CHAPTER 807

CIVIL PROCEDURE — MISCELLANEOUS PROVISIONS

NOTE: Chapter 807 was created by Sup. Ct. Order, 67 Wis. 2d 585, 740 (1975), which contains explanatory notes. Statutes prior to the 1983−84 edition also contain these notes.

807.001 Forms. (1) In all civil actions and proceedings in circuit court, the parties and court officials shall use the standard court forms adopted by the judicial conference under s. 758.18 (1), commencing the date on which the forms are adopted. If an applicable court form has been adopted under s. 758.18 (2), that form may be used in lieu of the standard court form.

(2) A party or court official may supplement a court form with additional material.

(3) A court may not dismiss a case, refuse a filing or strike a pleading for failure of a party to use a standard court form under sub. (1) or to follow format rules but shall require the party to submit, within 10 days, a corrected form and may impose statutory fees or costs or both.

(4) If the judicial conference does not create a standard court form for an action or pleading undertaken by a party or court official, the party or court official may use a format consistent with any statutory or court requirement for the action or pleading.

History: Sup. Ct. Order No. 98−01, 228 Wis. 2d xiii (2000); Sup. Ct. Order No. 05−02, 2005 WI 41, 278 Wis. 2d xxxv.

807.01 Settlement offers. (1) After issue is joined but at least 20 days before the trial, the defendant may serve upon the plaintiff a written offer to allow judgment to be taken against the defendant for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of service of the notice of acceptance, and the clerk must thereupon enter judgment accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment, the plaintiff shall not recover costs but defendant shall recover costs to be computed on the demand of the complaint.

(2) After issue is joined but at least 20 days before trial, the defendant may serve upon the plaintiff a written offer that if the defendant fails in the defense the damages be assessed at a specified sum. If the plaintiff accepts the offer and serves notice thereof in writing before trial and within 10 days after receipt of the offer and prevails upon the trial, either party may file proof of service of the offer and acceptance and the damages will be assessed accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer is not accepted and if damages assessed in favor of the plaintiff do not exceed the damages offered, neither party shall recover costs.

(3) After issue is joined but at least 20 days before trial, the plaintiff may serve upon the defendant a written offer of settlement for the sum, or property, or to the effect therein specified, with costs. If the defendant accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the defendant may file the offer, with proof of service of the notice of acceptance, with the clerk of court. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of settlement is not accepted and the plaintiff recovers a more favorable judgment, the plaintiff shall recover double the amount of the taxable costs.

(4) If there is an offer of settlement by a party under this section which is not accepted and the party recovers a judgment which is greater than or equal to the amount specified in the offer of settlement, the party is entitled to interest at an annual rate equal to 1 percent plus the prime rate in effect on January 1 of the year in which the judgment is entered if the judgment is entered on or before June 30 of that year or in effect on July 1 of the year in which the judgment is entered if the judgment is entered after June 30 of that year, as reported by the federal reserve board in federal reserve statistical release H. 15, on the amount recovered from the date of the offer of settlement until the amount is paid. Interest under this section is in lieu of interest computed under ss. 814.04 (4) and 815.05 (8).

(5) Subsections (1) to (4) apply to offers which may be made by any party to any other party who demands a judgment or setoff against the offering party.

History: Sup. Ct. Order, 67 Wis. 2d 585, 741 (1975); Sup. Ct. Order, 67 Wis. 2d vii (1975); 1975 c. 218; 1979 c. 271; 1981 c. 314; 1983 a. 253; 1985 a. 340; 2011 a. 69.

Cross−reference: For tender of payment, see s. 895.14.

Sub. (3) applies to cases of both liquidated and unliquidated damages. Graves v. Travelers Ins. Co. 66 Wis. 2d 124, 224 N.W.2d 398 (1974).

Subs. (3) and (4) do not apply to a rejected joint settlement offer made on behalf of individual plaintiffs. White v. General Casualty Company of Wisconsin, 118 Wis. 2d 433, 348 N.W.2d 614 (Ct. App. 1984).

Defendants who are jointly and severally liable may submit joint offers of judgments to an individual plaintiff under sub. (1). Denil v. Integrity Mutual Insurance Co. 135 Wis. 2d 373, 401 N.W.2d 13 (Ct. App. 1986).

Offers under sub. (3) are revocable. Sonnenburg v. Grohskopf, 144 Wis. 2d 62, 422 N.W.2d 925 (Ct. App. 1988).

Under sub. (3), a plaintiff suing multiple defendants under multiple theories, one of which involves several liability, must make separate settlement offers. Smith v. Keller, 151 Wis. 2d 264, 444 N.W.2d 396 (Ct. App. 1989).

Sub. (4) provides for simple, rather than compound, interest to accrue on the amount recovered. The relationship between sub. (4) and s. 628.46 (1) is discussed. Upthegrove v. Lumbermans Ins. Co. 152 Wis. 2d 7, 447 N.W.2d 367 (Ct. App. 1989).

While the inclusion of a reference to this section is preferable, a settlement offer that should reasonably be understood as an offer pursuant to s. 807.01 is sufficient to invoke its provisions. Bauer v. Piper Industries, Inc. 154 Wis. 2d 758, 454 N.W.2d 28 (Ct. App. 1990).

A plaintiff's offer of settlement addressed to multiple defendants reciting one aggregate settlement figure for all claims did not allow the defendants to individually assess their own exposure and is not valid for sanctions purposes. Wilber v. Fuchs, 158 Wis. 2d 158, 461 N.W.2d 803 (Ct. App. 1990).

A plaintiff's single offer of settlement to two individual defendant's and the insurer of both, within the policy limits, invoked sanctions under this section as the insurer was the only party interested in the settlement and could fully evaluate its exposure. Testa v. Farmers Ins. Exchange, 164 Wis. 2d 296, 474 N.W.2d 776 (Ct. App. 1991).

When damages are subject to a statutory limit, costs and interest awarded under this section are in addition to the damage award. Gorman v. Wausau Ins. Cos. 175 Wis. 2d 320, 499 N.W.2d 245 (Ct. App. 1993).

An insurer was not subject to sanctions under this section when, after initially rejecting the plaintiff's offer to settle, new facts resulted in the insurer's submitting its own offer to settle in the same amount. Oliver v. Heritage Mutual Insurance Co. 179 Wis. 2d 1, 505 N.W.2d 452 (Ct. App. 1993).

Separate offers to the defendant and the defendant's insurer in the same amount, which left unclear whether acceptance by the insurer also released the insured, did

not invoke sanctions under this section when the verdict exceeded the amount of the individual offers. Cue v. Carthage College, 179 Wis. 2d 175, 507 N.W.2d 109 (Ct. App. 1993).

Common law prejudgment interest and 12% interest under sub. (4) are not to be combined. Erickson v. Gunderson, 183 Wis. 2d 106, 515 N.W.2d 293 (Ct. App. 1994).

Interest under sub. (4) does not accrue on an award of double costs under sub. (3). American Motorists Insurance Co. v. R & S Meats, Inc. 190 Wis. 2d 197, 526 N.W.2d 791 (Ct. App. 1994).

A party making a settlement offer must do so in clear and unambiguous terms. A party's mere offer to settle for a specified sum when a part of the party's claim had been admitted and already reduced to judgment was ambiguous. Stan's Lumber, Inc. v. Fleming, 196 Wis. 2d 554, 538 N.W.2d 849 (Ct. App. 1995), 94−1258, 95−0004.

In a case involving a subrogated defendant, failure of an offer to specify whether payment to the subrogated defendant would be made from the settlement proceeds left the defendants unable to fully evaluate their exposure so that the offer was not valid for purposes of sub. (3). Ritt v. Dental Care Associates, S.C. 199 Wis. 2d 48, 543 N.W.2d 852 (Ct. App. 1995), 94−3344.

A judgment against a defendant to whom an offer to settle was made that is equal to or larger than the offer entitles the plaintiff to interest under sub. (4) on the amount recovered against the party to whom the offer was made. Blank v. USAA Property & Casualty Ins. Co. 200 Wis. 2d 270, 546 N.W.2d 512 (Ct. App. 1996), 95−1806.

Under sub. (3), the offer and judgment must be compared exclusive of any costs. Northridge Co. v. W.R. Grace & Co. 205 Wis. 2d 267, 556 N.W.2d 345 (Ct. App. 1996), 95−1193.

A single offer made to the plaintiff on condition that the plaintiff "indemnify or otherwise satisfy any existing related subrogated claims" invoked sub. (1) when the plaintiff knew the amount of the only subrogated claims and could fully and fairly evaluate the offer. Staehler v. Beuthin, 206 Wis. 2d 610, 557 N.W.2d 487 (Ct. App. 1996), 95−3295.

In sub. (4), "amount recovered" means that portion of a verdict for which a party is responsible. Nelson v. McLaughlin, 211 Wis. 2d 487, 565 N.W.2d 123 (1997), 95−3391.

Sub. (1) is procedural in nature and may be applied in federal claims brought in state court unless it defeats a substantial federal right. Duello v. Board of Regents, 220 Wis. 2d 554, 583 N.W.2d 863 (Ct. App. 1998), 97−2608.

An insurer has a fiduciary duty to clarify a settlement offer made to it that is ambiguous with respect to whether the offer applies to only the insurer or to both the insurer and the insured. Failure to clarify the ambiguity results in a valid offer under this section. Prosser v. Leuck, 225 Wis. 2d 126, 592 N.W.2d 178 (1999), 97−0686.

Sub. (3) provides no exceptions for assessments of double costs. Costs associated with determining coverage are subject to doubling under sub. (3). Prosser v. Leuck, 225 Wis. 2d 126, 592 N.W.2d 178 (1999), 97−0686.

The 10−day period in sub. (1) was tolled when a stay was entered one day after a settlement offer was served. Briggs v. Farmers Insurance Exchange, 2000 WI App 40, 233 Wis. 2d 163, 607 N.W.2d 670, 99−1123.

A party with multiple claims is not required to itemize a settlement offer in order to invoke the double costs and interest provisions of this section. Batteries Plus, LLC v. Mohr, 2000 WI App 153, 237 Wis. 2d 776, 615 N.W.2d 196, 99−1319.

Attorney's fees and costs, regardless of why they are awarded, are not part of the "amount recovered" under sub. (4) but rather are a shifting of the costs of litigation, and separate from the recovery. Dobbratz Trucking & Excavating v. PACCAR, Inc. 2002 WI App 138, 256 Wis. 2d 205, 647 N.W.2d 315, 01−1091.

Interest under sub. (4) and double costs under sub. (3) cannot be awarded when no judgment is entered in a case. Osman v. Phipps, 2002 WI App 170, 256 Wis. 2d 589, 649 N.W.2d 701, 01−1248.

When a defendant is sued under a fee−shifting statute, the defendant is on notice that the plaintiff is seeking not only damages but also reasonable attorney fees. Accordingly, when making an offer of judgment, the defendant is to include such fees and to so inform the plaintiff. The trial court should also include attorney fees in the judgment when it measures the offer against the judgment under sub. (1). Pachowitz v. LeDoux, 2003 WI App 120, 265 Wis. 2d 631, 666 N.W.2d 88, 02−2100.

It is not necessary that a judgment under sub. (4) must involve litigation and result in a verdict. A stipulated judgment greater than the plaintiff's earlier settlement offer entitled the plaintiff to double costs and interest. Tomsen v. Secura Insurance, 2003 WI App 187, 266 Wis. 2d 491, 668 N.W.2d 794, 03−0245.

The test for whether a given provision may be included in a settlement offer valid under this section is not reasonableness, but whether the provision specifies a remedy that could be imposed by the court. An offer demanding payment within 15 days of the offer was invalid because a judge could not enter a judgment requiring that the defendant tender payment within 15 days. DeWitt Ross & Stevens, S.C. v. Galaxy Gaming and Racing Limited Partnership, 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839, 02−0359.

"Taxable costs" in sub. (3) means those costs allowed as items of cost under s. 814.04. "Costs" in the first part of sub. (3) means "taxable costs." Costs recoverable under s. 814.04 include fees allowed by law, which includes attorney's fees allowed by law that represent a necessary cost of litigation to which a prevailing party is entitled under s. 814.04 (2). Alberte v. Anew Health Care Services, Inc. 2004 WI App 146, 275 Wis. 2d 571, 685 N.W.2d 614, 03−2674.

The pendency of a motion to dismiss part of a plaintiff's claim did not absolve the plaintiff from having to act on a statutory offer. The plaintiffs could have fully and fairly evaluated the offer despite the pending motion. If an offer is plain on its face and offers to settle the entire claim, it is an offer to do so despite the vagaries of suit. Mews v. Beaster, 2005 WI App 53, 279 Wis. 2d 507, 694 N.W.2d 476, 04−1147.

When the court of appeals reversed the trial court to reinstate a jury verdict that was clearly less than the defendant's original offer of settlement that the plaintiff rejected, the trial court was ordered to offset the costs in favor of the defendant against the judgment awarded to the plaintiff under this section and to enter the new judgment for the balance, under s. 814.12. Hamdan v. Dawicki, 2006 WI App 209, 296 Wis. 2d 623, 724 N.W. 2d 234, 05−1821.

A child recipient of an offer was unable to fully and fairly evaluate the terms of the offer when 1) it imposed an obligation for medical expenses upon a minor, when the legal obligation rested with the parent; 2) it employed overly broad language that imposed responsibility for any and all claims, rather than existing claims; and 3) the context in which the offer was made, specifically in light of requests for clarification and a contemporaneous offer to the child's parent, created confusion as to the child's obligations under the offer. Bockin v. Farmers Insurance Exchange, 2006 WI App 220, 296 Wis. 2d 694, 723 N.W. 2d 741, 05−3040.

Sub. (4) makes no distinction between pre− and postjudgment interest. It specifies that interest is calculated on a single amount, "the amount recovered," over one period of time, from the date of the offer of settlement until the amount is paid. The defendant's 2−stage calculation of interest, utilizing two time periods and two amounts recovered, could not be reconciled with the language of sub. (4). Sub. (4) provides for simple, not compound, interest. Morrison v. Rankin, 2008 WI App 158, 314 Wis. 2d 376, 760 N.W.2d 441, 08−0422.

When the case involves a subrogated party with a separate claim against the defendants, the plaintiff's offer of settlement must account for that separate claim. Because each separately owns part of the claim against the tortfeasor, a settlement between the insured and the tortfeasor that does not involve the subrogated insurer as a party, or provide for payment of the subrogated interest, leaves unsatisfied the part of the claim owned by the subrogated party. Hadrian v. State Farm Mutual Automobile Insurance Company, 2008 WI App 188, 315 Wis. 2d 529, 763 N.W.2d 215, 08−0527.

A single offer of settlement from an insured and its subrogated carrier was enforceable because it was clear that it encompassed both the insured's and its subrogated carrier's claims. Industrial Risk Insurers v. American Engineering Testing, Inc. 2009 WI App 62, 318 Wis. 2d 148, 769 N.W.2d 82, 08−0484.

Under *Prosser*, an insurer has a duty to clarify an ambiguous settlement offer when the ambiguity related to the settlement offer's failure to address a subrogated claim. The insurer's fiduciary duty regarding settlement mandates that the insurer must clarify an ambiguous offer in order to fully protect its insured's interests. Kubichek v. Kotecki, 2011 WI App 32, 332 Wis. 2d 522, 796 N.W.2d 858, 09−2331.

Subs. (3) and (4) may be utilized in diversity actions in federal courts. Dillingham−Healy v. Milwaukee Metropolitan Sewerage District, 796 F. Supp. 1191 (1992).

The new Wisconsin rules of civil procedure: Chapters 805−807. Graczyk, 59 MLR 671.

Offers of Judgment in Wisconsin Courts. Crinion. Wis. Law. Feb. 1991.

Meeting Head On: Offers of Settlement and an Insurer's Potential Bad Faith. Warch. Wis. Law. Oct. 1996.

807.02 Motions, where heard; stay of proceedings. Except as provided in s. 807.13 or when the parties stipulate otherwise and the court approves, motions in actions or proceedings in the circuit court must be heard within the circuit where the action is triable. Orders out of court, not requiring notice, may be made by the presiding judge of the court in any part of the state. No order to stay proceedings after a verdict, report or finding in any circuit court may be made by a circuit or supplemental court commissioner. No stay of proceedings for more than 20 days may be granted except upon previous notice to the adverse party.

History: Sup. Ct. Order, 67 Wis. 2d 585, 742 (1975); 1977 c. 449; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 2001 a. 61.

Judicial Council Note, 1988: The section is amended to except telephone hearings on motions from the requirement that motions be heard in the circuit where the action is triable. The amendment also permits the court to hear motions elsewhere upon stipulation of the parties. [Re Order effective Jan. 1, 1988]

807.03 Orders, how vacated and modified. An order made out of court without notice may be vacated or modified without notice by the judge who made it. An order made upon notice shall not be modified or vacated except by the court upon notice, but the presiding judge may suspend the order, in whole or in part, during the pendency of a motion to the court to modify or vacate the order.

History: Sup. Ct. Order, 67 Wis. 2d 585, 743 (1975).

807.04 Proceedings, where held; restriction as to making orders. (1) Except as provided under sub. (2), all trials, and all hearings at which oral testimony is to be presented, shall be held in open court. The court may make any order which a judge or a circuit or supplemental court commissioner has power to make.

(2) All hearings in which oral testimony is to be presented in an action or special proceeding that is commenced by a prisoner, as defined in s. 801.02 (7) (a) 2., shall be conducted by telephone, interactive video and audio transmission or other live interactive communication without removing him or her from the facility or institution if his or her participation is required or permitted and if the official having custody of him or her agrees. The court in which the action or special proceeding is commenced shall, when feasible, also allow counsel, witnesses and other necessary persons to participate in the hearing by telephone, interactive video and audio transmission or other live interactive communication.

The procedures and policies under s. 807.13 shall apply to the extent feasible.

History: Sup. Ct. Order, 67 Wis. 2d 585, 743 (1975); 1977 c. 187 s. 135; 1997 a. 133; 2001 a. 61.

807.05 Stipulations. No agreement, stipulation, or consent between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless made in court or during a proceeding conducted under s. 807.13 or 967.08 and entered in the minutes or recorded by the reporter, or made in writing and subscribed by the party to be bound thereby or the party's attorney.

History: Sup. Ct. Order, 67 Wis. 2d 585, 744 (1975); 1975 c. 218; Sup. Ct. Order, 141 Wis. 2d xiii (1987).

Comment, 2008: This section also applies to agreements, stipulations, and consents reached as a result of alternative dispute methods outlined in s. 802.12. In some cases, such as family law cases, court approval is required for an agreement to be effective.

Note: Sup. Ct. Order No. 05−05, 2008 WI 2, states, "the comments to Wis. Stat. §§ 807.05 and 802.12 are not adopted but will be published and may be consulted for guidance in interpreting and applying the statutes."

Judicial Council Note, 1988: The statute is amended to reflect that stipulations entered into at telephone conferences are no less binding than those made in writing or in court. [Re Order effective Jan. 1, 1988]

When a stipulation did not satisfy this section, summary judgment was improper because there was no factual basis on the record for the decision. Wilharms v. Wilharms, 93 Wis. 2d 671, 287 N.W.2d 779 (1980).

An oral agreement to settle an action that does not comply with this section is unenforceable. Adelmeyer v. Wisconsin Electric Power Co. 135 Wis. 2d 367, 400 N.W.2d 473 (Ct. App. 1986).

This section does not affect procedural stipulations or judicial admissions that dispense with evidentiary requirements. State v. Aldazabal, 146 Wis. 2d 267, 430 N.W.2d 614 (Ct. App. 1988).

The subscription requirement is met by a stamped facsimile signature. This provision does not require hand−written signatures. Kocinski v. Home Insurance Co. 154 Wis. 2d 56, 452 N.W.2d 360 (1990).

Contract law is not binding in construing, enforcing, or modifying stipulations, but principles of contract law, including the uniform commercial code, may illuminate a stipulation dispute, even to the point of being dispositive. Phone Partners Ltd. v. C. F. Communications, 196 Wis. 2d 702, 512 N.W.2d 155 (Ct. App. 1995), 94−2279.

To constitute a stipulation under this section, a statement must be conclusive on the question. The concession of a fact to the court made for strategic reasons and not agreed to by the other party is not a stipulation and the court need not engage in a colloquy with the parties about it. Fritz v. Fritz, 231 Wis. 2d 33, 605 N.W.2d 270 (Ct. App. 1999), 98−0605.

This section does not provide for a party to subscribe to an agreement through general conduct. A party's assent or approval must be formalized in some way on the document itself. Laska v. Laska, 2002 WI App 132, 255 Wis. 2d 823, 646 N.W.2d 393, 02−0022.

A fax transmittal letter sent by counsel that bore counsel's initials at the conclusion of the message text was subscribed within the meaning of this section thereby rendering the settlement terms accepted in that letter binding on the client and enforceable by the court. Waite v. Easton−White Creek Lions, Inc. 2006 WI App 19, 289 Wis. 2d 100, 709 N.W.2d 88, 05−1688.

When an attorney signed a settlement agreement contingent on his client's consent by noon the following day and the client did not consent to the settlement by the deadline created by the contingency, the settlement was not enforceable under this section. Subsequent actions by the parties cannot fulfill the statutory requirements. Neither the untimely oral assurances by the attorney to the other parties, nor the attorney's call notifying the court that a settlement had been reached, satisfied the contingency set forth in the agreement. Affordable Erecting, Inc. v. Neosho Trompler, Inc. 2006 WI 67, 291 Wis. 2d 259, 715 N.W.2d 620, 04−2746.

Oral settlements are not invariably unenforceable. Gliniciki v. Borden, Inc. 444 F. Supp. 619.

807.06 Copy of paper may be used, when. (1) If any original paper or pleading be lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original.

(2) The clerk of circuit court may electronically scan any paper or pleading, as permitted under SCR 72.05, and may discard the original paper or pleading pursuant to SCR 72.03 (3). If the original is discarded, the electronically scanned document constitutes the official court record.

NOTE: Section is shown as affected by SCO No. 12−05, eff. 1−1−13. Prior to 1−1−13 it reads:

807.06 Copy of paper may be used, when. If any original paper or pleading be lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original.

History: Sup. Ct. Order, 67 Wis. 2d 585, 744 (1975); Sup. Ct. Order No. 12−05, 2012 WI 112, filed 11−1−12, eff. 1−1−13.

807.07 Irregularities and lack of jurisdiction over the parties waived on appeal; jurisdiction exercised; transfer to proper court. (1) When an appeal from any court, tribunal, officer or board is attempted to any court and return is duly made to such court, the respondent shall be deemed to have waived all objections to the regularity or sufficiency of the appeal or to the jurisdiction over the parties of the appellate court, unless the respondent moves to dismiss such appeal before taking or participating in any other proceedings in said appellate court. If it appears upon the hearing of such motion that such appeal was attempted in good faith the court may allow any defect or omission in the appeal papers to be supplied, either with or without terms, and with the same effect as if the appeal had been originally properly taken.

(2) If the tribunal from which an appeal is taken had no jurisdiction of the subject matter and the court to which the appeal is taken has such jurisdiction, the court shall, if it appears that the action or proceeding was commenced in the good faith and belief that the first named tribunal possessed jurisdiction, allow it to proceed as if originally commenced in the proper court and shall allow the pleadings and proceedings to be amended accordingly; and in all cases in every court where objection to its jurisdiction is sustained the cause shall be certified to some court having jurisdiction, provided it appears that the error arose from mistake.

History: Sup. Ct. Order, 67 Wis. 2d 744; 1975 c. 218; Sup. Ct. Order, 92 Wis. 2d xiii (1979).

Judicial Council Committee's Note, 1979: Sub. (1) is amended to clarify that it addresses jurisdiction over the parties, and not the subject matter jurisdiction of the appellate court. Lack of subject matter jurisdiction of an appellate court cannot be waived. Sub. (1) cannot be used to cure defects concerning subject matter jurisdiction of an appellate court. [Re Order effective Jan. 1, 1980]

This section does not confer jurisdiction on the court to hear an appeal in a criminal case when the appeal is not timely. Scheid v. State, 60 Wis. 2d 575, 211 N.W.2d 458 (1973).

Sub. (2) applies only at the trial court level. It does not confer appellate jurisdiction on the supreme court when an appeal is first mistakenly taken to the circuit court. State v. Jakubowski, 61 Wis. 2d 220, 212 N.W.2d 155 (1973).

Mere retention of an appellant's brief prior to making a motion to dismiss is not participation in the appeal and does not constitute a waiver of an objection to jurisdiction. Prior holdings to the contrary are overruled. State v. Van Duyse, 66 Wis. 2d 286, 224 N.W.2d 603 (1974).

When a claimant timely appealed an adverse worker's compensation decision in good faith but erroneously captioned the appeal papers, the trial court abused its discretion by dismissing the action. Cruz v. DILHR, 81 Wis. 2d 442, 260 N.W.2d 692 (1978).

Sub. (1) does not apply to petitions to appeal under s. 808.10. First Wisconsin National Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).

The court of appeals erred in failing to exercise discretion under sub. (1) to permit an amendment of a notice of appeal. Northridge Bank v. Community Eye Care Center, 94 Wis. 2d 201, 287 N.W.2d 810 (1980).

Sub. (2) applies to actions for review under ch. 227. Shopper Advertiser v. DOR 117 Wis. 2d 223, 344 N.W.2d 115 (1984).

"Return" is a long−standing term of art that refers to the official record of the body whose decision is being reviewed and that must be filed with the reviewing court in a certiorari action. Because sub. (1) provides that "return" must be "duly made" before the respondent's participation in the action waives jurisdictional objections, when respondent's answer was filed before return was made to the circuit court, the answer did not waive its right to contest personal jurisdiction. Bergstrom v. Polk County, 2011 WI App 20, 331 Wis. 2d 678, 795 N.W.2d 482, 09−2572.

807.08 Borrowing court files regulated. The clerk shall not permit any paper filed in the clerk's office to be taken therefrom unless upon written order of a judge of the court. The clerk shall take a written receipt for all papers so taken and preserve the same until such papers are returned. Papers so taken shall be returned at once upon request of the clerk or presiding judge, and no paper shall be kept longer than 10 days.

History: Sup. Ct. Order, 67 Wis. 2d 585, 745 (1975); 1993 a. 486.

Clerks of court may not send original records of criminal cases to the public defender prior to appeal unless a judge authorizes the release. 69 Atty. Gen. 63.

807.09 Conciliators. (1) A circuit judge of the circuit court of any county may appoint and remove at any time, any retired or former circuit or county court judge to act, in matters referred by the judge and in conciliation matters. When a matter for conciliation is referred for such purpose, the conciliator shall have full authority to hear, determine and report findings to the court. Such conciliators may be appointed circuit court commissioners under SCR 75.02 (1).

(2) The circuit judges of such county shall make rules, not inconsistent with law, governing procedure before and pertaining to such conciliators and the county board shall fix and provide for their compensation.

History: Sup. Ct. Order, 67 Wis. 2d 585, 746 (1975); 1975 c. 218; 1977 c. 187 s. 135; 1977 c. 323 s. 16; 2001 a. 61.

807.10 Settlements in behalf of minors or individuals adjudicated incompetent; judgments. (1) A compromise or settlement of an action or proceeding to which a minor or individual adjudicated incompetent is a party may be made by the guardian, if the guardian is represented by an attorney, or the guardian ad litem with the approval of the court in which such action or proceeding is pending.

(2) A cause of action in favor of or against a minor or individual adjudicated incompetent may, without the commencement of an action thereon, be settled by the guardian, if the guardian is represented by an attorney, with the approval of the court appointing the guardian, or by the guardian ad litem with the approval of any court of record. An order approving a settlement or compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the court.

(3) If the amount awarded to a minor or individual adjudicated incompetent by judgment or by an order of the court approving a compromise settlement of a claim or cause of action of the minor or individual does not exceed the amount specified under s. 867.03 (1g) (intro.), exclusive of interest and costs and disbursements, and if there is no guardian of the ward, the court may upon application by the guardian ad litem after judgment, or in the order approving settlement, fix and allow the expenses of the action, including attorney fees and fees of guardian ad litem, authorize the payment of the total recovery to the clerk of the court, authorize and direct the guardian ad litem upon the payment to satisfy and discharge the judgment, or to execute releases to the parties entitled thereto, and enter into a stipulation dismissing the action upon its merits. The order shall also direct the clerk upon the payment to pay the costs, disbursements, and expenses of the action and to dispose of the balance in a manner provided in s. 54.12 (1), as selected by the court. The fee for the clerk's services for handling, depositing, and disbursing funds under this subsection is prescribed in s. 814.61 (12) (a).

History: Sup. Ct. Order, 67 Wis. 2d 585, 746 (1975); 1975 c. 218; 1981 c. 317; 1997 a. 290; 1999 a. 32; 2005 a. 387.

The quasi−judicial immunity of a guardian ad litem applies only to liability for the negligent performance of his or her duties, not as a shield against court−imposed sanctions for failure to obey a court order. Reed v. Luebke, 2003 WI App 207, 267 Wis. 2d 596, 671 N.W.2d 304, 02−2211.

Whether an individual has satisfied the standard for mental incompetence under this section should be determined by considering the person's ability to: 1) reasonably understand pertinent information; 2) rationally evaluate litigation choices based upon that information; and 3) rationally communicate with, assist, and direct counsel. Kainz v. Ingles, 2007 WI App 118, 300 Wis. 2d 670, 731 N.W.2d 313, 06−0963.

Because a claim was resolved when the plaintiff took judgment against the defendant's insurer, the requirement that settlements involving minors be approved by the court was not implicated. Parsons v. American Family Insurance Company, 2007 WI App 211, 305 Wis. 2d 630, 740 N.W.2d 399, 06−2481.

807.11 Orders: rendition and entry. (1) An order is rendered when it is signed by the judge.

(2) An order is entered when it is filed in the office of the clerk of court.

History: Sup. Ct. Order, 67 Wis. 2d 585, 747 (1975).

An oral order of a state court that an injunction be issued was valid even though the case was removed to federal court before the order was signed. Heidel v. Voight, 456 F. Supp. 959 (1978).

807.12 Suing by fictitious name or as unknown; partners' names unknown. (1) When the name or a part of the name of any defendant, or when any proper party defendant to an action to establish or enforce, redeem from or discharge a lien or claim to property is unknown to the plaintiff, such defendant may be designated a defendant by so much of the name as is known, or by a fictitious name, or as an unknown heir, representative, owner or person as the case may require, adding such description as may reasonably indicate the person intended. But no person whose title to or interest in land appears of record or who is in actual occupancy of land shall be proceeded against as an unknown owner.

(2) When the name of such defendant is ascertained the process, pleadings and all proceedings may be amended by an order directing the insertion of the true name instead of the designation employed.

(3) In an action against a partnership, if the names of the partners are unknown to the plaintiff, all proceedings may be in the partnership name until the names of the partners are ascertained, whereupon the process, pleadings and all proceedings shall be amended by order directing the insertion of such names.

History: Sup. Ct. Order, 67 Wis. 2d 585, 748 (1975).

This section does not authorize judgment against an unnamed individual. Miller v. Smith, 100 Wis. 2d 609, 302 N.W.2d 468 (1981).

When an action against an unnamed defendant under s. 807.12 was filed on the last day of the limitation period and amended process naming the defendant was served within 60 days after filing, the action was not barred. Relation back requirements of s. 802.09 (3) were inapplicable. Lak v. Richardson−Merrell, Inc. 100 Wis. 2d 641, 302 N.W.2d 483 (1981).

A fictitiously designated defendant's right to extinction of an action does not effectively vest until 60 days after the statute of limitations runs. Lavine v. Hartford Acc. & Indemnity, 140 Wis. 2d 434, 410 N.W.2d 623 (Ct. App. 1987).

A cause of action does not accrue until the plaintiff knows the tortfeasor's identity or reasonably should have discovered it. Spitler v. Dean, 148 Wis. 2d 630, 436 N.W.2d 308 (1989).

807.13 Telephone and audiovisual proceedings. (1) ORAL ARGUMENTS. The court may permit any oral argument by telephone.

(2) EVIDENTIARY HEARINGS. In civil actions and proceedings, including those under chs. 48, 51, 54, and 55, the court may admit oral testimony communicated to the court on the record by telephone or live audiovisual means, subject to cross−examination, when:

(a) The applicable statutes or rules permit;

(b) The parties so stipulate; or

(c) The proponent shows good cause to the court. Appropriate considerations are:

1. Whether any undue surprise or prejudice would result;

2. Whether the proponent has been unable, after due diligence, to procure the physical presence of the witness;

3. The convenience of the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony;

4. Whether the procedure would allow full effective cross−examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross−examination;

5. The importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

6. Whether the quality of the communication is sufficient to understand the offered testimony;

7. Whether a physical liberty interest is at stake in the proceeding; and

8. Such other factors as the court may, in each individual case, determine to be relevant.

(3) CONFERENCES. Whenever the applicable statutes or rules so permit, or the court otherwise determines that it is practical to do so, conferences in civil actions and proceedings may be conducted by telephone.

(4) NOTICE; REPORTING; EFFECT OF ACTIONS TAKEN; ACCESS. In any proceeding conducted by telephone under this section:

(a) If the proceeding is required to be reported, a court reporter shall be in simultaneous voice communication with all parties to the call, whether or not in the physical presence of any of them.

(b) Parties entitled to be heard shall be given prior notice of the manner and time of the proceeding. Any participant other than the reporter electing to be present with any other participant shall give reasonable notice thereof to the other participants.

(c) Regardless of the physical location of any party to the call, any waiver, stipulation, motion, objection, decision, order or any other action taken by the court or a party to a reported telephone hearing has the same effect as if made in open court.

(d) With the exception of scheduling conferences and pretrial conferences, proceedings shall be conducted in a courtroom or other place reasonably accessible to the public. Participants in the proceeding may participate by telephone from any location or may elect to be physically present with one or more of the other participants. Simultaneous access to the proceeding shall be provided to persons entitled to attend by means of a loudspeaker or, upon request to the court, by making a person party to the telephone call without charge.

History: Sup. Ct. Order, 141 Wis. 2d xiii (1987); Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1997 a. 252; 1999 a. 85; 2005 a. 387.

Judicial Council Note, 1988: This section [created] allows oral arguments to be heard, evidence to be taken, or conferences to be conducted, by telephone. Sub. (4) prescribes the basic procedure for such proceedings. [Re Order eff. 1−1−88]

Judicial Council Note, 1990: The change in sub. (2) (c) (intro.) from "interest of justice" to "good cause" is not intended as substantive, but merely to conform it to the language used in other statutes relating to use of telephonic procedures in judicial proceedings. SS. 967.08, 970.03 (13), 971.14 (1) (c) and (4) (b), and 971.17 (2), Stats. [Re Order eff. 1−1−91]

Speaker−telephone testimony in civil jury trials: The next best thing to being there? 1988 WLR 293.

Videoconference Trial Testimony. Mondschein. Wis. Law. July 1997.

807.14 Interpreters. On request of any party, the court may permit an interpreter to act in any civil proceeding other than trial by telephone or live audiovisual means.

History: Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1997 a. 252.

Judicial Council Note, 1988: This section [created] allows interpreters to serve by telephone or live audio−visual means in civil proceedings other than trials, on request of any party and approval by the court. [Re Order effective Jan. 1, 1988]

Se Habla Everything: The Right to an Impartial, Qualified Interpreter. Araiza. Wis. Law. Sept. 1997.

807.15 Penalty for certain actions by prisoners. (1) In this section, "prisoner" has the meaning given in s. 801.02 (7) (a) 2.

(2) In any action or special proceeding, including a petition for a common law writ of certiorari, brought by a prisoner, the court may, on its own motion or on the motion of any party, order the department of corrections to extend the prisoner's mandatory release date calculated under s. 302.11 (1) or the prisoner's eligibility for release to extended supervision under s. 302.113 (3) (bm) or 302.114 (3) (c) or order the sheriff to deprive the prisoner of good time under s. 302.43 if the court finds that any of the following applies:

(a) The action or special proceeding was filed for a malicious purpose.

(b) The action or special proceeding was filed solely to harass the party against which it was filed.

(c) The prisoner testifies falsely or otherwise knowingly offers false evidence or provides false information to the court.

(3) (a) Subject to pars. (b) and (c), if a court orders the department of corrections to extend a prisoner's mandatory release date or eligibility for release to extended supervision or orders the sheriff to deprive the prisoner of good time under sub. (2), the order shall specify the number of days by which the mandatory release date or eligibility for release to extended supervision is to be extended or the good time deprived.

(b) An order under sub. (2) to extend a prisoner's mandatory release date or deprive a prisoner of good time may not require the prisoner to serve more days than provided for under the prisoner's sentence.

(c) An order under sub. (2) to extend the eligibility for release to extended supervision of a prisoner subject to s. 302.113 may not require the prisoner to serve more days in prison than the total length of the prisoner's bifurcated sentence.

(4) This section applies to prisoners who committed an offense on or after September 1, 1998.

History: 1997 a. 133, 283.