

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.

(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.

(9m) CERTIORARI TO REVIEW REVOCATION OF PROBATION OR PAROLE. Of an action to review a probation or parole revocation by certiorari, any county in which the relator was convicted of an offense for which he was on probation or parole.

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(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: 1973 c. 217.

Cross reference: See 247.05 for venue in actions for affirmance or annulment of marriage or for divorce.

261.01 (1) (a), Stats. 1967, was not intended to require an in personam type of specific performance action to be brought in the county in which the land is situated, for in a legal sense, the in personam decree does not affect the land but requires the defendant to affect it and therefore such a suit is not encompassed within that subsection. *Fond du Lac Plaza, Inc v. H. C. Prange Co.* 47 W (2d) 593, 178 NW (2d) 67.

Sub (12) would not apply to a tort-feasor in one county and a hospital in another which is alleged to have aggravated the original injury. *Butzow v. Wausau Memorial Hospital*, 51 W (2d) 281, 187 NW (2d) 349.

Where the accident occurred outside this state and the defendant's present whereabouts are unknown, an action against the insurer for damages under a liability policy may be commenced and tried in the county of the state in which the insurer has its principal place of business or in the county in which the policy was delivered or in the county in which the insured had his last known place of residence. *Bowman v. Rural Mut. Ins. Co.* 53 W (2d) 260, 191 NW (2d) 881.

Venue problems in Wisconsin. *Sortor*, 56 MLR 87.

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.

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 [Stats. 1953] 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) [Stats. 1953].

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.

261.05 Change of venue between county and circuit courts. When the parties or their attorneys so stipulate in writing, the place of trial of any civil action, over which the circuit and county courts have concurrent jurisdiction, shall be changed from the circuit court to the county court or from the county 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 Municipal court appeals; change of venue. The appellate court shall change the place of trial of any action commenced before a municipal justice 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 Substitution of judge. (1) Any party to a civil action or proceeding may file a written request with the clerk of courts for a substitution of a new judge for the judge assigned to the trial of the case. The written request shall be filed on or before the first day of the term of court at which the case is triable or within 10 days after the case is noticed for trial. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action and to the named judge.

(2) After the written request has been filed, the named judge shall have no further jurisdiction in the action or proceeding except to determine if the request is correct as to form and timely filed. If the request is correct as to form and timely filed, the named judge shall be disqualified and shall promptly request assignment of another judge pursuant to s. 251.182.

(3) No party shall be entitled to file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one of such party of a written request.

History: 1971 c. 46, 138, 296

261.085 Assigned judge. In any case where another judge has been assigned under s. 251.182 to hear a particular action or proceeding, the clerk of circuit court shall forthwith notify all parties to the action or proceeding. If a written request for a substitution of a new judge is filed with regard to an assigned judge, it shall be filed within 7 days after notice of the assignment has been received. A copy of the written request shall be mailed forthwith to all parties and to the named judge.

History: 1971 c. 296

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.