

CHANGE OF VENUE: When party takes change of venue on account of prejudice of judge of the Cape Girardeau Court of Common Pleas and a judge from one of the circuit courts is called in to try case, the party taking the change is not required to deposit \$10 change of venue fee with clerk of Cape Girardeau Court of Common Pleas.

FEES:

VENUE:

VENUE IN COURT OF COMMON PLEAS:



August 3, 1955

Honorable Stephen N. Limbaugh
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Mr. Limbaugh:

This is in response to your request for opinion dated July 21, 1955, which reads as follows:

"Many of the lawyers practicing before the Cape Girardeau Court of Common Pleas as well as Honorable J. Henry Caruthers, the judge of such court, have been somewhat perplexed concerning the procedure to follow when a change of venue is taken on account of the prejudice of the Judge of the Cape Girardeau Court of Common Pleas.

"Under a recent Supreme Court opinion whenever any litigant wishes to take a change of venue on account of the prejudice of the Judge of the Cape Girardeau Court of Common Pleas, a judge of the circuit court of any circuit is called in to try the case and the case is tried in such court.

"In an ordinary change of venue case the party applying for the change deposits the sum of \$10.00 with the clerk and when circuit courts are involved in the event a special judge presides the \$10.00 fee is paid to such special judge. Statutory authority for this procedure is Section 508.220 and 508.230 Revised Statutes of Missouri, 1949.

"Change of venue statutes relating to Cape Girardeau Court of Common Pleas involve Sections 508.260 to 508.330 Revised Statutes of Missouri, 1949.

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"In the event a party takes a change of venue on account of the prejudice of the Judge of the Cape Girardeau Court of Common Pleas and a judge from one of the circuit courts in the state is called in to try the case, is the party taking the change required to deposit \$10.00 change of venue fee with the clerk of the Cape Girardeau Court of Common Pleas, and, if so, to whom is the \$10.00 payable?"

The recent Supreme Court opinion referred to is State ex rel. Greamer v. Blair, 270 S.W. 2d 1, in which the court held that Art. 5, Sect. 6 of the Constitution of Missouri, 1945, ("The Supreme Court may make temporary transfers of judicial personnel from one court to another as the administration of justice requires, and it may establish rules with respect thereto"), and Section 15 (" . . . any circuit judge may sit in any other court at the request of a judge thereof . . ."), supplant prior inconsistent statutes insofar as the latter pertain to granting change of venue on the ground of disqualification of a judge. One statute thus abrogated in part was Section 508.140, RSMo 1949:

"If reasonable notice shall have been given to the adverse party or his attorney of record, the court or judge, as the case may be, shall consider the application, and if it be sufficient, a change of venue shall be awarded to some county in the same, adjoining or next adjoining circuit, convenient to the parties for the trial of the case and where the causes complained of do not exist; provided, that where the application is founded on the interest, prejudice or other objections to the judge or judges, a change of venue shall not be awarded to another county if the parties shall thereupon agree upon a special judge, or if both parties request the election of a special judge to try the case; and in the latter case a special judge shall be elected as provided by law; . . ."

The Blair case makes clear that the proper procedure for a change of venue when the ground is disqualification of a judge is for another judge to be called into the regular judge's court to sit in the trial of the case for him, or for the Supreme Court to transfer temporarily a judge to the court where the case is pending.

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Sections 508.220, 508.230, and Sections 508.260, 508.270, which pertain more directly to the Cape Girardeau Court of Common Pleas, were not involved in the above case. Section 508.220 states, however, that:

"Whenever any change of venue is applied for in any civil cause from any circuit court of any county, or city constituting a county, to any other county or such city, in another circuit, (emphasis added) the party or person applying for such a change of venue shall, with his application, deposit with the clerk of the circuit court the sum of ten dollars; and thereupon, if such change of venue is awarded the clerk of said court shall transmit said sum of ten dollars, together with the transcript and proceedings in the cause, to the clerk of the court to which the removal is ordered;
. . . "

State ex rel. v. Flournoy, 160 Mo. 324, makes clear that the ten dollar fee is to be paid only by a party applying for a change of venue out of the county. Since there does not now exist a method of transfer to another county because of the prejudice of the judge, Section 508.220 applies no longer to this ground of removal.

CONCLUSION

It is the opinion of this office that when a party takes a change of venue on account of the prejudice of the judge of the Cape Girardeau Court of Common Pleas and a judge from one of the circuit courts is called in to try the case, the party taking the change is not required to deposit the ten dollars change of venue fee with the clerk of the Cape Girardeau Court of Common Pleas.

Yours very truly,

JOHN M. DALTON
Attorney General

WLaB:gm