

STATE OF WISCONSIN  
SUPREME COURT

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In re:

PROPOSED AMENDMENT TO  
WISCONSIN STATUTES § 806.02

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**PETITION OF WISCONSIN JUDICIAL COUNCIL  
FOR AN ORDER AMENDING WIS. STATS. § 806.02**

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ON BEHALF OF THE WISCONSIN JUDICIAL COUNCIL

April 2, 2018

For the reasons set forth in the accompanying supporting memorandum, the Wisconsin Judicial Council respectfully petitions the Wisconsin Supreme Court to amend WIS. STAT. § 806.02. This petition is directed to the Supreme Court's rule-making authority under WIS. STAT. § 751.12.

## PETITION

The Wisconsin Judicial Council respectfully requests that the Supreme Court adopt the following rule:

**SECTION 1.** 806.02 of the statutes is amended to read:

**806.02. Default judgment.** (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.

(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, 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.

(3) If a defendant fails to appear in an action within the time fixed in s. 801.09 the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 801.10 and, in addition, shall require further proof as follows:

- (a) Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by the complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.
- (b) Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

(4) In an action on express contract for recovery of a liquidated amount of money only, the plaintiff may file with the clerk proof of personal service of the summons on one or more of the defendants and an affidavit that the defendant is in default for failure to join issue. The clerk shall render and enter judgment against the defendants who are in default for the amount demanded in the complaint. Leaving the summons at the abode of a defendant is not personal service within the meaning of this subsection.

(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.

**Judicial Council Committee Note:**

Wis. Stat. § 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. 806.02 currently permits a plaintiff to obtain a default judgment against a defendant who fails to comply with §802.06(1), but it does not permit any other party to obtain a default judgment when an opposing party fails to comply with §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.

The Wisconsin Judicial Council respectfully requests that the Court issue an order adopting the amended § 806.02 and that it publish the accompanying Judicial Council Committee Note.

Dated April 2, 2018.

Respectfully submitted,

WISCONSIN JUDICIAL COUNCIL

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