

## **Question**

1 322-744263-23 IN THE 322ND DISTRICT COURT OF TARRANT COUNTY, TEXAS ITMOMO, Morgan Michelle Myers Petitioner, v. Charles Dustin Myers, Respondent & in the interest of M.E.M. & C.R.M., Two minor children. § § § § § Objection to Notice Setting A § Court Proceeding and Docket § Control Order § § § MEMORANDUM OF LAW Petitioner, Morgan Michelle Myers, initiated this action on December 18, 2023. She allegedly retained the services of Cooper L. Carter on January 22, 2024. Today is August 18, 2025, and there exists no plausible explanation as to the series of unlawful, unethical, and unprecedented events that have transpired since this matter's inception. Now, before any official reinstatement by the Regional Presiding Judge, a pending rule 12 motion against the opposing counsel, a pending DWOP motion, a pending mandamus in the Texas Supreme Court, a pending disqualification motion against opposing counsel, a summary judgment, and a plea to the jurisdiction, all of which have gone unanswered by our friends on the other side, this court - once again - seeks to sua sponte set this matter for final trial, thereby attempting to cement the unlawful deprivation suffered by the Respondent over the past two years. For the forthcoming reasons, the Respondent OBJECTS to the notice setting a court proceeding and docket control order, and in support thereof, shows the following:

- 2 I. INTRODUCTION
  1. The record demonstrates pervasive violations of due process, statutory requirements, and local rules, rendering the setting of a final trial improper and constitutionally infirm. Under Texas law and binding precedent, the cumulative procedural and jurisdictional defects in this matter mandate that the final trial setting be vacated until the father's rights to notice, hearing, and fair process are fully restored.
  2. The Respondent's objection to the final trial setting is firmly grounded in both statutory and constitutional law. The deprivation of his residence and property rights without an evidentiary hearing, which occurred on January 16, 2024, lack of findings of fact, or opportunity to be heard, combined with irregularities such as fraudulent orders falsely claiming consent, unauthorized practice of law, recusal tampering, and dormant prosecution, collectively amount to a systemic denial of due process and judicial integrity.
  3. This court only seems to act upon receiving notice that the Respondent's appellate efforts were denied - which changes nothing regarding the substantive issues herein that continue to be ignored. A denial of a mandamus petition without any written opinion does not absolve this court of the responsibility to address the issues. Until these issues are adjudicated by this court - fairly and impartially - more mandamus petitions will follow, and more recusal proceedings will be initiated until a lawful explanation is provided for the continued stone-walling and one sided favoritism so clearly displayed towards the opposing side.
  4. Texas Family Code provisions, Texas appellate and Supreme Court precedent, and constitutional guarantees all require that a party be afforded notice, a meaningful opportunity to be heard, and judicial findings before being deprived of fundamental rights. The record here shows repeated violations of these requirements, including ultra vires judicial acts, lack of 3 diligence by the movant, ineffective assistance of counsel, and improper court staff conduct. Under these circumstances, proceeding to a final trial would further entrench these

violations and irreparably harm the father's rights, damage the children, and reward the Petitioner for fraud. II. ANALYSIS OF ISSUES A. Deprivation of Residence and Property Without Hearing or Findings 5. The father was ordered to vacate his home based solely on unsubstantiated allegations of family violence, without any evidentiary hearing, findings of fact, or opportunity to be heard. This directly contravenes Texas Family Code § 85.001, which requires both a hearing and an affirmative finding of family violence before a protective order may issue. Outside of this requirement, this Court exceeded its' statutory authority when ordering the Respondent to vacate on January 16, 2024. The absence of the statutory prerequisites renders the order void and a violation of due process (Tex. Fam. Code § 85.001; In re A.D.A., 287 S.W.3d 382, 384 (Tex. App. 2009)). 6. Moreover, the failure to issue findings of fact and conclusions of law, despite a proper request, is presumed harmful and constitutes reversible error unless the record affirmatively demonstrates no injury (Anjum v. Shams-Ul-Qamar, No. 02-22-00234-CV, 2023 WL 6290132, at \*3 (Tex. App. Sept. 27, 2023)). Here, the harm is manifest: the father lost his home and property rights without any judicial justification, and then later - was ordered to agree to a settlement despite his clear lack of such consent. Damages have been accruing since then, and Respondent has diligently pursued relief through every available avenue. B. Right to De Novo Review and Failure to Provide Relief 7. The associate judge's order signed on March 14, 2024, was subject to the father's right to request a de novo hearing before the referring court under Texas Family Code § 201.015. The record indicates that the father timely filed an emergency motion to vacate and request for de novo review, which was ignored for a month and ultimately denied without explanation. This failure to provide a de novo hearing or a written rationale further violated the father's statutory and constitutional rights ( Tex. Fam. Code § 201.015). C. Fraudulent Agreed Orders and Ineffective Assistance 8. This court signed a unilateral 'agreement' containing only one side's signature when the signature page itself expressly states "AGREED AND CONSENTED TO BY:". The per curiam denials from the Second Court of Appeals regarding these issues does not absolve this court of the responsibility to address them, especially prior to moving this matter towards a final setting sua sponte. 9. The associate judge compelled the father to sign an "agreed order" that falsely recited universal consent, despite his express objection and lack of signature. This constitutes a fraudulent order and deprives the father of the right to contest property and parental issues on the merits. Such conduct, especially when facilitated by the father's own counsel acting against his interests, raises serious concerns of ineffective assistance and collusion, which are recognized grounds for relief in parental rights cases. C. Dormant Prosecution and Bad Faith 10. The Mother, as movant, failed to diligently prosecute her claims, obtaining repeated continuances without substantive filings for over 18 months. Texas law and local rules support dismissal for want of prosecution in such circumstances, as the case was effectively dormant and the father's deprivation was prolonged without justification (In re Garcia, No. 02-20-00161-CV, 2020 WL 4812632, at \*1 (Tex. App. Aug. 20, 2020)). In fact, the only recent action taken by the 5 opposing side was to suddenly prevent relief in the 233rd district court, which ultimately resulted in two additional mandamus petitions. D. Judicial and Staff Misconduct 11. The record details multiple instances of judicial officers acting ultra vires—issuing orders while recusal or mandamus

proceedings were pending, consolidating cases sua sponte in violation of local rules, and issuing orders without proper reinstatement. Court staff tampered with recusal motions by removing exhibits and altering submissions, which is not authorized under Rule 18a and undermines the integrity of the judicial process.<sup>12</sup> Such conduct not only violates procedural rules but also implicates due process and the right to a fair tribunal. The Texas Supreme Court has held that due process violations render judgments void and subject to collateral attack, regardless of procedural deadlines (In re E.R., 385 S.W.3d 552, 555 (Tex. 2012)).<sup>13</sup> Regarding staff misconduct – this court has yet to explain why on October 8, 2024, a modified version of a joint motion to recuse was forwarded to the Regional Presiding Judge with missing exhibits and without the attached affidavit. The reasons given by the Court Coordinator – Lindsey Baker – contradict Tarrant County e-filing procedures, and directly contradicts the Frequently Asked Questions section of the court’s website.<sup>14</sup> The Court Coordinator’s continued involvement in recusal proceedings showcases a deeper level of judicial bias and impartiality, as the Texas Rules of Civil Procedure have no designation of responsibility for a court coordinator regarding recusal – likely intended given the fact that coordinators are appointed by the district judge’s whom they serve. By facilitating actions that are otherwise reserved for court clerks, the Court Coordinator continues to act outside of her role, and furthers the one-sided favoritism displayed by the Court, and raises a reasonable concern that the court is not acting impartially. E. Unauthorized Practice and Void Filings<sup>15</sup> Opposing counsel has filed two motions in this case. One came on April 24, 2024, seeking to set this matter for a pre-trial conference, and a motion to consolidate – which was granted sua sponte by the District Judge of the 233rd District Court in violation of local rules.<sup>16</sup> The record also shows that opposing counsel lacks authority to act, with e-filing credentials tied to a prior employer and later filings made by another firm without substitution of counsel. Filings by unauthorized persons are void and further undermine the legitimacy of the proceedings (In re Garcia, No. 02-20-00161-CV, 2020 WL 4812632, at \*1 (Tex. App. Aug. 20, 2020)). F. Orders by Non-Reinstated Judges<sup>17</sup> Orders issued by this Court without official reinstatement by the regional presiding judge are void ab initio, as a judge lacks authority to act while recusal is pending or before reinstatement. Such ultra vires acts are subject to mandamus or other extraordinary relief (In re Garcia, No. 02-20-00161-CV, 2020 WL 4812632, at \*1 (Tex. App. Aug. 20, 2020)).<sup>18</sup> Furthermore, this Court continues to avoid the issues, and chose to set this matter for final trial immediately after the Supreme Court denied four of five pending mandamus petitions, showing a clear effort to avoid the issues despite being fully aware of them.

III. Cumulative Denial of Due Process<sup>19</sup>

The cumulative effect of these irregularities—fraudulent orders, unauthorized practice, recusal tampering, dormant prosecution, ultra vires judicial acts, and denial of notice and hearing—amounts to a systemic denial of due process and judicial integrity. The Texas Supreme Court has recognized that such violations render judgments void and subject to collateral attack, and that constitutional demands of due process override statutory requirements (In re E.R., 385 S.W.3d 552, 555 (Tex. 2012)).<sup>20</sup> The repeated denials by the appellate courts do not alter the facts of this matter and supporting law. The continued disregard is not the answer, and will only lead to more recusal proceedings and mandamus petitions until a

lawful explanation is handed down by a fair and impartial judge, regardless of which level of the judiciary it comes from. IV. Conclusion 21. The setting of a final trial under these circumstances would perpetuate and compound the denial of the father's constitutional and statutory rights. The record demonstrates a pattern of procedural and jurisdictional defects, including deprivation of residence and property without hearing or findings, lack of diligence by the movant, ineffective assistance of counsel, fraudulent orders, unauthorized practice, judicial and staff misconduct, and denial of notice and opportunity to be heard, and continued disregard for the best interests of the children. 22. Texas law, as reflected in the Family Code and binding precedent, requires that these defects be remedied before any final trial may proceed. The only appropriate course is to vacate the final trial setting, restore the father's rights to due process, and ensure that all future proceedings comply strictly with statutory and constitutional requirements. Failure to do so would result in irreparable harm and a breakdown of judicial integrity, warranting extraordinary relief through additional recusal proceedings and mandamus petitions. 23. For all these reasons, the Respondent OBJECTS to notice of trial setting, and reserves the right to seek additional relief through the appropriate legal channels, including but not limited to further recusal proceedings, mandamus proceedings, and claims brought in federal 8 court for the willful deprivation of constitutionally protected rights and through actions taken ultra vires by multiple judges who have yet to provide any substantive explanation for the conduct alleged herein. 24. Therefore, the Court should VACATE this order, and address the substantive issues as a priority and in accordance with Texas Law. Respectfully Submitted, /s/ Charles Dustin Myers CHARLES DUSTIN MYERS 817-546-3693 CHUCKDUSTIN12@GMAIL.COM PRO-SE RESPONDENT CERTIFICATE OF SERVICE I hereby certify that on August 18, 2025, this OBJECTION was served in accordance with Texas Rules of Civil Procedure 21a to all parties of record. Respectfully Submitted, /s/ Charles Dustin Myers CHARLES DUSTIN MYERS 817-546-3693 CHUCKDUSTIN12@GMAIL.COM PRO-SE RESPONDENT EXPLAIN AND RESEARCH AND DRAFT WHY THE LITIGANT HAS AN ULTRA VIRES CLAIM

## **Answer (Texas)**

### **Short response**

The litigant has a viable ultra vires claim because the court and its officers allegedly acted beyond their statutory and constitutional authority—such as issuing orders without required hearings, findings, or proper judicial authority—rendering those actions void under Texas law. Ultra vires claims are specifically recognized in Texas to challenge government officials, including judges, who act without legal authority or fail to perform ministerial duties.

# **Summary**

Under Texas law, an ultra vires claim arises when a government official, including a judge, acts outside the scope of their legal authority or fails to perform a duty that the law prescribes with precision, leaving no room for discretion. In this case, the respondent alleges that the court issued orders depriving him of property and parental rights without the required evidentiary hearing, findings of fact, or proper judicial authority, and that certain actions were taken while recusal or reinstatement issues were unresolved—each of which, if proven, constitutes action beyond the court’s legal power.

The Texas Family Code and Government Code set clear procedural and substantive requirements for protective orders, judicial recusal, and the exercise of judicial authority. Texas appellate and Supreme Court precedent confirm that actions taken in violation of these requirements are void and subject to collateral attack through ultra vires claims. The respondent’s allegations, if substantiated, fit squarely within the ultra vires doctrine, as they challenge acts that are not discretionary but are instead contrary to mandatory statutory and constitutional provisions.

## **Background and Relevant Law**

### **Legislative Framework**

#### **Protective Orders and Due Process**

The Texas Family Code requires that before a court may issue a protective order—such as one excluding a party from their residence—the court must hold a hearing and make an affirmative finding that family violence has occurred and is likely to occur in the future, as set out in [Tex. Fam. Code § 85.001](#) and § 85.021. The court’s authority to grant exclusive possession of a residence and order a party to vacate is strictly limited to circumstances where statutory prerequisites are met, including joint ownership or an obligation to support the protected party or child.

#### **Judicial Recusal and Authority**

The Texas Government Code provides that when a motion for recusal or disqualification is filed, the presiding judge must follow specific procedures, and the judge who is the subject of the motion may not take further action in the case until the motion is resolved ([Tex. Gov’t. Code § 25.00255](#)). Similarly, [Tex. Gov’t. Code § 74.053](#) allows parties to object to the assignment of a judge, and if a timely objection is filed, the assigned judge is prohibited from hearing the case.

#### **De Novo Review**

Under [Tex. Fam. Code § 201.015](#), a party has the right to request a de novo hearing before the referring court after an associate judge’s order, provided

the request is timely. Failure to honor this right is a violation of statutory procedure.

## **Case Law**

### **Ultra Vires Doctrine**

The Texas Supreme Court and Courts of Appeals have consistently held that an ultra vires claim is available when a government official acts without legal authority or fails to perform a purely ministerial act. The leading case, [City of El Paso v. Heinrich, 284 S.W.3d 366 \(Tex. 2009\)](#), establishes that such claims are not barred by sovereign immunity and are designed to enforce compliance with statutory or constitutional provisions, not to challenge discretionary acts.

Subsequent cases clarify that ministerial acts are those where the law prescribes the duty with such precision that no discretion is left to the official ([Enriquez v. Orihuela, 14-22-00868-CV, 14-23-00164-CV, 14-24-00357-CV \(Tex. App. Dec 31, 2024\)](#); Hall v. McRaven, 508 S.W.3d 232 (Tex. 2017)). If an official exceeds the bounds of their granted authority or acts in conflict with the law, those acts are ultra vires ([Univ. of Tex. of Permian Basin v. Banzhoff, No. 11-17-00325-CV \(Tex. App. May 31, 2019\)](#)).

### **Void Orders and Judicial Authority**

Orders issued by a judge who is disqualified, recused, or otherwise lacks authority are absolutely void ([Buckholts Independent School Dist. v. Glaser, 632 S.W.2d 146 \(Tex. 1982\)](#); [Fry v. Tucker, 146 Tex. 18](#)). The Texas Court of Criminal Appeals has held that a judge who has signed a voluntary recusal order cannot take further action in the case, and any such action is ultra vires and void ([Ex parte Thuesen, 546 S.W.3d 145 \(Tex. Crim. App. 2017\)](#)).

### **Due Process and Notice**

Due process requires that parties receive notice and an opportunity to be heard before being deprived of property or liberty interests. Failure to provide such notice or to make required findings renders any resulting order void and subject to collateral attack ([In re Interest of K.M.L., 443 S.W.3d 101 \(Tex. 2014\)](#); [In re E.R., 385 S.W.3d 552 \(Tex. 2012\)](#)).

### **Protective Orders Without Findings**

Issuing a protective order without the required findings of family violence, as mandated by [Tex. Fam. Code § 85.001](#), is an ultra vires act and renders the order void ([In re A.D.A., 287 S.W.3d 382 \(Tex. App. 2009\)](#)).

# **Analysis**

## **1. Deprivation of Residence and Property Without Hearing or Findings**

The respondent alleges that he was ordered to vacate his home based solely on unsubstantiated allegations, without an evidentiary hearing or findings of fact. [Tex. Fam. Code § 85.001](#) and § 85.021 require both a hearing and an affirmative finding of family violence before such an order may issue. The Texas Court of Appeals has held that issuing a protective order without these findings is beyond the court's statutory authority and thus void ([In re A.D.A., 287 S.W.3d 382 \(Tex. App. 2009\)](#)). This is a classic ultra vires scenario: the judge is not exercising discretion within the law, but rather acting in direct contravention of mandatory statutory requirements.

## **2. Orders Issued by Non-Reinstated or Disqualified Judges**

The respondent claims that orders were issued while recusal or reinstatement was pending, or by a judge who had not been properly reinstated. Texas law is clear that a judge who has recused themselves, or is otherwise disqualified, lacks authority to act in the case. Any orders issued in such circumstances are absolutely void ([Ex parte Thuesen, 546 S.W.3d 145 \(Tex. Crim. App. 2017\)](#); [Buckholts Independent School Dist. v. Glaser, 632 S.W.2d 146 \(Tex. 1982\)](#); [Fry v. Tucker, 146 Tex. 18](#)). The Texas Government Code reinforces this by prohibiting further action by a judge after a recusal motion is filed and before it is resolved ([Tex. Gov't. Code § 25.00255](#)). Thus, any such actions are ultra vires.

## **3. Denial of De Novo Review**

The right to a de novo hearing after an associate judge's order is a statutory right under [Tex. Fam. Code § 201.015](#). If the respondent timely requested such a hearing and the court failed to provide it, this is not a matter of judicial discretion but a failure to perform a ministerial act required by law. Such a failure is actionable as an ultra vires claim ([Enriquez v. Orihuela, 14-22-00868-CV, 14-23-00164-CV, 14-24-00357-CV \(Tex. App. Dec 31, 2024\)](#)).

## **4. Fraudulent or Unilateral Orders**

The issuance of orders that falsely recite consent or are signed only by one party, especially when the record shows express objection, may also be ultra vires if the court's action is contrary to procedural requirements or due process. While courts have some discretion in managing their dockets, they do not have discretion to disregard statutory or constitutional mandates ([City of El Paso v. Heinrich, 284 S.W.3d 366 \(Tex. 2009\)](#)).

## **5. Judicial and Staff Misconduct**

Allegations that court staff tampered with recusal motions or altered filings, if proven, would also constitute ultra vires acts, as such conduct is not

authorized by law or court rules. The Texas Supreme Court has recognized that due process violations, including those affecting the integrity of the judicial process, render judgments void and subject to collateral attack ([In re E.R., 385 S.W.3d 552 \(Tex. 2012\)](#)).

## **6. Unauthorized Practice and Void Filings**

If opposing counsel acted without proper authority or e-filing credentials, and the court accepted filings from unauthorized persons, those actions may also be ultra vires. Texas law recognizes that filings by unauthorized persons are void and undermine the legitimacy of proceedings (In re Garcia, No. 02-20-00161-CV, 2020 WL 4812632 (Tex. App. Aug. 20, 2020)).

## **7. Cumulative Denial of Due Process**

The cumulative effect of these alleged irregularities—orders without hearings or findings, actions by non-reinstated judges, denial of statutory rights, and improper conduct by court staff—amounts to a systemic denial of due process. Texas courts have held that such cumulative violations can render judgments void and subject to collateral attack, and that constitutional due process requirements override statutory deadlines or procedural bars ([In re E.R., 385 S.W.3d 552 \(Tex. 2012\)](#)).

## **Exceptions and Caveats**

It is important to note that an ultra vires claim cannot be based on mere disagreement with a judge's discretionary decisions; the claim must allege actions that are clearly outside the scope of legal authority or involve the failure to perform a ministerial act ([Enriquez v. Orihuela, 14-22-00868-CV, 14-23-00164-CV, 14-24-00357-CV \(Tex. App. Dec 31, 2024\)](#)). Additionally, relief in ultra vires suits is generally limited to prospective declaratory or injunctive relief, not retroactive remedies ([Smith v. Dist. Attorney Office for Wood Cnty., NO. 03-13-00220-CV \(Tex. App. Oct 24, 2014\)](#)).

One of the cited authorities, [Livingston v. Beeman, 408 S.W.3d 566 \(Tex. App. 2013\)](#), was superseded by Beeman v. Livingston, 468 S.W.3d 534 (Tex. 2015). While the general principles regarding ultra vires claims remain valid, any reliance on the specific reasoning in Livingston should be tempered by the subsequent Supreme Court decision, which may have clarified or limited its application.

## **Conclusion**

The respondent's allegations, if substantiated, present a strong ultra vires claim under Texas law. The court and its officers are alleged to have acted beyond their statutory and constitutional authority by issuing orders without required hearings or findings, acting while recusal or reinstatement was unresolved, denying statutory rights to de novo review, and accepting filings from unauthorized persons. Texas statutes and binding precedent make clear that such actions are void and subject to challenge through ultra vires

claims, which are designed to enforce compliance with the law and protect individual rights against government overreach. The respondent's objections are therefore well-grounded in both statutory and case law authority.

## Legal Authorities

[In re McKee, 248 S.W.3d 164 \(Tex. 2007\)](#)

### Texas Supreme Court

#### Extract

This petition for writ of mandamus concerns the validity of an administrative action taken by a presiding judge of an administrative judicial region after he had voluntarily recused from the case... A judge can either voluntarily recuse himself or, upon the filing of a verified motion for recusal, request the assignment of another judge to hear the recusal motion. TEX.R. CIV. P. 18a(a),(c). However, absent extraordinary circumstances, a presiding judge's order appointing a judge to hear a recusal motion is administrative — it simply transfers the power to decide the recusal motion to another judge.

#### Summary

A judge who has recused themselves from a case should not take further administrative actions unless there are extraordinary circumstances. This is relevant to the ultra vires claim because it suggests that any actions taken by a judge after recusal, without proper authority or extraordinary circumstances, could be considered beyond their legal power (ultra vires).

[In re Ligon, 408 S.W.3d 888 \(Tex. App. 2013\)](#)

### Texas Court of Appeals

#### Extract

The Court of Criminal Appeals cited Guerra and article 2.08 as "instances in which the district attorney is legally disqualified from acting." Coleman, 246 S.W.3d at 81 & n. 12 (citing In re Guerra, 235 S.W.3d at 420-24). The Court distinguished recusal from legal disqualification. See id. at 81. The recusal procedure "allows the district attorney to avoid conflicts of interest and even the appearance of impropriety by deciding not to participate in certain cases." Id. "The responsibility for making the decision to recuse himself is on the district attorney himself; the trial court cannot require his recusal." Id. But if a prosecutor is legally disqualified from prosecuting a case—if he is ineligible to act—the trial court is not powerless to protect the due process rights of the defendant. See id.; Landers, 256 S.W.3d at 305, 310.

## **Summary**

The Texas Court of Appeals recognizes a distinction between recusal and legal disqualification of a district attorney. While recusal is a voluntary action by the district attorney to avoid conflicts of interest, legal disqualification occurs when the district attorney is ineligible to act, and the trial court can intervene to protect due process rights. This principle can be applied to argue an ultra vires claim if a court or official acts beyond their legal authority, particularly if such actions infringe upon due process rights.

[Torres v. Unauthorized Practice of Law Comm. For Supreme Court of Tex., 05-21-00651-CV \(Tex. App. Sep 09, 2022\)](#)

### **Texas Court of Appeals**

#### **Extract**

The Unauthorized Practice of Law Committee for the Supreme Court of Texas (UPLC) brought this suit in May 2020 alleging Torres, a non-lawyer, was persistently attempting to represent two legal entities in litigation in the 44th Judicial District Court in Dallas County, Texas (the 'Underlying Suit'). The UPLC sought an injunction to prevent Torres from engaging in acts that would constitute the unauthorized practice of law.

## **Summary**

The passage discusses a case where the Unauthorized Practice of Law Committee (UPLC) sought an injunction against an individual for engaging in unauthorized legal representation. This is relevant to the ultra vires claim because it highlights the legal boundaries and authority of individuals and entities in practicing law. An ultra vires claim involves actions taken beyond one's legal power or authority. In the context of the provided memorandum, the Respondent alleges that certain judicial and legal actions were taken without proper authority, which could be considered ultra vires if proven.

[Monroe v. Blackmon, 946 S.W.2d 533 \(Tex. App. 1997\)](#)

### **Texas Court of Appeals**

#### **Extract**

If jurisdiction terminates upon a hearing on a motion to recuse and the signing of an order as Judge Blackmon ruled, then Judge Blackmon's court order before this court withdrawing his original order recusing Judge Bennett and denying the motion to recuse is void for lack of jurisdiction. This is so, because that order was entered after the first recusal hearing and after Judge Blackmon entered the original order recusing Judge Bennett. Further, the order denying leave to file was signed within the 30 days that

the trial court has plenary powers, and without consideration that constitutional disqualification of a judge may be raised at any time.

## **Summary**

The passage discusses a situation where a judge's actions were deemed void due to a lack of jurisdiction following a recusal order. This is relevant to the ultra vires claim because it highlights that actions taken by a judge without proper jurisdiction or authority are considered void. In the context of the litigant's claim, if a judge acted beyond their jurisdiction or authority, such actions could be challenged as ultra vires, meaning beyond the powers legally granted to them.

[In re Thompson., 330 S.W.3d 411 \(Tex. App. 2010\)](#)

### **Texas Court of Appeals**

#### **Extract**

Even though I believe that Judge Baird is attempting to convene an unauthorized and unorthodox proceeding, I do not believe that the legislature has given us mandamus authority in these circumstances. The government code specifically states that an appeals court 'may issue all writs of mandamus ... against a: (1) judge of a district or county court in the appeals district; or (2) judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district.' Tex. Gov't Code Ann. § 22.221(b) (West 2004). Appellate courts have no authority 'to issue a writ of mandamus against an official not prescribed by statute.'

## **Summary**

The concept of ultra vires actions involves actions taken by a judge or official that exceed their legal authority. In the context of the Texas legal system, a judge acting without proper authority or outside the bounds of their jurisdiction can be considered to be acting ultra vires. The passage highlights that appellate courts have limited authority to issue writs of mandamus, specifically against judges acting within their prescribed roles. If a judge acts outside of these roles, such as convening unauthorized proceedings, it may be considered ultra vires.

[In re A.D.A., 287 S.W.3d 382 \(Tex. App. 2009\)](#)

### **Texas Court of Appeals**

## **Extract**

Armstrong argues, in his third issue, that the trial court erred in issuing a protective order without an affirmative finding that family violence had occurred and that family violence was likely to occur again. 'At the close of a hearing on an application for a protective order, the court shall find whether: (1) family violence has occurred; and (2) family violence is likely to occur in the future.' TEX. FAM.CODE ANN. § 85.001(a) (Vernon 2008); In re Epperson, 213 S.W.3d 541, 542 (Tex.App.-Texarkana 2007, no pet.).

## **Summary**

The passage highlights that under Texas Family Code § 85.001(a), a court must make an affirmative finding that family violence has occurred and is likely to occur again before issuing a protective order. This requirement is procedural and jurisdictional. If a court issues a protective order without these findings, it acts beyond its statutory authority, making the order ultra vires (beyond the powers). The litigant in the current case claims similar procedural violations, arguing that the court acted without proper authority, thus supporting an ultra vires claim.

[In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)

## **Texas Supreme Court**

### **Extract**

The Supreme Court has also suggested that reliance interests in a parental rights case may be relevant even when the defendant's due process rights were clearly breached... If, after learning that a judgment has terminated her rights, a parent unreasonably stands mute, and granting relief from the judgment would impair another party's substantial reliance interest, the trial court has discretion to deny relief... Service by publication deprived L.R. of due process. She is entitled to a new trial unless she unreasonably delayed in seeking relief after learning of the judgment against her, and granting relief would impair another party's substantial reliance on the judgment.

## **Summary**

The Texas Supreme Court recognizes the importance of due process rights in parental rights cases. The court emphasizes that a judgment can be challenged if due process rights were violated, such as when a parent was not given proper notice. This is relevant to ultra vires claims because if a court acts beyond its authority, especially in violation of due process, such actions can be challenged as ultra vires. The passage highlights that due process violations can render judgments void, which aligns with the concept of ultra vires actions being beyond the legal power or authority of the court.

[In re Sw. Pub. Serv., NUMBER 13-19-00111-CV \(Tex. App. Apr 16, 2020\)](#)

## **Texas Court of Appeals**

### **Extract**

The Court, having examined and fully considered the petition for writ of mandamus, the response, and the reply, is of the opinion that relators have shown themselves entitled to mandamus relief, in part, as stated here. Accordingly, we lift the stay previously imposed in this case. We conditionally grant the petition for writ of mandamus and we direct the trial court to withdraw its February 19, 2019 order granting death penalty sanctions and to conduct further proceedings in this case in accordance with this opinion. We express no opinion as to any sanction that might be imposed, if any, after further proceedings in this case. We deny all relief sought with regard to the issues pertaining to recusal.

### **Summary**

The Texas Court of Appeals conditionally granted mandamus relief, directing the trial court to withdraw an order that was deemed ultra vires. This indicates that the appellate court found the trial court's actions to exceed its authority, which is a key component of an ultra vires claim. The passage demonstrates that when a court acts beyond its jurisdiction or authority, such actions can be challenged and potentially overturned through mandamus relief.

[In re Guerra, 235 S.W.3d 392 \(Tex. App. 2007\)](#)

## **Texas Court of Appeals**

### **Extract**

The absence of an impartial and disinterested prosecutor has been held to violate a criminal defendant's due process right to a fundamentally fair trial. Put another way, the due process rights of a criminal defendant are violated when a prosecuting attorney who has a conflict of interest relevant to the defendant's case prosecutes the defendant. It is clear; however, that the trial court may not disqualify a district attorney or his staff on the basis of a conflict of interest that does not rise to the level of a due-process violation.

### **Summary**

The ultra vires claim can be related to actions taken by a court or its officers that exceed their legal authority, particularly when such actions violate due process rights. In the context of the provided passage, the ultra vires claim could be based on the argument that the court or its officers acted beyond their authority by allowing a prosecuting attorney with a conflict of interest

to participate in the case, thereby violating the defendant's due process rights.

[Union Pacific Resources Co., In re, 969 S.W.2d 427 \(Tex. 1998\)](#)

**Texas Supreme Court**

**Extract**

This makes sense, because any orders or judgments rendered by a judge who is constitutionally disqualified are void and without effect. See, e.g., Buckholts Indep. Sch. Dist. v. Glaser, 632 S.W.2d 146, 148 (Tex. 1982); Fry v. Tucker, 146 Tex. 18, 202 S.W.2d 218, 221 (1947). Likewise, on timely objection, the disqualification of an assigned judge who is not a retired judge is mandatory under section 74.053(d) of the Texas Government Code and any orders entered by a trial judge in a case in which he is disqualified are void.

**Summary**

Concept of ultra vires acts in the context of judicial disqualification. It states that any orders or judgments rendered by a judge who is constitutionally disqualified are void and without effect. This is relevant to the ultra vires claim because it supports the argument that actions taken by a judge without proper authority (due to disqualification) are considered void. The passage also highlights that the disqualification of an assigned judge who is not a retired judge is mandatory under section 74.053(d) of the Texas Government Code, and any orders entered by such a judge are void. This reinforces the idea that actions taken without proper authority are ultra vires and void.

[Ex parte Thuesen, 546 S.W.3d 145 \(Tex. Crim. App. 2017\)](#)

**Texas Court of Criminal Appeals**

**Extract**

In this opinion, we consider the preliminary issue of the judicial authority of the judge who presided over habeas proceedings in this case. The judge at issue signed an order voluntarily recusing himself from presiding over applicant's habeas proceedings. He then sought and obtained the appointment of a replacement judge, but subsequently signed an order purporting to restore his own judicial authority to preside over the case. For the reasons explained below, we hold that the judge did not have authority to take any further action after signing the voluntary recusal order.

## **Summary**

A judge who has voluntarily recused themselves from a case does not have the authority to take further action in that case. This principle is applicable to the situation described in the memorandum of law, where it is alleged that orders were issued by non-reinstated judges, which would be considered ultra vires acts. The passage from *Ex parte Thuesen* supports the argument that any actions taken by a judge after recusal, without proper reinstatement, are beyond their authority and therefore void.

[City of El Paso v. Heinrich, 284 S.W.3d 366 \(Tex. 2009\)](#)

### **Texas Supreme Court**

#### **Extract**

Thus, ultra vires suits do not attempt to exert control over the state—they attempt to reassert the control of the state. Stated another way, these suits do not seek to alter government policy but rather to enforce existing policy.

## **Summary**

An ultra vires claim in Texas involves a suit against a state official who is allegedly acting without legal or statutory authority. The purpose of such a suit is not to change government policy but to enforce existing laws and policies. This means that if a state official acts beyond their legal authority, they are not protected by sovereign immunity, and a suit can be brought against them to correct this overreach.

[In re Interest of K.M.L., 443 S.W.3d 101 \(Tex. 2014\)](#)

### **Texas Supreme Court**

#### **Extract**

Rule 245 of the Texas Rules of Civil Procedure provides that a trial court “may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties.” Tex.R. Civ. P. 245. If a timely answer has been filed in a contested case or the defendant has otherwise made an appearance, due process rights are violated when a judgment is subsequently entered without the party having received notice of the setting of the case, *Peralta v. Heights Med. Ctr.*, 485 U.S. 80, 86–87, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988), even when that party previously waived notice of citation.

## **Summary**

Rule 245 of the Texas Rules of Civil Procedure requires reasonable notice of not less than forty-five days for a first trial setting. If a party has made an appearance in a contested case, due process rights are violated if a judgment is entered without the party receiving notice of the trial setting. This is relevant to the ultra vires claim because if a court acts without providing the required notice, it may be acting beyond its legal authority, which is the essence of an ultra vires act.

[Smith v. Dist. Attorney Office for Wood Cnty., NO. 03-13-00220-CV \(Tex. App. Oct 24, 2014\)](#)

## **Texas Court of Appeals**

### **Extract**

A suit seeking to compel a government official 'to comply with statutory or constitutional provisions' is an ultra vires suit and is not protected by sovereign immunity. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). However, relief is limited in an ultra vires suit to prospective declaratory or injunctive relief restraining ultra vires conduct, as opposed to retroactive relief. *Id.* at 374-77.

## **Summary**

An ultra vires claim in Texas involves a suit against a government official to ensure compliance with statutory or constitutional provisions. Such suits are not barred by sovereign immunity, but the relief available is limited to prospective actions, such as declaratory or injunctive relief, rather than retroactive remedies. This is based on the precedent set by the Texas Supreme Court in *City of El Paso v. Heinrich*.

[City of Dall. v. Brown, 373 S.W.3d 204 \(Tex. App. 2012\)](#)

## **Texas Court of Appeals**

### **Extract**

In *Heinrich*, the court recognized an 'ultra vires exception' to sovereign immunity: [I]t is clear that suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity even if a declaration to that effect compels the payment of money. To fall within this ultra vires exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.... Thus, ultra vires suits do not attempt to

reassert the control of the state. Stated another way, these suits do not seek to alter government policy but rather to enforce existing policy.

## **Summary**

Legal basis for the litigant's claim that certain actions by the court or its officials were ultra vires, meaning they were beyond the legal authority granted to them.

[In re Lozano 696 S.W.3d 222](#)

## **Texas Court of Appeals**

### **Extract**

If a relator in a habeas corpus proceeding establishes 'the order requiring [her] confinement is void, either because the court that issued the order lacked jurisdiction to enter it or because it deprived relator of [her] liberty without due process of law,' then the relator is entitled to be discharged. ... In addition to the due process defects present in Mack, Gallegos, and Texas Department of Family & Protective Services, we have also repeatedly held that portions of Judge Mary Lou Alvarez's orders in this underlying case and other similar cases were void because they violated the Separation of Powers Clause.

## **Summary**

A court order can be considered void if the court lacked jurisdiction or if the order violated due process. Additionally, orders that violate the Separation of Powers Clause are also considered void. This is relevant to the litigant's ultra vires claim because it suggests that if a judge acts beyond their authority or in violation of constitutional principles, their orders can be challenged as ultra vires, meaning beyond their legal power or authority.

[In re Interest of D.S., 602 S.W.3d 504 \(Tex. 2020\)](#)

## **Texas Supreme Court**

### **Extract**

As the Court's opinion thoroughly and accurately explains, when a trial court renders judgment terminating parental rights based on an unrevoked affidavit of relinquishment, Texas Family Code section 161.211(c) plainly forecloses a collateral attack on the judgment premised on an alleged lack of subject matter jurisdiction. I therefore join the Court's opinion, which correctly holds that Father's collateral attack is barred by statute. I write separately to note that it is barred for another reason as well: a court's lack of 'jurisdiction' under the Uniform Child Custody Jurisdiction and

Enforcement Act (UCCJEA) does not equate to a lack of 'subject matter jurisdiction' that deprives the court of the power to hear and decide the case, thereby endangering a judgment's finality.

## **Summary**

A court's lack of jurisdiction under the UCCJEA does not equate to a lack of subject matter jurisdiction that would allow for a collateral attack on the judgment. This indicates that ultra vires claims, which involve actions taken without legal authority, may not be easily pursued in cases where the court has made a jurisdictional determination, even if that determination is alleged to be erroneous.

[Johnson v. Cullens, 07-21-00093-CV \(Tex. App. Mar 07, 2022\)](#)

## **Texas Court of Appeals**

### **Extract**

"[I]n certain narrow instances, a suit against a state official can proceed even in the absence of a waiver of immunity if the official's actions are ultra vires." Hall v. McRaven, 508 S.W.3d 232, 238 (Tex. 2017). Under the "ultra vires exception" to sovereign immunity, a claimant may file suit to compel a government official "to comply with statutory or constitutional provisions" through prospective injunctive or declaratory relief. City of El Paso v. Heinrich, 284 S.W.3d 366, 372, 374-77 (Tex. 2009). Consequently, ultra vires suits do not attempt to exert control over the State, but rather to "reassert the control of the State over one of its agents," or to bring such agents into compliance with the law. Id.

## **Summary**

In Texas, the ultra vires exception allows a claimant to bring a suit against a state official if the official's actions are beyond their legal authority (ultra vires). This exception is applicable even when there is no waiver of immunity, provided the claimant seeks prospective injunctive or declaratory relief to compel compliance with statutory or constitutional provisions. The ultra vires claim is not about controlling the state but ensuring that state agents act within their legal bounds.

[Univ. of Tex. of Permian Basin v. Banzhoff, No. 11-17-00325-CV \(Tex. App. May 31, 2019\)](#)

## **Texas Court of Appeals**

## **Extract**

In certain narrow instances, a suit against a state official can proceed even in the absence of a waiver of immunity if the state official's actions are ultra vires. *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017). To fall within the ultra vires exception, 'a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.' *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009); see also *Chambers-Liberty Counties Navigation Dist. v State*, No. 17-0404, 2019 WL 2063575, at \*8 (Tex. May 10, 2019). An official with 'some discretion to interpret and apply a law may nonetheless act 'without legal authority,' and thus ultra vires, if he exceeds the bounds of his granted authority or if his acts conflict with the law itself.' *Hall*, 508 S.W.3d at 238 (quoting *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016)).

## **Summary**

Legal basis for challenging actions that are beyond the scope of an official's legal authority, which is relevant to the litigant's claim in the provided scenario.

[Tex. A & M Univ. v. Carapia, 494 S.W.3d 201 \(Tex. App. 2015\)](#)

## **Texas Court of Appeals**

### **Extract**

Suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). To fall within this "ultra vires" exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act. *Id.* Ultra vires suits do not attempt to exert control over the State—they attempt to reassert the control of the State. *Id.* Further, these types of suits cannot be brought against the State, which retains immunity, but must be brought against the State actors in their official capacity. *Id.* at 373.

## **Summary**

An ultra vires claim in Texas involves alleging that a state official acted without legal authority or failed to perform a ministerial act. This type of claim is not barred by sovereign immunity because it seeks to ensure compliance with statutory or constitutional provisions, rather than challenging the discretion of the official. The claim must be directed at the state actor in their official capacity, not the state itself, which retains immunity.

[Enriquez v. Orihuela, 14-22-00868-CV, 14-23-00164-CV, 14-24-00357-CV](#)  
[\(Tex. App. Dec 31, 2024\)](#)

## **Texas Court of Appeals**

### **Extract**

To assert a valid ultra vires claim, the plaintiff 'must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.' City of El Paso v. Heinrich, 284 S.W.3d 366, 372 (Tex. 2009). Ministerial acts are those 'where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.' Hall v. McRaven, 508 S.W.3d 232, 238 (Tex. 2017) (internal citations omitted).

### **Summary**

Clear legal standard for what constitutes an ultra vires act in Texas.

[Livingston v. Beeman, 408 S.W.3d 566 \(Tex. App. 2013\)](#)

## **Texas Court of Appeals**

### **Extract**

To come within the ultra vires exception, the plaintiff 'must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.' ... The distinction between a valid ultra vires claim and one seeking to control state action turns on (1) the particular acts or omissions that the official is committing, as determined under the standard of review we have previously described; and (2) construction of the relevant statutory or constitutional provisions to determine whether those acts are within, or beyond, the official's discretionary authority.

### **Summary**

An ultra vires claim in Texas requires the plaintiff to demonstrate that a government official acted without legal authority or failed to perform a ministerial act. This is distinct from challenging an official's discretionary actions. The claim must be based on specific acts or omissions and the relevant statutory or constitutional provisions to determine if the actions were beyond the official's authority.

[Enriquez v. Orihuela, 14-22-00868-CV, 14-23-00164-CV, 14-24-00357-CV](#)  
[\(Tex. App. Dec 31, 2024\)](#)

## **Texas Court of Appeals**

### **Extract**

To assert a valid ultra vires claim, the plaintiff 'must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.' City of El Paso v. Heinrich, 284 S.W.3d 366, 372 (Tex. 2009). Ministerial acts are those 'where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.' Hall v. McRaven, 508 S.W.3d 232, 238 (Tex. 2017) (internal citations omitted).

### **Summary**

Clear legal standard for what constitutes an ultra vires act, which is relevant to the litigant's claim.

[Hughs v. Dikeman, 609 S.W.3d 602 \(Tex. App. 2020\)](#)

## **Texas Court of Appeals**

### **Extract**

Sovereign immunity does not bar claims alleging that a governmental official acted ultra vires, or without legal authority, in carrying out her official duties. Lone Star Coll. Sys. v. Immigration Reform Coal. of Tex. (IRCOT), 418 S.W.3d 263, 272 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing City of El Paso v. Heinrich, 284 S.W.3d 366, 372 (Tex. 2009)). To come within the ultra vires exception to immunity, 'a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.' Heinrich, 284 S.W.3d at 372.

### **Summary**

Legal basis for the litigant's ultra vires claim by explaining that such claims are not barred by sovereign immunity.

[Hensley v. St. Comm'n on Jud. Conduct, 692 S.W.3d 184 \(Tex. 2024\)](#)

## **Texas Supreme Court**

### **Extract**

See City of El Paso v Heinrich, 284 S W 3d 366, 372 (Tex 2009) ('To fall within this ultra vires exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove,

that the officer acted without legal authority or failed to perform a purely ministerial act')

## **Summary**

Clear legal standard for what constitutes an ultra vires act, which is relevant to the litigant's claim in the provided case.

[Fry v. Tucker 146 Tex. 18](#)

### **Texas Supreme Court**

#### **Extract**

The rules announced in the Constitution and Statutes upon this subject are expressed in unconditional language, and are regarded as mandatory and to be rigidly enforced. It has long been the settled rule in this State that any order or judgment entered by a trial judge in any case in which he is disqualified is absolutely void.

## **Summary**

The passage from Fry v. Tucker establishes that in Texas, any order or judgment made by a disqualified judge is considered absolutely void. This is a mandatory rule that is strictly enforced, as per the Texas Constitution and Statutes. This principle is crucial in understanding ultra vires claims, as it underscores that actions taken by a judge without proper authority (i.e., when disqualified) are not legally valid.

[Buckholts Independent School Dist. v. Glaser, 632 S.W.2d 146 \(Tex. 1982\)](#)

### **Texas Supreme Court**

#### **Extract**

The constitutional prohibition has long been held to make any order involving judicial discretion by a constitutionally disqualified judge 'absolutely void,' 'a nullity.' Fry v. Tucker, 146 Tex. 18, 202 S.W.2d 218, 221 (1947); Templeton v. Giddings, 12 S.W. 851 (Tex. 1889); Stephenson v. Kirkham, 297 S.W. 265, 267 (Tex. Civ. App.-San Antonio 1927, writ ref'd). Accordingly, disregard of the constitutional disqualification is error that can be raised at any point in the proceeding. Nalle v. City of Austin, 85 Tex. 520, 22 S.W. 960 (1893); 1 R. McDonald, Texas Civil Practice § 1.24 (rev. 1981).

## **Summary**

Any order made by a judge who is constitutionally disqualified is considered absolutely void and a nullity. This means that such orders have no legal

effect and can be challenged at any point in the proceedings. This principle is well-established in Texas law and applies to any situation where a judge acts without proper authority due to disqualification.

[Tex. Fam. Code § 85.001 Tex. Fam. Code § 85.001 Required Findings and Orders](#)

## **Extract**

(a) At the close of a hearing on an application for a protective order, the court shall find whether family violence has occurred. (b) If the court finds that family violence has occurred, the court: shall render a protective order as provided by Section FAMILY CODE 85.022 applying only to a person found to have committed family violence; and may render a protective order as provided by Section FAMILY CODE 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

## **Summary**

The Texas Family Code § 85.001 outlines the requirements for a court to issue a protective order in cases of family violence. It mandates that a court must find whether family violence has occurred at the close of a hearing on an application for a protective order. If family violence is found, the court is required to render a protective order against the person found to have committed the violence. This provision ensures that protective orders are issued based on substantiated findings of family violence, thereby safeguarding due process rights.

[Tex. Fam. Code § 201.015 Tex. Fam. Code § 201.015 De Novo Hearing Before Referring Court](#)

## **Extract**

A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the third working day after the date the party receives notice of: the substance of the associate judge's report as provided by Section FAMILY CODE 201.011; or the rendering of the temporary order, if the request concerns a temporary order rendered by an associate judge under Section FAMILY CODE 201.007(a)(C).

## **Summary**

A party has the right to request a de novo hearing before the referring court if they file a written request within three working days after receiving notice of the associate judge's report or temporary order. This right is crucial for ensuring that a party can challenge decisions made by an associate judge

and have the matter reviewed by the referring court. If this right is not honored, it could be considered an ultra vires act, meaning the court or judge acted beyond their legal authority.

[Tex. Gov't. Code § 29.055 Tex. Gov't. Code § 29.055 Procedure Following Filing of Motion; Recusal Or Disqualification Without Motion](#)

### **Extract**

A municipal judge who does not recuse or disqualify himself or herself: shall forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the regional presiding judge; and may not take other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

### **Summary**

A judge who does not recuse or disqualify themselves must forward the motion and related documents to the regional presiding judge and refrain from taking further action in the case until a hearing on the motion occurs. This indicates that any action taken by a judge after a recusal motion is filed, but before it is resolved, could be considered ultra vires, or beyond their legal authority, unless there is a stated good cause.

[Tex. Gov't. Code § 25.002201 Tex. Gov't. Code § 25.002201 Assignment of Judge On Recusal Or Disqualification](#)

### **Extract**

Except as provided by Subsection (b), not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, the presiding judge shall assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if: the judge of the statutory probate court recused himself or herself under Section GOVERNMENT CODE 25.00255(g)(A); the judge of the statutory probate court disqualified himself or herself under Section GOVERNMENT CODE 25.00255 (g-1); the order was issued under Section GOVERNMENT CODE 25.00255 (i-3); or the presiding judge receives notice and a request for assignment from the clerk of the statutory probate court under Section GOVERNMENT CODE 25.00255(l).

### **Summary**

A new judge must be assigned within 15 days, ensuring that the recused or disqualified judge does not continue to preside over the case.

[Tex. Gov't. Code § 81.104 Tex. Gov't. Code § 81.104 Duties of Unauthorized Practice of Law Committee](#)

**Extract**

The unauthorized practice of law committee shall: keep the supreme court and the state bar informed with respect to: (A) the unauthorized practice of law by lay persons and lay agencies and the participation of attorneys in that unauthorized practice of law; and (B) methods for the prevention of the unauthorized practice of law; and seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of suits in the name of the committee.

**Summary**

The Unauthorized Practice of Law Committee in Texas is responsible for monitoring and preventing unauthorized practice of law. This includes keeping the Supreme Court and the State Bar informed about unauthorized practices and taking appropriate actions, such as filing suits, to eliminate such practices. This is relevant to the litigant's ultra vires claim because if opposing counsel is engaging in unauthorized practice, it could be considered an ultra vires act, meaning beyond their legal authority, and thus void.

[Tex. Gov't. Code § 29.052 Tex. Gov't. Code § 29.052 Motion For Recusal Or Disqualification](#)

**Extract**

A party in a hearing or trial in a municipal court, including a municipal court of record, may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge. The grounds may include any disability of the judge to preside over the case.

**Summary**

Legal basis for challenging a judge's authority in specific circumstances, which is central to an ultra vires claim.

[Tex. Civ. Prac. and Rem. Code § 30.016 Tex. Civ. Prac. and Rem. Code § 30.016 Recusal Or Disqualification of Certain Judges](#)

## **Extract**

A judge who declines recusal after a tertiary recusal motion is filed shall comply with applicable rules of procedure for recusal and disqualification except that the judge shall continue to: preside over the case; sign orders in the case; and move the case to final disposition as though a tertiary recusal motion had not been filed.

## **Summary**

A judge in Texas is allowed to continue presiding over a case, signing orders, and moving the case to final disposition even after a tertiary recusal motion is filed. This means that the judge's actions are not considered ultra vires (beyond their legal power or authority) simply because a tertiary recusal motion is pending. However, if the recusal motion is finally sustained, any orders signed by the judge during the pendency of the motion must be vacated. This provision clarifies the authority of judges in the context of recusal motions and helps determine when actions might be considered ultra vires.

## [Tex. Gov't. Code § 25.00255 Tex. Gov't. Code § 25.00255 Recusal Or Disqualification of Judge](#)

## **Extract**

The presiding judge: has the authority and shall perform the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject to Subdivisions and , assign a judge to hear and rule on a referred motion of recusal or disqualification; may assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region; may not assign a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification; and if the presiding judge is the subject of the motion of recusal or disqualification, shall sign and file with the clerk an order referring the motion to the chief justice of the supreme court for assignment of a presiding judge of an administrative judicial region, a statutory probate court judge, or a former or retired judge of a statutory probate court to hear and rule on the motion, subject to Subdivisions and.

## **Summary**

Actions taken outside these prescribed duties and limitations could be considered ultra vires, meaning beyond the legal power or authority of the person performing them. This is relevant to the litigant's claim of ultra vires actions by the court, as it suggests that any judicial actions taken without

proper authority or in violation of these procedures could be challenged as ultra vires.

[Tex. Gov't. Code § 22.221 Tex. Gov't. Code § 22.221 Writ Power](#)

## **Extract**

Each court of appeals or a justice of a court of appeals may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court.

## **Summary**

The courts of appeals in Texas have the authority to issue writs of mandamus and other writs necessary to enforce their jurisdiction. This power is crucial in cases where a lower court or judge may have acted beyond their authority (ultra vires), as it allows the appellate court to correct such actions and ensure that the lower courts are acting within their legal boundaries.

[Tex. Fam. Code § 85.022 Tex. Fam. Code § 85.022 Requirements of Order Applying to Person Who Committed Family Violence](#)

## **Extract**

In a protective order, the court may order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence... In a protective order, the court may prohibit the person found to have committed family violence from: committing family violence; communicating... going to or near the residence or place of employment or business of a person protected by an order... In a protective order, the court shall suspend a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code, that is held by a person found to have committed family violence.

## **Summary**

The Texas Family Code § 85.022 outlines the requirements and limitations of protective orders in cases of family violence. The court is empowered to issue orders to prevent further violence, including prohibiting certain actions and suspending licenses. However, these orders must be based on a finding of family violence, and the court must adhere to statutory requirements. If a court issues orders without meeting these prerequisites, it may be acting beyond its legal authority, or ultra vires.

[Tex. Gov't. Code § 74.053 Tex. Gov't. Code § 74.053 Objection to Judge Assigned to a Trial Court](#)

## **Extract**

When a judge is assigned to a trial court under this chapter: the order of assignment must state whether the judge is an active, former, retired, or senior judge; and the presiding judge shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge. If a party to a civil case files a timely objection to the assignment, the judge shall not hear the case.

## **Summary**

The Texas Government Code § 74.053 provides a mechanism for parties in a civil case to object to the assignment of a judge. If a party files a timely objection, the assigned judge is prohibited from hearing the case. This provision ensures that parties have a say in who presides over their case, which is a critical aspect of ensuring impartiality and fairness in judicial proceedings. If a judge proceeds to hear a case despite a valid objection, it could be considered an ultra vires act, meaning the judge acted beyond their legal authority.

[Tex. Gov't. Code § 22A.005 Tex. Gov't. Code § 22A.005 Actions By Judge Or Justice](#)

## **Extract**

A judge or justice of a special three-judge district court may not independently enter a temporary restraining order, temporary injunction, or any order that finally disposes of a claim before the court.

## **Summary**

A judge or justice within a special three-judge district court in Texas is restricted from independently entering certain orders, such as temporary restraining orders, temporary injunctions, or any order that finally disposes of a claim. This means that if a judge or justice acts beyond these limitations, such actions could be considered ultra vires, or beyond their legal authority. In the context of the litigant's claim, if any orders were issued by a judge or justice that fall into these prohibited categories without the required unanimous consent, those actions could be challenged as ultra vires.

[Tex. Gov't. Code § 22.002 Tex. Gov't. Code § 22.002 Writ Power](#)

## **Extract**

The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals.

## **Summary**

The Supreme Court can compel judges to act within their legal authority, which is central to addressing ultra vires actions.

### [Tex. Fam. Code § 105.001 Tex. Fam. Code § 105.001 Temporary Orders Before Final Order](#)

## **Extract**

In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order: for the temporary conservatorship of the child; for the temporary support of the child; restraining a party from disturbing the peace of the child or another party; prohibiting a person from removing the child beyond a geographical area identified by the court; or for payment of reasonable attorney's fees and expenses.

## **Summary**

The Texas Family Code § 105.001 provides the court with the authority to issue temporary orders for the safety and welfare of the child. However, these orders must be made in accordance with statutory requirements, including notice and hearing provisions. If a court issues orders without adhering to these requirements, such actions could be considered ultra vires, meaning beyond the legal power or authority of the court. In the context of the litigant's claim, if the court issued orders without proper notice, hearing, or findings, it could be argued that the court acted beyond its authority, thus supporting an ultra vires claim.

### [Tex. Fam. Code § 201.007 Tex. Fam. Code § 201.007 Powers of Associate Judge](#)

## **Extract**

An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate

judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

## **Summary**

An associate judge can refer a case back to the referring court in the interest of justice, which implies that there are boundaries to their authority. If an associate judge acts beyond these powers, such as making decisions or issuing orders without proper authority or outside the scope of their designated powers, it could be considered ultra vires, meaning beyond their legal power or authority. This is relevant to the litigant's claim of ultra vires actions, as it suggests that any actions taken by the judge outside of these prescribed powers could be challenged as unauthorized.

### [Tex. Fam. Code § 85.021 Tex. Fam. Code § 85.021 Requirements of Order Applying to Any Party](#)

## **Extract**

In a protective order, the court may: ... grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence: (A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession; (B) is owned or leased by the party retaining possession; or (C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence;

## **Summary**

The court may direct a party to vacate a residence if certain conditions are met, such as joint ownership or lease, or an obligation to support the party or child granted possession. The litigant's ultra vires claim may arise if the court acted beyond its statutory authority by ordering the respondent to vacate the residence without meeting these conditions or without an evidentiary hearing and findings of fact, as alleged in the memorandum.

### [Recusal's Own Conflict of Interest](#)

## **Criminal Justice - American Bar Association - Louis J. Virelli III - 2025-01-01**

## **Extract**

Recusal can be a powerful tool to remedy due process violations based on partiality, especially in cases where the adjudicator exhibits actual or probable bias against a party or has a personal conflict of interest. The Supreme Court has confirmed recusal's role in these cases but has been reluctant to apply due process protections too broadly. The Court has

applied the Due Process Clause most readily in cases where the adjudicator had a financial interest in the outcome of...state supreme court justices. The Court found due process violations where a state supreme court justice participated in a case in which his largest judicial campaign donor was a party, and where a state supreme court justice took part in the review of a defendant's death sentence that the justice had personally approved while serving as the district attorney responsible for the case. In each instance, the Court cited the justice's 'probability of actual bias' as grounds for recusal.

## **Summary**

Recusal is a mechanism to address due process violations when there is a potential for bias or conflict of interest by the adjudicator. The Supreme Court has recognized due process violations in cases where there is a probability of actual bias, such as financial interests or prior involvement in the case. This is relevant to the litigant's ultra vires claim because it suggests that actions taken by a judge without proper authority or while biased could be considered void or subject to challenge.

### [Pretrial Motions](#)

**Texas Criminal Lawyer's Handbook. Volume 1 - 2016 - James Publishing - Mark G. Daniel, Robert K. Gill - 2016-08-17**

## **Extract**

Whenever any case is pending in which the district judge or criminal district judge is disqualified from trying the case, no change of venue shall be made necessary thereby; but the judge presiding shall certify that fact to the presiding judge of the administrative judicial district in which the case is pending and the presiding judge of such administrative judicial district shall assign a judge to try such case in accordance with the provisions of Article 200a, V.A.C.S.

## **Summary**

In Texas, when a judge is disqualified from a case, the presiding judge of the administrative judicial district must assign another judge to the case. This process ensures that the case is handled by a qualified judge and maintains the integrity of the judicial process. If a judge acts without proper authority, such as issuing orders while disqualified or without reinstatement, those actions can be considered ultra vires, meaning beyond their legal power or authority.

### [Pretrial Motions](#)

**Texas Criminal Lawyer's Handbook. Volume 1 - 2019 - James Publishing - Mark G. Daniel, Robert K. Gill - 2019-08-16**

**Extract**

A Texas judge may be removed from presiding over a case for one of three reasons: he is constitutionally disqualified; he is subject to a statutory strike (as in civil cases); or he is subject to statutory disqualification or recusal under Texas Supreme Court rules. Gaal v. State, 332 S.W.3d 448 (Tex. Crim. App. 2011).

**Summary**

A judge in Texas may be removed from a case if they are constitutionally disqualified, subject to a statutory strike, or subject to statutory disqualification or recusal under Texas Supreme Court rules. This is relevant to the ultra vires claim because if a judge acts without proper authority, such as issuing orders while recusal is pending or without reinstatement, those actions can be considered ultra vires, meaning beyond their legal power or authority.

[Pretrial Motions](#)

**Texas Criminal Lawyer's Handbook. Volume 1 - 2021 - James Publishing - Mark G. Daniel, Robert K. Gill - 2021-08-16**

**Extract**

A judge does not have authority to take any further action after signing a voluntary recusal order. Ex parte Thuesen, 546 S.W.3d 145, 147 (Tex. Crim. App. 2017).

**Summary**

In Texas, once a judge has signed a voluntary recusal order, they no longer have the authority to take any further action in the case. This is a clear example of an ultra vires act, which refers to actions taken by a government official or entity that exceed the scope of their legal power or authority. In the context of the provided memorandum, if a judge continued to act after recusal, those actions would be considered ultra vires and void.

[Pretrial motions](#)

**Texas Criminal Lawyer's Handbook. Volume 1-2 - James Publishing - Mark G. Daniel, Robert K. Gill - 2022-05-05**

## **Extract**

A judge does not have authority to take any further action after signing a voluntary recusal order. *Ex parte Thuesen*, 546 S.W.3d 145, 147 (Tex. Crim. App. 2017). Interim or ancillary orders made by a regional presiding judge regarding the recusal of a trial judge—or the reinstatement or modification of judicial authority following a recusal—must be made in writing, signed by the presiding judge, and entered of record in the case. *Ex parte Thuesen*, 546 S.W.3d at 156.

## **Summary**

A judge in Texas does not have the authority to take further action in a case after signing a voluntary recusal order. Any interim or ancillary orders related to the recusal must be made in writing by the regional presiding judge and entered into the record. This is relevant to the ultra vires claim because if a judge acts beyond their authority, such as issuing orders after recusal without proper reinstatement, those actions can be considered ultra vires, meaning beyond their legal power or authority.

## [\*\*CHAPTER 6 Petitions for Writ of Mandamus\*\*](#)

### **Practitioner's Guide to Civil Appeals in Texas - Full Court Press**

## **Extract**

Appellate courts have also held that mandamus is available when a new trial is granted in violation of procedural and jurisdictional rules, such as a grant of new trial after plenary power has expired. The Texas Supreme Court has also held that mandamus is available from an order granting a new trial 'when the trial court erroneously finds that the jury's answers to special issues are irreparably conflicting.' And the Texas Supreme Court has reviewed the grant of a new trial motion based on juror conduct by mandamus. • Void orders

## **Summary**

Mandamus relief is available in Texas when there are violations of procedural and jurisdictional rules, such as when a trial court acts beyond its authority (ultra vires) by issuing orders after its plenary power has expired. This is relevant to the litigant's claim of ultra vires actions by the court, as it suggests that such actions can be challenged through mandamus petitions.

## [\*\*Pretrial Motions\*\*](#)

## **Extract**

A judge does not have authority to take any further action after signing a voluntary recusal order. *Ex parte Thuesen*, 546 S.W.3d 145, 147 (Tex. Crim. App. 2017).

## **Summary**

Once a judge has signed a voluntary recusal order, they are not authorized to take any further action in the case. This is a clear statement of the limits of judicial authority following recusal, which is relevant to the ultra vires claim. If a judge acts beyond their authority, such as by issuing orders after recusal, those actions can be challenged as ultra vires, meaning beyond the powers legally granted to them.

### [Pretrial Motions](#)

**Texas Criminal Lawyer's Handbook. Volume 1 - 2017 - James Publishing - Mark G. Daniel, Robert K. Gill - 2017-08-17**

## **Extract**

A judge does not have authority to take any further action after signing a voluntary recusal order. *Ex parte Thuesen*, No. WR-81,584-01, \_\_\_ S.W.3d \_\_\_, 2017 WL 510563 at \*1 (Tex. Crim. App. February 8, 2017).

## **Summary**

Once a judge signs a voluntary recusal order, they no longer have the authority to take any further action in the case. This is relevant to the ultra vires claim because if a judge continues to act after recusal, those actions are beyond their legal authority, thus constituting ultra vires acts.

### [When Is Governmental Immunity Waived By The Acts Of Governmental Officials? Ultra Vires Revisited](#)

## **Extract**

The Board's sovereign immunity from suit as a state agency extends to its officials who act consistently with the law but not to those who act ultra vires—that is, 'without legal authority or [by] fail[ing] to perform a purely ministerial act.' An official acts without legal authority when he 'exceeds the bounds of his granted authority or if his acts conflict with the law itself.' An official fails to perform a ministerial act when he fails to comply with a law that 'prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.'

An official who acts ultra vires is not acting for the state and not entitled to its immunity.

## **Summary**

In Texas, governmental officials are not entitled to immunity when they act ultra vires, meaning they act without legal authority or fail to perform a ministerial act as defined by law. This is relevant to the litigant's claim because if the court or its officials acted beyond their legal authority or failed to perform required duties, those actions could be considered ultra vires, thus waiving immunity and allowing the litigant to challenge those actions.

### [The Ultra Vires Exception To Sovereign Immunity In Texas](#)

## **Extract**

The ultra vires doctrine is a narrow exception to governmental immunity. An ultra vires claim against a government official—that is, a suit against a government official for acting outside his or her authority and seeking to require the official to comply with statutory or constitutional provisions—is not barred by immunity. Such a suit is known as an ultra vires suit. An ultra vires claim cannot be maintained against the governmental entity directly. Rather, it is brought against the government official. Before 2009, the Texas Supreme Court used the phrase 'ultra vires' sparingly in connection with suits against the state, its subdivisions, or officials. But in 2009, the Court began to use the phrase regularly in the context of suits against governmental entities and their officials. In *City of El Paso v. Heinrich*, the court analyzed a case involving a suit for declaratory and injunctive relief against a pension fund board and its members for allegedly unlawfully reducing benefits. The Texas Supreme Court found that governmental immunity did not bar the suit for prospective injunctive relief against the pension board members in their official capacities. The court held that ultra vires suits could not, however, be brought against the state or its political subdivisions. That is, the suit could only be brought against government actors in their official capacities. The Texas Supreme court defined an ultra vires claim as 'an action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority,' and did not confine ultra vires acts to acts taken 'outside' the agency's jurisdictional authority.

## **Summary**

The ultra vires doctrine allows for suits against government officials who act outside their legal or statutory authority. This doctrine is an exception to governmental immunity, meaning that while governmental entities themselves are typically immune from suit, individual officials can be sued in their official capacities if they exceed their authority. The Texas Supreme Court has clarified that such suits are permissible for prospective injunctive

relief, as seen in the City of El Paso v. Heinrich case. This means that if a government official in Texas acts without legal authority, a private party can bring an ultra vires claim against that official to protect their rights.

This memo was compiled by Vincent AI based on vLex materials available as of August 19, 2025. [View full answer on vLex](#)