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ILLINOIS LAW MANUAL

CHAPTER I

CIVIL PROCEDURE

B. VENUE

Generally, every action must be filed:

- (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or
- (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose.

If all defendants are non-residents of the State of Illinois, an action may be filed in any county within Illinois. 735 ILCS 5/2-101. It is important to note that venue is not a matter of jurisdiction, but relates solely to the location where the suit may be filed. Therefore, a defendant may waive improper venue. Any objection to venue is waived if not made within the time required to answer or within such further extension of time as the court may allow. 735 ILCS 5/2-104(b).

1. Residence of Corporations, Voluntary Unincorporated Associations and Partnerships for Purposes of Venue

Any private corporation organized under the laws of Illinois and any foreign corporation authorized to transact business in Illinois is a resident of any county in which it has its registered office or is doing business. A foreign corporation not authorized to transact business in Illinois is

a non-resident of the state. 735 ILCS 5/2102(a). Doing business in a county for venue purposes turns on the individual facts of each case. However, the courts will generally require more than minimal contacts with the county in order to classify the corporation as doing business within the county. Stambaugh v. International Harvester, 102 Ill. 2d 250, 257-63 (1984); Turner v. Jarden, 275 Ill. App. 3d 890, 893 (5th Dist. 1995); Lorenz v. Herrera, 362 Ill. App. 3d 1171, 1173724 (2d Dist. 2006); Long v. Gray, 306 Ill. App. 3d 445, 452 (1st Dist. 1999). For example, the mere solicitation of business within a county does not establish venue in that county. Consider the following examples:

- (a) In regard to services performed, an engineering partnership which infrequently performed engineering services in surrounding counties and in all incidences performed those services from its Chicago office was not doing business in the surrounding counties. Wilson v. Central Illinois Public Service, 165 Ill. App. 3d 533 (5th Dist. 1988). However, an attorney whose firm had prepared a will in a surrounding county and had recently filed at least eight claims in close proximity to the preparation of the will was properly sued in that county. McLane v. Russell, 159 Ill. App. 3d 429, 434 (3rd Dist. 1987);
- (b) In regard to sales activities, a corporation was not doing business in the county for purposes of venue where the corporation maintained no warehouse, regional office or sales office in the county and did not engage in the direct sale of its product to consumers in that county. Peterson v. Monsanto Co., 157 Ill. App. 3d 508, 510-11 (5th Dist. 1987).

The quantity or volume of business activity within a county is to be considered to determine whether the defendant is doing business within a county for venue purposes. Long, 306 Ill. App. 3d at 451. Finally, when a court determines if a corporation was doing business within the county, it must look at the corporation's actions at the time the suit is instituted, not at the time of service of process or at the time of accrual of the cause of action. Id. at 449. A partnership sued in its firm name is a resident of any county in which any partner resides or in which the partnership has an office or is doing business. A partnership sued in its firm name of which all partners are non-residents of Illinois and which does not have an office or does not do

business in Illinois is a non-resident of the state for venue purposes. 735 ILCS 5/2-102(b). The meaning of "doing business" regarding a partnership is the same as to corporations. Wilson v. Central Illinois Public Service, 165 Ill. App. 3d at 535 (1988); Turner v. Jarden, 275 Ill. App. 3d at 893 (1995); Ill. Commerce Comm'n. v. Entergy-Koch Trading, LP, 362 Ill. App. 3d 790 (1st Dist. 2005). A voluntary unincorporated association sued in its own name is a resident of any county in which the association has an office, or if no office can be found, venue is proper in any county in which an officer of the association resides. If all of the members are non-residents of the state and the association does not have an office or does not do business in Illinois, then the voluntary unincorporated association is considered a non-resident of the state for venue purposes. 735 ILCS 5/2-102(c).

2. Motions to Transfer Venue

No action will be dismissed because it has been filed in the wrong venue as long as there is a proper venue to which the cause may be transferred. 735 ILCS 5/2-104(a). All objections to improper venue are waived unless a defendant files a motion to transfer venue to a proper venue on or before the date upon which he or she is required to appear, or within any further time that may be granted to answer the complaint. However, if a defendant upon whose residence venue depends is dismissed upon motion of the plaintiff, then a remaining defendant may promptly move for the transfer as though the dismissed defendant had not been a party. 735 ILCS 5/2-104(b).

The method of transfer of a case from one venue to another is as follows:

- (a) The clerk of the court from which a transfer is granted shall immediately certify and transmit to the clerk of the court to which the transfer is ordered the originals of all papers filed in the case together with copies of all orders entered therein. In the event of a severance, certified copies of papers filed and orders entered shall be transmitted. The clerk of the court to which the transfer is ordered shall file the papers and transcripts transmitted to him or

her and docket the case and the action shall proceed and be determined as if it had originated in that court.

735 ILCS 5/2-106(b).

- (b) The cost and expenses of transfer. The costs attending a transfer shall be taxed by the clerk of the court from which the transfer is granted, and, together with the filing fee in the transferee court, shall be paid by the plaintiff. If the court granting the transfer finds that venue was fixed by the plaintiff in bad faith and without probable cause, then it may order the reasonable expenses of defendant in attending and obtaining a transfer to a proper venue, including a reasonable attorney's fee, to be paid by the plaintiff. If the cost and expenses are not paid within a reasonable time, the transferring court shall on motion dismiss the action.

735 ILCS 5/2-107.

3. Motions to Transfer Venue on Grounds of *Forum Non Conveniens*

a. Time for Filing

A motion to transfer the action to another venue (location) under the doctrine of *forum non conveniens* must be filed not later than 90 days after the last day allowed for the filing of an answer. Sup. Ct. Rule 187(a). This motion is used where venue is technically proper in the county where the suit is filed, but there is a more convenient location where the defendant seeks to have the case filed.

b. Proceedings

Hearings on a motion to transfer the action under the doctrine of *forum non conveniens* must be scheduled so as to allow the parties sufficient time to conduct discovery on issues of fact raised by the motion. Sup. Ct. Rule 187(b). These motions may be supported or opposed by affidavit. The determination of any factual issue in connection with such a motion does not constitute a determination of the merits of the case or any aspect thereof. Sup. Ct. Rule 187(b).

c. Factors to be Considered by the Court

The court has broad discretion in determining whether to transfer a cause to another jurisdiction on the basis of *forum non conveniens*. *Forum non conveniens* is founded upon considerations of fundamental fairness and sensible and effective judicial administration. Dawdy v. Union Pacific Railroad, 207 Ill. 2d 167, 171 (2003). Under the doctrine of *forum non conveniens*, the court may decline to exercise jurisdiction over a case where it appears that there is another forum with proper jurisdiction over the parties and the subject matter which is more convenient and which may better serve the interests of justice. Normally, the court will give deference to the plaintiff's choice of location for filing the suit as long as the requirements of the venue statute have been met. Gridley v. State Farm Mut. Auto. Ins. Co., 217 Ill. 2d 158, 170 (2005). However, where venue is proper in other counties and the plaintiff is not a resident of the county where the case is filed, the court is not required to give the same deference to the plaintiff's selection of the forum. Dawdy, 207 Ill. 2d at 174. Various public and private interests are to be considered by the court when ruling on a motion to transfer venue based on *forum non conveniens*. See Woodward v. Bridgestone/Firestone, Inc., 368 Ill. App. 3d 827, 832 (5th Dist. 2006).

In First National Bank v. Guerine, the Illinois Supreme Court reevaluated the vitality of the intrastate *forum non conveniens* doctrine. 198 Ill. 2d 511 (2002). The court held that, instead of weighing the private factors against the public factors, the trial courts must evaluate the total circumstances of the case in deciding whether the defendant has proven that the balance of factors strongly favors a transfer. Id. at 518. The private factors include:

- (1) convenience of parties;
- (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and

- (3) all other practical problems that make a trial of a case easy, expeditious and inexpensive.

Id. At 516.

The public factors include:

- (1) the interest in deciding localized controversies locally;
- (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and
- (3) the administrative difficulties presented by adding further litigation to congested court dockets.

Id. at 516-17.

When considering these factors, the court states that we must consider the world we live in today. A world connected by interstate highways, bustling airways, telecommunications, and the internet, which gives the doctrine of *forum non conveniens* a different meaning because the convenience of parties depends in large measure upon the context in which we evaluate their convenience. Id. at 525-26.

Specifically, the court ruled that a trial court abuses its discretion in granting a transfer when witnesses are scattered through several counties, including the plaintiff's chosen forum and no one county enjoys a predominant connection to the litigation. Id. at 526. See also, Langenhorst v. Norfolk Southern Ry., 219 Ill. 2d 430, 442 (2006).