

2012-43652

IN THE INTEREST OF § **IN THE DISTRICT COURT**
§
KENNEDY ROSE ROONEY, § **308TH JUDICIAL DISTRICT**
§
A CHILD § **HARRIS COUNTY, TEXAS**

MOTION TO DISQUALIFY OR IN THE ALTERNATIVE
FOR RECUSAL OF JUDGE JAMES LOMBARDINO

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Movant, John C. LaGrappe, Attorney for Respondent, KORA JEAN LEACH, (hereinafter Respondent), and brings this Motion to Disqualify or in the Alternative Motion for Recusal of Judge James Lombardino, and in support thereof, shows the Court the following:

I. INTRODUCTION

James J. Rooney (Petitioner) filed a Petition to Modify which included a request to deny Kora Leach access to her minor child on August 30, 2016. (See Court's File Petition and Affidavit) On August 31, 2016, Associate Judge David Sydow signed a Temporary Restraining Order (TRO) that denied Kora Leach access to her minor child. (See Court's file TRO) A hearing was scheduled for September 8, 2016. On September 6, 2016, Respondent Leach filed an answer generally denying the allegations in the Petition to Modify. (See Court's File Answer) On September 8, 2016, counsel and his client showed up for Court and learned the hearing had been passed by Bobby Newman, Petitioner's counsel.

The Temporary Restraining Order would have expired on September 13, 2016. However, Petitioner filed a Motion to Extend the Temporary Order on September 13, 2016, the date the TRO would expire. Respondent filed a response to petitioner's request for an extension

of the TRO the same day. Judge James Lombardino signed the extension despite Respondent's objections and without a hearing.

On September 20, 2016, Respondent filed a Counter-Motion to Modify in a Suit Affecting the Parent Child Relationship. On September 28, 2016, Myra Gregory was appointed the Amicus Attorney to represent the minor child.

On October 6, 2016, Judge James Lombardino presided over both parties requests for temporary orders. Judge Lombardino allowed the children to remain with James Rooney and awarded Kora Leach a Standard Possession Order.

On December 8, 2016, Respondent filed a Motion to Modify Temporary Orders and Request for Additional Temporary Orders.

The Motion was originally set for January 9, 2017. Undersigned counsel passed the hearing and it was reset for February 10, 2017 by a Rule 11 Agreement. The parties agreed to a hearing on April 12, 2017 due to Mr. Newman's schedule. On April 12, 2017, Mr. Newman filed a Notice of Engaged Counsel with an attached protective order. The problem was the protective order did not reflect that Mr. Newman was unavailable on that date. (See Court's File Notice of Engaged Counsel) Nonetheless, the Court rescheduled the hearing. During that time, Mr. Newman emailed counsel that he wanted the hearing scheduled in front of Judge Lombardino. (See Exhibit 1 Newman Email) The hearing was finally held on June 1, 2017 in front of Associate Judge David Sydow. Judge Sydow denied the Motion to Modify Temporary Orders.

Respondent Leach demanded a jury trial which is currently set for May 14, 2018. Both parties objected to the associate judge hearing the matter when their initial pleadings were filed in the modification proceedings in August and September of 2016. (See Court's File Petition to

Modify and Counter Petition to Modify)

II. BACKGROUND OF THE MOTION

There exists a personal relationship between Bobby K. Newman, counsel for James J. Rooney and the presiding judge of the 308th, the Honorable James Lombardino. The relationship extends to financial matters, campaign contributions, legal representation of Judge Lombardino's son, the referring of cases to Mr. Newman from court staff and infects Judge James Lombardino's ability to be an impartial jurist. Judge Lombardino's ability to preside over the case is also infected by his relationship with the amicus attorney, Myrna Gregory.

Counsel has represented Kora Leach in the 308th Family Court since September 6, 2016. During the course of that representation, several experienced attorneys have approached counsel and warned me of a relationship between Mr. Newman and Judge Lombardino and have told him counsel that Ms. Leach has no chance of success because Judge Lombardino demonstrates bias in favor of Mr. Newman and his clients because of the financial and personal relationship they share. Each attorney voiced fear of retaliation if their identities or statements were disclosed.

The statements caused counsel's mind to be divorced between two competing thoughts. Either it was sour grapes because the attorneys client's had not had successful results in the 308th or they were being truthful. However, there statements alone did not offer sufficient evidence to prove what they were saying.

On February 12, 2018, Dolcefino Consulting Inc., which is a media company run by former Channel 13 investigative reporter Wayne Dolcefino began doing an investigative series of broadcasts on the relationship between certain attorneys and certain family court judges. The initial broadcast was sent to my by a private investigator named German Vanegas because I had expressed concerns to Mr. Vanegas about the relationship between Judge Lombardino and Mr.

Newman.

The broadcast revealed that Bobby Newman was representing Judge James Lombardino's son, David Lombardino in a highly contested divorce that involves property and custody disputes. The divorce was filed in May of 2016. The case went to trial in February of 2018 but the trial abruptly recessed. The case went to mediation with Linda Thompson and was settled. Entry was set for March 29, 2018. Court records reveal that Mr. Lombardino's original attorney was Joseph Indelicato and at some point Mr. Newman became his lead attorney. Court records do not reveal when Mr. Newman entered as counsel. At no point since September of 2016, did Judge Lombardino or Mr. Newman inform undersigned counsel of Mr. Newman's representation of Judge Lombardino's son.

Judge Lombardino will be presiding over a jury trial in a custody dispute between Mr. Rooney and Ms. Leach that litigates custody issues that are materially similar to issues within the lawsuit that Mr. Newman provided representation to David Frank Lombardino, Judge Lombardino's son.

On March 13, 2018, Dolcefino Consulting broadcast a fourth installment on the family court system that provided more specific information on the nature of the relationship between Judge Lombardino and Mr. Newman. It revealed that a former paralegal, Kimberly Cardenas whom was employed by Mr. Newman's law firm had heard statements by Mr. Newman that he was not being paid for his services for David Lombardino. (See Exhibit 2 Cardenas Affidavit)

Harris County District Court Local Rule 4.3 requires a sworn inventory and appraisal be filed prior to trial of a contested matter. On February 5, 2018, Mr. Newman filed a Preliminary Sworn Inventory and Proposed Property Division on behalf of David Lombardino that listed a debt of \$104,443.86 owed to Mr. Newman for trial fees. It also listed an "anticipated

loan” for \$100,000.00 to be received from Carol Lombardino to pay the debt owed to Mr. Newman. (See Exhibit 3 Lombardino Preliminary Sworn Inventory)

The broadcast also revealed that Judge Lombardino’s Court Coordinator Norma Ovalle and Judge Lombardino had lunch or dinner at Tony Mandola’s Gulf Coast Kitchen with a Houston Doctor named Alex Lechin. Dr. Lechin was in the midst of a divorce with his wife. A friend had suggested to Dr. Lechin that he have lunch or dinner with a judge he knew. The judge was Judge Lombardino. During the interview, Dr. Lechin stated that Norma Ovalle had recommended that he hire Bobby K. Newman while Judge Lombardino was sitting at the table. She then contacted Mr. Newman by phone and discussed that he should discuss Dr. Lechin’s case for possible representation. These conversations happened while Judge Lombardino was seated at the table. However, Mr. Newman eventually represented Carmen Maria Lechin, Dr. Lechin’s estranged wife.

The March 13th broadcast also contained additional surprising information. Ms. Cardenas revealed that she had been told by Mr. Newman to obtain Mrs. Ovalle’s personal cell phone number. Mr. Newman was awarded \$150,000.00 in interim attorney fees by an order signed by Judge Lombardino in a separate case in the 308th on July 26, 2017. That morning an Order was submitted for Judge Lombardino’s signature. Two days later on July 28, 2017, Mrs. Ovalle began to text Ms. Cardenas to let her know that Judge Lombardino had signed the Order and sent a smile emoji after Ms. Cardenas thanked her. Ms. Cardenas stated that in no other court did she have the court coordinator’s private cell phone and that she did not receive private texts from the staff of other courts. (See Exhibit 1 Cardenas Affidavit) (See Exhibit 4 attached Order on Motion for Interim Attorney Fees and Expert Costs)

The fees were awarded to Mr. Newman six weeks after he hosted a political event at the

Federal Grill for Judge Lombardino. On June 9, 2017, Mr. Newman hosted an event that raised \$71,250.00 for Judge Lombardino. Mr. Newman personally contributed a maximum donation of \$5,000.00. (See Exhibit 5 July 15, 2017 Lombardino Campaign Report) His law partner Earle Lilly contributed \$3,250.00 on the same day. (See Exhibit 5 *id.*)

In Ms. Cardenas's interview she describes Mr. Newman's law firm as sponsoring the event and employees of the firm as working the phones to contact attorneys to solicit donations and/or their attendance at the fundraiser. Yet, the campaign finance report does not show a in-kind contribution from Lilly, Newman & Van Ness. (See Exhibit 5 *id.*)

The fundraiser occurred nine days after a hearing to modify temporary custody in this case was heard by Associate Judge David Sydow. On June 1, 2017 a hearing was held before Associate Judge David Sydow on Kora Leach's Motion to Modify Temporary Orders and Request for Additional Temporary Orders. Judge Sydow had stated in open court that he would discuss the case with Judge Lombardino before ruling. Judge Sydow denied Kora Leach's request that she be appointed the primary conservator of the children.

Judge Lombardino awarded Mr. Newman \$100,000.00 in attorney fees in *Cause No. 2013-71645 In the Interest of Luke Boehning Daniel In the 308th Judicial District of Harris County, Texas.* (See Exhibit 6 Order on Respondent's Motion for Interim Fees) Mr. Newman was awarded another \$30,000.00 in costs for attorney fees and \$25,000.00 in expert fees on the same day.

On March 28, 2018, Mr. Newman was awarded another \$185,765.35 in interim attorney fees in *Cause No. 2016-17081 In the Matter of the Marriage of Viscandra Jones and Darren Craig Jones and in the Interest of Sean Matthew Jones and Audrey Grace Jones In the 308th Judicial District of Harris County, Texas.* (See Exhibit 7 Order) This award is addition to the

\$150,000.00 in fees that he was awarded on July 26, 2017. (See Exhibit 4) Mr. Newman's client was awarded another \$24,000.00 in attorney fees on the same day.

Mr. Newman had been awarded over \$325,000.00 in legal fees on this one case while it appears that he has been representing Judge Lombardino's son. Since October of 2016, Judge Lombardino has awarded Mr. Newman \$460,000.00 in attorney fees in three cases in less than a eighteen month period in three cases.

Mr. Newman and Judge Lombardino's financial relationship goes back at least eight years whereby Mr. Newman has personally donated the maximum contribution limits during every election cycle and his law firm and various family members have made significant donations as well. Additionally, he and his law firm have also hosted fundraisers for Judge Lombardino's judicial campaigns.

During the 2010 election cycle both Mr. Newman, his father and his law firm made significant donations to Judge Lombardino's campaign. On January 10, 2010, Lilly Newman & Van Ness contributed \$1,500.00 to Judge Lombardino's campaign. On May 3, 2010, Bobby Newman P.C. contributed 5,000.00 to Judge Lombardino's campaign. On June 10, 2010, Lilly Newman & Van Ness contributed \$1,350.00 to the campaign. On August 19, 2010, Newman-Kimmons Investigations contributed \$1,000.00 to the campaign. The investigation company is run by Mr. Newman's father. On August 19, 2010, Lilly Newman & Van Ness contributed 1,250.00 to the campaign. On October 16, 2010, Mr. Newman's father gave an in-kind contribution of \$2,000.00 to host a campaign fundraiser for Judge Lombardino on his father's private yacht. On December 14, 2010, Bobby Newman contributed another donation of \$5,000.00 to the Lombardino campaign. On February 9, 2011, Lilly Newman & Van Ness contributed \$3,000.00. (See Exhibit 8 Campaign Finance Reports)

During the 2014 election cycle significant donations continued from Mr. Newman, his family and various entities. On May 17, 2013, Bobby Newman P.C. donated \$5,000.00 to Judge Lombardino's campaign. On December 13, 2013, Lillian Newman, the wife of Mr. Newman contributed \$5,000.00 to Judge Lombardino's campaign. (See Exhibit 9 Campaign Finance Reports)

During the 2017, election cycle as previously listed, Mr. Newman has donated another \$5,000.00 on June 9, 2017. He also hosted the aforementioned fundraiser. The donations from Mr. Newman, his family and various entities total \$30,100.00. This does not include the totals raised through the fundraisers.

The campaign finance reports evidence a systematic and continuous financial relationship between Mr. Newman and Judge Lombardino. The reports conflated with the evidence of Mr. Newman's representation of Judge Lombardino's son, his coordinator's attempt at attorney referrals, her unusual communications with Mr. Newman's paralegal and the fundraiser on June 9, 2017 create extraordinary suspicions about the relationship between Judge Lombardino and Mr. Newman. Furthermore, the lack of disclosure by Judge Lombardino of Mr. Newman's representation of his son on similar matters to our case, the financial arrangements between Mr. Newman, Judge Lombardino, his ex-wife and his son and the failure to disclose these financial arrangements while this case has been pending arouse further suspicions. Further, the astonishing amount of attorney fees awarded Mr. Newman and the timing of those awards gives Judge Lombardino's continued involvement in our case the stench of a Louisiana swamp.

However, Ms. Gregory's involvement further complicates matters. Ms. Gregory and Judge Lombardino also failed to disclose that Ms. Gregory had begun representing Miriam Mabel Lombardino, Judge Lombardino's wife shortly before he appointed her the amicus

attorney for the minor child. Ms. Gregory represented Mrs. Lombardino in Motion to Quash a Protective Order. There were two separate Motions to Quash filed with the second one being filed on September 22, 2016. (See Exhibit 10 Motion to Quash) This was six days prior to her being appointed the amicus attorney in our case.

It creates a problem because Ms. Gregory's fees are approved by the court. Neither Judge Lombardino nor Ms. Gregory disclosed this nor have they disclosed what their financial arrangements between her and his wife are.

The totality of the circumstances of the relationship between Mr. Newman, Ms. Gregory and Judge Lombardino preclude his ability to preside over this case and he should recuse himself, be disqualified or be recused by the presiding judge of this administrative judicial district.

III. Argument & Authorities

A judge in Texas may be removed from presiding over a case if the judge is constitutionally disqualified, is subject to a statutory strike, or is subject to statutory disqualification or recusal under Texas Supreme Court rules. *Gaal v. State*, 332 S.W.2d 448 (Tex.Crim.App. 2011).

Article V. Sec. 11 of the Texas Constitution states in part that: "No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case." *Tex. Const. Art. V. Sec. 11*

Tex.R.Civ.P. 18b(1) reads as follows:

- (1) Disqualification. Judges shall disqualify themselves in all proceedings in which:
 - (a) they have served as a lawyer in the matter in controversy, or a lawyer with whom

they previously practiced law served during such association as a lawyer concerning the matter; or

(b) they know that, individually or as a fiduciary, they have an interest in the subject matter in controversy; or

(c) either of the parties may be related to them by affinity or consanguinity within the third degree.

Texas Rule of Civil Procedure 18b(2) requires a judge to recuse herself in any proceeding in which: (1) the judge's impartiality might reasonably be questioned; (2) the judge has a personal bias or prejudice concerning the subject matter or a party; or (3) personal knowledge of disputed evidentiary facts concerning the proceeding. Tex.Rev.Civ.P. 18b(b)(1)-(3); *Gaal*, 332 S.W.2d at 453.

Perhaps the most exhaustive article regarding the sometimes fine-line distinctions is William W. Kilgarlin and Jennifer Bruch, *Disqualification and Recusal of Judges*, 17 St.Mary's L.J. 599 (1986). The article provides that "the terms 'disqualification' and 'recusal' are often used interchangeably ... such use is a grievous error. If a judge is disqualified under the Constitution, he is absolutely without jurisdiction in the case, and any judgment rendered by him is void, without effect, and subject to collateral attack." *Id.* at 601-602.

A distinction also exists between Rule 18b(1)(b) and Rule 18b(2)(e). Rule 18b(2) is applied to recusal as opposed to disqualification. Under the disqualification portion of Rule 18b the reference is to "an interest". Under the recusal section of Rule 18b(2)(e) the interest is described as a "financial interest". An "interest" under the disqualification portion of the rule is no different from a "financial interest" under the recusal section of the rule. The interest of a judge, in order that he may be disqualified, must, in general, be a direct pecuniary or property interest in the subject matter of litigation. *City of Pasadena v. State*, 428 S.W.2d 388(Tex.Civ.

App.-Houston [1st Dist.] 1967), overruled on other grounds, (concurring opinion on rehearing) 442 S.W.2d 325 (Tex.1969); *see also*, *Narro Warehouse, Inc. v. Kelly*, 530 S.W.2d 146, 149 (Tex.Civ.App.-Corpus Christi 1975, writ ref'd n.r.e.) (interest must be direct, real and certain, immediately resulting from the litigation in question); *Moody v. City of University Park*, 278 S.W.2d 912, 919 (Tex.Civ.App.-Dallas 1955, writ ref's n.r.e.) (judge must stand to gain or lose a measurable benefit as direct consequence of suit); *Wagner v. State*, 217 S.W.2d 463, 464 (Tex.Civ.App.-San Antonio 1948, writ ref'd n.r.e.) (interest necessary to disqualify must be direct or pecuniary interest in subject matter of litigation). Once a pecuniary interest is shown to exist, the judge is disqualified no matter how slight the interest. *See Cameron v. Greenhill*, 582 S.W.2d 775, 776 (Tex.), cert. denied, 444 U.S. 868, 100 S.Ct. 142, 62 L.Ed.2d 92 (1979); *Lindsley v. Lindsley*, 152 S.W.2d 415, 433 (Tex.Civ.App.-Dallas 1941) (opinion on rehearing), rev'd on other grounds, 139 Tex. 512, 163 S.W.2d 633 (1942).

Where doubt exists as to a judge's interest that doubt should be resolved in favor of disqualification. *Lindsley*, 152 S.W.2d at 432. The Dallas Court of Civil Appeals provided further that the constitutional language "may be interested" implies that if there is doubt, the judge should be disqualified. *Id.*

Once a Defendant files a motion to disqualify or recuse, the challenged judge may not deny the motion based on procedural defects but must either order the recusal or refer the motion to the regional presiding judge. Tex.R.Civ.P. 18a(f)(1).

Once a judge's impartiality is questioned under 18.01(b), Texas courts follow the reasonable-person test for questioned impartiality. *Kniatt v. State*, 239 S.W.3d 910 (Tex.App. - Waco, 2007). Texas Rule of Civil Procedure Rule 18b(b)(2) states "[a] judge must recuse in any proceeding in which...the judge's impartiality might reasonably be questioned." Tex.R.Civ.P.

18b(b)(1). “In determining whether a judge’s impartiality might be reasonably questioned so as to require recusal, the proper inquiry is whether a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge and the case, would have a reasonable doubt that the judge is actually impartial.” *Kniatt*, 239 S.W.2d at 915, quoting *Burkett v. State*, 196 S.W.2d 892, 896 (Tex.App. - Texarkana 2006, no pet.); also citing *Mosley v. State*, 141 S.W.3d 816, 834 (Tex.App. - Texarkana 2004, no ref’d); *Sears v. Olivarez*, 28 S.W.3d 611, 615 (Tex.App. - Corpus Christi 2000, order). To show bias or prejudice the movant must provide sufficient information to show that a reasonable person with knowledge of all of the circumstances would harbor doubts as to the judge’s impartiality. See *Abdygapparova v. State*, 243 S.W.3d 191 (Tex.App. - San Antonio 2007 (discretionary review refused)).

An order denying a motion to recuse is reviewed under an abuse of discretion standard. *Petitt v. Laware*, 715 S.W.2d 688, 692 (Tex. App.-Houston [1st. Dist.] 1986 writ re’d n.r.e) A Court abuses its discretion when the Court acts without any guiding rules and principles and only if the ruling on the motion was not within the zone of reasonable disagreement. *Kemp v. State*, 846 S.W.2d 289, 306 (Tex.Crim.App. 1992). Recusal is warranted when the bias attains a level denying the movant due process of law. *Abdygapparova*, 243 S.W.2d at 198 citing *Kemp*, 846 S.W.2d at 305; *McClenan v. State*, 661 S.W.2d 108, 109 (Tex.Crim.App. 1983). In the abuse of discretion review by appellate courts, the court “considers the totality of the evidence and information elicited at the recusal hearing to see if the record reveals sufficient evidence to support the recusal judge’s ruling that the trial judge was unbiased.” *Gaal*, 332 S.W.3d at 456.

A defendant is not required to demonstrate personal bias arising outside the judicial proceeding. “Recusal is required *whenever* there exists a genuine question concerning a judge’s impartiality, and not merely when the question arises from an extrajudicial source.” *Kniatt*, 239

S.W.2d at 917. While impartiality based on extra-judicial source is a common basis for recusal, it is not the exclusive one “since it is not the exclusive reason a predisposition can be wrongful or inappropriate.” *Id.* at 915. Further, partiality “does not refer to all favoritism, but only to such as is, for some reason, wrongful or inappropriate.” *Id.* at 915, citing *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994).

The due process clauses of the United States Constitution and the Texas Constitution “requires a neutral and detached hearing body or officer.” *Abdygapparova*, 243 S.W.3d at 208, citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973); *Brumit v. State*, 206 S.W.3d 639, 645 (Tex.Crim.App. 2006). Furthermore, no harm analysis is necessary once it is shown that the presiding judge is not impartial. The United States Supreme Court has repeatedly held that a violation of the right to an impartial judge is a structural error that defies harm analysis.” *Id.* at 209, citing *Arizona v. Fulminante*, 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); *Chapman v. California*, 386 U.S. 18, 23 & n. 8, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927); and *Cain v. State*, 947 S.W.2d 262, 264 (Tex.Crim.App. 1997).

A. JUDGE LOMBARDINO SHOULD BE DISQUALIFIED FROM PRESIDNG OVER THIS CASE UNDER ART. V. SEC. 11 OR RECUSE HIMSELF UNDER TCRP 18(B)(7)(b) BECAUSE HE HAS INTEREST IN OUR CASE DUE TO MR. NEWMAN’S REPRESENTATION OF JUDGE LOMBARDINO’S SON AND THE FINANCIAL ARRANGEMENTS ATTACHED TO PROVIDE THAT REPRESENTATION.

Mr. Newman represented David Lombardino either for free or David Lombardino owes him \$100,000.00 in attorney fees. Mr. Newman became an agent of David Lombardino when he became his attorney. Mr. Newman has requested attorney fees and will have to testify regarding

same in our case and request the award of those fees from Judge Lombardino in our case. Judge Lombardino would directly benefit from Mr. Newman being awarded attorney fees. It will either reward Mr. Newman for his pro bono representation of his son or may assist his son in providing fees for the repayment of fees owed to Mr. Newman. Judge Lombardino is constitutionally disqualified under either factual scenario.

As stated earlier in this motion, Article 5 Sec. 11. of the Texas Constitution reads in part that: “No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case...”

Tex. Const. Art. V. Sec. 11

A Texas Appellate Court has disqualified a judge whereby a member of his family had a financial interest in pending litigation before his court. “The employment of the judge’s wife by the defendant corporation was a direct pecuniary interest amounting to disqualification – *Gulf Maritime Warehouse v. Towers*, 858 SW2d 556 (Tex. App. – Beaumont 1993, denied); “ In *Gulf Maritime*, the Judge’s wife had been an employee of the Defendant corporation. The Court noted that she had stock options and a pension plan through her employment with the defendant corporation. The Court held, “Where doubt exists as to a Judge’s pecuniary interest in a matter, doubt is resolved in favor of disqualification.” *Gulf Maritime Warehouse Co.* 858 S.W.2d at 559

Postal Mutual Indemnity Co. v. Ellis, 169 SW2d 482 (Tex. 1943), was a worker’s compensation case in which the attorney for the plaintiff was the son of the presiding judge. The statute required the court to pass on and approve the fee to be paid to the attorney. The Supreme Court, finding the order void, said, “It appears to be settled that the word ‘party’ as used in the above statute [8306 V.A.C.S.], is not restricted to those who are named as parties in the

pleadings, but that it includes all persons directly interested in the subject matter and result of the suit, regardless of any appearance of their names in the record.” (p. 484) *Fry v. Tucker*, 202 SW2d 218 (Tex. 1947)

The inventory filed in Judge Lombardino’s case suggests that Mr. Newman has not been paid by David Lombardino and owes him \$100,000.00. Judge Lombardino’s son has a pecuniary interest in Mr. Newman being awarded attorney fees. Similar to the Judge in *Gulf Maritime*, Judge Lombardino has an interest in our case through a family member. Mr. Newman has an agency relationship with David Lombardino while simultaneously being the agent for James J. Rooney, Petitioner in this case. As in *Postal Mutual Indemnity Co*, the word party includes all persons directly interested in the subject matter and result of the suit, regardless of any appearance of their names in the record. (See also, *In Re O’Connor*, 92 SW3 446 (Tex. 2002) disqualifying judge in modification suit where judge’s former law partner had represented litigant in original divorce case.) (See also *Monroe v Blackmon* 946 S.W.2d 533, 537 (Tex. App.- Corpus Christi 1997) citing as authoritative commentary at 537 17 ST. MARY’S L.J. 601, 639 (1986) (noting ethics committee opinion which states that Judge should recuse himself where attorney for litigant is presently serving as a trustee, with discretionary powers, of a trust in which the Judge’s wife is a beneficiary)

Once a pecuniary interest is shown to exist, the judge is disqualified no matter how slight the interest. See *Cameron v. Greenhill*, 582 S.W.2d 775, 776 (Tex.), cert. denied, 444 U.S. 868, 100 S. Ct. 142, 62 L. Ed. 2d 92 (1979); *Lindsley v. Lindsley*, 152 S.W.2d 415, 433 (Tex.Civ.App.-Dallas 1941) (opinion on rehearing), rev’d on other grounds, 139 Tex. 512, 163 S.W.2d 633 (1942). As such, Judge Lombardino should honorably step aside from further proceedings in our case. If not, then the case should be referred to the presiding judge of the

11th administrative region and he should be constitutionally disqualified.

Further, Under 18(b)(7) a judge must recuse himself if a person related to the judge within the third degree is known to have an interest that could be substantially affected by the outcome of the proceeding. Tex. R. Civ. P. 18(b)(B). David Lombardino owes Mr. Newman \$100,000.00 according to his trial inventory. Judge Lombardino must decide whether to order attorney fees or what amount of attorney fees to award Mr. Newman in our case. Therefore, his son has a substantial interest in Judge Lombardino awarding Mr. Newman attorney fees. Or if Mr. Newman represented his son pro bono, then Judge Lombardino would owe a favor to Mr. Newman. Under either factual scenario, Judge Lombardino should recuse himself because his son's fee arrangement with Mr. Newman creates a substantial interest for Judge Lombardino in the outcome of our case.

B. JUDGE LOMBARDINO SHOULD BE RECUSED FROM PRESIDING IN THIS CASE BECAUSE A REASONABLE MEMBER OF THE PUBLIC WOULD HAVE A REASONABLE DOUBT ABOUT JUDGE LOMBARDINO'S ABILITY TO BE IMPARTIAL IN OUR CASE.

A combination of several factors would lead a reasonable member of the public to have a reasonable doubt about Judge Lombardino's ability to be impartial in this case. First, Mr. Newman represented David Lombardino and both Mr. Newman and Judge Lombardino failed to disclose this to attorneys who opposed Mr. Newman when representing litigants in Judge Lombardino's court. Second, they also failed to disclose the financial nature of their relationship to the attorneys who were opposing Mr. Newman in Judge Lombardino's court and that his son was accumulating a debt to Mr. Newman. Third, the amount of money donated to Judge Lombardino's campaign by Mr. Newman, entities associated with him and various family

members. Fourth, the continuing and systematic nature of the money donated from Mr. Newman to Judge Lombardino's campaign. Fifth, Mr. Newman sponsored campaign events and donated money around significant dates when he would appear before Judge Lombardino. Sixth, Judge Lombardino's coordinator referred clients to Mr. Newman. Seventh, Judge Lombardino's coordinator communicated with Mr. Newman's staff in an inappropriate manner. Eighth, Judge Lombardino has awarded Mr. Newman an unusually large amount of attorney fees while Mr. Newman has represented his son. Finally, Ms. Gregory's has represented Judge Lombardino's wife and Judge Lombardino must decide the award of her attorney fees in this case. All of these factors have demonstrated a reasonable member of the public at large would harbor reasonable doubt that Judge Lombardino would be impartial. In fact, based on these facts, a reasonable member of the public would be placed in imminent fear if they had a family law issue in the 308th district court and Mr. Newman was representing their spouse or former spouse.

As stated earlier in this motion, Once a judge's impartiality is questioned under 18.01(b), Texas courts follow the reasonable-person test for questioned impartiality. *Kniatt v. State*, 239 S.W.3d 910 (Tex.App. - Waco, 2007). Texas Rule of Civil Procedure Rule 18b(b)(2) states "[a] judge must recuse in any proceeding in which...the judge's impartiality might reasonably be questioned." Tex.R.Civ.P. 18b(b)(1). "In determining whether a judge's impartiality might be reasonably questioned, so as to require recusal, the proper inquiry is whether a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge and the case, would have a reasonable doubt that the judge is actually impartial." *Kniatt*, 239 S.W.2d at 915, quoting *Burkett v. State*, 196 S.W.2d 892, 896 (Tex.App. - Texarkana 2006, no pet.); also citing *Mosley v. State*, 141 S.W.3d 816, 834 (Tex.App. - Texarkana 2004, no ref'd); *Sears v. Olivarez*, 28 S.W.3d 611, 615 (Tex.App. - Corpus Christi 2000, order). To show bias or

prejudice the movant must provide sufficient information to show that a reasonable person with knowledge of all of the circumstances would harbor doubts as to the judge's impartiality. *See Abdygapparova v. State*, 243 S.W.3d 191 (Tex.App. - San Antonio 2007 (discretionary review refused)).

In Monroe v Blackmon, 946 S.W.2d 533, 537 (Tex. App.- Corpus Christi 1997), a Texas Appellate Court recused a judge who was being represented by an attorney while presiding over a case whereby the same attorney was representing one of several civil defendants. "In the instant case, instruments filed at the supreme court of this state, evidencing the Hunt, Hermasen firm's representation of Judge Bennett are clearly within the public domain. As lawyers, we belong to a profession bombarded by attention from popular media, and we feel certain that a reasonable member of the public at large appreciates the sacrosanct duty of a law firm and its lawyers to their clients. Accordingly, given the fact that the sanctity of the attorney-client relation is common knowledge, and assuming that a reasonable member of the public at large were apprised of all matters within the public domain, we can only conclude that reasonable doubts exist as to Judge Bennett's actual impartiality."

In contrast, the same Corpus Christi Appellate Court, refused to mandate recusal in another case in which a judge presided over a case whereby a party was represented by a lawyer who also represented the judge in a campaign finance related lawsuit. The Court stated there was prima facie case for recusal because the judge was presiding over a case in which he was also represented by a lawyer for one of the parties. However, the court found insufficient basis for recusal because nothing in the record explored the relationship between the attorney and the judge. 976 S.W.2d 308 Court of Appeals of Texas, Corpus Christi-Edinburg. *Lueg v. Lueg*. 976 S.W.2d 308 (Court of Appeals of Texas, Corpus Christi-Edinburg 1998).

Our case is vastly different. Mr. Newman represented David Lombardino either free of charge or is currently owed \$100,000.00 by David Lombardino. Second, Judge Lombardino never disclosed this to any attorney representing litigants opposed to Mr. Newman in his court. Third, his court coordinator referred a case to Mr. Newman while in the presence of Judge Lombardino at a private dinner. Fourth, his court coordinator sent unusual texts to employees of Mr. Newman from her personal cell phone immediately after Mr. Newman was awarded \$150,000.00 in attorney fees. Add these factors to the enormous amount of donations that Mr. Newman, his law firm and various family members have contributed to Judge Lombardino's campaign. Additionally, conflate these facts with the unusual nature and timing of the events Mr. Newman has sponsored for Judge Lombardino. The campaign activities only create further doubt about Judge Lombardino's ability to be impartial.

Texas courts have repeatedly rejected the notion that a judge's acceptance of campaign contributions from lawyers creates bias necessitating recusal, or even an appearance of impropriety. *J-IV Investments*, 784 S.W.2d at 107; *Rocha v. Ahmad*, 662 S.W.2d 77, 78 (Tex.App. —San Antonio 1983, no writ); *Texaco, Inc. v. Pennzoil, Co.*, 729 S.W.2d 768, 844–45 (Tex.App.—Houston [1st Dist.] 1987, writ ref'd n.r.e.), cert. dismissed, 485 U.S. 994, 108 S.Ct. 1305, 99 L.Ed.2d 686 (1988).

In *Aguilar v. Anderson*, 855 SW2d 799 (Tex. App. - El Paso 1993, Denied), a recusal motion was filed against the presiding judge based on the judge's solicitation and acceptance of a campaign contribution from an attorney appearing on behalf of the opposing side. The court upheld the decision denying recusal, citing the dilemma that would exist if judges could not sit in cases involving contributing attorneys. However, the El Paso Court further explained: "We cannot say, under these circumstances, that the presiding judge acted without reference to

guiding principles. In reaching this decision, the Court does not lightly dismiss the ethical dilemma posed by our system where an elected judiciary seeks campaign contributions from lawyers, nor do we lightly dismiss the heated criticism this system has generated. Both dissent and concurrence make cogent and thought-provoking arguments on the problems inherent in this elective scheme. We simply hold that, under these facts, the presiding judge did not act outside the bounds of discretion in deciding the recusal motion.” *Id* at 802

A Texas Supreme Court Justice raised the possibility that a case by case determination should be the criteria when dealing with campaign donations. Justice Enoch stated: “I do not mean to suggest that that circumstances could never arise, or have not already risen, where the nature and timing of a campaign contribution would be so unusually questionable as to require recusal under Rule 18b(2)(a). But such is not the case here.” *Rogers v Bradley* 909 S.W.2d 872, 883. (Tex. Supreme Court) (Justice Enoch responding to Justice Gammage’s recusal)

In our case, the timing of the donations and the “Federal Grill Fundraiser” are suspicious because the fundraiser was nine days after the temporary orders hearing in the Leach/Rooney case and six weeks before Judge Lombardino awarded Mr. Newman \$150,000.00 in attorney fees in the *Jones* case.

The combination of all the factors mandate recusal of Judge Lombardino. The campaign activities in isolation may not be enough. However, the campaign activities are aggravated by the multitude of other facts. Mr. Newman’s represented Judge Lombardino’s son, was owed a debt from that representation or may have provided pro bono representation. Furthermore, the failure to disclose that representation or the financial arrangements to lawyers opposing Mr. Newman in the 308th Court. Additionally, the 308th Court Coordinator communicated with Mr. Newman’s staff and referred clients to Mr. Newman while in the presence of Judge Lombardino.

CERTIFICATE OF CONFERENCE

Counsel attempted to confer with opposing counsel for Petitioner, Bobby K. Newman and the amicus attorney, Myrna Gregory in a diligent and good faith attempt to resolve issues presented in this motion without court intervention on April 9, 2018 by email at 12:39 PM. As of April 10, 2018 at 12:00 PM, Bobby K. Newman had not responded to the Email or communicated to counsel his position in regards to the motion. Counsel reasonably believes that that he will oppose this motion. The amicus attorney, Myrna Gregory has communicated via Email her opposition to this motion.

s/ John LaGrappe

Unofficial Copy Office of Chris Daniel District Clerk

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on April 9, 2018.

/s/ John C. LaGrappe
John C. LaGrappe

Unofficial Copy Office of Chris Daniel District Clerk