

CHAPTER 262.

COMMENCING CIVIL ACTIONS.

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**262.01 Jurisdiction, how acquired.** A civil action in a court of record shall be commenced by the service of a summons or an original writ. From the time of such service or the issuance of a provisional remedy the court shall have jurisdiction and have control of all subsequent proceedings. [1935 c. 541 s. 27]

**Revisor's Note, 1935:** An independent proceeding begun by an original writ is an action. State ex rel. Milwaukee Medical College v. Chittenden, 127 W 468, 494. (Bill No. 50 S, s. 27) where no action had been commenced by service of summons or other authorized process. In re Citizens State Bank of Gillette, 207 W 434, 241 NW 339. The entry of a judgment on cognovit is not the commencement of an action. Guardianship of Kohl, 221 W 385, 266 NW 800.

**262.02 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 defendants summoning them to appear within twenty days after service of the summons, exclusive of the day of service, and defend the action.
- (3) A notice that in case of failure so to do judgment will be rendered against them according to the demand of the complaint. It shall be subscribed by the plaintiff or his attorney with the addition of his post-office address, at which papers in the action may be served on him by mail. There may, at the option of the plaintiff, be added at the foot, when the complaint is not served with the summons and the only relief sought is the recovery of money, whether upon tort or contract, a brief notice specifying the sum to be demanded by the complaint. [1935 c. 483 s. 8; 43.08 (2)]

**262.03 Form.** (1) Such summons shall be substantially in the following form:  
 .... Court, .... County.

A. B., Plaintiff, }  
 vs. }  
 C. D., Defendant. }

THE STATE OF WISCONSIN, To said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

E. F.,  
 Plaintiff's Attorney.

P. O. Address ...., .... County, Wis.

If the complaint be not served with the summons the words "of which a copy is herewith served upon you" may be omitted or erased.

(2) In an action relating to real estate if any defendant is sued under a fictitious name or as an unknown owner, heir, grantee or persons whom it may concern or other similar designation, a description of the land affected shall be given in a note at the foot of the summons. [1935 c. 541 s. 28]

**262.04 Filing summons; state tax.** The summons must be filed with the clerk, and a state tax on the action of one dollar paid within ten days after the service of an answer or demurrer; or if no answer or demurrer be served at the time of applying for judgment. Otherwise the action shall be dismissed on motion of any defendant unless the plaintiff shall pay the tax and five dollars costs of motion.

**Note:** See 59.42 (40) as to advance clerk fees and suit tax, when paid. State tax of one dollar for commencing civil action is collectible in civil actions but not in special proceedings and is not collectible from state or federal government or their instrumentalities. Civil actions and special proceedings are distinguished. 27 Atty. Gen. 84.

**262.05 Demand of complaint.** A copy of the complaint may or may not be served with the summons at the plaintiff's option. If not so served the defendant may, in person or by attorney, within twenty days after the service of the summons demand in writing a copy of the complaint, specifying a place, embracing a post-office address, within the state, where it may be served, and a copy of it shall be served within twenty days thereafter accordingly.

**262.06 Notice of object of action.** In the case of a defendant against whom no personal claim is made the plaintiff may deliver to such defendant with the summons a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of all the property affected by it, if it affect specific real or personal property and 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 his request made within twenty days from receipt of summons. If a defendant on whom such notice is served unreasonably defend the action he shall pay costs to the plaintiff. [*Supreme Court Order, effective Sept. 1, 1932*]

**262.07 Who may serve summons.** The summons, together with the complaint or the notice aforesaid, may be served by the sheriff of the county where the defendant may be found or by any other person not a party to the action. The service shall be made and the summons, with the complaint or notice accompanying, if any, with proof of the service, returned to the person whose name is subscribed thereto with reasonable diligence. The person subscribing the summons may, at his option, by an indorsement thereon, fix a time for the service thereof, and the service shall then be made accordingly.

**262.08 Service on individuals and joint stock companies.** The summons and the accompanying complaint or notice aforesaid shall be served by delivering a copy thereof as follows:

(1) If the action be against a minor under the age of fourteen years to such minor personally, and also to his father, mother or guardian, or if there be none within this state then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed.

(2) If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of excessive drinking or otherwise, and for whom a guardian has been appointed, to such guardian and to the defendant personally.

(3) If against a joint stock company not organized as a corporation and having seven or more shareholders or associates, and sued in the name of the president under section 286.04, to such president thereof, or if not found after due diligence to any other officer or shareholder; and if against a joint stock company or association organized under the laws of any other state, territory or country and doing business in this state upon any officer or agent thereof within this state or upon the secretary of state or any agent or attorney appointed for that purpose under section 226.02.

(4) In all other cases to the defendant personally; or, if not found, by leaving a copy thereof at his usual place of abode in presence of some one of the family of suitable age and discretion, who shall be informed of the contents thereof.

**Note:** A substituted service cannot be more extensive or of greater scope than a personal service; hence the substituted service of a summons and complaint addressed to one person, correctly naming him, could not be considered as a service upon another bearing a different name, although both had a common place of abode and were members of the same family. *Baker v. Tormey*, 209 W 627, 245 NW 652.

An attempted substituted service under (4) made on the father of an emancipated minor, who at the time was working on a farm away from his father's home, was ineffectual to confer jurisdiction of the person of the minor, since not made at the minor's "usual place of abode," which, on the record, was the farm home at which he was working. *Caskey v. Peterson*, 220 W 690, 263 NW 658.

**262.09 Service on corporations.** Actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons and the accompanying complaint or notice aforesaid shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof as follows:

(1) If the action be against a county, to the county clerk.

(2) If against a town, to the chairman of the town and the town clerk.

(3) If against a city, to the mayor and the city clerk.

(4) If against a village, to the president of the board of trustees and the village clerk.

(5) If against a school district, to the director and the clerk thereof.

(6) If against a railroad corporation whose general office is within this state, to the president, secretary, superintendent, general manager or general solicitor thereof, if either shall reside and be within the county in which such action is brought; and in case neither of the officers named reside and are in such county, then to any station, freight or ticket agent thereof who shall reside and be within such county.

(7) If against a railroad corporation whose general office is or all whose aforesaid

officers shall reside or be without the state, to any station, freight, ticket or other agent thereof within the state.

(8) If against a corporation owning or operating sleeping or hotel cars or the like which has not its general office in the state, to any person having charge of any of its cars or any agent found within the state.

(9) If against any insurance corporation not organized under the laws of this state, to the agent or attorney thereof having authority therefor by appointment under the provisions of section 201.38, or to any agent of either such corporation who shall solicit insurance on its behalf or on behalf of any property owner or person desiring insurance, or who transmits an application for or a policy of insurance to or from any such corporation, makes any contract for insurance, collects or receives any premium therefor, or adjusts, settles or pays a loss for such corporation or aids or assists in doing either or in transacting any business for the same, or on any person who advertises to do any such thing.

(10) If against any other corporation organized under the laws of this state, to the president, or other such chief officer, vice president, secretary, cashier, treasurer, director, or managing agent. Provided, however, that whenever any such corporation does not have any officer or agent within this state upon whom legal service of process can be made, of which the return of the sheriff shall be prima facie evidence, service of the summons and accompanying complaint may be made by depositing duplicate copies thereof in the office of the secretary of state, one of which copies shall be filed in the office of said secretary of state, and the other by him immediately mailed, postage prepaid, addressed to said company at its office designated in its articles of incorporation on file in the office of the said secretary of state, and such service shall be deemed and treated as personal service on such corporation.

(11) If against any corporation or association having an aid or benefit department under its control or in connection therewith, not organized under the laws of this state and doing business herein, either as such corporation or association or by means or in the form of a local or subordinate aid or benefit association, or of subordinate branches, lodges or divisions, and which has failed to appoint an agent or attorney in compliance with paragraph (b) of subsection (2) of section 201.38, to any officer of any such local or subordinate aid or benefit association, branch, lodge or division.

(12) If against any foreign building and loan association authorized to do business in this state, upon the attorney thereof having authority therefor by appointment under the provisions of section 215.41, or upon any agent or officer thereof who may be found within this state; if against any such association not authorized to do business in this state, upon any person who shall solicit upon its behalf, or who transmits to or from it an application for membership, or a share, certificate, bond or other evidence of indebtedness, or in any manner aids or assists in doing either, or in transacting any business for such association, or advertises to do either of such or any like thing.

(13) If against any other foreign corporation, to any such officer being within the state, or to any agent having charge of or conducting any business therefor in this state, or any trustee or assignee of such corporation, or upon the secretary of state, as provided in section 226.02. But such service can be made upon a foreign corporation only either when it has property within the state or the cause of action arose therein, or the cause of action exists in favor of a resident of the state, and upon the secretary of state only when the cause of action arises out of business transacted in this state or when the defendant has property therein.

(14) If against any foreign joint stock company, common-law partnership or express company doing business in this state, upon the attorney thereof having authority therefor by appointment under the provisions of section 226.02, subject to the terms of said section.

(15) If against a telegraph or telephone company whose general office is within the state, to the president, secretary, superintendent, general manager or general solicitor thereof, if either shall reside and be within the county in which such action is brought; and in case neither of the officers named reside and are in such county, then to any operator or station manager thereof, who shall reside and be within such county. [1931 c. 79 s. 27]

**Revisor's Note:** There are scattered through the statutes many *special* provisions for service of summons. Most of those provisions provide for service on nonresidents, especially foreign corporations. Special provisions of that kind are listed here (the list may be incomplete):

38.06 (2) *Milwaukee school board.* " \* \* \* service of any summons, writ, pleading or other papers served in commencing the action or proceeding upon the president of the board and the superintendent and the secretary-business manager of the board is sufficient to constitute service upon the entire board; and it is sufficient to serve on

such 3 officers any notice required by law to be served upon the board."

85.05 (3) *Auto accident actions.* Service of summons on nonresident operators of automobiles in actions growing out of auto accidents in Wisconsin may be upon the commissioner of motor vehicle department.

129.11 *Itinerant merchant truckers.* In actions against licensed itinerant merchant truckers summons may be served on the motor vehicle department.

189.27 *Securities dealers.* Summons to a dealer or issuer of securities who has appointed the director and deputy director of the securities department as attorneys may

be served on either such attorneys or by filing a copy with the department.

194.10 *Motor carriers.* Carriers subject to chapter 194 are required to appoint an agent "upon whom process in \* \* \* legal proceedings, arising out of its operations within this state \* \* \* may be served"; and to notify the motor vehicle department of the appointment. If no agent is appointed then summons may be served on the secretary of the department.

198.12 *Municipal power districts.* " \* \* \* service of process upon the district shall be by service upon the chairman of the board and the clerk of the district \* \* \*"

200.03 (15) (16) *Foreign insurance companies.* The commissioner of insurance is "the attorney for all insurance companies admitted to this state for the purpose of service of summons and all other legal processes upon such companies."

201.43 *Service on insurance commissioner.* Service of summons and other process on the commissioner is "deemed personal service". The mode of service is detailed. A fee of \$2 is required.

208.26 *Service on mutual benefit societies.* Mutual benefit societies, foreign and domestic, must appoint the insurance commissioner their "attorney upon whom all legal process in any action \* \* \* against it shall be served." "(7) Legal process shall not be served upon any such society except in the manner and upon the attorney provided herein"

215.41 (3) *Foreign building and loan associations.* Such association must appoint the "banking commission \* \* \* as the attorney upon whom any summons \* \* \* may be served". See 262.09 (4) (12).

226.02 *Secretary of state as attorney for foreign corporations.* Every foreign corporation which is licensed by the secretary of state may be served with a summons by service upon the secretary or upon the attorney for Wisconsin appointed by the corporation.

226.025 The provisions of 226.02(3) (f) are extended to "every foreign corporation" which furnishes specified services or equipment in this state.

**262.10 Service on state; judgment.** The state may be made a party defendant in any action to quiet title under the provisions of section 281.01 or between other parties, when necessary to the proper determination of their rights, and the summons be served by delivering a copy to the attorney-general or leaving it at his office in the capitol with his assistant or clerk. But no judgment for the recovery of money or personal property or costs shall be rendered in any such action against the state.

**Note:** The state annuity and investment board holding a mortgage on the military company's premises was a proper party defendant in a suit to foreclose a mechanic's

A sheriff's service of process upon the office manager and auditor of a corporation was good service upon the corporation, where the corporation had recognized as valid the service of other process upon the same officer by the sheriff. The office manager and auditor of the corporation was a "managing agent" to whom process might be delivered as service upon the corporation, within (10). *Neitzke v. Kraft-Phenix Dairies, Inc.*, 214 W 441, 253 NW 579.

See note to 85.05, citing *State ex rel. Sexauer Mfg. Co. v. Grimm*, 217 W 422, 259 NW 262.

Service of process under (13) on the soliciting agent of a foreign corporation is valid even though the agent merely takes and transmits orders to the corporation which accepts and fills the orders without the state by the instrumentalities of interstate commerce. *Petition of Northfield Iron Co.*, 226 W 487, 277 NW 168.

The property, located in this state, of a foreign corporation, which will warrant the commencement of an action by a nonresident plaintiff upon a cause of action that arose in another state by service of process on an officer or agent of the corporation found within this state, must be of a substantial nature; mere office supplies used by a soliciting agent are insufficient to give jurisdiction by such a service. *Petition of Inland Steel Co.*, 174 W 140, 182 NW 917.

The judgment entered in *State ex rel. Consolidated T. Corp. v. Gregory*, 209 W 476, 245 NW 194, was reversed by the United States supreme court. It was there held that a foreign corporation, not licensed in this state, is not suable here merely because its products are sold here by a subsidiary corporation; that in order to hold an unlicensed foreign corporation responsible under the process of a local court the corporation must be carrying on business here at the time of service of process. In this case the president of such a corporation had come into the state solely to confer with an attorney who represented bondholders of the corporation. *Consolidated T. Corp. v. Gregory*, 53 S. Ct. Rep. 529.

lien for construction of the armory thereon. *Fulton v. State A. and I. Board*, 204 W 355, 236 NW 120.

**262.11 Date of service indorsed on summons.** The officer or person who serves a summons shall, at the time of the service, indorse upon the copy served the date of service, sign his name thereto and add, if an officer, his official title. Failure to make the indorsement shall not invalidate a service but the server shall not collect fees for such service. [1935 c. 541 s. 30]

**262.12 Publication or service outside state, when permitted.** When the summons cannot with due diligence be served within the state, the service of the summons may be made without the state or by publication upon a defendant when it appears from the verified complaint that he is a necessary or proper party to an action or special proceeding as provided in Rule 262.13, in any of the following cases:

(1) When such defendant is a nonresident of this state or his residence is unknown, or is a foreign corporation, and the defendant has property within the state, or the cause of action arose therein, and the court has jurisdiction of the subject of the action, whether the action be founded on contract or tort.

(2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors or avoid the service of a summons, or keeps himself concealed therein with the like intent.

(3) 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.

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

(5) When the action is for a divorce or for annulment of marriage.

(6) When the action is against any domestic private corporation and the proper officers on whom to make service do not exist or cannot be found. [*Supreme Court Order, effective Sept. 1, 1931; Supreme Court Order, effective Jan. 1, 1936*]

**Note:** Where the assignee of matured life insurance policy was nonresident and had possession of the policy, money which will contingently become due under policy to assignor-insured held not property in state as basis for service by publication. *Reidel v. Preston, 211 W 149, 246 NW 569.*

Under a Washington statute requiring that a complaint for divorce be under oath and be filed before further proceedings, including service of process, may be had, a judgment of a Washington court granting a divorce, where the complaint was not verified and the affidavit for service by publication was insufficient to cure this defect and service was had by publication only, was void for want of jurisdiction. *Estate of Kronglaski, 222 W 634, 269 NW 528.*

While 262.12 authorizes service by publication in actions to foreclose mortgages, it is beyond the power of the state to obtain jurisdiction of the person of a defendant domiciled beyond its borders. *Riley v. State Bank of De Pere, 223 W 16, 269 NW 722.*

The verified complaint must allege all necessary jurisdictional facts, or else the service by publication or by personal service without the state is void. Where a complaint showed that all the parties were nonresidents and that the cause of action did

not arise within the state, and there was no allegation that the defendants or either of them had any property within the state, service of the summons by publication and by personal service without the state was void, so that the circuit court was without jurisdiction and the defendants' motion on special appearance to vacate the alleged service should have been granted. *State ex rel. Ralph Lumber Co. v. Kleczka, 234 W 7, 290 NW 142.*

In action against nonresident and resident defendants an allegation that resident defendant assigned mortgage to nonresident defendant with intent to defraud creditors, did not state a cause of action against nonresident defendant so as to authorize substituted service, since the plaintiff was not seeking to hold the nonresident defendant as a garnishee within 267.17; no cause of action against the nonresident defendant was pleaded if the complaint be treated as an action at law to recover money and no cause was stated in equity to recover property transferred in fraud of creditors since such suit may be maintained only after judgment has been obtained against the principal debtor and execution returned unsatisfied. *Frawley v. Chakos, 36 F (2d) 373.*

#### 262.13 Publication or service outside state; proof of grounds; mode of service.

(1) Before entering judgment against any defendant who has been served with summons by publication or personally without the state pursuant to Rule 262.12 and who has not appeared, the court shall require proof by affidavit or other evidence to be made and filed of the nonresidence of the defendant where not shown by the verified complaint and of the existence of any other fact not shown by the verified complaint and necessary to authorize service to be made by publication and that the service was in fact made as the rule requires. The court may require additional proof. Said proof shall be conclusive in all collateral actions and proceedings.

(2) Service of the summons by publication shall consist of its publication in a newspaper likely to give notice to the defendant to be published once a week for three weeks and in case the defendant's post-office address is known or can be ascertained, by mailing him a copy of the summons and complaint, or a notice of the object of the action, as the case may require. The mailing may be omitted if the post-office address cannot be ascertained.

(3) The summons and a verified complaint shall be filed prior to the first publication, and prior to the mailing.

(4) In the cases specified in Rule 262.12 the plaintiff may, at his option and in lieu of service by publication, cause to be delivered to any defendant personally without the state a copy of the summons and verified complaint or notice of object of action as the case may require, which delivery shall have the same effect as a completed publication and mailing. If such defendant be a corporation, delivery may be made to the president, vice president, secretary, treasurer or general manager thereof. [*Supreme Court Order, effective Sept. 1, 1931; Supreme Court Order, effective Sept. 1, 1932; Supreme Court Order, effective July 1, 1941*]

**Note:** Where service of summons is by publication the service is not complete and the time allowed for answer does not begin to run until six days after the last required publication. Section 2640, R. S. 1878, now 262.13, required the summons to be published "not less than once a week for six weeks". Under that requirement it was held that where the summons was published six times, the first time on October 5 and

the last time on November 9, the time to answer did not begin to run until November 16. *Cox v. The North Wisconsin Lumber Co., 82 W 141, 146, 51 NW 1130; Johnson v. Hill, 90 W 19, 22, 62 NW 930.*

Where the entire object of an action is to determine the personal rights and obligations of a defendant, constructive service upon a nonresident is ineffectual. *State ex rel. Ledin v. Davison, 216 W 216, 256 NW 718.*

**262.14 Service by publication in special proceedings.** Service by publication of any process or notice in any special proceeding, except probate proceedings, may be made when the plaintiff is unable with due diligence to make service of such process or notice upon the defendant or party upon whom service is required. Such publication and proof thereof shall be made as required by section 262.13. [*Supreme Court Order, effective July 1, 1941*]

**Note:** See 32.05 re publication of notice of hearing in condemnation proceedings.

262.15 [Repealed by Supreme Court Order, effective Sept. 1, 1932]

262.16 **Proof of service.** Proof of the service of the summons and of the complaint or notice, if any, accompanying the same shall be as follows:

(1) If served by the sheriff, his certificate thereof showing place, time and manner of service.

(2) If by any other person, his affidavit thereof showing place, time and manner of service, that he knew the person served to be the defendant mentioned in the summons and left with, as well as delivered to, him a copy; and if the defendant was not personally served he shall state in such affidavit when, where and with whom such copy was left.

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

(4) In case of publication, the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the summons, with the complaint or notice, as prescribed by law if such mailing shall be required, made by the person who mailed the same.

[Supreme Court Order, effective Sept. 1, 1932]

262.17 **Voluntary appearance.** A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him.

**Note:** As to what is a sufficient appearance to waive defects in service of process, see *Schwartz v. Morris*, 219 W 404, 263 NW 379.

Nonresident defendant, who purported to appear specially to object to jurisdiction of the court over his person, nevertheless made a general appearance by requesting that he recover his "costs and disbursements" from plaintiff, since request for "costs and disbursements" implied full costs of action and was inconsistent with any but general appearance, although mere request for "costs,"

which would be construed as for costs of his motion only, would not have been inconsistent with special appearance. *State ex rel. Nelson v. Grimm*, 219 W 630, 263 NW 533.

Where party making special appearance to object to jurisdiction seeks also other consistent and merely incidental relief on same showing as that relied upon for special appearance, there is no waiver of special appearance or of right to rely upon lack of jurisdiction. *Bitter v. Gold Creek Min. Co.*, 225 W 55, 273 NW 509.