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Isn't it time to retire forum non conveniens doctrine in Illinois?

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A call for the abandonment of the doctrine of intrastate forum non conveniens dates back to an Illinois Supreme Court opinion filed in December, 1994. In *Peile v. Skelgas Inc.,* 163 Ill.2d 323, 645 N.E.2d 184 (1994), the late justice Moses W. Harrison's dissent called for the abandonment of the doctrine of intrastate forum non conveniens after he pragmatically found that the "improvement of the highway system, the expansion of scheduled air service and the spread of new technologies [had] eliminated the obstacles that once hindered the ability of parties to litigate their cases in different parts of [Illinois]."

For example, in a construction case that occurred in a rural Illinois county with significant factual connections to Cook County, it is difficult to place deference on affidavits attesting that Cook County is too inconvenient to travel to, but not too inconvenient for that same general contractor to build commercial buildings in Cook County or send their superintendents to manage commercial projects out of state.

In practice, it is certainly common for the discovery depositions of witnesses to take place in the county of their residence that presents little to no inconvenience to the witness. In the event that the case proceeds to trial, the witness' obligation is limited to offering half a morning or afternoon to testify.

Although a witness may have offered an affidavit to avoid the inconvenience of traveling to Cook County, forum discovery could later reveal that this same witness travels to Cook County regularly to visit friends, travel from O'Hare or Midway, shop on Michigan Avenue or attend sporting events.

These facts should cast into doubt the credibility of a prior affidavit. Simply put, if one is able to travel to Chicago to attend a baseball game or shop, one should be able to travel to Cook County to testify on behalf of their employer for less than a day.

In *First American Bank v. Guerine,* 198 Ill.2d, 511, 521 (Ill. 2002), arguably today Illinois' most seminal forum non conveniens case, the Illinois Supreme Court held that Cook County was a proper forum even though the accident occurred in DeKalb County and the plaintiff was from Kane County.

In *Guerine*, the court found that witnesses were scattered over numerous counties, with only one witness residing in Cook County, and therefore, no single county enjoyed a predominant connection to the litigation. Id., at 15.

The Illinois Supreme Court in *Guerine*, citing to Harrison's dissent in *Peile*, agreed that "today, we are connected by interstate highways, bustling airways, telecommunications and the world wide web. Today, the convenience, the touchstone of the forum non conveniens doctrine has a different meaning." Id,. at 14.

On March 29, the 1st District filed *Johnson v. Nash*, 2019 Il. App. (1st) 180840, a forum non conveniens opinion. *Johnson* could be argued to be both the progeny and an extension of *Guerine*. In *Johnson*, Associate Judge Daniel Gillespie was affirmed by the 1st District after denying forum non conveniens motions filed by construction companies seeking to transfer an action from Cook County to Kane County.

In *Johnson*, a group of Wisconsin residents, passengers in a limousine, were severely injured in an accident that occurred in Kane County. Oftentimes in personal-injury litigation, defendants accuse plaintiffs of "forum shopping" in an attempt to convince a court that the plaintiff sought to establish further Cook County connections through medical providers with offices there.

Often, such as in *Johnson*, a plaintiff is injured in an outlying county but is transferred to a Cook County medical facility given the specialized care one can receive in Cook County compared to surrounding counties.

Prior case law that affords less deference to the location of medical services should be questioned as *Johnson* now affords significant deference to the location of medical providers.

In *Johnson*, at least 20 medical providers who treated plaintiffs resided in Cook County. Id. at 17. It appears the *Johnson* court took a pragmatic approach in finding that these severely injured plaintiffs didn't seek Cook County providers for litigation motives but did so out of necessity given the specialized level of trauma care that they sought at facilities in Cook County compared to an outlying area.

For example, in a case where one sustains a traumatic brain injury, a plaintiff choosing Shirley Ryan AbilityLab's Brain Innovation Center is not because the hospital is located in Cook County, but because it is a world-class brain injury rehabilitation hospital that provides highly specialized care that facilities in other counties cannot provide.

In addition, although the "doing business" prong is most often associated with assessing venue, the *Johnson* court certainly saw the nexus between this prong and a forum non conveniens analysis.

The 1st District provided deference to the fact that the defendants derived significant business in Cook County. Although the *Johnson* court did not utilize this specific example, it can be argued that a defendant on the one hand cannot conveniently derive significant revenue in Cook County such as owning hospitals or operating retail stores, but then, on the other hand, claim it is too inconvenient to litigate disputes in Cook County. These simply do not go hand in hand.

In today's modern era with advanced telecommunications and travel, Harrison's dissent rings ever so true today, now a quarter of a century later, as Illinois appellate courts appear to be closely scrutinizing claims of inconvenience in intrastate forum non conveniens disputes.