

**DENY and Opinion Filed January 27, 2022**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-21-00524-CV**

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**IN RE LISA FINEBERG, Relator**

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**Original Proceeding from the 204th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. F14-14944**

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**MEMORANDUM OPINION**

Before Justices Schenck, Nowell, and Garcia  
Opinion by Justice Schenck

In this original proceeding, relator asks this Court to compel the recusal of the Honorable Tammy Kemp, the presiding judge of the 204th Judicial District Court, Dallas County. Relator also complains that Assigned Judge Jim Jordan should have recused himself from hearing the motion to recuse Judge Kemp.

A writ of mandamus issues to correct a clear abuse of discretion when no adequate remedy by appeal exists. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). Although mandamus is not an equitable remedy, its issuance is largely controlled by equitable principles. *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (orig. proceeding). One such principle is that

“equity aids the diligent and not those who slumber on their rights.” *Id.* (internal brackets and quotation marks omitted). Thus, delaying the filing of a petition for mandamus relief may waive the right to mandamus unless the relator can justify the delay. *In re Int’l Profit Assocs., Inc.*, 274 S.W.3d 672, 676 (Tex. 2009) (orig. proceeding). “A delay of only a few months can constitute laches and result in denial of mandamus relief.” *In re Dryden Co.*, No. 05-20-00028-CV, 2020 WL 205314, at \*1 (Tex. App.—Dallas Jan. 14, 2020, orig. proceeding) (mem. op.).

Here, relator waited almost fourteen months to file a petition for writ of mandamus, after this Court dismissed her appeal for lack of jurisdiction and denied her request to treat the notice of appeal as a mandamus petition without prejudice to refile a proper petition. At that point, it had been nearly two years since the most recent complained-of action. Relator has offered no explanation for this lengthy delay. Accordingly, because we conclude that relator’s unexplained delay bars her right to mandamus relief, we deny the petition for writ of mandamus.

/David J. Schenck/  
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DAVID J. SCHENCK  
JUSTICE

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