IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30704

CARL BERNOFSKY, DR.,

Plaintiff-Appellant,

versus

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND,

Defendant-Appellee.

Appeal from the United States District Court for
the Eastern District of Louisiana
(USDC No. 98-CV-2102-C)

April 10, 2001

Before KING, Chief Judge, REAVLEY and JONES, Circuit Judges.

PER CURIAM:[*]

The judgment of the district court is affirmed. The decision of that court against recusal is upheld for the reasons given by that court's order. On the merits, even if Tulane's response to the requests for reference be considered as adverse employment actions, there was no error of any significance and Bernofsky presents no evidence of improper motive or defamation.

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[*]Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

AFFIRMED.

KING, Chief Judge, dissenting:

With respect, I disagree with the panel majority on the matter of Judge Berrigan's recusal. A reasonable person would view the summer teaching assignment in Greece that Tulane Law School offered to Judge Berrigan, along with $5500 to cover her expenses, as something of a plum. She accepted that assignment in the midst of this litigation against the Administrators of the Tulane Educational Fund, indeed on the eve of her decision to grant summary judgment in favor of the Fund. Under the circumstances (and with a record devoid of any evidence of attenuation in the relationship between the Fund and the Law School), I think that a reasonable person might question her impartiality. I would reverse the judgment and remand with instructions to send the case to another judge.