

CAUSE NOS. 990,997 & 1017,1061

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THE STATE OF TEXAS

§ IN THE 51<sup>st</sup> DISTRICT

V.

§ COURT OF

WARREN STEED JEFFS

§ *Schleicher*  
TOM GREEN COUNTY, TEXAS

*Jiggly Williams*

**MOTION FOR RE-HEARING/RE-CONSIDERATION OF DEFENDANT'S  
FIRST AMENDED MOTION TO RECUSE TRIAL JUDGE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES WARREN STEED JEFFS, Defendant by and through his attorney, EMILY MUNOZ DETOTO, and respectfully files this Motion for Re-Hearing/Re-Consideration of Defendant's First Amended Motion to Recuse Trial Judge, in the above referenced and styled cases.

I.

**PROCEDURAL HISTORY**

On Monday, June 13, 2011, the parties appeared for a hearing on Defendant's First Amended Motion to Recuse Trial Judge. Defendant's First Amended Motion to Recuse Trial Judge, alleged, among other things, that the Court's non-verbal conduct during previous trials of FLDS Church members indicated that the Court had a severe personal bias against the FLDS Church and its members and because of such severe personal bias, any member of the FLDS will never receive a fair trial in front of Judge Barbara Walthers. The Honorable John Hyde presided over said hearing. Approximately 8 witnesses testified in said hearing. After testimony from 8 witnesses and arguments from Counsel, the Honorable John Hyde denied Defendant's Amended Motion to Recuse Trial Judge.

## II.

This motion is based on the following:

During the recusal hearing held on June 13, 2011, Defendant, Mr. Warren Steed Jeffs sought to have the trial Judge, Barbara Walthers recused from presiding over the above referenced cases because said Judge had a personal bias or prejudice against the Defendant and the FLDS, however, there exists crucial facts and/or pertinent questions that are left un-answered as to Judge Walthers' ability to sit as a neutral and detached jurist in the above referenced cases. Defendant asks this Court to re-consider her decision to not recuse herself, or alternatively asks the Honorable Judge Hyde to reconsider and re-hear Defendant's Amended Motion to Recuse Trial Judge. Defendant submits that there remains strong grounds for recusal that were not thoroughly developed during the first recusal hearing that, had they been developed, would have exposed Judge Walthers' bias against Mr. Jeffs and the FLDS. Said issues of concerns and/or actions taken by Judge Walthers, and or grounds for recusal that yet need to be developed include, but are not limited to the following:

1. In June of 2008, after Judge Walthers authorized the raid of the YFZ Ranch, her home was under guard after Utah and Arizona authorities warned of "enforcers" from the alleged sect. *See USA Today*, June 11, 2008. ([http://www.usatoday.com/news/nation/2008-06-11-texas-judge\\_N.htm](http://www.usatoday.com/news/nation/2008-06-11-texas-judge_N.htm)) It goes without saying that if the Judge felt it was necessary to be guarded by law enforcement from members of the FLDS, there must remain a question as to whether Judge Walthers harbors any bias, prejudice, or even fear of Mr. Jeffs, and members of the FLDS that will affect her ability to be a neutral and detached jurist, or if said experience was of such a nature as to engender bias and/or prejudice against Mr. Jeffs and the FLDS although the FLDS and Mr. Jeffs have no history, at all, of violence, but to the contrary have been the victims of persecuting zeal of both religious and political bias since the restoration of the Gospel of Jesus Christ as revealed through Joseph Smith, Jr.

2. In June of 2008, Judge Walthers herself authorized, by signing the warrant that was used as the basis for raiding the YFZ Ranch. Hence, Judge Walthers possessed knowledge of the alleged facts and circumstances surrounding the above cases and the other cases that came before her. By the authorizing the warrant, Judge Walthers, in essence, made a judgment as to the truthfulness and veracity of the person who called in to report the alleged offense, and made a judgment as to whether or not probable cause existed. The fact that Judge Walthers was the judge who authorized the issuance of the warrant that caused the YFZ Ranch to be searched, coupled with the fact that the Defendant has filed a motion seeking to be suppress the proceeds of the raid on the YFZ Ranch, creates is an almost impossible situation for Defendant and makes it more likely than not, that the Defendant does not have any meaningful chances in prevailing on said Motion to Suppress Evidence and Defendant submits that this certainly gives an appearance of partiality and bias on the part of Judge Walthers. See Litek, 510 U.S. at 588.
  
3. Judge Walthers, in granting the Motion to Change Venue, moved Mr. Jeffs' case from to Tom Green County, Texas. It is interesting to note that there are several counties that surround Schleicher County, yet Judge Walthers chose to move Mr. Jeffs' case to Tom Green, a county where she currently resides, and a county where a jury recently convicted and sentenced a member of the FLDS to 75 years in prison. Based upon change of venue to Tom Green County, it cannot be said that Judge Walthers does not appear to harbor bias or prejudice against Mr. Jeffs and the FLDS.
  
4. Judge Walthers issued the order authorizing the removal of over 400 children from the YFZ Ranch, but said decision was overturned by the State Supreme Court, and it was determined that Judge Walthers abused her discretion in issuing said order. However, despite this fact, Judge Walthers continued to interject herself and her wishes into return-agreements between CPS and the parents of the children who were forcibly removed from the YFZ Ranch, which delayed the reunion between the children and their parents un-necessarily. The Judge's unwillingness to follow the Supreme Court's ruling, and instead attempt to impose extra return-conditions surely gives the appearance that Judge Walthers harbors a bias or prejudice against Mr. Jeffs and the FLDS.

5. Debra Brown, head of Tom Green County CASA stated in an article published in the San Angelo Standard Times on March 29, 2009, that she received a call from Judge Barbara Walther on April 3, 2008 (prior to the execution of the search warrant on the YFZ Ranch) wherein Walther stated, "There has been a report of child abuse at the compound," Brown said Walther told her. "I've signed a warrant for CPS and law enforcement. They're going to check on some young ladies. There may be possible removals." This pre-emptive call to the local women's shelter indicating that there might be removals from the YFZ Ranch shows a pre-disposition to believing the allegations are true, and therefore, is favoritism towards the State and a bias and prejudice against the Defendant and the FLDS.

### III.

#### ARGUMENT AND AUTHORITIES

Both the Texas and United States Constitutions guarantee a party an impartial and disinterested tribunal. Metzger v. Sebek, 892 S.W.2d 20, 37-38 (Tex.App.-Houston [1<sup>st</sup> Dist. writ denied). In both civil and criminal cases, motions to recuse are governed by 18a and 18b of the Texas Rules of Civil Procedure. Arnold v. State, 853 S.W.2d 543, 544 (Tex.Crim.App. 1993). Pursuant to Rule 18b, "A Judge shall recuse himself in any proceeding, in which: (a) his impartiality might reasonably be questioned; [or] (b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceedings..." TEX. R. CIV. PROC. 18(b)(2). (emphasis added).

Partiality, bias, and prejudice are inherent in due process, which requires that a judge be neutral and detached. Abdygapparova v. State, 243 S.W.3d 191, 208 (Tex.App.-San Antonio 2008, pet. ref'd); Gagnon v. Scarpelli, 411 U.S. 778, 786 (1983).

"Partiality," refers to favoritism that is "wrongful or inappropriate." Liteky v. United States, 510 U.S. 540, 552 (1994). "Bias" and "prejudice" have been construed to connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved....or because it is excessive in degree." Id., 510 U.S. at 552. The inquiry into whether recusal is appropriate centers on objective criteria using a "reasonable person" standard. Abdygapparova, 243 S.W.3d at 198.

"To require recusal, a judge's bias must be extrajudicial and not based upon in-court rulings." Girder v. Boston Co., 773 S.W.2d 338, 346 (Tex.App.-Dallas 1989, writ denied) (citing United States v. Grinnel Corp., 384 U.S. 563, 583 (1966)). Opinions formed by the judge on the basis of facts introduced or events occurring during proceedings do not constitute a basis for a recusal motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Ludlow v. DeBerry, 959 S.W.2d 265, 271 (Tex.App.-Houston [14<sup>th</sup> Dist.] 1997, no pet) (citing Litekey v. United States 510 U.S. 540 (1994)); see also Kniatt v. State, 239 S.W.3d 910, 920 (Tex. App. -Waco 2007, no pet).

A movant need not prove that a judge is actually partial or biased to merit recusal; rather it is the "appearance" that matters. Liteky, 510 U.S. at 558. Indeed, due process requires recusal when "there is a serious risk of actual bias-based on objective and reasonable perceptions." Caperton v. A.T. Massey Coal Co. Inc., 129 S.Ct. 2252, 2263 (2009).

In this case, the denial of Defendant's First Amended Motion to Recuse Trial Judge and therefore allowing Judge Walthers to preside over Defendant's upcoming jury

trial, will deprive Defendant of a fair trial in violation of Texas Rule of Civil Procedure 18b for the following reasons:

**A. Judge Walthers' Impartiality Might Be Reasonably Questioned.**

In determining whether Judge Walther's impartiality may be questioned, the question becomes, whether a reasonable member of the public, knowing all the circumstances involved, would harbor doubts as to the impartiality of Judge Walthers with respect to the FLDS and Mr. Warren Jeffs. TEX. R. CIV.P. 18B(2)(a); Kemp, 846 S.W. 2d at 305. In this case, the answer is YES. Based upon the actions and rulings made by Judge Walthers it is clear that she has repeatedly displayed a prejudice against Mr. Warren Jeffs and the FLDS.

**B. Public Policy Requires the Judge Walthers Be Removed:**

The integrity of a court is called into question when a judge is partial, biased or prejudiced or creates a reasonable perception of such. "Public policy demands that a Judge act with absolute impartiality." CNA Ins. Co. v. Sheffey, 828 S.W.2d 785, 792 (Tex.App.—Texarkana 1992, writ denied). "Judicial decisions rendered under circumstances that suggest bias or prejudice or favoritism undermine the integrity of the courts, breed skepticism and mistrust, and thwart the principles on which the judicial system is based." Id.

Judge Walthers' actions have demonstrated bias and partiality and based upon the above referenced actions, as well as the fact that Judge Walthers has presided over the following proceedings:

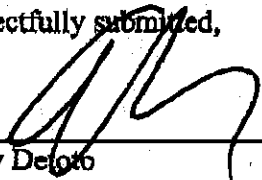
1. The 14 Day Hearing;

2. Prior Suppression Hearings for various FLDS defendants;
3. The *Raymond Jessop* Trial;
4. The *Alan Keate* Trial;
5. The *Michael Emack* Trial;
6. The *Merril Leroy Jessop* Trial;
7. The *Lehi Jeffs* Trial;
8. The *Abram Jeffs* Trial; and;
9. The *Keith Dutson, Jr.* Trial,

Defendant submits it is abundantly clear that Judge Walthers has lost her objectivity in all cases involving FLDS and Mr. Jeffs, and not only "appears" biased and impartial, but actual is.

THEREFORE, the Defendant respectfully requests that the Judge of this Court Re-consider its ruling on Defendant's First Amended Motion to Recuse Judge, and set this mater for a hearing so that the issues as stated above can be considered and said motion can be re-heard.

Respectfully submitted,



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**CO-COUNSEL FOR DEFENDANT  
WARREN STEED JEFFS**

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify that a true and correct copy of the above and foregoing was delivered to the Assistant District Attorney on the 1<sup>st</sup> day of July, 2011.

  
\_\_\_\_\_  
EMILY DETOTO

CAUSE NOS. 990,997 & 1017,1061

THE STATE OF TEXAS

§

IN THE 51<sup>st</sup> DISTRICT

V.

§

COURT OF

WARREN STEED JEFFS

§

*Schleicher*

TOM GREEN COUNTY, TEXAS

ORDER

Defendant's Motion for Re-Hearing/Re-Consideration of Defendant's First Amended Motion to Recuse Trial Judge is hereby:

\_\_\_\_\_ GRANTED, said motion is set for a hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_ DENIED

SIGNED on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Judge, 51st District Court