

Question

Does a defendant's attempt to set motions in the trial court after remand waive the plaintiff's obligation to file a certified copy of the remand order under Rule 237a of the Texas Rules of Civil Procedure?

Answer (Texas)

Short response

A defendant's attempt to set motions in the trial court after remand does not waive the plaintiff's obligation to file a certified copy of the remand order under Rule 237a of the Texas Rules of Civil Procedure. The plaintiff's duty to file the certified remand order and provide written notice remains mandatory regardless of the defendant's actions.

Summary

Under Texas Rule of Civil Procedure 237a, the plaintiff is required to file a certified copy of the federal remand order with the state court clerk and to provide written notice of this filing to all adverse parties. This procedural obligation is not excused or waived by any actions taken by the defendant, including attempts to set motions or otherwise participate in proceedings after remand.

Texas courts have consistently held that the plaintiff's compliance with Rule 237a is a prerequisite to triggering the defendant's answer deadline and to re vesting jurisdiction in the state court. The defendant's conduct, even if it demonstrates knowledge of the remand or active participation in the case, does not relieve the plaintiff of the statutory duty to file and notify as prescribed by the rule.

Background and Relevant Law

Rule 237a of the Texas Rules of Civil Procedure

Rule 237a governs the procedure when a case is removed from state court to federal court and subsequently remanded back to state court. The rule explicitly requires the plaintiff to file a certified copy of the federal remand order with the state court clerk and to provide written notice of this filing to all adverse parties. Only after these steps are completed does the fifteen-day period for the defendant to file an answer begin to run. The rule also prohibits the entry of a default judgment against a party who filed an answer in federal court during removal.

Key Case Law Interpreting Rule 237a

The Texas Supreme Court and Courts of Appeals have repeatedly addressed the operation and effect of Rule 237a, emphasizing the plaintiff's responsibility and the procedural consequences of noncompliance.

In [Gonzalez v. Guilbot, 315 S.W.3d 533 \(Tex. 2010\)](#), the Texas Supreme Court underscored that Rule 237a expressly places the obligation on the plaintiff to file a certified copy of the remand order with the state court clerk. The Court explained that this requirement is essential for transparency and uniformity in remand procedures and is not negated by the defendant's knowledge of the remand or participation in post-remand proceedings.

The Texas Court of Appeals in [Kashan v. McLane Co.](#), No. 03-11-00125-CV (Tex. App. June 7, 2012) reaffirmed that the plain language of Rule 237a imposes the burden on the plaintiff to file the remand order and provide written notice to adverse parties. The court specifically noted that this obligation is not waived by the defendant's actions, such as setting motions in the trial court after remand.

In [Toliver v. Dallas Fort Worth Hosp. Council, 198 S.W.3d 444 \(Tex. App. 2006\)](#), the court held that the fifteen-day deadline for the defendant to file an answer is triggered only by the plaintiff's filing of the remand order and written notice. The defendant's actions, including setting motions, do not affect or waive the plaintiff's obligation.

Similarly, [HBA East, Ltd. v. JEA Boxing Co., Inc., 796 S.W.2d 534 \(Tex. App. 1990\)](#) made clear that the plaintiff controls the timing of the remand order filing and notice, and that the defendant's conduct does not alter the plaintiff's procedural duties under Rule 237a.

Analysis

The Plaintiff's Non-Delegable Duty Under Rule 237a

The authorities are unanimous in holding that Rule 237a imposes a non-delegable duty on the plaintiff to file a certified copy of the remand order with the state court clerk and to provide written notice to all adverse parties. This duty is not contingent on the defendant's awareness of the remand, nor is it excused by the defendant's participation in post-remand proceedings.

The Texas Supreme Court in [Gonzalez v. Guilbot \(315 S.W.3d 533, 540–41 \[Tex. 2010\]\)](#) emphasized that the procedural requirements of Rule 237a are designed to ensure clarity and uniformity in the transfer of jurisdiction back to the state court. The Court rejected the argument that the defendant's knowledge or actions could substitute for the plaintiff's compliance with the rule. Instead, the Court held that the plaintiff's filing of the certified remand order is the operative event that re vests jurisdiction in the state court and triggers subsequent procedural deadlines.

The Court of Appeals in [Kashan v. McLane Co.](#) (No. 03-11-00125-CV) further clarified that the plaintiff's obligation is not waived by the defendant's actions, including attempts to set motions in the trial court after remand. The court's reasoning is rooted in the plain language of Rule 237a, which assigns the duty to the plaintiff and does not provide for waiver based on the defendant's conduct.

Similarly, [Toliver v. Dallas Fort Worth Hosp. Council](#) (198 S.W.3d 444, 447–48 [Tex. App. 2006]) and [HBA East, Ltd. v. JEA Boxing Co., Inc.](#) (796 S.W.2d 534, 538 [Tex. App. 1990]) both confirm that the fifteen-day answer deadline for the defendant is triggered only by the plaintiff's filing and notice, not by any action of the defendant. The courts in these cases explicitly rejected the notion that the defendant's participation in the case after remand could relieve the plaintiff of the procedural requirements of Rule 237a.

Rationale for Strict Compliance

The rationale for this strict approach is twofold. First, it ensures that all parties have clear notice of the procedural posture of the case and the applicable deadlines. Second, it prevents confusion or disputes about when jurisdiction is properly restored to the state court and when the defendant's answer deadline begins to run. By placing the burden on the plaintiff to file and notify, Rule 237a provides a clear, objective trigger for subsequent procedural events.

Defendant's Actions Do Not Constitute Waiver

The consistent theme in the case law is that the defendant's actions—whether setting motions, filing pleadings, or otherwise participating in the case after remand—do not waive or substitute for the plaintiff's obligation under Rule 237a. The courts have reasoned that allowing the defendant's conduct to excuse the plaintiff's noncompliance would undermine the uniformity and predictability that Rule 237a is designed to promote.

For example, in [Kashan v. McLane Co.](#), the court specifically addressed the argument that the defendant's attempt to set motions in the trial court after remand could waive the plaintiff's duty. The court rejected this argument, holding that the rule's plain language and purpose require strict adherence to the plaintiff's filing and notice obligations, regardless of the defendant's actions.

Similarly, in [Toliver v. Dallas Fort Worth Hosp. Council](#), the court held that the defendant's deadline to answer was not triggered because the plaintiff had not provided the required notice, even though the defendant was aware of the remand and had participated in the case. The court emphasized that the procedural requirements of Rule 237a must be satisfied to start the answer deadline.

Control of Timing and Notice

The courts have also noted that Rule 237a gives the plaintiff control over the timing of the remand order filing and the provision of notice to the defendants. This control is significant because it allows the plaintiff to determine when the defendant's answer deadline begins. However, with this control comes the responsibility to strictly comply with the procedural requirements of the rule.

In [HBA East, Ltd. v. JEA Boxing Co., Inc.](#), the court explained that the plaintiff's filing and notice are the operative events that trigger the defendant's answer deadline. The defendant's actions, no matter how proactive, do not alter this requirement.

Exceptions and Caveats

No Waiver by Defendant's Actions

The authorities provided do not identify any exceptions to the plaintiff's obligation under Rule 237a based on the defendant's conduct. The courts have uniformly held that the plaintiff's duty to file the certified remand order and provide notice is not waived or excused by the defendant's participation in the case after remand.

Potential for Equitable Relief

While the provided authorities do not discuss the possibility of equitable relief in cases of egregious conduct or gamesmanship, the strict language of Rule 237a and the courts' interpretations suggest that such arguments would face significant hurdles. The rule's purpose is to provide a clear, objective procedure for restoring jurisdiction and triggering deadlines, and the courts have been reluctant to depart from its requirements.

No Negative or Subsequent Treatment

None of the authorities cited have been subject to negative or subsequent treatment that would undermine their precedential value. The holdings remain good law and are consistently applied by Texas courts.

Conclusion

In summary, a defendant's attempt to set motions in the trial court after remand does not waive or excuse the plaintiff's obligation to file a certified copy of the remand order under Rule 237a of the Texas Rules of Civil Procedure. The plaintiff must strictly comply with the rule by filing the certified remand order with the state court clerk and providing written notice to all adverse parties. Only upon completion of these steps are the defendant's answer deadline and other procedural timelines triggered. The defendant's actions, regardless of their nature or timing, do not affect the plaintiff's mandatory duties under Rule 237a.

This approach ensures clarity, uniformity, and predictability in the remand process, and is firmly supported by the Texas Supreme Court and Courts of Appeals. Practitioners should be aware that failure to comply with Rule 237a may result in procedural delays or adverse consequences, and that reliance on the defendant's conduct will not suffice to satisfy the rule's requirements.

Legal Authorities

[Toliver v. Dallas Fort Worth Hosp. Council, 198 S.W.3d 444 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

DFW Hospital Council also cites HBA East Ltd. v. JEA Boxing Co., Inc., 796 S.W.2d 534, 538 (Tex.App.-Houston [1st Dist.] 1990, writ denied) for the proposition that rule 237a requires the plaintiff to file a copy of the remand order with the state court clerk and notify defendants of the filing in order to trigger the fifteen-day deadline for filing an answer. It argues that its deadline is supposed to be measured from the date Toliver served it with notice of the remand, and because Toliver never notified it of the remand, the fifteen day deadline was never triggered.

Summary

Rule 237a requires the plaintiff to file a certified copy of the remand order with the state court and notify the defendants to trigger the fifteen-day deadline for filing an answer. The defendant's actions, such as setting motions in the trial court, do not waive this obligation of the plaintiff. The rule is clear that the plaintiff's actions are necessary to start the deadline clock, and the defendant's actions do not alter this requirement.

[HBA East, Ltd. v. JEA Boxing Co., Inc., 796 S.W.2d 534 \(Tex. App. 1990\)](#)

Texas Court of Appeals

Extract

In this case, the cause was removed to federal court and quickly remanded back to the state court. Under rule 237a, it then became the plaintiffs' obligation to file a copy of the remand order with the clerk of the state court and to give written notice of such filing to the defendants. It should be noted that the plaintiff controls the timing of the filing and the written notice. Written notice must be accomplished in person, by registered mail, or in any other way directed by the court. TEX.R.CIV.P. 21a. Delivery in person or by registered mail generates a dated receipt from which the 15-day period can be calculated. A defendant then has 15 days after receipt of such written notice to file its answer.

Summary

Rule 237a imposes a clear obligation on the plaintiff to file a certified copy of the remand order with the state court clerk and to notify the defendants. This obligation is not waived by any actions taken by the defendants, such as setting motions in the trial court after remand. The rule specifies the procedure and timeline for the plaintiff's actions, and the defendants' actions do not alter this requirement.

[Kashan v. McLane Co., NO. 03-11-00125-CV \(Tex. App. Jun 07, 2012\)](#)

Texas Court of Appeals

Extract

Rule 237a of the Texas Rules of Civil Procedure establishes the deadline for filing an answer if an answer was not filed either before removal or in federal court during removal: When any cause is removed to the Federal Court and is afterwards remanded to the state court, the plaintiff shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. No default judgment shall be rendered against a party in a removed action remanded from federal court if that party filed an answer in federal court during removal. ... The plain language of Rule 237a places the burden on the plaintiff to file the remand order with the state trial court and to provide written notice to the attorneys of record for all adverse parties.

Summary

This obligation is not waived by the defendant's actions, such as attempting to set motions in the trial court after remand. The rule's language and the court's interpretation emphasize the plaintiff's responsibility, regardless of the defendant's actions.

[Gonzalez v. Guilbot, 315 S.W.3d 533 \(Tex. 2010\)](#)

Texas Supreme Court

Extract

We also reject Defendants' argument that allowing hand-delivery of the remand order to effect jurisdictional transfer in this case would destroy transparency and uniformity in the remand procedures. To the contrary, Texas Rule of Civil Procedure 237a expressly provides for the plaintiff to file a certified copy of the remand order with the state court clerk. Efforts to quickly recommence proceedings in the state court following an unsuccessful and apparently frivolous removal actually further the policy of avoiding excessive delay in resolving disputes. Defendants here resumed litigation in the probate court with full knowledge of the remand. Further, it is undisputed that the probate court took no action until after the remand order had been hand-delivered there. In light of these circumstances, Plaintiffs' hand-delivery of the remand order was sufficient to vest jurisdiction in the probate court.

Summary

Under Texas Rule of Civil Procedure 237a, the plaintiff is required to file a certified copy of the remand order with the state court clerk. The court emphasizes that this requirement is part of ensuring transparency and uniformity in remand procedures. The passage also indicates that the defendants' actions in resuming litigation with knowledge of the remand do not negate the plaintiff's obligation to file the certified copy. The court's decision underscores the importance of

following procedural rules to avoid delays and ensure proper jurisdictional transfer.

This memo was compiled by Vincent AI based on vLex materials available as of May 09, 2025. [View full answer on vLex](#)