

**Information or instructions: Motion Controverting Affidavit & Order transfer venue Plea of Privilege Package**

**PREVIEW**

1. A plea of privilege formerly was asserted to transfer the venue in a case from the county where it was filed to another county.
2. The plea was frequently filed when the defendant was sued in a county other than the county of his or her residence.
3. Civil Practice & Remedies Code §§ 15.0.1, 15.11 et seq. allowed the defendant to be sued in the county of his or her residence unless one of 19 exceptions to the rule was applicable.
4. The plea of privilege was filed before or simultaneously with the original answer, or was waived.
5. A plaintiff could contest the defendant's plea of privilege by showing the existence of one or more exceptions to the venue statute as stated in Article 1995 of the Revised Civil Statutes.
6. The Texas Civil Practice & Remedies Code §§ 15.0.1, 15.11 et seq., The Texas Venue Statute, were amended. The new rule completely changes the scope of the prior plea of privilege practice.
7. The new rule starts with the presumption that a defendant may be sued in the county of his or her residence or a county where the cause of action accrued. Instead of filing a plea of privilege which is then contested by a Plaintiff through the use of a controverting affidavit, the defendant should now file a Motion to Transfer Venue and set forth in the Motion the reasons why venue should be transferred.
8. Previously, a defendant had a right to a trial by jury on the issue of venue. This resulted in much litigation and an inordinate number of appeals applicable to the Plea of Privilege procedure. The new rule eliminates the trial by jury on the issue of venue. Venue now is handled much the same as any other pretrial matter.
9. After the defendant files the Motion to Transfer Venue, the plaintiff may file a response contesting the Motion. Thereafter, the court should hear the Motion on the basis of the Affidavits and Motions submitted at the hearing. The hearing will be conducted much like a summary judgment.
10. Under the old rule, the defendant had a right to appeal the decision on venue. The new rule eliminates this interlocutory appeal. The issue of venue will now not be decided on appeal until a judgment or final decision has been rendered in the cause. If the issue of venue was improperly decided by the lower court, the issue can be considered a significant error and cause the case to be remanded for a new trial.

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**THANK YOU**

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11. See the following rules of Texas Civil Procedure applicable to answers and their effects on a Motion to Transfer Venue (formerly Plea of Privilege): Rules 85, 86, 93A, 385, 527 and 330.

**PREVIEW**

**Form: Motion to transfer venue and defendant's original answer**

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

**[Name],  
PLAINTIFF**

**IN THE [Type of Court] COURT**

**[Court number]**

**vs.**

**[Name]  
DEFENDANT**

**OF [NAME], COUNTY, TEXAS**

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**MOTION TO TRANSFER VENUE AND DEFENDANT'S ORIGINAL ANSWER**

Defendant [Name] Moves to Transfer Venue, asserting [his or her] right to be sued in [Name] County, Texas, the county of Defendant's residence and the county in which the cause of action, if any, arose.

1. Defendant was not a resident of [county where action was filed] County, Texas when the cause of action arose.

**THIS DOCUMENT**

2. The cause of action complained of by Plaintiff arise in [county where action arose] County, Texas.

3. The substance of Plaintiff's complaint as stated in Plaintiff's Original Petition is [state facts].

4. Plaintiff has filed the suit in an inappropriate county.

5. Defendant's business records and material witnesses to the above entitled and numbered cause of action are located in [defendant's county of residence] County, Texas. [County] is therefore, a more appropriate forum for the above-entitled cause.

**THANK YOU**

6. In the alternative, but without limiting or waiving Defendant's Motion to Transfer Venue,

Defendant's motion is denied as a matter of law by Rule 92 of the Texas Rules of Civil Procedure,

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and respectfully requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

**PREVIEW**

**PRAYER**

Defendant respectfully requests that this Court sustain Defendant's Motion to Transfer Venue, and transfer the cause to the District Court of [defendant's county of residence] County, Texas, taxing costs incurred herein against Plaintiff; and that Defendant have such other and further relief to which Defendant may be justly entitled.

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Respectfully Submitted,

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

By \_\_\_\_\_

**THIS DOCUMENT**

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

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

**AFFIDAVIT**

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

**THANK YOU**

BEFORE ME, the undersigned authority, on this day personally appeared [defendant's Name], who being by me duly sworn on his oath deposed and said:

"My Name is \_\_\_\_\_; I am over the age of eighteen (18) years, and I reside at [Residence]. I have never been convicted of a crime, and I am fully competent to make this affidavit. The county of my residence at and during the time period complained of in Plaintiff's Original Petition is \_\_\_\_\_. The cause of action complained of in Plaintiff's Original Petition, if any, arose in \_\_\_\_\_ County, Texas. I have read the foregoing Motion to Transfer Venue and I have personal knowledge of the facts stated therein. They are all true and correct.

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Furthermore, this cause should be transferred from \_\_\_\_\_ County to \_\_\_\_\_ County, Texas for the following reasons: [List reasons that justify the transfer of venue from the county in which suit was filed to the proposed other requested county.]

**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:

\_\_\_\_\_  
[or Notary's Stamp]

**CERTIFICATE OF SERVICE**

**THIS DOCUMENT**

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:

\_\_\_ 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.

**THANK YOU**

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

Information or instructions: Plaintiff's controverting affidavit to defendant's motion to transfer venue

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1. The purpose of the Affidavit is to contest the transfer of venue from the county in which the suit is pending to the county requested by defendant for the Motion to Transfer Venue.

**PREVIEW**

2. The Affidavit in the form that follows conforms to the revisions in the Texas Rules of Civil Procedure and Civil Practice & Remedies Code §§ 15.0.1, 15.11 et seq. applicable to venue, which became effective September 1, 1983.

3. Texas Rule of Civil Procedure 87 places on Plaintiff a duty to controvert the venue facts pleaded by Defendant. All properly pleaded venue facts will be taken as true unless specifically denied. See Texas Rule of Civil Procedure 87, paragraph 3A.

4. Accordingly, a Controverting Affidavit should be filed to sustain the venue facts as pleaded in Plaintiffs' Original Petition.

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5. The party moving for the transfer of venue pursuant to Texas Rule of Civil Procedure 87 should set the matter for hearing and afford the other party forty-five (45) days notice of the hearing.

6. A response or opposing affidavit must be filed thirty (30) days prior to the hearing, rather than ten (10) days prior, as was true under the former rules for plea of privilege practice.

7. The Movant is not required to reply to a Controverting Affidavit. However, any reply must be filed seven (7) days prior to the hearing.

Form: Plaintiff's opposition to defendant's motion to transfer venue.

**THIS DOCUMENT**

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

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION  
TO TRANSFER VENUE

**THANK YOU**

Plaintiff [Name], files [his or her] Opposition to Defendant's Motion to Transfer Venue and in

support of the opposition respectfully shows the Court as follows:

1. [Recite facts giving rise to cause of action].

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2. [State that the county of Defendant's residence and/or the county in which the cause of action arose is the county in which the suit was filed, e.g., Plaintiff would show the Court that the cause of action on which this case is based arose in (county in which action was filed) County, Texas and would show the Court the following facts that support the allegation: (list facts that show why the cause of action arose in the requested county of the law suit)].
3. [Describe in defects in the venue affidavits or evidence presented by defendant]

**PREVIEW**

**PRAYER**

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Plaintiff prays that this Honorable Court overrule Defendant's Motion to Transfer Venue and

find that venue in this cause of action is properly situated in [county where action was filed] County, Texas.

Respectfully Submitted,

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

**THIS DOCUMENT**

By \_\_\_\_\_

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

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

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

**THANK YOU**

[Name], Attorney for Plaintiff, being first duly sworn, on [his or her] oath states that [he or she] is duly authorized to make this verification on behalf of the Plaintiff; that [he or she] has read the foregoing Plaintiff's Opposition to Defendant's Motion to Transfer Venue, and the Controverting Affidavit that is attached hereto and that the facts set forth therein are true and correct.

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Affiant

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

**PREVIEW**

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires: \_\_\_\_\_

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[of 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: **THIS DOCUMENT**

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.

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

**Information or instructions: Order overruling defendant's motion to transfer venue**

**THANK YOU**

1. The Order in the form that follows assumes that the Defendant's Motion to Transfer Venue was denied by the court.

**Form: Order overruling defendant's motion to transfer venue**

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

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[Name], IN THE [Type of Court] COURT

PLAINTIFF

# PREVIEW

[County Number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

## ORDER OVERRULING DEFENDANT'S MOTION TO TRANSFER VENUE

On \_\_\_\_\_, the court considered the Defendant's Motion to Transfer Venue.

The attorney for Defendant set this matter for hearing and delivered proper notice to attorney of record for Plaintiff. After considering the motion, affidavits and pleadings filed in this matter, the court decided that the Defendant's request should be denied.

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It is ORDERED that this cause of action shall remain in [Name] County, Texas.

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

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

APPROVED AS TO FORM AND SUBSTANCE

# THIS DOCUMENT

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

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
[Law Firm or Attorney's name]  
Attorney for Plaintiff  
[Address of firm]  
[Telephone and facsimile numbers.]  
[Texas Bar No.]

# THANK YOU

Information or instructions: Order sustaining defendant's motion to transfer venue

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1. The Order in the form that follows assumes that the court granted the Defendant's Motion to Transfer Venue.

# PREVIEW

**Form: Order sustaining defendant's motion to transfer venue**

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

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

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ORDER SUSTAINING DEFENDANT'S MOTION TO TRANSFER VENUE

On \_\_\_\_\_, the court considered the Defendant's Motion to Transfer

Venue from [Current County, Texas, to [Proposed] County, Texas.

The attorney for Defendant set this matter for hearing and delivered proper notice to attorney of record for Plaintiff. After considering the motion, affidavits and pleadings filed in this matter, the court decided that the Defendant's request should be granted.

**THIS DOCUMENT**

It is ORDERED that this cause of action shall be transferred from [Current County, Texas, to Proposed County, Texas.]

It is further ORDERED that the Clerk of this Court make up a transcript of all of the orders, pleadings and affidavits made in this cause, certifying them officially under the seal of this Court, and transmit the original papers in this cause to the Clerk of the [District/county] Court in and for [Name] County, Texas.

# THANK YOU

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

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

APPROVED AS TO FORM AND SUBSTANCE:  
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# PREVIEW

[Law Firm's or Attorney's Name]

Attorney for Plaintiff

[Address]

[Telephone & facsimile numbers]

Texas Bar no. [Number]

APPROVED AS TO FORM ONLY:

[Law Firm or Attorney's name]

Attorney for Defendant

[Address of firm]

[Telephone and facsimile numbers.]

[Texas Bar No.]

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# THIS DOCUMENT

# THANK YOU

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