

## 801.095 COMMENCEMENT OF ACTION AND VENUE

Phone No: ....

**History:** 1983 a. 323; Sup Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 187, 250; 1999 a. 32, 186; 2001 a. 16; 2005 a. 442.

**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.

**(1m) SERVICE BY CERTAIN NONRESIDENTS.** Notwithstanding sub. (1), an adult who is not a party to the action and who resides in Illinois, Iowa, Michigan, or Minnesota may serve an authenticated copy of the summons in this state.

**(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 or, if service is made in this state, an adult resident of this state or of Illinois, Iowa, Michigan, or Minnesota and is 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 Wis. 2d 585, 600 (1975); 1975 c. 218; Sup. Ct. Order, 92 Wis. 2d xiii (1979); 2005 a. 439.

**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]

A party is required to show strict compliance with the requirements of this section when service is challenged. *Dietrich v. Elliot*, 190 Wis. 2d 816, 528 N.W.2d 17 (Ct. App. 1995).

Service by a nonresident constitutes a fundamental defect compelling dismissal for lack of jurisdiction. *Bendimez v. Neidermire*, 222 Wis. 2d 356, 588 N.W.2d 55 (Ct. App. 1998), 98–0656.

Sub. (4) does not require the affiant to have first hand knowledge of how the documents were authenticated, nor does it require that the affiant's statements must be unqualified; it requires that the affiant affirm that an authenticated copy of the summons was served. *State v. Boyd*, 2000 WI App 208, 238 Wis. 2d 693, 618 N.W.2d 251, 99–2633.

The trial court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. *Williams Corner Investors, LLC v. Areawide Cellular, LLC*, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03–0824.

**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:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(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 the 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 adjudicated 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) or (6). If no guardian has been appointed when service is made upon a person alleged by 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 chairperson of the county board or the county clerk;
2. If against a town, the chairperson 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 technical college district, the district board chairperson or secretary thereof;
6. If against a school district or school board, the president 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 OR LIMITED LIABILITY COMPANIES, GENERALLY. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation or limited liability company 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 or limited liability company 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.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 602 (1975); 1975 c. 218; 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 192 s. 303 (2); 1985 a. 225; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1993 a. 112, 184, 265, 399, 491; 1997 a. 140; 1999 a. 32; 2005 a. 387.

**Cross-reference:** As to service on corporation, see also s. 180.0504.

**Judicial Council Note, 1986:** Sub. (1) (b) is amended to permit substituted service upon residents of other states. Service upon nonresidents may be made either as provided for Wisconsin residents or in accordance with the substituted service rule of the state wherein service is made. [Re Order eff. 7-1-86]

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 the defendant was not found, with no effort to learn where the defendant was, was not sufficient to support jurisdiction. *Heaston v. Austin*, 47 Wis. 2d 67, 176 N.W.2d 309 (1970).

When a village was a defendant, service was void when it was made upon the clerk's spouse in the clerk's absence. *Town of Washington v. Village of Cecil*, 53 Wis. 2d 710, 193 N.W.2d 674 (1972).

"Apparently in charge of the office" in sub. (5) (a) refers 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 the superior, particularly since the superior had accepted service of process in other actions without objection by the company. *Keske v. Square D Co.*, 58 Wis. 2d 307, 206 N.W.2d 189 (1973).

When 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 sub. (5) is required to establish as a predicate that the defendant entered into some consensual agreement with the plaintiff that contemplated a substantial contact in Wisconsin. *Afram v. Balfour, Maclaine, Inc.*, 63 Wis. 2d 702, 218 N.W.2d 288 (1974).

No presumption of due service was raised when an affidavit of service under sub. (5) (a) did not identify the person served as the one specified in sub. (5) (a). *Danielson v. Brody Seating Co.*, 71 Wis. 2d 424, 238 N.W.2d 531 (1976).

The prerequisite "due diligence" for service by publication was not established, despite the sheriff's affidavit, when a husband could have ascertained his wife's address by contacting any one of several relatives or in-laws. *West v. West*, 82 Wis. 2d 158, 262 N.W.2d 87 (1978).

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

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

"Reasonable diligence" under sub. (1) is discussed. *Welty v. Heggy*, 124 Wis. 2d 318, 369 N.W.2d 763 (Ct. App. 1985).

Indian tribal sovereignty is not infringed by service of process in a state action made on tribal lands. *Landerman v. Martin*, 191 Wis. 2d 788, 530 N.W.2d 62 (Ct. App. 1995).

Service of process on some of the partners in a general partnership is sufficient to properly commence a civil action against the partnership that will be binding on the partnership assets and the partners served. *CH2M Hill, Inc. v. Black & Veatch*, 206 Wis. 2d 370, 557 N.W.2d 829 (Ct. App. 1996), 95-2619.

The existence of a parent-subsidiary corporate relationship does not automatically establish the subsidiary as an agent of the parent for purposes of receiving process. *Prom v. Sumitomo Rubber Industries, Ltd.*, 224 Wis. 2d 743, 592 N.W.2d 657 (Ct. App. 1999), 98-0938.

A corporation whose offices were located on the 23rd floor of an office building was not properly served under sub. (5) (a) when the papers were left with a security guard in the building lobby who stated that he was authorized to accept service. *Bar Code Resources v. Ameritech, Inc.*, 229 Wis. 2d 287, 599 N.W.2d 872 (Ct. App. 1999), 98-1314.

Service on a limited partnership is governed by sub. (6), not ch. 179. Sub. (6) requires service upon all the general partners known to the plaintiff. When the only person served was a maintenance man, service was insufficient. *Carmain v. Affiliated Capital Corporation*, 2002 WI App 271, 258 Wis. 2d 378, 654 N.W.2d 265, 01-3077.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over the officer as an individual. *Useni v. Boudron*, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02-1475.

Personal jurisdiction over a body politic may be obtained by service of the summons and complaint on an officer, director, or managing agent, or substitute service on a "person who is apparently in charge of the office." Service on a nonparty, even when it occurs erroneously in reliance on the mistaken direction of a person in the office of the defendant, does not constitute service on the defendant. *Hagen v. City of Milwaukee Employee's Retirement System Annuity and Pension Board*, 2003 WI 56, 262 Wis. 2d 113, 663 N.W.2d 268, 01-3198.

Sub. (1) (d) permits substituted service on a natural person's agent who has actual express authority to accept service of summons for the principal. Apparent authority does not satisfy the requirement that the agent be "authorized by appointment" to accept service of summons. *Mared Industries, Inc. v. Mansfield*, 2005 WI 5, 277 Wis. 2d 350, 690 N.W.2d 835, 03-0097.

"Managing agent" as it appears in sub. (5) relates to an agent having general supervision of the affairs of the corporation. "Superintendent" and "managing agent" have corresponding meanings in the statute. Both terms relate to a person possessing and exercising the right of general control, authority, judgment, and discretion over the business or affairs of the corporation, either everywhere or in a particular branch or district. *Richards v. First Union Securities, Inc.*, 2006 WI 55, 290 Wis. 2d 620, 714 N.W.2d 913, 04-1877.

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 sub. (3). 63 Atty. Gen. 467.

Service on a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. *Chilcote v. Sherzter*, 372 F. Supp. 86 (1974).

**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