

NO. 10-16-00206-CR

IN THE TENTH COURT OF APPEALS
FOR THE STATE OF TEXAS

In re William M. Windsor, Relator

William M. Windsor,
Relator

v.

Judge Cindy Ermatinger,
Respondent

State of Texas,
Real Party in Interest

from Cause No. 90744
443rd District Court, Ellis County, Texas
Judge Cindy Ermatinger

FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

William M. Windsor (“Petitioner” or “Windsor”) files this “First Amended
Petition for Writ of Mandamus,” and shows the Court:

IDENTITY OF PARTIES AND COUNSEL

William M. Windsor, Petitioner, 110 E Center Street #1213, Madison, South Dakota 57042, 770-578-1094, bill@billwindsor.com

Judge Cindy Ermatinger, Respondent, 443rd District Court, 109 S. Jackson Street, Waxahachie, Texas 75165

State of Texas, Real Party in Interest, Assistant Ellis County District Attorney Ms. M. Ann Montgomery-Moran, 109 S. Jackson Street, Waxahachie, Texas 75165

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STATEMENT OF THE CASE

Case #90744 is an action for a \$100,000 judgment in an alleged failure to appear on a bond.

Judge Cindy Ermatinger is the judge in the 443rd Judicial District Court in Ellis County Texas.

This is a case in which Judge Cindy Ermatinger has conspired with the prosecuting attorneys to use a fraudulent and forged document claiming it to be the Bond in this matter when it is not. The evidence is crystal clear, shown in Case

#10-16-00207-CR and 10-16-00202-CR, referenced and incorporated herein as if attached hereto.

William M. Windsor seeks relief as Judge Cindy Ermatinger has denied William M. Windsor the opportunity to have a public defender, which is his right in a criminal matter. She has never addressed ANY of William M. Windsor's motions and has issued NO orders. She is attempting to force him to attend a hearing so he can be arrested on bogus charges. She is using letters to deny William M. Windsor the right to appeal improper orders. She is taking action in the case while a motion for recusal is pending.

STATEMENT OF JURISDICTION

As a case listed on the civil court docket, the Texas Rules of Appellate Procedure, Rule 52, provides that the Court of Appeals has jurisdiction. The Tenth Court of Appeals has jurisdiction over Ellis County courts, so it is the appropriate appellate court.

ISSUES PRESENTED

Issue #1: Is a district court obligated to respond to motions properly filed?

Issue #2: Is a judge to conduct as many hearings as practical by telephone?

Issue #3: Do letters to the parties from judges and their staff members have no validity under Texas law and are not appealable?

Issue #4: Is a trial court judge denied the authority to set hearings and trial dates while a motion for recusal is pending?

Issue #5: If a judge sets motions for hearings, must those settings be times do they do not effectively deny the relief requested?

Issue #6: Must William M. Windsor be given the opportunity to have a public defender in Case #90744 before any further action is taken in the case?

STATEMENT OF FACTS

1. Judge Cindy Ermatinger, Ellis County District Attorney Patrick Wilson, and Assistant Ellis County District Attorney Ann Montgomery-Moran conspired to generate a fraudulent document that they claimed is the “Bond” in the underlying matter. They had it forged, and they have used it to destroy what’s left of William M. Windsor’s life. Tenth Court of Appeals Case #10-16-00207-CR and Case #10-16-00202-CR and Ellis County District Court Case #14-158, 90744, and 39746-CR provide the evidence and are referenced and incorporated herein as if attached hereto.

2. Cause #90744 was created on December 30, 2014 with the filing of a Judgment NISI. [Appendix-1.]

3. On June 1, 2015, William M. Windsor sent a Motion to Dismiss to the Clerk of the Court for filing. [Appendix-2.] The Court never addressed this.

4. On January 19, 2016, William M. Windsor sent a Motion for Judicial Notice to the Clerk of the Court for filing. The Court never addressed this.

5. On January 29, 2016, William M. Windsor received a letter from Judge Cindy Ermatinger that is not an appealable order.

6. On February 25, 2016, William M. Windsor sent a Motion for Depositions by Telephone to the Clerk of the Court for filing. The Court never addressed this.

7. On February 25, 2016, William M. Windsor sent a Motion to Compel the Clerk of the Court to Provide Documents to the Clerk of the Court for filing. The Court never addressed this.

8. On March 1, 2016, William M. Windsor sent a Motion for Summary Judgment to the Clerk of the Court for filing. The Court has not addressed this.

9. On March 1, 2016, William M. Windsor sent a Motion for Jury Trial to the Clerk of the Court for filing. The Court never addressed this.

10. On March 2, 2016, William M. Windsor sent a Motion for Approval to Supplement the Record to the Clerk of the Court for filing. The Court never addressed this.

11. On March 14, 2016, Judge Cindy Ermatinger issued the only order ever issued in this case as she issued an order setting a hearing on the State's Motion for Summary Judgment. [Appendix-3.]

12. On March 17, 2016, William M. Windsor received a letter from Judge Cindy Ermatinger that is not an appealable order.

13. On March 21, 2016, William M. Windsor sent a Motion for Cancellation of Hearing to the Clerk of the Court for filing. The Court never addressed this.

14. On March 24, 2016, William M. Windsor sent a Motion to have Motions Decided Without Hearing to the Clerk of the Court for filing. The Court never addressed this.

15. On March 25, 2016, William M. Windsor sent a Demand for Orders in Cause #90744 to the Clerk of the Court for filing. The State did not respond, and Judge Cindy Ermatinger ignored the request. [Appendix-4.]

16. On March 25, 2016, William M. Windsor sent a Reply to the State's Response to the Motion for Depositions by Telephone to the Clerk of the Court for filing. The Court never addressed this.

17. On March 25, 2016, William M. Windsor sent a Reply to the State's Response to the Motion for Judicial Notice to the Clerk of the Court for filing. The Court never addressed this.

18. On March 25, 2016, William M. Windsor sent a Reply to the State's Response to the Motion for Depositions by Telephone to the Clerk of the Court for filing. The Court never addressed this.

19. On March 25, 2016, William M. Windsor three Motions for Judicial Notice to the Clerk of the Court for filing. The Court never addressed these.

20. On March 25, 2016, William M. Windsor sent an Amended Motion for Summary Judgment to the Clerk of the Court for filing. The Court has not addressed this.

21. On March 26, 2016, William M. Windsor sent a Reply to the State's Response to Motion to Compel Clerk to Provide Documents to the Clerk of the Court for filing. The Court never addressed this.

22. On April 6, 2016, William M. Windsor sent an Amended Motion for Cancellation of Hearing to the Clerk of the Court for filing. The Court never addressed this.

23. On April 13, 2016, William M. Windsor received a letter from Judge Cindy Ermatinger that is not an appealable order.

24. On May 2, 2016, William M. Windsor sent a Motion for Cancellation of Hearings to the Clerk of the Court for filing. The Court never addressed this.

25. On May 19, 2016, William M. Windsor sent a Second Amended Motion for Summary Judgment to the Clerk of the Court for filing. The Court has not addressed this.

26. On May 20, 2016, William M. Windsor sent a Motion for Sanctions and Criminal Charges against Ann Montgomery-Moran to the Clerk of the Court for filing. The Court has not addressed this.

27. On May 20, 2016, William M. Windsor sent a Motion to Strike State's Response to Defendant's Motion for Summary Judgment to the Clerk of the Court for filing. The Court has not addressed this.

28. On May 25, 2016, William M. Windsor sent a Motion for Investigator to the Clerk of the Court for filing. The Court has not addressed this.

29. On May 25, 2016, William M. Windsor sent a Motion to Authorize Depositions to the Clerk of the Court for filing. The Court has not addressed this.

30. On May 25, 2016, William M. Windsor sent a Motion to Compel and Motion for Sanctions to the Clerk of the Court for filing. The Court has not addressed this.

31. On June 2, 2016, William M. Windsor received a letter from Olivia Tucker, a secretary who is not authorized to issue orders as if a judge.

32. On June 3, 2016, William M. Windsor sent a Motion for Recusal of Judge Cindy Ermatinger to the Clerk of the Court for filing. This is pending before the Presiding Judge.

33. On June 9, 2016, William M. Windsor filed a requested a court-appointed attorney, but his requests have been ignored. [Appendix -5.]

34. On June 10, 2016, William M. Windsor received a letter from Olivia Tucker, a secretary who is not authorized to issue orders as if a judge. [Appendix-6.]

35. On June 22, 2016 at 1:20 pm CDT, William M. Windsor filed a Motion to Recuse Keith Dean, the mediator named to consider the recusal. [Appendix-7.]

36. On June 22, 2016 at 1:24 pm CDT, William M. Windsor filed a Motion to Recuse Judge Mary Murphy. [Appendix-8.]

37. On June 23, 2016, Judge Cindy Ermatinger filed a letter in Case #90744 purporting to set all matters except summary judgment motions for hearing on June 28, 2016; to set summary judgment motions for hearing on July 14, 2016; and set the trial for August 9, 2016. [Appendix-9.]

ARGUMENT

ISSUE #1: IS A DISTRICT COURT OBLIGATED TO RESPOND TO MOTIONS PROPERLY FILED? YES, JUDGE CINDY ERMATINGER MUST RULE PROMPTLY ON MOTIONS FILED.

38. There are no local rules for the 443rd District Court.

39. The 443rd Judicial District Court has not ruled on a single motion filed by William M. Windsor in Case #90744. The motions were all filed and served properly, with proper certificates of service. A dispositive Motion to

Dismiss has been unresolved for over a year, and the State had not even filed a response to it.

40. Judge Cindy Ermatinger has similarly not ruled on motions in the underlying Case #14-158. Motions have been pending in that case since February 2015.

41. Whether to consider and rule upon a motion is not a discretionary act on the part of a trial court.

Whether to consider and rule upon a motion is not a discretionary act on the part of a trial court. *In re Ramirez*, 994 S.W.2d 682, 683 (Tex. App.-San Antonio 1998, orig. proceeding). Rather, when a motion is properly filed and pending before a trial court, the act of considering and resolving it is ministerial. *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.-San Antonio 1997, orig. proceeding) (quoting *O'Donniley v. Golden*, 860 S.W.2d 267 (Tex. App.-Tyler 1993, orig. proceeding)).

(See also *State ex rel. Young v. Sixth Judicial Dist.*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007); *In re Ewere*, 05-14-00221-CV (Tex.App. Dist.5 02/27/2014); *In re Mendoza*, 467 S.W.3d 76 (Tex.App. Dist.14 04/21/2015); *In re Garrett*, 14-14-00669-CR, 14-14-00670-CR (Tex.App. Dist.14 08/26/2014); *In re Henderson*, WR-78, 769-03 (Tex.Crim.App. 08/26/2015); *In Re Chad Woods, Relator*, No. 14-12-00504-CR (Tex.App. Dist.14 06/14/2012); *Ex parte Bates*, 65 S.W.3d 133 (Tex.App. Dist.7 05/15/2001); *In Re Herschel Bryan Moffitt, Relator*, No. 07-13-0041-CV (Tex.App. Dist.7 02/20/2013); *In re Herrera*, No. WR-74,603-01 (Tex.Crim.App. 11/03/2010); *Simon v. Levario*, No. AP-76,183 (Tex.Crim.App. 11/18/2009); *In re Fuller*, No. 14-09-00291-CR (Tex.App. Dist.14 04/16/2009).)

42. Judge Cindy Ermatinger has violated Rule 7 (a) (1) of the Texas Administrative Rules: “(1) diligently discharge the administrative responsibilities of the office....”

43. Judge Cindy Ermatinger has violated Rule 7 (a) (2) of the Texas Administrative Rules: “(2) rule on a case within three months after the case is taken under advisement....”

44. Judge Cindy Ermatinger has also violated Rule 7(a)(6)(e) of the Texas Administrative Rules: “(e) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery and motions.” She has failed to establish any rules; she does whatever she wants.

45. The refusal to address William M. Windsor’s motions demonstrates Judge Cindy Ermatinger’s bias against Windsor and her participation in the rampant corruption in Ellis County Texas involving Judge Bob Carroll, Judge Joe Grubbs, judiciary staff, Ellis County Texas Sheriff Johnny Brown and his staff, and Ellis County Texas District Attorney Patrick Wilson and his staff. She wants to try to force William M. Windsor to come to Ellis County to be arrested. If he doesn’t appear, she will rule against him and perhaps find him in contempt.

ISSUE #2: IS A JUDGE TO CONDUCT AS MANY HEARINGS AS PRACTICAL BY TELEPHONE? YES, JUDGE CINDY ERMATINGER MUST CONDUCT AS MANY HEARINGS AS PRACTICAL BY TELEPHONE.

46. Judge Cindy Ermatinger has denied and ignored William M. Windsor’s requests to participate in hearings by telephone. She is attempting to get William M. Windsor arrested if he comes to Ellis County for a hearing.

47. Texas Rules of Civil Procedure Rule 166a states quite clearly that oral testimony is not allowed at a summary judgment hearing: “No oral testimony shall be received at the hearing.” Yet Judge Cindy Ermatinger has sent letters saying William M. Windsor’s attendance is REQUIRED.

48. There is no reason for William M. Windsor to attend a hearing in person when there will be no oral testimony or presentation of evidence. Everything that William M. Windsor needs to have considered will always be part of the Court’s Record.

49. Hearings by telephone are held routinely in courts all across Texas. A search of all appellate court decisions in Texas revealed 143 cases that were appealed where a telephonic hearing was noted.

50. The Texas Rules of Civil Procedure does recognize the use of telephonic hearings. See Rules 189, 199.1(b), 201.1, 503.1, and 508.3. There is case law – 143 cases in appellate court decisions.

51. Rule 7 (6) (b) of the Texas Rules of Judicial Administration provides “to the extent consistent with safeguarding the rights of litigants to the just processing of their causes, utilize methods to expedite the disposition of cases on the docket of the court, including “the use of telephone or mail in lieu of personal appearance by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates.”

52. Rule 7 (6) (b) of the Texas Rules of Judicial Administration provides that pretrial conferences should be used “to encourage settlements and to narrow trial issues.”

53. Judge Cindy Ermatinger has criminal motives in “requiring” William M. Windsor to appear in her courtroom in Ellis County for motion hearings. She used such a hearing on December 30, 2014 to charge William M. Windsor with felony bond jumping, and now she wants to use such a requirement so he can be arrested on her bogus charge. Judge Cindy Ermatinger and the prosecutors in this case have committed crimes, and they are doing anything they can to try to shut William M. Windsor up as it will be their best bet at avoiding prison.

ISSUE #3: DO LETTERS TO THE PARTIES FROM JUDGES AND THEIR STAFF MEMBERS HAVE NO VALIDITY UNDER TEXAS LAW AND ARE NOT APPEALABLE? YES, LETTERS FROM JUDGES AND STAFF MEMBERS OF JUDGES HAVE NO VALIDITY UNDER TEXAS LAW. ORDERS MUST BE ISSUED TO GIVE PARTIES THE RIGHT OF APPEAL.

54. Judge Cindy Ermatinger has not issued orders, but she has had her secretary send letters that purport to be orders. These letter-communicated “commands” are not binding under Texas law, and they are not appealable.

55. A ruling by a court must be in writing and signed by a judge.

To be effective, an order must be reduced to writing, signed by the trial judge, and entered in the record. (*State v. Shaw*, 4 S.W.3d 875, 878 (Tex. App.-Dallas 1999, no pet.).)

(See also *Mayfield v. State*, No. 12-09-00073-CR (Tex.App. Dist.12 04/22/2009).)

56. Failure to issue written orders denies William M. Windsor the right to file appeals. (*State v. Shaw*,supra.)

“A written order is a necessary for a party to perfect appeal from a trial court's order.” (*In RE Cleveland Nixon*, No. 05-15-00263-CV, Court of Appeals of Texas, Fifth District, Dallas (03/25/2015).

A docket sheet entry cannot stand as an order. See *Utilities Pipeline Co.*, 760 S.W.2d at 723; *Fuentes*, 960 S.W.2d at 264; *Pifer v. State*, 893 S.W.2d 109, 111 (Tex. App. _Houston [1st Dist.] 1995, pet. ref'd); see also *Ferguson v. State*, 367 S.W.2d 695, 696 (Tex. Crim. App. 1963); *Walls*, 273 S.W.2d at 876; *Burns*, 814 S.W.2d at 771. Docket sheet entries are not part of the record because they are inherently unreliable, lacking the formality of orders and judgments. See *Energo Int'l Corp. v. Modern Indus. Heating, Inc.*, 722 S.W.2d 149, 151 & n.2 (Tex. App. _Dallas 1986, no writ). Rather, a docket sheet entry is a memorandum made for the convenience of the trial court and clerk. *Energo Int'l Corp.*, 722 S.W.2d at 151.

(See also *Ex Parte Wisdom Ukachukwu Amanze*, No. 05-16-00579-CR, Court of Appeals of Texas, Fifth District, (05/19/2016).)

57. William M. Windsor asks this Court to order that letters from judges or staff members of judges have no validity under Texas law, and order that Judge Cindy Ermatinger must issue all commands as written orders.

58. In addition, William M. Windsor asks this Court to order that docket entries have no validity under Texas law, and Judge Cindy Ermatinger should must issue all commands as written orders.

59. On June 23, 2016, while this Petition is pending, Judge Cindy Ermatinger purports to have scheduled more hearings by letter and is stating that William M. Windsor must attend the hearings in person. [Appendix-9.]

ISSUE #4: ISSUE #4: IS A TRIAL COURT JUDGE DENIED THE AUTHORITY TO SET HEARINGS AND TRIAL DATES WHILE A MOTION FOR RECUSAL IS PENDING? YES. JUDGE CINDY ERMATINGER MUST NOT BE ALLOWED TO SCHEDULE HEARINGS AND A TRIAL WHILE A MOTION FOR RECUSAL IS PENDING

60. Judge Cindy Ermatinger must not be allowed to schedule a hearing and a trial while a motion for recusal is pending.

61. On June 3, 2016, William M. Windsor sent a Motion for Recusal of Judge Cindy Ermatinger to the Clerk of the Court for filing. This is pending before the Presiding Judge.

62. On June 22, 2016 at 1:20 pm CDT, William M. Windsor filed a Motion to recuse Keith Dean, the mediator named to consider the recusal. [Appendix-7.]

63. On June 22, 2016 at 1:24 pm CDT, William M. Windsor filed a Motion to recuse Judge Mary Murphy. [Appendix-8.]

64. There has been no ruling on the motions for recusal.

65. TRCP Rule 18a (f) (2) (A) states:

“Motion Filed Before Evidence Offered at Trial. If a motion is filed before evidence has been offered at trial, the respondent judge must take no further

action in the case until the motion has been decided, except for good cause stated in writing or on the record.”

66. TRCP Rule 18a (g) (1) states:

“Motion. The regional presiding judge must rule on a referred motion or assign a judge to rule. If a party files a motion to recuse or disqualify the regional presiding judge, the regional presiding judge may still assign a judge to rule on the original, referred motion. Alternatively, the regional presiding judge may sign and file with the clerk an order referring the second motion to the Chief Justice for consideration.”

67. On June 23, 2016, Judge Cindy Ermatinger filed a letter in Case #90744 purporting to set all matters except summary judgment motions for hearing on June 28, 2016; to set summary judgment motions for hearing on July 14, 2016; and set the trial for August 9, 2016. [Appendix-9.]

68. Despite the very clear Rules, Judge Cindy Ermatinger has violated TRCP Rule 18a (f) (2) (A) by taking action in the case by filing and distributing a letter that purports to set hearings and a trial date.

69. This Court must stop Judge Cindy Ermatinger.

ISSUE #5: IF A JUDGE SETS MOTIONS FOR HEARINGS, MUST THOSE SETTINGS BE TIMED SO THEY DO NOT EFFECTIVELY DENY THE RELIEF REQUESTED? YES. JUDGE CINDY ERMATINGER MUST BE STOPPED FROM SETTING HEARING DATES THAT EFFECTIVELY OVERRULE THE MOTIONS WITHOUT CONSIDERATION.

70. There has never even been an initial hearing or a pre-trial conference in this case.

71. This Court is attempting to schedule hearings that deny William M. Windsor due process, discovery, and rights granted under the Texas Rules of Civil Procedure. This Court has violated numerous rules and has no authority for its actions. The hearings allegedly scheduled by a letter dated June 23, 2016 must be cancelled.

72. William M. Windsor cannot attend any hearings in Texas in person. He is currently undergoing many medical tests as he is quite ill. The Court is well aware of this.

73. The scheduled hearings on June 28, 2016 violate William M. Windsor's rights pursuant to TRCP Rule 166a. Texas Rules of Civil Procedure ("TRCP") Rule 166a provides:

(d) Appendices, References and Other Use of Discovery Not Otherwise on File. Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

74. William M. Windsor has motions pending before the Court that must be decided BEFORE any hearing on summary judgment because they involve evidence gathering to be used to support William M. Windsor's motion for summary judgment and defense against the State's motion for summary judgment.

These motions include: Motion for Judicial Notice, Motion for Depositions by Telephone, Motion for Participation by Telephone, Motion to Compel Clerk to Provide Documents, Motion for Approval to Supplement Record, Motion to Have Motions Decided Without Hearing, Demand for Orders, Motion for Judicial Notice, Motion for Judicial Notice, Motion for Judicial Notice, Notice of Intent to File Summary Judgment Proof, Notice of Intent to File Summary Judgment Proof, Notice of Intent to File Summary Judgment Proof, Notice of Intent to File Summary Judgment Proof, Notice of Intent to File Summary Judgment Proof, Motion for Sanctions and Criminal Charges against Assistant Ellis County Texas District Attorney Ann Montgomery-Moran and the State of Texas, Motion for Sanctions and Criminal Charges against Cheri Lujan and the State of Texas, Motion for Sanctions and Criminal Charges against James Cook and the State of Texas, Motion for Sanctions and Criminal Charges against Johnny Brown and the State of Texas, Motion for Sanctions and Criminal Charges against Tabitha Smith and the State of Texas, Motion for Sanctions and Criminal Charges against Terry Ogden and the State of Texas, Motion for Investigator, Motion to Authorize Depositions, Motion to Compel and Motion for Sanctions.

75. Judge Cindy Ermatinger's letters outrageously say William M. Windsor's attendance at hearings is REQUIRED. There is no oral testimony at a summary judgment hearing, so there is no basis for William M. Windsor to be

REQUIRED to attend in person.

76. Texas Rules of Civil Procedure Rule 166a provides:

(c) Motion and Proceedings Thereon. The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. **No oral testimony shall be received at the hearing.** The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted. [**emphasis added.**]

77. William M. Windsor has filed a motion to have all of his motions decided without hearing. His motions and verifications/affidavits in support present his arguments and evidence in full. His motions specifically are not requests for evidentiary hearings.

78. William M. Windsor is located at least three days drive from Ellis County Texas by car, and he cannot afford to fly; he is afraid to fly; and he cannot

afford to drive and stay in hotels.

79. William M. Windsor is experiencing serious medical problems. He recently had emergency abdominal surgery. He has had complications from the surgery as well as new problems. He has difficulty walking; he has blurriness in his left eye that could be a problem with a lens implanted during cataract surgery; he has swelling in his feet and ankles as well as pain that had medical personnel concerned about a blood clot or vascular problems; his incisions are still red, and he experiences significant pain if there is any pressure on his abdomen; he has real difficulty walking with severe muscle pain in his calves as well as pain in his hips and back; he has multiple problems related to an enlarged prostate; and he has insomnia. He underwent an intensive screening process by the Mayo Clinic, and he is now going through a battery of tests and examinations. His next procedure is a Bone Density Scan on June 27, 2016 at 3:30 pm.

80. William M. Windsor feels his life at risk coming into Ellis County where he has recently received multiple threats of death or bodily harm. (See www.joeyisalittlekid.blogspot.com.) William M. Windsor's last court visit in Ellis County found him unlawfully incarcerated for 53 days, and a host of crimes and violations of Constitutional rights were committed against him. He believes being REQUIRED to attend an unnecessary hearing is clearly a set-up. Upon information and belief, Ellis County Texas District Attorney, Patrick Wilson,

wants to have him arrested on bogus charges. Upon information and belief, Judge Cindy Ermatinger is conspiring with the Ellis County District Attorney's Office in this regard. William M. Windsor asked the Ellis County District Attorney's Office to advise if they will quash the indictment, if there is a warrant for him in Ellis County, and if the plan is to have him arrested when he shows up in Ellis County. There was no response.

ISSUE #6: MUST WILLIAM M. WINDSOR BE GIVEN THE OPPORTUNITY TO HAVE A PUBLIC DEFENDER IN CASE #90744 BEFORE ANY FURTHER ACTION IS TAKEN IN THE CASE? YES. WILLIAM M. WINDSOR'S REQUEST FOR A PUBLIC DEFENDER MUST BE ADDRESSED BEFORE ANYTHING ELSE IS DONE IN CASE #90744.

81. William M. Windsor filed an Emergency Motion to Name a Public Defender in Case #90744 pursuant to the Texas Code of Criminal Procedure, Texas Penal Code, Texas Constitution, and U.S. Constitution.

82. William M. Windsor was never served with a Citation in this criminal matter, and he has never filed an Answer. He was never given the opportunity to have a public defender named. The right to be represented by counsel is an absolute.

83. William M. Windsor is indigent, and he needs the opportunity to have a public defender represent him.

84. A bond forfeiture case is a criminal case. All bond forfeiture cases

follow the criminal judicial process, including appeal to the Court of Criminal Appeals.

85. Both the Texas Supreme Court and the Court of Criminal Appeals have held that an appeal from a bail bond forfeiture is a criminal case that is within the jurisdiction of the Court of Criminal Appeals as established by article V, section 5 of the Texas Constitution. *See Jeter v. State*, 26 S.W. 49, 49 (Tex. 1894); *Ex parte Burr*, 185 S.W.3d 451, 452-53 (Tex. Crim. App. 2006); *see also Tex. Const. art. V, § 5(a)*. (*Texas Attorney General Opinion*, Opinion No. GA-0486, (11/21/2006).)

86. Ellis County is SUPPOSED to have a published procedure for appointing counsel, but William M. Windsor cannot find anything online, and his inquiries to Judge Cindy Ermatinger, Judge Bob Carroll, Presiding Judge Mary Murphy, and the Clerk of the Court have been unanswered.

Art. 26.04. PROCEDURES FOR APPOINTING COUNSEL. (a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 15.18, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i).

87. William M. Windsor should have been automatically offered a public defender on December 30, 2014, but he was not.

88. The denial of William M. Windsor’s request to consult an attorney was a violation of his Fourteenth Amendment due process rights. This also violates Article 1 Section 10 of the Texas Constitution: “RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor....”

89. This Court must not allow anything further to be done in Case #90744 without William M. Windsor being given the opportunity to have a public defender represent him.

PRAYER

WHEREFORE, William M. Windsor prays that this Court:

- a. grant this Petition;
- b. order that Judge Cindy Ermatinger may not take actions in Case #90744 while the recusal matter is pending;
- c. order the judge assigned to Case #90744 after recusal is dealt with to assign a public defender to represent William M. Windsor;
- d. order the judge assigned to Case #90744 after recusal is dealt with to issue orders with findings of fact and conclusions of law on all pending orders;
- e. order the judge assigned to Case #90744 after recusal is dealt with to deal with motions promptly in the future;

- f. order the judge assigned to Case #90744 after recusal is dealt with to conduct hearings by telephone without requiring William M. Windsor to be present in the courtroom;
- g. order the judge to conduct the Summary Judgment hearings by telephone;
- h. order Judge Cindy Ermatinger to rule on all dispositive motions promptly and not later than three months after they are filed;
- i. order Judge Cindy Ermatinger to conduct pretrial conferences;
- j. order Judge Cindy Ermatinger to use the telephone or mail in lieu of personal appearance by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates;
- k. order that letters from staff members of judges have no validity under Texas law, and Judge Cindy Ermatinger should must issue all commands as written orders;
- l. order that docket entries have no validity under Texas law, and Judge Cindy Ermatinger should must issue all commands as written orders;
- m. if this Court has the authority to do so, order the Bond and Judgment NISI void; and
- n. grant any other relief that this Court deems just and proper.

Submitted this 23rd day of June 2016,



William M. Windsor

110 E Center Street #1213, Madison, South Dakota 57042, 770-578-1094,
bill@billwindsor.com

CERTIFICATION

I hereby certify that I have reviewed the Petition for Writ of Mandamus, and every factual statement in the Petition is supported by competent evidence included in the appendix or record.

Signed this 23rd day of June 2016,



William M. Windsor

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this First Amended

Petition for Writ of Mandamus by email and mail:

Judge Cindy Ermatinger, 443rd District Court, 109 S. Jackson Street,
Waxahachie, Texas 75165

Ellis County District Attorney Patrick Wilson, 109 S. Jackson Street,
Waxahachie, Texas 75165

Assistant Ellis County District Attorney Ms. M. Ann Montgomery-Moran,
109 S. Jackson Street, Waxahachie, Texas 75165

Signed this 23rd day of June 2016,



William M. Windsor

110 E Center Street #1213, Madison, South Dakota 57042, 770-578-1094,
bill@billwindsor.com

APPENDIX

1. Judgment NISI.
2. Motion to Dismiss.
3. March 14, 2016 Order.
4. Demand for Orders.

5. Request for a Court-appointed Attorney
6. June 10, 2016 Letter from Olivia Tucker
7. Proof of Filing Motion to Recuse Keith Dean
8. Proof of Filing Motion to Recuse Judge Mary Murphy
9. June 23, 2016 Letter from Judge Cindy Ermatinger filed in Case #90744