NUMBER 13-19-00230-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI–EDINBURG

**HIDALGO COUNTY DISTRICT ATTORNEY
RICARDO RODRIGUEZ JR. AND
JUAN L. VILLESCAS,
ASSISTANT DISTRICT ATTORNEY,** **Appellants,**

v.

MARCO A. CANTU, **Appellee.**

**On appeal from the 370th District Court
of Hidalgo County, Texas.**

NUMBER 13-19-00254-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI–EDINBURG

**IN RE HIDALGO COUNTY CRIMINAL DISTRICT ATTORNEY
RICARDO RODRIGUEZ JR. AND JUAN VILLESCAS**

On Petition for Writ of Mandamus.

OPINION

Before Chief Justice Contreras and Justices Longoria and Perkes
Opinion by Justice Perkes[1]

By both appeal and petition for writ of mandamus, Hidalgo County Criminal District Attorney Ricardo Rodriguez Jr. and Assistant District Attorney Juan Villescas seek to set aside an order allowing Marco A. Cantu to intervene in a proceeding seeking presuit discovery filed pursuant to Texas Rule of Civil Procedure 202.[2] *See* TEX. R. CIV. P. 202 (governing depositions taken before an anticipated suit or to investigate a potential claim or suit). We dismiss the appeal filed in our cause number 13-19-00230-CV and conditionally grant the petition for writ of mandamus filed in our cause number 13-19-00254-CV.

I. BACKGROUND

The history of this litigation begins with a Rule 202 petition filed in a separate trial court proceeding. *See id.* On July 25, 2017, in cause number C-3354-17-A in the 92nd District Court of Hidalgo County, Cantu's spouse, Roxanne Cantu, filed a "Petition for Depositions Before Suit Pursuant to Rule 202 to Investigate Potential Claim or Suit." She sought the deposition of Murray Moore, Assistant District Attorney of Hidalgo County,

[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. When granting relief, the court must hand down an opinion as in any other case."); *see also id.* R. 47.4 (distinguishing opinions and memorandum opinions).

[2] This appeal and original proceeding arise from trial court cause number C-3569-17-G in the 370th District Court of Hidalgo County, Texas, and the respondent is the Honorable Noe Gonzalez. *See id.* R. 52.2. Cantu filed his pleadings in the trial court as Marco A. Cantu; however, in his response to the petition for writ of mandamus and other pleadings he self-identifies as Mark A. Cantu. This discrepancy is not material to our analysis.

Texas, "to investigate a potential claim or suit." Roxanne stated that she "anticipates the institution of a suit in which [she] may be a party," and stated that "[t]he subject matter of the anticipated suit is to investigate the role that Murray Moore had in addressing the Grand Jury of Hidalgo County, Texas; and whether or not Moore violated the Penal Code [of] the State of Texas in discussing matters outside of the Grand Jury['s] presence." Roxanne stated that she "expects to take the testimony from Murray Moore to determine who [Moore] made contact with regarding the Grand Jury investigation and or District Attorney investigation regarding attorneys who are engaged in criminal activities." Roxanne asserted that allowing her to take the deposition would "prevent a failure or delay of justice in an anticipated suit because it will allow the parties to streamline the matter and preserve the testimony of Murray Moore." The style of Roxanne's Rule 202 petition included both Rodriguez and Moore as "[r]espondents."

On August 3, 2017, in a separate proceeding in cause number C-3569-17-C in the 139th District Court of Hidalgo County, Roxanne filed a similar "Petition for Depositions Before Suit Pursuant to Rule 202 to Investigate Potential Claim or Suit." In this case, she requested the trial court to authorize Villescas's deposition "in order to investigate a potential claim or suit." She stated that she "anticipates the institution of a suit in which [she] may be a party" and identified the subject matter of the suit as follows:

> The subject matter of the anticipated suit is to investigate the role that Juan L. Villescas had in supervising Murray Moore the attorney in charge of the Grand Jury of Hidalgo County, Texas; and whether or not he and or she violated the Penal Code [of] the State of Texas in discussing matters outside of the Grand Jury['s] presence.

Roxanne identified Villescas as a person that she expected to have interests adverse to hers in the anticipated suit and identified the substance of the testimony that she expected to elicit and her reasons for desiring to obtain the testimony as follows: "Petitioner expects

to take the testimony from Juan L. Villescas to determine who he made contact with regarding the Grand Jury investigation and or District Attorney investigation regarding attorneys who are engaged in criminal activities." She asserted that allowing her to take the deposition would "prevent a failure or delay of justice in an anticipated suit because it [would] allow the parties to streamline the matter and preserve the testimony." This Rule 202 petition identified both Rodriguez and Villescas as respondents.

On August 9, 2017, Roxanne filed a notice of nonsuit without prejudice regarding her original petition for Rule 202 deposition in cause number C-3354-17-A. She did not similarly nonsuit her petition in cause number C-3569-17-C, which served as the genesis for this appeal and original proceeding.

On August 31, 2017, the presiding judge of the 139th District Court transferred cause number C-3569-17-C to the 370th District Court. The order transferring the case states that "by agreement of the District Judges of Hidalgo County, Texas, under the Local Rules of Hidalgo County, and in the best interest[s] of Justice, the above-styled and enumerated cause is hereby transferred to the 370th State District Court." After the transfer, the case was assigned a new cause number, C-3569-17-G, from which this appeal and original proceeding arise. In this new cause, Rodriguez and Villescas filed objections to Roxanne's petition for a presuit deposition.

On September 21, 2017, at 8:55 a.m., Cantu filed a "Petition in Intervention" in the underlying case. His petition in intervention provided, in its entirety:

> TO THE HONORABLE JUDGE OF SAID COURT:
>
> COMES NOW, Marco A. Cantu hereinafter referred to as Intervenor, files this Plea in Intervention and shows unto this Honorable Court as follows:
>
> I.

Intervenor Marco A. Cantu is a resident of Hidalgo County, Texas whose address is reflected in this pleading.

II.

Intervenor has a justiciable interest in the matters in controversy in this litigation in that Plaintiff, Marco A. Cantu is the husband of Roxanne Cantu and needs to depose the same party–parties that Roxanne Cantu has to dispose under her 202 Petition.

III.

PRAYER FOR RELIEF

Intervenor, Marco A. Cantu, prays that parties take judicial notice of the filing of this Plea In Intervention and that on final hearing Intervenor recover against the defendants as follows:

1. Intervenor[']s contracted interest;

2. Pre and Post judgment interest as provided by law;

3. Costs of suit;

4. Such other and further relief to which the Intervenor may show himself to be justly entitled.

That same day at 9:06 a.m., soon after Cantu filed his plea in intervention, he filed an "Amended Petition for Removal of District Attorney Ricardo Rodriguez Jr. from his Public Office for Official Misconduct, Requests for Disclosure, and Motion to Suspend the Defendant from Office and Appoint a Temporary Replacement." In this pleading, Cantu sought to remove Rodriguez from office based on allegations of incompetence and official misconduct. *See generally* TEX. LOC. GOV'T CODE ANN. §§ 87.011–.019. He stated that he sought an accelerated discovery control plan, propounded requests for disclosure, requested to "review and copy the contents of the District Attorney's file in this matter," and requested a jury trial. And, immediately after Cantu filed this petition, at 10:07 a.m., Roxanne filed a "Notice of Non-Suit Without Prejudice" regarding her Rule 202 petition in the underlying trial court proceedings.

On October 13, 2017, Rodriguez and Villescas filed "Respondents' Motion to Strike Intervenor's Petition in Intervention and in the Alternative, Plea to the Jurisdiction and Motion for Sanctions." In this motion, Rodriguez and Villescas recited the foregoing history, argued that Cantu "improperly forum shopped" his petition in intervention, contended that there was no pending lawsuit to support Cantu's petition in intervention and subsequent pleadings, and argued that the trial court lacked jurisdiction based on official immunity, prosecutorial immunity, and sovereign immunity. They requested sanctions against Cantu for filing a frivolous pleading on grounds, inter alia, that the petition in intervention "is very vague and does not address any basis in law or fact as to why he is entitled to a presuit deposition" of Villescas. Rodriguez and Villescas argued that Cantu merely relied on Roxanne's petition to support his request for a deposition and claims for affirmative relief, and further argued that Roxanne failed to meet her own burden to obtain a Rule 202 deposition. They asserted that "Petitioner, and subsequently Intervenor, fail to provide any evidence, such as an imminent harm or pressing need to obtain the presuit deposition, to assist the trial court in its findings."

The trial court held a series of hearings on Rodriguez and Villescas's motion to strike Cantu's petition in intervention and in the alternative, plea to the jurisdiction and motion for sanctions, on May 1, 2019, May 16, 2019, and May 17, 2019. On May 17, 2019, the trial court signed an "Order Denying Respondents' Motion to Strike Intervenor's Petition in Intervention and in the Alternative, Plea to the Jurisdiction." This order denied both the motion to strike and the plea to the jurisdiction. After the order was signed, the parties discussed proceeding with discovery pertaining to Cantu's requests for substantive relief; however, the trial court stayed this discovery and the underlying proceedings pending resolution of this appeal and original proceeding. Based on the

record presented, Cantu's most recent pleading in the underlying proceeding is his "Ninth Amended Petition For Removal Of Ricardo Rodriguez Hidalgo County District Attorney On This Particular Case And In The Alternative Motion To Disqualify Hidalgo County District Attorney Ricardo Rodriguez."

This appeal and original proceeding ensued.

II. THE ORIGINAL PROCEEDING

By one issue presented in their petition for writ of mandamus in appellate cause number 13-19-00254-CV, Rodriguez and Villescas assert that:

> The Respondent has clearly erred in allowing [Cantu] to intervene in a Rule 202 petition filed by [Cantu's] spouse requesting to take a presuit deposition of the First Assistant of the Hidalgo County Criminal District Attorney's Office relating to possible violations of the Penal Code. The Respondent has clearly erred in allowing an intervention without the proper showing of a justiciable interest in the suit by the purported Intervenor. Further, Respondent has allowed [Cantu] to engage in forum shopping by way of his Intervention.

Rodriguez and Villescas contend generally that Cantu has failed to meet the requirements for intervening in a Rule 202 petition. This Court requested that Cantu, or any others whose interest would be directly affected by the relief sought, file a response to the petition for writ of mandamus. *See* TEX. R. APP. P. 52.2, 52.4, 52.8. Cantu filed a response to the petition by which he asserts that he possesses a justiciable interest in the case because Roxanne is his spouse and he possesses a community property interest in her claims.[3] Cantu asserts, alternatively, that any "justiciable interest" requirement for his petition in intervention is irrelevant. He asserts that Roxanne nonsuited her request for a

[3] Cantu's response to the petition for writ of mandamus alleges that various attorneys have conspired to "defraud him out of his attorney's fees of over $875,000.00, which have been set aside for [his] share of a case settled in Webb County." He asserts that "improper contacts" occurred between one of these attorneys and the Hidalgo County District Attorney's office and thus contends "legitimate questions can be raised concerning the conduct of the District Attorney." By a separate motion, Cantu requests that we list several of these attorneys as "interested parties" in the case. Given our ultimate disposition of the mandamus, we dismiss Cantu's motion as moot.

Rule 202 deposition and therefore "any request for Rule 202 [relief] is completely off the table." Cantu argues that Roxanne's nonsuit rendered Rodriguez and Villescas's complaints moot:

> Again, all claims concerning a Rule 202 petition have been nonsuited, and Roxanne Cantu is no longer before the trial court. Accordingly, whether [Cantu] possessed a justiciable interest at the onset constitutes an advisory opinion; [Cantu] is the only party currently before the trial court, and thus his claims are not interfering with the claims of Roxanne Cantu. Likewise, whether [Cantu] initially provided all the allegations required for a Rule 202 petition constitutes an advisory opinion, because he is not seeking such relief. Whether the initial plea in intervention sets up a need to participate in a Rule 202 deposition constitutes an advisory opinion, because no such relief is being sought.

Cantu further asserts that the allegations made by Rodriguez and Villescas regarding forum shopping are speculative and are not subject to mandamus review.

A. Standard for Mandamus Relief

To obtain relief by writ of mandamus, a relator must establish that an underlying order is a clear abuse of discretion and that no adequate appellate remedy exists. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide*, 494 S.W.3d at 712; *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136. In deciding whether the benefits of mandamus outweigh the detriments, we weigh the public and private interests involved, and we look to the facts in each case to determine the

adequacy of an appeal. *In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 313 (Tex. 2010) (orig. proceeding); *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 469 (Tex. 2008) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136–37.[4]

An order under Rule 202, at least in certain circumstances, operates as a final, appealable order that is immediately subject to appellate review. *See In re Jorden*, 249 S.W.3d 416, 419 (Tex. 2008) (orig. proceeding); *Combs v. Tex. Civil Rights Project*, 410 S.W.3d 529, 534 (Tex. App.—Austin 2013, pet. denied). Orders granting presuit discovery from third parties against whom suit is not anticipated are final and appealable because the Rule 202 petitioner does not seek or contemplate further relief from those third parties. *See In re Jorden*, 249 S.W.3d at 419 & n.7; *In re Elliott*, 504 S.W.3d 455, 459 n.1 (Tex. App.—Austin 2016, orig. proceeding). In contrast, when discovery is sought from a potential defendant in an anticipated lawsuit, Rule 202 orders are considered ancillary to the possible subsequent suit and are not final and appealable. *In re Jorden*, 249 S.W.3d at 419; *In re Elliott*, 504 S.W.3d at 459–60; *In re Hewlett Packard*, 212 S.W.3d 356, 360 (Tex. App.—Austin 2006, orig. proceeding [mand. denied]).

Roxanne's Rule 202 petition states that she "anticipates a suit in this matter" and she "anticipates the institution of a suit in which [she] may be a party." Cantu's plea in intervention does not address whether litigation is expected, but merely states that he

[4] Rodriguez and Villescas's petition for writ of mandamus provides in its "Statement of the Case" that it is both a petition for writ of prohibition and a petition for writ of mandamus. In terms of the relief sought by this pleading, Rodriguez and Villescas request that we order the respondent to withdraw his order denying their motion to strike and instead enter an order striking Cantu's plea in intervention. They do not brief the availability or necessity of relief by way of a writ of prohibition. A writ of prohibition issues only to prevent the threatened commission of a future act. *See Tilton v. Marshall*, 925 S.W.2d 672, 676 n.4 (Tex. 1996) (orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. *Holloway v. Fifth Ct. of App.*, 767 S.W.2d 680, 682–83 (Tex. 1989) (orig. proceeding). Rodriguez and Villescas have not shown that a writ of prohibition is appropriate or necessary under the circumstances of this case, and accordingly, we limit our review to the propriety of relief by writ of mandamus.

"has a justiciable interest" in the matters in controversy because he "needs to depose the same party–parties" that Roxanne planned to depose "under her 202 petition." Under these circumstances, the trial court's order is not final and appealable; therefore, mandamus is the proper vehicle to review the trial court's order. *See In re Jorden*, 249 S.W.3d at 419; *In re Hewlett Packard*, 212 S.W.3d at 360.

"An improper order under Rule 202 may be set aside by mandamus." *In re Wolfe*, 341 S.W.3d 932, 933 (Tex. 2011) (orig. proceeding) (quoting *In re Jorden*, 249 S.W.3d at 420); *see In re City of Tatum*, 567 S.W.3d 800, 804 (Tex. App.—Tyler 2018, orig. proceeding); *In re PrairieSmarts LLC*, 421 S.W.3d 296, 304 (Tex. App.—Fort Worth 2014, orig. proceeding); *In re Reassure Am. Life Ins. Co*., 421 S.W.3d 165, 171 (Tex. App.—Corpus Christi–Edinburg 2013, orig. proceeding). In this regard, we note that depositions, once taken, cannot be "untaken," *see In re Jorden*, 249 S.W.3d at 419, and mandamus has historically issued for discovery that is "well outside the proper bounds." *In re Am. Optical Corp*., 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding); *see In re Chernov*, 399 S.W.3d 234, 235 (Tex. App.—San Antonio 2012, orig. proceeding).

Further, to the extent that our review in this matter is premised on the trial court's refusal to strike Cantu's intervention, mandamus relief is permissible when a trial court abuses its discretion by erroneously denying a motion to strike a petition in intervention. *See In re Union Carbide Corp.*, 273 S.W.3d 152, 156–57 (Tex. 2008) (orig. proceeding) (per curiam); *In re O'Quinn*, 355 S.W.3d 857, 861–62 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding).

B. Presuit Depositions Under Rule 202

Texas Rule of Civil Procedure 202 permits a person to petition the court for authorization to take a deposition before suit is filed: (1) to perpetuate or obtain the

person's own testimony or that of any other person for use in an anticipated suit; or (2) to investigate a potential claim or suit. TEX. R. CIV. P. 202.1(a), (b). A Rule 202 petition must, in summary:

> (1) be verified;
>
> (2) be filed in the proper court of any county where venue of an anticipated suit may lie or where the witness resides, if no suit is anticipated;
>
> (3) be in the name of the petitioner;
>
> (4) state either that the petitioner anticipates the institution of suit in which the petitioner may be a party or that the petitioner seeks to investigate a potential claim;
>
> (5) state the subject matter of the anticipated action, if any, and the petitioner's interest therein;
>
> (6) if suit is anticipated, state the names, addresses, and telephone numbers of the persons petitioner expects to have interests adverse to petitioner's, or state that this information cannot be ascertained through diligent inquiry and describe those persons;
>
> (7) state the names, addresses, and telephone number of the persons to be deposed, the substance of the expected testimony, and the petitioner's reasons for wanting the testimony; and
>
> (8) request an order authorizing the petitioner to take the depositions of the persons named in the petition.

See id. R. 202.2(a)–(h); *see also In re East*, 476 S.W.3d 61, 65–66 (Tex. App.—Corpus Christi–Edinburg 2014, orig. proceeding). Rule 202 does not require a petitioner to plead a specific cause of action; instead, it requires only that the petitioner state the subject matter of the anticipated action, if any, and the petitioner's interest therein. *See* TEX. R. CIV. P. 202.2(e); *In re DePinho*, 505 S.W.3d 621, 624 (Tex. 2016) (orig. proceeding) (per curiam).

The trial court "must" order the deposition to be taken "if, but only if," it finds that: (1) allowing the petitioner to take the requested deposition may prevent a failure or delay

of justice in an anticipated suit; or (2) the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. TEX. R. CIV. P. 202.4(a); *see In re Jorden*, 249 S.W.3d at 423. These required findings are mandatory and may not be implied from the record. *See In re Does*, 337 S.W.3d 862, 863 (Tex. 2011) (orig. proceeding); *In re City of Tatum*, 567 S.W.3d at 807. We review a trial court's order granting a Rule 202 petition under an abuse of discretion standard. *In re Elliott*, 504 S.W.3d at 459; *Patton Boggs LLP v. Mosely*, 394 S.W.3d 565, 568–69 (Tex. App.—Dallas 2011, no pet.); *In re Hewlett Packard*, 212 S.W.3d at 360. Nevertheless, a trial court has no discretion to order presuit discovery without the required findings and abuses its discretion by doing so. *In re City of Tatum*, 567 S.W.3d at 804–05; *In re Cauley*, 437 S.W.3d 650, 655 (Tex. App.—Tyler 2014, orig. proceeding).

Rule 202, like all the rules of civil procedure, was fashioned by the Texas Supreme Court to "obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law." TEX. R. CIV. P. 1; *see City of Dallas v. Dallas Black Fire Fighters Ass'n*, 353 S.W.3d 547, 554 (Tex. App.—Dallas 2011, no pet.); *see also Combs*, 410 S.W.3d at 534–35. However, "Rule 202 depositions are not now and never have been intended for routine use." *In re Jorden*, 249 S.W.3d at 423. Demanding discovery from someone before informing them about the issues under consideration presents practical and due process problems. *Id.*; *In re City of Tatum*, 567 S.W.3d at 804; *In re Elliott*, 504 S.W.3d at 460. Therefore, "[c]ourts must strictly limit and carefully supervise presuit discovery to prevent abuse" of Rule 202. *In re Wolfe*, 341 S.W.3d at 933; *see In re Reassure Am. Life Ins. Co*., 421 S.W.3d at 172. Further, Rule 202 was not intended to be utilized as a means for obtaining otherwise unobtainable

discovery. *See In re Doe*, 444 S.W.3d 603, 609 (Tex. 2014) (orig. proceeding); *In re Wolfe*, 341 S.W.3d at 933. Rule 202 expressly limits the scope of discovery in depositions to "the same as if the anticipated suit or potential claim had been filed." TEX. R. CIV. P. 202.5; *In re DePinho*, 505 S.W.3d at 625. Therefore, for a party to properly obtain Rule 202 pre-suit discovery, the trial court must have subject-matter jurisdiction over the anticipated action. *In re DePinho*, 505 S.W.3d at 625; *In re City of Dallas*, 501 S.W.3d 71, 73 (Tex. 2016) (orig. proceeding); *Combs*, 410 S.W.3d at 534; *see also Houston Indep. Sch. Dist. v. Durrell*, 547 S.W.3d 299, 306 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

C. Analysis

Rodriguez and Villescas contend that Cantu failed to properly file an intervention in a Rule 202 petition, failed to state a justiciable interest, and failed to meet the requirements for intervening in a Rule 202 petition. Cantu asserts that he has a justiciable interest in the proceeding as a married person with a community property interest in Roxanne's claims and that, alternatively, any issue pertaining to the requirements for a Rule 202 deposition are irrelevant or moot because Roxanne nonsuited her request for such a deposition, and he is not seeking relief under Rule 202.

Cantu's arguments pertaining to his alleged justiciable interest in the suit, relevance, or mootness appear to rely on the premise that Roxanne's Rule 202 petition instituted an independent lawsuit in which he had the right to intervene. *See* TEX. R. CIV. P. 60 ("Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party."); *id.* R. 61 ("These rules of pleading shall apply equally, so far as it may be practicable to intervenors and to parties, when more than one, who may plead separately."). Cantu's premise is incorrect.

A Rule 202 proceeding "is not a separate independent lawsuit" but is instead "in aid of and incident to an anticipated suit." *Lee v. GST Transp. Sys., LP*, 334 S.W.3d 16, 19 (Tex. App.—Dallas 2008, pet. denied); *see Office Emps. Int'l Union Local 277 v. Sw. Drug Corp.*, 391 S.W.2d 404, 406 (Tex. 1965) (interpreting the predecessor rule to Rule 202); *Combs*, 410 S.W.3d at 534 (concluding that a Rule 202 petition is not a "suit"); *see also Patton Boggs LLP*, 394 S.W.3d at 571 (concluding that the trial court lacked jurisdiction to grant a motion to compel arbitration filed in a Rule 202 proceeding). Stated differently, a Rule 202 proceeding is an ancillary proceeding. *In re Jorden*, 341 S.W.3d at 932. A Rule 202 petition "asserts no substantive claim or cause of action upon which relief can be granted." *Combs*, 410 S.W.3d at 534; *see Hughes v. Giammanco*, No. 01-18-00771-CV, 2019 WL 2292990, at *4, __ S.W.3d __, __ (Tex. App.—Houston [1st Dist.] May 30, 2019, no pet. h.). Therefore, "a Rule 202 petition does not place unfiled claims before the trial court for adjudication on the merits." *Caress v. Fortier*, No. 01-18-00071-CV, 2019 WL 2041325, at *3, __ S.W.3d __, __ (Tex. App.—Houston [1st Dist.] May 9, 2019, no pet. h.). Instead, a successful Rule 202 petitioner "simply acquires the right to obtain discovery—discovery that may or may not lead to a claim or cause of action" upon which relief can be granted. *Combs*, 410 S.W.3d at 534; *see Hughes*, 2019 WL 2292990, at *4.

The underlying trial court proceeding was initiated by Roxanne as a Rule 202 petition. *See* TEX. R. CIV. P. 202. She did not file any substantive claims or causes of action upon which relief could be granted; rather, she simply requested the presuit deposition of Villescas. *See id.* Roxanne's Rule 202 proceeding was ancillary in nature and did not constitute an independent lawsuit. *See In re Jorden*, 341 S.W.3d at 932; *Office Emps. Int'l Union Local 277*, 391 S.W.2d at 406; *Combs*, 410 S.W.3d at 534; *Lee,*

334 S.W.3d at 19. Accordingly, to the extent that Cantu's arguments rely on the premise that he had the right to intervene in a pending lawsuit, they are in error.

Here, Cantu's original pleading, his petition in intervention, merely states that he "has a justiciable interest in the matters in controversy in this litigation in that [he] is the husband of Roxanne Cantu and needs to depose the same party–parties that Roxanne Cantu has to dispose [sic] under her 202 petition." As a party intervening in a Rule 202 proceeding, Cantu was required to independently meet the requirements of Rule 202. *See In re Meeker*, 497 S.W.3d 551, 556–57 (Tex. App.—Fort Worth 2016, orig. proceeding). He failed to do so. *See* TEX. R. CIV. P. 202.2(a)–(h); *In re East*, 476 S.W.3d at 65–66. Cantu's petition in intervention fails to: state either that he anticipates the institution of suit in which he may be a party or that he seeks to investigate a potential claim; identify the subject matter of the anticipated action, if any, and Cantu's interest therein; provide the names, addresses, and telephone numbers of the persons with adverse interests; state the names, addresses, and telephone number of the persons to be deposed, the substance of the expected testimony, and Cantu's reasons for wanting the testimony; or request an order allowing Cantu to take the depositions of the persons named in the petition. *See* TEX. R. CIV. P. 202.2(d)–(h); *In re DePinho*, 505 S.W.3d at 624; *In re Emergency Consultants, Inc*., 292 S.W.3d 78, 79 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding).

Cantu's petition in intervention petition focuses on his relationship to Roxanne, and by intervening in her petition, he "appears to attempt to piggyback" on her stated reasons for the presuit deposition. *In re Meeker*, 497 S.W.3d at 557. Leaving aside the issue of whether Roxanne's Rule 202 petition is, in and of itself, sufficient under Rule 202, Cantu's petition in intervention fails to meet the explicit requirements of Rule 202. *See id.* ("We

cannot conclude that this attempt satisfies the detailed requirements of rule 202, which relate specifically to the 'person' or 'petitioner' seeking presuit discovery."); *see also* TEX. R. CIV. P. 202.1, 202.2(c)–(h). Moreover, Cantu's live pleading does not request a Rule 202 deposition, and he denies that he is currently seeking such relief in this original proceeding.

Cantu has improperly attempted to use a pending Rule 202 proceeding to institute substantive claims for relief regarding the removal of an elected official from office. Based on the foregoing, we conclude that the trial court clearly abused its discretion by denying Rodriguez and Villescas's motion to strike Cantu's petition in intervention. *See generally* TEX. R. CIV. P. 202; *In re Meeker*, 497 S.W.3d at 557. We further conclude that mandamus is appropriate to remedy this error. *See In re Wolfe*, 341 S.W.3d at 933; *In re Does*, 337 S.W.3d at 865. Accordingly, we conditionally grant mandamus relief. We direct the trial court to vacate its May 17, 2019 order denying Rodriguez and Villescas's motion to strike Cantu's plea in intervention and to enter an appropriate order granting the motion to strike and striking Cantu's intervention. We are confident that the trial court will comply with our directions, and our writ will issue only if it fails to comply.

III. THE APPEAL

Having conditionally granted mandamus relief regarding the May 17, 2019 order, we dismiss the appeal of that order currently pending in our cause number 13-19-00230-CV for lack of jurisdiction. *See In re Jorden*, 249 S.W.3d at 419; *In re Hewlett Packard*, 212 S.W.3d at 360; *see also In re Union Carbide Corp.*, 273 S.W.3d at 156–57; *In re O'Quinn*, 355 S.W.3d at 861–62. We likewise dismiss all pending motions in the appeal for lack of jurisdiction.

IV. CONCLUSION

We conditionally grant mandamus relief in our cause number 13-19-00254-CV and we dismiss the appeal in our cause number 13-19-00230-CV. In so ruling, we note that Rodriguez and Villescas have raised serious allegations in these cases against Cantu regarding forum shopping. Conduct that subverts the random assignment of cases "breeds disrespect for and threatens the integrity of our judicial system." *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (orig. proceeding) (per curiam); *see In re Union Carbide Corp.*, 273 S.W.3d 152, 157 (Tex. 2008) (orig. proceeding). We appreciate the significance and gravity of this issue; however, we do not address this issue here given our determination on the merits of Cantu's plea in intervention. *See* TEX. R. APP. P. 47.4.

GREGORY T. PERKES
Justice

Delivered and filed the
17th day of July, 2019.