

## CHAPTER 253.

## COUNTY COURTS.

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**253.01 County court established; where held.** There is established in each county a county court which shall be held by the county judge at the county seat of such county and at such other places as the county judge shall order.

**Cross Reference:** For provision for keeping office and holding special terms in certain counties, other than at county seat, see 253.26.

**253.02 County judges; election, term.** The term of office of every elected county judge shall be 6 years, and until his successor is elected and qualified, which term commences on the first Monday in January after election. No person shall be eligible to the office of county judge who is not, at the time of his election or appointment, an attorney of a court of record. Commencing January 1, 1954, no person 70 years of age or over shall be eligible to take office as county judge in counties under 500,000 population.

**History:** 1955 c. 299.

**Comment of Advisory Committee, 1951:** The probate jurisdiction of all county courts is identical. All county judges should be lawyers. The population of a county does not determine the size of estates or the difficulty of the questions of law presented. If a new county is created, provisions for election of the county judge can be included in the enabling act. (Bill 194-S)

**Note:** The requirement that judges must be lawyers does not apply to judges who were holding office in 1951. See s. 4, ch. 290, Laws 1951.

**253.025 Green county court; judge; appeals; reporter.** (1) The election and term of judge for the county court of Green county shall be as provided in s. 8.025.

(2) In any case of appeal from the county court or small claims court of Green county to the circuit court of Green county or in any case where the circuit court is called upon to exercise any supervisory jurisdiction over the county court or small claims court of Green county the judge of such circuit court shall disqualify himself and call in a judge from another circuit to determine the matter.

(3) Upon request of any party or their attorneys in an action in the circuit court for Green county, without the filing of an affidavit of prejudice, the judge thereof shall call in any other circuit judge designated by the chairman of the board of circuit judges to hold court and perform any judicial act required in the matter.

(4) The judge of the circuit court of Green county shall be a member of the board of circuit judges. The judge of the county court of Green county shall be a member of the board of county judges. When the same individual is judge of the county court and circuit court of Green county, said judge shall be deemed only a circuit court judge within the meaning of ss. 66.90 to 66.918.

(5) (a) Said judge shall receive a salary of \$10,000 per year payable in equal monthly instalments by Green county and he shall receive no other salary or compensation for his services as circuit, county, juvenile or small claims court judge, except as provided in s. 8.025 (1) (a).

(b) The court reporter appointed by the circuit judge for Green county shall also be

reporter for the county and small claims court for Green county, and receive the salary fixed by the county board of Green county and shall be paid by Green county.

**History:** 1957 c. 317.

See note to 252.06, citing 46 Atty. Gen. 151.

**253.03 Jurisdiction.** (1) The jurisdiction of the county court shall extend to the probate of wills and granting letters testamentary and of administration on the estates of all persons deceased who were at the time of their decease inhabitants of or residents in the same county and of all who shall die without the state having any estate within such county to be administered, and to any other cases authorized by law; to the appointment of guardians to minors and others in the cases prescribed by law; to all matters relating to the settlement of the estates of such deceased persons and of such minors and others under guardianship; to all cases of constructions of wills admitted to probate in such court; and to all cases of trusts and trust powers created by will admitted to probate in such court, including administration under ch. 323 of trusts created in accordance with s. 206.52 (2); and to hearing objections to the granting of licenses to marry, to ordering the refusal of such licenses, and to the granting of stays upon the issuances thereof, and such court shall have and exercise such other jurisdiction and powers as are or may be conferred by law.

(2) The county court shall have concurrent jurisdiction to hear, try and determine all matters and controversies which may arise between any personal representative, guardian or trustee appointed by such court and any other person relating to title to or interest in real and personal property so far as such matter or controversy is incidental to and necessary for the complete administration of the estate, guardianship or trust, and regardless of who has possession of the property or in whose name it may be, to the same extent and with like effect as such matters and controversies may be heard, tried and determined in courts of general jurisdiction.

(3) Subsection (2) shall not affect the provisions of chapters 313 and 319 relating to debts of or claims against decedents or persons under guardianship.

**History:** 1955 c. 73.

It is common practice for county courts in Wisconsin to assign the remaining personal estate of a testator in trust where a life estate is created by the will, as an orderly and efficient means of carrying out the terms of the will, even though a trust is not provided for therein by express words, and the county courts have jurisdiction so to do and their acts in so doing are not coram non iudice. Estate of Lenahan, 253 W 404, 46 NW (2d) 352.

See note to 310.11, citing Estate of Austin, 258 W 578, 46 NW (2d) 361.

The county court in probate had no jurisdiction of the subject matter of a petition of a hospital, which had furnished room and board to a decedent and was a judgment creditor of his estate, praying that a son of the decedent, who had filed no claim against the estate, be required to account to the estate for the reasonable cost of care which the son had allegedly failed to furnish to the decedent under a bond of support; or of a petition that such son of the decedent be required to account to the estate for the sum of \$7,000 by reason of an attempted election by a guardian, appointed shortly before the death of the decedent, to declare such sum due under the bond of support because of an alleged disagreement between the decedent and the son. Will of Reinke, 259 W 398, 48 NW (2d) 613.

Where a wife—living on friendly terms with her husband, who retained his house, his business, his office, and his legal residence at Appleton in Outagamie county—maintained a home in the city of Milwaukee for her convenience because her children lived there, her social and club life was centered there, and it was convenient though not necessary for her to transact business there, but, in dealing with statutory privileges and duties, such as voting and filing income-tax returns, she recognized the city of Appleton as her residence, the latter facts were controlling and required a finding that she was a resident of the city of Appleton at the time of her

death, so that the county court of Outagamie county had exclusive jurisdiction over her estate, and her will was to be admitted to probate there. Will of Baldwin, 260 W 195, 50 NW (2d) 463, 51 NW (2d) 361.

(2) does not require the county court to concur in the practice by which controversies over titles to realty are presented to the circuit court, and the jurisdiction of the county court, including the Milwaukee county court, may be invoked by petition and order to show cause, as against a contention that, instead, it should be invoked by summons and complaint. Estate of King, 261 W 266, 52 NW (2d) 385.

(2) does not confer on the county court exclusive jurisdiction to try and determine all matters and controversies relating to title to property involved in probate proceedings, and where an action to enforce a partnership agreement has already been commenced in the circuit court, and such court has assumed jurisdiction, and can determine title to real estate as well as dispose of all other matters arising in such action, the matter should be left there, and should not be tried or determined in the county court in which the estate of a deceased partner is being administered. State ex rel. Sommer v. Stauff, 265 W 388, 62 NW (2d) 384.

County courts have full equity jurisdiction to vacate orders and judgments in the administration of estates when they were induced by fraud, although the time to appeal has expired when relief is sought. Will of Pettee, 266 W 347, 63 NW (2d) 715.

In determining the place of residence of a testator at the time of his death, it was immaterial that when he moved from Outagamie to Brown county he established his residence in the home of his daughter rather than setting up his own home, and that he occasionally returned for temporary visits to Outagamie county, if such circumstances were accompanied by an intention to remain a resident of Brown county. Estate of Morey, 272 W 79, 74 NW (2d) 823.

**253.035 Jurisdiction of estates of deceased foreign persons.** (1) The jurisdiction of the county court shall also extend to a determination of the heirs and next of kin of nonresident foreign deceased persons who at the time of their death had an interest in real or personal property within such county and the state.

(2) The jurisdiction of the county court shall also extend to the administration of estates of nonresident foreign deceased persons who at the time of their death had an interest in real or personal property within such county and the state. A claim against the state school fund under section 318.03 (4) shall be deemed an interest in real or personal property.

(3) For the purposes of this section the situs of intangible personal property found in this state belonging to nonresident foreign deceased persons shall be deemed to be within the state.

(4) All matters arising in this section shall be administered in accordance with the statutes, rules and procedure of the county court applicable to the statutes of deceased residents of the state.

(5) All such nonresident foreign persons who have not been heard from for 10 years shall be presumed to be dead.

**History:** 1951 c. 699.

**253.04 Two counties; jurisdiction retained.** If a case be originally within the jurisdiction of the county courts of two or more counties the court which shall first take cognizance thereof by the commencement of proceedings shall retain the same throughout.

**253.05 Jurisdiction; residence collateral attack.** The jurisdiction assumed by any county court in any case, so far as it depends on the place of residence of any person or the location of his estate, shall not be contested in any action or proceeding whatever except on an appeal from the county court in the original case or when the want of jurisdiction appears on the same record.

An order or judgment of the county court assuming jurisdiction of a probate proceeding, where jurisdiction depends on the place of residence of the decedent, is appealable by objectors who have an interest in the estate as beneficiaries named in the will. Estate of Morey, 272 W 79, 74 NW (2d) 828.

**253.06 May issue process.** The several county courts shall have power to issue all summonses, citations, subpoenas, executions, warrants and processes authorized by law which may be necessary to carry into effect any order, judgment or decree thereof, to compel the attendance of witnesses or to carry into execution the powers with which they are vested.

**253.07 Disqualification of judge by relationship or interest; by affidavit; another judge called; procedure; pay and expenses.** (1) (a) When the county judge or his wife, child, parent, brother or sister is interested, or when the judge is the executor, administrator or guardian in any matter to be decided by the court, he shall be disqualified to act in relation to that matter.

(b) When any person, or the attorney for any person, interested in a matter in the county court, either at the time of filing any petition or any objection, notice of contest or other paper raising an issue, or at any other time up to and including the day set for hearing such matter, files an affidavit stating that he has good reason to believe and verily believes that from prejudice or other cause the judge of the county court, naming him, will not decide impartially, the judge shall thereupon be disqualified to act in relation to that matter. No person shall be allowed to file an affidavit against more than one judge in any matter.

(c) The disqualified judge shall thereupon request another judge to hold court for the purpose of settling or deciding such matter.

(d) The person who files such an affidavit of prejudice may be ordered by the court to immediately pay to the adverse party the fees of his witnesses in attendance on the hearing date and an attorney's fee of \$10, unless the adverse party was notified in writing at least 5 days prior to the hearing that such an affidavit had been or would be filed. Failure to make payment as ordered shall nullify the effect of the affidavit of prejudice. This paragraph does not apply in case an outside judge is presiding at the hearing of such matter unless the affiant has had 8 days' written notice that he was to preside.

(2) The request to another judge to hold court shall be filed in the court forthwith by the judge thereof and a copy mailed to the judge requested to act, and if said matter has been set for hearing the same shall stand continued until the judge so requested to act shall be ready to take it up for disposition. If the matter has not been set for hearing, the judge requested to act shall order a hearing thereon.

(3) The judge requested to act shall attend and act in such matter, so far as in his judgment the proper discharge of his other duties will permit. Ex parte orders, letters, bonds, petitions and affidavits may be presented to such acting judge, by mail or in person, for signing or approving, wherever he may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the county judge of the county where the records and files of the matter are kept.

(4) Whenever any county judge is required to hold court in any county other than

that for which he was elected he shall receive \$25 per day and his actual expenses, to be audited and paid by the county board of the county in which he so holds court.

**History:** 1951 c. 580.

An affidavit of prejudice, offered during a hearing in county court and after the court had already made findings on matters in issue, was too late, and the court correctly refused to honor it. Will of Kuttig, 260 W 415, 50 NW (2d) 669.

An affidavit of prejudice, merely reciting the affiant's belief that "from prejudice or other cause" the judge will not decide impartially, is void as neither stating the fact of prejudice nor any other cause, but simply that it is one or the other, without any possibility of ascertaining which. Will of Hill, 264 W 410, 59 NW (2d) 437.

Where the petitioner by his own petition consolidated the matter of his objections to the will with the matter of his claim against the estate, so that there was only one matter, he was thereby limited to the filing of one affidavit of prejudice, and he was not entitled to file a second affidavit even if the first affidavit was filed in the matter of the objections to the will. Estate of Landauer, 264 W 456, 59 NW (2d) 676.

A county judge of another county called in to act in the administration of an estate may continue to act until he disqualifies himself. Estate of Williams, 266 W 403, 63 NW (2d) 736.

Although (1) (b) provides that a judge against whom an affidavit of prejudice has been filed "shall thereupon be disqualified to act in relation to that matter," (1) (d) preserves the judge's jurisdiction to order a person filing such affidavit without giving the prescribed notice to the adverse party to pay to such party the fees of his witnesses, etc., and expressly restores all original jurisdiction to the judge for default in compliance with such order. Will of Draheim, 267 W 382, 66 NW (2d) 172.

**253.08 Courts of record; seals.** Every county court is a court of record and shall have a seal, and may direct and from time to time alter the inscriptions and devices thereon, and the respective county boards shall furnish such seals as shall be ordered; and when any such court shall be unprovided with a seal the judge thereof may authorize the use of any temporary seal or any device by way of seal until a seal shall be so provided. The seals now in use by said courts shall continue to be the seals thereof until others shall be provided according to law.

**253.09 Filing signature and seal.** Every county judge now serving in the state of Wisconsin, and every county judge hereafter elected to that office upon entering upon the duties of his office, shall file with the secretary of state his official signature, together with a certified impression of the seal of his court.

**253.10 County court terms; adjournments; court always open.** (1) A regular term of the county court shall be held on the first Tuesday of each month, except July and August, and shall continue to the commencement of the next regular term; and in case any matter shall not be heard at the term appointed therefor it shall stand continued until the next regular term unless the court shall otherwise order; but every county court shall be open at all times for the transaction of business.

(2) Special terms may be appointed by a general or special order entered in the minutes of the court; and when any order shall be made and notice given for the hearing of any matter at a term, such order shall be a sufficient appointment of a special term.

(3) In case any matter appointed to be heard at a special term is not heard at the appointed term, it stands continued to the current regular term and may be heard at any time, unless the court orders otherwise.

**253.11 Judge may hold court in other counties.** Any county judge may act as county judge of any county upon the request of the county judge thereof, and while so acting he shall have the same powers as if elected for the county in which he is acting. In case the office of county judge is vacant or the county judge is totally incapacitated, such request may be made by the circuit judge for the county where the vacancy or disability exists.

See note to 253.07, citing Estate of Hill, 272 W 197, 75 NW (2d) 582.

**253.12 Orders to be made in open court.** Every order and judgment in probate proceedings which affects the rights of any person shall be made in open court; except that a judge who holds court in a county other than his own may file findings of fact, order or judgment with the same effect as if done in open court.

Where an outside county judge had not relinquished jurisdiction and, after an adjudication of the matter over which he presided, he issued an order to show cause as to why one of the trustees under a will should not be determined guilty of contempt of court for having failed to comply with the court's order, the proceeding on the order to show cause was not a new matter over which such outside judge had no jurisdiction, and his declination to disqualify himself in response to a second affidavit of prejudice filed by such trustee, and his disposition of the order to show cause, did not constitute error, particularly in view of participation by such trustee in the proceeding on the order to show cause. Estate of Hill, 272 W 197, 75 NW (2d) 582.

253.11 and 253.07 (1) (c) are separate and distinct, and a county judge, under authority of 253.11, may request other county judges to hold court for him at his pleasure and notwithstanding that he is not disqualified to act. Estate of Hill, 272 W 197, 75 NW (2d) 582.

Where the contestant, contending that the county judge lost jurisdiction of the case when he appointed a substitute judge, and that he was not qualified to cancel such appointment and appoint a second substitute judge when the first one decided not to act, failed to raise objection to the assumption of jurisdiction by the second substitute judge and initiated proceedings after the assumption of jurisdiction by the second substitute judge, calling on such judge to act, the contestant thereby made a general appearance in the proceedings and waived all objections to the power of the second substitute judge to act. Will of Hopkins, 273 W 632, 79 NW (2d) 131.

**253.13 Judges, partners, clerk, not to be counsel.** No judge of the county court, his law partner, clerk or any person employed in or about his office shall be retained or employed as solicitor, attorney or counsel in any action or matter which may depend on or in any way relate to any judgment or decree made or passed by him; nor shall he or any such person be solicitor, attorney or counsel for or against any executor, administrator, trustee or guardian appointed within his jurisdiction in any action brought by or against the executor, administrator, trustee or guardian as such, nor in any action relating to the official conduct or duty of such party.

**253.14 Clerks, etc., not to be appraisers, etc.** No clerk or other person employed in the office of any county judge shall be commissioner, appraiser or divider of any estate in any case that is within the jurisdiction of such county judge or of the county court.

**253.15 Salary, judges not to take fees when.** (1) The annual salary of the county judge shall be payable out of the county treasury and shall be fixed by the county board at the annual meeting preceding the ensuing year in which he is to be elected. The salary so fixed shall not be increased or diminished during the term of the county judge.

(2) Every county judge is prohibited from taking or receiving, either directly or indirectly, any fees whatever for his official services in the administration of the estates of deceased persons, including proceedings to determine the descent of lands, and for certificates of title by descent, or termination of life estates, or of joint tenancy in lands or real estate mortgages, or certifying copies of any proceedings had before the court, or in the appointment of guardians, or in the administration of the estates of wards, except in the counties in which it is otherwise expressly provided by law.

(3) The judge of any county court where no other provision is made by law shall be entitled to receive five dollars per day, to be paid from the county treasury, for each day he shall be actually engaged in the examination of any person upon a criminal charge, or engaged upon any other matter, not appertaining to probate business, compensation for which is not otherwise provided.

(4) The county board may by resolution provide that the salary fixed shall be in lieu of all fees, per diem or other compensation out of the county treasury for the performance of any official duty imposed upon the county judge by law by virtue of his office which are authorized under the provision of subsection (3) of this section or of any other statute.

Opinion in 24 Atty. Gen. 631 to effect that provision relating to salary of county judge of Marquette county as contained in ch. 450, Laws 1921, is not modified by amendment to 253.15, made by ch. 468, Laws 1935, re-affirmed. 39 Atty. Gen. 144.

Where county board has fixed salary of county judge in lieu of fees, etc., pursuant to 59.15 (1) and 253.15 (4), reasonable doubt exists as to the validity of judge's claim for additional compensation for mental hearings under 51.07 (1), and payment should, as a matter of policy, be withheld until a court directs payment. This is true even though the patient has legal settlement outside the county. 45 Atty. Gen. 277, 296.

**253.16 County judge not to draft papers for actions; penalty.** No county judge or his clerk or any person employed by him in or about his office shall be allowed to draft or prepare any paper or give advice pertaining to the drafting or preparation of papers or as to who shall prepare them, relating to any matter, proceeding or action pending in or which there is good reason to believe will be brought or instituted in the county court over which such judge presides, except such as are expressly given by law. The prohibitions of this section shall apply to the drawing of wills. Any county judge who shall violate any of the provisions of this section shall be fined not less than fifty dollars nor more than five hundred dollars and be subject to impeachment.

**253.18 What books to be kept.** There shall be kept in every county court the following books:

(1) A court record in which the judge shall cause every matter or proceeding had in said court to be entered under a proper title, with a brief statement of the nature thereof, and of all papers filed, which in anywise relate to the same, with the date of filing and a reference to the page and volume of the minute book where any minute record shall have been made in any such matter or proceeding, and a reference to the page and volume of the record book or to the microfilm file where any document has been recorded in any such matter or proceeding, so that such record shall be a complete index or brief history of the matter or proceeding from the beginning to the final disposition thereof.

(2) A minute book in which shall be entered a brief statement of all the proceedings of the court during its sessions, and show all motions made and by whom, and all orders granted in open court or otherwise and the names of all witnesses sworn or examined in any matter or proceeding in such court. If this information is all included in the court record, the judge may direct that the minute book be no longer kept.

(3) A record book or books in which shall be recorded in full all wills admitted to probate with the certificate of probate, all letters and all judgments rendered. The judge may require any other documents to be recorded therein. Any documents may be recorded on

microfilm instead of in a record book. These records shall be kept irrespective of s. 59.715 (20) (c) unless recorded on microfilm.

(4) An alphabetical index to the court record and the file containing the original documents or microfilm copies thereof.

**History:** 1953 c. 154; 1957 c. 610.

**253.19 Testimony to be written.** When any witness is sworn and examined in any contested matter or proceeding in any county court and an appeal is taken, the judge thereof shall cause the testimony to be reduced to writing, and the stenographic reporter of such court shall receive the fees provided by law for transcripts of testimony in circuit court; provided, that nothing herein shall prohibit the judge in his discretion from causing the testimony to be so reduced to writing even in the absence of an appeal.

**253.20 Penalty for noncompliance.** Every county judge who shall neglect or refuse to comply with the provisions of sections 253.18 and 253.19 shall forfeit for each such neglect or refusal not less than twenty-five nor more than two hundred dollars.

**253.21 Presumption in favor of orders.** When the validity of any order or judgment of a county court shall be drawn in question in any other action or proceeding everything necessary to have been done or proved to render the order or judgment valid, and which might have been proved by parol at the time of making the order or judgment and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved unless the contrary appears on the same record.

**253.22 Orders, etc., how enforced.** If any person shall refuse or neglect to perform any order, judgment or decree of a county court such court may issue a warrant, directed to any sheriff, constable or other proper officer in this state, requiring him to apprehend and imprison such person in the common jail of the county until he shall perform such order, judgment or decree, or be delivered by due course of law.

**253.23 Revocation of warrants, etc.** Any warrant or commission for the appraisement of any estates, for examining claims against estates for partition of real estate or for the assignment of dower may be revoked by the judge of the county court for sufficient cause; and the judge may thereupon issue a new commission or proceed otherwise therein as the circumstances of the case shall require.

**253.24 Judge to give notice of escheats.** Whenever any county judge shall have knowledge or information that any real estate in his county has escheated to the state or that the state is entitled to receive any personal property belonging to the state of any deceased person for want of heirs or next of kin he shall forthwith notify the attorney-general of such fact.

**253.25 Office and records to be kept at county seat.** Every county judge in this state shall keep his office and the books, papers and records of the office of county judge at the county seat of the county in which he holds his office, which office and the books, papers and records thereof shall at all reasonable times be open to access and inspection by any person having any business therewith.

**253.26 Except in certain counties.** (1) The county judges of the counties of Chippewa, Columbia, Dodge, Fond du Lac, Grant, Green Lake, Jefferson, Monroe, Pepin, Pierce, Shawano, Trempealeau, Walworth, Washington and Waukesha may keep their offices and hold special terms of the county court at any time between the times of holding the regular terms and transact any business which might be done at, or which may be continued from, any regular term to such special term at the following places, in their respective counties:

- In the county of Chippewa, at the cities of Chippewa Falls and Stanley;
- In the county of Columbia, at the city of Columbus;
- In the county of Dodge, at the cities of Beaver Dam, Fox Lake, Horicon, Mayville, Watertown and Waupun;
- In the county of Fond du Lac, at the cities of Ripon and Waupun;
- In the county of Grant, at the city of Platteville;
- In the county of Green Lake, at the village of Princeton, the city of Berlin and village of Markesan;
- In the county of Jefferson, at the city of Watertown;
- In the county of Monroe, at the cities of Sparta and Tomah;
- In the county of Pepin, at the village of Pepin;
- In the county of Pierce, at the city of River Falls;
- In the county of Shawano, at the village of Wittenberg;
- In the county of Trempealeau, at the villages of Galesville and Osseo;
- In the county of Walworth, at the city of Whitewater;
- In the county of Washington, at the city of Hartford;

In the county of Waukesha, at the city of Oconomowoc.

(2) All orders, judgments, and business which shall be made and done at such special terms and places, or as shall have heretofore been so made or done, are declared valid.

(3) Any such county judge so authorized to keep his office and hold special terms of such county court and transact business at any such city as above provided may, when such city is located partly in the county for which such judge was elected, and partly in an adjoining county in this state, keep his office and hold such terms of court and transact any business which might be done at any regular term, within that part of such city in the county adjoining such county for which such judge was so elected, and may compel the attendance of witnesses and issue subpoenas and citations ordering and compelling the attendance of parties and witnesses at such office or place of holding such special term within such adjoining county, and may there transact any and all business which might be done at, or which may be continued from any regular term to such special term so held by order of such county judge within such adjoining county.

**253.27 Register in probate.** Any county judge may appoint, from time to time, by an instrument in writing filed with the county clerk, a competent person to act as clerk of the county court, who shall be officially designated as register in probate for the county in which such court is held. Such register shall, before entering upon his duties, take and subscribe the constitutional oath of office and file the same in the office of the clerk of the circuit court for such county. He shall perform such duties as the judge may direct, and whenever such judge shall be absent from the county seat or unable to discharge his duties and any application shall be made to such court which requires notice of hearing to be given such register may cause such notice to be given and make an order directing that it be given. Such order and notice when signed "by the court, . . . . ., register in probate," shall have the same effect as if signed by the county judge. If the board of any county in which such register may be appointed and in which his salary is not fixed by law shall not fix a salary for him the judge shall compensate such register for his services. The foregoing shall not apply to any county in which a register in probate is provided for by any other statute; but any register may administer any oath required in proceedings in such court and certify to copies of records and files therein.

See note to 253.33, citing 43 Atty. Gen. 20.

**253.28 Certified copies.** Registers in probate shall have the same powers as clerks of courts, to certify to copies of papers, records and judicial proceedings. And copies so certified to by such registers in probate shall be receivable in evidence with like effect as if certified to by clerks of courts.

**253.29 Register in probate; clerks; oaths; fees; certified copies.** (1) The registers in probate, the duly authorized assistant registers in probate and clerks of the county courts, and duly authorized deputy clerks, shall have the power to administer oaths, and certify to copies of any judgment, order, report or other paper or record of the county courts, and shall collect therefor the fees enumerated in sub. (2), such fees to be disposed of according to law.

(2) The fees enumerated in this subsection shall be charged and collected by the registers in probate, and clerks of the county court, in full for all services rendered in the respective proceedings. The term "register of probate" appearing in any special act means the same as the term "register in probate."

(a) For filing a petition whereby any proceeding in estates of deceased persons is commenced, when the gross estate or value of the property is \$1,000 or less, no fee; when the gross estate is more than \$1,000 and less than \$10,000, a fee of \$3; when the gross estate is \$10,000 or more and less than \$25,000, a fee of \$6; when the gross estate is \$25,000 or more and less than \$100,000, a fee of \$25; when the gross estate is \$100,000 or more, a fee of \$100. Such fee shall be paid at the time of the filing of the inventory, or other documents, setting forth the value of the estate in such proceedings. The fees fixed in this subsection shall also be paid in survivorship proceedings and in such survivorship proceedings the value shall be based on the value of the property passing to the survivor or survivors.

(b) For a certificate terminating a life estate or homestead interest, \$1, but the fee shall not be collected if such termination is consolidated with probate or administration proceedings.

(c) For a certificate or judgment of descent of lands the same fees shall be charged and collected as are charged in estate proceedings in paragraph (a) of this subsection based upon the valuation of the property passing by said certificate or judgment of descent.

(d) For filing objections to the probate of a will, \$10, except that this fee may be waived by the court when objection is filed by a guardian ad litem or attorney for a person in military service. The court may order a refund of said fee to the objector from the assets of the estate.

(e) For receiving a will for safekeeping, one dollar.

(g) For each certificate issued by the registers in probate or county judges, fifty cents.

(h) For copies of records or other papers in the custody and charge of registers in probate at the rate of 50 cents a page; and for the comparison and attestation of such copies as are not provided by the registers, 25 cents for each page, but the minimum charge in each of the above mentioned instances shall be \$1, including the certificate.

(i) In counties having a population of 500,000 or more, for filing claims against estates, \$1, except that the state or the political subdivisions thereof and bureaus and boards of the state and its political subdivisions shall be exempt from the payment of this fee.

(2m) For purposes of determining fees payable under sub. (2), the following shall apply:

(a) U. S. government bonds which by their terms are payable to another person upon death of the original registered owner are included in his gross estate and not subject to the fee for terminating a life estate.

(b) Life insurance, retirement benefits or annuities are excluded unless paid or payable to the estate or personal representative in which case they are included.

(c) When survivorship proceedings are pursued as part of probate or administration the gross estate is the sum of each.

(d) When survivorship proceedings are pursued independent of probate or administration, a fee shall be collected for each, such fee not to be less than that payable if the proceedings were consolidated.

(e) Proceedings to administer assets subsequent to entry of final judgment in an estate are subject to fees as separate proceedings, which fees shall not be less than those which would have been chargeable if such assets had been included in the original proceedings.

(f) The value of decedent's interest in real estate shall be diminished by the unpaid balance, on duly recorded or filed liens and mortgages.

(g) Special administrations are subject to filing fees, such fees to be credited upon fees for subsequent general administration or probate.

(3) The register in probate and the clerk of the county court shall, on the first Monday of each month, pay into the office of the county treasurer all fees collected by him and in his hands and still unclaimed as of said day. Each county treasurer of a county under 500,000 shall make a report under oath to the state treasurer on or before the fifth day of January, April, July and October of all fees received by him under s. 253.29 (2) (a) to (e) up to the first day of each of said months and shall at the same time pay 65 per cent of such fees to the state treasurer for deposit in the general fund. Each county treasurer shall retain the balance of fees received by him under this section for the use of the county. In counties having a population of 500,000 or more all fees paid under this section shall be kept for use by the county.

(4) Nothing herein contained shall be construed as depriving the county judge or any official of the county court of any compensation by way of fees, to which he may be entitled prior to August 19, 1939; and the county treasurer shall reimburse such county judge or official on account of all such fees which shall hereafter be paid into the county treasury.

(5) Any provision of any section or part of any section of the statutes in conflict with the provisions of this section shall be construed to be controlled by the provisions of this section.

**History:** 1953 c. 461, 644; 1955 c. 346, 498, 600; 1957 c. 90, 693.

See note to 59.15, citing 40 Atty. Gen. 460. Filing fees prescribed by 253.29 (2) (a) are payable in special administrations under 311.06 and in case of summary settlements of small estates under 311.05 and 311.055. Only one fee is chargeable against any one estate. The fee under 253.29 (2) (b) for a certificate issued under 230.47 (1), terminating a life estate, is \$1. This has nothing to do with certified copies. The fees charged for certified copies by registers in probate and clerks of county court under 253.29 (2) (g) and (h) are: For copies prepared by the court, 75 cents per page; for copies brought in, 25 cents per page; for the certificate in all cases, 50 cents; and the minimum charge, \$1 in all cases. (Stats. 1953) 43 Atty. Gen. 177. The fee under (2) (b) for a certificate terminating a life estate is \$1, and no further fee can be lawfully collected under (2) (a). Where the register in probate has made an overcharge under (2), which is not discovered until after the money has been sent to the state treasurer as required by (3), the only way to obtain a refund out of the state treasury is under 20.06 (2). 43 Atty. Gen. 291. 253.29 provides for no fees for filing petitions for discharge of bonds for maintenance, discharge of mortgages, and the like. 45 Atty. Gen. 131.

**253.295 Borrowing court files regulated.** The registers in probate and clerks of the county courts shall not permit any papers filed in their offices to be taken therefrom except upon the same terms and conditions specified in section 269.60.

**253.30 Board of county judges.** The several county judges of the state shall constitute a board to be known as the "Board of County Judges." They shall hold a meeting each year, at such time and place as they may determine. They shall make such rules and regulations in accordance with law, and not inconsistent with the rules of practice adopted

by the supreme court, as they shall deem advisable to promote the administration of the judicial business of the county courts of the state, and transact such other business as may properly come before them. Said board shall elect such officers as they may deem advisable for the proper conduct of their business, and such officers shall be elected for such terms as the board of county judges may determine. Such board may prescribe rules or by-laws for the conduct of their business. Each county judge attending the meeting or meetings of the board shall on presenting his certificate of attendance to the county treasurer of his county be reimbursed for his travel and hotel bills out of the general fund in the county treasury.

**253.31 Uniform forms for county courts.** (1) The board of county judges or its duly authorized committee shall from time to time adopt such uniform forms for use in the administration of the judicial business of the county courts as they deem necessary.

(2) Duly authenticated copies of all legal forms so adopted shall be furnished the office of secretary of state and there be kept on file and copies thereof shall, by the secretary of state, be transmitted to all of the county courts of Wisconsin.

(3) Only such applications and other process when properly presented to the county court on such uniform forms shall in the discretion of the court be received and accepted by every such court on and after January 1, 1931.

**253.32 Public administrator; appointment; qualifications, oath, bond, term.** The county court shall appoint a public administrator who shall, before entering upon his duties, take the official oath and give bond, with sufficient sureties, to the judge of said court, in a sum not less than one thousand dollars, with conditions substantially like the conditions of administrators' bonds, and that he will faithfully perform his duties; which bond shall be approved by the county court and with the oath filed and recorded therein. Additional bonds may be required by the court. The expense of surety upon such bonds shall be paid by the county treasurer out of inheritance tax funds belonging to the state, on the order of the county judge. The person appointed shall be an attorney if one is available and his term shall terminate upon the appointment of his successor. This section does not apply to Milwaukee county.

**253.33 County court reporter.** (1) **APPOINTMENT, OATH, DUTIES.** The judge of the county court may appoint, and remove at pleasure, a reporter to take the testimony in contested matters and may require him to file a transcript of such testimony. Every person so appointed is an officer of the court, and shall discharge such duties as the court or judge thereof shall require, and before entering upon his duties shall file his official oath in such court.

(2) **COMPENSATION.** Such reporter shall be paid by the county for his services such compensation as the county board shall direct.

(3) **TRANSCRIPT OF TESTIMONY.** Such reporter shall furnish to any party a transcript of the testimony taken by him in any matter or proceeding mentioned in this section upon being paid therefor the fees provided by law for transcripts of testimony in circuit court.

**History:** 1951 c. 56, 386; 1953 c. 61.

Register in probate who acts as court reporter in county court and juvenile court without having been appointed as such is not entitled to additional compensation for services as court reporter nor to the fees for transcripts mentioned in (3). 48 Atty. Gen. 20.