

CHAPTER 261.

PLACE OF TRIAL OF CIVIL ACTIONS.

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261.01 Place of trial. Except as provided in section 220.12 and subject to the provisions for change of venue the proper place of trial of civil actions is as follows:

(1) **WHERE SUBJECT OF ACTION SITUATED.** Of an action within one of the four classes next following, the county in which the subject of the action or some part thereof is situated, viz.: (a) For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such estate or interest, or for an injury to real property. (b) For the partition of property. (c) For the foreclosure, redemption or other satisfaction of a mortgage of real property. (d) For the recovery of distrained personal property, except that when personal property is seized in outlying waters under the provisions of section 29.05 then the place of trial shall be in the county in which the seizure of said personal property was made and where said seizure was made at a place where 2 or more counties have common jurisdiction under sections 2.03 and 2.04, then the place of trial may be in either county.

(2) **WHERE CAUSE OF ACTION ARISES.** Of an action within either of the two classes next following the county where the cause or some part thereof arose, viz.: (a) Except as provided in subsection (9), against a public officer or person appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, shall do anything touching the duties of such officer. (b) For the recovery of a penalty or forfeiture imposed by statute; and when the cause arose where two or more counties have a common jurisdiction, under sections 2.03 and 2.04, the action may be brought in either county.

(3) **ACTION AFFECTING MARRIAGE.** Of an action for the annulment or affirmance of a marriage or for a divorce, the action must be commenced in the county in which either party resides.

(4) **ACTION AGAINST RAILROADS.** Of an action against any railroad corporation as defined by s. 990.01, or against any corporation owning or operating any interurban railroad (except in condemnation proceedings), either in the county in which the cause of action arose or in that in which the plaintiff resides, if the road of such corporation extends into either county; if such road does not extend into either county, in any county into which its road does extend.

(5) **AGAINST INSURANCE COMPANIES.** Of an action against an insurance company, to recover on a policy of insurance, the county in which the defendant has its principal office or in which the plaintiff resides or, if brought by a person in a representative capacity by appointment of a court in the county in which such appointment was had, provided, however, that in the event an insurance company is sued or made a party to an action growing out of the negligent operation of a motor vehicle, the proper place of trial shall be in the county where the cause of action arose or where the person or persons, covered by an insurance policy by reason of which such insurance company is sued or made a party to said action, resides.

(6) **AGAINST OTHER CORPORATIONS.** Of an action against any other corporation the county in which it has its principal office or in which the cause of action or some part thereof arose.

(8) **ACTIONS BY STATE.** Of an action by the state against any county or county officer in any county; and actions brought to recover damages for trespass upon public lands, when the amount in controversy exceeds two hundred dollars in any county.

(9) **ACTIONS AGAINST THE STATE.** Of an action brought against the state or any state board or commission or any state officer in his official capacity, the county of Dane.

(10) **ACTIONS ON OFFICIAL BONDS.** Of an action for a breach of any official bond, in the county in which such bond is filed.

(11) **AUTO ACCIDENT ACTIONS.** Of an action growing out of the negligent operation of a motor vehicle, the county in which the cause of action arose or where the defendant resides.

(11b) **ASSAULT AND BATTERY ACTIONS.** Of an action growing out of assault and battery, the county in which the cause of action arose or where the defendant resides.

(12) **OTHER ACTIONS.** Of any other action, the county in which any defendant resides at the commencement of the action; or if no defendant resides in this state, any county which the plaintiff designates in his complaint.

History: 1951 c. 261 s. 3.

261.01 (3) prevails over and supersedes 261.02 so far as they are repugnant and irreconcilable, so that, since the effective date of the amendment to 261.01 (3), in 1947, all actions for divorce must be commenced in the county in which one of the parties resides, subject to statutory provisions for change of venue. [Case decided prior to amendment of 261.02 by ch. 83, Laws 1955.] *Abdella v. Abdella*, 268 W 127, 66 NW (2d) 689.

261.02 Place of trial, general rule, exceptions. The county designated in the complaint shall be the place of trial, unless the same be changed as provided in this chapter, except that every action named in s. 261.01 (1) can be commenced only in the county in which the property or some part thereof is situated and that every action named in s. 261.01 (3) can be commenced only in the county in which either party resides.

History: 1955 c. 83.

See note to 261.01, citing *Abdella v. Abdella*, 268 W 127, 66 NW (2d) 689.

261.021 Validation of certain divorces and annulments and affirmances of marriages. All divorces granted in this state and all judgments granted in this state annulling or affirming marriages based on actions commenced between July 14, 1947 and May 14, 1955, which when granted complied with the requirements of s. 261.02 as to place of trial and are otherwise valid, are hereby declared to be valid even though the actions on which they are based were not commenced in the county designated in s. 261.01 (3).

History: 1955 c. 83.

261.03 Change of venue to proper county. When the county designated in the complaint is not the proper place of trial, except as to actions named in subsection (1) of section 261.01, the defendant may, within twenty days after the service of the complaint, serve upon the plaintiff a demand in writing that the trial be had within a proper county, specifying the county or counties, and the reason therefor. Within five days after service of such demand the plaintiff may serve a written consent that the place of trial be changed, and specify to what county, if he have the option to name one and such consent shall change the place of trial accordingly. If the plaintiff's consent be not so served the defendant may, within twenty days after the service of his demand, move to change the place of trial, and the court or the presiding judge shall order the place changed with costs of motion. The right to obtain a change of the place of trial shall not be affected by any other proceedings in the action.

261.04 Change of venue, grounds for. The court or the presiding judge thereof may change the place of trial in the following cases:

(1) When there is reason to believe that an impartial trial cannot be had in the designated county and when so changed it shall be to a county in which the cause complained of does not exist.

(2) When the convenience of witnesses and the ends of justice would be promoted.

(3) When the parties or their attorneys shall stipulate in writing to change the place of trial; and, in this case, the order may be made by a judge.

(4) On the motion of any party at any time before trial in an action for damages growing out of the negligent operation of a motor vehicle, to any proper county where any other action is pending for damages for the negligent operation of a motor vehicle involving the same accident.

If the judge of the circuit was without jurisdiction to hear and decide a motion for a change of venue in a criminal case on account of community prejudice after an affidavit of prejudice had been filed against him, such motion for a change of venue was still pending when the case went to trial before an outside judge, and the defendant waived such motion by failing to renew it at that time and proceeding to trial without objection. *State v. Ketchum*, 263 W 82, 56 NW (2d) 531.

261.05 Change of venue between municipal and circuit courts. When the parties or their attorneys shall so stipulate in writing, the place of trial of any civil action, over which the circuit and municipal courts have concurrent jurisdiction shall be changed from the circuit court to the municipal court or from the municipal court to the circuit court; and filing such stipulation shall change the place of trial accordingly.

261.06 Change of venue if judge disqualified by interest. When the judge is a party or interested in any action in his court or is related to or has been of counsel for either party, the court or the presiding judge thereof shall, upon application of either party, and may without such application, change the place of trial or call in another judge as provided in section 261.08. The fact that the judge is a taxpayer does not disqualify him.

261.07 Justice and municipal court appeals; change of venue. The appellate court shall change the place of trial of any action commenced before a justice of the peace or municipal court upon application of the defendant in like manner and for like causes as in actions originally brought in the circuit court. The demand for consent to such change shall be made within 10 days after the defendant has notice of the appeal.

261.08 Venue changed for judge's prejudice; calling other judge. (1) The court shall change the place of trial to an adjoining circuit upon the application of any party, who shall file his affidavit, that he has good reason to, and does believe, that he cannot have a fair trial on account of the prejudice of the judge, naming him, or the court may retain the action until the end of the current term; and in the meantime shall request the chairman of the board of circuit judges to call some other circuit judge to attend and hold court during the current or next term for the purpose of exercising jurisdiction in all actions and proceedings in which applications for change of the place of trial have been made for such reason. And while so in attendance, said judge may make all orders and hear all applications and motions that may be brought on for hearing. If no other judge can hold court for such purpose, at either of such terms, an order changing the place of trial shall be entered on the first day of the next term.

(2) If such application is made after a continuance obtained by the party filing such affidavit, it shall be granted only upon payment of costs, but no costs for the attendance of witnesses shall be included if notice of the application, with a copy of such affidavit, was served upon the opposite party at least ten days before the commencement of the term. But one change of the place of trial shall be granted to the same side under this section.

(3) When the judge named in the affidavit is the presiding judge of the circuit, such affidavit must be filed and motion thereon made on or before the first day of the term, at which the case is triable, or within ten days after the case is noticed for trial; and when the judge so named is the judge of some other circuit, the affidavit must be filed and motion thereon made on the first day such judge holds court and before any proceeding is had in the case in which such affidavit is filed. When such affidavit names a judge of a circuit court consisting of branches, it must be filed and motion thereon made before the case is called for trial. The filing of such affidavit shall not deprive the presiding judge of the circuit, or of the branch of a circuit court in which the case is pending, of jurisdiction to determine pending motions made by the party filing such affidavit. No such affidavit shall name more than one circuit judge, except that in a circuit court consisting of more than two branches such affidavit may name two judges of said circuit court.

(4) Unless a called judge shall attend and begin the trial of such action or proceeding as early as the opening of court on the second day after the action is reached for trial in its regular order, the action shall not be called for trial (without consent of the parties) until such judge has given to the clerk of the court five days' notice of the time when he will attend, and the clerk shall give to the attorneys of record of all the parties immediate notice of the said time.

261.09 Time for motion to change venue. The place of trial shall not be changed, except under the provisions of section 261.08 after one continuance had on the motion of the party applying for a change unless it shall appear to the court that the cause therefor was discovered or developed after such continuance.

261.10 Proceedings after order for change of venue. When the place of trial is changed all process, pleadings and other papers, and copies of all entries and minutes of the clerk in such action shall be certified and transmitted by him to the clerk of the court to which the trial is changed, with a statement of his fees. Such fees shall be paid before transmission by the party procuring such change, except in the case mentioned in section 261.03, in which case the plaintiff shall pay such fees and the change shall be complete on the making of the order. The change, in other cases, shall be complete on filing the papers transmitted. If such transmission and filing be not made within twenty days from the making of the order to change the place of trial, unless such time be extended, the moving party shall lose his right to the change except in the case mentioned in section 261.03, and no order for a change for the same cause shall thereafter be made and the moving party shall pay the costs of the application within ten days after the expiration of said twenty days; but the other party, may, within forty days from the time of making of the order granting the change, pay the clerk fees and have the papers certified and transmitted to the court mentioned in such order.

261.11 Conclusiveness of change of venue; second motion. After trial had in the court to which the action has been changed, the proceedings for such change shall be conclusive unless a motion to remand was made before such trial was entered upon. If after the transmission of the papers an order changing the place of trial shall be reversed or set aside the effect shall be to change the place of trial back. After the transmission of the papers back to the original court on such reversal or setting aside of the order the party who filed his affidavit of prejudice may renew his application for a change of venue on such affidavit at the first term of court after the return of the papers; and such renewed application shall be treated as the original application.

261.12 Change of venue to civil court of Milwaukee county. Whenever the circuit court of Milwaukee county shall determine that due to congestion there is delay in the trial of actions and proceedings pending in said court, or for any other reason it shall appear that the prompt and efficient administration of justice will be promoted by the transfer of certain cases pending in said court, said court shall, unless by reason of consolidation of trials it will be in the interest of justice to retain the cause in said circuit court, by proper order upon its own motion or upon the application by any party, transfer to the civil court of Milwaukee county any action or proceeding pending in said circuit court within the classification of actions or proceedings enumerated in ss. 300.05 and 300.06 (2) and (4) in which action or proceeding the amount claimed or involved does not exceed the sum of \$10,000. Actions and proceedings so transferred shall be entitled to the same place for trial on the civil court calendar as if originally commenced there; and shall be heard, tried and determined in said civil court in the same manner and upon the same conditions, except as to appeal, as if said actions have been held for trial in the circuit court. Costs in actions transferred to the civil court hereunder shall be taxed therein in accordance with the practice in that court, except that the prevailing party may include disbursements incurred before the transfer of the cause taxable in his favor under the circuit court practice. The clerk of the circuit court shall, on such transfer of its record, pay to the clerk of the civil court, the sum of \$5, out of the filing fee originally received from the litigants in said action.

History: 1953 c. 248; 1955 c. 492.