUES, INQUISITIONS, AND OTHER MATTERS SUBMITTED TO YOU RESPECTFULLY AS JURORS DURING THE PRESENT TERM OF THIS COURT AND A TRUE VERDICT RENDERED ACCORDING TO THE LAW AND THE EVIDENCE UNLESS DISCHARGED BY THE COURT OR WITHDRAWN BY THE PARTIES."**

You may be seated.

Let me briefly go over some matters that may assist you or help explain your duties as a juror.

I would like to take this opportunity to introduce you to the Court personnel and their duties:

1. Court Reporter:_____

2. Circuit Clerks: _____

3. Bailiff: _____

4. Judge: _____

<u>ORIENTATION ITEMS:</u>

<u>This may be skipped if video is shown.</u>

Circuit court has two divisions:

1. Criminal
2. Civil

Explain different types of trials—Criminal vs. Civil. In Civil matters you will be asked to determine facts to resolve civil disputes, and award monetary judgments, and in Criminal matters you will determine the guilt or innocence of persons charged with crimes and the punishment of those persons, if found guilty.

- Criminal matters—Prosecutor represents the state, Defendant may have public defender or private counsel.
- Criminal matters—a Defendant has the Presumption of innocence.
- Criminal burden of proof—beyond a reasonable doubt.
- Findings or conclusion of the jury in Criminal matters must be unanimous.
- Findings or conclusion of the jury in Civil matters may be by nine or more of the jurors.
- Civil burden of proof—beyond a preponderance of the evidence.

Explain how juries are selected in Criminal vs. Civil matters.

- **Voir dire** examinations-purpose and nature. Voir dire simply means: **"to speak the truth"**. This procedure is not conducted to embarrass anyone, but simply to assure the parties they will have only fair and impartial jurors serving on the jury. It is important that all questions be answered truthfully.
- Civil selection is much faster and normally no one on one questioning.
- Criminal selection, slower and questions may be asked of you.
- What happens when they are not selected to serve.
- How often expected to be called in. Also they serve for Judge Cooper.

END OF QUALIFYING FOR TERM.

Sample Script for Accepting a Guilty Plea

Y 10 to 40 or Life

A 6 to 30	$15,000
B 5 to 20	$15,000
C 3 to 10	$10,000
D 0 to 6	$10,000

A 1 Year	$2,500
B 90 Days	$500
C 30 Days	$100

You are charged in CR ____-_____ with _____ a class____ misdemeanor/felony. That carries with it from ____ to ____ years in the penitentiary and up to a $ _____ fine.

[Swear in Defendant]
Do you understand the charge(s)against you and the possible penalties?

Defendant - Yes

I am looking at 2 pieces of paper, a Terms and Conditions of Suspended Sentence / Plea Statement of Guilty. I'll show them to you and ask, did you read, understand and sign both of these documents?

Defendant - Yes

Is that your signature toward the bottom of those pages?

Defendant - Yes

Are these the result of some negotiations between you and your attorney and the prosecuting attorney's office?

Defendant - Yes

Were any promises made to you, threats made against you or coercion used upon you to get you to sign these documents?

Defendant - No

Did you sign these after discussing them with your attorney?

Defendant - Yes

Has he/she answered all of your questions?
Defendant - Yes

Do you have any questions for me?

Defendant - No/Yes

Are you under the influence today of any drug or alcohol?

Defendant - No

What do you understand to be your plea agreement? What will happen to you if I accept this deal?

Defendant - Recites his plea agreement

Are you going to pay a fine?

Defendant - Yes/No

At $60.00 a month, beginning 90 days after your release from the Department of Corrections?

Do you understand that you have an absolute constitutional right to a jury trial, at which the state would have to prove you guilty beyond a reasonable doubt, which is a heavy burden of proof? You could have your attorney with you at trial, they could cross examine the states witnesses, and you could call witnesses on your behalf, testify on your own behalf or remain silent. If you were found guilty at trial you would have a right to appeal to the appeals court. If I accept a plea in this case do you understand that you are waiving and giving up all of those rights?

Defendant - Yes

[To Defense Counsel]

Do you think he/she understand these rights?

Counsel - Yes your Honor.

[To Prosecutor]

Is there a factual basis to the charge?

Counsel - Recites facts of the case.

Having heard that set of facts, how do you plead to the charge of _____?

Defendant - Guilty

And the facts just recited, are they the facts to which you are pleading guilty?

Defendant - Yes

Do you understand that I do not have to accept the plea agreement if I do not think it is appropriate?

Defendant - Yes

Is there any legal reason that I should not sentence you at this time?

Defendant – No

Are you satisfied with the services of your attorney?

Defendant -Yes

Do you have any complaint regarding any police officer, detective, jailer, bailiff or prosecutor associated with this case?

Defendant - No

I will accept your plea of guilty to the charge and I will accept this agreement. You are hereby sentenced to the Arkansas Department of Corrections for ____ years, with an additional suspended imposition of sentence of ____ years. Ninety days after your release from the Department of Corrections, you will begin making $60.00 a month payments until court costs of $150 are fully paid.

How much of this ___ years you are going to do at the Department of Corrections is largely up to you but absolutely up to the Department of Corrections. Once you are out, though, you will be under the jurisdiction of this Court for ___ full years, and during that period of time, you need to find some other means of making money and stay on the right side of the

law. If you can do that, you can get this behind you at some point in time, but if in that ___ years you violate the terms of this agreement or violate any other state, federal or municipal law, you can get brought back to court, and after a hearing in front of a judge, if the judge thinks it is proven that it is more then likely you violated the law, then you can get sentenced to ___ more years down there. Do you understand?

Defendant - Yes

All right. Good luck to you.

Sample Jury Trial Checklist

1. QUALIFICATION AND ORIENTATION

A. Swearing in (lots of swearing in)
B. Welcome
C. Paul Ells video/cd
D. Equipment available
E. How did they get there?
F. List disqualifications
G. List exemptions
H. A.C.A 16-31-106
I. Second oath
J. Introduction of Court personnel
K. Orientation discussion

2. CRIMINAL JURY TRIAL PROCEDURES

A. Call roll/announce ready/first oath for bailiff and jurors/juror cards w/numbers
B. Announce case/read charge/introduce defendant
C. Question to the jurors by Court
D. Introduce lawyers/witnesses
E. Voir dire by Court
F. What to ask and what not to ask
G. General voir dire by State/Defendant
H. Procedures for challenges or accepting jurors
I. Alternates/stipulation by attorneys
J. Attorneys confirm jurors
K. Second oath for jurors to serve
L. Swear witnesses/the rule
M. Breaks/AMI 101a and AMIb
N. Commence trial/explain responsibilities
O. Note taking
P. Preliminary instructions/explaining process
Q. Opening statements

R. State's case presented
S. Motions
T. Defendant's case present
U. Motions
V. Rebuttal
W. Jury instructions for innocence or guilt phase /procedures for presenting
X. Closing arguments
Y. Second bailiff oath
Z. Verdict forms explained
AA. Alternate juror instructions
BB. Dealing with jury questions/evidence
CC. Taking the verdict
DD. Reading the verdict
EE. Polling the jury
FF. Proceed to penalty phase/opening Instructions
GG. Opening statements?
HH. Taking of evidence or stipulations
II. Closing arguments
JJ. Taking the verdict
KK. Pronouncing sentence
LL. Give appeal notice
MM. Closing remarks to jurors/collect evidence
NN. Juror thank you letters

3. CIVIL JURY TRIAL PROCEDURE

A. Call roll/announce ready/first oath for bailiff and jurors/juror cards w/numbers
B. Announce case/introduce parties/attorneys
C. Voir dire by Court
D. Identify witnesses
E. Voir dire by attorneys
F. Process to select jurors
G. Alternates
H. Confirm jury by attorneys
I. Jurors' second oath

J. Swear the witnesses (always)/the rule
K. AMI 101a/AMI 101b
L. Commence trial/explain responsibilities
M. Note taking
N. Preliminary instructions/explaining process
O. Opening statements
P. Plaintiff's case presented
Q. Motions
R. Defendant's case presented
S. Motions
T. Rebuttals/motions
U. Jury instructions
V. Closing arguments
W. Bailiff's second oath
X. Explain verdict form(s)/interrogatories
Y. Taking the verdict/assign who is to prepare precedent
Z. Closing remarks to jurors/collect all exhibits
AA. Juror thank you letters

Sample Script for Civil Jury Trial

Will the Clerk please call the roll of the jurors?

- Is the Plaintiff ready for trial?
- Is the Defendant ready for trial?

Before we start, please administer the Bailiff's oath:

> OATH: **"Do you solemnly swear (or affirm) that you will faithfully, impartially, and to the best of your ability, discharge the duties of bailiff of this court, to which office you have been appointed, and strictly obey all orders of the court, as bailiff during the present session now being held?"**

Will all the member of the jury panel please rise:

The Clerk will please swear the Jurors to answer questions touching their qualifications to serve as jurors in this case.

OATH: **"Do you solemnly swear that you will make true and perfect answers to such questions as may be asked of you touching your qualifications to serve as jurors in the case of _____vs. _____?**

You may be seated.

If any questions dictates an answer by you, for the benefit of the Attorneys and the Court Reporter, I will ask you to please stand and state your name before answering.

Ladies and Gentlemen: This is a civil case:

(Read prepared text as to facts of case)

- Would the Plaintiff please stand and face the Jurors.
- Would the Defendant please stand and face the Jurors.

The Plaintiff is represented by:_____.

The Defendant is represented by:_____.

- Is any juror related by blood or marriage to any of the parties in this case? (4th degree)
- Is any juror related by blood or marriage to any of the attorneys?
- Is any juror subpoenaed, or expect to be called as a witness in this case?
- Does any attorney in this case represent any juror on any unfinished legal business at this time?
- Do any of the attorneys or members of their firm regularly represent you?

The following is a list of witnesses that may or may not be called in the trial, they are: (ask each witness to stand and face the jurors)

Read list of witnesses.

- Are any of the witnesses related to you by blood or marriage?
- Do any of you stand or have you lately stood in relationship of Guardian-Ward, Landlord-Tenant, Employer-Employee, or do you have any form of contractual relationship with the attorneys, the Plaintiff(s), the Defendant(s) or the witnesses?
- Do any of you know the facts of this case?
- Has any juror discussed this case with any person purporting to know the facts of the case?
- Have any of you read a newspaper account of the case or heard about the matter on radio?
- Have any of you formed or expressed an opinion about the case?
- Does any juror know of any reason that if chosen to serve as a juror you could not be absolutely fair and impartial and base your verdict strictly upon the law as given to you by the Court and the evidence gained from the witness stand?

Any questions on behalf of the Plaintiff?

Any questions on behalf of the Defendant?

Will the Clerk please place the remaining juror's chips into the jury wheel?

The attorneys should prepare their own list.

The Clerk then draws eighteen (18) names.

Ladies and Gentlemen as your names are called, would you please stand so the attorneys can place your name with a face, but remain where you are until all eighteen (18) names are called.

Clerk calls the names as selected by the Judge from the computer.

Optional: Ladies and Gentlemen, we will have a 10 minute recess while the attorneys prepare their list. (Attorneys will prepare their strikes and those names will be removed from the box.)

Court will come back to order.

Members of the Jury, as your name is called, please take a seat in the jury box.

- **What says the Plaintiff as to the Jury?**
- **What says the Defendant as to the Jury?**

Is there a necessity for an alternate? Can it be stipulated by and between the parties that if misfortune should befall one or more

members of this panel, we will conclude this case with those able-bodied individuals who are able to function as a jury?

Would the members of the Jury in the box please stand and raise your right hand.

The Clerk will swear the jury to try the case:

Oath**: "Do you and each of you solemnly swear that you will well and truly try the case of _____vs._____ and render a true verdict unless discharged by the Court or withdrawn by the parties?"**

Be seated.

Remaining Jurors will be excused at this time. (Give date of next trial if known.)

Is the rule requested?

Call all witnesses forward.

Clerk will swear the witnesses.

Explanation of The Rule: Do not discuss the case among yourselves or permit anyone to discuss the case with you other than the attorneys, and they will only talk with one of you at a time. Do not relate what has transpired in the courtroom when you have come in

and testified and return to the witness room. You may now go with the Bailiff.

Consider a recess at this time. ***Before first recess, read AMI 101. Read AMI 102 before each recess thereafter.***

AMI 101 General Opening and Cautionary Instructions

1. How we have a fair trial:

I will be giving you some instructions now about how to do your job as jurors. It will help you to follow them if you understand a basic principle about how our justice system works. Ours is called an "adversarial system." Each side brings in its evidence and makes its arguments in court. I instruct you on the law to be applied. And you wait until you have heard all the evidence and instructions before making up your mind. That way all parties know what all the evidence and the law are in this case and have had an opportunity to examine and respond to them, and to hear from all parties. You would deny the parties their right to a fair trial if you based your decision on something other than the law and evidence presented to you in this courtroom, such as dislike of a party, or on facts the parties have not had an opportunity to examine and respond to, or on some legal rule other than the ones I give you. You would not be doing your job as jurors if you allowed someone or something from outside this courtroom to influence your decision. And there would be serious consequences if any

of you allowed someone or something from outside this courtroom to influence your decision, or even to appear to influence your decision. For example, I may have to declare a mistrial and retry the entire case, which would be extremely wasteful for everyone.

So the basic principle is this: ***You are to decide this case fairly, based only on the evidence I allow to be presented in this courtroom and the law as instructed by me.*** You are not to consider information from any other source. Keep an open mind throughout the trial. And do not allow sympathy, prejudice, or like or dislike of any party or any attorney in this case to influence your decision. The fairness and lawfulness of the trial depend on your following this basic principle. To help you follow this basic principle, I will now explain how we will proceed and then give you rules you must follow as jurors.

2. How we will proceed:

(a) ***Opening statements****:* First the attorneys will have a chance to give you their views about the evidence at trial. These are called "opening statements." The attorneys' opening statements are not evidence. They are made only to help you understand the evidence and applicable law.

(b) ***Presentation of evidence****:* Next, the parties will bring their evidence into court. The introduction of evidence into court is governed by law. Evidence includes testimony of witnesses, exhibits, and anything else that I instruct you to consider. Matters the attorneys offer to present, but that I do not allow, are not evidence. What an attorney says or claims to have proven is not evidence. If such

statements, arguments, or claims have no basis in the evidence, you should disregard them. Admissions of fact by an attorney, however, are binding on his or her client.

Sometimes the attorneys will disagree about the introduction of evidence. When that happens, one of the attorneys may make an objection. I will decide whether, according to the law, the evidence may be admitted. You are to accept my decision without question. Do not guess or assume what the answer might have been or whether my ruling, or anything I may say or do during trial, indicates my views on the merits of the case. Any testimony that I order stricken from the record is not evidence. You are not to consider it. Simply treat such testimony as though it had never happened.

Sometimes the attorneys may need to speak with me up here at my desk about legal questions in the case that are not appropriate for the jury to hear. We will try to have as few of these conferences as possible and to keep them brief so that we do not keep you waiting.

Do not make up your mind during the trial about what the verdict should be. Evidence can be presented only one piece at a time. Wait until you have heard all the evidence and have discussed it thoroughly with your fellow jurors at the end of the trial during your deliberations before you decide the case.

(c) ***Recesses:*** We will periodically take breaks during the trial, called "recesses." These recesses are for things such as coffee, rest, lunch, dinner, or to go home if the trial lasts more than one day. Your duties as a juror continue during recesses. You must follow the rules even if you are away from the courtroom, such as at lunch or at home.

(d) ***Instructions:*** At times during the trial and after closing arguments I will give you instructions, as I am doing now. It is my duty as judge to inform you of the law applicable to this case through such instructions. It is your sworn duty as jurors to accept and to follow all of them. Do not single any one instruction out to the exclusion of the others. Follow them all as a whole. You are to consider the law only as instructed by me. Do not consider any other rule of law with which you may happen to be familiar.

(e) ***Closing arguments****:* After the evidence, the attorneys will have a chance to make their final remarks to you. These are called "closing arguments." The attorneys' closing arguments are not evidence. They are made only to help you understand the evidence and applicable law.

(f) ***Deliberations****:* After I give you your final instructions, you will then go to the jury room to discuss the case and to decide the questions I will put on your verdict form. These discussions are called "deliberations." They are absolutely private and neither I nor anyone else will be with you in the jury room. Your decision is your verdict. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.]

3. **Cautionary Instructions:**

Before we begin the trial, I am going to instruct you on some rules to prevent anything from outside this courtroom influencing your decision or even appearing to influence your decision. Remember how we have a fair trial: You must keep an open mind during the trial and decide the

case based only on the evidence presented in this courtroom and the law as given by me.

(1) The Basic Rule is this: ***Do not communicate about this case by any means whatsoever with anyone at all, or look for or receive any information whatsoever about this case other than the evidence in this courtroom and the law as I instruct you, until your jury duty is complete and I have discharged you.*** It is natural to want to communicate with others and to look things up yourself, and many people are used to doing so, especially with the electronic technology we have these days. But as jurors you have a serious special responsibility which requires you to give up for purposes of this trial some of the ways you normally would do things. I will now explain what this basic rule means.

(a) When I say *you are not to communicate with anyone at all about this case* I mean anyone. That includes your family, your friends, your acquaintances, or complete strangers.

(b) When I say *you are not to communicate by any means whatsoever* I mean not by any means at all. Do not talk at all with anyone about the case or the people or places involved, not in person or by telephone, including cell phone. Do not communicate by any electronic means, such as by text message, email, chat room, or discussion list, by posting updates on social media such as Facebook or MySpace, by blogging, by "Tweeting" on Twitter, or through any other Internet-based or other electronic means. Many of you have "Electronic Devices," such as a cell phone, iPhone, Smartphone, Blackberry, PDA, iPad, pager, or any

electronic device. You must turn them off while in the courtroom and during deliberations. If you have not already done so, turn them off now. Unless instructed otherwise, you are permitted to use such devices only during recesses and even then only concerning matters totally unrelated to this case or the people or places involved. If you would like, you will be given a telephone number at which you may be contacted while court is in session in case of an emergency.

(c) When I say *communicate*, I mean it both ways. You are not to send or transmit any information, thoughts, opinions, views, updates, or impressions about the case or the people or places involved to anyone else. And you are not to receive or allow anyone else to transmit any such information, thoughts opinions, views, updates, or impressions to you.

(e) When I say *you are not to look for or receive any information whatsoever outside this courtroom about this case or the people or places involved*, I mean from any other source at all. I will give you some examples. Do not read news stories or articles about the case, whether in print or any electronic form, or listen to any radio or television or online reports or Podcasts about the case. Do not search the Internet, such as through Google or on Wikipedia, to find out anything about this case or the people or places involved. Do not read newspapers or online news sources, watch television or online services, or listen to the radio or online sources, or use any Electronic Device to gather information, to get definitions, or to conduct any other research at all about this case. Do not go to the library and do research on the case there. Do not ask anyone – not in person, by telephone, or through any other electronic

means – for advice or information about this case. Do not visit the places involved in the case or use the Internet, such as Google Earth, to look at the places involved or at maps, descriptions, or pictures. If you happen to pass by the scene, do not stop or investigate.

In fact, until the trial is over, I suggest that you avoid all news and information media, including newspapers, news journals, television or radio newscasts, and online news sources such as Podcasts, streaming video or audio, blogs, or RSS feeds. I do not know whether there might be any reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you can do anything about it. If you would like, you may have your spouse or a friend clip or save any news stories to give you after the trial is over. I can assure you, however, that by the time you have heard all the evidence in this case, you will know more about it than anyone will learn through the news media.

(f) *When you are outside the courtroom, do not let anyone say anything to you about the case or the people or places involved.* If someone tries to say anything to you about the case or the people or places involved, notify court personnel.

(2) *Do not talk among yourselves about this case, or the people or places involved in it, until I send you to the jury room for your deliberations.* The purpose of this rule is to prevent you from influencing how your fellow jurors think about the case until after they have heard all the evidence, closing arguments, and my instructions on the applicable law. The time and place to discuss this case among

yourselves will be during deliberations in the jury room, but not before then.

(3) *During the trial do not talk with or otherwise communicate with any of the parties, lawyers, or witnesses involved in the case*. By this I mean do not speak with them at all about anything, not even to exchange pleasantries or to pass the time of day. Although it is a normal human tendency to greet and talk with other people, you must avoid even the appearance that someone has tried to influence you in this case. If someone sees you talking with a person involved in the case, suspicion about your fairness might be unnecessarily aroused. And remember that when the lawyers, parties, and witnesses do not speak with you when you pass in the hall or elsewhere, it is not because they are impolite but because they are not supposed to talk or otherwise communicate with you either.

(4) *Remember that all of these rules apply even when you are away from the courthouse, such as at recess.*

The parties have entrusted their case to you. All of us are depending on you to follow these rules so that you will fairly and justly decide the case based solely on the evidence presented in court and the law as instructed by me, and not on any other sources of information. Remember what I said earlier. Violation of these rules can have serious consequences, including a mistrial, which would be very costly and wasteful. If you become aware of any violation of any of these rules at all, notify court personnel of the violation.

INSTRUCTION TO BE READ BEFORE EACH RECESS:

AMI 102 Cautionary Instructions—Reminder of Jurors' Duties During Recess:

We are about to take *[our first][second]* recess. Remember that all of the rules I have given you apply even when you are away from the courthouse, such as at recess.

Now, remember the basic rule: ***Do not communicate about this case and the places and persons involved by any means whatsoever with anyone at all, or look for or receive any information whatsoever about this case other than the evidence in this courtroom and the law as I have instructed you, until your jury duty is complete and I have discharged you.***

Remember why we have this basic rule: So that you keep an open mind throughout the trial, and appear to others to keep an open mind, and so that you decide the case based only on the evidence presented at trial before the parties, and based only on the law as the Court has instructed you.

Remember to observe during our recess the other rules I gave you.

Do not talk among yourselves about this case, or the people or places involved in it, until I send you to the jury room for your deliberations.

Do not talk with or otherwise communicate with any of the parties, lawyers, or witnesses involved in the case even to exchange pleasantries or to pass the time of day.

Remember that the parties have entrusted their case to you. All of us are depending on you to follow these rules so that you will fairly and justly decide the case based solely on the evidence presented in court before the parties and the law as instructed by me, and not on any other sources of information. If you become aware of any violation of any of these rules at all, notify court personnel of the violation.

Remember what this basic rule means:

Do not communicate with anyone at all about this case or the persons or places involved, **including with your family, friends, and acquaintances**.

Do not use any means whatsoever to communicate. Do not talk in person or by telephone or communicate in any other way. For example, many of you have Electronic Devices such as cell phones, iPhones, Smartphones, Blackberries, PDAs, iPads, computers, and other electronic devices. Do not use them to talk, send or receive text messages, send or receive email, participate in or read a chat room or discussion list, post updates to a website or to social media such as Facebook or MySpace, to blog, to "Tweet" on Twitter, or to communicate through any other Internet-based or other electronic means at all.

Do not share information, or your thoughts, opinions, views, updates, or impressions about the case or the people or places involved with anyone else through any means. And do not allow anyone else to share with you any such information, thoughts, opinions, views, updates, or impressions. Do not ask anyone, not in person, by

telephone, or through any other electronic means, for advice or information about this case. Do not let anyone outside the courtroom say anything to you or otherwise communicate to you about the case or the people or places involved. If someone tries to say or convey or communicate anything to you by any means about the case or the people or places involved, notify court personnel.

Do not read any news stories or articles about the case or the people or places involved, whether in print or any electronic form. Do not listen to any radio or television or online reports or Podcasts about the case.

Do not use your Electronic Devices to search the Internet, such as through Google or on Wikipedia, to find out anything about this case or the people or places involved. Do not do research in a library. Do not read newspapers or online news sources, watch televison or online services, or listen to the radio or online sources, or use any electronic device to gather information, to get definitions, or to conduct any other research at all about this case.

Do not visit the places involved in the case or use the Internet, such as Google Earth, to look at the places involved or at maps, descriptions, or pictures.]

COMMENCEMENT OF THE TRIAL

Ladies and Gentlemen of the jury:

You have been selected and sworn as the jury to try the case of _____ vs. _____.

It is your solemn responsibility to determine the facts of this case, and your verdict must be based solely on the evidence as it is presented to you in this trial and the law on which the court instructs you during and at the close of the trial.

JUROR NOTE-TAKING

During the trial you will be permitted to take notes. The Court has provided you with pencils and notepaper for your convenience. For many years the practice of note taking was discouraged because the taking of notes distracts your mind from the evidence that is presented while you are busy taking notes. The other reason was that the best note-taker might have more influence on the other jurors than is wanted. Remember, each of you must individually determine the issues in this case. It is your responsibility to observe the witnesses as they testify and to listen attentively to all the testimony. At the end of the case, in deliberations, your collective minds will then reach a verdict. The notes are only to be used as a memory aid and should not be allowed to take precedence over jurors' independent memory of facts. Please understand that testimony cannot be repeated nor the trial delayed to permit the taking of accurate notes.

THERE IS NO REQUIREMENT THAT YOU TAKE NOTES.

OPENING STATEMENTS

Each side may address you once during opening statements. In accordance with the rules that govern these proceedings, attorney for the Plaintiff will speak first.

_____, you may now make your opening statement for the Plaintiff(s).

_____, you may now make your opening statement for the Defendant(s).

Plaintiff, call your first witness.

PLAINTIFF'S CASE

When Plaintiff(s) rest: Recess if motions are to be heard.

Defendant, call your first witness.

DEFENDANT'S CASE

When Defendant(s) rest: Recess if motions are to be heard.

Rebuttal?

Ladies and Gentlemen, you have heard all of the evidence in this case. It will be necessary to settle the instructions with the Attorneys. We will recess for _____ minutes.

CLOSING ARGUMENTS

Member of the Jury, it now becomes my duty to give you the law that will govern you in the trial of this case. As I have previously told you, this law will be contained in the form of various instructions and I trust that you will listen carefully to the reading of them and hope that you can better understand the law. Then it will be your duty to harmonize this law with the true facts as you determine them and render a verdict in compliance with both the law and the evidence.

READ THE INSTRUCTIONS

- Any additional instructions requested by the Plaintiff?
- Any additional instructions requested by the Defendant?

The Attorneys at this time will make their final argument to you. The Attorney for the Plaintiff will have the opening argument. The Attorney for the Defendant will then have his opportunity to make his argument. The Attorney for the Plaintiff will then reply to the argument of the Defendant.

The attorneys, in making these arguments to you, will be commenting upon the testimony that you have heard and the evidence that has been presented in this case. They, as you, will be recalling the

evidence that has been presented. They will not intentionally try to mislead you. However, if their recollection of the evidence differs from what your recollection is, you must follow your own recollection. These final arguments are not to be construed by you as evidence in this case or instructions on the law. They are, however, intended to help you better understand the contentions of each side in the issues you are to decide. You should give both sides your closest attention.

- _____, you may make your first closing. (Plaintiff)
- _____, you may make your closing argument.(Defendant)
- _____, you may make your final closing argument.

Administer Bailiff's oath prior to deliberation.

OATH: **"Do you solemnly swear (or affirm) that you will keep this jury together, not allowing any person to speak to them or overhear their deliberations, nor to speak to them yourself, unless it is in the performance of your official duties as bailiff to this court."**

Ladies and Gentlemen, I give you _____ verdict form(s).

(Read each of the verdict forms.)

You may take the Jury instructions and any of the exhibits

with you to the Jury room. However, please note if you request one exhibit, then all exhibits must be taken. You may now retire to deliberate. Everyone remain seated until the Jury has left the Courtroom.

The alternate juror(s) is/are released at this time.

When Jury returns: **Ladies and Gentlemen of the Jury, have you reached a verdict?**

(Foreperson should report they have.) Please hand the verdict to the Bailiff who will hand it to the Court.

READ VERDICT

- Does the Plaintiff desire to poll the Jury?

If so, call each juror's name and ask if this is his or her verdict?

Make sure all exhibits/evidence are in the custody of the court reporter.

Thank each member of the Jury for his or her attendance, attention and serving on the Jury. Remind them of any future dates, if known and that they are not required to discuss their verdict with anyone if they do not wish to do so.

The Jury is dismissed. **All remain seated until the Jurors have left the Courtroom.**

Assign who will prepare the precedent.

Post-trial motions?

Court is adjourned.

Sample Criminal Jury Trial Procedure

1. **PRELIMINARY MOTIONS**
    a. Advise all counsel of imposition of the rule.
    b. Ask parties if they request an alternate juror – Use Alternate in ALL MURDER, RAPE OR MULTIDAY TRIALS.
    c. Request a felony information from the prosecutor.
    d. Make sure all witnesses are in the witness room, or in a location ready when called.
    e. Make sure both sides have provided law clerk with jury instructions – ask them to review each other's instructions and identify any issues to the law clerk.
    f. Advise the parties that they 30 minutes for Voir Dire, opening and Closing (This time limit may be adjusted if needed)
2. **JURY SELECTION**
    a. Ask Bailiff to clear the courtroom of spectators (Attorneys and press may sit inside the rail, no use of electronic devices).
    b. Ask Bailiff to bring in the panel.
    c. Ask the panel if they are sure they are in the correct place.
    d. Clerk calls roll.
    e. Ask if there is anyone present whose name was not called.
    f. 1st Oath given by clerk
    g. Introduce yourself to jury.
    h. Read information to jury.
        i. Does anyone know anything about this matter?
    i. Introduce prosecutors.
        i. Do you know or have dealings with these attorneys or the Pulaski County Prosecuting Attorney's Office?
    j. Introduce Defendant and Defense counsel.
        i. Do you recognize or have any dealings with the people?
    k. Ask Bailiff to bring the witnesses in.
    l. Ask the witnesses to announce their name and place of employment to the panel.

m. Swear the witnesses.
    i. Do you recognize or have any dealings with the people?
n. Ask counsel if there are any witnesses not present, who may be called.
    i. Do you recognize these names or have any dealings with the people?
o. Ask the Panel if they have read, seen or looked at anything, to determine which case we may hear today?
p. (For cases involving Sex Offenses only) Based on the nature of the charges, if anyone needs to approach the bench, to discuss anything?
q. Ask the clerk to call 18 jurors.
r. State Inquires
s. Defense Inquires
t. Strikes are made in open court, state first, then defense (Prosecution 6, Defense 8, except in a Capital case Prosecution 10, Defense 12)
u. Repeat until you get 12 jurors.
v. Have clerk call 3 names for alternate (may adjust if you need more than 1 alternate).
w. State Inquires
x. Defense Inquires
y. Strikes are made in open court, state first, then defense (Each side gets 1 strike).
z. Ask both sides if the jury is satisfactory.
aa. Clerk gives 2nd Oath
bb. Give the Bailiff 1st oath
cc. Recess for 15 minutes to allow the jurors to make calls, etc.
dd. Admonish jury (Long Version) – Use short version at each recess.
ee. Thank and dismiss remaining panel.

3. STATE CASE IN CHIEF

a. Ask state READY FOR TRIAL
b. Ask defense READY FOR TRIAL
c. State opens
d. Defense opens
e. State calls witnesses

f. State rests
g. Defense motions
    i. Make record on the defendant's right to testify
    ii. If Defense does not intend to call any witnesses go through instructions
    iii. Let defense rest and renew motions
h. Read Instructions to jury
i. State close
j. Defense Close
k. State final close
l. Give Bailiff 2nd oath
m. Jurors retire
n. Review Instructions for Phase II with counsel
o. Jury Returns
    i. Ask the Foreperson
        1. Have you reached a verdict?
        2. Is it unanimous?
        3. Please hand the instructions to the Bailiff
        4. Review the verdict forms and announce the verdict
        5. Ask Counsel if they wish to have the jury polled

4. SENTENCING

a. Initial instruction to jury
b. State calls witnesses
c. State rests
d. Defense calls witnesses
e. Defense rests
f. State close
g. Defense Close
h. State final close
i. Jurors retire
j. Jury Returns
    i. Ask the Foreperson
        1. Have you reached a verdict?

2. Is it unanimous?
3. Please hand the instructions to the Bailiff
4. Review the verdict forms and announce the verdict

k. Ask the defendant if he wishes to say anything before sentencing
l. Impose sentence
m. Give appeal notice
n. Thank & dismiss jury
o. Adjourn

JURY SELECTION WORKSHEET

NAME OF CASE: _____ **vs.** _____

COUNTY: _____ CASE NUMBER**:** _____ DATE: _____

JURORS CALLED FROM PANEL FOR VOIR DIRE

1_____	11_____	21 _____
2_____	12 _____	22 _____
3_____	13_____	23 _____
4_____	14_____	24_____
5_____	15_____	25_____
6_____	16_____	26_____
7_____	17_____	27_____
8_____	18_____	28_____
9_____	19_____	29_____
10_____	20_____	30_____

ATTORNEYS: _____

CHALLENGES

BY STATE/PLAINTIFF (3)

1_____5_____9_____
2_____6____10_____
3_____7_____
4_____8_____

BY THE DEFENSE/DEFENDANT (3)

1_____5_____9_____
2_____6____10_____
3_____7____
4_____8____

CHALLENGES FOR CAUSE: _____

JURORS SELECTED

1_____	7_____
2_____	8_____
3_____	9_____
4_____	10_____
5_____	11_____
6_____	12_____

ALTERNATES: 1_____2_____3_____

SEATING CHART

JURY OUT: _____ JURY IN: _____VERDICT:_____

Sample Jury Admonishment

At the beginning

To ensure fairness, and the appearance of fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about his case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, if someone should try to talk to you about the case, please report it to me. Do not ready any newspaper accounts of the trial or listen to the radio or television reports about the case. Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case-you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side even if it is simply to pass the time of day an unwarranted and unnecessary suspicion about your Fairness might be aroused. When the lawyers, parties or witnesses do not speak to you in the hall or meet anywhere, remember it is because they are not supposed to talk or visit with you either.

Fifth, do not do any research or make any investigation about the case on your own. (Since this case involved an incident that occurred at a particular location, you may be tempted to visit the scene yourself. Please do not do so.) Tis case must tried solely upon the evidence presented to you in court and not upon any information or impression, whether correct or not, which you might acquire from visiting the scene. Even if you have previous information concerning (the scene of) the occurrence, (due to your familiarity with it) you should keep that information to yourself and not allow it to become a part of the deliberation.

Sixth, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Lastly, if you have a cell phone, pager, or other communication device, you must turn that device off while in the courtroom. You cannot use call phones and other communication devices for any purpose when in the jury room during

deliberations. Unless instructed otherwise, you can use those devices only during recesses. In case of an emergency, ask anyone who needs to get a message to you to call the Court Administration office at _____.

At recess

We are about to take a recess and I remind you of the instruction I gave earlier. During this recess, or any other recess, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone tries to talk to you about this case, please let me know about it immediately. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

<u>Sample Capital Murder Jury Trial Script</u>

THE COURT WILL COME TO ORDER.

MS. CLERK, HAVE YOU CALLED THE ROLL OF JURORS?

HOW MANY JURORS ARE PRESENT? HAVE ALL BEEN PREVIOUSLY QUALIFIED?

ASK ATTORNEYS TO APPROACH BENCH:

> IS THE STATE READY FOR TRIAL?
>
> IS THE DEFENDANT READY FOR TRIAL?
>
> WOULD THE PANEL PLEASE RISE TO TAKE THE OATH TO ANSWER QUESTIONS TOUCHING ON YOUR QUALIFICATIONS TO SERVE IN THIS CASE.

PANEL SHOULD BE SWORN BY THE CLERK AS FOLLOWS:

> **"DO YOU AND EACH OF YOUR SOLEMNLY SWEAR THAT YOU WILL MAKE TRUE AND PERFECT ANSWERS TO SUCH QUESTIONS AS MAY BE ASKED OF YOU TOUCHING YOUR QUALIFICATIONS TO SERVE AS JURORS IN THE CASE OF STATE OF ARKANSAS VS. _____."**

THIS CASE IS FILED IN _____ COUNTY CIRCUIT COURT, AND STYLED:

> **STATE OF ARKANSAS VS. _____.**
>
> **CASE NUMBER _____.**

LADIES AND GENTLEMEN, IN THIS CASE THE STATE IS

REPRESENTED BY _____, PROSECUTING ATTORNEY FOR THE _____ JUDICIAL DISTRICT.

(ASK ALL TO STAND)

HE/SHE WILL BE ASSISTED BY: _____.

THE DEFENDANT IN THIS CASE IS _____.

WOULD YOU PLEASE STAND AND FACE THE JURORS?

HE IS REPRESENTED BY _____.

THE DEFENDANT IS CHARGED WITH _____:

COUNT ONE ALLEGES THAT _____

_____

_____

_____

_____.

THIS IS A CLASS Y FELONY AND IS PUNISHABLE BY A TERM OF LIFE WITHOUT PAROLE OR DEATH.

COUNT TWO (if applicable) ALLEGES THAT _____

_____

_____

_____

_____.

THIS IS A CLASS Y FELONY AND IS PUNISHABLE BY A TERM OF LIFE WITHOUT PAROLE OR DEATH.

YOU ARE ADVISED THAT WHAT I HAVE JUST READ IS AN "INFORMATION". AN INFORMATION IS A METHOD BY WHICH AN INDIVIDUAL IS BROUGHT TO TRIAL. IT IS NOT EVIDENCE OF GUILT AND MUST NOT BE TAKEN AS SUCH BY YOU IF YOU ARE SELECTED AS A JUROR. IT IS MERELY A STEP IN THE PROCESS OF GOING TO TRIAL.

THE TRIAL OF THIS CASE WILL OCCUR IN TWO DISTINCT PHASES. THE FIRST PHASE, WHICH WE REFER TO AS THE GUILT OR INNOCENCE PHASE, IS LIMITED TO THE QUESTION WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THE GUILT OF THE ACCUSED. SHOULD THE ACCUSED BE FOUIND GUILTY OF CAPITAL MURDER AS DESCRIBED IN THE INFORMATION, A SECOND PHASE, OR SENTENCING PHASE, WILL BE HELD TO DETERMINE WHAT TYPE OF PUNISHMENT TO BE IMPOSED.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT EACH ELEMENT OF THE OFFENSES CHARGED.

THERE IS A PRESUMPTION OF THE DEFENDANT'S INNOCENCE IN A CRIMINAL PROSECUTION. IN THIS CASE

_____ IS PRESUMED TO BE INNOCENT. THAT PRESUMPTION OF INNOCENCE ATTENDS AND PROTECTS HIM THROUGHOUT THE TRIAL AND SHOULD CONTINUE AND PREVAIL IN YOUR MINDS UNTIL YOU ARE CONVINCED OF HIS GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT IS NOT A MERE POSSIBLE OR IMAGINARY DOUBT. IT IS A DOUBT THAT ARISES FROM YOUR CONSIDERATION OF THE EVIDENCE AND ONE THAT WOULD CAUSE A CAREFUL PERSON TO PAUSE AND HESITATE IN THE GRAVER TRANSACTIONS OF LIFE. A JUROR IS SATISFIED BEYOND A REASONABLE DOUBT IF AFTER AN IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE HE HAS AN ABIDING CONVICTION OF THE TRUTH OF THE CHARGE.

- ARE YOU, AND EACH OF YOU, WILLING AND ABLE TO GIVE TO _____, THE BENEFIT OF A DOUBT THROUGHOUT THE TRIAL UNTIL AND UNLESS IT IS OVERCOME?

THE DEFENDANT, _____, IS ACCUSED OF TWO COUNTS OF CAPITAL MURDER. IF, AND ONLY IF, THE STATE PROVES ITS CASE BEYOND A REASONABLE DOUBT, THE JURY WILL THEN BE ASKED TO DECIDE THE

PUNISHMENT IN ACCORDANCE WITH ARKANSAS LAW. IN ARKANSAS THERE ARE TWO POSSIBLE PUNISHMENTS FOR CAPITAL MURDER. ONE IS LIFE WITHOUT PAROLE. THE OTHER IS DEATH BY LETHAL INJECTION.

THERE IS NO WAY OF KNOWING WHETHER THE JURY WILL FIND THE DEFENDANT GULTY. BUT IN THE EVENT THAT IT DOES, THE STATE HAS ADVISED THE COURT IT INTENDS TO ASK THE JURY TO IMPOSE THE DEATH PENALTY. THEREFORE, IT IS NECESSARY THAT I ASK YOU CERTAIN QUESTIONS ABOUT YOUR THOUGHTS AND FEELINGS ON THE DEATH PENALTY.

THE FACT THAT YOU MAY HAVE RESERVATIONS ABOUT, OR CONSCIENTIOUS OR RELIGIOUS OBJECTIONS TO, CAPITAL PUNISHMENT DOES NOT AUTOMATICALLY DISQUALIFY YOU AS A JUROR IN A CAPITAL CASE. OF PRIMARY IMPORTANCE IS WHETHER YOU CAN SUBORDINATE YOUR PERSONAL PHILOSOPHY TO YOUR DUTY TO ABIDE BY YOUR OATH AS A JUROR AND FOLLOW THE LAW AS I GIVE IT TO YOU. IF YOU ARE WILLING TO RENDER A VERDICT THAT SPEAKS THE TRUTH AS YOU FIND IT TO EXIST, EVEN THOUGH SUCH VERDICT MAY LEAD TO THE IMPOSITION OF THE DEATH PENALTY, YOU ARE QUALIFIED TO SERVE AS A JUROR IN THE CASE. IF, HOWEVER, YOU ARE POSSESSED OF SUCH STRONG

OPINIONS REGARDING CAPITAL PUNISHMENT—NO MATTER WHAT THOSE OPINIONS MAY BE—THAT YOU WOULD BE PREVENTED FROM OR SUBSTANTIALLY IMPAIRED IN THE PERFORMANCE OF YOUR DUTES AS A JUROR, YOU ARE NOT QUALIFIED TO SERVE AS A JUROR.

IT IS UP TO EACH ONE OF YOU, USING THE STANDARD DESCRIBED TO SEARCH YOUR CONSCIENCE TO DETERMINE WHETHER YOU ARE IN A POSITION TO FOLLOW THE LAW AS I GIVE IT TO YOU AND RENDER A VERDICT AS THE EVIDENCE WARRANTS. ONLY BY YOUR CANDOR CAN EITHER THE ACCUSED OR THE STATE BE ASSURED OF HAVING THIS EXTREMELY SERIOUS CASE RESOLVED BY A FAIR AND IMPARTIAL JURY.

IF YOU ARE SELECTED AS A JUROR IN THIS CASE AND THIS CASE REACHES THE PENALTY PHASE OF THE TRIAL, I WILL THEN INSTRUCT YOU ON THE LAW CONCERNING PUNISHMENT. IN ORDER FOR A JURY TO RETURN A DEATH PENALTY, THE LAW REQUIRES YOUR VERDICT TO BE UNANIMOUS AND THAT YOU RETURN THREE PARTICULAR WRITTEN FINDINGS.

THESE ARE: FIRST, THAT ONE OR MORE AGGRAVATING CIRCUMSTANCES EXISTED BEYOND A REASONABLE DOUBT. SECOND, THAT SUCH

AGGRAVATING CIRCUMSTANCES OUTWEIGH BEYOND A REASONABLE DOUBT ANY MITIGATING CIRCUMSTANCES ANY OF YOU FIND TO EXIST. AND, THIRD, THAT THE AGGRAVATING CIRCUMSTANCES JUSTIFY BEYOND A REASONABLE DOUBT THE SENTENCE OF DEATH. THIS IS THE LAW IN THE STATE OF ARKANSAS AND YOU WOULD BE BOUND BY YOUR OATH TO FOLLOW IT.

COURT VOIR DIRE OF PANEL

- ANY PERSON ANSWERING "YES" TO ANY OF THE FOLLOWING QUESTIONS IS TO STAND (AND SHOW JUROR NUMBER ON CARD PROVIDED) SO THAT THE ATTORNEYS MAY IDENTIFY YOUR JUROR NUMBER AND NAME FOR FUTURE QUESTIONING IF THE PERSON IS CALLED AS A PROSPECTIVE JUROR. ONCE YOU ARE RECOGNIZED BY THE COURT, PLEASE STAND AND GIVE YOUR NAME FOR THE RECORD EACH AND EVERY TIME. THIS IS NOT DONE TO EMBARASS YOU BUT ONLY TO BE SURE WE HAVE A FULL AND ACCURATE RECORD OF ALL THESE PROCEEDINGS.

- IF THERE IS ANY PARTICULAR QUESTION THAT YOU ARE ASKED AND YOU WOULD RATHER NOT GIVE AN ANSWER IN OPEN COURT, OR IF AN ANSWER YOU WOULD GIVE MIGHT AFFECT THE OTHER JURORS,

THEN PLEASE ADVISE THE COURT YOU WISH TO APPROACH THE BENCH SO THAT YOUR ANSWER OR INFORMATION MAY BE GIVEN OUT OF THE PRESENCE OF THE OTHER JURORS.

- **WOULD ANY OF YOU AUTOMATICALLY VOTE AGAINST THE DEATH PENALTY OR COULD NEVER VOTE FOR THE DEATH PENALTY REGARDLESS OF ANY EVIDENCE THAT MIGHT BE DEVELOPED AT THE TRIAL OF THIS CASE?**

- **WOULD ANY OF YOU AUTOMATICALLY IMPOSE THE DEATH PENALTY AND REFUSE TO CONSIDER MITIGATING CIRCUMSTANCES AND OTHER POSSIBLE PUNISHMENT, WHICH IS LIFE WITHOUT PAROLE?**

- IT IS ANTICIPATED THAT THE TRIAL OF THIS CASE WILL LAST FOUR TO FIVE DAYS. IF ALL GOES AS PLANNED, TESTIMONY WILL BEGIN ON MONDAY.

- ARE ANY OF YOU "PERSONALLY" OR ANY IMMEDIATE MEMBER OF YOUR FAMILY RELATED TO OR ACQUAINTED WITH ANY OF THE ATTORNEYS, WITNESSES, OR THE DEFENDANT?

- HAVE ANY OF YOU EVER BEEN REPRESENTED BY ANY ATTORNEY IN THIS CASE, OR HAVE ANY CURRENT BUSINESS WITH ANY OF THE ATTORNEYS OR ASSOCIATES?

- DO ANY OF YOU KNOW THE FACTS OF THIS CASE?

- HAVE ANY OF YOU READ OR HEARD ANYTHING ABOUT THIS ALLEGED INCIDENT?

- HAVE ANY OF YOU FORMED OR EXPRESSED AN OPINION OF THE CASE WHICH MAY INFLUENCE YOUR JUDGMENT?

- DO ANY OF YOU FEEL THAT YOU ARE BIASED OR PREJUDICED FOR OR AGAINST EITHER PARTY?

- DOES THE FILING OF A CHARGE OR AN INDICTMENT OR INFORMATION RAISE ANY INFERENCE OF GUILT IN YOUR MIND?

- DO ANY OF YOU STAND OR HAVE YOU LATELY STOOD IN RELATIONS OF GUARDIAN-WARD, LANDLORD-TENANT, EMPLOYER-EMPLOYEE, OR DO HAVE ANY FORM OF CONTRACTUAL RELATIONSHIP WITH EITHER

THE ATTORNEYS, THE STATE, THE DEFENDANT OR THE WITNESSES?

- DO ANY OF YOU HAVE ANY DOUBTS OR RESERVATIONS ABOUT FOLLOWING MY INSTRUCTION THAT THE DEFENDANT IS PRESUMED TO BE INNOCENT UNTIL PROVEN GUILTY BEYOND A REASONABLE DOUBT BY EVIDENCE PRESENTED IN THIS COURT?

- DO ANY OF YOU HAVE ANY DOUBTS OR RESERVATIONS ABOUT BEING ABLE TO CONSIDER THE EVIDENCE IN THIS CASE FAIRLY AND IMPARTIALLY BECAUSE OF THE CHARGES OF CAPITAL MURDER?

- DO ANY OF YOU HAVE ANY DOUBTS OR RESERVATIONS ABOUT FOLLOWING MY INSTRUCTIONS THAT THE MERE ARREST OF THE DEFENDANT AND HIS PRESENCE HERE FOR TRIAL IS NOT TO BE CONSIDERED AS EVIDENCE AGAINST HIM IN THIS CASE?

- DO ANY OF YOU HAVE ANY DOUBTS OR RESERVATIONS ABOUT YOUR WILLINGNESS TO ACCEPT AND APPLY THE LAW AS I INSTRUCT YOU?

- AFTER THE JURY'S VERDICT IS ANNOUNCED IN OPEN COURT, THE MEMBERS OF THE JURY MAY BE CALLED UPON TO INDIVIDUALLY STATE IF THEY AGREE WITH THE VERDICT. THIS IS CALLED A "POLL OF THE JURY." WOULD ANY OF YOU BE UNWILLING TO DO SO IF YOU WERE SELECTED TO SERVE ON THE JURY?

- **DOES ANY JUROR KNOW OF ANY REASON THAT IF CHOSEN AS A JUROR WHY, HE OR SHE, COULD NOT BE ABSOLUTELY FAIR AND IMPARTIAL AND BASE YOUR VERDICT STRICTLY UPON THE LAW AS GIVEN TO YOU BY THE COURT AND THE EVIDENCE THAT IS GAINED FROM THE WITNESS STAND?**

- ANY GENERAL QUESTIONS OF THE PANEL BY THE STATE?

- ANY GENERAL QUESTIONS OF THE PANEL BY THE DEFENDANT?

CLERK, PLEASE PLACE THE JUROR'S CHIPS INTO THE JURY WHEEL AND DRAW REMAINING JURORS TO BE QUESTIONED INDIVIDUALLY IN THE ORDER THEIR NAMES ARE CALLED. EXCUSE THE REMAINING JURORS FOR TWO TO THREE HOURS.

IN CAPITAL CASES, THE STATE HAS 10 CHALLENGES AND THE DEFENSE HAS 12.

ALTERNATE JURORS

AFTER A FULL PANEL IS SEATED, THE COURT SHOULD INQUIRE CONCERNING ALTERNATE JURORS.

IS THERE A NECESSITY FOR ALTERNATE?

EACH SIDE HAS ONE STRIKE AGAINST EACH ALTERNATE JUROR.

MEMBER OF THE PANEL, AT THIS TIME WE ARE ABOUT TO RETIRE TO THE JURY ROOM WHERE THE PARTIES WILL CONDUCT A MORE IN DEPTH QUESTIONING OF PROSPECTIVE JURORS OUT OF THE HEARING OF THE REMAINING PANEL. THIS IS CALLED "SEQUESTERED VOIR DIRE," BUT DOES NOT MEAN ANYONE WILL BE REQUIRED TO REMAIN OVERNIGHT. IT IS SIMPLY A PROCESS TO GIVE A PROSPECTIVE JUROR A MORE PRIVATE SETTING TO ANSWER QUESTIONS THAT MIGHT NOT BE POSSIBLE IN FRONT OF THE ENTIRE PANEL.

IF YOU ARE SELECTED AS A JUROR, YOU WILL BE PERMITTED TO GO TO YOUR HOME, EMPLOYMENT OR PLACE OF BUISNESS UNTIL ALL THE JURORS AND ALTERNATES HAVE BEEN SELECTED AT WHICH TIME YOU WILL BE NOTIFIED TO RETURN FOR THE COMMENCMENT OF THE TRIAL. THE COURT WILL ADVISE YOU THAT YOU ARE NOT TO READ, LISTEN TO OR WATCH ANY NEWS REPORTS THAT MAY OCCUR AS A RESULT

OF THIS TRIAL IN ORDER THAT YOU MAY REMAIN FAIR AND IMPARTIAL.

DURING THE TIME WE ARE IN THE JURY ROOM, DO NOT DISCUSS THE CASE WITH YOUR FELLOW PROSPECTIVE JURORS, NOR READ ANY ARTICLES ON THE CASE, CONDUCT ANY RESEARCH, OR ALLOW ANY ONE ELSE TO DISCUSS THE CASE WITH YOU UNTIL YOU ARE DISCHARGED BY THE COURT.

YOU MAY BRING READING MATERIAL INTO THE COURTROOM UNTIL YOU ARE CALLED FOR QUESTIONING AND UNTIL THE COURT RECONVENES. YOU ARE PERMITTED TO MOVE ABOUT AND GO OUTSIDE THE COURTHOUSE, BUT YOU SHOULD NOT LEAVE THE COURTHOUSE GROUNDS. IF YOU STEP OUTSIDE, PLEASE MAKE SURE ONE OF THE BAILIFFS WILL BE AWARE OF WHERE YOU MIGHT BE IN CASE WE NEED YOU.

THE ORDER OF PROSPECTIVE JURORS TO BE QUESTIONED HAS ALREADY BEEN CONDUCTED AND APPROVED BY THE PARTIES. A LIST WILL BE MADE AVAILABLE TO YOU SO THAT YOU WILL HAVE SOME IDEA WHEN YOU WILL BE CALLED. THE FIRST PERSON TO BE CALLED WILL BE _____.

AT THIS TIME WE WILL MOVE TO THE JURY ROOM TO CONDUCT THE INDIVIDUAL VOIR DIRE.

- QUESTIONS BY THE STATE?

- QUESTIONS BY THE DEFENDANT?

ONCE QUESTIONING HAS BEEN COMPLETED, THE JUROR WILL BE ASKED TO LEAVE THE ROOM FOR COMMENTS/CHALLENGES.

WHAT SAYS THE STATE AS TO JUROR _____?
(GOOD OR STRIKE)

WHAT SAYS THE DEFENDANT AS TO JUROR _____?
(GOOD OR STRIKE)

JUROR WILL THEN BE ADVISED IF HE/SHE IS EXCUSED OR TO RETURN FOR SERVICE AND BE CAUTIONED.

AFTER THE STATE AND DEFENSE HAVE HAD AN OPPORTUNITY TO INQUIRE OF ALL THE JURORS, ASK:

- **WHAT SAYS THE STATE AS TO THE JURY?**
- **WHAT SAYS THE DEFENSE AS TO THE JURY?**

(BACK IN THE COURTROOM.)

WILL THE JURY PLEASE STAND, RAISE YOUR RIGHT HANDS, AND TAKE THE OATH TO SIT AS JURORS IN THIS CASE.

THE CLERK SHOULD SWEAR THE PANEL.

OATH: "DO YOU AND EACH OF YOU SOLEMNLY SWEAR THAT YOU WILL WELL AND TRULY TRY THE CASE OF STATE VS. _____, AND

RENDER A TRUE VERDICT UNLESS DISCHARGED BY THE COURT OR WITHDRAWN BY THE PARTIES?" BE SEATED.

EXCUSE THE BALANCE OF THE JURY PANEL. GIVE DATES OF NEXT TRIAL IF KNOWN.

WITNESSES: SWEARING/IS RULE REQUESTED?

THE WITNESSES, WHO WILL BE CALLED TO TESTIFY IN THIS CASE, SO FAR AS KNOWN BY THE COURT, ARE: _____ (THE JUDGE SHOULD OBTAIN THIS INFORMATION FROM BOTH SIDES PRIOR TO TRIAL. AS EACH WITNESS's NAMES ARE CALLED, THEY SHOULD RISE, OR IF OUTSIDE OF THE COURTROOM, COME INTO THE COURTROOM.)

EXPLANATION OF THE RULE

ALL WITNESSES SHOULD BE SWORN BY THE CLERK AND THE EXCLUSION OF WITNESS RULE GIVEN, IF APPROPRIATE, AS FOLLOWS:

- EACH OF YOU HAS BEEN SUMMONED AS A WITNESS IN THIS CASE.

- THE COURT HAS INVOKED A RULE OF PROCEDURE WHICH REQUIRES YOUR EXCLUSION FROM THE COURTROOM AT ALL ITEMS, EXCEPT DURING THE TRIAL WHEN YOU TESTIFY IN THIS MATTER.

- YOU ARE DIRECTED TO REMAIN OUT OF THE COURTROOM EXCEPT WHEN YOU ARE CALLED TO TESTIFY. WHILE YOU ARE WAITING TO TESTIFY, AND AFTER YOU HAVE DONE SO, YOU ARE NOT TO DISCUSS THIS CASE OR YOUR TESTIMONY AMONG YOURSELVES OR WITH ANYONE ELSE. YOU MAY, HOWEVER, DISCUSS YOUR TESTIMONY WITH COUNSEL FOR EITHER PARTY IN THIS CASE.

- COUNSEL FOR EACH OF THE PARTIES ARE INSTRUCTED TO ADVISE EACH OF THEIR RESPECTIVE WITNESSES THAT ARE NOT PRESENT AT THE TIME OF THE DIRECTION I HAVE JUST GIVEN THAT EACH OF THEM SHALL BE GOVERNED THEREBY.

- ANY VIOLATION OF THIS DIRECTION MAY NOT ONLY SUBJECT YOU TO CONTEMPT OF COURT BY MAY ALSO DISQUALIFY YOU AS A WITNESS IN THIS CASE.

BREAK BEFORE COMMENCING TRIAL

CONSIDER TAKING A BREAK AT THIS POINT IN ORDER FOR THE JURORS TO NOTIFY EMPLOYERS, FAMILY, ETC.

<u>READ THE FOLLOWING ADMONITION NOW AND BEFORE EACH RECESS:</u>

AMI 101a CAUTIONARY INSTRUCTION - COMMENCEMENT OF TRIAL (MODIFIED)

TO ENSURE FAIRNESS, AND THE APPEARANCE OF FAIRNESS, YOU AS JURORS MUST OBEY THE FOLLOWING RULES:

- FIRST, DO NOT TALK AMONG YOURSELVES ABOUT THIS CASE, OR ABOUT ANYONE INVOLVED WITH IT, UNTIL THE END OF THE CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR VERDICT.

- SECOND, DO NOT TALK WITH ANYONE ELSE ABOUT THIS CASE, OR ABOUT ANYONE INVOLVED WITH IT, UNTIL THE TRIAL HAS ENDED AND YOU HAVE BEEN DISCHARGED AS JURORS.

- THIRD, WHEN YOU ARE OUTSIDE THE COURTROOM, DO NOT LET ANY ONE TELL YOU ANYTHING ABOUT THE CASE, OR ABOUT ANYONE

INVOLVED WITH IT. IF SOMEONE SHOULD TRY TO TALK TO YOU ABOUT THE CASE, PLEASE REPORT IT TO ME.

- FOURTH, DURING THE TRIAL YOU SHOULD NOT TALK WITH OR SPEAK TO ANY OF THE PARTIES, LAWYERS OR WITNESSES INVOLVED IN THIS CASE - YOU SHOULD NOT EVEN PASS THE TIME OF DAY WITH ANY OF THEM. IT IS IMPORTANT NOT ONLY THAT YOU DO JUSTICE IN THIS CASE, BUT THAT YOU ALSO GIVE THE APPEARANCE OF DOING JUSTICE. IF A PERSON FROM ONE SIDE OF THE PROCEEDINGS SEES YOU TALKING TO A PERSON FROM THE OTHER SIDE - EVEN IF IT IS SIMPLY TO PASS THE TIME OF DAY - AN UNWARRANTED AND UNNECESSARY SUSPICION ABOUT YOUR FAIRNESS MIGHT BE AROUSED. WHEN THE LAWYERS, PARTIES OR WITNESSES DO NOT SPEAK TO YOU WHEN YOU PASS IN THE HALL OR MEET ANYWHERE, REMEMBER IT IS BECAUSE THEY ARE NOT SUPPOSED TO TALK OR VISIT WITH YOU EITHER.

- FIFTH, DO NOT READ ANY NEWS STORIES OR ARTICLES ABOUT THE CASE, OR ABOUT ANYONE INVOLVED WITH IT, OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE OR ABOUT ANYONE INVOLVED WITH IT. [IN FACT, UNTIL THE TRIAL IS OVER, I SUGGEST THAT YOU AVOID READING ANY NEWSPAPERS OR NEWS JOURNALS AT ALL, AND AVOID LISTENING TO ANY TV OR RADIO NEWS CASTS AT ALL. I DO NOT KNOW WHETHER THERE MIGHT BE ANY NEWS REPORTS OF THIS CASE, BUT IT THERE ARE YOU MIGHT INADVERTENTLY FIND YOURSELF READING OR LISTENING TO SOMETHING BEFORE YOU COULD DO ANYTHING ABOUT IT. IF YOUR WANT, YOU CAN HAVE YOUR SPOUSE OR A FRIEND

CUT OUT ANY STORIES AND SET THEM ASIDE TO GIVE YOU AFTER THE TRIAL IS OVER. I CAN ASSURE YOUR, HOWEVER, THAT BY THE TIME YOU HAVE HEARD THE EVIDENCE IN THE CASE, YOU WILL KNOW MORE ABOUT THE MATTER THAN ANYONE WILL LEARN THROUGH THE NEWS MEDIA.]

- SIXTH, DO NOT DO ANY RESEARCH OR MAKE ANY INVESTIGATION ABOUT THE CASE ON YOUR OWN. [SINCE THIS CASE INVOLVED AN INCIDENT THAT OCCURRED AT A PARTICULAR LOCATION, YOU MAY BE TEMPTED TO VISIT THE SCENE YOURSELF. PLEASE DO NOT DO SO. THIS CASE MUST BE TRIED SOLELY UPON THE EVIDENCE PRESENTED TO YOU IN COURT AND NOT UPON ANY INFORMATION OR IMPRESSION, WHETHER CORRECT OR NOT, WHICH YOU MIGHT ACQUIRE FROM VISITING THE SCENE. EVEN IF YOU HAVE PREVIOUS INFORMATION CONCERNING THE SCENE OF THE OCCURRENCE, DUE TO YOUR FAMILIARITY WITH IT, YOU SHOULD KEEP THAT INFORMATION TO YOURSELF AND NOT ALLOW IT TO BECOME A PART OF THE DELIBERATION.]

- SEVENTH, DO NOT MAKE UP YOUR MIND DURING THE TRIAL ABOUT WHAT THE VERDICT SHOULD BE. KEEP AN OPEN MIND UNTIL AFTER YOU HAVE GONE TO THE JURY ROOM TO DECIDE THE CASE AND YOU AND YOUR FELLOW JURORS HAVE DISCUSSED THE EVIDENCE.

INSTRUCTION TO BE READ BEFORE EACH RECESS:

<u>AMI 101B CAUTIONARY INSTRUCTION - DUTIES OF JURY DURING RECESSES</u>

WE ARE ABOUT TO TAKE [OUR FIRST] RECESS AND I REMIND YOU OF THE INSTRUCTIONS I HAVE GIVEN YOUR EARLIER. DURING THIS RECESS OR ANY OTHER RECESS, YOU MUST NOT DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW JURORS, MEMBERS OF YOUR FAMILY, PEOPLE INVOLVED IN THE TRIAL, OR ANYONE ELSE. IF ANYONE TRIES TO TALK TO YOU ABOUT THE CASE, PLEASE LET ME KNOW ABOUT IT IMMEDIATELY. [DO NOT READ, WATCH OR LISTEN TO ANY NEWS REPORTS OF THE TRIAL] FINALLY, KEEP AN OPEN MIND UNTIL ALL THE EVIDENCE HAS BEEN RECEIVED AND YOU HAVE HEARD THE VIEWS OF YOUR FELLOW JURORS.

COMMENCEMENT OF THE TRIAL

LADIES AND GENTLEMEN OF THE JURY:

YOU HAVE BEEN SELECTED AND SWORN AS THE JURY TO TRY THE CASE OF STATE VS. _____.

THIS IS A CRIMINAL CASE CHARGED BY AN INFORMATION FILED IN THIS COURT BY THE PROSECUTING ATTORNEY ALLEGING A VIOLATION OF THE LAWS RELATING TO AND STATED AS **CAPITAL MURDER**. THE ELEMENTS OF WHICH WILL BE EXPLAINED TO YOU LATER.

IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT AND YOUR VERDICT MUST BE BASED SOLELY ON THE

EVIDENCE AS IT IS PRESENTED TO YOU IN THIS TRIAL AND THE LAW ON WHICH THE COURT INSTRUCTS YOU

THE JURY IS CONCERNED WITH THE FACTS; THE COURT IS CONCERNED WITH THE LAW. THE COURT IS CONCERNED WITH FACTS ONLY TO SEE THEY ARE PROPERLY AND LAWFULLY PRESENTED TO YOU. THE JURY IS CONCERNED WITH THE LAW ONLY AS THE COURT INSTRUCTS IT. THUS THE RESPONSIBILITY OF THE JURY AND THE RESPONSIBILITY OF THE COURT ARE WELL DEFINED, AND THEY DO NOT OVERLAP.

JUROR NOTE-TAKING

DURING THE TRIAL YOU WILL BE PERMITTED TO TAKE NOTES. THE COURT HAS PROVIDED YOU WITH PENCILS AND NOTEPAPER FOR YOUR CONVENIENCE. FOR MANY YEARS THE PRACTICE OF JUROR NOTE-TAKING WAS DISCOURAGED BECAUSE THE TAKING OF NOTES DISTRACTS YOUR MIND FROM THE EVEIDENCE THAT IS PRESENTED WHILE YOU ARE BUSY TAKING NOTES. THE OTHER REASON WAS THAT THE BEST NOTE-TAKER MIGHT HAVE MORE INFLUENCE ON THE OTHER JURORS THAN IS WANTED. REMEMER, EACH OF YOU MUST INDIVIDUALLY DETERMINE THE ISSUES IN THIS CASE. IT IS YOUR RESPONSIBILITY TO OBSERVE THE

WITNESSES AS THEY TESTIFY AND TO LISEN ATTENTIVELY TO ALL THE TESTIMONY. AT THE END OF THE CASE, IN DELIBERATIONS, YOUR COLLECTIVE MINDS WILL THEN REACH A VERDICT. THE NOTES ARE ONLY TO BE USED AS A MEMORY AID AND SHOULD NOT BE ALLOWED TO TAKE PRECEDENCE OVER JURORS' INDEPENDENT MEMORY OF FACTS. PLEASE UNDERSTAND THAT TESTIMONY CANNOT BE REPEATED NOR THE TRIAL DELAYED TO PERMIT THE TAKING OF ACCURATE NOTES. FINALLY, THERE IS NO REQUIREMENT THAT YOU TAKE NOTES.

IN THE EVENT YOU SHOULD EXPERIENCE A PERSONAL PROBLEM DURING THE COURSE OF THE TRIAL, YOU MAY EXPLAIN THE MATTER TO THE BAILIFF, AND THE MESSAGE WILL BE RELAYED TO THE COURT

PRELIMINARY INSTRUCTIONS

BEFORE WE HEAR THE OPENING STATEMENTS OF COUNSEL AND BEGIN TO TAKE EVIDENCE, IT MAY BE HELPFUL IF YOU HAVE SOME PRELIMINARY INSTRUCTIONS TO FOLLOW IN LISTENING TO AND CONSIDERING THE EVIDENCE WHICH YOU WILL HEAR IN THIS CASE.

YOU HAVE THE EXCLUSIVE DUTY TO DECIDE ALL QUESTIONS OF FACT SUBMITTED TO YOU. IN CONNECTION WITH THIS DUTY YOU MUST DETERMINE THE EFFECT AND VALUE OF THE EVIDENCE. YOU MUST NOT BE INFLUENCED IN YOUR DECISION BY SYMPATHY, PREJUDICE OR PASSION TOWARD ANY PARTY, WITNESS OR ATTORNEY IN THE CASE.

THE ATTORNEYS FOR THE PARTIES WILL, OF COURSE, HAVE ACTIVE ROLES IN THE TRIAL. THEY WILL MAKE OPENING STATEMENT TO YOU, QUESTION WITNESSES AND MAKE OBJECTIONS AND, FINALLY, WILL ARGUE THE CASE AS THE LAST STEP BEFORE YOU COMMENCE YOUR DELIBERATIONS. REMEMBER THAT THE LAWYERS ARE NOT WITNESSES, AND SINCE IT IS YOUR DUTY TO DECIDE THE CASE SOLELY ON THE EVIDENCE WHICH YOU SEE OR HEAR IN THE CASE, YOU MUST NOT CONSIDER AS EVIDENCE ANY STATEMENT OF ANY ATTORNEY MADE DURING THE TRIAL. THERE IS AN EXCEPTION, AND THAT IS IF THE ATTORNEYS AGREE TO ANY FACT. THAT AGREEMENT, STIPULATION OR ADMISSION OF FACT WILL BE BROUGHT TO YOUR ATTENTION, AND YOU MAY THEN REGARD THAT FACT AS BEING CONCLUSIVELY PROVED WITHOUT THE NECESSITY OF FURTHER EVIDENCE.

IF A QUESTION IS ASKED AND AN OBJECTION TO THE QUESTION IS SUSTAINED, YOU WILL NOT HEAR THE ANSWER; YOU MUST NOT SPECULATE AS TO WHAT THE ANSWER MIGHT HAVE BEEN OR AS TO THE REASON FOR THE OBJECTION. IF AN ANSWER IS GIVEN TO A QUESTION AND THE COURT THEN GRANTS A MOTION TO STRIKE OUT THE ANSWER, YOU ARE TO COMPETELY DISREGARD THAT QUESTION AND THE ANSWER AND NOT CONSIDER THEM FOR ANY PURPOSE. A QUESITON, IN AND OF ITSELF, IS NOT EVIDENCE, AND MAY BE CONSIDERED BY YOU ONLY AS IT SUPPLIES MEANING TO THE ANSWER.

WHEN AN OBJECTION IS MADE, IT DOES NOT MEAN THAT ANYONE IS TRYING TO CONCEAL EVIDENCE FROM YOU. THERE ARE RULES GOVERNING THE ADMISSIBILITY OF EVIDENCE WHICH MUST BE FOLLOWED AND THE COURT ATTEMPTS TO ACCOMPLISH THIS BY RULING ON THE OBJECTIONS. THE OBJECTION IS MADE TO CALL THE COURT'S ATTENTIONS TO A POSSIBLE TRANSGRESSION OF THE RULES. OVER THE CENTURIES, THE LAW HAS DETERMINED WHAT EVIDENCE IS RELIABLE AND WHAT IS NOT. IN ORDER TO PRESERVE THE INTEGRITY OF THE TRIAL, EACH SIDE ATTEMPTS TO ENSURE THAT ONLY RELIABLE EVIDENCE IS PRESENTED TO THE JURY. THIS IS USUALLY THE REASON FOR THE OBJECTION.

THERE WILL BE OCCASIONS WHEN THE ATTORNEYS APPROACH THE BENCH AND SPEAK TO THE COURT OUT OF YOUR HEARING. YOU MUST NOT SPECULATE AS TO THESE DISCUSSIONS, WHICH CONCERN POINTS OF LAW, BECAUSE THEY ARE NOT EVIDENCE AND IT WOULD BE UNFAIR FOR THE JURY TO BE IN ON DISCUSSIONS, WHICH ARE NOT PART OF THE EVIDENCE UPON WHICH YOU WILL BASE YOUR DECISION.

AS JURORS, YOU WILL HAVE THE SOLE AND EXCLUSIVE DUTY TO DECIDE THE CREDIBILITY OF THE WITNESSES WHO WILL TESTIFY IN THE CASE, WHICH SIMPLY MEANS THAT IT IS YOU WHO MUST DECIDE WHETHER TO BELIEVE OR DISBELIEVE A PARTICULAR WITNESS. IN MAKING THIS DETERMINATION, YOU WILL APPLY THE TESTS OF TRUTHFULNESS WHICH YOU APPLY IN YOUR DAILY LIVES. THESE TESTS INCLUDE THE APPEARANCE OF EACH WITNESS ON THE STAND; HIS OR HER MANNER OF TESTIFYING; THE REASONABLENESS OF THE TESTIMONY; THE OPPORTUNITY THE WITNESS HAD TO SEE, HEAR AND KNOW THE THINGS CONCERNING WHICH HE OR SHE TESTIFIED; THE ACCURACY OF THE WITNESS' MEMORY; FRANKNESS OR LACK OF IT; INTELLIGENCE, INTEREST AND BIAS, IF ANY. YOU ARE NOT REQUIRED TO BELIEVE THE TESTIMONY OF ANY

WITNESS SIMPLY BECAUSE IT WAS GIVEN UNDER OATH. YOU MAY BELIEVE OR DISBELIEVE ALL OR ANY PART OF THE TESTIMONY OF ANY WITNESS.

YOU SHOULD NOT DECIDE ANY ISSUE OF FACT MERELY ON THE BASIS OF THE NUMBER OF WITNESSES WHO TESTIFY ON EACH SIDE OF THAT ISSUE. RATHER, THE FINAL TEST IN JUDGING EVIDENCE SHOULD BE THE FORCE AND WEIGHT OF THE EVIDENCE, REGARDLESS OF THE NUMBER OF WITNESSES ON EACH SIDE OF AN ISSUE. THE TESTIMONY OF ONE WITNESS, BELIEVED BY YOU, IS SUFFICIENT TO PROVE ANY FACT.

OPENING STATEMENTS OF COUNSEL ARE CONCISE AND ORDERLY DESCRIPTIONS OF EACH SIDE'S CLAIMS AND DEFENSES AND THE EVIDENCE COUNSEL EXPECT TO PRODUCE IN SUPPORT OF THOSE CLAIMS AND DEFENSES.

OPENING STATEMENTS ARE NOT EVIDENCE.

THEY ARE PREVIEWS OF THE RESPECTIVES CASES, DESIGNED TO GIVE YOU SOME PERSPECTIVE ON THE EVIDENCE. THEY ARE TO BE CONSIDERED ONLY AS A GUIDE SO YOU MAY UNDERSTAND AND EVALUATE THE EVIDENCE AS IT COMES TO YOU.

WHEN THE EVIDENCE IS COMPLETED, I WILL INSTRUCT YOU ON THE LAW APPLICABLE TO THIS CASE.

AFTER THE INSTRUCTIONS ARE GIVEN, THE ATTORNEYS WILL THEN ARGUE THE MERITS OF THE CASE. WHAT THE ATTORNEYS SAY IS NOT EVIDENCE. THE ARGUMENTS ARE GIVEN FOR THE PURPOSE OF ASSISTING YOU IN EVALUATING THE EVIDENCE AND ARRIVING AT THE CORRECT CONCLUSION CONCERNING THE FACTS. THEIR ARGUMENTS MAY BE ACCEPTED OR REJECTED.

EACH SIDE MAY ADDRESS YOU ONCE DURING OPENING STATEMENTS. IN ACCORDANCE WITH THE RULES WHICH GOVERN THESE PROCEEDINGS, THE STATE WILL SPEAK FIRST.

MR./MRS. PROSECUTOR, YOU MAY NOW MAKE YOUR OPENING STATEMENT FOR THE STATE.

_____[DEFENSE COUNSEL], YOU MAY NOW MAKE YOUR OPENING STATEMENT FOR THE DEFENDANT.

MR. PROSECUTOR, CALL YOUR FIRST WITNESS.

STATE'S CASE

WHEN STATE RESTS-

RECESS: (IF MOTIONS ARE TO BE HEARD)

DEFENSE, CALL YOUR FIRST WITNESS.

DEFENDANT'S CASE

WHEN DEFENDANT RESTS-

MOTIONS?

ANY REBUTTAL?

LADIES AND GENTLEMEN, YOU HAVE HEARD ALL OF THE EVIDENCE THAT YOU WILL HEAR IN THIS CASE. IT WILL BE NECESSARY TO SETTLE THE INSTRUCTIONS WITH THE ATTORNEYS. WE WILL RECESS FOR 15 MINUTES.

MEMBERS OF THE JURY, IT NOW BECOMES MY DUTY TO GIVE YOU THE LAW THAT WILL GOVERN YOU IN YOUR DELIBERATION IN THIS CASE. AS I PREVIOUSLY TOLD YOU, THIS LAW WILL BE CONTAINED IN THE FORM OF

VARIOUS INSTRUCTIONS AND I TRUST THAT YOU WILL LISTEN CAREFULLY TO THE READING OF THEM AND HOPE THAT YOU CAN BETTER UNDERSTAND THE LAW. THEN IT WILL BE YOUR DUTY TO HARMONIZE THIS LAW WITH THE FACTS.

READ INSTRUCTIONS

ANY ADDITIONAL INSTRUCTIONS REQUESTED BY THE STATE?

ANY ADDITIONAL INSTRUCTIONS REQUESTED BY THE DEFENDANT?

CLOSING ARGUMENTS

THE ATTORNEYS AT THIS TIME WILL MAKE THEIR FINAL ARGUMENT TO YOU. MR./MRS. [PROSECUTOR]_____ WILL MAKE AN OPENING ARGUMENT. THE ATTORNEY FOR THE DEFENDANT WILL THEN HAVE HIS/HER OPPORTUNITY TO MAKE HIS/HER ARGUMENT. THEN MR./MRS._____ WILL REPLY TO THE ARGUMENT OF THE DEFENDANT.

THE ATTORNEYS, IN MAKING THESE ARGUMENTS TO YOU, WILL BE COMMENTING UPON THE TESTIMONY THAT

YOU HAVE HEARD AND THE EVIDENCE THAT HAS BEEN PRESENTED. THEY, AS YOU, WILL BE RECALLING THE EVIDENCE THAT HAS BEEN PRESENTED. THEY WILL NOT INTENTIONALLY TRY TO MISLEAD YOU. HOWEVER, IF THEIR RECOLLECTION OF THE EVIDENCED DIFFERS FROM WHAT YOUR RECOLLECTION IS, YOU MUST FOLLOW YOUR OWN RECOLLECTION. THESE FINAL ARGUMENTS ARE NOT TO BE CONSTRUED BY YOU AS EVIDENCE IN THIS CASE OR INSTRUCTIONS ON THE LAW. THEY ARE, HOWEVER, INTENDED TO HELP YOU BETTER UNDERSTAND THE CONTENTIONS OF EACH SIDE IN THE ISSUES YOU ARE TO DECIDE.

YOU SHOULD GIVE BOTH SIDES YOUR CLOSEST ATTENTION.

MR./MRS. ____, YOU MAY MAKE YOUR FIRST CLOSING.

MR./MRS._____, YOU MAY MAKE YOUR CLOSING ARGUMENT.

MR./MRS._____, YOU MAY MAKE YOUR FINAL CLOSING.

VERDICT FORMS

LADIES AND GENTLEMEN, I GIVE YOU _____ VERDICT FORMS.

[READ EACH OF THE VERDICT FORMS]

YOU MAY TAKE THE JURY INSTRUCTIONS AND ANY OF THE EXHIBITS WITH YOU TO THE JURY ROOM. YOU MAY NOW RETIRE TO DELIBERATE.

[RETURN OF JURY…]

TAKING VERDICT

AFTER THE COURT HAS BEEN NOTIFIED THAT THE JURY HAS REACHED A VERDICT, ALL PARTIES AND ATTORNEYS SHOULD BE IN PLACE, THE JURY SHOULD BE PUT IN THE BOX.

ASK: WILL THE FOREMAN/FOREPERSON PLEASE STAND?
HAS THE JURY REACHED ITS VERDICT?
PLEASE HAND IT TO THE BAILIFF.

THE FOREPERSON SHOULD FOLD AND DELIVER THE VERDICT FORM TO THE BAILIFF. THE BAILIFF SHOULD DELIVER THE VERDICT FORM TO THE JUDGE.

ALL COUNSEL, PARTIES, WITNESSES, AND SPECTATORS REMAIN SEATED AND QUIET. THERE ARE TO BE NO DEMONSTRATIONS BY ANYONE AFTER THE READING OF THE VERDICT.

ASK THE DEFENDANT TO PLEASE RISE BEFORE READING OF THE VERDICT.

THE JUDGE SHOULD READ THE VERDICT AND POLL THE JURY IF REQUESTED BY EITHER PARTY.

IF GUILTY VERDICT:

THE ALTERNATE JURORS ARE RELEASED AT THIS TIME. THANK YOU FOR YOUR TIME AND SERVICE.

READ OPENING INSTRUCTIONS ON PHASE II OF TRIAL.

OPENING STATEMENTS:

STATE: MR./MRS._____ YOU MAY MAKE YOUR OPENING.

DEFENDANT: MR./MRS. _____ YOU MAY MAKE YOUR OPENING.

EVIDENCE:

STATE MAY PRESENT VICTIM IMPACT TESTIMONY AND/OR HISTORY OF PREVIOUS CONVICTIONS.

DEFENDANT MAY PRESENT MITIGATING CIRCUMSTANCES TESTIMONY.

READ SENTENCING PHASE BY INSTRUCTIONS TO JURY.

CLOSING ARGUMENTS:

READ FINAL INSTRUCTIONS AND VERDICT FORMS TO THE JURORS.

JURY RETIRES TO DELIBERATE ON THE PUNISHMENT.

WHEN JURY RETURNS:

ASK: WILL THE FOREMAN/FOREPERSON PLEASE STAND?

HAS THE JURY REACHED ITS VERDICT?

PLEASE HAND IT TO THE BAILIFF.

ALL COUNSEL, PARTIES, WITNESSES, AND SPECTATORS REMAIN SEATED AND QUIET. THERE ARE TO BE NO DEMONSTRATIONS BY ANYONE AFTER THE READING OF THE VERDICT.

ASK THE DEFENDANT TO RISE BEFORE READING OF VERDICT.

READ VERDICT.

ASK IF DEFENSE COUNSEL WANTS THE JURY POLLED. IF SO, POLL THE JURY.

HAVE DEFENSE COUNSEL AND DEFENDANT COME TO THE PODIUM. ASK: DOES EITHER COUNSEL OR DEFENDANT HAVE ANYTHING TO SAY BEFORE SENTENCING?

ASK: ANYTHING FROM THE STATE?

ASK: COUNSEL, DO YOU KNOW OF ANY LEGAL REASON WHY SENTENCE SHOULD NOT BE PASSED AT THIS TIME?

SENTENCING:

_____[DEFENDANT], IT IS THE JUDGMENT AND SENTENCE OF THIS COURT THAT YOU BE TAKEN BY THE SHERIFF OF _____ COUNTY AND DELIVERED TO THE DEPARTMENT OF CORRECTION TO:

1. **SERVE A TERM OF _____ YEARS, or**
2. **SERVE LIFE IN PRISON WITHOUT PAROLE, or**
3. **RECEIVE A SENTENCE OF DEATH BY LEATH INJECTION.**

(IF CONVICTED ON MULTIPLE COUNTS, SENTENCE AS ABOVE ON EACH COUNT.)

NOTIFY DEFENDANT OF RIGHT TO APPEAL.

RELEASE THE JURY AND THANK THEM FOR THEIR **TIME, ATTENTION AND SERVICE. THESE JURORS WILL BE EXCUSED FROM REMAINDER OF THE TERM.**

BE SURE AND GET THE INSTRUCTIONS AND EXHIBITS FROM THE JURY MEMBERS BEFORE RELEASING.

REMIND JURORS OF NEXT TRIAL DATE, IF KNOWN.

Sample Scripts

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)

Oath of 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."

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

Before commencing his or her duties, an interpreter appointed under this subchapter shall take an oath in substantially the following form:

"Do you [swear] [affirm] that you will make a true and impartial interpretation using your best skills and judgment in accordance with the standards and ethics of the interpreter profession and that you will abide by the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary, [so help you God] [under the penalty of perjury]?"
Ark. Code Ann. §16-10-1105.

Admonition of 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."

Charge to Grand Jury

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 thereon investigate the same.

In your deliberations the following procedure will be observed:

The Court will appoint one of you as foreman.

When you retiree 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."

Arraignment (Sample)

On this _____day of _____, 20_____, 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] 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 _____, 20_____.

_____

Judicial Officer

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 _____

_____

SSN._____

TELEPHONE_____

PRIOR
ADDRESS_____

PRESENT
EMPLOYER_____

ADDRESS_____

TELEPHONE_____

VEHICLE YOU OWN OR DRIVE:

MAKE_____ MODEL_____ COLOR_____

License Plate 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:_____ Guarantor:_____

Address:_____ Address:_____

Telephone:_____ Telephone:_____

Employer:_____ Employer:_____

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

Commitment to Jail to Await Trial (Sample)

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: _____, 20_____.

_____

Judicial officer

CONDITIONAL PLEA FORM

[For use with Rule 24.3(b), Arkansas Rules of Criminal Procedure]

IN THE CIRCUIT COURT OF _____, ARKANSAS
_____Division
No. _____

STATE OF ARKANSAS

v.
_____, Defendant

CONDITIONAL PLEA

I, _____ *(name of defendant),* with the approval of the court, and the consent of the Prosecuting Attorney am entering a plea of [guilty] [no contest] to Count 1. _____
Count 2. _____
Count 3. _____

I understand my plea is conditioned upon the filing of an appeal on the issue of_____ *(describe [motion to suppress seized evidence] [motion to suppress custodial statement] [motion to dismiss a charge because not brought to trial within the time provided in Rule 28.1 (b) or (c)] or [challenge to the constitutionality of Ark. Code Ann. §_____] upon which appeal will be based.)*

I understand that, if the judge approves my plea of [guilty] [no contest], a judgment and sentence will be entered, and that I may appeal on the issue specified above in the manner provided by the rules of court.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of [guilty] [no contest].

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading [guilty] [no contest], if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

_____ _____
Date Defendant

DEFENSE COUNSEL REVIEW

I have reviewed this conditional plea with my client, and I have discussed with my client its consequences.

_____ _____

Defense Counsel Date

PROSECUTOR APPROVAL

I have reviewed this conditional plea and consent to it.

_____ _____

Prosecutor Attorney Date

COURT APPROVAL

This Conditional Plea Agreement is approved, and I direct that it be entered of record in this case.

_____

Circuit Judge

_____

Date

This Conditional Plea Form shall accompany the Sentencing Order and be made a part of the record in the case.

I certify this is a true and correct record of this Court.

Date:_____ Circuit Clerk/Deputy: _____

CRIMINAL HISTORY WORKSHEET INSTRUCTIONS

A copy of the Criminal History Worksheet is available at http://www.state.ar.us/asc/forms.html.

Offender Name: Enter the name most commonly used by the Defendant. Name entered should match the name used on Criminal Information.

Date of Birth: Enter numerals to indicate the date of birth. Example: 03/25/1962.

Sex: Enter **"M"** for male and **"F"** for female.

SID #: Enter the Defendant's State Identification Number (SID). It may be obtained from the Criminal Information or from the local law enforcement agency handling the case. If this is the *first* arrest for the defendant, the SID number may not be available.

Date of Worksheet: Enter the date the worksheet was prepared.

Circuit Case #: Enter the circuit court case number.

County: Enter the name of the county in which charges are filed.

Offense: Enter the name of the offense for which the Defendant was charged.

Statute #: Enter the A.C.A. number for which the defendant was charged. Indicate the substantive crime, e.g., rape, theft, murder, etc. *Do not* put the statute code for "conspiracy," "attempt," or "solicitation" to commit an offense in this blank.

Date of Offense: Enter the date of the charged offense.

Person Completing Form: Enter the name of the person completing the worksheet.

Modifiers: Indicate if the offense was for "conspiracy," "attempt," or "solicitation." The seriousness level for an inchoate offense is one (1) level below the substantive offense.

Criminal History Supplement: If an offender has more than five (5) prior convictions in any category, list additional convictions on an additional Criminal History Worksheet.

Multiple Offenses: Circle the number of the prior conviction which represents the most serious offense among multiple offenses for a single course of conduct. For example, if a defendant is charged with residential burglary, breaking and entering, and theft of property, circle residential burglary because it is the most serious offense. For departure purposes, multiple offenses for a single course of conduct may be listed and identified as such on the Criminal History Worksheet.

Adult Felonies - Levels 6-10: List the name of the offense for each prior conviction. There are no restrictions on the date of an offense or conviction date at these levels.

> **Level:** Indicate the seriousness level for listed charges. Refer to the Seriousness Reference Table in the *Arkansas Sentencing Commission Sentencing Standards Grid, Offense Seriousness Rankings and Related Material* manual. Out-of-state, redefined, and unranked offenses shall be ranked at the level of the most comparable offense in this State. Refer to the Addendum to the Seriousness Reference Table in the standards manual.
>
> **Disposition Date:** Enter the date of disposition for listed charges.
>
> **Points:** One (1) point is given for each prior conviction on Levels 6-10. There are no time limitations on counting prior convictions at this level.

Adult Felonies - Levels 1-5: List the name of the offense for each prior conviction.

> **Level:** See above.
>
> **Disposition Date:** See above.

Points: One-half (.5) of a point is given for each conviction for offenses on Levels 1-5. Prior felony offenses at these levels will not be counted if a period of fifteen (15) years has elapsed since the date of discharge from or the expiration of the sentence, to the date of the current offense.

Adult Class A Misdemeanors: List prior convictions of Class A misdemeanors where the offender was charged as an Adult. Prior offenses must have occurred within ten (10) years of the current offense.

Level: Adult Class A Misdemeanors do not have seriousness levels. This field is not applicable for these offenses.

Offense Date: Indicate the offense date of the listed Adult Class A Misdemeanor convictions.

Points: One-fourth (.25) of a point is given on each conviction of an Adult Class A misdemeanor. No more than one (1) point may be accrued from Class A misdemeanor convictions.

Juvenile Adjudications: List prior juvenile adjudications. Weight is assigned only to judicial adjudications of delinquency for offenses for which a juvenile could have been tried as an adult and which the trial court deemed relevant to sentencing in the current proceeding.

Level: Compute the seriousness level as if the offense was committed by an adult. See above.

Offense date: See above.

Points: One-fourth of a point (.25) is given for adjudications where the juvenile could have been tried for a felony offense as an adult. However, one (1) point is given for the following more serious offenses: capital murder, murder in the first degree, murder in the second degree, kidnaping in the first degree, aggravated robbery, rape or battery in the first degree. If one of the prior adjudications is one of these more serious offenses, up to two (2) points may be accrued. If not, no more than one (1) point may be accrued. The juvenile offense(s) must have occurred within ten (10) years of the current offense.

Custody Status: Indicate if the defendant was on any type of criminal justice restraint for a felony at the time the current offense was committed. Criminal justice restraints include, but are not limited to incarceration, pretrial bond, suspended imposition of sentence, probation, parole, post-prison supervision, appeal bond, and release pending sentencing for a prior crime. A maximum of one (1) point may be accrued.

Total Points by Classification: Enter the total points accrued for each classification as follows: total points for Adult Felonies - Levels 6-10; total points for Adult Felonies Levels 1-5; total points for Adult Class A Misdemeanors (maximum of 1); total points for Juvenile Adjudications (maximum of 2); and total points for Custody Status (maximum of 1).

Total Criminal History Points: Enter the total points accrued, including a custody status point, if applicable. Round down to the nearest whole number.

Current Offense: Enter the statute number of the current charge.

Seriousness Level: Indicate the seriousness level of the current offense. See Arkansas Sentencing Commission Seriousness Reference Table.

History Score: Indicate the total criminal history score from above.

Presumptive Sentence: Indicate the presumptive sentence found on the sentencing grid at the intersecting cell of the seriousness level and the total criminal history score.

Presumptive Sentence Range: If the offense date is prior to July 1, 2005, indicate the range 5% below and 5% above the presumptive sentence. This may be found in Section III of the sentencing standards manual. If the offense date is July 1, 2005, and thereafter, this section is not applicable.

ARKANSAS SENTENCING COMMISSION

CRIMINAL HISTORY WORKSHEET

Offender Name (Last, First, Middle)	Date of Birth	Sex	SID # / Circuit Case #	Date of Worksheet

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 6-10			
1			
2			
3			
4			
5			
Adult Felonies Levels 1-5			
1			
2			
3			
4			
5			
Adult Class A Misdemeanors		Offense Date	
1			
2			
3			
4			
5			
Juvenile Adjudications		Offense Date	
1			
2			
3			
4			
5			

Felony Points Levels 6-10 _____

Felony Points Levels 1-5 _____

Class A Misdemeanor Points (Maximum of 1) _____

Juvenile Points(Maximum of 2) _____

Custody Status: If offender was on any type of custody supervision at the time of the current offense, add 1 point.

Custody Status Point (Maximum of 1) _____

TOTAL CRIMINAL HISTORY POINTS _____

(Round Down To Nearest Whole Point)

☐ Probation/SIS ☐ Parole/Post Prison Supervision ☐ Temp. Release ☐ Bond ☐ No CJ Control

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 470
Little Rock, AR 72201
(501) 682-5001

COVER SHEET

STATE OF ARKANSAS

CRIMINAL INFORMATION

This criminal information cover sheet or the standard criminal information form is required by Supreme Court Administrative Order Number 8 to be completed for every defendant and filed by the prosecutor. The data contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court rule. Instructions are located on the back of the form.

County _____ District _____ Case Number _____

Judge _____ Division _____ Filing Date _____

Style of Case _____

Prosecutor Providing Information _____

Is this an Amended Information? ☐ Yes

If yes, are you

Adding Offense(s)? ☐ Yes

Dropping Offense(s)? ☐ Yes

Changing Offense(s)? ☐ Yes

Is D being charged as a Habitual? ☐ Yes

Are multiple D's charged in the information? ☐ Yes

Is victim under the age of 14? ☐ Yes

Defendant's Full Name	Date of Birth	Race	Sex	SID #	Arrest Date

Address (Street, City, State, Zip)	SS#	Driver's License No.
	Arrest Tracking #	Prosecutor's File #

Alias 1	Alias 2	Alias 3

The attached information accuses the above named defendant of the following crime(s):

Code #	Offense	A/S/C	Offense Date	Counts	F/M	Class

_____ Circuit Clerk/Deputy Clerk

_____ Prosecuting Attorney/Deputy Prosecuting Attorney

AOC 2/07

CRIMINAL INFORMATION

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DISTRICT, _____ DIVISION

State of Arkansas

vs

_____

Case No. _____

Filing Date _____

		Multiple D's Charged Together ☐ -Or- Multiple D's Charged Separately ☐	
Amended Information?	☐ Yes		
If Yes:		Co-D's	Related Case #'s
Adding Offense(s)?	☐ Yes		
Dropping Offense(s)?	☐ Yes		
Changing Offense(s)?	☐ Yes		
D Charged As Habitual?	☐ Yes		
Is victim under the age of 14?	☐ Yes		

Defendant's Full Name	Date of Birth	Race	Sex	SID #	Arrest Date

Address (Street, City, State, Zip)	SS#	Driver's License No.
	Arrest Tracking #	Prosecutor's File #

Alias 1	Alias 2	Alias 3

I, _____, Prosecuting/Deputy Prosecuting Attorney, _____ Judicial District, in the name of the State of Arkansas, _____ County, accuse the above named defendant of the following crime(s):

Code #	Offense	A/S/C	Offense Date	Counts	F/M	Class

Committed as follows: Count # _____ Offense _____

The defendant on or about _____ (date), in _____ County, Arkansas did unlawfully

against the peace and dignity of the State of Arkansas.

Committed as follows: Count # _____ Offense _____

The defendant on or about _____ (date), in _____ County, Arkansas did unlawfully

against the peace and dignity of the State of Arkansas.

Committed as follows: Count # _____ Offense _____

The defendant on or about _____ (date), in _____ County, Arkansas did unlawfully

against the peace and dignity of the State of Arkansas.

Entered this _____ day of _____, 19_____. By _____
Prosecuting/Deputy Prosecuting Attorney
_____, Prosecuting Attorney.

AOC 2/07

INSTRUCTIONS FOR COMPLETING CRIMINAL INFORMATION

Pursuant to Supreme Court Administrative Order Number 8, the Office of the Prosecuting Attorney is responsible for the completion and filing of either the standard criminal information form or the criminal information cover sheet, a copy of which is to be forwarded by the circuit clerk to the Administrative Office of the Courts. Only one defendant shall be charged in each criminal information.

Court Location. Fill in the name of the county, district, and division (if applicable) of the court in which the information is being filed.

Style, Case #. Enter the name of the defendant for the style of the case, and the filing date (the month, day, and year the information is being filed). The clerk will assign and enter a case number upon filing.

Amendment/Habitual. Complete each question only if the answer is "yes." If a previous information was filed against the same defendant for the same occurrence, indicate the type of changes from the original or most recent information. Indicate "yes" if the defendant is being charged as a habitual offender, pursuant to A.C.A. § 5-4-501 et. seq.

Multiple Defendants. If the prosecutor checks "Multiple D's Charged Together" the clerk MUST assign the same case number to the information of each of the co-defendants listed on the information. If defendants will be charged in separate proceedings, the prosecutor should check "Multiple D's Charged Separately" and the related case numbers may be entered for case assignment and tracking purposes.

Defendant Information. Enter all background and directory information about the defendant which is available. A.C.A. § 12-12-1007 requires that the arrest tracking number be provided at filing if the defendant has been arrested.

Charging Information. Enter name of charging prosecutor, judicial district number, and county name. For each offense charged, list the Arkansas Code Annotated number of the offense, the title of the offense, whether the charge is for an attempt (A), solicitation (S) or conspiracy (C) (if none leave blank), the offense date, the number of counts, whether the charge is a felony (F) or misdemeanor (M), and its classification (Y, A, B, C, D, U).

Narrative Statement. For each count or series of counts and offenses, complete the narrative description of the defendant's actions which constituted the offense. Complete the charging statement by entering the classification of the offense and the range of possible fine and incarceration for the offense. Use additional pages if necessary.

Verification. Enter the date and the signature of the prosecuting authority. The clerk shall retain the original information in the case file and send a copy of the first page only of the information to the Administrative Office of the Courts.

CRIMINAL INFORMATION

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DISTRICT, _____ DIVISION

State of Arkansas

vs

_____

Case No. _____

Filing Date _____

Amended Information?	☐ Yes	Multiple D's Charged Together ☐ -Or- Multiple D's Charged Separately ☐	
If Yes:		Co-D's	Related Case #'s
Adding Offense(s)?	☐ Yes		
Dropping Offense(s)?	☐ Yes		
Changing Offense(s)?	☐ Yes		
D Charged As Habitual?	☐ Yes		
Is victim under the age of 14?	☐ Yes		

Defendant's Full Name	Date of Birth	Race	Sex	SID #	Arrest Date

Address (Street, City, State, Zip)	SS#	Driver's License No.
	Arrest Tracking #	Prosecutor's File #

Alias 1	Alias 2	Alias 3

I, _____, Prosecuting/Deputy Prosecuting Attorney, _____ Judicial District, in the name of the State of Arkansas, _____ County, accuse the above named defendant of the following crime(s):

Code #	Offense	A/S/C	Offense Date	Counts	F/M	Class

Committed as follows: Count # _____ Offense _____

The defendant on or about _____ (date), in _____ County, Arkansas did unlawfully

against the peace and dignity of the State of Arkansas.

Committed as follows: Count # _____ Offense _____

The defendant on or about _____ (date), in _____ County, Arkansas did unlawfully

against the peace and dignity of the State of Arkansas.

Committed as follows: Count # _____ Offense _____

The defendant on or about _____ (date), in _____ County, Arkansas did unlawfully

against the peace and dignity of the State of Arkansas.

Entered this _____ day of _____, 20_____. By _____

Prosecuting/Deputy Prosecuting Attorney

_____, Prosecuting Attorney.

IN THE CIRCUIT COURT OF _____COUNTY, ARKANSAS

_____DIVISION

STATE OF ARKANSAS

VS CASE NO. :_____

_____	_____	_____	_____
(FULL NAME OF DEFENDANT)	Date of Birth	Sex	Race

_____

OFFENSE(S) CHARGED AND CODE NOS.:

_____

PROSECUTING ATTORNEY'S NAME AND ADDRESS:

_____

DEFENSE ATTORNEY'S NAME AND ADDRESS:

_____

NAME OF ATTORNEY REQUESTING EXAMINATION:

_____

ARKANSAS ARREST TRACKING NUMBER:

_____

DEFENDANT'S CUSTODY STATUS AND LOCATION:

ORDER FOR CRIMINAL RESPONSIBILITY EXAMINATION OF DEFENDANT

Pursuant to Ark. Code Ann. § 5-2-305, the defendant has filed notice that he/she intends to rely on the defense of mental disease or defect and _____ has petitioned the Court for a criminal-responsibility examination and opinion.

It is therefore ORDERED:

1. All further proceedings in the prosecution are immediately suspended.

2. _____ (check if appropriate) The defendant has requested simultaneous fitness-to-proceed and criminal-responsibility examinations and two separate orders have been completed. *Checking this paragraph identifies cases in which DHS should receive two separate orders from the Court. Checking this paragraph does not substitute for the requirement of separate orders for a fitness-to- proceed examination and a criminal-responsibility examination as mandated by Ark. Code Ann. § 5-2-305.*

3. (Check the appropriate choice below.)

_____A. The defendant shall undergo examination by one (1) or more qualified psychiatrists or qualified psychologists: (name, address, and telephone no. of the examiner): _____

_____B. The defendant shall undergo examination by one (1) or more qualified psychiatrists not practicing with the Arkansas State Hospital: (name, address, and telephone no. of examiner): _____

_____C. The Director of the Division of Behavioral Health Services of the Department of Human Services is directed to determine who will examine the defendant.

DBHS Forensic Coordinator
Arkansas State Hospital
305 South Palm St.
Little Rock, AR 72205
(Tel) (501) 686-9174
(Fax) (501) 686-9198

4. The Director of the Division of Behavioral Health of the Department of Human Services or designee shall determine the location of the examination.
5. The prosecuting attorney shall provide a copy of this Order to the DBHS Director of Forensic Services, or examiner ordered by this Court to conduct the examination if not the Division of Behavioral Health Services, within five (5) days of entry of the Order.
6. The prosecuting attorney shall provide the examiner any information relevant to the examination, including but not limited to:
    A. The name and address of any attorney involved in the matter;
    B. Information about the alleged offense (s); and
    C. Any information about the defendant's background that is deemed relevant to the examination, including the criminal history of the defendant.
7. Having determined that the information is available and relevant pursuant to Ark. Code Ann. § 5-2-305 (g)(3), the Court directs the attorney for the defendant to provide the following information to the examiner:

    _____

8. The examiner shall provide a report to this Court which includes the following:
    A. A description of the nature of the examination;
    B. A description of any evidence that the defendant is feigning a sign or symptom of mental disease or defect;
    C. A specific description of the signs or symptoms of mental disease or defect, if in the opinion of the examiner the defendant has a mental disease or defect;

D. A substantiated diagnosis in the terminology of the American Psychiatric Association's current edition of the Diagnostic and Statistical Manual of Mental Disorders;

E. An opinion as to whether as the result of a mental disease or defect the defendant at the time of the alleged criminal conduct lacked the capacity to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law and an explanation of the examiner's opinion and the basis of the opinion; and

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 with an explanation of the examiner's opinion and the basis of the opinion.

9. The examiner shall not render an opinion or issue a report on criminal responsibility if the examiner believes that the defendant is not fit to proceed. The criminal responsibility examination shall be suspended and the Court shall be notified immediately that there is a question as to the defendant's fitness to proceed.

10. If an examination cannot be conducted because of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant is the result of mental disease or defect.

11. The examination shall be for a period not exceeding sixty (60) days or such longer period as the Director of the Division of Behavioral Health of the Department of

Human Services or his or her designee determines to be necessary for the purpose of the examination.

12. Any existing medical or pertinent record in the custody of a public agency shall be made available to the examiner and to the prosecuting attorney and the defendant's attorney for inspection and copying.

13. A person designated to perform an examination shall file the report of the examination with the clerk of the court, and the clerk of the court shall mail a copy to the defense attorney and a copy to the prosecuting attorney.

IT IS SO ORDERED.

_____ _____

Date 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 _____, 20_____, 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 the 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 a 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 _____, 20_____.

_____

ATTORNEY FOR DEFENDANT(S)

_____

NAME(S) OF DEFENDANT(S) REPRESENTED

_____

SIGNATURE(S) OF DEFENDANTS

IN THE CIRCUIT COURT OF _____COUNTY, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS

VS CASE NO. :_____

_____ _____ _____ _____

(FULL NAME OF DEFENDANT) Date of Birth Sex Race

_____

OFFENSE(S) CHARGED AND CODE NOS.:

_____

PROSECUTING ATTORNEY'S NAME AND ADDRESS:

_____

DEFENSE ATTORNEY'S NAME AND ADDRESS:

_____

NAME OF ATTORNEY OR JUDGE REQUESTING EXAMINATION:

_____

ARKANSAS ARREST TRACKING NUMBER:

_____

DEFENDANT'S CUSTODY STATUS AND LOCATION:

ORDER FOR FITNESS TO PROCEED EXAMINATION OF DEFENDANT

Pursuant to Ark. Code Ann. § 5-2-305, this Court finds reasonable suspicion to believe that the defendant may not be fit to proceed and therefore ORDERS:

1. All further proceedings in the prosecution are immediately suspended.

2. _____ (check if appropriate) The defendant has requested simultaneous fitness-to-proceed and criminal-responsibility examinations and two separate orders have been completed. *Checking this paragraph identifies cases in which DHS should receive two separate orders from the Court. Checking this paragraph does not substitute for the requirement of separate orders for a fitness-to-proceed examination and a criminal-responsibility examination as mandated by Ark. Code Ann. § 5-2-305.*

3. (Check the appropriate choice below.)

_____A. The defendant shall undergo examination by one (1) or more qualified psychiatrists or qualified psychologists: (name, address, and telephone no. of the examiner):_____

_____B. The defendant shall undergo examination by one (1) or more qualified psychiatrists not practicing with the Arkansas State Hospital: (name, address, and telephone no. of examiner):_____

_____C. The Director of the Division of Behavioral Health Services of the Department of Human Services is directed to determine who will examine the defendant.

DBHS Forensic Coordinator
Arkansas State Hospital
305 South Palm St.
Little Rock, AR 72205
(Tel) (501) 686-9174
(Fax) (501) 686-9198

4. The Director of the Division of Behavioral Health of the Department of Human Services or designee shall determine the location of the examination.

5. The prosecuting attorney shall provide a copy of this Order to the DBHS Director of Forensic Services, or examiner ordered by this Court to conduct the examination if

not the Division of Behavioral Health Services, within five (5) days of entry of this Order.

6. The prosecuting attorney shall provide the examiner any information relevant to the examination, including but not limited to the following:
    A. The name and address of any attorney involved in the matter;
    B. Information about the alleged offense (s); and
    C. Any information about the defendant's background that is deemed relevant to the examination, including the criminal history of the defendant.
7. Having determined that the information is available and relevant pursuant to Ark. Code Ann. § 5-2-305 (g)(3), the Court directs the attorney for the defendant to provide the following information to the examiner:

_____

8. The examiner shall provide a report to this Court which includes the following:
    A. A description of the nature of the examination;
    B. A description of any evidence that the defendant is feigning a sign or symptom of mental disease or defect;
    C. A finding as to whether the defendant has a mental disease or defect or if unable to make such a determination, the reasons therefor;
    D. A specific description of the signs or symptoms of mental disease or defect, if in the opinion of the examiner the defendant has a mental disease or defect;
    E. A substantiated diagnosis in the terminology of the American Psychiatric Association's current edition of the Diagnostic and Statistical Manual of Mental Disorders; and

F. An opinion on whether the defendant lacks the capacity to understand the proceedings against him or her and to assist effectively in his or her own defense as a consequence of mental disease or defect, and an explanation of the examiner's opinion and the basis of the opinion.

9. If an examination cannot be conducted because of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant is the result of mental disease or defect.

10. The examination shall be for a period not exceeding sixty (60) days or such longer period as the Director of the Division of Behavioral Health of the Department of Human Services or his or her designee determines to be necessary for the purpose of the examination.

11. Any existing medical or pertinent record in the custody of a public agency shall be made available to the examiner and to the prosecuting attorney and the defendant's attorney for inspection and copying.

12. A person designated to perform an examination shall file the report of the examination with the clerk of the court, and the clerk of the court shall mail a copy to the defense attorney and a copy to the prosecuting attorney.

IT IS SO ORDERED.

_____ _____

Date Circuit Judge

Form for Notice and Acknowledgment
for Service by Mail under Ark. R. Civ. P. 4(d)(8)(B)

This form is to be used only for service by mail under Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure. It cannot be used for service by mail under Rule 4(d)(8)(A) or for service by a commercial delivery company under Rule 4(d)(8)(C).

_____

NOTICE

To: [*Defendant's name and address*]

A lawsuit captioned _____ [insert caption of case from complaint] has been filed against you in the Circuit Court of _____ County, Arkansas. The enclosed summons and complaint are served on you in accordance with Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days. If you do not do so, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within the time specified in the summons. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, partnership, limited liability company, unincorporated association, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and are authorized to receive service, you must indicate under your signature your authority.

As the sender of this Notice and Acknowledgment of Receipt of Summons and Complaint, I declare under penalty of perjury that it is being mailed on [date].

Sender's Address:
_____
_____
_____

_____
[Signature]

_____
[Printed Name]

_____
[Date of Signature]

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the lawsuit referenced above at [address] on [date].

_____
[Signature]

_____
[Printed Name]

_____
[Relationship to Entity / Authority to Receive Service]

_____
[Date of Signature]

FORM OF SUMMONS

The Supreme Court of Arkansas has adopted the following form of summons for use in all cases in which personal service is to be had pursuant to Rule 4(c), (d) and (e) of the Arkansas Rules of Civil Procedure. The form incorporates a proof of service to be made by a sheriff, deputy sheriff, or other person, as appropriate, in accordance with Rule 4(g). The form may be modified as needed in special circumstances. Additional notices, if required, should be inserted in the appropriate space. This form is not for use in cases of constructive service pursuant to Rule 4(f). The adoption of this form is in compliance with Rule 4(b) and does not modify or amend any part of that rule.

Effective July 1, 2012

Corrected as of August 14, 2012

THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DIVISION [Civil, Probate, etc.]

_____
Plaintiff

v. No. _____

_____
Defendant

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT:

_____ [Defendant's name and address.]

_____

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) — or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas — you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are:_____

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

CLERK OF COURT

Address of Clerk's Office

_____

_____ _____
[Signature of Clerk or Deputy Clerk]

Date:_____

[SEAL]

No. _____ This summons is for _____ *(name of Defendant).*

PROOF OF SERVICE

☐ I personally delivered the summons and complaint to the individual at _____ _____[place] on _____ [date]; or

☐ I left the summons and complaint in the proximity of the individual by _____ _____ after he/she refused to receive it when I offered it to him/her; or

☐ I left the summons and complaint at the individual's dwelling house or usual place of abode at _____[address] with _____[name], a person at least 14 years of age who resides there, on _____[date]; or

☐ I delivered the summons and complaint to _____[name of individual], an agent authorized by appointment or by law to receive service of summons on behalf of _____[name of defendant] on _____[date]; or

☐ I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I served the summons and complaint on the defendant by certified mail, return receipt requested, restricted delivery, as shown by the attached signed return receipt.

☐ I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I mailed a copy of the summons and complaint by first-class mail to the defendant together with two copies of a notice and acknowledgment and received the attached notice and acknowledgment form within twenty days after the date of mailing.

☐ Other [specify]: _____

☐ I was unable to execute service because: _____

_____

My fee is $ ____.

To be completed if service is by a sheriff or deputy sheriff:

Date: _____ SHERIFF OF _____ COUNTY, ARKANSAS

By: _____
[Signature of server]

_____
[Printed name, title, and badge number]

To be completed if service is by a person other than a sheriff or deputy sheriff:

Date: _____ By: _____
[Signature of server]

_____
[Printed name]

Address: _____

_____

Phone: _____

Subscribed and sworn to before me this date: _____

_____
Notary Public

My commission expires: _____

Additional information regarding service or attempted service:

_____

_____

In Forma Pauperis Affidavit
[see Rule 72, Rules of Civil Procedure]

IN THE _____ COURT _____, COUNTY, ARKANSAS

IN RE PETITION OF _____
TO PROCEED IN FORMA PAUPERIS

NO. ___

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 prepay fees, costs or give security therefor, 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 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 ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare funds?

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 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 _____, 2____.

_____

Notary Public

My commission expires: _____

[(To be completed by authorized officer of penal institution)

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]

IN THE _____ COURT OF _____ COUNTY, ARKANSAS

IN RE PETITION OF _____
TO PROCEED IN FORMA PAUPERIS

CASE NO. _____

PETITION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

COMES NOW the Plaintiff, _____, *pro se*, who hereby petitions the court for Leave to Proceed *In Forma Pauperis* and does allege and state as follows:

1. That Plaintiff, a resident of the State of Arkansas, has prepared and desires to file with this Court a _____.

2. That Plaintiff has completed an Affidavit in Support of Request to *Proceed In Forma Pauperis* setting out his/her income and assets. Plaintiff's Affidavit accompanies this petition.

3. That Plaintiff's income barely suffices to meet the costs of life's daily essentials and includes no allotment that could be budgeted to pay for court fees and costs incident to this proceeding.

4. That Plaintiff has no other income in addition to that described in his/her Affidavit and no means of paying such costs without being reduced to total impoverishment.

6. That Plaintiff believes that he/she is entitled to the relief requested in the accompanying _____ and that such action is not brought for a frivolous or malicious purpose.

WHEREFORE, Plaintiff prays that the court enter an order allowing the Plaintiff to prosecute this action *In Forma Pauperis* and that the Plaintiff may have the necessary writs and processes without payment of fees or costs for the same.

Respectfully submitted,

SIGNATURE: _____
ADDRESS: _____
_____
PHONE: _____

Miscellaneous Pretrial 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

OMNIBUS HEARING ORDER

It is ORDERED that an Omnibus Hearing shall be held in this case on _____, 20____, 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 _____, 20_____.

_____

CIRCUIT JUDGE

The clerk is directed to send copies to:

Prosecuting Attorney

Defense Counsel

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 witnesses (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 informer 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. Hearing on privilege 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.

a. The hearing on disclosure set for _____.

b. The hearing on rape shield set for _____.

C. **MISCELLANEOUS MOTIONS**

1. The defense moves:

A. To dismiss for failure of the information to state an offense.

(Granted) (Denied)

B. To dismiss the information (or court _____ thereof) on the ground of duplicity. (Granted) (Denied)

C. To sever case of defendant _____ as to count _____ and for a separate trial. (Granted) (Denied)

D. To sever case of defendant _____ as to count _____ and for a separate trial. (Granted) (Denied)

E. For a Bill of Particulars. (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:

_____
PROSECUTING ATTORNEY

_____
DEFENSE ATTORNEY

_____
CIRCUIT JUDGE

"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

ORDER TO EXTEND TIME TO FILE THE RECORD
[For use with Rule 5(b), Arkansas Rules of Appellate Procedure – Civil]

IN THE CIRCUIT COURT OF _____, ARKANSAS

_____Division

No. _____

_____,

v.

_____,

ORDER TO EXTEND TIME TO FILE THE RECORD

Before the court is a motion pursuant to Rule 5 (b) of the Rules of Appellate Procedure – Civil to extend the time to file the record on appeal in order for the court reporter to include stenographically reported material. The court makes the following findings:

1. _____ ("Appellant") has filed a motion explaining the reasons for the requested extension.

2. Appellant has served the motion on all counsel of record and pro se parties.

3. The time to file the record on appeal has not yet expired.

4. All parties have had the opportunity to be heard on the motion [at a hearing held on the matter on _____, 20__] [and/or] [by filing a response to the motion].

5. Appellant, as required by Rule 6(b) of the Rules of Appellate Procedure – Civil, has timely ordered the stenographically reported material from the court reporter and made any financial arrangements required for its preparation.

6. An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal.

Based on these findings, good cause has been shown to extend the time to file the record on appeal.

IT IS THEREFORE ORDERED that Appellant's motion is granted. The time for filing the record is extended by _____ days, to _____, 20__, which is within the seven

month deadline set by Ark. R. App. P. -- Civil 5 (b)(2).

_____
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._____

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 provided 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 provided 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)

D. _____ years imprisonment in the Department of Correction with ____ years suspended and credit for _____ jail time

( ) Concurrent ( ) Consecutive

E. Probation for _____ years with _____ supervision and payment of monthly fee of $_____.

F. Suspend imposition of sentence for _____ years.

G. Serve a term of _____ in the County Jail with credit for _____.

( ) Concurrent ( ) Consecutive

H. Pay a fine of $ _____ with $_____ suspended.

I. Pay Court costs.

J. Pay restitution of $_____ to victim(s).

K. Cooperatively participate and complete a program for _____.

L. Attend school without unexcused absences or disciplinary problems.

M. Enroll in and complete a course to obtain a GED.

N. Perform community service of _____ hours.

O. One day of Department of Correction under ACT 548.

P. Expungement under ACT 346.

Q. Other:_____.

AS TO COUNT(S) _____ (Here specifically write provisions.)

_____ _____

DEFENDANT STATE'S ATTORNEY

_____ _____

DEFENSE ATTORNEY DATE

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

VS. CR _____-_____

_____ DEFENDANT

PLEA STATEMENT

You are charged with:

OFFENSE(S)	**RANGE OF IMPRISONMENT**	**FINE**
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

in the _____ County Circuit Court. It is necessary that you fully understand the entire contents of this document.

You are charged with a (felony / misdemeanor).
You are charged as a habitual offender. [_____YES] [_____ NO] (CHECK APPLICABLE BOX)

You could receive a total sentence from _____ to _____ in the (state penitentiary / county jail) and/or a fine of up to $_____.

You have a right to plead not guilty and to be tried before the court or by a jury, with the burden on the State of proving your guilt beyond a reasonable doubt. At the trial you would have the right to testify or not testify. You would have the right to confront and cross-examine all witnesses against you, and to have compulsory attendance of all witnesses you wish to call in your behalf. If you were found not guilty, you would be released on the charges for which you were tried. If, after determining the facts with instructions on the law from the court, the jury found you guilty, then they would fix your punishment. If you waive your right to trial by jury and elect a court trial, the court would determine both the facts and the law.

With these thoughts in mind, you must answer each of the following questions and initial your response.

	YES	NO	INITIALS
Do you hereby state your judgment is not now impaired by drugs, alcohol, or medication.	_____	_____	_____
Do you understand the minimum and maximum possible sentences for the offense(s) with which you have been charged?	_____	_____	_____
Do you understand that your plea of guilty is a waiver of your right to a trial by jury and of your right to appeal to any other court?	_____	_____	_____
Do you fully understand what you are charged with having done?	_____	_____	_____
Have you discussed your case fully with your attorney and are you satisfied with his or her service?	_____	_____	_____
Are you certain that your plea of guilty has not been induced by any force, threat, or promise, apart from a plea agreement?	_____	_____	_____

(OVER)

	YES	NO	INITIALS
Do you understand that the Judge is not required to carry out any understanding between you, your attorney, and the prosecuting attorney, and that power of sentencing is with the Court only?	_____	_____	_____
If your negotiated plea involves a sentence of imprisonment, do you state that no one has made you any promises regarding parole eligibility, earning of meritorious good time, early release, or anything of that nature in order to get you to enter this plea?	_____	_____	_____
Do you believe that if that this case went to trial, the State could meet its burden of proving your guilt beyond a reasonable doubt?	_____	_____	_____

FOR NON-CITIZENS OF THE UNITED STATES ONLY

If you are not a citizen of the United States of America, has your attorney informed you that by entering this plea, you will be subjecting yourself to a risk of being deported?	_____	_____	_____
Do you freely and voluntarily choose to enter your plea of guilty knowing that it could result in your deportation pursuant to the laws and regulations governing the United States Immigration and Naturalization Service?	_____	_____	_____

If your answer is "yes" to each of the preceding questions, and if you fully understand every detail of your guilty plea, then carefully read the following statement and sign in the appropriate space with your attorney witnessing your signature.

I AM AWARE OF EVERYTHING IN THIS DOCUMENT. I FULLY UNDERSTAND WHAT MY RIGHTS ARE, AND I FREELY, KNOWINGLY AND VOLUNTARILY PLEAD GUILTY BECAUSE I AM IN FACT GUILTY AS CHARGED.

_____
DEFENDANT'S SIGNATURE

I have carefully and completely explained this document to the accused. To the best of my knowledge he/she fully understands all of it. His/Her plea of guilty is consistent with the facts he/she has related to me and with my own investigation of the case.

_____ _____
DATE ATTORNEY FOR DEFENDANT

APPROVED:

_____
DEPUTY PROSECUTING ATTORNEY

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 b y 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 guilt 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 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 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

ORDER FOR PRETRIAL CONFERENCE

On _____, 20_____, 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 _____, 20_____, at _____ o'clock _____m.

This _____ day of _____, 20_____.

_____

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

NUMBER _____

IN THE MATTER
OF APPOINTMENT OF _____
TO SERVE LEGAL PROCESS

APPLICATION FOR APPOINTMENT AND AUTHORIZATION TO SERVE LEGAL PROCESS

Comes now _____, and petitions the court for an order of appointment as civil process server in accordance with Rule 4(c)(2), Arkansas Rules of Civil Procedure, and Administrative Order Number 20, and states:

1. Applicant seeks appointment to serve process in _____ Count[y] [ies], Arkansas and as established by affidavit satisfies the minimum qualifications:

(A) is eighteen years of age or older and a citizen of the United States;

(B) has a high school diploma or equivalent;

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

(D) holds a valid driver's license from one of the United States;

[*(E) Any additional qualifications of judicial circuit*]

2. Applicant certifies that [he/she] is familiar with the provisions of Rules 4, 5 and 45 of the Arkansas Rules of Civil Procedure and applicable Arkansas law and with the various documents to be served; that [he/she] will carry a certified copy of his or her order of appointment, and a valid

driver's license, when serving process, and will upon request or inquiry, present this identification at the time service is made.

3. Applicant is a resident of _____, _____ County, Arkansas with a mailing address of: _____.

WHEREFORE, Applicant prays that this Application be granted and that the Court enter an Order authorizing service of civil process in _____, Count[y][ies]Arkansas.

_____

Applicant

STATE OF ARKANSAS)
COUNTY OF _____)

I state on oath that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my present knowledge and belief.

_____
Applicant

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____
Notary Public

My Commission Expires: _____

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

NUMBER _____

IN THE MATTER OF THE APPOINTMENT OF _____
TO SERVE LEGAL PROCESS

ORDER OF APPOINTMENT AS PROCESS SERVER

Pursuant to Rule 4 (c)(2), Arkansas Rules of Civil Procedure, and Administrative Order Number 20, after reviewing the application, affidavit, and other information submitted by Applicant for appointment to serve legal process in _____Count[y][ies], Arkansas, the court finds as follows:

That the application should be, and hereby is, approved; this appointment is effective for _____ years, until 12:00 Midnight, _____, 2____, unless terminated earlier by court order.

Name of Process Server: _____

Address: _____

_____

Count[y][ies] in which
authorized to serve process: _____

This appointment is effective for every division of circuit court and for every district court in said count[y][ies].

The circuit clerk shall file this order and provide a certified copy of it to the process server, and the circuit clerk and sheriff of each county of this judicial circuit wherein approval has been granted. The circuit clerk(s) shall add the Applicant to the list of

qualified process servers that it maintains and posts.

The process server shall carry a certified copy of this order of appointment and a valid driver's license, when serving process and shall, upon request or inquiry, present this identification at the time service is made.

Entered this _____ day of _____, 2_____.

_____

Circuit Judge

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 _____, 20_____, 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 the 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 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 the 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 _____, 20_____.

_____

ATTORNEY FOR THE STATE

ADMINISTRATIVE OFFICE OF THE COURTS
SUPREME COURT OF ARKANSAS
J. D. GINGERICH, DIRECTOR

JUSTICE BUILDING
625 MARSHALL STREET
SUITE 1100
LITTLE ROCK, AR 72201-1020

TEL: 501-682-9400
FAX: 501-682-9410
TDD: 501-682-9412
EMAIL: aoc@arkansas.gov

To: County Judges and Circuit Clerks

From: J. D. Gingerich

Re: Reimbursement of Jury Costs, Act 1033 of 2007

Date: October 29, 2007

During the 2007 session of the General Assembly legislation was adopted which will revise the levels of compensation paid to persons who are called and selected to serve as members of petit and grand juries. Funds were also appropriated to the Administrative Office of the Courts to reimburse counties for a portion of the costs paid to jurors by the county. The legislation (Act 1033 of 2007, codified at A.C.A. 16-34-103-106) becomes effective January 1, 2008. The purpose of this memorandum is to answer questions you may have about the legislation and establish procedures for the certification of jury compensation, the reporting of monthly expenditures, and the quarterly reimbursement of a portion of the costs.

Who is eligible to be paid by the county for jury service?

The Act revises the previous statutory language as to who may receive payment for jury service. There are three basic requirements:

1) the person must have received official notice that he or she has been selected as a prospective juror and summoned to appear;
2) the person must actually appear at the location to which they were summoned; and
3) their attendance must be noted (in writing) by the circuit clerk.

What are the new rates of pay for jury service?

The Act divides persons eligible for payment into one of two groups - (1) those who are actually selected to serve as a member of a grand or petit jury (the official jurors plus alternates, if any) and (2) everybody else.

During the consideration of the legislation in the 2007 legislative session, information was received by the General Assembly which indicated that there was inconsistency from county to county as to when jurors would be paid the minimum or higher rates of compensation. Some counties pay a higher rate for attendance at jury orientation; others pay jurors who are present for voir dire a higher rate, even if they are not seated on the jury. The new law does not allow for

these distinctions. Persons who are chosen to serve "in the box" as a member of the jury are paid at the new rate of $50 per day; all others are paid a lower rate, with that rate to be set by county ordinance.

For those serving on the jury and as alternates, the rate of compensation is fifty dollars ($50) per day. This is a mandatory rate - the Act does not allow the county to set a lower or higher rate. All counties will pay the same rate.

For all other persons who are summoned and appear but who do not, for any reason, serve on the jury the rate is a minimum of fifteen dollars ($15) per day. A county may, by ordinance, set a higher rate of compensation. Many counties have, in the past, set a higher rate than the state minimum - counties may continue to set a higher rate.

May jurors be reimbursed for mileage?

Under current law, the county is required to pay milage reimbursement to all persons who were summoned as jurors but not selected to serve. The new law changes this provision in several ways. First, the mileage reimbursement is optional - to be paid, the quorum court must authorize the payment by ordinance. Second, if authorized, it is payable to all persons, whether selected to serve on the jury or not, but only if they reside outside of the city limits of the city where the court is located. Finally, the rate of the mileage reimbursement is set by the county (under current law it is the same as the rate for state employees).

For what expenses can the county be reimbursed by the state?

A county may request reimbursement, on a quarterly basis, for all payments made to persons who are summoned and who actually serve as a member of a grand or petit jury. In other words, only the cost of payments to those persons who are paid at the mandatory fifty dollar ($50) rate are eligible for reimbursement. The costs of payments to jurors who do not serve as members or alternates, the costs of mileage payments, or the costs of other payments (such as meals) paid to jurors will not be reimbursed by the state.

How does a county receive reimbursement?

The Act requires that the Administrative Office of the Courts develop a system for the certification of costs and reimbursement of eligible expenses. We have worked with the Division of Legislative Audit to establish this process. We have also been asked by members of the General Assembly to acquire the baseline data to calculate the full costs of the jury system for our state. In order to accomplish these purposes we have developed two forms, which are attached.

The first is a Certification of Jury Compensation for Calendar Year 2008. As described earlier in this memorandum, there are two areas of jury compensation which must be established by the county through the adoption of an ordinance. The first is the rate of compensation for prospective jurors which is either $15 per day or a higher amount as set by the county. The second is the approval of mileage reimbursement and, if approved, the rate of pay. Each county will need to make a decision about these payments and adopt an appropriate ordinance before December 31, 2007. After a decision has been made, the county must complete the attached Certification form and return it to our office by January 15, 2008.

I have also attached the Report of Jury Expenditures and Request for Reimbursement of Jury Costs for the first quarter of 2008. Pursuant to the Act, we must receive your report of jury

expenditures for the months of January, February and March on or before May 1, 2008. Upon receipt of your report we will promptly issue payment for that portion of the costs which were the result of the payment of $50 per day for persons who served as members of grand or petit juries during the period. A report form which will cover the second quarter of 2008 will be distributed after the first of the year.

Should you have questions about the provisions of the Act or about the reporting forms please feel free to contact me. We are pleased to have the opportunity of working with you in the administration of this new legislation.

JDG/pk

cc: Circuit Judges
Division of Legislative Audit
Association of Arkansas Counties
Senator Jim Luker
Representatives David Johnson, Will Bond, Ernest Brown, Steve Harrelson, Mark Pate, Robbie Wills and Jeff Wood

attachments

Certification of Jury Compensation for Calendar Year 2008
Pursuant to Act 1033 of 2007

1. Actual Jurors and Alternates. Section 2(b)(1) of Act 1033 of 2007 provides that persons who are eligible to receive jury compensation and who are actually chosen to serve as a member or alternate of a grand or petit jury will be paid $50 per day. This is the statutory rate - no action need be taken by the county.

2. Prospective Jurors. Section 2(b)(2) of Act 1033 of 2007 provides that persons who are eligible to receive jury compensation and who are excused or for other reasons do not serve as a member or alternate of a grand or petit jury, are entitled to a minimum of $15 per day. The quorum court may, by ordinance, set a higher level of compensation. (Many counties, for example, currently pay at a rate of $20 per day. To continue that practice, you should set that amount through the adoption of an ordinance and check the first box below, indicating your rate at $20 per day.)

   Please check one:

   ☐ For 2008 our county has adopted an ordinance which sets the rate of compensation under Section 2(b)(2) of Act 1033 at $_____ per day.

   ☐ For 2008 our county will pay the statutory minimum of $15 per day.

3. Mileage Reimbursement. Section 3 of Act 1033 of 2007 provides that a county may adopt an ordinance to provide payment of mileage reimbursement for jurors or prospective jurors whose primary residence is located outside of the city limits of the location of the court at a rate set by the county.

   Please check one:

   ☐ For 2008, our county has adopted an ordinance which authorizes a mileage reimbursement under Section 3 of Act 1033 of 2007 at a rate of _____ per mile.

   ☐ For 2008, our county will not provide a mileage reimbursement for jurors or prospective jurors.

I hereby certify that this report accurately reflects the compensation rates for jurors who will serve in our county for calendar year 2008, signed this _____ day of_____, 200___.

_____ _____
Signature of County Judge Name of County

* Return this form by January 15, 2008 to the Administrative Office of the Courts, 625 Marshall Street, Little Rock, AR 72201

	January	February	March	TOTAL FOR QUARTER
*Payments to Persons Who Actually Serve as a Member of a Grand or Petit Jury at $50 per day	*$_____*	*$_____*	*$_____*	*$_____*
Payments to Persons who are Summoned and Appear but do not Actually Serve as a Grand or Petit Juror at $15 per day or such higher amount as set by the county	$_____	$_____	$_____	$_____
Payments of Mileage Reimbursement to Jurors, If Authorized by the County	$_____	$_____	$_____	$_____
Other costs, such as meals, provided for or paid to Jurors	$_____	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____	$_____

*Note that <u>only</u> these costs are eligible for reimbursement from the state.

I hereby certify that this report reflects the true and accurate expenditures for jury costs for the time period indicated above.
Signed this _____ day of _____, 200____.

_____
Signature of Authorized County Official

_____
Name of County

Return form by May 1 to the Administrative Office of the Courts, Attn: Joyce French, 625 Marshall Street, Little Rock, AR 72201

	April	May	June	TOTAL FOR QUARTER
*Payments to Persons Who Actually Serve as a Member of a Grand or Petit Jury at $50 per day	*$_____*	*$_____*	*$_____*	*$_____*
Payments to Persons who are Summoned and Appear but do not Actually Serve as a Grand or Petit Juror at $15 per day or such higher amount as set by the county	$_____	$_____	$_____	$_____
Payments of Mileage Reimbursement to Jurors, If Authorized by the County	$_____	$_____	$_____	$_____
Other costs, such as meals, provided for or paid to Jurors	$_____	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____	$_____

*Note that <u>only</u> these costs are eligible for reimbursement from the state.

I hereby certify that this report reflects the true and accurate expenditures for jury costs for the time period indicated above.
Signed this _____ day of _____, 200____.

_____
Signature of Authorized County Official

_____
Name of County

Return form by August 1 to the Administrative Office of the Courts, Attn: Joyce French, 625 Marshall Street, Little Rock, AR 72201

	July	August	September	TOTAL FOR QUARTER
*Payments to Persons Who Actually Serve as a Member of a Grand or Petit Jury at $50 per day	*$_____*	*$_____*	*$_____*	*$_____*
Payments to Persons who are Summoned and Appear but do not Actually Serve as a Grand or Petit Juror at $15 per day or such higher amount as set by the county	$_____	$_____	$_____	$_____
Payments of Mileage Reimbursement to Jurors, If Authorized by the County	$_____	$_____	$_____	$_____
Other costs, such as meals, provided for or paid to Jurors	$_____	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____	$_____

*Note that <u>only</u> these costs are eligible for reimbursement from the state.

I hereby certify that this report reflects the true and accurate expenditures for jury costs for the time period indicated above.
Signed this _____ day of _____, 200____.

_____
Signature of Authorized County Official

_____
Name of County

Return form by November 1 to the Administrative Office of the Courts, Attn: Joyce French, 625 Marshall Street, Little Rock, AR 72201

	October	November	December	TOTAL FOR QUARTER
*Payments to Persons Who Actually Serve as a Member of a Grand or Petit Jury at $50 per day	*$_____*	*$_____*	*$_____*	*$_____*
Payments to Persons who are Summoned and Appear but do not Actually Serve as a Grand or Petit Juror at $15 per day or such higher amount as set by the county	$_____	$_____	$_____	$_____
Payments of Mileage Reimbursement to Jurors, If Authorized by the County	$_____	$_____	$_____	$_____
Other costs, such as meals, provided for or paid to Jurors	$_____	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____	$_____

*Note that <u>only</u> these costs are eligible for reimbursement from the state.

I hereby certify that this report reflects the true and accurate expenditures for jury costs for the time period indicated above.
Signed this _____ day of _____, 200____.

_____
Signature of Authorized County Official

_____
Name of County

Return form by February 1 to the Administrative Office of the Courts, Attn: Joyce French, 625 Marshall Street, Little Rock, AR 72201

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: _____

(SAMPLE)

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS
CIVIL DIVISION

JOHN DOE PLAINTIFF

VS. CASE NO. _____

JANE DOE DEFENDANT

SCHEDULING ORDER

Now on this ____ day of _____[Month] of _____[Year], IT IS HEREBY ORDERED that the above styled case is set for first-out jury trial on _____[Date] at _____ A.M. in the _____ County Courthouse, _____, Arkansas, before Circuit Judge _____. Counsel should be present in chambers no later than _____ A.M. Any objections to this trial date should be made in writing within ten (10) days from the date of this order to _____, Case Coordinator, _____[Address]. The pre-trial in this matter will be held on _____[Date] at _____ A.M.

The purpose of this order is to make certain that on the pre-trial date the case will be ready for trial. This is for the Court's benefit as well as the parties. Any changes herein must be approved by the Court. The attorneys who will try the case must be present at the pre-trial. FAILURE TO COMPLY WITH THIS ORDER IN ITS ENTIRETY MAY RESULT IN THE EXCLUSION OF EVIDENCE, ASSESSMENT OF COSTS AND/OR OTHER SANCTIONS.

In preparation for trial, all discovery, including evidentiary depositions, shall be completed no later than 30 days prior to trial. MOTIONS FOR SUMMARY JUDGMENT SHALL BE FILED NOT LESS THAN 34 DAYS PRIOR TO THE PRE-TRIAL DATE. This is to allow sufficient time for the response to the motion and any reply as required under Rule 56 of the Arkansas Rules of Civil Procedure. Any motions or pleadings that need to be brought to the

attention of the Court prior to any hearing should be mailed or faxed to the Court at _____, and/or faxed to _____.

Any discovery or procedural problem should be brought to the Court's attention promptly after the issue arises and not delayed until the motion deadline. By agreement, the parties may conduct additional discovery beyond this deadline, but the Court will not be available to resolve discovery disputes for this agreed-to discovery.

Each of you shall submit to the Court and opposing counsel no later than two (2) days prior to pre-trial.

(1) A brief summary of claims and relief sought. (No more than one page in length);

(2) A concise summary of facts. (No more than one page in length);

(3) Issues of fact expected to be contested;

(4) Issues of law expected to be contested;

(5) Estimated length of trial.

(6) Prospects for settlement, if any. (Note, the Court expects attorneys to confer and explore the possibility of settlement prior to answering these inquiries);

(7) The basis for jurisdiction or objections to jurisdiction;

(8) A list of pending motions;

(9) All proposed stipulations;

(10) Witness list;

(11) Exhibit list; (all exhibits are to be pre-marked)

(12) Proposed jury instructions;

(13) Will you agree to mediation?

(14) Any motions filed after the cutoff date must be made in good faith, and for good cause, otherwise they will be denied as untimely.

(SAMPLE)

(15) Pre-trial may be waived if there are no issues that need to be brought to the Court's attention. Counsel should notify the Court in writing prior to a pre-trial setting.

(16) Counsel shall attempt to resolve and edit depositions to be read and the Court will rule upon any remaining objections prior to trial.

In the event of settlement, contact the Case Coordinator immediately at _____. All settlement efforts should be completed prior to a jury being called, which is normally 3-4 days.

IT IS SO ORDERED.

_____

Circuit Judge

Sentencing Order Instructions

The original Sentencing Order is to be retained in the court's file. Copies are to be distributed to the Arkansas Department of Correction, the Department of Community Correction, the Arkansas Sentencing Commission, the Administrative Office of the Courts, the Prosecuting Attorney, the Defense Attorney, the Sheriff and the Defendant. *Please note*: If a Defendant is judicially transferred to the Department of Community Correction, the copy designated for the Arkansas Department of Correction should be sent to the Department of Community Correction.

Heading

Circuit Court: Enter the County name for the Circuit Court issuing the sentence.
Judicial District: Enter the Judicial District number for the sentencing court.
Division: Enter the appropriate Circuit Court division number. Do not enter "Criminal."
Date: Enter the date the sentence was pronounced.

Offender Information

Defendant's Name: Enter the name most commonly used by the defendant. The name entered should match the name entered on the criminal information sheet.
Date of Birth: Enter numerals to indicate the offender's date of birth (Month/date/year - ex: 03/25/1962).
Sex: Indicate the gender of the defendant.
Total Number of Counts: Indicate total number of counts listed on this sentencing order.
SID #: Enter the defendant's State Identification Number. While the SID number is not legally required, it may be obtained from the criminal information sheet or from the local law enforcement agency handling the case.
Race & Ethnicity: Indicate the defendant's race and ethnicity. It is possible for these categories to overlap. Please check all that apply.
Supervision Status at Time of Offense: Enter the defendant's criminal justice supervision status at the time of the current offense(s). This includes, but is not limited to: incarceration in a correctional facility or county jail, pretrial bond, suspended imposition of sentence, probation, parole, post-prison supervision, release pending sentencing for a prior crime, and release on appeal bond.

Court Information

Judge: Enter the name of the presiding judge.
Prosecuting Attorney/Deputy: Enter the name of the prosecuting attorney or deputy who represented the State.
Defendant's Attorney: Enter the name of the attorney who represented the defendant. Indicate the type of representation. In the case of a Pro Se defendant, no name is necessary.
Change of Venue: Indicate yes or no. If yes, indicate the county from which the case was transferred.

File Stamp: Place the Circuit Clerk's file mark in this area.

Legal Statements

Mark the appropriate statement for the type of sentence entered.

- The first box applies when a defendant is sentenced pursuant to Act 346, the First Offender Act (A.C.A. §16-93-301 et seq.) or any other statute where the court defers further proceedings without making a finding of guilt.
- The second box applies when a defendant is placed on probation, probation plus, or other alternative sanction. *This statement previously appeared on the Judgment and Disposition Form.*
- The third box applies when a defendant is sentenced to a term of incarceration in the Arkansas Department of Correction or a Department of Community Correction facility via judicial transfer. *This statement previously appeared on the Judgment and Commitment Form.*

Waiver of right to counsel: Indicate whether or not the defendant made a voluntary, knowing and intelligent waiver of the right to counsel.

Offense 1 Information:

A.C.A. # of Offense/Name of Offense: Indicate the Arkansas Code number and name of the crime for which the defendant was convicted. Use the entire code provision, including subsections. Please indicate the *substantive* crime, e.g. rape, theft, murder, etc. Do not put the statute number for "conspiracy", "attempt", or "solicitation" in this blank. If the defendant is being sentenced as a result of the revocation of probation or suspended imposition of sentence, do not enter "revocation," the code provision for revocation, or the cause of the revocation.

Case #: Enter the circuit court case number.

A.C.A. # of Original Charged Offense: Indicate the A.C.A. # of the original charged offense. For example, if a Defendant was originally charged with Aggravated Robbery (A.C.A. § 5-12-103) and ultimately convicted of Robbery, enter A.C.A. § 5-12-103.

ATN: Enter the defendant's Arrest Tracking Number (ATN). This number is different from the SID number. Each arrest will have a different ATN. A.C.A. § 12-12-1007 (e)(4) states "The arrest tracking number shall be in the court's case file before a trial commences or a judgment is entered."

Offense was Nolle Prossed, Dismissed, Acquitted: Select the appropriate response if this offense was Nolle Prossed, Dismissed or Acquitted.

Appeal from District Court: Indicate whether or not this offense was an appeal from District Court.

Probation/SIS Revocation: Indicate if this conviction is the result of a probation or SIS revocation. *Note*: An affirmative answer to this question applies to the *current offense only* and not to any new crime committed while on probation or parole.

Offense Date: Enter the date or range of dates on which the offense was committed. The date may be found in the criminal information sheet. *Note:* If the offense was Nolle Prossed, Dismissed or Acquitted, the offense date must be entered.

Offense is Felony/Misd./Violation: Indicate whether the conviction is for a felony, misdemeanor or violation.

Offense Classification: Indicate the class of the felony, misdemeanor or violation for which the defendant was convicted. Class Y, A, B, C, D, or U (unclassified).

Number of Counts: Enter the number of counts for this offense for which the defendant was convicted.

Criminal History Score: Indicate the defendant's criminal history score as determined according to A.C.A. § 16-90-802. If the current commitment is the result of a probation revocation, the criminal history score will be the score calculated at the time of the original sentencing. For instance, if the offender had a zero criminal history score at the time he/she was originally placed on probation, the criminal history score of the revocation would still be zero. A copy of the Criminal History Worksheet and instructions for completing the worksheet may be found at www.arkansas.gov/asc/forms.html.

Seriousness Level: Indicate the seriousness level of offense. Refer to the manual entitled *Arkansas Sentencing Commission Sentencing Standards Grid, Offense Seriousness Rankings and Related Material.* If the commitment is the result of a probation revocation, the seriousness level must *still* be entered. Although the sentencing guidelines are not applicable to revocations, transfer eligibility is still determined by the seriousness level of the offense.

Inchoate Information: Indicate whether the defendant attempted, solicited, or conspired to commit the current offense.

Presumptive Sentence: Indicate the presumptive sentence according to the Arkansas Sentencing Standards Grid. Mark each type of sanction listed on the sentencing grid. *This section is not applicable when a jury has recommended a sentence or in probation/sis revocations.*

Defendant Sentence:

Imposed: Indicate whether the imposed sentence is a term of incarceration in a Department of Correction (ADC) facility; a sentence to the Department of Correction with a judicial transfer to a Department of Community Correction Center (Jud. Tran.); or a term of incarceration in a county jail (County Jail). Indicate the number of months imposed.

- Do not use this space to indicate incarceration time for a sentence of probation plus.
- The box for county jail should only be checked when sentencing the Defendant for a misdemeanor offense. ADC time should not be an imposed sentence for a misdemeanor. If ADC time is indicated, the form will be returned for corrections. See A.C.A. § 5-4-402 for further explanation on place of incarceration.
- Do not include time for Suspended Imposition of Sentence. For example, a 10 year sentence with 5 years suspended and 5 years to serve would be listed as Imposed ADC = 60 months, SIS = 60 months, and total time to serve = 60 months.

Probation: Indicate the number of months on probation.

SIS: Indicate the number of months for suspended imposition of sentence.

Other: Indicate if the defendant was sentenced to life, life without parole, or death.

If probation or SIS accompanied by period of confinement: If a sentence of probation or SIS includes a period of confinement (Probation Plus), enter the amount of time in days *or* months. Indicate where the defendant should be confined in the conditions of probation and/or the "Additional Information" section of the Order.

Sentence Enhancement: If a sentence is subject to an enhancement, enter the number of months the sentence was enhanced and the applicable statute number. For instance, if the offense of

manufacturing methamphetamine is subject to an enhancement for doing so in the presence of certain persons, this entry would be as follows: *"120 months pursuant to A.C.A. § 5-64-411."*

Enhancement is to run Concurrent/Consecutive: Indicate if the enhancement is to run concurrent or consecutive to the substantive sentence imposed.

Habitual Offender: If the defendant is sentenced as a habitual offender as defined in Arkansas Code Annotated § 5-4-501, indicate which subsection applies.

Victim Information: Do not enter the name of any victim. If there is no victim or if the victim is a business, check not applicable. Indicate if the offense involved multiple victims. If there is only one victim per offense, enter the victim information with the offense. If there are multiple victims on one offense, please complete the Additional Victim Information Form.

Age: List the victim's age at the time of the offense.

Sex: Indicate the victim's gender.

Race & Ethnicity: Indicate the victim's race *and* ethnicity. It is possible for these categories to overlap. Please check all that apply.

Negotiated Plea or Plea Directly to Court: Indicate if the defendant voluntarily, intelligently, and knowingly entered a negotiated plea of guilty or nolo contendere or a plea directly to the court of guilty or nolo contendere.

Sentencing by Court/Jury/Other: Indicate if the defendant: was sentenced pursuant to §§ 16-93-301 et seq. or other (indicate the appropriate code provision); entered a plea and was sentenced by a jury; was found guilty by the court and sentenced by the court or a jury; was found guilty at a jury trial and sentenced by the court or a jury; or was found guilty of a lesser included offense by the court or a jury.

Sentence is a Departure: Indicate whether or not the sentence is a departure from the sentencing standards. If yes, the remaining information in this box <u>must</u> be completed. Departure information is not required if the sentence given is a presumptive sentence, the sentence is recommended by a jury, the sentence is a result of a Probation/SIS Revocation, or the offense is not a felony.

Durational or Dispositional Departure: Indicate if departure is Durational or Dispositional. A durational departure occurs when the imposed months are higher or lower than the presumptive ADC time. A dispositional departure occurs when the type of sanction given (AS, CCC, or ADC) is not listed as an option for the presumptive sentence. If the sentence is a durational departure, indicate the number of months above or below the presumptive sentence. For example, if the presumptive sentence is 42 months in ADC and the sentence imposed is 120 months in ADC, indicate on the form that the sentence imposed would be 78 months above the presumptive sentence (120 – 42 = 78).

Departure Reason: Indicate <u>either</u> an Aggravating Departure Reason <u>or</u> a Mitigating Departure Reason, but <u>never both</u> for the same offense. If the sentence is higher than the presumptive sentence, indicate the Aggravating Departure Reason number. If the sentence is lower than the presumptive sentence, indicate the Mitigating Departure Reason number. (See page 2 of the form for a list of these departure reasons.) If the departure reason is not listed, enter the appropriate number for "other" and explain the reason for the departure. Please be as descriptive as possible. For example, if the sentence is the result of a negotiated plea, do not simply say "Negotiated Plea." This information is listed elsewhere on this form. Instead, list the reasons for acceptance of the plea, such as "The charge was reduced in order to avoid 70% parole eligibility."

Consecutive/Concurrent: Indicate whether the sentence for this offense is to run consecutive or concurrent to other sentences. List the **offense number(s)** or **case number(s)** to which this

sentence will run consecutive or concurrent. If additional space is needed, use the "Additional Information" Section, or attach a separate sheet.

Additional Offenses

Additional Offense #: Enter the appropriate offense number, i.e. Additional Offense # 2, 3, etc. Repeat this section for each additional offense of the current sentencing event. See instructions for Offense 1 Information.
Sentence is a Departure: This information must be completed for each offense that is a departure from the presumptive sentence.

Special Conditions Information

Sex Offenses

Sex Offender: Indicate if the defendant was adjudicated guilty of an offense requiring sex offender registration and, therefore, must complete the Sex Offender Registration Form.
Aggravated Sex Offense: Indicate if the defendant committed an aggravated sex offense as defined in A.C.A. § 12-12-903.
Sexually Violent Predator: Indicate if the defendant is alleged to be a sexually violent predator, classified pursuant to A.C.A § 12-12-918.
Repeat Sex Offender: Indicate if the defendant has ever been previously convicted of a sex offense and list the prior case number(s). If additional space is needed, use the "Additional Information" Section, or attach a separate sheet.

DNA Sample/Qualifying Offense: Indicate if the defendant has been adjudicated guilty of a qualifying or repeat offense pursuant to A.C.A. § 12-12-1103. If yes, indicate the location where the DNA sample will be drawn.
Domestic Violence Offenses: Indicate if the defendant has been adjudicated guilty of a domestic-violence related offense. If no, indicate if the defendant was originally charged with a domestic-violence related offense and list the A.C.A. number of the offense. If the defendant has been adjudicated guilty of or was originally charged with a domestic-violence related offense, identify the relationship of the victim to the defendant.
Drug Crime: Indicate if the defendant has been convicted of a drug crime as defined in A.C.A. § 12-17-101.

Fees, Fines and Restitution

Fees and Fines: List the court costs, fines and/or fees levied against the defendant relating to all offenses covered by this sentencing document. If a particular fine or fee is not listed, please explain in the section entitled "Other."
Restitution: Enter the total dollar amount of restitution.
Payable to: Indicate to whom fines, fees, and restitution is to be paid. If the restitution payments are to be distributed to more than one beneficiary, please list the names of the recipients and indicate the order of priority in which they will be paid. If additional space is needed, use the "Additional Information" section or attach a separate sheet.
Terms: Indicate the terms for which fines, fees, and restitution payments are to be made.

Please note: If additional space is needed for any of these items, use the "Additional Information" Section, or attach a separate sheet.

Sentence Options

Indicate if the defendant was convicted of a target offense(s) under the Community Punishment Act.

Judicial Transfer: Indicate if the court orders a judicial transfer to the Department of Community Correction.

Defendant eligible to have his/her record sealed: Indicate if the defendant is eligible to have his/her record sealed pursuant to the Community Punishment Act.

Extended Juvenile Jurisdiction Applied: Indicate if Extended Juvenile Jurisdiction is applicable to this sentence.

Jail Time Credit: Enter the number of days for which the defendant is to receive credit for being in pretrial custody. This does not include time spent in county jail while waiting for transportation to a correctional facility following conviction.

Total Time to Be Served for All Offenses: Enter the number of months that make up the offender's total time to serve at ADC or CCC on Judicial Transfer. If sentences are to run concurrently, enter the term of the longest sentence. If sentences are to run consecutively, add the terms of the consecutive sentences, including any applicable enhancements, and enter the total amount. Please note: If the defendant received a death sentence or a death sentence in addition to a sentence for another offense (life or a number of months) the Total Time to Serve should read "Death". DO NOT SUBTRACT JAIL TIME CREDIT, PAROLE ELIGIBILITY, OR GOOD TIME.

Death Penalty/Execution Date: Indicate if the defendant received a death sentence and enter the stated date of execution. *Please note:* Enter the execution date that is pronounced in court.

Defendant Assignment: Indicate where defendant is initially assigned to serve his/her sentence.

ADC = Incarceration in a Department of Correction facility;

CCC = Incarceration in a Department of Community Correction Center via judicial transfer;

County Jail = Incarceration in a county jail (not county jail backup);

Probation = A term of supervised probation with or without incarceration in a DCC facility or county jail as a special condition;

SIS = A term of suspended imposition of sentence; or

Special Conditions = Other special conditions.

Conditions of disposition or probation are attached: Indicate if conditions of disposition or probation are attached. *Please note:* "A trial court may clearly place conditions on a defendant when the court suspends the imposition of sentence or places the defendant on probation; however, the same cannot be said for a sentence of imprisonment." *Parmley v. State*, 2011 Ark. App. 685 (2011).

Pre-Sentence Investigation Report: Indicate if a copy of the pre-sentence investigation on sentencing information is attached.

Prosecutor's Short Report: Indicate if the prosecutor's short report is attached. For those defendants committed to the ADC, a copy of the report must be attached to the ADC's copy of the Sentencing Order.

Defendant has previously failed a drug court program: Indicate if the defendant has ever previously failed a drug court program. This includes if the sentence on the current Order is the result of failing a drug court program.

Appellate Rights: Indicate whether the defendant was informed of his/her right to appeal the conviction.
Appeal Bond: Enter the amount of the defendant's appeal bond.
Delivery of Defendant: Indicate whether the County Sheriff is to transport the defendant to a county jail, take custody for referral to a CCC, or transport the defendant to the ADC.
Reporting Date: Indicate if the defendant shall report to a DCC probation officer for a reporting date to CCC.

Signatures

Prosecuting Attorney: Signature of the Prosecuting Attorney or Deputy Prosecuting Attorney who represented the State at trial. Indicate the date of the signature and print the attorney's name.
Circuit Judge: Signature of the circuit judge who imposed the sentence. Indicate the date of the signature and print the circuit judge's name.

Additional Information

Use this space for any other information not previously listed on this form, i.e., multiple counts of an offense that are to run consecutive to each other. If additional space is needed, attach a separate sheet.

SENTENCING ORDER

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS,
_____ JUDICIAL DISTRICT _____DIVISION

On _____ the Defendant appeared before the Court, was advised of the nature of the charge(s), of Constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing.

Offender

Defendant [Last, First, MI]	**DOB**	**Sex** ☐ Male ☐ Female	**Total Number of Counts**
SID #	**Race & Ethnicity** ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic		
Supervision Status at Time of Offense			

Court Info

Judge	File Stamp
Prosecuting Attorney/Deputy	
Defendant's Attorney ☐ Private ☐ Public Defender ☐ Pro Se ☐ Appointed	
Change of Venue ☐ Yes ☐ No If yes, from:	

Legal Statement

☐ Pursuant to A.C.A. ☐§§16-93-301 et seq., or ☐ §§_____ this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation.

☐ There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment: is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Correction (D.C.C) rules and regulations.

☐ of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C.) for the term specified on each offense shown below.

Defendant made a voluntary, knowing, and intelligent waiver of the right to counsel. ☐Yes ☐ No

Offense #1

A.C.A. # of Offense/ Name of Offense+			**Case #**
A.C.A. # of Original Charged Offense	**ATN**	**Offense was** ☐Nolle Prossed ☐ Dismissed ☐ Acquitted	
	Appeal from District Court ☐Yes ☐ No	**Probation/SIS Revocation+** ☐Yes ☐ No	
Offense Date	**Offense is** ☐ Felony ☐ Misd. ☐Viol.	**Offense Classification** ☐ Y ☐ A ☐ B ☐ C ☐ D ☐ U	
Number of Counts:	**Criminal History Score**	**Seriousness Level**	**Defendant** ☐ Attempted ☐ Solicited ☐ Conspired to commit the offense

Presumptive Sentence ☐ Prison Sentence of _____months ☐ Community Corrections Center ☐Alternative Sanction

Defendant Sentence* (see Page 2) Imposed ☐ADC ☐ Jud. Tran. ☐County Jail _____ months Probation _____ months SIS _____ months Other ☐ Life ☐ LWOP ☐ Death	If probation or SIS accompanied by period of confinement, state time: _____days or _____months.
	Sentence was enhanced _____ months, pursuant to A.C.A. §§_____. Enhancement(s) is to run: ☐ Concurrent ☐ Consecutive.
	Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection ☐ (a) ☐ (b) ☐ (c) ☐ (d)

Victim Info# (See page 2) ☐ N/A [Multiple Victims ☐Yes ☐ No]	**Age**	**Sex** ☐ Male ☐ Female	**Race & Ethnicity** ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Other ☐ Unknown ☐ Hispanic

Defendant voluntarily, intelligently, and knowingly entered a ☐negotiated plea of ☐guilty or ☐nolo contendere. ☐plea directly to the court of ☐guilty or ☐nolo contendere.	Defendant: ☐ was sentenced pursuant to ☐§§16-93-301 et seq., or ☐other §§_____ ☐ entered a plea and was sentenced by a jury. ☐ was found guilty by the court & sentenced by ☐ court ☐jury. ☐ was found guilty at a jury trial & sentenced by ☐ court ☐jury. ☐ was found guilty of lesser included offense by ☐ court ☐jury.

Sentence is a Departure ☐ Yes ☐ No	**Sentence Departure is** ☐ **Durational or** ☐**Dispositional**. If durational, state how many months above/below the presumptive sentence:
Departure Reason (See page 2 for a list of reasons) **Aggravating #** _____ **or Mitigating #** _____**. For Agg. #16 or Mit. #10, or if departing from guidelines, please explain:** _____	**Sentence will run:** ☐ Consecutive ☐ Concurrent to Offense # _____ or Case # _____

Defendant's Full Name:_____

Reasons for Departure (Please see complete list of departure criteria found at A.C.A. §16-90-804)	
Aggravating	**Mitigating**
1. Offender's conduct manifested extreme cruelty during commission of current offense.	1. Victim played an aggressive role or provoked the incident or was a willing participant.
2. Offender knew victim vulnerable due to extreme youth, advanced age, disability or ill health.	2. Offender lacked capacity of judgment due to mental or physical impairment.
3. Offense was major economic offense established by one of the following criteria: (a) multiple victims/incidents, (b) monetary loss substantially greater than typical, (c) degree of sophistication or time, (d) misuse of fiduciary duty, or (e) other similar conduct.	3. Offender played a minor or passive role in crime.
	4. Offender compensated/made effort to compensate for damage or injury before detection.
4. Offense was major controlled substance offense if two or more of the following are present: (a) Three or more separate transactions involve sale, transfer 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 was lesser participant showing caution/concern for safety or well-being of victim.
	6. Offender acted in response to continuing physical/sexual abuse by victim.
	7. Policy on multiple offenses in single course of conduct in offender's prior criminal history results in sentence which is excessive for this offense.
	8. Offender voluntarily admitted sexual offense and sought treatment before detection.
5. Offender employed firearm in furtherance or flight unless such use is element of offense	9. Offender made effort to provide assistance in investigation or prosecution of another as indicated by motion of state (can weigh timeliness of assistance, nature and extent of assistance, and truthfulness, completeness, and demonstrable reliability of info or testimony).
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.	10. Other
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	

NOTE:

*** Defendant Sentence**. "Imposed ADC" means incarceration in an Arkansas Department of Correction facility. "Imposed Judicial Transfer" means incarceration in a Department of Community Correction Center. "Imposed County Jail" means incarceration in a county jail facility. Indicate in months the total time the Defendant was sentenced to a term of incarceration. DO NOT INCLUDE TIME FOR SIS.

 # Victim Info. For more than one victim, please use the "Additional Victim Information" page to disclose additional victim demographics. If there is no victim, check not applicable.

+ A.C.A. # of Offense/Name of Offense & Probation/SIS Revocation. If an offender is being sentenced as a result of a revocation of probation or SIS, check the box indicating this is a "Probation/SIS Revocation", and enter the A.C.A. number and name of the offense for which the defendant was originally convicted. Do not enter the code provision for revocation or the cause of the revocation.

Defendant's Full Name:_____

Offense #:

A.C.A. # of Offense/ Name of Offense+			**Case #**
A.C.A. # of Original Charged Offense	**ATN**	**Offense was** ☐ Nolle Prossed ☐ Dismissed ☐ Acquitted	
	Appeal from District Court ☐ Yes ☐ No	**Probation/SIS Revocation+** ☐ Yes ☐ No	
Offense Date	**Offense is** ☐ Felony ☐ Misd. ☐ Viol.	**Offense Classification** ☐ Y ☐ A ☐ B ☐ C ☐ D ☐ U	
Number of Counts:	**Criminal History Score**	**Seriousness Level**	**Defendant** ☐ Attempted ☐ Solicited ☐ Conspired to commit the offense

Presumptive Sentence ☐ Prison Sentence of _____months ☐ Community Corrections Center ☐ Alternative Sanction

Defendant Sentence* (see Page 2)
Imposed ☐ADC ☐ Jud. Tran. ☐County Jail
_____ months
Probation _____ months
SIS _____ months
Other ☐ Life ☐ LWOP ☐ Death

If probation or SIS accompanied by period of confinement, state time: _____days or _____months.

Sentence was enhanced _____ months, pursuant to
A.C.A. §§_____.
Enhancement(s) is to run: ☐ Concurrent ☐ Consecutive.

Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection
☐ (a) ☐ (b) ☐ (c) ☐ (d)

Victim Info# (See page 2) ☐ N/A [Multiple Victims ☐Yes ☐No]	**Age**	**Sex** ☐ Male ☐ Female	**Race & Ethnicity** ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Other ☐ Unknown ☐ Hispanic

Defendant voluntarily, intelligently, and knowingly entered a
☐negotiated plea of ☐guilty or ☐nolo contendere.
☐plea directly to the court of ☐guilty or ☐nolo contendere.

Defendant:
☐ was sentenced pursuant to ☐§§16-93-301 et seq., or ☐other §§_____
☐ entered a plea and was sentenced by a jury.
☐ was found guilty by the court & sentenced by ☐ court ☐jury.
☐ was found guilty at a jury trial & sentenced by ☐ court ☐jury.
☐ was found guilty of lesser included offense by ☐ court ☐jury.

Sentence is a Departure ☐ Yes ☐ No

Sentence Departure is ☐ **Durational or** ☐ **Dispositional**.
If durational, state how many months above/below the presumptive sentence:

Departure Reason (See page 2 for a list of reasons)
Aggravating # _____ **or Mitigating #** _____**. For Agg. #16 or Mit. #10,**
or if departing from guidelines, please explain: _____
_____

Sentence will run: ☐ Consecutive ☐ Concurrent
to Offense # _____ or
Case # _____

Offense #:

A.C.A. # of Offense/ Name of Offense+			**Case #**
A.C.A. # of Original Charged Offense	**ATN**	**Offense was** ☐ Nolle Prossed ☐ Dismissed ☐ Acquitted	
	Appeal from District Court ☐ Yes ☐ No	**Probation/SIS Revocation+** ☐ Yes ☐ No	
Offense Date	**Offense is** ☐ Felony ☐ Misd. ☐ Viol.	**Offense Classification** ☐ Y ☐ A ☐ B ☐ C ☐ D ☐ U	
Number of Counts:	**Criminal History Score**	**Seriousness Level**	**Defendant** ☐ Attempted ☐ Solicited ☐ Conspired to commit the offense

Presumptive Sentence ☐ Prison Sentence of _____months ☐ Community Corrections Center ☐ Alternative Sanction

Defendant Sentence* (see Page 2)
Imposed ☐ADC ☐ Jud. Tran. ☐County Jail
_____ months
Probation _____ months
SIS _____ months
Other ☐ Life ☐ LWOP ☐ Death

If probation or SIS accompanied by period of confinement, state time: _____days or _____months.

Sentence was enhanced _____ months, pursuant to
A.C.A. §§_____.
Enhancement(s) is to run: ☐ Concurrent ☐ Consecutive.

Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection
☐ (a) ☐ (b) ☐ (c) ☐ (d)

Victim Info# (See page 2) ☐ N/A [Multiple Victims ☐Yes ☐No]	**Age**	**Sex** ☐ Male ☐ Female	**Race & Ethnicity** ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Other ☐ Unknown ☐ Hispanic

Defendant voluntarily, intelligently, and knowingly entered a
☐negotiated plea of ☐guilty or ☐nolo contendere.
☐plea directly to the court of ☐guilty or ☐nolo contendere.

Defendant:
☐ was sentenced pursuant to ☐§§16-93-301 et seq., or ☐other §§_____
☐ entered a plea and was sentenced by a jury.
☐ was found guilty by the court & sentenced by ☐ court ☐jury.
☐ was found guilty at a jury trial & sentenced by ☐ court ☐jury.
☐ was found guilty of lesser included offense by ☐ court ☐jury.

Sentence is a Departure ☐ Yes ☐ No

Sentence Departure is ☐ **Durational or** ☐ **Dispositional**.
If durational, state how many months above/below the presumptive sentence:

Departure Reason (See page 2 for a list of reasons)
Aggravating # _____ **or Mitigating #** _____**. For Agg. #16 or Mit. #10,**
or if departing from guidelines, please explain: _____
_____

Sentence will run: ☐ Consecutive ☐ Concurrent
to Offense # _____ or
Case # _____

Defendant's Full Name:_____

Special Conditions

Sex Offenses

Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form. ☐ Yes ☐ No

Defendant has committed an aggravated sex offense as defined in A.C.A. §12-12-903.
☐ Yes ☐ No

Defendant is alleged to be a sexually violent predator and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. §12-12-918.
☐ Yes ☐ No

Defendant, who has been adjudicated guilty of an offense requiring registration, has been adjudicated guilty of a prior sex offense under a separate case number. ☐ Yes ☐ No
If yes, list prior case numbers:

Domestic Violence Offenses

Defendant has been adjudicated guilty of a domestic-violence related offense.
☐ Yes ☐ No
If no, was defendant originally charged with a domestic-violence related offense? ☐ Yes ☐ No
If yes, state the A.C.A. # of the offense:

_____

If yes to either question, identify the relationship of the victim to the defendant.

_____

DNA Sample/Qualifying Offense

Defendant has been adjudicated guilty of a qualifying offense or repeat offense (as defined in A.C.A. §12-12-1103). ☐ Yes ☐ No
Defendant is ordered to have a DNA sample drawn at ☐ a A.C.C. facility ☐ the A.D.C. or
☐ other _____

Drug Crime

Defendant has been convicted of a drug crime, as defined in §12-17-101.
☐ Yes ☐ No

Fines, Fees, Restitution

Court Costs	$
Fines	$
Booking/Admin Fees ($20)	$
Drug Crime Assessment Fee ($125)	$
DNA Sample Fee ($250)	$
Mandatory Sex Offender Fee ($250)	$
Public Defender User Fee	$
Public Defender Attorney Fee	$
Other (explain)	$

Restitution $_____ **Payable to** [If multiple beneficiaries, give names and payment priority] _____

Terms
☐ Due Immediately
☐ Installments of: _____
☐ Payments must be made within _____ days of release from A.D.C.
☐ Upon release from confinement, Defendant must return to court to establish payment of restitution
☐ Restitution is joint and several with co-defendant(s) who was found guilty – List name(s) and case number(s) _____

_____

Sentence Options

Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. ☐ Yes ☐ No
The Court hereby orders a judicial transfer to the Department of Community Correction. ☐ Yes ☐ No
Pursuant to the Community Punishment Act, the Defendant shall be eligible to have his/her records sealed. ☐ Yes ☐ No

Extended Juvenile Jurisdiction Applied ☐ Yes ☐ No

JAIL TIME CREDIT	**TOTAL TIME TO BE SERVED FOR ALL OFFENSES** In months:_____ ☐ **Life** ☐ **LWOP**	**Death Penalty** ☐ Yes ☐ No	**If Yes, State Execution Date:**

DEFENDANT IS ASSIGNED TO: ☐ ADC ☐ CCC ☐ COUNTY JAIL ☐ PROBATION ☐ SIS ☐ SPECIAL CONDITIONS

Conditions of disposition or probation are attached. ☐ Yes ☐ No

A copy of the pre-sentence investigation on sentencing information is attached ☐ Yes ☐ No
A copy of the Prosecutor's Short Report is attached ☐ Yes ☐ No

☐ Defendant has previously failed a drug court program.

DEFENDANT WAS INFORMED OF APPELLATE RIGHTS ☐ Yes ☐ No **Appeal Bond $**

The County Sheriff is hereby ordered to: ☐ transport the defendant to county jail ☐ take custody for referral to CCC ☐ transport to ADC

Defendant shall report to ACC probation officer for report date to CCC ☐ Yes ☐ No

Signature

Prosecuting Attorney/Deputy (Print Name):_____

Signature: _____ **Date:**_____

Circuit Judge (Print Name):_____

Signature: _____ **Date:**_____

Additional Info

Additional Info: _____

_____

_____

_____

Defendant's Full Name:_____

Additional Victim Information

[CHECK ALL THAT APPLY]

[DO NOT ENTER THE NAME OF ANY VICTIM]

Offense #	Victim #	Age	Sex	Race/Ethnicity
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
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			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic
			☐ Male ☐ Female	☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Unknown ☐ Other ☐ Hispanic

Defendant's Full Name:_____

Offense #:

A.C.A. # of Offense/ Name of Offense+			**Case #**
A.C.A. # of Original Charged Offense	**ATN**	**Offense was** ☐ Nolle Prossed ☐ Dismissed ☐ Acquitted	
	Appeal from District Court ☐ Yes ☐ No	**Probation/SIS Revocation+** ☐ Yes ☐ No	
Offense Date	**Offense is** ☐ Felony ☐ Misd. ☐ Viol.	**Offense Classification** ☐ Y ☐ A ☐ B ☐ C ☐ D ☐ U	
Number of Counts:	**Criminal History Score**	**Seriousness Level**	**Defendant** ☐ Attempted ☐ Solicited ☐ Conspired to commit the offense

Presumptive Sentence ☐ Prison Sentence of _____months ☐ Community Corrections Center ☐ Alternative Sanction

Defendant Sentence* (see Page 2)
Imposed ☐ADC ☐ Jud. Tran. ☐County Jail
_____ months
Probation _____ months
SIS _____ months
Other ☐ Life ☐ LWOP ☐ Death

If probation or SIS accompanied by period of confinement, state time: _____days or _____months.

Sentence was enhanced _____ months, pursuant to
A.C.A. §§_____.
Enhancement(s) is to run: ☐ Concurrent ☐ Consecutive.

Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection
☐ (a) ☐ (b) ☐ (c) ☐ (d)

Victim Info# (See page 2) ☐ N/A [Multiple Victims ☐Yes ☐No]	**Age**	**Sex** ☐ Male ☐ Female	**Race & Ethnicity** ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Other ☐ Unknown ☐ Hispanic

Defendant voluntarily, intelligently, and knowingly entered a
☐negotiated plea of ☐guilty or ☐nolo contendere.
☐plea directly to the court of ☐guilty or ☐nolo contendere.

Defendant:
☐ was sentenced pursuant to ☐§§16-93-301 et seq., or ☐other §§_____
☐ entered a plea and was sentenced by a jury.
☐ was found guilty by the court & sentenced by ☐ court ☐jury.
☐ was found guilty at a jury trial & sentenced by ☐ court ☐jury.
☐ was found guilty of lesser included offense by ☐ court ☐jury.

Sentence is a Departure ☐ Yes ☐ No

Sentence Departure is ☐ **Durational or** ☐ **Dispositional**.
If durational, state how many months above/below the presumptive sentence:

Departure Reason (See page 2 for a list of reasons)
Aggravating # _____ **or Mitigating #** _____**. For Agg. #16 or Mit. #10,**
or if departing from guidelines, please explain: _____
_____

Sentence will run: ☐ Consecutive ☐ Concurrent
to Offense # _____ or
Case # _____

Offense #:

A.C.A. # of Offense/ Name of Offense+			**Case #**
A.C.A. # of Original Charged Offense	**ATN**	**Offense was** ☐ Nolle Prossed ☐ Dismissed ☐ Acquitted	
	Appeal from District Court ☐ Yes ☐ No	**Probation/SIS Revocation+** ☐ Yes ☐ No	
Offense Date	**Offense is** ☐ Felony ☐ Misd. ☐ Viol.	**Offense Classification** ☐ Y ☐ A ☐ B ☐ C ☐ D ☐ U	
Number of Counts:	**Criminal History Score**	**Seriousness Level**	**Defendant** ☐ Attempted ☐ Solicited ☐ Conspired to commit the offense

Presumptive Sentence ☐ Prison Sentence of _____months ☐ Community Corrections Center ☐ Alternative Sanction

Defendant Sentence* (see Page 2)
Imposed ☐ADC ☐ Jud. Tran. ☐County Jail
_____ months
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Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection
☐ (a) ☐ (b) ☐ (c) ☐ (d)

Victim Info# (See page 2) ☐ N/A [Multiple Victims ☐Yes ☐No]	**Age**	**Sex** ☐ Male ☐ Female	**Race & Ethnicity** ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Pacific Islander ☐ Other ☐ Unknown ☐ Hispanic

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☐plea directly to the court of ☐guilty or ☐nolo contendere.

Defendant:
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☐ entered a plea and was sentenced by a jury.
☐ was found guilty by the court & sentenced by ☐ court ☐jury.
☐ was found guilty at a jury trial & sentenced by ☐ court ☐jury.
☐ was found guilty of lesser included offense by ☐ court ☐jury.

Sentence is a Departure ☐ Yes ☐ No

Sentence Departure is ☐ **Durational or** ☐ **Dispositional**.
If durational, state how many months above/below the presumptive sentence:

Departure Reason (See page 2 for a list of reasons)
Aggravating # _____ **or Mitigating #** _____**. For Agg. #16 or Mit. #10,**
or if departing from guidelines, please explain: _____
_____

Sentence will run: ☐ Consecutive ☐ Concurrent
to Offense # _____ or
Case # _____

Issued by the

_____ COURT

_____County, Arkansas

_____

v.

_____

SUBPOENA IN A CIVIL CASE

CASE NUMBER _____

TO: _____

☐ YOU ARE COMMANDED to appear in the _____ Court of _____ County, Arkansas, at the place, date, and time specified below to testify in the above case.

Place of Testimony	Courtroom Date and Time

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Place of Deposition	Date and Time

☐ YOU ARE COMMANDED, at the time of the trial, hearing or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

☐ YOU ARE COMMANDED, no more than _____business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure 30(b)(6).

Issuing Officer Signature and Title (Indicate if Attorney for Plaintiff or Defendant) Date

Issuing Officer's Name, Address, and Phone Number

PROOF OF SERVICE

SERVED Date Place

Served On (Print Name) Manner of Service

Served By (Print Name) Title

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ _____

Date Signature of Server

_____

Address of Server

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(e), Ark. R. Civ. P.

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle, and Last name)

<u>PETITION TO DISMISS AND SEAL FIRST OFFENDERS UNDER ACT 346 of 1975 ACA §16-93-301 through 303 and ACT 1460 OF 2013 A.C.A.16-90-1401, Et. Seq.</u>

Comes the Defendant and for his/her petition to dismiss and seal the record states:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of _____ _____ in violation of A.C.A.§ _____.
2. The defendant entered a plea of guilty or nolo contendere to the offense(s) of: _____, in violation of A.C.A. § _____, on the _____ day of _____, _____.

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3. The offense was not a sexual offense as defined by ACA §5-14-101 et seq. nor was it a serious felony involving violence nor a felony involving violence as provided in ACA §5-4-501.
4. The offense or plea date was after March 10, 1975.
5. Prior to the date listed in Paragraph 2 above, the defendant had not been convicted of a felony.
6. With the Defendant's consent and without entering a judgment of guilt, the Court deferred further proceedings and placed the Defendant on probation for a period of ____ year(s) but not less than one (1) year.
7. **a**. The Defendant was sentenced prior to July 31, 2007, to probation only. A fine or term of imprisonment was not imposed; or
   b. The defendant was sentenced after July 31, 2007, to probation and a fine of _____, but not more than $3,500.00.
8. A term of imprisonment was not imposed on the Defendant.
9. The Defendant was sentenced under the provisions of Act 346 of 1975, A.C.A. § 16-93-301 through 303, which provides for the deferring of proceedings pending the defendant's conduct under the conditions of probation.
10. The Defendant has not previously been granted relief pursuant to Act 346 of 1975.
11. The Defendant has satisfactorily fulfilled the terms and conditions of probation or has been released by the court prior to that time. The Defendant has been rehabilitated.

12. ☐ Defendant has no pending felony charges in any state or federal court; or

☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows: _____

_____

13. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

14. As evidenced by my signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Dismissing and Sealing the above referenced case pursuant to A.C.A.§16-93-301, et seq.

_____
Defendant's Signature

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

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IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle, and Last name)

<u>ORDER TO DISMISS AND SEAL FIRST OFFENDERS UNDER</u>
<u>ACT 346 of 1975 ACA §16-93-301 through 303 and ACT 1460 OF 2013</u>
<u>A.C.A.16-90-1401, Et. Seq.</u>

Before the Court is the Petition of the Defendant to seal his/her record pursuant to Act 346 of 1975 and Act 1460 of 2013. The Court finds and orders as follows:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of _____ _____ in violation of A.C.A.§ _____.
2. The defendant entered a plea of guilty or nolo contendere to the offense(s) of: _____, in violation of A.C.A. § _____, on the _____ day of _____, _____.
3. The offense was not a sexual offense as defined by ACA §5-14-101 et seq. nor was it a serious felony involving violence nor a felony involving violence as provided in ACA §5-4-501.
4. The offense or plea date was after March 10, 1975.

5. Prior to the date listed in Paragraph 2 above, the defendant had not been convicted of a felony.
6. With the Defendant's consent and without entering a judgment of guilt, the Court deferred further proceedings and placed the Defendant on probation for a period of ____ year(s) but not less than one (1) year.
7. **a**. The Defendant was sentenced prior to July 31, 2007, to probation only. A fine or term of imprisonment was not imposed; or
   b. The defendant was sentenced after July 31, 2007, to probation and a fine of _____, but not more than $3,500.00.
8. A term of imprisonment was not imposed on the Defendant.
9. The Defendant was sentenced under the provisions of Act 346 of 1975, A.C.A. § 16-93-301 through 303, which provides for the deferring of proceedings pending the Defendant's conduct under the conditions of probation.
10. Prior to the entry of this Order to Dismiss and Seal, this Court has made, or caused to be made, a query of the Arkansas Crime Information Center to determine if the Defendant had been previously convicted of a felony or previously been granted probation under Act 346 of 1975. The Defendant has not been granted relief nor been sentenced under Act 346 of 1975 before.
11. The Defendant has satisfactorily fulfilled the terms and conditions of probation or has been released by the court prior to that time.
12. The defendant ☐ **HAS** or ☐ **HAS NOT** been rehabilitated.
13. ☐ Defendant has no pending felony charges in any state or federal court; or
    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows: _____
    _____
14. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to Dismiss and Seal the above referenced felony conviction(s) pursuant to A.C.A. §16-93-301, et seq and ACT 1460 OF 2013 A.C.A. §16-90-1401, et. seq. should be, and hereby is GRANTED.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information, the Administrative Office of the Courts, the prosecuting and/or city attorney, the District Court Clerk, if applicable, and the arresting agency. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle, and Last name)

PETITION TO DISMISS AND SEAL OFFENSE IN POST ADJUDICATION DRUG COURT PROCEEDING PURSUANT TO A.C.A . § 16-98- 303 {AND TO SEAL SEPARATE PREVIOUS OFFENSE FROM ANOTHER COURT }

Comes the Defendant and for his/her petition to seal the record states:

1. The defendant was arrested on the _____ day of _____, _____, and charge d with the offense(s) of _____ _____ A Class _____ ☐felony ☐misdemeanor in violation of A.C.A.§ _____.
2. The defendant plead guilty or nolo contendere to or was found guilty of _____, in violation of A.C.A. § _____, on the _____ day of _____, _____ .
3. The Defendant was placed on probation for a period of _____ months.

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4. The terms and conditions of Defendant's probation included the requirement that the Defendant successfully complete an approved drug court program.
5. The Defendant has successfully completed a drug court program.
6. The Defendant has received aftercare programming.
7. ☐ The Defendant has no pending felony charges in any state or federal court; or

   ☐ The Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____

8. If applicable, on the _____ day of _____, _____, in case number(s) _____ in _____ County _____ Court the Defendant previously plead guilty or nolo contendere to or was found guilty of _____, in violation of A.C.A. § _____.
9. The offense(s) listed in Paragraph 8 above, if any, is/are a target offense as defined in A.C.A. § 16- 93 -1202(10)(A)(i).
10. The offense(s) listed in Paragraph 8 above, if any, is/are not:
    i. Residential burglary;
    ii. Commercial burglary;
    iii. Breaking or entering; or
    iv. Fourth and/or subsequent offense of driving while intoxicated.
11. The Defendant has satisfactorily fulfilled the terms and conditions of probation/court supervision or has been released by the court prior to that time.

12. The Defendant has paid all filing fees mandated by A.C.A §16- 90-1419.

13. As evidenced by the signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Dismissing And Sealing the above-referenced case pursuant to A.C.A.§16-98-303 .

FURTHER, if applicable, the Defendant, _____, prays this Court enter an Order Sealing case number(s) _____ from _____ County _____ Court pursuant to A.C.A.§16-98 - 303.

_____
Defendant's Signature

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

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IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle, and Last name)

ORDER TO DISMISS AND SEAL OFFENSE IN POST ADJUDICATION DRUG COURT PROCEEDING PURSUANT TO A.C.A. § 16-98-303 {AND TO SEAL SEPARATE PREVIOUS OFFENSE FROM ANOTHER COURT }

Before the Court is the petition of the Defendant to seal his/her record pursuant to A.C.A.§ 16- 98-303. The Court finds and Orders as follows:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of _____ _____ A Class _____ ☐ felony ☐ misdemeanor in violation of A.C.A.§ _____.

2. The defendant plead guilty or nolo contendere to or was found guilty of _____, in violation of A.C.A. § _____, on the _____ day of _____, _____.

3. The Defendant was placed on probation for a period of _____ months.

4. The terms and conditions of Defendant's probation included the requirement that the Defendant successfully complete an approved drug court program.

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5. The Defendant has successfully completed a drug court program.
6. The Defendant has received aftercare programming.
7. The prosecuting attorney has recommended to the Court that the above referenced case and record be sealed.
8. ☐ The Defendant has no pending felony charges in any state or federal court; or

   ☐ The Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____

9. If applicable, on the _____ day of _____, _____, in case number(s) _____ in _____ County _____ Court the Defendant previously plead guilty or nolo contendere to or was found guilty of _____, in violation of A.C.A. § _____.
10. The offense(s) listed in Paragraph 9 above, if any, is/are a target offense as defined in A.C.A. § 16-93-1202(10)(A)(i).
11. The offense(s) listed in Paragraph 9 above, if any, is/are not:
    i. Residential burglary;
    ii. Commercial burglary;
    iii. Breaking or entering; or
    iv. Fourth and/or subsequent offense of driving while intoxicated.
12. The Defendant has satisfactorily fulfilled the terms and conditions of probation/court supervision or has been released by the court prior to that time.
13. The Defendant has paid all filing fees mandated by A.C.A §16-90-1419.
14. The defendant ☐ **HAS** or ☐ **HAS NOT** been rehabilitated.
15. The Court has considered the defendant's prior criminal history and has determined that dismissal of the case and sealing of the record is appropriate.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to Dismiss and Seal the Record in the above-referenced matter pursuant to A.C.A. §16- 98-303, should be, and hereby is GRANTED.

IT IS FURTHER ORDERED, if applicable, that the Petition of the Defendant to enter an Order Sealing case number(s) _____ from _____ County _____ Court pursuant to A.C.A.§16- 98- 303 is hereby GRANTED if concurred to by the Judge of said Court as evidenced by the Judge's signature below .

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information Center, the Administrative Office of the Courts, the prosecuting attorney and/or city attorney, the District Court Clerk, if applicable, and the arresting agency. Each of those agencies shall comply with the requirements of A.C.A. §16- 90-1413 as it pertains to them.

_____
Judge

_____
Date

Concurred in the Order Sealing case number(s) _____ from _____ County _____ Court

_____
Judge

_____
Date

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THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle, and Last name)

PETITION TO DISMISS AND SEAL OFFENSE IN PRE-ADJUDICATION DRUG COURT PROCEEDING PURSUANT TO A.C.A. §16-98-303 {AND TO SEAL SEPARATE PREVIOUS OFFENSE FROM ANOTHER COURT}

Comes the Defendant and for his/her petition to dismiss and seal the record states:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:

   _____

   _____

   A Class _____ ☐felony ☐misdemeanor in violation of A.C.A.§ _____.

2. With the Defendant's consent and without entering a judgment of guilt, the Court deferred further proceedings and placed the Defendant on probation/court supervision.
3. The terms and conditions of Defendant's probation/court supervision required the successful completion of an approved drug court program.

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4. On _____the Defendant successfully completed the drug court program.
5. The Defendant has received aftercare programming.
6. ☐ The Defendant has no pending felony charge in any state or federal court; or

   ☐ The Defendant has one or more pending felony charge in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____

7. The Defendant has paid all filing fees mandated by A.C.A §16-90-1419.
8. If applicable, on the _____ day of _____, _____, in case number(s) _____ in _____ County _____ Court the Defendant previously plead guilty or nolo contendere to or was found guilty of _____, in violation of A.C.A. § _____.
9. The offense(s) listed in Paragraph 8 above, if any, is/are a target offense as defined in A.C.A. § 16-93-1202(10)(A)(i).
10. The offense(s) listed in Paragraph 8 above, if any, is/are not:
    i. Residential burglary;
    ii. Commercial burglary;
    iii. Breaking or entering; or
    iv. Fourth and/or subsequent offense of driving while intoxicated.
11. The Defendant has satisfactorily fulfilled the terms and conditions of probation/court supervision or has been released by the court prior to that time.

12. As evidenced by the signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Dismissing and Sealing the above-referenced case pursuant to A.C.A. §16-98-303.

FURTHER, if applicable, the Defendant, _____, prays this Court enter an Order Sealing case number(s) _____ from _____ County _____ Court pursuant to A.C.A.§16-98-303.

_____
Defendant's Signature

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

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IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle, and Last name)

ORDER TO DISMISS AND SEAL OFFENSE IN PRE-ADJUDICATION DRUG COURT PROCEEDING PURSUANT TO A.C.A. §16-98-303 {AND TO SEAL SEPARATE PREVIOUS OFFENSE FROM ANOTHER COURT}

Before the Court is the Petition of the Defendant to seal his/her record pursuant to A.C.A. 16-98-303. The Court finds and orders as follows:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of
   _____
   _____
   A Class _____ ☐ felony ☐ misdemeanor in violation of A.C.A.§ _____.
2. With the Defendant's consent and without entering a judgment of guilt, the Court deferred further proceedings and placed the Defendant on probation/court supervision.
3. The terms and conditions of the Defendant's probation/court supervision required the successful completion of a drug court program approved by the Court.
4. On _____the Defendant successfully completed the drug court program.

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5. The defendant has received aftercare programming.
6. The prosecuting attorney has recommended to the Court that the above-referenced case be dismissed and that the record be sealed.
7. ☐ The Defendant has no pending felony charges in any state or federal court; or

   ☐ The Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____
8. The Defendant has paid all filing fees mandated by A.C.A §16-90-1419.
9. If applicable, on the _____ day of _____, _____, in case number(s) _____ in _____ County _____ Court the Defendant previously plead guilty or nolo contendere to or was found guilty of _____, in violation of A.C.A. § _____.
10. The offense(s) listed in Paragraph 9 above, if any, is/are a target offense as defined in A.C.A. § 16-93-1202(10)(A)(i).
11. The offense(s) listed in Paragraph 9 above, if any, is/are not:
    i. Residential burglary;
    ii. Commercial burglary;
    iii. Breaking or entering; or
    iv. Fourth and/or subsequent offense of driving while intoxicated.
12. The Defendant has satisfactorily fulfilled the terms and conditions of probation/court supervision or has been released by the court prior to that time.
13. The defendant ☐ **HAS** or ☐ **HAS NOT** been rehabilitated.
14. The Court has considered the defendant's prior criminal history and has determined that dismissal of the case and sealing of the record is appropriate.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to Dismiss the Case and Seal the Record in the above-referenced matter pursuant to A.C.A. §16-98-303, should be, and hereby is GRANTED.

IT IS FURTHER ORDERED, if applicable, that the Petition of the Defendant to enter an Order Sealing case number(s) _____ from _____ County _____ Court pursuant to A.C.A.§16-98-303 is hereby GRANTED if concurred to by the Judge of said Court as evidenced by the Judge's signature below.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information Center, the Administrative Office of the Courts, the prosecuting attorney and/or city attorney, the District Court Clerk, if applicable, and the arresting agency. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

Concurred in the Order Sealing case number(s) _____ from _____ County _____ Court

_____
Judge

_____
Date

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THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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IN THE _____ COURT OF _____, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**

(First, Middle and Last name)

<u>PETITION TO SEAL ARREST UNDER ACT 1460 OF 2013;</u>

<u>A.C.A.16-90-1401, Et. Seq.</u>

Comes the Defendant and for his/her petition to seal the record states:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:

   _____

   _____

   in violation of A.C.A.§ _____
2. More than one (1) year has passed since the Defendant was arrested and neither the prosecuting attorney nor the city attorney has filed charges against the Defendant for the above referenced arrest(s).
3. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.
4. ☐ Defendant has no pending felony charges in any state or federal court; or

☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

_____

_____

5. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq)
6. As evidenced by my signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Sealing the above referenced arrest(s) pursuant to A.C.A. §16-90-1409.

_____
Defendant's Signature

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

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Revised 01/01/2014

Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

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Revised 01/01/2014

IN THE _____ COURT OF _____, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle and Last name)

<u>ORDER TO SEAL ARREST UNDER ACT 1460 OF 2013;</u>

<u>A.C.A.16-90-1401, Et. Seq.</u>

Before the Court is the Petition of the Defendant to seal his/her record. The Court finds and orders as follows:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:

   _____

   _____

   in violation of A.C.A.§ _____
2. More than one (1) year has passed since the Defendant was arrested and neither the prosecuting attorney nor the city attorney has filed charges against the Defendant for the above referenced arrest(s).
3. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

4. ☐ Defendant has no pending felony charges in any state or federal court; or

   ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____

5. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq)
6. The preponderance of the evidence shows that the granting of this Petition does not place the public at risk and it does further the interests of justice.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to seal the above referenced arrest(s) pursuant to A.C.A. §16-90-1409 should be, and hereby is GRANTED.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information, the Administrative Office of the Courts, the prosecuting and/or city attorney as the case may be, the District Court Clerk, if applicable, and the arresting agency. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

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THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC FORM
Revised 01/01/2014

IN THE _____COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle and Last name)

PETITION TO SEAL CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCE OR COUNTERFEIT SUBSTANCE UNDER ACT 1460 OF 2013; A.C.A.16-90-1401, Et. Seq.

Comes the Defendant and for his/her petition to seal the record states:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:
   - ☐ Possession of Controlled Substance A.C.A.§5-64-419; or
   - ☐ Possession of Counterfeit Substance A.C.A.§5-64-441; or
2. Prior to sentencing an intake officer appointed by the Court, where applicable, determined the Defendant had a drug addiction and recommended the Defendant as a candidate for residential drug treatment.
3. The Defendant was placed on probation by the Court. The terms and conditions of the Order of Probation included the requirement that the Defendant successfully complete a drug treatment program approved by the Court and that the Defendant remain drug-free until successful completion of the probation.

4. The Defendant has successfully completed all of the terms and conditions of the Order of Probation.
5. Defendant has paid all court costs unless payment has been excused by the Court.
6. Defendant has repaid all Court ordered restitution.
7. Defendant has had no more than one (1) prior felony before this conviction.
8. ☐ The Defendant has completed all of the requirements of his or her sentence, or

   ☐ It has been at least one (1) year since the Court denied a Petition to Seal for this conviction.
9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.
10. ☐ Defendant has no pending felony charges in any state or federal court; or

    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

    _____

    _____
11. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq).
12. Defendant requests the Court enter a finding that he or she has been rehabilitated.
13. As evidenced by my signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____,
prays this Court enter an Order Sealing the above referenced felony conviction(s) pursuant to A.C.A.§16-90-1407.

_____ _____ City: _____ State: _____ Zip code:_____ *Defendant's Address*	_____ Defendant's Signature _____ Date

ACIC Form
Revised 04/01/2015

VERIFICATION

STATE OF ARKANSAS
COUNTY OF _____

Comes the Petitioner,_____, under oath and states that the foregoing Petition is true and correct to the best of my knowledge and belief.

_____
Petitioner

Subscribed and sworn to before me on this_____,
day of

_____, 20_____.

(Seal)

_____
Notary Public

My Commission expires: _____

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC Form
Revised 04/01/2015

Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to the Prosecuting Attorney for the County in which the Petition has been filed and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

ACIC Form
Revised 04/01/2015

IN THE _____ COURT OF _____, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**

(First, Middle and Last name)

<u>ORDER TO SEAL CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCE OR COUNTERFEIT SUBSTANCE UNDER ACT 1460 OF 2013; A.C.A.16-90-1401, Et. Seq.</u>

Before the Court is the Petition of the Defendant to seal his/her record. The Court finds and orders as follows:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:
   ☐ Possession of Controlled Substance A.C.A.§5-64-419; or
   ☐ Possession of Counterfeit Substance A.C.A.§5-64-441; or
2. Prior to sentencing an intake officer appointed by the Court, where applicable, determined the Defendant had a drug addiction and recommended the Defendant as a candidate for residential drug treatment.
3. The Defendant was placed on probation by the Court. The terms and conditions of the Order of Probation included the requirement that the Defendant successfully complete a drug treatment program approved by the Court and that the Defendant remain drug-free until successful completion of the probation.
4. The Defendant has successfully completed all of the terms and conditions of the Order of Probation.

5. Defendant has paid all court costs unless payment has been excused by the Court.
6. Defendant has repaid all Court ordered restitution.
7. Defendant has had no more than one (1) prior felony before this conviction.
8. ☐ The Defendant has completed all of the requirements of his or her sentence, or

   ☐ It has been at least one (1) year since the Court denied a Petition to Seal for this conviction.
9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.
10. ☐ Defendant has no pending felony charges in any state or federal court; or

    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

    _____

    _____
11. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq).
12. The defendant ☐ **HAS** or ☐ **HAS NOT** been rehabilitated.
13. The Court has considered the factors contained in A.C.A. §16-90-1415(c) and finds that the granting of this Petition is in the best interests of the State of Arkansas and of the Defendant.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to Seal the above referenced felony conviction(s) pursuant to A.C.A. §14-90-1407 should be, and hereby is GRANTED.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information Center, the Administrative Office of the Courts, the prosecuting attorney, the arresting agency, and both the city attorney and District Court Clerk if applicable, and. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC Form
Revised 01/01/2014

IN THE CIRCUIT COURT OF _____, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle and Last name)

PETITION TO SEAL FELONY UNDER ACT 1460 OF 2013;

A.C.A.16 - 90 - 1401, Et. Seq.

Comes the Defendant and for his/her petition to seal the record states:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of :

   _____

   _____

   A Class _____ ☐ felony ☐ misdemeanor in violation of A. C. A. §

   _____

2. The Defendant either pled guilty or nolo contendere or was found guilty with the offense(s) of : _____

   _____

   A Class _____ ☐ felony ☐ misdemeanor in violation of A. C. A. §

   _____

3. The Defendant has completed his or her sentence for the felony.
4. Defendant has paid all court costs unless payment has been excused by the Court.
5. Defendant has repaid all Court ordered restitution.

6. Defendant's felony conviction was **NOT** one of the following
   a. A Class Y, Class A or Class B felony except as provided in A.C.A.§16-90-1406;
   b. Manslaughter (§5-10-104);
   c. An unclassified felony where the maximum possible sentence of imprisonment is more than ten (10) years;
   d. A felony sex offense;
   e. A felony involving violence under §5-4-501 (d) (2);
   f. A felony in which the Defendant served any portion of his or her sentence as an inmate with the Department of Corrections; or,
   g. A felony traffic offense committed while the Defendant was the holder of a commercial learner's permit or commercial driver's license.
7. Defendant has had no more than one (1) prior felony before this conviction.
8. ☐ It has been at least five (5) years since Defendant has completed all of the requirements of his or her sentence, or
   ☐ It has been at least one (1) year since the Court denied a Petition to Seal for this conviction.
9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16 - 90 - 1419.
10. ☐ Defendant has no pending felony charges in any state or federal court; or
    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

    _____

    _____

11. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, Et. Seq.)
12. Defendant requests the Court enter a finding that he or she has been rehabilitated.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Sealing the above referenced felony conviction(s) pursuant to A.C.A.§16-90-1406.

_____ _____

_____ Defendant's Signature

_____ _____

Defendant's Address Date

ACIC Form
Revised 02/01/2015

VERIFICATION

STATE OF ARKANSAS
COUNTY OF _____

Comes the Petitioner, _____, under oath and states that the foregoing Petition is true and correct to the best of my knowledge and belief.

_____
Petitioner

Subscribed and sworn to before me on this _____, day of _____, 20_____.

(Seal)

_____
Notary Public

My Commission expires: _____

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No: _____

DOB _____ FBI No. (if known)_____

ACIC Form
Revised 02/01/2015

Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to the Prosecuting Attorney for the County in which the Petition has been filed and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

ACIC Form
Revised 02/01/2015

IN THE _____ COURT OF _____, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT

(First, Middle and Last name)

ORDER TO SEAL FELONY UNDER ACT 1460 OF 2013;

A.C.A.16-90-1401, Et. Seq.

Before the Court is the Petition of the Defendant to seal his/her record. The Court finds and orders as follows:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:

   _____

   _____

   A Class _____ ☐ felony ☐ misdemeanor in violation of A.C.A.§

   _____

2. The Defendant either pled guilty or nolo contendere or was found guilty in violation of A.C.A.§

   _____

   _____

   A Class _____ ☐ felony ☐ misdemeanor on the _____ day of

   _____, _____.

3. The Defendant has completed his or her sentence for the felony and complied with all conditions of probation, if any, or has been released by the Court prior to their completion.
4. Defendant has paid all court costs unless payment has been excused by the Court.
5. Defendant has repaid all Court ordered restitution.

6. Defendant's felony conviction was **NOT** one of the following:
   a. A Class Y, Class A or Class B felony except as provided in A.C.A.§16-90-1406;
   b. Manslaughter (§5-10-104);
   c. An unclassified felony where the maximum possible sentence of imprisonment is more than ten (10) years;
   d. A felony sex offense;
   e. A felony involving violence under §5-4-501(d)(2);
   f. A felony in which the Defendant served any portion of his or her sentence as an inmate with the Department of Corrections; or,
   g. A felony traffic offense committed while the Defendant was the holder of a commercial learner's permit or commercial driver's license.
7. Defendant has had no more than one (1) prior felony before this conviction.
8. ☐ It has been at least five (5) years since Defendant has completed all of the requirements of his or her sentence, or
   ☐ It has been at least one (1) year since the Court denied a Petition to Seal for this conviction.
9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.
10. ☐ Defendant has no pending felony charges in any state or federal court; or
    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

    _____

    _____

11. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, Et. Seq.)
12. The defendant ☐ **HAS** or ☐ **HAS NOT** been rehabilitated.

13. The Court has considered the factors contained in A.C.A. §16-90-1415(b)(1) and finds there is clear and convincing evidence that granting the Defendant's Petition furthers the interests of justice.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to Seal the above referenced felony conviction(s) pursuant to A.C.A. §14-90-406 should be, and hereby is GRANTED.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information, the Administrative Office of the Courts, the prosecuting attorney, the arresting agency, and both the city attorney and District Court Clerk, if applicable, and. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known) _____

ACIC Form
Revised 02/01/2015

IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle and Last name)

PETITION TO SEAL MISDEMEANORS UNDER ACT 1460 OF 2013; A.C.A.16-90-1401, Et. Seq.

Comes the Defendant and for his/her petition to seal the record states:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:
   _____
   _____
   in violation of A.C.A.§ _____

2. The Defendant either pled guilty or nolo contendere or was found guilty of the offense(s) of: _____
   _____
   _____
   in violation of A.C.A.§_____
   on the _____ day of _____, _____.

3. The Defendant has completed his or her sentence for the misdemeanor offense.

4. Defendant has paid all court costs unless payment has been excused by the Court.

5. Defendant has repaid all Court ordered restitution.

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6. Defendant has paid all driver's license suspension reinstatement fees and completed all driver's license reinstatement requirements if Petitioner's drivers license was suspended as a result of this plea or conviction.

7. ☐ It has been at least sixty (60) days since Defendant has completed all of these requirements and the conviction was not for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1);or

   ☐ It has been at least five (5) years since Defendant completed his or her sentence if the conviction was for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1); or

   ☐ It has been at least ninety (90) days since the Court denied a Petition to Seal for a conviction that is not for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1);or

   ☐ It has been at least one (1) year since the Court denied a Petition to Seal for a conviction that is for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1).

8. The Defendant was either not a holder of a commercial driver's license at the time of conviction or if he or she did hold a commercial driver's license at the time of conviction, the conviction was not for a traffic offense.

9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

10. ☐ Defendant has no pending felony charges in any state or federal court; or

    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows: _____

    _____

11. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq)

12. Defendant requests the Court enter a finding that he or she has been rehabilitated.

13. As evidenced by my signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Sealing the above referenced misdemeanor conviction(s) pursuant to A.C.A. §16-90-1405.

_____

_____

City: _____

State: _____ Zip code:_____

Defendant's Address

_____

Defendant's Signature

_____

Date

ACIC Form Revised
03/26/2015

VERIFICATION

STATE OF ARKANSAS
COUNTY OF _____

Comes the Petitioner,_____, under oath and states that the foregoing Petition is true and correct to the best of my knowledge and belief.

_____
Petitioner

Subscribed and sworn to before me on this_____,
day of

_____, 20_____.

(Seal)

_____
Notary Public

My Commission expires: _____

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC Form Revised
03/26/2015

Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

ACIC Form Revised
03/26/2015

IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle and Last name)

ORDER TO SEAL MISDEMEANORS UNDER ACT 1460 OF 2013;
A.C.A.16-90-1401, Et. Seq.

Before the Court is the Petition of the Defendant to seal his/her record. The Court finds and orders as follows:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:

   _____

   _____

   in violation of A.C.A.§ _____

2. The Defendant either pled guilty or nolo contendere or was found guilty of the offense(s) of: _____

   _____

   _____

   in violation of A.C.A.§_____
   on the _____ day of _____, _____.

3. The Defendant has completed his or her sentence for the misdemeanor offense and has complied with all conditions of probation, if any.

4. Defendant has paid all court costs unless payment has been excused by the Court.

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5. Defendant has repaid all Court ordered restitution.

6. Defendant has paid all driver's license suspension reinstatement fees and completed all driver's license reinstatement requirements if Petitioner's drivers' license was suspended as a result of this plea or conviction.

7. ☐ It has been at least sixty (60) days since Defendant has completed all of these requirements and the conviction was not for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1);or
   ☐ It has been at least five (5) years since Defendant completed his or her sentence if the conviction was for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1); or
   ☐ It has been at least ninety (90) days since the Court denied a Petition to Seal for a conviction that is not for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1);or
   ☐ It has been at least one (1) year since the Court denied a Petition to Seal for a conviction that is for one of the named misdemeanors listed in A.C.A.§ 16-90-1405(b)(1).

8. The Defendant was either not a holder of a commercial driver's license at the time of conviction or if he or she did hold a commercial driver's license at the time of conviction, the conviction was not for a traffic offense.

9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

10. ☐ Defendant has no pending felony charges in any state or federal court; or
    ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

    _____

    _____

11. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq)

12. There is no clear and convincing evidence as to why the Defendant's Petition should not be granted.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to seal the above referenced misdemeanor conviction(s) pursuant to A.C.A. §16-90-1405 should be, and hereby is GRANTED.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information, the Administrative Office of the Courts, the prosecuting and/or city attorney, the District Court Clerk, if applicable, and the arresting agency. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____
Sex _____ SID No. _____
DOB _____ FBI No. (if known)_____

ACIC Form
Revised 02/27/2015

IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle, and Last name)

PETITION TO SEAL PURSUANT TO ACT 531 OF 1993 ACA§16-93-1201, Et. Seq. and ACT 1460 OF 2013 A.C.A.16-90-1401, Et. Seq.

Comes the Defendant and for his/her petition to seal the record states:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of _____ _____ A Class _____ ☐felony ☐misdemeanor in violation of A.C.A.§ _____.
2. The defendant was convicted of the offense(s) of: _____, in violation of A.C.A. § _____, on the _____ day of _____, _____.
3. The offense(s) listed above is/are a target offense as defined in A.C.A.§16-93-1202(10)(A)(i) or (ii) and are not violent or sexual offenses as defined in A.C.A.§16-93-1202(10)(A)(iii) or (iv)

4. The Defendant was sentenced under Act 531 of 1993, as codified at A.C.A.§16-93-1201, et seq.
5. The Defendant has successfully completed:

   ☐ A term in the Arkansas Department of Corrections with judicial transfer to the Arkansas Department of Community Corrections; or

   ☐ A suspended imposition of sentence, with or without supervision; or

   ☐ Supervised or unsupervised probation; or

   ☐ A term in the county jail for a misdemeanor committed after January 1, 2007.
6. The Defendant has no more than one (1) prior felony conviction and the prior conviction was not for an offense listed in A.C.A.§16-93-1207(b)(1).

7. The Defendant has satisfactorily fulfilled the terms and conditions of probation or has been released by the court prior to that time. The Defendant has been rehabilitated.
8. ☐ Defendant has no pending felony charges in any state or federal court; or

   ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____

9. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

10. As evidenced by my signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Sealing the above referenced case pursuant to A.C.A.§16-93-1201, et seq.

_____
Defendant's Signature

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC Form
Revised 08/25/2014

Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

Defendant Address, Street:_____

_____

City:_____State:_____Zip code:_____

ACIC Form
Revised 08/25/2014

IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. Case No. _____

_____ DEFENDANT
(First, Middle, and Last name)

ORDER TO SEAL PURSUANT TO ACT 531 OF 1993 ACA§16-93-1201, Et. Seq. and ACT 1460 OF 2013 A.C.A.16-90-1401, Et. Seq.

Before the Court is the Petition of the Defendant to seal his/her record. The Court finds and orders as follows:

1. The defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of _____ _____ A Class _____ ☐ felony ☐ misdemeanor in violation of A.C.A.§ _____.
2. The defendant was convicted of the offense(s) of: _____, in violation of A.C.A. § _____, on the _____ day of _____, _____.
3. The offense(s) listed above is/are a target offense as defined in A.C.A.§16-93-1202(10)(A)(i) or (ii) and are not violent or sexual offenses as defined in A.C.A.§16-93-1202(10)(A)(iii) or (iv).

4. The Defendant was sentenced under Act 531 of 1993, as codified at A.C.A.§16-93-1201, et seq.
5. The Defendant has successfully completed:

   ☐ A term in the Arkansas Department of Corrections with judicial transfer to the Arkansas Department of Community Corrections; or

   ☐ A suspended imposition of sentence, with or without supervision; or

   ☐ Supervised or unsupervised probation; or

   ☐ A term in the county jail for a misdemeanor committed after January 1, 2007.
6. The Defendant has no more than one (1) prior felony conviction and the prior conviction was not for an offense listed in A.C.A.§16-93-1207(b)(1).
7. The Defendant has satisfactorily fulfilled the terms and conditions of probation or has been released by the court prior to that time.
8. The defendant ☐ **HAS** or ☐ **HAS NOT** been rehabilitated.
9. ☐ Defendant has no pending felony charges in any state or federal court; or

   ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____
10. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

11. IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to Seal the above referenced conviction(s) pursuant to A.C.A. §16-93-1201, et seq. should be, and hereby is GRANTED.

12. IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information Center, the Administrative Office of the Courts, the prosecuting attorney, the arresting agency, and both the city attorney and District Court Clerk, if applicable. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC Form
Revised 08/25/2014

IN THE _____ COURT OF _____, ARKANSAS
_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**
(First, Middle and Last name)

PETITION TO SEAL RECORDS OF NOLLE PROSEQUI, DISMISSALS AND JUDGMENTS OF ACQUITTAL UNDER ACT 1460 OF 2013; A.C.A.16-90-1401, Et. Seq.

Comes the Defendant and for his/her petition to seal the record states:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:
   _____
   _____
   in violation of A.C.A.§ _____

2. ☐ An Order of Nolle Prosequi was entered in this case more than one (1) year ago and the prosecuting attorney or the city attorney has not refilled said charges against the Defendant; or
   ☐ An Order of Dismissal has been entered in this case; or
   ☐ A judgment of Acquittal was entered in this case and the acquittal was not for reason of mental disease or defect under A.C.A.§5-2-301, et seq.

3. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.

ACIC Form
Revised 04/03/2015

4. ☐ Defendant has no pending felony charges in any state or federal court; or
   ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:

   _____

   _____

5. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq)

6. As evidenced by my signature below, the above information is true and correct to the best of Defendant's knowledge.

WHEREFORE, the Defendant, _____, prays this Court enter an Order Sealing the above referenced arrest(s) pursuant to A.C.A. §16-90-1410.

_____	_____
_____	Defendant's Signature
City: _____	_____
State: _____ Zip code:_____	Date
Defendant's Address	

ACIC Form
Revised 04/03/2015

VERIFICATION

STATE OF ARKANSAS
COUNTY OF _____

Comes the Petitioner, _____, under oath and states that the foregoing Petition is true and correct to the best of my knowledge and belief.

_____
Petitioner

Subscribed and sworn to before me on this _____,
day of
_____, 20_____.

(Seal)

_____
Notary Public

My Commission expires: _____

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known) _____

ACIC Form
Revised 04/03/2015

Certificate of Service

I, _____, do hereby certify that a true and correct copy of the foregoing Petition has been provided to either the Prosecuting Attorney for the County in which the Petition has been filed or to the City Attorney depending on which office prosecuted the case and the arresting agency by placing a copy of this Petition in the United States mail, postage prepaid, to said office or by hand delivering a copy to said office.

_____
Defendant or Defendant's Attorney

_____
Date

ACIC Form
Revised 04/03/2015

IN THE _____ COURT OF _____, ARKANSAS

_____ DIVISION

STATE OF ARKANSAS **PLAINTIFF**

vs. **Case No. _____**

_____ **DEFENDANT**

(First, Middle and Last name)

<u>ORDER TO SEAL RECORDS OF NOLLE PROSEQUI, DISMISSALS AND JUDGMENTS OF ACQUITTAL UNDER ACT 1460 OF 2013; A.C.A.16-90-1401, Et. Seq.</u>

Before the Court is the Petition of the Defendant to seal his/her record. The Court finds and orders as follows:

1. The Defendant was arrested on the _____ day of _____, _____, and charged with the offense(s) of:
   _____
   _____
   in violation of A.C.A.§ _____
2. ☐ An Order of Nolle Prosequi was entered in this case more than one (1) year ago and the prosecuting attorney or the city attorney has not refilled said charges against the Defendant; or
   ☐ An Order of Dismissal has been entered in this case; or
   ☐ A judgment of Acquittal was entered in this case and the acquittal was not for reason of mental disease or defect under A.C.A.§5-2-301, et seq.

3. The Defendant has paid all filing fees required to be paid with the filing of this Petition mandated by A.C.A §16-90-1419.
4. ☐ Defendant has no pending felony charges in any state or federal court; or
   ☐ Defendant has one or more pending felony charges in state or federal court and the status of that/those charges is/are as follows:
   _____
   _____
5. Defendant ☐ **IS** or ☐ **IS NOT** required to register as a sex offender under the Sex Offender Registration Act of 1997 (A.C.A.§ 12-12-901, et seq)
6. The preponderance of the evidence shows that the granting of this Petition does not place the public at risk and it does further the interests of justice.

IT IS, THEREFORE, by the Court, ORDERED that the Petition of the Defendant, _____, to seal the above referenced order of Nolle Prosequi, Order of Dismissal or Judgment of Acquittal pursuant to A.C.A. §16-90-1410 should be, and hereby is GRANTED.

IT IS FURTHER ORDERED that the Clerk is directed to mail or transmit a certified copy of the ORDER to the Arkansas Crime Information, the Administrative Office of the Courts, the prosecuting and/or city attorney as the case may be, the District Court Clerk, if applicable, and the arresting agency. Each of those agencies shall comply with the requirements of A.C.A. §16-90-1413 as it pertains to them.

_____
Judge

_____
Date

THE FOLLOWING INFORMATION IS REQUIRED FOR PROPER IDENTIFICATION OF THE DEFENDANT IN THE STATE AND NATIONAL RECORD SYSTEMS

Race _____ Arrest Tracking Number _____

Sex _____ SID No. _____

DOB _____ FBI No. (if known)_____

ACIC Form
Revised 01/01/2014

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 _____, 20_____.

_____

Defendant

I have questioned the defendant and find that he/she intelligently and knowingly waived counsel and was competent to do so.

_____

Judicial Officer

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 PROSECUTING ATTORNEY DEFENSE ATTORNEY

MOTION GRANTED.

_____

CIRCUIT JUDGE

_____

DATE

Working with Interpreters in the Courtroom

A Bench Guide for Judges

What are my duties regarding the appointment of an interpreter?

Arkansas judges are required both by statute and court rule to "appoint a qualified interpreter to assist a person with limited English proficiency in a court proceeding." Ark. Code Ann. § 16-10-1101 et seq. Limited English proficiency is defined as the inability to understand or communicate in English, due to a lack of fluency or to a speech or hearing impairment.

How do I know if an interpreter is qualified?

If an AOC-certified interpreter is not available, a candidate must have relevant training, specialized skills and knowledge, including familiarity with legal terminology, slang, idioms and dialectical variations. Candidates must know all the modes of interpretation (simultaneous, consecutive and sight translation).

Determining the English proficiency of a party and the need for an interpreter:

When an attorney or pro se litigant makes a request for an interpreter on behalf of a party or a witness, a judge should make arrangements for a qualified interpreter for the duration of the proceeding. If a request for an interpreter is not made, but it appears a party or witness has limited English proficiency, a judge should ask the following questions **on the record** to determine if an interpreter is necessary:

(In general, avoid questions easily answered with "yes" or "no" replies.)

- Please tell the court your name.
- How did you learn English?
- Please tell me about your country.
- What is the highest grade you completed in school?
- What did you do before coming here today?
- Describe some of the things you see in this courtroom.

Being bilingual or knowing sign language does not qualify a person to interpret. Children, relatives and friends should never be used to interpret. Judges, attorneys and court personnel should not function as interpreters. For foreign language interpreters, "the judge may appoint a non-certified interpreter only upon finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available." *In re Certification for Foreign Language Interpreters in Arkansas Courts,* 338 Ark. App'x 827 (1999).

Sample Voir Dire for Foreign Language Interpreters

- What training or credentials do you have as an interpreter?
- What is your native language?
- How did you learn your foreign language skills?
- Are you familiar with the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary? What are its main points?
- How many times have you interpreted in court?
- Describe your familiarity with legal terminology
- What types of cases have you interpreted?
- Do you understand you are to be a neutral party who is here to facilitate communication and that you should not offer advice or interject your opinion into these proceedings?

Sample Voir Dire for Sign Language Interpreters

- What credentials do you hold?
- Describe your formal legal training.
- What specialized training have you had?
- Describe the Code of Ethics as it applies to legal interpreters.
- How many times and what types of cases have you interpreted in court?
- Are there any professional or personal issues that may influence your interpretation?
- When interpreting errors occur, how do you intend to inform the court?

When satisfied with the interpreter's qualifications, the oath may be administered:

Sample Interpreter's Oath: "Do you swear [affirm] that you will make a true and impartial interpretation using your best skills and judgment in accordance with the standards and ethics of the interpreter profession and that you will abide by the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary?

How can I facilitate communication in an interpreted proceeding?

- Recognize that court proceedings can be confusing and intimidating for an LEP individual since other countries' legal systems and concepts often vary from those of the United States.
- Advise everyone in the courtroom of the presence and role of the interpreter.
- Instruct all participants to **speak loudly and clearly** and allow only **one person to speak at a time**.
- Permit member of court personnel to speak, via the interpreter, with the limited English proficient (LEP) individual immediately prior to the proceeding to allow interpreter to **assess accents, dialect, or pronunciation differences**.
- Ask the LEP individual if he/she is able to understand and communicate through the interpreter.
- Allow the interpreter to view **court files** prior to the proceedings to become familiar with names, parties and technical vocabulary.
- Speak **directly** to the party or witness, not to the interpreter. Do not ask the interpreter to explain or restate anything said by the party. Always direct the interpreter to interpret in the **first person** in order for the record to be accurate.
- Ensure that the interpreter always refers to self in the **third person** for the official record.
- The interpreter must convey **all** questions, answers and courtroom dialogue. Therefore, the interpreter is constantly working. Advise the interpreter to notify the court when breaks are needed.
- Some cases may require the use of two or more interpreters due to length or logistics. Certain situations require the use of an additional interpreter, who is deaf, to work in cooperation with the sign language interpreter.

Clarification of an interpreter's role

To assure that all participants understand the role of the interpreter, consider reading the following language (via the interpreter) at the start of a court proceeding:

For the defendant/witness

I want you to understand the role of the interpreter. The court interpreter is a neutral party who is here only to interpret the proceedings and facilitate communication. The interpreter will interpret only what is said without adding, omitting or summarizing anything. The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.

You are here to listen and/or give testimony to this court. When speaking, please speak directly to the attorney or to me. Do not ask the interpreter for advice. If you do not understand the interpreter, then tell me. If you need a question or answer repeated, please tell me. Wait until the entire statement has been interpreted before you answer. Do you have any questions?

For the jury

Languages other than English may be used during this trial. The evidence you are to consider is only that provided through the official court interpreters. Although some of you may understand the non-English language used, it is important for all jurors to consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must not rely in any way upon your own interpretation of the witness' words.

To schedule an interpreter, for foreign language resources, or for further questions:

Court Interpreter Services
Administrative Office of the Courts
625 Marshall St.
Little Rock, AR 72201
Phone: 501-682-9400
http://courts.arkansas.gov/administration/ interpreters

REQUEST FOR REIMBURSEMENT FOR FOREIGN LANGUAGE INTERPRETER SERVICES

Mail originals to Administrative Office of the Courts, Attn: Court Interpreter Services 625 Marshall Street, Little Rock, AR 72201

Interpreter Information:

Name and address:

_____
_____
_____
_____

Telephone: _____

☐ Certified Interpreter ☐ Candidate
☐ Sign Language ☐ Deaf Interpreter

Language:_____

Court Information

Date: _____

IMSS Order # _____

Judge: _____ City: _____

☐ District ☐ Criminal ☐ Civil
☐ Circuit ☐ Juvenile ☐ Probate
☐ Domestic Relations

# of people interpreted for: _____

☐ Defendant / Respondent ☐ Witness ☐ Minor
☐ Plaintiff / Petitioner ☐ Victim ☐ Parent / Relative

If interpreter services were not utilized, state the reason below:

_____

I certify that the interpreter appeared in my court on the date indicated above.

_____

JUDGE'S SIGNATURE **Date**

To Be Completed By Interpreter

Interpreter Services Provided For: (Mark All That Apply)

☐ Court ☐ DWI Screening ☐ Cashier Payment ☐ Telephonic
☐ Attorney/Client ☐ Probation ☐ Prosecutor ☐ Other

Total Billable Fees:

Interpreter Services:

Arrival Time: _____ End Time: _____ Total Time: _____

Travel Information

Foreign Language
Total miles: _____(round trip)
Total mileage fee (@.42/mile): _____ (Foreign Language)
Travel Time _____ @ $20.00 an hour
From: _____ to _____

Sign Language
Travel Time _____ @ $30.00 an hour
From: _____ to _____

Interpreting Fee: $ _____

Travel Time Fee: $ _____
(If Applicable)

Mileage Fee: $_____
(If Applicable)

Cancellation Fee: $ _____
(If Applicable)

TOTAL INVOICE: $ _____

I certify that I performed the interpreter services as indicated above and that the information provided is correct.

Signature of Interpreter _____ **Date** _____

AOC Use Only

Approved By: _____

AOC 07/01/2014

Working with the Limited English Proficient (LEP) Community

A Guide for Clerks

When must the court appoint an interpreter?

Arkansas courts are required both by statute and court rule to Arkansas judges are required both by statute and court rule to "appoint a qualified interpreter to assist a person with limited English proficiency in a court proceeding." Ark. Code Ann. § 16-10-1101 et seq. When an attorney or pro se litigant makes a request for an interpreter on behalf of a party or a witness, a judge should make arrangements for a qualified interpreter for the duration of the proceeding. If a request for an interpreter is not made, but it appears a party or witness has limited English proficiency, either due to language ability or hearing impairment, the court may request an interpreter at the judge's discretion.

What services are available through AOC Court Interpreter Services (CIS)?

- Three certified staff Spanish interpreters
- One certified staff sign language interpreter
- Contact information for certified interpreters listed by the AOC to be contracted for use in court proceedings (the Court Interpreter Services Registry)
- Assistance in locating and contracting deaf/blind interpreters, deaf interpreters, and interpreters for rare languages.
- Assistance with forms that have been translated into foreign languages by Court Interpreter Services
- Remote translation via telephone or, for sign language, by video (*Limited availability*)
- Communication Access Real-time Translation (CART): a verbatim, word-for-word, instant translation of the spoken word into written text. The text appears instantly on a computer screen so that deaf or hard-of-hearing consumers may read what is being said. (*Limited availability*)
- Development of foreign language resources

How do I request an interpreter?

When the court becomes aware that an interpreter will be needed for an in-court proceeding, AOC Court Interpreter Services should be notified by entering the request on the on-line IMSS system, available at www.aocinterpreters.com (select the "Customers" option), or by calling 1-800-950-8221. If a Spanish or sign language interpreter is required and the AOC staff interpreters are available, they will be scheduled to interpret for the proceeding. If interpretation for a language other than Spanish or sign language 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.

Being bilingual or knowing sign language does not qualify a person to interpret. Children, relatives and friends should never be used to interpret in court. Likewise, judges, attorneys and court personnel should not function as interpreters in court. For foreign language interpreters, "the court may appoint a non-certified interpreter only upon finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available." *In re Certification for Foreign Language Interpreters in Arkansas Courts,* 338 Ark. App'x 827 (1999).

While AOC Court Interpreter Services only provides interpreters for in-court proceedings and directly related actions, the interpreters listed on the registry are available to be contracted by any other authorities. Should an interpreter be requested by attorneys, law enforcement, mental health professionals, or any other court-affiliated authorities, please direct them to the registry, available by visiting the Court Interpreter Services website or by directly contacting our office.

When can an LEP individual use family members or friends to interpret?

LEP individuals will often bring English-speaking friends or family along to assist them. Given their lack of training and lack of impartiality, family or friends should never be used to interpret in court or when dealing with specific details of the LEP individual's case. That said, you may allow them to interpret in very limited circumstances outside of the courtroom where the level of vocabulary and complexity of information is very low (e.g., the LEP individual is seeking to submit completed documents or get logistical details for his or her proceeding).

Tips for communication with LEP individuals

Remember that you should *always* use a certified interpreter when conveying any sensitive information regarding an LEP individual's case. However, in some cases you may find yourself needing to convey simple logistical information or responding to basic informational queries. If the LEP individual has not brought a friend or family member to interpret, follow these useful tips:

Foreign Language Speakers

- Speak slowly and clearly, using simple English and avoiding colloquialisms. Say "yes" and "no" rather than "uh-huh" or "yeah".
- Do not raise your voice. Increasing your volume does not improve comprehension and can be confusing to the LEP person.
- Avoid contractions. The difference between "can" and "can't" can be especially difficult for non-native English speakers.
- Ask open-ended questions to check comprehension. Remember that many LEP persons will nod in assent or answer yes or no questions even without actually understanding the conversation.
- Use body language. Look directly at the individual, speak expressively, and utilize gestures.
- Use universally understood symbols or pictures. For example, if you are discussing a date, point to time on a clock or use a calendar. If you are discussing a location, use a map and draw directions.
- Be sensitive to cultural differences. Some cultures have very different standards regarding eye contact, personal space, hygiene, and physical contact.

Deaf, Deaf/Blind, and Hearing-Impaired

- Do not assume English literacy. The native language of most deaf individuals is sign language, not English. The average English reading level of the deaf in the US is just under that of a third-grader. This is not a measure of intelligence, merely of capability in a language that, for many deaf people, is foreign.
- Do not assume ability to lip-read.
- Use body language. Look directly at the individual, speak expressively, and utilize gestures.

Assessing bilingual staff

Bilingual staff are critical in communicating information to the LEP population and language abilities should thus be strongly considered in the hiring process. Some activities, such as assisting a litigant in filling out forms, require a very high level of fluency for effective communication. Court Interpreter Services is able to assist hiring authorities in assessing the foreign language level of applicants by connecting them with independent language testing services. Once the results have been received, CIS is also available to help clerks determine the extent to which the bilingual employee may be expected to work with LEP individuals.

Signage

Clerk's offices are required to post notice of the availability of interpreter services under Ark. Code Ann. § 16-10-1103(d). To this end, Court Interpreter Services has developed a poster and pamphlets describing availability of interpreters in the state's most commonly spoken foreign languages. If you are unable to determine the language of the LEP individual, CIS distributes an "I Speak" card that allows the individual to choose his/her language from 38 listed languages. CIS also provides a glossary of English to Spanish translations of important court locations or notices to assist you in translating existing signage. All resources are available on the CIS website.

To schedule an interpreter or for further questions:

Court Interpreter Services
Administrative Office of the Courts
625 Marshall St.
Little Rock, AR 72201
Phone: 501-682-9400
http://courts.arkansas.gov/administration/interpreters

ARKANSAS SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
COURT INTERPRETER SERVICES

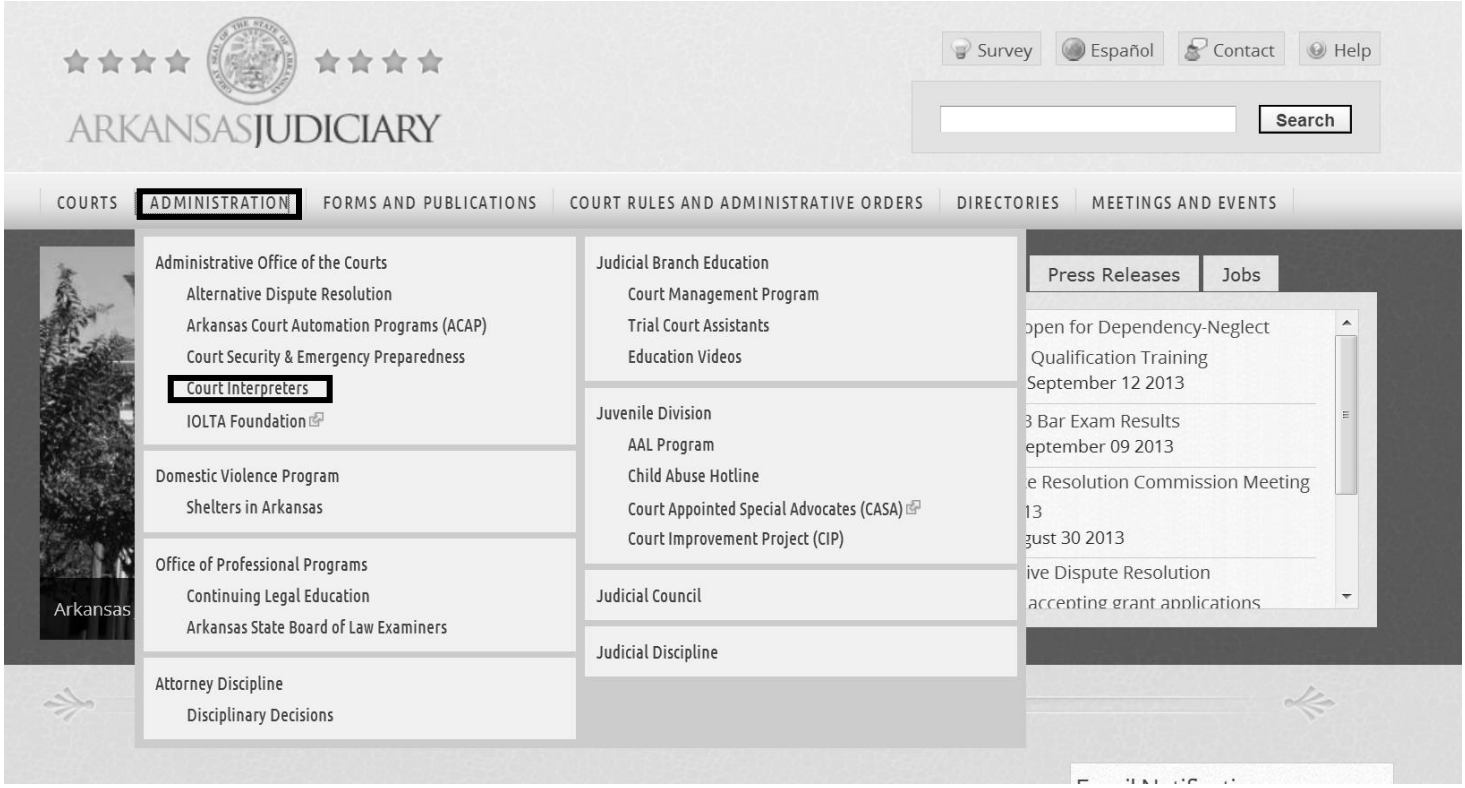
ON-LINE INTERPRETER SCHEDULING PROGRAM INFORMATION
https://courts.arkansas.gov

LOGIN	PASSWORD	CODEWORD

(Print this page and enter your Login, Password and Codeword for future reference)

Accessing the Online Scheduling Program

To access the online scheduling program go to https://courts.arkansas.gov, place your mouse cursor on the "ADMINISTRATION" link and choose "Court Interpreters":



Click on “Request an Interpreter”

ARKANSAS JUDICIARY

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Court Interpreters

Printer-friendly version | Send by email | PDF version

About Arkansas Court Interpreters

The Administrative Office of the Courts (AOC) provides interpreting services for individuals who have a limited ability to understand English, are deaf or hard of hearing, or are unable to speak. Removing barriers to communication helps ensure that all persons receive fair and equal access to justice.

The AOC is charged by law and Supreme Court per Curiam Order with the responsibility for the certification and matters related thereto of foreign language interpreters for Limited English Proficiency (L.E.P.) individuals or witnesses in the state and local courts of Arkansas. The AOC must also comply with the Americans with Disabilities Act by providing qualified interpreters for the deaf and hard of hearing. The AOC provides interpreting services during court proceedings or directly related actions. The AOC Court Interpreter Services maintains a Registry of Certified Court Interpreters who may be contracted directly by attorneys, law enforcement officers, jail officials, other state agency employees, social workers or mental health workers for interpreting services.

Court Interpreter Services
Contact: 501-682-9400

Attachment	Size
Arkansas Limited English Proficiency Plan	845.91 KB

Court Interpreter Links

- Foreign Language Interpreter Certification
- Request an Interpreter
- Sign Language Interpreters
- Interpreting Resources for Court Personnel
- Reimbursement Forms
- Check your Schedule
- Court Interpreters Registry
- Court Interpreter Resources
- Upcoming Events
- Contact Us
- Videos
- Welcome to the Arkansas Courts pamphlets

Click on “Place a Court Request for an Interpreter”. This will take you to the Customer Login page on the online request system.

Home >> Administration >> Interpreters

Request a Court Interpreter

Printer-friendly version | Send by email | PDF version

How to Request an Interpreter

Judges, circuit court clerks, court administrators and other court personnel who has been assigned this duty may request a court interpreter. The Interpreter Program at the Administrative Office of the Courts will then appoint a qualified interpreter to meet the specified need.

Enter the interpreter request through the online request system at www.aocinterpreters.com. NOTE: Each court is assigned their own login, password and code. The website is a secure site and allows the court to view their request at anytime in order to make changes or verify if an interpreter has been assigned. If you are a court who does not currently use this system and would like to, please contact us at aoc.interpreters@arkansas.gov or call (501)682-9400.

Instructions for courts completing online request.

Place a Court Request for an Interpreter

If your request for an interpreter is less than 72 hours notice, please call us at (501) 682-9400 and we will let you know if we are able to satisfy your request.

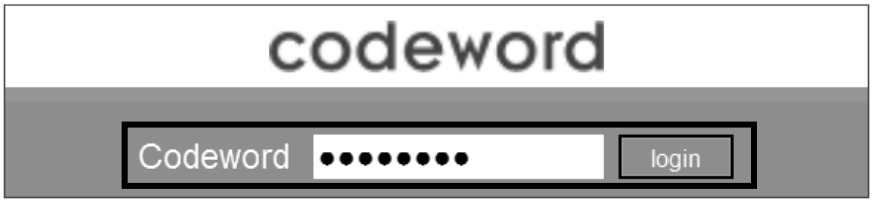
Arkansas Code of Professional Responsibility for Interpreters in the Judiciary
Interpreter Oath

Court Interpreter Links

- Foreign Language Interpreter Certification
- Request an Interpreter
- Sign Language Interpreters
- Interpreting Resources for Court Personnel
- Reimbursement Forms
- Check your Schedule
- Court Interpreters Registry
- Court Interpreter Resources
- Upcoming Events
- Contact Us
- Videos
- Welcome to the Arkansas Courts pamphlets

This will take you to the customer login screen. On this screen enter your username and password as provided to you by the AOC Court Interpreter Services and click login:

The **first** time you use the system a page requesting your codeword will appear the first time you use the system, however if you are using a different computer, it will appear again. Enter your codeword as provided by the AOC Court Interpreter Services and click login:

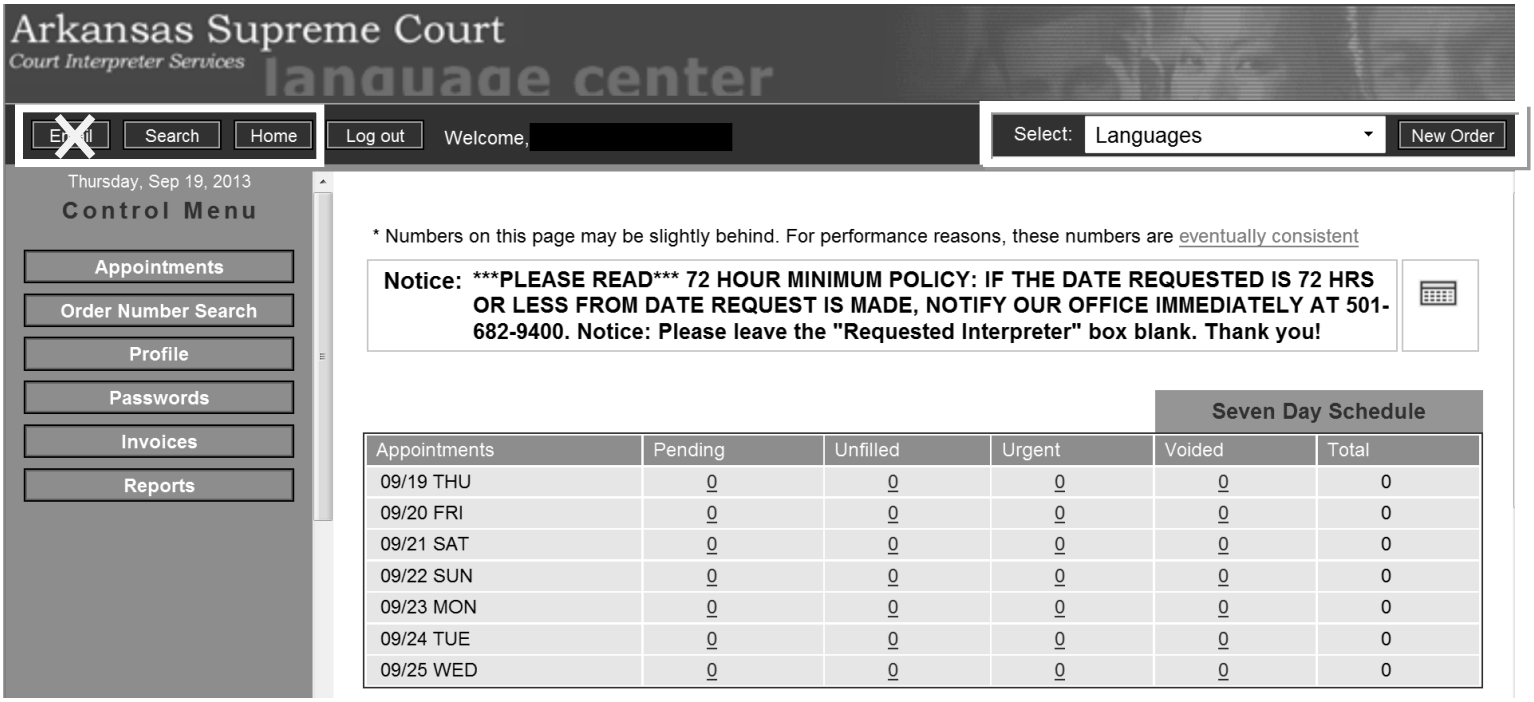


Submitting an Interpreter Request

Note: If the interpreter is needed in less than 72 hours (business hours)
YOU MUST CALL COURT INTERPRETER SERVICES at 501-682-9400.

Your home screen will appear. On left side of the task bar (across the top) there are several boxes (Email, Search, Home) followed by Welcome and your name. **Do not use the "email" button to contact Court Interpreter Services.**

- On the top right of the screen there is a box for Language and New Order.
- Choose the language from the pull down menu and click the New Order box.



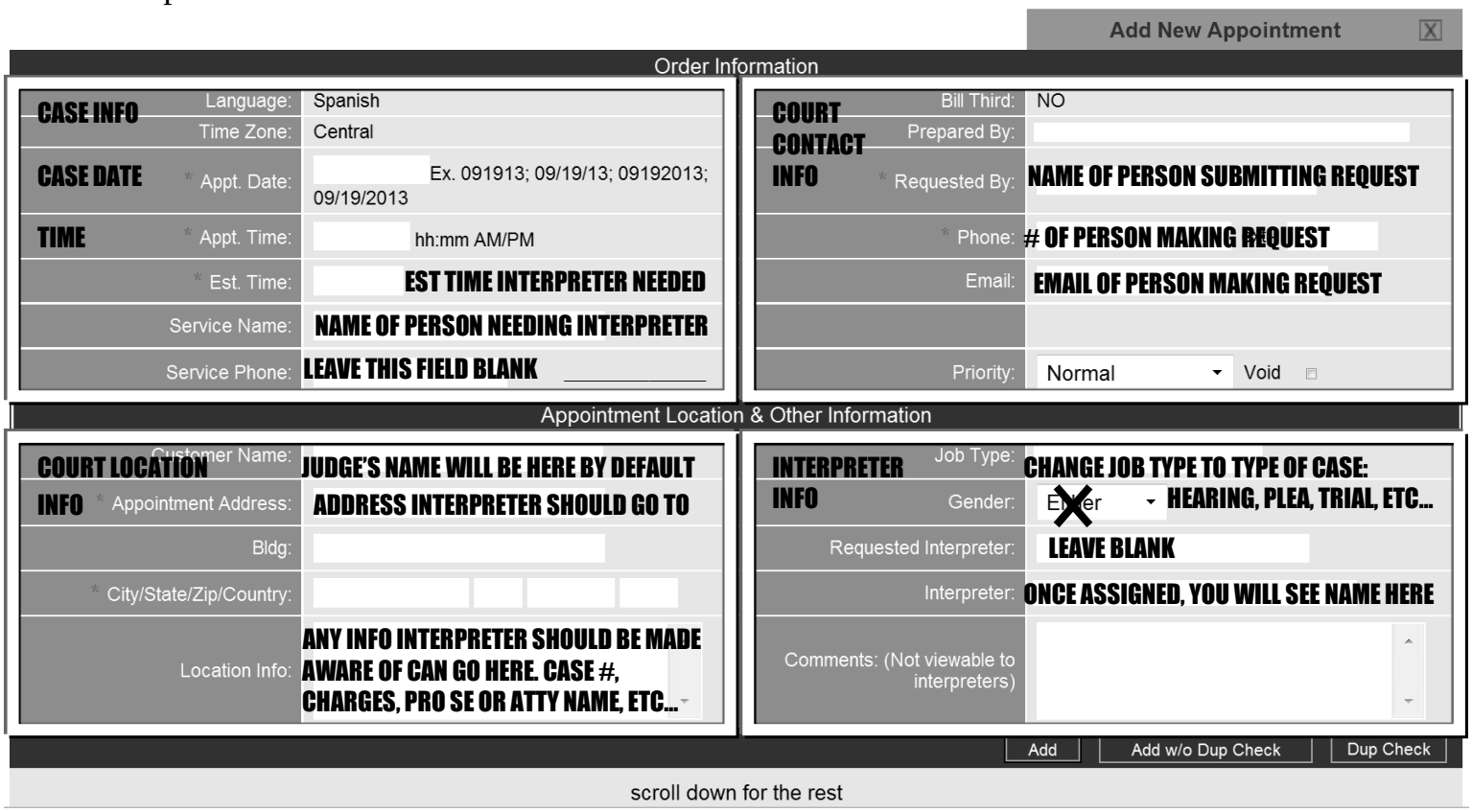
The following languages may be ordered through this system:

- **Marshallese**
- **Sign Language**
- **Spanish**
- **Vietnamese**

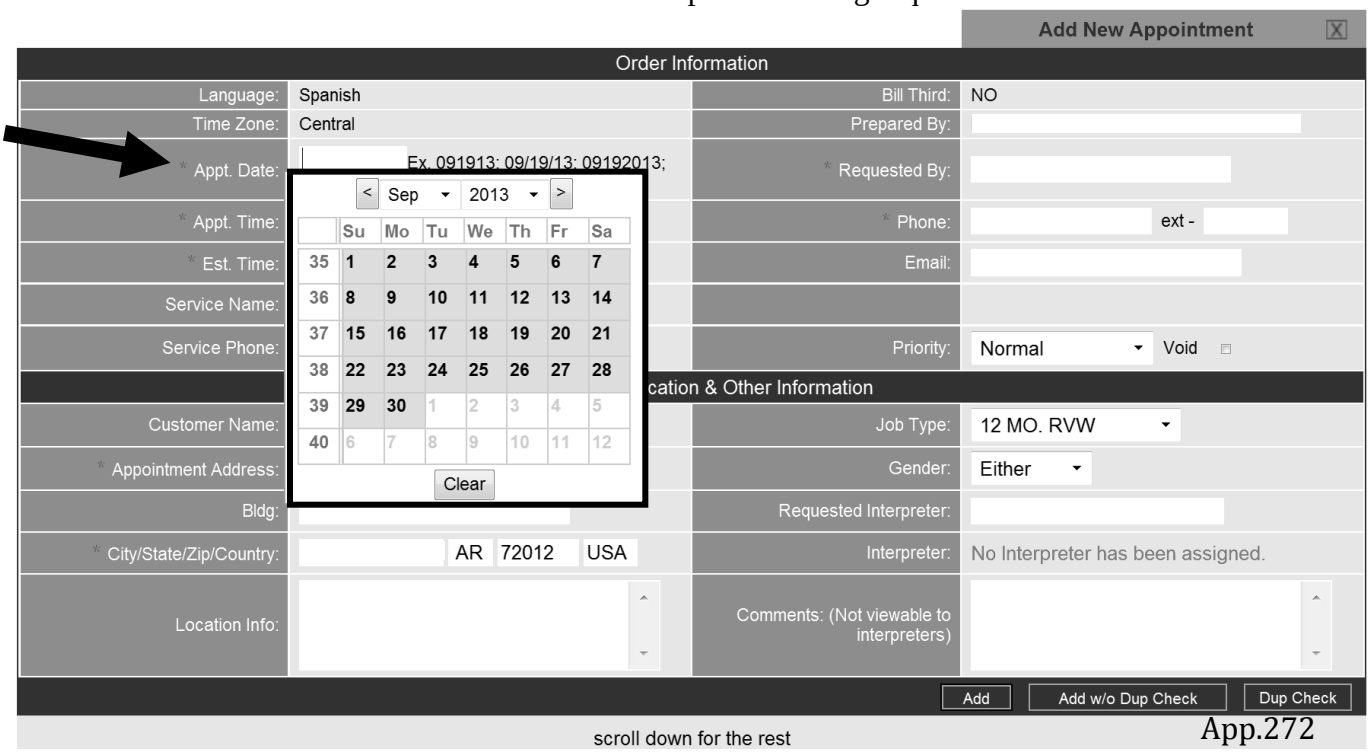
All others must be called into Court Interpreter Services.

Once a language has been selected and "New Request" has been clicked, the default screen will appear. The screen is divided into 4 sections:

1. Case Information: Time, Date and Name of L.E.P. individual needing interpreter
2. Court Contact Information
3. Court Location Information
4. Interpreter Information



Click on the appointment date and a calendar of the current month will automatically appear. Scroll forward to another month if needed and click on the date that the interpreter is being requested for.



- Enter the appointment time with no colon or letters. Use the minus (-) symbol for am and the plus (+) symbol for pm. For example, 9:00 am would be entered as 0900- and 9:00 pm would be entered as 0900+.

- Enter the estimated length of the assignment using only numbers and no letters. **Do not enter an assignment that is longer than 4 hours without first confirming the length of the assignment.**

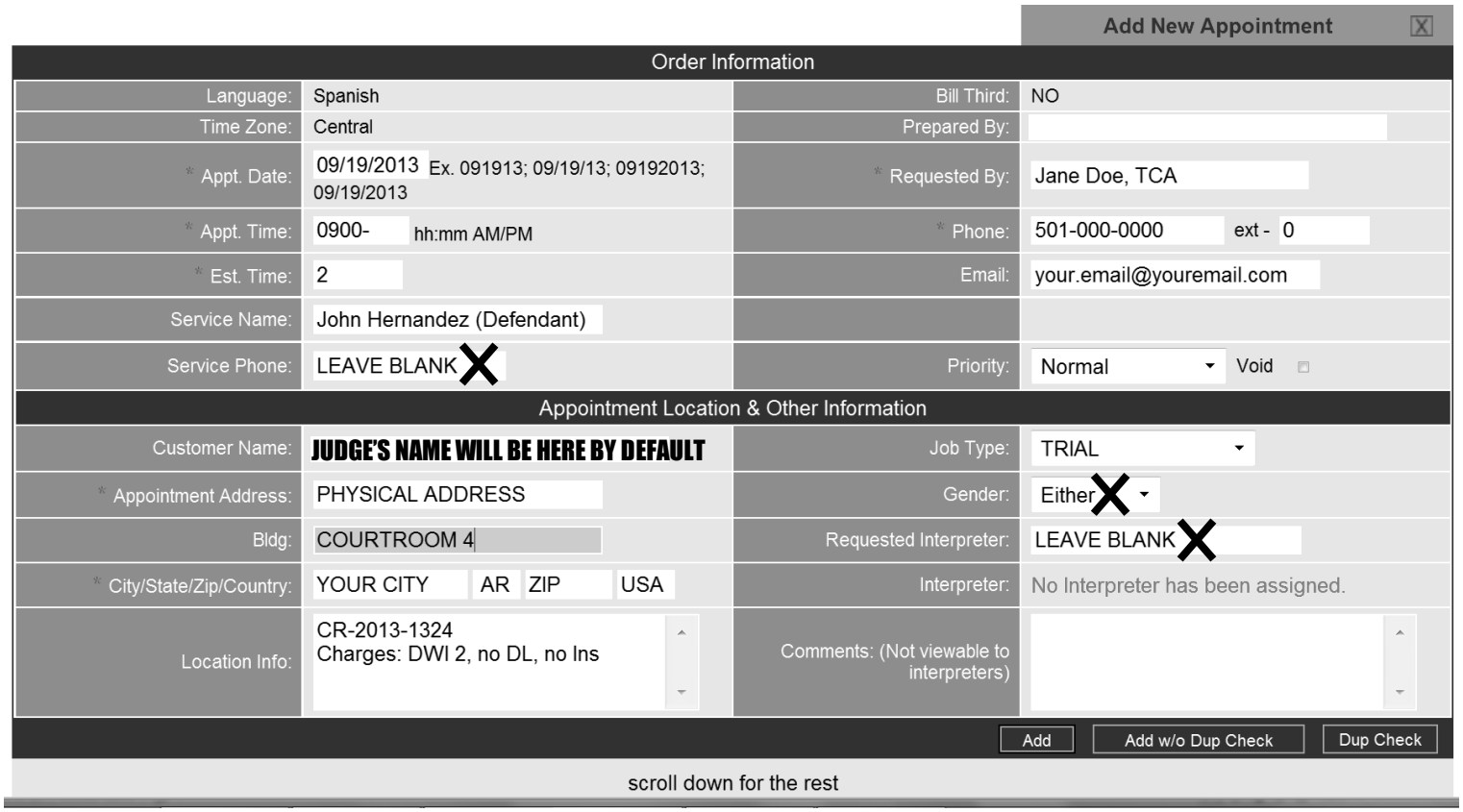
- Enter the name of the person needing the interpreter (defendant, witness, victim). If more than one individual requires an interpreter on the same date and time, put the word "multiple" in this box. In the "Location Info" or "Comments" section, list the case numbers and names of the individuals. **Do not enter a new request for each case.**

- The name of the Judge and the address of the court will automatically populate. Check to ensure that this is the court address where the assignment will take place as some judges hold court in more than one city. If it is incorrect, **change the address to the correct location** the interpreter needs to go to.

- Enter the name of the court trial court assistant, court clerk, etc in the "Requested By" section. Also, enter a good contact phone number (should the interpreter need to contact the court if they are late or to confirm an assignment), and an email address for the contact person.

- Click on the arrow next to "Job Type" drop down box and choose the option that best matches the type of case. There are many abbreviations, however the most common requests are: HEARING, TRIAL, PLEA, ARRAIGN. Also enter any information in the "Location Info" box that would help Court Interpreter Services determine what type of case it is. For example, if choosing "Hearing", add "Divorce", "Custody", "Suppression", etc. in the location info or comments section.

- Do not choose a gender. This refers to the gender of the interpreter if a special request is being made. Do not put a name in the "Requested Interpreter" box; Court Interpreter Services will monitor your request and schedule the interpreter. In the "Location Info" section enter the charge(s) and case number(s). **This information is imperative to aiding the interpreter in properly preparing for the assignment.**



Add New Appointment

Order Information

Language:	Spanish	Bill Third:	NO
Time Zone:	Central	Prepared By:	
* Appt. Date:	09/19/2013 Ex. 091913; 09/19/13; 09192013; 09/19/2013	* Requested By:	Jane Doe, TCA
* Appt. Time:	0900- hh:mm AM/PM	* Phone:	501-000-0000 ext - 0
* Est. Time:	2	Email:	your.email@youremail.com
Service Name:	John Hernandez (Defendant)		
Service Phone:	LEAVE BLANK X	Priority:	Normal Void

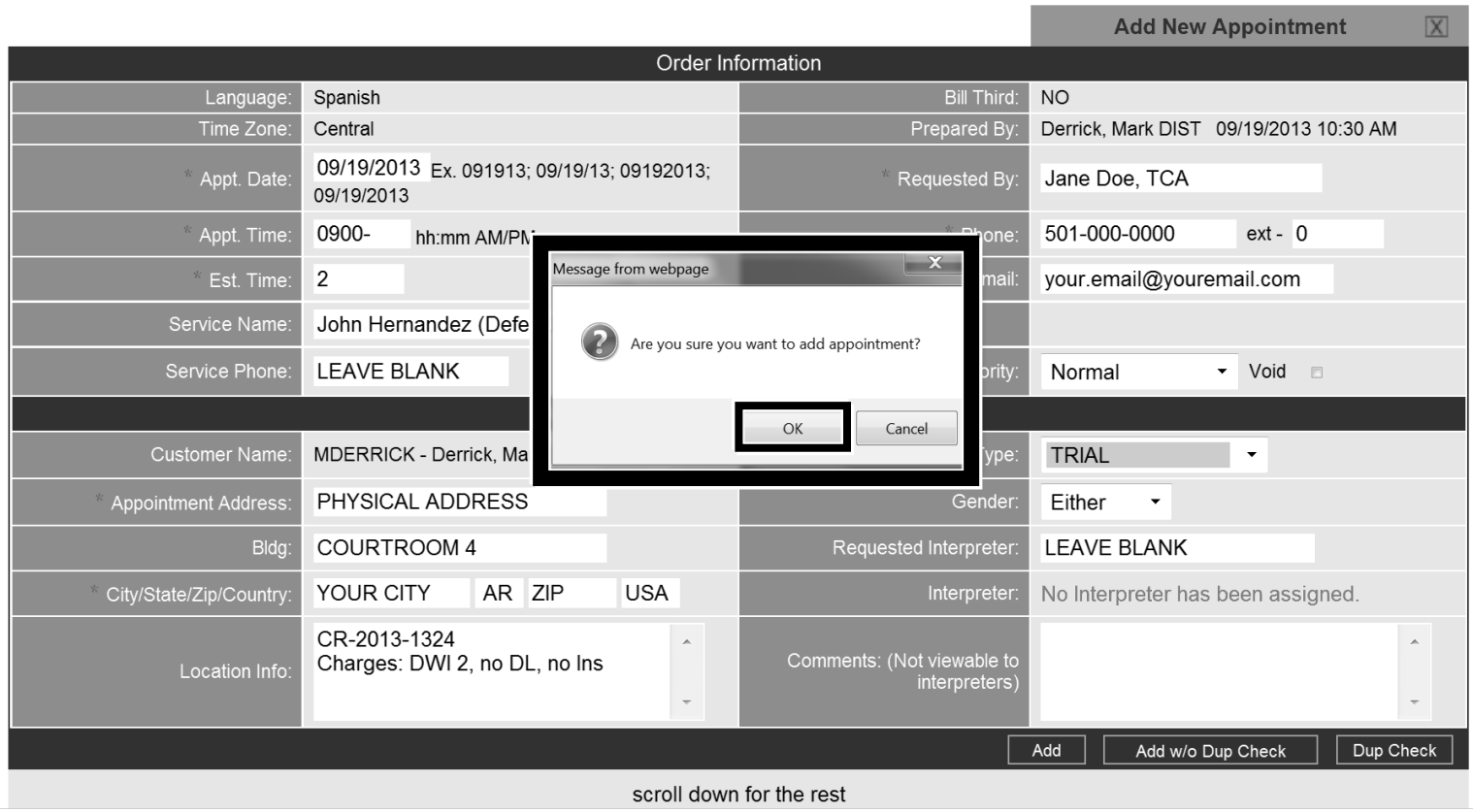
Appointment Location & Other Information

Customer Name:	JUDGE'S NAME WILL BE HERE BY DEFAULT	Job Type:	TRIAL
* Appointment Address:	PHYSICAL ADDRESS	Gender:	Either X
Bldg:	COURTROOM 4	Requested Interpreter:	LEAVE BLANK X
* City/State/Zip/Country:	YOUR CITY AR ZIP USA	Interpreter:	No Interpreter has been assigned.
Location Info:	CR-2013-1324 Charges: DWI 2, no DL, no Ins	Comments: (Not viewable to interpreters)	

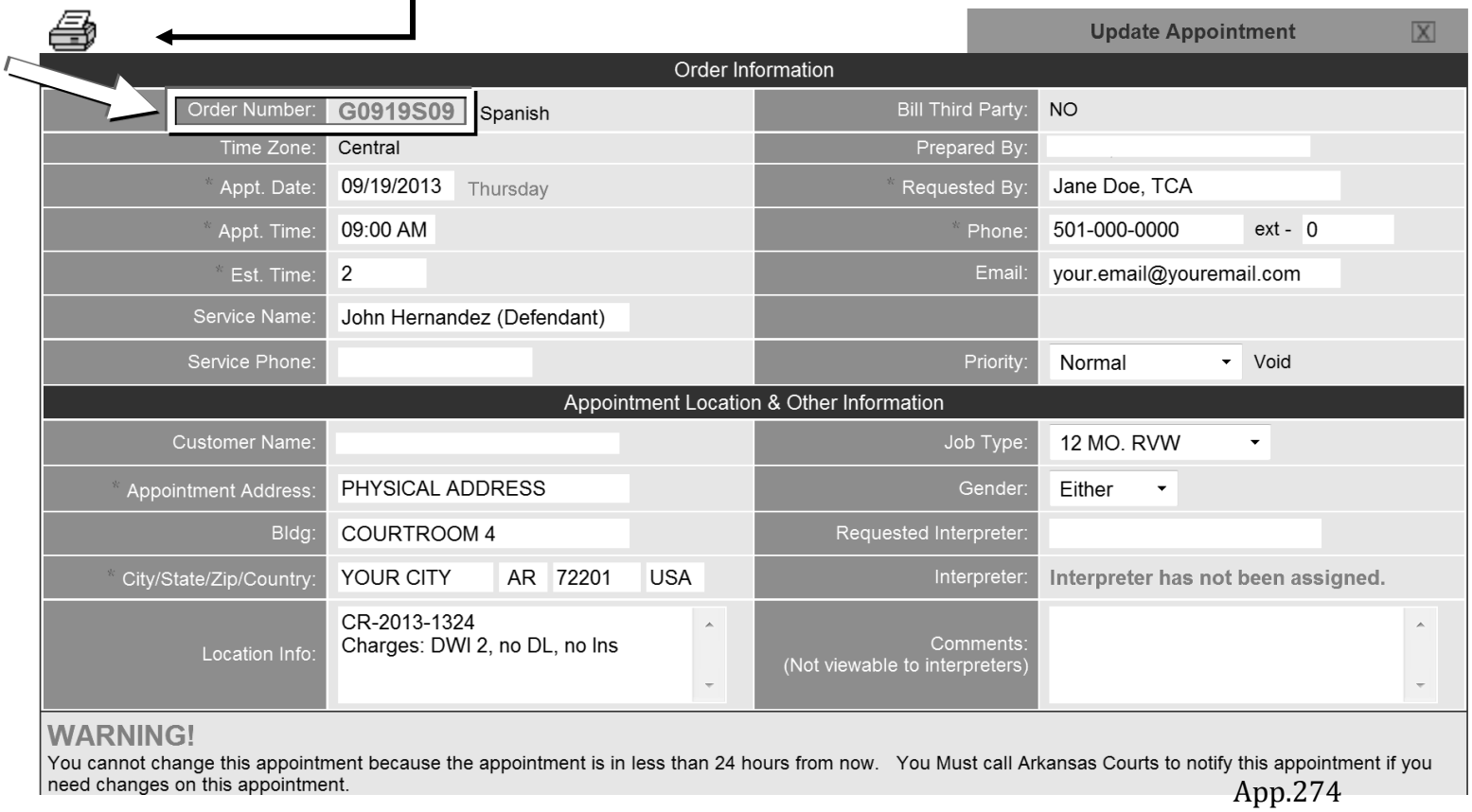
Add | Add w/o Dup Check | Dup Check

scroll down for the rest

- Once the information has been entered, click “add” (bottom right section).
- A message will appear asking “Are you sure you want to add appointment?”
- Click “OK”



A number will appear in red the upper left-hand corner. This number is both the order and confirmation number. You can print the order by clicking on the print icon on the upper left. This can be kept for your records or attached to the docket for that date.

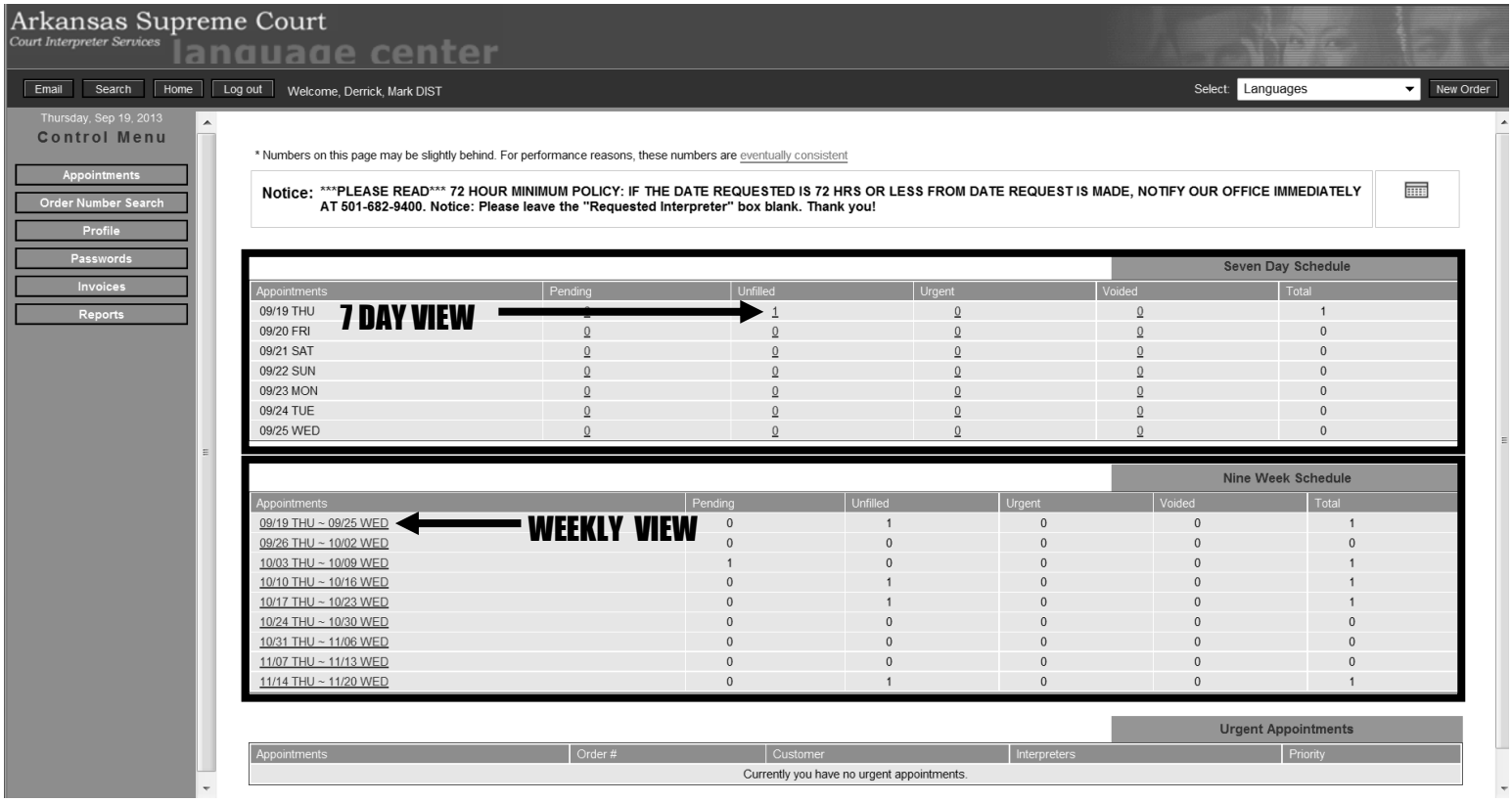


CHANGES AND CANCELLATIONS

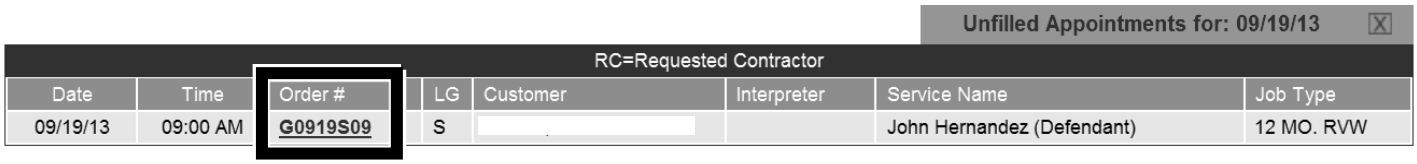
Changes or cancellations must be made within the order itself.

If the appointment is within 72 business hours or less, please call the Court Interpreter Services. The program will not allow a change or cancellation less than 24 hours in advance. This must be called into Court Interpreter Services at 501-682-9400.

To change or cancel an order, open the Court Interpreter scheduling website. The home screen is divided into two parts. The upper list shows the seven day schedule and the bottom is a nine week schedule. If the order is within seven days, it will appear in the upper portion. If it is beyond that, it will appear in the appropriate week on the lower section of the screen. A number will appear in either the "Appointments" or "Pending" column. Click on the **underlined number** in either column and a list will appear of the assignments for the court for that date.

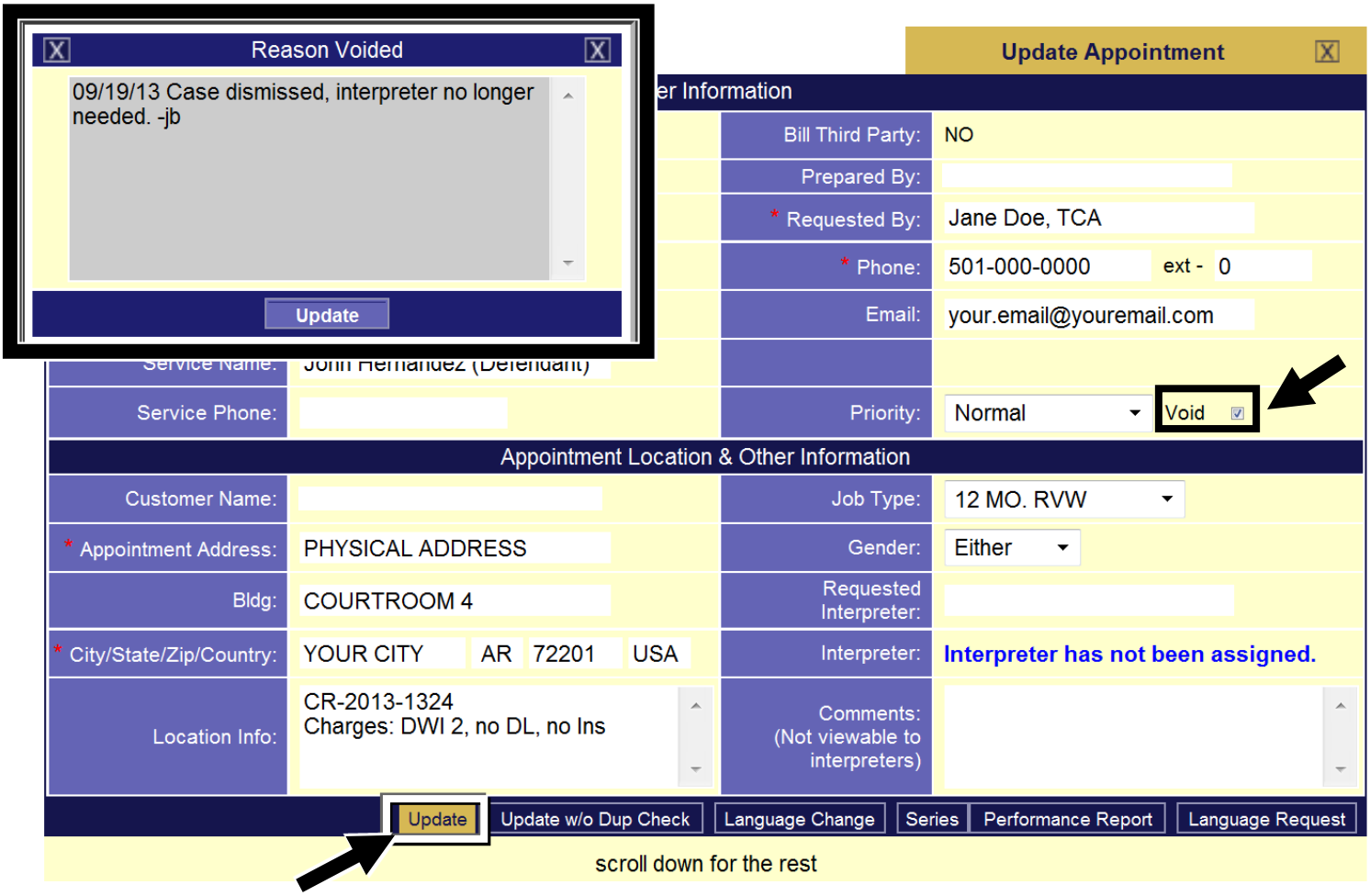


Confirm that the order number is correct and click on the **underlined Order Number**; the request will appear.



Make any changes or update any information that is necessary and click "Update" in the upper left hand part of the screen.

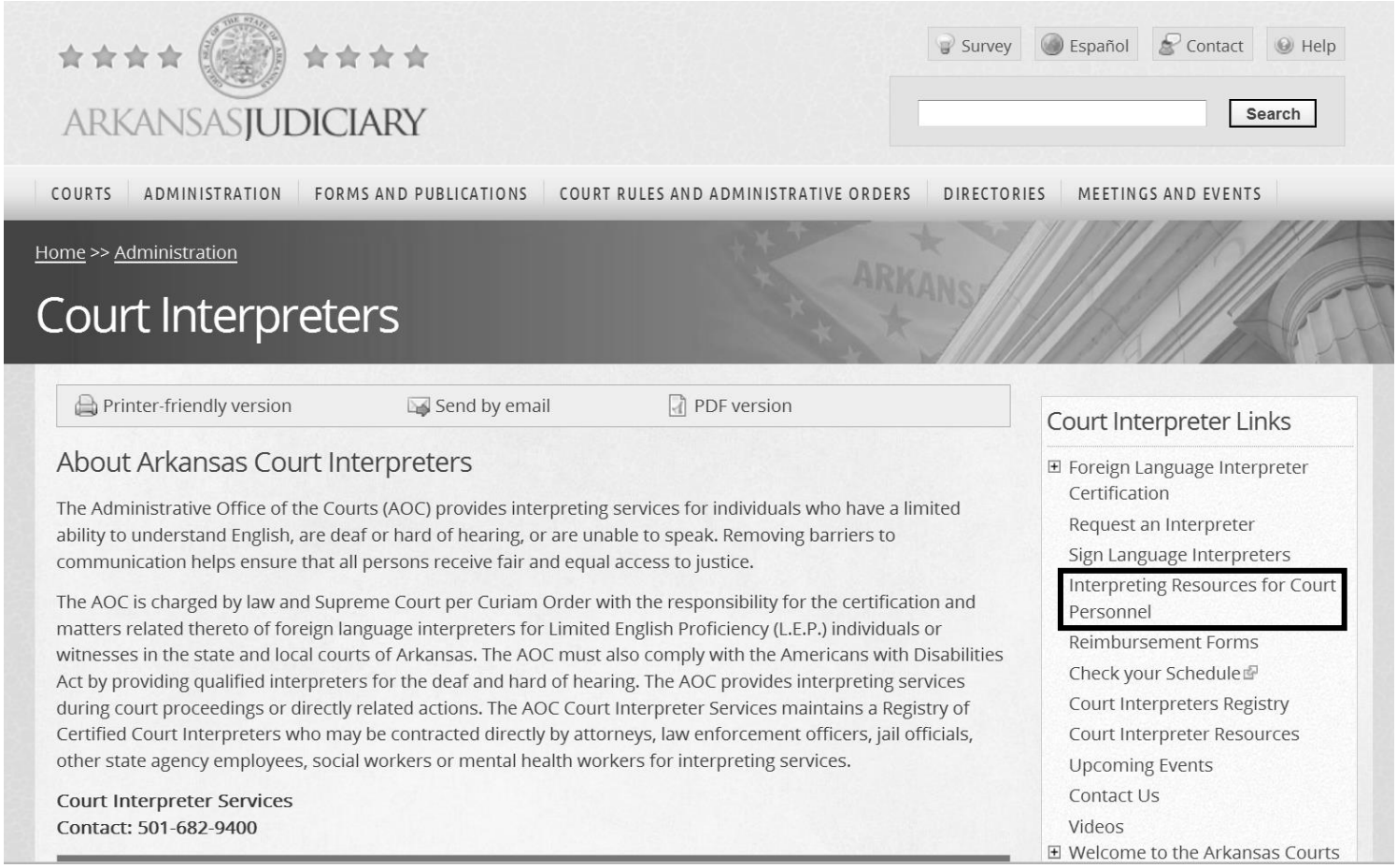
If you wish to void the request, click the "void" box next to the "Priority" drop down menu. A box will appear requesting the reason why the cancellation is being made. Click "Update". **A request cannot be voided if the assignment is within 24 hours. Call Court Interpreter Services if it is 72 <u>business</u> hours or less until the appointment time.**

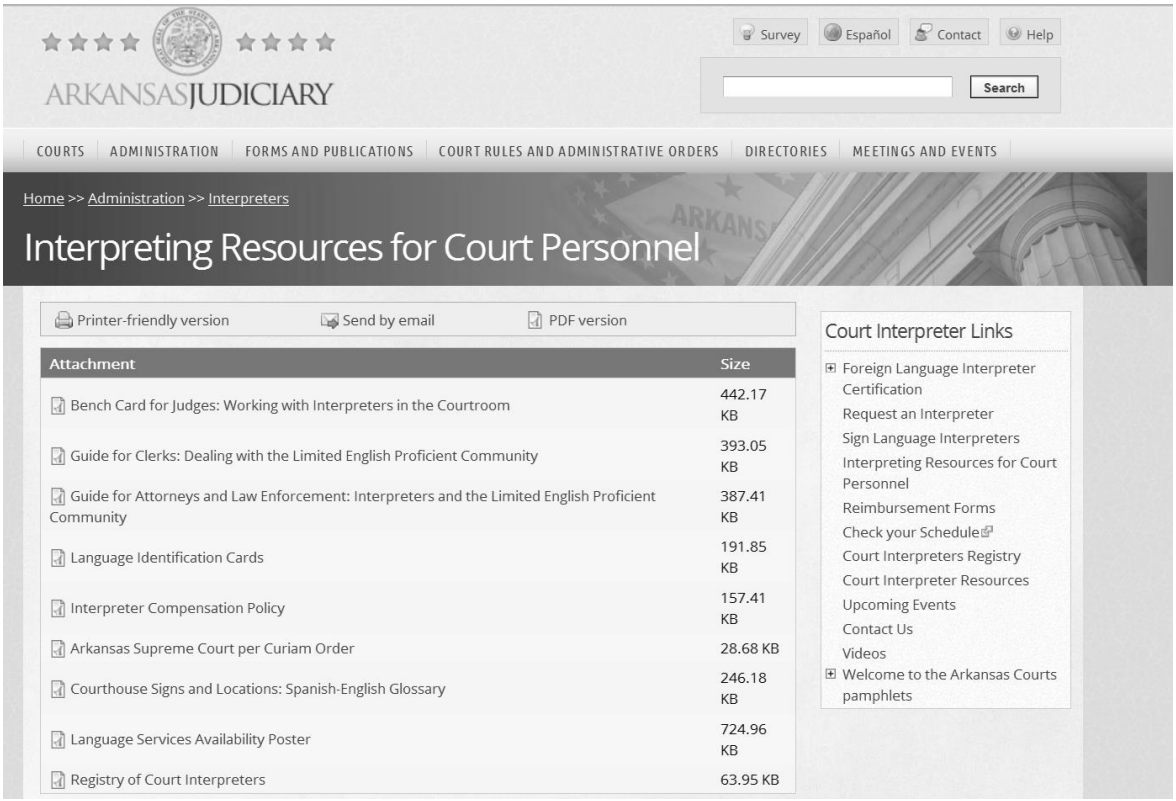


<u>Additional Information</u>

- **<u>Seven Day Schedule</u>**: The current week (including Saturday and Sunday)
- **<u>Week Schedule</u>**: A nine week schedule divided into weeks. If the order is greater than nine weeks out, use the order number to access the appointment.
- **<u>Appointments Column</u>**: Indicates the number of assignments on a particular date.
- **<u>Pending</u>**: Indicates the number of assignments that have been filled. Assignments remain in the column until the following day and the assignment has been completed
- **<u>Unfilled</u>**: Indicates the number of appointments that have either not been assigned to interpreters or that have not been accepted by interpreters.
- **<u>Block</u> <u>Appointment</u>**: *Use this ONLY if a certified Interpreter is required.*
- **<u>Series:</u>** After an appointment has been added, this box will enable a series of appointments to be scheduled for the same case and/or defendant. This feature opens a new window which has all of the appointment information in it except for the date, time and estimated time.

For Additional Resources:
Click on "Interpreting Resources for Court Personnel":





ARKANSAS SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
COURT INTERPRETER SERVICES

FOREIGN LANGUAGE AND SIGN LANGUAGE
INTERPRETER COMPENSATION POLICY & ASSIGNMENT PROTOCOL

The Administrative Office of the Courts (AOC) is charged by law and Supreme Court directive with the responsibility for the certification and related matters of foreign language interpreters for non-English speaking parties or witnesses in the state and local courts of Arkansas. (Ark. Code Ann. §16-10-1106 and Arkansas Supreme Court *Per Curiam* Order of September 30, 1999.) The AOC is also responsible for the provision of sign language interpreters and other auxiliary aids for persons who are deaf, deaf blind or hard of hearing in the state and local courts of Arkansas pursuant to Arkansas Code Ann. § 16-31-108.

The Arkansas General Assembly appropriates funds for the purpose of reimbursing the services of eligible foreign language and sign 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 demand for interpreter services in the state, courts are urged to utilize the services of these interpreters as efficiently as possible. The AOC has staff positions for three full-time certified Spanish interpreters and one certified sign language interpreter who are available on request and as time permits to provide direct interpreter services to state courts.

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ELIGIBLE FOREIGN LANGUAGE AND SIGN LANGUAGE INTERPRETERS

An **eligible** interpreter is one whose name appears on the current registry of interpreters maintained by the AOC and who has met all the requirements prescribed by the Arkansas Supreme Court to serve in a particular case. An eligible foreign language interpreter may also be an interpreter currently certified by another state which administered the Oral Proficiency Exam developed by the Consortium for Language Access in the Courts (formerly known as the Consortium for State Court Interpreter Certification) which is currently the Language Division at the National Center for State Courts or who is certified by the Federal Courts, and has registered with the Arkansas Court Interpreter Services Program. Written verification of current certification/qualification by the certifying entity is required. An eligible sign language interpreter holds current and recognized certification from the Registry of Interpreters for the Deaf (RID) and is a member in good standing with RID and the Arkansas Registry of Interpreters for the Deaf (ARID). Written verification of certification and membership must be provided to the AOC.

PROCEDURE FOR REQUESTING INTERPRETERS

When a state circuit or district court becomes aware that a foreign language interpreter or sign language interpreter or other auxiliary aid will be needed for an in-court proceeding, the request should be made by the court by using the online system, www.aocinterpreters.com provided by the AOC=s Court Interpreter Services (CIS). Each court will be provided its own Login, Password and Codeword and complete instructions on how to request the interpreter. The request needs to be made only by the court's office. For questions, Court Interpreter Services may be reached at 501-682-9400 or 1-800-950-8221.

If a Spanish interpreter is required and one of the staff interpreters is available, one will be assigned to interpret for the proceeding. If the staff interpreters are not available, Court Interpreter Services will contract with an available freelance certified Spanish interpreter who is listed on the registry of interpreters. Considering the complexity of the case, the Director of Court Interpreter Services will match the interpreter to the assignment. If interpretation for a language other than Spanish is required, Court Interpreter Services will contract with an available freelance interpreter who is listed on the registry of interpreters. If an interpreter for a language that is not listed on the registry of interpreters is required, Court Interpreter Services will perform a search on the NCSC Language Access list-serve of other states' interpreters and will verify that the credentials and training of the interpreter meet reciprocity standards with Arkansas courts. If the available contract interpreter is out of state and is required to travel to Arkansas, the Director of Court Interpreter Services will take into consideration the interpreter fee, travel time fee, airfare, lodging, per diem and any additional related costs to bring the interpreter to Arkansas and factor in the complexity of the case, type of case, rarity or complexity of the language required, length of time the case is set for and availability and training of contract interpreter. In order to control costs, the Director of Court Interpreter Services may recommend remote video or telephone interpreting services as an alternative to having the interpreter present in the courtroom.

If a sign language interpreter or other auxiliary aid is needed for a person who is deaf, deaf blind or hard of hearing, the full time staff interpreter will be scheduled to interpret for the proceeding. If the sign language staff interpreter is not available, Court Interpreter Services will contract with an available freelance interpreter who is listed on the registry of interpreters. Whenever it is determined that the services of a specialized linguistic facilitator will be beneficial as an additional communication aid, a deaf interpreter will be assigned along with the certified sign language interpreter.

If a conflict in scheduling should arise, CIS will contact the court directly to resolve it.

PROCEDURE FOR PAYMENT FOR INTERPRETER SERVICES

The AOC prescribes a Reimbursement Request Form and Court Interpreter Services provides it to each interpreter to use as his/her invoice for payment. At the conclusion of the court appointed interpreter services, the contract interpreter will complete the appropriate sections of the payment form and present it to the judge for approval. The judge will certify that the interpreter provided the services for the court by signing the completed payment form. Only the judge should sign this form.

The interpreter will then forward the original copy of the completed payment form to the AOC, Court Interpreter Services, for payment.

The AOC Court Interpreter Services gathers data from each of the forms provided by the interpreter for statistical and budgetary purposes. It is imperative that the interpreter complete the form with the information requested before turning it in for payment.

For payment, the AOC must receive the completed Reimbursement Form by the 5th day of the month following the interpreter's court assignment.

AOC Court Interpreter Services staff interpreters are not required to have a form signed by the judge.

RATE OF PAYMENT

In the event that the services of an interpreter are arranged locally without the knowledge or assistance of the AOC, the responsibility for payment of the interpreter's fees and costs will be with the local court.

CERTIFIED INTERPRETERS

A **certified foreign language interpreter,** as denoted on the registry of court interpreters, will be paid $50.00 for the first 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 .42 cents per mile. Travel time and mileage will be reimbursed **ONLY** when the certified interpreter is required to travel a distance of 20 miles or more each way from where he or she resides to location of assignment. Travel time is billed for "actual" time of travel. Travel time is **not** billed in 15 minute increments. There is no minimum amount of time billed and travel time should not be rounded.

A **RID Certified interpreter**, as denoted on the registry of court interpreters, will be paid $80.00 for the first two hours for in-court services with a guaranteed two 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 $30.00 per hour. Mileage will not be reimbursed. Travel time will be reimbursed **ONLY** when the certified interpreter is required to travel a distance of 20 miles or more each way from where he or she resides to location of assignment. Travel time is billed for "actual" time of travel. Travel time is **not** billed in 15 minute increments. There is no minimum amount of time billed and travel time should not be rounded.

Certified Deaf Interpreter – Is recognized as a specialized linguistic facilitator. A deaf interpreter, whose name appears on the registry of interpreters as a **certified deaf interpreter**, as denoted on the registry of court interpreters, will be paid $80.00 for the first two hours for in-court services with a guaranteed two 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 $30.00 per hour. Mileage will not be reimbursed. Travel time will be reimbursed **ONLY** when the certified interpreter is required to travel a distance of 20 miles or more each way from where he or she resides. Travel time is billed for "actual" time of travel. Travel time is **not** billed in 15 minute increments. There is no minimum amount of time billed and travel time should not be rounded.
Certified deaf interpreters shall always be teamed with a certified ASL interpreter.

NON-CERTIFIED INTERPRETERS

A foreign language interpreter whose name is on the registry of interpreters 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, and will be paid at a rate of $20.00 per hour. Mileage will be reimbursed at the rate of .42 cents per mile when the candidate for certification is required to travel a distance of 20 miles or more each way from where he or she resides to location of assignment. Candidates for certification are **not** eligible for travel time. The AOC Court Interpreter Services reserves the right to offer travel time of $10.00 per hour to any candidate on a case by case basis. This exception will only be offered if a candidate has been requested for an assignment which meets the requirement of 20 miles each way from his/her residence, and has been authorized by the Director of Court Interpreter Services.

Deaf Interpreter – Is recognized as a specialized linguistic facilitator. A deaf interpreter whose name appears on the registry of interpreters as a **deaf interpreter**, but who has not reached a certified level will be paid $60.00 for the first two hours for in-court service with a guaranteed two hour minimum. Additional hours in increments of 15 minutes will be paid at a rate of $20.00 per hour. **Non-certified deaf interpreters are not eligible for travel time**. The AOC Court Interpreter Services reserves the right to offer travel time of $10.00 per hour to any non-certified deaf interpreter on a case by case basis. This exception will only be offered if a candidate has been requested for an assignment which meets the requirement of 20 miles each way from their residence, and has been authorized by the Director of Court Interpreter Services. Non-certified deaf interpreters shall always be teamed with a certified ASL interpreter.

COURT ASSIGNMENTS

GENERAL COURT ASSIGNMENTS FOR INTERPRETERS

When a state court determines that a language or ASL interpreter is needed for a defendant, victim or witness, the court will enter the case information in the on-line IMSS system to request the interpreter through the CIS office. CIS monitors the court's requests and assigns the interpreter according to the needs of the court. CIS may assign a staff interpreter to the case or request a contract interpreter; depending on the complexity of the case, geographical location of the interpreter and/or costs that may be involved. All assignment requests for foreign language or ASL or deaf interpreters will be entered into the on-line system. CIS may call the interpreter first to verify availability before entering request on the on-line system but acceptance of the assignment is defined when the interpreter accepts the assignment on-line on the IMSS system.

All interpreters whose names appear on the Registry of Interpreters are provided with a secure password to the IMSS system to view their individual requests. These requests are not viewable by anyone else other than that particular interpreter logged-in.

An interpreter shall not take any assignments that have not been offered to him/her specifically by CIS through the on-line IMSS system.

Any assignment offered is subject to cancellation or change.

Once the assignment has been accepted it is the responsibility of the interpreter to call the court ahead of time to verify the information provided by the court such as: location of the assignment, time the interpreter is needed, and length of in-court services needed for that particular assignment. Interpreter will report back to CIS if any information is different than what the court originally entered.

If a foreign language or ASL interpreter is requested for more than one assignment in two different courts which are located within the same courthouse, and both assignments are completed within the allotted time for the guaranteed minimum fee, the interpreter should invoice the minimum hourly fee on one invoice and prepare a second invoice with only the judge's signature as confirmation that the services were provided, cross reference and turn in both forms for payment. The interpreter cannot invoice a minimum guaranteed fee for each judge. If the assignments are in the same city but in different locations, the interpreter is allowed to invoice the minimum fee for each location and travel time and mileage (if entitled) between the different locations.

STANDARD INTERPRETER DAY ASSIGNMENTS

In an effort to meet the high demand of some state courts with the limited foreign language interpreter resources available, CIS has developed the "Standard Interpreter Day". Each court chooses a particular day of the week or month to set their interpreter cases, and CIS automatically assigns the interpreter. Participation from the courts is voluntary, but both the court and CIS benefit from the arrangement. By assigning one interpreter for multiple cases on the same day, interpreter services are utilized efficiently, thus saving money. The TCA or District Clerk benefits from not having to enter each day into the IMSS system, and the assigned interpreter will have the responsibility of calling the court to see about changes and make sure the services will be needed.

The interpreters who participate in Standard Interpreter Day are offered the assignments on a monthly or quarterly basis; depending on the frequency a particular court needs the service. CIS guarantees the length of the assignment offered to the interpreter while the interpreter agrees to maintain communication with the court in order to be certain the interpreter is needed and to ascertain the approximate length of time services will be needed for that particular day. In the rare event that the court does not need the services of the interpreter on any particular day, the interpreter will be eligible for a cancellation fee as per the Cancellation Policy.

CANCELLATION POLICY

Cancellation fees are reimbursed only to foreign language, ASL or any other interpreter who has confirmed acceptance of the assignment.
Notice of the cancellation of a proceeding for which a certified foreign language, ASL or any other interpreter has been scheduled should be provided by the Court to the AOC, Court Interpreter Services, as soon as the court is aware of a change in the type of hearing or a cancellation. When CIS receives a cancellation of an assignment, CIS will determine if there are any unfilled interpreting needs within that vicinity. If there is no additional available work for the contract interpreter, the CIS will cancel the assignment and pay the cancellation fee as shown below. The AOC, Court Interpreter Services, will contact the interpreter assigned immediately upon receiving notification of the cancellation or change of type of hearing. The contracted interpreter is deemed advised of a cancellation when notice of the cancellation is given to the interpreter via telephone call, voicemail and/or by email at the contact telephone number and email address as listed in the *Registry of Interpreters*, not when the contract interpreter actually retrieves the message. It is the interpreter's responsibility to maintain up to date contact information with the office of Court Interpreter Services.

Contract interpreters who receive at least 24 hour advance notice of a cancellation of any assignment will not be entitled to a cancellation fee.

CANCELLATIONS OF ASSIGNMENTS OF LESS THAN TWO DAYS

Cancellation Circumstances	Payment to Be Made
Contract interpreter advised of cancellation a minimum of 24 hours in advance, excluding weekends and holidays.	**None**
Interpreter contracted for a court assignment of an estimated duration of 4 hours or less, as per the assignment request, advised of cancellation less than 24 hours in advance, excluding weekends and holidays, but before the interpreter could have reasonably been expected to leave for assignment.	The contract interpreter will be paid the minimum rate for any proceeding which was estimated at 4 hours or less.
Interpreter contracted for on-site assignment of an estimated duration of more than 4 hours, as per the assignment request, advised of cancellation less than 24 hours in advance, excluding weekends and holidays, but before the interpreter could have reasonably been expected to	The contract interpreter will be paid the four hour minimum for any proceeding with an estimated duration of more than 4 hours.

leave for assignment.	
Interpreter contracted for on-site assignment of an estimated duration of more than 4 hours, arrives at the courthouse without having been advised of the cancellation or change in type of hearing.	The contract interpreter will be paid a four hour fee for that day, plus any mileage and travel time to which the contract interpreter would be entitled.

CANCELATION OF ASSIGNMENTS OF TWO DAYS OR LONGER

Cancellation Circumstance	**Payment to Be Made**
Contract interpreter advised of cancellation a minimum of 24 hours in advance, excluding weekends and holidays.	**None**
Contract interpreter has been scheduled for an assignment, but the start date has to be postponed by one day and the interpreter is advised of the postponement less than 24 hours in advance, excluding weekends and holidays.	Four hours of the fee to which the contract interpreter would have been entitled on that first day.
Contract interpreter is advised of cancellation while en route to, immediately upon arrival, or after starting to provide services but before the end of the last date originally contracted for (e.g., case continued, parties do not show, case settles, case concludes early, etc.)	**For an assignment of two to four days:** 1. Four hour fee for the date for which the assignment/contract is cancelled. 2. Four hour fee to which the contract interpreter would be entitled for the next day. 3. Mileage reimbursement to which the contract interpreter would be entitled for each day traveled, if any. 4. No payment due for additional days if cancellation is more than 24 hours in advance for those days.

CANCELLATIONS DUE TO EMERGENCY CLOSING

Emergency closing encompasses any courthouse closure, including closures caused by weather, security incidents, governmental shutdown, or similar cause beyond the control of the Judiciary.

Cancellation circumstance	**Payment to Be Made**
Courthouse closed before start of business day and interpreter did not leave to go to the courthouse.	**None**
Courthouse closed before start of business day but interpreter leaves to get to courthouse and learns of the closing while en route or upon arrival. The closing of the courthouse was advertised in local media on a timely basis but interpreter was unaware.	**None**
Courthouse closed before start of business day but interpreter leaves to get to courthouse and learns of the closing while en route or upon arrival and the contract interpreter could not have known not to come given the timing of when the closing was posted.	Whatever mileage and travel fee, if any, to which the contract interpreter may ordinarily be entitled.
Courthouse closed during the day but interpreter services were provided before closing.	Whatever compensation interpreter would have been entitled to on that date.

If an assignment of a contract interpreter is cancelled within the time frame that would constitute a cancelation fee but CIS offers another assignment as a replacement of the original assignment that was cancelled, no cancellation fee will be paid. If the new assignment lasts longer than the time covered by what the cancellation fee would have been, the interpreter will be paid for the entire time at his/her normal reimbursement rate. If the replacement assignment requires interpreter to travel, mileage and travel reimbursement to which the contract interpreter is entitled will be paid.

Nothing contained herein precludes the presiding judge from ordering exclusive or additional payment from another source as he or she deems appropriate.

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 AOC will be the final arbiter for contested payments.

Language Identification Cards

Instructions: Place a check by the language spoken. ☑

☐ Mark this box if you read or speak English.	***English***
☐ ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.	***Arabic***
☐ Խնդրում ենք նշում կատարեք այս քառակուսում, եթե խոսում կամ կարդում եք հայերեն:	***Armenian***
☐ যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।	***Bengali***
☐ ឈូមបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។	***Cambodian***
☐ Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.	***Chamorro***
☐ 如果你能读中文或讲中文，请选择此框。	***Simplified Chinese***
☐ 如果你能讀中文或講中文，請選擇此框。	***Traditional Chinese***
☐ Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.	***Croatian***
☐ Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.	***Czech***
☐ Kruis dit vakje aan als u Nederlands kunt lezen of spreken.	***Dutch***
☐ اگر خواندن و نوشتن فارسي بلد هستيد، اين مربع را علامت بزنيد.	***Farsi***
☐ Cocher ici si vous lisez ou parlez le français.	***French***
☐ Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.	***German***
☐ Σημειώστε αυτό το πλαίσιο αν διαβάζετε ή μιλάτε Ελληνικά.	***Greek***
☐ Make kazye sa a si ou li oswa ou pale kreyòl ayisyen.	***Haitian Creole***
☐ अगर आप हिन्दी बोलते या पढ़ सकते हों तो इस बक्स पर चिह्न लगाएँ।	***Hindi***
☐ Kos lub voj no yog koj paub twm thiab hais lus Hmoob.	***Hmong***
☐ Jelölje meg ezt a kockát, ha megérti vagy beszéli a magyar nyelvet.	***Hungarian***

Source: *Language Identification Flashcard - 2004 Census Test*
U.S. Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce
www.lep.gov/ISpeakCards2004.pdf

AOC
2012

Instructions: Place a check by the language spoken. ☑

☐ Marchi questa casella se legge o parla italiano.	***Italian***
☐ 日本語を読んだり、話せる場合はここに印を付けてください。	***Japanese***
☐ 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.	***Korean***
☐ ให้ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ.	***Laotian***
☐ Kakōlleiki bọọk (box) in elaññe kwōjela kajin im waakin (read) majōl.	***Marshallese***
☐ Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim.	***Polish***
☐ Assinale este quadrado se você lê ou fala português.	***Portuguese***
☐ Însemnaţi această căsuţă dacă citiţi sau vorbiţi româneşte.	***Romanian***
☐ Пометьте этот квадратик, если вы читаете или говорите по-русски.	***Russian***
☐ Обележите овај квадратић уколико читате или говорите српски језик.	***Serbian***
☐ Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.	***Slovak***
☐ Marque esta casilla si lee o habla español.	***Spanish***
☐ Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog.	***Tagalog***
☐ ให้กาเครื่องหมายลงในช่องถ้าท่านอ่านหรือพูดภาษาไทย.	***Thai***
☐ Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga.	***Tongan***
☐ Відмітьте цю клітинку, якщо ви читаєте або говорите українською мовою.	***Ukrainian***
☐ اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔	***Urdu***
☐ Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ.	***Vietnamese***
☐ באצייכנט דעם קעסטל אויב איר לייענט אדער רעדט אידיש.	***Yiddish***

Source: *Language Identification Flashcard - 2004 Census Test*
U.S. Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce
www.lep.gov/ISpeakCards2004.pdf

AOC
2012

ARKANSAS SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS

Certified Interpreters Contracted by the Arkansas AOC

https://courts.arkansas.gov/administration/interpreters/request-court-interpreter

AOC STAFF

NAME	EMAIL	WORK #	Toll Free #	CELL #
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CERTIFIED - FOREIGN LANGUAGE INTERPRETERS - Independent Contractors

NAME	CITY	EMAIL	WORK #	HOME #	CELL #
ARABIC					
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CHINESE MANDARIN					
Huang, Claudio	Omaha, NE	chuangoppd@gmail.com			402/671-9808
FRENCH					
Odekirk, Véronique	Little Rock	veronique.odekirk@gmail.com			501/658-8659

CERTIFIED - FOREIGN LANGUAGE INTERPRETERS - Independent Contractors (continued...)

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GERMAN					
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HMONG					
Yang, Tou J.	St. Paul, MN	toujyang@hotmail.com			651/428-8261
JAPANESE					
Suzuki, Izumi	Novi, MI	izumi.suzuki@suzukimyers.com			248/343-9102
KOREAN					
Kim Haam, Vania	Mill Creek, WA	vhaam@instepis.com			415/344-5689
Lee, Young	Olympia, WA	younglee777@comcast.net			360/789-3186
LAO					
Littana, P. Paul	Otsego, MN	littana@comcast.net			612/558-5139
Mattix, Samuel	Bellingham, WA	laothailangsvcs@comcast.net			360/961-8606
MARSHALLESE					
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RUSSIAN					
Hall-Komkova, Dina	Sandy, UT	halldina@yahoo.com	385/468-0686		801/915-7520
Kvitko-Simon, Valeriya	Boise, ID	vksimon@gmail.com			208/724-2973
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Barandiaran, Maria	Nashville	mbarandiaran@gmail.com		870/845-2278	870/845-9485
Clary, William	Clarksville	wclary@ozarks.edu			479/979-7360
D'Auteuil, Emilia	Hot Springs	emiliadauteuil@gmail.com			501/627-4625
De Jesus, Jivette	Bentonville	jivette.dejesus.rullan@gmail.com			479/597-9900
Durand, Nicolas	Ward	nicolasadurand@hotmail.com		501/231-9515	501/231-9415
Gordon, Laura	Bella Vista	lauramariagordon@gmail.com			479/877-9816
Hernandez, Mariella	Little Rock	markinandez@gmail.com			501/786-4701
Merediz, Silvia	Germantown, TN	certifiedcourtinterpreter@gmail.com	901/752-1823		901/409-9074
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Simmons, Ashley	Little Rock	ajinesta@gmail.com			501/352-1662
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Yates, Liz	Russellville	lyates.inspanish@hotmail.com			479/747-0001

CERTIFIED - FOREIGN LANGUAGE INTERPRETERS - Independent Contractors (continued...)

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VIETNAMESE					
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QUALIFIED - SIGN LANGUAGE INTERPRETERS - Independent Contractors

NAME	CITY	EMAIL	WORK #	HOME #	CELL #
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Cunningham, Rhonda	Little Rock	rhondacunningham@me.com			501/952-2359
Deen, Val	Harrison	deenval@gmail.com			501/514-5170
Gorum, Will	Little Rock	wmgorum@sbcglobal.net			501/258-0534
Lowe, Julie - CT, NIC	Little Rock	interpreting@communicatinghands.com		501/374-5293	501/515-4521
West, John - CT, NIC	Benton	tsewnhoj@gmail.com			501/258-5035

LANGUAGES NOT LISTED

For languages not listed, please contact the AOC Court Interpreter Services directly at (501) 682-9400 or email: aoc.interpreter.services@arcourts.gov

IN RE: CERTIFICATION for FOREIGN LANGUAGE INTERPRETERS in ARKANSAS COURTS

___ S.W.2d ___

Supreme Court of Arkansas

Delivered September 30, 1999

Per Curiam.

All persons, whether or not able to understand or communicate adequately in the English language, must be afforded rights when they appear in court. See Ark. Code Ann. §16-64-111, §16-89-104, §16-10-102 and §25-15-101. It is the intent of this Per Curiam Order to provide for the certification, appointment and use of interpreters for non-English speaking parties or witnesses in all state and local court proceedings.

Ark. Code Ann. §16-10-102 established the Administrative Office of the Courts (AOC) subject to the supervision of the Supreme Court of Arkansas to be responsible for the administration of the nonjudicial business of the judicial branch. Ark. Code Ann. §16-10-127 authorizes and directs the AOC to establish a program to facilitate the use of interpreters and transliterators in all state and local courts in Arkansas and to prescribe the qualifications of and certify persons who may serve as certified interpreters in all courts in the state.

Therefore, pursuant to our superintending powers, we hereby authorize the AOC, with advice of the Arkansas Judicial Council Ad Hoc Foreign Language Interpreter Certification Committee, and in compliance with Administrative Order No. 11 and the rules of the Consortium for State Court Interpreter Certification, to prescribe requirements for the recruitment, testing, certification, evaluation, duties, professional conduct, continuing education, certification renewal, and other matters relating to interpreters.

When an interpreter is requested or when the judge determines that a party or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed, using the most current roster of certified interpreters maintained by the AOC.

Where possible, but particularly for more complex cases, an interpreter with Advanced Certification as denoted on the roster should be used.

The judge may appoint a non-certified interpreter only upon a finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. Recognizing that the judge is the final arbiter of any interpreter's qualifications, a non-certified interpreter may be appointed only after the judge has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved. Before appointing a non-certified interpreter, the judge shall make a finding that the proposed non-certified interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting, and that the proposed non-certified interpreter has read, understands, and will abide by Administrative Order No. 11, the Arkansas Code of Professional Responsibility for Interpreters in the Judiciary. A summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record or as a docket entry of the legal proceeding.

A non-English speaking party or witness may at any point in the proceeding waive the right to the services of an interpreter, but only when (1) the waiver isapproved by the judge on the record or by docket entry after explaining to the non-English speaking party or witness through an interpreter the nature and effect of the waiver; (2) the judge makes a finding on the record or by docket entry that the waiver has been made knowingly, intelligently, and voluntarily; and (3) in cases where the non-English speaking party or witness has retained/appointed counsel or has the right to counsel, that party or witness has been afforded the opportunity to consult with his or her attorney. At any point in any proceeding, for good cause shown, a non-English speaking party or witness may retract his or her waiver and request an interpreter.

All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Any of the following actions shall constitute good cause for the judge to remove an interpreter: (1) being unable to interpret adequately, including where the interpreter self-reports such inability; (2) knowingly and willfully making false interpretation while serving in an official capacity; (3) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity; (4) failing to adhere to the requirements prescribed by the AOC, including the Arkansas Code of Professional Responsibility for foreign language interpreters; (4) failing to follow other standards prescribed by law. The judge shall notify the AOC in writing whenever he or she removes an interpreter, setting forth the reason(s) for that action.

In all legal proceedings, the cost of providing interpreter services shall beassessed by the judge according to law. Provided, no non-English speaking party or witness shall be denied the services of an interpreter because he or she is unable to pay for those services.

This Per Curiam Order is effective January 1, 2000.