

1991 WL 255004

Only the Westlaw citation is currently available.  
United States District Court, E.D. Arkansas, Western  
Division.

LITTLE ROCK SCHOOL DISTRICT, Plaintiff,  
v.  
PULASKI COUNTY SPECIAL SCHOOL DISTRICT  
NO. 1, et al., Defendants,  
Mrs. Lorene Joshua, et al., Intervenor,  
Mrs. Katherine Knight, et al. Intervenor.

No. LR-C-82-866.

|  
Feb. 6, 1991.

*ORDER*

SUSAN WEBBER WRIGHT, District Judge.

\*1 On January 25, 1991, a hearing was held on the matter of the attorneys' fee petitions filed on December 14, 1984, January 15, 1985, and July 25, 1988 ("Fee Petitions"), by the former attorneys for the Little Rock School District, Philip E. Kaplan, Perlesta A. Hollingsworth, John Bilheimer, and Janet Pulliam and their associates (hereinafter collectively referred to as the "Kaplan Group"). The Kaplan Group were the attorneys for the Plaintiff, Little Rock School District ("LRSD"), from the filing of this suit in 1982 until they were dismissed in December, 1987; however, the Kaplan Group remains counsel of record for LRSD with respect to the Fee Petitions.

Subsequent to the Kaplan Group's dismissal, a settlement was reached between LRSD and the Defendants. However, the referenced Fee Petitions have been pending since their original filings. Previously this issue had been referred to Magistrate David Young by Judge Henry Woods.

On October 25, 1990 Magistrate Young issued his

proposed Findings and Recommendation concerning the award of fees. Parties filed responses to the proposed Findings and Recommendation of the Magistrate. This Court set the matter for hearing on January 25, 1991 to hear any further evidence the parties desired to present on the issue of fees.

Based upon the exhibits, the Court's observation of the witnesses and all the evidence presented at the hearing, the Court finds as follows:

1. A contract existed between the LRSD and the Kaplan Group. This contract provided that the Kaplan Group would bill at reduced hourly rates and LRSD would pay such rates as billed; however, in the event LRSD achieved "prevailing party status", LRSD would prosecute fee petitions at the attorneys full rates and pay the attorneys the difference between their billed rates and their full normal rates from the proceeds of any attorneys' fees award.

2. LRSD achieved "prevailing party status."

3. In 1987, the Kaplan Group proposed a modification of the contract to provide that instead of recovery of the remainder of their normal hourly rate from a fee award, the Kaplan Group and the LRSD would split evenly any award made by the Court. The modification became effective as evidenced by the fact that Dr. Cannon, the Superintendent at that time, communicated to the Kaplan Group that the board had approved the fees and he never indicated to the attorneys at any time that the agreement was anything but a 50-50 split. Furthermore, in correspondence between the Kaplan Group and Dr. Cannon, wherein the Kaplan Group maintained that the agreement was to split any award 50-50, Dr. Cannon never objected to the representations of the Kaplan Group or in any way indicated that the agreement was other than a 50-50 split. The Kaplan Group was unaware of any proposal by Dr. Cannon or any board action with regard to any other fee arrangement.

4. Thus, the contract as modified between LRSD and the Kaplan Group is that in the event the Court makes an award of attorneys fees to LRSD, any such award is to be split one-half to the Kaplan Group and one-half to LRSD. Because of this contractual relationship, the Court finds that LRSD could not unilaterally waive the pending Fee Petitions nor contract the agreement away without the approval of the Kaplan Group.

\*2 5. The Court finds that the Kaplan Group never waived or otherwise surrendered their rights under the contract.

6. Having found the existence of a contract between LRSD and the Kaplan Group with unfulfilled terms triggered by the fees that would have been awarded pursuant to 42 U.S.C. § 1988, the Court must next determine any such award.

7. The Court rejects the Magistrate's proposed Findings and Recommendation.

8. The Court awards attorneys' fees based upon the following formula:

The Court accepts the determinations made by the Magistrate as to the number of "adjusted compensatory hours" as evidenced on page 5 of the Magistrate's proposed Findings and Recommendation. The "adjusted compensatory hours" relating to work applicable to the 1984 Fee Petitions shall be compensated based upon the rates proposed in the 1984 Fee Petitions. The "adjusted

compensatory hours" relating to work applicable to the 1988 Fee Petition shall be compensated based upon the rates proposed in the 1988 Fee Petition. One-half of the total award belongs to LRSD and LRSD is obligated to pay one-half of the total award to the Kaplan Group. Because of the settlement between LRSD and the Defendants and LRSD's agreement to indemnify the Defendants for any attorneys' fees awarded, the Court finds that LRSD is directly obligated to pay the Kaplan Group its share of the fees awarded. Based upon this formula, the award is as follows:

1984-1988 AWARDS

50%

<i>Attorney</i>	<i>1984Award</i>	<i>1988 Award</i>	<i>Total Award</i>	<i>Attorneys</i>
Hollingsworth	87,905.25	204,410.25	292,315.50	146,157.75
Kaplan	91,021.05	142,608.00	233,629.05	116,814.52
Bilheimer	87,318.00	81,432.00	168,750.00	84,375.00
Pulliam	134,961.75	127,969.20	262,930.95	131,465.47
Heller	10,656.45	0.00	10,656.45	5,328.23
Walker	31,468.50	0.00	31,468.50	15,734.25
Maxey	38,589.75	2,517.75	41,107.50	20,553.75
Torrence	14,800.50	0.00	14,800.50	7,400.25
Hoggard	6,189.30	229.50	6,418.80	3,209.40

Cordell	801.45	0.00	801.45	400.73
Brewer	0.00	788.40	788.40	394.20
Easterwood	0.00	4,684.50	4,684.50	2,342.25
Strause	0.00	3,624.75	3,624.75	1,812.38
Wright	0.00	472.50	472.50	236.25
Law Clerks	28,721.25	9,374.40	38,095.65	19,047.83
				<hr/> \$555,272.25

(SEE ATTACHED SCHEDULES A & B)

9. In addition to the four attorneys previously identified as constituting the “Kaplan Group,” the other attorneys listed above were associates of one of the four designated attorneys. Schedule C (attached hereto) groups the associates with the primary attorneys with whom they were affiliated. LRSD is directed to pay the fees awarded to the Kaplan Group pursuant to the allocation set out on Schedule C. Kaplan, Hollingsworth, Pulliam and Bilheimer, respectively, shall be responsible for the division of the award, if any such agreement for division exists, among the attorneys as detailed on Schedule C. If any claim arises, each principal attorney shall make a concerted and good faith effort to resolve any claims asserted in their respective groups. Kaplan, Hollingsworth, Bilheimer and Pulliam, respectively, shall indemnify LRSD and each other for any claims by associates within their respective groups arising out of payments to the attorneys in the amounts and in the manner set out on Schedule C.

for fees incurred through December, 1987 and is without prejudice to the right of counsel for the Kaplan Group to file fee petitions to recover the legal fees incurred in prosecuting these Fee Petitions.

Accordingly, the Court hereby awards total fees in the sum of \$1,110,544.50 and orders that the LRSD pay to the Kaplan Group one-half of the total sum or \$555,272.25. Said amount shall accrue interest at the rate of 6.62% per annum from the date of this Order until satisfied. Furthermore, if these fees are not paid within six (6) months of January 25, 1991 (that is on or before July 25, 1991), the Court will impose a lien on the settlement proceeds which LRSD is paid by the State of Arkansas. The Court will retain jurisdiction over this matter pending complete implementation of the terms of this Order. This Order is final and appealable.

\*3 10. The award hereunder is limited to the Fee Petitions

1984 PETITION

<i>Attorney</i>	<i>Petition(a)</i>	<i>L e s s</i>	<i>Adjusted</i>		
	<i>Hours</i>	<i>1 0 %</i>	<i>Compensatory</i>		
			<i>Hours</i>		
Hollingsworth	723.5	7 2. 3 5	651.1 5	135.00	87,905.2 5
Kaplan	749.15	7 4. 9 1 5	674.2 3	135.00	91,021.0 5
Bilheimer	970.2	9 7. 0 2	873.1 8	100.00	87,318.0 0
Pulliam	1,578.5	1 5 7. 8 5	1,420 .65	95.00	134,961. 75
Heller	139.3	1 3. 9 3	125.3 7	85.00	10,656.4 5
Walker	466.2	4 6. 6 2	419.5 8	75.00	31,468.5 0

Little Rock School Dist. v. Pulaski County Special School..., Not Reported in...

---

Maxey	571.7	5 7. 1 7	514.5 3	75.00	38,589.7 5
Torrence	253.0	2 5. 3 0	227.7 0	65.00	14,800.5 0
Hoggard	105.8	1 0. 5 8	95.22	65.00	6,189.30
Cordell	13.7	1. 3 7	12.33	65.00	801.45
Brewer	—	—	—	—	—
Easterwood	—	—	—	—	—
Strause	—	—	—	—	—
Wright	—	—	—	—	—
Law Clerks	1,276.5	1 2 7. 6 5	1,148 .85	25.0	28,721.2 5

\$ 532,433.25

(a) Taken from Magistrate's  
Proposed Findings at Page 5.

(b) Taken from Brief in

Support of Plaintiff LRSD's  
Motion for Attorney's Fees  
at Page 5. (Kaplan Exhibit 4)

Support of Plaintiff LRSD's Motion for Attorney's Fees  
at Page 5. (Kaplan Exhibit 4)

-----Attorney Petition(a) Less Adjusted Petition(b)  
Award Hours 10% Compensatory Rates  
Hours-----  
-----Hollingsworth 723.5 72.35 651.15 135.00  
87,905.25Kaplan 749.15 74.915 674.23 135.00  
91,021.05Bilheimer 970.2 97.02 873.18 100.00  
87,318.00Pulliam 1,578.5 157.85 1,420.65 95.00  
134,961.75Heller 139.3 13.93 125.37 85.00  
10,656.45Walker 466.2 46.62 419.58 75.00  
31,468.50Maxey 571.7 57.17 514.53 75.00  
38,589.75Torrence 253.0 25.30 227.70 65.00  
14,800.50Hoggard 105.8 10.58 95.22 65.00  
6,189.30Cordell 13.7 1.37 12.33 65.00 801.45Brewer -- --  
-- -- --Easterwood -- -- --Strause -- -- --Wright --  
-- -- --Law Clerks 1,276.5 127.65 1,148.85 25.0  
28,721.25 ----- \$ 532,43- 3.25(a) Taken from Magistrate's  
Proposed Findings at Page 5.(b) Taken from Brief in

SCHEDULE A

1988 PETITION

<i>Attorney</i>	<i>Petition(a)</i>	<i>Less(a)</i>	<i>L e s s</i>	<i>Adjusted</i>		
	<i>Hours</i>	<i>Appel late</i>	<i>1 0 %</i>	<i>Compensatory</i>		
				<i>Hours</i>		
Hollingsworth	1,693.6	317.1	1 3 7 . 6 5	1,238.85	165.00	204,410.25
Kaplan	1,338.55	282.2	1 0 5 . 6	950.72	150.00	142,608.00

Little Rock School Dist. v. Pulaski County Special School..., Not Reported in...

---

			4			
Bilheimer	1,135.2	381.2	7 5 . 4	678 .60	120.00	81,432. 00
Pulliam	1,808.8	623.9	1 1 8 . 4 9	1,0 66. 41	120.00	127,96 9.20
Heller	—	—	—	—	—	—
Walker	29.3	29.3	—	—	—	—
Maxey	113.9	76.6	3 . 7 3	33. 57	75.00	2,517.7 5
Torrence	—	—	—	—	—	—
Hoggard	94.7	91.3	0 . 3 4	3.0 6	75.00	229.50
Cordell	—	—	—	—	—	—
Brewer	16.3	9.0	0 . 7 3	6.5 7	120.00	788.40
Easterwood	72.4	3.0	6 . 9 4	62. 46	75.00	4,684.5 0
Strause	60.0	6.3	5	48.	75.00	3,624.7

			.	33		5
			3			
			7			
Wright	9.2	2.2	0	6.3	75.00	472.50
			.			
			7			
Law Clerks	373.6	113.2	2	234	40.00	9,374.4
			6	.36		0
			.			
			0			
			4			
					\$578,11	
					1.25	

(a) Taken from  
magistrate's Proposed  
Findings at Page 5.

(b) Taken from Petition  
for Award of Attorney's  
Fees and Costs at Page 3.  
(Kaplan Exhibit 12)

## SCHEDULE B

[Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data

displaying the character  
positions.]\*\*\*\*\*  
\*\*\*\*\*  
\*\*\* This is piece 1. -- It begins at character 1 of table line  
1.  
\*\*\*\*\*  
\*\*\*\*\*-----  
-----  
Attorney Petition(a) Less(a) Less Adjusted Hours  
Appellate 10% Compensatory



Hours-----  
 -----Hollingsworth 1,693.6 317.1 137.65 1,238.85  
 165.00Kaplan 1,338.55 282.2 105.64 950.72  
 150.00Bilheimer 1,135.2 381.2 75.4 678.60  
 120.00Pulliam 1,808.8 623.9 118.49 1,066.41  
 120.00Heller -- -- -- --Walker 29.3 29.3 -- -- --Maxey  
 113.9 76.6 3.73 33.57 75.00Torrence -- -- -- --Hoggard  
 94.7 91.3 0.34 3.06 75.00Cordell -- -- -- --Brewer 16.3  
 9.0 0.73 6.57 120.00Easterwood 72.4 3.0 6.94 62.46  
 75.00Strause 60.0 6.3 5.37 48.33 75.00Wright 9.2 2.2 0.7  
 6.3 75.00Law Clerks 373.6 113.2 26.04 234.36 40.00  
 \$578,11- 1.25(a) Taken from magistrate's Proposed  
 Findings at Page 5.(b) Taken from Petition for Award of  
 Attorney's Fees and Costs at Page 3. (Kaplan Exhibit 12)  
 SCHEDULE B1... 10... 20... 30...  
 ...40... 50... 60...  
 ...70.\*\*\*\*\*  
 \*\*\*\*\*  
 This is piece 2. -- It begins at character 72 of table line 1.  
 \*\*\*\*\*  
 \*\*\*\*\*  
 ----- Petition(b) Award Rates-----  
 204,410.25 142,608.00 81,432.00 127,969.20 -- --  
 2,517.75 -- 229.50 -- 788.40 4,684.50 3,624.75 472.50  
 9,374.40 -----72.....80... 90 WIDETABLE  
 NOTE--Some parts of this form are wider than one  
 screen. To view material that exceeds the width of this

screen, use the right arrow key. To return to the original  
 screen, use the left arrow key.  
 ----- Attorney Petition(a) Less(a) Less  
 Adjusted Petition(b) Award Hours Appellate 10%  
 Compensatory Rates Hours  
 -----  
 -----Hollingsworth 1,693.6 317.1 137.65  
 1,238.85 165.00 204,410.25 Kaplan 1,338.55 282.2  
 105.64 950.72 150.00 142,608.00 Bilheimer 1,135.2  
 381.2 75.4 678.60 120.00 81,432.00 Pulliam 1,808.8  
 623.9 118.49 1,066.41 120.00 127,969.20 Heller -- -- -- --  
 -- -- Walker 29.3 29.3 -- -- -- --Maxey 113.9 76.6 3.73  
 33.57 75.00 2,517.75 Torrence -- -- -- -- -- Hoggard  
 94.7 91.3 0.34 3.06 75.00 229.50 Cordell -- -- -- -- --  
 Brewer 16.3 9.0 0.73 6.57 120.00 788.40 Easterwood  
 72.4 3.0 6.94 62.46 75.00 4,684.50 Strause 60.0 6.3 5.37  
 48.33 75.00 3,624.75 Wright 9.2 2.2 0.7 6.3 75.00 472.50  
 Law Clerks 373.6 113.2 26.04 234.36 40.00 9,374.40 -----  
 \$578,11- 1.25 (a) Taken from magistrate's Proposed  
 Findings at Page 5. (b) Taken from Petition for Award of  
 Attorney's Fees and Costs at Page 3. (Kaplan Exhibit 12)  
 SCHEDULE B

**Attorney**

**Award**

*Hollingsworth's Share:*

Hollingsworth

\$ 146,157.75

Heller

5,328.23

Walker

15,734.25

Torrence

7,400.25

Cordell

400.73

Easterwood	2,342.25
------------	----------

Strause	1,812.38
---------	----------

$\frac{1}{4}$ Law Clerks	4,761.96
--------------------------	----------

TOTAL to Hollingsworth	\$ 183,937.80
------------------------	---------------

*Kaplan's Share:*

Kaplan	116,814.52
--------	------------

Maxey	20,553.75
-------	-----------

Brewer	394.20
--------	--------

$\frac{1}{4}$ Law Clerks	4,761.96
--------------------------	----------

TOTAL to Kaplan	\$ 142,524.43
-----------------	---------------

*Pulliam's Share:*

Pulliam	131,465.47
---------	------------

Hoggard	3,209.40
---------	----------

	Wright	236.25
	¼ Law Clerks	4,761.96
TOTAL to Pulliam	\$ 139,673.08	

<i>Bilheimer's Share:</i>	Bilheimer	84,375.00
	¼ Law Clerks	4,761.96
	TOTAL to Bilheimer	\$ 89,136.96

SCHEDULE C

Not Reported in F.Supp., 1991 WL 255004

**All Citations**

---