

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.

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.

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.

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.

Cross Reference: See 59.42 (40) as to advance clerk fees and suit tax, when paid.

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.

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. 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.

(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.

262.09 Service of summons on corporations. (1) SAME AS ON INDIVIDUALS; MANNER CUMULATIVE. The summons may be served upon a corporation by delivering a copy thereof as provided in this section; and such service shall be of the same effect as personal service on a natural person. The methods of serving the summons authorized by this section are in addition to the methods authorized by other provisions of law. In lieu of delivering the copy to the officer specified, the copy may be left in his office with the person who is apparently in charge of the office.

(2) **POLITICAL CORPORATIONS.** If the action is against a county, to the chairman of the county board or to the county clerk; if against a town, to the chairman or clerk thereof; if against a city, to the mayor or clerk thereof; if against a village, to the president or clerk thereof; and if against a school district, school board or board of education, to the president, director, secretary or clerk thereof.

(3) **DOMESTIC CORPORATIONS, GENERALLY.** If against any other domestic corporation, to the president, vice president, superintendent, secretary, cashier, treasurer, director, trustee or managing agent. If such corporation has no officer or agent within the state upon whom service can be made (of which fact the certificate of the sheriff shall be evidence) service of the summons and complaint may be made by mailing copies thereof to the corporation at the address given in its articles of incorporation.

(4) **FOREIGN CORPORATIONS, GENERALLY.** If against any foreign corporation (including corporations created by or under acts of Congress) to the president, vice president, superintendent, secretary, cashier, treasurer, director or managing agent in this state, or to any agent having charge of or conducting any business for it in this state, or any trustee or assignee of such corporation; or to its attorney or agent for that purpose whether appointed by the corporation or designated by statute. When service is on an authorized state officer it shall be by delivering to him two copies of the summons and the complaint or notice of object of action and paying him \$2. Such state officer shall file one copy and mail the other to the defendant. If its address is not known or readily ascertainable, mailing is dispensed. But service can be made upon a foreign corporation only when it has property in this state or the cause of action arose therein, or arose out of business transacted in this state, or the cause of action exists in favor of a resident of this state. The certificate of the state officer that he was served with a summons and complaint or notice of object of action and that he mailed the same as required by law shall be evidence of service.

(5) **CONSTRUCTION OF (3) AND (4).** Subsections (3) and (4) are general; and their application is not limited or restricted by the subsections which follow.

(6) **RAILROADS.** If against a railroad corporation, to any station, freight or ticket agent thereof within the state.

(7) **SLEEPING CAR COMPANIES.** If against a sleeping car company (as defined in section 76.02) to any person having charge of any of its cars or any agent found in the state.

(8) **INSURANCE COMPANIES.** If against any foreign insurance corporation, to any agent of such corporation as defined by the insurance laws of this state.

(9) **FOREIGN CORPORATIONS WITH LOCAL BRANCHES.** If against any foreign corporation having an aid or benefit department under its control or in connection therewith doing business here, either as such corporation or by means or in the form of local or of subordinate branches, lodges or divisions, and which has failed to appoint an agent or attorney in compliance with section 208.26, to any officer of any such local or subordinate branch, lodge or division.

(10) **FOREIGN SAVINGS AND LOAN ASSOCIATIONS.** If against any foreign savings and loan association, to any person who solicits 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.

(11) **TELEGRAPH AND TELEPHONE COMPANIES.** If against a telegraph or telephone company, to any operator while on duty or station manager thereof, who is stationed in the county in which the action is brought.

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.

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.

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 section 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.

History: 1951 c. 247 s. 51.

See note to 270.62, citing *Schultz v. Schultz*, 256 W 139, 40 NW (2d) 515.

Authorizing service of summons by publication on a nonresident defendant who cannot be served within the state, so far as attempting to gain jurisdiction by such service of nonresident defendants in behalf of plaintiffs who are seeking money judgments (judgments in personam), is void as being in conflict with the 14th amendment. A state court obtains no jurisdiction in personam over a defendant who is not served

with process within the state and who enters no general appearance. In an action for personal injuries wherein no relief is sought other than in personam, constructive service of process beyond the boundaries of the state is insufficient to give our courts jurisdiction over the person of the nonresident defendant, and a judgment rendered against him on the basis of such service would be void for lack of due process of law. *Sheehan v. Matthew*, 253 W 606, 46 NW (2d) 752.

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 section 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, published in this state, likely to give notice to the defendant once a week for 3 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 section 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.

History: 1951 c. 247 s. 52.

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.

Cross Reference: See 32.05 re publication of notice of hearing in condemnation proceedings.

[262.15 Stats. 1931 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.

262.17 Voluntary appearance; waiver; guardian restricted. A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him, but no guardian or guardian ad litem (for any person under disability) may enter a voluntary appearance or waive a personal service of the summons upon such person under disability.