

PUTTIN' ON THE WRITS
Writs of Mandamus in Texas

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When the world has once begun to use us ill, it afterwards continues the same treatment with less scruple or ceremony. . . . JONATHAN SWIFT,
Thoughts on Various Subjects (1711).

I. INTRODUCTION

A litigant loses a crucial ruling in the trial court. Ordinarily, an interlocutory appeal is not available.¹ The litigant thinks “mandamus.” If you’re in that position, you might think again. You’re probably going to lose if you file a petition for writ of mandamus. In law, as in life, the general rule prevails: Lose once, lose again quickly and often without ceremony or explanation. *See, e.g., In re Silver Inspection Serv., Inc.*, 2002 WL 31488216 (Tex. App. – Houston [14th Dist.] 2002, orig. proceeding) (no publication). Despite the harsh rule, litigants keep puttin’ on the writs.

In the 2001 fiscal year, the Texas Supreme Court disposed of 246 petitions for writ of mandamus. ANNUAL REPORT OF THE TEXAS JUDICIAL SYSTEM, FISCAL YEAR 2001, Office of Court Administration, 25th Annual Report, Texas Judicial Council, 73rd Annual Report, p. 24. The court granted only 7 (2.8%) of those petitions. *See id.* The percentages are not much better in the two Houston courts of appeals. *See* section XI, *infra*. The odds, obviously, are not great, but hope springs eternal and mandamus filings continue to increase.

Mandamus is intended to be an extraordinary remedy, available only in limited circumstances. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). Nonetheless, it has become, literally, an everyday request in the Houston Courts of Appeals. In this calendar year, hopeful relators filed 272 petitions in the First and Fourteenth Courts of Appeals by November 18th. Interview with Chief Deputy Clerk, Charlene Mitchell, 14th Court of Appeals, Nov. 18, 2002.²

Because mandamus is an often-filed proceeding, a knowledge of mandamus procedure is essential for the Texas practitioner. The scope of this paper is limited. The paper addresses only briefly the substantive

¹ *See* TEX. CIV. PRAC. & REM. CODE § 51.014. Texas allows interlocutory appeals from a district court, county court at law, or county court that: (1) appoints a receiver or trustee; (2) overrules a motion to vacate an order that appoints a receiver or trustee; (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure; (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction; (5) denies a motion for summary judgment that is based on a n assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state; (6) denies a motion for summary judgment that is based in whole or in party upon a claim against of defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution or Article I Section 8, of the Texas Constitution; (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code; or (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is denied in Section 101.001. *Id.*

² Litigators submitted 26 mandamus actions to the Fourteenth Court of Appeals in 1984 and 67 mandamus actions in the first nine months of 1989. *See* Helen A. Cassidy, *The Instant Freeze-Dried Guide to Mandamus Procedure in Texas Court*, 31 S. TEX. L. REV. 413 (1990). Compare those figures to 136 in 10 1/2 months in 2002.

law of mandamus. Instead, it focuses on the procedural steps necessary to secure immediate review of adverse civil trial court rulings by filing a petition for writ of mandamus in an appellate court.

II. THE BASIC ELEMENTS FOR MANDAMUS RELIEF

To obtain mandamus relief, a relator must show the respondent abused its discretion and that there is no other adequate legal remedy.

A. Clear Abuse of Discretion

An appellate court will not grant mandamus relief unless the petitioner demonstrates a clear abuse of discretion. *Walker*, 827 S.W.2d at 839.

1. The standard

“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.’ ” *Id.* citing *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex.1985) (orig. proceeding). The court determines whether “the trial court’s error is so arbitrary, unreasonable, or based on so gross and prejudicial an error of law as to establish abuse of discretion. A mere error in judgment is not an abuse of discretion.” *Johnson*, 700 S.W.2d at 918.

2. No disputed facts

When the trial court’s decision rests on the resolution of factual issues or matters committed to the court’s discretion, “[t]he relator must establish that the trial court could reasonably have reached only one decision. *In re China Oil and Gas Pipeline Bureau*, — S.W.3d —, 2002 WL 1957381 *4 (Tex. App. – Houston [14th Dist.] 2002, orig. proceeding) (not yet released for publication) (quoting *Walker*, 827 S.W.2d at 839-40). If a trial court has held an evidentiary hearing and has resolved disputed issues of fact, an appellate court may not substitute its judgment on the facts for the judgment of the trial court. *Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655, 660 (Tex. 1992) (orig. proceeding). In other words, don’t take a mandamus if the facts are disputed. *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 60 (Tex. 1991) (orig. proceeding); *In re China Oil*, 2002 WL 1957381at *4.

3. Error of law

As to questions of law, however, the trial court is given little deference in matters involving the determination of legal principles. *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 437 (Tex. 1997) (orig. proceeding). If a trial court does not analyze or apply the law correctly, it commits an abuse of discretion. *Id.* Indeed, a lower court’s legal conclusion, based correctly on existing precedent, can be an abuse of discretion if the reviewing court decides to reconsider or clarify the precedent. *In re Smith Barney, Inc.*, 975 S.W.2d 593, 598-99 (Tex. 1998) (orig. proceeding).

B. No Adequate Remedy at Law

A writ of mandamus will issue "only to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law." Appellate courts have long recognized that they may not issue mandamus relief when the law provides another plain, adequate, and complete remedy. *Iley v. Hughes*, 158 Tex. 362, 311 S.W.2d 648, 652 (Tex.1958). The requirement that a person seeking mandamus relief establish the lack of an adequate appellate remedy is a "fundamental tenet" of mandamus practice. *Walker*, 827 S.W.2d at 840.

As the supreme court has repeatedly stated, An appellate remedy is not inadequate merely because it may involve more expense or delay than obtaining mandamus relief. *CSR Ltd. v. Link*, 925 S.W.2d 591, 596

(Tex.1996); *Walker*, 827 S.W.2d at 842. Because mandamus is an extraordinary remedy, appellate courts may not issue mandamus to supervise or correct a trial court's incidental rulings when there is an adequate remedy at law, such as a normal appeal. *See Canadian Helicopters, Ltd. v. Wittig*, 876 S.W.2d 304, 306 (Tex.1994); *Walker*, 827 S.W.2d at 839-40.

III. MANDAMUS JURISDICTION

Texas appellate courts derive their jurisdiction from the Texas Constitution and from statutes.

A. Courts of Appeals

The Texas Constitution and the Government Code confer on the courts of appeals the power to issue writs to protect their jurisdiction. TEX. CONST. art. V, § 6; TEX. GOV'T CODE § 22.221(a). Additionally, the courts of appeals may issue all writs of mandamus against a judge of a district or county court in the court of appeals district or the judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district. TEX. GOV'T CODE § 22.221(b). You may not seek to mandamus another person under this provision. Other than district and county judges, the courts of appeals do not have mandamus jurisdiction over other persons except to enforce their jurisdiction. TEX. GOV'T CODE § 22.221(a); *In re Bernard*, 993 S.W.2d 453, 454 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding). For instance, the courts of appeals have no mandamus jurisdiction over an associate judge, *Weldon v. Fritz*, 750 S.W.2d 930, 932 (Tex. App. – Corpus Christi 1988 orig. proceeding), a district clerk, *In re Strickhausen*, 994 S.W.2d 936, 936 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding), or a county district attorney, *In re Jackson*, 2002 WL 1586283 *1 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding).

B. Supreme Court

The Texas supreme court also derives its mandamus power from the Constitution and statute. The Constitution confers mandamus power on the supreme court to enforce its jurisdiction and also gives the legislature power to determine other supreme court mandamus jurisdiction. TEX. CONST. art. V § 3. The Government Code empowers the supreme court with authority to issue writs of mandamus against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of the court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals. TEX. GOV'T CODE § 22.002(a). Other than the persons named, the supreme court may not mandamus other persons except to enforce its jurisdiction. TEX. CONST. art. V § 3.

C. Election Mandamuses

Both the supreme court and the courts of appeals “may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.” TEX. ELEC. CODE § 273.061. The Election Code further provides that a rule on electoral affairs is enforceable by writ of mandamus in the same manner as if the rule were a statute. *Id.* at § 163.007.

IV. VENUE

Generally, a person seeking a writ of mandamus must first file in the court of appeals rather than in the supreme court. TEX. R. APP. P. 52.3(e). Some mandamus proceedings, of course, can only be filed in the supreme court, *e.g.*, a petition against a state executive officer. TEX. GOV'T CODE § 22.002(b) and (c).

When the courts of appeals and the supreme court have concurrent jurisdiction, there must be a compelling reason for first filing in the supreme court. TEX. R. APP. P. 52.3(e).

A. Courts of Appeals – General Mandamus Power

A court of appeals has general mandamus jurisdiction only over district or county judges in the court of appeals' district. TEX. GOV'T CODE § 22.221(b). If a petitioner is bringing a mandamus petition against a district or county judge in the 1st or 14th court of appeals district, the petitioner may file with either court and the petition is assigned on a rotating basis (Brazos County is an exception and a relator seeking mandamus relief against a district or county judge in Brazos County may also file in the 10th Court of Appeals.). TEX. GOV'T CODE § 22.201. For other counties that fall in more than one court of appeals' district, the petitioner may choose the forum.

Other than the 14 counties in the 1st and 14th courts of appeals district, nine other counties fall in more than one district. TEX. GOV'T CODE § 22.201. Gregg, Hopkins, Panola, Rusk, Upshur, and Wood counties fall in the 6th and 12th courts of appeals. Hunt county falls in the 5th and 6th courts of appeals. Kaufman and Van Zandt counties fall in the 5th and 12th courts of appeals.

B. Election Mandamus

A mandamus pertaining to an election must first be filed with the appropriate court of appeals. TEX. ELEC. CODE § 273.063. The particular venue provisions for election mandamus are in the Election Code. *Id.*

C. Court Unable to Act

If a court of appeals cannot take immediate action because it is unable to assemble a panel to act on a petition because members of the court are ill, absent, or unavailable, then relator must file the petition in the nearest court of appeals. TEX. R. APP. P. 17. A judge who is recused or unqualified is unavailable. *Id.* The nearest court of appeals is the one whose courthouse is nearest – measured by a straight line – to the courthouse of the trial court. *Id.*

V. WHEN TO FILE

Relator should file a writ of mandamus as soon as possible after an adverse ruling. Explain any delay in filing. Mandamus is based on equitable principles and lack of diligence can be fatal. *Rivercenter Assoc. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (orig. proceeding); *but see In re Delta Homes, Inc.*, 5 S.W.3d 237, 240 (Tex. App.– Tyler 1999, orig. proceeding).

VI. WHAT TO FILE

Rule 52 of the Rules of Appellate Procedure contains the requirements for filing a writ of mandamus in the supreme court and in the courts of appeals. TEX. R. APP. P. 52. Where the requirements differ, this paper will note the difference.

A. The Petition

Rule 52 sets out the style of an original proceeding and the form and the contents of the petition. Follow the rule carefully. The courts are not lenient with form and contents and require compliance with other rules of appellate procedure. *E.g., In re Jones*, 2002 WL 1980883 *1 (Tex. App. – Houston [1st Dist.]

2002, orig. proceeding)(no publication) (denying relief and noting non-compliance with rules 9.5 [service of documents], 20.1 [indigent party], 52.2 [designation of parties], 52.3 [form and contents of petition], and 52.7 [requirement of record]).

1. The Style and Parties

The petition must be captioned “*In re* [name of relator].” TEX. R. APP. P. 52.1. The party seeking the relief is the relator. TEX. R. APP. P. 52.2. The person against whom relief is sought is the respondent. *Id.* A person whose interest would be directly affected by the relief sought is a real party in interest. *Id.*

2. Form and Contents of Petition

All factual statements in the petition must be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated. TEX. R. APP. P. 52.3. The petition must, under appropriate headings and in the following order, contain: *Id.*

a. Identity of Parties and Counsel

List all parties and the names and addresses of all counsel. TEX. R. APP. P. 52.3(a). Listing phone numbers, fax numbers, and e-mail addresses of counsel is a great help to the court, especially if the proceeding is an emergency. Counsel for the real party in interest customarily represents the respondent judge.

b. Table of Contents

The petition must contain a table of contents with references to the pages of the petition. TEX. R. APP. P. 52.3(b). The table of contents must indicate the subject matter of each issue or point, or group of issues or points. *Id.*

c. Index of Authorities

The petition must include an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited. TEX. R. APP. P. 52.3(c).

d. Statement of the Case

The statement of the case should not exceed one page and should not discuss the facts. TEX. R. APP. P. 52.3(d). The statement must contain the following information: (1) a concise description of the nature of the underlying proceeding; (2) information about the respondent, the name of the judge, the court in which the judge is sitting, and the county in which the court is located; and (3) a concise description of the respondent’s action from which the relator seeks relief. *Id.*

EXAMPLE

The following format is an especially succinct method for statement of the case:

<i>Underlying Proceeding</i>	Discovery dispute in a personal injury and wrongful death case filed by relator, Polly Plaintiff, against the real party in interest, Mean Old Corporation.
<i>Respondent</i>	The Honorable Jane Jones, Judge, 700th Judicial District, Cassidy County, Texas

Order from which Relief is Sought

Order denying motion to compel production of privileged documents signed November 22, 2002. (App., tab 1).

e. Statement of Jurisdiction

State, without argument, the basis of the court's jurisdiction. TEX. R. APP. P. 52.3(e).

PRACTICE TIP

If the petition is filed in the supreme court without first being presented to the court of appeals, the petition must state the compelling reason the petition was not first presented to the court of appeals. *Id.*

EXAMPLE IN COURT OF APPEALS: This Court has jurisdiction to hear this original proceeding under Texas Government Code section 22.221(b).

EXAMPLE IN SUPREME COURT: This Court has jurisdiction to hear this original proceeding under Texas Government Code section 22.002(a). This petition was first presented to the Honorable 14th Court of Appeals on November 10, 2002. The court of appeals denied the petition on November 20, 2002. App., tab 2.

f. Issues Presented

The petition must state concisely all issues or points presented for relief. TEX. R. APP. P. 52.3(f). The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. *Id.*

EXAMPLE:

Did respondent abuse his discretion by reinstating a case more than 30 days after a judgment of dismissal based on an unverified motion to reinstate?

g. Statement of Facts

The petition must state concisely and without argument the facts pertinent to the issues or points presented. TEX. R. APP. P. 52.3(g). The statement must be supported by references to the appendix or the record. Remember, the facts should not be disputed. *See* section xxx, *supra*.

h. Argument

The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the appendix or record. TEX. R. APP. P. 52.3(h). Demonstrate why mandamus relief is proper. Show that respondent abused its discretion and there is no adequate remedy at law. *Walker v. Packer*, 837 S.W.2d at 839. If the complaint is about the failure to act, show that there is a legal duty to perform a non-discretionary act, there was a demand for performance, and a refusal to act. *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App. – Houston [1st Dist.] 1992, orig. proceeding).

PRACTICE TIP

Although the supreme court indicated in *Walker v. Packer* that a relator seeking mandamus relief in the supreme court must establish that mandamus relief is appropriate because the error of the lower court is so important to the jurisprudence of the state that it requires correction, the court has never reiterated that standard in a subsequent mandamus proceeding. 837 S.W.2d at 839 n. 7.

i. Prayer

The petition must contain a short conclusion that clearly states the nature of the relief sought. TEX. R. APP. P. 52.3(i).

EXAMPLE:

Respondent dismissed a case for want of prosecution. The real party in interest filed an unverified motion to reinstate, which does not extend the plenary power of the trial court. Respondent then reinstated the case more than 30 days after the judgment of dismissal. Because the respondent had no plenary power, the order of reinstatement was void.

For these reasons, this Court should issue a writ of mandamus directed to the Honorable Jane Doe commanding her to vacate her order of reinstatement and grant relator all other relief to which she may be entitled.

j. Appendix

The appendix must contain a certified or sworn copy of any order upon which relief is requested, or any other document showing the matter under complaint. TEX. R. APP. P. 52.3(j). The appendix must also contain, unless voluminous or impracticable, the text of any rule, regulation, ordinance, statute, constitutional provision or other law (excluding case law) on which the argument is based. *Id.*

PRACTICE TIP

In the supreme court, the appendix must contain any order or opinion of the court of appeals. *Id.*

The appendix may also contain copies or excerpts of relevant court opinion, documents on which the suit was based, pleadings and similar materials. *Id.* The appendix should not contain any evidence that is not necessary for a decision. *Id.*

The judges may carry the petition with them. Try not to make the appendix too large. In most cases, the petition and appendix can be bound together with appropriate tabs for the documents in the appendix.

PRACTICE TIP

The petition is limited to 50 pages in the courts of appeals and 15 pages in the supreme court. Relator must file an original and three copies in the court of appeals and the original and 11 copies in the supreme court. The filing fee is \$75.00.

B. The Record

Relator must file with the petition a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding and a properly authenticated transcript of any relevant testimony from any underlying proceeding, including exhibits offered in evidence or a statement that no testimony was adduced in connection with the matter. TEX. R. APP. P. 52.7. Failing to file a complete record can be fatal. *Johnson v. Hughes*, 663 S.W.2d 11, 12 (Tex. App. – Houston [1st Dist.] 1983, orig. proceeding). In the absence of the transcript of an evidentiary hearing, the appellate court will assume that the evidence supported the ruling of the trial court. *Levi Strauss & Co. v. Ferguson*, 762 S.W.2d 310, 312 (Tex. App.– El Paso 1988, orig. proceeding).

C. Response

A response is not mandatory. The court may not grant relief, other than temporary relief, unless a response has been requested or received by the court. TEX. R. APP. P. 52.4.

PRACTICE TIP

**Take the opportunity to dispute the facts if you can.
Mandamus usually does not lie when the facts are disputed.**

The response must follow the requirements of Rule 52.3, except that the list of parties and counsel is not necessary if accurate in relator's petition. *Id.* The response need not contain the statement of the case, the statement of the issues presented, or a statement of the facts, unless the responding party is dissatisfied with that portion of the petition. *Id.*

If the petition does not properly state a basis for jurisdiction, concisely note the lack of jurisdiction. *Id.* The argument is limited to the issues or points presented in the petition, although the responding party may rephrase the issues or points and the appendix need not contain any item included in the relator's appendix. *Id.*

PRACTICE TIP

The response is limited to 50 pages in the courts of appeals and 15 pages in the supreme court. TEX. R. APP. P. 52.6

D. Relator's Reply to Response

The relator may file a reply to an matter in the response. TEX. R. APP. P. 52.5. The court, however, may consider and decide the case before a reply brief is filed. *Id.*

PRACTICE TIP
The reply is limited to 8 pages in the courts of appeals and the supreme court. TEX. R. APP. P. 52.6.

VII. ACTION ON PETITION

The court may deny the petition with or without a response. TEX. R. APP. P. 52.8. The court, however, may not grant mandamus relief unless a response has been filed or requested. TEX. R. APP. P. 52.4. The supreme court may request full briefing. TEX. R. APP. P. 52.8.

The court may grant relief without oral argument. *Id.* When denying relief, the court is not required to issue an opinion. *Id.* When granting relief, however, the court must issue an opinion. *Id.*

VIII. MOTION FOR REHEARING

Any party may file a motion for rehearing within 15 days after the final order of the appellate court. TEX. R. APP. P. 52.9. No response need be filed unless the court requests one. *Id.* The court will not grant a motion for rehearing unless a response has been requested or filed. *Id.*

PRACTICE TIP
A motion for rehearing must be no longer than 15 pages. *Id.*

IX. TEMPORARY RELIEF

The relator may file a motion to stay any underlying proceedings or for any other temporary relief pending the court's action on the petition. TEX. R. APP. P. 52.10. The relator must certify to the court that it has notified or made a diligent effort to notify all parties by expedited means (such as phone or fax) that a motion for temporary relief has been or will be filed. *Id.*

A bond may be required to protect the parties affected by the temporary relief. *Id.* The court may grant temporary relief on its own motion. *Id.* Unless vacated or modified, an order granting temporary relief is effective until the case is finally decided. *Id.* Any party may move to reconsider the grant of temporary relief. *Id.*

PRACTICE TIP
Make the urgent nature of the temporary relief plain. A separate motion will more likely be noticed and given immediate attention. Always tell the clerk there is a request for emergency relief.

X. SANCTIONS

On motion of any party or on its own initiative, the court may – after notice and a reasonable opportunity to respond – impose sanctions on a party or attorney who is not acting in good faith as indicated by any of the following: (a) filing a petition that is clearly groundless; (b) bringing the petition only for delay of an underlying proceeding; (c) grossly misstating or omitting an obviously important and material fact in the petition or response; or (d) filing an appendix or record that is clearly misleading because of the omission of obviously important and material evidence or documents. TEX. R. APP. P. 52.11; *In re Guevara*, 41 S.W.3d 169, 174 (Tex. App. – San Antonio 2001, orig. proceeding) (imposing fine on attorney); *In re Cotton*, 972 S.W.2d 768, 770 (Tex. App. – Corpus Christi 1998, orig. proceeding) (same).

XI. OPTIONS FOR THE LOSER IN THE COURT OF APPEALS

Although there is no right to appeal a mandamus ruling by a court of appeals, the law does allow further review. A court of appeals acts abuses its discretion when it acts in excess of its writ power by granting mandamus relief when the trial court has not committed an abuse of discretion. *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917-18 (Tex. 1985). If the court of appeals grants mandamus, the respondent may then challenge its ruling by filing a petition for writ of mandamus against the court of appeals in the supreme court. If the court of appeals declines to issue a mandamus, the court has not abused its discretion. The relator may then file a petition for writ of mandamus against the original respondent in the supreme court.

XI. ANSWERED MANDAMUS PRAYERS

Mandamus is a tough proceeding and few succeed. On November 18, 2002, 272 relators prayed for mandamus relief in the First and Fourteenth Courts of Appeals. The courts granted only 13 of those prayers or 4.7%.³ The following is a list of the successful petitions:

- Respondent granted motion to compel arbitration under Texas Arbitration Act. *Mohamed v .Auto Nation USA Corp.*, --- S.W.3d ----, 2002WL 31429859 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding)(not yet released for publication).⁴

- Respondent denied motion to compel arbitration under the Federal Arbitration Act. *In re Tenet Healthcare, Ltd.*, 84 S.W.3d (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding); *In re Kellogg Brown & Root*, 80 S.W.3d 611 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding).

- Respondent appointed mediator of child custody dispute as arbitrator of property dispute. *In re Cartwright*, — S.W.3d —, 2002 WL 501595 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding)(not yet released for publication).

³ Obviously, not all mandamus proceedings that were filed in 2002 have been ruled on and some of the 13 granted were filed in 2001, but don't bet on the percentage changing significantly.

⁴ The proceeding was filed as an interlocutory appeal and as a mandamus; thus, the appellate style. Before the revisions of the appellate rules in 1997, mandamus petitions were styled *Relator v. Respondent*. Judges evidently got tired of seeing their names as defendants in legal proceedings.

- Respondent granted order to compel discovery of privileged documents. *In re Carbo Ceramics, Inc.*, 81 S.W.3d 369 (Tex. App. – Houston [14th Dist.] 2002, orig. proceeding).
- Respondent denied nonsuit and then entered injunction. *In re Simpson*, (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding).
- Respondent ordered witness in criminal proceeding to undergo psychological examination, beyond the scope of statute. *In re State ex. rel. Robinson*, — S.W.3d —, 2002 WL 1438773, (Tex. App. – Houston [14th Dist.] 2002, orig. proceeding)(not yet released for publication).
- Respondent acted outside plenary jurisdiction. *In re Luster*, 77 S.W.3d 331 (Tex. App. – Houston [14th Dist.] 2002, orig. proceeding); *In re Strickland*, 2002 WL 58482 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding)(no publication).
- Respondent, political party official, refused to remove candidate’s name from primary ballot. *In re Triantaphyllis*, 68 S.W.3d 861 (Tex. App. – Houston [14th Dist.] 2002, orig. proceeding).
- Respondent sanctioned attorney without notice or hearing. *In re Overton*, 2002 WL 1822140 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding) (no publication).
- Respondent denied motion to dismiss based on a finding that a corporation owned by a foreign state has waived its immunity under the Federal Sovereign Immunities Act. *In re China Oil and Gas Pipeline Bureau*, — S.W.3d —, 2002 WL 1957381 (Tex. App. – Houston [14th Dist.] orig. proceeding) (not yet released for publication).
- Respondent denied father’s writ of habeas corpus for child and refused to enter appropriate temporary custody orders. *In re Lau*, 2002 WL 31388914 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding) (no publication).

XII. CONCLUSION

Before thinking “mandamus,” consider the expenses and the impact of the filing on future proceedings before the respondent. If you then decide to take the risk against the difficult odds, remember that success with a petition for mandamus requires strict adherence to the facts and to the procedural requirements. Puttin’ on a successful writ ain’t easy.