

**Information or instructions: Plea in abatement motion & Order to quash service**

**PREVIEW**

1. The following form may be used to request the court to cancel or quash service of citation on a party and to abate the cause of action.
2. The motion is frequently used when the service has been issued improperly or served on the incorrect party to the lawsuit. It should show who the proper party to the lawsuit is.
3. The purpose of a plea in abatement is to dismiss Plaintiff's cause of action or abate it for any one or more of the following reasons: lack of jurisdiction, running of the statute of limitations, failure to state a cause of action, filing in the wrong court, or suit against defendant in an incorrect legal capacity.

4. See the following Texas Rules of Civil Procedure for rules applicable to plea in abatements:  
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Rule 85-Hearing in district court;  
Rule 358-Successor in office, vacation in office;  
Rule 150-Death of party in a suit;  
Rule 159-Abatement suit for injuries resulting in death;  
Rule 156-Between verdict and judgment;  
Rule 369A-Cause remanded to courts of civil appeals;  
Rule 155-Continuance of suit by surviving parties;  
Rule 152-Defendant;  
Rule 153-Executor or administrator;  
Rule 151-Appealance;  
Rule 159-Injuries resulting in death;  
Rule 158-Party suing for use of another;  
Rule 160-Dissolution of a corporation;  
Rule 358-Injunctions;  
Rule 175-Determination of plea in abatement;  
Rule 330-Hearing.

**THIS DOCUMENT**

**Form: Plea in abatement and motion to quash service**

1. This form contains an answer in the form of a general denial, a plea in abatement for lack of jurisdiction because an indispensable and necessary party was not joined, as well as special exceptions to the Plaintiff's pleadings.  
**THANK YOU**

2. The form also includes an affirmative defense based on the statute of limitations.

CAUSE NUMBER \_\_\_\_\_

[Name],

PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

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vs.  
[Name],  
DEFENDANT

# PREVIEW

OF [NAME], COUNTY, TEXAS

## DEFENDANT'S PLEA IN ABATEMENT AND ORIGINAL ANSWER

[Name], who has been Named as a Defendant in the above styled cause, and in answer to the Plaintiff's Original Petition filed therein respectfully shows the Court and jury the following:

### 1. PLEA IN ABATEMENT

1.1 In answer to Plaintiff's Original Petition, Defendant shows the Court that [Name of necessary party] does not appear in Plaintiff's Original Petition as a party to this suit, and that that person in that capacity is a necessary and indispensable party to this action, without whom a just adjudication cannot be made. For nonjoinder of the necessary party this Defendant moves for abatement of this suit.

### 2. GENERAL DENIAL

2.1 Subject to the above special exceptions in the Plea in Abatement and without waiving the same, in answer to Plaintiff's Petition, Defendant exercises his statutory right to require Plaintiff to prove all material allegations contained in the Plaintiff's Original Petition and for this purpose, he generally denies them all.

### 3. AFFIRMATIVE DEFENSE

3.1 Defendant would show the Court that Plaintiff's Cause of Action accrued more than 4 years before the date of the filing of Plaintiff's Original Petition and of the commencement of this suit, and that the suit is thus barred by Civil Practice & Remedies Code Section 16.051.

### PRAYER

Defendant respectfully prays for judgment of the Court on [his or her] Plea in Abatement, and that Defendant be dismissed with [his or her] costs; or, in the alternative, Defendant

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respectfully prays that the Court strike the portions of Plaintiff's Original Petition specially excepted to herein and prays for judgment of the Court that the Plaintiff take nothing by this suit, for costs, and for such other and further relief to which Defendant may be justly entitled, either at law or in equity.

**PREVIEW**

Respectfully Submitted,

\_\_\_\_\_  
[Law Firm Name]

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\_\_\_\_\_  
[Attorney's Name]

Attorney for Defendant  
[Attorney's Address]  
[Telephone Number]  
[Facsimile Number]  
[Bar Card Number]

**THIS DOCUMENT**

State of Texas  
County of \_\_\_\_\_

BEFORE ME, a notary public in and for [Suit County] County, Texas, on this day personally appeared [Name], to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first sworn upon oath, says that [he or she] is [party designation] in the above-referenced case, and has the authority to make this affidavit. Affiant further states that [he or she] has read the foregoing and that the pleading is in every statement and allegation true and correct.

[Include any other facts to support the affidavit]

**THANK YOU**

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me on \_\_\_\_\_ by

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**PREVIEW**

Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading or document has been served upon all attorneys of record and any parties who are not represented by an attorney on \_\_\_\_\_.

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Attorney for: [Other attorney's client's name]  
Attorney's name: [Other attorney's name]  
Attorney's address: [Other attorney's address]

Type of Service:

- U.S. Mail, Certified Return Receipt Request No. \_\_\_\_\_.
- U.S. Mail, First Class.
- Hand delivery by [name of delivery service]: \_\_\_\_\_.
- Facsimile transmission to \_\_\_\_\_ [fax sent before 5 p.m.]

**THIS DOCUMENT**

\_\_\_\_\_  
[Attorney's signature]

**Form: Order quashing service**

**CAUSE NUMBER** \_\_\_\_\_

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

**THANK YOU**

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

**ORDER TO QUASH SERVICE OF CITATION**

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On \_\_\_\_\_ the court considered the [Movant's name]'s Plea in Abatement and Motion to Quash Service of Citation filed by [Movant's name], as a friend of the Court.

**PREVIEW**

After considering the motion, the court decided that the request should be granted.

It is ORDERED that the Plea in Abatement and Motion to Quash Service of Citation filed by [Movant's name] as a friend of the Court be and is hereby GRANTED and that Citation issued herein be quashed and this cause abated.

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Signed on \_\_\_\_\_.

\_\_\_\_\_  
**JUDGE PRESIDING**

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
[Law Firm's or Attorney's Name]  
Attorney for Plaintiff  
[Address]  
[Telephone & facsimile numbers]  
Texas Bar no. [Number]

**THIS DOCUMENT**

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
[Law Firm's or Attorney's Name]  
Attorney for Plaintiff  
[Address]  
[Telephone & facsimile numbers]  
Texas Bar no. [Number]

**THANK YOU**

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