CHAPTER 256.

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

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

(1) To issue process of subpœna, 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.

The power conferred upon the several courts of record to issue process of subpoena is limited to any matter or cause pending or triable in such courts and does not extend to matters pending before administrative agencies. State ex rel. Thompson v. Nash, 27 W (2d) 183, 133 NW (2d) 769.

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

STATE OF WISCONSIN, }
County of .... } ss.

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 ...., 19...

.... (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 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.

(4) The county board is prohibited from reducing the salary or additional salary of a county or circuit judge for the term for which elected.

History: 1961 c. 495; 1967 c. 276.

256.025 Judge to file affidavit as to work done to receive salary. No judge of a court of record shall receive or be allowed to draw any salary, unless he first executes an affidavit stating that no cause or matter which has been submitted in final form to his court remains undecided that has been submitted for decision for one year, exclusive of the time that he has been actually disabled by sickness, which affidavit shall be presented to and filed with every official who certifies in whole or in part, the judge's salary.

256.03 What acts may be punished as criminal contempts. Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts and no other:

(1) Disorderly, contemptuous or insolent behavior committed during its sittings, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due its authority.

(2) Any breach of the peace, noise or disturbance directly tending to interrupt its proceedings.

(3) Wilful disobedience of any process or order lawfully issued or made by it.

(4) Resistance, wilfully offered, by any person to the lawful order or process of the court.

(5) The contumacious and unlawful refusal of any person to be sworn as a witness; and when so sworn, the like refusal to answer any legal and proper interrogatory.

(6) The publication of a false or grossly inaccurate report or copy of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decisions had in such court.

(7) The practicing as an attorney in such court without being first licensed as such in the manner provided by law.

Refusing to plead to the charge in an order to show cause is not sufficient to constitute contempt of court, since an order to show cause does not call for a plea. State ex rel. Reynolds v. County Court, 11 W (2d) 560, 105 NW (2d) 876.

The failure of a person to obey an order that is void for want of jurisdiction in the issuing court is not punishable as contempt; and want of jurisdiction to act means a lack of jurisdiction to act at all in a given situation or with reference to a certain subject matter; but disobedience of an order made by a court within its jurisdiction and power is a contempt, although the order may be clearly erroneous. State v. Ramsay, 16 W (2d) 154, 114 NW (2d) 118.

A court could find a wife in contempt who refuses to turn over clothing and furniture of children when custody of them was taken from her. Spring v. Spring, 16 W (2d) 460, 114 NW (2d) 807.

256.04 Contempt punished summarily. Contempts committed in the immediate view and presence of the court may be punished summarily; in other cases the party shall be notified of the accusation and have a reasonable time to make his defense.

The provision requiring an adjournment to one accused of a contempt without the presence of the court cannot be circumvented by requiring the accused to answer in the court's presence whether he will now obey a prior court order, and then finding that his negative answer constitutes a contempt occurring in the presence of the court. The judge who issued the disobeyed order or process should give consideration to whether he should take the discretionary step of disqualifying himself in order to permit another judge to try the contempt issue. State v. Ramsay, 16 W (2d) 154, 114 NW (2d) 118.

256.05 Contempt commitment. Whenever any person shall be committed for any contempt specified in this chapter the particular circumstances of his offense shall be set forth in the order or warrant of commitment.

256.06 Punishment for contempt. Punishment for contempt may be by fine or by imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine shall in no case exceed the sum of two hundred and fifty dollars nor the imprisonment thirty days; and when any person shall be committed to prison for the nonpayment of any such fine he shall be discharged at the expiration of thirty days.

Conviction of contempt of court is not a conviction for felony or misdemeanor as those terms are generally defined in the statutes. State ex rel. Jenkins v. Fayne, 24 W (2d) 476, 129 NW (2d) 147.

256.07 Criminal prosecution for contempt. Persons punished for a contempt, under the preceding provisions, shall, notwithstanding, be liable to indictment or information

for such offense; but the court before which a conviction shall be had on such indictment or information shall, in forming its sentence, take into consideration the punishment before inflicted. Nothing contained in the preceding sections of this chapter shall be construed to extend to proceedings against parties or officers as for any contempt for the purpose of enforcing any civil right or remedy.

An assertion on appeal that contemnor's alleged conduct should have been tried under this section rejected where throughout the proceeding the parties asserted that civil contempt was involved. Upper Lakes Shipping v. Seafarers' I. Union, 23 W (2d) 494, 128 NW (2d) 73.

256.08 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.

256.09 Failure to hold term not to affect suits. No process issued or action or proceeding in any court of record shall be discontinued by reason of such court not having been held at any stated term thereof or by reason of any term of such court having been altered; but such process shall be deemed returnable at the term which shall be held next after such failure or at the term established by such alteration, and such action or proceeding shall be continued to such next term or to the term established by such alteration, as the case may be.

256.10 Nor neglect to adjourn. No omission to adjourn any such court from day to day, previous to the final adjournment thereof without day, shall vitiate any proceedings in such court; and the adjournment of any court before the expiration of its term shall not affect the return or service of any writ issued prior or subsequent to such adjournment.

256.12 Adjournment to another place. Whenever it shall be deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity, to hold any court at the time and place appointed therefor the justices or judges of the court may appoint any other place within the same county and any other time for holding the same; and the said adjourned session shall be taken as part and continuance of said term, and all proceedings in the said court may be continued at said adjourned times and places and be of the same force and effect as if said court had continued its sessions at the place it was holden before such adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the same, and shall be published as a class 1 notice, under ch. 985, or in such other manner as is required in the order.

History: 1965 c. 252.

256.13 Continuances; legislative privilege. When a 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 or is president of the senate, in session, such fact shall be sufficient cause for the adjournment or continuance of such action or proceeding, and such adjournment or continuance shall be granted without the imposition of terms.

256.14 Sittings, public. The sittings of every court shall be public and every citizen may freely attend the same, except when otherwise expressly provided by law on the examination of persons charged with crime; provided, that when in any court a cause of a scandalous or obscene nature is on trial the presiding judge or justice may, in his discretion, exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses.

256.15 Holding court, effect of holidays. No court shall be opened or transact business on the first day of the week, the 4th day of July, Christmas or the day on which any general election shall be held unless it be for the purpose of instructing or discharging a jury or of receiving a verdict and rendering a judgment thereon; but this section shall not prevent the exercise of the jurisdiction of any magistrate when it shall be necessary, in criminal cases, to preserve the peace or arrest offenders. If the day fixed by law for beginning any term of any court of record falls upon a legal holiday, the term shall be deemed opened and adjourned until the next day which is not a Saturday, Sunday or holiday, and from day to day thereafter until the judge is present, and all matters returnable on that day shall be held continued until the judge is present; but whenever any such holiday, other than the 4th of July, Christmas and the day on which any general election shall be held, shall occur during the term of any court of record, said court may, in its discretion, proceed with its business thereon in like manner and with like effect as upon any other day.

History: 1964 Sup. Ct. Order, 25 W (2d) vi.

256.16 Memorial day; veterans to be given leave of absence on. (1) The head of every department of the state government and of every court of the state, every superintendent or foreman on the public works of the state, every county officer, and the head of every department or office in any town, village, or city, or other political subdivision, shall give leave of absence with pay for twenty-four hours on the thirtieth day of May of each year, or on such other day as may by law be designated as "Memorial Day," to every person in the employ of the state or any county, town, village or city therein, who has at any time served in and been honorably discharged from the army, navy, or marine corps of the United States. A refusal to give such leave of absence to one entitled thereto, shall constitute neglect of duty.

(2) In all cities, however organized, where the nature of the duties of the several departments of government of such cities is such as to necessitate the employment of members of such departments on Memorial day, the head of each such department shall arrange and assign such necessary work in such a manner as to permit the largest possible numbers of employes of such department to be off duty either the whole or part of Memorial day.

256.17 Legal holidays. January 1, February 12, February 22, May 30, July 4, October 12 (which shall be known as "Landing Day" in commemoration of the landing of Columbus), November 11, December 25, the first Monday in September which shall be known as Labor Day, the 4th Thursday of November or the day appointed by the governor as a day of public thanksgiving in each year, the day of holding the September primary election, and the day of holding the general election in November, are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every city of the 1st class the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 500,000 or more the county board may by ordinance provide that all county employes shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employes whose duties require that they work on such days be given equivalent time off on other days. Whenever any of said days shall fall on Sunday the succeeding Monday shall be the legal holiday.

History: 1963 c. 506 s. 8.

256.175 Indian Rights Day. July 4 is designated as "Indian Rights Day," and in conjunction with the celebration of Independence Day, appropriate exercises or celebrations may be held in commemoration of the granting by congress of home rule and a bill of rights to the American Indians. When July 4 falls on Sunday, exercises or celebrations of Indian Rights Day may be held on either the third or the fifth.

256.18 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.

256.19 Judges disqualified, when. In case any judge of any court of record shall be interested in any action or proceeding in such court or shall have acted as attorney or counsel for either of the parties thereto such judge shall not have power to hear and determine such action or proceeding or to make any order therein, except with the consent of the parties thereto.

A judge may not sentence a probation violator when he was the district attorney who signed the information and took part in the original proceedings which resulted in conviction. He should disqualify himself. The judge is not disqualified to sentence the violator in other cases with which he had no prior connection. James v. State, 24 W (2d) 467, 129 NW (2d) 227.

256.20 Judge not to review case on appeal. No judge of an appellate court or of any court to which a writ of certiorari or of error shall be returnable shall decide or take part in the decision of any cause or matter which shall have been determined by him, while sitting as a judge of any other court, unless there shall not be a quorum without him.

256.21 Judge not to have partner or be interested in costs; judge to disqualify himself for kinship. No judge shall have a partner practicing in the court of which he is a judge; nor shall any judge be directly or indirectly interested in the costs of any action that is brought in the court of which he is a judge except in those actions in which he is a party or is interested. Whenever the judge of any court is related within

the third degree of kinship to any litigant or to any attorney or agent or his spouse appearing for one of the litigants in any matter, he shall disqualify himself from acting in such matter and a qualified judge shall be called in such manner as provided by statute upon the filing of an affidavit of prejudice.

History: 1961 c. 495.

256.22 Judge not to act as attorney, etc.; attorneys not to have office with judge. (1) No judge, while holding such office, shall be in any manner engaged or act as attorney or counsel; and no judge or his clerk or any person employed by him in or about his office, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any matter or action pending before such judge or officer, or which he has reason to believe will be brought before him 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 shall 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 shall hold his office in the office of the clerk of any court in which he practices nor shall he hold his office in the same room with a judge.

(3) No practicing attorney shall have his office in the same room with any district attorney, municipal justice or court commissioner, unless he is a partner of such district attorney, municipal justice or court commissioner, in which case he shall not practice as an attorney before such municipal justice or court commissioner nor act as attorney in any case in which it is the duty of such 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 shall act as a municipal justice 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 such district attorney to prosecute or appear for the state.

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

History: 1961 c. 495; 1963 c. 407; 1965 c. 617; 1967 c. 276 s. 39.

(1), which prohibits the drafting of legal papers and the giving of legal advice by court personnel is applicable to Milwaukee county. Special court act for Milwaukee county has been repealed. 55 Atty. Gen. 5.

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

256.24 Liability of judicial officers. The judges of the circuit and county courts and court commissioners shall be held personally liable to any party injured for any wilful violation of the law in granting injunctions and appointing receivers, or for refusing to hear motions to dissolve injunctions and to discharge receivers; provided, such motions are made in accordance with the rules of law or such rules as are promulgated by the supreme court.

History: 1961 c. 495.

256.25 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 into court the sum of one thousand dollars or more in such action or proceeding may order such money to be deposited in a safe depository until the further order of the court or judge thereof. After such 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 such court or the judge thereof.

256.26 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 per-

sons during the sitting of the court of which they are officers; but no attorney or counselor shall be exempt from arrest during the sitting of a court of which he is an officer unless he shall be employed in some case pending and then to be heard in such court.

256.27 Appearance by attorney. (1) AUTHORIZED. Every person of full age and sound mind may appear by attorney in every action or proceeding by or against him in any court except felony actions, or may, at his election, prosecute or defend the same in person.

(2) SERVICE OF NOTICE. Upon the service of notice of appearance or retainer generally, by an attorney for any party, any other party may file such notice and have the appearance of such party entered as of the time when such notice was served.

(3) SUBSTITUTION OF ATTORNEYS. No order for the substitution of an attorney for a party shall be made without consent signed by such party and his attorney; or for cause shown and upon such terms as shall be just, and on such notice as the court or judge shall direct.

256.28 Attorneys; bar commissioners; license; disbarment. No person shall be admitted or licensed to practice as an attorney of any court of record except in the manner following:

(1) ADMISSION OF LAW SCHOOL GRADUATES, LIST OF SCHOOLS. Any person of full age and good moral character who is a citizen of the United States, a resident of this state and a graduate of any law school in this state which law school was at the time of his graduation approved by the council of legal education and admission to the bar of the American Bar Association, as shown by the records of the clerk of the supreme court, shall upon the production of his diploma and such certificate showing satisfactory completion of requirements relating to Wisconsin practice as may be granted by the law school from which he graduates be admitted to practice in all the courts of this state by the supreme court and when such court is not in session, by one of the justices thereof, by an order signed by such justice and filed with the clerk of said court. The clerk of the supreme court shall compile a record of all law schools in this state which are approved by the council of the American Bar Association on legal education and admission to the bar, together with the date of such approval, and those that are not approved; and such record so compiled shall constitute an official record of the supreme court, and proof of the fact that the law schools therein stated as approved by the council of the American Bar Association on legal education and admissions to the bar were so approved and at the times therein stated.

(2) ADMISSION ON CERTIFICATE OF BAR COMMISSIONERS. Every person of full age, who is a citizen of the United States and a resident of this state, of good moral character and otherwise qualified, shall be admitted to practice in all the courts of this state, by the supreme court, upon the production of the certificate of the board of state bar commissioners, and may be so admitted when such court is not in session, by one of the justices thereof upon the production of such certificate, by an order signed by such justice and filed with the clerk of said court.

(3) ADMISSION ON PROOF OF PRACTICE ELSEWHERE. Any person of full age, who shall have been admitted to practice in the court of last resort of any other state or territory or the District of Columbia, and who shall have become a resident of this state, is a citizen of the United States, and is of good moral character, may be admitted to practice in the courts of this state by the supreme court, upon filing with the clerk of the supreme court his written application therefor, and the certificate of his admission to practice in such court of last resort, in such other state or territory or the District of Columbia, and satisfactory proof that he is a citizen of the United States, is of good moral character, and has been engaged in actual practice in such other state or territory or the District of Columbia or in the courts of the United States, for 5 years, within the last 8 years prior to filing his application, exclusive, in each case, of time spent in the armed forces. The certificate of the judge of any court of record in such other state or territory or the District of Columbia or court of the United States, before whom such applicant has practiced, under the seal of such court, shall be deemed sufficient proof of such practice in such state or territory or the District of Columbia or court of the United States.

(3a) SERVICE COUNTED AS PRACTICE OF LAW. Service as judge of a court of record of any state or territory or the District of Columbia or of the United States, service determined by the supreme court to be actual legal service in any department of the United States government, and teaching in any law school which is approved by the council of the American Bar Association on legal education and admission to the Bar, shall be deemed to be actual practice of law for the purpose of this section, and such law teaching or such legal service done in this state as well as in such other state or territory or District of Columbia shall be counted under the 5 and 8 years' tests provided in sub. (3).

(4) NO SEX DISCRIMINATION. No person shall be denied admission or license to practice as an attorney in any court on account of sex.

(5) BAR COMMISSIONERS; APPOINTMENT; ELIGIBILITY OF APPLICANTS; EXAMINATION FEE; INVESTIGATION OF COMPLAINTS; COSTS CERTIFIED. The supreme court shall, on or before the 2nd Tuesday in August in each year, appoint one member of a board of 5 members to be known as the "State Bar Commissioners," for a term of 5 years. Three members of the board shall constitute a quorum. The supreme court shall, from time to time, promulgate rules relating to the qualifications of applicants for examination, their courses of study and the standard of acquirements to entitle them to admission to practice in the courts of this state, and such other rules relating to the examination of applicants for admission to the bar as the court deems necessary or desirable. The period of study necessary to enable the applicant to take the examination shall be at least 3 years. A fee of $50 shall be paid to the board by each applicant before taking any examination. The board may adopt such rules and forms relating to holding and conducting its meetings and its procedure as it deems necessary. Whenever the board receives reliable information that any attorney has violated any of the provisions of the oath for admission to the bar prescribed in s. 256.29, or been guilty of misconduct which would justify the suspension or revocation of his license, the board shall investigate the facts in reference thereto, and after such investigation, file a complaint thereon when in its judgment the facts so warrant. The clerk of the supreme court shall be secretary of the board, but he shall not be a member thereof. Whenever the board shall, directly or through counsel appointed under sub. (10), file with any circuit court commissioner of this state a written statement or declaration that it has received reliable information to the effect that any attorney has been guilty of misconduct which would justify the suspension or revocation of his license, the circuit court commissioner shall issue his subpoena for such persons as may be requested by the state bar commissioners or their counsel requiring them to appear before him at a time and place fixed in the subpoena, and proceedings may thereupon be had in respect thereto in the same manner as provided in s. 133.06, and all of the provisions of said statute insofar as the same may be applicable or adaptable to the proceeding shall apply thereto. Whenever the board directly or through such counsel requests, the clerk of the circuit court in any county shall issue a subpoena for such persons as may be requested, requiring them to appear before the board or before any member thereof at time and place fixed in the subpoena, and like proceedings may thereupon be had before the board or such member thereof. The fees of the court commissioner, clerk and witnesses shall be certified by the chief justice and paid as provided in sub. (14). Counsel for the board shall be paid compensation as fixed by the court. Each member of the board shall be paid $25 per day when actually and necessarily engaged in his duties and in addition his actual and necessary expenses.

(6) MEDICAL SUSPENSION OF LICENSE. (a) Whenever in the judgment of the board of state bar commissioners any attorney, because of mental infirmity, mental illness, or addiction to intoxicants or drugs, may not be permitted to practice law without danger to the interests of his clients and the public, said board may either work out a voluntary suspension of the lawyer's license to practice law by agreement or file a complaint with the court for the medical suspension of the lawyer's license to practice law, in either case until in the judgment of the said board the lawyer shall be restored to health and reliability, and in either case subject to the other or further direction of the court.

(b) Whenever in the judgment of the board of state bar commissioners any attorney is mentally incompetent, the said board may petition the county court of the county in which the attorney resides for the appointment of a guardian in his behalf under ch. 319. In any case where an attorney has been declared incompetent and a guardian appointed, the court having jurisdiction of such proceeding shall, upon such appointment, forward a certified copy of the order of appointment to the clerk of the supreme court and to the state bar of Wisconsin, and may enter an order as to the disposition of the matters pending in such attorney's practice.

(6a) MEDICAL SUSPENSION OF MENTALLY INCOMPETENT ATTORNEY. Any attorney who shall have been adjudged to be mentally incompetent shall thereupon be suspended for medical reasons from the practice of law. If such attorney shall be judicially declared to be restored to competency, he shall cause a showing thereof to be filed with the board of state bar commissioners and said board shall make a recommendation to the court as to his reinstatement.

(7) LICENSE REVOCATION, SUSPENSION. The authority or license granted to any person to practice as an attorney in courts of record in this state may be suspended or revoked

and annulled for the reasons now prescribed or authorized by law and by the practice of such courts, and also for the same reasons and in the manner prescribed in this section.

(8) COMPLAINT AGAINST ATTORNEY. Three or more residents of the state, one of whom shall be the district attorney of the county wherein the misconduct complained of occurred, or the board of state bar commissioners, or a county bar association having as members more than 500 attorneys licensed to practice law in this state by its president in its name upon resolution of its governing body, after an investigation, may make written complaint against any person described in subsection (7), except that a county bar association may file a complaint only against an attorney practicing or residing in its county. The complaint may be either positive, or on information and belief, and must be signed and verified by the oath or affirmation of those who make it. It must be entitled in the name of the state of Wisconsin against the defendant, and be addressed to the justices of the supreme court, contain the name and residence of the defendant and state with clearness and certainty the facts constituting the alleged misconduct of the defendant. It shall be presented to a justice of the supreme court.

(8a) SUPREME COURT TO ORDER SUBPOENAS. In order to aid the investigation required in sub. (8), the president of any county bar association therein described, after authority by resolution of its governing body, may file a verified petition with the supreme court of this state, the petition alleging that the bar association is conducting an investigation pursuant to sub. (8) and that the governing body of the bar association has, by resolution, authorized the president to request the issuance of subpoenas for various persons to be designated by the president. The supreme court shall thereupon enter an order directing any court commissioner of the state with whom a copy of the order may be filed to issue his subpoena for such persons as the president shall designate; and in the order the supreme court shall likewise appoint an attorney pursuant to sub. (10) to conduct the proceedings before such court commissioner. Upon the filing of a copy of the order with a court commissioner it shall be the duty of the court commissioner to issue his subpoenas for such persons as the president of the bar association may designate and shall require such persons to appear before such court commissioner at a time and place to be fixed in the subpoena. The persons subpoenaed shall be sworn and shall testify, and the testimony may be taken by a stenographic reporter, but need not be so taken, and if transcribed by a reporter shall be read to or by the witness and subscribed by him, unless the witness shall stipulate upon the record that the reading of the transcript of such testimony to or by the witness and his signature thereto are waived, and that the transcript may be used with like force and effect as if read and subscribed by him. The attendance of the witness under the subpoena may be compelled by any circuit court, and the attendance for the purpose of reading and subscribing the transcript may be compelled in the same manner that his attendance to be examined may be compelled. Upon conclusion of the proceedings which shall not be public, the record thereof shall be transmitted to the governing body of the local bar association. The commissioner shall be entitled to the fees provided in s. 252.17. All fees, costs and expenses incident to the inquiry shall be paid by the county bar association requesting the same.

(9) ANSWER OR DEMUR. The supreme court shall by order require the defendant to appear and answer or demur to the complaint within twenty days after service upon him of the complaint and order, and to file his pleading or motion in the office of the clerk of the supreme court within ten days after the time limited to plead, and shall cause the complaint and order to be served by the sheriff of the county where the defendant resides, or by some other competent person, in the same manner as a summons, except that service by publication shall not be authorized. The original complaint and order, with proof of service, shall forthwith be filed in said clerk's office.

(10) ATTORNEY FOR COMMISSIONERS AND IN DISCIPLINARY ACTION. The supreme court as occasion may require shall appoint a competent attorney who is a member of the bar of the supreme court to act as counsel for the state bar commissioners or for the parties making the complaint, or for any party authorized by statute to investigate the conduct of any attorney, and to conduct investigations and prosecute disbarment proceedings. The district attorney of the county of the defendant's residence shall in his county render such assistance in investigations and preparation for trial as such counsel shall reasonably request.

(11) DEFENSE PROCEDURES. The defendant may move to strike out matter, make more certain, demur or answer, as in other cases, and may file an affidavit of prejudice as provided in sub. (12).

(12) REFEREE; HEARING BEFORE, REPORT. Upon the filing of the defendant's answer the supreme court shall appoint a referee to hear the cause and to report his findings to the court, together with his recommendations as to the judgment to be made. The referee shall give to the defendant and counsel for the board of state bar commissioners or the

counsel appointed for the parties making the complaint at least 20 days' notice in writing of the time and place of trial. The proceeding shall be a civil action triable without a jury, governed by the rules and practice in equitable actions, except as different procedure is herein prescribed. At the commencement of the trial or during its progress the sittings may be changed as often as may be found convenient from one county to any other including that of the defendant's residence, upon the request of either party or on motion of the referee, if it shall appear that the convenience of the parties or witnesses or the speeding of the cause will be served thereby. All proceedings shall be carefully taken down by a stenographer to be appointed by the court, and the same together with all the testimony and evidence shall be transcribed in longhand or typewritten and certified and filed by him with other papers in the case.

(13) NOTICE TO DEFENDANT; ISSUE JOINED; TRIAL; JUDGMENT. Upon the filing of the report of the referee, including his findings of fact and recommendations as to the judgment to be entered, notice therof shall be served on the defendant or such attorney as shall have appeared for him and on the counsel for the board of state bar commissioners or for the parties making the complaint, and such objections or motions as the defendant or such counsel shall see fit to make thereto shall be filed within 20 days thereafter. The court shall thereupon set the cause down to be heard not less than 20 days after the date of the filing of such objections and exceptions. By the judgment the court may adjudge as follows:

(a) Absolute revocation or annulment of defendant's license to practice before all courts of record of the state of Wisconsin.

(b) Temporary suspension of license on such conditions as to the court shall seem just, and with or without the payment of a fine and the costs of the proceeding in whole or in part.

(c) The judgment may contain such other provisions with or without the foregoing as may be authorized by law.

(14) COSTS AND FEES; TAXATION, HOW PAID. The supreme court shall tax the costs including the witnesses', reporter's, clerk's, sheriff's, referee's and other officers' fees. The amounts so taxed and allowed shall be certified by the chief justice to the department of administration, which shall thereupon draw a warrant on the state treasurer for the respective amounts allowed in favor of the parties named as entitled thereto. Such amounts shall be charged to the appropriation provided in s. 20.680. If the judgment is against the defendant, all or a part of the costs may, in the discretion of the court, be charged to him, in which case they shall, together with any fine so adjudged, be collected by the district attorney of the county where defendant resides, and by him paid into the state treasury.

(15) SAME. The reasonable costs of disbarment proceedings conducted under the usual practice, other than that specially provided for in this section, shall be taxed, paid, adjudged and collected in the same manner as herein prescribed.

(16) OATH OF COMMISSIONERS' ATTORNEY. The counsel for the state bar commissioners or for the parties making the complaint and the referee herein provided for shall take and subscribe and file with the clerk of the supreme court the usual and customary oath of office.

History: 1961 c. 316; Sup. Ct. Order, 17 W (2d) xvii; 1965 c. 433 s. 121; Sup. Ct. Order, 31 W (2d) v; 1967 c. 43, 291 s. 14.

Where an attorney, abandoning his Wisconsin law practice in 1940 and not reengaging in the practice of law, thereafter made his living from gambling operations, and he pleaded guilty in 1958 to a charge of filing a false and fraudulent federal income-tax return, such crime involved "moral turpitude," requiring that his license to practice law in this state be revoked and suspended for 2 years, and that his license to practice be reinstated only on presentation of evidence that he has refrained in the meanwhile from practice, and on the further condition that he shall successfully pass the state bar examination within one year preceding his application for reinstatement. State v. Brodson, 11 W (2d) 124, 103 NW (2d) 912.

Where a single disreputable witness testifies to unprofessional conduct denied by an attorney, it does not amount to proof of guilt; but evidence by several witnesses, with other evidence, may be sufficient. State ex rel. Milwaukee Bar Asso. v. Aderman, 11 W (2d) 319, 105 NW (2d) 284.

An attorney who failed to file state income-tax returns for certain years, after having been repeatedly notified by the department of taxation to do so, was guilty of unprofessional conduct, and he is censured and reprimanded and required to pay the initial $750 of the costs and expenses of this disciplinary proceeding. State v. Roggensack, 19 W (2d) 38, 119 NW (2d) 412.

The license of an attorney, who filed false and fraudulent federal income-tax returns for certain years for the purpose of evading lawful taxes, is suspended for a period of 16 months and thereafter until reinstatement. The costs of this disciplinary proceeding are taxed to the defendant. After the expiration of 16 months, the defendant may apply for reinstatement of his license to practice law on compliance with sec. 6, Rule 10, State Bar Rules, and payment of costs. State v. Cain, 19 W (2d) 50, 119 NW (2d) 391.

An attorney who refuses to answer a complaint filed with a district grievance committee or to appear for a hearing is guilty of unprofessional conduct. State v. Kennedy, 20 W (2d) 513, 123 NW (2d) 449.

Unprofessional conduct consisting of sharing office space with non-lawyers and advertising discussed. State v. Willenson, 20 W (2d) 519, 123 NW (2d) 452.

Where an attorney drafted a will for a client and close friend, under which he was given a substantial bequest, and he included the bequest to himself at the testator's request, but he knew of a threat of a will contest, and imperiled not only his own but all bequests by including the bequest to himself, he was thereby guilty of unprofessional conduct calling for discipline in the form of a reprimand and the imposition against him of the costs of this disciplinary proceeding. State v. Horan, 21 W (2d) 66, 123 NW (2d) 488.

Where an attorney drafted and supervised the execution of a will for his uncle, disinheriting the latter's wife and only child and giving the entire estate to his mother—testator's sister—his activity gave rise to an inference of undue influence, since the will was unnatural on its face, and hence the attorney was guilty of unprofessional conduct calling for disciplinary action. State v. Eisenberg, 29 W (2d) 233, 138 NW (2d) 235.

Attorney who commingled funds (but with no loss to clients) was dilatory in handling matters and in one case misrepresented a matter to a client was guilty of gross professional misconduct warranting discipline. State v. Wildermuth, 34 W (2d) 235, 148 NW (2d) 656.

An attorney who collected moneys for clients, on occasions commingling them with his own until such times as he disbursed them properly, and who ignored without sufficient cause reasonable orders from the Board of State Bar Commissioners, was guilty of serious professional misconduct warranting disciplinary punishment. State v. Hildebrand, 35 W (2d) 822, 151 NW (2d) 660.

Periodic personal problems, a heavy law practice and prior conviction and imprisonment on a federal charge for failing to file tax returns do not justify a reduction of discipline. State v. Arneson, 36 W (2d) 618, 153 NW (2d) 497.

256.29 Attorneys regulated. (1) ATTORNEY'S OATH. Each person admitted to practice as a member of the bar of any court of this state shall subscribe the roll of attorneys to be kept by the clerk and shall in open court take an oath or affirmation of the tenor following, to wit: I do solemnly swear:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God.

(2) UNPROFESSIONAL CONDUCT. It is hereby declared to be unprofessional conduct and grounds of disbarment for any attorney to violate any of the provisions of the oath prescribed by this section; or to stir up strife and litigation; or to hunt up causes of action and inform thereof, in order to be employed to bring suit, or to breed litigation by seeking out those having claims for personal injuries or other grounds of action in order to secure them as clients; or to employ agents or runners for like purposes or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases or business to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed in influencing the criminal, the sick, the injured, the ignorant or others to seek his professional services.

(3) VOID CONTRACT, LEGAL EFFECT. Any contract of employment obtained or made in violation of this section shall be absolutely void as to the attorney; but the client may recover any compensation paid thereunder to or for or received by the attorney on account of such employment. The attorney shall not be allowed to prosecute or defend the action or proceeding contemplated by such employment.

256.293 Trust accounts required. A member of the state bar shall not commingle the money or other property of a client with his own, and he shall promptly report to the client the receipt by him of all money and other property belonging to such 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 shall promptly deposit his client's funds in a bank or trust company, authorized to do business in the State of Wisconsin, in a bank account separate from his own account and clearly designated as "Clients' Funds Account" or "Trust Funds Account", or words of similar import. 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 or trust company authorized to do business in the State of Wisconsin, 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.

History: Sup. Ct. Order, 13 W (2d) xi.

256.295 Barratry. (1) SOLICITING LEGAL BUSINESS. It shall be unlawful for any person to 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. It shall be unlawful for any person to communicate directly or indirectly with any attorney or person acting in his behalf for the purpose of aiding, assisting or abetting such 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. It shall be unlawful for an attorney to 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.

256.30 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 of Wisconsin, as provided by law, shall practice law within the meaning of sub. (2) of this section, or hold himself out as licensed to practice law as an attorney within the meaning of sub. (3) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, in addition to his liability to be punished as for a contempt.

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

(3) Every person who shall use the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his own 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 such person to be authorized to practice law or who shall in any other manner represent himself either verbally or in writing, directly or indirectly, as authorized to practice law in this state, shall be deemed to be holding himself out as 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 Christian or given name or any other surname than that under which he was originally admitted to the bar of this or any other state, in any instance in which the state bar commissioners shall, after a hearing, find that practicing under such 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 subsection (1). This subsection does not apply to a change of name resulting from marriage or divorce.

If a summons is issued and an appearance made in such a way as to constitute unauthorized practice of law, this does not make the action void or prevent the court from acquiring jurisdiction. Drugsvold v. Small Claims Court, 13 W (2d) 228, 108 NW (2d) 648.

Rule REB 5.04, providing for the drafting of certain documents by real estate brokers, will not be set aside, although such activity is practicing law. State ex rel. Reynolds v. Dinger, 14 W (2d) 193, 109 NW (2d) 685.

Trial courts have authority to regulate the practice of law. Competence in a specialized field and appearances only before an administrative agency do not prevent charging a layman with practicing law. State ex rel. State Bar v. Keller, 16 W (2d) 377, 114 NW (2d) 796, 116 NW (2d) 141.

A layman may appear before the Interstate Commerce Commission in Wisconsin and may give opinions in regard thereto but may not draft leases and contracts to be approved by the Commission. Practice before the Public Service Commission is not so interrelated with the ICC as to permit practice before the Wisconsin Commission. State ex rel. State Bar v. Keller, 21 W (2d) 100, 123 NW (2d) 905.

An executor cannot handle probate proceedings unless he is an attorney or represented by one. State ex rel. Baker v. County Court, 29 W (2d) 1, 138 NW (2d) 162.

See note to 260.13, citing State ex rel. State Bar v. Bonded Collections, 36 W (2d) 643, 154 NW (2d) 250.

An insurance agent who completes a loan application, note and mortgage to assist a purchaser of insurance in financing his car is practicing law. 49 Atty. Gen. 9.

Necessity of executor to appear by attorney in probate proceeding. 49 MLR 808.

Practice of law and conveyancing discussed. 1962 WLR 366.

256.31 State bar of Wisconsin. (1) There shall be an association to be known as the "State Bar of Wisconsin" composed of persons licensed to practice law in this state, and membership in such association shall be a condition precedent to the right to practice law in Wisconsin.

(2) The supreme court by appropriate orders shall provide for the organization and government of the association and shall define the rights, obligations and conditions of membership therein, to the end that such association shall promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice.

The integration of the state bar and its activities do not violate Art. I, Wis. Const. Lathrop v. Donohue, 10 W (2d) 230, 102 NW (2d) 404.

The polling of the active members of the state bar for an expression of their individual opinions on the qualifications of a nominee for a federal judgeship in Wisconsin did not impinge on an area of legislation not open to state bar activity, in that the United State Senate's confirmation of such a nomination is not a matter of legislation, at least not within the meaning of the bylaws and rules of the state bar. Axel v. State Bar, 21 W (2d) 661, 124 NW (2d) 671.

Lathrop case discussed. 1962 WLR 138.

256.32 Trial judge not to be counsel. No person shall be employed or allowed to appear as counsel or attorney before any court in any action which shall have been previously determined before him as a judge, justice, or examining magistrate.

256.325 Board of criminal court judges. The full-time judges of the courts of record of the state, having criminal jurisdiction, constitute the board of criminal court judges. The board shall meet at least twice each year at such time and place as it determines. The board shall elect a chairman, secretary and such other officers from its number as it deems necessary. Such officers shall perform such duties as the board prescribes. Each such judge, except a circuit judge, attending the meetings of the board shall on presenting his certificate of attendance to the county or municipal treasurer be reimbursed for his travel and reasonable and necessary expenses out of the funds made available for his court.

256.34 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 justice.

History: 1967 c. 276 s. 39.

256.35 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.

256.36 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 same and give such attorney a lien upon such cause of action and upon the proceeds or damages derived in any action brought for the enforcement of such cause of action, as security for his fees in the conduct of such litigation; when such agreement shall be made and notice thereof given to the opposite party or his attorney no settlement or adjustment of such action shall be valid as against the lien so created, provided that such agreement for fees shall be fair and reasonable, and this section shall not be construed as changing the law in respect to champertous contracts.

An agreement between an attorney and his client for an attorney's lien, and notice of the lien, are prerequisites to the creation and enforcement of the lien, and a mere notice by the attorney that he has been retained by the client is not sufficient notice of such an agreement to inform the opposite party of the lien. Goldman v. Home Mut. Ins. Co. 22 W (2d) 334, 126 NW (2d) 1.

256.37 When action settled by parties, what proof to enforce lien. If any such cause of action shall have been settled by the parties thereto after judgment has been procured without notice to the attorney claiming such lien, such lien may be enforced and it shall only be required to prove the facts of the agreement by which such lien was given, notice to the opposite party or his 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 said lien to prove the agreement creating the same, notice to the opposite party or his attorney and the amount for which said case was settled, which

shall be the basis for said lien and it shall at no time be necessary to prove up the original cause of action in order to enforce said lien and suit.

256.38 **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.

256.39 **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.

256.40 **Law Library.** Any circuit judge may, whenever he deems it desirable, purchase or direct the clerk of the circuit court for any county in his 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 circuit, provided the cost of such 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 such county authorizes the expenditure of a larger sum. Whenever such purchase or subscription is made such clerk shall have each volume of books received stamped or branded with the name of his county and take charge of the same for the use of the courts, judges, attorneys and officers thereof. The cost of such volumes shall be paid by the county treasurer upon the presentation to him of the accounts therefor, certified to by the clerk of the circuit court and the circuit judge.

256.41 **Law library; Milwaukee county.** The county board of any county containing 250,000 or more population may acquire by gift, purchase or otherwise, a law library and law books, and shall house such law library and additions in the courthouse or in suitable quarters elsewhere, and shall have power to make, and enforce by suitable penalties, rules and regulations for the custody, care and preservation of the books and other property contained in said library. The county board of such county shall provide reasonable compensation for the law librarian and such assistants as shall be necessary for the proper care and maintenance of such library. Such librarian and assistants shall be appointed as the county board shall determine, pursuant and subject to ss. 63.01 to 63.17. In such a county such librarian shall perform all of the duties imposed by s. 256.40 upon the clerk of the circuit court and such clerk shall be free from all responsibility imposed by said s. 256.40. The purchase of additional law books, legal publications, periodicals and works of reference for said library may be directed by each of the circuit judges of such county under s. 256.40. The library shall be kept open every day throughout the year excepting Sundays and holidays, and for such hours as said board may direct. Attorneys and the general public shall be permitted to use the books in said library in the building housing said library under such rules and regulations as said board may adopt.

256.45 **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.

256.46 **Reporter not to take statements of injured persons.** No phonographic reporter for any court of record in the state of Wisconsin or any of his assistants shall 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 reporter or assistant violating the provisions hereof shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation hereof. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section.

256.47 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.

256.48 Guardian ad litem must be an attorney; fees. 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 and shall be allowed reasonable compensation for his services, reasonable compensation to be such as is customarily charged by attorneys in this state for comparable services. Wherever the statutes do not specify who shall pay the fee of the guardian ad litem, the court shall order payment of his fees to be made by the party which the court determines should bear this cost.

The attorney for an insurer, who also acts as guardian ad litem for the insured, is not entitled to fees as guardian ad litem in the absence of a showing of special services. Dickman v. Schaeffer, 10 W (2d) 610, 103 NW (2d) 922.

256.49 Compensation of attorneys appointed by court. Notwithstanding any other provision of the statutes, in all cases where the statutes fix a fee and provide for the payment of expenses of an attorney to be appointed by the court to perform certain designated duties, the court appointing the attorney shall, after the services of the attorney have been performed and the disbursements incurred, fix the amount of his compensation for the services and provide for the repayment of disbursements in such sum as the court shall deem proper, and which compensation shall be such as is customarily charged by attorneys in this state for comparable services.

In determining fees the court can consider whether all of the services rendered were reasonably necessary and whether the requested fee is reasonable. Disbursements should be paid. Conway v. Sauk County, 19 W (2d) 599, 120 NW (2d) 671.

Calculation of proper fees and expenses discussed. Schwartz v. Rock County, 24 W (2d) 172, 128 NW (2d) 450.

Method of calculating attorney's fees and proper fee discussed. State v. DeKeyser, 29 W (2d) 132, 138 NW (2d) 129.

256.50 Age and other requirements for county judges. (2) No person who is 70 years of age or over or who is not licensed to practice law in this state may take office as a county judge after January 1, 1962, under the court reorganization act (ch. 315, laws of 1959).

History: 1963 c. 6.

256.52 Guardian ad litem for persons not in being or unascertainable. In any action or proceeding, except in paternity proceedings under ch. 52, 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.

Cross Reference: Compare 323.10 concerning guardians in trust matters.

256.54 Court administrator. (1) DEFINITION. In this section, unless the context requires otherwise, "court" means any tribunal recognized as part of the judicial branch of the government, but excluding municipal justices.

(2) ADMINISTRATIVE DIRECTOR. The office of administrator of courts is created with an administrative director, who shall be the head thereof and who shall assist the chief justice of the supreme court or other designated justice in the performance of his duties under s. 251.182, collect such statistics as the supreme court requires, and perform such other duties as the supreme court directs.

(3) APPOINTMENT, TERM AND SALARY. The administrative director shall be appointed by the supreme court for an indefinite term. The appointment shall be approved by a majority of the justices upon recommendation of the appointee by the chief justice. His term shall end when termination is approved by a majority of the justices. He shall devote full time to his official duties to the exclusion of engagement

in any other business or profession for profit. His salary shall be fixed by the supreme court, but shall not exceed compensation paid by the state and the counties to any circuit judge. He shall be included within the Wisconsin retirement fund and ss. 66.90 to 66.918 shall apply to him as they apply to justices of the supreme court.

(3m) QUALIFICATIONS. The administrative director shall have been actively engaged in the practice of law for at least 10 years prior to his appointment. In making the appointment preference shall be given to candidates who have had judicial or trial work experience.

(4) ASSISTANTS. The supreme court shall appoint and fix the compensation of an assistant to the administrative director where such assistant is deemed necessary to enable him to perform his duties.

(5) COMPLIANCE WITH REQUESTS. All judges, clerks of court, registers in probate, and other officers or employes of the courts shall comply with all requests made by the administrative director for information and statistical data relative to the work of the courts and of such offices.

(6) QUARTERS. The office of the administrator of courts shall be in the state capitol as convenient to the supreme court as may be.

(7) GOVERNING BODY FOR COURTS. The administrative director shall pursuant to s. 66.901 (16) act as the governing body for the supreme court and for circuit court judges and reporters and county court judges and reporters.

(8) SALARY CERTIFICATIONS. The administrative director may require each judge to verify and certify vouchers for salaries and expenses of himself, his reporter and any assistant reporters and, in certifying such salaries and expenses to the department of administration, may rely on the certifications received from the several judges.

History: 1961 c. 261, 642; 1965 c. 617; 1967 c. 247, 276 s. 39; 1967 c. 282.

256.55 Reporting testimony. (1) Except as provided otherwise in this section, all testimony in all courts of record in every action or proceeding, contested, uncontested or ex parte, shall be reported.

(2) Proceedings had on forfeitures of bail or deposit, pleas of guilty in ordinance violation cases, and pleas of guilty in misdemeanor cases need not be reported except when the maximum penalty may exceed $500 or 6 months, but the clerk shall keep a record indicating the calling of the case, nonappearance or plea made by the defendant and action taken by the court.

(3) Voir dire examinations in any civil or criminal action need not be reported unless ordered by the court. Opening statements and closing arguments shall be reported in any action upon request of a party or upon order of the court. A request to report opening or closing argument shall be made on the record before any such argument has commenced.

(4) Arguments of counsel on motions made during the course of trial shall be reported, but such arguments on motions made before or after trial need not be reported except upon order of the court.

(5) A record shall be made of the court's advice and defendant's reply under s. 957.26 (2).

(6) Preliminary examinations shall be reported.

(7) The reporter shall be readily available during all sessions of court to take any proceedings the court directs.

History: Sup. Ct. Order, 34 W (2d) v.

The supreme court points out that to obviate any question as to what occurred at a preliminary hearing, in all felony prosecutions before a magistrate the reporter should be called in to report what transpires at each appearance of the accused or his counsel. State ex rel Klinkiewicz v. Duffy, 35 W (2d) 369, 151 NW (2d) 63.

256.56 Reporters' notes. The original notes of all court reporters, made in open court or pursuant to an order of the court, constitute part of the records of the court in which made and are not the property of the reporter.

History: Sup. Ct. Order, 34 W (2d) v.

256.57 Transcripts. (1) Reporters' notes need not be transcribed unless required by this section, any other statute, or by court order.

(2) In any criminal action or proceeding the court may, and in case of sentence of any person to the state prisons or to a county house of correction for more than 6 months, the court shall order a transcript of the testimony and proceedings to be made and certified by the reporter and filed with the clerk of court, and a certified duplicate of such transcript to be filed with the warden or superintendent of the institution to

which the person is committed. The cost of such transcript, at the rate of 50 cents per 25-line page for the original and 15 cents per 25-line page for the duplicate, shall be paid for by the county treasurer upon the certificate of the clerk of court. In case of application for a pardon or commutation of sentence such duplicate transcript shall accompany the application.

(3) In any action in which the court orders a compulsory reference the court may direct the reporter thereof to attend the referee's hearing, report the testimony and proceedings and furnish a typewritten transcript thereof to the referee. For such transcripts the reporter shall be entitled to receive fees at the rates and paid in the manner provided in sub. (2).

(4) Testimony and proceedings under chs. 48 and 247 shall be transcribed only upon order of the court, except as otherwise provided by statute.

(5) Except as provided in sub. (4), every reporter, upon the request of any party to an action or proceedings, shall make a typewritten transcript, and as many copies thereof as such party requests, of the testimony and proceedings reported by him in such action or proceeding, or any part thereof specified by such party, the transcript and each copy thereof to be duly certified by him to be a correct transcript thereof. For such transcripts the reporter shall be entitled to receive fees from the party requesting the same, at the rate of 60 cents per 25-line page for the original and 20 cents per 25-line page for each copy; but when such request is by the state or any political subdivision thereof, the fees of the reporter shall be at the rates provided in sub. (2).

(6) A judge may also order the reporter to transcribe and file all or any part of the testimony and proceedings in any action or proceeding in the court of which he is the judge.

(7) A reporter may make a special charge, pursuant to arrangement with the party requesting the same, for furnishing typewritten transcripts of testimony and proceedings from day to day during the progress of any trial or proceeding.

(8) For purposes of this section a page other than the final page of a transcript shall consist of any 25 or more consecutive typewritten lines, double-spaced, on paper not less than 8½ inches in width, with a margin of not more than 1½ inches on the left and five-eighths of an inch on the right, exclusive of lines disclosing page numbering; type shall be standard pica with 10 letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall be not more than 15 spaces from left margin.

History: Sup. Ct. Order, 34 W (2d) v.

Discussion of court reorganization legislation relative to fees for transcripts by county court reporter. 51 Atty. Gen. 77.

256.58 Transfer of cases between circuit and county court. (1) If an action is brought in the circuit court over which the county court has jurisdiction under ch. 299, the court on its own motion may transfer the action, together with a record of all the proceedings had therein, to the county court.

(2) Except as provided in sub. (3) when it appears that an action pending in the county court will be tried by a 12-man jury, the county court may, by order transfer the action to the circuit court of said county, and the clerk shall transfer the file thereof to the circuit court.

(3) In counties having a population of 200,000 or more, actions commenced in county court may be transferred to circuit court, and actions commenced in circuit court may be transferred to county court, jurisdiction permitting, whenever the county board of judges so determines. When such transfer occurs, adjustment for suit tax paid to the state treasury shall be as stated in ss. 59.20 (11), 59.395 (5) and 271.21.

History: 1961 c. 495; 1963 c. 427; 1967 c. 226.

A circuit court cannot refuse to accept proper transfer of misdemeanor cases from county court where a trial by a jury of 12 is required. State ex rel. Murphy v. Voss, 34 W (2d) 501, 149 NW (2d) 595.

256.59 County board of judges in populous counties. In counties having a population of 200,000 or more there is constituted a county board of judges to consist of all the judges of courts of record in such county. A circuit judge shall be chairman of such board. Such board shall have power by majority vote of all members to organize and to establish, modify and repeal rules, not inconsistent with the statutes, to provide for the orderly, efficient and expeditious handling of all matters within the jurisdiction of such courts.

History: 1961 c. 495; 1967 c. 226.