CHAPTER 801

CIVIL PROCEDURE — COMMENCEMENT OF ACTION AND VENUE

NOTE: Chapter 801 was created by Sup. Ct. Order, 67 W (2d) 585 (1975), which contains Judicial Council Committee notes explaining each section. Statutes prior to the 1983−84 edition also have 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. "Action", as used in chs. 801 to 847, 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 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 W (2d) 585, 588 (1975); 1977 c. 449; 1979 c. 89; 1981 c. 390.

Chapters 801 to 847 apply to in rem actions under 161.555 regarding issue whether action may be brought against inanimate object as sole "defendant". See note to 801.07, citing State v. One 1973 Cadillac, 95 W (2d) 641, 291 NW (2d) 626 (Ct. App. 1980).

See note to 799.29, citing King v. Moore, 95 W (2d) 686, 291 NW (2d) 304 (Ct. App. 1980).

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

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 60 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 60 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) No prisoner, as defined in s. 301.01 (2), may commence a civil action or special proceeding against an officer, employe or agent of the department of corrections in his or her official capacity or as an individual for acts or omissions committed while carrying out his or her duties as an officer, employe or agent or while acting within the scope of his or her office, employment or agency until the person has exhausted any administrative remedies that the department of corrections has promulgated by rule.

History: Sup. Ct. Order, 67 W (2d) 585, 589 (1975); 1975 c. 218; 1981 c. 289, 317; 1995 a. 27.

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 (5), certiorari action may be commenced in three ways: pursuant to (1) allowing for summons and complaint, by service of appropriate writ, or by filing a complaint and serving it along with an order, in lieu of summons, upon defendant. Nickel River Inv. v. LaCrosse Review Bd., 156 W (2d) 429, 457 NW (2d) 333 (Ct. App 1990).

Certiorari action may be commenced by filing and serving summons and complaint pursuant to (1). Tobler v. Door County, 158 W (2d) 19, 461 NW (2d) 775 (1990).

Test to determine whether defects in summons and complaints are fatal set forth. Court has jurisdiction where error is technical and complainant can show defendant was not prejudiced; where error is fundamental no jurisdiction may attach. Am. Family Mut. Ins. v. Royal Ins. Co., 167 W (2d) 524, 481 NW (2d) 629 (1992).

Summons which 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 W (2d) 89, 486 NW (2d) 77 (Ct. App. 1992).

A summons served by publication under sub. (3) must be authenticated for the trial court to obtain personal jurisdiction. Burnett v. Hill, 199 W (2d) 163, 544 NW (2d) 580 (Ct. App. 1996).

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 W (2d) 585, 591 (1975); 1975 c. 218; 1983 a. 189.

Illegal aliens have right to sue in Wisconsin for injuries negligently inflicted upon them. Arteaga v. Literski, 83 W (2d) 128, 265 NW (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. 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 W (2d) 585, 591 (1975); 1979 c. 89.

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

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

See note to 753.03, citing In Matter of Guardianship of Eberhardy, 102 W (2d) 539, 307 NW (2d) 881 (1981).

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

Subject to limited exception, complainants in 42 USC 1983 actions need not exhaust administrative remedies prior to bringing action in state court. Casteel v. Vaade, 167 W (2d) 1, 481 NW (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 defend−

ant 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. 822.05 as provided in s. 822.12.

(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 W (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.

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

In an action against an Illinois corporate defendant and its officer alleging fraudulent advertising, the trial court possessed jurisdiction over the officer where 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, and where testimony indicated that defendant had participated in one such transaction in the state. State v. Advance Marketing Consultants, Inc. 66 W (2d) 706, 225 NW (2d) 887.

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

Trial court was entitled to consider complaint and answer in determining whether court had jurisdiction. Merco Distrib. Corp. v. O & R Engines, Inc. 71 W (2d) 792, 239 NW (2d) 97.

Manufacturer having no dealers or distributors in Wisconsin held amenable to jurisdiction under (4) by virtue of magazine advertisement solicitations and out−of−state sales to Wisconsin residents. See note to Art. I, sec. 1, citing Fields v. Playboy Club of Lake Geneva, Inc. 75 W (2d) 644, 250 NW (2d) 311.

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

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

Burden of proof is on plaintiff to establish jurisdiction under this section. Lincoln v. Seawright, 104 W (2d) 4, 310 NW (2d) 596 (1981).

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

Sub. (11) provides three independent sources of personal jurisdiction which must be considered in disjunctive. In re Marriage of McAleavy v. McAleavy, 150 W (2d) 26, 440 NW (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 W (2d) 471, 485 NW (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 W (2d) 585, 486 NW (2d) 533, (Ct. App. 1992).

See note to Art. I, sec. 1, citing Kulko v. California Superior Court, 436 US 84 (1978).

See note to Art. I, sec. 1, citing Rush v. Savchuk, 444 US 320 (1980).

See note to Art. I, sec. 1, citing Allstate Ins. Co. v. Hague, 449 US 302 (1981).

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).

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

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

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

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

Jurisdiction in an action for misrepresentation in sale of a boat did not exist where 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.

Fact that a Virginia corporation was a distributor for a Wisconsin corporation in Virginia is not enough to justify action in Wisconsin. Watral v. Murphy Diesel Co. 358 F Supp. 968.

A Texas company which ordered a turbine from a Wisconsin manufacturer, and which sent representatives to Wisconsin twice, was subject to Wisconsin jurisdiction. Nordberg, etc. v. Hudson Eng. Corp. 361 F Supp. 903.

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

Service upon nonresident's father at his residence was insufficient for exercise of personal jurisdiction over nonresident in diversity case, despite claimed actual notice, where no attempt was made to comply with 345.09. Chilcote v. Shertzer, 372 F Supp. 86.

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

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

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.

Actions of out−of−state police officials in continuously soliciting plaintiff's arrest by means of "fugitive from justice notice" entered into FBI National Crime Information Center computer data bank, in representing to Wisconsin authorities that extradition was desired and requesting plaintiff be arrested constituted sufficient minimum contact with Wisconsin to permit exercise of personal jurisdiction. Maney v. Ratcliff, 399 F Supp. 760.

Infrequent use of Wisconsin roads by 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).

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

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

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

Contract for services distinguished from contract for goods. L.B. Sales Corp. v. Dial Mfg., Inc. 593 F Supp. 290 (1984).

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

This section is intended to reach to the full extent permissible under the due process clause of the fourteenth amendment. Walworth Woodcraft v. Metro. Consol. Industries, 637 F Supp. 159 (E. D. Wis. 1986).

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, 841 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).

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.

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 W (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. 767.02 (1) (a) to (d) and when the residence requirements of s. 767.05 (1m) 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).

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

This section requires that in rem actions under 161.555 must be commenced against person having interest in property seized under 161.55. State v. One 1973 Cadillac, 95 W (2d) 641, 291 NW (2d) 626 (Ct. App. 1980).

Minimum contacts standard for quasi in rem jurisdiction discussed. Shaffer v. Heitner, 433 US 186.

Posting notice of eviction on apartment door did not satisfy minimum requirements of due process. Greene v. Lindsey, 456 US 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 W (2d) 585, 598 (1975); 1979 c. 110 s. 60 (7); Sup. Ct. Order, 101 W (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]

Jurisdiction dispute may not be resolved on motion. Merco Distrib. Corp. v. O & R Engines, Inc. 71 W (2d) 792, 239 NW (2d) 97.

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

Order denying motion to dismiss based on jurisdiction under 801.08 (1) is not final order and is not appealable as of right under 808.03 (1). Grulkowski v. Dept. of Transp. 97 W (2d) 615, 294 NW (2d) 43 (Ct. App. 1980).

Trial court erred in denying plaintiff's request for evidentiary hearing; plaintiff has no burden to prove jurisdictional facts prior to hearing. Henderson v. Milex Products, Inc. 125 W (2d) 141, 370 NW (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 W (2d) 256, 546 NW (2d) 192 (Ct. App. 1996).

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:

(a) Within 20 days, or within 45 days if the defendant is the state or an officer, agent, employe or agency of the state in an action or special proceeding brought within the purview of s. 893.82 or 895.46, 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; or

(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 W (2d) 585, 598 (1975); Sup. Ct. Order, 67 W (2d) viii; 1975 c. 218; Sup. Ct. Order, 112 W (2d) xi; Sup. Ct. Order, 171 W (2d) xxv; 1993 a. 365, 486.

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 employes 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]

See note to 805.18, citing Canadian Pac. Ltd. v. Omark−Prentice Hydraulics, 86 W (2d) 369, 272 NW (2d) 407 (Ct. App. 1978).

Failure to name party in summons means court has no authority over that party regarding the case; prejudice need not be shown. Bulik v. Arrow Realty, Inc., 148 W (2d) 441, 434 NW (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 W (2d) 396, 542 NW (2d) 454 (1996).

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: ...., 19..

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: ...., 19..

Signed: ....
A. B., Plaintiff
or
E. F., Plaintiff's Attorney
State Bar Number: ....
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 ...., 19.., 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: ...., 19..

Signed: ....
A. B., Plaintiff
or
E. F., Plaintiff's Attorney
State Bar Number: ....
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 ...., 19.., 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: ...., 19..

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

History: 1983 a. 323; Sup Ct. Order, 171 W (2d) xix (1992).

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.

(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 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 W (2d) 585, 600 (1975); 1975 c. 218; Sup. Ct. Order, 92 W (2d) xiii (1979).

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 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 W (2d) 816, 528 NW (2d) 17 (Ct. App. 1995).

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 such 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 mentally 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), (6) or (7). If no guardian has been appointed when service is made upon a person known to 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.

(7) OTHER UNINCORPORATED ASSOCIATIONS AND THEIR OFFICERS. A summons may be served individually upon any officer or director known to the plaintiff of an unincorporated association other than a partnership by service in the manner prescribed in sub. (1), (2), (5) or (6) where the claim sued upon arises out of or relates to association 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 against the association as to its assets anywhere.

History: Sup. Ct. Order, 67 W (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 W (2d) xix (1986); 1993 a. 112, 184, 265, 399, 491.

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 defendant was not found, with no effort to learn where he was, was not sufficient to support jurisdiction. Heaston v. Austin, 47 W (2d) 67, 176 NW (2d) 309.

Where a village is defendant, service is void if made upon the clerk's wife in his absence. Town of Washington v. Village of Cecil, 53 W (2d) 710, 193 NW (2d) 674.

The words "apparently in charge of the office" in (5) (a) refer 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 him, particularly since the superior had accepted service of process in other actions without objection by the company. Keske v. Square D Co. 58 W (2d) 307, 206 NW (2d) 189.

Where 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 (5) is required to establish as a predicate that the defendant entered into some consensual agreement with the plaintiff which contemplated a substantial contact in Wisconsin. Áfram v. Balfour, Maclaine, Inc. 63 W (2d) 702, 218 NW (2d) 288.

Where affidavit of service under (5) (a) did not identify person served as one specified in (5) (a), no presumption of due service was raised. Danielson v. Brody Seating Co. 71 W (2d) 424, 238 NW (2d) 531.

Where husband could have ascertained wife's address by contacting any one of several relatives and in−laws, prerequisite "due diligence" for service by publication was not established, despite sheriff's affidavit. West v. West, 82 W (2d) 158, 262 NW (2d) 87.

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

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

See note to 62.13, citing Gibson v. Racine Police & Fire Comm. 123 W (2d) 150, 366 NW (2d) 144 (Ct. App. 1985).

"Reasonable diligence" under (1) discussed. Welty v. Heggy, 124 W (2d) 318, 369 NW (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 W (2d) 788, 530 NW (2d) 62 (Ct. App. 1995).

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 (3). 63 Atty. Gen. 467.

See note to 801.05, citing Chilcote v. Shertzer, 372 F Supp. 86.

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 W (2d) 585, 606 (1975); 1975 c. 218.

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 W (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.

(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.

History: Sup. Ct. Order, 67 W (2d) 585, 607 (1975); 1975 c. 218; Sup. Ct. Order, 130 W (2d) xix (1986); Sup. Ct. Order, 161 W (2d) xvii (1991).

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 W (2d) 347, 541 NW (2d) 824 (Ct. App. 1995).

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 W (2d) xv (1984).

801.15 Time. (1) (a) In this subsection, "holiday" means any day which is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. 895.20 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 60 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 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 W (2d) 585, 610 (1975); 1975 c. 218; Sup. Ct. Order, 73 W (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 W (2d) xi (1986); 1985 a. 332; Sup. Ct. Order, 136 W (2d) xxv (1987); Sup. Ct. Order, 146 W (2d) xxxiii (1988); Sup. Ct. Order, 160 W (2d) xiv (1991); Sup. Ct. Order, 161 W (2d) xvii (1991); Sup. Ct. Order, No. 94−05, filed 4−27−94, eff. 7−1−94.

Cross−references: 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 employes, 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.

Court has no authority to enlarge time in which to file complaint. Pulchinski v. Strnad, 88 W (2d) 423, 276 NW (2d) 781 (1979).

See note to 809.10, citing Boston Old Colony Ins. v. Int'l. Rectifier Corp. 91 W (2d) 813, 284 NW (2d) 93 (1979).

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

See note to 806.06, citing Bruns v. Muniz, 97 W (2d) 742, 295 NW (2d) 112 (Ct. App. 1980).

See note to 108.09, citing Schiller v. DILHR, 103 W (2d) 353, 309 NW (2d) 5 (Ct. App. 1981).

Trial court abused discretion in enlarging time to file answer where answer was served 9 days after deadline. Hedtcke v. Sentry Ins. Co. 109 W (2d) 461, 326 NW (2d) 727 (1982).

Time computation under 32.05 (10) (a) and 32.06 (10) is controlled by 801.15 (1), not 990.001 (4). In Matter of Petition of Elec. Power Co. 110 W (2d) 649, 329 NW (2d) 186 (1983).

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

See note to 805.16, citing Brookhouse v. State Farm Mut. Ins. 130 W (2d) 166, 387 NW (2d) 82 (Ct. App. 1986).

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

Because courtesy agreement was made after default, court didn't abuse discretion by insisting on compliance with (2) (a). Clark County v. B.T.U. Structures, 144 W (2d) 11, 422 NW (2d) 910 (Ct. App. 1988).

Trial court has discretion to allow a jury trial where fees under s. 814.61 (4) were not timely paid. Chitwood v. A. O. Smith Harvestore, 170 W (2d) 622, 489 NW (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 W (2d) 907, 539 NW (2d) 911 (Ct. App. 1995).

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 requires the use of a plain−paper facsimile machine and permits the filing of those papers by facsimile transmission to the clerk of circuit court.

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

(c) The party or attorney, by filing papers by facsimile transmission, certifies that permission of the judge or court for filing by facsimile transmission has been granted. Papers filed by facsimile transmission are considered filed when transmitted except that papers filed by facsimile transmission completed after regular

business hours of the clerk of court's office are considered filed the next business day.

History: Sup. Ct. Order, 161 W (2d) xvii (1991); Sup. Ct. Order No. 94−11, filed 10−25−94, eff. 1−1−95.

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 may not be filed by facsimile transmission. Only papers that do not require a filing fee may be filed by fax. Pratsch v. Pratsch, 201 W (2d) 491, 548 NW (2d) 852 (Ct. App. 1996).

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) All actions in which the sole defendant is the state, any state board or commission or any state officer, employe or agent in an official capacity shall be venued in Dane county unless another venue is specifically authorized by law.

(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.

(5) Venue of an action to review a probation or parole revocation or a refusal of parole by certiorari shall be the county in which the relator was last convicted of an offense for which the relator was on probation or parole or for which the relator is currently incarcerated.

(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. 66.882 shall be in the county which contains the 1st class city that is located wholly or partially within the applicable district created under s. 66.882.

(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.

(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.

(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.

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. 767.65 (11) Revised (proceedings under the uniform reciprocal enforcement of support act); s. 77.12 (forest croplands tax act); s. 111.60 (Wisconsin employment relations act); s. 144.73 (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) interpreted. Enpro Assessment Corp. v. Enpro Plus, Inc. 171 W (2d) 542, 492 NW (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 W (2d) 222, 496 NW (2d) 327 (Ct. App. 1992).

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]

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.

History: 1983 a. 228.

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]

801.56 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 W (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).

(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 W (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 W (2d) ix (1978); 1977 c. 449; 1979 c. 175 ss. 50, 53; 1981 c. 137; 1987 a. 68.

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]

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

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

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

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

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

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

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

Where parties are united in interest and pleading together, if one presents its views in preliminary contested matter, all united parties are barred from moving for substitution. Carkel, Inc. v. Lincoln Cir. Ct. 141 W (2d) 257, 414 NW (2d) 640 (1987).

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

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

Where recommitment hearing under 51.20 (13) (g) 3 is before same judge who conducted original commitment proceeding, request for substitution is not allowed. Serocki v. Clark County Circ. Ct. 163 W (2d) 152, 471 NW (2d) 49 (1991).

Where appellate court remand requires a specific action by the trial court no substitution is allowed under sub. (7). Estate of Rusilowski, 171 W (2d) 648, 492 NW (2d) 345 (Ct. App. 1992).

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. Milw. Cir. Ct. 176 W (2d) 101, 499 NW (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 W (2d) 496, 546 NW (2d) 460 (1996).

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 W (2d) 496, 546 NW (2d) 460 (1996).

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 W (2d) 585, 757 (1975); 1977 c. 187 s. 135; Sup. Ct. Order, 141 W (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 W (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 W (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 W (2d) 585, 612 (1975), 758, 777; 1975 c. 218; Stats. 1975 s. 801.63; Sup. Ct. Order, 141 W (2d) xiii (1987); Sup. Ct. Order, 151 W (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 where the parties were different and because of Iowa law the plaintiff would lose substantial rights. Littmann v. Littmann, 57 W (2d) 238, 203 NW (2d) 901.

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 Ins. Corp. 65 W (2d) 377, 222 NW (2d) 638.

Party seeking stay must show not only that trial in 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 Ins. Corp. 82 W (2d) 616, 264 NW (2d) 525.

See note to 822.07, citing Mayer v. Mayer, 91 W (2d) 342, 283 NW (2d) 591 (Ct. App. 1979).