

CHAPTER 7
CHANGE OF VENUE PROCEDURES
CHANGE OF VENUE RECORD (FORM 40)

PURPOSE

The Change of Venue Record, Form 40, is a supplemental entry docket. It is a book to record the filing of all actions received on change of venue. It is a record wherein all proceedings are required to be entered from the time the cause is received by the clerk and until it is disposed of by the trial court. If properly kept, the clerk will be able to prepare the claim of expense to be transmitted to the county of origin pursuant to the requirements of IC 34-35-5-2. It will also prevent a duplication of certain per diem charges against the county of origin.

ENTERING

When a cause is received on change of venue it shall be entered first in the entry docket or fee book in the same manner as other causes are filed.

After the cause is properly entered in the entry docket, the clerk shall then enter the filing of the venued action in the change of venue record.

The change of venue record must show the name of the county of origin and its cause number, the cause number in your county, date filed, and title of cause. The record must be indexed in the same manner as the entry docket.

ENTRIES

A brief statement of all actions, filings, issues or proceedings thereafter, showing the dates thereof, will be entered in the space under "Court Proceedings." A reference to the order book number and page wherein such proceedings are entered, shall be entered in the column provided for that purpose and following the aforementioned statement. The clerk must record a brief statement of every order book entry, or transaction, from the time it is received until disposed of and to note all references to the order book. The calendar date of the transaction, order book entry, or proceeding shall be shown when entering the statement.

The entries in the change of venue record should be brief and should be taken from the judge's docket. They should be entered at the time the order book entry is recorded. The order book number and page should be listed on the judge's docket following the entry and also following the entry in the change of venue record.

After the cause is fully and finally determined, or disposed of in any other manner, the clerk will make such final entry in the change of venue record as required. This is in addition to the entries made in any other record.

TAX EXPENSE ITEMS

The chargeable items of expense incurred in the trial county will then be taxed and entered in the space designated for that purpose.

The expense will be audited and allowed by the judge of the court in his or her order of allowance pursuant to the requirements of IC 34-35-5-2. The order of expense will be taken from the entry in the judge's docket, recorded in the order book, and in the change of venue record.

The entry of allowance in the change of venue record may be brief and in substance:

(Date) "The court now audits and allows the expense," extending the order book reference to the proper column and entering the amounts of the chargeable items of expense as determined by the court in the space provided for that purpose and on the line designated for each item.

CHANGE OF VENUE CLAIM FOR EXPENSE

PREPARE CLAIM

When all entries have been entered in every record, the clerk should prepare the change of venue claim against the county of origin. The claim will be prepared in duplicate from the change of venue record. If the change of venue record has been properly kept, the clerk will have little difficulty in preparing the claim accurately. Claims should be prepared as soon as each cause is disposed of.

The claim will be made on the form provided for that purpose. It will be prepared in duplicate and must be signed by the judge and the clerk and issued under the seal of the court.

CONTENTS

The claim will show the cause number in the county of trial; title of cause; name of the county of trial; name of county or court of origin; date of filing in county of trial; date of judgment; date of trial; number of days; a brief entry of all proceedings showing the calendar date of each proceeding and the order book reference thereto; a statement of all the chargeable items and amounts of expense incurred in the county of trial. All of this information will be taken from the change of venue record.

The claims will contain an order, signed by the judge, for the auditor of the county of origin to issue a warrant upon the treasurer of said county in favor of the county of trial.

FILE WITH AUDITOR

When the claim is properly completed, signed and sealed, the clerk will enter in the change of venue record the date and amount of the claim certified to the auditor and deliver the claim in duplicate to the local county auditor who shall retain one (1) of said certificates of allowance in his or her office and mail by certified mail the duplicate thereof to the auditor of the county in which such cause originated and from which such expenses are due.

CLERK'S PER DIEM

The clerk is entitled to collect two dollars (\$2.00) from the county treasurer for each calendar day on which the clerk or the clerk's deputy attends a court when it is occupied with business concerning change of venue. The payment authorized is not affected by the number of items filed or the business transacted by the court on that date. [IC 34-35-5-8]

PER DIEM OF SPECIAL JUDGE - NOT INCLUDED AS EXPENSE

If a special judge is selected to hear or to try a change of venue proceeding, his or her per diem therefor cannot be included in the claim as a chargeable item of expense.

REPORT OF PAYMENT

Upon receipt of payment of the claim, the auditor will enter, or cause to be entered, in the change of venue record in the clerk's office, and under the proper cause number, the name of the county of origin paying the claim, date of receipt of payment and the quietus number issued therefor.

CHARGEABLE ITEMS OF EXPENSE

The chargeable items of expense to be audited and allowed by the court pursuant to IC 34-35-5-2 are:

1. Expense of keeping the prisoner, if any.
2. Expense of transporting the prisoner to or from any penal institution.
3. Any extraordinary expense for safekeeping the prisoner.
4. Fee set by the venue court under IC 33-40-2-5 for the pauper counsel, if counsel was appointed by that court.
5. Expense of any mileage, meals, lodging and per diems paid for or to jurors.
6. The per diems paid jury commissioners for drawing any special venire.
7. The sum of five dollars (\$5.00) for each day, or part of a day a bailiff is engaged in assisting the court in the trial of the cause.
8. The sum of eight dollars (\$8.00) for each day or part of a day an official court reporter takes evidence or testimony before the judge or jury concerning the cause.
9. The sum of ten dollars (\$10.00) per day for each day of trial for use of facilities and utilities.
10. The sum of five dollars (\$5.00) for notifying the jury not to attend court after having been summoned in any cause.
11. The amount of telephone or telegraph communications made by the court or authorized by it.
12. The per diem allowed by law to the clerk of the court for attending court.

TRIAL DEFINED

The term "trial" shall mean and include the impaneling of the jury, the actual trial, demurrer, a trial on the issues joined on a plea in abatement, motion for summary judgment and final disposition of the case.

ONE PER DIEM PER DAY

Except for the clerk, not more than one per diem or charge for the official reporting, or for use of facilities and utilities shall be made against any county of origin of the causes for the same day. If two or more proceedings are conducted in two or more separate causes from any county or counties of origin on the same day, the court shall allocate said charges for any such causes it may determine in its discretion.

The per diem for the clerk, bailiff, or the official court reporter shall be paid by the county of trial in the first instance and reimbursement obtained from the county of origin. [IC 34-35-5-7]

CHANGE OF VENUE CASES NOT TO BE DOCKETED UNLESS FEE ACCOMPANIES TRANSCRIPT

Since payment of the fee is required upon instituting the removal, such case cannot be docketed without receiving the fee. In order to eliminate unnecessary delay and correspondence between clerks and attorneys, it is imperative for the sending clerk to forward or cause to be forwarded a remittance therefor with the transcript.

CHANGE OF VENUE - CERTIFYING UNPAID COSTS

Whenever an order or judgment for costs is entered in a change of venue action from another county, whether upon dismissal or otherwise, and such costs remain unpaid for a period of thirty (30) days from date of finality of such order of judgment the clerk of the trial court shall certify an itemized transcript of all costs accrued in such action to the clerk of the court where the action first originated or to the clerk of the court in the county of residence of the judgment debtor if his or her residence be in a county of this state other than where the action first originated. [IC 34-35-7-1]

CHANGE OF VENUE - COLLECTIONS AND PAYMENT OF COSTS

In all cases where a change of venue is taken from one (1) county to another, the clerk of the court of the county in which final disposition is made of a cause shall within sixty (60) days after the costs are paid, transmit by check to the clerk of the county in which the costs were accrued. The clerk receiving the money shall mail his receipt to the clerk sending the money who shall file the same in his office to be a part of the permanent records of the office. The clerk who collects the costs shall set out on the register of fees and also upon the fee book where the costs are taxed a marginal note stating the date, amount, number of check and the clerk to whom such fees and costs were transmitted. [IC 34-35-6-1]

CHANGE OF VENUE - CONTENTS OF RECEIPT

The form of receipt shall provide: Title and cause number in both counties; name of judgment debtor; to whom costs are due; amount of costs, fee book, judgment docket and order book number and page wherein recorded by both the sending and receiving clerk; seal and signature of sending clerk; seal, and certificate of receiving clerk. [IC 34-35-7-2]

CHANGE OF VENUE - DISPOSITION OF COSTS

Upon collection of such unpaid change of venue costs, the clerk shall immediately remit to the county or counties entitled thereto all costs as shown by the transcript and retain such costs as are due his county. Clerks of courts receiving such costs shall make proper accounting for and distribution of such costs as provided by law. [IC 34-35-7-4]

CHANGE OF VENUE - FEE REQUIRED UPON CHANGE OF VENUE

When a change of venue is directed, the clerk of the court in which the suit is pending, as soon as the costs of the change are paid, shall immediately transmit:

- (1) all the papers; and
- (2) a transcript of all the proceedings;

to the clerk of the court of the county to which the venue is changed.

If the party fails to pay the costs of the change within the time prescribed by the court the party:

- (1) shall be taxed with all the costs made in the case up to the time of the failure to pay costs; and
- (2) is not entitled to a change of venue from the county. [IC 34-35-1-2]

CHANGE OF VENUE - NOTATION ON DOCKETS

The clerk transmitting the transcript of costs shall make a notation in the fee book or entry docket wherein the action was first entered and also in the judgment docket at the page wherein the judgment or order is recorded, showing the name of the county and court to which the transcript is being sent, date of transmittal and any other necessary notation. [IC 34-35-7-2]

CHANGE OF VENUE - PAYMENT OF COSTS - BY WHOM ACCEPTED

After unpaid venue costs are certified to the clerk of the court where the case first originated or to the clerk of the court in the county of residence of the judgment debtor, the clerk of the trial court cannot accept payment or enforce collection thereafter.

The clerk who receives and records the transcript shall accept payment of all costs from the judgment debtor or enforce collection by, fee bill or execution. [IC 34-35-7-3]

CHANGE OF VENUE - POSTING BY RECEIVING CLERK

Upon receipt of the transcript and remittance, the receiving clerk will enter payment of the fee in the entry docket and cash book.

CHANGE OF VENUE - FEE TO ACCOMPANY TRANSCRIPT

Upon forwarding the transcript, the fee will be remitted to the clerk of the court of the county to which the action is sent and must accompany all papers, pleadings and receipts relating to the case.

CHANGE OF VENUE - RECEIPT TO ACCOMPANY TRANSCRIPT

The transmitting clerk shall also prepare a receipt to accompany the transcript to the receiving clerk. The receiving clerk shall fill in the information necessary to complete the receipt, date, sign, seal and return it to the sending clerk to be filed with other papers relating to the case. [IC 34-35-7-2]

CHANGE OF VENUE - CLERK TO PREPARE TRANSCRIPT

Whenever a change of venue is granted a defendant in a criminal action and taken to another county, the clerk must make a transcript of the proceedings and orders of the court, and having sealed up the same with the original papers, shall deliver them to the sheriff, who must, without delay, deposit them in the clerk's office of the proper county and make his or her return accordingly. [IC 35-36-6-1]

CHANGE OF VENUE IN CAUSES REVERSED BY THE SUPREME AND APPELLATE COURTS AND REMANDED TO THE LOWER COURT FOR A NEW TRIAL

In every case where an appeal to the court of appeals or supreme court of the state of Indiana has been taken from a judgment rendered against any party and such judgment is reversed and said cause is remanded for a new trial, either party in said cause shall be entitled to a change of venue from the county notwithstanding any changes in venue theretofore taken. [IC 34-35-4-2]

TRANSCRIPT ON CHANGE OF VENUE - MONEY TO ACCOMPANY

Whenever a change of venue is taken from one county to another and money has been deposited with the clerk as a tender, cost bond, cash bail or recognizance bond, such money is to accompany the transcript to the county where the cause is venued. The clerk should send his or her check for the amount held by him or her with the papers in the cause and the check should be entered as one of the items of the receipt to be signed by the clerk receiving the transcript. The receiving clerk will make the proper entries in his records in the same manner as other money is received.