



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Assembly Committee on Judiciary
on
Assembly Bill 58
March 14, 2019**

Mr. Chairman and members of the Committee, thank you for the opportunity for a public hearing on Assembly Bill 58. Simply, this bill allows a plaintiff to personally serve a government entity instead of being required to use certified mail.

Under current law, a person may only serve notice to the State via certified mail.¹ Although certified mail successfully accomplishes service, hand-delivered personal service is just as effective, if not more so. Exclusion of personal service for a lawsuit against the state is likely a drafting error or an attempt to discourage lawsuits with this “gotcha” service provision.

This change became necessary after the 2016 Wisconsin Supreme Court case, *Sorenson v. Batchelder*.² In this case, Batchelder, a DOA employee, was driving a vehicle in his capacity as a state employee when he rear-ended Sorenson, a Wisconsin citizen. Sorenson sought compensation for both herself and her vehicle after suffering damages.

Sorenson’s attorney, who unfortunately could not be here to testify today, chose to use the most reliable type of service: personal service. Personal service is acceptable in any other situation except this one, when a claim is made against a state employee, so it is a simple mistake any attorney could easily make. Please find a letter in support of this bill from Attorney Abraham, the attorney of record in the case, included with my testimony. It turns out that, due to Capitol mail procedures, service by certified mail is impossible.

The court ultimately held that personal service does not comply with the requirements of the statute because it was not served by certified mail. Sorenson was unable to recover damages as a result of the statute.

This bill is a simple, common-sense change that prevents a minor technicality from interfering with justice and allows the use of personal service, the most reliable and common type of service.

The Wisconsin State Bar Litigation Section supports this bill.

Thank you for your time and I am happy to answer any questions.

¹ Wis. Stat. 893.82(5).

² 2016 WI 34, 368 Wis. 2d 140, 885 N.W.2d 362 (2016).

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March 8, 2019

To the State of Wisconsin Senate
Committee on Judiciary and Public Safety

RE: Assembly Bill 58/Senate Bill 62

To Whom It May Concern:

I regret that I am unable to appear today in person to express to you my support of Assembly Bill 58.

I was the attorney of record in the *Sorenson v. Sentry Insurance a Mutual Company* case in which my client had a personal injury claim against the State of Wisconsin. The statute as it is currently written requires service of the Notice of Claim upon the State Attorney General at his or her office in the capitol by Certified Mail. In this case, we served the Attorney General by Personal Service, which is the gold standard of service. After the state paid our client's property damage, they denied the injury portion of the claim because we had done better service than the statute required, but not by Certified Mail. As a result, our client was left without a remedy against the State. We appealed to the Wisconsin Supreme Court, which found for the State and our client received no compensation. This was after it was discovered that it is impossible to serve the Attorney General in the Capitol by Certified Mail, based on their procedure of sending all Certified Mail to the Post Office.

The current language of the statute allowed the State to unfairly deny payment of a citizen's injury claim, despite having effectuated service upon the Attorney General in a manner better than originally intended by the legislature.

For this reason, I support Bill 58 to allow service upon the attorney general by personal service and/or certified mail.

Thank you.

Very truly yours,
Hupy and Abraham, S.C.

By

Jason F. Abraham
Attorney at Law

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DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on Assembly Bills 58 and 59

Chairman Ott and members of the Assembly Committee on Judiciary, thank you for holding a public hearing on this legislation. The bills before you today represent an effort to clarify two processes that impact citizens and employers, how they interact with state government and how they interact with one another while pursuing legal remedies in our courts.

AB 58 increases and clarifies the ways in which a person may serve notice of claim against a state officer or employee. A 2016 decision by the Wisconsin Supreme Court found that service of process requirements must be strictly followed. Current law defines a very narrow procedure for proper service of a claim against a state official. It specifically requires the use of certified mail to deliver a notice to the state Capitol office of the Attorney General. As we know, this office is more of a formality – the substantial work of the Department of Justice and the Attorney General is conducted across the street from here at the Risser Justice Center. Further, delivery of certified mail within the Capitol to an individual office is nearly impossible given the way we deliver both U.S. mail and interdepartmental mail.

Allowing notice of claims to be delivered in person to the DOJ or the state Capitol office of the attorney general, or mailed via certified mail directly to the DOJ resolves the difficult bar currently set in statute for properly serving notice of claims against the state.

The other bill before you, AB 59, clarifies that private parties to lawsuits may serve certain legal documents via e-mail if both parties have, prior to the service, consented in writing to the use of e-mail as a valid medium for transmitting and receiving documents. Current law allows service of certain documents via personal delivery, delivery to a lawyer representing a party, delivery to a home address or place of business, and even via fax machine, but does not explicitly allow for the use of e-mail. Adding e-mail and electronic service to these methods brings this portion of state law into the 21st Century.

Thank you for considering this legislation.

LITIGATION SECTION

To: Assembly Committee on Judiciary
From: Litigation Section, State Bar of Wisconsin
Date: March 14, 2019
Re: AB 58 – notice of claim

The Litigation Section of the State Bar of Wisconsin supports AB 58, Representative Ron Tusler's legislation allowing a plaintiff to personally serve a government entity.

Section 893.82 sets forth a very precise method to provide notice of an injury claim to the Attorney General as a prerequisite to bringing a lawsuit. Under the current law, a written notice of claim must be sent to the office of the Attorney General in the capitol by certified mail.

AB 58 adds personal service as a permissible method of serving the notice of claim upon the Attorney General. This legislation would be a welcome change, as the Litigation Section believes injury claims should be adjudicated on their merits and not hinge on whether a pro se litigant or an attorney used a certain form of service.

In past legal challenges, the Wisconsin Supreme Court has held that claimants must strictly comply with the notice provisions. However, certified mail is not the most common nor most reliable method of service and strict compliance with this statute creates a trap for the unwary that may leave otherwise meritorious claims dismissed on a technicality.

For these reasons, the State Bar's Litigation Section asks for your support in the passage of this legislation.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN