CHAPTER 801

CIVIL PROCEDURE — COMMENCEMENT OF ACTION AND VENUE

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NOTE: Chapter 801 was created by Sup. Ct. Order, 67 Wis. 2d 585 (1975), which contains explanatory notes. Statutes prior to the 1983−84 edition also contain these notes.

801.01 Kinds of proceedings; scope of chs. 801 to 847.

(1) KINDS. Proceedings in the courts are divided into actions and special proceedings. In chs. 801 to 847, "action" includes "special proceeding" unless a specific provision of procedure in special proceedings exists.

(2) SCOPE. Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where different procedure is prescribed by statute or rule. Chapters 801 to 847 shall be construed, administered, and employed by the court and the parties to secure the just, speedy and inexpensive determination of every action and proceeding.

(3) EFFECTIVE DATES. (a) Chapters 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

(b) Chapters 804 to 807 shall apply to all actions pending or commenced on or after January 1, 1976, except those actions in which trial has commenced prior to January 1, 1976, as to which the statutes and rules in effect prior to January 1, 1976, shall continue to apply.

(c) Amendments and repeals of sections outside of chs. 801 to 807 shall be effective as follows:

1. Amendments and repeals effected in order to conform with provisions in chs. 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

2. Amendments and repeals other than those effected in order to conform with provisions in chs. 801 to 803 shall take effect on January 1, 1976, as to all actions then pending or thereafter commenced, except as provided in par. (b).

History: Sup. Ct. Order, 67 Wis. 2d 585, 588 (1975); 1977 c. 449; 1979 c. 89; 1981 c. 390; 2015 a. 196; 2017 a. 235.

Chapters 801 to 847 apply to in rem actions under s. 161.555 [now s. 961.555] and under s. 801.07 may not be brought against an inanimate object as sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An "action" includes special proceedings such as probate. In Matter of Estate of Martz, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

The applicability of chs. 801 to 847 in civil actions is not determined by a "mere alleged incompatibility" of statutes. Without an explicit or implicit prescription by the statute of a "different procedure," chs. 801 to 847 are applicable in civil proceedings. State v. Brown, 215 Wis. 2d 716, 573 N.W.2d 884 (Ct. App. 1997), 96−1211.

Summary judgment procedure is inconsistent with, and unworkable in, ch. 345 forfeiture proceedings. State v. Schneck, 2002 WI App 239, 257 Wis. 2d 704, 652 N.W.2d 434, 02−0513.

Summary judgment is inapplicable in ch. 343 hearings. State v. Baratka, 2002 WI App 288, 258 Wis. 2d 342, 654 N.W.2d 875, 02−0770.

The new Wisconsin rules of civil procedure: Chapters 801−803. Clausen and Lowe. 59 MLR 1.

801.02 Commencement of action.

(1) A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

(2) A civil action in which only an in rem or quasi in rem judgment is sought is commenced as to any defendant when a summons and a complaint are filed with the court, provided service of an authenticated copy of the summons and of either the complaint or a notice of object of action under s. 801.12 is made upon the defendant under this chapter within 90 days after filing.

(3) The original summons and complaint shall be filed together. The authenticated copies shall be served together except:

(a) In actions in which a personal judgment is sought, if the summons is served by publication, only the summons need be published, but a copy of the complaint shall be mailed with a copy of the summons as required by s. 801.11, and;

(b) In actions in which only an in rem or quasi in rem judgment is sought, the summons may be accompanied by a notice of object of action pursuant to s. 801.12 in lieu of a copy of the complaint and, when the summons is served by publication, only the summons need be published, but a copy of the complaint or notice of object of action shall be mailed with the copy of the summons as required by s. 801.12.

(4) No service shall be made under sub. (3) until the action has been commenced in accordance with sub. (1) or (2).

(5) An action seeking a remedy available by certiorari, quo warranto, habeas corpus, mandamus or prohibition may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order. The order may specify a time period shorter than that allowed by s. 802.06 for filing an answer or other responsive pleading.

(6) Fees payable upon commencement of a civil action shall be paid to the clerk at the time of filing.

(7) (a) In this subsection:

1. "Correctional institution" means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A correctional institu-

tion includes a Type 1 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction.

2. "Prisoner" means any person who is incarcerated, imprisoned or otherwise detained in a correctional institution or who is arrested or otherwise detained by a law enforcement officer. "Prisoner" does not include any of the following:

a. A person committed under ch. 980.

b. A person bringing an action seeking relief from a judgment terminating parental rights.

c. A person bringing an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under s. 809.30, 809.40, 973.19, 974.06 or 974.07.

d. A person bringing an action under s. 809.50 seeking relief from an order or judgment not appealable as of right that was entered in a proceeding under ch. 980 or in a case specified under s. 809.30 or 809.40.

e. A person who is not serving a sentence for the conviction of a crime but who is detained, admitted or committed under ch. 51 or 55 or s. 971.14 (2) or (5).

3. "Prison or jail conditions" means any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.

(b) No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated, imprisoned or detained until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule or, in the case of prisoners not in the custody of the department of corrections, that the sheriff, superintendent or other keeper of a jail or house of correction has reduced to writing and provided reasonable notice of to the prisoners.

(bm) A prisoner commencing an action or special proceeding shall first comply with the provisions of s. 893.80 or 893.82 unless one of the following applies:

1. The prisoner is filing a petition for a common law writ of certiorari.

2. The prisoner is commencing an action seeking injunctive relief and the court finds that there is a substantial risk to the prisoner's health or safety.

(c) At the time of filing the initial pleading to commence an action or special proceeding, including a petition for a common law writ of certiorari, related to prison or jail conditions, a prisoner shall include, as part of the initial pleading, documentation showing that he or she has exhausted all available administrative remedies. The documentation shall include copies of all of the written materials that he or she provided to the administrative agency as part of the administrative proceeding and all of the written materials the administrative agency provided to him or her related to that administrative proceeding. The documentation shall also include all written materials included as part of any administrative appeal. The court shall deny a prisoner's request to proceed without the prepayment of fees and costs under s. 814.29 (1m) if the prisoner fails to comply with this paragraph or if the prisoner has failed to exhaust all available administrative remedies.

(d) If the prisoner seeks leave to proceed without giving security for costs or without the payment of any service or fee under s. 814.29, the court shall dismiss any action or special proceeding, including a petition for a common law writ of certiorari, commenced by any prisoner if that prisoner has, on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ of certiorari, that was dismissed by a state or federal court for any of the reasons listed in s. 802.05 (4) (b) 1. to 4. The court may permit a prisoner to commence the action or special proceeding, notwithstanding this paragraph, if the court determines that the prisoner is in imminent danger of serious physical injury.

History: Sup. Ct. Order, 67 Wis. 2d 585, 589 (1975); 1975 c. 218; 1981 c. 289, 317; 1995 a. 27; 1997 a. 133, 187; 2001 a. 16; Sup. Ct. Order No. 03−06A, 2005 WI 86, 280 Wis. 2d xiii; 2007 a. 20; 2015 a. 55.

Judicial Council Note, 1981: Sub. (1) is amended to allow an action seeking an extraordinary remedy to be commenced in the same manner as any other civil action. Sub. (5) allows the additional option of using an order to shorten the time for filing a response to the complaint in lieu of a summons. This option is for the emergency situation when the case may be moot before a response would be filed. The order serves the same purpose as the alternative writ and the order to show cause used to initiate the action under writ procedures. In all other matters of procedure, the rules of civil procedure govern to the extent applicable. Sub. (5) applies only to procedure in the circuit court. In seeking an extraordinary remedy in the supreme court or court of appeals, s. 809.51, stats., should be followed. [Bill 613−A]

Pursuant to sub. (5), a certiorari action may be commenced in three ways: 1) under sub. (1) by summons and complaint; 2) by service of an appropriate writ; or 3) by filing a complaint and serving it along with an order, in lieu of a summons, upon the defendant. Nickel River Investments v. LaCrosse Review Board, 156 Wis. 2d 429, 457 N.W.2d 333 (Ct. App 1990). See also Tobler v. Door County, 158 Wis. 2d 19, 461 N.W.2d 775 (1990).

The test to determine whether defects in summons and complaints are fatal is set forth. The trial court has jurisdiction if the error is technical and the complainant can show that the defendant was not prejudiced. When the error is fundamental, no jurisdiction may attach. American Family Mutual Insurance v. Royal Ins. Co. 167 Wis. 2d 524, 481 N.W.2d 629 (1992).

A summons that designated an attorney to receive the defendant's answer, but was signed by the plaintiff, was technically defective and did not deprive the court of personal jurisdiction. Dungan v. County of Pierce, 170 Wis. 2d 89, 486 N.W.2d 77 (Ct. App. 1992).

Sub. (1) applies to the service of amended complaints. Archambault v. A−C Product Liability Trust, 205 Wis. 2d 400, 556 N.W.2d 392 (Ct. App. 1996), 95−3266.

A summons served by publication under sub. (3) must be authenticated. When an authenticated copy of the summons was published, but an unauthenticated copy was mailed, together with authenticated copies of the original summons and complaint, there was a technical, but no fundamental, error. Burnett v. Hill, 207 Wis. 2d 110, 557 N.W.2d 800 (1997), 94−2011.

An inmate challenging the calculation of his mandatory release date is not seeking relief from a judgment of conviction or a sentence of a court, does not fall within sub. (7) (a) 2. c., and is therefore a "prisoner" within the meaning of sub. (7) who must comply with the requirements of that subsection. State ex rel. Stinson v. Morgan, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999), 98−2971.

For a document to be filed, it must be properly deposited with the clerk under s. 59.40 (2). "Properly" connotes complying with formality or correctness, but is not susceptible to exact definition. The delivery of papers to the clerk at his home after business hours was too far removed from legislative guidelines to be considered properly deposited. Granado v. Sentry Insurance, 228 Wis. 2d 794, 599 N.W.2d 62 (Ct. App. 1999), 98−3675.

The sub. (7) (d) dismissals rule does not apply when a prisoner has sufficient prison trust funds to pay the filing fee in full. A court order under s. 814.29 (1m) (d) is required to release the funds. State ex rel. Coleman v. Sullivan, 229 Wis. 2d 804, 601 N.W.2d 335 (Ct. App. 1999), 98−2599.

The definition of "correctional institution" in sub. (7) (a) 1. does not include an out−of−state county jail and therefore a Wisconsin inmate sent to such a jail is not a prisoner under sub. (7) (a) 2. State ex rel. Speener v. Gudmanson, 2000 WI App 78, 234 Wis. 2d 461, 610 N.W.2d 136, 99−0568.

Sub. (7) (d), as applied to the petitioner, did not violate the constitutional guarantees of access to the courts or equal protection. State ex rel. Khan v. Sullivan, 2000 WI App 109, 235 Wis. 2d 260, 613 N.W.2d 203, 99−2102.

A petitioner who seeks to overturn the revocation of probation by a writ of certiorari is a prisoner under sub. (7) (a) 2. A probation revocation is not analogous to a judgment of conviction or a sentence, and a writ of certiorari challenging revocation is not subject to the exclusion under sub. (7) (a) 2. c. State ex rel. Cramer v. Wisconsin Court of Appeals, 2000 WI 86, 236 Wis. 2d 473, 613 N.W.2d 591, 99−1089.

An appeal is not included in "any action or special proceeding" that is subject to dismissal under sub. (7) (d). State ex rel. Adell v. Smith, 2000 WI App 188, 238 Wis. 2d 655, 618 N.W.2d 208, 00−0070.

Sub. (7), 95−96 stats., did not apply to a petition for a writ of certiorari seeking judicial review of a probation revocation by the department of administration. State ex rel. Mentek v. Schwarz, 2001 WI 32, 242 Wis. 2d 94, 624 N.W.2d 150, 99−0182.

The requirement of exhaustion of administrative remedies under sub. (7) (b) is applicable to a case advancing a constitutional challenge. There is no common law futility exception. This section also controls over s. 227.40, which in some cases allows obtaining a declaratory judgment without exhausting all administrative remedies. State ex rel. Hensley v. Endicott, 2001 WI 105, 245 Wis. 2d 607, 629 N.W.2d 686, 00−0076.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over him as an individual. Useni v. Boudron, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02−1475.

Sub. (7) (d) plainly provides that a dismissal must be of an appeal, writ of error, action, or special proceeding to be counted as a dismissal, and a partial dismissal — i.e., the dismissal of a claim or claims from a suit that proceeds on one or more viable claims — is not the dismissal of an action. Thus, a partial dismissal cannot be counted as dismissal of an action under sub. (7) (d). Henderson v. Raemisch, 2010 WI App 114, 329 Wis. 2d 109, 790 N.W.2d 242, 09−1850.

When the complaint served on the defendant was unsigned, even though it was nonetheless authenticated by the clerk of courts, and the complaint on file with the trial court was signed, the filing of the signed summons and complaint properly commenced the lawsuit, and the authenticated copy served on the defendant gave the

defendant sufficient notice to that effect. Mahoney v. Menard Inc. 2011 WI App 128, 337 Wis. 2d 170, 805 N.W.2d 728, 10−1637.

A plaintiff need not demonstrate the existence of an emergency in order to initiate a certiorari action using the complaint and order method under sub. (5). Koenig v. Pierce County Department of Human Services, 2016 WI App 23, 367 Wis. 2d 633, 877 N.W.2d 632, 15−0410.

Under sub. (5), it is the filing of a complaint that matters for purposes of determining whether a certiorari action was commenced within the applicable time limitation, not the obtaining and serving of an order. Koenig v. Pierce County Department of Human Services, 2016 WI App 23, 367 Wis. 2d 633, 877 N.W.2d 632, 15−0410.

Timely Service Abroad in Diversity Suits. La Fave. Wis.Law. Nov. 2000.

801.03 Jurisdiction; definitions. In this chapter, the following words have the designated meanings:

(1) "Defendant" means the person named as defendant in a civil action, and where in this chapter acts of the defendant are referred to, the reference attributes to the defendant any person's acts for which acts the defendant is legally responsible. In determining for jurisdiction purposes the defendant's legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.

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

(3) "Plaintiff" means the person named as plaintiff in a civil action, and where in this chapter acts of the plaintiff are referred to, the reference attributes to the plaintiff the acts of an agent within the scope of the agent's authority.

History: Sup. Ct. Order, 67 Wis. 2d 585, 591 (1975); 1975 c. 218; 1983 a. 189.

Illegal aliens have the right to sue in Wisconsin for injuries negligently inflicted upon them. Arteaga v. Literski, 83 Wis. 2d 128, 265 N.W.2d 148 (1978).

801.04 Jurisdictional requirements for judgments against persons, status and things. (1) JURISDICTION OF SUBJECT MATTER REQUIRED FOR ALL CIVIL ACTIONS. A court of this state may entertain a civil action only when the court has power to hear the kind of action brought. The power of the court to hear the kind of action brought is called "jurisdiction of the subject matter". Jurisdiction of the subject matter is conferred by the constitution and statutes of this state and by statutes of the United States; it cannot be conferred by consent of the parties. Except as provided in s. 813.015, nothing in chs. 801 to 847 affects the subject matter jurisdiction of any court of this state.

(2) PERSONAL JURISDICTION. A court of this state having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in s. 801.05 or 801.06 and in addition either:

(a) A summons is served upon the person pursuant to s. 801.11; or

(b) Service of a summons is dispensed with under the conditions in s. 801.06.

(3) JURISDICTION IN REM OR QUASI IN REM. A court of this state having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other thing pursuant to s. 801.07 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 801.12 with a summons and complaint or notice of object of action as the case requires.

History: Sup. Ct. Order, 67 Wis. 2d 585, 591 (1975); 1979 c. 89; 2015 a. 4.

A court having jurisdiction may decline to exercise it if there are sufficient policy reasons to do so. Jones v. Jones, 54 Wis. 2d 41, 194 N.W.2d 627 (1972).

State courts, including small claims courts, have a constitutional obligation to hear and decide 42 USC s. 1983 cases whether or not the federal right asserted is pendent to a state claim. Terry v. Kolski, 78 Wis. 2d 475, 254 N.W.2d 704 (1977).

A prior adult proceeding that litigated the question of the respondent's age collaterally estopped the state from relitigating the same question in juvenile court. The juvenile court has subject matter jurisdiction of the case. In Interest of H.N.T. 125 Wis. 2d 242, 371 N.W.2d 395 (Ct. App. 1985).

Subject to limited exceptions, complainants in 42 USC 1983 actions need not exhaust administrative remedies prior to being brought in state court. Casteel v. Vaade, 167 Wis. 2d 1, 481 N.W.2d 277 (1992).

State court jurisdiction. 1978 WLR 533.

801.05 Personal jurisdiction, grounds for generally. A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances:

(1) LOCAL PRESENCE OR STATUS. In any action whether arising within or without this state, against a defendant who when the action is commenced:

(a) Is a natural person present within this state when served; or

(b) Is a natural person domiciled within this state; or

(c) Is a domestic corporation or limited liability company; or

(d) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

(2) SPECIAL JURISDICTION STATUTES. In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

(3) LOCAL ACT OR OMISSION. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

(4) LOCAL INJURY; FOREIGN ACT. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

(5) LOCAL SERVICES, GOODS OR CONTRACTS. In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

(c) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value; or

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction; or

(e) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

(6) LOCAL PROPERTY. In any action which arises out of:

(a) A promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state; or

(b) A claim to recover any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this state either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(c) A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this state at the time the defendant acquired possession or control over it.

(7) DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE. In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(a) In an action in this state to foreclose upon real property situated in this state; or

(b) Following sale of real property in this state by the plaintiff under ch. 846; or

(c) Following resale of tangible property in this state by the plaintiff under ch. 409.

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

(9) TAXES OR ASSESSMENTS. In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state after July 1, 1960.

(10) INSURANCE OR INSURERS. In any action which arises out of a promise made anywhere to the plaintiff or some 3rd party by the defendant to insure upon or against the happening of an event and in addition either:

(a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred; or

(b) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person insured resided.

(11) CERTAIN MARITAL ACTIONS. In addition to personal jurisdiction under sub. (1) and s. 801.06, in any action affecting the family, except for actions under ch. 769, in which a personal claim is asserted against the respondent commenced in the county in which the petitioner resides at the commencement of the action when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action and the respondent is served personally under s. 801.11. The effect of any determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under this chapter or has been notified under s. 822.08 as provided in s. 822.06.

(11m) CERTAIN RESTRAINING ORDERS OR INJUNCTIONS. (a) Subject to subch. II of ch. 822, and in addition to personal jurisdiction under sub. (1) and s. 801.06, in any action filed pursuant to s. 813.12, 813.122, 813.123, or 813.125, if any of the following apply:

1. Subject to par. (b), an act or threat of the respondent giving rise to the petition occurred outside the state and is part of an ongoing pattern of harassment that has an adverse effect on the petitioner or a member of the petitioner's family or household, and the petitioner resides in this state.

2. Subject to par. (b), the petitioner or a member of the petitioner's family or household has sought safety or protection in this state as a result of an act or threat of the respondent giving rise to the petition.

3. Personal jurisdiction is permissible under the constitution of the United States or of the state of Wisconsin.

(b) Paragraph (a) 1. or 2. applies if, while the petitioner or a member of the petitioner's family or household resides or is temporarily living in this state, the respondent has had direct or indirect communication with the petitioner or a member of the petitioner's family or household or if the respondent has indicated a threat to the physical health or safety of the petitioner or of a member of the petitioner's family or household. A communication or indication for the purpose of this paragraph includes communication through mail, telephone, electronic message or transmittal, and posting on an electronic communication site, web page, or other electronic medium. Communication on any electronic medium that is generally available to any individual residing in this state is sufficient to exercise jurisdiction under par. (a) 1. or 2.

(c) If a court has personal jurisdiction pursuant to par. (a) and a respondent has been served but does not appear or does not file a response or motion asserting the defense of lack of personal jurisdiction, the court shall hear the action. This paragraph does not limit the respondent's right to challenge personal jurisdiction on appeal.

(12) PERSONAL REPRESENTATIVE. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in subs. (2) to (11) would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

(13) JOINDER OF CLAIMS IN THE SAME ACTION. In any action brought in reliance upon jurisdictional grounds stated in subs. (2) to (11) there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

History: Sup. Ct. Order, 67 Wis. 2d 585, 592 (1975); 1975 c. 218; 1977 c. 105, 203, 418; 1979 c. 196; 1979 c. 352 s. 39; 1993 a. 112, 326, 486; 2005 a. 130; 2015 a. 4.

Jurisdiction over a foreign executor under sub. (12) cannot be based on substantial activities in Wisconsin under sub. (1) (d). Rauser v. Rauser, 47 Wis. 2d 295, 177 N.W.2d 115 (1970).

In an action against an Illinois corporate defendant and its officer alleging fraudulent advertising, the trial court possessed jurisdiction over the officer when the answer to the complaint admitted corporate advertising in newspapers circulated in Wisconsin, the contacting of Wisconsin residents responding to the advertisements, and the taking of earnest money deposits when testimony indicated that the defendant had participated in one such transaction in the state. State v. Advance Marketing Consultants, Inc. 66 Wis. 2d 706, 225 N.W.2d 887 (1975).

Wisconsin courts may issue in personam orders that may operate on out−of−state property. Dalton v. Meister, 71 Wis. 2d 504, 239 N.W.2d 9 (1976).

The trial court was entitled to consider the complaint and answer in determining whether the court had jurisdiction. Merco Distributing Corp. v. O & R Engines, Inc. 71 Wis. 2d 792, 239 N.W.2d 97 (1976).

A manufacturer having no dealers or distributors in Wisconsin was amenable to jurisdiction under sub. (4) by virtue of magazine advertisement solicitations and out−of−state sales to Wisconsin residents. Fields v. Playboy Club of Lake Geneva, Inc. 75 Wis. 2d 644, 250 N.W.2d 311 (1977).

Findings of the facts requisite for jurisdiction under sub. (4) (b) may properly be made by reasonable inference from facts proven in the record. Stevens v. White Motor Corp. 77 Wis. 2d 64, 252 N.W.2d 88 (1977).

Standards of the "long−arm" statute prima facie meet due process requirements. Schmitz v. Hunter Machinery Co. 89 Wis. 2d 388, 279 N.W.2d 172 (1979).

The burden of proof is on the plaintiff to establish jurisdiction under this section. Lincoln v. Seawright, 104 Wis. 2d 4, 310 N.W.2d 596 (1981).

Substantially higher "doing business" contacts under sub. (1) (d) are required when a nonresident plaintiff brings a foreign cause of action. Vermont Yogurt v. Blanke Baer Fruit & Flavor, 107 Wis. 2d 603, 321 N.W.2d 315 (Ct. App. 1982).

Sub. (11) provides 3 independent sources of personal jurisdiction that must be considered in the disjunctive. McAleavy v. McAleavy, 150 Wis. 2d 26, 440 N.W.2d 566 (1989).

Telephone calls received by a defendant do not, standing alone, constitute sufficient contact to establish a basis for personal jurisdiction. Dietrich v. Patients Compensation Board, 169 Wis. 2d 471, 485 N.W.2d 614 (Ct. App. 1992).

A non−resident corporate officer alleged to have committed fraud or misrepresentation is subject to Wisconsin jurisdiction only if some act or omission was committed in Wisconsin. Pavlic v. Woodrum, 169 Wis. 2d 585, 486 N.W.2d 533, (Ct. App. 1992).

The term "service activities" under sub. (4) (a) requires that a defendant be engaged in some type of regular ongoing or repetitive activities in Wisconsin. Two meetings does not constitute service activities carried on with in the state. Housing Horizons, LLC v. Alexander Company, Inc. 2000 WI App 9, 232 Wis. 2d 178, 606 N.W.2d 263, 98−3635.

"Process" in sub. (4) (b) means subjecting something to a particular system of handling to effect a particular result and preparing something for market or other commercial use by subjecting it to a process. Kopke v. A. Hartrodt S.R.L. 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662, 99−3144.

A stream of commerce theory that it is not unreasonable to subject a nonresident manufacturer or distributor to suit if the sale of a product is not simply an isolated occurrence but arises from efforts to serve, directly or indirectly, the market for the product in the state, is applicable in determining whether sufficient minimum contacts exist for jurisdiction to be found. Kopke v. A. Hartrodt S.R.L. 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662, 99−3144.

Every personal jurisdiction issue requires a 2−step inquiry. It must first be determined whether defendants are subject to jurisdiction under Wisconsin's long−arm statute. If the statutory requirements are satisfied, then the court must consider whether the exercise of jurisdiction comports with due process requirements. Kopke v. A. Hardtrodt S.R.L., 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662, 99−3144.

Sub. (1) (d) may be a basis for personal jurisdiction over a respondent in a divorce and is not restricted to business or employment related activities. Bushelman v. Bushelman, 2001 WI App 124, 246 Wis. 2d 317, 629 N.W.2d 795, 00−0670.

The presumption of compliance with due process arising from this section may be rebutted by a defendant. There is a 5−factor test to analyze the substantiality of the defendant's contacts for due process purposes: the quantity, nature, and quality of the contacts, the source of the cause of action and its connection with those contacts, the interest of the state in the action, and convenience to the parties. Bushelman v. Bushelman, 2001 WI App 124, 246 Wis. 2d 317, 629 N.W.2d 795, 00−0670.

If a person is induced by false representations to come within the jurisdiction of a court for the purpose of obtaining service of process upon him or her, it is an abuse of legal process, and the service will be set aside. Service on a person who enters the state to engage in settlement talks will not be set aside in the absence of an agreement that service will not be attempted. Manitowoc Western Company, Inc. v. Montonen, 2002 WI 21, 250 Wis. 2d 452, 639 N.W.2d 726, 00−0420.

Traditional personal jurisdiction is not required in child custody proceedings. Child custody proceedings under ch. 822 are valid even in the absence of minimum contacts over an out−of−state parent. Section 801.05 (11) provides sufficient due process protection to out−of−state parents based on notice and an opportunity to be heard. Tammie J. C. v. Robert T. R. 2003 WI 61, 262 Wis. 2d 217, 663 N.W.2d 734, 01−2787.

In analyzing the quality of a defendant's contacts within the state, personal visits are the highest quality of contact. The next highest quality of contact is personal contact of another type. Druschel v. Cloeren, 2006 WI App 190, 295 Wis. 2d 858, 723 N.W. 2d 430, 05−2575.

Minimum contacts require the defendant's conduct and connection with the forum state are such that he or she should reasonably anticipate being haled into court there. The concept that the contacts of an individual, made as an agent of a business, do not count toward the minimum contacts required for personal jurisdiction, commonly referred to as the fiduciary shield doctrine, has not been adopted in Wisconsin. Druschel v. Cloeren, 2006 WI App 190, 295 Wis. 2d 858, 723 N.W. 2d 430, 05−2575.

The constitutional touchstone of long−arm jurisdiction is whether a defendant purposefully availed itself of the privilege of conducting activities within the forum state. If the defendant's efforts are purposefully directed toward another state's resident, jurisdiction may not be avoided merely because he or she did not physically enter the forum state. A substantial amount of business is transacted solely by mail and wire communications across state lines, making physical presence unnecessary. Stayart v. Hance, 2007 WI App 204, 747 N.W. 2d 149, 06−1418.

Sub. (1) (d) plainly requires the circuit court to analyze a defendant's contacts at the time the action is commenced. It was error for the circuit court to analyze the defendant's contacts preceding the commencement of the action. FL Hunts, LLC v. Wheeler, 2010 WI App 10, 322 Wis. 2d 738, 780 N.W.2d 529, 08−2506.

Courts consider 5 factors when analyzing whether a defendant has substantial contacts under sub. (1) (d): 1) the quantity of the contacts; 2) the quality of the contacts; 3) the source of the contacts and their connection with the cause of action; 4) the state's interest; and 5) the convenience of the parties. FL Hunts, LLC v. Wheeler, 2010 WI App 10, 322 Wis. 2d 738, 780 N.W.2d 529, 08−2506.

To determine whether an action relates to goods shipped from this state in a breach of contract action under sub. (5) (d), the court analyzes the contract's provisions and the complaint's allegations. Jurisdiction was not appropriate under sub. (5) (d) in this case because the action did not relate to the equipment the plaintiff provided the defendant. This case involved an employment contract, and not a sales contract, that made only one passing reference to equipment and lacked provisions traditionally included in sales contracts. FL Hunts, LLC v. Wheeler, 2010 WI App 10, 322 Wis. 2d 738, 780 N.W.2d 529, 08−2506.

Absent control by a parent corporation sufficient to cause a court to disregard the separate corporate identities of the parent and a subsidiary corporation, the activities of the subsidiary are insufficient to subject its nonresident parent corporation to general personal jurisdiction under sub. (1) (d). In assessing corporate separateness, Wisconsin courts have focused most directly on the amount of control that one corporation exercises or has the right to exercise over the other; whether both corporations employ independent decision−making; whether corporate formalities are observed; whether the corporations operate as one corporation; and whether observing the corporate separateness facilitates fraud. Rasmussen v. General Motors Corporation, 2011 WI 52, 335 Wis. 2d 1, 803 N.W.2d 623, 07−0035.

The meaning of "to the defendant" in sub. (5) (d) includes shipping goods from Wisconsin to third parties at the defendant's order or direction. Johnson Litho Graphics of Eau Claire, Ltd. v. James M. Sarver, 2012 WI App 107, 344 Wis. 2d 374, 824 N.W.2d 127, 10−1441.

Two questions govern whether the exercise of personal jurisdiction comports with due process: 1) whether the defendant purposefully established minimum contacts in Wisconsin; and 2) if so, whether the defendant's contacts in Wisconsin comport with notions of fair play and substantial justice, in light of relevant factors. The plaintiff carries the initial burden of showing that the defendant purposefully established minimum contacts with the state, and, if so, the burden then shifts to that the defendant to present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Johnson Litho Graphics of Eau Claire, Ltd. v. James M. Sarver, 2012 WI App 107, 344 Wis. 2d 374, 824 N.W.2d 127, 10−1441.

To make the determination of fair play and substantial justice under the due process analysis, the court considers five factors: 1) the forum state's interest in adjudicating the dispute; 2) the plaintiff's interest in obtaining convenient and effective relief; 3) the burden on the defendant; 4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and, 5) the shared interest of the several states in furthering fundamental substantive social policies. When there is a strong showing that the nonresident defendant purposefully availed itself of the benefits and protections of Wisconsin law, a lower showing of fairness suffices to permit personal jurisdiction. Johnson Litho Graphics of Eau Claire, Ltd. v. James M. Sarver, 2012 WI App 107, 344 Wis. 2d 374, 824 N.W.2d 127, 10−1441.

The defendant did not purposefully establish minimum contacts in Wisconsin so as to permit the circuit court to exercise personal jurisdiction over it under the facts of this case. Defendant's advertisements on its own website and third−party sites represented merely potential contacts with the state of Wisconsin. The facts did not suggest that the defendant targeted Wisconsin residents with its Internet advertisements any more than any other state's residents and the advertisements were accessible to everyone regardless of location. Carlson v. Fidelity Motor Group, LLC, 2015 WI App 16, 360 Wis. 2d 369, 860 N.W.2d 299, 14−0695.

An article published online is "processed" within the meaning of sub. (4) (b). The broad definition of "process" adopted by the supreme court in *Kopke*, 2001 WI 99, is broad enough to embrace the newspaper's process of preparing and arranging news and blank spaces for advertising content for the market and subjecting it to information processing so that users in Wisconsin can access articles placed on its website. Salfinger v. Fairfax Media Limited, 2016 WI App 17, 367 Wis. 2d 311, 876 N.W.2d 160, 15−0150.

The relationship between the defendant and the forum state must arise out of contacts that the defendant himself or herself creates with the forum state. The U.S. Supreme Court has consistently rejected attempts to satisfy the defendant−focused minimum contacts inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum state. The minimum contacts' analysis looks to the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there. Salfinger v. Fairfax Media Limited, 2016 WI App 17, 367 Wis. 2d 311, 876 N.W.2d 160, 15−0150.

A Wisconsin court may not exercise jurisdiction over a foreign defendant whose only real connection to Wisconsin is in having published an article online that is ostensibly available to anyone in the world and that also provides for targeted advertising based upon the user's location and interests. Salfinger v. Fairfax Media Limited, 2016 WI App 17, 367 Wis. 2d 311, 876 N.W.2d 160, 15−0150.

A father's acquiescence in his daughter's desire to live with her mother in California did not confer jurisdiction over the father in California courts. Kulko v. California Superior Court, 436 U.S. 84 (1978).

A state may not exercise quasi in rem jurisdiction over a defendant having no forum contacts by attacking a contractual obligation of the defendant's insurer licensed in the state. Rush v. Savchuk, 444 U.S. 320 (1980).

When an accident involving only Wisconsin residents occurred in Wisconsin, the fact that the decedent had been employed in Minnesota conferred jurisdiction on the Minnesota courts and Minnesota insurance law was applicable. Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981).

Foreign subsidiaries of a United States parent corporation are not amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum state. Goodyear Dunlop Tires Operations, S. A. v. Brown, 564 U.S. 7, 131 S. Ct. 858, 178 L. Ed. 2d 621 (2011).

When an out−of−state defendant placed an order in Wisconsin, but conducted no other activities in the state, the minimum contacts test was not satisfied. Lakeside Bridge & Steel v. Mountain State Const. 597 F.2d 596 (1979).

A New York corporation was subject to the long−arm statute when agents of the corporation made 2 visits to the state in connection with business on which the claim was based. Wisconsin Electrical Manufacturing Co., Inc. v. Pennant Products, 619 F.2d 676 (1980).

The Wisconsin circuit court had exclusive jurisdiction over trust assets in Illinois, making removal to Wisconsin federal district court improper. Norton v. Bridges, 712 F.2d 1156 (1983).

"Processed" under sub. (4) (b) included a distributor's purchase and sale of goods in the normal course of distribution of those goods. Nelson By Carson v. Park Industries, Inc. 717 F.2d 1120 (1983).

A buyer's inspection of goods before shipment from the state was sufficient contact for jurisdiction. Afram Export Corp. v. Metallurgiki Halyps, S.A. 772 F.2d 1358 (1985).

An act or omission occurring outside the state with consequences in the state does not fit the tort provisions of sub. (3). Services within the state under sub. (5) do not include the purchase of insurance from a state company. Federated Rural Electric Ins. v. Inland Power & Light, 18 F.3d 389 (1994).

Jurisdiction in an action for misrepresentation in the sale of a boat did not exist when the only contact was that the boat would be operated partly in Wisconsin and that the seller wrote a letter to the Wisconsin buyer confirming the already existing contract. McCalla v. A. J. Industries, Inc. 352 F. Supp. 544 (1973).

The fact that a Virginia corporation was a distributor for a Wisconsin corporation in Virginia is not enough to justify an action in Wisconsin. Watral v. Murphy Diesel Co. 358 F. Supp. 968 (1973).

A Texas company that ordered a turbine from a Wisconsin manufacturer and sent representatives to Wisconsin twice was subject to Wisconsin jurisdiction. Nordberg Division, Rex Chainbelt, Inc. v. Hudson Engineering Corp. 361 F. Supp. 903 (1973).

An action for injuries sustained by the plaintiff while using a machine manufactured by the defendant in France and sold to the plaintiff's employer was an action for personal injury based on breach of warranty and strict liability under subs. (4) and (5) (c). Davis v. Mercier−Freres, 368 F. Supp. 498 (1973).

Service upon a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. Chilcote v. Shertzer, 372 F. Supp. 86 (1974).

The court had jurisdiction over an insurer under sub. (1) (d) based on settlement negotiations conducted by an adjuster, and the insurer was estopped from asserting its no−action clause. Kirchen v. Orth, 390 F. Supp. 313 (1975).

The court had in−personam jurisdiction by virtue of sub. (5) (b) and (e) when the defendant made initial contact with the plaintiff, sent its president to Milwaukee to solicit the plaintiff's participation in the transaction, delivered documentation of title to the subject property to the plaintiff in Milwaukee, accepted payment in Milwaukee, and executed a lease agreement in Milwaukee. Ridge Leasing Corp. v. Monarch Royalty, Inc. 392 F. Supp. 573 (1975).

To determine whether a particular nonresident is "doing business" within this state, the court must consider the party's overall activities within the state, past and present, not at some fixed point in time. Modern Cycle Sales, Inc. v. Burkhardt−Larson Co. 395 F. Supp. 587 (1975).

Actions of out−of−state police officials in continuously soliciting the plaintiff's arrest by a "fugitive from justice notice" entered into an FBI computer data base, representing to Wisconsin authorities that extradition was desired and requesting that the

plaintiff be arrested was sufficient minimum contact with Wisconsin to permit the exercise of personal jurisdiction. Maney v. Ratcliff, 399 F. Supp. 760 (1975).

Infrequent use of Wisconsin roads by an Idaho trucking corporation did not constitute "continuous and systematic" activity necessary to confer jurisdiction under this section. Ladwig v. Trucks Ins. Exch. 498 F. Supp. 161 (1980).

A foreign corporation is not subject to jurisdiction in Wisconsin when the sole basis for assertion of jurisdiction was unilateral activity of the resident plaintiff. Jadair, Inc. v. Walt Keeler Co., Inc. 508 F. Supp. 879 (1981).

In applying the test under sub. (1) (d), the court looks to the defendant's general contacts with the forum state, not merely its contacts arising out of the specific transaction at issue. Jadair v. Van Lott, Inc. 512 F. Supp. 1141 (1981).

The defendant's attorney's delivery of checks in the state was insufficient contact to confer jurisdiction under this section. Sed, Inc. v. Bohager/Goodhues, Inc. 538 F. Supp. 196 (1982).

Contracts for services and contracts for goods are distinguished. L.B. Sales Corp. v. Dial Mfg., Inc. 593 F. Supp. 290 (1984).

A single sale in the state was insufficient contact to confer personal jurisdiction. Uni−Bond, LTD. v. Schultz, 607 F. Supp. 1361 (1985).

A parent−subsidiary relationship is sufficient to confer jurisdiction over the parent for long−arm purposes so long as the subsidiary carries on sufficient activities in the state. Hayeland v. Jaques, 847 F. Supp 630 (1994).

This section is intended to reach to the fullest extent allowed under the due process clause. Farby Glove & Mitten Co. v. Spitzer, 908 F. Supp. 625 (1995).

Foreseeability that the defendant's actions in one state may cause injury in Wisconsin does not amount to causing a local act. The consequences of an act alone do not establish jurisdiction over the defendant under sub. (3). Nelson v. Bulso, 979 F. Supp 1239 (1997).

In order for solicitation activities to trigger personal jurisdiction the solicitor must anticipate receiving a financial benefit from the activity. Knot Just Beads v. Knot Just Beads, Inc. 217 F. Supp. 2d 932 (2002).

The fiduciary shield doctrine, which denies personal jurisdiction over an individual whose presence and activity in a state were solely on behalf of an employer or other principal, was not found to be a part of Wisconsin law. Norkol/Fibercore, Inc. v. Grubb, 279 F.3d 993 (2003).

The 14th Amendment limits the personal jurisdiction of state courts. Because a state court's assertion of jurisdiction exposes defendants to the state's coercive power, it is subject to review for compatibility with the 14th Amendment's due process clause, which limits the power of a state court to render a valid personal judgment against a nonresident defendant. Specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction. For specific jurisdiction, a defendant's general connections with the forum are not enough. A specific connection between the forum and specific claims at issue is required. Bristol−Myers Squibb Co. v. Superior Court of California, San Francisco County, 582 U.S. ___, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017).

The state may not assert quasi in rem jurisdiction over an insurance company's contractual obligations to defend and indemnify its insured. 64 MLR 374 (1980).

Stacking the deck: Wisconsin's application of Leflar's choice−influencing considerations to torts choice−of−law cases. White. 1985 WLR 401.

Wisconsin's 'Stream of Commerce' Theory of Personal Jurisdiction. La Fave. Wis. Law. Nov. 2002.

801.06 Personal jurisdiction, grounds for without service of summons. A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a person, exercise jurisdiction in an action over a person with respect to any counterclaim asserted against that person in an action which the person has commenced in this state and also over any person who appears in the action and waives the defense of lack of jurisdiction over his or her person as provided in s. 802.06 (8). An appearance to contest the basis for in rem or quasi in rem jurisdiction under s. 802.06 (2) (a) 3. without seeking any other relief does not constitute an appearance within the meaning of this section.

History: Sup. Ct. Order, 67 Wis. 2d 585, 596 (1975); 1975 c. 218; 1993 a. 213.

801.07 Jurisdiction in rem or quasi in rem, grounds for generally. A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to s. 801.12. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

(1) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply when any such defendant is unknown.

(2) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real estate within this state.

(3) When the defendant has property within this state which has been attached or has a debtor within the state who has been garnisheed. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subs. (1) and (2).

(4) When the action is to declare property within this state a public nuisance.

(5) When the action is an action affecting the family under s. 767.001 (1) (a) to (d) and when the residence requirements of s. 767.301 have been met, a court having subject matter jurisdiction may exercise jurisdiction quasi in rem to determine questions of status if the respondent has been served under s. 801.11 (1). Notwithstanding s. 801.11 (intro.), the court need not have grounds for personal jurisdiction under s. 801.05 in order to make a determination of the status of a marriage under this subsection.

History: Sup. Ct. Order, 67 Wis. 2d 585, 597 (1975), 758; 1977 c. 418; 1979 c. 32 s. 92 (4); 1979 c. 352 s. 39; 1993 a. 213; 2001 a. 42; 2005 a. 443, s. 265.

This section requires that in rem actions under s. 161.555 [now s. 961.555] must be commenced against a person having an interest in property seized under s. 161.55 [now s. 961.55]. State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

For quasi in rem jurisdiction under sub. (5), minimum contacts between the defendant and the state are necessary. Mendez v. Hernandez−Mendez, 213 Wis. 2d 217, 570 N.W.2d 563 (Ct. App. 1997), 96−1731.

Sub. (3) applies when a settlement offer is made at least 20 days before trial. When a dispute is resolved by arbitration there is no trial and sub. (3) does not apply. Lane v. Williams, 2000 WI App 263, 240 Wis. 2d 255, 621 N.W.2d 922, 00−0852.

It is apparent that the legislature intended to empower the courts with the authority to determine the status of a marriage even if personal jurisdiction over one of the parties is lacking. In adding the final sentence of sub. (5), the legislature chose not to remove the requirement of personal jurisdiction for determinations involving other property or status subject to jurisdiction under this section. Had the legislature intended to remove the requirement of personal jurisdiction for divorce decisions involving property, it could have written the amendment more expansively. Montalvo v. U.S. Title and Closing Services, LLC, 2013 WI App 8, 345 Wis. 2d 653, 827 N.W.2d 635, 12−0102.

The minimum contacts standard for quasi in rem jurisdiction is discussed. Shaffer v. Heitner, 433 U.S. 186 (1977).

Posting a notice of eviction on an apartment door did not satisfy minimum requirements of due process. Greene v. Lindsey, 456 U.S. 444 (1982).

801.08 Objection to personal jurisdiction. (1) All issues of fact and law raised by an objection to the court's jurisdiction over the person or property as provided by s. 802.06 (2) shall be heard by the court without a jury in advance of any issue going to the merits of the case. If, after such a hearing on the objection, the court decides that it has jurisdiction, the case may proceed on the merits; if the court decides that it lacks jurisdiction, the defendant shall be given the relief required by such decision.

(2) Factual determinations made by the court in determining the question of personal jurisdiction over the defendant shall not be binding on the parties in the trial of the action on the merits.

(3) No guardian or guardian ad litem may, except as provided in this subsection, waive objection to jurisdiction over the person of the ward. If no objection to the jurisdiction of the court over the person of the ward is raised pursuant to s. 802.06 (2), the service of an answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be equivalent to an appearance and waiver of the defense of lack of jurisdiction over the person of the ward.

History: Sup. Ct. Order, 67 Wis. 2d 585, 598 (1975); 1979 c. 110 s. 60 (7); Sup. Ct. Order, 101 Wis. 2d xi.

Judicial Council Note, 1981: The last sentence of sub. (1) has been repealed because it erroneously implied that non−final orders deciding jurisdictional questions were appealable as of right. This has not been true since ch. 187, Laws of 1977 repealed s. 817.33 (3) (f), Wis. Stats. (1975) and created s. 808.03 (1), Wis. Stats. (1977). Heaton v. Independent Mortuary Corp. 97 Wis. 2d 379, 294 N.W.2d 15 (1980). [Re Order effective July 1, 1981]

A jurisdiction dispute may not be resolved on motion. Merco Distributing Corp. v. O & R Engines, Inc. 71 Wis. 2d 792, 239 N.W.2d 97 (1976).

An order denying a motion to dismiss for lack of personal jurisdiction is appealable by permission under s. 808.03 (2). Heaton v. Independent Mortuary Corp. 97 Wis. 2d 379, 294 N.W.2d 15 (1980).

An order denying a motion to dismiss based on jurisdiction under s. 801.08 (1) is not a final order and is not appealable as of right under s. 808.03 (1). Grulkowski v. DOT 97 Wis. 2d 615, 294 N.W.2d 43 (Ct. App. 1980).

The trial court erred in denying plaintiff's request for an evidentiary hearing. The plaintiff has no burden to prove jurisdictional facts prior to a hearing. Henderson v. Milex Products, Inc. 125 Wis. 2d 141, 370 N.W.2d 291 (Ct. App. 1985).

Conducting pretrial discovery does not constitute "going to the merits of the case" under sub. (1) and does not waive an objection raised under s. 802.06 (2). Honeycrest Farms v. Brave Harvestore Systems, 200 Wis. 2d 256, 546 N.W.2d 192 (Ct. App. 1996), 95−1789.

801.09 Summons, contents of. The summons shall contain:

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, the standardized description of the case classification type and associated code number as approved by the director of state courts and the names and addresses of the parties to the action, plaintiff and defendant.

(2) A direction to the defendant summoning and requiring defendant to serve upon the plaintiff's attorney, whose address shall be stated in the summons, either an answer to the complaint if a copy of the complaint is served with the summons or a demand for a copy of the complaint. The summons shall further direct the defendant to serve the answer or demand for a copy of the complaint within the following periods:

(a) 1. Except as provided in subds. 2. and 3., within 20 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for the defendant.

2. If the defendant is the state or an officer, agent, employee, or agency of the state, as to that defendant, within 45 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for the defendant.

3. Within 45 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for the defendant, if any of the following applies:

a. A defendant in the action is an insurance company.

b. Any cause of action raised in the complaint is founded in tort.

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

(3) A notice that in case of failure to serve an answer or demand for a copy of the complaint within the time fixed by sub. (2), judgment will be rendered against the defendant according to the demand of the complaint. The summons shall be subscribed with the handwritten signature of the plaintiff or attorney with the addition of the post−office address at which papers in the action may be served on the plaintiff by mail, plaintiff's or attorney's telephone number, and, if by an attorney, the attorney's state bar number, if any. If the plaintiff is represented by a law firm, the summons shall contain the name and address of the firm and shall be subscribed with the handwritten signature and state bar number, if any, of one attorney who is a member or associate of such firm. When the complaint is not served with the summons and the only relief sought is the recovery of money, whether upon tort or contract, there may, at the option of the plaintiff, be added at the foot a brief note specifying the sum to be demanded by the complaint.

(4) There may be as many authenticated copies of the summons and the complaint issued to the plaintiff or counsel as are needed for the purpose of effecting service on the defendant. Authentication shall be accomplished by the clerk's placing a filing stamp indicating the case number on each copy of the summons and the complaint.

History: Sup. Ct. Order, 67 Wis. 2d 585, 598 (1975); Sup. Ct. Order, 67 Wis. 2d viii; 1975 c. 218; Sup. Ct. Order, 112 Wis. 2d xi; Sup. Ct. Order, 171 Wis. 2d xxv; 1993 a. 365, 486; 1997 a. 133, 187; 2001 a. 16; 2005 a. 442.

Cross−reference: See s. 802.06 (1) for provision giving the state 45 days to serve an answer.

Judicial Council Note, 1983: Sub. (2) (a) is amended by applying the extended response time for state officers and agencies to state agents and employees as well. The extended time is intended to allow investigation of the claim by the department of justice to determine whether representation of the defendant by the department is warranted under s. 893.82 or 895.46, Stats. [Re Order effective July 1, 1983]

When a defective summons does not prejudice the defendant, non−compliance with sub. (2) (a) is not jurisdictional error. Canadian Pacific Ltd. v. Omark−Prentice Hydraulics, 86 Wis. 2d 369, 272 N.W.2d 407 (Ct. App. 1978).

Failure to name a party in the summons means that the court has no authority over that party regarding the case. Prejudice need not be shown. Bulik v. Arrow Realty, Inc., 148 Wis. 2d 441, 434 N.W.2d 853 (Ct. App. 1988).

An unsigned summons served with a signed complaint is a technical defect, which in the absence of prejudice does not deny the trial court personal jurisdiction. Gaddis v. LaCrosse Products, Inc. 198 Wis. 2d 396, 542 N.W.2d 454 (1996), 94−2121.

A stamped reproduction of a signature does not satisfy sub. (3), and correcting the signature a year after receiving notice of the defect is not timely under s. 802.05 (1) (a), 1999 stats. The error must be promptly corrected or else the certification statute and the protection it was intended to afford is rendered meaningless. Novak v. Phillips, 2001 WI App 156, 246 Wis. 2d 673, 631 N.W.2d 635, 00−2416. See also Schaefer v. Riegelman, 2002 WI 18, 250 Wis. 2d 494, 639 N.W.2d N.W.2d 715, 00−2157, reversing the holding of *Novak* that the error was technical and not fundamental.

A summons and complaint signed by an attorney not licensed in the state contained a fundamental defect that deprived the circuit court of jurisdiction even though the signature was made on behalf and at the direction of a licensed attorney. Schaefer v. Riegelman, 2002 WI 18, 250 Wis. 2d 494, 639 N.W.2d N.W.2d 715, 00−2157.

Default judgment entered immediately after the trial court permitted amendment of the pleadings to correct the defendant's name was void because the original summons and complaint named the wrong corporate entity, the defendant's parent. The general rule is that if a misnomer or misdescription does not leave in doubt the identity of the party intended to be sued, or, even when there is room for doubt as to identity, if service of process is made on the party intended to be sued, the misnomer or misdescription may be corrected by amendment at any stage of the suit, and a judgment taken by default is enforceable. However, if the amendment is to bring in a new party, it will be refused. Johnson v. Cintas Corporation, 2011 WI App 5, 331 Wis. 2d 51, 794 N.W.2d 475, 09−2549.

A wholly owned subsidiary of a corporation is a legal entity that exists independently of the parent. The failure to name the subsidiary in a summons and complaint when the subsidiary was the correct party constituted a fundamental defect that precluded the circuit court of personal jurisdiction over the subsidiary, regardless of whether or not the defect prejudiced the subsidiary. It is irrelevant that the summons and complaint was served upon the registered agent for the subsidiary and the subsidiary might have had knowledge that it was meant to be a party. Johnson v. Cintas Corporation, 2011 WI App 5, 331 Wis. 2d 51, 794 N.W.2d 475, 09−2549.

801.095 Summons form. The summons shall be substantially in one of the forms specified in subs. (1) to (4). The applicable form depends on the type of service and on whether a complaint is served with the summons, in accordance with s. 801.09. The forms are:

(1) PERSONAL SERVICE; COMPLAINT ATTACHED.

STATE OF WISCONSIN CIRCUIT COURT: .... COUNTY

A. B.

Address

City, State Zip Code File No. ....

, Plaintiff

vs. S U M M O N S

C. D.

Address .... (Case Classification Type): .... (Code No.)

City, State Zip Code

, Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within (20) (45) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose

address is ...., and to ...., Plaintiff's attorney, whose address is ..... You may have an attorney help or represent you.

If you do not provide a proper answer within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: ...., ... (year)

Signed: ....
A. B., Plaintiff
or
E. F., Plaintiff's Attorney
State Bar No.: ....
Address: ....
City, State Zip Code: ....
Phone No: ....

(2) PERSONAL SERVICE; NO COMPLAINT ATTACHED.

STATE OF WISCONSIN CIRCUIT COURT: .... COUNTY

A. B.
Address
City, State Zip Code File No. ....
, Plaintiff

vs. S U M M O N S

C. D.
Address .... (Case Classification Type): .... (Code No.)
City, State Zip Code
, Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you.

Within (20) (45) days of receiving this summons, you must respond with a written demand for a copy of the complaint. The demand must be sent or delivered to the court, whose address is ...., and to ...., Plaintiff's attorney, whose address is ..... You may have an attorney help or represent you.

If you do not demand a copy of the complaint within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: ...., ... (year)

Signed: ....
A. B., Plaintiff
or
E. F., Plaintiff's Attorney
State Bar No.: ....
Address: ....
City, State Zip Code: ....
Phone No.: ....

(3) NO PERSONAL SERVICE; COMPLAINT SERVED AT THE SAME TIME.

STATE OF WISCONSIN CIRCUIT COURT: .... COUNTY

A. B.
Address
City, State Zip Code File No. ....
, Plaintiff

vs. S U M M O N S

C. D.
Address .... (Case Classification Type): .... (Code No.)
City, State Zip Code
, Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is also served upon you, states the nature and basis of the legal action.

Within 40 days after ...., ... (year), you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is ...., and to ...., Plaintiff's attorney, whose address is ..... You may have an attorney help or represent you.

If you do not provide a proper answer within 40 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: ...., ... (year)

Signed: ....
A. B., Plaintiff
or
E. F., Plaintiff's Attorney
State Bar No.: ....
Address: ....
City, State Zip Code: ....
Phone No: ....

(4) NO PERSONAL SERVICE; COMPLAINT NOT SERVED AT THE SAME TIME.

STATE OF WISCONSIN CIRCUIT COURT: .... COUNTY

A. B.
Address
City, State Zip Code File No. ....
, Plaintiff

vs. S U M M O N S

C. D.
Address .... (Case Classification Type): .... (Code No.)
City, State Zip Code
, Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you.

Within 40 days after ...., ... (year), you must respond with a written demand for a copy of the complaint. The demand must be sent or delivered to the court, whose address is ...., and to ...., Plaintiff's attorney, whose address is ..... You may have an attorney help or represent you.

If you do not demand a copy of the complaint within 40 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: ...., ... (year)

Signed: ....

A. B., Plaintiff
or
E. F., Plaintiff's Attorney
State Bar No.: ....
Address: ....
City, State Zip Code: ....
Phone No: ....

History: 1983 a. 323; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 187, 250; 1999 a. 32, 186; 2001 a. 16; 2005 a. 442.

801.10 Summons, by whom served. (1) WHO MAY SERVE. An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

(1m) SERVICE BY CERTAIN NONRESIDENTS. Notwithstanding sub. (1), an adult who is not a party to the action and who resides in Illinois, Iowa, Michigan, or Minnesota may serve an authenticated copy of the summons in this state.

(2) ENDORSEMENT. At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server's official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

(3) PROOF OF SERVICE. The person making service shall make and deliver proof of service to the person on whose behalf service was made who shall promptly file such proof of service. Failure to make, deliver, or file proof of service shall not affect the validity of the service.

(4) PROOF IF SERVICE CHALLENGED. If the defendant appears in the action and challenges the service of summons upon the defendant, proof of service shall be as follows:

(a) Personal or substituted personal service shall be proved by the affidavit of the server indicating the time and date, place and manner of service; that the server is an adult resident of the state of service or, if service is made in this state, an adult resident of this state or of Illinois, Iowa, Michigan, or Minnesota and is not a party to the action; that the server knew the person served to be the defendant named in the summons; and that the server delivered to and left with the defendant an authenticated copy of the summons. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom the copy was left, and shall state such facts as show reasonable diligence in attempting to effect personal service on the defendant. If the copy of the summons is served by a sheriff or deputy sheriff of the county in this state where the defendant was found, proof may be by the sheriff's or deputy's certificate of service indicating time and date, place, manner of service and, if the defendant is not personally served, the information required in the preceding sentence. The affidavit or certificate constituting proof of service under this paragraph may be made on an authenticated copy of the summons or as a separate document.

(b) Service by publication shall be proved by the affidavit of the publisher or printer, or the foreman or principal clerk, stating that the summons was published and specifying the date of each insertion, and by an affidavit of mailing of an authenticated copy of the summons, with the complaint or notice of the object of the action, as the case may require, made by the person who mailed the same.

(c) The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

History: Sup. Ct. Order, 67 Wis. 2d 585, 600 (1975); 1975 c. 218; Sup. Ct. Order, 92 Wis. 2d xiii (1979); 2005 a. 439.

Judicial Council Committee's Note, 1979: Sub. (2) is amended to clarify that the individual who serves the summons on behalf of the plaintiff under the procedures in the Wisconsin Rules of Civil Procedure must indicate on the copy of the summons served both the time and date of service. There is presently a lack of uniformity of interpretation in Wisconsin of the term "time" in s. 801.10 (2). Some jurisdictions interpret it to include time and date of service while other jurisdictions interpret it as only the date of service. Clarifying that both the time and date of service must be indicated in the serving of the summons will insure that this potentially valuable information is noted on the served copy of every summons in Wisconsin.

Sub. (4) (a) is amended to also apply the requirement for indicating time and date of service to the affidavits and certificates of service used when proof of service is challenged. [Re Order effective Jan. 1, 1980]

A party is required to show strict compliance with the requirements of this section when service is challenged. Dietrich v. Elliot, 190 Wis. 2d 816, 528 N.W.2d 17 (Ct. App. 1995).

Service by a nonresident constitutes a fundamental defect compelling dismissal for lack of jurisdiction. Bendimez v. Neidermire, 222 Wis. 2d 356, 588 N.W.2d 55 (Ct. App. 1998), 98−0656.

Sub. (4) does not require the affiant to have first hand knowledge of how the documents were authenticated, nor does it require that the affiant's statements must be unqualified; it requires that the affiant affirm that an authenticated copy of the summons was served. State v. Boyd, 2000 WI App 208, 238 Wis. 2d 693, 618 N.W.2d 251, 99−2633.

The trial court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. Williams Corner Investors, LLC v. Areawide Cellular, LLC, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03−0824.

801.11 Personal jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(1) NATURAL PERSON. Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post−office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post−office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(2) NATURAL PERSON UNDER DISABILITY. Upon a natural person under disability by serving the summons in any manner prescribed in sub. (1) upon the person under disability and, in addition, where required by par. (a) or (b), upon a person therein designated. A minor 14 years of age or older who is not adjudicated incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(a) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in sub. (1) upon a parent or guardian having custody of the child, or if there is none, upon any other person having the care and control of the child. If there is no parent, guardian or other person having care and control of the child when service is made upon the child, then service of the summons shall also be made upon the guardian ad litem after appointment under s. 803.01.

(b) Where the person under disability is known by the plaintiff to be under guardianship of any kind, a summons shall be served separately upon the guardian in any manner prescribed in sub. (1), (5) or (6). If no guardian has been appointed when service is made upon a person alleged by the plaintiff to be incompetent to have charge of the person's affairs, then service of the summons shall be made upon the guardian ad litem after appointment under s. 803.01.

(3) STATE. Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

(4) OTHER POLITICAL CORPORATIONS OR BODIES POLITIC. (a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents:

1. If the action is against a county, the chairperson of the county board or the county clerk;

2. If against a town, the chairperson or clerk thereof;

3. If against a city, the mayor, city manager or clerk thereof;

4. If against a village, the president or clerk thereof;

5. If against a technical college district, the district board chairperson or secretary thereof;

6. If against a school district or school board, the president or clerk thereof; and

7. If against any other body politic, an officer, director, or managing agent thereof.

(b) In lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(5) DOMESTIC OR FOREIGN CORPORATIONS OR LIMITED LIABILITY COMPANIES, GENERALLY. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation or limited liability company either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation or limited liability company by publication and mailing as provided in sub. (1).

(c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(d) If against any insurer, to any agent of the insurer as defined by s. 628.02. Service upon an agent of the insurer is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of the insurer within 5 days after service upon the agent. Service upon any insurer may also be made under par. (a).

(6) PARTNERS AND PARTNERSHIPS. A summons shall be served individually upon each general partner known to the plaintiff by service in any manner prescribed in sub. (1), (2) or (5) where the claim sued upon arises out of or relates to partnership activities within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

History: Sup. Ct. Order, 67 Wis. 2d 585, 602 (1975); 1975 c. 218; 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 192 s. 303 (2); 1985 a. 225; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1993 a. 112, 184, 265, 399, 491; 1997 a. 140; 1999 a. 32; 2005 a. 387.

Cross−reference: As to service on corporation, see also s. 180.0504.

Judicial Council Note, 1986: Sub. (1) (b) is amended to permit substituted service upon residents of other states. Service upon nonresidents may be made either as provided for Wisconsin residents or in accordance with the substituted service rule of the state wherein service is made. [Re Order eff. 7−1−86]

There is no requirement in cases of substituted service that the affidavit recite that the process server used "reasonable diligence" in attempting to make personal service, but substituted service after 2 calls when the defendant was not found, with no effort to learn where the defendant was, was not sufficient to support jurisdiction. Heaston v. Austin, 47 Wis. 2d 67, 176 N.W.2d 309 (1970).

When a village was a defendant, service was void when it was made upon the clerk's spouse in the clerk's absence. Town of Washington v. Village of Cecil, 53 Wis. 2d 710, 193 N.W.2d 674 (1972).

"Apparently in charge of the office" in sub. (5) (a) refers to what is apparent to the process server. When a receptionist referred the process server to her superior, who did not send the server to the proper office, the server could serve the superior, particularly since the superior had accepted service of process in other actions without objection by the company. Keske v. Square D Co. 58 Wis. 2d 307, 206 N.W.2d 189 (1973).

When personal jurisdiction is challenged under the "long arm" statutes, the burden is on the plaintiff to prove prima facie the facts supporting jurisdiction. A plaintiff who relies on sub. (5) is required to establish as a predicate that the defendant entered into some consensual agreement with the plaintiff that contemplated a substantial contact in Wisconsin. Afram v. Balfour, Maclaine, Inc. 63 Wis. 2d 702, 218 N.W.2d 288 (1974).

No presumption of due service was raised when an affidavit of service under sub. (5) (a) did not identify the person served as the one specified in sub. (5) (a). Danielson v. Brody Seating Co. 71 Wis. 2d 424, 238 N.W.2d 531 (1976).

The prerequisite "due diligence" for service by publication was not established, despite the sheriff's affidavit, when a husband could have ascertained his wife's address by contacting any one of several relatives or in−laws. West v. West, 82 Wis. 2d 158, 262 N.W.2d 87 (1978).

A county civil service commission is a "body politic" under sub. (4) (a) 7. Watkins v. Milwaukee County Civil Service Comm. 88 Wis. 2d 411, 276 N.W.2d 775 (1979).

The exact identity and job title of the person upon whom service was made was not critical to whether the person was "apparently in charge of office" under sub. (5) (a). Horrigan v. State Farm Ins. Co. 106 Wis. 2d 675, 317 N.W.2d 474 (1982).

"Reasonable diligence" under sub. (1) is discussed. Welty v. Heggy, 124 Wis. 2d 318, 369 N.W.2d 763 (Ct. App. 1985).

Indian tribal sovereignty is not infringed by service of process in a state action made on tribal lands. Landerman v. Martin, 191 Wis. 2d 788, 530 N.W.2d 62 (Ct. App. 1995).

Service of process on some of the partners in a general partnership is sufficient to properly commence a civil action against the partnership that will be binding on the partnership assets and the partners served. CH2M Hill, Inc. v. Black & Veatch, 206 Wis. 2d 370, 557 N.W.2d 829 (Ct. App. 1996), 95−2619.

The existence of a parent−subsidiary corporate relationship does not automatically establish the subsidiary as an agent of the parent for purposes of receiving process. Prom v. Sumitomo Rubber Industries, Ltd. 224 Wis. 2d 743, 592 N.W.2d 657 (Ct. App. 1999), 98−0938.

A corporation whose offices were located on the 23rd floor of an office building was not properly served under sub. (5) (a) when the papers were left with a security guard in the building lobby who stated that he was authorized to accept service. Bar Code Resources v. Ameritech, Inc. 229 Wis. 2d 287, 599 N.W.2d 872 (Ct. App. 1999), 98−1314.

Service on a limited partnership is governed by sub. (6), not ch. 179. Sub. (6) requires service upon all the general partners known to the plaintiff. When the only person served was a maintenance man, service was insufficient. Carmain v. Affiliated Capital Corporation, 2002 WI App 271, 258 Wis. 2d 378, 654 N.W.2d 265, 01−3077.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over the officer as an individual. Useni v. Boudron, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02−1475.

Personal jurisdiction over a body politic may be obtained by service of the summons and complaint on an officer, director, or managing agent, or substitute service on a "person who is apparently in charge of the office." Service on a nonparty, even when it occurs erroneously in reliance on the mistaken direction of a person in the office of the defendant, does not constitute service on the defendant. Hagen v. City of Milwaukee Employee's Retirement System Annuity and Pension Board, 2003 WI 56, 262 Wis. 2d 113, 663 N.W.2d 268, 01−3198.

Sub. (1) (d) permits substituted service on a natural person's agent who has actual express authority to accept service of summons for the principal. Apparent authority does not satisfy the requirement that the agent be "authorized by appointment" to accept service of summons. Mared Industries, Inc. v. Mansfield, 2005 WI 5, 277 Wis. 2d 350, 690 N.W.2d 835, 03−0097.

"Managing agent" as it appears in sub. (5) relates to an agent having general supervision of the affairs of the corporation. "Superintendent" and "managing agent" have corresponding meanings in the statute. Both terms relate to a person possessing and exercising the right of general control, authority, judgment, and discretion over the business or affairs of the corporation, either everywhere or in a particular branch or district. Richards v. First Union Securities, Inc. 2006 WI 55, 290 Wis. 2d 620, 714 N.W.2d 913, 04−1877.

The guiding principle in reasonable diligence cases is that, when pursuing any leads or information reasonably calculated to make personal service possible, the plaintiff must not stop short of pursuing a viable lead or, in other words, stop short of the place where if the diligence were continued it might reasonably be expected to uncover an address of the person on whom service is sought. Loppnow v. Bielik, 2010 WI App 66, 324 Wis. 2d 803, 783 N.W.2d 450, 09−0747.

Chapter 801 explicitly applies to a certiorari action initiated by the filing of a summons and complaint. Special circumstances cannot establish personal jurisdiction in a certiorari action when the defendant has not been served in accordance with this section. Bergstrom v. Polk County, 2011 WI App 20, 331 Wis. 2d 678, 795 N.W.2d 482, 09−2572.

Publication of the summons and complaint in this case failed to meet the requirements of sub. (1) (c), requiring vacation of a default judgment. While the plaintiff asserted that the newspaper used was the predominant newspaper to publish legal

notices in the Milwaukee Metropolitan area, it failed to provide any evidence to that effect. The undisputed record as it stood at the time of the default judgment failed to establish that publication in a newspaper "printed and published daily in the City of Milwaukee, in said county" would have been likely to provide notice to a resident of Menomonee Falls in Waukesha county. PHH Mortgage Corporation v. Scott P. Mattfeld, 2011 WI App 62, 333 Wis. 2d 129, 799 N.W.2d 455, 10−0612.

Service by publication and mailing under sub. (1) (c) requires both publication and mailing to the defendant's "known" address. An error in the address used during the "mailing" component of service by publication and mailing was a "fundamental" defect depriving the court of jurisdiction. Strict compliance with the procedures for alternative forms of service is no less important than strict compliance with the requirements for personal service. O'Donnell v. Kaye, 2015 WI App 7, 359 Wis. 2d 511, 859 N.W.2d 441, 13−2615.

Admission of service by an assistant attorney general or a clerk specifically designated for that purpose by the attorney general will constitute service of process within the meaning of sub. (3). 63 Atty. Gen. 467.

Service on a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. Chilcote v. Shertzer, 372 F. Supp. 86 (1974).

801.12 Jurisdiction in rem or quasi in rem, manner of serving summons for; notice of object of action. (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 801.07 may affect the interests of a defendant in such action only if a summons and either a copy of the complaint or a notice of the object of the action under sub. (2) have been served upon the defendant as follows:

(a) If the defendant is known, defendant may be served in the manner prescribed for service of a summons in s. 801.11, but service in such a case shall not bind the defendant personally to the jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(b) If the defendant is unknown the summons may be served by publication thereof as a class 3 notice, under ch. 985.

(2) The notice of object of action shall be subscribed by the plaintiff or attorney and shall state the general object of the action, a brief description of all the property affected by it, if it affects specific real or personal property, the fact that no personal claim is made against such defendant, and that a copy of the complaint will be delivered personally or by mail to such defendant upon request made within the time fixed in s. 801.09 (2). If a defendant upon whom such notice is served unreasonably defends the action the defendant shall pay costs to the plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 606 (1975); 1975 c. 218.

Personal jurisdiction in fact, in addition to statutorily acceptable service, is a condition precedent to the exercise of jurisdiction *in rem* or *quasi in rem* upon a status or upon a property. Montalvo v. U.S. Title and Closing Services, LLC, 2013 WI App 8, 345 Wis. 2d 653, 827 N.W.2d 635, 12−0102.

801.13 Summons; when deemed served. A summons is deemed served as follows:

(1) A summons served personally upon the defendant or by substituted personal service upon another authorized to accept service of the summons for the defendant is deemed served on the day of service.

(2) A summons served by publication is deemed served on the first day of required publication.

History: Sup. Ct. Order, 67 Wis. 2d 585, 607 (1975).

801.14 Service and filing of pleadings and other papers. (1) Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in s. 801.11.

(2) Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last−known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; transmitting a copy of the paper by facsimile machine to his or her office; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

(2m) When an attorney has filed a limited appearance under s. 802.045 (2) on behalf of an otherwise self−represented person, anything required to be served under sub. (1) shall be served upon both the otherwise self−represented person who is receiving the limited scope representation and the attorney who filed the limited appearance under s. 802.045 (2). After the attorney files a notice of termination under s. 802.045 (4), no further service upon that attorney is required.

(3) In any action in which there are unusually large numbers of defendants, the court, upon motion or on its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(4) All papers after the summons required to be served upon a party, except as provided in s. 804.01 (6), shall be filed with the court within a reasonable time after service. The filing of any paper required to be served constitutes a certification by the party or attorney effecting the filing that a copy of such paper has been timely served on all parties required to be served, except as the person effecting the filing may otherwise stipulate in writing.

(6) If an action pertaining to the subject matter of the compact authorized under s. 304.16 may affect the powers, responsibilities, or actions of the interstate commission, as defined in s. 304.16 (2) (f), the plaintiff shall deliver or mail a copy of the complaint to the interstate commission at its last−known address.

History: Sup. Ct. Order, 67 Wis. 2d 585, 607 (1975); 1975 c. 218; Sup. Ct. Order, 130 Wis. 2d xix (1986); Sup. Ct. Order, 161 Wis. 2d xvii (1991); 2001 a. 96; 2007 a. 97; Sup. Ct. Order No. 13−10, 2014 WI 45, filed 6−27−14, eff. 1−1−15.

Judicial Council Note, 1986: Sub. (4) is amended by insertion of a cross−reference to s. 804.01 (6), providing that discovery documents need not be filed with the court unless the court so orders. [Re Order eff. 7−1−86]

Judicial Council Note, 1991: Sub. (2) is amended to clarify that facsimile transmission can be used to serve pleadings and other papers. Such service is deemed complete upon transmission. The change is not intended to expand the permissible means of serving a summons or writ conferring court jurisdiction under s. 799.12 and ch. 801, stats. [Re Order eff. 7−1−91]

Once an action has been commenced, service of the summons and complaint has been made on the defendant, and an attorney has appeared on behalf of the defendant, an amended complaint may be served on the defendant's attorney. Bell v. Employers Mutual Casualty Co. 198 Wis. 2d 347, 541 N.W.2d 824 (Ct. App. 1995), 095−0301.

A motion to dismiss with prejudice cannot be heard ex parte and should be granted only on finding egregious conduct or bad faith. Failure to obtain personal service with due diligence does not amount to egregious conduct or bad faith. Haselow v. Gauthier, 212 Wis. 2d 580, 569 N.W.2d 97 (Ct. App. 1997), 96−3589.

An amended complaint that makes no reference to or incorporates any of the original complaint supersedes the original complaint when the amended complaint is filed in court. When such a complaint was filed prior to the time for answering the original complaint had run, it was improper to enter a default judgment on the original complaint. Holman v. Family Health Plan, 227 Wis. 2d 478, 596 N.W.2d 358 (1999), 97−1490.

A party in default for failing to answer an original complaint cannot answer an amended complaint, thereby attempting to cure its default, unless the amended complaint relates to a new or additional claim for relief. Ness v. Digital Dial Communications, Inc. 227 Wis. 2d 592, 596 N.W.2d 365 (1999), 96−3436.

A receptionist who accepted the receipt of pleadings delivered to an attorney's office by a delivery service was a person in charge of the office within the meaning of sub. (2) and the papers had been properly "delivered." Varda v. General Motors Corporation, 2001 WI App 89, 242 Wis. 2d 756, 626 N.W.2d 346, 00−1720.

A circuit court may not enter a default judgment against a defendant on grounds that the defendant failed to file an answer with the court "within a reasonable time after service" under sub. (4) unless the court first determines that the late filing prejudiced either the plaintiff or the court. Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc. 2002 WI 66, 253 Wis. 2d 238, 646 N.W.2d 19, 00−1100.

801.145 Form of papers. (1) Except for exhibits and wills, the size of all papers filed in court shall be no larger than 8 1/2 inches by 11 inches.

(2) The clerk of circuit court or register in probate shall return any paper not in conformity with sub. (1) to the person or party attempting to file it.

History: Sup. Ct. Order, 120 Wis. 2d xv (1984).

801.15 Time. (1) (a) In this subsection, "holiday" means any day that is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. 995.20 or both, and a full day on Good Friday.

(b) Notwithstanding ss. 985.09 and 990.001 (4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.

(2) (a) When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms. The 90 day period under s. 801.02 may not be enlarged. If the motion is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect. The order of enlargement shall recite by its terms or by reference to an affidavit in the record the grounds for granting the motion.

(b) The time within which a motion challenging the sufficiency of the evidence or for a new trial must be decided shall not be enlarged except for good cause. The order of extension must be made prior to the expiration of the initial decision period.

(c) The time for initiating an appeal under s. 808.04, for deciding motions after verdict under s. 805.16 (3), and for making motions for reconsideration under s. 805.17 (3) or for relief from judgment or order under s. 48.46 (2) or 806.07 may not be enlarged.

(4) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte.

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party:

(a) If the notice or paper is served by mail, 3 days shall be added to the prescribed period.

(b) If the notice or paper is served by facsimile transmission or by the electronic filing system under s. 801.18 and such transmission is completed between 5 p.m. and midnight, 1 day shall be added to the prescribed period.

History: Sup. Ct. Order, 67 Wis. 2d 585, 610 (1975); 1975 c. 218; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 187 s. 135; 1977 c. 449; 1979 c. 89; 1983 a. 192 s. 304; 1985 a. 145; Sup Ct. Order, 130 Wis. 2d xi (1986); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 146 Wis. 2d xxxiii (1988); Sup. Ct. Order, 160 Wis. 2d xiv (1991); Sup. Ct. Order, 161 Wis. 2d xvii (1991); Sup. Ct. Order No. 94−05, 183 Wis. 2d xix; 1997 a. 187; 2005 a. 155; Sup. Ct. Order No. 14−03, 2016 WI 29, filed 4−28−16, eff. 7−1−16.

Cross−reference: See s. 32.05 (4) for exception to provision for added time in case of mailing.

Law Revision Committee Note, 1985: [Sub. (1)] Under the current statute, the time period specified by law or by a court relating to a court action or special proceeding is extended if the last day of the time period falls on a Saturday, Sunday or legal holiday. This amendment adds Good Friday, Christmas eve and New Year's eve. The afternoon of Good Friday and the full day on December 24 and 31 are holidays for state employees, and the amendment will permit clerks to close their offices at these times. [85 Act 145]

Judicial Council Committee's Note, 1976: The procedure under s. 801.15 (2) (a) for enlarging the period in which an act is required to be done under the rules of civil procedure cannot be used to enlarge the 60−day period under s. 801.02. See also s. 802.06 (2) (e) and (8).

Pars. (2) (b) and (c) are independent provisions. The enlargement of time "for good cause" provision in par. (b) does not apply to the time for appeal under s. 817.01, for motion after verdict under s. 805.16, and for relief from judgment under s. 806.07 as such a result would substantially impair the finality of judgments. The word "extended" is replaced by the word "enlarged" in par. (c) to comply with similar language in pars. (2) (a) and (b). [Re Order effective Jan. 1, 1977]

Judicial Council Note, 1986: Sub. (1) is amended by extending from 7 to 11 days the periods from which Saturdays, Sundays and legal holidays are excluded. The change conforms to that made in Rule 6 (a), F.R.C.P. in 1985. [Re Order eff. 7−1−86]

Judicial Council Note, 1986: Sub. (2) (c) is amended to clarify that, while the time for deciding motions after verdict may not be enlarged, the time for filing and hearing such motions may be enlarged by the court under revised s. 805.16 (1) and (2). [Re Order eff. 7−1−87]

Judicial Council Note, 1991: The amendment to sub. (2) (c) prohibits the court form extending the time for making reconsideration motions under s. 805.17 (3). [Re Order eff. 7−1−91]

Judicial Council Note, 1991: Sub. (5) (b) is created to allow one extra day to respond to papers served by facsimile transmission after normal business hours. Additional response time may be available under the computation rules of sub. (1) (b) if papers are so served on weekends or holidays. [Re Order eff. 7−1−91]

Judicial Council Note, 1994: Subsection (1) (b) is amended by excluding the last day of a time period from the computation if the clerk of courts office is closed all day.

A court has no authority to enlarge the time in which to file a complaint. Pulchinski v. Strnad, 88 Wis. 2d 423, 276 N.W.2d 781 (1979).

Error based on late service and filing of an affidavit was waived by the failure to object at a hearing. In re Spring Valley Meats, Inc. 94 Wis. 2d 600, 288 N.W.2d 852 (1980).

Notice of entry of judgment was "given" under s. 806.06 (5) when it was mailed. Sub. (5) was inapplicable. Bruns v. Muniz, 97 Wis. 2d 742, 295 N.W.2d 112 (Ct. App. 1980).

The trial court abused its discretion in enlarging the time to file an answer when the answer was served 9 days after the deadline. Hedtcke v. Sentry Ins. Co. 109 Wis. 2d 461, 326 N.W.2d 727 (1982).

Time computations under ss. 32.05 (10) (a) and 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). In Matter of Petition of Electric Power Co. 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

Service of an answer was timely under the terms of a courtesy agreement. Oostburg Bank v. United Savings, 130 Wis. 2d 4, 386 N.W.2d 53 (1986).

Time periods under s. 805.16 may not be enlarged by showing excusable neglect under s. 801.15 (2) (a). Brookhouse v. State Farm Mutual Insurance Co. 130 Wis. 2d 166, 387 N.W.2d 82 (Ct. App. 1986).

The trial court lost jurisdiction to decide motions after verdict by consecutively extending the time for its decision under sub. (2) (b). Ford Motor Co. v. Lyons, 137 Wis. 2d 397, 405 N.W.2d 354 (Ct. App. 1987).

Because a courtesy agreement was made after default, the court did not abuse its discretion by insisting on compliance with sub. (2) (a). Clark County v. B.T.U. Structures, 144 Wis. 2d 11, 422 N.W.2d 910 (Ct. App. 1988).

The trial court had discretion to allow a jury trial when fees under s. 814.61 (4) were not timely paid. Chitwood v. A. O. Smith Harvestore, 170 Wis. 2d 622, 489 N.W.2d 697 (Ct. App. 1992).

While clerical error is not always excusable, it is not as a matter of law inexcusable neglect. Sentry Insurance v. Royal Insurance Co. 196 Wis. 2d 907, 539 N.W.2d 911 (Ct. App. 1995), 94−3428.

Trial courts have discretion to shorten the 5−day notice requirement for motions. Schopper v. Gehring, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997), 96−2782.

Sub. (2) (a) is applicable to excusable neglect by a trial judge. State v. Elliot, 203 Wis. 2d 95, 551 N.W.2d 850 (Ct. App. 1996), 96−0012.

Excusable neglect is conduct that might have been the act of a reasonably prudent person under the same circumstances. A court must look beyond the cause of the neglect to the interests of justice, considering both the need to afford litigants a day in court and to ensure prompt adjudication. Whether the dilatory party acted in good faith, whether the opposing party was prejudiced, and whether prompt remedial action took place are factors to consider. An attorney who relied on an oral courtesy agreement whose terms were not disputed and promptly filed for an extension acted with excusable neglect. Rutan v. Miller, 213 Wis. 2d 94, 570 N.W.2d 54 (Ct. App. 1997), 97−0547.

Under sub. (1) (b) the last day is included in determining time periods unless it is "a day the clerk of courts office is closed." Whether or not the day is a "holiday" under sub. (1) (a) is not relevant. Klingbeil v. Perschke, 228 Wis. 2d 421, 596 N.W.2d 488 (Ct. App. 1999), 99−0488.

A courtesy extension agreement is not required to be in writing, but a court may consider the lack of documentation in making a determination as to whether an agreement existed. Connor v. Connor, 2001 WI 49, 243 Wis. 2d 279, 627 N.W.2d 182, 99−0157.

The trial court erroneously exercised its discretion by entering default judgment without hearing offered testimony on the question of whether an oral courtesy agreement existed and, if so, what the agreement provided. Johnson Bank v. Brandon Apparel Group, Inc. 2001 WI App 159, 246 Wis. 2d 828, 632 N.W.2d 107.

The trial court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. While prompt remedial action after the expiration of the statutory time limit is a material factor bearing on whether relief should be granted, it does not eliminate the requirement that a dilatory party demonstrate excusable neglect for its initial failure to meet the statutory deadline. Williams Corner Investors, LLC v. Areawide Cellular, LLC, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03−0824.

In the absence of excusable neglect, the court is not obligated to address the interests of justice. Estate of Otto v. Physicians Insurance Company of Wisconsin, Inc. 2007 WI App 192, 305 Wis. 2d 198, 739 N.W.2d 599, 06−1566.
Affirmed on other grounds. 2008 WI 78, 311 Wis. 2d 84, 751 N.W.2d 805, 06−1566.

The excusable neglect standard set forth in sub. (2) (a) does not apply to untimely motions to enlarge scheduling order deadlines. Rather, s. 802.10 provides the applicable standards and procedures courts apply to such motions. Parker v. Wisconsin Patients Compensation Fund, 2009 WI App 42, 317 Wis. 2d 460, 767 N.W.2d 272, 07−1542.

Sub. (1) is not a proper vehicle for a criminal defendant to seek a new trial in the interest of justice. During the appellate process under ss. 809.30 and 974.02, defendants may also appeal to the discretionary power of the court of appeals to order a new trial in the interest of justice under s. 752.35 and to the supreme court in an appeal under s. 751.06. State v. Henley, 2010 WI 97, 328 Wis. 2d 544, 787 N.W.2d 350, 08−0697.

Precedent has set an extremely high bar to reverse excusable neglect determinations. A court cannot reject out−of−hand the possibility that a packet was actually "lost in the mail," although courts should be skeptical of glib claims that attribute fault to the United States Postal Service. Courts should carefully scrutinize what steps an organization has taken to avoid such mishaps, how quickly the organization responds when it discovers its delinquency, and whether its delay has caused prejudice to the plaintiffs. Casper v. American International South Insurance Company, 2011 WI 81, 336 Wis. 2d 267, 800 N.W.2d 880, 06−1229.

Sub. (1) (b) is not applicable to an appeal before an administrative agency. Baker v. Department of Health Services, 2012 WI App 71, 2012 WI App 71, 342 Wis. 2d 174, 816 N.W.2d 337, 11−1529.

Avoiding and obtaining relief from default judgments. Parlee, WBB April, 1985.

801.16 Filing. (1) The filing of pleadings and other papers with the court as required by these statutes shall be made by filing them with the clerk of circuit court. The judge may require that the person filing the papers provide a copy to the judge.

(2) For papers that do not require a filing fee:

(a) A court may adopt a local rule, if it is approved by the chief judge, that permits the filing of papers with the clerk of circuit court by facsimile transmission to a plain−paper facsimile machine at a telephone number designated by the court. To provide uniformity, any local rule shall specify a 15−page limit for a facsimile transmission, unless an exception is approved by the assigned judge or court commissioner on a case−by−case basis.

(b) If no rule has been adopted under par. (a), the assigned judge or court commissioner may permit a party or attorney in a specific matter to file papers with the clerk of circuit court by facsimile transmission to a plain−paper facsimile machine at a telephone number designated by the assigned judge or court commissioner.

(c) If the facsimile transmission exceeds 15 pages or is filed in the absence of a local rule, the party or attorney shall certify that the assigned judge or court commissioner has approved the facsimile transmission.

(d) If papers are transmitted to a plain−paper facsimile machine of a noncourt agency, party, or company for the receipt, transmittal, and delivery to the clerk of circuit court, the clerk of circuit court shall accept the papers for filing only if the transmission complies with the local rule or has been approved by the assigned judge or court commissioner and certified by the party or attorney.

(e) Facsimile papers are considered filed upon receipt by the clerk of circuit court and are the official record of the court and may not be substituted. No additional copies may be sent. The clerk of circuit court shall discard any duplicate papers subsequently received by the clerk of circuit court, assigned judge, or court commissioner.

(f) Papers filed with the circuit court by facsimile transmission completed after regular business hours of the clerk of circuit court's office are considered filed on a particular day if the submission is made by 11:59 p.m. central time, as recorded by the court facsimile machine, so long as it is subsequently accepted by the clerk upon review. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders. Documents submitted by facsimile transmission completed after 11:59 p.m. are considered filed the next day the clerk's office is open.

History: Sup. Ct. Order, 161 Wis. 2d xvii (1991); Sup. Ct. Order No. 94−11, 187 Wis. 2d xxiii; Sup. Ct. Order No. 00−09, 2001 WI 33, 241 Wis. 2d xix; Sup. Ct. Order No. 14−03, 2016 WI 29, filed 4−28−16, eff. 7−1−16; Sup. Ct. Order No. 14−03A, filed 8−17−16, eff. 8−17−16; 2017 a. 365 s. 111.

Judicial Council Note, 1991: Sub. (2) clarifies that papers (other than those requiring a filing fee) may be filed by facsimile transmission to the judge or clerk, if a local court rule, or the judge in a specific matter, so permits. [Re Order eff. 7−1−91.]

A notice of appeal does not require a filing fee and may be filed by facsimile transmission under sub. (2). State v. Sorenson, 2000 WI 43, 234 Wis. 2d 648, 611 N.W.2d 240, 98−3107.

Under sub. (1), the filing of pleadings and other papers with the court shall be made by filing them with the clerk of circuit court. The circuit court should have rejected an affidavit and proposed order submitted by a child support agency that was submitted directly and exclusively to the judge. Teasdale v. Marinette County Child Support Agency, 2009 WI App 152, 321 Wis. 2d 647, 775 N.W.2d 123, 08−2827.

NOTE: Sup. Ct. Order No. 14−03 states: "The Comments to the statutes and to the supreme court rules created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2016: Sub. (2) (f) is a change to circuit court law and practice. Under prior law, fax filings were required to arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. In contrast, the mandatory electronic filing statute, s. 801.18 (4) (e), allows any filing made before midnight to be considered filed on that day. After July 1, 2016, parties who do not use the electronic filing system are given the advantage of the extended filing hours.

801.18 Electronic filing. (1) DEFINITIONS. In this section:

(a) "Clerk of court" means the official circuit court recordkeeper for the case in question, which may be the clerk of circuit court, juvenile clerk, or register in probate for that county.

(b) "Converted" means that all documents in a paper case file have been imaged by the clerk of court and the case file is available to accept filings via the electronic filing system.

(c) "Director" means the director of state courts.

(d) "Document" means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing in an action.

(e) "Electronic filing system" means an internet−accessible system established by the director for the purpose of filing documents with a circuit court, automatically integrating them into the court case management system, and electronically serving them on the parties.

(f) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the document. For purposes of the electronic filing system, a document is electronically signed if it is submitted by or on behalf of a user or court official through the electronic filing system and bears the name of the user in the place where a signature would otherwise appear. "Electronic signature" includes only those signature technologies specifically approved by the director.

(g) "Filing agent" means a person authorized under s. 799.06 (2) to appear on behalf of another.

(h) "High−volume filing agent" means a person authorized under s. 799.06 (2) who appears on behalf of an entity filing 10 or more actions a year in the county where the action is being filed.

(i) "Imaged document" means an electronic copy of a document originally created or submitted on paper.

(j) "Initiating document" means a summons and complaint, petition, application, citation, criminal complaint, or any other document filed to commence a court action.

(k) "Mandatory user" means a user who is subject to sub. (3) (a).

(L) "Paper party" means a party who is not subject to sub. (3) (a) who chooses not to participate in the electronic filing system as described in sub. (3) (c).

(m) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.

(n) "User" means an individual who has registered to use the electronic filing system under sub. (3). Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.

(o) "Voluntary user" means a party who is not subject to sub. (3) (a) who voluntarily registers to use the electronic filing system under sub. (3) (b).

(2) EFFECTIVE DATE; APPLICABILITY. (a) The director of state courts shall implement an electronic filing system for the Wisconsin circuit courts. The requirements of this section shall govern the electronic filing of documents in all types of actions and proceedings in circuit court.

(b) Mandatory use of the electronic filing system shall be phased in according to a schedule set by the director until the system has been fully implemented. The director shall make information about the transition schedule readily available to the public in advance of its application.

(c) Subject to the schedule set by the director under par. (b), mandatory users shall be required to use the electronic filing system for all new filings covered by the schedule. Electronic filing shall be required for all new actions brought in circuit court and for all new documents submitted in previously filed cases, except as otherwise provided in this section.

(d) After July 1, 2016 and prior to the date that electronic filing becomes mandatory under par. (b), parties may choose to electronically file actions and documents under the provisions of this statute or may continue to file by traditional methods.

(e) Electronic filing is limited to methods specifically approved by the director. The director may enter into an agreement with any state agency to allow electronic filing through a custom data exchange between the court case management system and the agency's automated information system. Parties using a custom data exchange are considered mandatory users and are subject to the requirements of this section.

(f) The procedures in this section shall be interpreted in a manner consistent with existing procedures. This section is not intended to limit the director's approval of new technologies that accomplish the same functions.

(g) The judges of the circuit court, the clerk of court, and all court staff shall cooperate and assist with the implementation of electronic filing.

(h) This section does not address documents required by law to be filed with court officials that are not filed in an action before the court. These documents may be filed by traditional methods unless otherwise required by the director of state courts.

(i) This section does not apply to filing of documents or transcripts with the court of appeals or supreme court.

(j) Prior to the effective date of this section, the director may require that electronic filing be mandatory in one or more pilot counties for purposes of testing and improving the mandatory electronic filing system.

(3) REGISTRATION REQUIREMENTS. (a) Subject to the schedule set by the director under sub. (2) (b), the following individuals shall register for access to the electronic filing system prior to filing documents in circuit court:

1. Licensed Wisconsin attorneys, other than those who are representing only themselves.

2. Attorneys appearing under SCR 10.03 (4).

3. High−volume filing agents.

(b) Parties who are not subject to par. (a) may voluntarily register to use the electronic filing system.

(c) A party not subject to par. (a) who does not choose to participate in the electronic filing system under par. (b) shall file, serve, and receive paper documents by traditional methods.

(d) All users shall register through the electronic filing system by executing a user agreement governing the system's terms of use. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. The electronic filing system shall make information on the technical requirements for filing readily available. By registering, users agree to electronically file all documents to the extent the electronic filing system can accept them.

(e) Upon completion of a properly executed user agreement under par. (d), the electronic filing system shall provide the user with a confidential, secure authentication procedure for access to the electronic filing system. This authentication procedure shall be used only by that user and by any agents or employees that the user authorizes. Upon learning that the confidentiality of the authentication procedure has been inadvertently or improperly disclosed, the user shall immediately report that fact through the electronic filing system.

(f) Users shall notify the electronic filing system within 10 business days of any change in the information provided for registration. Attorneys shall notify the electronic filing system within 10 business days of beginning representation of a formerly self−represented party. Entities appearing by a filing agent shall notify the electronic filing system within 10 business days of any change in the identity of a filing agent.

(g) Nonresident attorneys shall register following court approval of a motion to appear *pro hac vice* under SCR 10.03 (4).

(h) After registering to use the electronic filing system, a user shall also register as an attorney or party on any previously filed cases in which the user intends to continue to participate. The same authentication procedure shall be used for all cases on which the user is an attorney or a party. The electronic filing system may reset authentication procedures as needed for administrative and security purposes.

(i) Voluntary users who wish to stop using the electronic filing system in a particular case must notify the electronic filing system or the clerk of court. The electronic filing system shall indicate that traditional methods must be used for this party for future filings and service.

(j) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case. It may also provide a method for professionals and agencies associated with the case to receive information and file reports.

(4) TIME AND EFFECT OF ELECTRONIC FILING. (a) The electronic filing system is an agent of the circuit courts for purposes of filing, receipt, service, and retrieval of electronic documents.

(b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate clerk of court in the county where the case is filed. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.

(c) If the clerk of court accepts a document for filing, it shall be considered filed with the court at the date and time of the original submission, as recorded by the electronic filing system. Upon acceptance, the electronic filing system shall issue a confirmation to serve as proof of filing. When personal service is not required, the confirmation shall also serve as proof of service on the other users in the case.

(d) The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

(e) A document is considered filed on a particular day if the submission is completed by 11:59 p.m. central time, as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review. Documents filed after 11:59 p.m. are considered filed the next day the clerk's office is open. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders.

(5) COMMENCEMENT OF ACTION. (a) A user seeking to initiate an action shall first register with the electronic filing system as provided in sub. (3). The user shall then file an initiating document in the county where the action is to be commenced and provide the additional information requested by the electronic filing system to open a case.

(b) If a filing fee is required, the clerk of court may reject the document unless it has been submitted as provided in sub. (7) (b). At the written or oral request of the filer, the clerk of court may reject the document for filings made in error, if the request is made before the clerk of court has accepted the document.

(c) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and authenticate the document as provided in sub. (10). The case shall then be available through the electronic filing system. If the clerk of court rejects an initiating document, the filer shall be notified of the rejection.

(d) Initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method. Initiating documents shall be served together with a notice to the responding party stating that the case has been electronically filed and with instructions for how to use the electronic filing system.

(e) A mandatory user who represents a responding party shall register to use the electronic filing system as provided by this section. After registering to use the electronic filing system, the user shall also register as a user on the particular case. The electronic filing system will note the new user on the case.

(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS. (a) The electronic filing system shall generate a notice of activity to the other users in the case when documents other than initiating documents are filed. Users shall access filed documents through the electronic filing system. For documents that do not require personal service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document, except as provided in par. (b).

(b) If a document other than an initiating document requires personal service, it shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(c) Paper parties shall be served by traditional methods. The electronic case record shall indicate which parties are to be served electronically and which are to be served by traditional methods.

(d) Paper parties shall file documents with the court by traditional methods. The clerk of court shall image the documents and enter the imaged documents into the electronic filing system promptly. The notice of activity generated by the entry shall constitute service on the users in the case. Paper parties must serve other paper parties by traditional methods.

(e) If a notice sent to a user is returned undeliverable, the electronic filing system shall automatically notify the user who filed the document. The filing user shall then serve the document on that party by traditional methods. That party shall be treated as a paper party until the party corrects the problem and reregisters with the electronic filing system.

(f) For cases that were originally filed by traditional methods:

1. Subject to the schedule set by the director in sub. (2) (b), all mandatory users shall register as electronic users on each case for which they continue to appear. Mandatory users who do not register for a case will not receive notices of activity or service of documents.

2. For all cases that are in open status at the time electronic filing is mandated, the clerk of court shall send a notice by traditional methods to each unregistered party stating that the case has been converted to electronic filing. Mandatory users shall promptly register for these cases unless the user informs the court that the user is no longer appearing on behalf of the party.

3. For all cases that are in closed status prior to the time electronic filing is mandated, no action is required until there is a subsequent filing or the court initiates further activity on the case, subject to all of the following:

a. A mandatory user who initiates electronic activity on a closed case shall register as a user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly register as a user in the case or shall notify the court that the user is no longer appearing on behalf of the party.

b. A voluntary user who chooses to initiate electronic activity on a closed case shall register as a user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly register as a user in the case or shall notify the court that the user is no longer appearing on behalf of the party.

c. Service on a party who might be a voluntary user shall include a notice stating that the case has been converted to electronic filing and giving instructions for how to use the electronic filing system if the party chooses to do so.

(7) PAYMENT OF FEES. (a) Users shall make payments due to the clerk of court through the electronic filing system unless otherwise ordered by the court or unless arrangements are made with the clerk of court. The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.

(b) A document that requires payment of a fee is not considered filed until the fee is paid, a waiver of the fee is granted, or other arrangements for payment are made. The user may submit a petition or motion for waiver of costs and fees, including the electronic filing fee, under s. 814.29 (1), using a form provided by the court for that purpose. If a document is submitted with a petition or motion for waiver, it shall be considered filed with the court on the date and time of the original submission if the waiver is subsequently granted by the court or other arrangements for payment are made.

(c) Users shall be charged a fee for use of the electronic filing system, as provided under s. 758.19 (4m) and established by the director of state courts. The fee is a recoverable cost under ss. 799.25 (13) and 814.04 (2). The electronic filing fee shall not be charged to Wisconsin state and local government units.

(8) FORMAT AND CONTENT OF FILINGS. (a) The director shall make information about the technical requirements of the electronic filing system readily available to the public. Users are responsible for keeping up with these requirements and providing the necessary equipment, software, communication technology, and staff training.

(b) Users shall provide any case management information needed to transmit and file documents. The electronic filing system shall reject a document for failure to include information in any one of the mandatory fields identified by the system.

(c) Users shall format the appearance of all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including page limits.

(d) The electronic filing system may set limits on the length or number of documents. Documents rejected by the system for this reason shall be filed and served by traditional methods. Leave of court may be granted for traditional filing and service in appropriate cases.

(9) OFFICIAL RECORD. (a) Electronically filed documents have the same force and effect as documents filed by traditional methods. The electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.

(b) The duties of the clerk of court under ss. 59.40, 851.72, and 851.73, and all other statutes, court rules, and procedures may be fulfilled through proper management of electronic documents as provided in this section. The requirements of statutes and rules that refer to paper copies, originals, mailing, and other traditional methods may be satisfied by transmission of documents through the electronic filing system.

(c) Subject to the schedule set by the director in sub. (2) (b), the clerk of court shall maintain the official court record only in

electronic format for all cases commenced after that date. Documents filed by traditional methods shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to SCR 72.03 (3). Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(d) If a document is filed in a case in closed status, the clerk of court shall file the document electronically and convert that case to electronic format within a reasonable time. If conversion of the case would be unusually burdensome, the clerk of court may maintain the record in paper format with the permission of the court.

(e) The clerk of court shall make the public portions of the electronic record available for viewing at the clerk of court's office. The clerk of court shall make nonpublic portions of the electronic record available for viewing by authorized persons.

(f) The clerk of court may provide either paper or electronic copies of pages from the court record. The clerk of court shall charge the per−page fee set by ss. 814.61 (10) and 814.66 (1) (h) for electronic court records.

(g) Certified copies of an electronic record may be obtained from the clerk of court's office by traditional methods, as provided by s. 889.08. The electronic system may also make available a process for electronic certification of the court record. The seal of the court may be applied electronically. No use of colored ink or an impressed seal is required.

(h) Except as provided in par. (i), parties filing by traditional methods shall file a copy of any document and not the original paper document. The court may require the submitting party to produce the original paper document if authenticity of document is challenged. If the court inspects the original paper document, it shall be retained as an exhibit as provided in SCR 72.03 (4).

(i) Notwithstanding the other provisions of this section, a will deposited for safekeeping under s. 853.09 may not be electronically filed. The original paper will shall be deposited with the court.

(j) Notwithstanding the other provisions of this section, a person submitting a will to the court under s. 856.05 shall file the original paper will in the proper court. The register in probate shall image the will and create an electronic case file. The register in probate shall maintain the paper copy of a will in a separate file for the time period provided by SCR chapter 72.

(k) Pleadings may be submitted during a court proceeding by traditional methods. Pleadings submitted in court shall be imaged and the imaged copy entered into the court record by the clerk of court.

(L) For documentary exhibits, parties shall submit a copy of the exhibit and not the original. The clerk of court shall image each documentary exhibit and enter the imaged document into the court record. Copies of documentary exhibits so imaged may be discarded as provided in SCR 72.03 (3). If inspection of the original document is necessary to the court proceeding, the court may order that the original document be produced. Any original document so produced shall be retained as an exhibit as provided in SCR 72.03 (4).

(m) An administrative agency submitting a record for judicial review in compliance with s. 227.55 shall image the administrative record and submit the imaged copy electronically using a method provided by the electronic filing system. The electronic record shall be the official record in the circuit court. If inspection of an original document is necessary to the court proceeding, the court may order that the original document be produced.

(10) AUTHENTICATION. Electronic placement of the court filing stamp and the case number on each copy of an initiating document constitutes authentication under the statutes and court rules. An authenticated copy may be printed from the case management system by the clerk of court or from the electronic filing system by the user.

(11) NOTARIZATION AND OATHS. (a) Notaries public who hold valid appointments under ch. 137 may issue certificates of notarial acts for electronically filed documents as provided in this section.

(b) Court officials authorized by law to perform notarial acts may do so by application of their electronic signatures provided through the electronic filing system.

(c) Unless specifically required by statute or court rule, electronically filed documents are not required to be notarized.

(d) Documents notarized by traditional methods may be filed through the electronic filing system if a handwritten signature and physical seal appear on the original document. The user shall submit an imaged copy of the notarized document to the electronic filing system, and the court shall maintain the imaged copy as the official court record. The court may require the submitting party to produce the original paper document if the authenticity of the notarization is in question.

(e) Notwithstanding s. 706.07 (8) (c), an electronically filed complaint under ch. 799 may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney to a written oath attesting that the facts of the complaint are true, without swearing to the oath in front of a notarial officer.

(f) The director, in his or her discretion, may approve the use of an electronic notary technology compatible with the existing electronic filing system.

(12) SIGNATURES OF USERS. (a) A document requiring the signature of a user is deemed to have been signed by the user when it is electronically filed through the court electronic filing system. The signature shall use the format "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. This signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules.

(b) A summons and complaint, petition, or other initiating document that is signed in compliance with par. (a) bears a sufficient signature under s. 802.05.

(c) Each electronically filed document shall bear that person's name, mailing address, telephone number, and state bar number if applicable.

(d) An attorney may delegate the authority to submit documents to the electronic filing system to a person under the attorney's supervision. Any document requiring the attorney's signature is deemed to have been signed by the attorney if submitted to the electronic filing system and signed as provided in par. (a). Every attorney is responsible for all documents so submitted.

(e) Every attorney is responsible for electronically filed documents to the same extent as for paper filings. Attorneys using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785, and are subject to discipline for a violation of any duty to the court under the supreme court rules.

(f) Self−represented parties and filing agents under s. 799.06 are responsible for electronically filed documents to the same extent as for paper filings. Self−represented parties and filing agents using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.

(g) Users may submit documents without electronic signatures in the following situations:

1. A joint petition in an action for divorce or legal separation may be electronically filed if it bears the handwritten signature of one party and the electronic signature of the other or the handwritten signatures of both parties.

2. A stipulation will be considered signed by multiple persons if it bears the handwritten signatures of all signatories or if it bears the printed name of each signatory and contains a representation by the filing party that the filing party has consulted with the signatories and all have agreed to sign the document.

3. The court may agree to accept a document with the handwritten signature of a user and direct that it be made part of the electronic record by the clerk of court.

(h) For paper parties, every document requiring a signature shall be signed using a handwritten signature. If a document requiring a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided under sub. (9).

(i) Documents containing handwritten signatures of third parties, such as affidavits, may be filed through the electronic filing system if a handwritten signature appears on the original document. The user shall submit an imaged copy of the signed document to the electronic filing system, and the court shall maintain the imaged document as the official court record. The court may require the submitting party to produce the original paper document if validity of the signature is challenged.

(j) The director, in his or her discretion, may approve the use of other signature technologies to the extent that they work with the existing electronic filing system.

(13) SIGNATURES OF COURT OFFICIALS. (a) If the signature of a court official is required on a document, an electronic signature may be used. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a handwritten signature would be located on a particular order, form, letter, or other document, the official's printed name shall be inserted.

(b) The electronic signature of a court official shall be used only by the official to whom it is assigned and by such delegates as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized delegate.

(c) A court official may delegate the use of his or her electronic signature to an authorized staff member pursuant to the security procedures of the court case management system. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly disclosed, the court official shall immediately report that fact to the consolidated court automation programs. Court officials shall safeguard the security of their electronic signatures and exercise care in delegation.

(14) CONFIDENTIAL INFORMATION. (a) The confidentiality of an electronic record is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.

(b) Parties shall comply with the requirements of ss. 801.19 to 801.21 regarding redaction of protected information, identification of confidential material, and sealing of filed documents.

(c) If a document is confidential, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not required to review documents to determine if confidential information is contained within them.

(d) If a user seeks court approval to seal a document, the user may electronically file the document under temporary seal pending court approval of the user's motion to seal.

(e) The electronic filing system shall place a visible mark on documents identified as confidential.

(15) TRANSCRIPTS. (a) The original transcript of any proceeding produced under SCR 71.04 shall be electronically filed with the circuit court in accordance with procedures established by the director. This rule does not alter the requirements governing timelines, format or costs established by s. 814.69, SCR 71.04, or any other statutes, rules, and procedures. This section does not alter the requirements for filing transcripts with the supreme court or court of appeals.

(b) The electronic filing system shall note that the transcript has been prepared and filed with the court. Upon receiving payment or making arrangements for payment, the court reporter shall indicate which users may have access to the electronic transcript. Access to an electronic copy of the transcript through the electronic filing system shall serve as a duplicate copy under s. 757.57 (5) and SCR 71.04 (6). Upon the request of a user who is entitled to view the transcript, a single paper copy of the transcript shall be provided without additional charge. No user shall be granted access to view the transcript unless the court reporter has notified the system or the court has so ordered.

(c) The court reporter shall notify any paper parties by traditional methods that the transcript has been prepared. The court reporter shall serve a paper copy of the transcript by traditional methods on any paper party who has made arrangements for payment or who is entitled to be served with a copy. A court reporter may by agreement make the transcript available in another format.

(d) When notice to the clerk of the supreme court and court of appeals is required, the court reporter shall provide notice by traditional methods until directed otherwise by the supreme court or court of appeals.

(e) A transcript when filed under this section becomes a part of the court file. The transcript shall be made available to the public in accordance with the statutes and rules governing court records and any court orders.

(f) Under SCR 71.04 (10) (b), a court reporter may certify that the transcript is a verbatim transcript of the proceedings by applying the court reporter's signature in the same manner as provided in sub. (12) (a) and then electronically filing the transcript.

(g) A court reporter shall electronically file with the circuit court any sentencing transcript prepared under s. 973.08 (2). Payment shall be made as provided by SCR 71.04 (5) and s. 973.08 (2). The electronic filing system may provide a method to electronically transmit the transcript to the Department of Corrections as provided in s. 973.08 (5).

(h) A court reporter shall electronically file an original unredacted transcript with the circuit court. Parties shall comply with the requirements of ss. 801.19 (4) and 801.21 (8), regarding redaction and sealing of protected information in the transcript. If redaction is ordered, a court reporter shall electronically file a complete copy of the redacted transcript as provided in s. 801.19 (4).

(i) Court reporter notes that are required to be stored under SCR 71.03, SCR 72.01 (47), and Rule of Trial Court Administration 7 shall continue to be stored in their original medium.

(16) TECHNICAL FAILURES. (a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:

1. If the failure is caused by the court electronic filing system, the court may make a finding of fact that the user submitted the document to the court in a timely manner by tendering it to the electronic filing system. The court may enter an order permitting the document to be deemed filed or served on the date and time the user first attempted to transmit the document electronically or may grant other relief as appropriate.

2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief from non−jurisdictional deadlines upon satisfactory proof of the cause. Users are responsible for timely filing of electronic documents to the same extent as filing of paper documents.

(b) A motion for relief due to technical failure shall be made on the next day the office of the clerk of court is open. The document that the user attempted to file shall be filed separately and any fees due shall be paid at that time.

(c) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

History: Sup. Ct. Order No. 14−03, 2016 WI 29, filed 4−28−16, eff. 7−1−16; Sup. Ct. Order No. 14−03A, filed 8−17−16, eff. 8−17−16; 2017 a. 365 s. 111.

NOTE: Sup. Ct. Order No. 14−03 states that "the Comments to the statutes and to the supreme court rules created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

Comments, 2016

Sub. (2) provides that the mandatory use of electronic filing will be implemented according to a schedule determined by the director of state courts. The director will designate the order and timing of implementation after evaluating the resources available for programming, the readiness of the persons affected, and the logistical support available for implementation. The director may advance or delay implementation of certain case types, may require or exempt participation by certain filers, and may require other conditions as necessary. The director will set the schedule after consultation with the steering committee that oversees the work of the consolidated court automation programs.

All open cases will be converted to an electronic format. Mandatory electronic filing will apply both to new cases and to new documents filed in old cases. This will allow both the court and the parties to more quickly reap the benefits of all−electronic files rather than persist for years with both paper and electronic court records.

Conversion to electronic files is an enormous change for parties, attorneys, and the court system. Good−faith efforts and cooperation will promote a smooth transition to the new system.

Sub. (3) (a) distinguishes between non−attorney filers for purposes of mandatory participation in the electronic filing system. Under s. 799.06 (2), certain employees, agents, and LLC members may be authorized to file on behalf of an organization in small claims proceedings. This group of persons includes both high−volume filers like utility companies and hospitals and low−volume filers like small businesses and individual landlords. This section requires the high−volume filers to use the electronic filing system and allows small filers to participate voluntarily like self−represented parties.

Sub. (3) (j) recognizes that there are persons who occasionally file documents in cases where they are not parties, such as witnesses seeking protective orders, intervenors, amicus curiae, and crime victims under ch. 950. There are also many professionals and agencies regularly providing case−related services to the court, such as presentence investigators and social workers. To the extent that it is feasible and resources allow, the director may provide a means for filing documents and exchange of information in these situations.

Sub. (4) (c) provides that where personal service is not required, submission of a document to the electronic filing system is considered service on the other electronic users. Just as service through the post office is considered complete upon dropping a properly addressed envelope into a mailbox, service using the electronic filing system is complete upon properly transmitting the document.

Sub. (4)(e) is a change to law and practice. Currently, paper filings must arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. *Northern Air Services v. Link*, 2011 WI 75, 336 Wis. 2d 1, 804 N.W.2d 458. However, the most common if not universal practice among courts that mandate electronic filing is to use the entire calendar day as the filing period; this is also the practice recommended to the Wisconsin courts by the National Center for State Courts. This provision gives a user an extra few hours to file on the last day a document is due but does not otherwise affect the calculation of time. If a user submits a document or the court signs an order on a day when the clerk's office is closed, it is considered filed on the next day the clerk's office is open, except as provided by other statutes and rules, or by court order.

For consistency, the circuit court fax statute, s. 801.16(2) (f), is also amended. For a document that can be filed by facsimile, paper parties are given the advantage of the extended filing hours by providing that pleadings received before midnight will be considered filed that day.

Sub. (5) does not change the substantive law about when personal service is required for purposes of commencing the action and obtaining jurisdiction over the defendant or respondent.

Sub. (6) (a) provides that the electronic filing system now serves as the means of delivery between users for subsequent documents, the kind that were previously served by mail or delivery. Paper parties will continue to be served by traditional methods for both initiating and subsequent documents.

Sub. (6) (f) outlines how mandatory electronic filing will be initiated on previously filed cases. For cases that are in open status at the time electronic filing becomes mandatory, the clerk will work with attorneys and high−volume filing agents to register as users on their open cases. Parties who are not yet registered but who might be voluntary users will be provided with instructions on how to participate in the electronic filing system if they choose.

For cases that are in closed status, no action is required unless there is further activity on the case. Where post−judgment activity takes place, the first party to initiate electronic activity in the case must serve any unregistered parties by traditional methods. Mandatory users must then register as users on the case.

Sub. (7) (a) provides that filing fees shall be paid through the electronic filing system unless other arrangements are made. Payment of fines and forfeitures may be handled through separate websites. Other fees and deposits, such as guardian ad litem fees and condemnation awards, may be paid by other methods if ordered by the court or agreed to by the clerk of court. Attorneys should consult the Rules of Professional Conduct with respect to the restrictions on electronic transactions from trust accounts.

Sub. (7) (b) provides that the electronic filing fee may be waived for indigent parties and their attorneys, using the same procedure and criteria that courts apply to waiver of other costs and fees. If the court denies the waiver, the court may allow time to submit the fee for the filing to be considered filed on the date when it was first submitted.

Sub. (7) (c) provides that the electronic filing fee will not be charged to a Wisconsin governmental unit such as the district attorney, public defender and appointed counsel, court−appointed counsel, child support agency, Attorney General, or county and municipal attorney.

Sub. (8) (a) recognizes that the electronic filing system will become more sophisticated and user−friendly over time. Users should expect a number of changes during the initial years of electronic filing. Information about upcoming changes and any new requirements for equipment, software, formatting, connectivity, security, and staff training will be made available to the public.

Sub. (9) provides that court case files must be kept electronically. Mandatory users are required to file all documents electronically, with only a few exceptions. Documents submitted by paper parties will be converted to electronic format by the clerk of court. Because any paper submitted will be discarded after it is imaged, parties should not submit original documents to the court.

Similarly, this section does not require the parties to retain original paper documents. If there is likely to be a challenge to the validity of a document or exhibit, parties may be well−advised to keep the original document. For a high−volume practice, the economics may not support keeping paper originals when the remainder of the file is electronic, and parties may prefer to assume the risk of failure of proof.

Sub. (9) (k) allows most documents submitted in court as exhibits to be imaged and made part of the electronic record, rather than retained in paper format. If the court requires that the original document be produced for inspection, it will be retained pursuant to the supreme court rule governing imaging of exhibits.

Sub. (9) (L) requires an agency submitting an administrative record for review to file an electronic copy of the record.

Sub. (10) provides that electronic authentication satisfies the authentication requirements of Wisconsin Statutes, including ss. 801.02, 801.09 (4), and 909.02 (8). Statutory authentication requirements must be met upon filing of the summons and complaint in order to confer jurisdiction on the court. *American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 534, 481 N.W.2d 629 (1992).

The purpose of authentication is to give assurance by the clerk of court that copies served are true copies of filed documents and to provide the case number for future reference. *J.M.S. v. Benson*, 91 Wis. 2d 526, 532, 283 N.W.2d 465 (Ct. App. 1979), *rev'd on other grounds*, 98 Wis. 2d 406 (1980). The security and verifiability provided by the electronic filing system satisfy the purposes of the authentication requirements under statutes and case law.

Sub. (11) (e) makes a change to the law governing small claims complaints by eliminating the need for an electronically filed small claims complaint to be verified in front of a notary. Instead, it may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney to a written oath or affidavit attesting to the facts of the complaint. This change has been made to encourage the use of electronic filing by self−represented parties. The identification procedures and personal accountability provided by this section satisfy the purposes of traditional oath and notarization procedures.

Sub. (12) (a) and (d) represent a change to the 2008 electronic filing statute and to current law and practice. Since 2008, electronic filing in Wisconsin has used two processes to identify the lawyer or self−represented party who signs a document: a username and password combination, which allows users into the system, and a personal identification number (PIN), which acts as the signature and is applied personally by the attorney or self−represented party. Application of a separate PIN signature is an extra step compared to other states and the federal courts, where the username and password are sufficient.

The 2008 eFiling committee chose to impose this extra step because of Wisconsin case law regarding improperly signed pleadings. Appellate decisions have reasoned that the statutes require that attorneys personally sign a summons and complaint to confer jurisdiction on the court. The personal signature requirement exists to assure that the pleadings are well−grounded in law and fact, as an "essential protection" against an invalid claim, and to prevent the unauthorized practice of law. *See Schaefer v. Riegelman*, 2002 WI 18, 250 Wis. 2d 494, 512−13, 639 N.W.2d 715; *Jadair, Inc. v. U.S. Fire Insurance Co.,* 209 Wis. 2d 187, 211−12, 785 N.W.2d 698 (1997).

The new statute supersedes this line of cases and provides that any document submitted through the electronic filing system is considered signed if the document represents that it has been electronically signed by the attorney or self−represented party. The statutes and rules in other electronic filing jurisdictions provide that attorneys and self−represented parties are responsible for everything submitted to the electronic filing system.

Compliance with this section is intended to satisfy the signature requirements of ss. 801.09 (3) and 802.05 (1), as well as all other statutes and rules relating to court documents. For users of the electronic filing system, the identification procedures, security, and personal accountability provided by this section are deemed to satisfy the purposes of a handwritten signature and all other signature requirements. The courts and the Office of Lawyer Regulation have a range of sanctions and disciplinary measures that will serve as an adequate deterrent to any abuse of electronic signatures.

Sub. (13) provides electronic signatures for those court officials whose duties require them to sign documents in circuit court case files, including circuit court judges, clerks of circuit court, registers in probate, juvenile clerks, and circuit court commissioners appointed under s. 757.68 and SCR 75.02 (1).

Under this section, court officials may allow an authorized staff member to apply the official's electronic signature at the official's specific direction. Each court official remains responsible for approving the document before the electronic signature is applied, and should be held accountable as if the document were signed personally. The electronic signature shall be applied in accordance with the provisions of SCR 70.42.

Sub. (14) provides that the electronic filing system shall protect those case types and individual documents made confidential by law or sealed by court order. The electronic filing system will provide user security measures to allow access only to authorized persons.

Section 801.19 requires that all persons filing documents with the circuit court must review and redact certain protected information about individuals, such as personal identifiers and financial account numbers. Sections 801.20 to 801.21 require the filing party to identify any materials deemed confidential by law and to submit a motion to seal if a court order is required. These statutes are intended to work in concert with the electronic filing statute so that all electronic documents are free of protected information. The electronic filing system will mark confidential documents in a way that will be visible electronically and when the documents are printed.

Sub. (15) provides that transcripts of court proceedings shall be filed and incorporated into the circuit court record electronically. The director's office will provide access for court reporters to electronically file transcripts and serve them on the par-

ties who are registered users. The director will provide access for court reporters to view the electronic court record while preparing the transcript, including confidential information.

This section is not intended to change the arrangements for payment made between court reporters and parties. Users will receive service of the transcript via the electronic filing system and will be able to view it electronically when the court reporter notifies the system that payment has been arranged. Upon request, the court reporter will provide a single paper copy to each user who is entitled to view the transcript; otherwise paper copies for users are not required. Paper parties will continue to receive notices and transcripts on paper. Voluntary arrangements may be made to provide the transcript in other formats.

This section is not intended to change any requirements applicable to proceedings before the supreme court and court of appeals.

Sub. (16) addresses technical failures of the court's electronic filing system and the user's electronic systems. Court technical failures may include a failure to process the document upon receipt or erroneous exclusion of a user from the service list by the electronic filing system. User technical failures may include problems with the user's internet service provider, payment, office equipment or software, or loss of electrical power.

This section provides guidance for courts dealing with the rare, but probably inevitable, circumstance of the electronic filing system not being available or not functioning as intended. Where the user can demonstrate that the problem was caused by the court's electronic filing system, the circuit court may make a finding of fact that the document is deemed filed or served on the date and time that filing was attempted. The electronic filing system will generate a report for the user to document the problem.

Where the failure is caused by the user's own electronic systems or by external forces, the court should consider what consequences would follow a missed deadline for traditional filings caused by similar forces. Relief may be provided to the extent provided by s. 801.15 and other applicable statutes, court rules, and case law. Where the technical failure was not caused by the court electronic filing system, this section does not provide for relief from jurisdictional deadlines.

Regardless of the cause, the user shall submit a motion for relief on the next business day, along with the document to be filed and any filing fee.

Paperless Courts: E−Filing in Wisconsin Circuit Courts. Bousquet & Vandercook. Wis. Law. July 2008.

Are You Ready? Mandatory E−filing in Effect July 1. Bousquet & Vandercook. Wis. Law. June 2016.

801.19 Protected information in circuit court records.

(1) DEFINITIONS. In this section:

(a) "Protected information" means any of the following contained in a circuit court record:

1. A social security number.
2. An employer or taxpayer identification number.
3. A financial account number.
4. A driver license number.
5. A passport number.

(b) "Protected information form" means a form provided by the circuit court under SCR 70.153 for the purpose of submitting protected information in the manner described by this section.

(c) "Redact" means to obscure individual items of information within an otherwise publicly accessible document.

(d) "Seal" means to order that a portion of a document or an entire document shall not be accessible to the public.

(2) REQUIRED OMISSION OR REDACTION OF PROTECTED INFORMATION. (a) To retain privacy and prevent misuse of personal information, no party shall, on or after July 1, 2016, submit protected information in any document filed in any action or proceeding in circuit court except in the manner provided by this section.

(b) Except as provided in par. (c), the parties to the action are solely responsible for ensuring that protected information does not appear in any document filed with the court. The court will not review each document filed by a party for compliance with this section. Protected information that is not properly submitted is accessible to the public to the same extent as the rest of the court record.

(c) A party shall omit or redact protected information from documents filed with the court unless the protected information is required by law or is necessary to the action. When protected information is provided to the court, a party shall omit or redact it from any documents filed and shall provide it to the court subject to all of the following:

1. When submitting an original document such as a pleading, a party shall omit the protected information from the document. If the protected information is required by law or is necessary to the action, the party shall submit it separately on the protected information form.

2. When submitting a previously existing document such as an exhibit, a party shall redact all protected information from a copy of the document. The party shall submit the redacted copy for the public case file. If the protected information is required by law or is necessary to the action, the party shall submit it separately on the protected information form. The court may require the submitting party to produce the original unredacted document if necessary.

3. If redaction of a document is impracticable, the document may be attached to the protected information form without redaction. Any disagreement as to proper redaction of protected information shall be decided by the court.

(d) The protected information form and attachments are not accessible to the public, even if admitted as a trial or hearing exhibit, unless the court permits access. The clerk of circuit court or register in probate may certify the record as a true copy of an original record on file with the court by stating that information has been redacted or sealed in accordance with court rules or as ordered by the circuit court.

(e) In actions affecting the family, protected information may be submitted together with the information protected by ss. 767.215 and 767.127.

(f) 1. A party waives the protection of this section as to the party's own protected information by filing it without the protected information form.

2. If a party fails to comply with the requirements of this section, the court may, upon motion or its own initiative, seal the improperly filed documents and order new redacted documents to be prepared.

3. If a party fails to comply with the requirements of this section in regard to another person's protected information, the court may impose reasonable expenses, including attorney fees and costs, or may sanction the conduct as contempt.

(g) The court shall not include protected information in publicly accessible documents generated by the court, including judgments, orders, decisions, and notices. If the protected information is required by law or is necessary to the action, it shall be maintained and disseminated in a confidential manner. Notwithstanding this section, protected information may be referred to in open court to the extent deemed necessary by the court and may be taken down by the court reporter as part of the record.

(h) 1. Protected information shall be accessible to the parties, their attorneys, guardians ad litem appointed to the case, judicial officers, and court staff as assigned, unless otherwise ordered by the court. Access to other persons and agencies shall be allowed as provided by law. The parties may stipulate in writing to allow access to protected information to any person.

2. Any person may file a motion for access to protected information for good cause. Written notice of the motion to all parties shall be required.

3. If the person seeking access cannot locate a party to provide the notice required under this section, an affidavit may be filed with the court setting forth reasonable efforts to locate the party and requesting waiver of the notice requirement. The court may waive the notice requirement if the court finds that further efforts to locate the party are not likely to be successful.

(i) On appeal, if the record assembled under s. 809.15 (1) (c) includes the redacted version of any document, it shall also contain the unredacted version if submitted under sub. (2) (c) 2. The unredacted version shall be marked as confidential. Confidential paper documents shall be submitted in a sealed envelope.

(3) REDACTION OF PREVIOUSLY FILED DOCUMENTS. (a) This section does not require any party, attorney, clerk, or judicial officer to redact protected information that was filed prior to July 1, 2016.

(b) For documents filed prior to July 1, 2016, a person affected may by motion request that protected information in a circuit court file be redacted as provided in this section, using a form approved

by the court for this purpose. The moving party shall identify every place in the court record where the information to be protected is located. The protected information shall be submitted on or attached to a protected information form as provided in sub. (2).

(c) If the motion is granted, the clerk of circuit court or register in probate shall redact the protected information from the record at the places identified by the party. The clerk or register is not responsible for making any other redaction. The moving party shall be responsible for verifying that the redaction is complete as requested. Replacement documents shall not be submitted to the court.

(d) The protected information form and attachments are not accessible to the public, even if admitted as a trial or hearing exhibit, unless the court permits access. The clerk of circuit court or register in probate may certify the record as a true copy of an original record on file with the court by stating that information has been redacted or sealed in accordance with court rules or as ordered by the circuit court.

(e) The court may, on its own initiative, order redaction of protected information.

(f) The clerk of circuit court or register in probate may redact a person's social security number and passport number upon the written request of that person. All other requests for redaction of information already filed must be determined by the court.

(4) REDACTION OF TRANSCRIPTS. (a) Within 30 days of the time a transcript is filed with the circuit court, a person affected may file a motion with the circuit court to redact protected information from the transcript. The moving party shall identify by page and line every place in the transcript where the protected information is located. The protected information shall be submitted on or attached to a protected information form as provided in sub. (2). The unredacted transcript shall be publicly available while the motion and redaction are pending unless otherwise provided by law or court order. The court may order redaction after the 30−day period for good cause shown.

(b) Upon court order, the court reporter shall, without charge, redact the protected information from the transcript in accordance with the court order and with directives established by the director of state courts office. The court reporter shall file the complete redacted version of the transcript with the circuit court and shall send a notice of transcript redaction to the parties within 20 days of receiving the court order. The court reporter is not required to provide a paper copy of the redacted version of the transcript to registered users of the electronic filing system. The court reporter shall provide a redacted copy of the transcript, without charge, upon the request of a party not registered to use the electronic filing system. If the page numbers of the transcript do not change after redaction, the court reporter may choose to provide only the replacement pages.

(c) The redacted version of the transcript shall be accessible to the public to the same extent as the rest of the court record. The original unredacted transcript shall not be accessible.

(d) The court reporter shall certify the transcript under SCR 71.04 by stating that the redacted version is a verbatim transcript of the proceedings from which protected information has been redacted, as provided in this rule and ordered by the circuit court. The protected information form and the unredacted transcript may be included with the record on appeal if the protected information is necessary to the appeal or otherwise required by law. The protected information and unredacted transcript shall be marked as confidential; paper documents shall be submitted in a sealed envelope.

(e) Except as provided in this section, a court reporter is not required to redact protected information from any transcript of a circuit court proceeding.

History: Sup. Ct. Order No. 14−04, 2015 WI 89, filed 8−27−15 and eff. 7−1−16.

NOTE: Sup. Ct. Order No. 14−04 states: "Comments to Wis. Stat. ss. 801.19, 801.20, and 801.21 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the statute."

Comment, 2015: This section protects five specific items of personally identifiable information that sometimes appear in court filings. When submitting an original document such as a pleading, a party will omit these items from the document. If the protected information is necessary to the action or required by law to be submitted to the court, a party will submit it on a protected information form provided by the court. When submitting a previously existing document like an exhibit, a party will provide a redacted copy for the public file. If the protected information is necessary to the action, the party will submit it on the protected information form or by attaching an unredacted copy to the form. If the protected information is unnecessary to the action, the party may simply redact it without submitting the protected information to the court.

801.20 When documents may be filed as confidential.

(1) The director of state courts shall maintain a list of commonly−filed documents made confidential by statutes, court rules and case law, and shall make this list publicly available. Documents on the list may be submitted by a party without a motion or court order and will be automatically treated by the court as confidential.

(2) A filing party is responsible for properly identifying a document as confidential at the time it is filed. The court is not required to review documents to determine if the documents are confidential in nature.

History: Sup. Ct. Order No. 14−04, 2015 WI 89, filed 8−27−15 and eff. 7−1−16.

NOTE: Sup. Ct. Order No. 14−04 states: "Comments to Wis. Stat. ss. 801.19, 801.20, and 801.21 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the statute."

Comment, 2015. Confidentiality of court documents is often an area of confusion for the public, lawyers, and court−related professionals. This problem can be addressed by publishing a list of commonly−filed documents that the court will automatically treat as confidential without a motion because they are protected by statutes, court rules, or case law. The filing party must properly identify the document at the time it is filed. Court staff are not required to review documents to determine confidentiality.

801.21 Motions to seal.

(1) In this section:

(a) "Redact" means to obscure individual items of information within an otherwise publicly accessible document.

(b) "Seal" means to order that a portion of a document or an entire document shall not be accessible to the public.

(2) A party seeking to protect a court record not protected by s. 801.19 or included on the list described in s. 801.20 shall file a motion to seal part or all of a document or to redact specific information in a document. The motion must be served on all parties to the action. The filing party shall specify the authority for asserting that the information should be restricted from public access. The information to be sealed or redacted may be filed under a temporary seal, in which case it shall be restricted from public access until the court rules on the motion.

(3) The court may determine if a hearing is necessary on a motion to seal or redact a court record. The court may require that the moving party provide notice to the general public by posting information at the courthouse or other location, including the time, date, and location of the hearing.

(4) The court shall determine whether there are sufficient grounds to restrict public access according to applicable constitutional, statutory, and common law. In restricting access, the court will use the least restrictive means that will achieve the purposes of this rule and the needs of the requester. The court may order that a document be redacted in the manner provided under s. 801.19. If the court seals or redacts information, the public record shall indicate that an order to seal or redact was issued and the name of the court official entering the order.

(5) An unredacted or sealed document is not accessible to the public, even if admitted as a trial or hearing exhibit, unless the court permits access. The clerk of circuit court or register in probate may certify the record as a true copy of an original record on file with the court by stating that information has been redacted or sealed in accordance with court rules or as ordered by the circuit court.

(6) The court may, on its own initiative, order sealing or redaction of any part of the court record or transcript.

(7) Documents filed subsequent to the sealing order that are subject to the order must be so identified by the filing party.

(8) Upon court order, the court reporter shall, without charge, redact the transcript or mark the transcript as sealed in accordance with the court order and with directives established by the director of state courts office.

(9) On appeal, if the record assembled under s. 809.15 includes a sealed document, the sealed document shall be marked as confidential. Sealed paper documents shall be submitted in a sealed envelope.

History: Sup. Ct. Order No. 14−04, 2015 WI 89, filed 8−27−15 and eff. 7−1−16.

NOTE: Sup. Ct. Order No. 14−04 states: "Comments to Wis. Stat. ss. 801.19, 801.20, and 801.21 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the statute."

Comment, 2015: This section defines the procedural prerequisites for filing of documents under seal. This section is not intended to expand or limit the confidentiality concerns that might justify special treatment of any document. The section is intended to make it clear that filing parties do not have the unilateral right to designate any filing as confidential and that permission from the court is required. This permission may flow from a statute or rule explicitly requiring that a particular document or portion of a document be filed confidentially or from an analysis of the facts of the case and the applicable law.

801.50 Venue in civil actions or special proceedings.

(1) A defect in venue shall not affect the validity of any order or judgment.

(2) Except as otherwise provided by statute, venue in civil actions or special proceedings shall be as follows:

(a) In the county where the claim arose;

(b) In the county where the real or tangible personal property, or some part thereof, which is the subject of the claim, is situated;

(c) In the county where a defendant resides or does substantial business; or

(d) If the provisions under par. (a) to (c) do not apply, then venue shall be in any county designated by the plaintiff.

(3) (a) Except as provided in pars. (b) and (c), all actions in which the sole defendant is the state, any state board or commission, or any state officer, employee, or agent in an official capacity shall be venued in the county designated by the plaintiff unless another venue is specifically authorized by law.

(b) All actions relating to the validity or invalidly of a rule shall be venued as provided in s. 227.40 (1).

(c) An action commenced by a prisoner, as defined under s. 801.02 (7) (a) 2., in which the sole defendant is the state, any state board or commission, or any state officer, employee, or agent in an official capacity shall be venued in Dane County unless another venue is specifically authorized by law.

(3m) Venue in an action under s. 323.60 (8) or (9) related to hazardous substance releases shall be in the county as provided under s. 323.60 (10).

(4) Venue of an action seeking a remedy available by habeas corpus shall be in the county:

(a) Where the plaintiff was convicted or sentenced if the action seeks relief from a judgment of conviction or sentence under which the plaintiff's liberty is restrained.

(b) Where the liberty of the plaintiff is restrained if the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff.

(4m) Venue of an action to challenge the apportionment of any congressional or state legislative district shall be as provided in s. 751.035. Not more than 5 days after an action to challenge the apportionment of a congressional or state legislative district is filed, the clerk of courts for the county where the action is filed shall notify the clerk of the supreme court of the filing.

(5) Venue of an action for certiorari to review a probation, extended supervision, or parole revocation, a denial by a program review committee under s. 302.113 (9g) of a petition for modification of a bifurcated sentence, or a refusal of parole shall be the county in which the relator was last convicted of an offense for which the relator was on probation, extended supervision, or parole or for which the relator is currently incarcerated.

(5c) Venue of an action for certiorari brought by the department of corrections under s. 302.113 (9) (d) or 302.114 (9) (d) to review a decision to not revoke extended supervision shall be in the county in which the person on extended supervision was convicted of the offense for which he or she is on extended supervision.

(5m) Venue of an action arising from a consumer credit transaction, as defined in s. 421.301 (10), shall be in any county specified in s. 421.401 (1).

(5p) Venue of an environmental pollution action brought by a person who is not a resident of this state against a commission created under s. 200.23 shall be in the county which contains the 1st class city that is located wholly or partially within the applicable district created under s. 200.23.

(5r) Venue of an action under s. 813.12 growing out of domestic abuse shall be in the county in which the cause of action arose, where the petitioner or the respondent resides or where the petitioner is temporarily living, except that venue may be in any county within a 100−mile radius of the county seat of the county in which the petitioner resides or in any county in which the petitioner is temporarily living if the petitioner is any of the following:

(a) A victim advocate, as defined in s. 905.045 (1) (e).

(b) An employee of the county court system.

(c) A legal professional practicing law, as defined in SCR 23.01.

(d) A current or former law enforcement officer, as defined in s. 102.475 (8) (c).

(e) The spouse of a person listed in par. (a), (b), (c), or (d).

(f) A person who is currently or has been in a dating relationship, as defined in s. 813.12 (1) (ag), with or a person who has a child in common with a person listed in par. (a), (b), (c), or (d).

(g) An immediate family member, as defined in s. 97.605 (4) (a) 2., of a person listed in par. (a), (b), (c), or (d).

(h) A household member, as defined in s. 813.12 (1) (c), of a person listed in par. (a), (b), (c), or (d).

(5s) Venue of an action under s. 813.122 or 813.125 shall be in the county in which the cause of action arose or where the petitioner or the respondent resides, except that venue may be in any county within a 100−mile radius of the county seat of the county in which the petitioner resides or in any county in which the petitioner is temporarily living if the petitioner is any of the following:

(a) A victim advocate, as defined in s. 905.045 (1) (e).

(b) An employee of the county court system.

(c) A legal professional practicing law, as defined in SCR 23.01.

(d) A current or former law enforcement officer, as defined in s. 102.475 (8) (c).

(e) The spouse of a person listed in par. (a), (b), (c), or (d).

(f) A person who is currently or has been in a dating relationship, as defined in s. 813.12 (1) (ag), with or a person who has a child in common with a person listed in par. (a), (b), (c), or (d).

(g) An immediate family member, as defined in s. 97.605 (4) (a) 2., of a person listed in par. (a), (b), (c), or (d).

(h) A household member, as defined in s. 813.12 (1) (c), of a person listed in par. (a), (b), (c), or (d).

(5t) Except as otherwise provided in ss. 801.52 and 971.223 (1) and (2), venue in a civil action to impose a forfeiture upon a resident of this state for a violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, or for a violation of any other law arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, shall be in circuit court for the county where the defendant resides. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county. This subsec-

tion does not affect which prosecutor has responsibility under s. 978.05 (2) to prosecute civil actions arising from violations under s. 971.223 (1).

(5v) Venue of an action under s. 165.76 (6) shall be in any of the following counties:

(a) The county where the respondent resides.

(b) The county in which a court order requiring the respondent to submit a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis was entered.

(c) The county in which any court proceeding was held that resulted in a requirement that the respondent submit a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(6) Venue under this section may be changed under s. 801.52.

History: 1983 a. 204, 228, 389, 538; 1985 a. 234, 291; 1987 a. 208; 1993 a. 318, 319; 1997 a. 283; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2001 a. 109; 2007 a. 1; 2009 a. 28, 42, 261; 2011 a. 21, 38, 39, 61; 2017 a. 302.

Cross−reference: See s. 813.02 (4) for exception to sub. (1) as to venue.

Judicial Council Note, 1983: Sub. (1) is designed to separate questions of venue from questions of jurisdiction and competency. A defect in venue is not jurisdictional and does not affect the competence of the court. The cure for a defect in venue is to change the place of trial.

Sub. (2) liberalizes the present venue statute by providing the plaintiff with a broader range of initial venue choices. This subsection also deletes many of the archaic distinctions in the former statute.

The following list contains many, but not all, of the specialized venue provisions not found in chapter 801: s. 48.185 (children's code proceedings); s. 48.83 (adoption of minors); s. 51.45 (13) (n) (civil mental commitments); s. 52.10 (11) (proceedings under the uniform reciprocal enforcement of support act) [s. 52.10 (11) was renumbered s. 767.65 (11) and subsequently repealed by 1993 Wis. Act 326, which created ch. 769, the uniform interstate family support act]; s. 77.12 (forest croplands tax act); s. 111.60 (Wisconsin employment relations act); s. 144.73 (4) [now s. 291.95 (4)] (hazardous waste act); s. 185.44 (1) (cooperative contracts); s. 195.07 (railroad regulation act); s. 196.44 (3) (public utilities regulation act); s. 198.12 (2) (municipal power and water district act); s. 215.02 (5) (savings and loan association act); s. 227.16 (1) (administrative procedure act); s. 232.38 (solid waste recycling authority act); s. 234.22 (housing finance authority act); s. 345.31 (motor vehicle act); s. 421.401 (Wisconsin consumer act); s. 645.04 (1) (insurers rehabilitation and liquidation act); [s. 655.19 (health care liability and patients compensation)]; s. 701.14 (4) (living trusts); s. 752.21 (court of appeals); s. 753.065 (naturalization proceedings); s. 757.89 (Wisconsin judicial commission); s. 776.13 (annulment of corporate charters); s. 779.20 (log liens); s. 799.11 (small claims actions); s. 800.15 (municipal court appeals); s. 880.05 (guardianship actions); s. 882.03 (adult adoptions); s. 971.19 (criminal proceedings); s. 979.01 (inquests of the dead); s. 23.90 (conservation act); s. 45.50 (3) (soldiers and sailors civil relief); and s. 753.34 (5) (Menominee and Shawano counties).

Sub. (3) remains the same in substance.

Subs. (4) and (5) remain unchanged.

Sub. (6) recognizes the authority of the judge to change venue under s. 801.52. [Bill 324−S]

"Substantial business" under sub. (2) (c) is discussed. Enpro Assessment Corp. v. Enpro Plus, Inc. 171 Wis. 2d 542, 492 N.W.2d 325 (Ct. App. 1992).

"Where the liberty of the plaintiff is restrained" under sub. (4) (b) is the county where the plaintiff is confined. State ex rel. Frederick v. McCaugherty, 173 Wis. 2d 222, 496 N.W.2d 327 (Ct. App. 1992).

A certiorari proceeding to review a probation revocation must be heard in the circuit court of conviction, but it need not be heard by the same branch. Drow v. Schwarz, 225 Wis. 2d 362, 592 N.W.2d 623 (1999), 97−1867.

Sections 801.50 and 801.51, the general venue statutes, do not apply to actions arising from consumer credit transactions. Rather, the venue provision in s. 421.401 applies. Brunton v. Nuvell Credit Corporation, 2010 WI 50, 325 Wis. 2d 135, 785 N. W. 2d 302, 07−1253.

By requiring that a petitioner file its petition in the petitioner's county of residence, s. 227.53 (1) (a) 3. does not conflict with or negate the petitioner's ability to designate venue under sub. (3) (a). When a plaintiff designates the county for circuit court venue under sub. (3) (a), it means that the plaintiff is specifying venue, not choosing it. Even when s. 227.53 (1) (a) 3. eliminates any opportunity to choose a county, the plaintiff still designates venue within the meaning of sub. (3) (a). DNR v. Wisconsin Court of Appeals, District IV, 2018 WI 25, 380 Wis. 2d 354, 909 N.W.2d 114, 16−1980.

Another venue "is specifically authorized by law" under sub. (3) (a) only when venue is lawfully transferred to a county different from the one designated by the plaintiff. After 2011 Wis. Act 61, the "unless" clause in sub. (3) (a) serves only as a mechanism by which to oust the plaintiff's venue designation. DNR v. Wisconsin Court of Appeals, District IV, 2018 WI 25, 380 Wis. 2d 354, 909 N.W.2d 114, 16−1980.

Wisconsin's revised venue statutes. Fullin, WBB September, 1984.

801.51 Challenges to improper venue. Any party may challenge venue, on the grounds of noncompliance with s. 801.50 or any other statute designating proper venue, by filing a motion for change of venue:

(1) At or before the time the party serves his or her first motion or responsive pleading in the action.

(2) After the time set forth in sub. (1), upon a showing that despite reasonable diligence, the party did not discover the grounds therefor at or before that time.

History: 1983 a. 228.

Judicial Council Note, 1983: This section sets forth the procedure for challenging the plaintiff's initial choice of venue on the grounds that it fails to comply with the provisions of s. 801.50 or any other statute specifying proper venue. The former statute's 2−stage proceeding was unnecessary and tended to create confusion for unwary litigants. [Bill 324−S]

Sections 801.50 and 801.51, the general venue statutes, do not apply to actions arising from consumer credit transactions. Rather, the venue provision in s. 421.401 applies. Brunton v. Nuvell Credit Corporation, 2010 WI 50, 325 Wis. 2d 135, 785 N.W.2d 302, 07−1253.

801.52 Discretionary change of venue. The court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the venue to any county in the interest of justice or for the convenience of the parties or witnesses, except that venue in a civil action to impose a forfeiture for a violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or for a violation of any other law arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, may be changed only as provided in s. 971.223 (1) and (2) or in the same manner that is authorized for a change in the venue of a criminal trial under s. 971.22. This section does not apply to proceedings under ch. 980.

History: 1983 a. 228; 2005 a. 434; 2007 a. 1; 2009 a. 180.

Judicial Council Note, 1983: This section authorizes grounds for changing venue beyond the failure to comply with s. 801.50. It permits the court to apply traditional forum non conveniens principles to requests for discretionary change of venue. The court has discretion to change venue to any county in the state. [Bill 324−S]

801.53 Determination of motion for change of venue. Motions under ss. 801.51 and 801.52 shall be determined on the basis of proofs submitted by the parties unless the court orders a hearing or oral argument. Oral argument shall be heard by telephonic conference unless the court otherwise orders for cause shown.

History: 1983 a. 228.

Judicial Council Note, 1983: The provisions of the prior statute are revised in new s. 801.51. Motions under s. 801.51 are rarely contested and usually decided on affidavit. As on other nonevidentiary motions, oral argument should, if desired, be heard by 3−way or conference telephone call. Motions under s. 801.52, while requiring a factual foundation, usually are based not on dispute of fact but on balance of equities. Unless good cause to the contrary is advanced, arguments should be heard by 3−way or telephonic conference call. [Bill 324−S]

801.54 Discretionary transfer of civil actions to tribal court. (1) SCOPE. In a civil action where a circuit court and a court or judicial system of a federally recognized American Indian tribe or band in Wisconsin ("tribal court") have concurrent jurisdiction, this rule authorizes the circuit court, in its discretion, to transfer the action to the tribal court under sub. (2m) or when transfer is warranted under the factors set forth in sub. (2). This rule does not apply to any action in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

(2) DISCRETIONARY TRANSFER. When a civil action is brought in the circuit court of any county of this state, and when, under the laws of the United States, a tribal court has concurrent jurisdiction of the matter in controversy, the circuit court may, on its own motion or the motion of any party and after notice and hearing on the record on the issue of the transfer, cause such action to be transferred to the tribal court. The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, unless all parties stipulate to the transfer, in the exercise of its discretion the circuit court shall consider all relevant factors, including but not limited to:

(a) Whether issues in the action require interpretation of the tribe's laws, including the tribe's constitution, statutes, bylaws, ordinances, resolutions, or case law.

(b) Whether the action involves traditional or cultural matters of the tribe.

(c) Whether the action is one in which the tribe is a party, or whether tribal sovereignty, jurisdiction, or territory is an issue in the action.

(d) The tribal membership status of the parties.

(e) Where the claim arises.

(f) Whether the parties have by contract chosen a forum or the law to be applied in the event of a dispute.

(g) The timing of any motion to transfer, taking into account the parties' and court's expenditure of time and resources, and compliance with any applicable provisions of the circuit court's scheduling orders.

(h) The court in which the action can be decided most expeditiously.

(i) The institutional and administrative interests of each court.

(j) The relative burdens on the parties, including cost, access to and admissibility of evidence, and matters of process, practice, and procedure, including where the action will be heard and decided most promptly.

(k) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(2m) TRIBAL CHILD SUPPORT PROGRAMS. The circuit court may, on its own motion or the motion of any party, after notice to the parties of their right to object, transfer a post−judgment child support, custody or placement provision of an action in which the state is a real party in interest pursuant to s. 767.205 (2) to a tribal court located in Wisconsin that is receiving funding from the federal government to operate a child support program under Title IV−D of the federal Social Security Act (42 U.S.C. 654 et al.). The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party objects in a timely manner. Upon the filing of a timely objection to the transfer the circuit court shall conduct a hearing on the record considering all the relevant factors set forth in sub. (2).

(3) STAY OF PROCEEDING IN CIRCUIT COURT. When a circuit court transfers an action to tribal court under this rule, the circuit court shall enter an order to stay further proceedings on the action in circuit court. Jurisdiction of the circuit court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

(4) APPEALS. The decision of a circuit court to transfer an action to tribal court may be appealed as a matter of right under s. 808.03 (1).

(5) EFFECT OF TRANSFER. When a circuit court orders the transfer of an action to tribal court under this rule, the circuit court shall retain the circuit court filing fee and shall transmit to the tribal court a copy of all circuit court records in the action.

(6) POWERS, RIGHTS AND OBLIGATIONS UNAFFECTED. Nothing in this rule is intended to alter, diminish, or expand the jurisdiction of the circuit courts or any tribal court, the sovereignty of the state or any federally recognized American Indian tribe or band, or the rights or obligations of parties under state, tribal, or federal law.

History: Sup. Ct. Order No. 07−11, 2008 WI 114, filed 7−31−08, eff. 1−1−09; Sup. Ct. Order No. 07−11A, 2009 WI 63, 307 Wis. 2d xxi.

NOTE: Sup. Ct. Order No. 07−11 states: "The following Comment to Wis. Stat. s. 801.54 is not adopted, but will be published and may be consulted for guidance in interpreting and applying the statute:"

Comment, 2008. The purpose of this rule is to enable circuit courts to transfer civil actions to tribal courts in Wisconsin as efficiently as possible where appropriate. In considering the factors under sub. (2), the circuit court shall give particular weight to the constitutional rights of the litigants and their rights to assert all available claims and defenses.

A court that is considering transferring a case to a tribal court under the tribal transfer statute must conduct a two−part analysis. It must make a clear record of its findings and conclusions regarding concurrent jurisdiction, as well as an analysis of all of the rule's relevant factors on the facts presented. Kroner v. Oneida Seven Generations Corporation, 2012 WI 88, 342 Wis. 2d 626, 819 N.W.2d 264, 10−2533.

801.56 Change of venue if judge disqualified by interest. When the judge is a party or interested in any action in the judge's court or is related to or has been of counsel for either party, the court or the presiding judge thereof shall, upon application of either party, and may without such application, change the place of trial or call in another judge as provided in s. 801.58. The fact that the judge is a taxpayer does not disqualify the judge.

History: Sup. Ct. Order, 67 Wis. 2d 585, 757, 777 (1975); 1975 c. 218; Stats. 1975 s. 801.56.

801.58 Substitution of judge. (1) Any party to a civil action or proceeding may file a written request, signed personally or by his or her attorney, 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 preceding the hearing of any preliminary contested matters and, if by the plaintiff, not later than 60 days after the summons and complaint are filed or, if by any other party, not later than 60 days after service of a summons and complaint upon that party. 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 named judge.

(2) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If the judge named in the substitution request finds that the request was not timely and in proper form, that determination may be reviewed by the chief judge of the judicial administrative district, or by the chief judge of an adjoining judicial administrative district if the judge named in the request is the chief judge, if the party who made the substitution request files a written request for review with the clerk no later than 10 days after the determination by the judge named in the request. If no determination is made by the judge named in the request within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district or to the chief judge of an adjoining judicial administrative district, if the judge named in the request is the chief judge, for determination of whether the request was made timely and in proper form and reassignment as necessary. The newly assigned judge shall proceed under s. 802.10 (1).

(2m) If, under sub. (2), the judge determines that the request for substitution was made timely and in proper form, any ex parte order granted by the original judge remains in effect according to the terms, except that a temporary restraining order issued under s. 813.12 (3), 813.122 (4), 813.123 (4), or 813.125 (3) by the original judge is extended until the newly assigned judge holds a hearing on the issuance of an injunction. The newly assigned judge shall hear any subsequent motion to modify or vacate any ex parte order granted by the original judge.

(3) Except as provided in sub. (7), no party may file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one of such party of a written request.

(4) Upon the filing of an agreement signed by all parties to a civil action or proceeding, by the original judge for which a substitution of a new judge has been made, and by the new judge, the civil action or proceeding and pertinent records shall be transferred back to the original judge.

(5) In addition to other substitution of judge procedures, in probate matters a party may file a written request specifically stating the issue in a probate proceeding for which a request for substitution of a new judge has been made. The judge shall thereupon be substituted in relation to that issue but after resolution of the issue shall continue with the administration of the estate. If a person wishes to file a written request for substitution of a new judge for the entire proceeding, subs. (1) to (4) shall apply.

(6) (a) In probate matters ss. 801.59 to 801.62 apply, except that upon the substitution of any judge, the case shall be referred to the register in probate, who shall request assignment of another judge under s. 751.03 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to the assigned judge, by mail or in person, for signing or approving, wherever the judge may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the circuit court of the county where the records and files of the matter are kept.

(7) 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 filing of the remittitur in the trial court whether or not another request was filed prior to the time the appeal or writ of error was taken.

History: 1971 c. 46, 138, 296; Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); Stats. 1975 s. 801.58; 1977 c. 135 ss. 7, 15, 16; 1977 c. 187 s. 135; Sup. Ct. Order, 82 Wis. 2d ix (1978); 1977 c. 449; 1979 c. 175 ss. 50, 53; 1981 c. 137; 1987 a. 68; 2013 a. 322.

Judicial Council Note, 1977: Section 801.58 of the statutes has been changed in a number of significant ways. The statute states that a substitution of judge request in a civil action or proceeding is timely only if made before the hearing of a preliminary contested matter, codifying Pure Milk Products Coop. v. NFO, 64 Wis. 2d 241 (1974).

A new provision has been added to allow the parties to a criminal action or proceeding, the prosecuting attorney, and the original and the new judge to agree to have the matter referred back to the original judge. This will aid the administration of justice in those cases where it is advantageous for everyone concerned to have the original judge take back the matter. [Bill 74−S]

Judicial Council Committee's Note, 1977: Sub. (1) is amended to give a plaintiff 60 days from the time the summons and complaint are filed or a defendant or any added party 60 days after service of a summons and complaint upon them to request a substitution of a new judge, provided no preliminary contested matters have been argued by the requester. The previous time periods for requesting a substitution of judge (i.e., 10 days after the date of notice for a scheduling conference or 10 days after service of a standard scheduling order) are repealed as the use of such a conference or order is no longer mandatory under s. 802.10. [Re Order effective July 1, 1978]

Judicial Council Note, 1981: Sub. (2) has been revised to allow the clerk to refer the substitution request to the chief judge of the judicial administrative district when the judge whose substitution has been requested fails to determine within 7 days whether the request is timely made and in proper form.

Sub. (7) has been amended to clarify that the 20−day time period for filing a substitution request after an appellate remand commences upon the filing of the remittitur in the trial court. Rohl v. State, 97 Wis. 2d 514 (1980). [Bill 163−S]

A right can be waived by participation in preliminary motions in which the judge is allowed to receive evidence that of necessity is used and weighed in deciding ultimate issues. Pure Milk Products Coop. v. NFO, 64 Wis. 2d 241, 219 N.W.2d 564 (1974).

The *Bacon−Bahr* rule, which interprets this section to bar substitution in proceedings to modify support or custody orders, applies only to cases in which the judge has been previously involved. State ex rel. Tarney v. McCormack, 99 Wis. 2d 220, 298 N.W.2d 552 (1980).

A substitution of judge request may be filed with a deputy clerk. In Matter of Civil Contempt of Kroll, 101 Wis. 2d 296, 304 N.W.2d 175 (Ct. App. 1981).

An added party may request a substitution within 60 days of service if the added party has not actually participated in preliminary contested matters. City of La Crosse v. Jiracek Cos., Inc. 108 Wis. 2d 684, 324 N.W.2d 440 (Ct. App. 1982).

The 10−day period for substitution under sub. (1) is triggered by receipt of actual notice that the new judge has been assigned. State ex rel. Laborers Union v. Kenosha Cir. Ct. 112 Wis. 2d 337, 332 N.W.2d 832 (Ct. App. 1983).

Sub. (7) creates an unqualified right to substitution when further trial court proceedings are necessary after remand from an appellate court. State ex rel. Oman v. Hunkins, 120 Wis. 2d 86, 352 N.W.2d 220 (Ct. App. 1984).

"Further proceedings" under ss. 801.58 (7) and 808.08 (3) have the same definition. State ex rel. Ondrasek v. Circuit Ct. 133 Wis. 2d 177, 394 N.W.2d 912 (Ct. App. 1986).

If parties are united in interest and plead together and one presents its views in a preliminary contested matter, all united parties are barred from moving for substitution. Carkel, Inc. v. Lincoln County Circuit Court, 141 Wis. 2d 257, 414 N.W.2d 640 (1987). See also DeWitt Ross & Stevens v. Galaxy Gaming and Racing, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02−0359.

Affirmed on other grounds. 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839, 02−0359.

When the trial court is ordered to clarify its ruling in a divorce matter on remand, the *Bacon−Bahr* rule applies and no substitution under sub. (7) is permitted. Parrish v. Kenosha County Circuit Ct. 148 Wis. 2d 700, 436 N.W.2d 608 (1989).

Because an ex parte restraining order is not issued in the context of a contested proceeding, a substitution request may be granted subsequent to the entry of an order and prior to a hearing on the merits. Threlfall v. Town of Muscoda, 152 Wis. 2d 308, 448 N.W.2d 274 (Ct. App. 1989).

A request for substitution is not allowed when a recommitment hearing under s. 51.20 (13) (g) 3. is before the same judge who conducted the original commitment proceeding. Serocki v. Clark County Circuit Court, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

The requirement of sub. (1) that substitution requests be filed preceding the hearing of any "preliminary contested matters" applies to requests filed under sub. (5). A motion to compel discovery constitutes a "preliminary contested matter." State ex rel. Sielen v. Circuit Court for Milwaukee County, 176 Wis. 2d 101, 499 N.W.2d 651 (1993).

A nonsummary contempt motion is a part of the underlying action from which it arises, and the time allowed for requesting judicial substitution runs from the commencement of the action not from receipt of notice of the contempt proceeding. James L.J. v. Walworth County Circuit Court, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94−2043.

The court of appeals is authorized to exercise its supervisory authority over a chief judge who is ruling on a substitution request. James L.J. v. Walworth County Circuit Court, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94−2043.

The right to judicial substitution applies to ch. 980 proceedings. State v. Brown, 215 Wis. 2d 716, 573 N.W.2d 884 (Ct. App. 1997), 96−1211.

When a judge normally presides in one county but is assigned by substitution to a case filed in another county, the filing and entry for appeal purposes occur when the document comes into the possession of the clerk of court in the county in which the case was commenced. State v. Williams, 230 Wis. 2d 50, 601 N.W.2d 838 (Ct. App. 1999), 98−3338.

The only time a chief judge may become involved in the substitution process under sub. (2) is if a circuit court denies a substitution request for not being timely or properly filed. State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679, 97−3452.

If a circuit court may exercise discretion in discharging its duties on remand, the court must engage in "further proceedings" under sub. (7), entitling the parties to the right of substitution. If the remand requires a specific action that requires no exercise of discretion by the trial court, no substitution is allowed. State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679, 97−3452.

Review by the chief judge under sub. (2) is a prerequisite to appeal a denial of a request for substitution. A chief judge may review a denial only if a timely request for review is made. Paternity of Daniel L.G. 2002 WI App 47, 250 Wis. 2d 667, 641 N.W.2d 175, 01−1219.

Because two insurance companies' policies for the same insured were in effect on different dates and provided different types of coverages, they would not be similarly affected by the court's determination of when damages occurred. As determination of the dates would eliminate the possibility of coverage by one company and raise the possibility of coverage by the other, the two companies were not united in interest under sub. (3) although they shared some interests in the case. Cincinnati Insurance Company v. Milwaukee County, 2003 WI 57, 262 Wis. 2d 99, 663 N.W.2d 275, 02−2756.

For a motion hearing to be a "preliminary contested matter" for purposes of sub. (1), the dispositive question is whether the hearing concerned a substantive issue that went to the merits of the case. A hearing on a motion that depositions be suspended sought to narrow the scope of discovery and thus addressed a substantive issue that affected the presentation of the case. DeWitt Ross & Stevens v. Galaxy Gaming and Racing, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02−0359.

Affirmed on other grounds. 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839, 02−0359.

Although sub. (7) limits substitution to appeals and writs of error, and a petition for a supervisory writ is neither an appeal nor a writ of error, sub. (7) creates an unqualified right to substitution when further trial court proceedings are necessary after remand from an appellate court. Because the supreme court's supervisory writ reversed orders of the circuit court and remanded the matter to the circuit court for further proceedings either party was permitted to seek a substitution of judge. Universal Processing Services v. Circuit Court of Milwaukee County, 2017 WI 26, 374 Wis. 2d 26, 892 N.W.2d 267, 16−0923.

The civil peremptory substitution statute. Seaburg, WBB January, 1986.

801.59 Assigned judge. In any case where another judge has been assigned under s. 751.03 to hear a particular action or proceeding, the clerk of circuit court shall forthwith notify all parties to the action or proceeding, by mail or telephone, noting in the case file the time notice was sent or given and, if notice is given by telephone, the person with whom he or she spoke. If a written request for a substitution of a new judge is filed with regard to an assigned judge, it shall be filed within 7 days after notice of the assignment has been received. A copy of the written request shall be mailed forthwith to all parties and to the named judge.

History: 1971 c. 296; Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); 1977 c. 187 s. 135; Sup. Ct. Order, 141 Wis. 2d xiii (1987).

Judicial Council Note, 1988: This section is amended by allowing notice of a newly assigned judge to be given to the parties by telephone. Notation of the time of notice is required for purposes of s. 801.58 (1). [Re Order effective Jan. 1, 1988]

801.61 Proceedings after order for change of venue. When the place of trial is changed all process, pleadings and other papers, and copies of all entries and minutes of the clerk in such action shall be certified and transmitted by such clerk to the clerk of the court to which the trial is changed, with a statement of fees. Such fees shall be paid before transmission by the party procuring such change, except in the case mentioned in s. 801.51, in which case the plaintiff shall pay such fees and the change shall be complete on the making of the order. The change, in other cases, shall be complete on filing the papers transmitted. If such transmission and filing be not made within 20 days from the making of the order to change the place of trial, unless such time be extended, the moving party shall lose the right to the change except in the case mentioned in s. 801.51, and no order for a change for the same cause shall thereafter be made and the moving party shall pay the costs of the application within 10 days after the expiration of said 20 days; but the other party may, within 40 days from the time of making of the order granting the change, pay the clerk fees and have the papers certified and transmitted to the court mentioned in such order.

History: Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975), 777; 1975 c. 218, 422; Stats. 1975 s. 801.61; 1983 a. 228 s. 16.

801.62 Conclusiveness of change of venue; second motion. After trial in the court to which the action has been changed, the proceedings for the change shall be conclusive unless a motion to remand was made before the trial commences. If after the transmission of the papers an order changing the place of trial is reversed or set aside the effect shall be to change the place of trial back. After the transmission of the papers back to the original court on the reversal or setting aside of the order, a party may renew the application for a change of venue within 20 days. The renewed application shall be treated as the original application.

History: Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); 1975 c. 218; Stats. 1975 s. 801.62; 1977 c. 449.

801.63 Stay of proceeding to permit trial in a foreign forum. (1) STAY ON INITIATIVE OF PARTIES. If a court of this state, on motion of any party, finds that trial of an action pending before it should as a matter of substantial justice be tried in a forum outside this state, the court may in conformity with sub. (3) enter an order to stay further proceedings on the action in this state. A moving party under this subsection must stipulate consent to suit in the alternative forum and waive right to rely on statutes of limitation which may have run in the alternative forum after commencement of the action in this state. A stay order may be granted although the action could not have been commenced in the alternative forum without consent of the moving party.

(2) TIME FOR FILING AND HEARING MOTION. The motion to stay the proceedings shall be filed prior to or with the answer unless the motion is to stay proceedings on a cause raised by counterclaim, in which instance the motion shall be filed prior to or with the reply. The issues raised by this motion shall be tried to the court in advance of any issue going to the merits of the action and shall be joined with objections, if any, raised by answer or motion pursuant to s. 802.06 (2). The court shall find separately on each issue so tried and these findings shall be set forth in a single order.

(3) SCOPE OF TRIAL COURT DISCRETION ON MOTION TO STAY PROCEEDINGS. The decision on any timely motion to stay proceedings pursuant to sub. (1) is within the discretion of the court in which the action is pending. In the exercise of that discretion the court may appropriately consider such factors as:

(a) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;

(b) Convenience to the parties and witnesses of trial in this state and in any alternative forum;

(c) Differences in conflict of law rules applicable in this state and in any alternative forum; or

(d) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(4) SUBSEQUENT MODIFICATION OF ORDER TO STAY PROCEEDINGS. Jurisdiction of the court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

(5) Motions under this section may be heard on the record as prescribed in s. 807.13.

History: Sup. Ct. Order, 67 Wis. 2d 585, 612 (1975), 758, 777; 1975 c. 218; Stats. 1975 s. 801.63; Sup. Ct. Order, 141 Wis. 2d xiii (1987); Sup. Ct. Order, 151 Wis. 2d xvii (1989).

Judicial Council Note, 1988: Sub. (5) [created] allows motions for stays under this section to be heard by telephone conference. [Re Order effective Jan. 1, 1988]

A motion to stay a Wisconsin action or transfer the case to an Iowa court where an action arising out of the same accident was pending was properly denied when the parties were different and because of Iowa law the plaintiff would lose substantial rights. Littmann v. Littmann, 57 Wis. 2d 238, 203 N.W.2d 901 (1973).

A court ordinarily should adjudicate the litigation before it and the plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant. A trial of the cause should be permitted in another state only upon a convincing showing that the trial in Wisconsin is likely to result in a substantial injustice. U.I.P. Corp. v. Lawyers Title Insurance Corp. 65 Wis. 2d 377, 222 N.W.2d 638 (1974).

A party seeking a stay must show not only that trial in the forum state will be inconvenient and unjust but also that trial in another forum is both more convenient and just. U.I.P. Corp. v. Lawyers Title Insurance Corp. 82 Wis. 2d 616, 264 N.W.2d 525 (1978).

Section 801.63 does not control inconvenient forum motions in custody proceedings. Mayer v. Mayer, 91 Wis. 2d 342, 283 N.W.2d 591 (Ct. App. 1979).

801.64 Legislative findings; 2007 Wisconsin Act 1. The legislature finds that providing under 2007 Wisconsin Act 1 for the place of trial in the county where the offender resides is consistent with the legislature's authority under article I, section 7, of the constitution and with previous acts by the legislature providing for the place of trial in counties other than where the elements of the offense may have occurred. The legislature further finds that allowing defendants charged with violating offenses covered by 2007 Wisconsin Act 1 to request a trial in the county where the offense occurred is consistent with the protections in article I, section 7, of the constitution. The legislature finds that violations of offenses covered by 2007 Wisconsin Act 1 are violations of the public trust that should be adjudicated in the county where the offender resides so the individuals who the defendant interacts with daily, serves, or represents as a public official or candidate and whose trust was violated by the offense will judge the defendant's guilt or innocence. The legislature further finds that to so provide is consistent with equal protection of the laws under article I, section 1, of the constitution. The legislature finds the venue provision in 2007 Wisconsin Act 1 represents an appropriate balance between the rights of the defendant and the need to prevent and prosecute civil and criminal offenses covered by 2007 Wisconsin Act 1.

History: 2007 a. 1.