

## CHAPTER 262.

## COMMENCING CIVIL ACTIONS.

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**262.01 Jurisdiction, how acquired.** A civil action in a court of record shall be commenced by the service of a summons or an original writ. From the time of such service or the issuance of a provisional remedy the court shall have jurisdiction and have control of all subsequent proceedings.

Jurisdiction of the person can only be acquired by service of a summons in the manner prescribed for personal service, even where a motion to make one a party or an order to show cause why one should not be made a party is personally served. *Madison v. Pierce*, 266 W 303, 62 NW (2d) 910. See note to 262.17, citing *Ozaukee Finance Co. v. Cedarburg Lime Co.* 268 W 20, 66 NW (2d) 686.

**262.02 Summons, contents of.** The summons shall contain:

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant.

(2) A direction to the defendants summoning them to appear within twenty days after service of the summons, exclusive of the day of service, and defend the action.

(3) A notice that in case of failure so to do judgment will be rendered against them according to the demand of the complaint. It shall be subscribed by the plaintiff or his attorney with the addition of his post-office address, at which papers in the action may be served on him by mail. There may, at the option of the plaintiff, be added at the foot, when the complaint is not served with the summons and the only relief sought is the recovery of money, whether upon tort or contract, a brief notice specifying the sum to be demanded by the complaint.

**262.03 Form.** (1) Such summons shall be substantially in the following form:  
.... Court, .... County.

A. B., Plaintiff,  
v.  
C. D., Defendant.

THE STATE OF WISCONSIN, To said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

E. F.,  
Plaintiff's Attorney.

P. O. Address . . . . , . . . . County, Wis.

If the complaint be not served with the summons the words "of which a copy is herewith served upon you" may be omitted or erased.

(2) In an action relating to real estate if any defendant is sued under a fictitious name or as an unknown owner, heir, grantee or persons whom it may concern or other similar designation, a description of the land affected shall be given in a note at the foot of the summons.

**262.04 Filing summons; state tax.** The summons must be filed with the clerk, and a state tax on the action of \$5 paid within 10 days after the service of an answer or demurrer; or if no answer or demurrer be served at the time of applying for judgment. Otherwise the action shall be dismissed on motion of any defendant unless the plaintiff shall pay the tax and \$5 costs of motion.

**History:** 1953 c. 327.

**Cross Reference:** See 59.42 (40) as to advance clerk fees and suit tax, when paid. Suit tax of \$5 is payable on transfers of cases from justice courts under 301.245. 43 Atty. Gen. 319.

**262.05 Demand of complaint.** A copy of the complaint may or may not be served with the summons at the plaintiff's option. If not so served the defendant may, in person or by attorney, within twenty days after the service of the summons demand in writing a copy of the complaint, specifying a place, embracing a post-office address, within the state, where it may be served, and a copy of it shall be served within twenty days thereafter accordingly.

**262.06 Notice of object of action.** In the case of a defendant against whom no personal claim is made the plaintiff may deliver to such defendant with the summons a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of all the property affected by it, if it affect specific real or personal property and 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 his request made within twenty days from receipt of summons. If a defendant on whom such notice is served unreasonably defend the action he shall pay costs to the plaintiff.

**262.07 Who may serve summons.** The summons, together with the complaint or the notice aforesaid, may be served by the sheriff of the county where the defendant may be found or by any other person not a party to the action. The service shall be made and the summons, with the complaint or notice accompanying, if any, with proof of the service, returned to the person whose name is subscribed thereto with reasonable diligence. The person subscribing the summons may, at his option, by an indorsement thereon, fix a time for the service thereof, and the service shall then be made accordingly.

**262.08 Personal service on individuals and its equivalent.** For personal service or its equivalent, the summons, and the accompanying complaint or notice aforesaid, if any, shall be served by delivering a copy thereof as follows:

(1) If the action be against a minor under the age of 14 years, for whom no guardian has been appointed, by delivering within the state a copy thereof to such minor personally, and also to his father or mother, or if there be none within this state then to any other person having the care and control of such minor, or with whom he shall reside.

(2) If against a person for whom a guardian has been appointed, by delivering within the state a copy thereof to such guardian and to the defendant personally.

(3) In all other cases by delivering within the state a copy thereof to the defendant personally; or, if not found, by leaving within the state a copy thereof at his usual place of abode in the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(4) If the defendant, being a resident of this state, has departed therefrom with intent to avoid the service of a summons, or keeps himself concealed therein with the like intent, and service cannot be made in accordance with the foregoing subsections, service in accordance with s. 262.13 shall be the equivalent of personal service.

(5) In the situations specified in s. 85.05 (6), service in accordance with the procedure specified therein shall be the equivalent of personal service.

(6) In the case of summons of a municipal court, or other court whose process does not run throughout Wisconsin, the term "state" as used in this section shall be construed to mean the area within which its process may be legally served.

**History:** Sup. Ct. Order, 262 W vii.

**Comment of Judicial Council, 1952:** The types of service in (1) to (6) are equivalent to personal service in that they give the court jurisdiction in personam so that it can render a personal judgment against the defendant. Generally in personam judgments can be rendered only if the defendant is duly served within the state or voluntarily appears, *Sheehan v. Matthew*, 258 W 606. The situations in (4) and (5) are exceptions based on the theories that in (4) amenability to suit in the state while a resident is absent therefrom is an incident of domicile (see *Milliken v. Meyer*, 311 U. S. 457; *Roberts v. Roberts*, 135 Minn. 397, and A.L.I. Restatement, Judgments Sec. 16; and in (5) that use of special Wisconsin facilities by a non-resident motorist and violation of Wisconsin's laws while in the state may subject such motorist to jurisdiction of Wisconsin courts (see *Tarczynski v. Chi-*

*cago, M. St. P. & P. R. Co.* 261 W 149). Since the statute considered in the *Milliken* case supra covered only departure by a resident to avoid service and not "to defraud his creditors," the latter words were deleted in changing present 262.12 (2) to proposed 262.08 (4). (1) eliminates service on an employer of a minor under 14 as no longer realistic; (2) eliminates confusing verbiage; (3) makes more definite the qualifications of the agent upon whom substituted service is made; (6) is a statutory recognition of the case law limitation on territorial jurisdiction of municipal courts which stems from the Constitution. Wis. Constitution art VII sec. 2; *State ex rel. Schneider v. Midland I. & F. Corp.* 219 W 161; *Bookhout v. State*, 66 W 415; *Atkins v. Fraker*, 32 W 510; *Bruins v. Bruins*, 55 W 548. [Re Order effective May 1, 1953]

**262.09 Personal service of summons on corporations and its equivalent.** (1) SAME AS ON INDIVIDUALS; MANNER CUMULATIVE. The summons may be served upon a corporation by delivering a copy thereof within the state as provided in this section; and such service shall be of the same effect as personal service on a natural person. The methods of serving the summons authorized by this section are in addition to the methods authorized by other provisions of law. In lieu of delivering the copy to the officer specified, the

copy may be left in his office within the state with the person who is apparently in charge of the office. In the case of summons of a municipal court, or other court whose process does not run throughout Wisconsin, the term "state" as used in this section shall be construed to mean the area within which its process may be legally served.

(2) **POLITICAL CORPORATIONS.** If the action is against a county, to the chairman of the county board or to the county clerk; if against a town, to the chairman or clerk thereof; if against a city, to the mayor or clerk thereof; if against a village, to the president or clerk thereof; and if against a school district, school board or board of education, to the president, director, secretary or clerk thereof.

(3) **DOMESTIC CORPORATIONS, GENERALLY; INSURANCE CORPORATIONS.** If against any other domestic corporation to the president, vice president, superintendent, secretary, cashier, treasurer, director, trustee or managing agent. If such corporation has no officer or agent within the state upon whom service can be made (of which fact the certificate of the sheriff shall be evidence) service of the summons and complaint may be made by mailing copies thereof to the corporation at the address given in its articles of incorporation.

(4) **FOREIGN CORPORATIONS, GENERALLY.** If the defendant is a foreign corporation (including one created by or under any act of Congress) and (a) is doing business in Wisconsin at the time of service, or (b) the cause of action against it arose out of the doing of business in Wisconsin, service may be made in accordance with the provisions of s. 180.825 or by delivering within or without the state a copy of the summons to any officer, director or managing agent of the corporation.

(5) **CONSTRUCTION OF (3) AND (4).** Subsections (3) and (4) are general; and their application is not limited or restricted by the subsections which follow.

(6) **RAILROADS.** If against a railroad corporation, to any station, freight or ticket agent thereof within the state.

(7) **SLEEPING CAR COMPANIES.** If against a sleeping car company (as defined in section 76.02) to any person having charge of any of its cars or any agent found in the state.

(8) **DOMESTIC OR FOREIGN INSURANCE CORPORATIONS.** If against any domestic or foreign insurance corporation, to any agent of such corporation as defined by the insurance laws of this state. Service upon such agent of a domestic insurance corporation 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 such corporation within 5 days after service upon the agent.

(9) **FOREIGN CORPORATIONS WITH LOCAL BRANCHES.** If against any foreign corporation having an aid or benefit department under its control or in connection therewith doing business here, either as such corporation or by means or in the form of local or of subordinate branches, lodges or divisions, and which has failed to appoint an agent or attorney in compliance with section 208.26, to any officer of any such local or subordinate branch, lodge or division.

(10) **FOREIGN SAVINGS AND LOAN ASSOCIATIONS.** If against any foreign savings and loan association, to any person who solicits upon its behalf, or who transmits to or from it an application for membership, or a share, certificate, bond or other evidence of indebtedness, or in any manner aids or assists in doing either, or in transacting any business for such association, or advertises to do either of such or any like thing.

(11) **TELEGRAPH AND TELEPHONE COMPANIES.** If against a telegraph or telephone company, to any operator while on duty or station manager thereof, who is stationed in the county in which the action is brought.

(12) **DOMESTIC CORPORATION OFFICERS NOT FOUND.** When the action is against any domestic private corporation and the proper officers on whom to make service do not exist or cannot with reasonable diligence be found within this state, service in accordance with s. 262.13 shall be the equivalent of personal service. This subsection shall not apply to the summons of a municipal court or other court whose process does not run throughout Wisconsin.

(13) **OTHER SERVICE STATUTES.** If the defendant is a foreign corporation and the cause of action arises in the situations specified in s. 85.05 (6), service may be made in accordance with the procedure specified therein.

**History;** Sup. Ct. Order, 262 W vii, viii; 1953 c. 48, 648.

**Comment of Judicial Council, 1952: 262.09**  
 (4) (Stats. 1951) stated that service upon an agent of a foreign corporation could be made on one of 4 conditions: 1. if the corporation has property in Wisconsin; 2. if the cause of action arose in Wisconsin; 3. if the cause of action arose out of business transacted in Wisconsin; or 4. if the cause of action exists in favor of a Wisconsin resident. While situations 2 and 3 provide adequate bases for jurisdiction, situations 1 and 4 do not and rendition of judgment after service in such situations would be in violation of due process. See *Pennoyer v. Neff*, 95 U. S. 714, 724, *Schultz v. Schultz*, 256 W 139 and 23 Am. Jur. 482 s. 489 as to situation 1 and see *Consolidated T. Corp. v. Gregory*, 289 U. S. 85 and A.L.I. Restatement, Judgments Sec. 30 as to situation 4. (12) is placed in this section on the basis of the type jurisdiction conferred rather than on the basis of the mechanics of service. (See

present 262.12 (6)). Jurisdiction to render personal judgments may be had over domestic corporations although service is by mailing or by serving without the state, since jurisdiction stems from the corporation being a Wisconsin creature. If the mode of service is reasonably calculated to give notice, there has been compliance with the requirements of due process. See *Mullane v. Central Hanover Tr. Co.*, 339 U. S. 306, 314. See also comment under 262.08 [Re Order effective May 1, 1953].

corporation was physically present in Wisconsin, or that there are agents or subsidiaries within the state who deal with its products or merchandise, does not establish its corporate presence within the state so that it was doing or conducting business within the state within the meaning of (4), authorizing service of summons on a foreign corporation by serving on an officer or agent "having charge of or conducting any business for it in this state." (Stats. 1951) *Mitchell v. Airline Reservations, Inc.* 265 W 313, 61 NW (2d) 496.

**262.10 Service on state; judgment.** The state may be made a party defendant in any action to quiet title under the provisions of section 281.01 or between other parties, when necessary to the proper determination of their rights, and the summons be served by delivering a copy to the attorney-general or leaving it at his office in the capitol with his assistant or clerk. But no judgment for the recovery of money or personal property or costs shall be rendered in any such action against the state.

**262.11 Date of service indorsed on summons.** The officer or person who serves a summons shall, at the time of the service, indorse upon the copy served the date of service, sign his name thereto and add, if an officer, his official title. Failure to make the indorsement shall not invalidate a service but the server shall not collect fees for such service.

**262.12 Publication or service outside state, when permitted.** When the summons cannot with reasonable diligence be served within the state, the service of the summons may be made without the state or by publication upon a defendant 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 action is for a divorce or for annulment of marriage of a resident of this state.

(4) 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 pursuant to the preceding subsections.

(5) In the case of summons of a municipal court or other court whose process does not run throughout Wisconsin, the term "state" as used in this section shall be construed to mean the area within which its process may be legally served.

**History:** 1951 c. 247 s. 51; Sup. Ct. Order, 262 W viii.

**Comment of Judicial Council, 1952:** See 1952 comments of Judicial Council to 262.08. If the defendant has or claims an interest in Wisconsin property from which the plaintiff seeks to exclude him, if the action is for divorce or annulment of a resident's marriage, or if defendant has property which has been attached or garnished the court may obtain jurisdiction over the subject matter by publication or service without the state, but cannot render an in personam judgment against the defendant except in such situations as are mentioned in 262.08 (4) and (5), 262.09 (12) and (13). 262.12 (1) (Stats. 1951) fails to square with the constitutional concepts of *Pennoyer v. Neff*, 95 U. S. 714 and results in purported judgments without jurisdiction as exemplified in *Sheehan v. Matthew*, 258 W 606. [Re Order effective May 1, 1953].

See note to 270.62, citing *Schultz v. Schultz*, 256 W 139, 40 NW (2d) 515.

Authorizing service of summons by publication on a nonresident defendant who cannot be served within the state, so far as attempting to gain jurisdiction by such serv-

ice of nonresident defendants in behalf of plaintiffs who are seeking money judgments (judgments in personam), is void as being in conflict with the 14th amendment. A state court obtains no jurisdiction in personam over a defendant who is not served with process within the state and who enters no general appearance. In an action for personal injuries wherein no relief is sought other than in personam, constructive service of process beyond the boundaries of the state is insufficient to give our courts jurisdiction over the person of the nonresident defendant, and a judgment rendered against him on the basis of such service would be void for lack of due process of law. *Sheehan v. Matthew*, 258 W 606, 46 NW (2d) 752.

Ohio court was not required to give full faith and credit to Wisconsin divorce decree awarding custody of minor children to their father where that decree was obtained in ex parte divorce action in Wisconsin court which had no personal jurisdiction over the mother. [U. S. C. A. Const. art. 4 sec. 1; 28 U. S. C. A. sec. 1738.] *May v. Anderson*, 73 S. Ct. 840.

**262.13 Publication or service outside state; proof of grounds; mode of service.**

(1) Before entering judgment against any defendant who has been served with summons by publication or personally without the state (or municipal court area in a proper case), pursuant to ss. 262.08 (4), 262.09 (12) or 262.12 and who has not appeared, the court shall require proof by affidavit or other evidence to be made and filed of the existence of any fact not shown by the verified complaint and necessary to authorize service to be made by publication and that the service was in fact made as the rule requires. The

court may require additional proof. Said proof shall be conclusive in all collateral actions and proceedings.

(2) Service of the summons by publication shall consist of its publication in a newspaper, published in this state, likely to give notice to the defendant once a week for 3 successive weeks, and in case the defendant's post-office address is known or can with reasonable diligence be ascertained, by mailing him a copy of the summons and complaint, or a notice of the object of the action, as the case may require. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(3) The summons and a verified complaint shall be filed prior to the first publication, and prior to the mailing.

(4) In the cases specified in ss. 262.08 (4), 262.09 (12) or 262.12 the plaintiff may, at his option and in lieu of service by publication, cause to be delivered to any defendant personally without the state (or municipal court area in a proper case) a copy of the summons and verified complaint or notice of object of action as the case may require, which delivery shall have the same effect as a completed publication and mailing. If such defendant be a corporation, delivery may be made to the president, vice president, secretary, treasurer or general manager thereof.

**History:** 1951 c. 247 s. 52; Sup. Ct. Order, 262 W ix; 1955 c. 366.

**Comment of Judicial Council, 1952:** Under 262.13 (1) (Stats. 1951) it seems impossible to make proof of service on Wisconsin residents who are absent from the state for a protracted period, since proof must be made and filed any defendant served by publication or without the state is a nonresident. [Re Order effective May 1, 1953]

**262.14 Service in special proceedings.** Service and proof of service of any process or notice in any special proceeding, except probate proceedings, may be made in the manner provided for service of summons and proof thereof.

**History:** Sup. Ct. Order, 262 W ix.

**Cross Reference:** See 32.05 re publication of notice of hearing in condemnation proceedings.

**Comment of Judicial Council, 1952:** This change makes it clear that service and proof of service in special proceedings is like service and proof thereof in actions and that in the proper situations there may be service outside of the state or publication as well as personal service within the state. [Re Order effective May 1, 1953]

**262.16 Proof of service.** Proof of the service of the summons and of the complaint or notice, if any, accompanying the same shall be as follows:

(1) If served by the sheriff, his certificate thereof showing place, time and manner of service.

(2) If by any other person, his affidavit thereof showing place, time and manner of service, that he knew the person served to be the defendant mentioned in the summons and left with, as well as delivered to, him a copy; and if the defendant was not personally served he shall state in such affidavit when, where and with whom such copy was left.

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

(4) In case of publication, the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the summons, with the complaint or notice, as prescribed by law if such mailing shall be required, made by the person who mailed the same.

**262.17 General appearance.** A general appearance of a defendant is equivalent to a personal service of the summons upon him. No guardian or guardian ad litem may waive a personal service of the summons upon a defendant under disability, but service of a demurrer or answer by a guardian ad litem followed by hearing or trial shall cure any defect in service of summons actually attempted.

**History:** Sup. Ct. Order, 265 W vi.

The question of want of jurisdiction, because of lack of service of process on the defendant, may and must be raised by special appearance since a general appearance would give the court the jurisdiction it might not previously have had, and would cure any defect in the original attempted service of process. Where the issue of jurisdiction is raised by special appearance, the trial court has the discretionary power to require the defendant, who claims he was not the driver of an automobile involved in an accident, to appear personally in court and confront witnesses to the accident, and if questions of fact are raised, the trial court may require the taking of testimony in open court in lieu of relying entirely on affidavits and counter affidavits, so that the trial court, by the employment of such means, can prevent fraud from being per-

petrated in cases of this kind in which the jurisdiction of the court over the person of the defendant is challenged by special appearance. *Plovey v. Vogele*, 264 W 416, 59 NW (2d) 495.

In proceeding on a motion to vacate a cognovit judgment for want of service of process on the defendant, but also requesting an order dismissing the cognovit proceedings on the records, files, and proceedings therein, the defendant made a general appearance and waived whatever jurisdictional defect might have existed in the cognovit proceedings, although he attempted to limit the effect of his appearance by a recital in his notice of motion that he appeared specially for the purpose of the motion only and for no other purpose. *Ozaukee Finance Co. v. Cedarburg Lime Co.* 263 W 20, 66 NW (2d) 686.