

FILED  
03-25-2026  
Anna Maria Hodges  
Clerk of Circuit Court  
2025CV009593

STATE OF WISCONSIN    CIRCUIT COURT    MILWAUKEE COUNTY

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MICHAEL FISCHER,

Petitioner,

v.

CASE NO.  
25CV009593

CITY OF WAUWATOSA,

Respondent.

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**BRIEF IN SUPPORT OF CITY'S MOTION TO DISMISS PETITION**

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The City of Wauwatosa (the “City”), by its attorneys, Crivello, Nichols & Hall, S.C., respectfully submits this Brief in Support of its Motion to Dismiss the Petition for Certiorari, which seeks complete dismissal of the petition against the City because the Petitioner failed to effectuate sufficient service of the summons and petition under Wis. Stat. §802.06(2)(a)5.

**INTRODUCTION**

On November 5, 2025, Petitioner Michael Fischer filed this Petition for a Writ of Certiorari against the City of Wauwatosa Board of Review. (Dkt. 2). The Petition asks the court to review the decision of the Board of Review concerning Fischer’s property located at 1665 Mountain Avenue, Wauwatosa, Wisconsin 53213. (*Id.*, p. 1). Pursuant to Wis. Stat. § 801.02(5), Petitioner was required to serve an authenticated copy of the Petition and the Writ on the Respondents in accordance with state statutes and civil procedure. The Respondents filed an answer to the Petition on February 4, 2025. (Dkt. 5). Included in the answer were the Respondent’s Affirmative Defenses, which included that “Petitioner has failed to properly and timely serve the Respondent with process in this case, such that this court lacks jurisdiction.” (Dkt. 5, p. 2). Upon information and belief,

Petitioner failed to properly serve the Respondents, and, consequently, the Court should dismiss the Petition for a Writ of Certiorari altogether.

### **LEGAL ANALYSIS**

“A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days.” Wis. Stat. § 801.02. The issue of service of process came before the court of appeals in *Bergstrom v. Polk County*, 2011 WI App 20, ¶12, 331 Wis. 2d 678, 685 – 686, 795 N.W.2d 482, and as relevant to the issue raised by this Motion, the court in *Bergstrom* explained as follows: “[g]enerally, failure to properly serve a defendant is a fundamental defect fatal to the action, regardless of prejudice, *Hagen v. City of Milwaukee Employees' Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, ¶ 13, 262 Wis.2d 113, 663 N.W.2d 268, and warrants dismissal of the plaintiff's complaint, *Bartels v. Rural Mut. Ins. Co.*, 2004 WI App 166, ¶ 16, 275 Wis.2d 730, 687 N.W.2d 84.” *Id.* The court in *Bergstrom* continued, “Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh.” *Id.* (quoting *Dietrich v. Elliott*, 190 Wis.2d 816, 528 N.W.2d 17 (Ct. App. 1995)). The court further acknowledged that “[w]e have previously stated that, if the service statutes ‘are to be meaningful, they must be unbending.’” *Id.* (quoting *Mech v. Borowski*, 116 Wis.2d 683, 686, 342 N.W.2d 759 (Ct.App.1983)).

Wis. Stat. § 801.11 states that Courts of this state may exercise personal jurisdiction over a defendant only if a summons is personally served on the defendant. No prejudice to the respondent needs to be shown to warrant the dismissal of the action. *Studelska v. Avercamp*, 178 Wis 2d 457 (1997).

Pursuant to Wis. Stat. §801.02(5), “[a]n action seeking a remedy available by certiorari ... may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order.” Therefore, the Petition and the Signed Writ needed to be properly served, similarly to a civil action under Wis. Stat. § 801.02(1).

In this case, the Petitioner himself attempted service on the Respondent by delivering a copy of the Petition (prior to the Writ of Certiorari being issued) on November 7, 2025. Attached as **Ex. A** is the Petitioner’s Proof of Service, which was not filed with the court as of the time Respondent makes this motion. The Writ of Certiorari (Dkt. 3) was never served on the Respondents, which is required by statute. Further, the Petitioner himself, an interested party, served the City on his own behalf. Under Wis. Stat. § 801.10, the petition “may be served by any adult resident of the state where service is made *who is not a party to the action.*” (Emphasis added). As Michael Fischer is a party to the action, he is not able to serve the petition on his own accord. According to the Affidavit of Service, the Petitioner himself “hand-delivered” the Petition, to the City Clerk and City Attorney at City Hall. (See Exhibit A). The affidavit of service was not filed with the court, and no order of Writ of Certiorari was served on the Respondent.

Strict compliance with the statutes governing service is required, and “[s]ervice must be made in accordance with the manner prescribed by statute.” *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶¶ 25, 43, 339 Wis. 2d 493, 811 N.W.2d 756 (citation omitted). “Generally, failure to properly serve a defendant is a fundamental defect fatal to the action, regardless of prejudice, and warrants dismissal of the plaintiff’s complaint[.]” *Bergstrom v. Polk Cnty.*, 2011 WI App 20, ¶12,

331 Wis. 2d 678, 795 N.W.2d 482 (citations omitted). This is a fundamental defect and deprives this court of personal jurisdiction, and therefore the petition should be dismissed altogether. While the consequence of dismissal may be harsh, the rules of civil procedure must be unbending if they are to be meaningful. *See Bergstrom*, 2011 WI App 20, ¶12 (citing *Mech v. Borowski*, 116 Wis.2d 683, 686, 342 N.W.2d 759 (Ct.App.1983)).

Based on the foregoing, the Respondent, City of Wauwatosa, respectfully requests that the Court grant its motion to dismiss the petition altogether with costs and disbursements of this action and any other relief that the Court deems just and/or equitable.

Dated this 25th day of March, 2026.

**CRIVELLO, NICHOLS & HALL S.C.**  
Attorneys for Respondent, City of Wauwatosa

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### PROOF OF SERVICE

**Case No.:** 2025CV009593  
**Court:** Milwaukee County Circuit Court  
**Petitioner:** Michael Fischer  
**Respondent:** City of Wauwatosa Board of Review

**1. Documents Served**

- Petition for Writ of Certiorari (including all attachments filed with the court)

**2. Parties Served**

- City Clerk – City of Wauwatosa (as agent for the Board of Review)
- City Attorney – City of Wauwatosa

**3. Method of Service**

- Hand-delivery

**4. Date of Service**

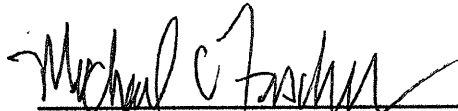
- Friday, November 7<sup>th</sup>, 2025

**5. Locations Served**

- City Clerk’s Office, City Hall, 7725 W. North Avenue, Wauwatosa, WI 53213
- City Attorney’s Office, City Hall, 7725 W. North Avenue, Wauwatosa, WI 53213

**6. Declaration**

I, Michael Fischer, declare that the above documents were served on the parties listed on the date and by the method indicated. I affirm that the information in this Proof of Service is true and correct to the best of my knowledge.

Signature:   
 Michael Fischer

NOV 7, 2025  
 Date:

**RECEIPT ACKNOWLEDGMENT:** *Staff may stamp, date, or initial here to confirm receipt*

**City Clerk’s Office:**

*Received by Misty [Signature] 11/7/2025*

Stamp/Initial: \_\_\_\_\_  
 Received by \_\_\_\_\_  
 Date: \_\_\_\_\_  
 NOV 07 2025

**City Attorney’s Office:**

City Clerk’s Office

Stamp/Initial: \_\_\_\_\_ Date: \_\_\_\_\_

Ex.A