

CAUSE NO. CV1611219

SHERRY LYNN JOHNSON,

Plaintiff

V.

DAVID DEXEL, ET AL

Defendants.

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IN THE DISTRICT COURT OF

LIBERTY COUNTY, TEXAS

253RD JUDICIAL DISTRICT

**DEFENDANT CLARINDA COMSTOCK'S MOTION TO TRANSFER VENUE AND
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION, SUBJECT
TO MOTION TO TRANSFER VENUE**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Clarinda Comstock files her Motion to Transfer Venue and Original Answer to Plaintiff's Original Petition, subject to Motion to Transfer Venue, and would respectfully show the Court as follows:

**I.
MOTION TO TRANSFER VENUE**

1. This is a lawsuit brought against a Harris County, Texas lawyer for legal services provided in Harris County, Texas. Defendant objects to venue in Liberty County, because it is not a county of proper venue under Texas Civil Practice and Remedies Code § 15.17, or any other rule or law. Defendant denies any and all purported venue "facts" pleaded by Plaintiff.

2. Harris County, Texas is the proper county of venue for this case. *See* TEX. CIV. PRAC. & REM. CODE § 15.015 ("An action against a county shall be brought in that county."). Additionally, all or a substantial part of the events giving rise to Plaintiff's claims occurred in Harris County. Each of the alleged acts or omissions giving rise to those claims and the causes of action enumerated by Plaintiff against Defendants occurred in Harris County, Texas. None of the alleged acts or omissions giving rise to Plaintiff's claims or causes of action occurred in



Liberty County, much less a substantial part of such acts or omissions. Maintenance of the suit in Liberty County will work an injustice on Defendant considering the fact that none of the events giving rise to the claims against Defendant occurred in Liberty and none of the relevant evidence or witnesses are located in Liberty County. The balance of interests of all of the parties predominate in favor of the action being brought in Harris County. The transfer of the case to Harris County will not work an injustice to any other party. Accordingly, Harris County is clearly the county of proper venue under the general venue rule. *See* TEX. CIV. PRAC. & REM. CODE §15.002(a)(1). Therefore, Defendant requests that the Court transfer venue of this case to Harris County, Texas.

II.
GENERAL DENIAL

3. Defendant denies generally the allegations in Plaintiff's Petition and requests that Plaintiff be required to prove them by a preponderance of the evidence in accordance with the laws of the State of Texas.

III.
ADDITIONAL DEFENSES

4. Defendant will further show that this action is subject to the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code, including (without limitation) the requirement of § 33.003 thereof that the trier of fact determine the relative responsibility of Plaintiff, Defendants, and each and every responsible third-party that may be joined in the suit. Defendant may not be held jointly and severally liable for any amount of damages claimed herein unless the percentage of responsibility of Defendant when compared with that of Plaintiff, and each and every responsible third party is greater than 50%.

5. Defendant will further show that Plaintiff's alleged damages may have resulted from new and independent, unforeseeable, superseding and intervening causes unrelated to any conduct of Defendant.

6. Defendant will further show that Plaintiff's alleged damages were not proximately caused by any act or omission of Defendant, but by the acts and/or omissions of a third party over whom Defendant had no control.

7. Defendant will further show that Defendant is not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff own acts, conduct, negligence and/or failure to exercise reasonable care in mitigating her damages.

8. Defendant will further show that it is not responsible for any loss caused by Plaintiff's own negligence, intentional misconduct, or other act or omission.

9. Defendant will further show that Plaintiff's claims are barred in whole or in part by the doctrine of derived judicial immunity.

10. Defendant will further show that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

11. Defendant will further show that Plaintiff's claims are barred by res judicata and/or collateral estoppel.

12. Defendant will further show that Plaintiff's claims are barred by waiver, estoppel, and/or quasi-estoppel.

13. Defendant will further show that Plaintiff does not have standing to sue Defendant for some or all of her purported causes of action.

14. Defendant will further show that she acted in good faith and with the reasonable belief that she was acting in the best interest of Willie Joe Mills.

15. Defendant will further show that in the unlikely event Plaintiff is adjudged to be entitled to any damages in this matter, which is denied, Plaintiff is not entitled to recover prejudgment interest on any future damages. Defendant would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would not be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law.

16. Defendant will further show that if prejudgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. §304.101 *et seq.*

17. Defendant will further show that if post-judgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. §304.003(c).

18. Defendant would further show that it is entitled to all caps and limitations on damages pursuant to the Texas Civil Practices & Remedies Code.

III.

JURY DEMAND

19. Defendant requests a jury trial. The jury fee has previously been tendered to the District Clerk.

WHEREFORE, PREMISES CONSIDERED, Defendant Clarinda Comstock respectfully pray that Plaintiff take nothing of and from Defendant, and that Defendant receives all costs of Court and such other and further relief, both at law and in equity, to which Defendant may show herself to be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

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**ATTORNEYS FOR DEFENDANT
CLARINDA COMSTOCK**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been sent to all known counsel of record and/or parties of record pursuant to the Texas Rules of Civil Procedure on the 28th day of September, 2016.

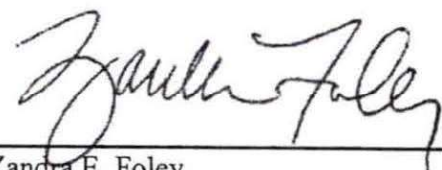
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