

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

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NO. 03-15-00573-CV

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In re Daniel Montes

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ORIGINAL PROCEEDING FROM HAYS COUNTY

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MEMORANDUM OPINION

Relator Daniel Montes filed a petition for writ of mandamus and request for emergency stay complaining that the Hays County Local Administrative Judge has refused to rule on Montes's: (1) request for a prefiling order allowing him to proceed with a mandamus petition previously filed with and denied by this Court; and (2) request to vacate a 2003 order declaring him a vexatious litigant. *See* Tex. Civ. Prac. & Rem. Code §§ 11.101-.102; *In re Montes*, No. 03-15-00472-CV, 2015 Tex. App. LEXIS 8648, at \*2 (Tex. App.—Austin Aug. 18, 2015, orig. proceeding) (mem. op.); <http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx>. Montes has not shown that he presented the judge with his requested relief; rather, Montes's petition states only that he "reached out" to the judge. *See Terrazas v. Ramirez*, 829 S.W.2d 712, 723 (Tex. 1991) (orig. proceeding) (noting general rule that mandamus is not available to compel action that has not first been demanded and refused). Further, Montes has removed to federal court the mandamus petition for which he now seeks permission to file.<sup>1</sup>

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<sup>1</sup> Montes's motion for rehearing and motion for en banc reconsideration remain pending due to the stay triggered by his removal of the case to federal court.

The petition for writ of mandamus is denied. *See* Tex. R. App. P. 52.8(a). The request for emergency stay is dismissed as moot.

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Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Pemberton and Field

Filed: September 16, 2015