THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

Presented by

THE UNITED STATES BANKRUPTCY COURT

EASTERN AND WESTERN DISTRICTS OF ARKANSAS

June 5, 2026

William H. Bowen School of Law

Little Rock, Arkansas

CLE Credit Hours 6 (including 1 hour of ethics)

PROGRAM AGENDA

AND

HANDOUT MATERIALS

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

Presented by the United States Bankruptcy Court
Eastern and Western Districts of Arkansas
William H. Bowen School of Law, Little Rock
Friday, June 5, 2026

PROGRAM
6 approved AR CLE hours (5 general hours; 1 ethics hour)
Materials: https://www.areb.uscourts.gov/news

8:20-8:30 Welcome
Hon. Phyllis M. Jones, *U.S. Bankruptcy Chief Judge for the Eastern and Western Districts of Arkansas*

8:30-9:30 Walking the Same Path: AI and the Court...What Would Mixon Do?
Hon. Bianca M. Rucker, *U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas*

9:30-10:30 Through the Appellate Lens: A Perspective from the Arkansas Supreme Court
Justice Barbara Webb, *Arkansas Supreme Court*

10:30–10:45 Break

10:45-11:45 From Assistant U.S. Attorney to Educator: Practical Lessons in Trial Advocacy
Patrick Harris, *Director of Advocacy, William H. Bowen School of Law*

11:45-1:00 Lunch (provided at cost – select box lunch choice on registration form)

1:00-2:00 Practical Insights from Experienced Trial Lawyers
Steven W. Quattlebaum, *Quattlebaum, Grooms & Tull, PLLC*
John E. Tull III, *Quattlebaum, Grooms & Tull, PLLC*

2:00-2:30 Break

2:30-3:30 Trial Practice Conversation with the Court
Hon. D. P. Marshall Jr., *U.S. District Judge for the Eastern District of Arkansas*
Hon. James M. Moody Jr., *U.S. District Judge for the Eastern District of Arkansas*
Hon. Benecia B. Moore, *U.S. Magistrate Judge for the Eastern District of Arkansas*
Moderator: Hon. Richard D. Taylor, *U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas*

3:30-4:30 Inside the Bankruptcy Courtroom: A Judicial Roundtable
Hon. Phyllis M. Jones, *U.S. Bankruptcy Chief Judge for the Eastern and Western Districts of Arkansas*
Hon. Richard D. Taylor, *U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas*
Hon. Bianca M. Rucker, *U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas*

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

June 5, 2026

Presentation from 8:30 to 9:30

Walking the Same Path: AI and the Court. . . What Would Mixon Do?

Hon. Bianca M. Rucker

U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas

Handout Materials

THE HONORABLE JAMES G. MIXON
TRIAL PRACTICE SYMPOSIUM

Walking the Same Path: AI and the Court...
What Would Mixon Do?

1. Arkansas Administrative Order 25: Artificial Intelligence

2. Federal and Arkansas case law addressing AI use

3. Examples of standing orders from other courts

4. Article about Magistrate Judge pulling back an order requiring AI certification

Order 25. Artificial Intelligence.

Section 1. Awareness.

Everyone participating in the court system must be mindful of the following when entering client or court data into any electronic system that generates responses or uses generative artificial intelligence (GAI):

(a) Certain GAI tools retain the data submitted into their system and use it to keep building their large language models (LLM), or what you would consider their database.

(b) Anyone who enters confidential or sealed information into a GAI should determine whether the system is retaining and using the confidential or sealed data. A public LLM is accessible to anyone and usually hosted by a third party (like OpenAI's GPT or Anthropic's Claude). A private LLM is deployed and controlled by an organization and operated on its own infrastructure or cloud account.

(c) Anyone who either intentionally or inadvertently discloses confidential or sealed information related to a client or case may be violating established rules, some examples are:

(1) Arkansas Supreme Court Administrative Order No. 19, which limits access to certain court records and data;

(2) the Arkansas Code, which has many statutes that limit access to certain court records and data;

(3) the Arkansas Rules of Professional Conduct;

(4) the Arkansas Code of Judicial Conduct;

(5) the various applicable Rules of Procedure; and

(6) the many other rules governing other court staff—for example, court reporters.

Section 2. Prohibition.

The Administrative Office of the Courts is responsible for maintaining several court management systems for our state courts including case management, electronic filing, online payment, jury management, and others.

(a) The following are prohibited from intentionally exposing our state courts' internal data to a GAI that is using a public LLM:

(1) Administrative Office of the Courts staff;

(2) All clerks of the courts and their staff (district, circuit, and appellate); and

(3) Anyone else with access to internal CourtConnect.

(b) Research and Analysis. Anyone subject to the prohibition in Section 2 may request the approval of the Supreme Court's Automation Committee to engage in a research and analysis project related to the use of generative AI tools and general AI for the benefit of our courts.

(c) The CIS Division is allowed to engage in research and analysis related to the use of generative AI tools and general AI for the benefit of our courts.

HISTORY

Adopted December 11, 2025.

2025 WL 3461537
Only the Westlaw citation is currently available.
United States District Court, E.D. Arkansas,
Central Division.

Steven MAGEE, Plaintiff
v.
NEW BALANCE ATHLETICS, INC., Defendant

No. 4:25-cv-265-DPM
|
Signed December 2, 2025

Attorneys and Law Firms

Steven Magee, San Antonio, TX, Pro Se.

Robert D. Carroll, Pro Hac Vice, Todd Marabella, Pro Hac Vice, Goodwin Procter LLP, Boston, MA, Timothy James Cullen, Cullen & Co., PLLC, Little Rock, AR, for Defendant.

ORDER

D.P. Marshall Jr., United States District Judge

**1 About a decade ago, Steven Magee registered HOOPLIFE® as a trademark for athletic apparel — shirts, pants, jackets, hats, caps, and uniforms. He's in that business. The mark is the term in "standard characters without claim to any particular font, style, size, or color[.]" as required by the drawing regulation applicable to this kind of mark. *Doc. 1 at 30*; 37 C.F.R. § 2.52(a)(1). A few years later Magee registered the same mark for athletic bags, backpacks, and various other bags. *Doc. 1 at 31*. In 2023, the "Hooplife Basketball Academy," which is based in central Arkansas, ordered approximately 900 items of athletic apparel from BSN Sports, a New Balance entity. The company made and supplied them. These jerseys, t-shirts, hoodies, and such had Hooplife, Hooplife Basketball Academy, or both on them. Magee, acting *pro se*, has sued New Balance Athletics, Inc., for trademark infringement. He makes five claims, one of which is infringement by counterfeiting. He seeks approximately $18,000,000 in damages. This case is Magee's third effort at pursuing these claims against New Balance. *Magee v. New Balance, Inc.*, No. 5:23-cv-923-FB (W.D. Tex.); *Magee v. Varsity Brands Holding Co., Inc.*, No. 3:24-cv-833-E-BK (N.D. Tex.).

New Balance moves to dismiss the counterfeiting claim or strike Magee's enhanced-damages requests rooted in that claim. 15 U.S.C. § 1117(b). Magee prepared his response using generative AI. New Balance moves to strike it. By New Balance's count, Magee's response misstated the holdings of twenty-seven of the thirty cases cited, invented false quotations from twenty-three cases, and fabricated two cases. *Doc. 16 at 17 & Appendix A*. Magee apologizes. He says he was unaware that generative AI could do such things. He promises to do better in future filings. He asks the Court to disregard what his response says about nine cases, but consider the rest of his response, or allow a substituted paper. Magee also moves for summary judgment on his counterfeiting claim.

*

New Balance's motion to strike Magee's response is granted. The Court accepts Magee's apology. That's a good first step. But Magee is an experienced *pro se* litigant. He has pursued this dispute diligently in three courts and filed other similar cases about his trademarks. *E.g., Magee v. BSN Sports, LLC*, No. 3:21-cv-1726-G-BT (N.D. Tex.); *Magee v. BSN Sports, LLC*, No. 3:25-cv-2485-E-BN (N.D. Tex). It should not be necessary to do so, but the Court admonishes him: Magee must verify all sources he cites in his court filings, especially cases, statutes, regulations, rules,* and other legal authorities; and he must cultivate a healthy skepticism about materials located with internet searches and especially about materials generated by artificial intelligence.

**2 Magee must also show cause by 9 January 2025 why the Court should not impose a monetary sanction. Magee's response gummed up the case. It required New Balance to incur unnecessary attorney's fees. The misstatements and false quotations are so interwoven with the argument that the Court was unable to rely on the document. Magee's points about counterfeiting had to be gleaned from his other filings. All this is unacceptable.

*

While the Court is a bit skeptical about Magee's counterfeiting claim, as he argues it, New Balance's motion to dismiss this claim with prejudice now is denied. The claim is plausible. Magee's motion for summary judgment on this claim is also denied.

Start with the statute. The Lanham Act imposes liability for nonconsensual commercial use of "any reproduction, counterfeit, copy, or colorable imitation of a registered mark ..." when the "use is likely to cause confusion, or to cause mistake, or to deceive[.]" 15 U.S.C. § 1114(1)(a). The statute defines some of its terms. "A 'counterfeit' is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark." 15 U.S.C. § 1127. In another provision, the statute requires that the registered mark be "in use" and that the "counterfeit mark" be "for such goods or services sold, offered for sale, or distributed ...." 15 U.S.C. § 1116(d)(1)(B)(i).

In the only binding precedent on this issue, the Court of Appeals explained the statute. "A counterfeit is thus far more similar to the registered mark than a mark that barely infringes it, and so an infringing mark is not necessarily also a counterfeit." *Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*, 908 F.3d 313, 340 (8th Cir. 2018). The *Sturgis* Court addressed the counterfeit issue as to a design mark (the Monahan mark), not Sturgis Bike Week® or Take the Ride to Sturgis®, the word marks in that case. 908 F.3d at 320, 338, & 339-40. The explanation, though, faithfully applies the statute's definition and helpfully illuminates a deep issue: Whether the average person would be confused about the product. *Kelly-Brown v. Winfrey*, 717 F.3d 295, 314-15 (2d Cir. 2013). "The more fundamental point is that the purpose of trademark law is not to guarantee genuine trademarks but to guarantee that every item sold under the mark is the genuine trademarked product, and not a substitute." *General Electric Co. v. Speicher*, 877 F.2d 531, 534 (7th Cir. 1989) (Posner, J.)

HOOPLIFE® is a fanciful term and, the Court assumes, therefore distinctive. RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 13 cmt. b & c (AM. L. INST. 1995). It is a standard character or word mark: "The mark consists of standard characters without claim to any particular font, style, size, or color." *Doc. 1 at 30.* This required definition is sweeping. But the mark's breadth also contains the seeds of difficulty, or perhaps opportunity, for a counterfeiting claim. Comparison is the usual way to determine whether the challenged mark is identical or substantially indistinguishable from the registered mark. *Sturgis*, 908 F.3d at 339-40; *Kelly-Brown*, 717 F.3d at 314-15. New Balance encourages the Court to do some comparing now, deploying the color copies Magee used in his Texas litigation plus the black-and-white copies attached to his complaint. Magee responds that there's no need: All the athletic apparel ordered by Hooplife Basketball Academy included the term Hooplife, so New Balance is a counterfeiter.

***3** Magee's argument seems to prove too much. It would collapse the statute's distinction between a counterfeit mark and any infringing mark. Magee has a plausible infringement claim. New Balance hasn't argued otherwise. While his counterfeiting claim appears overbroad, perhaps this is simply a function of the word-mark context. The Court's mind is not at rest on this.

As the parties know, and this Court is coming to appreciate, the fighting issue is vexed. "Confusion abounds in the existing case law regarding counterfeiting." Jessica Bromall Sparkman and Rod S. Berman, *Inconsistency and Confusion in the Judicial Treatment of Counterfeiting Claims*, 113 TRADEMARK REP. 553, 586 (2023). If confusion is too strong a conclusion, lack of clarity is not. The Court concludes it can do a better job deciding this important issue in due course —with clearer photographs for comparison, facts about potential confusion, and focused briefing about allegedly counterfeit word marks such as HOOPLIFE®. This is a punt, but sometimes a punt is the best one can do. The Court concludes that the first question is infringement. If there was, then the counterfeiting question and the related damages questions (treble and statutory) will arise. For now, it is enough to hold that Magee's request for enhanced damages stays in the case because he has plausibly alleged counterfeit marks. New Balance is probably correct on the number of types-of-goods issue. 15 U.S.C. § 1117(c). Discovery will clarify the list.

*

Motion to dismiss in part, *Doc. 11*, denied. Motion for partial summary judgment, *Doc. 21*, denied. Both denials are without prejudice. Motion to strike, *Doc. 16*, granted. Magee's response, *Doc. 13*, is stricken. Magee must show cause about further sanctions for his generative-AI-infected response by 9 January 2025. The Court regrets its delay in addressing all these motions. For good cause, the Court extends the due date for the parties' Rule 26(f) report to 19 December 2025.

So Ordered.

All Citations

Slip Copy, 2025 WL 3461537

Footnotes

* Another example. Magee withdrew his response to New Balance's motion to strike and filed a substituted version — saying he did so to comply with LOCAL RULE 7.2(e)'s twenty-five-page limit on briefs. *Doc. 19.* But the Local Rule imposes no page limit. All the Local Rules are on this Court's website. https://www.are.uscourts.gov/court-info/local-rules-and-orders/local-rules.

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2025 WL 1950112
Only the Westlaw citation is currently available.
United States District Court, W.D.
Arkansas, Fayetteville Division.

JASON M. HATFIELD, P.A., Plaintiff
v.
Tony PIRANI and Pirani Law, PA, Defendants

CASE NO. 5:22-CV-5110
|
Signed July 16, 2025

Attorneys and Law Firms

Joseph R. Falasco, Quattlebaum Grooms Tull Burrow PLLC, Little Rock, AR, Mark M. Henry, Henry Law Firm, Fayetteville, AR, Otto Matthew Bartsch, Henry Law Firm, Lewisville, TX, for Plaintiff.

Tony Pirani, Pirani Law PA, Fayetteville, AR, for Defendants.

OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

*1 The trial of this case is set to begin on Monday, July 21, 2025. A pretrial conference was held on Friday, July 11, 2025, during which oral argument was received on a variety of pending motions. The Court issued many rulings from the bench, some of which will be memorialized in this written Opinion and Order. To whatever extent there may be any conflict between the rulings contained in this written Order and the Court's statements made from the bench during the July 11 pretrial hearing, this written Order controls.

First, with respect to Plaintiff Jason M. Hatfield, P.A.'s Motion to Strike (Doc. 399)—that Motion is **GRANTED IN PART**, for the reasons stated from the bench during the July 11 pretrial hearing. Defendant Tony Pirani admitted to using artificial intelligence to draft the Motions in Limine that he electronically signed and filed at Docs. 397 and 398, and conceded that these materials contained citations to nonexistent cases and quotations of nonexistent passages. This is an obvious and flagrant violation of Rule 11(b)(2)'s requirement that attorneys certify that they undertake a reasonable inquiry to ensure that their written filings contain legal contentions that "are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." *See* Fed. R. Civ. P. 11(b)(2). "A fake opinion is not 'existing law' and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law. An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system." *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023). The Court will exercise its inherent authority to **STRIKE** the offending filings (Docs. 397 and 398), given their flagrant violation of the rules of the Court. *See, e.g., Buergofol GmbH v. Omega Liner Co., Inc.*, 2024 WL 3521802, at *2 (D.S.D. July 24, 2024); *LaLoup v. United States*, 92 F. Supp. 3d 340, 354 (E.D. Penn. 2015). After the trial of this matter has concluded, the Court will enter a separate order setting a schedule for Mr. Pirani to show cause why further sanctions should not be imposed, including monetary sanctions and referral to the Arkansas Judiciary's Office of Professional Conduct.

Next, with respect to Mr. Hatfield's Motion for Sanctions and Fees (Doc. 396)—that Motion is also **GRANTED IN PART**, for the reasons stated from the bench during the July 11 pretrial hearing. Mr. Pirani apparently failed to engage in any conferral whatsoever with opposing counsel regarding jury instructions and factual stipulations, and did not engage in any substantive conferral with opposing counsel regarding deposition designations, despite the Second Amended Case Management Order's express requirement that the parties confer on all these matters. *See* Doc. 384, §§ 7–8, 10. This significantly increased the workload for Plaintiff's counsel in liminal motion practice, which correspondingly resulted in a significant increase in this Court's own workload before, during, and after the July 11 pretrial hearing. Mr. Hatfield will be awarded a reasonable attorney's fee for this unnecessary burden, the amount of which will be determined at a later date after the trial of this matter has concluded. However, the Court will not strike Mr. Pirani's cross-deposition designations as a sanction for his failure to confer, as this sanction could impair his ability to present an effective defense at trial and would thus be disproportionate to the harm caused.

*2 Finally, with respect to Mr. Hatfield's Motion in Limine (Doc. 391)—that Motion is **GRANTED IN PART AND DENIED IN PART**, for the reasons stated from the bench during the July 11 pretrial hearing. That Motion identified thirty-one separately-numbered types or categories of evidence that Mr. Hatfield sought to exclude. The Court

notes that, given the law of the case in this matter, there are some types of evidence that may not be admissible for the purpose of arguing that the Nunez Contract was valid or that Mr. Hatfield's lien was invalid, but that may be admissible for the purpose of arguing that Mr. Pirani *believed* at the relevant times that the Nunez Contract was valid or that Mr. Hatfield's lien was invalid. *See, e.g.*, Doc. 383, pp. 3, 8–10. For that reason, the Court must defer ruling on the admissibility of some of the items discussed in Mr. Hatfield's Motion and, depending on the circumstances under which their introduction is ultimately sought, might admit them with a limiting instruction given to the jury regarding the purposes for which they may and may not be considered. With those observations made, the Court will now very briefly memorialize here the rulings it made from the bench during the July 11 pretrial hearing as to each separately-numbered paragraph in Mr. Hatfield's Motion:

(1) Granted, with the caveat that this ruling does not prevent Mr. Pirani from presenting evidence or argument regarding his state of mind;

(2) Deferred ruling, subject to pretrial briefing that the parties will submit on the topic of the settlement agreement;

(3) Granted;

(4) Deferred ruling, but Mr. Pirani may not mention his discussions with Mark Henry or any recordings made thereof during his opening statement nor during trial without first approaching the bench and seeking permission to do so outside the hearing of the jury;

(5) Granted;

(6) Deferred ruling, with the caveat mentioned above regarding law of the case and permissible and impermissible uses;

(7) Granted, in that Mr. Pirani may not present evidence that he has never previously engaged in the conduct of which he is accused here for the purpose of proving he lacked the propensity to engage in the conduct of which he is accused here;

(8) Denied;

(9) Deferred ruling, subject to pretrial briefing that the parties will submit on the topic of the settlement agreement;

(10) Granted;

(11) Deferred ruling, with the caveat mentioned above regarding law of the case and permissible and impermissible uses;

(12) Granted, with respect to Ms. Vital's affidavit; deferred ruling with respect to the relevance of Ms. Vital's notes;

(13) Granted;

(14) Granted;

(15) Granted;

(16) Granted;

(17) Granted;

(18) Granted;

(19) Granted as to documentary evidence, though Mr. Pirani may cross-examine Mr. Banks regarding whether he was intoxicated at the time of the crash;

(20) Granted;

(21) Granted;

(22) Deferred ruling, with the caveat mentioned above regarding law of the case and permissible and impermissible uses;

(23) Granted;

(24) Deferred ruling with respect to relevance;

(25) Granted;

(26) Granted;

(27) Granted;

(28) Granted;

(29) Granted;

(30) Granted;

(31) Granted, with the caveat mentioned above regarding law of the case and permissible and impermissible uses.

IT IS THEREFORE ORDERED that:

- Plaintiff Jason M. Hatfield, P.A.'s Motion in Limine (Doc. 391) is **GRANTED IN PART AND DENIED IN PART;**
- Plaintiff's Motion for Sanctions and Fees (Doc. 396) is **GRANTED IN PART,** with the particular sanctions to be determined on a later date;
- Plaintiff's Motion to Strike (Doc. 399) is **GRANTED IN PART,** with further sanctions to be determined on a later date; and
- Defendants Tony Pirani's and Pirani Law, PA's Motions in Limine (Docs. 397 and 398) are **STRICKEN.**

IT IS SO ORDERED on this 16th day of July, 2025.

All Citations

Slip Copy, 2025 WL 1950112

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2025 WL 679024
Only the Westlaw citation is currently available.
United States District Court, E.D. Arkansas,
Central Division.

Diane NGUYEN, on behalf of herself
and all others similarly situated, Plaintiff
v.
SAVAGE ENTERPRISES, et al., Defendants

CASE NO. 4:24-CV-00815-BSM
|
Signed March 3, 2025

Attorneys and Law Firms

Caleb Baumgardner, Lucien R. Gillham, Luther Oneal Sutter, Sutter & Gillham, PLLC, Little Rock, AR, for Plaintiff.

James Andrew Vines, Dobson & Vines PLLC, Little Rock, AR, for Defendant Savage Enterprises.

Timothy Joseph Giattina; McMath Woods, P.A., Little Rock, AR, for Defendant Kunal Manmeet LLC.

ORDER

BRIAN S. MILLER, UNITED STATES DISTRICT JUDGE

*1 Diane Nguyen is ordered to pay $1000 into the registry of the court as a sanction for citing nonexistent authority in support of her response to Savage Enterprises's motion to dismiss. *See* Doc. No. 47. Nguyen was ordered to show cause why she should not be sanctioned for citing nonexistent authority. Doc. No. 55 at 11. She responded that artificial intelligence, as well as counsels' heavy workload and personal issues, may have contributed to the errors in her response. *See* Doc. No. 56 at 2–4. She concludes with an apology. *See id.* at 4–6.

When a party presents a pleading to the court, it is certifying that all of the claims, defenses and other legal contentions made in the pleading are warranted by existing law or a non-frivolous argument. *See* Fed. R. Civ. P. 11(b); *Stephen L. LaFrance Holdings, Inc. v. Sorensen*, No. 4:11-CV-00807-BRW, 2012 WL 299542, at *2 (E.D. Ark. Feb. 1, 2012). "A fake opinion is not 'existing law' and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law. An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system." *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023) (citations omitted). A reasonable sanction may be imposed when Rule 11(b) is violated. *See Stephen L. LaFrance Holdings, Inc.*, 2012 WL 299542, at *2.

Nguyen's violation of Rule 11(b) warrants a reasonable sanction, and $1000 is reasonable because it is on the low end of the range of sanctions imposed on others who have engaged in similar conduct. *See, e.g., Mata*, 678 F. Supp. 3d at 466 ($5,000); *Wadsworth v. Walmart Inc.*, No. 2:23-CV-118-KHR, 2025 WL 608073, at *8 (D. Wyo. Feb. 24, 2025) ($3,000 and $1,000); *United States v. Hayes*, No. 2:24-CR-0280-DJC, 2025 WL 235531, at *15 (E.D. Cal. Jan. 17, 2025) ($1,500).

For these reasons, Diane Nguyen has fourteen days to pay $1000 into the registry of the court as a sanction for citing nonexistent authority.

IT IS SO ORDERED this 3rd day of March, 2025.

All Citations

Slip Copy, 2025 WL 679024

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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

IN RE: WHITEHALL PHARMACY LLC, DEBTOR

CASE NO.: 4:25-bk-12406
CHAPTER 11

ORDER REGARDING SANCTIONS

Before the court is its *Order to Appear and Show Cause Why Sanctions Should Not Issue* ("OSC") entered on August 18, 2025, at ECF No. 89 directing Charles D. Davidson, Sr. ("Davidson"), Deven Harvison ("Harvison"), and the Davidson Law Firm (collectively, "Counsel") to appear and show cause why this court should not find one or more violations of Rule 9011 and Local Rule 2090-2[1] with sanctions as provided therein. Counsel, on August 28, 2025, filed their *Response to Order to Show Cause Why Sanctions Should Not Issue* ("Response") at ECF No. 98. By agreement, Counsel rested on their Response. Thereafter, the court took the matter under advisement. For the reasons stated herein, the OSC is withdrawn and dismissed; no sanctions are imposed. This order concludes this matter and shall be transmitted to the Arkansas Office of Professional Conduct to supplement Counsel's election to self-report; this transmission is not intended as an independent referral.

I. BACKGROUND

The debtor, Whitehall Pharmacy LLC ("Whitehall"), filed a Chapter 11 case on July 21, 2025, represented by Davidson and Harvison, both attorneys at the Davidson Law Firm. The commencement of a Chapter 11 case is often attended by several motions seeking first day orders from the court; these typically concern ongoing operations, such as utilities and use of cash collateral. Whitehall adhered to this pattern.

---

[1] Federal Rule of Bankruptcy Procedure 9011; Local Rule 2090-2 of the United States Bankruptcy Courts for the Eastern and Western Districts of Arkansas.

Atypically, however, Whitehall also sought permission from the court to pay *pre-petition* claims of various creditors or vendors deemed critical to Whitehall's ongoing business and potential reorganization. Specifically, Whitehall filed its *Amended Motion for Authority to Pay Critical Vendors* ("Amended Motion") at ECF No. 24, which states in pertinent part:

> COMES NOW Whitehall Pharmacy LLC, Debtor and Debtor-in-Possession (the "Debtor"), by and through its counsel, and for its Amended Motion for Authority to Pay Critical Vendors (the "Motion"), respectfully states as follows:
>
> ....
>
> 15. Courts in this District and others have routinely authorized the payment of critical vendor claims under similar circumstances. See, e.g., *In re Berry Good, LLC*, No. 4:20-bk-12345 (Bankr. E.D. Ark. May 2020) (authorizing payment of perishable produce suppliers critical to debtor's restaurant operations).
>
> ....
>
> WHEREFORE, the Debtor respectfully requests that this Court enter an order: (1) Authorizing, but not directing, the Debtor to pay prepetition obligations of the Critical Vendors up to a cap of $1,904,869.56; (2) Authorizing the Debtor to condition such payments on the continued provision of goods and services on customary trade terms; and (3) Granting such other and further relief as is just and proper. Absent the relief requested, Debtor will suffer immediate and irreparable harm due to potential supply chain disruption, loss of access to pharmaceuticals, and harm to patient care and estate value.
>
> Respectfully Submitted,
>
> DAVIDSON LAW FIRM
>
> /s/ Charles Darwin Davidson, Sr.
> Charles Darwin Davidson, Sr. ABN73026
> -and-
> Deven K. Harvison ABN2017263
> 724 Garland Street
> Little Rock, Arkansas 72201
> 501-374-9977
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(*Amended Motion*, at 1, 4, and 6, ECF No. 24). The *Berry Good* case and parenthetical comprise the only caselaw and substantive authority cited in the Amended Motion supporting the requested relief.

The Hon. Phyllis M. Jones entered her *Interim Order Authorizing the Debtor to Pay Prepetition Claims of Critical Vendors* ("Interim Order") at ECF No. 28 granting the requested relief on a temporary basis and setting the Amended Motion for hearing on August 14, 2025. Thereafter, Judge Jones recused, which resulted in this court presiding at the August 14 hearing; both Davidson and Harvison appeared on Whitehall's behalf. By its *Order* entered on August 14, 2025, at ECF No. 84, the court terminated without prejudice the Interim Order and reserved the Amended Motion for hearing by subsequent notice.

At the August 14 hearing, this court raised perceived infirmities respecting paragraph 15 of the Amended Motion; specifically, the factual allegations and legal assertions contained therein could be misleading, false, or incorrect. Critical vendor motions are not routinely filed or granted in the Eastern District of Arkansas. The case referenced in paragraph 15 does not exist. The case number reflects an actual Chapter 13 bankruptcy case in the Eastern District of Arkansas; the case name, *In re Berry Good, LLC*, does not. The order referenced therein does not exist or stand for the proposition suggested. At the August 14 hearing, Counsel admitted as much and intimated that artificial intelligence ("AI") may have been used in generating paragraph 15.

II. RESPONSE

Accordingly, the court issued its OSC pursuant to Rule 9011 and Local Rule 2090-2. In their Response, Counsel wisely elected four courses of action. First, while outlining their process by way of explanation (including the use of AI), Davidson and Harvison took and accepted ultimate responsibility for the phantom case citation and authority; they pled negligence and

systemic lapses in lieu of an intent to mislead the court or gain an adversarial advantage. Second, Counsel self-imposed several internal safeguards. Specifically,

> 36. Debtor's Counsel remains committed to maintaining the highest professional standards of accuracy, candor, and integrity in all filings with the Court. To that end, Debtor's Counsel has implemented immediate safeguard[s], including, but not limited to:
>
> a) AI will no longer be used in the preparation of motions, pleadings, or other documents filed with the Court;
> b) Any remaining use of AI will be confined strictly to administrative tasks, and only with attorney oversight;
> c) All counsel at DLF must enroll in and attend additional CLE at a minimum of three (3) hours regarding AI's use in the legal industry;
> d) Mandatory attorney review of all drafts prior to filing has been reinforced;
> e) Every case citation included in any filing must now be verified directly in Westlaw or Lexis before a pleading is finalized and failure to adhere to this policy, failure to do so will result in appropriate disciplinary action.

(*Response*, at 10 and 11, ECF. No. 98). Third, Counsel volunteered that it would not bill Whitehall for any time related to the Amended Motion, OSC, or Response. Fourth, Counsel self-reported this matter by transmitting to the Arkansas Office of Professional Conduct the OSC and their Response.

III. ANALYSIS

Bankruptcy "first day orders" are reorganization specific. After filing, the automatic stay takes effect affording the debtor immediate refuge from their creditors while it attempts to reorganize. Harmoniously, the Bankruptcy Code both fosters and circumscribes the debtor's ability to continue its operations without some court, creditor, or United States Trustee ("UST") scrutiny. The exigencies of the situation, however, often require that some matters, such as use of cash collateral, must be addressed almost immediately upon filing. It is typical for the debtor to file a variety of first day motions with limited notice to other parties. The court, recognizing the

exigencies of the circumstances,[2] generally affords first day requests favorable treatment. In doing so, the court relies on the representations contained in the motions, knows that any resulting orders are temporary, and takes comfort that the court, creditors, and UST can suss out the authority and facts to determine whether the relief accorded should extend beyond the initial interim. Paragraph 15 of the Amended Motion fits that rubric.

> 15. Courts in this District and others have routinely authorized the payment of critical vendor claims under similar circumstances. See, e.g., *In re Berry Good, LLC*, No. 4:20-bk-12345 (Bankr. E.D. Ark. May 2020) (authorizing payment of perishable produce suppliers critical to debtor's restaurant operations).

(*Amended Motion*, at 4). The *Berry Good* case and parenthetical comprise the only persuasive authority cited in the Amended Motion supporting the requested relief.

Unfortunately, just about everything in paragraph 15 is incorrect. Critical vendor motions are not routinely filed or granted in the Eastern District of Arkansas. The case referenced in paragraph 15 does not exist. The case number reflects an actual Chapter 13 bankruptcy case in the Eastern District of Arkansas; the case name, *In re Berry Good, LLC*, does not. The order referenced therein does not exist or stand for the proposition suggested and is, as confirmed in the Response, AI generated.

The idea behind a critical vendor motion is that the debtor seeks to favor certain vendors by elevating and paying their *pre-petition* debt because their product or services are "critical." This treatment is inconsistent with the Bankruptcy Code and usurps the protections afforded by disclosure, classification, acceptable discrimination, and ratable distribution contemplated by a full plan confirmation process. There are jurisdictions both rejecting and accepting critical vendor efforts.

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[2] *See* 11 U.S.C. § 363(c)(3) (stating that any hearing on immediate use of cash collateral "shall be scheduled in accordance with the needs of the debtor").

The issue is not conclusive in the Eighth Circuit, though at least four courts within the circuit have published opinions referencing critical vendor motions with approbation. *See R. Ray Fulmer, II v. Fifth Third Equip. Fin. Co.* (*In re Veg Liquidation, Inc.*), 583 B.R. 203 (B.A.P. 8th Cir. 2018); *In re Wehrenberg, Inc.*, 260 B.R. 468 (Bankr. E.D. Mo. 2001); *In re Payless Cashways, Inc.*, 268 B.R. 543 (Bankr. W.D. Mo. 2001); *In re O & S Trucking, Inc.*, No. 12-61003, 2012 WL 2803738 (Bankr. W.D. Mo. June 29, 2012); and *In re BDC Grp., Inc.*, No. 23-00484, 2023 WL 4111476 (Bankr. N.D. Iowa June 21, 2023). But, insofar as this court can determine, critical vendor motions and orders approving same are not routine in the Eastern or Western Districts of Arkansas. No current judge, current law clerk, or five career law clerks past and present polled can recall one ever being addressed or approved in these two districts.

Whether an Eastern District of Arkansas bankruptcy court should approve a critical vendor motion is certainly subject to dispute. This court inclines toward the belief that there is statutory and case law authority that may justify same. On that premise, argument for the relief requested is fair; a categorical statement that it is routine in this district is not. Alone, that representation only invites curiosity which diminishes the argument. That representation, however, coupled to a specific but non-existent case in support, invites scrutiny and consequences.

When examined, paragraph 15 is the result of a flawed AI search that suggested an incorrect generalization falsely supported by a specific but non-existent case. Under any scenario, a suspect argument buttressed with a case from whole cloth violates the expressed and tacit norms governing the practice of law as it intersects with the courts. Simply, you cannot make stuff up to convince a court to do something.

In simpler times, that would end the inquiry with draconian consequences. The times, however, are no longer simple; thus, the inquiry does not end here.

AI interposes additional considerations that defy easy categorization or scrutiny when examining the traditional norms of practice and advocacy. Threshold, two fields of inquiry present in any AI debate. The first is whether exposition artificially generated by a computer is acceptable in what has contextually been a forum for human critical analysis, thought, and advocacy. That is not the instance here. Rather, it is the second; that is, when AI sacrifices accuracy to satisfy the consumer and that inaccuracy is advocated before the court.

Thus, the inquiry becomes (1) are the expressed norms violated and (2) does an artificial component alter the discourse and impact the consequences. The answer to the first is easy. As suggested above, the use of a phantom case clearly violates the traditional and expressed norms of advocacy and practice before any court. It would be difficult to argue otherwise.

First, it is a violation of Rule 9011, which provides in pertinent part:

> (b) Representations to the Court. By presenting to the court a petition, pleading, written motion, or other document-whether by signing, filing, submitting, or later advocating it-an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:
>
> > (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law;

Fed. R. Bankr. P. 9011.

Second, phantom case authority violates Local Rule 2090-2 of the United States Bankruptcy Court for the Eastern and Western Districts of Arkansas. With respect to Attorney Discipline and Disbarment, the rule provides:

> The standard of professional conduct for attorneys practicing in this Court is governed by the Arkansas Rules of Professional Conduct and Federal Rule of Bankruptcy Procedure 9011. The Court will refer violations of the Arkansas Rules of Professional Conduct to the Arkansas Committee on Professional Conduct for such actions and sanctions as the Committee deems appropriate. Additionally, the Court shall have such authority and discretion as are permitted by and under the

> Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, statutory and common law, and the express and inherent powers conferred upon them. Sanctions may include suspension or disbarment from the practice before this Court.

As incorporated, the Arkansas Rules of Professional Conduct weigh in and provide in pertinent part:

> Rule 3.3. Candor Toward the Tribunal.
> (a) A lawyer shall not knowingly:
> (1) make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]

Further,

> Rule 8.4. Misconduct.
> It is professional misconduct for a lawyer to:
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice[.]

Non-existent authority is grounds for sanction and referral under Rule 9011, our local rules, the court's inherent powers, and the Arkansas Rules of Professional Conduct as incorporated.

So, the answer to the first question posed above is a resounding yes. The only acceptable conclusion is that citing a made-up case is a false representation to the court that violates the expressed norms of practice, is actionable, and should bear consequences. The answer, however, to the second question—whether an artificial component alters the calculus—is more difficult.

Here, our traditional norms are challenged. In context, the traditional advocacy process begins with black letter law in the form of statutes, codes, and regulations. Then, there are judicial opinions and orders interpreting black letter law in the context of justiciable issues based on discrete facts. Lawyers cite cases for their binding or persuasive authority and have done so ever since someone started committing judicial decisions to stone, parchment, or paper. The ability to find and cite cases has evolved over time from laborious research in courthouses, to compendiums, indices, digests, reporters, advance sheets, key numbers, and now the internet.

The internet changed this dynamic in two ways. First, it streamlined, refined, and improved the research process. Users could select fields, topics, and key numbers to find and locate cases. Eventually, more specific tools, such as key words or phrases, enhanced the process. Second, and more pertinent to the present issue, AI is creating a process where instead of just finding authority, the computer also does the supplicant's thinking and analysis for them. The first innovation continues to evolve; the second is new, likewise continues to evolve, but constitutes an *entirely new dimension*, rather than a continuum, in legal practice. Finding has evolved into finding and thinking.

Travel back to research, the first changed dynamic. From stone to the internet, how lawyers found and used case law took many forms. Some would carefully read every case they found; some would read every page of select cases they thought pertinent; others might read the digest entry and then read only that section of the case; others might read only the digest entry; others barely read anything at all and cited anything that looked like it might support their position. Each was a personal decision by the lawyer for which he or she is accountable under the traditional norms of practice both officially—through codes of conduct and Rule 9011—and unofficially per the norms and expectations of courts.

AI compresses this historical dynamic. The research engine is now the search and thinking engine. AI finds case law and tells the subscriber that it supports their position. All the personalities described above—and known oh-so-well to us all—have become one.

Except, however, AI is flawed. In its infancy—albeit one that may be in college soon—it is immature and does not always provide accurate information or correct analysis; it may even make things up.

A tool that potentially supplants your advocacy by doing the finding and thinking for you is enticing.[3] But in the end, it is only a tool. Despite our near total and unfortunate faith in the internet, it does not relieve the attorney of his or her responsibility to make sure that the information and analysis are correct.

Reliance on AI can, however, mitigate intent. Here, Counsel is responsible for their negligence and misplaced reliance on AI, but there is no indication—and this court does not believe—that they purposely misled the court. They did not decide to make up a case. Misplaced reliance or negligence does not always equal intentional misrepresentation.

To be clear, the mitigation is not of their responsibility; that remains choate. A lawyer should know the authority they are citing. Rather, misplaced reliance or negligence can mitigate consequences to the extent the proof or self-evident facts demonstrate a lack of intent to actively mislead the court.

This is not an abjuration of the lawyer's responsibility to the profession and to the courts. Rather, this is a recognition that negligence or misplaced reliance on a new technology should not be viewed through the same exacting prism as an intentional effort to mislead a court or gain an adversarial advantage by purposely creating and citing nonexistent authority. If two things are not the same, consequences should not be the same.

A new technology affords only a limited window where this defense is available; time will alert the bar to AI's limitations and how the bench and bar should respond. Adversaries and the courts are entitled to rely on the integrity of advocacy; if AI displaces the mule, lawyers retain the reins. Here, Counsel acknowledges their negligence in that regard. In these circumstances, grace presents in determining consequences.

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[3] Enticing until it supplants you entirely.

Rule 9011, our local rules, and this court's inherent powers afford it an array of possible remedies and sanctions. The court, however, is satisfied that the remedial actions and safeguards outlined in the Response are appropriate to the circumstances. No sanctions are warranted or issued.

IV. CONCLUSION

The OSC is withdrawn and dismissed. This order concludes this matter and shall be transmitted to the Arkansas Office of Professional Conduct to supplement Counsel's election to self-report; this transmission is not intended as an independent referral.

IT IS SO ORDERED.

Dated this this 3rd day of September 2025.

HONORABLE RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

cc: Whitehall Pharmacy LLC
Charles D. Davidson, Sr.
Deven Harvison
Joseph A. DiPietro
Robert Brech

2026 Ark. App. 205
Court of Appeals of Arkansas,
DIVISION IV.

Patrick HRDLICHKA, Appellant
v.
Samantha BENGSTON, Appellee

No. CV-25-106
|
Opinion Delivered April 1, 2026

APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04CV-23-3080], HONORABLE JOHN R. SCOTT, JUDGE

Attorneys and Law Firms

Patrick Hrdlichka, pro se appellant.

One brief only.

Opinion

STEPHANIE POTTER BARRETT, Judge

*1 **1 Patrick Hrdlichka, pro se, appeals from the Benton County Circuit Court order awarding appellee, Samantha Bengtson, $10,000.00 in compensatory damages as well as $237.50 in costs under Arkansas Code Annotated section 16-118-107 (Repl. 2016). On appeal, Hrdlichka argues (1) the circuit court incorrectly applied Arkansas Code Annotated section 16-118-107; (2) there was no evidence of felony conduct introduced, so he cannot be liable under Arkansas Code Annotated section 16-118-107; (3) compensatory damages were awarded without meeting the standard of preponderance of the evidence; (4) the circuit court's interpretation of Arkansas Code Annotated section 16-118-107 contradicts well-established Arkansas jurisprudence; and (5) the court's ruling violates his constitutional guarantee to equal protection under article 2, section 3 of the Arkansas Constitution. *2 Bengtson did not file a response brief in this appeal. Due to numerous fatal briefing deficiencies under the Rules of the Supreme Court and Court of Appeals and Arkansas Rules of Appellate Procedure–Civil that prevent us from engaging in meaningful review, including the submission of fictitious cases, we dismiss the appeal.

On November 7, 2023, Bengtson filed a complaint in the Benton County Circuit Court alleging that on the night of February 3, 2022, Hrdlichka committed a felonious second-degree battery against her, and she suffered damages as a result. Bengtson sought to recover damages under Arkansas Code Annotated section 16-118-107, which allows for crime victims to seek damages in a civil action. After a bench trial, the circuit court denied Bengtson's request for punitive damages but awarded Bengtson $10,000.00 in compensatory damages plus interest at the rate of 5 percent until paid plus the cost of the service and filing fees. Hrdlichka did not object to the court's award of damages. On November 1, 2024, the circuit court entered its written judgment awarding Bengtson $10,000.00 in compensatory damages and an additional $237.50 in costs.

The standard of review on appeal from a bench trial is whether the court's findings were clearly erroneous or clearly against the preponderance of the evidence. *See, e.g.*, *El Paso Prod. Co. v. Blanchard*, 371 Ark. 634, 640, 269 S.W.3d 362, 368 (2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that an error has been made. *Id.* Facts in dispute and determinations of credibility are solely within the province of the fact-finder. *Id.*

*3 The present appeal contains multiple fatal briefing deficiencies that prevent us from conducting a meaningful review. Parties appearing pro se, like Hrdlichka, receive no special consideration of their argument and are held to the same standard as licensed attorneys. *See Perry v. State*, 287 Ark. 384, 699 S.W.2d 739 (1985).

Hrdlichka's brief fails to comply with Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals in numerous respects. Rule 4-2(a) prescribes the required contents and organization of an appellant's brief, and the deficiencies here are pervasive. The points on appeal and the table of contents are not arranged in the order required by the rule. Ark. Sup. Ct. R. 4-2(a)(2)–(3). The statement of facts fails to include citations to the record for nearly the entirety of the narrative and omits essential procedural history necessary for appellate review. Ark. Sup. Ct. R. 4-2(a)(6). Instead of presenting a unified statement of the case and the facts as contemplated by the rule, Hrdlichka includes a separate paragraph labeled "Statement of the Case," further departing from the prescribed structure. *Id.* Moreover, the argument section is not presented under clear subheadings numbered to correspond with the points on appeal. Rule

4-2(a)(7) requires that each argument be set out under a separate, clearly designated heading that corresponds to the point relied on. This requirement ensures that the court and opposing parties may readily identify the issues presented for review. Hrdlichka's failure to organize the argument in this manner renders the brief difficult to follow and inhibits meaningful appellate consideration. Although any one of the above-described deficiencies, viewed in isolation, might appear technical or minor, taken together they reflect a complete failure to comply with Rule 4-2.

*4 **2 Even more concerning to this court is the fact Hrdlichka cites multiple cases that, upon review, do not exist. The authorities relied on in support of his arguments are not found in the Arkansas Reports, the South Western Reporter, or any recognized legal database. In short, they are fictitious. We cannot evaluate arguments predicated on nonexistent precedent. The appellate process depends on accurate citation to existing authority so that we may assess the legal foundation of a party's claims. When a party cites fabricated cases, we are deprived of any meaningful ability to conduct review. Fictitious citations fail to comply with Rule 4-2 of the Rules of the Arkansas Supreme Court and Appellate Court. Rule 4-2(a)(7) requires that arguments contain citation to authority relied on and that citations conform to the required format. This rule is not aspirational. It ensures clarity, uniformity, and fairness in our appellate process. Hrdlichka's citations do not conform to the rule's formatting requirements and, more critically, do not correspond to any real authority.

Additionally, all counsel appearing before this court are bound to exercise professional judgment and responsibility and to comply with the rules of appellate procedure. Among other obligations, Rule 11 provides that by presenting a submission to the court, an attorney certifies "to the best of his knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact [and] is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Ark. R. App. P.–Civ. 11(a). At the very least, the duties imposed by Rule 11 require that parties read, and thereby confirm the existence and validity of, the legal authorities on which *5 they rely. Indeed, we can think of no other way to ensure that the arguments made based on those authorities are "warranted by existing law." *Id.* R. 11(a). These significant violations of our rules mandate dismissal of this appeal.

We further take this opportunity to address a growing and troubling practice: the submission of appellate briefs generated in whole or in part through artificial-intelligence tools that contain fabricated, inaccurate, or nonexistent legal citations. This practice presents serious risks to the integrity of judicial proceedings and undermines the administration of justice.

First, the appellate process depends on accuracy. Appellate courts review legal arguments grounded in established authority. When a party cites precedent, the court must be able to rely on the representation that the authority exists, that it stands for the proposition asserted, and that it has not been mischaracterized. Fabricated citations—whether created intentionally or through unverified use of artificial intelligence—waste judicial resources, delay resolution of cases, and erode confidence in the judicial system.

Second, all litigants, including pro se appellants, bear responsibility for the contents of their filings. The use of artificial intelligence does not relieve a litigant of the duty to verify the accuracy of citations. A brief containing nonexistent cases is no different, in effect, from a brief containing invented precedent.

Third, the court emphasizes that technology, including artificial intelligence, is not a substitute for legal judgment, verification, and professional diligence. For these reasons, the court strongly discourages pro se appellants and attorneys from submitting artificial-intelligence-generated *6 arguments without thorough verification. The integrity of the appellate process depends on the reliability of the record and the authenticity of the law cited. That responsibility remains squarely with the party who signs and submits the brief. Filings that contain fabricated or materially inaccurate citations may be struck, and appropriate sanctions, such as dismissal, may be imposed where warranted.

Finally, filing an appellate brief with fictitious citations in this court, for any reason, is a flagrant violation of the duties of candor Hrdlichka and every other appellant owes to this court. We regret that Hrdlichka has given us our first opportunity to consider the impact of fictitious cases being submitted to this court, an issue that has gained national attention in the rising availability of artificial intelligence. "Citing nonexistent case law or misrepresenting the holdings of a case is making a false statement to a court[;] [i]t does not matter if [generative A.I.] told you so." Maura R. Grossman, Paul W. Grimm & Daniel G. Brown, *Is Disclosure and Certification of the Use of Generative AI Really Necessary?* 107 Judicature, no. 2, 2023,

at 68, 75. As a federal district court in New York recently noted,

> **3 A fake opinion is not "existing law" and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law. An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system.

Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023) (internal citation omitted) (dismissing a filing and sanctioning a party for submitting bogus legal citations generated by ChatGPT); *see also Model Rule of Prof'l* Conduct 3.3 (Am. Bar. Ass'n 2025) (imposing an ethical duty to demonstrate candor to the courts and prohibiting the making of false *7 statements of material fact or law). To protect the integrity of the justice system, courts around the country have been considering and enacting local rules specifically geared towards prohibiting or disclosing the use of generative artificial intelligence in court filings. We urge all parties practicing before this court, barred and self-represented alike, to be cognizant that we are aware of the issue and will not permit fraud on this court in violation of our rules.

Dismissed.

Klappenbach, C.J., and Brown, J., agree.

All Citations

--- S.W.3d ----, 2026 Ark. App. 205, 2026 WL 886645

End of Document

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANDING ORDER RE: ARTIFICIAL INTELLIGENCE ("AI") IN CASES ASSIGNED TO JUDGE BAYLSON

If any attorney for a party, or a *pro se* party, has used Artificial Intelligence ("AI") in the preparation of any complaint, answer, motion, brief, or other paper, filed with the Court, and assigned to Judge Michael M. Baylson, **MUST**, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing, and **CERTIFY**, that each and every citation to the law or the record in the paper, has been verified as accurate.

DATED: 6/6/2023

BY THE COURT:

/s/ MICHAEL M. BAYLSON

MICHAEL M. BAYLSON, U.S.D.J.

DISCLOSURE AND CERTIFICATION REQUIREMENTS FOR GENERATIVE ARTIFICIAL INTELLIGENCE
Chambers of United States Magistrate Judge Jason A. Robertson

1. Consistent with Rule 11(b) of the Federal Rules of Civil Procedure, and the certifications required thereunder, the Court directs that any party, whether appearing pro se or through counsel, who utilizes any generative artificial intelligence (AI) tool in the preparation of any documents to be filed with the Court, must disclose in the document that AI was used and the specific AI tool that was used. The unrepresented party or attorney must further certify in the document that the person has checked the accuracy of any portion of the document drafted by generative AI, including all citations and legal authority.

2. If generative AI is utilized in the preparation of any documents filed with the Court, the unrepresented party or attorney will be held responsible for the contents thereof, in accordance with Rule 11 and applicable rules of professional conduct and/or attorney discipline.

3. The failure to make the disclosure and certification described in paragraph 1 may result in the imposition of sanctions.

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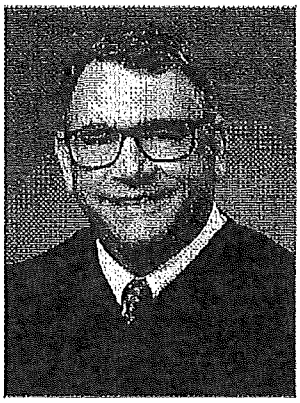
Ill. Magistrate Judge Fuentes Talks Pulling Back AI Order

By **Sarah Martinson**



Judge Gabriel Fuentes

Law360 (August 2, 2024, 4:05 PM EDT) -- Almost a year after issuing a standing order on generative artificial intelligence, Illinois Magistrate Judge Gabriel A. Fuentes has pulled back that order, finding it no longer necessary and slightly burdensome, the judge recently said at a panel during the American Bar Association's annual meeting in Chicago.

In May 2023, Judge Fuentes had issued a standing order for civil cases requiring all litigants to disclose the use of generative AI for legal research or document drafting.

Judge Fuentes said at the panel Thursday that in the year following his order, not a single litigant disclosed using generative AI in filings submitted to his court.

Jayne Reardon, another panelist and a legal ethics consultant, asked the judge what he would have done if litigants had disclosed using generative AI in their court filings.

"I wasn't sure what I was going to use the information for, which is why I wanted to back off a little bit," Judge Fuentes said.

In April, Judge Fuentes issued a revised standing order that no longer included a generative AI disclosure requirement. The disclosure requirement was moved to an appendix of background information and court preferences attached to the standing order.

Judge Fuentes is one of several federal judges who have **issued standing orders** requiring litigants to disclose their use of generative AI or certify that AI-generated material is accurate.

Many of those orders were issued after a pair of New York personal injury attorneys **made headlines** for submitting a ChatGPT-generated brief with fake case citations. The attorneys were **ultimately sanctioned** for their mistake.

Standing orders on AI have continued to slowly trickle in since the New York case. In June, a group of North Carolina federal judges **issued an order** requiring litigants to certify that their court filings do not use generative AI outside standard legal research tools and have been fact-checked by a human.

While judges are well-meaning with their AI orders, a few legal scholars have **raised concerns** about these orders discouraging the use of technology and creating more barriers for self-represented litigants.

Going in a different direction, the Fifth Circuit in June **rejected** a proposed rule requiring attorneys to verify that documents were not written using generative AI, or if they were, that they were checked for accuracy by humans.

Legal scholars told Law360 Pulse that they hope the circuit court's decision will **deter courts** from adopting similar AI rules.

Judge Fuentes was one of six speakers on Thursday's panel that covered a wide range of issues

involving AI, including access to justice and the ABA's **recent ethics guidance** on using the technology.

The other speakers were Leighton Allen, associate at Foley & Lardner LLP; Daniel Linna Jr., senior lecturer and director of law and technology initiatives at Northwestern University Pritzker School of Law; Josh Strickland, corporate vice president and global products counsel at Motorola Solutions Inc.; and Cook County Circuit Court Judge E. Kenneth Wright Jr.

The panel was moderated by Lucy Thomson, founding principal at Livingston PLLC and one of the co-editors of the **ABA's new book on AI**.

--Editing by Lakshna Mehta.

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

June 5, 2026

Presentation from 9:30 to 10:30

Through the Appellate Lens: A Perspective from the Arkansas Supreme Court

Hon. Annabelle Clinton Imber Tuck

Associate Justice of the Arkansas Supreme Court (Retired)

Moderator: Hon. Richard D. Taylor

U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas

Handout Materials

THE HON. JAMES G. MIXON TRIAL PRACTICES SYMPOSIUM
JUNE 5, 2026

THROUGH THE APPELLATE LENS: A PERSPECTIVE FROM THE ARKANSAS SUPREME COURT-RETIRED

Hon. Annabelle Clinton Imber Tuck

I. *Introduction*
   a. Practiced with Wright, Lindsey & Jennings
   b. Chancery and Circuit Judge, Pulaski Co.
   c. Associate Justice with the Arkansas Supreme Court
   d. Jurist in Residence, Bowen School of Law

II. *Reflections and Perspective* (Moderator: Hon. Richard D. Taylor)
   a. Practice, Circuit Court, Supreme Court, and Educator: Which did/do you personally enjoy the most and why?
   b. From all three, what areas of trial practice present difficulties to many lawyers?
   c. Post-law school, how can lawyers best hone their trial skills?
   d. How important is making the record?
   e. Can closing and oral argument change the jurist's mind?

III. *Recent Cases*

Recent notable Arkansas Supreme Court cases involving evidence or trial practices include rulings on the admission of out-of-court statements, juvenile transfer evidence, hearsay rules, and medical damages.

Key decisions and procedural changes include:

- **Hearsay and DNA Evidence** (*Owen Watson v. State of Arkansas*, 2026 Ark. 97 (May 7, 2026)): The Court affirmed the admission of DNA evidence, ruling that testimony regarding the collection of DNA swabs, their sealing in manilla envelopes, and secure transport to a state crime lab provided sufficient proof for authentication and proper chain of custody under Arkansas Rule of Evidence 901(a). Additionally, the Court affirmed the admission of testimony by a police officer regarding her actions in pursuing and apprehending a suspect as that testimony is not hearsay.
- **Juvenile Transfer Order and Evidence Presented in Support** (*State of Arkansas v. Minor Child*, 2026 Ark. 66 (Apr. 16, 2026)): Overturning precedent, the Court ruled that the legislature can authorize state appeals of non-final juvenile transfer orders. The Court found clear error by a circuit court, as direct testimony and other evidence demonstrated the crime was inherently violent, necessitating subsequent review.
- **Hearsay Testimony Limits** (*Parris v. State*, 2026 Ark. 5 (Jan. 29, 2026)): The Court reversed a defendant's theft-by-receiving conviction, ruling that an officer's testimony establishing that a firearm was stolen was inadmissible hearsay when it was solely based on checking a database entry rather than direct proof. "Testimony that an officer read a

report stating that a particular weapon was reported stolen is insufficient proof that it was stolen property, especially where the officer was unable to answer basic questions about who owned the weapon and who it was allegedly stolen from." The officer search and subsequent testimony was not an "actual business record" qualifying as an exception to Arkansas Rule of Evidence 803.

- **Courtroom Recordings and Access** (*Spencer v. State of Arkansas*, CR-26-38 (Jan. 23, 2026)): The Court granted an emergency writ of certiorari to vacate a lower court's January 2026 order that had placed limits on courtroom occupancy and banned all recordings during trial, protecting the openness of court proceedings. The order additionally removed the circuit court judge and reassigned the case to a special circuit judge.
- **Evidence of Medical Damages** (Proposed Rule 412): On February 5, 2026, the Arkansas Supreme Court published a Per Curiam regarding the proposed Creation of Rule 412 of the Arkansas Rules of Evidence to address recent legislative changes. The proposed evidence rule restricts the admissibility of evidence for past necessary medical care to the amounts actually paid or legally obligated to be paid.

Cite as 2026 Ark. 97

SUPREME COURT OF ARKANSAS

No. CR-25-768

OWEN WATSON APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered:** May 7, 2026 APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [NO. 18CR-22-338] HONORABLE RANDY PHILHOURS, JUDGE AFFIRMED AS MODIFIED.

NICHOLAS J. BRONNI, Associate Justice

Owen Watson began raping Minor Victim when she was just ten years old, and four months after she turned fourteen, MV gave birth to Watson's biological daughter. A jury convicted Watson of child rape, and the circuit court sentenced him to life in prison. He appeals his conviction and sentence, arguing evidentiary issues, judicial bias, and other supposed errors. We reject Watson's claims and affirm both his conviction and his sentence.

Factual and Procedural Background

When MV was ten years old, Watson, her mother's boyfriend, moved into their home. Watson then began raping MV. The abuse continued for years until MV became pregnant—at age thirteen—and her family contacted police. Following an investigation, the State charged Watson with rape.

Watson's trial was short. MV testified that Watson had begun raping her when she was just ten years old, and she described how she had learned she was pregnant. A police officer, Chelsey Stafford, testified about the investigation and, particularly relevant here,

how she had collected and stored DNA samples from Watson. A forensic DNA technician, Christopher Glaze, testified that DNA testing confirmed that Watson is the biological father of MV's child. And Watson did not contest paternity; his counsel repeatedly acknowledged that Watson is the biological father of MV's child.

The jury convicted Watson of rape, and the circuit court sentenced him to life in prison. Watson appeals.

Discussion

Watson raises five claims on appeal. Broadly speaking, he claims that the circuit court improperly: (1) heard hearsay testimony; (2) admitted DNA evidence without sufficient foundation; (3) denied his motion for a mistrial on the basis of a prospective juror's statement that she had worked with defense counsel at the public defender's office; (4) denied his recusal motion; and (5) concluded that he was a habitual offender. None of those claims have any merit, and we affirm Watson's conviction and sentence.

1. Start with the hearsay claim. Watson argues that the circuit court erred when it permitted Officer Stafford to testify that MV had told her that "Watson had been raping her since she was ten years old." Watson objected and argued that statement was inadmissible hearsay. The circuit court overruled the objection, explaining the statement was not being used to prove rape but to explain how Officer Stafford got involved with the case and how she conducted her investigation. That was not error. On the contrary, consistent with the circuit court's conclusion here, we have previously held that "testimony introduced to explain an officer's actions in pursing and apprehending a suspect is not hearsay." *Dixon v. State*, 2011 Ark. 450, at 14–15, 385 S.W.3d 164, 174. So we reject Watson's argument.

2. Second is Watson's argument that the circuit court erroneously admitted DNA evidence. Watson claims that DNA evidence should never have been admitted because "[t]here was no proof as to the chain of custody of the DNA exhibits whatsoever." But that is not the case. Officer Stafford testified about collecting DNA samples from Watson and MV's child, sealing those samples in manilla envelopes labeled with the case number, and delivering them to a secure evidence locker. Officer Stafford also testified that an evidence clerk transported those samples to the state crime laboratory for testing. And Glaze, the forensic DNA technician at the state crime laboratory, testified that he did not believe anyone had tampered with the envelopes used to collect the DNA samples.

Arkansas Rule of Evidence 901(a) says that "evidence is admissible so long as there is evidence sufficient to support a finding that the matter in question is what its proponent claims." *Faulkner v. State*, 2026 Ark. 60, at 8, 728 S.W.3d 352, 357 (quoting Ark. R. Evid. 901(a)) (internal quotation marks omitted). That rule does not require the State to "eliminate every possibility of tampering" or to "'account[] for . . . every person who could have conceivably'" touched a piece of evidence. *Lee v. State*, 326 Ark. 229, 236, 931 S.W.2d 433, 437–38 (1996) (quoting *Phills v. State*, 301 Ark. 265, 783 S.W.2d 348 (1990)). It need only "establish[] within a reasonable probability that the evidence ha[s] not been tampered with." *Guydon v. State*, 344 Ark. 251, 255, 39 S.W.3d 767, 770 (2001). The testimony above—explaining how the evidence was collected, secured, and moved—was more than sufficient to meet that standard.

3. Next is Watson's claim that the circuit court erred when it denied his motion for a mistrial after a prospective juror stated she knew Watson's attorney from her employment

at the public defender's office years earlier. Watson claims that statement revealed he was indigent and prejudiced his defense. To obtain a mistrial, Watson had to demonstrate that the prospective juror's statement was "so prejudicial that justice could not be served by a continuation of the trial." *Hill v. State*, 255 Ark. 720, 722, 502 S.W.2d 649, 650 (1973). Incontrovertibly, a mistrial is such "an extreme and drastic remedy," *Franklin v. State*, 2024 Ark. 9, at 4, 682 S.W.3d 1, 4, and only "appropriate when there is a high degree of necessity," *Renico v. Lett*, 559 U.S. 766, 774 (2010) (citing *Arizona v. Washington*, 434 U.S. 497, 506 (1978)) (internal quotation marks omitted).

Watson does not make that showing, preferring to simply speculate that mere knowledge that a prospective juror had once worked alongside defense counsel in the public defender's office would lead jurors to conclude that Watson was indigent and use that knowledge against Watson. But naked conjecture is not prejudice, and we have previously rejected substantially similar claims. *See Vaughn v. State*, 289 Ark. 31, 709 S.W. 73 (1986) (rejecting as speculative, a defendant's claim that he was so prejudiced by the circuit court's reference to his attorney as a public defender); *Landreth v. State*, 331 Ark. 12, 22–23, 960 S.W.2d 434, 439 (1998) ("Any prejudice caused by reference to the defense counsel as 'public defenders' is speculative at best."). We likewise do so here.

4. Then there is Watson's recusal motion. Watson argues that the circuit court abused its discretion when it denied his recusal motion after making an off-hand comment before trial expressing skepticism about Watson's claim that while the DNA proved he is the father of MV's child, he did not rape MV. The rules of judicial conduct require disqualification "in any proceeding in which the judge's impartiality might reasonably be

questioned." Ark. Code Jud. Conduct R. 2.11(A). That is a high standard, and Watson's allegation falls short here. Impartiality does not require gullibility; nor does it bar judges from forming opinions and expressing skepticism. *See In re J.P. Linahan, Inc.*, 138 F.2d 650, 654 (2d Cir. 1943) ("Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions."); *see also Bentonville Sch. Dist. v. Sitton*, 2022 Ark. 1, at 4 ("A mere allegation that a judge's conduct has the appearance of impropriety falls short of the disqualifying standard that a judge's impartiality be reasonably questioned."). Watson's claim to the contrary falls flat.

5. Last, we consider Watson's claim that the State failed to prove he was a habitual offender. The circuit court sentenced Watson as a habitual offender under Ark. Code Ann. § 5-4-501(d) (Repl. 2024) after the State proved Watson had been convicted of two prior violent felonies. The State proved one of Watson's prior convictions with a document titled "Order and Conditions of Probation." Watson argues that order was insufficient to prove the prior conviction, claiming that a document that merely shows he was placed on probation was not sufficient.[1] But the order does not simply show he was placed on probation. It shows Watson pled guilty, that the circuit court found him guilty, and that he was placed on probation. That is sufficient to prove "beyond a reasonable doubt that

[1]Watson also argues that order did not reflect that he was represented by counsel and thus could not be used to demonstrate a prior conviction. Because he did not make that argument below, the State did not have an opportunity to respond to it with additional evidence, so we decline to reach the unpreserved issue.

the defendant was [previously] convicted or found guilty." Ark. Code Ann. § 5-4-504(a) (Repl. 2025).

6. That leaves just one loose end. The State asks us to remand to correct a scrivener's error because the circuit court did not check the habitual-offender box on its sentencing order. We decline to remand this matter, "needless[ly] wasting . . . resources." *Smith v. State*, 2022 Ark. 95, at 22 (Womack, J., concurring). Instead, as the error is purely clerical, we exercise our power to "correct the sentence in lieu of remanding" and, as we have in other cases, affirm the sentence as modified. *Walden v. State*, 2014 Ark. 193, at 11, 433 S.W.3d 864, 871.

Affirmed as modified.

BAKER, C.J., and HUDSON, J., concur.

KAREN R. BAKER, Chief Justice, concurring. While I agree with the majority's decision to affirm Watson's rape conviction, I write separately because, based on this court's longstanding precedent, Watson's hearsay argument is not preserved for our review. Thus, I would decline to reach the merits of it.

On appeal, Watson challenges Officer Chelsey Stafford's testimony that, during the investigation, MV told Stafford that "Watson had been raping her since she was ten years old." At trial, Watson simply objected "to hearsay[.]" The circuit court overruled Watson's general hearsay objection, and the direct examination of Stafford continued. After Stafford's testimony had concluded and outside the presence of the jury, the circuit court expressed concern about its earlier ruling regarding the admissibility of Stafford's testimony recounting what MV said to her in the course of the investigation, because "we didn't establish any

groundwork for an excited utterance or anything like that." The court went on to explain that the testimony was admissible to "show why the investigator went on and did what she did the rest of that evening." No further objections were made.

Now on appeal, Watson argues that the circuit court abused its discretion by allowing Stafford to repeat at trial a prior consistent statement made by MV that improperly bolstered MV's testimony. He specifically contends that the prior consistent statement was inadmissible because MV's alleged motive to fabricate the rape allegations preexisted the statement she made to Stafford, and her motive was as great when the statement was made as it was when the testimony was given. Watson did not make these arguments at trial. In criminal cases, issues must be presented to the circuit court in order to preserve them for appeal. *Wilder v. State*, 2023 Ark. 137, at 5, 675 S.W.3d 424, 428. We have long held that arguments not raised at trial will not be addressed for the first time on appeal. *Coston v. State*, 2025 Ark. 143, at 6, 720 S.W.3d 241, 244. Likewise, parties cannot change the grounds for an objection on appeal but are bound by the scope and nature of their objections as presented at trial. *Id.* Therefore, I would decline to address the merits of Watson's prior-consistent-statement arguments because they were not presented to the circuit court as a basis for his general hearsay objection.

Accordingly, I must concur.

HUDSON, J., joins.

Lassiter & Cassinelli, by: *Michael Kiel Kaiser*, for appellant.

Tim Griffin, Att'y Gen., by: *Brooke Jackson Gasaway*, Ass't Att'y Gen., for appellee.

Cite as 2026 Ark. 66

SUPREME COURT OF ARKANSAS

No. CR-25-564

STATE OF ARKANSAS APPELLANT V. MINOR CHILD APPELLEE	Opinion Delivered: April 16, 2026 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. 60CR-25-987] HONORABLE LATONYA HONORABLE, JUDGE REVERSED AND REMANDED.

NICHOLAS J. BRONNI, Associate Justice

Appellee Minor Child is charged with the capital murder and aggravated robbery of a fifteen-year-old victim. MC was charged in Pulaski County Circuit Court, but at MC's request, his case was transferred to the circuit court's juvenile division. The State appeals, arguing the circuit court erred when it transferred MC's case.

Both parties acknowledge this appeal is foreclosed by *State v. A.G.*, 2011 Ark. 244, 383 S.W.3d 317. Reexamining that decision at the State's urging, we conclude it conflicts with the plain language of our constitution, overrule it, and hold that the State's appeal is proper. On the merits, we likewise agree with the State that the circuit court clearly erred in granting MC's transfer motion, and accordingly, we vacate the circuit court's transfer order and remand for further proceedings not inconsistent with this opinion.

Facts and Procedural Background

This case began with a January 28, 2025 call to law enforcement reporting a homicide on Stanton Road in Little Rock. When officers arrived on scene, they found the fifteen-

year-old victim in the passenger seat of a nearby car, dead from a gunshot wound to his right shoulder. Following an investigation, the State charged MC with capital murder and aggravated robbery in Pulaski County Circuit Court.

MC moved to transfer his case to the juvenile division pursuant to the then-existing juvenile transfer statute. *See* Ark. Code Ann. § 9-27-318 (Repl. 2020) (repealed) (current version at Ark. Code Ann. § 9-35-412); *see also Rolfe v. State*, 2026 Ark. 4, at 5 n.2, 726 S.W.3d 589, 592 n.2. To obtain a transfer under that provision (and the current one), a movant must demonstrate by clear and convincing evidence that transfer is appropriate. *See* Ark. Code Ann. § 9-27-318(h)(2) (Repl. 2020); Ark. Code Ann. § 9-35-412(h)(2) (Supp. 2025). And in determining whether a movant has made that showing, the circuit court must consider and make "written findings" on ten "factors": (1) "[t]he seriousness of the offense"; (2) "whether the offense was committed in an aggressive, violent, premeditated, or willful manner"; (3) whether the offense was against a person or property; (4) the juvenile's culpability; (5) the juvenile's prior criminal history; (6) the juvenile's prospects for rehabilitation; (7) the juvenile's "sophistication and maturity"; (8) "[w]hether the juvenile acted alone or as part of a group"; (9) other reports and materials "relating to the juvenile's mental, physical, educational, and social history"; and (10) "[a]ny other factors deemed relevant." Ark. Code Ann. § 9-27-318(g)–(h)(1) (Repl. 2020); Ark. Code Ann. § 9-35-412(g)–(h)(1) (Supp. 2025).

To support his transfer motion, MC presented testimony from three witnesses—his mother, a juvenile ombudsman, and the acting chief probation officer with the Pulaski County Juvenile Court—and submitted two letters from other supporters. Collectively,

MC's evidence showed that (1) other juveniles facing similar charges had previously been committed to the Division of Youth Services; (2) if MC was to be adjudicated delinquent in the juvenile system, he would be eligible for various rehabilitative services; (3) MC was doing well in school; (4) MC had no prior criminal history; and (5) MC had otherwise behaved appropriately while in custody.

The State opposed MC's transfer request and offered testimony from Detective Chris Henderson about the investigation and violent nature of the victim's death. Detective Henderson testified that he responded to a reported homicide on Stanton Road and found the victim dead with a gunshot wound to his right shoulder. He explained that—based on information from the caller who contacted law enforcement—MC became the sole suspect. He also testified that MC had stayed with his grandmother on the night of the murder and that police had found a .380-caliber pistol inside the home and a .380 shell casing outside the home. MC's mother additionally admitted on cross-examination that MC owned a firearm, though the record on appeal does not reveal the caliber.

The circuit court granted MC's transfer motion, concluding in a written order that MC had carried his burden of establishing by clear and convincing evidence that the case should be transferred to the juvenile division. In so doing, it made specific written findings on nine of the ten factors enumerated in the juvenile transfer statute—including, as particularly relevant here, explaining that it found "no evidence" whether MC's alleged murder of the victim was committed in an aggressive, violent, premeditated, or willful manner. It did not make specific written findings discussing "[a]ny other factors deemed relevant."

Relying on the juvenile transfer statute's language permitting either party to "appeal from a transfer order," the State appeals that decision. *See* Ark. Code Ann. § 9-27-318(l) (Repl. 2020) ("[a]ny party may appeal from a transfer order"); Ark. Code Ann. § 9-35-412(l) (Supp. 2025) (same).

Discussion

This case presents two issues. First, can the State appeal the circuit court's transfer order? Second, did the circuit court clearly err in granting the transfer? The answer to both questions is yes, and we reverse and remand.

The State's Appeal is Proper

We begin with the jurisdictional issue: Can the State appeal the transfer decision? The juvenile transfer statute enacted by the General Assembly unambiguously says that it can. *See* Ark. Code Ann. § 9-27-318(l) (Repl. 2020) ("[a]ny party may appeal from a transfer order"); Ark. Code Ann. § 9-35-412(l) (Supp. 2025) (same). But in *State v. A.G.*, this court declared that the General Assembly lacked the power to authorize such appeals. 2011 Ark. 244, at 4–6, 383 S.W.3d 317, 319–20. This court did not explain that conclusion or cite any constitutional provision to support it. The State therefore asks us to examine the issue anew. Doing so, we conclude that *State v. A.G.* conflicts with the plain language of the constitution, overrule that unreasoned decision, and hold that the State may appeal the circuit court's transfer decision.

A. Start with our constitution. In 2000, the people of Arkansas adopted amendment 80, which provides the foundation for the modern Arkansas Judiciary. That amendment creates "a right of appeal to an appellate court from the Circuit Courts" and authorizes

"other rights of appeal as may be provided by Supreme Court rule or by law." Ark. Const. amend. 80, § 11. The first half of that provision—recognizing "a right of appeal to an appellate court from the Circuit Courts"—is about final judgments, and in a nutshell, it authorizes appeals from final judgments. *See, e.g.*, *Ozark Mountain Solid Waste Dist. v. JMS Enters., Inc.*, 2021 Ark. 4, at 5, 614 S.W.3d 449, 451 ("[A]n appeal may be taken from a final judgment or decree entered by the circuit court."). This case does not concern a final judgment, and as such, that language is not at issue here.

Rather, we are concerned with the second half of that provision, the one recognizing "other rights of appeal as may be provided by Supreme Court rule or by law." That provision grants both this court (by rule) and the General Assembly (by law) the power to authorize additional kinds of appeals. Indeed, amendment 80's use of the disjunctive "or" signals two alternative sources of authority—by law and by rule. *See Standridge v. Fort Smith Pub. Schs.*, 2025 Ark. 42, at 5, 708 S.W.3d 773, 777 ("The word 'or' is almost always disjunctive, that is, it is generally used to indicate an alternative." (internal quotation marks omitted)). And no one could plausibly dispute that "an act of the legislature is a law." *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 650 (1837); *accord Ark. State Bd. of Election Comm'rs v. Pulaski Cnty. Election Comm'n*, 2014 Ark. 236, at 14, 437 S.W.3d 80, 88–89 ("The legislative branch of our state government has the power and the responsibility to proclaim the law through statutory enactments."). So we conclude that, on its face, amendment 80 grants both this court and the General Assembly the power to authorize appeals from non-final orders.

B. We likewise conclude that the General Assembly exercised that power when it adopted the juvenile transfer statute's language permitting appeals. As discussed above, that language plainly and unambiguously provides that "[a]ny party may appeal from a transfer order." Ark. Code Ann. §§ 9-27-318(l) (Repl. 2020); 9-35-412(l) (Supp. 2025). Moreover, no one disputes that provision applies here and that under it the State was entitled to appeal the circuit court's transfer order.

Normally, that would be the end of the jurisdictional matter, and we would move on to the merits. But that is not the case because, as both parties acknowledge, *State v. A.G.*, 2011 Ark. 244, 383 S.W.3d 317, held the juvenile transfer statute's appeal provision unconstitutional. It is not clear why. That case does not cite the Arkansas Constitution or discuss any constitutional language that provision supposedly violated—let alone discuss amendment 80. *See id.* On the contrary, it simply declares the appeal provision of the juvenile transfer statute unconstitutional on the ground that it "direct[ly] conflicts with" this court's rules only permitting a very narrow class of interlocutory appeals. *Id.* at 6, 383 S.W.3d at 320; *see* Ark. R. App. P. –Crim. 3(a) (permitting State interlocutory appeals on three issues). Far from explaining why that supposed conflict rendered the juvenile transfer statute unconstitutional, *State v. A.G.* simply string cited a series of pre-amendment 80 separation-of-powers cases, declared that those cases somehow applied, and announced *sans* analysis a conclusion. *See id.*

That is not how we resolve constitutional questions. Instead, "[c]onstitutional analysis must begin with 'the language of the instrument[.]'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 235 (2022) (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 186–89, 6

L.Ed. 23 (1824)); *Taylor v. Ferguson*, 2025 Ark. 180, at 9, 722 S.W.3d 498, 503 ("[W]hen interpreting a constitutional provision, we must look to the natural meaning of the text as it would have been understood at the time of its adoption." (cleaned up)). Doing so, *State v. A.G.* should have begun with constitutional text and considered amendment 80's language authorizing both this court and the General Assembly to provide for rights of appeal. It is not clear why *State v. A.G.* did not do that.[1] But either way, we are bound by constitutional text, not this court's prior blunder, and we now overrule *State v. A.G.* *See State v. Good Day Farm Ark., LLC*, 2025 Ark. 207, at 12, 725 S.W.3d 1, 8 (overturning court's prior "refus[al] to follow the plain text"). Any other approach treats our constitution not as a "written document" but as "a set of civic values and norms" determined by judges—and we firmly reject that approach. *See Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n*, 990 N.W.2d 122, 130 (Wis. 2023).

C. For his part, MC makes a different argument, claiming the entire juvenile transfer statute—not just the appeal provision—is unconstitutional. He grounds that claim on amendment 67, which gives the General Assembly the power to "define jurisdiction of matters relating to juveniles," and amendment 80's language giving this court the power to "prescribe the rules of pleading, practice and procedure for all courts." He claims that, in combination, those provisions grant this court the sole power to determine whether a case belongs in juvenile or adult court.

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[1]It is unclear whether the court somehow missed that plainly relevant provision, simply opted to ignore amendment 80 in favor of some vague notion of the judicial role, failed to look beyond the four corners of the parties' briefing, or did some combination of those things.

We rejected this argument in *C.B. v. State*, 2012 Ark. 220, at 5–6, 406 S.W.3d 796, 799–800, explaining that the juvenile transfer statute does not merely dictate the procedure for how a juvenile's rights are enforced. It establishes standards for determining whether an offender should be tried as a juvenile, and such decisions—and the mechanisms for making those determinations—are for the General Assembly to decide. *See id.* (holding the juvenile transfer statute embodies "substantive law that is rooted in public policy" and concerns "questions of policy . . . to be addressed by the General Assembly, which is the policy-making branch of government"). MC does not offer any basis for overturning that decision, like claiming we failed to acknowledge a controlling constitutional provision or showing that our prior approach is unworkable. *See Good Day Farm*, 2025 Ark. 207, at 12, 725 S.W.3d 1, 8; *Evans v. Harrison*, 2025 Ark. 164, at 5, 721 S.W.3d 753, 756 (correcting precedent that ignored a "clear and unmistakable conflict" between a statute and the constitution); *Zinger v. Terrell*, 336 Ark. 423, 430, 985 S.W.2d 737, 741 (1999) (this court is not required to stand by unworkable precedent). Nor is it clear that adopting MC's argument would help him since it would render the very statute that he relied on below unconstitutional and thereby potentially void his transfer. We reject MC's invitation to overturn our decision in *C.B. v. State*.

The Circuit Court Erred in Granting MC's Transfer Motion

We next consider the merits. We review decisions granting or denying juvenile-transfer motions for clear error, *Rolfe*, 2026 Ark. 4, at 7, 726 S.W.3d at 593, and applying that standard, we conclude that the circuit court clearly erred when it found the State failed

to present any evidence on whether MC's alleged offense was committed in an aggressive, violent, premeditated, or willful manner. We reverse and remand.

The State makes two arguments for reversal. First, although the State acknowledges the circuit court made written findings on the first nine factors listed in the juvenile transfer statute, it argues that the court's failure to make written findings on the tenth factor, "[a]ny other factors deemed relevant," warrants reversal. That argument is meritless. To be sure, the statute requires the circuit court to make "written findings on all of the factors under subsection (g) of this section." Ark. Code Ann. § 9-27-318(h)(1). But the tenth factor is a "catch-all" provision that merely permits circuit courts to consider additional factors beyond those already enumerated in the statute. *See Rolfe*, 2026 Ark. 4, at 11, 726 S.W.3d at 593. Thus, by definition, that last factor is implicated—and a written finding required—only when the circuit court considers additional factors. Applying that principle here, the State's argument fails because no one claims that the circuit court considered additional, unenumerated factors in granting MC's transfer motion and, as a result, no written finding was necessary.

Second, the State argues that the circuit court clearly erred when it found "no evidence was presented as to the manner of death or cause of death by homicide." Examining the record on this point, we "are left with a firm and definite conviction that a mistake was made." *Id.* at 4. The State presented direct testimony from Detective Henderson that the victim died by a gunshot wound to his shoulder. That is not, as the circuit court concluded, "no evidence" concerning the manner of death of the alleged victim. Instead, that evidence clearly shows that the alleged offense was committed in an

aggressive, violent, premeditated, or willful manner. As we have previously explained, "firing a gun at an occupied vehicle[] [is] unquestionably an offense involving violence." *Jones v. State*, 332 Ark. 617, 622, 967 S.W.2d 559, 561 (1998). Nor was the circuit court's erroneous finding immaterial to its decision to grant the transfer motion. After all, a circuit court's decision to deny a transfer motion may be based solely on the nature of the offense. *C.B.*, 2012 Ark. 220, at 16, 406 S.W.3d at 805. By failing to properly acknowledge the evidence on this factor, the circuit court clearly erred in granting MC's motion to transfer the case to the juvenile division. We reverse and remand on this point.

Conclusion

We conclude that our prior unreasoned decision in *State v. A.G.* conflicts with the plain language of our constitution, overrule that case, and hold that the State's appeal is proper. We likewise conclude that the circuit court clearly erred in granting MC's transfer motion, vacate the circuit court's transfer order, and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded.

BAKER, C.J., and HUDSON and WOOD, JJ., dissent.

KAREN R. BAKER, Chief Justice, dissenting. I must dissent from the majority's decision to reverse and remand. Instead, I would decline to reach the merits of this case and dismiss because it is not a proper State appeal. As I previously stated in my concurring and dissenting opinion in *State v. A.G.*, 2011 Ark. 244, at 7, 383 S.W.3d 317, 321, the State

may appeal from a transfer order. However, similar to *A.G.*, the resolution of the issues in the present appeal turns on facts unique to this case. Accordingly, I would dismiss this appeal.

RHONDA K. WOOD, Justice, dissenting. I agree with the majority that the State may appeal from a juvenile-transfer order. But I disagree that the circuit court's decision to transfer the case to the juvenile division was clearly erroneous. The majority opinion rests on faulty legal and factual assumptions. These assumptions lead to an opinion that ignores our well-settled precedents. I must dissent.

First, the majority's brief analysis finding a clear error stems from its own misinterpretation of the facts. The majority states that the circuit court erred when it found "no evidence was presented to the manner of death or cause of death by homicide." The majority explains that the State presented this evidence. But let's consider the testimony. The State presented one witness at the hearing—Detective Henderson. His testimony about the "manner and cause of death" is as follows:

Q: And what - - did you respond to the scene?

A: Yes, sir.

Q: Okay. And what injuries did Mr. Staats sustain?

A: He sustained one gunshot wound to his right shoulder.

The majority reverses because it believes the circuit court should have found evidence on the manner and cause of death. But the State presented no such evidence. The detective only testified about his visual impressions when he responded to the scene.[1] This

[1]Even the Information does not contain an allegation as to the manner and cause of death. Also, it is even more egregious that the majority suggests shots were fired at an

is not how we characterize manner-and-cause-of-death evidence. We generally apply those terms to the medical examiner's testimony, who, after being qualified as an expert, can testify how and why the victim died.[2] This is obviously why the circuit court found no evidence about the manner and cause of death.

Second, even if the majority believes the testimony was sufficient, this evidence does not matter. The statutory juvenile-transfer scheme does not require this finding. Even the State concedes that the manner and cause of death "*is not a factor for the court to consider.*" The State believes the circuit court should not have even mentioned it at all. Yet the majority reverses because it disagrees with how the circuit court interpreted this evidence.

Statutorily, the relevant factor is whether the offense was committed in an aggressive, violent, premeditated, or willful manner. And although the circuit court explained that it lacked specific facts about the homicide, the court acknowledged the violent nature of the offense:

> Whether that offense was committed in an aggressive or violent manner. If it is in fact a homicide, and let me say for the record, it's been charged as a homicide. But there's been no evidence in this hearing to state whether or not the manner of death and the cause of death was by homicide. So I take that into account as well. *Noting that anytime someone is killed, if in fact that is what occurred, then that is inherently, as Mr. Brown stated, a violent and aggressive manner.*

(Emphasis added.) This ruling could not have been clearer.

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occupied vehicle. That was not in the record either. Nor do we assume finding a victim somewhere means the act occurred there.

[2] *See, e.g.*, *Tait v. State*, 2026 Ark. 28, at 3; *Airsman v. State*, 2014 Ark. 500, at 17, 451 S.W.3d 565, 575; *Camp v. State*, 2011 Ark. 155, at 15, 381 S.W.3d 11, 19; *Fudge v. State*, 341 Ark. 759, 765, 20 S.W.3d 315, 318 (2000).

The circuit court recognized that murders are inherently violent and aggressive. The circuit court just weighed the other factors more significantly in favor of a transfer.[3] I find it unsettling that, after the circuit court deliberately and thoughtfully went through each factor and explained its reasoning, the majority can set it aside over a tangential disagreement. The detailed findings from the bench comprise six pages of the record transcript. This court should respect the work of circuit judges and make an effort to understand their rulings. Equally frustrating is the majority's decision to seemingly add a new requirement to the statutory scheme. The General Assembly promulgated factors that courts must consider when deciding whether to transfer a case. We should not add to them.

Last, the majority's new approach runs counter to our precedent: "As stated previously, the trial court's finding on each factor need not be supported by clear and convincing evidence. Rather, *after considering all ten factors*, the trial court must determine whether there is clear and convincing evidence to try the juvenile as an adult." *Otis v. State*, 355 Ark. 590, 610, 142 S.W.3d 615, 626 (emphasis added). The majority here finds error on a factor not present in the statute, disagrees with the circuit court's interpretation, and then remands to the circuit court. Does this mean the case stays in adult court? Can the circuit court simply adopt the majority's speculation as to the manner and cause of death

[3]The circuit court noted that the juvenile had no prior criminal history, no significant signs of independence or maturity that would justify adult court, and decent grades and compliance with school-based educational therapy. The court noted DYS offered significant rehabilitative services and, as a form of confinement, constituted a punitive form of punishment. And an extended-juvenile-jurisdiction designation always offered the opportunity to convert to adult punishment. The court also considered the unsolicited letters that commented about the juvenile's good behavior while in detention.

and then reconsider it and still transfer? The majority doesn't say and instead creates more uncertainty.[4]

Recently, we reexplained "that the violent and serious nature of an offense alone *may* justify adult prosecution." *Rolfe v. State*, 2026 Ark. 4, at 10, 726 S.W.3d 589, 595 (emphasis added). But we also emphasized our deference to the circuit court, which must weigh all the evidence: "In sum, Rolfe's remaining challenge merely reflects disagreement with how the circuit court weighed the factors. We note that the court was entitled to weigh heavily the seriousness, violence, risk to public safety, and limited likelihood of rehabilitation." *Id.* We cannot state in January that circuit courts have discretion to weigh these factors, yet in April remove their discretion.

Because the majority's opinion misreads the circuit court's findings about the cause of death, seemingly adds a new factor to the statutory scheme, and disregards our precedent deferring to the circuit courts' weight of the statutory factors, I dissent.

HUDSON, J., joins.

Tim Griffin, Att'y Gen., by: *Brooke Jackson Gasaway*, Ass't Att'y Gen., for appellant.

Brent P. Gasper and *David Raupp*, Arkansas Public Defender Commission, for appellee.

[4]It is also of note that if the matter can still be transferred, we are running the clock on rehabilitation if we do not plainly say it. Instead, we leave open the real likelihood of another appeal.

Cite as 2026 Ark. 5

SUPREME COURT OF ARKANSAS

No. CR-24-786

KENT PARRIS APPELLANT V. STATE OF ARKANSAS APPELLEE +	Opinion Delivered: January 29, 2026 APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT [NO. 01DCR-22-133] HONORABLE DONNA GALLOWAY, JUDGE AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

RHONDA K. WOOD, Associate Justice

Kent Parris sold fentanyl, methamphetamine, and drug paraphernalia during a law enforcement sting operation within one thousand feet of a church. After the exchange, Parris drove off and law enforcement followed and attempted to pull him over. Initially, Parris evaded them but eventually pulled over. In addition to searching Parris and his car, officers walked the chase path looking for discarded evidence. They discovered a clear bag containing methamphetamine and later a backpack, notably with a handgun and pills inside. A jury convicted Parris of possession of fentanyl with purpose to deliver, possession of cocaine with purpose to deliver, possession of drug paraphernalia to manufacture, delivery of methamphetamine, delivery of fentanyl, simultaneous possession of drugs and firearms, and theft by receiving-firearm. In total, the jury sentenced him to life imprisonment plus another 185 years' imprisonment (the seven sentences to be served consecutively) along

with a concurrent ten years' enhanced sentence for certain drug crimes within one thousand feet of a church.

He appeals the sufficiency of evidence for the convictions and objects to the enhancement. We affirm all convictions, as well as the enhancement, with one exception. We find there was not substantial evidence to support the theft-by-receiving conviction. The circuit court abused its discretion in admitting the officer's hearsay testimony that the firearm was reported stolen. We reverse this conviction because there was insufficient evidence that the firearm was stolen property.

I. *Statement of the Facts*

Testimony and evidence at trial included the following facts. Jessica Scherm's boyfriend was in legal trouble. She offered to be a confidential informant and agreed to help officers catch Parris, her former dealer, selling drugs. This was in exchange for her boyfriend getting out of legal trouble. Even though it had been years since she had purchased drugs from Parris, Scherm convinced Parris that she wanted to buy drugs again because she needed money and Parris told her she could "flip it" for money. At first, Parris refused to meet Scherm in DeWitt for the sale but eventually agreed to meet her one night.

Scherm worked with detectives to set up the sting. Officers searched Scherm and her vehicle and confirmed she did not possess any drugs or drug paraphernalia. They took images and recorded the serial numbers of the cash they gave Scherm to buy the drugs. Scherm also had a recording device to record and transmit audio of the transaction with Parris. Officers followed Scherm to the transaction location—a church parking lot at the edge of town. Scherm parked her vehicle and waited for Parris. When Parris got close and Scherm shared

location, Parris objected. He stated, "I'm not fixing to go to no church ground." Parris drove past the church and Scherm drove out behind him, following him for approximately 250 feet from the church where he stopped. There, Scherm gave Parris the marked bills and Parris gave Scherm five blue fentanyl pills and a dryer-sheet box. The dryer-sheet box contained an identical blue pill, a set of digital scales, and approximately two ounces of methamphetamine. After the drug deal was complete, Parris drove away.

Parris drove down West Haliburton Avenue with his driver's window open. Officer Wilson drove up behind him and signaled for him to pull over. Parris pulled over after a little more than a block, but once the officer exited his vehicle, Parris drove off. After about a four-block chase, Parris pulled over and surrendered to police.

When Wilson opened Parris's car door, he saw a small blue fentanyl pill in Parris's lap. Officers arrested Parris and conducted a search. Parris had $660 of marked bills. Police found four small clear bags of crack cocaine and another set of digital scales. Officers thought Parris may have used his short flight to try to get rid of evidence. Therefore, two officers walked back along the chase route. Approximately a block and a half from where Parris was arrested, officers found a clear baggie containing methamphetamine. Further down, approximately a block from where Wilson had first attempted to stop Parris, officers found a black bag containing a loaded handgun and a bottle of blue fentanyl pills.

At trial, in addition to testimony, the State introduced the audio of the drug deal, body camera footage, the drugs, the cardboard dryer box, the digital scales, the black bag, the guns, and the money. On the second day of trial, the State recalled Wilson to testify regarding the firearm found in the black bag. Over the defense's hearsay objections, Wilson

testified that he checked the Arkansas Crime Information Center (ACIC) database and saw that the weapon had been reported stolen. Finally, the chief forensic chemist from the Arkansas Crime Laboratory, Felicia Lackey, testified specifically about the drugs. Lackey testified that the little blue pills were counterfeit pharmaceuticals that contained fentanyl. She explained that she tested one of the little blue pills sold to Scherm and one of the little blue pills recovered in the black bag and confirmed they both contained fentanyl. She also testified that the two sets of pills were identical in shape and appearance. Lackey confirmed that the four plastic bags found in Parris's car contained cocaine and that the cardboard dryer box contained methamphetamine.

The defense moved for a directed verdict, and the circuit court denied the motion. The jury convicted and sentenced Parris to twenty years' imprisonment for possession of drug paraphernalia to manufacture[1], fifty years' imprisonment for delivery of methamphetamine[2], life imprisonment for delivery of fentanyl[3], thirty years' imprisonment for possession of fentanyl with purpose to deliver[4], twenty years' imprisonment for possession of cocaine with purpose to deliver[5], fifty years' imprisonment for simultaneous possession of drugs and firearms[6], and fifteen years' imprisonment for theft by receiving-

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[1]Ark. Code Ann. § 5-64-443(b) (Supp. 2023).

[2]*Id.* § 5-64-422(b)(3) (Supp. 2023).

[3]*Id.* § 5-64-421(c)(1) (Supp. 2023).

[4]*Id.* § 5-64-421(b) (Supp. 2023).

[5]*Id.* § 5-64-420(b)(1) (Supp. 2023).

[6]Ark. Code Ann. § 5-74-106 (Supp. 2023).

firearm[7], all to run consecutively. There was also imposed a ten-year enhancement for the delivery of methamphetamine, delivery of fentanyl, possession of fentanyl with purpose to deliver, and possession of cocaine with purpose to deliver within one thousand feet of a church.[8] Parris filed a timely notice of appeal.

II. *Analysis*

A. Sufficiency of the Evidence

We typically consider challenges to the sufficiency of the evidence before other points on appeal. *Lewondowski v. State*, 2021 Ark. 132, at 2. We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *McClendon v. State*, 2019 Ark. 88, at 3, 570 S.W.3d 450, 452–53. We review the evidence in the light most favorable to the verdict to determine whether there is substantial evidence supporting that verdict. *Matthews v. State*, 2025 Ark. 213, at 4-5; 725 S.W.3d 16, 19. We do not reweigh the evidence or substitute our judgment for that of the jury. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Brown v. State*, 2025 Ark. 147, at 4, 720 S.W.3d 102, 104.

1. *Drug-related convictions*

Parris argues that the State did not present sufficient evidence that he intended to deliver the various drugs or possess them with purpose to deliver because Jessica Scherm asked him to come to DeWitt and sell the drugs to her as opposed to it being his idea. He

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[7]Ark. Code Ann. § 5-36-106(e)(3)(B)(iii) (Supp. 2023).

[8]The enhancements were to be served concurrently.

argues that the law enforcement sting equated to entrapment. Parris also argues that the State did not present sufficient evidence that he possessed the drug paraphernalia with the purpose to manufacture drugs.

"Since intent ordinarily cannot be proven by direct evidence, jurors are allowed to draw upon their common knowledge and experience to infer it from the circumstances. Because of the difficulty in ascertaining a person's intent, a presumption exists that a person intends the natural and probable consequences of his or her acts." *Noble v. State*, 2017 Ark. 142, at 3, 516 S.W.3d 727, 730 (cleaned up).

The State presented substantial evidence that Parris arrived in DeWitt in possession of methamphetamine, fentanyl, and cocaine[9] and delivered both methamphetamine and fentanyl to Scherm. In addition to Scherm's testimony, the State introduced the audio recording of the transaction, the physical evidence of the drugs delivered to Scherm, and the physical evidence seized from Parris's car. Parris drove to DeWitt to participate in this drug deal. The jury could reasonably infer that Parris had the intent and purpose to possess the drugs for delivery and to deliver the drugs to Scherm.

Similarly, the State presented substantial evidence that Parris possessed drug paraphernalia—the digital scales—with the purpose to manufacture either methamphetamine or cocaine. The statute prohibits use or possession of drug paraphernalia

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[9]Even though Parris did not deliver cocaine to Scherm, Parris does not present a separate argument on this point but simply argues that there was no intent because selling the drugs to Scherm was her idea. We note that Officer Wilson testified that the crack cocaine found in Parris's car was packaged individually for sale, and that an additional set of digital scales was found in the back of Parris's car. From this evidence, and the evidence that Parris had just sold Scherm other drugs, the jury could reasonably infer without conjecture that Parris's possession of the crack cocaine was with the purpose to deliver.

"to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, or repack a controlled substance." Ark. Code Ann. § 5-64-443(b)(2) (Supp. 2021). At trial, Scherm testified that she told Parris she wanted to sell methamphetamine to make money. The State presented evidence that Parris gave the digital scale to Scherm along with the two 1-ounce bags of methamphetamine. Officer Wilson testified that methamphetamine is typically consumed in quarter-gram or smaller doses, and that two ounces was enough for more than two hundred doses. From this evidence, there was substantial evidence that the jury could have reasonably concluded that the purpose of the digital scale that Parris possessed and then provided to Scherm was to weigh the methamphetamine to repackage it into individual doses for resale. Parris focuses on the one term "manufacture," but the statute includes language covering broader activities.

Finally, to the extent that Parris challenges the enhancement for selling the drugs within one thousand feet of the church, the evidence established that Parris knew[10] the location of the church, and even though he refused to sell the drugs in the church parking lot, he was well within the one thousand feet when he voluntarily stopped and engaged in the transaction.

Because the State presented substantial evidence at trial for a jury to conclude without conjecture that Parris intended to possess the drugs for delivery, intended to deliver the

[10]In *Small v. State*, 2018 Ark. App. 80, 543 S.W.3d 516, the Court of Appeals held that proof of a culpable mental state is required for this enhancement. We have not decided this issue, and do not need to reach it here. Even assuming, *arguendo*, that a culpable mens rea is required, the State presented sufficient proof and Parris's challenge fails.

drugs, and possessed the drug paraphernalia to manufacture for sale, the circuit court correctly denied Parris's motion for a directed verdict on the drug-related counts.

2. *Simultaneous possession of firearms and drugs*

Parris challenges the sufficiency of the evidence tying him to the drugs and the gun found by officers in the black bag on West Haliburton Avenue.[11] Because the contraband was not found on Parris's person, we must identify the appropriate standard for evaluating the evidence that Parris was in possession of the contraband. We have long held that a conviction for possession does not require proof of actual or physical possession of an item on one's person. *See, e.g.*, *Osborne v. State*, 278 Ark. 45, 50, 643 S.W.2d 251, 253 (1982). Most of these cases involve constructive possession, in which the defendant knows the contraband is present and maintains control over it. *See, e.g.*, *Strong v. State*, 368 Ark. 23, 26, 242 S.W.3d 620, 623 (2006) ("[N]either exclusive nor physical possession is necessary to sustain a charge if the place where the offending substance is found is under the dominion and control of the accused."). For example, a defendant might have constructive possession of contraband hidden in a car or home. Our jurisprudence in this area has arisen primarily from cases in which contraband was found in jointly occupied premises. *See, e.g.*, *Lambert v. State*, 2017 Ark. 31, at 4, 509 S.W.3d 637, 640–41; *Carter v. State*, 2010 Ark. 293, at 5–6, 367 S.W.3d 544, 548; *Polk v. State*, 348 Ark. 446, 452–54, 73 S.W.3d 609, 613–15 (2002).

[11]We do not address the issue of the methamphetamine found in the baggie in the ditch on the side of the road because that evidence was not necessary to substantiate Parris's drug-related convictions.

Yet Parris was convicted for simultaneous possession of drugs and a firearm even though they were found in a public area outside his control. We have considered this scenario. *See Hodge v. State*, 303 Ark. 375, 797 S.W.2d 432 (1990). We held that circumstantial evidence can establish that a defendant did have constructive possession. Suspects will sometimes flee and attempt to rid themselves of evidence of their crime. We explained that in circumstantial-evidence cases, where the evidence is entirely outside the control of the defendant, the State must provide "definite factors" linking the defendant to the contraband. *Id.* at 378, 797 S.W.2d at 434; *see also Garner v. State*, 355 Ark. 82, 89–90, 131 S.W.3d 734, 738–39 (2003). It is not a different test, but we were emphasizing there must be direct or circumstantial evidence that the defendant had actual or constructive possession of the contraband. Circumstantial evidence may provide a basis for a conviction, but for the jury to draw such an inference the evidence must be consistent with the defendant's guilt and inconsistent with every other reasonable conclusion. *Clevenger v. State*, 2025 Ark. 128, at 6, 719 S.W.3d 453, 459.

The State presented evidence that Parris sold drugs to Scherm minutes before Officer Wilson tried to pull him over. Parris had the marked bills and other drugs. Wilson was chasing Parris and saw that Parris had his driver's-side window open. Wilson admitted that he did not see Parris throw anything from the vehicle, but Wilson was one thousand feet behind Parris in the dark during the chase. And the State introduced photos and bodycam footage of the roadway search and the discovery of the bag with the handgun and fentanyl pills immediately after Parris was arrested. The bag in the yard was found on what would have been the driver's side of a quiet residential street, at night, with little traffic. Officer

Jamie Irons testified that the bag and its contents were not wet with rain or dew or anything that would indicate it had been lying out but was covered in dust as if it had been pitched. Finally, the fentanyl pills found in the handbag were identical to the pills Parris sold to Scherm and the pill found on Parris's lap during his arrest.

Parris argues that there must be more, such as fingerprints or DNA, definitively linking Parris to the handbag, gun, or pill bottle. But this is not the standard. And on appeal, we view the evidence in the light most favorable to the jury verdict. We find there was substantial circumstantial evidence that the jury could determine that the items were in Parris's possession and that he threw them from the car during his brief flight. A jury could find possession on the basis of circumstantial evidence without resorting to speculation and conjecture. The circuit court correctly denied Parris's directed- verdict motion on this count.

3. *Theft by receiving – firearm*

Parris argues that the State presented insufficient evidence to support his conviction of theft by receiving the firearm. We agree. One commits theft by receiving if one receives, retains, or disposes of stolen property either knowing that the property was stolen; or having a good reason to believe the property was stolen. Ark. Code Ann. § 5-36-106(a) (Supp. 2023). Parris was convicted of a Class D felony because the allegedly stolen item was a firearm worth less than $2,500.

The only evidence presented that the firearm was "stolen property" was Officer Wilson's testimony that he looked up the model and serial number of the handgun in the ACIC database and found it had been reported stolen. When the State announced it was

re-calling Wilson to state that he had looked up the serial number, Parris objected. "And that's hearsay, Your Honor." The State argued that because the ACIC's database regularly keeps records of reports of stolen weapons, what Wilson reviewed fell under a hearsay exception for business records. Parris again objected and said, "It's not [referring to the State's business-record argument]." The defense continued repeating it was hearsay and arguing the State had to provide more tangible evidence of stolen property. The circuit court allowed Wilson to testify that the firearm had been reported stolen according to his ACIC submission.

On appeal, Parris raises the hearsay objection again and argues that it directly impacts the sufficiency of the evidence on the theft-by-receiving conviction. Arkansas Rule of Evidence 801 defines "hearsay" as "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." Ark. R. Evid. 801. Officer Wilson's testimony about the ACIC information was for the truth of the matter asserted, and as it was not his original statement, it is quintessential hearsay.

Yet the State contends, both at trial and on appeal, that it was a business record and fits that hearsay exception. A record of a 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"—when regularly kept and recorded as part of that business activity is an exception to the hearsay rule. Ark. R. Evid. 803. And perhaps it is, but the State did

not introduce a physical record from ACIC where this court can even consider if law enforcement could introduce it as business record.

The State argues that in our review of the sufficiency of the evidence we may consider, in the light most favorable to the verdict, evidence that may have been inadmissible. *See, e.g., George v. State*, 356 Ark. 345, 351, 151 S.W.3d 770, 773 (2004). Even considering it in the light most favorable to the State, testimony that an officer read a report stating a particular weapon was reported stolen is insufficient proof that it was stolen property, especially where the officer was unable to answer basic questions about who owned the weapon and who it was allegedly stolen from. From this bare testimony, a reasonable jury would not be able to conclude that the weapon was stolen without resorting to speculation or conjecture. And although we do consider admissible and inadmissible evidence for our sufficiency review, we do not consider evidence that was not presented, like an actual business record.

Because the State did not introduce substantial evidence to support Parris's theft-by-receiving conviction, we reverse that conviction.[12] We remand to the circuit court to enter a new sentencing order. We note that there have been four amended sentencing orders, and

[12]We note that Wilson's testimony was offered to prove the truth of an out-of-court statement by another declarant—i.e., that the gun was stolen—and it was inadmissible hearsay under Rule 801. He was testifying as to something he read. Its admission was an abuse of discretion, and it would not be harmless error because it was certainly prejudicial since this was the State's only evidence that the firearm had been stolen. As we reverse on sufficiency, we do not address it further.

the last one still appears to be inaccurate.[13] For these reasons, we affirm in part and reverse and remand in part for entry of a new sentencing order.

Affirmed in part; reversed and remanded in part.

WOMACK and WEBB, JJ., concur.

HUDSON, J., concurs in part and dissents in part.

SHAWN A. WOMACK, Justice, concurring. I agree with the majority in affirming Parris's convictions for possession of fentanyl with purpose to deliver, possession of cocaine with purpose to deliver, possession of drug paraphernalia, delivery of methamphetamine, delivery of fentanyl, and simultaneous possession of drugs and a firearm. I also agree with majority's conclusion that Detective Wilson's testimony alone was not admissible under the business-records exception to hearsay. For the business-records exception to apply, the proponent of the evidence must actually introduce a record, whether it be "[a] memorandum, report, record, or data compilation, in any form[.]"[1] But I disagree with the

[13]The transcript and the jury form depict that all the sentences shall be served consecutively. Yet the fourth amended sentencing order does not reflect that on each count. Additionally, the sentencing order is missing the sentencing enhancement for count four (possession of fentanyl with intent to deliver) that is reflected on the jury verdict form. Finally, in the "Special Conditions" section of the sentencing order, the "Drug Crime" section should be checked "yes." Because of these inaccuracies that do not track the record, the sentencing order needs to be corrected beyond the reversal for the theft by receiving conviction.

[1]Ark. R. Evid. 803(6); *State v. Jackson*, 4 N.W.3d 298, 309–10 (Iowa 2024) (compiling cases supporting this conclusion).

majority that this means there was insufficient evidence to support Parris's conviction for theft by receiving.

When considering a sufficiency challenge, we review "the evidence before the trial court without first excluding evidence which may have been erroneously admitted."[2] Simply put, in this circumstance, it is irrelevant for our sufficiency analysis that Detective Wilson's testimony was inadmissible hearsay. Based on an ACIC inquiry, Detective Wilson determined that the firearm in Parris's possession at the time of his arrest had been reported as stolen. There is nothing in the record to suggest that the ACIC report was false or inaccurate, and, as the majority explained, Parris had constructive possession of the firearm. Admissibility of the testimony itself aside, this is sufficient evidence to support a conviction for theft by receiving.[3] As we have held before, "unexplained possession of property recently stolen constitutes legally sufficient evidence to warrant a conviction."[4] Moreover, if the majority truly believed that there was insufficient evidence to support Parris's conviction for theft by receiving, the appropriate action would be to reverse and dismiss the conviction, not reverse and remand.[5]

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[2]*Findley v. State*, 300 Ark. 265, 273, 778 S.W.2d 624, 628 (1989).

[3]Ark. Code Ann. § 5-36-106(a).

[4]*Boyette v. State*, 254 Ark. 320, 324, 493 S.W.2d 428, 431 (1973).

[5]*Burks v. United States*, 437 U.S. 1, 16 (1978); *Hughes v. State*, 347 Ark. 696, 703, 66 S.W.3d 645, 648 (2002).

Finally, I would not address the alleged deficiencies in the sentencing order. Neither party addressed these issues in their briefs, and it is unclear that all the supposed errors are errors at all.

For these reasons, I concur.

WEBB, J., joins.

COURTNEY RAE HUDSON, Justice, concurring in part and dissenting in part. I concur with the majority that substantial evidence supports appellant Kent Parris's convictions for possession of fentanyl with purpose to deliver, possession of cocaine with purpose to deliver, possession of drug paraphernalia to manufacture, delivery of methamphetamine, delivery of fentanyl, and simultaneous possession of drugs and firearms. However, because I would also affirm Parris's conviction for theft by receiving of a firearm, I respectfully dissent in part.

Parris presents two arguments for reversal regarding his theft-by-receiving conviction: (1) he challenges the sufficiency of the evidence supporting the conviction, and (2) he claims that the circuit court abused its discretion by allowing the State to present hearsay testimony to show that the firearm was stolen. I address Parris's sufficiency argument first due to double-jeopardy concerns. *E.g.*, *Hudson v. State*, 2025 Ark. 129, 720 S.W.3d 91. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Bush v. State*, 2024 Ark. 77, 687 S.W.3d 570. On appeal, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Brooks v. State*, 2016 Ark. 305, 498 S.W.3d 292. Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond

suspicion or conjecture. *Id.* In determining whether there is substantial evidence to support the verdict, this court reviews the evidence in the light most favorable to the State. *Bush, supra.* The credibility of witnesses is an issue for the jury, not the court; the trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Smith v. State*, 2024 Ark. 1, 680 S.W.3d 711.

Pursuant to Ark. Code Ann. § 5-36-106(a) (Repl. 2013), "[a] person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person: (1) [k]nowing that the property was stolen; or (2) [h]aving good reason to believe the property was stolen." The unexplained possession or control of recently stolen property gives rise to a presumption that a person knows or believes that property was stolen. Ark. Code Ann. § 5-36-106(c)(1).

Here, Detective Bradley Wilson testified that he ran the model and serial number of the handgun that was found in Parris's backpack through the ACIC database and discovered that it had been reported stolen out of Little Rock. As will be discussed further when addressing his second argument, Parris contends that this testimony was hearsay and should not have been admitted. Parris argues that because Wilson's testimony was the only evidence presented to establish that the gun was stolen, his conviction should be reversed and dismissed.

Parris is incorrect. In determining the sufficiency of the evidence on appeal, we consider all of the evidence introduced at trial, whether it is properly admitted or not. *Wallace v. State*, 2023 Ark. 7, 659 S.W.3d 267. I would hold that Parris's unexplained possession of the same firearm that Wilson testified had been reported stolen in the ACIC

database was sufficient to support his conviction for theft by receiving and that the circuit court did not err by denying Parris's motion for directed verdict on this offense. I therefore disagree with the majority's conclusion otherwise.

Parris next contends that the circuit court erred by allowing the State to present hearsay testimony to show that the firearm had been stolen. At trial, when the State announced that it wished to re-call Detective Wilson to testify about the stolen firearm, Parris objected on the basis of hearsay. The State argued that the report fell within the business-records exception. Parris responded that the ACIC report was not proof that anything had been stolen because it could have been a false report. Parris argued that the State had to call the person whom the gun was allegedly stolen from to testify that it was their property and that it had been stolen. He also argued that it was double hearsay in that someone had reported the gun as stolen to law enforcement, which then reported it to ACIC/NCIC. The circuit court overruled the objection, stating that Parris could cross-examine Wilson with regard to any "holes" in the proof. Later, before the State re-called Wilson, the circuit court clarified that it would allow Wilson to submit into evidence any reports that he had prepared and state his basis for the reports but would not allow the admission of reports that he did not prepare. The State responded that it would not introduce any reports regarding the stolen firearm, just Wilson's testimony. Parris noted his continued objection to this evidence.

During Wilson's testimony, he was asked about what he discovered when he radioed the serial number of the firearm into dispatch. Parris again objected on the basis of hearsay. The circuit court ruled that Wilson could testify to his knowledge and his actions. Wilson

then testified that dispatch had notified him that there was a "hit in ACIC" that the firearm had been stolen out of Little Rock. Parris objected, arguing that Wilson "cannot testify to something somebody just told him over the radio that somebody at A—NCIC said was reported that was also based on [a] report somebody else sent in." The State again asserted that it was a business record, but the circuit court sustained the objection, telling the State to ask Wilson for additional information. In response to the State's question about what actions he took after finding the gun, Wilson stated that he looked at the serial number, make, model, and caliber on the printout from the Crime Information Center and that it matched the firearm that he had recovered. When the State asked what the printout showed, Parris stated, "That's the objection, Your Honor." He argued that Wilson "cannot testify as to what a printout from some agency in Arkansas sent him for the proof-- truth of the matter asserted." The State responded, "[T]he same thing we argued earlier, is that this is Arkansas Crime Information Center. It's the database that holds every report for every stolen item. That he simply checked that database and the serial number and the caliber and everything else matched that this weapon was stolen." The circuit court ruled that it would allow the testimony.

On appeal, Parris argues that Wilson's hearsay testimony was not admissible under the business-records exception found in Ark. R. Evid. 803(6) because the State did not satisfy the conditions necessary for that exception. Rule 803(6) provides that the following is not excluded by the hearsay rule:

> [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.

We have held that to be admissible under the business-records exception, the evidence must be (1) a record or other compilation; (2) of acts or events; (3) made at or near the time the act or event occurred; (4) by a person with knowledge, or from information transmitted by a person with knowledge; (5) kept in the course of a regularly conducted business; (6) which has a regular practice of recording such information; (7) all as shown by the testimony of the custodian or other qualified witness. *E.g.*, *Terry v. State*, 309 Ark. 64, 826 S.W.2d 817 (1992).

The decision to admit or exclude evidence is within the sound discretion of the circuit court, and we will not reverse that decision absent a manifest abuse of discretion. *Bishop v. State*, 2023 Ark. 150, 675 S.W.3d 869. An abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Id.* Furthermore, we will not reverse unless the appellant demonstrates that he was prejudiced by the evidentiary ruling. *Id.*

Parris contends that Wilson's testimony did not satisfy Rule 803(6) because he had no direct knowledge that the gun was stolen other than from the ACIC; he had no authority, ownership, or responsibility over the ACIC system; and Parris was not provided with an opportunity to confront the person who reported the firearm stolen—either the person who reported it to ACIC or the ACIC custodian of records. The State asserts that Parris's argument is not preserved for our review. I agree. First, to the extent that Parris is

raising a Confrontation Clause argument, it was not raised below and is not preserved. Second, while Parris clearly preserved his hearsay argument, when the State claimed that the Rule 803(6) exception applied, Parris did not specifically challenge whether the State had laid a proper foundation for that exception. Had he done so, the State could have asked additional questions of Wilson to ensure that he was qualified to testify about the ACIC database and his routine reliance on the information contained therein. A defendant is bound by the scope and nature of the objections and arguments made at trial and may not enlarge or change those grounds on appeal. *E.g.*, *Sullivan v. State*, 2012 Ark. 74, 386 S.W.3d 507. Thus, I would decline to address the merits of Parris's argument. While the majority complains that the State did not introduce the physical ACIC record at issue, the circuit court ruled in response to Parris's hearsay objection that it would not allow the admission of any reports that Wilson did not prepare. Furthermore, Parris does not argue on appeal that the absence of the ACIC report rendered the testimony inadmissible under Rule 803(6). I would therefore affirm.

Ingle Law Firm, by: *Mathew R. Ingle*, for appellant.

Tim Griffin, Att'y Gen., by: *Dalton Cook*, Ass't Att'y Gen., for appellee.

ARKANSAS SUPREME COURT

PROCEEDINGS OF JANUARY 29, 2026

PER CURIAM ORDERS

CV-25-243. In Re Purdue Global Law School, an Original Action. Petitioner's petition to amend Rules XII and XVI of the Arkansas rules governing admission to the bar is tabled for further consideration.

CR-26-38. Aaron Spencer v. State of Arkansas, from Lonoke County Circuit Court. Petitioner's petition for writ of certiorari and other relief; emergency consideration requested. Expedited consideration granted; petition for writ of certiorari granted. Writ issued; circuit court's January 13, 2026, order limiting courtroom occupancy and no recordings vacated; Twenty-Third Judicial Circuit Judge (Division 1), Hon. Barbara Elmore removed from 43CR-24-551; 43CR-24-551 to be reassigned to a special circuit judge appointed by this Court. 43CR-24-551 is immediately stayed pending this Court's appointment of a special judge. Baker, C.J., and Hudson, and Wood, JJ., would deny the petition for writ of certiorari. (Proceedings of January 23, 2026)

CV-26-51. Phillip T. Thompson v. State of Arkansas, Office of Child Support Enforcement, from Pulaski County Circuit Court, Seventeenth Division. Petitioner's emergency petition for writ of certiorari or, alternatively, petition for writ of prohibition; and petitioner's emergency motion to stay enforcement. Expedited consideration granted; petition for writ of certiorari or, alternatively, petition for writ of prohibition; and motion to stay enforcement are denied. Tendered reply brief considered as a motion to file reply brief and denied. (Proceedings of January 27, 2026)

CV-26-61. Casey Reed v. Ken Yang; Grant County Board of Election Commissioners; Saline County Board of Election Commissioners; Geral Harrison, in His Capacity as Grant County and Circuit Clerk; Doug Curtis, in His Capacity as Saline County Clerk; Joseph Wood, in His Capacity as Chairman of the Republican Party of Arkansas; Cole Jester, in His Capacity as Arkansas Secretary of State, from Pulaski County Circuit Court, Third Division. Appellant's petition for writ of certiorari and motion for expedited consideration. Expedited consideration granted; petition for writ of certiorari taken with the case. Expedited briefing schedule issued. Hiland and Bronni, JJ., not participating. (Proceedings of January 27, 2026)

Cite as 2026 Ark. 18

SUPREME COURT OF ARKANSAS

IN RE CREATION OF RULE 412 OF THE ARKANSAS RULES OF EVIDENCE	**Opinion Delivered:** February 5, 2026

PER CURIAM

The Arkansas Supreme Court's Committee on Civil Practice considered and made recommendations for how to address the General Assembly's change to Arkansas Code Annotated section 16-64-120(a) pursuant to 2025 Acts of Ark. No. 28. We now publish our proposed change for comment. The comment period shall end on April 1, 2026. Comments should be submitted in writing to: Kyle E. Burton, Clerk of the Arkansas Supreme Court, Attention: Amendments to Arkansas Rules of Civil Procedure, Justice Building, 625 Marshall Street, Little Rock, AR 72201, or by email: rulescomments@arcourts.gov. The new rule is shown in "line-in, line-out" form.

Arkansas Rules of Evidence

Rule 412. Past necessary medical care, treatment, or services.

(a) Evidence of costs other than those costs actually paid by or on behalf of the plaintiff or that remain unpaid and for which the plaintiff or any third party is legally responsible is not admissible to prove the reasonable value of past necessary medical care, treatment, or services received.

(b) For purposes of this rule the term "plaintiff" means the person who received the past necessary medical care, treatment, or services for which damages are sought.

Reporter's Note: Evidence of billed medical charges are inadmissible to the extent they represent an amount a medical provider has agreed to not accept and reduce further. The actual medical charges, those sums required to be collected, or which have been collected, are relevant evidence.

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

June 5, 2026

Presentation from 10:45 to 11:45

From Assistant U.S. Attorney to Educator: Practical Lessons in Trial Advocacy

Patrick Harris

Director of Advocacy, William H. Bowen School of Law

Handout Materials

James G. Mixon Trial Practice Symposium

From Assistant U.S. Attorney to Educator: Practical Lessons in Trial Advocacy

Pat Harris

Director of Advocacy

Wm. H. Bowen School of Law

University of Arkansas at Little Rock

1. Bowen Law School Advocacy Program
    a. Adjuncts – Fall & Spring Semesters
    b. Lawyering Skills I and II
    c. Civil and Criminal law exposure
    d. Moot Court Competitions
    e. Mock Trial Competitions
    f. Evidence Practice
    g. Voir Dire
2. Mock Trial Program at Bowen
    a. One competition every semester with 2 teams
    b. Only 2Ls and 3Ls
    c. Practice and practice with about 15-18 practices working around the students' schedule and the receipt the case file from the competition
    d. Start with the Closing Argument & Rebuttal
3. Teaching students the art of trial practice
    a. Know the case inside and out
    b. The very last practice is a full trial in front of a Judge
4. Teaching Opening Statements and Closing Arguments
    a. Statement versus argument
5. Teaching Direct examination and Cross examination
    a. Why is Cross very hard to learn for students?
    b. Interview witnesses to know their testimony better than the witness
    c. Play the part of the witness
6. Teaching the Rules of Evidence – the hard part
    a. Learning to anticipate objections and responding to objections

i. This is very hard for law students
ii. Adapt – they are on their own- no help from co-counsel

b. The most cited Rules of Evidence
i. Rule 615 - The Rule
ii. Rule 611 - Scope of Cross Examination
iii. Rule 406 - Habit
iv. Rule 401 - Relevant Evidence
v. Rule 403 - Excluding Relevant Evidence
vi. Rule 404(a) & (b) - Character Evidence, Other Crimes, Wrongs or Acts
vii. Rule 608(a) & (b) - Character for Truthfulness & Untruthfulness
viii. Rule 609 - Impeachment by prior conviction
ix. Rule 701 & 702 - Lay & Expert Opinion
x. Rule 801 - Hearsay
xi. Rule 803 - Hearsay Exceptions
xii. Rule 804 - Hearsay Exceptions
xiii. Rule 1002 - Best Evidence Rule

7. Teaching Voir Dire and arguing a Motion in Limine

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

June 5, 2026

Presentation from 1:00 to 2:00

Practical Insights from Experienced Trial Lawyers

Steven W. Quattlebaum

Quattlebaum, Grooms & Tull, PLLC

John E. Tull III

Quattlebaum, Grooms & Tull, PLLC

Handout Materials

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

June 5, 2026

Presentation from 2:30 to 3:30

Trial Practice Conversation with the Court

Hon. D. P. Marshall Jr.

U.S. District Judge for the Eastern District of Arkansas

Hon. James M. Moody Jr.

U.S. District Judge for the Eastern District of Arkansas

Hon. Benecia B. Moore

U.S. Magistrate Judge for the Eastern District of Arkansas

Moderator: Hon. Richard D. Taylor

U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas

Handout Materials

Trial Practice Conversation with the Court

Hon. D. P. Marshall Jr., *U.S. District Judge for the Eastern District of Arkansas*
Hon. James M. Moody Jr., *U.S. District Judge for the Eastern District of Arkansas*
Hon. Benecia B. Moore, *U.S. Magistrate Judge for the Eastern District of Arkansas*
Moderator: Hon. Richard D. Taylor, *U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas*

1. You have a bench trial starting Monday next and you are preparing. When reviewing the pleadings, is there anything in particular you are looking for that may guide and assist you in your preparation?

2. The parties appear for trial and have plenty of witnesses in tow. Do you independently ask if anyone wishes to invoke the rule or do you leave it up to the parties? Can the parties raise or invoke the rule at any time, or do you have a cut off after which it is no longer appropriate?

3. Openings commence. What are you looking for in an opening that will assist you in understanding each side's case and the evidence they are about to present?

4. Direct examination commences. Do you have an expectation concerning background, exposition, and context on direct examination? What is it you want to know about or from a witness that will assist you in understanding and processing their testimony?

5. Parties tend to over object or under object when it comes to hearsay. Do you have any general philosophy about when you expect to hear that type of objection and whether it is over or underused?

6. Cross examination commences. Based on your experience both as lawyers and on the bench, are there any practices, techniques, or philosophies concerning cross-examination that occasion more organized and productive results?

7. The parties are wrapping up their evidence. From your experience, are there any areas that you would like to share or emphasize in the context of making a suitable record before you and presumably any appellate court?

8. And finally, the parties make their closings. Is there anything that you like to see emphasized? Additionally, how often in your experience is a good closing determinative in pushing you one direction or the other?

THE HONORABLE JAMES G. MIXON TRIAL PRACTICE SYMPOSIUM

June 5, 2026

Presentation from 3:30 to 4:30

Inside the Bankruptcy Courtroom: A Judicial Roundtable

Hon. Phyllis M. Jones

U.S. Bankruptcy Chief Judge for the Eastern and Western Districts of Arkansas

Hon. Richard D. Taylor

U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas

Hon. Bianca M. Rucker

U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas

Handout Materials

In Person Testimony

Rule 43. Taking Testimony

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

History

Amended Feb. 28, 1966, eff. July 1, 1966; July 1, 1966; Nov. 20, 1972, and Dec. 18, 1972, eff. July 1, 1975; March 2, 1987, eff. Aug. 1, 1987; April 23, 1996, eff. Dec. 1, 1996; April 30, 2007, eff. Dec. 1, 2007.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Notes of Advisory Committee on Rules. *Subdivision (a).* The first sentence is a restatement of the substance of USC, Title 28, former § 635 (Proof in common-law

actions), formerly § 637 (now §§ 2072, 2073) (Proof in equity and admiralty), and former Equity Rule 46 (Trial—Testimony Usually Taken in Open Court—Rulings on Objections to Evidence). This rule abolishes in patent and trademark actions, the practice under former Equity Rule 48 of setting forth in affidavits the testimony in chief of expert witnesses whose testimony is directed to matters of opinion. The second and third sentences on admissibility of evidence and Subdivision (b) on contradiction and cross-examination modify USC, Title 28, formerly § 725 (now § 1652) (Laws of states as rules of decision) insofar as that statute has been construed to prescribe conformity to state rules of evidence. Compare Callahan and Ferguson, Evidence and the New Federal Rules of Civil Procedure, 45 Yale LJ 622 (1936), and Same; 2, 47 Yale LJ 195 (1937). The last sentence modifies to the extent indicated USC, Title 28, § 631 (Competency of witnesses governed by State laws).

Subdivision (b). See 4 Wigmore on Evidence (2d ed, 1923) §§ 1885 et seq.

Subdivision (c). See former Equity Rule 46 (Trial—Testimony Usually Taken in Open Court—Rulings on Objections to Evidence). With the last sentence compare *Dowagiac v Lochren,* 143 Fed 211 (CCA8th, 1906). See also *Blease v Garlington,* 92 US 1, 23 L Ed 521 (1876); *Nelson v United States,* 201 US 92, 114, 26 S Ct 358, 50 L Ed 673 (1906); *Unkle v Wills,* 281 Fed 29 (CCA8th, 1922).

See Rule 61 for harmless error in either the admission or exclusion of evidence.

Subdivision (d). See former Equity Rule 78 (Affirmation in Lieu of Oath) and USC, Title 1, § 1 (Words importing singular number, masculine gender, etc.; extended application), providing for affirmation in lieu of oath.

Supplementary note of Advisory Committee regarding Rules 43 and 44. These rules have been criticized and suggested improvements offered by commentators. 1 Wigmore on Evidence, 3d ed 1940, 200–204; Green, the Admissibility of Evidence Under the Federal Rules, 1941, 55 Harv L Rev 197. Cases indicate, however, that the rule is working better than these commentators had expected. *Boerner v United States,* CCA2d, 1941, 117 F2d 387, cert den 1941, 313 US 587, 85 L Ed 1542, 61 S Ct 1120; *Mosson v Liberty Fast Freight Co.* CCA2d, 1942, 124 F2d 448; *Hartford Accident & Indemnity Co. v Olivier,* CCA5th, 1941, 123 F2d 709; *Anzano v Metropolitan Life Ins. Co. of New York,* CCA3d, 1941, 118 F2d 430; *Franzen v E. I. DuPont De Nemours & Co.* CCA3d, 1944, 146 F2d 837; *Fakouri v Cadais,* CCA5th, 1945, 147 F2d 667; *In re C. & P. Co.* SD Cal 1945, 63 F Supp 400, 408. But cf. *United States v Aluminum Co. of America,* SD NY 1938, 1 Fed Rules Serv 43a.3, Case 1; Note, 1946, 46 Col L Rev 267. While consideration of a comprehensive and detailed set of rules of evidence seems very desirable, it has not been feasible for the Committee so far to undertake this important task. Such consideration should include the adaptability to federal

practice of all or parts of the proposed Code of Evidence of the American Law Institute. See Armstrong, Proposed Amendments to Federal Rules of Civil Procedure, 4 FRD 124, 137–138.

Notes of Advisory Committee on 1966 amendments. This new subdivision authorizes the court to appoint interpreters (including interpreters for the deaf), to provide for their compensation, and to tax the compensation as costs. Compare proposed subdivision (b) of Rule 28 of the Federal Rules of Criminal Procedure.

Notes of Advisory Committee on 1972 amendments. Rule 43, entitled Evidence, has heretofore served as the basic rule of evidence for civil cases in federal courts. Its very general provisions are superseded by the detailed provisions of the new Rules of Evidence. The original title and many of the provisions of the rule are, therefore, no longer appropriate.

Subdivision (a). The provision for taking testimony in open court is not duplicated in the Rules of Evidence and is retained. Those dealing with admissibility of evidence and competency of witnesses, however, are no longer needed or appropriate since those topics are covered at large in the Rules of Evidence. They are accordingly deleted. The language is broadened, however, to take account of acts of Congress dealing with the taking of testimony, as well as of the Rules of Evidence and any other rules adopted by the Supreme Court.

Subdivision (b). The subdivision is no longer needed or appropriate since the matters with which it deals are treated in the Rules of Evidence. The use of leading questions, both generally and in the interrogation of an adverse party or witness identified with him, is the subject of Evidence Rule 611(c). Who may impeach is treated in Evidence Rule 607, and scope of cross-examination is covered in Evidence Rule 611(b). The subdivision is accordingly deleted.

Subdivision (c). Offers of proof and making a record of excluded evidence are treated in Evidence Rule 103. The subdivision is no longer needed or appropriate and is deleted.

Effective date of 1972 amendments. Act Jan. 2, 1975, P. L. 93-595, 88 Stat. 1926, provided in § 3 that the amendment of Rule 43 "shall take effect on the one hundred and eightieth day beginning after the date of enactment of this Act.".

Notes of Advisory Committee on 1996 amendments. Rule 43(a) is revised to conform to the style conventions adopted for simplifying the present Civil Rules. The only intended changes of meaning are described below.

The requirement that testimony be taken "orally" is deleted. The deletion makes it clear that testimony of a witness may be given in open court by other means if the witness is not

able to communicate orally. Writing or sign language are common examples. The development of advanced technology may enable testimony to be given by other means. A witness unable to sign or write by hand may be able to communicate through a computer or similar device.

Contemporaneous transmission of testimony from a different location is permitted only on showing good cause in compelling circumstances. The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truthtelling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. Transmission cannot be justified merely by showing that it is inconvenient for the witness to attend the trial.

The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place. Contemporaneous transmission may be better than an attempt to reschedule the trial, particularly if there is a risk that other—and perhaps more important—witnesses might not be available at a later time.

Other possible justifications for remote transmission must be approached cautiously. Ordinarily depositions, including video depositions, provide a superior means of securing the testimony of a witness who is beyond the reach of a trial subpoena, or of resolving difficulties in scheduling a trial that can be attended by all witnesses. Deposition procedures ensure the opportunity of all parties to be represented while the witness is testifying. An unforeseen need for the testimony of a remote witness that arises during trial, however, may establish good cause and compelling circumstances. Justification is particularly likely if the need arises from the interjection of new issues during trial or from the unexpected inability to present testimony as planned from a different witness.

Good cause and compelling circumstances may be established with relative ease if all parties agree that testimony should be presented by transmission. The court is not bound by a stipulation, however, and can insist on live testimony. Rejection of the parties' agreement will be influenced, among other factors, by the apparent importance of the testimony in the full context of the trial.

A party who could reasonably foresee the circumstances offered to justify transmission of testimony will have special difficulty in showing good cause and the compelling nature of the circumstances. Notice of a desire to transmit testimony from a different location should be given as soon as the reasons are known, to enable other parties to arrange a deposition, or to secure an advance ruling on transmission so as to know whether to prepare to be present with the witness while testifying.

No attempt is made to specify the means of transmission that may be used. Audio transmission without video images may be sufficient in some circumstances, particularly as to less important testimony. Video transmission ordinarily should be preferred when the cost is reasonable in relation to the matters in dispute, the means of the parties, and the circumstances that justify transmission. Transmission that merely produces the equivalent of a written statement ordinarily should not be used.

Safeguards must be adopted that ensure accurate identification of the witness and that protect against influence by persons present with the witness. Accurate transmission likewise must be assured.

Other safeguards should be employed to ensure that advance notice is given to all parties of foreseeable circumstances that may lead the proponent to offer testimony by transmission. Advance notice is important to protect the opportunity to argue for attendance of the witness at trial. Advance notice also ensures an opportunity to depose the witness, perhaps by video record, as a means of supplementing transmitted testimony.

Notes of Advisory Committee on 2007 amendments. The language of Rule 43 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

NOTES TO DECISIONS

Amended

United States Code Annotated
Federal Rules of Bankruptcy Procedure (Refs & Annos)
Part VII. Adversary Proceedings

Federal Rules of Bankruptcy Procedure, Rule 7043

Rule 7043. Taking Testimony

Effective: April 8, 2026
Currentness

<[New rule effective December 1, 2026, absent contrary Congressional action.]>

Fed. R. Civ. P. 43 applies in an adversary proceeding.

CREDIT(S)

(Added Apr. 8, 2026, eff. Dec. 1, 2026, absent contrary Congressional action.)

Fed.Rules Bankr.Proc. Rule 7043, 11 U.S.C.A., FRBP Rule 7043
Including Amendments Received Through 6-1-2026

End of Document

KeyCite Yellow Flag
Distinguished by In re Junior Larry Hillbroom Litigation, D.N.Mar.I., May 26, 2022

444 F.Supp.3d 967
United States District Court, D. Minnesota.
IN RE: RFC AND RESCAP LIQUIDATING TRUST ACTION
This document relates to: ResCap Liquidating Trust
v.
Primary Residential Mortgage, Inc.

Case No. 0:13-cv-3451 (SRN/HB), Case No. 16-cv-4070 (SRN/HB)
|
Signed March 10, 2020
|
Filed 03/13/2020

Synopsis
Background: Following global virus outbreak which occurred during ongoing bench trial, defendants moved to allow their final two witnesses to appear via videoconference testimony, and plaintiffs moved for continuance of trial.

[Holding:] The District Court, Susan Richard Nelson, J., held that outbreak constituted good cause and compelling circumstances so as to warrant videoconference testimony by final two defense witnesses.

Defendants' motion granted and plaintiffs' motion denied.

Procedural Posture(s): Motion for Continuance.

West Headnotes (5)

[1] Witnesses⇨Remote Testimony

The decision to require testimony by videoconference falls within district court's discretion. Fed. R. Civ. P. 43(a).

2 Cases that cite this headnote
More cases on this issue

[2] Federal Civil Procedure⇨Reception of Evidence
Witnesses⇨Remote Testimony

District court's discretion on question of whether to require testimony by videoconference is supplemented by its wide latitude in determining the manner in which evidence is to be presented under the Federal Rules of Evidence.

Fed. R. Civ. P. 43(a); Fed. R. Evid. 611(a).

8 Cases that cite this headnote
More cases on this issue

[3] Witnesses⇨Remote Testimony

Because certain features of testimony useful to evaluating credibility and persuasiveness, such as the immediacy of a living person, can be lost with video technology, and the ability to observe demeanor, central to the fact-finding process, may be lessened, remote transmission of testimony is the exception and not the rule.

7 Cases that cite this headnote
More cases on this issue

[4] Witnesses⇨Remote Testimony

Given the speed and clarity of modern videoconference technology, where good cause and compelling circumstances are shown, such testimony satisfies the goals of live, in-person testimony and avoids the short-comings of deposition testimony.

26 Cases that cite this headnote
More cases on this issue

[5] Witnesses⇨Remote Testimony

Global virus outbreak constituted good cause and compelling circumstances so as to warrant videoconference testimony by final two defense witnesses in ongoing bench trial; virus was unexpected occurrence which spread around world within three months of initial detection in China, severity of illness and method of its spread was not fully understood, witnesses would have to travel in order to testify in person, appropriate safeguards existed to ensure accurate identification of witness and to protect against influence by persons present with witness, and delay of trial to allow for in-person testimony would prejudice defendant and postpone possibility of infection at later date. Fed. R. Civ. P. 43(a); Fed. R. Evid. 611(a).

24 Cases that cite this headnote
More cases on this issue

Attorneys and Law Firms

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Pro Hac Vice, Heather K. Christenson, Pro Hac Vice, Isaac Nesser, Pro Hac Vice, Jacob J. Waldman, Pro Hac Vice, Jeffrey Carl Miller, Pro Hac Vice, Jennifer Jackson Barrett, Pro Hac Vice, Kanika G. Shah, Pro Hac Vice, Kathleen Marie Sullivan, Pro Hac Vice, Matthew A. Lee, Pro Hac Vice, Peter Evan Calamari, Pro Hac Vice, Richard I. Werder, Jr., Pro Hac Vice, Sascha N. Rand, Pro Hac Vice, Serafina Concannon, Pro Hac Vice, Thomas D. Pease, Pro Hac Vice, Tyler Whitmer, Pro Hac Vice, Darren Mitchell Goldman, Pro Hac Vice, Kate E. Cassidy, Pro Hac Vice, Quinn Emanuel Urquhart & Sullivan, LLP, Joshua S. Margolin, Pro Hac Vice, Selendy & Gay PLLC, New York, NY, Alexander J. Merton, Pro Hac Vice, Amroh Faisal Idris, Pro Hac Vice, Gabriel F. Soledad, Pro Hac Vice, Jonathan Eser, Lauren Weeman Misztal, Pro Hac Vice, Michael J. Madigan, Pro Hac Vice, Quinn Emanuel Urquhart & Sullivan LLP, Washington, DC, Anthony Paul Alden, Pro Hac Vice, Claire Disston Hausman, Pro Hac Vice, Danielle L. Gilmore, Pro Hac Vice, Danielle Marie Shrader-Frechette, Pro Hac Vice, David C. Armillei, Pro Hac Vice, Dawn Utsumi, Pro Hac Vice, Diane L. Cafferata, Pro Hac Vice, Duane R.A. Lyons, Pro Hac Vice, Harry A. Olivar, Jr., Pro Hac Vice, Jeffrey J. Ung, Pro Hac Vice, Johanna Yao Ong, Pro Hac Vice, John Steven Gordon, Pro Hac Vice, Kenneth John Shaffer, Pro Hac Vice, Kristen Bird, Pro Hac Vice, Matthew R. Scheck, Pro Hac Vice, Michael Jude Galvin, Pro Hac Vice, Molly Caroline Stephens, Pro Hac Vice, Rachael L. McCracken, Pro Hac Vice, Randa A.F. Osman, Pro Hac Vice, Richard Allen Schirtzer, Pro Hac Vice, Sarah J. Cole, Pro Hac Vice, Viola Trebicka, Pro Hac Vice, William Charlie Price, Pro Hac Vice, Zena Jacobsen, Pro Hac Vice, Melissa Andrea Dalziel, Pro Hac Vice, David Michael Grable, Pro Hac Vice, Robert Jason Becher, Pro Hac Vice, Quinn Emanuel Urquhart & Sullivan, LLP, Noah S. Helpern, Pro Hac Vice, Browne George Ross, Los Angeles, CA, Christina Wu, Pro Hac Vice, Zoe P. Chernicoff, Pro Hac Vice, Linda J. Brewer, Pro Hac Vice, Quinn Emanuel Urquhart & Sullivan LLP, San Francisco, CA, Donald G. Heeman, Jessica J. Nelson, Laurie M. Quinn, Randi J. Winter, Spencer Fane LLP, Minneapolis, MN, Jeffrey Alan Lipps, Pro Hac Vice, Jennifer A.L. Battle, Pro Hac Vice, Michael N. Beekhuizen, Pro Hac Vice, Carpenter Lipps & Leland LLP, Columbus, OH, Nicholas Aaron Leefer, Pro Hac Vice, Valerie Jon Ramos, Pro Hac Vice, Quinn Emanuel Urquhart & Sullivan, LLP, Redwood Shores, CA, Nicole Y. Altman, Pro Hac Vice, Honolulu, HI, for RFC and ResCap Liquidating Trust Action.

ORDER RE: VIDEOCONFERENCING OF REMAINING WITNESSES

SUSAN RICHARD NELSON, United States District Judge

*969 This matter comes before the Court regarding a recent development involving the coronavirus, otherwise known as COVID-19.[1] Currently, Plaintiff ResCap Liquidating Trust ("ResCap") and Defendant Primary Residential Mortgage, Inc. ("PRMI") are engaged in a bench trial before the Court that began on February 10, 2020. (*See* Minute Entry [Doc. No. 5425].) The Court held trial on February 10, 11, 12, 13, 14, 18, 19, 20, and 21, as well as March 3 and 4, 2020. (*See* Minute Entries [Doc. Nos. 5425, 5429, 5432, 5433, 5434, 5446, 5447, 5450, 5451, 5464, 5465].) The trial is scheduled to resume on Thursday, March 12, 2020, with closing arguments anticipated the following day. (*See* Minute Entry [Doc. No. 5465].) There are two PRMI witnesses remaining: Dr. Justin McCrary and James Crawford.

On March 10, 2020, the Court was informed of the following facts. Sometime prior to March 2, 2020, a Quinn Emanuel attorney in New York who is not a member of ResCap's trial team contracted COVID-19. (*See* Pl.'s March 10, 2020 Letter [Doc. No. 5467] at 1.) During the week of February 24, 2020, prior to any diagnosis of the infected attorney, [redacted] This past weekend, Quinn Emanuel became aware that the infected attorney had been diagnosed with COVID-19. (Pl.'s March 10, 2020 Letter at 1.) [redacted] Out of an abundance of caution, Quinn Emanuel's New York office was temporarily closed after the infected attorney tested positive. (*Id.*)

Upon learning of the temporary closure of Quinn Emanuel's New York office, PRMI's counsel contacted counsel for ResCap, as well as PRMI's two remaining witnesses, Dr. McCrary and Mr. Crawford. (Def.'s March 10, 2020 Letter [Doc. No. 5468] at 1.) Dr. McCrary, who lives in New York, and Mr. Crawford, who lives in Utah, have requested that they not be ordered to travel to Minnesota to provide testimony on March 12. (*Id.* at 2.) [redacted][2]

ResCap proposes that trial continue as scheduled, with the Court and parties exploring safety measures by which the witnesses could testify in person, while reducing the risk of viral transmission. (Pl.'s March 10, 2020 Letter at 2.) Alternatively, ResCap proposes that Dr. McCrary, and Mr. Crawford, as necessary, participate by videoconference. (*Id.*) Doing so would allow trial to continue as scheduled, without requiring either witness to travel to Minnesota. (*Id.*)

PRMI's counsel, however, objects to the use of videoconferencing technology for this purpose. (Def.'s March 10, 2020 Letter at 2–3.) Counsel contends that presenting testimony in this fashion would be *970 "patently unfair," given Dr. McCrary's "compelling interest in presenting his testimony in person, just as Plaintiff did with respect to its expert, Dr. Snow." (*Id.* at 2.) Counsel argues that Dr. McCrary would be hindered in his ability to clearly convey his testimony if he was required to do so via videoconference. (*Id.* at 2–3.) Counsel also objects to any suggestion that PRMI submit Mr. Crawford's testimony by deposition. (*Id.* at 3.) Counsel contends that because it had planned to present Mr. Crawford's live testimony at trial, it had no reason to ask him questions on redirect during his deposition and did not do so. (*Id.*) Counsel argues that requiring PRMI to submit designations from its own witness, based on Plaintiff's questions, would be fundamentally unfair. (*Id.*)

PRMI therefore requests that the Court reschedule the final two days of trial for the first available dates amenable to the Court and the parties. (*Id.*) ResCap states that while it is sympathetic to the witnesses' concerns, reasonable arrangements can be made to avoid the prejudice of further delays in the trial schedule. (Pl.'s March 10, 2020 Letter at 3.)

[1] [2]Pursuant to Federal Rule of Civil Procedure 43(a), "[a]t trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise." However, the rule also provides that "[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." Fed. R. Civ. P. 43(a). Accordingly, the decision to require testimony by videoconference falls within the Court's discretion. *See Thomas v. Anderson*, 912 F.3d 971, 977 (7th Cir. 2018) ("[U]nder Rule 43(a), the judge has discretion to allow live testimony by video for 'good cause in compelling circumstances and with appropriate safeguards.' "), *cert. denied*, —— S. Ct. ——, 140 S.Ct. 533, 205 L.Ed.2d 334 (2019). Moreover, the Court's discretion on this question is supplemented by its "wide latitude in determining the manner in which evidence is to be presented" under the Federal Rules of Evidence. *Parkhurst v. Belt*, 567 F.3d 995, 1002 (8th Cir. 2009) (citing Fed. R. Evid. 611(a)).

[3]Conducting a trial by videoconference is certainly not the same as conducting a trial where witnesses testify in the same room as the factfinder. *Thornton v. Snyder*, 428 F.3d 690, 697 (7th Cir. 2005), *cert. denied*, 547 U.S. 1192, 126 S.Ct. 2862, 165 L.Ed.2d 896 (2006). Indeed, "[v]ideoconference proceedings have their shortcomings." *Id.* " '[V]irtual reality is rarely a substitute for actual presence and ... even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it.' " *Id.* (quoting *United States v. Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001)). Certain features of testimony useful to evaluating credibility and persuasiveness, such as " '[t]he immediacy of a living person' " can be lost with video technology, and the " 'ability to observe demeanor, central to the fact-finding process, may be lessened[.]' " *Id.* (citations omitted). Accordingly, "remote transmission [of testimony] is to be the exception and not the rule." *Lopez v. NTI, LLC*, 748 F. Supp. 2d 471, 479 (D. Md. 2010).

[4]Still, advances in technology minimize these concerns. The near-instantaneous transmission of video testimony through current technology permits "the jury [or, in a bench trial, the Court] to see the live witness along with his hesitation, his doubts, his variations of language, his confidence or precipitancy, [and] his calmness or consideration[.]" *971 *In re Vioxx Prods. Litig.*, 439 F. Supp. 2d 640, 644 (E.D. La. 2006) (citations omitted) (cleaned up). Given the speed and clarity of modern videoconference technology, where good cause and compelling circumstances are shown, such testimony "satisfies the goals of live, in-person testimony and avoids the short-comings of deposition testimony." *Id.*

"Courts most frequently allow remote testimony in special circumstances, such as where a vital witness would be endangered or made uncomfortable by appearing in a courtroom." *Eller v. Trans Union, LLC*, 739 F.3d 467, 478 (10th Cir. 2013) (citing *Parkhurst*, 567 F.3d at 997 (child victim of sexual abuse); *Jennings v. Bradley*, 419 Fed. App'x 594, 598 (6th Cir. 2011) (unpublished) (three witnesses posed security threats while fourth witness would be deprived of necessary mental health support if forced to testify in person)). Courts also occasionally permit the use of remote testimony in situations where a witness is located far from the site of the trial or hearing. *Id.* (collecting cases). The variations in the case law illustrate that the question of whether good cause and compelling circumstances exist such that remote testimony should be permitted is a case-specific question.

The Advisory Committee Notes to Rule 43(a) are instructive here. After observing the "good cause in compelling circumstances" requirement, the advisory committee notes that "[t]ransmission cannot be justified merely by showing that it is inconvenient for the witness to attend the trial." Fed. R. Civ. P. 43(a) advisory committee's note to 1996 amendment. Rather, "[t]he most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place." *Id.* Notably, the use of "[c]ontemporaneous transmission *may be better than an attempt to reschedule the trial*[.]" *Id.* (emphasis added).

[5]Turning to the facts of this case, the Court finds that there is good cause and compelling circumstances that, with appropriate safeguards, justify the use of contemporaneous remote video testimony for both Dr. McCrary and Mr. Crawford, as opposed to postponing the trial any further. First, with respect to good cause, the occurrence of COVID-19—and its impact on the health and safety of the parties and witnesses—is undoubtably an "unexpected" occurrence that nevertheless still permits witnesses "to testify from a different place." Fed. R. Civ. P. 43(a) advisory committee's note to 1996 amendment. The virus was detected in China only recently in December 2019, and in three months has spread around the world.[3] The International Health Regulations Emergency Committee of the World Health Organization has declared the virus outbreak a "public health emergency of international concern" and the United States Health and Human Services Secretary has declared the virus a "public health emergency."[4] Moreover, the severity of the illness is not yet fully understood.[5] And while the exact method by which the virus spreads is not known with certainty, the CDC has generally classified the virus as a "community spread" disease that "spread[s] easily and sustainably in the community[.]"[6] Under the circumstances, COVID-19's unexpected nature, rapid spread, and potential risk establish good cause for remote testimony. Indeed, one court faced with a request for *972 a temporary restraining order addressing the movement of patients infected with COVID-19 considered the virus to pose a "threat of an immediate and irreparable injury." *City of Costa Mesa v. United States*, No. 8:20-cv-00368-JLS (JDE), 2020 WL 882000, at *1 (C.D. Cal. Feb. 21, 2020). Several courts have announced COVID-19-related restrictions on in-person appearances.[7] And, of particular concern here, the virus has been positively identified near—though not directly in contact with— [redacted]. (*See* Pl.'s March 10, 2020 Letter at 1.)

Compelling circumstances also exist for the witnesses in this case. As PRMI notes in its letter, Dr. McCrary, who lives in New York, and Mr. Crawford, who lives in Utah, have requested that they not be ordered to travel to Minnesota to provide testimony on March 12 in light of the COVID-19 virus. (Def.'s March 10, 2020 Letter [Doc. No. 5468] at 2.) [redacted] The Court is very sympathetic to these concerns, particularly in light of the many unknowns inherent in a virus outbreak. While the Court is unaware of a case fitting these exact circumstances, remote testimony is most often permitted "in special circumstances, such as where a vital witness would be endangered or made uncomfortable by appearing in a courtroom." *Eller*, 739 F.3d at 478. The desire to avoid potentially infecting family members with a disease whose risk factors, transmission vectors, and characteristics are not entirely understood certainly falls within that category, particularly where the witnesses at issue remain "able to testify from a different place" that does not present the risk or discomfort avoided by requiring live testimony. Fed. R. Civ. P. 43(a) advisory committee's note to 1996 amendment.

The Court is also confident that "appropriate safeguards" designed to "ensure accurate identification of the witness and that protect against influence by persons present with the witness" can be established through videoconference testimony. *Id.* Moreover, the Court is certain that "[a]ccurate transmission" of the contents of the witnesses' testimony will occur. *Id.* Finally, the Court is unpersuaded by defense counsel's assertions that "[r]equiring testimony by videoconference" from Dr. McCrary would "severely hinder [his] ability to convey his testimony (which concerns complicated subject matters) in a clear and comprehensible manner to the Court." (Def.'s Mar. 10, 2020 Letter at 2–3.) If this were a jury trial, the Court's concerns about clarity would perhaps be heightened. However, as this is a bench trial, the Court is confident it will adequately understand Dr. McCrary's testimony, even through videoconference technology. In any event, any issues with clarity can be addressed during testimony. *See* Fed. R. Evid. 614(b) (permitting the Court to examine a witness regardless of who calls the witness).

Finally, the Court holds that the use of "[c]ontemporaneous transmission" for remote testimony is absolutely preferable over "an attempt to reschedule the trial[.]" Fed. R. Civ. P. 43(a) advisory committee's note to 1996 amendment. This trial has been spread out over nearly a month and a half, and it is unclear precisely when the Court could schedule additional trial days in the near future. The next two consecutive open days in the Court's schedule, *973 which are in late April 2020, are being held open in light of a *pro se* criminal jury trial that may carry over from the preceding week. In addition, the prospect of a

delay until late April would prejudice Plaintiff, as it would give PRMI an additional seven to eight weeks to prepare their damages expert. Moreover, the COVID-19 outbreak itself presents further complications, as postponing the trial for any length of time could merely postpone the possibility of infection at a later date, which itself might require additional delays. Given the availability of contemporaneous videoconference technology for receiving the testimony of both Dr. McCrary and Mr. Crawford, such a lengthy delay is untenable. The use of videoconference technology in this case balances the witnesses' valid concerns about safety with the need for expeditious trial proceedings.

Accordingly, the Court denies PRMI's request to reschedule the final two days of trial. Instead, the Court will preside over the final two days of trial by videoconference. The Court is advised by IT staff in this District that the most reliable, secure video link may be obtained at other federal courthouses. The parties are therefore directed to conduct their direct and cross examinations on Thursday and Friday, March 12 and 13 respectively, from a local federal courthouse of their choice. By 11:00 a.m., Eastern Time, tomorrow, Wednesday, March 11, 2020, they shall identify the courthouse and the lead IT videoconferencing person from each courthouse so that our IT videoconferencing staff can communicate with them promptly. The videoconference link will allow all three locations to be seen on a split screen, simultaneously.

IT IS SO ORDERED.

All Citations

444 F.Supp.3d 967, 111 Fed. R. Evid. Serv. 1184

Footnotes

1 The coronavirus (COVID-19) is a respiratory disease that was first detected in China but has now been identified in more than 100 locations internationally, including the United States. The "COVID-19" moniker is an abbreviation of the diseases name "coronavirus disease 2019." *See Coronavirus Disease 2019 (COVID-19) Situation Summary*, CDC (Mar. 9, 2020), https://www.cdc.gov/coronavirus/2019-ncov/summary.html.

The Court takes judicial notice of the Centers for Disease Control and Prevention website. *See Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 793 (8th Cir. 2016) (citing *Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 648 (7th Cir. 2011) for the authority of a court to take judicial notice of government websites).

2 The CDC has indicated that the symptoms of a COVID-19 infection may appear anywhere from two to fourteen days after infection. *See Symptoms*, CDC (March 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html.

3 *See* Coronavirus Disease 2019, *supra* n.1

4 *Id.*

5 *Id.*

6 *See How COVID-19 Spreads*, CDC (Mar. 10, 2020),

https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

7 *See* United States Courts for the Ninth Circuit, March 9, 2020 Announcements, https://www.ca9.uscourts.gov/content/view.php?pk_id=0000001034; *see also* United States District Court for the Eastern District of Texas, Marshall Division, Standing Order Regarding the Novel Coronavirus (COVID-19) (providing guidance and directing parties to "meet and confer regarding the appropriate means to conduct [impacted] ... trial[s]" and to "consider, among other things ... [w]hether video conferencing would be appropriate and effective").

End of Document

City of Chicago v. Fulton

USCS Bankruptcy R 7001

Current through changes received through May 21, 2026.

Rule 7001. Types of Adversary Proceedings

An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings:

(a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, a proceeding by an individual debtor to recover tangible personal property under § 542(a) [11 USCS § 542(a)], or a proceeding under § 554(b), § 725 [11 USCS §§ 554(b), 725], Rule 2017, or Rule 6002;

(b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property—except a proceeding under Rule 3012 or Rule 4003(d);

(c) a proceeding to obtain authority under § 363(h) [11 USCS § 363(h)] to sell both the estate's interest in property and that of a co-owner;

(d) a proceeding to revoke or object to a discharge—except an objection under § 727(a)(8) or (a)(9), or § 1328(f) [11 USCS § 727(a)(8) or (a)(9), or § 1328(f)];

(e) a proceeding to revoke an order confirming a plan in a Chapter 11, 12, or 13 case;

(f) a proceeding to determine whether a debt is dischargeable;

(g) a proceeding to obtain an injunction or other equitable relief—except when the relief is provided in a Chapter 9, 11, 12, or 13 plan;

(h) a proceeding to subordinate an allowed claim or interest—except when subordination is provided in a Chapter 9, 11, 12, or 13 plan;

(i) a proceeding to obtain a declaratory judgment related to any proceeding described in (a)–(h); and

(j) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

History

As amended March 30, 1987, eff. Aug. 1, 1987; April 30, 1991, eff. Aug. 1, 1991; April 26, 1999, eff. Dec. 1, 1999; April 28, 2010, eff. Dec. 1, 2010; April 27, 2017, eff. Dec. 1, 2017; April 2, 2024, eff. Dec. 1, 2024.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Notes of Advisory Committee. The rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this Rule 7001. Under Rule 9014 some of the Part VII rules also apply to contested matters.

These Part VII rules are based on the premise that to the extent possible practice before the bankruptcy courts and the district courts should be the same. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure. Although the Part VII rules of the former Bankruptcy Rules also relied heavily on the Fed. R. Civ. P., the former Part VII rules departed from the civil practice in two significant ways: a trial or pretrial conference had to be scheduled as soon as the adversary proceeding was filed and pleadings had to be filed within periods shorter than those established by the Fed. R. Civ. P. These departures from the civil practice have been eliminated.

The content and numbering of these Part VII rules correlates to the content and numbering of the Fed. R. Civ. P. Most, but not all, of the Fed. R. Civ. P. have a comparable Part VII rule. When there is no Part VII rule with a number corresponding to a particular Fed. R. Civ. P., Parts V and IX of these rules must be consulted to determine if one of the rules in those parts deals with the subject. The list below indicates the Fed. R. Civ. P., or subdivision thereof, covered by a rule in either Part V or Part IX.

F.R.Civ.P.	Rule in Part V or IX
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38,39	9015(a)–(e)
47–51	9015(f)
43,44,44.1	9017
45	9016
58	9021

59	9023
60	9024
61	9005
63	9028
77(a),(b),(c)	5001
77(d)	9022(d)
79(a)–(d)	5003
81(c)	9027
83	9029
92	9030

Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§ 544, 545, 547, 548 and 549 of the Code; subject to important exceptions, proceedings to recover money or property; proceedings on bonds under Rules 5008(d) and 9025; proceedings under Rule 4004 to determine whether a discharge in a chapter 7 or 11 case should be denied because of an objection grounded on § 727 and proceedings in a chapter 7 or 13 case to revoke a discharge as provided in §§ 727(d) or 1328(e); and proceedings initiated pursuant to § 523(c) of the Code to determine the dischargeability of a particular debt. Those proceedings were classified as adversary proceedings under former Bankruptcy Rule 701.

Also included as adversary proceedings are proceedings to revoke an order of confirmation of a plan in a chapter 11 or 13 case as provided in §§ 1144 and 1330, to subordinate under § 510(c), other than as part of a plan, an allowed claim or interest, and to sell under § 363(h) both the interest of the estate and a co-owner in property.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings.

Any claim or cause of action removed to a bankruptcy court pursuant to 28 U.S.C. § 1478 is also an adversary proceeding.

Unlike former Bankruptcy Rule 701, requests for relief from an automatic stay do not commence an adversary proceeding. Section 362(e) of the Code and Rule 4001 establish an expedited schedule for judicial disposition of requests for relief from the automatic stay. The formalities of the adversary proceeding process and the time for serving pleadings are not well suited to the expedited schedule. The motion practice prescribed in Rule 4001 is best suited to such requests because the court has the flexibility to fix hearing dates and other deadlines appropriate to the particular situation.

Clause (1) contains important exceptions. A person with an interest in property in the possession of the trustee or debtor in possession may seek to recover or reclaim that

property under § 554(b) or § 725 of the Code. Since many attempts to recover or reclaim property under these two sections do not generate disputes, application of the formalities of the Part VII Rules is not appropriate. Also excluded from adversary proceedings is litigation arising from an examination under Rule 2017 of a debtor's payments of money or transfers of property to an attorney representing the debtor in a case under the Code or an examination of a superseded administration under Rule 6002.

Exemptions and objections thereto are governed by Rule 4003. Filing of proofs of claim and the allowances thereof are governed by Rules 3001–3005, and objections to claims are governed by Rule 3007. When an objection to a claim is joined with a demand for relief of the kind specified in this Rule 7001, the matter becomes an adversary proceeding. See Rule 3007.

Notes of Advisory Committee on 1987 amendments. Another exception is added to clause (1). A trustee may proceed by motion to recover property from the debtor.

Notes of Advisory Committee on 1991 amendments. Clauses (5) and (8) are amended to include chapter 12 plans.

Notes of Advisory Committee on 1999 amendments. This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief Other amendments are stylistic.

Notes of Advisory Committee on 2010 amendments. Paragraph (4) of the rule is amended to create an exception for objections to discharge under §§ 727(a)(8), (a)(9), and 1328(f) of the Code. Because objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge, the more formal procedures applicable to adversary proceedings, such as commencement by a complaint, are not required. Instead, objections on these three grounds are governed by Rule 4004(d). In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules apply to these matters.

Changes Made After Publication. The proposed addition of subsection (b) was deleted, and the content of that provision was moved to Rule 4004(d). The exception in paragraph (4) of the rule was revised to refer to objections to discharge under §§ 727(a)(8), (a)(9), and 1328(f) of the Code. The redesignation of the existing rule as subdivision (a) was also deleted. The Committee Note was revised to reflect these changes.

Notes of Advisory Committee on 2017 Amendments.

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer

of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

Notes of Advisory Committee on 2024 amendments. The language of Rule 7001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Additionally, the following substantive changes have been made.

Paragraph (a) is amended to create an exception for certain turnover proceedings under § 542(a) of the Code. An individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain the use of property that may be exempted. As noted by Justice Sotomayor in her concurrence in *City of Chicago v. Fulton*, 141 S. Ct. 585, 592-95 (2021), the more formal procedures applicable to adversary proceedings can be too time-consuming in such a situation. Instead, the debtor can now proceed by motion to require turnover of such property under § 542(a), and the procedures of Rule 9014 will apply. In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules will apply to the matter.

NOTES TO DECISIONS

141 S.Ct. 585
Supreme Court of the United States.

CITY OF CHICAGO, ILLINOIS, Petitioner
v.
Robbin L. FULTON, et al.

No. 19-357
|
Argued October 13, 2020
|
Decided January 14, 2021

Synopsis

Background: Bankruptcy court issued rule to show cause why city should not be sanctioned for refusing to release Chapter 13 debtor's vehicle, which had been impounded because of unpaid parking tickets. The United States Bankruptcy Court for the Northern District of Illinois, Jacqueline P. Cox, J., 584 B.R. 252, entered judgment in favor of debtor, and city appealed. In separate Chapter 13 case, debtor moved to enforce automatic stay by requiring city to release vehicle, and the United States Bankruptcy Court for the Northern District of Illinois, Deborah Lee Thorne, J., 588 B.R. 811, granted motion. City appealed. In yet another case, debtor again filed motion to enforce stay against city, which motion was granted by the United States Bankruptcy Court for the Northern District of Illinois, Carol A. Doyle, J., 590 B.R. 467, and city appealed. Finally, like relief was granted by the United States Bankruptcy Court for the Northern District of Illinois, Jack B. Schmetterer, J., 2018 WL 2570109, and city appealed. Consolidating cases for purposes of appeal, the Court of Appeals for the Seventh Circuit, Flaum, Circuit Judge, 926 F.3d 916, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Alito, held that an entity's mere retention of estate property after the filing of a bankruptcy petition does not constitute an act to exercise control over property of the estate in violation of the Bankruptcy Code's automatic stay, abrogating *In re Weber*, 719 F.3d 72, *In re Del Mission Ltd.*, 98 F.3d 1147, and *In re Knaus*, 889 F.2d 773.

Vacated and remanded.

Justice Barrett took no part in the consideration or decision of the case.

Justice Sotomayor filed a concurring opinion.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Motion to Enforce Automatic Stay.

West Headnotes (18)

[1] **Bankruptcy**⇦Proceedings, Acts, or Persons Affected

When a debtor files a petition for bankruptcy, the Bankruptcy Code protects the debtor's interests by imposing an automatic stay on efforts to collect prepetition debts outside the bankruptcy forum. 11 U.S.C.A. § 362(a).

32 Cases that cite this headnote

[2] **Bankruptcy**⇦Creation of estate; time

Under the Bankruptcy Code, the filing of a bankruptcy petition has certain immediate consequences, including the creation of "an estate." 11 U.S.C.A. § 541.

18 Cases that cite this headnote

[3] **Bankruptcy**⇦Property of Estate in General

Section of the Bankruptcy Code governing property of the estate is intended to include in the estate any property made available to the estate by other provisions of the Code. 11 U.S.C.A. § 541.

19 Cases that cite this headnote

[4] **Bankruptcy**⇦Collection and Recovery for Estate; Turnover

Turnover section of the Bankruptcy Code provides, with just a few exceptions, that an entity other than a custodian in possession of property of the bankruptcy estate shall deliver to the trustee, and account for, that property. 11 U.S.C.A. § 542.

8 Cases that cite this headnote

[5] **Bankruptcy**⇦Proceedings, Acts, or Persons Affected

One automatic consequence of the filing of a bankruptcy petition is that, with certain exceptions, the petition operates as a stay, applicable to all entities, of efforts to collect from the debtor outside of the bankruptcy forum. 11 U.S.C.A. § 362(a).

26 Cases that cite this headnote

[6] **Bankruptcy**⇦Automatic Stay

Bankruptcy Code's automatic stay serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others. 11 U.S.C.A. § 362(a).

21 Cases that cite this headnote

[7] **Bankruptcy**⇦Damages and attorney fees
Bankruptcy⇦Exemplary or punitive damages; fines

Under the Bankruptcy Code, an individual injured by any willful violation of the automatic stay shall recover actual damages, and may recover punitive damages. 11 U.S.C.A. §§ 362(a), 362(k)(1).

10 Cases that cite this headnote

[8] **Bankruptcy**⇦Proceedings, Acts, or Persons Affected

Entity's mere retention of estate property after the filing of a bankruptcy petition does not constitute an act to exercise control over property of the estate in violation of the Bankruptcy Code's automatic stay; rather, that subsection of the Code prohibits affirmative acts that would disturb the status quo of estate property as of the time

the bankruptcy petition was filed; abrogating *In re Weber*, 719 F.3d 72, *In re Del Mission Ltd.*, 98 F.3d 1147, and *In re Knaus*, 889 F.2d 773. 11 U.S.C.A. § 362(a)(3).

52 Cases that cite this headnote

[9] **Action**⇨Stay of Proceedings

A "stay" is an order that suspends judicial alteration of the status quo.

4 Cases that cite this headnote

[10] **Bankruptcy**⇨Proceedings, Acts, or Persons Affected

In context of the stay provision of the Bankruptcy Code prohibiting any act to exercise control over property of the estate, the term "act" refers to something done or performed, or a deed. 11 U.S.C.A. § 362(a)(3).

21 Cases that cite this headnote

[11] **Bankruptcy**⇨Proceedings, Acts, or Persons Affected

In context of the stay provision of the Bankruptcy Code prohibiting any act to exercise control over property of the estate, to "exercise" means to bring into play or to make effective in action, and to exercise something like control is to put in practice or carry out in action. 11 U.S.C.A. § 362(a)(3).

13 Cases that cite this headnote

[12] **Statutes**⇨Particular Words and Phrases

In interpreting a statute, omissions may qualify as "acts" in certain contexts.

2 Cases that cite this headnote

[13] **Statutes**⇨Particular Words and Phrases

In interpreting a statute, in certain contexts the term "control" may mean to have power over.

[14] **Bankruptcy**⇨Collection and Recovery for Estate; Turnover

Exceptions to the Bankruptcy Code's turnover provision shield (1) transfers of estate property made from one entity to another in good faith without notice or knowledge of the bankruptcy petition, and (2) good-faith transfers to satisfy certain life insurance obligations. 11 U.S.C.A. §§ 542, 542(c), (d).

2 Cases that cite this headnote

[15] **Statutes**⇨Superfluousness

Canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.

30 Cases that cite this headnote

[16] **Bankruptcy**⇨Proceedings, Acts, or Persons Affected

Stay provision of the Bankruptcy Code prohibiting any act to exercise control over property of the estate prohibits collection efforts outside the bankruptcy proceeding that would change the status quo. 11 U.S.C.A. § 362(a)(3).

41 Cases that cite this headnote

[17] **Bankruptcy**⇨Collection and Recovery for Estate; Turnover

Bankruptcy Code's turnover provision works within the bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee. 11 U.S.C.A. § 542(a).

3 Cases that cite this headnote

[18] Bankruptcy⇨Collection and Recovery for Estate; Turnover

Bankruptcy Code's turnover provision does not mandate turnover of property that is of inconsequential value or benefit to the estate. 11 U.S.C.A. § 542(a).

9 Cases that cite this headnote

587 *Syllabus

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

*154 The filing of a petition under the Bankruptcy Code automatically "creates an estate" that, with some exceptions, comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Section 541 is intended to include within the estate any property made available by other provisions of the Bankruptcy Code. Section 542 is one such provision, as it provides that an entity in possession of property of the bankruptcy estate "shall deliver to the trustee, and account for" that property. The filing of a petition also automatically "operates as a stay, applicable to all entities," of efforts to collect prepetition debts outside the bankruptcy forum, § 362(a), including "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," § 362(a)(3). Here, each respondent filed a bankruptcy petition and requested that the city of Chicago (City) return his or her vehicle, which had been impounded for failure to pay fines for motor vehicle infractions. In each case, the City's refusal was held by a bankruptcy court to violate the automatic stay. The Seventh Circuit affirmed, concluding that by retaining possession of the vehicles the City had acted "to exercise control over" respondents' property in violation of § 362(a)(3).

Held: The mere retention of estate property after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code. Under that provision, the filing of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms is that § 362(a)(3) prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed. Respondents' alternative reading would create at least two serious problems. First, reading § 362(a)(3) to cover mere retention of property would render § 542's central command—that an entity in possession of certain estate property "shall deliver to the trustee ... such property"—largely superfluous, even though § 542 appears to be the provision governing the turnover of estate property. Second, respondents' reading would render the commands of § 362(a)(3) and § 542 contradictory. Section 542 carves out exceptions to the turnover command. Under respondents' reading, an entity would be required to turn over *155 property under § 362(a)(3) even if that property were exempt from turnover under § 542. The history of the Bankruptcy Code confirms the better reading. The Code originally included both § 362(a)(3) and § 542(a), but the former provision lacked the phrase "or to exercise control over property of the estate." When that phrase was later added by amendment, Congress made no mention of transforming § 362(a)(3) into an affirmative turnover obligation. It is unlikely that Congress would have made such an important change simply by adding the phrase "exercise control," rather than by adding a cross-reference to § 542(a) or some other indication that it was so transforming § 362(a)(3). Pp. 590 - 592.

926 F.3d 916, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except BARRETT, J., who took no part in the consideration or decision of the case. SOTOMAYOR, J., filed a concurring opinion.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Attorneys and Law Firms

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Opinion

Justice ALITO delivered the opinion of the Court.

*156 **589 [1] When a debtor files a petition for bankruptcy, the Bankruptcy Code protects the debtor's interests by imposing an automatic stay on efforts to collect prepetition debts outside the bankruptcy forum. *Ritzen Group, Inc.* v. *Jackson Masonry, LLC*, 589 U.S. ——, ——– – ———, 140 S.Ct. 582, 588–589, 205 L.Ed.2d 419 (2020). Those prohibited efforts include "any act ... to exercise control over property" of the bankruptcy estate. 11 U.S.C. § 362(a)(3). The question in this case is whether an entity violates that prohibition by retaining possession of a debtor's property after a bankruptcy petition is filed. We hold that mere retention of property does not violate § 362(a)(3).

I

[2] [3] [4] Under the Bankruptcy Code, the filing of a bankruptcy petition has certain immediate consequences. For one thing, a petition "creates an estate" that, with some exceptions, comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1). Section 541 "is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code." *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198, 205, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983). One such provision, § 542, is important for present purposes. Titled "Turnover of property to the estate," § 542 provides, with just a few exceptions, that an entity (other than a custodian) in possession of property of the bankruptcy estate "shall deliver to the trustee, and account for" that property.

[5] [6] [7] A second automatic consequence of the filing of a bankruptcy petition is that, with certain exceptions, the petition "operates as a stay, applicable to all entities," of efforts to collect from the debtor outside of the bankruptcy forum. *157 § 362(a). The automatic stay serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others. Under the Code, an individual injured by any willful violation of the stay "shall recover actual damages, including costs and attorneys' fees, and in appropriate circumstances, may recover punitive damages." § 362(k)(1).

Among the many collection efforts prohibited by the stay is "any act to obtain possession of property of the estate or of property from the estate or *to exercise control over property of the estate*." § 362(a)(3) (emphasis added). The prohibition against exercising control over estate property is the subject of the present dispute.

In the case before us, the city of Chicago (City) impounded each respondent's vehicle for failure to pay fines for motor vehicle infractions. Each respondent filed a Chapter 13 bankruptcy petition and requested that the City return his or her vehicle. The City refused, and in each case a bankruptcy court held that the City's refusal violated the automatic stay. The Court of Appeals affirmed all of the judgments in a consolidated opinion. *In re Fulton*, 926 F.3d 916 (CA7 2019). The court concluded that "by retaining possession of the debtors' vehicles after they declared bankruptcy," the City had acted "to exercise control over" respondents' property in violation of § 362(a)(3). *Id.*, at 924–925. We granted certiorari to resolve a split in the Courts of Appeals over whether an entity that retains possession of the property of a **590 bankruptcy estate violates § 362(a)(3).[1] 589 U.S. ——, 140 S.Ct. 680, 205 L.Ed.2d 449 (2019). We now vacate the judgment below.

[1] Compare *In re Fulton*, 926 F.3d 916, 924 (CA7 2019), *In re Weber*, 719 F.3d 72, 81 (CA2 2013), *In re Del Mission Ltd.*, 98 F.3d 1147, 1151–1152 (CA9 1996), and *In re Knaus*, 889 F.2d 773, 774–775 (CA8 1989), with *In re Denby-Peterson*, 941 F.3d 115, 132 (CA3 2019), and *In re Cowen*, 849 F.3d 943, 950 (CA10 2017).

*158 II

[8] The language used in § 362(a)(3) suggests that merely retaining possession of estate property does not violate the automatic stay. Under that provision, the filing of a bankruptcy petition operates as a "stay" of "any act" to "exercise control" over the property of the estate. Taken together, the most natural reading of these terms—"stay," "act," and "exercise control"—is that § 362(a)(3) prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed.

[9] [10] [11] Taking the provision's operative words in turn, the term "stay" is commonly used to describe an order that "suspend[s] judicial alteration of the status quo." *Nken* v. *Holder*, 556 U.S. 418, 429, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (brackets in original; internal quotation marks omitted). An "act" is "[s]omething done or performed ... ; a deed." Black's Law Dictionary 30 (11th ed. 2019); see also Webster's New International Dictionary 25 (2d ed. 1934) ("that which is done," "the exercise of power," "a deed"). To "exercise" in the sense relevant here means "to bring into play" or "make effective in action." Webster's Third New International Dictionary 795 (1993). And to "exercise" something like control is "to put in practice or carry out in action." Webster's New International Dictionary, at 892. The suggestion conveyed by the combination of these terms is that § 362(a)(3) halts any affirmative act that would alter the status quo as of the time of the filing of a bankruptcy petition.

[12] [13] We do not maintain that these terms definitively rule out the alternative interpretation adopted by the court below and advocated by respondents. As respondents point out, omissions can qualify as "acts" in certain contexts, and the term " 'control' " can mean " 'to have power over.' " *Thompson* v. *General Motors Acceptance Corp.*, 566 F.3d 699, 702 (CA7 2009) (quoting Merriam-Webster's Collegiate Dictionary 272 (11th ed. 2003)). But saying that a person engages in an "act" to "exercise" his or her power over a thing communicates more than merely "having" that power. Thus the *159 language of § 362(a)(3) implies that something more than merely retaining power is required to violate the disputed provision.

Any ambiguity in the text of § 362(a)(3) is resolved decidedly in the City's favor by the existence of a separate provision, § 542, that expressly governs the turnover of estate property. Section 542(a), with two exceptions, provides as follows:

> "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate."

[14] The exceptions to § 542(a) shield (1) transfers of estate property made from one entity to another in good faith without notice or knowledge of the bankruptcy petition **591 and (2) good-faith transfers to satisfy certain life insurance obligations. See §§ 542(c), (d). Reading § 362(a)(3) to cover mere retention of property, as respondents advocate, would create at least two serious problems.

[15] First, it would render the central command of § 542 largely superfluous. "The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Yates* v. *United States*, 574 U.S. 528, 543, 135 S.Ct. 1074, 191 L.Ed.2d 64 (2015) (plurality opinion; internal quotation marks and brackets omitted). Reading "any act ... to exercise control" in § 362(a)(3) to include merely retaining possession of a debtor's property would make that section a blanket turnover provision. But as noted, § 542 expressly governs "[t]urnover of property to the estate," and subsection (a) describes the broad range of property that an entity "shall deliver to the trustee." That mandate would be surplusage if § 362(a)(3) already required an entity affirmatively to relinquish *160 control of the debtor's property at the moment a bankruptcy petition is filed.

[16] [17] Respondents and their *amici* contend that § 542(a) would still perform some work by specifying the party to whom the property in question must be turned over and by requiring that an entity "account for ... the value of " the debtor's property if the property is damaged or lost. But that is a small amount of work for a large amount of text in a section that appears to be the Code provision that is designed to govern the turnover of estate property. Under this alternative interpretation, § 362(a)(3), not § 542, would be the chief provision governing turnover—even though § 362(a)(3) says nothing expressly on that question. And § 542 would be reduced to a footnote—even though it appears on its face to be the governing provision. The better account of the two provisions is that § 362(a)(3) prohibits collection efforts outside the bankruptcy proceeding that would change the status quo, while § 542(a) works within the bankruptcy process to draw far-flung estate property back into the hands of the debtor or trustee.

[18] Second, respondents' reading would render the commands of § 362(a)(3) and § 542 contradictory. Section 542 carves out exceptions to the turnover command, and § 542(a) by its terms does not mandate turnover of property that is "of inconsequential value or benefit to the estate." Under respondents' reading, in cases where those exceptions to turnover under § 542 would apply, § 362(a)(3) would command turnover all the same. But it would be "an odd construction" of § 362(a)(3) to require a creditor to do immediately what § 542 specifically excuses. *Citizens Bank of Md.* v. *Strumpf*, 516 U.S. 16, 20, 116 S.Ct. 286, 133 L.Ed.2d 258 (1995). Respondents would have us resolve the conflicting commands by engrafting § 542's exceptions onto § 362(a)(3), but there is no textual basis for doing so.

The history of the Bankruptcy Code confirms what its text and structure convey. Both § 362(a)(3) and § 542(a) were included *161 in the original Bankruptcy Code in 1978. See Bankruptcy Reform Act of 1978, 92 Stat. 2570, 2595. At the time, § 362(a)(3) applied the stay only to "any act to obtain possession of property of the estate or of property from the estate." *Id.*, at 2570. The phrase "or to exercise control over property of the estate" was not added until 1984, Bankruptcy Amendments and Federal Judgeship Act of 1984, 98 Stat. 371.

Respondents do not seriously dispute that § 362(a)(3) imposed no turnover obligation prior to the 1984 amendment. But **592 transforming the stay in § 362 into an affirmative turnover obligation would have constituted an important change. And it would have been odd for Congress to accomplish that change by simply adding the phrase "exercise control," a phrase that does not naturally comprehend the mere retention of property and that does not admit of the exceptions set out in § 542. Had Congress wanted to make § 362(a)(3) an enforcement arm of sorts for § 542(a), the least one would expect would be a cross-reference to the latter provision, but Congress did not include such a crossreference or provide any other indication that it was transforming § 362(a)(3). The better account of the statutory history is that the 1984 amendment, by adding the phrase regarding the exercise of control, simply extended the stay to acts that would change the status quo with respect to intangible property and acts that would change the status quo with respect to tangible property without "obtain[ing]" such property.

* * *

Though the parties debate the issue at some length, we need not decide how the turnover obligation in § 542 operates. Nor do we settle the meaning of other subsections of § 362(a).[2] We hold only that mere retention of estate property *162 after the filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

[2] In respondent Shannon's case, the Bankruptcy Court determined that by retaining Shannon's vehicle and demanding payment, the City also had violated §§ 362(a)(4) and (a)(6). Shannon presented those theories to the Court of Appeals, but the court did not reach them. 926 F.3d at 926, n. 1. Neither do we.

It is so ordered.

Justice BARRETT took no part in the consideration or decision of this case.

Justice SOTOMAYOR, concurring.

Section 362(a)(3) of the Bankruptcy Code provides that the filing of a bankruptcy petition "operates as a stay" of "any act ... to exercise control over property of the [bankruptcy] estate." 11 U.S.C. § 362(a)(3). I join the Court's opinion because I agree that, as used in § 362(a)(3), the phrase "exercise control over" does not cover a creditor's passive retention of property lawfully seized prebankruptcy. Hence, when a creditor has taken possession of a debtor's property, § 362(a)(3) does not require the creditor to return the property upon the filing of a bankruptcy petition.

I write separately to emphasize that the Court has not decided whether and when § 362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things, "any act to create, perfect, or enforce any lien against property of the estate" and "any act to collect, assess, or recover a claim against [a] debtor" that arose prior to bankruptcy proceedings. §§ 362(a)(4), (6); see, *e.g.*, *In re Kuehn*, 563 F.3d 289, 294 (CA7 2009) (holding that a university's refusal to provide a transcript to a student-debtor "was an act to collect a debt" that violated the automatic stay). Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to "deliver" estate property to the trustee *163 or debtor under § 542(a). The City's conduct may very well violate one or both of these other provisions. The Court does not decide one way or the other.

Regardless of whether the City's policy of refusing to return impounded vehicles satisfies the letter of the Code, it hardly **593 comports with its spirit. "The principal purpose of the Bankruptcy Code is to grant a ' "fresh start" ' " to debtors. *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)). When a debtor files for Chapter 13 bankruptcy, as respondents did here, "the debtor retains possession of his property" and works toward completing a court-approved repayment plan. 549 U.S. at 367, 127 S.Ct. 1105. For a Chapter 13 bankruptcy to succeed, therefore, the debtor must continue earning an income so he can pay his creditors. Indeed, Chapter 13 bankruptcy is available only to "individual[s] with regular income." 11 U.S.C. § 109(e).

For many, having a car is essential to maintaining employment. Take, for example, respondent George Peake. Before the City seized his car, Peake relied on his 200,000-mile 2007 Lincoln MKZ to travel 45 miles each day from his home on the South Side of Chicago to his job in Joliet, Illinois. In June 2018, when the City impounded Peake's car for unpaid parking and red-light tickets, the vehicle was worth just around $4,300 (and was already serving as collateral for a roughly $7,300 debt). Without his car, Peake had to pay for rides to Joliet. He filed for bankruptcy, hoping to recover his vehicle and repay his $5,393.27 debt to the City through a Chapter 13 plan. The City, however, refused to return the car until either Peake paid $1,250 upfront or after the court confirmed Peake's bankruptcy plan. As a result, Peake's car remained in the City's possession

for months. By denying Peake access to the vehicle he needed to commute to work, the City jeopardized Peake's ability to make payments to *all* his creditors, the City included. Surely, Peake's vehicle *164 would have been more valuable in the hands of its owner than parked in the City's impound lot.[1]

[1] Even though § 362(a)(3) does not require turnover, whether and when the City may sell impounded cars is an entirely different matter. See, *e.g.*, *In re Cowen*, 849 F.3d 943, 950 (CA10 2017) ("It's not hard to come up with examples of ... 'acts' that 'exercise control' over, but do not 'obtain possession of,' the estate's property, e.g., a creditor in possession who improperly sells property belonging to the estate").

Peake's situation is far too common.[2] Drivers in low-income communities across the country face similar vicious cycles: A driver is assessed a fine she cannot immediately pay; the balance balloons as late fees accrue; the local government seizes the driver's vehicle, adding impounding and storage fees to the growing debt; and the driver, now without reliable transportation to and from work, finds it all but impossible to repay her debt and recover her vehicle. See Brief for American Civil Liberties Union et al. as *Amici Curiae* 11–16, 31–32. Such drivers may turn to Chapter 13 bankruptcy for a "fresh start." *Marrama*, 549 U.S. at 367, 127 S.Ct. 1105 (internal quotation marks omitted).[3] But without their vehicles, many debtors quickly find themselves unable to make their Chapter 13 payments. The cycle thus continues, disproportionately burdening communities **594 of color, see Brief for American Civil Liberties Union et al. as *Amici Curiae* 17, and interfering not only with debtors' ability to earn an income and pay their creditors but also with their access to childcare, groceries, medical appointments, and other necessities.

[2] See, *e.g.*, Ramos, Chicago Seized and Sold Nearly 50,000 Cars Over Tickets Since 2011, Sticking Owners With Debt, WBEZ News (Jan. 7, 2019) (online source archived at www.supremecourt.gov).

[3] The 10-year period from 2007 to 2017, for instance, saw a tenfold increase in the number of Chicagoans filing Chapter 13 bankruptcies that involved debt to the City. See Sanchez & Kambhampati, Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy, ProPublica Illinois (Feb. 27, 2018) (online source archived at www.supremecourt.gov).

*165 Although the Court today holds that § 362(a)(3) does not require creditors to turn over impounded vehicles, bankruptcy courts are not powerless to facilitate the return of debtors' vehicles to their owners. Most obviously, the Court leaves open the possibility of relief under § 542(a). That section requires any "entity," subject to some exceptions, to turn over "property" belonging to the bankruptcy estate. 11 U.S.C. § 542(a). The debtor, in turn, must be able to provide the creditor with "adequate protection" of its interest in the returned property, § 363(e); for example, the debtor may need to demonstrate that her car is sufficiently insured. In this way, § 542(a) maximizes value for all parties involved in a bankruptcy: The debtor is able to use her asset, which makes it easier to earn an income; the debtor's unsecured creditors, in turn, receive timely payments from the debtor; and the debtor's secured creditor, for its part, receives "adequate protection [to] replace the protection afforded by possession." *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198, 207, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983). Secured creditors cannot opt out of this arrangement. As even the City acknowledges, § 542(a) "impose[s] a duty of turnover that is mandatory when the statute's conditions ... are met." Brief for Petitioner 37.

The trouble with § 542(a), however, is that turnover proceedings can be quite slow. The Federal Rules of Bankruptcy Procedure treat most "proceeding[s] to recover ... property" as "adversary proceedings." Rule 7001(1). Such actions are, in simplified terms, "essentially full civil lawsuits carried out under the umbrella of [a] bankruptcy case." *Bullard* v. *Blue Hills Bank*, 575 U.S. 496, 505, 135 S.Ct. 1686, 191 L.Ed.2d 621 (2015). Because adversary proceedings require more process, they take more time. Of the turnover proceedings filed after July 2019 and concluding before June 2020, the average case was pending for over 100 days. See Administrative Office of the United States Courts, Time Intervals in Months From Filing to Closing of Adversary Proceedings Filed Under *166 11 U.S.C. § 542 for the 12-Month Period Ending June 30, 2020, Washington, DC: Sept. 25, 2020.

One hundred days is a long time to wait for a creditor to return your car, especially when you need that car to get to work so you can earn an income and make your bankruptcy-plan payments. To address this problem, some courts have adopted strategies to hurry things along. At least one bankruptcy court has held that § 542(a)'s turnover obligation is automatic even absent a court order. See *In re Larimer*, 27 B.R. 514, 516 (Bankr. D Idaho 1983). Other courts apparently will permit debtors to seek turnover by simple motion, in lieu of filing a full adversary proceeding, at least where the creditor has received adequate notice. See Tr. of Oral Arg. 81 (counsel for the City stating that "[i]n most bankruptcy courts, if a creditor responds to a motion [for turnover] by" arguing that the debtor should have instituted an adversary proceeding, the bankruptcy judge will ask whether the creditor received "actual notice"); Brief for United States as *Amicus Curiae* 32 (reporting that "some courts have granted [turnover] orders based solely on a motion"); but see, *e.g.*, *In re Denby-Peterson*, 941 F.3d 115, 128–131 (CA3 2019) (holding that debtors must seek turnover through adversary proceedings). Similarly, even when a turnover request does take the form of an **595 adversary proceeding, bankruptcy courts may find it prudent to expedite proceedings or order preliminary relief requiring temporary turnover. See, *e.g.*, *In re Reid*, 423 B.R. 726, 727–728 (Bkrtcy. Ct. ED Pa. 2010); see generally 10 Collier on Bankruptcy ¶ 7065.02 (16th ed. 2019).

Ultimately, however, any gap left by the Court's ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges. It is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned. Congress, too, could offer a statutory fix, either by ensuring that expedited review is available *167 for § 542(a) proceedings seeking turnover of a vehicle or by enacting entirely new statutory mechanisms that require creditors to return cars to debtors in a timely manner.

Nothing in today's opinion forecloses these alternative solutions. With that understanding, I concur.

All Citations

592 U.S. 154, 141 S.Ct. 585, 208 L.Ed.2d 384, 69 Bankr.Ct.Dec. 160, Bankr. L. Rep. P 83,578, 21 Cal. Daily Op. Serv. 373, 2021 Daily Journal D.A.R. 503, 28 Fla. L. Weekly Fed. S 648

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Case Filing Statistics for

Arkansas

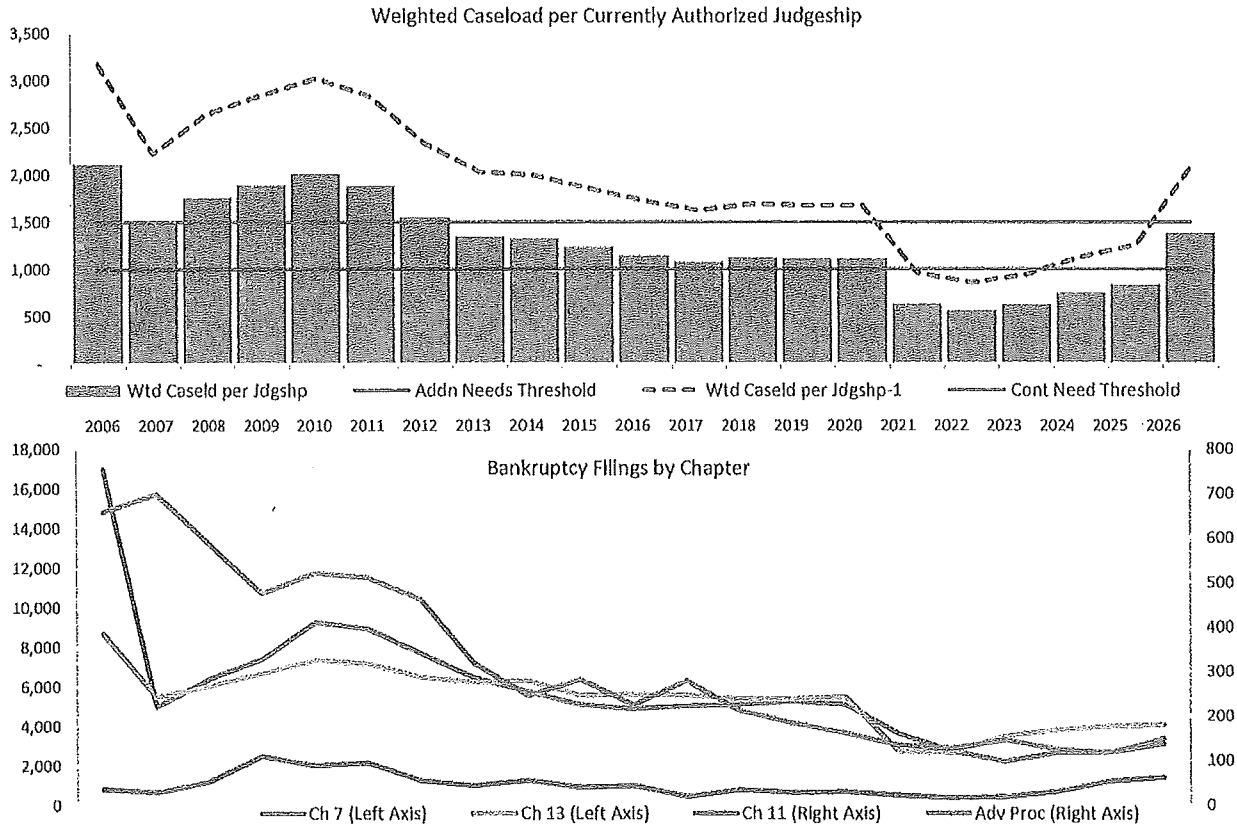
Eighth Circuit

All Circuits

Eastern and Western Districts of Arkansas

Authorized Judgeships: 3 | Permanent: 3 | Temporary: -

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Adv Proc	Authorized Judgeships	Weighted Caseload Current	Weighted Caseload per Judgeship	Weighted Caseload per Judgeship minus 1
3/31/2006	25,746	385	25,361	16,995	37	8,698	659	3	6,338	2,113	3,169
3/31/2007	10,534	313	10,221	5,001	29	5,481	699	3	4,441	1,480	2,220
3/31/2008	12,491	412	12,079	6,405	54	6,026	588	3	5,285	1,762	2,642
3/31/2009	14,195	540	13,655	7,412	110	6,659	477	3	5,684	1,895	2,842
3/31/2010	16,703	586	16,117	9,264	89	7,337	522	3	6,041	2,014	3,021
3/31/2011	16,220	525	15,695	8,943	95	7,167	512	3	5,660	1,887	2,830
3/31/2012	14,216	408	13,808	7,692	55	6,452	463	3	4,661	1,554	2,330
3/31/2013	12,709	310	12,399	6,438	44	6,214	319	3	4,059	1,353	2,029
3/31/2014	12,058	307	11,751	5,729	55	6,258	246	3	3,981	1,327	1,990
3/31/2015	10,692	239	10,453	5,083	40	5,552	282	3	3,708	1,236	1,854
3/31/2016	10,496	248	10,244	4,862	43	5,581	225	3	3,446	1,149	1,723
3/31/2017	10,595	234	10,361	5,019	19	5,539	280	3	3,242	1,081	1,621
3/31/2018	10,478	221	10,257	5,077	34	5,358	212	3	3,379	1,126	1,689
3/31/2019	10,685	195	10,490	5,261	28	5,382	184	3	3,344	1,115	1,672
3/31/2020	10,601	217	10,384	5,080	30	5,477	161	3	3,346	1,115	1,673
3/31/2021	6,301	165	6,136	3,589	22	2,678	134	3	1,915	638	957
3/31/2022	5,356	120	5,236	2,699	16	2,633	127	3	1,706	569	853
3/31/2023	5,686	98	5,588	2,195	18	3,469	146	3	1,885	628	943
3/31/2024	6,455	156	6,299	2,634	30	3,780	124	3	2,254	751	1,127
3/31/2025	6,690	199	6,491	2,646	54	3,975	117	3	2,509	836	1,255
3/31/2026	7,241	275	6,966	3,089	62	4,053	149	3	4,153	1,384	2,076



WEIGHTED CASELOAD

Eastern and Western Districts of Arkansas

12 Months Ended 3/31/2026

	Category	Case Weight	APs and Cases Filed	Percentage of Cases Filed	Total Weighted Caseload	Percentage of Total Weighted Caseload
Chapter 7	Individual					
	Pro Se	0.482	#N/A		#N/A	#N/A
	Represented					
	Assets ≤50K	0.082	#N/A		#N/A	#N/A
	50K< Assets ≤500K	0.184	#N/A		#N/A	#N/A
	Assets >500K	0.565	#N/A		#N/A	#N/A
	Non-Individual	2.022	#N/A		#N/A	#N/A
	All Other Chapter 7 Cases	2.364	#N/A		#N/A	#N/A
Chapter 9	Assets ≤1MM	6.766	#N/A		#N/A	#N/A
	1MM < Assets ≤10MM	10.979	#N/A		#N/A	#N/A
	10MM < Assets ≤100MM	26.651	#N/A		#N/A	#N/A
	Assets >100MM	15.178	#N/A		#N/A	#N/A
	All Other Chapter 9 Cases	1.033	#N/A		#N/A	#N/A
Chapter 11	Individual	12.257	#N/A		#N/A	#N/A
	Small Business					
	Non Subchapter V	5.645	#N/A		#N/A	#N/A
	Subchapter V	14.387	#N/A		#N/A	#N/A
	Other non-Individual					
	Assets ≤1MM	6.766	#N/A		#N/A	#N/A
	1MM < Assets ≤10MM	10.979	#N/A		#N/A	#N/A
	10MM < Assets ≤100MM	26.651	#N/A		#N/A	#N/A
	Assets >100MM	15.178	#N/A		#N/A	#N/A
	All Other Chapter 11 Cases	3.620	#N/A		#N/A	#N/A
	Mega Ch 11 Adjustment				#REF!	#REF!
Chapter 12		3.394	#N/A		#N/A	#N/A
Chapter 13	Pro Se	0.685	#N/A		#N/A	#N/A
	Represented					
	Liab ≤50K	0.416	#N/A		#N/A	#N/A
	50K< Liab ≤100K	0.416	#N/A		#N/A	#N/A
	10K< Liab ≤100K	0.568	#N/A		#N/A	#N/A
	Liab >500K	1.296	#N/A		#N/A	#N/A
Chapter 15		1.646	#N/A		#N/A	#N/A
Adversary Proceedings	Represented					
	Recovery Money/Property					
	Preferences (12)	1.294	#N/A		#N/A	#N/A
	All Other (11,13,14,454)	8.016	#N/A		#N/A	#N/A
	Objection to/Revocation of Discharge (41,424)	3.752	#N/A		#N/A	#N/A
	Dischargeability					
	523(a)(2), (4) & (6) (62,67,68)	5.511	#N/A		#N/A	#N/A
	523(a)(8) (63)	0.946	#N/A		#N/A	#N/A
	All Other (61,64,65,66,426)	2.793	#N/A		#N/A	#N/A
	Validity, Priority or Extent of Lien (21,435)	5.185	#N/A		#N/A	#N/A
	All Other (01,02,SIPA,31,51,71,72,81,91,related old codes)	9.271	#N/A		#N/A	#N/A
	Pro Se					
	One Or More Pro Se Plaintiffs (Defendant Represented)	4.499	#N/A		#N/A	#N/A
	One Or More Pro Se Defendants (Plaintiff Represented)	3.461	#N/A		#N/A	#N/A
	At Least One Pro Se Plaintiff and At Least One Pro Se Defendan	3.513	#N/A		#N/A	#N/A
	Totals				#N/A	#N/A

Total Weighted Filings	#N/A
Authorized Judgeships	3.0
Weighted Filings per Judgeship: Authorized Judgeship(s) Only	#N/A
National Average	1,166
Continuing Need Status (Should Exceed 1,000)	#N/A

Prepared by the Judicial Services Office,
Administrative Office of the United States Courts

4/23/2026

Filings and Rank
12 Months Ended 3/31/2026

	Filings							Rank						
	Total	Ch 7	Ch 11	Non V	Sub V	Ch 13	APs	Total	Ch 7	Ch 11	Non V	Sub V	Ch 13	APs
AR	7,241	3,089	62	26	36	4,053	149	29	38	33	36	24	17	38
IA,N	1,427	1,208	7	5	2	203	141	75	67	83	78	85	78	40
IA,S	2,272	1,827	21	16	5	424	45	69	61	64	49	76	72	71
MN	10,515	8,096	42	14	28	2,358	333	18	13	41	55	31	40	14
MO,E	6,431	3,925	15	7	8	2,478	77	34	33	74	73	70	38	53
MO,W	4,621	2,330	33	13	20	2,256	76	49	47	47	57	40	42	54
NE	2,977	1,950	30	14	16	977	32	61	58	51	54	49	60	78
ND	742	653	2	1	1	85	21	84	82	88	87	88	88	86
SD	681	526	2	-	2	148	14	85	85	87	89	84	83	88
AK	268	206	1	-	1	60	7	90	90	89	88	87	90	89
AZ	13,265	10,963	136	56	80	2,165	307	10	7	16	21	9	43	16
CA,N	6,694	4,539	202	130	72	1,951	231	32	27	13	12	11	46	19
CA,E	12,914	10,308	105	62	43	2,494	189	12	8	20	19	21	37	27
CA,C	30,913	26,133	422	272	150	4,355	831	1	1	6	7	3	16	5
CA,S	5,660	4,900	46	28	18	712	125	42	25	37	34	43	66	43
HI	1,189	724	15	11	4	448	22	78	79	73	60	81	71	84
ID	2,517	2,311	16	7	9	189	77	67	50	72	72	64	80	52
MT	900	734	24	17	7	134	17	82	78	59	47	71	84	87
NV	9,666	8,029	107	49	58	1,528	290	20	14	19	24	15	53	18
OR	8,249	6,471	37	19	18	1,736	173	24	19	44	42	42	47	33
WA,E	2,343	1,973	24	16	8	342	98	68	57	58	48	69	73	46
WA,W	7,412	5,706	94	28	66	1,610	182	28	23	24	33	13	50	30
CO	8,991	7,290	136	68	68	1,561	348	21	17	15	18	12	52	11
KS	4,377	2,321	64	46	18	1,982	179	51	49	32	27	41	45	31
NM	1,691	1,454	12	8	4	224	45	74	64	78	69	80	77	70
OK,N	2,067	1,831	4	2	2	231	39	72	60	86	86	83	76	74
OK,E	1,338	1,179	5	4	1	154	26	76	68	84	80	86	81	81
OK,W	4,313	3,388	17	8	9	907	75	52	36	71	68	63	61	55
UT	7,980	5,272	34	18	16	2,674	213	25	24	46	45	48	31	21
WY	600	504	11	6	5	85	42	87	86	80	75	75	87	73
AL,N	10,509	4,182	55	28	27	6,270	344	19	28	34	32	33	5	13
AL,M	6,574	1,144	19	2	17	5,408	58	33	70	67	85	45	8	64
AL,S	4,082	893	25	10	15	3,164	30	53	74	57	62	51	27	80
FL,N	2,758	2,083	76	37	39	598	62	64	52	29	30	23	68	62
FL,M	27,925	21,563	524	217	307	5,821	934	2	2	5	9	1	7	3
FL,S	16,326	9,167	375	218	157	6,769	425	6	9	9	8	2	3	9
GA,N	22,051	12,229	327	182	145	9,493	362	4	5	10	10	4	2	10
GA,M	6,724	2,044	26	15	11	4,636	67	31	54	55	52	59	14	60
GA,S	3,970	701	17	6	11	3,250	42	55	81	70	74	58	26	72

Rank	Total	Ch 7	Ch 11	Non V	Sub V	Ch 13	APs
1	CA,C	CA,C	TX,S	TX,S	FL,M	IL,N	DE
2	FL,M	FL,M	TX,N	TX,N	FL,S	GA,N	NJ
3	IL,N	MI,E	NJ	NJ	CA,C	FL,S	FL,M
4	GA,N	IL,N	NY,E	NY,E	GA,N	TN,W	TX,S
5	MI,E	GA,N	FL,M	DE	TX,N	AL,N	CA,C
6	FL,S	OH,N	CA,C	NY,S	IL,N	MI,E	IL,N
7	OH,N	AZ	DE	CA,C	NJ	FL,M	MD
8	NJ	CA,E	NY,S	FL,S	TX,S	AL,M	MI,E
9	TX,N	FL,S	FL,S	FL,M	AZ	VA,E	FL,S
10	AZ	NJ	GA,N	GA,N	NY,E	NJ	GA,N

Weighted Caseload per Authorized Judgeship and Rank

12 Months Ended 3/31/2026

Rank	District	Weighted Caseload per Judgeship	Rank	District	Weighted Caseload per Judgeship	Rank	District	Weighted Caseload per Judgeship
1	TX,S	3,621	31	TX,W	1,156	61	OR	704
2	DE	2,876	32	TN,M	1,118	62	KS	703
3	MS,N	2,409	33	GA,M	1,094	63	NE	687
4	TX,N	2,360	34	VA,E	1,088	64	MT	686
5	DC	2,318	35	SC	1,081	65	OH,S	661
6	TX,E	2,153	36	AL,S	1,061	66	WI,W	651
7	FL,M	2,132	37	PA,M	1,053	67	OH,N	617
8	NJ	2,060	38	KY,E	1,029	68	ID	613
9	LA,E	2,057	39	IN,N	1,020	69	NY,N	607
10	FL,N	2,003	40	AZ	972	70	CT	596
11	FL,S	1,965	41	LA,M	967	71	WV,S	570
12	GA,N	1,806	42	CA,C	926	72	RI	567
13	NY,E	1,785	43	KY,W	921	73	IA,S	538
14	AL,M	1,685	44	PA,W	911	74	OK,W	536
15	NC,E	1,537	45	NY,S	908	75	MI,W	534
* 16	AR	1,384	46	PR	900	76	VA,W	529
17	NV	1,357	47	WA,W	885	77	OK,E	508
18	MI,E	1,311	48	MA	857	78	IL,S	495
19	MS,S	1,260	49	WI,E	851	79	IA,N	472
20	IN,S	1,256	50	MO,E	842	80	NC,M	438
21	IL,N	1,252	51	TN,E	835	81	WY	425
22	LA,W	1,240	52	PA,E	807	82	NY,W	392
23	MD	1,240	53	WA,E	788	83	NM	382
24	NC,W	1,228	54	HI	787	84	IL,C	374
25	AL,N	1,222	55	MO,W	763	85	ME	327
26	CO	1,218	56	WV,N	748	86	OK,N	323
27	UT	1,201	57	GA,S	744	87	ND	283
28	TN,W	1,171	58	NH	740	88	SD	134
29	CA,E	1,169	59	CA,S	730	89	VT	124
30	MN	1,166	60	CA,N	724	90	AK	69

Weighted Filings per Authorized Judgeship and per Authorized Judgeship Minus One (Adjusted Weighted Filings)

12 Months Ended 3/31/2026

District (Judgeships)	Wtd Fil per Auth Judgeship	Adjusted Wtd Fil per Auth Judgeship
DC (1)	2,318	-
ME (2)	327	653
MA (5)	857	1,072
NH (1)	740	-
RI (1)	567	-
PR (4)	900	1,200
CT (3)	596	894
NY,N (3)	607	910
NY,E (7)	1,785	2,082
NY,S (9)	908	1,021
NY,W (3)	392	588
VT (1)	124	-
DE (8)	2,876	3,286
NJ (9)	2,060	2,317
PA,E (5)	807	1,008
PA,M (2)	1,053	2,105
PA,W (4)	911	1,214
MD (7)	1,240	1,446
NC,E (3)	1,537	2,306
NC,M (3)	438	657
NC,W (2)	1,228	2,456
SC (3)	1,081	1,621
VA,E (6)	1,088	1,305
VA,W (3)	529	793
WV,N (1)	748	-
WV,S (1)	570	-

District (Judgeships)	Wtd Fil per Auth Judgeship	Adjusted Wtd Fil per Auth Judgeship
LA,E (2)	2,057	4,114
LA,M (1)	967	-
LA,W (3)	1,240	1,860
MS,N (1)	2,409	-
MS,S (2)	1,260	2,519
TX,N (6)	2,360	2,833
TX,E (2)	2,153	4,306
TX,S (6)	3,621	4,345
TX,W (5)	1,156	1,445
KY,E (2)	1,029	2,057
KY,W (3)	921	1,381
MI,E (6)	1,311	1,573
MI,W (3)	534	801
OH,N (8)	617	705
OH,S (7)	661	771
TN,E (4)	835	1,113
TN,M (3)	1,118	1,677
TN,W (4)	1,171	1,561
IL,N (10)	1,252	1,391
IL,C (3)	374	562
IL,S (2)	495	990
IN,N (3)	1,020	1,529
IN,S (4)	1,256	1,675
WI,E (4)	851	1,135
WI,W (2)	651	1,302
AR (3)	1,384	2,076
IA,N (2)	472	944
IA,S (2)	538	1,075
MN (4)	1,166	1,555
MO,E (3)	842	1,263
MO,W (3)	763	1,144
NE (2)	687	1,375
ND (1)	283	-
SD (2)	134	269

District (Judgeships)	Wtd Fil per Auth Judgeship	Adjusted Wtd Fil per Auth Judgeship
AK (2)	69	138
AZ (7)	972	1,134
CA,N (9)	724	814
CA,E (6)	1,169	1,403
CA,C (21)	926	972
CA,S (4)	730	973
HI (1)	787	-
ID (2)	613	1,226
MT (1)	686	-
NV (4)	1,357	1,809
OR (5)	704	879
WA,E (2)	788	1,575
WA,W (5)	885	1,106
CO (5)	1,218	1,523
KS (4)	703	937
NM (2)	382	764
OK,N (2)	323	645
OK,E (1)	508	-
OK,W (3)	536	804
UT (3)	1,201	1,801
WY (1)	425	-
AL,N (5)	1,222	1,528
AL,M (2)	1,685	3,370
AL,S (2)	1,061	2,123
FL,N (1)	2,003	-
FL,M (9)	2,132	2,399
FL,S (7)	1,965	2,293
GA,N (8)	1,806	2,064
GA,M (3)	1,094	1,641
GA,S (3)	744	1,117

HISTORY OF THE
FEDERAL RULES OF EVIDENCE

Rules: Federal Rules of Evidence

Introduction

In contrast to most codification efforts under the Rules Enabling Act of 1934 and its progeny, the Federal Rules of Evidence (FRE) had a rather tumultuous birth. Whereas Congress accepted the rules of civil, criminal, and appellate procedure between 1938 and 1967 without making significant revisions, the FRE were subject to substantial alterations in both houses of Congress and gave rise to considerable debate among scholars, politicians, and the bar. Some members of Congress rejected the notion that the Supreme Court had the authority to promulgate rules of evidence under either the Rules Enabling Act or the U.S. Constitution, arguing that the FRE reflected substantive policy choices that could only be enacted by statute. Congress ultimately passed the revised FRE as a statute, thereby removing any ambiguity as to their constitutionality or the Supreme Court's authority. The rules that resulted out of this process were initially somewhat divisive among practitioners and policymakers, but have since become widely accepted and have influenced the evidence rules of many states.

Federal Evidence Law before the FRE

Prior to the adoption of the FRE, the federal law of evidence was based on a blend of general common-law principles, state law, federal statutes and—in a handful of areas—the Constitution. The common law of evidence proved difficult to distill into readily comprehensible maxims, as it was built on a series of rules with many technical exceptions, which often varied considerably from jurisdiction to jurisdiction. Beginning in the late nineteenth century, a group of leading lawyers and evidence scholars attempted to more clearly define the common law of evidence. Perhaps the leading authority was John Henry Wigmore's multivolume *Treatise on the System of Evidence in Trials at Common Law*, originally published in 1904. This work compiled and attempted to make sense of concepts and rulings on the subject from multiple state and federal decisions on the admissibility of evidence. Nevertheless, individual jurisdictions continued to differ on the best approaches to fundamental issues like the availability of evidentiary privileges and the manifold exceptions to the inadmissibility of hearsay (out-of-court statements offered to prove the truth of the matter asserted).

Wigmore and other eminent law professors and leaders of the bar lamented that evidence standards were so variable. Indeed, in the early 1930s, the influential American Law Institute (ALI) claimed that a restatement of evidentiary rules "would be a waste of time or worse," arguing instead that "what was needed was a thorough revision of existing law." In 1938, an American Bar Association (ABA) committee called for "a short code which shall contain only the[] wise essentials [of the rules of evidence], but shall still be practicable." Led by professor Edmund Morgan, another major scholar in the

field, the ALI drafted a Model Code of Evidence in 1940. Though not especially short (the first edition ran to approximately 300 pages), the Model Code was designed to deal in general principles, which judges would have discretion to apply in practice, obviating the need to reconcile many of the more technical details of the law of evidence. The Model Code did not attempt to capture all the existing common-law evidence rules. According to Morgan, this labyrinthine body of judge-made law reflected judges' struggle to both respect precedent and "to avoid the absurdities which the simple application of these pronouncements would produce." The result of this tension, he claimed, was that judges had "engrafted qualifications, refinements and exceptions upon earlier rules, so that the law of evidence ha[d] grown irregularly and in haphazard fashion, one rule seeming to have no relation in reason to another."

The Model Code's collection of general principles agitated less radical reformers like Wigmore, however, who felt that any code should provide judges with concrete guidance in specific cases. The Model Code's drafters also devoted considerable energy to defending some of its more sweeping reforms of a legal field in which many experienced practitioners prized stability. Nebraska was the only state to adopt the Model Code, and even there it proved contentious (the state supreme court's decision to adopt the ALI's standards prompted the legislature to revoke the court's rulemaking authority). Yet Wigmore's alternative to the Model Code, a hefty tome of more than 500 pages, seemed to confirm some of Morgan's criticisms of the byzantine state of the field. This conflict over the proper scope of evidentiary rules and the range of judicial discretion in admitting or excluding evidence continued to inform many of the debates over the FRE after World War II. While the Model Code's

defense of trial judges' "role as master of the trial" disturbed many conservative lawyers, its advocacy of simplification and deference to judicial discretion ultimately won out in a different form.

Federalism also posed challenges for would-be rule makers. Because diversity jurisdiction cases arose under state law, for example, it was not always clear whether state or federal evidence rules should apply. The Conformity Act of 1872 required federal courts to conform "as near as may be" to state-court "practice and procedure," though it was unclear how much of the law of evidence fit those categories. In *Nudd v. Burrows* (1875), the Supreme Court permitted a federal court to admit evidence that would have been inadmissible under state law and upheld the judge's decision to comment on the evidence at the conclusion of the trial in a manner state judges could not. Federal courts were not free to reject all state evidence standards, however. In 1884, for example, the Supreme Court permitted the use of a state physician-patient privilege in an insurance case even though the Court acknowledged this result was likely contrary to the interests of "truth and justice." Federal courts were often more leery of applying state judge-made rules than they were of enforcing state statutes. An 1897 opinion by the U.S. Court of Appeals for the Eighth Circuit, for instance, stated that "the decisions of the courts of a state construing common-law rules of evidence are not obligatory on the federal courts" but should be used "merely [as] persuasive authority."

The fine balance between state and federal evidentiary rules was arguably complicated even further by the Supreme Court's landmark decision in *Erie Railroad v. Tompkins* (1938). In *Erie*, the Supreme Court held that federal trial courts should apply state substantive law and

federal procedural law in diversity cases. This decision overturned a nineteenth-century opinion that had drawn a firm distinction between state statutes (which federal courts had to apply in diversity cases) and state common-law rules (which they did not). Since some state common-law rules of evidence were unambiguously procedural, federal courts often disregarded those and relied instead on federal common-law principles. However, the status of other important evidence rules—such as the parol evidence rule (which governs oral statements about written contracts), the availability of judicially recognized privileges, or the burden of proof—remained unclear.

The Federal Rules of Civil Procedure (FRCP), promulgated the same year as the Supreme Court decided the *Erie* decision, attempted to address the potential conflict between state and federal rules. FRCP 43(a) (since significantly revised) broadly favored admissibility, stating that evidence admissible under state law, federal statutes, or federal common-law principles should be admitted. Where those bodies of law differed as to the admissibility of evidence, FRCP 43(a) stated that "the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any [applicable bodies of law]." In the aftermath of the FRCP's adoption, several commentators and a few lower federal courts continued to lament the absence of a clear and uniform set of evidentiary rules. Some observers believed that the FRCP's drafters had shirked the issue by placing the onus back on federal trial judges to determine the best of several applicable evidence standards.

The Federal Rules of Criminal Procedure (FRCrP), adopted in 1946, provided a loose analogue to FRCP 43(a), minus some of that rule's federalism concerns, in the form of FRCrP 26. That rule stated that in criminal cases, the admissibility of evidence should be decided using the "principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." The rule's "reason and experience" language appears to have reflected changes made in response to the Supreme Court's concern that, by codifying the use of common-law principles, the criminal rules could lead judges to freeze judge-made evidence principles in place, rather than allowing them to evolve.

These broad rules remained the primary governing standards on federal evidence for decades, a situation one contemporary commentator put down to the disruptive effects of World War II and a lack of initiative from leaders of the bar, many of whom saw advantages to preserving local evidentiary rules they had mastered. However, FRCP 43(a) arguably failed to ensure uniformity across the federal system because federal courts in states with more liberal evidence rules might be more likely to admit evidence than others. And neither rule addressed evidentiary issues that did not directly pertain to admissibility, such as the availability of judicial notice (the court's power to deem certain empirical facts conclusively proven).

Beginning in 1948, the ABA's National Conference of Commissioners on Uniform State Laws attempted to craft a new set of model rules that would help to bring state standards into uniformity with each other. This drive, had it been successful, would have had a significant effect on federal evidence standards under FRCP 43(a).

In 1953, the commissioners released a first edition of the Uniform Rules of Evidence (Uniform Rules). Though the commissioners had worked in conjunction with the ALI at times, they attempted to avoid many of the negative responses to the Model Code by framing the Uniform Rules as a less revolutionary proposal for uniformity. The Uniform Rules were also significantly simpler than the Model Code, distilled as they were into just seventy-two rules. While only a few states adopted the Uniform Rules, their brevity proved an important template for the FRE's drafters.

Drafting the FRE

Beginning in 1958, the ABA advocated that the Judicial Conference of the United States (the national policy-making body for the federal courts) create a special committee to determine whether to adopt the Uniform Rules for federal trial courts. In 1961, the Conference approved the creation of an Advisory Committee on Rules of Evidence. Before the Advisory Committee formed, however, Chief Justice Earl Warren decided to appoint a separate special committee to determine the feasibility and wisdom of adopting a new body of federal evidence rules. It is not entirely clear why Warren decided on this intermediary step, though some scholars have speculated that he was concerned by the resistance to prior attempts at standardization. As the committee's preliminary report suggested, there was also at least some question whether the Judicial Conference and the Supreme Court had the power to promulgate evidence rules in the absence of explicit statutory authorization. The special committee, led by law professors James Moore and Thomas Green and featuring a group of federal judges and former Secretary of State Dean Acheson, reported favorably in 1961 on both the need for, and feasibility of, federal rules. The special committee published a

preliminary draft of its report with a call for comments and sent a revised final report to the Judicial Conference's Standing Committee on Rules of Practice and Procedure in 1963.

In March of that year, the Judicial Conference authorized the appointment of an Advisory Committee to draft new federal rules. Chief Justice Warren appointed the Advisory Committee members in 1965, with prominent Chicago lawyer Albert Jenner chairing the Committee and Edward Cleary, a professor at the University of Illinois College of Law, serving as its Reporter. The Advisory Committee worked for nearly four years on drafting a new set of rules. Though members of the Advisory Committee stressed that their main aim was uniformity, rather than reform, and several noted that they intended to use the Uniform Rules as a guide, any positions on hot-button topics were likely to elicit substantial resistance and comment from members of the bar and other professions with a stake in federal litigation. So it was when the Advisory Committee released a preliminary draft of the rules in 1969 for public comment. After two rounds of revision designed to respond to the many comments the Advisory Committee received in response to the preliminary draft, it sent a revised draft to the Judicial Conference, which in turn submitted the rules to the Supreme Court without further revisions or publication.

Even this move proved contentious, however. Chief Judge Henry Friendly of the Court of Appeals for the Second Circuit wrote to the Supreme Court complaining that the Judicial Conference had not subjected the rules to sufficient scrutiny or allowed for public comment on the rules in their revised form. In 1971, he also noted his criticisms in a judicial opinion. It is not clear whether Friendly's intervention was the

cause, but the justices opted to return the revised rules to the Judicial Conference to be disseminated for further public comment and possible revision.

Coinciding as it did with the fallout from the Pentagon Papers controversy over the publication of stolen government documents, the Judicial Conference's reconsideration of the revised rules was subject to pressure from conservative politicians and leading figures in the Justice Department who were concerned that the rules did not appropriately shield government secrets from disclosure in federal court. The concern about this issue was heightened when Senator John McClellan introduced legislation designed to increase congressional oversight over the rule-making process, stressing that reform was necessary to ensure the forthcoming evidence rules would adequately protect government secrecy. After a series of revisions by the Advisory and Standing Committees, including several dozen responding to the Justice Department's concerns, the Supreme Court approved the FRE on November 20, 1972.

Justice William O. Douglas dissented from the Court's order. Douglas reasoned that the Court's authority to promulgate rules governing "practice and procedure" in the federal courts did not include the formulation of rules of evidence. He also objected that the Court was not actively involved in the formulation of the rules, but instead acted as a mere "conduit" between the Advisory Committee and Congress. The result was that the rules appeared to bear the Court's "imprimatur" even though the Court did not "appraise them on their merits, weighing the pros and cons."

Congressional Revisions to the Proposed Rules

Justice Douglas's concerns were amplified in the political arena. Despite the various drafting committees' efforts to respond to criticisms, several of the proposed rules remained contentious. Among the most debated were those granting judges substantial discretion over the admissibility of relevant but potentially inflammatory evidence, those permitting judges to comment on the evidence when summing up a case to the jury, and those regarding evidentiary privileges.

The proposed privilege rules elicited comments from professionals, such as medical doctors, whose relationships had been privileged in many jurisdictions, but were not protected by the new rules. In the aftermath of a 1972 Supreme Court decision narrowly rejecting a journalist's claim of a First Amendment privilege against compelled testimony before a grand jury, many reporters advocated the inclusion of a journalist's privilege to preserve the confidentiality of anonymous sources. Perhaps ironically, the proposed rules' protection of state secrets and the prosecutorial informant privilege proved the most politically provocative. Even some of the politicians who had argued for such protections before the rules came before Congress changed course as the Watergate scandal came to engulf the Nixon Administration in 1973 and '74.

Finally, some members of both houses echoed Douglas's argument that the Rules Enabling Act did not empower the Court to craft rules of evidence. A handful of critics suggested the FRE might also pose constitutional issues. Some members of Congress, for example, suggested that the proposed rules standards for judicial notice in criminal cases might deprive defendants of their Sixth Amendment right to a jury trial.

Others offered broader constitutional critiques, arguing that so many of the rules touched on substantive policy choices that they should be the subject of congressional legislation rather than judicial rule making.

The Supreme Court did not formally transmit the FRE to Congress until February 1973, such that they were to take effect on July 1, 1973. In March 1973, however, Congress passed legislation postponing the promulgation of the rules to allow it to hold hearings and debate their substance. Federal judges divided on the effect of this intervention. Some began applying the rules to cases on the grounds that they had received the approval of the Judicial Conference and eight Supreme Court justices, while others treated Congress's action as the functional equivalent of a legislative rejection of the rules. A small number of states also adopted the FRE prior to Congress's revisions (though the extent to which those states reconciled their rules with those that eventually emerged in the federal system varied).

Despite the forceful reactions against elements of the FRE from members of Congress and external stakeholders, as a practical matter, congressional investigations into the Watergate scandal dominated much of the attention when the House Judiciary Committee began consideration of amendments to the FRE. Nonetheless, the Committee continued its work at a measured pace, hearing testimony on the advisability of individual rules and debating several of the more vexed questions about judicial discretion and privileges. On February 6, 1974, the House passed a much-revised version of the FRE. The Senate Judiciary Committee then held its own hearings and made substantial revisions to the House bill. In general, the version of the rules the Senate passed on November 22, 1974, more closely resembled the rules the Court

had transmitted to Congress. A bicameral conference committee then attempted to reconcile the two bills. In the main, the reconciled version of the FRE more closely resembled the House bill. However, on some critical issues, the reconciled bill was silent. For example, the reconciled bill did not include a rule authorizing judges to comment on evidence and left the scope of privileges to the "common law—as interpreted by the United States courts in the light of reason and experience" (though state law was to govern privileges in diversity cases due to concerns about the constitutionality of federal-law privileges under *Erie*). Both houses passed the reconciled bill in late December 1974, and President Gerald Ford signed it into law on January 2, 1975. The FRE went into effect on July 1 of that year.

The FRE as Adopted

As finally promulgated, the FRE comprised sixty-two rules organized into eleven articles. Article I contained general provisions such as the purpose and construction of the rules, the effect of errors, and the use of evidence for limited purposes. Article II dealt with the concept of judicial notice, a power somewhat curtailed in the criminal context by Congress's modifications. Article III concerned presumptions and the applicability of state law in civil cases. Article IV governed relevance, the most debated and important aspect of which was Rule 403, giving judges discretion to exclude otherwise relevant evidence to avoid undue prejudice, confusion, or time wasting. Article V, initially limited to a single rule, defined privileges as judges interpreted them under the common law. The Article eliminated all nine of the specific privileges outlined in the version of the FRE the Court had transmitted to Congress. Article VI governed the procedural rules dealing with witnesses. Article VII laid out

the rules for accepting or excluding opinion and expert testimony. Article VIII defined the federal law of hearsay. While these rules included many of the common-law exceptions to the hearsay exclusion, such as those for "excited utterances" or statements made for the purposes of medical diagnosis, the FRE also granted judges latitude to admit other hearsay statements that did not fit a defined exception but had other indications of reliability. Article IX dealt with the authentication and identification of documents. Article X defined other rules for documents, such as the admissibility of copies. Article XI contained a small group of miscellaneous rules governing issues like the scope of the rules' applicability and the process for subsequent amendments.

Reception of the FRE

Unsurprisingly, given the plethora of policy concerns and revisions that had contributed to their drafting and adoption, the FRE did not please everyone with a stake in the law of evidence. Some seasoned trial lawyers grumbled in bar journal articles about individual changes or the cumulative disruption of having to learn a new set of rules. Nevertheless, several states adopted the FRE in part or whole relatively quickly. Sixteen states adopted part or all of the FRE before the end of the 1970s, and twenty-nine states had done the same within ten years of their adoption by the federal courts. These state adoption processes, however, were often contentious themselves, and many of the areas of conflict in the drafting and adoption of the FRE —particularly the law of privileges—became sore points again at the state level. Indeed, some states (including Massachusetts, New York, and Illinois) engaged in protracted debates over whether to adopt the FRE and ultimately declined to do so. Other states did not always track revisions to the rules, moreover, such that

even in some jurisdictions that adopted the original federal rules, there remains a lack of total uniformity. Still, the FRE have increasingly become the most widely used and recognized guide to the general principles of evidence, forming the core of most law school courses on evidence and informing the law of evidence even in some states that have not yet formally adopted the rules.

Revisions to the FRE

The FRE have been subject to multiple other revisions since their promulgation. Perhaps the most significant were the adoption of specific rules governing sexual offense cases in 1978 and again in the mid-1990s; the protection of inadvertently disclosed privileged material in 2008; and the "restyling" of the rules in 2011.

An analogue to so-called "rape shield laws" passed by several states, FRE 412 (adopted in 1978) was designed to protect victims of sexual crimes from character attacks on the stand based on their own sexual pasts. This tactic had become notorious for "putting the victim on trial" and arguably contributed to structural barriers to victims seeking justice for sexual violence. However, members of the defense bar pointed to the need to preserve the rights of the accused and argued such evidence was relevant to essential elements of the case under the relevance standards articulated in FRE 401 and 402. FRE 412 attempted to balance these countervailing concerns by prohibiting most uses of a victim's sexual past, but permitting its use to prove certain essential facts and to preserve the defendant's constitutional rights. In 1994, Congress passed legislation extending a similar set of protections to witnesses in civil sexual tort cases.

Congress further modified the rules the next year by adding FRE 414, which permitted evidence of similar past offenses in child molestation prosecutions, and FRE 415, which permitted the use of evidence that a party had committed a similar act in civil cases seeking redress for a sexual assault or child molestation. These rule changes modified FRE 404(b)'s limitation of the use of prior crimes or wrongful acts as part of the political branches' concerted effort to crack down on serial sexual offenders during the 1990s.

The proliferation of digital technologies beginning in that decade gave rise to concerns related to the discovery of electronic information during litigation. One of the major issues associated with the scale of "e-discovery" was the cost and difficulty of ensuring that documents disclosed during the discovery process did not contain confidential information protected by attorney-client privilege or the work-product doctrine (a rule protecting from disclosure materials prepared by lawyers on behalf of their clients). In 2006, the Advisory Committee took up this issue, eventually proposing a new rule designed to protect parties who inadvertently disclosed privileged materials despite taking reasonable precautions. As this rule potentially changed the law of privilege and touched on the effect in federal court of disclosures and judicial orders initially made in state court proceedings, the Judicial Conference sent the proposed rule to Congress to pass as a statute, rather than using the amendment process outlined in the Rules Enabling Act. Congress passed, and President George W. Bush signed, the rule into law in September 2008.

In the 2000s and early 2010s, the Judicial Conference's Standing Committee on Rules of Practice and Procedure engaged in a sustained effort to restyle court rules to simplify and

modernize their language without changing their underlying meaning. The restyling effort also aimed to make the style of each body of rules more consistent with the others. The Supreme Court approved the restyled FRE on April 26, 2011, and they became effective on December 1 of that year.