

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:  HIGHLAND CAPITAL MANAGEMENT, L.P.  Reorganized Debtor.	§ § § § § § §	Chapter 11  Case No. 19-34054-sgj-11
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**MOTION FOR RECUSAL**

Movants James Dondero, NexPoint Asset Management, L.P. (f/k/a Highland Capital Management Fund Advisors, L.P.), NexPoint Advisors, L.P., The Dugaboy Investment Trust, Nexpoint Real Estate Partners, LLC, and the Get Good Trust respectfully request that this Court recuse itself from these proceedings and that another judge of the United States Bankruptcy Court for the Northern District of Texas be assigned to preside over this bankruptcy. In addition, Movants respectfully request that the Court vacate all orders and other judicial decisions rendered by the Court in this bankruptcy from the date the Court began writing its novels “parodying” Movants to the present day.

This Court has been writing novels with characters difficult to distinguish from the participants in this case and with plots tracking these bankruptcy proceedings. The United States Court of Appeals for the Fifth Circuit observed that: “Due to the similarities between the characters in Chief Judge Jernigan’s novel and the litigants currently before her in court, a strong argument could be made that she had a duty to recuse.” *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466, at \*7 (5th Cir. Apr. 16, 2025). And although the Court of Appeals declined to force recusal in response to an interlocutory petition for mandamus, it did not vindicate or in any way defend this Court’s actions or its refusal to recuse in response to the novels. *Id.*



The Court of Appeals denied mandamus solely on account of the exceedingly deferential standard of review employed by a district court in reviewing a mandamus petition, as well as the additional deference owed by a court of appeals when reviewing a district court’s refusal to issue mandamus. The Court of Appeals explained that even a strong showing that the bankruptcy court erred by declining to recuse is insufficient to warrant mandamus relief ordering recusal. Instead, a petitioner must show that the lower court “*clearly and indisputably* erred” before mandamus can issue. *Id.* at \*7 (emphasis in original) (internal citation omitted); *see also id.* (holding that reviewing courts will not intervene on mandamus “to correct a duty that is to any degree debatable.”). On top of that, the Court of Appeals was reviewing the district court’s order declining to issue mandamus requiring this Court to recuse, which added an additional layer of deference as district-court orders of this sort are reviewed only for “abuse of discretion.” *See id.* at \*3.

This Court should take heed of the Court of Appeals’ suggestion and step away from this case. *See id.* at \*7. The recusal issue will be raised again on direct appeal, where the parties will not need to show only “clear and indisputable error.” Rulings infected by this “strong argument” for recusal will not serve judicial economy, as they will add to what will need to be redone if the Court of Appeals finds the failure to recuse reversible error on direct appeal.

### **BACKGROUND**

On April 5, 2023, Movants petitioned for mandamus in the District Court, seeking immediate review of this Court’s latest decision declining to recuse itself from this case. *Dondero v. Jernigan*, No. 3:23-cv-00726-S (N.D. Tex.), Dkt. 1. The District Court denied mandamus, and the Movants appealed to the Court of Appeals. *Id.*, Dkts. 25, 26.

On November 5, 2024, a panel of the Court of Appeals issued a decision affirming the District Court. With respect to this Court’s novels, the Court of Appeals noted some dissimilarities

between the hedge fund and CEO depicted in the books and Highland Capital and James Dondero. It concluded “that a reasonable reader or observer of these proceedings would not necessarily question Chief Judge Jernigan’s impartiality in this case.” But it did not analyze the deferential standard of review on mandamus that was particular to its analysis of the novels.

The Movants petitioned for rehearing *en banc* and focused on the extraordinary circumstances of the novels. *Dondero v. Jernigan*, No. 24-10287 (5th Cir.), Dkt. 96. The Court of Appeals called for a response and kept the *en banc* petition under advisement for nearly five months. *See id.*, Dkt. 112. On April 16, 2025, the original panel (as authorized by Fifth Circuit rules) took control of the petition for rehearing *en banc*, granted panel rehearing, and replaced its opinion. *Id.*, Dkts. 141, 142. The panel thoroughly reworked its analysis of the novels and how they affect the duty to recuse. And the amended opinion observes that: “Due to the similarities between the characters in Chief Judge Jernigan’s novel and the litigants current before her court, a strong argument could be made that she had a duty to recuse.” *Dondero v. Jernigan*, 2025 WL 1122466, at \*7.

The Court of Appeals then added a discussion of the standard of review on mandamus specific to the novels. The Court of Appeals observed how truly remarkable it is for a judge presiding over a case to write novels regarding such a closely related subject matter: “To our knowledge, no court—apart from the district court that initially denied mandamus in this case—has ever analyzed [the duty to recuse when a judge’s impartiality might reasonably be questioned] on facts like these.” *Id.* The Court of Appeals indicated that the unprecedented nature of this book writing made granting mandamus more difficult, because the right to relief has to be “clear and indisputable,” making mandamus an inapt setting to consider issues not previously decided by the appellate courts. *Id.* The Court of Appeals emphasized that the Movants may have shown

“possible error,” but until direct appeal and in the mandamus setting then presented showing error is insufficient: Only “clear and indisputable error” will do. *Id.* And the Court held that even that high bar is surrounded by another layer of deference, as the Court of Appeals will not reverse a District Court’s refusal to issue mandamus unless it “abused its discretion” in failing to find “clear and indisputable error.” *Id.*

The Movants sought to bring the panel’s revised opinion to the *en banc* court, noting the nationwide split of authority over the standard of review applicable to the mandamus petition challenging a lower court judge’s refusal to recuse. *Dondero v. Jernigan*, No. 24-10287 (5th Cir.), Dkt. 149. After several weeks, the Court of Appeals denied that *en banc* petition. *Id.*, Dkt. 152. The Movants will be seeking Supreme Court review.

### ARGUMENT

The Court of Appeals declined to reverse the District Court and to require it to issue mandamus relief directing the recusal of this Court. The Court of Appeals’s principal reason for doing so was the extremely demanding showing required for mandamus relief: That the lower clear “*clearly and indisputably* erred.” *Dondero v. Jernigan*, 2025 WL 1122466, at \*7. Against this standard, even “a strong argument [that this Court] had a duty to recuse” will not result in mandamus requiring recusal. *Id.*

The Court of Appeals’s discussion of the high threshold for mandamus relief is juxtaposed with how the recusal decision will be reviewed on direct appeal. On direct appeal, decisions not to recuse are reviewed for an abuse of discretion. *Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-62 (5th Cir. 1980).<sup>1</sup> But, at the direct appeal stage,

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<sup>1</sup> Abuse of discretion is not the standard of review in other courts of appeals, where decisions not to recuse are reviewed *de novo*. See, e.g., *In re Sherwin Williams Co.*, 607 F.3d 474, 477 (7th Cir. 2010). Those courts have explained that the duty to recuse, when a judge’s impartiality may

parties need not show that the lower court “clearly and indisputably erred” in declining to recuse. *Id.* at 960–62 & n.4 (comparing the more lenient standard of review when a recusal decision is addressed after litigation is final with the “exceptional circumstances amounting to a judicial usurpation of power” required for mandamus); *In re Moody*, 755 F.3d 891, 897 (11th Cir. 2014) (explaining that review of district court judge’s refusal to recuse under mandamus authority was “even more stringent” than the ordinary abuse-of-discretion standard applicable to review on appeal of a recusal issue). And strong arguments that the lower court had a duty to recuse are more likely to lead to reversible error on direct appeal. A judge’s failure to recuse when required by statute renders each of the court’s rulings below error, because the litigants were deprived of an impartial judge.<sup>2</sup>

The Court of Appeals explained that the law on the standard of review creates a category of decisions that will not be reversed on mandamus in the middle of the case, but that will be reversed on direct appeal at the end of the case. This Court’s recusal decision is very likely in that category. In undertaking its analysis, the Court of Appeals is providing this Court with a window of time to correct itself with respect to its recusal decision and to step back from this case. That opportunity is an artifact of the posture of this case. Rarely do lower courts receive such a clear forecast from a reviewing court regarding the likely result in a later direct appeal.

Considerations of judicial economy and preserving confidence in the judicial system strongly counsel in favor of recusal and allowing another judge—whose impartiality cannot

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be reasonably questioned, is a statutory mandate, and that the standard of review should therefore not refer to the court’s discretion in making such a decision. *Id.*; *see also* 28 U.S.C. § 455(a) (“Any justice, judge, or magistrate judge of the United States *shall* disqualify himself in any proceeding in which his impartiality might be reasonably questioned.”) (emphasis added).

<sup>2</sup> In this case, the Court should have recused itself the moment that it began writing novels about the parties and issues in this case.

reasonably be questioned—to take over this matter. Moreover, the Court should vacate all of its orders and decisions in this case taken since the day the Court began writing its novels.

**DATED:** August 15, 2025

Respectfully submitted,

**ASHCROFT SUTTON LLP**

By: /s/ Johnny Sutton (with permission)

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**CERTIFICATE OF SERVICE**

I certify that on August 15, 2025, this document was served on ECF participants, electronically through the Court's ECF System.

/s/ Geoffrey S. Harper

**CERTIFICATE OF CONFERENCE**

I certify that on August 15, 2025, I conferred with Jeff Pomerantz and Greg Demo, Counsel to Highland Capital Management, L.P. and the Highland Claimant Trust and they oppose the relief requested in this Motion.

/s/ Jonathan F. Mitchell (with permission)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.  
Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

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**ORDER GRANTING MOTION FOR RECUSAL**

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The Court has considered Movants James Dondero, NexPoint Asset Management, L.P. (f/k/a Highland Capital Management Fund Advisors, L.P.), NexPoint Advisors, L.P., The Dugaboy Investment Trust, NexPoint Real Estate Partners, LLC, and the Get Good Trust's ("**Movants**")<sup>1</sup> contemporaneously filed *Motion for Recusal* (the "**Motion**") in which Movants have asked the undersigned judge (the presiding judge in the underlying chapter 11 bankruptcy case No. 19-34054-sgj11, captioned above) to recuse herself from the case due to perceived conflicts of interest, and to vacate all orders and other judicial decisions rendered by the Court in

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

this bankruptcy from the date the Court began writing its novels. Based on the evidence and argument presented by the parties, the Court hereby finds and concludes that the Motion for Recusal is well-taken. Accordingly, it is hereby **ORDERED THAT**:

1. The Motion for Recusal is **GRANTED**.
2. This Court shall recuse itself from presiding over this bankruptcy proceeding.
3. This Court shall vacate all orders and other judicial decisions rendered by the Court in this bankruptcy proceeding from the day the Court began writing its novels up to the present day.

**### End of Order ###**

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