

CHAPTER 262.

COMMENCING CIVIL ACTIONS.

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262.01 Legislative intent. This chapter shall be liberally construed to the end that actions be speedily and finally determined on their merits. The rule that statutes in derogation of the common law must be strictly construed does not apply to this chapter.

262.02 Civil action, how commenced; service in special proceedings. (1) **CIVIL ACTION.** A civil action in a court of record is commenced by the service of a summons or an original writ. The summons may be served in the manner provided in this chapter. The writ of habeas corpus shall be served exclusively in the manner provided in s. 292.10; otherwise the service of an original writ may be made by serving a duplicate original thereof in the manner provided in this chapter for service of a summons.

(2) **SPECIAL PROCEEDINGS.** Service and proof of service of any process or notice in any special proceeding may be made in the manner provided in this chapter for service of a summons.

(3) **PROBATE PROCEEDINGS.** Except where explicitly provided in title XXIX, no provision of this chapter shall apply to probate proceedings.

Proceedings in habeas corpus, mandamus and prohibition are actions and not special proceedings. Consolidated Apparel Co. v. Common Council, 14 W (2d) 31, 109 NW (2d) 486.
 Jurisdiction of the person can only be acquired by service of a summons in the manner prescribed for personal service; this is plain and fundamental, even where motion to make one a party or order to show cause why one should not be made a party is personally served. Estate of Von Wald, 24 W (2d) 256, 128 NW (2d) 398.

262.025 Applicability of chapter 262. After August 4, 1961, civil actions shall be commenced as provided in this chapter.

History: 1961 c. 331.

262.03 Definitions. In this chapter the following words have the designated meanings:

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

(2) "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 his agent within the scope of his authority.

(3) "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.

262.04 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 this chapter 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. 262.05 or 262.07 and in addition either:

- (a) A summons is served upon the person pursuant to s. 262.06; or
- (b) Service of a summons is dispensed with under the conditions in s. 262.07.

(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. 262.08 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 262.09 with a summons and complaint or notice of object of action as the case requires.

262.05 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. 262.06 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
- (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 third 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 third 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 his 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 third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state; or

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

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

(7) **DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE.** In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other

security agreement executed by the defendant or his 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. 297; or
- (c) Following resale of tangible property in this state by the plaintiff under ch. 409.

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

(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 third 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 any action to determine a question of status under s. 247.05 (1), (2) and (3), or in an independent action for support, alimony or property division commenced in the county in which the plaintiff resides at the commencement of the action when the defendant resided in this state in marital relationship with the plaintiff for not less than 6 consecutive months within the 6 years next preceding the commencement of the action, and after the defendant left the state the plaintiff continued to reside in this state, and the defendant cannot be served under s. 247.06 but is served under s. 247.062 (1).

(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 he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

(13) JOINDER OF CAUSES 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: 1963 c. 158; 1967 c. 198.

(5) (a) and (b) furnish ground for exercising jurisdiction over an Illinois corporation which contracted for goods to be manufactured and paid for in Wisconsin and to be delivered to a carrier f.o.b. a Wisconsin city. *Flambeau Plastics Corp. v. King Bee Mfg. Co.* 24 W (2d) 459, 129 NW (2d) 237.

In an action by an insurer against a Wisconsin corporation, a dealer in hammocks, to secure reimbursement for the amount of a judgment obtained in another state by a nonresident who suffered injuries when a defective stand resold to her through the dealer's out-of-state customer (plaintiff's insured) collapsed, a cross complaint by the dealer for breach of warranty against the manufacturer of the stand, an unlicensed foreign corporation, which shipped the stand at the dealer's request from its factory directly to the dealer's customer, which pleading was silent as to where the dealer-manufacturer contract was entered into, was legally insufficient to set forth the prescribed statutory jurisdictional facts upon which personal jurisdiction over the manufacturer could be predicated. *Travelers Ins. Co. v. George McArthur & Sons*, 25 W (2d) 197, 130 NW (2d) 852.

Jurisdiction over a nonresident defendant under (5) is predicated on some degree of consensual privity between plaintiff and defendant with respect to the action brought, but it is not necessary that the defendant have done any act within the state—the basis therefor being that the defendant has entered into some consensual agreement

with the plaintiff which contemplates a substantial contact in Wisconsin. The preliminary determination of whether personal jurisdiction has been acquired over a nonresident defendant does not turn on whether the latter may ultimately be held responsible, but is dependent on whether the requirements of 262.05 are satisfied. *Pavaion v. Fishman*, 30 W (2d) 228, 140 NW (2d) 263.

Undisputed evidence that on at least 2 occasions the nonresident by mail solicited large numbers of Wisconsin resident stockholders, together with proof of other personal solicitation activities and attempts to purchase shares, warranted the circuit court in concluding that the nonresident had subjected itself to the jurisdiction of the Wisconsin courts. *Slyver Steel C. Co. v. American Steel & P. Corp.* 32 W (2d) 555, 146 NW (2d) 476.

Where a foreign corporation's representative solicited orders in Wisconsin and an order was filled, service of process in the foreign state was valid. *Wis. Metal & Chem. Corp. v. DeZurik Corp.* 222 F Supp. 119.

A nonresident corporation which solicited and obtained distributorship contracts in Wisconsin which resulted in sales had sufficient contact to be amenable to service in actions by resident plaintiff-distributors, but nonresident distributors cannot join as plaintiffs where they and the defendant with respect to each other had no Wisconsin contacts. *Sun-X Glass Tinting v. Sun-X Int.* 227 F Supp. 365.

A foreign corporation's entry into 50 contracts with a Wisconsin corporation in the

normal course of business during a 6-year period preceding service is sufficient to sustain jurisdiction. *Becher Corp. v. Anderson-Tully Co.* 252 F Supp. 631.
Products liability; the privacy requirement in Wisconsin. 47 MLR 209.

An analysis of the constitutional guidelines provided by (3), (4) and (10). 49 MLR 149.
(3), (4) and (5) discussed. 1962 WLR 544.

262.06 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. 262.05 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 within this state in the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(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 verified 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 be 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 must also be made upon a guardian ad litem who has been appointed pursuant to s. 260.23 (3).

(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 his 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 his affairs, then service of the summons must be made upon a guardian ad litem who has been appointed pursuant to s. 260.23 (3).

(3) STATE. Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at his office in the capitol with his 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 chairman of the county board or the county clerk;

2. If against a town, the chairman 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 school district, school board or board of education, the president, director, secretary or clerk thereof; and

6. 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, GENERALLY. Upon a domestic or foreign corporation:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation 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 by publication and mailing as provided in sub. (1) (c).

(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 domestic or foreign insurance corporation, to any agent of such corporation as defined by the insurance laws of this state. Service upon such agent of a domestic or foreign insurance corporation 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 such corporation within 5 days after service upon the agent.

(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. 262.05 (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 any 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. 262.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication against the association as to its assets anywhere.

History: 1961 c. 147; 1963 c. 6; 1965 c. 252.

In an action against a husband and wife where the wife was not served with the summons but the husband, at his office, signed a receipt for her by himself as husband, there was no valid service on her which conferred jurisdiction on the court. *Howard v. Preston*, 30 W (2d) 663, 142 NW (2d) 178.

by attorneys "for" the party sought to be bound by the appeal gives rise to a prima facie case of agency by the attorneys under (1) (d). See also the annotation under 269.37 citing this case. *Fontaine v. Milwaukee County Expressway Comm.* 31 W (2d) 275, 143 NW (2d) 3.

Enforcement of claims against unincorporated associations. *Smith*, 1960 WLR 444.

Acknowledgment of service of notice of appeal from an administrative hearing order

262.07 Personal jurisdiction, grounds for without service of summons. A court of this state having jurisdiction of the subject matter may, without serving a summons upon him, exercise jurisdiction in an action over a person:

(1) Who makes a general appearance in an action pursuant to s. 262.16 (1) or who authorizes an attorney to appear in his behalf; or

(2) With respect to any counterclaim asserted against that person in an action which he has commenced in this state.

262.08 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. 262.09. 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.

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

History: 1961 c. 33.

262.09 Jurisdiction in rem or quasi in rem, manner of serving summons for. (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 262.08 may affect the interests of a defendant in such an action only if a summons, and a copy of

the verified complaint or notice of the object of the action as required by s. 262.12 (2), have been served upon the defendant as follows:

(a) *Defendant known.* If the defendant is known, he may be served in the manner prescribed for service of a summons in s. 262.06 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) *Defendant unknown.* If the defendant is unknown the summons may be served by publication thereof as a class 3 notice, under ch. 985.

History: 1963 c. 6; 1965 c. 252.

262.10 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, and the names of the parties to the action, plaintiff and defendant.

(2) A direction to the defendant summoning and requiring him 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 pursuant to s. 262.12 (1) (a). The summons shall further direct the defendant to serve the answer or demand for a copy of the complaint:

(a) Within 20 days, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for him; 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) that judgment will be rendered against the defendant according to the demand of the complaint. The summons shall be subscribed by the plaintiff or his attorney with the addition of his post-office address, at which papers in the action may be served on him by mail. 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 separate original summonses issued as are needed for the purposes of serving the defendant.

262.11 Summons, form. (1) The summons shall be substantially in the following form:

.... Court, County

A. B., Plaintiff

v.

C. D., Defendant

THE STATE OF WISCONSIN, To said defendant:

You are hereby summoned and required to serve upon, plaintiff's attorney, whose address is, [an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service] [a demand for a copy of the complaint within 20 days after service of the summons upon you, exclusive of the day of service] [an answer to the complaint which is herewith served upon you within 40 days after the ... day of, A.D. 19.., exclusive of the date just stated] [a demand for a copy of the complaint within 40 days after the ... day of, A.D. 19.., exclusive of the date just stated] and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

E. F.

Plaintiff's Attorney

P. O. Address, County, Wis.

(2) In an action relating to real estate if any defendant is sued under a fictitious name or as an unknown owner, heir, grantee, or persons whom it may concern or other similar designation, a description of the land affected shall be given in a note at the foot of the summons.

262.12 Summons, what must accompany when served. (1) **PERSONAL JURISDICTION.** (a) When personal or substituted personal service is made upon the defendant within this state, a copy of the complaint may or may not be served with the summons at the plaintiff's option. If a copy of the complaint is not served, the defendant, in person or by attorney, within the time fixed in s. 262.10 (2), may demand in writing a copy of

the complaint, specifying a place, embracing a post-office address, within this state where the complaint may be served and a copy of the complaint shall be served within 20 days thereafter accordingly.

(b) When personal service is made without this state upon the defendant, a copy of the verified complaint shall accompany the summons.

(c) When the summons is served by publication, only the summons need be published, but a copy of the verified complaint shall be mailed with the copy of the summons as required by s. 262.06 (1) (e).

(2) JURISDICTION IN REM OR QUASI IN REM: NOTICE OF OBJECT OF ACTION. (a) When personal or substituted personal service is made upon the defendant within or without this state, a copy of the verified complaint or a notice of the object of the action shall accompany the summons. The notice of object of action shall be subscribed by the plaintiff or his 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 his request made within the time fixed in s. 262.10 (2). If a defendant, upon whom such notice is served, unreasonably defends the action he shall pay costs to the plaintiff.

(b) When the summons is served by publication, only the summons need be published, but a copy of the verified complaint or a notice of the object of the action shall be mailed with the copy of the summons as required by s. 262.09.

See note to 262.16, citing *Milwaukee County v. Schmidt, Garden & Erikson*, 35 W (2d) 33, 150 NW (2d) 354.

262.13 Summons, filing. (1) The summons shall be filed with the clerk of the court in which the action is brought and the clerk's fee and state suit tax, if applicable, paid, as follows:

(a) Where there has been service on any defendant otherwise than by publication, the summons shall be filed and the clerk's fee and suit tax paid within 10 days after the earliest such service.

(b) Where service is to be made by publication, the summons and verified complaint shall be filed and clerk's fee and suit tax paid before the first insertion. Proof of publication, and of mailing when required, shall be filed within 10 days after the last required insertion.

(2) If the summons is not filed and the clerk's fee and suit tax are not paid as required by sub. (1), any party upon whom the summons was served may file his copy of the summons, without payment of suit tax or clerk's fee, and shall be entitled, upon application and notice thereof to plaintiff, to an order requiring plaintiff to file the original summons or a copy thereof and to pay the clerk's fee and suit tax within a specified time, not exceeding 90 days, after service upon plaintiff of notice of entry of the order. The court may allow costs of motion to the moving party, and if allowed, such costs must be deposited with the clerk, for payment to the moving party, before the summons may be filed. If the summons is not filed and payments are not made within the time specified in the order, the moving party may pay the clerk's fee and suit tax and have a judgment, without further notice, dismissing the action as to him, without prejudice, and for his costs of motion, if allowed, and his disbursements.

(3) In any event, if the summons, or a copy which was served on any defendant, is not filed and the clerk's fee and suit tax are not paid within one year after the earliest service on any defendant in the action, service made on any defendant in the action shall lose all force and become void, as if never made. From time to time the court may, by order, authorize the clerk to destroy all papers presented for filing and entitled in actions for which no summons or other document appropriate for commencing a civil action has been filed provided that one year has elapsed after the first of the papers entitled in each such action has been presented to the clerk. The clerk may destroy such papers without regard to ss. 59.715, 59.716, and 59.717, but a list of the papers destroyed shall be retained with the order authorizing destruction. The effective date of this subsection is May 1, 1965.

History: Sup. Ct. Order, 20 W (2d) v; 1965 c. 252.

Cross Reference: See Chapter 247 for restrictions on the filing of a summons in divorce and legal separation actions.

The enclosure of the original summons in the sealed envelope containing a discovery deposition which was filed with the clerk, but as to which no tax or fees were paid, does not constitute a filing under (3). The notice of the hearing pursuant to which (3) was adopted was sufficient. *Mosing v. Hagen*, 33 W (2d) 636, 148 NW (2d) 93.

262.14 Summons, who may serve; indorsement; return of original summons. (1) WHO MAY SERVE. A copy of the summons, together with a copy of the complaint or notice of the object of the action, as the case may require, may be served by the sheriff of

the county or his deputy within this state where the defendant may be found or by any other person not a party to the action. The person subscribing the summons may by an indorsement thereon fix a time for the service of the summons and the service shall then be made accordingly. If no such time for making service is fixed, service shall be made with reasonable diligence.

(2) **INDORSEMENT ON COPY SERVED.** The sheriff or person who serves a copy of the summons shall, at the time of the service, sign his name thereto and add, if a sheriff, or deputy, his official title. Failure to make the indorsement shall not invalidate a service but the server shall not collect fees for such service.

(3) **RETURN OF ORIGINAL SUMMONS.** The sheriff or person making the service shall, with reasonable diligence, return the original summons, with proof of service, to the person whose name is subscribed thereto.

262.15 Summons, when deemed served. A summons is deemed served as follows:

(1) **PERSONAL OR SUBSTITUTED PERSONAL SERVICE.** 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) **SERVICE BY PUBLICATION.** A summons served by publication is deemed served on the first day of required publication.

262.16 Raising objection to personal jurisdiction, general appearance. (1) **GENERAL APPEARANCE.** An appearance of a defendant who does not object to the jurisdiction of the court over his person is a general appearance and gives the court personal jurisdiction over him.

(2) **HOW AND WHEN OBJECTION SHALL BE MADE.** An objection to the court's jurisdiction over the person is not waived because it is joined with other defenses or motions which, without such objection to jurisdiction, would constitute a general appearance. Such objection shall be raised as follows:

(a) By motion when a defect is claimed in the service of the summons without a complaint; or when the defect appears upon the face of the record other than the complaint; or in case of a judgment on cognovit or by default;

(b) By demurrer when the defect appears upon the face of the complaint; and

(c) By answer in all other cases.

(d) In the case of a jurisdictional attack upon a judgment on cognovit or by default there shall be annexed to the motion a proposed demurrer or answer in which all defenses upon which the defendant relies shall be alleged.

(3) **JURISDICTION ISSUES TRIED TO COURT.** All issues of fact and law raised by an objection specified in sub. (2) shall be tried to 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. Such decision upon a question of jurisdiction shall be by order which is appealable. The raising of such objection and the making of such a stipulation may be called a special appearance, but the effect of the objection or appearance is limited to that specified in sub. (2).

(4) **JURISDICTIONAL FACTS NOT BINDING ON MERITS OF ACTION.** The findings of fact 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.

(5) **OBJECTIONS TO JURISDICTION OVER PERSONS UNDER DISABILITY.** 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 sub. (2), the service of a demurrer, answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be equivalent to a general appearance by the ward.

(6) **WAIVER OF OBJECTION TO LACK OF PERSONAL JURISDICTION.** Except as provided in sub. (5), an objection to the jurisdiction of the court over the person is waived if not made as provided in this section.

Where the court, on the application of the defendant husband, reinstated an action for divorce after having previously dismissed it for want of prosecution, the plaintiff wife waived her objections to the jurisdiction of the court by her general appearance on the date ultimately set for trial, and by proceeding to trial. *Vishnevsky v. Vishnevsky*, 11 W (2d) 259, 105 NW (2d) 314.

defenses on the merits, any subsequent appearance by him to prepare for or to go to trial on the merits does not constitute waiver of his objection to jurisdiction over his person. *Punke v. Brody*, 17 W (2d) 9, 115 NW (2d) 601.

The permission afforded in (2) to combine in an answer objection to the personal jurisdiction of the court with defenses to the merits does not prohibit or prevent a defendant from making a general appear-

ance under (1) prior to answering, demurring, or making a motion which presents an objection to the jurisdiction of the court, for an appearance and a pleading are distinct and separate. Service of a notice of retainer and appearance constituted a general appearance. *McLaughlin v. Chicago, M., St. P. & P. R. Co.* 23 W (2d) 592, 127 NW (2d) 813.

Where a defendant served outside the state wishes to object on the ground of lack of personal jurisdiction and also demur to the complaint as failing to state a cause

of action, he cannot raise the jurisdiction question by demurrer. He should serve a motion, with supporting affidavits, with the demurrer. *Pavalon v. Thomas Holmes Corp.* 25 W (2d) 540, 131 NW (2d) 331.

Where only a summons was served outside the state in violation of 262.12 (1) (b) but defendant by letter demanded a copy of the complaint, the defendant waived his right to object and could not do so after the complaint was served. *Milwaukee County v. Schmidt, Garden & Erikson*, 35 W (2d) 33, 150 NW (2d) 354.

262.17 Proof of service of summons, defendant appearing in action. Where the defendant appears in the action and challenges the service of the summons upon him as provided in s. 262.16, proof of the service of the summons shall be as follows:

(1) **PERSONAL SERVICE OR SUBSTITUTED PERSONAL SERVICE.** (a) If served by the sheriff of the county or his deputy in this state where the defendant was found, by the sheriff's certificate thereof, showing place, time and manner of service; or

(b) If served by any other person, his affidavit thereof, showing place, time and manner of service; that he is an adult resident of the state of service and is not a party to the action; that he knew the person served to be the defendant mentioned in the summons and left with, as well as delivered to, him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left.

(2) **SERVICE BY PUBLICATION.** In case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of each insertion, and an affidavit of mailing of a 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.

(3) **WRITTEN ADMISSION OF DEFENDANT.** The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

History: 1965 c. 252.

262.18 Judgment against nonappearing defendant; proof of jurisdiction. Where a defendant fails to appear in the action within the time fixed in s. 262.10 (2) the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 262.17 and, in addition, shall require further proof as follows:

(1) **WHERE PERSONAL JURISDICTION IS CLAIMED OVER THE DEFENDANT.** Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

(2) **WHERE JURISDICTION IS IN REM OR QUASI IN REM.** Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

262.19 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 his consent to suit in the alternative forum and waive his 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 demurrer or pursuant to s. 262.16. The court shall find separately on each issue so tried and these findings shall be set forth in a single order which is appealable.

(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.

Forum non conveniens plea and juris- v. Chicago & N. W. R. Co. 14 W (2d) 329, diction under 1957 statutes discussed. Lau 111 NW (2d) 158.

262.20 Costs on dismissal for lack of jurisdiction or stay of proceedings. (1)
COSTS ON DISMISSAL FOR LACK OF PERSONAL JURISDICTION. If on objection of any defendant made pursuant to s. 262.16 the action is dismissed as to that defendant on the ground that the court lacks jurisdiction over his person, the court when entering judgment dismissing the action against the defendant may order the plaintiff to pay to the defendant all reasonable actual costs, disbursements and expenses of the action up to the judgment of dismissal, but the amount so recovered can in no case exceed the sum of \$500.

(2) **COSTS ON STAY OF FURTHER PROCEEDINGS.** Any party who obtains an order staying further proceedings in the action pursuant to s. 262.19 may recover all statutory costs and disbursements in the action up to the order for stay.