



# VENUE AND FORUM NON CONVENIENS

OFTEN MISUNDERSTOOD AND MISAPPLIED

# VENUE

## THE BASICS

- Governed by 735 ILCS 5/2-101
- Venue is proper if:
  1. the case is filed 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.

# VENUE

## THE BASICS

- “The clear intent of the legislature in enacting the general venue statute was to insulate defendants from being sued in faraway places where they neither reside nor carry on any activities, and to make it more convenient to litigate the action by conducting the trial in the same venue where the transaction took place. Illinois courts have repeatedly upheld these purposes, stating that a defendant has the right to insist upon a proper venue, provided he does so in a timely manner.” *Williams v. Illinois State Scholarship Com.*, 139 Ill.2d 24, 52-53 (1990) (internal citations omitted).

# VENUE

## Residency

- The residency of any defendant in the county is sufficient to lay venue in the case for defendants.
- Residency for an individual is where they reside.
- Residency for an incorporated business is where they have their registered agent or the entity's revenues. 735 ILCS 5/2-102; *Gardner v. International Harvester Company*, 113 Ill.2d 535, 541 (1986).
- Solicitation of business by an entity does not establish venue; only sales do. *Id.*

# VENUE

## Revenue to Establish Residency

- The Illinois Supreme Court in *Bucklew v. G.D. Searle Company*, 138 Ill.2d 282, 290 (1990) stated that “‘doing business’ in a county for purposes of venue requires a greater quantum of activity than is necessary under due process to sustain jurisdiction over a foreign party. See also, *The Baltimore & Ohio Railroad Company v. Mosele*, 67 Ill.2d 321, 327-330 (1977).
- In *Sabados v. Planned Parenthood of Greater Indiana*, 378 Ill.App.3d 243, 251 (1st Dist. 2007) the court held that conducting 1.5% of business in Illinois was insufficient to lay personal jurisdiction over a foreign corporation. Accordingly, in order for venue to be proper a defendant must do at least 1.5% of its business in a county in order to be considered to be “doing business” for the purposes of venue.

---

# VENUE

## Timing of Motion

The timing of your motion to transfer, if there is one, is within the time for an answer to be filed and it must be filed with the responsive pleading, else it is waived. 735 ILCS 5/2-104(b). *Sullivan v. Sullivan*, 110 Ill.App.3d 714 (1st Dist. 1982); *Pet Rescue, Inc. v. Doherty*, 302 Ill.App.3d 274 (2nd Dist. 1999).

---

# VENUE

## Form of Motion

735 ILCS 5/2-104

(c) Motions for transfer to a proper venue may be supported and opposed by affidavit. In determining issues of fact raised by affidavits, any competent evidence adduced by the parties shall also be considered. The determination of any issue of fact in connection with a motion to transfer does not constitute a determination of the merits of the case or any aspect thereof.

# VENUE

## Effectuating Transfer and Costs

- 735 ILCS 5/2-106 and 735 ILCS 5/2-107
- If a matter is filed in the wrong forum, then the court will certify so and the clerk will effectuate the transfer.
- In that circumstance the plaintiff would pay the transfer fee.



# ***FORUM NON CONVENIENS***

## **The Basics**

- *Forum non conveniens* is an equitable doctrine that is “founded in considerations of fundamental fairness and sensible and effective judicial administration.” *Vinson v. Allstate*, 144 Ill.2d 306, 310 (1991). It is governed by Supreme Court Rule 187.
- A *forum non conveniens* motion presumes that statutory venue is proper.
- The Court “is afforded considerable discretion in ruling on a *forum non conveniens* motion.” *Ruch v. Padgett*, 2015 IL App (1st) 142972, ¶ 38.

# ***FORUM NON CONVENIENS***

## **The Basics**

- “This doctrine allows a trial court to decline jurisdiction when trial in another forum would better serve the ends of justice.” *Langenhorst v. Norfolk Southern Ry.*, 219 Ill.2d 430, 441 (2006).
- A dismissal based on *forum non conveniens* can be between forums in different states - interstate - or between forums within the same state - intrastate. *Ruch*, 2015 IL App (1st) at ¶ 37.

# ***FORUM NON CONVENIENS***

## **The Basics**

- The doctrine affords courts discretionary power that should be exercised only in exceptional circumstances when the interests of justice require a trial in a more convenient forum. *Langenhorst*, 219 Ill.2d at 443.
- “The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated, and the plaintiff’s forum choice should rarely be disturbed unless the other factors strongly favor transfer.” *Id.* at 443.
- The burden is on the defendant to show that relevant private and public interest factors “strongly favor” the defendant’s choice of forum to warrant disturbing plaintiff’s choice. *Id.* at 444.

---

# ***FORUM NON CONVENIENS***

## **The Basics - Deference**

A plaintiff's choice of forum is entitled to substantial deference. "The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated, and the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer."  
*Langenhorst*, 219 Ill.2d at 443.

# ***FORUM NON CONVENIENS***

## **The Basics - Deference**

- “[w]hen the plaintiff is foreign to the forum chosen and the action that gives rise to the litigation did not occur in the chosen forum, this assumption [of convenience] is no longer reasonable. Instead, it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules.” *Dawdy*, 207 Ill.2d 167, 174 (2003).

# ***FORUM NON CONVENIENS***

## **The Factors**

- In deciding a motion based on *forum non conveniens*, the court must balance certain private and public interests in determining the appropriate forum in which the case should be tried. *Dawdy*, 207 Ill.2d at 172.
- The court considers all relevant factors in making its determination. *Langenhorst*, 219 Ill.2d at 444.
- The doctrine of *forum non conveniens* requires the evaluation of the total circumstances rather than concentration on any single factor. *Lambert v. Goodyear Tire & Rubber Co.*, 332 Ill. App. 3d 373, 378 (1st Dist. 2002).

---

# ***FORUM NON CONVENIENS***

## **The Private Interest Factors**

Private interest factors include:

(1) the convenience of the parties;

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

(3) all other practical problems that make trial of a case easy, expeditious, and inexpensive.” *Langenhorst*, 219 Ill.2d 430, 443 (2006) (quoting *First Nat 'l Bank v. Guerine*, 198 Ill.2d 511,516 (2002)).

# ***FORUM NON CONVENIENS***

## **The Public Interest Factors**

Public interest factors include:

- (1) the interest in deciding controversies locally;
- (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and
- (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Id.* at 443-44.



# ***FORUM NON CONVENIENS***

## **Other Considerations**

- Subsequent treating physicians is not to be given undue weight, given the obvious incentive it would create for potential plaintiffs to seek care in the forum they would prefer their case to be tried. *Bland v. Norfolk & Western Railway Co.*, 116 Ill.2d 217, 226-227 (1987).
- Affidavits should be offered in support of motion to transfer in order to establish inconvenience of the chosen forum. *Langenhorst*, 219 Ill.2d at 450.
- The Annual Report of the Administrative Office of the Illinois Courts is the proper reference in assessing court congestion. *Dawdy*, 207 Ill.2d at 181.

# FORUM NON CONVENIENS

## Other Considerations

- The court congestion factor, alone, is not enough to justify transfer if none of the other relevant factors, individually or collectively, can be said to weigh strongly in favor of transfer. *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill.2d 101 (1990).
- As elucidated by the Supreme Court, "[c]ourts should be extremely reluctant to dismiss a case from the *forum rei gestae* merely because that forum's docket has a backlog." *Brummett v. Wepfer Marine, Inc.*, 111 Ill.2d 495, 503 (1986).
- The supreme court also concluded that "[w]hen deciding/forum non conveniens issues, the trial court is in the better position to assess the burdens on its own docket." *Langenhorst*, 219 Ill. 2d at 451.

# ***FORUM NON CONVENIENS***

## **Other Considerations**

- Defendant must supply specific information on the inconvenience of witnesses. *Weaver v. Midwest Towing, Inc.*, 116 Ill.2d 279, 289 (1987).
- In *Schoon v. Hill*, 207 Ill. App. 3d 601, 608 (1st Dist. 1991) the court stated:

[defendant] did not indicate what the testimony of potential witnesses would be, how their testimony would impact the defense or whether or not their depositions could be used successfully at trial. Significantly, [defendant] did not even provide the names and addresses of its own employees who had knowledge about the case and who would testify at trial. The motion states only a conclusion and does not set out any facts to show that other forums would be more convenient for trial than Cook County. (citations omitted).

# ***FORUM NON CONVENIENS***

## **Other Considerations**

- Discovery can be issued related to *forum non conveniens* pursuant to Supreme Court Rule 187(b).
- The discovery can include written discovery and depositions.
- Often times an initial motion is filed that is then supplemented once discovery is completed.

# ***FORUM NON CONVENIENS***

## **Timing of Motion**

- A motion to transfer pursuant to Supreme Court Rule 187 must be filed within 90 days of the time for the responsive pleading to be filed.
- The period for a filing a *forum non conveniens* motion from the last day allowed for the filing of the party's answer. Paragraph (a) refers to "that party's answer" to insure that a later-joined defendant is not foreclosed from filing a *forum non conveniens* motion by the failure of another defendant to do so in a timely manner.



Illinois Association of Defense Trial Counsel  
PO Box 588  
Rochester IL 62563-0588  
800-232-0169, [idc@iadtc.org](mailto:idc@iadtc.org)  
[www.iadtc.org](http://www.iadtc.org)