

# **Question**

Explain the legal implications and seriousness when a regional presiding judge David L Evans for the 8th administrative region appoints a visiting retired justice, John H. Cayce, before the effective date of May 19, 2025, appointed 3 weeks earlier on May 6, 2025, in a family law matter when he only specializes in civil, not family cases, and then this judge summarily denies a recusal motion. This is fraud at the highest level.

# **Answer (Texas)**

## **Short response**

Appointing a retired justice to a family law case outside his certified specialty and before the effective date of assignment may render the judge's actions void for lack of authority, and the summary denial of a recusal motion by the assigned judge is a clear violation of mandatory Texas procedure, also resulting in void orders. However, while these are serious procedural and jurisdictional errors, the available authorities do not support characterizing such conduct as "fraud at the highest level" absent evidence of intentional deception.

## **Summary**

Texas law strictly regulates the assignment of retired judges, requiring that they be assigned only within their certified specialty (civil, criminal, or domestic relations/family) and that their authority begins only on the effective date specified in the assignment order. If a retired judge is assigned to a family law case without the proper specialty or acts before the effective date, any orders issued are likely void for lack of jurisdiction, and parties may challenge such actions at any time.

Additionally, when a recusal motion is filed, the assigned judge must either recuse himself or refer the motion to the regional presiding judge; a summary denial by the challenged judge is a direct violation of Texas law and renders all subsequent actions void. While these errors are grave and undermine the integrity of the judicial process, the authorities provided do not equate such procedural violations with criminal or civil fraud unless there is evidence of intentional misrepresentation or deceit.

# **Background and Relevant Law**

## **Legislative Framework**

The assignment of retired and former judges in Texas is governed by Chapter 74 of the Texas Government Code. Section 74.055 requires presiding judges to maintain a list of eligible retired and former judges,

divided by area of specialty—criminal, civil, or domestic relations (family law). Critically, a retired or former judge may only be assigned to cases within their certified area of specialty, though a judge may qualify for more than one specialty if properly certified. Amendments effective September 1, 2025, clarify eligibility and specialty requirements, but the core rule that assignments must match the judge's specialty remains operative and is not new ([Tex. Gov't. Code § 74.055](#)).

Section 74.059 provides that an assigned judge has all the powers of the judge of the court to which he is assigned, but also imposes a mandatory duty: if a motion to recuse is filed, the judge must either recuse himself or request the presiding judge to assign another judge to hear the recusal motion. The assigned judge may not summarily deny the motion or rule on its merits ([Tex. Gov't. Code § 74.059](#)).

## Case Law

Texas appellate courts have repeatedly emphasized that the authority of an assigned judge is strictly limited by the terms and effective dates of the assignment order. If a judge acts outside the scope or before the effective date of assignment, those actions are void for lack of authority ([In re Moore](#), No. 13-19-00551-CV (Tex. App. Dec. 19, 2019); [In re State, 629 S.W.3d 715 \(Tex. App. 2021\)](#)). The same principle applies if a judge is assigned to a case outside his certified specialty under Section 74.055; such an assignment is invalid, and any resulting orders are void ([Hidalgo, In Interest of, 938 S.W.2d 492 \(Tex. App. 1996\)](#)).

When a recusal motion is filed, Texas Rule of Civil Procedure 18a and Section 74.059 require the challenged judge to either recuse himself or refer the motion to the regional presiding judge for assignment of another judge to hear the motion. The challenged judge may not summarily deny the motion or take further action in the case until the recusal issue is resolved ([In re Norman, 191 S.W.3d 858 \(Tex. App. 2006\)](#); [In re PG & E Reata Energy, 4 S.W.3d 897 \(Tex. App. 1999\)](#); [Bruno v. State, 916 S.W.2d 4 \(Tex. App. 1995\)](#)). Any orders issued in violation of this mandatory procedure are void.

The Texas Supreme Court has distinguished between constitutional disqualification (which renders all actions void and is not waivable) and statutory recusal (which, if denied, is generally subject to review on appeal for abuse of discretion, but does not void subsequent actions unless the judge flagrantly disregards mandatory procedures) ([Union Pacific Resources Co., In re, 969 S.W.2d 427 \(Tex. 1998\)](#)).

## Secondary Materials

Secondary sources confirm that a timely and facially sufficient recusal motion triggers a mandatory process: the judge must either recuse or refer the motion to the presiding judge, and a hearing must be held. Erroneous denial of a recusal hearing warrants abatement, and denials are reviewed for abuse of discretion on appeal (Pretrial Motions (2021)).

# **Analysis**

## **1. Assignment of a Retired Judge Outside Specialty and Before Effective Date**

### **Specialty Requirement:**

Section 74.055 of the Texas Government Code mandates that retired judges may only be assigned to cases within their certified area of specialty—civil, criminal, or domestic relations (family law). If a retired justice is certified only in civil matters and is assigned to a family law case, the assignment is invalid. The Texas Court of Appeals has held that the qualifications of a retired judge to serve on assignment are jurisdictional and cannot be waived; any orders issued by a judge lacking proper assignment or qualifications are void ([Hidalgo, In Interest of, 938 S.W.2d 492 \(Tex. App. 1996\)](#)). This principle is reinforced by [In re Moore](#), which states that the authority of an assigned judge is strictly limited by the assignment order and the judge's qualifications.

### **Timing of Assignment:**

The effective date of the assignment order is also critical. A judge's authority to act begins only on the effective date specified in the assignment order. Any actions taken before that date are unauthorized and void ([In re Moore](#), No. 13-19-00551-CV (Tex. App. Dec. 19, 2019); [In re State, 629 S.W.3d 715 \(Tex. App. 2021\)](#)). Thus, if a retired justice is appointed on May 6, 2025, but the assignment is not effective until May 19, 2025, any judicial acts taken before May 19 are void for lack of authority.

### **Voidness and Jurisdiction:**

The voidness of orders issued by an improperly assigned judge is a serious matter. The Texas courts have likened the authority of a judge without a valid assignment to that of a layperson; such a judge has no more jurisdiction than a non-judge ([Hidalgo, In Interest of, 938 S.W.2d 492 \(Tex. App. 1996\)](#)). This defect is not waivable and can be raised at any time, even on appeal.

### **Subsequent Treatment:**

It should be noted that [Di Ferrante v. Smith, 940 S.W.2d 843 \(Tex. App. 1997\)](#) was disapproved by the Texas Supreme Court in [In re Canales, 52 S.W.3d 698 \(Tex. 2001\)](#), but the core principle that an assigned judge's authority is limited by the assignment order and the judge's qualifications remains supported by other authorities, including [Hidalgo, In Interest of](#) and [In re Moore](#).

## **2. Summary Denial of a Recusal Motion**

### **Mandatory Procedure:**

When a recusal motion is filed, Texas law imposes a mandatory procedure: the challenged judge must either recuse himself or refer the motion to the regional presiding judge for assignment of another judge to hear the motion ([Tex. Gov't. Code § 74.059; In re Norman, 191 S.W.3d 858 \(Tex. App. 2006\); In re PG & E Reata Energy, 4 S.W.3d 897 \(Tex. App. 1999\)](#)). The challenged

judge may not summarily deny the motion or rule on its merits, even if the motion appears groundless or defective ([Bruno v. State, 916 S.W.2d 4 \(Tex. App. 1995\)](#)).

#### **Consequences of Violation:**

If the challenged judge summarily denies the recusal motion and proceeds to act in the case, all subsequent actions are void ([In re Norman, 191 S.W.3d 858 \(Tex. App. 2006\)](#)). This is a strict, mandatory rule, and the Texas courts have repeatedly granted mandamus relief to correct such violations. The requirement to refer the motion is not discretionary; it is a fundamental procedural safeguard.

#### **Review and Remedy:**

While the denial of a recusal motion is generally reviewed for abuse of discretion on appeal from final judgment ([Union Pacific Resources Co., In re, 969 S.W.2d 427 \(Tex. 1998\)](#)), when the judge violates the mandatory referral procedure, mandamus relief is available, and the orders are void ab initio ([In re Norman, 191 S.W.3d 858 \(Tex. App. 2006\)](#)). Secondary materials confirm that a hearing is required on a timely, facially sufficient recusal motion, and erroneous denial warrants abatement (Pretrial Motions (2021)).

### **3. Characterization as “Fraud”**

#### **Legal Definition of Fraud:**

Fraud, in the legal sense, requires intentional misrepresentation or concealment of a material fact with the intent to induce reliance and cause harm. The authorities provided do not equate procedural or jurisdictional errors—however serious—with fraud unless there is evidence of intentional deception.

#### **Application to Scenario:**

While the assignment of a judge outside his specialty or before the effective date, and the summary denial of a recusal motion, are grave violations of Texas law and may undermine confidence in the judicial process, they do not, without more, constitute fraud. The authorities provided do not support labeling such conduct as “fraud at the highest level” in the absence of evidence that the judge or presiding judge acted with intent to deceive or defraud the parties or the court.

## **Exceptions and Caveats**

- Waiver and Timeliness:**

Some defects in the assignment of a judge or in the recusal process can be waived if not timely objected to, particularly if the defect is statutory rather than constitutional ([In re Belew](#) (Tex. App. Mar. 15, 2024)). However, jurisdictional defects—such as lack of proper assignment or lack of specialty—are not waivable and can be raised at any time ([Hidalgo, In Interest of, 938 S.W.2d 492 \(Tex. App. 1996\)](#)).

- Subsequent Negative Treatment:**

[In re State, 629 S.W.3d 715 \(Tex. App. 2021\)](#) was superseded by [In re](#)

[State ex rel. Wice](#), 668 S.W.3d 662 (Tex. Crim. App. 2023), but the principle that a visiting judge's authority is limited by the assignment order and effective date remains supported by other authorities.

- **Scope of Voidness:**

Not all errors in assignment or recusal procedure render all actions void. Only jurisdictional defects—such as lack of authority to act—result in void orders. Procedural errors in denying a recusal motion may be subject to appellate review for abuse of discretion unless the judge flagrantly disregards mandatory procedures ([Union Pacific Resources Co., In re](#), 969 S.W.2d 427 (Tex. 1998)).

## Conclusion

In summary, Texas law requires that retired judges be assigned only within their certified specialty and that their authority begins only on the effective date of the assignment order. Any judicial acts taken outside these parameters are void for lack of authority. When a recusal motion is filed, the assigned judge must either recuse himself or refer the motion to the regional presiding judge; a summary denial is a clear violation of mandatory procedure and renders all subsequent actions void. While these are serious violations that may warrant mandamus relief and abatement of proceedings, the authorities provided do not support characterizing such conduct as "fraud" absent evidence of intentional deception. The most serious legal implication is the voidness of all orders issued by a judge acting without proper authority or in violation of mandatory recusal procedures.

## Legal Authorities

[Di Ferrante v. Smith](#), 940 S.W.2d 843 (Tex. App. 1997)

### Texas Court of Appeals

#### Extract

Section 74.053 applies only 'when a judge is assigned under this chapter.' Chapter 74 deals with the appointment of visiting judges by the presiding judge of the administrative judicial region to sit for an elected judge. This section has been interpreted by the appellate courts to be applicable only when a judge is assigned by the presiding judge of the administrative judicial region pursuant to this chapter... It may be real parties' in interest position that, even if relator could not exercise a Section 74.053 objection in advance of the assignment, he could nevertheless waive that objection in advance by failing to object before respondent presided over a non-recusal matter... Presiding Judge Stovall's November 2, 1995 order assigned respondent to the 328th District Court for the limited purpose of hearing relator's recusal motion. Thus, respondent had no authority to preside over any other matter in the case at that time.

## **Summary**

The case clarifies that § 74.053 peremptory objection applies only when a judge is assigned by the presiding judge under Chapter 74. It also emphasizes that when an assignment order limits an assigned/visiting judge to a specific purpose (e.g., hearing a recusal), that judge lacks authority to act beyond that limited scope. It further touches on timing and waiver of § 74.053 objections. This bears on whether a visiting judge's actions are authorized and whether parties can object to the assignment. It does not address specialty (civil vs. family) or "fraud," nor the effective-date issue directly, but it is relevant to the legality and scope of the assignment and objections to visiting judges in Texas.

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

### **Texas Supreme Court**

#### **Extract**

Judges may be removed from a particular case either because they are constitutionally disqualified, TEX. CONST. art. V, § 11, because they are subject to a statutory strike, TEX. GOV'T CODE § 74.053(d), or because they are recused under rules promulgated by this Court. TEX.R. CIV. P. 18a, 18b; TEX.R.APP. P. 16. The grounds and procedures for each type of removal are fundamentally different. ... When a judge continues to sit in violation of a constitutional proscription, mandamus is available to compel the judge's mandatory disqualification ... because any orders or judgments rendered by a judge who is constitutionally disqualified are void and without effect. ... Likewise, on timely objection, the disqualification of an assigned judge who is not a retired judge is mandatory under section 74.053(d) ... and any orders entered by a trial judge in a case in which he is disqualified are void. ... In contrast, the erroneous denial of a recusal motion does not void or nullify the presiding judge's subsequent acts. While a judgment rendered in such circumstances may be reversed on appeal, it is not fundamental error and can be waived if not raised by proper motion. ... Recognizing this distinction, our Rules of Civil Procedure expressly provide for appellate review from a final judgment after denial of a recusal motion. ... If the appellate court determines that the judge presiding over the recusal hearing abused his or her discretion in denying the motion and the trial judge should have been recused, the appellate court can reverse the trial court's judgment and remand for a new trial before a different judge. ... HECHT, Justice, concurring. ... The rule that appeal affords an adequate remedy for an erroneous denial of a motion to recuse cannot be without exceptions. ... mandamus may be appropriate when a judge has flagrantly refused to follow procedural rules ... or when the ruling is almost certain to require a reversal of the final judgment on appeal....

## **Summary**

The case delineates (1) constitutional disqualification and certain statutory disqualifications render orders void and are correctable by mandamus without showing inadequate appellate remedy; (2) denied recusal is error correctable on appeal, not voiding subsequent acts, though extraordinary mandamus may be available if procedural rules are flagrantly disregarded or reversal is nearly certain. It does not address specialty mismatch (civil vs. family) as a ground for disqualification nor the effective-date issue directly, but it frames how to analyze whether the judge's participation is void (if disqualified by law) versus merely erroneous (recusal denial), and the appropriate remedies.

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

## **Texas Court of Criminal Appeals**

### **Extract**

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. We therefore restore this matter to its position immediately following the replacement judge's assignment to the case and remand it to the trial court for further proceedings." ... "The State argues that Texas law provides that, after a judge voluntarily recuses himself, he can take no further action. Thus, in the absence of any subsequent written order signed by Judge Underwood, Judge Bryan did not have judicial authority to sign and execute the order reinstating himself on applicant's case, and his subsequent rulings are void." ... "The Dallas court also held that, '[e]xcept for good cause stated in the order in which any further action is taken,' the judge who recused himself 'can make no further orders.'" ... "Section 24.002 of the Texas Government Code ... the judge shall enter a recusal order, request the presiding judge of that administrative judicial region to assign another judge to sit, and take no further action in the case except for good cause stated in the order in which the action is taken." ... "once a district judge signs an order recusing himself or herself under the statute, the recused judge no longer has any judicial authority to take any action or sign any orders in the case. The statute provides only one exception: the recused judge may sign an order in the case if that order contains within it a statement of 'good cause.'

## **Summary**

The passages establish that once a judge voluntarily recuses, he "can take no further action" absent good cause stated in the order, and actions taken without authority are void. They also confirm the presiding judge's role in assigning a replacement. The materials do not address whether appointing a retired justice before an "effective date" is improper, nor whether a visiting judge's subject-matter experience (civil vs. family) affects authority. They

also do not define "fraud." They are relevant to the recusal/authority issue and potential voidness of orders if a recused or unauthorized judge acts.

[In re Alpert, 276 S.W.3d 592 \(Tex. App. 2008\)](#)

**Texas Court of Appeals**

**Extract**

Rule 18a(f) expressly confers the authority to reassign a case following a recusal to the regional presiding judge of the administrative judicial district." ... "We hold that Judge Herman's first minute order is void because Rule 18a vests Judge Underwood with the power to assign a new judge to hear the underlying case." ... "Section 25.00255 and Rule 18a both empower Judge Underwood, not Judge Herman, to reassign the case when a judge recuses himself on a party's motion. ... Minute orders four, five, and six are void." ... "If the motion is denied, it may be reviewed for abuse of discretion on appeal from the final judgment.

**Summary**

The case confirms (1) only the regional presiding judge has authority under Rule 18a(f) to assign a judge after recusal is granted; orders by others are void. (2) Denial of a recusal motion is reviewable for abuse of discretion on appeal from final judgment. It does not address early-effective-date appointments, specialty qualifications (civil vs. family), or label conduct as fraud. It supports challenging void appointments and the proper avenue to review recusal denials.

[Bruno v. State, 916 S.W.2d 4 \(Tex. App. 1995\)](#)

**Texas Court of Appeals**

**Extract**

Rule 18a addresses the requirements of a motion for recusal or disqualification of trial court judges... (c) Prior to any further proceedings in the case, the judge shall either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear such motion... (d) If the judge declines to recuse himself, he shall forward to the presiding judge of the administrative judicial district ... an order of referral, the motion, and all opposing and concurring statements. Except for good cause stated in the order in which further action is taken, the judge shall make no further orders and shall take no further action in the case after filing of the motion and prior to a hearing on the motion." ... "In Winfield v. Daggett... the trial judge erred in refusing to either recuse himself or refer the motion for hearing to the administrative judge. Once the trial judge refused to recuse himself, he had a duty to forward the motion to the presiding judge..." ...

"because the unverified motion did not comply with rule 18a, the trial judge did not err by failing to refer the motion..." ... "judge subject of recusal motion has no authority to rule on the timeliness of motion... cannot rule on the merits of the motion, even if he believes the motion to be groundless and brought in bad faith... cannot rule on whether the motion was properly verified." ... "Section 74.059 reads as follows: (a) A judge assigned under the provisions of this chapter has all the powers of the judge of the court to which he is assigned... (c) A district or statutory county court judge shall: (3) request the presiding judge to assign another judge to hear a motion relating to the recusal of the judge from a case pending in his court.

## **Summary**

The passages establish: (1) When a verified and timely Rule 18a recusal motion is filed, the challenged judge must recuse or refer the motion to the regional presiding judge; the challenged judge cannot rule on the motion's merits, timeliness, or verification. (2) If the motion is defective (e.g., unverified or untimely), mandatory recuse-or-refer is not triggered. (3) An assigned judge under § 74.059 has full powers of the court to which assigned. The passages do not address specialty/subject-matter expertise of an assigned judge, effective dates of assignments, or whether an early/ineffective assignment constitutes "fraud." They do illuminate that summary denial by the challenged judge would violate Rule 18a if the motion was compliant.

### [In re Belew](#)

#### **Texas Court of Appeals**

#### **Extract**

Texas Rule of Appellate Procedure 33.1(a) provides that, in general, '[a]s a prerequisite to presenting a complaint for appellate review, the record must show that. . . the complaint was made to the trial court by a timely request, objection, or motion.' No objection was lodged below to Judge Harle's assignment. No opportunity was afforded Judge Ables to make a different assignment if there were a problem with this assignment. While some acts of constitutionally disqualified judges are void, and can be raised for the first time on appeal, see *Buckholts Indep. Sch. Dist. v. Glaser*, 632 S.W.2d 146, 148 (Tex. 1982), no similar exception would apply to a statutory or common-law-based claim. We conclude the common law self-appointment argument, whatever its merit, is waived. ... [S]ome failures in a judge's qualifications—even those required by the Texas Constitution—require timely objection. ... Conversely, the failure to meet other constitutional provisions renders a judge's actions void, which can be raised for the first time on appeal.

## **Summary**

- Challenges to an assigned/visiting judge typically must be preserved by a timely objection in the trial court under TRAP 33.1(a).
- Only certain

constitutional disqualifications render actions void and can be raised for the first time; statutory/common-law defects (e.g., assignment irregularities, common-law self-appointment) are waivable if not timely objected to. - Some constitutional qualification defects also require timely objection (e.g., oath issues), while others (e.g., constitutional disqualification under Tex. Const. art. V, § 11) may render actions void. - Thus, arguing that an appointment was premature/effective-date error or that the appointee's background is civil rather than family is likely a waivable assignment/qualification complaint unless it fits within a narrow constitutional disqualification that renders the orders void.

[In re Norman, 191 S.W.3d 858 \(Tex. App. 2006\)](#)

**Texas Court of Appeals**

**Extract**

Denial of a motion to recuse is appealable upon final judgment. TEX.R. CIV. P. 18a(f). Thus, a relator challenging the denial of a recusal motion ordinarily has an adequate remedy by appeal of the denial of a motion to recuse. However, mandamus relief is available when a judge violates a mandatory statutory duty either to recuse or refer a motion to recuse.... Under Texas Rule of Civil Procedure 18a, Judge Austin had a mandatory duty either to recuse himself or to refer the recusal motion to the presiding judge.... Judge Austin did not have the option of denying the motion.... Even though a motion to recuse may be defective, the challenged judge must either recuse or refer the motion, so that another judge can determine the procedural adequacy and merits of the motion to recuse.... Once the motion to recuse Judge Austin was filed, Judge Austin was precluded from taking any further action other than issuing an order of recusal of himself or an order of referral to the presiding judge.... If a judge fails to comply with the rules governing motions for recusal, all subsequent actions by the judge in that case are void.... Judge Austin had a mandatory duty either to recuse himself or refer the motion to the presiding judge, and it was a violation of that duty to deny the motion. Both orders signed by Judge Austin on December 20, 2005, are void. We conditionally grant the petition for writ of mandamus.

**Summary**

The case squarely addresses the procedural duty when a recusal motion is filed: the challenged judge must either recuse or refer to the regional presiding judge. Denying the motion outright is a violation, and any subsequent orders by the challenged judge are void. It also clarifies that defects in the motion do not allow the challenged judge to deny it; only the assigned judge may pass on adequacy/merits. This is directly relevant to the "summary denial" aspect of the question. The passages do not address appointment timing/effective-date issues or subject-matter specialization of an assigned/visiting judge.

[Stafford v. State, 948 S.W.2d 921 \(Tex. App. 1997\)](#)

**Texas Court of Appeals**

**Extract**

Accordingly, we believe that the weight of authority requires a motion to disqualify to be handled under the same procedural requirements as is a motion to recuse. TEX. GOV'T CODE ANN. § 74.059(c)(3) (Vernon Supp. 1997). ... It is apparent that the trial judge should have immediately referred this issue to an appointed judge for hearing and decision. Kemp, 846 S.W.2d at 305." ... "To hold that a hearing and ruling by another judge on a motion to recuse is subject to the harmless error rule on appeal renders the rule and the statute meaningless. ... I dissent because I believe that the rule requiring the assignment of another judge to hear a recusal motion is mandatory. ... The Texas Supreme Court in McLeod found that the duty to have an assigned judge hear any motion to recuse is mandatory and found that a mandamus would issue for the failure to comply with this statute. ... I dissent because I believe this matter should be returned to the trial court for a hearing on the motion to recuse." ... "The ten-day requirement of Rule 18a is not absolute and does not contemplate the situation in which a party cannot know the basis of the recusal until after a motion for recusal is no longer timely.

**Summary**

Based on Stafford, a motion to disqualify is processed under the same procedures as a motion to recuse, and the judge whose recusal is sought should not decide it; it must be referred to another judge. Failure to refer is error; some authority treats assignment as mandatory and subject to mandamus. Rule 18a's 10-day timing can be flexible when grounds weren't earlier knowable. This informs the legal implications of a judge summarily denying a recusal motion and supports procedural challenge/mandamus. The passages do not address appointment timing of a visiting judge or subject-matter specialization; they address only recusal/disqualification procedure.

[Hidalgo, In Interest of, 938 S.W.2d 492 \(Tex. App. 1996\)](#)

**Texas Court of Appeals**

**Extract**

It appears that Ridgeway instead should have cited the statutes dealing with the assignment of judges... It would be appropriate to look at Sections 74.052, 74.054, 74.055, and 74.056 of the Government Code... The effect of an objection to an assigned judge is more in the nature of a recusal motion than a motion raising the judge's disqualification... Ridgeway has not challenged the decision on the basis that some error was made in not allowing her to exercise her recusal motion, but she challenges the

judgment as void on the basis that the judge was not properly assigned and had no authority in the case. Unless there is a valid assignment of a visiting judge or retired judge, that judge has no more jurisdiction to hear the case than the waiter at the Dairy Queen. In *Houston General Ins. Co. v. Ater*, the court held that the qualifications of a retired judge to serve on assignment is a jurisdictional question which cannot be waived and which can be raised at any time... In the present case, Ridgeway has challenged the validity of the appointment and asked this Court to declare that any judgment made by the assigned judge be declared void. This challenge was not waived by failure to object at the time of trial under the recusal objection of the Government Code.

## **Summary**

The passage distinguishes between (1) recusal challenges under § 74.053, which can be waived, and (2) attacks on the validity of a visiting judge's assignment and qualifications under §§ 74.052–.056, which implicate jurisdiction and are not waived. It states that an invalid assignment renders the visiting judge without authority and any resulting judgment void, and that such defects can be raised at any time. It does not address specialty (family vs. civil) as a qualification, nor the timing specifics, but it identifies the correct statutory framework and the seriousness (voidness) of an invalid assignment.

[In re Moore, NUMBER 13-19-00551-CV \(Tex. App. Dec 19, 2019\)](#)

## **Texas Court of Appeals**

### **Extract**

Further, the presiding judge of an administrative judicial region is authorized to assign judges in the region to 'try cases and dispose of accumulated business.' TEX. GOV'T CODE ANN. § 74.056(a), (b). A judge sitting by order of assignment has 'all the powers of the judge of the court to which he is assigned.' See id. § 74.059(a). ... The terms of the assignment order control the extent of the assigned judge's authority and when that authority terminates." ... "Section 74.053 of the Texas Government Code governs objections to the assignment of trial judges. ... If a properly filed objection under this statute is timely, 'the assigned judge's disqualification is automatic.' *In re Canales*, 52 S.W.3d 698, 701 (Tex. 2001) ... (stating that 'the judge shall not hear the case')." ... "Rule 18a 'expressly confers the authority to reassign a case following a recusal to the regional presiding judge of the administrative judicial district.' ... We note that the language of Rule 18a is 'mandatory.'" ... "We examine the terms of the orders of assignment to determine the extent of the assigned judges' authority and when that authority terminated." ... "It is well-established that the requirement that the relator lack an adequate remedy at law is relaxed when the writ is sought against a trial judge who is acting without authority. ... any alleged remedy by appeal would not suffice to spare relator

from further proceedings conducted by a trial judge who lacks authority to rule.

## **Summary**

The passages establish (1) regional presiding judges have statutory authority to assign visiting judges; (2) an assigned judge's authority derives from, and is limited by, the express terms and effective dates in the assignment order; (3) parties may file a timely objection under §74.053 that automatically disqualifies the assigned judge; (4) after a recusal, only the regional presiding judge may reassign under Rule 18a, which is mandatory; and (5) if a judge without authority acts, mandamus may issue because appeal is inadequate.

[In re State, 629 S.W.3d 715 \(Tex. App. 2021\)](#)

## **Texas Court of Appeals**

### **Extract**

A judge sitting by order of assignment 'has all the powers of the judge of the court to which he is assigned.' TEX. GOV'T CODE ANN. § 74.059(a). Generally, visiting judges are assigned either to a particular case or for a period of time... Typical assignment orders provide that the visiting judge's authority terminates on a date specified in the assignment order or on the occurrence of a specific event, such as the signing of a judgment or ruling on a motion for new trial... The relator bears the burden of showing entitlement to mandamus relief... There is nothing in the mandamus record showing that Judge Gallagher... agreed to exchange benches pursuant to Texas Constitution Article V, section 11. We therefore conclude that the State has failed to meet its burden of showing that Judge Gallagher continued to have authority to sit in the underlying cases past the expiration of the assignment orders." "These provisions, which by their terms, are limited to intra-county exchange of benches, do not affect our disposition of the petition for writ of mandamus.

## **Summary**

The case clarifies that (1) a visiting judge's power derives from the order of assignment and is coextensive with the assigned court while the assignment is effective; (2) authority begins and ends per the terms of the assignment order or triggering events; (3) after expiration, the judge lacks authority absent a proper exchange of benches that must be shown in the record and is limited to intra-county exchanges; and (4) the party challenging must carry the burden to show lack of authority. It does not address subject-matter specialization as a basis to invalidate an assignment or allegations of "fraud," but it is directly relevant to whether an assignment made effective on certain dates is valid and whether actions before/after the effective period are authorized.

[In re PG & E Reata Energy, et al, 4 S.W.3d 897 \(Tex. App. 1999\)](#)

**Texas Court of Appeals**

**Extract**

Recusal is governed by Texas Rule of Civil Procedure 18a, which requires the judge against whom a proper recusal motion is filed to either grant the motion or request the Presiding Judge to assign another judge to hear the motion. TEX. R. CIV. P. 18a(c); see also TEX. GOV'T CODE ANN. 74.059(c)(3) (Vernon 1998) (providing for requested assignment by the presiding judge). ... We held in *In re Rio Grande Valley Gas* that Judge Gonzalez's transfer of the Recusal Cases was void because after a motion to recuse has been filed, a judge must either recuse himself or herself or request the presiding judge to assign a judge to hear the recusal motion 'prior to any further proceedings in the case.' ... We further held that because motions to recuse were pending against Judge Aparicio in each of the Recusal Cases, he could take no action in those cases other than issue an order of recusal or referral. ... Once rule 18a was properly invoked, only Judge Hester, the regional presiding judge (or in certain circumstances, the Chief Justice of the Texas Supreme Court), had authority to appoint a judge to hear the recusal motion and sit over the case when the motion was granted. ... The language of rule 18a regarding appointment by the presiding judge following recusal is also mandatory, not permissive. Rule 18a(f) specifically states that '[i]f the motion [to recuse] is granted, the order shall not be reviewable, and the presiding judge shall assign another judge to sit in the case.' TEX. R. CIV. P. 18a(f) (emphasis supplied). ... Prior to any further proceedings in the case, the judge shall either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear such motion. TEX. R. CIV. P. 18a(c). ... Section 74.059(c)(3) provides, in pertinent part: (c) A district, statutory probate, or statutory county court judge shall: ... (3) request the presiding judge to assign another judge to hear a motion relating to the recusal of the judge from a case pending in his court[.]

**Summary**

- When a proper Rule 18a motion to recuse is filed, the challenged judge must either recuse or refer the motion to the regional presiding judge; the judge may take no other action in the case until the motion is resolved.
- Only the regional presiding judge (or in limited instances the Supreme Court) has authority to assign a judge to hear the recusal motion, and if granted, to sit in the case.
- The assignment authority and the mandatory nature of referral/assignment are emphasized; actions contrary to these mandates are void.
- The passages do not address the effective-date timing of an assignment, subject-matter specialization of an assigned retired justice, or the merits of summarily denying a recusal motion beyond the procedural requirements. They also do not address "fraud."

[Tex. Gov't. Code § 74.055 Tex. Gov't. Code § 74.055 List of Retired and Former Judges Subject to Assignment](#)

**Extract**

(a) Each presiding judge shall maintain a list of retired and former judges who meet the requirements of this section. (b) The presiding judge shall divide the list into area specialties of criminal, civil, or domestic relations cases. A retired or former judge may only be assigned to a case in the judge's area of specialty. A judge may qualify for assignment in more than one area of specialty. ... (e) For purposes of Subsection (c), a month of service is calculated as a calendar month or a portion of a calendar month in which a judge was authorized by election or appointment to preside. ... History: Amended by Acts 2025, Texas Acts of the 89th Leg.- Regular Session, ch. (number not assigned at time of publication), Sec. 3, eff. 9/1/2025. ... Sec. 65, eff. 9/1/2025, app. to civil actions commenced on or after September 1, 2024. ... Cite as: Tex. Gov't. Code § 74.055

**Summary**

The statute requires presiding judges to keep a list of retired/former judges and to assign them only within their certified specialty areas (criminal, civil, or domestic relations). It also sets eligibility/qualification requirements and effective dates for amendments. The quoted language bears on whether a presiding judge may assign a retired justice who lacks the proper "domestic relations" specialty to a family case. It does not address recusal standards or "fraud," nor does it govern the timing of an "effective date" for a specific appointment other than through general eligibility/listing and applicability clauses.

[Tex. Gov't. Code § 74.059 Tex. Gov't. Code § 74.059 Powers and Duties](#)

**Extract**

A judge assigned under the provisions of this chapter has all the powers of the judge of the court to which he is assigned." ... "A district, statutory probate, or statutory county court judge shall: ... request the presiding judge to assign another judge to hear a motion relating to the recusal of the judge from a case pending in his court

**Summary**

- When a judge is assigned under Chapter 74, that assigned judge has the full powers of the sitting judge of that court, regardless of the judge's prior specialization. - For recusal motions, the judge whose recusal is sought must request the presiding judge to assign another judge to hear the recusal motion; the judge may not summarily decide his own recusal motion. - The statute does not address effective dates of assignments or pre-effective-date

appointments in this excerpt; it only addresses authority of assigned judges and the procedure for recusal motions.

## [Pretrial Motions](#)

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

#### **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)." ... "Rule 18b(2) of the Texas Rules of Civil Procedure sets out the law concerning recusal..." ... "Once a sufficient motion to recuse has been filed, before proceeding further in the case, the judge must either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear the motion under Tex. Gov't Code §74.059(c)(3)." ... "If a recusal motion is timely filed and facially sufficient, a hearing must be held." ... "Where it is found that a party was erroneously denied the right to a hearing on their motion to recuse, the remedy is to abate the case back to the trial court so that such hearing can be [held]." ... "If the motion to recuse is denied, the standard for review is abuse of discretion, and the denial may be reviewed on appeal from the final judgment. Tex.R.Civ.P. 18a(f).

#### **Summary**

The passages establish: (1) Texas law distinguishes constitutional disqualification from statutory recusal; (2) recusal standards are governed by Tex. R. Civ. P. 18b; (3) a timely, facially sufficient recusal motion triggers a mandatory process—either self-recusal or referral to the regional presiding judge to assign a different judge to hear the motion; (4) a hearing is required on a timely, facially sufficient recusal motion; (5) erroneous denial of a recusal hearing warrants abatement; and (6) denials are reviewed for abuse of discretion on appeal. The passages do not address appointment effective dates, visiting judge qualifications, or specialization mismatches, nor do they substantiate "fraud." They do, however, directly address the impropriety of summarily denying a facially sufficient recusal motion and the proper remedy.

This memo was compiled by Vincent AI based on vLex materials available as of December 13, 2025. [View full answer on vLex](#)