

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

MAR 1 1999

CHARLES R. FULBRIDGE III
CLERK

IN RE:

The Complaint of Carl Bernofsky Against United States District Judge Ginger Berrigan, Eastern District of Louisiana, Under the Judicial Conduct and Disability Act of 1980.

Docket Number: 99-05-372-0118

O R D E R

Over the past several years, Carl Bernofsky has had four civil suits pending against the same defendant (or related entities) in the court of United States District Judge Ginger Berrigan. The last two, which have been consolidated, remain pending.

In the consolidated cases, Bernofsky filed a motion for recusal of Judge Berrigan because of the judge's asserted "material and continuing relationship" with the defendant. Judge Berrigan denied the motion by written order. Bernofsky attempted to appeal to this Court, but we dismissed the appeal as being from a nonfinal order.

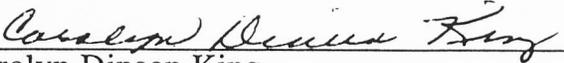
Bernofsky has now submitted a judicial misconduct complaint asserting that Judge Berrigan should have granted the motion for recusal and should have disclosed the alleged association with the defendant. Insofar as it seeks recusal of Judge Berrigan, the complaint is an attempt to relitigate the unsuccessful recusal motion -- from which Bernofsky will have the right to appeal once a final judgment is rendered in the consolidated cases. This aspect of the complaint relates directly to the merits of the action below, and is subject to dismissal under 28 U.S.C. § 372(c)(3)(A)(ii).

Bernofsky's complaint that Judge Berrigan should have disclosed her

associations with Tulane lacks merit because Bernofsky has not alleged that any facts existed that would have required Judge Berrigan to recuse herself. Lunde v. Helms, 29 F.3d 367, 370 (8th Cir. 1994) (affirming district judge's denial of recusal motion where judge had made donations to and "presented two educational programs" for the university-defendant); Tonkovich v. Kansas Board of Regents, 924 F. Supp. 1084, 1086 (D. Kans. 1996) (denying motion to recuse magistrate judge who was adjunct instructor at defendant law school). Similarly, recusal would not have been required for Judge Berrigan's participation in an externship program in which Tulane law students performed volunteer work in her chambers. Finally, although Bernofsky complains about Judge Berrigan's service on the Amistad Research Center board, he has not offered evidence that Amistad is related to Tulane in any way other than being located on the Tulane campus. Nor has he shown that Judge Berrigan has any financial interest in the outcome of his suits, or any proceeding involving Tulane. Lunde, 29 F.3d at 371. The remainder of Bernofsky's complaint is therefore subject to dismissal as frivolous under 28 U.S.C. § 372(c)(3)(A)(iii).

Judicial misconduct proceedings under 28 U.S.C. § 372(c) are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

The complaint is DISMISSED.



Carolyn Dineen King
Chief Judge

February 23, 1999