Seven Things to Know About Changes to Wisconsin Civil Procedure

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The Wisconsin legislature recently enacted major changes to civil discovery, class action lawsuits, and statutes of limitations.[1] With limited exceptions, these changes first apply to cases filed on or after July 1, 2018. The amendments are likely to have a significant impact on civil lawsuits in Wisconsin.

1. Changes to Scope of Discovery
The scope of discovery will now align closely with the Federal Rules of Civil Procedure. Discovery is permitted regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.[2]

Parties can seek to limit the scope of discovery if:

- The discovery sought is cumulative or duplicative or can be obtained more efficiently from some other source.
- The burden or expense of the proposed discovery outweighs its likely benefit or is not proportional to the claims and defenses at issue.[3]

In ruling on a motion to limit discovery, the court may require the requesting party to pay some or all of the producing party's expenses.

2. Automatic Stay of Discovery Upon Filing of Certain Motions
Upon the filing of a motion to dismiss, a motion for judgment on the pleadings, or a motion for more definite statement, all discovery and other proceedings must be stayed for a period of 180 days or until the court decides the motion, whichever is sooner. Upon a showing of good cause, the court may permit a party to obtain limited discovery.[4]

3. Limitations on Scope of e-Discovery
A party is not required to provide discovery of any of the following categories of electronically stored information (ESI) unless the requesting party makes a showing of substantial need and good cause, subject to the proportionality assessment referenced above:

- Data that cannot be retrieved without substantial additional programming to retrieve and search.
- Backup data that is substantially duplicative of data accessible elsewhere.
- Legacy data remaining from prior systems that cannot be accessed with the existing system.
- Data that is not reasonably accessible because of undue burden or cost.[5]

4. Limitations on Discovery
Generally, new limits will apply to the following discovery procedures:

- Twenty-five interrogatories, including all subparts.[6]
- Ten depositions, which are limited to seven hours.[7]
- Requests for production of documents may only reach back up to five years prior to the accrual of the cause of action. Exceptions apply to requests for patient health care records, vocational records, educational records, or any other similar records.[8]

5. Changes to Class Actions
Beginning July 1, circuit courts are required to provide written decisions regarding class certifications. The appellate court must hear immediate appeals of orders granting or denying class action certifications or denying a motion to decertify a class. Except to consider and implement a settlement, all discovery and proceedings are stayed pending the outcome of any such appeal.[9]

6. Statutes of Limitations
The statute of limitations period is reduced from six to three years generally for the following types of actions:

- Fraud.[10]
- Statutory claims, unless a different limitation is specified.[11]
- Injury to the character or rights of another, not arising on contract.[12]

7. Changes to the Statute of Repose
The statute of repose provides an absolute time bar to the commencement of claims against the owner or occupier of property or against any person involved in the improvement to real property to recover damages for any injuries arising out of certain types of acts. Prior law defined the "exposure period" as the ten years immediately following the date of substantial completion of the improvement to real property. The exposure period has been reduced from ten to seven years, and allows for a three-year extension if a person sustains damages during the period beginning on the first day of the fifth year and ending on the last day of the seventh year after the substantial completion of the improvement to real property.[13]

Conclusion
The changes to Wisconsin's Rules of Civil Procedure are designed to replicate the Federal Rules of Civil Procedure, which in general provide a narrower scope of discovery. It remains to be seen how Wisconsin courts will interpret and implement the new civil litigation rules. What is certain is that parties involved in litigation must consider these important changes when litigating their cases.

[1] 2017 Wisconsin Act 235.
[2] Wis. Stat. § 804.01(2)(a).
[3] Wis. Stat. § 804.01(2)(am).
[4] Wis. Stat. § 802.06(1)(b).
[5] Wis. Stat. § 804.01(1g).
[6] Wis. Stat. § 804.08(1)(am).
[7] Wis. Stat. § 804.045.
[8] Wis. Stat. § 804.09(2)(a)3.
[9] Wis. Stat. § 803.08(11)(a-b).
[10] Wis. Stat. § 893.93(1m)(b).
[11] Wis. Stat. § 893.93(1m)(a).
[12] Wis. Stat. § 893.53.
[13] Wis. Stats. §§ 893.89(1), (3)(b).

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