

## CHAPTER 262.

## COMMENCING CIVIL ACTIONS.

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**Note:** Chapter 262 as here printed applies only to causes of action arising prior to July 1, 1960. For provisions of chapter 262 effective after June 30, 1960, see chapter 262 as printed on succeeding pages.

**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.

**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.

**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

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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. If such guardian has not been served due to inadvertence or mistake, the court shall extend such time for service to 60 days after such inadvertence or mistake is discovered, so that such failure to serve such guardian shall not be a jurisdictional defect.

(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. 345.09, 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.

**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.

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(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. 345.09, service may be made in accordance with the procedure specified therein.

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

**Note: As to causes of action arising after June 30, 1960, see 285.10 which was renumbered from 262.10 and amended by chapter 226, laws of 1959, effective July 1, 1960.**

**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.

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**262.12 Publication or service outside state, when.** 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.

**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.

**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.

**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 or a constable, 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.

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**262.17 General and special appearance; objections to jurisdiction; waiver; trial.**

(1) An appearance of a defendant who does not object to the jurisdiction of the court over his person is a general appearance and is equivalent to a personal service of the summons upon him.

(2) An objection to the court's jurisdiction over the person of a defendant is not waived because it is joined with other defenses or motions which, without such objection to jurisdiction, would constitute a general appearance. Such objection shall be raised as follows:

(a) By motion when a defect is claimed in the service of the summons without a complaint; or when the defect appears upon the face of the record other than the complaint; or in the case of a judgment on cognovit or by default;

(b) By demurrer when the defect appears upon the face of the complaint; and

(c) By answer in all other cases.

(d) In the case of a judgment on cognovit or by default there shall be annexed to the motion a proposed demurrer or answer in which all defenses upon which the defendant relies shall be alleged.

(3) Where any defect specified in sub. (2) does not appear on the face of the pleadings or otherwise on the record, the parties to the action by their respective attorneys may stipulate in writing that the issues of fact and law with respect thereto shall be determined by the court in advance of the trial on the merits.

(4) All issues of law raised by an objection specified in sub. (2), and all issues of law and fact pursuant to the stipulation specified in sub. (3) shall be tried 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. Such decision shall be by order which is appealable. The raising of such objection and the making of such a stipulation may be called a special appearance, but the effect of objection, stipulation, or appearance is limited to that specified in sub. (2).

(5) Where the objection is raised by motion under sub. (2) (a) all issues shall be determined by order of the court, which order is appealable; the time for responding to any proposed pleading shall run from the date of the order constituting the court's decision on the objection.

(6) No guardian or guardian ad litem may waive a personal service of the summons upon a ward. If no objection to the jurisdiction of the court over the person of the ward is raised under sub. (2), the service of a demurrer, answer or motion by a guardian or guardian ad litem followed by hearing or trial shall be equivalent to a personal service of summons upon the ward.

(7) Except as provided in sub. (6), an objection to the jurisdiction of the court over the person is waived if not made as provided in this section.

## CHAPTER 262.

## COMMENCING CIVIL ACTIONS.

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262.06	Personal jurisdiction, manner of serving summons for.	262.15	Summons, when deemed served.
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262.08	Jurisdiction in rem or quasi in rem, grounds for generally.	262.17	Proof of service of summons, defendant appearing in action.
262.09	Jurisdiction in rem or quasi in rem, manner of serving summons for.	262.18	Judgment against nonappearing defendant, proof of jurisdiction.
		262.19	Stay of proceeding to permit trial in a foreign forum.
		262.20	Costs on dismissal for lack of jurisdiction or stay of proceedings.

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**262.01 Legislative intent.** This chapter shall be liberally construed to the end that actions be speedily and finally determined on their merits. The rule that statutes in derogation of the common law must be strictly construed does not apply to this chapter.

**262.02 Civil action, how commenced; service in special proceedings.** (1) **CIVIL ACTION.** A civil action in a court of record is commenced by the service of a summons or an original writ. The summons may be served in the manner provided in this chapter. The writ of habeas corpus shall be served exclusively in the manner provided in s. 292.10; otherwise the service of an original writ may be made by serving a duplicate original thereof in the manner provided in this chapter for service of a summons.

(2) **SPECIAL PROCEEDINGS.** Service and proof of service of any process or notice in any special proceeding may be made in the manner provided in this chapter for service of a summons.

(3) **PROBATE PROCEEDINGS.** Except where explicitly provided in title XXIX, no provision of this chapter shall apply to probate proceedings.

**262.03 Definitions.** In this chapter the following words have the designated meanings:

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

(2) "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 his agent within the scope of his authority.

(3) "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 acts 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.

**262.04 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

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be conferred by consent of the parties. Nothing in this chapter 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. 262.05 or 262.07 and in addition either:

(a) A summons is served upon the person pursuant to s. 262.06; or

(b) Service of a summons is dispensed with under the conditions in s. 262.07.

(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. 262.08 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 262.09 with a summons and complaint or notice of object of action as the case requires.

**262.05 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. 262.06 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

(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 third 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 third 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 his 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 third 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 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

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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 agreement executed by the defendant or his 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. 297; or
- (c) Following resale of tangible property in this state by the plaintiff under ch. 122 or 241.

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

(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 third 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) **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 (10) would have furnished a basis for jurisdiction over the deceased had he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

(12) **JOINDER OF CAUSES IN THE SAME ACTION.** In any action brought in reliance upon jurisdictional grounds stated in subs. (2) to (10) 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.

**262.06 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. 262.05 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 within this state in the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), then the summons may be served by publication and mailing. Publication shall consist of publishing a copy of the summons in a newspaper, published in this state, likely to give notice to the defendant, once a week for 3 successive weeks. 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 verified 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 such 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 mentally 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 guar-



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dian having custody of the child, or if there be 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 must also be made upon a guardian ad litem who has been appointed pursuant to s. 260.23 (3).

(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 his guardian in any manner prescribed in sub. (1), (5), (6) or (7). If no guardian has been appointed when service is made upon a person known to the plaintiff to be incompetent to have charge of his affairs, then service of the summons must be made upon a guardian ad litem who has been appointed pursuant to s. 260.23 (3).

(3) STATE. Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at his office in the capitol with his 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 chairman of the county board or the county clerk;
2. If against a town, the chairman 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 school district, school board or board of education, the president, director, secretary or clerk thereof; and
6. 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, GENERALLY. Upon a domestic or foreign corporation:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation 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 by publication and mailing as provided in sub. (1) (c).

(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.

(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. 262.05 (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.

(7) OTHER UNINCORPORATED ASSOCIATIONS AND THEIR OFFICERS. A summons may be served individually upon any officer or director known to the plaintiff of an unincorporated association other than a partnership by service in any manner prescribed in sub. (1), (2), (5) or (6) where the claim sued upon arises out of or relates to association activities within this state sufficient to subject a defendant to personal jurisdiction under s. 262.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication against the association as to its assets anywhere.

(8) COURTS WITH LESS THAN STATE-WIDE PROCESS. In the case of summons of a court whose process does not run throughout this state, service of the summons shall be made pursuant to the statutes of 1957, subject to any amendments made thereafter to the acts creating such courts.

**262.07 Personal jurisdiction, grounds for without service of summons.** A court of this state having jurisdiction of the subject matter may, without serving a summons upon him, exercise jurisdiction in an action over a person:

**Note:** Chapter 262 as here printed applies only to causes of action arising after June 30, 1960. For provisions of chapter 262 effective prior to July 1, 1960, see chapter 262 as printed on preceding pages.

(1) Who makes a general appearance in an action pursuant to s. 262.16 (1) or who authorizes an attorney to appear in his behalf; or

(2) With respect to any counterclaim asserted against that person in an action which he has commenced in this state.

**262.08 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. 262.09. 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 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 under subs. (1), (2) and (3).

**262.09 Jurisdiction in rem or quasi in rem, manner of serving summons for.** (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 262.08 may affect the interests of a defendant in such an action only if a summons, and a copy of the verified complaint or notice of the object of the action as required by s. 262.12 (2), have been served upon the defendant as follows:

(a) *Defendant known.* If the defendant is known, he may be served in the manner prescribed for service of a summons in s. 262.06 but service in such a case shall not bind the defendant personally to the jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(b) *Defendant unknown.* If the defendant is unknown the summons may be served by publication in a newspaper published in this state, likely to give notice to the defendant, once a week for 3 successive weeks.

(2) In the case of summons of a court whose process does not run throughout this state, service of the summons shall be made pursuant to the statutes of 1957, subject to any amendments made thereafter to the acts creating such courts.

**262.10 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 defendant summoning and requiring him to serve upon the plaintiff's attorney, whose address shall be stated in the summons, either an answer to the complaint if a copy of the complaint is served with the summons or a demand for a copy of the complaint pursuant to s. 262.12 (1) (a). The summons shall further direct the defendant to serve the answer or demand for a copy of the complaint:

(a) Within 20 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for him; or

(b) Within 40 days after a date stated in the summons, exclusive of such date, if no such personal or substituted personal service has been made, and service is made by publication. The date so stated in the summons shall be the date of the first required publication.

(3) A notice that in case of failure to serve an answer or demand for a copy of the complaint within the time fixed by sub. (2) that judgment will be rendered against the defendant according to the demand of the complaint. The summons 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. When the complaint is not served with the summons and the only relief sought is the recovery of money, whether upon tort or contract, there may, at the option of the plaintiff, be added at the foot a brief note specifying the sum to be demanded by the complaint.

**Note:** Chapter 262 as here printed applies only to causes of action arising after June 30, 1960. For provisions of chapter 262 effective prior to July 1, 1960, see chapter 262 as printed on preceding pages.

(4) There may be as many separate original summonses issued as are needed for the purposes of serving the defendant.

**Note:** See 247.081 for special provision as to summons in actions affecting marriage.

**262.11 Summons, form.** (1) The 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 and required to serve upon ...., plaintiff's attorney, whose address is ...., [an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service] [a demand for a copy of the complaint within 20 days after service of the summons upon you, exclusive of the day of service] [an answer to the complaint which is herewith served upon you within 40 days after the .... day of ...., A.D. 19.., exclusive of the date just stated] [a demand for a copy of the complaint within 40 days after the .... day of ...., A.D. 19.., exclusive of the date just stated] and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

E. F.

Plaintiff's Attorney

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

(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.

**Note:** See 247.081 for special provision as to summons in actions affecting marriage.

**262.12 Summons, what must accompany when served.** (1) **PERSONAL JURISDICTION.** (a) When personal or substituted personal service is made upon the defendant within this state, a copy of the complaint may or may not be served with the summons at the plaintiff's option. If a copy of the complaint is not served, the defendant, in person or by attorney, within the time fixed in s. 262.10 (2), may demand in writing a copy of the complaint, specifying a place, embracing a post-office address, within this state where the complaint may be served and a copy of the complaint shall be served within 20 days thereafter accordingly.

(b) When personal service is made without this state upon the defendant, a copy of the verified complaint shall accompany the summons.

(c) When the summons is served by publication, only the summons need be published, but a copy of the verified complaint shall be mailed with the copy of the summons as required by s. 262.06 (1) (c).

(2) **JURISDICTION IN REM OR QUASI IN REM: NOTICE OF OBJECT OF ACTION.** (a) When personal or substituted personal service is made upon the defendant within or without this state, a copy of the verified complaint or a notice of the object of the action shall accompany the summons. The notice of object of action shall be subscribed by the plaintiff or his 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 his request made within the time fixed in s. 262.10 (2). If a defendant, upon whom such notice is served, unreasonably defends the action he shall pay costs to the plaintiff.

(b) When the summons is served by publication, only the summons need be published, but a copy of the verified complaint or a notice of the object of the action shall be mailed with the copy of the summons as required by s. 262.09.

**Note:** See 247.081 for special provision as to service of complaint 60 days after commencement of the action in actions affecting marriage.

**262.13 Summons, filing; state tax.** (1) The summons shall be filed with the clerk of the court in which the action is brought, and a state suit tax on the action paid, as follows:

(a) Where there has been personal service within or without this state upon the defendant or substituted service within this state at the defendant's usual place of abode, within 10 days after service of any pleading by defendant, or if defendant is in default, then at the time of applying for judgment.

**Note: Chapter 262 as here printed applies only to causes of action arising after June 30, 1960. For provisions of chapter 262 effective prior to July 1, 1960, see chapter 262 as printed on preceding pages.**

(b) Prior to the first publication; and a verified complaint shall be filed at the same time with the summons.

(2) If the summons is not filed and suit tax paid as required by sub. (1), the action shall be dismissed on motion of any defendant unless the plaintiff immediately files the summons and pays the suit tax plus costs of motion.

**262.14 Summons, who may serve; indorsement; return of original summons. (1) WHO MAY SERVE.** A copy of the summons, together with a copy of the complaint or notice of the object of the action, as the case may require, may be served by the sheriff of the county or his deputy within this state where the defendant may be found or by any other person not a party to the action. The person subscribing the summons may by an indorsement thereon fix a time for the service of the summons and the service shall then be made accordingly. If no such time for making service is fixed, service shall be made with reasonable diligence.

(2) **INDORSEMENT ON COPY SERVED.** The sheriff or person who serves a copy of the summons shall, at the time of the service, sign his name thereto and add, if a sheriff, or deputy, his official title. Failure to make the indorsement shall not invalidate a service but the server shall not collect fees for such service.

(3) **RETURN OF ORIGINAL SUMMONS.** The sheriff or person making the service shall, with reasonable diligence, return the original summons, with proof of service, to the person whose name is subscribed thereto.

**262.15 Summons, when deemed served.** A summons is deemed served as follows:

(1) **PERSONAL OR SUBSTITUTED PERSONAL SERVICE.** 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) **SERVICE BY PUBLICATION.** A summons served by publication is deemed served on the first day of required publication.

**262.16 Raising objection to personal jurisdiction, general appearance. (1) GENERAL APPEARANCE.** An appearance of a defendant who does not object to the jurisdiction of the court over his person is a general appearance and gives the court personal jurisdiction over him.

(2) **HOW AND WHEN OBJECTION SHALL BE MADE.** An objection to the court's jurisdiction over the person is not waived because it is joined with other defenses or motions which, without such objection to jurisdiction, would constitute a general appearance. Such objection shall be raised as follows:

(a) By motion when a defect is claimed in the service of the summons without a complaint; or when the defect appears upon the face of the record other than the complaint; or in case of a judgment on cognovit or by default;

(b) By demurrer when the defect appears upon the face of the complaint; and

(c) By answer in all other cases.

(d) In the case of a jurisdictional attack upon a judgment on cognovit or by default there shall be annexed to the motion a proposed demurrer or answer in which all defenses upon which the defendant relies shall be alleged.

(3) **JURISDICTION ISSUES TRIED TO COURT.** All issues of fact and law raised by an objection specified in sub. (2) shall be tried to 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. Such decision upon a question of jurisdiction shall be by order which is appealable. The raising of such objection and the making of such a stipulation may be called a special appearance, but the effect of the objection or appearance is limited to that specified in sub (2).

(4) **JURISDICTIONAL FACTS NOT BINDING ON MERITS OF ACTION.** The findings of fact 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.

(5) **OBJECTIONS TO JURISDICTION OVER PERSONS UNDER DISABILITY.** 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 sub. (2), the service of a demurrer, answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be equivalent to a general appearance by the ward.

**Note: Chapter 262 as here printed applies only to causes of action arising after June 30, 1960. For provisions of chapter 262 effective prior to July 1, 1960, see chapter 262 as printed on preceding pages.**

(6) **WAIVER OF OBJECTION TO LACK OF PERSONAL JURISDICTION.** Except as provided in sub. (5), an objection to the jurisdiction of the court over the person is waived if not made as provided in this section.

**262.17 Proof of service of summons, defendant appearing in action.** Where the defendant appears in the action and challenges the service of the summons upon him as provided in s. 262.16, proof of the service of the summons shall be as follows:

(1) **PERSONAL SERVICE OR SUBSTITUTED PERSONAL SERVICE.** (a) If served by the sheriff of the county or his deputy in this state where the defendant was found, by the sheriff's certificate thereof, showing place, time and manner of service; or

(b) If served by any other person, his affidavit thereof, showing place, time and manner of service; that he is an adult resident of the state of service and is not a party to the action; 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.

(2) **SERVICE BY PUBLICATION.** In case of publication, by 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 of the object of the action, as the case may require, made by the person who mailed the same.

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

**262.18 Judgment against nonappearing defendant; proof of jurisdiction.** Where a defendant fails to appear in the action within the time fixed in s. 262.10 (2) the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 262.17 and, in addition, shall require further proof as follows:

(1) **WHERE PERSONAL JURISDICTION IS CLAIMED OVER THE DEFENDANT.** Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

(2) **WHERE JURISDICTION IS IN REM OR QUASI IN REM.** Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

**262.19 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 his consent to suit in the alternative forum and waive his 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 demurrer or pursuant to s. 262.16. The court shall find separately on each issue so tried and these findings shall be set forth in a single order which is appealable.

(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;

**Note:** Chapter 262 as here printed applies only to causes of action arising after June 30, 1960. For provisions of chapter 262 effective prior to July 1, 1960, see chapter 262 as printed on preceding pages.

- (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.

**262.20 Costs on dismissal for lack of jurisdiction or stay of proceedings. (1)**  
**COSTS ON DISMISSAL FOR LACK OF PERSONAL JURISDICTION.** If on objection of any defendant made pursuant to s. 262.16 the action is dismissed as to that defendant on the ground that the court lacks jurisdiction over his person, the court when entering judgment dismissing the action against the defendant may order the plaintiff to pay to the defendant all reasonable actual costs, disbursements and expenses of the action up to the judgment of dismissal, but the amount so recovered can in no case exceed the sum of \$500.

(2) **COSTS ON STAY OF FURTHER PROCEEDINGS.** Any party who obtains an order staying further proceedings in the action pursuant to s. 262.19 may recover all statutory costs and disbursements in the action up to the order for stay.