

CHAPTER 806

JUDGMENT

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806.01 Judgment. (1) (a) A judgment is the determination of the action. It may be final or interlocutory.

(b) Each judgment shall specify the relief granted or other determination of the action, and the name and place of residence of each party to the action and occupation, trade or profession.

(c) Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the pleadings. If there be no answer the relief granted to the plaintiff shall not exceed that demanded in the complaint.

(2) If a partial judgment is proper in an action with several parties, the court in its discretion, may render judgment against one or more of the defendants and dismiss or permit the action to proceed against the others. In case of a finding substantially disposing of a claim on its merits, but leaving an account to be taken or a condition to be performed in order fully to determine the rights of the parties, an interlocutory judgment may be rendered disposing of all issues covered by the finding and reserving final judgment.

History: Sup. Ct. Order, 67 W (2d) 715; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 270.53 (1) defines all judgments as "final determinations." Since interlocutory judgments are by common acceptance not final determinations, the definition is misleading. Sub (1) (a) expressly provides that judgments are either final or interlocutory.

Sub. (1) (b) replaces s. 270.71 (1).

Sub. (1) (c) replaces s. 270.57.

Sub. (2) replaces s. 270.54. [Re Order effective Jan. 1, 1976]

See note to 808.01, citing *Estreen v. Bluhm*, 79 W (2d) 142, 255 NW (2d) 473.

Order filed after verdict which gave plaintiff option of accepting reduced judgment or new trial limited to issue of damages, was not a "judgment" under this section. *Collins v. Gee*, 82 W (2d) 376, 263 NW (2d) 158.

The new Wisconsin rules of civil procedure: Chapters 805—807. Graczyk, 59 MLR 671.

806.02 Default judgment. (1) A default judgment may be rendered as provided in subs. (1) to (4) if no issue of law or fact has been joined and if the time for joining issue has expired. Any defendant appearing in an action shall be entitled to notice of motion for judgment.

(2) After filing the complaint and proof of service of the summons on one or more of the defendants and an affidavit that the defendant is in default for failure to join issue, the plaintiff may move for judgment according to the demand of the complaint. If proof of any fact is necessary for the court to give judgment, the court shall hear the proof.

(3) If a defendant fails to appear in an action within the time fixed in s. 801.09 the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 801.10 and, in addition, shall require further proof as follows:

(a) 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 the 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.

(b) Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show 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.

(4) In an action on express contract for recovery of a liquidated amount of money only, the plaintiff may file with the clerk the complaint, proof of personal service of the summons on one or more of the defendants and an affidavit that the defendant is in default for failure to join issue. The clerk shall render and enter judgment against the defendants who are in default for the amount demanded in the complaint. Leaving the summons at the abode of a defendant is not personal service within the meaning of this subsection.

(5) A default judgment may be rendered against any defendant who has appeared in the action but who fails to appear at trial. If proof of any fact is necessary for the court to render judgment, the court shall receive the proof.

History: Sup. Ct. Order, 67 W (2d) 716; Sup. Ct. Order, 73 W (2d) xxxi; Sup. Ct. Order, 82 W (2d) ix.

Cross References: For time required for notice under (2), see 801.15 (4).

See 802.06 (1) for provision giving the state 45 days to respond to a complaint or counterclaim.

Judicial Council Committee's Note, 1974: This section replaces ss. 270.62 and 262.18. Subs. (1), (2) and (4) are based on subs. (1), (2) and (3) of s. 270.62. Sub. (3) is s. 262.18 renumbered. Sub. (5) is new.

The last sentence of sub. (1) changes the provision of s. 270.62 (3) that no notice of application for judgment need be given to a defendant who has appeared in an action on a contract for a liquidated sum of money only.

Section 270.62 (4), which contains special requirements for obtaining a default judgment against a nonresident defendant served by publication, has been stricken. [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1976: A clerk of court is permitted under s. 806.06 (2) to render the judgment described in ss. 806.02 (4) and 806.03. [Re Order effective Jan. 1, 1977]

Judicial Council Committee's Note, 1977: Sub. (5) has been modified to allow a judge in a default judgment matter to receive rather than mandatorily hear the proof of any fact necessary for a court to render judgment. This change allows a judge the option of in-chamber consideration of affidavits presented by attorneys. Under the present language the time of the judge may be taken up in open court hearing proof presented by the attorney orally whereas proof submitted by the attorney in the form of affidavits may be just as competent and trustworthy. Under the new language, the judge still retains the option of hearing proof in open court of any fact necessary to render a default judgment. [Re Order effective July 1, 1978]

There was no abuse of discretion in denying relief where movant answered complaint by business letter, movant was experienced business person, well-educated and had undergone nearly identical experience in former case. *Hansher v. Kaishian*, 79 W (2d) 374, 255 NW (2d) 564.

Lawyer's failure to answer complaint due to misplacing client's papers while moving office did not relieve client from resulting default judgment. *Dugenske v. Dugenske*, 80 W (2d) 64, 257 NW (2d) 865.

See note to 806.07, citing *Maier Const., Inc. v. Ryan*, 81 W (2d) 463, 260 NW (2d) 700.

806.03 Judgment on admitted claim; order to satisfy. In an action on an express contract for the recovery of a liquidated sum of money only, if the answer admits any part of the plaintiff's claim or if the answer sets up a

counterclaim for an amount less than the plaintiff's claim and contains no other defense to the action, the clerk, on motion of the plaintiff, shall render and enter judgment for the amount so admitted or for the amount claimed in the complaint less the amount of the defendant's counterclaim. When the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim and may enforce the order as it enforces a judgment or provisional remedy.

History: Sup. Ct. Order, 67 W (2d) 718; Sup. Ct. Order, 73 W (2d) xxxi.

Judicial Council Committee's Note, 1974: Section 270.63, renumbered. [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1976: A clerk of court is permitted under s. 806.06 (2) to render the judgment described in ss. 806.02 (4) and 806.03. [Re Order effective Jan. 1, 1977]

806.04 Declaratory judgments. (1)

SCOPE. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

(2) **POWER TO CONSTRUE, ETC.** Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder. No party shall be denied the right to have declared the validity of any statute or municipal ordinance by virtue of the fact that the party holds a license or permit under such statutes or ordinances.

(3) **BEFORE BREACH.** A contract may be construed either before or after there has been a breach thereof.

(3m) **PATERNITY.** If the rights of the natural father have not been terminated, any person who claims to be the natural father of a child born out of wedlock and not subsequently legitimated or adopted may, within 5 years after the date of birth of the child, petition for a declaration of paternity. The court may determine by a clear and convincing preponderance of the evidence that the person is the natural father of the child. Any further determinations affecting the natural father's rights shall be in accordance with the standards of s. 48.425.

(4) REPRESENTATIVES, ETC. Any person interested as or through a personal representative, executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, mental incompetent or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the personal representatives, executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(5) ENUMERATION NOT EXCLUSIVE. The enumeration in subs. (2), (3) and (4) does not limit or restrict the exercise of the general powers conferred in sub. (1) in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

(6) DISCRETIONARY. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(7) REVIEW. All orders, judgments and decrees under this section may be reviewed as other orders, judgments and decrees.

(8) SUPPLEMENTAL RELIEF. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

(9) JURY TRIAL. When a proceeding under this section involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(10) COSTS. In any proceeding under this section the court may make such award of costs as may seem equitable and just.

(11) PARTIES. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration

may prejudice the right of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party, and shall be entitled to be heard. If a statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (9) is placed in issue by the parties, the joint committee for review of administrative rules shall be served with a copy of the petition and, with the approval of the joint committee on legislative organization, shall be made a party and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (9) is placed in issue by the parties, the joint committee on legislative organization shall be served with a copy of the petition and the joint committee on legislative organization, the senate committee on organization or the assembly committee on organization may intervene as a party to the proceedings and be heard.

(12) CONSTRUCTION. This section is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

(13) WORDS CONSTRUED. The word "person" wherever used in this section, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

(14) PROVISIONS SEVERABLE. The several sections and provisions of this section except subs. (1) and (2) are declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the statute invalid or inoperative.

(15) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

(16) SHORT TITLE. This section may be cited as the "Uniform Declaratory Judgments Act".

History: Sup. Ct. Order, 67 W (2d) 718; 1975 c. 218; Sup. Ct. Order, 82 W (2d) ix; 1977 c. 449.

Judicial Council Committee's Note, 1974: Section 269.45 [269.56], renumbered. [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1977: Sub. (3m), as created by ch. 263, laws of 1973, is added. Sub. (3m), which was created during the time the rules of civil procedure were in the process of being adopted, was inadvertently not included in new s. 806.04 along with the other provisions of former s. 269.56. The only intent of the Judicial Council during the preparation of the Rules of Civil Procedure in regard to old s. 269.56 was to renumber it to s. 806.04. [Re Order effective July 1, 1978]

An action for declaratory judgment will not lie to define a law enforcement officer's right to demand that a doctor take a blood sample for an intoxication test where the complaint cites no statute under which the doctor is threatened with prosecution and where various facts might affect the rights of the person from whom blood is to be drawn. *Waukesha Memorial Hospital v. Baird*, 45 W (2d) 629, 173 NW (2d) 700.

While in most cases a court may not know a declaratory judgment would not terminate a controversy giving rise to the proceeding until it had heard the evidence, a court need not go through trial to arrive at a foregone conclusion when it appears on the face of the complaint a declaratory judgment would not terminate the controversy. (Language in *Miller v. Currie*, 208 Wis. 199, intimating otherwise, is modified in accordance herewith.) *American Med. S. Inc. v. Mutual Fed. S. & L.* 52 W (2d) 198, 188 NW (2d) 529.

Sub. (5) qualifies the specific powers enumerated in subs. (2), (3) and (4) as well as sub. (1) and the discretionary power in sub. (6) applies to all cases. Even if a complaint states a cause of action for declaratory relief it may be dismissed if a declaratory judgment would not terminate the controversy. *American Med. S. Inc. v. Mutual Fed. S. & L.* 52 W (2d) 198, 188 NW (2d) 529.

In a suit for declaratory judgment the complaint should not be dismissed when the judgment declares the rights on the complaint or the merits are decided; dismissal is proper when for a valid reason the merits are not reached and the suit should not be entertained. *Kenosha v. Unified School Dist. No. 1*, 55 W (2d) 642, 201 NW (2d) 66.

A complaint alleging that the insurance commissioner is threatening action against an insurance agent who also contracts to service employe welfare funds, claiming a violation of 211.14 (2) (a), Stats. 1969, states a valid basis for declaratory judgment as against a demurrer. *Pension Management, Inc. v. DuRose*, 58 W (2d) 122, 205 NW (2d) 553.

In a complaint of putative father, challenge to the propriety of seeking declaratory relief is not sustained because the relief sought falls within the broad scope of declaratory judgment jurisdiction, meets the 4 requisites for its invocation, and a judgment entered herein will terminate the controversy. *Slawek v. Stroh*, 62 W (2d) 295, 215 NW (2d) 9.

Plaintiffs-taxpayers have standing to challenge constitutionality of county assessor statute. *Thompson v. Kenosha County*, 64 W (2d) 673, 221 NW (2d) 845.

Request by the employer for declaratory judgment cannot be entertained because the purpose of the statute was to expedite justice and to avoid long and complicated litigation, not to interrupt legal proceedings presently in operation. *State v. WERC*, 65 W (2d) 624, 223 NW (2d) 543.

Service of a copy of the proceedings upon the attorney general under (11) is not only mandatory, but goes to the jurisdiction of the court to hear the action in the first instance. *Bollhoffer v. Wolke*, 66 W (2d) 141, 223 NW (2d) 902.

Sustaining of the demurrer was also proper with respect to plaintiffs' attempt via declaratory judgment to effect dissolution of a subdivision corporation where: (1) The determination of the corporation's right to exist would affect members thereof not before the court as parties; (2) sub. (11) requires that all persons who "would be affected by the declaration" shall be made parties; and (3) a corporation may only be dissolved by voluntary act of its shareholders or involuntary proceedings initiated by the attorney general. *Rudolph v. Indian Hills Estates, Inc.* 68 W (2d) 768, 229 NW (2d) 671.

Hospitals are "direct objects" of 70.11 (4m) for purposes of standing to bring declaratory judgment action seeking tax exemption for medical equipment leased by hospital from commercial lessor. *Madison Gen. Hosp. Asso. v. City of Madison*, 71 W (2d) 259, 237 NW (2d) 750.

Declaratory judgments discussed. *State ex rel. Lynch v. Conta*, 71 W (2d) 662, 239 NW (2d) 313.

Discussion of the use of the declaratory judgment act against the state, agencies and officers. *Lister v. Bds. of Regents*, 72 W (2d) 282, 240 NW (2d) 610.

In declaratory judgment action by taxpayers against school board, legal conclusions in complaint challenging constitutionality of taxing statute were permissible. Declaratory judgment actions discussed. *Tooley v. O'Connell*, 77 W (2d) 422, 253 NW (2d) 335.

Service on the attorney general is a jurisdictional prerequisite under (11) even when the constitutional issue is collateral to or a preliminary step in the determination of rights sought to be declared. *O'Connell v. Bd. of Ed., Jt. Dist. #10*, 82 W (2d) 728, 264 NW (2d) 561.

806.05 Declaratory judgments against obscene matter. (1) GROUNDS FOR AND COMMENCEMENT OF ACTION.

Whenever there is reasonable cause to believe that any book, magazine, or other written matter, or picture, sound recording or film, which is being sold, loaned, or distributed in any county, or is in the possession of any person who intends to sell, loan or distribute the same in any county, is obscene, the district attorney of such county, in the name of the state, as plaintiff, may file a complaint in the circuit court for such county directed against such matter by name. Upon the filing of such complaint, the court shall make a summary examination of such matter. If it is of the opinion that there is reasonable cause to believe that such matter is obscene, it shall issue an order, directed against said matter by name, to show cause why said matter should not be judicially determined to be obscene. This order shall be addressed to all persons interested in the publication, production, sale, loan, exhibition and distribution thereof, and shall be returnable within 30 days. The order shall be published as a class 2 notice, under ch. 985. A copy of such order shall be sent by certified mail to the publisher, producer, and one or more distributors of said matter, to the persons holding the copyrights, and to the author, in case the names of any such persons appear on such matter or can with reasonable diligence be ascertained by said district attorney. Such publication shall commence and such notices shall be so mailed within 72 hours of the issuance of the order to show cause by the court.

(1m) INTERLOCUTORY ADJUDICATION. After the issuance of the order to show cause under sub. (1), the court shall, on motion of the district attorney, make an interlocutory finding and adjudication that said book, magazine or other written matter or picture, sound recording or film is obscene, which finding and adjudication shall be of the same effect as the final judgment provided in sub. (3) or (5), but only until such final judgment is made or until further order of the court.

(2) RIGHT TO DEFEND; JURY TRIAL. Any person interested in the publication, production,

sale, loan, exhibition or distribution of such matter may appear and file an answer on or before the return day named in said notice. If in such answer the right to trial by jury is claimed on the issue of the obscenity of said matter, such issue shall be tried to a jury. If no right to such trial is thus claimed, it shall be deemed waived, unless the court shall, for cause shown, on motion of an answering party, otherwise order.

(3) DEFAULT. If no person appears and answers within the time allowed, the court may then, without notice, upon motion of the plaintiff, if the court finds that the matter is obscene, make an adjudication against the matter that the same is obscene.

(4) SPEEDY HEARING; RULES OF EVIDENCE. If an answer is filed, the case shall be set down for a speedy hearing, but an adjudication of default and order shall first be entered against all persons who have not appeared and answered in the manner provided in sub. (3). If any person answering so demands, the trial shall not be adjourned for a period of longer than 72 hours beyond the opening of court on the day following the filing of the answer. At such hearing, subject to chs. 901 to 911, the court shall receive the testimony of experts and evidence as to the literary, cultural or educational character of said matter and as to the manner and form of its production, publication, advertisement, distribution and exhibition. The dominant effect of the whole of such matter shall be determinative of whether said matter is obscene.

(5) FINDINGS AND JUDGMENT. If, after the hearing, the court or jury, unless its finding is contrary to law or to the great weight and clear preponderance of the evidence, determines that the matter is obscene, the court shall enter judgment that the matter is obscene. If it is determined that the matter is not obscene, the court shall enter judgment dismissing the complaint, and a total of not more than \$100 in costs, in addition to taxable disbursements, may be awarded to the persons defending the matter, which shall be paid from the county treasury. Any judgment under this subsection may be appealed to the court of appeals under chs. 808 and 809 by any person adversely affected, and who is either interested in the publication, production, sale, loan, exhibition or distribution of the matter, or is the plaintiff district attorney.

(6) ADMISSIBILITY IN CRIMINAL PROSECUTIONS. In any trial for a violation of s. 944.21, the proceeding under this section and the final judgment of the circuit court under sub. (3) or (5) or the interlocutory adjudication under sub. (1m), shall be admissible in evidence on the issue of the obscenity of said matter and on the

issue of the defendant's knowledge that said matter is obscene, provided, that if the judgment of the court sought to be introduced in evidence is one holding the matter to be obscene, it shall not be admitted unless the defendant in said criminal action was served with notice of the judgment of the court hereunder, and the criminal prosecution is based upon conduct by said defendant occurring more than 18 hours after such service or such appearance, whichever is earlier.

History: Sup. Ct. Order, 67 W (2d) 721; 1975 c. 218; 1977 c. 187, 272.

Judicial Council Committee's Note, 1974: Section 269.565, renumbered. [Re Order effective Jan. 1, 1976]

Statutory procedures and constitutionality of the statute discussed. *State v. I, A Woman*—Part II, 53 W (2d) 102, 191 NW (2d) 897.

806.06 Rendition, perfection and entry of judgment. (1) (a) A judgment is rendered by the court when it is signed by the judge or by the clerk at the judge's written direction.

(b) A judgment is entered when it is filed in the office of the clerk of court.

(c) A judgment is perfected by the taxation of costs and the insertion of the amount thereof in the judgment.

(d) A judgment is granted when given orally in open court on the record.

(2) The judge or the clerk upon the written order of the judge may sign the judgment. The judgment shall be entered by the clerk upon rendition.

(3) After an order or judgment is entered, either party may serve upon the other a written notice of entry.

(4) A judgment may be rendered and entered at the instance of any party either before or after perfection. If the party in whose favor the judgment is rendered causes it to be entered, the party shall perfect the judgment within 30 days of entry or forfeit the right to recover costs. If the party against whom the judgment is rendered causes it to be entered, the party in whose favor the judgment is rendered shall perfect it within 30 days of service of notice of entry of judgment or forfeit the right to recover costs. If proceedings are stayed under s. 806.08, judgment may be perfected at any time within 30 days after the expiration of the stay. If the parties agree to settle all issues but fail to file a notice of dismissal, the judge may direct the clerk to draft an order dismissing the action. No execution shall issue until the judgment is perfected or until the expiration of the time for perfection, unless the party seeking execution shall file a written waiver of entitlement to costs.

(5) Notice of entry of judgment must be given within 21 days of the entry of judgment to constitute notice under s. 808.04 (1).

History: Sup. Ct. Order, 67 W (2d) 724; 1975 c. 218; Sup. Ct. Order, 83 W (2d) xxvii.

Judicial Council Committee's Note, 1974: The present statutes speak somewhat confusingly of judgment being "given," "awarded," "granted," or "rendered," without defining what constitutes the "giving," "awarding," "granting," or "rendering" of judgment. The definitions contained in sub. (1), especially subs. (1) (a) and (1) (d) are designed to bring some precision to the terminology concerning judgments.

Subs. (2), (3) and (4) replace ss. 270.65 and 270.66 [Re Order effective Jan. 1, 1976]

806.07 Relief from judgment or order. (1) On motion and upon such terms as are just, the court may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);

(c) Fraud, misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released or discharged;

(f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;

(g) It is no longer equitable that the judgment should have prospective application; or

(h) Any other reasons justifying relief from the operation of the judgment.

(2) The motion shall be made within a reasonable time, and, if based on sub. (1) (a) or (c), not more than one year after the judgment was entered or the order or stipulation was made. A motion based on sub. (1) (b) shall be made within the time provided in s. 805.16. A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.

History: Sup. Ct. Order, 67 W (2d) 726; 1975 c. 218.

Cross Reference: For limitation on power to reverse or set aside a judgment or to grant a new trial, see 817.37.

Judicial Council Committee's Note, 1974: This section is substantially equivalent to Federal Rule 60 (b) and replaces s. 269.46. [Re Order effective Jan. 1, 1976]

See note to 806.02, citing *Hansher v. Kaishian*, 79 W (2d) 374, 255 NW (2d) 564.

See note to 806.02, citing *Dugenske v. Dugenske*, 80 W (2d) 64, 257 NW (2d) 865.

Trial court abused discretion in refusing to vacate default judgment under (1) (a) where defendant sent letter purporting to be an answer to plaintiff's counsel. *Maier Const., Inc. v. Ryan*, 81 W (2d) 463, 260 NW (2d) 700.

Section 805.17 (3) does not limit trial court's discretionary power to grant relief under 806.07 (1) (h) when reasons justifying relief are apparent to the court. In *Matter of Estate of Smith*, 82 W (2d) 667, 264 NW (2d) 239.

806.08 Stay of proceedings to enforce a judgment. (1) Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. Subsection (3) governs the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial, or to alter or amend a judgment, or of a motion for relief from a judgment or order.

(3) When an appeal is taken from an interlocutory or final judgment or appealable order granting, dissolving or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(4) When an appeal is taken, the appellant may obtain a stay in accordance with s. 808.07.

(5) This section does not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(6) When a court has rendered a final judgment under the conditions stated in s. 806.01 (2), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

History: Sup. Ct. Order, 67 W (2d) 726; Sup. Ct. Order, 67 W (2d) ix; 1977 c. 187 s. 135.

Judicial Council Committee's Note, 1974: This section is based on Federal Rule 62, except for sub. (4) which makes the provisions of ch. 817 (ch. 274 renumbered) control stays pending appeal. With respect to execution of judgment, this section should be read with s. 806.06 (4) which provides that no execution shall issue until the judgment is perfected or until the expiration of the time for perfection, unless the party seeking execution files a written waiver of his entitlement to costs. [Re Order effective Jan. 1, 1976]

806.09 Restitution in case of reversed judgment; purchaser for value. (1) If any judgment or part of a judgment is collected and such judgment is afterwards set aside or reversed, the trial court shall order the same to be restored with interest from the time of the collection, but in case a new trial is ordered the

party who has collected the judgment may retain the same pending the new trial, upon giving a bond in such sum and with such sureties as the court shall order, conditioned for the restoration of the amount collected with interest from the time of collection. The order of restitution may be obtained upon proof of the facts upon notice and motion and may be enforced as a judgment. Nothing herein shall affect or impair the right or title of a purchaser for value in good faith without notice.

(2) Whenever in a civil action on appeal to the court of appeals or the supreme court the appellant fails to stay execution and pending the appeal the sheriff or other officer collects all or any part of the judgment appealed from, the officer collecting the judgment shall deposit the amount collected, less the officer's fees, with the clerk of the court out of which execution issued. In case of reversal on the appeal, restitution may be made in accordance with sub. (1). In case of affirmance the clerk shall pay over the deposit to the judgment creditor on the filing of the remittitur from the court of appeals or the supreme court.

History: Sup. Ct. Order, 67 W (2d) 728; 1975 c. 218; 1977 c. 187.

Judicial Council Committee's Note, 1974: Sub. (1) is s. 270.67 renumbered; sub. (2) is s. 270.68 renumbered. [Re Order effective Jan. 1, 1976]

806.10 Judgment docket. (1) At the time of entry of a judgment directing in whole or in part the payment of money the clerk shall enter in a judgment docket, either arranged alphabetically or accompanied by an alphabetical index, a docket of such judgment containing:

(a) The name at length of each judgment debtor, with place of residence and occupation, trade or profession. If the judgment or judgment docket fails to give the place of residence, the occupation, trade or profession of the judgment debtor, the validity of the judgment shall not be affected thereby but, the judgment creditor may at any time file with the clerk an affidavit stating, on knowledge or information and belief, such information; and the clerk shall thereupon enter the facts according to the affidavit in the docket, noting the date and hour of such entry.

(b) The name of the judgment creditor, in like manner.

(c) The name of the attorney for the judgment creditor, if stated in the record.

(d) The date of the entry of the judgment.

(e) The day and hour of entering such docket.

(f) The amount of the debt, damages or other sum of money recovered, with the costs.

(g) If the judgment is against several persons such statement shall be repeated under the name

of each person against whom the judgment was rendered, in the alphabetical order of their names, respectively, when the docket is arranged alphabetically, or entered in the index under the name of each such person when the docket is kept with an alphabetical index accompanying.

(2) Whenever any docketed judgment shall be reversed and the remittitur filed the clerk shall enter on the docket "reversed on appeal".

(3) Every clerk who docketed a judgment or decree and enters upon the docket a date or time other than that of its actual entry or neglects to docket the same at the proper time shall be liable in treble damages to the party injured.

History: Sup. Ct. Order, 67 W (2d) 729; 1975 c. 218.

Judicial Council Committee's Note, 1974: Sub. (1) is substantially identical to s. 270.74 except that the words "or judgment docket" have been added to the second sentence of sub. (1) (a).

Sub. (2) is s. 270.82 renumbered.

Sub. (3) is substantially identical to s. 270.84. [Re Order effective Jan. 1, 1976]

806.11 Delinquent income tax docket. At the time of filing the warrant provided by s. 71.13 (3) or 71.11 (23), the clerk shall enter in the delinquent income tax docket, either arranged alphabetically or accompanied by an alphabetical index, a docket of such warrant containing:

(1) The name at length of each delinquent income tax debtor, with place of residence and occupation, trade or profession, if any such be stated in the warrant.

(2) The date of the warrant.

(3) The day and hour of entering such docket.

(4) The amount of delinquent income taxes with interest, penalties and costs as set forth in the warrant.

(5) If the warrant be against several persons such statement shall be repeated under the name of each person against whom the warrant was issued, in the alphabetical order of their names, respectively, when the docket is arranged alphabetically, or entered in the index under the name of each such person when the docket is kept with an alphabetical index accompanying.

History: Sup. Ct. Order, 67 W (2d) 730; 1975 c. 218.

Judicial Council Committee's Note, 1974: This section is substantially identical to s. 270.745. [Re Order effective Jan. 1, 1976]

806.115 Filing of duplicate copy of warrant. The department of revenue may file in any county a duplicate copy of a warrant filed under s. 71.11 (23) or 71.13 (3) and the clerk shall enter such duplicate copy on the delinquent income tax docket as provided in s. 806.11, and upon entry therein the duplicate copy shall have

the same legal effect as the warrant filed under s. 71.13 (3).

History: 1975 c. 224.

806.12 Transcript of municipal judge's judgment. The clerk of the circuit court shall, upon the production of a duly certified transcript of a judgment for more than \$10, exclusive of costs, rendered by any municipal judge in the county, forthwith file the same and docket such judgment in the docket of the court in the manner prescribed in s. 806.10. When the transcript shows that execution was stayed in the municipal court, with the name of the surety thereof, the clerk shall docket the judgment against such surety as well as the judgment debtor, and such surety shall be bound thereby as a judgment debtor and the surety's property be subject to lien and be liable thereon to the same extent as the surety's principal. Every such judgment, from the time of such filing of the transcript thereof, shall be deemed the judgment of the circuit court, be equally under the control thereof and be carried into execution, both as to the principal judgment debtor and the debtor's surety, if any, in the same manner and with like effect as the judgments thereof, except that no action can be brought upon the same as a judgment of such court nor execution issued thereon after the expiration of the period of the lien thereof on real estate provided by s. 806.15.

History: Sup. Ct. Order, 67 W (2d) 731; 1975 c. 218; 1977 c. 305 s. 64.

Judicial Council Committee's Note, 1974: Section 270.75 renumbered. [Re Order effective Jan. 1, 1976]

806.13 Judgments docketed in other counties. When a judgment is docketed as provided in ss. 806.10, 806.12 and 806.24, or a warrant is docketed as provided in s. 108.22 (2), it may be docketed in like manner in any other county, upon filing with the clerk of court thereof a transcript from the original docket, certified to be a true copy therefrom by the clerk of the original court having custody thereof.

History: Sup. Ct. Order, 67 W (2d) 731; 1975 c. 224.

Judicial Council Committee's Note, 1974: Section 270.76 renumbered. [Re Order effective Jan. 1, 1976]

806.14 Enforcement of real estate judgment in other counties. If a judgment affecting real property is rendered in any county other than that in which such property is situated the trial court may, at any time, order that the judgment with all papers filed and copies of entries, orders and minutes made in the action, shall be by its clerk certified and transmitted to and filed by the clerk of the circuit court of the county where such property is situated; or order that certified copies thereof be so transmitted and filed and upon such filing such judgment

may be enforced in such circuit court, with the same force and effect as if such judgment had been originally entered therein. The trial court shall have concurrent jurisdiction to enforce such judgment when certified copies of the papers are transmitted.

History: Sup. Ct. Order, 67 W (2d) 732.

Judicial Council Committee's Note, 1974: Section 270.78 renumbered. [Re Order effective Jan. 1, 1976]

806.15 Lien of judgment; priority; statute may be suspended. (1) Every judgment, when properly docketed, and the docket gives the judgment debtor's place of abode and occupation, trade or profession shall, for 10 years from the date of the entry thereof, be a lien on the real property (except the homestead mentioned in s. 815.20) in the county where docketed, of every person against whom it is rendered and docketed, which the person has at the time of docketing or which the person acquires thereafter within said 10 years. A judgment based upon a claim discharged in bankruptcy shall upon entry of the order of satisfaction or discharge cease to be and shall not thereafter become a lien on any real property of the discharged person then owned or thereafter acquired.

(2) When the collection of the judgment or the sale of the real estate upon which it is a lien shall be delayed by law, and the judgment creditor shall have caused to be entered on the docket "enforcement suspended by injunction" or otherwise, as the case may be, and such entry dated, the time of such delay after the date of such entry shall not be taken as part of said 10 years. And whenever an appeal from any judgment shall be pending and the bond or deposit requisite to stay execution has been given or made, the trial court may, on motion, after notice to the judgment creditor, on such terms as it shall see fit, direct the clerk to enter on the docket that such judgment is "secured on appeal" and thereupon it shall cease during the pendency of such appeal to be a lien.

(3) If the judgment is affirmed on appeal or the appeal is dismissed the clerk shall, on the filing of the remittitur, enter on the docket "lien restored by affirmance" or "lien restored by dismissal of appeal" with the date of such entry, and the lien thereof shall be thereupon restored. Similar entries may be made with the like effect upon the docket of such judgment in any other county upon filing with the clerk of the circuit court thereof a transcript of the original docket.

History: 1973 c. 211; Sup. Ct. Order, 67 W (2d) 732; 1975 c. 200.

Cross Reference: See 806.19 (4) for procedure to be followed to obtain satisfaction of judgment discharged in bankruptcy.

Judicial Council Committee's Note, 1974: Section 270.79 renumbered. [Re Order effective Jan. 1, 1976]

A judgment creditor who obtains a lien on the land by docketing his judgment is not a purchaser for value, and the fact that a judgment creditor may be without notice of a prior equitable interest when he docketed is not sufficient to give his lien priority over that of a prior equitable mortgagee, for the failure of notice does not inure to the benefit of a subsequent judgment creditor because he does not part with any value in reliance on the misleading state of his debtor's title. *IFC Colateral Corp. v. Commercial Units, Inc.* 51 W (2d) 41, 186 NW (2d) 214.

In bankruptcy proceedings the lien of judgment obtained before discharge was not extinguished by discharge and could be applied to the proceeds of the bankruptcy sale of the real estate to which the lien attached. *In re Tillman Produce Co., Inc.* 396 F Supp. 500.

Creditor's rights; after-acquired property. *Norman*, 56 MLR 137.

806.155 Civil action judgments prior to 1962. [Not printed; see s. 270.795, 1973 Statutes and Supreme Court Order, 67 W (2d) 761, Appendix II, s. 43; 1975 c. 39 s. 708s.]

806.16 Appellate court judgment, docketing. The clerk of the supreme court, on demand and upon payment of \$1, shall furnish a certified transcript of any money judgment of the court of appeals or the supreme court which transcript may be filed and docketed in the office of any clerk of the circuit court in the manner that other judgments are docketed and shall then be a like lien and for a like time as circuit court judgments on the real property in the county where docketed. If the court of appeals or supreme court remits its judgment for the recovery of money or for costs to the lower court, the judgment shall in like manner be docketed by the clerk of the lower court and shall have the like force and effect as judgments of the circuit court so docketed.

History: Sup. Ct. Order, 67 W (2d) 734; 1977 c. 187.

Judicial Council Committee's Note, 1974: Section 270.80 renumbered. [Re Order effective Jan. 1, 1976]

806.17 Docketing federal judgments. Every judgment and decree requiring the payment of money rendered in a district court of the United States within this state shall be, from the docketing thereof in said court, a lien upon the real property of the judgment debtor situated in the county in which it is so docketed, the same as a judgment of the state court. A transcript of such docket may be filed with the clerk of the court of any other county; and shall be docketed in the clerk's office as in the case of judgments and decrees of the state courts and with like effect, on payment of fees as provided in s. 59.42.

History: Sup. Ct. Order, 67 W (2d) 734; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 270.81 renumbered. [Re Order effective Jan. 1, 1976]

806.18 Assignment of judgment. (1) When a duly acknowledged assignment of a judgment is filed, the clerk shall note the fact and the date thereof and of filing on the docket.

(2) An assignment may be made by an entry on the docket thus: "I assign this judgment to A.B.," signed by the owner, with the date affixed and witnessed by the clerk.

History: Sup. Ct. Order, 67 W (2d) 734; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 270.85 renumbered. [Re Order effective Jan. 1, 1976]

806.19 Satisfaction of judgments. (1)

(a) A judgment may be satisfied in whole or in part or as to any judgment debtor by an instrument signed and acknowledged by the owner or, at any time within 5 years after the rendition thereof, (when no assignment has been filed) by the owner's attorney of record, or by an acknowledgment of satisfaction, signed and entered on the docket in the county where first docketed, with the date of entry, and witnessed by the clerk. Every satisfaction of a part of a judgment or as to some of the judgment debtors shall state the amount paid thereon or for the release of such debtors, naming them.

(b) No satisfaction by an attorney shall be conclusive upon the judgment creditor in respect to any person who has notice of revocation of the authority of such attorney, before any payment made thereon or before any purchase of property bound by such judgment has been effected.

(c) On filing a duly executed satisfaction, the clerk shall enter the same on the court record of the case and shall enter a statement of the substance thereof, including the amount paid, on the margin of the judgment docket with the date of filing the satisfaction.

(2) When an execution is returned satisfied in whole or in part the judgment is deemed satisfied to the extent of the amount so returned unless such return is vacated and the clerk shall enter in the docket that the amount stated in such return has been collected.

(3) For the purpose of paying any money judgment, the debtor may deposit with the clerk of the court in which the judgment was entered the amount of liability thereon. The clerk shall give the debtor a certificate showing the date and amount of the deposit and identifying the judgment; and shall immediately note on the docket thereof and on the margin of the judgment journal the amount and date of the deposit. The debtor shall immediately give written notice to the owner of record of the judgment and to the owner's attorney of record, personally, or by registered mail, to the last known post-office address, stating the amount, date and purpose of the deposit, and that it is held subject to the order of such judgment owner. Ten days after giving the notice, the clerk shall, upon filing proof of such service, satisfy the judgment of record, unless the trial court otherwise orders. Acceptance by such owner of the sum deposited

shall have the same legal consequences that payment direct by the debtor would have. Payment to the clerk shall include 50 cents clerk's fees.

(4) Upon proper notice, any person who has secured a discharge in bankruptcy may apply to the court where any judgment rendered void by such order of discharge was entered, for an order to satisfy such judgment. If the court finds that such order of discharge in bankruptcy was duly obtained and that its effect is to render void the judgment sought to be satisfied, it shall declare such judgment to be satisfied and direct satisfaction thereof to be entered on the docket. The entry of such order of satisfaction of judgment shall bar any other action in the courts of this state against such bankrupt person based upon the judgment so satisfied.

History: 1973 c. 211; Sup. Ct. Order, 67 W (2d) 735; 1975 c. 218.

Cross Reference: See 806.15 (1) which provides that a judgment discharged in bankruptcy ceases to be a lien upon entry of the order of discharge.

Judicial Council Committee's Note, 1974: Sub. (1) (a) is s. 270.87 renumbered.

Sub. (1) (b) is s. 270.88 renumbered.

Sub. (1) (c) is s. 270.89 renumbered.

Sub. (2) is s. 270.86 renumbered.

Sub. (3) is s. 270.93 renumbered.

Sub. (4) is identical to s. 270.91 (2). [Re Order effective Jan. 1, 1976]

In bankruptcy proceedings the lien of judgment obtained before discharge was not extinguished by discharge and could be applied to the proceeds of the bankruptcy sale of the real estate to which the lien attached. In re Tillman Produce Co., Inc. 396 F Supp. 500.

Bankruptcy: effect of the 1970 bankruptcy act amendments on the discharge that never was. Knight, 1971 WLR 1174.

806.20 Court may direct satisfaction; refusal to satisfy. (1) When a judgment has been fully paid but not satisfied or the satisfaction has been lost, the trial court may authorize the attorney of the judgment creditor to satisfy the same or may by order declare the same satisfied and direct satisfaction to be entered upon the docket.

(2) If any owner of any judgment, after full payment thereof, fails for 7 days after request and tender of reasonable charges therefor, to satisfy the judgment, the owner shall be liable to the party paying the same, the party's heirs or representatives in the sum of \$50 damages and also for actual damages occasioned by such failure.

History: Sup. Ct. Order, 67 W (2d) 737; 1975 c. 218.

Judicial Council Committee's Note, 1974: Sub. (1) is s. 270.90 renumbered.

Sub. (2) is s. 270.94 renumbered. [Re Order effective Jan. 1, 1976]

806.21 Judgment satisfied not a lien; partial satisfaction. If a judgment is satisfied in whole or in part or as to any judgment debtor and such satisfaction docketed, such judgment shall, to the extent of such satisfaction, cease to

be a lien; and any execution thereafter issued shall contain a direction to collect only the residue thereof, or to collect only from the judgment debtors remaining liable thereon.

History: Sup. Ct. Order, 67 W (2d) 737

Judicial Council Committee's Note, 1974: Section 270.91 (1) renumbered [Re Order effective Jan. 1, 1976]

806.22 Filing transcript of satisfaction. If a satisfaction of a judgment has been entered on the docket in the county where it was first docketed, a certified transcript of the docket and a certificate by the clerk, under official seal, showing the satisfaction, may be filed with the clerk of the court in any county where it is docketed, and such clerk shall thereupon make a similar entry on the clerk's docket.

History: Sup. Ct. Order, 67 W (2d) 738; 1975 c. 218

Judicial Council Committee's Note, 1974: Section 270.92 renumbered. [Re Order effective Jan. 1, 1976]

806.23 Action on judgment, when brought. No action shall be brought upon a judgment rendered in any court of this state between the same parties, without leave of the court, for good cause shown, on notice to the adverse party.

History: Sup. Ct. Order, 67 W (2d) 738.

Judicial Council Committee's Note, 1974: Section 270.95 renumbered. [Re Order effective Jan. 1, 1976]

806.24 Uniform enforcement of foreign judgments act. (1) DEFINITION. In this section "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

(2) **FILING AND STATUS OF FOREIGN JUDGMENTS.** A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of circuit court of any county of this state. The clerk shall treat any foreign judgment in the same manner as a judgment of the circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner.

(3) **NOTICE OF FILING. (a)** At the time of the filing of the foreign judgment, the judgment creditor or lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post-office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The

notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until 15 days after the date the judgment is filed.

(4) **STAY.** (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

(5) **OPTIONAL PROCEDURE.** The right of a judgment creditor to bring an action to enforce the judgment instead of proceeding under this section remains unimpaired.

(6) **UNIFORMITY OF INTERPRETATION.** This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(7) **SHORT TITLE.** This act may be cited as the "Uniform Enforcement of Foreign Judgments Act".

History: Sup. Ct. Order, 67 W (2d) 738; 1975 c. 218.

Cross Reference: See 618.61 for provision for reciprocal enforcement of foreign insurance decrees or orders.

Judicial Council Committee's Note, 1974: Section 270.96 renumbered. [Re Order effective Jan. 1, 1976]

The established constitutional principles that (a) without proper service of process no full faith and credit need be accorded a foreign judgment, since the requirements of due process militate against such enforcement; (b) want of jurisdiction is a matter of legitimate inquiry where enforcement of such a judgment is sought; and (c) mere recital of jurisdiction or jurisdictional facts is not sufficient to bar such inquiry, apply to both actions in rem and quasi in rem as well as to personal judgments. *Hansen v. McAndrews*, 49 W (2d) 625, 183 NW (2d) 1.

806.25 No judgment without action. Any authorization in a note executed after June 18, 1972, for the creditor, or other person acting on the creditor's behalf, to confess judgment for the debtor shall be void and unenforceable.

History: 1973 c. 261; Sup. Ct. Order, 67 W (2d) 740; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 270.69 renumbered. [Re Order effective Jan. 1, 1976]