

NO. 233-765358-25

IN THE 233<sup>RD</sup> DISTRICT COURT OF TARRANT COUNTY, TEXAS

**IN RE: M.E.M., ET AL.**

\*\*CHARLES DUSTIN MYERS, \*\*

Petitioner,

**MORGAN MICHELLE MYERS,**

Respondent.

Notice of Legal Clarification

2025-03-28

**TO THE HONORABLE COURT:**

Petitioner, CHARLES DUSTIN MYERS, files this Notice of Clarification, and in support thereof, shows the following:

1. Despite the strong legal position of the Petitioner, his self-represented status seems to take priority in the eyes of the court regarding adjudication.
2. This notice is to provide the court with statutory context, Texas precedent, and to remind the court that his presence here is not out of naivety or misunderstanding of the law but indeed is derived from a ***thorough understanding*** of the facts that continue to be disregarded based on his self-represented status.
3. Even if a response were ordered by this court from the opposition, COOPER L. CARTER would not be able to produce any valid opposition, which is why she resorts to conduct that leverages her status as a licensed attorney such as what transpired on March 28<sup>th</sup>, 2025, before this very court.
4. Despite the court's feelings towards pro-se litigants, the undersigned's facts prevail.

## **I. Prohibited Ex Parte Contact During TRO Hearing**

5. It is improper for an attorney to communicate with a court about a matter pending without including or giving notice to the opposing party. Texas Disciplinary Rule of Professional Conduct 3.05(b) expressly forbids a lawyer from **communicating ex parte with a tribunal to influence a pending matter**, except in very limited circumstances (e.g. in writing with prompt delivery of a copy to the other side, or orally with adequate prior notice to the other side). Contacting the judge during the TRO hearing to announce an intended motion (such as consolidation) without the opponent's knowledge or presence would violate this rule. As the Texas ethics rules explain, ex parte contacts outside these exceptions are strictly controlled due to their potential for abuse. In short, unless permitted by law and with proper notice, one party's lawyer cannot privately influence the court about a case.

*“A lawyer shall not... communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter” except in the course of official proceedings or with notice to the opposing side” - Tex. R. Disc. Prof'l. Cond. 3.05*

6. In the instant case, this is exactly what occurred. Without informing the Petitioner about her availability issues, she skipped over these rules to influence proceedings to which she did not respond to, raise objection to, or provide any valid argument against. Instead, she requested to **contact the judge during an emergency TRO**, which was not only permitted by the Associate Judge of the 233<sup>rd</sup> District Court, but directly influenced the proceedings in violation of the above rules.

7. This kind of off-the-record communication is also inconsistent with the judge's ethical duties. The Texas Code of Judicial Conduct prohibits judges from **initiating or permitting ex**

**parte communications about the merits** of a pending case. - Canon 3.B(8) Texas Code of Judicial Conduct. In an ethics opinion, the judge's act of discussing a case with one lawyer (even at the judge's own initiative) was deemed a violation of Canon 3(B)(8). *Exhibit 1*

8. Accordingly, a lawyer who calls or messages the court during an opponent's hearing (without proper notice) is engaging in an impermissible ex parte contact. Such conduct has been condemned as undermining the fairness of proceedings and can subject the lawyer to discipline under Rule 3.05(b). Tex. Comm. On Professional Ethics, Op. 604 (2011). The proper course would be to file any motion (like consolidation) through normal procedures and ensure the other party has notice or an opportunity to be heard, rather than attempting to sway the judge in private.

9. In the instant case, the proper course was not followed. In fact, the proper course has not been followed throughout the entirety of the litigation from Ms. Carter. At the last minute, COOPER L. CARTER requested to be 'patched in' to the EMERGENCY TRO hearing on March 28, 2025, by contacting court staff after hours rather than contacting Petitioner directly. Furthermore, after Petitioner traveled to the 233<sup>rd</sup> District Court on March 28<sup>th</sup>, 2025, to present his motion – the Judge used these ex-parte communications to deprive the Petitioner of his due process rights, and allowed Ms. Carter to declare the EMERGENCY TRO 'improper' despite providing no argument or counter-argument to Petitioner's objection.

10. Given that the TRO was a true emergency and the ex-parte communications directly impacted the Petitioner's due process rights, the court effectively denied Petitioner the right to be heard from the unsworn testimony of an attorney who, despite claiming she would file a motion to consolidate, never did so. This is a blatant disregard for Texas law and an attempt to undermine the Petitioner's position and the best interests of the children, which was successful.

## **II. Effect of a Pending Rule 12 Motion to Show Authority**

11. Under Texas law, when an attorney's authority to act in a case is challenged by a Rule 12 motion, the attorney **may not act on behalf of the client until the court resolves that motion.** Texas Rule of Civil Procedure 12 allows any party to require an attorney to "show authority" to represent a client. At the Rule 12 hearing, the **burden is on the challenged attorney to prove his authority;** if he fails, the court "*shall refuse to permit the attorney to appear in the cause*" and shall strike any pleadings filed without authority. See *In Re: Freeman GRAVITT* (2012).

12. Texas courts have held that once a question is raised about an attorney's authority, the Rule's requirements are mandatory and must be strictly followed. *Id.* In *In re Salazar*, the Fort Worth Court of Appeals emphasized that "once the trial court finds the challenged attorney has not met his burden of proof, it is mandatory that the trial court follow Rule 12's requirements." *Id. 315 S.W.3d 279, 283 (Tex.App.-Fort Worth 2010, orig. proceeding)*. This means the attorney can no longer represent the party in that case unless and until he demonstrates authority.

13. Importantly, during the pendency of a Rule 12 motion (before it is decided), the attorney's power to act for the client is suspended or at least highly questionable. Texas courts discourage any further action by that lawyer until the challenge is resolved, to avoid unauthorized filings or proceedings. For example, in **Sloan v. Rivers** (Fort Worth Court of Appeals), an attorney admitted he had no authority from the named party; the court noted this admission "*vitiates the petition*" that had been filed, rendering it a nullity. *In re B.E.A.R.*, No. 05–02–01493–CV, 2003 WL 21544507 (Tex.App.-Dallas 2003, July 10, 2003, no pet.) (mem. op.).

14. In other words, actions taken by a lawyer without authority have no effect. Thus, if an attorney is facing a Rule 12 motion, any attempt to participate in hearings, file additional pleadings, or otherwise act on the client's behalf before the court rules on the motion is improper. The proper procedure is to halt such participation until the attorney proves his authority at the Rule 12 hearing. Only after the court is satisfied that the attorney is authorized should the attorney resume acting for the client. *In Re: Freeman GRAVITT* (2012). Failure to abide by this could result in the attorney's filings being stricken and even dismissal of claims if no authorized person is pursuing them.

15. In the instant case, COOPER L. CARTER's authority has not only been pending before the 322<sup>nd</sup> District Court since September 20, 2024, but remains un-opposed, unanswered, and unadjudicated. All of these facts were pointed out in both the emergency TRO that the court refused to hear and actually *un-set* for a hearing which the court refused to look at. The same applies to this court. Promptly after the incorrect consolidation motion was filed by COOPER L. CARTER in this court, it was objected to and summarily ignored by the court.

16. In essence, the court not only permitted ex parte communications in violation of professional and judicial ethics but permitted her to do so while her authority remained in question in **both courts**. COOPER L. CARTER has not provided any meaningful insights into the core issues of this case – the children's best interests. Rather, she has continued to ask favors from the bench which have been entertained at the expense of the best interest of the children named in this suit. Petitioner reminds this court that he opened this suit to escape this exact situation and allowed the same attorney with no legal position to influence proceedings she failed to participate in.

17. Finally, when raising the proper argument before the tribunal, the law came second to politics, and the Petitioner's pro-se status rendered his valid position 'improper' arbitrarily and prompted the tribunal to redefine Rule 237a of the Texas Rules of Civil Procedure and deny him the ability to be heard.

### **III. RULE 237A OF THE TEXAS RULES OF CIVIL PROCEDURE**

18. Contrary to the court's claims, Rule 237a of the Texas Rules of Civil Procedure is **mandatory**, regardless of how the case was removed or if the removal was proper.

19. Under Rule 237a, the **procedure** is that the plaintiff (after remand) must file a certified copy of the federal remand order with the state court and **give written notice of that filing to the defendant**. *HBA East, Ltd. v. JEA Boxing Co.*, 796 S.W.2d 534, 537 (Tex. App. 1990) ("The plain wording of rule 237a gives a defendant 15 days from the receipt of the plaintiff's notice of the filing of the order of remand to file an answer in state court, without reference to whether the original removal was provident. Were we to hold that actual notice of an order of remand was sufficient to cause the 15-day period to commence, not only would we render meaningless the language of rule 237a, but we would cause confusion among practitioners concerning the "start" date from which the 15-day answer deadline is determined after a cause is remanded to state court from federal court.").

20. Other courts have agreed with the *HBA East* approach. In **Kashan v. McLane Co.**, for example, the Austin Court of Appeals overturned a post-remand default judgment, reiterating that "*the plain language of Rule 237a places the burden on the plaintiff to file the remand order with the state court and to provide written notice to the defendant,*" and that a defendant's actual notice from the federal proceedings does not excuse non-compliance. *Id.* NO. 03-11-00125-CV, 7

(Tex. App. Jun. 7, 2012). Even an improper or frivolous removal invokes this rule because, during the period of removal, the state court had no jurisdiction; once the case returns, fairness dictates the defendant get a reasonable time to answer in state court. In short, **Rule 237a is mandatory and applies in all removal scenarios, as the language unambiguously states.**

21. In the instant case, the court, off the record, made the argument contrary to the above. Nothing in Texas law supports the notion that “improperly removed cases by pro-se litigants don’t apply” or that improperly removed cases do not divest the state court of jurisdiction. Common law and the face of rule 237a contradict this notion outright. Despite this, the court chose to apply the law incorrectly due to one of the following reasons:

- a. The ex parte communications made between COOPER L. CARTER and the tribunal;
- b. The deep-seated antagonism against self-represented litigants;
- c. The presumption that the pro-se litigant doesn’t know his legal position.

Other than these three reasons, the court had nothing before it to come to this conclusion, and declared the TRO improper.

22. Therefore, the court’s directive to ‘file the TRO in the 322<sup>nd</sup> district court’ fails because ***they do not have jurisdiction over the divorce matter given COOPER L. CARTER’S inability to follow proper procedure.***

23. Despite these failures by COOPER L. CARTER, the children and the Petitioner suffer the consequences.

24. Had the court even taken a cursory review at the emergency TRO, these facts would have been apparent. However, the court chose not to act for reasons not supported by Texas law.

#### **IV. Dilatory Tactics and False Promises of Consolidation (Rule 3.02 and Sanctions)**

24. **Texas Disciplinary Rule 3.02** obligates attorneys to avoid tactics that unreasonably delay or burden the legal process. The rule states: “*In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.*” Falsely promising to file a motion (such as a motion to consolidate cases) with no intent to actually do so – merely to delay a proceeding – violates this ethical mandate. Such behavior is considered a dilatory tactic with no substantial purpose other than to frustrate the opposing party or the court schedule. The comments to Rule 3.02 note that “**Dilatory practices indulged in merely for the convenience of lawyers**” or for strategic delay are “**normally... ‘unreasonable’ within the meaning of this Rule.**”

25. In other words, an attorney cannot feign intent to take a legal step (like consolidation) as a ploy to push back a hearing or gain an unfair time advantage. Doing so not only breaches professional ethics (Rule 3.02) but can also run afoul of procedural rules that guard against bad-faith litigation conduct.

26. If an attorney engages in delay for delay’s sake or other bad-faith litigation tactics, Texas courts have tools to sanction such conduct. **Rule 13 of the Texas Rules of Civil Procedure** authorizes sanctions against attorneys who file pleadings or motions that are groundless and brought in bad faith or for the purpose of harassment.

27. Likewise, **Chapter 10 of the Civil Practice & Remedies Code** (Tex. Civ. Prac. & Rem. Code §§10.001–.004) requires that every pleading or motion be warranted by good faith legal arguments and not filed for an “improper purpose,” which expressly includes causing unnecessary delay. An attorney who, for example, files a frivolous motion or makes false

representations to postpone proceedings can be sanctioned with penalties ranging from fee awards to contempt.

28. Texas case law provides examples of sanctions for dilatory or bad-faith tactics. In **Bradt v. Sebek**, 14 S.W.3d 756 (Tex. App.—Houston [1st Dist.] 2000, pet. denied), an attorney was sanctioned under Rule 13 for pursuing litigation tactics that were not aimed at resolving the case on the merits, but rather at harassing the opponents and causing undue delay. The court found the attorney had acted in “**bad faith**”, which it defined as more than mere bad judgment – “*it implies the conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose.*”

29. Specifically, the attorney in *Bradt* made sweeping allegations and dragged out the proceedings without evidence – conduct which the trial court concluded “*was to abuse or harass the defendants in bad faith with frivolous claims*”. Upholding a \$100,000 sanction, the First Court of Appeals agreed that the attorney’s pleadings were groundless and brought in bad faith or to harass. This case underlines that courts will penalize lawyers who use legal processes as a weapon of delay or obstruction rather than to adjudicate genuine disputes.

30. Importantly, **deliberately misleading the court or the other party about one’s intentions** (such as claiming “I will file a consolidation motion” to induce the court to halt the opponent’s hearing, and then never following through) is the type of bad-faith conduct that can trigger sanctions. Courts look to whether an attorney’s statements or filings had any reasonable basis or were simply a sham. If there was no legal or factual basis to consolidate (and the attorney never actually intended to seek consolidation), representing otherwise is arguably a false statement to the tribunal as well as a dilatory tactic. This could violate not only Rule 3.02 but

also Rule 3.01 (prohibiting frivolous filings) and Rule 3.03 (candor toward the tribunal), and would justify sanctions under Texas law.

31. For instance, in *Darnell v. Broberg*, 565 S.W.3d 450 (Tex. App.—Texarkana 2018, pet. denied), the court affirmed sanctions where a party’s pleadings were made in bad faith for improper purposes. The court echoed the standard that *bad faith* means the conscious doing of a wrong for a dishonest purpose, and it found that standard met when a party persisted in groundless tactics that served only to delay and needlessly increase the cost of litigation.

32. Similarly, in **Herring v. Welborn**, 27 S.W.3d 132 (Tex. App.—San Antonio 2000, pet. denied), the court explained that an objective lack of basis combined with an improper motive (such as delay or harassment) warrants sanctions: “*filings a pleading with no basis in fact or law, for the purpose of delay, is sanctionable as bad faith.*” (See id. at 143).

33. In summary, **Texas Disciplinary Rule 3.02** forbids lawyers from needlessly delaying litigation, and using a ruse of “planned consolidation” to derail a hearing would violate this duty. Additionally, **Rule 13, Texas R.Civ.P., and Chapter 10, CPRC** provide courts the power to sanction filings or arguments made in bad faith or for delay. Texas appellate decisions demonstrate that courts will sanction attorneys for **dilatory tactics** – i.e., conduct with no substantive purpose except to delay or thwart the proceedings.

34. In the instant case, this is exactly how COOPER L. CARTER has been handling these matters. She has provided no substance in either court, has filed no responsive pleadings, has failed to show her authority, and continuously side-steps the rules of procedure to the detriment of both the Petitioner and his children.

35. If COOPER L. CARTER had any valid legal position, she would have asserted it after 14 months of litigation. Instead, she has continuously utilized her status as a licensed attorney to leverage improper and unethical practices to avoid accountability for her client.

36. If the tables were turned, the EMERGENCY TRO would have been granted without question today by the Associate Judge, and the pro-se litigant would have been reprimanded for the conduct outlined above.

37. Instead, despite the Petitioner's legal position being accurate and in-line with Texas precedent, the court chose to deny due process and favor the attorney without even glancing at the motion.

### **CONCLUSION**

The 233<sup>rd</sup> District Court of Tarrant County should re-address this situation immediately, as the actions taken in the face of a true emergency are unacceptable, unlawful, and leaves the children in this matter without the relief that has been desperately and diligently sought for the past year.

Pro-se litigant or not, this court has a duty to uphold the law, and today, it utterly failed in this prospect by choice by enabling the conduct of COOPER L. CARTER to continue at the expense of the children.

Despite the clear bias towards self-representation – the Petitioner has made his legal position clear. The court cannot just waive his arguments in favor of unethical legal practices and deny him the opportunity to be heard. Because in the end, the consolidation motion was never filed. This notice, alongside the brief oral statement given in open court, explains why. Despite this, the court chose politics over Texas law in this matter, and the children bear the fallout.

Respectfully submitted,

/s/ Charles Dustin Myers

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