

2019 County
and District Clerks'
Association of Texas
Winter Education
Conference

January 28-31, 2019

Embassy Suites by
Hilton Hotel
Conference Center & Spa,
San Marcos

Piece of the
Puzzle, Part of
the Whole



Transfer Cases

Wednesday, January 30, 2019
9:15–10:15 a.m

Hon. Sharena Gilliland
Parker County District Clerk

An overview of the clerks' role in transferring cases to another court, as well as receiving cases transferred into your court.


Hon. Sharena Gilliland took office as Parker County's district clerk in 2011. She earned her bachelor's degree from Oklahoma State University and her Juris Doctor from Baylor University School of Law. Before taking office, she practiced law for about 10 years, primarily in the area of civil litigation. Gilliland and her husband Chawn live in Willow Park.



TRANSFERRING CASES
January 30, 2019

TYPES OF TRANSFERS

- Federal
- Texas Rules of Civil Procedure
- Family Code
- Probate Code





**KEEP
CALM
OR
I WILL
USE MY
CLERK
VOICE**



FEDERAL CASES

- Removal to Federal Court – jurisdiction
 - Diversity of Parties
 - Minimum amount in controversy
 - Federal Question
- Bankruptcy
 - One or more parties declares bankruptcy before or while suit pending



FEDERAL CASES

- Texas Rules of Civil Procedure 237a:
 - If case removed to Federal Court and remanded back to State Court, plaintiff should file a certified copy of the order of remand with clerk and plaintiff to notify other parties
 - If defendant has not yet answered, he has 15 days from receipt of the notice of remand
 - No default judgment in State Court if defendant answered in Federal Court during the removal



FEDERAL CASES

- Clerk's Duties:
 - Removal to Federal Court:
 - Notice of Removal filed – close case
 - Remanded – re-open case
 - Bankruptcy:
 - No hearings/court activity while case is abated for bankruptcy
 - Suggestion of Bankruptcy filed – close case
 - Receipt of Order lifting Bankruptcy – re-open case
- No fees



FEDERAL CASES

- OCA Reporting (Civil):
 - Removed to Federal Court: DISPOSITION –
Line 10. Change of Venue Transfers (District)
Line 11. Change of Venue Transfers (CCL)
 - Suggestion of Bankruptcy: CASES ON DOCKET –
Line 7. Cases Placed on Inactive Status (District)
Line 8. Cases Placed on Inactive Status (CCL)
 - Bankruptcy lifted or Remanded from Federal Court: CASES ON DOCKET –
Line 3. Cases Reactivated (District)
Line 4. Cases Reactivated (CCL)



TRANSFER VENUE

- Civil Practice & Remedies Code chapter 15
 - Sets out proper venue for different cases, certain defendants, multiple parties
- TRCP 86-89 – Wrong County
 - Due Order of Pleading – Motion to Transfer must be filed BEFORE or CONCURRENTLY with any other plea, pleading, motion
 - Attorneys may ask that you file the Motion to Transfer Venue prior to filing the Original Answer
 - Entitled to 45 days notice before Hearing
 - Discovery continues while Motion pending
 - No interlocutory appeal available, unless multiple parties (TRCP 87 and CRPC §15.003)



TRANSFER VENUE

- TRCP 86-89 – Wrong County
 - Clerk's Duties:
 - If Motion Denied: no action
 - If Motion Granted: "The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed."
 - Clerk who RECEIVES the transfer shall mail notification to the plaintiff/attorney that the transfer has been completed, that the filing fee is due within 30 days of mailing notice (and will be dismissed if not timely paid)
 - Fees: No Fee for filing Motion to Transfer. Receiving Clerk - charge full fees for a new case.



TRANSFER VENUE

- TRCP 86-89 – Written Consent of Parties
 - Same process as if wrong county, but NO due order of pleading
 - Written consent of parties can be filed at any time.
 - Clerk's duties:
 - If Motion Denied: no action
 - If Motion Granted: "The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed."
 - Clerk who RECEIVES the transfer shall mail notification to the plaintiff/attorney that the transfer has been completed, that the filing fee is due within 30 days of mailing notice (and will be dismissed if not timely paid)
 - Fees: No Fee for filing Motion to Transfer. Receiving Clerk - charge full fees for a new case.



TRANSFER VENUE

- TRCP 257-261 – No Impartial Trial
 - Party alleges cannot receive a fair trial in that county, file Motion to Transfer
 - Must be supported by party's affidavit and affidavits of at least 3 credible residents
 - No deadline or Due Order of Pleading



TRANSFER VENUE

- TRCP 257-261 – No Impartial Trial
- Clerk's Duties:
 - If Motion Denied: no action
 - If Motion Granted: "The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause, to the clerk of the court to which the venue has been changed."
 - Clerk who RECEIVES the transfer shall mail notification to the plaintiff/attorney that the transfer has been completed, that the filing fee is due within 30 days of mailing notice (and will be dismissed if not timely paid)
 - Fees: No Fee for filing Motion to Transfer. Receiving Clerk - charge full fees for a new case.



TRANSFER VENUE

- OCA Reporting (Civil):
 - Transfer OUT: DISPOSITION –
Line 10. Change of Venue Transfers (District)
Line 11. Change of Venue Transfers (CCL)
 - Transfer IN: CASES ON DOCKET –
Line 4. All Other Cases Added (District)
Line 5. All other Cases Added (CCL)



FAMILY CASES

- Generally, the court originally rendering orders retains exclusive jurisdiction over all other matters from the SAPCR
- If jurisdiction should be transferred, court of original, continuing jurisdiction must sign the order to transfer before other action in another venue
- Divorce & SAPCR filed in different courts
 - Family Code §103.002(b) – transfer SAPCR to court where divorce is pending



FAMILY CASES

- Family Code chapter 155
 - File motion to transfer in court of continuing jurisdiction – process (§155.204)
 - Notify all parties and AG, if applicable
 - Petitioner – file at the time of initial pleadings
 - Respondent – file no later than 21st day after final date of period for filing a controverting affidavit
 - *If no controverting affidavit filed, hearing not required
 - On or before Monday after 20th day of notice of motion served, any controverting affidavit must be filed
 - If controverting affidavit filed, each party entitled to at least 10 days notice of hearing
 - If transfer granted, must be transferred no later than 21st day after hearing
 - No interlocutory appeal



FAMILY CASES

- Family Code chapter 155
 - Clerk's Duties (§155.207):
 - 10th **working day** after date order of transfer signed, transferring clerk must send:
 - Pleadings in the **pending** proceeding
 - Pleadings/docs specifically requested by a party
 - Certified copies of all entries in the minutes*
 - Certified copies of all final orders
 - Certified copy of the Order of Transfer
 - Certified copy of order directing payments to transferee court to any party/employer and to local registry
 - **Transferee/Receiving clerk:**
 - Open a new file and keep all transferred records
 - Notify the judge, all parties, and transferring clerk, and local registry that the case has been docketed



FAMILY CASES

- Family Code §262.203 (CPS)
 - Generally follow Chapter 155 transfer provisions
 - Some exceptions, including, not required to transfer to court with pending divorce before a final order for the protection of the child
 - Note for clerks of court of continuing jurisdiction – CPS court in another county can order the transfer to the CPS court without a hearing in the court of continuing jurisdiction
 - Clerks follow chapter 155 transfer procedures and deadlines



FAMILY CASES

- Family Code chapter 103 (SAPCR)
 - §103.002 – transfer within Texas, generally follow chapter 155
 - §103.003 – transfer within Texas and child out of state
 - Generally follow Chapter 155 transfer provisions



FAMILY CASES

- Fees:
 - Motion to Transfer - \$15.00 (§110.002(4))
 - Transfer Fee (payable to Transferee/Receiving Clerk) - \$45.00 (§110.005(a))
- OCA Reporting (Family):
 - Transfer OUT: DISPOSITION –
Line 10. Change of Venue Transfers (District, CCL)
 - Transfer IN: CASES ON DOCKET –
Line 4. All Other Cases Added (District, CCL)
- BVS Form VS-165
 - Transferring clerk should mail to BVS notifying the State of the transfer



FAMILY CASES

- Checklist to include in your Transfer:
 - Certified copy of the Order of Transfer
 - Certified copy of all FINAL Orders
 - Certified copy of any PENDING Orders
 - Copy of all PENDING pleadings
 - Copy of all other documents requested by a party
 - Letter listing all documents being forwarded (courtesy; not required)
 - Ask the receiving clerk if they prefer 1 PDF or each document as a PDF (courtesy; not required)
 - DO NOT** just send the entire file!



JUVENILE CASES

- Family Code chapters 51-61
 - §51.07 – Transfer for Disposition
 - §51.072 – Transfer of Probation Supervision – Interim
 - §51.073 – Transfer of Probation Supervision – Permanent
 - §51.08 – Transfer from Criminal Court
 - §54.051 – Transfer of Determinate Sentence Probation to Appropriate District Court



JUVENILE CASES

- Clerk's Duties:
 - Certified Copy of all Orders and Pleadings
- OCA Reporting (Juvenile):
 - Transfer OUT: ADJUDICATIONS –
Line 14. Transferred to Adult Criminal Court (District, CCL)
Line 18. All other Adjudications/Findings (transferred to other county) (District, CCL)
 - Transfer IN: CASES ON DOCKET –
Line 6. All Other Cases Added (District, CCL)
- Fees:
 - Generally, NO fees for transferring in or out



PROBATE CASES

- Estates Code chapter 32 (Jurisdiction)
 - §32.003 – Contested Probate with no Statutory Probate Court or Statutory County Court with original probate jurisdiction: county judge may transfer contested matter to statutory probate or district court
 - If party requests statutory probate assignment before judge transfers to district, shall grant assignment and not transfer to district
 - Statutory probate or district court only hear and resolve the contested matter, then send back to the county court
 - County court still manages uncontested issues
 - District Clerk can perform any function in the contested matter as County Clerk can in probate



PROBATE CASES

- Estates Code chapter 32 (Jurisdiction)
 - §32.004 – Contested Probate with no Statutory Probate Court: county judge may transfer contested matter to statutory court
- Clerk's duties:
 - County Clerk send all pleadings with contested issues
 - District Clerk set up new file, then send back all pleadings/orders filed in contested matter after contested matter is resolved
 - Fees: District Clerk – full fees



PROBATE CASES

- Estates Code chapter 33 (Venue)
 - §33.101 – Transfer to Other County: proceedings commenced in more than one county and venue transferred
 - Clerk duties: retain a copy of the entire file and send the original to the transferee clerk
 - §33.102 – Transfer for Want of Venue: court does not have priority of venue
 - Clerk duties: send the original and certified copies of the entries made on the judge's probate docket
 - §33.103 – Transfer for Convenience: transfer if best interest of the estate or if no admin of the estate, the decedent's heirs under the will
 - Clerk's duties: send the original and a certified copy of the index



PROBATE CASES

- Chapter 32 (Jurisdiction)
 - Fees:
 - District Clerk – full fees to set up new case
 - County Clerk – no fees
 - OCA
 - District Clerk (Civil) – Transfer IN: CASES ON DOCKET – Line 4. All Other Cases Added (Other civil)
 - District Clerk (Civil) – Transfer OUT: DISPOSITIONS – Line 10. Change of Venue Transfers
 - County Clerk (Probate) – Transfer IN: CASES ON DOCKET – Line 2b. All Other Cases Added - All Other Matters



PROBATE CASES

- Chapter 33 (Venue)
 - Fees:
 - County Clerk – no fees
 - OCA
 - County Clerk (Probate) – Transfer IN: CASES ON DOCKET - Line 2b. Other Cases Added – All Other Matters (CCL, Constitutional)



CONSOLIDATION

○ **Consolidate ≠ Transfer!!!**

○ **Transfer ≠ Consolidate!!!**

○ TRCP 174a

- (a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
- (b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.



QUESTIONS?

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