

NO. \_\_\_\_\_

		§	IN THE DISTRICT COURT
	Relator	§	
vs.		§	
		§	OF HARRIS COUNTY
GRACE CANTADA		§	
		§	
	Defendant.	§	_____ JUDICIAL DISTRICT

**RELATOR'S PETITION FOR WRIT OF MANDAMUS  
- COMMON LAW RIGHT TO PUBLIC ACCESS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, (“Relator”) pro per, and PETITION FOR WRIT OF MANDAMUS - COMMON LAW RIGHT TO PUBLIC ACCESS (“Writ”) complaining of GRACE CANTADA, herein (“Defendant”), and for cause of action would respectfully show this Honorable Court the following:

**STATEMENT OF CLAIM**

The Defendant filed a post-it-note in Harris County Civil Court #2 Case Number 1092834. The Post-it-Note stated “why was this filed in this court” and was read into the record. The Rule 12 “Special Committee” issued a ruling that stated that the post-it-note is a case record thus does not fall under the Texas Public Information Act and is not appealable under Rule 12. As a matter of case law and the Texas Constitution, the public has a Common Law Right to Public Access to the case records; however, the Defendant has repeatedly failed to provide the case records.

**DISCOVERY**

1. Discovery will be conducted under Level 2 of the Texas Rules of Civil Procedure.

**JURISDICTION AND VENUE**

2. This Court has personal jurisdiction and venue is proper pursuant to TEX. CONST. art. V, § 8 (Vernon 1993) *District Court judges shall have the power to issue writs necessary to enforce their jurisdiction.* Moreover, the Defendant resides in Harris County.

## **PARTIES**

3. Relator, is a resident of Travis County with an address of

4. Defendant, GRACE CANTADA is located at 201 Caroline, Houston, TX. Moreover, CANTADA lives at 14619 Carolina Falls Lane, Cypress, TX 77433. It may be served by service upon the Office of the Harris County Attorney at 1019 Congress, 15th Floor Houston, TX 77002.

## **STATEMENT OF FACTS**

5. On June 15<sup>th</sup>, 2021, Relator submitted a request to the Defendant and the judge, in writing, requesting a copy of the case record post-it-note filed in case number 1092834.

6. The Harris County Clerk of the Court did not produce the records as required under the Texas Constitution and Common Law Right to Public Access.

7. The Relator filed a Rule 12 appeal and the “Special Committee” defined the post-it-note as a case record and dismissed my Rule 12 appeal due to lack of jurisdiction.

8. The Special Committee stated that the case filing falls under the common law right of access to case records.

9. On September 7<sup>th</sup>, 2021, the Relator filed another request with the Harris County Clerk of the Court which was ignored.

10. On September 28<sup>th</sup>, 2021, the Relator sent a copy of this Writ to the Defendant. The Defendant has still failed to produce the case record which was yet again ignored.

## **CAUSE OF ACTION: COMMON LAW RIGHT TO PUBLIC ACCESS**

11. Texas Constitution, Art. 1, Sec. 13 states “*All courts shall be open, ...*”

12. Tex. Loc. Gov't Code § 191.006 states “all records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records.”

13. Pursuant to Tex. Loc. Gov't Code § 192.006, the clerk of the court is the keeper of all

court records.

14. In Rule 12 Ruling 10-004 (2010), The ruling stated that “we note, however, that case records or court records that are not subject to Rule 12 may be open pursuant to other law such as the common-law right to public access. As guidance we refer Respondent to Rule 12 Decision 00-001 and Open Records Letter Nos. 99-2109 (1999) and 93-764 (1993)”

15. In Rule 12 Ruling 00-001 (2001) the ruling stated that Rule 76a of the Texas Rules of Civil Procedure governs public access to civil court records. It provides that civil court records “are presumed to be open to the general public.” They may be sealed only upon a showing of “a specific, serious and substantial interest which clearly outweighs . . . this presumption of openness; [and] any probable adverse effect that sealing will have upon the general public health or safety; [and that] no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.” Public access to criminal court records, such as those at issue here, are governed by common law and constitutional law. The common law right to public access was articulated by the United States Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.C t. 1306, 1312 (1978), as follows:

“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, . . . American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen’s desire to keep a watchful eye on the workings of public agencies . . . .”

The constitutional law relating to public access to criminal court records was summarized by the court in *Express-News Corp. v. MacRae*, 787 S.W.2d 451, 452 (Tex. App.–San Antonio 1990), as follows: “The public’s right to public trials under the First and Fourteenth Amendments to the United States Constitution includes a presumption that judicial records will be open to inspection by the press and public. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.C t. 1306, 1312 (1978). This presumption of openness may be overcome by a countervailing interest, such as the defendant’s

right to a fair trial, but the reason for closure or sealing must be apparent and clearly articulated. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 581, 100 S.Ct. 2814, 2829-30 (1980); *Houston Chronicle Publishing Co. v. Hardy*, 578 S.W.2d 495, 499 (Tex. App.–Corpus Christi, 1984), cert. denied, 470 U.S. 1052, 105 S.Ct. 1754 (1985).” In *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992), the court conditionally granted a writ of mandamus against a trial court which had prohibited a newspaper from publishing the identity of a rape victim which had already been disclosed in an indictment, a motion in limine, and a charge to the jury. The court held that once they are filed with the court, court records become public records. Although court records are not records covered by the Public Information Act (formerly “Open Records Act”), Texas Government Code §552.001 et seq., several attorney general open records letters have discussed the issue, and found a right to public access. OR99-1825 (traffic citations are subject to disclosure under common-law right to copy and inspect court records and statutory law governing municipal courts); OR99-2611 (personal information such as place of employment, work and home telephone numbers of the accused which are found in traffic citations maintained by police department are not exempt from disclosure); OR99-0766 (traffic citations maintained by city are subject to Public Information Act); OR99-3698 (distinguishing between records maintained solely by municipal court and those also maintained by city

#### **Count One: MANDAMUS**

16. The Relator repeats and realleges each of the foregoing paragraphs as if set forth fully herein.

17. “Clear abuse of discretion for which there is no adequate remedy at law. When such factors exist, mandamus is appropriate. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App. --Dallas 1999, no pet.).

PRAYER FOR RELIEF Therefore, Relator respectfully prays the Court:

- A. Enter a writ of mandamus requiring the Defendant to make public and provide to Relator all information responsive to the request;
- B. Grant declaratory relief stating the Defendant violated Realtor's rights under the Texas Constitution;
- C. Award Sanctions to the Relator;
- D. Grant reasonable attorneys' fees, litigation expenses and court costs ; and,
- E. Grant all other relief as appears reasonable and just, to which Relator may be entitled.

Dated: October \_\_\_\_, 2021

Respectfully submitted

By: \_\_\_\_\_

**Petitioner *pro per***