

Case No. 24-10287

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.

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JAMES DONDERO; HIGHLAND CAPITAL MANAGEMENT  
FUND ADVISORS, L.P.; the DUGABOY INVESTMENT TRUST;  
GET GOOD TRUST; and NEXPOINT REAL ESTATE  
PARTNERS, LLC,

*Appellants*

v.

JUDGE STACEY G. JERNIGAN,

*Appellee*

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On Appeal from the United States District Court for the Northern  
District of Texas, Dallas Division  
No. 3:23-CV-0726-S  
Hon. Karen Gren Scholer, District Judge

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APPELLANTS' UNOPPOSED MOTION FOR EXTENSION OF  
TIME TO FILE A PETITION FOR EN BANC REVIEW

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Good Trust, and NexPoint Real Estate Partners, LLC*



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Pursuant to Fifth Circuit Local Rule 26(b), Appellants James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC (collectively, “Appellants”) request a 14–day extension of time to file a Petition for En Banc Review. As set forth in greater detail below, there is good cause for this request for extension of time because the issues are complex and because Appellants are in the process of engaging replacement appellate counsel to assist in crafting their en banc petition.

Appellants believe that the panel’s decision in this appeal conflicts with the precedent of at least one other federal circuit court, and that the conflict poses a question of extraordinary importance—that is, the appropriate standard of review to apply when reviewing the decision of a sitting judge not to recuse herself. The panel applied a deferential, abuse of discretion standard of review in affirming the bankruptcy court’s recusal decision, notwithstanding that (1) the recusal statute, 28 U.S.C. § 455 is mandatory, (2) application of an abuse of discretion standard gives great deference to the decision of the very judge being accused of

impartiality, and (3) the panel's application of an abuse of discretion standard conflicts with other federal circuit court precedent.

To properly present such an important issue, Appellants are engaging appellate counsel, who will need time to review the voluminous record and fully immerse in the issue to be briefed to the panel. The current deadline to file the petition for en banc review is November 19, 2024. Appellants respectfully request an extension of the deadline to December 3, 2024 for the good cause described herein. This motion is not made for delay and will not prejudice any other parties to the appeal.

Dated: November 15, 2024

Respectfully Submitted,

/ s/ Michael J. Lang  
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**CERTIFICATE OF SERVICE**

This certifies that, on November 15, 2024, this brief was served this day on all parties who receive notification through the Court's electronic filing systems.

/ s / Michael J. Lang  
Michael J. Lang

**CERTIFICATE OF CONFERENCE**

This certifies that, on November 15, 2024, the undersigned conferred with counsel for Highland, John Morris, who indicated Highland was not opposed to the Motion and relief requested.

/ s / Michael J. Lang  
Michael J. Lang