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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
1998 OCT 15 P 2:02

UNED STATES DISTRICT COURT FOR LOUISIANA  
THE EASTERN DISTRICT OF LOUISIANA  
LORETTA G. WHYTE  
CLERK

DR. CARL BERNOFSKY  
Plaintiff

versus

ADMINISTRATORS OF THE TULANE  
EDUCATIONAL FUND  
Defendant

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\* CIVIL ACTION  
\*  
\* NO. 98:-1792  
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\*  
\* SECTION "C"  
\*  
\* JUDGE BERRIGAN  
\*  
\*  
\*  
\* MAGISTRATE CHASEZ

\* \* \* \* \*

MOTION FOR RECUSAL

NOW INTO COURT, through undersigned counsel, comes plaintiff, Dr. Carl Bernofsky ("Dr. Bernofsky"), who moves the district court judge pursuant to 28 U.S.C. Section 455 to grant plaintiff's Motion For Recusal on the ground that the judge is disqualified under 28 U.S.C. Section 455(a).

Respectfully submitted,

*R. Phipps*

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UNITED STATES DISTRICT COURT FOR  
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MEMORANDUM IN SUPPORT OF MOTION FOR RECUSAL

MAY IT PLEASE THE COURT:

Plaintiff herein, Dr. Carl Bernofsky ("Dr. Bernofsky"), submits this memorandum in support of his Motion for Recusal. Recusal is warranted because this matter has been assigned to United States District Court Judge Helen Ginger Berrigan who has held an appointment on the Board of Directors of the Amistad Research Center at Tulane University. This assignment creates a strong appearance of impropriety.

I. INTRODUCTION

According to the Tulane Law School Catalogue 1995-96, page

104, Judge Berrigan, was an Adjunct Associate Professor of Law. According to the 19      edition of the Almanac of the Federal Judiciary, Judge Berrigan has been associated with Tulane's Amistad Research center since 1990. (Vol.1, 5th Circuit, p.3). For this reason a strong appearance of impropriety is created with Judge Berrigan assigned to a matter where Tulane University is the defendant. For these reasons she is disqualified under 28 U.S.C. Section 455(a) and Dr. Bernofsky's motion for recusal is warranted and must be granted.

## II. LAW AND ARGUMENT

### A. Standards For Recusal Under Section 455(a)

Title 28 U.S.C. Section 455(a) provides in relevant part: "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

The relevant consideration under Section 455(a) is the appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855, (1988). The very purpose of 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. Liljeberg, 108 S.Ct. at 2205.

B. Dr. Bernofsky Is Entitled To Have This Case Assigned To Another Magistrate Judge Who Is Not Affiliated With Tulane University.

Here, a reasonable person would question the judge's impartiality where the judge has been an Adjunct Faculty Member at defendant university. If a reasonable man or woman apprised

of all of the circumstances would question the judge's impartiality, the appearance of impartiality sufficient to trigger Section 455(a). *Travelers Ins. Co. v. Liljeberg Enterprises, Inc.*, 3d 1405 (5th Cir. 1994).

Here, recusal will promote confidence in the judiciary by avoiding even the appearance of impropriety. Because a strong appearance of partiality is created here under Section 455(a) recusal is required.

### III. CONCLUSION

Dr. Bernofsky's motion for recusal is warranted pursuant to 28 U.S.C. Section 455(a). Dr. Bernofsky respectfully submits the recusal motion must be granted and this case assigned to another district court judge, unaffiliated with Tulane University.

Respectfully submitted,



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CERTIFICATE

I certify that a copy of the above and forgoing has this day, October 15, 1998, been forwarded to counsel of record by U.S. Mail Postage P 3, i.e.,:

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New Orleans, LA 70163

  
\_\_\_\_\_  
Roger D. Phipps

UNITED STATES DISTRICT COURT FOR  
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DR. CARL BERNOFSKY  
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\* JUDGE BERRIGAN  
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\*  
\*  
\* MAGISTRATE CHASEZ  
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\* \* \* \* \*

ORDER

Now on this \_\_\_\_\_, this cause having come before this Court upon the motion of the plaintiff, Dr. Carl Bernofsky, to grant plaintiff's Motion For Recusal of the district court judge under 28 U.S.C. Section 455(a), the Court having considered the motion and reviewed the memoranda,

IT IS ORDERED:

That plaintiff's Motion is Granted. The Clerk of Court is directed to realLOT these matters to another district court judge.

UNITED STATES DISTRICT COURT JUDGE

