

June 05, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**BY: CSanchez
DEPUTY**HON. DAVID G. GUADERRAMA**§
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§**ALL CASES****NOTICE OF LAW CLERK RECUSAL**

I employ two law clerks in my chambers. One of those law clerks, Mr. Kevin M. Lewis, intends to apply for a vacant U.S. Magistrate Judge position in this District.

Several members of the Merit Selection Panel who will be considering Mr. Lewis's application are attorneys who regularly practice before this Court.¹ After carefully reviewing the Judiciary's ethical canons and advisory opinions issued by the Judiciary's Committee on Codes of Conduct ("Committee"), Mr. Lewis has determined that it would be improper for him to work on any case involving members of the Merit Selection Panel while his application is pending.² I agree with Mr. Lewis's assessment.

¹ See Order Appointing Merit Selection Panel for Calendar Year 2024-2026 (W.D. Tex. May 15, 2024).

See also 28 U.S.C. § 631(i) (explaining that "merit selection panels, composed of residents of the individual judicial districts, . . . assist the courts in identifying and recommending persons who are best qualified to fill" Magistrate Judge vacancies).

² Cf. COMMITTEE ON CODES OF CONDUCT ADVISORY OPINION #97 (concluding that, during the time that a Merit Selection Panel is considering whether to recommend an incumbent Magistrate Judge for reappointment for an additional term, that Judge "is required to recuse" himself from "any case involving an attorney or a party who is a member of the panel," as a reasonable observer might question that Judge's ability to be impartial in such cases); COMMITTEE ON CODES OF CONDUCT ADVISORY OPINION #74 (concluding that "when it is contemplated that a law clerk may accept employment with a lawyer or law firm that is participating in a pending case," that law clerk "should have no involvement whatsoever in pending matters handled by the prospective employer"); COMMITTEE ON CODES OF CONDUCT ADVISORY OPINION #81 ("[P]articipation by [a] law clerk in a pending case involving [his] prospective employer may reasonably create an appearance of impropriety and a cause for concern on the part of opposing counsel.").

Thus, until the Court has selected the successful candidate for the Magistrate Judgeship, Mr. Lewis hereby **RECUSES** himself from working on any case in which a member of the Merit Selection Panel has appeared as counsel of record in—or is a party to—the litigation.

Mr. Lewis further **PLEDGES** that, while his application remains pending, he will not discuss any such case with me or any other member of my staff.³

The pertinent ethical opinions indicate that so long as Mr. Lewis recuses himself from cases involving the Panelists, Mr. Lewis's disqualifying conflict is not attributed to me or any other member of my staff. In other words, the Committee's advisory opinions indicate that Mr. Lewis's recusal from such cases suffices to eliminate the appearance of impropriety; neither I, Mr. Lewis's co-clerk, nor any other member of my staff must recuse themselves from cases involving the Merit Selection Panelists.⁴ I and the other members of my staff will therefore continue to hear and work on cases involving members of the Merit Selection Panel notwithstanding Mr. Lewis's disqualification.

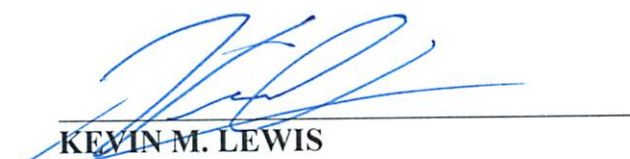
³ Cf. COMMITTEE ON CODES OF CONDUCT ADVISORY OPINION #51 (indicating that a law clerk who is recused from a case "should avoid any discussion of the case with the judge, law clerks, or others").

⁴ Cf. COMMITTEE ON CODES OF CONDUCT ADVISORY OPINION #74 (concluding that even though a *law clerk* must recuse himself from working on cases in which his future employer is counsel of record, "such a circumstance does not in itself mandate disqualification of the *judge*" (emphasis added)); COMMITTEE ON CODES OF CONDUCT ADVISORY OPINION #51 (indicating that when one of a Judge's law clerks is disqualified from working on a particular case due to an ethical conflict, "the matter may be transferred . . . to another clerk").

SIGNED this 5th day of June 2024.



DAVID C. GUADERRAMA
SENIOR U.S. DISTRICT JUDGE



KEVIN M. LEWIS
CAREER LAW CLERK