

Information or instructions: ~~Plea in abatement motion & Order to quash service~~ Alternate Form

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.

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4. See the following Texas Rules of Civil Procedure for rules applicable to plea in abatements:

- 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-Appearance;
- 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: Alternate Plea in abatement and motion to quash service

CAUSE NUMBER

THANK YOU

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

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PLEA IN ABATEMENT AND MOTION TO QUASH SERVICE OF CITATION

PREVIEW

[Name], as a friend of the Court, moves to quash the service of citation allegedly had in this Court and to abate the cause of action, as it is currently filed.

1. [Name], Movant herein, as a friend of this Court, will respectfully point out that citation was served upon Movant as agent for Defendant [Name].

2. This service is defective because the lawsuit is against [Name]; therefore, Defendant [Name] should be personally served, rather than [his or her] attorney.

3. Accordingly, Movant prays that his citation be quashed, declared defective, and held for naught, and that this claim be in all respects abated.

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PRAYER

[Name], friend of this Court, respectfully asks that this cause and claim for damages be abated, that the alleged citation and services of process thereon be quashed as being defective, and for such other and further relief to which he may be justly entitled.

THIS DOCUMENT

Respectfully Submitted,

[Law Firm Name]

By _____

[Attorney's Name]

THANK YOU

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

AFFIDAVIT

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.

PREVIEW

[Include any other facts to support the affidavit]

Affiant

Subscribed and sworn to before me on _____ by _____

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Signature of officer

Notary's typed or printed name

My commission expires:

THIS DOCUMENT
[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 _____.

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:

THANK YOU

___ U.S. Mail, Certified Return Receipt Request No. _____.

___ U.S. Mail, First Class.

___ Hand delivery by [name of delivery service]: _____.

___ Facsimile transmission to _____ [fax number] before 5 p.m.

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[Attorney's signature]
PREVIEW

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Form: Order quashing service

PREVIEW
CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

ORDER TO QUASH SERVICE OF CITATION

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Abatement and Motion to Quash Service of Citation filed by [Movant's name], as a friend of the Court.

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 state.

THIS DOCUMENT

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]

THANK YOU

APPROVED AS TO FORM AND SUBSTANCE:

[Law Firm's or Attorney's Name] **LegalFormsForTexas.Com**

Attorney for Plaintiff
[Address]
[Telephone & facsimile numbers]
Texas Bar no. [Number]

PREVIEW

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