

**STATE OF WISCONSIN
COUNTY OF DANE
CIRCUIT COURT
BRANCH 7**

ROY U. SCHENK Petitioner vs. CITY OF MADISON, MADISON EQUAL OPPORTUNITIES COMMISSION, and ST. MARY'S HOSPITAL & MEDICAL CENTER Respondents	DECISION & ORDER Case No. 02 CV 885
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This *pro se* petitioner has ventured into legal waters that intimidate and swamp even the most seasoned lawyer. He seeks a circuit court review of a decision dismissing his complaint by the Madison Equal Opportunities Commission (MEOC). While Mr. Schenk understandably focuses his arguments on the merits of his case, he unfortunately misunderstands the fundamental and fatal flaws to his lawsuit, as raised by respondents in the Motion to Dismiss that is the subject of this determination. This decision does not address the merits of petitioner's claim because the procedures he utilized deprive this tribunal of jurisdiction to do just that.¹

Somehow, Mr. Schenk received the impression that his action for circuit court review needed to be brought under the provisions of Wis. Stats. Chapter 227. It is this first misstep that led petitioner down the wrong and uncorrectable path. Why he took this route is a mystery since the final paragraph of the "Notice of Right to Appeal Final Order," marked as received by Mr. Schenk on February 22, 2002 states:

Either or both parties may seek judicial review of the attached Final Order as provided by Section 68.13 of the Wisconsin Statutes, by common law or by any other available legal remedy. Review of this Order pursuant to Sec. 68.13(1) must be commenced by petition for certiorari in the circuit court for Dane County within 30 days after receipt of this Order.

[emphasis supplied]²

By ignoring the clear directive of this Notice, petitioner sought to utilize the service provisions of Wis. Stat. §227.53 (1)(a), which does provide for service by certified mail.³ The problem is that judicial review of municipal administrative proceedings is governed by Chapter 68, not Chapter 227. That fact is made clear by the title and contents of Chapter 68 and by the definition in §227.01(1) which includes only **state** agencies as subject to its provisions.

Wis. Stat. §68.13 allows for review of municipal decisions only by "certiorari." Proper commencement of a certiorari action has been the subject of substantial interpretation by the Wisconsin Supreme Court:

The meaning of sec. 801.02, Stats., taken as a whole, is plain. It is neither unclear nor ambiguous. Giving effect to each and every word, clause and sentence of the section requires that the language "under sub. (1)" of sec. 801.02(5) refers to sec. 801.02(1). Such a reference, in turn, requires that an action for a remedy available by certiorari under sec. 801.02(5) may be commenced by filing and serving a complaint pursuant to sec. 801.02(1). Any other construction of sec. 801.02(5) would render superfluous the language "under sub. (1)."

No inquiry into the intent of the legislature is necessary because it requires no more than a mere facial reading of the statute to conclude that the statute permits the use of a summons and complaint to commence a certiorari action. Reference to the legislative history of sec. 801.02, Stats., simply spotlights what already is at center stage. The legislature, when it enacted secs. 12 and 13, ch. 289, Laws of 1981, removed certain restrictive language from sec. 801.02(1) (1979-80) and created ch. 781, which deals with extraordinary remedies such as certiorari. The result of the legislative action is to make extraordinary writs unnecessary and to allow extraordinary remedies to be reached via the "provision" used for ordinary civil actions. Actions for "certiorari, habeas corpus, mandamus or prohibition," which previously were excluded from the summons and complaint procedure specified in sec. 801.02(1), no longer are excluded under the statute.

Tobler v. Door County, 158 Wis. 2d, 19, 24, 461 N.W. 2d 775 (1990). [emphasis added]

The "provisions used for ordinary civil actions" are found in Chapters 801-807, commonly known as the rules of civil procedure, and Wis. Stat. §801.11 calls for personal service, except in circumstances that do not pertain here. The parties agree that this personal service on either MEOC or the City of Madison has not occurred.⁴

Respondents are correct in their contention that the law as to the proper commencement of an action is unforgiving. "Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear harsh." Mech v. Borowski, 116 Wis. 2d 683, 686 (1983). "We have long adhered to the rule that strict compliance with procedural statutes is necessary to obtain jurisdiction to review administrative agency decisions." [citations omitted], Department of Transportation v. Peterson, 226 Wis. 2d 623, ¶ 20, 594 N.W. 2d 765 (1999). Regardless of how worthy the contentions of Mr. Schenk's petition, his method of serving this action makes further consideration impossible.

ORDER

For the reasons stated in this decision, the Motion to Dismiss is **GRANTED. THIS CASE IS DISMISSED.**

Dated this 19th day of June 2002 at Madison, Wisconsin.

BY THE COURT

Moria Krueger, Judge
Case No. 02 CV 0885

¹No purpose would be served by analyzing the merits of the underlying case since such analysis would have no legal effect due to the jurisdictional deficits. In addition, Circuit Courts have enough work to attend without offering advisory opinions. Pursuant to a long-standing principle, then, only the dispositive issue will be addressed. Gross v. Hoffman, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938).

²Although petitioner did not get this document to the court until the day after he filed this action (March 20, 2002), it is assumed that he wanted the Notice and Decision of the commission to be part of his initial pleadings.

³There is no proof of any kind of service in this file, but since both sides to this controversy agree that service was by certified mail (before the expiration of 30 days from the date of the MEOC decision), that fact will be deemed to be true. Mr. Schenk's reliance on Chapter 227 is clearly stated in his Brief in Response to the Motion to Dismiss, p. 2.

⁴Just as this service defect obviates the need to address the merits of Mr. Schenk's contentions, so it is that questions as to MEOC's ability to be sued, as to St. Mary's standing in this case, and as to the adequacy of the pleadings need not be decided.