

CHAPTER 799

PROCEDURE IN SMALL CLAIMS ACTIONS

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799.01 Applicability of chapter. Subject to the limitations of ss. 799.11 and 799.12, the procedure in this chapter shall be used in circuit court in the following actions:

(1) **EVICION ACTIONS.** Actions for eviction as defined in s. 799.40 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, 345 and 778, 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; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53.

This section does not authorize court to grant injunctive relief. *County of Columbia v. Bylewski*, 94 W (2d) 153, 288 NW (2d) 129 (1980).

799.02 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. 799.01, 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 chs. 801 to 847 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 beyond the limitations of s. 799.01, the court shall dismiss the same and proceed under this chapter.

History: Sup. Ct. Order, 67 W (2d) 776; 1979 c. 32 ss. 66, 92 (16); 1979 c. 89, 177.

See note to 799.43, citing *Scalzo v. Anderson*, 87 W (2d) 834, 275 NW (2d) 894 (1979).

799.03 Intent. Sections 799.01 and 799.02 are procedural and not jurisdictional. In this chapter unless otherwise designated, "court" means circuit court and "court" does not mean court commissioner.

History: 1977 c. 345; 1977 c. 449 s. 497; 1979 c. 32 ss. 64, 92 (16).

799.04 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 chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter.

(2) FORMS. Except as otherwise provided in this subsection and this chapter, the forms specified in chs. 801 to 847 shall be used. Forms shall be uniform, concisely written and readily understandable by members of the public. Summons and complaint forms shall be made available to the public by the clerk of court and, in counties having a population of 500,000 or more, the summons shall have all provisions printed in both English and Spanish.

History: Sup. Ct. Order, 67 W (2d) 776; 1977 c. 345; 1979 c. 32 ss. 66, 92 (16); 1979 c. 89.

799.05 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. 799.01, 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 a person authorized to appear under s. 799.06 (2), 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, the attorney 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,
Circuit 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 or her 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. 799.01) and the amount of damages, if any, demanded is \$

Dated:, 19....

E. F.

Clerk of Circuit 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:

.....

(7) FORM; POPULOUS COUNTIES. In counties establishing at least one part-time or full-time court commissioner position under s. 757.68 (1) (b), the summons shall be substantially in the following form:

STATE OF WISCONSIN: CIRCUIT
COURT: COUNTY

A. B., Plaintiff,

vs. S U M M O N S (Small Claims)

C. D., Defendant.

THE STATE OF WISCONSIN, To said
defendant:

You are being sued

for: Eviction

.... Return of Property

..... \$

If you wish to dispute this matter, you must then be in Room, of the [County] County Courthouse, [address], [City], Wisconsin before o'clock m., on, 19.... If you do not appear, a judgment may be given to the person suing you for what the person is asking.

You are encouraged to bring with you all papers and documents relating to this matter, but there is no need to bring witnesses at this time.

Dated at [County], Wisconsin, this day of, 19....

PLAINTIFF'S ATTORNEY or PLAINTIFF

E. F.

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ADDRESS

Clerk of Circuit Court
or

Signed:

PLAINTIFF OR PLAINTIFF'S
ATTORNEY

PHONE

G. H.

Address:

History: Sup. Ct. Order, 67 W (2d) 764; 1977 c. 449 s. 497;
1979 c. 32 ss. 66, 92 (16); 1979 c. 108.

Plaintiff or Plaintiff's Attorney

History: 1977 c. 345; 1977 c. 449 s. 497; 1979 c. 32 ss. 66,
92 (16); 1979 c. 108; 1979 c. 176 s. 85; 1979 c. 177 s. 85.

799.06 Actions; how commenced, pleadings, appearances. (1) PLEADINGS. Except as provided in s. 799.41 with respect to complaints in eviction actions and except as provided in sub. (3), pleadings may be oral. Any circuit court may by order require written pleadings in a particular case.

(2) A person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her or its own proper person or by an attorney regularly authorized to practice in the courts of this state. Under this subsection, a person is considered to be acting in his, her or its own proper person if the appearance is by a full-time authorized employe of the person. An assignee of any cause of action under this chapter shall not appear by a full-time authorized employe, unless the employe is an attorney regularly authorized to practice in the courts of this state.

(3) In counties establishing at least one part-time or full-time court commissioner position under s. 757.68 (1) (b), the complaint shall be in writing and shall be substantially in the following form:

STATE OF WISCONSIN: CIRCUIT
COURT: COUNTY

A. B., Plaintiff,
Address:

vs.
Address:

C O M P L A I N T

C. D., Defendant.
Address:

For Plaintiff's claim against Defendant, Plaintiff states that:

1. Plaintiff's injuries or losses occurred on or about

[month and day], 19.... [year], and under the following circumstances (briefly state the facts of your claim):

.....
.....
.....

2. Wherefore, Plaintiff demands judgment for: (check as appropriate)

.... a. Eviction.

.... b. Return of property.

.... c. The sum of \$ [enter amount].

Plus attorney fees, if any, costs of this suit and such other relief, as the court deems proper.

799.07 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.

History: 1979 c. 32 s. 66

799.08 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. 799.25.

History: 1973 c. 218; Sup. Ct. Order, 67 W (2d) 776; 1975 c. 325; 1979 c. 32 ss. 66, 92 (16).

799.09 Night or Saturday sessions; public information. (1) In counties establishing at least one part-time or full-time court commissioner position under s. 757.68 (1) (b), the court commissioner shall schedule at least one evening or Saturday session per month for small claims type actions.

(2) Information regarding the existence, location and hours of the circuit court's small claims system shall be disseminated and publicized throughout the county by the clerk of court.

History: 1977 c. 345, 449; 1979 c. 32 s. 66.

799.10 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. 799.07 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. 799.01;

(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. 799.24;

(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 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.

History: 1979 c. 32 ss. 66, 92 (16); 1979 c. 176.

799.11 Venue. (1) The venue of actions in which the procedure of ch. 799 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.

History: 1979 c. 32 ss. 66, 92 (16).

799.12 Service of summons. (1) Except as otherwise provided in this chapter, all provisions of chs. 801 to 847 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. 799.16 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. 799.25. 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 the 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 circuit 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; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 89; 1979 c. 176.

799.14 Failure of actual notice of suit by mail. (1) PETITION; HEARING; TRIAL ON MERITS. In any action, where service of summons is

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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 against the defendant (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).

History: 1979 c. 32 s. 66; 1979 c. 176.

799.16 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 property unless based on service as provided in s. 799.12 (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. 799.12 (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 property, 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. 799.12 (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. 799.12 (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 the 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. 799.12 (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 the 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

CIRCUIT 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 circuit 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

CIRCUIT 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 circuit 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
CIRCUIT 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 circuit 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 Plaintiff's Attorney

History: Sup. Ct. Order, 67 W (2d) 764; 1975 c. 218; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 110 s. 60 (7); 1979 c. 176

799.20 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 3rd party, from that time the entire

action may be tried using the procedure under chs. 801 to 847.

History: Sup. Ct. Order, 67 W (2d) 765; 1977 c. 449; 1979 c. 32 s. 66.

799.205 Substitution of judge. (1) Any party to a small claims action or proceeding may file a written request with the clerk of courts for a substitution of a new judge for the judge assigned to the case. The written request shall be filed on the return date of the summons or within 10 days after the case is scheduled for trial. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action and to the original judge.

(2) After the written request has been filed, the original 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. If the request is correct as to form and timely filed, the named judge shall be disqualified and shall promptly request assignment of another judge under s. 751.03.

(3) Except as provided in sub. (4), no party is entitled to file more than one such written request in any one action, and any single such request shall not 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.

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

History: 1971 c. 46, 137, 296, 307; 1977 c. 135; 1977 c. 187 s. 135; 1977 c. 449; 1979 c. 32 s. 66.

799.206 Populous counties; court commissioner. (1) In counties establishing at

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least one part-time or full-time court commissioner position under s. 757.68 (1) (b), all actions and proceedings commenced under this chapter shall be returnable before a court commissioner appointed under s. 757.68.

(2) Judgment on failure to appear may be entered by the court commissioner or the clerk upon the return date as provided in s. 799.22.

(3) When all parties appear in person or by their attorneys on the return date in an eviction action and a contest exists, the parties or their attorneys or both shall be ordered to appear forthwith before the calendar judge for a hearing.

(4) Except as provided in sub. (3), the court commissioner shall hear all matters using the procedures set forth in s. 799.207.

History: 1977 c. 345; 1979 c. 32 ss. 66, 92 (16).

799.207 Populous counties; procedure.

(1) (a) The court commissioner shall hold a conference with the parties or their attorneys or both on the return date, examine pleadings and identify issues.

(b) Except as provided in par. (e), a decision shall be rendered by the court commissioner on the return date if there is time available for a hearing, the parties do not intend to call witnesses, and the parties agree to such a hearing. If for any of the reasons stated in this paragraph, the matter cannot be heard on the return date, an adjourned date shall be set.

(c) The court commissioner may consider all relevant information and the proceedings shall not be governed by the rules of evidence.

(d) A record of the proceeding shall be made and shall be limited to the time and location of the hearing, the parties, witnesses and attorneys present and the decision.

(e) If the court commissioner cannot reach a decision on the return or adjourned date, the commissioner shall mail the decision to each party within 30 days of the date of the hearing.

(2) The court commissioner's decision shall become a judgment 11 days after rendering, if oral, and 16 days after mailing, if written, except that:

(a) Default judgments will have immediate effect.

(b) Either party may file a demand for trial within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision to prevent the entry of the judgment.

(3) (a) There is an absolute right to have the matter heard before the court if the requirements of this section are complied with.

(b) The court commissioner shall give each of the parties a form and instructions which shall

be used for giving notice of an election to have the matter heard by the court.

(c) The demand for trial must be filed with the court and mailed to the other parties within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision. Mailing of the notice and proof of such mailing is the responsibility of the party seeking review.

(d) Notice of a demand for trial may also be given in writing and filed by either of the parties at the time of an oral decision.

(4) Following the timely filing of a demand for trial, the court shall mail a trial date to all of the parties.

(5) (a) A timely filing of a demand for trial shall result in a new trial before the court on all issues between the parties.

(b) The court shall conduct a pretrial conference on the same day the matter is scheduled for trial.

History: 1977 c. 345; 1979 c. 32 s. 66; 1979 c. 110.

799.21 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. (c), 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, the demand shall be filed at or before the time of joinder of issue; in all other actions within 20 days thereafter.

(b) In counties establishing at least one part-time or full-time court commissioner position under s. 757.68 (1) (b), except in eviction actions which shall be governed by par. (a), demand for trial by jury shall be made at the time a demand for trial is filed. If the party requesting a trial does not request a jury trial, any other party may request a jury trial by filing such request with the court and mailing copies to all other parties within 15 days from the date of mailing of the demand for trial or the date on which personal notice of demand is given, whichever is applicable. If no party demands a trial by jury, the right to trial by jury is waived forever. The fees specified in par. (c) shall be paid when the demand for a trial by jury is filed.

(c) 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 under chs. 801 to 807 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 chs. 801 to 807, except that the court is not required to provide the jury with one complete set of written instructions under s. 805.13 (4). If no complaint has previously been served and filed, the plaintiff shall 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.

History: Sup. Ct. Order, 67 W (2d) 776; 1977 c. 345, 449; 1979 c. 32 s. 66; 1979 c. 128.

See note to 345.43, citing *State v. Graf*, 72 W (2d) 179, 240 NW (2d) 387.

799.215 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.

History: 1979 c. 32 s. 66.

799.22 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.

History: 1979 c. 32 s. 66.

799.225 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.

History: 1979 c. 32 s. 66.

799.23 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.

History: 1979 c. 32 s. 66.

799.24 Judgment. (1) ENTRY OF JUDGMENT OR ORDER; NOTICE OF ENTRY THEREOF. When a judgment or an order is rendered, the judge, court commissioner 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 SECTION 806.15. Section 806.15 shall apply with respect to docketed judgments.

History: Sup. Ct. Order, 67 W (2d) 776; 1977 c. 345; 1979 c. 32 s. 66.

799.25 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. 799.12 (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. 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. 799.21 (3).

(10) ATTORNEY FEES. Attorney fees, both in the original action and on appeal, 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

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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 the defendant is not entitled to recover for cost items the defendant has not advanced.

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

(11) **ADDITIONAL COSTS.** Additional costs as may be allowed to a municipality under ss. 66.12 (3) (a) and 778.195 (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; 1977 c. 187, 449; 1979 c. 32 ss. 66, 92 (16); 1979 c. 176.

799.255 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.

History: 1979 c. 32 s. 66.

799.27 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.

History: 1979 c. 32 s. 66.

799.28 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; 1979 c. 32 s. 66.

799.29 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, no contest and forfeitures of deposit.

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

History: 1979 c. 32 s. 66; 1979 c. 110 s. 60 (6)

Sub (1) provides exclusive procedure for reopening default judgment in small claims proceedings. *King v. Moore*, 95 W (2d) 686, 291 NW (2d) 304 (Ct. App. 1980).

799.30 Appeal. An appeal of a judgment or order under this chapter shall be to the court of appeals.

History: Sup. Ct. Order, 67 W (2d) 776; 1975 c. 218; 1977 c. 187; 1979 c. 32 s. 66.

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

799.40 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 the claim for restitution of the premises any other claim against the defendant arising out of the defendant's possession or occupancy of the premises.

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

History: 1979 c. 32 s. 66; 1979 c. 176.

Constructive eviction discussed. *First Wis. Trust Co. v. I. Wiemann Co.* 93 W (2d) 258, 286 NW (2d) 360 (1980).

Eviction practice in Wisconsin. *Boden*, 54 MLR 298.

Burden of proof required to establish defense of retaliatory eviction. 1971 WLR 939.

799.41 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. 799.40 (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; 1979 c. 32 ss. 66, 92 (16).

799.42 Service and filing in eviction actions. The complaint shall be served with the summons when service is had under s. 799.12 (1) and (2).

History: 1979 c. 32 ss. 66, 92 (16).

799.43 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. 799.02 the defendant may counterclaim provided that in construing s. 799.02 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; 1979 c. 32 ss. 66, 92 (16).

Counterclaims relating to oral agreements to pay increased rent, unfair trade practices, oral guarantees and interference with quiet enjoyment were properly dismissed as extrinsic to the lease. *Scalzo v. Anderson*, 87 W (2d) 834, 725 NW (2d) 894 (1979).

799.44 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. 799.40 (2) and plaintiff prevails thereon, for such other relief as the court orders. Judgment shall be entered accordingly as provided in s. 799.24.

(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. 799.45. 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 the defendant's 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 the plaintiff or 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 Circuit 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 according to law, and to make due return of this writ within ten days.

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

..... Clerk

History: 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 176

799.45 Execution of writ of restitution.

(1) WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff, and after payment to the sheriff 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. In executing the writ of restitution the sheriff shall:

(a) 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) 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) 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 the 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 the defendant at the 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 the

sheriff's 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.

799.25 the additional costs incurred by the plaintiff.

History: 1979 c. 32 ss. 66, 92 (16); 1979 c. 176.

See note to 407 210, citing *Wegwart v. Eagle Movers, Inc.*, 441 F Supp. 872.