

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

LITTLE ROCK SCHOOL DISTRICT

PLAINTIFF

VS.

NO. 4:82CV 00866 DPM

**PULASKI COUNTY SPECIAL SCHOOL
DISTRICT NO. 1, et al.**

DEFENDANTS

LORENE JOSHUA, et al.

INTERVENORS

KATHERINE KNIGHT, et al.

INTERVENORS

**NLRSD'S RESPONSE TO REQUEST FOR
POSITION STATEMENT ON RECUSAL**

The Court has requested that each party provide a statement of its position with respect to the application of 28 U.S.C. § 455 to the previous service of Judge Marshall as a law clerk to the Honorable Richard Arnold of the Eighth Circuit Court of Appeals. Upon a review of the facts provided by Judge Marshall and the provisions of 28 U.S.C. § 455, the North Little Rock School District ("NLRSD") believes there is no basis for recusal in this matter.

We were requested to look particularly at 28 U.S.C. § 455(b)(3) in making this analysis. First, it must be understood that § 455 in general is directed at avoiding situations where a judge might have an actual or perceived bias against a party. This is why individuals who have an acknowledged personal bias, have represented a party in the proceeding during private practice, and have other relationships with the parties that would create the possibility of bias for or against a party are expected to recuse. With this context, we interpret § 455(b)(3) to apply to government employees or former employees

to the extent they were serving as counsel, advisor or material witness in a matter in which the government agency that employed them was a party at interest.

Assuming that the other bases for bias discussed in § 455 do not apply, which is the case here, a person serving as a judge, or as a clerk to a judge, is not acting in a manner that would indicate or reasonably permit an inference of bias where a former government employer, or more particularly the court itself as that employer, is *not* a party. Rather, that individual is working for or in the capacity of an *unbiased* arbiter of the dispute before it. If such involvement required recusal, no judge would be able to sit in a subsequent appeal involving the same case. That is clearly not the rule of law applicable in school desegregation cases in general and this case in particular. Rather, in this context, the judge, or the law clerk working in his office, has no bias in any such subsequent matter other than to determine the applicable law, with due consideration for previous precedents, and apply it to the facts of the case. This is not evidence of bias, but what a judge is oath-bound to do.

Under the circumstances presented, it is the position of the NLRSD that there is no basis for recusal in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen W. Jones, attorney for Separate Defendant North Little Rock School District, certify I electronically filed the foregoing with the Clerk of the court using the ECF system which sent notification of such filing to the following:

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