

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 18-03

**In re proposed amendment to Wisconsin
Statute § 806.02**

FILED

OCT 23, 2018

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On April 4, 2018, Attorneys William C. Gleisner, Vice Chair of the Wisconsin Judicial Council, and Thomas L. Shriner, Chair of the Wisconsin Judicial Council's Evidence and Civil Procedure Committee, filed a rule petition asking the court to amend Wis. Stat. § 806.02 pertaining to default judgment when an opposing party fails to serve a timely reply to or answer a claim. Wisconsin Stat. § 806.02 currently permits a plaintiff to obtain a default judgment against a defendant who fails to comply with Wis. Stat. § 802.06(1), but it does not permit any other party to obtain a default judgment when an opposing party fails to comply with Wis. Stat. § 802.06(1) by filing a response to a counterclaim or cross claim. This petition is intended to rectify that inconsistency.

The court discussed the petition on June 15, 2018 at a closed conference and voted to solicit written comments on the petition. Letters were sent to the interested persons on August 6, 2018.

The court conducted a public hearing on October 11, 2018. Attorney Thomas L. Shriner presented the petition to the court on behalf of the Judicial Council. The Honorable Eugene Gasiorkiewicz, Racine County Circuit Court, also appeared and spoke in favor of the petition. The court discussed the petition at a closed administrative conference and voted to grant the petition.

IT IS ORDERED that:

SECTION 1. 806.02(1) is amended to read as follows:

806.02 (1) A default judgment may be rendered in favor of any party as provided in subs. (1) to (4) if no issue of law or fact has been joined on any claim asserted in a complaint, counterclaim, or cross claim and if the time for joining issue has expired. Any defendant appearing in an action shall be entitled to notice of motion for judgment.

SECTION 2. A Judicial Council Committee Note to 806.02(1) of the statutes is created to read:

JUDICIAL COUNCIL COMMITTEE NOTE

Wis. Stat. s. 802.06(1) currently requires defendants to file an answer to the complaint. It also requires parties served with a counterclaim or a cross complaint to serve a reply to the counterclaim or an answer to the cross-claim. Wis. Stat. s. 806.02 currently permits a plaintiff to obtain a default judgment against a defendant who fails to comply with s. 802.06(1), but it does not permit any other party to obtain a default judgment when an opposing party fails to comply with s. 802.06(1) by filing a response to a counterclaim or cross claim. The Council could find no logical basis for this disparity in treatment. Furthermore, the Council noted that

Rule 55 of the Federal Rules of Civil Procedure allows any party to obtain judgment against another party who has failed to plead or otherwise defend against a complaint, counterclaim, or cross claim.

SECTION 3. 806.02(2) is amended to read as follows:

806.02 **(2)** After filing the complaint, counterclaim, or cross claim and proof of service thereof ~~of the summons on one or more of the defendants~~ and after filing an affidavit that ~~the defendant~~ the party against whom judgment is sought is in default for failure to join issue, ~~the plaintiff~~ a party may move for judgment according to the demand of the complaint, counterclaim, or cross claim. If the amount of money sought was excluded from the demand for judgment, as required under s. 802.02(1m), the court shall require ~~the plaintiff~~ the moving party to specify the amount of money claimed and provide that information to the court and to the other parties appearing in the action prior to the court rendering judgment. If proof of any fact is necessary for the court to ~~give~~ render judgment, the court shall receive the proof.

SECTION 4. 806.02(5) is amended to read as follows:

806.02 **(5)** A default judgment may be rendered against any ~~defendant~~ party who has appeared in the action but who fails to appear at trial. If proof of any fact is necessary for the court to render judgment, the court shall receive the proof.

IT IS FURTHER ORDERED that the effective date of this order is January 1, 2019.

IT IS FURTHER ORDERED that the Judicial Council Committee Note to Wis. Stat. § 806.02 is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

IT IS FURTHER ORDERED that the rule adopted pursuant to this order shall apply to court proceedings commenced after the effective date of this rule and to any proceedings within a court proceeding then pending, except insofar as, in the opinion of the circuit court, application of the rule change would not be feasible or would work injustice, in which event the former rule applies.

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 23rd day of October, 2018.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

