CHAPTER 801

CIVIL PROCEDURE — COMMENCEMENT OF ACTION AND VENUE

801.01 Kinds of proceedings; scope of chs. 801 to 847. (1) KINDS. Proceedings in the courts are divided into actions and special proceedings. "Action", as used in chs. 801 to 847, includes "special proceeding" unless a specific provision of procedure in special proceedings exists.

(2) SCOPE. Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where different procedure is prescribed by statute or rule. Chapters 801 to 847 shall be construed to secure the just, speedy and inexpensive determination of every action and proceeding.

(3) EFFECTIVE DATES. (a) Chapters 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

(b) Chapters 804 to 807 shall apply to all actions pending or commenced on or after January 1, 1976, except those actions in which trial has commenced prior to January 1, 1976, as to which the statutes and rules in effect prior to January 1, 1976, shall continue to apply.

(c) Amendments and repeals of sections outside of chs. 801 to 807 shall be effective as follows:

1. Amendments and repeals effected in order to conform with provisions in chs. 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

2. Amendments and repeals other than those effected in order to conform with provisions in chs. 801 to 803 shall take effect on January 1, 1976, as to all actions then pending or thereafter commenced, except as provided in par. (b).

History: Sup. Ct. Order, 67 W (2d) 588; 1977 c. 449; 1979 c. 89; 1981 c. 390.

Judicial Council Committee's Note, 1974: The statutes contained in ch. 801 through 807 are general in their application to civil actions and special proceedings. They govern all matters of practice and procedure except to the extent that contrary provisions otherwise provide. Thus, they are subject to the special rules applicable to actions affecting marriage under ch. 247, small claims actions under ch. 299, actions to recover forfeitures under ch. 288, illegitimacy proceedings under ch. 52, probate proceedings under chs. 851-79, provisional and extraordinary remedies under chs. 264-268 and any other special rule governing particular kinds of actions or special proceedings. As used in this section, "rule" refers to a rule of pleading or practice promulgated by the State Supreme Court pursuant to s. 251.18. [Re Order effective Jan. 1, 1976]

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

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

The new Wisconsin rules of civil procedure: Chapters 801—803. Clausen and Lowe. 59 MLR 1.

801.02 Commencement of action. (1) A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 60 days after filing.

(2) A civil action in which only an in rem or quasi in rem judgment is sought is commenced as to any defendant when a summons and a complaint are filed with the court, provided service of an authenticated copy of the summons and of either the complaint or a notice of object of action under s. 801.12 is made upon the

defendant under this chapter within 60 days after filing.

(3) The original summons and complaint shall be filed together. The authenticated copies shall be served together except:

(a) In actions in which a personal judgment is sought, if the summons is served by publication, only the summons need be published, but a copy of the complaint shall be mailed with a copy of the summons as required by s. 801.11, and;

(b) In actions in which only an in rem or quasi in rem judgment is sought, the summons may be accompanied by a notice of object of action pursuant to s. 801.12 in lieu of a copy of the complaint and, when the summons is served by publication, only the summons need be published, but a copy of the complaint or notice of object of action shall be mailed with the copy of the summons as required by s. 801.12.

(4) No service shall be made under sub. (3) until the action has been commenced in accordance with sub. (1) or (2).

(5) An action seeking a remedy available by certiorari, quo warranto, habeas corpus, mandamus or prohibition may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order. The order may specify a time period shorter than that allowed by s. 802.06 for filing an answer or other responsive pleading.

(6) Fees payable upon commencement of a civil action shall be paid to the clerk at the time of filing.

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

Judicial Council Committee's Note, 1974: This section abolishes the mode of commencement of action by service of summons. It should be read together with the proposed s. 893.39 (Action, when deemed commenced). The last clauses of subs. (1) and (2) are designed to correspond to the 60 day period of grace provided by s. 893.40 which is recommended for repeal. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1981: Sub. (1) is amended to allow an action seeking an extraordinary remedy to be commenced in the same manner as any other civil action. Sub. (5) allows the additional option of using an order to shorten the time for filing a response to the complaint in lieu of a summons. This option is for the emergency situation when the case may be moot before a response would be filed. The order serves the same purpose as the alternative writ and the order to show cause used to initiate the action under writ procedures. In all other matters of procedure, the rules of civil procedure govern to the extent applicable. Sub. (5) applies only to procedure in the circuit court. In seeking an extraordinary remedy in the supreme court or court of appeals, s. 809.51, stats., should be followed. [Bill 613-A]

Action was properly commenced where defect in authentication did not prejudice defendant. Schlumpf v. Yellick, 94 W (2d) 504, 288 NW (2d) 834 (1980).

801.03 Jurisdiction; definitions. In this chapter, the following words have the designated meanings:

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

(2) "Plaintiff" means the person named as plaintiff in a civil action, and where in this chapter acts of the plaintiff are referred to, the reference attributes to the plaintiff the acts of an agent within the scope of the agent's authority.

(3) "Defendant" means the person named as defendant in a civil action, and where in this chapter acts of the defendant are referred to, the reference attributes to the defendant any person's acts for which acts the defendant is legally responsible. In determining for jurisdiction purposes the defendant's legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.

History: Sup. Ct. Order, 67 W (2d) 591; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 262.03, renumbered. [Re Order effective Jan. 1, 1976]

Illegal aliens have right to sue in Wisconsin for injuries negligently inflicted upon them. Arteaga v. Literski, 83 W (2d) 128, 265 NW (2d) 148 (1978).

801.04 Jurisdictional requirements for judgments against persons, status and things. (1) JURISDICTION OF SUBJECT MATTER REQUIRED FOR ALL CIVIL ACTIONS. A court of this state may entertain a civil action only when the court has power to hear the kind of action brought. The power of the court to hear the kind of action brought is called "jurisdiction of the subject matter". Jurisdiction of the subject matter is conferred by the constitution and statutes of this state and by statutes of the United States; it cannot be conferred by consent of the parties. Nothing in chs. 801 to 847 affects the subject matter jurisdiction of any court of this state.

(2) PERSONAL JURISDICTION. A court of this state having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in s. 801.05 or 801.06 and in addition either:

(a) A summons is served upon the person pursuant to s. 801.11; or

(b) Service of a summons is dispensed with under the conditions in s. 801.06.

(3) JURISDICTION IN REM OR QUASI IN REM. A court of this state having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other thing pursuant to s. 801.07 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 801.12 with a summons and

complaint or notice of object of action as the case requires.

History: Sup. Ct. Order, 67 W (2d) 591; 1979 c. 89.

Judicial Council Committee's Note, 1974: Section 262.04, renumbered. [Re Order effective Jan. 1, 1976]

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

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

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

State court jurisdiction. 1978 WLR 533.

801.05 Personal jurisdiction, grounds for generally. A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances:

(1) LOCAL PRESENCE OR STATUS. In any action whether arising within or without this state, against a defendant who when the action is commenced:

(a) Is a natural person present within this state when served; or

(b) Is a natural person domiciled within this state; or

(c) Is a domestic corporation; or

(d) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

(2) SPECIAL JURISDICTION STATUTES. In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

(3) LOCAL ACT OR OMISSION. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

(4) LOCAL INJURY; FOREIGN ACT. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

(5) LOCAL SERVICES, GOODS OR CONTRACTS. In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

(c) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value; or

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction; or

(e) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

(6) LOCAL PROPERTY. In any action which arises out of:

(a) A promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state; or

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

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

(7) DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE. In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(a) In an action in this state to foreclose upon real property situated in this state; or

(b) Following sale of real property in this state by the plaintiff under ch. 846; or

(c) Following resale of tangible property in this state by the plaintiff under ch. 409.

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

tion while the defendant held office as a director or officer.

(9) TAXES OR ASSESSMENTS. In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state after July 1, 1960.

(10) INSURANCE OR INSURERS. In any action which arises out of a promise made anywhere to the plaintiff or some 3rd party by the defendant to insure upon or against the happening of an event and in addition either:

(a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred; or

(b) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person insured resided.

(11) CERTAIN MARITAL ACTIONS. In addition to personal jurisdiction under sub. (1) and s. 801.06, in any action affecting the family in which a personal claim is asserted against the respondent commenced in the county in which the petitioner resides at the commencement of the action when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action and the respondent is served personally under s. 801.11. The effect of any determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under this chapter or has been notified under s. 822.05 as provided in s. 822.12.

(12) PERSONAL REPRESENTATIVE. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in subs. (2) to (11) would have furnished a basis for jurisdiction over the deceased had he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

(13) JOINDER OF CLAIMS IN THE SAME ACTION. In any action brought in reliance upon jurisdictional grounds stated in subs. (2) to (11) there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

History: Sup. Ct. Order, 67 W (2d) 592; 1975 c. 218; 1977 c. 105, 203, 418; 1979 c. 196; 1979 c. 352 s. 39.

Judicial Council Committee's Note, 1974: Section 262.05 as amended by ch. 157, laws of 1973, renumbered. [Re Order effective Jan. 1, 1976]

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

In an action against an Illinois corporate defendant and its officer alleging fraudulent advertising, the trial court possessed jurisdiction over the officer where the answer to the complaint admitted corporate advertising in newspapers circulated in Wisconsin, the contacting of Wisconsin residents responding to the advertisements, and the taking of earnest money deposits, and where testimony indicated that defendant had participated in one such transaction in the state. State v. Advance Marketing Consultants, Inc. 66 W (2d) 706, 225 NW (2d) 887.

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

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

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

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

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

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

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

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

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

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

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

Jurisdiction in an action for misrepresentation in sale of a boat did not exist where the only contact was that the boat would be operated partly in Wisconsin and that the seller wrote a letter to the Wisconsin buyer confirming the already existing contract. McCalla v. A. J. Industries, Inc. 352 F Supp. 544.

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

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

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

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

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

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

To determine whether a particular nonresident is "doing business" within this state the court must consider the party's overall activities within the state, past and present, not at

some fixed point in time. Modern Cycle Sales, Inc. v. Burkhardt-Larson Co. 395 F Supp. 587.

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

Infrequent use of Wisconsin roads by Idaho trucking corporation did not constitute "continuous and systematic" activity necessary to confer jurisdiction under this section. Ladwig v. Trucks Ins. Exch. 498 F Supp. 161 (1980).

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

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

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

State may not assert quasi in rem jurisdiction over an insurance company's contractual obligations to defend and indemnify its insured. 64 MLR 374 (1980).

801.06 Personal jurisdiction, grounds for without service of summons. A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a person, exercise jurisdiction in an action over a person with respect to any counterclaim asserted against that person in an action which the person has commenced in this state and also over any person who appears in the action and waives the defense of lack of jurisdiction over his or her person as provided in s. 802.06 (8). An appearance to contest the basis for in rem or quasi in rem jurisdiction under s. 802.06 (2) (c) without seeking any other relief does not constitute an appearance within the meaning of this section.

History: Sup. Ct. Order, 67 W (2d) 596; 1975 c. 218.

Judicial Council Committee's Note, 1974: This section is based on s. 262.07. Where s. 262.07 makes a "general appearance" a sufficient jural act on which to predicate personal jurisdiction, s. 801.06 speaks in terms of appearance and waiver of defense. The special appearance concept, so denominated, is abolished with the adoption of s. 802.06 (8). The last sentence rejects the "limited appearance" concept. See Restatement of Judgments s. 40 (1942); United States v. Balanovski, 236 F.2d 298 (2d Cir. 1956); Cheshire National Bank v. Jaynes, 224 Mass. 14, 112 N.E. 500 (1916). [Re Order effective Jan. 1, 1976]

801.07 Jurisdiction in rem or quasi in rem, grounds for generally. A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to s. 801.12. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

(1) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply when any such defendant is unknown.

(2) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real estate within this state.

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

(4) When the action is to declare property within this state a public nuisance.

(5) When the action is an action affecting the family under s. 767.02 (1) (a) to (d) and when the residence requirements of s. 767.05 (1m) have been met, a court having subject matter jurisdiction may exercise jurisdiction quasi in rem to determine questions of status if the respondent has been served under s. 801.11 (1).

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

Judicial Council Committee's Note, 1974: Section 262.08, renumbered. [Re Order effective Jan. 1, 1976]

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

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

801.08 Objection to personal jurisdiction. **(1)** All issues of fact and law raised by an objection to the court's jurisdiction over the person or property as provided by s. 802.06 (2) shall be heard by the court without a jury in advance of any issue going to the merits of the case. If, after such a hearing on the objection, the court decides that it has jurisdiction, the case may proceed on the merits; if the court decides that it lacks jurisdiction, the defendant shall be given the relief required by such decision.

(2) Factual determinations made by the court in determining the question of personal jurisdiction over the defendant shall not be binding on the parties in the trial of the action on the merits.

(3) No guardian or guardian ad litem may, except as provided in this subsection, waive objection to jurisdiction over the person of the ward. If no objection to the jurisdiction of the court over the person of the ward is raised pursuant to s. 802.06 (2), the service of an answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be

equivalent to an appearance and waiver of the defense of lack of jurisdiction over the person of the ward.

History: Sup. Ct. Order, 67 W (2d) 598; 1979 c. 110 s. 60 (7); Sup. Ct. Order, 101 W (2d) xi.

Judicial Council Committee's Note, 1974: This section is the former s. 262.16 modified to complement the provisions of s. 802.06 on methods of objecting to jurisdiction over the person. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1981: The last sentence of sub. (1) has been repealed because it erroneously implied that nonfinal orders deciding jurisdictional questions were apppealable as of right. This has not been true since ch. 187, Laws of 1977 repealed s. 817.33 (3) (f), Wis. Stats. (1975) and created s. 808.03 (1), Wis. Stats. (1977). Heaton v. Independent Mortuary Corp., 97 Wis. 2d 379, 294 N.W. 2d 15 (1980). [Re Order effective July 1, 1981]

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

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

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

801.09 Summons, contents of. The summons shall contain:

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant.

(2) A direction to the defendant summoning and requiring defendant to serve upon the plaintiff's attorney, whose address shall be stated in the summons, either an answer to the complaint if a copy of the complaint is served with the summons or a demand for a copy of the complaint. The summons shall further direct the defendant to serve the answer or demand for a copy of the complaint:

(a) Within 20 days, or within 45 days if the defendant is the state or an officer or agency of the state, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for him; or

(b) Within 40 days after a date stated in the summons, exclusive of such date, if no such personal or substituted personal service has been made, and service is made by publication. The date so stated in the summons shall be the date of the first required publication.

(3) A notice that in case of failure to serve an answer or demand for a copy of the complaint within the time fixed by sub. (2), judgment will be rendered against the defendant according to the demand of the complaint. The summons shall be subscribed with the handwritten signature of the plaintiff or attorney with the addition of the post-office address, at which papers in the action may be served on the plaintiff by mail. If the plaintiff is represented by a law firm, the summons shall contain the name and address of the firm and shall be subscribed with the handwritten signature of one attorney who is a member or associate of such firm. When the complaint is not served with the summons and the only relief sought is the recovery of money, whether upon tort or contract, there may, at the option of the plaintiff, be added at the foot a brief note specifying the sum to be demanded by the complaint.

(4) There may be as many authenticated copies of the summons and the complaint issued to the plaintiff or counsel as are needed for the purpose of effecting service on the defendant. Authentication shall be accomplished by the clerk's placing a filing stamp indicating the case number on each copy of the summons and the complaint.

History: Sup. Ct. Order, 67 W (2d) 598; Sup. Ct. Order, 67 W (2d) viii; 1975 c. 218.

Cross Reference: See 802.06 (1) for provision giving the state 45 days to serve an answer.

Judicial Council Committee's Note, 1974: This section is based on s. 262.10. Unlike that statute, however, which requires merely that the summons be "subscribed," sub. (3) expressly requires the handwritten signature of the plaintiff or his attorney.

Sub. (4) should be read with s. 801.02. The original summons and complaint are filed with the court; the defendant is served with copies authenticated as provided in sub. (4). [Re Order effective Jan. 1, 1976]

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

801.10 Summons, by whom served. (1) WHO MAY SERVE. An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

(2) ENDORSEMENT. At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server's official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

(3) PROOF OF SERVICE. The person making service shall make and deliver proof of service to the person on whose behalf service was made who shall promptly file such proof of service. Failure to make, deliver, or file proof of service shall not affect the validity of the service.

(4) PROOF IF SERVICE CHALLENGED. If the defendant appears in the action and challenges the service of summons upon the defendant, proof of service shall be as follows:

(a) Personal or substituted personal service shall be proved by the affidavit of the server indicating the time and date, place and manner

of service, that the server is an adult resident of the state of service not a party to the action, that the server knew the person served to be the defendant named in the summons and that the server delivered to and left with the defendant an authenticated copy of the summons. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom the copy was left, and shall state such facts as show reasonable diligence in attempting to effect personal service on the defendant. If the copy of the summons is served by a sheriff or deputy sheriff of the county in this state where the defendant was found, proof may be by the sheriff's or deputy's certificate of service indicating time and date, place, manner of service and, if the defendant is not personally served, the information required in the preceding sentence. The affidavit or certificate constituting proof of service under this paragraph may be made on an authenticated copy of the summons or as a separate document.

(b) Service by publication shall be proved by the affidavit of the publisher or printer, or the foreman or principal clerk, stating that the summons was published and specifying the date of each insertion, and by an affidavit of mailing of an authenticated copy of the summons, with the complaint or notice of the object of the action, as the case may require, made by the person who mailed the same.

(c) The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

History: Sup. Ct. Order, 67 W (2d) 600; 1975 c. 218; Sup. Ct. Order, 92 W (2d) xiii.

Judicial Council Committee's Note, 1974: Section 262.14 purports to express the qualifications of the person effecting service of the summons. While that section does not by its terms require the server to be an adult, s. 262.17 (1) (b) does require an affidavit of adulthood (among other things) for proof of personal or substituted personal service. Sub. (1) makes the qualifications of the server required by the substantive statute match the qualifications required for the proof of service in sub. (4).

Sub. (2) requires the person making service to indorse on the copy of the summons served not only his name (and title, if any) as under s. 262.14 (2), but also the time, place and manner of service and, for substituted personal service, upon whom service was made and such facts as show reasonable diligence in attempting to effect personal service on the defendant. The information is also required for proof of service under sub. (4). [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1979: Sub. (2) is amended to clarify that the individual who serves the summons on behalf of the plaintiff under the procedures in the Wisconsin Rules of Civil Procedure must indicate on the copy of the summons served both the time and date of service. There is presently a lack of uniformity of interpretation in Wisconsin of the term "time" in 801.10 (2). Some jurisdictions interpret it to include time and date of service while other jurisdictions interpret it as only the date of service. Clarifying that both the time and date of service must be indicated in the serving of the summons will insure that this potentially valuable information is noted on the served copy of every summons in Wisconsin.

Sub. (4) (a) is amended to also apply the requirement for indicating time and date of service to the affidavits and certificates of service used when proof of service is challenged. [Re Order effective Jan. 1, 1980]

801.11 Personal jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(1) NATURAL PERSON. Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode within this state in the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(2) NATURAL PERSON UNDER DISABILITY. Upon a natural person under disability by serving the summons in any manner prescribed in sub. (1) upon such person under disability and, in addition, where required by par. (a) or (b), upon a person therein designated. A minor 14 years of age or older who is not mentally incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(a) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in sub. (1) upon a parent or guardian having custody of the child, or if there is none, upon any other person having the care and control of the child. If there is no parent, guardian or other person having care and control of the child when service is made upon the child, then service of the summons shall also be made upon the guardian ad litem after appointment under s. 803.01.

(b) Where the person under disability is known by the plaintiff to be under guardianship

of any kind, a summons shall be served separately upon the guardian in any manner prescribed in sub. (1), (5), (6) or (7). If no guardian has been appointed when service is made upon a person known to the plaintiff to be incompetent to have charge of the person's affairs, then service of the summons shall be made upon the guardian ad litem after appointment under s. 803.01.

(3) STATE. Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

(4) OTHER POLITICAL CORPORATIONS OR BODIES POLITIC. (a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents:

1. If the action is against a county, the chairman of the county board or the county clerk;

2. If against a town, the chairman or clerk thereof;

3. If against a city, the mayor, city manager or clerk thereof;

4. If against a village, the president or clerk thereof;

5. If against a vocational, technical and adult education district, the district board chairman or secretary thereof;

6. If against a school district, school board, the president, secretary or clerk thereof; and

7. If against any other body politic, an officer, director, or managing agent thereof.

(b) In lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(5) DOMESTIC OR FOREIGN CORPORATIONS, GENERALLY. Upon a domestic or foreign corporation:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation by publication and mailing as provided in sub. (1).

(c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(d) If against any insurer, to any agent of the insurer as defined by s. 628.02. Service upon an agent of the insurer is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of the insurer within 5 days after service upon the agent. Service upon any insurer may also be made under par. (a).

(6) PARTNERS AND PARTNERSHIPS. A summons shall be served individually upon each general partner known to the plaintiff by service in any manner prescribed in sub. (1), (2) or (5) where the claim sued upon arises out of or relates to partnership activities within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

(7) OTHER UNINCORPORATED ASSOCIATIONS AND THEIR OFFICERS. A summons may be served individually upon any officer or director known to the plaintiff of an unincorporated association other than a partnership by service in the manner prescribed in sub. (1), (2), (5) or (6) where the claim sued upon arises out of or relates to association activities within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication against the association as to its assets anywhere.

History: Sup. Ct. Order, 67 W (2d) 602; 1975 c. 218; 1977 c. 339 s. 43; 1979 c. 89, 102, 177.

Judicial Council Committee's Note, 1974: Section 801.11 is identical to s. 262.06 except that s. 262.06 (2) (c) relating to commencement of actions against minors was stricken as inconsistent with the new mode of commencement under s. 801.02 and the terms "board of education" and "director" in s. 262.06 (4) (a) 6 were struck to conform with recent changes in school law found in chs. 117-121, Stats. [Re Order effective Jan. 1, 1976]

There is no requirement in cases of substituted service that the affidavit recite that the process server used "reasonable diligence" in attempting to make personal service, but substituted service after 2 calls when defendant was not found, with no effort to learn where he was, was not sufficient to support jurisdiction. Heaston v. Austin, 47 W (2d) 67, 176 NW (2d) 309.

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

The words "apparently in charge of the office" in (5) (a) refer to what is apparent to the process server. When a receptionist referred the process server to her superior, who did not send the server to the proper office, the server could serve him, particularly since the superior had accepted service of process in other actions without objection by the company. Keske v. Square D Co. 58 W (2d) 307, 206 NW (2d) 189.

Where personal jurisdiction is challenged under the "long arm" statutes, the burden is on the plaintiff to prove prima facie the facts supporting jurisdiction. A plaintiff who relies on (5) is required to establish as a predicate that the defendant entered into some consensual agreement with the plaintiff which contemplated a substantial contact in Wisconsin. Afram v. Balfour, Maclaine, Inc. 63 W (2d) 702, 218 NW (2d) 288.

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

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

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

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

Admission of service by an assistant attorney general or a clerk specifically designated for that purpose by the attorney general will constitute service of process within the meaning of (3). 63 Atty. Gen. 467.

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

801.12 Jurisdiction in rem or quasi in rem, manner of serving summons for; notice of object of action. (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 801.07 may affect the interests of a defendant in such action only if a summons and either a copy of the complaint or a notice of the object of the action under sub. (2) have been served upon the defendant as follows:

(a) If the defendant is known, defendant may be served in the manner prescribed for service of a summons in s. 801.11, but service in such a case shall not bind the defendant personally to the jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(b) If the defendant is unknown the summons may be served by publication thereof as a class 3 notice, under ch. 985.

(2) The notice of object of action shall be subscribed by the plaintiff or attorney and shall state the general object of the action, a brief description of all the property affected by it, if it affects specific real or personal property, the fact that no personal claim is made against such defendant, and that a copy of the complaint will be delivered personally or by mail to such defendant upon request made within the time fixed in s. 801.09 (2). If a defendant upon whom such notice is served unreasonably defends the action the defendant shall pay costs to the plaintiff.

History: Sup. Ct. Order, 67 W (2d) 606; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 262.09, renumbered with the word "verified" deleted from the phrase "verified complaint". Section 802.05 abolishes verification of pleadings.

Sub. (2) is taken from s. 262.12 (2). [Re Order effective Jan. 1, 1976]

801.13 Summons; when deemed served. A summons is deemed served as follows:

(1) A summons served personally upon the defendant or by substituted personal service upon another authorized to accept service of the summons for the defendant is deemed served on the day of service.

(2) A summons served by publication is deemed served on the first day of required publication.

History: Sup. Ct. Order, 67 W (2d) 607.

Judicial Council Committee's Note, 1974: Section 262.15, renumbered. [Re Order effective Jan. 1, 1976]

801.14 Service and filing of pleadings and other papers. (1) Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in s. 801.11.

(2) Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

(3) In any action in which there are unusually large numbers of defendants, the court, upon motion or on its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every

such order shall be served upon the parties in such manner and form as the court directs.

(4) All papers after the summons required to be served upon a party shall be filed with the court within a reasonable time after service. The filing of any paper required to be served constitutes a certification by the party or attorney effecting the filing that a copy of such paper has been timely served on all parties required to be served, except as the person effecting the filing may otherwise stipulate in writing.

(5) The filing of pleadings and other papers with the court as required by these statutes shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

History: Sup. Ct. Order, 67 W (2d) 607; 1975 c. 218.

Judicial Council Committee's Note, 1974: This section is based on Federal Rule 5. Sub. (1) is designed to relieve attorneys of the time-wasting necessity of checking the files in the clerk's office to determine whether important papers have been filed. Not every paper that is filed need be served. Proofs of service, subpoenas, and similar papers do not fall within the service requirements of sub. (1).

Sub. (2) replaces s. 269.34 (2) and (3) and removes the statute's restriction on the hours of the day within which service could be made by leaving a copy of the paper at the party's residence with a person of suitable age and discretion. If violation of an order may bring a party into contempt, the order should be served on the party himself.

Sub. (3) refers to the only circumstances in which the provisions of s. 802.01 (1) with respect to required pleadings are permitted to be relaxed. The relaxation goes only to the extent of permitting the court to make an order dispensing with the necessity of replies to counterclaims and answers to cross-claims in actions in which there are unusually large numbers of defendants.

The second sentence of sub. (4) is designed to do away with unnecessary affidavits of service of papers. [Re Order effective Jan. 1, 1976]

801.15 Time. (1) Notwithstanding ss. 985.09 and 990.001 (4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this section "legal holiday" means any statewide legal holiday provided in s. 757.17.

(2) (a) When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms. The 60 day period under s. 801.02 may not be enlarged. If the motion is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect. The order of enlargement shall recite by its terms or by reference to an affidavit in the record the grounds for granting the motion.

(b) The time within which a motion challenging the sufficiency of the evidence or for a new trial must be decided shall not be enlarged except for good cause. The order of extension must be made prior to the expiration of the initial decision period.

(c) The time for appeal under s. 808.04, for motions after verdict under s. 805.16, and for motions for relief from judgment or order under s. 806.07 may not be enlarged.

(4) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte.

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

History: Sup. Ct. Order, 67 W (2d) 610; 1975 c. 218; Sup. Ct. Order, 73 W (2d) xxxi; 1977 c. 187 s. 135; 1977 c. 449; 1979 c. 89.

Cross References: See 32.05 (4) for exception to provision for added time in case of mailing.

See 879.31 permitting an extension of time for appeal in probate matters.

Judicial Council Committee's Note, 1974: Sub. (1) provides a more generous method of computing time than is available under ss. 985.09 and 990.001 (4) by excluding from the period being computed not only Sundays and legal holidays which would otherwise fall on the last day of the period, but also Saturdays. Now, Saturdays are excluded only if the place at which some action is to occur is a governmental office which, under the "duly established official office hours," is closed on Saturdays.

Sub. (2) (a) simplifies practice by doing away with the requirement that an affidavit accompany a motion for enlargement of time, even when the motion is made before the expiration of the period sought to be enlarged.

Sub. (2) (b) is designed to foster the speedy resolution of motions after verdict.

Sub. (4) reduces the period within which a notice of motion must be served from 8 days to 5 days. However, since under sub. (1), Saturdays and Sundays are excluded from the computation, the actual minimum period for service of notice of motion is 7 days.

Sub. (5) reduces the additional time after service by mail from 5 days (s. 269.36) to 3 days. [Re Order effective Jan. 1, 1976]

Judicial Council Committee's Note, 1976: The procedure under s. 801.15 (2) (a) for enlarging the period in which an act is required to be done under the rules of civil procedure cannot be used to enlarge the 60-day period under s. 801.02. See also s. 802.06 (2) (e) and (8).

Pars. (2) (b) and (c) are independent provisions. The enlargement of time "for good cause" provision in par. (b) does not apply to the time for appeal under s. 817.01, for motion after verdict under s. 805.16, and for relief from judgment under s. 806.07 as such a result would substantially impair the finality of judgments. The word "extended" is replaced by the word "enlarged" in par. (c) to comply with similar language in pars. (2) (a) and (b). [Re Order effective Jan. 1, 1977]

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

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

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

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

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

801.50 Place of trial. Except as provided in s. 220.12 and subject to the provisions for change of venue the proper place of trial of civil actions is as follows:

(1) WHERE SUBJECT OF ACTION SITUATED. Of an action within one of the 4 classes next following, the county in which the subject of the action or some part thereof is situated:

(a) For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such estate or interest, or for an injury to real property.

(b) For the partition of property.

(c) For the foreclosure, redemption or other satisfaction of a mortgage of real property.

(d) For the recovery of distrained personal property, except that when personal property is seized in outlying waters under s. 29.05 then the place of trial shall be in the county in which the seizure of said personal property was made and where said seizure was made at a place where 2 or more counties have common jurisdiction under ss. 2.03 and 2.04, then the place of trial may be in either county.

(2) WHERE CAUSE OF ACTION ARISES. Of an action within either of the 2 classes next following the county where the cause or some part thereof arose:

(a) Except as provided in sub. (9), against a public officer or person appointed to execute the officer's duties, for an act done by the officer in virtue of office, or against a person who, by the officer's command, or in the officer's aid, shall do anything touching the duties of such officer.

(b) For the recovery of a penalty or forfeiture imposed by statute; and when the cause arose where 2 or more counties have a common jurisdiction, under ss. 2.03 and 2.04, the action may be brought in either county.

(4) ACTION AGAINST RAILROADS. Of an action against any railroad corporation as defined by s. 990.01, or against any corporation owning or operating any interurban railroad (except in condemnation proceedings), either in the county in which the cause of action arose or in that in which the plaintiff resides, if the road of such corporation extends into either county; if such road does not extend into either county, in any county into which its road does extend.

(5) AGAINST INSURERS. Of an action against an insurer, to recover on a policy of insurance, the county in which the defendant has its principal office or in which the plaintiff resides or, if brought by a person in a representative capacity by appointment of a court, in the county in which the appointment was had, provided, however, that in the event an insurer is sued or made a party to an action growing out of negligence by the insured, the proper place of trial shall be in the county where the cause of action arose or where the person or persons, covered by an insurance policy by reason of which the insurer is sued or made a party to the action, resides.

(6) AGAINST OTHER CORPORATIONS. Of an action against any other corporation the county in which it has its principal office or in which the cause of action or some part thereof arose.

(8) ACTIONS BY STATE. Of an action by the state against any county or county officer in any county; and actions brought to recover damages for trespass upon public lands, when the amount in controversy exceeds $200 in any county.

(9) ACTIONS AGAINST THE STATE. Of an action brought against the state or any state board or commission or any state officer in an official capacity, the county of Dane unless another place is specifically authorized by law.

(9m) CERTIORARI TO REVIEW REVOCATION OF PROBATION OR PAROLE OR REFUSAL OF PAROLE. Of an action to review a probation or parole revocation or a refusal of parole by certiorari, the county in which the relator was last convicted of an offense for which the relator was on probation or parole or for which the relator is currently incarcerated.

(9r) HABEAS CORPUS. Of an action seeking a remedy available by habeas corpus:

(a) If the action seeks relief from a judgment of conviction or a sentence under which the plaintiff's liberty is restrained, in the county in which the plaintiff was convicted or sentenced.

(b) If the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff, in the county in which the liberty of the plaintiff is restrained.

(10) ACTIONS ON OFFICIAL BONDS. Of an action for a breach of any official bond, in the county in which such bond is filed.

(10m) ACTIONS AFFECTING MARRIAGE. Of an action affecting marriage, the county designated in the petition, if the requirements of s. 767.05 (1m) and (2) are met.

(11b) ASSAULT AND BATTERY ACTIONS. Of an action growing out of assault and battery, the county in which the cause of action arose or where the defendant resides.

(12) OTHER ACTIONS. Of any other action, the county in which any defendant resides at the commencement of the action; or if no defendant resides in this state, any county which the plaintiff designates in his complaint.

History: 1973 c. 217; Sup. Ct. Order, 67 W (2d) 757; 1975 c. 41 s. 51; 1975 c. 150, 199, 200; 1977 c. 187, 404; 1979 c. 102 s. 236 (3), (4); 1979 c. 196; 1981 c. 289.

Cross Reference: See 767.05 for venue in actions affecting the family.

Judicial Council Note, 1981: Sub. (9r) is intended to eliminate some of the confusion as to venue for an action seeking habeas corpus relief. An attack on the validity of a conviction or sentence is most appropriately filed in the county where the conviction and sentence took place while an attack on the conditions of confinement is most appropriate in the county where the plaintiff is confined. In each, venue is where the records and witnesses are most likely to be conveniently available. [Bill 613-A]

Section 261.01 (1) (a), Stats. 1967, was not intended to require an in personam type of specific performance action to be brought in the county in which the land is situated, for in a legal sense, the in personam decree does not affect the land but requires the defendant to affect it and therefore such a suit is not encompassed within that subsection. Fond du Lac Plaza, Inc. v. H. C. Prange Co. 47 W (2d) 593, 178 NW (2d) 67.

Sub. (12) would not apply to a tort-feasor in one county and a hospital in another which is alleged to have aggravated the original injury. Butzow v. Wausau Memorial Hospital, 51 W (2d) 281, 187 NW (2d) 349.

Where the accident occurred outside this state and the defendant's present whereabouts are unknown, an action against the insurer for damages under a liability policy may be commenced and tried in the county of the state in which the insurer has its principal place of business or in the county in which the policy was delivered or in the county in which the insured had his last-known place of residence. Bowman v. Rural Mut. Ins. Co. 53 W (2d) 260, 191 NW (2d) 881.

An action arising under 133.01 (1) (Stats. 1969) brought by a private party seeking treble damages allegedly resulting from a conspiracy in restraint of trade, is one for the recovery of a statutory penalty, hence under (2) (b), its proper venue is where the cause of action arose. State ex rel. Nordell v. Kinney, 62 W (2d) 558, 215 NW (2d) 405.

Venue in uninsured motorist action was determined under (5) rather than (11) despite both parties' waiver of arbitration. State ex rel. Carl v. Charles, 71 W (2d) 85, 237 NW (2d) 29.

Venue problems in Wisconsin. Sortor, 56 MLR 87.

801.51 Place of trial, general rule, exceptions. The county designated in the complaint shall be the place of trial, unless the same be changed as provided in this chapter, except that every action named in s. 801.50 (1) can be commenced only in the county in which the property or some part thereof is situated.

History: Sup. Ct. Order, 67 W (2d) 757, 777.

Pollution of well was not "injury to real property" under 801.50 (1) (a). Subject matter jurisdiction and competency to render judgment distinguished. Mueller v. Brunn, 105 W (2d) 171, 313 NW (2d) 790 (1982).

801.52 Validation of certain divorces and annulments and affirmances of marriages. All divorces granted in this state and all judgments granted in this state annulling or affirming marriages based on actions commenced between July 14, 1947 and May 14, 1955, which when granted complied with the requirements of s. 261.02 [Stats. 1953] as to place of trial and are otherwise valid, are hereby declared to be valid even though the actions on which they are based were not commenced in the county designated in s. 261.01 (3) [Stats. 1953].

History: Sup. Ct. Order, 67 W (2d) 757.

801.53 Change of venue to proper county. When the county designated in the complaint is not the proper place of trial, except as to actions named in s. 801.50 (1), the defendant may, within 20 days after the service of the complaint, serve upon the plaintiff a demand in writing that the trial be had within a proper county, specifying the county or counties, and the reason therefor. Within 5 days after service of such demand the plaintiff may serve a written consent that the place of trial be changed, and specify to what county, if the plaintiff has the option to name one and such consent shall change the place of trial accordingly. If the plaintiff's consent be not so served the defendant may, within 20 days after the service of the demand, move to change the place of trial, and the court or the presiding judge shall order the place changed with costs of motion. The right to obtain a change of the place of trial shall not be affected by any other proceedings in the action.

History: Sup. Ct. Order, 67 W (2d) 757, 777; 1975 c. 218.

Change of venue as matter of right cannot be granted when civil action is already venued in "proper" county. State ex rel. H&SS Dept. v. Dane Co. Cir. Ct. 71 W (2d) 156, 237 NW (2d) 692.

Filing responsive pleadings does not constitute waiver of objection to venue. Orders relating to venue are appealable by permission under 808.03 (2). Aparacor, Inc. v. DILHR, 97 W (2d) 399, 293 NW (2d) 545 (1980).

801.54 Change of venue, grounds for. The court may change the place of trial in the following cases:

(1) When there is reason to believe that an impartial trial cannot be had in the designated county and when so changed it shall be to a county in which the cause complained of does not exist.

(2) When the convenience of witnesses and the ends of justice would be promoted.

(3) When the parties or their attorneys shall stipulate in writing to change the place of trial; and, in this case, the order may be made by a judge.

(4) On the motion of any party at any time before trial in an action for damages growing out of the negligent operation of a motor vehicle, to any proper county where any other action is pending for damages for the negligent operation of a motor vehicle involving the same accident.

History: Sup. Ct. Order, 67 W (2d) 757; 1977 c. 449.

Courts need not consider influential position of witness in community in determining whether to grant change of venue under (1). Central Auto Co. v. Reichert, 87 W (2d) 9, 273 NW (2d) 360 (Ct. App. 1978).

801.56 Change of venue if judge disqualified by interest. When the judge is a party or interested in any action in the judge's court or is related to or has been of counsel for either party, the court or the presiding judge thereof shall, upon application of either party, and may without such application, change the place of trial or call in another judge as provided in s. 801.58. The fact that the judge is a taxpayer does not disqualify the judge.

History: Sup. Ct. Order, 67 W (2d) 757, 777; 1975 c. 218.

801.57 Municipal court appeals; change of venue. The appellate court shall change the place of trial of any action commenced before a municipal judge upon application of the defendant in like manner and for like causes as in actions originally brought in the circuit court. The demand for consent to such change shall be made within 10 days after the defendant has notice of the appeal.

History: Sup. Ct. Order, 67 W (2d) 757; 1977 c. 305 s. 64.

801.58 Substitution of judge. (1) Any party to a civil action or proceeding may file a written request, signed personally or by his or her attorney, with the clerk of courts for a substitution of a new judge for the judge assigned to the case. The written request shall be filed preceding the hearing of any preliminary contested matters and, if by the plaintiff, not later than 60 days after the summons and complaint are filed or, if by any other party, not later than 60 days after service of a summons and complaint upon that party. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action and to the named judge.

(2) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary. The newly assigned judge shall proceed under s. 802.10 (1).

(3) Except as provided in sub. (7), no party may file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one of such party of a written request.

(4) Upon the filing of an agreement signed by all parties to a civil action or proceeding, by the original judge for which a substitution of a new judge has been made, and by the new judge, the civil action or proceeding and pertinent records shall be transferred back to the original judge.

(5) In addition to other substitution of judge procedures, in probate matters a party may file a written request specifically stating the issue in a probate proceeding for which a request for substitution of a new judge has been made. The judge shall thereupon be substituted in relation to that issue but after resolution of the issue shall continue with the administration of the estate. If a person wishes to file a written request for substitution of a new judge for the entire proceeding, subs. (1) to (4) shall apply.

(6) (a) In probate matters ss. 801.59 to 801.62 apply, except that upon the substitution of any judge, the case shall be referred to the register in probate, who shall request assignment of another judge under s. 751.03 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to the assigned judge, by mail or in person, for signing or approving, wherever the judge may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the circuit court of the county where the records and files of the matter are kept.

(7) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order as to any or all of the parties in a manner such that further proceedings in the trial court are necessary, any party may file a request under sub. (1) within 20 days after the filing of the remittitur in the trial court whether

or not another request was filed prior to the time the appeal or writ of error was taken.

History: 1971 c. 46, 138, 296; Sup. Ct. Order, 67 W (2d) 757; 1977 c. 135 ss. 7, 15, 16; 1977 c. 187 s. 135; Sup. Ct. Order, 82 W (2d) ix; 1977 c. 449; 1979 c. 175 ss. 50, 53; 1981 c. 137.

Judicial Council Note, 1977: Section 801.58 of the statutes has been changed in a number of significant ways. The statute states that a substitution of judge request in a civil action or proceeding is timely only if made before the hearing of a preliminary contested matter, codifying Pure Milk Products Coop. v. NFO, 64 Wis. 2d 241 (1974).

A new provision has been added to allow the parties to a criminal action or proceeding, the prosecuting attorney, and the original and the new judge to agree to have the matter referred back to the original judge. This will aid the administration of justice in those cases where it is advantageous for everyone concerned to have the original judge take back the matter. [Bill 74-S]

Judicial Council Committee's Note, 1977: Sub. (1) is amended to give a plaintiff 60 days from the time the summons and complaint are filed or a defendant or any added party 60 days after service of a summons and complaint upon them to request a substitution of a new judge, provided no preliminary contested matters have been argued by the requester. The previous time periods for requesting a substitution of judge (i.e., 10 days after the date of notice for a scheduling conference or 10 days after service of a standard scheduling order) are repealed as the use of such a conference or order is no longer mandatory under s. 802.10. [Re Order effective July 1, 1978]

Judicial Council Note, 1981: Sub. (2) has been revised to allow the clerk to refer the substitution request to the chief judge of the judicial administrative district when the judge whose substitution has been requested fails to determine within 7 days whether the request is timely made and in proper form.

Sub. (7) has been amended to clarify that the 20-day time period for filing a substitution request after an appellate remand commences upon the filing of the remittitur in the trial court. Rohl v. State, 97 Wis. 2d 514 (1980). [Bill 163-S]

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

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

See note to 59.38, citing In Matter of Civil Contempt of Kroll, 101 W (2d) 296, 304 NW (2d) 175 (Ct. App. 1981).

801.59 Assigned judge. In any case where another judge has been assigned under s. 751.03 to hear a particular action or proceeding, the clerk of circuit court shall forthwith notify all parties to the action or proceeding. If a written request for a substitution of a new judge is filed with regard to an assigned judge, it shall be filed within 7 days after notice of the assignment has been received. A copy of the written request shall be mailed forthwith to all parties and to the named judge.

History: 1971 c. 296; Sup. Ct. Order, 67 W (2d) 757; 1977 c. 187 s. 135.

801.60 Time for motion to change venue. The place of trial shall not be changed, except under s. 801.58 after one continuance had on the motion of the party applying for a change unless it shall appear to the court that the cause therefor was discovered or developed after such continuance.

History: Sup. Ct. Order, 67 W (2d) 757, 777.

801.61 Proceedings after order for change of venue. When the place of trial is changed all process, pleadings and other papers, and copies of all entries and minutes of the clerk in such action shall be certified and transmitted by such clerk to the clerk of the court to which the trial is changed, with a statement of fees. Such fees shall be paid before transmission by the party procuring such change, except in the case mentioned in s. 801.53, in which case the plaintiff shall pay such fees and the change shall be complete on the making of the order. The change, in other cases, shall be complete on filing the papers transmitted. If such transmission and filing be not made within 20 days from the making of the order to change the place of trial, unless such time be extended, the moving party shall lose the right to the change except in the case mentioned in s. 801.53, and no order for a change for the same cause shall thereafter be made and the moving party shall pay the costs of the application within 10 days after the expiration of said 20 days; but the other party may, within 40 days from the time of making of the order granting the change, pay the clerk fees and have the papers certified and transmitted to the court mentioned in such order.

History: Sup. Ct. Order, 67 W (2d) 757, 777; 1975 c. 218, 422.

801.62 Conclusiveness of change of venue; second motion. After trial in the court to which the action has been changed, the proceedings for the change shall be conclusive unless a motion to remand was made before the trial commences. If after the transmission of the papers an order changing the place of trial is reversed or set aside the effect shall be to change the place of trial back. After the transmission of the papers back to the original court on the reversal or setting aside of the order, a party may renew the application for a change of venue within 20 days. The renewed application shall be treated as the original application.

History: Sup. Ct. Order, 67 W (2d) 757; 1975 c. 218; 1977 c. 449.

801.63 Stay of proceeding to permit trial in a foreign forum. (1) STAY ON INITIATIVE OF PARTIES. If a court of this state, on motion of any party, finds that trial of an action pending before it should as a matter of substantial justice be tried in a forum outside this state, the court may in conformity with sub. (3) enter an order to stay further proceedings on the action in this state. A moving party under this subsection must stipulate consent to suit in the alternative

forum and waive right to rely on statutes of limitation which may have run in the alternative forum after commencement of the action in this state. A stay order may be granted although the action could not have been commenced in the alternative forum without consent of the moving party.

(2) TIME FOR FILING AND HEARING MOTION. The motion to stay the proceedings shall be filed prior to or with the answer unless the motion is to stay proceedings on a cause raised by counterclaim, in which instance the motion shall be filed prior to or with the reply. The issues raised by this motion shall be tried to the court in advance of any issue going to the merits of the action and shall be joined with objections, if any, raised by answer or motion pursuant to s. 802.06 (2). The court shall find separately on each issue so tried and these findings shall be set forth in a single order which is appealable.

(3) SCOPE OF TRIAL COURT DISCRETION ON MOTION TO STAY PROCEEDINGS. The decision on any timely motion to stay proceedings pursuant to sub. (1) is within the discretion of the court in which the action is pending. In the exercise of that discretion the court may appropriately consider such factors as:

(a) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;

(b) Convenience to the parties and witnesses of trial in this state and in any alternative forum;

(c) Differences in conflict of law rules applicable in this state and in any alternative forum; or

(d) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(4) SUBSEQUENT MODIFICATION OF ORDER TO STAY PROCEEDINGS. Jurisdiction of the court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

History: Sup. Ct. Order, 67 W (2d) 612, 758, 777; 1975 c. 218.

Judicial Council Committee's Note, 1974: Section 262.19 renumbered. [Re Order effective Jan. 1, 1976]

A motion to stay a Wisconsin action or transfer the case to an Iowa court where an action arising out of the same accident was pending was properly denied where the parties were different and because of Iowa law the plaintiff would lose substantial rights. Littmann v. Littmann, 57 W (2d) 238, 203 NW (2d) 901.

A court ordinarily should adjudicate the litigation before it and the plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant. A trial of the cause should be permitted in another state only upon a convincing showing that the trial in Wisconsin is likely to result in a substantial injustice. U.I.P. Corp. v. Lawyers Title Ins. Corp. 65 W (2d) 377, 222 NW (2d) 638.

Party seeking stay must show not only that trial in forum state will be inconvenient and unjust, but also that trial in another forum is both more convenient and just. U.I.P. Corp. v. Lawyers Title Ins. Corp. 82 W (2d) 616, 264 NW (2d) 525.

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