

**IN THE MATTER OF THE
MARRIAGE OF**

**AND IN THE INTEREST OF
MARA MYERS AND
CAROLINE MYERS
MINOR CHILDREN**

TARRANT COUNTY, TEXAS

ORDER OF REFERRAL

SIGNED this 8 day of October, 2024.

JUDGE PRESIDING

NO. 24-0395

NO. ____ SW3d ___, 04-10-24

NO. 322-744263-23 & NO. 322-744538-23

Morgan Michelle Myers v Charles Dustin Myers

JOINT MOTION TO RECUSE

Proceedings arising from the 322nd District Court

-&-

On Petition for Writ of Mandamus from the Second Court of
Appeals,

Tarrant County, Texas

-&-

In the Supreme Court of Texas,
Austin.

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NO. 322-744263-23

IN THE 322ND DISTRICT COURT OF TARRANT COUNTY, TEXAS

**IN THE MATTER
OF THE MARRIAGE OF
MORGAN MICHELLE MYERS
AND CHARLES DUSTIN MYERS**

**AND IN THE INTEREST OF MARA
MYERS AND CAROLINE MYERS,
CHILDREN**

MOTION FOR RECUSAL

TO THE HONORABLE DAVID EVANS

OF THE 8TH ADMINISTRATIVE JUDICIAL REGION OF TEXAS:

In February of 2018, response to a question posed by the Republican Club Political Action Committee, the now elected District Judge James Munford stated:

“I’m running for this office because I’ve worked many, many years in the family law field. I want to help and work with the citizens of Tarrant County and the families of Tarrant County to provide a good and accurate judiciary that follows the rules of law.”

However, in this case, Respondent, CHARLES DUSTIN MYERS, has encountered a series of judicial determinations that fundamentally contradict this objective. The assurance to uphold a judiciary that follows the rule of law has been replaced with decisions that have deprived the Respondent of due process, equitable hearings, and his fundamental paternal rights. Respondent respectfully moves to recuse District Judge James Munford and Associate Judge Jeffrey Kaitcer pursuant to TAC §155.152 & TEX. R. CIV. P § 18b(b)(1) and in support thereof, states the following un-opposed facts:

I. BASIS FOR RECUSAL

A. The impartiality of a judge may be challenged in the trial court by a motion to recuse. TEX. R. CIV. P. 18a, 18b. The Respondent respectfully moves to recuse Honorable Judge James Munford and Honorable Associate Judge Jeffrey Kaitcer from presiding over cause number 322-744263-23¹ for their collective inability to remain impartial in this matter by depriving the Respondent of a fair trial on four separate appearances. “Texas requires the recusal of a judge in any case where his or her impartiality might reasonably be questioned, regardless of any actual bias which may be held in a case.” *Aguilar v. Anderson*, 855 S.W.2d 799, 815.

B. This motion has been filed at the earliest practicable opportunity, as the Respondent has exhausted all other available legal avenues without receiving any response, explanation, or opposition. Respondent has given the trial court every opportunity to correct the errors made in this case and has recently discovered pertinent information related to the initial proceeding that took place on January 16th, 2024, as outlined below. There are no current settings or upcoming hearings, and the case has not yet been scheduled for a final trial. The Respondent’s motion is verified and asserts grounds for recusal pursuant to TEX. CIV. R. P. 18(b)b1. These grounds are not predicated solely on the judges’ prior rulings. Instead, this motion presents detailed, particularized facts based on the Respondent's direct knowledge that are admissible as evidence and are self-authenticating

¹ This case was consolidated on January 16th, 2024, by District Judge James Munford with cause number 322-744538-23, a protective order suit initiated by the Petitioner, Morgan Michelle Myers.

under Rule 902(4) of the Texas Rules of Evidence and are sufficient to warrant recusal. Moreover, where facts are presented based on information and belief, the foundation for such beliefs is explicitly stated. See TEX. R. CIV. P. 18a(a)(1)-(4); 18a(b)(1)

II. QUESTIONING THE IMPARTIALITY OF JAMES MUNFORD

A. On September 29th, 2024, the Respondent discovered a Facebook post made by the Tarrant County District Courts which stated the following:

“The following Tarrant County District Courts will be closed tomorrow, Tuesday, January 16, 2024.

This list is evolving as individual Judges are making informed decisions based on their dockets, inclement weather, and the safety and welfare of litigants, Court staff, counsel, and the general public.” – Tarrant County District Courts on January 15, 2024.

The Fort Worth Independent School District also announced that they would remain closed due to inclement weather in the area. <https://www.fox4news.com/news/dallas-fort-worth-school-closings-jan-16>. On December 14th, 2024, the petitioner requested a protective order from James Munford, which was denied. *Exhibit A*. However, one month and two days later, Judge James Munford made an initial decision that has been unexplained for the last ten months.

B. The initial decision at issue arose during a show cause hearing concerning an order of protection initiated by the petitioner, Morgan Michelle Myers, on December 22, 2023. This hearing was originally scheduled to be presided over by Associate Judge Jeffrey Kaitcer in the 322nd District Court of Tarrant County at 9:00 A.M. on January 16th, 2024. However, due to delays caused by inclement weather as mentioned above, the

proceedings were instead conducted by District Judge James Munford, as Associate Judge Jeffrey Kaitcer arrived late.

C. Both parties were present and appeared without legal representation. During the proceedings, Judge Munford presented the parties with an agreed continuance, which both parties accepted, and which was subsequently granted by Judge Munford as reflected in his order. However, despite granting the continuance, Judge Munford went further, issuing a series of rulings where he sua sponte consolidated the protective order case with the divorce case previously filed by the petitioner on December 18, 2023.

Exhibit B. He ordered the Respondent to vacate the residency that same day by 2:00 p.m., divested him of the custody of his children, and the hearing was then rescheduled for January 22, 2024, to be presided over by Associate Judge Jeffrey Kaitcer. *Exhibit C.*

D. This decision by Judge Munford undeniably raises serious questions regarding his impartiality in this matter. Due process of law requires that an individual receive notice and hearing before being deprived of a property right. *In re the Guardianship of Bays*, 355 S.W.3d 715, 720 (Tex. App. 2011); See *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783, 58 L. Ed. 1363 (1914) ("a fundamental requisite of due process of law is the opportunity to be heard"). Furthermore, the Texas Family Code prohibits such an order before notice and hearing. TEX. FAM. CODE 105.001 ("...an order may not be rendered under Subsection (a)(1)... except after notice and a hearing...") (referencing child custody).

E. Moreover, 6.405(b) of the Texas Family Code was not satisfied, which is a mandatory requirement before any hearing can take place given the original petition for divorce claimed an active order of protection was currently in effect against the Respondent. *Exhibit B, p. 7*. (“The petitioner shall attach to the petition a copy of each order described by Subsection (a)(1) in which a party to the suit or the child of a party to the suit was the applicant or victim of the conduct alleged in the application... if a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.”) All of the procedural safeguards above were disregarded by James Munford.

F. The purpose of temporary orders with injunctive relief is not to destroy the status quo, but rather to preserve it. See *Iranian Muslim Organization v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981); *Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978); *Citizens of Texas Sav. v. Fox Jacobs*, 718 S.W.2d 2, 3 (Tex. App. 1985). Similarly to how the temporary injunction in *Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53 (Tex. 2016) improperly denied the City its undisputed right to access groundwater—an essential resource—Judge Munford's rulings have deprived the Respondent of his residency, which has served not only as the family home since 2015 but also as the headquarters for his business which provided for the children – an essential resource to their wellbeing. Furthermore, the Respondent was divested of custodial rights to his children without justification. Like the injunction in *Coyote*, rather than preserving the status quo, these initial rulings have done the opposite by depriving

the Respondent of his constitutional rights to property prior to due process of law. US CONST. AMEND XIV, § 1; TEX CONST. ART. I, § 19. Furthermore, James Munford prejudged critical matters that require full evidentiary hearings. TEX. FAM. CODE 105.001(b) (...an order may not be rendered under Subsection (a)(1), (2), or (5) except after notice and a hearing.) (in regard to the temporary conservatorship for a child, for the temporary support of the child, or for payment of attorney's fees.)

G. The Respondent's burden of showing of bias or impartiality to such an extent that the movant was deprived of a fair trial is satisfied from Judge Munford's initial ruling. See *Rodriguez v. JPMorgan Chase Bank, N.A.*, No. 04-14-00342-CV, 22 (Tex. App. Jun. 17, 2015).

H. The threshold for recusal is "whether a reasonable member of the public at large, knowing all the facts in the public domain concerning the judge's conduct, would have a reasonable doubt that the judge is actually impartial." *Hansen v. JPMorgan Chase Bank, N.A.*, 346 S.W.3d 769, 776 (Tex. App.—Dallas 2011, no pet.); *Rodriguez v. JPMorgan Chase Bank, N.A.*, No. 04-14-00342-CV, 22 (Tex. App. Jun. 17, 2015). The Respondent asserts that a reasonable member of the public would indeed reasonably doubt James Munford was actually impartial given that he deprived the Respondent of a fair trial. Thus, the Respondent's burden and threshold for recusal has been met, and Judge James Munford should be recused from this matter.

I. The only reasoning provided was an oral statement regarding his personal opinion regarding the Respondent living next door to his ex-partner's grandparents,

which is extrajudicial and comes from a biased perspective which discounted the facts of the case relevant to the children's well-being. In the context of this case, recusal is warranted if the trial judge's impartiality might reasonably be questioned, or he has a personal bias. TEX. R. CIV. P. 18b(2). This opinion or bias was irrelevant to the well being of the children, as the grandmother, much like the children, relied on the Respondent's income in order to provide financial stability, and further justifies his recusal.

III. QUESTIONING THE IMPARTIALITY OF JEFFREY KAITCER

A. The initial ruling reset the case to January 22nd, 2024. The Respondent retained the services of Dan Bacalis, while the Petitioner arrived without any legal representation and retained the services of Cooper Carter in the lobby of the courtroom. Much like the first setting, Associate Judge Jeffrey Kaitcer granted a continuance which only benefitted the petitioner by allowing her legal representation more time to become familiar with the case while simultaneously extending the initial orders of Judge James Munford to February 1st, 2024, which significantly impacted the Respondent and his children. *Exhibit D*. Neither party appeared before the Jeffrey Kaitcer, and this decision was made without any input from the Respondent and without any opportunity to contest it.

B. At the third trial setting on February 1, 2024, the parties arrived only to be presented with a settlement agreement from the Respondent's own counsel. Given that the case had been delayed twice already and the ongoing damage from being unable to work at full capacity was compounding by the day, the Respondent contested this

strategy. He was informed by his attorney that the orders could be modified later and was urged to sign it. Left with no better alternative, the Respondent signed the agreement under duress after already being deprived of his residency, children, and business since January 16th, 2024. *Exhibit E*

C. The agreement removed the children from their own home that they had resided in their entire life and allowed the Respondent back into the home until March 1, 2024. It also established child support, and allocated financial responsibilities to the parties, to where the Respondent was left with both car payments, an unreasonable amount of time to transition from the home and with the addition of child support obligations. *Exhibit E*

D. Due to the Respondent's counsel drafting a settlement agreement rather than representing the interests of his client, he was terminated shortly after the third setting on February 5, 2024, where the Respondent began to represent himself *pro se*. *Exhibit F*. He filed a motion to reconsider the associate judge's report for temporary orders on February 9, 2024, which wasn't set for hearing until March 14 due to unnecessary delay by the opposing counsel, Cooper Carter, who has not filed any pleadings in this case on behalf of the petitioner. *Exhibit G*

E. Given that Dan Bacalis had been terminated, and that the associate judge's report signed on February 1, 2024, had clear stipulations regarding its' reduction to writing *Exhibit G, p.5*, the Respondent filed notice with the court on March 4th, 2024, stating that he would not be leaving the marital residence as it was not in the best interests of his children. *Exhibit H*

F. This decision prompted the petitioner to run inside the family residence on March 6th, 2024, while the Respondent was walking his daughters to school on her visitation time and lock the petitioner out of the home. Since this day, the Respondent has pursued relief to no avail, without argument, and without any response or findings of facts from either judge or Cooper Carter, petitioner's counsel.

G. On March 14, 2024, the parties appeared before Associate Judge Jeffrey Kaitcer to address the Respondent's motion to reconsider. Just minutes prior to the hearing, the Respondent was served formally reduced temporary orders by Cooper L. Carter, which contained significant clerical discrepancies and deviated from the original orders signed on February 1, 2024. These orders are currently in effect today as 'agreed orders'. *Exhibit I*. The orders also reference a hearing that was never conducted in this case.

H. During the hearing, the Respondent was precluded from addressing the events leading up to February 1, 2024, due to sustained objections based on relevance. Despite signing off on the Associate Judge's Report which non-suited the protective order, the opposing counsel was nonetheless permitted to elicit testimony from their client regarding her purported fear for safety should Respondent be allowed near the residency, which has not been supported by any evidence to date.

I. Judge Kaitcer refused to admit the Respondent's exhibits, which included affidavits from business clients prepared to attest to his need for residency and his close relationship with his daughters. *Exhibit J*. Judge Kaitcer further stated in open court, while drafting his ruling on the Respondent's motion, "You don't care about your kids.

You just care about your business." This remark, devoid of any evidentiary basis, exposed a deep-seated bias that rendered impartial adjudication impossible. A neutral and impartial evaluator would have acknowledged the interconnected nature of the Respondent's business, residency, and familial relationships as well as the impact of the initial proceedings leading up to that point. Further, an impartial judge would have realized that there is no logical explanation to remove a parent who relies on the residency to provide for the children while simultaneously denying the evidence that would have corroborated this need.

J. The Respondent's motion for reconsideration concluded with an illegible order, requiring him to sign the temporary orders served just moments earlier by 1:30 p.m. that same day. *Exhibit K*. Again, the order was designated as "agreed" despite lacking the Respondent's signature, was reduced outside of its' own procedural requirements ordered by the same judge, was reduced without any underlying motion for temporary orders ever served to the Respondent and differed from the associate judge's report signed on February 1, 2024. Rather than holding the opposing counsel and the petitioner in contempt for violating Rule 13 of the Texas Rules of Civil Procedure for signing a fictitious pleading which contained false statements, Jeffrey Kaitcer deprived the Respondent of a fair trial, thus warranting his recusal from this matter.

K. It is evident, based on common sense and objective evaluation of the public facts regarding Jeffrey Kaitcer's conduct that no reasonable person would believe that he was actually impartial knowing all of the facts of the case. After eight months of seeking

relief throughout the Texas judiciary, the collective actions of Judge James Munford and Associate Judge Jeffrey Kaitcer remain unexplained, and the damage is ongoing. Their joint recusal is necessary to ensure a fair resolution of this matter and to ensure the persistent favoritism directed towards the petitioner is abolished.

IV. THE AFTERMATH

A. Since the March 14th hearing, the case has stalled. There has been no participation from the opposing party, and all attempted communications have failed. There hasn't been any explanation for the denials in the Second Court of Appeals, leaving the Respondent to continue seeking every remedy available to him to correct the decisions presented above or receive a valid legal basis that justifies them.

B. The joint managing conservatorship that the current orders outline has put the Respondent in massive amounts of debt. He had to stay in hotels on Thursday nights in order to take his Children to school on Friday mornings for his visitation period, and for the extended summer visitation, rented an AIR BNB in order to provide the Children with a stable living space. The Respondent was able to have the owner of the AIRBNB located at 6608 Dewsbury St. that was only 1.3 miles from the Respondent's home allow him to port forward the router, allowing him to work to some degree, where he stayed until September 14th, 2024. Given the requirements to operate his business, an alternative residency would take a fair amount of time to transition to, and likewise the petitioner would need equal amount of time to obtain full employment in order to maintain the

current household. All of this was explained in the Respondent's pleadings that were before the court on January 16th, 2024, but were not considered. *Exhibit L, Exhibit M*

C. Since the March 14th hearing, the petitioner has moved additional family members into the home, has not paid rent, and has reduced her employment while significantly reducing the Respondents. On top of both James Munford and Jeffrey Kaitcer's disregard for the law and the best interests of the children, the inadvertent favoritism towards the petitioner has allowed her to further her own interests at the expense of the status quo of the children. An impartial judge is required in this matter to ensure that this one-sided favoritism does not continue at the expense of the children.

D. On June 2 of 2024, the petitioner's grandmother contacted the Respondent reiterating the above. She stated that the children were not being taken care of, that the petitioner was not acting like herself, and that she was not paying rent. This information was relayed to the Supreme Court of Texas, where the Respondent's motion for rehearing on petition for writ of mandamus is still pending before the court, asking them to compel James Munford to vacate the current orders which were entered by Associate Judge Jeffrey Kaitcer as agreed without consent and referenced a hearing that has never taken place.

V. QUESTIONS THAT REMAIN UNANSWERED

Throughout this case, several concerning questions have arisen regarding the conduct of both judges:

1. What dire circumstance compelled Judge James Munford to take up a case on short notice and grant injunctions and make child custody decisions without knowing the facts or considering the pleadings, particularly on a day the court was closed due to inclement weather when he had denied a similar request a month earlier?
2. Why did Judge Munford grant an agreed continuance at a protective order hearing and simultaneously rule against one of the parties on divorce issues without taking into consideration the preponderance of the evidence before him?
3. What factual basis on the record compelled Jeffrey Kaitcer to openly make negative statements about the Respondent regarding his children?
4. Why has Cooper Carter failed to respond to any of the Respondent's pleadings and neglected to file any documents on behalf of her client?
5. What factual basis exists on the record to supports the petitioner being granted full custody of the children and sole use of the residence?
6. How can an order be issued as an "agreed order" after consent was explicitly withdrawn, referencing a hearing that never occurred, and served to the Respondent before a scheduled hearing meant to challenge the very order?

VI. CONCLUSION

This case, as detailed in the pending motion for rehearing before the Supreme Court of Texas, revolves around the core issue of accountability. What began with Morgan Michelle Myers attempting to avoid responsibility has now evolved into a troubling scenario where both judges have repeatedly failed to recognize and correct their serious missteps. Attorney Cooper Carter's authority to represent the petitioner, currently being challenged through a Rule 12 motion, further deepens concerns about the integrity and fairness of these proceedings.

Recusing both judges is not just a procedural necessity, but a crucial step toward ensuring that this case is reviewed impartially and that the facts are properly considered. This will allow the court to focus on the petitioner's pattern of deception and, more importantly, what truly serves the best interests of the children. The petitioner's actions have caused unnecessary delays, destabilized her family, and inflicted significant emotional and financial harm on all involved. The ongoing litigation, exacerbated by a lack of judicial transparency and accountability, has only added to the hardship.

Despite these issues, the Respondent holds no ill will toward any party involved. His primary concern has always been, and continues to be, doing what is right for his children. The Respondent believes that with impartial judges and a renewed focus on fairness, this case can still be resolved justly, allowing all parties to move forward with dignity and integrity. The Respondent remains diligent in his commitment to securing a fair outcome that reflects the best interests of his children as the Family Code mandates.

VII. PRAYER FOR RELIEF

The Respondent respectfully requests the following relief:

1. That the clerk of the court deliver a copy of the motion for recusal to both the respondent judges and the regional presiding judge, and deliver any signed orders of recusal or referral to the regional presiding judge immediately upon filing.
2. That the respondent judges either recuse themselves or refer the motion to the regional presiding judge within three business days after the motion is filed, and refrain from taking any further action in the case until the motion is decided, unless good cause is shown in writing or on the record.
3. That the regional presiding judge issue interim orders to reset the status quo by allowing the Respondent's immediate return to his home and business, thereby initiating a peaceful transitional period for the family's well-being and stability.
4. That the motion for recusal be conducted by telephone, as permitted by **Rule 18(g)(6)(C)**, to expedite the process and ensure all documents submitted by facsimile or email, if otherwise admissible under the rules of evidence, are considered.
5. That, if the motion is granted, the regional presiding judge reassign the case to another court or assign another judge to ensure fairness and impartiality moving forward.

The Respondent seeks this relief to ensure that the case proceeds in a just manner, restoring stability and allowing a fair resolution to the matter at hand during the pendency of the case.

Respectfully submitted,

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Pro-se

VIII. CERTIFICATE OF SERVICE

Respondent certifies that a true copy of this Joint Motion for Recusal was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on **10/07/2024**:

Cooper L. Carter (Counsel for real party in interest)
by EMAIL/ESERVE at COOPERCARTER@MAJADMIN@COM

Morgan Michelle Myers (real party in interest)
by EMAIL/ESERVE at MORGANMW02@GMAIL.COM

HOLLY HAYES (OAG)
By EMAIL/ESERVE at CSD-Legal-914@oag.texas.gov

/s/ Charles Dustin Myers
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IX. CERTIFICATE OF CONFERENCE

A conference was not held with Cooper Carter on the merits of this Motion because the Respondent failed to reach via her provided telephone number on the case docket after two attempts. Respondent has communicated the merits to the petitioner

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