

## CHAPTER 821

## UNIFORM CERTIFICATION OF QUESTIONS OF LAW RULE

821.01 Power to answer.  
 821.02 Method of invoking.  
 821.03 Contents of certification order.  
 821.04 Preparation of certification order.  
 821.05 Costs of certification.  
 821.06 Briefs and argument.

821.07 Opinion.  
 821.08 Power to certify.  
 821.09 Procedure on certifying.  
 821.10 Severability.  
 821.11 Construction.  
 821.12 Short title.

**821.01 Power to answer.** The supreme court may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States or the highest appellate court of any other state when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court and the court of appeals of this state.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**Judicial Council Note, 1982:** This section provides that the supreme court has the right to answer questions certified to it; it is not mandatory. Under some circumstances it is possible that the court might decide not to answer a certified question. See, for example, *Atlas Life Insurance Co. v. W. I. Southern, Inc.*, 306 U.S. 563 (1939) and *National Labor Relations Board v. White Swan*, 313 U.S. 23 (1941) (in both cases the Supreme court of the United States refused to answer certified questions).

The courts listed as the courts which may certify questions are the Supreme Court of the United States and the federal Courts of Appeals. Also included are the highest appellate courts of other states. This provision allows certification of questions in conflicts cases. [Re Order effective January 1, 1983]

**821.02 Method of invoking.** This chapter may be invoked by an order of any of the courts referred to in s. 821.01 upon the court's own motion or upon the motion of any party to the cause.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.03 Contents of certification order.** A certification order shall set forth:

- (1) The questions of law to be answered; and
- (2) A statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**Judicial Council Note, 1982:** The certification order in the statement of facts should present all of the relevant facts. The purpose is to give the answering court a complete picture of the controversy so that the answer will not be given in a vacuum. The certifying court could include exhibits, excerpts from the record, summary of the facts found by the court, and any other document which will be of assistance to the answering court. [Re Order effective January 1, 1983]

**821.04 Preparation of certification order.** The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal. The supreme court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the supreme court, the record or portion thereof may be necessary in answering the questions.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.05 Costs of certification.** Fees and costs shall be the same as in civil appeals filed in the court of appeals and shall be

equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982); 1995 a. 224.

**821.06 Briefs and argument.** Proceedings in the supreme court shall be those provided in rules or statutes governing briefs and arguments.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.07 Opinion.** The written opinion of the supreme court stating the law governing the questions certified shall be sent by the clerk under the seal of the supreme court to the certifying court and to the parties.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.08 Power to certify.** The supreme court or the court of appeals of this state, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any state when it appears to the certifying court that there are involved in any proceeding before the court questions of law of the receiving state which may be determinative of the cause then pending in the certifying court and it appears to the certifying court that there are no controlling precedents in the decisions of the highest court or intermediate appellate courts of the receiving state.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**Judicial Council Note, 1982:** This section allows the appellate courts of this state to certify to the highest court of another state. This could prove to be very useful in the case of conflicts of laws where a Wisconsin court wishes to apply the law of another state. If that state's law is unclear on the point, a question could be certified. This is the reciprocal provision to the provisions of s. 821.01 governing certification of questions to the Wisconsin supreme court by the appellate courts of other states. [Re Order effective January 1, 1983]

**821.09 Procedure on certifying.** The procedures for certification from this state to the receiving state shall be those provided in the laws of the receiving state.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.10 Severability.** If any provision of this chapter or the application thereof to any person, court, or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.11 Construction.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).

**821.12 Short title.** This chapter may be cited as the "Uniform Certification of Questions of Law Rule."

**History:** Sup. Ct. Order, 107 Wis. 2d xiii (1982).