IN THE MUNICIPAL COURT OF APPEALS
EL PASO, TEXAS

IN RE:	§	
	§	**MCA Docket No. 11-MCA-3482**
MARCO RUIZ,	§	
	§	**Cause No. 18198910**
REALTOR	§	

OPINION

Realtor filed an Application for Writ of Mandamus to require Richarda Momson, in her capacity as Municipal Court Clerk of the City of El Paso, Texas, to send a Clearance Notice as provided for by Section 706.005 (a) Tex. Transportation Code to the Department of Public Safety.

Realtor contends that he was denied renewal of his Driver's License based on his failure to appear. (See Section 706.004 (a), Tex. Transportation Code) That Section authorizes the Department of Public Safety to deny renewal of a person's Driver's License for failure to appear based on a complaint.

Section 706.005 (a), (Tex. Transportation Code) provides a political subdivision shall notify the Department of Public Safety that there is no cause to continue to deny renewal of a person's Driver's License based on the person's previous failure to appear if the person pays an administrative fee of $30.00 (See Section 706.006 (a), Tex. Transportation Code) and posts a bond or gives other security to reinstate the charge for which the original warrant was issued. Realtor has posted a bond and has paid the administrative fee but the Municipality involved, the City of El Paso, through the Municipal Court Clerk's Office has refused to notify the Department of those facts. That has led to the request for issuance of a Writ of Mandamus directing Richarda Momson, as Clerk of the Municipal Courts, to so notify the Department. If the Clearance Notice

is sent, the Department may not continue to deny the renewal of a person's Driver's License if, among other things, the above conditions are met.

Section 30.00137, Tex. Government Code, gives this Court the power in Criminal Law matters to issue to the Municipal Courts and Judges of those Courts the Writ of Mandamus necessary to protect the Appellate Court's jurisdiction or enforce its judgments. That Section does not identify the Municipal Court Clerk as a person to whom the Writ of Mandamus could issue. However, this Court believes the term "Municipal Courts" would include the Clerk or other personnel of that Office and could be subject to this Court's Mandamus power if issuance thereof was necessary to protect the Appellate Court's jurisdiction or enforce its judgment.

This Court has compared Section 22.221, Tex. Government Code, which addresses the powers of the Court of Appeals to issue a Writ of Mandamus if the Writ is necessary to enforce the jurisdiction of the Court. It can be issued against the Judge of a District or County Court in the Court of Appeal's district or a Judge of a District Court who was acting as a Magistrate at a Court of Inquiry in the Court of Appeal's district. Like Section 30.00137, it does not identify a District Clerk as being subject to the Writ of Mandamus.

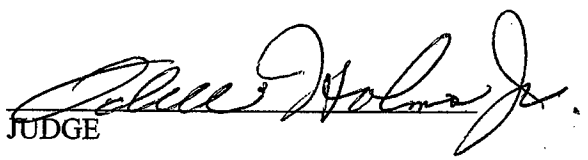
However, the Court of Appeals in Houston conditionally granted a Writ of Mandamus against a District Clerk recognizing that it had no jurisdiction to issue a Writ of Mandamus against a District Clerk unless it was necessary to enforce their jurisdiction IN RE: Michael W. Washington, (7 SW 3rd 181 (Tex. App., Houston, 1st Dist., 1999). In that case, the District Clerk had failed to file a Notice of Appeal which invokes the Court of Appeal's jurisdiction, and the District Clerk's failure to forward the Notice of Appeal delivered to him for filing because such was necessary to enforce the Court's jurisdiction. Also, the Eighth Court of Appeals recognized that it did not have the power to issue a Writ of Mandamus to a District Clerk unless her conduct

interfered with the Court's jurisdiction IN RE: Kevin Revels, No. 08-11-00175-CR (Tex. App.-El Paso 2011) . The Court held that because the Clerk in that case had done nothing to interfere with their jurisdiction, the Application was denied.

In this case, there has been no trial of Realtor before the Municipal Courts, no conviction as yet, and no appeal perfected or appealed to this Court. Therefore, nothing has been done to jeopardize this Court's jurisdiction, and therefore, the Petition is denied.

However, in passing, and for whatever guidance it may provide to the City and the Clerk of our Municipal Courts, sending the Clearance Notice as required by law is a ministerial duty mandated by Statute. A Court that does have jurisdiction of this issue would be authorized to issue the Writ directing compliance with that Statute. Continued refusal to comply with that requirement when Realtor has met its conditions by posting bond and paying the administrative fee, could eventually lead to a Writ being issued enforcing compliance by a Court that has jurisdiction to do so. Putting Realtor to that task seems unnecessary to this Court under the circumstances. This Court would have issued the Writ if it had determined it had jurisdiction to do so.

SIGNED this 22 day of June, 2011.



JUDGE