

CV-14-427

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, et al

PLAINTIFFS-APPELLEES

VS.

Case No. CV-14-427

NATHANIEL SMITH, MD, MPH, et al

DEFENDANTS-APPELLANTS

PLAINTIFFS-APPELLEES' RESPONSE TO PER CURIAM ORDER

Comes Kendall Wright, et al, Plaintiffs-Appellees herein, and respectfully submit their Response to this Court's Per Curiam Order and state:

1. That Plaintiffs-Appellees apologize to this Court for the appearance that their response to Defendants-Appellants Motion for Oral Arguments appeared to be in opposition to Justices Wood and Wynne serving on this case. Plaintiffs-Appellees are certain that said Justices can and would render a fair and well-reasoned decision.

2. However, Appellees' concern was and is due to the continued delay in the rendering of a decision that would be totally unnecessary if the Justices that have had the matter under submission since November 20, 2014 were permitted to finalize their work.

3. This Court recognized the need for an expedited appeal process on October 23, 2014 and immediately set Oral Arguments for November 20, 2014.

Further delay to conduct second oral arguments and new consideration runs counter to this Court's granting of the Motion to Expedite and further harms Plaintiffs-Appellees.

4. There is no authority that Appellees can find directly on point in a search of all state and federal courts. The issue presented is novel.

5. This Court has held, in regard to the appointment of a Special Justice that:

“When justices of this court find it necessary to disqualify themselves from participating in a case it is imperative that there be some safety valve that will allow the parties to continue before the court.”

Medlock v. Leathers, 311 Ark. 175, 182, 842 SW2d 428, 432 (1992).

6. Special Justice McCorkindale was appointed by the Governor of the State of Arkansas in accordance with Amendment 80, Section 13 to the Arkansas Constitution on October 1, 2014 due to the recusal of Justice Hoofman.

7. Due to this Court's observance in *Medlock*, it would thus appear that this Court's position and the intention of Amendment 80, Section 13 is that there should be no delay or disruption in the appeal procedure and that the appointment of and continuing serving of Special Justice McCorkindale accomplishes that intent.

8. Further, as stated in Appellees' Response to Motion for [Second] Oral Argument, Rule 1-7 of the Rules of the Arkansas Supreme Court provides that

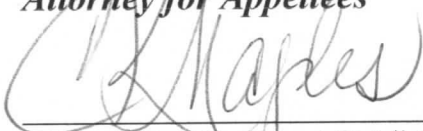
“where no provision is made by statute or other rule, proceedings in the Court shall be in accordance with existing practice.” No “existing practice” of the Supreme Court provides for holding a second oral argument before different Justices after seven Justices have already heard oral argument, participated in the case, and **taken the case under submission.**

9. Due to this Court’s recognition of the need for expediency in this matter, the Court’s stated reason, as set forth in *Medlock*, for the appointment and duty of Special Justice McCorkindale and the purpose of Amendment 80, Section 13 to the Arkansas Constitution, this Court should allow this matter to move forward for decision by the Justices under whom it was previously submitted.

WHEREFORE, Appellees respectfully request that this Court expedite the issuance of its decision.

Respectfully submitted,

Attorney for Appellees



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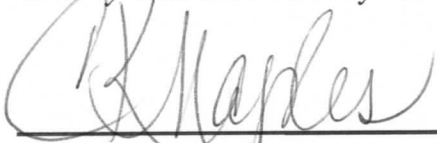
CERTIFICATE OF SERVICE

The undersigned counsel hereby states that a true and correct copy of the foregoing document was served upon the following counsel via email on February 17, 2015:

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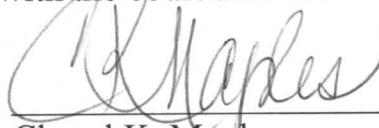
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CERTIFICATE OF COMPLIANCE

I hereby certify that I have served on opposing counsel and unredacted and, if required, a redacted PDF document that complies with the Rules of the Supreme Court and the Court of Appeals. The PDF documents are identical to the corresponding parts of the paper documents from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.



Cheryl K. Maples