

## CHAPTER 801

## CIVIL PROCEDURE — COMMENCEMENT OF ACTION AND VENUE

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**NOTE:** Chapter 801 was created by Sup. Ct. Order, 67 Wis. 2d 585 (1975), which contains explanatory notes. Statutes prior to the 1983–84 edition also contain these notes.

**801.01 Kinds of proceedings; scope of chs. 801 to 847.**

(1) **KINDS.** Proceedings in the courts are divided into actions and special proceedings. “Action”, as used in chs. 801 to 847, includes “special proceeding” unless a specific provision of procedure in special proceedings exists.

(2) **SCOPE.** Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where different procedure is prescribed by statute or rule. Chapters 801 to 847 shall be construed to secure the just, speedy and inexpensive determination of every action and proceeding.

(3) **EFFECTIVE DATES.** (a) Chapters 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

(b) Chapters 804 to 807 shall apply to all actions pending or commenced on or after January 1, 1976, except those actions in which trial has commenced prior to January 1, 1976, as to which the statutes and rules in effect prior to January 1, 1976, shall continue to apply.

(c) Amendments and repeals of sections outside of chs. 801 to 807 shall be effective as follows:

1. Amendments and repeals effected in order to conform with provisions in chs. 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

2. Amendments and repeals other than those effected in order to conform with provisions in chs. 801 to 803 shall take effect on January 1, 1976, as to all actions then pending or thereafter commenced, except as provided in par. (b).

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 588 (1975); 1977 c. 449; 1979 c. 89; 1981 c. 390.

Chapters 801 to 847 apply to in rem actions under s. 161.555 [now 961.555] and under s. 801.07 may not be brought against an inanimate object as sole “defendant.” State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An “action” includes special proceedings such as probate. In Matter of Estate of Martz, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

The applicability of chs. 801 to 847 in civil actions is not determined by a “mere alleged incompatibility” of statutes. Without an explicit or implicit prescription by the statute of a “different procedure,” chs. 801 to 847 are applicable in civil proceedings. State v. Brown, 215 Wis. 2d 716, 573 N.W.2d 884 (Ct. App. 1997), 96–1211.

Summary judgment procedure is inconsistent with, and unworkable in, ch. 345 forfeiture proceedings. State v. Schneck, 2002 WI App 239, 257 Wis. 2d 704, 652 N.W.2d 434, 02–0513.

Summary judgment is inapplicable in ch. 343 hearings. State v. Baratka, 2002 WI App 288, 258 Wis. 2d 342, 654 N.W.2d 875, 02–0770.

The new Wisconsin rules of civil procedure: Chapters 801–803. Clausen and Lowe. 59 MLR 1.

**801.02 Commencement of action. (1)** Except as provided in s. 20.931 (5) (b), a civil action in which a personal judgment is

sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

(2) A civil action in which only an in rem or quasi in rem judgment is sought is commenced as to any defendant when a summons and a complaint are filed with the court, provided service of an authenticated copy of the summons and of either the complaint or a notice of object of action under s. 801.12 is made upon the defendant under this chapter within 90 days after filing.

(3) The original summons and complaint shall be filed together. The authenticated copies shall be served together except:

(a) In actions in which a personal judgment is sought, if the summons is served by publication, only the summons need be published, but a copy of the complaint shall be mailed with a copy of the summons as required by s. 801.11, and;

(b) In actions in which only an in rem or quasi in rem judgment is sought, the summons may be accompanied by a notice of object of action pursuant to s. 801.12 in lieu of a copy of the complaint and, when the summons is served by publication, only the summons need be published, but a copy of the complaint or notice of object of action shall be mailed with the copy of the summons as required by s. 801.12.

(4) No service shall be made under sub. (3) until the action has been commenced in accordance with sub. (1) or (2).

(5) An action seeking a remedy available by certiorari, quo warranto, habeas corpus, mandamus or prohibition may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order. The order may specify a time period shorter than that allowed by s. 802.06 for filing an answer or other responsive pleading.

(6) Fees payable upon commencement of a civil action shall be paid to the clerk at the time of filing.

(7) (a) In this subsection:

1. “Correctional institution” means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A correctional institution includes a Type 1 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction.

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2. “Prisoner” means any person who is incarcerated, imprisoned or otherwise detained in a correctional institution or who is arrested or otherwise detained by a law enforcement officer. “Prisoner” does not include any of the following:

- a. A person committed under ch. 980.
- b. A person bringing an action seeking relief from a judgment terminating parental rights.
- c. A person bringing an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under s. 809.30, 809.40, 973.19, 974.06 or 974.07.
- d. A person bringing an action under s. 809.50 seeking relief from an order or judgment not appealable as of right that was entered in a proceeding under ch. 980 or in a case specified under s. 809.30 or 809.40.
- e. A person who is not serving a sentence for the conviction of a crime but who is detained, admitted or committed under ch. 51 or 55 or s. 971.14 (2) or (5).

3. “Prison or jail conditions” means any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.

(b) No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated, imprisoned or detained until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule or, in the case of prisoners not in the custody of the department of corrections, that the sheriff, superintendent or other keeper of a jail or house of correction has reduced to writing and provided reasonable notice of to the prisoners.

(bm) A prisoner commencing an action or special proceeding shall first comply with the provisions of s. 893.80 or 893.82 unless one of the following applies:

1. The prisoner is filing a petition for a common law writ of certiorari.
2. The prisoner is commencing an action seeking injunctive relief and the court finds that there is a substantial risk to the prisoner’s health or safety.
- (c) At the time of filing the initial pleading to commence an action or special proceeding, including a petition for a common law writ of certiorari, related to prison or jail conditions, a prisoner shall include, as part of the initial pleading, documentation showing that he or she has exhausted all available administrative remedies. The documentation shall include copies of all of the written materials that he or she provided to the administrative agency as part of the administrative proceeding and all of the written materials the administrative agency provided to him or her related to that administrative proceeding. The documentation shall also include all written materials included as part of any administrative appeal. The court shall deny a prisoner’s request to proceed without the prepayment of fees and costs under s. 814.29 (1m) if the prisoner fails to comply with this paragraph or if the prisoner has failed to exhaust all available administrative remedies.

(d) If the prisoner seeks leave to proceed without giving security for costs or without the payment of any service or fee under s. 814.29, the court shall dismiss any action or special proceeding, including a petition for a common law writ of certiorari, commenced by any prisoner if that prisoner has, on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ of certiorari, that was dismissed by a state or federal court for any of the reasons listed in s. 802.05 (4) (b) 1. to 4. The court may permit a prisoner to commence the action or special proceed-

ing, notwithstanding this paragraph, if the court determines that the prisoner is in imminent danger of serious physical injury.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 589 (1975); 1975 c. 218; 1981 c. 289, 317; 1995 a. 27; 1997 a. 133, 187; 2001 a. 16; Sup. Ct. Order No. 03–06A, 2005 WI 86, 280 Wis. 2d xiii; 2007 a. 20.

**Judicial Council Note, 1981:** Sub. (1) is amended to allow an action seeking an extraordinary remedy to be commenced in the same manner as any other civil action. Sub. (5) allows the additional option of using an order to shorten the time for filing a response to the complaint in lieu of a summons. This option is for the emergency situation when the case may be moot before a response would be filed. The order serves the same purpose as the alternative writ and the order to show cause used to initiate the action under writ procedures. In all other matters of procedure, the rules of civil procedure govern to the extent applicable. Sub. (5) applies only to procedure in the circuit court. In seeking an extraordinary remedy in the supreme court or court of appeals, s. 809.51, stats., should be followed. [Bill 613–A]

Pursuant to sub. (5), a certiorari action may be commenced in three ways: 1) under sub. (1) by summons and complaint; 2) by service of an appropriate writ; or 3) by filing a complaint and serving it along with an order, in lieu of a summons, upon the defendant. Nickel River Investments v. LaCrosse Review Board, 156 Wis. 2d 429, 457 N.W.2d 333 (Ct. App. 1990). See also Tobler v. Door County, 158 Wis. 2d 19, 461 N.W.2d 775 (1990).

The test to determine whether defects in summons and complaints are fatal is set forth. The trial court has jurisdiction if the error is technical and the complainant can show that the defendant was not prejudiced. When the error is fundamental, no jurisdiction may attach. American Family Mutual Insurance v. Royal Ins. Co. 167 Wis. 2d 524, 481 N.W.2d 629 (1992).

A summons that designated an attorney to receive the defendant’s answer, but was signed by the plaintiff, was technically defective and did not deprive the court of personal jurisdiction. Dungan v. County of Pierce, 170 Wis. 2d 89, 486 N.W.2d 77 (Ct. App. 1992).

Sub. (1) applies to the service of amended complaints. Archambault v. A–C Product Liability Trust, 205 Wis. 2d 400, 556 N.W.2d 392 (Ct. App. 1996), 95–3266.

A summons served by publication under sub. (3) must be authenticated. When an authenticated copy of the summons was published, but an unauthenticated copy was mailed, together with authenticated copies of the original summons and complaint, there was a technical, but no fundamental, error. Burnett v. Hill, 207 Wis. 2d 110, 557 N.W.2d 800 (1997), 94–2011.

An inmate challenging the calculation of his mandatory release date is not seeking relief from a judgment of conviction or a sentence of a court, does not fall within sub. (7) (a) 2. c., and is therefore a “prisoner” within the meaning of sub. (7) who must comply with the requirements of that subsection. State ex rel. Stinson v. Morgan, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999), 98–2971.

For a document to be filed, it must be properly deposited with the clerk under s. 59.40 (2). “Properly” connotes complying with formality or correctness, but is not susceptible to exact definition. The delivery of papers to the clerk at his home after business hours was too far removed from legislative guidelines to be considered properly deposited. Granado v. Sentry Insurance, 228 Wis. 2d 794, 599 N.W.2d 62 (Ct. App. 1999), 98–3675.

The sub. (7) (d) dismissals rule does not apply when a prisoner has sufficient prison trust funds to pay the filing fee in full. A court order under s. 814.29 (1m) (d) is required to release the funds. State ex rel. Coleman v. Sullivan, 229 Wis. 2d 804, 601 N.W.2d 335 (Ct. App. 1999), 98–2599.

The definition of “correctional institution” in sub. (7) (a) 1. does not include an out-of-state county jail and therefore a Wisconsin inmate sent to such a jail is not a prisoner under sub. (7) (a) 2. State ex rel. Speener v. Gudmanson, 2000 WI App 78, 234 Wis. 2d 461, 610 N.W.2d 136, 99–0568.

Sub. (7) (d), as applied to the petitioner, did not violate the constitutional guarantees of access to the courts or equal protection. State ex rel. Khan v. Sullivan, 2000 WI App 109, 235 Wis. 2d 260, 613 N.W.2d 203, 99–2102.

A petitioner who seeks to overturn the revocation of probation by a writ of certiorari is a prisoner under sub. (7) (a) 2. A probation revocation is not analogous to a judgment of conviction or a sentence, and a writ of certiorari challenging revocation is not subject to the exclusion under sub. (7) (a) 2. c. State ex rel. Cramer v. Wisconsin Court of Appeals, 2000 WI 86, 236 Wis. 2d 473, 613 N.W.2d 591, 99–1089.

An appeal is not included in “any action or special proceeding” that is subject to dismissal under sub. (7) (d). State ex rel. Adell v. Smith, 2000 WI App 188, 238 Wis. 2d 655, 618 N.W.2d 208, 00–0070.

Sub. (7), 95–96 stats., did not apply to a petition for a writ of certiorari seeking judicial review of a probation revocation by the department of administration. State ex rel. Mentek v. Schwarz, 2001 WI 32, 242 Wis. 2d 94, 624 N.W.2d 150, 99–0182.

The requirement of exhaustion of administrative remedies under sub. (7) (b) is applicable to a case advancing a constitutional challenge. There is no common law futility exception. This section also controls over s. 227.40, which in some cases allows obtaining a declaratory judgment without exhausting all administrative remedies. State ex rel. Hensley v. Endicott, 2001 WI 105, 245 Wis. 2d 607, 629 N.W.2d 686, 00–0076.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over him as an individual. Useni v. Boudron, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02–1475.

Timely Service Abroad in Diversity Suits. La Fave. Wis.Law. Nov. 2000.

**801.03 Jurisdiction; definitions.** In this chapter, the following words have the designated meanings:

(1) “Defendant” means the person named as defendant in a civil action, and where in this chapter acts of the defendant are referred to, the reference attributes to the defendant any person’s

acts for which the defendant is legally responsible. In determining for jurisdiction purposes the defendant's legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.

(2) "Person" means any natural person, partnership, association, and body politic and corporate.

(3) "Plaintiff" means the person named as plaintiff in a civil action, and where in this chapter acts of the plaintiff are referred to, the reference attributes to the plaintiff the acts of an agent within the scope of the agent's authority.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 591 (1975); 1975 c. 218; 1983 a. 189.

Illegal aliens have the right to sue in Wisconsin for injuries negligently inflicted upon them. *Artega v. Literski*, 83 Wis. 2d 128, 265 N.W.2d 148 (1978).

**801.04 Jurisdictional requirements for judgments against persons, status and things.** (1) JURISDICTION OF SUBJECT MATTER REQUIRED FOR ALL CIVIL ACTIONS. A court of this state may entertain a civil action only when the court has power to hear the kind of action brought. The power of the court to hear the kind of action brought is called "jurisdiction of the subject matter". Jurisdiction of the subject matter is conferred by the constitution and statutes of this state and by statutes of the United States; it cannot be conferred by consent of the parties. Nothing in chs. 801 to 847 affects the subject matter jurisdiction of any court of this state.

(2) PERSONAL JURISDICTION. A court of this state having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in s. 801.05 or 801.06 and in addition either:

(a) A summons is served upon the person pursuant to s. 801.11; or

(b) Service of a summons is dispensed with under the conditions in s. 801.06.

(3) JURISDICTION IN REM OR QUASI IN REM. A court of this state having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other thing pursuant to s. 801.07 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 801.12 with a summons and complaint or notice of object of action as the case requires.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 591 (1975); 1979 c. 89.

A court having jurisdiction may decline to exercise it if there are sufficient policy reasons to do so. *Jones v. Jones*, 54 Wis. 2d 41, 194 N.W.2d 627 (1972).

State courts, including small claims courts, have a constitutional obligation to hear and decide 42 USC s. 1983 cases whether or not the federal right asserted is pendent to a state claim. *Terry v. Kolski*, 78 Wis. 2d 475, 254 N.W.2d 704 (1977).

A prior adult proceeding that litigated the question of the respondent's age collaterally estopped the state from relitigating the same question in juvenile court. The juvenile court has subject matter jurisdiction of the case. In *Interest of H.N.T.* 125 Wis. 2d 242, 371 N.W.2d 395 (Ct. App. 1985).

Subject to limited exceptions, complainants in 42 USC 1983 actions need not exhaust administrative remedies prior to being brought in state court. *Casteel v. Vaade*, 167 Wis. 2d 1, 481 N.W.2d 277 (1992).

State court jurisdiction. 1978 WLR 533.

**801.05 Personal jurisdiction, grounds for generally.** A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances:

(1) LOCAL PRESENCE OR STATUS. In any action whether arising within or without this state, against a defendant who when the action is commenced:

(a) Is a natural person present within this state when served; or

(b) Is a natural person domiciled within this state; or

(c) Is a domestic corporation or limited liability company; or

(d) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

(2) SPECIAL JURISDICTION STATUTES. In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

(3) LOCAL ACT OR OMISSION. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

(4) LOCAL INJURY; FOREIGN ACT. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

(5) LOCAL SERVICES, GOODS OR CONTRACTS. In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

(c) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value; or

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction; or

(e) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

(6) LOCAL PROPERTY. In any action which arises out of:

(a) A promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state; or

(b) A claim to recover any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this state either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(c) A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this state at the time the defendant acquired possession or control over it.

(7) DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE. In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(a) In an action in this state to foreclose upon real property situated in this state; or

(b) Following sale of real property in this state by the plaintiff under ch. 846; or

(c) Following resale of tangible property in this state by the plaintiff under ch. 409.

(8) DIRECTOR, OFFICER OR MANAGER OF A DOMESTIC CORPORATION OR LIMITED LIABILITY COMPANY. In any action against a defendant who is or was an officer, director or manager of a domestic corporation or domestic limited liability company where the action arises out of the defendant's conduct as such officer, director or manager or out of the activities of such corporation or limited liability company while the defendant held office as a director, officer or manager.

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**(9) TAXES OR ASSESSMENTS.** In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state after July 1, 1960.

**(10) INSURANCE OR INSURERS.** In any action which arises out of a promise made anywhere to the plaintiff or some 3rd party by the defendant to insure upon or against the happening of an event and in addition either:

(a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred; or

(b) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person insured resided.

**(11) CERTAIN MARITAL ACTIONS.** In addition to personal jurisdiction under sub. (1) and s. 801.06, in any action affecting the family, except for actions under ch. 769, in which a personal claim is asserted against the respondent commenced in the county in which the petitioner resides at the commencement of the action when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action and the respondent is served personally under s. 801.11. The effect of any determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under this chapter or has been notified under s. 822.08 as provided in s. 822.06.

**(12) PERSONAL REPRESENTATIVE.** In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in subs. (2) to (11) would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

**(13) JOINDER OF CLAIMS IN THE SAME ACTION.** In any action brought in reliance upon jurisdictional grounds stated in subs. (2) to (11) there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 592 (1975); 1975 c. 218; 1977 c. 105, 203, 418; 1979 c. 196; 1979 c. 352 s. 39; 1993 a. 112, 326, 486; 2005 a. 130.

Jurisdiction over a foreign executor under sub. (12) cannot be based on substantial activities in Wisconsin under sub. (1) (d). *Rauser v. Rauser*, 47 Wis. 2d 295, 177 N.W.2d 115 (1970).

In an action against an Illinois corporate defendant and its officer alleging fraudulent advertising, the trial court possessed jurisdiction over the officer when the answer to the complaint admitted corporate advertising in newspapers circulated in Wisconsin, the contacting of Wisconsin residents responding to the advertisements, and the taking of earnest money deposits when testimony indicated that the defendant had participated in one such transaction in the state. *State v. Advance Marketing Consultants, Inc.* 66 Wis. 2d 706, 225 N.W.2d 887 (1975).

Wisconsin courts may issue in personam orders that may operate on out-of-state property. *Dalton v. Meister*, 71 Wis. 2d 504, 239 N.W.2d 9 (1976).

The trial court was entitled to consider the complaint and answer in determining whether the court had jurisdiction. *Merco Distributing Corp. v. O & R Engines, Inc.* 71 Wis. 2d 792, 239 N.W.2d 97 (1976).

A manufacturer having no dealers or distributors in Wisconsin was amenable to jurisdiction under sub. (4) by virtue of magazine advertisement solicitations and out-of-state sales to Wisconsin residents. *Fields v. Playboy Club of Lake Geneva, Inc.* 75 Wis. 2d 644, 250 N.W.2d 311 (1977).

Findings of the facts requisite for jurisdiction under sub. (4) (b) may properly be made by reasonable inference from facts proven in the record. *Stevens v. White Motor Corp.* 77 Wis. 2d 64, 252 N.W.2d 88 (1977).

Standards of the "long-arm" statute prima facie meet due process requirements. *Schmitz v. Hunter Machinery Co.* 89 Wis. 2d 388, 279 N.W.2d 172 (1979).

The burden of proof is on the plaintiff to establish jurisdiction under this section. *Lincoln v. Seawright*, 104 Wis. 2d 4, 310 N.W.2d 596 (1981).

Substantially higher "doing business" contacts under sub. (1) (d) are required when a nonresident plaintiff brings a foreign cause of action. *Vermont Yogurt v. Blanke Baer Fruit & Flavor*, 107 Wis. 2d 603, 321 N.W.2d 315 (Ct. App. 1982).

Sub. (11) provides 3 independent sources of personal jurisdiction that must be considered in the disjunctive. *McAleavy v. McAleavy*, 150 Wis. 2d 26, 440 N.W.2d 566 (1989).

Telephone calls received by a defendant do not, standing alone, constitute sufficient contact to establish a basis for personal jurisdiction. *Dietrich v. Patients Compensation Board*, 169 Wis. 2d 471, 485 N.W.2d 614 (Ct. App. 1992).

A non-resident corporate officer alleged to have committed fraud or misrepresentation is subject to Wisconsin jurisdiction only if some act or omission was committed in Wisconsin. *Pavlic v. Woodrum*, 169 Wis. 2d 585, 486 N.W.2d 533, (Ct. App. 1992).

The term "service activities" under sub. (4) (a) requires that a defendant be engaged in some type of regular ongoing or repetitive activities in Wisconsin. Two meetings does not constitute service activities carried on with in the state. *Housing Horizons, LLC v. Alexander Company, Inc.* 2000 WI App 9, 232 Wis. 2d 178, 606 N.W.2d 263, 98–3635.

"Process" in sub. (4) (b) means subjecting something to a particular system of handling to effect a particular result and preparing something for market or other commercial use by subjecting it to a process. *Kopke v. A. Hartrudt S.R.L.* 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662, 99–3144.

A stream of commerce theory that it is not unreasonable to subject a nonresident manufacturer or distributor to suit if the sale of a product is not simply an isolated occurrence but arises from efforts to serve, directly or indirectly, the market for the product in the state, is applicable in determining whether sufficient minimum contacts exist for jurisdiction to be found. *Kopke v. A. Hartrudt S.R.L.* 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662, 99–3144.

Sub. (1) (d) may be a basis for personal jurisdiction over a respondent in a divorce and is not restricted to business or employment related activities. *Bushelman v. Bushelman*, 2001 WI App 124, 246 Wis. 2d 317, 629 N.W.2d 795, 00–0670.

The presumption of compliance with due process arising from this section may be rebutted by a defendant. There is a 5-factor test to analyze the substantiality of the defendant's contacts for due process purposes: the quantity, nature, and quality of the contacts, the source of the cause of action and its connection with those contacts, the interest of the state in the action, and convenience to the parties. *Bushelman v. Bushelman*, 2001 WI App 124, 246 Wis. 2d 317, 629 N.W.2d 795, 00–0670.

If a person is induced by false representations to come within the jurisdiction of a court for the purpose of obtaining service of process upon him or her, it is an abuse of legal process, and the service will be set aside. Service on a person who enters the state to engage in settlement talks will not be set aside in the absence of an agreement that service will not be attempted. *Manitowoc Western Company, Inc. v. Montonen*, 2002 WI 21, 250 Wis. 2d 452, 639 N.W.2d 726, 00–0420.

Traditional personal jurisdiction is not required in child custody proceedings. Child custody proceedings under ch. 822 are valid even in the absence of minimum contacts over an out-of-state parent. Section 801.05 (11) provides sufficient due process protection to out-of-state parents based on notice and an opportunity to be heard. *Tammie J. C. v. Robert T. R.* 2003 WI 61, 262 Wis. 2d 217, 663 N.W.2d 734, 01–2787.

In analyzing the quality of a defendant's contacts within the state, personal visits are the highest quality of contact. The next highest quality of contact is personal contact of another type. *Druschel v. Cloeren*, 2006 WI App 190, 295 Wis. 2d 858, 723 N.W. 2d 430, 05–2575.

Minimum contacts require the defendant's conduct and connection with the forum state are such that he or she should reasonably anticipate being haled into court there. The concept that the contacts of an individual, made as an agent of a business, do not count toward the minimum contacts required for personal jurisdiction, commonly referred to as the fiduciary shield doctrine, has not been adopted in Wisconsin. *Druschel v. Cloeren*, 2006 WI App 190, 295 Wis. 2d 858, 723 N.W. 2d 430, 05–2575.

The constitutional touchstone of long-arm jurisdiction is whether a defendant purposefully availed itself of the privilege of conducting activities within the forum state. If the defendant's efforts are purposefully directed toward another state's resident, jurisdiction may not be avoided merely because he or she did not physically enter the forum state. A substantial amount of business is transacted solely by mail and wire communications across state lines, making physical presence unnecessary. *Stayart v. Hance*, 2007 WI App 204, 747 N.W. 2d 149, 06–1418.

A father's acquiescence in his daughter's desire to live with her mother in California did not confer jurisdiction over the father in California courts. *Kulko v. California Superior Court*, 436 U.S. 84 (1978).

A state may not exercise quasi in rem jurisdiction over a defendant having no forum contacts by attacking a contractual obligation of the defendant's insurer licensed in the state. *Rush v. Savchuk*, 444 U.S. 320 (1980).

When an accident involving only Wisconsin residents occurred in Wisconsin, the fact that the decedent had been employed in Minnesota conferred jurisdiction on the Minnesota courts and Minnesota insurance law was applicable. *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981).

When an out-of-state defendant placed an order in Wisconsin, but conducted no other activities in the state, the minimum contacts test was not satisfied. *Lakeside Bridge & Steel v. Mountain State Const.* 597 F.2d 596 (1979).

A New York corporation was subject to the long-arm statute when agents of the corporation made 2 visits to the state in connection with business on which the claim was based. *Wisconsin Electrical Manufacturing Co., Inc. v. Pennant Products*, 619 F.2d 676 (1980).

The Wisconsin circuit court had exclusive jurisdiction over trust assets in Illinois, making removal to Wisconsin federal district court improper. *Norton v. Bridges*, 712 F.2d 1156 (1983).

"Processed" under sub. (4) (b) included a distributor's purchase and sale of goods in the normal course of distribution of those goods. *Nelson By Carson v. Park Industries, Inc.* 717 F.2d 1120 (1983).

A buyer's inspection of goods before shipment from the state was sufficient contact for jurisdiction. *Afram Export Corp. v. Metallurgiki Halypis, S.A.* 772 F.2d 1358 (1985).

An act or omission occurring outside the state with consequences in the state does not fit the tort provisions of sub. (3). Services within the state under sub. (5) do not include the purchase of insurance from a state company. *Federated Rural Electric Ins. v. Inland Power & Light*, 18 F.3d 389 (1994).

Jurisdiction in an action for misrepresentation in the sale of a boat did not exist when the only contact was that the boat would be operated partly in Wisconsin and that the seller wrote a letter to the Wisconsin buyer confirming the already existing contract. *McCalla v. A. J. Industries, Inc.* 352 F. Supp. 544 (1973).

The fact that a Virginia corporation was a distributor for a Wisconsin corporation in Virginia is not enough to justify an action in Wisconsin. *Watrall v. Murphy Diesel Co.* 358 F. Supp. 968 (1973).

A Texas company that ordered a turbine from a Wisconsin manufacturer and sent representatives to Wisconsin twice was subject to Wisconsin jurisdiction. *Nordberg Division, Rex Chainbelt, Inc. v. Hudson Engineering Corp.* 361 F. Supp. 903 (1973).

An action for injuries sustained by the plaintiff while using a machine manufactured by the defendant in France and sold to the plaintiff's employer was an action for personal injury based on breach of warranty and strict liability under subs. (4) and (5) (c). *Davis v. Mercier-Freres*, 368 F. Supp. 498 (1973).

Service upon a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. *Chilcote v. Sherzter*, 372 F. Supp. 86 (1974).

The court had jurisdiction over an insurer under sub. (1) (d) based on settlement negotiations conducted by an adjuster, and the insurer was estopped from asserting its no-action clause. *Kirchen v. Orth*, 390 F. Supp. 313 (1975).

The court had in-personam jurisdiction by virtue of sub. (5) (b) and (e) when the defendant made initial contact with the plaintiff, sent its president to Milwaukee to solicit the plaintiff's participation in the transaction, delivered documentation of title to the subject property to the plaintiff in Milwaukee, accepted payment in Milwaukee, and executed a lease agreement in Milwaukee. *Ridge Leasing Corp. v. Monarch Royalty, Inc.* 392 F. Supp. 573 (1975).

To determine whether a particular nonresident is "doing business" within this state, the court must consider the party's overall activities within the state, past and present, not at some fixed point in time. *Modern Cycle Sales, Inc. v. Burkhardt-Larson Co.* 395 F. Supp. 587 (1975).

Actions of out-of-state police officials in continuously soliciting the plaintiff's arrest by a "fugitive from justice notice" entered into an FBI computer data base, representing to Wisconsin authorities that extradition was desired and requesting that the plaintiff be arrested was sufficient minimum contact with Wisconsin to permit the exercise of personal jurisdiction. *Maney v. Ratcliff*, 399 F. Supp. 760 (1975).

Infrequent use of Wisconsin roads by an Idaho trucking corporation did not constitute "continuous and systematic" activity necessary to confer jurisdiction under this section. *Ladwig v. Trucks Ins. Exch.* 498 F. Supp. 161 (1980).

A foreign corporation is not subject to jurisdiction in Wisconsin when the sole basis for assertion of jurisdiction was unilateral activity of the resident plaintiff. *Jadair, Inc. v. Walt Keeler Co., Inc.* 508 F. Supp. 879 (1981).

In applying the test under sub. (1) (d), the court looks to the defendant's general contacts with the forum state, not merely its contacts arising out of the specific transaction at issue. *Jadair v. Van Lott, Inc.* 512 F. Supp. 1141 (1981).

The defendant's attorney's delivery of checks in the state was insufficient contact to confer jurisdiction under this section. *Sed, Inc. v. Bohager/Goodhues, Inc.* 538 F. Supp. 196 (1982).

Contracts for services and contracts for goods are distinguished. *L.B. Sales Corp. v. Dial Mfg., Inc.* 593 F. Supp. 290 (1984).

A single sale in the state was insufficient contact to confer personal jurisdiction. *Uni-Bond, LTD. v. Schultz*, 607 F. Supp. 1361 (1985).

A parent-subsidiary relationship is sufficient to confer jurisdiction over the parent for long-arm purposes so long as the subsidiary carries on sufficient activities in the state. *Hayeland v. Jaques*, 847 F. Supp. 630 (1994).

This section is intended to reach to the fullest extent allowed under the due process clause. *Farby Glove & Mitten Co. v. Spitzer*, 908 F. Supp. 625 (1995).

Foreseeability that the defendant's actions in one state may cause injury in Wisconsin does not amount to causing a local act. The consequences of an act alone do not establish jurisdiction over the defendant under sub. (3). *Nelson v. Bulso*, 979 F. Supp. 1239 (1997).

In order for solicitation activities to trigger personal jurisdiction the solicitor must anticipate receiving a financial benefit from the activity. *Knot Just Beads v. Knot Just Beads, Inc.* 217 F. Supp. 2d 932 (2002).

The fiduciary shield doctrine, which denies personal jurisdiction over an individual whose presence and activity in a state were solely on behalf of an employer or other principal, was not found to be a part of Wisconsin law. *Norkol/Fibercore, Inc. v. Grubb*, 279 F.3d 993 (2003).

The state may not assert quasi in rem jurisdiction over an insurance company's contractual obligations to defend and indemnify its insured. 64 MLR 374 (1980).

Stacking the deck: Wisconsin's application of Leflar's choice-influencing considerations to torts choice-of-law cases. *White*, 1985 WLR 401.

Wisconsin's 'Stream of Commerce' Theory of Personal Jurisdiction. *La Fave*, Wis. Law. Nov. 2002.

**801.06 Personal jurisdiction, grounds for without service of summons.** A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a person, exercise jurisdiction in an action over a person with respect to any counterclaim asserted against that person in an action which the person has commenced in this state and also over any person who appears in the action and waives the defense of lack of jurisdiction over his or her person as provided in s. 802.06 (8). An appearance to contest the basis for in rem or quasi in rem jurisdiction under s. 802.06 (2) (a) 3. without seeking any other relief does not constitute an appearance within the meaning of this section.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 596 (1975); 1975 c. 218; 1993 a. 213.

**801.07 Jurisdiction in rem or quasi in rem, grounds for generally.** A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the

grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to s. 801.12. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

(1) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply when any such defendant is unknown.

(2) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real estate within this state.

(3) When the defendant has property within this state which has been attached or has a debtor within the state who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subs. (1) and (2).

(4) When the action is to declare property within this state a public nuisance.

(5) When the action is an action affecting the family under s. 767.001 (1) (a) to (d) and when the residence requirements of s. 767.301 have been met, a court having subject matter jurisdiction may exercise jurisdiction quasi in rem to determine questions of status if the respondent has been served under s. 801.11 (1). Notwithstanding s. 801.11 (intro.), the court need not have grounds for personal jurisdiction under s. 801.05 in order to make a determination of the status of a marriage under this subsection.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 597 (1975), 758; 1977 c. 418; 1979 c. 32 s. 92 (4); 1979 c. 352 s. 39; 1993 a. 213; 2001 a. 42; 2005 a. 443, s. 265.

This section requires that in rem actions under s. 161.555 [now s. 961.555] must be commenced against a person having an interest in property seized under s. 161.55 [now s. 961.55]. *State v. One 1973 Cadillac*, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

For quasi in rem jurisdiction under sub. (5), minimum contacts between the defendant and the state are necessary. *Mendez v. Hernandez-Mendez*, 213 Wis. 2d 217, 570 N.W.2d 563 (Ct. App. 1997), 96-1731.

Sub. (3) applies when a settlement offer is made at least 20 days before trial. When a dispute is resolved by arbitration there is no trial and sub. (3) does not apply. *Lane v. Williams*, 2000 WI App 263, 240 Wis. 2d 255, 621 N.W.2d 922, 00-0852.

The minimum contacts standard for quasi in rem jurisdiction is discussed. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

Posting a notice of eviction on an apartment door did not satisfy minimum requirements of due process. *Greene v. Lindsey*, 456 U.S. 444 (1982).

**801.08 Objection to personal jurisdiction. (1)** All issues of fact and law raised by an objection to the court's jurisdiction over the person or property as provided by s. 802.06 (2) shall be heard by the court without a jury in advance of any issue going to the merits of the case. If, after such a hearing on the objection, the court decides that it has jurisdiction, the case may proceed on the merits; if the court decides that it lacks jurisdiction, the defendant shall be given the relief required by such decision.

(2) Factual determinations made by the court in determining the question of personal jurisdiction over the defendant shall not be binding on the parties in the trial of the action on the merits.

(3) No guardian or guardian ad litem may, except as provided in this subsection, waive objection to jurisdiction over the person of the ward. If no objection to the jurisdiction of the court over the person of the ward is raised pursuant to s. 802.06 (2), the service of an answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be equivalent to an appearance and waiver of the defense of lack of jurisdiction over the person of the ward.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 598 (1975); 1979 c. 110 s. 60 (7); Sup. Ct. Order, 101 Wis. 2d xi.

**Judicial Council Note, 1981:** The last sentence of sub. (1) has been repealed because it erroneously implied that non-final orders deciding jurisdictional questions were appealable as of right. This has not been true since ch. 187, Laws of 1977 repealed s. 817.33 (3) (f), Wis. Stats. (1975) and created s. 808.03 (1), Wis. Stats. (1977). *Heaton v. Independent Mortuary Corp.* 97 Wis. 2d 379, 294 N.W.2d 15 (1980). [Re Order effective July 1, 1981]

A jurisdiction dispute may not be resolved on motion. *Mercato Distributing Corp. v. O & R Engines, Inc.* 71 Wis. 2d 792, 239 N.W.2d 97 (1976).

An order denying a motion to dismiss for lack of personal jurisdiction is appealable by permission under s. 808.03 (2). *Heaton v. Independent Mortuary Corp.* 97 Wis. 2d 379, 294 N.W.2d 15 (1980).





## 801.095 COMMENCEMENT OF ACTION AND VENUE

Phone No: ....

**History:** 1983 a. 323; Sup Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 187, 250; 1999 a. 32, 186; 2001 a. 16; 2005 a. 442.

**801.10 Summons, by whom served. (1) WHO MAY SERVE.** An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

**(1m) SERVICE BY CERTAIN NONRESIDENTS.** Notwithstanding sub. (1), an adult who is not a party to the action and who resides in Illinois, Iowa, Michigan, or Minnesota may serve an authenticated copy of the summons in this state.

**(2) ENDORSEMENT.** At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server's official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

**(3) PROOF OF SERVICE.** The person making service shall make and deliver proof of service to the person on whose behalf service was made who shall promptly file such proof of service. Failure to make, deliver, or file proof of service shall not affect the validity of the service.

**(4) PROOF IF SERVICE CHALLENGED.** If the defendant appears in the action and challenges the service of summons upon the defendant, proof of service shall be as follows:

(a) Personal or substituted personal service shall be proved by the affidavit of the server indicating the time and date, place and manner of service; that the server is an adult resident of the state of service or, if service is made in this state, an adult resident of this state or of Illinois, Iowa, Michigan, or Minnesota and is not a party to the action; that the server knew the person served to be the defendant named in the summons; and that the server delivered to and left with the defendant an authenticated copy of the summons. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom the copy was left, and shall state such facts as show reasonable diligence in attempting to effect personal service on the defendant. If the copy of the summons is served by a sheriff or deputy sheriff of the county in this state where the defendant was found, proof may be by the sheriff's or deputy's certificate of service indicating time and date, place, manner of service and, if the defendant is not personally served, the information required in the preceding sentence. The affidavit or certificate constituting proof of service under this paragraph may be made on an authenticated copy of the summons or as a separate document.

(b) Service by publication shall be proved by the affidavit of the publisher or printer, or the foreman or principal clerk, stating that the summons was published and specifying the date of each insertion, and by an affidavit of mailing of an authenticated copy of the summons, with the complaint or notice of the object of the action, as the case may require, made by the person who mailed the same.

(c) The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 600 (1975); 1975 c. 218; Sup. Ct. Order, 92 Wis. 2d xiii (1979); 2005 a. 439.

**Judicial Council Committee's Note, 1979:** Sub. (2) is amended to clarify that the individual who serves the summons on behalf of the plaintiff under the procedures in the Wisconsin Rules of Civil Procedure must indicate on the copy of the summons served both the time and date of service. There is presently a lack of uniformity of interpretation in Wisconsin of the term "time" in 801.10 (2). Some jurisdictions interpret it to include time and date of service while other jurisdictions interpret it as only the date of service. Clarifying that both the time and date of service must be indicated in the serving of the summons will insure that this potentially valuable information is noted on the served copy of every summons in Wisconsin.

Sub. (4) (a) is amended to also apply the requirement for indicating time and date of service to the affidavits and certificates of service used when proof of service is challenged. [Re Order effective Jan. 1, 1980]

A party is required to show strict compliance with the requirements of this section when service is challenged. *Dietrich v. Elliot*, 190 Wis. 2d 816, 528 N.W.2d 17 (Ct. App. 1995).

Service by a nonresident constitutes a fundamental defect compelling dismissal for lack of jurisdiction. *Bendimez v. Neidermire*, 222 Wis. 2d 356, 588 N.W.2d 55 (Ct. App. 1998), 98–0656.

Sub. (4) does not require the affiant to have first hand knowledge of how the documents were authenticated, nor does it require that the affiant's statements must be unqualified; it requires that the affiant affirm that an authenticated copy of the summons was served. *State v. Boyd*, 2000 WI App 208, 238 Wis. 2d 693, 618 N.W.2d 251, 99–2633.

The trial court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. *Williams Corner Investors, LLC v. Areawide Cellular, LLC*, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03–0824.

**801.11 Personal jurisdiction, manner of serving summons for.** A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

**(1) NATURAL PERSON.** Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

**(2) NATURAL PERSON UNDER DISABILITY.** Upon a natural person under disability by serving the summons in any manner prescribed in sub. (1) upon the person under disability and, in addition, where required by par. (a) or (b), upon a person therein designated. A minor 14 years of age or older who is not adjudicated incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(a) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in sub. (1) upon a parent or guardian having custody of the child, or if there is none, upon any other person having the care and control of the child. If there is no parent, guardian or other person having care and control of the child when service is made upon the child, then service of the summons shall also be made upon the guardian ad litem after appointment under s. 803.01.

(b) Where the person under disability is known by the plaintiff to be under guardianship of any kind, a summons shall be served separately upon the guardian in any manner prescribed in sub. (1), (5) or (6). If no guardian has been appointed when service is made upon a person alleged by the plaintiff to be incompetent to have charge of the person's affairs, then service of the summons shall

be made upon the guardian ad litem after appointment under s. 803.01.

(3) STATE. Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

(4) OTHER POLITICAL CORPORATIONS OR BODIES POLITIC. (a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents:

1. If the action is against a county, the chairperson of the county board or the county clerk;
2. If against a town, the chairperson or clerk thereof;
3. If against a city, the mayor, city manager or clerk thereof;
4. If against a village, the president or clerk thereof;
5. If against a technical college district, the district board chairperson or secretary thereof;
6. If against a school district or school board, the president or clerk thereof; and
7. If against any other body politic, an officer, director, or managing agent thereof.

(b) In lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(5) DOMESTIC OR FOREIGN CORPORATIONS OR LIMITED LIABILITY COMPANIES, GENERALLY. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation or limited liability company either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation or limited liability company by publication and mailing as provided in sub. (1).

(c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(d) If against any insurer, to any agent of the insurer as defined by s. 628.02. Service upon an agent of the insurer is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of the insurer within 5 days after service upon the agent. Service upon any insurer may also be made under par. (a).

(6) PARTNERS AND PARTNERSHIPS. A summons shall be served individually upon each general partner known to the plaintiff by service in any manner prescribed in sub. (1), (2) or (5) where the claim sued upon arises out of or relates to partnership activities within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 602 (1975); 1975 c. 218; 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 192 s. 303 (2); 1985 a. 225; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1993 a. 112, 184, 265, 399, 491; 1997 a. 140; 1999 a. 32; 2005 a. 387.

**Cross-reference:** As to service on corporation, see also s. 180.0504.

**Judicial Council Note, 1986:** Sub. (1) (b) is amended to permit substituted service upon residents of other states. Service upon nonresidents may be made either as provided for Wisconsin residents or in accordance with the substituted service rule of the state wherein service is made. [Re Order eff. 7-1-86]

There is no requirement in cases of substituted service that the affidavit recite that the process server used "reasonable diligence" in attempting to make personal service, but substituted service after 2 calls when the defendant was not found, with no effort to learn where the defendant was, was not sufficient to support jurisdiction. *Heaston v. Austin*, 47 Wis. 2d 67, 176 N.W.2d 309 (1970).

When a village was a defendant, service was void when it was made upon the clerk's spouse in the clerk's absence. *Town of Washington v. Village of Cecil*, 53 Wis. 2d 710, 193 N.W.2d 674 (1972).

"Apparently in charge of the office" in sub. (5) (a) refers to what is apparent to the process server. When a receptionist referred the process server to her superior, who did not send the server to the proper office, the server could serve the superior, particularly since the superior had accepted service of process in other actions without objection by the company. *Keske v. Square D Co.*, 58 Wis. 2d 307, 206 N.W.2d 189 (1973).

When personal jurisdiction is challenged under the "long arm" statutes, the burden is on the plaintiff to prove prima facie the facts supporting jurisdiction. A plaintiff who relies on sub. (5) is required to establish as a predicate that the defendant entered into some consensual agreement with the plaintiff that contemplated a substantial contact in Wisconsin. *Afram v. Balfour, Maclaine, Inc.*, 63 Wis. 2d 702, 218 N.W.2d 288 (1974).

No presumption of due service was raised when an affidavit of service under sub. (5) (a) did not identify the person served as the one specified in sub. (5) (a). *Danielson v. Brody Seating Co.*, 71 Wis. 2d 424, 238 N.W.2d 531 (1976).

The prerequisite "due diligence" for service by publication was not established, despite the sheriff's affidavit, when a husband could have ascertained his wife's address by contacting any one of several relatives or in-laws. *West v. West*, 82 Wis. 2d 158, 262 N.W.2d 87 (1978).

A county civil service commission is a "body politic" under sub. (4) (a) 7. *Watkins v. Milwaukee County Civil Service Comm.*, 88 Wis. 2d 411, 276 N.W.2d 775 (1979).

The exact identity and job title of the person upon whom service was made was not critical to whether the person was "apparently in charge of office" under sub. (5) (a). *Horrigan v. State Farm Ins. Co.*, 106 Wis. 2d 675, 317 N.W.2d 474 (1982).

"Reasonable diligence" under sub. (1) is discussed. *Welty v. Heggy*, 124 Wis. 2d 318, 369 N.W.2d 763 (Ct. App. 1985).

Indian tribal sovereignty is not infringed by service of process in a state action made on tribal lands. *Landerman v. Martin*, 191 Wis. 2d 788, 530 N.W.2d 62 (Ct. App. 1995).

Service of process on some of the partners in a general partnership is sufficient to properly commence a civil action against the partnership that will be binding on the partnership assets and the partners served. *CH2M Hill, Inc. v. Black & Veatch*, 206 Wis. 2d 370, 557 N.W.2d 829 (Ct. App. 1996), 95-2619.

The existence of a parent-subsidiary corporate relationship does not automatically establish the subsidiary as an agent of the parent for purposes of receiving process. *Prom v. Sumitomo Rubber Industries, Ltd.*, 224 Wis. 2d 743, 592 N.W.2d 657 (Ct. App. 1999), 98-0938.

A corporation whose offices were located on the 23rd floor of an office building was not properly served under sub. (5) (a) when the papers were left with a security guard in the building lobby who stated that he was authorized to accept service. *Bar Code Resources v. Ameritech, Inc.*, 229 Wis. 2d 287, 599 N.W.2d 872 (Ct. App. 1999), 98-1314.

Service on a limited partnership is governed by sub. (6), not ch. 179. Sub. (6) requires service upon all the general partners known to the plaintiff. When the only person served was a maintenance man, service was insufficient. *Carmain v. Affiliated Capital Corporation*, 2002 WI App 271, 258 Wis. 2d 378, 654 N.W.2d 265, 01-3077.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over the officer as an individual. *Useni v. Boudron*, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02-1475.

Personal jurisdiction over a body politic may be obtained by service of the summons and complaint on an officer, director, or managing agent, or substitute service on a "person who is apparently in charge of the office." Service on a nonparty, even when it occurs erroneously in reliance on the mistaken direction of a person in the office of the defendant, does not constitute service on the defendant. *Hagen v. City of Milwaukee Employee's Retirement System Annuity and Pension Board*, 2003 WI 56, 262 Wis. 2d 113, 663 N.W.2d 268, 01-3198.

Sub. (1) (d) permits substituted service on a natural person's agent who has actual express authority to accept service of summons for the principal. Apparent authority does not satisfy the requirement that the agent be "authorized by appointment" to accept service of summons. *Mared Industries, Inc. v. Mansfield*, 2005 WI 5, 277 Wis. 2d 350, 690 N.W.2d 835, 03-0097.

"Managing agent" as it appears in sub. (5) relates to an agent having general supervision of the affairs of the corporation. "Superintendent" and "managing agent" have corresponding meanings in the statute. Both terms relate to a person possessing and exercising the right of general control, authority, judgment, and discretion over the business or affairs of the corporation, either everywhere or in a particular branch or district. *Richards v. First Union Securities, Inc.*, 2006 WI 55, 290 Wis. 2d 620, 714 N.W.2d 913, 04-1877.

Admission of service by an assistant attorney general or a clerk specifically designated for that purpose by the attorney general will constitute service of process within the meaning of sub. (3). 63 Atty. Gen. 467.

Service on a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. *Chilcote v. Sherzter*, 372 F. Supp. 86 (1974).

**801.12 Jurisdiction in rem or quasi in rem, manner of serving summons for; notice of object of action.** (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 801.07 may affect the interests of a defendant in such action only if a summons and either a copy of the complaint or a notice of the object of the action under sub. (2) have been served upon the defendant as follows:

(a) If the defendant is known, defendant may be served in the manner prescribed for service of a summons in s. 801.11, but service in such a case shall not bind the defendant personally to the

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jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(b) If the defendant is unknown the summons may be served by publication thereof as a class 3 notice, under ch. 985.

(2) The notice of object of action shall be subscribed by the plaintiff or attorney and shall state the general object of the action, a brief description of all the property affected by it, if it affects specific real or personal property, the fact that no personal claim is made against such defendant, and that a copy of the complaint will be delivered personally or by mail to such defendant upon request made within the time fixed in s. 801.09 (2). If a defendant upon whom such notice is served unreasonably defends the action the defendant shall pay costs to the plaintiff.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 606 (1975); 1975 c. 218.

**801.13 Summons; when deemed served.** A summons is deemed served as follows:

(1) A summons served personally upon the defendant or by substituted personal service upon another authorized to accept service of the summons for the defendant is deemed served on the day of service.

(2) A summons served by publication is deemed served on the first day of required publication.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 607 (1975).

**801.14 Service and filing of pleadings and other papers.** (1) Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in s. 801.11.

(2) Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; transmitting a copy of the paper by facsimile machine to his or her office; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

(3) In any action in which there are unusually large numbers of defendants, the court, upon motion or on its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(4) All papers after the summons required to be served upon a party, except as provided in s. 804.01 (6), shall be filed with the court within a reasonable time after service. The filing of any

paper required to be served constitutes a certification by the party or attorney effecting the filing that a copy of such paper has been timely served on all parties required to be served, except as the person effecting the filing may otherwise stipulate in writing.

(6) If an action pertaining to the subject matter of the compact authorized under s. 304.16 may affect the powers, responsibilities, or actions of the interstate commission, as defined in s. 304.16 (2) (f), the plaintiff shall deliver or mail a copy of the complaint to the interstate commission at its last-known address.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 607 (1975); 1975 c. 218; Sup. Ct. Order, 130 Wis. 2d xix (1986); Sup. Ct. Order, 161 Wis. 2d xvii (1991); 2001 a. 96; 2007 a. 97.

**Judicial Council Note, 1986:** Sub. (4) is amended by insertion of a cross-reference to s. 804.01 (6), providing that discovery documents need not be filed with the court unless the court so orders. [Re Order eff. 7-1-86]

**Judicial Council Note, 1991:** Sub. (2) is amended to clarify that facsimile transmission can be used to serve pleadings and other papers. Such service is deemed complete upon transmission. The change is not intended to expand the permissible means of serving a summons or writ conferring court jurisdiction under s. 799.12 and ch. 801, stats. [Re Order eff. 7-1-91]

Once an action has been commenced, service of the summons and complaint has been made on the defendant, and an attorney has appeared on behalf of the defendant, an amended complaint may be served on the defendant's attorney. *Bell v. Employers Mutual Casualty Co.*, 198 Wis. 2d 347, 541 N.W.2d 824 (Ct. App. 1995), 095-0301.

A motion to dismiss with prejudice cannot be heard ex parte and should be granted only on finding egregious conduct or bad faith. Failure to obtain personal service with due diligence does not amount to egregious conduct or bad faith. *Haselow v. Gauthier*, 212 Wis. 2d 580, 569 N.W.2d 97 (Ct. App. 1997), 96-3589.

An amended complaint that makes no reference to or incorporates any of the original complaint supercedes the original complaint when the amended complaint is filed in court. When such a complaint was filed prior to the time for answering the original complaint had run, it was improper to enter a default judgment on the original complaint. *Holman v. Family Health Plan*, 227 Wis. 2d 478, 596 N.W.2d 358 (1999), 97-1490.

A party in default for failing to answer an original complaint cannot answer an amended complaint, thereby attempting to cure its default, unless the amended complaint relates to a new or additional claim for relief. *Ness v. Digital Dial Communications, Inc.*, 227 Wis. 2d 592, 596 N.W.2d 365 (1999), 96-3436.

A receptionist who accepted the receipt of pleadings delivered to an attorney's office by a delivery service was a person in charge of the office within the meaning of sub. (2) and the papers had been properly "delivered." *Varda v. General Motors Corporation*, 2001 WI App 89, 242 Wis. 2d 756, 626 N.W.2d 346, 00-1720.

A circuit court may not enter a default judgment against a defendant on grounds that the defendant failed to file an answer with the court "within a reasonable time after service" under sub. (4) unless the court first determines that the late filing prejudiced either the plaintiff or the court. *Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.*, 2002 WI 66, 253 Wis. 2d 238, 646 N.W.2d 19, 00-1100.

**801.145 Form of papers.** (1) Except for exhibits and wills, the size of all papers filed in court shall be no larger than 8 1/2 inches by 11 inches.

(2) The clerk of circuit court or register in probate shall return any paper not in conformity with sub. (1) to the person or party attempting to file it.

**History:** Sup. Ct. Order, 120 Wis. 2d xv (1984).

**801.15 Time.** (1) (a) In this subsection, "holiday" means any day that is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. 995.20 or both, and a full day on Good Friday.

(b) Notwithstanding ss. 985.09 and 990.001 (4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.

(2) (a) When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms. The 90 day period under s. 801.02 may not be enlarged. If the motion is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect. The order of enlargement shall recite by its terms or by reference to an affidavit in the record the grounds for granting the motion.

(b) The time within which a motion challenging the sufficiency of the evidence or for a new trial must be decided shall not

be enlarged except for good cause. The order of extension must be made prior to the expiration of the initial decision period.

(c) The time for initiating an appeal under s. 808.04, for deciding motions after verdict under s. 805.16 (3), and for making motions for reconsideration under s. 805.17 (3) or for relief from judgment or order under s. 48.46 (2) or 806.07 may not be enlarged.

(4) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte.

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party:

(a) If the notice or paper is served by mail, 3 days shall be added to the prescribed period.

(b) If the notice or paper is served by facsimile transmission and such transmission is completed between 5 p.m. and midnight, 1 day shall be added to the prescribed period.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 610 (1975); 1975 c. 218; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 187 s. 135; 1977 c. 449; 1979 c. 89; 1983 a. 192 s. 304; 1985 a. 145; Sup. Ct. Order, 130 Wis. 2d xi (1986); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 146 Wis. 2d xxxiii (1988); Sup. Ct. Order, 160 Wis. 2d xiv (1991); Sup. Ct. Order, 161 Wis. 2d xvii (1991); Sup. Ct. Order No. 94–05, 183 Wis. 2d xix; 1997 a. 187; 2005 a. 155.

**Cross-reference:** See s. 32.05 (4) for exception to provision for added time in case of mailing.

**Law Revision Committee Note, 1985:** [Sub. (1)] Under the current statute, the time period specified by law or by a court relating to a court action or special proceeding is extended if the last day of the time period falls on a Saturday, Sunday or legal holiday. This amendment adds Good Friday, Christmas eve and New Year's eve. The afternoon of Good Friday and the full day on December 24 and 31 are holidays for state employees, and the amendment will permit clerks to close their offices at these times. [85 Act 145]

**Judicial Council Committee's Note, 1976:** The procedure under s. 801.15 (2) (a) for enlarging the period in which an act is required to be done under the rules of civil procedure cannot be used to enlarge the 60-day period under s. 801.02. See also s. 802.06 (2) (e) and (8).

Par. (2) (b) and (c) are independent provisions. The enlargement of time "for good cause" provision in par. (b) does not apply to the time for appeal under s. 817.01, for motion after verdict under s. 805.16, and for relief from judgment under s. 806.07 as such a result would substantially impair the finality of judgments. The word "extended" is replaced by the word "enlarged" in par. (c) to comply with similar language in pars. (2) (a) and (b). [Re Order effective Jan. 1, 1977]

**Judicial Council Note, 1986:** Sub. (1) is amended by extending from 7 to 11 days the periods from which Saturdays, Sundays and legal holidays are excluded. The change conforms to that made in Rule 6 (a), F.R.C.P. in 1985. [Re Order eff. 7–1–86]

**Judicial Council Note, 1986:** Sub. (2) (c) is amended to clarify that, while the time for deciding motions after verdict may not be enlarged, the time for filing and hearing such motions may be enlarged by the court under revised s. 805.16 (1) and (2). [Re Order eff. 7–1–87]

**Judicial Council Note, 1991:** The amendment to sub. (2) (c) prohibits the court from extending the time for making reconsideration motions under s. 805.17 (3). [Re Order eff. 7–1–91]

**Judicial Council Note, 1991:** Sub. (5) (b) is created to allow one extra day to respond to papers served by facsimile transmission after normal business hours. Additional response time may be available under the computation rules of sub. (1) (b) if papers are so served on weekends or holidays. [Re Order eff. 7–1–91]

**Judicial Council Note, 1994:** Subsection (1) (b) is amended by excluding the last day of a time period from the computation if the clerk of courts office is closed all day.

A court has no authority to enlarge the time in which to file a complaint. Pulchinski v. Strnad, 88 Wis. 2d 423, 276 N.W.2d 781 (1979).

Error based on late service and filing of an affidavit was waived by the failure to object at a hearing. In re Spring Valley Meats, Inc. 94 Wis. 2d 600, 288 N.W.2d 852 (1980).

Notice of entry of judgment was "given" under s. 806.06 (5) when it was mailed. Sub. (5) was inapplicable. Bruns v. Muniz, 97 Wis. 2d 742, 295 N.W.2d 112 (Ct. App. 1980).

The trial court abused its discretion in enlarging the time to file an answer when the answer was served 9 days after the deadline. Hedtcke v. Sentry Ins. Co. 109 Wis. 2d 461, 326 N.W.2d 727 (1982).

Time computations under ss. 32.05 (10) (a) and 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). In Matter of Petition of Electric Power Co. 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

Service of an answer was timely under the terms of a courtesy agreement. Oostburg Bank v. United Savings, 130 Wis. 2d 4, 386 N.W.2d 53 (1986).

Time periods under s. 805.16 may not be enlarged by showing excusable neglect under s. 801.15 (2) (a). Brookhouse v. State Farm Mutual Insurance Co. 130 Wis. 2d 166, 387 N.W.2d 82 (Ct. App. 1986).

The trial court lost jurisdiction to decide motions after verdict by consecutively extending the time for its decision under sub. (2) (b). Ford Motor Co. v. Lyons, 137 Wis. 2d 397, 405 N.W.2d 354 (Ct. App. 1987).

Because a courtesy agreement was made after default, the court did not abuse its discretion by insisting on compliance with sub. (2) (a). Clark County v. B.T.U. Structures, 144 Wis. 2d 11, 422 N.W.2d 910 (Ct. App. 1988).

The trial court had discretion to allow a jury trial when fees under s. 814.61 (4) were not timely paid. Chitwood v. A. O. Smith Harvestore, 170 Wis. 2d 622, 489 N.W.2d 697 (Ct. App. 1992).

While clerical error is not always excusable, it is not as a matter of law inexcusable neglect. Sentry Insurance v. Royal Insurance Co. 196 Wis. 2d 907, 539 N.W.2d 911 (Ct. App. 1995), 94–3428.

Trial courts have discretion to shorten the 5-day notice requirement for motions. Schopper v. Gehring, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997), 96–2782.

Sub. (2) (a) is applicable to excusable neglect by a trial judge. State v. Elliot, 203 Wis. 2d 95, 551 N.W.2d 850 (Ct. App. 1996), 96–0012.

Excusable neglect is conduct that might have been the act of a reasonably prudent person under the same circumstances. A court must look beyond the cause of the neglect to the interests of justice, considering both the need to afford litigants a day in court and to ensure prompt adjudication. Whether the dilatory party acted in good faith, whether the opposing party was prejudiced, and whether prompt remedial action took place are factors to consider. An attorney who relied on an oral courtesy agreement whose terms were not disputed and promptly filed for an extension acted with excusable neglect. Rutan v. Miller, 213 Wis. 2d 94, 570 N.W.2d 54 (Ct. App. 1997), 97–0547.

Under sub. (1) (b) the last day is included in determining time periods unless it is "a day the clerk of courts office is closed." Whether or not the day is a "holiday" under sub. (1) (a) is not relevant. Klingbeil v. Perschke, 228 Wis. 2d 421, 596 N.W.2d 488 (Ct. App. 1999), 99–0488.

A courtesy extension agreement is not required to be in writing, but a court may consider the lack of documentation in making a determination as to whether an agreement existed. Connor v. Connor, 2001 WI 49, 243 Wis. 2d 279, 627 N.W.2d 182, 99–0157.

The trial court erroneously exercised its discretion by entering default judgment without hearing offered testimony on the question of whether an oral courtesy agreement existed and, if so, what the agreement provided. Johnson Bank v. Brandon Apparel Group, Inc. 2001 WI App 159, 246 Wis. 2d 828, 632 N.W.2d 107.

The trial court court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. While prompt remedial action after the expiration of the statutory time limit is a material factor bearing on whether relief should be granted, it does not eliminate the requirement that a dilatory party demonstrate excusable neglect for its initial failure to meet the statutory deadline. Williams Corner Investors, LLC v. Area-wide Cellular, LLC, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03–0824.

In the absence of excusable neglect, the court is not obligated to address the interests of justice. Estate of Otto v. Physicians Insurance Company of Wisconsin, Inc. 2007 WI App 192, 305 Wis. 2d 198, 739 N.W.2d 599, 06–1566. Affirmed on other grounds, 2008 WI 78, 311 Wis. 2d 84, 751 N.W.2d 805, 06–1566.

The excusable neglect standard set forth in sub. (2) (a) does not apply to untimely motions to enlarge scheduling order deadlines. Rather, s. 802.10 provides the applicable standards and procedures courts apply to such motions. Parker v. Wisconsin Patients Compensation Fund, 2009 WI App 42, 317 Wis. 2d 460, 767 N.W.2d 272, 07–1542.

Avoiding and obtaining relief from default judgments. Parlee, WBB April, 1985.

**801.16 Filing. (1)** The filing of pleadings and other papers with the court as required by these statutes shall be made by filing them with the clerk of circuit court. The judge may require that the person filing the papers provide a copy to the judge.

**(2)** For papers that do not require a filing fee:

(a) A court may adopt a local rule, if it is approved by the chief judge, that permits the filing of papers with the clerk of circuit court by facsimile transmission to a plain-paper facsimile machine at a telephone number designated by the court. To provide uniformity, any local rule shall specify a 15-page limit for a facsimile transmission, unless an exception is approved by the assigned judge or court commissioner on a case-by-case basis.

(b) If no rule has been adopted under par. (a), the assigned judge or court commissioner may permit a party or attorney in a specific matter to file papers with the clerk of circuit court by facsimile transmission to a plain-paper facsimile machine at a telephone number designated by the assigned judge or court commissioner.

(c) If the facsimile transmission exceeds 15 pages or is filed in the absence of a local rule, the party or attorney shall certify that the assigned judge or court commissioner has approved the facsimile transmission.

(d) If papers are transmitted to a plain-paper facsimile machine of a noncourt agency, party, or company for the receipt,

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transmittal, and delivery to the clerk of circuit court, the clerk of circuit court shall accept the papers for filing only if the transmission complies with the local rule or has been approved by the assigned judge or court commissioner and certified by the party or attorney.

(e) Facsimile papers are considered filed upon receipt by the clerk of circuit court and are the official record of the court and may not be substituted. No additional copies may be sent. The clerk of circuit court shall discard any duplicate papers subsequently received by the clerk of circuit court, assigned judge, or court commissioner.

(f) Papers filed by facsimile transmission completed after regular business hours of the clerk of circuit court's office are considered filed the next business day.

**History:** Sup. Ct. Order, 161 Wis. 2d xvii (1991); Sup. Ct. Order No. 94–11, 187 Wis. 2d xxiii; Sup. Ct. Order No. 00–09, 2001 WI 33, 241 Wis. 2d xix.

**Judicial Council Note, 1991:** Sub. (2) clarifies that papers (other than those requiring a filing fee) may be filed by facsimile transmission to the judge or clerk, if a local court rule, or the judge in a specific matter, so permits. [Re Order eff. 7–1–91.]

A notice of appeal does not require a filing fee and may be filed by facsimile transmission under sub. (2). *State v. Sorenson*, 2000 WI 43, 234 Wis. 2d 648, 611 N.W.2d 240, 98–3107.

Under sub. (1), the filing of pleadings and other papers with the court shall be made by filing them with the clerk of circuit court. The circuit court should have rejected an affidavit and proposed order submitted by a child support agency that was submitted directly and exclusively to the judge. *Teasdale v. Marinette County Child Support Agency*, 2009 WI App 152, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_, 08–2827.

## 801.17 Electronic filing. (1) DEFINITIONS. In this section:

(a) “Clerk of court” means the official circuit court record-keeper for the case in question, which may be the clerk of circuit court, juvenile clerk, or register in probate for that county.

(b) “Document” means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing. For purposes of this rule, a document includes the transmittal page submitted with the filing.

(c) 1. “Electronic filing system” means a web-based system established by the director of state courts for the purpose of filing documents with a circuit court, automatically integrating them into the consolidated court automation program case management system, and electronically serving them on the parties.

2. “Electronic filing” does not include submission by electronic mail, facsimile, floppy disks, or other electronic methods.

(d) “Electronic filing system administrator” means an individual appointed by the director of state courts to receive information and take action as necessary to run the electronic filing system.

(e) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign the document.

(f) “Initiating document” means a summons and complaint, petition, application, citation, criminal complaint, or any other document filed to commence a court action.

(g) “Traditional methods” means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.

(h) “Transmittal page” means a page generated by the electronic filing system containing the case management information necessary to transmit and file a document.

(i) “User” means an individual who has registered to use the electronic filing system under section (3).

(2) SCOPE. (a) The director of state courts shall implement an electronic filing system for the Wisconsin circuit courts.

(b) Use of the electronic filing system is voluntary. Parties or their attorneys may choose to participate in the electronic filing system on a case-by-case basis. Parties or attorneys who choose not to participate shall file, serve, and receive paper documents by traditional methods.

(c) Any action that may be brought in circuit court may be brought using electronic filing, subject to the ability of the elec-

tronic filing system to accept the documents. This section does not guarantee anyone the right to file electronically.

(d) The procedures in this section shall be interpreted in a manner consistent with existing procedural rules.

(3) REGISTRATION REQUIREMENTS. (a) The following individuals may register for access to the electronic filing system:

1. Licensed Wisconsin attorneys.
2. Attorneys appearing under SCR 10.03 (4).
3. Parties to an action who are not represented by an attorney.
4. Full-time employees authorized under s. 799.06 (2).

(b) Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.

(c) Users shall register through the electronic filing system website by executing a user agreement governing the terms of use of the electronic filing system. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. By registering, users agree to electronically file all documents to the extent the electronic filing system can accept them.

(d) Upon completion of a properly executed user agreement, the electronic filing system shall assign to the user a confidential, secure access code. The access code shall be used only by the user to whom it is assigned and by any agents or employees that the user authorizes. Upon learning that the confidentiality of the access code has been inadvertently or improperly disclosed, the user shall immediately report that fact through the electronic filing system.

(e) Users shall notify the electronic filing system within 10 days of any change in the information provided for registration. Attorneys shall notify the electronic filing system within 10 days of beginning representation of a formerly self-represented user.

(f) Nonresident attorneys may register following court approval of a motion to appear pro hac vice under SCR 10.03 (4).

(g) The same access code shall be used for all cases on which the user is an attorney or a party. The user's access code shall expire 6 months from the last activity on any case for which the user is registered. The electronic filing system may reset access codes and electronic signatures as needed for administrative and security purposes.

(h) Users who wish to stop using the electronic filing system in a particular case must notify the director of state courts through the electronic filing system. The electronic filing system shall generate a notice to all parties that traditional methods must be used for this party for future filings and service.

(i) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case, such as witnesses seeking protective orders, intervenors, and amicus curiae. It may also provide a method for submitting reports by individuals who are not parties to the case, such as presentence investigators and social workers.

(4) TIME AND EFFECT OF ELECTRONIC FILING. (a) The electronic filing system is an agent of the circuit court for purposes of electronic filing, receipt, service, and retrieval of electronic documents.

(b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate clerk of court in the county where the case is filed. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.

(c) The clerk of court may review the document to determine if the document should be accepted for filing. If the clerk accepts the document, the document shall be considered filed with the court at the time the original submission to the electronic filing system was complete. Upon acceptance, the electronic filing system shall issue a confirmation with the date and time of the original submission to serve as proof of filing. If the clerk rejects the document, the document shall not become part of the court record

and the filer shall receive notification of the rejection. The filer may be required to refile the document.

(d) The date the document is considered filed shall be determined by the regular designated business hours of the clerk of court. Any document submitted to the electronic filing system before the close of regular business hours shall be considered filed on that date, so long as it is subsequently accepted by the clerk upon review. A document submitted after the close of regular business hours shall be considered filed the next business day. The electronic filing system shall note the date and time the document is submitted.

(e) Whenever a party has the right or duty to do some act within a prescribed period after the service of a document on the party, one day shall be added to the prescribed period if the document is served through the electronic filing system between 5 p.m. and 12 midnight.

(f) The calculation of time for reply under other statutes and rules is neither expanded nor contracted by this section.

(g) The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

**(5) COMMENCEMENT OF ACTION.** (a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and authenticate the document as provided in sub. (10). The electronic filing system shall send a notice to the filer that the filing has been accepted and is available through the electronic filing system website.

(b) Initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method. Initiating documents shall be served together with a notice to the responding party stating that the case has been electronically filed and giving instructions for how to use the electronic filing system if the responding party chooses to do so.

(c) A responding party or attorney for a responding party may register to use the electronic filing system as provided by this section. After registering to use the electronic filing system, the responding party or attorney shall also register as a user on the particular case. A notice indicating the new user will be sent to the other users on the case.

**(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS.** (a) Filing of documents other than initiating documents through the electronic filing system shall cause a notice of activity to be sent to the electronic mail account of the other users who are parties to the action. Users shall access filed documents through the electronic filing system.

(b) For documents that do not require personal service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document, except as provided in par. (d).

(c) Documents requiring personal service shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(d) If a notice of activity sent to a user's electronic mail account is rejected or returned undeliverable, the electronic filing system shall automatically notify the filing party. The filing party shall then serve the document on that user by traditional methods. The user whose electronic mail account rejected the notice shall be treated as a nonregistered party until the party corrects the problem and reregisters with the electronic filing system.

(e) Unrepresented parties or attorneys who are not users shall be served by traditional methods. The clerk shall maintain a list indicating which unrepresented parties or attorneys are to be served electronically and which are to be served by traditional methods.

(f) An unrepresented party or attorney may submit a request to the clerk of court to begin electronic filing of documents after commencement of the case. The decision to allow electronic filing of documents after the case has been commenced is in the sole

discretion of the clerk of court. If the request is granted, the requester shall register under this section and shall send a notice to the other parties by traditional methods stating that the case has been electronically filed and shall include instructions for how to use the electronic filing system if the other parties choose to do so.

(g) Subpoenas may be electronically generated consistent with s. 805.07 and ch. 885, and shall bear the electronic signature of the issuing attorney or court official. Subpoenas shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(h) The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court. Discovery materials that are not filed with the court through the electronic filing system may be exchanged electronically between the parties by mutual consent, consistent with s. 804.01.

**(7) PAYMENT OF FEES.** (a) Users shall make any payment due to the clerk of court through the electronic filing system unless otherwise ordered by the court or unless special arrangements are made with the clerk of court. Documents that require payment of a fee are not considered filed until the fee is paid or a waiver of the fee is granted. The electronic filing system shall establish one or more methods for electronic payment.

(b) Users may submit a request for waiver of fees under s. 814.29 (1), using a form provided by the electronic filing system for that purpose.

(c) The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.

(d) Users may be charged a convenience fee for use of the electronic filing system, as provided by s. 758.19 (4m).

**(8) FORMAT AND CONTENT OF DOCUMENTS.** (a) To the extent practicable, the user shall format all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including page limits.

(b) Users shall provide any case management information needed to transmit and file the document. The electronic filing system shall reject the document for failure to include information in any one of the mandatory fields identified by the system.

(c) The electronic filing system may set limits on the length or number of exhibits. Exhibits rejected by the system for this reason shall be filed and served by traditional methods. Leave of court may be granted for traditional filing and service in appropriate cases.

(d) Users shall maintain the original of each electronically filed document in electronic form until final disposition of the case and expiration of all time for appeal.

**(9) OFFICIAL RECORD.** (a) Electronically filed documents have the same force and effect as documents filed by traditional methods.

(b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.

(c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and nonelectronic formats. Documents filed by traditional methods shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, notwithstanding SCR 72.03 (3). If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically scanned into the electronic filing system, the clerk shall maintain the document in paper format.

(d) Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(e) The clerk of court shall make the public portions of the electronic record available through a public access terminal located in the clerk's office. The clerk of court shall charge for copies of

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pages from the electronic record under ss. 814.61 (10) and 814.66 (1) (h).

(f) Certified copies of an electronic record shall be obtainable from the clerk of court's office by traditional methods, as provided by s. 889.08.

(g) If a document is filed by traditional methods, the submitting party shall file a copy of that document and not the original paper document. The court may require the submitting party to produce the original paper document if validity of the signature or document is challenged.

**(10) AUTHENTICATION.** Electronic placement of the clerk's filing stamp and case number on each copy of an initiating document constitutes authentication under the statutes and court rules. An authenticated copy may be printed from the consolidated court automation program case management system by the clerk of court or from the electronic filing system by the filing party.

**(11) NOTARIZATION AND OATHS.** (a) If a document is required to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the document. A physical or electronic image of a stamp, impression, or seal need not accompany the electronic signature. The electronic signature and notary seal may be applied to the document's transmittal page.

(b) Notaries public who hold valid appointments under ch. 137 may register with the electronic filing system for authorization to notarize electronically filed documents. To register, notaries must be able to meet the technical requirements of the electronic filing system. Upon receipt of a properly executed notary agreement, the electronic filing system shall assign to the notary a confidential electronic signature and seal. The notary signature and seal shall be used only by the notary to whom it is assigned. Upon learning that the confidentiality of the signature and seal have been inadvertently or improperly disclosed, the notary shall immediately report that fact through the electronic filing system website.

(c) Documents notarized by traditional methods may be filed through the electronic filing system if a handwritten signature and physical seal appear on the original document. The user shall submit a scanned copy of the notarized document to the electronic filing system, and the court shall maintain the scanned document as the official court record. The court may require the submitting party to produce the original paper document if validity of the notarization is challenged.

(d) Other officers authorized by law to perform notarial acts may do so by application of their electronic signatures if those signatures are already provided through the electronic filing system.

(e) The electronic signature and seal provided for notaries public by the electronic filing system satisfy the self-authentication provisions of s. 909.02.

**(12) SIGNATURES OF USERS.** (a) Users shall be provided with an electronic signature that can be executed by the user with the intent to sign a document. The electronic signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules. Each document electronically signed shall bear that person's name, mailing address, telephone number, and state bar number if applicable. If a statute requires a signature at a particular location on a form, the user shall insert the user's printed name and an indication that the document has been electronically signed. The electronic signature may be applied to the document's transmittal page.

(b) A summons and complaint, petition, or other initiating document that is electronically signed in compliance with this section bears a sufficient signature under s. 802.05.

(c) An electronic signature shall be used only by the user to whom it is assigned. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly dis-

closed, the user shall immediately report that fact through the electronic filing system.

(d) Attorneys are responsible for electronically filed documents to the same extent as for paper filings. Attorneys using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785, and are subject to discipline for any violation of a duty to the court under the supreme court rules.

(e) Self-represented parties are responsible for electronically filed documents to the same extent as for paper filings. Self-represented parties using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.

(f) Documents containing signatures of third parties, such as affidavits, may be filed through the electronic filing system if a handwritten signature appears on the original document. The user shall submit a scanned copy of the signed document to the electronic filing system, and the court shall maintain the scanned signature as the official court record. The court may require the submitting party to produce the original paper document if validity of the signature is challenged.

(g) If a document bearing a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided by sub. (9).

**(13) SIGNATURES OF COURT OFFICIALS.** (a) If the signature of a court official is required on a document, an electronic signature may be used. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a nonelectronic signature would be located on a particular order, form, letter, or other document, the official's printed name shall be inserted.

(b) The electronic signature of a court official shall be used only by the official to whom it is assigned and by such designees as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized designee.

(c) A court official may delegate the use of his or her electronic signature to an authorized designee pursuant to the security procedures of the consolidated court automation program case management system. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly disclosed, the court official shall immediately report that fact to the consolidated court automation program. Court officials shall safeguard the security of their electronic signatures and exercise care in delegating the electronic signature.

**(14) CONFIDENTIAL INFORMATION.** (a) The confidentiality of an electronic record, or an electronic or paper copy thereof, is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.

(b) If a document is confidential, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not required to review documents to determine if confidential information is contained within them.

(c) If a user seeks court approval to make a document confidential, the user may electronically file the document under temporary seal pending court approval of the user's motion to seal.

(d) The electronic filing system shall place a visible mark on documents identified as confidential.

**(15) TECHNICAL FAILURES.** (a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:

1. If the failure is caused by the court electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.

2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as filing of paper documents, with similar consequences for missed deadlines.

(b) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

**History:** Sup. Ct. Order No. 06–08, 2008 WI 36, 305 Wis. 2d xxv; Sup. Ct. Order No. 08–20, 2008 WI 106, filed and eff. 7–25–08.

**Comment, 2008:** Sub. (4) is intended to be consistent with the rules for facsimile transmissions under ss. 801.15 and 801.16.

Sub. (6) does not apply the general rule that most documents are considered served when they are mailed. Although documents are considered filed when they are accepted by the clerk and posted to the electronic filing website, the parties are notified of the posting by a notice sent to an electronic mail account. Because electronic mail is not yet as reliable as the United States Post Office, this subsection requires the filing party to revert to traditional service if the electronic mail notice is returned as undeliverable.

Sub. (6) (f) provides that the clerk of court may allow an existing case to be converted to electronic filing upon the request of a party, but the clerk is not required to do so.

Sub. (7) provides that most routine fees be paid electronically, including filing, motion, and docketing fees, fines and forfeitures, court costs, and court-ordered attorney fees. Larger fees and deposits, such as condemnation awards, may be paid by other methods if ordered by the court or agreed to by the clerk of court. Attorneys should consult the Rules of Professional Conduct, SCR 20:1.15 (e), with respect to the restrictions on electronic transactions from trust accounts.

Sub. (9) requires parties filing documents by traditional methods, such as by hand delivery or by mail, to submit copies instead of original documents, to allow the clerk to eliminate the paper file. Discarding the paper copy is consistent with the rule governing facsimile copies, s. 801.16 (2) (e), which provides that the faxed copy is the official record, and the original, if received, should be discarded. The rule does not require the submitting party to retain original paper documents. If there is likely to be a challenge to the validity of a signature or exhibit, parties may be well-advised to keep the original paper document. For a high-volume law practice, the economics may not support keeping paper originals when the remainder of the file is electronic, and parties may prefer to assume the risk of failure of proof.

SCR 72.03 (3) provides that even when the clerk of court has electronically stored a court file, the clerk may not destroy the paper file until one year after entry of a final order in the case. In contrast, the electronic filing rule anticipates that there may not even be a paper file for the case, so the clerk should be allowed to discard the paper copy as soon as it is electronically scanned and the clerk has confirmed that the electronic copy is legible, complete, and properly saved to the file.

Sub. (10) provides that electronic authentication satisfies the authentication requirements of Wisconsin Statutes, including ss. 801.02, 801.09 (4), and 909.02 (8). Statutory authentication requirements must be met upon filing of the summons and complaint in order to confer jurisdiction on the court. *American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 534 (1992). The purpose of authentication is to give assurance by the clerk that copies served are true copies of filed documents and to provide the case number for future reference. *J.M.S. v. Benson*, 91 Wis. 2d 526, 532 (Ct. App. 1979), *rev'd on other grounds*, 98 Wis. 2d 406 (1980). The security and verifiability provided by the electronic filing system satisfy the purposes of the authentication requirements under statutes and case law.

Sub. (11) is intended to satisfy the standards for electronic notarization set by ss. 137.19 (the Uniform Electronic Transactions Act) and 706.25 (2) (c) (the Uniform Real Property Electronic Recording Act). The rule should be interpreted flexibly to the extent that technical standards for electronic notarization evolve.

The function of the notary is to witness the signature and to administer an oath when one is required. See ss. 706.07; 887.01; 887.03; *Kellner v. Christian*, 197 Wis. 2d 183, 191 (1995). Notarial acts as defined by s. 706.07 (1) (c) include the ability to administer oaths, take acknowledgments and verifications, and authenticate or certify documents. The intent of this section is to allow notaries to perform traditional notarial functions using alternate technology, and to make them responsible for electronic notarization to the same extent they are responsible for traditional notarization. These functions may be performed not only by notaries public but also by a judge, clerk or deputy clerk of a court of record, or a court commissioner under s. 706.07 (3). This section provides that the electronic signature of one of these officials may be applied to a certificate of notarial acts certifying that the function was performed.

This section does not require the submitting party to retain original paper documents or exhibits bearing the notary's seal and signature. If there is likely to be a challenge to the validity of the notarization, parties may be well-advised to keep the paper copies. The court may require a party to produce the original paper document if validity of the notarization is challenged.

Sub. (12) adopts the definition of electronic signature appearing in ss. 137.11 (8) and 706.25 (1) (d). Consistent with s. 137.15 (4), it provides that if a law requires a signature, an electronic signature applied through the electronic filing system satisfies that requirement.

The Wisconsin legislature has affirmed the trend toward acceptance of electronic signatures in government records and commercial transactions. At the request of the Wisconsin Director of State Courts, 2003 Wisconsin Act 294 (the Uniform Electronic Transactions Act) exempted court filings from coverage in order to allow the court to develop its own technical and legal standards. This section now allows the electronic signing and filing of those documents described in s. 137.12 (2m), as well as all other documents filed with the court.

Compliance with this section satisfies the signature requirements of ss. 801.09 (3), 802.05 (1), and 805.07 (4) (a), as well as all other statutes and rules relating to court

documents. Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. See *Schaefer v. Riegelman*, 2002 WI 18, 250 Wis. 2d 494, 512–13; *Novak v. Phillips*, 2001 WI App 156, 246 Wis. 2d 673, 680–81; *Jadair, Inc. v. U.S. Fire Insurance Co.*, 209 Wis. 2d 187, 211–12 (1997). For users of the electronic filing system, the identification procedures, security, and personal accountability provided by these rules are deemed to satisfy the purposes of a handwritten signature and all other signature requirements.

The intent of this section is to make attorneys and self-represented parties responsible for electronic filings to the same extent they are responsible for paper filings. For that reason, the rule does not include a provision allowing attorneys to reveal their electronic signatures to office staff so the staff can apply the signature; the attorney must review each electronically filed document and apply his or her electronic signature personally. The courts and the Office of Lawyer Regulation have a range of sanctions and disciplinary measures that will serve as an adequate deterrent to any misuse of electronic signatures.

This section does not require the submitting party to retain original paper documents bearing handwritten signatures. If there is likely to be a challenge to the validity of the signature, the submitting party may be well-advised to keep the original document.

Sub. (13) provides electronic signatures for those court officials whose duties require them to sign documents in circuit court case files, including circuit court judges, clerks of circuit court, registers in probate, juvenile clerks, and circuit court commissioners appointed under s. 757.68 and SCR 75.02 (1). Electronic signatures may also be provided for the chief justice and the director of state courts to use for assignment of judges pursuant to SCR 70.23 and 70.24. A district court administrator may be the designee of a chief judge for purposes of judicial assignment.

Under this section, court officials may allow an authorized staff member to apply the official's electronic signature at the official's specific direction. Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. No case has examined the signature requirements for court officials, and the reasoning behind previous decisions seems inapplicable. Each court official remains responsible for reviewing, revising and approving the document before the electronic signature is applied, and should be held accountable as if the document were signed personally. The electronic signature shall be applied in accordance with the provisions of SCR 70.42.

Sub. (14) provides that the electronic filing system shall protect those case types made confidential by statutes. Within an open case type, certain documents may be sealed by statute, such as presentence reports, financial disclosure forms, psychological evaluations, and certain health care records. This section places the burden on the submitting party to identify those documents as confidential. Confidential information may also be contained within an otherwise open document, such as a trade secret; the burden is on the filing party to move to seal those documents. As an added protection, the electronic filing system will mark confidential documents in a way that will be visible on the computer screen and when the documents are printed.

Sub. (15) addresses technical failures of the court's electronic filing system or the user's electronic systems. Technical failures may include an error in the transmission of the document to the electronic filing system or to a served party, a failure to process the document upon receipt by the electronic filing system, or erroneous exclusion of a party from the service list by the electronic filing system.

Correction of technical failures should generally be allowed in order to encourage the use of the electronic filing system. Correction should be automatic where the user can demonstrate that the problem was caused by the court's electronic filing system. The electronic filing system will generate a report if needed for a user to document the problem. Where the failure is caused by the user's electronic systems (such as electronic mail, word processing, or a database program) or by external forces (such as problems with the user's Internet service provider or power outages), the court has the discretion to correct the problem. The court should consider what consequences would follow a missed deadline for traditional filings, caused by forces such as malfunctioning equipment or traffic delays. The committee considered limiting the court's discretion to correct technical errors in the filing of initiating documents, where untimely filing is a jurisdictional issue, but decided against creating a bright-line rule because of occasional exceptions such as *St. John's Home of Milwaukee v. Continental Casualty Co.*, 147 Wis. 2d 764, 788–89 (Ct. App. 1988) and *Granado v. Sentry Ins.*, 228 Wis. 2d 794, 799 (Ct. App. 1999).

Paperless Courts: E-Filing in Wisconsin Circuit Courts. Bousquet & Vandercook. Wis. Law. July 2008.

### 801.50 Venue in civil actions or special proceedings.

(1) A defect in venue shall not affect the validity of any order or judgment.

(2) Except as otherwise provided by statute, venue in civil actions or special proceedings shall be as follows:

- In the county where the claim arose;
- In the county where the real or tangible personal property, or some part thereof, which is the subject of the claim, is situated;
- In the county where a defendant resides or does substantial business; or
- If the provisions under par. (a) to (c) do not apply, then venue shall be in any county designated by the plaintiff.

(3) All actions in which the sole defendant is the state, any state board or commission or any state officer, employee or agent in an official capacity shall be venued in Dane County unless another venue is specifically authorized by law.

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**(3m)** Venue in an action under s. 323.60 (8) or (9) related to hazardous substance releases shall be in the county as provided under s. 323.60 (10).

**(4)** Venue of an action seeking a remedy available by habeas corpus shall be in the county:

(a) Where the plaintiff was convicted or sentenced if the action seeks relief from a judgment of conviction or sentence under which the plaintiff's liberty is restrained.

(b) Where the liberty of the plaintiff is restrained if the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff.

**(5)** Venue of an action for certiorari to review a probation, extended supervision, or parole revocation, a denial by the earned release review commission under s. 302.1135 (5) of a petition for modification of a sentence, or a refusal of parole shall be the county in which the relator was last convicted of an offense for which the relator was on probation, extended supervision, or parole or for which the relator is currently incarcerated.

**(5c)** Venue of an action for certiorari brought by the department of corrections under s. 302.113 (9) (d) or 302.114 (9) (d) to review a decision to not revoke extended supervision shall be in the county in which the person on extended supervision was convicted of the offense for which he or she is on extended supervision.

**(5m)** Venue of an action arising from a consumer credit transaction, as defined in s. 421.301 (10), shall be in any county specified in s. 421.401 (1).

**(5p)** Venue of an environmental pollution action brought by a person who is not a resident of this state against a commission created under s. 200.23 shall be in the county which contains the 1st class city that is located wholly or partially within the applicable district created under s. 200.23.

**(5r)** Venue of an action under s. 813.12 growing out of domestic abuse shall be in the county in which the cause of action arose, where the petitioner or the respondent resides or where the petitioner is temporarily living.

**(5s)** Venue of an action under s. 813.122 or 813.125 shall be in the county in which the cause of action arose or where the petitioner or the respondent resides.

**(5t)** Except as otherwise provided in ss. 801.52 and 971.223 (1) and (2), venue in a civil action to impose a forfeiture upon a resident of this state for a violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, or for a violation of any other law arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, shall be in circuit court for the county where the defendant resides. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county. This subsection does not affect which prosecutor has responsibility under s. 978.05 (2) to prosecute civil actions arising from violations under s. 971.223 (1).

**(6)** Venue under this section may be changed under s. 801.52.

**History:** 1983 a. 204, 228, 389, 538; 1985 a. 234, 291; 1987 a. 208; 1993 a. 318, 319; 1997 a. 283; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2001 a. 109; 2007 a. 1; 2009 a. 28, 42.

**Cross-reference:** See s. 813.02 (4) for exception to sub. (1) as to venue.

**Judicial Council Note, 1983:** Sub. (1) is designed to separate questions of venue from questions of jurisdiction and competency. A defect in venue is not jurisdictional and does not affect the competence of the court. The cure for a defect in venue is to change the place of trial.

Sub. (2) liberalizes the present venue statute by providing the plaintiff with a broader range of initial venue choices. This subsection also deletes many of the archaic distinctions in the former statute.

The following list contains many, but not all, of the specialized venue provisions not found in chapter 801: s. 48.185 (children's code proceedings); s. 48.83 (adoption of minors); s. 51.45 (13) (n) (civil mental commitments); s. 767.65 (11) Revised (proceedings under the uniform reciprocal enforcement of Support act); s. 77.12 (forest croplands tax act); s. 111.60 (Wisconsin employment relations act); s. 144.73 (4) [now s. 291.95 (4)] (hazardous waste act); s. 185.44 (1) (cooperative contracts); s. 195.07 (railroad regulation act); s. 196.44 (3) (public utilities regulation act); s. 198.12 (2) (municipal power and water district act); s. 215.02 (5) (savings and loan

association act); s. 227.16 (1) (administrative procedure act); s. 232.38 (solid waste recycling authority act); s. 234.22 (housing finance authority act); s. 345.31 (motor vehicle act); s. 421.401 (Wisconsin consumer act); s. 645.04 (1) (insurers rehabilitation and liquidation act); [s. 655.19 (health care liability and patients compensation)]; s. 701.14 (4) (living trusts); s. 752.21 (court of appeals); s. 753.065 (naturalization proceedings); s. 757.89 (Wisconsin judicial commission); s. 776.13 (annulment of corporate charters); s. 779.20 (log liens); s. 799.11 (small claims actions); s. 800.15 (municipal court appeals); s. 880.05 (guardianship actions); s. 882.03 (adult adoptions); s. 971.19 (criminal proceedings); s. 979.01 (inquests of the dead); s. 23.90 (conservation act); s. 45.50 (3) (soldiers and sailors civil relief); and s. 753.34 (5) (Menominee and Shawano counties).

Sub. (3) remains the same in substance.

Subs. (4) and (5) remain unchanged.

Sub. (6) recognizes the authority of the judge to change venue under s. 801.52. [Bill 324–S]

"Substantial business" under sub. (2) (c) is discussed. Enpro Assessment Corp. v. Enpro Plus, Inc. 171 Wis. 2d 542, 492 N.W.2d 325 (Ct. App. 1992).

"Where the liberty of the plaintiff is restrained" under sub. (4) (b) is the county where the plaintiff is confined. State ex rel. Frederick v. McCaugherty, 173 Wis. 2d 222, 496 N.W.2d 327 (Ct. App. 1992).

A certiorari proceeding to review a probation revocation must be heard in the circuit court of conviction, but it need not be heard by the same branch. Drow v. Schwarz, 225 Wis. 2d 362, 592 N.W.2d 623 (1999), 97–1867.

Wisconsin's revised venue statutes. Fullin, WBB September, 1984.

**801.51 Challenges to improper venue.** Any party may challenge venue, on the grounds of noncompliance with s. 801.50 or any other statute designating proper venue, by filing a motion for change of venue:

**(1)** At or before the time the party serves his or her first motion or responsive pleading in the action.

**(2)** After the time set forth in sub. (1), upon a showing that despite reasonable diligence, the party did not discover the grounds therefor at or before that time.

**History:** 1983 a. 228.

**Judicial Council Note, 1983:** This section sets forth the procedure for challenging the plaintiff's initial choice of venue on the grounds that it fails to comply with the provisions of s. 801.50 or any other statute specifying proper venue. The former statute's 2-stage proceeding was unnecessary and tended to create confusion for unwary litigants. [Bill 324–S]

**801.52 Discretionary change of venue.** The court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the venue to any county in the interest of justice or for the convenience of the parties or witnesses, except that venue in a civil action to impose forfeiture for a violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or for a violation of any other law arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, may be changed only as provided in s. 971.223 (1) and (2) or in the same manner that is authorized for a change in the venue of a criminal trial under s. 971.22. This section does not apply to proceedings under ch. 980.

**History:** 1983 a. 228; 2005 a. 434; 2007 a. 1.

**Judicial Council Note, 1983:** This section authorizes grounds for changing venue beyond the failure to comply with s. 801.50. It permits the court to apply traditional forum non conveniens principles to requests for discretionary change of venue. The court has discretion to change venue to any county in the state. [Bill 324–S]

**801.53 Determination of motion for change of venue.** Motions under ss. 801.51 and 801.52 shall be determined on the basis of proofs submitted by the parties unless the court orders a hearing or oral argument. Oral argument shall be heard by telephonic conference unless the court otherwise orders for cause shown.

**History:** 1983 a. 228.

**Judicial Council Note, 1983:** The provisions of the prior statute are revised in new s. 801.51. Motions under s. 801.51 are rarely contested and usually decided on affidavit. As on other non-evidentiary motions, oral argument should, if desired, be heard by 3-way or conference telephone call. Motions under s. 801.52, while requiring a factual foundation, usually are based not on dispute of fact but on balance of equities. Unless good cause to the contrary is advanced, arguments should be heard by 3-way or telephonic conference call. [Bill 324–S]

**801.54 Discretionary transfer of civil actions to tribal court.** **(1) SCOPE.** In a civil action where a circuit court and a court or judicial system of a federally recognized American Indian tribe or band in Wisconsin ("tribal court") have concurrent jurisdiction, this rule authorizes the circuit court, in its discretion, to

transfer the action to the tribal court under sub. (2m) or when transfer is warranted under the factors set forth in sub. (2). This rule does not apply to any action in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

**(2) DISCRETIONARY TRANSFER.** When a civil action is brought in the circuit court of any county of this state, and when, under the laws of the United States, a tribal court has concurrent jurisdiction of the matter in controversy, the circuit court may, on its own motion or the motion of any party and after notice and hearing on the record on the issue of the transfer, cause such action to be transferred to the tribal court. The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, unless all parties stipulate to the transfer, in the exercise of its discretion the circuit court shall consider all relevant factors, including but not limited to:

(a) Whether issues in the action require interpretation of the tribe's laws, including the tribe's constitution, statutes, bylaws, ordinances, resolutions, or case law.

(b) Whether the action involves traditional or cultural matters of the tribe.

(c) Whether the action is one in which the tribe is a party, or whether tribal sovereignty, jurisdiction, or territory is an issue in the action.

(d) The tribal membership status of the parties.

(e) Where the claim arises.

(f) Whether the parties have by contract chosen a forum or the law to be applied in the event of a dispute.

(g) The timing of any motion to transfer, taking into account the parties' and court's expenditure of time and resources, and compliance with any applicable provisions of the circuit court's scheduling orders.

(h) The court in which the action can be decided most expeditiously.

(i) The institutional and administrative interests of each court.

(j) The relative burdens on the parties, including cost, access to and admissibility of evidence, and matters of process, practice, and procedure, including where the action will be heard and decided most promptly.

(k) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

**(2m) TRIBAL CHILD SUPPORT PROGRAMS.** The circuit court may, on its own motion or the motion of any party, after notice to the parties of their right to object, transfer a post-judgment child support, custody or placement provision of an action in which the state is a real party in interest pursuant to s. 767.205 (2) to a tribal court located in Wisconsin that is receiving funding from the federal government to operate a child support program under Title IV–D of the federal Social Security Act (42 U.S.C. 654 et al.). The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party objects in a timely manner. Upon the filing of a timely objection to the transfer the circuit court shall conduct a hearing on the record considering all the relevant factors set forth in sub. (2).

**(3) STAY OF PROCEEDING IN CIRCUIT COURT.** When a circuit court transfers an action to tribal court under this rule, the circuit court shall enter an order to stay further proceedings on the action in circuit court. Jurisdiction of the circuit court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the

action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

**(4) APPEALS.** The decision of a circuit court to transfer an action to tribal court may be appealed as a matter of right under s. 808.03 (1).

**(5) EFFECT OF TRANSFER.** When a circuit court orders the transfer of an action to tribal court under this rule, the circuit court shall retain the circuit court filing fee and shall transmit to the tribal court a copy of all circuit court records in the action.

**(6) POWERS, RIGHTS AND OBLIGATIONS UNAFFECTED.** Nothing in this rule is intended to alter, diminish, or expand the jurisdiction of the circuit courts or any tribal court, the sovereignty of the state or any federally recognized American Indian tribe or band, or the rights or obligations of parties under state, tribal, or federal law.

**History:** Sup. Ct. Order No. 07–11, 2008 WI 114, filed 7–31–08, eff. 1–1–09; Sup. Ct. Order No. 07–11A, 2009 WI 63, filed and eff. 7–1–09.

**NOTE:** Sup. Ct. Order No. 07–11 states: "The following Comment to Wis. Stat. s. 801.54 is not adopted, but will be published and may be consulted for guidance in interpreting and applying the statute:"

**Comment, 2008.** The purpose of this rule is to enable circuit courts to transfer civil actions to tribal courts in Wisconsin as efficiently as possible where appropriate. In considering the factors under sub. (2), the circuit court shall give particular weight to the constitutional rights of the litigants and their rights to assert all available claims and defenses.

**801.56 Change of venue if judge disqualified by interest.** When the judge is a party or interested in any action in the judge's court or is related to or has been of counsel for either party, the court or the presiding judge thereof shall, upon application of either party, and may without such application, change the place of trial or call in another judge as provided in s. 801.58. The fact that the judge is a taxpayer does not disqualify the judge.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 757, 777 (1975); 1975 c. 218; Stats. 1975 s. 801.56.

**801.58 Substitution of judge. (1)** Any party to a civil action or proceeding may file a written request, signed personally or by his or her attorney, with the clerk of courts for a substitution of a new judge for the judge assigned to the case. The written request shall be filed preceding the hearing of any preliminary contested matters and, if by the plaintiff, not later than 60 days after the summons and complaint are filed or, if by any other party, not later than 60 days after service of a summons and complaint upon that party. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action and to the named judge.

**(2)** When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If the judge named in the substitution request finds that the request was not timely and in proper form, that determination may be reviewed by the chief judge of the judicial administrative district, or by the chief judge of an adjoining judicial administrative district if the judge named in the request is the chief judge, if the party who made the substitution request files a written request for review with the clerk no later than 10 days after the determination by the judge named in the request. If no determination is made by the judge named in the request within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district or to the chief judge of an adjoining judicial administrative district, if the judge named in

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the request is the chief judge, for determination of whether the request was made timely and in proper form and reassignment as necessary. The newly assigned judge shall proceed under s. 802.10 (1).

(3) Except as provided in sub. (7), no party may file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one of such party of a written request.

(4) Upon the filing of an agreement signed by all parties to a civil action or proceeding, by the original judge for which a substitution of a new judge has been made, and by the new judge, the civil action or proceeding and pertinent records shall be transferred back to the original judge.

(5) In addition to other substitution of judge procedures, in probate matters a party may file a written request specifically stating the issue in a probate proceeding for which a request for substitution of a new judge has been made. The judge shall thereupon be substituted in relation to that issue but after resolution of the issue shall continue with the administration of the estate. If a person wishes to file a written request for substitution of a new judge for the entire proceeding, subs. (1) to (4) shall apply.

(6) (a) In probate matters ss. 801.59 to 801.62 apply, except that upon the substitution of any judge, the case shall be referred to the register in probate, who shall request assignment of another judge under s. 751.03 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to the assigned judge, by mail or in person, for signing or approving, wherever the judge may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the circuit court of the county where the records and files of the matter are kept.

(7) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order as to any or all of the parties in a manner such that further proceedings in the trial court are necessary, any party may file a request under sub. (1) within 20 days after the filing of the remittitur in the trial court whether or not another request was filed prior to the time the appeal or writ of error was taken.

**History:** 1971 c. 46, 138, 296; Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); Stats. 1975 s. 801.58; 1977 c. 135 ss. 7, 15, 16; 1977 c. 187 s. 135; Sup. Ct. Order, 82 Wis. 2d ix (1978); 1977 c. 449; 1979 c. 175 ss. 50, 53; 1981 c. 137; 1987 a. 68.

**Judicial Council Note, 1977:** Section 801.58 of the statutes has been changed in a number of significant ways. The statute states that a substitution of judge request in a civil action or proceeding is timely only if made before the hearing of a preliminary contested matter, codifying *Pure Milk Products Coop. v. NFO*, 64 Wis. 2d 241 (1974).

A new provision has been added to allow the parties to a criminal action or proceeding, the prosecuting attorney, and the original and the new judge to agree to have the matter referred back to the original judge. This will aid the administration of justice in those cases where it is advantageous for everyone concerned to have the original judge take back the matter. [Bill 74–S]

**Judicial Council Committee's Note, 1977:** Sub. (1) is amended to give a plaintiff 60 days from the time the summons and complaint are filed or a defendant or any added party 60 days after service of a summons and complaint upon them to request a substitution of a new judge, provided no preliminary contested matters have been argued by the requester. The previous time periods for requesting a substitution of judge (i.e., 10 days after the date of notice for a scheduling conference or 10 days after service of a standard scheduling order) are repealed as the use of such a conference or order is no longer mandatory under s. 802.10. [Re Order effective July 1, 1978]

**Judicial Council Note, 1981:** Sub. (2) has been revised to allow the clerk to refer the substitution request to the chief judge of the judicial administrative district when the judge whose substitution has been requested fails to determine within 7 days whether the request is timely made and in proper form.

Sub. (7) has been amended to clarify that the 20–day time period for filing a substitution request after an appellate remand commences upon the filing of the remittitur in the trial court. *Rohl v. State*, 97 Wis. 2d 514 (1980). [Bill 163–S]

A right can be waived by participation in preliminary motions in which the judge is allowed to receive evidence that of necessity is used and weighed in deciding ultimate issues. *Pure Milk Products Coop. v. NFO*, 64 Wis. 2d 241, 219 N.W.2d 564 (1974).

The *Bacon–Bahrule*, which interprets this section to bar substitution in proceedings to modify support or custody orders, applies only to cases in which the judge has been previously involved. *State ex rel. Tarney v. McCormack*, 99 Wis. 2d 220, 298 N.W.2d 552 (1980).

A substitution of judge request may be filed with a deputy clerk. In *Matter of Civil Contempt of Kroll*, 101 Wis. 2d 296, 304 N.W.2d 175 (Ct. App. 1981).

An added party may request a substitution within 60 days of service if the added party has not actually participated in preliminary contested matters. *City of La Crosse v. Jiracek Cos., Inc.* 108 Wis. 2d 684, 324 N.W.2d 440 (Ct. App. 1982).

The 10–day period for substitution under sub. (1) is triggered by receipt of actual notice that the new judge has been assigned. *State ex rel. Laborers Union v. Kenosha Cir. Ct.* 112 Wis. 2d 337, 332 N.W.2d 832 (Ct. App. 1983).

Sub. (7) creates an unqualified right to substitution when further trial court proceedings are necessary after remand from an appellate court. *State ex rel. Oman v. Hunkins*, 120 Wis. 2d 86, 352 N.W.2d 220 (Ct. App. 1984).

“Further proceedings” under ss. 801.58 (7) and 808.08 (3) have the same definition. *State ex rel. Ondrasek v. Circuit Ct.* 133 Wis. 2d 177, 394 N.W.2d 912 (Ct. App. 1986).

If parties are united in interest and plead together and one presents its views in a preliminary contested matter, all united parties are barred from moving for substitution. *Carkel, Inc. v. Lincoln County Circuit Court*, 141 Wis. 2d 257, 414 N.W.2d 640 (1987). See also *DeWitt Ross & Stevens v. Galaxy Gaming and Racing*, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02–0359. Affirmed on other grounds, 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839, 02–0359.

When the trial court is ordered to clarify its ruling in a divorce matter on remand, the *Bacon–Bahrule* applies and no substitution under (7) is permitted. *Parrish v. Kenosha County Circuit Ct.* 148 Wis. 2d 700, 436 N.W.2d 608 (1989).

Because an ex parte restraining order is not issued in the context of a contested proceeding, a substitution request may be granted subsequent to the entry of an order and prior to a hearing on the merits. *Threlfall v. Town of Muscodia*, 152 Wis. 2d 308, 448 N.W.2d 274 (Ct. App. 1989).

A request for substitution is not allowed when a recommitment hearing under s. 51.20 (13) (g) 3. is before the same judge who conducted the original commitment proceeding. *Serocki v. Clark County Circuit Court*, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

The requirement of sub. (1) that substitution requests be filed preceding the hearing of any “preliminary contested matters” applies to requests filed under sub. (5). A motion to compel discovery constitutes a “preliminary contested matter.” *State ex rel. Sielen v. Circuit Court for Milwaukee County*, 176 Wis. 2d 101, 499 N.W.2d 651 (1993).

A nonsummary contempt motion is a part of the underlying action from which it arises, and the time allowed for requesting judicial substitution runs from the commencement of the action not from receipt of notice of the contempt proceeding. *James L.J. v. Walworth County Circuit Court*, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94–2043.

The court of appeals is authorized to exercise its supervisory authority over a chief judge who is ruling on a substitution request. *James L.J. v. Walworth County Circuit Court*, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94–2043.

The right to judicial substitution applies to ch. 980 proceedings. *State v. Brown*, 215 Wis. 2d 716, 573 N.W.2d 884 (Ct. App. 1997), 96–1211.

When a judge normally presides in one county but is assigned by substitution to a case filed in another county, the filing and entry for appeal purposes occur when the document comes into the possession of the clerk of court in the county in which the case was commenced. *State v. Williams*, 230 Wis. 2d 50, 601 N.W.2d 838 (Ct. App. 1999), 98–3338.

The only time a chief judge may become involved in the substitution process under sub. (2) is if a circuit court denies a substitution request for not being timely or properly filed. *State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County*, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679, 97–3452.

If a circuit court may exercise discretion in discharging its duties on remand, the court must engage in “further proceedings” under sub. (7), entitling the parties to the right of substitution. If the remand requires a specific action that requires no exercise of discretion by the trial court, no substitution is allowed. *State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County*, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679, 97–3452.

Review by the chief judge under sub. (2) is a prerequisite to appeal a denial of a request for substitution. A chief judge may review a denial only if a timely request for review is made. *Paternity of Daniel L.G.* 2002 WI App 47, 250 Wis. 2d 667, 641 N.W.2d 175, 01–1219.

Because two insurance companies’ policies for the same insured were in effect on different dates and provided different types of coverages, they would not be similarly affected by the court’s determination of when damages occurred. As determination of the dates would eliminate the possibility of coverage by one company and raise the possibility of coverage by the other, the two companies were not united in interest under sub. (3) although they shared some interests in the case. *Cincinnati Insurance Company v. Milwaukee County*, 2003 WI 57, 262 Wis. 2d 99, 663 N.W.2d 275, 02–2756.

For a motion hearing to be a “preliminary contested matter” for purposes of sub. (1), the dispositive question is whether the hearing concerned a substantive issue that went to the merits of the case. A hearing on a motion that depositions be suspended sought to narrow the scope of discovery and thus addressed a substantive issue that affected the presentation of the case. *DeWitt Ross & Stevens v. Galaxy Gaming and Racing*, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02–0359. Affirmed on other grounds. 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839, 02–0359.

The civil peremptory substitution statute. *Seaburg*, WBB January, 1986.

**801.59 Assigned judge.** In any case where another judge has been assigned under s. 751.03 to hear a particular action or proceeding, the clerk of circuit court shall forthwith notify all parties to the action or proceeding, by mail or telephone, noting in the case file the time notice was sent or given and, if notice is given by telephone, the person with whom he or she spoke. If a written

request for a substitution of a new judge is filed with regard to an assigned judge, it shall be filed within 7 days after notice of the assignment has been received. A copy of the written request shall be mailed forthwith to all parties and to the named judge.

**History:** 1971 c. 296; Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); 1977 c. 187 s. 135; Sup. Ct. Order, 141 Wis. 2d xiii (1987).

**Judicial Council Note, 1988:** This section is amended by allowing notice of a newly assigned judge to be given to the parties by telephone. Notation of the time of notice is required for purposes of s. 801.58 (1). [Re Order effective Jan. 1, 1988]

### 801.61 Proceedings after order for change of venue.

When the place of trial is changed all process, pleadings and other papers, and copies of all entries and minutes of the clerk in such action shall be certified and transmitted by such clerk to the clerk of the court to which the trial is changed, with a statement of fees. Such fees shall be paid before transmission by the party procuring such change, except in the case mentioned in s. 801.51, in which case the plaintiff shall pay such fees and the change shall be complete on the making of the order. The change, in other cases, shall be complete on filing the papers transmitted. If such transmission and filing be not made within 20 days from the making of the order to change the place of trial, unless such time be extended, the moving party shall lose the right to the change except in the case mentioned in s. 801.51, and no order for a change for the same cause shall thereafter be made and the moving party shall pay the costs of the application within 10 days after the expiration of said 20 days; but the other party may, within 40 days from the time of making of the order granting the change, pay the clerk fees and have the papers certified and transmitted to the court mentioned in such order.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975), 777; 1975 c. 218, 422; Stats. 1975 s. 801.61; 1983 a. 228 s. 16.

### 801.62 Conclusiveness of change of venue; second motion.

After trial in the court to which the action has been changed, the proceedings for the change shall be conclusive unless a motion to remand was made before the trial commences. If after the transmission of the papers an order changing the place of trial is reversed or set aside the effect shall be to change the place of trial back. After the transmission of the papers back to the original court on the reversal or setting aside of the order, a party may renew the application for a change of venue within 20 days. The renewed application shall be treated as the original application.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); 1975 c. 218; Stats. 1975 s. 801.62; 1977 c. 449.

### 801.63 Stay of proceeding to permit trial in a foreign forum.

(1) **STAY ON INITIATIVE OF PARTIES.** If a court of this state, on motion of any party, finds that trial of an action pending before it should as a matter of substantial justice be tried in a forum outside this state, the court may in conformity with sub. (3) enter an order to stay further proceedings on the action in this state. A moving party under this subsection must stipulate consent to suit in the alternative forum and waive right to rely on statutes of limitation which may have run in the alternative forum after commencement of the action in this state. A stay order may be granted although the action could not have been commenced in the alternative forum without consent of the moving party.

(2) **TIME FOR FILING AND HEARING MOTION.** The motion to stay the proceedings shall be filed prior to or with the answer unless the motion is to stay proceedings on a cause raised by counterclaim, in which instance the motion shall be filed prior to or with the reply. The issues raised by this motion shall be tried to the court in advance of any issue going to the merits of the action and shall be joined with objections, if any, raised by answer or motion pursuant to s. 802.06 (2). The court shall find separately on each issue so tried and these findings shall be set forth in a single order.

(3) **SCOPE OF TRIAL COURT DISCRETION ON MOTION TO STAY PROCEEDINGS.** The decision on any timely motion to stay proceedings

pursuant to sub. (1) is within the discretion of the court in which the action is pending. In the exercise of that discretion the court may appropriately consider such factors as:

(a) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;

(b) Convenience to the parties and witnesses of trial in this state and in any alternative forum;

(c) Differences in conflict of law rules applicable in this state and in any alternative forum; or

(d) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(4) **SUBSEQUENT MODIFICATION OF ORDER TO STAY PROCEEDINGS.** Jurisdiction of the court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

(5) **Motions under this section may be heard on the record as prescribed in s. 807.13.**

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 612 (1975), 758, 777; 1975 c. 218; Stats. 1975 s. 801.63; Sup. Ct. Order, 141 Wis. 2d xiii (1987); Sup. Ct. Order, 151 Wis. 2d xvii (1989).

**Judicial Council Note, 1988:** Sub. (5) [created] allows motions for stays under this section to be heard by telephone conference. [Re Order effective Jan. 1, 1988]

A motion to stay a Wisconsin action or transfer the case to an Iowa court where an action arising out of the same accident was pending was properly denied when the parties were different and because of Iowa law the plaintiff would lose substantial rights. *Littmann v. Littmann*, 57 Wis. 2d 238, 203 N.W.2d 901 (1973).

A court ordinarily should adjudicate the litigation before it and the plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant. A trial of the cause should be permitted in another state only upon a convincing showing that the trial in Wisconsin is likely to result in a substantial injustice. *U.I.P. Corp. v. Lawyers Title Insurance Corp.* 65 Wis. 2d 377, 222 N.W.2d 638 (1974).

A party seeking a stay must show not only that trial in the forum state will be inconvenient and unjust but also that trial in another forum is both more convenient and just. *U.I.P. Corp. v. Lawyers Title Insurance Corp.* 82 Wis. 2d 616, 264 N.W.2d 525 (1974).

Section 801.63 does not control inconvenient forum motions in custody proceedings. *Mayer v. Mayer*, 91 Wis. 2d 342, 283 N.W.2d 591 (Ct. App. 1979).

### 801.64 Legislative findings; 2007 Wisconsin Act 1.

The legislature finds that providing under 2007 Wisconsin Act 1 for the place of trial in the county where the offender resides is consistent with the legislature's authority under article I, section 7, of the constitution and with previous acts by the legislature providing for the place of trial in counties other than where the elements of the offense may have occurred. The legislature further finds that allowing defendants charged with violating offenses covered by 2007 Wisconsin Act 1 to request a trial in the county where the offense occurred is consistent with the protections in article I, section 7, of the constitution. The legislature finds that violations of offenses covered by 2007 Wisconsin Act 1 are violations of the public trust that should be adjudicated in the county where the offender resides so the individuals who the defendant interacts with daily, serves, or represents as a public official or candidate and whose trust was violated by the offense will judge the defendant's guilt or innocence. The legislature further finds that to so provide is consistent with equal protection of the laws under article I, section 1, of the constitution. The legislature finds the venue provision in 2007 Wisconsin Act 1 represents an appropriate balance between the rights of the defendant and the need to prevent and prosecute civil and criminal offenses covered by 2007 Wisconsin Act 1.

**History:** 2007 a. 1.