CHAPTER 757

GENERAL PROVISIONS CONCERNING COURTS OF RECORD, JUDGES, ATTORNEYS AND CLERKS

757.001 Definitions. In this chapter:

(1) "Circuit court commissioner" means a person appointed under SCR 75.02 (1) and a supplemental court commissioner authorized under SCR 75.02 (3) to the limited extent of that authorization.

(2) "Supplemental court commissioner" means a person appointed under s. 757.675 (1).

History: 2001 a. 61.

757.01 Powers of courts. The several courts of record of this state shall have power:

(1) To issue process of subpoena, requiring the attendance of any witness, residing or being in any part of this state, to testify in any matter or cause pending or triable in such courts.

(2) To administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of such court.

(3) To devise and make such writs and proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.

(4) To exercise any of the powers and duties of a circuit court commissioner.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.01; 2001 a. 61.

757.02 Justices and judges and municipal judges; oath of office; ineligibility to other office; salary; conservators of peace. (1) Every person elected or appointed justice of the supreme court, judge of the court of appeals, judge of the circuit court or municipal judge, shall take, subscribe and file the following oath:

STATE OF WISCONSIN,

County of ....

I, the undersigned, who have been elected (or appointed) to the office of ...., but have not yet entered upon the duties thereof, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Wisconsin; that I will administer justice without respect to persons and will faithfully and impartially discharge the duties of said office to the best of my ability. So help me God.

.... (Signature)

Subscribed and sworn to before me this .... day of ...., ... (year)

.... (Signature)

(2) The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he or she was elected or appointed.

(3) The judges of such courts shall be conservators of the peace, and have power to administer oaths and take the acknowledgments of deeds and other written instruments throughout the state.

(5) Except for retired judges appointed under s. 753.075, each supreme court justice, court of appeals judge and circuit court judge included under ch. 40 shall accrue sick leave at the rate established under s. 230.35 (2) for the purpose of credits under s. 40.05 (4) (b) and for premium payment determinations under s. 40.05 (4) and (5).

History: 1977 c. 187 s. 96; 1977 c. 305 s. 64; 1977 c. 418, 449; Stats. 1977 s. 757.02; 1979 c. 32; 1981 c. 96, 353; 1987 a. 83; 1989 a. 355; 1997 a. 250.

The period of time constituting the "term for which elected" is set when a judge or justice is elected, and is thereafter unalterable by means of resignation. Wagner v. Milwaukee County Election Commission, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816, 02–0375.

757.025 Judge to file affidavit as to work done to receive salary. (1) No judge of a court of record may receive or be allowed to draw any salary, unless he or she first executes an affidavit stating that no cause or matter which has been submitted in final form to his or her court remains undecided that has been submitted for decision for 90 days, exclusive of the time that he or she has been actually disabled by sickness or unless extended by the judge under sub. (2). The affidavit shall be presented to and filed with every official who certifies in whole or in part, the judge's salary.

(2) If a judge is unable to complete a decision within the 90–day period specified in sub. (1), the judge shall so certify in the record and the period is thereupon extended for one additional period of not to exceed 90 days.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.025.

NOTE: See SCR 70.36, judges' certification of status of pending cases, adopted in 118 Wis. 2d 762, at 786.

This section is an intrusion by the legislature into the exclusively judicial area of judicial decision–making and, as such, is an unconstitutional violation of the separation of powers doctrine. In Matter of Complaint Against Grady, 118 Wis. 2d 762, 348 N.W.2d 559 (1984).

757.05 Penalty surcharge. (1) LEVY OF PENALTY SURCHARGE. (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) or (2m), for a financial responsibility violation under s. 344.62 (2), or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced in proportion to the suspension.

(b) If a fine or forfeiture is imposed by a court of record, after a determination by the court of the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(c) If a fine or forfeiture is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(d) If any deposit of bail is made for a noncriminal offense to which this subsection applies, the person making the deposit shall also deposit a sufficient amount to include the surcharge under this subsection for forfeited bail. If bail is forfeited, the amount of the surcharge shall be transmitted monthly to the secretary of administration under this subsection. If bail is returned, the surcharge shall also be returned.

(2) USE OF PENALTY SURCHARGE MONEYS. All moneys collected from penalty surcharges under sub. (1) shall be credited to the appropriation account under s. 20.455 (2) (i).

NOTE: Sub. (2) is shown as amended eff. 7–1–24 by 2023 Wis. Act 19. Prior to 7–1–24 it reads:

(2) USE OF PENALTY SURCHARGE MONEYS. All moneys collected from penalty surcharges under sub. (1) shall be credited to the appropriation account under s. 20.455 (2) (i). The moneys credited to the appropriation account under s. 20.455 (2) (j) and (ja) constitute the law enforcement training fund.

History: 1999 a. 9 ss. 2292m, 2298, 3050m to 3050o; 1999 a. 72 s. 6; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327; 2005 a. 25, 60; 455; 2007 a. 96; 2009 a. 12, 28, 276; 2011 a. 258; 2023 a. 19.

757.07 Privacy protections for judicial officers. (1) DEFINITIONS. In this section:

(a) "Data broker" means a commercial entity that collects, assembles, or maintains personal information concerning an individual who is not a customer or an employee of that entity in order to sell the information or provide 3rd–party access to the information. "Data broker" does not include any of the following:

1. A commercial entity using personal information internally, providing access to businesses under common ownership or affiliated by corporate control, or selling or providing data for a transaction or service requested by or concerning the individual whose personal information is being transferred.

2. A commercial entity providing publicly available information through real–time or near real–time alert services for health or safety purposes.

3. A commercial entity using information that is lawfully made available through federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience.

4. A commercial entity engaged in the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, furnisher, or user that provides information for use in a consumer report, and by a user of a consumer report, but only to the extent that such activity is regulated by and authorized under the federal Fair Credit Reporting Act, 15 USC 1681, et seq.

5. A consumer reporting agency subject to the federal Fair Credit Reporting Act, 15 USC 1681, et seq.

6. A commercial entity using personal information collected, processed, sold, or disclosed in compliance with the federal Driver's Privacy Protection Act of 1994, 18 USC 2721, et seq.

7. A commercial entity using personal information to do any of the following:

a. Prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity.

b. Preserve the integrity or security of systems.

c. Investigate, report, or prosecute any person responsible for an action described under subd. 7. a. or b.

8. A financial institution, affiliate of a financial institution, or data subject to title V of the federal Gramm–Leach–Bliley Act, 15 USC 6801, et seq.

9. A covered entity for purposes of the federal privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996, specifically 42 USC 1320d–2 note.

10. A commercial entity engaging in the collection and sale or licensing of personal information incidental to conducting the activities described in subds. 1. to 9.

11. Insurance and insurance support organizations.

12. Law enforcement agencies or law enforcement support organizations and vendors.

(b) "Government agency" includes any association, authority, board, department, commission, independent agency, institution, office, society, or other body corporate and politic in state or local government created or authorized to be created by the constitution or any law.

(c) "Home address" includes a judicial officer's permanent residence and any secondary residences affirmatively identified by the judicial officer. "Home address" does not include a judicial officer's work address.

(d) "Immediate family" includes any of the following:

1. A judicial officer's spouse.

2. A minor child of the judicial officer or of the judicial officer's spouse, including a foster child, or an adult child of the judicial officer or of the judicial officer's spouse whose permanent residence is with the judicial officer.

3. A parent of the judicial officer or the judicial officer's spouse.

4. Any other person who resides at the judicial officer's residence.

(e) "Judicial officer" means a person who currently is or who formerly was any of the following:

1. A supreme court justice.

2. A court of appeals judge.

3. A circuit court judge.

4. A municipal judge.

5. A tribal judge.

6. A temporary or permanent reserve judge.

7. A circuit, supplemental, or municipal court commissioner.

(f) "Permanent residence" means the place where a person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return.

(g) "Personal information" means any of the following with regard to a judicial officer or any immediate family member of a judicial officer, but does not include information regarding employment with a government agency:

1. A home address.

2. A home or personal mobile telephone number.

3. A personal email address.

4. A social security number, driver's license number, federal tax identification number, or state tax identification number.

5. Except as required under ch. 11, a bank account or credit or debit card information.

6. A license plate number or other unique identifiers of a vehicle owned, leased, or regularly used by a judicial officer or an immediate family member of a judicial officer.

7. The identification of children under the age of 18 of a judicial officer or an immediate family member of a judicial officer.

8. The full date of birth.

9. Marital status.

(h) "Publicly available content" means any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person or entity, from the Internet, from the government agency upon request either free of charge or for a fee, or in response to a public records request under ch. 19.

(i) "Publicly post or display" means to intentionally communicate or otherwise make available to the general public.

(j) "Transfer" means to sell, license, trade, or exchange for consideration the personal information of a judicial officer or a judicial officer's immediate family member.

(k) "Written request" means written notice signed by a judicial officer or a representative of the judicial officer's employer requesting a government agency, business, association, or other person to refrain from publicly posting or displaying publicly available content that includes the personal information of the judicial officer or judicial officer's immediate family.

(2) PUBLICLY POSTING OR DISPLAYING A JUDICIAL OFFICER'S PERSONAL INFORMATION BY A GOVERNMENT AGENCY. (a) A government agency may not publicly post or display publicly available content that includes a judicial officer's personal information, provided that the government agency has received a written request in accordance with sub. (4) that it refrain from disclosing the judicial officer's personal information. After a government agency has received a written request, that agency shall remove the judicial officer's personal information from publicly available content within 10 business days. After the government agency has removed the judicial officer's personal information from publicly available content, the agency may not publicly post or display the information, and the judicial officer's personal information shall be exempt from inspection and copying under s. 19.35 unless the government agency has received consent as provided under sub. (4) (e) to make the personal information available to the public.

(b) Nothing in this subsection prohibits a government agency from providing access to records containing the personal information of a judicial officer to a 3rd party if the 3rd party meets any of the following criteria:

1. Possesses a signed consent document, as provided under sub. (4) (e).

2. Is subject to the requirements of 15 USC 6801, et seq.

3. Executes a confidentiality agreement with the government agency.

(3) DATA BROKERS AND OTHER PERSONS AND BUSINESSES. (a) No data broker may knowingly sell, license, trade, purchase, or otherwise make available for consideration the personal information of a judicial officer or a judicial officer's immediate family, provided that the judicial officer has made a written request to the data broker. The data broker shall cease knowingly selling, licensing, trading, purchasing, or otherwise making available personal information for consideration pursuant to the written request within 10 business days of the written request.

(b) 1. No person, business, or association may publicly post or display on the Internet publicly available content that includes the personal information of a judicial officer or the judicial officer's immediate family, provided that the judicial officer has made a written request to the person, business, or association that it refrain from disclosing or acquiring the personal information.

2. Subdivision 1. does not apply to any of the following:

a. Personal information that the judicial officer or an immediate family member of the judicial officer voluntarily publishes on the Internet after April 1, 2025.

b. Personal information lawfully received from a state or federal government source, including from an employee or agent of the state or federal government.

(c) 1. After a person, business, or association has received a written request from a judicial officer to protect the privacy of the personal information of the judicial officer and the judicial officer's immediate family, the person, business, or association shall remove, within 10 business days, the publicly posted or displayed personal information identified in the request; ensure that the information is not publicly posted or displayed on any website or subsidiary website controlled by that person, business, or association; and identify any other publicly posted or displayed instances of the identified information that should also be removed.

2. After receiving a judicial officer's written request, no person, business, or association may transfer the judicial officer's personal information to any other person, business, or association through any medium, except as follows:

a. The person, business, or association may transfer personal information that the judicial officer or an immediate family member of the judicial officer voluntarily publishes on the Internet after April 1, 2025.

b. The person, business, or association may transfer the judicial officer's personal information at the request of the judicial officer if the transfer is necessary to effectuate a request to the person, business, or association from the judicial officer.

(4) PROCEDURE FOR COMPLETING A WRITTEN REQUEST FOR PROTECTION OF PERSONAL INFORMATION. (a) No government agency, person, data broker, business, or association may be found to have violated any provision of this section if the judicial officer fails to submit a written request calling for the protection of the personal information of the judicial officer or the judicial officer's immediate family.

(b) 1. A written request under this subsection is valid if the request meets the requirements of par. (d) and if the judicial officer does any of the following:

a. Sends the written request directly to a government agency, person, data broker, business, or association.

b. If the director of state courts has a policy and procedure for a judicial officer to file the written request with the director of state court's office to notify government agencies, the judicial officer sends the written request to the director of state courts.

2. In each quarter of a calendar year, the director of state courts shall provide to the appropriate officer with ultimate supervisory authority for a government agency a list of all judicial officers who have submitted a written request under subd. 1. b. The officer shall promptly provide a copy of the list to the government agencies under his or her supervision. Receipt of the written

request list compiled by the director of state courts office by a government agency shall constitute a written request to that agency for purposes of this subsection.

(c) A representative from the judicial officer's employer may submit a written request on the judicial officer's behalf, provided that the judicial officer has given written consent to the representative and provided that the representative agrees to furnish a copy of that consent when the written request is made. The representative shall submit the written request as provided under par. (b).

(d) A judicial officer's written request shall be made on a form prescribed by the director of state courts and shall specify what personal information shall be maintained as private. If a judicial officer wishes to identify a secondary residence as a home address, the designation shall be made in the written request. A judicial officer's written request shall disclose the identity of the officer's immediate family and indicate that the personal information of these family members shall also be excluded to the extent that it could reasonably be expected to reveal personal information of the judicial officer. Any person receiving a written request form submitted by or on behalf of a judicial officer under this paragraph shall treat the submission as confidential.

(e) 1. A judicial officer's written request is valid for 10 years or until the judicial officer's death, whichever occurs first.

2. Notwithstanding a judicial officer's written request, a government agency, person, data broker, business, or association may release personal information otherwise subject to the written request under any of the following circumstances:

a. As required in response to a court order.

b. If a judicial officer or immediate family member of the judicial officer consents to the release of his or her own personal information as provided under subd. 3.

c. If the judicial officer provides the government agency, person, data broker, business, or association with consent to release the personal information as provided under subd. 3.

3. A judicial officer or immediate family member of the judicial officer may consent to release personal information otherwise protected by a judicial officer's written request if the consent is made in writing on a form prescribed by the director of state courts. An immediate family member of the judicial officer may only consent to the release of his or her own personal information.

4. A judicial officer under sub. (1) (e) 1. to 3., or 6. may designate the director of state courts as the judicial officer's agent for purposes of service of process, and if the director of state courts receives service of process, notice, or demand required or permitted by law to be served on a judicial officer who has designated the director of state courts as his or her agent for purposes of service of process under this subdivision, the director of state courts shall forward the process, notice, or demand to the judicial officer's home address.

(4m) (a) In this subsection, "land records website" means a public website that allows users to search and retrieve a real estate property database or geographic records.

(b) Any provider of a public–facing land records website shall establish a process for judicial officers and immediate family members of judicial officers to opt out from the display and search functions of their names on the provider's public–facing land records website.

(5) (a) A judicial officer whose personal information is made public as a result of a violation of this section may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. Notwithstanding s. 814.04, if the court grants injunctive or declaratory relief, the governmental agency, business, association, data broker, or other person responsible for the violation shall be required to pay the judicial officer's costs and reasonable attorney fees.

(b) Provided that an employee of a government agency has complied with the conditions set forth in sub. (2), it is not a violation of this section if an employee of a government agency publishes personal information, in good faith, on the website of the government agency in the ordinary course of carrying out public functions.

(c) It is unlawful for any person to knowingly publicly post or display on the Internet the personal information of a judicial officer or of the judicial officer's immediate family if the person intends the public posting or display of the personal information to create or increase a threat to the health and safety of the judicial officer or the judicial officer's immediate family and, under the circumstances, bodily injury or death of the judicial officer or a member of the judicial officer's immediate family is a natural and probable consequence of the posting or display. A person who violates this paragraph is guilty of a Class G felony.

(6) This section shall be construed broadly to favor the protection of the personal information of judicial officers and the immediate family of judicial officers.

NOTE: This section is created eff. 4–1–25 by 2023 Wis. Act 235.

History: 2023 a. 235.

757.08 Vacancy in judgeship not to affect suits. No process, proceeding or action, civil or criminal, before any court of record shall be discontinued by the occurrence of any vacancy in the office of any judge or of all the judges of such court, nor by the election of any new judge or judges of any such court, but the persons so elected shall have power to continue, hear and determine such process, proceedings or action as their predecessors might have done if no new election had been held.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.08.

757.10 Failure to adjourn. No omission to adjourn any such court may vitiate any proceedings in the court.

History: 1977 c. 187 s. 96; 1977 c. 449; Stats. 1977 s. 757.10.

757.12 Adjournment to another location. Whenever it is deemed unsafe or inexpedient, by reason of war, pestilence, public calamity, or other compelling factors limiting or preventing access to the courthouse, the justices or judges of the court may order court to be held at an alternative location in this state, including in another county, on a temporary basis. Every such order shall be made in writing. Notice of such orders shall be provided by e–mail to the chief justice, the chief judge of the judicial district, the director of state courts, the State Bar of Wisconsin, and the local bar association. Any such orders shall be placed on the Wisconsin state courts website, the county website, and the door of the courthouse, if practicable. All court proceedings moved to another location shall have the same force and effect as if held at the original location. Bench warrants shall not be issued for failure to appear without a finding that the party received notice of the date, time, and location of the proceeding.

History: 1977 c. 187 s. 96; 1977 c. 449; Stats. 1977 s. 757.12; Sup. Ct. Order No. 21–03, 2022 WI 23, filed 4–21–22, eff. 7–1–22; s. 35.17 correction.

757.13 Continuances; legislative privilege. When a witness, party or an attorney for any party to any action or proceeding in any court or any commission, is a member of the Wisconsin legislature, in session, that fact is sufficient cause for the adjournment or continuance of the action or proceeding, and the adjournment or continuance shall be granted without the imposition of terms.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.13; 1979 c. 34.

This section would violate the doctrine of separation of powers if construed to mandate the grant of a continuance or adjournment. Courts should consider, in the sound exercise of their discretion, that a witness, party, or party's attorney is a member of the legislature in session when that person seeks a continuance or adjournment for that reason and should accommodate the schedule of the legislature consistent with the demands of fairness and efficiency in the particular case. State v. Chvala, 2003 WI App 257, 268 Wis. 2d 451, 673 N.W.2d 401, 03–0746.

757.14 Sittings, public. The sittings of every court shall be public and every citizen may freely attend the same, including proceedings held by telephone or videoconferencing technology, except if otherwise expressly provided by law. If the content of the proceeding is deemed graphic or obscene, the judge or justice may exclude from the courtroom all minors not present as parties or witnesses. The court may utilize electronic means to allow the

public the ability to hear and see, in real time, all proceedings in a manner as similar as practicable to being present in the courtroom.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.14; Sup. Ct. Order No. 21−03, 2022 WI 23, filed 4−21−22, eff. 7−1−22.

Any citizen has the right to attend immunity hearings arising out of a John Doe proceeding. State ex rel. Newspapers, Inc. v. Circuit Court, 65 Wis. 2d 66, 221 N.W.2d 894 (1974).

It was an abuse of discretion to exclude the public from the voir dire of potential jurors. State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 340 N.W.2d 460 (1983).

Commitment hearings under s. 51.20 (12) are open unless the court grants the subject individual's motion for closure. State ex rel. Wisconsin State Journal v. Dane County Circuit Court, 131 Wis. 2d 515, 389 N.W.2d 73 (Ct. App. 1986).

The 6th amendment right to a public trial extends to voir dire. A judge's decision to close or limit public access to a courtroom in a criminal case requires the court to go through an analysis on the record in which the court considers overriding interests and reasonable alternatives. The court must make specific findings on the record to support the exclusion of the public and must narrowly tailor the closure. State v. Pinno, 2014 WI 74, 356 Wis. 2d 106, 850 N.W.2d 207, 11−2424.

Public access to criminal trials in particular is protected by the 1st amendment. Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982).

757.15 Holding court, effect of holidays. A court may be open to transact business on the first day of the week and on a legal holiday in like manner and with like effect as upon any other day.

History: 1975 c. 159; 1977 c. 54; 1977 c. 187 s. 96; 1977 c. 449; Stats. 1977 s. 757.15; 1989 a. 261.

757.18 Process, etc., to be in English. All writs, process, proceedings and records in any court within this state shall be in the English language, except that the proper and known names of process and technical words may be expressed in the language heretofore and now commonly used, and shall be made out on paper or parchment in a fair, legible character, in words at length and not abbreviated; but such abbreviations as are now commonly used in the English language may be used and numbers may be expressed by Arabic figures or Roman numerals in the usual manner.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.18.

757.19 Disqualification of judge. (1) In this section, "judge" includes the supreme court justices, court of appeals judges, circuit court judges and municipal judges.

(2) Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs:

(a) When a judge is related to any party or counsel thereto or their spouses within the 3rd degree of kinship.

(b) When a judge is a party or a material witness, except that a judge need not disqualify himself or herself if the judge determines that any pleading purporting to make him or her a party is false, sham or frivolous.

(c) When a judge previously acted as counsel to any party in the same action or proceeding.

(d) When a judge prepared as counsel any legal instrument or paper whose validity or construction is at issue.

(e) When a judge of an appellate court previously handled the action or proceeding while judge of an inferior court.

(f) When a judge has a significant financial or personal interest in the outcome of the matter. Such interest does not occur solely by the judge being a member of a political or taxing body that is a party.

(g) When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.

(3) Any disqualification that may occur under sub. (2) may be waived by agreement of all parties and the judge after full and complete disclosure on the record of the factors creating such disqualification.

(4) Any disqualification under sub. (2) in a civil or criminal action or proceeding must occur, unless waived under sub. (3), when the factors creating such disqualification first become known to the judge.

(5) When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 751.03.

(6) In addition to other remedies, an alleged violation under this section or abuse of the disqualification procedure shall be referred to the judicial commission.

History: 1977 c. 135; 1977 c. 187 s. 96; 1977 c. 447, 449; Stats. 1977 s. 757.19; 1979 c. 175 s. 53; 1979 c. 221; 1985 a. 332.

Judicial Council Note, 1977: Section 256.19 [757.19] has been repealed and recreated to more comprehensively set out the procedure in Wisconsin for a judge to disqualify himself or herself. The new provisions apply to courts of record and municipal courts and define those situations in which a judge should in the interest of justice disqualify himself or herself from hearing a matter. Subsection (2) (g) is a catch−all provision to be used in those situations where a particular set of circumstances dictates that a judge disqualify himself or herself.

The new judge disqualification section contains provisions for assuring that a disqualification is timely made and also provides for waiver of a statutory disqualification upon agreement of all interested parties and the judge. Alleged violations of this section will be brought to the attention of the judicial commission for appropriate review. [Bill 74−S]

A judge who represented the defendant as counsel in another phase of a criminal matter had no power to act as judge in hearing a related postconviction motion and should have, sua sponte, disqualified himself. Rainey v. State, 65 Wis. 2d 374, 222 N.W.2d 620 (1974).

Although the judge was apparently biased against defense counsel, the judge's refusal to recuse himself was harmless error under the facts of the case. State v. Walberg, 109 Wis. 2d 96, 325 N.W.2d 687 (1982).

Under sub. (2) (g), the self−disqualification decision is subjective, and review is limited to determining whether the judge concluded disqualification was necessary. State v. American TV & Appliance, 151 Wis. 2d 175, 443 N.W.2d 662 (1989).

That a judge's spouse was employed in the office of the district attorney, but had no connection to a particular case, did not require the judge's disqualification. State v. Harrell, 199 Wis. 2d 654, 546 N.W.2d 115 (1996), 94−1655.

The fact that the trial judge "witnesses" the actions of the jurors, witnesses, lawyers, and parties does not transform the judge into a "material witness" under sub. (2) (b). State v. Hampton, 217 Wis. 2d 614, 579 N.W.2d 260 (Ct. App. 1998), 95−0152.

A motion to vacate a supreme court decision on the grounds that a participating justice was disqualified, filed 1300 days after the decision was issued and 600 days after the facts on which the motion was based became known, was untimely and frivolous. Jackson v. Benson, 2002 WI 14, 249 Wis. 2d 681, 639 N.W.2d 545, 97−0270.

Sub. (2) (g) does not require disqualification when a person other than the judge objectively believes that there is an appearance that the judge is unable to act in an impartial manner. In re Estate of Sharpley, 2002 WI App 201, 257 Wis. 2d. 152, 653 N.W.2d 124, 01−2167.

When analyzing a judicial bias claim, there is a rebuttable presumption that the judge was fair, impartial, and capable of ignoring any biasing influences. The test for bias comprises two inquiries, one subjective and one objective, either of which can violate a defendant's due process right to an impartial judge. Actual bias on the part of the decision maker meets the objective test. The appearance of partiality can also offend due process. Every procedure that would offer a possible temptation to the average person as a judge not to hold the balance nice, clear, and true between the state and the accused, denies the latter due process of law. State v. Gudgeon, 2006 WI App 143, 295 Wis. 2d 189, 720 N.W.2d 114, 05−1528.

Absent a pervasive and perverse animus a judge may assess a case and potential arguments based on what he or she knows from the case in the course of the judge's judicial responsibilities. Opinions formed by the judge on the basis of facts introduced or events occurring in the course of current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep−seated favoritism or antagonism that would make fair judgment impossible. State v. Rodriguez, 2006 WI App 163, 295 Wis. 2d 801, 722 N.W.2d 136, 05−1265. Affirmed on other grounds. 2007 WI App 252, 306 Wis. 2d 129, 743 N.W.2d 460, 05−1265.

A court's rejection of a plea does not in and of itself become a "personal interest in the outcome of the matter," and sub. (2) (f) is not implicated. State v. Conger, 2010 WI 56, 325 Wis. 2d 664, 797 N.W.2d 341, 08−0755.

In this case, when the judge served as both the presiding judge in the drug court program in which the defendant participated and as the sentencing judge in the defendant's criminal case, the defendant met his burden to demonstrate objective judicial bias based on the combined effect of 1) the judge's comments indicating he had determined before the sentencing−after−revocation hearing that the defendant would be sentenced to prison if he did not succeed in drug court; and 2) the judge's dual role as the presiding judge in the drug court proceedings and as the judge who sentenced the defendant after the revocation of his probation. State v. Marcotte, 2020 WI App 28, 392 Wis. 2d 183, 943 N.W.2d 911, 19−0695.

In lieu of exclusive reliance on a judge's personal inquiry, or on appellate review of the judge's determination respecting actual bias, the due process clause has been implemented by objective standards that do not require proof of actual bias. In defining these standards, the U.S. Supreme Court has asked whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

There is a serious risk of actual bias, based on objective and reasonable perceptions, when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect the contribution had on the outcome of the election. Whether campaign contributions were a necessary and sufficient cause of a judge's victory is not the proper inquiry. Due process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances would offer a possible

temptation to the average judge to lead the judge not to hold the balance "nice, clear, and true." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

Under the due process clause, there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case. Williams v. Pennsylvania, 579 U.S. 1, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016).

Step One to Recusal Reform: Find an Alternative to the Rule of Necessity. Croy. 2019 WLR 623.

757.22 Judge not to act as attorney, etc.; attorneys not to have office with judge. (1) No judge, while holding office, may be in any manner engaged or act as attorney or counsel; and no judge or his or her clerk or any person employed by the judge in or about his or her office, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any matter or action pending before the judge or officer, or which the judge has reason to believe will be brought before him or her for decision, or draft or prepare any papers, including wills, or other proceedings relating to any such matter or action except when expressly authorized by law; and no court commissioner or other judicial officer may be allowed to demand or receive any fees or compensation for services as such commissioner or judicial officer, except those expressly authorized by law, upon penalty, for any violation hereof, of removal from office.

(2) No practicing attorney may hold office in the office of the clerk of any court in which he or she practices nor may he or she hold office in the same room with a judge.

(3) No practicing attorney may have his or her office in the same room with any district attorney, municipal judge or court commissioner, unless he or she is a partner of the district attorney, municipal judge or court commissioner, in which case he or she shall not practice as an attorney before the municipal judge or court commissioner nor act as attorney in any case in which it is the duty of the district attorney to appear or prosecute for the state; except that the law partner of any district attorney may, at the request of the district attorney, without fee or compensation therefor, assist the district attorney in the prosecution of any case on the part of the state.

(4) No law partner of any district attorney may act as a municipal judge or court commissioner in any case in which the state may be a party or defend in any court any person charged with any offense, or appear in any civil action against the state in which it is the duty of the district attorney to prosecute or appear for the state.

(5) Any attorney who violates sub. (2), (3) or (4), and any municipal judge or court commissioner who violates or knowingly permits any such violation, may be fined not to exceed $100 for each such offense.

History: 1977 c. 187 s. 96; 1977 c. 305 ss. 52, 64; Stats. 1977 s. 757.22.

Under sub. (1), a judge may not draft or prepare legal papers even on a gratuitous basis. In re Van Susteren, 82 Wis. 2d 307, 262 N.W.2d 133 (1978).

A probate registrar is an official of the court. An attorney who serves as probate registrar is prohibited from practicing law in the court. 63 Atty. Gen. 55.

757.23 Court commissioner, when disqualified. A municipal, circuit, or supplemental court commissioner, or any judge acting as a court commissioner, shall not act or take part in the decision of, or make any order in any matter or proceeding in which he or she is a party, or in which his or her rights would be in any manner affected by his or her decision or order thereon, or in which he or she is interested, or in which his or her law partner, or any person connected with him or her as employer, employee or clerk, or in the law business in any manner, shall be interested or appear as a party, agent, attorney or counsel. Any municipal, circuit, or supplemental court commissioner or judge, acting as a court commissioner, violating this section shall forfeit $25 for each violation, and shall also be subject to removal from office.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.23; 1997 a. 27; 2001 a. 61.

757.24 Liability of judicial officers. Circuit judges and circuit and supplemental court commissioners shall be held personally liable to any party injured for any willful violation of the law in granting injunctions and appointing receivers, or for refusing to hear motions to dissolve injunctions and to discharge receivers if the motions are made in accordance with law or such rules as are promulgated by the supreme court.

History: 1977 c. 187 s. 96; 1977 c. 449; Stats. 1977 s. 757.24; 2001 a. 61.

757.25 Money in court, how deposited. The judge of any court of record on the application of a party to any action or proceeding therein who has paid $1,000 or more into court in the action or proceeding may order the money to be deposited in a safe depository until the further order of the court or judge thereof. After the money has been so deposited it shall be withdrawn only upon a check signed by the clerk of the court pursuant to whose order the deposit was made and upon an order made by the court or the judge thereof. The fee for the clerk's services for depositing and disbursing the money is prescribed in s. 814.61 (12) (a).

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.25; 1981 c. 317.

This section has two prerequisites for a fee under s. 814.61 (12) (a): 1) a party to the action has paid at least $1000 into court; and 2) the same party has obtained from the judge an order directing the clerk of court to deposit the money in a safe depository. HSBC Realty Credit Corp. v. City of Glendale, 2007 WI 94, 303 Wis. 2d 1, 734 N.W.2d 874, 05–1042.

This section applies only in those instances when a court order exists. 73 Atty. Gen. 3.

757.26 Court officers, liability of to arrest. The officers of the several courts of record shall be liable to arrest and may be held to bail in the same manner as other persons, except during the actual sitting of any court of which they are officers; and when sued with any other person such officers shall be liable to arrest and may be held to bail as other persons during the sitting of the court of which they are officers. No attorney or counselor may be exempt from arrest during the sitting of a court of which he or she is an officer unless he or she is employed in some case pending and then to be heard in the court.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.26.

757.293 Trust accounts required. (1) A member of the state bar shall not commingle the money or other property of a client with his or her own, and he or she shall promptly report to the client the receipt by him or her of all money and other property belonging to the client. Unless the client otherwise directs in writing, whenever an attorney collects any sum of money upon any action, claim or proceeding, either by way of settlement or after trial or hearing, he or she shall promptly deposit his or her client's funds in a bank, trust company, credit union, savings bank or savings and loan association, authorized to do business in this state, in an account separate from his or her own account and clearly designated as "Clients' Funds Account" or "Trust Funds Account", or words of similar import. The attorney, with the written consent of the client, may deposit the client's funds in a segregated client's trust account with all interest accruing thereon to the client. Unless the client otherwise directs in writing, securities of a client in bearer form shall be kept by the attorney in a safe deposit box at a bank, trust company, credit union, savings bank or savings and loan association authorized to do business in this state, which safe deposit box shall be clearly designated as "Clients' Account" or "Trust Account", or words of similar import, and be separate from the attorney's own safe deposit box.

(2) A member of the state bar shall maintain and preserve for at least 6 years complete records pertaining to client's funds or assets received by him or her which are required to be distributed or segregated by sub. (1). The records shall include his or her trust fund checkbooks and the stubs or copies thereof, statements of the account, vouchers and canceled checks or share drafts thereon or microfilm copies thereof and his or her account books showing dates, amounts and ownership of all deposits to and withdrawals by check or share draft or otherwise from the accounts, and all of the records shall be deemed to have public aspects as related to such member's fitness to practice law. Upon request of the board of attorneys professional responsibility, or upon direction of the supreme court, the records shall be submitted to the board for its inspection, audit, use and evidence under such conditions to protect the privilege of clients as the court may provide. The records,

or an audit thereof, shall be produced at any disciplinary proceeding involving the attorney wherever material. Failure to produce the records shall constitute unprofessional conduct and grounds for disciplinary action.

(3) A member of the State Bar of Wisconsin shall file with the state bar annually, with payment of the member's state bar dues or upon other date as approved by the supreme court, a certificate stating whether the member is engaged in the private practice of law in Wisconsin and, if so, the name of each bank, trust company, credit union, savings bank, or savings and loan association in which the member maintains a trust account, safe deposit box, or both, as required by this section. A partnership or professional legal corporation may file one certificate on behalf of its partners, associates, or officers who are required to file under this section. The failure of a member to file the certificate required by this section is grounds for automatic suspension of the member's membership in the state bar in the same manner as provided in section 6 of rule 2 of the Rules of the State Bar of Wisconsin for nonpayment of dues. The filing of a false certificate is unprofessional conduct and is grounds for disciplinary action. The state bar shall supply to each member, with the annual dues statement or at other time as directed by the supreme court, a form on which the certification must be made and a copy of this section.

History: Sup. Ct. Order, 48 Wis. 2d vii (1970); Sup. Ct. Order, 74 Wis. 2d ix, xvii (1976); 1977 c. 187 s. 96; 1977 c. 272; Stats. 1977 s. 757.293; Sup. Ct. Order, eff. 1–1–80; 1981 c. 319; 1983 a. 369; 1991 a. 221; 2001 a. 103.

NOTE: The Sup. Ct. Order dated 12–11–79, eff. 1–1–80, states in section 5 that this section is repealed as an equivalent provision is contained in the Supreme Court Rules. See SCR 20:1.15. Section 757.293 is shown as affected by ch. 319, laws of 1981, 1983 Wis. Act 369 and 1991 Wis. Act 221.

The issuance by an attorney of 49 checks drawn upon his clients' trust account within a 13–month period, some for personal purposes or for loans to others, and all dishonored by the bank for lack of sufficient funds, constituted unprofessional conduct. State v. Stoveken, 68 Wis. 2d 716, 229 N.W.2d 224 (1975).

757.295 Barratry. (1) SOLICITING LEGAL BUSINESS. Except as provided under SCR 20:7.1 to 20:7.5, no person may solicit legal matters or a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services.

(2) SOLICITATION OF A RETAINER FOR AN ATTORNEY. Except as provided under SCR 20:7.1 to 20:7.5, no person may communicate directly or indirectly with any attorney or person acting in the attorney's behalf for the purpose of aiding, assisting or abetting the attorney in the solicitation of legal matters or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

(3) EMPLOYMENT BY ATTORNEY OF PERSON TO SOLICIT LEGAL MATTERS. Except as provided under SCR 20:7.1 to 20:7.5, no attorney may employ any person for the purpose of soliciting legal matters or the procurement through solicitation of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

(4) PENALTY. Any person guilty of any violation of this section shall be imprisoned not more than 6 months or fined not exceeding $500.

History: 1977 c. 187 s. 96; 1977 c. 273, 357; 1977 c. 447 ss. 190, 210; Stats. 1977 s. 757.295; 1985 a. 135; 1997 a. 35.

An agreement that a non–attorney would solicit clients for an attorney, in violation of this section, in exchange for payment of 25 percent of the attorney's fee, in violation of s. 757.45, was unenforceable on the grounds of unjust enrichment or restitution. Abbott v. Marker, 2006 WI App 174, 295 Wis. 2d 636, 722 N.W.2d 162, 05–2853.

Solicitation may be barred even though "speech" is component of that activity. Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978).

757.30 Penalty for practicing without license. (1) Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than $50 nor more than $500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

(2) Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, circuit or supplemental court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

(3) Every person who uses the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his or her name or any sign, advertisement, business card, letterhead, circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand the person to be authorized to practice law or who in any other manner represents himself or herself either verbally or in writing, directly or indirectly, as authorized to practice law in this state, shall be deemed to be purporting to be licensed to practice law as an attorney within the meaning of this section.

(4) No person shall practice law in this state under any other given name or any other surname than that under which originally admitted to the bar of this or any other state, in any instance in which the board of bar examiners shall, after a hearing, find that practicing under the changed name operates to unfairly compete with another practitioner or to mislead the public as to identity or to otherwise result in detriment to the profession or the public. Any person violating this subsection shall be subject to the penalty provided in sub. (1). This subsection does not apply to a change of name resulting from marriage or divorce.

History: 1977 c. 26; 1977 c. 187 s. 96; Stats. 1977 s. 757.30; 1979 c. 98; 1991 a. 32, 39; 1993 a. 490; 2001 a. 61.

When the record did not indicate that a tenant union provided inadequate, unethical, or complex legal advice to tenants, the tenant union information service was protected by free speech guarantees. Hopper v. Madison, 79 Wis. 2d 120, 256 N.W.2d 139 (1977).

A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. To do so constitutes practicing law without a license in violation of this section and voids the appeal. Requiring a lawyer to represent a corporation in filing the notice does not violate constitutional guarantees of equal protection, due process, or the right of any suitor to prosecute or defend a suit personally. Jadair Inc. v. United States Fire Insurance Co., 209 Wis. 2d 187, 561 N.W.2d 718 (1997), 95–1946.

Section 799.06 (2) authorizes a non–lawyer employee to represent a party to a small claims action at the appellate as well as trial court level and is an exception to the rule stated in *Jadair.* Holz v. Busy Bees Contracting, Inc., 223 Wis. 2d 598, 589 N.W.2d 633 (Ct. App. 1998), 98–1076.

A nonlawyer's questioning of a witness on the state's behalf at a John Doe hearing, even if constituting the unauthorized practice of law, did not require exclusion of the testimony at trial. State v. Noble, 2002 WI 64, 253 Wis. 2d 206, 646 N.W.2d 38, 99–3271.

No exception was found under this section to permit an attorney unlicensed in this state to represent a person at a peer review hearing at which representation by legal counsel was allowed. Seitzinger v. Community Health Network, 2004 WI 28, 270 Wis. 2d 1, 676 N.W.2d 426, 02–2002.

A nonlawyer personal representative of an estate may not represent the interests of the estate in a mortgage foreclosure proceeding and may not commence an appeal from a mortgage foreclosure. Accordingly, the notice of appeal filed by the nonlawyer personal representative in this case was ineffective to initiate a valid appeal on behalf of the estate. Ditech Financial, LLC v. Estate of Stacey, 2018 WI App 18, 380 Wis. 2d 447, 909 N.W.2d 180, 16–2371.

Officers and employees of a bank are not illegally practicing law by filling out lease forms designed and prepared by the attorney representing the owner of the property being leased under a property management agreement between the owner and the bank. 60 Atty. Gen. 114.

Drafting of articles of incorporation constitutes the practice of law within meaning of sub. (2). 65 Atty. Gen. 173.

Sub. (2) is inapplicable to practice in federal courts. United States v. Peterson, 550 F.2d 379.

Nonlawyer Practice: An Expanding Role. Tenenbaum. Wis. Law. Nov. 1994.

The Unauthorized Practice of Law: Court Tells Profession, Show Us the Harm. Zilavy & Chevrez. Wis. Law. Oct. 2005.

When Nonlawyers "Represent" LLCs. Mehl. Wis. Law. Mar. 2009.

757.34 Attorney not to be bail, etc. No attorney practicing in this state shall be taken as bail or security on any undertaking, bond or recognizance in any action or proceeding, civil or criminal, nor shall any practicing attorney become surety on any bond or recognizance for any sheriff, constable, clerk of court or municipal judge.

History: 1977 c. 187 s. 96; 1977 c. 305 s. 64; Stats. 1977 s. 757.34.

757.35 Blank process to attorneys. The clerks of the courts of record may deliver to any attorney of their courts, in blank, any and all processes which may be requisite for the prosecution of or carrying on any action or special proceeding in such courts, or the enforcement of any order or judgment therein. All processes, so delivered, shall be signed by the clerk officially and have the seal of the court impressed thereon and may be completed by the attorney, and shall have the same force as if the same were perfected by the clerk.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.35.

757.36 Lien on proceeds of action to enforce cause of action. Any person having or claiming a right of action, sounding in tort or for unliquidated damages on contract, may contract with any attorney to prosecute the action and give the attorney a lien upon the cause of action and upon the proceeds or damages derived in any action brought for the enforcement of the cause of action, as security for fees in the conduct of the litigation; when such agreement is made and notice thereof given to the opposite party or his or her attorney, no settlement or adjustment of the action may be valid as against the lien so created, provided the agreement for fees is fair and reasonable. This section shall not be construed as changing the law in respect to champertous contracts.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.36.

An allegation of a retainer is not sufficient to imply an agreement for a lien; even if a written retainer agreement exists, there must be separate proof of a lien agreement. Weigel v. Grimmett, 173 Wis. 2d 263, 496 N.W.2d 206 (Ct. App. 1992).

This section does not create an attorney's lien on settlement proceeds in the absence of a contractual lien; if the contract is breached by the attorney an alternative lien is not created. McBride v. Wausau Insurance Co., 176 Wis. 2d 382, 500 N.W.2d 387 (Ct. App. 1993).

757.37 When action settled by parties, what proof to enforce lien. If any such cause of action is settled by the parties thereto after judgment has been procured without notice to the attorney claiming the lien, the lien may be enforced and it shall only be required to prove the facts of the agreement by which the lien was given, notice to the opposite party or his or her attorney and the rendition of the judgment, and if any such settlement of the cause of action is had or effected before judgment therein, then it shall only be necessary to enforce the lien to prove the agreement creating the same, notice to the opposite party or his or her attorney and the amount for which the case was settled, which shall be the basis for the lien and it shall not be necessary to prove up the original cause of action in order to enforce the lien and suit.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.37.

That an insurance company knew an attorney was working on a case did not mean the insurance company had notice that the attorney had a lien. Gerald R. Turner & Assoc. S.C. v. Moriarty, 25 F.3d 1356 (1994).

757.38 Consent of attorney in settlement of actions for personal injuries. No settlement or adjustment of any action which shall have been commenced to recover damages for any personal injury or for the death as a result of any personal injury in which an attorney shall have appeared for the person or persons having or claiming a right of action for such injury or death shall be valid, unless consented to in writing by such attorney or by an order of the court in which said action is brought approving of such settlement or adjustment.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.38.

757.39 Judges may direct calendars to be printed. The judges of the several courts of record having civil jurisdiction may, in their discretion, direct the respective clerks thereof to prepare printed calendars of the causes to be heard at the several terms, which shall be in the form and contain such matter as the judge may direct. The expense of the printing shall be paid out of the county treasury.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.39.

757.40 Law library. Any circuit judge may, whenever he or she deems it desirable, purchase or direct the clerk of the circuit court for any county in his or her circuit to purchase law books and subscribe for the periodical reports of any of the courts of the several states or territories or of the United States, for any county in his or her circuit, provided the cost of the books and reports, including pocket parts and continuing services, shall not exceed $1,500 for any county in one year, unless the board of supervisors of the county authorizes the expenditure of a larger sum. Whenever the purchase or subscription is made the clerk shall have each volume of books received stamped or branded with the name of the county and take charge of the same for the use of the courts, judges, attorneys and officers thereof. The cost of the volumes shall be paid by the county treasurer upon the presentation to him or her of the accounts therefor, certified to by the clerk of the circuit court and the circuit judge.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.40.

757.41 Law library; Milwaukee County. (1) The county board of any county having a population of 250,000 or more may acquire by gift, purchase or otherwise, a law library and law books, and shall house the law library and additions in the courthouse or in suitable quarters elsewhere, and may make, and enforce by suitable penalties, rules and regulations for the custody, care and preservation of the books and other property contained in that library. The county board shall provide reasonable compensation for the law librarian and such assistants as are necessary for the proper care and maintenance of the library. Except as provided in sub. (2), the librarian and assistants shall be appointed as the county board determines, under ss. 63.01 to 63.17. The librarian shall perform all of the duties imposed by s. 757.40 upon the clerk of the circuit court of the county in which the library is located and that clerk has no responsibility under s. 757.40. The purchase of additional law books, legal publications, periodicals and works of reference for the library may be directed by each of the circuit judges of the county under s. 757.40. The library shall be kept open every day throughout the year, except Sundays and holidays, for such hours as the county board directs, but the county board may determine by ordinance that the library be closed on Saturdays. Attorneys and the general public shall be permitted to use the books in the library in the building housing the library under rules and regulations adopted by the county board.

(2) In any county with a population of 750,000 or more, the librarian shall be appointed in the unclassified service by the county executive, subject to confirmation by the county board. The librarian may be dismissed at any time by the county executive with the concurrence of a majority of the members–elect of the county board or by a majority of the members–elect of the county board with the concurrence of the county executive. If the county executive vetoes an action by the county board dismissing the librarian, the county board may override the veto by a two–thirds vote of its members–elect. Assistants shall be appointed as the county board determines, under ss. 63.01 to 63.17.

History: 1971 c. 111; 1977 c. 187 ss. 96, 135; Stats. 1977 s. 757.41; 1987 a. 48; 2017 a. 207 s. 5.

757.45 Sharing of compensation by attorneys prohibited. It is unlawful for any person to divide with or receive from, or to agree to divide with or receive from, any attorney or group of attorneys, whether practicing in this state or elsewhere, either before or after action brought, any portion of any fee or compensation, charged or received by such attorney or any valuable consideration or reward, as an inducement for placing or in consideration of having placed, in the hands of such attorney, or in the hands of another person, a claim or demand of any kind for the purpose of collecting such claim, or bringing an action thereon, or of representing claimant in the pursuit of any civil remedy for the recovery thereof; but this section does not apply to an agreement between attorneys and counselors at law when associated in the conduct of legal matters to divide between themselves the compensation to be received. Any person violating this section shall be fined not to exceed $500 or imprisoned not to exceed 6 months.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.45.

An agreement that a non–attorney would solicit clients for an attorney, in violation of s. 757.295, in exchange for payment of 25 percent of the attorney's fee, in violation of this section, was unenforceable on grounds of unjust enrichment or restitution. Abbott v. Marker, 2006 WI App 174, 295 Wis. 2d 636, 722 N.W.2d 162, 05–2853.

757.46 Court reporter not to take statements of injured persons. No court reporter for any court of record in the state of Wisconsin or any of his or her assistants may be employed by any person or corporation to take the statement of any injured or other person in any way relating to the manner in which the person was injured or killed or the extent of personal injuries, and any court reporter or assistant violating this section shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation of this section. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.46; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii.

757.47 Taxes of this state enforced in other states. **(1)** The courts of this state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect of the liability for taxes lawfully imposed by the laws of this state, and the officials of such other state are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the secretary of state of such other state that such officials have the authority to collect the taxes sought to be collected by such action shall be conclusive proof of that authority.

(2) The attorney general is empowered to bring action in the courts of other states to collect taxes legally due the state.

(3) The term "taxes" as herein employed shall include:

(a) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise.

(b) Any and all penalties lawfully imposed pursuant to a taxing statute.

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.47.

757.48 Guardian ad litem must be an attorney. **(1)** (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.407, an attorney shall have completed 3 hours of approved continuing legal education that relates to the functions and duties of a guardian ad litem under ch. 767 and that includes training on the dynamics of domestic violence and the effects of domestic violence on victims of domestic violence and on children. In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall have complied with SCR chapter 36.

(b) The guardian ad litem shall be allowed reasonable compensation for his or her services such as is customarily charged by attorneys in this state for comparable services. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b). If the attorney of record is also the guardian ad litem, the attorney shall be entitled only to attorney fees and shall receive no compensation for services as guardian ad litem.

(2) If the statutes do not specify how the fee of the guardian ad litem is paid, the ward shall pay such fee. The court may, however, in cases involving real or personal property in which the ward claims or may have a right or interest, order payment out of such property.

(3) No guardian ad litem may be permitted to receive any assets or income of his or her ward, nor may any bond be required of a guardian ad litem, but all assets or income of the ward may be paid or delivered to the ward's guardian of the estate, subject to the exceptions of s. 54.12.

(4) No person shall be appointed guardian ad litem for a plaintiff without the written consent of the person appointed.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971) 1971 c. 211; 1977 c. 187 s. 96; 1977 c. 299, 447; Stats. 1977 s. 757.48; 1987 a. 355; 1993 a. 16; 1995 a. 27; 2003 a. 130; 2005 a. 387; 2005 a. 443 s. 265; 2007 a. 96.

Cross–reference: See s. 879.23 (4) for parent as guardian in probate matters.

Cross–reference: See SCR 35.015 for education requirements.

Comment of Judicial Council, 1971: A guardian ad litem shall: (1) Be an attorney and be allowed reasonable compensation as is customarily charged by attorneys for comparable services. If the attorney of record is also the guardian ad litem, only one fee is allowed. (2) Be compensated by the ward or out of the ward's property. (3) Not be permitted to receive any money or property of the ward. (4) Not be appointed for a plaintiff without the appointed person's consent. Subsection (1) is in present law; subs. (3) and (4) are the same as present law. [Re Order effective July 1, 1971]

Sub. (1) (a) is void as an unconstitutional violation of the separation of powers. It interferes with the judiciary's exclusive authority to regulate the practice of law. Fiedler v. Wisconsin Senate, 155 Wis. 2d 94, 454 N.W.2d 770 (1990).

The courts' power to appropriate compensation for court–appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Court, 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

757.52 Guardian ad litem for persons not in being or unascertainable. In any action or proceeding the court may appoint a guardian ad litem for persons not in being or presently unascertainable, if the court has reason to believe that such appointment is necessary to protect the interests of such persons.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1977 c. 187 s. 96; Stats. 1977 s. 757.52; 1985 a. 29 s. 3202 (23); 1993 a. 326.

Comment of Judicial Council, 1971: Guardian ad litem for unborn child. (Clarification) [Re Order effective July 1, 1971]

757.54 Retention and disposal of court records. **(1)** Except as provided in sub. (2), the retention and disposal of all court records and exhibits in any civil or criminal action or proceeding or probate proceeding of any nature in a court of record shall be determined by the supreme court by rule.

(2) (a) In this subsection:

1. "Custody" has the meaning given in s. 968.205 (1) (a).

2. "Discharge date" has the meaning given in s. 968.205 (1) (b).

(b) Except as provided in par. (c), if an exhibit in a criminal action or a delinquency proceeding under ch. 938 includes any biological material that was collected in connection with the action or proceeding and that is either from a victim of the offense that was the subject of the action or proceeding or may reasonably be used to incriminate or exculpate any person for the offense, the court presiding over the action or proceeding shall ensure that the exhibit is retained until every person in custody as a result of the action or proceeding, or as a result of commitment under s. 980.06 that is based on a judgment of guilty or not guilty by reason of mental disease or defect in the action or proceeding, has reached his or her discharge date.

(bm) The court shall ensure that an exhibit to which par. (b) applies is retained in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the exhibit.

(c) Subject to par. (e), the court may destroy an exhibit that includes biological material before the expiration of the time period specified in par. (b) if all of the following apply:

1. The court sends a notice of its intent to destroy the exhibit to all persons who remain in custody as a result of the criminal action, delinquency proceeding, or commitment under s. 980.06 and to either the attorney of record for each person in custody or the state public defender.

2. No person who is notified under subd. 1. does either of the following within 90 days after the date on which the person received the notice:

a. Files a motion for testing of the exhibit under s. 974.07 (2).

b. Submits a written request for retention of the exhibit to the court.

3. No other provision of federal or state law requires retention of the exhibit.

(d) A notice provided under par. (c) 1. shall clearly inform the recipient that the exhibit will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the exhibit is filed under s. 974.07 (2) or a written request for retention of the exhibit is submitted to the court.

(e) If, after providing notice under par. (c) 1. of its intent to destroy an exhibit, a court receives a written request for retention of the exhibit, the court shall ensure that the exhibit is retained until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the exhibit under s. 974.07 (9) (b) or (10) (a) 5.

History: Sup. Ct. Order, 136 Wis. 2d xi (1987); 2001 a. 16; 2005 a. 60.

757.55 Reporting testimony. The supreme court shall determine, by rule, the civil and criminal actions and proceedings which shall be reported.

History: 1981 c. 353.

NOTE: See SCR ch. 71.

757.57 Transcripts. (2) In any criminal action or proceeding the court may order, and when required by s. 973.08 the court shall order, a transcript of the testimony and proceedings to be made and certified by a court reporter and filed with the clerk of court. Certified duplicates of transcripts prepared in compliance with s. 973.08 shall be filed with the warden or superintendent of the institution to which sentenced persons have been committed. The cost of the transcript is prescribed in s. 814.69 (1). In case of application for a pardon or commutation of sentence the duplicate transcript shall accompany the application.

(5) Except as provided in SCR 71.04 (4), every court reporter, upon the request of any party to an action or proceeding, shall make a typewritten transcript, and as many copies thereof as the party requests, of the verbatim record in the action or proceeding, or any part thereof specified by the party, the transcript and each copy thereof to be duly certified by him or her to be a correct transcript thereof. For the transcripts the court reporter is entitled to receive the fees prescribed in s. 814.69 (1) (b) and (bm).

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.57; 1979 c. 32 s. 92 (4); Sup. Ct. Order, eff. 1–1–80; 1981 c. 317, 353, 389; 1987 a. 403 s. 256; 1995 a. 27; 2001 a. 16; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii.

NOTE: This section was repealed by Sup. Ct. Order dated 12–11–79, eff. 1–1–80. Subsequent legislative acts repealed and recreated subs. (2) and (5) and repealed subs. (3), (7), and (8). See SCR ch. 71.

757.60 Judicial administrative districts. The state is divided into judicial administrative districts for the purpose of administering the court system. Each district includes all the circuit courts within the district. The judicial administrative districts are as follows:

(1) The 1st district consists of Milwaukee County.

(2) The 2nd district consists of Kenosha, Racine and Walworth counties.

(3) The 3rd district consists of Dodge, Jefferson, Ozaukee, Washington, and Waukesha counties.

(4) The 4th district consists of Calumet, Fond du Lac, Green Lake, Manitowoc, Marquette, Sheboygan, Waushara, and Winnebago counties.

(5) The 5th district consists of Columbia, Dane, Green, Lafayette, Rock, and Sauk counties.

(7) The 7th district consists of Adams, Buffalo, Clark, Crawford, Grant, Iowa, Jackson, Juneau, La Crosse, Monroe, Pepin, Pierce, Richland, Trempealeau, and Vernon counties.

(8) The 8th district consists of Brown, Door, Kewaunee, Marinette, Oconto, Outagamie and Waupaca counties.

(9) The 9th district consists of Florence, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Shawano, Taylor, Vilas, and Wood counties.

(10) The 10th district consists of Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Iron, Polk, Rusk, St. Croix, Sawyer, and Washburn counties.

History: 1977 c. 449; Sup. Ct. Order, 84 Wis. 2d xiii (1978); Sup. Ct. Order, eff. 1–1–80; 1981 c. 317; 1995 a. 225; Sup. Ct. Order No. 18–01, 2018 WI 33, 380 Wis. 2d xiii; Sup. Ct. Order No. 19–21, 2020 WI 17, 390 Wis. 2d xvii.

757.66 Recovery of legal fees paid for indigent defendants. Whenever a county or the state has paid for legal representation of an indigent defendant and the county board or the department of justice so requires, the clerk of the court where representation for the indigent was appointed shall prepare, sign and record in the office of the register of deeds a certificate stating the name and residence of the indigent beneficiary, the amount paid by the county or the state for his or her legal representation, the date when paid, the court and county in which the case was heard and such other information as the county board directs. If a certificate is recorded within 6 months after payment is made by the county or the state it may, within the time after the recording provided by s. 893.86, commence an action to recover from the indigent defendant, or his or her estate if the action is commenced within the time set for filing claims by creditors, the amount paid by the county or the state for his or her legal representation. In any such action ss. 859.02 and 893.86, so far as applicable, may be pleaded in defense. The claim shall not take precedence over the allowances in ss. 861.31, 861.33 and 861.35. The district attorney or the department of justice, as applicable, shall commence and prosecute all actions and proceedings necessary under this section to make the recovery when it appears that the indigent defendant or his or her estate is able to pay the claim.

History: 1971 c. 40 s. 93; 1977 c. 187 s. 96; Stats. 1977 s. 757.66; 1979 c. 323, 356; 1983 a. 302; 1989 a. 96; 1993 a. 301.

Recovery of legal defense fees from indigent defendants is discussed. James v. Strange, 407 U.S. 128.

Not Poor Enough: Why Wisconsin's System for Providing Indigent Defense is Failing. Velazquez–Aguilu. 2006 WLR 193.

757.67 Testimony of judge of kin to attorney. No judge of any court of record shall testify as to any matter of opinion in any action or proceeding in which any person related to such judge in the first degree shall be an attorney of record.

History: Sup. Ct. Order, 59 Wis. 2d R1, R4 s. 6 (1973); Stats. 1973 s. 256.67; 1977 c. 187 s. 96; Stats. 1977 s. 757.67.

757.675 Supplemental court commissioners. (1) In each county the circuit judges shall appoint such number of supplemental court commissioners as the proper transaction of business requires, except that in counties having a population of 200,000 or more each judge may appoint not more than 2 supplemental court commissioners and in counties having a population of less than 200,000 each judge shall, as nearly as possible, appoint an equal number of supplemental court commissioners within the county. In all counties the appointments shall be subject to the approval of a majority of the circuit judges for the county. Appointments shall be in writing and shall be filed in the office of the clerk of the circuit court. All supplemental court commissioners appointed after May 16, 1978, shall be attorneys licensed to practice in this state. The appointing judge may remove, at will and without cause, any supplemental court commissioner appointed by the judge or the judge's predecessor in office. Unless he or she is so removed, the term of each supplemental court commissioner shall continue until the expiration of the term of the appointing judge and until the successor of the commissioner is appointed and qualified. Each supplemental court commissioner shall take and file the official oath in the office of clerk of the circuit court of the county for which appointed before performing any duty of the office.

(2) Supplemental court commissioners may, under their own authority:

(a) Officiate at marriage ceremonies throughout the state.

(b) Issue subpoenas and attachments or other process to compel the attendance of witnesses, administer oaths and affidavits, take depositions and testimony when authorized by law or rule or order, and certify and report the depositions and testimony.

(c) Issue the following writs returnable before a judge at a time set by the judge or the judge's clerk: habeas corpus; certiorari; ne exeat and alternative writs of mandamus.

(d) Supervise accountings subsequent to a sale of land under ch. 75.

(e) Issue subpoenas returnable before a judge on behalf of the Wisconsin department of justice for antitrust violations under s. 133.11 (1) or violations of ss. 563.02 to 563.80 under s. 563.71 (1).

(f) Investigate and dispose of unclaimed property under ss. 171.04 to 171.06.

(g) Except as provided in s. 757.69 (1) (p) 3., conduct a paternity proceeding according to the procedures set out in ch. 767 whenever a circuit court commissioner is specifically authorized to do so.

(h) Conduct supplementary hearings on the present financial status of a debtor and exercise the powers of the court under ss. 816.04, 816.08 and 816.11.

(i) Take and certify acknowledgments.

(3) In addition to the duties expressly set forth in sub. (2) (a) to (i), a supplemental court commissioner may perform other ministerial duties as required by a court.

(4) A supplemental court commissioner may transfer to a court any matter in which it appears that justice would be better served by such a transfer.

(5) A supplemental court commissioner shall refer to a court of record for appropriate action every alleged showing of contempt in the carrying out of the lawful decisions of the supplemental court commissioner.

(6) Supplemental court commissioners appointed under sub. (1) shall collect the fees prescribed in s. 814.68 (1).

History: 2001 a. 61 ss. 83, 87, 89, 105, 106, 108.

757.68 Circuit court commissioners. (1) Subject to subs. (2m) to (5m), in every county organized for judicial purposes, the county board shall establish the number of circuit court commissioner positions necessary for the efficient administration of judicial business within the circuit courts of the county. The circuit court commissioners may be employed on a full–time or part–time basis. SCR chapter 75 shall govern the qualifications for, and appointment, supervision, training, evaluation, and discipline of, circuit court commissioners. Any person qualified and acting as a judicial court commissioner on August 1, 1978, shall be considered a circuit court commissioner and shall continue in the classified county civil service but any person appointed as a court commissioner after August 1, 1978, shall be in the unclassified civil service. Each circuit court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.

(2m) (a) *Counties other than Milwaukee.* 1. 'Appointment.' In each county, except in a county having a population of 750,000 or more, the chief judge of the judicial administrative district shall, by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint a circuit court commissioner to supervise the office of family court commissioner for the county.

2. 'Powers; civil service; oath; temporary appointment; assistants.' The circuit court commissioner appointed to supervise the office of family court commissioner is in addition to the maximum number of circuit court commissioners permitted by sub. (1). The circuit court commissioner supervising the office of family court commissioner, or any circuit court commissioner assisting in family matters, may be placed under a county civil service system by resolution of the county board.

(b) *Milwaukee County.* In counties having a population of 750,000 or more, there is created in the classified civil service a circuit court commissioner position to supervise the office of family court commissioner and such additional circuit court commissioner positions as the county board shall determine and authorize. Circuit court commissioners shall be appointed to these positions by the chief judge of the judicial administrative district under SCR 75.02 (1).

(3m) The board of supervisors of any county may establish one or more circuit court commissioner positions on a part–time or full–time basis to assist in matters affecting juveniles. A circuit court commissioner under this subsection shall serve at the discretion of the chief judge.

(4m) In counties having a population of 750,000 or more, there is created in the classified civil service a circuit court commissioner position to supervise the office of probate court commissioner and to assist the court in probate matters. In counties having a population of at least 100,000 but not more than 750,000, the county board may create a circuit court commissioner position to supervise the office of probate court commissioner and to assist in probate matters. That position may be in the classified civil service. If the chief judge delegates that authority to a judge assigned to probate jurisdiction, that judge may assign to the circuit court commissioner any matters over which the judge has jurisdiction, and the circuit court commissioner may determine such matters and may sign any order or certificate required by that determination.

(5m) In counties having a population of 750,000 or more, the county board shall establish at least one circuit court commissioner position on a full–time basis to assist in small claims matters under ch. 799. In counties having a population of less than 750,000, the county board may establish one or more circuit court commissioner positions on a part–time or full–time basis to assist in small claims matters under ch. 799.

(6) The county board shall set the salary of persons appointed as circuit court commissioners. The county board shall furnish circuit court commissioners with necessary office space, furnishings, supplies, and services.

(7) The chief judge of the judicial administrative district may assign law clerks, bailiffs, and deputies to a circuit court commissioner. The chief judge shall supervise those law clerks, bailiffs, and deputies assigned to the court, except that the chief judge may delegate that authority.

(8) Each circuit court commissioner shall participate in programs of continuing circuit court commissioner education required by the supreme court. The supreme court shall charge a fee for the costs of the continuing education programs required under this subsection. All moneys collected under this subsection shall be credited to the appropriation account under s. 20.680 (2) (ga).

History: 1973 c. 278; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 199; 1975 c. 430 s. 80; 1977 c. 187 s. 96; 1977 c. 323 ss. 7, 11; 1977 c. 345; 1977 c. 418 ss. 751, 752; 1977 c. 447 ss. 192 to 195; 1977 c. 449; Stats. 1977 s. 757.68; 1979 c. 32 s. 92 (16); 1981 c. 317 ss. 85pg, 2202; 1987 a. 151, 208; 2001 a. 61 ss. 10, 84 to 92, 113, 168, 170; 2001 a. 105 s. 73; 2009 a. 180; 2017 a. 207 s. 5.

757.69 Powers and duties of circuit court commissioners. (1) A circuit court commissioner may:

(a) Direct a case to the proper court if the defendant wishes to enter a plea after intelligent waiver of rights.

(b) In criminal matters issue summonses, arrest warrants or search warrants, determine probable cause to support a warrantless arrest, conduct initial appearances of persons arrested, set bail, inform the defendant in accordance with s. 970.02 (1), refer the person to the authority for indigency determinations specified under s. 977.07 (1), conduct the preliminary examination and arraignment, and, with the consent of both the state and the defendant, accept a guilty plea. If a court refers a disputed restitution issue under s. 973.20 (13) (c) 4., the circuit court commis-

sioner shall conduct the hearing on the matter in accordance with s. 973.20 (13) (c) 4.

(bn) In matters involving a civil violation of s. 346.63 or of a local ordinance that conforms with s. 346.63, issue search warrants.

(c) Conduct initial appearances in traffic cases and county ordinance cases, in traffic regulation cases and county ordinance cases receive noncontested forfeiture pleas, order the revocation or suspension of operating privileges and impose monetary penalties according to a schedule adopted by a majority of the judges of the courts of record within the county, and refer applicable cases to court for enforcement for nonpayment.

(d) In small claims actions, conduct initial return appearance and conciliation conferences.

(e) Conduct noncontested probate proceedings.

(f) Issue warrants and capiases for those who do not appear as summoned.

(g) When assigned to assist a court in juvenile matters:

1. Issue summonses and warrants.

2. Order the release or detention of children or expectant mothers of unborn children taken into custody.

3. Conduct detention and shelter care hearings.

4. Conduct preliminary appearances.

5. Conduct uncontested proceedings under s. 48.13, 48.133, 48.9795, 938.12, 938.13, or 938.18.

6. Enter into consent decrees or amended consent decrees under s. 48.32 or 938.32.

7. Exercise the powers and perform the duties specified in par. (j) or (m), whichever is applicable, in proceedings under s. 813.122 or 813.125 in which the respondent is a child.

8. Conduct hearings under s. 48.21, 48.217, 938.21, or 938.217 and thereafter order a child or juvenile held in or released from custody.

9. Conduct hearings under s. 48.213 or 48.217 and thereafter order an adult expectant mother of an unborn child to be held in or released from custody.

10. Conduct plea hearings.

11. Conduct prehearing conferences.

12. Issue orders requiring compliance with deferred prosecution agreements.

13. Conduct all proceedings on petitions or citations under s. 938.125.

14. Conduct permanency reviews under s. 48.38 (5) or 938.38 (5) and permanency hearings under s. 48.38 (5m) or 938.38 (5m).

15. Conduct emergency in–home to out–of–home changes in placement hearings under s. 48.357 (2) (b) or 938.357 (2) (b).

(h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20, 51.45, 55.13, and 55.135, conduct reviews of guardianships under ch. 54 and reviews of protective placements and protective services under ch. 55, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions, and, if the person claims or appears to be unable to afford counsel, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

(i) Conduct inquests under ch. 979.

(j) Hold hearings, make findings and issue temporary restraining orders under s. 813.122 or 813.123.

(k) Administer oaths, take, certify, and report depositions and testimony, take and certify acknowledgments, allow accounts, and fix the amount and approve the sufficiency of bonds.

(m) Hold hearings, make findings, and issue temporary restraining orders and injunctions under s. 813.12 or 813.125.

(n) Hold hearings, make findings and issue orders under s. 49.856 (4).

(o) Hold hearings and issue orders on petitions under s. 173.23 (3).

(p) When assigned to assist in matters affecting the family:

1. Preside at any hearing held to determine whether a judgment of divorce or legal separation shall be granted if both parties to a divorce action state that the marriage is irretrievably broken, or if both parties to a legal separation action state that the marital relationship is broken, and that all material issues, including but not limited to division of property or estate, legal custody, physical placement, child support, spousal maintenance and family support, are resolved. A court commissioner may also preside at any hearing held to determine whether a judgment of divorce or legal separation shall be granted if one party does not participate in the action for divorce or legal separation. A circuit court commissioner may grant and enter judgment in any action over which he or she presides under this subdivision unless the judgment modifies an agreement between the parties on material issues. If the circuit court commissioner does not approve an agreement between the parties on material issues, the action shall be certified to the court for trial.

2. Conduct hearings and enter judgments in actions for enforcement of, or revision of judgment for, maintenance, custody, physical placement or visitation.

3. Except when prohibited by the chief judge of the judicial administrative district, conduct hearings and enter orders and judgments in actions to establish paternity, in actions to establish or enforce a child support or a family support obligation and in actions to revise orders or judgments for child support or family support.

(1m) Circuit court commissioners assigned to assist a court in juvenile matters shall sit at the children's court center, the usual court facility for juvenile matters, or such other facility designated by the chief judge of the judicial administrative district. Those commissioners may not do any of the following:

(a) Conduct fact–finding or dispositional hearings except on petitions or citations under s. 938.125 and except as provided in sub. (1) (g) 5.

(b) Make dispositions other than approving consent decrees, ordering compliance with deferred prosecution agreements and ordering dispositions in uncontested proceedings under s. 48.13, 48.133, 938.12, or 938.13.

(c) Conduct hearings for the termination of parental rights or for adoptions.

(d) Make changes in placements of children, of juveniles, or of the expectant mothers of unborn children, or revisions or extensions of dispositional orders, except pursuant to petitions or citations under s. 938.125, in uncontested proceedings under s. 48.13, 48.133, 938.12, or 938.13, or as permitted under sub. (1) (g) 6., 8., 9., and 15.

(e) Conduct hearings, make findings, or issue orders in proceedings under s. 48.977 or 48.978.

(f) Conduct waiver hearings under s. 938.18, except as provided in sub. (1) (g) 5.

(g) Make any dispositional order under s. 938.34 (4d), (4h), or (4m).

(2) A judge may refer to a circuit court commissioner cases in which:

(a) The trial of an issue of fact requires the examination of an account, in which case the circuit court commissioner may be directed to report upon any specific question of fact involved therein.

(b) The taking of an account is necessary for the information of the court before judgment or for carrying a judgment or order into effect.

(c) A question of fact other than upon the pleadings arises.

(d) Proposed findings of fact and conclusions of law are to be prepared pertaining to default mortgage and land contract foreclosures and mechanics liens.

(2m) Circuit court commissioners may exercise, under their own authority, all of the powers listed under s. 757.675 (2) to (5).

(2t) A circuit court commissioner shall cooperate with the county and the department to ensure that all dependent children receive reasonable and necessary child support.

(8) Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo.

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105; 2005 a. 264, 387; 2007 a. 45, 179; 2009 a. 79; 2011 a. 181; 2015 a. 373; 2017 a. 117; 2019 a. 109; 2021 a. 169.

Section 970.04 specifically limits the availability of a second preliminary examination in a criminal matter and precludes a request for a de novo hearing under the more general sub. (8). State v. Gillespie, 2005 WI App 35, 278 Wis. 2d 630, 693 N.W.2d 320, 04−1758.

A party who requests a hearing de novo under sub. (8) is entitled to a hearing that includes testimony from the parties and their witnesses. Stuligross v. Stuligross, 2009 WI App 25, 316 Wis. 2d 344, 763 N.W.2d 241, 08−0311.

The issuance of a search warrant is not an exercise of "[t]he judicial power," as that phrase is employed in article VII, section 2. Instead, issuance of a valid search warrant requires that the individual be authorized by law to issue the warrant, that he or she be neutral and detached, and that the warrant be issued only upon a showing of probable cause. Sub. (1) (b) does not impermissibly intrude upon "[t]he judicial power" granted to the courts by article VII, section 2 and is constitutional. State v. Williams, 2012 WI 59, 341 Wis. 2d 191, 814 NW 2d 460, 10−1551.

The provision in sub. (8) for a circuit court to conduct a "hearing de novo" on review of a court commissioner's order presupposes that the court commissioner has conducted a hearing. A de novo hearing is a new hearing of a matter, conducted as if the original hearing had not taken place. Thus, a local rule precluding a new hearing upon stipulation or default does nothing more than expressly advise as to the practical consequences of consenting to a court commissioner's order. Nehls v. Nehls, 2012 WI App 85, 343 Wis. 2d 499, 819 N.W.2d 335, 11−2330.

757.70 Hearings before court commissioners. (1) All proceedings and hearings before a court commissioner, including proceedings held by telephone or videoconferencing technology, shall be public and open to every citizen, except juvenile proceedings or when it is necessary for the court in which the action or proceeding is pending to impose by order restrictions under its inherent power to conduct proceedings in camera.

(2) All hearings before a circuit or supplemental court commissioner shall be held in accordance with s. 753.24. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.675 (2) (h), or depositions taken before a circuit or supplemental court commissioner.

History: 1977 c. 323; 2001 a. 61; Sup. Ct. Order No. 21−03, 2022 WI 23, filed 4−21−22, eff. 7−1−22; s. 35.17 correction in (2).

757.81 Definitions. In ss. 757.81 to 757.99:

(1) "Commission" means the judicial commission created by s. 757.83.

(3) "Judge" means a judge of any court established by or pursuant to article VII, section 2 or 14, of the constitution, or a supreme court justice.

(4) "Misconduct" includes any of the following:

(a) Willful violation of a rule of the code of judicial ethics.

(b) Willful or persistent failure to perform official duties.

(c) Habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties.

(d) Conviction of a felony.

(5) "Panel" means a judicial conduct and disability panel constituted under s. 757.87.

(6) "Permanent disability" means a physical or mental incapacity which impairs the ability of a judge or circuit or supplemental court commissioner to substantially perform the duties of his or her judicial office and which is or is likely to be of a permanent or continuing nature.

History: 1977 c. 449; 1983 a. 378; 1991 a. 269; 1995 a. 77; 2001 a. 61.

The provisions for judicial disciplinary proceedings under ss. 757.81 to 757.99 are constitutional. In Matter of Complaint Against Seraphim, 97 Wis. 2d 485, 294 N.W.2d 485 (1980).

A violation of the code of judicial conduct is "willful" for purposes of sub. (4) when the judge's conduct was not the result of duress or coercion and when the judge knew or should have known that the conduct was prohibited by the code. Although a judge may commit a "willful" violation constituting judicial misconduct when the judge has no actual knowledge that his or her conduct is prohibited by the code, the judge's actual knowledge, or lack thereof, of the code is relevant to the issue of discipline. Wisconsin Judicial Commission v. Ziegler, 2008 WI 47, 309 Wis. 2d 253, 750 N.W.2d 710, 07−2066.

757.83 Judicial commission. (1) MEMBERSHIP; APPOINTMENT; TERMS. (a) There is created a judicial commission of 9 members: 5 nonlawyers nominated by the governor and appointed with the advice and consent of the senate; one trial judge of a court of record and one court of appeals judge appointed by the supreme court; and 2 members of the State Bar of Wisconsin, who are not judges or court commissioners, appointed by the supreme court. The commission shall elect one of its members as chairperson.

(b) The term of a member is 3 years, but a member shall not serve more than 2 consecutive full terms. A vacancy is filled by the appointing authority for the unexpired term. Members of the commission shall receive compensation of $25 per day for each day on which they were actually and necessarily engaged in the performance of their duties and shall be reimbursed for expenses necessarily incurred as members of the commission.

(2) QUORUM; VOTING. A majority of the commission constitutes a quorum. The commission may issue a formal complaint or a petition only upon a finding of probable cause by a majority of the total membership not disqualified from voting. A member must be present to vote on the question of probable cause. A member shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

(3) RULES. The commission shall promulgate rules under ch. 227 for its proceedings.

(4) STAFF. The judicial commission shall hire an executive director, and may hire one staff member, in the unclassified service. The executive director shall be a member of the State Bar of Wisconsin and shall provide staff services to the judicial commission.

History: 1977 c. 449; 1979 c. 34, 154; 1983 a. 27, 378; 1987 a. 27; 1991 a. 269; 1995 a. 27; 2001 a. 103; 2007 a. 20.

Cross−reference: See also JC, Wis. adm. code.

757.85 Investigation; prosecution. (1) (a) The commission shall investigate any possible misconduct or permanent disability of a judge or circuit or supplemental court commissioner. Misconduct constitutes cause under article VII, section 11, of the constitution. Except as provided in par. (b), judges, circuit or supplemental court commissioners, clerks, court reporters, court employees and attorneys shall comply with requests by the commission for information, documents and other materials relating to an investigation under this section.

(b) The judge or circuit or supplemental court commissioner who is under investigation is not subject to the request procedure under par. (a) but is subject to the subpoena procedure under sub. (2).

(2) The commission may issue subpoenas to compel the attendance and testimony of witnesses and to command the production of books, papers, documents or tangible things designated in the subpoena in connection with an investigation under this section.

(3) The commission may notify a judge or circuit or supplemental court commissioner that the commission is investigating possible misconduct by or permanent disability of the judge or circuit or supplemental court commissioner. Before finding probable cause, the commission shall notify the judge or circuit or supplemental court commissioner of the substance of the complaint or petition and afford the judge or circuit or supplemental court

commissioner a reasonable opportunity to respond. If the judge or circuit or supplemental court commissioner responds, the commission shall consider the response before it finds probable cause.

(4) The commission may require a judge or circuit or supplemental court commissioner who is under investigation for permanent disability to submit to a medical examination arranged by the commission.

(5) The commission shall, upon a finding of probable cause that a judge or circuit or supplemental court commissioner has engaged or is engaging in misconduct, file a formal complaint with the supreme court. Upon a finding of probable cause that a judge or circuit or supplemental court commissioner has a permanent disability, the commission shall file a petition with the supreme court. If the commission requests a jury under s. 757.87 (1), the request shall be attached to the formal complaint or the petition.

(6) The commission shall prosecute any case of misconduct or permanent disability in which it files a formal complaint or a petition.

(7) Insofar as practicable, the procedures applicable to civil actions apply to proceedings under ss. 757.81 to 757.99 after the filing of a complaint or petition.

History: 1977 c. 449; 1983 a. 192; 1983 a. 378 s. 11m; 1985 a. 332; 1987 a. 72; 1991 a. 269; 2001 a. 61.

Cross–reference: See also JC, Wis. adm. code.

757.87 Request for jury; panel. (1) After the commission has found probable cause that a judge or circuit or supplemental court commissioner has engaged in misconduct or has a permanent disability, and before the commission files a formal complaint or a petition under s. 757.85 (5), the commission may, by a majority of its total membership not disqualified from voting, request a jury hearing. If a jury is not requested, the matter shall be heard by a panel constituted under sub. (3). The vote of each member on the question of a jury request shall be recorded and shall be available for public inspection under s. 19.35 after the formal complaint or the petition is filed.

(2) If a jury is requested under sub. (1), the hearing under s. 757.89 shall be before a jury selected under s. 805.08. A jury shall consist of 6 persons, unless the commission specifies a greater number, not to exceed 12. Five–sixths of the jurors must agree on all questions which must be answered to arrive at a verdict. A court of appeals judge shall be selected by the chief judge of the court of appeals to preside at the hearing, on the basis of experience as a trial judge and length of service on the court of appeals.

(3) A judicial conduct and permanent disability panel shall consist of either 3 court of appeals judges or 2 court of appeals judges and one reserve judge. Each judge may be selected from any court of appeals district including the potential selection of all judges from the same district. The chief judge of the court of appeals shall select the judges and designate which shall be presiding judge.

History: 1977 c. 449; 1981 c. 335 s. 26; 1983 a. 378 ss. 8g, 11m; 1991 a. 269; 2001 a. 61.

757.89 Hearing. A record shall be kept of any hearing on a formal complaint or a petition. The allegations of the complaint or petition must be proven to a reasonable certainty by evidence that is clear, satisfactory and convincing. The hearing shall be held in the county where the judge or circuit or supplemental court commissioner resides unless the presiding judge changes venue for cause shown or unless the parties otherwise agree. If the hearing is by a panel, the panel shall make findings of fact, conclusions of law and recommendations regarding appropriate discipline for misconduct or appropriate action for permanent disability and file the findings, conclusions and recommendations with the supreme court. If a jury hearing is requested under s. 757.87 (1), the presiding judge shall instruct the jury regarding the law applicable to judicial misconduct or permanent disability, as appropriate. The presiding judge shall file the jury verdict and his or her recommendations regarding appropriate discipline for misconduct or appropriate action for permanent disability with the supreme court.

History: 1977 c. 449; 1983 a. 378 s. 11m; 1991 a. 269; 2001 a. 61.

757.91 Supreme court; disposition. The supreme court shall review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability. The rules of the supreme court applicable to civil cases in the supreme court govern the review proceedings under this section.

History: 1977 c. 449; 1983 a. 378 s. 11m.

757.93 Confidentiality of proceedings. (1) (a) All proceedings under ss. 757.81 to 757.99 relating to misconduct or permanent disability prior to the filing of a petition or formal complaint by the commission are confidential unless a judge or circuit or supplemental court commissioner waives the right to confidentiality in writing to the commission. Any such waiver does not affect the confidentiality of the identity of a person providing information under par. (b).

(b) Any person who provides information to the commission concerning possible misconduct or permanent disability may request that the commission not disclose his or her identity to the judge or circuit or supplemental court commissioner prior to the filing of a petition or a formal complaint by the commission.

(2) If prior to the filing of a formal complaint or a petition an investigation of possible misconduct or permanent disability becomes known to the public, the commission may issue statements in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge or circuit or supplemental court commissioner to a fair hearing without prejudgment, to state that the judge or circuit or supplemental court commissioner denies the allegations, to state that an investigation has been completed and no probable cause was found or to correct public misinformation.

(3) The petition or formal complaint filed under s. 757.85 by the commission and all subsequent hearings thereon are public.

(4) This section does not preclude the commission, in its sole discretion, from:

(a) Referring to the director of state courts information relating to an alleged delay or an alleged temporary disability of a judge or circuit or supplemental court commissioner.

(b) Referring to an appropriate law enforcement authority information relating to possible criminal conduct or otherwise cooperating with a law enforcement authority in matters of mutual interest.

(c) Referring to an attorney disciplinary agency information relating to the possible misconduct or incapacity of an attorney or otherwise cooperating with an attorney disciplinary agency in matters of mutual interest.

(d) Disclosing to the chief justice or director of state courts information relating to matters affecting the administration of the courts.

(e) Issuing an annual report under s. 757.97.

History: 1977 c. 449; 1983 a. 378 ss. 8r, 11m; 1987 a. 72; 1991 a. 269; 2001 a. 61.

Cross–reference: See also s. JC 3.01, Wis. adm. code.

757.94 Privilege; immunity. (1) A complaint or communication alleging judicial misconduct or permanent disability with the commission, executive director, commission staff or panel and testimony in an investigation under this section is privileged.

(2) A presiding judge, executive director or a member of the commission, commission staff or panel is immune from civil liability for any conduct in the course of the person's official duties under ss. 757.81 to 757.99.

History: 1977 c. 449; 1983 a. 27, 378.

757.95 Temporary suspension by supreme court. The supreme court may, following the filing of a formal complaint or

a petition by the commission, prohibit a judge or circuit or supplemental court commissioner from exercising the powers of a judge or circuit or supplemental court commissioner pending final determination of the proceedings.

History: 1977 c. 449; 1991 a. 269; 2001 a. 61.

757.97 Annual report. The commission shall issue an annual report on or before April 1 of each year which provides information on the number and nature of complaints received and their disposition, and the nature of actions it has taken privately concerning the conduct of judges or court commissioners. Information contained in the annual report shall be presented in a manner consistent with the confidentiality requirements under s. 757.93. The report shall be filed with the chief justice of the supreme court, the governor and the presiding officers of the senate and the assembly.

History: 1983 a. 378; 1987 a. 72; 1991 a. 269.

757.99 Attorney fees. A judge or circuit or supplemental court commissioner against whom a petition alleging permanent disability is filed by the commission shall be reimbursed for reasonable attorney fees if the judge or circuit or supplemental court commissioner is found not to have a permanent disability. A judge or circuit or supplemental court commissioner against whom a formal complaint alleging misconduct is filed by the commission and who is found not to have engaged in misconduct may be reimbursed for reasonable attorney fees. Any judge or circuit or supplemental court commissioner seeking recovery of attorney fees authorized or required under this section shall file a claim with the claims board under s. 16.53.

History: 1977 c. 449; 1981 c. 20; 1983 a. 378 s. 11m; 1991 a. 269; 2001 a. 61.