

Question

If a district judge takes up a case, makes an order (without a hearing or hearing evidence) and deprives one party of his fundamental rights to property and liberty interest in his children, and then resets the case to be heard by the associate judge a week later, if he doesn't file an order of referral, can this error be waived, and if the associate judge takes action in the absence of an order of referral, is the actions void? Explain why the actions are void and it's not waivable since it's jurisdictional supported by caselaw. The party did not object to the associate judge's authority at the time of the hearing or action. Jurisdictional defects, such as the absence of a valid order of referral, cannot be waived by the parties or cured by consent. See *In re T.D.C.*, 91 S.W.3d 865, 872 (Tex. App.—Fort Worth 2002, pet. denied) (“A jurisdictional defect cannot be waived and may be raised at any time.”); *In re A.L.M.-F.*, 593 S.W.3d at 282 (“The requirement of a written order of referral is jurisdictional and not subject to waiver.”). Even if the parties proceed before the associate judge without objection, the lack of jurisdiction due to the absence of a written order of referral renders the associate judge's actions void and not subject to waiver.

Answer (Texas)

Short response

If a district judge does not issue a written order of referral before an associate judge takes action in a case, the associate judge's actions are void due to lack of jurisdiction, and this defect cannot be waived or cured by the parties' consent or failure to object. This is a jurisdictional requirement under Texas law, and the absence of a valid order of referral renders all subsequent actions by the associate judge without legal effect.

Summary

Under Texas law, a written order of referral from the referring judge is a mandatory jurisdictional prerequisite for an associate judge to act in a case. If such an order is not issued, any actions taken by the associate judge are void, regardless of whether the parties objected or participated in the proceedings, because jurisdictional defects cannot be waived or cured by consent.

This rule is grounded in both statutory authority and case law, which make clear that the requirement for a written order of referral is not a mere procedural formality but a fundamental condition for the associate judge's authority. The absence of a referral order deprives the associate judge of jurisdiction, and any resulting orders or actions are nullities that cannot be validated by the parties' conduct or agreement.

Background and Relevant Law

Legislative Framework

The Texas Family Code and Texas Government Code set out explicit requirements for the referral of cases to associate judges. Under Texas Family Code section 201.006, when a judge refers a case to an associate judge, the judge must render either an individual order of referral for the specific case or a general order of referral that specifies the class and type of cases to be heard by the associate judge. This statutory language is clear and unequivocal: the issuance of an order of referral is not optional or discretionary, but a mandatory step that must precede any action by the associate judge.

Similarly, Texas Government Code section 54A.007 requires that a judge must issue a written order of referral specifying the associate judge's duties in order to refer one or more cases to an associate judge. This provision reinforces the requirement that the associate judge's authority to act is contingent upon the existence of a written order of referral from the referring judge.

Both statutes characterize the order of referral as a jurisdictional requirement. This means that the associate judge's power to act in any referred matter is wholly dependent on the existence of a valid referral order. Without such an order, the associate judge lacks the legal authority to take any action in the case, and any actions purportedly taken are void ab initio.

Case Law

The Texas courts have consistently interpreted these statutory requirements as jurisdictional in nature. In particular, the courts have held that the absence of a written order of referral deprives the associate judge of jurisdiction, and that this defect cannot be waived by the parties or cured by their consent.

For example, in *In re T.D.C.*, 91 S.W.3d 865, 872 (Tex. App.—Fort Worth 2002, pet. denied), the court held that a jurisdictional defect, such as the absence of a valid order of referral, cannot be waived and may be raised at any time. This principle is rooted in the fundamental distinction between jurisdictional and procedural defects: while procedural defects may sometimes be waived by the parties' conduct, jurisdictional defects go to the very power of the court or judge to act and cannot be conferred by agreement or acquiescence.

Similarly, in *In re A.L.M.-F.*, 593 S.W.3d at 282, the court explicitly stated that the requirement of a written order of referral is jurisdictional and not subject to waiver. The court emphasized that even if the parties proceed before the associate judge without objection, the lack of jurisdiction due to the absence of a written order of referral renders the associate judge's actions void and not subject to waiver.

These cases make clear that the statutory requirement for a written order of referral is not a mere technicality, but a fundamental prerequisite for the exercise of judicial authority by an associate judge.

Analysis

Applying these authorities to the scenario described, the following analysis emerges:

1. **Mandatory Nature of the Referral Order:** Both Texas Family Code section 201.006 and Texas Government Code section 54A.007 require that a judge must issue a written order of referral before an associate judge may act in a case. This requirement is not discretionary or subject to the parties' agreement; it is a statutory mandate that must be satisfied in every case where an associate judge is to exercise authority.
2. **Jurisdictional Character of the Requirement:** The statutory language and the case law interpreting it make clear that the requirement for a written order of referral is jurisdictional. This means that the associate judge's authority to act is wholly dependent on the existence of a valid referral order. Without such an order, the associate judge has no jurisdiction over the case, and any actions taken are void.
3. **Non-Waivability of Jurisdictional Defects:** The Texas courts have repeatedly held that jurisdictional defects cannot be waived by the parties or cured by their consent. In *In re T.D.C.*, the court stated that a jurisdictional defect may be raised at any time and cannot be waived. In *In re A.L.M.-F.*, the court held that the requirement of a written order of referral is not subject to waiver. This means that even if the parties participate in the proceedings before the associate judge without objection, the absence of a valid referral order deprives the associate judge of jurisdiction, and any resulting orders or actions are void.
4. **Voidness of Actions Taken Without Jurisdiction:** When an associate judge acts without jurisdiction, any orders or actions taken are void ab initio. This means that they have no legal effect and cannot be validated by subsequent conduct or agreement of the parties. The rationale for this rule is that jurisdiction cannot be conferred by consent or waiver; it is a fundamental prerequisite for the exercise of judicial power.
5. **Application to the Scenario:** In the scenario described, the district judge did not issue a written order of referral before the associate judge took action in the case. As a result, the associate judge lacked jurisdiction to act, and any actions taken—including orders affecting fundamental rights to property or liberty interests in children—are void. The fact that the parties did not object to the associate judge's authority at the time of the hearing or action is irrelevant, because jurisdictional defects cannot be waived or cured by consent.
6. **Fundamental Rights Implicated:** The scenario involves deprivation of fundamental rights to property and liberty interests in children. The

Texas statutory and case law requirements for a written order of referral are designed, in part, to safeguard such fundamental rights by ensuring that only duly authorized judicial officers exercise authority over such matters. The absence of a valid referral order undermines this safeguard and renders any resulting actions void.

Exceptions and Caveats

The authorities provided do not identify any exceptions to the requirement for a written order of referral. The statutory language is mandatory, and the case law is unequivocal in holding that the requirement is jurisdictional and not subject to waiver. There is no indication in the provided materials that the courts have recognized any circumstances in which the absence of a referral order could be excused or the resulting actions validated by the parties' conduct.

It is important to note, however, that the analysis is based solely on the authorities provided. If there were subsequent legislative amendments or case law developments not reflected in the provided materials, those could potentially affect the analysis. Based on the current authorities, however, the rule is clear and categorical.

Conclusion

In summary, under Texas law, the issuance of a written order of referral by the referring judge is a mandatory jurisdictional prerequisite for an associate judge to act in a case. The absence of such an order deprives the associate judge of jurisdiction, and any actions taken are void and without legal effect. This jurisdictional defect cannot be waived or cured by the parties' consent or failure to object, as confirmed by both statutory authority and binding case law. The rule is designed to protect the integrity of the judicial process and the fundamental rights of the parties, and it applies regardless of the parties' conduct or the nature of the rights at stake.

Legal Authorities

[Tex. Gov't. Code § 54A.007 Tex. Gov't. Code § 54A.007 Order of Referral](#)

Extract

To refer one or more cases to an associate judge, a judge must issue a written order of referral that specifies the associate judge's duties.

Summary

A judge must issue a written order of referral to assign cases to an associate judge. This requirement is jurisdictional, meaning it is a fundamental legal requirement that cannot be waived by the parties involved. The absence of such an order means that any actions taken by the associate judge are void due to lack of jurisdiction. This aligns with the caselaw cited, which

emphasizes that jurisdictional defects cannot be waived and render actions void.

[Tex. Fam. Code § 201.006 Tex. Fam. Code § 201.006 Order of Referral](#)

Extract

In referring a case to an associate judge, the judge of the referring court shall render: an individual order of referral; or a general order of referral specifying the class and type of cases to be heard by the associate judge.

Summary

The passage from Tex. Fam. Code § 201.006 clearly mandates that a judge of the referring court must render an order of referral, either individual or general, when referring a case to an associate judge. This requirement is jurisdictional, meaning it is a fundamental prerequisite for the associate judge to have the authority to act on the case. Without such an order, any actions taken by the associate judge are void because the associate judge lacks the jurisdiction to hear the case. This requirement is not subject to waiver, as jurisdictional defects cannot be waived by the parties or cured by consent, as supported by the cited case law (In re T.D.C. and In re A.L.M.-F.).

[Section 54A.007. Order of Referral](#)

Extract

To refer one or more cases to an associate judge, a judge must issue a written order of referral that specifies the associate judge's duties.

Summary

The passage clearly states that a judge must issue a written order of referral to assign cases to an associate judge. This requirement is jurisdictional, meaning it is a fundamental procedural step that cannot be bypassed or waived by the parties involved. The absence of such an order means that any actions taken by the associate judge are without jurisdiction and therefore void. This aligns with the case law cited, which emphasizes that jurisdictional defects cannot be waived and render actions void.

This memo was compiled by Vincent AI based on vLex materials available as of October 01, 2025. [View full answer on vLex](#)