Chapter 14

1991 EDITION

Jurisdiction; Venue; Change of Judge

JURISDICTION AND VENUE

14.030 Jurisdiction as affected by place where cause of action or suit arises

14.040 Actions and suits that are to be brought where subject is situated

14.050 Actions that are to be brought where cause arose

14.060 Venue of suits against state departments and officials

14.070 Venue for annulment or dissolution of marriages, separation; Abuse Prevention Act proceedings

14.080 Venue for other actions; residence of corporations and partnerships

CHANGE OF VENUE

14.110 When place of trial may be changed

14.120 Time of motion; to what county changed; number of changes

14.130 Transmission of transcript of proceedings and original papers

14.140 Payment of costs

14.150 When court may vacate order

14.160 When change of place of trial deemed complete

DISQUALIFICATION OF JUDGE

14.210 Disqualification of judicial officers for cause; application of section; waiver

14.250 Disqualification of judge; transfer of cause; making up issues

14.260 Affidavit and motion for change of judge; time for making; limit of two changes of judge

14.270 Affidavit and motion in counties with presiding judge; time for making; limit of two changes of judge

CROSS REFERENCES

Change of judge in contempt proceeding arising from a labor dispute, 662.130

Enforcement of support, jurisdiction in circuit court of each county, 110.092

Guardians and conservators, submission to personal jurisdiction of court by acceptance of appointment, 126.075, 126.113, 126.247

Guardianship, state of residence of ward, concurrent jurisdiction, 126.090, 126.143

Sheridan Federal Correctional Institution, jurisdiction, 272.075

Venue for guardianship and conservatorship proceedings:

Conservators and protective proceedings, 126.167

Incapacitated persons, 126.100

Minor, 126.065

14.040

Boundary disputes, suits to determine, 105.705

Forcible entry and detainer, action, 105.110

Forfeitures of realty to the state, recovery, 30.420

14.050

Cigarette tax, cases involving, 323.420

Forfeitures of personalty to the state, recovery, 30.420

Public Utility Commission, venue of proceeding against, 756.580

14.060

Tax court proceedings, place of hearing, 305.475

14.080

Cooperative corporation, agent for service of summons, 62.155

Juvenile proceeding, venue, 419.479

14.110

Changing place of trial of action in justices' courts, 52.530

Conservatorship and protective proceedings, when transfer of proceedings permitted, 126.173, 126.177

Juvenile court proceeding, transfer to other county, 419.547

Support matters, transfer, 110.182

14.210 to 14.270

District court judges, disqualification, 46.141

14.210

Judicial officer may act as an attorney, exceptions, 1.220

14.250

Municipal city recorder's court, change of judge, 221.348

Not applicable to tax court judge, 305.455

JURISDICTION AND VENUE

14.010 [Amended by 1975 c.628 §1; repealed by 1979 c.284 §199]

14.020 [Repealed by 1979 c.284 §199]

14.030 Jurisdiction as affected by place where cause of action or suit arises. When the court has jurisdiction of the parties, it may exercise it in respect to any cause of action or suit wherever arising, except for the specific recovery of real property situated without this state, or for an injury thereto.

14.035 [1963 c.352 §1; 1975 c.628 §2; 1979 c.246 §2; repealed by 1979 c.246 §7]

14.040 Actions and suits that are to be brought where subject is situated. Actions and suits for the following causes shall be commenced and tried in the county in which the subject of the action or suit, or some part thereof, is situated:

(1) Actions for the recovery of real property, or an estate or interest therein, or for injuries to real property;

(2) Actions for the recovery of any personal property distrained for any cause;

(3) Suits for the partition of real property;

(4) Suits for the foreclosure of a lien or mortgage upon real property;

(5) Suits for the determination of an adverse claim, estate, or interest in real property, or the specific performance of an agreement in relation thereto.

14.050 Actions that are to be brought where cause arose. Actions for the following causes shall be commenced and tried in the county where the cause, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake, river or other stream of water, situated in two or more counties, the action may be commenced and tried in any county bordering on such lake, river or stream, and opposite the place where the offense was committed;

(2) Against a public officer or person specially appointed to execute the duties of the public officer for an act done by the officer or person in virtue of the office of the public officer; or against a person who, by the command of the public officer, or in aid of the public officer, shall do anything touching the duties of such officer.

14.060 Venue of suits against state departments and officials. Any suit against any department, official, officer, commissioner, commission or board of the state, as such, or in virtue of such status, other than a suit for the causes enumerated in ORS 14.040, may be brought in the county wherein the cause of suit, or some part thereof, arose.

14.070 Venue for annulment or dissolution of marriages, separation; Abuse Prevention Act proceedings. Any of the following suits or proceedings shall be commenced and tried in a county in this state in which one of the parties to the suit or proceeding resides:

(1) A suit for the annulment or dissolution of the marriage contract, or for marital separation.

(2) An Abuse Prevention Act proceeding under ORS 107.700 to 107.730. [Amended by 1987 c.331 §1]

14.080 Venue for other actions; residence of corporations and partnerships. (1) All other actions shall be commenced in the county in which the defendants, or one of them, reside at the commencement of the action or in the county where the cause of action arose. A party resident of more than one county shall be deemed a resident of each such county. If none of the defendants reside in this state the action may be commenced in any county.

(2) For purposes of this section, a corporation incorporated under the laws of this state, a limited partnership or a foreign corporation authorized to do business in this state shall be deemed to be a resident of any county where the corporation or limited partnership conducts regular, sustained business activity or has an office for the transaction of business or where any agent authorized to receive process resides. A foreign corporation or foreign limited partnership not authorized to transact business in this state shall be deemed not to be a resident of any county in this state.

(3) For purposes of this section, a partnership or other unincorporated association subject to being sued in its own name shall be deemed a resident of any county where any person resides upon whom summons could be served for service upon the partnership or unincorporated association. [Amended by 1983 c.163 §1]

CHANGE OF VENUE

14.110 When place of trial may be changed. (1) The court or judge thereof may change the place of trial, on the motion of either party to an action or suit, when it appears from the affidavit of such party that the motion is not made for the purpose of delay and, either:

(a) That the action or suit has not been commenced in the proper county; or,

(b) That the judge is a party to, or directly interested in the event of the action or suit, or connected by consanguinity or affinity within the third degree, with the adverse party or those for whom the adverse party prosecutes or defends; or,

(c) That the convenience of witnesses and the parties would be promoted by such change; or,

(d) In an action, that the judge or the inhabitants of the county are so prejudiced against the party making the motion that the party cannot expect an impartial trial before said judge or in said county, as the case may be.

(2) When the moving party in an action is a nonresident of the county, the affidavit above required may be made by any one on behalf of the moving party.

14.120 Time of motion; to what county changed; number of changes. The motion for a change of the place of trial may be made and allowed any time after the commencement of the action or suit and before the beginning of trial, except that, if the change sought is pursuant to the provisions of ORS 14.110 (1)(a), the motion must be made before filing of the answer. If the motion is allowed, the change shall be made to the county where the action or suit ought to have been commenced, if it is for the cause mentioned in ORS 14.110 (1)(a), and in other cases to the most convenient county where the cause assigned as the reason for the change does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. [Amended by 1963 c.339 §1]

14.130 Transmission of transcript of proceedings and original papers. When the place of trial has been changed, the clerk shall forthwith transmit to the clerk of the proper court, a transcript of the proceedings in such cause, with all the original papers filed therein, having first made out and filed in the office of the clerk, authenticated copies of all such original papers.

14.140 Payment of costs. The cost of a change of venue on the ground set forth in ORS 14.110 (1)(a) shall be paid by the plaintiff, and failure to pay such cost within 20 days after entry of the order for change of venue is ground for dismissal of the action or suit. The cost of a change of venue on any other grounds shall be paid by the applicant. The cost of a change of venue on any ground shall not be taxed as a part of the costs of the case; and the clerk may require payment of such costs before the transcript and papers are transmitted. [Amended by 1963 c.339 §2]

14.150 When court may vacate order. If the transcript and papers are not transmitted to the clerk of the proper court within the time prescribed in the order allowing the change, and the delay is caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party.

14.160 When change of place of trial deemed complete. Upon the filing of the transcript and papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court.

14.170 [Amended by 1971 c.298 §1; repealed by 1981 s.s. c.3 §141]

DISQUALIFICATION OF JUDGE

14.210 Disqualification of judicial officers for cause; application of section; waiver. (1) A judge shall not act as such in a court of which the judge is a member in any of the following cases:

(a) When the judge is a party to or directly interested in the action, suit or proceeding, except that the judge shall not be disqualified from acting as such in a case in which the judge is added as a party after taking any official action as a judge in the action, suit or proceeding, and in that case the judge shall be dismissed as a party without prejudice;

(b) When the judge was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

(c) When the judge is related to any party, or to the attorney for any party, or to the partner or office associate of any such attorney, by consanguinity or affinity within the third degree;

(d) When the judge has been attorney in the action, suit or proceeding for any party.

(2) This section does not apply to an application to change the place of trial, or the regulation of the order of business in court. In the cases specified in paragraphs (c) and (d) of subsection (1) of this section, the disqualification may be waived by the parties, and, except in the Supreme Court, shall be deemed to be waived, unless an application for a change of the place of trial is made as provided by statute. [Amended by 1983 c.763 §59]

14.220 [Repealed by 1955 c.408 §2]

14.230 [Repealed by 1955 c.408 §2]

14.240 [Repealed by 1955 c.408 §2]

14.250 Disqualification of judge; transfer of cause; making up issues. No judge of a circuit court shall sit to hear or try any suit, action, matter or proceeding when it is established, as provided in ORS 14.250 to 14.270, that any party or attorney believes that such party or attorney cannot have a fair and impartial trial or hearing before such judge. In such case the presiding judge shall forthwith transfer the cause, matter or proceeding to another judge of the court, or apply to the Chief Justice of the Supreme Court to send a judge to try it; or, if the convenience of witnesses or the ends of justice will not be interfered with by such course, and the action or suit is of such a character that a change of venue thereof may be ordered, the presiding judge may send the case for trial to the most convenient court; except that the issues in such cause may, upon the written stipulation of the attorneys in the cause agreeing thereto, be made up in the district of the judge to whom the cause has been assigned. [1955 c.408 §1(1); 1981 c.215 §5; 1987 c.338 §1]

14.260 Affidavit and motion for change of judge; time for making; limit of two changes of judge. (1) Any party to or any attorney appearing in any cause, matter or proceeding in a circuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that such party or attorney believes that such party or attorney cannot have a fair and impartial trial or hearing before such judge, and that it is made in good faith and not for the purpose of delay. No specific grounds for the belief need be alleged. Such motion shall be allowed unless the judge moved against, or the presiding judge in those counties where there is one, challenges the good faith of the affiant and sets forth the basis of such challenge. In the event of such challenge, a hearing shall be held before a disinterested judge. The burden of proof shall be on the challenging judge to establish that the motion was made in bad faith or for the purposes of delay.

(2) The affidavit shall be filed with such motion at any time prior to final determination of such cause, matter or proceedings in uncontested cases, and in contested cases before or within five days after such cause, matter or proceeding is at issue upon a question of fact or within 10 days after the assignment, appointment and qualification or election and assumption of office of another judge to preside over such cause, matter or proceeding.

(3) No motion to disqualify a judge shall be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding. No motion to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve in a county other than the county in which the judge or judge pro tem resides shall be filed more than five days after the party or attorney appearing in the cause receives notice of the assignment.

(4) In judicial districts having a population of 100,000 or more, the affidavit and motion for change of judge shall be made at the time and in the manner prescribed in ORS 14.270.

(5) No party or attorney shall be permitted to make more than two applications in any cause, matter or proceeding under this section. [1955 c.408 §1(2); 1959 c.667 §1; 1981 c.215 §6; 1987 c.338 §2]

14.270 Affidavit and motion in counties with presiding judge; time for making; limit of two changes of judge. In any county where there is a presiding judge who hears motions and demurrers and assigns cases to the other judges of the circuit court for trial, the affidavit and motion for change of judge to hear the motions and demurrers or to try the case shall be made at the time of the assignment of the case to a judge for trial or for hearing upon a motion or demurrer. Oral notice of the intention to file the motion and affidavit shall be sufficient compliance with this section providing that the motion and affidavit are filed not later than the close of the next judicial day. No motion to disqualify a judge to whom a case has been assigned for trial shall be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding; except that when a presiding judge assigns to the presiding judge any cause, matter or proceeding in which the presiding judge has previously ruled upon any such petition, motion or demurrer, any party or attorney appearing in the cause, matter or proceeding may move to disqualify the judge after assignment of the case and prior to any ruling on any such petition, motion or demurrer heard after such assignment. No party or attorney shall be permitted to make more than two applications in any action or proceeding under this section. [1955 c.408 §1(3); 1959 c.667 §2; 1969 c.144 §1; 1981 c.215 §7]