

NO. 322-744263-23 & NO. 322-744538-23

In the Matter of the Marriage of
Morgan Michelle Myers & Charles Dustin Myers
and in the Interest of
M.E.M & C.R.M,
Minor Children.

MOTION TO ENTER JUDGEMENT

In the 322nd District Court.

Tarrant County, Texas

IN REGARD TO:

JOINT MOTION TO RECUSE

TO BE PRESIDED BY JUSTICE LEE GABRIEL

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I. TEXAS PRESCEDENT REGARDING RECUSAL

1. In Texas, courts operate under a foundational presumption of impartiality. However, this presumption can be overcome if a movant presents compelling evidence of bias that fundamentally threatens due process. The Texas Court of Appeals has emphasized this requirement: bias must be so severe that it denies the movant a fair and impartial hearing. *In Interest of E.R.C.*, 496 S.W.3d 270, 280 (Tex. App.—Texarkana 2016, pet. denied); *Ex parte Ellis*, 275 S.W.3d 109, 117 (Tex. App.—Austin 2008, no pet.). Simply put, due process mandates that all parties are heard by a neutral, detached judge. *Brumit v. State*, 206 S.W.3d 639, 644-45 (Tex. Crim. App. 2006). This is not just a procedural necessity; it's enshrined in both the U.S. Constitution and the Texas Constitution.

2. Texas courts use the "reasonable person" test to determine whether recusal is appropriate: Would a well-informed, impartial observer reasonably question the judge's impartiality based on the known facts? *Hansen v. JP Morgan Chase Bank, N.A.*, 346 S.W.3d 769, 776 (Tex. App.—Dallas 2011, no pet.) (quoting *Sears v. Olivarez*, 28 S.W.3d 611, 615 (Tex. App.-Corpus Christi 2000, order) (en banc) (internal quotations and citations omitted)). If the answer is yes, the movant bears the burden of proving that a recusal is warranted and satisfies that burden only if he shows bias or partiality to such an extent as to deprive him of a fair trial. See *Abdygapparova v. State*, 243 S.W.3d 191, 196 (Tex. App.-San Antonio 2007, pet. ref'd). Bias sufficient to warrant a recusal commonly stems from an extrajudicial source. *Id.* When recusal is based on alleged biased rulings, they must display a deep-seated favoritism or antagonism that would make a fair judgment impossible. *Ludlow v. DeBerry*, 959 S.W.2d 265, 281 (Tex.App.-Houston [14th Dist.] 1997, no pet.).

II. INTRODUCTION

This case exemplifies a serious violation of core due process principles, particularly in the failure of the 322nd District Court of Tarrant County as a whole to substantiate its rulings with factual findings or evidentiary support. Such ungrounded decisions have resulted in substantial harm, indicating a concerning bias that jeopardizes a fair resolution. This bias has disrupted the parent-child relationship by unjustly favoring one parent, despite indications that this party has prioritized personal interests over the children's welfare, while penalizing the other without lawful basis.

Without any factual or legal justification for these decisions, the only reasonable inference is an underlying bias, likely fueled by either fraudulent pleadings submitted by the Petitioner or an extrajudicial influence not in the record. These circumstances call for recusal to restore impartiality and procedural integrity. The judges' actions contravene their duties under the Texas Code of Judicial Conduct, disregarding fundamental protections enshrined in both the U.S. Constitution and Texas law. Given these considerations, Respondent CHARLES DUSTIN MYERS respectfully requests that the Court grant the Joint Motion to Recuse and, in the interest of judicial economy, issue judgment without a hearing given the egregious circumstances of this matter.

For the reasons below, and notwithstanding the points raised in the Joint Motion to Recuse, the Respondent requests the court grant the recusal motion and enter judgement immediately in the interest of justice and judicial economy.

III. ARGUMENT

If you took any reasonable person off of the street, presented them with the facts of this case, this is what they would see starting from the earliest dated document in the order they were submitted before this court:

A. THE ORIGINAL PETITION FOR DIVORCE

1. On December 18th, 2024, the Petitioner, MORGAN MICHELLE MYERS, filed for divorce.

(Exhibit B, Joint Motion to Recuse, Page 1)

My name is: Morgan Michelle Myers

First

Middle

Last

I am the **Petitioner**, the person asking for a divorce.

The last three numbers of my driver's license number are 579. My driver's license was issued in (State): Texas.

or I do not have a driver's license number.

The last three numbers of my social security number are: 893.

or I do not have a social security number.

My spouse's name is: Charles Dustin Myers

First

Middle

Last

My spouse is the **Respondent**.

1. Discovery Level

The discovery level in this case, if needed, is Level 2.

2. Legal Notice (Check one box.)

I think my spouse will sign a Waiver of Service (or Answer). Do not send a sheriff, constable, or process server to serve my spouse with a copy of this Petition for Divorce at this time.

I will have a sheriff, constable, process server or clerk serve my spouse with this Petition for Divorce here:

6641 Anne Court, Watauga, Texas 76148

Street Address

City

State

Zip

If this is a work address, name of business: _____

I ask the clerk to issue a Citation of Service (the form necessary to provide legal notice to my spouse by "Official Service of Process"). I understand that I will need to **pay the fee** (or file a Statement of Inability to Afford Payment of Court Costs if I am unable to pay the fee) and **arrange for service**.

I cannot find my spouse. I ask that my spouse be served by publication. I understand I must file an Affidavit for Citation by Publication and hire a lawyer to serve as attorney ad litem for me.

AFFIDAVIT OF INABILITY



A CERTIFIED COPY
ATTEST: 04/15/2024
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Catherine Saenz

From the start, the perception of weakness is presented through an affidavit of inability to pay. Further in the document, on page 7 at the top, it shows:

9. Protective Order Statement (Check the appropriate boxes. Fill in the requested information.)

9A. No Protective Order

- I do not have a protective order against my spouse and I have not asked for one.
- My spouse does not have a protective order against me and has not asked for one.

9B. Pending Protective Order

- I have filed paperwork at the courthouse asking for a protective order against my spouse, but a judge has not decided if I should get it. I asked for a protective order on 12/14/2023

Date Filed

In Tarrant County, Texas. The cause number is _____
County State Cause Number

If I get a protective order, I will file a copy of it before any hearings in this divorce.

So far, we've established that the Petitioner is indigent and has filed paperwork for a protective order on December 14th, 2023, hinting at domestic violence related issues.

On the very same page at the bottom, the petition further goes on to state:

10. Waiver of Waiting Period Based on Family Violence (Check only if applicable.)

- I ask the Court to waive the 60-day waiting period for divorce because: (Check one box.)

- My spouse has been convicted of or received deferred adjudication for a crime involving family violence against me or a member of my household.
- I have an active protective order or an active magistrate's order for emergency protection against my spouse because of family violence during our marriage. The order includes a finding that my spouse committed family violence.

Here, before even finishing the Petitioner's first pleading, the first question arises:

2. Why would the Petitioner file paperwork for a protective order on December 14th, 2023, if there was already an active order with a finding of family violence in place? Perhaps her state of mind lead to harmless error. It would be reasonable to believe that this slip-up wouldn't destroy the credibility of the Petitioner, however, by waiving the 60-day waiting period due to an active order of protection, the Petitioner must file a copy of this order with the court before any hearing can take place pursuant to the Tex. Fam. Code 6.405(b) to protect the Respondent's right from false or misleading allegations.

B. THE APPLICATION FOR PROTECTIVE ORDER

3. After setting the first document down, the next document for review would be yet another application for a protective order. We already know that the Petitioner has filed for a protective order on December 14th, 2023, claimed to already have one active in her original petition for divorce on December 18th, 2023, and now is requesting an additional protective order on December 22nd, 2023. (See *Exhibit 8* attached hereto.)

4. In reviewing the document, we see the following:

- 5 Grounds:** Why is the Applicant asking for this Protective Order? Check one or both:

The Respondent committed family violence.

The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (check one): Attached, or Not available now but will be filed before the hearing on this Application

Allegations of family violence. The need for protection. The inability to pay costs. These are the foundation of the Petitioner's case, and these actions occurred during the week of Christmas. Further down in the application for her third protective order, it goes on to state:

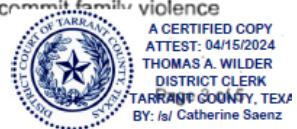
10 ✓Temporary Ex Parte PROTECTIVE ORDER

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children, or Other Adults named on page 1 of this form immediate and irreparable injury, loss, and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice, or hearing.

11 ✓Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: 6641 ANNE CT WATAUGA, TX 76148 or has resided at this Residence within the 30 days prior to filing this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence

Application for Protective Order
Form Approved by the Supreme Court of Texas



Not only was the Petitioner's situation so dire that it required three protective orders, but so much so that his immediate ejection from the family residence is warranted based on the clear and present danger of family violence in the attached affidavit:

I declare under penalty of perjury that the foregoing is true and correct.

Executed in TARRANT County, State of TX, 22ND day of DEC., 2023 (Month), 2023 (Year).

M. S.

(Declarant Signature).

1. Describe the most recent time the Respondent hurt you or threatened to hurt you:

TOLD ME I DESERVED TO BE BEAT UP, THAT ANOTHER WOMAN SHOULD COME "KICK MY ASS".

2. In which county did this happen? TARRANT

3. What date did this happen? 12 / 18 / 23

4. Was a weapon involved? Yes No If yes, what kind?

5. Were any children there? Yes No If yes, who? MARA MYERS + CAROLINE MYERS

6. Did anyone call the police? Yes No If yes, what happened?

7. Did you get medical care? Yes No If yes, describe your injuries:

8. Has the Respondent ever threatened or hurt you before? Describe below in detail how the Respondent threatened or hurt you, including date(s) if possible.

MULTIPLE MENTIONS OF "WE JUST NEED TO FUCK" AND OTHER SEXUALLY AGGRESSIVE COMMENTS, LAYING IN BED NAKED WHEN I PREVIOUSLY SAID I DON'T WANT TO SHOW/PARTICIPATE IN ANY PHYSICAL AFFECTION.

9. Were weapons ever involved? Yes No If yes, what kind?

10. Were any children there? Yes No If yes, who? MARA MYERS + CAROLINE MYERS

11. Have the police ever been called? Yes No

12. Did you ever have to get medical care? Yes No If yes, describe your injuries:

13. Has the Defendant ever been convicted of family violence? NO

If yes, list when and in which county and state the convictions occurred:

M. S.
Applicant signs here



The petitioner claims family violence occurred on December 18th, 2023, which is when she filed for divorce claiming that she already requested an order of protection on December 14th, 2023, and already had an active order of protection in place. But here, in the application for a protective order, she declares under penalty of perjury that family violence has occurred and is continuously occurring.

5. This repeated filing pattern raises critical questions about the consistency and sincerity of the Petitioner's claims. According to the record:

- The Petitioner first applied for a protective order on **December 14, 2023**.
- Shortly after, in her **December 18, 2023, divorce filing**, she asserts that a protective order is already active, which presumably refers to the December 14 application.
- Yet again, on **December 22, 2023**, the Petitioner submits another application for a protective order, citing family violence that allegedly took place on **December 18, 2023**, the same day as her divorce filing.

6. The Petitioner's repeated applications for protective orders within such a short time frame create an impression of inconsistency or overstatement, especially considering the lack of new, escalating incidents documented in each application. If the December 14 and December 18 filings sufficiently described her need for protection, the necessity for a third protective order application just four days later is questionable.

7. Furthermore, the Petitioner's assertion in her **December 18** divorce petition that an active protective order is already in place could be perceived as misleading. If the December 14 application had yet to be fully processed or formally issued as an order, her claim of an "active order" may have been premature or even intentionally misleading, potentially influencing the court's perception of the case's urgency and the Respondent's character.

8. Adding to these inconsistencies, the affidavit attached to the third application, dated **December 22, 2023**, states under penalty of perjury that family violence is continuously occurring. This raises another crucial point: if the Petitioner truly felt that she was in imminent, ongoing danger, why did she not seek immediate law enforcement assistance following the alleged incidents, instead of submitting repeated applications to the court?

9. Now, we turn to the Respondent's answer and subsequent pleadings for such claims.

C. THE RESPONDENT'S ORIGINAL ANSWER

10. The Respondent in his original answer, attached hereto as *Exhibit 7*, states the following in regard to the claims made against him:

"The Plaintiff, Morgan Michelle Myers, intentionally lied about allegations of family violence to the court, as evidenced by the complete absence of any police reports, medical records, or credible witnesses to corroborate such claims. I assert that my personal history is devoid of any such incidents and my record remains unblemished. Please see attached EXHIBIT B.

These unfounded allegations have caused significant undue stress and threaten the well-being of my children and myself. The claim that I have a history of family violence is categorically false and is maliciously designed to obstruct my parental rights and access to my children.

The timing and nature of these allegations suggest a strategic play to influence the outcome of concurrent legal proceedings—specifically an eviction case and our ongoing divorce. It appears these claims were fabricated to leverage an advantage in these matters, rather than to protect any party from harm.

The Plaintiff also requested for joint conservatorship in the divorce and seeks co-parenting, which directly contradicts this order in and of itself.

In light of these considerations, I plead with the court to dismiss the protective order and to take appropriate measures to prevent further unwarranted interference with my family life and living situation, as my children's best interests remain my priority.”

11. He also raises the following affirmative defenses:

I claim the affirmative defenses checked below:

- | | | |
|--|---|---|
| <input type="checkbox"/> accord and satisfaction | <input type="checkbox"/> estoppel | <input type="checkbox"/> license |
| <input type="checkbox"/> arbitration and award | <input type="checkbox"/> failure of consideration | <input type="checkbox"/> release |
| <input type="checkbox"/> assumption of risk | <input checked="" type="checkbox"/> fraud | <input type="checkbox"/> res judicata |
| <input type="checkbox"/> contributory negligence | <input checked="" type="checkbox"/> illegality | <input type="checkbox"/> statute of frauds |
| <input type="checkbox"/> discharge in bankruptcy | <input type="checkbox"/> injury to fellow servant | <input type="checkbox"/> statute of limitations |
| <input checked="" type="checkbox"/> duress | <input type="checkbox"/> laches | <input type="checkbox"/> waiver |

As well as an additional affirmative defense:

“**Abuse of Process:** The petitioner has utilized the judicial proceedings as an instrument of malice and personal vendetta, with the primary intent of causing unwarranted harm to my reputation and rights, rather than seeking legitimate redress for a valid legal grievance.” *Click for reference.*

“Lack of Evidence: The petitioner has failed to provide any credible evidence, such as police reports, medical documentation, or witness testimony to substantiate the allegations of family violence. My record is clear of any such incidents, underscoring the baseless nature of the allegations.” *Click for reference.*

12. Given the contested nature of the claims, the inconsistencies within the Petitioner’s pleadings, any reasonable finder of fact would be able to discern from the information presented thus far that an evidentiary hearing would be required prior to making any determinations given that there is no clear and present danger of violence based on what has been presented so far.

D. THE RESPONDENT’S MOTION TO CONSOLIDATE

13. On January 3rd, 2024, the Respondent submitted a motion to consolidate the divorce suit with the protective order suit in the interest of judicial economy to provide the court with more information. Amongst this information was insight that on top of the petitions already filed by mother between December 14, 2023, and December 22, 2023, she also instigated an eviction suit against the Respondent.

14. On top of this new information, the respondent specifically requests in this consolidation motion that:

“Evidence provided suggests that there have been misrepresentations to the court, including the transfer of funds from the joint account and the plaintiff’s interaction with third parties, which could affect both the protective order and the divorce outcome. The protective order – which was based on claims of family violence – are entirely baseless as I have no record of family violence, and no evidence from the Plaintiff has been provided to substantiate these claims.”

– *Exhibit M, Joint Motion to Recuse*

And in the conclusion, the Respondent states:

“Given the overlapping factual and legal issues in the divorce and protective order cases, consolidation would serve the interests of justice and efficiency. It would ensure that the court has a comprehensive understanding of the intertwined nature of the family's circumstances, which is vital for fair and equitable resolution of these matters. While the eviction case may not be directly consolidated due to jurisdictional differences, it should be considered in context with the other cases to provide a complete picture of the ongoing disputes and to keep the best interests of our children intact.”

- Exhibit M, Joint Motion to Recuse

E. THE RESPONDENT'S MOTION FOR CONTINUANCE

15. On January 7th, 2024, the Respondent filed a motion of continuance with an accompanying brief, including a parenting plan that the Respondent provided to the court which, among other important facts, states:

“Continuity for Children: While we navigate these proceedings, it is critical to maintain stability and continuity for our children. Any temporary custody arrangements should reflect the least disruptive path for them.”

- Exhibit L, Joint Motion to Recuse

As well as:

“The court's facilitation in endorsing a temporary and flexible visitation framework is crucial. This framework must account for the current living situation and the significant emotional and logistical upheaval that the divorce proceedings have caused.”

- Exhibit L, Joint Motion to Recuse

It should have already been apparent from the fact finder that based on the pleadings alone, we have one parent showcasing a drastic concern about his children while the other submits a flurry of lawsuits in an attempt to discard the Respondent from his home.

16. Now that the facts are established, and the same information presented herein aligns with the information the court had at the time of its' initial decision - we can put ourselves in the shoes of the trial court during the first scheduled hearing and compare the results with the facts outlined above.

F. THE JANUARY 16TH, 2024, SHOW CAUSE HEARING

17. On December 16th, 2024, the 322nd District Court of Tarrant County was closed due to inclement weather, the presiding judge, Jeff Kaitcer, arrived late due to this fact.

18. Not knowing the court had been announced closed, the parties appeared, but given the circumstances, were presented with a continuance. Both parties agreed to such. No hearing took place, no witnesses were called, and no evidence was presented. Given the circumstances, any reasonable person would agree this was the right move.

19. However, when we examine the initial ruling made in this case, we see a decision made that not only deprived the Respondent of his residency, but also of the close relationship with his children. *Exhibit C, Joint Motion to Recuse.*

20. Under what statute or guiding principal of law did James Munford utilize to warrant an order that: 1) Granted a continuance to both parties, consolidated the divorce and protective order cases, yet ordered the Respondent to vacate the residency and divested him of his custodial rights prior to being able to present his defense?

21. There isn't one. This is why since this decision has been made, nothing else has happened in the case outside of the Father seeking relief first in the form of a reconsideration motion followed by seeking relief in the Texas Court of Appeals. The ongoing deprivation without justification not only showcases an egregious disregard for the law, but a disregard for the Texas families that judicial officers are elected to protect.

22. When considering that the Respondent has filed over 1,500 pages of information seeking relief without *a single explanation* from the court, has uncovered the Petitioner's true motive for her initial pleadings, has shown she falsified her indigenous status, and that her actions have severely damaged not only the Respondent's business and ability to provide for his Children, but the emotional stability they rely on for their development.

23. As pointed out in the motion to reconsider evidence heard on March 14th, 2024, the Petitioner texted two individuals outside of the marriage to the amount of 16,500 times within the scope of a year, visited their residency 18 hours on average per week, admitted to defrauding the marital estate, admitted to receiving help filing her fraudulent pleadings, and has shown through her actions that she is not a fit parent, and the current arrangements remain in place solely because of the judge's refusal to follow the law.

24. When you consider the following information on top of how this case was founded, it's clear that a willful deprivation of constitutional rights is taking place by the court, and the recusal of both judges must be granted as a matter of law.

D. PROCEDURAL MISHANDLING SHOWCASES DEEPER ISSUES

6. Pursuant to the Texas Rules of Civil Procedure 18(a)(f), the Respondent judges have two options once a motion to recuse is filed. 1) the judge can file with the clerk an order of recusal or disqualification, or 2) the judge can sign and file with the clerk an order referring the motion to the regional presiding judge.

7. Rather than filing the orders of referral with the clerk of the court, they were forwarded from the court coordinator via email, Lindsey Baker, without the required certificate of service and remain inaccessible through the Texas Supreme Court approved electronic filing manager, re:Search Texas.

8. The original motion was altered and did not contain the affidavit or exhibits vital to the motion. This fact was promptly pointed out in *Exhibit 1*, where the file size difference can be seen from the email attachments. **Click for reference.**

9. Lindsey Baker then confirmed that the exhibits and affidavits had been forwarded. The file size difference was then pointed out in the last correspondence chain found within *Exhibit 1*, to which an amended order of referral followed, and the reasons given for the modification of the original motion changed due to the motion's length, thereby justifying the modification of the original motion into three parts. See *Exhibit 2*.
Click for reference.

10. Given that the very purpose of re:Search Texas is to streamline the process of service and case management, it raises the question as to why the court would choose to

utilize the platform up until the joint motion to recuse was filed. Further, the Frequently Asked Questions found within the District Clerk's website for electronic filing specifically reiterate that exhibits should be merged into one document with the lead document, and that the file size limit is 35mb. Given that the Respondent's original joint motion to recuse was well under the maximum size of 35mb, and the joint motion was filed as one document as the clerk prefers – why was it modified and served outside of the requirements of Rule 21a of the Texas Rules of Civil Procedure? These facts were highlighted in the Respondent's formal objection filed and served on all parties through the EFM on October 10, 2024, and is attached hereto as *Exhibit 3*, and remains undocketed at the time of filing this motion. **Click for reference.**

11. Finally, contradicting everything above, Judge Jeff Kaitcer's order of referral was properly served through the EFM as one document, with the affidavit and all exhibits attached as one motion, but is albeit missing from the electronic case docket.

12. All undocketed filings that have been accepted by the court but remain missing from the re:Search Texas platform or that have been served to the respondent and are missing from the re:Search Texas platform have been attached hereto as *Exhibit 4*. **Click for reference.**

13. There is no excuse for this conduct, and it showcases a willful agenda by the court to deprive the Respondent of his right to a fair trial, a right to an appeal, and warrants immediate recusal.

E. APPLICATION OF CANON 3 AND REMEDIAL ACTION

13. The actions of Judges Munford and Judge Kaitcer demonstrate a clear departure from the standards of impartiality and integrity mandated by Canon 3 of the *Texas Code of Judicial Conduct*. The facts before this court reveal a pattern of procedural inconsistencies and biased decision-making that stem, in large part, from the Petitioner's misleading filings—an influence that both judges have inadvertently allowed to impact their rulings. Even though such information may have been obtained during the proceedings, no findings have been made justifying the initial decision, which only leaves the appearance of impartiality, which is enough to warrant recusal. See *Rogers v. Bradley*, 909 S.W.2d 872, 873 (Tex.1995) ("Declaration of Recusal" by Gammage, J.) (noting that issue is one of perception). ("[B]eyond the demand that a judge be impartial is the requirement that judge appear to be impartial so that no doubts or suspicions exist as to the fairness or integrity of the court."); see also *Sears v. Olivarez*, 28 S.W.3d 611, 613–14 (Tex.App.-Corpus Christi 2000, no pet.). The facts outlined above raise serious doubts, and would raise the same doubts to any reasonable member of the public.

14. Under **Canon 3(B)**, judges are required to adjudicate based on impartiality and factual accuracy. However, the judges' failure to critically assess the Petitioner's narrative of hardship, coupled with improper handling of filings, has resulted in decisions that lack factual support and undermine the Respondent's rights to a fair hearing. This court now has the opportunity to address this lapse by recusing the judges and ensuring the case is overseen with genuine impartiality. To selectively start docket pleadings only after the

recusal motion was filed points to the intentional nature of the court to obfuscate the record.

15. **Canon 3(C)** underscores the judges' responsibility to administer the court's operations consistently and transparently. The irregular handling of critical filings—orders forwarded without proper certificates of service, mismanagement within the EFM system, and discrepancies in access—demonstrate a failure in maintaining the procedural integrity essential to a fair process. These administrative oversights have obstructed the Respondent's access to justice, and this court now has both the facts and the authority to remedy this by granting this motion to enter judgement. The court cannot put its' fear of public scrutiny before the law, which is exactly what it has done here. After six months of sitting idle and watching the Respondent seek relief, the court suddenly choosing to take action once a recusal is filed is highly suspicious.

16. Finally, **Canon 3(D)** obligates this court to take appropriate action if it is established that a violation has occurred within the code. The Respondent believes that the violation is merely a product of relying on fraudulent pleadings by the Petitioner mixed with permitting a likely unauthorized attorney to prosecute the case and does not reflect on either Judge Munford or Judge Kaitcer's overall fitness for office.

F. A CLOSER LOOK AT CANON 3(D)(2)

17. A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action.

18. To assist in this determination, notwithstanding the current challenge to Ms. Carter's authority, one needs to look no further than the current temporary orders in place, which is attached as *Exhibit I* in the original joint motion to recuse filed on October 7, 2024.

19. On page 1, the orders read: "On February 1, 2024, the Court heard Petitioner's motion for temporary orders." A review of the record will show that no motion for temporary orders has been served to the Respondent in this matter, no notice of hearing was served to the parties regarding such a motion, and no hearing ever occurred regarding this motion.

20. The orders move on to state that both parties "appeared by counsel and announced ready" and "signed an agreed associate judge's report" when in fact, both parties appeared, but were rushed into a settlement agreement by the Respondent's prior counsel due to his unwillingness to remain in the courthouse all day, leading to his termination. Steve Myers, a witness, was present in the conference room during this exchange. Neither party went before the judge on February 1st, 2024. See *Exhibit 6*.

21. The agreement, which can be found in *Exhibit E* in the original joint motion to recuse, had the following provisions at the bottom of page 5 of the agreement:

"A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order shall be prepared by Dan Bacalis. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed Order shall have five (5) days to do so. There are no

ten (10) day letters. If an agreement is not reached, a Motion to Sign shall be filed and set within thirty (30) days from the signing of this Report.”

22. Given that an agreement was clearly not reached, the orders were reduced to writing well beyond the 20 day requirement, the orders were not prepared by Dan Bacalis, no motion to sign was filed, and the Respondent was not given 5 days to review the orders, it calls into question as to how they were permitted to be rendered despite lacking the Respondent’s signature and despite being served to him immediately prior to a hearing scheduled to challenge their legal foundation.

23. Notwithstanding the above, the mere fact that the orders state “[t]he parties have agreed to the terms of this order as evidenced by the signatures below.” and no signature from the Respondent is present showcases a pre-determined outcome, and a one-sided favoritism that warrants recusal.

24. Finally, and most concerning, is the fact that Judge Jeff Kaitcer affixed his signature to this document which states that “[t]he Court, after examining the record and the agreement of the parties and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties.”

25. The foregoing statement can’t possibly be true for two reasons. 1) No evidence has been admitted into this case, and no argument from counsel was presented – only baseless objections without foundation. 2) The associate judge could not have possibly examined the record, because it is apparent that consent was not present at the time of rendition, and the directives he ordered within the agreement were not followed.

26. Expanding on point 2 above, the associate judge could not possibly have examined the record because in the original answer to the protective order filed by the Respondent, he claimed duress as an affirmative defense alongside fraud and illegality.

See Exhibit 7.

27. There can be no claim of duress unless the following elements are present: (1) a threat or action taken without legal justification; (2) the threat or action was of such a character as to destroy the other party's free agency; (3) the threat or action overcame the opposing party's free will, causing them to do something they would not otherwise have done and were not legally bound to do; (4) the restraint was imminent; and (5) the opposing party had no present means of protection (*McMahan v. Greenwood*, 108 S.W.3d 467, 482 (Tex.App.-Houston [14th Dist.] 2003, pet. denied)).

28. The Petitioner's actions—including seeking an emergency *ex parte* order, initiating an eviction, filing for divorce, and pursuing an additional protective order—occurred within an 8-day span, representing actions taken without legal justification.

29. These actions threatened the Respondent's livelihood by removing him from the residence he needed to provide for his children, as well as from the home where his children had been raised with their father. This threat materialized on January 16, 2024, when the Respondent was ordered to vacate the residence without justification.

30. These actions forced the Respondent to sign an agreement he would not have otherwise accepted. This agreement allowed him to return to the residence but involved conditions that removed his children from their home and was under no legal obligation

to settle given the circumstances of the case and the baselessness of the claims made against him.

31. If the Respondent did not sign, he would have faced no alternative other than continued exclusion from his residence and further impairment of his ability to provide for his children. This threat was imminent.

32. The Respondent's counsel advised him to sign the agreement instead of proceeding to a hearing, leaving him without a viable means of protection at that time.

33. All elements of duress were present when the Respondent signed the agreement. Judge Kaitcer and Ms. Carter were aware that consent was not present when the orders were rendered yet were entered regardless. This disregard for procedural fairness and apparent partiality underscores the need for recusal.

34. Finally, Ms. Carter signed a pleading containing false statements, in violation of Rule 4.01(a) of the Texas Rules of Disciplinary Conduct. She claimed that the Respondent agreed to the orders, that they were based on a hearing that never occurred, and referenced a motion never served to the Respondent. This court should address these actions in accordance with Canon 3(D)(2) of the Texas Code of Judicial Conduct.

G. THE RULE 12 MOTION

35. In addition to the un-answered motion in limine and all other pleadings filed in this case, the Respondent presents one new critical piece of information that should have

Cooper Carter immediately removed from this case unless she is able to prove her authority or verify her employment:

[!\[\]\(c3fc175bc90da56b0b7d34c090738a93_img.jpg\)](#) Confirm You Are This Attorney

Name: Cooper Carter

Attorney Number: 24121530

Email: cc***er@canteyhanger.com

Click "Send Confirmation Email" to have an email sent to your State Bar of Texas preferred email address.

[Send Confirmation Email](#)

Why would Cooper Carter affix her signature to pleadings filed by Roderick Marx, someone not on the case, and also claim to be working for Marx Altman & Johnson, yet is registered with the Texas Supreme Court approved re:Search Texas platform with Cantey and Hanger? This surely would explain why she hasn't filed anything on behalf of her client in this matter or responded to any of the Respondent's pleadings. Further, why would Cooper Carter continue to remain on a case where she clearly can't competently represent her client? The only answer is that the outcome was predetermined, which considering the totality of facts of this case, seems to be the only logical explanation.

36. This level of incompetency on behalf of Ms. Carter, the partiality exhibited by both judges in this matter combined with the procedural abnormalities should never occur in our courts. Yet here, it has not only happened, but has been permitted to continue.

H. FINAL THOUGHTS

37. According to Tex. R. Civ. P. 21(d)(a)(1), a "court proceeding" includes any appearance before the court, such as a hearing or trial. Per Tex. R. Civ. P. 21(a), every pleading, plea, motion, or application to the court for an order—whether presented as a motion, plea, or other request—must be filed with the court clerk in writing, state the grounds, and be noted on the docket unless presented during a hearing or trial.

38. Should this matter proceed to a hearing, the court must adhere to the Texas Rules of Civil Procedure, including docketing all missing items listed in *Exhibit 4* and following the service requirements in Rule 21a when scheduling the hearing. Informal notices via email only obscure the opportunity for an appeal and fail to comply with Texas Civil Procedure. The court cannot continue to overlook its duty to correct these oversights, nor can it ignore state laws to uphold decisions lacking any legal justification.

39. It is deeply troubling that the Respondent, a self-represented litigant, must underscore basic procedural requirements to ensure adherence to standard rules, while the Petitioner's attorney has repeatedly disregarded these processes by raising baseless objections in proceedings yet remaining silent in the record. This absence of accountability raises questions about the attorney's commitment to ethical standards and procedural integrity, and it is perplexing that any reviewing judge could ignore the severity of the issues documented in this brief.

40. It remains unanswered how a citizen of this state can be removed from his home and stripped of custody of his children based solely on unproven accusations by the

other parent, without the opportunity to defend himself. Our society—and especially our children—should not be subjected to this level of disregard by elected officials.

41. When such actions come from a vindictive parent willing to falsify their financial status and weave a false narrative for protection, the court should take appropriate action to prevent such deceptive actions from occurring in the future, and should surely be a factor in determining their fitness as a parent.

42. If a hearing is determined that it must be held, the Respondent requests to subpoena HOLLY HAYES, who will be served a copy of this pleading, RODERICK MARX, and VICTORIA WEAVER so that the Respondent may obtain necessary information as to what their role is in the case. Addresses for subpoenas are shared amongst Cooper Carter, Victoria Weaver, and Roderick Marx, and the address for HOLLY HAYES can be found within the interpleader filing that this court has ignored for nearly four months.

43. If the motion is granted without a hearing, the immediate course of action should be turned to the Rule 12 motion which has been sitting on the docket unanswered for nearly two months.

44. If this case could have been adjudicated fairly, it would have already been done. The delays in this matter come not from the Respondent, but from the manner in which the case was founded upon: fraud.

IV. CONCLUSION

Recusing Judges Munford and Kaitcer is the first step to restore the Respondent's rights as all other state remedies have been exhausted. These are essential first steps this court can now take. These actions will not only uphold Canon 3(D)'s standards but will also correct procedural injustices, ensuring that the case can proceed in alignment with the highest principles of fairness and impartiality. Such measures will allow new judges to enter the case and review the facts unobscured by the intentional deceptions that have compromised these proceedings, ultimately protecting the children's best interests as mandated by the *Texas Family Code*.

Given the court's decision to stop docketing pleadings at the time the recusal motion was filed, along with its handling of the matter outside established legal standards, any reasonable member of the public, fully informed of the facts, would reasonably question whether the judges were acting impartially in this case.

Such impartiality has rewarded a mother that has fabricated not only her financial status to this court, but also a false need for protection that should be taken as serious violations that are apparent from the face of her pleadings. To continuously deprive a parent of his constitutionally protected rights to his children and residency despite being given every opportunity to correct the situation showcases a blatant refusal by the current judges to either fix the situation or provide legal justification for their decisions.

Without a factual basis or explanation for the court's decisions, they must be recused so that the truth of the matter may be addressed after ten wasted months. The court must not tolerate the levels of deception and fraud committed by the Petitioner, and the Respondent reiterates that despite the egregious acts taken against him in totality, he holds no ill will toward any participant in this matter, and solely seeks a just and swift resolution for the sake of his children.

The court has all of the necessary information it needs to grant this motion and enter judgement for the recusal in the Respondent's favor which is not appealable. Pursuant to the Texas Rules of Civil Procedure, a denial of a motion to recuse is only reviewable by mandamus while a grant remains final.

V. PRAYER

The respondent respectfully requests the following relief from this court:

1. Immediately recuse both judge James Munford and Jeff Kaitcer from this matter by a date deemed appropriate by the court should no response be filed from the opposing party in opposition to the relief requested herein.
2. Require that the clerk of the court docket the missing documents in accordance with the Texas Rules of Civil Procedure 21a found in *Exhibit 4*.**Click for reference.**

3. Take judicial notice of the Petitioner's deception by examining her pleadings and the effects it has had on the case.
4. Take judicial notice of the effort put forth by the Respondent to correct this situation and the lack thereof from the opposing party.
5. Pre-admit all exhibits attached hereto, and all exhibits found within the original Joint Motion to Recuse, attached to this envelope as a separate lead document to prevent confusion when referencing exhibits.
6. Adopt the Respondent's First Amended Motion for Temporary Orders attached hereto as *Exhibit 5* and take judicial notice of the Respondent's parenting plan, attached as *Exhibit L* in the original joint motion to recuse and admit both into evidence.
7. Award any other extraordinary relief deemed appropriate and necessary by the court given the circumstances presented.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
Pro-se
817-507-6562
Chuckdustin12@gmail.com

AFFIDAVIT OF CHARLES MYERS

**STATE OF TEXAS
COUNTY OF TARRANT**

BEFORE ME, the undersigned authority, on this day personally appeared Charles Dustin Myers, who, after being duly sworn, did depose and state as follows:

1. Introduction and Background

My name is Charles Dustin Myers, and I am the Respondent in the case No. 322-744263-23 & No. 322-744538-23, In the Matter of the Marriage of Morgan Michelle Myers & Charles Dustin Myers and in the Interest of M.E.M. & C.R.M., Minor Children, currently pending in the 322nd District Court of Tarrant County,

Texas. I am above 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein, which are true and correct.

2. Procedural Violations and Due Process Concerns

Since the initiation of this case, I have encountered numerous procedural irregularities that have obstructed my right to a fair hearing. I was removed from my residence and separated from my children on January 16, 2024, based solely on allegations made by the Petitioner, without any evidentiary findings or an opportunity to defend myself in a formal hearing. This deprivation of my rights was executed without adherence to the foundational principles of due process.

3. Duress in Signing the February 1, 2024, Agreement

On February 1, 2024, I was compelled to sign an agreement that I did not fully understand nor agree with. This agreement allowed me limited access back into my residence but resulted in the removal of my children from their home. My decision to sign was made under duress, as I was advised by my attorney to accept these terms rather than proceed to a hearing, due to the potential of further exclusion from my home and livelihood. I felt I had no other viable option to safeguard my ability to continue providing for my children.

4. Bias and Lack of Impartiality

I have serious concerns regarding the impartiality of Judges Munford and Kaitcer, as the procedural management of this case has shown a consistent disregard for my rights. My filings and objections have been met with resistance and have often been undocketed or handled irregularly, while the Petitioner's pleadings have

proceeded unchecked, despite containing misleading and unsubstantiated claims.

This pattern of favoritism and procedural leniency towards the Petitioner has compromised the integrity of these proceedings.

5. Misrepresentation and Lack of Consent in Orders

The current orders on record falsely state that both parties appeared before the court on February 1, 2024, announced readiness, and signed an agreed associate judge's report. In reality, there was no formal hearing or review of evidence on that date, and I did not give my consent to the terms as recorded. Furthermore, the orders assert that necessary legal prerequisites were met, when, in fact, no such procedural steps were observed. These inaccuracies directly impact my rights and the fairness of these proceedings.

6. Unethical Conduct and Professional Misconduct

The Petitioner's counsel, Ms. Carter, signed and submitted pleadings containing false statements, misrepresenting my consent to the orders and claiming that a hearing had occurred when it had not. This conduct violates Rule 4.01(a) of the Texas Rules of Disciplinary Conduct and Canon 3(D)(2) of the Texas Code of Judicial Conduct. Such behavior not only misleads the court but also deprives me of a fair and just resolution.

7. Need for Recusal

Given these procedural irregularities, false representations, and lack of impartiality demonstrated by Judges Munford and Kaitcer, I respectfully request their recusal from this case. Their actions and the management of this case have created an

appearance of partiality, depriving me of my right to due process and casting doubt on the integrity of these proceedings.

8. Request for Judicial Review and Corrective Action

I request that this court take immediate action to address the procedural oversights, docket missing filings as per Texas Rules of Civil Procedure, and ensure an impartial review of the facts in this case. I seek a fair hearing, free from bias, where the truth can be assessed without obstruction. In the interest of justice, I also urge the court to examine the Petitioner's documented misrepresentations and their impact on the well-being of my children, M.E.M. and C.R.M.

9. Conclusion

This affidavit is submitted with sincere intent to restore fairness and procedural integrity to these proceedings, not out of malice or animosity toward any individual involved. My only goal is to reach a resolution that genuinely considers the best interests of my children and respects my constitutional rights as a parent.

I declare under penalty of perjury that the foregoing is true and correct.

X
CHARLES DUSTIN MYERS
817-507-6562
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

CERTIFICATE OF SERVICE

Respondent, CHARLES DUSTIN MYERS, certifies that a true copy of this trial brief and all exhibits were served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on **11/11/24**:

Cooper L. Carter (Counsel for real party in interest)
by EMAIL/ESERVE at COOPERCARTER@MAJADMIN@COM

Morgan Michelle Myers (real party in interest)
by EMAIL/ESERVE at MORGANMW02@GMAIL.COM

Holly L. Hayes, Texas Office of the Attorney General
By EMAIL/ESERVE at 914-filer@texas.oag.gov

The Honorable Justice Lee Gabriel

By EFM/ESERVE at LGabriel@tarrantcountytexas.gov

/s/ Charles Dustin Myers
Charles Dustin Myers
Chuckdustin12@gmail.com
6641 Anne Court
Watauga, TX 76148
Tel: 1-817-507-6562
Pro-se