



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER OF ABATEMENT

Appellate case name: In re The State of Texas Ex Rel. Brian W. Wice
Appellate case number: 01-20-00477-CR; 01-20-00478-CR; 01-20-00479-CR;
Trial court case number: 1555100, 1555101, 1555102
Trial court: 177th District Court of Harris County

On June 30, 2020, relator, Brian W. Wice, filed a petition for writ of mandamus (1) challenging a June 25, 2020 order signed by the Honorable Robert Johnson, Presiding Judge of the 177th District Court of Harris County, vacating a change of venue order in the underlying cases and returning venue of the cases to Collin County; and (2) compelling rulings on certain motions.

After the mandamus petition was filed, relator subsequently informed this Court that (1) Judge Johnson voluntarily recused himself from the underlying cases on July 6, 2020, and (2) the cases were reassigned on July 15, 2020 to the Honorable Jason Luong of the 185th District Court. Although relator has not filed a motion requesting abatement of this original proceeding, relator's filing notifying the Court of these developments "advises" that abatement is appropriate under the circumstances.

When a mandamus petition complains of actions taken by a trial judge who subsequently recuses, appellate courts have the discretion to either deny the petition or to abate the case and allow the successor judge to consider the issues raised in the petition. *See In re Blevins*, 480 S.W.3d 542, 544 (Tex. 2013). Our decision should be based on a determination of "which of the two approaches affords the better and more efficient manner." *Id.* We conclude that the better and more efficient approach in these original proceedings is to abate.

Accordingly, we ABATE these original proceedings for **45 days** from the date of this order to allow Judge Luong to reconsider the challenged order and, if appropriate, to consider the pending motions. Judge Luong is directed to take whatever actions and hold whatever hearings he determines are necessary to consider the matters herein. A supplemental clerk's record containing any rulings, along with a reporter's record of any hearings held, shall be filed within **45 days** from this order. We withdraw our request that real party in interest file a response to the mandamus petition.

It is so ORDERED.

Judge's signature: /s/Gordon Goodman
Acting for the Court

Date: July 28, 2020

Panel consists of Justices Goodman, Hightower, and Countiss.