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Edwin H. Greenebaum

Indiana University Maurer School of Law, greeneba@indiana.edu

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Arkansas' Judiciary: It's History and Structure

Edwin H. Greenebaum*

Courts are established to make justice available to private suitors and to provide forums in which public officials may enforce the law and accuse and prosecute those charged with crime. Arkansas from its earliest days as a territory has, like other states, provided courts in a system of three tiers. On the lowest level numerous judicial officers of limited jurisdiction, using simple procedures for inexpensive enforcement of small claims and prosecution of petty offenses, are located throughout the state so that they may be geographically accessible to all Arkansas citizens. A smaller number of courts of general jurisdiction are provided on the second level to try more important cases, both civil and criminal, and to supervise the inferior courts. At the highest level there is a Supreme Court with a statewide appellate jurisdiction.¹ This was the structure provided in the territorial government² and which has continued until the present day. There has been an increase in the number of courts with a confusing array of jurisdictions, but the three tier pattern remains.³

COURTS OF LIMITED JURISDICTION

In each county there is a court, presided over by a county judge, known as the county court.⁴ Under Arkansas' first constitution the county judge was elected by the justices of the peace,⁵ but since 1861 the county judge has been popularly elected.⁶ The county court is the principal instrument of county government and performs a mixture of executive and legislative as well as judicial tasks.⁷ The county judges must meet age and residence requirements, but need not be lawyers.⁸ The county court is a court of

*Assistant Professor of Law, University of Arkansas.

¹ARK. CONST. art. 7, § 4. In addition the Supreme Court has an original jurisdiction "to issue writs of quo warranto to the circuit judges and chancellors when created, and to officers and political corporations when the question involved is the legal existence of such corporations." ARK. CONST. art. 7, § 5.

²"[T]he judicial power of the territory shall be vested in a superior court, and in such inferior courts as the legislative department of the territory shall from time to time institute and establish, and in justices of the peace . . ." *An Act Establishing the Territory of Arkansas*, 3 Stat. 493, 95 (1819).

³"The judicial power of the State shall be vested in one Supreme Court, in circuit courts, in county and probate courts, and in justices of the peace. The General Assembly may also vest such jurisdiction as may be deemed necessary in municipal corporation courts, courts of common pleas, where established, and, when deemed expedient, may establish separate courts of chancery." ARK. CONST. art. 7, § 1. Arkansas' current constitution dates from 1874; prior constitutions were adopted in 1836, 1861, 1864, and 1868.

⁴ARK. CONST. art. 6, § 9 (1836); ARK. CONST. art. 7, § 28.

⁵ARK. CONST. art. 6, § 10 (1836).

⁶ARK. CONST. art. 6, § 12 (1861).

⁷Under the 1868 constitution, the county court was known as the board of county supervisors. ARK. CONST. schedule § 23.

⁸ARK. CONST. art. 7, § 29.

record⁹ and the county judge exercises judicial jurisdiction over matters arising out of the government of the county.¹⁰ Appellate supervision over the judgments rendered in the county courts is placed in the circuit courts where matters heard in the county court are tried de novo,¹¹ and where the county judge is assigned the task of defending the appeals.¹²

The principal courts of limited jurisdiction have been justice of the peace and municipal corporation courts.¹³ The constitution provides that there shall be one justice of the peace in each township for every 200 electors, but with at least two justices in each township.¹⁴ Corporation courts may be vested with jurisdiction concurrent with the justices of the peace.¹⁵ Such jurisdiction is as follows:¹⁶

First, exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest, and concurrent jurisdiction in matters of contracts where the amount in controversy does not exceed the sum of three hundred dollars, exclusive of interest;

Second, concurrent jurisdiction in suits for the recovery of personal property where the value of the property does not exceed the sum of three hundred dollars, and in all matters of damage to personal property where the amount in controversy does not exceed the sum of one hundred dollars;

Third, such jurisdiction of misdemeanors as is now, or may be, prescribed by law;

Fourth, to sit as examining courts and commit, discharge or recognize offenders to the court having jurisdiction, for further trial, and to bind persons to keep the peace or for good behavior;

Fifth, for the foregoing purposes they shall have power to issue all necessary processes;

Sixth, they shall be conservators of the peace in their respective counties, provided a justice of the peace shall not have jurisdiction where a lien on land or title or possession thereto is involved.

The oldest corporation courts under the current constitution are mayor's courts and police courts. Mayor's courts have criminal

⁹ARK. STAT. ANN. § 22-101 (Repl. 1962).

¹⁰"The county courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The county court shall be held by one judge, except in cases otherwise herein provided." ARK. CONST. art. 7, § 28. This jurisdiction is amplified by statute. ARK. STAT. ANN. § 22-601 (Repl. 1962).

¹¹ARK. CONST. art. 7, § 33; ARK. STAT. ANN. §§ 22-304, 27-2001, 27-2006 (Repl. 1962).

¹²ARK. STAT. ANN. § 27-2008 (Repl. 1962).

¹³See generally ARK. LEGISLATIVE COUNCIL, RESEARCH DEPARTMENT, SURVEY OF MINOR COURT SYSTEMS OF ARKANSAS (1950).

¹⁴ARK. CONST. art. 7, § 39. Justices of the peace, like county judges, need not be lawyers. *Id.* § 41.

¹⁵*Id.* § 43. Corporation courts may not have civil jurisdiction exceeding that permitted by the constitution for justices of the peace. *United Loan & Inv. Co. v. Chilton*, 225 Ark. 1037, 287 S.W.2d 458 (1956). Within that limit, however, the legislature has withdrawn jurisdiction from justices of the peace and vested it in corporation courts. See note 25 *infra*.

¹⁶ARK. CONST. art. 7, § 40.

jurisdiction over violations of city ordinances and jurisdiction concurrent with the justices of the peace, and the mayor may request a justice of the peace to sit as judge in his place.¹⁷ Police courts, established in cities of the first class and permitted for cities of the second class,¹⁸ have jurisdiction over misdemeanors under the cities and towns act¹⁹ and jurisdiction over violation of all ordinances passed by the city council.²⁰ A justice of the peace may also substitute for the police judge under appropriate circumstances.²¹

The more modern corporation court is the municipal court. The first general municipal court legislation, enacted in 1927, permitted cities with populations of more than 9,300 to establish municipal courts.²² Legislation, however, in 1929, 1935, 1939, 1947, 1951, and 1953 has successively reduced this population requirement so that currently any city of 2,400 or more population, and any county seat town may have a municipal court.²³ Where municipal courts are established, police courts are to be abolished,²⁴ and certain jurisdictions of the justices of the peace are narrowed or abolished.²⁵ The justices of the peace and judges of the various corporation courts enumerated each have jurisdiction "coextensive with the county."²⁶

In addition to justice of the peace and corporation courts, thirteen counties in Arkansas have courts of common pleas with civil jurisdiction limited in amounts varying from \$500 to \$1500. These courts are presided over by the county judge. Courts of common pleas, like justices of the peace and corporation courts, have no authority to affect title or possession of real estate.²⁷

Procedure in Arkansas' courts of limited jurisdiction varies considerably. Procedure in justice of the peace courts is regulated extensively by statute.²⁸ These procedures attempt to impose on the parties the least burden of expense, time and preparation consistent with the essentials of notice and a fair trial. At the other extreme the procedure of the courts of common pleas conforms to that of the circuit courts.²⁹ The procedures of the police courts, mayor's courts,

¹⁷ARK. STAT. ANN. §§ 19-1102—1204 (Repl. 1956).

¹⁸*Id.* §§ 22-801—808 (Repl. 1962).

¹⁹ARK. STAT. ANN. § 22-801 (Repl. 1962). The Compiler's Note details where the other sections of the act are compiled.

²⁰ARK. STAT. ANN. § 22-801 (Repl. 1962).

²¹*Ibid.*

²²Ark. Acts 1927 No. 60, § 1. Special laws permitting establishment of municipal courts are collected in the Compiler's Notes to ARK. STAT. ANN. § 22-701 (Repl. 1962).

²³The current provision is compiled as ARK. STAT. ANN. § 22-701 (Repl. 1962). The intervening legislation is collected in the Compiler's Notes, and see also ARK. STAT. ANN. § 22-732 (Repl. 1962).

²⁴ARK. STAT. ANN. § 22-702 (Repl. 1962).

²⁵*Id.* §§ 22-709—724.

²⁶*Ibid.* But see, *id.* § 22-710.

²⁷The special acts authorizing and governing the individual courts of common pleas are collected in a Compiler's Note following ARK. STAT. ANN. § 22-615 (Repl. 1962). The constitutional authority is ARK. CONST. art 7, § 32.

²⁸The provisions are compiled as ARK. STAT. ANN. §§ 26-101, —1511 (Repl. 1962).

²⁹See note 27 *supra*.

and municipal courts are not regulated by statute.³⁰ Transfer of venue as of right may be had from a justice of the peace court to a court of common pleas of the same county³¹ or to a municipal court located in the justice of the peace's township.³² Jury trial may be had as of right in a justice of the peace court before a jury consisting of six jurors.³³ Juries in the courts of common pleas vary, in the counties having these courts, between six and twelve.³⁴ No jury trial is provided by statute for mayor's courts in civil cases³⁵ or for municipal courts generally, and explicit provision states that there shall be no jury trial in police courts,³⁶ in criminal cases in mayor's courts,³⁷ and in municipal courts created for county seat towns under special provisions.³⁸ Appeal from all these inferior courts is to the circuit court where trial is held *de novo*.³⁹ Of the judges of these minor courts, only municipal court judges are required to be lawyers.⁴⁰

COURTS OF GENERAL JURISDICTION

When Arkansas became a state, jurisdiction not otherwise vested by statute or the constitution in another court was exercised by circuit courts. In its territorial days, Arkansas was first divided into two circuits.⁴¹ At the time of obtaining statehood the state had been further divided so that there were then six circuits.⁴² The constitution provided that the legislature could establish separate courts of chancery,⁴³ but this at first was not done, and the circuit courts exercised a general civil as well as a criminal jurisdiction.⁴⁴

The United States had generally followed the English pattern by establishing separate courts of law and equity.⁴⁵ Courts of law are those courts which hear criminal cases,⁴⁶ entertain suits to re-

³⁰The rules governing procedure in each police court must be posted in the room in which the court is held. ARK. STAT. ANN. § 22-803 (Repl. 1962). Service of process issued by municipal courts is governed by ARK. STAT. ANN. § 22-730 (Repl. 1962).

³¹See note 27 *supra*.

³²ARK. STAT. ANN. § 22-725 (Repl. 1962).

³³*Id.* § 26-608.

³⁴See note 27 *supra*.

³⁵Provisions governing procedure in justice of the peace courts may apply. See ARK. LEGISLATIVE COUNCIL, RESEARCH DEPARTMENT, SURVEY OF MINOR COURT SYSTEMS OF ARKANSAS 9 (1950).

³⁶ARK. STAT. ANN. § 22-802 (Repl. 1962) and the Compiler's Notes thereto.

³⁷ARK. STAT. ANN. § 44-116 (1947).

³⁸ARK. STAT. ANN. §§ 22-732—738 (Repl. 1962).

³⁹ARK. CONST. art. 7, § 14; ARK. STAT. ANN. §§ 22-707, 806, 26-1301, 1307, 1308, 27-2001, 2006 (Repl. 1962).

⁴⁰ARK. STAT. ANN. § 22-704 (Repl. 1962).

⁴¹Ark. Acts 1819, No. 73 (1821) (provisions adopted by the governor and judges before first territorial legislature convened).

⁴²See ARK. CONST. art. 6, § 4, and art. 4, § 34 (1836).

⁴³*Id.* art. 6, § 1. The current provision is ARK. CONST. art. 7, § 1.

⁴⁴ARK. REV. STAT. ch. 43, § 3, and ch. 23, § 1 (1837). Separate criminal courts established in 1871 for counties with above 15,000 inhabitants (Washington County expressly excepted), Ark. Acts 1871, No. 33, were abolished in 1874 by ARK. CONST. art. 7, § 45.

⁴⁵See generally FIELD & KAPLAN, MATERIALS ON CIVIL PROCEDURE 296-315 (1953).

⁴⁶ARK. STAT. ANN. § 43-1405 (1947).

quire public officials to perform their offices according to law,⁴⁷ apply traditional rules in disputed matters of contract, tort and property,⁴⁸ and in which a jury trial as of right may be had by the parties.⁴⁹ The chancery courts, in which no jury trial of right is available, supplement law courts by making available injunctive relief, ordering parties to do or refrain from doing acts in those cases where courts of law can only grant money damages and those damages may not give a plaintiff adequate relief, and by applying supplementary legal principles, substantive and procedural, where the rules applied at law are too inflexible, resulting in injustice in occasional cases.⁵⁰

In 1855, at approximately the same time that a trend began in other states to merge their separate courts of law and equity,⁵¹ Arkansas established its first chancery court in Pulaski County.⁵² Several other chancery courts were established by special acts prior to 1903⁵³ when legislation provided that, "Separate courts of chancery are hereby established in every county in the State of Arkansas."⁵⁴ Thus, at a time when the trend was well under way to abolish dual court systems, Arkansas established a statewide divided civil jurisdiction for the first time. Currently, the state is divided into eighteen circuits for courts of law⁵⁵ and into fifteen chancery circuits.⁵⁶ Statutory provision has been made so that cases commenced in the wrong jurisdiction may be easily transferred to the correct court,⁵⁷ and it has been provided that a circuit judge and a chancellor may by agreement exchange jurisdictions for matters of convenience.⁵⁸ Nevertheless, as a jurisdictional matter, chancery courts may hear only cases in which a jury trial as of right may not be had,⁵⁹ and the circuit courts may hear only those cases which arise at law.⁶⁰

In addition to their general equity jurisdiction, the chancery judges also sit as probate courts and, in that capacity, exercise the traditional probate jurisdiction.⁶¹ This jurisdiction was given to the equity courts by constitutional amendment in 1937⁶² which altered

⁴⁷ARK. STAT. ANN. §§ 22-302—03 (1962).

"The writs themselves [mandamus, certiorari and prohibition] seem to have been originally mere administrative orders from superior officials to their subordinates telling them to do something, to give some information, or the like. Clearly, the King's Bench was making a great contribution to public law when it adapted these writs to legal purposes, and assumed the task of directing them as occasion required to various departments of central and local government." PLUCKNETT, CONCISE HISTORY OF THE COMMON LAW 173 (1956).

⁴⁸ARK. STAT. ANN. § 22-301 (Repl. 1962).

⁴⁹ARK. CONST. art. 2, § 7.

⁵⁰ARK. STAT. ANN. § 22-404 (Repl. 1962); see FIELD & KAPLAN, MATERIALS ON CIVIL PROCEDURE 261-295 (1953).

⁵¹See FIELD & KAPLAN, MATERIALS ON CIVIL PROCEDURE 299-315 (1953).

⁵²Ark. Acts 1854, 137.

⁵³See Compiler's Notes to ARK. STAT. ANN. § 22-401 (Repl. 1962).

⁵⁴ARK. STAT. ANN. § 22-401 (Repl. 1962).

⁵⁵See Compiler's Notes to ARK. STAT. ANN. § 22-310 (Repl. 1962).

⁵⁶See Compiler's Notes to ARK. STAT. ANN. § 22-406 (Repl. 1962).

⁵⁷ARK. STAT. ANN. §§ 22-405, 27-208—210 (Repl. 1962).

⁵⁸*Id.* § 22-340.

⁵⁹*Id.* § 27-205.

⁶⁰*Id.* § 27-206.

⁶¹*Id.* § 62-2004 (Supp. 1963).

⁶²ARK. CONST. amend. 24, § 1.

the older provisions granting probate jurisdiction to the county courts and the county judge.⁶³

The Supreme Court, exercising a statewide appellate jurisdiction over the circuit and chancery courts,⁶⁴ is a continuation of the Superior Court of territorial days.⁶⁵ For a time during the period of territorial government, the judges of the Superior Court were also circuit judges, each having been assigned to one circuit where they exercised general original jurisdiction.⁶⁶ Circuit riding was abandoned, however, and at the time Arkansas became a state, its first constitution provided for a Supreme Court of three judges.⁶⁷ The number was increased in 1923 to five⁶⁸ and 1927 to seven judges.⁶⁹

The manner in which the courts of general jurisdiction are to perform their tasks is extensively regulated by statute. However, in addition to procedures specifically prescribed, each court is given the "power to issue all writs or process which may be necessary in the exercise of their respective jurisdiction, according to the principles and usages of law,"⁷⁰ thus being able to meet problems which may not be explicitly provided for by statute. While the practice acts have been systematically compiled,⁷¹ it could not accurately be said that Arkansas has a single "code of procedure." The legislature has, since the compilation of the *Revised Statutes of the State of Arkansas* in 1837, accumulated provisions which they have enacted to meet problems as they arose, and statutes have been relatively infrequently repealed. The result has been that in many instances there are multiple statutes governing the same procedural problem without any instruction by the legislature as to how they are to be reconciled.

By constitutional requirement the justices of the Supreme Court and the judges of the circuit court must be learned in the law, have practiced law for a minimum number of years and meet residency requirements.⁷² Qualifications for chancery judges are not set out in the constitution, presumably because there was no general establishment of chancery courts at the time the constitution was adopted. However, it is supposed that judges of the chancery courts are constitutionally to have the same qualifications as circuit judges as they exercise jurisdiction which had originally been vested in the circuit courts; statute so provides.⁷³

JUDICIAL ADMINISTRATION

Although the central state government exercises power to regulate judicial administration and the provision of courts and judges,

⁶³*Id.* art. 7, § 34.

⁶⁴See note 1 *supra*.

⁶⁵See note 2 *supra*.

⁶⁶Ark. Acts 1828, 33-39.

⁶⁷ARK. CONST. art. 6, § 2 (1836).

⁶⁸*Id.* amend. 9, § 1.

⁶⁹ARK. STAT. ANN. § 22-201 (Repl. 1962).

⁷⁰*Id.* § 22-110.

⁷¹See *id.* vols. 3, 3A, 3B.

⁷²ARK. CONST. art. 7, §§ 6, 16.

⁷³ARK. STAT. ANN. § 22-411 (Repl. 1962).

counties and municipalities in fact play a large role due to legislation allowing municipalities to decide whether or not to establish corporation courts and through special legislation.⁷⁴ Further, all judges in Arkansas are elected by the citizens of the jurisdiction which they serve.⁷⁵

Arkansas' constitution contains a provision prohibiting the legislature from passing laws which do not have general application throughout the state.⁷⁶ However, the Arkansas Supreme Court has held that this provision does not affect the establishment or abolition of courts⁷⁷ and has allowed the legislature to fix salaries for public officers which vary from county to county.⁷⁸ As a result there has been considerable legislation which has been responsive to the demands of the local jurisdictions and counties who must pay the expenses of establishing and maintaining the courts. The only central control over the selection of judges is in the Governor who has the power to fill vacancies in judicial office.⁷⁹ Older, unrepealed provisions, however, permit members of the local bar to elect a special judge if a circuit, chancery, or municipal court judge is not on hand to hold a scheduled term of court.⁸⁰

Some flexibility is potentially provided by the statutory provision which allows circuit judges and chancery judges to exchange jurisdictions with each other and among circuits by agreement.⁸¹ However, there is no central authority with power to assign judges to serve where they are most needed. Further, although the constitution provides for the number of justices of the peace to be elected,⁸² there is no requirement that they actually hold court.⁸³ The holding of mayor's courts seems also be permissive.⁸⁴ The combination of these factors results in a potentially wide disparity in the provision of judicial resources as between counties or between population groupings having equal needs.

⁷⁴The Compiler's Notes to *Arkansas Statutes Annotated* have attempted to collect the relevant special legislation.

⁷⁵ARK. CONST. art. 7, §§ 6, 19, 29, 38; ARK. STAT. ANN. §§ 22-409—703, —810 (Repl. 1962).

⁷⁶ARK. CONST. art. 5, §§ 24-26, amend. 14.

⁷⁷*Buzbee v. Hutton*, 186 Ark. 134, 52 S.W.2d 647 (1932); *City of Stuttgart v. Elms*, 220 Ark. 722, 249 S.W.2d 829 (1952).

⁷⁸*E.g.*, ARK. STAT. ANN. § 22-704 (Repl. 1962) contains an exception that "In counties having more than one county seat, one of which has a population of not more than 16,300 and not less than 16,250 according to the 1950 federal census, the city council of such city may fix the salary of the judge of said county at a greater or lesser sum than that provided above . . ." The superseding provisions of ARK. STAT. ANN. § 22-704 (Repl. 1962) provide for salaries of municipal court judges which vary among the municipalities individually specified by name. Salaries of circuit and chancery judges must be uniform throughout the state. ARK. CONST. amend. 43.

⁷⁹ARK. CONST. amend. 29, § 1. See also ARK. CONST. art 7, § 36; ARK. STAT. ANN. §§ 22-613,—437—38 (Repl. 1962).

⁸⁰ARK. CONST. art 7, § 21; ARK. STAT. ANN. §§ 22-436,—705 (Repl. 1962).

⁸¹ARK. STAT. ANN. § 22-340 (Repl. 1962).

⁸²Note 14 *supra* and accompanying text.

⁸³See ARK. LEGISLATIVE COUNCIL, RESEARCH DEPARTMENT, SURVEY OF MINOR COURT SYSTEMS OF ARKANSAS 4 (1950).

⁸⁴*Id.* at 9.

Lawyers are licensed to practice throughout the state.⁸⁵ However, it may be difficult for a lawyer from another county to know just what courts are available or what the procedures in the available courts are. Circuit, chancery, and probate jurisdictions are uniform throughout the state; however, just what minor courts may exist in each county is largely left to local option, and the procedure in those courts may also vary.⁸⁶

There is a striking unavailability of information about the administration of courts in Arkansas. Practices of record keeping vary a great deal throughout the state, and there is no central facility which regularly collects information as to court activity.⁸⁷ The profusion and confusion of special acts makes more difficult the task of knowing what courts exist in each county, already difficult due to the permissive nature of enabling legislation. A 1950 report surveying the minor court systems in Arkansas could only estimate the number of justices of the peace and mayors who actually hold court,⁸⁸ and of one police court the report had to conclude, "It is probable that a police court exists in the City of Luxora, but this department has not been able to obtain confirmation of this fact."⁸⁹ As a result, it is very difficult to know to what degree Arkansas' courts are effective in achieving the objectives of establishing a court system. It is not known just how many minor courts are available to try small claims and petty offenses. It is not known what procedures these courts in fact use or how crowded are their dockets. It is even difficult to know whether the courts of general jurisdiction, the circuit and chancery courts, have adequate resources to meet the demands made upon them. Such information can be obtained only incompletely in laborious surveys, sending investigators into each county and municipality to ask what the court situation is, and even then the investigator is made dependent on the varying quality of records kept by the clerks of each court.⁹⁰ In addition to difficulties of evaluation thus posed, an inflexibility results from the fact that by the time data is collected, filed and analyzed, the situation in the counties may have changed. Until records of court activity are regularly kept and compiled, provision and allocation of judicial resources can only be made by periodic changes which may only roughly meet the need.

⁸⁵ARK. STAT. ANN. § 25-101 (Repl. 1962).

⁸⁶See pp. 154-55 *supra*.

⁸⁷Letter from Walter R. Niblock, Executive Secretary, Arkansas State Judiciary Commission, to Edwin H. Greenebaum, May 5, 1964.

⁸⁸ARK. LEGISLATIVE COUNCIL, RESEARCH DEPARTMENT, SURVEY OF MINOR COURT SYSTEMS OF ARKANSAS 4, 9 (1950).

⁸⁹*Id.* at 8.

⁹⁰Letter from Walter R. Niblock, Executive Secretary, Arkansas State Judiciary Commission, to Edwin H. Greenebaum, May 5, 1964.

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