

Opinion No. 14-1209

April 27, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Manuel Arellano, Jr., Springer, New Mexico.

JUSTICE OF THE PEACE.

Justice of the peace must require witnesses to appear and testify upon application for change of venue.

OPINION

{*70} I have received your letter of the 24th inst., in which you ask, in substance, whether a party who makes an application for a change of venue from the court of a justice of the peace is required to present his witnesses before the court to be by him interrogated about their reasons for believing that the court is prejudiced against the applicant, referring specially to Sections 3330 and 3331 of the Compiled Laws of 1897.

Section 3330 authorizes a party to present to a justice his petition setting forth the cause of his application for change of venue, adding thereto an affidavit as to the truth of the petition in the language set out in that section, and the petition and affidavit must be supported by the oath of at least two witnesses of good character known to the court, who shall be presented by the party on making his application. I am unable to see that this means anything except that the supporting witnesses must be brought into court. There is nothing said about their making any affidavit. They must appear and testify in open court. This view is corroborated by Section 3331, which declares that "the justice shall, in the presence of both parties or their attorneys, proceed to hear and try the same," that is, he shall hear and try the application. The trial of the application would be like any other trial. Witnesses could be heard in support of the application and against the application and the justice must then decide whether good cause has been shown by the evidence presented for a change of venue.