

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOANNE WARWICK,

Plaintiff,

v.

UNIVERSITY OF THE PACIFIC;
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
(CDCR); PATRICIA MILLER; MATTHEW
CATE; MARVIN SPEED; TED RICH;
MICHAEL BRADY; CLAUDIA BELSHAW;
JILL BROWN; JOHN D. STOKES; GARY
SWARTHOUT; DOES TWO THROUGH
TWENTY-FIVE, inclusive,

Defendants.

No. C 08-3904 CW

ORDER DENYING
PLAINTIFF'S
RULE 60 MOTION FOR
RELIEF FROM
JUDGMENT (Docket
No. 224)

Plaintiff Joanne Warwick moves for relief from judgment, pursuant to Federal Rules of Civil Procedure 60(b)(2), (3) and (d)(3). Docket No. 224. Defendants oppose the motion. Having considered all of the parties' submissions, the Court DENIES the motion.

BACKGROUND

This lawsuit arises from Warwick's termination as a contract attorney for the California Parole Advocacy Program (CalPAP). CalPAP trains, appoints and assigns panel-contracted attorneys to

1 parolees facing parole revocation proceedings. CalPAP is operated
2 by Defendant University of Pacific (UOP) through a contract with
3 the State of California. CalPAP removed Warwick from the CalPAP
4 panel of attorneys because her gate clearance at San Quentin
5 prison was revoked. In response to her termination, Warwick filed
6 suit against Defendants UOP, the California Department of
7 Corrections and Rehabilitation (CDCR) and various individuals,
8 claiming violations under Title 42 U.S.C. § 1983 and California
9 business tort law. On July 6, 2010 this Court granted Defendants'
10 motions for summary judgment on all claims.
11

12 Warwick's Rule 60 motion for relief from judgment is directed
13 at the summary adjudication of her § 1983 claim. With respect to
14 that claim, Warwick alleged that UOP; Ted Rich, Deputy
15 Commissioner of the Board of Parole Hearings (BPH); Marvin Speed,
16 BPH Executive Director; and Matthew Cate, Secretary of CDCR,
17 deprived her of her constitutional First Amendment rights.
18 Specifically, Warwick claimed that Rich and Speed retaliated
19 against her because of her complaints about BPH, including her
20 charges that BPH officials were responsible for certain purported
21 problems with the CalPAP program and that BPH staff were not
22 respecting inmates' due process rights and were committing
23 malfeasance. Warwick alleged that Rich and Speed conspired with
24 Mary Swanson, CalPAP program director, to retaliate against
25 Warwick by suggesting that Warwick had sexual relationships with
26
27
28

1 inmates, setting in motion a series of events leading to Warwick's
2 losing her clearance.

3 In granting Defendants' motion for summary judgment, the
4 Court determined that the evidence was clear that Warden Brown
5 made the decision to revoke Warwick's clearance. The Court found
6 a close temporal link between the May 20, 2005 complaint letter
7 that Warwick sent to Speed and the date Warwick's clearance was
8 revoked, May 27, 2005. However, there was no evidence that Speed
9 and Rich were involved in the warden's decision to revoke
10 Warwick's clearance.¹ The Court found no evidence that Rich knew
11 about the complaint letter, and no evidence that Speed or Rich
12 insinuated to Brown, or anybody else, that Warwick was having sex
13 with parolees. Accordingly, the Court granted summary judgment in
14 favor of Rich and Speed.²
15
16
17

18 ¹ As explained in the order, Brown testified that she learned
19 that Warwick visited an inmate after his revocation proceedings
20 had concluded, and that, on a different occasion, Warwick took a
21 parolee to the Ukiah parole office, and then accompanied him or
22 drove him to a motel. These incidents gave rise to Brown's
23 concern that Warwick was misusing her status as a CalPAP attorney,
24 and Brown's decision to revoke Warwick's clearance. The written
25 explanation CDCR later provided to Warwick stated that her
26 visiting privileges had been suspended because she had continued
27 to visit prisoners in her role as a CalPAP attorney after the
28 legal proceedings concerning parole had concluded. CDCR
considered that such action is "an abuse of the privilege of
attorney visiting and constitutes good cause for a suspension of
visiting privileges."

² Warwick did not allege a § 1983 claim against Brown, but
the Court noted in its summary judgment order that there was no
evidence that Brown, on her own accord, revoked Warwick's
clearance in retaliation for exercising her First Amendment
rights.

1 The Court granted summary judgment in favor of Cate,
2 concluding that, in light of the absence of evidence that Rich,
3 Speed or Brown revoked Warwick's clearance in retaliation for her
4 protected speech, Cate could not be held liable for CDCR's
5 policies, practices and customs related to any alleged retaliatory
6 clearance revocation.

7
8 Plaintiff's section 1983 claim against UOP failed because
9 there was no evidence that state actors engaged in a conspiracy to
10 retaliate against Warwick and, thus, UOP, as a private actor and
11 alleged co-conspirator could not be held liable for engaging in
12 such a conspiracy. Furthermore, an email in which Swanson
13 informed Speed that in order to be a contract attorney with
14 CalPAP, an attorney needed a clearance to enter a prison was
15 insufficient to raise an inference that they agreed to terminate
16 Warwick in retaliation for complaining about UOP, CalPAP, CDCR or
17 BPH. Finally, because Warwick was an at-will independent
18 contractor, UOP did not need to create a "cause" to remove Warwick
19 from the CalPAP panel of attorneys.
20

21 On July 8, 2010, two days after this Court issued its order
22 granting summary judgment, the Clerk entered judgment in favor of
23 Defendants. On July 9, 2010 Plaintiff made a request to inspect
24 records maintained by CDCR, pursuant to California Code of
25 Regulations Title 15, section 3450. Plaintiff received, on August
26 5, 2010, various documents, including those that have prompted
27 this motion. In approximately August or September 2010, Warwick
28

1 received a copy of San Quentin's Department Operations Manual
2 Supplement, which is also addressed in this motion.

3 LEGAL STANDARD

4 Federal Rule of Civil Procedure 60(b) provides that, "upon
5 such terms as are just," a court may relieve a party from an order
6 or final judgment for the following reasons: (1) mistake,
7 inadvertence, surprise, or excusable neglect; (2) newly discovered
8 evidence which by due diligence could not have been discovered in
9 time to move for a new trial under Rule 59(b); (3) fraud (whether
10 heretofore denominated intrinsic or extrinsic), misrepresentation,
11 or other misconduct of an adverse party; (4) the judgment is void;
12 (5) the judgment has been satisfied, released or discharged;
13 (6) any other reason justifying relief from operation of the
14 judgment. Fed. R. Civ. P. 60(b). A motion for relief under Rule
15 60(b) must be made within reasonable time, and such a motion under
16 subsections (1), (2) and (3) must be made no more than a year
17 after entry of the judgment or order. Fed. R. Civ. P. 60(c).

18 "Relief from judgment on the basis of newly discovered
19 evidence is warranted if (1) the moving party can show the
20 evidence relied on in fact constitutes 'newly discovered evidence'
21 within the meaning of Rule 60(b); (2) the moving party exercised
22 due diligence to discover this evidence; and (3) the newly
23 discovered evidence must be of 'such magnitude that production of
24 it earlier would have been likely to change the disposition of the
25 case.'" Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082,
26
27
28

1 1093 (9th Cir. 2003) (quoting Coastal Transfer Co. v. Toyota Motor
2 Sales, U.S.A., Inc., 833 F.2d 208, 211 (9th Cir. 1987)).

3 Under Rule 60(b)(3), the movant must (1) prove by clear and
4 convincing evidence that the verdict was obtained through fraud,
5 misrepresentation, or other misconduct; and (2) establish that the
6 conduct complained of prevented the losing party from fully and
7 fairly presenting his or her case or defense. Casey v.
8 Albertson's Inc., 362 F.3d 1254, 1260 (9th Cir. 2004); Jones v.
9 Aero/Chem Corp., 921 F.2d 875, 878-79 (9th Cir. 1990).

10 Rule 60(b)(3) "require[s] that fraud . . . not be discoverable by
11 due diligence before or during the proceedings. Casey, 362 F.3d
12 at 1260.

13 DISCUSSION

14 I. Jurisdiction

15 On August 5, 2010, Warwick filed a notice of appeal to the
16 Ninth Circuit, seeking review of this Court's order granting
17 summary judgment in Defendants' favor and entry of judgment
18 against her. Subsequently, Warwick filed a second notice of
19 appeal directed at the Court's order denying her motion to oppose
20 costs. On July 9, 2011, while both appeals were pending, Warwick
21 filed the present motion. The Ninth Circuit's August 10, 2011
22 order notified Warwick that the district court lacked jurisdiction
23 to consider her proposed Rule 60(b) motion for relief without a
24 limited remand from the Ninth Circuit. The court instructed
25 Warwick to file a motion for limited remand accompanied by a
26
27
28

1 written statement that the district court wished to entertain the
2 proposed motion, or an opening brief, by October 3, 2011. Warwick
3 responded by filing a motion for voluntary dismissal of her
4 appeals. On October 5, 2011, the Ninth Circuit granted the
5 motion, pursuant to Federal Rule of Appellate Procedure 42(b).
6 Because the appeals have been dismissed, this Court has
7 jurisdiction to consider Warwick's Rule 60 motion for relief.

8
9 II. Timeliness

10 Warwick filed her Rule 60 motion a year and a day after
11 judgment entered, and completed the submission of her supporting
12 declarations two days after that. Thus, Warwick's motion is
13 untimely. Warwick stated that she was having trouble with the
14 filing, and intended to file a motion for an extension of time but
15 did not do so. Warwick also stated that she has been facing
16 health problems and other stressful situations. It is not clear
17 that these problems explain the delay that occurred between when
18 she received new information from CDCR in August and September
19 2010 and when she filed her motion for relief in July 2011.
20 However, even if the merits of Warwick's motion are considered,
21 relief from judgment is unwarranted.

22
23 II. Newly Discovered Evidence

24 Warwick points to three items of purported newly discovered
25 evidence to argue that relief from judgment is warranted.

26
27 The first item is a memorandum dated June 3, 2005 from San
28 Quentin sergeant E.J. Hinkle to Patricia Miller. The memorandum

1 states that on April 22, 2005, Warwick scheduled a visit with an
2 inmate,³ pursuant to the Valdivia injunction, although the inmate
3 had already been offered a deal and accepted it. The memorandum
4 states that Warwick was informed that she had to go through
5 "normal Attorney visits" to see the inmate. Warwick contends that
6 the memorandum establishes that "one of the reasons" given to
7 justify revocation of her clearance was pretextual. According to
8 Warwick, there would have been no need for her to attempt to sign
9 in as a CalPAP attorney when she was approved for regular attorney
10 visits. Warwick propounds this evidence to attack testimony that
11 Warwick misrepresented herself to gain access to San Quentin and
12 thus engaged in inappropriate conduct. However, Warwick's
13 argument misconstrues the reason her clearance was revoked; it was
14 revoked because Brown was concerned that Warwick's ongoing
15 relationship with an inmate and parolee after the parole
16 revocation process was inappropriate--not that Warwick
17 misrepresented the type of visit. Furthermore, this evidence does
18 nothing to cure the deficiencies in proof that the Court
19 identified in granting summary judgment on the § 1983 claims.
20
21

22 The second item Warwick has identified is a San Quentin
23 visitors log, dated June 1, 2005, which listed Warwick's visits to
24 inmate Hodge on May 11 and May 17, 2005. Just as she argued with
25

26 ³ The name of the inmate is redacted from the memorandum, but
27 in her briefing, Warwick appears to admit that the inmate in
28 question was Hodge.

1 respect to the Hinkle memorandum, Warwick claims that the log
2 shows that the reasons for the revocation of her clearance were
3 false and pretextual, in that it demonstrates that she was
4 approved for regular attorney visits in May with Hodge. For the
5 same reasons explained above, the log does not amount to new
6 evidence that warrants relief from this Court's summary judgment
7 order.

8
9 Warwick also argues that the log shows how easily one could
10 verify the basis for her May visits and, thus, verify an
11 allegation before revoking a clearance based on unsubstantiated
12 rumors. This is irrelevant because it does not cure the
13 deficiencies in proof that were the basis for the Court's
14 determination.

15
16 The third newly discovered document is the second page of an
17 April 14, 2006 letter sent from John Dovey to Warwick. The second
18 page of the letter shows that a blind carbon copy was sent to
19 Jeanne S. Woodford, along with other CDCR officials, informing
20 them of Warwick's inquiry regarding the clearance revocation.
21 Even if Warwick exercised due diligence to discover it, there is
22 no reason to believe that it would have affected the outcome of
23 the case. Warwick posits that if she had received the letter she
24 would have deposed Woodford and her testimony would have likely
25 showed a failure to follow proper procedure. However, Warwick
26 provides no evidence, such as a declaration by Woodford, to
27 establish what Woodford would have likely said in a deposition.
28

1 Warwick's argument makes clear that the letter itself would not
2 have changed the case; it would have simply prompted further
3 discovery request.

4 In sum, none of the three newly discovered documents
5 identified by Warwick justify her request for relief from
6 judgment.

7 III. Fraud

8 Warwick contends that the CDCR committed fraud by withholding
9 certain evidence during discovery. Specifically, Warwick points
10 to the withholding of San Quentin's Department Operations Manual
11 Supplement, which Warwick refers to as "SQ Operational Plans" or
12 "SQ Plans," concerning visiting and the exclusions of visitors.
13 Warwick contends that the withholding of this document prevented
14 her from questioning Warden Brown or Warden Stokes about the
15 policies set forth therein. It is troubling that, although
16 Warwick requested "San Quentin Institutional Operation Plans"
17 regarding gate stops in February 2009, she did not receive the
18 Supplement until September 2010. However, the provision of the
19 Supplement on which Warwick relies is not materially different
20 from a provision regarding exclusion of visitors, which was
21 available as part of California Code of Regulations
22 section 3176.3(f). Both provide for written notification to the
23 person excluded, as well as a notification that, upon request, the
24 person may meet with the official who ordered the exclusion.
25 Warwick deposed Chief Deputy Warden John Stokes, regarding the
26
27
28

1 clearance revocation's compliance with section 3176.3(f).

2 Furthermore, it is not clear that the Supplement could not have
3 been uncovered through due diligence in the discovery process. In
4 fact, Plaintiff's then counsel sought to file a motion to compel
5 the production of documents, but it was denied because it was
6 untimely.

7
8 Next, Warwick asserts that emails were destroyed. Her
9 argument is not clear in that at certain points she refers to
10 emails that were actually produced during discovery. Warwick
11 appears to criticize CDCR's email retention practices, although
12 the basis for this criticism, including the State Records
13 Management Act, the Department Operations Manual, the Records
14 Retention Schedules and related deposition testimony, were
15 available during the litigation, such that this issue could have
16 been raised earlier. Warwick's bare allegation of perjury against
17 Mike Miller is unavailing. Nor has Warwick supported her claim
18 that six months to one year of Valdivia Taskforce records are
19 missing. She has made a Public Records Act request and personally
20 inspected the Valdivia Taskforce records and has failed to find
21 the records. However, Warwick does not explain why she believes
22 the records were destroyed.
23

24
25 Warwick has failed to point to clear and convincing evidence
26 that Defendants won the judgment through fraud, misrepresentation
27 or other misconduct. Relief under Rule 60(b)(3) is not warranted.
28

1 IV. Fraud on the Court

2 In addition to Rule 60(b), Warwick has invoked Federal Rule
3 of Civil Procedure 60(d)(3) as the basis for her motion for relief
4 from judgment. Rule 60(d) states that the "rule does not limit a
5 court's power to: . . . (3) set aside judgment for fraud on the
6 court." Fed. R. Civ. P. 60(d)(3). Warwick has not shown a fraud
7 on the Court. The Court's inherent power to vacate or amend a
8 judgment obtained by fraud is narrowly construed, "applying only
9 to fraud that defiles the court or is perpetrated by officers of
10 the court." United States v. Chapman, 642 F.3d 1236, 1240 (9th
11 Cir. 2011). Fraud on the court occurs when "the fraud rises to
12 the level of an unconscionable plan or scheme which is designed to
13 improperly influence the court in its decision." Id. (internal
14 quotation marks omitted). Although Warwick claims fraud on the
15 court, she does not explain how such a fraud occurred and the
16 evidence she has submitted does not support such a finding.

17
18
19 CONCLUSION

20 Warwick's motion for relief from judgment is DENIED.

21 IT IS SO ORDERED.

22
23 Dated: 11/15/2011

24 
CLAUDIA WILKEN
United States District Judge