

WISCONSIN DEPARTMENT OF JUSTICE
PEG LAUTENSCHLAGER, ATTORNEY GENERAL

CIVIL
PROCESS
MANUAL

JANUARY 2003

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Dear Law Enforcement Official,

Civil process is critical to the functioning of our legal system. Foreclosure, garnishment, replevin, civil suits, and the enforcement of judgements, involve the timely service of papers at critical stages of the proceedings. Although other aspects of law enforcement may receive more notoriety the service of process in conformity with Wisconsin statutes is vital to the smooth operation of our legal system.

Wisconsin's sheriffs and their deputies have discharged this function commendably. Many departments have developed their own protocols and policies that have served them well over the years. This manual is not intended in any way to circumvent local practice but rather to be a general guide to some of the basic legal issues and requirements involved. I trust that you find it useful.

Although many individuals contributed to the updating of this manual, I would like to acknowledge Assistant Attorney General David Perlman for his role in coordinating this effort. Please do not hesitate to contact David if you have any questions or comments regarding this manual.

Sincerely,

A handwritten signature in black ink that reads "Peggy A. Lautenschlager". The signature is written in a cursive, flowing style.

*Peggy A. Lautenschlager
Attorney General*

CIVIL PROCESS MANUAL

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ACKNOWLEDGEMENTS

A manual such as this one is not possible to produce without review, input, and constructive suggestion from professionals in the field. Many people from law enforcement took valuable time to review the proposed drafts and provide their expertise. It is impossible to single out all those who made valuable contributions but a few deserve specific mention for their tireless and superb efforts to the project. The following people are so recognized:

Chief Jed Dolnick of the Jackson Police Department,

Sergeant Dean Colrud of the Portage County Sheriff's Department,

Detective Sherri Manning of the Milwaukee County Sheriff's Department, and

Deputy Gary Richards of the Milwaukee County Sheriff's Department.

In addition special thanks to Jim Cardinal and to the Wisconsin Sheriffs and Deputy Sheriffs Association for their encouragement, knowledge and support.

Finally, a special acknowledgement to former Assistant Attorney General Ted Purcell whose research and notes were instrumental to the completion of the text and whose efforts in the previous manual set the format and standard for this effort.

The text was written by Assistant Attorney General Dave Perlman of the Training and Standards Bureau of the Wisconsin Department of Justice.

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CIVIL PROCESS MANUAL

I. INTRODUCTION

Purpose and Goal of Manual

The purpose of this manual is to be a guide to the deputy sheriff in serving process. The focus will be on practical concerns and not on the history and evolution of the law. Whenever possible the manual will provide specific information with clear-cut instructions. However, as in most areas of the law, there are gray areas and in those situations the manual will only be able to offer suggestions. The manual is meant for statewide use and thus will limit its information to an overview of the various laws of service of process, which have statewide applicability. The manual can not and will not reference local concerns and practices. For those issues you are urged to consult your department procedures and policies. Also, this manual is not a substitute for consulting your corporation counsel on specific questions and issues.

Sheriff departments are called upon routinely to serve a myriad of legal papers. In Wisconsin, this critical function has been performed with distinction. However, as new laws with new requirements of service develop and old laws are revised there was a growing consensus among the law enforcement community that a manual with basic information and straightforward guidance was needed. It is hoped that this manual fills that need.

II. GENERAL INFORMATION

Statutory Basis

The sheriff's department serves civil process because it is a duty required by Statute. Wisconsin Statute 59.27(4) reads that a sheriff:

“Personally, or by the undersheriff or deputies, serve or execute all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff.”

Since the service of process is a statutory duty of the sheriff it follows that this duty be executed in a professional manner, consistent with state law and department policy.

Priority in Serving Process

You will be given many different types of papers to serve and so it is important to attach priorities to them. An important priority is the time limitation to serving the paper. Take special note of those having short dates and serve those first. Unfortunately there may be occasions where the paper arrives to you with very little opportunity for you to serve it on time. Try your best to serve this paper even if you feel that the moving party was slower than necessary in getting this paper to you.

Another important priority is the potential threat to a person or property if timely service is not made. Examples would include temporary restraining orders and injunctions related to domestic abuse, child abuse, and/or harassment.

In all cases try to follow the instructions of the issuing attorney as to the time and place of service.

Do Not Give Legal Advice

The service of process will result in your being in constant contact with citizens, many of whom are in stressful situations. It is not uncommon for citizens being served to ask you for advice about the merits of their case or to request a recommendation as to an attorney. **Do not** give advice. **Do not** give legal advice or counsel. You may tell a person that he/she might want to contact an attorney for advice but **do not** suggest any particular attorney. Remember the statutes specifically prohibit you from acting as an attorney. Wisconsin Statute 59.30 reads as follows:

“No sheriff, undersheriff, deputy, coroner or medical examiner shall appear or practice as an attorney in any court, draw or fill up any writ, pleading or proceeding for a party in any action, nor, with the intent to be employed in the collection of any demand or the service of any process, advise or counsel any person to commence an action or proceeding; and for violation of this section every such officer shall forfeit not more than \$50.

Routine Duties Upon Receipt of Papers to be Served

- 1) Examine the paper and its copies to make sure they are valid. Check the relevant Wisconsin Statute and/or the appropriate section of this manual to determine what constitutes validity for the paper you have.
- 2) Note the amount of time for service and check the dates.
- 3) Determine who is to be served and how service can be completed.
- 4) Make certain that the copies are consistent with the original

Who May Serve

Civil cases: For civil cases, any law enforcement officer can serve anywhere in the state as **801.10** provides that in most civil actions an authenticated copy of the summons may be served by any adult resident of the state. It generally is prudent, however, for you to serve within your own jurisdiction because if anything goes wrong during the contact you can respond as a law enforcement officer because you will be in your jurisdiction.

Criminal cases: **968.04(4)** Arrest warrants or summons on criminal complaints should be served only by law enforcement officers within their own jurisdiction.

Note: Under the mutual aid statute, **66.0313**, a law enforcement officer may serve either a civil or criminal paper outside of their jurisdiction with full police powers if doing so upon request from a law enforcement agency in the host jurisdiction.

KEY POINTS

- ★ **Prioritize the papers and serve the papers with short dates first**
- ★ **Do not give legal advice**

III. COMPUTING TIME

Time can be a critical component in the service of papers. Many actions require specific time restraints as to service. Therefore it is critical for you to have an understanding on how time is computed.

Computation of Time for Proceedings in Chapters 801 to 847 - 801.15

Most of the papers you will serve arise from proceedings filed pursuant to statutes found between Chapters 801 to 847 of the Wisconsin Statutes. This includes but is not limited to large claim actions, writs of replevin, writs of attachment, garnishment, injunctions and restraining orders, and writs of executions to real and personal property. Additionally, there are actions filed outside of the scope of 801 to 847, which nonetheless specifically reference the same time computation method as used for actions arising in Chapters 801 to 847. Such actions include small claims, eviction actions, and writs of restitution (799.04(1)). Therefore in most, though not all cases, the papers that you serve the method of computing time is that set forth in 801.15. This method is as follows:

When the Period of Time is Less than Eleven Days - 801.15(1)(b)

In computing time frames of less than eleven days, Saturdays, Sundays and holidays shall be excluded in the computation. In other words all days to be counted when the time frame is less than eleven days are “working days.”

When the Period of Time is Eleven Days or Greater - 801.15(1)(b)

In computing time frames of eleven days or greater, Saturdays, Sundays, and holidays count in the computation.

First Day and Last Day

In computing time frames do not count the day from which the time period begins to run but you do count the last day unless, if applicable, it is a day when the clerk of courts office is closed.

Examples: (Assume no holidays) You receive a paper on Monday the 1st which must be served at least five days before the scheduled hearing date of Monday the 15th. This paper must be served no later than Monday the 8th. If served on the 8th, the counting would begin on Tuesday the 9th- go for four days that week and end on the fifth day, the hearing date of Monday the 15th (holidays and weekends excluded, first day not counted but the last day is counted).

You receive a paper on Monday the 1st, which must be served within 15 days from when you receive it. The paper must be served by Tuesday the 16th (holidays and weekends count in the computation, first day is not counted but the last day is counted).

Note: There will be other examples in the manual relating to time counting as to particular actions but the above represents the general method of counting.

KEY POINTS

- ★ **Do not count Saturdays, Sundays, and holidays if the time period involved is less than eleven days**
- ★ **Count Saturdays, Sundays, and holidays if the time period is eleven days or greater**
- ★ **Do not count the day from which the time period begins to run but do count the last day unless, if applicable, it is a day when the clerk of courts office is closed**

IV. THE SERVICE (GENERAL)

You will be called upon to serve many kinds of papers for many kinds of legal actions. Later in this manual various types of paper will be discussed with specificity. Here, some general concepts of service applicable to all process are discussed.

Personal Service - 801.11(1)

Most legal documents are served by personally giving a copy to the person to be served. You should identify yourself to the citizen being served and inform the citizen of the contents of the paper without discussing the merits of the case.

You must exercise reasonable diligence in effecting personal service. Reasonable diligence is not defined in the statutes. It has been interpreted by the courts to mean a pursuit of leads or information reasonably calculated to make personal service possible. Check with your department policy as to reasonable diligence as most will have a minimum requirement as to attempts made to effect service.

Substitute Service - 801.11(1)(b)

If with reasonable diligence the paper can not be served personally, substitute service may be made.

Pursuant to 801.11(1)(b) Wis. Stats., substituted service can be made by leaving a copy of the paper at the party's usual place of abode in the presence of some competent member of the family at least 14 years of age or in the presence of a competent adult, currently residing in the subject's usual place of abode. In either instance you should inform the

party with whom the paper is left, of the contents of the paper without discussing the merits of the case.

There is no statutory definition of what is meant by “family member” but the case law suggests that to qualify as a family member the person must be part of the household. For instance, a Wisconsin case held that a daughter was not a family member because although related to the defendant she lived in a different household. Please check with your department policy as to this issue as it is likely it will specifically describe how it interprets “family member” for service purposes. The key is not just that the person is related to the person for whom personal service was not possible after due diligence but also that they are part of the same household.

Usual place of abode means the actual premises where the party sleeps, eats, and gets mail, etc. Competent means one who is capable of understanding the contents of the paper.

Service by Publication - 801.11(1)(c)

The plaintiff does Service by publication, if allowed, after you return the paper as unserved. Nevertheless it is useful for you to understand the general framework of this procedure.

If with reasonable diligence the defendant can not be served personally or by substituted service, service may be made by publication of the summons as a class 3 notice under Chapter 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 complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Pursuant to **801.13(2)**, a summons served by publication is deemed served on the first day of required publication.

Service on a Natural Person Under Disability - 801.11(2)

There will be times where you will be called upon to serve minors under the age of 14 years or any person under guardianship of any kind or any person without guardianship who is known to be incompetent. The service as to these individuals is governed by 801.11(2) Wis Stats whose rules are as follows:

Service on a Minor Under the Age of 14 - 801.11(2)(a)

Personal service on a minor under the age of 14 is accomplished by the following two steps:

- 1) Personal service of the minor and,
- 2) Personal service upon a parent or guardian having custody of the minor, or if there is none, upon any person having 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 on the child, then service of the summons shall also be made upon the guardian ad litem after one is appointed.

Personal Service on a Minor 14 years of Age or Older - 801.11(2)

A minor 14 years of age or older, who is not mentally incompetent and not otherwise under guardianship is served in the same manner as are adults.

Personal Service on a Person 14 years of age or Older who is known to be under a guardianship or if without guardianship is known to be incompetent to be in charge of his/her affairs-801.11 (2)(a)

If the person to be served is 14 years of age or older and is known to be under guardianship, service is made in the following manner:

- 1) Personal service on the individual, and
- 2) Personal service upon the guardian

If the person to be served is 14 years of age or older and is without guardianship but is known to be incompetent to handle his/her affairs, service is made in the following manner:

- 1) Personal service on the individual, and
- 2) Personal service to the guardian ad litem after one has been appointed

Service on the Sheriff- 59.31

Every writ, notice, or other paper required to be delivered to or served on any sheriff may be served by leaving the same at the sheriff's office during the hours it is required to be kept open. Personal service on the sheriff can be effected by delivery of the paper to any person belonging to the sheriff's office.

Service on the State- 801.11(3)

Personal service is made upon the state by delivering a copy of the paper to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

Service on other Public Corporations or Bodies Politic-801.11 (4)

County- 801.11(4) 1

Personally serving the chairperson of the county board or the county clerk

Town- 801.11(4) 2

Personally serving the chairperson or clerk thereof

City- 801.11(4) 3

Personally serving the mayor, city manager, or clerk thereof

Village-801.11 (4) 4

Personally serving the president or clerk thereof

Technical College District-801.11 (4) 5

Personally serving the district board chairperson or secretary thereof

School District or School Board-801.11(4)6

The president or clerk thereof

Any Other Body Politic-801.11(4)7

An officer, director, or managing agent thereof. In lieu of delivering the paper to an officer, director, or managing agent, the paper may be left in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

Domestic or Foreign Corporation -801.11(5)

Personally serving the president or vice-president, superintendent, secretary, treasurer, cashier, director, trustee, managing agent or any other person who is apparently in charge of the office.

Non-Incorporated Business

Some small businesses are not incorporated. The face of such a paper would typically show a defendant and a business name, accompanied by "DBA"(doing business as) such as "John Jones, DBA Jones Window Cleaning". If you receive such a paper treat it as an action against the named defendant and follow the standard rules of service as to an individual.

Attorney of Record-801.14(2)

Once an action has been started and an attorney has appeared, subsequent papers in the action may be served on the attorney. If the attorney is not in his/her office the papers may be left with whoever is in charge in his/her absence. The papers may also be left at the attorney's home in the same manner. If the attorney's office or home address is unknown service can be made by leaving the paper with the Clerk of Courts. **Note:** The attorney must be an attorney of record and not a party to the action.

KEY POINTS

- ★ **You must exercise reasonable diligence in effecting personal service**
- ★ **Reasonable diligence is not defined in the statutes but has been interpreted by the courts to mean a pursuit of leads or information reasonably calculated to make personal service possible**
- ★ **Substituted service can be made by leaving a copy of the paper at the party's usual place of abode in the presence of some family member at least fourteen years old or in the presence of a competent adult currently residing in the subject's place of abode.**
- ★ **A family member should be part of the household**

V. SERVICE REQUIREMENTS AS TO PARTICULAR ACTIONS

You will serve papers for various types of court action. The following looks at each particular action, each with their own service requirement.

Domestic Abuse Restraining Orders and Injunctions - 813.12

Domestic Abuse Restraining Orders and Injunctions are commenced by petition, which are to be personally served upon the respondent. Unless otherwise specified within the petition this service can be accomplished right up to the time of the hearing. If the time of hearing arrives and service has not been made and the petitioner files an affidavit with the court stating that personal service was unsuccessful because the respondent was avoiding service by concealment or otherwise, the petitioner may serve the respondent by publication under Ch. 985 Wis. Stats and by mailing if the respondent's address is known or with due diligence can be found.

Surrender of Firearms - 813.12(4m)

Certain injunctions may require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action was commenced. When a respondent surrenders a firearm to the sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered. The receipt shall include the manufacturer, model and serial number of the firearm and shall be signed by both the respondent and the sheriff. The sheriff shall keep the original receipt and provide a copy to the respondent. When the firearm is returned to the respondent the sheriff shall surrender to the respondent the original receipt and all copies of the receipt in his/her possession. The sheriff may store the firearm surrendered to him/her in a warehouse that is operated by a public warehouse keeper licensed under Chapter 99 and the respondent shall pay the costs charged by the warehouse for storing the firearm.

Small Claims Actions - 799.12

Service of small claims actions can be accomplished in one of two ways.

- 1) Personal service in the standard way with the possibility for substitute service if after due diligence the party can not be found.
- 2) The plaintiff may serve a small claims action by mail if the circuit court in the jurisdiction where the action is filed has a rule which so authorizes this procedure. If this method is used the original and necessary copies of the paper along with the appropriate fees are left with the clerk of court for mailing. Service is deemed to have occurred when the paper is mailed.

Timing Requirement for Small Claim Actions - 799.05(3)

Small claim actions (except for small claim eviction actions) must be served at least eight working days before the date the party must appear. The date of appearance shall be not less than eight working days from the issue date and no more than 30 days from the issue date.

In measuring the time, the eight days begins with the first working day after the issue date. In measuring the 30 days, holidays and weekends count in the computation and the count begins with the first day after the issue date. If the 30th day is a day when the clerk of court is closed then the 30th day would be the first day after that when the clerk of court is open.

Examples: Assume no holidays.

If small claims action is issued on Monday March 10th, the earliest date for the hearing is March 20th- (eight working days beginning with the first working date after issuance and assuming no holidays). The last possible date for the hearing is April 9th (30 days including holidays and weekends from the first day after issuance)

In the above examples the paper for the March 20th hearing must be served on the date of issuance, March 9th, eight working days before the day of the hearing and the paper for the April 9th hearing must be served by March 30th, eight working days before the day of the hearing.

Small Claims Actions-Eviction - 799.16(3)

This paper is to be served personally on the defendant or through substituted service if after due diligence the defendant can not be found, consistent with the time limits described below.

If personal or substituted service can not be accomplished, service can be accomplished by posting a copy on the premises involved and mailing a copy to the defendant, consistent with the time limits described below.

Timing for Eviction Actions-799.05(3)(b)

Personal or Substituted Service- In eviction actions the return date shall be not less than five working days nor more than 30 days from the issue date. The paper must be served not less than five working days prior to the return date.

Examples: Assume no holidays

If eviction action was issued on Monday March 10th, the earliest the return date could be is Monday March 17th. This allows little time for service, as it must be accomplished no later than the date of issue, March 10th.

If eviction action was issued on Monday March 10th the latest the return date could be is Wednesday April 9th. Service must be accomplished by Tuesday April 2nd.

Service of Eviction Action by Posting and Mailing (typically this service is done by the plaintiff) - 799.16(3)

When Applicable

If the paper is returned more than seven days prior to the return date with proof that the defendant cannot be served with personal or substituted service then service can be made by posting and mailing. This process is typically done by the plaintiff or his/her attorney and so it is important that you notify these parties of your inability to serve personally or by substitution early enough so that they can comply with the following described time restrictions.

Posting- This is accomplished by affixing a copy of the paper onto some part of the premises where it may be conveniently read. This posting must occur at least seven days prior to the return date. Additionally, at least five days prior to the return date an additional copy of the paper must also be mailed to the defendant at the last-known address even if it is the premises, which are the subject of the action.

Example: Assume no holidays

Paper issued on Monday March 10th with a return date of Wednesday April 9th. Personal or substituted service could not be achieved. Paper is returned with proof that the defendant could not be served with personal or substituted service on Monday, March 24th. The posting must occur no later than Monday March 31st as that is seven working days prior to the return date. The mailing must occur no later than Wednesday, April 2nd, as that is five working days prior to the return date.

When the Paper is Returned Less than Seven Days Prior to the Return Date - 799.16(3)(b)

When the paper is returned less than seven days prior to the return date with proof that the defendant cannot be served with personal or substituted service, posting and mailing are not possible. In such a circumstance the court on the return date shall adjourn to a date not less than seven days from the original return date and service should be accomplished by posting and mailing in the manner described above.

Writ of Restitution - 799.45

In an eviction action, if the court finds that the plaintiff is entitled to possession, the court may order a writ of restitution. No writ shall be executed if received by the sheriff more than 30 days after its issuance.

Example:

At the March 10th eviction hearing the court orders a writ of restitution. The sheriff receives this writ on April 20th. This writ can not be lawfully executed as it was received more than 30 days after its issuance.

If the court determines that there is hardship to the defendant it may stay the issuance of a writ by a period not to exceed 30 days from the date of the order of judgement. In this circumstance the sheriff must receive the writ no more than 30 days after the 30-day stay from the date of judgement has expired.

Example:

The date of judgement is March 10th. The court stays the issuance of the writ until March 20th. The sheriff must receive the writ no later than April 19th.

Upon the timely delivery of a writ of restitution and after payment to the sheriff of the requisite fee the sheriff shall execute the writ. The sheriff shall execute the writ within ten working days of the receipt of the writ.

Example:

The sheriff receives a timely writ on Monday March 10th along with the required fee. This writ must be executed no later than March 24th, as that is ten working days from the date of receipt of the writ.

Duties of the Sheriff in Executing a Writ of Restitution - 799.45(1)(2)

Prior to executing the writ of restitution the sheriff may require that the plaintiff deposit a reasonable sum representing the probable cost of removing the defendant's property and of the deputies services. In executing the writ of restitution the sheriff shall:

- 1) remove from the premises described in the writ the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.

- 2) Remove or supervise removal from the premises described in the writ all personal property found in the premises not the property of the plaintiff, using such reasonable force as is necessary.
- 3) Exercise ordinary care in the removal or supervision of removal of all persons and property from the premises and in the handling and storage of all property removed from the premises.

When the Removal can be done by the Plaintiff - 799.45(3)

In counties other than Milwaukee County, if certain conditions are met, the landlord may choose to be responsible for the removal, storing, or disposal of property that is found on the premises and does not belong to the plaintiff. In such a circumstance the landlord will have to obtain a bond or insurance policy to pay the defendant and indemnify the sheriff for any damages to the property removed from the premises that is handled with less than ordinary care.

KEY POINTS

- ★ **Small claims actions (except for small claim eviction actions) must be served at least eight working days before the party must appear. The date of appearance shall be not less than eight working days from the issue date and no more than thirty days from the issue date**
- ★ **In eviction actions the return date shall be not less than five working days or more than thirty days from the issue date. The paper must be served not less than five working days prior to the return date.**
- ★ **No writ of restitution shall be executed if received by the sheriff more than thirty days after its issuance**

Large Claims- claims over \$5,000 - 801.02(1); 801.11(1)

The paper must be served within 90 days of filing. If after due diligence the party can not be found then substituted service is to be employed. If with reasonable diligence the party can not be served personally or by substituted service, the plaintiff may attempt service 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 should be mailed to the defendant, at or immediately prior to the first publication a copy of the summons and complaint. The mailing may be omitted if the defendant's post-office address can not be found with reasonable diligence.

Divorce Petition - 767.085(3)

The petition for divorce should be served in the standard way; personally served on the opposing party and if that is not possible after reasonable diligence by substituted service and if that is not possible by publication. If the parties together initiate the action with a joint petition, service is not required. **Note:** Many departments have policies, which prohibit substituted service for divorce actions.

Additionally a copy of the petition should be served upon the family court commissioner of the county in which the action is begun, whether such action is contested.

Actions to Enforce Judgement of Child Support - 767.027(1)

In any action to enforce a judgement or order of child support, service can be accomplished by the following:

- 1) A diligent effort is made to ascertain the location of the respondent.
- 2) Written notice of the action has been delivered to the most recent residential address or employer address provided by the respondent to the child support agency.

Garnishment Complaint - 812.07

A garnishment is an action whereby a creditor attempts to satisfy his/her claim by seizing assets that belong to the debtor but are in the hands of a third party.

The debtor is called the “Principal Defendant.” The party who is being served and is holding the assets due to the debtor is called the “Garnishee Defendant.”

The following is the service procedure for all garnishment actions except the garnishment of earnings:

The summons and complaint shall be served on the “Garnishee Defendant” in conformity with the standard procedure. The statute requires the garnishee to receive a \$3 garnishment fee before being required to file an answer so you typically will be serving a check in this amount in addition to the summons and complaint.

If the “Garnishee Defendant” is named by a partnership name, service may be made upon any partner. Additionally notice of such service or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the “Principal Defendant” in the standard way no later than 10 business days after service on the “Garnishee Defendant.”

Example: A corporation is the “Garnishee Defendant” and John Doe is the “Principal Defendant.”

Service of the garnishee summons and complaint is made on an officer of the corporation on Monday, March 10th. A notice of this service or a copy of the garnishee summons and complaint, together with the summons in the principal action, must be served on John Doe no later than Monday March 24th.

Garnishment of Earnings - 812.35(2)(3)(4)

Earnings means compensation paid or payable by the garnishee for personal services, whether designated as wages, salary, commission, bonus or otherwise, and includes periodic payments under a pension or retirement program.

To commence an earnings garnishment proceeding, the judgement creditor files a garnishment notice with the clerk of courts. Upon receipt of the notice and appropriate fee the clerk of court issues two earning garnishment forms. These two garnishment forms are to be served in the following manner:

- 1) Within 60 days after the filing of the notice, one of the two earning forms are served upon the debtor by first class mail, or certified mail with return receipt requested, or by any means permissible for the service of a summons in a civil action other than by publication.
- 2) Within 60 days after the filing of the notice, the other earning form is served upon the garnishee in the same ways as described in 1) as well as by any other means if the garnishee signs an admission of service.

In addition, the creditor shall serve on the debtor at the same time the earnings form is served 1) an exemption notice, 2) an answer form, and 3) schedules and worksheets. Also served at this time is the \$15 fee to the earnings garnishee for each earnings garnishment.

Service should be made first on the garnishee. Service on the debtor shall be made within seven business days after the date of service on the garnishee and at least three business days before the payday of the first pay period affected by the garnishment. Service by mail is complete upon mailing.

Subpoenas - 885.03; 885.06

Any subpoena may be served by any person by exhibiting and reading it to the witness, or by giving the witness a copy thereof, or by leaving such copy at the witness's abode.

Except when subpoenaed on behalf of the state, of a municipality in a forfeiture action, or of an indigent respondent in a paternity action, witness fees should accompany the subpoena.

KEY POINTS

- ★ **A large claim action must be served within ninety days of filing**
- ★ **The statutes require the "garnishee defendant" to receive a \$3 garnishment fee before being required to file an answer so you typically will be serving a check in that amount in addition to the summons and complaint.**
- ★ **Notice of service or a copy of the garnishee summons and complaint, together with the summons in the principal action shall be served on the "principal defendant" no later than ten business days after service on the "garnishee defendant."**
- ★ **In a garnishment of earnings action service should first be made on the garnishee. Service on the debtor shall be made within seven business days after the date of service on the garnishee and at least three business days before the payday of the first pay period affected by the garnishment.**

Terminating Tenancy - 704.21(1)

This is one of the few examples of civil process, which can be served by a party to the action, i.e. the landlord. These are notices to notify the tenant that his/her tenancy is being terminated for various reasons. They are to be served by one of the following methods:

- 1) By giving a copy of the notice personally to the tenant or leaving a copy at the tenant's usual place of abode in the presence of some competent member of the tenant's family at least 14 years of age who is informed of the contents of the notice;
- 2) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant's last known address;
- 3) If after reasonable diligence, notice can not be served in the manners described above, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant's last known address

Notice of Mortgage Foreclosure - 815.31(1)(2)(6)

The sheriff who makes the sale of mortgaged premises, under a judgement, shall publicly advertise the sale by posting a written notice describing the real estate to be sold with reasonable certainty in three public places in the town or municipality where such real estate is to be sold at least three weeks prior to the date of sale and also in three public places of the town or municipality where such real estate is situated if it is not in the town or municipality where the sale is to be held.

A copy of the notice of sale shall be printed each week for six successive weeks in a newspaper of the county prior to the date of sale.

Every sale shall be at auction between 9 o'clock in the morning and 5 o'clock in the afternoon.

Notice of Sale of Personal Property - 815.29

Notice of the sale shall be posted in three public places of the town or municipality where the sale is to be had at least 20 days before the date of sale. The sale must be made between 9 o'clock in the morning and 5 o'clock in the afternoon.

Notice of Probate - 879.05

Notice required in the administration of an estate or other probate proceeding shall be served in one of the two following ways:

- 1) Service shall be made by first class mail either within or without the state at least 20 days before the hearing or proceeding upon any person whose post-office address is known or can with reasonable diligence be ascertained, or

- 2) Personal service shall be made at least 10 days before the hearing in the standard way except service shall not be made by publication and substituted service may not be made outside the state.

KEY POINTS

- ★ **A terminating tenancy action is one of the few examples of civil process which, can be served by a party to the action, i.e. the landlord.**
- ★ **The sheriff who makes the sale of mortgaged premises, under a judgement, shall advertise the sale by posting a written notice in three public places in the town or municipality where such real estate is to be sold at least three weeks prior to the date of sale and also in three public places in the town or municipality where such real estate is situated if it is not in the town or municipality where the sale is to be held.**
- ★ **Notice of sale of personal property shall be posted in three public places in the town or municipality where the sale is to be held at least twenty days before the date of the sale.**

Notice for Appointment of Guardian
for Incompetent, Minor, or Spendthrift - 880.08(1)(2)(3)

The notice of hearing for the appointment of a guardian for an incompetent must be served personally upon the proposed incompetent and existing guardian, if any, at least 10 days before the time set for hearing. If the proposed incompetent is in custody or confinement the notice shall be served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent.

The notice of hearing for the appointment of a guardian for minors is served as follows:

Service of the notice shall be made as described below to all of the following persons if applicable:

- 1) The subject minor's spouse.
- 2) The subject minor's parents, except no notice need be served on parents whose rights have been judicially terminated.
- 3) The subject minor if he/she is over 14 years of age unless the minor appears at the hearing.
- 4) Any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

Service of the above shall be accomplished by either:

- 1) First class mail either within or without the state at least 20 days before the hearing or proceeding upon any person whose post-office address is known or can with reasonable diligence be ascertained, or

- 2) Personal service in the standard way except that service can not be made by publication and substituted service may not be made outside of the state.

A spendthrift is statutorily defined as a person who because of the use of drugs, intoxicants, or of gambling, idleness or debauchery is unable to attend to business.

The notice of hearing for the appointment of a guardian for a spendthrift shall be personally served on the proposed spendthrift at least ten days before the date of the hearing.

Replevin – Chapter 810

Replevin is an action to regain personal property unlawfully held or retained by another. Replevin can be filed as a small claim action if the value of the property claimed does not exceed \$5,000 and is filed as a large claim if the value exceeds \$5,000. Service rules are the same as for more conventional small claim or large claim actions. They are:

Replevin as a Small Claims Action - 799.05

The paper must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than 30 days from the issue date.

Service of small claims actions can be accomplished in one of two ways.

- 1) Personal service in the standard way with the possibility for substitute service if after due diligence the party can not be found.
- 2) By mail if the circuit court in the jurisdiction where the action is filed has a rule which so authorizes this procedure. If this method is used the original and necessary copies of the paper along with the appropriate fees are left with the clerk of court for mailing. Service is deemed to have occurred when the paper is mailed.

Replevin as a Large Claims Action - 801.02

The paper must be served within 90 days of filing. If after due diligence the party can not be found then substituted service is to be employed. If with reasonable diligence the party can not be served personally or by substituted service, 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 should be mailed to the defendant, at or immediately prior to the first publication a copy of the summons and complaint. The mailing may be omitted if the defendant's post-office address can not be found with reasonable diligence.

Writs of replevin are somewhat involved and place extra responsibilities on the sheriff. These responsibilities are as follows:

- 1) A replevin action must consist of the following when accepted and executed by the Sheriff's Department:
 - a) summons

- b) affidavit or complaint
 - c) bond
 - d) bond approval by a judicial officer
 - e) requisition to the sheriff
- 2) When the plaintiff is seeking immediate delivery of the property the complaint must show or the affidavit must so state the following: **810.02**
- a) the plaintiff or someone acting on the plaintiff's behalf must show that the plaintiff is entitled to the property claimed
 - b) that the property is being wrongfully detained and there should be an exact description of the property
 - c) the alleged cause of the detention according to the plaintiff's best knowledge, information and belief
 - d) that the property has not been taken for a tax, assessment or fine or seized under any execution or attachment against the property of the plaintiff, or that if so seized it is exempt from the seizure
 - e) the value of the property, and
 - f) the location of the property claimed by the plaintiff with sufficient specific factual allegations for the judge or judicial officer to determine that there is reason to believe that the property is in the location described or in the possession of the defendant or any person acting on behalf of, subject to or in concert with the defendant
- 3) Upon the issuance of an order directing the return of property and upon execution of a bond in an amount approved by the judge and with sufficient sureties approved by the judge, the sheriff shall take the property from the defendant or such persons as are acting on behalf of, in concert with or under control of the defendant, and deliver possession of the property to the plaintiff. **810.03**
- 4) If the property to be taken is in a building or enclosure the sheriff may demand its delivery. If the property is not delivered the sheriff shall advise the plaintiff of the refusal of the delivery and the plaintiff may then apply for a search warrant and upon delivery of the search warrant the sheriff may then enter and take the property. **810.09**
- 5) The sheriff shall keep the property taken in a secure place and deliver it to the party entitled thereto upon receiving the sheriff's lawful fees for taking and the sheriff's necessary expenses for keeping the same. **810.10**

As writs of replevin can be complex be sure to read the entire paper before you start and make all arrangements before you seize.

KEY POINTS

- ★ **Replevin, as a small claims action must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than 30 days from the issue date.**
- ★ **Replevin as a large claims action must be served within 90 days of filing.**

Attachment - Chapter 811

The writ of attachment is a paper issued by the judge on request of the plaintiff at any time after a summons and complaint has been filed but before final judgement. The writ is directed to the sheriff of the county in which the property is located and requires the sheriff to attach all the property of the defendant within the county or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses.

If the attachment is asking for a dollar amount the sheriff does not have to guess as to what property he/she should have to tag. In such a circumstance the plaintiff should arrange for a supplemental hearing to assess what property the respondent has so that he/she can then give the sheriff an attachment with the property specifically listed.

Before the writ of attachment can be executed a bond on the part of the plaintiff shall be filed with the court in an amount set by the judge issuing the writ. No bond is necessary when the plaintiff is the state, or any county, town or municipality, therein. **811.06** Upon receipt of the writ of attachment the sheriff shall without delay seize so much of the property of the defendant in the sheriff's county that will satisfy the plaintiff's demands with costs and expenses and make an inventory thereof. The sheriff shall arrange for all the personal property attached to be appraised by two disinterested residents of the county who shall be first sworn by the sheriff to make a true appraisal. **811.10**

The sheriff shall serve copies of the writ, the affidavit, bond, and inventory upon the defendant in the same manner as a summons.

Writs of Execution - Chapter 815

Once a party has obtained a judgement against another they may enforce that judgement in a manner provided by law. A judgement, which requires the payment of money or the delivery of property, may be enforced by execution.

There are three kinds of executions: 1) an execution against the property of the judgement debtor, 2) an execution against the judgement debtor's person, and 3) an execution for the delivery of property.

Writs of execution can be quite involved and therefore are difficult to capsulize in a manual. Whenever you receive a writ of execution please refer to Chapter 815 of the statutes as it sets forth the procedures for the various writs involved. Also writs of execution can involve procedures which are discussed earlier in the manual. (See section on sale of personal property and section on notice of foreclosure.)

The following is a discussion of the some of the basic general concepts of writs of execution.

When a Writ is Issued - 815.04

A writ of execution may be issued after a judgement has been recorded and perfected. The writ may be issued at any time within five years of the rendition of the judgement.

How the Writ is Issued – 815.05

The writ of execution shall be issued from the circuit court where the judgement, a certified copy of the judgement, or the transcript of the municipal judge's judgement is filed. The execution shall be directed to the sheriff or in the circumstance where the sheriff is an interested party, to the coroner.

In order for the writ of execution to be valid under the statute the following information about the judgement should be present:

- 1) The writ must contain the seal of the court and must be signed by the clerk of circuit court
- 2) The county where the judgement or a certified copy of the judgement or transcript is filed
- 3) The names of the parties
- 4) The amount of the judgement, if it is for money
- 5) The amount due on the judgement
- 6) The time of entry in the judgement and lien docket in the county to which the execution is issued

The following is a list of requirements as to various kinds of executions. This list is not all-inclusive. (For a complete list see Chapter 815.05.)

Executions Against Property - 815.05(1s)

If the execution is against the property of the judgement debtor, the execution requires the officer to whom it is directed to satisfy the judgement out of the personal property of the debtor. If not enough sufficient personal property can be found, the judgement should be satisfied out of the real property belonging to the judgement debtor on the day the judgement was entered in the judgement or lien docket or at any time thereafter.

Real Estate - 815.05(2)

If real estate has been attached and a judgement rendered, the execution may direct a sale of the defendant's interest in the real estate.

Judgement to Enforce a Lien - 815.05(3)

Upon a judgement to enforce a lien upon specific property, the execution shall direct the officer to sell the interest that the defendant had in that specific property at the time the lien had attached.

Execution Against the Person - 815.05(5)

If the execution is against the person of the judgement debtor, the execution shall require the officer to arrest the judgement debtor and commit him/her to the county jail until the judgement debtor pays the judgement or is discharged according to law.

County to Which Execution Shall be Issued - 815.07

When the execution is against the property of the judgement debtor, the execution may be issued to the sheriff of any county where the judgement is entered in the judgement and lien docket.

When the execution requires the delivery of real or personal property, the execution shall be issued to the sheriff of the county where the property or some of the property is located. Executions may be issued at the same time to different counties.

Sheriff's Endorsement - 815.08

Upon receipt of any writ of execution, the sheriff or other officer shall note thereon the year, month, day, and hour of the day when the sheriff or other officer received it.

Property Exempt from Execution - 815.18

By statute there is certain property which is exempt from execution. These exemptions are motivated by the specific statutory intent to allow debtors and their dependents the means of obtaining a livelihood, to enjoy property necessary to sustain life and opportunity and to avoid becoming public charges. These exemptions are recited in specificity in 815.18 Wis Stats.

KEY POINTS

- ★ **A writ of execution may be issued at any time within five years after a judgement has been recorded and perfected.**
- ★ **The writ of execution shall be issued from the circuit court where the judgement, a certified copy of the judgement, or the transcript of the municipal judge's judgement is filed.**
- ★ **There is certain property, which is exempt from execution. These exemptions are recited in specificity in 815.18 Wis Stats.**

Habeas Corpus - 782.10

The writ of habeas corpus is served, by delivering a copy of the same, to the person to whom it is directed, and if such person can not be found, service is made by leaving a copy at the jail or other place in which the prisoner may be confined with any underofficer or other person of proper age, having charge of such prisoner. The service of the writ is not complete until the party serving the writ tenders to the custodian of the prisoner the fees allowed for bringing up the prisoner and other appropriate fees.

Mandamus and Prohibition - Chapter 783

Writs of mandamus and of prohibition shall be served upon the court and the party to whom it shall be directed.

V. Special Situations and Statutes

Search Warrants - 968.15 (1); 968.17

A search warrant must be executed within 5 days of date of issue. Holidays and weekends count in this time computation. The search warrant must be returned to the clerk of court within 48 hours of execution. Holidays and weekends do not count in this time computation.

Resisting or Obstructing an Officer - 946.41

It is a class A misdemeanor for anyone to resist or obstruct an officer while such officer is doing any act in an official capacity and with lawful authority.

The definition of obstruction includes giving false information to the officer or knowingly placing physical evidence with the intent to mislead the officer in the performance of his/her duties including the service of any summons or civil process. In addition, whoever, in violating the resisting or obstructing statute, hinders, delays, or prevents an officer from properly serving or executing any summons or civil process, is civilly liable to the person injured for any actual loss caused thereby and to the officer or the officer's superior for any damages adjudged against either of them.

KEY POINTS

- ★ **A search warrant must be executed within five days of date of issue.**
- ★ **It is the crime of obstruction to knowingly give false information to mislead an officer in the performance of his/her service of process duties**

GLOSSARY OF KEY TERMS

Attachment: A writ against property, which commands the sheriff to seize property belonging to the defendant to satisfy a claim of the plaintiff.

Competent: A person who is capable of understanding the contents of the paper served.

Eviction: A summons to the defendant to appear and answer a complaint for unlawfully detaining certain premises.

Execution: A writ to enforce a judgement, which requires the payment of money or the delivery of property.

Family Member: In the service of process context, a family member is a relative who is part of the household. * Check with department policy on this issue, as it is likely it will describe how the department interprets "family member."

Garnishment: An action whereby a creditor attempts to satisfy his/her claim by seizing assets that belong to the debtor but are in the hands of a third party.

Garnishee Defendant: The party in a garnishment action who is holding the assets due to the debtor.

Habeas Corpus: A writ directed to a person detaining another, commanding him to produce the body of the prisoner at a certain time and place.

Large Claims Action: An action on a claim for greater than \$5,000.

Personal Service: The direct serving of a copy of the paper to the person to be served.

Posting: A process where a copy of an eviction action is affixed onto some part of the premises where it can be conveniently read.

Principal Defendant: The debtor in a garnishment action.

Reasonable Diligence: A pursuit of leads or information reasonably calculated to make personal service possible.

Replevin: A process commanding the sheriff to seize property, which is in the hands of the defendant.

Restraining Order: An order after a hearing that is intended to protect one individual from violence, abuse, harassment, stalking etc., by another.

Small Claims Action: An action on a claim for \$5,000 or less.

Substituted Service: The serving of a copy of the paper at the party's usual place of abode to a competent member of the family at least fourteen years of age or to a competent adult currently residing in the abode.

Terminating Tenancy: A writ notifying the tenant to vacate the premises at a specified time.

Usual Place of Abode: The actual premises where the party sleeps, eats and gets mail, etc.

Writ of Restitution: An action, which commands the sheriff to remove the defendant and goods from the premises so that the owner may have peaceful possession of the same and to satisfy the judgement for costs.

TIME REQUIREMENTS FOR KEY ACTIONS

Eviction: Return date shall be not less than five working days nor more than thirty days from the issue date. The paper must be served not less than five working days prior to the return date.

Executions: Notice of Mortgage Foreclosure - Sale shall be advertised by posting at least three weeks prior to the date of sale. Notice of Sale of Personal Property - Notice of sale shall be posted at least twenty days before the date of sale.

Garnishment: A garnishment summons and complaint shall be served on the “garnishee defendant” in conformity with the standard procedure for a small claims action or a large claims action- whichever is applicable. Notice of such service or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the “principal defendant” no later than ten business days after service on the “garnishee defendant.”

Large Claims Action: The paper must be served within ninety days of filing.

Replevin: Replevin as a small claims action - The paper must be served eight business days before the return date. The return date for the summons served must be not less than eight business days from the issue date nor more than thirty days from the issue date. Replevin as a large claims action - The paper must be served within ninety days of filing.

Restraining Orders: Unless otherwise specified they can be served right up to the time of the hearing.

Small Claims Action: General- a small claims action must be served at least eight working days before the date the party must appear. The date of appearance shall be not less than eight working days from the issue date and no more than thirty days from the issue date. Small claims, eviction action - see above under **Eviction**.

Writ of Restitution: No writ shall be executed if received by the sheriff more than thirty days after its issuance.

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