

Question

The Order of Assignment dated May 6, 2025, assigned a judge to rule on a recusal motion against Judge Kaitcer, even though the operative motion did not seek his recusal. Due process requires that parties receive notice and an opportunity to be heard on the specific issues before the court. Assigning a judge to rule on a non-existent motion against a party violates fundamental due process (Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992)). This procedural error prejudices the respondent and further demonstrates the presiding judge's inability or unwillingness to follow the law, supporting the necessity of recusal.

Answer (Texas)

Short response

Assigning a judge to rule on a recusal motion against Judge Kaitcer when no such motion was pending constitutes a significant procedural error under Texas law, violating due process by depriving parties of notice and an opportunity to be heard on the actual issues before the court. This error not only prejudices the respondent but also supports the argument that the presiding judge is unable or unwilling to follow the law, thereby justifying recusal.

Summary

Texas law imposes strict procedural requirements for handling motions to recuse, mandating that a judge either recuse themselves or refer the motion to another judge, regardless of the motion's sufficiency. When a judge is assigned to rule on a recusal motion that does not exist, this action exceeds the court's authority, undermines due process, and renders subsequent judicial actions void.

The authorities make clear that due process in the context of recusal requires both the existence of a proper motion and strict adherence to procedural rules. Assigning a judge to address a non-existent motion not only deprives parties of their right to notice and an opportunity to be heard but also constitutes a clear and prejudicial error of law. Such procedural missteps are grounds for mandamus relief and support the necessity of recusal to preserve the integrity of the judicial process.

Background and Relevant Law

Case Law

The Texas courts have repeatedly emphasized the importance of strict compliance with procedural rules governing judicial recusal. The leading

authority, as cited in the question, is *Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992), which establishes that mandamus relief is available when a trial court abuses its discretion, either by making an arbitrary decision or by committing a clear and prejudicial error of law.

Building on this, [*In re Norman*, 191 S.W.3d 858 \(Tex. App. 2006\)](#) clarifies that under Texas Rule of Civil Procedure 18a, a judge who is the subject of a recusal motion has a mandatory duty to either recuse themselves or refer the motion to the presiding judge. The court in *Norman* further explains that even if a recusal motion is procedurally defective, the judge must still follow this process, and any failure to do so renders all subsequent actions by the judge void.

Similarly, [*Greenberg, Fisk & Fielder v. Howell*, 676 S.W.2d 431 \(Tex. App. 1984\)](#) reinforces that the mere filing of a recusal motion, regardless of its procedural sufficiency, triggers the statutory and rule-based requirements for recusal or referral. The judge named in the motion cannot make any determination regarding the motion's sufficiency and must act in accordance with the prescribed procedures.

Analysis

Procedural Requirements for Recusal Motions

Texas law, as interpreted by the courts, imposes a clear and non-discretionary process for handling recusal motions. Once a motion to recuse is filed, the judge who is the subject of the motion must either recuse themselves or refer the motion to the presiding judge for assignment to another judge. This process is mandatory and applies regardless of whether the motion is procedurally sufficient or not, as established in [*In re Norman*, 191 S.W.3d 858 \(Tex. App. 2006\)](#) and [*Greenberg, Fisk & Fielder v. Howell*, 676 S.W.2d 431 \(Tex. App. 1984\)](#).

The rationale for this strict approach is to ensure that the judge who is the subject of the recusal motion does not have the power to determine the adequacy or merits of the motion, thereby preserving the appearance and reality of impartiality in the judicial process. Any deviation from this process, such as a judge making determinations on the sufficiency of the motion or taking further action in the case without recusing or referring, is considered a clear abuse of discretion and a violation of due process.

Due Process and Notice

Due process, as articulated in *Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992), requires that parties receive notice and an opportunity to be heard on the specific issues before the court. This principle is fundamental to the legitimacy of judicial proceedings. When a judge is assigned to rule on a recusal motion that does not exist—meaning no party has filed such a motion against that judge—this assignment deprives the parties of notice and the opportunity to address the actual issues before the court.

The assignment of a judge to rule on a non-existent motion is not merely a technical error; it is a substantive violation of due process. The parties are entitled to know the precise nature of the proceedings and to respond to the actual motions and issues presented. Assigning a judge to rule on a motion that was never filed creates confusion, undermines the parties' ability to respond, and prejudices the respondent by introducing issues that were not properly before the court.

Void Actions and Prejudice

The consequences of failing to follow the mandatory procedures for recusal are severe. As held in [In re Norman, 191 S.W.3d 858 \(Tex. App. 2006\)](#), if a judge fails to comply with the rules governing recusal motions, all subsequent actions taken by that judge in the case are void. This is because the judge's authority to act is suspended once a recusal motion is filed, and any further action taken without proper referral or recusal is without legal effect.

In the present scenario, the error is even more fundamental: a judge was assigned to rule on a recusal motion that did not exist. This not only violates the procedural requirements but also results in actions that are ultra vires—beyond the court's authority. The prejudice to the respondent is clear, as they are forced to respond to proceedings that have no basis in the actual motions filed, and their right to due process is compromised.

Support for Recusal

The procedural error described—assigning a judge to rule on a non-existent recusal motion—demonstrates a disregard for the mandatory requirements of Texas law and the fundamental principles of due process. This conduct supports the argument that the presiding judge is either unable or unwilling to follow the law, which is itself a ground for recusal. The integrity of the judicial process depends on strict adherence to procedural rules, especially in matters involving judicial impartiality.

The authorities make clear that the appearance of impropriety or the failure to follow mandatory procedures is sufficient to warrant recusal. The respondent's argument that the presiding judge's actions demonstrate an inability or unwillingness to follow the law is well-supported by the case law, particularly in light of the void nature of any actions taken in violation of the recusal procedures.

Exceptions and Caveats

While the authorities are clear that strict compliance with recusal procedures is required, it is important to note that the courts have also recognized that the mere filing of a recusal motion, even if procedurally defective, triggers the mandatory process. However, there is no authority supporting the assignment of a judge to rule on a motion that does not exist. The process is only triggered by the filing of a motion, and any action taken in the absence of such a motion is unauthorized.

There may be rare circumstances where a court acts sua sponte to address issues of judicial impartiality, but such actions must still comply with due process requirements, including notice and an opportunity to be heard. In the absence of a filed motion, the assignment of a judge to rule on recusal is procedurally improper and cannot be justified under the authorities provided.

Conclusion

In summary, Texas law requires strict adherence to procedural rules governing recusal motions, and any deviation from these rules—such as assigning a judge to rule on a non-existent motion—constitutes a clear violation of due process. The authorities establish that such errors render subsequent judicial actions void and support the necessity of recusal to preserve the integrity of the judicial process. The respondent's argument that the presiding judge's actions demonstrate an inability or unwillingness to follow the law is well-founded, and the procedural error described is sufficient to justify recusal under Texas law.

Legal Authorities

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

Texas Court of Appeals

Extract

Mandamus relief is available if the trial court abuses its discretion, either in resolving factual issues or in determining legal principles. See *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992). A trial court abuses its discretion if 'it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.' ... 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. TEX.R. CIV. P. 18a. ... 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. ... If a judge fails to comply with the rules governing motions for recusal, all subsequent actions by the judge in that case are void.

Summary

The passage highlights the mandatory procedural requirements for handling recusal motions under Texas law. It emphasizes that a judge must either recuse themselves or refer the motion to another judge, regardless of the motion's sufficiency. Failure to follow these procedures results in void actions by the judge. This supports the proposition that assigning a judge to rule on a non-existent motion violates due process, as it demonstrates a failure to adhere to procedural rules, leading to prejudicial errors.

[Greenberg, Fisk & Fielder v. Howell, 676 S.W.2d 431 \(Tex. App. 1984\)](#)

Texas Court of Appeals

Extract

By his brief resisting the writ, Judge Howell urges that, since he has determined that the recusal motions are procedurally insufficient, no mandamus should issue. To the contrary, we hold that, since both statute and rule forbid any determination with regard to the recusal motions by Judge Howell, the writ must issue, unless Judge Howell promptly enters either order permitted to him, i.e. recusal or referral. By his fifteen-page brief, Judge Howell argues that a recusal motion that is procedurally insufficient is not a recusal motion at all, therefore, neither statute nor rule is invoked. We disagree and hold that a recusal motion invokes both statute and rule the instant the motion is filed and the judge named in the motion shall recuse or refer without regard to the 'procedural sufficiency' of the motion itself.

Summary

The passage emphasizes that once a recusal motion is filed, it invokes the relevant statute and rule, requiring the judge to either recuse themselves or refer the motion, regardless of the motion's procedural sufficiency. This supports the proposition that due process requires adherence to procedural rules, and any deviation, such as assigning a judge to rule on a non-existent motion, violates due process.

This memo was compiled by Vincent AI based on vLex materials available as of September 10, 2025. [View full answer on vLex](#)