CHAPTER 799

PROCEDURE IN SMALL CLAIMS ACTIONS

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799.01 Applicability of chapter. (1) EXCLUSIVE USE OF SMALL CLAIMS PROCEDURE. Except as provided in ss. 799.02 (1) and 799.21 (4) and except as provided under sub. (2), the procedure in this chapter is the exclusive procedure to be used in circuit court in the following actions:

(a) *Eviction actions*. Actions for eviction as defined in s. 799.40 regardless of the amount of rent claimed therein.

(am) *Return of earnest money.* Actions for the return of earnest money tendered pursuant to a contract for purchase of real property, including a condominium unit, as defined in s. 703.02 (15), and time−share property, as defined in s. 707.02 (32), that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract unless the transfer is exempt from the real estate transfer fee under s. 77.25 regardless of the amount claimed.

(b) *Forfeitures*. Actions to recover forfeitures except as a different procedure is prescribed in chs. 23, 66, 345 and 778, or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein.

(c) *Replevins*. Actions for replevin under ss. 810.01 to 810.13 where the value of the property claimed does not exceed $10,000.

(cm) *Arbitration.* Actions for the confirmation, vacation, modification or correction of an arbitration award where arbitration was in settlement of a controversy arising out of a transaction for the purchase of real property, including a condominium unit, as defined in s. 703.02 (15), and time−share property, as defined in s. 707.02 (32), that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract regardless of the amount of that award.

(cr) *Third−party complaints, personal injury claims, and tort claims*. Third−party complaints, personal injury claims, and actions based in tort, where the amount claimed is $5,000 or less.

(d) *Other civil actions*. Other civil actions where the amount claimed is $10,000 or less, if the actions or proceedings are:

1. For money judgments only except for cognovit judgments which shall be taken pursuant to s. 806.25; or

2. For attachment under ch. 811 and garnishment under subch. I of ch. 812, except that s. 811.09 does not apply to proceedings under this chapter; or

3. To enforce a lien upon personalty.

(2) PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may use the procedure in this chapter in an action to recover a tax from a person liable for that tax where the amount claimed, including interest and penalties, is $10,000 or less. This chapter is not the exclusive procedure for those actions.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 325, 365, 422; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53; Stats. 1979 s. 799.01; 1983 a. 228; 1987 a. 208, 378, 403; 1989 a. 31, 359; 1991 a. 163; 1993 a. 80, 181; 1995 a. 27; 2011 a. 32.

This section does not authorize the court to grant injunctional relief. County of Columbia v. Bylewski, 94 Wis. 2d 153, 288 N.W.2d 129 (1980).

The $5,000 small claims limitation applies to pecuniary loss, but not to costs and fees associated with the loss. Reusch v. Roob, 2000 WI App 76, 234 Wis. 2d 270, 610 N.W.2d 168, 98−3102.

A plaintiff may elect to sue in small claims court when actual damages exceed $5,000. The small claims award limitation is a limit on recovery, not a bar that denies the court jurisdiction over cases in which the plaintiff's actual damages exceed $5,000. When a trial court finds that a small claims plaintiff's actual damages exceed the statutory award limit of $5,000, the court should apply any reduction for comparative negligence to the damages found before applying the statutory limit. Bryhan v. Pink, 2006 WI App 110, 294 Wis. 2d 347, 718 N.W.2d 112, 05−1030.

799.02 Counterclaims and cross complaints. (1) If a counterclaim or cross complaint is filed, which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 799.01, the person filing the same shall pay the fee prescribed in s. 814.62 (3) (b), and the entire matter shall be tried under chs. 801 to 847 procedure, except that the counterclaim or cross complaint shall be deemed denied and a responsive pleading thereto is not required unless ordered by the court and the requirements for appearance by the parties shall be governed by s. 799.06 (2).

(2) If a counterclaim or cross complaint is filed, which does not arise out of the same transaction or occurrence that is the subject matter of the plaintiff's claim and which is beyond the limitations of s. 799.01, the court shall dismiss the same and proceed under this chapter.

(3) If a counterclaim or cross complaint is filed that is beyond the limitations of s. 799.01, the person filing the counterclaim or cross complaint shall mail a notice to the plaintiff or the plaintiff's attorney, if any, at the address listed on the summons. The notice shall be mailed on the same day the counterclaim or cross complaint is filed and shall inform the plaintiff of all of the following:

(a) That a counterclaim or cross complaint has been filed in the action.

(b) That as a result of that filing the entire matter may be tried under chs. 801 to 847 procedure.

(c) That the summons, specifying the time and date the parties are required to appear at court, may no longer apply.

(d) The telephone number of the appropriate clerk of circuit court that the plaintiff may call to find out if he or she should still appear in court at the time and date listed on the summons.

(e) That a copy of the counterclaim or cross complaint will be served on the plaintiff or the plaintiff's attorney within 60 days after filing.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1979 c. 32 ss. 66, 92 (16); 1979 c. 89, 177; Stats. 1979 s. 799.02; 1981 c. 317; 1987 a. 208.

799.03 Definition. In this chapter unless otherwise designated, "court" means circuit court and "court" does not mean circuit court commissioner.

History: 1977 c. 345; 1977 c. 449 s. 497; 1979 c. 32 ss. 64, 92 (16); Stats. 1979 s. 799.03; 1983 a. 228; 2001 a. 61.

Judicial Council Note, 1983: The first sentence is deleted because it has been construed to mean that actions for $1,000 or less need not be jurisdictionally brought under ch. 799. State v. Hervey, 113 Wis. 2d 634 (1983). Under revised s. 799.01, the circuit court lacks jurisdiction over certain actions unless ch. 799 procedures are followed. [Bill 324−S]

799.04 Relation of this chapter to other procedural rules. (1) GENERAL. Except as otherwise provided in this chapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter. Any judicial proceeding authorized to be conducted under s. 807.13 may be so conducted in actions under this chapter.

(2) FORMS. Except as otherwise provided in this subsection and this chapter, the forms specified in chs. 801 to 847 shall be used. Forms shall be uniform, concisely written and readily understandable by members of the public. Summons and complaint forms shall be made available to the public by the clerk of court and, in counties having a population of 500,000 or more, the summons shall have all provisions printed in both English and Spanish.

History: Sup. Ct. Order, 67 Wis. 2d 776; 1977 c. 345; 1979 c. 32 ss. 66, 92 (16); 1979 c. 89; Stats. 1979 s. 799.04; Sup. Ct. Order, 141 Wis. 2d xiii (1987).

Judicial Council Note, 1988: Sub. (1) is amended to authorized the use of telephone conferences in proceedings under this chapter whenever such conferences would be so authorized in other civil actions. [Re Order effective Jan. 1, 1988]

799.05 Summons. (1) CONTENTS. The summons shall state the nature of the demand substantially in the terms of one or more of the provisions of s. 799.01, and, except as provided in ss. 806.30 to 806.44, the dollar amount of damages, if any, the last−known address of the parties and the name, state bar number, if any, address and telephone number of plaintiff's attorney, if any. The caption shall include the standardized description of the case classification type and associated code number as approved by the director of state courts.

(2) SIGNING. The process shall be signed by the clerk or by any attorney duly authorized to practice law in this state and shall be issued by the clerk only to a person authorized to appear under s. 799.06 (2), and not otherwise.

(3) RETURN DATE. (a) Every summons shall specify a return date and time.

(b) Except in eviction actions, the return date for a summons served upon a resident of this state shall be not less than 8 days nor more than 30 days from the issue date, and service shall be made not less than 8 days prior to the return date. In eviction actions, the return date for a summons served upon a resident of this state shall be not less than 5 days nor more than 25 days from the issue date, and service shall be made not less than 5 days prior to the return date.

(c) The return date for a summons served upon a nonresident of this state shall be not less than 20 days from the issue date.

(d) The clerk shall set the day and hour at which the summons is returnable.

(4) CLERK TO FURNISH TIME OF RETURN. If a summons is signed by an attorney, the attorney shall obtain from the clerk of court the hour and date within the limits of sub. (3) on which to make the summons returnable.

(5) NOTING DATE OF MAILING. After a copy of the summons has been mailed, the clerk shall note the date of mailing on the original.

(6) FORM. Except as provided in s. 799.22 (4) (b) 3., the summons shall be substantially in the following form:

STATE OF WISCONSIN CIRCUIT COURT: ....County

A. B.
Address
City, State Zip Code File No. ....
, Plaintiff
vs. S U M M O N S − SMALL CLAIMS
C. D.
Address .... (Case Classification Type): .... (Code No.)
City, State Zip Code
, Defendant

THE STATE OF WISCONSIN, to the Defendant:

You are hereby summoned to appear and plead to the Plaintiff's complaint in the above court at .... in the (city) (village) of ...., on the .... day of ...., ... (year), at .... o'clock (a.m.) (p.m.). [A copy of the complaint is hereto attached.] [The Plaintiff will state his or her demand on that date.] In case of your failure to appear, a judgment may be rendered against you in accordance with the demands made by the Plaintiff. The nature of the demand being made upon you is .... (state in terms of s. 799.01 of the Wisconsin Statutes) and the amount of damages, if any, demanded is .....

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

Signed: ....
E. F., Clerk of Circuit Court
or
G. H., Plaintiff's Attorney
State Bar No.: ....
Address: ....
City, State Zip Code: ....
Phone No.: ....

(7) FORM; CIRCUIT COURT COMMISSIONER. Except as provided in s. 799.22 (4) (b) 3., in counties in which a circuit court commissioner is assigned to assist in small claims matters, the summons shall be substantially in the following form:

STATE OF WISCONSIN CIRCUIT COURT: .... COUNTY

A. B.
Address
City, State Zip Code File No. ....
, Plaintiff
vs. S U M M O N S (SMALL CLAIMS)
C.D.
Address
City, State Zip Code
, Defendant

THE STATE OF WISCONSIN, to the Defendant:
You are being sued for:

.... Eviction
.... Return of Property
.... Confirmation, vacation, modification or correction of arbitration award
.... $.....

If you wish to dispute this matter, you must then be in Room ...., of the .... (County) County Courthouse, ... (address), ... (city), Wisconsin before .... o'clock (a.m.) (p.m.), on ...., ... (year). If you do not appear, a judgment may be given to the person suing you for what that person is asking.

You are encouraged to bring with you all papers and documents relating to this matter, but there is no need to bring witnesses at this time.

Dated at .... County, Wisconsin, this .... day of ...., ... (year)

Signed: ....
E. F., Clerk of Circuit Court
or
G. H., Plaintiff's Attorney
State Bar No.: ....
Address: ....
City, State Zip Code: ....
Phone No.: ....

History: 1977 c. 345; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 108; 1979 c. 176 s. 85; 1979 c. 177 s. 85; Stats. 1979 s. 799.05; Sup. Ct. Order, 130 Wis. 2d xi; 1987 a. 142, 208, 403; 1989 a. 56; 1991 a. 163, 236; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1993 a. 80; 1997 a. 250; 2001 a. 61; 2013 a. 76.

Judicial Council Note, 1986: Sub. (3) is amended by extending from 17 to 30 days the period between the issuance of the summons and the return date, in order to permit timely service on defendants who are not residents of the county where the action is pending. [Re Order eff. 7−1−86]

799.06 Actions; how commenced, pleadings, appearances. (1) PLEADINGS. All pleadings except the initial complaint may be oral. Any circuit court may by rule require written pleadings and any judge or circuit court commissioner may require written pleadings in a particular case.

(2) A person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her, or its own proper person or by an attorney regularly authorized to practice in the courts of this state. Under this subsection, a person is considered to be acting in his, her, or its own proper person if the appearance is by a member, as defined in s. 183.0102 (15), agent, or authorized employee of the person, or by an agent of the member or an authorized employee of the agent. An assignee of any cause of action under this chapter shall not appear by a full−time authorized employee, unless the employee is an attorney regularly authorized to practice in the courts of this state.

(3) The complaint in an eviction action shall conform to s. 799.41. The complaint in other actions under this chapter shall be in writing and shall be substantially in the following form:

STATE OF WISCONSIN CIRCUIT COURT: .... COUNTY

A. B.
Address
City, State Zip Code File No. ....
, Plaintiff
vs. C O M P L A I N T
C. D.
Address .... (Case Classification Type): .... (Code No.)
City, State Zip Code
, Defendant

For the Plaintiff's claim against Defendant, Plaintiff states that:

1. Plaintiff's injuries or losses occurred on or about .... (month and day), ... (year), and under the following circumstances (brief statement of the facts of plaintiff's claim):

. . . . . .
. . . . . .
. . . . . .
. . . . . .

2. Wherefore, Plaintiff demands judgment for (return of property) (confirmation, vacation, modification or correction of arbitration award) (the sum of $....) plus attorney fees, if any, costs of this suit and such other relief as the court deems proper.

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 764 (1975); 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 108; Stats. 1979 s. 799.06; 1987 a. 208; 1991 a. 163; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 250; 2001 a. 61; 2013 a. 76.

Sub. (2) authorizes a non−lawyer employee to represent a party to a small claims action at the appellate as well as trial court level. Holz v. Busy Bees Contracting, Inc. 223 Wis. 2d 598, 589 N.W.2d 633 (Ct. App. 1998), 98−1076.

799.07 File of summons; forfeiture tickets; warrants. The clerk shall keep a file of summons issued by the clerk, of forfeiture tickets filed with the clerk, and of warrants for arrests issued by the clerk.

History: 1979 c. 32 s. 66; Stats. 1979 s. 799.07; 1993 a. 486.

799.09 Public information. Information regarding the existence, location and hours of the circuit court's small claims system shall be disseminated and publicized throughout the county by the clerk of court. Each county shall produce and make available to all litigants in small claims actions publications explaining the procedures to be followed by litigants in small claims actions.

History: 1977 c. 345, 449; 1979 c. 32 s. 66; Stats. 1979 s. 799.09; 1987 a. 208.

799.10 Case file, court record. (1) CLERK TO MAINTAIN COURT RECORD AND CASE FILE. The clerk of circuit court shall maintain a court record of small claims cases, and a case file for each case in which there are papers other than the ones listed in s. 799.07 to be filed.

(2) ENTRIES; WHAT TO CONTAIN. Entries in the court record shall include:

(a) The number of the case;

(b) The title of every action including the full names of the parties and their addresses, if known. If service is by mail, the clerk shall also enter the date when the summons is mailed to any defendant, and the name of the person to whom mailed;

(c) The names of attorneys, if any, appearing in the action;

(d) Type of action by reference to s. 799.01;

(e) Nature of plea in forfeiture actions;

(f) The judgment or final order entered, date of entering it and the amount of forfeiture or damages, costs and fees due to each person separately;

(g) Satisfaction of forfeiture, or commitment for nonpayment of forfeiture or judgment;

(h) The date of mailing notice of entry of judgment or final order as provided in s. 799.24;

(i) Such additional entries as may be necessary to supply essential information not contained in the case file or reporter's record.

(3) CORRECTING COURT RECORD. The judge has power at any time to order the court record corrected or any omission or additional entry supplied if the judge is satisfied that an error or omission exists or that one or more additional entries are needed.

(4) TIME OF COURT RECORD ENTRIES. Entries in the court record shall be made not later than the time of the entry of the judgment or final order, or as soon thereafter as possible. No court record entries need be made in uncontested cases where the action is for a money forfeiture charging violation of a parking regulation.

History: 1979 c. 32 ss. 66, 92 (16); 1979 c. 176; Stats. 1979 s. 799.10; 1995 a. 224.

799.11 Venue. (1) The venue of actions in which the procedure of this chapter is used is as follows:

(a) In actions for garnishment, any county in which the garnishee resides or, if not a resident of the state, is found; or, the county in which the summons in the principal action has issued or where the judgment therein is entered.

(b) In any claim arising out of a consumer transaction, as defined in s. 421.301 (13), or a consumer credit transaction, as defined in s. 421.301 (10), in the county specified by s. 421.401.

(c) In actions for a forfeiture, the county in which the act occurred on which the action for forfeiture is based.

(d) In actions to recover a tax, the county in which the tax was levied.

(e) In all other actions, the county specified by s. 801.50.

(2) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any one of them.

(3) When, in any action under this chapter, it appears from the return of service of the summons or otherwise that the county in which the action is pending is not a proper place of trial and that another county would be a proper place of trial, the court or circuit court commissioner shall, on motion of a party or its own motion, transfer the action to that county unless the defendant appears and waives the improper venue. The clerk of the court to which the action is transferred shall issue a new notice of return date upon payment of the fee required by s. 814.61 (2) (a).

History: 1979 c. 32 ss. 66, 92 (16); Stats. 1979 s. 799.11; 1981 c. 300; 1981 c. 390 s. 252; 1983 a. 228, 389, 538; 1987 a. 208; 2001 a. 61.

799.12 Service of summons. (1) Except as otherwise provided in this chapter, all provisions of chs. 801 to 847 with respect to jurisdiction of the persons of defendants, the procedure of commencing civil actions, and the mode and manner of service of process, shall apply to actions and proceedings under this chapter.

(2) Any circuit court may by rule authorize the service of summons in some or all actions under this chapter by mail under sub. (3) in lieu of personal or substituted service under s. 801.11.

(3) If authorized by court rule under sub. (2), service may be made by mail by leaving the original and necessary copies of the summons with the clerk of court, together with the fee prescribed in s. 814.62 (4). The court shall require the use of certified mail with return receipt requested for all eviction cases for which service by mail is authorized under sub. (2), and for all other cases may by rule require the use of certified mail with return receipt requested. Whenever the use of certified mail is required, the additional fee prescribed in s. 814.62 (4) shall be paid for each defendant. The clerk shall mail a copy to each defendant at the last−known address as specified in the summons. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address. Service by mail to obtain a personal judgment shall be limited to the county where the action is commenced.

(4) If with reasonable diligence the defendant cannot be served by personal or substituted service under s. 801.11, or if mailed service is authorized under sub. (2) and the envelope enclosing the summons is returned unopened to the clerk, service may be made by mailing and publication under sub. (6). The clerk shall issue a new return date allowing timely publication of a class 1 notice under ch. 985.

(5) Section 345.09 shall not apply to actions under this chapter.

(6) (a) Service by mailing and publication authorized under sub. (4) may be made as provided in s. 801.11 (1) (c) or as provided in this subsection.

(b) If the defendant's post−office address can be ascertained with reasonable diligence, service may be made by mailing to the defendant a copy of the summons at or immediately prior to the publication of the summons or a notice under par. (c) as a class 1 notice under ch. 985.

(c) If the defendant's post−office address cannot be ascertained with reasonable diligence, the mailing may be omitted and service may be made by publishing as a class 1 notice under ch. 985 a notice in substantially the following form, except as provided in s. 799.22 (4) (b) 3.:

SMALL CLAIMS SUMMONS NUMBER ....

....(Defendant's Name)

....(Defendant's Address, if known)

You are being sued by .... (plaintiff's name) in the small claims court for .... County, ... (room number, address and telephone number of the court). A hearing will be held at .... o'clock (a.m.) (p.m.), on ...., ... (year). If you do not appear, a judgment may be given to the person suing you. [A copy of the claim has been mailed to you at the address above.]

(7) Any circuit court may by rule authorize service of the summons and complaint prior to filing and authentication thereof, provided the appropriate fee under s. 814.62 is paid before the summons is issued and the summons is not reusable for a different defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 89, 176; Stats. 1979 s. 799.12; 1981 c. 317; 1987 a. 208; Sup. Ct. Order No. 95−10, 195 Wis. 2d xv (1996); 1997 a. 250; 2013 a. 76.

How Wisconsin Circuit Courts Can Ensure Proper Service in Eviction Actions After 2013 Wisconsin Act 76. Ahrendt. 2014 WLR 1201.

799.14 Failure of actual notice of suit by mail. (1) PETITION; HEARING; TRIAL ON MERITS. In any action, where service of summons is made by mailing, a defendant, at any time within 15 days of receiving actual knowledge of the pendency of the action or of the entry of judgment against the defendant, if judgment has been entered, but not more than one year after judgment was entered, may, by written verified petition, on forms provided by the court, petition to set aside the judgment if one has been entered and for an opportunity to be heard upon the merits. Thereupon the court shall set the matter for hearing at a time that will give the parties reasonable opportunity to appear and, if judgment has been entered, shall stay all proceedings on the judgment. At the time of the hearing the questions raised by the petition shall first be heard and determined by the court. If the court grants the petition, the court shall proceed to try the matter upon the merits or, if judgment has been entered, shall vacate the judgment and proceed to try the matter upon the merits. If the court denies the petition, it shall, if judgment has been entered, revoke its order staying proceedings thereon or, if a judgment has not been entered, it may give the defendant opportunity to be heard upon the merits.

(2) EFFECT OF ACTUAL APPEARANCE. This section shall not apply to a defendant who actually appeared and submitted to the jurisdiction of the court without filing application as provided in sub. (1).

History: 1979 c. 32 s. 66; 1979 c. 176; Stats. 1979 s. 799.14; 1999 a. 85.

799.16 Actions in rem or quasi in rem; limitation on judgment. (1) BASIS. In proceedings in rem or quasi in rem no judgment shall be entered against a defendant for an amount in excess of the value of the property unless based on personal or substituted service as provided in s. 799.12 (1), or unless the defendant appears without objecting to the jurisdiction of the court over defendant's person.

(2) ADJOURNMENT AND PUBLICATION. When the defendant has not been served with personal or substituted service pursuant to s. 799.12 (1) and does not waive the defense of lack of jurisdiction over the person under s. 802.06 (8) and the court has jurisdiction over the property, service may be made on the defendant by publication. If service is to be made by publication, the proceeding shall be adjourned to a day certain by the court, and a notice in substantial conformity with sub. (4) shall be published as a class 1 notice, under ch. 985.

(3) ADJOURNMENT, POSTING AND MAILING IN EVICTION ACTIONS. In eviction actions, when the defendant has not been served with personal or substituted service pursuant to s. 799.12 (1) and does not waive the defense of lack of jurisdiction over the person under s. 802.06 (8), service may be made as follows:

(a) If the summons is returned more than 7 days prior to the return date with proof that the defendant cannot be served with personal or substituted service within the state under s. 799.12 (1), the plaintiff may, at least 7 days prior to the return date, affix a copy of the summons and complaint onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date an additional copy of the summons and complaint shall also be mailed to the defendant at the last−known address, even if it is the premises which are the subject of the action.

(b) In all other cases where the summons and complaint are returned with proof that the defendant cannot be served with personal or substituted service within the state under s. 799.12 (1), the court shall, on the return date, adjourn the case to a day certain not less than 7 days from the return date, and the plaintiff shall affix a notice in substantial conformity with sub. (4) (c) onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date, an additional copy of said notice, together with a copy of the summons and complaint, shall be mailed to the defendant at the last−known address, even if it is the premises which are the subject of the action.

(c) Before judgment is entered after service is made under this section, the plaintiff shall file proof of compliance with this section.

(4) FORMS. (a) *Notice in attachment and garnishment.*

STATE OF WISCONSIN
CIRCUIT COURT
.... COUNTY
TO:

You are hereby notified that (an attachment) (a garnishment) has been issued against you and your property (attached) (garnisheed) to satisfy the demand of .... amounting to $ .....

Now, unless you shall appear in the circuit court, of .... County, located in the courthouse in .... (municipality), before Judge ...., or before any judge to whom the action may be assigned, on .... (date), at .... (time), judgment will be rendered against you and your property sold or applied to pay the debt as provided by law.

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

.... Plaintiff
By .... Plaintiff's Attorney

(b) *Notice in replevin.*

STATE OF WISCONSIN
CIRCUIT COURT
.... COUNTY
TO:

You are hereby notified that a replevin action has been issued to recover the possession of the following described goods and chattels, to wit: .... of which I, the plaintiff, am entitled to possess, but which you have (unjustly taken) (unlawfully detained) from me.

Now, unless you shall appear in the circuit court, of .... County, located in the courthouse in .... (municipality), before Judge ...., or before any judge to whom the action may be assigned, on .... (date), at .... (time), judgment will be rendered against you for the delivery of said property to me and for damages for the (taking and) detention thereof and for costs.

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

.... Plaintiff
By .... Plaintiff's Attorney

(c) *Notice in eviction.*

STATE OF WISCONSIN
CIRCUIT COURT
.... COUNTY
TO:

Take notice that an eviction action has been commenced against you to recover the possession of the following described premises ...., of which I, the plaintiff, am entitled to possession, but which you have unlawfully detained from me.

Unless you appear and defend on the .... day of ...., ... (year), at .... o'clock ..M., in the circuit court of .... county, located in the courthouse in the city of ...., before the Honorable ...., a Judge of said court, or before any judge to whom the action may be assigned, judgment may be rendered against you for the restitution of said premises and for costs.

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

.... Plaintiff
By .... Plaintiff's Attorney

History: Sup. Ct. Order, 67 Wis. 2d 575, 764 (1975); 1975 c. 218; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 110 s. 60 (7); 1979 c. 176; Stats. 1979 s. 799.16; 1987 a. 208; 1993 a. 213, 246, 491; Sup. Ct. Order No. 95−10, 195 Wis. 2d xv (1996); 1997 a. 250.

799.20 Answer; counterclaim and cross complaint. (1) PLEADING ON RETURN DATE OR ADJOURNED DATE. On the return date of the summons or any adjourned date thereof the defendant may answer, move to dismiss under s. 802.06 (2) or otherwise respond to the complaint.

(2) CROSS COMPLAINT. In the case of more than one defendant, any cross complaint by one defendant against another who has appeared shall be made or filed on the return date or any adjourned date.

(4) INQUIRY OF DEFENDANT WHO APPEARS ON RETURN DATE. If the defendant appears on the return date of the summons or any adjourned date thereof, the court or circuit court commissioner shall make sufficient inquiry of the defendant to determine whether the defendant claims a defense to the action. If it appears to the court or circuit court commissioner that the defendant claims a defense to the action, the court or circuit court commissioner shall schedule a trial of all the issues involved in the action, unless the parties stipulate otherwise or the action is subject to immediate dismissal. In a residential eviction action, the court or circuit court commissioner shall hold and complete a court or jury trial of the issue of possession of the premises involved in the action within 30 days of the return date of the summons or any adjourned date thereof, unless the parties stipulate otherwise or the action is subject to immediate dismissal.

History: Sup. Ct. Order, 67 Wis. 2d 585, 765 (1975); 1977 c. 449; 1979 c. 32 s. 66; Stats. 1979 s. 799.20; 1987 a. 208; 2001 a. 61; 2013 a. 76.

799.205 Substitution of judge. (1) Any party to a small claims action or proceeding may file a written request 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 on the return date of the summons or within 10 days after the case is scheduled for trial. 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 original judge.

(2) After the written request has been filed, the original judge shall have no further jurisdiction in the action or proceeding except to determine if the request is correct as to form and timely filed. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. If the request is correct as to form and timely filed, the named judge shall be disqualified and

shall promptly request assignment of another judge under s. 751.03.

(3) Except as provided in sub. (4), no party is entitled to file more than one such written request in any one action, and any single such request shall not 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 such party of a written request.

(4) 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 entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

History: 1971 c. 46, 137, 296, 307; 1977 c. 135; 1977 c. 187 s. 135; 1977 c. 449; 1979 c. 32 s. 66; Stats. 1979 s. 799.205; 1987 a. 151.

799.206 Return date proceedings before court commissioner. (1) In counties establishing a circuit court commissioner position under s. 757.68 (5m), all actions and proceedings commenced under this chapter shall be returnable before a circuit court commissioner appointed under s. 757.68 (1) and SCR chapter 75. In any other county, a circuit court commissioner may conduct return date proceedings if delegated such authority under s. 757.69 (1) (d).

(2) Judgment on failure to appear may be entered by the circuit court commissioner or the clerk upon the return date as provided in s. 799.22.

(3) When all parties appear in person or by their attorneys on the return date in an eviction, garnishment, or replevin action and any party claims that a contest exists, the matter shall be forthwith scheduled for a hearing, to be held as soon as possible before a judge and in the case of an eviction action, not more than 30 days after the return date.

(4) Except as provided in sub. (3), the circuit court commissioner shall hear all matters using the procedures set forth in s. 799.207.

History: 1977 c. 345; 1979 c. 32 ss. 66, 92 (16); Stats. 1979 s. 799.206; 1987 a. 208; 2001 a. 61; 2013 a. 76.

799.207 Proceedings before circuit court commissioner. (1) (a) Any circuit court commissioner assigned to assist in small claims matters may hold a conference with the parties or their attorneys or both on the return date, examine pleadings and identify issues.

(b) Except as provided in par. (e), a decision shall be rendered by the circuit court commissioner on the return date if there is time available for a hearing, the parties do not intend to call witnesses, and the parties agree to such a hearing. If for any of the reasons stated in this paragraph, the matter cannot be heard on the return date, an adjourned date shall be set.

(c) The proceedings shall be conducted as provided in s. 799.209.

(d) A record of the proceeding shall be made and shall be limited to the time and location of the hearing, the parties, witnesses and attorneys present and the decision.

(e) If the circuit court commissioner cannot reach a decision on the return or adjourned date, the commissioner shall mail the decision to each party within 30 days of the date of the hearing.

(2) The circuit court commissioner's decision shall become a judgment 11 days after rendering, if oral, and 16 days after mailing, if written, except that:

(a) Default judgments will have immediate effect.

(b) Either party may file a demand for trial within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision to prevent the entry of the judgment.

(3) (a) There is an absolute right to have the matter heard before the court if the requirements of this section are complied with.

(b) The circuit court commissioner shall give each of the parties a form and instructions which shall be used for giving notice of an election to have the matter heard by the court.

(c) The demand for trial must be filed with the court and mailed to the other parties within 10 days from the date of an oral decision or 15 days from the date of mailing of a written decision. Mailing of the notice and proof of such mailing is the responsibility of the party seeking review.

(d) Notice of a demand for trial may also be given in writing and filed by either of the parties at the time of an oral decision.

(4) Following the timely filing of a demand for trial, the court shall mail a trial date to all of the parties.

(5) A timely filing of a demand for trial shall result in a new trial before the court on all issues between the parties.

History: 1977 c. 345; 1979 c. 32 s. 66; 1979 c. 110; Stats. 1979 s. 799.207; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 208; 2001 a. 61.

Judicial Council Note, 1988: The substance of sub. (5) (b) is retained in s. 799.208. [Re Order effective Jan. 1, 1988]

799.208 Pretrial conference. In any action under this chapter, the pretrial conference may be conducted by telephone as provided in s. 807.13 (3) at the discretion of the court and may be conducted on the trial date.

History: Sup. Ct. Order, 141 Wis. 2d xiii (1987).

799.209 Procedure. At any trial, hearing or other proceeding under this chapter:

(1) The court or circuit court commissioner shall conduct the proceeding informally, allowing each party to present arguments and proofs and to examine witnesses to the extent reasonably required for full and true disclosure of the facts.

(2) The proceedings shall not be governed by the common law or statutory rules of evidence except those relating to privileges under ch. 905 or to admissibility under s. 901.05. The court or circuit court commissioner shall admit all other evidence having reasonable probative value, but may exclude irrelevant or repetitious evidence or arguments. An essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence.

(3) The court or circuit court commissioner may conduct questioning of the witnesses and shall endeavor to ensure that the claims or defenses of all parties are fairly presented to the court or circuit court commissioner.

(4) The court or circuit court commissioner shall establish the order of trial and the procedure to be followed in the presentation of evidence and arguments in an appropriate manner consistent with the ends of justice and the prompt resolution of the dispute on its merits according to the substantive law.

History: 1987 a. 208; 1991 a. 269; 2001 a. 61.

799.21 Trial. (1) DETERMINATION OF METHOD OF TRIAL. In the absence of a jury demand, trial shall be to the court.

(2) TRIAL BY COURT. If trial is to the court, the case may, with the consent of all the parties, be tried on the return day.

(3) TRIAL BY JURY. (a) Any party may, upon payment of the fees prescribed in ss. 814.61 (4) and 814.62 (3) (e), file a written demand for trial by jury. If no party demands a trial by jury, the right to trial by jury is waived forever. In eviction actions, the demand shall be filed at or before the time of joinder of issue; in all other actions within 20 days thereafter.

(b) In counties in which a circuit court commissioner is assigned to assist in small claims matters, except in eviction actions which shall be governed by par. (a), demand for trial by jury shall be made at the time a demand for trial is filed. If the party requesting a trial does not request a jury trial, any other party may request a jury trial by filing the request with the court and mailing copies to all other parties within 15 days from the date of mailing of the demand for trial or the date on which personal notice of

demand is given, whichever is applicable. If no party demands a trial by jury, the right to trial by jury is waived forever. The fees prescribed in ss. 814.61 (4) and 814.62 (3) (e) shall be paid when the demand for a trial by jury is filed.

(4) JURY PROCEDURE. If there is a demand for a trial by jury, the judge or circuit court commissioner shall place the case on the trial calendar and a jury of 6 persons shall be chosen as provided in s. 345.43 (3) (b). The parties shall proceed as if the action had originally been begun as a proceeding under chs. 801 to 807, except that the court is not required to provide the jury with one complete set of written instructions under s. 805.13 (4) and the requirements for appearance by the parties shall be governed by s. 799.06 (2).

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1977 c. 345, 449; 1979 c. 32 s. 66; 1979 c. 128; Stats. 1979 s. 799.21; 1981 c. 317; 1987 a. 208; 2001 a. 61.

Requiring the payment of a jury fee did not violate the right to a trial by jury. County of Portage v. Steinpreis, 104 Wis. 2d 466, 312 N.W.2d 731 (1981).

799.213 Arbitration actions. Chapter 788 applies to actions relating to the confirmation, vacation, modification or correction of an arbitration award.

History: 1991 a. 163.

799.215 Trial by court, findings and judgment. Upon a trial of an issue of fact by the court, its decision shall be given either orally immediately following trial or in writing and filed with the clerk within 60 days after submission of the cause, and shall state separately the facts found and the conclusions of law thereon; and judgment shall be entered accordingly.

History: 1979 c. 32 s. 66; Stats. 1979 s. 799.215.

799.22 Judgment on failure to appear or answer. **(1)** WHEN PLAINTIFF FAILS TO APPEAR. If the plaintiff fails to appear on the return date or on the date set for trial, the court may enter a judgment for the defendant dismissing the action, on motion of the defendant or on its own motion.

(2) WHEN DEFENDANT FAILS TO APPEAR. If the defendant fails to appear on the return date or on the date set for trial, the court may enter a judgment upon due proof of facts which show the plaintiff entitled thereto.

(3) PLAINTIFF'S PROOF WHERE ACTION AROSE ON CONTRACT FOR RECOVERY OF MONEY. In any action arising on contract for the recovery of money only, if the defendant fails to appear and answer or to appear at the time set for trial, the plaintiff may file with the judge or clerk a verified complaint, or an affidavit of the facts, or may offer sworn testimony or other evidence to the clerk or judge, and either may enter judgment thereon.

(4) PLEADING IN LIEU OF APPEARANCE. (a) Any circuit court may by rule permit a defendant to join issue in any of the actions specified in s. 799.01 without appearing on the return date by answering, either by mail or by telephone, within such time and in such manner as the rule permits.

(am) If the defendant is a nonresident of this state, the circuit court shall adopt a rule to permit the defendant to join issue in any of the actions specified in s. 799.01 without appearing on the return date by answering by mail, in such manner as the rule permits, and if the court adopts a rule under par. (a) to permit the defendant to join issue without appearing on the return date by answering by telephone, then the defendant shall also be permitted to join issue by answering by telephone, in such manner as the rule permits.

(b) If a court adopts a rule under par. (a), then all of the following apply:

1. The existence of the rule shall be deemed an appearance by the plaintiff in that court on the return date for purposes of sub. (1).

2. A proper answer by the defendant under the rule shall be deemed an appearance by the defendant in that court on the return date for purposes of sub. (2).

3. Any summons under s. 799.05 (6) or (7) or 799.12 (6) (c) and any notice under s. 799.16 (4) shall notify the defendant of the option to answer without appearing in court on the return date and the methods of answering permitted by the rule.

History: 1979 c. 32 s. 66; Stats. 1979 s. 799.22; 1987 a. 208; 1989 a. 56.

799.225 Dismissal of pending actions. The court may without notice dismiss any action or proceeding, in which issue has not been joined, which is not otherwise disposed by judgment or stipulation and order within 6 months from the original return date.

History: 1979 c. 32 s. 66; Stats. 1979 s. 799.225.

799.24 Judgment. **(1)** ENTRY OF JUDGMENT OR ORDER; NOTICE OF ENTRY THEREOF. When a judgment or an order is rendered, the judge, circuit court commissioner or clerk of circuit court shall immediately enter it in the court record and note the date thereof which shall be the date of entry of judgment or order. The clerk of circuit court, except in municipal and county forfeiture actions, shall mail a notice of entry of judgment to the parties or their attorneys at their last−known address within 5 days of its entry. Upon payment of the exact amount of the fee prescribed in s. 814.62 (3) (c), the clerk of circuit court shall enter the judgment in the judgment and lien docket.

(2) APPLICABILITY OF S. 806.15. Section 806.15 shall apply with respect to judgments entered in the judgment and lien docket.

(3) STIPULATED DISMISSAL. Prior to the entry of judgment, upon stipulation of the parties to a schedule for compliance with the stipulation, the court or circuit court commissioner may enter a stipulated judgment of dismissal in lieu thereof. Any such judgment may be vacated without notice to the obligated party, and the unsatisfied portion thereof entered, upon application by the prevailing party and proof by affidavit of noncompliance with the terms of the stipulation.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1977 c. 345; 1979 c. 32 s. 66; Stats. 1979 s. 799.24; 1981 c. 317; 1983 a. 302 s. 8; 1987 a. 208; 1995 a. 224; 1997 a. 27; 2001 a. 61.

When written notice of entry of judgment showed an incorrect date of entry, the time to appeal under s. 808.04 (1) was not shortened to 45 days. Mock v. Czemierys, 113 Wis. 2d 207, 336 N.W.2d 188 (Ct. App. 1983).

A judgment for payment of a forfeiture can be docketed, accumulates interest at 12 percent, and may be enforced through collection remedies available in other civil proceedings. OAG 2−95.

799.25 Costs. The clerk shall without notice to the parties tax and insert in the judgment as costs in favor of the party recovering judgment the following:

(1) FILING FEE. The fee prescribed in s. 814.62 (3) (a), if paid.

(3) MAILING FEE. The mailing fee prescribed in s. 814.62 (4), if paid.

(5) GARNISHEE FEE. Any garnishee fee paid.

(6) SERVICE FEES AND OTHER CHARGES. Lawful fees or charges paid to the sheriff, constable or other person for serving the summons or any other document, and charges paid to the sheriff in connection with the execution of any writ of restitution.

(7) WITNESS FEES. Amounts necessarily paid out for witness fees, including travel, as prescribed in s. 814.67. The fees for witnesses and their travel shall not exceed 50 percent of the amount recovered unless an order is entered specifying the amount to be paid in excess of 50 percent and the reasons therefor.

(9) JURY FEE. The fee prescribed in ss. 814.61 (4) and 814.62 (3) (e) for a jury if demanded under s. 799.21 (3).

(10) ATTORNEY FEES. (a) Attorney fees as provided in s. 814.04 (1) and (6), except if the amount of attorney fees is otherwise specified by statute.

(b) In an action of replevin and attachment the value of the property recovered shall govern the amount of the attorney fees taxable. In an action of eviction the attorney fees taxable shall be $10 plus such sum as is taxable under par. (a) on account of the recovery of damages.

(c) If judgment is for the defendant, the amount claimed in the complaint, the value of the property sought to be recovered or the amount recovered on the defendant's counterclaim, in the court's discretion, shall govern the amount of the attorney fees that the

defendant shall recover, and the defendant is not entitled to recover for cost items the defendant has not advanced.

(d) No attorney fees may be taxed in behalf of any party unless the party appears by an attorney other than himself or herself.

(11) ADDITIONAL COSTS. Additional costs as may be allowed to a municipality under s. 814.63 (2).

(12) SECURITY FOR COSTS. When security for costs shall be ordered pursuant to s. 814.28, the maximum amount allowed shall be $50.

(13) ADDITIONAL COSTS AND DISBURSEMENTS. The court may permit additional costs and disbursements to be taxed pursuant to ch. 814.

History: 1971 c. 32; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1977 c. 187, 449; 1979 c. 32 ss. 66, 92 (16); 1979 c. 176; Stats. 1979 s. 799.25; 1981 c. 317 ss. 85sn to 85sz, 2202; 1981 c. 365, 391; 1987 a. 208; 1989 a. 359; 1993 a. 490.

A court commissioner lacked jurisdiction over a counterclaim alleging a frivolous action, and the commissioner's order finding the claim not frivolous was void. Hessenius v. Schmidt, 102 Wis. 2d 697, 307 N.W.2d 232 (1981).

799.255 Small claims fees. In actions under this chapter, the clerk shall collect the fees prescribed in s. 814.62.

History: 1981 c. 317.

799.26 Money damages; disclosure of assets requested. (1) When a judgment for money damages is entered under this chapter, the court or circuit court commissioner shall order the judgment debtor to execute under penalty of contempt a disclosure statement and to mail or deliver that statement to the judgment creditor or to the clerk of circuit court in the county where the judgment is entered within 15 days of entry of judgment unless the judgment is sooner satisfied. The statement shall disclose, as of the date of judgment, the debtor's name, residence address, employers and their addresses, any real property interests owned by the debtor, cash on hand, financial institutions in which the judgment debtor has funds on deposit, whether the debtor's earnings are totally exempt from garnishment under s. 812.34 (2) (b), and such other information as required by the schedules adopted under sub. (3).

(1m) If the judgment debtor complies with sub. (1) by mailing or delivering the disclosure statement to the clerk of circuit court, the judgment debtor shall mail or deliver a copy of that disclosure statement to the judgment creditor.

(2) Failure to comply with an order under sub. (1) is punishable by a remedial sanction under ch. 785. Execution of a disclosure statement and delivery of the disclosure statement to the clerk of circuit court or sheriff upon service of a motion for contempt is compliance with the order.

(3) The judicial conference shall adopt standard schedules for the disclosure required by sub. (1), which shall inform judgment debtors of the requirements of this section, the sanctions for nondisclosure or fraudulent misrepresentation, a general description of garnishment and execution, and information about the types of assets and income which are exempt from the claims of creditors. The judicial conference shall also adopt a standard form pleading invoking the contempt powers of the court under sub. (2), copies of which may be obtained by judgment creditors without charge from the clerk.

History: 1987 a. 208; 1991 a. 182; 1993 a. 80; 2001 a. 61.

799.27 Adjournments. (1) ON REQUEST. Except in eviction actions, a party who appears on the return date shall be given, on request, an adjournment of at least 7 days, or such longer period as the court grants. In eviction actions, no adjournments shall be granted except for cause shown under sub. (2) and (3), unless with the consent of the plaintiff.

(2) FOR CAUSE. For good cause shown to the court by either party, the court may extend the time within which any act may be done, except the time for the taking of an appeal.

(3) SAME; TERMS. No continuance under sub. (2) shall be granted, unless by consent of the parties, except upon such terms as the court deems just.

History: 1979 c. 32 s. 66; Stats. 1979 s. 799.27.

799.28 New trial. (1) MOTIONS FOR NEW TRIAL. Motions for new trial in the trial court are governed by s. 805.15. A motion for a new trial must be made and heard within 20 days after the verdict is rendered, unless the court extends the time as provided in s. 801.15 (2) (b). If the motion is not decided within 10 days of the date of hearing, it shall be deemed denied. The entry of judgment by the court without deciding a pending motion for a new trial shall be deemed a denial of the motion.

(2) NEWLY DISCOVERED EVIDENCE. A motion to set aside a verdict or to open up a judgment and for a new trial founded upon newly discovered evidence may be heard upon affidavits and the proceedings in the action. Such a motion may be made at any time within one year from the verdict or finding. The order granting or denying the motion shall be in writing and shall specify the grounds for granting the new trial, or state the court's reasons for denying it.

History: Sup. Ct. Order, 67 Wis. 2d 585, 765 (1975); 1979 c. 32 s. 66; Stats. 1979 s. 799.28.

799.29 Default judgments. (1) MOTION TO REOPEN. (a) There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown.

(b) In ordinance violation cases, the notice of motion must be made within 20 days after entry of judgment. In ordinance violation cases, default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit.

(c) In other actions under this chapter, the notice of motion must be made within 12 months after entry of judgment unless venue was improper under s. 799.11. The court shall order the reopening of a default judgment in an action where venue was improper upon motion or petition duly made within one year after the entry of judgment.

(2) STIPULATIONS. The court, judge or municipal judge having trial jurisdiction to recover a forfeiture may, with or without notice, for good cause shown by affidavit and upon just terms, within 30 days after the stipulation has been entered into, relieve any person from the stipulation or any order, judgment or conviction entered or made thereon. Where the stipulation was made without appearance in or having been filed in court, the court, judge or municipal judge may order a written complaint to be filed and set the matter for trial. The stipulation or a copy shall, in such cases, be filed with the court, judge or municipal judge and costs and fees shall be taxed as provided by law.

History: 1979 c. 32 s. 66; 1979 c. 110 s. 60 (6); Stats. 1979 s. 799.29; 1983 a. 228; 1985 a. 332; 1987 a. 208; 2003 a. 138.

Judicial Council Note, 1983: Sub. (1) (c) liberalizes the time limit for reopening default judgments entered in improperly venued actions. This remedy supplements the court's authority under s. 799.11 (3) to correct venue on its own motion. [Bill 324−S]

Sub. (1) provides the exclusive procedure for reopening a default judgment in small claims proceedings. King v. Moore, 95 Wis. 2d 686, 291 N.W.2d 304 (Ct. App. 1980).

799.30 Appeal. An appeal of a judgment or order under this chapter shall be to the court of appeals.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 218; 1977 c. 187; 1979 c. 32 s. 66; Stats. 1979 s. 799.30.

799.40 Eviction actions. (1) WHEN COMMENCED. A civil action of eviction may be commenced by a person entitled to the possession of real property, or by that person's agent authorized in writing, to remove therefrom any person who is not entitled to either the possession or occupancy of such real property.

(1m) ACCEPTANCE OF RENT OR OTHER PAYMENT. If a landlord commences an action under this section against a tenant whose

tenancy has been terminated for failure to pay rent or for any other reason, the action under this section may not be dismissed because the landlord accepts past due rent or any other payment from the tenant after serving notice of default or after commencing the action.

(2) JOINDER OF OTHER CLAIMS. The plaintiff may join with the claim for restitution of the premises any other claim against the defendant arising out of the defendant's possession or occupancy of the premises.

(3) EXCEPTION. Nothing in this section shall affect ss. 704.09 (4) and 704.19.

(4) STAY OF PROCEEDING. (a) The court shall stay the proceedings in a civil action of eviction if the tenant applies for emergency assistance under s. 49.138. The tenant shall inform the court of the outcome of the determination of eligibility for emergency assistance. The stay remains in effect until the tenant's eligibility for emergency assistance is determined and, if the tenant is determined to be eligible, until the tenant receives the emergency assistance.

(b) The court shall stay the proceedings in a civil action of eviction against a foreclosed homeowner, as defined in s. 846.40 (1) (b), under the circumstances and as provided in s. 846.40 (9).

History: 1979 c. 32 s. 66; 1979 c. 176; Stats. 1979 s. 799.40; 1991 a. 39; 1995 a. 289; 2009 a. 2; 2011 a. 143; 2013 a. 76.

Any act of the landlord that renders the premises unfit for occupancy relieves the tenant from the obligation of paying rent. Constructive eviction can only take place when the tenant abandons the premises within a reasonable time after a substantial breach of the lease. First Wisconsin Trust Co. v. L. Wiemann Co. 93 Wis. 2d 258, 286 N.W.2d 360 (1980).

Implicit in the sub. (4) mandate that a stay is required until the tenant receives the emergency assistance is a requirement that the tenant seek and find suitable permanent housing within a reasonable period of time and that the stay will remain in effect for only a reasonable period of time as determined by the judge under the circumstances in each individual case. McQuestion v. Crawford, 2009 WI App 35, 316 Wis. 2d 494, 765 N.W.2d 822, 08−1096.

Eviction practice in Wisconsin. Boden. 54 MLR 298.

Burden of proof required to establish defense of retaliatory eviction. 1971 WLR 939.

Tenant eviction protection and takings clause. Manheim. 1989 WLR 925 (1989).

799.41 Complaint in eviction actions. (1) The complaint shall be in writing and subscribed by the plaintiff or attorney in accordance with s. 802.05. The complaint shall identify the parties and the real property which is the subject of the action and state the facts which authorize the removal of the defendant. The description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described. A description by street name and number is sufficient. If the complaint relates only to a portion of described real estate, that portion shall be identified. If a claim in addition to the claim for restitution is joined under s. 799.40 (2), the claim shall be separately stated. The prayer shall be for the removal of the defendant or the property or both and, if an additional claim is joined, for the other relief sought by the plaintiff.

(2) If the eviction seeks to remove a tenant whose tenancy is terminated as the result of a foreclosure judgment and sale under s. 708.02, the complaint shall identify the action as an eviction of the tenant due to a foreclosure action.

History: Sup. Ct. Order, 67 Wis. 2d 585, 766 (1975); 1975 c. 218; 1979 c. 32 ss. 66, 92 (16); Stats. 1979 s. 799.41; 1987 a. 403; 2009 a. 28.

799.42 Service and filing in eviction actions. The complaint shall be served with the summons when service is had under s. 799.12 (1), (2), or (3).

History: 1979 c. 32 ss. 66, 92 (16); Stats. 1979 s. 799.42; 1987 a. 208; 2013 a. 76.

799.43 Defendant's pleading in eviction actions. The defendant may plead to the complaint orally or in writing, except that if the plaintiff's title is put in issue by the defendant, the answer shall be in writing and subscribed in the same manner as the complaint. Within the limitation of s. 799.02 the defendant may counterclaim provided that in construing s. 799.02 as applied to eviction actions, any claim related to the rented property shall be considered as arising out of the transaction or occurrence which is the subject matter of the plaintiff's claim.

History: Sup. Ct. Order, 67 Wis. 2d 585, 766 (1975); 1975 c. 218; 1979 c. 32 ss. 66, 92 (16); Stats. 1979 s. 799.43.

Counterclaims relating to oral agreements to pay increased rent, unfair trade practices, oral guarantees, and interference with quiet enjoyment were properly dismissed as extrinsic to a lease. Scalzo v. Anderson, 87 Wis. 2d 834, 275 N.W.2d 894 (1979).

799.44 Order for judgment; writ of restitution. (1) ORDER FOR JUDGMENT. In an eviction action, if the court finds that the plaintiff is entitled to possession, the court shall immediately enter an order for judgment for the restitution of the premises to the plaintiff. If an additional cause of action is joined under s. 799.40 (2) and plaintiff prevails thereon, the court shall enter judgment for such other relief as the court orders. Judgment shall be entered accordingly as provided in s. 799.24.

(2) WRIT OF RESTITUTION. At the time of ordering judgment for the restitution of premises, the court shall immediately order that a writ of restitution be issued, and the writ may be delivered to the sheriff for execution in accordance with s. 799.45. No writ shall be executed if received by the sheriff more than 30 days after its issuance.

(3) STAY OF WRIT OF RESTITUTION. At the time of ordering judgment, upon application of the defendant with notice to the plaintiff, the court may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed 30 days from the date of the order for judgment. Any such stay shall be conditioned upon the defendant paying all rent or other charges due and unpaid at the entry of judgment and upon the defendant paying the reasonable value of the occupancy of the premises, including reasonable charges, during the period of the stay upon such terms and at such times as the court directs. The court may further require the defendant, as a condition of such stay, to give a bond in such amount and with such sureties as the court directs, conditioned upon the defendant's faithful performance of the conditions of the stay. Upon the failure of the defendant to perform any of the conditions of the stay, the plaintiff may file an affidavit executed by the plaintiff or attorney, stating the facts of such default, and the writ of restitution may forthwith be issued.

(4) WRIT OF RESTITUTION; FORM AND CONTENTS. The writ of restitution shall be in the name of the court, sealed with its seal, signed by its clerk, directed to the sheriff of the county in which the real property is located, and in substantially the following form:

(Venue and caption)

THE STATE OF WISCONSIN To the Sheriff of .... County:

The plaintiff, ..., of .... recovered a judgment against the defendant, ..., of ...., in an eviction action in the Circuit Court of .... County, on the .... day of ...., ... (year), to have restitution of the following described premises:

.... (description as in complaint), located in .... County, Wisconsin.

YOU ARE HEREBY COMMANDED To immediately remove the defendant, ..., from the said premises and to restore the plaintiff, ..., to the possession thereof. You are further commanded to remove from said premises all personal property not the property of the plaintiff, and to store and dispose of the same according to law, and to make due return of this writ within ten days.

Witness the Honorable ...., Judge of the said Circuit Court, this .... day of ...., ... (year)

.... Clerk

History: 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 176; Stats. 1979 s. 799.44; 1997 a. 250; 2013 a. 76.

799.445 Appeal. An appeal in an eviction action shall be initiated within 15 days of the entry of judgment or order as specified in s. 808.04 (2). An order for judgment for restitution of the premises under s. 799.44 (1) or for denial of restitution is appealable as a matter of right under s. 808.03 (1) within 15 days after the entry

of the order for judgment for restitution or for denial of restitution. An order for judgment for additional causes of action is appealable as a matter of right under s. 808.03 (1) within 15 days after the entry of the order for judgment for the additional causes of action. No appeal by a defendant of an order for judgment for restitution of the premises may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking to the plaintiff, in an amount and with surety approved by the judge who ordered the entry of judgment. The undertaking shall provide that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the appellate court upon the appeal and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal. Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the sheriff holding an issued but unexecuted writ of restitution or of execution, the sheriff shall promptly cease all further proceedings pending the determination of the appeal. If the tenant fails to pay rent when due, or otherwise defaults in the terms of the undertaking, the payment guaranteed by the undertaking with surety shall be payable immediately to the plaintiff and shall not be held in escrow by the court. Upon the failure of the tenant to pay rent when due, or upon other default by the tenant in the terms of the undertaking, the stay of proceedings shall be dismissed and the sheriff shall immediately execute the writ of restitution.

History: 1983 a. 219 s. 39; 1993 a. 466.

Judicial Council Note, 1983: This section is renumbered from s. 808.07 (7), and amended to replace the appeal deadline of 10 days after mailing notice of entry of judgment by the time period specified in s. 808.04 (2), for greater uniformity. The appeal deadline established by that statute applies regardless of whether the action has been tried to a 12−person jury. [Bill 151−S]

A tenant in an eviction may move for reconsideration of the judgment under s. 805.17 (3), but must take an appeal from the judgment within the time for appeal in this section. The time for filing an appeal under s. 805.17 (3) does not apply. Highland Manor Associates v. Bast, 2003 WI 152, 268 Wis. 2d 1, 672 N.W.2d 709, 02−2799.

799.45 Execution of writ of restitution; disposal of personal property. (1) WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff, and after payment to the sheriff of the fee required by s. 814.70 (8), the sheriff shall execute the writ. If the plaintiff, or the plaintiff's attorney or agent, does not notify the sheriff under sub. (3m) that the plaintiff or his or her agent will remove and store or dispose of the property, the sheriff may require that prior to the execution of any writ of restitution the plaintiff deposit a reasonable sum representing the probable cost of removing the defendant's property chargeable to the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s. 814.70 (8). In case of dispute as to the amount of the required deposit, the amount of that deposit shall be determined by the court under s. 814.70 (10).

(2) HOW EXECUTED; DUTIES OF SHERIFF. In executing the writ of restitution the sheriff shall:

(a) Remove from the premises described in the writ the person of the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.

(b) If the plaintiff or his or her agent does not notify the sheriff under sub. (3m) that the plaintiff or his or her agent will remove and store or dispose of the personal property, remove or supervise removal from the premises described in the writ, using such reasonable force as may be necessary, all personal property found in the premises not the property of the plaintiff.

(bg) If requested by the plaintiff or his or her agent, assist the plaintiff or his or her agent in the removal, under sub. (3m), of all personal property found in the premises described in the writ, not the property of the plaintiff, using such reasonable force as may be necessary.

(c) Exercise ordinary care in the removal or supervision of removal of all persons from the premises, in the removal or supervision of removal of personal property under par. (b), and in the handling and storage of all property removed from the premises under par. (b).

(3) MANNER OF REMOVAL AND DISPOSITION OF REMOVED GOODS BY SHERIFF. (a) In accomplishing the removal of property from the premises described in the writ, the sheriff is authorized to engage the services of a mover or trucker unless the plaintiff notifies the sheriff under sub. (3m) that the plaintiff will remove and store or dispose of the property.

(b) Except as provided in par. (c), the property removed from such premises under this subsection shall be taken to some place of safekeeping within the county selected by the sheriff. Within 3 days of the removal of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4) stating the place where the goods are kept and shall deliver to the defendant any receipt or other document required to obtain possession of the goods. Warehouse or other similar receipts issued with respect to goods stored by the sheriff under this subsection shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the sheriff to a place of safekeeping shall be the responsibility of the defendant. Any person accepting goods from the sheriff for storage under this subsection shall have all of the rights and remedies accorded by law against the defendant personally and against the property stored for the collection of such charges, including the lien of a warehouse under s. 407.209. Risk of damages to or loss of such property shall be borne by the defendant after delivery by the sheriff to the place of safekeeping.

(c) When, in the exercise of ordinary care, the sheriff determines that property to be removed from premises described in the writ is without monetary value, the sheriff may deliver or cause the same to be delivered to some appropriate place established for the collection, storage, and disposal of refuse. In such case the sheriff shall notify the defendant as specified in sub. (4) of the place to which the goods have been delivered within 3 days of the removal of the goods. The exercise of ordinary care by the sheriff under this subsection does not include searching apparently valueless property for hidden or secreted articles of value.

(d) All of the rights and duties of the sheriff under this section may be exercised by or delegated to any of the deputies.

(3m) ALTERNATIVE DISPOSITION OF PROPERTY BY PLAINTIFF. When delivering a writ of restitution to the sheriff, as a complete alternative to the procedure for disposition of the property under sub. (3), the plaintiff or his or her attorney or agent may notify the sheriff that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property that is found in the premises described in the writ and that does not belong to the plaintiff in accordance with s. 704.05 (5). If the sheriff is notified that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property under this subsection, the sheriff shall, if requested by the plaintiff or his or her agent, supervise the removal and handling of the property by the plaintiff or the plaintiff's agent.

(4) MANNER OF GIVING NOTICE TO DEFENDANT. All notices required by sub. (3) to be given to the defendant by the sheriff shall be in writing and shall be personally served upon the defendant or mailed to the defendant at the last−known address, even if such address be the premises which are the subject of the eviction action.

(5) RETURN OF WRIT; TAXATION OF ADDITIONAL COSTS. (a) Within 10 days of the receipt of the writ, the sheriff shall execute the writ and perform all of the duties required by this section and return the same to the court with the sheriff's statement of the expenses and charges incurred in the execution of the writ and paid by the plaintiff.

(b) Upon receipt of the returned writ and statement from the sheriff, the clerk shall tax and insert in the judgment as prescribed by s. 799.25 the additional costs incurred by the plaintiff.

History: 1979 c. 32 ss. 66, 92 (16); 1979 c. 176; Stats. 1979 s. 799.45; 1981 c. 317 s. 2202; 1983 a. 500 s. 43; 1993 a. 486; 1997 a. 317; 2009 a. 322; 2013 a. 76.

A sheriff was liable in his official capacity for actions of a deputy executing an untimely writ of restitution. Wolf−Lillie v. Sonquist, 699 F.2d 864 (1983).

Warehousemen's liens may constitutionally be enforced against tenants dispossessed under s. 299.45, 1977 stats. [now s. 799.45]. Wegwart v. Eagle Movers, Inc. 441 F. Supp. 872.