Department Response to the Commission's October 28, 2015 Comments on DWD Proposal D15-11
(The Commission's Comments are in black type. The Department's response is in red type.)

Concerns with the D15-11 proposal:

- *Proposed sec. 108.09(7)(c)4. requires that all parties must answer a complaint seeking judicial review of a commission decision. Currently, the successful parties at the commission level may rely on the commission to defend its decision and need not incur litigation expenses by answering.*

    - **This could be a trap for incorporated employers, especially small businesses, because an officer or shareholder of an incorporated business who is not a lawyer cannot represent the business in court.** For example, any business operated as an LLC would have to hire an attorney to represent it in court and file an answer.

The department disagrees with this assertion. The department proposal provides that all parties who chose to answer the complaint "shall" answer the complaint by a date certain. Currently, only LIRC "shall" answer by a date certain and the other defendants "may" file an answer. In other words, the proposed change clarifies that, if a party wishes to appear and defend the case with its own argument and brief (rather than rely on the Commission to do so, for example), that party must file an answer by a date certain. That is the law and practice in court cases of all or nearly all other types in Wisconsin.

The proposed change does not ***require*** any party to answer. As the Commission has noted in briefs it has filed, the courts have held that if a party declines to answer the complaint, that party's default is not grounds to prevent the other defendants from defending the merits of the case. For example, in a case where the employer agrees with the Commission's decision, it is reasonable to expect that it will choose not to answer the complaint. In that event, the Commission would defend its decision and, as under current law, the employer's failure to answer will not prejudice the Commission's defense of its decision in favor of the employer.

Corporations may appear only by counsel under current law. This requirement is applicable to all court cases in Wisconsin and does not change under the proposal.

- If an employer or employee fails to answer, it is not clear from the proposal if the court would be required to issue a default decision against that employer or employee. If so, a court could enter a default judgment against an employer who failed to answer and require that employer to pay unemployment insurance benefits before reviewing the underlying commission decision that denied benefits.

The department disagrees with the Commission's conclusion. Under the proposed change, a court may enter an order declaring that a non-appearing party is in default for failing to timely or properly answer the complaint. In the absence of a defendant's excusable neglect for failing to answer the complaint, that declaration of default should ordinarily be the result. The defaulting party should be precluded from seeking to litigate the case later. The proposal

conforms to the longstanding law and practice in court actions in Wisconsin in cases of other types.

Contrary to the Commission's statement, employers do not "pay unemployment insurance benefits" – the department pays the benefits. If a party defaults by failing to answer the complaint, the other parties, including the Commission, remain free to litigate the merits of their respective legal positions. Contrary to the implication of the Commission's statement, where the court affirms the Commission's decision favoring the employer on a particular claim matter, the employer's default for failure to answer the complaint will ***not*** subject it to paying benefits for the claim. But the employer's default for failure to answer the complaint should, as the proposal envisions, preclude that employer from litigating the merits of the case in an untimely and improper manner.

- *Proposed sec. 108.09(7)(c)1. provides that "any party," not just aggrieved parties, may bring an action for judicial review.*
    - This tracks the language of current Wis. Stat. § 108.09(7)(a), but does not pick up the "party aggrieved thereby" language included by the current cross-reference to sec. 102.23(1)(a). (Note that proposed sec. 108.09(7)(g) provides that any "party aggrieved" by a circuit court judgment may appeal to the court of appeals.) The proposed language would allow an appeal by any employer or employee, even if they are not aggrieved by the commission's decision, contrary to current law. See *Cornwell Personnel Associates, Ltd, v. DILHR*, 92 Wis. 2d 53, 284 N.W.2d 706 (Ct. App. 1979). This may just be a drafting error, but if it was intentional, it might **permit nuisance appeals to circuit court**.

Nuisance suits are rare and would, in the case of an employer filing a nuisance suit, require the hiring of a lawyer and payment of legal fees. The department does not foresee parties filing nuisance suits. The proposed change does not prevent a party from arguing that an appealing party lacks standing to appeal, just as the department did in the *Cornwell* case. The department, as a party to all judicial review actions, will monitor court filings for nuisance suits. If nuisance suits are filed, the department will ask the Council to revisit the issue.

- *Proposed sec. 108.09(7)(a) and (c)1. requires parties to name DWD as a defendant in all unemployment insurance appeals to court.*
    - **This could be a trap for employers and employees and result in the increased dismissal of actions brought by employers and employees who seek judicial review of commission decisions**. If an employer or employee fails to name DWD as a defendant in an action for judicial review, the court would lack competence to proceed and could be required to dismiss the employer or employee's case. An employer or employee might not intuitively realize it had to name DWD as a party in court cases if DWD was not a party before the administrative law judge or commission.

It is true that an action for judicial review would likely be dismissed for failure to name the department as a party, just as the action would likely be dismissed for failure to name the Commission as a party. But, as discussed below, all statutes and notices should be updated to reflect this change before the change is effective. The law was amended in recent years to clarify that the department is a required party defendant in an action by an employer to review a decision under section 108.10 (unemployment tax matters). It is not unfair to require the same in the review of a benefit decision.

- In most cases, courts review commission decisions simply to determine if the commission's interpretation and application of the law is reasonable, and the employer or employee seeking judicial review attempts to prove it is not. Having DWD as a party in every case could add a third voice that would unnecessarily **complicate the court's task on judicial review.**

Wisconsin's Circuit Court judges are able to handle multi-party litigation, including multiple parties' arguments in judicial review actions. The department seeks the right to present its arguments on all issues on appeal because the department administers the unemployment insurance program. A judicial decision in a benefit appeal will result in the department ultimately having to implement that decision.

The Department's view of what is a correct reading of the law does not necessarily conform to that of the Commission, whether or not the Commission's decision has affirmed a decision by the Department. In many cases, the Department would forego active involvement in a case in which it is named a defendant because its view of the law will not diverge from that of the Commission; the Commission will support its decision by its brief to the court. In the relatively rare case in which the Department disagrees with the Commission, the opportunity to separately brief the court will assure a balanced consideration of the legal issues by the courts.

- *Proposed sec. 108.09(7)(c)2. eliminates the requirement that a circuit court agree to the case being brought before it if no party resides in that county.*

  - Currently, a court has authority to agree—or not agree—to hear a case being brought before it when no party resides in that county. Currently, the court's agreement is required not only in unemployment insurance and worker's compensation cases, but also in most other administrative agency review actions. See, e.g., sec. 227.53(1)(a)3. This provision would **eliminate a court's discretion to decline to hear an unemployment insurance appeal when both the employer and the employee reside somewhere else.**

The department disagrees with the Commission's conclusion because there is no loss of the court's discretion. The Circuit Court would only permit an action for judicial review in a county in which no party resides to continue after notice and a hearing to all parties. The court

could, in its discretion based on the parties' arguments, deny the motion and transfer the case to a different county.

- *Proposed sec. 108.09(7)(c)5. provides that, after the commission files the record, the court "shall" schedule briefing by the parties, and any party "may" request oral argument.*
    - While most judicial review actions currently involve briefing by request or court order, requiring briefing in every case could limit a court's discretion to determine how it handles cases before it. Specifically providing that any party may request oral argument is unnecessary because that is already the case in any court proceeding. As a result, the provision may be interpreted as *requiring* courts to have oral argument whenever requested, also **limiting a court's discretion in handling cases.**

It is questionable how a court would handle a judicial review action if it did not direct the parties to brief the issues. The Commission has repeatedly argued that the record on appeal is based solely on the testimony and exhibits from the appeal tribunal hearing and that the Circuit Court should not hold additional evidentiary hearings. Notably, the Commission cites no case that resulted in a merits decision in which the Circuit Court *did not* set a briefing schedule.

With respect to oral argument, it is clear in the proposed language that a party *may request* it and the Circuit Court may, in its discretion, deny that request.

- After stating that any party may request oral argument in the last sentence of proposed sec. 108.09(7)(c)5., the proposed language incorporates a second clause from sec. 102.23(1)(d) "; subject to the provisions of law for a change of the place of trial or the calling in of another judge." The reason for including this second clause and its effect on the first clause is unclear as it does not refer to oral argument.

The referenced section is a revision of s. 102.23(1)(d), which stated, "The action may thereupon be brought on for hearing before the court upon the record by any party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge." The proposed language could be changed to "Any party may request oral argument before the court. The provisions of law for a change of the place of trial or the calling in of another judge apply to this subsection."

- *Proposed sec. 108.09(7)(d)6. and (f) seem to limit a circuit court's remedy.*
    - This may be a drafting error, as the proposal does not include all the remedies stated in current sec. 102.24(1). Proposed sec. 108.09(7)(d) permits a court to remand a case to the commission in cases where the fact findings are unsupported and could be construed to permit further hearing. However, the proposed language does not pick up a court's authority "to enter proper judgment upon the findings of the commission" in

cases where the court affirms the commission's fact findings but reverses the commission's interpretation or application of the law.

The Circuit Court either confirms the Commission's order or sets it aside. The Court, in its decision, sets forth the reasons for confirming or setting aside the order, along with any relevant instructions to the Commission. The proposal clarifies actual practice.

- *Proposed sec. 108.09(7)(c)2. provides that proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is DWD, the proceedings shall be in the circuit court of the county where a defendant – other than the commission – resides.*

    - The proposal tracks the current sec. 102.23(1)(a), but uses the term "department" rather than a "state agency." Thus, other state agencies who are employers would be required to bring actions in Dane County, not the county where a defendant resides as provided in current law.

It is true that, on rare occasions, another state agency that happens to be an employer in an action for review of a Commission decision could file in Dane County. Or it could file in any county if the parties agree or the Circuit Court orders under the proposed s. 108.09(7)(c)2. The department will track the appeals and advise the Council regarding the number of judicial review actions filed by State agencies.

Concerns that the origin and effects of the proposed changes were misrepresented to the Council:

It is unclear why the Commission notes the following points.

- The minutes from the September 17, 2015, UIAC meeting regarding DWD Proposal D15-11 are in error. Those minutes state that *"LIRC appeared before the Council in November 2013 requesting changes to address confusion of the courts and claimants on why LIRC references Wis. Stat. § 102.23, which also contains language that does not pertain to UI. At that time, Ms. Knutson suggested LIRC prepare a proposal that transferred relevant sections from Wis. Stat. 102.23 to Wis. Stat. Ch. 108 for the changes they were recommending; however, they chose not to proceed at that time."*

    - **This is not correct.** The commission appeared at the November 18, 2013, UIAC meeting by Bill Jordahl, Commissioner, and Tracey Schwalbe, General Counsel. The purpose of the commission's appearance was to request UIAC support on proposed law changes to streamline procedures for the UI appeals process before the commission, to correct legislative drafting errors in statutory provisions, and to repeal obsolete provisions. [The relevant portion of the minutes of the November 18, 2013, meeting is attached. Interestingly, the minutes from that meeting, and only from that meeting, have been removed from the UIAC website.] Ms. Knutson at one point referenced the fact that the procedure for UI court appeals referred to the process in chapter 102 and asked if the

commission had considered a law change proposal regarding that. Ms. Schwalbe responded that such a change had not been considered because it would be a huge undertaking and require the involvement of all of the commission's experienced court attorneys. The focus in November 2013 was only on improving the case review process as a result of a lean government initiative the commission had undertaken earlier that year. The brief exchange between Ms. Knutson and Ms. Schwalbe did not even warrant mention in the minutes of the meeting.

- The commission was never contacted by DWD regarding this proposal or even indicated that it was considering such a proposal. The commission's court attorneys have handled UI court work for decades.

Laurie McCallum, the Commission's chairperson, was present at the September 17, 2015 UIAC meeting. At that meeting, the Department presented the proposal to integrate relevant portions of s. 102.23 into s. 108.09 and to make certain changes. Those in attendance at the September 17th meeting were provided with a copy of the proposed statutory changes. Commissioner Bill Jordahl was present at the October 12, 2015 UIAC meeting, when the UIAC again considered this proposal and voted to approve it. The Commission's correspondence of October 28, 2015 was the first time that the Commission expressed an opinion on the proposal to the UIAC.

- There have not been any problems with UI court cases being handled through the procedures established in ch. 102.
  - The fact that the UI court appeals are handled by reference to chapter 102 is not new or unusual. Courts have recognized that the authority conferred on the commission in WC and UI cases is similar and therefore look to the WC statutes to interpret UI law. "We look to sec. 102.19(4)(c), Stats., of the Worker's Compensation Act because the authority conferred thereunder upon LIRC is substantially the same as that conferred by sec,. 108.09(6)(c), Stats. LIRC has program responsibilities under the Worker's Compensation Act which are substantially the same as its program responsibilities under the Unemployment Compensation Act. Sec. 15.221(2), Stats." *La Crosse Footwear v. LIRC*, 147 Wis. 2nd 419, 424, 434 N.W.2d 392 (1988).

The department suggested that the UIAC integrate portions of s. 102.23 into s. 108.09 for two main reasons. First, in order to make some changes to those provisions related to unemployment insurance appeals. Second, if the Legislature decides to change s. 102.23, those changes would be binding on the unemployment insurance program. The Legislature has introduced 2015 AB 501, which proposes to make changes to Wis. Stat. § 102.23. A copy of the relevant portion of AB 501 is attached.

- DWD represented to the Council that the *"department had tried to consolidate cases in the past; however, LIRC would only agree to the consolidation if the cases were heard in Dane County."*

    - **This, too, is not correct.** DWD filed several lawsuits against the commission in 2014 that were filed in counties where none of the parties resided, contrary to the law. DWD did not get the stipulation of the parties or the agreement of the court to do so. The commission therefore either moved to dismiss or moved for a change of venue, depending on the facts of the case. For cases involving very fact-specific issues, the commission informed DWD that the cases could be transferred to the counties where the parties resided *or* to Dane County where the commission resided. In fact, the commission stipulated to the transfer of several cases to counties around the state. For cases involving substantially similar legal issues, the commission suggested that it would conserve judicial resources if the cases were all brought in Dane County where one of the defendants – the commission – resided, rather than file the cases in several counties and have several courts have to rule on venue transfer motions and consolidation. The commission never *required* that cases be heard in Dane County – it just made economic sense for the state to have the cases combined in Dane County when the parties resided all over the state. DWD refused to file the cases in the correct counties or in Dane County where the commission resided.

The Department disagrees with the Commission's response. The department filed a series of appeals that had identical legal issues in a county in which at least one claimant resided. The Commission agreed to venue in Milwaukee County in the five cases filed there. The other parties, in default for failure to answer, were not required to agree. A Kenosha County judge ultimately decided that his original decision agreeing with the Commission's request to transfer the cases to Dane County was incorrect. The Legislature rejected venue rules allowing agencies to file administrative appeals in Dane County. Chapter 227 and Section 102.23 were both amended to prevent that result, while the Commission has recently persisted in seeking that result.

LIRC opposed "economic sense" regarding consolidation in Kenosha, Milwaukee and Waukesha Counties, forcing cases with identical legal issues to be litigated separately in numerous counties. As the Legislature determined, Dane County is not a proper venue in actions filed by the agency where the private party defendants do not reside in Dane County.

- DWD represented to the Council that a *"vast majority of appeals to circuit court are filed by claimants or businesses and in the county in which they reside. Often these cases are dismissed due to technicalities discovered by LIRC."*

- **The first sentence is true. The second sentence is vague and incorrect.** Cases may be dismissed if the plaintiffs, including DWD, fail to follow the statutory procedures to properly commence a circuit court action. Courts dismiss cases if parties do not follow the required statutory procedures.

The Department disagrees with the Commission's comments. It is unclear how the statement that "often these cases are dismissed due to technicalities discovered by LIRC" is vague and incorrect on the grounds that "courts dismiss cases if parties do not follow the required statutory procedures." The Commission routinely moves to dismiss cases when parties fail to follow litigation procedures, which is an example of a technicality. In fact, in 2014, 53% of actions for circuit court review of the Commission's unemployment insurance decisions were dismissed without a merits decision, based on the Commission's published statistics. A copy of the 2014 statistics are attached.

- DWD represented to the Council the proposal provides that *"the department is a party in all UI appeals to court, which ensures that the department has the opportunity to defend its position in judicial review cases."*

  - **This is vague.** It is not clear what positions DWD would anticipate defending in court. It is also not clear what value would be provided to the State by including DWD as a party in every UI benefits court case. **Courts have already ruled repeatedly that the commission has final review authority over department interpretations of the UI law.** *See, e.g., DILHR v. LIRC,* 161 Wis. 2d 231, 245, 467 N.W.2d 545 (1991); *DILHR v. LIRC,* 193 Wis. 2d 391, 397, 535 N.W.2d 6 (Ct. App. 1995); *DaimlerChrysler v. LIRC,* 2007 WI 15, ¶ 23.

As discussed above, the department seeks to appear as a party in all actions for judicial review in order to ensure that it may make its arguments on the issues before the Court because the department will ultimately have to implement the final result of the judicial review action. The proposal does not change LIRC's authority in resolving issues of law under chapter 108. But that authority is always subject to the court's review. The Department would be a party in order to advocate for a correct interpretation of the law.

- DWD represented to the Council that the *"proposal clarifies and simplifies certain procedural aspects of judicial review."*

  - **This is not correct.** By failing to take into account several aspects of the court review process, the proposed changes will lead to greater confusion on the part of the parties and the courts.

It is unclear which "aspects of the court review process" the Department has not taken into account in drafting this proposal.

- DWD represented to the Council that the *"administrative effect of this proposal on the Department and the Commission is expected to be minimal."*

    - **It is highly doubtful that the administrative effect of the proposal on DWD will be minimal; the administrative effect on the commission will be substantial.** DWD proposes to be a party in all UI benefit appeals to court. For the past several years, more than 100 court cases have been filed each year, and hundreds of attorney hours have been needed to handle the litigation. DWD will obviously incur litigation expenses (attorney time, copying costs, postage, and travel) to participate in so many court appeals.

In the vast majority of benefit appeals, the department anticipates that the department will file a statement that it agrees with the Commission's decision and the arguments that the Commission makes in its brief. The department has reviewed the potential effects of this proposal and, based on its review, has not requested additional funding for staffing.

- Cases in which DWD has participated as a party in the past have required extensive briefing and procedural delays. Adding DWD as a party in every case will **increase litigation costs** for the commission.

The majority of benefit cases in which the department has actively participated involved issues where the department disagreed with the Commission's application of law, which is precisely the reason that the department seeks to be a party to all benefit appeals—to protect its right to argue its position. The Commission has raised procedural arguments as obstacles to getting to the merits efficiently.

- In addition, if the proposal is passed, the commission will need to revise its appeal rights form for parties, revise the frequently asked questions (FAQs) for appealing a commission decision to circuit court, revise the sample pleadings available to parties, make revisions to the commission website with relevant information, and train staff. In addition, the commission will need to update the information it provides to clerks of circuit courts across Wisconsin regarding handling of appeals of commission UI decisions. This will take a great deal of staff resources and at least six months to accomplish.

It is unclear why implementation of the proposal will take a "great deal of staff resources and at least six months to accomplish" these tasks. The department offers to rewrite the appeal rights form, revise the Commission's FAQs and edit the Commission's sample pleadings for the Commission in order to alleviate any potential cost to the Commission.

- Although the commission is able to transmit the hearing record to the circuit court within 60 days in most cases, there are instances in which the vendor does not get the transcript to the commission timely. Rushing transcripts results in higher costs. In addition, the commission's staff has been reduced through recent budget cuts, and its remaining staff has had to absorb a greater amount of the commission's workload, making it difficult to compile a court record within an artificial timeframe.

In cases where the Commission is unable to transmit the record in time, it could send a short motion to the court requesting additional time. And it is not just 60 days – it is 60 days from the date that the Commission appears in the action. If the Commission answers 20 days after service, it would technically have 80 total days to prepare the record.

- DWD represented to the Council that it *"is anticipated that this proposal will have a negligible fiscal effect."*

  The proposal will have a **substantial fiscal effect on the commission and on other stakeholders.** Adding DWD as a party in every case will increase litigation costs for the commission and will require additional staff time and resources. Cases in which DWD has participated as a party in the past have required extensive briefing and involved procedural delays. The proposal duplicates state litigation expenses in cases filed by employers and employees. **The proposal will increase costs for parties who will need to appear in order to preserve their rights, including certain small businesses which will be required to hire attorneys,** and will increase General Program Revenue (GPR) costs for the court system. Transcripts costs would also increase.

As stated above, corporations must currently hire counsel to appear in judicial review actions. That has not changed. Sole proprietors may appear without counsel.

In unusual situations where the transcript is lengthy, the Commission could request additional time to prepare the transcript in order to avoid higher fees. It is unclear how GPR costs for the court system will increase under this proposal.

Most claimants and employers named as defendants forego all involvement in benefit appeals. In the relatively few cases filed by the department, it is rare that other parties expend any costs; the claimant and employer often default, leaving the dispute to be resolved through briefs filed by the department and the Commission. This will not change under the proposal.

The department's legitimate interests in asserting its view of the law to the courts outweigh any cost considerations identified by the Commission. The department's involvement will assure a balanced consideration of the legal issues by the courts where its view of the law diverges from that of the Commission.

2014 COURT STATISTICS

UNEMPLOYMENT INSURANCE

Total UI Court Decisions	120	
Circuit Court	108	
Court of Appeals	10	
Supreme Court	2	
Circuit Court Decisions	108	
Affirmed LIRC	49	45%
Reversed in part/Affirmed in part	1	1%
Remand to LIRC	1	1%
Dismissed	57	53%
Court of Appeals Decisions	10	
Affirmed Circuit Court, Affirmed LIRC	5	50%
Affirmed Other	1	10%
Reversed Circuit Court; Affirmed LIRC	1	10%
Reversed Circuit Court; Reversed LIRC	2	20%
Dismissed	1	10%
Supreme Court Decisions	2	
Petitions Denied	2	100%

EMPLOYER TAX OR LIABILITY

Total Employer Tax or Liability Court Decisions	6	
Circuit Court	6	
Court of Appeals	0	
Supreme Court	0	
Circuit Court Decisions	6	
Affirmed LIRC	3	50%
Reversed LIRC	1	17%
Dismissed	2	33%
Court of Appeals Decisions	0	
Supreme Court Decisions	0	

employee's disability as it may then appear. This subsection shall not affect the application of the limitation in s. 102.17 (4).

SECTION 30. 102.21 of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

102.21 Payment of awards by municipalities. ~~Whenever~~ When an award is made under this chapter or s. 66.191, 1981 stats., against any ~~municipality~~ local governmental unit, the person in whose favor the award is made shall file a certified copy of the award with the ~~municipal~~ clerk of the local governmental unit. Unless an appeal is taken, within 20 days after that filing, the ~~municipal~~ clerk shall draw an order on the ~~municipal~~ treasurer of the local governmental unit for the payment of the award. If upon appeal the award is affirmed in whole or in part, the ~~municipal~~ clerk shall draw an order for payment of the award within 10 days after a certified copy of the judgment affirming the award is filed with that clerk. If the award or judgment provides for more than one payment, the ~~municipal~~ clerk shall draw orders for payment as the payments become due. No statute relating to the filing of claims against, or the auditing, allowing, and payment of claims by, a ~~municipality~~ local governmental unit applies to the payment of an award or judgment under this section.

SECTION 31. 102.23 (1) (a) of the statutes, as affected by 2015 Wisconsin Act 55, is renumbered 102.23 (1) (a) 1. and amended to read:

102.23 **(1)** (a) 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on the order or award or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. The commission shall identify in the order

or award the persons that must be made parties to an action for review of the order or award.

2. Within 30 days after the date of an order or award made by the commission ~~either originally or after the filing of a petition for review with the department, the division, or the commission under s. 102.18,~~ any party aggrieved by the order or award may commence an action in circuit court for review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court ~~commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant~~. The summons and complaint shall name the party commencing the action as the plaintiff and shall name as defendants the commission and all persons identified by the commission under subd. 1. If the circuit court determines that any other person is necessary for the proper resolution of the action, the circuit court may join that person as a party to the action, unless joinder of the person would unduly delay the resolution of the action. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, the circuit court may extend the time ~~in~~ within which an action may be commenced by an additional 30 days.

3. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

SECTION 32. 102.23 (1) (c) of the statutes is amended to read:

102.23 **(1)** (c) ~~Except as provided in par. (cm), the~~ The commission shall serve its answer within 20 days after the service of the complaint~~, and, within the like time,~~

~~the adverse party.~~ Except as provided in par. (cm), any other defendant may serve an answer to the complaint within 20 days after the service of the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the ~~party~~ defendant had commenced a separate action for the review ~~thereof~~ of the order or award.

SECTION 33. 102.23 (1) (cm) of the statutes is amended to read:

102.23 **(1)** (cm) If ~~an adverse party to the proceeding~~ a defendant in an action brought under par. (a) is an insurance company, the insurance company may serve an answer to the complaint within 45 days after the service of the complaint.

SECTION 34. 102.28 (2) (a) of the statutes is amended to read:

102.28 **(2)** (a) *Duty to insure payment for compensation.* Unless exempted ~~by the department~~ under par. (b) or (bm) or sub. (3), every employer, as described in s. 102.04 (1), shall insure payment for ~~that~~ compensation under this chapter in an insurer authorized to do business in this state. A joint venture may elect to be an employer under this chapter and obtain insurance for payment of compensation. If a joint venture that is subject to this chapter only because the joint venture elected to be an employer under this chapter is dissolved and cancels or terminates its contract for the insurance of compensation under this chapter, that joint venture is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

SECTION 35. 102.28 (2) (b) (title) of the statutes is amended to read:

102.28 **(2)** (b) (title) *Exemption from duty to insure; employers generally.*

SECTION 36. 102.28 (2) (bm) of the statutes is created to read: