

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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 11 2011

JAMES W. McCORMACK, CLERK

By: *[Signature]* DEP CLERK

**LITTLE ROCK SCHOOL DISTRICT,
et al.**

PLAINTIFFS

v.

CASE NO. 4:82CV00866

**PULASKI COUNTY SPECIAL
SCHOOL DISTRICT, et al.**

DEFENDANTS

RECUSAL COMMENTS

Come *amicus curiae* movants Mark Perry, Reddie Ray and Ben Rice and for their response to the request by the Court for comments by the parties on the possibility of a recusal by the court and state:

1. Neither movants nor anyone else from Jacksonville can become parties herein by the prior order of this court that there is no standing for Jacksonville interests. However, the ruling in *Ladue v. Goodhead*, 181 Misc. 807, 44 NY S 2d 783,787 gives movants the right to file an *amicus curiae* brief for the purpose of introducing argument, authority and evidence to protect their interests.

2. The Court has not yet ruled on the motion for permission to file a supplemental *amicus curiae* brief, but has questioned whether or not such a brief would present a "justiciable issue". No supplemental brief has been presented by movants. It would seem that until a supplemental brief is filed that no accurate determination can be made as to whether or not the supplemental brief would raise a "justiciable issue".

3. The issue that would be briefed by movants concerns a perceived need to clarify footnote 2 at page 1377 in *Little Rock School District v. Pulaski County School District No. 1*, 921 F2d 1371(8th Cir.1990). In that footnote, the right of the Arkansas General Assembly to take action

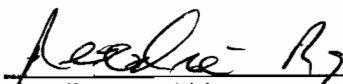
on Pulaski County school district boundaries was recognized, but there was no mention as to whether the executive branch of state government has the right to enforce any action of the legislative branch of state government.

That decision was rendered by a three judge panel of the 8th Circuit Court of Appeals that included Hon. Richard Arnold, who at the time employed this Court as a law clerk. This Court has stated that he did not participate in any way in the discussions, deliberations or writing of the opinion in that case. The former employment relationship with Judge Arnold does not in and of itself call for recusal. Whether that employment would give rise to inhibitions or reservations on the part of this Court in seeing a need to clarify a decision by the former employer can only be answered by this Court. The Court has stated that the former employment relationship will result in no partiality in reaching a decision in this case. These movants have no objection to this Court proceeding as the judge in this case.

4. Currently, the executive branch of state government has assumed management of PCSSD pursuant to state law after a recommendation by the Arkansas Legislative Joint Audit Committee that Pulaski County Special School District(PCSSD) be 'reconstituted' due to a lack of proper response to a 'fiscal distress' situation. The "justiciable issue" is the extent of the authority of the Arkansas Department of Education(ADE) to take further action with respect to a failing school district while that district (PCSSD) is being monitored by this Court. Specifically, if removing the Jacksonville/North Pulaski area from the PCSSD would be beneficial to PCSSD without interfering with the desegregation goals of their case, could ADE take such action?

Respectfully Submitted,

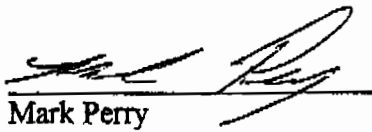

Mark Perry, State Rep.


Reddie Ray, Alderman


Ben E. Rice, Retired Atty

Certificate of Service

Come movants Mark Perry, Reedie Ray and Ben E. Rice and hereby certify that a copy of their Recusal Comments has been sent through the US Mail to the attorneys for the parties listed in the attached Exhibit A this 11th day of July, 2011.


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Reedie Ray


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Exhibit "A"