

NO. 02-25-00582-CV

**IN THE SECOND JUDICIAL DISTRICT
COURT OF APPEALS
AT FORT WORTH, TEXAS**

IN RE: CHARLES DUSTIN MYERS, RELATOR.

Original Proceeding Arising Out of
the 322nd Judicial District Court of Tarrant County
Cause No. 322-744263-23
Honorable James B. Munford, District Judge Presiding

MOTION FOR REHEARING

Respectfully submitted by:

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TO THE HONORABLE SECOND COURT OF APPEALS:

Relator, CHARLES DUSTIN MYERS, respectfully moves this Court for rehearing in regard to the *per curiam* denial issued by this Honorable Court on October 31, 2025, and in support thereof, has attached a concurrent motion for leave to supplement shows this Court the following:

I. INTRODUCTION AND ISSUES FOR REHEARING

1. Texas statutes and controlling case law make clear that a written order of referral is a mandatory, jurisdictional prerequisite for an associate judge to act in family law proceedings. Where, as here, the record facially shows that no such order was issued, all actions taken by the associate judge—including orders of withdrawal, consolidation, and temporary orders—are void and cannot be cured by party agreement, subsequent proceedings, or the passage of time.
2. Rehearing is appropriate because the absence of a written order of referral constitutes a jurisdictional defect that renders the associate judge's actions void. The case docket, now properly authenticated and submitted with a concurrent Motion for Leave to Supplement the Record, conclusively demonstrates this jurisdictional defect.
3. The issue on rehearing is the lack of the case docket to aid in the Court's determination in the Relator's original petition, which has now been provided, and facially supports his claims raised in his petition and can be verified by the Court.

II. JURISDICTIONAL REQUIREMENTS AND STATUTORY FRAMEWORK

4. Texas law is explicit regarding the authority of associate judges in family law proceedings. Under the Texas Family Code, a referring court must render either an individual or general order of referral when assigning a case to an associate judge. This requirement is not discretionary; it is a jurisdictional mandate. Specifically, Tex. Fam. Code § 201.006 provides that a judge "shall render" an order of referral—either for a specific case or a class of cases—before an associate judge may act. The use of "shall" in the statute imposes a duty, not a mere suggestion, and failure to comply deprives the associate judge of authority to act, resulting in a jurisdictional defect.

5. Similarly, Tex. Gov't Code § 54A.007 requires that a judge must issue a written order of referral specifying the associate judge's duties before referring one or more cases. This written order is a mandatory prerequisite, and its absence means the associate judge lacks any authority to preside or issue orders.

6. Texas courts have consistently held that when an associate judge acts without a proper order of referral, the resulting orders are void for lack of jurisdiction. A trial court has no discretion to misapply the law, and failure to comply with jurisdictional requirements constitutes an abuse of discretion

warranting mandamus relief. See *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) .

III. EVIDENCE OF JURISDICTIONAL DEFECT

7. The docket for Cause No. 322-744263-23, submitted with Relator's Motion for Leave to Supplement the Record and properly authenticated by unsworn declaration pursuant to Texas Civil Practice and Remedies Code § 132.001, conclusively demonstrates that no order of referral was filed before the associate judge began presiding over hearings and issuing orders.

8. A review of the docket shows the absence of such an order, yet the mandamus record, as provided in the Petition for Mandamus, clearly shows the District Judge presided over the first order which removed the Relator from his home without findings (MR. B.1) and several subsequent orders were signed by the Associate Judge.

9. These orders include an associate judge's report signed January 22, 2024, (MR C.1), an associate judge's report signed February 1, 2024 (MR D.5), an agreed order of withdraw of counsel and consolidation (MR. E.2, MR. E.5), an associate judge's report signed on March 14, 2024 (MR. H.1) and the temporary orders at issue. (MR. I.38)

10. The first reference to any "Order of Referral" appears only on October 9, 2024 (Docket Entries 228, 233, 234, 235) – approximately nine months after the

associate judge began acting in the case, and these entries actually pertain to recusal proceedings rather than the initial referral required by statute, highlighting the Relator's efforts to seek an explanation for continued misapplication of Texas law that continues to occur in this case.

11. In summary, the docket thus clearly shows that the associate judge acted without proper authority for months. This is not a mere technical defect but a fundamental jurisdictional error that cannot be waived or cured retroactively.

12. The Respondent judge should be ordered to reject these orders as the referring Court, and the case should be remanded for further proceedings in accordance with Texas law.

IV. MANDAMUS IS THE APPROPRIATE REMEDY

13. Mandamus is the appropriate remedy when a jurisdictional defect renders orders void and there is no adequate remedy by appeal. The ongoing enforcement of these void orders causes continuing harm to Relator and his children that cannot be remedied through the normal appellate process.

14. The Texas Government Code authorizes this Court to issue writs of mandamus to enforce its jurisdiction and correct jurisdictional defects (Tex. Gov't. Code § 22.221). Because the orders at issue were issued by an Associate Judge without an order of referral, Relator has no adequate remedy by appeal, and mandamus relief is warranted.

15. This Court should grant the motion for leave to supplement the record, and likewise the rehearing to address the clear jurisdictional defect demonstrated by the case docket, which was not previously provided in the petition for writ of mandamus.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Relator Charles Dustin Myers respectfully requests that this Court:

1. Grant the Relator's currently filed motion for leave to supplement the record, which includes the case docket for purposes of Rehearing;
2. Grant this motion for rehearing;
3. Withdraw its denial of the petition for writ of mandamus;
4. Upon reconsideration with the supplemented record, grant the petition for writ of mandamus;
5. Declare void all orders and proceedings conducted by the Associate Judge without a proper order of referral and remand the case to the trial court for further proceedings in accordance with Texas law; and
6. Grant such other and further relief, both general and special, at law and in equity, to which Relator may show himself justly entitled.

Respectfully submitted,

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