IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

STELLA MORRISON	§	
	§	
v.	§	CIVIL ACTION NO. 1:13-CV-00327-KFG
	§	
LAYNE WALKER, et al.	§	
	§	

ORDER DENYING RULE 60(B) MOTION FOR RELIEF

Pending before the court is Plaintiff Stella Morrison's "Motion for Relief from the Final Judgment and Prior Rulings Pursuant to Fed. R. Civ. P. 60(b)." Doc. No. 139. Morrison requests the court set aside both the final judgment entered by the Honorable Zack Hawthorn on November 2, 2015 (Doc. No. 108), as well as any other prior rulings entered by Judge Hawthorn in this case. Morrison argues such relief is appropriate because one of Judge Hawthorn's law clerks, Jennifer Fisher, allegedly participated in *ex parte* communications with counsel to Defendant Layne Walker, and because Judge Hawthorn should have recused himself from the matter *ab initio*. For the reasons stated below, Morrison's motion is denied.

I. BACKGROUND

The present matter has an extensive history of litigation, stretching back over three years. The portions relevant to the present motion will be briefly summarized. On May 22, 2013, Morrison, a local attorney in Jefferson County, Texas, filed a complaint against three defendants: Walker, Jefferson County and the State of Texas. Doc. No. 1. Morrison asserted multiple violations of her First Amendment rights to free speech and freedom of association, her Fourteenth Amendment rights to due process and equal protection, claims under 42 U.S.C. §§ 1981 and 1983, as well as several state law torts. Morrison alleged that these violations all occurred while Walker served as the presiding judge for the 252nd District Court of Jefferson

County, Texas, a position he held at all times relevant to the lawsuit until 2014, at which point he resigned. *Id*. Morrison further alleges that the impetus for Walker's alleged misconduct is a grudge Walker held against Morrison for her husband's decision to run against Walker in the 2006 judicial election for the seat on the 252nd District Court bench. Doc. No. 74, at 2.

After granting Walker's initial motion to dismiss on the grounds of judicial immunity (Doc. No. 32), Morrison sought leave on two separate occasions to file amended complaints. *See* Doc. Nos. 36, 46. Despite Walker's opposition to both motions, Judge Hawthorn each time granted Morrison leave to amend her complaint. Additionally, Judge Hawthorn afforded Morrison the opportunity to re-plead one outstanding claim, an allegation of a false perjury charge, to enable the court to determine whether such alleged acts of Walker were protected under the doctrine of absolute judicial immunity. Doc. No. 32. On May 20, 2014, Morrison filed the "new version" of her amended complaint, adding two new Defendants, Jefferson County Sheriff's Deputy Anthony Barker and former Jefferson County District Attorney Tom Maness, as well as adding factual allegations to support her claim that Walker had conspired to have false perjury charges levied against her. *See* Doc. No. 46, ex. 2. In her amended complaint, Morrison also re-asserted previously-dismissed claims against Walker, which Judge Hawthorn refused to re-consider, making clear that "the *only* live claim against Walker is the one relating to his alleged filing of false (perjury) charges." Doc. No. 59, at 2.

In response to Judge Hawthorn's order affording her leave to file a new amended complaint, Morrison filed a fourth version of her first amended complaint, retaining claims against Walker, Jefferson County, Deputy Barker, and Maness. Doc. No. 74. In this third amended complaint, Morrison maintained her allegations of false perjury charges against Walker, but further alleged a variety of additional wrongs allegedly committed by Walker,

including preventing her from entering certain public areas in the courthouse of the 252nd District Court and prohibiting her from appearing before the 252nd District Court. *Id*. at 2-4. Moreover, Morrison alleged that Deputy Barker assaulted her and physically removed her from a courthouse hallway, and that Maness conspired with Walker to have false perjury charges filed against her, causing her to sit through five hours of grand jury questioning. *Id*. at 5-6. Finally, Morrison alleged that because Jefferson County generally supported and empowered Walker in his allegedly criminal and unconstitutional behavior towards Morrison, it was also liable for Walker's alleged misconduct. *Id*. at 6.

Walker, Jefferson County, Deputy Barker and Maness each filed Rule 12(b)(6) motions to dismiss, alleging, amongst other things, that Morrison failed to fully allege facts supporting her claim regarding the alleged conspiracy to file perjury charges against her, and that Walker, Jefferson County, Deputy Barker and Maness were each entitled to various forms of judicial, prosecutorial or official immunity. *See* Doc. Nos. 77, 78, 82, 83. Consequently, Judge Hawthorn ordered Morrison to file a supplemental pleading regarding Walker and Maness' alleged conspiracy to seek falsified perjury charges against her, as the facts in her amended complaint again did not allow the court to reasonably determine whether Walker was entitled to judicial immunity. Doc. No. 102. Morrison filed a response conceding that although she initially claimed that the incident forming the basis of her false perjury claim "had nothing to do with a case that was pending or had been adjudicated in Walker's court," (Doc. No. 74, at 6), after reviewing the court reporter's transcript, the incident in question had indeed occurred in Walker's court, and as a result would be barred under the doctrine of judicial immunity. Doc. No. 104 at 1-2. Accordingly, on August 28, 2015, Morrison voluntarily withdrew her claims against Walker and Maness. *Id*. at 3. On September 24, 2015, Judge Hawthorn dismissed

Morrison's only remaining claims in the litigation, those against Deputy Barker and Jefferson County, as barred by qualified immunity, and alternatively, for failure to state a claim for which relief may be granted, and expressly prohibited her from yet another opportunity to amend her complaint. Doc. No. 107. On November 2, 2015, observing that there were no remaining Defendants or active claims in Morrison's case, Judge Hawthorn directed the clerk of court to close the case. Doc. No. 108.

Two weeks after the closing of the Morrison's case, Walker moved for attorney's fees to be paid by Morrison. Doc. No. 110. Nearly four months later, after Judge Hawthorn granted Morrison leave to file a response to Walker's motion for attorney's fees, Morrison responded to Walker's motion (Doc. No. 118) and an evidentiary hearing was set for May 12, 2016, to consider Walker's motion. Morrison subsequently requested two separate continuances of the evidentiary hearing, both of which were granted by Judge Hawthorn, and the hearing on Walker's motion for attorney's fees was ultimately set for July 21, 2016.

Ten days prior to the evidentiary hearing, Morrison moved to recuse Judge Hawthorn, alleging that he was "biased or prejudiced against (Morrison's counsel) and by extension to (Morrison)" due to allegedly disparate treatment between Morrison and Walker. Doc. No. 125, at 2. Morrison's motion to recuse, however, was filed by her prior attorney, John Morgan. A month prior to her motion to recuse, in connection with her second continuance request for the evidentiary hearing, Morrison informed the court that her new lawyer, Laurence Watts, was substituting as counsel "in place of John Morgan." Doc. No. 122, at 1. As such, Judge Hawthorn denied Morrison's motion to recuse, while granting Morrison leave to re-file her motion by her new attorney of record, Watts. Doc. No. 126. Morrison re-filed her motion to recuse Judge Hawthorn a week later, largely restating the allegations made in her initial motion

to recuse. Doc. No. 128. On July 20, 2016, Judge Hawthorn denied Morrison's motion. Doc. No. 131. On the same day, Morrison filed a motion to reconsider Judge Hawthorn's order, alleging that Walker's response (Doc. No. 129) to Morrison's motion to recuse revealed *ex parte* communications between Walker's attorneys and Judge Hawthorn's staff. Doc. No. 134. Because the evidentiary hearing regarding Walker's motion for attorney's fees was set for the next day, Judge Hawthorn entered a brief order recusing himself from Morrison's case.[1] Doc. No. 136.

After Judge Hawthorn recused, the case was transferred to the undersigned for all further proceedings. Soon thereafter, Morrison filed the present Rule 60(b) motion for relief from Judge Hawthorn's final judgment, and the Court of Appeals for the Fifth Circuit issued an order remanding Morrison's appeal of this case to this court pending disposition of her Rule 60(b) motion. Doc. No. 144.

II. LEGAL STANDARD

Rule 60(b) of the Federal Rules of Civil Procedure provides that a court may relieve a party from a final judgment, order, or proceeding for several reasons, including mistake; newly discovered evidence; fraud, misrepresentation or misconduct by an opposing party; a void judgment; a judgment based on a prior judgment that has since been reversed or vacated; and finally, a broad savings clause that includes "any other reason that justifies relief." FED. R. CIV. P. 60(b)(1)-(6). A motion for relief from final judgment "must be made within a reasonable time," and no later than a year after the entry of the judgment in question when the moving party

[1] As Judge Hawthorn notes in his order denying a motion to recuse filed by Watts in a companion case to the present matter, *Klein v. Walker*, Judge Hawthorn's order denying Morrison's motion to recuse had been signed and entered, but not yet docketed, prior to Walker's response to Morrison's motion. *See* No. 1-14-cv-509, Doc. No. 81, at 2 (E.D. Tex. Sept. 1, 2016). Judge Hawthorn conducted his own investigation into the matter and concluded that "no improper *ex parte* communications had in fact occurred." *Id*. Because "Walker's response gave the *appearance* that *ex parte* communications may have occurred," however, and "out of an abundance of caution," Judge Hawthorn chose to voluntarily recuse himself. *Id*. (emphasis in original).

alleges mistake ((b)(1)), newly discovered evidence ((b)(2)), or fraud ((b)(3)). FED. R. CIV. P. 60(c)(1).

For motions brought under Rule 60(b)(4)-(6), there is no clear consensus on what constitutes a "reasonable amount of time," and the court's judgment as to whether a greater than reasonable amount of time has passed before the moving party brings its motion for relief is largely contingent upon the factors of the particular case. *See, e.g., Yanow v. Weyerhaeuser S.S. Co.*, 274 F.2d 274 (9th Cir. 1958), *cert. denied*, 362 U.S. 919 (1960) (where litigant brought motion for relief under Rule 60(b)(4) eleven months after decision was rendered, but litigant "had frequent occasion to sift (through) the record," and had already proceeded with his appeal, an unreasonable time had passed); *U.S. v. 119.67 Acres of Land, More or Less, Situated in Plaquemines Par., State of La.*, 663 F.2d 1328 (5th Cir. 1981) (motion brought by government to set aside stipulated condemnation judgment four years after judgment was entered was not an unreasonable amount of time because government had not previously realized the condemned land was necessary for navigational servitude).

The savings clause contained in Rule 60(b)(6) provides the court with its broadest authority to relieve the moving party from a final judgment "'upon such terms as are just,' provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988) (internal citations omitted). Thus, a motion requesting relief under Rule 60(b)(6) must provide grounds that are separate and distinct from any other articulated grounds for relief, as "clause (6) and clauses (1) through (5) are mutually exclusive." *Id.* at 863, n. 11. Finally, while the burden of proof for relief from a final judgment

under Rule 60(b) is generally high, relief under (b)(6) is only granted under "extraordinary circumstances." *Id*.

III. DISCUSSION

Morrison raises four grounds for setting aside Judge Hawthorn's final judgment, as well as all other rulings made in her case: (i) the alleged *ex parte* communications between one of Judge Hawthorn's law clerks, Jennifer Fisher and Joe Fisher,[2] one of Walker's attorneys, constitute newly discovered evidence under Rule 60(b)(2); (ii) in his response to Morrison's motion to recuse, Walker's counsel admitted to such *ex parte* communications, constituting fraud under Rule 60(b)(3); (iii) Judge Hawthorn's final judgment is void under Rule 60(b)(4), because his spouse, a director in the Jefferson County Dispute Resolution Center (the DRC) constitutes a conflict that required his recusal *ab initio*; and (iv) Judge Hawthorn's failure to recuse constitutes such an extraordinary circumstance under Rule 60(b)(6) that justice demands relief for Morrison from his final judgment. Although the underlying claims in Morrison's four grounds for relief are largely redundant, the undersigned shall address each ground individually.

i. Morrison's "newly discovered evidence" of ex parte communications has been refuted, and even if it was not, such communications are immaterial to Judge Hawthorn's final judgment

Morrison alleges that Walker's response to Morrison's motion to recuse (Doc. No. 129) reveals *ex parte* communications between Walker's counsel and one of Judge Hawthorn's law clerks, Jennifer Fisher, due to the following statement: "that is neither here nor there because [the law clerk in question] is not working on this case." Doc. No. 129, at 9-10. This statement,

[2] Morrison alleges that Edward Fisher, Jennifer Fisher's husband, was also involved in Walker's representation. Doc. No. 139, at 5. Apart from Morrison's bare assertion "based on information and belief," she offers no additional facts establishing that Edward Fisher was involved in Walker's representation, and Edward Fisher is not listed as an attorney of record on the court's docket. As a result, the undersigned will only discuss alleged *ex parte* communications between Jennifer Fisher and Joe Fisher, as the discussion would be identical regardless of Edward Fisher's alleged involvement in Walker's representation.

according to Morrison, could not have been made by Walker's counsel but for *ex parte* communications with the law clerk, and such *ex parte* communications constitute newly discovered evidence under Rule 60(b)(2). Doc. No. 139, at 4.

Although Judge Hawthorn did not address the allegation of *ex parte* communications in his order recusing himself from this case (Doc. No. 136), he did choose to address it in another matter, *Klein v. Walker*, where Watts (who also represents the plaintiff in that matter, Phillip Klein) also demanded Judge Hawthorn recuse himself, largely on the basis of Judge Hawthorn's recusal in this matter. *See* No. 1-14-cv-509, Doc. No. 49. In his order denying Klein's motion to recuse, Judge Hawthorn indicated that in the present matter, before his order denying Morrison's motion to recuse was docketed, Walker filed his response to Morrison's motion to recuse, including the statement regarding Judge Hawthorn's law clerk. *See* No. 1-14-cv-509, Doc. No. 81, at 2. After Morrison filed her motion for reconsideration of Judge Hawthorn's denial of her motion to recuse, Judge Hawthorn chose to investigate Morrison's allegations of *ex parte* communications, including consultation with his staff. *Id.* Judge Hawthorn's investigation revealed that no improper *ex parte* communications had occurred, but because "Walker's response gave the *appearance* that *ex parte* communications may have occurred regarding that case," Judge Hawthorn felt it proper to recuse. *Id.* (emphasis in original) (citing *Liteky v. U.S.*, 510 U.S. 540, 548 (1994) (grounds for recusal are "to be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance"). In that case, after the explanation was given, Klein chose not to appeal Judge Hawthorn's order denying recusal to the district judge, and is thus barred from raising it on appeal except on the grounds of plain error. *See* FED. R. CIV. P. 52(a).

Walker offers another explanation as to why it would be "common sense" for both parties to know that the law clerk in question was not involved in the case: both attorneys were aware that Russell Welch, another law clerk of Judge Hawthorn's, was the clerk handling Morrison's case. Doc. No. 142, at 8. Walker notes that as a consequence of Morrison's counsel often needing extensions or continuances, counsel to both Walker and Morrison were in frequent contact with Welch to determine appropriate rescheduling of both hearings and deadlines. *Id*. Walker also supplied email correspondence between Welch, Walker's counsel, and both Morgan and Watts, indicating that Morgan and Watts were both aware that they were to contact Welch when extensions were needed. Doc. No. 142, ex. 1. Thus, Walker argues, when he stated that Jennifer Fisher was not involved in this matter, *ex parte* communications were not needed for such a statement. Rather, just as Morgan and Watts "themselves were emailing Mr. Welch—not Mrs. Fisher—they were doing so because they *knew* Mr. Welch, and not Mrs. Fisher, was the law clerk handling this case," Walker made the same observation in his response to Morrison's motion to recuse. *Id*. (emphasis in original).

Tellingly, in her reply to Walker's response to her Rule 60(b) motion, Morrison makes no mention of this argument. *See* Doc. No. 143. She does not address her counsel's email exchanges with Welch, nor does she refute that it was common knowledge among both her and Walker's counsel that when extensions or other issues arose during litigation, they knew to contact Welch, and not Jennifer Fisher. As such, the undersigned finds that there is no reason to doubt Judge Hawthorn's conclusion that *ex parte* communications between Jennifer Fisher and Walker's counsel did not occur. Moreover, given Morrison's failure to respond to Walker's clarification as to why it would be "common sense" for any attorney involved in this matter to state that Jennifer Fisher did not work on this case, the undersigned finds that this is a reasonable

explanation for Walker's statement in his response to Morrison's motion to recuse. Thus, there is no credible reason to believe *ex parte* communications occurred in this case, and Morrison has failed to proffer "newly discovered evidence" that would merit relief from Judge Hawthorn's final judgment under Rule 60(b)(2).

ii. Even if ex parte communications occurred, they did not prevent Morrison from "fully and fairly presenting her case"

Morrison argues that the alleged *ex parte* communications also constitute "fraud, misrepresentation, or misconduct by an opposing party," providing a separate basis for relief from Judge Hawthorn's final judgment under Rule 60(b)(3). Doc. No. 139, at 3. For a party to merit relief under Rule 60(b)(3), the party demonstrating misconduct by the opposing party must do so by clear and convincing evidence, and the offending party's conduct must be so grievous as to prevent the losing party from fully and fairly presenting its case. *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978). In other words, Rule 60(b)(3) is "aimed at judgments which were unfairly obtained, not at those which are factually incorrect." *Id*. (internal citations omitted). As previously discussed, Morrison fails to prove by clear and convincing evidence that *ex parte* communications occurred. Even if it were to be assumed that *ex parte* communications did in fact occur between Jennifer Fisher and Walker's counsel, Morrison still fails to articulate in what manner those communications inhibited her from fully and fairly presenting her case.

Morrison argues that "Walker's attorneys had *ex parte* communications with the court, which is a serious violation of the Texas Attorney Disciplinary Rules." Doc. No. 139, at 8-9. She also argues that "*ex parte* communications with [Judge Hawthorn's] court is a very serious breach of the public trust in our legal system, destroys the integrity of the legal system, [and] undermines the public's perception of integrity of a court's ruling." *Id*. at 12. This is the extent of Morrison's allegations regarding the harm incurred by her on account of the alleged *ex parte*

communications. It has already been conclusively established that *ex parte* communications have not occurred, but even assuming that they have, Morrison does not allege that such communications in any way impeded her ability to present her case or resulted in an improperly obtained judgment. In *Rozier*, the Fifth Circuit vacated a judgment under Rule 60(b)(3) where the defendant was aware of a document in its files that was relevant to the plaintiff's case, that document was explicitly requested by the plaintiff through interrogatories, was subject to a discovery order, but the defendant failed to disclose the document, and then falsely stated in an interrogatory response that it was unable to locate the document. 573 F.2d at 1348-49. These "discovery abuses which assault the fairness and integrity of litigation" were such that Rule 60(b)(3) relief was appropriate. *Id*. at 1346. No such misconduct has occurred here. Even if Morrison's allegations of *ex parte* communications are to be entirely believed, she fails to demonstrate that the failure to disclose such communications in any way was relevant to her case, let alone that it impeded her from presenting her case. Thus, because *ex parte* communications did not occur, and because Morrison fails to allege how such communications prevented her from fully and fairly presenting her case, relief under Rule 60(b)(3) is not warranted.

iii. Neither Mrs. Hawthorn's position with the DRC nor Jennifer Fisher's familial relationship to Walker's counsel necessitated Judge Hawthorn's recusal

Morrison alleges that two different parties with close connection to Judge Hawthorn—his wife and his law clerk, Jennifer Fisher—have financial stakes in the outcome of this matter, which constitute conflicts of interest that required his recusal from the outset. Doc. No. 139, at 3. Judge Hawthorn's failure to do so, Morrison argues, voids his final judgment and merits relief under Rule 60(b)(4).

As a threshold matter, Morrison's allegations regarding Mrs. Hawthorn do not satisfy the "reasonable time" requirement of Rule 60(b). Morrison alleges that Mrs. Hawthorn works as a director for the DRC, causing a financial conflict of interest for Judge Hawthorn that he failed to disclose. Doc. No. 139, at 13. Based upon a review of the DRC's website, the DRC provides mediators to parties located in Jefferson County, with the goal of resolving disputes out of court, in exchange for a fee of $150 per party. *See* http://www.co.jefferson.tx.us/drc/home.htm (last visited Nov. 29, 2016). The DRC indicates that Mrs. Hawthorn coordinates "training programs and workshops related to conflict resolution, communication and negotiation skills" for work groups in Jefferson County. *Id*.

Because Morrison brings her allegation regarding Mrs. Hawthorn under Rule 60(b)(4),[3] her allegation must be made within a reasonable amount of time after the entry of the judgment, order, or date of the proceeding in question. FED. R. CIV. P. 60(c)(1). Morrison brought her Rule 60(b) motion as a broad, catch-all motion requesting relief both from Judge Hawthorn's final judgment, as well as all other rulings he made in the case, meaning that the undersigned must consider the timing of Morrison's request. Morrison first levied her allegations involving Mrs. Hawthorn in her motion to recuse, on July 11, 2016. *See* Doc. No. 125, at 3. She largely reasserted the same allegations in her Rule 60(b) motion on August 16, 2016. *See* Doc. No. 139, at 9. Morrison filed her initial complaint on May 22, 2013, nearly three years prior to first raising her allegations regarding Mrs. Hawthorn. In neither her motion to recuse nor her Rule 60(b) motion does Morrison explain why she is just now alleging this conflict of interest meriting recusal. Indeed, Morrison offers no explanation as to the timing of the allegations

[3] The undersigned notes that Walker is correct that Morrison's argument regarding Mrs. Hawthorn's position with the DRC is more properly characterized as "newly discovered evidence" under Rule 60(b)(2), rather than voiding the judgment under Rule 60(b)(4). *See* Doc. No. 142, at 9. Regardless, Morrison's argument fails to meet the timeliness standard of Rule 60(c)(1). FED. R. CIV. P. 60(c)(1).

regarding Mrs. Hawthorn. Morrison even concedes that her counsel at the initiation of her complaint, Morgan, worked with Mrs. Hawthorn at the DRC prior to the filing of Morrison's complaint. *See* Doc. No. 143, at 6 ("Morgan was aware [Mrs. Hawthorn] is the Director of the DRC, but Morgan was not aware [Mrs. Hawthorn] was Judge Hawthorn's wife . . . there are many unrelated people with the last name of Hawthorn in the State of Texas"). Setting aside the dubious and potentially sanctionable nature of Morrison's counsel's claims (*see* FED. R. CIV. P. 11(b)-(c)), even if they are to be believed, the fact that Mrs. Hawthorn is in fact married to Judge Hawthorn does not qualify as "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." FED. R. CIV. P. 60(b)(2). As such, the undersigned finds that Morrison's allegations regarding Mrs. Hawthorn were not made within the reasonable amount of time required by Rule 60(c)(1).

Even if the undersigned were to consider Morrison's arguments regarding Mrs. Hawthorn's alleged financial interest in the DRC to be timely, they still fall short of justifying relief under Rule 60(b). Relief under Rule 60(b) for a failure to recuse is a two-step process: not only must the litigant claiming relief demonstrate that the undersigned should have recused under § 455, but she must *also* demonstrate why that failure to recuse is grounds for relief under Rule 60(b). *See Liljeberg*, 486 U.S. at 863 ("Section 455 does not, on its own, authorize the reopening of closed litigation"). Indeed, while Morrison devotes nearly five pages of her briefing, beginning with the section header "CASE LAW ON THE EFFECT OF A RECUSAL," as to why Judge Hawthorn should have recused himself earlier in her proceedings, Morrison utterly fails to demonstrate why his failure to recuse justifies Rule 60(b) relief, beyond a single conclusory sentence: "In this situation, given the serious nature of the facts, this court should vacate and overturn the Final Judgment and all prior substantive rulings issued by [Judge

Hawthorn] prior to entry of the Final Judgment, because [Judge Hawthorn] (and therefore all his rulings) have the strong appearance of partiality under 28 U.S.C. § 455." Doc. No. 139, at 15. Morrison fails to explain why her allegations of Judge Hawthorn's failure to recuse, even if are they to be believed in their entirety, merit Rule 60(b) relief.

Even if Morrison's conclusory statement that Judge Hawthorn's failure to recuse merits Rule 60(b) relief, she fails to demonstrate why Judge Hawthorn should have recused earlier in her case. Morrison offers two theories for why Mrs. Hawthorn's employment at the DRC requires recusal: (i) § 455(a)'s "catchall" provision, which provides that a judge must recuse in "any proceeding in which his impartiality might reasonably be questioned," and (ii) § 455(b)(4)'s provision requiring recusal when a judge's spouse "has a financial interest in the subject matter in controversy or in a party to the proceeding." 28 U.S.C. § 455(a), (b)(4). Judges are afforded wide latitude when considering motions to recuse, as "[a] motion to disqualify brought under 28 U.S.C. § 455 is committed to the sound discretion of the . . . judge." *Sensley v. Albritton*, 385 F.3d 591, 598 (5th Cir. 2004) (internal citations omitted). Indeed, motions to recuse are closely scrutinized to prevent parties from gamesmanship in seeking who they perceive to be a more favorable judge. *See id.* ("Courts should take special care in reviewing recusal claims so as to prevent parties from abusing § 455 for a dilatory and litigious purpose based on little or no substantiated basis").

A party demanding recusal under § 455(a)'s catchall provision for an alleged financial conflict of interest must illustrate the size or nature of the financial stake alleged. *Exxon Mobil Corp. v. U.S.*, 110 Fed.Cl. 407 (2013). Indeed, "not every appearance of a violation of § 455(b)(4) creates a disqualifying interest under § 455(a)," and as such, judges still have discretion under § 455(a)'s catchall provision to determine whether the alleged financial interest,

or the appearance of such interest, is such that recusal is justified. *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 128-29 (2d Cir. 2003). Where a spouse's financial stake in litigation is small, or unlikely to be influenced, recusal is not required under § 455(a). *Exxon Mobil Corp.*, 110 Fed.Cl. at 414.

Here, Morrison makes no substantiated allegation as to the size or scope of Mrs. Hawthorn's alleged financial interest in this case. The simple explanation for this is because no such interest exists. Morrison's sole claim is that because Mrs. Hawthorn is a director at the DRC, she works "directly in a managerial capacity for the County of Jefferson, which was a Defendant in his case." Doc. No. 139, at 10. Obviously, there are no allegations that Mrs. Hawthorn was at all involved in the underlying facts of the case. There is no allegation that her salary would be affected by the outcome of this litigation, nor any connection made between the DRC's budget and the outcome of this litigation. The easiest explanation for the absence of such allegations is simple: no such connection exists. Indeed, in a county of more than 250,000 people, with over 33 departments in county government,[4] "the possibility that the outcome of this proceeding could have any impact on" Mrs. Hawthorn's financial interests is far less than even "remote," if such a possibility even exists, and thus recusal of Judge Hawthorn under § 455(a) was unnecessary and in fact inappropriate. *Exxon Mobil Corp.*, 110 Fed.Cl. at 414; *see also Sensley*, 385 F.3d at 598-99. Extending Morrison's theory to its logical conclusion, *any* Jefferson County taxpayer would have a financial stake in her litigation, as a judgment against the county would be funded by the Jefferson County tax base. This would require the recusal of *any* judge who pays taxes in Jefferson County presiding over *any* case in which Jefferson County is a party. The absurdity of Morrison's argument is plain in its application.

[4] *See* Jefferson County's official website, http://www.co.jefferson.tx.us/, for a comprehensive list (last visited November 21, 2016).

For much the same reason that recusal was unwarranted under § 455(a), recusal is also not required under § 455(b)(4). Recusal is required under § 455(b)(4) if a judge's spouse has a financial interest in the outcome of the litigation. The spouse's financial interest in the matter must be direct, rather than "remote, contingent, or speculative." *Berthelot v. Boh Bros. Constr. Co., L.L.C.*, 431 F. Supp. 2d 639 (E.D. La. 2006) (citing *In re Placid Oil Co.*, 802 F.2d 783, 786-87 (5th Cir. 1986)); *see also U.S. v. Arena*, 180 F.3d 380, 398 (2d Cir. 1999); *In re Va. Elec. & Power Co.*, 539 F.2d 357, 366-67 (4th Cir. 1976). In the primary authority upon which *Morrison* relies, *Shell Oil Co. v. U.S.*, a trial judge's wife owned nearly 100 shares of stock in Chevron Corporation, the parent company of a litigant in a case to which he was assigned. 672 F.3d, 1283, 1286 (Fed. Cir. 2012). The judge did not indicate at what stage in the litigation he learned of his wife's financial interest, nor did he indicate whether he sought a formal advisory opinion on the issue. *Id*. The Federal Circuit granted Rule 60(b) relief from the trial judge's final judgment, explaining that "the owner of stock in a parent corporation has a direct legal or equitable interest in a controlled subsidiary," requiring recusal under § 455(b)(4). *Id*. at 1291 (internal quotations omitted).

No such direct legal or equitable interest is present here. Mrs. Hawthorn is a director of the DRC. Morrison offers no evidence that Mrs. Hawthorn maintains any direct legal or equitable interest in the DRC. The present circumstances more closely resemble *Sensley v. Albritton*, where a class of plaintiffs alleged that a judge should have recused himself from a petition challenging proposed redistricting being defended by the local district attorney's office, where the judge's wife worked as an assistant district attorney. 385 F.3d at 599. Although the judge's wife was not involved in defending the redistricting proposal, the plaintiffs alleged that the outcome of the case could potentially affect her employment status with the district

attorney's office, amongst other speculative, contingent connections under § 455(b)(4). *Id*. at 600. The Fifth Circuit rejected an appeal of the judge's decision not to recuse, concluding that the alleged interest was "remote, contingent, and speculative," and that the "edifice of conjecture [does] not support an objective conclusion that [the judge] has a financial interest in the outcome of the case." *Id*. at 600-01. Here, Morrison does not even offer any sort of conjecture as to the connection between the outcome of her litigation and Judge Hawthorn's financial interest by virtue of his wife's employment with Jefferson County. Instead, she merely observes that Mrs. Hawthorn is a Jefferson County employee, and by virtue of Jefferson County being a named defendant in her complaint, Judge Hawthorn was required to recuse under § 455(b)(4). Such remote, contingent and speculative interests are insufficient to merit recusal, and as such, Judge Hawthorn's decision not to recuse by virtue of his wife's employment with a named defendant in Morrison's complaint does not provide grounds for relief under Rule 60(b)(4).

Morrison also reasserts an argument she initially made in her motion to recuse Judge Hawthorn (Doc. No. 128, at 5), claiming that because Jennifer Fisher's husband Edward is an equity partner at Provost Umphrey, one of the law firms currently representing Walker, she has a financial stake in the outcome of the litigation, at least as it pertains to Walker's motion for attorney's fees. Doc. No. 139, at 12. According to Morrison, if the court were to award attorneys' fees to Walker, then Jennifer Fisher's "pecuniary community property interest in the Provost Umphrey Law Firm stood to gain." *Id*. at 5.

First, even if Morrison's allegations were legitimate, this does not provide a basis for relief from Judge Hawthorn's final judgment, or any other ruling in this case. Judge Hawthorn's only conflict would be related to Walker's motion for attorney's fees, a motion he did not rule on

before recusing. Thus, even if such a conflict of interest did exist, it is insufficient to provide relief from Judge Hawthorn's final judgment, or any other ruling he made in this case.

Second, to the extent Morrison argues that Judge Hawthorn should have recused under § 455(b), which contains two provisions addressing situations where a judge maintains a relationship to persons with an "interest" in the proceedings, those provisions do not apply to this case. The first relevant provision, § 455(b)(4), addresses situations where the judge, "or his spouse or minor child residing in his household has a financial interest in the subject matter in controversy." 28 U.S.C. § 455(b)(4). The second relevant provision, § 455(b)(5), only pertains to a judge or his spouse, or a person "within the third degree of relationship to either of them." 28 U.S.C. § 455(b)(5).

Alternatively, Morrison argues that applying the *Liljeberg* test under § 455(a) provides a separate basis for relief from Judge Hawthorn's final judgment for a failure to recuse. Doc. No. 139, at 10-11. § 455(a) is the broad, catch-all provision of § 455, providing that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Under *Liljeberg*, a court considers the following three factors when considering whether a judgment should be vacated due to a violation of § 455(a): (i) the risk of injustice to the parties in the particular case; (ii) the risk that the denial of relief from the judgment will produce injustice in other cases; and (iii) the risk of undermining the public's confidence in the judicial process. *Liljeberg*, 486 U.S. at 864. These three factors, "along with other established equitable precepts," are considered by the court holistically in considering whether to grant relief from a final judgment.[5] *U.S. v. O'Keefe*, 169 F.3d 281, 287 (5th Cir. 1999).

[5] The undersigned notes that although that in *Liljeberg*, the Supreme Court considered whether failure to recuse under § 455(a) is a proper basis for relief under Rule 60(b)(6)'s savings clause. *Liljeberg*, 486 U.S. at 863-

When considering the three *Liljeberg* factors on the whole, it is clear that Judge Hawthorn carefully complied with all ethical obligations regarding a law clerk's potential interest in this case. The Committee on Codes of Conduct for United States Judges[6] issued an Advisory Opinion that directly addresses the type of potential conflict Morrison alleges as it relates to Jennifer Fisher's potential involvement in this matter. The Committee's Advisory Opinion No. 51 states that "law clerks should disqualify themselves in cases where their spouses or minor children have a financial interest in a matter in controversy."[7] Despite this caution, the Committee explicitly states that that it "has not applied a similar blanket recusal rule for judges." *Id*. As Judge Hawthorn's initial order denying Morrison's motion for recusal states, Judge Hawthorn closely followed the Committee's Advisory Opinion, and in accordance with the Advisory Opinion, he assigned this case to a law clerk (Welch) unaffiliated with any parties or counsel in the case. Doc. No. 131, at 7. Judge Hawthorn went on to indicate that he was aware of the potential conflict with Jennifer Fisher, and that from the outset of this case, she was disqualified and screened from any participation in the matter. *Id*. (quoting the Committee's

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64. Nearly all applications of the *Liljeberg* test in this jurisdiction, when considering relief under Rule 60, also consider whether relief for failure to recuse is appropriate under Rule 60(b)(6). *See, e.g.*, *Harris v. Bd. of Sup'rs of La. State Univ. & Agr. & Mech. Coll. ex rel. LSU Health Sci. Ctr. Shreveport*, 409 Fed. Appx. 725 (5th Cir. 2010); *U.S. v. O'Keefe*, 169 F.3d 281 (5th Cir. 1999); *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404 (5th Cir. 1994).

While Morrison's pleadings are imprecise as to whether she claims Judge Hawthorn's failure to recuse is grounds for relief under Rules 60(b)(2), 60(b)(3), 60(b)(4) or 60(b)(6), Morrison most heavily relies on Mrs. Hawthorn and Jennifer Fisher's alleged financial interests in the outcome of litigation as grounds for why Judge Hawthorn's decision not to recuse earlier violates the *Liljeberg* test. Doc. No. 139, at 11-12. These alleged financial conflicts of interest are brought under Morrison's claims for relief under Rule 60(b)(4), and as such, are addressed in this section of the undersigned's opinion. In any event, Morrison's other claims of violations of the *Liljeberg* test (Judge Hawthorn's "inherent hostility to Klein, Morgan, Morrison, Stephen Hartman and others suing Layne Walker," and the alleged *ex parte* communications) are also addressed in other sections of this opinion.

[6] The Judicial Conference's website states: "The Judicial Conference of the United States has authorized its Committee on Codes of Conduct to publish formal advisory opinions on ethical issues that are frequently raised or have broad application. These opinions provide ethical guidance for judges and judicial employees and assist in the interpretation of the codes of conduct and ethics regulations that apply to the judiciary." UNITED STATES COURTS, ETHICS POLICIES, http://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies (last visited November 28, 2016).

[7] ADMIN. OFFICE OF THE U.S. COURTS, GUIDE TO JUDICIARY POLICY, vol. 2, Ethics Advisory Opinions, Advisory Opinion No. 51 (June 2009), http://www.uscourts.gov/file/1903/download.

Advisory Opinion as to the danger of a judge recusing solely on the basis of one of his law clerk's *potential* conflict of interest, noting that "the disqualification of a judge is far more disruptive to the administration of justice than the disqualification of a law clerk . . . and the matter may be transferred easily to another clerk").

Thus, Judge Hawthorn was transparent from the beginning of this litigation and walled off Jennifer Fisher from any involvement in the matter, to ensure that injustice was not risked to any parties in this matter. Moreover, although under no obligation to do so, Judge Hawthorn explained his reasons for recusal in this matter in his order denying a motion for recusal by Morrison's counsel in *Klein v. Walker*. This explanation, though far from necessary, exhibited Judge Hawthorn's continued transparency, ensuring that the public's confidence in the judicial process will not be eroded. When considering the three *Liljeberg* factors holistically, recusal was not required under § 455(a), and thus, relief under Rule 60(b)(4) (or Rule 60(b)(6)) is not appropriate in this matter.

iv. Morrison has failed to identify such an "extraordinary circumstance" under Rule 60(b)(6) to merit relief from Judge Hawthorn's final judgment

Finally, Morrison asserts that "the circumstances regarding the recusal of [Judge Hawthorn] are such that in justice and fairness the matter justifies setting aside [Judge Hawthorn's] substantive rulings," pursuant to Rule 60(b)(6). As a preliminary matter, Morrison fails to articulate any meaningful, distinct claims necessitating Rule 60(b)(6) relief from those she contends merit relief under Rule 60(b)(2)-(4). Indeed, she concedes that the primary bases for Rule 60(b)(6) relief are Mrs. Hawthorn's employment with the DRC, Jennifer Fisher's employment as one of Judge Hawthorn's law clerks, the alleged *ex parte* communications, and an overarching allegation of "inherent hostility" towards Morrison, Morgan, and "others suing Walker." Doc. No. 139, at 11-12. As *Liljeberg*, the primary authority upon which Morrison

relies, makes clear, however, grounds for relief under Rule 60(b)(6) cannot be "premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg*, 486 U.S. at 863. Accordingly, because Morrison fails to articulate any separate grounds for relief from those stated in her Rule 60(b)(2)-(4) arguments, she is not entitled to relief under Rule 60(b)(6).

Even if one were to overlook the *Liljeberg* requirement, Morrison's allegations of impropriety do not come close to the "extraordinary circumstances" required to grant relief under Rule 60(b)(6)'s savings clause. In addition to the aforementioned allegations regarding Jennifer Fisher and Mrs. Hawthorn, Morrison levies two additional allegations of disparate treatment between Walker's and Morrison's counsel that constitute extraordinary circumstances under Rule 60(b)(6): (i) Judge Hawthorn permitted counsel to Walker, Mark Sparks, to file pleadings on Walker's behalf after Sparks left the Provost Umphrey law firm, but did not allow Morgan to file pleadings on behalf of Morrison after Watts replaced him as Morrison's counsel; and (ii) despite Judge Hawthorn's advisory prohibiting personal attacks in filed pleadings or open court, Judge Hawthorn continued to allow Walker's counsel to file "egregiously improper, scandalous and unconstitutional" attacks against Morrison's counsel without reproach. Doc. No. 139, at 13-14. Both of these allegations, Morrison argues, were sufficient grounds for Judge Hawthorn to recuse under 28 U.S.C. § 455, and his failure to do so earlier in the case is grounds for relief under Rule 60(b)(6) from his final judgment.

A party requesting recusal under § 455 must point to "extrajudicial" sources of impartiality or bias in a judge's conduct. Extrajudicial sources are events that occur "outside of the litigation context," *i.e.*, judicial actions other than those made in rulings or other judicial proceedings. *Andrade v. Chojnacki*, 338 F.3d 448, 455 (5th Cir. 2003). A party must point to extrajudicial sources to justify recusal under § 455, as "judicial rulings alone almost never

constitute a valid basis for a [recusal] motion . . . [and] judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Liteky*, 510 U.S. at 555; *see also U.S. v. Stanley*, 595 F. App'x 314, 320 (5th Cir. 2014); *Dailey v. U.S.*, 6:07-CV-281, 2010 WL 4683824, at *1 (E.D. Tex. Nov. 10, 2010) (Schneider, J.). When faced with a motion to recuse, the decision to grant the motion is not one that is to be taken lightly, as "a federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified." *Laird v. Tatum*, 409 U.S. 824, 837 (1972).

For a judicial act or statement to necessitate recusal, not only must the act or statement in question derive from an extrajudicial source, but it must also "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky*, 510 U.S. at 555; s*ee also Andrade*, 338 F.3d at 462. Indeed, when providing examples of such inherent hostility or favoritism towards one party in extrajudicial sources that recusal is required, the Supreme Court provided the following quote from a District Judge, involving a World War I espionage case with German-American defendants: "One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans because their hearts are reeking with disloyalty." *Id.* (quoting *Berger v. U.S.*, 255 U.S. 22, 28 (1921)). Thus, for Morrison to demonstrate that Judge Hawthorn's decision not to recuse under § 455 to be such an "extraordinary circumstance" as to merit relief from his final judgment under Rule 60(b)(6), Morrison must demonstrate extrajudicial sources of Judge Hawthorn's impartiality, and such impartiality must be so severe that it would be impossible for Judge Hawthorn to render a fair judgment. She demonstrates neither of these two conditions.

Because Morrison's allegations of *ex parte* communications and financial conflicts of interest have already been discussed, the undersigned will only discuss her allegations of disparate treatment. Morrison argues that although Judge Hawthorn permitted Walker's counsel, Sparks, to continue filing pleadings on his behalf after Sparks left his firm, Provost Umphrey, Judge Hawthorn did not continue to allow Morrison's counsel, Morgan, to continue to file pleadings on her behalf after she substituted Watts as her counsel.

The basis for Morrison's belief that Judge Hawthorn allowed a substituted-for counsel to appear on behalf of Walker but not on behalf of her apparently stems from deposition testimony given by Walker in *Klein v. Walker*. In her reply in support of her motion to strike Walker's motion for attorney's fees, Morrison cites a two-page excerpt from a 140-page deposition transcript, including the following exchange:

> Watts: When did [Sparks] represent you?
> Walker: I would assume from the day all this started until he left the law firm.
> Watts: And when was that?
> Walker: I don't recall.
> Watts: When did he withdraw from representing you?
> Walker: I don't know.

Doc. No. 138, ex. 3 at 6. In further support of her allegation that Sparks no longer represents Walker, Morrison provides the attorney-of-record information from Morrison's appeal of this matter in the Fifth Circuit, which indicates that Sparks' (as well as Joe Fisher and Kim Coogan, Walker's other two attorneys who represented him before Judge Hawthorn) representation had been terminated. Doc. No. 132, ex. 2. In totality, Morrison concludes that because Sparks left Provost Umphrey, he no longer represents Walker, and thus Judge Hawthorn should not have permitted him to file pleadings on his behalf.

This argument misses the mark for several reasons. First, Morrison's examples of disparate treatment are entirely comprised of Judge Hawthorn's judicial actions, and she fails to

cite a single extrajudicial source of bias or hostility meriting recusal. Second, Morrison fails to cite any intervening authority to establish why an attorney's departure from a law firm mid-case mandates his withdrawal from representation. Unsurprisingly, neither the ABA's Model Rules, nor the Texas Rules of Professional Conduct, contain any mention of such a requirement. *See* ABA Model Rule 1.16, "Declining or Terminating Representation"; Tex. Disciplinary Rules Prof'l Conduct R. 1.06, 1.09. Third, and most importantly, Walker himself has made clear that Sparks still represents him in this matter, and his representation has never been terminated. Doc. No. 137, at 1-2. By contrast, in Morrison's second motion to continue the hearing on Walker's motion for attorney's fees, she justified her request by stating that "Laurence Watts is *substituting as counsel for Stella Morrison in place of John Morgan*," and Watts was unable to make the hearing, scheduled for the next day. Doc. No. 122, at 1 (emphasis added). Thus, when Morgan attempted to file Morrison's initial motion to recuse (Doc. No. 125), Judge Hawthorn denied it (while permitting Morrison leave to re-file) on the basis that Morgan no longer represented Morrison. Doc. No. 126, at 2. There was no disparate treatment between Walker's and Morrison's counsel; by Morrison's own pleadings, Morgan no longer represents Morrison, and by Walker's own pleadings, Sparks continues to represent Walker.

Finally, Morrison's allegations of disparate treatment as it pertains to Judge Hawthorn's allowance of *ad hominem* attacks against Morrison in Walker's pleadings are so threadbare that they hardly merit recitation. Morrison asserts that Judge Hawthorn enforced his advisory prohibiting *ad hominem* arguments and personal attacks only against her, "effectively reward[ing] Walker's attorneys for violating" the advisory, and Judge Hawthorn "permitted continued violations of [his] advisory through continued personal attacks by Walker's counsel upon Morgan and Klein, culminating in Walker's attorneys [sic] stated intention to seek

sanctions against Morrison and Morgan." Doc. No. 139, at 13-14. First, Morrison wholly fails to cite a single example in the record to support this allegation. Second, as Morrison herself notes, Klein is neither a litigant nor attorney of record in this matter. Doc. No. 139, at 8. Claims of animus towards Klein in Walker's pleadings or conduct are wholly irrelevant for purposes of a Rule 60(b) motion for relief from judgment. Third, Judge Hawthorn struck only one pleading in this matter on the basis of personal attacks: *Walker's* "Motion to Dismiss under Rules 12(b)(1) and 12(b)(6)" (Doc. No. 55). *See* Doc. No. 72, at 1 (Walker's motion "contains unnecessary and impermissible *ad hominem* attacks"). Quite simply, Morrison fails to provide any evidence disparate treatment between Morrison and Walker because no such evidence exists. Thus, Morrison fails to demonstrate the "inherent hostility" required to demonstrate Judge Hawthorn should have recused himself earlier in this matter, which is required to justify relief under Rule 60(b)(6)'s savings clause.

IV. CONCLUSION

For the above stated reasons, Morrison's "Motion for Relief from the Final Judgment under Fed. R. Civ. P. 60(b) (Doc. No. 139) is **DENIED**.

SIGNED this the 7th day of December, 2016.

KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE