CHAPTER 803

CIVIL PROCEDURE — PARTIES

803.01 Parties plaintiff and defendant; capacity. (1) REAL PARTY IN INTEREST. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(2) REPRESENTATIVES. A personal representative, executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in the party's own name without joining the person for whose benefit the action is brought. A partner asserting a partnership claim may sue in the partner's own name without joining the other members of the partnership, but the partner shall indicate in the pleading that the claim asserted belongs to the partnership.

(3) INFANTS OR INCOMPETENT PERSONS. (a) *Appearance by guardian or guardian ad litem.* If a party to an action or proceeding is a minor, or if the court has reason to believe that a party is mentally incompetent to have charge of the party's affairs, the party shall appear by an attorney, by the general guardian of the party's property who may appear by attorney or by a guardian ad litem who may appear by an attorney. A guardian ad litem shall be appointed in all cases where the minor or incompetent has no general guardian of property, or where the general guardian fails to appear and act on behalf of the ward or incompetent, or where the interest of the minor or incompetent is adverse to that of the general guardian. Except as provided in s. 807.10, if the general guardian does appear and act and the interests of the general guardian are not adverse to the minor or incompetent, a guardian ad litem shall not be appointed. Except as provided in s. 879.23 (4), where the interests of the minor or mentally incompetent person are represented by an attorney of record the court shall, except upon good cause stated in the record, appoint that attorney as the guardian ad litem.

(b) *Guardian ad litem.* 1. The guardian ad litem shall be appointed by a circuit court of the county where the action is to be commenced or is pending.

2. When the plaintiff is a minor 14 years of age or over, upon the plaintiff's application; or if the plaintiff is under that age or is mentally incompetent, upon application of the plaintiff's guardian or of a relative or friend. If made by a relative or friend, notice thereof must first be given to the guardian if the plaintiff has one in this state; if the plaintiff has none, then to the person with whom the minor or mentally incompetent resides or who has the minor or mentally incompetent in custody.

3. When the defendant is a minor 14 years of age or over, upon the defendant's application made within 20 days after the service of the summons or other original process; if the defendant is under that age or neglects to so apply or is mentally incompetent, then upon the court's own motion or upon the application of any other party or any relative or friend or the defendant's guardian upon such notice of the application as the court directs or approves.

4. If the appointment, for a plaintiff or a defendant, is after the commencement of the action, it shall be upon motion entitled in the action. If the appointment is for a plaintiff and is made before the action is begun, the petition for appointment shall be entitled in the name of the action proposed to be brought by the minor or incompetent, and the appointment may be made before the summons is served. Upon the filing of a petition for appointment before summons, the clerk may impose a suit tax and filing fee but in that event no additional suit tax and filing fee shall be imposed when the summons is filed.

5. The motion or petition under subd. 4 shall state facts showing the need and authority for the appointment. The hearing on the motion or petition under subd. 4, if made by a minor or mentally incompetent person for such person's guardian ad litem, may be held without notice and the appointment made by order. If the motion or petition is made for a minor or mentally incompetent who is an adverse party, the hearing shall be on notice.

6. If a compromise or a settlement of an action or proceeding to which an unrepresented minor or mentally incompetent person is a party is proposed, a guardian ad litem shall be appointed, upon petition in a special proceeding, to protect the interest of the minor or incompetent even though commencement of an action is not proposed. Any compromise or settlement shall be subject to s. 807.10.

(c) *Procedure where minor or incompetent not represented.* 1. If at any time prior to the entry of judgment or final order, the court finds that either a minor, or a person believed by the court to be mentally incompetent to have charge of his or her affairs, has not been represented in the action or proceeding as provided in par. (a), there shall be no further proceedings until a guardian ad litem is appointed. In making such appointment, the court shall fix a reasonable time within which the guardian ad litem may move to vacate or strike any order entered or action taken during the period when a guardian ad litem was required; and as to all matters to which objection is not made, the guardian ad litem and the ward shall be bound. Any such motion by a guardian ad litem shall be granted as a matter of right.

2. If the court finds after the entry of judgment or final order that a person, who at the time of entry of judgment or final order was a minor or mentally incompetent, was not represented in the action or proceeding by an attorney of record or otherwise represented as provided in par. (a) the judgment or order shall be vacated on motion of:

a. The minor or mentally incompetent, for whom no appointment was made, at any time prior to the expiration of one year after the disability is removed; or

b. The personal representative of such minor or mentally incompetent at any time prior to the expiration of one year after the death of the minor or mentally incompetent.

History: Sup. Ct. Order, 67 W (2d) 638; 1975 c. 218; 1977 c. 299, 449.

Judicial Council Committee's Note, 1974: Sub. (1)'s rule of non-dismissal despite absence of real party in interest would obviate abatement and limitations problem such as arose in Borde v. Hake, 44 Wis. 2d 22, 170 N.W. 2d 768 (1969).

Sub. (2) broadens somewhat the provisions of s. 260.15.

Sub. (3) is the same as ss. 260.22 through 260.24. [Re Order effective Jan. 1, 1976]

803.02 Joinder of claims and remedies. **(1)** A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or 3rd party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

(2) Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the 2 claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to the plaintiff, without first having obtained a judgment establishing the claim for money.

History: Sup. Ct. Order, 67 W (2d) 642; 1975 c. 218.

Judicial Council Committee's Note, 1974: Sub. (1) creates an unlimited right of claim joinder. It must be read with ss. 803.03 and 803.04 which limit party joinder and thus indirectly affects the asserting of claims.

Sub. (2) is designed to foster economy of judicial effort. Compare Lipman v. Manger, 185 Wis. 63 (1924); Running v. Widdes, 52 Wis. (2d) 254 (1971). [Re Order effective Jan. 1, 1976]

803.03 Joinder of persons needed for just and complete adjudication. **(1)** PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if (a) in the person's absence complete relief cannot be accorded among those already parties, or (b) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may 1. as a practical matter impair or impede the person's ability to protect that interest or 2. leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his or her claimed interest.

(2) CLAIMS ARISING BY SUBROGATION, DERIVATION AND ASSIGNMENT. (a) *Joinder of related claims.* A party asserting a claim for affirmative relief shall join as parties to the action all persons who at the commencement of the action have claims based upon subrogation to the rights of the party asserting the principal claim, derivation from the principal claim, or assignment of part of the principal claim. For purposes of this section, a person's right to recover for loss of consortium shall be deemed a derivative right. Any public assistance recipient asserting a claim against a 3rd party for which the public assistance provider has a right of subrogation or assignment under s. 49.65 (1) or (2) shall join the provider as a party to the claim. Any party asserting a claim based upon subrogation to part of the claim of another, derivation from the rights or claim of another, or

assignment of part of the rights or claim of another shall join as a party to the action the person to whose rights the party is subrogated, from whose claim the party derives his or her rights or claim, or by whose assignment the party acquired his or her rights or claim.

(b) *Options after joinder.* Any party joined pursuant to par. (a) may 1. participate in the prosecution of the action, 2. agree to have his or her interest represented by the party who caused the joinder, or 3. move for dismissal with or without prejudice. If the party joined chooses to participate in the prosecution of the action, the party joined shall have an equal voice with other claimants in such prosecution. If the party joined chooses to have his or her interest represented by the party who caused the joinder, the party joined shall sign a written waiver of the right to participate which shall express consent to be bound by the judgment in the action. Such waiver shall become binding when filed with the court, but a party may withdraw the waiver upon timely motion to the judge to whom the case has been assigned with notice to the other parties. A party who represents the interest of another party and who obtains a judgment favorable to such other party may be awarded reasonable attorneys fees by the court. If the party joined moves for dismissal without prejudice as to his or her claim, the party shall demonstrate to the court that it would be unjust to require the party to prosecute the claim with the principal claim. In determining whether to grant the motion to dismiss, the court shall weigh the possible prejudice to the movant against the state's interest in economy of judicial effort.

(c) *Scheduling and pretrial conferences.* At the scheduling conference and pretrial conference, the judge to whom the case has been assigned shall inquire concerning the existence of and joinder of persons with subrogated, derivative or assigned rights and shall make such orders as are necessary to effectuate the purposes of this section. If the case is an action to recover damages based on alleged criminally injurious conduct, the court shall inquire to see if an award has been made under ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15.

(3) DETERMINATION BY COURT WHENEVER JOINDER NOT FEASIBLE. If any such person has not been so joined, the judge to whom the case has been assigned shall order that the person be made a party. If the party should join as a plaintiff but refuses to do so, the party may be made a defendant, or, in a proper case, an involuntary plaintiff. If a person as described in subs. (1) and (2) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

(a) To what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(b) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(c) Whether a judgment rendered in the person's absence will be adequate; and

(d) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(4) PLEADING REASONS FOR NONJOINDER. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subs. (1) and (2) who are not joined, and the reasons why they are not joined.

(5) EXCEPTION OF CLASS ACTIONS. This section is subject to s. 803.08.

History: Sup. Ct. Order, 67 W (2d) 643; 1975 c. 218; 1979 c. 189, 221.

Judicial Council Committee's Note, 1974: Sub. (1), based on the 1966 revision of Rule 19 of the Federal Rules of Civil Procedure, provides a functional test for determining whether a party is "necessary". It replaces the first sentence of s. 260.12.

Sub. (2) is new. It is intended to foster economy of judicial effort by requiring that all "parts" of a single cause of action whether arising by subrogation, derivation, or assignment, be brought before the court in one action. It supplements the provisions of s. 102.29 concerning third-party liability in workmen's compensation cases.

Sub. (3), like sub. (1), is based on the 1966 revision of Federal Rule 19. It provides a functional test for determining whether a party is "indispensable". [Re Order effective Jan. 1, 1976]

803.04 Permissive joinder of parties. (1) PERMISSIVE JOINDER. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one

or more defendants according to their respective liabilities.

(2) NEGLIGENCE ACTIONS: INSURERS. (a) In any action for damages caused by negligence, any insurer which has an interest in the outcome of such controversy adverse to the plaintiff or any of the parties to such controversy, or which by its policy of insurance assumes or reserves the right to control the prosecution, defense or settlement of the claim or action, or which by its policy agrees to prosecute or defend the action brought by plaintiff or any of the parties to such action, or agrees to engage counsel to prosecute or defend said action or agrees to pay the costs of such litigation, is by this section made a proper party defendant in any action brought by plaintiff in this state on account of any claim against the insured. If the policy of insurance was issued or delivered outside this state, the insurer is by this paragraph made a proper party defendant only if the accident, injury or negligence occurred in this state.

(b) If an insurer is made a party defendant pursuant to this section and it appears at any time before or during the trial that there is or may be a cross issue between the insurer and the insured or any issue between any other person and the insurer involving the question of the insurer's liability if judgment should be rendered against the insured, the court may, upon motion of any defendant in the action, cause the person who may be liable upon such cross issue to be made a party defendant to the action and all the issues involved in the controversy determined in the trial of the action or any 3rd party may be impleaded as provided in s. 803.05. Nothing herein contained shall be construed as prohibiting the trial court from directing and conducting separate trials on the issue of liability to the plaintiff or other party seeking affirmative relief and on the issue of whether the insurance policy in question affords coverage. Any party may move for such separate trials and if the court orders separate trials it shall specify in its order the sequence in which such trials shall be conducted.

(3) SEPARATE TRIALS. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

History: Sup. Ct. Order, 67 W (2d) 646; 1975 c. 218.

Cross References: As to insurers being made defendants, see 632.24. See 285.10, providing that the state may be made a party in an action to quiet title to land.

Judicial Council Committee's Note, 1974: Sub. (1) limits party joinder and, since claim joinder is unlimited under s. 803.02, it is this section that provides the check on the size and cohesiveness of actions.

Sub. (2) is taken from s. 260.11.

Sub. (3), read with s. 805.05, gives the court considerable latitude in ordering severance. [Re Order effective Jan. 1, 1976]

See note to 802.02, citing Voight v. Aetna Casualty & Surety Co. 80 W (2d) 376, 259 NW (2d) 85.

See note to 632.24, citing Fagnan v. Great Central Ins. Co. 577 F (2d) 418 (1978).

See note to 632.24, citing Federal Deposit Ins. Co. v. MGIC Indem. Corp. 462 F Supp. 759 (1978).

803.05 Third-party practice. (1) At any time after commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the defending party for all or part of the plaintiff's claim against the defending party, or who is a necessary party under s. 803.03. The third-party plaintiff need not obtain leave to implead if he or she serves the third-party summons and third-party complaint not later than 6 months after the summons and complaint are filed or the time set in a scheduling order under s. 802.10; thereafter, the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make defenses to the third-party plaintiff's claim as provided in s. 802.06 and counterclaims against the third-party plaintiff and cross-claims against any other defendant as provided in s. 802.07. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff if the claim is based upon the same transaction, occurrence or series of transactions or occurrences as is the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant if the claim is based upon the same transaction, occurrence or series of transactions or occurrences as is the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided in s. 802.06 and counterclaims and cross-claims as provided in s. 802.07.

(2) When a counterclaim is asserted against a plaintiff, the plaintiff may cause a 3rd party to be brought in under circumstances which under this section would entitle a defendant to do so.

History: Sup. Ct. Order, 67 W (2d) 648; 1975 c. 218; Sup. Ct. Order, 82 W (2d) ix.

Judicial Council Committee's Note, 1974: Unlike s. 260.19 which, by its terms, permits the defendant to implead another whenever a complete determination of the controversy in court could not be had without impleader, sub. (1) limits impleader by the defendant to cases involving contribution or indemnification or both. The term "subject matter" discussed in the comment to s. 802.07, has been omitted from this section for the same reasons given in that comment. [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1977: Sub. (1) has been amended to allow a third-party plaintiff to serve the

third-party summons and third-party complaint without leave of the court to implead if the third-party summons and third-party complaint are filed not later than 6 months after the summons and complaint in the original action are filed. The new six-month time period has been created since the old time period allowing a third-party plaintiff to file a third-party summons and third-party complaint without the need to obtain leave to implead during the time set in a scheduling order under s. 802.10 can no longer apply in most cases. The use of such a scheduling order is now completely discretionary with the trial judge. [Re Order effective July 1, 1978]

803.06 Misjoinder and nonjoinder of parties. (1) Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(2) When it comes to the attention of the court that the summons has not been served upon a named defendant, the court may enter an order on its own initiative, after notice to parties of record, dismissing the action as to that defendant without prejudice.

History: Sup. Ct. Order, 67 W (2d) 649; Sup. Ct. Order, 73 W (2d) xxxi.

Judicial Council Committee's Note, 1974: Misjoinder of parties is not fatal, the defect being cured simply by adding or dropping a party. Whether nonjoinder is fatal is controlled by s. 803.03 (3). Nonjoinder and misjoinder issues may be raised either by answer or by motion under s. 802.06 (2). [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1976: Sub. (2) establishes an efficient procedure for dismissing an action against a defendant who has not been served. It will help alleviate situations such as clouds on title that could result from a summons that was not served being on file with the clerk of court. [Re Order effective Jan. 1, 1977]

803.07 Interpleader. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this section supplement and do not in any way limit the joinder of parties permitted in s. 803.04.

History: Sup. Ct. Order, 67 W (2d) 649; 1975 c. 218.

Judicial Council Committee's Note, 1974: Although the common law action of interpleader has long been recognized in Wisconsin, the statutes fail, with one exception, to make provision for such actions. The exception is s. 260.19 (5) which recognizes a defendant's right to interplead a third party who seeks from the defendant the same debt or property sought by the plaintiff. This section makes it clear that the right of interpleader is not restricted to the former s. 260.19 (5) situation. This statute is not jurisdictional; that is, it does not do away with the requirement that there exist as to each defendant an independent ground for asserting jurisdiction over his person. [Re Order effective Jan. 1, 1976]

803.08 Class actions. When the question before the court is one of a common or general interest of many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

History: Sup. Ct. Order, 67 W (2d) 650.

Judicial Council Committee's Note, 1974: This section is essentially identical to the class action provision found in s. 260.12. [Re Order effective Jan. 1, 1976]

See note to 59.77, citing Hicks v. Milwaukee County, 71 W (2d) 401, 238 NW (2d) 509.

Trial court did not abuse its discretion in determining that an action for damages caused by the negligent withdrawal of groundwater was not an appropriate class action. Nolte v. Michels Pipeline Const. Inc. 83 W (2d) 171, 265 NW (2d) 482 (1978).

Test of common interest under 260.12, 1973 Stats., is whether all members of purported class desire same outcome of suit that their alleged representatives desire. Goebel v. First Fed. Savings & Loan Asso. 83 W (2d) 668, 266 NW (2d) 352 (1978).

Choice of law in class action based on pension rights discussed. Schlosser v. Allis-Chalmers Corp. 86 W (2d) 226, 271 NW (2d) 879 (1978).

Trial court must decide if named plaintiffs can fairly represent common class interest which they share with represented class and if joinder of all members is impracticable. O'Leary v. Howard Young Medical Center, 89 W (2d) 156, 278 NW (2d) 217 (Ct. App. 1979).

Procedural aspects of class action suits discussed. Mercury Record v. Economic Consultants, 91 W (2d) 482, 283 NW (2d) 613 (Ct. App. 1979).

803.09 Intervention. (1) Upon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.

(2) Upon timely motion anyone may be permitted to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order or rule administered by a federal or state governmental officer or agency or upon any regulation, order, rule, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely motion may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(3) A person desiring to intervene shall serve a motion to intervene upon the parties as provided in s. 801.14. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for

which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

History: Sup. Ct. Order, 67 W. (2d) 650; 1975 c. 218.

Judicial Council Committee's Note, 1974: This section replaces s. 260.205 which provides only for permissive intervention. This section retains the availability of a permissive intervention and also provides for intervention of right when the applicant claims an interest in the subject of the action and is so situated that the disposition of the action may impair his ability to protect his interest unless representation of his interest by existing parties is adequate. In cases involving the validity of statutes, ordinances or franchises, the provisions of s. 806.04 (11) apply. [Re Order effective Jan. 1, 1976]

803.10 Substitution of parties. (1) DEATH. (a) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in s. 801.14 and upon persons not parties in the manner provided in s. 801.11 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested on the record by service of a statement of the facts of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(b) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in the action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(2) INCOMPETENCY. If a party becomes incompetent, the court upon motion served as provided in sub. (1) may allow the action to be continued by or against his representative.

(3) TRANSFER OF INTEREST. In case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in sub. (1).

(4) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE. (a) When a public officer, including a receiver or trustee appointed by virtue of any statute, is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(b) When a public officer sues or is sued in an official capacity, the public officer may be described as a party by the official title rather than by name; but the court may require the officer's name to be added.

(5) DEATH AFTER VERDICT OR FINDINGS. After an accepted offer to allow judgment to be taken or to settle pursuant to s. 807.01, or after a verdict, report of a referee or finding by the court in any action, the action does not abate by the death of any party, but shall be further proceeded with in the same manner as if the cause of action survived by law; or the court may enter judgment in the names of the original parties if such offer, verdict, report or finding be not set aside. But a verdict, report or finding rendered against a party after death is void.

History: Sup. Ct. Order, 67 W. (2d) 652; 1975 c. 200, 218.

Judicial Council Committee's Note, 1974: This section is based on Federal Rule 25 and s. 269.22.

Sub. (1) provides a simpler method for substitution of parties after death than is found in ss. 269.14 through 269.24.

Subs. (2) and (3) are generally equivalent to ss. 269.16 and 269.14, respectively.

Sub. (4) is broader than s. 269.15, which provides by its terms only for substitution of public officers who are claimants.

Sub. (5) is based on s. 269.22. Unlike the present statute, however, reference is made to accepted offers of settlements by plaintiffs to reflect the recent amendment of s. 269.02 (which is renumbered in this proposed code as s. 807.01). [Re Order effective Jan. 1, 1976]