



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

December 29, 1992

Honorable Mike Driscoll  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

Letter Opinion No. 92-87

Re: Whether a district clerk may charge a fee for making certified copies of papers in a cause of action transferred to another court pursuant to rule 89 of the Texas Rules of Civil Procedure and related questions (RQ-241)

Dear Mr. Driscoll:

You ask several questions regarding the authority of a district clerk to charge and collect fees for making certified copies of papers in a cause of action transferred pursuant to rule 89 of the Texas Rules of Civil Procedure. Your questions are premised on the assumption that a motion to transfer venue filed under rule 86 is sustained by the court. Your questions relate to the authority of the district clerk to charge fees for services rendered in connection with the transfer. You ask first whether the district clerk may charge a fee for making certified copies of papers in these circumstances. If the clerk may charge a fee, you ask what amount may be charged, which party is responsible for paying the fee, and whether the clerk may refuse to transfer the case file until the fee is paid.

Rule 89 governs the transfer of actions following a sustained motion to transfer venue. It provides the following in pertinent part:

If a motion to transfer venue is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the proper court; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under 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. Provided, however, if the cause be severable as to parties defendant and shall be ordered transferred as to one or more defendants but not as to all, the clerk, instead of sending the original papers, shall make certified copies of such filed papers as directed by the court and forward the same to the clerk of the court to which the venue has been changed.

Tex. R. Civ. P. 89.

Several things are immediately apparent from this language. First, the rule plainly states that costs incurred prior to the time a cause is filed in the transferee court are taxed to the plaintiff. Thus, assuming the clerk may charge a fee for making certified copies of papers filed in the cause, the costs must be charged to the plaintiff. Second, the rule allows certified copies to be prepared by the clerk only as directed by the court in cases severed as to some but not all defendants.<sup>1</sup> The clerk is not generally required to prepare certified copies of papers filed in all cases transferred following a motion to transfer venue.

There remains the threshold question: whether the district clerk may charge a fee in those cases where the clerk is required to prepare certified copies of papers filed in a transferred case. You observe that sections 51.317, 51.318, and 51.319 of the Government Code, which prescribe fees due a district clerk for services, do not prescribe a fee for making certified copies in cases transferred under rule 89. Nor are we aware of any other rule or statute that expressly prescribes such a fee. However, you note that subsection (5) of section 51.319 allows the clerk to charge a "reasonable" fee "for performing any other service prescribed or authorized by law for which no fee is set by law." Because a fee for making certified copies pursuant to rule 89 is not otherwise set by law, the clerk may charge a reasonable fee for these services. This office cannot determine the reasonableness of a particular fee in the opinion process. Rather, the district clerk must make this determination following consultation with your office.

Your final inquiry is whether the district clerk may refuse to transfer the case file of a cause transferred pursuant to rule 89 if the plaintiff fails to pay fees for the clerk's services in making certified copies. We agree with your determination that the clerk is vested with no discretion to delay or suspend the transfer of a case by withholding the case file in the event a plaintiff fails to pay fees as required by rule 89. As you correctly observe, the rules and code provisions governing venue mandate that *the court* transfer a cause to the appropriate court. The district clerk is given the ministerial duty of preparing the transcript of the proceedings and, if necessary, certified copies of the original papers filed in the cause. The rule does not, in our opinion, authorize the clerk to delay the transfer of a case to a proper court under rule 89, whether or not fees for services have been paid. *Compare* Attorney General Opinion JM-216 (1984) (district clerk need not docket a case transferred to his county under rule 89 until filing fee is paid on the case) *with* Attorney General Opinion H-1155 (1978) (because duty to file pleadings is ministerial, clerk cannot refuse to file pleadings which appear to clerk to be inadequately certified).

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<sup>1</sup>You do not ask whether the district clerk may charge a fee for certifying the transcript prepared pursuant to rule 89.

**S U M M A R Y**

A district clerk may charge a "reasonable" fee for making certified copies pursuant to rule 89 of the Texas Rules of Civil Procedure. The costs for such services are taxed against the plaintiff. The clerk has no discretion to delay the transfer of a case under rule 89 by refusing to transfer the case file, even where the plaintiff fails to pay the fee for the clerk's services in making certified copies.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon". The signature is fluid and cursive, with a large initial "S" and "A".

Steve Aragon  
Assistant Attorney General  
Opinion Committee