

IN THE LONOKE COUNTY CIRCUIT COURT OF ARKANSAS

HEATH STOCKS

PETITIONER

VS

CASE NO. CR-97-9

STATE OF ARKANSAS

RESPONDENT

**MOTION TO STRIKE RESPONDENT'S UNTIMELY ANSWER TO THE WRIT OF ERROR CORAM NOBIS, THE AMENDMENT FOR ISSUANCE OF THE WRIT OF AUDITA QUERELA; AND MOVING THIS COURT TO ENTER DEFAULT JUDGMENT FOR THE PETITIONER.**

Comes now, Heath Stocks, the Petitioner herein and pro se, moving this Honorable Court to grant his Motion to Strike Respondent's Untimely Answer to the Writ of Error Coram Nobis, Writ of Audita Querela Amendment; and moving this Court to enter default judgment for the Petitioner, and does so state;

**JURISDICTION**

This Court has jurisdiction to grant to the Motion to Strike and Motion to Enter Default Judgment, pursuant to Arkansas Rules of Civil Procedure Rules 15 (a) and Rule 55 (A) (B).

**FACTS**

1. The petitioner Heath Stocks filed his motion for the issuance of the writ of error coram nobis on September 20, 2017 and subsequently amended this petition, that was filed on September 29, 2017 to include that Stocks was further moving for this court to consider the issuance of the writ of audita querela and other relief based upon the facts in the petition.

2. On October 27, 2017 the State filed an ambiguous response asking this court to dismiss the writ of error coram nobis and the writ of audita querela without conducting a hearing. In essence the State is asking this court to grant summary judgment for failure to state facts upon which relief can be granted. . Arkansas Rules of Civil Procedure Rule 12 (b). *St. Paul Mercury Ins. Co., v Circuit Court of Craighead County, Western Div., 2002, 73 S. W. 3d 584, 348 Ark. 197.*

3. The State's response should be stricken for failure to plead a defense in a timely manner. Stocks filed his petition for the issuance of the writ of error coram nobis on September 20, 2017 and subsequently amended the petition on September 29, 2017. According to the Arkansas Rules of Criminal Procedure Rule 15 (a), the State had twenty (20) days to plead in response to the amended pleading or within the time for response to the original pleading. The longer period is from the time of the amended pleading on September 29, 2017. Which means that the State would have had to respond by October 18, 2017 and no later than October 18, 2017, excluding the final date of October 18, 2017 falling on a weekend. The State did not respond to either pleading until October 27, 2017, which is way beyond the allowable time period to respond. Defendant's time for answer or reply should be calculated from the date of filing of the amended complaint, on September 29, 2017 and not the date of filing of the original complaint. Arkansas Rules of Civil Procedure Rule 15 (a).

4. Default judgment is the proper action, where the Respondent has not filed a motion to this Court for extension of time to answer the pleading; there was no mistake, inadvertance, surprise, excusable neglect, or other cause for Respondent's failure to file a timely answer. Arkansas Rules of Civil Procedure Rule 12 (a) and Rule 55 (A). *Layman v Bone, 1998, 967 S. W.*

2d 561, 333 Ark. 121; Moore v Taylor Sales, Inc., 1997, 953 S. W. 2d 889, 59 Ark. App. 30; Tom E. Jones Const. Co., Inc. v Holmes, 1984, 11 Ark. App. 88, 666 S. W. 2d 412.

5. Thus, the Motion to Strike the Respondent's Answer and enter default judgment in Stocks's behalf is the proper remedy.

**RELIEF REQUESTED**

WHEREFORE, Stocks prays that his Motion to Strike the Respondent's Answer and Enter Default Judgment for Stocks be granted in its entirety and all other equitable relief deemed appropriate by this Court.

Respectfully submitted,

*Heath Stocks*  
Heath Stocks

**VERIFICATION OF SIGNATURE**

I, Heath Stocks do swear and attest that I am filing this Motion to Strike Respondent's Untimely Answer to the Writ of Error Coram Nobis, and Writ of Audita Querela Amendment; and moving this Court to enter default judgment for the Petitioner, and the facts asserted herein are to the best of my knowledge and is not done in bad faith.

/s/ *Heath Stocks*  
Heath Stocks

State of Arkansas  
County of Jefferson

SUBSCRIBED AND SWORN TO BEFORE me a Notary Public on this 8th day of Nov 2017.

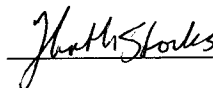
/s/ *Ethel Darrough*  
Notary Public

My Commission Expires: 01-25-2026

ETHEL DARROUGH  
NOTARY PUBLIC-STATE OF ARKANSAS  
JEFFERSON COUNTY  
My Commission Expires 01-25-2026  
Commission # 12695985

**CERTIFICATE OF SERVICE**

I, Heath Stocks hereby certify that I have serviced an exact copy of the foregoing to the Prosecuting Attorney Chuck Graham, Courthouse, 301 N. Center St., Ste. 301, Lonoke AR 72086-2892 on this 8<sup>th</sup> day of November 2017 by U. S. Mail postage prepaid.

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Heath Stocks