

MORRIS ATLAS
ROBERT L. SCHWARZ
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ADRIANA H. CÁRDENAS
GREGORY S. KAZEN
PATRICIA S. RIM
RICARDO G. BENAVIDES
LORIN L. RUNNELS

ATLAS & HALL, L.L.P.
ATTORNEYS AT LAW
PROFESSIONAL ARTS BUILDING • 818 PECAN
P.O. BOX 3725
McALLEN, TEXAS 78502-3725
(956) 682-5501
FAX (956) 686-6109

January 27, 2003

The Honorable Thomas R. Phillips
Chief Justice, Supreme Court
Supreme Court Building
P. O. Box 12248
Capitol Station
Austin, Texas 78711

Dear Justice Phillips:

On January 24, 2003, I sent to you proposed rule changes which had been approved for submission to the Supreme Court by the Court Rules Committee, including a proposed change to Rule 528 (Venue Changed on Affidavit). Today I received from the subcommittee the final version of Rule 528, which was not submitted to me in a timely manner, and which contains some minor revisions in wording.

Please substitute the enclosed version of Rule 528 for the one submitted to you last week and accept my apologies for this inconvenience.

By copy of this letter, I am forwarding copies of this proposed rule change to Justice Hecht and to Chris Grissel.

Sincerely,

By:



O. C. Hamilton, Jr.

OCH:PGB
JudgePhillips.Rule528.1272003

Attachment

STATE BAR OF TEXAS
COMMITTEE ON COURT RULES
REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE
TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing Rule:

RULE 528. VENUE CHANGED ON AFFIDAVIT

If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

II. Proposed Rule Change:

RULE 528. ~~VENUE CHANGED~~ TRANSFER ON AFFIDAVITS

a. Objection Affidavits.

If any party seeks to transfer a suit based upon a belief that the party cannot receive a fair and impartial trial before the justice or in the justice precinct in which the suit is filed, the party must object to trial in that court by taking the following action:

- (1) Not later than seven days before the date set by the court for trial, file affidavits of the party and of two other credible persons who are residents of the county and serve copies upon other parties.
- (2) The affidavits of the party and of the other persons must state that they have good reason to believe and do believe that the party cannot receive a fair and impartial trial before the justice or in the precinct in which the suit is filed.

✓ **b. Notice of Transfer.**

Upon the filing of the affidavits required by section (a) of this rule, the justice shall give written notice in accordance with Rule 524 to all parties that, unless affidavits are filed as provided by section (c) of this rule, an order will be signed, not earlier than 15 days after notice, transferring the suit to the court of the nearest justice within the county not subject to the same or some other disqualification, and identifying that justice in the notice.

c. Party's response to notice.

If any party opposes trial before the justice or in the justice precinct to which the suit is to be transferred, or to any other justice or justice precinct in the county, the party must file affidavits that meet the requirements of section (a) of this rule, not later than the 10th day after the notice.

d. Court action following time for response.

Not earlier than the 15th day after the notice of transfer, the court shall take whichever of the following actions is applicable:

- (1) If no party has filed the required affidavits objecting to the justice or precinct stated in the notice, the court shall sign an order pursuant to Rule 531 transferring the suit to that court.
- (2) If any party has filed the required affidavits objecting to the justice or precinct stated in the notice, the court shall sign an order pursuant to Rule 531 transferring the suit to the court of the nearest justice within the county to which no party has objected and filed affidavits required pursuant to section (a) of this rule.
- (3) If every justice or justice precinct within the county has had affidavits filed objecting to trial before every justice and justice precinct pursuant to this rule, the court shall submit a written request to the county judge, to appoint a qualified person and place to try the suit within the county.

III. Brief statement of reasons for requested changes and advantages to be served by them:

This modification prevents current abuses occurring in certain justice courts on a regular basis and provides for a relatively prompt resolution of the problems that the rule is intended to address. The rule is modified to permit only one objection after notice is issued.

Respectfully submitted,

Travis E. Vanderpool
HUNTON & WILLIAMS
Energy Plaza, 30th Floor
1601 Bryan Street
Dallas, Texas 75201

Date: October 18, 2002