Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1724

By: Representatives Williams, Vines

For An Act To Be Entitled

AN ACT TO REPEAL OBSOLETE STATUTES IN TITLE 16; TO AMEND OTHER STATUTES AFFECTED BY THE OBSOLETE STATUTES IN TITLE 16; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL OBSOLETE STATUTES IN TITLE 16; AND TO AMEND OTHER STATUTES AFFECTED BY THE OBSOLETE STATUTES IN TITLE 16.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-26-1107(b)(1), concerning involuntary dissolution, is amended to read as follows:

(b)(1) If the writ of summons, which shall be returnable in thirty (30) days, issued on the complaint in the action is returned by the sheriff unserved because no registered agent or other person eligible to receive service can be found in his jurisdiction, then upon the filing of the writ of summons with the clerk of the court, bearing the sheriff's return, the clerk shall issue and publish against the defendant corporation, for the time and in the manner prescribed ~~in § 16-58-130, a warning order~~ by Rule 4 of the Arkansas Rules of Civil Procedure; and he shall appoint an attorney ad litem ~~pursuant to § 16-65-403(a)(1) [repealed]~~ as provided by law.

SECTION 2. Arkansas Code § 4-75-211(c)(1), concerning witness testimony, is amended to read as follows:

(c)(1) Any defendant in an action brought under the provisions of this section or any witness desired by the state may be required to testify under

~~the provisions of~~ §§ 16-43-211 and ~~16-43-701~~ and otherwise provided by law.

SECTION 3. Arkansas Code § 4-106-202(f)(1), concerning witness testimony, is amended to read as follows:

(f)(1) Any defendant in an action brought under the provisions of this subchapter may be required to testify under ~~the provisions of~~ §§ 16-43-211 and ~~16-43-701~~ and otherwise provided by law.

SECTION 4. Arkansas Code § 15-56-302 is amended to read as follows:

15-56-302. Summons — Validity of lessee's title.

(a) Summons shall be issued and served as in other cases in chancery.

(b) All persons, if any, whose names or whereabouts are stated in the petition to be unknown to the plaintiff shall be deemed and taken as defendants by the name or designation of "all whom it may concern", and such persons may be constructively summoned, as provided ~~in § 16-58-130~~ by Rule 4 of the Arkansas Rules of Civil Procedure. However, the validity of the lessee's title under the lease, when approved by the court, shall not thereafter be subject to attack by any person whatsoever, including, but not limited to, nonresidents, minors, or other incompetents, except by direct appeal in the manner provided by law.

SECTION 5. Arkansas Code § 15-73-403 is amended to read as follows:

15-73-403. Service of summons.

Summons shall be issued and served as in other cases in circuit court and if any defendant shall be a nonresident of the state, or his or her whereabouts unknown to the plaintiff, such person may be constructively summoned, as provided ~~in § 16-58-130~~ by Rule 4 of the Arkansas Rules of Civil Procedure.

SECTION 6. Arkansas Code Annotated 16-32-102, concerning jury commissioners, which are no longer used, is repealed:

~~16-32-102. Jury commissioners.~~

~~(a) On or before November 1 of each year, the circuit judge shall appoint not less than three (3) nor more than twelve (12) jury commissioners who shall:~~

~~(1) Not be related to one another, or to the appointing judge,~~

~~within the second degree of consanguinity or affinity;~~

~~(2) Possess the qualifications for petit jurors;~~

~~(3) Have no suits pending in the circuit courts;~~

~~(4) Not be directly or indirectly concerned with any pending criminal proceeding or prison investigation; and~~

~~(5) Not be related within the second degree of consanguinity or affinity to any elected county officer.~~

~~(b) The judge shall administer to the commissioners the following oath:~~

~~"You do swear faithfully to discharge the duties required of you as jury commissioners; that you will select jurors as provided by law from a cross section of the community which this court serves and you will not exclude or include any persons on account of race, religion, sex, national origin, or economic status; that you will not select any person as a juror who has solicited or had others to solicit that his name be placed on the jury list; that you will not make known to anyone the names of the prospective jurors that you select until after they have been notified by the court of their selection; and that you will not, directly or indirectly, converse with anyone selected by you as a juror concerning the merits of any proceeding pending, or likely to come before the grand jury or court until after the case is tried or otherwise finally disposed of."~~

~~(c) Jury commissioners shall receive ten dollars ($10.00) per day for their services and ten cents (10¢) per mile from and to their homes by the most direct and practical route.~~

~~(d) No person shall be appointed as a jury commissioner who has served as a jury commissioner anywhere in the state within four (4) years of the date of appointment.~~

~~(e) If any commissioner shall become disqualified, die, or be executed, the judge, in his discretion, may appoint a successor commissioner.~~

~~(f) Any person who shall fail or refuse to attend and perform the duties required of a jury commissioner, without reasonable excuse, shall be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500). However, nothing in this subsection shall be construed to limit the inherent powers of the court to punish for contempt.~~

SECTION 2. Arkansas Code Title 16, Chapter 41, which has been

superseded by Amendment 80 and the Court Rules, is repealed:

~~Chapter 41~~

~~Uniform Rules of Evidence~~

~~16-41-101. Uniform Rules of Evidence.~~

~~The "Uniform Rules of Evidence" in this chapter are adopted for proceedings in the courts of this state.~~

~~ARTICLE I General Provisions~~

~~Rule 101. Scope. These rules govern proceedings in the courts of this state to the extent and with the exceptions stated in Rule 1101.~~

~~Rule 102. Purpose and construction. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence, to the end that the truth may be ascertained and proceedings justly determined.~~

~~Rule 103. Rulings on evidence.~~

~~(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and~~

~~(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or~~

~~(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.~~

~~(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.~~

~~(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.~~

~~(d) Errors Affecting Substantial Rights. Nothing in this rule~~

precludes taking notice of errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104. Preliminary questions. —

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. Whenever the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or in the court's discretion subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions in criminal cases shall be conducted out of the hearing of the jury. Hearings on other preliminary matters in all cases shall be so conducted whenever the interests of justice require or, in criminal cases, whenever an accused is a witness, if he so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105. Limited admissibility. — Whenever evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or related writings or recorded statements. — Whenever a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which in fairness ought to be considered contemporaneously with it.

ARTICLE II Judicial Notice

~~Rule 201. Judicial notice of adjudicative facts. —~~

~~(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.~~

~~(b) Kinds of Facts. A judicially noticed fact must be one 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.~~

~~(c) When Discretionary. A court may take judicial notice, whether requested or not.~~

~~(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.~~

~~(e) Opportunity to Be Heard. 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.~~

~~(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.~~

~~(g) Instructing Jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed.~~

~~ARTICLE III Presumptions~~

~~Rule 301. Presumptions in general in civil actions and proceedings. —~~

~~(a) Effect. In all actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.~~

~~(b) Inconsistent Presumptions. 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.~~

~~Rule 302. Applicability of federal law in civil actions and proceedings. — In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to~~

~~which federal law supplies the rule of decision is determined in accordance with federal law.~~

~~Rule 303. Presumptions in criminal cases. —~~

~~(a) Scope. Except as otherwise provided by statute, in criminal cases, presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.~~

~~(b) Submission to Jury. The court is not authorized to direct the jury to find a presumed fact against the accused. If a presumed fact establishes guilt or is an element of the offense or negatives a defense, the court may submit the question of guilt or of the existence of the presumed fact to the jury, but only if a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. If the presumed fact has a lesser effect, the question of its existence may be submitted to the jury provided the basic facts are supported by substantial evidence or are otherwise established, unless the court determines that a reasonable juror on the evidence as a whole could not find the existence of the presumed fact.~~

~~ARTICLE IV Relevancy and Its Limits~~

~~Rule 401. Definition of "relevant evidence." — "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.~~

~~Rule 402. Relevant evidence generally admissible — Irrelevant evidence inadmissible. — All relevant evidence is admissible, except as otherwise provided by statute or by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.~~

~~Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. — Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.~~

~~Rule 404. Character evidence not admissible to prove conduct — Exceptions — Other crimes. — (a) Character Evidence Generally. 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:~~

~~(1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;~~

~~(2) 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;~~

~~(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.~~

~~(b) Other Crimes, Wrongs, or Acts. 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.~~

~~Rule 405. Methods of proving character. — (a) Reputation or Opinion. 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.~~

~~(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.~~

~~Rule 406. Habit — Routine practice. — (a) Admissibility. 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.~~

~~(b) Method of Proof. 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.~~

~~Rule 407. Subsequent remedial measures. Whenever, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures if offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.~~

~~Rule 408. Compromise and offers to compromise. Evidence of (1) furnishing, offering, or promising to furnish, or (2) accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.~~

~~Rule 409. Payment of medical and similar expenses. Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.~~

~~Rule 410. Withdrawn pleas and offers. Evidence of a plea later withdrawn, of guilty, or admission of the charge, or nolo contendere, or of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing withdrawn pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer.~~

~~Rule 411. [Reserved.]~~

~~ARTICLE V Privileges~~

~~Rule 501. Privileges recognized only as provided. Except as otherwise provided by constitution or statute or by these or other rules promulgated by the Supreme Court of this state, 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.~~

~~Rule 502. Lawyer-client privilege. — (a) Definitions. As used in this rule:~~

~~(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.~~

~~(2) A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.~~

~~(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.~~

~~(4) A "representative of the lawyer" is one employed by the lawyer to assist the lawyer in the rendition of professional legal services.~~

~~(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.~~

~~(b) General Rule of Privilege. 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 (1) between himself or his representative and his lawyer or his lawyer's representative, (2) between his lawyer and the lawyer's representative, (3) by him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.~~

~~(c) Who May Claim the Privilege. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.~~

~~(d) Exceptions. There is no privilege under this rule:~~

~~(1) Furtherance of Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;~~

~~(2) Claimants Through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;~~

~~(3) Breach of Duty by a Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;~~

~~(4) Document Attested by a Lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;~~

~~(5) Joint Clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients; or~~

~~(6) Public Officer or Agency. As to a communication between a public officer or agency and its lawyers unless the communication concerns a pending investigation, claim, or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest.~~

~~Rule 503. Physician, psychotherapist, chiropractor-patient privilege.~~

~~(a) Definitions. As used in this rule:~~

~~(1) A "patient" is a person who consults or engages or is examined or interviewed by a physician, psychotherapist, dentist, or~~

~~pharmacist.~~

~~(2) A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.~~

~~(3) A "psychotherapist" is (i) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (ii) a person licensed or certified as a psychologist under the laws of any state or nation, while similarly engaged.~~

~~(4) A "chiropractor" is a person authorized to practice chiropractic in any state or na~~tion, or reasonably believed by the patient so to be.

~~(5) A "dentist" is a person authorized to practice dentistry in any state or nation, or reasonably believed by the patient so to be.~~

~~(6) A "pharmacist" is a person who is authorized to practice pharmacy in any state or nation, or reasonably believed by the patient so to be.~~

~~(7) A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician, psychotherapist, or chiropractor, including members of the patient's family.~~

~~(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction, among himself, a physician, psychotherapist, chiropractor, or dentist and persons who are participating in the diagnosis or treatment under the direction of the physician, psychotherapist, or chiropractor, including members of the patient's family. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a pharmacist or persons under the direction of a~~

~~pharmacist.~~

~~(c) Who May Claim the Privilege. The privilege may be claimed by the patient, his guardian or conservator, or the personal representative of a deceased patient. The person who was the physician, psychotherapist, chiropractor, dentist, or pharmacist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.~~

~~(d)Exceptions:~~

~~(1) Proceedings for Hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.~~

~~(2) Examination by Order of Court. If the court orders an examination of the physical, mental, or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.~~

~~(3) Condition an Element of Claim or Defense. There is no privilege under this rule as to a communication relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.~~

~~Rule 504. Husband-wife privilege. — (a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.~~

~~(b) General Rule of Privilege. 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.~~

~~(c) Who May Claim the Privilege. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.~~

~~(d) Exceptions. There is no privilege under this rule in a proceeding in which one spouse is charged with a crime against the person or property of (1) the other, (2) a child of either, (3) a person residing in~~

~~the household of either, or (4) a third person committed in the course of committing a crime against any of them.~~

~~Rule 505. Religious privilege. — (a) Definitions. As used in this rule:~~

~~(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.~~

~~(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.~~

~~(b) General Rule of Privilege. 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.~~

~~(c) Who May Claim the Privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.~~

~~Rule 506. Political vote. —~~

~~(a) General Rule of Privilege. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot.~~

~~(b) Exceptions. This privilege does not apply if the court finds that the vote was cast illegally or determines that the disclosure should be compelled pursuant to the election laws of the state.~~

~~Rule 507. 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.~~

~~Rule 508. Secrets of state and other official information — Governmental privileges. — (a) If the law of the United States creates a~~

~~governmental privilege that the courts of this state must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.~~

~~(b) No other governmental privilege is recognized except as created by the constitution or statutes of this state.~~

~~(c) Effect of Sustaining Claim. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant, or dismissing the action.~~

~~Rule 509. Identity of informer. — (a) Rule of Privilege. The United States or a state or subdivision thereof has 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 or member of a legislative committee or its staff conducting an investigation.~~

~~(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.~~

~~(c)Exceptions:~~

~~(1) Voluntary Disclosure; Informer a Witness. No privilege exists under this rule if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.~~

~~(2) Testimony on Relevant Issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit.~~

~~If the court finds there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, in criminal cases the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one (1) or more of the following: requiring the prosecuting attorney to comply, granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In civil cases, the court may make any order the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.~~

~~Rule 510. Waiver of privilege 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.~~

~~Rule 511. Privileged matter disclosed under compulsion or without opportunity to claim privilege. — A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.~~

~~Rule 512. Comment upon or inference from claim of privilege — Instruction. — (a) Comment or Inference Not Permitted. 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.~~

~~(b) Claiming Privilege Without Knowledge of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.~~

~~(c) Jury Instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim or privilege is entitled to an instruction that no inference may be drawn therefrom.~~

~~ARTICLE VI Witnesses~~

~~Rule 601. General rule of competency. — Every person is competent to be a witness except as otherwise provided in these rules.~~

~~Rule 602. Lack of personal knowledge. — A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.~~

~~Rule 603. Oath or affirmation. — 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.~~

~~Rule 604. Interpreters. — An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.~~

~~Rule 605. Competency of 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 point.~~

~~Rule 606. Competency of juror as witness. — (a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.~~

~~(b) Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received, but a juror may testify on the questions whether extraneous prejudicial information was~~

~~improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.~~

~~Rule 607. Who may impeach. — The credibility of a witness may be attacked by any party, including the party calling him.~~

~~Rule 608. Evidence of character and conduct of witness. — (a) Opinion and Reputation Evidence of Character. 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.~~

~~(b) Specific Instances of Conduct. 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.~~

~~The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.~~

~~Rule 609. Impeachment by evidence of conviction of crime. — (a) General Rule. 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 (1) 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.~~

~~(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.~~

~~(c) Effect of Pardon, Annulment, or Certificate of~~

~~Rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one (1) year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.~~

~~(d) Juvenile Adjudications. 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 in evidence is necessary for a fair determination of the issue of guilt or innocence.~~

~~(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.~~

~~Rule 610. 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 their nature his credibility is impaired or enhanced.~~

~~Rule 611. Mode and order of interrogation and presentation. (a) Control by Court. 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.~~

~~(b) Scope of Cross-Examination. 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.~~

~~(c) Leading Questions. 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.~~

~~Rule 612. Writing or object used to refresh memory. — (a) While Testifying. 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.~~

~~(b) Before Testifying. If, before testifying, a witness uses a writing or object to refresh his memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.~~

~~(c) Terms and Conditions of Production and Use. 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. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony, the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.~~

~~Rule 613. Prior statements of witness. — (a) Examining Witness Concerning Prior Statement. 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.~~

~~(b) Extrinsic Evidence of Prior Inconsistent Statement of~~

~~Witness. 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 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 as defined in Rule 801(d)(2).~~

~~Rule 614. Calling and interrogation of witnesses by court. —~~

~~(a) Calling by Court. The court, at the suggestion of a party or on its own motion, may call witnesses, and all parties are entitled to cross-examine witnesses thus called.~~

~~(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.~~

~~(c) Objections. 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.~~

~~Rule 615. 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.~~

~~Rule 616. Right of victim to be present at hearing. — Notwithstanding any provision to the contrary, in any criminal prosecution, the victim of a crime and in the event that the victim of a crime is a minor child under eighteen (18) years of age, that minor victim's parents, guardian, custodian or other person with custody of the alleged minor victim shall have the right to be present during any hearing, deposition, or trial of the offense.~~

~~ARTICLE VII Opinions and Expert Testimony~~

~~Rule 701. Opinion testimony by lay witnesses. — If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:~~

~~(1) Rationally based on the perception of the witness; and~~

~~(2) Helpful to a clear understanding of his testimony or the determination of a fact in issue.~~

~~Rule 702. Testimony by experts. — If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.~~

~~Rule 703. Basis of opinion testimony by experts. — The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.~~

~~Rule 704. Opinion on ultimate issue. — Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.~~

~~Rule 705. Disclosure of facts or data underlying expert opinion. — The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.~~

~~Rule 706. Court appointed experts. — (a) Appointment. The court, on motion of any party or its own motion, may enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed 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. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.~~

~~(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation~~

~~thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.~~

~~(c) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.~~

~~(d) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.~~

~~ARTICLE VIII Hearsay~~

~~Rule 801. Definitions. — The following definitions apply under this article:~~

~~(a) Statement. A "statement" is:~~

~~(1) An oral or written assertion; or~~

~~(2) Nonverbal conduct of a person, if it is intended by him as an assertion.~~

~~(b) Declarant. A "declarant" is a person who makes a statement.~~

~~(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.~~

~~(d) Statements Which Are Not Hearsay. A statement is not hearsay if:~~

~~(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (i) inconsistent with his testimony and, if offered in a criminal proceeding, was given under oath and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a disposition, or (ii) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive.~~

~~(2) Admission by Party-Opponent. The statement is offered against a party and is (i) his own statement, in either his individual or a representative capacity, (ii) a statement of which he has manifested his~~

~~adoption or belief in its truth, (iii) a statement by a person authorized by him to make a statement concerning the subject, (iv) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.~~

~~Rule 802. Hearsay rule. — Hearsay is not admissible except as provided by law or by these rules.~~

~~Rule 803. Hearsay exceptions — Availability of declarant immaterial. — The following are not excluded by the hearsay rule, even though the declarant is available as a witness:~~

~~(1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.~~

~~(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.~~

~~(3) Then-existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.~~

~~(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.~~

~~(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.~~

~~(6) Records of Regularly Conducted Business Activity. A~~

~~memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.~~

~~(7) Absence of Entry in Records Kept in Accordance with the Provisions of Paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.~~

~~(8) Public Records and Reports. To the extent not otherwise provided in this paragraph, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; and (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.~~

~~(9) Records of Vital Statistics. Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.~~

~~(10) Absence of Public Records or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.~~

~~(11) Records of Religious Organizations. Statements of births, marriages, divorces, death, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.~~

~~(12) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.~~

~~(13) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.~~

~~(14) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and applicable statute authorizes the recording of documents of that kind in that office.~~

~~(15) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.~~

~~(16) Statements in Ancient Documents. Statements in a document in existence twenty years or more the authenticity of which is established.~~

~~(17) Market Reports, Commercial Publications. Market~~

~~quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.~~

~~(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.~~

~~(19) Reputation Concerning Personal or Family History. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.~~

~~(20) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.~~

~~(21) Reputation as to Character. Reputation of a person's character among his associates or in the community.~~

~~(22) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.~~

~~(23) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.~~

~~(24) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial~~

~~guarantees of trustworthiness, if the court determines that (i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

~~(25) A statement made by a child under ten (10) years of age concerning any act or offense against that child involving sexual offenses, child abuse, or incest is admissible in any criminal proceeding in a court of this state, provided:~~

~~1. The court finds, in a hearing conducted outside the presence of the jury, that the statement offered possesses a reasonable likelihood of trustworthiness using the following criteria:~~

~~a. the spontaneity and consistency of repetition of the statement by the child;~~

~~b. the mental state of the child;~~

~~c. the child's use of terminology unexpected of a child of similar age;~~

~~d. the lack of a motive by the child to fabricate the statement.~~

~~2. Before the hearsay testimony is admitted by the court and without regard to the determination of competency, the court will examine the child on the record in camera. This examination shall be considered along with the criteria set forth in subdivisions (25)1.a.- d. as to the admissibility of the hearsay statements. The court shall not require this examination nor shall it require the attendance of the child at the hearing if the court determines the examination and attendance will be against the best interest of the child.~~

~~3. The proponent of the statement shall give the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement.~~

~~4. This section shall not be construed to limit the~~

~~admission of an offered statement under any other hearsay exception or applicable rule of evidence.~~

~~Rule 804. Hearsay exceptions -- Declarant unavailable. -- (a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:~~

~~(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement;~~

~~(2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so;~~

~~(3) Testifies to a lack of memory of the subject matter of his statement;~~

~~(4) Is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity; or~~

~~(5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance, or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony, by process or other reasonable means.~~

~~A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.~~

~~(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:~~

~~(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.~~

~~(2) Statement Under Belief of Impending Death. A statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.~~

~~(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal~~

~~liability or to render invalid a claim by him against another or to make him an object of hatred, ridicule, or disgrace, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other person implicating both himself and the accused, is not within this exception.~~

~~(4) Statement of Personal or Family History. (i) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (ii) a statement concerning the foregoing matters and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.~~

~~(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interests of justice will best be served by admission of the statements into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

~~Rule 805. Hearsay within hearsay. — Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.~~

~~Rule 806. Attacking and supporting credibility of declarant. — If~~

~~a hearsay statement, or a statement defined in Rule 801(d)(2)(iii), (iv), or (v), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.~~

~~ARTICLE IX Authentication and Identification~~

~~Rule 901. Requirement of authentication or identification. —~~

~~(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.~~

~~(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:~~

~~(1) Testimony of Witness with Knowledge. Testimony of a witness with knowledge that a matter is what it is claimed to be.~~

~~(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.~~

~~(3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.~~

~~(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.~~

~~(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.~~

~~(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.~~

~~(7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.~~

~~(8) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form, (i) is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence twenty (20) years or more at the time it is offered.~~

~~(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.~~

~~(10) Methods Provided by Statute or Rule. Any method of authentication or identification provided by the Supreme Court of this state or by a statute or as provided in the Constitution of this state.~~

~~Rule 902. Self-authentication. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:~~

~~(1) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.~~

~~(2) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1), having no seal, if a public officer having a seal and having official duties in the district political~~

~~subdivision of the officer or employee certifies under seal or that the signer has the official capacity and that the signature is genuine.~~

~~(3) Foreign Public Documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the executing or attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificate of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may for good cause shown order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.~~

~~(4) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3), or complying with any law of the United States or of this state.~~

~~(5) Official Publications. Books, pamphlets, or other publications issued by public authority.~~

~~(6) Newspapers and Periodicals. Printed material purporting to be newspapers or periodicals.~~

~~(7) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.~~

~~(8) Acknowledged Documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.~~

~~(9) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.~~

~~(10) Presumptions Created by Law. Any signature, document, or other matter declared by any law of the United States or of this state, to be presumptively or prima facie genuine or authentic.~~

~~Rule 903. Subscribing witness' testimony unnecessary. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.~~

~~ARTICLE X Contents of Writings, Recordings, and Photographs~~

~~Rule 1001. Definitions. For purposes of this article the following definitions are applicable:~~

~~(1) Writings and Recordings. "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, optical disk imaging, or other form of data compilation.~~

~~(2) Photographs. "Photographs" include still photographs, X-ray films, videotapes, and motion pictures.~~

~~(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."~~

~~(4) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by an optical disk imaging system, or by other equivalent techniques which accurately reproduce the original.~~

~~Rule 1002. Requirement of original. To prove the content of a writing, recording, or photograph, the original writing, recording, or~~

~~photograph is required, except as otherwise provided in these rules or by rules adopted by the Supreme Court of this state or by statute.~~

~~Rule 1003. Admissibility of duplicates. A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.~~

~~Rule 1004. Admissibility of other evidence of contents. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:~~

~~(1) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;~~

~~(2) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;~~

~~(3) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing; and he does not produce the original at the hearing; or~~

~~(4) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.~~

~~Rule 1005. Public records. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy complying with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.~~

~~Rule 1006. Summaries. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.~~

~~Rule 1007. Testimony or written admission of party. Contents of writings, recordings, or photographs may be proved by the testimony or~~

~~deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.~~

~~Rule 1008. Functions of court and jury. — Whenever the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised whether (1) the asserted writing ever existed, or (2) another writing, recording, or photograph produced at the trial is the original, or (3) other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.~~

~~ARTICLE XI Miscellaneous Rules~~

~~Rule 1101. Rules applicable. — (a) Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.~~

~~(b) Rules Inapplicable. The rules other than those with respect to privileges do not apply in the following situations:~~

~~(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).~~

~~(2) Grand Jury. Proceedings before grand juries.~~

~~(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; preliminary examination detention hearing in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.~~

~~(4) Contempt proceedings in which the court may act summarily.~~

~~Rule 1102. Title. — These rules shall be known and may be cited as Uniform Rules of Evidence.~~

SECTION 7. Arkansas Code 16-43-215(b)(3), concerning a videotaped deposition of an analyst for the State Crime Lab, is amended to read as

follows:

(3) Examination and cross-examination of the analyst shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of the Arkansas Uniform Rules of Evidence~~, § 16-41-101~~.

SECTION 8. Arkansas Code Title 16, Chapter 43, Subchapter 7, which has been superseded by Amendment 80 of the Arkansas Constitution and the Court Rules, is repealed:

~~Subchapter 7 — Examination~~

~~16-43-701. Persons present compelled to testify.~~

~~A person present before a court or judicial officer may be compelled to testify in the same manner as if he were served with a subpoena.~~

~~16-43-702. Direct examination and cross-examination.~~

~~The examination of a witness by the party producing him is the direct examination. The examination of the same witness upon the same matter by the adverse party is the cross-examination. The direct examination must be completed before the cross-examination begins unless the court otherwise directs.~~

~~16-43-703. Reexamination of witnesses.~~

~~A witness once examined cannot be reexamined as to the same matter without leave of the court but may be reexamined as to any new matter upon which he has been examined by the adverse party. After the examination on both sides is concluded, the witness cannot be recalled without leave of the court.~~

SECTION 9. Arkansas Code § 16-46-201, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-201. Statute books as evidence of private acts.~~

~~The printed statute books of this state shall be evidence of the private acts contained therein.~~

SECTION 10. Arkansas Code § 16-46-202, which has been superseded by

Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-202. Statute books of other jurisdictions as evidence of legislative acts.~~

~~(a) The printed statute books of the several states and territories of the United States, purporting to have been printed under the authority of the states or territories, shall be evidence of the legislative acts of such states or territories.~~

~~(b) Copies of any act, law, or resolution contained in the printed statute books of any of the states and territories of the United States and purporting to have been printed by authority of the state or territory, and which are or may be deposited in the office of the Secretary of State and required by law to be kept there, certified under the seal of the Secretary of State, shall be admitted as evidence.~~

SECTION 11. Arkansas Code § 16-46-203, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-203. Official documents of cities and towns.~~

~~Printed copies of the ordinances, resolutions, orders, and bylaws of any city or incorporated town in this state which are published by the authority of the city or incorporated town, and manuscript copies of these things, certified under the hand of the proper officer and having the corporate seal of such city or town attached thereto, shall be received as evidence.~~

SECTION 12. Arkansas Code § 16-46-205, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-205. Copies of records of Auditor of State or Treasurer of State.~~

~~(a) Copies of all papers and documents legally deposited in the office of the Auditor of State or the office of the Treasurer of State, when certified by the officer and authenticated by his seal of office, shall be received in evidence in the same manner and with the same effect as the originals.~~

~~(b) Any extract or entry from lists, books, or tax books relative to~~

~~lands sold or forfeited at collectors' sales or any of the records of the office of the Auditor of State properly certified by the Auditor of State shall be received in any court in evidence, in the same manner as if a copy of the entire list, book, tax book, or other record had been produced.~~

~~(c) Where a debt due to the state appears upon the books of the Auditor of State or of any other public officer whose duty it shall be to audit and keep an accurate account of such debt, a copy of the balance due upon the books of the Auditor of State or officer, certified by him to be a correct and true balance, shall be sufficient evidence of such indebtedness.~~

SECTION 13. Arkansas Code § 16-46-206, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-206. Copies of public officers -- Copies of bonds given in judicial proceedings and probate matters.~~

~~(a) Copies of all bonds required by law to be given by sheriffs, collectors, state and county treasurers, the Clerk of the Supreme Court and clerks of circuit courts, and all officers of or under the state who are required by law to give bond for the faithful performance of their duties, duly certified under the seal of office of the officer in whose custody the bonds are required by law to be kept, shall be received as evidence to the same extent as the originals.~~

~~(b) Copies of all bonds required by law to be given by executors, administrators, guardians, and commissioners for the faithful performance of their duties as such, and the bonds of principal and security, required to be taken in the course of any judicial proceedings in any of the courts of this state, duly certified and attested, under the seal of office of the officer to whom by law the custody of the bonds is committed, shall be evidence to the same extent as the originals.~~

SECTION 14. Arkansas Code § 16-46-207, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-207. Copies of public contracts.~~

~~Copies of contracts entered into by individuals with the state or any officer thereof, or with any county or with any person for the benefit of any~~

~~county, under or by the authority of any law or the lawful order of any court, in the custody of any officer, duly certified and attested, under the official seal of the officer, or if the officer has no official seal, then verified by his affidavit, shall be allowed as evidence to the same extent as the original.~~

SECTION 15. Arkansas Code § 16-46-208 is repealed.

~~16-46-208. Production of original bond or contract upon denial of execution.~~

~~When suit shall be brought on any copy of a bond, contract, or writing mentioned in § 16-46-206 or § 16-46-207 and the defendant shall, by his answer under oath, deny the execution of the instrument, the court may require the production of the original bond or writing if necessary to the attainment of justice.~~

SECTION 16. Arkansas Code § 16-46-209, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-209. Certified copies of land entries.~~

~~Copies of entries made in the books of any land office of this state, or papers filed therein, certified by the register or receiver, shall be evidence to the same extent as the original books or papers would be if produced.~~

SECTION 17. Arkansas Code § 16-46-210, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules of Evidence, is repealed:

~~16-46-210. Copies of records relating to disposition of state lands.~~

~~All certified transcripts from the office of the Auditor of State and all certified transcripts from the office of the Commissioner of State Lands shall be received in evidence of the existence of the records of which the transcript is a copy, without further authenticity, in all matters pending in any of the courts of this state.~~

SECTION 18. Arkansas Code § 16-46-212, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 902 of the Arkansas Rules

of Evidence, is repealed:

~~16-46-212. Authenticated copies or transcripts of federal documents.~~

~~Properly authenticated copies or transcripts of books, records, reports, minutes of proceedings, and other documents, or any part thereof or excerpts therefrom, of any department or agency of the United States kept, made, or maintained in the performance of duties prescribed by law shall be admitted in evidence in the courts of this state equally with the originals thereof.~~

SECTION 19. Arkansas Code § 16-56-101 is repealed:

~~16-56-101. Application of limitations -- Nonresidents.~~

~~This act and all other acts of limitations in force on December 14, 1844, shall apply to nonresidents as well as residents of this state.~~

SECTION 20. Arkansas Code § 16-58-103, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 4 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-58-103. Summons generally.~~

~~(a) No summons or order for a provisional remedy shall be issued by the clerk in any action before the plaintiff's complaint or petition therein is filed in his or her office.~~

~~(b) With every summons, the clerk shall issue as many copies thereof as there are defendants named therein unless otherwise ordered by the plaintiff.~~

~~(c)(1) A summons shall be issued at any time, to any county, against any one (1) or more of the defendants, at the plaintiff's request.~~

~~(2) But a summons not served shall not be taxed in the costs unless otherwise ordered by the court.~~

SECTION 21. Arkansas Code § 16-58-130, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 4(f) of the Arkansas Rules of Civil Procedure, is repealed:

~~16-58-130. Constructive service -- Warning orders.~~

~~(a) The circuit clerk shall make and file with the papers in the case an order warning the defendant to appear in the action within thirty (30) days from the time of making the order:~~

~~(1) Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action, that he or she had made diligent inquiry and that it is his information and belief that the defendant:~~

~~(A) Is a foreign corporation, having no agent in this state; or~~

~~(B) Is a nonresident of this state; or~~

~~(C) Has departed from this state with intent to delay or defraud his creditors; or~~

~~(D) Has been absent from this state four (4) months; or~~

~~(E) Has left the county of his or her residence to avoid the service of a summons; or~~

~~(F) Conceals himself or herself so that a summons cannot be served upon him or her; or~~

~~(2) Where either of the facts mentioned in subdivisions (a)(1)(E) and (F) of this section is stated in the return, by the proper officer of a summons against the defendant.~~

~~(b) In an action against the heirs of a deceased person as unknown heirs or against other persons made defendants as unknown owners of any property to be divided or disposed of in the action, where it appears by the complaint that the names of the heirs, or any of them, of such other persons are unknown to the plaintiff, a warning order, as directed in subsection (c) of this section, shall be made by the clerk against the unknown heirs or owners.~~

~~(c) The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. Warning orders shall be published weekly for at least two (2) weeks. The warning order shall be published in a newspaper of general circulation in the county in which the court is held.~~

~~(d) A defendant against whom a warning order has been made and published, upon completion of the publication of the warning order for the two (2) weeks required by law, shall be deemed to have been constructively summoned upon the date of the making of the order.~~

~~(e) The plaintiff may, at any time before judgment, have a summons served on the defendant, if found in this state, although a warning order may have been previously entered against him. After service the case shall~~

~~proceed as in other cases of actual service.~~

~~(f) No lien on the property of a defendant constructively summoned shall be created otherwise than by an attachment, as provided in Chapter III of Title VIII of the code, or by judgment. Nor shall any other defendant be restrained from paying or delivering any money or property into his hands belonging or due to the defendant, by notice endorsed on the summons, or otherwise than by attachment or judgment.~~

SECTION 22. Arkansas Code § 16-58-134, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 4(i) of the Arkansas Rules of Civil Procedure, is repealed:

~~16-58-134. Time limit for service.~~

~~If service of the summons is not made upon a defendant within one hundred twenty (120) days after the filing of the complaint, the action may be dismissed as to that defendant without prejudice upon motion or upon the court's initiative. If a motion to extend is made anytime before the court enters a dismissal without prejudice, the time for service may be extended by the court upon a showing of good cause. If service is made by mail pursuant to this rule, service shall be deemed to have been made for the purpose of this provision as of the date on which the process was accepted or refused. This paragraph shall not apply to service in a foreign country pursuant to Arkansas Rules of Civil Procedure Rule 4(c) or to complaints filed against unknown tortfeasors.~~

SECTION 23. Arkansas Code § 16-61-101, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 10 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-101. Designation of parties.~~

~~In a civil action, the party complaining shall be known as the plaintiff and the adverse party as the defendant.~~

SECTION 24. Arkansas Code § 16-61-103, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 17 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-103. Actions by infants.~~

~~(a) The action of an infant must be brought by his or her guardian or~~

~~his or her next friend.~~

~~(b) Any person may bring the action of an infant as his or her next friend, but the court has power to dismiss it if it is not for the benefit of the infant, or to substitute the guardian of the infant, or another person, as the next friend.~~

~~(c) The guardian or next friend is liable for the costs of the action brought by him or her, and where he or she is insolvent and it is made to appear that the action is malicious or that the next friend was selected because of his or her insolvency, the court in its discretion may require him or her to give security for the costs.~~

SECTION 25. Arkansas Code § 16-61-104, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 17 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-104. Actions against infants — Defense by guardian.~~

~~(a) The defense of an infant must be by his or her regular guardian or by a guardian appointed to defend for him or her, where no regular guardian appears, or where the court directs a defense by a guardian appointed for that purpose.~~

~~(b) No judgment can be rendered against an infant until after a defense by a guardian.~~

~~(c)(1) The appointment of a guardian may be made upon the application of the infant if he or she is of the age of fourteen (14) years and if he or she applies within twenty (20) days after the service of the summons.~~

~~(2) If he or she is under the age of fourteen (14) years or does not so apply, the appointment may be made upon the application of any friend of the infant or on that of the plaintiff in the action.~~

SECTION 26. Arkansas Code § 16-61-105, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 17 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-105. Actions by insane persons.~~

~~(a)(1) The action of a person judicially found to be of unsound mind must be brought by his or her guardian or, if he or she has none, by his or her next friend.~~

~~(2) When brought by his or her next friend, the action is~~

~~subject to the powers of the court in the same manner as the action of an infant so brought.~~

~~(b) The guardian or next friend is liable for the costs, and the court, in its discretion, may require him or her to give security for costs.~~

SECTION 27. Arkansas Code § 16-61-106, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 17 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-106. Actions against insane persons -- Defense.~~

~~(a) The defense of an action against a person judicially found to be of unsound mind must be by his or her guardian or a guardian appointed by the court to defend for him, where no guardian appears or where the court directs a defense by a guardian.~~

~~(b) No judgment can be rendered against him or her until after a defense by his or her guardian or by a guardian appointed for that purpose.~~

~~(c) No appointment can be made until after service of the summons, as directed in this code.~~

~~(d) The guardian to defend may be appointed on the application of any friend of the defendant or on that of the plaintiff.~~

SECTION 28. Arkansas Code § 16-61-108, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 17 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-108. Guardian ad litem -- Appointment -- Party or attorney not appointed for infant or insane person.~~

~~(a) The guardian to defend shall be appointed by the circuit court or by the judge thereof.~~

~~(b) The appointment cannot be made until after the service of the summons in the action.~~

~~(c) No party or attorney in an action can be appointed guardian to defend therein for an infant or person of unsound mind.~~

~~(d)(1) During the vacation of the court, the circuit court clerk shall have the same power of appointing a guardian ad litem for an infant defendant who has been summoned in the action that his or her court or the judge thereof has.~~

~~(2) The court or judge shall have the power to change the~~

~~guardian so appointed by appointing another in his or her stead whenever the interests of the infant require such a change.~~

~~(c) The clerk shall endorse the name of the guardian and the date of his or her appointment upon the complaint.~~

SECTION 29. Arkansas Code § 16-61-113, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 22 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-113. Interpleader generally.~~

~~Where, in an action for the recovery of real or personal property, any person having an interest in the property applies to be made a party, the court may order it to be done.~~

SECTION 30. Arkansas Code § 16-61-114, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 22 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-114. Interpleader by defendant.~~

~~(a) Upon affidavit of a defendant, before answer in any action upon contract or for the recovery of personal property, that some third party, without collusion with him or her, has or makes a claim to the subject of the action, and that he or she is ready to pay or dispose thereof, as the court may direct, the court may:~~

~~(1) Make an order for the safekeeping, for the payment or deposit in court, or for delivery of the subject of the action to such person as it may direct; and~~

~~(2) Make an order requiring the third party to appear in a reasonable time and maintain or relinquish his or her claim against the defendant; and~~

~~(3) In the meantime stay the proceedings.~~

~~(b)(1) If the third party, being served with a copy of the order, fails to appear, the court may declare him or her barred of all claims in respect to the subject of the action against the defendant therein.~~

~~(2) If he or she appears, he or she shall be allowed to make himself or herself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties, in respect to the subject of the action, upon his or her compliance~~

~~with the order of the court for the payment, deposit, or delivery thereof.~~

SECTION 31. Arkansas Code § 16-61-115, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 22 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-61-115. Interpleader in action against sheriff for recovery of property or proceeds.~~

~~(a) The provisions of § 16-61-114 shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him or her under an execution, or for the proceeds of the property so taken or sold by him or her.~~

~~(b) The defendant in any such action shall be entitled to the benefit of § 16-61-114 against the party in whose favor the execution issued, upon exhibiting to the court the process under which he or she acted, with his or her affidavit that the property, for the recovery of which, or its proceeds, the action was brought, was taken under such process.~~

~~(c) In an action against a sheriff, or other officer, for the recovery of property taken under an execution, the court may, upon the application of the defendant, and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given.~~

SECTION 32. Arkansas Code § 16-62-104, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 25 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-62-104. Death or expiration of powers -- Effect upon action.~~

~~(a) Where there are several plaintiffs or defendants in an action, and one (1) of them dies, or his or her powers as a personal representative cease, if the right of action survives to or against the remaining parties, the action may proceed, the death of the party or the cessation of his powers being stated on the record.~~

~~(b) Where one (1) of several plaintiffs or defendants dies, or his or her powers as a personal representative cease, if the cause of action does not admit of survivorship, and the court is of opinion that the merits of the controversy can be properly determined and the principles applicable to the case fully settled, it may proceed to try the cause as between the remaining~~

~~parties. However, the judgment shall not prejudice any who were not parties at the time of the trial.~~

SECTION 33. Arkansas Code § 16-62-105, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 25 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-62-105. Death or expiration of powers — Revivor of action.~~

~~(a) Where one (1) of the parties to an action dies, or his or her powers as a personal representative cease before the judgment, if the right of action survives in favor of or against his representative or successor, the action may be revived and proceed in their names.~~

~~(b) The revivor shall be by an order of the court that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.~~

~~(c) The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died or whose powers ceased, suggesting his or her death or the cessation of his or her powers, which with the names and capacities of his representative or successor, shall be stated in the order.~~

~~(d)(1) If the order is made by the consent of the parties, the action shall forthwith stand revived.~~

~~(2) If not made by consent, the order shall be served in the same manner as a summons upon the party adverse to the one making the motion. At the first term commencing not less than ten (10) days after such service, the party on whom it is made may show cause against the revivor. If sufficient cause is not then shown, the cause shall stand revived.~~

~~(e) If ten (10) days' notice has been given to the representatives or successor of the party who died or whose powers ceased of the motion by the adverse party, where the motion is by such representatives or successor, and due return is made of the service of notice, the court may, if sufficient cause is not shown to the contrary, make an order reviving the action in the names of such parties, whereupon the action shall stand revived.~~

~~(f)(1) Where it appears to the court by the affidavit of the plaintiff that the representatives of the defendant, or any of them, in whose name the action is ordered to be revived, are nonresidents of this state, have left the state to avoid the service of the order, have been absent therefrom four~~

~~(4) months, or so conceal themselves that the order cannot be served upon them or that the names of the heirs of the defendant against whom the action is ordered to be revived, or of some of them, are unknown to the affiant, an order may be made by the court warning the representatives or unknown heirs to appear on the first day of its next term and show cause why the action should not be revived against them.~~

~~(2) The parties so warned shall be deemed constructively served with a copy of the order of revivor ten (10) days before the term at which they are warned to appear; and, if sufficient cause is not shown to the contrary, the action shall, at that term, stand revived.~~

SECTION 34. Arkansas Code § 16-62-106, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 25 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-62-106. Death of a party — Revivor in name of special administrator.~~

~~(a) In all cases where suits may be instituted, and either plaintiff or defendant dies pending the suit or suits, it shall be lawful for the court before which the suit or suits are pending, on the motion of any party interested, to appoint a special administrator, in whose name the cause shall be revived. The suit or suits shall progress, in all respects in his or her name with like effect as if the plaintiff or defendant, as the case may be, had remained in full life.~~

~~(b) The powers of the special administrator shall extend and be confined alone to the mere prosecution or defense of the particular suit or suits which he may be appointed by the court to prosecute or defend.~~

~~(c) No special administrator shall be appointed as prescribed in this section where there is a general administrator.~~

~~(d) No such special administrator or executor shall be liable for costs of the suit, for the management whereof he or she may be appointed.~~

SECTION 35. Arkansas Code § 16-63-201, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 7 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-201. Pleadings generally.~~

~~The pleadings are the written statements, by the parties of the facts constituting their respective claims and defenses.~~

SECTION 36. Arkansas Code § 16-63-202, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 7 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-202. Filing pleadings.~~

~~(a) Parties shall file with all pleadings and motions one (1) copy thereof, which copy may be withdrawn by the opposite party or his or her attorney for his or her files.~~

~~(b) If the party filing a pleading desires a copy of the pleading, he or she shall make and retain the copy at the time the original is prepared, or he or she or any other interested person may have access to the papers for the purpose of examining or copying the pleadings.~~

SECTION 37. Arkansas Code § 16-63-204, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 17 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-204. Answer by guardian of infant or insane person or by attorney for prisoner.~~

~~It shall be the duty of the guardian of an infant or of a person of unsound mind, or an attorney appointed for a prisoner, to file an answer denying the material allegations of the complaint prejudicial to the defendant.~~

SECTION 38. Arkansas Code § 16-63-205, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 13 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-205. Counterclaim.~~

~~When it appears that a new party is necessary to a final decision upon the counterclaim, the court may either permit the new party to be made by a summons to reply to the counterclaim in the answer or may direct that it be stricken out of the answer and made the subject of a separate action.~~

SECTION 39. Arkansas Code § 16-63-207, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 8 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-207. Libel and slander.~~

~~(a)(1) In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose. It shall be sufficient to state generally that the defamatory matter was published or spoken concerning the plaintiff.~~

~~(2) If the allegation is not controverted in regard to judgments, it shall not be necessary to prove it on trial.~~

~~(b) In an action for libel or slander, the defendant may, in his or her answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, legally admissible in evidence, to reduce the amount of damages. Whether he or she proves the justification or not, he or she may give in evidence the mitigating circumstances.~~

SECTION 40. Arkansas Code § 16-63-209, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 8 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-209. Instrument for payment of money only -- Sufficiency of pleading.~~

~~In an action or defense founded upon an instrument for the payment of money only, it shall be sufficient for a party to give a copy of the instrument and to state that there is due to him or her thereon from the adverse party a specified sum which he or she claims.~~

SECTION 41. Arkansas Code § 16-63-210, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 8 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-210. Actions for recovery of real property.~~

~~In an action for the recovery of real property, the property must be described in the complaint with such convenient certainty as to enable an officer holding an execution to identify it.~~

SECTION 42. Arkansas Code § 16-63-212, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 8 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-212. Presumptions and matters of judicial notice.~~

~~Neither presumptions of law nor matters of which judicial notice is~~

~~taken need be stated in a pleading.~~

SECTION 43. Arkansas Code § 16-63-213, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 8 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-213. Irrelevant or redundant matter.~~

~~If irrelevant or redundant matter is inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby, at the cost of the party whose pleading contained it.~~

SECTION 44. Arkansas Code § 16-63-214, which has been superseded by Amendment 80 of the Arkansas Constitution and Rules 8 and 12 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-214. Variance between pleading and proof.~~

~~(a)(1) No variance between the allegation in a pleading and the proof is to be deemed material unless it has actually misled the adverse party to his or her prejudice in maintaining his or her action or defense upon the merits.~~

~~(2) Whenever it is alleged that a party has been so misled, that fact must be shown to the satisfaction of the court, and it must also be shown in what respect he or she has been misled. Thereupon, the court may order the pleading to be amended upon such terms as may be just.~~

~~(b) Where the variance between the allegation in the pleading and the proof is not material, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs.~~

~~(c) Where, however, the allegation of the claim or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within this section, but a failure of proof.~~

SECTION 45. Arkansas Code § 16-63-216, which has been superseded by Amendment 80 of the Arkansas Constitution and Rules 8 and 12 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-216. Constructive service -- Proof of allegations.~~

~~The statements of the complaint, as against a defendant who was constructively summoned and who has not appeared, except those which are to~~

~~his or her benefit, shall not be taken as true but are to be established by proof. But where the plaintiff files with the complaint his or her own affidavit stating that any of the allegations thereof recited in the affidavit are true, and known to be so by the defendant, and that they cannot be proved or shown otherwise than by his or her answer, so far as the affiant knows or believes, such allegations, unless denied by the answer, shall be taken as true.~~

SECTION 46. Arkansas Code § 16-63-217, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 30 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-217. Depositions.~~

~~(a) Officers and stenographers taking depositions shall prepare an original and two (2) carbon copies of the depositions at the time of transcribing. The officer shall be allowed a reasonable compensation to be fixed by the court and taxed as cost for this service.~~

~~(b) The plaintiff and defendant shall each be furnished with one (1) of these copies for their files, and the original shall be filed and retained in the office of the clerk as set out in § 16-63-202.~~

SECTION 47. Arkansas Code § 16-63-301, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 21 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-301. Misjoinder.~~

~~(a) At any time before the defense, the court shall on motion of the defendant strike out of the complaint any cause or causes of action improperly joined with others.~~

~~(b) All objections to the misjoinder of causes of action shall be deemed to be waived unless made as provided in subsection (a) of this section, and all errors in the decisions of the court thereon are waived unless excepted to at the time.~~

SECTION 48. Arkansas Code § 16-63-401, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 40 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-401. Continuance after amendment.~~

~~When either party amends any pleading or proceeding and the court is satisfied by affidavit or otherwise that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in the same term or to another term of court.~~

SECTION 49. Arkansas Code § 16-63-407, which has been superseded by Amendment 80 of the Arkansas Constitution and Rule 15 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-63-407. Striking causes of action.~~

~~The plaintiff may strike from his or her complaint any cause of action at any time before the final submission of the case to the jury or to the court, where the trial is by the court.~~

SECTION 50. Arkansas Code § 16-64-101, which has been superseded by Amendment 80 of the Arkansas Constitution and Article VI of the Arkansas Rules of Civil Procedure, is repealed:

~~16-64-101. Trial generally.~~

~~A trial is a judicial examination of the issues, whether of law or of fact, in an action.~~

SECTION 51. Arkansas Code § 16-64-102, which has been superseded by Amendment 80 of the Arkansas Constitution and Article VI of the Arkansas Rules of Civil Procedure, is repealed:

~~16-64-102. Issues.~~

~~(a) Issues arise upon the pleadings where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two (2) kinds: of law and of fact.~~

~~(b)(1) An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.~~

~~(2) An issue of fact arises upon:~~

~~(A) A material allegation in the complaint denied by the answer;~~

~~(B) A setoff or counterclaim presented in the answer and denied by the reply; and~~

~~(C) Material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further~~

~~pleading.~~

~~(c) Issues both of law and fact may arise upon different parts of the pleadings in the same action. In such cases, the issues of law must be first tried unless the court otherwise directs.~~

SECTION 52. Arkansas Code § 16-64-103, which has been superseded by Amendment 80 of the Arkansas Constitution and Rules 38 and 39 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-64-103. Trial by court or jury.~~

~~(a) Issues of law must be tried by the court.~~

~~(b) Issues of fact, arising in action by proceedings at law for the recovery of money or of specific real or personal property, shall be tried by a jury unless a jury trial is waived.~~

SECTION 53. Arkansas Code § 16-64-104, which has been superseded by Amendment 80 of the Arkansas Constitution and Rules 38 and 39 of the Arkansas Rules of Civil Procedure, is repealed:

~~16-64-104. Requirements as to jury trials applicable to trials by court.~~

~~The provisions of Title IX of the Civil Code respecting trials by jury apply, so far as they are in their nature applicable, to trials by the court.~~

SECTION 54. Arkansas Code Title 16, Chapter 67, Subchapter 2, regarding appeals to the circuit court and superseded by Amendment 80 of the Arkansas Constitution, Rule 9 of the Arkansas District Court Rules, and Rule 36 of the Arkansas Rules of Criminal Procedure, is repealed:

~~Subchapter 2 - Appeal to Circuit Court~~

~~16-67-202. Bond on appeal.~~

~~Where an appeal is taken by any person in cases of allowances made for or against counties, he or she shall give a bond, payable to the proper county, conditioned to prosecute the appeal and save the county from all costs on account of the appeal being taken.~~

~~16-67-203. Transmission of original papers to circuit court.~~

~~In all appeals to the circuit court from all judgments and orders of~~

~~the county court, the clerk of the county court shall transmit all of the original papers and a transcript of the record entry in the cause or matter to the clerk of the circuit court. He or she shall take his or her receipt therefor and file the receipt in place of the original papers.~~

~~16-67-204. Notice of appeal.~~

~~If the appeal is not granted at the term at which the judgment or order is rendered or the appellee does not enter his or her appearance in the circuit court, he or she shall be summoned, actually or constructively, as provided by law for the service of a summons, to appear and answer the appeal.~~

~~16-67-205. Time of trial of appeal.~~

~~All appeals granted ten (10) days before the commencement of any term of the circuit court, next after the appeal is allowed shall be tried and determined at such terms unless continued for cause.~~

~~16-67-206. Jurisdiction for final judgment in trials de novo or appeals.~~

~~In all cases of trials de novo, or of appeals from inferior courts, the circuit courts shall have or retain jurisdiction of the subject matter for final judgment in the same manner and to the same extent as though original jurisdiction had been conferred on the circuit courts by law, notwithstanding that the amount in controversy may be lesser or greater than that found in the court below.~~

~~16-67-207. Appeal tried de novo.~~

~~The circuit court shall proceed to try all appeals from county courts de novo as other cases at law.~~

~~16-67-208. Defense of appeals — Costs.~~

~~In cases when appeals are prosecuted in the circuit court or Supreme Court, the judge of the county court shall defend the appeal. All expenses or money paid out by reason of the defense shall be repaid by the proper county by order of the county court.~~

SECTION 55. Arkansas Code Title 16, Chapter 67, Subchapter 3, regarding appeals to the Supreme Court and superseded by Amendment 80 of the Arkansas Constitution, the Rules of Appellate Procedure, and the Rules of the Supreme Court is repealed:

~~Subchapter 3 — Appeal to Supreme Court~~

~~16-67-302. Rules for conduct of appeals.~~

~~The Supreme Court may make rules for the convenient dispatch of business, the preservation of order, the argument of cases or motions, the manner and time of presenting motions or petitions for rehearing, the time of issuing its mandates and decisions, and modes of enforcing its mandates and orders, and it may change the rules.~~

~~16-67-305. Survival of right of review.~~

~~If a judgment is rendered against several persons, and one (1) of them dies, a writ of error or appeal may be brought upon the judgment by the survivors.~~

~~16-67-306. Style of parties.~~

~~The party taking the appeal or writ of error shall be called the appellant and the adverse party, the appellee.~~

~~16-67-308. Writs of error — Issuance.~~

~~Writs of error upon any final judgment or decision of any circuit court shall issue as of course, in all cases, out of the Supreme Court in vacation, as well as in term time, subject to the regulation prescribed by law.~~

~~16-67-309. Time for granting appeal or writ of error.~~

~~An appeal or writ of error in a civil case shall not be granted except within six (6) months after the rendition of the judgment, order, or decree sought to be reviewed unless the party applying therefor was an infant or of unsound mind at the time of its rendition. In those cases an appeal or writ of error may be granted to such parties or their legal representatives within six (6) months after the removal of their disabilities or death.~~

~~16-67-313. Bond for costs.~~

~~(a) The appellant may be required to give security for costs under the same circumstances that plaintiffs in civil action may be so required.~~

~~(b) Whenever a bond for costs on appeal is required by law, the bond shall be filed with the notice of appeal.~~

~~(c) The bond shall be in the sum of two hundred fifty dollars ($250), unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required.~~

~~(d) The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment or decree is affirmed or the payment of such costs as the appellate court may award if the judgment or decree is modified.~~

~~(e) If a bond on appeal in the sum of two hundred fifty dollars ($250) is given, no approval thereof is necessary.~~

~~(f) After a bond on appeal is filed, an appellee may raise objections to the form of the bond or to the sufficiency of the surety for determination by the clerk.~~

~~(g)(1) If a bond on appeal or a supersedeas bond is not filed within the time allowed by law or if the bond filed is found insufficient and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the court.~~

~~(2) After the action is docketed, application for leave to file a bond may be made only in the appellate court.~~

~~16-67-314. Record on appeal -- Docketing appeal.~~

~~(a)(1) The record on appeal shall be filed with the appellate court and the appeal there docketed within ninety (90) days from the date of filing the notice of appeal except that the trial court may prescribe the time for filing and docketing, which in no event shall be less than ninety (90) days from the date of filing the first notice of appeal.~~

~~(2) In all cases where there has been designated for inclusion any evidence or proceeding at the trial or hearing which was stenographically reported, the trial court, after finding that a reporter's transcript of the evidence or proceeding has been ordered by the appellant, in its discretion and with or without motion or notice, may extend the time for filing the record on appeal and docketing the appeal, if its order for extension is made before the expiration of the period for filing and docketing as originally~~

~~prescribed or extended by a previous order. However, the trial court shall not extend the time to a date more than seven (7) months from the date of the entry of the judgment or decree.~~

~~(b)(1) The clerk of the trial court, under his hand and the seal of the court, shall transmit to the appellate court a true copy of the matter designated by the parties, but shall always include, whether or not designated, copies of following:~~

~~(A) The material pleadings without unnecessary duplication;~~

~~(B) The verdict of the jury, if any;~~

~~(C) The findings of fact and conclusions of law, if any;~~

~~(D) The master's report, if any;~~

~~(E) The opinion of the court, if any;~~

~~(F) The judgment or decree or part thereof appealed from;~~

~~(G) The notice of appeal with the date of filing;~~

~~(H) The designations or stipulations of the parties as to matter to be included in the record; and~~

~~(I) Any statements by the appellant of the points on which he or she intends to rely.~~

~~(2) The matter so certified and transmitted shall constitute the record on appeal.~~

~~(c) The appellee may file an authenticated copy of the record in the clerk's office of the Supreme Court with the same effect as if filed by the appellant.~~

~~(d) If the Supreme Court has acquired jurisdiction of a cause, but it is made to appear that the record is incomplete for want of documents, exhibits, or a bill of exceptions, and the trial court has lost such jurisdiction, the Supreme Court, or a judge thereof, shall have power to direct a writ to any clerk, reporter, or other person charged with the duty of preparing the matter in question and may require compliance with its discretionary orders.~~

~~16-67-315. Transcript or bill of exceptions -- Extension of time for filing -- Authentication.~~

~~(a) In all cases where a prayer for appeal is granted by the trial court and supersedeas bond filed in the manner provided by law, the Arkansas~~

~~Supreme Court may, and is given authority, on showing of unavoidable casualty such as the death of the official reporter, the length of the trial record, or for other meritorious cause shown, to extend the time for filing a transcript or a bill of exceptions, as the case may be, by its order or by writ of certiorari, for an additional period of time not to exceed one hundred twenty (120) days from and after the expiration of the appeal period now provided by law.~~

~~(b) In the preparation of the transcript or bill of exceptions on appeal the trial judge is vested with authority during the one hundred twenty-day extension period to pass upon and authenticate the transcript or bill of exceptions by his or her certificate in the same manner as now provided by law.~~

~~16-67-316. Order as to original papers or exhibits.~~

~~Whenever the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies it may make such order therefor and for the safekeeping, transportation, and return thereof, as it deems proper.~~

~~16-67-317. Time for trial.~~

~~Appeals and writs of error shall stand for trial when the copy of the record shall have been filed in the office of the clerk of the court for sixty (60) days unless a summons is required, in which case the cause shall stand for trial sixty (60) days after the service of the summons.~~

~~16-67-318. Arrangement of appeals on docket.~~

~~The clerk shall arrange the appeals upon the docket, setting a proper number for each day of the term, and, in arranging them, may have due regard to the convenience of litigants in placing together the appeals from the several judicial districts.~~

~~16-67-319. Assignment of errors unnecessary.~~

~~No written assignment of error shall be necessary, but the judgment may be reversed or modified for any error appearing in the record to the prejudice of an appellant or cross-appellant.~~

~~16-67-320. Motion to dismiss.~~

~~(a) Where the appeal or writ of error was improperly granted or the appellant's right of further prosecuting the appeal or writ of error has ceased, the appellee, in lieu of pleading, may move the court to dismiss the appeal or writ of error.~~

~~(b) The grounds of the motion to dismiss shall be stated in writing, signed by the appellee or his or her counsel, and, if not appearing on the face of the record or by a writing purporting to have been signed by the appellant and filed, shall be verified by affidavit.~~

~~(c) The motion shall not be heard or determined before the day on which the appeal or writ of error is set for trial on the docket, unless the appellant consents thereto.~~

~~(d) The appellee may by answer filed and verified by himself or herself, or agent or attorney, plead any fact or facts which renders the granting of the appeal or writ of error improper or destroys the appellant's right of further prosecuting the appeal or writ of error; to which answer, the appellant shall file a reply, likewise verified by the affidavit of himself or herself, agent, or attorney. The questions of law or fact thereon shall be determined by the court.~~

~~16-67-321. Appeals taken for delay.~~

~~(a)(1) Where an appeal or a writ of error, with a supersedeas, has been taken merely for delay, the appellee may at any time move the court to affirm the judgment or order as a delay case.~~

~~(2) Before making the motion to affirm the judgment or order as a delay case, the appellee or his or her counsel shall endorse on the record in substance that he or she has carefully examined the record and believes the appeal or writ of error is prosecuted for delay merely.~~

~~(b) Upon the filing of the motion to affirm the judgment or order as a delay case, the court shall examine the record and, if it finds no error in the proceedings and believes the appeal or writ of error was prosecuted merely for delay, shall affirm the judgment or order.~~

~~(c) The appellee may, in open court, confess error at any time, whereupon the case shall be reversed and remanded to the court from which the appeal or writ of error was taken.~~

~~16-67-322. Death of party after appeal or writ of error -- Effect.~~

~~(a) If all the appellants or plaintiffs in error die after the appeal taken or writ of error brought and before judgment is rendered thereon, the executor or administrator of the last surviving appellant or plaintiff, or the heirs or devisees of the appellant or plaintiff in cases where they would be entitled to bring writs of error or prosecute an appeal, may be substituted for the appellant or plaintiff and the cause shall proceed at their suit.~~

~~(b) If all the appellees, the sole appellee, all the defendants, or the sole defendant in a writ of error die after an appeal is entered or writ of error brought and before judgment thereon, the executors or administrators of the appellees or defendants may be compelled to become parties and join in error in the same manner as in an original suit.~~

~~16-67-323. Briefs by counsel.~~

~~The counsel who shall make briefs under the rules and regulations of the Supreme Court shall, after the statement of the cause, briefly state the points and the authorities relied on and shall cause the briefs to be filed with the opinion of the court, and the brief shall form a part of the record in the cause.~~

~~16-67-324. Time court's decision becomes final.~~

~~No mandate shall issue and no decision shall become final until after fifteen (15) judicial days from the time the decision was rendered, unless the court, for good cause shown, shall otherwise direct.~~

~~16-67-325. Reversal, affirmation, or modification of judgment or order -- Mandate of court -- Enforcement.~~

~~(a) The Supreme Court may reverse, affirm, or modify the judgment or order appealed from, in whole or in part and as to any or all parties, and when the judgment or order has been reversed or affirmed, the Supreme Court may remand or dismiss the cause and enter such judgment upon the record as it may in its discretion deem just.~~

~~(b)(1) When a cause is affirmed or reversed and remanded, the mandate must be taken out and filed in the court from which the appeal was taken by the plaintiff or defendant within one (1) year from the rendition of the~~

~~judgment, affirming or reversing the cause, and not thereafter.~~

~~(2) Immediately upon the expiration of the period of one (1) year after the judgment of reversal is entered, when the mandate is not taken out, the clerk of the Supreme Court shall upon application of the party entitled thereto issue an execution for all costs accrued up to the date of reversal in the Supreme Court and in the court from which the cause has been appealed.~~

~~(c)(1) Upon the determination of any appeal or writ of error, the Supreme Court may award execution to carry the determination of the appeal or writ of error into effect or may remand the record with the decision of the court thereon to the circuit court in which the cause originated and order such decision to be carried into effect if the mandate is taken out and filed with the court from which the appeal came within twelve (12) months from the determination of any appeal.~~

~~(2) The decision shall be carried into effect within ten (10) years from the rendition of the judgment and not thereafter.~~

~~(d) Upon the affirmance by the Supreme Court of any judgment, order, or decree which has been wholly or in part superseded, judgment shall be rendered and entered up against the securities on the supersedeas bond and the court shall award execution thereon.~~

~~16-67-326. Affirmance of judgment — Effect.~~

~~(a) Upon the affirmance of a judgment, order, or decree of a court for the payment of money or delivery of personal property, the appellee may file in the clerk's office of the court a copy of the mandate of affirmance upon which the clerk shall endorse the time of filing, and thereupon such writs of execution may be issued on the judgment, order, or decree as could be issued after the mandate had been entered in the court.~~

~~(b) Upon the affirmance of a judgment, order, or decree for the payment of money, the collection of which in whole or in part has been superseded as provided in §§ 16-67-302, 16-67-317 — 16-67-321, 16-67-324, 16-67-326(a), 16-67-327, and 16-67-330 — 16-67-332, ten percent (10%) damages on the amount superseded may be awarded at the discretion of the court against the appellant in cases where appeal was taken for delay.~~

~~16-67-327. Reversal of judgment — Remand — Continuance.~~

~~When a case shall have been reversed and remanded by the Supreme Court for further proceedings, it may be continued at the first term unless the mandate shall have been filed with the clerk of the court below and reasonable notice given to the adverse party or his or her attorney of record before the commencement of the term, in which case it shall stand for trial unless good cause for a continuance is shown.~~

~~16-67-328. Remand of case for insufficient facts in special verdict.~~

~~When the facts in a special verdict are insufficiently found, the Supreme Court may remand the cause and order another trial to ascertain the facts.~~

~~16-67-329. Rights of appellant on reversal.~~

~~If any judgment of the circuit court is reversed by the Supreme Court on writ of error or appeal, and the judgment has been carried into effect before the reversal thereof, the defendant may recover from the plaintiff in the judgment the full amount paid thereon, including costs, by an action for so much money had and received to his or her use.~~

~~16-67-330. Error which can be corrected on motion in lower court not ground for reversal.~~

~~A judgment or final order shall not be reversed for an error which can be corrected on motion in the inferior courts until the motion has been made there and overruled.~~

~~16-67-331. Enforcement of mandate by fine and imprisonment.~~

~~The Supreme Court shall have power to enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until they are obeyed.~~

~~16-67-332. Petitions for rehearing.~~

~~(a) If a petition for rehearing is filed before the time for the decision to become final, as is specified in § 16-67-324, all proceedings upon the decision and mandate therein shall be suspended until petition for rehearing shall be acted upon by the court.~~

~~(b)(1) However, the court in term time, or a judge thereof in~~

~~vacation, may enlarge the time for filing petitions for rehearing, not exceeding thirty (30) additional days, and order that all proceedings upon the decision be stayed during such time. But the party applying for an extension or enlargement of the time for filing a petition for rehearing must do so within fifteen (15) judicial days from the time the decision was rendered and show good cause for the enlargement. Reasonable notice of the application must be first given the opposite party or his attorney of record.~~

~~(2) Any order for an extension of time made by a judge of the court shall be subject to the order of the court.~~

SECTION 57. Arkansas Code § 18-60-407 is amended to read as follows:

18-60-407. Constructive service.

Parties interested may be constructively summoned as provided ~~in § 16-58-130~~ by Rule 4 of the Arkansas Rules of Civil Procedure.

SECTION 58. Arkansas Code § 20-49-201(c), concerning sterilization of mental incompetents, is amended to read as follows:

(c) The court shall, on its own motion, appoint for the ~~alleged~~ person who is allegedly incompetent a guardian ad litem, in compliance with the procedure set forth ~~in § 16-61-108~~ by law for infant defendants.

SECTION 59. Arkansas Code § 28-39-303(c), concerning proceedings for allotment, is amended to read as follows:

(c) Parties interested may be constructively summoned, as provided ~~in § 16-58-130~~ by Rule 4 of the Arkansas Rules of Civil Procedure.

SECTION 60. DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General Assembly. All such acts shall have full force and effect, and so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts amending or repealing the appropriate parts of the Arkansas Code of 1987.