

CHAPTER 271

COSTS AND FEES IN COURTS OF RECORD

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271.01 Costs allowed to plaintiff. (1) Except as otherwise provided in this chapter, costs shall be allowed of course to the plaintiff upon a recovery.

(3) In an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than \$50 damages he shall recover no more costs than damages.

271.02 Costs limited, discretionary. (1) When several actions are brought against parties who might have been joined as defendants and the actions are consolidated under section 269.05 no costs, other than disbursements, shall be allowed to the plaintiff in excess of what he would be entitled to had he brought but one action.

(2) In equitable actions and special proceedings costs may be allowed or not to any party, in whole or in part, in the discretion of the court, and in any such case the court may award to the successful party such costs (exclusive of disbursements) not exceeding \$100, as the court deems reasonable and just, in view of the nature of the case and the work involved. This subsection refers only to such costs and fees as may be taxed by the authority of the statutes, independent of any contract of the parties upon the subject, which contract shall apply unless the court finds that the provisions thereof are inequitable or unjust.

Courts can make a determination of the reasonableness of attorneys fees even where a note specifies the amount. *Lakeshore C. F. Corp. v. Bradford A. Corp.* 45 W (2d) 313, 173 NW (2d) 165.

271.03 Costs to defendant. (1) If the plaintiff is not entitled to costs under s. 271.01 (1) or (3), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint.

(2) Where there are several defendants who are not united in interest and who make separate defenses by separate answers, if the plaintiff recovers against some but not all of such defendants, the court may award costs to any defendant who has judgment in his favor.

271.035 Costs upon counterclaims and cross complaints. (1) Except as otherwise provided in this section, costs shall be allowed on counterclaims and cross complaints as if separate actions had been brought thereon.

(2) When the causes of action stated in the complaint and counterclaim and cross complaint arose out of the same transaction or occurrence, costs in favor of the successful party upon the complaint and counterclaim and cross complaint so arising shall be in the discretion of the court.

(3) Costs recovered by opposing parties shall be offset.

Awarding statutory costs to the lessee and denial of costs to the lessor (whose recovery for unpaid installments of rent under the agreement was reduced by the damages the lessee sustained) was, under 271.035 (2) and (3), *Stats. 1969*, a matter within the trial court's discretion, the language of the statute indicating that costs are purely discretionary when both parties recover on their respective claims in one action, and there being no showing that the trial court herein abused its discretion (So much of the opinion in *Zimmerman v. Dornbrook*, 6 W (2d) 567, implying that if both parties recover on their claims, as a matter of right costs should be allowed for each side, is modified accordingly.) *Mid-Continent Refrigerator Co. v. Straka*, 47 W (2d) 739, 178 NW (2d) 28.

Where judgment was ordered for defendant in plaintiff's action and also for defendant on one of several counter-claims, costs were properly awarded to defendant as to each. *Arrowhead Growers S. Co. v. Central Sands Prod.* 48 W (2d) 383, 180 NW (2d) 567

271.036 Omnibus costs provision. If a situation arises in which the allowance of costs is not covered by sections 271.01 to 271.035, the allowance shall be in the discretion of the court.

271.04 Items of costs. When allowed costs shall be as follows:

(1) **FEES** (a) When the amount recovered or the value of the property involved is \$1,000 or over, the costs (exclusive of disbursements) shall be \$100; when it is less than \$1,000 and is \$500 or over, \$50; when it is less than \$500 and is \$200 or over, \$25; and when it is less than \$200, \$15.

(b) When no money judgment is demanded and no specific property is involved, or where it is not practical to ascertain the money value of the rights involved, the costs under paragraph (a) shall be fixed by the court, but shall not be less than fifteen dollars nor more than one hundred dollars.

(2) **DISBURSEMENTS.** All the necessary disbursements and fees of officers allowed by law; the suit tax; the compensation of referees; a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but in no event shall such item exceed the authorized sheriff's fee for the same service; amounts actually paid out for certified copies of papers and records in any public office; postage, telegraphing, telephoning and express; adverse examinations including copies; plats and photographs, not exceeding \$50 for each such item; an expert witness fee of \$25 for each expert who testifies, exclusive of the standard witness fee and mileage which shall also be taxed for each such expert; and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to such lands. Guardian ad litem fees shall not be taxed as a cost or disbursement.

(3) **JUDGMENT ON CONFESSION.** When a judgment for damages is entered upon confession or upon a note or bond and warrant of attorney five dollars shall be recovered for costs exclusive of disbursements.

(4) **INTEREST ON VERDICT.** When the judgment is for the recovery of money, interest at the rate of 7% per annum from the time of verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs.

(5) **DISBURSEMENTS IN TIMBER TRESPASS.** In actions founded upon the unlawful cutting of timber, or such cutting and its conversion, or such cutting and its unlawful detention, when the value of such timber or the damages recovered exceeds fifty dollars, full costs shall be recovered by the plaintiff, and there shall be included therein the actual reasonable expense of one survey and ascertainment of the quantity of timber cut, made after the commencement of the action, by one surveyor and one assistant, if proved as a necessary disbursement. And the defendant shall recover like costs in the same manner in case the plaintiff is not entitled to costs.

(6) **JUDGMENT BY DEFAULT.** If the judgment is by default or upon voluntary dismissal by the adverse party the costs taxed under sub. (1) shall be one-half what they would have been had the matter been contested.

(7) **JUDGMENT OFFER NOT ACCEPTED.** If the offer of judgment pursuant to s. 269.02 is not accepted and the plaintiff fails to recover a more favorable judgment he shall not recover costs but the defendant shall have full costs to be computed on the demand of the complaint.

(8) **ACTIONS FOR MUNICIPAL CORPORATIONS.** In all actions brought for the benefit of any county, town, village, city or other municipal corporation of this state by a citizen taxpayer, the plaintiff shall be entitled to recover for his own use, in case he shall prevail, the taxable costs of such action and such part of the recovery as the court shall deem reasonable, as attorney's fees, not to exceed 20 per cent of such recovery, and not to exceed \$500.

History: Sup. Ct. Order, 50 W (2d) vii; 1971 c. 141.

Cross Reference: See 204.11 as to recovery of premium on suretyship obligation given by a party.

Comment of Judicial Council, 1971: Guardian ad litem fees shall not be taxed as a cost or disbursement. Present law permits guardian ad litem fees to be taxed as costs or disbursements. [Re Order effective July 1, 1971]

271.07 Costs on motion. Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding \$50, and may be absolute or directed to abide the event of the action.

271.08 Costs on appeal from municipal court; certiorari. (1) In actions appealed from municipal court, where there is no new trial, if the judgment be affirmed or the appeal dismissed the respondent shall have costs; if reversed, the appellant; if affirmed in part and reversed in part, the court may award the costs or such part thereof as shall seem just to either party. Where there is a new trial costs shall be awarded to the successful party; but if the ap-

peal be from a judgment in favor of the appellant he shall have costs only when he shall obtain a more favorable judgment, and otherwise the respondent shall have costs. In all such cases full costs shall be \$10 fees and all disbursements made for state tax, return of the justice, and officers' and witnesses' fees, together with all costs taxable in the municipal court in such action.

(2) Upon certiorari to municipal court the same costs shall be awarded to the successful party as provided by sub. (1), where there is no new trial.

271.10 Taxation of costs. (1) **CLERK'S DUTY, NOTICE, REVIEW.** The clerk shall tax and insert in the judgment and in the docket thereof, if the same shall have been docketed, on the application of the prevailing party, upon three days' notice to the other, the sum of the costs and disbursements as above provided, verified by affidavit.

(2) **COST BILL, SERVICE.** All bills of costs shall be itemized and served with the notice of taxation.

(3) **OBJECTIONS, PROOFS, ADJOURNMENT.** The party opposing such taxation, or the taxation of any particular item shall file with the clerk a particular statement of his objections, and he may produce proof in support thereof and the clerk may adjourn such taxation, upon cause shown, a reasonable time to enable either party to produce such proof.

(4) **COURT REVIEW.** The clerk shall note on the bill all items disallowed, and all items allowed, which have been objected to; and his action may be reviewed by the court on motion of the party aggrieved made and served within ten days after taxation, which review shall be founded on the bill of costs and the objections and proof on file in respect thereto. No objection shall be entertained on such review which was not made before the clerk, except to prevent great hardship or manifest injustice.

Where the court included excessive attorney's fees in the judgment and the clerk did not tax costs, appellant need not ask for review under sub. (4) and can object on appeal. *Running v. Widdees*, 52 W (2d) 254, 190 NW (2d) 169.

271.11 Disbursements, how proved. Charges in a bill of costs for witness fees, or copies of documents or other disbursements, except to officers for services shall not be taxed without an affidavit stating the distance the witnesses respectively traveled and the days they actually attended, and an affidavit that such copies were necessarily obtained for use; nor shall such other disbursements be allowed without an affidavit specifying the items thereof, nor

unless they appear to have been necessary and reasonable in amount.

271.12 Costs may be set off. If, in any action, a recovery be had by one party and costs be awarded to the other the court may set off one against the other and render judgment for the balance.

271.13 Referee; court to fix and allow fees. After the trial of any issue by a referee pursuant to a compulsory reference for that purpose his fees and expenses shall be fixed by the court in which his report has been filed and paid by the county as other circuit court expenses are paid. In all other cases the compensation of referees shall be three dollars for each day necessarily occupied with the business of the reference; but the parties may agree in writing upon any other rate of compensation.

271.131 Taxing costs on compulsory references. In all cases of compulsory reference wherein the fees claimed by the referee shall exceed fifty dollars, such fees shall not be allowed until a hearing is had thereon, upon ten days' notice to the district attorney of the county, accompanied by a copy of the bill.

271.14 Fiduciary; liability for costs limited; bond premium. In any action or proceeding prosecuted or defended in any court in Wisconsin by an executor, administrator, guardian ad litem, trustee of an express trust, general guardian or a person expressly authorized by statute, unless otherwise specially provided, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected of the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action, proceeding or defense. In all actions or proceedings in which any receiver, assignee, guardian, guardian ad litem, executor, administrator, or other fiduciary may be entitled to recover costs he may recover in addition to other costs, such sum paid a company authorized by the laws of this state, so to do for becoming his surety upon any bond or other obligation given by him in his representative capacity, in such action or proceeding, pursuant to law or the order of any court or judge, as may be allowed by the court or judge, in which or before whom he accounts, not exceeding two per centum per annum on the amount secured by such obligation, or any less amount which he may have paid any such company for such purpose.

271.15 Assignee's liability for costs. In actions in which the cause of action shall, by assignment, after the commencement of the action or in any other manner become the property of a person not a party to the action such person shall be liable for the costs in the same manner as if he were a party; and payment thereof may be enforced by attachment.

271.16 Settlement, costs on. Upon settlement of an action no greater sum shall be demanded for costs than at the rate prescribed in this chapter.

271.19 Records copied not to be taxed for. No record, writ, return, pleading, instrument or other writing copied into any proceeding, entry, process or suggestion shall be computed as any part of the draft of such proceeding, entry, process or suggestion.

271.21 Suit tax. (1) In each civil action, special proceeding, except probate proceedings, and cognovit judgment in the circuit or county court, excluding all matters brought into the probate branches, a suit tax of \$11 shall be paid at the time the action is commenced, except that:

(a) In actions by small claim type procedure, the suit tax is \$2.50.

(b) In forfeiture actions in the county court, the tax is \$3.

(2) An additional suit tax of \$2 shall be collected from defendants in all actions for violations of traffic regulations and shall be paid into the state treasury.

(3) A municipality need not advance the suit tax but shall be exempt from payment of such tax until the defendant pays costs pursuant to s. 299.25.

(4) The suit tax paid in circuit court shall be paid into the state treasury after any credits are applied for transfer of cases to the county court, in which case the rule governing remittance from the county court shall apply. The suit tax paid in county courts shall be paid one-half into the state treasury and one-half into the county treasury after any credit for transfer of cases to circuit court.

History: 1971 c. 278.

Cross References: Suit tax is required by sec. 18, art. VII, Const. 128.21 (1) provides that no suit tax is to be collected on amortization of debt proceedings by wage earners. See 59.42 (2) as to payment of suit tax by counties, municipalities and school districts. 52.01 (8) provides that counties are not to pay the suit tax on actions under 52.01.

See 267.04 for special provision for suit tax in garnishment actions.

271.22 What county to pay costs when venue changed, taxation, certification. (1)

In all proceedings, including criminal actions, where a change of venue is had (except in cases where such change is made because the action was not brought in the proper county), or when an action, occupying a day or more, is tried outside the county wherein pending, the county in which such action was commenced shall pay to the county in which the same shall be tried the following expenses arising out of such change of venue:

(a) The per diem fees of the clerk or his deputies, all the taxable costs, disbursements and fees of such clerk on any proceeding or action.

(b) The per diem fees of the petit jurors actually in attendance upon said court.

(c) The per diem fees of the sheriff, undersheriff and deputies in attendance upon said court.

(d) All lawful charges for boarding the jury.

(e) The legal fees of all witnesses in any criminal case or proceedings which are a charge against the county.

(f) The fees or compensation of the reporter in attendance upon said court, and such other fees allowed to such reporter in criminal proceedings which are chargeable to the county.

(g) Such other lawful costs, charges, fees, and disbursements which are chargeable to the county, and all lawful costs, disbursements and charges which any such county may be subjected to or may incur in any such action or proceedings.

(h) All charges for subpoenaing witnesses in any criminal case or proceedings and which are a proper charge against the county. The fees of such officers, jurors and reporter to be estimated for each day and part of a day, not less than half a day, occupied in disposing of any such action.

(2) The clerk shall make out a correct bill of all the expenses which shall accrue under this section and have the same taxed and allowed by the presiding judge of such court; and when so taxed shall transmit the same to the county clerk of the county in which said action was commenced. A county order therefor shall issue in favor of the county, in which any such action or proceedings were had, or tried.

(3) Wherever costs are to be taxed against a county, pursuant to the provisions of this section, the district attorney of the county where the action or proceeding was tried shall serve upon the district attorney of the county sought to be charged with such expense a copy of such bill of expenses, together with eight days'

notice of the time and place the same will be taxed before the presiding judge of such court. No such bill of expense shall be allowed unless such notice is given or is waived in writing.

271.23 Actions by or against county. In all actions by or against a county, and in actions or proceedings by or against county officers in their name of office, costs shall be awarded to the prevailing party as in actions between individuals.

271.24 Action against city official, cost. Costs, if any, in an action against a city officer in his official capacity, except the action directly involve the title to his office, shall not be awarded against such officer, but may be awarded against the city.

271.25 Court costs, repaid counties. In any civil action or proceeding tried in a circuit or county court of this state, either by or against the state or any of the state officers in their official capacity, or any of the state commissions, under the provisions of the statutes, there shall be repaid out of the state treasury to said county upon the certificate of the presiding judge and the clerk of said court and the approval of the attorney general and the audit of the department of administration:

- (1) The per diem of the clerk of court.
- (2) The per diem and mileage allowed by law to the petit jurors actually in attendance upon said court during the trial of any such action or proceeding.
- (3) In case a referee shall be appointed in any such action or proceeding, the fees of the referee and the necessary expenses of such reference.
- (4) The fees of the reporter of the court for transcribing the testimony taken in any action against the public service commission in which these statutes require the court to transmit such testimony to such commission. Expenses under this section shall be charged to the legal expense appropriation in s. 20.455, except where elsewhere specifically charged to some other appropriation.

271.27 Security for costs. In all cases where it shall appear reasonable and proper the court may require the plaintiff to give sufficient security for such costs as may be awarded against him.

271.28 Security for costs. (1) **DEFENDANT MAY REQUIRE.** Except as otherwise provided by section 271.29, the defendant may require the plaintiffs to file security for costs if

the plaintiffs are all nonresidents; or are foreign corporations, nonresident executors, administrators, guardians, trustees or receivers; or are trustees or assignees of any debtor; or are imprisoned for crime for terms less than life; or shall take issue upon the answer of the garnishee.

(2) **ORDER FOR SECURITY.** Upon proof by affidavit entitling the defendant thereto the court or judge shall order the plaintiffs to file security for costs in a sum therein mentioned, not less than two hundred and fifty dollars, within twenty days after the service upon them of a copy of such order, and that all proceedings on the part of such plaintiffs be stayed until security is filed.

(3) **SECURITY, HOW GIVEN.** Within the time required the plaintiffs shall file with the clerk of the court, and give the defendant notice thereof, an undertaking with sureties, each of whom shall justify, by affidavit, in the sum stated in the undertaking, above liabilities and exemptions, in property in this state, conditioned to pay on demand all costs that may be awarded to the defendant in such action in any court, not exceeding the sum mentioned in such order. Upon failure to file such undertaking the court may, upon motion of the defendant, dismiss the action.

(4) **DEPOSIT IN LIEU OF UNDERTAKING.** The plaintiffs in lieu of such undertaking may deposit with the clerk of the court (who shall give a receipt therefor) money equal to the amount specified in the order for security, and give notice of such deposit.

271.29 Security for costs, suit tax, service and clerk's fees for indigents. (1) Any person may commence, prosecute or defend any action or proceeding in any court, or any writ of error or appeal therein, without being required to give security for cost or to pay any service or clerk's fee or suit tax, upon filing in said court, and receiving approval of the affidavit by the court, his affidavit that because of his poverty he is unable to pay the costs of said action or proceeding, or any writ of error or appeal therein, or to give security for the same, and that he believes that he is entitled to the redress that he seeks in such action or proceeding, or writ of error or appeal, and setting forth briefly the nature of his cause or appeal, or defense. If such person subsequently recovers costs, the recovered amount shall first be applied to pay any service and filing fees which were waived under this subsection. Nothing contained in this section shall prevent the affiant from recovering any service or clerk's fees

or any suit tax waived under this section. If such person subsequently recovers these costs, the recovered amount shall be used to pay any costs waived under this section.

(2) The court may dismiss any action or proceeding brought under this section if it be made to appear that the allegation of poverty is untrue; or may require security as in other cases.

271.33 Additional security for costs. If any surety on any undertaking given under section 271.28 shall remove from the state or be deemed at any time insufficient the court or presiding judge may require the plaintiff to give a new undertaking, and every person becoming surety thereon shall be liable for all costs, from the commencement of the action, in like manner as if he had been the original surety.

271.34 Attorney for plaintiff liable for costs. In any case in which the defendant, at the time of the commencement of the action, may require security for costs the attorney for the plaintiff shall be liable for such costs not exceeding \$100, until security therefor is filed, whether such security shall have been required by the defendant or not; but such attorney may

relieve himself from such liability by filing an undertaking as prescribed by section 271.28, and giving notice thereof.

271.46 Taxation after settlement. Upon the settlement of an execution by a defendant or upon settling any action or demand the sheriff or attorney claiming any fees which shall not have been taxed shall, upon being required by the defendant and on his paying the expenses thereof, have his fees taxed by some proper officer authorized to tax costs in the court in which the action may be pending or from which the execution shall have been issued.

271.47 Fees not collectible till taxed. No sheriff, attorney or other person shall collect any fees, after having been required as aforesaid to have the same taxed, without such taxation having been made.

271.48 Duty of officers taxing costs. Every officer authorized to tax costs in any court for services in any proceeding shall examine the bills presented for taxation, whether such taxation be opposed or not, and must be satisfied that the items charged are correct and legal, and shall strike out all charges for services which, in his judgment, were not necessary.