

TITLE XXVIII.

Procedure in County Court in Small Claims Type Actions.

CHAPTER 299

PROCEDURE IN COUNTY COURT IN SMALL CLAIMS TYPE ACTIONS

299.01	Applicability of chapter	299.22	Judgment on failure to appear or answer.
299.02	Counterclaims and cross complaints.	299.225	Dismissal of pending actions
299.03	Intent.	299.23	Reporter.
299.04	Relation of this chapter to other procedural rules.	299.24	Judgment.
299.05	Summons	299.25	Costs.
299.06	Actions; how commenced, pleadings, appearances.	299.255	Small claims fees.
299.07	File of summons; forfeiture tickets; warrants.	299.26	Costs on appeal.
299.08	Clerk's fee	299.27	Adjournments.
299.10	Case file, case docket.	299.28	New trial.
299.11	Venue.	299.29	Default judgments.
299.12	Service of summons	299.30	Appeal.
299.14	Failure of actual notice of suit by mail.	299.31	Agreed statement.
299.16	Actions in rem or quasi in rem; limitation on judgment.	299.40	Eviction actions.
299.20	Answer; counterclaim and cross complaint	299.41	Complaint in eviction actions.
299.205	Substitution of judge.	299.42	Service and filing in eviction actions.
299.21	Trial	299.43	Defendant's pleading in eviction actions.
299.215	Trial by court, findings and judgment.	299.44	Order for judgment; writ of restitution.
		299.45	Execution of writ of restitution.

299.01 Applicability of chapter. Subject to the limitations of ss. 299.11 and 299.12, the procedure in this chapter shall be used in county court in the following actions:

(1) **EVICION ACTIONS.** Actions for eviction as defined in s. 299.40 regardless of the amount of rent claimed therein.

(2) **FORFEITURES.** Actions to recover forfeitures except as a different procedure is prescribed in chs. 23, 66, 288 and 345, or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein;

(3) **REPLEVINS.** Actions for replevin under ss. 810.01 to 810.13 where the value of the property claimed does not exceed \$1,000.

(4) **OTHER CIVIL ACTIONS.** Other civil actions where the amount claimed is \$1,000 or less, provided that such actions or proceedings are:

(a) For money judgments only except for cognovit judgments which shall be taken pursuant to s. 806.25; or

(b) For attachment or garnishment under chs. 811 and 812, except that ss. 811.09 and 812.01 (2) shall not apply to proceedings under this chapter; or

(c) To enforce a lien upon personalty; or

(d) To recover a tax.

History: Sup. Ct. Order, 67 W. (2d) 776; 1975 c. 325, 365, 422.

299.02 Counterclaims and cross complaints. (1) If a counterclaim or cross complaint is filed, which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 299.01, the person filing the same shall pay the additional clerks' fee required by s. 59.42 (2) and an additional \$4 suit tax, and the entire matter shall be tried under Title XLIIA procedure.

(2) If a counterclaim or cross complaint is filed, which does not arise out of the same transaction or occurrence that is the subject matter of the plaintiff's claim and which is

299.02 SMALL CLAIMS ACTIONS

beyond the limitations of s. 299.01, the court shall dismiss the same and proceed under this chapter.

History: Sup Ct. Order, 67 W (2d) 776

299.03 Intent. Sections 299.01 and 299.02 are procedural and not jurisdictional. Unless otherwise designated wherever the word "court" is used herein it means county court.

299.04 Relation of this chapter to other procedural rules. (1) GENERAL. Except as otherwise provided in this chapter, the general rules of practice and procedure in Title XXIV and Title XLIIA shall apply to actions and proceedings under this chapter.

(2) FORMS. Except as otherwise provided in this chapter, the forms specified in Title XLIIA shall be used.

History: Sup Ct. Order, 67 W (2d) 776

299.05 Summons. (1) CONTENTS. The summons shall state the nature of the demand substantially in the terms of one or more of the provisions of s. 299.01, and the dollar amount of damages, if any, the last known address of the parties and the name and address of plaintiff's attorney, if any.

(2) SIGNING. The process shall be signed by the clerk or by any attorney duly authorized to practice law in this state and shall be issued by the clerk only to an individual acting in his own behalf and appearing in his own proper person, or to attorneys, and not otherwise.

(3) RETURN DATE. Every summons shall specify a return date and time. Except in eviction actions, the return date shall be not less than 8 days nor more than 17 days from the issue date, and service shall be made not less than 8 days prior to the return date. In eviction actions the return date shall be not less than 5 days nor more than 17 days from the issue date, and service shall be made not less than 5 days prior to the return date. The clerk shall set the day and hour at which the summons is returnable.

(4) CLERK TO FURNISH TIME OF RETURN. If a summons is signed by an attorney, he shall obtain from the clerk of court the hour and date within the limits of sub. (3) on which to make the summons returnable.

(5) NOTING DATE OF MAILING. After a copy of the summons has been mailed, the clerk shall note the date of mailing on the original.

(6) FORM. The summons shall be substantially in the following form:

State of Wisconsin,

County Court

County

A.B., Plaintiff

V.

C.D., Defendant

SUMMONS (Small Claims)

THE STATE OF WISCONSIN,

To said defendant:

You are hereby summoned to appear and plead to the plaintiff's complaint in the above court at ... in the (city) (village) of ..., on the ... day of ..., A.D., 19..., at ... o'clock (A.M.) (P.M.) [A copy of the complaint is hereto attached.] [The plaintiff will state his demand on that date.] In case of your failure to appear and to plead, a judgment may be rendered against you in accordance with the demands made by the plaintiff. The nature of the demand being made upon you is ... (state in terms of s. 299.01) and the amount of damages, if any, demanded is \$.....

Dated: ..., 19.....

E. F.

Clerk of County Court

[or]

G. H.

Plaintiff's Attorney

Plaintiff's P.O. Address:

Plaintiff's Attorney (if any):

(Name)

(P.O. Address)

Defendant's P.O. Address:

299.06 Actions; how commenced, pleadings, appearances. (1) PLEADINGS. Except as provided in s. 299.41 with respect to complaints in eviction actions, pleadings may be oral or written and need not be verified. Any county court may by order or rule require written pleadings in a particular or all cases.

(2) (a) An individual may commence an action either in his own proper person and in his own behalf, or by an attorney regularly authorized to practice in the circuit courts of this state, but not otherwise. Actions on behalf of any other party shall be commenced only by attorneys regularly authorized to practice in the circuit courts of this state.

(b) Any party to any action or proceeding before said court may appear and prosecute the same in his own proper person or by an attorney regularly authorized to practice in the circuit courts of this state but not otherwise.

History: Sup Ct. Order, 67 W (2d) 764

299.07 File of summons; forfeiture tickets; warrants. The clerk shall keep a file of summons issued by him, of forfeiture tickets filed with him, and of warrants for arrests issued by him.

299.08 Clerk's fee. At the time of issuance of every summons or other process in a proceeding not commenced by a summons, the plaintiff shall pay to the clerk of the court, a clerk's fee of \$3 and the applicable suit tax prescribed by s. 814.21 (1) (a), except that the state or a municipality need not advance these fees, but is exempt from payment of such fees until the defendant pays costs under s. 299.25.

History: 1973 c. 218; Sup. Ct. Order, 67 W (2d) 776; 1975 c. 325

299.10 Case file, case docket. (1) CLERK TO MAINTAIN DOCKET AND CASE FILE. The clerk shall maintain a docket of small claims cases under this chapter, which docket may be in loose leaf or card form, and a case file for each case in which there are papers other than the ones listed in s. 299.07 to be filed.

(2) ENTRIES; WHAT TO CONTAIN. Entries in the docket shall include:

- (a) The number of the case;
- (b) The title of every action including the full names of the parties and their addresses, if known. If service is by mail, the clerk shall also enter the date when the summons is mailed to any defendant, and the name of the person to whom mailed;
- (c) The names of attorneys, if any, appearing in the action;
- (d) Type of action by reference to s. 299.01;
- (e) Nature of plea in forfeiture actions;
- (f) The judgment or final order entered, date of entering it and the amount of forfeiture or damages, costs and fees due to each person separately;
- (g) Satisfaction of forfeiture, or commitment for nonpayment of forfeiture or judgment;
- (h) The date of mailing notice of entry of judgment or final order as provided in s. 299.24;
- (i) Such additional entries as may be necessary to supply essential information not contained in the case file or reporter's record.

(3) CORRECTING DOCKET. The judge has power at any time to order the docket corrected or any omission or additional entry supplied if he is satisfied that an error or omission exists, or that one or more additional entries are needed.

(4) TIME OF DOCKET ENTRIES. Entries in the docket shall be made not later than the time of the entry of the judgment or final order, or as soon thereafter as possible. No docket entries need be made in uncontested cases where the

action is for a money forfeiture charging violation of a parking regulation.

299.11 Venue. (1) The venue of actions in which the procedure of ch. 299 is used is as follows:

(a) In tort actions and actions growing out of the negligent operation of a motor vehicle, the county where the cause of action arose, or where the defendant resides.

(b) In contract actions, the county where the defendant resides or is personally served.

(c) In actions for garnishment, any county in which the garnishee resides or, if not a resident of the state, is found; or, the county in which the summons in the principal action has issued or where the judgment therein is entered.

(d) In actions for eviction, replevin or to enforce a lien on personal property, the county in which the real property is located or personal property is customarily kept.

(e) In actions for a forfeiture, the county in which the act occurred on which the action for forfeiture is based.

(f) In actions to recover a tax, the county in which the tax was levied.

(2) "County" means a county in this state.

(3) For foreign corporations, "residence" in this section refers to any county in which a corporation carries on substantial business activity; for domestic corporations "residence" refers to the county in which the corporation has its principal office.

(4) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any one of them.

(5) When, in any action under this chapter, it appears from the return of service of the summons or otherwise that the county in which the action is pending is not a proper place of trial of such action under this section, the court shall, on motion of a party or on its own motion, on the return day of the summons or prior to taking any other action on the case, determine the correctness of the venue. If venue is correct the case shall continue. If venue is not correct, the action shall be dismissed unless the defendant appears and waives the improper venue.

299.12 Service of summons. (1) Except as otherwise provided in this chapter, all provisions of Title XLIIA with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter.

(2) Personal service of process to obtain a personal judgment must be made within the state. Except as provided in s. 299.16 there shall be no service by publication.

(3) Except in eviction actions, service may be made by mail by leaving the original and necessary copies of the summons with the clerk of court, together with 50 cents for each defendant to cover the expense of mailing, except that a municipality need not advance the mailing fee, but shall be exempt from payment of such fee until the defendant pays costs pursuant to s. 299.25. The court may by rule require the use of registered or certified mail with return receipt requested, in which event the fee prescribed shall be \$1.50 for each defendant. The clerk shall mail a copy to each defendant at his last known address as specified in the summons. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address. Service by mail to obtain a personal judgment shall be limited to the county where the action is commenced.

(4) Any county court may by rule require that service of summons in some or all actions be made as prescribed in subs. (1) and (2).

(5) Section 345.09 shall not apply to actions under this chapter.

History: Sup Ct Order, 67 W (2d) 776.

299.14 Failure of actual notice of suit by mail. (1) PETITION; HEARING; TRIAL ON MERITS.

In any action, where service of summons is made by mailing, a defendant, at any time within 15 days of receiving actual knowledge of the pendency of the action or of the entry of judgment therein against him (if judgment has been entered), but not more than one year after judgment was entered, may, by written verified petition, on forms provided by the court, petition to set aside the judgment if one has been entered and for an opportunity to be heard upon the merits. Thereupon the court shall set the matter for hearing at a time that will give the parties reasonable opportunity to appear and, if judgment has been entered, shall stay all proceedings on the judgment. At the time of the hearing the questions raised by the petition shall first be heard and determined by the court. If the court grants the petition, the court shall proceed to try the matter upon the merits or, if judgment has been entered, shall vacate the judgment and proceed to try the matter upon the merits. If the court denies the petition, it shall, if judgment has been entered, revoke its order staying proceedings thereon or, if a judgment has not been entered, it may give the defendant opportunity to be heard upon the merits.

(2) EFFECT OF ACTUAL APPEARANCE. This section shall not apply to a defendant who

actually appeared and submitted to the jurisdiction of the court without filing application as provided in sub. (1).

299.16 Actions in rem or quasi in rem; limitation on judgment. (1) BASIS. In proceedings in rem or quasi in rem no judgment shall be entered against a defendant for an amount in excess of the value of the res unless based on service as provided in s. 299.12 (1) and (2), or unless the defendant appears without objecting to the jurisdiction of the court over defendant's person.

(2) ADJOURNMENT AND PUBLICATION. When the defendant has not been served pursuant to s. 299.12 (1) and (2) and does not waive the defense of lack of jurisdiction over the person under s. 802.06 (8) and the court has jurisdiction over the res, service may be made on the defendant by publication. If service is to be made by publication, the proceeding shall be adjourned to a day certain by the court, and a notice in substantial conformity with sub. (4) shall be published as a class 3 notice, under ch. 985.

(3) ADJOURNMENT, POSTING AND MAILING IN EVICTION ACTIONS. In eviction actions, when the defendant has not been served pursuant to s. 299.12 (1) and (2) and does not waive the defense of lack of jurisdiction over the person under s. 802.06 (8), service may be made as follows:

(a) If the summons is returned more than 7 days prior to the return date with proof that the defendant cannot be served within the state under s. 299.12 (1) and (2), the plaintiff may affix a copy of the summons and complaint onto some part of the premises where it may be conveniently read for at least 7 days prior to the return date. At least 5 days prior to the return date an additional copy of the summons and complaint shall also be mailed to the defendant at his last known address, even if it is the premises which are the subject of the action.

(b) In all other cases where the summons and complaint are returned with proof that the defendant cannot be served within the state under s. 299.12 (1) and (2), the court shall, on the return date, adjourn the case to a day certain not less than 7 days from the return date, and the plaintiff shall affix a notice in substantial conformity with sub. (4) (c) onto some part of the premises where it may be conveniently read until such adjourned date. At least 5 days prior to the return date, an additional copy of said notice, together with a copy of the summons and complaint, shall be mailed to the defendant at his last known address, even if it is the premises which are the subject of the action.

(c) Before judgment is entered after service is made under this section, the plaintiff shall file proof of compliance with this section.

(4) FORMS. (a) Notice in attachment and garnishment.

STATE OF WISCONSIN
COUNTY COURT
... COUNTY

TO:

You are hereby notified that (an attachment) (a garnishment) has been issued against you and your property (attached) (garnished) to satisfy the demand of ... amounting to \$

Now, unless you shall appear in the county court, of ... County, located in the courthouse in the city of ..., before the Hon. ..., a judge of said court, or before any judge of said court to whom the said action may be assigned for trial according to the law on the ... day of ..., A.D., 19 ..., at ... o'clock in the ... noon, judgment will be rendered against you and your property sold or applied to pay the debt as provided by law.

Dated this ... day of ..., 19 ...

... Plaintiff

By ... Plaintiff's Attorney

(b) Notice in replevin.

STATE OF WISCONSIN
COUNTY COURT
... COUNTY

TO:

You are hereby notified that a replevin action has been issued to recover the possession of the following described goods and chattels, to wit: ... of which I, the plaintiff, am entitled to possess, but which you have (unjustly taken) (unlawfully detained) from me.

Now, unless you shall appear in the county court, of ... County, located in the courthouse in the city of ..., before the Hon. ..., a judge of said court, or before any judge of said court to whom the said action may be assigned for trial according to the law, on the ... day of ..., A.D., 19 ..., at ... o'clock in the ... noon, judgment will be rendered against you for the delivery of said property to me and for damages for the (taking and) detention thereof and for costs.

Dated this ... day of ..., 19 ...

... Plaintiff

By ... Plaintiff's Attorney

(c) Notice in eviction.

STATE OF WISCONSIN
COUNTY COURT
... COUNTY

To:

Take notice that an eviction action has been commenced against you to recover the possession of the following described premises ..., of which I, the plaintiff, am entitled to possession, but which you have unlawfully detained from me.

Unless you appear and defend on the ... day of ..., 19..., at ... o'clock ...M., in the county court of ... county, located in the courthouse in the city of ..., before the Honorable ..., a Judge of said court, or before any judge to whom the action may be assigned, judgment may be rendered against you for the restitution of said premises and for costs.

Dated: ..., 19...

... Plaintiff

By ... His Attorney

History: Sup. Ct. Order, 67 W (2d) 764; 1975 c. 218.

299.20 Answer; counterclaim and cross complaint. (1) PLEADING ON RETURN DATE OR ADJOURNED DATE. On the return date of the summons or any adjourned date thereof the defendant may answer, move to dismiss under s. 802.06 (2) or otherwise respond to the complaint.

(2) CROSS COMPLAINT. In the case of more than one defendant, any cross complaint by one defendant against another who has appeared shall be made or filed on the return date or any adjourned date.

(3) IMPLEADER, PROCEDURE WHEN GRANTED. If the court grants a motion to implead a third party, from that time the entire action may be tried by circuit court procedure.

History: Sup. Ct. Order, 67 W (2d) 765

299.205 Substitution of judge. (1) Any party to an action or proceeding under this chapter may file a written request for a substitution of a new judge for the judge assigned to the trial of the case. The written request shall be filed on the return date of the summons or within 10 days after the case is noticed for trial. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action.

(2) After the written request has been filed, the judge shall have no further jurisdiction in the action or proceeding except to determine if the request is correct as to form and timely filed. The case shall then be referred to the clerk who shall request assignment of another judge pursuant to s. 251.182.

(3) No party shall be entitled to 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 such party of a written request.

History: 1971 c. 46, 137, 296, 307.

299.21 Trial. (1) **DETERMINATION OF METHOD OF TRIAL.** In the absence of a jury demand, trial shall be to the court.

(2) **TRIAL BY COURT.** If trial is to the court, the case may, with the consent of all the parties, be tried on the return day.

(3) **TRIAL BY JURY.** (a) Any party may, upon payment of the fees specified in par. (b), file a written demand for trial by jury. If no party demands a trial by jury, the right to trial by jury is waived forever. In eviction actions, such demand shall be filed at or before the time of joinder of issue; in all other actions within 20 days thereafter.

(b) The fee for a jury is \$24, plus an additional amount as suit tax which will result in a suit tax payment of the amount which would have been payable had the action been commenced in circuit court and additional clerk's fees of \$6.

(4) **JURY PROCEDURE.** If there is a demand for a trial by jury, the parties shall proceed as if the action had originally been begun as a proceeding under Title XLIIA; the plaintiff shall, when no complaint has previously been served and filed, accordingly file and serve a written complaint within 20 days of the jury demand, and the court shall place the case on the trial calendar of the county court or forthwith transfer the case to circuit court for trial.

History: Sup Ct Order, 67 W (2d) 776.

299.215 Trial by court, findings and judgment. Upon a trial of an issue of fact by the court, its decision shall be given either orally immediately following trial or in writing and filed with the clerk within 60 days after submission of the cause, and shall state separately the facts found and the conclusions of law thereon; and judgment shall be entered accordingly.

299.22 Judgment on failure to appear or answer. (1) **WHEN PLAINTIFF FAILS TO APPEAR.** If the plaintiff fails to appear and plead on the return date or on the date set for trial, the court may enter a judgment for the defendant dismissing the action, on motion of the defendant or on its own motion.

(2) **WHEN DEFENDANT FAILS TO APPEAR.** If the defendant fails to appear and plead on the return date or on the date set for trial, the court may enter a judgment upon due proof of facts which show the plaintiff entitled thereto.

(3) **PLAINTIFF'S PROOF WHERE ACTION AROSE ON CONTRACT FOR RECOVERY OF MONEY.** In any action arising on contract for the recovery of money only, if the defendant fails to appear and answer or to appear at the time set for trial, the plaintiff may file with the judge or clerk a

verified complaint, or an affidavit of the facts, or may offer sworn testimony or other evidence to the clerk or judge, and either may enter judgment thereon.

299.225 Dismissal of pending actions. The court may without notice dismiss any action or proceeding, in which issue has not been joined, which is not otherwise disposed by judgment or stipulation and order within 6 months from the original return date.

299.23 Reporter. The testimony in the trial of any contested action shall be taken by a phonographic reporter or other court approved method. In all other matters proceedings shall be reported as the court directs.

299.24 Judgment. (1) **ENTRY OF JUDGMENT OR ORDER; NOTICE OF ENTRY THEREOF.** When a judgment or an order is rendered, the judge or clerk shall immediately enter it in the case docket and note the date thereof which shall be the date of entry of judgment or order. The clerk, except in municipal and county forfeiture actions, shall mail a notice of entry of judgment to the parties or their attorneys at their last known address within 3 days of its entry. Any such judgment shall be a docketed judgment for all purposes upon payment of a fee of 50 cents to the clerk. The clerk shall enter such docketed judgment in an appropriate judgment docket book.

(2) **APPLICABILITY OF 806.15.** Section 806.15 shall apply with respect to docketed judgments.

History: Sup Ct Order, 67 W (2d) 776.

299.25 Costs. The clerk shall without notice to the parties tax and insert in the judgment as costs in favor of the party recovering judgment the following:

(1) **SUIT TAX.** Any suit tax paid.

(2) **CLERK'S FEE.** Any clerk's fee paid.

(3) **MAILING FEE.** A mailing fee of 50 cents or \$1.50 as provided in s. 299.12 (3), if paid.

(4) **RETURN OF CASE FILE.** A fee of 50 cents for returning the case file and transcript or statement as specified in s. 59.42 (9) (b), if paid.

(5) **GARNISHEE FEE.** Any garnishee fee paid.

(6) **SERVICE FEES AND OTHER CHARGES.** Lawful fees or charges paid to the sheriff, constable or other person for serving the summons or any other document, and charges paid to the sheriff in connection with the execution of any writ of restitution.

(7) **WITNESS FEES.** Amounts necessarily paid out for witness fees, including travel, as prescribed in s. 885.05 with respect to circuit court procedure. The fees for witnesses and their travel shall not exceed 50% of the amount

recovered unless an order is entered specifying the amount to be paid in excess of 50% and the reasons therefor.

(9) JURY FEE. A \$24 fee for a jury if demanded under s. 299.21 (3).

(10) ATTORNEY'S FEES. Attorney's fees, both in the original action and on appeal to circuit court, except when the amount thereof is otherwise specially provided for:

(a) On a judgment for \$50 or less, there shall be no attorney's fees; on a judgment for more than \$50 and less than \$100, \$5; on a judgment for \$100 and less than \$200, \$10; on a judgment for \$200 and not more than \$500, \$25.

(b) In an action of replevin and attachment the value of the property recovered shall govern the amount of the attorney's fees taxable. In an action of eviction the attorney's fees taxable shall be \$10 plus such sum as is taxable under par. (a) on account of the recovery of damages.

(c) If judgment is for the defendant, the amount claimed in the complaint, the value of the property sought to be recovered or the amount recovered on the defendant's counterclaim, in the court's discretion, shall govern the amount of the attorney's fees that the defendant shall recover, and he shall not be entitled to recover for cost items he has not advanced.

(d) No attorney's fees shall be taxed in behalf of any party unless he appear by an attorney.

(11) ADDITIONAL COSTS. Additional costs may be allowed to a municipality under ss. 66.12 (3) (a) and 288.195 (2).

(12) SECURITY FOR COSTS. When security for costs shall be ordered pursuant to s. 814.28, the maximum amount allowed shall be \$50.

(13) ADDITIONAL COSTS AND DISBURSEMENTS. The court may permit additional costs and disbursements to be taxed pursuant to ch. 814.

History: 1971 c. 32; Sup. Ct. Order, 67 W. (2d) 776.

299.255 Small claims fees. The clerk shall collect the following fees in actions and proceedings under this chapter:

(1) EXECUTIONS; WRIT OF RESTITUTION. For issuing an execution or writ of restitution, 50 cents.

(2) TRANSCRIPTS. For issuing or docketing a transcript, \$1.

(3) CERTIFIED COPIES. For certified copies of any document, 50 cents per page if prepared by the clerk, 25 cents per page if only compared by the clerk, but in no case less than \$1. If a photostatic copy is furnished by the applicant the fee for certifying the same shall be \$1 regardless of the number of pages. There shall be no additional charge made for the certificate.

299.26 Costs on appeal. On appeal to the circuit court, the appellant shall pay to the clerk of court a suit tax of \$5 as provided in s. 814.21 and a filing fee of \$5 as provided in s. 59.42 (3).

History: Sup. Ct. Order, 67 W. (2d) 776.

299.27 Adjournments. (1) ON REQUEST. Except in eviction actions, a party who appears on the return date shall be given, on request, an adjournment of at least 7 days, or such longer period as the court grants. In eviction actions, no adjournments shall be granted except for cause shown under sub. (2) and (3), unless with the consent of the plaintiff.

(2) FOR CAUSE. For good cause shown to the court by either party, the court may extend the time within which any act may be done, except the time for the taking of an appeal.

(3) SAME; TERMS. No continuance under sub. (2) shall be granted, unless by consent of the parties, except upon such terms as the court deems just.

299.28 New trial. (1) MOTIONS FOR NEW TRIAL. Motions for new trial in the trial court are governed by s. 805.15. A motion for a new trial must be made and heard within 20 days after the verdict is rendered, unless the court extends the time as provided in s. 801.15 (2) (b). If the motion is not decided within 10 days of the date of hearing, it shall be deemed denied. The entry of judgment by the court without deciding a pending motion for a new trial shall be deemed a denial of the motion.

(2) NEWLY DISCOVERED EVIDENCE. A motion to set aside a verdict or to open up a judgment and for a new trial founded upon newly discovered evidence may be heard upon affidavits and the proceedings in the action. Such a motion may be made at any time within one year from the verdict or finding. The order granting or denying the motion shall be in writing and shall specify the grounds for granting the new trial, or state the court's reasons for denying it.

History: Sup. Ct. Order, 67 W. (2d) 765.

299.29 Default judgments. (1) MOTION TO REOPEN. There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown. The notice of motion must be made within 20 days after entry of judgment in ordinance violation actions and within 90 days in other actions. In ordinance violation cases default judgments for purposes of this section include pleas of guilty, nolo contendere and forfeitures of deposit.

(2) STIPULATIONS. The court, judge or justice having trial jurisdiction to recover a

299.29 SMALL CLAIMS ACTIONS

3410

forfeiture may, with or without notice, for good cause shown by affidavit and upon just terms, within 30 days after such stipulation has been entered into, relieve any person from such stipulation or any order, judgment or conviction entered or made thereon. Where such stipulation was made without appearance in or having been filed in court, the court, judge or justice may order a written complaint to be filed and set the matter for trial. The stipulation or a copy shall, in such cases, be filed with the court, judge or justice and costs and fees shall be taxed as provided by law.

299.30 Appeal. (1) **ORDERS.** An appeal may be taken to the circuit court from orders denying motions or petitions made under ss. 299.14, 299.28 and 299.29 within 20 days of entry of such order.

(2) **WHERE TRIED BY A JURY.** If an action was tried with a jury, any appeal shall be taken under ch. 817.

(3) **EVICITION ACTIONS.** (a) *Manner of appeal; undertaking to stay proceedings on judgment.* In all eviction actions except those tried to a jury of 12 and governed by sub. (2), appeal shall be to the circuit court under the procedure specified in sub. (4), but the time for service and filing of the notice of appeal is limited to 10 days after mailing of notice of entry of judgment. No such appeal by a defendant shall stay proceedings on such judgment unless the appellant serves and files with the notice of appeal an undertaking to the plaintiff, in an amount and with surety or sureties approved by the county judge who ordered the entry of judgment, to the effect that the appellant will pay all costs and disbursements of such appeal which may be taxed against him, obey the order of the appellate court upon such appeal, and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal.

(b) *Stay of proceedings.* Upon the service and filing of such approved undertaking, all further proceedings in enforcement of the judgment appealed from shall be stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice of appeal and approved undertaking upon the sheriff holding an issued but unexecuted writ of restitution or of execution, the sheriff shall promptly cease all further proceedings thereon pending the determination of such appeal.

(4) **OTHER JUDGMENTS.** Within 20 days after the date of mailing of notice of entry of judgment, as appears in the case docket, any appeal other than one specified in subs. (2) and (3) may be taken to the circuit court by any party to an action or proceeding from any final judgment by filing a notice of appeal signed by

appellant or attorney with the clerk of the court which tried the case under this chapter, and by serving a copy of the notice of appeal on all parties bound by the judgment who appeared in the action or their attorneys. Execution may be stayed under ch. 817. Within 40 days after notice of appeal is filed the appellant shall file with the clerk of court either a transcript of the reporter's notes of the trial or an agreed statement on appeal, or a statement that the appellant's appeal can be supported by the case file without the transcript. The appellant shall pay the costs of preparing the transcript.

(5) **CLERK TO MAKE RETURNS.** Within 10 days after the transcript, or agreed statement under s. 299.31, or statement that the appeal can be supported by the case file without the transcript, is filed with the clerk, the clerk shall return the case file, and any transcript or agreed statement, or statement as to the appeal being supported by the case file alone, which has been filed with him, to the circuit court, and shall notify the parties of such filing in the circuit court.

(6) **CIRCUIT COURT POWER ON APPEAL.** On appeal, the circuit court has power similar to that of the supreme court under ch. 817 to review and to affirm, reverse or modify the judgment appealed from. In addition, the circuit court may order a new trial in whole or in part, which shall be in the county court.

(7) **MOTIONS IN APPELLATE COURT.** At any time after the filing in the circuit court of the return on an appeal, any party to the action or proceeding, upon notice under s. 801.15 (4), may move that the judgment appealed from be affirmed, or modified and affirmed as modified, or that the appeal be dismissed, or may move for a new trial or a reversal. This motion shall state concisely the grounds upon which it is made and shall be heard on the record.

History: Sup. Ct. Order, 67 W (2d) 776; 1975 c. 218.

Cross Reference: See 66.12 for provision for appeals in city and village ordinance violation cases.

Where defendant appealed from a drunken driving conviction but failed to file a transcript within 40 days, it is not proper for the city to move to dismiss the case for failure to file the transcript. The circuit court could order a new trial even after the lapse of 5 years where the reporter's notes could not be found. *Mequon v. Bruseth*, 47 W (2d) 791, 177 NW (2d) 852.

A judgment of the county court dismissing an action without prejudice may be appealed to the circuit court. *Milwaukee v. Cohen*, 57 W (2d) 38, 203 NW (2d) 633.

299.31 Agreed statement. In lieu of a transcript on appeal, the oral proceedings may be presented in an agreed statement signed by all the parties to the appeal. This shall be a condensed statement in narrative form of all or such portions of the oral proceedings as are necessary to a determination of the questions on appeal.

299.40 Eviction actions. (1) WHEN COMMENCED. A civil action of eviction may be commenced by a person entitled to the possession of real property to remove therefrom any person who is not entitled to either the possession or occupancy of such real property.

(2) JOINDER OF OTHER CLAIMS. The plaintiff may join with his claim for restitution of the premises any other claim against the defendant arising out of his possession or occupancy of the premises.

(3) EXCEPTION. Nothing in this section shall affect ss. 704.09 (4) and 704.19.

*Eviction practice in Wisconsin. Boden, 54 MLR 298.
Burden of proof required to establish defense of retaliatory eviction. 1971 WLR 939.*

299.41 Complaint in eviction actions. The complaint must be in writing and subscribed by the plaintiff or attorney in accordance with s. 802.05. The complaint must identify the parties and the real property which is the subject of the action and state the facts which authorize the removal of the defendant. The description of real property is sufficient whether or not it is specific if it reasonably identifies what is described, and a description by street name and number is sufficient. If the complaint relates only to a portion of described real estate, such portion shall be identified. If a cause of action in addition to the claim for restitution is joined under s. 299.40 (2), the same shall be separately stated. The prayer shall be for the removal of the defendant or the property, or both, and, if an additional cause of action is joined for the other, relief sought by the plaintiff.

History: Sup. Ct. Order, 67 W (2d) 766; 1975 c. 218.

299.42 Service and filing in eviction actions. The complaint shall be served with the summons when service is had under s. 299.12 (1) and (2).

299.43 Defendant's pleading in eviction actions. The defendant may plead to the complaint orally or in writing, except that if the plaintiff's title is put in issue by the defendant, the answer shall be in writing and subscribed in the same manner as the complaint. Within the limitation of s. 299.02 the defendant may counterclaim provided that in construing s. 299.02 as applied to eviction actions, any claim related to the rented property shall be considered as arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

History: Sup. Ct. Order, 67 W (2d) 766; 1975 c. 218.

299.44 Order for judgment; writ of restitution. (1) ORDER FOR JUDGMENT. In an eviction action, if the court finds that the plaintiff is

entitled to possession, the order for judgment shall be for the restitution of the premises to the plaintiff and, if an additional cause of action is joined under s. 299.40 (2) and plaintiff prevails thereon, for such other relief as the court orders. Judgment shall be entered accordingly as provided in s. 299.24.

(2) WRIT OF RESTITUTION. At the time of ordering judgment for the restitution of premises, the court shall order that a writ of restitution be issued, and the writ may be delivered to the sheriff for execution in accordance with s. 299.45. No writ shall be executed if received by the sheriff more than 30 days after its issuance.

(3) STAY OF WRIT OF RESTITUTION. At the time of ordering judgment, upon application of the defendant with notice to the plaintiff, the court may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed 30 days from the date of the order for judgment. Any such stay shall be conditioned upon the defendant paying all rent or other charges due and unpaid at the entry of judgment and upon the defendant paying the reasonable value of the occupancy of the premises, including reasonable charges, during the period of the stay upon such terms and at such times as the court directs. The court may further require the defendant, as a condition of such stay, to give a bond in such amount and with such sureties as the court directs, conditioned upon his faithful performance of the conditions of the stay. Upon the failure of the defendant to perform any of the conditions of the stay, the plaintiff may file an affidavit executed by himself or his attorney, stating the facts of such default, and the writ of restitution may forthwith be issued.

(4) WRIT OF RESTITUTION; FORM AND CONTENTS. The writ of restitution shall be in the name of the court, sealed with its seal, signed by its clerk, directed to the sheriff of the county in which the real property is located, and in substantially the following form:

(Venue and caption)

THE STATE OF WISCONSIN To the Sheriff
of County:

The plaintiff,, of recovered a judgment against the defendant,, of, in an eviction action in the County Court of County, on the day of, 19..., to have restitution of the following described premises:

.... (description as in complaint), located in County, Wisconsin.

YOU ARE HEREBY COMMANDED To immediately remove the defendant,, from the said premises and to restore the plaintiff,, to the possession thereof. You are further commanded to remove from said premises all personal property not the property of the plaintiff, and to store and dispose of the same

299.44 SMALL CLAIMS ACTIONS

3412

according to law, and to make due return of this writ within ten days.

Witness the Honorable, Judge of the said County Court, this day of, 19..

..... Clerk

299.45 Execution of writ of restitution. (1)

WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff, and after payment to him of the fee required by s. 59.28 (24), the sheriff shall execute the writ. The sheriff may require that prior to the execution of any writ of restitution the plaintiff deposit a reasonable sum representing the probable cost of removing the defendant's property chargeable to the plaintiff under s. 59.28 (24) and (25) and of the services of deputies under s. 59.28 (24). In case of dispute as to the amount of such required deposit, the amount thereof shall be determined by the court under s. 59.28 (25).

(2) HOW EXECUTED; DUTIES OF SHERIFF. The sheriff shall execute the writ in the manner following:

(a) He shall remove from the premises described in the writ the person of the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.

(b) He shall remove from the premises described in the writ, using such reasonable force as may be necessary, all personal property found therein not the property of the plaintiff.

(c) He shall exercise ordinary care in the removal of all persons and property from the premises and in the handling and storage of all property removed therefrom.

(3) MANNER OF REMOVAL AND DISPOSITION OF REMOVED GOODS. (a) In accomplishing the removal of property from the premises described in the writ, the sheriff is authorized to engage the services of a mover or trucker.

(b) Except as provided in par. (c), the property removed from such premises shall be taken to some place of safekeeping within the county selected by the sheriff. Within 3 days of the removal of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4) stating the place where the goods are kept and shall deliver to the defendant any receipt or other document required to obtain possession of the goods. Warehouse or other similar receipts issued with respect to goods stored by the sheriff

under this subsection shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the sheriff to a place of safekeeping shall be the responsibility of the defendant, and any person accepting goods from the sheriff for storage under this subsection shall have all of the rights and remedies accorded by law against the defendant personally and against the property stored for the collection of such charges, including the lien of a warehouseman under s. 407.209. Risk of damages to or loss of such property shall be borne by the defendant after delivery by the sheriff to the place of safekeeping.

(c) When, in the exercise of ordinary care, the sheriff determines that property removed from premises described in the writ is without monetary value, he may deliver or cause the same to be delivered to some appropriate place established for the collection, storage and disposal of refuse. In such case he shall notify the defendant as specified in sub. (4) of the place to which the goods have been delivered within 3 days of the removal of the goods. The exercise of ordinary care by the sheriff under this subsection does not include searching apparently valueless property for hidden or secreted articles of value.

(d) All of the rights and duties of the sheriff under this section may be exercised by or delegated to any of his deputies.

(4) MANNER OF GIVING NOTICE TO DEFENDANT. All notices required by sub. (3) to be given to the defendant by the sheriff shall be in writing and shall be personally served upon the defendant or mailed to him at his last known address, even if such address be the premises which are the subject of the eviction action.

(5) RETURN OF WRIT; TAXATION OF ADDITIONAL COSTS. (a) Within 10 days of the receipt of the writ, the sheriff shall execute the writ and perform all of the duties required by this section and return the same to the court with his statement of the expenses and charges incurred in the execution of the writ and paid by the plaintiff.

(b) Upon receipt of the returned writ and statement from the sheriff, the clerk shall tax and insert in the judgment as prescribed by s. 299.25 the additional costs incurred by the plaintiff.