

AMEND. 80.
[QUALIFICATIONS OF JUSTICES AND JUDGES].

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A.C.R.C. Notes. Acts 2001, No. 914, § 1, codified as § 16-10-136, provided:

“Qualifications of justices and judges. Restrictions on extrajudicial activities found in Arkansas Constitution, Amendment 80, shall not preclude a justice or judge from: (1) Being a member of the reserve units of any branch of the United States Armed Forces; (2) Being a member of the National Guard; (3) Teaching; (4) Serving on any state or United States boards or commissions which relate to the law for the administration of justice; or (5) Serving in an extrajudicial capacity which is not prohibited by the Arkansas Code of Judicial Conduct.”

Publisher's Notes. This amendment was adopted at the November 2000 general election and approved by a vote of 431,137 for and 323,647 against.

This amendment was designated as Amendment 80 by the Secretary of State, and was known as

Amendment No. 3 on the general election ballot for 2000:

“An amendment to revise the judicial article of the Arkansas Constitution.” The bracketed heading was added by the Publisher.

Preambles. This amendment contained a preamble which read:

“BE IT RESOLVED BY THE SENATE OF THE EIGHTY-SECOND GENERAL ASSEMBLY OF THE STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

“That the following is hereby proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Senators and Representatives, if a majority of the electors voting thereon at such election, adopt such amendment, the same shall become a part of the Constitution of the State of Arkansas, to wit:”

Research References

Ark. L. Rev.

First National Bank of Dewitt v. Cruthis: An Analysis of the Right to a Jury Trial in Arkansas After the Merger of Law and Equity, 60 Ark. L. Rev. 563.

U. Ark. Little Rock L.J.

Municipal Gone District: Jurisdiction in New Court of First Resort, 24 U. Ark. Little Rock L.J. 277.

Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L.J. 465.

The Right to Trial by Jury in Arkansas After Merger of Law and Equity, 24 U. Ark. Little Rock L.J. 649.

A Practitioner's Guide to Arkansas's New Judicial Article, 24 U. Ark. Little Rock L.J. 715.

Case Notes

Application.

Bypassing Rules of Pleading, Practice, and Procedure.

Collateral Source Rule.

Judicial Power.

Jurisdiction.

Malpractice Proceedings.

Res Judicata.

Application.

Since this amendment states that circuit courts assume the jurisdiction of chancery courts, circuit

courts have only the jurisdiction that chancery courts had prior to the amendment; thus, the trial court erred when it found that it had the jurisdiction to grant injunctive relief to prevent the Arkansas Professional Bailbondsman Licensing Board from holding a hearing on bail bond company's alleged violations due to insufficient notice. *Ark. Prof'l Bail Bondsman Licensing Bd. v. Frawley*, 350 Ark. 444, 88 S.W.3d 418 (2002).

Bypassing Rules of Pleading, Practice, and Procedure.

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court's rule-making authority over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. *Bird v. Shaffer*, 2012 Ark. App. 464 (2012).

Collateral Source Rule.

Court granted plaintiff's motion challenging the Arkansas Civil Justice Reform Act of 2003, § 16-55-212(b), and allowed plaintiff to introduce evidence of the amounts billed to her for medical services necessitated by the injuries that were the subject of her lawsuit, regardless of any discount that she had received on those amounts because (1) if the Arkansas Supreme Court were considering the constitutionality of § 16-55-212(b), it would hold that § 16-55-212(b) infringed on its constitutional prerogative to prescribe rules of evidence under Ark. Const., Amend. 80, § 3, and was, therefore, unconstitutional because § 16-55-212(b) would, if enforced, work a reversal of the collateral source rule that had been recognized and approved by the Arkansas Supreme Court, yet the Arkansas Supreme Court did not "prescribe" § 16-55-212(b), and (2) the Arkansas Supreme Court would, if presented with the instant motion, find that § 16-55-212(b) violated Ark. Const., Art. V, § 32 as the Arkansas Supreme Court had held that a personal injury plaintiff was entitled, assuming a successful showing of liability, to recover the payments made (or written off) on her behalf by a collateral source, but § 16-55-212(b) would prevent her from doing that. *Burns v. Ford Motor Co.*, 549 F. Supp. 2d 1081 (W.D. Ark. 2008).

Judicial Power.

Defendant's argument that the prohibition of Ark. Sup. Ct. & Ct. App. R. 5-2, prohibiting citation to unpublished opinions, violated his right of due process under Ark. Const. art. II, §§ 8 and 21, was rejected because the federal judicial power clause had never before been construed to limit courts in the manner in which they conduct their business, and the same could be said for Arkansas's judicial article. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

Jurisdiction.

After petitioner special prosecutors of Division 3 filed a report regarding their investigation into possible criminal conduct involving the death of a civilian by a police officer, Division 6 did not have authority to call a special grand jury to investigate the incident as Division 3 had exclusive jurisdiction because it had already acted by appointing special prosecutors to investigate before Division 6 issued its order to call a special grand jury. Under its superintending control, the supreme court could not allow coordinate divisions of a single circuit to compete for control of processes investigating possible criminal acts; Division 3 assumed jurisdiction first and thus held exclusive jurisdiction. *Foster v. Hill*, 372 Ark. 263, 275 S.W.3d 151 (2008).

In a wrongful death action filed by the decedent's son against the hospital and doctors, summary judgment in favor of the doctors and hospital was improper as the circuit court usurped the authority of the probate court under this amendment by its ruling that the son's appointment as personal

representative of his father's estate was void. *Edwards v. Nelson*, 372 Ark. 300, 275 S.W.3d 158 (2008).

This amendment, which was in effect when the circuit court ruled on the matters at issue, merged circuit and chancery courts into circuit courts so that circuit courts would have jurisdiction over all matters previously cognizable in circuit, chancery, probate, and juvenile courts; the circuit judge was empowered to hear all matters within the jurisdiction of the circuit court, which included probate matters. *Ferguson v. Ferguson*, 2009 Ark. App. 549, 334 S.W.3d 425 (2009).

Writ of prohibition was not available where the circuit court had subject matter jurisdiction, even though it was alleged that the plaintiffs in the underlying action lacked standing, because the issue of standing was not a question of subject matter jurisdiction, and § 6(A) of this amendment did not alter the jurisdiction of law and equity. *Chubb Lloyds Ins. Co. v. Miller County Circuit Court*, 2010 Ark. 119, 361 S.W.3d 809 (2010).

Arkansas Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its exclusive jurisdiction under § 6 of this amendment to act to protect the integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services. *Arkansas Dep't of Human Servs. v. Shelby*, 2012 Ark. 54, 2012 Ark. 54 (2012).

In a case where appellant contended that an order of protection did not comport with the requirements of the law because it was issued after a hearing without appellant receiving actual notice or an opportunity to participate therein, the revocation of probation based on the commission of a felony was appropriate because appellant violated the protective order under § 5-53-134; by pleading guilty, appellant admitted that he knew the order existed, an element of the crime, and that he knowingly violated it. Appellant did not seek to appeal the order of protection, he did not raise a lack of notice before entering his guilty plea, and he did not appeal the judgment following the plea in that case; moreover, the circuit court had jurisdiction over any criminal act within its borders, and appellant admitted to committing the criminal act of violating the protective order. *Standridge v. State*, 2012 Ark. App. 563, 423 S.W.3d 677 (2012).

Malpractice Proceedings.

Because the language, "By means of expert testimony provided only by a medical care provider of the same specialty as the defendant" in § 16-114-206(a) adds requirements to Ark. R. Evid. 702, attempts to dictate procedure, and invades the province of the judiciary's authority to set and control procedure, it violates the separation-of-powers doctrine in § 3 of this amendment, and the inherent authority of the courts to protect the integrity of proceedings and the rights of the litigants. *Broussard v. St. Edward Mercy Health Sys.*, 2012 Ark. 14, 386 S.W.3d 385 (2012).

Res Judicata.

Trial court erred in awarding a law firm an attorney's fee of \$11,902.47 as the claim was barred by res judicata as: (1) in a first suit, the firm was denied relief for breach of contract and quantum meruit; (2) this amendment granted the trial court jurisdiction to rule on all claims of relief, legal and equitable; (3) jurisdiction was proper in the first suit under § 28-1-104, and the first suit fully and finally settled all issues between the firm and the clients; and (4) both suits involved the same parties, and the same claims. *Hooten v. Mobley Law Firm, P.A.*, 2011 Ark. App. 778, 387 S.W.3d 298 (2011).

Cited: *Carter v. Four Seasons Funding Corp.*, 351 Ark. 637, 97 S.W.3d 387 (2003); *Cato v. Craighead County Circuit Court*, 2009 Ark. 334, 322 S.W.3d 484 (2009); *Kuelbs v. Hill*, 2010 Ark. App. 427, 379 S.W.3d 47 (2010).

§ 1. Judicial power.

The judicial power is vested in the Judicial Department of state government, consisting of a Supreme Court and other courts established by this Constitution.

§ 2. Supreme Court.

(A) The Supreme Court shall be composed of seven Justices, one of whom shall serve as Chief Justice. The Justices of the Supreme Court shall be selected from the State at large.

(B) The Chief Justice shall be selected for that position in the same manner as the other Justices are selected. During any temporary period of absence or incapacity of the Chief Justice, an acting Chief Justice shall be selected by the Court from among the remaining justices.

(C) The concurrence of at least four justices shall be required for a decision in all cases.

(D) The Supreme Court shall have:

(1) Statewide appellate jurisdiction;

(2) Original jurisdiction to issue writs of quo warranto to all persons holding judicial office, and to officers of political corporations when the question involved is the legal existence of such corporations;

(3) Original jurisdiction to answer questions of state law certified by a court of the United States, which may be exercised pursuant to Supreme Court rule;

(4) Original jurisdiction to determine sufficiency of state initiative and referendum petitions and proposed constitutional amendments; and

(5) Only such other original jurisdiction as provided by this Constitution.

(E) The Supreme Court shall have power to issue and determine any and all writs necessary in aid of its jurisdiction and to delegate to its several justices the power to issue such writs.

(F) The Supreme Court shall appoint its clerk and reporter.

(G) The sessions of the Supreme Court shall be held at such times and places as may be adopted by Supreme Court rule.

Research References

Ark. L. Rev.

Jennifer R. Rovetti, Comment: Regnat Populus? Amending the Arkansas State Constitution After *Forrester v. Martin*, 66 Ark. L. Rev. 429 (2013).

Case Notes**Habeas Corpus.****Habeas Corpus.**

Prior case law did not preclude the Supreme Court of Arkansas from considering a second petition for habeas corpus relief where defendant's first petition, alleging that the trial court lacked jurisdiction to enter a judgment of conviction against defendant for rape because the crime had occurred in another county, had been rejected because defendant had not provided an adequate abstract of the proceedings in the trial court; the Court's prior opinion in *McAdams v. Automotive Rentals, Inc.*, 324 Ark. 332, 924 S.W.2d. 464 (1966) was overruled to the extent that it was in conflict with the present decision. *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003).

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. *Parmley v. Norris*, 586 F.3d 1066 (8th Cir. 2009).

§ 3. Rules of pleading, practice, and procedure.

The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.

Research References**Ark. L. Rev.**

Austin A. King, Case Note: A Problematic Procedure: The Struggle for Control of Procedural Rulemaking Power, 67 Ark. L. Rev. 759 (2014).

U. Ark. Little Rock L. Rev.

Jarred Kibbey, Note: A Call For the Arkansas General Assembly to Modernize the Standard of Care Requirement in Medical Malpractice Cases, 36 U. Ark. Little Rock L. Rev. 673 (2014).

Sevawn Foster, Note: Constitutional Law — Arkansas's Current Procedural Rulemaking Conundrum: Attempting to Quell the Political Discord, 37 U. Ark. Little Rock L. Rev. 105 (2014).

Case Notes

Bypassing Rules of Pleading, Practice, and Procedure.

Habeas Corpus.

Malpractice Proceedings.

Mandate to Prescribe the Rules of Procedure.

Province of the Supreme Court.

Bypassing Rules of Pleading, Practice, and Procedure.

Section 16-55-202 was unconstitutional and conflicted with Ark. Const., Art. 4, § 2 and this section because rules regarding pleading, practice, and procedure were solely the responsibility of the supreme court; the nonparty-fault provision bypassed the rules of pleading, practice, and procedure by setting up a procedure to determine the fault of a nonparty and mandating the consideration of that nonparty's fault in an effort to reduce a plaintiff's recovery. *Thomas v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135 (2009).

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. *Parmley v. Norris*, 586 F.3d 1066 (8th Cir. 2009).

Malpractice Proceedings.

The constitutional infirmity in § 16-114-209(b) is the provision for dismissal if an affidavit does not accompany a complaint within thirty days; therefore, a decision to dismiss a medical malpractice action for failing to file such an affidavit was reversed on appeal since this conflicted with Ark. R. Civ. P. 3 and Ark. Const. amend. 80, § 3. *Summerville v. Thrower*, 369 Ark. 231, 253 S.W.3d 415 (2007).

Mandate to Prescribe the Rules of Procedure.

Once the requirements of § 14-51-308(e)(1)(B) have been met, an appeal from a decision of the civil service commission to circuit court should proceed in accordance with the rules of the court governing an appeal from inferior courts; thus, a party appealing a decision of the civil service commission has, pursuant to Ark. Inferior Ct. R. 9(c), thirty days from the entry of the commission's written decision to file a record with the circuit court. *Barrows v. City of Fort Smith*, 2010 Ark. 73, 360 S.W.3d 117 (2010).

Province of the Supreme Court.

Medical-costs provision, § 16-55-212(b) violated separation of powers under Ark. Const., Art. 4, § 2 and this section because rules regarding the admissibility of evidence were within the province of the supreme court. *Thomas v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135 (2009).

Section 9-27-318, which vested prosecutors with the discretion to bring felony charges against 16-year-olds in the criminal divisions of circuit courts, was substantive law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under Ark. Const. Art. 4, §§ 1, 2. Also, § 9-27-318(c) did not deny a juvenile equal protection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. *C.B. v. State*, 2012 Ark. 220, 406 S.W.3d 796 (2012).

Cited: Nelson v. State, 2011 Ark. 429, 384 S.W.3d 534 (2011); ProAssurance Indem. Co. v. Metheny, 2012 Ark. 461, 425 S.W.3d 689 (2012).

§ 4. Superintending control.

The Supreme Court shall exercise general superintending control over all courts of the state and may temporarily assign judges, with their consent, to courts or divisions other than that for which they were elected or appointed. These functions shall be administered by the Chief Justice.

Case Notes

Habeas Corpus.

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. *Parmley v. Norris*, 586 F.3d 1066 (8th Cir. 2009).

§ 5. Court of Appeals.

There shall be a Court of Appeals which may have divisions thereof as established by Supreme Court rule. The Court of Appeals shall have such appellate jurisdiction as the Supreme Court shall by rule determine and shall be subject to the general superintending control of the Supreme Court. Judges of the Court of Appeals shall have the same qualifications as Justices of the Supreme Court.

Case Notes

Habeas Corpus.

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. *Parmley v. Norris*, 586 F.3d 1066 (8th Cir. 2009).

§ 6. Circuit courts.

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

(B) Subject to the superintending control of the Supreme Court, the Judges of a Circuit Court may divide that Circuit Court into subject matter divisions, and any Circuit Judge within the Circuit may sit in any division.

(C) Circuit Judges may temporarily exchange circuits by joint order. Any Circuit Judge who consents may be assigned to another circuit for temporary service under rules adopted by the Supreme Court.

(D) The Circuit Courts shall hold their sessions in each county at such times and places as are, or may be, prescribed by law.

Case Notes

Authority.
Child Custody.
Equitable Lien.
Jurisdiction.
Jury Trial.

Authority.

Writ of prohibition was denied in a case challenging the constitutionality of § 16-7-202(b) because a circuit court had jurisdiction to hear a motion relating to estate administration due to subdivision (A) of this section, and the constitutionality of a statute could have been heard by a circuit court and appealed. *Ellis v. Reynolds*, 368 Ark. 572, 247 S.W.3d 845 (2007).

Child Custody.

Order denying adoption petitions, treating the matter as a custody issue, and awarding custody of a child to appellees was upheld as the trial court had the power to determine custody after it dismissed the adoption petitions; the issue of custody was before the trial court because appellees had requested custody of the child, as well as the right to adopt her. *Smith v. McCracken*, 96 Ark. App. 270, 240 S.W.3d 621 (2006).

Equitable Lien.

Circuit court may exercise any act of jurisdiction that either a court of law or equity could have exercised prior to Ark. Const., Amend. 80, and the designation of an action as a specific type of action does not prevent a circuit court from hearing any matter within the court's jurisdiction that is properly

raised to the court. *Smith v. McCracken*, 96 Ark. App. 270, 240 S.W.3d 621 (2006).

Where a creditor sought, among other things, an equitable lien in count one of its amended complaint, the circuit court erred in submitting the claim to a jury. *First Nat'l Bank of Dewitt v. Cruthis*, 360 Ark. 528, 203 S.W.3d 88 (2005).

Jurisdiction.

Where the trial court accepted appellant's plea for capital-felony murder on a Sunday in violation of § 16-10-114, the statutory violation did not affect the trial court's jurisdiction over the matter under this section, and Ark. Const., Amend. 80, § 19. *Noble v. Norris*, 368 Ark. 69, 243 S.W.3d 260 (2006).

In a case in which two insurance companies sought a writ of prohibition ordering a circuit court to dismiss the claims alleged against them in a proposed nationwide class action against numerous insurance companies, they unsuccessfully argued that subdivision (A) of this section of this amendment granted circuit courts jurisdiction over only justiciable matters, and that following the removal of plaintiff insured's claims to bankruptcy court and the dismissal of those claims due to his death, there remained no plaintiffs who had an insurance contract with them who could assert a justiciable matter against it in the circuit court. Standing was not a question of subject-matter jurisdiction, and this amendment did not change that. *Foremost Ins. Co. v. Miller County Circuit Court, Third Div.*, 2010 Ark. 116, 361 S.W.3d 805 (2010).

As the criminal division of the circuit court lost its exclusive jurisdiction over a juvenile's case when it transferred the case to the juvenile division pursuant to § 9-27-318, the criminal division lacked authority to later set aside its transfer order, and that order was a nullity. *C.H. v. State*, 2010 Ark. 279, 365 S.W.3d 879 (2010).

Circuit court had jurisdiction under subsection (a) of this section, because the subject matter of the underlying dispute prior to the complaint's amendment was breach of contract. *Peterson v. Davis*, 2012 Ark. App. 166 (2012).

Circuit court had jurisdiction to hear the case even though it concerned child-custody law and was outside the subject of proceedings in the juvenile division, because the designation of divisions was for the purpose of judicial administration and not for the purpose of subject matter jurisdiction, and the creation of divisions would in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the circuit court; once the juvenile division of the circuit court ordered that the child be placed in the permanent custody of the third parties, the child was no longer dependent-neglected and she came into dependency-neglect proceedings due to parental neglect and parental unfitness. *Young v. Arkansas Dep't of Human Servs.*, 2012 Ark. 334 (2012).

In a termination of parental rights case, a circuit court had subject matter jurisdiction to hear the case because it had original jurisdiction of all justiciable matters not otherwise assigned; the creation of divisions did not limit the power to hear the case. *Russell v. Arkansas Dep't of Human Servs.*, 2014 Ark. App. 734 (2014).

Trial court had no subject-matter jurisdiction to try defendant for the crime of violation of a protective order under § 9-15-207 because that statute did not describe a criminal offense, which was described in § 5-53-134; and only provided a mechanism by which a person could obtain injunctive and equitable relief for protection against domestic abuse. *Standridge v. State*, 2014 Ark. 515, 452 S.W.3d 103 (2014).

While the circuit court might have erred in allowing a prior, closed dependency-neglect case to be reopened, it had subject-matter jurisdiction to hear the petition and enter the termination order, the

parents failed to raise any argument to the circuit court concerning the reopening of the closed dependency-neglect case, and any error in that regard on the part of the circuit court was waived and not preserved for appeal. *Ward v. Arkansas Dep't of Human Servs.*, 2015 Ark. App. 106 (2015).

Jury Trial.

The right to a jury trial set out in Ark. Const., Art. 2, § 7 is unaffected by Ark. Const., Amend. 80 as section 7 does not assure the right to a jury trial in all possible instances, but rather in those cases where the right to a jury trial existed when the constitution was framed; further, the right to a jury trial does not apply to new rights created by the legislature since the adoption of the Arkansas Constitution. *First Nat'l Bank of Dewitt v. Cruthis*, 360 Ark. 528, 203 S.W.3d 88 (2005).

Circuit court erred in submitting a bank's foreclosure and fraudulent-transfer claims to the jury, as these claims historically had been submitted to a trial judge in equitable proceedings. *Nat'l Bank of Ark. v. River Crossing Partners, LLC*, 2011 Ark. 475, 385 S.W.3d 754 (2011).

Cited: *Williams v. Arkansas Dep't of Human Servs.*, 2015 Ark. App. 171, 458 S.W.3d 271 (2015).

§ 7. District courts.

(A) District Courts are established as the trial courts of limited jurisdiction as to amount and subject matter, subject to the right of appeal to Circuit Courts for a trial de novo.

(B) The jurisdictional amount and the subject matter of civil cases that may be heard in the District Courts shall be established by Supreme Court rule. District Courts shall have original jurisdiction, concurrent with Circuit Courts, of misdemeanors, and shall also have such other criminal jurisdiction as may be provided pursuant to Section 10 of this Amendment.

(C) There shall be at least one District Court in each county. If there is only one District Court in a county, it shall have county-wide jurisdiction. Fines and penalties received by the district court shall continue to be distributed in the manner provided by current law, unless and until the General Assembly shall establish a new method of distribution.

(D) A District Judge may serve in one or more counties. Subject to the superintending control of the Supreme Court, the Judges of a District Court may divide that District Court into subject matter divisions, and any District Judge within the district may sit in any division.

(E) District Judges may temporarily exchange districts by joint order. Any District Judge who consents may be assigned to another district for temporary service under rules adopted by the Supreme Court.

Case Notes

Right to Appeal.

Right to Appeal.

Defendant could appeal his probation revocation from district court to circuit court because his right to appeal from district court to circuit court, under this section, was not limited to cases in which there was a right to a jury trial. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003).

§ 8. Referees, masters and magistrates.

(A) A Circuit Court Judge may appoint referees or masters, who shall have power to perform such duties of the Circuit Court as may be prescribed by Supreme Court rule.

(B) With the concurrence of a majority of the Circuit Court Judges of the Circuit, a District Court judge may appoint magistrates, who shall be subject to the superintending control of the District Court and shall have power to perform such duties of the District Court as may be prescribed by Supreme Court rule.

§ 9. Annulment or amendment of rules.

Any rules promulgated by the Supreme Court pursuant to Sections 5, 6(B), 7(B), 7(D), or 8 of this Amendment may be annulled or amended, in whole or in part, by a two-thirds (2/3) vote of the membership of each house of the General Assembly.

Research References

U. Ark. Little Rock L. Rev.

Sevawn Foster, Note: Constitutional Law — Arkansas's Current Procedural Rulemaking Conundrum: Attempting to Quell the Political Discord, 37 U. Ark. Little Rock L. Rev. 105 (2014).

§ 10. Jurisdiction, venue, circuits, districts and number of judges.

The General Assembly shall have the power to establish jurisdiction of all courts and venue of all actions therein, unless otherwise provided in this Constitution, and the power to establish judicial circuits and districts and the number of judges for Circuit Courts and District Courts, provided such circuits or districts are comprised of contiguous territories.

Case Notes

Authority of Judge.

Repeal by Implication.

Authority of Judge.

Adoption of both § 16-17-929 and this amendment did not affect the validity of *Brenk v. State*, 311 Ark. 579, 847 S.W.2d 1 (1993), which allowed search warrants to be issued by any judicial officer, regardless of the county in which the judicial officer was elected or appointed. *Wagner v. State*, 2010 Ark. 389, 368 S.W.3d 914 (2010).

Repeal by Implication.

Section 16-55-213(a) repealed by implication an older venue statute, § 16-60-116(a): § 16-55-213(a) established a new general rule for venue different from the former rule, creating an irreconcilable conflict, and § 16-55-213(a)'s reference to "all civil actions" demonstrated an intent to adopt a new venue scheme. *Dotson v. City of Lowell*, 375 Ark. 89, 289 S.W.3d 55 (2008).

§ 11. Right of appeal.

There shall be a right of appeal to an appellate court from the Circuit Courts and other rights of appeal as may be provided by Supreme Court rule or by law.

§ 12. Temporary disqualification of justices or judges.

No Justice or Judge shall preside or participate in any case in which he or she might be interested in the outcome, in which any party is related to him or her by consanguinity or affinity within such degree as prescribed by law, or in which he or she may have been counsel or have presided in any inferior court.

Cross References. Disqualification from proceedings for lack of impartiality, Ark. Code Jud. Cond. Canon 3(E).

Case Notes

Cited: *White v. Priest*, 348 Ark. 135, 73 S.W.3d 572 (2002).

§ 13. Assignment of special and retired judges.

(A) If a Supreme Court Justice is disqualified or temporarily unable to serve, the Chief Justice shall certify the fact to the Governor, who within thirty (30) days thereafter shall commission a Special Justice, unless the time is extended by the Chief Justice upon a showing by the Governor that, in spite of the exercise of diligence, additional time is needed. If the Governor fails to commission a Special Justice within thirty (30) days, or within any extended period granted by the Chief Justice, the Lieutenant Governor shall commission a Special Justice.

(B) If a Judge of the Court of Appeals is disqualified or temporarily unable to serve, the Chief Judge shall certify the fact to the Chief Justice who shall commission a Special Judge.

(C) If a Circuit or District Judge is disqualified or temporarily unable to serve, or if the Chief Justice shall determine there is other need for a Special Judge to be temporarily appointed, a Special Judge may be assigned by the Chief Justice or elected by the bar of that Court, under rules prescribed by the Supreme Court, to serve during the period of temporary disqualification, absence or need.

(D) In naming Special Justices and Judges, the Governor or the Chief Justice may commission, with their consent, retired Justices or Judges, active Circuit or District Judges, or licensed attorneys.

(E) Special and retired Justices and Judges selected and assigned for temporary judicial service shall meet the qualifications of Justices or Judges of the Court to which selected and assigned.

(F) Special and retired judges shall be compensated as provided by law.

Case Notes

Cited: White v. Priest, 348 Ark. 135, 73 S.W.3d 572 (2002).

§ 14. Prohibition of practice of law.

Justices and Judges, except District Judges, shall not practice law during their respective terms of office. The General Assembly may, by classification, prohibit District Judges from practicing law.

§ 15. Prohibition of candidacy for non-judicial office.

If a Judge or Justice files as a candidate for non-judicial governmental office, that candidate's judicial office shall immediately become vacant.

§ 16. Qualifications and terms of justices and judges.

(A) Justices of the Supreme Court and Judges of the Court of Appeals shall have been licensed attorneys of this state for at least eight years immediately preceding the date of assuming office. They shall serve eight-year terms.

(B) Circuit Judges shall have been licensed attorneys of this state for at least six years immediately preceding the date of assuming office. They shall serve six-year terms.

(C) District Judges shall have been licensed attorneys of this state for at least four years immediately preceding the date of assuming office. They shall serve four-year terms.

(D) All Justices and Judges shall be qualified electors within the geographical area from which they are chosen, and Circuit and District Judges shall reside within that geographical area at the time of election and during their period of service. A geographical area may include any county contiguous to the county to be served when there are no qualified candidates available in the county to be served.

(E) The General Assembly shall by law determine the amount and method of payment of expenses of Justices and Judges. Such expenses may be increased, but not diminished, during the term for which such Justices or Judges are selected or elected.

(F) Circuit, District, and Appellate Court Judges and Justices shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States, except as authorized by law. [As amended by Const. Amend. 94.]

Publisher's Notes. Ark. Const. Amend. 94, which amended this section effective November 5, 2014, was proposed by H.J.R. 1009 during the 2013 Regular Session and adopted at the November 2014 general election by a vote of 428,206 for and 388,459 against.

Before amendment, subsection (E) read: "The General Assembly shall by law determine the amount and method of payment of Justices and Judges. Such salaries and expenses may be increased, but not diminished, during the term for which such Justices or Judges are selected or elected. Salaries of Circuit Judges shall be uniform throughout the state."

Case Notes

Judicial Qualifications.

Judicial Qualifications.

Section 16-13-104 is unconstitutional as it conflicts with Ark. Const. Amend. 80, § 16, which governs judicial qualifications; thus, a circuit court judge cannot run for election for another judicial position. *Daniels v. Dennis*, 365 Ark. 338, 229 S.W.3d 880 (2006).

Circuit court properly denied a voter's disqualification petition and granted a judicial candidate's third-party complaint because she was an eligible candidate under the Arkansas Constitution where the alleged administrative suspension of her as a delinquent lawyer was done without notice or a hearing in violation of her state and federal due process rights. *Williams v. Martin*, 2014 Ark. 210 (2014).

Candidate's appeal from an order granting a declaratory judgment and issuing a writ of mandamus in

favor of a circuit judge on the basis that the candidate was not qualified or eligible for the office of circuit judge was moot because the supreme court could provide no relief; the circuit judge initiated a proper pre-election challenge to the candidate's qualification to stand for the office. *Bailey v. Martin*, 2014 Ark. 213, 433 S.W.3d 904 (2014).

Judicial candidate was a licensed attorney for six years before the date of taking office, subsection (B) of this section required, because, *inter alia*, the candidate's non-payment of an annual license fee for 45 days, automatically suspending the candidate under Ark. R. Admis. Bar VII, did not terminate the candidate's license or remove the candidate from the list of licensed attorneys. *Kelly v. Martin*, 2014 Ark. 217, 433 S.W.3d 896 (2014).

Judicial candidate was a licensed attorney for six years before the date of taking office, as subsection (B) of this section, required, because, *inter alia*, Ark. R. Admis. Bar VII(E), telling the Clerk to keep a list of attorneys no longer licensed and the reasons therefor, including delinquency of fee, did not show the candidate was no longer licensed because (1) the candidate's privilege to practice law was not terminated, and (2) the more specific Ark. R. Admis. Bar VII(C) governed. *Kelly v. Martin*, 2014 Ark. 217, 433 S.W.3d 896 (2014).

Judicial candidate was a licensed attorney for six years before the date of taking office, subsection (B) of this section, required, because, *inter alia*, the candidate's non-payment of an annual license fee for 45 days, automatically suspending the candidate under Ark. R. Admis. Bar VII, did not terminate the candidate's license or remove the candidate from the list of licensed attorneys. *Kelly v. Martin*, 2014 Ark. 217, 433 S.W.3d 896 (2014).

Judicial candidate's occasional failure to pay an annual attorney licensing fee, causing automatic suspension under Ark. R. Admis. Bar VII(C), did not make the candidate ineligible for office due to not being licensed to practice law for the six years preceding taking office, because the candidate remained licensed when suspended, since the candidate's license was not terminated and the candidate's name was not removed from the list of licensed attorneys. *Chandler v. Martin*, 2014 Ark. 219, 433 S.W.3d 884 (2014).

§ 17. Election of circuit and district judges.

(A) Circuit Judges and District Judges shall be elected on a nonpartisan basis by a majority of qualified electors voting for such office within the circuit or district which they serve.

(B) Vacancies in these offices shall be filled as provided by this Constitution.

Case Notes

Election.

Election.

The Arkansas Constitution's provision for the election of special judges when the regular judge fails to attend, Ark. Const., Art. 7, § 21, which also describes the election procedure for a judge who disqualifies, although referring to the circuit court, is equally applicable to the election of special chancellors and

special probate judges. *Daley v. Boroughs*, 310 Ark. 274, 835 S.W.2d 858 (1992).

§ 18. Election of Supreme Court Justices and Court of Appeals Judges.

(A) Supreme Court Justices and Court of Appeals Judges shall be elected on a nonpartisan basis by a majority of qualified electors voting for such office. Provided, however, the General Assembly may refer the issue of merit selection of members of the Supreme Court and the Court of Appeals to a vote of the people at any general election. If the voters approve a merit selection system, the General Assembly shall enact laws to create a judicial nominating commission for the purpose of nominating candidates for merit selection to the Supreme Court and Court of Appeals.

(B) Vacancies in these offices shall be filled by appointment of the Governor, unless the voters provide otherwise in a system of merit selection.

§ 19. Transition provisions, tenure of present justices and judges, and jurisdiction of present courts.

(A) Tenure of Present Justices and Judges.

(1) Justices of the Supreme Court and Judges of the Court of Appeals in office at the time this amendment takes effect shall continue in office until the end of the terms for which they were elected or appointed.

(2) All Circuit, Chancery, and Circuit-Chancery Judges in office at the time this Amendment takes effect shall continue in office as Circuit Judges until the end of the terms for which they were elected or appointed; provided further, the respective jurisdictional responsibilities for matters legal, equitable or juvenile in nature as presently exercised by such Judges shall continue until changed pursuant to law.

(3) Municipal Court Judges in office at the time this Amendment takes effect shall continue in office through December 31, 2004; provided, if a vacancy occurs in an office of a Municipal Judge, that vacancy shall be filled for a term which shall end December 31, 2004.

(B) Jurisdiction of Present Courts.

(1) The Jurisdiction conferred on Circuit Courts established by this Amendment includes all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts including those matters repealed by Section 22 of this Amendment. The geographic circuits and subject matter divisions of these courts existing at the time this Amendment takes effect shall become circuits and divisions of the Circuit Court as herein established until changed pursuant to this Amendment. Circuit Courts shall assume the jurisdiction of Circuit, Chancery, Probate and

Juvenile Courts.

(2) District Courts shall have the jurisdiction vested in Municipal Courts, Corporation Courts, Police Courts, Justice of the Peace Courts, and Courts of Common Pleas at the time this Amendment takes effect. District Courts shall assume the jurisdiction of these courts of limited jurisdiction and other jurisdiction conferred in this Amendment on January 1, 2005. City Courts shall continue in existence after the effective date of this Amendment unless such City Court is abolished by the governing body of the city or by appropriate action of the General Assembly. Immediately upon abolition of such City Court, the jurisdiction of the City Court shall vest in the nearest District Court in the county where the city is located.

(C) Continuation of Courts. The Supreme Court provided for in this Amendment shall be a continuation of the Supreme Court now existing. The Court of Appeals shall be regarded as a continuation of the Court of Appeals now existing. All laws and parts of laws relating to the Supreme Court and to the Court of Appeals which are not in conflict or inconsistent with this Amendment shall remain in full force and effect and shall apply to the Supreme Court and Court of Appeals, respectively, established by this Amendment until amended, repealed or superseded by appropriate action of the General Assembly or the Supreme Court pursuant to this Amendment. The Circuit Courts shall be regarded as a continuation of the Circuit, Chancery, Probate and Juvenile Courts now existing. Effective January 1, 2005, the District Courts shall be regarded as a continuation of the Municipal Courts, Corporation Courts, Police Courts, Justice of the Peace Courts and Courts of Common Pleas now existing. All the papers and records pertaining to these courts shall be transferred accordingly, and no suit or prosecution of any kind or nature shall abate because of any change made by this Amendment. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, decrees, orders, sentences, regulations, causes of action and appeals existing on the effective date of this Amendment shall continue unaffected except as modified in accordance with this Amendment.

Publisher's Notes. This Effective Dates note is being set out to reflect a correction in the 2004 bound volume.

Cross References. Penalty for excessive unexcused school absences being revocation of driving privilege, § 6-18-222.

Jurisdiction of circuit courts, § 9-27-306.

Effective Dates. Ark. Const., Amend. 80, § 21, provided: "This amendment shall become effective July, 2001."

§ 20. Prosecuting attorneys.

A Prosecuting Attorney shall be elected by the qualified electors of each judicial circuit.

Prosecuting Attorneys shall have been licensed attorneys of this state for at least four years immediately preceding the date of assuming office. They shall be qualified electors within the judicial circuit from which they are elected and shall reside within that geographical area at the time of the election and during their period of service. They shall serve four-year terms.

§ 21. Effective date.

This Amendment shall become effective on July, 2001.

Publisher's Notes. The text of this section has been printed exactly as enacted. Based on the effective dates of the repeals in Ark. Const. Amend. 80, § 22, the apparent intent was to make this Amendment effective July 1, 2001.

§ 22. Repealer.

(A) The following sections of Article 7 of the Constitution of the State of Arkansas are hereby repealed effective July 1, 2001; 1 through 18; 20 through 22; 24; 25; 32; 34; 35; 39; 40; 42; 44; 45 and 50.

(B) Sections 34 and 35 of Article 7 of the Constitution of the State of Arkansas, as amended by Sections 1 and 2 of Amendment 24, are hereby repealed effective July 1, 2001.

(C) Section 43 of Article 7 of the Constitution of the State of Arkansas is hereby repealed effective January 1, 2005.

(D) Section 1 of Amendment 58 of the Constitution of the State of Arkansas is hereby repealed effective July 1, 2001.

(E) Section 1 of Amendment 64 of the Constitution of the State of Arkansas is hereby repealed effective January 1, 2005.

(F) Section 1 of Amendment 77 of the Constitution of the State of Arkansas is hereby repealed effective July 1, 2001.

(G) No other provision of the Constitution of the State of Arkansas shall be repealed by this Amendment unless the provision is in irreconcilable conflict with the provisions of this Amendment.