

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.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

A Bill

Act 915 of 2001
SENATE BILL 793

5 By: Senator Everett
6
7

For An Act To Be Entitled

9 AN ACT TO REPEAL ARKANSAS CODE TITLE 16, CHAPTER 16,
10 CONCERNING THE COURT OF COMMON PLEAS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13 AN ACT TO REPEAL ARKANSAS CODE TITLE 16,
14 CHAPTER 16, CONCERNING THE COURT OF
15 COMMON PLEAS; AND FOR OTHER PURPOSES.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 16, Chapter 16 is repealed.

22 ~~16-16-201. Establishment—Terms.~~

23 ~~There is established in Ashley and Drew Counties a court of common~~
24 ~~pleas. It shall be held quarterly by the county judge of the counties, at the~~
25 ~~courthouse of the counties, on the first Mondays in February, May, August, and~~
26 ~~November of each year. The court shall continue in session until the business~~
27 ~~before the court is disposed of, unless adjourned by the court until some~~
28 ~~other day to be designated in an order of adjournment.~~
29

30 ~~16-16-202. Jurisdiction.~~

31 ~~The court shall have jurisdiction of all actions on contracts, express~~
32 ~~or implied, all actions of replevin, actions for damages to persons or of~~
33 ~~property, or both, and actions in attachment or garnishment, where the sum or~~
34 ~~the amount in controversy does not exceed one thousand dollars (\$1,000),~~
35 ~~exclusive of interest. However, the court shall not have jurisdiction of any~~
36 ~~actions where the title to real estate is in controversy, nor of any criminal~~

1 ~~actions, nor of any other action where exclusive jurisdiction is vested by the~~
 2 ~~Arkansas Constitution in the county or probate court.~~

3
 4 ~~16-16-203.—Pleading and practice.~~

5 ~~The rules of pleading and practice which govern the circuit court shall~~
 6 ~~govern the Courts of Common Pleas in Ashley and Drew Counties.~~

7
 8 ~~16-16-204.—Judge.~~

9 ~~The county judge of Ashley County and the county judge of Drew County~~
 10 ~~shall be the judge of their respective courts of common pleas and shall~~
 11 ~~receive, in addition to the salary received by them as county judge, the~~
 12 ~~following which shall be paid quarterly:~~

13 ~~(1) In Ashley County, five hundred dollars (\$500) per annum, to~~
 14 ~~be paid out of the salary and incidental fund of the county;~~

15 ~~(2) In Drew County, two hundred fifty dollars (\$250) per annum,~~
 16 ~~to be paid out of the general revenue of the county.~~

17
 18 ~~16-16-205.—Clerk.~~

19 ~~The clerk of the circuit court of the county shall be ex officio clerk~~
 20 ~~of the court of common pleas and shall be entitled to the same fees as are~~
 21 ~~allowed by law for similar services in the circuit court.~~

22
 23 ~~16-16-206.—Sheriff.~~

24 ~~The sheriffs of Ashley and Drew Counties, respectively, shall act as~~
 25 ~~sheriff of the court and attend each session of it.~~

26
 27 ~~16-16-207.—Seal—Docket—Records.~~

28 ~~The clerk of the court is authorized and required to obtain and keep for~~
 29 ~~the court a seal, docket, and all necessary records for preserving a record of~~
 30 ~~all the proceedings of the court at the expense of the county.~~

31
 32 ~~16-16-208.—Writs, processes, and execution.~~

33 ~~(a) The clerk of the court is empowered to issue all necessary writs,~~
 34 ~~processes, and executions in any action pending in the court.~~

35 ~~(b) The writs and processes shall be authenticated by the seal of the~~
 36 ~~circuit court and may be directed to and served in any county in this state in~~

1 ~~the same manner, and with the same force and effect, as similar processes~~
 2 ~~issued by the circuit court.~~

3 ~~(c) All writs, summonses, orders, and other processes shall be directed~~
 4 ~~to and served by the sheriff as provided by law for similar proceedings in the~~
 5 ~~circuit court, and he shall receive the same fees as are allowed by law for~~
 6 ~~similar services in the circuit court.~~

7
 8 ~~16-16-209. Transfer of action from justice of the peace court.~~

9 ~~(a) When any civil action is pending before any justice of the peace in~~
 10 ~~the county, either party may have the action removed to the court of common~~
 11 ~~pleas by written motion filed with the justice before whom the cause is~~
 12 ~~pending.~~

13 ~~(b) On the filing of the motion, the justice shall suspend all further~~
 14 ~~proceedings therein and shall, as soon thereafter as practicable and within~~
 15 ~~ten (10) days, make out a duly certified transcript of all his docket entries~~
 16 ~~in such case. He shall transmit the transcript, together with all the~~
 17 ~~original papers in the cause, to the clerk of the court, for which he shall~~
 18 ~~receive one dollar (\$1.00) to be paid by the party filing the motion at the~~
 19 ~~time he files the motion.~~

20 ~~(c) The cause shall stand for trial and shall be tried as if first~~
 21 ~~instituted in the court of common pleas.~~

22 ~~(d) When any case is pending before a justice of the peace and shall be~~
 23 ~~removed to the court of common pleas, it shall be the duty of the justice of~~
 24 ~~the peace to notify all witnesses, subpoenaed before him, of the transfer of~~
 25 ~~the cause to the court of common pleas, notifying them to attend that court,~~
 26 ~~naming the date they may be required to attend the court, which shall be the~~
 27 ~~first day of the following term commencing more than ten (10) days after the~~
 28 ~~filing of the motion to transfer. The witnesses shall be required to attend~~
 29 ~~without further notice.~~

30
 31 ~~16-16-210. Trial by court — Juries.~~

32 ~~(a) All issues of law and of fact shall be tried by the court unless a~~
 33 ~~jury is demanded by either party.~~

34 ~~(b)(1) If a jury is demanded by either party, the court shall order the~~
 35 ~~sheriff to summon a jury of six (6) lawfully qualified persons as jurors,~~
 36 ~~unless the parties by agreement demand a jury of twelve (12).~~

1 ~~(2) The jurors shall be immediately summoned, qualified,~~
 2 ~~impaneled, and sworn to try the case in the same manner that jurors are~~
 3 ~~required to be qualified, impaneled, and sworn in the circuit court.~~

4 ~~(3) Jurors accepted and used in the trial of any cause shall each~~
 5 ~~be entitled to one dollar (\$1.00) for every day they shall serve. This amount~~
 6 ~~shall be paid by the county and charged by the clerk as other costs in the~~
 7 ~~case to be paid by the party against whom the cost may be adjudged, or legally~~
 8 ~~due to pay the cost.~~

9
 10 ~~16-16-211. Witnesses.~~

11 ~~Witnesses in the court shall be allowed one dollar (\$1.00) per day for~~
 12 ~~attendance before the court to be taxed as costs and paid as other costs in~~
 13 ~~the action.~~

14
 15 ~~16-16-212. Judgments.~~

16 ~~All judgments rendered by the court shall be a lien upon the real estate~~
 17 ~~of the defendant, the same as if it were rendered by the circuit court, and~~
 18 ~~shall be entered on the judgment record of the county. Executions may be~~
 19 ~~issued thereon and executed in the same manner as upon judgments in the~~
 20 ~~circuit court.~~

21
 22 ~~16-16-213. Appeals.~~

23 ~~(a)(1) Any person aggrieved by any final judgment rendered by the~~
 24 ~~court, except as to judgment of dismissal for want of prosecution, may take an~~
 25 ~~appeal to the circuit court within thirty (30) days after rendition of the~~
 26 ~~judgment by making a good and sufficient bond to be approved by the clerk and~~
 27 ~~complying with the law, otherwise, as to appeal from justice of the peace~~
 28 ~~courts to the circuit court. The affidavit for appeal may be made by the~~
 29 ~~party, his agent, or attorney.~~

30 ~~(2) If the court has adjourned, the appeal shall be allowed by~~
 31 ~~the clerk when notice of the appeal in the case shall be served upon the~~
 32 ~~appellee, his agent, or attorney of record. However, if the appeal is allowed~~
 33 ~~by the court in open session, upon motion of the appellant, and the filing of~~
 34 ~~the affidavit and bond before the final adjournment of the court, no further~~
 35 ~~notice to the adverse party shall be necessary.~~

36 ~~(b) On all appeals to the circuit court, the clerk shall transmit all~~

1 of the original papers in the case, affidavit for appeal, appeal bond,
2 certificate of amount of costs accrued, and a complete transcript of all the
3 record entries in the case to the clerk of the circuit court, whereupon the
4 circuit court shall try the cause de novo.

5 (c) All appeals granted by the court or the clerk of the court, as
6 provided in this section, more than ten (10) days before the commencement of
7 the term of the circuit court, shall stand for trial at that term unless
8 continued for cause.

9 (d) In the trial of all cases on appeal from the court of common pleas,
10 if the appellee recovers judgment for any amount, the judgment shall be
11 rendered against the appellant and the sureties on his appeal bond. However,
12 if the judgment is for a lesser amount than the judgment appealed from, the
13 appellee shall pay all costs accruing in the circuit court together with the
14 transcript from the court of common pleas, to be credited on the judgment by
15 the clerk.

16
17 ~~16-16-301. Definition.~~

18 As used in this subchapter, unless the context otherwise requires,
19 "judge" or "court" means the Judge of the Court of Common Pleas of Chicot
20 County, unless otherwise designated.

21
22 ~~16-16-302. Establishment—Terms.~~

23 There is established in Chicot County a court of common pleas, to be
24 held quarterly by the county judge of the county at the courthouse of the
25 county, commencing on the fourth Mondays in January, April, July, and October
26 of each year. It shall continue in session until the business before the
27 court is disposed of, unless adjourned by the court until some other day to be
28 designated by the court.

29
30 ~~16-16-303. Jurisdiction.~~

31 The court shall have jurisdiction of all actions on contract, express or
32 implied, all actions of replevin, and actions for damages to person or
33 property, or both, where the sum or the amount in controversy does not exceed
34 one thousand dollars (\$1,000), exclusive of interest. However, the court
35 shall not have jurisdiction of any action where the title to real estate is in
36 controversy, nor any criminal action, nor any other action where exclusive

1 jurisdiction is vested by the Arkansas Constitution in the county or probate
2 courts.

3
4 ~~16-16-304.—Pleading and practice.~~

5 ~~The rules of pleading and practice which govern the circuit courts shall~~
6 ~~govern this court.~~

7
8 ~~16-16-305.—Judge.~~

9 ~~The county judge of Chicot County shall be the judge of the court of~~
10 ~~common pleas and shall receive, in addition to the salary received by him as~~
11 ~~county judge, the sum of five hundred dollars (\$500) per annum, to be paid~~
12 ~~quarterly out of the county treasury.~~

13
14 ~~16-16-306.—Clerk.~~

15 ~~The clerk of the circuit court of the county shall be ex officio clerk~~
16 ~~of the court of common pleas and shall be entitled to the same fees as are~~
17 ~~allowed by law for similar services in the circuit court.~~

18
19 ~~16-16-307.—Sheriff.~~

20 ~~The sheriff of the county shall be the ordinary officer of the court and~~
21 ~~shall attend at each session thereof.~~

22
23 ~~16-16-308.—Seal—Docket—Records.~~

24 ~~The clerk of the court is authorized and required to obtain and keep for~~
25 ~~the court a seal, docket, and all necessary records for preserving a record of~~
26 ~~all the proceedings of the court, at the expense of Chicot County.~~

27
28 ~~16-16-309.—Writs, process, and executions.~~

29 ~~(a) The clerk of the court is empowered to issue all necessary writs,~~
30 ~~process, and executions in any action pending in the court.~~

31 ~~(b) The writs and process are to be authenticated by the seal of the~~
32 ~~circuit court and may be directed to and served in any county in this state in~~
33 ~~the same manner, and with the same force and effect, as similar process issued~~
34 ~~by the circuit court.~~

35 ~~(c) All writs and other process shall be directed to the sheriff,~~
36 ~~except when he is disqualified, in which event the writs or process shall be~~

1 directed and served as is provided by law for similar proceedings in the
2 circuit court. He shall receive the same fees as are allowed by law for
3 similar services in the circuit court.

4
5 ~~16-16-310. Transfer from justice of the peace court.~~

6 ~~(a) When any civil action is pending before any justice of the peace in
7 the county, either party may have the action removed to the court of common
8 pleas by written motion filed with the justice before whom the cause is
9 pending.~~

10 ~~(b) On the filing of the motion, the justice shall suspend all further
11 proceedings therein and shall, as soon thereafter as practicable and within
12 ten (10) days, make out a duly certified transcript of all his docket entries
13 in the case. He shall transmit the transcript, together with all the original
14 papers in the cause, to the clerk of that court, for which he shall receive
15 one dollar (\$1.00) to be paid by the party filing the motion at the time he
16 files the motion.~~

17 ~~(c) The cause shall stand for trial and be tried as if first instituted
18 in the court of common pleas.~~

19 ~~(d) All witnesses subpoenaed before the justice shall be notified by
20 him that the cause has been transferred to the court of common pleas, and they
21 shall attend that court at the next term thereof commencing more than ten (10)
22 days after the motion to transfer is filed and granted, without further
23 notice.~~

24
25 ~~16-16-311. Trial by court — Juries.~~

26 ~~(a) All issues of law and fact shall be tried by the court, unless a
27 jury is demanded by either party.~~

28 ~~(b)(1) If a jury is demanded by either party, the court shall order the
29 sheriff or other officer in attendance upon the court to summon a jury of
30 twelve (12) persons lawfully qualified to serve as jurors, as is required in
31 the circuit courts, unless the parties agree upon a lesser number.~~

32 ~~(2) The jurors shall be immediately summoned, impaneled, and
33 sworn to try the action in the same manner that jurors are required to be
34 impaneled and sworn in the circuit courts.~~

35 ~~(3) Jurors impaneled in the court shall each be entitled to one
36 dollar (\$1.00) for every day they shall serve, to be paid by the county as~~

1 ~~expenses of the court.~~

2

3 ~~16-16-312.—Witnesses.—~~

4 ~~Witnesses in the court shall be allowed one dollar (\$1.00) per day for~~
5 ~~attendance before the court.~~

6

7 ~~16-16-313.—Costs.—~~

8 ~~There shall be entered and charged by the clerk as part of the cost on~~
9 ~~each judgment rendered in the court a tax of two dollars (\$2.00), to be~~
10 ~~collected and paid into the county treasury by the sheriff to the credit of~~
11 ~~the fund for expenses of courts of record.~~

12

13 ~~16-16-314.—Judgments.—~~

14 ~~All judgments rendered by the court shall be liens upon the real estate~~
15 ~~of the defendant in the county, the same as if rendered by the circuit court,~~
16 ~~and shall be entered on the judgment record of the county.—Executions may be~~
17 ~~issued thereon and executed in the same manner as upon judgments in the~~
18 ~~circuit court.~~

19

20 ~~16-16-315.—Appeals.—~~

21 ~~(a)(1) Any person aggrieved by any final judgment rendered by the~~
22 ~~court, except a judgment of dismissal for want of prosecution, may take an~~
23 ~~appeal to the circuit court within thirty (30) days after the rendition of the~~
24 ~~judgment by pursuing the same course as is provided by law for appeals from~~
25 ~~justice of the peace courts to the circuit court.—The affidavit for appeal~~
26 ~~may be made by the party, his agent, or his attorney.—~~

27 ~~(2) If the court has adjourned, the appeal may be allowed by the~~
28 ~~clerk.—~~

29 ~~(b) If the appeal is allowed by the clerk, notice of the appeal shall~~
30 ~~be served upon the appellee or his attorney of record, but, if allowed by the~~
31 ~~court, the order of the court granting the appeal shall be sufficient notice~~
32 ~~to the adverse party that an appeal has been taken.—~~

33 ~~(c) On all appeals to the circuit court, the clerk shall transmit all~~
34 ~~the original papers in the case, the affidavit for appeal, appeal bond, and a~~
35 ~~complete transcript of all the records and entries in the case to the clerk of~~
36 ~~the circuit court, whereupon the circuit court shall try the cause de novo.—~~

1 ~~(d) All appeals in which the transcript and papers shall be filed with~~
 2 ~~the clerk of the circuit court ten (10) days before the commencement of any~~
 3 ~~term thereof shall stand for trial at that term, unless continued for cause.~~
 4 ~~However, in cases where the appeal has been granted more than ten (10) days~~
 5 ~~before the commencement of a term of the circuit court, the appellee shall~~
 6 ~~have the right to demand a trial at that term, regardless of the time when the~~
 7 ~~transcript was filed, unless a continuance is granted by the court for cause.~~

8 ~~(e) Upon a failure of the appellant to file the transcript on or before~~
 9 ~~the first day of the term of the circuit court held more than ten (10) days~~
 10 ~~after the appeal has been granted, the appellee may file the transcript and~~
 11 ~~have the appeal dismissed or the judgment of the court of common pleas~~
 12 ~~affirmed for want of prosecution.~~

13 ~~(f) In trials of all cases on appeal from the court of common pleas, if~~
 14 ~~the appellee recovers judgment for any amount, the judgment shall be rendered~~
 15 ~~against the appellant and the sureties on his appeal bond if one shall have~~
 16 ~~been given. However, if the judgment rendered in the circuit court against~~
 17 ~~the appellant shall be for a lesser amount than the judgment appealed from,~~
 18 ~~the appellant shall recover the costs of the appeal, and judgment shall be~~
 19 ~~rendered against the appellee.~~

20
 21 ~~16-16-401. Establishment—Terms.~~

22 ~~(a) A court of common pleas is established in and for Crittenden~~
 23 ~~County.~~

24 ~~(b) The court shall hold four (4) terms annually at the courthouse of~~
 25 ~~the county, commencing respectively on the second Mondays in January, April,~~
 26 ~~July, and October of each year.~~

27
 28 ~~16-16-402. Court of record.~~

29 ~~The court of common pleas shall be a court of record.~~

30
 31 ~~16-16-403. Jurisdiction.~~

32 ~~The court of common pleas shall have original jurisdiction in the~~
 33 ~~following matters:~~

34 ~~(1) Concurrent jurisdiction with the courts of justices of the~~
 35 ~~peace in all matters of contract and in all civil actions and special~~
 36 ~~proceedings where the amount in controversy does not exceed in value the sum~~

1 of one hundred dollars (\$100), exclusive of interest;

2 (2) Concurrent jurisdiction with the circuit court in all matters
3 of contract and in all civil actions and special proceedings where the amount
4 in controversy does not exceed the sum of one thousand dollars (\$1,000).
5 However, the court shall not have jurisdiction in any case where a lien on
6 land or a title or a possession thereof is involved.

7
8 16-16-404. Practice and procedure.

9 The rules of practice and procedure governing in the circuit court shall
10 be the rules of practice and procedure governing in the court of common pleas
11 in Crittenden County, except as otherwise especially provided in this
12 subchapter.

13
14 16-16-405. Judge — Special judge.

15 (a) The County Judge of Crittenden County shall be the judge of the
16 county court of the county, the road commissioner, and the ex officio judge of
17 the common pleas courts. For his services as such, he shall receive a salary
18 of three thousand dollars (\$3,000) per annum, to be allowed and paid quarterly
19 out of the county treasury.

20 (b)(1)(A) Whenever the judge of the court fails to attend at the
21 commencement of any term or fails to attend on any adjourned day of any term
22 of the court, the regular practicing attorneys present may at the hour of 1:00
23 p.m. of that day elect one (1) of their number to discharge the duties of
24 judge of the court for the balance of the term or until the regular judge
25 shall appear.

26 (B) Where the judge of the court shall be disqualified to
27 sit in any cause, the attorneys present may in like manner elect one (1) of
28 their number to discharge the duties of judge of the court for the
29 determination of the cause.

30 (2) Any special judge shall be allowed for his services the sum
31 of ten dollars (\$10.00) per diem, to be paid out of the county treasury.

32
33 16-16-406. Clerk.

34 The county clerk shall be ex officio clerk of the common pleas court of
35 Crittenden County and custodian of its records and shall be entitled to
36 collect and receive for the performance of his duties as such the same fees

1 and emoluments allowed the circuit court clerk for the performance of like
2 duties.

3
4 ~~16-16-407.—Sheriff.~~

5 ~~The sheriff shall be allowed the sum of two dollars (\$2.00) for each and~~
6 ~~every day he shall be in attendance upon the court.—This sum shall be paid~~
7 ~~out of the county treasury and shall not be taxed as costs.—For all other~~
8 ~~services rendered under the provisions of this subchapter, the sheriff shall~~
9 ~~be entitled to the same fees allowed him by law for performing the same~~
10 ~~services in the circuit court.—These fees are to be taxed as costs and paid~~
11 ~~as provided in this subchapter.~~

12
13 ~~16-16-408.—Docket.~~

14 ~~The clerk shall keep a docket in which all cases shall be entered in the~~
15 ~~order in which they are brought.—The cases shall be numbered consecutively~~
16 ~~and shall stand for trial in the same order.~~

17
18 ~~16-16-409.—Writs, process, and provisional remedies.~~

19 ~~In the exercise of its jurisdiction, the court of common pleas shall~~
20 ~~have the power to issue all necessary writs, process, and provisional~~
21 ~~remedies.—It shall cause the writs, process, and provisional remedies to be~~
22 ~~authenticated by the seal of the court.~~

23
24 ~~16-16-410.—Time for filing defense—Default judgment.~~

25 ~~(a) The defense to an action in the court shall be filed on the first~~
26 ~~day the court is in session after ten (10) days from the date of service of~~
27 ~~summons in the county or in an adjoining county, thirty (30) days from the~~
28 ~~date of service of summons in any other county, sixty (60) days from the date~~
29 ~~of service of summons, as prescribed by law, outside of the state, and thirty~~
30 ~~(30) days from the date of constructive service by publication of a warning~~
31 ~~order, as prescribed by law.~~

32 ~~(b) The action shall stand for trial, and judgment by default may be~~
33 ~~had as if the summons had been served the same length of time, and in the same~~
34 ~~manner, before the commencement of the term.~~

35
36 ~~16-16-411.—Transfer of action from justice of the peace court.~~

1 ~~(a) When any civil action or special proceeding is or shall be pending~~
 2 ~~before any justice of the peace in the county, either party may on motion have~~
 3 ~~a change of venue from the justice's court to the court of common pleas.~~

4 ~~(b)(1) On the filing of the motion, the justice shall at once suspend~~
 5 ~~all further proceedings therein and shall at once, and without delay, make out~~
 6 ~~a certified transcript of his docket entries in the case and all costs therein~~
 7 ~~accrued to date. He shall transmit the transcript together with all the~~
 8 ~~original papers in the case to the clerk of the common pleas court.~~

9 ~~(2) For this service, the justice shall receive the sum of one~~
 10 ~~dollar (\$1.00) to be paid by the party applying for change of venue, to be~~
 11 ~~taxed as costs in the cause. However, where the change of venue is taken by~~
 12 ~~the plaintiff, he shall at the same time pay all costs which may have accrued~~
 13 ~~before the justice.~~

14 ~~(c) The clerk shall file the transcript and papers, and he shall docket~~
 15 ~~the transcript and papers.~~

16 ~~(d) The cause shall stand for trial on the first day the court is in~~
 17 ~~session after five (5) days from the date of the filing of the transcript and~~
 18 ~~shall proceed in the common pleas court in all respects as though originally~~
 19 ~~brought therein.~~

20
 21 ~~16-16-412. Trial by court — Juries.~~

22 ~~(a) All issues of law and fact shall be tried by the court unless a~~
 23 ~~jury trial shall be demanded by either party.~~

24 ~~(b)(1) A jury for the trial of issues of fact shall consist of six (6)~~
 25 ~~persons unless the parties agree to a lesser number.~~

26 ~~(2) Where a jury is demanded, the court shall order the sheriff~~
 27 ~~to forthwith summon a special venire of a sufficient number of persons to make~~
 28 ~~the jury.~~

29
 30 ~~16-16-413. Juror and witness fees.~~

31 ~~Jurors and witnesses in the court shall be entitled to the same fees as~~
 32 ~~jurors and witnesses in courts of justices of the peace, to be taxed as costs~~
 33 ~~as provided in this subchapter.~~

34
 35 ~~16-16-414. Fees — Costs.~~

36 ~~All fees provided for in this subchapter shall, except where directed to~~

1 ~~be paid out of the county treasury, be taxed as costs against the party~~
2 ~~litigant against whom judgment for costs may be rendered.~~

3
4 ~~16-16-415.—Judgments.—~~

5 ~~All judgments rendered by the court shall be a lien upon the real estate~~
6 ~~of the defendant, the same as if it were rendered by the circuit court. It~~
7 ~~shall be entered on the judgment record of the county, and executions may be~~
8 ~~issued thereon and executed in the same manner as upon judgments in the~~
9 ~~circuit court.~~

10
11 ~~16-16-416.—Executions.—~~

12 ~~(a) Executions for the enforcement of judgments rendered in the common~~
13 ~~pleas court may be issued upon the application of the party entitled thereto~~
14 ~~at any time within ten (10) years of entry of the judgment, but not~~
15 ~~afterwards.~~

16 ~~(b) The execution shall be against the goods and chattels of the person~~
17 ~~against whom it is issued and shall be dated as on the day on which it is~~
18 ~~issued. It shall be made returnable within thirty (30) days thereafter and~~
19 ~~may be substantially in the form used in the circuit court.~~

20
21 ~~16-16-417.—Levy and sale.—~~

22 ~~(a)(1) Any officer after having taken goods and chattels into his~~
23 ~~custody by virtue of an execution issued from the court shall without delay~~
24 ~~give public notice by at least three (3) advertisements posted in three (3)~~
25 ~~public places in the county of the time and place, when and where they will be~~
26 ~~exposed for sale.~~

27 ~~(2) The notices shall describe the goods and chattels taken and~~
28 ~~shall be posted at least ten (10) days before the day of sale.~~

29 ~~(3) At the time and place so appointed, if the goods and chattels~~
30 ~~are present for the inspection of bidders, the officer shall expose the goods~~
31 ~~and chattels for sale at public vendue, for cash in hand. However, no real~~
32 ~~estate or interest therein shall be levied upon or sold by virtue of any~~
33 ~~execution issued from the court.~~

34 ~~(b)(1) Whenever any officer to whom any order of attachment issued by~~
35 ~~the common pleas court is directed can find no personal property upon which to~~
36 ~~levy the order of attachment, he may and shall levy the order upon any lands,~~

1 tenements, town lots, interest in, or equity of redemption in any real
 2 property belonging to the defendant in the attachment, subject to execution by
 3 the laws of this state, and make his return accordingly, describing in his
 4 return the property so levied upon.

5 ~~(2)(A) In all cases in suits by attachment in which lands,~~
 6 ~~tenements, town lots, interest in, or equity of redemption in any real~~
 7 ~~property shall have been levied upon as provided for in this section, the~~
 8 ~~plaintiff, if he obtains judgment therein, shall be entitled to a transcript~~
 9 ~~of the judgment and proceedings in the cause. Upon the filing of the~~
 10 ~~transcript in the office of the clerk of the circuit court of the county, the~~
 11 ~~judgment shall be entered in the docket of the circuit court for common law~~
 12 ~~judgments and shall thenceforth have the same force and effect as a judgment~~
 13 ~~rendered in said circuit court.~~

14 ~~(B) An order of sale upon the judgment shall be issued by~~
 15 ~~the clerk of the court, directed to the sheriff of the county under which the~~
 16 ~~property so seized and levied upon and condemned to be sold by the judgment~~
 17 ~~shall be sold in the same manner and with the same notice as sales of real~~
 18 ~~property under executions are made. However, no such sale shall be made until~~
 19 ~~the plaintiff shall execute bond to the defendant in the manner now prescribed~~
 20 ~~by law.~~

21
 22 ~~16-16-418. Stay of executions.~~

23 ~~(a) The provisions of law governing the stay of executions on judgments~~
 24 ~~of the circuit courts shall apply to and govern the stay of executions on~~
 25 ~~judgments of this court. However, execution upon the common pleas judgments~~
 26 ~~shall in no event be stayed for a period of more than six (6) months from the~~
 27 ~~date of judgment.~~

28 ~~(b) The stay bonds shall have the force and effect of a judgment of the~~
 29 ~~court, upon which the execution may be issued as on stay bonds in the circuit~~
 30 ~~court.~~

31
 32 ~~16-16-419. Appeals.~~

33 ~~(a) Any person aggrieved by any judgment rendered by the court, except~~
 34 ~~a judgment by dismissal for want of prosecution, may in person or by attorney~~
 35 ~~take an appeal therefrom to the circuit court.~~

36 ~~(b) An appeal may be taken at any time within thirty (30) days after~~

1 the rendition of the judgment appealed from by the appellant or his attorney
 2 making and filing with the clerk an affidavit that the appeal is not taken for
 3 delay, but that justice may be done, and causing a notice of the taking of the
 4 appeal to be served upon the adverse party or his attorney of record.

5 (c) In all cases where an appeal is taken, the appellant, together with
 6 one (1) or more sureties to be approved by the clerk, within thirty (30) days
 7 after the rendition of the judgment appealed from, shall make and file with
 8 the clerk a bond to the appellee in a sum sufficient to secure the payment of
 9 the judgment and costs of appeal, conditioned that he will prosecute his
 10 appeal with effect or that he will perform the judgment of the court.—
 11 However, either party may appeal without giving bond, but in such cases the
 12 judgment appealed from shall not be superseded but shall remain in full force
 13 and effect.

14 (d) Where the appellant or his attorney makes and files with the clerk
 15 at the same term of the court at which the judgment was rendered an affidavit
 16 that the appeal is not taken for delay, but that justice may be done, the
 17 court shall grant the appeal as a matter of right. The entry of the order
 18 granting the appeal shall be notice to the adverse party that an appeal has
 19 been taken.

20 (e)(1) On all appeals taken to the circuit court as provided for in
 21 this section, the clerk shall transmit the original papers in the case, the
 22 affidavit and appeal bond, and a certified copy of all the record entries to
 23 the clerk of the circuit court, whereupon the cause shall be tried in the
 24 circuit court de novo. No new or additional cause of action or new or
 25 additional counterclaim or setoff shall be filed in the circuit court.

26 (2) Where the transcript and papers are filed with the clerk of
 27 the circuit court ten (10) days before the commencement of any term thereof,
 28 the cause shall stand for trial at such term.

29 (f) If the appellee recovers judgment for any amount, the judgment
 30 shall be rendered against the appellant and the sureties upon his appeal bond.—
 31 However, if the appellee recovers judgment for a lesser amount than the
 32 judgment appealed from, the appellant shall recover the costs of the appeal
 33 from the appellee by judgment therefor.

34
 35 16-16-501. Establishment—Terms—Adjournments.—

36 A court of common pleas is established in Cross County, to be held

1 quarterly at the court house in the county, commencing on the third Mondays in
 2 January, April, July, and October of each year. The court shall continue in
 3 session until the business before the court shall be disposed of. However, if
 4 the continuation of the court should conflict with the terms of some other
 5 court of record, the judge shall adjourn the court of common pleas until some
 6 other day named and designated by him, or until the next term of the court.

7
 8 ~~16-16-502.—Jurisdiction.~~

9 The court shall have jurisdiction of all law actions of contract, either
 10 express or implied, all actions of replevin and damages to persons, to
 11 property, or to both, where the sum and the amount in controversy, exclusive
 12 of interest, shall not exceed one thousand dollars (\$1,000). However, the
 13 court shall have no jurisdiction of any actions where the title to or
 14 possession of real estate is in controversy, nor of any criminal action, nor
 15 any action or matter where exclusive jurisdiction is by law given to either
 16 the county or probate court.

17
 18 ~~16-16-503.—Pleading and practice.~~

19 The rules of practice governing the circuit court shall be the rules of
 20 practice in this court. Any pleading, service, process, record, or other
 21 proceedings which are required in the circuit court shall be required and held
 22 sufficient in this court unless otherwise expressly provided herein.

23
 24 ~~16-16-504.—Judge.~~

25 The judge of the county court of Cross County shall be the judge of the
 26 court of common pleas and, in addition to the salary now received by him as
 27 county judge, shall receive the sum of nine hundred dollars (\$900) per annum,
 28 to be paid quarterly out of the county treasury.

29
 30 ~~16-16-505.—Clerk.~~

31 The clerk of the circuit court shall be ex officio clerk of the court of
 32 common pleas and shall be entitled to the same fees as are allowed by law for
 33 similar service in the circuit court. These fees are to be considered and
 34 paid as provided in § 16-16-512 for the payment of fees of jurors and
 35 witnesses, also the sheriff, and not otherwise.

36

1 ~~16-16-506.—Sheriff.~~

2 ~~The sheriff of the county shall be the ordinary officer of the court and~~
3 ~~shall, in person or by deputy, attend each session thereof.~~

4
5 ~~16-16-507.—Docket.~~

6 ~~he clerk of the court shall prepare and keep a docket, in which shall be~~
7 ~~entered all cases in the order in which they are brought. The cases shall be~~
8 ~~numbered consecutively up to the end of each year and stand for trial in the~~
9 ~~order in which they are brought and filed.~~

10
11 ~~16-16-508.—Writs, process, and provisional remedies.~~

12 ~~(a) The clerk of the court is authorized and empowered to issue all~~
13 ~~necessary writs, processes, and provisional remedies in any action coming~~
14 ~~within the jurisdiction of the court.~~

15 ~~(b) All writs and processes issued from the court shall be~~
16 ~~authenticated by the seal of the circuit court.~~

17 ~~(c) All writs of execution and other process issued out of the court~~
18 ~~may be directed and served in any county in this state, with the same force~~
19 ~~and effect as similar process issued out of and by the circuit court.~~

20 ~~(d)(1) All writs and other processes issuing out of the court shall be~~
21 ~~directed to the sheriff; however, the writs or other processes may be served~~
22 ~~by any officer in the county, authorized to serve process, designated by the~~
23 ~~party suing out the process.~~

24 ~~(2) The sheriff or other officer who shall serve any process~~
25 ~~issuing out of the court shall be allowed the same fees as are now or may be~~
26 ~~allowed by law to sheriffs for similar service in the circuit court, to be~~
27 ~~paid as provided in § 16-16-512 for jurors and witnesses' fees.~~

28
29 ~~16-16-509.—Time for filing defense—Default judgment.~~

30 ~~(a) The defense to an action shall be made, unless for cause further~~
31 ~~time is given, on or before the first day after service as required by Civil~~
32 ~~Code, § 126, as amended [superseded]. However, if the court is not in~~
33 ~~session, the defense shall be filed on or before the first day of any regular~~
34 ~~or adjourned term thereafter.~~

35 ~~(b) The court shall render judgment on the second day after time for~~
36 ~~filing defense, as provided in subsection (a) of this section, by default.~~

1 ~~However, the court may grant further time, for cause, to file a defense.~~

2

3 ~~16-16-510. Transfer or change of venue from justice of the peace court.~~

4 ~~(a) When any civil action is, or shall be, pending before any justice~~
 5 ~~of the peace in the county, either party may, on motion, have a change of~~
 6 ~~venue from that justice's court to the court of common pleas in the county.~~

7 ~~(b) On the filing of this motion, the justice shall suspend all further~~
 8 ~~proceedings therein and shall at once, without delay, make out a duly~~
 9 ~~certified transcript of his docket entries in the case. He shall transmit the~~
 10 ~~transcript, together with all the original papers, to the clerk of the court,~~
 11 ~~for which he shall receive one dollar (\$1.00), and he shall receive five cents~~
 12 ~~(5¢) per mile to and from the office of the clerk of the court. However, if~~
 13 ~~the change of venue is asked for by the plaintiff, he shall pay all costs~~
 14 ~~which may have accrued before the justice.~~

15 ~~(c) Upon a change of venue being taken to the court of common pleas as~~
 16 ~~provided in subsection (b) of this section, neither party shall be permitted~~
 17 ~~to file in the court any new additional counterclaim or setoff, nor shall~~
 18 ~~either party be required to file any additional pleading. The cause shall be~~
 19 ~~tried upon its merits, as though the cause was still in the justice of the~~
 20 ~~peace's court.~~

21 ~~(d) This section shall in no way affect or change the law now in force~~
 22 ~~providing for a change of venue from one (1) justice of the peace to another.~~

23

24 ~~16-16-511. Trial by court — Juries.~~

25 ~~(a) All issues of law and fact shall be tried by the court unless a~~
 26 ~~jury is demanded by either party.~~

27 ~~(b)(1) If a jury is demanded by either party, the court shall order the~~
 28 ~~sheriff, or other officer in attendance upon the court, to summon a jury of~~
 29 ~~twelve (12) persons lawfully qualified to serve as jurors, as is required in~~
 30 ~~circuit courts, unless the parties agree to a lesser number.~~

31 ~~(2) The jurors shall be forthwith summoned, impaneled, and sworn~~
 32 ~~to try the action, in the same way and manner as juries are summoned,~~
 33 ~~impaneled, and sworn to try and determine an action pending in the circuit~~
 34 ~~court.~~

35 ~~(3) Each party shall be entitled to three (3) peremptory~~
 36 ~~challenges.~~

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~~16-16-512.—Juror and witness fees.—~~

~~The jurors impaneled in the court and the witnesses in attendance thereon shall be entitled to the sum of one dollar (\$1.00) per day, to be paid in all cases by the party litigant against whom judgment therefor shall be rendered. As in the circuit court, the fees shall become and be considered a part of the costs of the action and shall be so collected.~~

~~16-16-513.—Judgment.—~~

~~All judgments rendered by the court of common pleas shall be a lien upon all property, the same as if rendered by the circuit court, subject to execution, which the defendant may have and own in the county at the time of the rendition of such judgment and at any time thereafter until such judgment is fully paid off.~~

~~16-16-514.—Appeals.—~~

~~(a) Any person aggrieved by any judgment rendered by the court, except a judgment for want of prosecution, in person, by agent, or attorney, may take an appeal therefrom to the circuit court of the county, upon complying with the following requisites:~~

~~(1) The appellant, his agent, or his attorney shall make and file with the clerk an affidavit that the appeal is not taken for the purpose of delay, but that justice may be done;~~

~~(2) The appellant, or some other person for him, together with one (1) or more securities to be approved by the clerk, shall enter into bond to the adverse party in a sum sufficient to secure the payment of the judgment and costs of appeal;~~

~~(3) The appeal shall be granted by the court as a matter of right upon motion filed at the same term of the court at which judgment was rendered. The entering of the order granting the appeal shall be sufficient notice to the adverse party that an appeal has been taken;~~

~~(4) In order to make the appeal effectual, the affidavit and bond for appeal must be filed with the clerk within thirty (30) days after the appeal is granted. Upon the filing of the affidavit and bond, all further proceedings in the court shall be suspended. However, either party may appeal without giving bond, but in such cases judgment shall not be suspended.~~

1 ~~(b) On all appeals to the circuit court, as provided for in this~~
 2 ~~section, the clerk shall transmit the original papers in the case, the~~
 3 ~~affidavit and appeal bond, and a certified transcript of the records entries~~
 4 ~~in the case to the clerk of the circuit court, whereupon the circuit court~~
 5 ~~shall proceed to try the case de novo.~~

6 ~~(c) No new or additional cause of action nor any new or additional~~
 7 ~~setoff or counterclaims shall be filed in the circuit court.~~

8 ~~(d) All appeals in which transcripts and papers shall be filed with the~~
 9 ~~clerk of the circuit court ten (10) days before the commencement of any term~~
 10 ~~shall stand for trial at such term unless the appeal is continued for cause.~~

11 ~~(e) In trials de novo of all cases of appeals, if the appellee recovers~~
 12 ~~judgment for any amount, the judgment shall be rendered against the appellant~~
 13 ~~and his securities on the appeal bond. However, if the judgment rendered in~~
 14 ~~the circuit court against the appellant is for a lesser amount than the~~
 15 ~~judgment appealed from, the appellant shall recover the costs of the appeal~~
 16 ~~from the appellee by judgment therefor.~~

17
 18 ~~16-16-601. Establishment—Terms—Adjournment.~~

19 ~~A court of common pleas is established in Desha County, to be held~~
 20 ~~quarterly at the courthouse in the county, commencing on the second Mondays in~~
 21 ~~January, April, July, and October of each year. The court shall continue in~~
 22 ~~session until the business before the court shall be disposed of. However, if~~
 23 ~~the continuation of the court conflicts with the terms of some other court of~~
 24 ~~record, then the judge shall adjourn the court of common pleas until some~~
 25 ~~other day named and designated by him or until the next term of the court.~~

26
 27 ~~16-16-602. Jurisdiction.~~

28 ~~The court shall have jurisdiction of all law actions of contract, either~~
 29 ~~express or implied; all actions of replevin and damage to persons, to~~
 30 ~~property, or to both, where the sum and amount in controversy, exclusive of~~
 31 ~~interest, does not exceed one thousand five hundred dollars (\$1,500); all~~
 32 ~~actions of forcible entries and detainers and forcible and unlawful detainers.~~
 33 ~~However, the court shall have no jurisdiction of any actions involving the~~
 34 ~~title to real estate, nor of any criminal action, nor of any matter or action~~
 35 ~~where the exclusive jurisdiction is by law given to either the county or~~
 36 ~~probate courts.~~

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~~16-16-603.—Pleading and practice.—~~

~~The rules of practice governing other proceedings which are required in the circuit court shall be required and held sufficient in this court unless otherwise expressly provided in this subchapter.—~~

~~16-16-604.—Judge.—~~

~~(a) The judge of the county and probate courts of Desha County shall be the judge of the court of common pleas.—~~

~~(b) The judge of the county and common pleas courts of Desha County shall be at least twenty five (25) years of age, a citizen of the United States, of upright character, of good business education, learned in the law, and a resident of the state two (2) years before his election, and a resident of the county at the time of the election and during his continuance in office.—~~

~~16-16-605.—Clerk.—~~

~~The clerk of the circuit court shall be ex officio clerk of the court of common pleas and shall be entitled to the same fees as are allowed and paid as provided in § 16-16-611 for the payment of fees of jurors and witnesses, and the sheriff, and not otherwise.—~~

~~16-16-606.—Sheriff.—~~

~~The sheriff of the county shall be the ordinary officer of the court and shall, in person or by deputy, attend each session thereof.—~~

~~16-16-607.—Docket—Records.—~~

~~(a) The clerk of the court shall prepare and keep a docket, in which shall be entered all cases in the order in which they are brought.—The cases shall be numbered consecutively up to the end of each year and stand for trial in the order in which they are brought and filed.—~~

~~(b) The clerk of the court shall also prepare and keep a well bound book in which he shall enter and record all judgments, orders, and decrees of the court.—This book shall be indexed, and in all respects it shall be kept in the same manner as the records of the circuit court are required by law to be kept.—~~

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~~16-16-608.— Filing fee.—~~

~~Every plaintiff filing any suit or suits as provided for in this subchapter, at the time of filing the suit or suits, shall pay to the clerk of this court in addition to the regular fees as provided by law the sum of one dollar (\$1.00), which sum shall be a tax for filing the suit. The tax shall be paid into the general fund of the county.—~~

~~16-16-609.— Writs, process, and provisional remedies.—~~

~~(a) The clerk of the court is authorized and empowered to issue all necessary writs, processes, and provisional remedies in any action coming within the jurisdiction of the court.—~~

~~(b) All writs and processes issued from the court shall be authenticated by the seal of the circuit court.—~~

~~(c) All writs of execution and other process issued out of the court may be directed and served in any county in this state, with the same force and effect as similar process issued out of and by the circuit court.—~~

~~(d)(1) All writs and other process issuing out of the court shall be directed to the sheriff. However, the writs or other process may be served by any officer in the county authorized to serve process designated by the party suing out the process.—~~

~~(2) The sheriff or other officer who shall serve any process issuing out of the court shall be allowed the same fees as are now, or may be, allowed by law to sheriffs for similar service in the circuit court, to be paid as provided for jurors and witness fees in § 16-16-611.—~~

~~16-16-610.— Trial by court — Juries.—~~

~~(a) All issues of law and fact shall be tried by the court unless a jury is demanded by either party.—~~

~~(b)(1) If a jury is demanded by either party, the court shall order the sheriff, or other officer in attendance on the court, to summon a jury of twelve (12) persons lawfully qualified to serve as jurors as is required in the circuit court unless the parties agree to a lesser number.—~~

~~(2) The jurors shall be forthwith summoned, impaneled, and sworn to try the action, in the same way and manner as juries are summoned, impaneled, and sworn to try and determine an action pending in the circuit~~

1 court.

2 ~~(3) Each party shall be entitled to three (3) peremptory~~
3 ~~challenges.~~

4

5 ~~16-16-611. Juror and witness fees.~~

6 ~~Jurors impaneled in the court and witnesses in attendance thereon shall~~
7 ~~be entitled to the sum of one dollar (\$1.00) per day, but only if they claim~~
8 ~~their attendance on the day of the trial of the cause in which they were~~
9 ~~summoned or subpoenaed. The fee shall be paid in all cases by the party~~
10 ~~litigant against whom judgment therefor shall be rendered. The fees shall~~
11 ~~become and be considered a part of the cost of the action and shall be~~
12 ~~collected as in the circuit court.~~

13

14 ~~16-16-612. Judgments—Execution.~~

15 ~~All judgments rendered by the court of common pleas shall be a lien upon~~
16 ~~all property the same as if rendered by the circuit court, subject to~~
17 ~~execution, which the defendant may have and own in the county at the time of~~
18 ~~the rendition of the judgment and at any time thereafter until the judgment is~~
19 ~~fully paid off.~~

20

21 ~~16-16-613. Appeals.~~

22 ~~(a) Any person aggrieved by any judgment rendered by the court, except~~
23 ~~a judgment for want of prosecution, in person, by agent, or attorney, may take~~
24 ~~an appeal therefrom to the circuit court of the county, upon complying with~~
25 ~~the following requisites:~~

26 ~~(1) The appellant, his agent, or his attorney shall make and file~~
27 ~~with the clerk an affidavit that the appeal is not taken for the purpose of~~
28 ~~delay, but that justice may be done;~~

29 ~~(2) The appellant or some other person for him, together with one~~
30 ~~(1) or more securities, to be approved by the clerk, shall enter into bond to~~
31 ~~the adverse party in the sum sufficient to secure the payment of such judgment~~
32 ~~and costs of appeal;~~

33 ~~(3) The appeal shall be granted by the court as a matter of right~~
34 ~~upon motion filed at the same term of the court at which judgment was~~
35 ~~rendered. The entering of the order granting the appeal shall be of~~
36 ~~sufficient notice to the adverse party that an appeal has been taken;~~

1 ~~(4) In order to make the appeal effectual, the affidavit and bond~~
2 ~~for appeal must be filed with the clerk within thirty (30) days after the~~
3 ~~appeal is granted. Upon the filing of the affidavit and bond, all further~~
4 ~~proceedings in the court shall be suspended. However, either party may appeal~~
5 ~~without giving bond, but in such cases judgment shall not be suspended.~~

6 ~~(b) On all appeals to the circuit court, as provided for in this~~
7 ~~section, the clerk shall transmit the original papers in the case, the~~
8 ~~affidavit and appeal bond, and a certified transcript of the record entries in~~
9 ~~the case to the clerk of the circuit court, whereupon the circuit court shall~~
10 ~~proceed to try the case de novo.~~

11 ~~(c) No new or additional cause of action, nor any new or additional~~
12 ~~setoff or counterclaim shall be filed in the circuit court.~~

13 ~~(d) All appeals in which the transcript and papers are filed with the~~
14 ~~clerk of the circuit court ten (10) days before the commencement of any term~~
15 ~~thereof shall stand for trial at such term unless the appeals are continued~~
16 ~~for cause.~~

17 ~~(e) In trials de novo of all cases of appeals, if the appellee recovers~~
18 ~~judgment for any amount, the judgment shall be rendered against the appellant~~
19 ~~and his securities on the appeal bond. However, if the judgment rendered in~~
20 ~~the circuit court against the appellant is for a lesser amount than the~~
21 ~~judgment appealed from, the appellant shall recover the costs of the appeal~~
22 ~~from the appellee by judgment therefor.~~

23
24 ~~16-16-701. Definitions.~~

25 ~~As used in this subchapter, unless the context otherwise requires,~~
26 ~~"judge" or "judges" and "court" or "courts" shall be held to apply to, and~~
27 ~~mean, the judge or judges of and the court or courts of common pleas of the~~
28 ~~counties named in this subchapter, unless otherwise designated.~~

29
30 ~~16-16-702. Creation.~~

31 ~~There is established in Garland, Lee, and Prairie Counties a court of~~
32 ~~common pleas.~~

33
34 ~~16-16-703. Terms — Adjournment.~~

35 ~~(a)(1) The Court of Common Pleas of Lee County shall be held quarterly~~
36 ~~by the county judge at the courthouse, commencing on the third Mondays in~~

1 ~~January, April, July, and October of each year.~~

2 ~~(2) The Court of Common Pleas of Prairie County shall be held~~
 3 ~~quarterly by the county judge at the courthouse on the fourth Mondays of~~
 4 ~~January, April, July, and October of each year.~~

5 ~~(3) The Court of Common Pleas of Garland County shall be begun~~
 6 ~~and held on the first Mondays in March, June, September, and December of each~~
 7 ~~year.~~

8 ~~(b) Each of the courts is to continue in session until the business~~
 9 ~~thereof shall be disposed of unless the continuation of the court shall come~~
 10 ~~in conflict with the term of some other court of record, or the convenience of~~
 11 ~~the litigants, in the judgment of the court, demands a special term. In this~~
 12 ~~event, the judge may adjourn the court until some other day to be designated~~
 13 ~~by the court or until the next regular term of the court.~~

14
 15 ~~16-16-704. Jurisdiction.~~

16 ~~The courts shall have jurisdiction of all law actions of contract,~~
 17 ~~either express or implied, of all actions of replevin, and of actions of~~
 18 ~~damages, either to person or property or both, where the sum in controversy,~~
 19 ~~exclusive of interest, shall not exceed five hundred dollars (\$500). However,~~
 20 ~~the courts shall have no jurisdiction of any action where the title to real~~
 21 ~~estate is in controversy, nor of any criminal action, nor of any action or~~
 22 ~~matter where exclusive jurisdiction is given by law to the county court and~~
 23 ~~court of probate.~~

24
 25 ~~16-16-705. Practice and procedure generally.~~

26 ~~The rules of practice which govern in the circuit court shall be the~~
 27 ~~rules of practice in these courts. Any pleading, process, service, record, or~~
 28 ~~other proceeding, which is required in the circuit court, shall be required~~
 29 ~~and deemed sufficient in these courts unless herein otherwise expressly~~
 30 ~~provided.~~

31
 32 ~~16-16-706. Judges.~~

33 ~~The judges of the courts shall receive, in addition to the salary now~~
 34 ~~received by them as county judges, the sum of four hundred dollars (\$400) per~~
 35 ~~annum, to be paid quarterly out of their respective county treasuries.~~
 36 ~~However, the salary of the judge of the Court of Common Pleas of Prairie~~

1 County shall be the sum of two hundred dollars (\$200) per annum, to be paid
2 quarterly out of the county treasury of Prairie County.

3
4 ~~16-16-707.—Special judges.—~~

5 ~~(a) If the county judge is disqualified to sit in any cause pending~~
6 ~~before the court, or fails, neglects, or refuses to appear and hold his court~~
7 ~~by the hour of 10:00 a.m. of the second day of any term of the court, then the~~
8 ~~regular practicing attorneys present may elect some one of their number to~~
9 ~~discharge the duties of the judge of the court for the determination of the~~
10 ~~cause or hold the court for the balance of the term or until the judge~~
11 ~~appears. However, in no event shall the special judge discharge the duties~~
12 ~~beyond the term.—~~

13 ~~(b) The special judge shall be paid such sum as may be allowed by the~~
14 ~~county courts for his services, not to exceed ten dollars (\$10.00) per day,~~
15 ~~which shall be paid by the counties and deducted from the salary of the county~~
16 ~~judge.—~~

17
18 ~~16-16-708.—Clerk.—~~

19 ~~The clerk of the county court of each of the counties shall be ex~~
20 ~~officio clerk of the court of common pleas and shall be entitled to the same~~
21 ~~fees as are allowed by law for similar services in the circuit courts.—~~

22
23 ~~16-16-709.—Sheriff.—~~

24 ~~The sheriffs respectively of the counties shall be the ordinary officers~~
25 ~~of the courts and attend at each session thereof.—~~

26
27 ~~16-16-710.—Docket.—~~

28 ~~The clerks of the courts shall respectively prepare and keep one (1)~~
29 ~~docket, in which shall be entered all cases in the order in which they are~~
30 ~~brought. The cases shall be numbered consecutively up to the end of each~~
31 ~~year, commencing again at number one (1) at the beginning of each year. They~~
32 ~~shall stand for trial in the order in which they are brought.—~~

33
34 ~~16-16-711.—Filing fees—Garland County.—~~

35 ~~The fee for filing any case in the Court of Common Pleas of Garland~~
36 ~~County, shall be fifteen dollars (\$15.00). The fee shall cover all costs of~~

1 issuance of summons and service of process and all other fees presently
 2 charged by such courts. It shall be in lieu of all fees presently prescribed
 3 by law for such cases.

4
 5 ~~16-16-712. Writs and process.~~

6 ~~(a) The clerks of the courts are authorized and empowered to issue all~~
 7 ~~necessary writs, process, and provisional remedies in any action coming within~~
 8 ~~the jurisdiction of the courts.~~

9 ~~(b) All writs and process from courts of common pleas shall be~~
 10 ~~authenticated by the seal of the county court.~~

11 ~~(c) Writs of execution and other process issuing out of the courts may~~
 12 ~~be directed and served in any county in this state, with the same force and~~
 13 ~~effect as similar process issued by the circuit court.~~

14 ~~(d)(1) All writs and other process issuing out of the courts shall be~~
 15 ~~directed to the sheriff, but they may be served by any officer in the county~~
 16 ~~authorized to serve process, designated by the party suing out the process.~~

17 ~~(2) Any officer who shall serve any process issuing out of any of~~
 18 ~~the courts shall be allowed the same fees as are allowed by law to sheriffs~~
 19 ~~for similar services.~~

20
 21 ~~16-16-713. Time for filing defenses—Default judgment.~~

22 ~~(a) The rules of practice which govern in the circuit court shall be~~
 23 ~~the rules of practice in these courts. Any pleading, process, service,~~
 24 ~~record, or other proceeding which is required in the circuit court shall be~~
 25 ~~required and deemed sufficient in these courts, unless otherwise expressly~~
 26 ~~provided in this subchapter.~~

27 ~~(b)(1) All defenses to actions brought in such courts shall be filed on~~
 28 ~~or before the first day of the term, when summons has been served ten (10)~~
 29 ~~days before the term. However, the time for filing defenses may be extended~~
 30 ~~in the sound discretion of the court.~~

31 ~~(2) In all actions when answers are not filed on or before the~~
 32 ~~first day of the term, the court may, on the second day of the term or on any~~
 33 ~~day thereafter, render judgment by default. However, the court may, for good~~
 34 ~~cause shown, allow further time for filing a defense.~~

35
 36 ~~16-16-714. Transfer of action from justice of peace court.~~

1 ~~(a) When any civil suit is pending before any justice of the peace in~~
 2 ~~any of the counties, either party may, on motion, have a change of venue from~~
 3 ~~the court of that justice of the peace to the court of common pleas in the~~
 4 ~~county where the action shall be pending.~~

5 ~~(b)(1) On the filing of the motion, the justice of the peace shall~~
 6 ~~suspend all further proceedings therein and shall, as soon thereafter as~~
 7 ~~practicable, make out a duly certified transcript of his docket entries in the~~
 8 ~~case. He shall transmit the transcript, together with all the original papers~~
 9 ~~filed in the cause to the clerk of the court, for which he shall receive one~~
 10 ~~dollar (\$1.00). The justice of the peace shall also receive five cents (5¢)~~
 11 ~~per mile to and from the office of the clerk of the court, to be paid by the~~
 12 ~~party applying for the change of venue. However, if the change of venue is~~
 13 ~~asked for by the plaintiff, he shall pay all costs which may have accrued~~
 14 ~~before the justice.~~

15 ~~(2) Upon a change of venue being taken as provided in subsection~~
 16 ~~(a) of this section, neither party shall be permitted to file in the court any~~
 17 ~~new or additional cause, or any new or additional counterclaim, or setoff, nor~~
 18 ~~shall either party be required to file any additional pleadings, but the cause~~
 19 ~~shall be tried upon its merits, as though still in the justice's court.~~

20 ~~(c) This section shall in no way affect or change the law now in force~~
 21 ~~providing for a change of venue from one justice of the peace to another.~~

22
 23 ~~16-16-715. Trial by court — Juries.~~

24 ~~(a) All issues of law and fact shall be tried by the court unless a~~
 25 ~~jury shall be demanded by either party.~~

26 ~~(b)(1) If either party demands a jury, the court shall order the~~
 27 ~~sheriff, or other officers in attendance upon the court, to summon a jury of~~
 28 ~~six (6) persons, unless the parties agree to a lesser number, who shall be~~
 29 ~~qualified to serve as jurors, on juries, as required in circuit courts, who~~
 30 ~~shall be forthwith summoned and impaneled to try the action.~~

31 ~~(2) In the formation of a jury, each party shall be entitled to~~
 32 ~~three (3) peremptory challenges, and any deficiency, arising from any cause,~~
 33 ~~in the number of jurors summoned may be supplied by summoning others in their~~
 34 ~~stead.~~

35 ~~(3) The court or clerk shall administer to each jury the~~
 36 ~~following oath:~~

1
2 ~~"You, and each of you, do solemnly swear that you will well and truly~~
3 ~~try the matter in controversy, between, plaintiff, and~~
4 ~~, defendant, and a true verdict render according to the law and evidence,~~
5 ~~unless discharged by the court or withdrawn by the parties, so help you God."~~

6 ~~(4) Jurors impaneled in the court shall be entitled to the same~~
7 ~~fees and shall be paid in the same way as jurors in justice of the peace~~
8 ~~courts.~~

9
10 ~~16-16-716. Witness fees.~~

11 ~~Witnesses in the courts shall be allowed the same fees that are allowed~~
12 ~~witnesses in justice of the peace courts in civil cases, to be paid in all~~
13 ~~cases by the parties litigant.~~

14
15 ~~16-16-717. Judgments.~~

16 ~~All judgments rendered by the courts shall be a lien upon all the~~
17 ~~property which the defendant may own in the county at the time of the~~
18 ~~rendition of the judgment, and at any time thereafter until the judgment is~~
19 ~~fully paid off, the same as if rendered by the circuit court, subject to~~
20 ~~execution.~~

21
22 ~~16-16-718. Appeals.~~

23 ~~(a) Any person aggrieved by any judgment rendered by any of the courts,~~
24 ~~except a judgment of dismissal for want of prosecution, in person or by agent,~~
25 ~~may take an appeal therefrom, to the circuit court of the county upon~~
26 ~~complying with the following requisites:~~

27 ~~(1) The appellant or his agent shall make and file with the~~
28 ~~clerk, an affidavit that the appeal is not taken for the purpose of delay, but~~
29 ~~that justice may be done;~~

30 ~~(2) The appellant or some person for him, together with one (1)~~
31 ~~or more securities to be approved by the clerk, must enter into an obligation~~
32 ~~to the adverse party in a sum sufficient to secure the payment of the judgment~~
33 ~~and the costs of appeal;~~

34 ~~(3) The appeal shall be granted by the court as a matter of right~~
35 ~~upon motion filed at the same term of the court at which the judgment was~~
36 ~~rendered; and the entering of the order granting the appeal shall be a~~

1 sufficient notice to the adverse party that an appeal has been taken; and

2 ~~(4) In order to make the appeal effectual, the affidavit and bond~~
3 ~~for appeal must be filed with the clerk within thirty (30) days after the~~
4 ~~appeal is granted.~~

5 ~~(b) Upon the filing of the affidavit and bond, all further proceedings~~
6 ~~in the court shall be suspended.~~

7 ~~(c) Either party may appeal without giving any bond, but in such cases~~
8 ~~the judgment shall not be suspended.~~

9 ~~(d)(1) On all appeals to the circuit court taken as provided in this~~
10 ~~section, the clerk shall transmit the original papers in the case, the~~
11 ~~affidavit and appeal bond, and a certified transcript of the record entries in~~
12 ~~the case to the clerk of the circuit court; whereupon, the circuit court shall~~
13 ~~proceed to try the cause de novo. However, no new or additional cause of~~
14 ~~action, nor any new or additional setoff or counterclaim, shall be filed in~~
15 ~~the circuit court.~~

16 ~~(2) All appeals in which the transcript and papers shall be filed~~
17 ~~with the clerk of the circuit court ten (10) days before the commencement of~~
18 ~~any term thereof shall stand for trial at such term, unless continued for~~
19 ~~cause.~~

20 ~~(e) In trials de novo of all cases of appeals, if the appellee recovers~~
21 ~~judgment for any amount, the judgment shall be rendered against the appellant~~
22 ~~and his securities on the appeal bond. However, if the judgment rendered in~~
23 ~~the circuit court against the appellant shall be for a lesser amount than the~~
24 ~~judgment appealed from, the appellant shall recover the costs of the appeal,~~
25 ~~and judgment shall be rendered against the appellee therefor.~~

26
27 ~~16-16-719. Prairie County—Northern and Southern Districts.~~

28 ~~(a)(1) Prairie County shall be divided into two (2) judicial districts,~~
29 ~~to be called the Northern District and the Southern District.~~

30 ~~(2) All that portion of Prairie County lying north of the~~
31 ~~following described lines shall constitute the Northern District, and all~~
32 ~~lying south of the lines shall constitute the Southern District: Beginning at~~
33 ~~the mouth of Bayou Wattensas, on the west side of White River, and running up~~
34 ~~the stream to where sections seventeen (17), eighteen (18), nineteen (19), and~~
35 ~~twenty (20) in township three (3), north range five (5), west corner, and from~~
36 ~~that point due west to the western boundary of the county, and on the east of~~

1 ~~White River, commencing at the mouth of Jackson's Bayou, where it empties into~~
 2 ~~Cache River, then west with the Bayou to the center of section twenty three~~
 3 ~~(23), in township three (3), north range four (4), west, and thence west on~~
 4 ~~the half section line through sections twenty two (22), twenty one (21), and~~
 5 ~~twenty (20), to White River.~~

6 ~~(b)(1) The courts of common pleas in and for the Northern District of~~
 7 ~~Prairie County shall continue to be held at the county seat at Des Arc, as now~~
 8 ~~provided by law. There shall be no change in the style of the process and~~
 9 ~~legal proceedings which shall be pending in that court.~~

10 ~~(2) The court of common pleas in the Northern District shall be~~
 11 ~~held at the same time as is by law now provided.~~

12 ~~(3) The court of common pleas shall have jurisdiction of all~~
 13 ~~matters pertaining to its jurisdiction within the territorial limits of the~~
 14 ~~Northern District.~~

15 ~~(4) The court shall be styled the Court of Common Pleas of the~~
 16 ~~County of Prairie for the Northern District.~~

17 ~~(c)(1) The Court of Common Pleas of Prairie County shall be held the~~
 18 ~~same number of sessions in the town of De Valls Bluff, as by law the court is~~
 19 ~~now held at the county seat of the county and at such times as may be~~
 20 ~~designated by law. It shall be called the Court of Common Pleas of Prairie~~
 21 ~~County for the Southern District.~~

22 ~~(2) No citizen or resident of the Northern District shall be~~
 23 ~~liable to be sued in the Southern District in any action whatever.~~

24 ~~(3) The judge of the county court of Prairie County shall also be~~
 25 ~~the judge of the Court of Common Pleas of the Southern District.~~

26 ~~(4) The judge of the court shall hold court at the courthouse in~~
 27 ~~the Southern District on the second Mondays in February, May, August, and~~
 28 ~~November of each year.~~

29 ~~(5) The court of common pleas is vested with such jurisdiction~~
 30 ~~within and for the Southern District of all such matters within that district,~~
 31 ~~as are now by law vested in courts of common pleas of this state, and the same~~
 32 ~~proceedings may be had in the court as are now had and transacted in other~~
 33 ~~courts of common pleas of this state.~~

34 ~~(6) All matters over which the court of common pleas has~~
 35 ~~jurisdiction pertaining to that part of Prairie County within the Southern~~
 36 ~~District and to persons and property resident and being therein shall be~~

1 subject to the jurisdiction of the Court of Common Pleas of Prairie County for
2 the Southern District.

3 ~~(7) The Clerk of the Circuit Court of Prairie County shall~~
4 ~~furnish all the necessary books and records now by law required to be kept in~~
5 ~~the offices of clerks of the courts of common pleas to be paid for by the~~
6 ~~County Court of Prairie County out of the revenue received from the Southern~~
7 ~~District.~~

8 ~~(8) All laws now in force in this state, not inconsistent with~~
9 ~~this section, for the government of courts of common pleas, county officers,~~
10 ~~and the institution of suits in civil or criminal cases, the summoning,~~
11 ~~trying, impaneling, and charging grand and petit jurors, and the general~~
12 ~~disposition of all business shall be the same as declared to be in full force~~
13 ~~in the Southern District.~~

14 ~~(d)(1) The sheriff, clerk, treasurer, and judge of the Court of Common~~
15 ~~Pleas of Prairie County shall be the sheriff, clerk, treasurer, and judge of~~
16 ~~the Court of Common Pleas of both the Northern and Southern Districts and~~
17 ~~shall be invested with all the ministerial and judicial and ex officio powers~~
18 ~~in the respective districts as such officers now are by law.~~

19 ~~(2) It is made the respective duty of the sheriff, clerk, and~~
20 ~~treasurer of Prairie County, by and with the approval of the presiding judge~~
21 ~~of the county court, to appoint a deputy, and each one (1) of the above-named~~
22 ~~officers shall reside in one (1) of the districts and their deputies in the~~
23 ~~other.~~

24 ~~(e) As to all matters not in the provisions of this section, Prairie~~
25 ~~County shall be one (1) entire and undivided county.~~

26 ~~(f) In all business done by the clerk of Prairie County, he shall state~~
27 ~~in what district the business is done and specify what court his proceedings~~
28 ~~have relation to, and he shall state the capacity in which he acts, as is now~~
29 ~~required by law.~~

30 ~~(g) All process issued by the clerk of the circuit court of Prairie~~
31 ~~County shall be made returnable, according to existing laws, to the proper~~
32 ~~district, either for circuit, chancery, or common pleas court, disclosing in~~
33 ~~such process the time, place, and court at which the parties to be served with~~
34 ~~such process are required to attend.~~

35 ~~(h) In all cases not necessary for the purposes of this section, the~~
36 ~~clerk shall style himself the clerk of the proper court or office of Prairie~~

1 County, and not as clerk of either district as provided for in this section.

2 (i) ~~When parties litigant or their attorneys in any civil matters~~
 3 ~~petition the court in which such suit or suits are pending and show in the~~
 4 ~~petition that it would be to the interest of parties litigant to change the~~
 5 ~~venue to the Southern District, the court shall then cause such suit or suits~~
 6 ~~to be transferred from the Northern to the Southern District. In this case,~~
 7 ~~it shall be the duty of the clerk of the court of the Northern District to~~
 8 ~~make out a full and complete transcript of all the record entries and send the~~
 9 ~~transcript, together with all the original papers in such cause filed in his~~
 10 ~~office, to the clerk's office in the Southern District. The transcript so~~
 11 ~~made out shall be under the proper seal of such court and duly certified to by~~
 12 ~~the clerk at the expense of the party applying for and obtaining the change of~~
 13 ~~venue.~~

14
 15 ~~16-16-801. Definitions.~~

16 ~~As used in this subchapter, unless the context otherwise requires, the~~
 17 ~~terms "judge" or "court" apply to and mean the judge of or the court of common~~
 18 ~~pleas, unless otherwise designated.~~

19
 20 ~~16-16-802. Establishment — Terms.~~

21 ~~There is established in Lonoke County a court of common pleas, to be~~
 22 ~~held quarterly by the county judge of that county, commencing on the third~~
 23 ~~Mondays in March, June, September, and December of each year, to continue in~~
 24 ~~session until the business thereof is disposed of, unless adjourned by the~~
 25 ~~court until some other day to be designated by the court.~~

26
 27 ~~16-16-803. Jurisdiction.~~

28 ~~The court shall have jurisdiction of all law actions on contract,~~
 29 ~~express or implied, all actions of replevin, damages either to person or~~
 30 ~~property, or both, where the sum in controversy does not exceed one thousand~~
 31 ~~dollars (\$1,000), exclusive of interest. However, the court shall have no~~
 32 ~~jurisdiction of any action where the title to real estate is in controversy,~~
 33 ~~nor of any criminal action, nor of any other action where exclusive~~
 34 ~~jurisdiction is vested in the county or probate courts.~~

35
 36 ~~16-16-804. Rules of practice.~~

1 ~~The rules of practice which govern the circuit court shall govern this~~
2 ~~court.~~

3
4 ~~16-16-805.—Judge.~~

5 ~~The county judge of the county shall be the judge of the court of common~~
6 ~~pleas. He shall receive, in addition to the salary now received by him, the~~
7 ~~sum of two hundred dollars (\$200) per annum, to be paid quarterly, out of the~~
8 ~~county treasury.~~

9
10 ~~16-16-806.—Clerk.~~

11 ~~The clerk of the circuit court of the county shall be ex officio clerk~~
12 ~~of the court of common pleas and shall be entitled to the same fees as are~~
13 ~~allowed by law for similar services in the circuit court.~~

14
15 ~~16-16-807.—Sheriff.~~

16 ~~The sheriff of the county shall be the ordinary officer of the court and~~
17 ~~shall attend each session thereof.~~

18
19 ~~16-16-808.—Docket—Record.~~

20 ~~The clerk of the court shall prepare and keep a docket. The clerk shall~~
21 ~~also prepare and keep a record of the proceedings of the court in the same~~
22 ~~manner as is provided by law for the circuit court.~~

23
24 ~~16-16-809.—Writs, process, and execution—Service.~~

25 ~~(a) The clerk of the court is authorized and empowered to issue all~~
26 ~~necessary writs, process, and execution in any action pending in the court.~~

27 ~~(b) The writs or process are to be authenticated by the seal of the~~
28 ~~circuit court and may be directed and served in any county of this state in~~
29 ~~the same manner and with the same force and effect as similar process issued~~
30 ~~by the circuit court.~~

31 ~~(c) All writs and other process issuing out of the court shall be~~
32 ~~directed to the sheriff, except when he is disqualified. In this event, the~~
33 ~~writs or process shall be directed and served in the same manner as is~~
34 ~~provided by law for similar proceedings in the circuit court. He shall~~
35 ~~receive the same fees as are allowed now by law for similar services in the~~
36 ~~circuit court.~~

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~~16-16-810. Transfer of action from justice of the peace court.~~

~~(a) When any civil action shall be pending before any justice of the peace in the county, either party may have the action removed to the court of common pleas by written motion, filed with the justice before whom the cause is pending.~~

~~(b) On the filing of the motion, the justice shall suspend all further proceedings therein and shall, as soon thereafter as practicable, make out a duly certified transcript of all his docket entries in such case. He shall transmit the transcript, together with all the original papers in the cause, to the clerk of the court, for which he shall receive one dollar and fifty cents (\$1.50), to be paid by the party filing the motion, at the time he files the motion.~~

~~16-16-811. Trial by court — Juries.~~

~~(a) All issues of fact and law shall be tried by the court unless a jury shall be demanded by either party.~~

~~(b)(1) If a jury is demanded by either party, the court shall order the sheriff or other officer in attendance to summon a jury of twelve (12) persons, unless the parties agree to a lesser number, lawfully qualified to serve on juries.~~

~~(2) The jurors shall forthwith be summoned and impaneled to try the action.~~

~~(3) In the formation of the jury, the laws applicable to juries for trial of civil causes in the circuit court shall apply.~~

~~(4) The clerk or judge shall administer to each jury the following oath:~~

~~"You, and each of you, do solemnly swear that you will well and truly try the matter in controversy between, plaintiff, and, defendant, and a true verdict render according to the law and evidence, unless discharged by the court or withdrawn by the parties, so help you God."~~

~~(5) Jurors impaneled in the court shall each be entitled to one dollar (\$1.00) for every day that they shall serve, to be paid by the county, as expenses of the court.~~

~~16-16-812.—Witness fees.—~~

~~Witnesses in the court shall be allowed the same fees as are allowed in the circuit court.~~

~~16-16-813.—Judgments—Execution.—~~

~~All judgments rendered by the court shall be a lien upon all real estate, the same as if they had been rendered by the circuit court.—They shall be entered on the judgment record of the county, and executions may be issued and executed in the same manner as upon judgments of the circuit court.~~

~~16-16-814.—Appeals.—~~

~~(a) Any party to an action may take an appeal from any final judgment of the court to the circuit court within thirty (30) days after the rendition of the final judgment by pursuing the same course as is provided for by law for appeals from justice of the peace courts to the circuit court.~~

~~(b)(1) If the court has adjourned, the appeal may be allowed by the clerk, and, if allowed by the clerk, notice of the appeal shall be served on the appellee or his attorney of record.~~

~~(2) If allowed by the court, the order of the court granting the appeal shall be a sufficient notice to the adverse party that an appeal has been taken.~~

~~(c) On all appeals to the circuit court, the clerk shall transmit all of the original papers in the case, the affidavit, and appeal bonds, and a transcript of all the record entries in the case to the clerk of the circuit court, whereupon the circuit court shall try the cause de novo.~~

~~(d) No new or additional cause of action, nor any new or additional setoff or counterclaim shall be filed in the circuit court.~~

~~(e)(1) All appeals in which the transcript and papers shall be filed with the clerk of the circuit court ten (10) days before the commencement of any term thereof shall stand for trial at that term unless continued for cause.~~

~~(2) In cases where the appeal has been granted more than ten (10) days before the commencement of the term of the circuit court, the appellee shall have the right to demand a trial at that term, regardless of the time when the transcript was filed, unless a continuance is granted by the court for cause.~~

1 ~~(f) Upon failure of the appellant to file the transcript on the first~~
 2 ~~day of the term of the circuit court when the appeal has been granted more~~
 3 ~~than ten (10) days before the first day of the term of the circuit court, the~~
 4 ~~appellee may file the transcript and have the appeal dismissed or the judgment~~
 5 ~~of the court of common pleas affirmed for want of prosecution.~~

6 ~~(g) In the trials of all cases on appeals from the court of common~~
 7 ~~pleas, if the appellee recovers judgment for any amount, the judgment shall be~~
 8 ~~rendered against the appellant and his securities on the appeal bond, if one~~
 9 ~~was given. However, if the judgment rendered in the circuit court against the~~
 10 ~~appellant shall be for a less amount than the judgment appealed from, the~~
 11 ~~appellant shall recover the costs of the appeal, and judgment shall be~~
 12 ~~rendered against the appellee therefor.~~

13
 14 ~~16-16-901. Establishment—Terms.~~

15 ~~(a) A court of common pleas is established in and for Madison County.~~

16 ~~(b) The court shall hold four (4) terms annually at the courthouse of~~
 17 ~~the county commencing, respectively, on the first Mondays of January, April,~~
 18 ~~July, and October of each year.~~

19
 20 ~~16-16-902. Court of record.~~

21 ~~The court of common pleas shall be a court of record.~~

22
 23 ~~16-16-903. Jurisdiction.~~

24 ~~The court of common pleas shall have original jurisdiction in the~~
 25 ~~following matters:~~

26 ~~(1) Concurrent jurisdiction with the courts of the justice of the~~
 27 ~~peace in all matters of contract, and in all civil actions and special~~
 28 ~~proceedings where the amount in controversy does not exceed in value the sum~~
 29 ~~of one hundred dollars (\$100), exclusive of interest;~~

30 ~~(2) Concurrent jurisdiction with the circuit court in all matters~~
 31 ~~of contract and in all civil actions and special proceedings where the amount~~
 32 ~~in controversy does not exceed the sum of one thousand dollars (\$1,000),~~
 33 ~~exclusive of interest, but the court shall not have jurisdiction in any case~~
 34 ~~where a lien on land or title or possession thereto is involved.~~

35
 36 ~~16-16-904. Practice and procedure.~~

1 ~~The rules of practice and procedure governing the circuit court shall be~~
2 ~~the rules and procedure governing in this court, except as otherwise provided~~
3 ~~in this subchapter.~~

4
5 ~~16-16-905.—Judge.~~

6 ~~(a) The judge of the county court shall be judge of the court of common~~
7 ~~pleas.~~

8 ~~(b) In addition to the salary received by him as county judge, the~~
9 ~~judge shall receive the sum of four hundred fifty dollars (\$450) as the judge~~
10 ~~of the court of common pleas, to be paid quarterly out of the treasury of the~~
11 ~~county.~~

12
13 ~~16-16-906.—Special judge.~~

14 ~~(a) Whenever the judge of the court fails to attend the commencement of~~
15 ~~any term or fails to attend on any adjourned day of the court, the regular~~
16 ~~practicing attorneys present may, at the hour of 1:00 p.m. of that day, select~~
17 ~~one of their number to discharge the duties of judge of the court for the~~
18 ~~balance of the term or until the regular judge shall appear.~~

19 ~~(b) Where the judge of the court is disqualified to sit in any cause,~~
20 ~~the attorneys present may in like manner elect one of their number to~~
21 ~~discharge the duties of the judge of the court for the termination of the~~
22 ~~cause.~~

23 ~~(c) Any such special judge shall be allowed for his services the sum of~~
24 ~~five dollars (\$5.00) per diem, to be paid out of the county treasury.~~

25
26 ~~16-16-907.—Clerk—Sheriff.~~

27 ~~(a) The clerk of the circuit court shall be ex officio clerk of the~~
28 ~~court of common pleas, and the sheriff of the county shall be the ordinary~~
29 ~~officer of the court.~~

30 ~~(b) Both of these officers in person or by deputy shall attend each~~
31 ~~session of the court.~~

32 ~~(c)(1) The sheriff shall be allowed the sum of two dollars (\$2.00) for~~
33 ~~each and every day he shall be in attendance upon the court, which sum shall~~
34 ~~be paid out of the county treasury and shall not be taxed as costs.~~

35 ~~(2) For all other services rendered under the provisions of this~~
36 ~~subchapter, the sheriff shall be entitled to the same fees allowed him by law~~

1 ~~for performing the same services in the circuit court, the fees to be taxed as~~
2 ~~costs and paid as provided in this subchapter.~~

3
4 ~~16-16-908.—Docket.~~

5 ~~The clerk shall keep a docket in which all cases shall be entered in the~~
6 ~~order in which they are brought. The cases shall be numbered consecutively and~~
7 ~~shall stand for trial in the same order.~~

8
9 ~~16-16-909.—Writs, process, and provisional remedies.~~

10 ~~(a) In the exercise of its jurisdiction, the court of common pleas~~
11 ~~shall have the power to issue all necessary writs, process, and provisional~~
12 ~~remedies.~~

13 ~~(b) The court shall cause the writs, process, and provisional remedies~~
14 ~~to be authenticated by the seal of the circuit court until a seal shall be~~
15 ~~provided for the common pleas court.~~

16
17 ~~16-16-910.—Time for filing defense—Default judgment.~~

18 ~~The defense to an action in the court shall be filed on the first day~~
19 ~~the court is in session after ten (10) days from the date of service of~~
20 ~~summons in the county or in an adjoining county, thirty (30) days from the~~
21 ~~date of service of summons in any other county, forty (40) days from the date~~
22 ~~of service of summons, as prescribed by law, outside of the state, and thirty~~
23 ~~(30) days from the date of constructive service by publication of a warning~~
24 ~~order, as prescribed by law. The action shall stand for trial, and judgment~~
25 ~~by default may be had, as if the summons had been served in the same manner~~
26 ~~and within the same length of time before the commencement of the term.~~

27
28 ~~16-16-911.—Transfer of action from justice of the peace court.~~

29 ~~(a) When any civil action or special proceeding is or shall be pending~~
30 ~~before any justice of the peace in the county, either the plaintiff or the~~
31 ~~defendant may, on motion, have a change of venue from the justice's court to~~
32 ~~the court of common pleas.~~

33 ~~(b) On the filing of the motion, the justice of the peace shall at once~~
34 ~~suspend all further proceedings therein. He shall at once and without delay~~
35 ~~make out a certified transcript of his docket entries in the case and all~~
36 ~~costs therein accrued to date. He shall transmit the transcript with all the~~

1 original papers in the case to the clerk of the common pleas court, for which
2 services the justice of the peace shall receive the sum of one dollar (\$1.00)
3 to be paid by the party applying for change of venue, to be taxed as costs in
4 the cause. However, where the change of venue is taken by the plaintiff, he,
5 she, or they shall at the same time pay all costs which may have accrued
6 before the justice of the peace.

7 (c) The clerk shall file the transcript and papers and docket the
8 transcript and papers. The cause shall stand for trial on the first day the
9 court is in session after five (5) days from the date of the filing of the
10 transcript and shall proceed within the common pleas court in all respects as
11 though originally brought therein.

12
13 ~~16-16-912. Trial by court — Juries.~~

14 (a) All issues of law and fact shall be tried by the court unless a
15 jury trial shall be demanded by either party.

16 (b) If a jury trial is demanded by either party, a jury shall be
17 forthwith summoned as is now provided by law, and with the qualifications
18 prescribed by law for jurors.

19
20 ~~16-16-913. Juror and witness fees.~~

21 Jurors and witnesses in the court shall be entitled to the same fees as
22 jurors and witnesses in the county court, to be taxed as costs as provided in
23 this subchapter.

24
25 ~~16-16-914. Fees — Costs.~~

26 All fees provided for in this subchapter, except where directed to be
27 paid out of the county treasury, shall be taxed as costs against the party
28 litigant against whom judgment may be rendered.

29
30 ~~16-16-915. Execution, levy, and sale generally.~~

31 (a) Executions for the enforcement of a judgment rendered in the common
32 pleas court, except when a transcript thereof has been filed in the office of
33 the clerk of the circuit court of the county, may be issued upon the
34 application of the party entitled thereto at any time within ten (10) years
35 from the entry of the judgment, but not afterward.

36 (b) Execution shall be against the goods and chattels of the person

1 against whom it is issued and shall be dated as of the day on which it is
 2 issued. It shall be made returnable within thirty (30) days thereafter and
 3 may be substantially in the form used in the circuit court.

4 (c)(1) Any officer having taken goods and chattels into his custody by
 5 virtue of an execution issued from the court shall, without delay, give public
 6 notice by at least three (3) advertisements, posted in three (3) public places
 7 in the county, of the time and place they will be exposed for sale.

8 (2) The notices shall describe the goods and chattels taken and
 9 shall be posted at least ten (10) days before the day of sale.

10 (3) At the time and place so appointed, if the goods and chattels
 11 are present for the inspection of bidders, the officers shall expose the goods
 12 and chattels for sale at public vendue, for cash in hand. However, no real
 13 estate or interest therein shall be levied upon or sold by virtue of any
 14 execution issued from the court.

15
 16 ~~16-16-916. Levy and sale of real estate.~~

17 (a) Whenever any officer to whom any order of attachment issued by the
 18 common pleas court shall be directed can find no personal property upon which
 19 to levy the order of attachment, he may and shall levy the order upon any
 20 lands, tenements, town lots, or interest in or equity of redemption in any
 21 real property belonging to the defendant in the attachment, subject to
 22 execution by the laws of this state. He shall make his return accordingly,
 23 describing in his return the property so levied upon.

24 (b)(1) In all cases in suits by attachment in which lands, tenements,
 25 town lots, or interest in or equity of redemption in any real property shall
 26 have been levied upon as provided for in this section, the plaintiff, if he
 27 obtains judgment therein, shall be entitled to a transcript of the judgment
 28 and proceedings in the cause.

29 (2) Upon the filing of the transcript in the office of the clerk
 30 of the circuit court for common law judgment, the transcript shall henceforth
 31 have the same force and effect as a judgment rendered in the court, upon which
 32 an order of sale may be issued by the clerk of the court, directed to the
 33 sheriff of the county, whereupon the property so seized and levied upon and
 34 condemned to be sold by the judgment shall be sold in the same manner and with
 35 the same notice as sales of real property under executions are made. However,
 36 no such sale shall be made until the plaintiff shall execute bond to the

1 defendant in the manner prescribed by law.

2 (c) ~~Upon demand of any person in whose favor judgment shall have been~~
 3 ~~rendered by the common pleas court for more than ten dollars (\$10.00),~~
 4 ~~exclusive of costs, the clerk of the court shall, upon payment of a fee of one~~
 5 ~~dollar (\$1.00) therefor, give to such person a certified transcript of the~~
 6 ~~judgment.~~

7 (d) ~~The clerk of the circuit court of the county shall, upon the~~
 8 ~~presentation of any such transcript, file it in his office and forthwith enter~~
 9 ~~the judgment in the circuit court docket for common law judgments. He shall~~
 10 ~~note therein the time of the filing of the transcript.~~

11 (e) ~~No such transcript shall be filed and no execution shall be sued~~
 12 ~~out of the circuit court on such judgment until an execution shall have been~~
 13 ~~issued from the common pleas court and returned that the defendant has no~~
 14 ~~goods and chattels whereon to levy the order of attachment.~~

15 (f) ~~Every judgment, from the time of filing the transcript thereof,~~
 16 ~~shall be a lien upon the real estate of the defendant in the county to the~~
 17 ~~same extent as a judgment of the circuit court of the county and shall be~~
 18 ~~carried into execution in the same manner and with like effect as the judgment~~
 19 ~~of the circuit court.~~

20
 21 ~~16-16-917. Stay of execution.~~

22 ~~The provisions of law governing the stay of executions of judgments of~~
 23 ~~the circuit courts shall apply to and govern the stay of executions of~~
 24 ~~judgments of this court. However, executions upon the common pleas judgments~~
 25 ~~shall in no event be stayed for a period of more than six (6) months from the~~
 26 ~~date of judgment. Such stay bonds shall have the force and effect of a~~
 27 ~~judgment of the court, upon which an execution may be issued as on stay bonds~~
 28 ~~in the circuit court.~~

29
 30 ~~16-16-918. Appeals.~~

31 (a) ~~Any person aggrieved by any judgment rendered by the court, except~~
 32 ~~a judgment by dismissal for want of prosecution, may in person or by attorney~~
 33 ~~take an appeal therefrom to the circuit court.~~

34 (b) ~~The appellant or his attorney shall make and file with the clerk of~~
 35 ~~the circuit court at the same term of the court at which the judgment was~~
 36 ~~rendered an affidavit that the appeal is not taken for delay but that justice~~

1 may be done. The court shall grant the appeal as a matter of right, and the
 2 entry of the order granting the appeal shall be notice to the adverse party
 3 that an appeal has been taken.

4 (c) An appeal may be taken at any time within thirty (30) days after
 5 the rendition of the judgment appealed from by the appellant or his attorney
 6 making and filing with the clerk an affidavit that the appeal is not taken for
 7 delay but that justice may be done and causing a notice of the taking of the
 8 appeal to be served upon the adverse party, or his attorney of record.

9 (d) In all cases where an appeal is taken, the appellant, together with
 10 one (1) or more securities to be approved by the clerk, within thirty (30)
 11 days after the rendition of the judgment appealed from, shall make and file
 12 with the clerk a bond to the appellee in a sum sufficient to secure the
 13 payment of the judgment and costs of appeal, conditioned that he will
 14 prosecute his appeal with effect or that he will perform the judgment of the
 15 court. However, either party may appeal without giving bond. In such cases,
 16 the judgment appealed from shall not be superseded but shall remain in full
 17 force and effect.

18 (e) On all appeals taken to the circuit court as provided for in this
 19 section, the clerk shall transmit the original papers in the case, the
 20 affidavit and appeal bond, and a certified copy of all the record entries to
 21 the clerk of the circuit court, whereupon the cause shall be tried in the
 22 circuit court de novo.

23 (f) No new or additional cause of action or new or additional
 24 counterclaim or setoff shall be filed in the circuit court.

25 (g) Where the transcript and the papers shall be filed with the clerk
 26 of the circuit court ten (10) days before the commencement of any term
 27 thereof, the cause shall stand for trial at the term.

28 (h) If the appellee recovers judgment for any amount, judgment shall be
 29 rendered against the appellant and the sureties upon his appeal bond.
 30 However, if the appellee recovers judgment for a lesser amount than the
 31 judgment appealed from, the appellant shall recover the costs of the appeal
 32 from the appellee by the judgment therefor.

33
 34 16-16-1001. Establishment—Terms—Adjournment.

35 (a) A court of common pleas is established in Mississippi County to be
 36 held monthly at the courthouses of the Osceola and Chickasawba Districts of

1 ~~that county.~~

2 ~~(b) The court shall commence, for the Osceola District, on the first~~
3 ~~Tuesday in each month and, for the Chickasawba District, on the second Tuesday~~
4 ~~in each month.~~

5 ~~(c) When commenced, the court shall continue in session until the~~
6 ~~business before the court shall be disposed of. However, if the continuance~~
7 ~~of the court is in conflict with the term of some other court of record, then~~
8 ~~the judge shall adjourn the court of common pleas until some other day named~~
9 ~~and designated by him or until the next term of the court.~~

10

11 ~~16-16-1002. Jurisdiction.~~

12 ~~(a) The court shall have jurisdiction of:~~

13 ~~(1) All law actions of contract, either express or implied;~~

14 ~~(2) All actions of replevin and damage to persons, to property,~~
15 ~~or to both, where the sum and the amount in controversy, exclusive of~~
16 ~~interest, shall not exceed one thousand dollars (\$1,000); and~~

17 ~~(3) All actions of forcible entries and detainers, and forcible~~
18 ~~and unlawful detainers.~~

19 ~~(b) However, the court shall have no jurisdiction of any actions~~
20 ~~involving the title to real estate, nor of any criminal action, nor of any~~
21 ~~matter or action where the exclusive jurisdiction is by law given to the~~
22 ~~county courts.~~

23

24 ~~16-16-1003. Practice, pleading, service, process, etc.~~

25 ~~(a) The rules of practice governing the circuit court shall be the~~
26 ~~rules of practice in this court.~~

27 ~~(b) Any pleading, service, process, record, or other proceedings which~~
28 ~~are required in the circuit court shall be required and held sufficient in~~
29 ~~this court unless otherwise expressly provided for in this subchapter.~~

30

31 ~~16-16-1004. Judge.~~

32 ~~(a) The judge of the county court of Mississippi County shall be the~~
33 ~~judge of the court of common pleas.~~

34 ~~(b) In addition to the salary now received by him as county judge, the~~
35 ~~judge of the court of common pleas shall receive the sum of six hundred~~
36 ~~dollars (\$600) per annum, to be paid quarterly out of the county treasury.~~

1 ~~(c) The judge of the common pleas court of Mississippi County shall be~~
2 ~~at least twenty five (25) years of age, a citizen of the United States, and of~~
3 ~~upright character, of good business education, learned in the law, and a~~
4 ~~resident of the state two (2) years before his election, and a resident of the~~
5 ~~county at the time of his election and during his continuance in office, and~~
6 ~~shall have practiced law three (3) years.~~

7
8 ~~16-16-1005. Clerk.~~

9 ~~The clerk of the circuit court shall be ex officio clerk of the court of~~
10 ~~common pleas and shall be entitled to the same fees as are allowed by law for~~
11 ~~similar services in the circuit court. Fees are to be considered and paid as~~
12 ~~provided for in § 16-16-1011 for the payment of fees of jurors and witnesses,~~
13 ~~also the sheriff, and not otherwise.~~

14
15 ~~16-16-1006. Sheriff.~~

16 ~~The sheriff of the county shall be the ordinary officer of the court and~~
17 ~~shall, in person or by deputy, attend each session thereof.~~

18
19 ~~16-16-1007. Docket — Records.~~

20 ~~(a) The clerk of the court shall prepare and keep a docket, in which~~
21 ~~shall be entered all cases in the order in which they are brought. The cases~~
22 ~~shall be numbered consecutively up to the end of each year and stand for trial~~
23 ~~in the order in which they are brought and filed.~~

24 ~~(b) The clerk of the court shall also prepare and keep a well bound~~
25 ~~book, in which he shall enter and record all judgments, orders, and decrees of~~
26 ~~the court, which book shall be indexed, and in all respects shall be kept in~~
27 ~~the same manner as the records of the circuit court are required by law to be~~
28 ~~kept.~~

29
30 ~~16-16-1008. Writs, process, and provisional remedies.~~

31 ~~(a) The clerk of the court is authorized and empowered to issue all~~
32 ~~necessary writs, processes, and provisional remedies in any action coming~~
33 ~~within the jurisdiction of the court.~~

34 ~~(b) All writs and processes issued from the court shall be~~
35 ~~authenticated by the seal of the circuit court.~~

36 ~~(c) All writs of execution and other process issued out of the court~~

1 may be directed and served in any county in this state, with the same force
2 and effect as similar process issued out of any by the circuit court.

3 ~~(d) All writs and other process issuing out of the court shall be~~
4 ~~directed to the sheriff. However, the writ or other process may be served by~~
5 ~~any officer in the county authorized to serve process designated by the party~~
6 ~~suing out the process.~~

7 ~~(e) The sheriff or other officer who shall serve any process issuing~~
8 ~~out of the court shall be allowed the same fees as are now or may be allowed~~
9 ~~by law to sheriffs for similar services in the circuit court, to be paid as~~
10 ~~provided for jurors and witness fees in § 16-16-1011.~~

11
12 ~~16-16-1009. Change of venue from justice of the peace courts.~~

13 ~~(a) When any civil action is or shall be pending before any justice of~~
14 ~~the peace in the county, either party may, on motion, have a change of venue~~
15 ~~from the justice of the peace court to the court of common pleas in the~~
16 ~~county.~~

17 ~~(b) On the filing of such motion, the justice shall suspend all further~~
18 ~~proceedings therein and shall at once, without delay, make out a certified~~
19 ~~transcript of his docket entries in such case. He shall transmit the same,~~
20 ~~together with all the original papers, to the clerk of said court, for which~~
21 ~~he shall receive one dollar (\$1.00), also five cents (5¢) per mile to and from~~
22 ~~the office of the clerk of said court. However, if such change is asked for~~
23 ~~by the plaintiff, he shall pay all costs which may have accrued before the~~
24 ~~justice of the peace.~~

25 ~~(c) Upon a change of venue being taken, as provided in this section, to~~
26 ~~the court of common pleas, neither party shall be permitted to file in the~~
27 ~~court any new additional counterclaim or setoff, nor shall either party be~~
28 ~~required to file any additional pleading, but the cause shall be tried upon~~
29 ~~its merits, as though the cause were still in the justice of the peace court.~~

30 ~~(d) This section shall in no way affect or change the law in force~~
31 ~~providing for a change of venue from one justice of the peace to another.~~

32
33 ~~16-16-1010. Trial by court—Juries.~~

34 ~~(a) All issues of law and fact shall be tried by the court unless a~~
35 ~~jury is demanded by either party.~~

36 ~~(b)(1) If a jury is demanded by either party, the court shall order the~~

1 ~~sheriff, or other officer in attendance on the court, to summon a jury of~~
 2 ~~twelve (12) persons lawfully qualified to serve as jurors as is required in~~
 3 ~~circuit courts unless the parties agree to a lesser number.~~

4 ~~(2) The jurors shall be forthwith summoned, impaneled, and sworn~~
 5 ~~to try the action, in the same way and manner as juries are summoned,~~
 6 ~~impaneled, and sworn to try and determine an action pending in the circuit~~
 7 ~~court.~~

8 ~~(3) Each party shall be entitled to three (3) peremptory~~
 9 ~~challenges.~~

10
 11 ~~16-16-1011. Juror and witness fees.~~

12 ~~(a) Jurors impaneled in the court, and witnesses in attendance thereon,~~
 13 ~~shall be entitled to the sum of one dollar (\$1.00) per day if they claim their~~
 14 ~~attendance on the day of the trial of the cause in which they were summoned or~~
 15 ~~subpoenaed.~~

16 ~~(b)(1) The fees are to be paid in all cases by the party litigant~~
 17 ~~against whom judgment therefor shall be rendered.~~

18 ~~(2) The fees shall become and be considered a part of the cost of~~
 19 ~~the action as in the circuit court and shall be so collected.~~

20
 21 ~~16-16-1012. Judgments—Execution.~~

22 ~~All judgments rendered by the court of common pleas shall be a lien upon~~
 23 ~~all property the same as if rendered by the circuit court, subject to~~
 24 ~~execution, which the defendant may have and own in the county at the time of~~
 25 ~~the rendition of the judgment and at any time thereafter until that judgment~~
 26 ~~is fully paid off.~~

27
 28 ~~16-16-1013. Appeals.~~

29 ~~(a) Any person aggrieved by any judgment rendered by the court, except~~
 30 ~~a judgment of dismissal for want of prosecution, may in person, by agent, or~~
 31 ~~by attorney take an appeal therefrom to the circuit court of the judicial~~
 32 ~~district of the county in which the court of common pleas rendering the~~
 33 ~~judgment appealed from was held, upon complying with the following requisites:~~

34 ~~(1) The appellant, his agent, or his attorney shall make and file~~
 35 ~~with the clerk an affidavit that the appeal is not taken for the purpose of~~
 36 ~~delay, but that justice may be done;~~

1 ~~(2) The appellant, or some other person for him, together with~~
 2 ~~one (1) or more securities, to be approved by the clerk, shall enter into bond~~
 3 ~~to the adverse party in a sum sufficient to secure the payment of such~~
 4 ~~judgment and costs of appeal;~~

5 ~~(3) The appeal shall be granted by the court as a matter of right~~
 6 ~~upon motion filed at the same term of the court at which judgment was~~
 7 ~~rendered. The entering of the order granting the appeal shall be sufficient~~
 8 ~~notice to the adverse party that an appeal has been taken;~~

9 ~~(4) In order to make the appeal effectual, the affidavit and bond~~
 10 ~~for appeal must be filed with the clerk within thirty (30) days after the~~
 11 ~~appeal is granted;~~

12 ~~(5) Upon the filing of the affidavit and bond, all further~~
 13 ~~proceedings in the court shall be suspended. However, either party may appeal~~
 14 ~~without giving bond, but in such cases judgment shall not be suspended.~~

15 ~~(b) On all appeals to the circuit court, as provided in this section,~~
 16 ~~the clerk shall transmit the original papers in the case, the affidavit and~~
 17 ~~appeal bond, and a certified transcript of the record entries in the case to~~
 18 ~~the clerk of the circuit court, whereupon the circuit court shall proceed to~~
 19 ~~try the case de novo.~~

20 ~~(c) No new or additional cause of action, nor any new or additional~~
 21 ~~setoff or counterclaim shall be filed in the circuit court.~~

22 ~~(d) All appeals in which the transcript and papers shall be filed with~~
 23 ~~the clerk of the circuit court ten (10) days before the commencement of any~~
 24 ~~term thereof shall stand for trial at such term unless the appeal is continued~~
 25 ~~for cause.~~

26 ~~(e) In trials de novo of all cases of appeals if the appellee recovers~~
 27 ~~judgment for any amount, the judgment shall be rendered against the appellant~~
 28 ~~and his securities on the appeal bond. However, if the judgment rendered in~~
 29 ~~the circuit court against the appellant shall be for a lesser amount than the~~
 30 ~~judgment appealed from, the appellant shall recover the costs of the appeal~~
 31 ~~from the appellee by judgment therefor.~~

32
 33 ~~16-16-1101. Establishment Term Adjournment.~~

34 ~~A court of common pleas is established in Nevada County, to be held~~
 35 ~~quarterly in the town of Prescott, in the county, commencing on the second~~
 36 ~~Mondays in March, June, October, and December of each year. The court shall~~

1 ~~continue in session until the business before the court shall be disposed of.~~
 2 ~~However, if the continuation of the court conflicts with some other court of~~
 3 ~~record, the judge shall adjourn the court to some other day, or until the next~~
 4 ~~term thereof.~~

5
 6 ~~16-16-1102. Jurisdiction.~~

7 ~~The court shall have jurisdiction of law actions by contract, express or~~
 8 ~~implied, actions of attachment and replevin and for damage to persons or~~
 9 ~~property, where the amount in controversy, exclusive of interest, exceeds~~
 10 ~~twenty dollars (\$20.00) and does not exceed five hundred dollars (\$500).~~
 11 ~~However, the court shall have no jurisdiction where the title of real estate~~
 12 ~~is involved, nor of any criminal action, nor of any action or matter where~~
 13 ~~exclusive jurisdiction is by law given to the county or probate court.~~

14
 15 ~~16-16-1103. Practice and procedure.~~

16 ~~The rules of practice and procedure in force in the circuit courts, so~~
 17 ~~far as they are applicable, shall govern in the court of common pleas.~~

18
 19 ~~16-16-1104. Judge — Special judge.~~

20 ~~(a) The judge of the county court of Nevada County shall be judge of~~
 21 ~~the court of common pleas and, in addition to his salary as county judge,~~
 22 ~~shall receive the sum of one hundred dollars (\$100) per annum to be paid~~
 23 ~~quarterly out of the county treasury.~~

24 ~~(b)(1) If the county judge is disqualified to sit in any cause or~~
 25 ~~causes pending in the court, or if he fails, neglects, or refuses to appear~~
 26 ~~and hold the court by the hour of 10:00 a.m. of the second day of any term~~
 27 ~~thereof, or fails, refuses, or neglects to appear for one (1) whole day of~~
 28 ~~that term, the court shall not stand adjourned until the next term thereof.~~
 29 ~~In either event, the regular practicing attorneys present may elect some one~~
 30 ~~(1) of their number as special judge to discharge the duties of the regular~~
 31 ~~judge and to hold the court for the balance of the term or for the~~
 32 ~~determination of such causes as the regular judge was disqualified to preside~~
 33 ~~in, or until the regular judge shall appear, as the case may be.~~

34 ~~(2) The special judge shall be allowed by the county court for~~
 35 ~~his services five dollars (\$5.00) per day, which shall be paid by the county~~
 36 ~~and deducted from the salary of the county judge.~~

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~~16-16-1105.—Clerk.—~~

~~The clerk of the circuit court shall be ex officio clerk of the court of common pleas and shall receive the same fees as are allowed by law for similar services in the circuit court to be taxed as costs in the action in which the service is had.~~

~~16-16-1106.—Sheriff.—~~

~~The sheriff of the county shall be the officer of the court.~~

~~16-16-1107.—Docket.—~~

~~The clerk of the court shall keep a docket in which shall be entered all cases in the order in which they are brought. The cases shall be numbered consecutively and stand for trial in the order in which they are filed.~~

~~16-16-1108.—Writs, summons, process, and provisional remedies.—~~

~~(a) The clerk of the court is authorized and empowered to issue all necessary writs, summons, process, and provisional remedies in any action within the jurisdiction of said court.~~

~~(b) All writs and process issued from the court shall be signed by the clerk and authenticated by the seal of the circuit court.~~

~~(c)(1) All writs and process shall be directed to the sheriff but may be served by any officer authorized to serve process, when designated by the party suing out the process.~~

~~(2) The officer who shall serve process from the court shall be paid the same fees as are now or may be allowed by law to sheriffs for similar services in the circuit court, to be taxed as costs in the action in which the service is had.~~

~~16-16-1109.—Time for filing defenses—Default judgment.—~~

~~(a) All defenses to actions shall be filed on or before the first day of the term, when summons has been served ten (10) days before the term.~~

~~(b) In cases where answers are not filed as required by this section, the court may, on the second day of the term or afterwards, render judgment by default. However, the court may for good cause shown allow further time for filing defenses.~~

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~~16-16-1110. Transfer of action from justice of the peace court.~~

~~(a) In any civil action pending before any justice of the peace in the county, either party may on motion change the venue from the justice's court to the court of common pleas.~~

~~(b) If such change of venue is asked by the defendant, he shall file with the motion a verified answer, denying in whole or part the plaintiff's claim, or a counterclaim, or setoff to the plaintiff's action, and, if the answer, counterclaim, or setoff is not filed, no change of venue shall be granted.~~

~~(c)(1) Upon filing the motion and, if filed by the defendant, an answer, counterclaim, or setoff, the justice of the peace shall suspend proceedings therein and without delay make out a certified transcript of his docket entries in such case. He shall transmit the transcript with all the original papers to the clerk of the court of common pleas for which he shall receive one dollar (\$1.00). The justice of the peace shall also receive five cents (5¢) per mile to and from the office of the clerk to be paid in advance by the party applying for the same.~~

~~(2) If the change is asked by the plaintiff, then he shall pay all costs accruing before the justice of the peace.~~

~~16-16-1111. Trial by court — Juries.~~

~~(a) Issues of fact and law shall be tried by the court unless one of the parties demands a jury.~~

~~(b)(1) If one of the parties demands a jury, the court shall order the officer in attendance to summon a jury of nine (9) persons, unless the parties agree upon a lesser number, who shall be forthwith summoned and impaneled as in the circuit court to try the action.~~

~~(2) The jury shall be the judges of the law and evidence, and the law, if not presented by the parties, shall be read to the jury by the court.~~

~~16-16-1112. Juror and witness fees.~~

~~Witnesses and jurors in the court shall receive the same fees that are allowed to witnesses and jurors in justice of the peace courts, to be paid as costs by the party against whom judgment shall be rendered.~~

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~~16-16-1113.—Judgment.—~~

~~All judgments rendered by the court shall be liens upon the real estate of the party against whom it was rendered in the county from the date of the judgment for three (3) years, subject to be revived as in the circuit court by scire facias. The judgments may be stayed in the same manner as circuit court judgments are stayed.~~

~~16-16-1114.—Executions.—~~

~~Executions and other process from the court may issue to any county in the state and may be directed and enforced against real or personal property in the same manner as executions on circuit court judgments are enforced. They may be stayed in the same manner as circuit court executions are stayed.~~

~~16-16-1115.—Appeals.—~~

~~(a) Any party aggrieved by judgment rendered by the court, except a judgment of dismissal for want of prosecution, may take an appeal to the circuit court, at any time within thirty (30) days from the rendition of one (1) judgment upon complying with the following requisites:~~

~~(1) The appellant, his agent, or his attorney shall make and file with the clerk of the court an affidavit that the appeal is not taken for the purpose of delay, but that justice may be done.~~

~~(2) The appellant or some person for him shall enter into bond to the adverse party in a sum sufficient to secure the payment of the judgment and costs of the appeal.~~

~~(3) The appeal shall be granted as a matter of right, and the filing of the affidavit shall be a sufficient notice to the adverse party that the appeal has been taken.~~

~~(b)(1) Upon the filing of the affidavit and bond within the time required by this section, all further proceedings in the court shall be suspended. If execution has issued on the judgment, previous to the filing of the appeal bond, the clerk shall issue his supersedeas bond recalling such execution, and any property that may have been taken thereunder shall be discharged.~~

~~(2) Either party may appeal without giving the bond, but the execution of the judgment shall not be suspended thereby.~~

1 ~~(c)(1) When an appeal is taken, the clerk shall transmit all the papers~~
2 ~~in the case, together with a certified transcript of the record entries~~
3 ~~therein, to the circuit court, where the case shall be tried de novo. However,~~
4 ~~no setoff or counterclaim shall be filed in the circuit court.~~

5 ~~(2) All appeals taken ten (10) days before the first day of the~~
6 ~~term of the circuit court next after the appeal taken shall be tried at such~~
7 ~~term unless continued by consent or for cause.~~

8 ~~(d) If, upon appeal, the appellee recovers judgment in the circuit~~
9 ~~court for any amount, judgment shall be rendered against the appellant and his~~
10 ~~sureties on the appeal bond if an appeal bond shall have been given. However,~~
11 ~~if the judgment rendered in the circuit court against the appellant is for a~~
12 ~~lesser amount than the judgment appealed from, the appellant shall recover the~~
13 ~~costs of the appeal, and judgment shall be rendered against the appellee~~
14 ~~therefor.~~

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17 **APPROVED: 3/19/2001**
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