

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 162 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

SENATE BILL 33

5 By: Senator R. Thompson
6 By: Representative Harrelson
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For An Act To Be Entitled

10 AN ACT TO AMEND SUPREME COURT RULE 5-2 AS
11 AUTHORIZED BY SECTION 9 OF AMENDMENT 80 TO THE
12 ARKANSAS CONSTITUTION TO PERMIT UNPUBLISHED
13 OPINIONS OF THE COURT OF APPEALS TO BE CITED BY
14 COURTS OR IN MATERIALS PRESENTED TO COURTS; AND
15 FOR OTHER PURPOSES.

Subtitle

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18 TO AMEND SUPREME COURT RULE 5-2 AS
19 AUTHORIZED BY SECTION 9 OF AMENDMENT 80
20 TO THE ARKANSAS CONSTITUTION.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Legislative findings and intent.

26 (a) The General Assembly finds that:

27 (1) As a matter of legal principle, all Arkansas appellate
28 decisions have some precedential value. When an appellate court says what
29 the law is for a particular set of facts, that decision binds that court and
30 lower courts in later similar cases unless the prior decision has been
31 overruled, can be distinguished from the case under consideration, or is
32 overruled in the process of deciding the current case;

33 (2) As a practical matter, there is no longer any such thing as
34 an "unpublished" opinion. Every decision made by an Arkansas appellate court
35 is available to the public without charge in a searchable format on the



1 Arkansas Judiciary website at www.courts.state.ar.us; and

2 (3) The effect of this act should apply only to opinions issued
 3 after the effective date of this act.

4 (b) As authorized by Arkansas Constitution, Amendment 80, § 9, it is
 5 the intent of the General Assembly to amend Supreme Court Rule 5-2 in so far
 6 as it relates to the precedential value of unpublished opinions of the Court
 7 of Appeals.

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 9 SECTION 2. Pursuant to Section 9 of Amendment 80 to the Arkansas
 10 Constitution, Supreme Court Rule 5-2 is amended to read as follows:

11 Rule 5-2. Opinions.

12 (a) Supreme court – Signed opinions. All signed opinions of the
 13 Supreme Court shall be designated for publication.

14 (b) Court of appeals – Opinion form. Opinions of the Court of Appeals
 15 may be in conventional form or in memorandum form. They shall be filed with
 16 the Clerk. The opinions need not contain a detailed statement of the facts,
 17 but may set forth only such matters as may be necessary to an understandable
 18 discussion of the errors urged. In appeals from decisions of the Arkansas
 19 Board of Review in unemployment compensation cases, when the Court finds the
 20 decision appealed from is supported by substantial evidence, that there is an
 21 absence of fraud, no error of law appears in the record, and an opinion would
 22 have no precedential value, the order may be affirmed without opinion.

23 (c) Court of appeals – Published opinions. Opinions of the Court of
 24 Appeals which resolve novel or unusual questions will be released for
 25 publication when the opinions are announced and filed with the Clerk. The
 26 Court of Appeals may consider the question of whether to publish an opinion
 27 at its decision-making conference and at that time, if appropriate, make a
 28 tentative decision not to publish. Concurring and dissenting opinions will
 29 be published only if the majority opinion is published. All opinions that
 30 are not to be published shall be marked "Not Designated for Publication."

31 (d) Court of appeals – Unpublished opinions . (1) Opinions of the
 32 court of appeals not designated for publication shall not be published in the
 33 ~~arkansas reports~~ Arkansas Reports and shall not be cited, quoted or referred
 34 to by any court or in any argument, brief, or other materials presented to
 35 any court (except in continuing or related litigation upon an issue such as
 36 ~~res judicata, collateral estoppel, or law of the case~~). Opinions not

1 designated for publication shall be listed in the Arkansas Reports by case
2 number, style, date, and disposition.

3 (2) Precedential value. Except for an order affirmed without an
4 opinion under subsection (b) of this rule, every opinion of the Court of
5 Appeals issued after the effective date of this act is precedent and may be
6 relied upon and cited by any party in any proceeding. Whether an opinion is
7 included in the Arkansas Reports or Arkansas Appellate Reports shall have no
8 effect on its precedential value.

9 (3) Citation. After the effective date of this act, every Court
10 of Appeals opinion that is not designated for publication which has
11 precedential value shall be cited in all court papers by referring to the
12 case name, appellate docket number, the court name, and the date of decision.

13 (e) Copies of all opinions. In every case the Clerk will furnish,
14 without charge, one typewritten copy of all of the Court's published or
15 unpublished opinions in the case to counsel for every party on whose behalf a
16 separate brief was filed. The charge for additional copies is fixed by
17 statute.

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