No. 09-16-00299-CV

IN THE COURT OF APPEALS
FOR THE NINTH DISTRICT OF TEXAS
BEAUMONT, TEXAS

LAYNE WALKER,

APPELLANT

VS.

STEPHEN HARTMAN

APPELLEE

FILED IN
9th COURT OF APPEALS
BEAUMONT, TEXAS
9/23/2016 3:01:32 PM
CAROL ANNE HARLEY
Clerk

On Appeal from the 58TH Judicial District Court
of Jefferson County, Texas
Trial Court Cause No. A-198,672

APPELLEE'S OPPOSED, VERIFIED MOTION TO RECUSE CHIEF JUSTICE McKEITHEN, JUSTICE KREGER AND JUSTICE HORTON, AND CERTIFICATE OF CONFERENCE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

TO THE HONORABLE NINTH COURT OF APPEALS JUDGE:

Appellee, Stephen Hartman, files this Opposed, Verified Motion to Recuse Chief Justice McKeithen, Justice Kreger and Justice Horton, and Certificate of Conference, pursuant to Tex. R. App. 16, which incorporates the legal standards for recusal in Tex. R. Civ. P. 18(b)(1) & (2).

Appellee will demonstrate: (1) these Justices' impartiality may reasonably be questioned; and (2) a reasonable person, with knowledge of the circumstances, would harbor doubts as to the impartiality of these Justices, and that these Justices' bias against attorney John Morgan and his clients is pervasive and is of such a nature and extent that allowing these three (3) Justices to preside over this appeal would deny Appellee's right to receive Due Process of Law.

SUMMARY OF ARGUMENT

The Texas and United States' Constitutions provide that Morgan and his clients (including Hartman) have a fundamental right to an impartial and disinterested tribunal. Texas law provides that a judge must be recused where the judge's impartiality might reasonably be questioned, or if the judge has a personal bias or prejudice concerning a subject matter or a party. If there is evidence of a judge's bias from an

extra-judicial source, the judge must be recused. If the party seeking recusal relies upon a judge's rulings, the contents of those rulings can mandate recusal if they demonstrate a "pervasive bias" or a high degree of antagonism against a party, or an attorney, that would make a fair judgment impossible.

In this case, Hartman has provided significant evidence that a reasonable person, with knowledge of the circumstances, would harbor doubts as to impartiality of the three (3) Justices at issue in this Motion, and that the bias of these three (3) Justices is of such a nature and extent that allowing these Justices to serve on this appeal would deny Hartman's right to receive Due Process of Law. Hartman has included substantial evidence demonstrating that there is an appearance of substantial and pervasive bias by these three (3) Justices against Morgan and his clients, which include Appellee Hartman.

This evidence consists of significant extrajudicial comments by Walker's attorney, Mr. Jeffrey Dorrell. Hartman has included substantial evidence demonstrating the close, working relationship between Mr. Dorrell and Mr. Retzalff, who is a convicted criminal, a Vexatious Litigant, and a self-professed member of the Aryan Brotherhood. The

evidence demonstrates that Mr. Retzlaff has been sending multiple emails to Appellee's counsel, Morgan, which: (1) brag about Mr. Dorrell's ex parte communications with the Ninth Court of Appeals; (2) predict accurately and in advance Ninth Court of Appeals' rulings involving these three (3) Justices that are adverse to Morgan and his clients; and (3) state that Dorrell/Retzlaff know what the Ninth Court of Appeals' rulings through these three (3) Justices will be in advance. These emails, on their face, repetitively brag about ex parte communications stemming from an extreme, pervasive bias against Morgan and his clients by these three (3) Justices. These emails, standing alone, require recusal under Texas law and the United States and Texas' Constitutions.

Furthermore, from 2012 to the present, Morgan and his clients have lost every single substantive proceeding in the Ninth Court of Appeals, with one exception. These rulings are set forth below. Prior to 2012, Morgan and his clients were successful in the Ninth Court of Appeals on many occasions. A review of these rulings corroborates that these three (3) Justices have a pervasive bias against Morgan and his clients that requires their recusal under Texas law. If these three (3) Justices are not recused, a reasonable person would conclude Hartman shall be denied Due

Process of Law.

FACTUAL BACKGROUND

Appellant, Stephen Hartman, sued Layne Walker, Sheriff Mitch Woods, former District Attorney Tom Maness, and several other Defendants (including Sheriff's Deputies, Assistant District Attorneys, private sector attorneys, Walker's former court coordinators, and some County employees), alleging civil rights violations and a civil conspiracy to maliciously prosecute Hartman. Appellee filed suit in federal court, pursuant to 42 U.S.C. §1983, including pendent state law tort claims. The federal Magistrate recommended: (1) dismissal of Hartman's claims under §1983 (which Judge Crone affirmed); and (2) the federal court should decline to exercise supplemental jurisdiction over Hartman's state law claims. Hartman has timely appealed Judge Crone's Final Judgment dismissing the §1983 claims to the United States Court of Appeals Fifth Circuit.

Hartman timely filed this lawsuit in state court, pursuant to 28 U.S.C. §1367, because Judge Crone declined to exercise supplemental jurisdiction over Hartman's state law claims. This case is pending before this Honorable Court in an accelerated appeal after the trial court denied

Walker's Motion to Dismiss under the Texas Citizen's Participation Act.

Defendants Walker, Broussard, Kolander and Smith are under Felony Indictment for matters stemming from the arrest and malicious prosecution of Hartman. Hartman, through Undersigned Counsel (Morgan), has sued the power base in Jefferson County, which has resulted in: (1) a plethora of threats (including death threats) through Walker's current attorney, Jeffrey Dorrell (Dorrell) through his agent Thomas Retzlaff (Retzlaff) (discussed infra); (2) repeated braggadocious statements by Dorrell through Retzlaff of ex parte communications with this Court (discussed infra); (3) multiple emails by Dorrell through Retzlaff that accurately predict this Court's Opinions that are adverse to Morgan and his clients, before these Opinions are publicly released (discussed infra); and (4) the ongoing filing of repetitive Grievances in attempts to take away Morgan's law license in order to stop prosecution of this litigation.

From the time of Walker's termination of Morgan's parental visitation rights (April, 2012), to the present, the Ninth Court of Appeals through these three (3) Justices have repeatedly ruled adversely to Morgan and his clients to such an extent that a reasonable observer could

conclude these Justices have a pervasive bias with a high degree of antagonism against Morgan and his clients, and permitting these three (3) Justices to rule on this interlocutory appeal would deny Hartman Due Process. A reasonable person can interpret some of these rulings to demonstrate judicial nullification. Additionally, a reasonable observer could conclude this Court has ignored some of Morgan's legal arguments in various appeals, re-interpreting facts. In one case, this Court has personally insulted Morgan, labeling Morgan a "bully" in one published Opinion, which to a reasonable person would indicate these three (3) Justices have a severe personal bias against Morgan.

From 2012 to the present, with the exception of this Court ordering the production of the remainder of the Tanner audiotape in the Stephen Hartman criminal case on mandamus (discussed infra), Morgan and his clients have lost all substantive appeals in this Court before these three (3) Justices. During this same time frame, however, Morgan had an appellate proceeding on behalf of a client in a court outside the Ninth Court, in Cenac Towing Co., Inc. and Teppco Marine Services, LLC v. Johnny Defonte, Individually and d/b/a Port Bolivar Marine Services, Inc., No. 01-12-01036-CV; In the Houston [1st Dist.] Court of Appeals, where

Morgan was successful for his client after a successful trial result. A reasonable observer, when reviewing and comparing these three (3) Justices' Opinions involving Morgan and his clients to the ruling in the Johnny Defonte appeal, could conclude there is a substantial disparity in treatment of Morgan and his clients by these three (3) Justices, in comparison to another Texas Court of Appeals.

LEGAL STANDARDS

In this case, Walker is represented by attorney Jeffrey Dorrell of the Hanszen LaPorte Law Firm. Mr. Dorrell works closely with a convicted criminal and Aryan Brotherhood member, Thomas Retzlaff. See Exhibit "1," Affidavit of Philip Klein dated March 26, 2015 (without attachments); Exhibit "2," Affidavit of Philip Klein dated September 22, 2016; Exhibit "3," Affidavit of James McGibney, dated April 2, 2015 (without attachments); Exhibit "4," Plaintiffs' Response to Defendant Rauhauser's "Reply" of December 3, 2015 and Motion for New Trial; In Cause No. 067-270669-14; James McGibney, et al. v. Thomas Retzlaff, et al.; In the 67th Judicial District Court, Tarrant County, Texas; Exhibit "5," Affidavit of

James McGibney, dated April 4, 2016 (with attachments).[1] Dorrell and Retzlaff have a long history of publishing anonymous websites that have defamed Philip Klein, and also James McGibney. Beginning in 2012, contemporaneously with Morgan's child custody case before former Judge Walker, Dorrell/Retzlaff's websites have targeted Morgan. The Dorrell/Retzlaff websites, and Mr. Retzlaff's emails, have also targeted all attorneys who have represented Mr. McGibney and Mr. Klein, including Rick Espey, Paul Gianni, Morgan, Evan Stone and Larry Watts. See Exhibits "1-4." The website www.irontroll.com, exposed Mr. Dorrell as the blogger "Sam the Eagle" who ran the anti-Klein website www.notthisonetoojacques.blogspot.com.

Currently, Mr. Retzlaff, using content provided by Mr. Dorrell, administers the anonymous website www.viaviewfiles.net, which posts false, defamatory "articles" and also threats of bodily and financial harm against Mr. Klein, Morgan, Mr. McGibney, attorneys Rick Espey, Paul Gianni, Larry Watts, Evan Stone and others, who are all attorneys who have represented Mr. McGibney and Mr. Klein. This website follows all

[1] Dorrell also works closely with Aryan Brotherhood members and convicted criminals Neal Rauhauser and Jo Jo Camp.

of Dorrell's cases against Morgan, Mr. Klein & Mr. McGibney, by publishing sealed documents, Dorrell's court pleadings, etc., threatening attorneys, falsely representing certain trial court rulings, etc. See Exhibit "6," Affidavit of Brittany Retzlaff (identifying Retzlaff as the administrator of www.viaviewfiles.net; See also www.viaviewfiles.net, under Tex. R. Evid. 201 Hartman requests the Court reviewing this Motion to take judicial notice of this website's contents under Tex. R. Evid. 201(b)(1) & (2). Mr. Dorrell through Mr. Retzlaff, uses the email address james.smith871003@gmail.com, under the pseudonym "James Smith." Exhibit "2." Dorrell/Retzlaff have sent Morgan multiple emails which include threats, encouraging Morgan to commit suicide, deriding Morgan on a personal basis, and most importantly for purposes of this Motion, repeatedly bragging about Dorrell's ex parte communications with the Ninth Court of Appeals, and Dorrell's accurate knowledge of this Court's Opinions involving Morgan, either pro se, or on behalf of his clients, prior to the publication of this Court's Opinions. These emails are all attached and will be discussed below.[2]

[2] Dorrell/Retzlaff have sent emails to Philip Klein making approximately 34 death threats to him and his family members. Dorrell/Retzlaff via email have also made threats of bodily harm to attorneys

In Case No.: 1:13-cv-00327; Stella Morrison v. Layne Walker, et al; In the United States District Court, Eastern District of Texas, Beaumont Division, attorney Mark Sparks (who is no longer counsel of record for Walker but continues to file pleadings with ad hominem attacks on Morgan and Klein in federal court), admitted to ex parte communications with the federal Magistrate's staff, causing the recusal of the federal Magistrate. Morrison's Motion pursuant to Fed. R. Civ. P. 60(b) is attached as Exhibit "7."

The fact that Walker's attorneys in both the Morrison federal civil rights lawsuit, and also in multiple cases before these three (3) Justices involving Morgan pro se, Morgan's clients, and almost always Mr. Dorrell as opposing counsel, admit and even brag about ex parte communications with courts (including the Ninth Court of Appeals), renders these claims of ex parte communications with the Ninth Court of Appeals credible to such an extent that any reasonable person would believe Mr. Dorrell's claims of repetitive ex parte communications are accurate and the three (3) Justices at issue must be recused.

Rick Espey, Paul Gianni and Evan Stone, in addition to Morgan and Mr. McGibney.

Under the Constitutions of Texas and the United States of America, citizens have a fundamental right to an impartial and disinterested tribunal. Metzger v. Sebek, 892 S.W.2d 20, 37-38 (Tex. App. – Houston [1st Dist.] 1994, writ denied). Rules 18a and 18b of the Texas Rules of Civil Procedure provide for the recusal or disqualification of a trial judge. Tex. R. App. P. 16 expressly incorporates these standards for recusal or disqualification of an appellate Judge. Rule 18(b)(2) provides in relevant part that a "judge must recuse in any proceeding in which: (A) the judge's impartiality might reasonably be questioned; (B) the judge has a personal bias or prejudice concerning the subject matter or a party."

In order to recuse a judge, a judge's bias most often should be derived from an extrajudicial source and not based only on the judge's rulings in a judicial proceeding. Under the "extrajudicial source rule," an unfavorable judicial opinion or hostile, in-court comments by a judge to a party or counsel are usually not sufficient for recusal, unless they emanate from an extrajudicial source. Gaal. v. State, 332 S.W.3d 448, 454 (Tex. Crim. App. 2011); Abdygapparova v. State, 243 S.W.3d 191, 198 (Tex. App. – San Antonio, 2007, pet. denied); Ludlow v. DeBerry, 959 S.W.2d 265, 281 (Tex. App. – Houston [14th Dist.] 1998, no pet.); Grider v. Boston Co.,

773 S.W.2d 338, 346 (Tex. App. – Dallas 1989, writ denied) (citing United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)).

A judge may develop and express impatience, annoyance or anger, as long as the judge derives that opinion from the evidence, testimony or events during trial. Dow Chemical Co. V. Francis, 46 S.W.3d 237 (Tex. 2001) (citing Liteky v. United States, 510 U.S. 540, 555 (1994); Abdygapparova, 243 S.W.3d at 198 (holding that bias sufficient for recusal generally stems from an extrajudicial source and results in an outcome on the merits based on information outside of what the judge learned from participating in the case at hand)(citing Quinn v. State, 958 S.W.2d 397, 402-03 (Tex. Crim. App. 1997)).

If a judge's opinions are derived from the evidence presented and events occurring during court proceedings, and not from an extrajudicial source, those opinions or in-court comments do not necessitate recusal, unless they display a "pervasive bias" or a high degree of antagonism that would make a fair judgment impossible. Liteky v. United States, 510 U.S. 540, 555 (1994); Gaal v. State, 332 S.W.3d at 454-55; Bustos v. Schwabe, Williamson & Wyatt, P.C., No. 04-07-00081-CV; 2008 WL 182932 (Tex. App. – San Antonio, 2008, pet. denied); Ludlow, 959 S.W.2d at 281.

This Court recently held in In re: Commitment of Winkle, 434 S.W.3d 300, 311 (Tex. App. – Beaumont 2014, pet. denied), as follows: "The standard for recusal is clear. When the party moving for recusal relies on bias to claim the trial judge should be recused, the party filing the Motion to Recuse must show that a reasonable person, with knowledge of the circumstances, would harbor doubts as to the impartiality of the [court], and that the bias is of such a nature and extent that allowing the judge to serve would deny the movant's right to receive due process of law." See also Humitech Deb. Corp. v. Pearlman, 424 S.W.3d 782, 797 (Tex. App. – Dallas 2014, no pet.). Likewise, a judge must be recused when his or her actions, opinions or remarks "reveal such a high degree of favoritism or antagonism as to make a fair judgement impossible." Ludlow v. Deberry, 959 S.W.2d 265, 271 (Tex. App. – Houston [14th Dist.] 1997, no writ); In re: AKM, No. 09-12-00464-CV, 2014 WL 809007 (Tex. App. – Beaumont 2014, pet. denied); Hanson v. JP Morgan Chase Bank, 346 S.W.3d 769, 776 (Tex. App. – Dallas 2011, no pet.).

A party does not have to prove that a judge is actually biased or partial to support a request for recusal. A party must only show that the judge's opinions or in-court comments have the appearance of bias.

Liteky, 510 U.S. at 558. (emphasis added). Therefore, the test for recusal is whether a reasonable person, knowing all the circumstances involved, would doubt the impartiality of the judge. Tingler v. State of Texas, No. 1:08-CV-194, 2008 WL 5480558 (E.D. Tex. 2008); Abdygapparvoa, 243 S.W.3d at 198; Williams v. Viswanatham, 65 S.W.3d 685, 687 (Tex. App. – Amarillo, 2001, pet. denied).

EVIDENCE AND ARGUMENT

1) Mr. Dorrell, through Mr. Retzlaff's emails, brags about: (1) ex parte communications with the Ninth Court of Appeals; (2) the Ninth Court of Appeals personally dislikes or "hates" Morgan; (3) knowledge in advance of adverse rulings by these three (3) Justices, involving Morgan and his clients; and (4) accurately predicting this Court's rulings that are adverse to Morgan and his clients.

Morgan will address each email sent by Dorrell/Retzlaff seriatim.[3]

1. Dorrell/Retzlaff email dated March 2, 2015. (Exhibit "8")

In this email, Dorrell/Retzlaff extort Morgan, stating that if he were to "give up information on James McGibney and his associates" then "things would go a lot easier for you in Texas. You are facing a boatload

[3] Dorrell/Retzlaff's emails contain graphic language that strongly impugn the reputation of the Justices of the Ninth Court of Appeals. Neither Hartman nor Morgan wrote these emails, and therefore Hartman and Morgan are not responsible for these emails' contents or linguistics.

of sanctions that will destroy your ability to ever practice law again and will keep you in debt for the rest of your life… a lot of people hate you and a lot of people want to see you crushed. But even bugs can be useful, no?"

A reasonable person would interpret this email as stating that Dorrell/Retzlaff have improper influence over Texas courts that have the ability to sanction Morgan to such an extreme extent that it would destroy Morgan's ability to practice law and keep him in debt for the rest of Morgan's life. These clear statements regarding: (1) potential future rulings by Texas courts adverse to Morgan; and (2) a lot of people who "hate"Morgan and wanting to see him "crushed." This email could be interpreted by any reasonable person to establish Dorrell/Retzlaff know that certain judges have agreed to adjudicate cases adversely involving Morgan or his clients.

2. Dorrell/Retzlaff email dated May 14, 2015. (Exhibit "9")

The content of this email is similar to the first one, engaging in extortion of Morgan through the means of interstate commerce, which is both a federal and state crime. This email states, among other things: "...very shortly anything you have will be completely and utterly worthless." This email states: "I am reading about you getting your ass

kicked again in the Court of Appeals. Johnny boy when are you going to learn? Those folks in Beaumont hate your mother fucking guts!!" (emphasis added) The email also threatens Morgan with being declared a Vexatious Litigant, similar to Thomas Retzlaff who was adjudicated a Vexatious Litigant in the State of Texas. This email also brags about Dorrell/Retzlaff disclosing all of Morgan's personal information publicly on their www.viaviewfiles.net website, and Dorrell's/Retzlaff's efforts to destroy Morgan's law practice.

A reasonable person, when reading this email, would conclude that Dorrell/Retzlaff have warranted these three (3) Justices in the Ninth Court of Appeals who handle Morgan's appeals either for himself pro se, or for his clients (i.e., Chief Justice McKiethen, Justice Horton and Justice Kreger) are the ones who "hate [Morgan's] mother-fucking guts!!" Any reasonable person would interpret this email to demonstrate that Dorrell/Retzlaff brag about pervasive bias by these three (3) Justices against Morgan and his clients.

3. Dorrell/Retzlaff email dated September 1, 2015 at 2:41 p.m. (Exhibit "10")

This email calls for Morgan's suicide and discloses his home address.

This email also references future court rulings in which Mr. Dorrell is seeking sanctions against Morgan in Cause No. 126,841; John S. Morgan v. Sheryl Johnson-Todd; In the County Court at Law No. 1, Jefferson County, Texas, and the State Bar proceeding filed against Morgan (which was instigated by Dorrell/Retzlaff's Grievances and Kathleen Winslow Morgan's employment by the Texas State Bar's Chief Disciplinary Counsel). The State Bar dismissed with prejudice its lawsuit against Morgan. The email provides: "Now you have lost everything. I hear that Linda Acevado [State Bar prosecutor] is a very mean lady with a 95% conviction rate."

A reasonable person, when reading this email in conjunction with the other emails, would conclude Dorrell/Retzlaff predict future, adverse rulings against Morgan and his clients, both at the trial court and in the Ninth Court of Appeals, which will cause Morgan to lose everything.

4. Dorrell/Retzlaff email dated September 1, 2015 at 2:45 p.m. (Exhibit "11")

This email references the State Bar proceeding against Morgan and threatened audits by the IRS. This email also references Dorrell's lawsuit against Mr. Klein and his company in San Antonio, Texas.

A reasonable person, when reading this email in conjunction with the other emails, would conclude Dorrell/Retzlaff are predicting that Morgan's ability to practice law successfully is no longer a tenable goal.

5. Dorrell/Retzlaff email dated September 15, 2015. (Exhibit "12")

This email contains Dorrell/Retzlaff's repeated request that Morgan commit suicide, refers to Morgan as "Johnny," and contains the following statement directly pertinent to this Motion: "Remember how I told you three months ahead of time that the Beaumont Court of Appeals had already ruled against you and on what grounds? Remember how I told you how I knew?" The email also states: "Want to bet that they are about to do the same thing in this new case, too? Yep, you will see." (emphasis added)

A reasonable person reading this email would most certainly conclude that Mr. Dorrell, through Mr. Retzlaff: (1) has ex parte communications with the Ninth Court of Appeals; (2) is informed of the Ninth Court of Appeals' rulings involving Morgan and his clients in advance; and (3) is bragging about these facts through Mr. Retzlaff. These emails have been entirely accurate regarding Dorrell/Retzlaff's

predictions of adverse rulings by the Ninth Court of Appeals against Morgan and his clients, prior to this Court publishing its Opinions. This email, standing alone, even without the others, makes recusal of these three (3) Justices mandatory under Texas law, because it confirms Dorrell/Retzlaff accurately predict rulings by these three (3) Justices of this Court in advance, which can only occur through ex parte communications.

6. Retzlaff's post on Mr. Dorrell's website www.viaviewfiles.net. (Exhibit "13")

This post states: "Poor Philip Klein doesn't yet realize that his PI business is as dead as John Morgan shortly will be."

A reasonable person, when reading Mr. Retzlaff's internet post, in conjunction with the other emails, would conclude that Dorrell/Retzlaff intend to murder Morgan, and that others in this legal community might share the desire to see Morgan dead.

7. Dorrell/Retzlaff email dated October 29, 2015. (Exhibit "14")

This email states: "I told you two months ago exactly how the court would rule in this case. Just like I told you months before the decision was released in the GoDaddy case how it would work out for you. My

cousin has worked for that court for many, many years and a lot of cases come and go. But yours always seem to stand out for their epic failure." (emphasis added) This email also calls for Morgan's death, as well as the death of Philip Klein.

A reasonable person, when reading this email in conjunction with the other emails, would most definitely conclude Mr. Dorrell has ex parte communications with the three (3) Justices at issue in this Motion, because once again Dorrell/Retzlaff have prior knowledge of these three (3) Justices' rulings, and Dorrell/Retzlaff brag these three (3) Justices have allegedly agreed in advance to rule adversely to Morgan and his clients. This makes recusal for these three (3) Justices mandatory under Texas law.

8. Dorrell/Retzlaff email dated December 9, 2015. (Exhibit "15")

This email states: "I told you those people on the Beaumont court hate your guts Morgan!" "I just got word that your motion for rehearing was denied in record time this morning." "My cousin told me not a single judge spent more than twenty seconds looking at your papers. Everyone there is all excited about the State Bar trial and you losing your law license." (emphasis added) This email again calls for Morgan's suicide.

Any reasonable person, when reading this email in conjunction with the others, would conclude the three (3) Justices at issue share Dorrell/Retzlaff's hatred of Morgan. This email provides more cogent evidence of: (1) persistent, ex parte communications between Dorrell/Retzlaff and the Ninth Court of Appeals; (2) improper knowledge by Dorrell/Retzlaff of how the Ninth Court of Appeals handles appellate proceedings involving Morgan and his clients; and (3) prior knowledge of the Ninth Court of Appeals' rulings before they are published, that are adverse to Morgan and his clients. This makes recusal of these three (3) Justices mandatory under Texas law.[4]

9. Dorrell's/Retzlaff's email dated December 31, 2015. (Exhibit "16")

This email states: "And you are facing your own court sanctions hearing soon." The email further provides: "You, McGibney and Klein. All brought down by the same person. All owing millions of dollars in court sanctions and judgments."

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[4] Dorrell/Retzlaff have insulted Justice Johnson by name in this email. Morgan believes Justice Johnson has integrity and would not participate in fixed rulings for political purposes.

Similar to the other emails, this email references future court hearings and future results of court hearings that Dorrell/Retzlaff warrant shall be adverse to Morgan. A reasonable person, when reading this email in conjunction with the other emails, would conclude that these three (3) Justices of the Ninth Court of Appeals must be recused from adjudicating any more appeals involving Morgan, either Pro Se or on behalf of his clients, due to Mr. Dorrell's repetitive claims through Mr. Retzlaff of pervasive bias by these three (3) Justices against Morgan and his clients, and Mr. Dorrell's extensive ex parte communications with the Ninth Court of Appeals.

10. Dorrell/Retzlaff email dated March 2, 2016. (Exhibit "17")

This email accurately predicted in advance the Texas Supreme Court would deny a Petition for Review filed by Morgan, stating: "(1) my cousin on the Beaumont court of appeals called a friend of hers in Austin at the Court and got a heads up, or (2) I have an amazing ability to predict the future which worked so well when I predicted the outcome of the Court of Appeals' decision in your stupid lawsuit against me in GoDaddy and in your even dumber lawsuit against the attorney for your ex-wife? Anyway, in a couple of days you will find out the news." (emphasis added)

The email further talks about the State Bar proceeding against Morgan, and concludes: "Shitheads like you always lose in the end."

This email brags of yet more ex parte communications by Mr. Dorrell with this Court, and strongly indicates Ninth Court of Appeals' rulings are fixed in advance against Morgan and his clients. A reasonable person, when reading this email in conjunction with the others, would conclude the recusal of these three (3) Justices is mandatory under Texas law.

11. Dorrell/Retzlaff email dated April 16, 2016. (Exhibit "18")

This email states: "Funny how I predicted that Texas Supreme Court decision just exactly one day before it was released just like how I 'predicted' each of the decisions from the Beaumont Court of Appeals weeks ahead of time and told you upon what grounds the court would use. Except something is not a prediction if you were told ahead of time what the results would be. Just does not seem fair, does it?" (emphasis added). This email continues by calling for the death of Morgan, and talking about Morgan's "repeated, spectacular losses..." in courts.

This email correctly predicted a Texas Supreme Court ruling denying a Petition for Review filed by Morgan; bragged about knowing in advance that Opinions written by these three (3) Justices would be

adverse to Morgan; bragged about Mr. Dorrell's ex parte communications with the Ninth Court of Appeals; and accurately states Dorrell/Retzlaff have knowledge "what the results would be" of cases involving Morgan that have been adjudicated by these three (3) Justices in the Ninth Court of Appeals. Any reasonable person, when reading this email in conjunction with the other emails, would conclude these three (3) Justices must be recused under Texas law.

12. Dorrell/Retzlaff email dated June 12, 2016. (Exhibit "19")

This email, in addition to attacking Phil Klein and his family, references Morgan's law firm as "failing" by stating: "Do you have any paying clients? I do not see many people coming in and out of your office lately... ."

Notably, Mr. Dorrell on behalf of Walker has filed a scurrilous pleading in this particular case, which he has included in the Clerk's Record to be used in this appeal, claiming Morgan has a "failing" law practice. Mr. Dorrell's pleadings in this case claiming Morgan has a "failing"law practice directly corroborates that Mr. Dorrell works together with Mr. Retzlaff through these Dorrell/Retzlaff emails, which also claim Morgan has a "failing" law practice.

That is, both Mr. Dorrell in a court pleading, and this Dorrell/Retzlaff email characterize Morgan's law practice as "failing." No reasonable person would find this to be a coincidence. Further, if Morgan's law practice is "failing" (which Morgan denies), then Retzlaff/Dorrell appear to credit the Ninth Court of Appeals and other courts with this alleged failure, by bragging about Mr. Dorrell's knowledge in advance about the Ninth Court of Appeals' repetitive, adverse rulings against Morgan and his clients. A reasonable person, when reading this email in conjunction with the other emails, would conclude that these three (3) Justices must be recused under Texas law.

13. Dorrell/Retzlaff email dated July 10, 2016. (Exhibit "20")

This email references the GoDaddy lawsuit (discussed infra), and Morgan's custody litigation, both involving adverse rulings against Morgan from the three (3) Justices at issue in this Motion to Recuse. This email also states: "I read about you and your stupid lawsuits and it is amazing that you just don't give it all up and find some other line of business to get involved in… ."

A reasonable person, when reading this email in conjunction with the other emails, would conclude that Morgan's law practice is facing

difficulties consistent with Dorrell/Retzlaff bragging about their extensive ex parte communications with the Ninth Court of Appeals, and their bragging about their prior knowledge of the Ninth Court of Appeals' allegedly pre-planned, adverse rulings against Morgan and his clients, which are accurately predicted by Dorrell/Retzlaff. A reasonable person would therefore conclude that these three (3) Justices must be recused under Texas law.

14. Dorrell/Retzlaff email dated July 21, 2016. (Exhibit "21")

This email references a scheduled sanctions hearing in the Stella Morrison federal civil rights case which was pending before Judge Hawthorne. The Motion for Sanctions was filed without authority by Mark Sparks, who is a co-administrator of www.viaviewfiles.net and files pleadings with incessant personal attacks upon Morgan and Mr. Klein. Mr. Sparks sought almost $200,000.00 in sanctions against Morgan and Morrison in federal court due to such matters as the State Bar proceeding against Morgan (which the State Bar dismissed), Mr. Klein's publications on his web blog, www.setpoliticalreview.com, Walker's rulings in Morgan's custody case, and other scurrilous insults by Mr. Sparks. The Magistrate recused himself before the hearing after Mr. Sparks admitted to ex parte

communications with the federal Court, on behalf of Walker. This Dorrell/Retzlaff email also states: "So many sanctions for you, for Stella, and this one case against Layne, and then some more sanctions against you in another case against Todd, then yet more sanctions against you and that fathead Phil Klein & Hartman against Layne. So hard to track them all. And you still owe my attorneys and the GoDaddy attorneys lots of money from your silly lawsuits against us."

This email, similar to other ones, predicts that the outcomes of federal and state court rulings will be adverse to Morgan and his clients in the future. This email, when read conjunction with the other emails, further supports the perception of any reasonable person that Dorrell/Retzlaff have ex parte communications with these three (3) Justices of the Ninth Court of Appeals, which makes their recusal mandatory under Texas law.

15. Dorrell/Retzlaff email dated July 29, 2016. (Exhibit "22")

This email calls for Morgan's death and states: "You should really save your money. Once your law practice is finally closed for good you will need the money if you want to eat." The email further provides: "Nobody will miss you when you are dead except for those of us who constantly

make fun of you."

A reasonable person, when reading this email in conjunction with the other emails, would conclude Morgan's law practice would be closing, if at all, due to fixed, adverse rulings against him, which Dorrell/Retzlaff accurately has predicted from the Ninth Court of Appeals. Further, this email indicates these three (3) Justices have a strong, pervasive bias against Morgan, because Dorrell/Retzlaff implies these three (3) Justices are included with the group of people who want Morgan dead and who constantly "make fun of" Morgan. A reasonable person, when reading this email in conjunction with all the other emails, would conclude that these three (3) Justices must be recused under Texas law.

16. Dorrell/Retzlaff email dated August 22, 2016. (Exhibit "23")

This email provides: "Do you think the judges in the Fifth Circuit Court of Appeals like you any better than the judges in the Beaumont Court of Appeals?" This email further states that Morgan and his client "will be facing massive sanctions and attorneys' fees by then for filing such a stupid lawsuit against someone she [Morrison] should not have messed with [referencing Walker]. Kind of like your stupid lawsuit against GoDaddy and me, Mr. Texxxan.com."

This email, when read in conjunction with the other emails, would cause a reasonable person to conclude: (1) Dorrell/Retzlaff have repetitive ex parte communications with the Ninth Court of Appeals; (2) these three (3) Justices personally dislike Morgan pursuant to their pervasive bias that demonstrates a high degree of antagonism toward Morgan and his clients; and (3) Walker obtains preferential treatment in both federal court and in the Ninth Court of Appeals. This email also predicts future court rulings will be adverse to Morgan and his clients. Again, all of Dorrell/Retzlaff's predictions in the past regarding the Ninth Court of Appeals' rulings have been accurate. This email, therefore, when read in conjunction with the other emails, would cause any reasonable person to conclude these three (3) Justices must be recused under Texas law.

2) Mr. Dorrell, Walker's attorney, through these emails accuse Chief Justice McKeithen, Justice Horton and Justice Kreger of several Texas Judicial Cannon violations.

As set forth above, Dorrell/Retzlaff's repetitive emails to Morgan brag about: (1) adverse rulings by these three (3) Justices against Morgan and his clients; (2) prior knowledge of these adverse rulings from these three (3) Justices that are adverse to Morgan and his clients; (3) Mr. Dorrell's extensive ex parte communications with the Ninth Court of

Appeals; and (4) these three (3) Justices have a strong, pervasive bias against Morgan demonstrating a high degree of antagonism. In short, these emails demonstrate Morgan and his clients do not have Due Process rights in the Ninth Court of Appeals. These emails are also consistent with the contents of Mr. Sparks' unauthorized filings in federal court that admitted ex parte communications with the Honorable Magistrate Hawthorne's staff, in which Mr. Sparks requested the federal judge sanction Morgan for such unconstitutional matters including Mr. Klein's valid exercise of his First Amendment rights, Walker's rulings in Morgan's child custody case, etc. Mr. Dorrell's emails, on behalf of Walker, therefore accuse these three (3) Justices of violating the following Texas Judicial Cannons:

1. Judicial Cannon No. 1, which is entitled "Upholding the Integrity and Independence of the Judiciary."
2. Judicial Cannon No. 2, which is entitled "Avoiding Impropriety and the Appearance of Impropriety and All of the Judge's Activities."
3. Judicial Cannon No. 3, which is entitled "Performing the Duties of Judicial Office Impartially and Diligently."

In addition to directly impugning the integrity of these three (3) Justices and the entire Ninth Court of Appeals, any reasonable person reading the Dorrell/Retzlaff emails would conclude that Hartman would not be entitled to Due Process on this appeal pending before these three (3) Justices, because: (1) Hartman is represented by attorney John Morgan; and (2) Retzlaff/Dorrell brag that these three (3) Justices have a pervasive bias against Morgan and his clients that exhibits a high degree of antagonism.

Mr. Dorrell's conduct through these emails, standing along, admits to violating multiple Texas Attorney Disciplinary Rules, as follows:

1. Rule 3.03, entitled "Candor Toward the Tribunal."
2. Rule 3.04, entitled "Fairness in Adjudicatory Proceedings."
3. Rule 3.05, entitled "Maintaining Impartiality of a Tribunal."
4. Rule 8.03, entitled "Reporting Professional Misconduct."
5. Rule 8.04, entitled "Misconduct."[5]

A reasonable person, when considering all this evidence, would conclude

[5] The Texas State Bar Investigator, Mr. Timothy Baldwin, has been informed repeatedly of Mr. Dorrell's activities that are identified in this Motion, but yet the Texas State Bar will not investigate Mr. Dorrell on these issues, which has the effect of encouraging more of Mr. Dorrell's misbehavior.

these three (3) Justices have an impermissible, pervasive bias against Morgan and his clients that requires recusal under Texas law and under the United States and Texas Constitutions.

3) The Ninth Court of Appeals' rulings involving Morgan, whether he appeared Pro Se or on behalf of clients, from 2012 to the present, when considered in conjunction with the Dorrell/Retzlaff emails, would cause any reasonable person to conclude these three (3) Justices have a pervasive bias with a high degree of antagonism against Morgan and his clients, to such an extent that Hartman, represented by Morgan, will be denied Due Process unless these three (3) Justices are recused.

A review of this Court's decisions from 2012 (the year Walker terminated Morgan's parental visitation rights) reveals that Morgan and his clients have lost every substantive proceeding in the Ninth Court of Appeals, with one exception. Prior to 2012, Morgan had a multitude of successful results on appeals in the Ninth Court of Appeals, and had been retained on a few occasions by other attorneys as appellate counsel in this Court for cases Morgan was not involved in at the trial court level. These adverse adjudications include the following:

1. Cause No. 09-12-00463-CV; Texas Department of Transportation v. Tina Cash; in the Ninth District Court of Appeals (signed January 2, 2013 before the panel consisting of

Chief Justice McKeithen, Justice Kreger and Justice Horton);

2. Cause No. 09-13-00095-CV; In re: John S. Morgan and John S. Morgan, P.C. d/b/a Morgan Law Firm; In the Ninth District Court of Appeals (signed March 14, 2013, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton;

3. Cause No. 09-13-0039-CV; Amanda Lafferty v. Jasper County Sheriff's Department; In the Ninth District Court of Appeals, (signed October 31, 2013, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton);

4. Cause No. 09-13-00285-CV; GoDaddy.com, LLC v. Holly Toups, et al.; In the Ninth District Court of Appeals (signed November 5, 2013, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton);

5. Cause No. 09-13-00490-CV; In re: John S. Morgan and John S. Morgan, P.C. d/b/a Morgan Law Firm (signed December 12, 2013, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton);

6. Cause No. 09-12-00464-CV; In re: AKM, JDM & DMM; In the

Ninth District Court of Appeals (signed December 30, 2013, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton;

7. Cause No. 09-12-00521-CV; Calvin Brown v. CB&I, Inc., Mike Sossman, Irving Gatica & Mike Anderson, In the Ninth District Court of Appeals (signed on January 16, 2014 before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton)

8. Cause No. 09-15-0073-CV; Sheryl Johnson-Todd v. John S. Morgan; In the Ninth District Court of Appeals (signed May 11, 2015, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton) (Johnson-Todd I);

9. Cause No. 09-15-00210-CV; Sheryl Johnson-Todd v. John S. Morgan; In the Ninth District Court of Appeals (signed July 23, 2015, before the panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton) (Johnson-Todd II);

During this same time, this Court has ruled favorably to Morgan,

Pro Se, on one (1) occasion, and favorably to Morgan's client on one (1) occasion, as follows:

1. Cause No. 09-14-00438-CV; In re: AKM; In the Ninth District Court of Appeals (signed October 8, 2014, before the Panel consisting of Chief Justice McKeithen, Justice Kreger and Justice Horton) (denying Petition for Mandamus filed by Johnson-Todd to "clarify any issues the visiting judge assigned to hear the case may decide upon remand… ," which asked this Court only to restate its prior ruling regarding the issues on remand in Morgan's child custody case); and,

2. Cause No. 09-13-00579-CR; In re: The State of Texas v. Stephen Louis Hartman; In the Ninth District Court of Appeals (signed April 16, 2014, before the Panel consisting of Chief Justice McKeithen, Justice Johnson, Justice Horton, with Justice Johnson dissenting) (ordering the production of the remainder of the Tanner audio-tape on mandamus, as containing potentially exculpatory evidence, consisting of 41 minutes of erased tape and additional conversation after the erased portion).

A) Certain aspects of some of this Court's adverse rulings against Morgan, Pro Se, or his clients, could be interpreted by a reasonable person to demonstrate these three (3) Justices have a pervasive bias against Morgan and his clients with a high degree of antagonism.

The authorities cited supra is clear that a party seeking recusal of a judge based upon a judge's ruling has a stronger burden for recusal than for a party seeking recusal based upon extra-judicial statements, such as the Dorrell/Retzlaff emails. That being said, however, a pattern of judicial rulings can be grounds for a party to seek recusal of a judge or, in this case, these three (3) Justices. See Liteky v. United States, 510 U.S. 540, 555 (1994) (recusal is proper if a judicial ruling or rulings demonstrate a judge has a pervasive bias with a high degree of antagonism toward the party or attorney). The Dorrell/Retzlaff emails alone are so direct, they provide powerful grounds for requiring recusal under Texas law, as an extra-judicial source. The following portion of this Motion to Recuse, therefore, corroborates Dorrell/Retzlaff's braggadocios emails regarding the Ninth Court of Appeals' pervasive bias against Morgan and his clients, and Mr. Dorrell's ex parte communications with the Ninth Court of Appeals. For the sake of brevity, Appellee will not discuss all issues that could be examined in each of the rulings from these three (3) Justices, but

instead will focus on certain aspects of some of these Opinions that, to a reasonable person with knowledge of the circumstances, could demonstrate that these three (3) Justices have a pervasive bias against Morgan and his clients with a high degree of antagonism, to such an extreme extent that Hartman will be denied Due Process if these three (3) Justices rule on this Interlocutory Appeal.

B) These three (3) Justices' ruling in Morgan's custody case demonstrates, to a reasonable observer, these Justices have a pervasive bias against Morgan with a high degree of antagonism.

The case In re: AKM, JDM, & DMM; No. 09-12-00464-CV, demonstrated on the face of the appellate record, rampant illegality by Walker, the Amicus, and Kathleen Winslow Morgan's trial counsel. An impartial appellate court should have reversed all of Walker's rulings and remanded for a new trial. This did not occur. Instead, these three (3) Justices ignored critical facts and engaged in judicial nullification that is apparent to a reasonable person who read the Briefs, the appellate record, and this Court's Opinion.

For example, all of Morgan's Trial Exhibits were destroyed prior to appeal. The destruction of these Exhibits was obvious, because the Record on Appeal (consisting of the Clerk's Record and the Reporter's Record with

trial Exhibits) contained no Trial Exhibits of Morgan, but contained all fo Ms. Winslow Morgan's Trial Exhibits. Roger McCabe's trial notebook was substituted for Morgan's Trial Exhibits, by Judge Warne's Order, despite undisputed evidence that Mr. McCabe's trial notebook was not substantially the same as Morgan's Trial Exhibits. Since the Record on Appeal could not be accurately reconstructed, Morgan was entitled to a new trial as a matter of law. Tex. R. App. P. 34.6(e)(f).

The Court did not address Morgan's argument that Walker's No-Contact Order was unprecedented, unconstitutional, and Walker entered this Order in a retaliatory rage as he was ranting about Philip Klein. Mr. Klein was not a party or a witness in Morgan's child custody case.

The Court nullified Morgan's argument that Walker should have been recused (therefore entitling Morgan to a new trial), based on his attorneys' Motion to Recuse. Judge Underwood would not permit Mr. Klein to testify at the recusal hearing. Morgan's attorneys at that time, in accordance with Tex. R. Evid. 103, did not make a formal Bill of Exceptions based on Judge Underwood's ruling excluding Mr. Klein's testimony. Instead, Morgan's attorneys properly preserved appellate review over Judge Underwood's ruling, for consideration by the Ninth

Court of Appeals, by describing accurately what Mr. Klein's testimony would have shown. These three (3) Justices, however, engaged in judicial nullification by refusing to follow the clear terms of Tex. R. Evid. 103 and all cases decided on Rule 103, holding that a formal Bill of Exception is no longer required under Texas law to preserve a potential trial court error for appellate review, unless a party requests the court "direct that an offer of proof be made in question-and-answer form." Neither the court nor opposing counsel made such a request. See Bowman v. Patel, No. 01-10-00811-CV 2012 WL 524428 (Tex. App.–Houston [1st Dist.] 2012, no pet.); In re: NRC, 94 S.W.3d 799, 806 (Tex. App,. – Houston [14th Dist.] 2002, pet. denied). These three (3) Justices declined to follow every single case under Texas law applying Tex. R. Evid. 103, holding Morgan did not preserve the issue for appellate review, for lack of a formal Bill of Exceptions. This Court, therefore, avoided reversing for a new trial.

These there (3) Justices ignored that Walker and Judge Warne did not follow any of the procedures or legal grounds under Tex. Family Code §161.001, to terminate Morgan's parental visitation rights. The Texas Family Code does not authorize terminating parental visitation rights, because a blogger complains about Walker's judicial corruption.

The Court essentially labeled Morgan mentally ill, by ignoring the undisputed evidence of Morgan's mental state and by impliedly approving Walker's "Therapeutic Reunification Plan" drafted by Ms. Winslow-Morgan's attorneys' chosen expert, Dr. Abrams, to reunite Morgan with his children. The evidence on Morgan's mental stability included one (1) PhD psychologist's report (Dr. Roberts), and two (2) psychiatric reports (Dr. Gripon and Dr. Doguet), all three (3) of them consistently finding Morgan had no mental disease or illness. These three (3) Justices ignored this evidence and approved the "Therapeutic Reunification Plan" essentially adjudicated Morgan mentally ill without any evidence. If Morgan had participated in this Plan as drafted, his participation would certainly have been used by Walker to attempt to revoke Morgan's law license, because participation in the Plan required Morgan to admit he was mentally ill.[6]

The Court ignored A.K.M.'s Statement under oath regarding her outcry of child abuse perpetrated by her mother, Kathleen Winslow

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[6] Walker and his cohorts (including Mr. Retzlaff) have filed several Grievances seeking to revoke Morgan's law license. This pattern of Grievances renders Morgan's concerns about Walker, et al., seeking to revoke Morgan's law license if he had admitted mental illness in order to see his children, a valid concern.

Morgan, which Walker sealed notwithstanding Texas Family Code §153.009(b) has a mandatory requirement that a child's in chambers interview MUST be made a part of the record. See In re A.C., 387 S.W.3d 673, 676 (Tex. App. – Texarkana 2012, pet. denied). A reasonable person could conclude this Court nullified this issue.

This Court ignored the Amicus, Ms. Raquel West (currently Judge West) testified illegally against Morgan. The Texas Family Code §107.007(4) prohibits an Amicus from testifying. Ms. West also testified in a materially dishonest manner regarding the contents of A.K.M.'s in-chambers' testimony.

These three (3) Justices refused to consider A.K.M.'s testimony, which such refusal demonstrates to a reasonable person would conclude literally helped Walker conceal this critical evidence.[7] The testimony of A.K.M. remains sealed to this day, in violation of the Texas Family Code §153.009(b), which would cause any reasonable person to conclude that these three (3) Justices are still hiding evidence that would exonerate

[7] To this day, Morgan has no contact with his daughter. This caused, and will continue to cause, severe psychological damage to A.K.M. The period of separation has also caused harm to J.D.M. and D.M.M.

Morgan from the allegation he caused A.K.M. to falsely report sexual abuse by Kathleen Winslow Morgan.

These three (3) Justices ignored Walker's extreme impropriety of placing Morgan's former attorney, Roger McCabe, on the stand and cross-examining him in order for Walker to "correct the record."

These three (3) Justices ignored that Walker's adjudication of the case focused heavily on the activities of Philip Klein and the valid exercise of Mr. Klein's First Amendment rights through the publication of articles on his web blog, as the grounds for terminating Morgan's parental visitation rights, even though: (1) Mr. Klein's articles have no relevance to Morgan's fitness as a parent; and (2) Mr. Klein was not a party or a witness in Morgan's child custody case.

These three (3) Justices ignored the findings of Dr. Douget and Dr. Roberts, as well as Dr. Gripon, finding no psychiatric or mental issues with Morgan.

These three (3) Justices ignored Walker confiscated the cell phones of both A.K.M. and Morgan. The Court ignored Walker accessed Morgan's law firm email and read Morgan's privileged attorney-client communications after he confiscated Morgan's cell phone, again

demonstrating Walker should have been recused and Morgan was entitled to a new trial.

These three (3) Justices ignored Walker erased all evidence of Kathleen Winslow Morgan's sexual abuse contained on the cell phone of A.K.M., which such evidence Morgan and a neutral witness had viewed prior to Walker's purloining of A.K.M.'s cell phone.

The Court ignored Walker unlawfully sealed and possibly removed from the record Kathleen Winslow Morgan's naked photographs of D.M.M., and Walker also destroyed notes handwritten by A.K.M., corroborating sexual abuse by her mother against A.K.M., D.M.M. and J.D.M.

When this Court could not find evidence Morgan was either unfit as a parent or was mentally ill, this Court quoted as "facts" the arguments of Sheryl Johnson-Todd, the attorney for Kathleen Winslow Morgan. It is axiomatic that attorney argument is not evidence.

The issues inherent in the Court's rulings would lead any reasonable person to conclude that these three (3) Justices have a strong, pervasive bias with a high degree of antagonism against Morgan that denied Morgan Due Process of Law, requiring these three (3) Justices' recusal in

this case.

C) This Court's Opinion in Cause No. 09-13-00285-CV; GoDaddy.com, LLC v. Holly Toups, et al, is important for this Motion. Mr. Retzlaff claims that he was in fact the Mr. Texxxan who was involved in the revenge porn industry that included child pornography.

The GoDaddy Ninth Court of Appeals ruled the Communications Decency Act (CDA) §230 provides civil immunity for GoDaddy knowingly hosting websites containing child pornography and unlawful obscenity. The Court's ruling relied on, in part, on a Seventh Circuit Opinion in Doe v. GTE Corp., 347 F.3d 655 (7th Cir. 2003), in which the Seventh Circuit addressed a website hosting unauthorized videos of athletes, but that case did not address child pornography or intentional tort claims under CDA §230.

These three (3) Justices did not rule on Appellant's arguments that CDA §230 should not be interpreted to protect knowing violations of federal and state penal codes, including child pornography and obscenity. These are the facts at issue in the GoDaddy case.

These three (3) Justices did not address that GoDaddy had actual notice that the websites at issue violated mandatory federal age verification and record keeping requirements, and therefore these

websites operated in violation of the Children's Protection and Obscenity Enforcement Act, 18 U.S.C. §257 & 257a, which contain criminal penalties. These three (3) Justices likewise did not address that these websites are illegal enterprises in violation of Tex. Penal Code §43.21, 43.22 & 43.23.

These three (3) Justices actually reversed its prior Opinion in Milo v. Martin, 311 S.W.3d 210 (Tex. App. – Beaumont 2010, no pet.), in which the Ninth Court of Appeals held CDA §230 does not preempt state law intentional tort claims. In the GoDaddy Opinion, however, the Court dismissively stated Milo did not have such a holding, but yet the Court did not explain why this Court's prior Opinion in Milo was being reversed or why it otherwise did not apply to the GoDaddy case's facts. In so ruling, this Court also ignored an en banc Opinion of the federal Ninth Circuit Court of Appeals, Fair Housing Counsel v. Roommates, LLC, 521 F.3d 1157, 1169 (9th Cir. 2008) (en banc) (holding under CDA §230(c)(2)(A) there is no civil immunity for malicious misconduct for a website hosting company).

D) These three (3) Justices' ruling in Sheryl Johnson-Todd I & II, could reasonably be interpreted by an observer to demonstrate a pervasive bias of these three (3) Justices against Morgan with a high degree of antagonism.

In Sheryl Johnson-Todd (I & II), Morgan appeared Pro Se before the Ninth Court of Appeals in both appeals. Morgan provided substantial evidence pertaining to the same misbehavior of Dorrell/Retzlaff that is at issue in this Motion to Recuse. These arguments were relevant to several legal points Morgan raised in both appeals. The Ninth Court of Appeals did not acknowledge Mr. Dorrell's unethical tactics, which include the improper activities which Morgan is raising in this Motion to Recuse.

In Sheryl Johnson-Todd (II), Mr. Klein sent an Affidavit attaching Dorrell/Retzlaff emails attesting to Mr. Dorrell's ex parte communications with the Ninth Court of Appeals, and Mr. Dorrell's knowledge in advance of the Ninth Court's rulings that are adverse to Morgan. See Exhibit "2," Mr. Klein's Affidavit." Chief Justice McKeithen ensured that Mr. Klein's Affidavit and the included Dorrell/Retzlaff's emails were not included in the record, because the Chief Justice returned them to Mr. Klein. The Chief Justice wrote a letter strongly implying Mr. Klein engaged in improper behavior for informing the Ninth Court of Appeals about these

matters. Any reasonable person viewing handling of these issues by Chief Justice McKeithan could conclude that these three (3) Justices sought to ensure that Mr. Dorrell's misconduct at issue in this Motion to Recuse would not be mentioned in the Court's Opinions and would not be part of the appellate record.

In Johnson-Todd (II), these three (3) Justices labeled Morgan a "bully," for trying to protect information regarding Morgan which was sealed as part of a plea bargain that Morgan entered into in order to protect himself from a wrongful felony Indictment, with threats of violence from the Aryan Brotherhood (which is a prison gang). Persons have told Morgan directly they were "shocked" or "surprised" by these three (3) Justices' ad hominem labeling of Morgan, which was entirely not necessary for the Court's ruling, particularly because Morgan was seeking to enforce a legitimate goal. Any reasonable person could conclude, therefore, that these three (3) Justices actions in these appeals demonstrate a pervasive bias against Morgan with a high degree of antagonism, which makes their recusal mandatory.

CONCLUSION

For the reasons set forth above, Morgan requests this Court recuse Chief Justice McKeithen, Justice Kreger and Justice Horton from involvement in this appeal and in this case.

WHEREFORE, PREMISES CONSIDERED, Appellee Stephen Hartman prays that this Court grant this Motion to Recuse Chief Justice McKeithen, Justice Kreger and Justice Horton and grant Appellee such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

/s/ John S. Morgan
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CERTIFICATE OF CONFERENCE

Undersigned Counsel sent correspondence dated September 23, 2016, to attorney for Defendant Walker who is Opposed to this Motion.

/s/ John S. Morgan
JOHN S. MORGAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been properly transmitted to all appropriate parties via electronic filing on this 23rd day of September, 2016:

/s/ John S. Morgan
JOHN S. MORGAN