

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

January 4, 2017

Carl Bernofsky, Ph.D.  
109 Southfield Rd, Apt 51H  
Shreveport, LA 71105

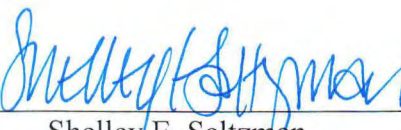
RE: Judicial Misconduct Complaint No. 05-17-90013

Dear Dr. Bernofsky:

Your complaint against United States Senior District Judge Helen G. Berrigan has been dismissed by Chief Judge Carl E. Stewart.

Enclosed is a copy of the order. Procedures for filing a petition for review of the order are set out in Rule 18 of the enclosed Rules For Complaints of Judicial-Conduct and Judicial-Disability Proceedings. We must receive any petition for review in the Clerk's office by no later than **February 14, 2017**. See Rule 18(b).

Sincerely,  
LYLE W. CAYCE  
Clerk

By   
Shelley E. Saltzman  
Deputy Clerk

Enclosures

JAN 04 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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IN RE:

The Complaint of Carl Bernofsky Against United States Senior District  
Judge Helen G. Berrigan, Eastern District of Louisiana, Under the Judicial  
Improvements Act of 2002.

Complaint Number: 05-17-90013

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ORDER

In February 1999, civil litigant Carl Bernofsky filed a judicial misconduct complaint against United States Senior District Judge Helen G. Berrigan. (Judicial Misconduct Complaint No. 99-05-372-0118). Bernofsky's allegations were dismissed as merits-related and frivolous under former 28 U.S.C. §§ 372(c)(3)(A)(ii) and (iii) – now 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii) – by order entered March 1, 1999. He petitioned for review, and an Appellate Review Panel of the Judicial Council affirmed the dismissal of the complaint by order entered April 26, 1999.

Bernofsky has now submitted a 26-page “petition” to the Judicial Council requesting an investigation into Judge Berrigan's conduct. To the extent that Bernofsky is attempting to supplement or reopen Complaint No. 99-05-372-0118, the statute provides for no further review of an unfavorable decision and the request is DENIED. To the extent that Bernofsky's petition is a new judicial misconduct complaint against Judge Berrigan, it has been considered fully and is DISMISSED as set forth below.

Judge Berrigan presided over four cases that Bernofsky filed against Tulane University-related entities in 1995 and 1998 (Bernofsky v. Tulane Univ. Med. Ctr., et al., EDLA Case No. 2:95cv358, aff'd, 5th Cir. Case No. 97-30575; Bernofsky v. Teachers Ins. Annuity, et al., EDLA Case No. 2:98cv1577; and Bernofsky v. Admin. of Tulane

Ed., EDLA Case Nos. 2:98cv1792 and 2:98cv2102, aff'd, 5th Cir. Case No. 00-30704)<sup>1</sup>. In connection with the latter two cases, Bernofsky filed a petition for writ of mandamus in the Fifth Circuit, requesting that Judge Berrigan be required to recuse herself, which was denied (In Re Bernofsky, 5th Cir. Case No. 99-30614).

The core of Bernofsky's complaint is that Judge Berrigan "[e]ngaged in a pattern of conduct inconsistent with her constitutional duty to faithfully execute the laws" in that she improperly failed to disclose her affiliation with Tulane (teaching assignments with Tulane Law School and service as a director on the board of the Amistad Research Center located on Tulane's campus), that she was biased against Bernofsky because of the affiliation, and that she should have recused from his cases.<sup>2</sup> To the extent Bernofsky's allegations are repetitive of those raised and dismissed in Complaint No. 99-05-372-0118, they are frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In connection with Judge Berrigan's decisions not to recuse sua sponte or in response to Bernofsky's motions for her recusal, Bernofsky claims that she violated Canon 3(C) of the Code of Judicial Conduct and 28 U.S.C. § 455, including by entering judgment in favor of Tulane when she was on the Board of Amistad; that her failure to disclose her association with Tulane deprived Bernofsky "of his constitutional right to a due-process hearing on the merits before an impartial tribunal" because he did not have "the opportunity to bring this fact to the attention of the Appellate and U.S. Supreme Courts" such that his chances for success in those courts were impacted negatively; and that Judge Berrigan should have recused from Bernofsky's cases after accepting from Tulane Law School a paid summer teaching assignment in Greece. To the extent these allegations are repetitive of Complaint No. 99-05-372-0118, in that they attack Judge Berrigan's decisions on disclosure and recusal that were addressed in that complaint, they

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<sup>1</sup> In connection with EDLA Case Nos. 2:98cv1792 and 2:98cv2102, Bernofsky also filed an appeal from Judge Berrigan's denial of his motion to recuse, which was dismissed for lack of jurisdiction. 5th Cir. Case No. 98-31417.

<sup>2</sup> Bernofsky's attempt to conflate Amistad Research Center and the defendants in his lawsuits was rejected by the orders entered in Complaint No. 99-05-372-0118.

are frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent the allegations are new, in that they attack Judge Berrigan's decisions on disclosure and recusal that were not addressed in Complaint No. 99-05-372-0118, they relate directly to the merits of the judge's decisions and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In connection with other decisions made by Judge Berrigan in Bernofsky's lawsuits, he alleges that her denial of his motion for a restraining order and injunction against Tulane had the effect of allowing the university "the opportunity to deprive an established scientist of his profession;" that in dismissing EDLA Case No. 2:98cv1577 on Bernofsky's motion, Judge Berrigan "[o]bstructed justice by complying with [Tulane] to deny Plaintiff a paid-up health benefit to which he was medically eligible (cancer) and entitled;" that Judge Berrigan "[o]bstructed justice and abused her judicial authority by suppressing crucial, material evidence refuting [the university's] claims for justifying its actions against Plaintiff;" and that the judge "articulated decisions that she later reversed by rulings that favored Defendant." These allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii) because they are directly related to the merits of Judge Berrigan's decisions. Further, the allegation related to the dismissal of Case No. 2:98cv1577 is frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) because the case was dismissed on Bernofsky's own motion.


With regard to Judge Berrigan's response to Bernofsky's petition for mandamus, he complains that it "displays an underlying animosity" toward him; that her "assessment of [Bernofsky's] psychological state of mind is subjective and prejudicial;" that "she had already formed an opinion in" Case Nos. 2:98cv1792 and 2:98cv2102 before trial or the completion of discovery; that it showed a "predisposition and bent of mind" and "pervasive bias" against him; and that Judge Berrigan was attempting "to dissuade [Bernofsky's] attorneys from pursuing the recusal issue." These claims are frivolous and/or lack sufficient evidence to raise an inference that misconduct has occurred and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See also Liteky v. U.S.*, 510 U.S. 540, 555-56 (1994) ("opinions formed by the judge on the basis of facts

introduced or events occurring the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make a fair judgment impossible” and a judge’s “expressions of impatience, dissatisfaction, annoyance, and even anger” do not establish bias or partiality).

Finally, Bernofsky speculates that Judge Berrigan “had an interest in the outcome of the proceedings;” alleges that she “[m]aintained extrajudicial contact with” and received “extrajudicial information” from Tulane while presiding over his cases; and claims that she “filed a false and deceptive public record” (by altering her biography in the *Almanac of the Federal Judiciary*). These assertions lack sufficient evidence to raise an inference that misconduct has occurred, and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Judicial misconduct proceedings 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.

  
Carl E. Stewart  
Chief Judge

December 28, 2016