



NUMBER 13-09-00427-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE MAURICIO CELIS

**On Petition for Writ of Mandamus
and/or Writ of Prohibition.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Garza and Vela
Per Curiam Memorandum Opinion¹**

Relator, Mauricio Celis, filed an "Emergency Application for Leave to File an Original Petition for Writ of Mandamus and/or Writ of Prohibition and Original Petition for Writ of Mandamus and/or Writ of Prohibition and Motion for Temporary Relief"² in the above cause on July 24, 2009, complaining that the respondent, the Honorable Louis Sturns, abused

¹ See TEX. R. APP. P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not required to do so."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

² We dismiss relator's application for leave to file the petition for writ of mandamus and/or writ of prohibition as moot. The Texas Rules of Appellate Procedure no longer require the relator to file a motion or application for leave in an original proceeding. See generally TEX. R. APP. P. 52, cmt. to 1997 revision.

his discretion in granting a motion to recuse the Honorable J. Manuel Bañales from presiding over two of relator's cases.

Mandamus relief may be granted if the relator shows that: (1) the act sought to be compelled is purely ministerial; and (2) there is no adequate remedy at law. See *Deleon v. Dist. Clerk*, 187 S.W.3d 473, 474 (Tex. Crim. App. 2006) (orig. proceeding). The relator must have a "clear right" to the relief sought and the merits of the relief sought must be "beyond dispute." See *id.* "The requirement of a clear legal right necessitates that the law plainly describes the duty to be performed such that there is no room for the exercise of discretion." See *id.*

The Court, having examined and fully considered the petition for writ of mandamus and/or writ of prohibition, is of the opinion that relator has not shown himself entitled to the relief sought. See TEX. R. CIV. P. 18a(f); *De Leon v. Aguilar*, 127 S.W.3d 1, 5 (Tex. Crim. App. 2004); *In re Lutz*, 164 S.W.3d 721, 723-724 (Tex. App.—El Paso 2005, orig. proceeding); *Dist. Judges of Collin County v. Comm'rs Court of Collin County*, 677 S.W.2d 743, 745 (Tex. App.—Dallas 1984, writ ref'd n.r.e.); see also *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.—Houston [1st Dist] 1994, writ denied). Accordingly, the petition for writ of mandamus and/or writ of prohibition, and motion for temporary relief, are DENIED. See TEX. R. APP. P. 52.8(a).

PER CURIAM

Do not publish. See TEX. R. APP. P. 47.2(b).

Memorandum Opinion delivered and filed
this 24th day of July, 2009.

