



1 state law claim for negligent failure to train, supervise, and  
2 manage employees as to Defendants First Transit, Inc. and Laidlaw  
3 Transit Services, Inc.

4 By Order (#94) on June 21, 2011, this Court granted in part and  
5 denied in part Defendants' Motion for Summary Judgment (#67). The  
6 motion was granted as to Plaintiff's third cause of action for state  
7 law negligence and denied as to her first and second claims for  
8 violations of the ADA and Section 504. The Court further determined  
9 that Plaintiff is not entitled to compensatory or punitive damages  
10 under the ADA and Section 504, but is limited to declaratory and  
11 injunctive relief.

12 Plaintiff thereafter filed a Motion to Amend Summary Judgment  
13 (#101) on July 14, 2011, and a Motion for Clarification (#110) on  
14 August 29, 2011 and a Notice of Appeal (#111) on September 28, 2011  
15 when the Court did not, in Plaintiff's opinion, act quickly enough  
16 on her prior motion (#101). On October 6, 2011, we denied (#116)  
17 Plaintiff's Motion to Amend Summary Judgment (#101). We denied  
18 (#117) Plaintiff's Motion for Clarification (#110) on October 19,  
19 2011. On October 27, 2011, the Court of Appeals dismissed  
20 Plaintiff's Notice of Appeal (#111) because the order challenged is  
21 not final or appealable. The Court of Appeals also denied  
22 Plaintiff's petition for writ of mandamus, finding that she had  
23 failed to demonstrate that this case warranted the intervention of  
24 that Court.

25 On October 5, 2011, this Court denied (##114, 115) without  
26 prejudice Defendants' Motion for Attorney's Fees and Costs (#100) as  
27

1 premature because there has yet to be an entry of final judgment in  
2 this case.

3 On November 7, 2011, Plaintiff filed a Motion for Recusal of  
4 District Judge (#121) and a Motion for Recusal of Magistrate Judge  
5 (#122).

6

7

## **II. Legal Standard**

8 Recusal is governed by 28 U.S.C. §§ 144 and 455. The standard  
9 for recusal set forth in these sections is "whether a reasonable  
10 person with knowledge of all the facts would conclude that the  
11 judge's impartiality might reasonably be questioned." United States  
12 v. Studley, 783 F.2d 934, 939 (9th Cir. 1986) (citations omitted).  
13 Disqualification must rest upon a factual basis; otherwise litigants  
14 would have veto power over the assignment of judges based on mere  
15 tenuous speculation. Laxalt v. McClatchy, 602 F. Supp. 214, 217 (D.  
16 Nev. 1985) (citing In re United States, 666 F.2d 690, 695 (1st Cir.  
17 1981)). Furthermore, the alleged prejudice must result from an  
18 extrajudicial source - a judge's prior adverse ruling is not  
19 sufficient cause for recusal. Laxalt, 602 F. Supp. at 217 (citing  
20 Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir. 1984)). "[T]he  
21 challenged judge himself should rule on the legal sufficiency of a  
22 recusal motion in the first instance." Studley, 783 F.2d at 940  
23 (citing United States v. Azhocar, 581 F.2d 735, 738 (9th Cir. 1978),  
24 cert denied, 440 U.S. 907 (1979)). In the absence of a legitimate  
25 reason to recuse, a judge should participate in all cases assigned.  
26 United States v. Holland, 510 F.3d 909, 912 (9th Cir. 2008).

27

28

1 **III. Discussion**

2 Plaintiff's Motion for Recusal of District Judge (#121) and  
3 Motion for Recusal of Magistrate Judge (#122) are identical and do  
4 not differentiate between the two judges. The Court therefore  
5 analyzes Plaintiff's claims together as against both.

6 It appears to the Court that Plaintiff alleges the Court is  
7 biased by the involvement of Defendants' counsel's law firm,  
8 Alverson, Taylor, Mortensen & Sanders. Plaintiff explains that the  
9 firm was co-founded by now United States Senator Harry Reid, who is  
10 involved in the appointment of federal judges. It also appears that  
11 Plaintiff is claiming that the Court is biased because many of the  
12 attorneys at the firm have clerked for state and federal judges.  
13 Plaintiff expresses her concern that she will not receive a fair  
14 trial in the state of Nevada due to the "'good old boys' that  
15 seemingly run Las Vegas" and that she would therefore prefer that  
16 the case be heard by the Court of Appeals for the Ninth Circuit.

17 Plaintiff's allegations in this regard, at best, constitute  
18 tenuous speculation that would not lead a reasonable person to doubt  
19 the Court's impartiality. Even if Plaintiff had specifically  
20 alleged relationships, influence, or contact between Court and  
21 defense counsel, many judges have a history of activity in politics  
22 or strong political connections, and such a background is  
23 insufficient to require recusal. Laxalt, 602 F. Supp. at 217  
24 (citing Home Placement Serv. v. Providence Journal Co., 739 F.2d  
25 671, 675 (1st Cir. 1984)).

26 To the extent Plaintiff prefers that the Court of Appeals hear  
27 her case, that Court has already dismissed her Notice of Appeal

1 (#118) because there has yet to be an entry of final judgment in  
2 this case. Plaintiff may appeal once final judgment has been  
3 entered. Moreover, recusal in this case would not result in the  
4 transfer of this case to the Court of Appeals, which does not  
5 conduct trials in any event, but to a different judge in this  
6 District. For these reasons, the Court will not at this time issue  
7 a Certificate of Appealability.

8       The rest of Plaintiff's allegations are not extrajudicial  
9 because they involve the Court's and the Magistrate Judge's  
10 performance while presiding over this case and therefore do not  
11 provide grounds for recusal. For example, Plaintiff repeatedly  
12 complains about amount of time it has taken the Court to rule on her  
13 numerous motions:

14       On September 29, 2011 plaintiff filed . . . with the 9<sup>th</sup>  
15 Circuit Court of Appeals due to the lack of judicial  
16 action. On October 8 2011 after the case was appealed to  
17 the Ninth Circuit, nine (9) days after the filing of the  
18 appeal , the Court decided to answer the plaintiff [sic]  
19 Motions submitted three (3) month [sic] earlier on Amend  
Summary Judgment and Clarification filed July 14, 2011 and  
September 29, 2011 respectively. Another delay and NOTICE  
TO APPEAL was dismissed by the 9th Circuit . . . because  
Judge Reed acted upon Motions. Another delay which has  
occurred throughout this on-going case.

20 (Pls.' Mot. Recusal at 5 (##121, 122).) This delay does not provide  
21 grounds for recusal because it is not extrajudicial. Studley, 783  
22 F.2d at 939. Moreover, the time it has taken to decide the parties'  
23 motions in this case is not unusual, especially given the busy  
24 docket in this case and the number of motions filed. The Court has

25

26

27

28

1 thoroughly read, analyzed, and decided upon all of Plaintiff's many  
2 motions in due course.<sup>1</sup>

3 In this regard, Plaintiff also complains of a "Complete Absence  
4 of Due Process" because there has been no pretrial order, oral  
5 arguments, jury selection, or trial in this case. However, the  
6 matter has not yet come to trial due to the motion practice engaged  
7 in by the parties. Plaintiff is correct that the parties', not the  
8 Court's, Proposed Joint Pretrial Order was originally due November  
9 12, 2010; however, due to the filing of numerous dispositive  
10 motions, the deadline has been reset numerous times. Furthermore,  
11 these delays do not constitute an "absence of due process" - on the  
12 contrary, the record shows that Plaintiff has been afforded ample  
13 process, as the Court has addressed each of Plaintiff's many filings  
14 in due course. Finally, Plaintiff's allegations in this regard are  
15 not extrajudicial and therefore do not provide a basis for recusal.  
16 Studley, 783 F.2d at 939.

17 Plaintiff again argues - as she did in her Motion for  
18 Magistrate Judge to Reconsider (#79), in her Motion to Amend Summary  
19 Judgment (#101), in her Motion for Clarification (#110), and her  
20 Notice of Appeal (#111) - that the Court and the Magistrate Judge  
21 have wrongly decided numerous issues in this case. The Court finds

22  
23 <sup>1</sup> Plaintiff also emphasizes that the Court failed to decide upon  
24 her July 2011 Motion to Amend Summary Judgment (#101) until October  
25 2011 in spite of the docket entry providing "[r]esponses due by  
26 7/31/2011." (Pl.'s Mot. Recusal at 2 (##121, 122).) The Court finds  
27 it necessary to clarify that the due date on the docket refers to the  
28 Defendants' response (#102), which was timely filed on July 25, 2011.  
The Court does not "respond" or issue "responses" in the way the  
parties respond to each other. Rather, the Court issues orders for  
which there are no due dates.

1 all of Plaintiff's contentions of error, most of which the Court has  
2 already considered numerous times, without merit. Moreover, as  
3 these allegations stem from this Court's and the Magistrate's  
4 performance in this case, they are not extrajudicial and cannot be  
5 grounds for recusal. Studley, 783 F.2d at 939. To the extent  
6 Plaintiff disagrees with the Court's decisions of law in this case,  
7 Plaintiff may appeal the matter upon entry of final judgment.

8 Plaintiff takes issue with the fact that this Court's Order  
9 (#116) denying her Motion to Amend Summary Judgment (#101) was done  
10 by minute entry and electronically signed by the Deputy Clerk of the  
11 Court. This argument is completely without merit; however, the  
12 Court wishes to clarify that the Court analyzed and decided  
13 Plaintiff's motion in chambers and wrote the Order (#116) which was  
14 entered and electronically signed by the Deputy Clerk. The matter  
15 was not "handed over to the deputy clerk for further action."  
16 Moreover, the Order (#116) adequately addressed the questions and  
17 concerns that warranted answering - the Court is not obligated to  
18 address each of Plaintiff's issues three or four times. Although  
19 Plaintiff is unhappy with the orders adverse to her, which is  
20 understandable, a judge's prior adverse ruling is not sufficient  
21 cause for recusal. Allum v. Nevada, No. 3:10-CV-00700, 2011 WL  
22 3841282 at \*1 (D. Nev. Aug. 25, 2011) (citing Studley, 783 F.2d at  
23 939).

#### 24 25 **IV. Conclusion**

26 Based on the record before the Court and the pleadings and  
27 documents on file in this matter, the Court finds that Plaintiff has  
28

1 failed to demonstrate any extrajudicial influence or relationship  
2 that would lead a reasonable person to conclude that the  
3 impartiality of this court might reasonably be questioned. See 28  
4 U.S.C. § 455(a). In the absence of a legitimate reason to recuse, a  
5 judge should participate in all cases assigned. Allum, 2011 WL  
6 3841282 at \*1 (citing Holland, 510 F.3d at 912)). Accordingly, the  
7 Court shall deny Plaintiff's motions (#121, 122) for recusal.

8  
9 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's Motion for  
10 Recusal of District Judge (#121) and Motion for Recusal of  
11 Magistrate Judge (#122) are **DENIED**.

12  
13  
14 DATED: November 10, 2011.

15   
16 UNITED STATES DISTRICT JUDGE