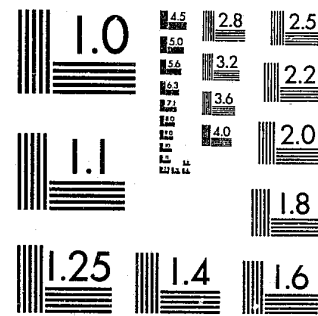


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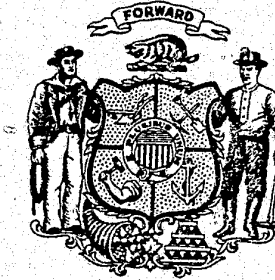
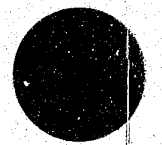
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WISCONSIN CIVIL CASE PROCESSING TIME REQUIREMENTS
FROM INITIAL FILING TO TRIAL: AN OVERVIEW

STAFF BRIEF 79-3

Wisconsin Legislative Council Staff
October 16, 1979

State Capitol
Madison, Wisconsin

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STAFF BRIEF 79-3*

WISCONSIN CIVIL CASE PROCESSING TIME REQUIREMENTS
FROM INITIAL FILING TO TRIAL: AN OVERVIEW

INTRODUCTION

This Staff Brief has been prepared for the Legislative Council's Committee on Courts to provide background information regarding mandatory civil case processing time requirements at the trial court level.

The document is divided into three parts. PART I briefly summarizes Wisconsin's current time requirements for processing the majority of civil cases from the time of filing to trial. PART II sets forth the findings and recommendations of the Advisory Committee to the Judicial Planning Committee regarding civil case processing time limits. PART III discusses the findings and recommendations in this area contained in the national survey documents on trial court management.

Also included, as Appendix 1, is an excerpt from the Resource Planning Corporation's (RPC) Wisconsin Case Processing Study Final Report containing a detailed listing of Wisconsin statutes and rules establishing time limits in civil actions. Appendix 2 also contains excerpts from the Resource Planning Corporation's Final Report, setting forth RPC's recommendations regarding civil case processing time limitations.

*This Staff Brief was prepared by Dan Fernbach, Senior Staff Attorney,
Legislative Council Staff.

PART I

SUMMARY OF TRIAL COURT CIVIL CASE PROCESSING
TIME REQUIREMENTS IN WISCONSIN

Currently, in Wisconsin, the rules of the Wisconsin Supreme Court and the Wisconsin statutes do not mandate the speedy trial and disposition of civil cases at the trial court level.

As a general rule, there are presently no limitations regarding the time in which civil actions must be brought to trial. Time limits do exist for some specialized types of cases, but these cases represent a very small percentage of the state's civil caseload.

Additionally, there are some intermediate events and pretrial activities in civil proceedings which are subject to statutorily prescribed time requirements, while other activities and events are subject only to general guidelines. Therefore, the sum of the component procedural parts of a civil case in Wisconsin does not establish an overall time limitation at the trial court level for processing civil matters from the time of filing to the time of disposition.

Obviously, because the nature and extent of pretrial activity will differ according to the type and complexity of each civil matter, it is difficult, and may even be undesirable, to impose absolute time limits which will apply to all civil cases. In addition, other factors, such as case backlog and the availability of judicial manpower, can affect the time required to bring a civil case to trial.

The Wisconsin Supreme Court adopted new rules of civil practice and procedure, effective July 1, 1978, which, among other things, provides the only existing general mandate regarding the establishment of a trial date for civil cases. Specifically, the new rules provide that all civil cases pending for one year will be deemed ready for trial, and that within 14 months of filing, the court shall by order establish dates for the pretrial conference and the trial. [See s. 802.10 (2), Wis. Stats.] However, the rules do not set forth specific time periods within which the pretrial conference and the trial itself must be conducted, and the above-cited provision also allows the trial court, on its own motion or upon motion of a party for cause shown, to amend its order.

The rules provide other devices which permit the trial court to become involved early in a civil proceeding. For example, the judge may, at any time within 150 days of filing, serve a scheduling order on the parties which will establish a timetable for the disposition of a civil matter. [Section 802.10 (3) (c), Wis. Stats.] Additionally, in lieu of the above-discussed "14 month rule," the judge, not earlier than 90 days

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after filing, may call a scheduling conference to establish a detailed timetable for completion of the case. [Section 802.10 (3) (a), Wis. Stats.]

In addition to these scheduling rules, Wisconsin's rules and statutes governing civil procedure contain a number of procedural time constraints for the completion of various pretrial activities which are generally applicable to most, though not all, civil cases. Briefly, these intermediate time limitations may be summarized as follows:

Commencement. A civil action is commenced by filing a copy of the complaint with the court and serving a summons and the complaint upon the defendant within 60 days of filing. [Section 801.02 (1), Wis. Stats.]

The defendant must respond with an answer to the complaint within 20 days after service of the complaint upon the defendant. [Sections 801.09 (2) (a) and 802.06 (1), Wis. Stats.] If the defendant fails to answer, presumably a civil case could be ready for the entry of a default judgment 80 days after commencement of the action.

Responsive Pleadings and Motions. A civil defendant may utilize a number of responsive pleadings and motions which could have the effect of materially lengthening the time required to join the issues in a civil matter. The defendant may assert a counterclaim or cross-claim, either of which requires an answer within 20 days after service. [Section 802.06 (1), Wis. Stats.] In addition, the rules of civil procedure authorize 10 specific defenses which may be asserted by motion. [See s. 802.06 (2), Wis. Stats.] Several of these motions require hearings upon at least 20 days notice. [Section 802.08 (2), Wis. Stats.] Also, a motion for a more definite statement may be filed, which if granted by the court, must be responded to within 10 days of service. [Section 802.06 (1) and (5), Wis. Stats.]

At any time within six months of commencement, the defendant may implead a third-party defendant without leave of the court. [Section 803.05 (1), Wis. Stats.] Service is required within 60 days of filing a third-party complaint, and the third party must answer the complaint within the standard time period of 20 days from the date of service. Thus, it is possible that in cases involving complex pleadings or impleaded third-party defendants, joinder of the issues could be one year or more after commencement.

Pretrial Discovery. Wisconsin has rather broad and liberal rules regarding the conduct of pretrial discovery. A number of discovery devices are authorized, and the rules expressly provide that, unless the court orders otherwise, the parties may utilize the various discovery devices at any time, in any sequence, upon any notice and with any frequency. [See ss. 804.01 (4) and 804.04, Wis. Stats.]

Obviously, certain methods of discovery, such as depositions upon written questions [see s. 804.06, Wis. Stats.] and written interrogatories [see s. 804.08, Wis. Stats.], can require substantial periods of time. For example, a party utilizing the former must serve his or her written questions on all other parties, who then have 30 days to serve cross-questions, if any, on all the parties. Any party may serve redirect questions within 10 days thereafter, and within another 10 day period after such service, any party may serve recross questions upon all other parties. [Section 804.06 (1) (c), Wis. Stats.] Thus, 50 days notice for utilizing each deposition upon written questions is authorized. Again, it should be noted that the use of such depositions is not limited, and by stipulation the parties may agree to a more liberal time period.

Wisconsin's rules also permit a party to serve upon any other party a written "request for admission" of the truth of any matters within the permissible scope of discovery, which must be answered within 30 days. [Section 804.11 (1) (b), Wis. Stats.] As with other discovery devices, such requests may be utilized any number of times.

As noted previously, Wisconsin's rules permit the trial court to use a standard scheduling order or scheduling conference to govern the timely conduct of civil cases. When used, scheduling orders must contain dates for the completion of discovery. Violation of a scheduling order potentially could, but seldom does, result in sanctions against the offending party, which may include payment of reasonable expenses, issuance of a contempt order, entry of a default judgment or dismissal on the merits. [See ss. 804.12 (2) (a) and 805.03, Wis. Stats.] However, these sanctions for violating scheduling orders, like the use of scheduling orders themselves, are options. The only mandate then regarding the timely disposition of civil cases is that a case be calendared for trial (but not necessarily tried) 14 months after it is filed.

[Attached, as Appendix], is a detailed discussion and analysis of Wisconsin's time guidelines for the processing of civil cases at the trial court level, including a listing of statutory time limits applicable to specific types of civil cases, as set forth on pages 2-27 to 2-49 of the Wisconsin Case Processing Study Final Report, dated July 1, 1978, prepared by Resource Planning Corporation.]

PART II

FINDINGS AND RECOMMENDATIONS OF THE ADVISORY COMMITTEE
TO THE JUDICIAL PLANNING COMMITTEE RELATING TO
TRIAL COURT CIVIL CASE PROCESSING TIME REQUIREMENTS

In the Fall of 1977, the Judicial Planning Committee retained a Washington-based consulting firm, the Resource Planning Corporation, to conduct a study to determine the incidence and causes of case processing delays in Wisconsin's trial courts. To provide guidance to the consultant, an Advisory Committee, composed of five Judicial Planning Committee members and three members appointed by the Chief Justice, was created.

On August 11, 1978, the Advisory Committee submitted its final report. Regarding trial court civil case processing time requirements, the Advisory Committee made specific findings that:

- Wisconsin has developed complex, detailed, and voluminous statutory time constraints on virtually all stages of case processing, while simultaneously allowing numerous exceptions. Full compliance with this mass of statutory requirements is unlikely, even if it could be described as necessary or desirable. Local courts cannot possibly monitor compliance, creating an environment where despite statutory limitations, actual case processing times can exceed statutory prescriptions by as much as 500%.
- Wisconsin's case processing statutes are not invariably directed toward rapid processing of cases: statutes often allow inordinate amounts of time to complete stages in litigation, far in excess of actual observed processing times, judges' opinions as to ideal processing times, or processing times established in other states.
- Sanctions available to judges for violation of statutory time prescriptions appear to be of limited utility due to their severity and inflexibility.

Pursuant to these findings, the Advisory Committee recommended that statutory case processing times for civil cases be revised to eliminate ambiguous, inconsistent, and unnecessary language; and that general guidelines governing precedence of cases and overall time limits for different civil case types be established by statute. Under the direction of the Chief Judge, local trial courts should be authorized to create and enforce specific interim processing times by court rule.

[Attached, as Appendix 2, are pages 4-3 to 4-7 of the Wisconsin Case Processing Study Final Report, dated July 1, 1978, which sets forth Resource Planning Corporation's recommendations regarding civil case time processing requirements for Wisconsin trial courts.]

PART III
FINDINGS AND RECOMMENDATIONS CONTAINED IN
NATIONAL SURVEY LITERATURE ON TRIAL COURT MANAGEMENT

In recent years, the national survey literature on trial court management and judicial administration has given considerable attention to the impact and diversity of state "speedy trial" statutes and rules governing the conduct of criminal cases.^{1/} However, the recent survey literature has provided no comparable analysis of state statutes and court rules mandating overall time limits for the disposition of civil cases.

Some of the reasons for the lack of attention given to mandated civil case processing time requirements are suggested in the literature itself:

Our observation and data, however, both indicate that the rules regarding time limits are honored more in the breach than in the observance, except in a few courts. . . A further aspect of the findings here is that effective and discretionary judicial case management now serves much of the purpose once served by mandated time limits. The Federal Rules of Civil Procedure eliminated numerous time limits while also eliminating numerous procedural technicalities. Since the rules were adopted, in 1938, many remaining time limits have been eliminated. Discovery, especially, is now governed by very few time limits.^{2/}

and

Because of the considerable diversity in civil cases, most researchers and writers have shied away from suggesting "speedy trial" standards comparable to those in criminal cases. Most states specify optimum time spans for the completion of various pretrial activities, but further guidance is rarely furnished for overall processing times.... In contrast to the limited number of standards for processing time in civil cases, numerous sets of criminal delay standards compete for attention.^{3/}

^{1/}For example, see Fort, Burke O'Hara, Speedy Trial: A Selected Bibliography and Comparative Analysis of State Speedy Trial Provisions, Washington D.C.: National Criminal Justice Reference Service, 1978; Church, Thomas W., Justice Delayed: The Pace of Litigation in Urban Trial Courts, Williamsburg: National Center for State Courts, 1978, pp. 47-49.

^{2/}Flanders, Steven, Case Management and Court Management in United States District Courts, Washington D.C.: Federal Judicial Center, 1970, p. 17.

^{3/}Church, Thomas W., Pretrial Delay: A Review and Bibliography, Williamsburg: National Center for State Courts, 1978, p. 6.

It has further been noted that:

All jurisdictions have time limits governing the filing of documents, hearing of motions, etc. These rules are not self-enforcing and may be no more than legal bases for entry of defaults and dismissals for failure to prosecute. As a practical matter, courts do not monitor cases to determine whether these rules have been complied with and as a matter of courtesy, most attorneys do not invoke them except on the provocation of repeated delays.

Furthermore, time limits in rules and statutes often bear little relationship to reasonable time limits for the processing of a case. The rules of one major metropolitan court, for example, are such that if counsel used the maximum time allowed each step in a civil case, it would take 26 months from filing to trial, exclusive of possible delays due to continuances.^{4/}

However, some attempt has been made in recent years to develop civil case processing time standards. For example, in 1976, the American Bar Association's Commission on Standards of Judicial Administration, in its Standards Relating to Trial Courts, adopted Standard 2.52, Standards of Timely Disposition. For civil cases, these standards recommend that a trial or hearing on the merits should be held within the following time limits:

1. Cases involving child custody, support of dependents or commitment to an institution: 45 days from filing;
2. Cases using summary hearing procedures, as in small claims: 30 days from filing; and
3. Other civil cases: six months, except in particular types of cases where a longer interval is deemed necessary because of normally encountered eventualities such as exceptionally complicated discovery, stabilization of injury in personal injury cases and settlement of financial affairs in probate cases.^{5/}

Rather than attempting to adhere to general time standards for the disposition of civil cases, as expressed in statutes and court rules, which may require numerous exceptions due to the complexity of certain types of civil cases and other factors beyond the control of the parties, the bulk of the contemporary survey literature recommends the adoption of civil case processing time standards at the local level, coupled with tighter individual case monitoring and control by local court administrators and the trial judge.

^{4/}Solomon, Maureen, Caseflow Management in the Trial Court, Commission on Standards of Judicial Administration, American Bar Association, 1973, p. 38.

^{5/}American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Trial Courts, American Bar Association, 1976, p. 93.

For example, a recent survey report on civil case management in the United States district courts, states that:

[F]ederal judges have increasingly asserted control over the timing of the civil litigative process through pretrial conferences, discovery cutoff dates, and through insisting early in the case on rapid progress toward trial. The findings...show the dramatic results of these controls.... In matters not governed by time limits in the rules (Federal Rules of Civil Procedure)--particularly discovery--there are huge differences in preparation time between courts that rigorously control their dockets and courts that do not. We found that a court can handle its caseload rapidly only if it takes the initiative to require lawyers to complete their work in a timely fashion. ^{6/} [Emphasis added.]

As examples of the types of judicial management which have proved effective, the author cites certain administrative practices utilized in the federal district courts in Los Angeles and Miami:

In Los Angeles, if the answer is late, most judges have their courtroom deputies routinely mail a form requesting the attorneys to show cause why the complaint should not be dismissed for a failure to prosecute (if service is not complete), or move for a default judgment (if service was completed more than twenty days earlier).... The case is also placed on the docket for hearing on "law and motions day." Most notably, once all answers have been received, the deputy mails a notice setting the case for final pretrial on the first Monday sixty days or more from the date of the notice. This procedure is mandated by local rule 9.... According to the rule, all discovery must be completed before the pretrial conference. A proposed pretrial order must be lodged five days before the date set.^{7/}

Case flow administration in the Miami area is described as follows:

The Southern District of Florida, which had a median disposition time of four months when surveyed, exercised the strictest control over each stage. Each of the seven judges had a policy to monitor closely the completion of pleadings, and was able at least to communicate with all lawyers in the case (a necessity for future case management) not long after the twenty days required for an answer, in most cases. Then an order was sent out setting a pretrial conference for 60 or 90 or as much as 120 days ahead. The same order required that discovery be completed five days prior to the conference. A trial date was set also, normally within two to perhaps five weeks following the pretrial conference.

^{6/}S. Flanders, supra, p. 17.

^{7/}Id., p. 20.

Note that this schedule was set by the court from the pleadings and other papers available quite soon after filing, without benefit of any discussion with the attorneys. Of course a continuance of the pretrial and trial schedule could be granted if the attorneys were later able to show the case required it.^{8/}

Similarly, recommendations for more stringent case flow management by the trial courts have been recommended to the ABA's Commission on Standards of Judicial Administration.^{9/} These recommendations embody the principles that:

1. Judicial responsibility for operation of a case flow management system must be centralized;
2. The case flow management system must incorporate case processing time standards and system performance standards as explicit management goals;
3. Goal setting must be followed by continuing measurement of performance against the established standards and periodic review of procedures on the basis of feedback from the participants;
4. The case flow management system should be modified periodically to meet changing conditions; and
5. The status of cases must be monitored from filing to termination.

Finally, a recent study by the National Center for State Courts on case processing delays in the trial courts concludes that strong civil case management by the trial courts is a necessary ingredient in attempting to speed up the pace of civil litigation:

The basic tenet of the case management philosophy is that the court, not the attorneys, should control the progress of cases in the pretrial period. Progress of individual cases is monitored to insure that civil litigation moves through pleadings, discovery, and motions without unnecessary delay.... While strong case management may be less essential to a jurisdiction accustomed to a speedy civil process, we conclude that such a system is necessary to accelerate civil litigation in a court that has traditionally been slow.^{10/}

DF:mek;men

^{8/}Flanders, Steven, "Case Management in Federal Courts: Some Controversies and Some Results," The Justice System Journal, Winter 1978, p. 151.

^{9/}M. Solomon, supra, pp. 36-41.

^{10/}T. Church, Justice Delayed, supra, p. 66.

APPENDIX 1

DETAILED ENUMERATION OF WISCONSIN'S STATUTORY
CIVIL CASE PROCESSING TIME REQUIREMENTS
BY RESOURCE PLANNING CORPORATION

Excerpt from Wisconsin Case Processing Study
Final Report

Prepared by

Resource Planning Corporation

2.4.2 Commencement of Action

Civil actions seeking personal, in rem, or quasi in rem judgments, other than actions of certiorari, habeas corpus, mandamus, or prohibition, are commenced by filing a summons and a complaint with the court and obtaining service of same upon the defendant(s) within 60 days of filing.¹²² Actions relating to the aforementioned extraordinary writs are commenced by service of an original writ upon the defendant and the filing forthwith of a copy with the court.¹²³

It should be noted that s. 801.02 applies only to original actions in circuit and county courts. Several actions for judicial review or appeals from lower court and administrative agency decisions have statutes governing the time in which the action must be commenced.

Because these are beyond the control of the court, and because they raise questions of jurisdiction rather than case flow, they are not recited herein but are included in Appendix D, Commencement of Actions.

122. W. S. A., s. 801.02.

123. Id.

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2.4.3 Service of Summonses/Notice

As stated above, service in the majority of civil cases must be perfected with 60 days from the time the action is filed with the court. (NOTE: Methods and sufficiency of service are defined in ss. 801.11 through 801.14.)

Several types of actions require that service be accomplished within shorter periods of time; these cases are:

- 52.38(2) Support of Dependents - petition must be served within 10 days before the date set for the hearing.
- 52.075(3) Cities, General Charter Law: Detachment of farm land from cities: Hearing notice - court shall make an order fixing the time of hearing which shall not be less than 60 nor more than 90 days thereafter, and at least 40 days prior to said time fixed, notice of hearing of such petition shall be served.
- 66.014(4)(A) General Municipality Law: Procedure for incorporation of villages and cities: Notice - notice shall not be less than 10 days prior to the hearing.
- 66.435(4)(B) General Municipality Law: Urban Renewal Act: Workable programs - aggrieved may appeal directly to the circuit court within 30 days after a copy of the order has been served; a copy of such petition shall be served personally or by registered or certified mail within the 30 day period herein provided.
- 75.51(3) Land Sold For Taxes: Reassessment of taxes by order of court - a copy of which objections shall within 5 days after such filing be served upon the attorney for the opposite party
- 80.24 Laying Highways: Appeal from award of damages by owner - appellant shall serve, at least 6 days before he makes his appeal, a notice in writing.
- 80.25 Laying Highways: Taxpayer may appeal; service of notice - appellant shall serve at least 6 days before he makes his appeal, a notice in writing.
- 88.05(3)(a) Drainage of Lands: General Rules applicable to notices of hearings (county court) - notice of hearing shall be mailed at least 20 days before the date set for hearing.

- 88.05(3)(b) Drainage of Lands: General Rules applicable to notices of hearings (county court) - notice shall be published; last insertion shall be not more than 20 days before the hearing.
- 88.05(5) Drainage of Lands: General Rules applicable to notices of hearings (county court) - notice of hearing may be served as provided in s. 801.11, at least 20 days before the time fixed for hearing.
- 88.78(2) Drainage of Lands: Annexation of benefited lands - owners notified of the filing of such petition and the contents thereof and requiring such owners to show cause at a time and place therein fixed, not less than 20 days after such petition is filed.
- 88.89(3) Drainage of Lands: Roads not to obstruct natural watercourse - at least 10 days before the time fixed for hearing, order to show cause shall be served on the owner or maintainer.
- 111.07(7) Employment Relations: Employment Peace Act: Prevention of unfair labor practices - action may be brought on for hearing upon the commission serving 10 day's written notice upon the respondent.
- 117.03(4) School District Reorganization: State Appeal board - notice shall be served on the state superintendent as chairman of the state appeal board and filed with the clerk.
- 128.20(2) Creditors Actions: Settlement of receivers' or assignees' accounts - apply to the court upon not less than 10 day's notice to creditors.
- 176.121(1) Police Regulations Intoxicating Liquors: Revocation on complaint of the department of revenue - summons and complaint shall be served at least 20 days before appearance.
- 186.29(5) Partnerships and Corporations: Credit Unions: Possession by Commission: Adjustment of loans and withdrawal of shares - at least 5 day's written notice shall be given of the time and place.
- 223.055(2)(B) Trust Company Banks: Common trust funds: Court accountings - notice by mailing not less than 14 days prior to the date of the hearing.
- 227.16(1)(A) Administrative Procedure and Review: Parties and proceedings for review - serving petition upon the agency and by filing such petition in the office of the clerk of the circuit court, all within 30 days after the service of the decision of the agency.

- 227.16(1)(c) Administrative Procedure and Review: Parties and proceedings for review - service not later than 30 days after the institution of the proceeding.
- 247.14 The Family Code: Actions Affecting Marriage: Service on and appearance by family court commissioner - each party shall, within 20 days after making service on the opposite party, serve same upon family court commissioner.
- 296.07 Realty of wards or incompetents; application for sale or incumbrance - notice shall be given by mailing a copy at least 10 days before the date of the hearing.
- 298.03 Arbitration: Court order to arbitrate; procedure - five day's notice in writing of such application shall be served upon the party in default. . .
- 298.09 Arbitration: Court confirmation award, time limit - notice in writing of the application shall be served 5 days before the hearing thereof.
- 298.13 Arbitration: Notice of motion to change award - notice of a motion must be served within 3 months after the award is filed.
- 299.05(3) Procedure In County Court In Small Claims Actions: Summons - except in eviction actions, return date shall be not less than 8 days nor more than 17 days from the issue date, and service shall be made not less than 8 days prior to the return date; in eviction actions the return date shall be not less than 5 days nor more than 17 days from the issue date, and service shall be made not less than 5 days prior to the return date.
- 299.16(3)(a) Procedure In County Court In Small Claims Type Actions: Actions in rem or quasi in rem; limitation on judgment; adjournment posting and mailing in eviction actions - in eviction actions, if summons returned more than 7 days prior to return date with proof that the defendant cannot be served within the state, plaintiff may affix a copy of the summons and complaint onto some part of the premises at least 7 days prior to the return date. At least 5 days prior to the return date an additional copy shall be mailed to the defendant.
- 299.16(3)(b) Procedure In County Court In Small Claims Type Actions: Actions in rem or quasi in rem; limitation on judgment; adjournment, posting and mailing in eviction actions - in all other cases where the summons and complaint are returned with proof that the defendant cannot be served within the state, the court shall, on the return date, adjourn the case to a day certain not less than 7 days from the return date, and the plaintiff shall affix a notice.
- 440.41(1) Department of Regulation and Licensing: Professional Fund Raisers, and Professional Solicitors: Solicitation

and collection of funds for charitable purposes; Designation of the department as agent for service of process; service of process - service of such process shall be completed 10 days after the receipt of a return receipt signed by the addressee or bearing a notation that receipt was refused.

It should be noted that there is no set format for expressing the time in which notices or summonses must be served. This is largely due to the fact that these cases often arise from agency decisions involving matters which require expeditious handling. Therefore, the most prevalent model among the exceptions requires the court to set a hearing date within a statutorily defined period, and to require service of a summons or of a petition and notice a certain number of days before the hearing.

The number of days for service of notice varies; ten and twenty days prior notice are the most commonly prescribed periods.

Less common practice is to require that notice be served within a given time after the court or agency decision being appealed is entered, usually prior to filing the case with the reviewing court. Certain statutes require that service coincide with court filing, and still others mandate service within a specified time after court filing.

2.4.4 Pleadings, Motions, and Substitution

The Rules of Civil Procedure require that the summons direct the defendant to serve an answer or a demand for a copy of the complaint within 20 days if personal or substituted personal service has been made, unless the state or an agency or officer of the state is the defendant.¹²⁴ In the latter instance, 45 days are allowed. If service is by publication, the defendant must respond within 40 days.¹²⁵ In all instances, failure to respond enables the entry of a default judgment according to the demand of the complaint.¹²⁶

124. W. S. A., ss. 801.09(2)(a), 802.06(1).

125. W. S. A., s. 801.09(2)(b).

126. Id.

Answers of guardians ad litem must be served 20 days after their appointment,¹²⁷ and answers to cross claims and counterclaims must also be served within 20 days of service of the complaint or claim.¹²⁸ The state, its agencies and its officers have 45 days to serve answer to all complaints, cross claims and counterclaims.¹²⁹ Moreover, s. 802.06 requires that any other pleading ordered by the court shall be served within 20 days from service of the order, unless the order otherwise directs.¹³⁰

At any time after commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action. The third party plaintiff need not obtain leave to implead if he or she serves the summons and complaint not later than six months after the summons and complaint are filed or within the time set in the scheduling order for completion of impleader. Thereafter, the third-party defendant shall serve defenses, counterclaims, and cross claims within 20 days of service.¹³¹

The Civil Rules also provide that parties may amend their pleadings once as a matter of course at any time within six months after the summons and complaint are filed or within the time set in a scheduling order.¹³² After the scheduling order is entered, pleadings may be amended only by leave of the court or by written consent of the adverse party.¹³³ In either event, pleas in response to amended pleadings must be made within 20 days after service of the amended pleading unless otherwise ordered by the court or unless such a pleading is not required or permitted.¹³⁴

127. W. S. A., s. 802.06.

128. Id.

129. Id.

130. Id.

131. W. S. A., s. 803.05(1).

132. W. S. A., s. 802.09(1).

133. Id.

134. Id.

If any pleading to which a responsive pleading is permitted is so vague as to preclude response, the party may move for a more definite statement before responding. If the motion is granted, the affected party has 10 days in which to provide a more definite statement, unless otherwise ordered by the court, or the court may strike the pleading.¹³⁵

Prior to responding to a pleading, or if no responsive pleading is permitted, a party may, within 20 days of service of a pleading, move to strike any insufficient defenses from the pleading; this may also be done on the court's initiative.¹³⁶

Section 802.06(2) also lists ten defenses which are to be raised by motion rather than in the defendant's answer.

Motions by the defendant for a change of venue to a proper county must be served upon the plaintiff within 20 days of service of the complaint and summons. The plaintiff must serve a written consent within five days of service of such demand or within 20 days of service, the defendant may move the court for said change and the court shall order the place of trial changed.¹³⁷ Actions for the recovery of real or distrained personal property, for the partition of property, or for satisfaction of mortgages on real property are excluded.¹³⁸ The same procedure holds true for municipal court appeals, except that the demand for consent to change of venue must be made within 10 days after the defendant has notice of the appeal.¹³⁹

Motions for judgment on the pleadings may be made by any party after joinder of the issue, but within such time as not to delay the trial.¹⁴⁰

135. W. S. A., s. 802.06(5).

136. W. S. A., s. 802.06(6).

137. W. S. A., s. 801.53.

138. Id.

139. W. S. A., s. 801.57.

140. W. S. A., s. 802.06(3).

A written motion, other than those which may be heard ex parte, and notice of hearing thereof shall be served at least five days prior to the hearing thereon.¹⁴¹ Supporting affidavits must be served with the motion and notice, and opposing affidavits must be served at least one day prior to the hearing.¹⁴²

Any party to a civil action may file a written request with the clerk of courts to substitute a new judge for the judge assigned to the case.¹⁴³ The request shall be filed prior to the hearing of any preliminary contested matters and, if filed by the plaintiff, not later than 60 days after the summons and complaint are filed or, if by any other party, not later than 60 days after service of the summons and complaint upon that party.¹⁴⁴

After the request has been filed, the named judge has no further jurisdiction other than to determine if the request is correct as to form and is timely filed.¹⁴⁵ If correct and timely, the judge is disqualified and must promptly request assignment of another judge to the case.¹⁴⁶ No time limits are placed on either the request for, or the assignment of a new judge.

At any time, however, the parties, the original judge, and the new judge may sign and file an agreement transferring the case back to the original judge.¹⁴⁷

Each party (or parties pleading together) may file only one such request in any one action,¹⁴⁸ except that all parties are entitled to file one such request within 20 days of an appellate court decision remanding a case to the trial court.¹⁴⁹

141. W. S. A., s. 801.15(4).

142. Id.

143. W. S. A., s. 801.58(1).

144. Id.

145. W. S. A., s. 801.58(2).

146. Id.

147. W. S. A., s. 801.58(4).

148. W. S. A., s. 801.58(3).

149. W. S. A., s. 801.58(7).

In addition to the Rules of Civil Procedure governing pleadings, the statutes contain several prescriptions governing the time allowed to plead in certain types of cases. These are:

- 62.075(4) Cities, General Charter Law: Detachment of farm land from cities: Objections, decisions; appeal - owners of land, if opposed to said proceedings, shall at least 15 days before the time of hearing, file and serve their verified objections.
- 66.05(8)(b) General Municipality Law: Razing buildings; excavations - the owner shall have 20 days following service to reply.
- 66.054(14)(b) General Municipality Law: Licenses for fermented malt beverages: court review - person desiring such review shall file his pleadings at commencement. The said city council, village or town board or licensee shall have 20 days within which to file his or their answer.
- 66.411 General Municipality Law: Urban Redevelopment; enforcement of duties - proceeding shall be commenced by a petition. It shall be the duty of the court to specify the time, not exceeding 20 days after service within which the corporation must answer the petition.
- 66.435(4)(B) General Municipality Law: Urban Renewal Act: Workable programs - aggrieved may appeal to the circuit court within 30 days after a copy of the order has been served. A copy of such petition shall be served within the 30 day period herein provided. A reply or answer shall be filed within 15 days.
- 72.521(5) Land Sold For Taxes: Foreclosure of tax liens by action in rem: Rights of persons having an interest in parcels of land affected by tax liens - answer must be served 30 days from publication and filed within 30 days after the date mentioned in the notice.
- 72.521(7) Land Sold for Taxes: Foreclosure of tax liens by action in rem: Rights of persons having an interest in or lien upon parcels described in list of tax liens to answer petition - answer must be served within 30 days after the date mentioned in the notice.
- 75.51(3) Land Sold For Taxes: Reassessment of Taxes by order of court - any party seeking to contest action shall, within 20 days after notice of the completion and filing of such reassessment and tax roll, file with the clerk of the court objections in writing, a copy of which objections shall within 5 days after such filing, be served upon the attorney for the opposite party.

- 102.23(1)(b) Worker's Compensation: Judicial Review - the department shall serve its answer within 20 days after the service of the complaint, and, within the like time, such adverse party may serve an answer.
- 128.14(1) Creditors' Actions: Notice; Injunction; time of filing claims - court shall require creditors to file their verified claims within 3 months from the date of the filing of an assignment or the appointment of a receiver.
- 128.20(1) Creditor's Actions: Settlement of receivers' or assignees' accounts - every receiver or assignee shall, within 6 months after the time limited for filing claims, file with the clerk of the court a full and itemized statement.
- 180.405(1)(c) Corporations: Business Corporations: Shareholders' derivative actions - complaint in any such action shall be filed within 20 days after the action is commenced.
- 180.825(2) Corporations: Business Corporations: Service of process on foreign corporations - the time within which the defendant may answer or move to dismiss shall not start to run until 10 days after the date of mailing.
- 181.295(1)(c) Corporations: Nonstock Corporations: Members Derivative actions - the complaint in any such action shall be filed within 20 days after the action is commenced.
- 185.93(1)(c) Corporations: Co-Operatives: Member or Stockholder derivative actions - no action may be instituted by a member or stockholder unless he files the complaint in such action within 20 days after the action is commenced.
- 198.17 Corporations: Municipal Power Districts: Eminent Domain procedure; Action to determine necessity of taking - the complaint shall be served with the summons. The defendant or defendants shall answer in said action within 10 days after such service.
- 212.23(4) Civil Procedure: Garnishment: Garnishment of earnings of public officers and employees - within 20 days after service upon him, the garnishee shall answer.
- 227.16(2) Administrative Procedure and Review: Parties and proceedings for review - every person served with the petition for review, who desires to participate in the proceedings for review shall serve upon the petitioner, within 20 days after service of the petition, a notice of appearance clearly stating his position with reference to each material allegation.
- 227.18 Administrative Procedure and Review: Record on Review - within 30 days after service of the petition for review upon the agency, the agency shall transmit to the reviewing court the original or certified copy of the entire record.

- 245.11(1) The Family Code: Objections to marriage - may file with the court having probate jurisdiction, a petition setting forth the grounds of objection to the marriage and asking for an order requiring the parties to show cause why the license should not be refused.
- 247.085(2) The Family Code: Petitions and Response: If only one party initiates the action, the other may serve a response or counterclaim within 20 days after the date of service.
- 294.07 Quo Warranto: Proceedings on motion to dismiss; continuance - if the defendant moves to dismiss and such motion is sustained, the plaintiff or relator may amend the complaint within 24 hours; if it is overruled, the defendant shall serve an answer in like time.
- 299.21(4) Procedure in County Court In Small Claims Type Actions: Jury Procedure - if there is a demand for a jury, plaintiff shall file and serve a written complaint within 20 days of the jury demand.
- 345.27(1) Vehicle Code: Rules Relating to Civil and Criminal Liability: Stipulation of no contest - stipulation shall be received within 10 days of the date of the alleged violation.
- 345.421 Vehicle Code: Discovery - neither party is entitled to pre-trial discovery except that if the defendant moves within 10 days after the alleged violation and shows cause therefor,
- 426.110(4)(e) Wisconsin Consumer Act: Administration: Class actions; injunctions; declaratory relief - not less than 30 days after the commencement of an action for injunctive relief, the customer may amend his complaint.

In many cases the time for answering the complaint or objecting to the petition is 20 days, as in the Civil Rules. These statutes differ from the Rules primarily in the amount of time for service of the complaint or notice of commencement of the action.

2.4.5 Discovery

Parties may obtain discovery by: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. ¹⁵⁰

¹⁵⁰ W. S. A., s. 804.01(1).

The Rules of Civil Procedure allow broad discovery. The frequency of use of these discovery methods can be curtailed only upon a protective court order issued upon motion and good cause shown¹⁵¹ where justice requires protection of a party or person from annoyance, embarrassment, oppression or undue burden or expense.¹⁵² Methods of discovery may be employed in any sequence, unless the court upon motion orders otherwise.¹⁵³

The time in which discovery must be accomplished is not defined in the Rules; completion of discovery is controlled by the schedule recited in the scheduling order, which order may be amended upon ~~timely motion of any party, or upon the judge's own motion.~~¹⁵⁴

However, the use of scheduling orders is discretionary. The time limits which are provided for the accomplishment of various discovery activities are discussed below.

Depositions upon oral examination may be employed by any party to take the testimony of any person after commencement of the action.¹⁵⁵ A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party;¹⁵⁶ "reasonable notice" is the standard employed in the Federal Rules of Civil Procedure. The court may for cause shown enlarge or shorten the amount of time provided in the written notice.¹⁵⁷

After commencement of an action, any party may take the testimony of any person by deposition upon written questions.¹⁵⁸ Procedure, and time for accomplishment is significantly different than

151. Id.

152. W. S. A., s. 804.01(3).

153. W. S. A., s. 804.01(4).

154. W. S. A., s. 802.10(1).

155. W. S. A., s. 804.05(1).

156. W. S. A., s. 804.05(2).

157. Id.

158. W. S. A., s. 804.06(1)(a).

for deposition on oral examination. A party desiring to take a deposition upon written questions shall serve notice and the questions on every other party to the case.¹⁵⁹ Within 30 days after service, any party may serve cross questions on all other parties. Within 10 days of service of cross questions, a party may serve redirect questions on all parties. Within 10 days of service of redirect questions, a party may serve recross questions upon all other parties.¹⁶⁰ The court may for cause shown enlarge or shorten the time.¹⁶¹

Any party may serve written interrogatories upon any other party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.¹⁶² The party upon whom the interrogatories have been served shall serve a copy of the answers, and any objections within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint.¹⁶³ The times for return may be altered, at the discretion of the court.¹⁶⁴

A request for production or entry for inspection may be served upon the plaintiff at any time after commencement of the action, and upon any other party with or after service of the summons and complaint.¹⁶⁵ The party upon whom the inspection request is served shall serve a written response within 30 days of service of the request, except that a defendant may serve a response within 45 days of service of the complaint and summons.¹⁶⁶ The court may shorten or lengthen time for response.¹⁶⁷

159. W. S. A., s. 804.06(1)(b).

160. W. S. A., s. 804.06(1)(c).

161. Id.

162. W. S. A., s. 804.08(1)(a).

163. W. S. A., s. 804.08(1)(b).

164. Id.

165. W. S. A., s. 804.09(2).

166. Id.

167. Id.

Physical and mental examinations of parties may also be compelled as part of discovery. On motion for cause shown and upon notice to all parties, the court may order a party to submit to a mental or physical examination.¹⁶⁸ The court may also order inspection of medical records.¹⁶⁹ No times are set for the completion of medical examinations, other than a requirement that all reports received by the adverse party must also be delivered to the other party within 10 days of receipt by the adverse party.¹⁷⁰ This time prescription, however, impacts admissibility of the evidence rather than civil case processing.

Requests for admission may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint.¹⁷¹

Each request for admission must be made separately, and shall be deemed admitted within 30 days of the service of the request unless the party to whom the request is directed serves upon the requesting party a written answer or objection.¹⁷² The court may enlarge or shorten the 30 day period.¹⁷³ Also, unless shortened by the court, a defendant shall not be required to serve answers or objections within 45 days of services of the summons and complaint.¹⁷⁴

As noted earlier, the Rules provide few limitations governing the time in which discovery must be completed. Sequence and frequency of discovery activities are expressly not controlled by

168. W. S. A., s. 804.10(1).

169. W. S. A., s. 804.10(2).

170. W. S. A., s. 804.10(3)(a).

171. W. S. A., s. 804.11(1)(a).

172. W. S. A., s. 804.11(1)(b).

173. Id.

174. Id.

Chapter 804. Thus, all methods of discovery may be employed upon commencement of an action, and conducted in any sequence and with whatever frequency the parties desire.

Three controls on discovery do exist. The court may enter scheduling orders specifying the date for completion of discovery, which orders may be amended upon timely motion of any party or on motion of the court. (See Section 2.4.6, Calendar Practice, *infra*.)

Upon motion of any party or by a person from whom discovery is sought, and for good cause shown, the court may curtail or eliminate discovery by entry of a protective order.

Finally, those methods of discovery for which time limitations exist (usually dealing with compliance) also provide for the judge to enlarge or shorten the time, often at the court's discretion.

2.4.6 Calendar Practice

Section 802.10 of the Rules of Civil Procedure governs calendar practice in all actions and special proceedings except appeals to circuit court, actions seeking extraordinary writs, actions in which all defendants are in default, provisional remedies, and actions under s. 66.12 Chapters 48, 52, 102, 108, 227, 247, 288, 299, 348, 812, and proceedings under Title 42-B.¹⁷⁵

All actions and special proceedings not exempted are deemed to be ready for trial one year after the summons and complaint are filed. The trial court will, within 60 days after the expiration of the one-year period after the summons and complaint are filed, set dates for both a pretrial conference and a trial. The court may set dates for a pretrial conference and a trial at a time earlier than 60 days after the expiration of one year after the filing of the summons and complaint upon either a motion of a party for

175. W. S. A., s. 802.10(1).

cause shown or upon stipulation of all parties. Any order establishing dates for a pretrial conference and a trial may, on the court's own motion, or upon motion of a party for cause shown, be modified.¹⁷⁶

In lieu of the above provisions, the court may, on its own motion or upon motion of a party, call a scheduling conference. The conference may be called not earlier than 90 days after filing of the summons and complaint upon at least 10 days written notice to all attorneys of record and to all parties of record not represented by counsel. At least one attorney of record for each represented party and unrepresented parties are to appear. After consultation, the judge shall set:

- the time at which a motion for default judgment may be heard;
- the times within which discovery must be completed;
- the time, prior to the pretrial conference, within which impleader shall be completed and within which pleadings may be amended;
- a time at or prior to the pretrial conference within which motions before trial shall be served and heard;
- a date for the pretrial conference and a date for trial as soon as practicable after the pretrial conference.¹⁷⁷

Scheduling orders, once entered, control the processing of the case unless modified. The judge may amend the scheduling order upon timely motion of any party if it appears the schedules cannot be reasonable met. Whenever the judge determines that it is not reasonable to meet pretrial or trial dates established, the judge may amend the order on the judge's own motion.¹⁷⁸

176. W. S. A., s. 802.10(2).
177. W. S. A., s. 802.10(3)(a).
178. W. S. A., s. 802.10(3)(b).

In lieu of a scheduling conference, the judge may use mail, telephone, or other means to obtain scheduling information and may enter an order based on the information so obtained, or may enter and serve a standard scheduling order upon the parties. If a standard scheduling order is employed, it shall be entered within 150 days after commencement of the action.¹⁷⁹

(NOTE: Section 802.10 becomes effective as to all actions pending on July 1, 1978, provided that any scheduling order entered prior to July 1, 1978, shall remain in effect.¹⁸⁰ Prior to the effective date, the entry of scheduling orders was mandatory rather than discretionary.)

2.4.7 Pretrial Conferences

In all contested civil actions and contested special proceedings (except those under Chapters 48, 52, 288, 299 and 345), the judge shall direct the attorneys for the parties to appear for a pretrial conference. This can be waived by the parties with the approval of the judge. In uncontested civil actions and special proceedings, a pretrial conference may be held at the discretion of the judge.¹⁸¹

The purpose of the pretrial conference, generally, is to narrow the issues to be tried. The Rules provide that attorneys appearing at the conference must have the authority to enter stipulations.¹⁸²

The date for the pretrial conference is set in the scheduling order,¹⁸³ or by the court within 60 days after the expiration of one year from filing. The judge is authorized to adjourn a pretrial conference or order additional conferences if such action is necessary or advisable.¹⁸⁴

179. W. S. A., s. 802.10(3)(c).
180. W. S. A., s. 802.10(4).
181. W. S. A., s. 802.11.
182. Id.
183. Id.
184. W. S. A., s. 802.10(2).

Following the pretrial conference, the judge must make an order reciting the action taken and setting or confirming the final trial date. When entered, the pretrial order controls subsequent proceedings, unless modified on motion of a party or the court for good cause. If for any reason the action is not tried on the date set in the scheduling or pretrial order, the judge shall, within 30 days after the elapsed trial date, set the case for the earliest possible trial date.¹⁸⁵

2.4.8 Trial

Unless scheduling orders or the trial date orders are modified, all civil actions and special proceedings are to be tried at the time provided in these orders. This is the only provision relating to trial dates. However, the time for hearing or trial of several types of civil actions or special proceedings are governed by specific statutes. Certain cases are given priority or calendar preference:

- 32.26(3) Eminent Domain: Authority of the department of local affairs and development and industry, labor and human resources - hearings seeking order from circuit court or county court requiring a condemnor to comply with ss. 31.19 to 32.27 shall be given precedence of the courts calendar.
- 45.50(3) Veteran's Affairs, Benefits and Memorials: Reemployment in civil employment after completion of military service - upon filing of a motion, a petition and on reasonable notice, which shall not be less than 10 days, court of record shall order a speedy hearing in any such case and shall advance it on the calendar.
- 59.21(8)(B)6 Counties: Sheriff, undersheriff, deputies - accused may appeal from the order to the circuit court by serving written notice thereof on the secretary of the (grievance) committee within 10 days after the order is filed. Within 5 days thereafter the board shall certify to the clerk of the circuit court the record of the proceedings. The action shall then have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board, fix a date of trial, which shall not be later than 15 days after such application except by agreement.

¹⁸⁵ W. S. A., s. 802.11.

- 62.23(7)(E)15 Cities, General Charter Law: City Planning: Zoning - all issues in any proceeding under this section shall have preference over all other actions and proceedings.
- 66.014(3)(A) General Municipality Law: Procedure for incorporation of villages and cities: Hearing - upon the filing of the petition the circuit court shall by order fix a time and place for a hearing giving preference to such hearing over other matters on the court calendar.
- 66.014(7)(b) General Municipality Law: Procedure for incorporation of villages and cities: Action - any action contesting an incorporation shall be placed at the head of the circuit court calendar.
- 66.021(10)(B) General Municipality Law: Annexation of territory: Action - any action contesting an annexation shall be placed at the head of the circuit court calendar.
- 66.05(3) General Municipality Law: Razing buildings; excavations - hearing on application for restraining order shall be had within 20 days and shall be given precedence over other matters on the court's calendar.
- 70.47(9)(A) General Property Taxation: Board of review proceedings: Appeal - appeal shall be by writ of certiorari to the circuit court and shall be placed at the head of the circuit court calendar.
- 70.47(13)(A) General Property Taxation: Board of Review proceedings: Milwaukee, filing objections, proceedings, appeal - appeal shall be by writ of certiorari to the circuit court and shall be placed at the head of the circuit court calendar.
- 87.16 Flood Control: Court proceedings speeded - any action brought in any court, except action to review the orders of the department pursuant to ss. 87.01 to 87.17, shall have precedence over all other actions pending upon such calendar.
- 111.07(11) Employment Relations: Employment Peace Act: Prevention of unfair labor practices - petitions filed under this section shall have preference over any civil cause of a different nature pending in the circuit court, and the circuit courts shall always be deemed open for trial herein.
- 227.25 Administrative Procedure and Review: Certification of certain cases from the circuit court of Dane County to other circuits - any action or proceeding for the review of any order of an administrative officer or administrative tribunal of the state required by law to be instituted in the circuit court of Dane County, and shall not have been called for trial or hearing within 6 months, and shall not have been continued by stipulation of the parties or by order of the court for cause shown, shall on application of either party on 5 days'

written notice to the other be certified and transmitted for trial to the circuit court of the County of the residence or principal place of business of the plaintiff or petitioner, where such action or proceeding shall have the precedence over all ordinary civil actions.

- 294.07 Quo Warranto: Proceedings on motion to dismiss; continuance - if the defendant moves to dismiss the complaint under s. 802.06(2), the issue raised by such a motion shall have preference upon the calendar and be tried before the other issues thereon.

For other case types, hearing times are explicitly set:

- 32.96(7) Eminent Domain: Condemnation for streets, highways, storm or sanitary sewers, water courses, alleys, airports and mass transit facilities - the hearing shall not be earlier than 20 days after the date of its filing.
- 51.20(11) State Mental Health Act: Involuntary commitment for treatment - jury trial: If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the demand.
- 51.20(15)(e) State Mental Health Act: Involuntary commitment for treatment - on appeal, the circuit court shall render a decision within 30 days after receipt of the case file and transcript.
- 51.20(17)(c) State Mental Health Act: Involuntary commitment for treatment - reexamination of patients: If a hearing has not been held within 30 days, the court shall within 24 hours of the filing, order an examination to be completed within seven days. Hearing may then be held at court's discretion but, if not within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.
- 51.45(13)4(d) State Mental Health Act: Prevention and Control of Alcoholism: Involuntary commitment for treatment - if a person is taken into protective custody, preliminary hearing shall be held not later than 48 hours after receipt of a petition for commitment.
- 51.45(13)4(e) State Mental Health Act: Prevention and Control of Alcoholism: Involuntary commitment for treatment - upon a finding of probable cause, the court shall fix a date for a full hearing within 14 days.
- 52.075(3) Cities, General Charter Law: Detachment of farm land from cities: Hearing notice - when the owner files a verified petition with the clerk the court shall make an order

fixing the time of hearing, which shall not be less than 60 nor more than 90 days thereafter.

- 55.06(10)(B) Protective Service System/Protective Placement - petition for termination of protective placement, if a hearing has not been held within the previous 6 months, shall be heard within 21 days of its receipt by the court.
- 59.21(8)(B)6 Counties: Sheriff, undersheriff, deputies - the court shall, upon application of the accused or of the board, fix a date of trial, which shall not be later than 15 days after such application except by agreement.
- 62.13(5)(I) Cities, General Charter Law: Police and fire departments: Disciplinary actions against subordinates - once at issue, the court shall, upon application of the accused, fix a date of trial, which shall not be later than 15 days after such application except by agreement.
- 66.05(3) General Municipality Law: Razing buildings; excavations - hearing shall be had within 20 days and shall be given precedence.
- 66.05(8)(b) General Municipality Law: Razing buildings; excavations - upon application by the building inspector the circuit court shall promptly set the petition for hearing.
- 66.054(14)(b) General Municipality Law: Licenses for fermented malt beverages: Court Review - once at issue, hearing may be had before the presiding judge of said court within 5 days.
- 88.09(1) Drainage of Lands: Appeals in drainage proceedings - any person whose lands have been assessed benefits or who has been awarded damages in a drainage proceeding may, within 30 days after entry of the order, petition the court for a jury trial. Thereupon such issues shall be set for trial.
- 88.83(4) Drainage of Lands: Transfer of district to city or village jurisdiction - no hearing shall be held on the petition until 30 days have elapsed from the date of such publication.
- 102.23(1)(c) Workmen's Compensation: Judicial Review - action may be brought on for hearing before said court upon the record by either party on 10 day's notice to the other.
- 111.07(7) Employment Relations: Employment Peace Act: Prevention of unfair labor practices - action may be brought on for hearing upon record by the commission serving 10 day's written notice upon the respondent.
- 128.20(2) Creditors' Actions: Settlement of receivers' or assignees' accounts - upon filing such a report the receiver or assignee may apply to the court upon not less than 10

day's notice for a final settlement of such account, and the court shall fix a time and place for the hearing.

- 166.555(2)(b) Uniform Controlled Substances Act: Enforcement and Administrative Provisions: Forfeiture proceedings; Commencement - the action shall be set for hearing within 60 days of the service of the answer.
- 176.121(1) Police Regulations Intoxicating Liquor: Revocation on complaint of the department of Revenue - upon complaint, the clerk shall issue a summons commanding the person so complained to appear before it not less than 20 days from that date. Such summons and a copy of the complaint shall be served at least 20 days before the time in which such person is to appear.
- 176.121(2) Police Regulations Intoxicating Liquor: Revocation on complaint of the department of Revenue - but if such person shall appear and answer the complaint, the court shall fix a date for trial not more 30 days after the return date of the summons.
- 198.17 Corporations: Municipal Power Districts: Eminent Domain procedure: Action to determine necessity of taking - the defendant shall answer within 10 days after service and the action shall be at issue and stand ready for trial upon 10 days' notice by either party.
- 227.19(2) Administrative Procedure and Review: Trial - proceeding for review of administrative agency decisions as provided in this chapter may be brought on for trial or hearing at any time upon not less than 10 days' notice given after the expiration of the time for service of the notices.
- 227.25 Administrative Procedure and Review: Certification of certain cases from the circuit court of Dane County to other circuits - any action or proceeding for review required by law to be instituted in or taken to the circuit court of Dane County which shall not have been called for within 6 months after being instituted, shall on application of either party on 5 days' written notice to the other be certified and transmitted for trial to the circuit court of the County of the residence or principal place of business of the plaintiff or petitioner, where such action shall have precedence.

2.4.9 Motions and Judgment

Upon rendition of a verdict in a jury trial, the judge shall set dates for serving and filing motions and for arguing motions. The dates for hearing motions shall be not less than 10 nor more than

60 days after the verdict.¹⁸⁶ Orders granting or denying the motions must be entered within 90 days after verdict, or shall be deemed denied.¹⁸⁷ Motions for a new trial based on newly discovered evidence may be made within one year after verdict, and shall be deemed denied unless an order granting or denying the motion is entered within 30 days after hearing.¹⁸⁸

Cases tried to the court require that written findings of fact and conclusions of law, or a memorandum of decision containing same, be filed by the court prior to rendering judgment.¹⁸⁹ These are to be made as soon as practicable and in no event more than 60 days after the submission of the cause to the court.¹⁹⁰

A judgment is the determination of the action.¹⁹¹ A judgment is granted when given orally in open court, rendered when signed by the court, entered when filed with the clerk, and perfected by the taxation of costs and the insertion of the amount thereof in the judgment.¹⁹² Judgment may be entered at the instance of any party either before or after perfection.¹⁹³

After judgment is entered, either party may serve upon the other a written notice of entry of judgment.¹⁹⁴

186. W. S. A., s. 805.16.

186. W. S. A., s. 805.16.

187. Id.

188. Id.

189. W. S. A., s. 805.17(2).

190. Id.

191. W. S. A., s. 806.01(1)(a).

192. W. S. A., s. 806.06(1).

193. W. S. A., s. 806.06(4).

194. W. S. A., s. 817.01(1).

APPENDIX 2

RESOURCE PLANNING CORPORATION RECOMMENDATIONS
ON CIVIL CASE PROCESSING TIME REQUIREMENTS
IN WISCONSIN

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Excerpt from Wisconsin Case Processing Study
Final Report

Prepared by
Resource Planning Corporation

4.4 Statutory Case Processing Standards Be Established for Civil Cases in a Form Similar to those for Criminal Cases

The statutory case processing time limits for civil cases are complex, and in many instances unduly liberal. As a result, there is evidence to suggest that the intent of the statutes is often subverted.

As Section 2.0 illustrated, the Wisconsin statutes contain time prescriptions for virtually every major stage of the litigation process. In addition, for each general time limit established there is a long list of case specific exceptions scattered throughout the statutes. For example, although the statutes prescribe that service in the majority of civil cases must be perfected within 60 days from the time the action is filed, there are 33 case specific exceptions which prescribe times ranging from 5 to 90 days.

It may be argued that the degree of statutory complexity is necessary and illustrates a concern for expediting cases by way of specific control over each stage in the process. However, this does not appear to be the case in light of the liberal time periods allowed for certain procedures. For example, s. 802.10(2) of the Rules of Civil Procedures effective July 1, 1978, provides that within 14 months of filing the court shall set a date for a pretrial conference. This appears to be an inordinate amount of time given:

- Even the lengthiest 10 percent of the cases disposed of in 1974-1976 actually had pretrial hearings in less than 12 months.

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- The majority of trial judges in the state believe that a reasonable civil processing time for disposition of complex civil matters should not exceed 11 months.
- Comparable states such as New York require that all civil matters be disposed within 12 months of filing.

Although the detail and volume of statutory time limitations suggests an intent to closely control the time required to adjudicate a civil matter, actual practice demonstrates that the goal is not being satisfied. For example, s. 802.10(1)(b)²⁰⁹ requires that a trial date be established that falls within 30 days of the pretrial conference. Based on the analysis of court records of cases which proceeded to trial, the average time period between pretrial and trial was 146 days for property damage cases and 188 days for personal injury cases. Admittedly, the statutes allow for exceptions to this requirement and extensions of time. However, if the average processing time for this stage of the proceedings exceeds the statutory time limit by 500 percent, the impact of the statute on case delay is certainly questionable.

If we assume that statutorily mandated time limits are required to ensure efficient case processing, the solution to this problem becomes a question of how these prescriptions should be structured. At a minimum, statutory limits should be

- unambiguous as to the time requirements for final disposition of the matter;
- achievable in light of available manpower, resources, and case load;
- flexible enough to allow for local court variations in procedure, resources, and caseload, as well as case complexity;
- concise enough to allow monitoring with a minimum amount of judicial time.

209. This section has since been repealed, but was in effect for cases processed during the period from which the case sample was drawn.

To achieve these objectives, RPC recommends that general civil case processing limits be established statutorily, with more detailed time limits being the responsibility of the local courts, with guidance provided by the Supreme Court. Specifically, this would entail:

- Statutory time limits for the disposition of civil matters. Separate limits may be created for specific types of cases (e.g., personal injury, property damage) and/or by the complexity of the matter (e.g., filing of third party complaint).
- All time limits for interim stages of the process would be established at the local court level in accordance with recommendations promulgated by the Supreme Court.
- Local court time limits would be established, published, and enforced, using date certain scheduling orders entered not later than one week after the case is at issue.

This system would obviously allow the exercise of judicial discretion in amending limits set out in the scheduling order within the constraints imposed by statute for case disposition.

Based on a survey of judicial attitudes concerning case processing times, and data collected during this project on actual case processing times, it appears that disposition time limits could be established and achieved which are far below those allowable under current statutes (see Table 4-1).

It should be noted that such a system would only establish processing standards, leaving the responsibility for enforcement of these standards with the trial court judges of the state.

TABLE 4-1
ACTUAL CASE PROCESSING TIME
FROM FILING TO DISPOSITION
COMPARED TO JUDICIAL OPINIONS REGARDING
REASONABLE PROCESSING TIME (IN DAYS)

CASE TYPE	CIRCUIT JUDGES' OPINION	ACTUAL CIRCUIT MEDIAN	COUNTY JUDGES' OPINION	ACTUAL COUNTY MEDIAN
Felony	120	86	90	28
Misdemeanor	60	52	60	10
Contested Traffic	60	154	60	55
Personal Injury	310	298	210	235
Property Damage	180	202	122	143
Money Judgment	180	44	90	27
Divorce	177	224	150	190

As noted, time limits for completion of interim stages should be set at the local level using date certain scheduling orders. At a minimum, these orders should set limits for the completion of:

- discovery
- impleader and pleadings
- filing, service, and hearing of pretrial motions
- pretrial conference and settlement discussions
- trial

These requirements are essentially the same as provided in present scheduling orders and, when strictly adhered to, represent the only effective curb on protraction of discovery. Several judges have commented that discovery, particularly through the use of interrogatories and written depositions, is presently the most abused and effective tactical device for purposes of delay.

END