

## MEMORANDUM

**TO:** Judge Noonan  
**FROM:** Krista Gallager  
**DATE:** 06/22/01  
**RE:** Extension of Time For Service of Process in Family Actions

### ANALYSIS

Under § 767.085(3), Stats., if one party initiates a family action, the other party must be served under ch. 801. If the parties initiate an action with a joint petition, service of a summons is not required. See § 767.085(3), Stats. Section 801.11, Stats., sets forth the requirements for service of process by which the court may obtain personal jurisdiction on the defendant. Under § 801.02(1), Stats., service of an authenticated copy of the summons and complaint must be made upon the defendant within 90 days after the action is filed with the court.

In addition, § 801.15(2), Stats., provides that this 90-day time period for service may not be enlarged. However, § 767.145(2), Stats., creates an exception to this restriction and allows the court to extend the time for service in a family action. Section 767.145(2), Stats., provides:

Except as provided in s. 767.456, extension of time under any other circumstances shall be governed by s. 801.15(2), except that the court may, upon the petitioner's demonstration of good cause, and without notice, order one additional 60-day extension for service of the initial papers in the action.

Therefore, the court may order a 60-day extension of time for service beyond the 90-day time period prescribed by § 801.02(1), Stats. See § 767.145(2), Stats. It is worth noting that the enlargement of time in a paternity proceeding is governed by § 767.456, Stats., rather than § 767.145(2), Stats. Essentially, § 767.456, Stats., provides for an extension of time for service until the date the summons and petition are actually served if certain criteria are met. In addition, § 767.14, Stats., requires service on the family court commissioner within 20 days after service on the opposite party. Section 767.145, Stats., also provides the court with discretion to extend the time to serve the family court commissioner.

Section 767.145(2), Stats., does not expressly provide whether the 60-day extension must begin immediately after the 90-day time period for service has expired. Thus, there could be a situation where a party is unable to serve the opposing party within the 90 days, and subsequently seeks a 60-day extension to begin on the date the court order is issued rather than the date the 90 days expires. As such, a party could be served after the expiration of 150 days (90 plus 60). Unfortunately, I could not find any cases on point addressing this issue. However, an unpublished court of appeals case indicates that the 60-day extension runs from the expiration of the 90-day time period for service. *In re*

*Paternity of J.E.J.*, 124 Wis. 2d 775, 1985 Wisc. App. LEXIS 3302 (Ct. App. 1985), was a paternity action in which the respondent asked the trial court to dismiss the paternity petition against him for late service of process because service was not performed until more than 120 days after the petition was filed. Under the applicable statutes at that time, service was to have been performed within 60 days after filing under § 801.02(1), Stats. The statutes provided that the court may order one additional 60 day extension for service upon a demonstration of good cause. The court of appeals determined that the respondent was served more than 120 days after the filing of the petition, and the trial court could not extend the time for service beyond the 120 days. The court of appeals further stated that once the 60-day extension had expired, personal jurisdiction over the respondent could be obtained only by his voluntary appearance. The court of appeals also determined that time for service cannot be extended on public policy grounds past 120 days. The court of appeals held that “[i]f there is no service within 120 days and if there is no waiver of the defect in service, then the trial court has no personal jurisdiction over the respondent and cannot grant a further extension on public policy grounds.” The court of appeals reversed the trial court’s denial of the respondent’s motion to dismiss. The holding of *J.E.J.* indicates that this Court could not extend the time for service in a family action (except a paternity case under § 767.456, Stats.) beyond the 150 days (the total of the 90 days under § 801.02(1), Stats., and the 60-day extension under § 767.145, Stats.).

Therefore, a reasonable interpretation of § 767.145(2), Stats., is that the time for service cannot be extended beyond 150 days. This is consistent with the statute because an extension of time beyond the 150 days of total time would contravene the intent of the statute. The statute specifically provides for only “one additional 60-day extension for service of the initial papers in the action.” § 767.145(2), Stats. Additional time beyond the 150 days total time for service would contravene the limited amount of time provided in the statute. Otherwise, the legislature would simply have given the court unfettered discretion to extend the time for service rather than a limited one 60-day extension. In addition, it is reasonable that the time period for service should be restricted. The statutes have consistently treated the enlargement of the time period for service distinct from the enlargement of time for performing other actions, such as filing a witness list or amending a complaint, where the court’s discretion is broad. (For example, § 801.15(2), Stats., allows the time period to be enlarged for acts required to be done at or within a specified, except for service under § 801.02, Stats.) Further, it is reasonable that service of process is subject to a heightened standard because it enables the court to exercise personal jurisdiction on a party. “Personal jurisdiction is obtained by service of the summons and complaint on the defendant.” *Hester v. Williams*, 117 Wis. 2d 634, 641 (1984). An action is commenced when the summons and complaint are filed, but the plaintiff then has a limited time to obtain personal jurisdiction over the defendant by service of the summons and complaint. *Id.* As such, in order for a court to have personal jurisdiction over a respondent in a family action (other than paternity), the respondent must be served within a 150 days (the 90 days plus a 60-day extension) or waive the defect in service.